



**TAS / CAS**

TRIBUNAL ARBITRAL DU SPORT  
COURT OF ARBITRATION FOR SPORT  
TRIBUNAL ARBITRAL DEL DEPORTE

**CAS 2024/A/10629 Deportivo Maldonado SAD v. Real Sociedad de Fútbol SAD &  
CAS 2024/A/10630 Real Sociedad de Fútbol SAD v. Deportivo Maldonado SAD**

## **ARBITRAL AWARD**

**delivered by the**

## **COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

President: Mr Oliver Jaberg, Attorney-at-law, Switzerland  
Arbitrators: Mr Daniel Cravo Souza, Attorney-at-law, Brazil  
Mr David Arias, Attorney-at-law, Spain

**in the arbitration between**

**Deportivo Maldonado SAD, Uruguay**

Represented by Mr Breno Costa Ramos Tannuri, Sao Paulo, Brazil

**-Appellant in CAS 2024/A/10629-  
-Respondent in CAS 2024/A/10630-**

**and**

**Real Sociedad de Fútbol SAD, Spain**

Represented by Mr Alfredo Garzón Vicente, Mr Juan Alfonso Prieto Huang and Ms Patricia Galán Olleros, Madrid, Spain

**-Respondent in CAS 2024/A/10629-  
-Appellant in CAS 2024/A/10630-**

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**I. PARTIES**

1. Deportivo Maldonado SAD (the Appellant in CAS 2024/A/10629 and the Respondent in CAS 2024/A/10630; hereinafter “Maldonado”) is a Uruguayan professional football club affiliated with the Asociación Uruguaya de Fútbol (“AUF”), which in turn is affiliated with the Fédération Internationale de Football Association (“FIFA”).
2. Real Sociedad de Fútbol SAD (the Respondent in CAS 2024/A/10629 and the Appellant in CAS 2024/A/10630; hereinafter “Real Sociedad”) is a Spanish professional football club affiliated with the Real Federación Española de Fútbol (“RFEF”), which in turn is also affiliated with FIFA; Maldonado and Real Sociedad are hereinafter jointly referred to as the “Parties”.

**II. FACTUAL BACKGROUND**

3. Below is a summary of the relevant facts and allegations based on the Parties’ submissions and evidence presented. Additional facts and allegations found in the Parties’ submissions and evidence may be set out, where relevant, in other parts of this award. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, this award refers only to the submissions and evidence considered necessary to explain its reasoning.

**A. Relevant Facts**

4. On 3 and 5 August 2016, following an offer by Real Sociedad and a counteroffer by Maldonado each dated 28 July 2016, Maldonado and Real Sociedad concluded an agreement for the permanent transfer of the player Mr Willian José da Silva, Brazilian national, born on 23 November 1991 (the “Player”), for an amount of EUR 6’000’000 net (the “Transfer Agreement”). By way of the Transfer Agreement, Maldonado transferred 100% of the federative rights and 70% of the economic rights in the Player to Real Sociedad.
5. The Transfer Agreement included a sell-on clause (the “Sell On Clause”) providing that, if the Player were to be permanently transferred to another football club, Maldonado would be entitled to certain amounts (the “Sell On Fee”). In particular, Clause 5 of the Transfer Agreement stipulates the following:

*“5. FUTURE TRANSFER OFFER*

*5.1 If Real Sociedad receives an offer in relation to the definitive transfer of Willian José to another Football club (“Other Football Club”) on a permanent basis (“Transfer Offer”), Real Sociedad will be, in its absolute discretion, entitled to accept or reject such Transfer Offer. [...]*

*5.2 If Real Sociedad transfers Willian José on a permanent basis to Other Football Club in the future, Maldonado shall be entitled to receive the following amounts:*

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*a) If Real Sociedad transfers to the Other Football Club the Federative Rights and Economic Rights of Willian José, Maldonado shall be entitled to receive 30% (thirty per cent) of the transfer price. For this purposes [sic], the transfer price will be considered as any and all gross amounts payable by the Other Football Club to Real Sociedad in connection with the definitive transfer of Willian José whichever concept ("Sell On Fee"). [...]*

*5.3 Real Sociedad shall: (i) immediately disclose to Maldonado all pertinent documents directly or indirectly in connection with the transfer referred to in Clause 5.2 above and all other related transactions; and (ii) pay to Maldonado the sum referred to in Clause 5.2 within fifteen (15) days following the receipt of the transfer fee in the account of Real Sociedad by such Other Football Club. If the transfer is agreed to be paid by that Other Football Club in more than one instalment, Maldonado shall then be entitled to receive its Sell-on Right in the same form of that as agreed between Real Sociedad and the Other football Club. [...]*

*5.7 In the event that Real Sociedad fails to make the payments to Maldonado due under this Agreement, and without prejudice of the above, Maldonado will be entitled to receive a late payment interest on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at the rate of 10% (ten per cent) per annum above the base rate of Barclays Bank plc from time to time. Real Sociedad acknowledges and agrees that the sum set out above represents a genuine and reasonable pre-estimate of Maldonado's loss arising from the delay or failure to pay and is not unconscionable."*

6. Clause 4.6 of the Transfer Agreement (Clause 4: "Transfer Payments") contains a clause whose wording is identical with Clause 5.7 of the Transfer Agreement.

7. Clause 15 of the Transfer Agreement ("Legal Fees and Costs") reads as follows:

*"In the event of a dispute arising from this Agreement, each party shall pay and be responsible for its own costs, including any legal costs, incurred which relate to any such dispute, including costs arising out of mediation, arbitration, litigation, or any alternative dispute resolution."*

8. Clause 19 of the Transfer Agreement ("Entire Agreement") stipulates the following:

*"19.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.*

*19.2 Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. [...]"*

9. In mid-August 2021, Real Betis Balompié SAD ("Betis") approached Real Sociedad declaring its interest in signing the Player. Due to the fact that Betis's salary cap for the 2021/2022 season would be exceeded by a permanent transfer, LaLiga (the Spanish

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professional football league) would however not allow such permanent transfer at this stage. Both Real Sociedad and Betis were aware of this fact.

10. On 25 August 2021, Real Sociedad, Betis and the Player signed a loan agreement for the remainder of the 2021/2022 season (the “Loan Agreement”). The Agreement included a loan fee of EUR 960’000 plus applicable VAT (Value-added Tax), payable on 15 September 2021 (the “Loan Fee”). Real Sociedad invoiced Betis for EUR 1’161’600 on 26 August 2021.
11. Also on 25 August 2021, Real Sociedad and the Player signed an agreement named “Liquidación de la temporada 2021-22 entre D. Willian José da Silva y la Real Sociedad de Fútbol, S.A.D.” (the “Liquidation Agreement”). In the Liquidation Agreement, Real Sociedad undertook to pay a total of EUR 2’931’250 net to the Player in two instalments by 16 October 2021 and by 31 December 2021 (Clause 1 of the Liquidation Agreement).
12. On 15 October 2021, Maldonado issued an invoice regarding the Sell On Fee in connection with the Loan Agreement and the Loan Fee to Real Sociedad, requesting the payment of EUR 348’480 (30% of the Loan Fee) from Real Sociedad.
13. On 18 October 2021, Real Sociedad rejected Maldonado’s claim, arguing that the Sell On Fee was payable only in connection with a permanent transfer.
14. On 2 November 2021 and on 10 December 2021, Maldonado sent Real Sociedad reminders regarding its invoice of 15 October 2021.
15. On 12 March 2022, Betis submitted a formal offer to Real Sociedad for the definitive acquisition of the Player’s federative and economic rights effective as of 1 July 2022 for a fixed transfer price of EUR 6’500’000 plus VAT.
16. On 1 June 2022, Real Sociedad, the Player and Betis signed an agreement for the permanent transfer of the Player (“Contrato de cesión definitiva de derechos federativos y económicos de D. Willian José da Silva por parte de la Real Sociedad de Fútbol, S.A.D., al Real Betis Balompié, S.A.D. y compensación de gastos de liquidación”; the “Betis Transfer Agreement”). In the Betis Transfer Agreement, Real Sociedad and Betis agreed on a transfer fee of EUR 7’000’000 plus corresponding VAT to be paid as follows: EUR 3’000’000 plus VAT on 15 February 2023; EUR 2’000’000 plus VAT on 15 July 2023; EUR 2’000’000 plus VAT on 15 July 2024 (the “Betis Transfer Fee”).
17. Moreover, the Betis Transfer Agreement included, in its Clause 4, a “compensation of liquidated expenses” of EUR 3’000’000 plus VAT (original in Spanish) as follows:

*“FOURTH. – COMPENSATION OF LIQUIDATED EXPENSES OF THE PLAYER BY REAL SOCIEDAD*

*4.1 The Parties agree that REAL BETIS will compensate REAL SOCIEDAD with the amount of 3,000,000.- € (THREE MILLION EUROS), plus the corresponding VAT, if applicable, for the expenses associated with the PLAYER assumed by REAL*

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*SOCIEDAD with respect to the liquidation that the latter agrees with the PLAYER for those concepts that correspond between the parties.*

*4.2 Such compensation will be paid via bank transfer according to the following payment schedule:*

*i. 1,500,000.- € (...) plus, in such case, the applicable VAT, on 1 July 2022; and*

*ii. 1,500,000.-€ (...) plus, in such case, the applicable VAT, on 15 October 2022.”*

18. On 23 June 2022, Real Sociedad issued two invoices to Betis, one in the amount of EUR 8'470'000 for the Betis Transfer Fee and one in the amount of EUR 3'630'000 for the compensation of liquidated expenses.
19. Also on 23 June 2022, in a letter to Real Sociedad, Maldonado set out its position regarding its claims arising from the Loan Agreement and from the Betis Transfer Agreement. In addition, Maldonado issued another invoice regarding the Sell On Fee in connection with the Betis Transfer Agreement, requesting payment of EUR 3'630'000 (EUR 7'000'000 plus EUR 3'000'000 = EUR 10'000'000; plus 21% VAT = EUR 12'100'000; thereof 30%) from Real Sociedad.
20. On 28 July 2022, Maldonado requested payment of EUR 544'500 from Real Sociedad, corresponding to a 30% share of the first instalment of the compensation of liquidated expenses allegedly due on 1 July 2022 (EUR 1'500'000 plus 21% VAT = EUR 1'815'000; thereof 30%). Real Sociedad rejected this request by letter of 1 August 2022.
21. On 10 November 2022, Maldonado requested the payment of another EUR 544'500 from Real Sociedad, corresponding to a 30% share of the second instalment of the compensation of liquidated expenses allegedly due on 15 October 2022. Real Sociedad rejected this request by letter of 14 November 2022.
22. On 17 February 2023, Real Sociedad paid EUR 900'000 to Maldonado, corresponding to 30% of EUR 3'000'000 excl. VAT for the first instalment of the Betis Transfer Fee due on 15 February 2023.
23. By email of 17 February 2023 and letter of 11 April 2023, Maldonado requested Real Sociedad to pay an additional EUR 189'000, corresponding to the VAT of the share of the first instalment of the Betis Transfer Fee (30% of EUR 630'000).
24. On 1 August 2023, Real Sociedad paid EUR 600'000 to Maldonado, corresponding to 30% of EUR 2'000'000 excl. VAT for the second instalment of the Betis Transfer Fee due on 15 July 2023. Another EUR 600'000, corresponding to 30% of EUR 2'000'000 excl. VAT for the third instalment of the Betis Transfer Fee, was paid to Maldonado by Real Sociedad on 13 August 2024.
25. By email and letter of 3 August 2023, Maldonado requested Real Sociedad to pay an additional EUR 126'000, corresponding to the VAT of the share of the second instalment

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of the Betis Transfer Fee (30% of EUR 420'000). Maldonado included a table with Maldonado's corresponding late payment interest claims.

**B. Proceedings before FIFA**

26. On 5 September 2023, Maldonado lodged a claim against Real Sociedad before the Players' Status Chamber of the FIFA Football Tribunal (the "FIFA PSC"). In its claim, Maldonado requested the payment of the following amounts by Real Sociedad:
  - EUR 348'480 as 30% Sell On Fee for the Loan Fee (EUR 960'000 plus 21% VAT = EUR 1'161'600) paid to Real Sociedad by Betis;
  - EUR 544'500 as 30% Sell On Fee for the first instalment of the compensation of liquidated expenses (EUR 1'500'000 plus 21% VAT = EUR 1'815'000) paid to Real Sociedad by Betis, plus interest as from 16 July 2022;
  - EUR 544'500 as 30% Sell On Fee for the second instalment of the compensation of liquidated expenses (EUR 1'500'000 plus 21% VAT = EUR 1'815'000) paid to Real Sociedad by Betis, plus interest as from 30 October 2022;
  - EUR 189'000 as 30% Sell On Fee unpaid for the first instalment of the Betis Transfer Fee of EUR 3'000'000 due on 15 February 2023 due to missing VAT (EUR 1'089'000 *minus* EUR 900'000), plus interest as from 2 March 2023;
  - EUR 126'000 as 30% Sell On Fee unpaid for the second instalment of the Betis Transfer Fee of EUR 2'000'000 due on 15 July 2023 due to missing VAT (EUR 726'000 *minus* EUR 600'000), plus interest as from 30 July 2023.
27. In its response before the FIFA PSC, Real Sociedad rejected Maldonado's claim, arguing that the Loan Fee (EUR 960'000), compensation of liquidated expenses (EUR 3'000'000) and VAT (EUR 1'881'600) associated with the Player's transfer to Betis did not trigger the Sell On Clause.
28. By decision of 23 April 2024 (Ref. Nr. FPSD 11678; the "Appealed Decision"), the FIFA PSC partially accepted Maldonado's claim. The FIFA PSC notably concluded that the Loan Fee does not trigger the Sell On Clause. On the other hand, according to the FIFA PSC, the compensation of liquidated expenses likely corresponds to a hidden transfer fee and, as such, shall trigger the Sell On Fee. As a result, Maldonado was declared entitled to the following amounts:
  - EUR 544'500 as outstanding transfer fee plus 10% interest per annum above the base rate of Barclays Bank plc as from 16 July 2022 until the date of effective payment;
  - EUR 544'500 as outstanding transfer fee plus 10% interest per annum above the base rate of Barclays Bank plc as from 30 October 2022 until the date of effective payment.
29. As for VAT, the FIFA PSC determined that, since the Transfer Agreement does not specify if the values are net or gross, said amounts are gross, in accordance with the common practice for said amounts. This results in additional amounts payable by Real

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Sociedad to Maldonado of EUR 189'000 and EUR 126'000 as outstanding Sell On Fee, plus 10% interest per annum above the base rate of Barclays Bank plc as from 2 March 2023 and 30 July 2023, respectively, until the date of effective payment.

30. On 8 May 2024, the grounds of the FIFA PSC decision Ref. Nr. FPSD 11678 of 23 April 2024 were notified to the Parties via the FIFA Legal Platform. The operative part of the FIFA PSC decision Ref. Nr. FPSD 11678 reads as follows:

*“1. The claim of the Claimant, Deportivo Maldonado, is partially accepted.*

*2. The Respondent, Real Sociedad de Fútbol, must pay to the Claimant the following amounts:*

***EUR 544,500 as outstanding transfer fee plus 10% interest per annum above the base rate of Barclays Bank plc as from 16 July 2022 until the date of effective payment;***

***EUR 544,500 as outstanding transfer fee plus 10% interest per annum above the base rate of Barclays Bank plc as from 30 October 2022 until the date of effective payment;***

***EUR 189,000 as outstanding sell-on fee plus 10% interest per annum above the base rate of Barclays Bank plc as from 2 March 2023 until the date of effective payment;***

***EUR 126,000 as outstanding sell-on fee plus 10% interest per annum above the base rate of Barclays Bank plc as from 30 July 2023 until the date of effective payment.***

*3. Any further claims of the Claimant are rejected.*

*4. Full payment (including all applicable interest) shall be made to the bank account indicated in the Bank Account Registration Form.*

*5. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:*

*1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.*

*2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.*

*For the Football Tribunal:*

*[...]*”

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

31. On 28 May 2024, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2023 edition) (the “CAS Code”), Maldonado filed a Statement of Appeal against the FIFA PSC decision of 23 April 2024/8 May 2024. In its Statement of Appeal, Maldonado appointed Mr Daniel Cravo Souza, attorney-at-law in Brazil, as arbitrator.
32. Also on 28 May 2024, in accordance with Articles R47 and R48 CAS Code, Real Sociedad filed a Statement of Appeal against the FIFA PSC decision of 23 April 2024/8 May 2024. In its Statement of Appeal, Real Sociedad appointed Mr David Arias, attorney-at-law in Spain, as arbitrator.
33. On 7 June 2024, based on a joint request by the Parties, the proceedings were suspended until 8 July 2024 to conduct settlement negotiations. The suspension was lifted on 8 July 2024.
34. On 13 June 2024, in reply to a corresponding notice by the CAS Court Office of 4 June 2024, FIFA declared that it would not intervene in the present proceedings.
35. On 12 July 2024, the procedures CAS 2024/A/10629 (appeal filed by Maldonado) and CAS 2024/A/10630 (appeal filed by Real Sociedad) were consolidated and it was confirmed that, in accordance with a joint request by the Parties, the proceedings would be bilingual (Spanish – English).
36. On 31 August 2024, Maldonado filed its Appeal Brief in CAS 2024/A/10629 in accordance with Article R51 CAS Code.
37. On 12 September 2024, Real Sociedad filed its Appeal Brief in CAS 2024/A/10630 in accordance with Article R51 CAS Code.
38. On 15 October 2024, Mr Oliver Jaberg, attorney-at-law in Switzerland, was appointed President of the Panel.
39. On 25 October 2024, the CAS Court Office informed the Parties, pursuant to Article R54 CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, that the Panel appointed to decide the present case was constituted as follows:  
  
President: Mr Oliver Jaberg, Attorney-at-law, Switzerland  
Arbitrators: Mr Daniel Cravo Souza, Attorney-at-law, Brazil  
Mr David Arias, Attorney-at-law, Spain
40. In its Appeal Brief and reiterated on 25 September 2024, 30 October 2024 and 13 November 2024, Real Sociedad submitted a request for a deposit *ad cautelam* with the CAS of the amount awarded by the FIFA PSC in the Appealed Decision.



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41. On 5 December 2024, Real Sociedad's request for a deposit *ad cautelam* of the amount awarded by the FIFA PSC in the Appealed Decision was denied by the CAS.
42. On 20 January 2025, Maldonado and Real Sociedad filed their respective Answers, in accordance with Article R55 CAS Code.
43. With its Answer in CAS 2024/A/10629, Real Sociedad submitted proof of payment of EUR 1'404'000 to Maldonado as a deposit *ad cautelam* payment effected on 10 January 2025.
44. In its Answer of 20 January 2025 in CAS 2024/A/10630, Maldonado confirmed receipt of the deposit *ad cautelam* payment.
45. By letter of 28 January 2025, Maldonado informed the Panel that they had declined receipt of Real Sociedad's deposit *ad cautelam* payment and returned the funds to Real Sociedad on 22 January 2025.
46. On 10 February 2025, Real Sociedad submitted several procedural requests with regard to its deposit *ad cautelam* payment to Maldonado and related default interest.
47. On 20 March 2025, the Parties and their witnesses were called to appear at the hearing to be held on 19 June 2025 by videoconference.
48. On 19 June 2025, the CAS Court Office sent the Parties the Order of Procedure, which was duly signed by the Parties.
49. On 19 June 2025, a hearing was held by videoconference. In addition to the members of the Panel and Mr Antonio de Quesada, Head of Arbitration, the following persons attended the hearing:
  - a) For Maldonado:

Mr Breno Costa Ramos Tannuri (counsel)

Mr Pedro Vasconcelos Botelho (counsel)
  - b) For Real Sociedad:

Mr Alfredo Garzón Vicente (counsel)

Mr Juan Alfonso Prieto Huang (counsel)

Ms Patricia Galán Olleros (counsel)

Mr Guillermo Amilibia (in-house legal counsel of Real Sociedad)

Mr Luis Manfredi (LaLiga; witness called by Real Sociedad)

Mr José Manuel Almudí Cid (expert witness called by Real Sociedad)

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50. At the conclusion of the hearing, both Parties confirmed that they were satisfied with the way the hearing had been conducted and that their procedural rights and right to be heard had been respected. Also, both Parties confirmed that they had no objections to the composition of the Panel.

#### IV. POSITIONS OF THE PARTIES

51. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this award, the Panel has accounted for and carefully considered all the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

##### A. Maldonado

###### 1. CAS 2024/A/10629

52. Maldonado submits the following in support of its appeal:
53. Firstly, Maldonado contests the FIFA PSC's determination regarding the Sell On Fee for the Loan Agreement and the Loan Fee for the following reasons:
54. Maldonado's counteroffer of 28 July 2026 states "*30% of any future transfer*", which was fully accepted by Real Sociedad. It was the true and common intention of the Parties that the payment of the Sell On Fee should apply to both, namely, temporary and permanent transfers of the Player from Real Sociedad to any subsequent football club(s). "*Any future transfer*" of the Player can only mean to encompass all of them, regardless of whether on a temporary or permanent basis. The wording of the Transfer Agreement was only drafted as such to regulate the specific case provided for in item 3 of Maldonado's counteroffer. Therefore, the Loan Fee paid by Betis to Real Sociedad for the (simulated) loan of the Player shall trigger the payment of the Sell On Fee.
55. According to Maldonado, the loan must be qualified as a permanent transfer. The (simulated) loan of the Player to Betis shall be equated to and considered as a permanent transfer, insofar as the Player never returned therefrom. The Player was transferred to (and was meant to be transferred to) Betis on a permanent basis from day one, through a simulated scheme aimed at circumventing the LaLiga Financial Fair-Play rules in force at the time. The payment of the Loan Fee was agreed to within a simulated scheme orchestrated to conceal the permanent transfer of the Player from Real Sociedad to Betis from day one. Real Sociedad prevented the contractual condition by simulating a loan to avoid the clause.
56. Since the Loan Fee was part of a disguised permanent transfer, Maldonado is entitled to 30% of the Loan Fee (plus VAT), i.e., to EUR 348'480.
57. Secondly, with regard to the compensation of liquidated expenses, Maldonado submits as follows:

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58. The EUR 3'000'000 compensation of liquidated expenses paid by Betis to Real Sociedad is, in substance, part of the economic consideration for the Player's permanent transfer and therefore falls within the scope of the 30% Sell On Clause. The true common will of the parties (Article 18 of the Swiss Code of Obligations, "SCO") was to make the Player's stay permanent from the outset. The compensation was agreed in parallel with the transfer and completes the overall consideration received (economic reality test), and the compensation was pre-agreed and executed concurrently with the sale (timing and sequencing). The loan and separate compensation were a disguised structure to avoid triggering the resale clause.
59. The EUR 3'000'000 should be requalified as additional transfer value and are thus subject to the 30% resale compensation.
60. In its Appeal Brief, Maldonado submits the following Requests for Relief:

*"FIRST – To uphold the present appeal and set aside the Challenged Decision only as far as the payment of the Sell-on Fee over the Loan Fee is concerned, amending the corresponding recitals of the Challenged Decision and maintaining the rest;*

*SECOND – To order Real Sociedad to pay Maldonado the total amount of EUR 348,480 (three hundred forty-eight thousand four hundred eighty euros) as outstanding Sell-on Fee over the Loan Fee, plus the applicable default interest set out in the DM-RS Transfer Agreement at the rate of 10% (ten percent) per annum above the base rate of Barclays Bank plc as from 1 October 2021 until the date of effective payment.*

*THIRD – To confirm recitals 4, 5, 6 and 7 of the Challenged Decision, as well as the obligation of Real Sociedad to pay Maldonado the following amounts granted under recital 2 thereof:*

- (i) EUR 544,500 (five hundred forty-four thousand five hundred euros) as outstanding Sell on Fee payable over the first instalment of the Extra Transfer Fee, plus the applicable default interest at the rate of 10% (ten percent) per annum above the base rate of Barclays Bank plc as from 16 July 2022 until the date of effective payment;*
- (ii) EUR 544,500 (five hundred forty-four thousand five hundred euros) as outstanding Sell-on Fee payable over the second instalment of the Extra Transfer Fee, plus the applicable default interest at the rate of 10% (ten percent) per annum above the base rate of Barclays Bank plc as from 30 October 2022 until the date of effective payment;*
- (iii) EUR 189,000 (one hundred eighty-nine thousand euros) as the outstanding shortfall of the Sell-on Fee payable in connection with the first instalment of the Transfer Fee, plus the applicable default interest at the rate of 10% (ten percent) per annum above the base rate of Barclays Bank plc as from 2 March 2023 until the date of effective payment; and*

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- (iv) *EUR 126,000 (one hundred twenty-six thousand euros) as the outstanding shortfall of the Sell-on Fee payable in connection with the second instalment of the Transfer Fee, plus the applicable default interest at the rate of 10% (ten percent) per annum above the base rate of Barclays Bank plc as from 30 July 2023 until the date of effective payment.*

*FOURTH – To render the operative part of the CAS Arbitral Award within 4 (four) months as from the closure of the evidentiary proceedings (cf. Art. R59 of the CAS Code);*

*FIFTH – To order Real Sociedad to bear all costs associated with the present arbitration; and*

*SIXTH – To order Real Sociedad to pay a contribution towards the legal fees, costs and expenses incurred by Maldonado in the amount of CHF 15,000 (fifteen thousand Swiss francs)."*

## 2. CAS 2024/A/10630

61. Maldonado submits as follows in support of its position:
62. Firstly, with regard to the compensation of liquidated expenses, Maldonado submits as follows:
63. The payment of liquidated expenses must be considered an extra transfer fee (the "Extra Transfer Fee"). The payment of the Extra Transfer Fee was imperative for the conclusion of the permanent transfer of the Player from Real Sociedad to Betis, as without it said transaction would have never taken place. As such, it is irrelevant from a legal standpoint whether upon receipt of the Extra Transfer Fee Real Sociedad transferred the amount thereof to the Player.
64. Had the will of the Parties been to limit the scope of the Sell On Clause to a "fee" or a "price", they would have certainly drafted it as such. Not only does the Transfer Agreement expressly refer to "any and all" gross amounts "payable" – something that must be paid or can be paid to satisfy an obligation – "in connection with the definitive transfer of" the Player, but it also adopts a rather broad definition of "economic rights".
65. The fact that 50% of the FIFA solidarity mechanism was expressly deducted from the Betis Transfer Fee (pursuant to Clause 2.4 of the Betis Transfer Agreement), while no equivalent provision applies to deduct the solidarity mechanism from the Extra Transfer Fee, bears no relevance whatsoever to the present dispute, nor can it be construed in such a way as to imply that Maldonado would not be entitled to the Sell On Fee in connection with the Extra Transfer Fee.
66. Secondly, with regard to VAT, Maldonado's position on Real Sociedad's appeal is the following:
67. The Transfer Agreement mentions "any and all gross amounts payable". No deduction of tax is mentioned, no restriction on the profits made is mentioned. VAT does fall within

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the scope of an amount payable by Betis to Real Sociedad “in connection with” the permanent transfer of the Player. The Parties contractually chose to deviate from it by expressly referring to “any and all gross amounts payable in connection with the definitive transfer of” the Player.

68. Real Sociedad itself has already acknowledged to Maldonado twice, in its letters of 1 August 2022 and of 14 November 2022, that the Sell On Fee should be calculated adding up the applicable VAT to the Betis Transfer Fee.
69. Lastly, regarding default interest, Maldonado argues that Real Sociedad has not even bothered to quote a single award issued by the CAS which requires the creditor to prove any financial loss in order to claim default interest over an unpaid amount. Any late payment entails a financial loss per se. Moreover, in the Transfer Agreement, Real Sociedad expressly acknowledged that the default interest stipulated therein represented a “genuine and reasonable pre-estimate of Maldonado’s loss arising from the delay or failure to pay and is not unconscionable.”
70. In its Appeal Answer, Maldonado submits the following Requests for Relief:

*“FIRST – To dismiss the appeal filed by Real Sociedad;*

*SECOND – To render the operative part of the final award within 4 (four) months as from the closure of the evidentiary proceedings (cf. Art. R59 of the CAS Code);*

*THIRD – To order Real Sociedad to bear all costs associated with the present arbitration; and*

*FOURTH – To order Real Sociedad to pay a contribution towards the legal fees, costs and expenses incurred by Maldonado in an amount equal to at least CHF 15,000 (fifteen thousand Swiss francs).”*

**B. Real Sociedad**

*1. CAS 2024/A/10629*

71. Real Sociedad submits the following in support of its position:
72. Firstly, the Transfer Agreement unequivocally stated that the Sell On Fee would apply only to the permanent transfer of the Player, expressly excluding temporary transfers. If the Parties had wanted the Sell On Fee to apply to temporary transfers, they would have expressly stipulated this. As established by the principle *in claris non fit interpretatio*, when a contract is clear and precise, no interpretation that distorts it is permitted. Real Sociedad categorically rejects any attempt to draw an analogy between a transfer and a temporary loan. Such an analogy is not only forced but also ignores the substantial differences between the two operations.
73. Secondly, the Sell On Fee is calculated on the basis of the final transfer price, and not on exceptional expenses incurred by Real Sociedad during the temporary transfer,

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subsequently reimbursed by Betis as part of the permanent transfer negotiations. These expenses do not form part of the transfer value itself.

74. During the 2021/2022 season, Real Sociedad temporarily loaned the Player to Betis. During this period, and exclusively at the Player's request, Real Sociedad assumed payment of his salary. This decision was made with the sole objective of preserving the Player's tax residence in the province of Gipuzkoa, a direct benefit for the Player and unrelated to the subsequent transfer contract. It was the Player himself who requested that Real Sociedad assume most of his salary during the loan, with the aim of maintaining his tax status. This fact, which is documented and indisputable, demonstrates that the assumption of the salary was not a manoeuvre to evade contractual obligations, but rather a response to the Player's needs.
75. Thirdly, VAT is an indirect tax and does not constitute income for Real Sociedad, nor does it form part of the transfer price for the purposes of calculating the Sell On Fee. Including it would distort the original agreement and constitute an unfair penalty and/or additional charge in relation to the essential terms of the legal transaction for Real Sociedad.
76. In its Appeal Answer, Real Sociedad submits the following Requests for Relief (original in Spanish):
  1. *"Dismiss in its entirety the appeal lodged by Deportivo Maldonado against the Decision.*
  2. *Confirm in part the Decision adopted by the Players' Status Chamber of the FIFA Football Tribunal on 23 April 2024 (reference no. FPSD-11678), except for the following:*
    - 2.1 *Annul point IV/2 of the Decision in its entirety, excluding compensation of expenses from the transfer price, and rendering the following monetary condemnations null and void:*
      - 2.1.1. *the amount of €544,500 corresponding to 30% of the first installment of the liquidation of expenses, plus VAT, together with interest at 10% per annum above the base rate of Barclays Bank plc, applicable from 16 July 2022, until the date of actual payment;*
      - 2.1.2. *the amount of €544,500 corresponding to 30% of the second installment of the liquidation of expenses, plus VAT, together with interest at 10% per annum above the base rate of Barclays Bank plc, applicable from 30 October 2022, until the date of actual payment;*
    - 2.2 *Annul point IV/2 of the Decision in its entirety, excluding VAT from the transfer price, and rendering the following monetary condemnations null and void:*

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*2.2.1. The amount of €189,000 corresponding to 30% of the VAT applied to the transfer price, together with interest at 10% per annum above the base rate of Barclays Bank plc, applicable from 2 March 2023, until the date of actual payment;*

*2.2.2. The amount of €126,000 corresponding to 30% of the VAT paid on the transfer price, together with interest at 10% per annum above the base rate of Barclays Bank plc, applicable from 30 July 2023, until the date of actual payment.*

*2.3 Annul point VI/2 [sic] of the Decision in its entirety, rendering the order to pay default interest null and void.*

- 3. Order the full refund to Real Sociedad of the amounts paid ad cautelam, amounting to €1,404,000, made exclusively for the purpose of avoiding the accrual of additional interest for late payment during the processing of these proceedings, together with the interest for late payment accrued from the date of the deposit until the date of its actual refund.*
- 4. In all cases, order Deportivo Maldonado to pay all expenses, costs, or fees arising from this arbitration.*
- 5. Order Deportivo Maldonado to compensate Real Sociedad for the costs incurred both in this arbitration and in the previous instance, the amount of which shall be determined at the discretion of this Honorable Arbitration Panel, in accordance with the provisions of Article R64.5 of the Code.”*

## *2. CAS 2024/A/10630*

77. Real Sociedad submits the following in support of its appeal:
78. Firstly, the Parties expressly agreed that the Sell On Fee would accrue solely and exclusively for the permanent transfer of the Player (and not for temporary transfers).
79. Secondly, the Sell On Fee is calculated on the basis of the final transfer price (and not on the basis of expenses exceptionally incurred by Real Sociedad at the request and for the benefit of the Player during the temporary transfer and which were reimbursed by Real Betis in the context of the subsequent permanent transfer). The EUR 3'000'000 compensation of liquidated expenses should not be included as part of the resale clause base. This agreement had no connection whatsoever with the definitive transfer of the Player.
80. The EUR 3'000'000 compensation is a distinct reimbursement of extraordinary salary costs paid during the loan – not part of and clearly separated from the Betis Transfer Fee – and therefore not subject to the Sell On Clause. The Player wanted to maintain his tax status, which is why Real Sociedad continued to pay his salary during the loan with Betis in the 2021/2022 season. The compensation covered extraordinary salary costs, which must clearly be separated from the transfer price. These costs were quantified at a net

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total of EUR 2'931'250 (Clause 1 of the Liquidation Agreement), which in gross terms amounted to a figure close to EUR 4'000'000 (according to the Player's withholding certificate for the 2021 financial year). No further breakdown was necessary, as the expenses consisted solely and exclusively of the total salary paid to the Player during the 2021/2022 season, which was clear and known to both Real Sociedad and Betis.

81. Real Sociedad submits the following supporting arguments as to why the compensation payment was not a hidden transfer fee:
  - Separate negotiation and invoicing: The compensation and the Betis Transfer Fee were negotiated and documented as independent payments.
  - Purpose of payment: The EUR 3'000'000 payment reflects net salary obligations paid on behalf of Betis at the Player's request (linked to tax status), not sporting value. No solidarity contribution was deducted (as opposed to from the Betis Transfer Fee, see Clause 2.4 of the Betis Transfer Agreement).
  - No coincidence of payments: The compensation of expenses was due on 1 July 2022 and 15 October 2022 (Clause 4.2 of the Betis Transfer Agreement), the transfer fee was due on 15 February 2023, 15 July 2023, and 15 July 2024 (Clause 2.2 of the Betis Transfer Agreement).
  - Transparency: The compensation was openly disclosed and VAT-invoiced as a distinct reimbursement. The amount of the expenses to be reimbursed was completely clear to Real Sociedad, the Player, and Betis, which reinforces the transparency of the transaction.
  - Legal classification: The compensation lacks the legal and economic characteristics of a transfer price.
82. Thirdly, the corresponding VAT amounts are not part of the transfer price as they are an indirect tax and therefore do not constitute income or capital gains for Real Sociedad. VAT is an indirect tax, which means that it does not constitute a profit for the entity that collects it (Real Sociedad), but must be transferred in full to the tax authorities. This characteristic of VAT defines it as a "pass-through" or transferable tax. VAT is a tax credit belonging to the Spanish Tax Agency; Real Sociedad acts solely as a legal intermediary in this transaction, collecting the tax from Betis for subsequent remittance to the Tax Agency, which has no contractual involvement in the present dispute.
83. Spanish legislation and European Union directives establish that international transfers of players are not subject to VAT. International transfers of players are considered exports of services, which are exempt from VAT.
84. Lastly, regarding default interest, Real Sociedad submits that, considering that it has fully complied with all its payment obligations to Maldonado, late payment interest is not applicable. Payments were made in full and timely, thus no interest penalty applies.



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85. To justify the imposition of late payment interest, it is necessary to demonstrate that the creditor (in this case, Maldonado) has suffered financial damage as a result of late payment. However, in this case Maldonado has not suffered any financial loss, nor has it claimed that the payments made by Real Sociedad have caused it any kind of damage or financial loss. The imposition of late payment interest in this context is unfounded and does not respond to a need to compensate Maldonado for an alleged delay in the fulfillment of obligations by Real Sociedad.
86. Real Sociedad submits the following Requests for Relief (original in Spanish):
1. *“Annul point IV/2 of the Decision in its entirety, excluding compensation of expenses from the transfer price, and rendering the following monetary condemnations null and void:*
    - 1.1 *the amount of €544,500 corresponding to 30% of the first installment of the liquidation of expenses, plus VAT, together with interest at 10% per annum above the base rate of Barclays Bank plc, applicable from 16 July 2022, until the date of actual payment.*
    - 1.2 *the amount of €544,500 corresponding to 30% of the second installment of the liquidation of expenses, plus VAT, together with interest at 10% per annum above the base rate of Barclays Bank plc, applicable from 30 October 2022, until the date of actual payment;*
  2. *Annul point IV/2 of the Decision in its entirety, excluding VAT from the transfer price, and rendering the following monetary condemnations null and void:*
    - 2.1 *The amount of €189,000 corresponding to 30% of the VAT applied to the transfer price, together with interest at 10% per annum above the base rate of Barclays Bank plc, applicable from 2 March 2023, until the date of actual payment;*
    - 2.2. *The amount of €126,000 corresponding to 30% of the VAT paid on the transfer price, together with interest at 10% per annum above the base rate of Barclays Bank plc, applicable from 30 July 2023, until the date of actual payment.*
  3. *Annul point VI/2 [sic] of the Decision in its entirety, rendering the order to pay default interest null and void.*
  4. *Order the full refund to Real Sociedad of the amounts paid ad cautelam, amounting to €1,404,000, made exclusively for the purpose of avoiding the accrual of additional interest for late payment during the processing of these proceedings, together with the interest for late payment accrued from the date of the deposit until the date of its effective refund.*
  5. *In all cases, order Deportivo Maldonado to pay all expenses, costs, or fees arising from this arbitration.*

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6. *Order Deportivo Maldonado to compensate Real Sociedad for the costs incurred both in this arbitration and in the previous proceedings, the amount of which shall be determined at the discretion of this Honorable Arbitration Panel, in accordance with the provisions of Article R64.5 of the Code.”*

**V. JURISDICTION**

87. Article R47 para. 1 CAS Code provides as follows:

*“An appeal against the decision of a federation, association or sports-related body may be filed with 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”.*

88. The Parties rely on the FIFA Statutes as well as Article R47 CAS Code as conferring jurisdiction to the CAS.
89. None of the Parties contested the jurisdiction of CAS to hear these proceedings and CAS jurisdiction was confirmed by the Parties by signing the Order of Procedure.
90. In light of the foregoing, the Panel is satisfied that CAS has jurisdiction over this dispute.

**VI. ADMISSIBILITY**

91. Article R49, first sentence 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”.*

92. As for the deadline for filing an appeal, in accordance with Article R49 CAS Code and the FIFA Statutes, the time limit for filing the appeal is 21 days. Both Maldonado’s and Real Sociedad’s appeals were filed within that deadline, given that the Parties were notified of the Appealed Decision with grounds via FIFA Legal Platform on 8 May 2024 and submitted their Statements of Appeal on 28 May 2024. Also, both appeals comply with all other requirements of Article R48 CAS Code, including payment of the CAS Court Office fee (Article R64.1 CAS Code), and are therefore admissible. The admissibility of the present appeals is not contested by the respective counterparty.
93. In view of the above, the Panel holds that both Maldonado’s and Real Sociedad’s appeals are admissible.

**VII. APPLICABLE LAW**

94. Article R58 CAS Code provides as follows:

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*“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.”*

95. The Panel understands that Article 49 para. 2 of the FIFA Statutes (May 2024 edition) is applicable to both appeals filed by the Parties. As a consequence, the provisions of the CAS Code of Sport-Related Arbitration shall apply to the proceedings. Further, in accordance with these provisions, the Panel shall apply the various FIFA regulations and, additionally, Swiss law. In this context, the Panel also notes that Real Sociedad invokes the application of Article 56 para. 2 of the FIFA Statutes (May 2022 edition). Considering that what matters is the content of the norm, and that the provision contained on the subject in the 2022 edition of the FIFA Statutes is identical to that enshrined in the 2024 edition of the FIFA Statutes, the Panel considers that there is no dispute by any of the Parties regarding the applicability of the contents of the norm concerned.
96. The Panel therefore rules that the present dispute is to be assessed on the basis of the corresponding FIFA regulations (in particular the FIFA Regulations on the Status and Transfer of Players, May 2023 edition; the “FIFA RSTP”), and that Swiss law shall be applied subsidiarily.
97. Consequently, English law (cf. Clause 16.1 of the Transfer Agreement) will not need to be considered in this context. In fact, neither Party has pleaded in front of this Panel as to the content of English law in this case, let alone to an extent that the Panel would consider relevant to reach its decision.

## VIII. PROCEDURAL ISSUES

### A. Respondent’s Deposit *ad cautelam* Payment

98. In its Appeal Brief, Real Sociedad submitted a request for a deposit *ad cautelam* with the CAS of the amount awarded to Maldonado by the FIFA PSC in the Appealed Decision, i.e., of EUR 1’404’000.
99. The Panel has decided to reject this request, on the grounds that CAS does not provide escrow accounts for parties.
100. Irrespective of the above, the Panel notes that on 10 January 2025, Real Sociedad paid EUR 1’404’000 directly to Maldonado, also under the concept of a deposit *ad cautelam* payment. This payment was rejected by Maldonado on 22 January 2025 and the money was returned to Real Sociedad (see *supra* paras. 44-46).

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**B. Respondent's Request to dismiss Exhibits submitted by Maldonado**

101. At the hearing, Real Sociedad submitted a request to declare inadmissible a total of six Exhibits filed by Maldonado with its Appeal Brief (Exhibits 8 and 17 with their respective annexes, filed as Exhibits 9, 10, 18, and 19).
102. Real Sociedad based the relevant request on an asserted conflict of interest of counsel for Maldonado by representing both Maldonado and the Player to the detriment of Real Sociedad. According to Real Sociedad, these Exhibits concerned confidential correspondence between lawyers and were protected by legal privilege. Filing these Exhibits in the framework of the present proceedings would therefore constitute a violation of confidentiality and of legal privilege.
103. Maldonado opposed the relevant request, arguing that all parties involved, including Real Sociedad, were aware of its counsel's activities. Also, Real Sociedad's request at the hearing would be belated and constitute an unfair surprise, as Real Sociedad should have raised any objections in this regard in its Appeal Answer.
104. As a starting point, the Panel refers to CAS 2019/A/6344, paras. 403 and 406, where the Panel stated:

*"403. The Panel notes that the present CAS proceedings are governed from a procedural perspective by Swiss law and on a substantive level by the various regulations of FIFA and, subsidiarily, by Swiss law. Accordingly, the question of whether Leite's Notes are admissible evidence is to be answered by Swiss law, as the law applicable in these proceedings. Given the seat of the present arbitration is Switzerland, the Panel considers that PILA [Swiss Private International Law Act] is applicable. Article 184 PILA states: "[t]he arbitral tribunal shall itself take the evidence".*

*"406. Accordingly, the FCE [FIFA Code of Ethics] does not explicitly permit or prohibit the use of illegally obtained evidence. Absent any such provision, pursuant to Article 182(2) PILA it is up to the Panel to fill this lacuna. The Panel notes that the Panel in CAS 2020/A/6785 were faced with this very issue, and noted the following:[...]"*

105. The Panel notes that many CAS panels facing questions of admissibility of evidence in the past have turned to the International Bar Association (IBA) Rules on the Taking of Evidence in International Arbitration (see, e.g., CAS 2013/A/3061, para. 136; CAS 2019/A/6416 & CAS 2019/A/6417, para. 100). In the motivation of its request at the hearing, Real Sociedad invoked the IBA Rules as well. The Panel therefore finds it appropriate to assess Real Sociedad's request in light of the IBA Rules.
106. In accordance with Articles 9.2 let. b and 9.3 of the IBA Rules, the arbitral tribunal has the power to exclude evidence on account of legal privilege or illegality.
107. The Panel notes that Maldonado has submitted as Exhibits 8 and 17 to its Appeal Brief private communications (WhatsApp messages and emails) between counsel for the Player, on the one hand, and counsel for Real Sociedad, on the other. Maldonado was

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only able to obtain these communications because its counsel in the present proceedings was also the Player's counsel at the time. Maldonado was not a party to these communications, which were solely between Real Sociedad and the Player; when communicating with the Player at the time, Real Sociedad did not have to expect that the relevant communications would be provided to Maldonado. The Panel finds this conclusion to be amplified by the fact that counsel for Maldonado in the present proceedings did not represent Maldonado in the proceedings before FIFA.

108. The present constellation must also be distinguished from one where the Player (and not his counsel) provides such communications to a third party like *in casu* Maldonado.
109. Furthermore, there is no evidence on file that Maldonado or the Player would have sought or obtained Real Sociedad's consent to file the relevant communications in the present proceedings.
110. The Panel deems that counsel for the Player at the time of the communications and today's counsel for Maldonado should have been aware of the sensitivity of the matter and sought to clarify it before filing the information obtained in these proceedings. In the Panel's opinion, when balancing the interests at stake – Maldonado's interest to file evidence supporting its allegations and Real Sociedad's interest to be able to negotiate with counsel for the Player without having to fear that the content of these negotiations is subsequently used against it by a third party – there is no other way to protect Real Sociedad's interest than to dismiss Exhibits 8 and 17 to Maldonado's Appeal Brief. On the other hand, there are other ways for Maldonado to support its allegations, and such evidence has indeed been filed by Maldonado in these proceedings.
111. As far as the annexes to Exhibits 8 and 17 to Maldonado's Appeal Brief are concerned (Exhibits 9, 10, 18, and 19 to Maldonado's Appeal Brief), in turn, dismissing them from the case file is not warranted, on the grounds that these concern mere drafts and not actual agreements, they were not labelled as privileged or confidential, and were not part of the private communications strictly between lawyers.
112. While the Panel finds it regrettable that Real Sociedad did not raise its objection in its Answer (or at any point before the hearing), it is of the view that Real Sociedad's way to proceed does not reach the level of "unfair surprise" as argued by Maldonado. In particular, it was Maldonado who filed the relevant documents and must have been aware of their possible ramifications.
113. Based on the above, the Panel concludes that the evidence filed by Maldonado as Exhibits 8 and 17 to its Appeal Brief were obtained in disregard of legal privilege and confidentiality. The Panel therefore rules that Exhibits 8 and 17 to Maldonado's Appeal Brief are inadmissible pursuant to Articles 9.2 and 9.3 of the IBA Rules and hence excluded from the case file. Exhibits 9, 10, 18, and 19 to Maldonado's Appeal Brief are admissible and remain on file.
114. In making this determination, the Panel however highlights that Exhibits 8 and 17 to Maldonado's Appeal Brief are not material to the Panel's findings in this case. The Panel notes that the submissions made by Maldonado in connection with these two Exhibits are

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corroborated by other evidence filed by Maldonado; in particular, Real Sociedad's letter to Maldonado of 1 August 2022 (Exhibit 26 to Maldonado's Appeal Brief) lays out in detail the history of the agreements between the Parties and the Player as well as the related intentions on the end of Real Sociedad, the Player, and Betis. Accordingly, the Panel finds that admitting Exhibits 8 and 17 to Maldonado's Appeal Brief to the file would not change anything with regard to the outcome of the present case.

## **IX. MERITS**

### **A. Burden of Proof**

115. According to Article 13 para. 5 of the FIFA Procedural Rules Governing the Football Tribunal (March 2023 edition), a party that asserts a fact has the burden of proving it. The allocation of the burden of proof by this provision is in line with the general rule of Article 8 of the Swiss Civil Code, and its application to disputes like the present one has been confirmed by CAS many times (see, e.g., CAS 2020/A/7605, para. 220).
116. The Parties did not make any submissions as to why this principle should not apply or should be mitigated (cf. CAS 2020/A/7612) in the present case, and the Panel cannot make out any reasons for this either.
117. Accordingly, Maldonado bears the burden of proving, to the comfortable satisfaction of the Panel, that (i) the Transfer Agreement between Maldonado and Real Sociedad was also to cover temporary transfers/loans for the purposes of the Sell On Clause, and/or that (ii) the Loan Agreement between Real Sociedad, the Player and Betis is an act of simulation and was in fact a permanent transfer agreement at this stage already.
118. Real Sociedad, on the other hand, bears the burden of proving, to the comfortable satisfaction of the Panel that (i) the EUR 3'000'000 paid to Real Sociedad by Betis under the Betis Transfer Agreement as compensation of liquidated expenses are not part of the transfer consideration for the Player and no hidden transfer fee, and that (ii) the Parties' understanding when signing the Transfer Agreement was that VAT shall not be included when establishing the amounts to which Maldonado was entitled under the Sell On Clause.

### **B. Application of the Sell On Clause to the Loan Agreement and the Loan Fee?**

119. Maldonado's appeal concerns the FIFA PSC's decision not to apply the Sell On Clause to the Loan Agreement and the Loan Fee.
120. According to Maldonado, Maldonado is entitled to participate in the Loan Fee of EUR 1'161'600 (EUR 960'000 plus VAT) paid to Real Sociedad by Betis. Maldonado bases its claim on two different grounds: the Transfer Agreement itself (see *infra* section IX.B.1) and simulation of the loan (see *infra* section IX.B.2).

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*1. By Virtue of the Loan Agreement?*

121. In a first argument, Maldonado relies on the Loan Agreement in conjunction with Maldonado's counteroffer dated 28 July 2016 (see *supra* para. 4).
122. In its counteroffer of 28 July 2016, Maldonado stated in Clauses 2 and 6: "*Deportivo Maldonado will be entitled to receive 30% of any future transfer of Willian Jose from Real Sociedad to another football club*", and that the Parties "*should now reflect this in a proper transfer agreement*". On the same day, Real Sociedad expressed "*its full acceptance as to the counterproposal*" except Clause 1.
123. The Panel finds the above to be superseded by the subsequent Transfer Agreement and in particular by Clause 19 para. 1 of the Transfer Agreement ("Entire Agreement") which states as follows: "*This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.*" Moreover, Clause 19 para. 2 of the Transfer Agreement states: "*Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. [...]*". These provisions void any diverging or more extensive stipulations made before the Transfer Agreement was signed. This also applies to Maldonado's counteroffer of 28 July 2016 and Real Sociedad's related acceptance.
124. Turning to Clause 5 of the Transfer Agreement, the relevant provision clearly refers to "permanent transfers" and "definitive transfers" as triggering the Sell On Fee (Clauses 5.1 and 5.2 of the Transfer Agreement). The Parties, who were both assisted by legal professionals when negotiating and signing the Agreement, must be held fully aware of the highly relevant distinction in professional football between a temporary (loan) and a permanent transfer. The fact that Clause 5 of the Transfer Agreement expressly mentions permanent/definitive transfers only, paired with the Clause's unambiguous wording in this regard, leaves the Panel with no doubt that the Transfer Agreement does not entitle Maldonado to participate in fees for temporary transfers/loans regarding the Player (as well), and thus in the Loan Fee of EUR 1'161'600 (EUR 960'000 plus VAT) paid to Real Sociedad by Betis.
125. In particular, and in the Panel's view, the term "whichever concept" in Clause 5.2.a of the Transfer Agreement does not extend the scope of application of such clause to temporary transfers/loans, as the wording and structure unequivocally limit its scope to permanent/definitive transfers. To achieve the objective sustained by Maldonado, i.e. to extend the scope of application of such clause to temporary transfers/loans, the terms temporary transfer/loan would have had to be used in the Transfer Agreement, especially considering that these terms are long-standing and widely recognized in the professional football industry, where all relevant stakeholders are familiar with their meaning. In this context, the coherent interpretation to explain the inclusion of the term "any concept" in said provision is the intention of the Parties to attribute a broad and comprehensive definition of the so-called "transfer price", defined by the parties as "any and all gross amounts payable by the Other Football Club to Real Sociedad in connection with the definitive transfer of William José". In other words, Maldonado's economic participation,

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in a future (definitive) transfer would concern not only the amounts paid and/or literally titled (by Real Sociedad and the Other Football Club) as “transfer price” or “transfer fee” – denominations routinely used in this type of legal transaction –, but also amounts received by Real Sociedad under “whichever concept” for permanent/definitive transfers.

126. In view of the above, the Panel concludes that Maldonado has no claim under the Sell On Clause from the Loan Fee directly based on the Loan Agreement.

*2. By Virtue of a simulated Loan Agreement?*

127. In a second argument, Maldonado bases its claim for participation in the Loan Fee paid to Real Sociedad by Betis on the assertion that the Loan Agreement was in fact a simulation, since a permanent transfer of the Player from Real Sociedad to Betis would have been intended from day one (i.e., in August 2021 already).
128. The concept of simulation of a contract under Swiss law is rooted in Article 18 para. 1 SCO, which gives priority to the true and common (inner) intention of the parties (“Willenstheorie”) over their respective declarations of will (“Erklärungstheorie”). Pursuant to Article 18 para. 1 SCO, when assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement. In accordance with Article 18 para. 1 SCO, the judge or the arbitrator interpreting a contract governed by Swiss law must go beyond the mere terms of the contract in order to determine the real and common intention of the parties (Decision of the Swiss Federal Tribunal [SFT] dated 20 August 2012, 4A\_240/2012, published in: 31 ASA Bull. 100 (2013); ATF 131 III 288, para. 3.1; CAS 2014/A/3508, para. 197).
129. After careful analysis of the evidence adduced and the submissions of the Parties, the Panel is not comfortably satisfied that the Loan Agreement is a simulation, but that the true intention of Real Sociedad and Betis in 2021 would, since the beginning, in fact have been the permanent transfer of the Player.
130. It is undisputed that both Real Sociedad and Betis were aware that a permanent transfer of the Player was not legally possible in 2021 due to the Financial Fair Play Regulations of LaLiga. Indeed, and as confirmed by Mr Guillermo Amilibia of Real Sociedad in his email to Maldonado of 30 September 2022, the only reason why no permanent transfer of the Player took place in 2021 already were the LaLiga restrictions:

*“De no haber concurrido las limitaciones existentes con motivo de las restricciones de LaLiga al REAL BETIS, el jugador habría sido traspasado definitivamente en verano de 2021 por 7 millones (+ 3% de plusvalía) [...]”.*

Free translation:

*“Had it not been for the limitations imposed by LaLiga restrictions on REAL BETIS, the Player would have been transferred permanently in the summer of 2021 for [EUR] 7 million (+ 3% gains) [...]”.*



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131. The Betis Transfer Agreement was signed on 1 June 2022 and thus after the Loan Agreement (25 August 2021). In this regard, the Panel is convinced by Mr Guillermo Amilibia's testimony, according to which, in August 2021, there was no agreement about a permanent transfer of the Player for that season; rather, the agreement in August 2021 as far as a permanent transfer of the Player is concerned was regarding the 2022/2023 season.
132. The Panel also finds that Real Sociedad did not earn any extra transfer income from the Loan Agreement with Betis, rendering a simulated loan, particularly aiming to damage Maldonado's contractual interests, even less plausible. The EUR 960'000 Real Sociedad received from Betis under the Loan Agreement were part of the reimbursement by Betis for Real Sociedad provisionally covering the Player's salary for the 2021/2022 season (see *infra* section IX.C). It is customary in loan transfers that the salary of the player being loaned is borne by the club accepting the loan. In fact, not having to pay a player's salary for a particular period is one of the main reasons why players are loaned, which is consistent with the fact that the loaning club does not benefit from the loaned player's services during that time.
133. For these reasons, the Panel does not see any bad faith on the part of Real Sociedad in the sense of Article 152 para. 1 and Article 156 SCO as alleged by Maldonado, either. Article 62 SCO, which is also invoked by Maldonado, cannot find any application in the case at hand on the grounds that the legal relationship between the Parties is governed by contract (the Transfer Agreement), and Article 62 SCO exclusively governs extracontractual claims (see the title of Title One ["Creation of Obligations"], Section Three of the SCO: "Obligations deriving from Unjust Enrichment", as compared to Title One, Section One: "Obligations arising by Contract").
134. In view of the above, the Panel finds that (i) it was not agreed in the Transfer Agreement that the Sell On Fee in favour of Maldonado would also apply to temporary transfers/loans, and (ii) the Loan Agreement between Real Sociedad and Betis is no act of simulation, does not constitute a simulated permanent transfer agreement and does not damage the legitimate contractual interests of Maldonado. Consequently, Maldonado's claim is dismissed and the related findings by the FIFA PSC in the Appealed Decision are confirmed.

**C. Application of the Sell On Clause to the Compensation of Liquidated Expenses?**

135. In the first of its two principal arguments of its appeal, Real Sociedad challenges the FIFA PSC's decision to apply the Sell On Clause to the "compensation of liquidated expenses" paid to Real Sociedad by Betis. In the Appealed Decision, the FIFA PSC qualified the compensation of liquidated expenses as a hidden transfer fee, triggering the Sell On Clause and thus entitling Maldonado to EUR 1'089'000 to be paid by Real Sociedad. According to Real Sociedad, Maldonado is not entitled to participate in the compensation of liquidated expenses of EUR 3'630'000 (EUR 3'000'000 plus VAT) paid to Real Sociedad by Betis.
136. After careful examination of the file and the evidence adduced by the Parties, the Panel is not satisfied that the payment of EUR 3'000'000 (plus VAT) made by Betis to Real

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Sociedad as compensation of liquidated expenses is a hidden transfer fee, or that it triggers the Sell On Clause in any other way:

137. In order to determine the legal nature of the compensation of liquidated expenses, the starting point is the two agreements governing the relevant payment, i.e. the Betis Transfer Agreement and the Liquidation Agreement.
138. The Betis Agreement between Real Sociedad and Betis clearly separates the “transfer price” (Clause 2, “precio de la transferencia”) from the “compensation of liquidated expenses” (Clause 4, “compensación de gastos de liquidación del jugador por la Real Sociedad”). In addition, there were separate invoices issued by Real Sociedad to Betis for the transfer price and for the compensation of liquidated expenses, each with different due dates.
139. The Liquidation Agreement between Real Sociedad and the Player does not refer to the Player’s definitive transfer to Betis in general or to the Betis Transfer Agreement in particular. On the other hand, the first draft of the Liquidation Agreement had stated (original in Spanish):

*“If, for any reason, the definitive transfer of the PLAYER’s federative and economic rights to REAL BETIS does not take place, the Parties agree that REAL SOCIEDAD shall nevertheless make the payments in the amounts and on the dates indicated above.”*

140. Turning to the underlying motives of the two Agreements, the Panel deems compelling the explanation given by Mr Guillermo Amilibia at the hearing, according to which the payment was meant to compensate Real Sociedad for paying the Player’s salary during the 2021/2022 season while the Player was not playing for Real Sociedad but for Betis.
141. More specifically, Mr Guillermo Amilibia explained the structure of the transaction as follows:
  - The Player’s salary for the 2021/2022 season according to the contract with Real Sociedad was around EUR 4’000’000 gross.
  - In the 2021/2022 season, due to LaLiga’s financial licensing regulations (“Normativa de control económico de LaLiga”), Betis was only able to spend EUR 1’000’000 for the Player’s salary, leaving a mismatch of EUR 3’000’000.
  - Betis was obliged to pay to the Player EUR 40’000 gross directly, corresponding to the applicable minimum wage for employees in the territory of the province of Sevilla (the hometown of Betis).
  - Real Sociedad’s goal in the transaction with Betis was freeing a license for its first squad and not having to pay the Player’s salary for the 2021/2022 season.
  - Real Sociedad therefore undertook to provisionally cover for the Player’s salary in the amount of 3’960’000 which was paid to the Player on 31 December 2021.

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- Betis paid EUR 3'000'000 (plus VAT) to Real Sociedad in accordance with Clause 4 of the Betis Transfer Agreement as a reimbursement for Real Sociedad provisionally covering the Player's salary.
  - The remainder of EUR 960'000 (plus VAT) was paid to Real Sociedad by Betis in accordance with Clause 3.1.A of the Loan Agreement on 15 September 2021.
  - The payments to the Player had to come from Real Sociedad in order not to jeopardize the Player's favourable tax status in Gipuzkoa.
142. The Panel finds confirmation of Mr Guillermo Amilibia's account in Real Sociedad's letter to Maldonado of 1 August 2022, filed as Exhibit 26 to Maldonado's Appeal Brief.
143. The above structure of the transaction is further supported by the witness statement of Mr Ramón Alarcón Rubiales, Executive General Director of Betis, who confirmed that Betis has paid all amounts due to Real Sociedad as of 19 October 2023 in a timely manner.
144. In addition, Ms María José López Lorenzo, Legal Director of LaLiga, declared in her witness statement that, also in the understanding of LaLiga, the stipulation in Clause 4.1 of the Betis Transfer Agreement constitutes an independent agreement and does not form part of the "fixed price" of the transfer of the Player.
145. In this connection, it is important to note that according to the testimony of Mr Luis Manfredi given at the hearing, there was no investigation by LaLiga against Real Sociedad. This means that, while LaLiga was fully aware of the structure of the transfer of the Player between Real Sociedad and Betis, LaLiga did not find there to be anything unusual or suspicious in that transaction. The Panel also deems it to be of considerable relevance that LaLiga did not object in any way to either the Loan Agreement or to the Betis Transfer Agreement.
146. Additionally, the Panel does not see that Maldonado would have suffered any damage from the way the transaction between Real Sociedad and Betis was structured. The Player's salary for the 2021/2022 season had to be paid in accordance with his contract, either by Real Sociedad or by Betis. The compensation of liquidated expenses was a reimbursement for salary owed to the Player. There was no agreement between Maldonado and Real Sociedad, in turn (and this would not have made any sense either), to let Maldonado participate in the salary payments to the Player.
147. In light of the above, the Panel finds that the EUR 3'000'000 (plus VAT) paid to Real Sociedad by Betis in accordance with Clause 4 of the Betis Transfer Agreement as compensation of liquidated expenses were a reimbursement of salary owed to the Player under his employment contract that had been paid in advance by Real Sociedad. Hence, the payment does neither constitute a hidden transfer fee nor form part in any other way of the transfer consideration. The Sell On Fee in favour of Maldonado does not apply and Maldonado is not entitled to participate in the relevant payment.

148. Real Sociedad's appeal is therefore accepted in this regard and the Appealed Decision, insofar it orders Real Sociedad to pay to Maldonado the amount of EUR 544'500 twice as outstanding transfer fee (cf. *supra*, para 31), is set aside.

**D. Application of the Sell On Clause to the VAT-Part of the Betis Transfer Fee?**

149. In the second of its two principal arguments of its appeal, Real Sociedad challenges the FIFA PSC's decision to apply the Sell On Fee to the Betis Transfer Fee including VAT. According to Real Sociedad, Maldonado is not entitled to participate in the Betis Transfer Fee paid to Real Sociedad by Betis including VAT (i.e., EUR 8'470'000) but only excluding VAT (i.e., EUR 7'000'000).
150. In the Appealed Decision, the FIFA PSC decided that, for the purposes of calculating Maldonado's entitlement under the Sell On Clause regarding the Player's transfer from Real Sociedad to Betis, VAT was to be included, entitling Maldonado to amounts of EUR 189'000 and EUR 126'000 to be paid by Real Sociedad. The FIFA PSC justified its approach with the practical reality of football transfers and that VAT was an integral component of the overall financial transaction. Moreover, the contract between Maldonado and Real Sociedad did not specify if the values are net or gross; in accordance with common practice, they were assumed to be gross by the FIFA PSC.
151. The Panel finds that the FIFA PSC's ruling is correct for the following reasons:
152. First of all, the Panel refers to Clause 5.2.a of the Transfer Agreement, which reads as follows:
- "For this purposes [sic], the transfer price will be considered as any and all gross amounts payable by the Other Football Club to Real Sociedad in connection with the definitive transfer of Willian José whichever concept ("Sell On Fee")."*
153. The first step to determine the applicability or not of VAT for the purposes of calculating Maldonado's entitlement under the Sell On Clause is to evaluate whether there is a common understanding of the relevant provision by the Parties.
154. In this regard, the Panel notes that in two letters to Maldonado, Real Sociedad itself included VAT when summarising the amounts payable to Maldonado (Respondent's letter of 1 August 2022, p. 7; Respondent's letter of 14 November 2022, p. 1: "€8,470,000 (VAT included)").
155. The Panel is not satisfied by Real Sociedad's explanation that its president would have misunderstood or misjudged the content of his letters. The Panel has not been presented with any evidence in this regard, in particular by the president Mr Jokin Aperribay Bedialauneta himself. Also, the language used in the relevant letters is very clear ("€8,470,000 (VAT included)"). Contrary to Real Sociedad's submission, these unambiguous declarations are not (and cannot be) voided by Mr Guillermo Amilibia's later email of 20 March 2023 asserting the contrary.

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156. Equally, the Panel is not convinced by Real Sociedad's argument that "gross" in the Transfer Agreement would only include direct taxes, agents' commission, and solidarity contribution. Again, if this had indeed been the intention of the Parties, this could readily have been clarified in the Agreement, and both Parties had assistance by legal professionals when drafting and signing the Transfer Agreement. It could also have been specified if VAT should be exempted from the understanding of "gross" as per Clause 5.2.a of the Transfer Agreement. The fact that this has not been done (and not even been discussed beforehand) lends further support to the conclusion that the Parties' understanding was that VAT was included when calculating Maldonado's entitlement under the Sell On Clause.
157. The Panel therefore concludes that it was the Parties' common understanding and original intent, and Real Sociedad accepted, that the Sell On Fee in favour of Maldonado was to be calculated based on the amount of the relevant transfer fee instalment including VAT.
158. In addition to the aforesaid, the Panel shares the view expressed by the FIFA PSC in the Appealed Decision that practical reality of football transfers is such that VAT is an integral component of the overall financial transaction. Accordingly, even if there were no common understanding of the Parties as to the inclusion of VAT in the case at hand, i.e., in the event of dissent, an objective interpretation of Clause 5.2.a of the Transfer Agreement results in VAT being included in the transfer price for the purposes of calculating the Sell On Fee as well.
159. In view of the above, the Panel finds that Maldonado's entitlement under the Sell On Clause extends to the transfer fee paid to Real Sociedad under the Betis Transfer Agreement **including VAT**. Maldonado is therefore entitled to payments of EUR 189'000 for the first instalment of the Betis Transfer Fee and of EUR 126'000 for the second instalment of the Betis Transfer Fee.
160. Real Sociedad's appeal is therefore rejected in this regard and the Appealed Decision, insofar it orders Real Sociedad to pay to Maldonado EUR 189'000 and EUR 126'000 as outstanding Sell On Fee, is confirmed.

#### **E. Default Interest**

161. Maldonado requests default interest to be added to all claims awarded. Real Sociedad, in turn, denies any obligation to pay default interest to Maldonado.
162. Any claim for default interest is composed of (i) the interest rate and (ii) the interest period.
163. As to the interest rate, the Panel recalls that the Transfer Agreement, in its Clause 5.7, contains a specific rule which stipulates that the interest rate is 10% (ten per cent) per annum above the base rate of Barclays Bank plc from time to time. The relevant rate was agreed on by the Parties in the Transfer Agreement; by signing it, Real Sociedad acknowledged that this rate represents a genuine and reasonable pre-estimate of Maldonado's loss arising from the delay or failure to pay and is not unconscionable (ibid.). Accordingly, based on the principle of "pacta sunt servanda", Real Sociedad has

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accepted, and is bound by, the agreement regarding interest rate as per the Transfer Agreement.

164. On the other hand, and contrary to Real Sociedad's assertion, it is not necessary that the party entitled to default or late payment interest specifies any damage or financial loss occurred due to the late payment. This is not only a general principle of (Swiss) law (cf. e.g. Article 104 para. 1 SCO) but has also expressly been agreed as such in Clause 5.7 of the Transfer Agreement.
165. In view of the above, the Panel rules that Real Sociedad has to pay default interest on the amounts owed to Maldonado at a rate of 10% (ten per cent) per annum above the base rate of Barclays Bank plc from time to time.
166. Regarding the interest period, the following must be highlighted:
167. Maldonado has rejected Real Sociedad's deposit *ad cautelam* payment in the amount of EUR 1'404'000 made to Maldonado on 10 January 2025 and returned it to Real Sociedad (see *supra* paras. 43-45). The majority of the Panel does not see any reasons that would entitle Maldonado to do so; in particular, the goal of allowing interest to continue accruing is not a legitimate one. Default interest serves to compensate for the inconveniences incurred as a result of the late receipt of a sum of money. It is contradictory to refuse the acceptance of a sum of money and at the same time demand compensation for not receiving that sum of money.
168. By rejecting Real Sociedad's deposit *ad cautelam* payment, Maldonado fell in default of the obligee within the meaning of Article 91 SCO. Once the obligee is in default, default of the obligor is no longer possible (Decision of the SFT 4A\_446/2015, consid. 3.3.2; Decision of the SFT 4C.277/2005, consid. 5), leading to the interest period ending.
169. Accordingly, the Panel, as decided by its majority, rules that Real Sociedad has to pay default interest up until the date of Real Sociedad's deposit *ad cautelam* payment, which is 10 January 2025.
170. In conclusion, Real Sociedad is ordered to pay 10% interest per annum above the base rate of Barclays Bank plc as from 2 March 2023 until 10 January 2025 on the amount of EUR 189'000, and 10% interest per annum above the base rate of Barclays Bank plc as from 30 July 2023 until 10 January 2025 on the amount of EUR 126'000.

## X. COSTS

(...)

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## ON THESE GROUNDS

### The Court of Arbitration for Sport rules that:

1. The appeal filed by Deportivo Maldonado SAD against the decision Ref. Nr. FPSD 11678 issued on 23 April 2024 by the Players' Status Chamber of the FIFA Football Tribunal is dismissed.
2. The appeal filed by Real Sociedad de Fútbol SAD against the decision Ref. Nr. FPSD 11678 issued on 23 April 2024 by the Players' Status Chamber of the FIFA Football Tribunal is partially accepted.
3. The decision Ref. Nr. FPSD 11678 issued on 23 April 2024 by the Players' Status Chamber of the FIFA Football Tribunal is confirmed, except for point 2 of its operative part, which is amended as follows:

*“2. Real Sociedad de Fútbol must pay to Deportivo Maldonado the following amounts:*

- *EUR 189,000 as outstanding Sell On Fee plus 10% interest per annum above the base rate of Barclays Bank plc as from 2 March 2023 until 10 January 2025;*
- *EUR 126,000 as outstanding Sell On Fee plus 10% interest per annum above the base rate of Barclays Bank plc as from 30 July 2023 until 10 January 2025.”*

4. (...).

5. (...).

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

Seat of arbitration: Lausanne, Switzerland

Date: 26 November 2025

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## **THE COURT OF ARBITRATION FOR SPORT**

Oliver Jaberg  
President of the Panel

Daniel Cravo Souza  
Arbitrator

David Arias  
Arbitrator