CAS 2018/A/5725 Santos Futebol Clube v. FC Barcelona, Neymar da Silva Santos Junior, Neymar da Silva Santos, Neymar Sport e Marketing s/s Limitada and FIFA

CAS 2018/A/5726 Neymar da Silva Santos Junior v. Santos Futebol Clube & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Sofoklis P. Pilavios, Attorney-at-Law in Athens, Greece

Arbitrators: Mr. Ulrich Haas, Professor in Zürich, Switzerland

Mr. Efraim Barak, Attorney-at-law in Tel Aviv, Israel

in these two arbitrations between

CAS 2018/A/5725 Santos Futebol Clube v. FC Barcelona, Neymar da Silva Santos Junior, Neymar da Silva Santos, Neymar Sport e Marketing s/s Limitada and FIFA

Santos Futebol Clube, Santos, Brazil
Represented by Messrs. David Casserly, Nicolas Zbinden and Anton Sotir, Kellerhals Carrard, Lausanne, Switzerland

-Appellant-

and

1/FC Barcelona, Barcelona, Spain
Represented by Mr. Marc Baumgartner, Attorney at law, Schoeb/Baumgartner, Geneva, Switzerland

-First Respondent-

2/Neymar da Silva Santos Junior, Brazil
Represented by Mr. Marcos Motta, Attorney-at-law and Mr. Stefano Malvestio, Bichara e Motta Advogados, Rio de Janeiro, Brazil

-Second Respondent-

3/Neymar da Silva Santos, Brazil
Represented by Mr. Marcos Motta, Attorney-at-law and Mr. Stefano Malvestio, Bichara e Motta Advogados, Rio de Janeiro, Brazil

-Third Respondent-

4/Neymar Sport e Marketing s/s Limitada, Santos, Brazil
Represented by Mr. Marcos Motta, Attorney-at-law and Mr. Stefano Malvestio, Bichara e Motta Advogados, Rio de Janeiro, Brazil

-Fourth Respondent-

5/Fédération Internationale de Football Association (FIFA), Zurich, Switzerland
Represented by Mr Jaime Cambreleng Contreras, Head of Litigation, and Ms. Isabel Falconer, Senior Group Leader

-Fifth Respondent-

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CAS 2018/A/5726 Neymar da Silva Santos Junior v. Santos Futebol Clube & FIFA

Neymar da Silva Santos Junior, Brazil
Represented by Mr. Marcos Motta, Attorney-at-law and Mr. Stefano Malvestio, Bichara e Motta Advogados, Rio de Janeiro, Brazil

-Appellant-

and

1/Santos Futebol Clube, Santos, Brazil
Represented by Messrs. David Casserly, Nicolas Zbinden and Anton Sotir, Kellerhals Carrard, Lausanne, Switzerland

-First Respondent-

2/Fédération Internationale de Football Association (FIFA), Zurich, Switzerland
Represented by Mr Jaime Cambreleng Contreras, Head of Litigation, and Ms. Isabel Falconer, Senior Group Leader

-Second Respondent-

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I. PARTIES

1. Santos Futebol Club (“**Santos**”) is a football club, with registered seat in Santos, Brazil. Santos is affiliated to the Confederação Brasileira de Futebol, which is a member of the Fédération Internationale de Football Association (FIFA).

2. FC Barcelona (“**Barcelona**”) is a football club, with registered seat in Barcelona, Spain. Barcelona is affiliated to the Real Federación Española de Fútbol, which is a member of the Fédération Internationale de Football Association (FIFA).

3. Neymar da Silva Santos Junior (“**Neymar Junior**” or the “**Player**”) is a Brazilian professional football player who currently plays for Paris Saint-Germain FC.

4. Neymar da Silva Santos (“**Neymar da Silva**”) is the Player’s father.

5. Neymar Sport e Marketing s/s Limitada (“**Neymar Sport**”) is a Brazilian company with its seat in Santos, Brazil.

6. Fédération Internationale de Football Association (“**FIFA**”) is the world governing body of football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players, worldwide. FIFA is an association under Swiss law and has its headquarters in Zürich, Switzerland

II. FACTUAL BACKGROUND

A. Background Facts

7. 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.

8. On 19 August 2010, Neymar Junior signed an employment contract with Santos (the “**Employment Contract**”) which was set to expire on 19 August 2015. Section 4.2 of said contract stipulated that *“In case of breach, unilateral termination or non-compliance with this Agreement by the Athlete, for purposes of being transferred to other foreign club, it is established a fine to be paid by the Athlete to Santos, as provided for in article 28 and its paragraphs of Law 9615/98, as amended by Laws 9981/2000 and 10672/2003, in the following values and conditions: (i) € […] ([…] Euros) as a result of termination occurred until December 31, 2010 and (ii) € […] ([…] Euros) as a result of termination occurred from January 1st, 2011.”*

9. On 23 August 2011, Barcelona’s President sent a letter to Santos stating, *inter alia*, the following: “*(…) I hereby respectfully and officially communicate you about the interest by FC BARCELONA in contracting your player NEYMAR DA SILVA SANTOS JUNIOR. As previously discussed, our planning for the player is that he continues in Santos FC at this moment and must present himself in FC Barcelona on January 2013 at the latest, depending on the player’s will and the agreement with FC Barcelona. As you know, the indemnity for contractual rescission of the player amounts […] euros, we confirm that we will pay it entirely as to the following conditions: - […] euros on the signature of the contract. - […] as to the transfer of the player.*

We kindly request your authorization to initiate the salary negotiations directly with the player. (...)"

10. On 7 November 2011, Neymar Junior and Santos entered into a new employment agreement (the "**Second Employment Contract**") which replaced the one in place since 19 August 2010. The new employment agreement was set to expire on 13 July 2014 and increased the contractually stipulated compensation amount for Santos in the event of a unilateral early termination of the employment relationship or a transfer of the Player to another club, to the amount of EUR […].

11. On 8 November 2011, Santos' President issued a letter with the following content: "*Santos FC (...) pursuant to article 18 par. 3 of the FIFA Regulations on the Status and Transfer of Players, expressly informs that it agreed and authorises the player Neymar to begin, starting today, negotiations*[1] *with any national or international sports entity, being entitled to concretise the eventual transfer provided that it takes place after 2014 and respects all the terms of the contract executed with Santos FC*" (the "**Authorisation Letter**").

12. On 15 November 2011, Barcelona, the Player, Neymar da Silva acting as the Player's representative and the Brazilian company N & N Consultoria Esportiva e Empresarial LTDA ("N & N Consultoria"), represented by Neymar da Silva, signed an agreement (the "**Free Agent Agreement**"), which stipulated, *inter alia*, the following:

"*(...) PLAYER has executed an agreement with N & N under which he has transferred the future economic rights once the condition of "free agent" occurs so that said company will have the economic rights of signing as well as the exclusive right to decide and determine the club or sports entity with which PLAYER shall establish his new employment relationship as a professional football player, with the right of said society to receive the remuneration for such economic rights and exclusive right of decision agreed upon with the third club or sports entity, under the conditions that will be referred to hereinafter.*

(...)

First - Incorporation of PLAYER to the team of FC BARCELONA

Having an agreement between SANTOS FC and PLAYER for the termination of the employment contract between the two been reached, PLAYER agrees to join the FC BARCELONA first team squad once this finalization is made and no later than August 25, 2014, under the terms of this contract and in accordance with the employment contract that is incorporated into this agreement as Annex II.

Likewise, N & N agrees and guarantees FC BARCELONA that it will execute its exclusive right of election, in favor of FC BARCELONA as the designated club for the acquisition of all the federative and economic rights of PLAYER owned by N & N as of the date on which said condition of "free agent" of PLAYER is fulfilled and no later than August 25, 2014.

(...)

Fourth - Loan and insurance policy

[1] The word "negotiations" is used to translate the word "trantativas" from the Portuguese original text in the unofficial translation submitted by Barcelona. On the other hand, the unofficial translation provided by Santos, translates the same word by "discussions". The matter of the translation of the Authorisation Letter is addressed below.

FC BARCELONA and N & N will subscribe in a maximum term of four weeks from today, a loan contract by which the first one will lend to the latter the amount of […] euros (€ […]) that must be paid within a maximum period of one month from the execution of this contract.

Said loan will not generate any interests and its principal must be fully amortized by N & N on the day the employment contract is formalized, unless an early amortization event included in this contract is applicable.

Simultaneously to the delivery of the principal of said loan, N & N commits to take out an insurance that covers the risk of permanent injury - insofar as this permanently makes it impossible for Player to practice elite professional football -, with a minimum coverage of € […], of which € […] will be delivered to FC BARCELONA as early amortization of the loan indicated in clause four FC BARCELONA will reimburse N & N for the costs of contracting said insurance policy in the part corresponding to the € […] coverage, and will be paid within a maximum period of one month from the moment N & N makes the respective payments.

Fifth - Transfer of rights

FC BARCELONA will pay N & N, as consideration and compensation for (i) the execution in favor of FC BARCELONA of the exclusive right to designate the new employer club of PLAYER from the date of termination of his contract with SANTOS FC, and this no later than August 25, 2014; (ii) carry out, jointly with PLAYER, all necessary or convenient actions that will lead to the condition of "free agent", and (iii) for the acquisition by FC BARCELONA of all the federative and economic rights of PLAYER, the amount of […] euros (€ […]), in the following terms and conditions

- As for € […], as compensation for the amortization of the loan indicated in the previous fourth clause, FC BARCELONA states that, as of today, the collection of this amount by N & N does not accrue any fiscal obligation in Spain, FC BARCELONA being responsible for any fiscal obligation contrary to this statement.

- As for € […], on September 1, 2014 This amount will be paid by FC BARCELONA upon the production by N & N of the originals of the corresponding invoices and original copy of the Certificate of Tax Residence, by transfer to the bank account, domiciled in the place of fiscal residence of N & N, which is indicated on the invoice.

FC BARCELONA states that, as of today, the collection of this amount by N & N does not accrue any fiscal obligation in Spain, FC BARCELONA being responsible for any fiscal obligation contrary to this statement.

(…)

7.3 In case of non-compliance by any of the parties with the obligation to execute the labor contract, the non-compliant party must pay […] euros (€ […]) as a penalty to the other party. The payment of said compensation shall not exempt N & N from the loan repayment obligation indicated in clause four.

(…)"

13. The Free Agent Agreement included an Annex II, which was captioned "Employment Contract" and provided for the hiring of the Player by Barcelona as a free agent from July 2014 until 31 June 2019 against a yearly salary of EUR […] (the "**First Barcelona Contract**"). Said document was duly signed by Barcelona, Neymar Junior and Neymar da Silva, acting as the Player's representative.

14. On 6 December 2011, Barcelona, the Player and the Brazilian company N & N Consultoria, represented by Neymar da Silva, signed a "Loan Contract" (the "**Loan Contract**"), which stipulated, *inter alia*, the following:

"*First – Object*

FCB grants N & N a loan in the amount of […] euros (€ […]), an amount that is delivered by bank transfer that will be made no later than December 15, 2011, and whose receipt will be attached to this contract as Annex 1. The transfer will be made to the bank account opened in the name of N & N, whose data are indicated below (…)

Second - Interests

The principal of this loan does not accrue interests, except interests for late payment that could be applied in accordance with the fifth provision

Third - Duration, maturity and amortization

The present loan is granted until September 1, 2014, the date on which it will automatically expire and N & N must pay the loan principal in full. FCB may proceed to terminate this contract in advance in the cases provided for in the fourth provision N & N cannot proceed to the early refund of the amount subject of this loan, unless expressly authorized and in writing by FCB. This loan may be amortized, in whole or in part, with compensation of any amount owed by FCB to N & N in application of the Agreement

Fourth - Early amortization

4.1 FCB may unilaterally terminate this loan contract in advance and, consequently, request the return of its principal in the following cases

(i) non-compliance with the Agreement by N & N and/or Player

(ii) existence of any circumstance that prevents the formalization of the Associated Contracts, for any reason indicated in Clause 7 3 of the Agreement

(iii) death or injury of the Player that permanently makes it impossible for him to practice elite professional football.

4.2 In cases in which the Agreement establishes FC Barcelona's obligation to indemnify N & N and/or the Player in an amount equal to or greater than € […], the repayment of the principal of the loan may be made by offsetting said payment with the amount owed by FCB as compensation In particular, the amortization of this loan will be due to compensation (total or partial, as applicable), of debt, N & N being able to definitely endorse the amount that is the object of this loan in the following cases

(i) In the case of sanction of doping not due to fraud or fault of the Player, and of resignation of FCB when hiring,

(ii) In the event of breach by FCB of the Agreement.

4.3 In the event of death or injury of the Player, the repayment of the principal of the loan will be compensated with the payment to FCB of € […] by the insurance company with which the coverage policy of said risk is contracted.

<u>*Fifth - Delay in compliance with obligations*</u>

In the event that N & N delays the payment of the principal at the expiration of the contract or in case of early repayment of the same, whatever their cause is, it will incur a default without need of a requirement by FCB and the due balance will accrue, in accordance with the Article 316 of the Commercial Code, nominal moratorium interests equal to the official rate of interests valid during the previous three months in Spain at the time of the beginning of the delay, increased by four percentage points. FCB may capitalize monthly interests accrued and not paid, which will accrue new interests with application of the rate established in the previous paragraph.

(…)"

15. Between the time period 2011 until 2013, Santos received several offers by Real Madrid and other clubs to transfer the Player.

16. On 24 May 2013, Santos, Barcelona, the Player and the Brazilian company N & N Consultoria, represented by Neymar da Silva, signed a "Memorandum of Understanding" (the "**Memorandum**"), which stipulated, *inter alia*, the following:

"*Whereas*

I. Today, the parties reached an irrevocable and unchangeable agreement to the transfer of the federative rights of the PLAYER to FC BARCELONA.

II. The FC Barcelona agrees to pay a price for the transfer of federative rights in the fixed amount of € […] ([…] EUROS).

III. SANTOS FC needs a term until the nest (sic!) *Tuesday, May 28, 2013, to complete the elaboration of the definitive clauses of the Agreement for Transfer of Federative Rights of Professional Football Player, such analysis not meaning right of revocation and termination of the Agreement for Transfer of Federative Rights of the PLAYER to FC BARCELONA or change to the price agreed above.*

The parties resolve that:

1. SANTOS FC binds itself, in irrevocable and unchangeable character, to transfer the federative rights of the PLAYER to FC BARCELONA.

IV. FC Barcelona irrevocably and irreversibly undertakes to pay the price for this transfer of federative rights in the amount of € […] ([…] EUROS.

2. The parties will detail the obligations undertaken in this agreement in an Agreement for Transfer of Federative Rights of Professional Football Player, to be executed between the parties until Tuesday, May 28, 2013.

3. The parties agree not to make substantial changes in the attached drafts and that, especially, that they shall not change the will of the parties concerning the transfer of the federative rights of the PLAYER and the price agreed above.

4. Upon the execution of the Agreement for Transfer of Federative Rights, PLAYER and N&N expressly waive to the rights existing before SANTOS, especially commissions of any nature, amounts arising from the current agreement for exploration of image rights executed with

SANTOS FC, as well as any others, of any nature whatsoever, except those arising from special employment agreement signed with SANTOS.

5. FC BARCELONA undertakes to pay the FAAP FENAMAF fee related to the first portion of the total amount of the agreement.

6. This Memorandum of Understanding will be valid until the execution of the attached contractual instruments, after which it will be considered as extinguished.

7. The parties undertake to keep the confidentiality about the existence and contents of this agreement. Any non-compliance with said obligation does not imply annulment of this agreement.

8. This agreement will be governed by the rules of FIFA and UEFA related to the transfer of players.

9. Any dispute or controversy that arises or is related to this agreement shall be submitted exclusively to the Court for Arbitration for Sport (CAS) in Lausanne, Switzerland, and shall be settled by means of application of the Sporting Code (CAD Code), concerning the arbitration procedure. The arbitration panel will be comprised of three arbitrators. The arbitration will be in Spanish and, subsidiarily, in English.

(...)"

17. On 31 May 2013, Santos, Barcelona, the Player, Neymar da Silva, acting as the Player's representative, and Neymar Sport, represented by Neymar da Silva, entered into an "Agreement for the transfer of federative rights of professional football player" concerning the transfer of Neymar Junior from Santos to Barcelona (the "**Transfer Agreement**"), which included, *inter alia*, the following provisions:

"*(...)*

First Clause - AGREEMENT OBJECT

*1.1. As provided for herein and particularly subject to the compliance with the precedent conditions set forth in the Sixth Clause, **SANTOS FC definitively transfer and sell to F.C. BARCELONA, who accepts, all federative rights over the PLAYER and all economic rights arising therefrom**, without limitation and free of charges and encumbrances.*

1.2. For those purposes, SANTOS FC and the PLAYER subscribe on this date all necessary agreements, submitted to the same precedent conditions, for the definitive termination of the employment agreement of the PLAYER and of the agreement for assignment of image rights signed by SANTOS FC and NEYMAR SPORTS MARKETING (NR SPORTS).

Second Clause - EFFECTIVE DATE OF THE TRANSFER OF FEDERATIVE RIGHTS

*2.1. The transfer of the federative rights shall have automatic effects, and thus shall not require the execution of any other agreements or documents, **no later than July 29, 2013** insofar as the conditions precedent set forth in clause 6 are satisfied. Consequently, any rights or obligations arising from this agreement shall be subject to the fulfilment thereof.*

2.2. On July 29, 2013 and before the execution of the corresponding employment agreement, the PLAYER will be incorporated to the team of F.C. BARCELONA, when the employment relationship between both will become effective.

Third Clause - VALUE FOR THE TRANSFER OF THE FEDERATIVE RIGHTS AND OTHERS

*3.1. The **price for this transfer of federative rights is agreed to be the fixed amount of** […] **EUROS (€ […]).** Such price shall be paid by FC BARCELONA to SANTOS FC on June 7, 2013, once the condition precedent set forth in the Sixth Clause is satisfied.*

3.2. SANTOS FC shall issue the corresponding invoice in advance, as well as deliver to F.C. BARCELONA the documentation demonstrating to be subject to agreement for exemption of double taxation. SANTOS FC binds itself to enter all required data in the TMS/FIFA system, regardless of the sending of the International Transfer Certificate of the PLAYER, which will occur on a date to be determined by F.C. BARCELONA (provisionally on July 29, 2013).

3.3. The parties hereby expressly state that said amount:

*i) shall be understood **as the compensation to SANTOS FC for 100% of the PLAYER's federative rights and 100% of the economic rights arising therefrom, including both those owned by Santos and by third parties**, which shall be liquidated by SANTOS FC in accordance with the agreements to be entered into by the latter with said third parties and, in any event, with full indemnity for BARCELONA FC.*

ii) includes any compensation that may be due to SANTOS FC as training compensation and solidarity contribution in relation to the PLAYER, expressly waiving as far as necessary any additional compensation for these rights, exclusively in relation to this transfer. The parties expressly declare that said amount:

3.4. F.C. BARCELONA is responsible for the payment of 1% (one percent) on the total price intended to the payment of the administrative fees set forth in the Brazilian laws, which amount will be deposited in favor of SANTOS FC, together with the second payment provided for in clause 3.1.

Fourth Clause - CONSENT AND WAIVER OF THE PLAYER

4.1. The PLAYER gives his express consent to the definitive transfer of the federative rights, accepting all the conditions, especially that of submission to a medical examination on the date appointed for such purpose, as well as the effective date of the transfer of the federative rights and incorporation in the first team of F.C. BARCELONA, with the corresponding termination of his employment relationship with SANTOS FC.

4.2. In any event, the PLAYER expressly and irrevocably waives any amount or percentage to which he may be entitled as a result of this present transfer of rights (whether by agreement or contract, applicable law, federative rules or collective agreement), because they are included in the remuneration agreed with FC BARCELONA. Therefore, neither SANTOS F.C. nor F.C. BARCELONA shall pay any amount for this reason to the PLAYER, who does not have anything to claim in this regard.

4.3. The parties ensure the pre-emption right in favor of SANTOS FC in case F.C. BARCELONA negotiate the PLAYER by loan or definitively with any other Brazilian, Spanish or foreign team and, in any negotiation, SANTOS FC shall be informed about the offering conditions, having a term 3 (three) days to inform if it is interested or not in exercising the pre-emption right and match the business conditions. The lack of written manifestation from SANTOS FC within said term will be deemed, for all purposes, as a waiver to the exercising of such right.

4.4. In case such pre-emption right is not complied with, F.C. BARCELONA shall pay a fine in favour of SANTOS FC in the amount of this transfer, that is, [...] EUROS (€ [...]), to be paid within 24 (twenty-four) hours from the registration of the athlete in the new club.

Fifth Clause - WAIVER OF NEYMAR SPORTS MARKETING (NR SPORTS)

NEYMAR SPORTS MARKETING (NR SPORTS) expressly and irrevocably waives any amount or percentage, particularly relating to commissions, to which it may be entitled as a result of this transfer of rights, by virtue of agreements executed with SANTOS F.C. or by the application of applicable law, federative rules or a collective agreement. Therefore, neither SANTOS F.C. nor F.C. BARCELONA shall pay any amount for this reason to NEYMAR SPORTS MARKETING (NR SPORTS), which has nothing to claim in this regard.

Ninth Clause - JURISDICTION

9.1. Any dispute, controversy or claim deriving from or in relation to this Agreement (or originating from or relating to the relationship between the parties that arises from this Agreement), including any question regarding its existence, validity or termination, shall be submitted to and resolved by the Legal Body of FIFA (Art. 22 of FIFA-RSTP), applying the rules and regulations of FIFA. Any appeal arising from the decision of the Arbitral Body of FIFA shall be submitted to the Court for Arbitration for Sport (C.A.S.) in Lausanne, Switzerland. The arbitration shall be conducted in English.

(...)"[2]

18. On the same 31 May 2013, Barcelona issued a letter to Santos, by means of which "*FC BARCELONA irrevocably binds itself to pay to SANTOS F.C. an amount of [...] EUROS (€ [...]) in case, during the period in which Mr. Neymar da Silva Santos Junior is member of the team of FC BARCELONA, he is elected as one of the three finalists to the award of best player of the year granted by FIFA (FIFA World Player). Such payment will be made only once, the first time the player is granted this honour, regardless of the number of seasons that have passed when he reaches the capacity of finalist. Such payment will be made within the maximum term of one month from the date in which the player is appointed as one of the three finalists to the award of best player of the year granted by FIFA (FIFA World Player), upon previous submission by SANTOS F.C. of the corresponding invoice.*" (the "**FIFA World Player of the Year Statement**").

19. On 3 June 2013, Barcelona, Neymar Junior and Neymar da Silva concluded an employment contract (the "**2013 Barcelona Contract**") and a contract for image rights.

20. On 3 June 2013, the Vice-President of Barcelona was reported saying that the signing of Neymar Junior costed *"57 million Euros"*.

21. On 12 July 2013, Santos sent a letter to Barcelona stating *inter alia* "*because of such statement DIS Esportes e Eventos has notified Santos to ask for information about the fee involved in the transfer of the player. The company is suggesting that Santos may have hidden the real transfer fee in order to reduce its participation*".

22. On 19 July 2013, Barcelona replied stating that the amount of EUR 57,000,000 "*...is related to other payments FC Barcelona had to bare in order to resolve previous agreements with other parties. (...) Therefore, these additional payments result in an extra cost for FC Barcelona directly associated to the acquisition of Neymar Jr, although never related to Santos FC, nor*

[2] Unofficial translation provided by Santos.

obviously being regarded as a Transfer Fee, as it is not a compensation for the acquisition of any right of the player".

23. On 24 January 2014, in the context of a Spanish criminal proceeding, Santos received information in writing regarding the agreements signed between Barcelona, Neymar Junior and N & N Consultoria in 2011.

24. On 10 February 2014, Santos sent a letter to Barcelona that included a table containing "*all contracts and amounts involved in the transfer of the player Neymar Junior*" in the amount of EUR […] and further stated: "*According to FC Barcelona's official information, the companies N&N and N&R received € […] as "compensation", thus we have concluded that the "other parties" referred to in the letter of 19 July 2013 would be such companies (N&N and N&R), owned by the player's father, Mr. Neymar da Silva Santos. All the contracts and amounts related above have legal provision and were justified by FC Barcelona, except the payment of such compensation of € […] to the companies owned by Neymar Junior's parents. Therefore, we hereby request a copy of any document and/or contract signed by FC Barcelona, which resulted in the payment of € […] to the companies N&N / N&R, "directly associated to the acquisition of Neymar Jr". This measure is intended to clarify under what justification and basis the said sum has been paid to "other parties" than to Santos Futebol Clube, which held the economic and federative rights of Neymar Junior when of his transfer, in 2013.*"

25. On 17 September 2017, Barcelona paid EUR […] to Santos, corresponding to the bonus payment agreed under the FIFA World Player of the Year Statement, in compliance with the decision rendered by the Single Judge of the FIFA PSC on 28 June 2017 in case with ref. nr. 15-01254 (see par. 29 below).

B. Proceedings before the FIFA Players' Status Committee and the FIFA Dispute Resolution Chamber

26. On 27 May 2015, Santos lodged a claim with the FIFA Players' Status Committee (the "FIFA PSC") against Barcelona, Neymar Junior, Neymar da Silva and Neymar Sport, requesting the payment of compensation in the amount of EUR […] plus interest of 8% *p.a.* and the reimbursement of all expenses and fees incurred. Santos claimed that Barcelona, the Player and his father had planned and secured the transfer of the Player from Santos in advance, in exchange for several payments made from Barcelona to the Player, his father and a network of companies and that this fact was withheld from Santos during the negotiations for the conclusion of the Transfer Agreement, which constitutes civil fraud. Had the defendants not committed said "*wrongful acts*", Santos would have been able to sell the Player for his true market price. Santos calculated that the total sum spent by Barcelona for the transfer of Neymar Junior was EUR […], including EUR […], which corresponds to the transfer fee, and, consequently, requested the remaining EUR […] from the defendants as compensation for damages. Furthermore, Santos requested the amount of EUR […], which Barcelona failed to pay after the Player was named a finalist for the FIFA World Player of the Year award in 2015. Santos finally requested that sanctions be imposed on the defendants in accordance with Articles 62 and 41 of the FIFA Disciplinary Code, for violations of the FIFA Regulations on Transfer and Status of Players ("RSTP"), the TMS rules and the FIFA Agents Regulations.

27. On account of the scope of competence of the judicial bodies of FIFA and of the different respondents, FIFA decided to divide the claim of Santos into four separate proceedings:

<u>(i) Case 15-01254, Santos v. Barcelona (decided by the Single Judge of the FIFA PSC)</u>

28. Barcelona contested FIFA's competence to hear Santos' claim. In addition, and as to the substance of the case, it rejected Santos' claims and allegations. In particular, Barcelona denied

that it breached the Transfer Agreement and argued that the authorisation letter granted by Santos did not prevent the Player from entering into an agreement with a third club nor obliged him to inform Santos of the existence of such an agreement.

29. On 28 June 2017, the Single Judge of the FIFA PSC rendered its decision (the "**First Appealed Decision**"), by which it partially accepted the claim of Santos and ordered Barcelona to pay to Santos *"within 30 days as from the date of notification of the present decision, the total amount of EUR […] plus 5% interest p.a. on said amount as from 31 December 2015 until the date of effective payment"*.

30. On 10 April 2018, FIFA communicated to the parties the grounds of the First Appealed Decision, determining *inter alia* the following:

"*16. Furthermore, the Single Judge acknowledged that, in its claim to FIFA, the Claimant had requested from the Respondent the payment of EUR […] as compensation for having breached the transfer agreement and/or for its fraudulent behaviour and of EUR […] for having breached the confidentiality clause included in the Transfer agreement. Similarly, the Single Judge remarked that the Claimant had requested from the Respondent the payment of EUR […] in accordance with the statement. In addition, the Single Judge observed that from the Claimant's point of view, the Respondent should be sanctioned in accordance with the Regulations and the Disciplinary Code.*

17. Finally, the Single Judge acknowledged that, for its part, the Respondent, although recognising the existence of several agreements related to the transfer of the player from the Claimant, had contested the claim of the latter inter alia arguing that the payments made in conjunction with such agreements could not be considered as part of the transfer fee paid for the player.

18. Bearing in mind all the aforementioned, the Single Judge noted that, in accordance with the documentation provided and the arguments put forth by both parties, it was undisputed that the amount of EUR […] did not correspond to 100% of the sum spent by the Respondent in the context of the transfer of the player from the Claimant to the Respondent, as established in clause 3.3 of the transfer agreement. Furthermore, the Single Judge also noted from the documentation on file as well as from the submissions of the parties that the player and Neymar Sports – seemingly in disagreement with clauses 4.2 and 5 of the transfer agreement – appear to have received from the Respondent some payments in connection with his transfer to the latter, which the Respondent however claims not to correspond to the transfer fee.

19. Notwithstanding the foregoing, and without further developing the analysis of an alleged breach of the aforementioned contractual clauses by the Respondent, the Single Judge deemed it appropriate to point out that the transfer agreement did not provide for any consequences for the party at fault in case of an eventual breach of any of its clauses, let alone of clauses 3.3, 4.2 or 5, in particular.

20. In the same context, the Single Judge further referred to art. 12 par. 3 of the Procedural Rules, in accordance with which the burden of proof has to be borne by the party claiming a right on the basis of an alleged fact and pointed out that no evidence had been provided by the Claimant in support of the allegation that it would have incurred in any type of damage in connection with the additional payments made by the Respondent.

21. Equally, the Single Judge reasoned that such additional payments could not be considered as a quantification of a possible damage suffered by the Claimant in respect to the transfer of the player and recalled that the Claimant had voluntarily negotiated and concluded the

transfer agreement and had, therefore, accepted all of its terms and conditions, including the financial ones. In this sense, the Single Judge emphasised that the Claimant had agreed upon receiving the total amount of EUR […] as transfer fee for the player.

22. *Hence, in view of all the aforementioned and, in particular, taking into account the lack of a provision in the transfer agreement establishing any financial or other consequences in case of a possible breach of one of its provisions by either party as well as considering that the Claimant had failed to demonstrate that it would have in fact suffered a damage in the amount of EUR […] in connection with the transfer of the player to the Respondent, the Single Judge came to the conclusion that the claim of the Claimant for compensation in the amount of EUR […] had to be rejected, due to its lack of contractual, legal or evidentiary basis.*

23. *In continuation and as to the second part of the Claimant's claim, i.e. its request for the payment of EUR […] as compensation for having allegedly breached the confidentiality clause included in the contract, the Single Judge recalled once again that the transfer agreement did not include a provision establishing any financial or other consequences in case of a possible breach of one of its clauses, let alone of clause 8. Hence, the Single Judge determined that also this part of the Claimant's claim had to be rejected, due to its lack of contractual, legal or evidentiary basis.*

24. *Having established the aforementioned, the Single Judge turned his attention to the third part of the Claimant's claim, i.e. its request concerning the payment of EUR […] in accordance with the statement of 31 May 2013, as a consequence of the player having become one of the finalist of the 2015 FIFA Ballon d'Or, and recalled that such request of the Claimant had not been specifically contested by the Respondent.*

25. *Therefore, considering the aforementioned as well as taking into account the legal principle of pacta sunt servanda, which in essence means that agreements must be respected by the parties in good faith, bearing in mind that the player was indeed one of the finalists of the 2015 FIFA Ballon d'Or and that it had remained undisputed that the Respondent failed to pay to the Claimant the sum of EUR […] in accordance with the statement, the Single Judge resolved that the Respondent, in order to fulfil its obligations established in the document in question, has to pay to the Claimant the outstanding amount of EUR […].*

26. *Additionally and with regard to the Claimant's request for interest in the amount of 8% p.a. to be applied on the sum of EUR […], the Single Judge recalled that, according to the statement, the amount of EUR […] was to be paid to the Claimant one month after the nomination of the player. As to that and in accordance with the information at his disposal, the Single Judge remarked that the player was nominated finalist of the 2015 FIFA Ballon d'Or on 30 November 2015. Finally, the Single Judge pointed out that no provision related to the payment of a specific amount of interest in case of late payment by the Respondent was included in the statement.*

27. *As a result of the aforementioned and in accordance with his well-established jurisprudence, the Single Judge decided that interest in the amount of 5% p.a. were to be applied on the outstanding amount of EUR […] as of the day after the expiry of the one month deadline included in the statement had elapsed, i.e. as of 31 December 2015.*

28. *Finally and as to the requests for sanctions against the Respondent, the Single Judge considered that such requests fall outside the scope of the present contractual dispute between clubs belonging to different associations (cf. art. 11 lit. f) of the Regulations) and, as a result, they cannot be assessed by the Single Judge of the Players' Status Committee.*

29. *In view of all the aforementioned, the Single Judge decided that the claim of the Claimant is partially accepted and that the Respondent has to pay to the Claimant the total amount of EUR […] plus 5% interest p.a. as of 31 December 2015.*

(...)"

(ii) Case 15-01255, Santos v. Neymar Junior & Barcelona (decided by the FIFA DRC)

31. Neymar Junior contested FIFA's competence to hear Santos' claim, which was based on the Swiss Code of Obligations and not the RSTP. In addition, he claimed that he was not even a party to the Transfer Agreement and denied the Santos' claim as to its substance and that he had breached Articles 13-17 of the RSTP, as he was expressly authorised to negotiate with other clubs and his contractual relationship with Santos was terminated by mutual agreement.

32. Barcelona equally contested FIFA's competence to hear Santos' claim. Barcelona also contested having interfered with the contractual relationship between Santos and the Player in the sense of Articles 18 (3) and 18bis of the RSTP, as the Player was duly authorised to negotiate with other clubs.

33. On 30 June 2017, the FIFA DRC rendered its decision (the "**Second Appealed Decision**"), by which it declared that *"1. The claim of the Claimant, Santos FC, is admissible. 2. The claim of the Claimant, Santos FC, is rejected."*

34. On 10 April 2018, FIFA communicated to the parties the grounds of the Second Appealed Decision, determining *inter alia* the following:

"*4. In this respect, the Chamber deemed it appropriate to briefly recall that on the basis of the principle of litis pendens, a decision-making body is not in a position to deal with the substance of a case if the same matter, involving the same parties, has already been brought before and is still pending with another decision-making body.*

(...)

6. Based on the foregoing, the Chamber concluded that the present proceedings and the ones pending in Brazil and in Spain do not appear to deal with the same matter, as the latter seem to be related to tax and criminal issues, while the present ones – in line with art. 22 lit. a) of the Regulations – are rather employment-related. Thus, the Chamber rejected the player's and Barcelona's objection to the admissibility of Santos' claim based on the principle of litis pendens.

7. In continuation, the Chamber remarked that the player and Barcelona also contested the admissibility of the claim of the Claimant alleging its prescription. In particular, the Chamber noted that the Respondents deem the starting point for the calculation of the prescription should be the conclusion of the MoU of 24 May 2013, between the Claimant and the Respondents, inter alia, in which the terms of the transfer were agreed upon. Thus, as per the Respondents, Santos's claim lodged on 27 May 2015 should be considered as prescribed, in line with art. 25 par. 5 of the Regulations.

(...)

9. In this respect, the Chamber considered that the event giving rise to the present dispute was, in fact, the transfer of the player from Santos to Barcelona, effective with the conclusion of the transfer agreement between the aforementioned parties inter alia on 31 May 2013. Hence, taking into account that the claim of the Claimant was lodged on 27

May 2015 and considering that the transfer agreement – being the legal basis for his actual transfer to Barcelona – was concluded on 31 May 2013, the Chamber established that the claim of the Claimant was lodged within the two years deadline provided for in art. 25 par. 5 of the Regulations and therefore is not time-barred.

10. *Finally and as to the argument raised by both Respondents that FIFA would not be competent to hear the present dispute as the claim of the Claimant is mainly based on Swiss law, the Chamber pointed out once again that, in accordance with art. 24 par. 1 in combination with art. 22 lit. a) of the Regulations on the Status and Transfer of Players (edition 2015) it is competent to deal with an employment-related dispute between a player, his former club and his new club, concerning the maintenance of contractual stability, and in connection with an ITC. Furthermore, the Chamber reminded the parties that, in accordance with the FIFA Statutes, Swiss law is applicable subsidiarily to the FIFA Regulations.*

(...)

14. *In doing so, the members of the Chamber acknowledged that, on 19 August 2010, the player and Santos concluded a first employment contract, valid as from 19 August 2010 until 19 August 2015, as per which the player was entitled to receive a monthly salary of BRL […]. Furthermore, the Chamber acknowledged that on 7 November 2011, the player and Santos concluded a second employment contract, valid as from 1 November 2011 to 13 July 2014, replacing the first employment contract and according to which the player was entitled to a monthly salary of BRL […].*

15. *Subsequently, the Chamber noted that, on 31 May 2013, Santos, the player, Barcelona, the father of the player and Neymar Sports signed a transfer agreement related to the transfer of the player from Santos to Barcelona, which provided for a transfer fee of EUR […] to be paid on 7 June 2013 by Barcelona to Santos. The Chamber further acknowledged that the transfer agreement included a clause which inter alia prevented the player from receiving and Barcelona from paying to him any amount related to the transfer in question.*

16. *In continuation, the DRC took note of the allegations of Santos, according to which the player and Barcelona would have colluded behind its back in order to obtain a transfer of the player to Barcelona in accordance with terms favourable to the latter. Equally, the Chamber took note of the Claimant's allegations according to which Barcelona would have paid to the player and to his family – also via several companies – the total amount of EUR […], allegedly breaching the terms of the transfer agreement. In the same context, the Chamber observed that the Claimant considered the behaviour of both Respondents as being fraudulent and accused the latter of having breached not only the FIFA Regulations but also Swiss law and the UNIDROIT principles.*

17. *In continuation, the DRC acknowledged that, in its claim to FIFA, Santos had requested from the Respondents the payment of EUR […] as compensation for having breached the transfer agreement and/or for their fraudulent behaviour and of EUR […] for having breached the confidentiality clause included in the Transfer agreement. Equally, the Chamber remarked that, from the Claimant's point of view, FIFA should impose sanctions on both the player and Barcelona in accordance with art. 17 and 18 of the Regulations as per art. 62 of the Disciplinary Code.*

18. *Furthermore, the Chamber noted that, for their part, the player and Barcelona had contested all allegations of Santos and had rejected the latter's claim in its entirety. In particular with regard to the present labour dispute, the Chamber acknowledged that the*

player emphasises that his transfer to Barcelona was freely agreed between the two clubs and therefore he could have never breached his employment contract(s) with Santos.

19. *The DRC equally acknowledged Santos' argument that its "contractual claims are not based on the 2011 Employment Agreement; they are based on the Transfer Agreement. (…) Santos' contractual claims are based on Swiss law and Swiss law principle should be used in determining Santos' compensation, not FIFA standards. Santos only expressed ad cautelam that, if FIFA considers that any compensation is due to Santos under Article 17 of the RSTP instead of under Swiss law, such compensation should follow the principle of full compensation, which is widely recognised by FIFA jurisprudence."*

20. *At this point, and before entering the analysis of the parties' arguments as to their substance, the Chamber deemed it important to clarify that it took note of the aforementioned argument of Santos, however, its competence – as well as that of the Players' Status Committee – is delimited by art. 22 of the Regulations and, accordingly, the DRC is only competent to deal with disputes between a club and a player – either under art. 22 lit. a) or b) – which are employment-related. Therefore, the part of Santos' claim lodged against the player and his new club, Barcelona, currently under analysis, shall be considered under the scope of the employment relationship between the player and Santos.*

21. *Having said that, the Chamber – in the scope of its competence as defined in art. 22 lit. a) of the Regulations – first referred to art. 13 of the Regulations ("Respect of contract") in accordance with which a contract between a player and a club may be terminated upon expiry of the term of the contract and by mutual agreement. Furthermore, the Chamber pointed out that the application of art. 17 of the Regulations ("Consequences of terminating a contract without just cause") is clearly limited to cases of breach – or inducement to breach – of an employment contract concluded between a club and a player, without just cause.*

22. *Therefore, considering the aforementioned as well as taking into account the fact that the employment contract concluded between the player and Santos was undisputedly terminated by mutual agreement, as an agreement for the player's transfer to Barcelona was negotiated and concluded by Santos inter alia on 31 May 2013, the Chamber determined that no breach of the first or of the second contracts in the sense of the Regulations had occurred and that therefore art. 17 of the Regulations is in casu not applicable.*

23. *In continuation and as for Santos' requests for sanctions against both the player and Barcelona on the basis of art. 18 of the Regulations and art. 62 of the Disciplinary Code, the DRC first deemed that, in view of the circumstances of the present case, the documentation provided by the parties and, in particular, the authorisation letter of 8 November 2011 (cf. point I.18 above), a breach of art. 18 par. 3 of the Regulations by the player of Barcelona could not be established. As to Santos' request for the application of disciplinary sanctions in accordance with art. 62 of the Disciplinary Code, the Chamber was eager to clarify that such request falls outside the scope of the present employment-related dispute and as a result cannot be assessed by the DRC.*

24. *Equally and referring to the request of the Claimant related to the payment of compensation for an alleged breach of the confidentiality clause included in the transfer agreement, the DRC established that such request lay outside the scope of an employment-related dispute and as a result cannot be assessed by the DRC.*

25. *Finally, the DRC referred to art. 18 par. 4 of the Procedural Rules and stressed that no procedural compensation shall be awarded in proceedings of the Players' Status*

Committee and the Dispute Resolution Chamber. As a result, the Chamber established that any request for reimbursement of costs in connection with the present proceedings has to be rejected, for lack of legal basis.

26. *In view of all the aforementioned, the DRC decided that the claim of Santos is rejected.*"

(iii) Case 17-00581, Santos v. Neymar da Silva (decided by the Single Judge of the FIFA PSC)

35. FIFA informed Santos that it had no competence to deal with its claim against Neymar da Silva in accordance with Article 6 (1) of the Procedural Rules. Santos, however, insisted that a decision be taken by FIFA on the basis of the arbitration clause included in the Transfer Agreement and in accordance with Article 22 lit. f) and 23 (1) of the RSTP.

36. On 28 June 2017, the Single Judge of the FIFA PSC rendered his decision (the "**Third Appealed Decision**"), by which it declared that "*1. The claim of the Claimant, Santos FC, is inadmissible. (...)*"

37. On 10 April 2018, FIFA communicated to the parties the grounds of the Third Appealed Decision, determining *inter alia* the following:

"2. *With regard to his competence, the Single Judge recalled that in accordance with art. 6 par. 1 of the Procedural Rules, "[P]arties are members of FIFA, clubs, players, coaches or licensed match agents". In this respect, the Single Judge pointed out that neither art. 6 par. 1 of the Procedural Rules nor any other provision in FIFA's complete regulatory framework provides the basis to establish its competence to hear disputes involving a private person, who is not a coach, a player or a licensed match agent.*

3. *In view of the above, the Single Judge concluded that he lacked the competence to enter the substance of the present matter due to the fact that the Respondent cannot be considered as a party in front of FIFA in the sense of art. 6 par. 1 of the Procedural Rules.*

4. *In addition and for the sake of good order, the Single Judge was eager to emphasise that the jurisdiction of FIFA's deciding bodies derives from the Regulations and the FIFA Statutes only, and not from private agreements between parties. In this respect, the Single Judge pointed out that clause 9 of the transfer agreement (cf. point I.5 above) contradicted art. 6 par. 1 of the Procedural Rules as well as art. 22 of the Regulations (in all their editions) and, consequently, it was to be considered as not applicable. The Single Judge further highlighted that, if the line of reasoning of the Claimant with regard to the competence of FIFA would be followed, then the Single Judge would be acting against FIFA's own Regulations, Procedural Rules and Statutes, i.e. the legal framework which defines his competence.*

(...)"

(iv) Case 17-00582, Santos v. Neymar Sport (decided by the Single Judge of the FIFA PSC)

38. FIFA informed Santos that it had no competence to deal with its claim against Neymar Sport in accordance with Article 6 (1) of the Procedural Rules. Santos, however, insisted that a decision be taken by FIFA on the basis of the arbitration clause included in the Transfer Agreement and in accordance with Articles 22 lit. f) and 23 par. 1 of the RSTP.

39. On 28 June 2017, the Single Judge of the FIFA PSC rendered his decision (the "**Fourth Appealed Decision**"), by which it declared that "*1. The claim of the Claimant, Santos FC, is inadmissible. (...)*"

40. On 10 April 2018, FIFA communicated to the parties the grounds of the Fourth Appealed Decision, determining *inter alia* the following:

"2. *With regard to his competence, the Single Judge recalled that in accordance with art. 6 par. 1 of the Procedural Rules, "[P]arties are members of FIFA, clubs, players, coaches or licensed match agents". In this respect, the Single Judge pointed out that neither art. 6 par. 1 of the Procedural Rules nor any other provision in FIFA's complete regulatory framework provides the basis to establish its competence to hear disputes involving a company.*

3. *In view of the above, the Single Judge concluded that he lacked the competence to enter the substance of the present matter due to the fact that the Respondent cannot be considered as a party in front of FIFA in the sense of art. 6 par. 1 of the Procedural Rules.*

4. *In addition and for the sake of good order, the Single Judge was eager to emphasise that the jurisdiction of FIFA's deciding bodies derives from the Regulations and the FIFA Statutes only, and not from private agreements between parties. In this respect, the Single Judge pointed out that clause 9 of the transfer agreement (cf. point I.5 above) contradicted art. 6 par. 1 of the Procedural Rules as well as art. 22 of the Regulations (in all their editions) and, consequently, it was to be considered as not applicable. The Single Judge further highlighted that, if the line of reasoning of the Claimant with regard to the competence of FIFA would be followed, then the Single Judge would be acting against FIFA's own Regulations, Procedural Rules and Statutes, i.e. the legal framework which defines his competence.*

(...)"

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

41. On 30 April 2018, Santos lodged a statement of appeal with the Court of Arbitration for Sport ("CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration and Mediation Rules ("Code") directed against Barcelona, Neymar Junior, Neymar da Silva and Neymar Sport with respect to the four Appealed Decisions. In its statement of appeal Santos nominated Mr. Ulrich Haas, Professor in Zürich, Switzerland, as arbitrator. This procedure was initiated under the reference *CAS 2018/A/5725*.

42. On 30 April 2018, Neymar Junior lodged a statement of appeal with the CAS in accordance with Articles R47 and R48 of the Code directed against Santos and FIFA with respect to the Second Appealed Decision. This procedure was initiated under the reference *CAS 2018/A/5726*.

43. On 1 May 2018, Barcelona lodged a statement of appeal with the CAS in accordance with Articles R47 and R48 of the Code directed against FIFA and Santos and naming Neymar Junior as interested party with respect to the Second Appealed Decision. In its statement of appeal Barcelona nominated Mr. Efraim Barak, Attorney-at-law in Tel Aviv, Israel, as arbitrator. This procedure was initiated under the reference *CAS 2018/A/5727*.

44. On 1 May 2018, Barcelona lodged a statement of appeal with the CAS in accordance with Articles R47 and R48 of the Code directed against FIFA and Santos with respect to the First Appealed Decision. In its statement of appeal Barcelona nominated Mr. Efraim Barak, Attorney-at-law in Tel Aviv, Israel, as arbitrator. This procedure was initiated under the reference *CAS 2018/A/5728*.

45. On 11 May 2018, Neymar Junior informed the CAS Court Office that it nominated Mr. Efraim Barak, Attorney-at-law in Tel Aviv, Israel, as arbitrator in case *CAS 2018/A/5726*.

46. On 11 May 2018, Santos requested an extension of the time limit to file its appeal brief in case *CAS 2018/A/5725*.

47. On 14 May 2018, the CAS Court Office invited the parties to state whether they agree to submit those four appeals to the same Panel and informed them that, in the absence of agreement between the parties, the President of the CAS Appeals Arbitration Division shall decide.

48. On 17 May 2018, FIFA informed the CAS Court Office that it did not object to the submission of all appeals to the same Panel and that it did not oppose to the nomination of Mr. Efraim Barak and of Mr. Ulrich Haas by the other parties.

49. On 17 May 2018, Barcelona wrote to the CAS Court Office and noted that Santos filed one statement of appeal directed against all parties with respect to four different FIFA decisions, even though Barcelona was not a party to two of the four FIFA proceedings and, as a result, Barcelona could not comment or agree on submitting the appeals to the same Panel, until the procedural framework for the Santos' appeal is clear.

50. On 18 May 2018, the CAS Court Office informed the parties that, in view of Santos having filed one single statement of appeal against the four Appealed Decisions and named the respondents altogether, it was not for the CAS Court Office to determine which respondent is concerned by which decision(s). The CAS Court Office further invited Barcelona to comment on whether it agreed to submit the appeals to the same Panel and indicated that, once a decision is made on that matter, Barcelona could make submissions in its answer to the matter *CAS 2018/A/5725* that it cannot be considered as a party to the extent that some of the Appealed Decisions are concerned.

51. On 18 May 2018, Barcelona wrote to the CAS Court Office stating that the filing of one statement of appeal by Santos in case *CAS 2018/A/5725* against four different FIFA decisions that involve more than four different parties raises issues of admissibility and, therefore, it reserved its rights in this respect and informed the CAS Court Office that, at that moment in time, it could not agree to submit the different appeals to the same Panel. Barcelona further requested that the proceedings be suspended in cases *CAS 2018/A/5727* and *CAS 2018/A/5728*, until certain decisions are taken in respect of the procedural framework of the different appeals.

52. On 18 May 2018, Neymar da Silva and Neymar Sport wrote to the CAS Court Office stating that they were not parties to the FIFA proceedings that resulted in the Fourth and the Third Appealed Decision respectively. They also contested the admissibility of the appeal of Santos and their inclusion as parties in CAS proceedings due to Article 6 (1) of the FIFA Rules Governing the Procedures of the PSC and the DRC and, in addition, raised a series of procedural matters including that the obligation of the respondents in case *CAS 2018/A/5725* to jointly nominate an arbitrator is a violation of their procedural rights, that their joint nomination as respondents by Santos is a breach of confidentiality of the FIFA and CAS proceedings and that they lack standing to be sued. Said parties requested to be allowed to express their position on whether they agreed to submit the different appeals to the same Panel or not at a later date and only after their aforementioned requests were denied by the CAS.

53. On 18 May 2018, Neymar Junior wrote to the CAS Court Office and contested the admissibility of Santos' appeal. Neymar Junior also claimed that the obligation of the respondents in case *CAS 2018/A/5725* to jointly nominate an arbitrator is a violation of their procedural rights, and that their joint nomination as respondents by Santos is a breach of confidentiality of the FIFA and CAS proceedings. Neymar Junior requested to be allowed to express his position on whether

he agreed to submit the different appeals to the same Panel or not at a later date and only after his aforementioned requests were denied by the CAS.

54. On 18 May 2018, Santos wrote to the CAS Court Office stating that it agreed to the different appeals being submitted to the same Panel. As to the admissibility of its appeal against four FIFA decisions, Santos argued that "*Santos filed only one procedure before FIFA since it was of the opinion that all the respondents acted together and carried out the same plan to harm the Brazilian club. The first claim was only separated in four cases due to specific provisions related to the jurisdiction of the FIFA Judicial Bodies. Notwithstanding, all the procedures are related to the same transfer agreement and shall be dealt with by the same Panel in the appeal before the CAS. Furthermore, all the Parties have indicated the same arbitrator to act in all the procedures. Therefore, we are of the opinion that the same Panel shall deal with all the procedures initiated by the Parties, because the facts are the same, the parties are the same, the arbitrators are the same and, moreover, in order to avoid contradictory decisions.*"

55. On 22 May 2018, the CAS Court Office notified to the parties a letter from Santos' president, Mr. Jose Carlos Peres, which stated that "*Santos FC dismissed the law firm CCLA on 11 May 2018 and we are hiring new lawyers to represent Santos FC (...) Furthermore, any correspondence sent by that firm since 11 May 2018 should be disregarded*".

56. On 22 May 2018, the CAS Court Office further informed the parties that, in view of the procedural issues raised by them, the following was suggested:

"*- Santos Futebol Clube shall indicate which Respondent(s) are parties in each appeal against each four decisions. The CAS Court Office will then register three new procedures and it will be for the Panel, once constituted, to decide on the admissibility of such appeals.*

- Should Santos Futebol Clube maintain Neymar da Silva Santos and Neymar Sport e Marketing s/s Limitada as Respondents in at least one proceeding, the issue of the standing to be sued of the latter shall be decided by the Panel together with the merits of the matters as such issue, according to Swiss law, is a question of merits and not of jurisdiction or admissibility.

- All matters shall be submitted to the same Panel in accordance with Article R50 of the Code of Sports-related Arbitration (the "Code") – and not consolidated as per Article R52 of the Code. The coarbitrators shall be Prof. Dr. Ulrich Haas and Mr. Efraim Barak. The Panel will then decide whether to issue one single award for all matters or different awards.

- The following procedural calendar shall apply: (...)"

57. On 23 May 2018, FIFA wrote to the CAS Court Office stating that, in principle, it did not oppose the procedural guidelines proposed by the CAS, related in particular to the general appeal lodged by Santos apparently against four different FIFA decisions. FIFA also stated that "*we adhere to the objection of Mr. Neymar da Silva Santos Junior and of FC Barcelona to the admissibility of the "general" statement of appeal of Santos Futebol Clube (CAS 2018/A/5725), which we equally deem not to meet the strict formal requirements of art. R48 of the CAS Code.*"

58. On 24 May 2018, Barcelona wrote to the CAS Court Office stating that it agreed to the procedural steps proposed in the CAS Court Office letter of 22 May 2018 and it also agreed to submit the different procedures to the same Panel. Barcelona further requested that all correspondence, including the 11 May 2018 letter of Santos' former representative to extend the deadline to file the appeal brief, be disregarded and, as a result, in the lack of an effective and existing extension request, that Santos' appeal in case *CAS 2018/A/5725* be deemed to be withdrawn as per Article R51 of the Code.

59. On 24 May 2019, Neymar Junior, Neymar da Silva and Neymar Sport informed the CAS Court Office that they agreed to the procedural directions set forth in the CAS Court Office letter of 22 May 2018. They also stated that, in line with the letter of Barcelona of 24 May 2018, they considered that the request for extension of the time limit to file the appeal brief had been effectively withdrawn by the president of Santos.

60. On 25 May 2018, the CAS Court Office wrote to the parties stating that, since Santos had failed to indicate, whether it agreed with the procedural guidelines proposed by the CAS Court Office letter of 22 May 2018, the procedural issues shall be submitted to the President of the CAS Appeals Arbitration Division, or her Deputy, for determination. The CAS Court Office further invited Santos to reply until 30 May 2018 to the objections raised by the other parties as to the admissibility of Santos' appeal and to comment on the matter of Santos' former counsel's request for an extension of the time limit to file the appeal brief and the subsequent Santos' request to disregard all correspondence of its former counsel since 11 May 2018.

61. On 31 May 2018, the CAS Court Office informed the parties that its letter of 25 May 2018 had remained unanswered by Santos and, as a result, further instructions from the President of the CAS Appeals Arbitration Division, or her Deputy, would follow in due course.

62. On 1 June 2018, Mr. Bernardo Palmeiro, Attorney-at-law of 14 Sports Law, Porto, Portugal, wrote to the CAS Court Office on behalf of Santos stating that he was retained by the latter with respect to the present proceedings and submitted the relevant power of attorney which was dated 18 May 2018. He requested several items of correspondence exchanged between the parties and the CAS Court Office until that time. He also stated Santos' agreement to the procedural guidelines proposed by the CAS Court Office letter of 22 May 2018 and further wrote that "*[t]he Respondents in each of the four appeals shall be those already identified in the joint statement of appeal: FC Barcelona, Neymar da Silva Santos Junior, Neymar da Silva Santos, Neymar Sport e Marketing s/s Limitada, FIFA*". He further contested the other parties' objection as to the matter of Santos' former counsel's request for an extension of the time limit to file the appeal brief, stating that (i) Santos had given express instructions to its former counsel to request the extension of time (thereby submitting relevant correspondence), (ii) Santos' president was mistaken as to the date that the former counsel was dismissed, (iii) the letter of the president of Santos clearly refers "*only to correspondence since that date (not of that date)*", and (iv) Santos' former counsel had a valid power or attorney at the time of the extension request. Additionally, he requested another extension of the time limit to file the Santos' appeal brief.

63. On 6 June 2018, FIFA wrote to the CAS Court Office stating its objection to the admissibility of Santos' request for an extension of the deadline to file the appeal brief.

64. On 6 June 2018, Neymar Junior, Neymar da Silva and Neymar Sport equally objected to the admissibility of Santos' request for an extension of the deadline to file the appeal brief and further put on the record several complaints against Santos' procedural conduct and requested that a time limit be set of only three days to file the Santos' appeal brief.

65. On 6 June 2018, Barcelona wrote to the CAS Court Office stating that Santos' letter of 1 June 2018 was sent after the expiry of the time limit set by the CAS Court Office to Santos on 25 May 2019. Moreover, Barcelona indicated that Santos' new counsel had apparently been retained by Santos already since 18 May 2018 and, consequently, there is no justification for Santos' failure to timely file its observations pursuant to the CAS Court Office letter of 25 May 2019. At any case, Barcelona subscribed to the content of the FIFA letter of 6 June 2018 and stated that pursuant to Article R51 of the Code, Santos' appeal should be deemed to have been withdrawn and that Santos' extension request included in its letter of 1 June 2018 is inadmissible as it was submitted past the 10-day time limit to file the appeal brief. Barcelona also requested

that the CAS Court Office fix a hard deadline for Santos to file its appeal brief in case *CAS 2018/A/5725*.

66. On 7 June 2018, the CAS Court Office informed the parties that all pending procedural issues were being submitted to the CAS Appeals Arbitration Division President for her consideration.

67. On 14 June 2018, the CAS Court Office informed the parties that all four pending appeals shall be referred to the same Panel in accordance with Article R50 of the Code with Mr. Ulrich Haas and Mr. Efraim Barak acting as co-arbitrators. CAS Court Office further stated that it will be for the Panel, once constituted, to decide on the admissibility of the Santos' appeal, on the issue of Santos' request for an extension to file the appeal brief and on the next steps of the proceedings and that, in the meantime, all deadlines shall be suspended.

68. On 30 July 2019, the CAS Court Office informed the parties that the Panel appointed to decide this matter had been constituted as follows:

President: Mr. Sofoklis P. Pilavios, Attorney-at-Law in Athens, Greece
Arbitrators: Mr. Ulrich Haas, Professor in Zürich, Switzerland
Mr. Efraim Barak, Attorney-at-law in Tel Aviv, Israel

69. On 9 August 2018, the CAS Court Office informed the parties that the procedural issues raised by Barcelona, Neymar Junior, Neymar da Silva, Neymar Sport and FIFA with respect to the admissibility of the appeal of Santos and Santos' request for an extension to file its appeal brief in case *CAS 2018/A/5725* are dismissed and that the reasons for such decision shall be provided in the final award. The CAS Court Office further stated that Santos was granted a final deadline of 7 days to file its appeal brief and that Barcelona, Neymar Junior, Neymar da Silva, Neymar Sport and FIFA were invited to file their respective answers within 20 days from the receipt of Santos' appeal brief.

70. On 16 August 2018, Santos filed its appeal brief in case *CAS 2018/A/5725*.

71. On 21 August 2018, the CAS Court Office stated that, in view of the respective statements of appeal and the parallel conduct of the present proceedings, Barcelona, Neymar Junior, Neymar da Silva, Neymar Sport and FIFA shall all file a single answer respectively to Santos' appeal brief.

72. On 22 and 23 August 2018, Barcelona, Neymar Junior, Neymar da Silva, Neymar Sport and FIFA requested an extension of the time limit to file their respective answers, in view of the exceptionally long time available to Santos to file its appeal brief. Santos objected to such request.

73. On 28 August 2018, the CAS Court Office informed the aforementioned parties that the time limit to file their respective answers had been extended for an additional 50 days.

74. On 17 October 2018, Neymar Junior, Neymar da Silva and Neymar Sport objected once more to Santos filing one appeal brief and thereby creating "*a de facto unilateral consolidation of 4 (four) different appeals involving different parties and decisions, a fact which was unanimously contested by all respondents, since the moment when this procedure was set in motion*" and stated that even though the CAS Court Office informed the parties of the Panel's decision to reject their procedural objections on 9 August 2018, it was their understanding that the matters raised by the same parties' (Neymar Junior, Neymar da Silva and Neymar Sport) letter of 18 May 2018 "*were still not addressed by the Panel and are still problematic within the context of these proceedings*". In addition, and particularly with respect to the CAS jurisdiction to hear the Santos' appeal in so far it was directed against them, Neymar da Silva and Neymar Sport

contested said jurisdiction, on the basis that they fall outside the scope of the FIFA rules and in particular Article 22 of the RSTP and, consequently, they cannot be bound to an arbitration clause included in the FIFA rules and regulations. In this context, they requested that four separate arbitration proceedings be opened with respect to the Santos' appeal and the advance on costs be calculated accordingly and that CAS then should proceed with issuing a preliminary award on jurisdiction pursuant to Article R55 of the Code as far as the proceedings relating to said parties (Neymar Junior, Neymar da Silva and Neymar Sport) are concerned.

75. On 18 October 2018, the CAS Court Office informed the parties that the procedure *CAS 2018/A/5725* shall not be split in view of the fact that Santos had indicated that all respondents are to be considered as respondents with respect to all Appealed Decisions. Furthermore, the parties have agreed that all matters be submitted to the same Panel and it will be for the latter to determine the allocation of costs in its final award. Lastly, the CAS Court Office wrote to the parties that issues such as standing to be sued and/or FIFA's jurisdiction to deal with the matter in the first place are substantive issues and concern the merits and, therefore, their request for bifurcation of the proceedings shall be dismissed and their deadline to file their answers remain applicable.

76. On 18 October 2018, FIFA filed its answer in this matter.

77. On 23 October 2018, Barcelona wrote a letter to the CAS Court Office stating that it "*withdraws with immediate effect its appeals against the FIFA decisions with reference numbers Iza 15-01255 (Dispute Resolution Chamber) and Iza-01254 (Players' Status) lodged with the Court of Arbitration for Sport and registered by the CAS under the following numbers: CAS 2018/A/5727 and CAS 2018/A/5728.*"

78. On 24 October 2018, Neymar Junior, Neymar da Silva and Neymar Sport objected to the contents of the CAS Court Office letter of 18 October 2018 and requested that their deadline to file their answers be suspended, they be granted access to the files related to the FIFA proceedings to which they were not parties and be allowed, within a reasonable deadline, to file detailed submissions on jurisdiction and other procedural and preliminary issues, before the Panel issue a preliminary award on jurisdiction pursuant to Article R55 of the Code.

79. On 25 October 2018, Barcelona equally requested copies of the file related to the FIFA proceedings to which it was not a party and the suspension of the time limit to file its answer.

80. On 13 November 2018, the CAS Court Office sent a letter to the parties including the following instructions from the Panel:

"*(a) The request to be granted a deadline to file submissions on jurisdiction, in order to issue a preliminary decision as per Article R55 of the Code of Sports-related Arbitration (the "Code").*

As already indicated in the CAS Court Office letter of 18 October 2018, FIFA's jurisdiction to hear the appealed cases and render the appealed decisions in the first place is an issue on the merits. Furthermore, the Panel, in majority, has decided not to bifurcate the issues on the merits.

(b) The requests of Neymar da Silva Santos Junior, Neymar da Silva Santos, Neymar Sport e Marketing s/s Limitada and of FC Barcelona to be allowed access to the FIFA case files to which they were not parties.

Such requests are denied in view of the fact that Neymar da Silva Santos Junior, Neymar da Silva Santos, Neymar Sport e Marketing s/s Limitada and FC Barcelona can file their Answers with respect to the decisions to which they were parties. Should the Parties and/or the Panel

then deem that some documents with respect to some appealed decisions were relevant to ones' appeal, a second round of submissions may be ordered."

The CAS Court Office further invited the aforementioned parties to file their respective answers within five days.

81. On 19 November 2018, Barcelona, Neymar Junior, Neymar da Silva and Neymar Sport filed their answers in this matter.

82. On 26 November 2018, the CAS Court Office invited the parties to comment on whether they prefer a hearing to be held.

83. On 29 November 2018, the Panel issued two awards on costs in cases *CAS 2018/A/5727* and *CAS 2018/A/5728* confirming that the respective proceedings were terminated and the cases were deleted from the CAS roll. As a result the present proceedings are now styled *CAS 2018/A/5725 Santos Futebol Clube v. FC Barcelona, Neymar da Silva Santos Junior, Neymar da Silva Santos, Neymar Sport e Marketing s/s Limitada & FIFA & CAS 2018/A/5726 Neymar da Silva Santos Junior v. Santos Futebol Clube & FIFA*.

84. On 4 December 2018, FIFA wrote to the CAS Court Office stating that, in view of the detailed submissions presented in the matters at hand, it is of the opinion that the holding of a hearing is not necessary.

85. On 4 December 2018, Barcelona wrote to the CAS Court Office that it did not consider the holding of a hearing necessary.

86. On 7 December 2018, Santos wrote to the CAS Court Office stating that a hearing is not necessary.

87. On 10 December 2018, Neymar Junior, Neymar da Silva and Neymar Sport informed the CAS Court Office that they do not deem a hearing necessary.

88. On 20 December 2018, the CAS Court Office informed the parties that the Panel had decided to hold a hearing.

89. On 14 January 2019, Santos requested that Barcelona and Neymar Junior be ordered to translate some of the exhibits they submitted together with their respective answers into English.

90. On 23 January 2019, Barcelona wrote to the CAS Court Office stating that it will provide certified translations for some of the requested exhibits and provided its comments for the remaining ones.

91. On 24 January 2019, Neymar Junior objected to Santos' request of 14 January 2019 as the exhibits at issue were in the Portuguese language, which is the official language both in the place of domicile of Santos and of its legal counsel. Neymar Junior further requested that Santos be ordered to provide a translation of several of Santos' exhibits filed with the appeal brief, which contain text or videos in the Spanish language. The issue of the subsequent dispute regarding the admissibility of the submitted translated exhibits by Santos is addressed in the relevant section of the award below.

92. On 4 March 2019, Santos withdrew its request for sporting sanctions against Neymar Junior.

93. On 22 May 2019, a hearing took place at the CAS Court Office in Lausanne, Switzerland.

94. The Panel sat in the following composition:

President:	Mr. Sofoklis P. Pilavios, Attorney-at-Law in Athens, Greece
Arbitrators:	Mr. Ulrich Haas, Professor in Zürich, Switzerland
	Mr. Efraim Barak, Attorney-at-law in Tel Aviv, Israel

95. The Panel was assisted by Ms Delphine Deschenaux-Rochat, CAS Counsel.

96. The following persons attended the hearing:

- Santos was represented by Mr. Nicolas Zbinden and Mr. Anton Sotir, Counsel.

- Barcelona was represented by Mr. Wouter Lambrecht, In-House Counsel, Mr. Micael Totaro and Mr. Marc Baumgartner, Counsel.

- Neymar Junior was represented by Mr. Marcos Motta, Mr. Stefano Malvestio, and Mr Udo Seckelmann, Counsel.

- Neymar da Silva and Neymar Sport were represented by Mr. Marcos Motta, Mr. Stefano Malvestio and Mr Udo Seckelmann, Counsel.

- FIFA was represented by Ms Isabel Falconer, Ms Laura Römer and Ms Erika Montemor Ferreira, In-House Counsel.

97. At the outset of the hearing, the parties confirmed that they did not have any objection as to the constitution and composition of the Panel.

98. At the conclusion of the hearing, the parties confirmed that their right to be heard and to be treated equally in the present proceedings before the Panel had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

99. The following summarises the Parties' arguments and submissions and does not necessarily address each point advanced by the Parties. The Panel has nonetheless carefully considered all the submissions made by the Parties in the course of these proceedings, whether or not there is specific reference to them in the following summary.

100. The submissions of Santos, in essence, may be summarised as follows:

- The Authorisation Letter did not grant the Player permission to enter into an employment contract or other agreement with Barcelona or other clubs, or to receive money from them. Its purpose was to merely allow him to start discussions with other football clubs regarding an eventual transfer as of 2014, which would have to respect the Player's employment contract with Santos. By means of the Authorisation Letter, Santos did not waive its right to receive transfer compensation from an eventual transfer of the Player, did not authorise the Player to enter into a binding employment contract with another club, did not consent to the Player receiving payments from another club to secure his move as a free agent, did not allow the Player to sign a contract to the effect that a transfer to a club other than Barcelona or a renewal of his employment relationship with Santos would be prevented and did not provide for an exclusion of Santos from the negotiation process.

- The Free Agent Agreement is, in fact, an agreement governing the payments received by – in reality – Neymar Junior, as a direct and necessary consequence of the transfer of his federative and economic rights to Barcelona. Such payments need to be taken into account in order to calculate the Player's true market value and, consequently, the value of his transfer from Santos to Barcelona.

- The First Barcelona Contract contains all the *essentialia negotii* that are necessary for a valid and binding employment contract and was concluded between its parties while Neymar Junior was still under contract with Santos for another 2,5 years and without Santos knowing about it and, therefore, constitutes a breach of Article 18 (3) of the RSTP. Based on the FIFA jurisprudence, Barcelona could not rely on the terms of the Authorisation Letter to be exempt from its obligation to contact Santos before entering into contractual negotiations with a player. In addition, Neymar Junior, through Neymar Sport, received a payment of EUR […] from Barcelona, which was only disguised as a loan, while it was, in fact, an advance of the Player's sign-on fee from Barcelona. Further than that, Barcelona and Neymar Junior coming together to negotiate the future transfer in October 2011 in Miami, which lead to the conclusion of the Free Agent Agreement and the First Barcelona Contract, constitutes an inducement of the Player to breach his then existing contractual relationship with Santos.

- It is true that the Player's contract with Santos was mutually terminated on 31 May 2013 and, as a result, this is not a typical Article 17 RSTP dispute. However, the breach of his employment contract with Santos by Neymar Junior, and the inducement to such breach by Barcelona, on at least two occasions (in October 2011 during the Miami meetings and in November 2011 by concluding the Free Agent Agreement and the First Barcelona Contract) were the cause of financial damage to Santos which has to be compensated.

- Last but not least, Santos submits that Neymar Junior, Barcelona and Neymar Sport violated Articles 4.2 and 5 of the Transfer Agreement, according to which Neymar Junior and Neymar Sport were to receive no payment in connection with the former's transfer to Barcelona, and Santos and Barcelona undertook to pay them no amounts to that regard.

- In essence, Santos claims that Barcelona, Neymar Junior, Neymar da Silva and Neymar Sport violated the terms of the Authorisation Letter and the provisions of the FIFA RSTP and were in breach of the Player's employment contract with Santos and of the Transfer Agreement. Such conduct on their part resulted in Santos being unable to renew its employment contract with Neymar Junior or to negotiate his transfer with other clubs. According to Articles 97 and 98 of the Swiss Code of Obligations, the Respondents are obliged to compensate Santos for the loss or damage it incurred as a result of the "contractual fraud" they committed against Santos. In particular, Santos was unable to receive a fair (the full) market price for the transfer of the Player and is entitled to compensation which, taking into account the price actually paid by Barcelona to secure the Player's transfer, either calculated under Article 17 FIFA RSTP or under Swiss law, amounts to EUR […], for which Barcelona, Neymar Junior, Neymar da Silva and Neymar Sport are jointly and severally liable.

- As a result, Santos requests the CAS to rule that:

  "*(1) The decisions of the FIFA Players' Status Committee (Iza 17-00581 and Iza 17-00582) and FIFA Dispute Resolution Chamber (ref. Iza 15-01255) are set aside.*

  (2) The decision of the FIFA Players' Status Committee (ref. Iza 15-01254) is confirmed with respect to the admissibility of the claim and the obligation of Barcelona to pay Santos

the amount of EUR […] plus 5% interest p.a., from 31 December 2015 until the date of the effective payment, and the remaining part of the decision is set aside.

(3) Barcelona and Neymar da Silva Santos Junior violated Article 18 para. 3 of the FIFA Regulations.

(4) Neymar da Silva Santos Junior breached the Second Santos Employment Contract during the protected period.

(5) Barcelona induced Neymar da Silva Santos Junior to breach the Second Santos Employment Contract during the protected period.

(6) Barcelona, Neymar da Silva Santos Junior, Neymar da Silva Santos and Neymar Sports e Marketing S/S Limitada breached the Transfer Agreement.

(7) Barcelona, Neymar da Silva Santos Junior, Neymar da Silva Santos and Neymar Sports e Marketing S/S Limitada committed contractual fraud in relation to the Transfer Agreement.

(8) Barcelona shall be liable to pay Santos damages relating to the contractual fraud, the violation of the FIFA Regulations and the breach of the Transfer Agreement, in an amount up to EUR […].

(9) Neymar da Silva Santos Junior shall be liable to pay Santos damages relating to the contractual fraud, the violation of the FIFA Regulations, the breach of the Second Santos Employment Contract and the breach of the Transfer Agreement, in an amount up to EUR […].

(10) Neymar da Silva Santos shall be liable to pay Santos damages relating to the contractual fraud and the breach of the Transfer Agreement, in an amount up to EUR […].

(11) Neymar Sports e Marketing S/S Limitada shall be liable to pay Santos damages relating to the contractual fraud and the breach of the Transfer Agreement, in an amount up to EUR […].

(12) Barcelona, Neymar da Silva Santos Junior, Neymar da Silva Santos and Neymar Sports e Marketing S/S Limitada shall be jointly and severally liable to pay Santos damages in the amount of EUR […].

(13) Santos is granted an award for interest on all awarded damages at a rate of 5% per annum, from 1 June 2013 until the date of full payment.

(14) Neymar da Silva Santos Junior shall be banned from playing in official matches for a period of six months.

(15) Barcelona shall be banned from registering any new players for two consecutive and entire registration periods.

(16) Santos is granted a contribution towards its legal costs and the costs of the arbitration."

101. The submissions of Barcelona, in essence, may be summarized as follows:

- Barcelona claims that not only Santos knew the purpose of the Authorisation Letter, it was also aware of the Free Agent Agreement being negotiated between Barcelona, Neymar Junior and N&N Consultoria, through Mr. Eduardo Musa, a Santos' employee, and of it

having been concluded, through numerous press reports. The Free Agent Agreement was, in fact, perfectly in line with the Authorisation Letter. Barcelona, in accordance with industry practices, had agreed to pay a significant sign-on fee to Neymar Junior since he would be joining Barcelona as a free agent.

- After the Transfer Agreement and since Neymar Junior was not transferred as a free agent to Barcelona, the parties to the Free Agent Agreement decided to amend it. However, the financial compensation due to Neymar Junior remained unchanged as per the terms of the Free Agent Agreement and Barcelona and N&N agreed that the latter was to receive EUR […], as initially promised, taking into account the payment of EUR […] already made in 2011.

- Article 18 (3) of the RSTP does not serve to protect the right of a club to renew its employment relationship with a player, nor does it have as its objective to protect the possibility of a club to negotiate the transfer of a player to interested third clubs. Moreover, the Player in the case at hand was issued an Authorisation Letter and, additionally, there were no overlapping contracts binding him to two different clubs and no breach of the Player's employment contract with Santos. Further than that, Article 18 (3) cannot apply, as the contractual stability between Santos and Neymar Junior has not been affected, the employment agreement between them having been terminated by mutual consent.

- Barcelona contests the interpretation of the Authorisation Letter put forward by Santos. Its meaning, since it is a unilateral declaration of one party and not an agreement, is to be inferred, first and foremost, by the analysis of its wording. Barcelona disputes the translation of the Authorisation Letter by Santos and claims that "*(...) a iniciar, desde já, tratativas com qualsquer entidades (...) podendo concretizar eventual transferência*" is to be translated as "*to begin, as of now, negotiations with any entity (...), being entitled to concretise an eventual transfer*", which means that there existed an authorisation by Santos to the Player to immediately negotiate and to conclude a future transfer, that would take place after the term of the Player's employment relationship with Santos. In addition, the express reference to Article 18 (3) shows that Santos waived the protection offered by said provision and expressly authorised Neymar Junior to negotiate and conclude a free agent agreement earlier than the six-month limit.

- Barcelona did not breach clauses 4.2 and 5 of the Transfer Agreement. Said clauses, in light of the provisions of the Memorandum signed between the Parties, set out merely the agreement of the Parties on a waiver of rights by Neymar Junior and Neymar Sport to claim any amounts from Santos and Barcelona in relation to the amounts to be paid under the Transfer Agreement. They do not, however, prohibit Barcelona from paying certain amounts to Neymar Junior and Neymar Sport outside the Transfer Agreement. In addition, clause 4.2 makes express reference to the existence of a "remuneration agreed with FC Barcelona", which is to satisfy Neymar Junior and Neymar Sport's claims in full. As such, the latter parties in fact waived any amounts they may have been entitled to claim under their separate agreements with Santos.

- Barcelona did not commit civil fraud in the sense of Article 28 of the Swiss Code of Obligations. Santos was perfectly aware of the existence of an agreement between Neymar Junior and Barcelona, this agreement had been authorised by Santos by means of the Authorisation Letter and Santos had a clear idea of Neymar Junior's market value at the time of the Transfer Agreement, as Santos was clearly aware both of the circumstances surrounding the transfer, as well as of the interest of other clubs for the Player. Additionally, there is no causal link between the alleged intentional deceptive behaviour and the conclusion of the Transfer Agreement, whereas, the claim at hand is time-barred under Swiss law. At any case, Santos did not suffer any damages as it did not prove (i) that

Barcelona would have paid more than the amount stipulated in the Transfer Agreement, and (ii) that Neymar would have been transferred to another club.

- To sum up, Barcelona claims that Santos, while aware of the negotiations between the Parties and the existence of the Free Agent Agreement, agreed to the Player's transfer, freely signed the Transfer Agreement and received the transfer fee of EUR […] . In contrast with its previous attitude and since almost two years have elapsed after the Transfer Agreement, however, Santos has been trying to increase the agreed compensation, by submitting a groundless claim in front of FIFA.

- As a result, Barcelona requests the CAS to:

  "*a. Dismiss all prayers for relief submitted by Santos FC and in particular:*

  1. Decide that FC Barcelona did not violate FIFA Regulations;

  Alternatively:

  Return the case to FIFA to take the appropriate decision regarding a potential disciplinary sanction;

  2. Decide that FC Barcelona did not breach the Transfer Agreement;

  3. Decide that FC Barcelona did not commit a civil fraud and that in any event any claim was time-barred;

  4. In any event, decide that Santos FC has not suffered nor proven any damage;

  Alternatively:

  Allow FC Barcelona to provide a complete written submission regarding its right of recourse against other Respondents in application of art. 50 et seq. SCO;

  b. Order Santos FC to pay the costs of the present arbitration;

  c. Order Santos FC to pay the legal fees and expenses of FC Barcelona, to be determined at a later stage of the proceedings."

102. The submissions of FIFA, in essence, may be summarised as follows:

- Santos' filing of a collective appeal referring to four different decisions of FIFA, without even indicating the specific respondents in each of the appeals, runs counter to Article R48 of the Code. The appeal is, therefore, not admissible. Moreover, Santos had displayed on more than one occasion a total disregard of CAS' procedural instructions and procedural fairness and respect of the Parties' equal rights to be heard.

- The procedural recklessness and bad faith displayed by Santos throughout the present proceedings has to be taken into consideration by the CAS Panel, when assessing the present matter, in particular as far as consequences related to said party's contribution towards the other parties' legal fees are concerned (quoting award in CAS 2016/A/4494).

- As to the substance of the matter, FIFA endorses the Appealed Decisions in their entirety. In addition, FIFA claims that the collective appeal of Santos not only fails to identify the contractual basis of the claims Santos has against each party, but also harms the Respondents' right of defence, as they must first identify which of the multiple arguments

raised by Santos relates to which decision. The appeal lacks substantial evidence of any type of concrete damage or of a logical causal connection between the parallel agreements and Santos' request for damages.

- The appeal related to case with Ref. no. 15-01254 is a purely contractual dispute between Santos and Barcelona and FIFA has no standing to be sued as FIFA does not have any stake in the dispute and nothing is being sought against it in the appeal.

- With respect to the case with Ref. no. 15-01255, FIFA claims that Santos' argumentation with regard to the extent of the Authorisation Letter and the real intention behind its issuance is irrelevant to the dispute, as it does not possibly entail a breach of the employment contract leading to the application of the financial and sporting consequences of Article 17 of the RSTP, as argued by Santos. There is no possibility of applying sanctions in accordance with Article 17 (3) and (4) of the Regulations or of ordering the payment of compensation to the former club, in case of a violation of Article 18 (3). This situation would merely entail the possible application of disciplinary sanctions against the parties in breach by the FIFA Disciplinary Committee.

- Concerning the decisions with Ref. no. 17-00581 and 17-00582, FIFA states that the jurisdiction of its deciding bodies derives from its Regulations and Statutes only and not from agreement between private parties, which cannot override Article 22 of the Regulations or Article 6 of the Procedural Rules, making it somehow possible that Neymar da Silva or the company become parties in the dispute and are held jointly and severally liable for the payment of compensation awarded to Santos, if any. The outcome of criminal proceedings in Brazil or in Spain can by no means be adopted in the sports-related dispute at hand.

- As a result, FIFA made the following requests to the CAS:

  "*1. In light of the above considerations, we insist that the decision passed by the DRC on 30 June 2017 with Ref. no. 15-01255 Club Santos FC, Brazil / Player Neymar da Silva Santos Junior, Brazil, & FC Barcelona, Spain as well as the decisions passed by the Single Judge on 28 June 2017 with Ref. no. 15-01254 Player Neymar da Silva Santos Junior, Brazil (Club Santos FC, Brazil / FC Barcelona, Spain), Ref. no. 17-00581 Club Santos FC, Brazil / Mr. Neymar da Silva Santos and Ref. no. 17-00582 Club Santos FC, Brazil / Neymar Sport Marketing) were fully justified. We therefore request that the present appeal(s) be rejected and the decisions taken by the DRC on 30 June 2017 and the Single Judge on 28 June 2017 be confirmed in their entirety.*

  2. Furthermore, all costs related to the present procedure(s) as well as the legal expenses of FIFA shall be borne by the Appellant."

103. The submissions of Neymar Junior, in essence, may be summarised as follows:

- CAS has no jurisdiction to hear the dispute at hand with respect to Neymar Junior as neither of the conditions of Article R47 of the Code is met. In the event that the dispute is submitted to CAS by Santos in application of the arbitration clause included in section 9 of the Transfer Agreement, such arbitration clause is not applicable *ratione personae* on Neymar Junior as he is not defined as "party" to the Transfer Agreement, is invalid, not applicable and manifestly void as it aims to subject to FIFA jurisdiction private parties that are not bound by the FIFA Rules and Regulations and is not applicable *ratione materiae* to the present dispute between Santos and Neymar Junior, as matters related to a potential breach of the Second Employment Contract between Santos and Neymar Junior lie within the exclusive jurisdiction of Brazilian courts.

- As to the merits, Neymar Junior submits that Santos' claim in front of FIFA is time-barred as more than two years have elapsed since the event giving rise to the dispute, namely the signing of the Memorandum of 24 May 2013, which was already a binding and final transfer agreement containing all the *essentialia negotii* for the transfer of the Player from Santos to Barcelona, and not the signing of the Transfer Agreement. In addition, Santos' claim in accordance with the Swiss law provisions on contractual fraud is also time-barred in accordance with Article 31 SCO, which provides for a one-year limitation period.

- The Authorisation Letter, which is the key element in this matter, entitled Neymar Junior to negotiate and enter into a pre-contract with any club he intended to, provided that he would respect the terms of his employment contract with Santos and that such contract would only be effective as of 2014. Neymar Junior never exceeded the terms of the Authorisation Letter and, as a result, the 2011 agreements he concluded with Barcelona, which would only take effect when the contractual relationship between Santos and Neymar Junior would end, are legitimate and Santos' claims have no basis. Contrary to Santos' efforts to diminish the importance of the Authorisation Letter, without it Neymar Junior would not have signed his Second Employment Contract with Santos. Moreover, a more correct translation of its content, than the one provided by Santos, is "*...negotiations with any national or international sports entity, being entitled to concretise the eventual transfer…*", as opposed to *"...discussions ... in order to concretise…"*. This means that the Authorisation Letter granted Neymar Junior the possibility to begin negotiations with any club and to concretise the eventual transfer provided that it took place after 2014 and his employment contract with Santos was respected. In fact, this was the interpretation adopted by the DRC in the Second Appealed Decision, in which the Authorisation Letter was considered as a waiver of Santos' rights under Article 18 (3) of the RSTP.

- In this respect, Neymar Junior submitted two expert reports by Dr Jan Kleiner and Mr. Marc Cavaliero, Attorneys-at-law of Kleiner & Cavaliero, Zurich, Switzerland and by Mr. Gianpaolo Monteneri, Attorney-at-law of Monteneri Sports Law, Zurich, Switzerland, respectively. In essence, the experts are in agreement that by issuing the Authorization Letter, Santos waived its rights under Article 18 (3) RSTP towards the Player and allowed the Player to conclude an employment contract with a new club after the end of the term of his employment relationship with Santos; that the Free Agent Agreement, the First Barcelona Contract and the Loan Contract do not constitute a violation of the terms of the Authorisation Letter or of the FIFA rules; that the Player was not obliged under the applicable FIFA rules to disclose the content of the aforementioned agreements or any payments made by Barcelona to Santos; that the Player did not breach his employment contract with Santos; that the Authorisation Letter does not contain any provision as to whether the payment of EUR […] to N & N Consultoria is permissible or not and neither do the applicable FIFA rules, as they contain no provisions to regulate the payments potentially made by the new club of a player during the validity of his existing contract to his current club; and that there are no provisions in the FIFA rules that expressly prohibit the payment of the balance of EUR […] by Barcelona to N & N Consultoria after the entry into effect of the employment contract between the Player and Barcelona, *i.e.* at a time when the Player was no longer in a contractual relationship with Santos.

- Neymar Junior committed no breach of the terms of his employment contract with Santos, which was respected until the parties decided to mutually terminate it in view of the conclusion of the Transfer Agreement. Moreover, neither is a breach of Article 18 par. 3 of the RSTP on behalf of Neymar Junior to be found, as correctly established by the FIFA DRC. The conclusion of the 2011 Barcelona agreements does not constitute a breach of Neymar Junior's obligations arising from his contract with Santos or the RSTP. At any case, the violation of Article 18 par. 3 of the RSTP would entail sanctions of a disciplinary nature only and, in addition, it can never trigger the consequences established in Article 17 of the

RSTP, which applies only in the event of a premature termination of an employment relationship.

104. As a result, Neymar Junior requested CAS to:

(i) in his appeal in case *CAS 2018/A/5726*

"*a) Declare that Second Respondent wrongfully found First Respondent's claim as admissible since Second Respondent should have:*

a.1) Terminated proceedings or granted a stay until the competent Spanish and Brazilian courts have rendered final, binding and enforceable decisions in any and all proceedings might be pending domestically, all in order to void the risk of conflicting decisions;

a.2) Declared the claim lodged by First Respondent against Appellant as not admissible;

a.3) Rejected the claim lodged by First Respondent against Appellant pursuant to art. 25 par. 5 of the Regulations.

b) Order Respondents to reimburse the Appellant for legal expenses added to any and all FIFA and CAS administrative and procedural costs, already incurred or eventually incurred by the Appellant.";

and

(ii) in his answer in case *CAS 2018/A/5725* to issue

"a) an award dismissing the Appellant's claims in their entirety for lack of jurisdiction;

b) alternatively, in the event the Panel determines that it has jurisdiction:

b.1. an award declaring that FIFA wrongfully found Santos claim as admissible and annul the Second Appealed Decision;

b.2. an award dismissing the Appellant's claims in the merits for the reasons exposed in this Answer;

b.3. lastly, if the Appellant's claims are accepted, dismiss the claims of the Appellant against the Second Respondent and hold that the First Respondent is the sole debtor of any compensation to the Appellant;

c) order the Appellant to bear any and all CAS administrative and procedural costs, which have already been incurred or may eventually be incurred in connection with this arbitration;

d) grant Second Respondent a contribution towards his legal fees and other expenses incurred in connection with the proceedings equal to CHF 100,000.00 (one hundred thousand Swiss Francs), pursuant to Article R65.3 of the CAS Code;

e) such other relief as the Panel may deem appropriate."

105. The submissions of Neymar da Silva and Neymar Sport, in essence, may be summarised as follows:

- Neymar da Silva and Neymar Sport contested the filing by Santos of one appeal brief for four different Appealed Decisions, which led to the *de facto* consolidation of four different cases in the present matter.

- CAS has no jurisdiction to hear this matter as Neymar da Silva and Neymar Sport are not FIFA members and, therefore, are evidently not bound by the arbitration clause in favor of CAS included in the FIFA Statutes and Regulations. In addition, Neymar da Silva and Neymar Sport are not parties to the Transfer Agreement which contains the arbitration clause on which Santos relies. Neymar da Silva and Neymar Sport only sign the Transfer Agreement "*additionally*" *(meaning not as proper parties) and for the purpose of agreeing only with the provisions stipulated at clauses four and five of such contract, which do not entail any consent to arbitrate.* The wording of the arbitration clause clearly establishes that it relates to disputes regarding the relationship between the parties of the Transfer Agreement, whereas the express reference to the RSTP also excludes Neymar da Silva and Neymar Sport, as, not being FIFA members, they are not subject to the RSTP. At any case, an arbitration clause submitting disputes to FIFA and, on appeal, to CAS, in unenforceable and void if a party to the dispute is not a FIFA member. Lastly, the present dispute does not fall within FIFA's judicial competence which is defined under Article 22 of the RSTP and, as such, it cannot be covered by the arbitration clause of the Transfer Agreement.

- As to the merits, Neymar da Silva and Neymar Sport claim that they lack standing to be sued as they were not and could even not be parties to the FIFA proceedings that led to the Appealed Decisions. Moreover, in cases with Ref. no. 17-00581 and 17-00582, FIFA issued decisions on 9 July 2015 and then on 25 January 2017, when it informed Santos in writing of the lack of competence of its deciding bodies to deal with the claim against Neymar da Silva and Neymar Sport, which constitute appealable decisions in accordance with the Code. Since Santos did not file an appeal 21 days after 25 January 2017 the latest, the decision that FIFA is not competent on the matter involving Neymar da Silva and Neymar Sport is *res judicata.*

- Further than that, the extent and scope of the Panel's review in a CAS appeal is limited by the requests submitted by the parties and the scope of the decision appealed against. Hence, Neymar da Silva and Neymar Sport not being FIFA members directly or indirectly, FIFA and, on appeal, CAS have no competence to rule against Neymar da Silva and Neymar Sport.

- At any case, FIFA rightly found that Santos' claims were inadmissible. Not only Neymar da Silva and Neymar Sport cannot be parties to proceedings before the FIFA PSC, but they cannot also be respondents to claims brought against them on the basis of the RSTP (which do not apply on them).

106. As a result, Neymar da Silva and Neymar Sport requested that CAS issue:

"*a) an award dismissing the Appellant's claims in their entirety for lack of jurisdiction;*

b) alternatively, in the event the Panel determines that it has jurisdiction:

b.1. an award dismissing the Appellant's claims in the merits for the reasons exposed in this Answer;

b.2. lastly, if the Appellant's claims are accepted, dismiss the claims of the Appellant against the Third and Fourth Respondents and hold that the First Respondent is the sole debtor of any compensation to the Appellant;

c) order the Appellant to bear any and all CAS administrative and procedural costs, which have already been incurred or may eventually be incurred in connection with this arbitration;

d) grant Third Respondent a contribution towards its legal fees and other expenses incurred in connection with the proceedings equal to CHF 100,000.00 (one hundred thousand Swiss Francs), pursuant to Article R65.3 of the CAS Code;

e) grant Fourth Respondent a contribution towards its legal fees and other expenses incurred in connection with the proceedings equal to CHF 100,000.00 (one hundred thousand Swiss Francs), pursuant to Article R65.3 of the CAS Code; and

f) such other relief as the Panel may deem appropriate."

V. JURISDICTION

107. The Panel notes that by letter to the CAS Court Office dated 17 October 2018, Neymar da Silva and Neymar Sport challenged the jurisdiction of CAS to hear the present dispute in respect of the claims of Santos against them, mainly because the arbitration clause included in the Transfer Agreement is intended to submit to the FIFA jurisdiction disputes which, under FIFA rules, "*are not of FIFA competence*" since "*FIFA is not competent to hear disputes which are not based on the rules of the association*".

108. In line with the findings of the CAS Panel in case 2018/A/5628 (paragraphs 50 *et seq.*), the Panel considers that the issue of the jurisdiction of the CAS must be considered on a formal basis. In this respect, in the presence of four FIFA decisions, two of which concern Neymar da Silva and Neymar Sport, the following considerations shall apply.

109. With respect to CAS jurisdiction, Article R47 of the 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.*"

110. Articles 57 (1) and 58 (1) of the FIFA Statues (2016 edition) provide as follows:

"*FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents.*"

and

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

111. Moreover, as noted by MAVROMATI/REEB (*The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials*, 2015, p. 389), even in the absence of a specific arbitration agreement, "*in order for the CAS to have jurisdiction to decide on an appeal, the statutes or regulations of the sports body that issued the decision must expressly recognise the CAS as an arbitral body of appeal.*"

112. As the appeal of Santos is directed against four decisions of FIFA that are final (which is not disputed by the Parties), and based on the above, the Panel holds that CAS has jurisdiction to hear this case.

113. The issue of whether FIFA had jurisdiction or not to deal with the present dispute as far as certain parties are concerned is one which is related to the merits of the case, as clearly stated in the letter of the CAS Court Office of 18 October 2018, and will be analysed below.

VI. ADMISSIBILITY

114. The appeals were filed within the 21 days set by Article 58 (1) of the FIFA Statutes.

115. Barcelona, Neymar Junior, Neymar da Silva and Neymar Sport objected to the admissibility of the appeal filed by Santos on various stages of this arbitration on the following grounds:

116. Barcelona argues in its letter of 18 May 2018 to the CAS Court Office that "*(...) the filing of one single statement of appeal against four different FIFA decisions involving more than four different parties raises questions of admissibility and FC Barcelona reserves all its rights in this respect.*"

117. Neymar Junior, Neymar da Silva and Neymar Sport state in their letters of 18 May 2018 that they were not parties to all the FIFA proceedings that lead to the Appealed Decisions. They also state that the appeal "*failed to comply with the requirements of Article R48 of the CAS Code, since Santos FC should have filed separate appeals for each FIFA decision. The appeal of Santos, not complying with the CAS Code, shall therefore be declared inadmissible.*"

118. FIFA equally doubted the admissibility of the appeal of Santos by letter dated 23 May 2018, on the basis that it did not meet the strict formal requirements of Article R48 of the Code. Furthermore, in its answer FIFA claims that the filing of a collective appeal by Santos "*raises concrete difficulties for the Respondents to exercise their right of defence and, consequently, jeopardises their right to equal and fair proceedings*" and further requests that, in spite of the decision to consider the appeal as admissible, CAS should consider Santos' general procedural attitude when deciding on Santos' contribution to the other Parties' legal fees and expenses.

119. Santos on its part argued in its letter of 18 May 2018 that the reason it filed one joint appeal, which was also the case with its (single) claim it filed in front of FIFA against all respondents on 27 May 2015, is that "*it was of the opinion that all the respondents acted together and carried out the same plan to harm the Brazilian club. The first claim was only separated in four cases due to specific provisions related to the jurisdiction of the FIFA Judicial Bodies. Notwithstanding, all the procedures are related to the same transfer agreement and shall be dealt with by the same Panel in the appeal before the CAS. Furthermore, all the Parties have indicated the same arbitrator to act in all the procedures. Therefore, we are of the opinion that the same Panel shall deal with all the procedures initiated by the Parties, because the facts are the same, the parties are the same, the arbitrators are the same and, moreover, in order to avoid contradictory decisions.*"

120. On 14 June 2018, the CAS Court Office informed the parties that it will be for the Panel, once constituted, to decide (*inter alia*) on the admissibility of the Santos' appeal.

121. In this respect, Santos claimed further in its appeal brief that the collective filing of one appeal was justified "*given that the dispute is based on the same documents and the same set of facts. The Appellant is seeking damages from all the Respondents, and is asking that they be held*

jointly and severally liable. Moreover, the Transfer Agreement, being the basis of the dispute, was signed by all Respondents."

122. On the matter of the admissibility of the Santos' appeal, the Panel finds that the following considerations shall apply.

123. As to the matter of the formal admissibility of the (statement of) appeal, Article R48 of the Code provides that:

"***Statement of Appeal***

The Appellant shall submit to CAS a statement of appeal containing:

- *the name and full address of the Respondent(s);*
- *a copy of the decision appealed against;*
- *the Appellant's request for relief;*
- *the nomination of the arbitrator chosen by the Appellant from the CAS list, unless the Appellant requests the appointment of a sole arbitrator;*
- *if applicable, an application to stay the execution of the decision appealed against, together with reasons;*
- *a copy of the provisions of the statutes or regulations or the specific agreement providing for appeal to CAS.*

Upon filing the statement, the Appellant shall pay the CAS Court Office fee provided for in Article R64.1 or Article R65.2.

If the above-mentioned requirements are not fulfilled when the statement of appeal is filed, the CAS Court Office may grant a one-time-only short deadline to the Appellant to complete its statement of appeal, failing receipt of which within the deadline, the CAS Court Office shall not proceed."

124. According to MAVROMATI/REEB (*The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials*, 2015, p. 407), the purpose of Article R48 of the Code is to provide the CAS with full knowledge of the subject matter of the case, in order to discourage any frivolous and vexatious appeals.

125. The Panel finds that in this case, the statement of appeal of Santos meets all the formal requirements of Article R48 of the Code. This notwithstanding, the Panel has considered the issues raised by the Respondents, concerning the disregard of the aforementioned Parties' rights or the fact that they were not parties to all the FIFA proceedings that led to the four Appealed Decisions. In this respect, the Panel finds that none of the Parties have expressly specified in what way and to what extent their procedural rights were violated by the filing of a single appeal by Santos or, alternatively, how the filing of four separate appeals would ensure the safeguarding of such rights. As to the latter argument of the Parties, the Panel notes that the fact that the appeal of Santos challenges four different decisions of FIFA and is directed against more respondents that are named collectively, does not appear to be a violation of any procedural rule related to the admissibility of an appeal. As established above, neither Article 58 (1) of the FIFA Statutes nor Article R48 of the Code specify which party (-ies) the appeal should be brought against. The latter issue is one that is related to the issue of lack of standing to be sued and will be analysed below.

126. As a result, the Panel finds that the procedural violations alleged by the Parties do not justify the rejection of the appeal of Santos as inadmissible and, since the appeal complied with all

requirements of Article R48 of the Code, including the payment of the CAS Court Office fees, it follows that it is admissible.

VII. OTHER PROCEDURAL ISSUES

1. The issue of Santos' request for extension to file the appeal brief

127. FIFA, Barcelona, Neymar Junior, Neymar da Silva and Neymar Sport argue that the letter of Santos' president which was notified to the Parties by the CAS Court Office on 22 May 2018 has to be interpreted as a request to disregard all correspondence, including the 11 May 2018 letter of Santos' (former at the time of request) representative to extend the deadline to file the appeal brief and, as a result, the appeal of Santos should be deemed to be withdrawn as per Article R51 of the Code.

128. The Panel notes that the exact wording of the Santos' letter at issue is as follows:

"*Santos FC dismissed the law firm CCLA on 11 May 2018 and we are hiring new lawyers to represent Santos FC (...) Furthermore, any correspondence sent by that firm since 11 May 2018 should be disregarded.*"

129. In order to resolve this matter, the Panel has to seek the true meaning of the declaration of the president of Santos and, in order to do that, the Panel needs to first establish a time sequence of the events of that day.

130. It is not disputed that Santos dismissed its first legal counsel some time during 11 May 2018. It is also not disputed that said counsel sent the disputed request for extension on that same day. In this respect, the Panel finds that the scenario that the first counsel of Santos was dismissed by its client and, following his dismissal, sent the letter by which it requested the disputed extension is neither plausible nor advanced by any of the Parties.

131. Turning to the content of the letter of Santos' president to the CAS Court Office, the Panel finds that it is equally not plausible that the president of Santos wanted to revoke said request, which would have as a result the appeal having been dismissed. The disputed phrase ("*any correspondence sent by that firm since 11 May 2018 should be disregarded*") can only be reasonably understood to suggest that the president of Santos wanted to exclude from the CAS' consideration any correspondence sent by said counsel after the time of his dismissal.

132. Last but not least, the Panel also notes that the meaning of the preposition "*since*" is not limited to indicating a period between the time mentioned (including that point in time) and the present time, but it can also be used to denote a time or event in the past when one is describing an event or situation that has happened after that time (https://www.collinsdictionary.com/dictionary/english/since).

133. As a result, the Panel does not understand the declaration of the president of Santos as intending to include the extension request of 11 May 2018 of its (former at the time of the declaration) counsel.

2. The Translations

134. On 14 January 2019, Santos requested that some of the exhibits of Neymar Junior and Barcelona, filed mostly in Portuguese language, be translated into English in view of the then coming hearing. On 21 January 2019, the CAS Court Office accepted Santos' request and granted 15 days to the aforementioned parties to submit the requested translations. Thereafter,

both Neymar Junior and Barcelona noted that several of the exhibits filed with the appeal brief of Santos (included some video files which were filed without a transcript) were in either Spanish or Portuguese language and, in order to guarantee a fair and equal preparation of the parties for the hearing, requested in turn that Santos be ordered to submit translations of such exhibits into English. On 28 January 2019, the CAS Court Office ordered Santos to submit the requested translations and granted Santos a deadline until 1 March 2019 to do so. Santos sent to the CAS Court Office some of the requested translations and a request for extension of the time limit to file the remaining ones until 7 March 2019, by email the time stamp of which read "2 March 2019" and "00:29". The CAS Court Office informed the Parties that Santos' time limit to file the remaining exhibits is suspended until further notice and on 4 and 8 March 2019, Barcelona and Neymar Junior respectively objected to the filing of the translated exhibits and the extension request by Santos as filed out of time and asked the extension request and the exhibits at issue be disregarded by the Panel. On 11 March 2019, the CAS Court Office informed the Parties that Santos filed the remaining translated exhibits and that a decision with respect to the admissibility of Santos' translated exhibits will follow.

135. On 18 March 2019, the CAS Court Office informed the Parties that, after having enquired about the time stamp of incoming emails, the IT services company confirmed that such time is the one at the location of the addressee, *i.e.* Lausanne, meaning that the email in dispute was actually sent from Porto on 1 March 2019 at 23:29 pm. As a result, the Panel decided to accept the translated exhibits and the extension request filed by Santos on the aforementioned date and time, which were filed in a timely manner and due to the large volume of the exhibits the translation of which was ordered.

VIII. APPLICABLE LAW

136. Article R58 of the Code provides as follows:

"***Law Applicable to the merits***

The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."

137. The Panel notes that Article 57 (2) of the FIFA Statutes stipulates 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.*"

138. In addition, section 9.1 of the Transfer Agreement provides that:

"*9.1. Any dispute, controversy or claim deriving from or in relation to this Agreement (or originating from or relating to the relationship between the parties that arises from this Agreement), including any question regarding its existence, validity or termination, shall be submitted to and resolved by the Legal Body of FIFA (Art. 22 of FIFA-RSTP), applying the rules and regulations of FIFA. Any appeal arising from the decision of the Arbitral Body of FIFA shall be submitted to the Court for Arbitration for Sport (C.A.S.) in Lausanne, Switzerland. The arbitration shall be conducted in English.*" (emphasis added)

139. Consequently, the Panel will decide the present dispute primarily in accordance with the FIFA Regulations and, subsidiarily, apply Swiss law in case of any gap in the FIFA rules and regulations.

140. The present matter was submitted to the FIFA judicial bodies on 27 May 2015, hence after 1 April 2015, which is the date when the 2015 edition of the RSTP came into force (see Articles 26 and 29 of the RSTP). This is the edition of the rules and regulations under which the case shall be assessed.

141. In this regard, Articles 17 and 18 (3) of the RSTP provide that:

"***17. Consequences of terminating a contract without just cause***

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

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

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

(...)

4. In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period. It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach. The club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods. The club shall be able to register new players, either nationally or internationally, only as of the next registration period following the complete serving of the relevant sporting sanction. In particular, it may not make use of the exception and the provisional measures stipulated in article 6 paragraph 1 of these regulations in order to register players at an earlier stage.

5. Any person subject to the FIFA Statutes and regulations who acts in a manner designed to induce a breach of contract between a professional and a club in order to facilitate the transfer of the player shall be sanctioned.

18. Special provisions relating to contracts between professionals and clubs

(...)

3. A club intending to conclude a contract with a professional must inform the player's current club in writing before entering into negotiations with him. A professional shall only be free to conclude a contract with another club if his contract with his present club has expired or is due to expire within six months. Any breach of this provision shall be subject to appropriate sanctions.

(...)"

142. In addition, the Panel shall also apply the 2015 version of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution in this matter.

IX. MERITS

143. According to Article R57 of the Code, the Panel has "*full power to review the facts and the law*". As is long-established in the jurisprudence of the CAS, by reference to this provision, a CAS arbitration procedure may entail a *de novo* review of the merits of the case, and is not confined merely to deciding whether the ruling appealed was correct or not. Accordingly, it is the function of the Panel to make an independent determination as to merits (see CAS 2007/A/1394).

144. In light of the facts of the case and the arguments of the parties, the Panel notes that it first needs to consider some preliminary matters.

145. After dealing with such matters, the Panel will then review the merits of the appeal grounds advanced against the Appealed Decisions and, in particular, it will first examine separately the appeal of Santos against Neymar da Silva and Neymar Sport with respect to the Third and the Fourth Appealed Decisions and then the grounds advanced by Santos with respect to the rest of the Respondents and reply to the following questions: (i) Was there a breach of the RSTP that justifies the payment of compensation based on Article 17 RSTP?; (ii) Was there a breach of the Transfer Agreement that justifies the payment of compensation?; (iii) Does Article 28 of the Swiss Code of Obligations apply?; (iv) What are the consequences of such breach(es), if any? (appeal in case *CAS 2018/A/5725*); and, finally, the Panel will examine whether the Second Appealed Decision was wrong in finding that the claim of Santos against Neymar Junior was admissible (appeal in case *CAS 2018/A/5726*).

A. Standing to be sued

146. As a preliminary issue, the Panel must address the question as to whether Neymar da Silva and Neymar Sport have standing to be sued in the present proceedings, which is disputed by them.

147. Said Parties claim, in essence, that while Barcelona and Neymar Junior have standing to be sued with respect to the First and the Second Appealed Decisions, this is clearly not the case as regards Neymar da Silva and Neymar Sport with respect to the Third and the Fourth Appealed Decisions since, by seeking the annulations of it, Santos was not claiming anything against them, but against FIFA. It is therefore only FIFA that has standing to be sued with regard to the Third and the Fourth Appealed Decisions.

148. The Panel makes the following observations.

149. The FIFA rules and regulations do not contain any provisions with respect to who is the proper respondent in case an appeal is directed against a FIFA decision. Consequently, the issue must be resolved on the basis of Swiss law that applies subsidiarily (see *supra* no. VIII). According thereto, a decision by an organ of an association is designed to shape an alleged relationship either between the sports organisation and its member(s) or between members. The first type of disputes is frequently referred to as "vertical disputes". The second type of disputes is described as "horizontal disputes". As a general rule a party has standing to be sued in the context of an appeal against a decision of a sports organisation, if it derives a legal position from said decision in its dispute with the other party. The duty or burden of proving that a party bases its legal position on the decision issued by the sports organisation lies with the appellant.

150. Looking at the facts, it is undisputed that the Appealed Decisions were rendered between Santos on the one part, as claimant, and the rest of the Parties (save FIFA) on the other, as respondents, even though FIFA dismissed the claims against Neymar da Silva and Neymar Sport as inadmissible.

151. Moreover, the Panel notes that the argument advanced by Neymar da Silva and Neymar Sport would make sense in a decision rendered by the FIFA disciplinary bodies concerning exclusively the existence of a disciplinary infringement under the applicable FIFA rules, as stated numerous times in relevant CAS case law, which, however, is not the case in the matter at hand.

152. In view of the foregoing, the Panel finds that all Parties, including Neymar da Silva and Neymar Sport, have standing to be sued as a prospective respondent, since in the context of their dispute with Santos they rely on the respective decisions.

153. As a result, the Panel cannot grant the request of Neymar da Silva and Neymar Sport with respect to their (lack of) standing to be sued <u>within the frame of the CAS appeal's proceedings</u> (emphasis added by the Panel).

154. At this point, and before examining the appeal grounds at issue, the Panel feels that it should determine first whether there is merit in the appeal grounds advanced by Santos against the Third and the Fourth Appealed Decisions, as they are concerning Neymar da Silva and Neymar Sport only.

B. Appeal grounds

1. The appeal of Santos against Neymar da Silva and Neymar Sport with respect to the Third and the Fourth Appealed Decisions

155. In both the Third and Fourth Appealed Decisions, the FIFA PSC dismissed the claim of Santos against Neymar da Silva and Neymar Sport as inadmissible. In particular, the PSC Single Judge found in both cases that:

"*(...)*

3. In view of the above, the Single Judge concluded that he lacked the competence to enter the substance of the present matter due to the fact that the Respondent cannot be considered as a party in front of FIFA in the sense of art. 6 par. 1 of the Procedural Rules.

4. In addition and for the sake of good order, the Single Judge was eager to emphasise that the jurisdiction of FIFA's deciding bodies derives from the Regulations and the FIFA Statutes only, and not from private agreements between parties. In this respect, the Single Judge pointed out that clause 9 of the transfer agreement (cf. point I.5 above) contradicted art. 6 par. 1 of the Procedural Rules as well as art. 22 of the Regulations (in all their editions) and, consequently, it was to be considered as not applicable. The Single Judge further highlighted that, if the line of reasoning of the Claimant with regard to the competence of FIFA would be followed, then the Single Judge would be acting against FIFA's own Regulations, Procedural Rules and Statutes, i.e. the legal framework which defines his competence.

(...)"

156. In this respect, Santos provides no specific grounds to contradict the above-mentioned considerations of the FIFA PSC. It only claims in its appeal that "*the CAS is competent to deal with the appeals involving Neymar Sr and Neymar Sports e Marketing*" on the basis of Article

R27 of the Code, as this is a sports-related dispute and there is a reference to CAS in the arbitration clause contained in the Transfer Agreement.

157. The Panel notes, however, that the matter to be decided in order to determine whether there is merit in the Santos' appeal against the Third and the Fourth Appealed Decisions, is not whether CAS has jurisdiction to hear the appeal as far as it is directed against Neymar da Silva and Neymar Sport (which jurisdiction, in fact, arises not only from the arbitration clause in the transfer agreement – as this is an appeal arbitration – but also from the relevant clause in the FIFA Statutes), but whether the FIFA PSC was correct to dismiss the claims against said parties as inadmissible.

158. At any case, the Panel feels obliged to make the following considerations in this respect.

159. It is not disputed between the parties that Neymar da Silva and Neymar Sport do not fall within the categories listed under Article 6 (1) of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution. Said provision states that "*[p]arties are member associations of FIFA, clubs, players, coaches or licensed match agents*".

160. It is also not disputed that Neymar da Silva and Neymar Sport do not fall within the categories of the legal or natural persons listed under Article 22 of the RSTP, the disputes between which belong to the competence of the FIFA bodies and the FIFA PSC in particular.

161. In this respect, the Panel further observes that from the scope of application of the RSTP (Article 1) and from their complete content, it appears that the imposition of duties and obligations to third private parties (not FIFA members, clubs, players, coaches or licensed match agents in the sense of the aforementioned provisions) or the resolution of disputes to which they are a party fall outside the scope of the FIFA rules and regulations.

162. In light of the foregoing and in the lack of any argument of Santos to the contrary, the Panel finds that the Single Judge of the FIFA PSC was right to dismiss the claims of Santos against Neymar da Silva and Neymar Sport and, as a result, the Panel shall not examine the merits of any grounds advanced by Santos against Neymar da Silva and Neymar Sport and dismisses all requests of Santos related to said parties.

2. Was there a breach of the RSTP that justifies the payment of compensation based on Article 17?

163. As far as the legal basis of its claim is concerned, Santos submits, in essence, that by concluding the First Barcelona Contract, the parties to it breached Article 18 (3) of the RSTP and, even though "*this is not a typical 'Article 17 RSTP' dispute*", still "*the violation of Article 18 para. 3 of the FIFA Regulations relates to the contractual stability and the compensation shall be based on Article 17 of the FIFA Regulations*".

164. As a preliminary remark, the Panel notes that both Article 17 and Article 18 of the RSTP primarily aim to safeguard the maintenance of contractual stability between football parties. In the words of another CAS Panel, the purpose of Article 17 is "*...basically nothing else than to reinforce contractual stability,* i.e. *to strengthen the principle of pacta sunt servanda in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations, be it breaches by a club or by a player...*" (CAS 2008/A/1519-20).

165. The Panel, however, is bound by the wording of the applicable FIFA provisions and notes the following in this respect:

(a) The consequence of any breach of Article 18 (3) shall be the imposition of "*appropriate sanctions*"*;*

(b) the obligation to pay compensation under Article 17 arises only "*if a contract is terminated without just cause*".

166. Obviously, Article 18 (3) is not meant to stipulate financial compensation to the aggrieved club, but provides for the imposition of disciplinary sanctions against the parties guilty of breach. This finding is confirmed not only by the meaning of "*sanctions*" under the complete FIFA regulatory framework, but also by the fact that there is no other provision included in the RSTP stipulating the criteria of determining such compensation, let alone in Article 17, which clearly requires a contract termination without just cause.

167. Thus, the Panel declines to declare that a breach of Article 18 (3) of the RSTP shall have the consequences claimed by Santos.

168. For the sake of clarity, the Panel further observes that the application of Article 17 of the RSTP is precluded in this matter with respect to the Second Employment Contract, since said contract was not terminated without just cause, but was mutually terminated with the signing of the Transfer Agreement.

3. Was there a breach of the Transfer Agreement that justifies the payment of compensation?

169. Santos claims, in essence, that Neymar Junior and Barcelona violated Articles 4.2 and 5 of the Transfer Agreement, according to which Neymar Junior and Neymar Sport were to receive no payment in connection with the former's transfer to Barcelona and, in turn, Santos and Barcelona undertook to pay them no amounts to that regard.

170. Said interpretation is disputed by Barcelona and Neymar Junior who claim that the reason behind the said provisions of the Transfer Agreement was to secure that Neymar or the Brazilian company N & N Consultoria would not request from Santos a percentage of the transfer fee, as was agreed in a previous agreement between them and that the inclusion of such provisions in the Transfer Agreement is essentially an implementation of Article 4 of the Memorandum.

171. The provisions in dispute state the following:

"*Fourth Clause - CONSENT AND WAIVER OF THE PLAYER*

(...)

4.2. In any event, the PLAYER expressly and irrevocably waives any amount or percentage to which he may be entitled as a result of this present transfer of rights (whether by agreement or contract, applicable law, federative rules or collective agreement), because they are included in the remuneration agreed with FC BARCELONA. Therefore, neither SANTOS F.C. nor F.C. BARCELONA shall pay any amount for this reason to the PLAYER, who does not have anything to claim in this regard."

"*Fifth Clause - WAIVER OF NEYMAR SPORTS MARKETING (NR SPORTS)*

NEYMAR SPORTS MARKETING (NR SPORTS) expressly and irrevocably waives any amount or percentage, particularly relating to commissions, to which it may be entitled as a result of this transfer of rights, by virtue of agreements executed with SANTOS F.C. or by the application of applicable law, federative rules or a collective agreement. Therefore, neither SANTOS F.C.

nor F.C. BARCELONA shall pay any amount for this reason to NEYMAR SPORTS MARKETING (NR SPORTS), which has nothing to claim in this regard."

172. The Panel observes that it is not clear from the wording of the provisions alone which of the interpretations advanced by the Parties is the one that corresponds the most to what the parties of the Transfer Agreement wanted.

173. However, the Panel notes that said provisions, even if Santos' interpretation is to be accepted, govern only the matter of payments that are made (a) to the Player or to Neymar Sports (b) as a result of the transfer and (c) as from the date the Transfer Agreement was signed.

174. In this respect, the Panel notes that under the Free Agent Agreement, Barcelona assumed the obligation to pay a monetary amount to the Brazilian company N & N Consultoria - and not to Neymar Junior or Neymar Sports. Even though there may well be links between the aforementioned individual and companies (Santos claims that N & N Consultoria is owned by the parents of Neymar Junior), the Panel cannot find that by implementing the terms of the Free Agent Agreement and making the payment of the remaining EUR […] after the signing of the Transfer Agreement, which is not proven by Santos, Barcelona or the Player did in fact breach the Transfer Agreement.

175. Additionally, the rest of the payments or agreements mentioned by Santos do not meet the aforementioned three provisions. In particular:

- The EUR […] payment under the Loan Agreement (which is in fact the first payment provided under the Free Agent Agreement) was made on 6 December 2011, *i.e.* prior to the Transfer Agreement and not to Neymar Junior or Neymar Sports but to N & N Consultoria;

- The rest of the agreements mentioned by Santos or payments that were arguably made under them were concluded between Barcelona and the Player or a legal entity after the Transfer Agreement.

176. As a result, the Panel finds that there was no breach of the Transfer Agreement in the way alleged by Santos and, therefore, it shall not examine whether Santos is entitled to compensation under Articles 97 and 98 SCO.

4. Does Article 28 of the Swiss Code of Obligations apply?

177. Santos claims that the Respondents committed "*contractual fraud*" under Article 28 of the Swiss Code of Obligations (SCO) by entering into the agreements that preceded the Transfer Agreement with the sole objective to force Santos to sign it and enable Barcelona "*to avoid or minimise any transfer fee paid to Santos*".

178. In the way of preliminary remarks, the Panel notes that in modern football, the wishes of a young star player as to his transfer destination is equally (if not more) important than the transfer fee offered by the transferee club, the transfer agreement being a contract between three parties. Additionally, the market value of a player cannot be easily set apart from the transfer fee: the market value is very much reflected in the amount a party is willing to receive, in order to conclude a transaction with another party in the relevant market.

179. Secondly, the Panel cannot not see what was there to be gained by Barcelona from the "scheme" described by Santos, which was allegedly intended to enable Barcelona "*to avoid or minimise any transfer fee paid to Santos*", but resulted in Barcelona finally paying a transfer fee of EUR […] to Santos and an amount of EUR […] to the rest of the Respondents.

180. Now the Panel will turn its attention to the legal analysis of the aforementioned provision of Swiss law. Article 28 SCO states as follows:

"*1 A party induced to enter into a contract by the fraud of the other party is not bound by it even if his error is not fundamental.*

2 A party who is the victim of fraud by a third party remains bound by the contract unless the other party knew or should have known of the fraud at the time the contract was concluded."

181. Santos claims that the elements of contractual fraud are: (i) intentional deception of a party by action or omission; (ii) conduct inducing the deceived party to enter into a contract; (iii) refusal to enter into the contract by the aggrieved party, had it known the actual circumstances.

182. Barcelona and Neymar Junior claim that the negotiations and the meetings between Barcelona and the side of the Player as well as their conclusion by signing the 2011 agreements, were known to Santos as not only were they reported widely in the press, but also Mr. Eduardo Musa ("Duda"), a Santos employee, was present at the Miami meeting and was also informed regularly by Barcelona on the discussions and was aware of the agreements signed between Barcelona and the side of the Player, providing relevant evidence. Santos did not manage to adequately dispute the above claims.

183. Barcelona and Neymar Junior further argue that a claim on the basis of Article 28 SCO is time-barred as Article 31 SCO provides for a peremptory time limit of one year within which the aggrieved party needs to seek restitution for the performance made.[3]

184. The Panel finds that the applicable rules do indeed provide for a time-limit of one year within which the party acting under fraud has to act. Said time-limit begins from the time the fraud was discovered (Article 31 (2) SCO) and the party under fraud does not have to comply with it only if he has not yet executed his part of the agreement (see Swiss Federal Tribunal awards in BGE 106 II 346 E. 3a p. 349; BGE 84 II 621 E. 2b, c p. 625; BGE 66 II 158 E. 5 p. 160).

185. In this respect, and in order to determine whether Article 31 SCO applies in the matter at hand, the Panel notes that neither (i) the existence of reports in the press dating from the date of signing of the 2013 Barcelona Contract, which contained a statement of the Vice-President of Barcelona saying that the signing of Neymar Junior costed "*57 million Euros*", nor (ii) the content of the 19 July 2013 reply letter from Barcelona to Santos stating *inter alia* that "*these additional payments result in an extra cost for FC Barcelona directly associated to the acquisition of Neymar Jr, although never related to Santos FC*", nor (iii) the fact that on 24 January 2014, in the context of Spanish criminal proceedings, Santos received in writing information regarding the agreements signed between Barcelona, Neymar Junior and N & N Consultoria in 2011, nor (iv) the content of the 10 February 2014 Santos second letter to Barcelona, were disputed between the parties. In addition, there was nothing in the evidence produced by the parties or adduced in the hearing to make the Panel think otherwise.

186. Consequently, the Panel finds that, even if Santos had managed to establish that the conditions of Article 28 SCO are met in the matter at hand and that, as a result, Santos is entitled to claim compensation as per Article 31 (3) SCO for losses or damages incurred based on other provisions of Swiss law, such as Articles 99 and 41 SCO (both of which assumptions the Panel

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[3] The wording of the provision has as follows: "*1 Where the party acting under error, fraud or duress neither declares to the other party that he intends not to honour the contract nor seeks restitution for the performance made within one year, the contract is deemed to have been ratified. 2 The one-year period runs from the time that the error or the fraud was discovered or from the time that the duress ended 3. (…)*" (English translation available at https://www.admin.ch/opc/en/classified-compilation/19110009/index.html).

equally doubts on the basis of the considerations and facts mentioned above in par. 180), it still failed to keep the time-limit of Article 31 (1) SCO, as it was clearly aware of the facts that purportedly constituted the alleged fraud for more than one year prior to the date of the filing of its claim in front of FIFA.

187. On those grounds, the Panel finds that Santos is precluded from seeking compensation on the basis of Article 28 SCO.

188. As a result, the Panel does not need to examine whether there are any consequences of the breaches alleged by Santos and any further claims or requests for relief are dismissed.

5. Was the Second Appealed Decision wrong in finding that the claim of Santos against Neymar Junior was admissible?

189. Before entering into the substance of the claim of Santos against Neymar Junior and Barcelona, the Second Appealed Decision considered (and dismissed) the objections of Neymar Junior as to the admissibility of the claim on the basis of the following considerations: (i) the proceedings which were then pending in Spain and in Brazil were of a purely tax and criminal nature and, as a result, the principle of *litis pendens* could not apply in the ongoing FIFA proceedings which concerned the breach or the inducement to breach an employment relationship, (ii) the starting point for the calculation of the limitation period under Article 25 (5) RSTP ("*the event giving rise to the dispute*") is the signing of the Transfer Agreement and not the conclusion of the Memorandum between Santos, Barcelona, Neymar Junior and N & N Consultoria on 24 May 2013, and (iii) FIFA is competent to deal with an employment-related dispute between a player, his former club and his new club under Articles 24 (1) and 22 lit. a) RSTP and may also apply Swiss law subsidiarily to its rules and regulations in accordance with the FIFA Statutes.

190. On the basis of the prayers for relief of Neymar Junior in his appeal (case CAS 2018/A/5726) and his submissions on file, the Panel makes the following considerations.

191. As to the application of the principle of *litis pendens*, the Panel consideres that court proceedings were in fact pending before state courts in Spain and in Brazil at the same time when the claim of Santos was decided by the FIFA DRC. However, taking into account that the claim of Santos brought before FIFA concerned "*a dispute between a Brazilian club, a Brazilian player and a Spanish club, pertaining to the maintenance of contractual stability and connected with the issuance of an International Transfer Certificate (ITC)*" (par. II.2 of the Second Appealed Decision), which was not effectively disputed by the Parties, and that said proceedings before national state courts, as compared with the case brought before FIFA, would have in any case a different object, as they concerned tax and criminal law aspects related to the transfer of Neymar Junior, and also the fact that no noteworthy or exceptional reasons were advanced by Neymar Junior before FIFA that would exceptionally allow for the dismissal or the stay of the FIFA proceedings, the Panel comes to the conclusion that FIFA was correct to dismiss the objections of Neymar Junior in this respect.

192. Neymar Junior further argues that Santos' claim, having been brought before FIFA on 27 May 2015, was outside the two-year limitation period, because "*the event giving rise to the dispute*", namely the conclusion of the Memorandum which was "*an irrevocable and unchangeable agreement*", occurred on 24 May 2013.

193. The Panel cannot agree with that line of argumentation. "*The event giving rise to the dispute*" occurred when Barcelona, Santos and the Player concluded the Transfer Agreement on 31 May 2013. It was the conclusion of the Transfer Agreement (and not of the Memorandum) that resulted in the transfer of Neymar Junior and served as basis for the claims of Santos against the Respondents in this matter. Had the Transfer Agreement not been concluded and executed between its Parties, the present dispute would not have arisen.

194. Consequently, Santos' claim was timely filed before the FIFA DRC and is thus not time-barred under Article 25 (5) RSTP.

195. Finally, the Panel cannot ignore the fact that FIFA is competent to hear employment-related disputes or disputes related to the maintenance of contractual stability under the conditions of Article 22 RSTP, irrespective of the legal basis for such claims or the applicable law. Neymar Junior does not dispute in his submissions either the existence in the matter at hand of the conditions that establish FIFA competence in the event of employment-related disputes or disputes related to the maintenance of contractual stability, or the nature of the dispute at hand as falling within the scope of the provisions of Article 22 RSTP.

196. Therefore, in view of the above, the Panel finds that the appeal brought by Neymar Junior against the Second Appealed Decision is to be dismissed and the Second Appealed Decision is to be confirmed as far as the admissibility of the claim of Santos is concerned.

X. COSTS

(…).

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeals filed by Santos Futebol Clube on 30 April 2018 against the decisions issued on 28 June 2017 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association (case 15-01254), on 30 June 2017 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association (case 15-01255), on 28 June 2017 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association (case 17-00581) and on 28 June 2017 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association (case 17-00582) are dismissed.
2. The appeal filed by Neymar da Silva Santos Junior on 30 April 2018 against the decision issued on 30 June 2017 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association (case 15-01255) is dismissed.
3. The decisions issued on 28 June 2017 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association (case 15-01254), on 30 June 2017 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association (case 15-01255), on 28 June 2017 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association (case 17-00581) and on 28 June 2017 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association (case 17-00582) are confirmed.
4. (…).
5. (…).
6. (…).
7. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 7 July 2020

THE COURT OF ARBITRATION FOR SPORT

Sofoklis P. Pilavios
President of the Panel