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# FIFA DISPUTE RESOLUTION CHAMBER

**SPORTING CLUBE DE PORTUGAL - FUTEBOL, S.A.D.**

v.

**RUI PEDRO DOS SANTOS PATRÍCIO  
&  
WOLVERHAMPTON WANDERERS FOOTBALL CLUB**

To the attention of Mrs. Maja KUSTER HOFFMANN  
Head of the Players' Status

FIFA-Strasse 20,  
P.O. Box 8044 Zurich, Switzerland

Delivered by email to: [psdfifa@fifa.org](mailto:psdfifa@fifa.org)

Messrs. Juan de Dios CRESPO PÉREZ, José Carlos OLIVEIRA and Alfonso LEÓN LLEÓ on behalf of Sporting Clube de Portugal - Futebol, S.A.D. (the “*Claimant*”, “*Sporting*”, or the “*Club*”) as its representatives submit its

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## STATEMENT OF CLAIM

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against Rui Pedro Dos Santos Patrício (the “*First Respondent*” or the “*Player*”) and Wolverhampton Wanderers Football Club (the “*Second Respondent*” or the “*New Club*”) before the Fédération Internationale de Football Association Dispute Resolution Chamber (the “*FIFA DRC*”) in relation to the present claim filed with regards to the employment-related dispute, involving the issuance of an International Transfer Certificate (hereinafter also referred to as “*ITC*”), in between the *Claimant* and the *First Respondent* (hereinafter also referred jointly as the “*Parties*”) and the *Second Respondent*.



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**A) CLAIMANT:**

1. Sporting Clube de Portugal - Futebol SAD is a professional football club registered with the Portuguese Football Association, playing in Primeira Liga.
2. The *Claimant* is duly represented by its lawyers:

Mr. Juan de Dios CRESPO PÉREZ, Mr. José Carlos OLIVEIRA, Mr. João LOBAO, Mr. João SAÚDE, Ms. Rita CANAS DA SILVA and Mr. Alfonso LEÓN LLEÓ; attorneys-at-law in Lisboa (Portugal) and Valencia (Spain)

3. The *Claimant* requests that all communications regarding the present dispute be made to his counsels on the following emails address:

[jddcrespo@ruizcrespo.com](mailto:jddcrespo@ruizcrespo.com);  
[jcoliveira@sporting.pt](mailto:jcoliveira@sporting.pt);  
[aleon@ruizcrespo.com](mailto:aleon@ruizcrespo.com)

**B) ADVANCE OF COSTS:**

4. Article 18(2) of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber states that disputes such as this one bears no cost:

*“DRC proceedings relating to disputes between clubs and players in relation to the maintenance of contractual stability as well as international employment related disputes between a club and a player are free of charge.”*

5. Accordingly, there is no advance of costs to be paid.

**C) RESPONDENTS:**

6. The *First Respondent* is Mr. Rui Pedro Dos Santos Patrício, a professional football player born in Regueira de Pontes (Portugal) on the 15<sup>th</sup> of February 1988, in respect of whom notifications shall be made to his new employer, the *Second Respondent* who will be in a position to provide your most esteemed services with his current location and/or forward him the present brief.
7. On the other hand, in order to ensure receipt of the present written submission by the *First Respondent*, please find below the address of the *Player's* current intermediary:

Alameda dos Oceanos - Edifício Espace, Lote 1.06.1.4 - Escritório 3.18  
1990-207 Lisboa (Portugal);



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Fax: + 351 21 898 7079;  
Email: [gestifute@gestifute.com](mailto:gestifute@gestifute.com).

8. The *Second Respondent* is Wolverhampton Wanderers Football Club, an English professional football club registered with the English Football Association, with address and do-ordinates as follow:

Wolverhampton Wanderers Football Club (1986) Limited;  
Registered Office: Molineux Stadium, Waterloo Road, Wolverhampton;  
WV1 4QR;  
Company Registration Number: 01989823;  
E-Mail: [info@wolves.co.uk](mailto:info@wolves.co.uk).

9. The contact person of the *Club* is its Club Secretary Mr. Matt Wild, whose email address is: [mattwild@wolves.co.uk](mailto:mattwild@wolves.co.uk)

**D) STATEMENT OF FACTS:**

10. The *Player* has been playing for the *Claimant* since a youth player with the age of 13. Since the age of 18 he has been playing for the *Club's* first team (extract from Transfermarkt.com - herein enclosed as **Annex no. 2**).
11. Additionally, the *Player* is the captain of the *Club's* A team.
12. On the 1<sup>st</sup> of March 2016 the *Club* entered into a new employment contract with the *Player* titled "Contract" (hereinafter referred to as the "*Employment Contract*" or "*the Contract*" - herein enclosed as **Annex no. 3**<sup>1</sup>) for a term of five (5) sporting seasons being from the seasons 2016/2017 until the season 2021/2022, namely to the date of the 30<sup>th</sup> of June 2022.
13. Pursuant to § 2 of the *Employment Contract* the *Club's* financial obligations vis-à-vis the *Player* were the following:

*"SPORTING SAD undertakes to pay the player for each of the 2016/2017 to 2021/2022 seasons the gross annual amount of € 2,376,144.00 (two million, three hundred and seventy-six thousand, one hundred and forty-four euros), to be paid through 12 monthly, successive and equal installments in the gross amount of € 198,012.00 (one hundred and ninety-eight thousand and twelve euros) each, including proportional amounts corresponding to holiday and Christmas allowances, which become due on the fifth day of the month following that which they concern "*

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<sup>1</sup> The original version of the *Contract* is drafted in Portuguese. The *Claimant* herein provides free translations into English of each contractual clause it will refer to along the present written submission.



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14. Pursuant § 8 of the *Employment Contract*, the *Player* was granted the right to unilaterally terminate the contract without the need to invoke just cause, and immediately be disengaged from any employment bound with the *Club* under the following conditions:

*"a) The termination can only take place in the period between May 15 and June 15 of each sporting season, and communication must be sent to SPORTING SAD, by fax to the number [...], addressed to the Board of Directors, 15 days prior to the date on which it shall operate its effects;*

*b) With this communication, SPORTING SAD should be immediately paid the amount of € 45,000,000.00 (forty-five million euros).*

*c) Once the notice has been served with the advance and within the deadlines set forth in item a) and the sum mentioned in b) above has been paid, SPORTING SAD undertakes to terminate its employment and sports relationship with the player, and, upon request, to authorize the FPF to proceed to the sending of the respective International Certificate to any foreign Club that might have required it".*

15. It is also assumed that *"the player may demand in the period between May 15 and June 15 of each sporting season that SPORTING SAD accepts a proposal for the acquisition of the federative rights relating to the player presented by another foreign Club or SAD, for the price of € 45,000,000.00 (forty-five million euros) paid to SPORTING by means of a transfer to its bank account"*(§ 9 of the *Employment Contract*).

16. § 11 of the *Employment Contract* stipulates the consequences of a termination without just cause:

*"b) In the event that the player terminates unlawfully, he shall be obliged, in the legal-labor scope, to pay to SPORTING SAD an indemnity corresponding to the amount of the remuneration that he would be entitled to receive until the end of the terminated contract, being his registration by a third Club dependent, in the legal-sport scope, upon the payment of the amount of € 45,000,000.00 (forty-five million euros) corresponding to the valuation of the player's sports participation rights made by the parties in this contract."*

17. By means of a letter dated 31<sup>st</sup> of May 2018 and received on the 1<sup>st</sup> of June 2018, the *Club* was notified of the unilateral termination of the *Employment Contract* by the *Player*. The *Player* attempted to ground said premature termination with alleged just cause by means of a termination letter (hereinafter referred as such and herein enclosed as **Annex no. 4**).



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18. In short (the allegations and the reply thereto will be developed in detail at a later stage along the present brief) the *Player* purports that the *Club* committed a breach of its legal and contractual obligations as an employer by supposedly violating his professional and personal dignity as well as his physical integrity (**Annex no. 4**, pages 1-3):

“- *Guilty violation of legal or conventional guarantees of the worker;*  
- *Application of an abusive sanction;*  
- *Failure of health and safety conditions in the workplace;*  
- *Infringement of the employee's serious interests; and*  
- *Offense to the physical or moral integrity, freedom, honour or dignity of the employee, punishable by law, practiced by the employer or his representative.*”

19. On the 11<sup>th</sup> of June 2018 the *Club* sent a letter to the *First Respondent* refuting the latter's reasons for termination of the *Employment Contract*.

20. On the 18<sup>th</sup> of June 2018, the *New Club* officially announced the signing of the *Player* and informed the *Claimant* it had submitted a request via TMS in respect of the *Player's* ITC.

21. The *Claimant* will hereinafter undoubtedly ground the fact that the *Player* unilaterally breached his *Employment Contract* without just cause and therefore needs to compensate the *Club* accordingly.

22. The *Claimant* therefore files this claim in front of the FIFA Dispute Resolution Chamber (hereinafter also referred to as the “*DRC*”) to adjudicate on this matter and award the corresponding compensation in favour of the *Club* pursuant to Article 17 of the FIFA Regulations on the Status and Transfer of Players (hereinafter also referred to as the “*RSTP*”) as:

- a. The *First Respondent* unilaterally breached his employment contract with the *Claimant* without just cause;
- b. The *Second Respondent* is jointly and severally liable as it induced said unilateral breach without just cause;
- c. The *Claimant* herein requests compensation in the amount of EUR 54,702,588.00/- (Fifty-Four Million Seven Hundred Two Thousand Five Hundred Eighty Eight Euro), plus the corresponding default interest.
- d. Sporting sanctions shall be imposed over the *First* and *Second Respondent*.



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**E) JURISDICTION:**

23. Pursuant to § 10 of the *Employment contract* the *FIFA DRC* is exclusively competent to settle all conflicts arising from the *Contract*, particularly but not exclusively limited to the existence or not of just cause in the event of any unilateral termination on the initiative of either party.
24. In relation thereto, it is self-explanatory that the *Parties*, duly represented by their respective legal advisors, expressly renounced in advance to their right to seek redress before any judicial body, court and/or arbitral tribunal other than the *FIFA DRC*.
25. The *Claimant* is a Portuguese football club affiliated to the Federação Portuguesa de Futebol (hereinafter also referred to as the “*FPF*”).
26. The *First Respondent* is a professional football player of Portuguese nationality who is now registered with Wolverhampton Wanderers Football Club, professional English football club registered with the English Football Association in relation with whom an ITC request has been made through the FIFA Transfer Matching System (hereinafter also referred to as the “*FIFA TMS*”).
27. As this dispute is based upon a breach of contract and subsequent request for registration of a professional football opposing two clubs affiliated to different national football associations, this is a dispute of an international dimension.
28. In addition, the *Claimant* and the *Respondents* are indirect members of *FIFA*. Therefore they are subject to and bound by the statutes, rules and regulations enacted by the governing body for football worldwide.
29. Article 24 of the *FIFA RSTP* identifies that the *DRC* shall adjudicate over disputes described in article 22 of the *FIFA RSTP*:
- “1. The *Dispute Resolution Chamber (DRC)* shall adjudicate on any of the cases described under article 22 a), b), d), and e) with the exception of disputes concerning the issue of an *ITC*.”
30. Article 22(a) of the *FIFA RSTP* outlines that the *DRC* shall have jurisdiction over contractual stability cases where there has been an *ITC* request:
- “22 *Competence of FIFA*  
[...]  
a) *disputes between clubs and players in relation to the maintenance of contractual stability (articles 13-18) where there has been an ITC request*



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*and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract; [...]*

31. Moreover, we note that § 10 of the *Contract* states the following:

*“As partes desde já acordam designar a Câmara de Resolução de Disputas de FIFA, com recurso para o Tribunal Arbitral do Desporto de Lausanne, na Suíça, para dirimir todos os conflitos emergentes do presente contrato, nomeadamente para julgar e existência ou não de justa causa em eventual rescisão unilateral por iniciativa de qualquer das partes, com expressa renúncia a qualquer outro órgão judicial.”*

Which can be translated into English as it follows:

*“The parties hereby agree to designate the FIFA Dispute Resolution Chamber, with appeal before the Court of Arbitration for Sport in Lausanne, Switzerland, to solve all disputes arising from this contract, in particular to judge whether or not there is a just cause in unilateral termination by the initiative of either party, with express renounce to any other judicial body.”*

32. Conclusively, as explained above, the *Club* and the *First Respondent* agreed on the jurisdiction of the *FIFA DRC* to solve any dispute arising from the *Contract*.

**F) APPLICABLE LAW:**

33. As a result of the *FIFA DRC* being the appropriate and competent body to hear and adjudicate this dispute, the *FIFA Statutes and Regulations* shall apply on a primary basis and, as *FIFA* is an association domiciled in Switzerland and therefore governed by Swiss law, said legislation shall be subsidiarily applicable.

34. Moreover, we note that § 13 of the *Contract* states:

*“Em tudo o que não estiver previsto no presente contrato, e apenas nessa situação, aplicar-se-á o CCT outorgado entre o Sindicato Nacional dos Jogadores Profissionais de Futebol e a Liga Portuguesa de Futebol Profissional.”*

Which can be translated into English as it follows:

*“To all matters not provided for in this contract, and only in this situation, it is applicable the collective bargaining agreement entered into between the National Union of Professional Football Players and the Portuguese Professional Football League.”*





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35. As a result, subject to the primacy of applicable FIFA's regulations, Swiss law shall apply complementarily, taking into consideration subsidiarily the provisions of the Portuguese collective bargaining agreement and the Portuguese labour code.

**G) AS TO THE MERITS:**

36. The *Claimant* will herein exhaustively demonstrate that the *Player* unilaterally terminated the *Contract* without just cause.

37. The *Parties* agreed in the *Contract* that in case the *Player* terminated the *Contract* without just cause, the *Club* would be entitled to compensation.

38. The following issues will be discussed below as follows:

- a. General remarks regarding employment contracts in football;
- b. Allegations made by the *Player*;
- c. Termination of the *Contract* without just cause;
- d. Calculation of the corresponding compensation.

**a. General remarks regarding employment contracts in the football industry:**

39. It firstly needs to be stated that the *Employment Contract* was valid and binding and it will be demonstrated that the *Player* terminated it without just cause.

40. In this respect, just a general remark, it is trite law to say that "*agreements have to be executed (pacta sunt servanda) by the parties involved to them*" (CAS 2008/A/1568 M. & Football Club Wil 1900 v. FIFA & Club Naftex AC Bourgas).

41. The sanctity of contracts is further enshrined where it has been held by long-standing CAS jurisprudence that *pacta sunt servanda* "*should not be easily disregarded*" (CAS 2005/A/973 Panathinaikos Football Club v. S.5).

42. Article 17(1) of the *FIFA RSTP* specifically states, *verbatim*:

*"Article 17 Consequences of terminating a contract without just cause:*

*The following provisions apply if a contract is terminated without just cause:*

*In all cases, the party in breach shall pay compensation [...]"*



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43. The jurisprudence as to what constitutes “just cause” is well established and reiterated on countless occasions by the *FIFA DRC* as well as the *CAS*.
44. Applying Swiss Law, the *CAS* has made the following authoritative comments, which provides for an accurate guide to the law when determining whether the breach of a contract was undertaken with or without cause, evoked in *CAS 2006/A/1100 Tareq Eltaib v. Club Gaziantepspor*:
- a. An employment contract can only be terminated prior to its expiry if there are “valid reasons” or if the involved contractual parties reach a mutual agreement as to the end of the contract at stake;
  - b. Article 337(2) of the Swiss Code of Obligations ((hereinafter also referred to as the “*SCO*”)) states that “[a] *valid reason is considered to be, in particular, any circumstances under which, if existing, the terminating party can in good faith not be expected to continue the employment relationship*”.
  - c. Whether there is “good cause” to terminate any contract depends on the overall circumstances of the case at hand;
  - d. Only a breach of the utmost severity justifies termination of a contract without prior warning.
  - e. A breach is considered to be of the utmost severity when there are objective criteria which do not reasonably permit to expect a continuation of the employment relationship between the parties.
  - f. The circumstances that occur after the declaration of termination shall not be taken into account while determining whether there was or not a valid reason to terminate a contract.

**b. Allegations made by the Player:**

**b.1. Alleged defamation of the Player:**

**b.1.1. General remarks:**

45. The *Player* claims in his statement incidents that happened between the 19<sup>th</sup> of January 2018 and the 12<sup>th</sup> of April 2018 and the incident at the *Club*’s academy in Alcochete which took place on 15<sup>th</sup> of May 2018.



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46. The allegations referred to events having taken place in between the 19<sup>th</sup> of January 2018 and the 12<sup>th</sup> of April 2018, however, cannot be considered anymore as it is long-standing jurisprudence of the Swiss Federal Tribunal that waiting for a period of time after any alleged breach indicates that the continuation of the employment relationship is not unreasonable and is therefore a sign of waiving the assertion of the important reason (ATF 4A\_559/2012 (18.3.13) E. 5.2.2, 4A\_517/2010 (11.11.10) E. 2, 4A.169/2007 (20.8.07) E. 3 fr., 4C.348/2003 (24.8.04) E. 3.2 fr.).
47. This is corroborated by well-established CAS jurisprudence (CAS 2014/A/3643 Club Promotora del Pachuca S.A. de C.V.v. Facundo Gabriel Coria & Federation Internationale de Football Association (FIFA):

*“The party prepared to put an immediate end to the employment agreement on the grounds of a just cause has only a short period of reflection, after which it must be assumed that the said party chose to continue the contractual relationship until the expiry of the agreed period. A period of reflection of two to three business days is a maximum. An extension of a few days is tolerated only under exceptional circumstances”.*

48. It must therefore be concluded that, the allegations which allegedly should have led to the termination of the contract with just cause and occurred between the 19<sup>th</sup> of January 2018 and the 12<sup>th</sup> of April 2018 have elapsed already due to timing reasons<sup>2</sup>. It must be held, that the incidents must have been not that severe that the continuation of the employment relationship would not have been possible. The *FIFA DRC* therefore should not deal with those allegations at all.
49. And, even if the *FIFA DRC* takes those points into consideration, nevertheless they do not constitute a reason for a unilateral termination of the *Employment Contract* as it will be substantiated further on.

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<sup>2</sup> This is also consistent with the Portuguese Labour Law. Indeed article 395.1 of the Portuguese Labour Code establishes: “*O trabalhador deve comunicar a resolução do contrato ao empregador, por escrito, com indicação sucinta dos factos que a justificam, nos 30 dias subsequentes ao conhecimento dos factos.*” Which can be translate into English as follows: “*The employee must communicate the termination of the contract to the employer, in writing, with a brief indication of the facts that justify it, within 30 days from the facts.*”. This is a time-limit (see Article 298 (2) of the Civil Code), but it shall be invoked by the interested party (see article 303 and 333 of the Civil Code) - to that effect. See, in particular, the ruling of the Supreme Court of Justice of November 17, 2016, Case No. 861 / 13.3TTVIS.C1.S2. This provision is justified by the necessity of ensuring legal security: “[t]he time-limit is primarily justified on the grounds of legal security. It is based on objective reasons of rule of law, as well as on the need to decide, within a reasonable time, legal situations and to avoid a tendency of a perpetual bound on the obligee that, otherwise, could be always demanded by the right older” (judgment of the Coimbra Relation of April 28, 2017, Case No. 176 / 16.5T8LMG.C1).



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**b.1.2. Messages sent by the President of the Club to the Player as per his condition of captain of its A team and consequently liaison with the rest of the players:**

b.1.2.1. 19<sup>th</sup> of January 2018:

50. The first supposedly defamatory allegation attributed to the Club is described in pages 3-4 of **Annex no. 4**:

*“In the sequence of the tie with the Vitória de Setúbal team [the President of SPORTING SAD] sent me, as Team Captain, the following message:*

*“I am the President. As such I have to be at your side in good and bad times.*

*But I'm also professional and adept at this Club that I love.*

*This result put me in a state of nerves I did not deserve. I had to be seen in the hospital. [...]*

*I live my role as President with love but it is also my professional life and every bad result puts in question the same.*

*Thousands of Sporting Fans go to stadiums all over the country with no money to eat afterwards.*

*I know that nothing was lost today without being two points but the truth is that we have placed in deep sadness millions of people who only want from you to be happy. That today was our last frustration this year. That from now on we can only give joy to all. Already enough "the next year will be the one of great achievements". Enough of not giving the joys that Sporting fans deserve.*

*Not worth losing points and crying. We have to cry if we need to always win the three points. May today be the turning point.*

*Attitude and Commitment to win the four competitions where we are! This time we cannot fail. This season we have no more excuses to give. This year every goal we fail will be totally unforgivable and we will be the only ones to blame. Let's take from this frustration the ultimate strength to win everything, because I will not tolerate it being different.*



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*I give what I have and what I do not have and I cannot have bad days or manage good and bad.*

*[...]*

*Enough! Let's all fight together without any more excuses or failures. We have more than 3 and a half million people to suffer for us. It is our sole duty to give them happiness!*

*Attitude and Commitment to Attain All Glory."*

51. Conversely to the allegations of the *Player*, the message shows not at all any disregard by the *Club's* President towards the *First Respondent*. Despite showing some kind of sadness/frustration over two lost points against a worse team, which is normal, he intends rather to encourage and promote the team's commitment in subsequent games.
52. It also needs to be mentioned that the President speaks using the first person plural "we". This shows a strong sense of identity with the team itself and he does not take out himself from the responsibility towards all the fans:

*"[...] I have to be at your side in good and bad times";*

*"**We** put in sadness [...]"*;

*"That today was **our** last frustration";*

*"That from now on **we** can only give joy" [...];*

*"this season **we** cannot fail";*

*"**We** have no more excuses to give";*

*"Every goal **we** fail will be totally unforgivable and we will be the only ones to blame";*

*"Let's take this frustration out of the final force";*

*"Let's **all** fight **together**";*

*"It is **our** only duty to give them happiness."*

*(emphasis added by the Claimant)*

53. It is not unusual that a representative of a *Club* makes some remarks if he thinks that there is some lack of commitment and/or considers a wrong attitude among the squad. E.g. Michael Zorc, the sporting director of the German football club Borussia Dortmund, also criticized his team's attitude after a 1:1 draw, and this even publicly<sup>3</sup>.

<sup>3</sup><https://www.derwesten.de/sport/fussball/bvb/bvb-sportdirektor-zorc-unterstuetzt-stoegers-kritik-an-spielern-id213568879.html>



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54. Other examples: the nowadays head coach of Tottenham Hotspur Mauricio Pochettino criticizes in his book the professional football player Luke Shaw:

*"I felt his head was not in the right place to make the sacrifices and decisions that are necessary at that age."<sup>4</sup>*

55. Or José Mourinho, head coach of the English football club Manchester United:

*"I think we are inconsistent and we are inconsistent many times in our attitude," said Mourinho.*

*"Against our top-five opponents, we didn't lose any points for them. We didn't lose points in the two duels against the direct opponents, but then we lost points against teams that were promoted - we lost against Huddersfield and lost against Newcastle.*

*"We lost points against teams that probably are going to be relegated or are in the group of teams involved in the relegation fight.*

*"We lost three points against West Bromwich Albion and lost two points against other teams involved in that fight - Stoke and Southampton. We were not consistent and you pay the price."<sup>5</sup>*

56. Furthermore, the same individual made the following public statement regarding the attitude of his side further to a defeat in a match against an in principle inferior opponent:

*"That is not the case here. In the first half I was waiting for the mistake. They came from Mata and from Victor. It could have come from anyone because the attitude was really poor. When I lose matches I like to lose because the opponent was better and had more quality. When you lose because of your attitude, it is really bad."*

*"I don't even remember a friendly match in which our attitude was so poor. In the second half we tried but they played against an opponent who was defending, they were playing against the (referee's) watch and the wind was*

<sup>4</sup> <http://www.sportbible.com/football/news-mauricio-pochettino-is-critical-of-luke-shaw-in-his-book-20171101>

<sup>5</sup> <http://www.skysports.com/football/news/11667/11337380/jose-mourinho-blasts-manchester-uniteds-lack-of-consistency>



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*tremendous. We could have had a second goal but it would have been an undeserved draw."*

*"We came here to play a Premier League match, to play for three points. I feel really disappointed and, if I were a Manchester United supporter, not a manager, I would be really disappointed because you can play and lose to an opponent with more quality but not to an opponent that had more attitude."<sup>6</sup>*

57. Thus, it has been illustrated that the statements made by the President alike statements made by coaches, sporting directors (etc.) are rather usual in the world of football. This message surely does not constitute any violation of the employee's professional duty or guarantee and neither enables the *Player* to terminate the *Contract* with just cause.

b.1.2.2. 19<sup>th</sup> of March 2018:

58. The second alleged incident attributed to the *Club* arose only on the 19<sup>th</sup> of March 2018, after a victory obtained in the Portuguese League, where the President expressed firstly his happiness about the team's commitment and attitude, so complimenting the team.

59. The criticism, however, concerned the disregard of the players to obey the instructions that had been previously transmitted, regarding a solidarity action that should have been fulfilled in this game.

60. In fact, the *Club*, through its Technical Secretary, Vasco Fernandes, informed the *Player* as the captain of the *Club's* A team that before the start of the game a solidarity action would be carried out for the sake of the Sporting Foundation called "We Have Much Love to Give".

61. The *Club*, through its Technical Secretary, Vasco Fernandes, informed the *Player*, and in in total 18 players - André Pinto, Bas Dost, Bruno Fernandes, Bryan Ruiz, Cristiano Piccini, Fábio Coentrão, Fredy Montero, Gelson Martins, Jeremy Mathieu, Lumor Agbenyenu, Marcos Acuña, Marcus Wendel, Rodrigo Battaglia, Romain Salin, Ruben Ribeiro, Rui Patrício, Sebastian Coates, Stefan Ristovski (**Annex no. 5**) - through individual private messages sent by mobile phone, via WhatsApp, on the 18<sup>th</sup> of March 2018, at 11:30 p.m. that in the moments before the start of the match, a marketing action would be carried out for the *Club's* Foundation called "We have a lot of Love to Donate".

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<sup>6</sup> <https://www.independent.co.uk/sport/football/premier-league/manchester-united-huddersfield-jose-mourinho-attitude-worst-he-has-known-a8013056.html>



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62. It was a marketing action that in that period was adopted transversally in the various modalities of the *Club*.
63. In the same communication, the *Player* was informed that he and his teammates would have to:
  - a) Take the photograph of the starting 11 (eleven) as usual, and then take a second photo to make a heart with the hands, as illustrated by an image that was presented;
  - b) Make the same gesture if someone scores a goal.
64. Two actions which are in any case usual in the world of football.
65. The *Player* joined the *Club* team and participated in said team photography, but he did not observe the instructions given by the *Club* nor did he convey them to his teammates, thus failing to obey the instructions by the *Club*. Since the captain of the team did not make any move to follow the instructions, also the other teammates did not obey to the rules.
66. It has to be noted that it is not possible that the *Player* forgot to do the instructed actions as the instructions of the Technical Secretary, Vasco Fernandes, were clear and the *Player*, being the captain, got remembered before the game but yet did not act according to his duties.
67. Instead, it was a deliberate, provocative and concerted act of disobedience which led to an internal disciplinary procedure. The afore-referred private message sent by the President was seeking to draw the *Player's* attention over his duties as team captain.
68. While the *Player* alleges the language used by the President, it is well known that there are working sectors in which communication between the parties tolerates a higher level of informality in respective treatment and thus also another tone.
69. Pursuant to Swiss law, the observance of morality to which any employer is obliged in his own person and prevention of acts of immorality towards employees is in practice understood very narrowly and only in respect of honor or sexual acts.
70. That's why the values concerned depend on the particular job and are highly different (REHBINDER/STÖCKLI, Einleitung und Kommentar zu den Art. 319-330b OR, Schweizerisches Zivilgesetzbuch, Das Obligationenrecht, Die einzelnen





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Vertragsverhältnisse, Der Arbeitsvertrag, Art. 319-362 OR, BK – Berner Kommentar, Art. 328 N 10)<sup>7</sup>.

71. In this regard, professional football players are used to some kind of rude tone. It is notorious that in the football world the tone can get rude as it is an emotional business branch. What the President wrote in the text is not harsh e.g. compared to all the trash talk that professional football players are commonly confronted in matches shouted by opponent fans, players (including their teammates) and sometimes even their own fans.
72. In light of the above-mentioned, it is inappropriate of the *Player* to claim the rude tone of the President and the termination of the contract with alleged just cause in response thereof is striking to say the least. In sum, said text message was not infringing the personality rights (dignity/honor) of the *Player* and would never give rise to the termination of the contract with just cause.

**b.1.3. Absence of the President:**

73. Moreover, the *Player* invokes - as alleged evidence of the President's lack of support for the team - the latter absence on the 5<sup>th</sup> of April 2018, along the Union des Associations Européennes de Football (hereinafter also referred to as "UEFA") Europa League match played in Madrid against Club Atletico Madrid.
74. However, the *Player* avoided referring to the health reasons that prevented the *Club's President* from travelling to Spain on that day.
75. It is therefore far-fetched to infer from the absence of the President any disregard towards the players.
76. The sequence and timing of the afore-referred events demonstrate that at no stage these were even considered by the *Player* and or his legal representatives as serious circumstances even deserving a written notice to the *Club*.

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<sup>7</sup> Said considerations based on Swiss law are corroborated by jurisprudence from Portuguese courts, as follows: In a ruling of January 7, 2016, the Évora Court of Appeal states that: "*in the context of a social sporting life, in a specific social context of relations between sporting leaders, there is social tolerance in relation to some margin of harsh language and confrontation of words and ideas. The excesses of language and attitude coexist here with a corresponding "power of fit" on the part of those who frequent and move in these same spaces and in the same means, "sports fight"* (Case No. 756 / 13.0TATVR.E1 , Summary, I, with emphasis our).



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**b.1.4. Facebook publications on the 5<sup>th</sup> of April 2018:**

77. The Facebook publication originates after the defeat of the *Club* in the game, played on the 5<sup>th</sup> of April 5 2018 in Madrid, against Club Atletico Madrid by 2-0.
78. First, it should be pointed out that this is the first message (among those mentioned in the letter of termination) that has been published in a social network: the previous ones - to which the *First Respondent* seems nevertheless to reserve the same relevance - were sent from the mobile phone of the President of the *Club* (via WhatsApp) to the *Player's* mobile phone.
79. Secondly, it is important to take the wording chosen by the President into consideration. He described the defeats of the *Claimant* as collective defeats (i.e, not only of the players, but of the whole *Club*); so that such defeat inevitably also lead to a personal defeat, as regards himself).
80. Moreover, the title of said publication was: "*Europa League: What Future? We have to fill Alvalade*". Undoubtedly, the objective of the message was to fill the stadium with *Club's* fans as there were still chances to qualify for the final of said competition with a good game in the second leg in Portugal. Thus, it was nothing but a motivating message towards all the players and fans to keep their heads up.
81. The sole purpose of the message was to provoke union of the players and focus onto the second leg of said playoff.
82. Regarding the words chosen by the President it needs to be noted the following:
  - (i) he mentioned what he expected from the *Club's* A team:

*"[a] concentrated team with an attitude and commitment, defensively defensible and goal-scoring of 11 surpassing themselves and becoming 22"* (Annex no. 4, page 7);
  - (ii) The comments made by the President with which the *Player* was supposedly displeased began with the following words:

*"What I saw [...]"* (Annex no. 4, page 7). This is solely a description of the game, which every commentator and every fan witnessed as well;
  - (iii) That the comment was a mere description of the match is also illustrated by the comment made towards the referee:



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"a foul on the back 87 minutes that should have given the Atlético player a yellow card". So he not only referred to the Club's squad.

83. In general, said comments described situations in which the team could have performed better. However, the comments were surely not acrimonious or disrespectful as alleged by the *Player* (**Annex no. 4**, page 7). It was nothing less than a description and his view of the game.
84. It would not make any sense for the President to demoralize the players with the comments as the second leg in Portugal still needed to be played and the team still had chances to qualify for the next round. The *Player's* suggestion in this respect is frankly inconsistent.
85. Additionally, the football players are highly competitive sports professionals and always subject to intense exposure and scrutiny. Even if the players understood the comments as criticism, they are used to it by the means of the media.
86. Even more, obviously according to the *Player* nobody from the *Club* should criticize the performance of their players. However, if necessary and constructive, it lies within the responsibilities of a President, at any given time:
  - (i) to support where appropriate;
  - (ii) to show solidarity and encouragement when necessary; but also,
  - (iii) objectivity and assertiveness, when justified.

**b.1.5. Legal aspects according to Swiss Law:**

87. Art. 28 of the Swiss Civil Code (hereinafter also referred to as the "SCC") protects the legal personality of every person as a general provision. Art. 328 *SCO* corresponds to the respective protection under Swiss labor law.
88. Amongst others, the provision addresses the protection of the emotional life of a natural person. However, for an infringement, the emotional sphere must be **DIRECTLY** and sustainably impaired. Just feelings of aversion are legally irrelevant (Aebi-Müller, Personen- und Familienrecht – Partnerschaftsgesetz, Art. 1-456 ZGB – PartG, CHK - Handkommentar zum Schweizer Privatrecht, 3rd ed., 2016, Art, 28 N 14).
89. Art. 28 *SCC* respectively Art. 328 *SCO* also protects the honor of natural persons. Honor is the validity to which a person is entitled in society. It is to be distinguished between the inner honor (the sense of honor) and the external honor (the factual reputation in the community), whereby both aspects of the honor are to



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- be protected. On the other hand, ZGB 28 also protects the social prestige of a person regarding essential areas of life such as occupation, politics, Sport, etc. (s BGE 119 II 97 E 4b concerning professional honor) (Aebi-Müller, Art. 28 N18).
90. If the comments are solely a value judgement (“reines Werturteil”) they are permissible, provided that they do not use an inappropriate form, are completely unobjective and thus unnecessarily offensive (ATF 71 II 191 E 1).
  91. Firstly, it needs to be noted that the comments have been made just after a game, i.e. after a highly nerve-racking game in which the vast majority of the *Club*'s goals for said sporting season were at stake. The comments itself relate to some specific situations in the game where the players should have acted differently. The language respectively the words used by the President nevertheless were not unobjective nor were they offensive.
  92. In light of above-mentioned it needs to be stressed that the honor, particularly of the *Player*, was not violated by the comments made by the President and neither constitutes a personality right infringement pursuant to Art. 28 *SCC* or 328 *SCO* and therefore did not enable the *First Respondent* to terminate the employment contract with the *Club* with immediate effect.
  93. This applies even more since the *Player* is a famous athlete, considered under Swiss Law as “figures of contemporary society par excellence”. The Swiss Federal Tribunal subsumes under this term persons who due to their position, their function or their performance have become so prominent in the public eye, that the public has a legitimate interest in the person itself respectively in their participation in public life has to be affirmed. This applies for example for politicians, top officials, famous athletes, scientists or artists (ATF 127 III 481, E.2 c/aa).
  94. It is needless to say that the *Player*, the captain of a most renowned club as the *Claimant* and goalkeeper of the Portuguese National Team is such a “figure of contemporary society par excellence”. Such persons have to put up with a higher degree of criticism (Schneider-Marfels, Kapitel 6: Rufmord im Internet / I. – IV., Social Media und Recht für Unternehmen, 2015, p. 206).
  95. **However, once again, it has to be strongly underlined that the statements made by the President not even referred to the *Player*.**
  96. Even if it had been the case and he had been pointed directly - *quod non*, a termination with immediate effect is not valid if grounded on alleged criticism towards the employee's work performance (ATF 1C\_156/2007 of 30.8.2007 E.4).



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97. In light of all above-mentioned explanations, the publication on Facebook does not constitute a violation of Art. 328 *SCO* as it does not infringe the professional honor of the *Player*.
98. The fact that the statements by the President were not harsh can be illustrated by the interview the *Player* gave:

*"[our] focus is to train and play and that's what we did today. We made the most of this game and got the victory, which was the most important of all. It was to win and that's what we fight for every day (8 ...) ] Sometimes it runs like we want, some does not, but that's football. We will continue to make the most of Sporting, which is the most important. (...) To work, to give our maximum, in all the training, in all the games, this is what we will continue to do until the end of the season."*

(emphasis added by the *Claimant*)

99. The statements made by the *Player* once more demonstrate that the Presidents' Facebook postings had no negative effect, but rather a motivational one.

**b.1.6. FIFA jurisprudence regarding press statements:**

100. This interpretation goes also in line with the jurisprudence of the *FIFA* judicial bodies. For instance, its decision dated 20<sup>th</sup> of November 2014 with reference number 11141471 reads as follows:

*"11. The Single Judge noted that on 14 May 2012, four and a half months after the signing of Contract 2, the Respondent sent the Claimant a letter of termination by which the Respondent ended the contractual relationship on the grounds that the Claimant had made statements to the press that damaged the Respondent. The Single Judge noted that the Respondent in its letter stated that the termination was based primarily on the second and fifth clauses of Contract 2, the internal regulations of the club, those of the Football Federation of Country D and the FIFA Code of ethics.*

*12. Furthermore, the Single Judge noted that the Claimant had replied in writing to the defendant rejecting its letter of termination as being unfair.*

*13. In this regard, the Single Judge noted that the Claimant had submitted this claim to FIFA for premature termination by the Respondent without just cause and claiming the payment of salaries, bonuses, air tickets and compensation for damages.*



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14. *The Single Judge reiterated that the Respondent considered that the statements made to the press by the Claimant amounted to just cause for early termination of the contractual relationship and that the dismissal was in accordance with its statutes and its internal regulations.*

**However,**

15. *In this context, the Single Judge considered it appropriate to note that based on the principle of contractual stability, employment contracts are to be respected and in principle can only be terminated either by expiry of their term or by an agreement between the parties.*

16. *In this regard, the Single Judge paused to analyze the position of the Respondent with respect to the termination of the Contract 2 in February and on whether it was justified due to the fact that the Claimant's statements to the press had allegedly affected the prestige and the good name of the club and also that dismissal was invoked according to the rules.*

17. *In continuation, the Single Judge analyzed in detail the allegations of the Respondent and the evidence provided and preliminarily concluded that the reasons provided by the Respondent were not sufficiently important to end the contractual relationship entered into between the parties.*

18. *In this context, the Single Judge stressed that the termination of an employment contract must always be "ultima ratio", that is to say that it is an extreme measure applied when there is no possibility of continuing the contractual relationship.*

101. Another decision of the FIFA Players' Status Committee of the same date with reference number 11142253 reads:

*"18. The Single Judge noted that the Respondent considered that the statements made to the press by the head coach on behalf of his whole technical team (including the Claimant) amounted to just cause for premature termination of the contractual relationship and that the dismissal was in accordance with its statutes and internal regulations.*

19. *In this context, the Single Judge considered it appropriate to note that based on the principle of contractual stability, employment contracts are to be respected and in principle can only be terminated either by expiry of their term or by an agreement between the parties.*



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20. In this regard, the Single Judge paused to analyze the position of the Respondent with respect to the termination of the contract was justified because the Claimant's statements to the press had allegedly affected the prestige and the good name of the club and also that dismissal was invoked according to the rules.

21. In continuation, the Single Judge analyzed in detail the allegations of the Respondent and the evidence provided and preliminarily concluded that the reasons provided by the Respondent were not sufficiently important to end the contractual relationship entered into between the parties."

102. As clearly established by the aforementioned decision, the termination of an employment contract must only be done as an "ultima ratio", i.e. as a last resort after all other possibilities have been exhausted and it is no longer possible to expect the employment relationship to continue. Those statements by the Presidents made in the press cannot be considered as a valid reason for terminating an employment contract with immediate effect.
103. Said stance is even more confirmed by a most recent decision issued by the Single Judge of the *FIFA* Players' Status Committee on the 5<sup>th</sup> of June 2018 on the case 16-01459.

**b.1.7. The unfair attitude and challenge expressed by the Player:**

104. Once back to Portugal, the *Player* now alleges he had the expectation of meeting immediately, with the President of the *Club*. However, when they landed in Portugal on the 6<sup>th</sup> of April, the *Club's* team manager informed the team that the President could not meet that day informing that said meeting would take place immediately after the game on Sunday 8<sup>th</sup> of April against the Portuguese football club Paços de Ferreira, i.e. 48 hours later (see **Annex no. 4**, page 8).
105. The immediate unavailability of the President of the *Club* on the 6<sup>th</sup> of April was due to previously planned professional commitments in Lisbon, namely a hearing at the *Tribunal Arbitral do Desporto* Court of Arbitration for Sport, in Lisbon, and a meeting at the *Procuradoria Geral da República* (Portuguese Public Attorney's Office). The meeting was therefore scheduled for the 8<sup>th</sup> of April, shortly after the game.
106. Apparently, due to the displeasure provoked by not meeting immediately the *Club's* President, the *Player* chose to react irresponsibly without waiting for said meeting to happen and disclosed publicly in his personal accounts of his Instagram social network a release (**Annex no. 4**, pp. 8-10).



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107. It is well known, in the scope of the legal-labor relationship, that employees must obey the employer, the legal subordination of the employment contract being a shaping pattern of the contractual relationship. By posting a reply on Facebook and not waiting for the meeting scheduled on the 8<sup>th</sup> of April 2018, the *Player* clearly disregarded the *Club*'s directives.
108. Article 321d *SCO* provides regarding the right of general directives as it follows:
- “1 The employer is entitled to issue general directives and specific instructions regarding the performance of the work and the conduct of employees in his business or household.*
- 2 The employee must comply in good faith with the employer's general directives and specific instructions.”*
109. As a result of the above, in case employees violate directives alike, employers can sanction the employees' disobedience with disciplinary sanctions according to the employment contract or the specific work regulations (MÜLLER, *Aktuelle Rechtsprechung zur Haftung des Arbeitnehmer*, in *ArbR* 2006, p. 19).
110. As a consequence of the disregard of the *Club*'s directive, the commencement of a disciplinary procedure vis-à-vis the *Player* was announced. Considering the *Club* as the *Player*'s employer, it had the right in doing so.
111. The allegation of the *Player* that he supposedly suffered from disciplinary measures in a harmful way is absurd.
112. Even more, considering the disciplinary procedure involving the *Player* lasted for less than 24 hours, i.e. he was fielded in the upcoming football match and no fine was imposed upon him. Consequently, claiming said alleged - although inexistent - disciplinary sanction as being of an abusive nature is frankly surprising.
113. To make matters worse for the *Player* if he really had been imposed a disciplinary sanction as he nowadays contends, disciplinary procedures alike always grant the right to be heard of employees and even more, the possibility of its appeal in case the sanction finally imposed - if any - is deemed unfair.
114. However, none of these actions were adopted back then by the *Player*. This is self-explanatory - just as it happened with the other alleged offences in respect of which the *First Respondent* intends to ground his termination without notice - that at no stage the *Player* considered these as being real grievances entitling him to terminate the *Contract*. Coincidentally, said alleged offences became suddenly a just ground for termination only a couple of weeks ahead of the upcoming transfer window.





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**b.1.8. Incidents that happened after the 6<sup>th</sup> of April 2018:**

**b.1.8.1. Incidents on the 7<sup>th</sup> and 8<sup>th</sup> of April 2018:**

115. The meeting followed on the 7<sup>th</sup> of April 2018 between the President and certain players of the *Club* among who was the *Player*.
116. Following that meeting, the *Player* alleges wrongfully that the President made another post on the 8<sup>th</sup> of April exclusively directed to him (**Annex no. 4**, p. 13). In fact, the text referred to on pages 13 to 17 of **Annex no. 4** was a public post which had the purpose to appease the moods of everyone after the emotional discussion of the previous day. The President intended to put an end to any divergence that might have existed displaying therefore a conveying attitude which should have been matched by the *Player* as the *Club*'s captain and the leading figure in the squad, but unfortunately the latter never acted accordingly.
117. Subsequently, a winning streak commenced as the *Club* obtained five victories in a row, i.e. as of the 8<sup>th</sup> of April.

On the 8<sup>th</sup> of April 8 2018, Sporting defeated Paços de Ferreira 2-0.

On the 12<sup>th</sup> of April 12 2018, Sporting beat Atletico Madrid 1-0.

On the 18<sup>th</sup> of April 18 2018, Sporting defeated Futebol Clube do Porto 1-0.

On the 22<sup>nd</sup> of April 2018 Sporting beat Boavista 1-0.

On the 28<sup>th</sup> of April 28 2018, Sporting beat Portimonense 2-1.

118. As per the above, it can be easily inferred that the working conditions at the *Club* were more than adequate, allowing the *Player* and the rest of his teammates to duly perform and exercise his profession, conversely to the *First Respondent*'s current accusations when he wanted to terminate the *Employment Contract* without just cause, which do not match the proven facts surrounding the case at stake and demonstrate the inconsistency of the *Player*'s arguments.

**b.1.8.2. Incident on the match of the 5<sup>th</sup> of May 2018:**

119. On page 20 of the termination letter, the *Player* mentions that on the 5<sup>th</sup> of May 2018, in the game played against the Portuguese club Benfica, the President went to talk with the Ultras of the *Club*. He then makes the statement that in this game torches were thrown from the Ultras at his goal which almost hit him attempting to establish anyhow a link and attributing responsibility to the President of the *Club*.



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120. The allegations in this respect are mind-blowing and deprived of any basis. The *First Respondent* shows not any evidence that the talk were causal to the throwing of the torches. It also makes no sense, as the *Club* would suffer also high fines issued by the *FPF*.
121. The truth is that the President, the Support Liaison Officer and the Team Manager went to talk with the Ultras of the *Club* in order to confirm the previously agreed choreographic show which would be performed following the game.
122. As all along the issues raised through the *First Respondent*'s termination letter, the latter has not met at all the principle contained in Article 12 paragraph 3 of the *FIFA* Rules governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber according to which the claiming party shall carry the burden of proof.
123. The *Player* did not submit substantiated arguments supporting his request for termination without just cause and, *a fortiori*, has not presented any evidence in this regard, comforting himself by only enumerating certain alleged damages not supported by any means of proof at all.

**b.2. Incident regarding the training ground invasion:**

b.2.1. Allegations and description of the incident:

124. Firstly the *Club* wants to make clear that it strongly condemns the acts of violence that have been committed, trusting that all attackers have already been, and any remaining responsible ones will be found and punished severely by the competent authorities, and has indeed highly assisted in this respect.
125. The GNR (Guarda Nacional Republicana) arrested 18 attackers on the same evening on the 15<sup>th</sup> of May 2018.<sup>8</sup>
126. It is unacceptable that the *Player* wants to create to link this incident with the President, suggesting that the latter would have pushed the fans to do such an act by referring to expressions such as "*Strange [...]*", "*Strange too [...]*" "*Strange yet [...]*" and "*Unusual too [...]*".

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<sup>8</sup> <https://www.abola.pt/Nnh/Noticias/Ver/730549>



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127. The *Player* found it strange that the training that was pre-scheduled for Wednesday 16<sup>th</sup> of May 2018 at the Alcochete Academy, as it was anticipated for Tuesday 15<sup>th</sup> of May 2018 (**Annex no. 4**, page 23). Such a re-scheduling was a decision made by the team's coach, Mr. Jorge Jesus, within his autonomy to define the suitable training schedule and strategy.
128. For the *Player*, it was clear that the said attack at the Academy was not an isolated and unforeseeable conduct that could escape the ability of the *Club*' officials to perform, but rather an event that was perfectly predictable what, once again, remains entirely unsubstantiated (**Annex no. 4**, page 29).
129. It is, however, false that any security procedure has been neglected.
130. On the 15<sup>th</sup> of May 2018, the date of the attacks in Alcochete, the guard of the port, Rui Falcão, was at his post.
131. The *Club*'s Academy Operations Director, Ricardo Gonçalves, who was in the premises of the same, was contacted by Bruno Jacinto, Supporters Liaison Officer of the *Club* who, while checking on social networks, had knowledge of a possible visit of the supporters to the Academy.
132. Accordingly, Mr. Bruno Jacinto informed Mr. Ricardo Gonçalves, a few minutes before 5:00 p.m., that a group of individuals was on its way to the Academy to have a normal chat with the players.
133. Ricardo Gonçalves, the Operations Director, communicated the contents of this call to João Duarte and Vasco Fernandes, Technical Secretaries of the *Club*. Ricardo Gonçalves contacted immediately the GNR (National Republican Guard)<sup>9</sup> to prevent said group from entering the premises.
134. Thus, the Operations Director of the Academy of Sporting, Ricardo Gonçalves, contacted by telephone the commander of the GNR station of Montijo, Márcio Alves, requesting the immediate presence of the GNR on the spot.
135. At these moments, João Duarte was to lock the doors of the building that give access to the exterior and telephoned João Reis, wardrobe, asking him to immediately lock the door inside, as a group of supporters approached.
136. Also Vasco Fernandes, immediately, tried to lock the doors to the outside to prevent the access of the group.

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<sup>9</sup> GNR is a militarized force, as opposed to PSP (Public Security Police) which is a police force. The latter works in urban areas, while GNR in rural areas. The *Club*'s Academy is located in Alcochete, specifically in a rural area under the GNR's jurisdiction.



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137. Almost simultaneously with the telephone call of the Liaison Officer to the Operations Director of the Academy, at 5:00 p.m., the guard at the entrance, Rui Falcão, was also alerted by AMARSUL employees, who were collecting waste that a large group of individuals moved there.
138. Immediately after the pick-up truck entered the Academy, a group of journalists outside the Academy entrance began to flee into it, looking for shelter as they were extremely concerned for their own safety.
139. If the gate was closed, the journalists would have been trapped between the gate and the 50 persons storming the training territory. Nobody could have foreseen the consequences for the journalists and it was not unlikely that the individuals would have attacked them. There was just a short period of time to react, and the employee of the *Club* opened the gate for them not to get physically attacked.
140. The security guard then immediately saw a group of about fifty individuals, some in dark clothes, others with club equipment, mostly hooded, running threateningly. At that stage, it was not possible to close the gate anymore as otherwise the journalists would be trapped between the gate and said group.
141. Right afterwards, he called the Operations Director, Ricardo Gonçalves, who was with the team, informing him of the invasion.
142. David (mobile guard of the Academy), who was at the premises, asked João Duarte, Technical Secretary, to make himself available and go to the entrance because Rui Falcão, guard of the concierge, had asked for support in order to avoid their entrance. We highlight that the security personnel in place was perfectly adequate to the nature of the facility.
143. It was decided, however, that it would be better if David stayed there, because it was more important to avoid the group entering the building and its approach to the players.
144. The group went first to the training grounds No. 2 and 3, where the main team usually trained, but only encountered João Duarte and Paulo Cintrão, members of the technical team and the head coach of the *Club* Jorge Jesus. They shot "torches", surrounded Jorge Jesus and forced him to move to the shower room area.
145. Subsequently, they attempted to access the professional area, by firstly trying to unsuccessfully breaking two access doors , only being able to enter the building after forcing a third automatic glass door, which yielded with the strength of the group.



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146. Already inside the building, the group went to the shower room.
147. On their way, they had to pass by two access doors, to the corridor and to the resort itself, damaging them.
148. During their course of vandalism, the Security Director tried to talk to them, to demote them, even telling them that the GNR was already on its way and that they would be arrested putting himself also at risk of being physically attacked. However, the group was not unfortunately discouraged.
149. Also João Duarte tried to block the group's access, which was not at all possible because of the large number of attackers who reached the point of even threatening him with a torch near the face.
150. Thus, many *Club*' officials tried to thwart the invaders without success.
151. Already inside the shower room, the attackers sought out the football players Marcus Acuña and assaulted Bas Dost.
152. The aggression to the latter was interrupted by the action of João Duarte, who pushed the individual who assaulted Bas Dost, removed the player from the place, and took him immediately to the doctor, Dr. Virgílio Abreu, in a room nearby.
153. The assaults lasted for about 3 minutes, after which the group left the premises and fled.
154. Around 5:20 pm, the GNR patrol arrived at the Alcochete Academy.
155. They were immediately told by the security guard that the group was no longer inside the Academy, since they had fled on foot.
156. Then, the GNR patrol began the necessary steps to intercept the individuals, having succeeded in arresting a part of attackers.
157. The facts described show that the *Club*'s employees reacted at all stages to an utmost level of professionalism in response to an unforeseeable and anomalous situation that unfortunately happened that day beyond the *Claimant*'s control.
158. The *Club*'s responsible employees for the facilities not only immediately communicated to the authorities the threat that was imminent, requesting their urgent arrival, but also always collaborated actively with the authorities to identify those responsible for such an act. Results of said investigation are indeed self-explanatory.



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159. In fact, no prior circumstances having happened before had make the *Player* signal the *Club* that something like the Alcochete incident might occur.
160. Also, neither the private security company 2045 - Empresa de Segurança, S.A., nor the police authorities with which the *Club* has always been in permanent contact, nor PSP's responsible (*spotters*), a special sports information unit, which is in charge of constantly monitoring the behavior and movements of soccer Ultras, were aware of any potential incident alike.
161. It is, in fact, criminal behavior, terrorist behavior and, to that extent, beyond the sphere of protection that is required of the employer.
162. In a dispute of an economic nature, in order for the *Player* to leave the *Club* without having to disburse transfer fee and therefore obtain a higher sign-on-fee, it is frankly reckless that the *First Respondent* attempts to impute (without evidence) any direct or indirect responsibility to the *Club* for the unfortunate incident that occurred and how dramatic it was for the whole *Club*.
163. It is therefore imperative to conclude that, in such exceptional circumstances of acts of terrorism and vandalism, the *Club's* officials quickly responded to the imminent threat, within the constraints of time and possibilities referred to. The criminals who are arrested will be indicted of acts of terrorism in accordance with the Portuguese Criminal Code by the competent authorities.
164. Due to all this, and due to the non-existent demonstration by *the Player* that there have been safety breaches attributable to the *Club*, it must be considered as totally unfounded the invocation of just cause based on an alleged lack of safety and health conditions at work.
165. In essence, the facts recalled by the *Player* are given a most biased construction and therefore, as herein exhaustively demonstrated, these do not correspond by any means to any attitude that would entail any violation whatsoever of the rights and professional guarantees of the *Club's* employees.
166. Art. 328 *SCO* states as it follows:

*"I Within the employment relationship, the employer must acknowledge and safeguard the employee's personality rights, have due regard for his health and ensure that proper moral standards are maintained. In particular, he must ensure that employees are not sexually harassed and that any victim of sexual harassment suffers no further adverse consequences."*



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*2 In order to safeguard the personal safety, health and integrity of his employees he must take all measures that are shown by experience to be necessary, that are feasible using the latest technology and that are appropriate to the particular circumstances of the workplace or the household, provided such measures may equitably be expected of him in the light of each specific employment relationship and the nature of the work.”*

167. Art. 328 I *SCO* describes the general duty of care of the employer. Personality rights protect also the physical integrity and the mental health of employees (Pellascio, OR Kommentar Schweizerisches Obligationenrecht, OFK - Orell Füssli Kommentar, 3rd ed., 2016, Art. 328 N 10).
168. In this respect, an employee shall not be only protected against occupational accidents; rather has the employer to avert all damage to health which could result for them from exercising their profession (ATF 132 III 257 E. 5.2.):

*“In order to protect the life and health of employees, the employer must take the necessary measures according to the experience in the business field, to the state of the technology and which are appropriate to the conditions of the company. The necessary measures have to be considered in light of the specific employment relationship and needs to be reasonably expected. For this protection, the employer must take the necessary and appropriate measures. This includes the duty to ensure a perfect condition of the work spaces, so that the life and health of the workers are not endangered.”*

169. Art. 328 para. 2 *SCO* requires the employer to take sufficient measures to protect employees. The arrangements must at least reach the standard generally recognized in the corresponding professional circle. The range of measures to be taken is limited by technical feasibility and economic reasonableness (Pellascio, Art. 328 N12; also Art. 6 para. 1 of the « Loi sur le travail »):

*“Pour protéger la santé des travailleurs, l'employeur est tenu de prendre toutes les mesures dont l'expérience a démontré la nécessité, que l'état de la technique permet d'appliquer et qui sont adaptées aux conditions d'exploitation de l'entreprise. Il doit en outre prendre toutes les mesures nécessaires pour protéger l'intégrité personnelle des travailleurs.”*

170. In the case at stake, the “standard generally recognized in professional circles” should be the one established by the applicable regulations adopted by the governing bodies for football.
171. Art. 26 of the *UEFA* Club Licensing Regulation are the applicable ones with regards to the safety measures to be implemented to training facilities:



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*“As a minimum, the infrastructure of training facilities must fulfil the requirements defined by the licensor, for example:*

- a) relevant indoor/outdoor facilities;*
- b) the specificities of those facilities (i.e. number and size of football pitches);*
- c) dressing room specificities;*
- d) the medical room and its minimum equipment (i.e. defibrillator and first aid kit);*
- e) floodlighting;*
- f) any other relevant requirements identified by the licensor.”*

172. The FPF as licensor has set, as instructed by UEFA in light of the above-mentioned provisions, its own regulations in relation thereto, which are the following:

*“Secção II. Critérios relativos às infraestruturas*

*[...]*

*Artigo 33º - Responsável de segurança*

*O candidato à licença **deverá ter nomeado um responsável de segurança qualificado, encarregue das questões de segurança.***

*O responsável de segurança deve ter, no mínimo, uma das seguintes qualificações:*

- a) diploma da escola de polícia ou de especialista em segurança, em conformidade com a legislação nacional;*
- b) diploma de segurança de curso específico emitido por uma organização reconhecida pelo Estado;*
- c) um “reconhecimento de competência” por parte da FPF baseada na experiência prática de pelo menos um ano em matérias de segurança de estádio.*

*Artigo 35º - Oficial de ligação de adeptos (OLA)*

*O candidato à licença deverá **ter nomeado um oficial de ligação de adeptos (OLA) para servir de ponto de contacto principal para os adeptos.***

*O candidato à licença deve nomear um OLA que tenha frequentado um curso da FPF ou da Liga para OLA. O treino dos OLA será feito com recurso ao Manual a aprovar pela UEFA e a outros meios de formação a aprovar pela FPF e/ou pela LPFP. Em caso devidamente justificado, que seja aceite pelo OGL, o OLA poderá fazer-se substituir.*

***O OLA deve assistir regularmente às reuniões com a direcção do clube e colaborar com o responsável de segurança nas questões de segurança.”***

Said relevant part of the afore-referred regulations is freely translated as it follows:





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## Section II. Criteria for infrastructure

### Article 24 -

#### UEFA club competition stadium

The applicant for the license must present the **regulations for the safety and use of public access spaces duly updated and approved by the competent authorities and registered with the Council for Ethics and Safety in Sport (CESD)**, in accordance with the legislation in force.

The applicant for the license must present a copy of the last survey carried out at his premises.

[...]

### Article 33 - Responsible for security

The license applicant **must have appointed a qualified security officer in charge of security matters**. The security officer must have at least one of the following qualifications:

- (a) diploma from the police school or a security specialist in accordance with national law;
- b) diploma of security of specific course issued by an organization recognized by the State;
- (c) a "recognition of competence" on the part of the FPF based on practical experience of at least one year on stadium safety matters.

### Article 34 - Assistants to sports venues

The license applicant shall **establish a security organization for in-home matches by using appropriately qualified (internal or external) Sports Venue Assistants (ARDs) as provided by applicable law**. To that end, it must either hire the ARD or enter into a written contract as the stadium owner to make ARD available, or enter into a written contract with an outside security company to make ARD available.

### Article 35 - Associate Fellow (OLA)

The candidate for the license **should have appointed a Support Liaison Officer (SLO) to serve as the main contact point for the supporters**.

The license applicant must nominate an OLA who has attended an FPF or

League course for OLA. The training of the OLA will be done using the Manual to be approved by UEFA and other means of training to be



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approved by the FPF and / or the LPFP. In a duly justified case, accepted by the OGL, the OLA may be replaced.

**OLA should regularly attend meetings with the club's management and cooperate with the safety officer.**

173. *Sporting* fulfilled all the criteria set by both the *FPF* and *UEFA* regarding safety measures to be implemented.
174. The *Club*' employees did all their efforts to prevent a more violent incident from occurring, acting thoughtfully regarding the stress (timely and mentally) caused by the invasion.
175. In light of the above-mentioned explanations it is clear that the *Club* satisfied at all stances its duty of care according to Art. 328 *SCO* due to the fact that the security arrangements in place complied with the high standards requested by both the *UEFA* and the *FPF*.
176. The *Club* as an employer cannot held liable against every incident which potentially might happen. An incident like the one on the 15<sup>th</sup> of May was not foreseeable. It was unavoidable to prevent 50 attackers to invade the locker room, accident caused by some criminals. Therefore, the only liable party in the present case are said individuals based upon Art. 41 *SCO* and Art. 28 *SCC*.

c. **As to the termination of the Contract without just cause:**

c.1. **Legal considerations under Swiss Law:**

177. Exclusively an infringement of personality rights of the utmost severity may eventually entitle, under a most exceptional scenario, the injured employee to terminate his employment contract without being obliged to address a prior notice to his employer asking the latter to remedy said circumstances which render impossible the continuance of the contractual relationship (Pellascio, Art. 328 N20; also Emmel, *Vertragsverhältnisse Teil 2: Arbeitsvertrag, Werkvertrag, Auftrag, GoA, Bürgschaft* Art. 319-529 OR, *CHK - Handkommentar zum Schweizer Privatrecht*, 3rd ed., 2016, Art. 328 N 10).
178. Since the *Club* did neither infringe the personality rights of the *Player* due to the messages sent to him by the President as per the *First Respondent's* position as his liaison (captain) with the rest of the squad nor by means of the public Facebook post where the *Player* was not even referred to; and since no fault can be attributed to *the Club* as per the most unfortunate sequence of events having occurred within its training premises, pursuant to Art. 328 *SCO*, the *Player* did not



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have just cause when he terminated prematurely and unilaterally the *Employment Contract* with immediate effect.

179. Additionally, in the impossible scenario where the *FIFA DRC* would consider any violation of the *Player's* personality rights, it would not by any means reach the degree of utmost severity that would eventually allow any employee to terminate his employment contract with immediate effect.
180. Even more, when considering the longest amount of time elapsed in between the alleged offences and the moment when the *First Respondent* terminated the *Contract*, as a clear proof of the real motivations driving him, i.e. being transferred as a "free agent".
181. A public statement or certain text messages addressed to the *Player* in the latter's capacity and responsibility as captain of the *Club's* A team, do not constitute mobbing which would be a violation of the fiduciary duty of the employer according to Art. 328 *SCO*. Mobbing can be described as a deliberate attempt to force a person out of his/her workplace by humiliation, general harassment and/or emotional abuse emanating from his/her boss(es) during a long period of time. The behavior of said hierarchically superior shall undoubtedly be aimed at the employee's systematical isolation, social exclusion or even to squeeze said person out of his/her workplace (ATF 4A\_32/2010 E 3.2; 2A.312/2004 E 6.2; 4A\_245/2009 E 4.3.1).
182. This is clearly not the case, i.e. there was no any particular focus on the *First Respondent* as the vast majority of the communications addressed to the *Player* were addressed as well to all the rest of the players. In case the President sent messages directly to the *Player*, it was because he is the captain of the team and can therefore influence it in a most positive way.
183. In line with explanations above, the *FIFA DRC* must keep in mind that professional football players have to put up with a higher degree of criticism as they are "figures of contemporary society par excellence".
184. Additionally, the *Player* was also the captain of the team. For obvious reasons he must be involved in a way more frequent interaction with the *Club*, and particularly with its President rather than other players. It is expected that there are some disagreements and that the tone might get a bit rude at some point.
185. The mere fact that there was allegedly a poor working atmosphere does neither constitute mobbing nor automatically grants the possibility to terminate an employment contract with immediate effect (ATF 4A\_381/2014 E 5.1).



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186. Thus, even if the *Player* had the personal impression that the atmosphere between the President and him was bad, that supposed circumstance did not allow him to terminate the *Contract* without prior notice or warning granting the *Club* due deadline to remedy said alleged breach.
187. The Swiss Federal Tribunal has consistently ruled that prior to a unilateral contract termination the notifying party must clearly indicate to the other party that he considers that the conduct complained of is intolerable and that a repetition would not be accepted without sanction. In addition, the notified party must clearly know which behavior will no longer be tolerated in the future (ATF 4C.10/2007 of 30.4.2007 E.2.1, ATF 4C.57/2007 of 15.5.2007 E.3.2, 4C.364/2005 of 12.1.2005).
188. Even stricter was the highest court of Canton Lucerne (LGVE 2007 I Nr. 24), which considered that a prior warning informing on “*further steps*” to be adopted and that “*the employment relationship could not be maintained*” were not clear enough.
189. In the case at hand, the *Club* was never informed by the *Player*, that for instance in case of other statements being made of an alleged defamatory nature the *Player* would terminate the *Contract* with immediate effect. The *Player*’s position as captain of the *Club* quite conversely, required from him an even higher degree of responsibility and care vis-à-vis the *Claimant*.
190. Consequently, if in his view, certain violations of the *Contract* had been committed he was the one expressly required to notify said alleged breaches without delay to the *Club*.

**c. 2. Possibility to maintain the employment relationship:**

191. In this respect, it should be pointed out that even if the *Club* was considered to have failed to safeguard - *quod non* - any duty or guarantee it should have granted the *Player*, such supposed contractual breach was not demonstrated by the *Player* along his termination letter as being serious enough to sustain the impossibility of maintaining the existing employment relationship between the *Parties*.
192. First, it should be clarified that the messages exchanged between the President of the *Club* and the *Player* that were reflected in the termination letter are only a very limited part of the communications between them, picked and chosen according to a most biased criteria by the *First Respondent*.
193. It is important therefore, to clarify that, after the post published on Facebook on the 5<sup>th</sup> of April 2018, the President sent a general message to the *Club* players on the 21<sup>st</sup> of April 2018.



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194. Similar messages were sent to the *Club*' players Messrs. Montero, Ribeiro and Lumor where he votes of confidence in the team, in a clear attempt to appease and redirect:

*"[and] u very much believe in the team that I chose to be me within the 4 lines! We will win, win, win and win. And after these 4 victories we will raise together the Portuguese Cup! Know how to distinguish the enemies from whom you only want us to do more and better! "*

Extract of the message enclosed as **Annex no. 6**.

195. Players' reaction to the words of the President of the *Club* was of appreciation, showing their commitment to the achievement of the *Claimant's* goals - cf. **Annex no. 6 BIS** except for the *Player*, whose silence was particularly outrageous considering his condition as captain of the *Club*.
196. Despite the *Player's* disregard, the President did persist in attempting to redirect the *Player*, for instance by texting him (**Annex no. 7**):

*"[It is] not fair Rui. Stop it because I do not deserve this from you or the other captains. I have already explained to you that captains do not have this mission. In all the big clubs of the world the captains have to have the endorsement of the president, how come is it not the case here? Rui it is enough. Think about it a little and see if this is logical. In Madrid you were whistled and booed by 4,000 people. I ensured your support again. Do not forget this."*

197. Thus the *Club's* President did clearly demonstrate his redirecting attitude towards the *Player*, despite having been neglected by the latter.
198. Soon after the incidents of Alcochete, on the 17<sup>th</sup> of May 2018, the President of the *Club* sent another message to the *Player* and other players of the squad showing being devastated for "*a criminal act that has happened today*" concluding that "*we are not always in agreement, but we are family. A supportive embrace*" (relevant communication herein enclosed as **Annex no. 8**).
199. Once again, the *Player* failed to reply.
200. On the 18<sup>th</sup> of May 2018 the President tried to recall the *Player* his duties from such an attitude, seeking, once again, at redirecting the *First Respondent* through the following message - herein enclosed as **Annex no. 9**:

*"Rui, I am the father of 4 children, I have a living father, a mother and a wife. I am President of this Club and I can and should criticize, but as you know, I have never tolerated and will not tolerate these acts of vandalism and crime. As you are the Captain I ask you if I can specifically contribute*



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*in any way to your well-being. I want to know if any threats are being made to you that I should be made aware of. As I told you at the meeting, we may have issues, but it does not seem that turning your back to your President, not talking normally to him and not telling him what he can do to help us, is not the best way of defending the Club and the working group. Together we can solve everything because I assure you: whoever did this will pay a high price and all of you can be sure you will enjoy all conditions you have always had."*

201. Subsequently, the President sent further messages to the *Player*, all of them willfully neglected.
202. The behavior of the *First Respondent* was frankly reprehensible, however at the present stage it can be easily interpreted further to the *Player's* signing for the *Second Respondent*. It seems now apparent that this was clearly an orchestrated attempt by the *Player* to abandon the *Club* in light of the *First Respondent's* desire to leave which it is nowadays clear that it was already pre-existent at the time of the events at the origin of the present dispute.
203. The *Player* did nothing to warn about, and subsequently cooperate in solving any potential issue he might have considered as such. The *First Respondent* neither suggested any solution, intended to ease any supposed discomfort but rather opted all of a sudden - i.e. without any prior warning and/or measures proposed to be adopted by the *Club* - to unilaterally communicate his decision to terminate the *Contract* with immediate effect shortly ahead of the upcoming transfer window and while he was training with the national team in preparation for the World Cup.
204. Thus, it becomes clear that there was no just cause for a unilateral termination of the *Employment Contract* as the one undertaken by the *Player*. It remains undeniable that the *Club* always searched for redirecting the *First Respondent* before the sudden contractual termination.
205. The *Player* further claims in his termination letter that "*all the above-mentioned facts, which constitute, on the one hand, a continuous course of psychological violence, which calls into question my personal and professional dignity and which have contributed to the degradation, attributable to the employer, of my working conditions; and, on the other hand, in the face of the events that took place at the Alcochete Academy, which endangered my physical integrity (and even my life), and nothing was done by the employer to prevent it. with regard to the current situation, the existence of the employment relationship is totally untenable*" (Annex no. 4, p.33).
206. In respect of the above circumstances, the following precedent decided by the *FIFA DRC* (15-00654/pam) is self-explanatory. In said case, a player terminated



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his employment contract unilaterally in principle due to the political situation in Ukraine and the move of his mother out of the country.

207. The *FIFA DRC* held that:

“17. [...] the sole fact that that here was political unrest in Ukraine, as well as the fact that the player’s mother decided to move to Russia, does not automatically lead to the conclusion that the contract between Club X and the player could no longer be executed; it was also the player’s responsibility to contact Club X, in order to discuss whether there could be found a solution for the situation in which the player considered it impossible to fulfill his contractual duties, given the fact that he was the party unwilling to comply with his contractual obligations.”  
(emphasis added by the Claimant)

208. Here as well the case: the *First Respondent* terminated the *Contract* without prior notice on the 31st of May 2018.

**c. 3. Specificity of sport:**

209. The acts committed by certain criminals when entering the training camp of the *Club* and intrude themselves into the dressing room was absolutely despicable.

210. Undoubtedly, the incident that happened on the 15<sup>th</sup> of May 2018 was shocking, not only for the involved players, but also for the *Club*.

211. However, when looking at the present dispute, the “specificity of sport” (is greatly taken into consideration by dispute resolution systems in force in the world of sports such as the *FIFA DRC* or the Court of Arbitration for Sport (hereinafter also referred to as “*CAS*”). The case at stake cannot be blindly compared with a usual labor law dispute as the surrounding circumstances are clearly different. In general, the freedom of parties involved in the field of sports is very particular due to the specificities governing employment relationships in this sector which greatly differs from the one applicable to “normal” employees.

212. When considering this specific case, the *FIFA DRC* needs to take into consideration said specific nature of the labor relationship entered into by and between the *Club* and the *Player*, particularly but not exclusively limited to.

- a. The long contractual past of the *Parties* and the trust established by and between them to be honored;
- b. The highest bargaining power of the *Player* in his contractual relationship with the *Club* and the undue influences exerted by third parties in the framework of said employment relationship;



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- c. The fact that the *Player* is one of the most valuable players of the *Club*, duly reflected by his high market value in the football market;
- d. The fact that the *First Respondent* occupies a prominent position within the team, since he was the team captain which did require from his in all scenarios an increased degree of responsibility;
- e. The personal motivations of the *First Respondent*, who had long wanted to leave the *Club* as undoubtedly demonstrated along the present written submission and was ready to do so by any means;
- f. The fact that the football world is a universe of emotions and has its own language in relationships established by and between its different stakeholders;
- g. The fact that, as a professional high level player, the *First Respondent* is required to have a higher than average physical and mental resilience;
- h. The strong public exposure that marks the professional activity of the *Player* to which the latter is well-used to after a most successful and long sporting career;
- i. The fact that the *Player* was in the negotiating process of leaving the *Club* for months and resorted to certain circumstances to deprive the *Club* of the transfer fee it was entitled to further to the countless resources the *Claimant* had invested on the *Player* which was allowed the latter to enjoy the sporting career it actually has. Most likely, said transfer fee avoided - temporarily pending the decision to be adopted by your most esteemed services - should have resulted in greater financial conditions for the *Player* and his agent through the transfer at hand or future ones;
- j. The fact that the *Player* terminated the *Contract* at a time when he was already in the preparatory stage for the 2018 World Cup, having no need to join the *Club's* facilities for at least one month and therefore subject to no imminent risk - if any - as the latter pretends along the most biased argumentation put forward in his termination letter;
- k. As well as, the fact that the *Player* did not consider, as the applicable legal framework and jurisprudence related thereto requires, previously exhausting all available remedies. Quite conversely, the *Player* did unilaterally terminate the *Employment Contract* without prior notification not as an *ultima ratio* but rather as a first option, anticipated due to his desire to sign for the *New Club*.





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213. In case the *Player* terminates the *Contract* alleging just cause, it needs to be kept in mind that more than just the *First Respondent* and the *Claimant* have an interest in the outcome of this procedure.
214. It needs to be recalled again that the *New Club* is obviously keen on not paying any transfer compensation to the *Club*. The agents of the *Player*, surely a *determinant factor in said abrupt and premature termination without just cause*, must be as well undoubtedly interested in the transfer to happen in order to receive a commission.
215. Lastly, the *Player* as a “free agent” moving from the *Claimant* to a new club would get a very high signing bonus as the *New Club* does not need to pay any transfer fee.
216. Thus, considering the present dispute, it is highly likely that the *Player* got influenced by the *New Club* and the *Player*’s agent in order to terminate the *Contract* with immediate effect as all three parties would benefit from the transfer of the *Claimant* as “free agent”. Indeed, the *Player* and his entourage surely anticipated the *Club* would have reacted immediately to any real and substantiated demand made by the *First Respondent*, i.e. the prior warning required by the applicable case law and jurisprudence related thereto. The *Player* did not want to take that risk as the *Club* would have responded to any supposed queries and this would have made the *First Respondent*’s case even more inconsistent and groundless than it is at the present stage, if that is even possible. The above would have made disappear the interest of the *New Club*, being the latter aware as per his vast experience in professional football of its strict liability further to a termination with just cause which, most likely, would have frustrated the *Player*’s transfer.
217. At the very least, this would have forced the *New Club* to maintain ongoing the negotiations with the *Club* regarding the *Player*’s transfer. For obvious reasons the *New Club* and the *Player* rather preferred waiting until a claim was filed against them in front of your most esteemed services and not having to disburse any amount in exchange of the services of the *Player* for now, but until a decision is pronounced by the *FIFA DRC* several months later where the *Claimant* will finally obtain the amounts it is entitled to but by means of a compensation instead of a transfer fee which any good faith party would have negotiated and paid instead of opting for such a drastic measures as the *Respondents* did.
218. The above is further corroborated by the undoubted fact that the *Player* negotiated with other clubs before terminating the *Contract* with immediate effect shortly before the 31<sup>st</sup> of May, which indicates that the allegations upon which the *First Respondent* intends to rely now, were even for himself not considered as valid reasons not to continue the employment relationship.



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219. It is no coincidence that the *Player* notified the termination of his contract after the *Club* requested a transfer fee which was in the *Player's* view too high. The termination of his contract with immediate and arguing with sporting just cause must be considered as an act of bad faith and cannot be allowed by the *FIFA DRC*.
220. In submitting the contractual resolution in this timing, after the failure of negotiations with two foreign clubs, the *Claimant* legitimately questions the alleged just cause, invoked by the *Player*, as well as the alleged impossibility of continuation of the *Contract*.
221. In fact, we are referring to a universe of emotions, sometimes exacerbated, that are explained by competitive pressure, by the need to achieve goals and results, along with the irrationality with which the sports dispute is sometimes experienced.
222. In addition, a professional sportsman, especially a (inter) national football player, has a higher than average physical and mental resilience - which again means refuting the any infringement towards the *Player*. It is also necessary to consider the strong public exposure that conditions the *Player's* activity which also leads to the inexistence of just cause for the *First Respondent*, given that such criticisms and observations are frequent in the world of football, as mentioned above, using various examples.
223. When deciding the case, *FIFA DRC* also should consider the consequences of a termination of an employment contract with immediate effect for Sporting due to an accident which was even with more security and safety measures on the training facilities unavoidable. The *Claimant* is a club which depends on the transfer income of the *Player(s)*. The *Club* would not only lose the services of the *Player(s)* and would suffer for years on a sporting level but would also lose transfer income of more than 200 Mio. EUR.
224. If the *FIFA DRC* would decide in this case in favor of the *Player(s)*, it would open doors for criminal manipulations and creates a dangerous jurisprudence for the future.
225. This cannot be in the interest of the *FIFA DRC* either and also fundamentally runs against the principal of contractual stability.
226. As a final remark, we reiterate that the *Club* had negotiated the transfer of the *Player* during the period immediately before the *Player's* unilateral termination of the *Contract* without just cause. Indeed, the negotiation with Napoli and the



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*Second Respondent* are public, as also reported by several sources of information<sup>10</sup> (**Annex no. 10**).

227. Once those negotiations did not result in a transfer, the *Player* decided to terminate the *Contract* in order to join the *Second Respondent*, which entitles the *Club* to receive compensation as we will demonstrate below.

**d. The calculation of the compensation:**

**d.1. The liquidated damages clause contained in the *Employment Contract*:**

228. Once demonstrated that the *Player* terminated the *Contract* without just cause, we refer to article 17 of the *FIFA RSTP* in order to establish the related consequences.

229. At the outset, it is important to note that the purpose of article 17 of the *FIFA RSTP* is to reinforce contractual stability, to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations (CAS 2008/A/1644 M. v. Chelsea Football Club Ltd., award of 31 July 2009 at page 17).

230. Pursuant to article 17.1 and article 17.2 of the *FIFA RSTP*:

*“1. 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.*

*2. Entitlement to compensation cannot be assigned to a third party. If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties. [...]”*

<sup>10</sup> [https://www.sportsmole.co.uk/football/wolves/transfer-talk/news/wolves-to-beat-napoli-to-rui-patricio\\_325587.html](https://www.sportsmole.co.uk/football/wolves/transfer-talk/news/wolves-to-beat-napoli-to-rui-patricio_325587.html);  
<https://www.birminghammail.co.uk/sport/football/transfer-news/wolves-lisbon-rui-patricio-transfer-14768394>;  
<https://es.besoccer.com/noticia/el-wolverhampton-piensa-en-rui-patricio-443906>



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231. Accordingly, as stated by article 17.1 and 17.2 of the *FIFA RSTP*, in case “*otherwise provided for in the contract*” the calculation of the compensation for the breach of contract shall be made with due consideration of the criteria established by the same article.
232. Therefore, the *FIFA RSTP* establishes the principle of the primacy of contractual obligations over the valid criteria set by FIFA in order to calculate the compensation as a consequence of terminating an employment contract without just cause.
233. Swiss law regulates the abovementioned contractual obligations by means of the liquidated damages clause, as set out in article 160 *SCO*, which states:
- “1 *Where a penalty is promised for non-performance or defective performance of a contract, unless otherwise agreed, the creditor may only compel performance or claim the penalty.*
- 2 *Where the penalty is promised for failure to comply with the stipulated time or place of performance, the creditor may claim the penalty in addition to performance provided he has not expressly waived such right or accepted performance without reservation.*
- 3 *The foregoing does not apply if the debtor can prove that he has the right to withdraw from the contract by paying the penalty.*”
234. Moreover, article 161 *SCO* states:
- “1 *The penalty is payable even if the creditor has not suffered any loss or damage.*
- 2 *Where the loss or damage suffered exceeds the penalty amount, the creditor may claim further compensation only if he can prove that the debtor was at fault.*”
235. The application of liquidated damages clauses to football employment contracts is supported by the longstanding *FIFA DRC* and *CAS* jurisprudence.
236. For instance, we refer to the award CAS 2008/A/1519 - FC Shakhtar Donetsk (Ukraine) v/ Mr. Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) & FIFA CAS 2008/A/1520 – Mr. Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) v/ FC Shakhtar Donetsk (Ukraine) & FIFA, which state:



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*“65. Article 17 para. 1 of the FIFA Regulations sets the principles and the method of calculation of the compensation due by a party because of a breach or a unilateral and premature termination of a contract.*

*66. First, the provision states the principle of the primacy of the contractual obligations concluded by a player and a club: “...unless otherwise provided for in the contract [...]” The same principle is reiterated in art. 17 para. 2 of the FIFA Regulations.*

*67. This should not come to a surprise for those that are aware of the history of the provision itself and of the rules that are valid in some countries: Indeed, the rationale of allowing the parties to establish in advance in their contract the amount to be paid by either party in the event of unilateral, premature termination without just cause is to recognize that in some countries players and clubs have not only the right but even the obligation to do so (while, one shall note, in some other countries they may be prohibited to do so).*

*68. Whether such clauses are called “buy out-clauses”, “indemnity” or “penalty clauses” or otherwise, is irrelevant. To meet the requirements of art. 17 para. 1 FIFA Regulations the parties shall have “provided otherwise”, i.e. the parties shall have provided in the contract how compensation for breach or unjustified termination shall be calculated. Legally, such clauses correspond therefore to liquidated damages provisions<sup>11</sup>, at least so far as the real will of the parties to foresee in such clause the amount to be paid by the breaching party in the event of a breach and/or of a unilateral, premature termination of the employment contract is established. Indeed, when FIFA and the relevant stakeholders were drafting the provision, it was recognized that such kind of penalties/liquidated damages may be validly agreed between the parties and, in such a case, it should not be up to the FIFA Regulations to deprive such a clause of its legal effect”.*

237. Within the football context, these clauses are known as “buy-out clause” and the award CAS 2013/A/3417 FC Metz v. NK Nafta LENDAVA defines them as follows:

*“86. According to CAS jurisprudence, a buy-out-clause included in an employment agreement of a professional football player is a clause “that determines in advance the amount to be paid by a party in order to terminate prematurely the employment relationship” (CAS 2007/A/1358) [...]”*

<sup>11</sup> CAS 2007/A/1358, FC Pyunik Yerevan v/ Carl Lombe, AFC Rapid Bucuresti & FIFA, N 87; 2007/A/1359, FC Pyunik Yerevan v/ Edel Apoula Edima Bete, AFC Rapid Bucuresti & FIFA, N 90.



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**d.2. Compensation established in the Contract:**

238. We note that the *Contract* regulates in detail the different unilateral terminations executable by both *Parties* according to different scenarios.
239. Therefore, we refer to the related articles of the *Contract* in order to establish the correct contractual provision and related compensation to apply in the case at stake.
240. Article 8 of the *Contract* establishes the *Player's* right to unilaterally terminate the Contract without just cause by paying a compensation in the amount of EUR45,000,000.00/-, as follows:

*“Ao JOGADOR é conferido o direito a rescindir unilateralmente o presente contrato sem necessidade de invocação de justa causa, ficando imediatamente desvinculado laboral e desportivamente da SPORTING SAD nas seguintes condições”:*

- a) *“A rescisão só poder[ia] ter lugar no período compreendido entre os dias 15 de maio e 15 de junho de cada época desportiva, devendo ser enviada comunicação à SPORTING SAD, por fax para o número [...], dirigida à Administração, com 15 dias de antecedência à data em que a mesma dev[esse] operar os seus efeitos;*
- b) *Com aquela comunicação, dever[ia] ser efectuado à SPORTING SAD um pagamento imediato no montante de € 45.000.000,00 (quarenta e cinco milhões de euros).*
- c) *Feita a comunicação com o aviso prévio e nos prazos previstos na alínea a) e paga a verba mencionada na alínea b) antecedente, a SPORTING SAD obriga[va]-se a desvincular laboral e desportivamente o jogador e, ainda, caso para tal [fosse] solicitada, a autorizar a F.P.F. a proceder ao envio do respectivo Certificado Internacional para qualquer Clube estrangeiro que o t[ivesse] requerido”*

Which can be translated into English as it follows:

“The player has the right to unilaterally terminate the contract without the need to invoke just cause, and immediately be released from work and sporting activity SPORTING SAD under the following conditions:



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- a) "The termination can only take place in the period between May 15 and June 15 of each sporting season, which communication shall be sent to SPORTING SAD, by fax to the number [...], addressed to the Board of Directors, 15 days prior to the date on which it shall operate its effects;
- b) With this communication, SPORTING SAD shall be made immediately paid the amount of EUR 45,000,000.00/- (Forty Five Million Euros);
- c) Once the notice has been notified with the advance and within the deadlines set in item a) and the sum mentioned in item b) above has been paid, SPORTING SAD undertakes to terminate its employment and sports relationship with the player and, upon request, to authorize the FPF to proceed to the sending of the respective International Transfer Certificate to any foreign Club that might have required it."

241. Moreover, article 9 of the *Contract* establishes the *Club's* obligation to accept any other clubs' offer in the amount of EUR 45,000,000.00/- for transferring the *Player* during a particular period of the sporting season, as follows:

*"O jogador poderá exigir no período compreendido entre os dias 15 de maio e 15 de junho de cada época desportiva que a SPORTING SAD aceite[ass]e uma proposta de aquisição dos direitos federativos relativos ao jogador que [fosse] apresentada por outro Clube ou SAD estrangeiro, pelo preço de € 45.000.000,00 (quarenta e cinco mil milhões de euros) pago à SPORTING SAD mediante transferência para a conta bancária desta."*

Which can be translated into English as it follows:

The player may demand in the period between May 15 and June 15 of each sporting season that SPORTING SAD accepts a proposal for the acquisition of the federative rights relating to the player presented by another Club or SAD, for the price of € 45,000,000.00 (forty-five million euros) paid to SPORTING SAD by means of a transfer to its bank account.

242. Furthermore, article 11.b) of the *Contract* establishes the *Club's* right to be satisfied a compensation contractually agreed in advance by both *Parties* in case the *Player* terminated the *Contract* alleging a just cause but the *FIFA* Dispute Resolution Chamber ruling he had not such just cause, as follows:

*"No caso de uma das partes rescindir o presente contrato alegando para tal justa causa e a Câmara de Resolução de Disputas da FIFA ou o Tribunal Arbitral de Desporto de Lausanne não reconhece[sse] a sua existência, ficar[ia] constituída na obrigação de indemnizar a contraparte pelos*



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*prejuízos causados pela conduta ilícita, fixando-se, desde já, a título de cláusula penal o montante indemnizatório a pagar (conforme n.º 2 do referido art. 17 do Regulamento FIFA do Estatuto e Transferência de Jogadores), que será o seguinte:*

*[...];*

*Na hipótese de ser o jogador a rescindir ilicitamente fica obrigado, no âmbito jurídico-laboral, a pagar à SPORTING SAD uma indemnização correspondente ao valor das remunerações que haveria de receber até ao final do contrato rescindido, ficando a sua inscrição por parte de um terceiro Clube dependente, no âmbito jurídico-desportivo, do pagamento do montante de € 45.000.000,00 (quarenta e cinco milhões de euros) correspondente à valorização dos direitos de participação desportiva do jogador feita pelas partes no presente contrato”*

Which can be translated into English as it follows:

In case one of the parties terminates this contract claiming just cause and the FIFA Dispute Resolution Chamber or the Court of Arbitration for Sport, Lausanne, does not recognize [its] existence, it is established an obligation to compensate the counterparty for the damages caused by the unlawful conduct, establishing, as a liquidated damages clause, the amount of compensation to be paid (pursuant to paragraph 2 of article 17 of the FIFA Regulations of the Status and Transfer of Players), which shall be as follows:

[...]

In the event that the player terminates unlawfully, he shall be obliged, in the legal-labor scope, to pay SPORTING SAD an indemnity corresponding to the amount of remuneration that he would be entitled to receive until the end of the terminated contract, being his registration by a third Club dependent, in the legal-sport scope, upon the payment of the amount of € 45,000,000.00 (forty-five million euros) corresponding to the value of the player’s sporting rights agreed by the parties in this contract.

243. Considering all three different scenarios covered respectively by clauses 8, 9 and 11 to the *Employment Contract*, it remains obvious that the third one, i.e. foreseen by clause 11, is the one that shall be applied by your most esteemed services.

Indeed, on the 31<sup>st</sup> of May 2018 the *Player* breached the *Employment Contract* alleging having supposedly just cause to do so.

244. However as exhaustively demonstrated along the present brief, the *FIFA* Dispute Resolution Chamber will not recognize the grounds upon which the *First Respondent* sustained said premature and unilateral termination and therefore the *First* and *Second Respondents* will be obliged to indemnify the *Claimant* with:





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- a. “ao valor das remunerações que haveria de receber até final do contrato rescindido”: the amount of remuneration that he would have received until the expiry of the terminated contract: **AND**
- b. “a valorização dos direitos de participação” due to the fact that the *Player* seeks being registered by a third club, i.e. the *Second Respondent* and the value of the player’s sporting rights agreed by the parties in this contract.

d.2.1. As to the remaining value of the Contract:

245. With reference to the amount of the remuneration due to the *Club*, the *Parties* agreed said amount in article 1 and 2 of the *Contract*, which states:

*“1. O JOGADOR obriga-se a prestar com regularidade a actividade de futebolista da SPORTING SAD, em representação e sob autoridade e direção desta, com início a 01 de Julho de 2016 e termo no final de época desportiva 2021/22, ou seja, a 30 Junho de 2022.*

*2. Pela prestação acima referida e verificado o pressuposto mencionado no n. 1 antecedente, a SPORTING SAD obriga-se a pagar ao JOGADOR, por cada uma das épocas desportivas 2016/2017 a 2021/2022, o montante anual bruto de € 2,376,144,00 (dois milhões, trezentos e setenta e seis mil, cento e quarenta e quatro euros), que será pago através de 12 prestações mensais, sucessivas e iguais ilíquidas de €198.012,00 (cento e noventa e oito mil e doze euros) casa, as quais incluem os proporcionais correspondentes aos subsídios de férias e de Natal, e se vencem no dia 5 do mês seguinte aquele a que disserem respeito.”*

Which can be translated into English as it follows:

1 The player undertakes to regularly perform the footballing activity for SPORTING SAD, in representation and under its authority and direction, beginning on July 1, 2016 and finishing at the end of the sports season 2021/22, that is, on 30 June 2022.

2 SPORTING SAD undertakes to pay the player for each of the 2016/2017 to 2021/2022 seasons the gross annual amount of € 2,376,144.00 (two million, three hundred and seventy-six thousand, one hundred and forty-four euros), to be paid through 12 monthly, successive and equal installments in the gross amount of € 198,012.00 (one hundred and ninety-eight thousand and twelve euros) each, including proportional amounts corresponding to holiday and Christmas allowances, which become due on the fifth day of the month following that which they concern.



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246. Taking into account the duration of the *Contract* and that the *Player* terminated it without just cause on the 31<sup>st</sup> of May 2018, “*the amount of the remuneration that would be received until the end of the contract*”<sup>12</sup> is equal to EUR 9,702,588.00/- as follows:

➤ **Remaining value of the *Contract***<sup>13</sup>:

<u>Season</u> <sup>14</sup>	<u>Contractual obligations performed</u>	<u>Remaining value of the <i>Contract</i></u>
<u>2016/2017</u>	<u>EUR 2,376,144.00/-</u>	
<u>2017/2018</u>	<u>EUR 2,178,132.157-</u>	<u>EUR 198,012.16/-</u>
<u>2018/2019</u>		<u>EUR 2,376,144.00/-</u>
<u>2019/2020</u>		<u>EUR 2,376,144.00/-</u>
<u>2020/2021</u>		<u>EUR 2,376,144.00/-</u>
<u>2021/2022</u>		<u>EUR 2,376,144.00/-</u>
<b><u>TOTAL</u></b>	<b><u>EUR 4.554.276.00/-</u></b>	<b><u>EUR 9,702,588.00/-</u></b>

d.2.2. As to the value of the *Player*’s sporting rights agreed by the *Parties* in the *Contract*:

247. The *Parties* agreed on the market value of the *Player* in the amount of EUR 45,000,000.00/-.

**d. 3. As to the proportionality of clause contained in article 11 to the *Employment Contract*:**

248. We note that the compensation established by article 11 of the *Contract*<sup>17</sup> represents a liquidated damages clause in the meaning of article 17 *FIFA RSTP* and of the abovementioned awards CAS 2008/A/1519 & CAS 2008/A/1520.

249. Specifically, by means of article 11 “*the real will of the parties to foresee in such clause the amount to be paid by the breaching party in the event of a breach and/or of a unilateral, premature termination of the employment contract is*

<sup>12</sup> See article 11 of the *Contract*;

<sup>13</sup> Source: Elaboration based upon articles 1 and 2 of the *Contract*;

<sup>14</sup> Article 8.1 of the Portuguese Lei n.28/98 establishes the maximum duration of sports employment contract in 8 sporting season. In this regard, article 18.2 of the *FIFA RSTP* states that employment contracts longer than 5 sporting seasons “*shall only be permitted if consistent with national laws*”;

<sup>15</sup> EUR 2,178,132,060 is equal to the salary received by the *Player* during the 2017-2018 sporting season, namely from 1 January 2017 to 31 May 2018, when he terminated the *Contract* without just cause;

<sup>16</sup> EUR 198,012 is equal to the 2017-2018 remaining salary, corresponding to the whole June 2018.

<sup>17</sup> The liquidated damage clause established by article 11 of the *Contract* is consistent with article 46 and 47 of the Portuguese collective bargain agreement (*Contrato colectivo de trabalho celebrado entre a liga portuguesa de futebol profissional e o sindicato dos jogadores profissionais de futebol*)



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*established*” and “*in such a case, it should not be up to the FIFA Regulations to deprive such a clause of its legal effect.*<sup>18</sup>”

250. Having already exhaustively demonstrated that the *First Respondent* terminated the *Contract* without just cause, in order to calculate the related compensation, we refer to the liquidated damages clause set out in article 11 of the *Contract*.
251. Said liquidated damages clause entitles the *Club* to receive the compensation corresponding to:
- The amount of the remuneration that would be received until the end of the contract; together with
  - A payment in the amount of EUR 45,000,000.00/- (Forty Five Million Euros) corresponding to the player's sports value made by the parties in the *Contract* in case he is subsequently registered by a third club as it has been the case.
252. In case the *Player* would not have opted to unilaterally terminate his *Contract* without just cause - i.e. trying thereby to deprive the *Claimant* of a fundamental compensation it needs in order to secure the services of a substitute of the same level of his captain and the goalkeeper of the national team having won the latest international competition, i.e. the *UEFA Euro 2016* - he would have been in any case subject to the payment of EUR 45,000,000.00/- under the following two contractual provisions:
- Had the *Player* had terminated the *Contract* in accordance with article 8 of it; or
  - Had the *Club* had received an offer for transferring the *Player* in accordance with article 9 of the *Contract*.
253. However, said termination without just cause entails an additional penalty evaluated in “*ao valor das remunerações que haveria de receber até final do contrato rescindido*”: i.e. the amount of remuneration that he would have received until the expiry of the prematurely terminated *Contract*.
254. Before analyzing the calculation of the abovementioned compensation, we highlight that article 11 of the *Contract* complies with the laws applicable to the case at stake, namely the *FIFA* rules and regulations and, subsidiarily, Swiss law.
255. Indeed, article 17 of the *FIFA RSTP*, regulating the consequence of terminating any employment contract without just cause, when saying “*unless otherwise*

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<sup>18</sup> CAS 2008/A/1519 & CAS 2008/A/1520



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*provided for in the contract*”, establishes the principle of primacy of contractual obligations agreed between players and clubs over the content of said particular article.

256. The validity of clauses alike has been confirmed along its well-established case law by the FIFA judicial bodies and subsequently by the Court of Arbitration for Sport.
257. For instance, we refer to the award CAS 2013/A/3411 Al Gharafa S.C. & M. Bresciano v. Al Nasr S.C. & FIFA, which paragraph 94 states:

*“94. The Panel does not agree with such indication, and confirms that the clause contained at Article 8.1 of the Contract qualifies as a contractual penalty or “liquidated damages” clause (“clause pénale” or “Konventionalstrafe”) under Swiss law (Article 160 of the Swiss Code of Obligations, the “CO”), e.g. under the law applicable to the merits of the dispute in this arbitration. In fact, it contains all the necessary elements required for such purpose: (i) the parties bound thereby are mentioned, (ii) the kind of penalty has been determined, (iii) the conditions triggering the obligation to pay it are set, (iv) its measure is identifiable (COUCHEPIN, *La clause pénale*, Zurich 2008, § 462). In other words, Article 8.1, which sets an amount of “damages” to be paid “if” the contract is breached, appears to perform a function (the determination of the amount that a party has to pay to the other as damages in the event of breach of contract) perfectly consistent with Swiss law.”*

258. We highlight that article 11 of the *Contract* complies with the necessary elements required by Swiss law, namely:

- The parties bound are mentioned (namely the *Player* and the *Club*);
- The kind of penalty (namely the liquidated damages clause);
- The condition triggering the obligation to pay (namely the termination of the *Contract* without just cause by the *Player*); and
- The amount (namely the remaining value of the *Contract* and EUR 45,000,000.00/- in case another club registered the *Player*).

259. Moreover, the same abovementioned CAS award states at paragraph 95:

*“95. It is to be noted, in that regard, that Swiss law does not require “penalty clauses” to be “reciprocal” in order to be valid. Therefore, the*



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*DRC was not entitled to disregard it, only because it would not apply to a breach committed by Al Nasr(2). In addition, the fact that Article 8.1 appears to set, in accordance with its second sentence, only a “minimum threshold” is again perfectly consistent with Swiss law: Article 161.2 CO, in*

*fact, provides that, “where the loss or damage suffered exceeds the penalty amount, the creditor may claim further compensation only if he can prove that the debtor was at fault”, and therefore explicitly states that compensation in a larger measure could be sought by the creditor, by giving evidence of the debtor’s fault, if the amount of damages actually suffered exceeds the amount stipulated in the penalty clause.”*

- 260.** Therefore, CAS jurisprudence (CAS award 2013/A/3411 at para. 95) clearly establishes that liquidated damages clauses shall not be reciprocal in order to be valid.
- 261.** Moreover, Swiss law (article 161.2 of the SCO) adds that the related compensation could be increased by the creditor if he proves that the damage actually suffered exceeds the compensation agreed by means of the liquidated damages clause.
- 262.** As a final remark, we highlight that article 11 also complies with article 50 of the Portuguese collective bargaining agreement (consequences for the player when unilaterally terminating the contract without just cause)<sup>19</sup>.

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<sup>19</sup> 1. Quando a justa causa invocada nos termos do artigo 43.º venha a ser declarada insubsistente por inexistência de fundamento ou inadequação dos factos imputados, o jogador fica constituído na obrigação de indemnizar o clube ou sociedade desportiva em montante não inferior ao valor das retribuições que lhe seriam devidas se o contrato de trabalho tivesse cessado no seu termo.

2. Se pela cessação do contrato resultarem para a entidade empregadora prejuízos superiores ao montante indemnizatório fixado no número anterior, poderá aquela intentar a competente ação de indemnização para ressarcimento desses danos, sem prejuízo da produção dos efeitos da rescisão.”

Which could be translated in English as follows:

“1. When the just cause invoked under Article 43 is declared inadmissible due to lack of grounds or inadequacy of the alleged facts, the player is obliged to indemnify the club or sports company for an amount not less than the amount of the remunerations which would be owed to him if the contract of employment had ceased on its expiry date.

2. If the termination of the contract results in damages to the employer greater than the amount of compensation set forth in the previous number, the employee may seek the competent action for compensation for damages, without prejudice to the effects of the termination.



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**d.4. The damage suffered by the Club and compensation agreed in advance by and between the Parties reflected in the Contract and its proportionality:**

263. We demonstrated that article 11 of the *Contract* provides a compensation equal to the remaining value of the *Contract* plus, in case a new club signed the *Player*, the “*value of the player’s sporting rights agreed by the parties in this contract*”<sup>20</sup>, which corresponds to the damage suffered by the *Club* due to the chance he has been deprived of transferring the *Player* to other clubs.
264. The *Parties* agreed on the market value of the *Player* in the amount of EUR 45,000,000.00/- “€ 45.000.000,00 (*quarenta e cinco milhões de euros correspondente à valorização dos direitos de participação desportiva do jogador feita pelas partes no presente contrato*)”.
265. Therefore, said amount of money corresponds to the market value of the *Player* as agreed by the *Parties*, which is perfectly consistent with the current market value of the best goalkeepers in European football.
266. We refer to the award CAS 2011/A/2356 SS Lazio S.p.A. v. CA Vélez Sarsfield & FIFA, which states:

“71. *With regard to the nature of the transaction/s, the Panel has taken into consideration that [...]*

*The Player and Al Saad agreed in Clause X3 of the Contract that should the Player terminate the Contract without just cause, Al Saad would be entitled to a compensation of EUR 20 million. It is reminded that the referenced clause reads as follows:*

*If the Player terminates the Contract and such termination is not due to a just cause or a mutual agreement between the parties concerned or the Player breaches the Contract and such breach leads to termination or the right to terminate the Contract, then the Club shall be entitled to receive from the Player a compensation for an amount equal to 20 million Euros.*

...

75. *Applying the above mentioned elements to this case the Panel is of the opinion that:*

*The consent of the club of origin (Al Saad) indeed existed, it not being sustainable to state that Al Saad had no contractual role in this story. From the very moment in which Al Saad accepted to include Clause X3 in the Contract it was undoubtedly consenting and admitting that the Player could leave Al Saad to join another club upon Al Saad’s receipt of compensation of EUR 20,000,000. This is to be understood as a consent rendered in*

<sup>20</sup> See article 11 of the Contract



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advance, which in the Panel's view is legally feasible. The proceedings started by Al Saad against Lazio do not hinder, in the Panel's view, the clear existence of such consent appearing from the wording of Clause X3 of the Contract."

267. In view of the foregoing, and taking into account article 8, 9, and 11 of the *Contract*, the *Club* consented in advance to transfer the *Player* in exchange of compensation in the amount of EUR 45,000,000.00/-, which therefore corresponds the transfer value of the *Player* agreed by the *Parties*.
268. Specifically, the *Player* had the right to unilaterally terminate the *Contract* without just cause by paying EUR 45,000,000.00/- during the period 15 May - 15 June of each sporting season during the validity of the *Contract* (see article 8 of the *Contract*).
269. Moreover, the *Player* had the right to force the *Club* to accept any offer exceeding EUR 45,000,000.00/- (see article 9 of the *Contract*) during the period 15 May - 15 June of each sporting season during the validity of the *Contract*.
270. Therefore it is clear that the *Parties* agreed on a market value of the *Player* in the amount of EUR 45,000,000.00/- which represents the replacement costs and related damages the *Club* should burden further to any premature termination exercised by the *Player*.
271. Indeed, when the *Player* decided to terminate the *Contract* prematurely and without just cause, the *Club* lost its right to receive EUR 45,000,000.00/- (as established by articles 8 and 9 of the *Contract*) and therefore it is entitled to receive the same amount, which was established by the *Parties* as a compensation as a consequences for the unilateral termination of the *Contract* by the *Player* without just cause.
272. We herein reiterate that the *Player's* market value agreed by the *Parties* is not excessive, while it is perfectly consistent with the current market value of the top goalkeepers in the world.
273. The *First Respondent* has been the *Club's* goalkeeper since 2001, with 460 appearances, winning 2 Portuguese Cup (2007-2008 and 2015-2016), 1 Portuguese League Cup (2017-2018) and 2 Portuguese Super Cup (2008-2009 and 2016-2017) (**Annex no. 2**).
274. Moreover, the *Player* has been the goalkeeper of the Portuguese national team from the Under 15 to the top national team, with more than 120 appearances, winning the 2016 UEFA Euro and currently playing the 2018 FIFA World Cup in Russia.



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275. Therefore, the *First Respondent* is one of the best goal keepers in the world and his market value agreed in the *Contract* is perfectly in line and compatible with the current market value of the top goal keepers in the world, above all considering that, when he terminated the *Contract*, he was bound to the *Club* for the following four sporting seasons.
276. Furthermore, it needs to be taken into consideration that goal keepers' careers are longer than other footballers' careers. Therefore, the *Player's* career is still long and it could last additional 10 years.
277. As a comparison, we refer to the transfer of the Brazilian goalkeeper Ederson, who moved from the Portuguese club Benfica to Manchester City in exchange of nearly EUR 40,000,000.00/- in July 2017<sup>21</sup> (**Annex no. 11** herein enclosed).

**d.5. The *Player* and the *New Club* shall be considered as jointly and severally liable with regards the compensation to be awarded in favour of the *Claimant* by the *FIFA DRC*:**

278. On the 18<sup>th</sup> of June 2018, the *Second Respondent* officially announced the signing of the *First Respondent*.
279. We further refer to article 17.2 of the *FIFA RSTP*, which states as it follows:

*“Entitlement to compensation cannot be assigned to a third party. If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties.”*

280. Therefore, the *Player* and the *New Club* are jointly responsible for paying the compensation (stipulated in the *Contract* and agreed between the *Parties*) to the *Club*, regardless of any involvement or inducement to breach the *Contract*.
281. As confirmed by the long standing *FIFA DRC* and *CAS*, article 17.2 of the *FIFA RSTP* is of an objective nature. For instance, we refer to the award CAS 2014/A/3852 Ascoli Calcio 1898 S.p.A v. Papa Waigo N'diaye & Al Wahda Sports and Cultural Club, which states:

*“109. Pursuant to article 17.2 of the RSTP:*

*Entitlement to compensation cannot be assigned to a third party. If a professional is required to pay compensation, the professional and his new*

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<sup>21</sup> <https://www.transfermarkt.es/ederson/transfers/spieler/238223>





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*club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties.*

*110. As is generally admitted by CAS and by DRC case law, liability under article 17.2 RSTP is of an objective nature and does not require that the new club be considered as instigator of the player's breach. As long as a club can be identified as the "new club" of the player, joint liability can be established.*

*111. Pursuant to the definitions provided in the RSTP, the new club is "the club that the player is joining".*

- 282.** In view of the foregoing, the *Player* and the *New Club* are jointly and severally liable to compensate the *Club*.
- 283.** Moreover, we recall that the liquidated damages clause agreed by the *Parties* in the *Contract* further establishes "*the payment of the amount of € 45,000,000.00 (forty-five million euros) corresponding to the player's sports value made by the parties in this contract*" in case of the *Player's* registration with another club.
- 284.** In view of the foregoing, the *Club* is entitled to receive compensation in the amount of EUR 9,702,588.00/- (corresponding to remaining value of the *Contract*) plus EUR 45,000,000.00/- (corresponding to the player's market value made by the *Parties*), which is equal to **EUR 54,702,588.00/-**.
- 285.** In the impossible scenario that the *FIFA DRC* should evaluate article 11 of the *Contract* as partially or entirely invalid and/or null and void - *quod non*, we kindly request to decide the most appropriate compensation the *Player* and the *New Club* shall pay to the *Club* in accordance with the parameters set out in article 17.1 of the *FIFA RSTP*, taking into account the specific circumstances of the case at stake.

**d.6. Legal interest rate:**

- 286.** Pursuant to article 73 of the *SCO*:

*"Where an obligation involves the payment of interest but the rate is not set by contract, law or custom, interest is payable at the rate of 5% per annum".*

- 287.** The *Contract* does not provide any interest rate further to a breach of contract without just cause being committed, therefore a five percent (5%) per annum shall be automatically applied to the values due by the *First* and *Second Respondent* to the *Claimant*:



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- a. as of the 31<sup>st</sup> of May 2018, when the *Player* terminated the *Contract* without just cause over the amount of 9,702,588.00/-;
- b. as of the 18<sup>th</sup> of June 2018<sup>22</sup> (**Annex no. 10** herein enclosed) over the amount of EUR 45,000,000.00/-.

**d.7. Sporting sanctions:**

**288.** The breach committed by the *Player* occurred within the so called protected period and therefore it shall generate sporting sanctions to be imposed on it.

**289.** Pursuant to paragraphs of article 17 of the *FIFA RSTP*:

*“3. In addition to the obligation to pay compensation, sporting sanctions shall also be imposed on any player found to be in breach of contract during the protected period. This sanction shall be a four-month restriction on playing in official matches. In the case of aggravating circumstances, the restriction shall last six months. These sporting sanctions shall take effect immediately once the player has been notified of the relevant decision. The sporting sanctions shall remain suspended in the period between the last official match of the season and the first official match of the next season, in both cases including national cups and international championships for clubs. This suspension of the sporting sanctions shall, however, not be applicable if the player is an established member of the representative team of the association he is eligible to represent, and the association concerned is participating in the final competition of an international tournament in the period between the last match and the first match of the next season. Unilateral breach without just cause or sporting just cause after the protected period shall not result in sporting sanctions. Disciplinary measures may, however, be imposed outside the protected period for failure to give notice of termination within 15 days of the last official match of the season (including national cups) of the club with which the player is registered. The protected period starts again when, while renewing the contract, the duration of the previous contract is extended.*

*4. In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period. It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach. The club shall be banned from registering any new players, either nationally or internationally, for two*

<sup>22</sup> <https://www.wolves.co.uk/news/first-team/20180618-wolves-complete-patricio-signing/>.



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*entire and consecutive registration periods. The club shall be able to register new players, either nationally or internationally, only as of the next registration period following the complete serving of the relevant sporting sanction. In particular, it may not make use of the exception and the provisional measures stipulated in article 6 paragraph 1 of these regulations in order to register players at an earlier stage.”*

290. It is crystal clear that the *New Club* has induced the *Player* to terminate the *Contract* without just cause. In this regard, the *Club* and the *New Club* had negotiated the transfer of the *Player* during the days preceding the *Player*'s termination dated 31<sup>st</sup> of May 2018.
291. It means that the *Player* and the *New Club* tried to conclude the transfer of the *Player* by paying millions of euro, although the *Player* had already terminated the *Contract* alleging just cause.
292. It follows that if the *Player* had terminated the *Contract* with just cause he would have been entitled to transfer for free. Nevertheless, the *Player* and the *New Club* continued the negotiations.
293. Accordingly, the *Player* and the *New Club* knew the termination had been made without just cause if they were willing to pay approximately EUR 20,000,000.00/- for the *Player*'s transfer.
294. Moreover, we understand that the termination letter has been drafted during the days before 31<sup>st</sup> of May 2018, namely when the *Club* and the *New Club* were negotiating the *Player*'s transfer.
295. Therefore, while the *Player* was negotiating his transfer to the *New Club*, the *First Respondent*'s was as well drafting his letter to terminate the *Contract*.
296. If the *Player* had really believed to have just cause to terminate the *Contract*, why would he have involved the *New Club* in order to pay millions of euro for his transfer, when he could simply have been transferred for free?
297. It is very clear that the *Player*'s behavior does not reflect the behavior of a player who acknowledges having just cause to terminate his employment contract.
298. This is further supported by the behavior of the *New Club*, that was willing to pay millions of euro, despite the alleged just cause which would have allowed a transfer without any payment
299. Truth is that the *Club* refused the *New Club*'s proposal because the offer made was highly inadequate in relation to the real value of the *Player* and due to the fact



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that the *New Club* had induced the *Player* to terminate the *Contract*, as demonstrated by the negotiation preceding the termination of the *Contract*.

**300.** This is the reason why the *Player* hereby requests the Honorable *FIFA DRC* to impose:

- On the *Player* a six-month restriction on playing in official matches, considering the aggravating circumstances of the case at stake;
- On the *New Club* a ban from registering any new players, either nationally or internationally, for two entire and consecutive registration periods.



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## H) EVIDENCE AND ANNEXES:

301. The following evidence and annexes are attached to this claim:

**Annex no. 1:** Power of Attorney;

**Annex no. 2:** Transfermarkt excerpt related to the *Player's* sporting career;

**Annex no. 3:** the *Contract*;

**Annex no. 4:** the Termination Letter;

**Annex no. 4 BIS:** Response to the Termination Letter sent on the 11<sup>th</sup> of June 2018 by the *Club* to the *Player*;

**Annex no. 5:** Communication sent by the President to the *Player* on 18<sup>th</sup> of March 2018;

**Annex no. 6:** Message sent by the President to certain players on the 21<sup>st</sup> of April 2018;

**Annex no. 6 BIS:** Response to said message by the players;

**Annex no. 7:** Communication message sent by the President of the *Club* to the *Player*;

**Annex no. 8:** Communication sent by the President of the *Club* to the *Player* on the 17<sup>th</sup> of May 2018;

**Annex no. 9:** Communication sent by the President of the *Club* to the *Player* on the 18<sup>th</sup> of May 2018.

**Annex no. 10:** Press releases in relation with the *Player's* transfer;

**Annex no. 11:** Transfermarkt excerpt related to a goalkeeper's transfer of press release;



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## **D) REQUEST FOR RELIEF**

The *Claimant* requests that the *FIFA DRC* issues a decision in the following terms:

1. To accept this claim.
2. To determine that the *Player* unilaterally terminated the *Contract* without just cause.
3. To issue a decision condemning the *Player* and the *New Club* to pay the *Club* a compensation in the amount of:
  - 3.1. **EUR 54,702,588.00/-** (Fifty Four Million Seven Hundred Two Thousand Five Hundred Eighty Eight Euro);
    - 3.1.1. To award the application of five percent (5%) interest rate per annum, starting from the 31<sup>st</sup> of May 2018:
      - 3.1.1.1. as of the 31<sup>st</sup> of May 2018, when the *Player* terminated the *Contract* without just cause over the amount of 9,702,588.00/-;
      - 3.1.1.2. as of the 18<sup>th</sup> of June 2018<sup>23</sup> over the amount of EUR 45,000,000.00/-.
    - 3.2. Or, in the alternative, the appropriate compensation under article 17.1 of the *FIFA RSTP* together with corresponding interests at a five percent (5%) rate as of the 31<sup>st</sup> of May 2018.
  4. To fix a sum to be paid by the *Player*, in order to contribute to the payment of its legal fees and costs in the amount of CHF 20,000.00/-; and
  5. To order the *Player* to assume the entirety of the *FIFA DRC* administration and procedural fees, if any.

<sup>23</sup> <https://www.wolves.co.uk/news/first-team/20180618-wolves-complete-patricio-signing/>



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Valencia (Spain) and Lisbon (Portugal) on the 6<sup>th</sup> of July 2018, on behalf of Sporting Clube de Portugal - Futebol, S.A.D

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