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

CAS 2024/A/10531 Santa Clara Açores, Futebol, S.A.D. v. Kennedy Kofi Boateng and SC Austria Lustenau

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Mr Kwadjo Adjepong, Solicitor, London, United Kingdom
Arbitrators:	Dr Jan Räker, Attorney-at-law in Stuttgart, Germany
Arbitrators:	Mr Manfred Peter Nan, Attorney-at-law in Amsterdam, The Netherlands

in the arbitration between

Santa Clara Açores, Futebol, S.A.D, Portugal

Represented by Mr Luis Cassiano Neves, Attorney-at-law, Porto, Portugal; and Mrs Mathilde Costa Dias, Attorney-at-law, Porto, Portugal

Appellant

and

Kennedy Kofi Boateng, Ghana

Represented by Mr Sam Kasoulis, Solicitor, Morgan Sports Law, London, United Kingdom; and Mr Marko Lavs, Trainee Solicitor, Morgan Sports Law, London, United Kingdom

Respondent 1

SC Austria Lustenau GMBH, Lustenau, Austria

Represented by Mr Luca Tettamanti, Attorney-at-law Lugano, Switzerland; and Mr Raphäel Bourré, Attorney-at-law, Lugano, Switzerland

Respondent 2

I. PARTIES

1. Santa Clara Açores, Futebol, S.A.D (the "Appellant" or "Santa Clara") is a professional football club with its registered office in Azores, Portugal. The club is registered with the Portuguese Football Federation (*Federação Portuguesa de Futebol* – the "FPF"), which in turn is affiliated to the *Fédération Internationale de Football Association* ("FIFA").

2. Kennedy Kofi Boateng (the "First Respondent" or the "Player") is a professional football player of Ghanaian nationality.

3. SC Austria Lustenau GmbH (the "Second Respondent" or "Lustenau") is a professional football club with its registered office in Lustenau, Austria. The club is affiliated to the Austrian Football Association (*Österreichischer Fußball-Bund* – the "ÖFB"), which in turn is a member of FIFA.

4. The Appellant, the First Respondent and the Second Respondent together are referred to as the "Parties". The First Respondent and the Second Respondent together are referred to as the "Respondents".

II. FACTUAL BACKGROUND

A. Background Facts

5. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

6. On 1 July 2021, the Player entered into an employment contract with Santa Clara for two seasons until the end of the 2022/2023 season (the "Contract"). The key clauses of the contract are provided below.

7. Clause 2 of the Contract provided that:

"Clause 2

2.1. 2021/2022 season:

Santa Clara 5.AD undertakes to pay the Player the net annual remuneration of 108 €000.00, to be paid in 12 equal and successive monthly installments, each worth €9,000.00 € net, with the first due on August 5, 2021 and the following on the same day of the month subsequent payments, plus €500.00 per month for housing expenses; all in total 114 €000.00 net annually;"

8. Clause 2.2 of the Contract stated:

"2.2. 2022/2023 season:

Santa Clara SAD undertakes to pay the Player the net annual remuneration of 114 €000.00, to be paid in 12 equal and successive monthly installments, each worth €9,500.00 € net, with the first due on August 5, 2022 and the following on the same day of the month subsequent payments, plus €500.00 per month for housing expenses; all in total 120 €000.00 net annually;"

9. Clause 2.3 of the Contract stipulated:

"2.3. 2023/2024 season:

(Optional, if the option right is exercised by March 30, 2023 for another season, for this purpose, the parties concluded in writing a fixed-term employment contract subject to suspensive condition to produce its effects in the event that said option right is exercised, for the 2023/2024 sports season):

Santa Clara SAD undertakes to pay the Player the net annual remuneration of 120€000.00 to be paid in 12 equal and successive monthly instalments, each worth €10,000.00 net, with the first due on August 5, 2023 and the following on the same day of the month subsequent payments, plus €500.00 per month for housing expenses; all in total 126 €,000.00 net annually".

10. Clause 4 of the Contract provided that:

"Clause 4

This contract has a duration determined by deadline: starting on July 1, 2021 and ends at the end of the 2022/2023 sports season.

The parties agree to grant Santa Clara, SAD the right of option in renewing the [contract] for another optional season - Season 2023/2024, if the option right is exercised by the 30th of March 2023 for another season".

11. Clause 5 of the Contract stated that:

"Clause [5]

1. *Santa Clara SAD may also pay the Player game or classification prizes depending on of the results and respective participation, it being agreed that such counterparts will not are part of the concept of remuneration agreed under art. 260º, nº 1, a), b) and c) of the Code of Labor(sic).*

2. *For the purposes of this clause, Santa Clara SAD is obliged to pay the Player the following prizes:*
   - *as a Signature Premium, the amount of €20,000.00 net, to be paid in the following installments: €5,000.00 net upon signing of the contract; €5,000.00*

net after 6 months of contract duration; €5,000.00 net at the start of the second sports season; 5 000.00 and after 6 months of contract duration in the second sports season;

- as a Performance Bonus, the following amounts: €10,000.00 net in case of victory in any of the competitions at national level; €10,000.00 net in case of Qualification for European Competitions; €10,000.00 net in case of Qualification for the Group Stage in the current sporting season."

12. Clause 6 of the Contract provided that:

"Clause 6[…]

For the purposes of current sports labor(sic) regulations, Santa Clara SAD declares that it does not paid any transfer premium for the Player."

13. In addition, Clause 13 stated that:

"Clause 13

The Parties agree that the Player may terminate unilaterally and without just cause the sports employment contract which is now concluded through payment to Santa Clara SAD of a net compensation set at €4,000,000.00 (Four million euros)."

14. On 17 November 2022, Santa Clara sent a letter to the Player which stated that it intended to exercise the Unilateral Extension Option ("UEO"). More specifically, Santa Clara's letter provides as follows:

"The Club is extremely happy to confirm that, by this means, it expressly exercises its right to extend the Employment Contract signed on 1 July 2021. As a result, your employment will now terminate on 30 June 2024, and as of 1 July 2023, you shall be entitled to a monthly global net remuneration of EUR 10,500 net, which amounts of EUR 126,000 net per year. Moreover, the Club will rely on your availability to discharge all administrative acts, namely the execution of all documents required to promote the registration of the extension before the Portuguese Football Federation and the Portuguese Football League."

15. On 25 November 2022, Santa Clara sent a second notification to the Player to trigger the option right and extend the Contract until the end of the 2023/2024 season and the Player was asked to present himself at its headquarters on 1 December 2022 to execute the documents to register the Contract extension. Santa Clara stated that: *"[…] we deem of the utmost importance to highlight that in accordance with the applicable regulation and well established jurisprudence, the signature of the abovementioned documents is not a necessary condition for the validity of the extension of the Employment Agreement, which was already effectively and validly performed by the Club in our notification dated 17 November 2022, and already produced all legal effects of such date"*. However, the Player did not respond to Santa Clara's request and did not show up at the scheduled meeting on 1 December 2022.

16. On 27 May 2023, the Player departed from Portugal for the summer break.

17. On 14 June 2023 the Player received a notification from Mr Rafael Andrade, the Team Manager of the A team of Santa Clara via WhatsApp, instructing the Player to return to São Miguel Island (Azores) by 29 June 2023, in preparation for the Player's scheduled activities commencing on the morning of 30 June 2023. However, the Player did not respond to this notification or subsequent attempts to contact him, including by telephone.

18. On 19 June 2023, a message was sent to all the players at Santa Clara by WhatsApp message with instructions for air travel to return to São Miguel Island. The message added that training would resume on 30 June 2023.

19. On 22 June 2023, Santa Clara's Team Manager provided the Player with a training plan via WhatsApp for the vacation period to facilitate physical preparation for the upcoming season. This was followed up with another message on 29 June 2023 to remind the Player that work would start on 30 June 2023. Again, no response was received from the Player.

20. On 30 June 2023, the Player did not attend Santa Clara for the start of pre-season training. In addition, on 3 July 2023 the Player exited Santa Clara's WhatsApp message group.

21. On 14 July 2023, Santa Clara sent a formal notice to the Player stating that he was requested to return to Santa Clara on or before 17 July 2023 and that a failure to do so would lead to the opening of disciplinary proceedings against the Player.

22. On 16 July 2023 in response to Santa Clara's previous letter, the Player, through his former legal representative, replied emphasising that the contractual relationship had ended on 30 June 2023. The Player asserted that the UEO clause is contrary to domestic and international law.

23. On 24 July 2023, Santa Clara notified the Player, by an emailed letter, that disciplinary proceedings had been commenced due to his alleged unjustified absence. In response, the Player stated that the option right was not valid and that he no longer had any employment relationship with Santa Clara and should be considered a "free agent". As a result of the above, Santa Clara considered that the Player had unilaterally terminated the Contract without just cause.

24. In early September 2023, the Player's agent contacted Santa Clara informing them that the Player would be ready to resume his services with Santa Clara. This offer was rejected by Santa Clara as it believed there had been a breakdown of trust between Player and Santa Clara; the Player had been replaced by someone else; and Santa Clara suspected that this contact from the agent was because the Player had failed to find a new club after the termination of the Contract.

25. On 20 September 2023, Santa Clara acknowledged receipt of the Player's Statement of Defence regarding the disciplinary proceedings. Santa Clara also noted the Player's position that he was not bound by any employment contract with Santa Clara after 30 June 2023.

26. At the end of October 2023, the Player was introduced to Mr Alexander Schneider, Director of Football from Lustenau, by the Player's agent Mr Tony Appiah. Lustenau was interested in the Player and enquired about his situation and learned from the Player, the Player's Agent, and his sporting passport issued by the FPF, that the Player was a free agent.

27. On 6 November 2023, the Player signed a contract with Lustenau, valid until 31 May 2024. Lustenau agreed to pay the Player a monthly salary of EUR 5,750.

B. Proceedings before the FIFA DRC

28. On 19 September 2023, Santa Clara lodged a claim with the Dispute Resolution Chamber of the FIFA Football Tribunal ("FIFA DRC") against the Player.

29. On 25 October 2023 the Player submitted his response to the claim at FIFA, disputing it.

30. On 9 November 2023, Santa Clara broadened the scope of its claim with FIFA to include Lustenau, seeking to jointly and severally oblige the Player and Lustenau to pay compensation in the sum of EUR 4,000,000 and impose sporting sanctions against Lustenau.

31. On 2 February 2024, Lustenau summitted its response to the claim at FIFA, disputing it.

32. On 22 February 2024, the FIFA DRC rendered its decision (the "Appealed Decision"), with the following operative part:

> *"1. The Football Tribunal has jurisdiction to hear the claim of the claimant, Santa Clara Açores Futebol SAD.*
>
> *2. The claim of the Claimant is rejected.*
>
> *3. This decision is rendered without costs."* (emphasis omitted)

33. On 5 April 2024, the grounds of the Appealed Decision were communicated to the Parties ruling that the UEO was invalid and therefore the Contract had expired at the end of the original term i.e. 30 June 2023.

34. In the Appealed Decision the FIFA DRC concluded that:

> *"78. […] [T]he unilateral extension option contained in clause 2.3 of the Contract could not be upheld. Not only was it evident from the context that the Player was reluctant to continue his contractual relationship with the Claimant, but particularly the terms of the extension were neither clear enough, nor sufficiently lucrative to meet the collective criteria of a valid unilateral extension option – the threshold for which is already considerably high by its nature alone.*
>
> *79. As a result of the invalidity of the unilateral extension option, the Chamber was able to establish that the Contract expired on its originally stipulated term, namely 30 June 2023."*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

35. On 26 April 2024, Santa Clara filed a Statement of Appeal with the Court of Arbitration for Sport ("CAS"), challenging the Appealed Decision, in accordance with Articles R47 and R48 of the 2023 edition of the Code of Sports-related Arbitration (the "CAS Code"). Santa Clara called the Player and Lustenau as the Respondents.

36. On 5 June 2024, following extensions to the deadline granted by CAS, Santa Clara filed its Appeal Brief in accordance with Article R51 of the CAS Code.

37. On 14 June 2024, Santa Clara appointed Dr Jan Räker, Attorney-at-law in Stuttgart, Germany, as arbitrator.

38. On 27 June 2024, the Respondents jointly appointed Mr Manfred Peter Nan, Attorney-at-law in Amsterdam, the Netherlands, as arbitrator.

39. On 17 July 2024, the Player filed his Answer in accordance with Article R55 of the CAS Code. In his Answer, he, *inter alia*, challenged the admissibility of the appeal.

40. On 22 July 2024, following an extension to the deadline granted by CAS, Lustenau filed its Answer in accordance with Article R55 of the CAS Code.

41. On 26 July 2024, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Arbitral Tribunal appointed to decide the procedure was constituted as follows:

President:	Mr Kwadjo Adjepong, Solicitor in London, United Kingdom;
Arbitrators:	Dr Jan Räker, Attorney-at-law in Stuttgart, Germany;
	Mr Manfred Peter Nan, Attorney-at-law in Amsterdam, the Netherlands.

42. On 29 and 30 July 2024 respectively, Santa Clara requested a hearing to be held, whereas the Player and Lustenau preferred the Panel to issue an arbitral award based solely on the Parties' written submissions. Furthermore, the Parties considered that a case management conference was not necessary.

43. On 6 August 2024, and after considering the Parties' positions, the CAS Court Office informed the Parties that, in accordance with Article R57 of the CAS Code, the Panel had decided to hold an in-person hearing. Furthermore, and on behalf of the Panel, the CAS Court Office invited FIFA to provide a copy of the complete case file related to this appeal.

44. On 22 August 2024, the CAS Court Office provided the Parties with the Order of Procedure, which was duly signed and returned by the Player on 22 August 2024, by Lustenau on 26 August 2024 and by Santa Clara on 27 August 2024.

45. On 10 September 2024, the CAS Court Office invited the Player to indicate whether he maintains his request to consider the appeal inadmissible, and at the same time invited Lustenau to indicate whether it objected to the admissibility of the appeal.

46. On 17 September 2024, the Player informed the CAS Court Office that it no longer objected to the admissibility of the appeal and Lustenau informed the CAS Court Office that it aligns with the Player's position.

47. On 11 November 2024, the CAS Court Office provided the Parties with a Tentative Hearing Schedule, which was duly approved by the Parties.

48. On 19 November 2024, a hearing was held at the CAS Court Office in Lausanne, Switzerland. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution of the Panel.

49. At the start of the hearing, the Panel agreed to the Appellant's request to be given more time for their Opening submissions and less time for Closing submissions. The same flexibility was granted to all the Parties. No other preliminary applications, issues or objections were raised.

50. In addition to the members of the Panel, Ms Delphine Deschenaux-Rochat, CAS Counsel, the following persons attended the hearing in person, unless indicated otherwise:

- For the Appellant:

  1) Mr Luis Cassiano Neves, Counsel,
  2) Mrs Matilde Costa Dias, Counsel,
  3) Mr Aakash Batra, Counsel (by videoconference),
  4) Mr Cristovoão Leitão, Interpreter.

- For the First Respondent:

  1) Mr William Sternheimer, Counsel,
  2) Mr Marko Lavs, Trainee Solicitor, Co-Counsel (by videoconference).

- For the Second Respondent:

  1) Mr Luca Tettamanti, Counsel,
  2) Mr Raphaël Bourré, Co-Counsel,
  3) Mr Mirco Papaleo, Sporting Director of Lustenau.

51. The Panel heard opening and closing submissions from the legal representatives for the Parties. The President of the Panel instructed the interpreter and the witnesses to tell the truth subject to the sanctions of perjury under Swiss law. The Panel heard oral evidence from the following witnesses called by the Appellant, who were subjected to examination and cross-examination as well as questions from the Panel:

- Mr Klaus Câmara, President of Santa Clara assisted by the Interpreter;
- Mr Diogo Monteiro Rodrigues, Head of Legal of Santa Clara assisted by the Interpreter; and
- Mr Lazaro Souskas, a FIFA Licenced Agent, based in Greece.

52. The Parties were given a full opportunity to present their cases, submit their arguments and answer questions posed by members of the Panel. After their closing submissions and before the end of the hearing, all Parties confirmed that their right to be heard had been respected. There were no objections raised as to the manner in which the Panel had conducted the hearing, and no procedural objections were made.

53. At the hearing, Mr Kaus Câmara, the former CEO of Santa Clara, now its President, gave oral evidence. He said that, although he was not involved in the initial Contract signed with the Player, he was involved in seeking to extend the Player's contract through the UEO. He said Santa Clara made clear it wanted to exercise the UEO in November 2022, but the Player did not engage in discussion and asked Santa Clara to speak to his lawyers. Santa Clara expected the Player to be included in the team for the following season, but although it asked the Player to complete the administrative paperwork for the UEO, this did not happen. When Santa Clara realised the Player was not coming back to the club, a new central defender was hired in January 2024 for EUR 100,000. Disciplinary proceedings were initiated by Santa Clara against the Player after he left.

54. In addition, Mr Diogo Monteiro Rodrigues, head of the legal department at Santa Clara, also gave oral evidence at the hearing. He explained that when a UEO is exercised, an administrative procedure takes place where the Player fills out some forms which will allow for a registration sheet and signs an addendum to the Contract. However, he was not present when the original Contract was signed. After 30 June 2023 there was no valid registration of the Player as the Player did not sign the relevant administrative documents. This is why the Player Passport indicated that the Player's contract ended on 30 June 2023 and the FPF issued an International Transfer Certificate ("ITC"). He said an email should be sufficient for an UEO and the registration of the Player with the FPF is purely an administrative act.

55. Mr Lazaro Souskas, a FIFA licenced agent from Greece, also gave oral evidence at the hearing. In May 2023 he discovered the Player was good and he wanted to check if he was a free agent. He discovered that the Player had one more year of his contract. He therefore did not take matters further as the clubs he represented were not able to pay a transfer fee.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

A. The Appellant

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

(i) The assessment of whether this UEO is valid comes down to three issues: (a) Is the UEO valid and, if so, was it validly exercised? (b) If yes, which party terminated the contract and was that with or without just cause? (c) What compensation should be payable? As issues (b) and (c) are a consequence of issue (a) the focus should be on issue (a). FIFA did not follow this approach in the Appealed Decision and focused on "whether the Player was on the mercy of the club" and the analysis of whether the Player's salary increased or was substantial or not, which was wrong.

(ii) Clauses 2.3 and 4 of the Contract embody the option right for the Appellant to unilaterally extend the Contract for the 2023/2024 season, which was successfully exercised by the Appellant in a timely manner. In this regard it is relevant that the Player explicitly confirmed to the FIFA Agent, Mr Lazaro Souskas, that he still had one year left in the Contract, which explicitly confirms that the Player himself deemed the UEO valid and binding, and duly exercised. The Appellant can demonstrate the legality and validity of this contractual clause in accordance with long-standing and established jurisprudence.

(iii) It is pertinent to assess the overall circumstances surrounding the termination of the Contract signed between the Appellant and First Respondent to determine if the Contract was unilaterally terminated with or without just cause to determine the legal consequences of the UEO. For this, the Appellant shall demonstrate the ramifications of the First Respondent's unjustified and continuous absence from duty. The testimony from the witnesses demonstrates all the circumstances of the case in particular (a) the circumstances surrounding the exercise of the UEO; (b) the details surrounding the Parties' communications; (c) the Parties' conduct throughout the entire process; (d) the Player's role in the team and professional prospects; and (e) the Player's conduct after the termination of the Contract. Although the Player changed his mind and wanted to go back to the Club in September 2023, this was too late to exercise the UEO.

(iv) The Player terminated the Contract. Special attention must be given to the Player's change of stance during the month of September 2023, i.e., after the termination of the Contract without just cause, and how such a change of stance, to seek to return to the Club, only confirms the validity and enforceability of the UEO, which was effectively exercised by the Appellant in a timely manner. Therefore, the Player's current position is a violation of the principle of *venire contra factum proprium*.

(v) The UEO complies with the Portmann Criteria, submitted as part of a report by Professor Wolfgang Portmann in *Athlético Peñarol v Suares, Barotti and PSG* (CAS 2005/A/983 & 984) which stated that UEOs could be valid under Swiss law if the following conditions were satisfied: (i) the Potential maximum duration of the employment relationship must not be excessive; (ii) the UEO has to be exercised within an acceptable deadline before the expiry of the current contract; (iii) the original contract has to define the salary rise triggered by the UEO; (iv) the content of the contract must not result in putting one party at the mercy of another; and (v) the UEO has to be clearly emphasised in the original contract so that the Player can have full consciousness of it at the moment of signing.

(vi) FIFA's assessment of the UEO was wrong in relation to the remuneration payable to the Player under the option right in the Contract. While clauses 2.3 and 4 of the Contract may *prima facie* reveal an omission regarding bonus provisions, this must be understood within the broader context of the employment relationship. Therefore, the bonuses in the Contract were applicable to the option right and the extended period as well. In addition, the Contract clearly shows that the option right is unambiguous in its scope and provides for an overall increase in remuneration, encompassing both the normal salary increase and the conditional bonus payments.

(vii) The Player was not "at the mercy of the Club". The Contract signed was entirely acceptable for a player of his age and ability. The fact that the Player was given a contract in Portuguese did not put him at a disadvantage. The Player knew exactly what he was signing by signing the Contract containing the UEO. The Player had plenty of leverage and he exercised it. Even though the Player needed to sign an addendum, this was purely for administrative purposes and does not affect the validity of the UEO. The Appellant acted in good faith and the Player did not.

(viii) As the UEO is valid and was validly exercised by the Appellant, the Player unilaterally terminated the Contract without just cause and therefore the Appellant is owed compensation for unlawful termination without just cause and the Second Respondent should be held jointly and severally liable for the payment of such compensation.

(ix) Clause 13 of the Contract stipulates a predetermined, mutually and freely agreed compensation of EUR 4,000,000 for the Player's unilateral termination without just cause, and that amount should be awarded to the Appellant.

(x) If the Panel does not enforce Clause 13, compensation should be calculated in accordance with Article 17 FIFA RSTP, in which the compensation amount in any case must not be less than EUR 1,000,000 considering, *inter alia*, the termination during the protected period; the Player's conduct between the months of November 2022 and July 2023; the market value of the Player in the amount of at least EUR 700,000; the principle of "positive interest"; the great expectations of the Appellant in relation to the Player's huge potential; the Player's salaries under his new and old contracts; the costs associated with replacing the Player; and the "specificity of sport".

(xi) Pursuant to Article 17(2) FIFA RSTP, the joint and several liability of a professional player and their new club is automatic. Therefore, the Player's new club shall automatically be responsible, together with the Player for a contractual breach by the Player without just cause and will therefore be responsible for paying compensation to the Player's former club. Hence, the Second Respondent must be declared as jointly and severally liable for the payment of the compensation for breach of contract to the Appellant.

57. At the hearing, the Appellant withdrew its request for relief to impose sporting sanctions on the Player and the Second Respondent.

58. On this basis, the Appellant submitted the following prayers for relief *verbatim*:

a) "The appeal filed by Santa Clara Açores, Futebol, S.A.D, is admissible.

b) The Decision of the FIFA DRC (Ref. FPSD-11838) dated 22 February 2024, whose grounds were notified on 5 April 2024, is to be set aside.

c) A new decision shall be issued by this Honourable Court which shall replace in its entirety the DRC Decision and shall determine inter alia that:

i. *Clauses 2.3 and 4 of the Employment Agreement signed between the Appellant and the First Respondent are legal, valid and enforceable clauses, which produced their legal effects, and ergo, extended the duration of the Employment Agreement till the culmination of the 2023/2024 season, i.e. until 30 June 2024;*

ii. *The First Respondent shall be liable for the unilateral termination of the Employment Agreement without just cause.*

iii. *The First Respondent is liable for the payment of the amount freely agreed and determined under Clause 13 of the Employment Agreement, i.e., EUR 4.000.000,00 (Four Million Euros);*

iv. *The Second Respondent, i.e. the Player's new club shall be jointly and severally liable for the payment of any compensation to be paid to the Appellant following the unilateral termination of the Employment Agreement without just cause.*

In the alternative.

v. *In case this Honourable Court decides to reduce the amount contractually agreed and established under clause 13 of the Employment Agreement, it shall nevertheless determine that the First Respondent is liable for the payment of an adequate compensation, which, in any case, shall never be less than EUR 1.000.000,00 (One million Euros);*

vi. *The Second Respondent, i.e. the Players New Club, shall be jointly and severally liable for the payment of any compensation to be paid to the Appellant following the unilateral termination of the Employment Agreement without just cause.*

In any case,

vii. *Impose the appropriate sporting sanctions upon the Player and his new Club.*

viii. *Order both Respondents to bear the costs of the present arbitration proceedings in its entirety, together with a contribution towards the Appellant's legal expenses in the amount of CHF 5000".* (emphasis in original)

B. The First Respondent

59. The First Respondent's submissions, in essence, may be summarised as follows:

(i) The UEO was not valid, and the Player did not breach the Contract, and no compensation is due to the Appellant. If the Panel concludes that the UEO was valid, and the Player did breach the Contract, it must consider the quantum of compensation due to the Appellant – however, no amount of compensation can be granted. No sporting sanctions should apply for the alleged breach. Even if sporting

sanctions were to apply, FIFA is not a party to these proceedings and CAS cannot impose sporting sanctions.

(ii) The UEO put the Club in a stronger position than it was within the contractual relationship and provided a disproportionate advantage which the FIFA DRC have consistently denounced, i.e. the Club had the unilateral right (or power) to terminate or extend the Contract without allowing the Player the same rights. Therefore, the potestative and unilateral nature of the UEO clause renders it null and void.

(iii) It is a matter of common knowledge that, in employment relationships, the employer is typically the stronger party. As a result, one cannot assume that because a provision is within the Contract, it is (a) the result of genuine consensus or (b) *per se* valid and enforceable.

(iv) The jurisprudence of the FIFA DRC and the CAS, as well as Portuguese and Swiss Law demonstrate that UEO's in professional football are considered invalid. For example, the FIFA DRC concluded that UEO's in favour of clubs lead to unjustified inequality between the rights of the player and a club and restrict a player's freedom (see decisions of the FIFA DRC on 18 March 2010 no. 310607 and Club Kerala Blasters v Oswaldo Henriquez & Bnei Skahnin, 28 April 2020).

(v) The Player clearly indicated his disagreement with the execution of the UEO. The Player has repeatedly rejected the validity of the UEO. He always assumed and accepted that the Contract terminated on 30 June 2023, which was demonstrated by the email of 16 July 2023 and by his Statement of Defence provided during the internal disciplinary proceedings.

(vi) There are several CAS Awards that consider UEO's to be contrary to the meaning and intention of the FIFA RSTP (see CAS 2005/A/983 and 984), and to be unlawful and as such not accepted under Swiss law (see CAS 2009/A/1856-1857).

(vii) The *Portmann Criteria* are neither law, regulations nor jurisprudence and are completely irrelevant to the consideration of UEO's. However, even if the Portmann criteria was considered by CAS, the most important criteria were not complied with, and the Player did not in fact receive a salary increase for the additional year of the Contract and there was no financial benefit for the Player in terms of the UEO. The Player's total salary for the 2022/2023 season was EUR 130,000. Yet in the 2023/2024 season the Player would only earn EUR 126,000 (excluding bonuses). Even if the *Portmann Criteria* did apply, key criteria were not met. The Player was "at the mercy of the Club" as the employer wields more power than the Club. In addition, as noted by the FIFA DRC, the UEO did not constitute a *substantial increase* in salary. The bonuses could not continue under the UEO. Ultimately, the Player would have earned less. Bonuses dependent on winning the Portuguese Cup or European competition means that the Player in effect was not eligible for any of these potential bonuses, as the Club was relegated at the end of the 2022/2023 season.

(viii) Under Portuguese law, Article 19 law 54/2017 prohibits the inclusion of UEOs in Portuguese employment contracts.

(ix) Were Swiss law to be applicable to the current dispute for lacunas regulated by the FIFA RSTP, Article 335a of the Swiss Code of Obligations ("SCO") confirms that unilateral rights for employers regarding the duration of employment contracts would not be accepted (see CAS 2016/A/4875).

(x) The statement of Mr Souskas is not relevant as he was unknown to the Player and the short WhatsApp exchange clearly confirms that the Player had no interest in working with him.

(xi) The fact that in September 2023, Mr Appiah, the Player's agent, contacted the Appellant to start negotiations for the Player to return to Santa Clara is no confirmation that the Player was wrong or accepted the UEO. Instead, the Player deemed the option invalid but for 4 months found himself in a situation of unemployment against his desire in view of the joint liability rules of FIFA. To rule that this would be a violation of the principle of *venire contra factum proprium* is strongly denied.

(xii) If the UEO was valid, there would be no need to send an addendum to the Player to be signed. The Appellant should have notified the Portuguese league if the UEO had taken place, but this did not happen. The Appellant tried to use the UEO to obtain a transfer fee as they knew that the Player wanted to leave the Club.

(xiii) FIFA and CAS jurisprudence support the submission that UEO's are not valid and incompatible with the FIFA RSTP. Swiss Law can fill any lacuna in the RSTP. Swiss law prohibits rights imposed on one party but not the other.

(xiv) In the unlikely event that CAS deems the UEO to be valid, it should consider the legal consequences that arise from a termination without just cause based on Article 17 of the FIFA RSTP while taking into consideration the principle of proportionality and EU law. As a result, as this case involves the Player's move from a club in one EU country to another EU country, consideration should be given to the opinion of the Advocate General in the *Diarra* case where the European Court of Justice said the consequences for a player to terminate a contract without just cause cannot be draconian. (See *FIFA v BZ (Diarra) C-650/22, 4 October 2024*)

(xv) Clause 13 of the Contract is clearly potestative insofar as it creates a disproportionate and excessive repartition of the rights of the parties to the Contract (to the Player's detriment) but there is also no reciprocal clause that would benefit the Player. This clause should be deemed as manifestly excessive since the total remuneration under the Contract including the housing allowance is EUR 380,000. Imposing a EUR 4,000,000 penalty would amount to charging the Player approx. 10.5 times the total contract value, which is exceedingly disproportionate and violates the principle of the freedom of movement of players. This would be 'draconian' compensation and for all these reasons, Clause 13 should be declared null and void.

(xvi) If the Player would be liable to pay compensation under the FIFA RSTP, the Appellant has not brought any convincing evidence supporting that it suffered any damage; it only saved salaries. As such, the compensation for breach of contract should therefore be set at zero.

(xvii) As the Player did not terminate the Contract without just cause, no sporting sanctions are applicable. Moreover, as the Appellant failed to include FIFA as a respondent in the present proceedings, no sporting sanctions can be imposed by CAS.

60. On this basis, the First Respondent submitted the following prayers for relief *verbatim*:

"1. Declare the Appeal inadmissible;

2. Subsidiarily, reject the Appeal of the Appellant in its entirety;

3. Confirm the decision of the FIFA DRC in full;

4. Order the Appellant to pay the full arbitration costs; and

5. Order the Appellant to pay the first Respondent an amount of at least CHF 5,000 towards his legal costs".

C. The Second Respondent

61. The Second Respondent's submissions, in essence, may be summarised as follows:

(i) The Contract between the Player and the Appellant ended on 30 June 2023 since the UEO provided in the Contract was invalid, and as such the Appealed Decision shall be fully confirmed.

(ii) The focus should be on (a) inducement, as the request for a sporting sanction is not applicable; (b) the joint and several liability principle is not applicable in the context of this case; and (c) the request for compensation should not be granted even if the UEO is deemed to be valid.

(iii) The UEO is invalid. The FIFA RSTP is silent about UEO's in favour of Clubs, however the FIFA DRC over time has adopted its own jurisprudence that they should be considered invalid due to their potestative nature and the fact that they restrict an employee's freedom of work. (See FIFA DRC decision n.510635 issued on 6 May 2010.)

(iv) In its well-established jurisprudence, CAS adopted a case-by-case assessment in order to adjudicate the validity of UEOs taking into consideration several elements for example:

i. The potential maximum jurisdiction of the labour relationship should not be excessive;

ii. The option should be exercised within an acceptable deadline before the expiry of the current contract.

(v) The salary reward deriving from the option right should be defined in the original contract and lead to a substantial increase in a player's remuneration to constitute a consideration given in exchange of the right of option granting;

i. One party should not be at the mercy of the other party with regard to the contents of an employment contract;

ii. The option should be clearly established and emphasised in the original contract so the player is conscious of it at the time they sign the contract;

iii. The extension period should be proportional to the main contract; and

iv. It would be advisable to limit the number of extension options to one sole extension.

(vi) The above criteria were considered by the FIFA DRC at paragraph 60 of the Appealed Decision. The main and crucial points (iii) (iv) and (v) are not fulfilled. In the circumstances of the current case, all of the above criteria have not been met therefore, this and the general attitude of the Parties, means that the UEO should be declared invalid.

(vii) According to clause 2.3 of the Contract, the Player was entitled to receive an annual salary for the season 2023/2024 equal to EUR 126,000 net, whereas for the season 2022/2023 he received as per clause 2.2 an annual salary of EUR 120,000, which means an increase of only 5%. Taking into account the bonusses provided for in clause 5.2 of the Contract, the Player's remuneration is even lower than the one provided for the season 2022/2023.

(viii) The Player never signed the addendum to the Contract required by the UEO. It is not an administrative formality it is a legal formality. It was an amendment to a legal contract for the Player to be bound by it. The Player sent two emails to the Appellant's former CEO and current President, Mr Câmara, in June 2023 confirming that he did not want to continue at Santa Clara. Therefore, the WhatsApp chat between the Player and Mr Souskas, who was unknown to him, is of no relevance. The Appellant did not provide any evidence to prove that the UEO was negotiated as none of the witnesses were present when the Contract was signed. The Player's contract was in Portuguese and he was not represented by anyone when it was signed and did not realise what he was signing.

(ix) The Player was "at the mercy of the Club" as the UEO establishes unbalanced rights between the Player and the Appellant as to the duration of the Contract, which is not acceptable. Furthermore, the UEO is not clearly established and emphasised in the Contract.

(x) The alleged request of the Player's agent for Santa Clara to take the Player back in September 2023 does not reflect a Player's change of stance or position.

(xi) The UEO is unlawful under Portuguese law.

(xii) The UEO was not duly exercised by the Appellant.

(xiii) No compensation shall be paid to the Appellant under Clause 13 of the Contract as this clause is not applicable to determine any compensation. The Claim for EUR 4,000,000 is more than double the seasonal budget for the Second Respondent and is the equivalent of a buyout clause and not a penalty.

(xiv) The Appellant failed to prove any damage based upon Article 17 of the FIFA RSTP, as such the Appellant's claim for EUR 1,000,000 must be dismissed. The Player signed for the Appellant for free. The Appellant therefore made a saving, rather than incurring an expense, by the Player leaving. When the Player left, the Club no longer had to pay his salary. There should be a nexus between the breach and the lost opportunity if there is to be a transfer value. This should be the case where there are offers from other clubs for the Player.

(xv) In relation to joint and several liability, the *Diarra* case is relevant for the Second Respondent as the main argument relating to joint and several liability is that automatic joint and several liability limits freedom of movement for players. Arguably, a new club needs fault negligence to be liable. In CAS jurisprudence the joint and several liability is not automatic. These criteria should not apply where there is a long period between a player breaching a club contract and a new club recruiting a player. The exceptional circumstances in relation to due diligence shows that a new club cannot be jointly and severally liable. The Player passport confirms that the Player was a free agent. There was no way for the Second respondent to know if a UEO may have been in place. When the Second Respondent asked for the ITC the Appellant did not respond. Also, the Appellant did not oppose the ITC. On 19 September 2023 the Appellant issued the claim with FIFA, however in November 2023 the Second Respondent asked for the ITC and the Appellant did not oppose it as it was in their interest to have a potential new debtor.

(xvi) An inducement by a new club can give rise to joint and several liability. In this case there is no evidence of an inducement. The Second Respondent did its due diligence and there was no issue for the Player to join the Second Respondent. The salary offered by the Second Respondent was less than half that the Player would have earned under the UEO, i.e. the Player was offered a salary of EUR 5,750 gross a month.

(xvii) The Appellant's pleadings suggest that he was replaced immediately, however at the hearing a witness confirmed the Player was replaced approximately 6 months after he left. As a result, there is no basis for the request for compensation.

(xviii) No sporting sanctions can be imposed as the Appellant does not have standing to request such sanctions.

62. On this basis, the Second Respondent submitted the following prayers for relief *verbatim*:

"On a principal basis

(i) *The appeal filed by Santa Clara Açores, Futebol, S.A.D is dismissed.*

(ii) *The Challenged Decision issued by the FIFA DRC is confirmed in full;*

On a subsidiary basis, if CAS deems that the Unilateral Extension Clause is valid and was duly exercised by Santa Clara Açores Futebol SAD for the reasons and arguments set forth in this answer;

(iii) *No compensation for breach of the Employment Agreement shall be payable to Santa Clara Açores Futebol SAD for the reasons and arguments set forth in this Answer:*

In any case.

(iv) *SC Austria Lustenau GmbH shall not be jointly and severally liable with the Player for the payment to Santa Clara Açores Futebol SAD of any compensation for the breach of the Employment Contract;*

(v) *No sporting sanctions shall be imposed on SC Austria Lustenau GmbH;*

(vi) *Santa Clara Açores Futebol SAD shall bear the costs of this arbitration procedure;*

(vii) *Santa Clara Açores Futebol SAD shall compensate SC Austria Lustenau GmbH for legal and other costs incurred in connection with this arbitration procedure and the procedure before FIFA in an amount to be determined at the discretion of the Panel, but not less than CHF 20,000".* (emphasis in original)

V. JURISDICTION

63. Article R47 of the CAS Code provides as follows:

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

64. The jurisdiction of CAS, which is not disputed, derives from Article 57(1) FIFA Statutes (May 2022 Edition), as it determines that "*[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question*",

and Article R47 of the CAS Code. The jurisdiction of CAS is not contested and is further confirmed by the Order of Procedure duly signed by the Parties.

65. It follows that CAS has jurisdiction to hear, adjudicate and decide on the present dispute.

VI. ADMISSIBILITY

66. Article R49 of the CAS Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties."

67. Under Article 57 of the FIFA Statutes, decisions adopted by FIFA legal bodies, such as the FIFA DRC, can be appealed within 21 days from their notification.

68. The grounds of the Appealed Decision were notified to the Parties on 5 April 2023. The Appellant lodged his appeal on 26 April 2023, i.e. within the 21 days allotted under Article 57 of the FIFA Statutes.

69. As mentioned above, despite objections previously raised regarding admissibility, the Respondents confirmed by letters dated 17 September 2024 that they no longer object to the admissibility of the appeal. Furthermore, the appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

70. It follows that the appeal is admissible.

VII. APPLICABLE LAW

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

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

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

72. Article 56(2) FIFA Statutes provides the following:

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

73. Santa Clara submits that taking into consideration the legal framework determined by the FIFA DRC, and pursuant to Article 56(2) FIFA Statutes and Article R58 of the CAS Code, CAS shall primarily apply the FIFA RSTP (May 2023 edition), and Swiss law on a subsidiary basis.

74. The Player submits that pursuant to Article R58 of the CAS Code, Article 3 of the FIFA Procedural Rules and Clause 14 of the Contract, the FIFA regulations shall apply as well as Portuguese law. In addition, also EU law applies.

75. Lustenau submits that pursuant to Article R58 of the CAS Code and Article 57(2) FIFA Statutes the FIFA regulations, in particular the FIFA RSTP, shall apply together with Swiss law. Furthermore, CAS shall also apply Portuguese law.

76. Accordingly, the present dispute must be decided applying the FIFA rules and regulations, in particular the FIFA RSTP (May 2023 edition). Considering that the federation which issued the Appealed Decision, i.e. FIFA, has its seat in Switzerland, Swiss law will apply subsidiarily to fill any lacuna in the FIFA regulations.

VIII. MERITS

77. Based on the above, the Panel observes that the dispute at hand centres around the question whether or not the UEO as included in the Contract can be considered valid. In this regard, the Panel will consider the following issues:

a) Is the UEO valid?

b) If the answer to a) is affirmative, was the UEO validly exercised?

c) If the answer to b) is affirmative, did the Player terminate the Contract without just cause?

d) If the answer to c) is affirmative, what are the financial consequences of the termination?

e) If a compensation must be paid to Santa Clara by the Player, is Lustenau jointly and severally liable?

A. The Applicable burden and standard of proof

78. The Panel, in considering whether the UEO is valid, needs to ascertain whether the burden of proof concerning whether the UEO was valid has been met based on the applicable standard of proof.

79. Swiss law, in particular, Article 8 of the Swiss Civil Code (SCC), states that: "*Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact*".

80. This position is supported by CAS jurisprudence which provides that "*In CAS arbitration, any party wishing to prevail on a disputed issue must discharge its 'burden of proof', i.e. it must meet the onus to substantiate its allegations and to affirmatively approve the facts on which it relies with respect to that issue.*" (See *inter alia* CAS 2009/A/1909).

81. As a result, the Panel observes that the burden rests with the Appellant to prove the facts that it submits that support the validity of the UEO.

B. The validity of the Unilateral Extension Option

82. As mentioned above, Clause 2 of the Contract states that:

> *"Optional, if the option right is exercised by March 30, 2023 for another season […]:*
>
> *Santa Clara SAD undertakes to pay the Player the net annual remuneration [...] in total EUR 126,000 net annually."*

83. In addition, Clause 4 of the Contract provides that:

> *"The parties agree to grant Santa Clara, SAD the right of option in renewing the contract for another optional season – Season 2023-2024, if the option right is exercised by the 30th of March 2023 […]."*

84. The Appellant submits that Clauses 2 and 4 of the Contract embody the option right for the Appellant to unilaterally extend the Contract for the 2023/2024 season, which was successfully exercised by the Appellant in a timely manner. In addition, the Appellant argues that it is important to assess the overall circumstances surrounding the termination of the Contract signed between the Appellant and First Respondent to determine if the Contract was unilaterally terminated with or without just cause. As such, the Appellant also asserts that the UEO complies with the *Portmann Criteria*. However, the First Respondent maintains that The *Portmann Criteria* are neither law, regulations nor jurisprudence and are completely irrelevant to the consideration of UEO's. Besides, both the Respondents submit that, even if the *Portmann Criteria* are considered by the CAS Panel, the criteria were not complied with.

85. First, the Panel wishes to remark that the FIFA Regulations, particularly the FIFA RSTP, do not contain any express provision which prohibits the unilateral extension of employment contracts. In fact, the decisions by the FIFA DRC and the CAS on unilateral

extension options have always been based on the spirit and legal framework which the FIFA regulations intend to foster.

86. In this regard, the Panel notes that the FIFA Commentary (edition 2023; page 230) provides as follows:

"The DRC. And CAS have analysed these clauses with a high degree of caution, considering the specific circumstances of each case. Historically, both bodies have been quite critical and the corresponding decisions state quite explicitly that clauses which put the player at the mercy of the club, which can decide unilaterally to extend the contract without any corresponding gain for the player (such as an increased salary, for instance), are illegal in that they limit the player's freedom of movement and contravene the general principles of labour law.

By the same token, CAS jurisprudence has examined in depth the criteria for a unilateral extension clause to be deemed valid, which has become known as the "Portmann criteria". Nonetheless, they have not been applied uniformly by CAS […]*".*

87. In continuation, the FIFA Commentary (edition 2023, page 231-232) refers to a more recent case (CAS 2020/A/7145 of which a summary is published in the ECA Legal Bulletin) in which "*CAS remarked that a case-by-case assessment must always be carried out in order to determine the validity of such clauses. The majority of the panel, recalling previous awards (inter alia, CAS 2013/A/3260 and CAS 2014/A/3852) underlined that several elements can be taken into account in order to determine the validity of a unilateral extension clause. These included that: 1) the potential maximum duration of the labour relationship should not be excessive; 2) the option should be exercised within an acceptable deadline before the expiry of the current contract; 3) the salary reward deriving from the option right should be defined in the original contract; 4) one party should not be at the mercy of the other party with regard to the contents of the employment contract; 5) the option should be clearly established and emphasised in the original contract so that the player is conscious of it at the time they sign the contract; 6) the extension period should be proportional to the main contract; and 7) it would be advisable to limit the number of extension options to one sole extension*."

88. The Panel, in principle, concurs with such an approach, considering that a UEO which complies with the aforementioned criteria will more often than not be valid, with all further peculiarities of each specific case still having to be considered and leaving room for a deviant judgment. The Panel further agrees that regarding the third and fourth element not only the salary reward deriving from the option right should be defined in the original contract, but also a substantial salary increase to avoid being at the mercy of the club. The Panel finds support in CAS jurisprudence such as in CAS 2014/A/3852 (where the panel considered an increase of nearly three times the original salary relevant), and in CAS 2020/A/7145 where the panel observed that the player was not at the mercy of the club because his salary was increased by approximately 36%, without interpreting the mentioned precedents as the respective minimum percentage required to meet the standard.

89. The Panel further stresses that in addition to the above seven criteria, it can also be relevant to assess whether or not the Player was assisted during the negotiations that led to the conclusion of the employment contract in which the UEO was inserted, also in light of the equal balance between the parties. In this regard, it can be of relevance whether he or any agent of the Player spoke the language in which the contract has been drafted. Further to this, also the stance of the parties can provide further guidance. For example, whether the Player agreed with the effects of the UEO by means of not immediately objecting thereto and keep training and playing games for the club and still receiving his increased salary after the extended period started to run (see, *inter alia*, DRC 21 February 2006, no. 261245, DRC 7 June 2013, no. 06132616 and CAS 2013/A/3375 & 3376).

90. Furthermore, the intention of the parties can shed more light as to the validity of the option clause, also whether there are any material provisions under national law that should be taken into account to which both parties rely on, such as a collective bargaining agreement at national level that provides for specific rules in relation to unilateral extension options, as it was found to be of relevance in CAS 2013/A/3375 & 3376. Furthermore, as confirmed in CAS 2014/A/3852, it is relevant whether the ensuing terms and conditions of employment are fair and adequately reflect the right that the player has granted to the club without the need of further negotiation. For example, the relegation of a club could be a reason for further negotiation unless this situation is already covered by the content of the UEO.

91. In accordance with the above, the Panel will now assess whether or not the UEO is valid.

92. As a starting point, and going through the elements touched upon in para's 79 – 82 *supra*, the Panel has no hesitation to declare the UEO invalid.

93. Although the maximum duration of the Contract is not excessive, the extension period is proportional, there is only one UEO clause and the UEO was exercised within an acceptable deadline before the initial expiry of the Contract, the total remuneration was not clearly defined and there was no substantial increase in salaries. In fact, the maximum increase would be 5% which is by far not sufficient.

94. With regard to the third and fourth element, the Panel notes that whilst the Contract outlined a monthly salary and conditional bonuses (contained in Clause 2), the extension only referred to a monthly salary. This raises the question as to whether the Player would still have been entitled to conditional bonuses in the extended term. The Appellant considers these bonuses to be applicable also to the extended term, while the Respondents argue the opposite, also pointing to the circumstance that the applicability of the bonuses was either impossible or at least highly unlikely following the Appellant's relegation from the Portuguese first division.

95. The Panel notes that the Contract provision foreseeing the extension could have addressed this issue by including a statement as to the inclusion of any of the existing bonuses, but did not do so. The Panel however concludes, that it is moot to determine by means of interpretation of the contract, whether the bonuses were applicable and how the Club's relegation should influence this evaluation, as even in the case of a full applicability of the bonuses and their evaluation as maintaining their full value, the overall percental

increase in salary would even be lower, if the bonuses are taken into consideration as well, given that there would be no increase in that respect. Furthermore, the Panel notes that clause 5 para. 2 of the Contract also foresaw a 'signature premium' of EUR 20,000 that was payable to the Player. This signing fee was not agreed as due per year, but as only once, with specific due dates agreed. The Panel considers that, as the 'signature premium' was not related to the ongoing services of the Player, the Contract cannot be interpreted to the extent that the signature premium would also have become partially payable in an extension year, whereas it still needs to be considered as part of the Player's original salary. The Panel is therefore inclined to assume that the Player's salary in the extended term would overall have even been lower than during the original term, even with the conditional bonuses being considered payable and equivalent. Therefore, the Panel finds that FIFA DRC's assessment of this issue, i.e. that the UEO would not amount to a "substantial salary increase," is correct.

96. The Appellant submits that special attention must be given to the Player's change of stance during the month of September 2023 when he indicated a willingness to return to the Club, i.e., after the termination of the Contract without just cause, and how such a change of stance only confirms the validity and enforceability of the UEO, which was effectively exercised by the Appellant in a timely manner. However, the First Respondent submits that the Player clearly indicated his disagreement with the execution of the UEO; the Player has repeatedly rejected the validity of the UEO; the Player always assumed and accepted that the Contract terminated on 30 June 2023, which was demonstrated by the email of the 16 July 2023; and by his Statement of Defence provided during the internal disciplinary proceedings.

97. The Panel notes that the Player could have expressly confirmed his rejection of the UEO at an earlier stage and even explored the possibility of returning to the Club in September 2023 through his agent. However, the Player's conduct in his refusal to engage in any negotiations with the Club to agree the UEO and his failure to complete the relevant paperwork required to bring the UEO into effect, confirms that he did not accept the UEO to be valid. Therefore, the Panel is of the opinion that the Player's current position is not a violation of the principle of *venire contra factum proprium*.

98. As a result of the above, in the circumstances of this case, the Panel finds that the UEO is not valid. The UEO did not amount to a "substantial increase" in the Player's salary. In addition, the contract extension should have been part of a meaningful negotiation between the Player and the Appellant; the Addendum to the Contract should have been signed by the Player as well as the related registration documents. This should have been followed by formal registration of the details of the contract extension with the FPF. In fact, none of these steps to validate the contract extension took place.

99. As the Panel finds that the UEO was invalid, as mentioned above, it follows that there was no breach of the Contract by the Player without just cause as the Contract was terminated *ipso jure* at the end of its term on 30 June 2023, and consequently no

compensation is payable by the First Respondent and consequently the issue of whether the Second Respondent is to be held jointly and severally liable is moot.

IX. CONCLUSION

100. In conclusion, the Panel holds that the UEO clause was invalid. As a result, the term of the Contract between Santa Clara and the Player ended on 30 June 2023. This means that the Player was a free agent at the moment he signed an employment agreement with Lustenau in November 2023. Consequently, the Player is not required to pay compensation to Santa Clara and therefore Lustenau cannot be jointly and severally liable. The FIFA DRC was therefore correct to dismiss the Appellant's claim for compensation. The Appealed Decision must therefore be upheld.

101. All further or other motions or prayers for relief are rejected.

X. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 26 April 2024 by Santa Clara Açores, Futebol, S.A.D against the decision issued on 22 February 2024 by the Dispute Resolution Chamber of the FIFA Football Tribunal is dismissed.

2. The decision issued on 22 February 2024 by the Dispute Resolution Chamber of the FIFA Football Tribunal is confirmed.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 24 February 2025

THE COURT OF ARBITRATION FOR SPORT

Mr Kwadjo Adjepong
President of the Panel

Dr Jan Räker
Arbitrator

Mr Manfred Peter Nan
Arbitrator