UNIVERSITY OF KANSAS

RESPONSE

TO

NCAA AMENDED NOTICE OF ALLEGATIONS

March 5, 2020

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I. OVERVIEW

The University of Kansas (the "University" or "Kansas") is committed to full compliance with NCAA legislation, as has been demonstrated by the comprehensive nature and extent of its compliance efforts over the years. When there are suspected violations of NCAA rules and regulations, the University has not hesitated to investigate, self-report, cooperate, and ultimately when appropriate, accept responsibility. It is because of that commitment to integrity, the rules, and its robust compliance efforts, that the institution has strong ground to stand on when it believes that allegations of NCAA rules and regulations charged against it are simply unsupported by the evidence and the record.

In this case, stemming from federal criminal trials in 2018, there are several facts that are in dispute; there are assumptions made; and, perhaps most importantly, there are unprecedented and novel theories put forward that, if found to have merit by the Panel, would dramatically alter the collegiate sports landscape in ways not contemplated by the Membership. This infractions' proceeding would redefine the criminal verdicts in the federal trials if the Panel adopts the enforcement staff's theories. In its Response, the University formally challenges each of the men's basketball related allegations in the Amended Notice of Allegations ("ANOA") as neither NCAA legislation nor the facts support the enforcement staff's allegations.

Adidas as a Representative of KU Athletics Interest

Of particular concern to the institution, is the NCAA's assertion that Adidas, and Adidas employees and associates, were representatives of the University's athletics interests (as defined by NCAA legislation) during the period of the alleged violations and therefore acting on the University's behalf when they engaged in alleged violations of NCAA bylaws. The evidence however, based mainly on trial testimony, fails utterly to support a conclusion that Adidas or any Adidas employees acted as representatives of the University during the period in question. Individuals formally associated with Adidas acted in their own interests when they gave money to the family and guardians of student-athletes. In fact, sworn testimony makes clear that these former Adidas associates went to great lengths to conceal their activities from Kansas

and its basketball staff. The University did not know and, as the evidence reveals, could not have reasonably known, about the conduct of these persons formerly affiliated with Adidas.

In issuing the allegations contained in the ANOA, the enforcement staff relies on a never before alleged theory. Specifically, the enforcement staff alleges that: (1) a corporate sponsor of an institution's athletics program is a representative of the institution's athletics interests because, by the very nature of the relationship, sponsors make financial contributions that promote athletics, and (2) every employee, consultant, or other person associated with the corporate sponsor is a representative of the institution if the institution knew or should have known the individual was associated with the corporate sponsor. Stated otherwise, according to the enforcement staff, every corporate sponsor and most, if not all, individuals associated with the sponsor are boosters of every institution with which the sponsor does business. This theory, if adopted by the Panel, would have far reaching ramifications throughout the Membership given the universal use of corporate sponsorships throughout Division I athletics. Moreover, as is explained in the Response, under the terms of NCAA legislation, innumerable current and former student-athletes would be ineligible due to their pre-enrollment participation in non-scholastic events and on non-scholastic teams that were provided financial support by Nike, Under Armour, Adidas, and others.

Head Coach as a Representative for Life

Yet the novel theories put forward by the enforcement staff in the allegations go beyond the Adidas relationship. For example, the enforcement staff alleges that Larry Brown, the former Kansas head men's basketball coach (1983-1988) is a representative of Kansas's athletic interests even though he has not coached in Lawrence in more than thirty years, and since his departure has not promoted or recruited on behalf of the University's athletics programs, and has never donated to the University's athletics programs. The enforcement staff relies on casual and innocuous phone conversations between Brown and members of the University's men's basketball staff, all of whom he knows well. He was never asked to recruit on behalf of Kansas nor did he. Yet here again, the enforcement staff asserts a novel theory—that a head coach becomes a representative of an institution for life—a contention that has no basis in NCAA legislation, case

precedent, official interpretations or educational materials. Again, this theory would have a ripple effect across the Membership as any former coach of an institution would be considered a representative of that institution's athletic interests forever.

Head Coach Responsibility

As is laid out in great detail in the Response, there is no reasonable conclusion that members of the University, including the men's basketball staff, knew or should have known about any violations of NCAA rules. Head Coach Bill Self had no knowledge of any NCAA rules violations or illicit conduct exhibited by Adidas, its employees or its consultants. In addition, as the University noted in September 2019, voluminous evidence demonstrates uncontestably that Coach Self did, in fact, promote an atmosphere of compliance and fully monitor his staff. The charges leveled against Coach Self are not based on fact.

Institution's Failure to Monitor

The University also strongly disagrees with the assertion that it failed to monitor the men's basketball program. The enforcement staff's allegations and conclusions regarding the University's compliance program are misguided. Kansas has one of the strongest compliance programs in the nation and it has been recognized by its peers nationally for its work. In addition, throughout this infractions process, Kansas has fully cooperated with the NCAA, participated in interviews, turned over requested materials and otherwise responded to all requests of the enforcement staff. The University takes seriously all NCAA and Big 12 bylaws, consistently provides education to its staff members, and monitors its programs to ensure compliance with these bylaws.

Football Allegations

As noted at above, the University has not hesitated to investigate and self-report violations of NCAA rules and regulations, as evidenced by the football allegations issued in the ANOA. All of the football allegations were discovered and self-reported by the University, and the University accepts responsibility for the violations. The most severe football-related Level II allegations took place under the former head coach and his staff.

In the following pages, the University of Kansas will put forward its detailed arguments regarding the violations and will present a clear and fact-based narrative that addresses each allegation. While there is no denying that the conduct of those associated with Adidas may have broken criminal laws, the University of Kansas and its employees should not be held responsible for that conduct.

II. BACKGROUND

The ANOA arises out of a highly publicized federal criminal trial in which a jury found that James Gatto, acting in concert with Thomas Gassnola, defrauded the University and its men's basketball program by making certain payments and promised payments to the [redacted][1] During the trial, Gassnola repeatedly testified under oath that neither the University nor any of its men's basketball staff knew about his and Gatto's conduct. The jury determined **beyond a reasonable doubt** that Gassnola's and Gatto's payments and promised payments were concealed from the University and that the University was a victim of Gassnola's and Gatto's crimes. In addition, the judge ordered Gassnola and Gatto to provide restitution to the University.

The enforcement staff nonetheless seeks to turn the criminal verdict on its head by asserting novel and factually unsupported theories as to why Gassnola and Gatto were representatives of the University at the time of their criminal actions, thereby holding the University responsible for the crime committed against it. Neither NCAA legislation nor the facts support the enforcement staff's assertions.

III. SUMMARY OF ALLEGATIONS AND THE UNIVERSITY'S RESPONSE

The allegations in the ANOA fall into one of eight categories.

First, Allegations 1, 2-b, 2-c, 2-d, 2-e, 3-a, and 3-b assert that: (a) Gassnola had contacts with and provided or promised to provide money to the [redacted] and a family friend of prospective student-athlete [redacted] (b) at the time of his alleged conduct, Gassnola was a

[1] [redacted] was a prospective student-athlete at the time of most of the payments and promised payments. [redacted] was a prospective student-athlete at the time of Gassnola's and Gatto's conduct. [redacted] and [redacted] became men's basketball student-athletes at the University, [redacted]

consultant to adidas America, Inc. ("Adidas"),[2] and he reported to Gatto, who was an employee of Adidas and approved of Gassnola's conduct; (c) Adidas, Gassnola, and Gatto were representatives of the University at the time of Gassnola's actions; and (d) Gassnola engaged in impermissible recruiting and provided impermissible benefits in violation of Bylaws 12, 13, and 16.

The University acknowledges that the evidence supports findings that most of the alleged contacts, payments, or promised payments occurred. However, as the federal criminal jury found, the payments and promised payments were concealed from the University. Further, the credible and persuasive evidence establishes that Adidas, Gassnola, and Gatto were **not** representatives of the University's athletics interests at the times of the events. Accordingly, the Panel should find no institutional violations pursuant to any of these allegations.

Second, Allegations 3-c and 3-d allege that: (a) Merl Code had contact with the family of a prospective student-athlete; (b) Dan Cutler had a contact with a prospective student-athlete; (c) Cutler offered an impermissible inducement to the prospective student-athlete with whom he had contact; (d) neither prospective student-athlete attended the University; (e) both Cutler and Code were consultants to Adidas at the time of their alleged contacts; (f) Cutler, Code, and Adidas were representatives of the University's athletics interests at the time of their alleged conduct; and (g) Cutler's and Code's actions constituted impermissible recruiting contacts or inducements in violation of Bylaw 13.

The credible and persuasive evidence, however, establishes that: (a) Code did **not** have any contact with the family of a prospective student-athlete at or near the time alleged; (b) Cutler did **not** offer an improper recruiting inducement; and (c) Cutler and Code and Adidas were **not** representatives of the University's athletics interests at the time of their alleged actions. Therefore, the Panel should find no institutional violations pursuant to either of these allegations.

[2] The ANOA uses an initial upper case "A" when referring to Adidas although the relevant entity uses all lower-case letters. The University will use the initial upper case "A" except when quoting documents that use all lower-case letters.

Third, Allegation 2-a asserts that: (a) Larry Brown initiated contact with the guardian of then prospective student-athlete [redacted] (b) Brown was a representative of the University's athletics interests at the time; and (c) Brown's contact was a in violation of Bylaw 13.

The credible and persuasive evidence, however, establishes that: (a) Brown did **not** initiate contact with [redacted]; (b) Brown had a pre-existing relationship with the guardian that began when Brown was coaching at another institution and was recruiting a different prospective student-athlete who had the same guardian; (c) in response to the [redacted] request for input regarding [redacted] options, Brown identified multiple institutions that might be a good fit for [redacted] and, (d) Brown was **not** a representative of the University's athletics interests. Thus, the Panel should find no institutional violation pursuant to this allegation.

Fourth, Allegation 4 asserts that men's head basketball coach, Bill Self, failed to promote an atmosphere of compliance and/or failed to monitor his staff, as required by Bylaw 11.1.1.1, in connection with some of the conduct contained in Allegations 1, 2, and 3 because he either (1) knew of some of the conduct that was occurring, or (2) knew or should have known that assistant men's basketball coach, Kurtis Townsend, was involved in or aware of some of the conduct. In addition, Allegations 2-a, 2-b, 2-c, and 3-d assert that Townsend was aware of or involved in the conduct underlying those allegations and failed to report them.

The weight of the credible and persuasive evidence, however, establishes that **none** of the underlying violations occurred, and Self and Townsend were not aware of, nor should they have been aware of, any conduct that was a violation. Accordingly, the Panel should find that Head Coach Bill Self did not violate Bylaw 11.1.1.1, and Assistant Coach Kurtis Townsend did not fail to report any violations.

Fifth, Allegation 5 asserts the University failed to monitor or control its athletics programs in connection with several of the items asserted in Allegations 1 and 2.

The weight of the credible and persuasive evidence, however, establishes that **none** of the underlying allegations constitute violations and, in any event, the University monitored and controlled its athletics programs.

In summary, the claims against the University's men's basketball program and its coaches rely heavily on the enforcement staff's novel treatment of corporate sponsors as automatic representatives of each institution's athletics interests. Given that such treatment is not supported by any relevant NCAA legislation, case precedent, or official interpretation, it cannot be established that a party knew or should have known such activity to be a violation, particularly when the NCAA itself has never published guidance or enforced such actions under the legislation that has been in place for decades.

Sixth, Allegation 6 asserts that the football program exceeded the permissible number of coaches based on the actions of a former football video coordinator, including conducting private meetings where he engaged in technical and tactical instructions with quarterbacks.

The violations were self-reported, and the weight of the credible and persuasive evidence establishes that the violations occurred as alleged and are Level II violations.

Seventh, Allegation 7 asserts that the based on the facts and circumstances set forth in Allegation 6, that the head football coach failed to monitor the actions of the former football video coordinator.

The weight of the credible and persuasive evidence established that the violation occurred as alleged and is a Level II violation.

Eighth, Allegation 8 asserts that the football team exceeded the permissible number of coaches based on the actions of two non-coaching staff members who occasionally engaged in isolated and limited on-field activities that provided at most a minimal competitive advantage.

The violations were self-reported, and the University and enforcement staff agree that the violations are appropriately categorized as Level III.

IV. THE PRIOR CRIMINAL PROCEEDINGS

This proceeding arises primarily out of a highly publicized criminal proceeding in the United States District Court for the Southern District of New York in which Gatto and Code were indicted, tried, convicted, and sentenced for conspiracy to commit wire fraud and for wire fraud ("SDNY trial"). The charges against Gatto and Code related to payments that they or their co-conspirators made or promised to make to the families of, or individuals associated with, several prospective student-athletes, who attended the University or other institutions. The payments and promised payments to [redacted] are the basis of Allegations 1, 2-d, and 2-e.

The government's case required it to prove beyond a reasonable doubt that the payments and promised payments were concealed from the institution that the prospective student-athlete attended, and the institution was the defrauded party. (See **FI-30**, pp. 1-3, 26 [Superseding Indictment]; **FI-31**, transcript pp. 49-50, 54-56, 60 [Opening Statements]; **FI-33**, pp. 1789, 1800-03, 1805-06, 1809-10 [Closing Statements]; **Exhibit 1**, pp. 1613-14, 1629-31, 1643-46, 1655 [Closing Statements];[3] **Exhibit 2**, pp. 1834-36, 1842 [Jury Instructions] **FI-35**, pp. 1-3, 22, 25-27 [Government Sentencing Memorandum]).

The SDNY trial was the culmination of a lengthy investigation that involved dozens of FBI agents and the use of wire taps, search warrants, undercover agents, and subpoenas as well as the cooperation of co-conspirators, including Gassnola, who was interviewed for many hours on multiple occasions. After extensive investigation, the government presented its case to a federal grand jury that indicted Gatto and Code. Although the indictment alleges that assistant men's basketball coaches at some of the other institutions were aware of some of the payments and were participants in the payment scheme (See **FI-30**, pp. 14-15, 20-21), it is important to note that the portion of the indictment relating to the University **did not**

[3] The University cites to the opening and closing statements as demonstrating the government's theory and prosecution of the case, not for evidentiary value. Opening and closing statements as well as sidebar discussions between counsel and the judge are not substantive evidence presented to and considered by the jury and therefore lack evidentiary value. They are not "facts" or "evidence" for purposes of Bylaw 19.7.8.3.

allege that any of the University's men's basketball coaches or athletics employees were aware of, or participated in, the scheme to pay [redacted] (See Id., pp. 21-26).

Gassnola was the government's key witness for most of the payments and promised payments. On multiple occasions during direct examination, the Assistant United States Attorney solicited sworn testimony from Gassnola that all of the payments and promised payments to [redacted] **were intentionally concealed from both the University and its coaching staff.** (See FI-6, pp. 914-16, 934, 1017, 1024, 1040, 1044-46). In addition, the government presented testimony from Gassnola that he made a payment to a family friend of [redacted] (the subject of Allegation 3-a) to create a relationship between [redacted] and Adidas in order to convince [redacted] to join an Adidas grassroots team and/or participate in Adidas Nations. (See Id., pp. 915-16, 945, 1009-11). On cross examination, Gassnola reiterated that the University did not know about the payments. (See Id., pp. 1172, 1215, 1231).[4] By contrast and consistent with the indictment, Gassnola testified that assistant coaches at two other institutions were aware of and/or participants in the payment scheme for other prospective student-athletes. (See Id., pp. 999-1000, 1120-21, 1211-12, 1230-31).[5] In connection with Gassnola's sentencing, the United States Attorney's Office stated that: Gassnola's testimony was "compelling and credible" and "Gassnola unambiguously and repeatedly acknowledged his understanding that the universities – as institutions – did not know of or condone the payments;"[6] and throughout the entire process, Gassnola was "consistently

[4] Gassnola also successfully concealed his payments from the NCAA Eligibility Center staff. [redacted] and [redacted] were highly rated men's basketball prospective student-athletes that were subject to review by the NCAA Eligibility Center to determine their amateurism status. As such, they were subject to a "complex case review" of the prospect's amateurism status. This enhanced amateurism review was conducted to determine if the prospects, their families, or anyone associated with the prospects accepted cash or any other impermissible benefits contrary to NCAA rules. These reviews, conducted in collaboration with the involved member institutions, may include extensive research by the NCAA into the personal lives of the prospects and their families; document requests for bank records and other financial information; evaluation of known associates; interviews of prospects, their families, and other individuals; and a thorough vetting of the involved prospective student-athletes' lives. (See Exhibit 3 [Eligibility Center Manual]). Despite the best efforts of the NCAA Eligibility Center's professional staff, the NCAA did not uncover any of the payments that are the subject of the ANOA.

[5] All of these statements by Gassnola were essential to the government's case. Ethical rules restrict counsel from presenting testimony that is known to be false and permit them to refuse to provide evidence that they reasonably believe to be false. See NY Rules of Professional Conduct 3.3; ABA Model Rule of Professional Responsibility 3.3.

[6] In its letter detailing Gassnola's cooperation, the government noted that he acknowledged that an assistant coach at another institution may have been aware of or solicited payments that are not at issue in this case. (See FI-38, p. 7).

truthful, complete, and forthcoming," "answered questions honestly," and was "truthful[ ], complete[ ], and reliable[ ]." (See FI-38, pp. 7-9 [Government 5K Letter (brackets in original)]).

At the conclusion of the SDNY trial, the jury found Gatto and Code guilty beyond a reasonable doubt, which required a finding that there was a scheme to defraud the University and that the University did not know about the payments and promised payments to [redacted] (See Exhibit 2, pp. 1834-36, 1842).[7]

Despite the SDNY jury finding beyond a reasonable doubt that the University was the innocent victim of the concealed payments and promised payments to [redacted] and despite the NCAA's inability to discover the same payments despite the extensive investigative efforts by the professionals in the NCAA eligibility staff (see fn. 4, supra), the enforcement staff has nevertheless charged the University with multiple Level I violations relating to these very same payments. In the ANOA, the enforcement staff has not asserted (and cannot assert based on the evidence) that the University, its men's basketball staff, or its athletics staff knew or should have known of the payments or promised payments. Rather, the enforcement staff alleges, without specifying any supporting facts, that prior to the payments, Adidas[8] had been promoting the University's athletics programs since at least October [redacted] and, therefore, the University is responsible for the conduct of all Adidas employees, consultants, and independent contractors that the University knew or should have known were associated with Adidas regardless of whether the University knew or should have known of the conduct of those individuals. As is explained in detail below, this theory has never been applied to classify as a booster an entity that is simply a corporate sponsor, and is not supported by the language of the relevant NCAA legislation or the weight of the credible and persuasive evidence.

In the alternative, the enforcement staff has asserted that one or more members of the University's men's basketball or the athletics staffs knew or should have known that Gassnola was assisting in recruiting

[7] Gatto and Code have appealed, and their appeal is pending.

[8] The ANOA does not identify to which Adidas entity the enforcement staff is referring. Because no Adidas entity qualifies as a representative of the University's athletics interests, the University will use the term "Adidas" throughout this Response.

prospective student-athletes on the University's behalf. In support of their argument, the enforcement staff relies on several items that, when taken in the context of Gassnola's background and role at Adidas,[9] are innocuous and commonplace communications that occur on a daily basis throughout the Membership. They do not establish that the University's men's basketball or athletics staffs had any reason to know that Gassnola was assisting in recruiting men's basketball student-athletes on behalf of the University.

V. ADIDAS, GASSNOLA, GATTO, CODE, AND CUTLER WERE NOT REPRESENTATIVES OF THE UNIVERSITY'S ATHLETICS INTERESTS AT THE RELEVANT TIMES

The ANOA contains multiple conclusory assertions that Adidas, Gassnola, Gatto, Code, and Cutler are representatives of the University's athletics interest without citing any particular information in support of those assertions. In an effort to narrow the issues and facts that need to be addressed by the Panel, the University, Self, and Townsend asked the enforcement staff to provide detail about each act or event that the enforcement staff contends caused Adidas and the four individuals to become representatives of the University's athletics interests. (See Exhibit 4). In support of their requests, the University, Self and Townsend cited to the requirement of Bylaw 19.7.1 which requires that the involved parties be given "the details of the allegations." (See Id.).

In response, the enforcement staff essentially reiterated the conclusory language contained in the ANOA and cited generally to 60 different FIs that cover thousands of pages. (See Exhibit 5). No specific event or act is identified. As such, the enforcement staff did not heed the request in Dr. Cartwright's September 19, 2019 letter that the cases be presented in a manner so that they could be resolved in a fair and efficient manner. (See Exhibit 30). The enforcement staff did, however, attempt to insert several new theories and allegations. It added an allegation that Adidas made "financial contributions" to the University's athletics program which made it and its employees and consultants representatives, and added

[9] As is discussed in detail below, Gassnola had a long-time association with an AAU scholastic boys' basketball team, the New England Playaz; assisted Adidas with supporting its grassroots basketball teams and events; and assisted Adidas and Gatto in creating and maintaining relationships with men's basketball athletes in an effort to ultimately sign them as endorsers of Adidas' basketball products if they reached the NBA.

a citation to Bylaw 13.02.15. (See Exhibit 5). This expansion of a new theory at this time is both inappropriate and without merit. In addition, the enforcement staff added a new theory and allegation that Brown became a representative of the University's athletics interest in 1983 when he was hired as the head men's basketball coach. This new theory is not properly added at this late date and is not supported by NCAA legislation or precedent. Finally, the enforcement staff alleged that both Cutler and Code were representatives of the University's athletics interests as early as October [redacted] because the University knew or should have known that they were consultants to Adidas. Neither Cutler nor Code were even associated with Adidas in October [redacted] (See FI-4, p. 50 [Townsend]; Exhibit 6 [Cutler LinkedIn Excerpt]).

As a result of the enforcement staff's broad approach in the ANOA and refusal to provide any specifics, the University can only speculate as to which events the enforcement staff will contend made Adidas and its employees and consultants representatives of the University's athletics interests. The ANOA refers to numerous events spread over a three-year period. Because an entity or person who becomes a representative of an institution's athletics interests retains that status, the events alleged in the ANOA need to be analyzed in chronological order rather than in the order that they appear in the ANOA.

A. The Enforcement Staff's Theory in the ANOA

As best as the University can determine from the ANOA, the enforcement staff is contending that "as early as October [redacted]

1. Adidas became a representative of the University's athletics interests under NCAA Constitution 6.4.1 and 6.4.2, because by October [redacted] members of the University's men's basketball and athletics department staffs knew that Adidas was promoting the University's intercollegiate athletics program;
2. Gassnola and Gatto became a representative of the University's athletics interests under NCAA Constitution 6.4.2 because by October [redacted] members of the University's men's basketball and athletics department staffs knew that they were "members" of a corporate entity (Adidas) covered by NCAA Constitution 6.4.1; and
3. Gassnola became a representative of the University's athletics interests in his individual capacity under NCAA Constitution 6.4.2 because by October [redacted] members of the men's basketball staff knew he was assisting in the recruitment of prospective student-athletes.

In addition, the enforcement staff asserts that Cutler and Code were consultants for Adidas and makes the conclusory statement that they were representatives of the University's athletics interests at some unspecified time prior to June 27, 2017 and September 14, 2017, respectively. It appears that the enforcement staff is relying on NCAA Constitution 6.4.2, and asserting that, as of the referenced dates, the University's men's basketball staff was aware that Cutler and Code were "members" of Adidas, which was covered by Constitution 6.4.1.

Stated otherwise, the enforcement staff first contends that Adidas promoted the University's athletics interests and, therefore, the University is automatically responsible for the conduct of all persons the University knew or should have known were employed by or affiliated with Adidas regardless of whether the University knew or should have known anything about the individuals' conduct. The enforcement staff secondarily argues that the University's men's basketball staff knew or should have known that Gassnola was assisting in the University's recruitment of prospective student-athletes at the time of the events referenced in Allegations 1, 2-b, 2-c, 2-d, 2-e, 3-a, and 3-b. As is explained in detail below, neither of the enforcement staff's assertions are supported by the facts or the relevant NCAA legislation, case precedent, or interpretations.

B. The Enforcement Staff's New Theory Regarding Adidas

In its February 19, 2020 letter, the enforcement staff added an allegation that Adidas became a representative of the University's athletics interest as early as October [redacted] pursuant to Constitution 6.4.2 and Bylaw 13.02.15, because the University knew of should have known that Adidas had "made financial contributions to the athletics department." (See Exhibit 5). The enforcement staff has provided no further detail to support this allegation, but the University can only presume that the enforcement staff is arguing that the payments made by Adidas under the sponsorship contracts that were the result of extensive arms-length negotiations constitute "financial contributions." As is explained below, this new assertion is not supported by any relevant NCAA legislation, case precedent, or official interpretation.

C. Adidas is Not a Representative of the University's Athletics Interests Pursuant to Constitution 6.4.1 or 6.4.2 or Bylaw 13.02.15

The assertions by the enforcement staff are unprecedented and erroneous applications of NCAA legislation concerning who qualifies as a representative of an institution's athletics interests. If the panel were to adopt either of the enforcement staff's positions, it would result not only in an incorrect and unfair outcome for the University, but would have far reaching and unintended consequences within the Membership as described below.

In support of its argument that Adidas is a representative of the University's athletics interests, the enforcement staff cites Constitution 6.4.1 and 6.4.2. Constitution 6.4.1 provides, in relevant part:

> An institution's "responsibility" for the conduct of its intercollegiate athletics program shall include responsibility for the acts of [a] ... corporate entity (e.g. apparel or equipment manufacturer) ... when a member of the institution's executive or athletics administration, or an athletics department staff member, has knowledge that such ... corporate entity ... is promoting the institution's intercollegiate athletics program.

The enforcement staff has not provided any explanation in the ANOA or its February 19, 2020 letter as to what conduct Adidas, as an entity, engaged in that constitutes "promoting the institution's intercollegiate athletics program" in October [redacted] or thereafter.

Constitution 6.4.2 provides:

> An institution's "responsibility" for the conduct of its intercollegiate athletics program shall include responsibility for the acts of individuals, a corporate entity (e.g., apparel or equipment manufacturer) or other organization when a member of the institution's executive or athletics administration or an athletics department staff member has knowledge or should have knowledge that such an individual, corporate entity or other organization:
>
> (a) Has participated in or is a member of an agency or organization as described in Constitution 6.4.1;
>
> (b) Has made financial contributions to the athletics department or to an athletics booster organization of that institution;
>
> (c) Has been requested by the athletics department staff to assist in the recruitment of prospective student-athletes or is assisting in the recruitment of prospective student-athletes;

(d) Has assisted or is assisting in providing benefits to enrolled student-athletes; or

(e) Is otherwise involved in promoting the institution's athletics program.

The enforcement staff has not specifically asserted which, if any of the subdivisions applies to Adidas in this matter, although it appears that the ANOA relied on subdivision (e) and in its February 19, 2020 letter, the staff is relying on subdivision (b). Constitution 6.4.2(b) does not apply because that section applies to donations that are made to the athletics department or an athletics booster organization - not arm's length commercial contracts. In addition, as discussed above and below, Adidas did not promote the University's athletics program, so Constitution 6.4.2(e) is inapplicable.

Although the ANOA does not provide any detail in support of the enforcement staff's argument under Constitution 6.4.1, it appears that the enforcement staff is relying solely upon the undisputed fact that Adidas has had a sponsorship agreement in place with the University since 2005. The enforcement staff included in the factual information the current sponsorship agreement, which is dated effective as of July 1, 2017 (See FI-93), and the prior sponsorship agreement that was effective as of September 1, 2005 and amended effective as of July 1, 2012. (See FI-94). To the extent that the enforcement staff is contending that the mere existence of a sponsorship agreement causes an institution to be responsible for the acts of the sponsor under Constitution 6.4.1, the enforcement staff is mistaken as to the nature and scope of both Constitution 6.4.1 and the role of sponsorship agreements.

Constitution 6.4.1 requires that an entity *promote* the institution's athletics programs – not simply that it has a sponsorship agreement. The 2005 and 2017 sponsorship agreements at issue here require that Adidas pay the University monies and provide goods and services in return for the University promoting and marketing the Adidas brand – not for Adidas promoting the University's athletics program. In this regard, the recitals in the 2005 and 2017 sponsorship agreements state that Adidas is entering into the agreement "to acquire the designation for certain adidas' Products as the official Products of Kansas Athletics' athletics programs in the designated categories; to secure the sponsorship recognition and acknowledgement of adidas products [sic] by Kansas Athletics' Athletic Program Staff; and to acquire

certain sponsorship recognition rights from Kansas Athletics." (See FI-93; FI-94). That the University is promoting Adidas (and not the other way around), is further demonstrated by the fact that the compensation that Adidas pays the University is increased or decreased based upon increases or decreases in the scope of the University's promotion of the Adidas brand. (See FI-93; FI-94). In this regard:

- Section 3(B) of both agreements provide that if the football or men's basketball programs' ability to appear on television is restricted, Adidas may reduce its payments due to the decreased exposure Adidas receives;

- Section 5(A) of the 2017 agreement states that if the University adds a sports program, Adidas is obligated to provide the University with additional Adidas products in return for the additional exposure;

- Section 5(B) of both agreements indicates that if the NCAA or the governing athletic conference changes its rules, including Bylaw 12.5.4 ("Use of Commercial Trademarks or Logos on Equipment, Uniforms and Apparel"), in a manner that adversely impacts the display of the Adidas logo and marks on the University's apparel, Adidas is entitled to reduce its payments;

- Section 6(A) of both agreements requires that all University teams must exclusively wear Adidas products during all team events except in very limited situations and that this requirement is a material term;

- Sections 6(B), 6(C), and 6(D) of both agreements bar University student-athletes and athletics personnel from covering up any Adidas logo except in very limited circumstances and violations permit Adidas to significantly reduce its payments;

- Section 7 of both agreements grants Adidas the exclusive license to use the University's marks "in connection with the advertisement, promotion, and sale of adidas Products;" the exclusive right to advertise, market and promote itself as the exclusive supplier to the University's athletics program; and the right to use the University's coaches as endorsers of Adidas products;

- Section 8 of both agreements requires that the head coach of each sports program be available for three appearances per year to recognize Adidas' sponsorship and promote the sale of Adidas products.

- Section 12(A) of both agreements allows Adidas to terminate the sponsorship in a variety of circumstances which involve limitations to or adverse impacts on the marketing and display rights of the Adidas brand.

- Exhibit B to both agreements requires the University to provide Adidas with certain signage and advertising opportunities in various media so that Adidas can promote its brand.

(See FI-93; FI-94). The foregoing items individually and collectively establish that the relationship has been and continues to be based on the University promoting Adidas – not Adidas promoting the University.

The University has other sponsorship agreements pursuant to which entities pay for advertising, marketing, and promotional rights that they obtain as sponsors. Likewise, many, if not all, other Division I member institutions have sponsorship agreements with apparel companies and many other corporate entities. The revenue streams from these corporate sponsors provide financial support for member institutions' sports programs.[10] By its terms, Constitution 6.4.1 does not make member institutions responsible for the conduct of corporate entities that are paying institutions to help to advertise, market, and/or promote those corporate entities' products and services. Indeed, under the theory that the enforcement staff apparently is espousing, every member institution would be responsible for every action of potentially every employee of every sponsor, inasmuch as the institutions necessarily have knowledge of their sponsors and the enforcement staff takes the position that institutions should know who works for their sponsors.

No prior infractions case has extended Constitution 6.4.1 to corporate entities that are paying the institution for sponsorship rights. Instead, the few cases that involve entities and cite to Constitution 6.4.1 pertain to the conduct of booster organizations whose *very purpose* is to promote the institution's athletics programs rather to promote the booster clubs as separate entities with their own products or services. See e.g. *Baylor University*, pp. 22-23 (2012) (involving conduct by Friends of Baylor, which made direct donations to Baylor sports programs and was created to promote Baylor athletics by two alumni, each of whom made significant personal donations to Baylor sports programs); *University of Kentucky*, pp. 24-25 (2002) (pertaining to conduct by the Wildcat Club, which was the football program's booster organization); *California State University, Northridge*, pp. 14-15 (2000) (concerning conduct by the Quarterback Club, which was the football program's booster organization). Further, the University was unable to locate any

[10] In this regard member institutions are no different than the NCAA, which uses corporate sponsors to help fund its operations. (See Exhibit 7).

interpretations or educational materials to support the extension of Constitution 6.4.1 to corporate sponsors *solely* because they are sponsors.[11] As a result, five University athletics administrators, each of whom have decades of experience in Division I athletics and have worked at a number of other institutions, all stated that corporate sponsors are not representatives of the athletics interests of institutions that they sponsor simply because they are a sponsor and make payments. (See FI-17, p. 57 [Reed]; FI-19, p. 25 [Keating]; FI-20, p. 43 [Lester]; FI-22, pp. 32-33 [Zenger]; FI-23, p. 30 [Long]).

Moreover, corporate sponsors, including but not limited to entities such as Nike, Under Armour, and Adidas provide prospective student-athletes with various benefits (apparel, travel, meals, etc.) relating to their participation in events sponsored by those entities (e.g. Adidas Nations and Gauntlet, Nike Peach Jam and EYBL, and Under Armour Rise and Association).[12] These benefits are permissible under Bylaw 12.1.2.1.4.3, *but only* if the outside sponsor is neither an agent nor a representative of an institution's athletics interests. Nike, Under Armour, and Adidas have sponsorship agreements with numerous Division I institutions.[13] If the enforcement staff's argument is adopted by the Panel, solely by virtue of the existence of their sponsorship agreements, Nike, Under Armour, and Adidas would be deemed to be promoting the athletics interests of every institution with which they have sponsorship agreements and, therefore, Nike, Under Armour, and Adidas would constitute representatives of each institutions' athletics interests pursuant to Constitution 6.4.1.[14] As a consequence, any prospective student-athlete who received gear or actual and necessary expenses from Nike, Under Armour, or Adidas in connection with events, such as Adidas Nation and Gauntlet, Nike Peach Jam and EYBL, and Under Armour Rise and Association,

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[11] The University acknowledges that under the terms of Constitution 6.4.1 when sponsors engage in the promotion of an institution's athletics' interests rather than their own corporate interests and the institution knew of the conduct, they become representatives for which the University is responsible. There is no evidence that Adidas was engaging in this conduct as an entity and that the University knew or should have known Adidas was engaging in this type of conduct.

[12] The listed events are just a small fraction of the events (and participants) that would be impacted if the enforcement staff's interpretation were adopted. For example, prospective student-athletes have been sent to Atlantis, Bahamas by Nike; to Italy and Aruba by Adidas, and to Rucker Park in New York City by Under Armour. (See FI-1, p. 84 [Self]).

[13] Although Nike, Under Armour, and Adidas each have sponsorship agreements with many institutions, under the enforcement staff's theory, each company would become a representative of athletics' interests for amateurism purposes if it had a sponsorship agreement with just one institution.

[14] Under the enforcement staff's theory, if an individual associated with an apparel company provides an impermissible benefit or inducement, that individual would be deemed to be a booster of every institution that the apparel company sponsors.

would have received prohibited pay or other benefits under Bylaw 12.1.2 and would have lost his/her amateur status under Bylaw 12.1 because the exception under 12.1.2.1.4.3 would be inapplicable. The NCAA enforcement and initial eligibility staffs are fully aware that Nike, Under Armour, and Adidas are providing monetary benefits to thousands of prospective student-athletes. Yet, not a single infractions case has been brought nor an eligibility certification been denied due to the provision of these benefits.

D. The University is Not Responsible for the Conduct of Gassnola, Gatto, Code, or Cutler Pursuant to Constitution 6.4.2-(a)

The enforcement staff has asserted that because Adidas is a representative of the University's athletics interests under Constitution 6.4.1, the University is responsible for the acts of Gassnola and Gatto (and apparently Code and Cutler) simply because the University knew or should have known that they were "members" of Adidas. Inasmuch as the University is not responsible for Adidas' conduct under Constitution 6.4.1 as set forth above, the enforcement staff's contention that the University is responsible for the acts of Gassnola, Gatto, Code, and Cutler under the Adidas "members" theory also fails.

Even if Adidas is deemed a representative under Constitution 6.4.1, the plain language of Constitution 6.4.2 does not support the enforcement staff's contention. Constitution 6.4.1 refers to three categories of entities: "[1] an independent agency, [2] corporate entity (e.g. apparel or equipment manufacturer), or [3] other organization." Adidas fits into the second category and that is what the ANOA asserts ("Adidas is a corporate entity (e.g. apparel or equipment manufacturer)"). Constitution 6.4.2-(a) makes institutions responsible only for individuals that are known or should have been known to be members of the first and third categories ("An institution's 'responsibility' for the conduct of its intercollegiate athletics program shall include responsibility for the acts of individuals ... [when the institution's athletics administration or staff knows or should know] that such an individual ... (a) Has participated in or is a member of *an agency or organization* described in Constitution 6.4.1." [emphasis added]). The membership's omission of a reference to "corporate entities" in Constitution 6.4.2-(a) should

be given effect.[15] Further, the phrase "participated in or is a member of" in Constitution 6.4.2-(a) makes no sense when applied to a corporate entity. Moreover, the consequence of the enforcement staff's argument would be to impose responsibility on member institutions for conduct far beyond their ability to control. Member institutions would be responsible for every employee, consultant, and independent contractor who is known or should be known to work for or with any of the institution's corporate sponsors.

For all of these reasons, there is no basis for the enforcement staff's effort to have this Panel re-write and expand the scope of Constitution 6.4.2-(a) to cover the employees, consultants, and independent contractors of corporate entities. Any potential expansion of responsibility, particularly given the magnitude of the impact, should only be imposed on member institutions, if and when the issue is studied, proposed, and approved by the Membership through the legislative process.

E. The University Did Not Become Responsible for Gassnola's Conduct Pursuant to Constitution 6.4.2-(c) in October

The enforcement staff asserts that Gassnola became a representative of the University's athletics interests as early as October pursuant to Constitution 6.4.2-(c) because a member of either the men's basketball staff or the athletics department staff had knowledge or should have had knowledge that Gassnola was assisting in the recruitment of student-athletes. For the reasons discussed below, a reasonably prudent person would conclude that there is insufficient credible and persuasive information to establish that Gassnola was assisting the University in recruiting prospective men's basketball student-athletes in October much less that one or more members of the men's basketball or athletics department staffs knew or should have known that Gassnola was allegedly assisting in recruiting. See Bylaw 19.7.8.3.

1. The Enforcement Staff's Theory Under Constitution 6.4.2-(c)

The ANOA does not identify the factual basis for the enforcement staff's assertions that (a) Gassnola was assisting in the recruitment of prospective student-athletes "as early as October or

[15] Under well settled interpretive principles, when language is used in one section of a statute but not in another, the omitted language cannot be read into the latter section. (See Russello v. United States, 464 U.S. 16, 23 [1983]; United States v. Naftalin, 441 U.S. 768, 773-74 [1979]).

even that (b) the University's men's basketball or athletic staffs knew or should have known of Gassnola's efforts. Based on the documents referenced in the factual information chart and the enforcement staff's questioning during the investigation, it appears that the enforcement staff is relying on an October 9, [redacted] email from The Oread Hotel ("The Oread") to men's basketball director of student-athlete development, Fred Quartlebaum, and assistant men's basketball coach Kurtis Townsend (see FI-96), and/or a March 2, [redacted] email that Gassnola sent to Chris Rivers at Adidas. (See FI-41). The information in the record does not rise to the level of proof required by Bylaw 19.7.8.3.

2. Gassnola's October 10, [redacted] Stay at The Oread Did Not Make Him a Representative of the University's Athletics Interests

Initially, it is important to note that the ANOA does not allege that any NCAA rules violations took place during Late Night in the Phog in [redacted] The allegations concerning interactions among Gassnola, [redacted] and [redacted] (Allegation 1-a) took place two or more years later.

On October 10, [redacted] the University's men's basketball team held an event, known as "Late Night in the Phog," that opened its men's and women's basketball programs' seasons. This event is like "Midnight Madness" basketball events that a number of other institutions hold. It is an important event that draws significant interest from the University's fans. The University has an open-door policy at the event (i.e., no admission fee is charged) and over the years, hundreds of individuals associated with university sponsors, as well as representatives of Nike, Under Armour, and Adidas, have all attended the event. (See FI-1, pp. 15-16, 31, 37; FI-3, pp. 11-13, 22 [both Self]). Similarly, Gassnola apparently has attended "Midnight Madness" events at Nike-sponsored schools even though he was affiliated with Adidas. (See FI-1, p. 35 [Self]; FI-3, p. 21 [Self]; FI-41 [Gassnola 3/2/15 email]).

Some prospective student-athletes attend Late Night in the Phog on official and unofficial visits. The Oread is the only hotel that is located adjacent to campus and is popular with visitors to the University. (See FI-1, pp. 33-34 [Self]). The University often obtains rooms at the hotel for prospective student-athletes on official visits that occur throughout the year (not just for Late Night in the Phog). (See Id., p. 38; FI-2,

pp. 5, 9 [Self]; FI-4, p. 41 [Townsend]). The Oread has standard guest rooms on floors two through five. (See www.theoread.com/room-suites/).

The October 9, [redacted] email from The Oread to Quartlebaum and Townsend simply forwards the hotel's proposed rooming list. (See FI-96). The attached list included six prospective student-athletes who were on official visits and their parents or guardians, the parent of a seventh prospective student-athlete who was on an unofficial visit, Gassnola, and Gatto. (See FI-96; see also FI-2, pp. 3-7 [Self]). The Oread's proposed rooming list provided that the six student-athletes would be spread over the four floors of the hotel that have guest rooms. In addition, the hotel's proposed list assigned the parents and guardians of the prospective student-athletes to rooms on three of those floors. As a result, The Oread's proposed rooming list put Gassnola and Gatto in rooms on the same floor as some of the prospective student-athletes and the parent of one prospective student-athlete. (See FI-96). The University did not pay for Gassnola's and Gatto's rooms, so it does not know if they actually stayed at The Oread and, if they did, in what rooms they stayed. Moreover, there is no evidence that Gassnola or Gatto were informed that any prospective student-athletes and their families were staying at The Oread.

Quartlebaum informed the enforcement staff that: he did not recall the email when asked about it nearly five years later; neither Gassnola nor Gatto ever asked him to reserve a room for them at the hotel; and he does not know who, if anyone, at the University would have been involved in placing them on a room reservation list. (See FI-85, pp. 13-15). Townsend thought that Gassnola and Gatto usually stayed at The Oread when they were in town for a game or Late Night in the Phog, and on some occasions prospective student-athletes may be staying in the same hotel. (See FI-4, pp. 20-21, 41-42). Townsend did not know how Gassnola or Gatto obtained their rooms at the hotel when they were in town. (See Id., pp. 22-23). The enforcement staff did not ask Townsend about the October 9, [redacted] email. Self did not know whether Gassnola or Gatto stayed at The Oread; did not request that a room be reserved for either of them; and denied knowing about the October 9, [redacted] email. (FI-1, p. 38; FI-2, pp. 4-8). Self's administrative assistant, Joan Stephens, stated that she never obtained a hotel room for Gassnola or Gatto. (See FI-81, p.

19). It is possible Gassnola or Gatto told The Oread that Gassnola and Gatto were related to the University and The Oread added them to the block for the [redacted] Late Night in the Phog event. There is no evidence in the record that any of the men's basketball staff had any involvement in Gassnola or Gatto obtaining a room at The Oread for the [redacted] event or on any other occasion.[16] In sum, there is insufficient credible or persuasive evidence to conclude that the University assisted Gassnola or Gatto in getting rooms in October [redacted] much less that the University did so in an effort to request that Gassnola and Gatto assist in recruiting prospective student-athletes to the University.

Even if the men's basketball staff somehow assisted Gassnola and Gatto in obtaining rooms at The Oread for October 10, [redacted] the mere fact that Gassnola and Gatto were staying in the same hotel as prospective student-athletes is not evidence that Gassnola was recruiting the prospective student-athletes to the University through any interactions that might have taken place inside the hotel.[17] As previously noted, The Oread is a popular hotel that is located adjacent to campus. There is nothing unusual about people staying there and Gassnola and Gatto stayed there on other occasions. Moreover, a representative from Under Armour, Hanif Hill, appears to have stayed at The Oread for Late Night in the Phog in [redacted] when prospective student-athletes were also staying at the hotel (see FI-97 [[redacted] rooming list]), but that does not lead to the conclusion that Hill was improperly recruiting the prospective student-athletes for the institutions that Under Armour sponsors or the University.[18]

Further, any communication that Gassnola may have had with the prospective student-athletes at this open-to-the-public event was most likely directed toward creating, maintaining, or improving the relations between Adidas and the prospective student-athletes in an effort to promote Adidas' commercial

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[16] There is evidence that in the summer of [redacted] Gatto asked Adidas' on campus representative, Stephanie Temple, if she could get rooms for him and Gassnola through the University's block of rooms for a neutral site game and that Temple contacted athletics staff and was told to contact the hotel herself. (See FI-95 [email]). In addition, on several occasions Temple personally had obtained rooms at various hotels in Lawrence when Adidas representatives, other than Gatto or Gassnola, were in town for a game. Temple did not recall if she ever directly obtained hotel rooms for Gatto or Gassnola in Lawrence. (See FI-80, pp. 12, 15-16, 22-23).

[17] The same holds true for Gatto, however, the ANOA only asserts that Constitution 6.4.2-(c) applies to Gassnola.

[18] It is also likely that other Under Armour representatives and Nike representatives were at The Oread for Late Night in the Phog or games on other occasions. Their mere presence would not mean that they were engaged in improper recruiting on behalf of the institutions that they sponsor.

interests. In this regard, Adidas, like Nike and Under Armour, promotes its basketball products through sponsorships of AAU and intercollegiate sports programs and through NBA player endorsement deals. (See FI-6, pp. 921, 1047-51, 1083-84 [Gassnola SDNY]). Gatto's primary job with Adidas was to sign prospective and existing professional men's basketball players to endorsement contracts. (See Id., pp. 921, 1008, 1053; FI-35, p. 28 [Government Sentencing Memo]). Gassnola assisted Gatto by helping to create and maintain relationships with men's basketball athletes from the grassroots level through college in the hopes of increasing the likelihood that the athletes would sign endorsement deals with Adidas if and when they became professionals. (See FI-6, pp. 920-21, 939-40). As noted below, two of the prospective student-athletes who were at Late Night in the Phog in [redacted] signed endorsement contracts with Adidas when they became professionals even though they attended Nike-sponsored institutions.

Finally, there is no NCAA legislation (nor could there be) that prohibits institutions from allowing employees or others associated with their corporate sponsors from attending games or major events, or staying in the same hotels that the institution uses for its prospective student-athletes and their families. Member institutions rely on revenue from their corporate sponsors to help fund their athletics programs. In return for the sponsorship monies, the corporate entities seek to maximize their opportunities to promote themselves, which includes being visible at important events.[19] There is nothing in Constitution 6.4.1 or 6.4.2 that makes an institution responsible for corporate sponsors simply because the sponsors are promoting their own self-interests by being present at events.

3. Gassnola's and Gatto's Alleged Conversations on or about October 10, [redacted] Did Not Make Gassnola a Representative of the University's Athletics Interests

The enforcement staff's apparent reliance on the portion of Gassnola's March 2, [redacted] email (see FI-41), pertaining to conversations that allegedly took place on or about October 10, [redacted] likewise provides no basis for the staff's contention that Gassnola became a representative of the University's athletics interests in October [redacted]

[19] Adidas' sponsorship agreements entitle Adidas to certain ticket allotments for this reason. (See FI-93; FI-94).

a. Gassnola's Alleged Discussions with the Men's Basketball Staff

On February 17, 2015, Chris Rivers, who was in charge of grassroots basketball at Adidas, sent an email to Gassnola and several others noting, among other things, that he wanted short written recaps after trips that note "who we are seeing and how these touch points help us [Adidas] in the short and long term future … [and] validat[e] the money we spent in addition to demonstrating how are building relationships that will help us [Adidas] *in the draft signing process*." Rivers also requested a 90-day recap of "the great work we have been doing in the field." (See FI-42 [emphasis supplied]). According to Gassnola, he prepared his March 2, 2015 email in response to Rivers' request for a 90-day recap. (FI-6, pp. 952-53). During the investigation, the enforcement staff focused on two sentences in the March 2, 2015 email.

In the email, Gassnola chronicles his travels listing various institutions, coaches, and media personalities with whom he allegedly had interactions. First, the email states that on October 10, [redacted] "Met with Coach Self and staff Talked Recruiting Targets and the up coming seasson [sic] assured them that we are here to help." (See FI-41). Although Gassnola was asked several questions about his March 2, 2015 email during his testimony in the SDNY trial, he was never questioned by any of the parties about the meaning of this sentence or asked to provide any detail about his alleged conversation on October 10, [redacted] with the University's men's basketball staff. During the investigation of this infractions matter, the only time that the enforcement staff directly mentioned this email was at Self's August 20, 2019 interview when they read it into the record and asked Self if he had any comments on it. Self responded and disputed that he had any discussion with Gassnola about recruiting prospects. Self stated that the men's basketball program had never used Gassnola to help it recruit. He noted that the identities of the prospective student-athletes who the University are recruiting and who are visiting campus at any given time are public knowledge. Self also pointed out that the email was Gassnola's effort "to justify his existence" to his Adidas bosses and, therefore, is not reliable. (See FI-2, pp. 7-10).[20] Furthermore, the fact that the email

[20] Although the March 2, 2015 email was entered into evidence during the SDNY trial, no factual findings that were made that relate to the email in general, much less to the portion that pertains to the events on October 10, [redacted] Further, the email did not provide evidence supporting any of the elements of the crimes that were charged or of which the defendants were convicted.

was drafted five months after the alleged conversation took place raises questions as to whether Gassnola was accurately describing remote events. Also, Gassnola wrote the email for the purpose of self-justifying his position, so his statements should not be accepted as accurate, particularly given Self's denial.

Additionally, as Townsend explained at length, college basketball coaches routinely speak with a wide variety of individuals about prospective student-athletes including but not limited to scouting services personnel, high school and AAU coaches, and people associated with all of the shoe companies. College coaches have these conversations because there are limits on their contacts with and ability to observe prospects. By contrast, these other individuals have no such limitations, often have much more frequent contact with prospects, and accordingly can sometimes provide valuable and current insights. (See **FI-4**, pp. 41-42, 48-49, 104-05, 120-23). Townsend noted that he regularly calls and is called by his contacts at Nike and Under Armour and other sources about prospects, as do other college coaches. (See **Id.**, pp. 37, 42, 45-46, 48, 104).[21] Assistant men's basketball coach Jerrance Howard gave a similar explanation and indicated that when he worked at other institutions he talked with and gathered intelligence from multiple sources, including apparel sponsors. (See **FI-86**, pp. 5-6, 20-21, 27-28). None of these fact-gathering conversations are violations of NCAA Bylaws.

For the foregoing reasons, this Panel should not treat the above-quoted portion of the March 2, 2015, email as credible and persuasive evidence that improper recruiting assistance was being provided or requested on October 10, [redacted] See Bylaws 19.7.8.3 and 19.7.8.3.1. In any event, the first sentence does not establish that Gassnola was asked to assist, or was assisting, the men's basketball program recruit prospective student-athletes.

Moreover, if the Panel treats the March 2, 2015 email as credible and persuasive evidence, it supports Townsend's description as it demonstrates the scope of the access that is available to individuals

[21] Townsend's call records show that he had numerous calls with his contacts at Nike and Under Armour. (See **FI-135**).

associated with the apparel companies and that other collegiate coaching staffs routinely speak with them. According to the email, during the 90-day period covered:

- Gassnola and Gatto both also attended the season opening basketball events at Kentucky (a Nike school) and Indiana.
- Gassnola and/or Gatto met one or more times each with the coaching staffs at Kentucky (Nike), Indiana, Michigan, Syracuse (Nike), Arizona (Nike), North Carolina State, UCLA, and Miami.
- Gassnola kept John Beilein, then the Michigan head basketball coach, "in the loop on all things that are going on with [then-prospective student-athlete] [redacted] ... as well as talk[ed] about [then-prospective student-athlete] [redacted]."
- Gassnola observed at least 18 different top-rated prospective men's basketball student-athletes play, many of them multiple times.
- Gassnola had meals with prospective student-athletes and/or members of their families on multiple occasions.

(See FI-41). In sum, although the evidence does not support a finding that the University's men's basketball staff discussed their recruiting targets with Gassnola on October 10, [redacted] there would have been nothing unusual or improper if they had done so.

It is unclear if the enforcement staff is focusing just on the last part of the sentence in which Gassnola states five months after the fact that he and Gatto "assured [the men's basketball staff] that we are here to help." If the enforcement staff is relying on this phrase, the Panel should not find it to be credible and persuasive evidence that they were assisting with recruiting. During the SDNY trial, Gassnola was never asked about this statement and no finding was ever made related to it. Moreover, even if true, the statement that "we are here to help" with no further context does not lead to the conclusion that they would be helping the program by improperly recruiting. It could mean, for example, that they would help by obtaining apparel, particularly since the quoted phrase immediately followed the statement that they talked about "the up coming seasson [sic]." (See Id.). In this regard, during the 2014-15 season, Gassnola and Gatto obtained the then very popular Adidas footwear known as Yeezys for the University's men's basketball coaches. (See FI-1, pp. 19-20 [Self]; FI-4, pp. 87-88 [Townsend]). Moreover, even if the "help"

related to recruiting, it could simply be passing on information that they heard, which is no different than what occurs on a regular basis at member institutions.

A major sponsor saying that they "are here to help" is an innocuous statement and does not put an institution on notice that the sponsor intends to engage in improper recruiting and then conceal the conduct from the institution. Nor should it cause an institution to take pause and consider whether the sponsor is promoting the institutions athletics programs. In fact, the March 2, 2015 email states that Gassnola made the same type of innocuous statement to the Indiana University head men's basketball coach on two separate occasions in the fall of 2015. (See FI-41). The threshold for permanently becoming a representative of an institution's athletics interests (see Bylaw 13.02.15.1) is not triggered by a benign statement that "we are here to help."

b. Gatto's Alleged Communications with a Parent and Prospective Student-Athletes

The second statement in the March 2, 2015 email regarding October 10, [redacted] indicates: "Jim [Gatto] spent time with [redacted] etc were all there for the event. All the kids new [sic] Adidas was there and Jim said his hellos." (See FI-41). It is unclear how these alleged communications by Gatto establish that Gassnola was assisting the University recruit anyone. The enforcement staff has only asserted that Constitution 6.4.2-(c) applies to Gassnola. In addition, for the reasons stated above, the Panel should not find this statement made five months later is credible and persuasive evidence under Bylaws 19.7.8.3 and 19.7.8.3.1.[22] In any event, there is no evidence that any conversations that Gatto allegedly had with any of the prospective student-athletes had anything to do with assisting *the University's* recruiting efforts. Instead, the language states that Gatto *was promoting Adidas*. All three of the prospects that are referred to in the email ([redacted]) attended schools sponsored by Nike (Duke, University of California, Berkley, and

[22] The University notes that the key issue to be determined by the jury in the SDNY trial was whether the universities were the unwitting subjects of a scheme to defraud. The jury was not required to assess whether statements such as the one relied upon by the enforcement staff was accurate since it did not pertain to that key issue. Thus, the Panel should not accept as true statements made in documents simply because the document was admitted into evidence in the SDNY trial for unrelated reasons.

UNLV, respectively). [redacted] later signed NBA endorsement deals with Adidas. Thus, Gatto's efforts to promote the interests of Adidas were successful and fit squarely into Rivers' request for written communication that shows "how each of these touch points will help us [Adidas] in the short and long term future … in addition to demonstrating how we are building relationships that help us in the draft signing process." (See FI-42).

F. Gassnola was Not Assisting the University Recruit [redacted] and the Men's Basketball Staff Did Not Know and Should Not Have Known of Gassnola's Conduct

Allegation 3-a contains the next events that pertain to Gassnola. This allegation asserts that (1) on December 11, [redacted] Gassnola had an impermissible recruiting contact with [redacted] in [redacted]; and (2) in the winter of [redacted] Gassnola provided a family friend of [redacted] $15,000 to provide to [redacted] mother. Allegation 3-a does not contend that the University's men's basketball or athletics staffs had any actual or constructive contemporaneous knowledge of either alleged event and there is no evidence of any such knowledge in the record.

1. Gassnola's Alleged Contact with [redacted] on December 11-12, [redacted]

[redacted] was a top prospect in the incoming class of [redacted], and on December 11-12, [redacted] was a high school sophomore. The only information in the record regarding this alleged contact is an entry on Gassnola's March 2, [redacted] email to Rivers that states,

> Dec 11 and 12 AC aka Genuine (1 3rd of the SOUL PATROL) went to [redacted] to see [redacted] and [redacted] took [redacted] to Dinner spent time with [redacted] before hand

(See FI-41). This entry and the alleged interaction were never discussed in the SDNY trial. For all of the reasons stated previously, the Panel should not treat this statement as credible and persuasive information. Moreover, this entry only states that "AC" (Anthony Coleman who worked for Adidas [See FI-6, p. 996 (Gassnola SDNY)]), went to [redacted] and spent time with [redacted] There is no reference to Gassnola being present. The absence of any reference to Gassnola contrasts with his other entries in which he indicated when he was part of a group of multiple Adidas representatives – October 10, ("Jim and I"); October 12 and 13 ("Jim and I"); November 17 ("Jim and I"); November 18 ("Jim and i"); December 12-14 ("Jim aka

Swings My self and the Soul Patrol"); December 20-23 ("Hulio Myself AC and Young Cutty"); January 2-4 ("AC and Myself"); January 17-19 ("the whole bball crew"); January 20 ("AC myself and Rivs"); January 21 ("AC and I"); February 25 ("AC Myself Hulio and Jim"); and February 28 ("AC, Jim Wes 2.0 and Myself"). Thus, there is no basis for finding that Gassnola was even present with "AC."

Even if Gassnola was present, there is no credible and persuasive evidence that on December 11-12, Gassnola was assisting in recruiting to Kansas rather than creating a relationship with to persuade him to join a grassroots program sponsored by Adidas, attend an event sponsored by Adidas, or create a relationship in the hopes that would sign an endorsement deal with Adidas if and when he became a professional, which was the end game that Adidas sought from these contacts. (See FI-42 [River's 2/17/15 email]). In this regard, when Gassnola was questioned about the $15,000 payment that is discussed in the next subsection, he indicated that he was trying to accomplish these goals on behalf of Adidas – not that he was trying to assist the University recruit Moreover, it is unclear exactly what the phrase "spent time with before hand" covers. played in a high school game on December 12, (See Exhibit 8). A reasonable person conducting serious affairs cannot draw any conclusion, as required by Bylaw 19.7.8.3, as to whether there was a simple greeting or something else.

Finally, there is absolutely no evidence in the record that any member of the University's men's basketball or athletics staff knew or should have known about the alleged December 11-12, contact and that Gassnola purportedly was trying to help the University recruit at that time. The enforcement staff asked Self if he was aware of this contact and he stated he was not. (See FI-2, pp. 22-23).

For these reasons, there is no credible and persuasive evidence to support a finding that Gassnola was a representative of the University's athletics interests on December 11-12,

2. Gassnola's Alleged $15,000 Payment to Family Friend in Winter

The only evidence in the record regarding the alleged $15,000 payment is Gassnola's testimony in the SDNY trial. Gassnola testified that he made a payment of $15,000 to a family friend of named in the winter of when was a junior. (See FI-6, pp. 1009-10). Gassnola said he intended

that the $15,000 be given by [redacted] to [redacted] mother (see Id., p. 1010), although there is no proof in the record that [redacted] mother received the money. The following exchange then occurred:

> Q: Why did you give that $15,000 payment for the benefit of [redacted] family?
>
> A: Because I felt bad for his family and I wanted to establish a relationship between him, his family and Adidas.
>
> Q: After you made this payment, did [redacted] ever play at any Adidas events?
>
> A: One event.
>
> Q: Which one?
>
> A: Adidas Nations. (Id.).

On cross examination by Gatto's attorney, the following exchange took place:

> Q: And you tried to recruit [redacted] for Coach Self to go to the University of Kansas, is that correct?
>
> A: At the time I met [redacted] at that time it was about grassroots, putting him on one of our grassroots team [sic]. (Id., pp. 1106-07).

Thus, the record establishes that Gassnola made the $15,000 payment to build a relationship with [redacted] and recruit him to Adidas (consistent with Adidas' goal of "building relationships that help us in the draft signing process" [see FI-42 (Rivers' 2/17/15 email)]) – not to assist the University.

Further, there is no evidence that anyone at the University knew or should have known anything about the alleged $15,000 payment at or before the time it was made. Self and Townsend both specifically denied knowing about this payment. (See FI-2, p. 23; FI-4, pp. 118-19). The University first learned of this alleged payment from Gassnola's testimony in the SDNY trial. In this regard, the University was no different than the NCAA, which was unaware of the payment despite its Eligibility Center putting [redacted] through a "complex case review" prior to certifying his eligibility to compete for another institution.[23]

[23] The NCAA's Eligibility Center's review thoroughly vetted [redacted] and his family's personal lives, which should have included making requests for their bank records and other financial information, evaluating their known associates, and interviewing [redacted] his family, and other individuals.

Moreover, Self and Townsend both advised the enforcement staff that they began recruiting [redacted] during his freshman year in high school (i.e., well prior to Gassnola's first alleged contact with him), and that Townsend was the primary recruiter and the one with contact with [redacted] and his mother. (See FI-1, p. 79; FI-4, pp. 10, 115-16). Townsend learned about [redacted] from a high school coach in the [redacted] area that he (Townsend) had known for 33 years and Townsend and Self went to watch a practice when [redacted] was a freshman in high school. (See FI-4, p. 115-16). Townsend stated that sometime after [redacted] year (i.e., in the summer of [redacted] he may have mentioned to Gassnola that he had seen [redacted] play, but did not tell Gassnola that the University was recruiting [redacted] or ask for any assistance with the recruiting. (See Id., p. 116). [redacted] took an unofficial visit to Kansas during his [redacted] year because the prep school he was attending happened to be playing a game in Lawrence against a Kansas-based prep school. (See Id., pp. 116-17). Townsend thought [redacted] was going to commit to the University, but on September 6, [redacted] committed to the University of Arizona. Townsend noted that: (1) he had a far better relationship with [redacted] and his mother than Gassnola; (2) [redacted] mother was still exchanging texts with Townsend years later; and (3) he obtained far more information about [redacted] from his (Townsend's) contact at Nike than he did from Gassnola. (See Id., pp. 122-23).

The enforcement staff has referenced a text that Gassnola sent to Self on August 19, 2017 to try to prove that Gassnola was assisting the University in recruiting [redacted] in [redacted] or early [redacted] and the University's men's basketball and athletics staff knew about Gassnola's alleged recruiting activities in [redacted] and early [redacted] On August 19, 2017, Gassnola texted Self thanking him for the Adidas sponsorship agreement extension,[24] and referencing changes to the grassroots program and some unexplained internal fighting at Adidas about the company's approach to institutional sponsorships. (See FI-40). The ANOA characterizes Gassnola's last text in the thread rather than quoting it. The text states: "I promise you. I got this. I have never let you down Except ([redacted]) lol We will get it right" (See Id.). The enforcement staff

[24] An August 21, 2017 letter confirming the principal terms of the agreement is contained at the end of FI-93.

asks the Panel to make the illogical leap from Gassnola's insertion into the text thread the non sequitur "Except ( ) lol" as establishing both that two and three years earlier Gassnola had been assisting the University to recruit (rather than assist Adidas to recruit as Gassnola testified under oath), *and* the University should have contemporaneously known about what Gassnola was doing in and early There is no factual basis for this contention. Gassnola was never asked any questions about the meaning of this statement in the SDNY trial. Self and Townsend both had no explanation as to why Gassnola made this offhand, joking ("lol") remark or what he meant by it, given that he did not help them recruit (See FI-1, p. 85; FI-4, p. 121). A reasonable person conducting serious affairs would not make the unsupported and illogical leaps that the enforcement staff requests. (See Bylaw 19.7.8.3).

In sum, there is insufficient credible and persuasive evidence to support the enforcement staff's allegation that Gassnola became a representative of the University's athletics interests in connection with his interactions with

G. There is No Credible and Persuasive Evidence that Gassnola was a Representative of the University's Athletics Interests on March 22,

1. The Enforcement Staff's Allegation

Allegation 3-b asserts that on March 22, Gassnola was a representative of the University's athletics interests and provided an impermissible benefit in an unknown amount to who was the of then-Kansas men's basketball student-athlete, In support of its allegation, the enforcement staff apparently relies on: (1) a transaction on a page from one of bank statements that redacted with black marker (see FI-13); (2) interview by the enforcement staff and eligibility staff on January 18, 2019 (without participation by the University) (see FI-12); and (3) a September 6, 2019 "expert report" from Ernst & Young that purports to decipher several pieces of information that had redacted from his personal banking records, including the March 22, transaction. (See FI-14). In particular, the "expert report" that the enforcement staff commissioned asserts that on March 22, a wire transfer in an unknown amount was sent from the bank account of the New England Playaz and deposited into account. (See FI-14). The enforcement staff alleges that this

wire transfer was an impermissible benefit to [redacted] Allegation 3-b does not assert that anyone on the University's men's basketball or athletics staffs had actual or constructive contemporaneous knowledge of the wire transfer or even that it purportedly was an impermissible benefit to [redacted][25]

2. There is No Proof that the Redacted March 22, [redacted] Transaction is Related to [redacted]

As discussed in detail below (see Section VI(C)), even if the enforcement staff can establish that the March 22, [redacted] transaction was a wire transfer from a New England Playaz bank account, there is no evidence in the record that ties the wire transfer to [redacted] To the contrary, [redacted] stated repeatedly that the transaction had nothing to do with [redacted] or Kansas. (See FI-12, pp. 27-28, 30-34). The enforcement staff has presented no evidence to counter [redacted] denial and has not proven that the transfer related to [redacted] In fact, it is well known that [redacted] was associated with a number of prospective and current student-athletes at the time of the payment, any of whom could have been the beneficiary of such a payment. In addition, [redacted] ran a basketball camp in [redacted] sponsored by Adidas and the transfer could have been related to that sponsorship. (See Id., pp. 12-13). Further, [redacted] stated that, at one point, Gassnola asked [redacted] about having one of his scholastic players join the New England Playaz, and the wire could have been related to that effort. (See Id., pp. 16, 18). Thus, the enforcement staff's unsupported speculation that the wire transfer relates to [redacted] is not only contrary to the only evidence in the record ([redacted] repeated denials that the payment related to [redacted] but it also ignores other possible explanations. As such, the allegation relies on sheer speculation and is not based on credible and persuasive evidence that a reasonable person would rely upon in the conduct of serious affairs. (See Bylaw 19.7.8.3).

[25] The NCAA's eligibility staff obtained the bank statements from [redacted] in connection with a prospective student-athlete who was not being recruited by the University. (See [redacted] ECInterview_081718_Kansas_00874.mp3; [redacted] Email [redacted] 082217_Kansas_00874.pdf; [redacted] Email [redacted] 082317_Kansas_00874.pdf). [redacted] redacted portions of his bank statements because they were not relevant to the eligibility of the student-athlete in question. (See FI-12, p. 33; [redacted] ComplexCaseReviewEIReport_Feb2018_Kansas_00874.pdf). Although the enforcement staff repeatedly asked [redacted] to provide unredacted copies of his bank statements, he apparently refused. (See FI-12, pp. 28-29, 32). Contrary to [redacted] express wishes not to disclose financial information that was irrelevant to the prospective student-athlete for whom the records were produced, the enforcement staff retained Ernst & Young and asked it to decipher (i.e. unredact) portions of [redacted] banking records. (See FI-14). There is no evidence that [redacted] was aware of and consented to the NCAA's sharing of his personal financial information with a third-party. The University submits that this Panel should not condone the tactics used by the enforcement staff under these circumstances, which may have violated [redacted] privacy rights.

3. There is No Proof that Gassnola was a Representative of the University's Athletics Interests on March 22, [redacted]

As of March 22, [redacted] was in the last week of his [redacted] year at the University, was not playing in men's basketball contests, and was about to declare his intention to enter the NBA draft. Although the ANOA does not specifically allege it, based on questioning by the enforcement staff during the investigation, it appears that the staff is relying on Constitution 6.4.2-(d) as their basis for the allegation that the University is responsible for Gassnola's alleged payment to [redacted] Under this bylaw, an institution is responsible for the conduct of individuals who provide benefits "to enrolled student-athletes", but only "when a member of the institution's executive or athletics administration or athletics department staff member has knowledge or should have knowledge that [the] individual" is providing or has provided improper benefits to enrolled student-athletes. There is no evidence in the record that the payment was provided to [redacted] or that any of the University's staff members knew or should have known about this payment. Assistant men's basketball coach Norm Roberts, [redacted] primary recruiter, indicated that he had no knowledge of any benefits being provided by Gassnola to [redacted] (See FI-91, p. 19). The University first learned of this payment from the enforcement staff.

During the investigation, the enforcement staff speculated that the March 22, [redacted] payment was to induce [redacted] to return to the University for his [redacted] year. There are several problems with the staff's unsupported conjecture. First, as the men's basketball staff noted, it was known from the start that [redacted] was [redacted] that status never changed, and there was never any conversation about him staying. (See FI-1, pp. 55-56, 107 [Self]; FI-4, pp. 36-37 [Townsend]; FI-91, p. 19 [Roberts]). Second, when the enforcement staff raised the possibility that the payment was made to get [redacted] to stay at the University, [redacted] responded, "[redacted] wasn't even playing so that's a problem. (unintelligible). [redacted] wasn't even playing." (See FI-12, p. 34). In this regard, [redacted] did [redacted]

[redacted] (See Exhibit

9). Thus, the University had no motive to pay him to return the following year. Third, [redacted] decided to enter the NBA draft immediately after the University lost [redacted] and a mere four days after the alleged payment. (See FI-12, pp. 34-35; Exhibit 10). Fourth, Adidas' primary interest in [redacted] was to sign him to an endorsement deal once he entered the NBA (see FI-42 [Rivers' 2/17/15 email]), which it did. (See FI-4, pp. 34-35 [Townsend]; Exhibit 11). Therefore, it would have been contrary to Adidas' self-interest to pay [redacted] to convince [redacted] to stay at Kansas for another year. By contrast, it would have been in Adidas' interest to pay [redacted] to persuade [redacted] to sign an endorsement contract with Adidas.

For all the foregoing reasons, there is insufficient credible and persuasive evidence that Gassnola became a representative of the University's athletics interests at or before the alleged March 22, [redacted] payment, and the University is not responsible for any impermissible benefit that Gassnola may have provided. See Constitution 6.4.2; Bylaw 19.7.8.3.

H. There is No Credible and Persuasive Evidence that Gassnola was a Representative of the University's Athletics Interests Between September 30, [redacted] and June 14, 2017

The ANOA refers to five alleged interactions between Gassnola and the family of [redacted] between September 30, [redacted] and June 4, 2017, asserts that each of the five interactions violated NCAA legislation, and contends that the University was responsible for Gassnola's conduct. As was demonstrated above, Gassnola was not a representative of the University's athletics interests prior to these interactions. Thus, it is necessary to evaluate whether any of the five interactions during this time period resulted in Gassnola becoming a representative of the University's athletics interests. As will be discussed below, (1) each of the five interactions occurred in private, (2) the only evidence supports the conclusion that the University did not know about the interactions, and (3) there is no factual basis for holding that the University should have known about any of the interactions. In connection with the last item, it is notable that the NCAA's Eligibility Center subjected [redacted] to a complex case review, and the professional staff apparently uncovered no evidence of any of the five interactions and [redacted] was certified as eligible.

1. Gassnola Did Not Become a Representative of the University's Athletics Interests Between September 30, [redacted] and October 2, [redacted]

Allegation 1-a asserts that, in [redacted] on the same night as Late Night in the Phog, Gassnola offered a future recruiting inducement to then-prospective student-athlete [redacted] mother, [redacted] to secure [redacted] enrollment at the University. Late Night in the Phog was held on October 1, [redacted]

According to Gassnola, he had heard that [redacted] and her [redacted] were taking money from agents and financial people. (See FI-6, pp. 1022-23, 1137). He was concerned that word of these payments would get out and felt that he could conceal any payments better than the agents and financial people. (See Id., pp. 1023-24, 1137). Gassnola stated that he met with [redacted] and [redacted] in his hotel room in The Oread in early October [redacted] when he was in town for Late Night in the Phog and told them to stop taking money from others and to come to him. (See Id.). According to Gassnola, the next morning during a car ride to the airport with Gatto, he told Gatto about his conversation with [redacted] and [redacted] and Gatto told him to do what he had to do. (Id., p. 1025).

There is no evidence in the record that anyone at the University knew about Gassnola's conversations in his hotel room with [redacted] and [redacted] or in the car with Gatto. In addition, there is no basis for holding that any of the men's basketball or athletics staff should have known about these private conversations. The University notes that Gassnola apparently arranged for his own room at The Oread. In this regard, Gassnola's name is not on the group rooming list provided to the University (by contrast Hill who represented Under Armour was on the [redacted] list). (See FI-97). In addition, Gassnola testified under oath that he concealed all of his payments to [redacted] and [redacted] from everyone at the University. (See FI-6, pp. 1024, 1040, 1231). Further, Self and Townsend, who was [redacted] primary recruiter, denied any knowledge of these conversations until the SDNY trial. (See FI-1, pp. 61-62; FI-4, p. 77).

Because there is no credible and persuasive evidence that the University knew or should have known about Gassnola's conduct between September 30, [redacted] and October 2, [redacted] the University was not

responsible for any recruiting inducement that he may have provided to [redacted] and [redacted] See Constitution 6.4.2-(d); Bylaw 19.7.8.3.[26]

2. Gassnola Did Not Become a Representative of the University's Athletics Interests on November 1, [redacted]

Allegation 1-a asserts that in November [redacted] Gassnola had an impermissible recruiting contact with [redacted] and [redacted] to secure [redacted] commitment to the University. Allegation 1-b(1) contends that Gassnola, with Gatto's approval, provided $30,000 in cash to [redacted] and [redacted] during a private meeting in her hotel room in New York City. Allegations 1-a and 1-b(1) do not claim that the University's men's basketball or athletics staffs contemporaneously knew about this private meeting and payment and do not explain how the University should have known about it.

During the SDNY trial, Gassnola testified he concealed all of his payments from Kansas (see FI-6, pp. 914-16, 934, 941-42). In addition, he specifically testified that he concealed all of his payments to [redacted] and [redacted] from the coaching staff at Kansas and "never" said "a thing" to "anyone" at Kansas about any of the payments. (See Id., pp. 1024, 1040). Finally, he testified that in November and December 2017, he worked with [redacted] to lie to the University about the payments. (See Id., pp. 1042-45). During the infractions investigation, both Self and Townsend denied having any knowledge about Gassnola meeting with [redacted] and [redacted] in New York City on November 1, [redacted] and giving them $30,000. (See FI-1, pp. 62-65; FI-4, p. 78). The University first learned of this payment in connection with the SDNY trial. The NCAA's Eligibility Center did not uncover this cash payment as part of its complex case review.

Because, there is no credible and persuasive evidence that the University knew or should have known about Gassnola's conduct on or before November 1, [redacted] the University is not responsible for any impermissible recruiting contact or payment made by Gassnola related to [redacted] See Constitution 6.4.2; Bylaw 19.7.8.3.

[26] The Notice of Allegations does not allege that Gatto violated any NCAA legislation or that the University is responsible for Gatto's conduct on or about October 1, [redacted] Even if the enforcement staff had made such an allegation, it would fail for the same reasons.

3. Gassnola Did Not Become a Representative of the University's Athletics Interests Between January 19 and 23, [redacted]

Allegation 1-a asserts that in January [redacted] Gassnola had an impermissible recruiting contact with [redacted] and [redacted] to secure [redacted] commitment to the University. Allegation 1-b(2) contends that between January 19 and 23, 2017, Gassnola, with Gatto's approval, provided $20,000 to [redacted] in Las Vegas. Gassnola testified that he met with [redacted] in his hotel room and gave her $20,000 in cash while he was in Las Vegas for an Adidas annual grassroots basketball director's meeting and that NCAA representatives were present at the meeting. (See FI-6, p. 1032). No one from the University attended this meeting. The ANOA does not allege that the University's men's basketball or athletics staffs knew about this private meeting and payment and does not explain how they should have known about it.

As noted in Section V(H)(2), Gassnola testified in the SDNY trial that he concealed all of his payments from the University and its coaching staff, and worked with [redacted] to lie to the University about the payments. (See FI-6, pp. 914-916, 934, 941-42, 1024, 1040, 1042-45.) During the infractions investigation, Self and Townsend both denied having any knowledge of this private meeting or payment until the SDNY trial. (See FI-1, p. 65; FI-4, pp. 85-86.) The NCAA Eligibility Center did not uncover this cash payment during its complex case review.

Because there is no credible and persuasive evidence that the University knew or should have known about Gassnola's conduct between January 19 and 23, [redacted] the University is not responsible for this contact or payment. See Constitution 6.4.2; Bylaw 19.7.8.3.

4. Gassnola Did Not Become a Representative of the University's Athletics Interests on February 24, 2017

Allegation 1-b(3) alleges that on February 24, [redacted] Gassnola, with Gatto's approval, sent [redacted] $20,000 via a wire transfer and that the payment was an impermissible recruiting benefit.[27] As with the

[27] Gassnola testified that he asked his then-fiancée to make the wire transfer to [redacted] (See FI-6, pp. 1034-36).

prior two items, the ANOA does not assert that the University contemporaneously knew about this payment and does not explain how the University should have known about it.

As noted in the prior item, Gassnola testified in the SDNY trial that he concealed all of his payments from the University and its men's basketball staff and worked with [redacted] to lie to the University about the payments. (See FI-6, pp. 914-916, 934, 941-42, 1024, 1040, 1042-45.) During the infractions investigation, Self and Townsend both denied having any knowledge of this private financial transaction until the SDNY trial. (See FI-1, pp. 68-69; FI-4, p. 91). In addition. as part of its complex case review of [redacted] the Eligibility Center had the ability to request access to bank records of [redacted] and his family members. Either the Eligibility Center chose not to request [redacted] bank records, or the $20,000 wire transfer and/or its purpose was concealed from the NCAA given that [redacted] was certified as eligible.

Because there is no credible and persuasive evidence that the University knew or should have known about Gassnola wiring $20,000 to [redacted] on or before February 24, [redacted] the University is not responsible for the payment. See Constitution 6.4.2; Bylaw 19.7.8.3.

5. Gassnola Did Not Become a Representative of the University's Athletics Interests on June 14, 2017

Allegation 1-c alleges that on or about June 14, [redacted] Gassnola, with Gatto's approval, used Adidas funds to send $15,000 to [redacted] via a wire transfer, and the payment was an impermissible recruiting benefit. As with the prior three items, the ANOA does not assert that the University knew about this private financial transaction at the time it was made and does not explain how the University should have known about it.

As noted in the prior items, Gassnola testified in the SDNY trial that he concealed all of his payments from the University and worked with [redacted] to lie to the University about the payments. (See FI-6, pp. 914-916, 934, 941-42, 1024, 1040, 1042-45.) During the infractions investigation, Townsend and Self denied knowing about any potential payment until November 11, 2017 at which time he immediately reported the possible violation. (See FI-1, pp. 69-70; FI-4, p. 90).[28] In addition, the Eligibility Center had

[28] More detail concerning the University's investigation into this payment is contained in Section VI(A) below.

the ability to request access to [redacted] bank records as part of its complex case review. Either the Eligibility Center did not request access or somehow the $15,000 wire transfer was not discovered.

Because there is no credible and persuasive evidence that the University knew or should have known about Gassnola wiring $15,000 to [redacted] on or before June 14, [redacted] the University is not responsible for the payment. See Constitution 6.4.2; Bylaw 19.7.8.3.

I. There is No Credible and Persuasive Evidence that Cutler was a Representative of the University's Athletics Interests Between June 27 and July 1, 2017

Allegation 3-c asserts that Cutler, an Adidas outside consultant, had an impermissible recruiting contact and offered an impermissible recruiting inducement to men's basketball prospective student-athlete [redacted] The enforcement staff contends that Cutler spoke with [redacted] at an Adidas basketball event in Los Angeles and asked if he would be open to Kansas recruiting him; [redacted] responded affirmatively; and Cutler replied that Adidas would ensure that [redacted] parents could attend games by providing financial assistance for travel expenses. The enforcement staff further asserts that within three weeks, Self learned of Cutler's contact with [redacted] and [redacted] interest and thereafter contacted [redacted] and [redacted] mother. For the reasons stated below, neither Self nor anyone else on the University's men's basketball staff knew or should have known that Cutler had direct contact with [redacted] or that Cutler allegedly offered to provide financial assistance to [redacted] family if he committed to the institution.

As will be discussed in detail in Section VI(C) below, (1) there is substantial disagreement between the recitation of events provided by [redacted] and the version given by [redacted] parents in their joint interview by the enforcement staff (the University was not invited to participate in either of those interviews); and (2) documentary evidence contradicts key "facts" provided by both [redacted] and his parents. However, even if [redacted] and his parents had provided information that was consistent with each other's versions and the documentary evidence, there is no credible and persuasive evidence that Cutler was a representative of the University's athletics interests at the time of his alleged conduct.

At the outset, as was discussed previously in Section V(C), Adidas was not a representative of the University's athletics interests, and Adidas's employees, consultants, and independent contractors were not

representatives of the University. Thus, the question is whether Cutler qualified in his own right as a representative of the University's athletics interests.

During the investigation, the enforcement staff asked the men's basketball staff about their knowledge of and interactions with Cutler. None of the men's basketball staff knew whether Cutler was employed by Adidas. They only knew that during the past three years, Cutler worked the welcome desk at the Adidas-sponsored basketball tournaments and events. In this role, Cutler collected the admission fees, gave out wrist bands to the attendees, and provided information as to who was playing on which court and when. (See FI-4, pp. 69-70 [Townsend]; FI-86, p. 31 [Howard]; FI-91, p. 17 [Roberts]; FI-92, pp. 4-5 [Roberts]). The last item was particularly important, because Adidas had "the worst website of anybody" and the coaches needed to be able to plan and maximize their time at events. (See FI-92, p. 5 [Roberts]).

The ANOA does not assert, and there is no evidence in the record, that prior to June 27, 2017 Cutler engaged in any conduct within the scope of Constitution 6.4.2. Further, because Cutler did not engage in any such conduct, the University could not have actual or constructive notice of it.[29] In addition, there is no credible and persuasive evidence in the record that anyone from the University contemporaneously knew or should have known that at some point between June 27, 2017 and July 1, 2017, Cutler was going to: allegedly ask [redacted] if he would be open to the University recruiting him; and purportedly make some representation about some unknown person or entity assisting [redacted] parents with their travel if [redacted] attended the University. In the absence of any such proof, the University is not responsible for whatever Cutler may have said to [redacted][30]

[29] The only information in the record is that Cutler, like numerous individuals associated with AAU programs, scouting services, and grassroots programs, might make a passing remark about a prospective student-athlete being good. The men's basketball coaches were adamant, however, that they never used Cutler to help them recruit. (See FI-1, pp. 45, 47 [Self]; FI-86, pp. 31, 40 [Howard]; FI-91, pp. 17, 20, 26-27; FI-92, pp. 3-5, 7 [both Roberts]).

[30] Moreover, as is discussed in Section VI(C) below, there is no indication in the record that Cutler ever informed anyone at the University that he spoke with [redacted] directly about attending Kansas, as opposed to simply passing on industry scuttlebutt to the effect that [redacted] was open to considering institutions that had not previously recruited him. Further, none of the [redacted] allege that Self made any reference to assisting [redacted] parents with travel in the very brief phone calls he had with [redacted] and his mother on July 20, 2017.

J. There is No Credible and Persuasive Evidence that Gassnola was a Representative of the University's Athletics Interests in August or September

The ANOA asserts that several events occurred during August and September involving Gassnola that pertained to then-perspective student-athlete and/or his There is insufficient credible and persuasive evidence that Gassnola was a representative of the University's athletics interests at the time of any of these events.[31]

1. Gassnola Did Not Become a Representative of the University on August 9, .

Allegation 2-c alleges that on August 9, 2017, Adidas, Gassnola, Townsend, and Self worked together to offer basketball shoes and apparel ("gear") to outfit a non-scholastic basketball team with which was affiliated. Initially, NCAA legislation does not typically prevent apparel companies from sponsoring grassroots and AAU-type teams. See generally Bylaws 12.1.2.1.4.3 and 12.1.2.1.4.4. Here, as is detailed below in the University's response to Allegation 2-c, the credible and persuasive evidence establishes that: (1) was looking for used gear to send to Angola for use by youths who could not afford to buy new gear and played on unidentified and unspecified AAU-type teams;[32] (2) Townsend offered to put in contact with Nike, Under Armour, and Adidas to see if any of them could provide used gear; and (3) none of the apparel companies representatives, including Gassnola on behalf of Adidas, ever indicated that they would help and no used gear was ever offered or supplied. As result, there is no basis for finding that Gassnola became a representative of the University's athletics interests or that an improper recruiting inducement was offered.

is a

(See FI-7, pp. 34-37 [to

[31] The ANOA also asserts that Adidas and Gatto were representatives of the University's athletics interests based on their knowledge and approval of Gassnola's conduct. As with Gassnola, there is insufficient credible and persuasive evidence to make the University responsible for Adidas and Gatto under Constitution 6.4.1 or 6.4.2.

[32] As discussed below (See Section VIB)), Gassnola had the mistaken understanding that the gear was for an Angolan national basketball team rather than for youths on AAU-type teams. In any event, the identity of the team the gear was intended for is not relevant to the determination that Gassnola did not become a representative of the University.

[redacted]. (See Id., p. 111).

In early August [redacted], asked Townsend if Kansas could donate used gear to Angolan youth basketball teams. (See FI-7, p. 58-59; FI-8, pp. 12-13, 27, 40-41; FI-9, pp. 16-17 [all [redacted] wanted used gear because, unlike new gear, used gear did not require payment of significant customs fees. (See FI-7, p. 72; FI-9, pp. 17-18). Townsend told [redacted] that the University could not donate the gear, but offered to contact or provide [redacted] with contact information for individuals at Nike, Under Armour, and Adidas. (See FI-5, pp. 14 [Townsend]; FI-8, pp. 13, 22-24; FI-9, p. 17 [both [redacted][33] Nike and Under Armour only dealt with new gear and Under Armour wanted a business plan, so neither of those options resulted in any gear being offered or provided. (See FI-8, pp. 13, 22-24; FI-9, pp. 17-18). Townsend provided [redacted] and Gassnola with each other's contact information. Thereafter, Gassnola and [redacted] discussed the gear briefly on a few phone calls, but Gassnola did not offer to provide any used gear and, in fact, never provided any gear. (See FI-4, p. 105; FI-5, pp. 15, 22-23, [both Townsend]; FI-7, pp. 59-62, 72-73, 91-92; FI-8, pp. 17-20 [both [redacted]

Further, during their calls about the used gear, Gassnola never suggested that [redacted] attend the University (or any other institution). (See FI-7, pp. 92-95; FI-8, pp. 32, 34-35 [both [redacted] Additionally, Townsend never asked Gassnola to help the University recruit [redacted] (See FI-4, p. 105; FI-5, p. 28 [both Townsend]).

The foregoing facts establish that Gassnola was not asked by Townsend or Self to assist in the University's recruitment of [redacted] and he did not assist in the University's recruitment of [redacted] Therefore, Gassnola did not become a representative of the University's athletics interests pursuant to NCAA Constitution 6.4.2-(c). Further, the undisputed evidence is that Gassnola neither promised to provide nor provided any gear to an enrolled student-athlete. Accordingly, Gassnola did not become the

[33] Throughout his career, Townsend has given the contact information of people at all three apparel companies to numerous scholastic entities and AAU-type programs that were looking for sponsorships. (See FI-4, pp. 105-07; FI-5, pp. 15-17). NCAA legislation allows apparel teams to sponsor scholastic and AAU teams. See Bylaw 12.1.2.1.4.3.

University's representative under NCAA Constitution 6.4.2-(d). Finally, because the evidence establishes that Gassnola never promoted the University during his limited calls with [redacted] about the gear, he did not become the University's representative pursuant to NCAA Constitution 6.4.2-(e).

2. Gassnola Did Not Have Impermissible Recruiting Contacts with [redacted] in August and September [redacted]

Allegation 2-b asserts that Gassnola had impermissible recruiting contacts with [redacted] in August and September [redacted] by way of telephone calls in which Gassnola purportedly encouraged [redacted] to have [redacted] enroll at the University as a men's basketball student-athlete. This allegation further asserts that Townsend and Self were aware of and encouraged Gassnola's conduct.

Allegation 2-b overlaps with Allegation 2-c inasmuch as the limited calls between Gassnola and [redacted] pertained to whether any used gear could be provided. As noted above, [redacted] repeatedly stated that during their calls, Gassnola never suggested [redacted] attend the University (or any other institution). (See FI-7, pp. 92-95; FI-8, pp. 32, 34-35). There is no evidence in the record to the contrary. Accordingly, there is no credible and persuasive evidence to support the allegation that Gassnola became a representative of the University by encouraging [redacted] to have [redacted] enroll at the University.

3. Gassnola Did Not Become a Representative Because of the $2,500 that he Provided to [redacted] Between September 8 and 15, [redacted]

NCAA Constitution 6.4.2 conditions an institution's responsibility for an individual's actions on the existence of credible and persuasive evidence that the institution contemporaneously knew or should have known about an individual's conduct. Allegation 2-d asserts that sometime between September 8 and 15, 2017, Gassnola and Gatto provided a $2,500 cash payment to [redacted] as an impermissible recruiting inducement to secure [redacted] commitment to the University. There is no assertion in the ANOA that the University contemporaneously knew about this payment and no explanation of how the University should have known about this private cash payment.

At the SDNY trial, Gassnola testified that he put $2,500 cash inside a magazine and sent it to [redacted] in response to [redacted] request for help paying for online classes that [redacted] was taking.

(See FI-6, pp. 1012-13, 1139, 1196.)[34] During the investigation, [redacted] stated he received the $2,500 in cash wrapped inside an auto repair receipt, denied asking Gassnola for it or knowing that it was going to be sent, and indicated that the online classes that [redacted] might need to take were free. (See FI-7, pp. 67, 80-82). A WhatsApp message thread between Gassnola and [redacted] supports [redacted] version. (See FI-11.)

As previously noted, Gassnola repeatedly testified under oath in the SDNY trial that he concealed all the payments from Kansas. (See FI-6, pp. 914-16, 934, 941-42.) Further, Gassnola stated he never discussed any payments to [redacted] with anyone at the University. (See Id., p. 1017). During the investigation of this matter, Self and Townsend both denied knowing about the $2,500 payment until the SDNY trial. (See FI-1, p. 112 [Self]; FI-5, p. 47 [Townsend].) In addition, [redacted] stated that he never informed anyone at the University about the $2,500 payment. (See FI-8, p. 47.) Because there is no evidence that the University knew or should have known about Gassnola's $2,500 cash payment to [redacted] the University did not become responsible for Gassnola's conduct.

4. Gassnola Did Not Become a Representative Because of his Alleged Unfulfilled Promise to Pay [redacted] $20,000

Allegation 2-e asserts that on or about September 11, [redacted], Adidas, Gatto, and Gassnola offered a $20,000 recruiting inducement to [redacted] in order to induce [redacted] to enroll at the University. There is no assertion in the ANOA that the University contemporaneously knew or should have known about this alleged promised payment.[35]

As previously stated several times, Gassnola testified under oath in the SDNY trial that he concealed all of his payments from Kansas. (See FI-6, pp. 914-16, 934, 941-42). Further, he concealed the alleged promise to pay $20,000 from everyone at the University, including the coaches. (See Id., p.

[34] Although Allegation 2-d refers to Gatto, unlike other payments made by Gassnola, there is no evidence in the record that Gassnola specifically told Gatto about the $2,500 payment. In addition, as is discussed below, there is no evidence that the $2,500 payment secured [redacted] commitment to the University.

[35] Gassnola testified that he never made the $20,000 payment. (See FI-6, pp. 1013, 1020, 1171, 1186, 1196). Moreover, as demonstrated in the University's response to Allegation 2-e, the weight of the credible and persuasive evidence is that Gassnola never offered to pay $20,000 to [redacted]

1017). During the investigation of this matter, Self and Townsend both denied knowledge of the alleged promised payment of $20,000. (See FI-1, pp. 112, 114-15 [Self]; FI-4, p. 108 [Townsend]; FI-5, pp. 29, 41 [Townsend]). The University first learned about this allegedly promised, but unfulfilled, payment in connection with the SDNY trial.

Because there is no credible and persuasive evidence that the University knew or should have known about Gassnola's alleged September 11, 2017 unfulfilled promise to pay [redacted] the University is not responsible under NCAA Constitution 6.4.2 for his allegedly improper conduct.

K. There Is No Credible and Persuasive Evidence That Code Was a Representative of The University's Athletics Interests on September 14, [redacted]

Allegation 3-d asserts that on September 14, [redacted], Adidas outside consultant Merl Code had an impermissible recruiting contact with the family of then-prospective student-athlete [redacted] and learned "what it would take" for [redacted] to commit to the University. Allegation 3-d further contends that Code communicated some of what he learned to Self and Townsend just prior to their home visit with the [redacted] family. Finally, Allegation 3-d asserts that Code provided additional information to Townsend after Self and Townsend's in-home visit with the [redacted] family.

As discussed in Section V(C) above, Adidas was and is not a representative of the University's athletics interests, and its employees, consultants, and independent contractors did not become representatives of the University's athletics interests because of their employment by or association with Adidas. Accordingly, the University is only responsible for Code's alleged conduct if he qualified in his own right as a representative of the University's athletics interests under Constitution 6.4.2 prior to or at the time of his alleged conduct. The enforcement staff appears to be relying on Constitution 6.4.2-(c) in support of its contention that the University is responsible for Code's conduct. However, the ANOA does not allege that, prior to or at the time of Code's alleged impermissible recruiting contact with [redacted] family, the University's men's basketball or athletics staff knew or should have known that Code was assisting the University with recruiting prospective student-athletes. Instead, Allegation 3-d contends that Code spoke with Self and Townsend sometime *after* Code's alleged improper recruiting contact. Allegation

3-d does not assert that Code had any further purportedly improper recruiting contact with the [redacted] family after speaking with Self and Townsend. Moreover, during the investigation of this matter, Self stated that Code did not assist the men's basketball program in recruiting prospective student-athletes or in promoting the men's basketball team or any of the University's other athletics programs. (See FI-2, p. 21). Further, both Self and Townsend stated that they did not even know that Code was working for Adidas until shortly before Code's call with Townsend. (See FI-2, pp. 20-21; FI-4, p. 50).

Because there is insufficient credible and persuasive evidence that the University knew or should have known prior to or at the time of Code's alleged improper recruiting contact that he was assisting the University in recruiting a prospective student athlete, the University was not responsible for any alleged violation. See Constitution 6.4.2-(c); Bylaw 19.7.8.3. In any event, as described in detail in Section VI(C) below, there is no factual basis for the enforcement staff's claim that Code had an improper recruiting contact with the [redacted] family or otherwise violated NCAA legislation on or about September 14, 2017 in connection with [redacted]

L. There Is No Credible and Persuasive Evidence That Gassnola Was a Representative of The University's Athletics Interests on September 23, 2017

Allegation 1-d asserts that on September 23, 2017, Gassnola, with Gatto's approval, provided a $4,000 impermissible benefit to [redacted] in connection with her son, [redacted] who was a then-men's basketball student-athlete at the University. There is no assertion in the Notice of Allegation that the University contemporaneously knew or should have known about this payment.

As is noted above, Gassnola testified that he concealed his payments, including payments to [redacted] and [redacted] from Kansas and its coaching staff and worked with [redacted] to lie to the University about the payments. (See FI-6, pp. 914-16, 934, 941-42, 1024, 1040, 1042-45). During the infractions investigation, Self denied having any knowledge of this alleged payment until the SDNY trial. (See FI-1, p. 71).

Because there is no credible and persuasive evidence that the University knew or should have known about Gassnola promising to send $4,000 to [redacted] on or about September 23, 2017, the University is not responsible for this alleged payment. See Constitution 6.4.2; Bylaw 19.7.8.3.

V. RESPONSES TO ALLEGATIONS

A. Allegation 1

UNIVERSITY'S CONCLUSIONS

The University concludes that the facts alleged by the enforcement staff pertaining to the interactions among and between Gassnola, Gatto, [redacted] and [redacted] and the payments made by Gassnola to [redacted] and [redacted] in connection with Allegations 1-a, 1-b(1), 1-b(2), 1-b(3) [36], and 1-c, are substantially correct and supported by the weight of the credible and persuasive evidence. The University concludes that the facts alleged by the enforcement staff pertaining to Allegation 1-d are at least partially supported by the weight of the credible and persuasive evidence. In this regard, the University believes that the weight of the credible and persuasive evidence supports a finding of a promised improper payment of $4,000, but it does not support a finding that the payment was actually made.

For the reasons set forth above in Sections V(A) through V(E), V(H), and V(L), the University concludes that, contrary to the assertions in Allegation 1, Adidas, Gassnola, and Gatto were not representatives of the University's athletics interests, as defined in Constitution 6.4.1 and 6.4.2, at the time of any of the events alleged in Allegation 1, and, therefore, the University is not responsible for any of the conduct of Gassnola or Gatto that is described in Allegation 1. As a result, the University did not violate Bylaws 12.3.1.3, 13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1, 13.2.1.1-(e), and 16.11.2.1.

REVIEW OF THE EVIDENCE

Allegation 1-a

In the SDNY trial, Gassnola testified that he had heard that [redacted] were taking money from outside influences such as agents and financial people. (See FI-6, pp. 1023-24, 1137). Gassnola stated that when he was at the [redacted] Late Night in the Phog event, he met with [redacted] in his hotel room at The Oread and told them to stop taking money from others. He said that they should just come to

[36] The wire transfer that is referenced in Allegation 1-b(3) was actually made by Gassnola's then-fiancée at his request rather than by Gassnola. (See FI-6, pp. 1034-36 [Gassnola SDNY]: FI-50 [wire transfer documentation]).

him and he would take care of them. (See Id., pp. 1022-24, 1137). Gassnola stated that he thought that he could conceal the payments better than the other people. (See Id., pp. 1023-24, 1137). Gassnola claimed that the next morning, he told Gatto about this conversation and Gatto told him to do what he had to do. (See Id., p. 1025). Gassnola subsequently testified that he discussed all the payments to [redacted] family with Gatto and Gatto approved all of them. (See Id., p. 1040).

[redacted] Gassnola, and Gatto did not cooperate with the enforcement staff's investigation. (See FI-106 [letter to Gassnola's attorney]; FI-107 [letter to Gatto's attorney]; FI-114, FI-115 and FI-116 [letters to [redacted][37]; FI-117 [letter to [redacted] No other individuals had any knowledge of this meeting in The Oread.

Allegation 1-b(1)

In the SDNY trial, Gassnola testified that during the first week of November [redacted] he met [redacted] in a hotel room that she was renting in New York City and gave her $30,000 in cash. (See FI-6, pp. 1027-28). Gassnola stated that he funded this payment by: submitting an invoice for fictitious expenses to Gatto for $50,000; receiving payment on the invoice from Adidas; and withdrawing funds that were then used for the $30,000 payment. (See Id., pp. 1027-30). Gassnola testified that he told Gatto that he would be giving [redacted] the $30,000. (See Id., pp. 1029). Gassnola also said that he told Gatto about all the payments to [redacted] family and Gatto approved. (See Id., p. 1040). In support of Gassnola's testimony, the government introduced into evidence: an October 18, [redacted] email from Gassnola to Gatto enclosing an October 15, [redacted] invoice from Gassnola for "Basketball Team Tournaments Fee" (see FI-45); an excerpt from the New England Playaz, Inc.'s bank statement showing a $50,000 deposit from Adidas America on October 21, [redacted] (see FI-46); and an excerpt from Gassnola's then-fiancée's credit card statement showing

[37] As is discussed below in connection with Allegation 1-c, [redacted] was interviewed by the University in connection with that payment. [redacted] advised the University that the $15,000 payment on June 14, [redacted] was the only payment that she received from Gassnola. (See Exhibit 12 [[redacted] Interview]).

a $50 parking fee in Manhattan, NY on November 1, [redacted] (See FI-47). The government did not provide evidence of Gassnola withdrawing the $30,000 from the bank.

As noted in the prior section, [redacted] Gassnola, and Gatto did not cooperate with the enforcement staff's investigation. No other individuals had any knowledge of this New York City meeting and payment.

Allegation 1-b(2)

In the SDNY trial, Gassnola testified that in January 2017, he was in Las Vegas for the Adidas annual grassroots directors meeting and that NCAA representatives also attended the event. (See FI-6, pp. 1031-32). Gassnola stated that prior to going to Las Vegas, he submitted a $90,000 invoice to Adidas, received payment on that invoice, and withdrew $27,500. (See Id., pp. 1032-34). Gassnola testified that while he was in Las Vegas, [redacted] met him in his hotel room, he gave her $20,000 in cash that came from his $27,500 withdrawal, and he used the remaining money to gamble and shop. (See Id., pp. 1032, 1034). When asked if Gatto knew about this payment, Gassnola said that at some later date, "I told Jimmy [Gatto] that [redacted] family was in a good place." (See Id., p. 1034). Gassnola subsequently testified that he told Gatto about all the payments to [redacted] family and Gatto approved. (See Id., p. 1040). In support of his testimony, the government introduced into evidence: an excerpt from Gassnola's then-fiancée's credit card statement showing hotel charges in Las Vegas for January 20 to 23, 2017 (see FI-48); an excerpt from the New England Playaz, Inc.'s bank statement showing a $90,000 deposit from Adidas America on January 18, 2017 (see FI-49); and an excerpt from the New England Playaz, Inc.'s bank statement showing a $27,500 withdrawal on January 19, 2017. (See Id.). The government did not provide evidence of Gassnola's invoice that resulted in the $90,000 deposit.

As noted in the prior sections, [redacted] Gassnola, and Gatto did not cooperate with the enforcement staff's investigation. No other individuals had any knowledge of this Las Vegas meeting and payment.

Allegation 1-b(3)

In the SDNY trial, Gassnola testified that he instructed his then-fiancée to wire $20,000 to [redacted] bank account on February 24, [redacted] and indicate on the wire transfer documentation that the money was for

a basketball camp, but that was not true. (See FI-6, pp. 1034-36). Gassnola claimed that before he made this payment, he told Gatto that "[redacted] family was in a good place" and that Gatto reimbursed him for this payment. (See Id.). Gassnola also testified that he told Gatto about all the payments to [redacted] family and Gatto approved. (See Id., p. 1040). In support of his testimony, the government introduced into evidence documentation of the wire transfer. (See FI-50). The government did not provide evidence of Gassnola separately invoicing Adidas in connection with this payment, any money being deposited into Gassnola's account in connection with this payment, or any money being placed into Gassnola's then-fiancée's account to cover the funds that she wired to [redacted]

[redacted] Gassnola, and Gatto did not cooperate with the enforcement staff's investigation. (See FI-106 [letter to Gassnola's attorney]; FI-107 [letter to Gatto's attorney]; FI-117 [letter to [redacted] The University is unaware if the enforcement staff attempted to interview Gassnola's then-fiancée. No other individuals (except possibly [redacted] had any knowledge of this wire transfer.

Allegation 1-c

[redacted] enrolled in classes at the University on May 31, [redacted]. In the SDNY trial, Gassnola testified that on June 14, [redacted] he wired $15,000 into [redacted] bank account. (See FI-6, pp. 1037-38). Gassnola stated that: on May 1, 2017 he submitted an invoice to Adidas for $70,000 for a "Tournament Activation Fee," which was not true; on May 31, 2017, he received $70,000 from Adidas; and he used a portion of that money to wire the $15,000 to [redacted] (See Id.). Gassnola claimed that he discussed this particular payment with Gatto and Gatto approved of all the payments to [redacted] family. (See Id., pp. 1038, 1040). In support of his testimony, the government introduced into evidence: Gassnola's May 1, 2017 invoice to Adidas for $70,000 (see FI-51); an excerpt from the New England Playaz, Inc.'s bank statement showing a $70,000 deposit from Adidas America on May 31, 2017 (see FI-52); and documentation of a $15,000 wire transfer to [redacted] on June 14, 2017 from the New England Playaz, Inc. bank account. (See FI-53).

On November 11, [redacted] Self received information that [redacted] may have received money from Gassnola. (See FI-2, pp. 13-14, 16). Self immediately reported this information to the University's

athletics administration and compliance office, the University began investigating the possible payment[38] and withheld [redacted] from competition. (See Id., p. 13). During the University's investigation of this issue, the University interviewed [redacted] two days later in her [redacted] home on November 13, 2017 and again on December 12, 2017, and obtained a written statement from her on January 8, 2018. In her initial interview, [redacted] stated that she had first met Gassnola a couple of years earlier at an Adidas event in Los Angeles and beginning in 2017, they developed an emotional relationship. She admitted receiving the $15,000 wire transfer from the New England Playaz account and produced six months of bank statements including one showing the receipt of the $15,000. (See Exhibit 12, pp. 14-15, 33 [[redacted] Initial Interview]; Exhibit 13 [[redacted] Bank Statements]; Exhibit 14 [[redacted] Written Statements]). [redacted] said that the $15,000 was a loan that she needed to pay for her living expenses and the cost of relocating to [redacted], but she admitted that she never intended to repay the loan. (See Exhibit 12, pp. 16, 19; Exhibit 14; Exhibit 15, pp. 2, 6-7, 9-10 [[redacted] Second Interview]). [redacted] stated that she did not receive money on other occasions from Gassnola, except once receiving a couple of hundred dollars of gambling money when they were in Las Vegas. (See Exhibit 15, pp. 6, 12-13). During her second interview, [redacted] admitted that she had multiple arrangements with other married men who would periodically send her money and/or pay for some of her living expenses. The bank statements that she supplied to the University show multiple deposits from other men. (See Id., pp. 1-2, 13-14; Exhibit 13).

The University also conducted an interview of [redacted] and obtained a written statement from him. He denied ever personally receiving any money or gifts from anyone associated with the University, a shoe company, an agent, or a financial advisor. He stated that he had no knowledge of his mother or [redacted] ever receiving any money or gifts from anyone associated with the University, a shoe company, an agent, or a

[38] [redacted]

financial advisor. [redacted] denied knowing Gassnola. (See Exhibit 16, pp. 7, 9, 14-16, 19 [[redacted] Interview]; Exhibit 17 [[redacted] Written Statement]).[39]

The University disclosed the information it obtained to the NCAA and sought reinstatement for [redacted] (See FI-76). The reinstatement staff asked for additional information, which the University supplied. (See Id.). Subsequently, the reinstatement staff informed the University that [redacted] would not be processed in light of the current infractions investigation. [redacted].

[redacted] Gassnola, and Gatto did not cooperate with the enforcement staff's investigation.

Allegation 1-d

In the SDNY trial, Gassnola testified that he gave $4,000 to [redacted] in late summer or early fall of 2017. (See FI-6, p. 1038). Gassnola identified a text thread that he exchanged with [redacted] during which he told [redacted] on Friday September 22, 2017 that he would send $4,000 and it would be in her account the following Monday (September 25, 2017) or Tuesday (September 26, 2017). (See Id., p. 1040). Gassnola said that he learned of the criminal investigation on September 26, 2017, which was the day that Gatto and others were arrested. (See Id., p. 1041). In support of Gassnola's testimony, the government introduced into evidence the text thread that Gassnola exchanged with [redacted] (See FI-54). The government did not offer any documentary proof that the $4,000 payment was actually made.

As noted in the prior sections, [redacted] Gassnola, and Gatto did not cooperate with the NCAA's investigation. No other individuals had any knowledge of this alleged payment. [redacted] did cooperate, however, with the University's initial investigation. [redacted] provided the University with copies of her bank statements covering the time period from June 8, [redacted] to December 5, [redacted]. (See FI-74). There is no $4,000 wire transfer into her account from Gassnola or other deposit on or about September 23, [redacted] or at any other point during the six months covered by her bank statements. (See Id.).

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[39] [redacted] the University also interviewed several University staff members and collected various documentation, including phone records from [redacted] and the men's basketball staff. (See FI-74 [University's investigation file re [redacted]

B. Allegation 2

UNIVERSITY'S CONCLUSIONS

Allegation 2-a

The University concludes that the weight of the credible and persuasive evidence does **not** support the allegations that: (1) Brown was a representative of the University's athletics interests in August 2017; (2) Brown told Townsend that he would contact [redacted] (3) Brown contacted [redacted] and (4) Townsend should have reported the foregoing. As a result, the University did not violate Bylaws 13.01.2, 13.1, 13.1.2.1, and 13.1.3.5.1, and Constitution 2.8.1 did not require Townsend to report his discussion with Brown.

Allegation 2-b

The University concludes that the weight of the credible and persuasive evidence does **not** support the allegations that: (1) Gassnola was a representative of the University's athletics interests in August and September 2017; (2) Gassnola's telephone contacts with [redacted] constituted impermissible recruiting contacts; and (3) Gassnola encouraged [redacted] to enroll at Kansas as a student-athlete. As a result, the University did not violate Bylaws 13.01.2, 13.1, 13.1.2.1, and 13.1.3.5.1, and Constitution 2.8.1 did not require Townsend to report.

Allegation 2-c

The University concludes that the weight of the credible and persuasive evidence does **not** support the allegations that: (1) Adidas and Gassnola were representatives of the University's athletics interests as of August 9, 2017; (2) Adidas, Gassnola, Self, and Townsend worked together to offer [redacted] a recruiting inducement; and (3) Adidas, Gassnola, Self and Townsend offered shoes and apparel to [redacted] to outfit a non-scholastic basketball team with which [redacted] was affiliated. To the contrary, the evidence establishes that Townsend provided and offered to provide contact information for Nike, Under Armour, and Adidas, but none of the three companies offered to provide, nor did they provide, any used gear to any

underprivileged Angolan youth basketball players. As a result, the University did not violate Bylaws 12.1.2, 12.3.1.3, 13.2.1, and 13.2.1.1-(b).

Allegation 2-d

The University concludes that the weight of the credible and persuasive evidence does **not** support the allegations that Adidas, Gassnola, and Gatto were representatives of the University's athletics interests on September 8 and 15, 2017, and Gassnola provided $2500 to [redacted] to secure [redacted] commitment to enroll as a student-athlete at the University. Accordingly, the University did not violate Bylaws 12.1.2, 12.3.1.3, 13.2.1, and 13.2.1.1-(e).

Allegation 2-e

The University concludes that the weight of the credible and persuasive evidence does **not** support the allegations that Adidas, Gassnola, and Gatto were representatives of the University's athletics interests on or about September 11, 2017, and Gassnola offered to provide $20,000 to [redacted] In addition, the credible and persuasive evidence establishes that Gassnola never provided the $20,000 to [redacted] to persuade [redacted] to have [redacted] commit to enroll as a student-athlete at the University. Accordingly, the University did not violate Bylaws 12.1.2, 12.3.1.3, 13.2.1, and 13.2.1.1-(e).

REVIEW OF THE EVIDENCE

Allegation 2-a

In December [redacted]. (See FI-7, pp. 34-37 [redacted] was recruited by Larry Brown, who was the head men's basketball coach at SMU, and in April [redacted] committed to enroll at SMU for the [redacted] academic year. (See FI-8, p. 75 [redacted] Exhibit 18 [Wikipedia]). During [redacted] recruitment, both [redacted] and [redacted] came to know Brown. (See FI-7, pp. 39-42, FI-8, pp. 70-74 [both [redacted] FI-78, pp. 16-17 [redacted] After Brown resigned from SMU in July [redacted] attended IMG Academy as a post-graduate student and delayed his enrollment to the 2017-18 academic year.

[redacted] subsequently contacted Brown and asked Brown what institutions he thought would be good options for [redacted] (See FI-7, pp. 39-42, 104; FI-8, pp. 75, 80 [both [redacted] Brown indicated that both the University of Maryland ("Maryland") and the University of Alabama ("Alabama") would be good options. Maryland's head men's basketball coach had played collegiately for Brown and had been an assistant coach working under Brown both collegiately and professionally. (See FI-7, pp. 39-42, 104; FI-9, pp. 75, 80 [both [redacted] FI-77, p. 19 [Brown]). [redacted] subsequently enrolled at Maryland.

Brown has coached professional and collegiately since 1965 and has connections with numerous coaches, including with some of the University's men's basketball coaches.[40] Brown regularly keeps in touch with many of the individuals with whom he has coached. Brown was the head men's basketball coach at Kansas from 1983 to 1988, but he never made any financial contributions to the University or its athletics department during or after his employment and never assisted the University's recruitment of any prospective student-athletes after he left the University. (See FI-77, pp. 5-7, 15). As a result, in the summer of 2017, Brown was not a representative of the University's athletics interests.

Townsend was friends with Brown, and they would speak periodically. (See FI-5, p. 12 [Townsend]). Townsend recalled that during one of their conversations, he asked Brown if he had any information regarding [redacted] recruitment. Brown responded that he had heard that [redacted] was going to Maryland. (See Id.). Brown volunteered that if he was asked, he would say Kansas is a great place. (See Id.). Townsend never asked Brown to contact [redacted] or [redacted] or to assist with the University's recruitment of [redacted] (See Id.). Brown had no recollection of speaking with Townsend about [redacted] and did not recall speaking to [redacted] or [redacted] about Kansas. (See FI-77, pp. 18-20).[41]

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[40] In 2016, one publication identified Brown as having the best "coaching tree" in college basketball without even considering the relationships he developed during his 27 years as an NBA head coach. (See Exhibit 19).

[41] Both Jerrance Howard and Brown recalled that [redacted] name came up in one of their regular phone conversations. (See FI-77, pp. 25-26; FI-86, pp. 36-38). Howard said he never asked Brown to assist with the recruitment of [redacted] or to talk with [redacted] or [redacted] about the University. (See FI-86, p. 37). Brown stated that Howard told him that he had heard [redacted] might not be going to Maryland and asked "if [redacted] asked what I [Brown] thought about KU would I be positive about KU and I – you know, I said of course I would. You're there and Bill's there, I coached there, why wouldn't I." (See FI-77, p. 18). Brown was adamant that Howard never asked him to contact [redacted] or [redacted] and that Howard was asking about how Brown would respond if contacted by [redacted] or [redacted] (See Id., p. 26).

Based on the foregoing, contrary to the allegations in the ANOA, Townsend never asked Brown to assist the University's recruitment of [redacted] and therefore Brown did not become a representative of the University's athletics interests pursuant to Constitution 6.4.2-(c). In addition, there is no proof in the record in support of the assertions in the ANOA that "Brown informed Townsend that he would contact [redacted] or that "Brown impermissibly contacted [redacted] As noted above, Brown did not recall speaking with Townsend, and there is no evidence that Brown ever reached out to [redacted] or [redacted] stated that on one occasion, *he* contacted Brown for advice, just as he had in connection with [redacted] and another prospective student-athlete. (See FI-7, pp. 39-42, 104; FI-8, pp. 75, 79-81, 86, 88-89). [redacted] indicated that with [redacted] Brown had discussed at least two institutions other than Kansas and when he asked about possible schools for [redacted] Brown mentioned two other institutions in addition to Kansas as possibilities. (See FI-7, pp. 39-42, 104, 113, FI-8, pp. 75, 79-82, 88). Brown said he would not tell [redacted] where [redacted] should go, and [redacted] did not view Brown as recruiting for the University. (See FI-8, pp. 77-78, 80, 84, 86, FI-9 p. 4).[42] [redacted] stated that Brown only mentioned the University during this one call that he had initiated to get Brown's opinion. (See FI-8, p. 84).

Further, even though [redacted] and Brown spoke periodically, Brown never discussed the University with [redacted] In addition, [redacted] never told [redacted] that Brown had recommended Kansas, among other institutions. (See FI-78, pp. 18 [redacted] stated that Kansas had been at the top of his list for two years and he made the decision on his own to attend the University. (See Id., pp. 15, 31).

Lastly, Brown stated that he routinely gets asked by people for his views on schools and coaches given his more than 50 years coaching experience and connections throughout collegiate basketball. (See

[42] In his third interview outside the presence of the University, [redacted] altered his prior statements and indicated that during their discussion Brown strongly recommended Kansas, although he still said that Brown was not recruiting for Kansas. (See FI-9, p. 4). [redacted] speculated based on scuttlebutt he had heard that Brown was hoping for an assistant men's basketball coaching job at the University even though there was no open coaching position and the University was unaware of Brown's alleged interest. (See FI-9, pp. 2, 4, 7-9, 14, 16). Brown never sought or discussed a position coaching at the University in 2017. (See FI-77, p. 28).

FI-77, pp. 17-18). Brown noted that within just a few minutes of time, he was able to identify more than 40 institutions that employ men's basketball coaches with whom he has previously coached. (See Id., pp. 3-4).

Allegation 2-b

The evidence pertaining to Gassnola not being a representative of the University's athletics interests through September 2017 is set forth in Sections V(C)-(H) and (J). The evidence regarding the contacts between Gassnola and [redacted] are detailed below in connection with Allegations 2-c, 2-d, and 2-e.

Allegation 2-c

According to Townsend, Brown mentioned to him that [redacted] was looking to assist a team in [redacted] (See FI-5, p. 14). Subsequently, Townsend spoke with [redacted] who asked if the University could donate any of its used gear for children in Africa who had nothing, but Townsend indicated that was not possible. (See FI-7, pp. 59-60; FI-8, pp. 13, 19-20, 27, 40-41; FI-9, pp. 16-17 [all [redacted] wanted used gear to avoid the customs fees that are imposes on new gear. (See FI-7, p. 72; FI-9, pp. 17-18). [redacted] never told Townsend exactly what team he was seeking to assist, but Townsend believed it was an AAU-type team in [redacted] (See FI-5, p. 23).

Townsend offered to reach out to Nike, but [redacted] did not want to work with Nike because of a prior bad experience he had with Nike. (See FI-7, pp. 92-95; FI-8, pp. 13, 22-27, FI-9, p. 17 [all [redacted] Townsend mentioned [redacted] interest in used gear to both Gassnola and Hill at Under Armour. (See FI-5, pp. 14-15 [Townsend], FI-8, pp. 13, 22-24, FI-9, p. 17 [both [redacted] Townsend passed on Gassnola's contact information and Hill's name to [redacted] (See FI-5, pp. 15, 17, 22, 25 [both Townsend]; FI-6, pp. 1013-14, 1169 [Gassnola]; FI-7, pp. 59-60; FI-8, pp. 13, 20, 22-25, 28 [both [redacted] Townsend never found out if any of the apparel companies sponsored the team that [redacted] was looking to help. (See FI-4 p. 96; FI-5, p. 49). Self was aware that Townsend had put [redacted] in contact with someone at an apparel company. (See FI-1 pp. 94, 98-100).

Townsend has passed on the names of possible contacts at the various apparel companies to many other teams in the past, but he has not otherwise been involved in the communications between the teams and the apparel companies. (See FI-4 pp. 105-107; FI-5, pp. 15-17 [both Townsend]).

On August 9, 2017, which was the day after Townsend provided Gassnola's contact information to [redacted] Townsend and Self spoke to [redacted] (See FI-1 pp. 94, 96-97 [Self]; FI-5, pp. 26-28 [Townsend]). Around the same time as that call, Townsend and Gassnola exchanged several texts. (See FI-62 [text]). Townsend told Gassnola that Self had just spoken to [redacted] and asked Gassnola to let him know how his (Gassnola's) conversation went with [redacted] about possibly providing used gear. (See FI-4, pp. 101-103; FI-5, pp. 27-28). Later that day, Gassnola and Self exchanged texts about Gassnola contacting [redacted] about possibly providing the used gear to the team requested that [redacted] was seeking to help. (FI-1 pp. 96-97 [Self]). Gassnola referred to his contacting [redacted] about this subject being "light work." (See FI-6, pp. 1177-78 [Gassnola]; FI-7, pp. 91-92 [redacted] FI-61).

Gassnola spoke with [redacted] about [redacted] seeking used apparel for youths in Africa, however, the evidence indicates that Gassnola and Adidas neither offered to provide nor provided any gear (new or used), and Gassnola never contacted anyone at Adidas to supply the used gear. (See FI-6, pp. 1169-70 [Gassnola]; FI-7, pp. 61-62, 72-74; FI-8, pp. 20-22, 28-29 [both [redacted] Instead, during their calls, Gassnola only seemed interested in learning about [redacted] contacts in [redacted] and the identities of any decision makers who might be able to send other [redacted] athletes to the United States. (See FI-7, p. 74; FI-8, pp. 4, 17-18, 32 [both [redacted] Gassnola never suggested that [redacted] should enroll at Kansas or any other school. (See FI-7, pp. 92-95; FI-8, pp. 31-32, 34-35 [both [redacted]

Allegation 2-d

In September [redacted], after [redacted] had orally committed to the Kansas, the University advised [redacted] that [redacted] needed to graduate in December [redacted], because he had started high school in [redacted] in January [redacted] (See FI-5, pp. 17-18 [Townsend]). At the time, [redacted] IMG, and all the other institutions that were recruiting [redacted] were unaware of the requirement. IMG wanted the University

and [redacted] to get a waiver to allow him to graduate in May [redacted] and continue playing for IMG in the second semester. (See Id., pp. 17-18; FI-7, pp. 47-48, 65-69, 99, 113; FI-8, pp. 17, 82; FI-9, pp. 5-6 [all three [redacted] The University raised the possibility of [redacted] enrolling in Florida Virtual classes, which are free, in case he needed additional classes so that he could graduate in December 2017. (See FI-7, pp. 66-67, 112). Gassnola called [redacted] about the used gear while he ([redacted] was driving to IMG to try to discuss whether and how [redacted] was going to graduate in December 2017. (See FI-8, pp. 16-17, 30). Gassnola asked [redacted] what was going on and [redacted] explained that [redacted] needed to graduate in December and mentioned the possibility of [redacted] taking Florida Virtual classes. (See Id.). Gassnola asked how much the classes would cost. (See FI-7, pp. 66-67). [redacted] responded that he did not know, because he did not realize at the time that the classes were free. (See Id., pp. 66-67, 82). [redacted] insisted that he did not ask Gassnola for any money for the classes. (See FI-7, pp. 67, 80-82; FI-8, pp. 30-31).[43] This was the only time that he discussed [redacted] with Gassnola. (See FI-8, pp. 17-19). [redacted] did not communicate with Gassnola again until September 15, [redacted]. (See Id., pp. 30, 33).

Two or three days before September 15, [redacted], an overnight envelope was delivered to [redacted] next door neighbor that was addressed to [redacted] with an incorrect last name. (See FI-7, pp. 80-81; FI-8, p. 12). The envelope contained a car repair invoice that was wrapped around $2,500 in cash. (See FI-7, pp. 67, 80-81, 100). Gassnola previously had suggested that he and [redacted] communicate via the phone application WhatsApp, so [redacted] reached out to Gassnola using that method. (See Id., pp. 73-74; FI-8, pp. 10-11, 33-34). [redacted] and Gassnola exchanged the following thread on WhatsApp. (See FI-11).

[redacted]	Hey, how are you?
Gassnola:	Good bro. What's going on?
[redacted]	I got $2500 in the mail? Car repair?
Gassnola:	For classes. LB said to take care of you. LB is family.

[43] In the SDNY trial, Gassnola said that [redacted] indicated that he needed money for the classes and they discussed the sum of $2500. (See FI-6, pp. 1012, 1139). Gassnola's claim in this regard is contradicted by the messages that Gassnola and [redacted] exchanged on September 11, 2017.

[redacted] [redacted] Virtual?

Gassnola: Yes. Where are you with IMG?

[redacted] It's free [smiley face]... I appreciate the gersture [sic] but I'm good. No need for money. My wife freaked out seeing the car repair receipt.

Gassnola: Can't give it back now. Just keep it.

[redacted] LOL

[redacted] I really don't want to sound ungrateful for what you did. But I really need nothing money wise. I can really use your help with the used jersey for the poor kids in Angola. anything you have used or don't need. If its any inconvenience please let me know. (See FI-11).

This exchange demonstrates: (1) no money was requested or desired by [redacted] (2) Gassnola acted unilaterally; (3) [redacted] was only seeking used gear for the youths in Angola; and (4) Gassnola had made no promise to [redacted] to provide any gear even though more than a month had passed since they first communicated. Moreover, given that [redacted] had committed to the University 2 ½ weeks earlier, it is evident that Adidas supplying used gear was not an inducement for [redacted] commitment.

[redacted] donated $500 to the church and deposited $2,000 in his bank account. (See FI-7, p. 84; FI-8, pp. 48-49). [redacted] bank statement reflects a $2,000 cash deposit on September 20, 2017. (See FI-10). [redacted] did not receive any of the money, he did not know about the $2,500 until [redacted] told him about it during the SDNY trial, and it did not influence his decision to go to Kansas. (See FI-8, pp. 55-56, 66 [redacted] FI-78, pp. 20-25 [redacted] The same day that [redacted] found out about the $2,500 payment, he told Townsend what [redacted] had said to him regarding receiving $2,500 from Gassnola. Townsend immediately informed the University athletics administration, and the University informed the enforcement staff. (See FI-5, pp. 25, 47-48 [Townsend]; FI-78, pp. 20-25 [redacted]

As previously noted, Gassnola repeatedly testified under oath in the SDNY trial that he concealed all payments from the University and its coaching staff. (See FI-6, pp. 914-16, 934, 941-42). Further, Gassnola stated he never discussed any payments to [redacted] with anyone at the University. (See Id., p. 1017). During the investigation of this matter, Self and Townsend both denied knowing about the $2,500

payment. (See FI-1, p. 112; FI-5, p. 47). In addition, [redacted] stated that he never informed anyone at the University about the $2,500. (See FI-8, pp. 11-12, 15, 47-48). The University first learned about this payment in connection with the SDNY trial.

Allegation 2-e

During the SDNY trial, Gassnola testified that [redacted] informed him that he ([redacted] had received $60,000 from a Maryland booster in return for [redacted] attending Maryland and he needed to get out of that agreement. (See FI-6, pp. 102-13, 1170, 1197, 1213). Gassnola claimed that he offered to give [redacted] $20,000 to help him repay the Maryland booster so that [redacted] could enroll in Kansas rather than Maryland. (See Id., pp. 1013, 1171). Gassnola repeatedly testified that he never actually provided the $20,000 to [redacted] (See Id., pp. 1013, 1020, 1171, 1186, 1196).

Gassnola's testimony concerning what [redacted] allegedly told him and his [Gassnola's] promise to pay $20,000 is not credible and should not be accepted by the Panel for the following reasons.

Initially, [redacted] repeatedly insisted during his interviews that: (1) he did not know any Maryland booster; (2) no one paid him $60,000 to obtain [redacted] commitment to Maryland; (3) he never told Gassnola that he had been paid $60,000 by a Maryland booster in return for [redacted] enrolling as a student-athlete at Maryland; and (4) Gassnola never promised to pay him $20,000. (See FI-7, pp. 98; FI-8, pp. 56-57, 67-68, 70). It appears that Gassnola erroneously pieced together various bits of information into an inaccurate version of events as is explained below.

In early 2017, [redacted] switched from playing on a grassroots team sponsored by Nike to a team sponsored by Under Armour named the [redacted] (See FI-7, pp. 11-12 [[redacted] At the same time, [redacted] entered into either an employment or consulting arrangement with an entity, EBL Basketball, LLC ("EBL"), which was owned by Jon Lasko. (See FI-87, p. 6 [Lasko]; FI-121 [draft agreement]). During 2017, EBL paid [redacted] approximately $26,000 before withholdings. (See FI-10 [[redacted] bank records]; FI-121 [pay stub]). In communications with the University, the enforcement staff inexplicably has relied on these payments as somehow supporting Gassnola's story. However, the

evidence in the record shows that the arrangement between Lasko and [redacted] had nothing to do with [redacted] going to Maryland and Lasko had no connection to Maryland.

According to [redacted] and Lasko, EBL and Lasko wanted to create a basketball academy in the Miami area and [redacted] was paid by EBL to help recruit players from Africa to attend the academy. (See FI-7, p. 52; FI-87, pp. 7-9). In addition, Lasko had a relationship with the [redacted],[44] and [redacted] duties included driving [redacted] and several other players from the Orlando area to Miami for practices, assisting with practices, and traveling with the team to competitions and events. (See FI-7, pp. 24-26). Further, Lasko's son played on the [redacted], and according to [redacted] Lasko sought [redacted] help in getting Lasko's son an opportunity to play collegiately. [redacted] believed that the compensation he received from EBL was for this purpose as well. (See Id., pp. 12-13, 26-27, 52-54; FI-9, pp. 10-11).

Moreover and importantly, the evidence establishes that Lasko had no contacts with Maryland and requested that [redacted] talk to the Maryland coaches about Lasko's son. (See FI-7, pp. 53-54).[45] There is no proof in the record that Lasko was a Maryland booster and the payments to [redacted] were somehow related to [redacted] committing to Maryland.

In addition to the foregoing, the University understands that the enforcement staff investigated Gassnola's assertion that a Maryland booster paid [redacted] $60,000, and the staff apparently found no evidence of any payment by a Maryland booster to [redacted] Access to this investigative material is clearly relevant to this allegation and should have been provided pursuant to Bylaw 19.7.1.2. As a result, the University requests that the Panel infer that the enforcement staff's failure to provide access to its investigation materials is evidence that the materials would support a determination that no violation

[44] Although Lasko told the enforcement staff he had no financial interest in or management responsibility over the Florida Vipers (See, FI-87, pp. 15, 19-20), the credible and persuasive evidence indicates that Lasko had some form of relationship with the team in 2017. Specifically, the draft agreement between EBL and [redacted] indicates that EBL operated the Florida Vipers. (See FI-121). In addition, on January 11, 2017, EBL filed an application with the Florida Department of State to use the fictious name "Florida Vipers." (See Exhibit 20).

[45] Lasko did try to get [redacted] to talk with the Indiana men's basketball coaches about their interest in recruiting [redacted] (See FI-87, p. 10). However, Indiana is an Adidas-sponsored institution.

occurred. See Bylaw 19.7.8.3.2 (providing for an adverse interference when an institution or individual do not provide relevant materials).

The record contains information that may explain how Gassnola may have become confused. Shortly after [redacted] switched to the Florida Vipers, Merl Code and Brad Augustine met with [redacted] in an effort to get [redacted] to play for 1 Family, which was an Orlando-based team sponsored by Adidas and coached by Augustine. (See FI-7, pp. 49-51 [[redacted] [redacted] had gone to college with Augustine and did not care for him. (Id., p. 49). Rather than telling Augustine that he did not like him, [redacted] stated that he was under contract with Lasko and the Florida Vipers, and Augustine and Code said they could get him out from under that agreement. (See Id., pp. 49-50, 66). Because the Florida Vipers were sponsored by Under Armour and the scuttlebutt was that [redacted] was going to Maryland, Gassnola may have misunderstood the situation as being that [redacted] had a contract with a Maryland booster.

Finally, even if the record had supported Gassnola's story, there is no basis for finding that he was a representation of the University when he allegedly offered to provide $20,000 to [redacted] As previously stated, Gassnola testified under oath in the SDNY trial that he concealed all payments from Kansas and the other institutions. (See FI-6, pp. 914-16, 934, 941-42). Further, he concealed the proposed $20,000 payment from everyone at the University. (See Id., p. 1017). During the investigation of this matter, Self and Townsend both denied knowledge of the alleged promised payment of $20,000. (See FI-1, pp. 112, 114-15 [Self]; FI-4, p. 108; FI-5, pp. 29, 41 [both Townsend]). The University learned about this allegedly promised payment in connection with the SDNY trial. Therefore, the University is not responsible under Constitution 6.4.2 for Gassnola's alleged unfulfilled promise.

C. Allegation 3

UNIVERSITY'S CONCLUSIONS

Allegation 3-a

The University concludes that the weight of the credible and persuasive evidence does **not** support the allegations that: (1) Gassnola was a representative of the University's athletics interests on December

11, [redacted] (2) Gassnola met with [redacted] on December 11, [redacted] (3) Gassnola met with [redacted] to recruit him for the University; and (4) the University violated Bylaws 13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1, and 13.2.1.1-(e).

The University concludes that the weight of the credible and persuasive evidence supports findings that: (1) Gassnola provided someone named [redacted] with $15,000 in the winter of [redacted] believed [redacted] to be a family friend of the [redacted] family, and hoped that [redacted] would give the $15,000 to [redacted] mother; (2) Gassnola gave the $15,000 to [redacted] to create a relationship with [redacted] in an effort to get [redacted] to play on an Adidas grassroots team, compete at Adidas Nations, and eventually sign an endorsement deal when he ([redacted] entered the NBA; and (3) in the middle of a text thread with Self on August 19, 2017 regarding a variety of topics that were wholly unrelated to Allegation 3-a or [redacted] Gassnola made the non sequitur remark, "I have never let you down Except [redacted] [sic] lol" (see FI-40), however, there is no credible and persuasive evidence that Gassnola actually assisted the University's recruitment of [redacted]

The University concludes that the weight of the credible and persuasive evidence does **not** support the allegations that: (1) Gassnola was a representative of the University's athletics interests during the winter of [redacted] and (2) the University violated Bylaws 13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1, and 13.2.1.1-(e) in connection with Gassnola's $15,000 payment to [redacted]

Allegation 3-b

The University concludes that the weight of the credible and persuasive evidence does **not** support the allegations that: (1) Gassnola was a representative of the University's athletics interests on March 22, [redacted] (2) Gassnola provided an impermissible benefit to [redacted] and (3) the University violated Bylaws 12.1.2, 12.3.1.2, and 16.11.2.1 in connection with [redacted]

Allegation 3-c

The University concludes that the credible and persuasive evidence does **not** support findings that: (1) Cutler was a representative of the University's athletics interests between June 27 and July 1, 2017; and

(2) the University violated Bylaws 13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1, and 13.2.1.1-(g) in connection with Cutler's communication with [redacted] between June 27 and July 1, 2017.

The University concludes that the weight of the credible and persuasive evidence cannot establish exactly what Cutler said to [redacted] and when and where the conversation took place. Finally, the credible and persuasive evidence supports findings that: (1) Self was told indirectly by Cutler that [redacted] might have interest in being recruited by the University, however, that information was wrong; (2) neither Cutler nor anyone else ever advised Self that he (Cutler) had spoken directly to [redacted] and allegedly indicated to [redacted] that if he enrolled at the University, some unidentified person would provide financial assistance to [redacted] parents so they could attend games; (3) Self made consecutive three and one minute calls to [redacted] and a three minute call to [redacted] mother on July 20, [redacted] (4) [redacted] and his mother told Self that [redacted] was not interested in being recruited by Kansas; (5) the University had no other communications with the [redacted] and (6) on July 23, [redacted] committed to [redacted] University ("[redacted]

[redacted].

Allegation 3-d

The University concludes that the weight of the credible and persuasive evidence does **not** establish that: (1) Code was a representative of the University's athletics interests on September 14, [redacted] (2) Code had contact with the [redacted] family on or about September 14, [redacted]; (3) Townsend failed to report any violation; and (4) the University violated Constitution 2.8.1 and Bylaws 13.01.2, 13.1, 13.1.2.1, and 13.1.3.5.1.

Allegation 3-e

Because Allegations 3-a, 3-c, and 3-d are unsupported, they cannot form the basis for Allegation 4. Likewise, since Allegations 3-a through 3-d are unfounded, they cannot serve a basis for Allegation 5.

REVIEW OF THE EVIDENCE

Allegation 3-a

1. December 11, [redacted] Alleged Meeting

As is detailed above in Section V(F)(1), the only evidence in the record pertaining to the purported recruiting contact between Gassnola and [redacted] on December 11, [redacted] is a March 2, [redacted] email from Gassnola to Rivers that states:

> Dec 11 and 12 AC aka Genuine (1 3rd of the SOUL PATROL) went to san Diego to see [redacted] took [redacted] to Dinner spent time with [redacted] before hand (See FI-41).

On its face, this document only states that Anthony Coleman of Adidas a/k/a AC (see FI-6, p. 996 [Gassnola SDNY]) went to see [redacted] Because there was no testimony about this statement in the SDNY trial, there is no basis for importing this statement and concluding that Gassnola was present.[46]

Moreover, as previously described in Section V(F)(1) and in Rivers' February 17, 2015 email, the purpose of the Adidas representatives' contacts with prospective student-athletes, such as [redacted] was to create a relationship with the prospective student-athletes in the hopes that in the short term they would participate in Adidas grassroots basketball and in the long-term they would sign endorsement deals with Adidas when they entered the NBA. (See FI-42). Consistent with this goal, whatever contact with [redacted] might have occurred[47] was for Adidas' benefit and not to recruit [redacted] to Kansas. (See FI-6, pp. 1010, 1106-07 [Gassnola SDNY]). Finally, the evidence in the record is that the University did not know about this alleged contact. (See FI-2, pp. 22-23 [Self]).

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[46] As noted in Section V(F)(1), when Gassnola was part of a group of Adidas representatives who were present at the other events that are described in the March 2, 2015 email, he always expressly identified himself as being present. (See FI-41).

[47] The phrase "spent time with [redacted] before hand" is ambiguous and could refer to simply a greeting exchanged in passing. Moreover, this Panel should not treat as credible and persuasive evidence unsworn, out-of-court statements made by or on behalf of Gassnola given that he did not testify about this event and there is no other corroborating information. In this regard, Gassnola admitted on multiple occasions during his sworn testimony in the SDNY trial that he had made false statements in other documents. (See FI-6, pp. 976 [falsely telling Gatto that he had spoken to Rick Pitino], 1045 [having his attorney falsely tell the University that Gassnola knew absolutely nothing about any potential criminal or NCAA violations that pertain to the University]; 1196 [falsely telling Gatto that he had given $20,000 to [redacted]

As a result, the University did not violate Bylaws 13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1, and 13.2.1.1-(e).

2. Winter [redacted] Alleged $15,000 Payment

As discussed above in Section V(F)(2), the only evidence in the record is that: (1) on some unknown date in the winter of 2015, Gassnola gave $15,000 to someone named [redacted] who Gassnola thought was an [redacted] family friend, in the hopes that [redacted] would give the money to [redacted] mother; and (2) Gassnola made the payment in an effort to create a relationship with [redacted] in the hope that he would participate in Adidas grassroots basketball and eventually sign an endorsement deal with Adidas. (See FI-6, pp. 1009-10, 1106-07; FI-42 [Rivers 2/17/15 email]). There is no evidence in the record that the payment was intended to assist in recruiting [redacted] to Kansas. Further, the University had no knowledge of the payment, and first learned of the payment in connection with the SDNY trial. (See FI-2 p. 23 [Self]; FI-4, pp. 118-19 [Townsend]). Finally, the evidence indicates that the University started recruiting [redacted] prior to Gassnola's first contact with [redacted] had better and stronger contacts with [redacted] and his mother than Gassnola's extremely limited interactions, and never asked Gassnola to assist in recruiting [redacted] (See FI-1, p. 79 [Self], FI-4, pp. 10, 115-17, 122-23 [Townsend]).

Based on the foregoing, the University did not violate Bylaws 13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1, and 13.2.1.1-(e)

3. August 19, 2017 Text from Gassnola to Self

The enforcement staff has tried to overcome the lack of any credible and persuasive evidence that: (1) Gassnola was assisting the University in recruiting [redacted] in [redacted] or early [redacted] and (2) the University's men's basketball and athletics' staff had any knowledge of any alleged recruiting activities by Gassnola by citing to a text that Gassnola sent to Self on August 19, [redacted] Gassnola texted Self thanking him for his help in getting the Adidas sponsorship agreement extension done and referencing changes to the grassroots program and some unexplained internal fighting at Adidas about the University. (See FI-40). The ANOA characterizes Gassnola's last text in the thread rather than quoting it. The text states in full: "I promise

you. I got this. I have never let you down Except [redacted] lol We will get it right." (See Id.). The enforcement staff asks the Panel to make the illogical leap from Gassnola's insertion into the text thread the non sequitur "Except [redacted] lol" as establishing both that two and three years earlier Gassnola had been assisting the University to recruit [redacted] (rather than assist Adidas in recruiting [redacted] for its own purposes as Gassnola testified under oath), *and* the University should have had contemporaneous knowledge about what Gassnola was doing in 2014 and early 2015. There is no basis for this contention.

Gassnola was never asked any questions about the meaning of this statement in the SDNY trial, it was not relevant to any issue in the trial, and there was no finding made based upon it. Self and Townsend both had no explanation as to why Gassnola made this offhand, joking ("lol") remark or what he meant by it, given that he did not help them recruit [redacted] (See FI-1, p. 85; FI-4, p. 121). As noted above in footnote 47, Gassnola admitted in his testimony during the SDNY trial that he often would say things that were untrue in his statements outside of his testimony. All of the credible and persuasive evidence indicates that this is yet another one of those instances. Stated otherwise, these out-of-context three words are not sufficient credible and persuasive evidence upon which a reasonable person would conclude that, contrary to the other available evidence, years earlier Gassnola had provided impermissible recruiting assistance.

Accordingly, the University did not violate Bylaws 13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1, and 13.2.1.1-(e).

Allegation 3-b

On August 17, 2017, the Eligibility Center's complex case unit interviewed [redacted] about several then-prospective student-athletes, including [redacted], none of whom were being recruited by the University. (See [redacted] EC Interview_081718_00874.mp3). At that time, [redacted] was entering his second NBA season. After his interview, [redacted] sent redacted bank statements from his personal account and bank records from [redacted] father to prove how some of [redacted] expenses were paid. (See [redacted] Email_[redacted]082217_Kansas_00874.pdf; [redacted] Email_[redacted]082317_Kansas_00874.pdf;

[redacted] ComplexCaseEIReport_Feb2018_Kansas_00874.pdf). The Eligibility Center apparently must have been satisfied with [redacted] submission of the redacted bank records given that [redacted] was declared eligible and competed for the University of [redacted].

At some point, apparently without [redacted] permission, someone within the NCAA attempted to unredact several entries that had nothing to do with [redacted] and eventually the enforcement staff sent the bank statements to Ernst & Young to try to unredact portions of them. Ernst & Young purported to issue an expert opinion as to what was typed underneath some of the redactions on the 14 pages of [redacted] banking records. Ernst & Young said that it was able to read only parts of the redacted information. (See FI-14). The only transaction that the enforcement staff asserts is relevant to the University is a March 22, [redacted] wire transfer in an unknown amount[48] from an account allegedly owned by the New England Playaz. (See Id.).

The enforcement staff has submitted no evidence that [redacted] authorized the unredaction of the entries by Ernst & Young or anyone else. To the contrary, when asked by the enforcement staff in his January 18, 2019 interview why he redacted certain transactions and information, [redacted] plainly stated that the redacted transactions were irrelevant to the inquiry and they contained his personal financial information. (See FI-12, p. 33). Although the enforcement staff repeatedly asked [redacted] to provide unredacted bank statements, he apparently never did. (See Id., pp. 28-29, 32).

In any event, there is no evidence in the record that if a March 22, [redacted] transfer from New England Playaz occurred, it had anything to do with [redacted] or the University. The only evidence in the record is [redacted] repeated statements that the redacted transaction was **not** related to [redacted] or the University. (See Id., pp. 27-28, 30-34). In addition, there are several other possible reasons why the New England Playaz might have wired money to [redacted] that are unrelated to [redacted] or the University. [redacted] was associated with a number of prospective and current student-athletes at the time and the payment could have been related to one of those individuals. In addition, [redacted] had a basketball camp in Mali that was sponsored

[48] All that can be determined from the unredacted information is that after the wire transfer was credited, [redacted] account balance was $11,067.90. (See FI-13). Therefore, the amount of the wire was less than that amount, although it could have been considerably less.

by Adidas and the transfer could have been related to that sponsorship. (See Id., pp. 12-13). Further, [redacted] stated that at one point, Gassnola asked [redacted] about having one of his scholastic players join the New England Playaz, and the wire could have been related to that effort. (See Id., pp. 16, 18).

During the investigation, the enforcement staff speculated that the alleged March 22, [redacted] transfer was intended to cause [redacted] to return to the University for the [redacted] academic year rather than enter the NBA. There is no evidence in support of this conjecture. To the contrary, the record establishes that:

- [redacted] was always a "one and done" and there was never any talk about him continuing for a second year. (See FI-1, pp. 55-56, 107 [Self]; FI-4, pp. 36-37 [Townsend]; FI-91, p. 19 [Roberts]).
- In response to the enforcement staff's speculation, [redacted] stressed that "[redacted] wasn't even playing so that's a problem. [unintelligible]. [redacted] wasn't even playing." (See FI-12, p. 34).
- [redacted] did not play in the two games after March 22, [redacted] payment; [redacted] (See Exhibit 11 [Summary of [redacted] playing time]).
- [redacted] decided to enter the NBA draft on March 26, 2017. (See Exhibit 10).
- [redacted] signed an endorsement contract with Adidas shortly after March 22, [redacted] This endorsement deal was Adidas' ultimate goal – not getting [redacted] to spend a second year at the University.
- [redacted] also signed a $3,400,000 contract with the [redacted]. (See Exhibit 21).

As a result of the foregoing, the University did not violate Bylaws 12.1.2, 12.3.1.2, and 16.11.2.1.

Allegation 3-c

1. Background Regarding Cutler

According to the University's men's basketball coaches, Cutler had worked the admissions and information table at Adidas grassroots events since 2015. He would take money from attendees, give out wrist bands, and provide information on which courts and when prospective student-athletes were playing. (See FI-4, pp. 69-70 [Townsend]; FI-86, p. 31 [Howard]; FI-91 p. 17 [Roberts]; FI-92, pp. 4-5 [Roberts]).

There is no evidence that Cutler assisted the men's basketball coaches in recruiting prior or subsequent to the June 27 – July 1, [redacted] time period referenced in the ANOA.[49] To the contrary, the men's basketball coaches denied ever using him to help recruit. (See FI-86, pp. 28, 36 [Howard]; FI-91, pp. 13, 20 [Roberts]; FI-92, pp. 5-7 [Roberts]). None of the men's basketball support staff who were asked about Cutler knew who he was. (See FI-84, p. 30 [Quartlebaum]; BBechard_TR_062019_Kansas_00874.pdf, p. 15; LHare_TR_061919_Kansas_00874.pdf, p. 28).

2. [redacted] Parents' Version of Events

The enforcement staff jointly interviewed [redacted] parents on November 13, 2018 without the University's knowledge or involvement. (See FI-16). [redacted] father explained that during the summers of [redacted] and [redacted] played on an [redacted]-based and Adidas-sponsored grassroots team that his father helped coach and they would see Cutler at various Adidas events. (See Id., pp. 8-11). [redacted] father said that Cutler was the person at Adidas that he communicated with the most. (Id., p. 12). [redacted] father explained that Cutler was responsible for arranging a trip to Italy for two Adidas teams, [redacted] was chosen to be on one of the teams, and [redacted] made the trip to Italy despite being injured in practice before leaving for Italy. (See Id., pp. 12-16). [redacted] father had a number of contacts with Cutler related to that team, [redacted] injury, and the Italy trip. In addition, [redacted] father interacted with Cutler in connection with trips that [redacted] made to Los Angeles and Houston to play on this same Adidas team. (See Id., pp. 15-16). [redacted] father stated that even after [redacted] was done playing grassroots basketball, he kept in touch with Cutler, including talking to him about the possibility of Adidas sponsoring a grassroots team in [redacted] (See Id., p. 12). Further, [redacted] father initiated a conversation with Cutler to see how he was doing two weeks before [redacted] parents' interview by the enforcement staff. (See Id., pp. 12, 14). There is no evidence or claim that during any of their numerous communications, Cutler ever discussed the possibility of [redacted] going to Kansas with [redacted] father.

[49] Like many other people, Cutler might mention in passing something like "this kid's a good player." (See FI-91, p. 15 [Roberts]; FI-92, p. 3 [Roberts]). However, this is a type of simple personal opinion that may be information gathering, but does not rise to the level of assisting with recruiting.

After much back and forth between [redacted] mother and father about what occurred and when, they provided the following sequence of events relating to Allegation 3-c:

- The [redacted] were in Lawrence, Kansas for a tournament the second week of the July 2017 evaluation period. (See Id., pp. 19-21).

- Self was at a game watching another prospective student-athlete who played the same position as [redacted] and Self made an offer to the other player. (See Id., pp. 40-43).

- While they were in Lawrence, the [redacted] took a trip to the Kansas campus and snuck in a back door to the fieldhouse. (See Id., pp. 39-40).

- [redacted] mother was in a hotel room on Saturday night and received a phone call from Self who "asked me straight out if we were interested in an offer and I said no. I said [redacted] down the homestretch. He's got it narrowed down to a few schools and he's not interested in complicating with additional offers at this time. He's -- this is -- this is nearing the end for him. He's -- he's exhausted. He's done." (See Id., pp. 20, 23).

- Self asked if he could talk with [redacted] and [redacted] mother responded that she wanted to talk with [redacted] first. (See Id., p. 23).

- This was the only call that the [redacted] received from anyone at Kansas. (See Id., pp. 22-24, 38-39).

- [redacted] played in a game on Sunday and they started driving back to [redacted] after the game. (See Id., p. 23).

- On the ride back, [redacted] decided to commit to [redacted] His parents required him to first call all of the schools who had recruited him to tell them "no." Kansas was not one of the schools that [redacted] called, because the University hadn't recruited him. (See Id., pp. 22, 37).

- Also, during the ride home, [redacted] mother told [redacted] about the call from Self. To his parents' knowledge, [redacted] never spoke to Self. (See Id., pp. 23-24, 27-28).

- In response to his parents telling him about Self's call the prior night, [redacted] told his parents that when he was in [redacted] a week earlier someone spoke to [redacted] about Adidas schools, including Indiana or Kansas. [redacted] parents thought that the person was Cutler. (See Id., pp. 24-31, 33, 37, 40).

- The enforcement staff asked [redacted] father if anyone from Adidas ever told him that if [redacted] went to Kansas they wouldn't have to worry about their travel. In response, [redacted] parents said that [redacted] told them that Cutler had told him something to that effect during the conversation in [redacted] although Cutler did not tell [redacted] who would cover his parents' travel. (See Id., pp. 31-33, 37, 40). Again, [redacted] father did not claim that Cutler made a similar offer to him during their numerous communications.

- After [redacted] told his parents about Cutler's alleged remark, [redacted] mother asked [redacted] what his response was, and [redacted] said he told Cutler that he knows that providing help with travel would be against the rules. (See Id., pp. 31-32).

3. [redacted] Version of Events

[redacted] was interviewed two weeks after his parents, again without the University's participation or knowledge. (See FI-15). [redacted] knew Cutler from him (Cutler) working all of the Adidas basketball tournaments and Adidas Nations camps. (See Id., pp. 8-10). Beginning in April 2017, Cutler started communicating with [redacted] father about [redacted] going to Italy in June, and [redacted] ended up going on the trip. (See Id., pp. 9, 15).

[redacted] stated that when he was in Los Angeles in late June for an Adidas Nations camp,[50] Cutler spoke to him when no one else was around. (See Id., pp. 10, 11). [redacted] claimed that the following conversation occurred:

- Cutler "just talked to me about like if I was ever interested in Kan -- or Adidas school and I said no, really." (See Id., pp. 9-10).
- Then Cutler "just told me like if I were to go to Kansas like my parents would be at every game, they'd make sure that they were there, they'd make sure they'd have -- about in like a nice hotel and everything." (See Id.).

[redacted] told the enforcement staff that "Like obviously I didn't, you know, really pay much attention to what he was saying but I never even took a visit to Kansas and end up really being interested in them." (See Id.). [redacted] stated that Cutler said that Self had told him (Cutler) that schools had not really recruited [redacted] because his brother was at [redacted] but that Kansas would be interested. (See Id., pp. 11-12). According to [redacted] this was the only time that Cutler spoke with him about Kansas. (See Id., p. 14). [redacted] said he told his parents about this conversation as soon as he got home from Los Angeles. (See Id., pp. 13-14).

[redacted] stated that he subsequently went to Spartanburg, South Carolina for a tournament and noted that Self was not at that tournament. (See Id., pp. 12, 19-20). [redacted] said he and his mother were in a hotel room in Spartanburg when Self called his cell phone. (See Id., pp. 12, 18). [redacted] said he talked to Self for

[50] Initially, [redacted] said the conversation was in Houston in August. (See Id., p. 10).

10-15 minutes then gave the phone to his mother who talked to Self for another 10-15 minutes; so, the call was about 30 minutes long in total. (See Id., pp. 12-13). [redacted] stated that Self never mentioned Cutler or indicated he had talked to Cutler. In addition, Self never mentioned any travel benefits for [redacted] parents. [redacted] said that it was just a normal recruiting call. (See Id., pp. 13, 20-22). [redacted] said that Self indicated on the call that he had not seen [redacted] play, asked how [redacted] team was doing in the tournament, and suggested that [redacted] should come to Kansas for a visit. [redacted] responded that he had already cut his list down. (See Id., pp. 12-13). [redacted] said he never visited Kansas officially or unofficially and Self never offered a scholarship. (See Id., pp. 13, 22).

[redacted] stated that the following week he was in Lawrence for another tournament. He said Self was at the tournament, but neither Self nor anyone else from Kansas talked to him then or at any other time. (See Id., pp. 12-13, 17-18). [redacted] said that the Lawrence tournament was not sponsored by Adidas and Cutler was not there. (See Id., p. 20). [redacted] stated that as he was driving home, he committed to [redacted] and called all of the schools who had been recruiting him. He did not call Kansas. (See Id., pp. 18-19).

The enforcement staff did not make any effort to clarify or address any of the numerous inconsistencies between the versions of events given by [redacted] and his parents (e.g. the Cutler conversation with [redacted] was in Los Angeles versus Spartanburg; [redacted] told his parents about the Cutler conversation right after Los Angeles versus weeks later on the car ride home from Lawrence; the call from Self occurred in Spartanburg versus Lawrence, Self spoke with both [redacted] and his mother versus Self spoke only with his mother; [redacted] never visited the University versus they went into Allen Fieldhouse while they were in Lawrence for the tournament).

4. The University's Men's Basketball Coach's Statements

During his May 17, 2019 interview, Self indicated that he believed he got a call from Cutler about [redacted] (see FI-1, p. 42), although as he explained below, the call apparently went to Roberts who advised Self about the call. Self said that Cutler indicated that the [redacted] were in Lawrence for the Hardwood Classic tournament, someone asked which schools were recruiting [redacted] and whether the [redacted] had

heard from Kansas, and the [redacted] responded "no" but that they like Lawrence. Self understood that Cutler was passing on what he had heard. (See Id., pp. 42, 50).

Self said that he made one call to [redacted] and/or [redacted] mother shortly after hearing from Cutler and found out that Cutler's information that [redacted] might be interested in Kansas was wrong. Self stated that [redacted] committed the next day to [redacted]. (See FI-1, pp. 42, 43, 45, 47). Self said that the contact was an introductory-type call telling the [redacted] that if they were open to Kansas being involved, Kansas would love to be involved. (See Id., p. 43). Self recalled the mother asking if it was always that hot there because the temperature was about 105°. (See Id.)

The enforcement staff told Self that they had information that two weeks prior to his call to the [redacted] Cutler had talked to [redacted] in California,[51] asked if [redacted] would be interested in Kansas, and told [redacted] that Self was interested in him. (See Id., pp. 45, 52). Self denied ever telling Cutler that he was interested in [redacted] using Cutler to recruit, or authorizing Cutler to speak for him. (See Id., pp. 45-46). Self stated that prior to his call to the [redacted] the University had not called the [redacted] and had not evaluated or intended to be involved with [redacted] in any way. (See Id., p. 46).[52] The enforcement staff also advised Self that Cutler allegedly told [redacted] that his parents would not have to worry about traveling to games, and Self denied knowing about such statement and said it was untrue. (See Id., pp. 47, 51).

Self noted that he attended the Hardwood Classic in Lawrence for one day to see another prospective student-athlete and that is the day that he called the [redacted] (See Id., p. 53). Self did not recall seeing Cutler at the tournament. (See Id.). Self's phone records establish that on the night of Thursday, July 20, [redacted] he made a three-minute call to [redacted] phone at 9:47 p.m., called [redacted] number at 9:51 p.m. for one minute, and called [redacted] mother's phone at 9:52 p.m. for three minutes. (See Id., pp. 49, 53; FI-133, p. 628 [Self Phone Log]). There were no calls from Cutler to Self on Self's phone log. (See FI-1, pp. 51-53 [Self]; FI-132 [Self Phone Logs]; FI-133 [Self Phone Bills]). After his interview, Self advised the

[51] The Los Angeles event was actually three weeks earlier.
[52] Because of this lack of contact or evaluation, the University did not have a recruiting file on [redacted]

enforcement staff through his attorney that he may have obtained information from Cutler indirectly through Roberts. (See FI-131 [Letter from Self's attorney]).

The enforcement staff interviewed Roberts on August 13, 2019. Roberts indicated that he heard from someone, he could not recall if it was Cutler or someone else, that [redacted] might be opening up his recruitment and might be willing to consider Kansas. (See FI-92, pp. 3-4). Although the University had never recruited [redacted] Roberts passed the information on to Self. (See Id., p. 3). Roberts said that he probably found [redacted] number in one of the scouting services that the University uses. (See Id., p. 6). Self made one outreach that went nowhere and there was no follow-up. (See Id., pp. 3, 6-7).

The enforcement staff re-interviewed Self on August 20, 2019. Self indicated that he may have been mistaken in his prior interview when he said that Cutler called him. Cutler may have called Roberts, who then passed the information on to him that [redacted] might be interested in Kansas. (See FI-2, pp. 16-17).

The Hardwood Classic ran from Thursday, July 20, [redacted] to Sunday, July 23, [redacted] (See Exhibit 22). [redacted] committed to [redacted] Sunday, July 23, [redacted] (See Exhibit 23).

Based on the foregoing, the University did not violate Bylaws 13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1, and 13.2.1.1-(g).

Allegation 3-d

1. Merl Code's Background and Limited Interaction with the University

Code was a longtime Nike employee who joined Adidas as a consultant at some point prior to his arrest in September 2017. Code had very limited contact with the University. Self knew Code enough to say hello, but never had a conversation with him, and did not even know he worked for Adidas until approximately September 8, 2017. (See FI-1, pp. 41; FI-2, pp. 20-21). Townsend indicated that he did not know Code well, had talked with him about 15-20 times over his entire career, and also did not know Code was working for Adidas until shortly before September 8, 2017. (See FI-4, pp. 50, 125). Roberts had met Code when he worked for Nike but did not know him beyond exchanging greetings and had never seen him at the University. (See FI-91, p. 16). When he coached at prior institutions that were sponsored by Nike,

Howard had interacted with Code as a Nike employee. Howard could only recall one communication from Code and that was unrelated to [redacted] (See FI-86, pp. 28-30).

None of the men's basketball support staff, including Self's assistant Stephens, administrative assistant Hoffman, director of operations Bechard, director of student development Quartlebaum, or equipment manager Hare, had even heard of Code until his September 2017 arrest. (See FI-81, p. 16 [Stephens]; FI-82, pp. 13-14 [Hoffmann]; FI-84, p. 20 [Quartlebaum]; BBechard_TR_062019_Kansas_00874.pdf, pp. 12, 17; LHare_TR_061919_Kansas_00874.pdf, pp. 21-22). Likewise, deputy athletic director Lester, special assistant to the athletic director Keating, and assistant athletic director of alumni relations Allee all had not heard of Code until his arrest. (See FI-19, pp. 19, 24 [Keating]; FI-20, p. 28 [Lester]; FI-24, p. 22 [Allee]).

2. Code's Lack of Contact with [redacted] Family on or About September 14, [redacted]

As is detailed below, the evidence establishes that Code had a falling out with [redacted] mother and [redacted] and they had not been in contact since the spring of [redacted] Thus, it is difficult to comprehend how the enforcement staff could allege that Code had an impermissible recruiting contact with the [redacted] family on or about September 14, [redacted]

During the enforcement staff's joint interview of [redacted] mother and [redacted] on November 1, 2018, the enforcement staff asked them to describe the nature of their relationship with Code and [redacted] mother responded, "There is no relationship" and that other than the three of them being from the [redacted], "there was no relationship." (See FI-27, p. 16). Both parents stated that they do not talk or text with Code. (See Id.). [redacted] mother and [redacted] went on to explain that [redacted] played on an Adidas-sponsored grassroots team in Atlanta during the summer of [redacted] but was unhappy with the team. (See Id., pp. 4, 14, 18). [redacted] had been an AAU coach since before [redacted] was born, and they decided in the summer of [redacted] that they wanted to start a team. (See Id., pp. 13-14). [redacted] approached Nike, Under Armour, and Adidas about sponsoring a team coached by him. (See Id. p. 14). After Code heard that [redacted] was looking for his own team, Code approached [redacted]

parents about instead joining Code's [redacted] team, but they were not interested. (See Id., p. 18). Instead, [redacted] parents agreed with Rivers that [redacted] would coach, and [redacted] would play on the new team, the [redacted], and Adidas would provide $40,000 to sponsor the team. [redacted] parents stated that Code was not involved in Adidas agreeing to sponsor the [redacted]. (See Id., pp. 31-32). After they told Code that they did not want [redacted] to play on his team, [redacted] parents and Code stopped talking and they had nothing to do with each other. (See Id., pp 18-19, 32). Before they stopped communicating with him, the [redacted] never told Code that they needed anything from an institution in order to commit. (See Id., pp. 19, 32, 35-36).

[redacted] final five schools were [redacted]. (See Id., p. 27). Then-Clemson assistant men's basketball coach Steve Smith was recruiting [redacted] and had been friends with Code since he was in high school in the late 1980's and early 1990's. (See FI-88, pp. 4, 6, 14). Smith stated that the only people who assisted [redacted] with his recruitment were his mother and [redacted] (See Id., pp. 9-10, 12, 14). Smith informed the enforcement staff of the same sequence of events as had [redacted] parents. Specifically, after his sophomore year of high school ([redacted] played on the [redacted] team that is based out of [redacted] but he and his family did not like the team and wanted to form their own team in [redacted]. (See Id. pp. 10, 13). Code opposed [redacted] getting his own Adidas-sponsored team and wanted [redacted] to play on his (Code's) existing Adidas-sponsored AAU team, the Carolina CHAOS. (See Id., pp. 10-11, 20). Initially, Code and [redacted] "butted heads" and had a "contentious" relationship over this issue, but they quickly stopped communicating and did not have a relationship after [redacted] sophomore year ([redacted] (See Id., pp. 10, 12). Both Code and [redacted] told Smith about these events. (See Id., pp. 10, 13, 20).

In light of the foregoing, it is inexplicable that the enforcement staff has charged the University with a Level I recruiting violation for Code allegedly having an impermissible recruiting contact with [redacted] family on or about September 14, [redacted] Despite the University's efforts to show the lack of a basis for this allegation in pre-NOA communications, the enforcement staff persisted in pursuing it.

3. Code's September 12, 2017 Call to Townsend

Adidas sponsored a reception related to Self's and Tracy McGrady's induction into the Basketball Hall of Fame on September 8, 2017. (See FI-1, pp. 21, 113 [Self]; FI-2, p. 18 [Self]). During the reception, Gatto approached Townsend and asked how the recruitment of [redacted] was going. (See FI-4, pp. 50, 62 [Townsend]). At that point, the University had been recruiting [redacted] for three years, was in [redacted] final five schools, had a home visit scheduled, and had a commitment that [redacted] would come to campus for a visit. (See Id., p. 60). Townsend responded to Gatto that they were going for a home visit in a few days. (See Id., p. 50). Gatto asked if Townsend had talked to Code about [redacted] (See Id., pp. 50, 55). Townsend was surprised because he had been recruiting [redacted] for three years and had never heard of Code being connected to [redacted] (See Id., pp. 59-62). Gatto told Townsend that Code was "over" the Adidas-sponsored team that [redacted] was playing on and [redacted] was coaching. (See Id., pp. 65-66). As noted above, this information was not true.

On September 12, [redacted] as Self and Townsend were driving to [redacted] home for a visit, Townsend called Code and put him on speaker phone to gather any last minute, additional information that Code might have about [redacted] given Gatto's (inaccurate) assertion that Code was "over" [redacted] nonscholastic team. (See FI-1, p. 88 [Self]; FI-2, pp. 19-20, 22 [Self]; FI-4, pp. 50-51, 66-67 [Townsend]). The call was very short. (See FI-4, p. 51 [Townsend]; FI-135 [Townsend Phone Records]). Townsend asked Code if he had any information that could help, and Code responded to the effect "don't tell him he's a 4-man, tell him he's a guard" because [redacted] wanted [redacted] to be a guard. (See FI-1, p. 89 [Self]; FI-2, pp. 20, 22, 26 [Self]; FI-4, p. 51 [Townsend]). Self responded jokingly along the lines of "Hey he's a point guard far as I'm concerned" or "I'll tell him he's Magic Johnson." (See FI-1, p. 89 [Self]; FI-2, p. 26 [Self]l FI-4, p. 51 [Townsend]). At the end of the call, Code asked Townsend to let him know how the visit went and Townsend said he would. (See FI-4, p. 51 [Townsend]).

There is no evidence in the record that Code told Self and Townsend that he had any contact with the [redacted] family. Rather, he was just passing along industry scuttlebutt. Thus, there is no evidence of any improper recruiting contact by Code and no violations of Bylaws 13.01.2, 13.1, 13.1.2.1, and 13.1.3.5.1.

4. Self's and Townsend's September 12, 2017 Home Visit

According to Self and Townsend, during the home visit, [redacted] and [redacted] advised them that they intended to move to the locale of whatever institution [redacted] selected,[53] and they were interested knowing about the primary schools in the area for [redacted] younger brother who was starting school. (See FI-1, p. 89 [Self]; FI-4, pp. 51, 55-56 [Townsend]). During the visit, as he normally does, Self explained how much Pell Grant money [redacted] could receive, how much [redacted] could earn working at the University's summer basketball camp, what [redacted] could earn giving private lessons in compliance with NCAA rules, and what the monthly stipend was. (See FI-4, pp. 51-52, 55-56 [Townsend]). At no point during the home visit or at any other time, did [redacted] or his parents ask for cash or any other improper benefits. (See FI-4, pp. 56, 58-59, 64-65 [Townsend]).

During their interview, [redacted] and [redacted] mother stated that during the recruiting process, they let all of the schools, including [redacted], know that chances were that they would relocate to wherever [redacted] went. (See FI 27, pp. 21-22, 24). They never asked to be given housing; they just asked for the names of realtors and recommendations for safe neighborhoods. (See Id., pp. 23-25). They also asked for information on schools for their youngest son and ideas of where jobs might be available for [redacted] (See Id., pp. 21-22, 24-25). [redacted] and [redacted] mother stated that all of the institutions gave them information on schools and neighborhoods. (See Id., p. 25). They insisted that they never asked anyone for cash, and were adamant that the coaches could not have misconstrued them as asking for any improper benefits. (See Id., pp. 25-26, 30-31). [redacted] and [redacted] mother further stated that Townsend never promised cash, housing, or a job if [redacted]

[53] There is nothing unusual or improper about parents of highly rated recruits moving to the area where their sons go to college. Over the years, a dozen other parents had moved to the Lawrence area and obtained jobs so they could watch their sons compete at Kansas. (See FI-4, pp. 54-55 [Townsend]).

chose to attend Kansas, and everyone from the University was very professional in their recruiting and never said anything improper. (See Id., pp. 21-22).

In sum, nothing improper occurred during the University's home visit and [redacted] family provided the same information and identified the same factors they were considering to *all* institutions that were in [redacted] final group of five schools.

5. Townsend's September 13, [redacted] Call with Code

On the morning of September 13, [redacted] Townsend called Code to let him know how the visit went. (See FI-4, pp. 50-51 [Townsend]). During the call, Code indicated that he knew what [redacted] wanted; he wanted cash in his pocket, an occupational opportunity, and housing. (See FI-4, pp. 51, 53-54). Code did not say he had spoken with the [redacted] family. In fact, Code and [redacted] had not spoken in more than a year. Thus, this call does not provide credible and persuasive proof in support the allegation that Code had an improper recruiting contact with [redacted] family and there was no violation of Bylaws 13.01.2, 13.1, 13.1.2.1, and 13.1.3.5.1.[54]

6. The University Did Not Violate Constitution 2.8.1

Constitution 2.8.1 requires member institutions report to the NCAA situations "in which compliance has not been achieved." There is no evidence that compliance was not achieved on this issue. Code stated that he knew that [redacted] wanted cash, a job opportunity, and housing. However, the credible and persuasive evidence establishes that Code had no basis for his assertion. Further, Townsend repeatedly told the enforcement staff that Code was not trustworthy or credible. (See FI-4, pp. 51-52, 57-60). He was correct as evidenced by the record in this case and the fact that the NCAA and [redacted] permitted [redacted] to compete throughout the [redacted] season despite having notice of Code's claim in October of [redacted].

[54] Further, there is no proof in the record that Townsend or anyone else at the University made any effort to provide any improper benefit to the [redacted] family. As a result, the enforcement staff has not alleged that any violation of the impermissible recruiting inducement legislation.

Allegations 3-e

Because Allegations 3-a through 3-d are not supported by the credible and persuasive evidence and no violations occurred, they cannot support Allegations 4 and 5.

D. Allegation 4

UNIVERSITY'S CONCLUSIONS

Allegation 4-a

At the outset, the University notes that there is no support for the enforcement staff's assertion that Self violated Bylaw 11.1.1.1 by failing to report potential, but not actual, violations "to athletics compliance staff to allow for an independent inquiry." The Committee on Infractions has decided more than 70 cases in which it found a head coach failed to exercise the responsibilities required under Bylaw 11.1.1.1 or its predecessor, Bylaw 11.1.2.1. In every case, the Committee on Infractions found first that an underlying violation of another bylaw occurred and then that the underlying violation resulted from the head coach's failure to promote an atmosphere of compliance and/or to monitor institutional staff that directly or indirectly reported to the head coach as required by Bylaw 11.1.1.1. No case has ever found a violation or Bylaw 11.1.1.1 for failing to report to conduct that did not violate another bylaw. This result is consistent with Bylaw 19.2.3(a), which requires only that institutional staff members, including head coaches, "[a]ffirmatively repor[t] instances of *noncompliance*." (emphasis supplied).

Allegation 4-a(1)

This allegation is not substantially correct. For the reasons stated in Sections V(B) through V(H)(1) and VI(A): (1) neither Adidas nor Gassnola was a representative of the University's athletics interests at the time of [redacted] official visit in [redacted] (2) Self did not know, nor should he have known, about any contact between Gassnola and [redacted] during [redacted] official visit in [redacted][55] and (3) the weight of the credible and persuasive evidence does not support the violation of NCAA legislation referenced in Allegation 1-a. In

[55] To the extent that Allegation 4-a(1) contends that Self had knowledge of Gassnola's purported contact with other prospective student-athletes and their families at the [redacted] Late Night in the Phog, it is not correct for the reasons stated in Section V(D).

addition, there is no evidence to support the new assertion in Allegation 4-a(1) that Gassnola had an impermissible recruiting contact with [redacted] during his official visit in [redacted] As a result, there is no underlying violation of NCAA legislation for which Self could be responsible pursuant to Bylaw 11.1.1.1. In addition, Gassnola was not an institutional staff member who reported directly or indirectly to Self; therefore, Bylaw 11.1.1.1 does not make Self presumptively responsible for Gassnola's conduct. Finally, Self rebutted any presumption of responsibility by demonstrating that he promoted an atmosphere of compliance and monitored his staff including immediately reporting [redacted] may have received money when he was made aware of it.

Allegations 4-a(2) and 4-a(3)

These allegations are not substantially correct. For the reasons stated in Sections V(B) through V(J) and VI(B): (1) Gassnola was not a representative of the University's athletics interests in August or September 2017 when he allegedly had impermissible telephone recruiting contacts with [redacted] and allegedly made an impermissible offer to provide shoes and/or apparel to a team at [redacted] request; (2) Self did not know, nor should he have known, about any impermissible recruiting contacts; (3) there was no impermissible provision of shoes or apparel; and (4) the weight of the credible and persuasive evidence does not support the violations of NCAA legislation referenced in Allegations 2-b and 2-c. As a result, there is no underlying rules violation for which Self could be responsible pursuant to Bylaw 11.1.1.1. In addition, Gassnola was not an institutional staff member who reported directly or indirectly to Self; therefore, Bylaw 11.1.1.1 does not make Self presumptively responsible for Gassnola's conduct. Finally, Self rebutted any presumption of responsibility by demonstrating that he promoted an atmosphere of compliance and monitored his staff.

Allegation 4-a(4)

This allegation is not substantially correct. For the reasons stated in Sections V(B) through V(F) and VI(C): (1) Gassnola was not a representative of the University's athletics interests at the time of his alleged improper recruiting contact with [redacted] on December 11, [redacted] and/or in the winter of [redacted] (2) Self

did not know, nor should he have known, about any contact between Gassnola and [redacted] on December 11, [redacted] and/or in the winter of [redacted] and (3) the weight of the credible and persuasive evidence does not establish that Gassnola had an improper recruiting contact with [redacted] on December 11, [redacted] and (4) the weight of the credible and persuasive evidence does not support the violation of NCAA legislation referenced in Allegation 3-a. As a result, there is no underlying rules violation for which Self could be responsible pursuant to Bylaw 11.1.1.1. In addition, Gassnola was not an institutional staff member who reported directly or indirectly to Self; therefore, Bylaw 11.1.1.1 does not make Self presumptively responsible for Gassnola's conduct. Finally, Self rebutted any presumption of responsibility by demonstrating that he promoted an atmosphere of compliance and monitored his staff.

Allegation 4-a(5)

This allegation is not substantially correct. For the reasons stated in Sections V(D), V(I), and VI(C): (1) Cutler was not a representative of the University's athletics interests at the time of his alleged improper recruiting contact with [redacted] between June 27 and July 1, 2017; (2) Self did not know, nor should he have known, about any purported improper recruiting contact between Cutler and [redacted] between June 27 and July 1, 2017; and (3) the weight of the credible and persuasive evidence does not support the violation of NCAA legislation referenced in Allegation 3-c. As a result, there is no underlying rules violation for which Self could be responsible pursuant to Bylaw 11.1.1.1. In addition, Cutler was not an institutional staff member who reported directly or indirectly to Self; therefore, Bylaw 11.1.1.1 does not make Self presumptively responsible for Cutler's conduct. Finally, Self rebutted any presumption of responsibility by demonstrating that he promoted an atmosphere of compliance and monitored his staff.

Allegation 4-a(6)

This allegation is not substantially correct. For the reasons stated in Sections V(D), V(K), and VI(C): (1) Code was not a representative of the University's athletics interests at the time of his alleged improper recruiting contact with the [redacted] family on or about September 14, 2017; (2) Self did not know, nor he should have known, about any improper recruiting contact between Code and the [redacted] family on

or about September 14, 2017; and (3) the weight of the credible and persuasive evidence establishes that Code *did not have any contact* with the [redacted] family on or about September 14, 2017; and (4) the weight of the credible and persuasive evidence does not support the violation of the NCAA legislation referenced in Allegation 3-d. As a result, there is no underlying rules violation for which Self could be responsible pursuant to Bylaw 11.1.1.1. In addition, Code was not an institutional staff member who reported directly or indirectly to Self; therefore, Bylaw 11.1.1.1 does not make Self presumptively responsible for Code's conduct. Finally, Self rebutted any presumption of responsibility by demonstrating that he promoted an atmosphere of compliance.

Allegation 4-b

This allegation is not substantially correct.

In connection with the portion of this allegation that is based on Allegation 2-a, as is noted in Section VI(B), the weight of the credible and persuasive evidence is that: (1) Townsend did not ask Brown to contact [redacted] or to speak positively about the University; (2) Brown did not contact [redacted] rather when contacted by [redacted] and asked by [redacted] for his views Brown identified the University as one of several institutions that would be a good fit for [redacted] (3) Brown gets calls like [redacted] all the time and provides similar responses; (4) Brown was not a representative of the athletics interests in August 2017; and (5) there was no violation of the NCAA legislation referenced in Allegation 2-a. As a result, there is no underlying violation for which Self could be responsible for pursuant to Bylaw 11.1.1.1, and Self had no duty to report. In addition, Self rebutted the presumption of responsibility by demonstrating that he promoted an atmosphere of compliance and monitored his staff.

Relating to the portion of this allegation that is based on Allegations 2-b and 2-c, as is noted in response to Allegations 2-b, 2-c, 4-a(2), and 4-a(3) and for the reasons stated in Sections V(B) through V(J), there is no underlying violation for which Self could be responsible pursuant to Bylaw 11.1.1.1 for failing to monitor Townsend, and Self had no duty to report. In addition, Self rebutted the presumption of responsibility by demonstrating that he promoted an atmosphere of compliance and monitored his staff.

Concerning the portion of this allegation that is based on Allegation 3-d, as is noted in response to Allegations 3-d and 4-a(6) and for the reasons stated in Sections V(D), V(K), and VI(C), there is no underlying violation for which Self could be responsible pursuant to Bylaw 11.1.1.1 for failing to monitor Townsend, and Self had no duty to report under Bylaw 19.2.3. In addition, Self rebutted the presumption of responsibility by demonstrating that he promoted an atmosphere of compliance and monitored his staff.

REVIEW OF THE EVIDENCE

Allegation 4-a(1)

The evidence establishing that Gassnola was not a representative of the University's athletics interests at the time of [redacted] official visit in [redacted] is set forth in Sections V(B) through V(H)(1). The evidence pertaining to the alleged impermissible recruiting contact between Gassnola and [redacted] during [redacted] official visit and Self's lack of knowledge about that purported impermissible recruiting contact is set forth in University's response to Allegation 1-a in Section VI(A). In addition, there is no evidence in the record that Gassnola had an impermissible recruiting contact with [redacted] during his official visit in [redacted] Further, there is no evidence that Gassnola was an institutional staff member at any time, much less that he reported directly or indirectly to Self at the time of [redacted] official visit in [redacted]

Allegations 4-a(2) and 4-a(3)

The evidence demonstrating that Gassnola was not a representative of the University's athletics interests in August and September 2017 is set forth in Sections V(B) through V(J). The evidence of Self's lack of knowledge of any purported impermissible telephone recruiting contacts between Gassnola and [redacted] in August and September 2017, and the evidence that no shoes or apparel were provided by Gassnola or Adidas is set forth in University's responses to Allegations 2-b and 2-c in Section VI(B). In addition, there is no evidence that Gassnola was an institutional staff member at any time, much less that he reported directly or indirectly to Self in August and September 2017.

Allegation 4-a(4)

The evidence establishing that Gassnola was not a representative of the University's athletics interests on December 11, 2014 or in the winter of 2015 is set forth in Sections V(B) through V(F). The University's response to Allegation 3-a in Section VI(C), demonstrates: (1) the credible and persuasive evidence does not support the allegations that Gassnola had any contact with [redacted] on December 11, [redacted] or that any such purported contact had anything to do with the University; (2) Self had no knowledge of any purported impermissible recruiting contact between Gassnola and [redacted] on December 11, [redacted] (3) Gassnola's provision of $15,000 to [redacted] during the winter of [redacted] was for the benefit of Adidas and was unrelated to the University; and (4) Self had no knowledge of Gassnola's payment of $15,000 to [redacted]. In addition, there is no evidence Gassnola was an institutional staff member at any time, much less that he reported directly or indirectly to Self on December 11, 2014 or in the winter of 2015.

Allegation 4-a(5)

The evidence demonstrating that Cutler was not a representative of the University's athletics interests at the time of his alleged impermissible recruiting contact with [redacted] between June 27, 2017 and July 1, 2017 is set forth in Sections V(D) and V(I). The evidence pertaining to the alleged impermissible recruiting contact between Cutler and [redacted] between June 27, 2017 and July 1, 2017, and Self's lack of knowledge of any such purported impermissible recruiting contact is set forth in University's response to Allegation 3-d in Section VI(C). There is no evidence that Cutler was an institutional staff member at any time, much less that he reported directly or indirectly to Self between June 27, 2017 and July 1, 2017.

Allegation 4-a(6)

The evidence establishing that Code was not a representative of the University's athletics interests on or about September 14, 2017 is set forth in Sections V(D) and V(K). The evidence demonstrating that there was no contact between Code and the [redacted] family on or about September 14, 2017, and Self had no knowledge of Code having any impermissible recruiting contact is set forth in University's response

to Allegation 3-d in Section VI(C). There is no evidence that Code was an institutional staff member at any time, much less that he reported directly or indirectly to Self on or about September 14, 2017.

Allegation 4-b

The evidence establishing that Brown was not a representative of the University's athletics interests in August 2017 and relating to Brown's discussion with Townsend and [redacted] call to Brown are set forth in the University's response to Allegation 2-a in Section VI(B). The evidence establishing that Gassnola was not a representative of the University's athletics interests in August and September 2017, and that Code was not a representative of the University's athletics interests on or about September 14, 2017 is set forth in Sections V(D) and V(K). The University's response: (1) pertaining to the alleged impermissible recruiting contacts between Gassnola and [redacted] in August and September 2017; (2) demonstrating that no shoes or apparel were provided to a team at the request of [redacted] and (3) establishing that Self and Townsend had no knowledge of any impermissible recruiting contacts between Gassnola and [redacted] are set forth in its responses to Allegations 2-b and 2-c in Section VI(B). The evidence demonstrating that no impermissible recruiting contact took place between Code and the [redacted] family on or about September 14, 2017, and that Self and Townsend had no knowledge of any impermissible recruiting contact between Code and the [redacted] family is contained in the University's response to Allegation 3-d in Section VI(C).

Self's Efforts to Promote Compliance and Monitor His Staff

The University incorporates and adopts the portion of Self's response to Allegation 4 that describes his efforts to promote compliance within the men's basketball program and to monitor the institutional staff members who report directly and indirectly to him. In addition, based upon the testimony given by virtually every staff member interviewed during the investigation, including members of the athletics compliance office, and based upon direct observations over the course of Coach Self's tenure at Kansas, Coach Self promotes a culture of compliance. Coach Self embraces compliance by attending monthly rules education meetings, communicates with the compliance staff on a regular basis, helps identify and address compliance

concerns, and supports proactive compliance initiatives. Accordingly, the University does not agree with the allegation that he failed to rebut the presumption of head coach responsibility.

E. Allegation 5

UNIVERSITY'S CONCLUSIONS

Allegation 5-a

This allegation is not substantially correct. For the reasons stated in Sections V(B) through V(K), neither Adidas nor any individuals associated with Adidas who are identified in the ANOA (Gassnola, Gatto, Code, and Cutler) became representatives of the University's athletics interests at any of the times identified in the ANOA. Accordingly, NCAA Constitution 2.1.1, 2.1.2, 2.8.1, 6.01.1, 6.4.1, and 6.42 did not require the University to develop policies to deter them from violating NCAA legislation, provide them with rules education, or monitor their conduct. In addition, for the reasons stated in Sections VI(A) through VI(C), none of the conduct allegedly engaged in by Adidas, Gassnola, Gatto, Code, and Cutler that is referenced in Allegations 1, 2, and 3 constituted an institutional violation of NCAA legislation. Further, the University properly educates, monitors, and controls its athletics programs as required by NCAA legislation.[56]

Allegation 5-b

This allegation is not substantially correct. For the reasons stated in Sections V(B) through V(E), V(G), V(H), V(J), and V(L), Gassnola was not a representative of the University's athletics interests at any of the times identified in the ANOA. As is explained in the University's responses to Allegations 1 and 2, none of Gassnola's conduct was an institutional violation of NCAA legislation. In addition, there is no legislative, precedential, or interpretative authority that requires member institutions to educate or monitor the conduct of individuals who are not representatives of the institution's athletic interests.

[56] The University anticipates that, during the time period at issue in the ANOA, very few, if any, institutions educated, monitored, and controlled the activities of its corporate sponsors and their employees, consultants, and associates. It has been widely understood that due to the nature of the arrangements, corporate sponsors are promoting their own interests, not those of the institutions. Accordingly, they are not representatives of the University's athletics interests under NCAA Constitution 6.4.1 and 6.4.2 a s a result of their sponsorship contract.

The ANOA does not specify which three "senior athletics department administrators [allegedly] identified red flags or concerns" about Gassnola, or when within the referenced one-year period the alleged red flags or concerns were raised. As is detailed below, the instances that the University assumes the enforcement staff is referring did not constitute "red flags" that required the University to take action.

Finally, Gassnola repeatedly testified during the SDNY trial that he was fully aware of the NCAA legislation that the enforcement staff contends pertains to his conduct that is at issue, knew that his conduct might be in violation of NCAA legislation, and knew the University and its men's basketball staff would not want him to engage in the conduct. Gassnola nonetheless engaged in the conduct and took affirmative steps to conceal his conduct from the University and its coaches, such as conducting transactions in hotel rooms. As a result, efforts to educate or monitor him would have been futile.

Accordingly, the University did not violate Constitution 2.1, 2.1.2, 2.8.1, 6.01.1, 6.4.1, or 6.4.2.

Allegation 5-c

This allegation is not substantially correct. As stated in Sections V(B) through V(H)(1), neither Gassnola nor Gatto was a representative of the University's athletic interests at the time of Late Night in the Phog in 2016. There is no evidence in the record that the University knew Gatto or Gassnola had rooms in the same hotel as [redacted] and [redacted] in [redacted] for Late Night in the Phog. If Gatto and Gassnola stayed at The Oread for the 2016 Late Night in the Phog, the record indicates that they obtained their reservations without any assistance from the University and the University has no way to control to whom The Oread rents its rooms. Further, there is no evidence in the record that Gatto or Gassnola interacted with [redacted] during Late Night in the Phog in 2016, or that Gatto or Gassnola had any interactions with [redacted] or [redacted] in public during the event. The only allegedly interaction that took place among Gassnola, [redacted] and [redacted] occurred in Gassnola's private hotel room. The University has no right, ability, or obligation to limit with whom individuals meet in their private hotel rooms, or to surveil what occurs within an individual's private hotel room. As a result, the University did not violate Constitution 2.1.1, 2.1.2, 6.01.1, 6.4.1, or 6.4.2.

Allegation 5-d

This allegation is not substantially correct. As is discussed in detail below, the University did monitor student-athlete [redacted] in general and in connection with [redacted] Once the compliance office learned about [redacted] they investigated the circumstances pertaining to the [redacted] purchase and maintenance and determined that there was no evidence of any NCAA violations relating to the [redacted]. The ANOA does not allege [redacted] or his family violated any NCAA legislation in connection with their acquisition of the [redacted]. There is no NCAA legislation or University policy that requires that the circumstances surrounding a student-athlete's acquisition of a [redacted] be completed in a certain number of days. Accordingly, there is no basis for the allegation that the University failed to monitor or control its athletics program in violation of Constitution 2.1.1, 2.8.1, and 6.01.1 by not determining more quickly that there was no compliance issue related to the acquisition of [redacted].

Allegation 5-e

Allegation 5-e(1) is not substantially correct. For the reasons stated in Sections V(B) – V(J)(2) and VI(B), in August 2017, Gassnola was not a representative of the University's athletics interests, Gassnola did not engage in any impermissible recruiting violations involving [redacted] and Self and Townsend had no knowledge of any impermissible recruiting violations.

Allegation 5-e(2) is not substantially correct. For the reasons stated in Sections V(B) – V(J)(2) and VI(B), in August 2017, Gassnola was not a representative of the University's athletics interests, Gassnola did not have a recruiting contact with [redacted] in December [redacted] any payment by Gassnola to [redacted] in the winter of [redacted] was not an impermissible recruiting contact on behalf of the University, and in August 2017, Self did not know that Gassnola allegedly had tried to help the University recruit [redacted] in December [redacted] and the winter of [redacted]

Allegations 5-e(3) and 5-e(4) are correct statements, however, they omit other highly relevant facts and did not raise "red flags" concerning the eligibility of [redacted] or the involvement of Gassnola in potential or actual NCAA violations pertaining to the University.

Allegation 5-e(5) is a correct statement, however, it omits other highly relevant facts and did not raise a "red flag" as to the eligibility of [redacted]

The remainder of Allegation 5-e is not substantially correct. Neither the University and its men's basketball staff, nor [redacted] was aware of Gassnola's alleged payment of $2,500 to [redacted] or his alleged promise to provide $20,000 to [redacted] until the SDNY trial.

REVIEW OF THE EVIDENCE

Allegation 5-a

Sections V(B) through V(L) set forth the evidence establishing that Adidas and its consultants were not representatives of the University's athletics interests in October 2014 or any other time relevant to any of the violations alleged in the ANOA. Sections VI(A) through VI(C) detail the evidence demonstrating that (1) the University has no responsibility for the actions of Gassnola, Gatto, Code, or Cutler that are alleged in the ANOA, and (2) the University did not violate any NCAA legislation in connection with the alleged conduct of Gassnola, Gatto, Code, and Cutler.

Allegation 5-b

The ANOA does not identify which three senior athletics department administrators supposedly "identified red flags or concerns about the role and involvement" of Gassnola with the athletics department and men's basketball programs in the 2016-17 academic year and the summer of 2017. The University presumes that the enforcement staff is referring to the following two situations.

For a number of years, the University has hosted a gathering of the athletics compliance personnel from the Division I institutions located in Kansas, states neighboring Kansas, certain other institutions located in the Midwest but not neighboring Kansas, and select compliance personnel that David Reed, Senior Associate Athletic Director - Compliance & Student Services, knows from his lengthy career in athletics compliance. This gathering is known as the Midwest Compliance Summit. (See FI-17, p. 4 [Reed]). A number of NCAA personnel are also invited to the Midwest Compliance Summit. In 2017, the Midwest Compliance Summit took place on July 17 and 18. (See Exhibit 24 [agenda]). On July 18, 2017, there were

three breakout sessions, including one for senior compliance administrators and Geoff Silver, NCAA Managing Director, Academic and Membership Affairs; Chris Howard, NCAA Director of Enforcement; Jeremy McCool, NCAA Director of Enforcement; and Jamie Israel, then NCAA Director of Amateurism Certification and Complex Case Review. (See Id; FI-17, pp. 4-5 [Reed]).

The senior compliance administrator breakout session covered several topics that were of concern to the senior compliance administrators, including discussions about graduate transfers and satellite camps. The purpose of the session was to get direct input from the NCAA hierarchy on these types of matters. During the breakout session, Reed made a comment to the effect that "these shoe companies are employing less than desirable individuals in their grassroots areas and we are placed in the impossible situation ***because we cannot dictate who the shoe companies hire or send to our universities***." (See FI-17, p. 5 [emphasis supplied]). He continued by stating in substance that "Adidas parades TJ Gassnola to our campus and this guy has the same rap sheet as Lucky Luciano." (See Id.). In response, people in the room laughed but no one, *including the four senior NCAA officials*, indicated that (1) there was any way to control who corporate sponsors employ or use or (2) there was any obligation to educate or monitor the conduct of corporate sponsors' employees, consultants, or associates. (See Id., p. 33). The lack of any suggestions apparently was because the four NCAA officials agreed with Reed that the institutions cannot control who a corporate sponsor employs or uses.

The University presumes that Allegation 5-b also refers to a situation described by Sean Lester, Deputy Athletics Director - Administrator, and Sheehan Zenger, former Director of Athletics, during their interviews. According to both Lester and Zenger, in 2017, the University was negotiating an extension of its contract with Adidas. Lester had seen Gassnola on campus over the years about three to five times. (See FI-20, p. 14). Lester described Gassnola as a large individual with a "boisterous personality" who reminded him of Tony Soprano in look, image, and persona. (See Id. pp. 31-32). Lester indicated to Zenger words to the effect that Gassnola was not his "cup of tea." (See Id. p. 30). Lester had no specific concerns about Gassnola and simply did not care for his personality. (See Id., pp. 14, 32). During a break in the negotiations

with Adidas, Lester asked Mark King, who was then head of Adidas North America, what Gassnola's role was with Adidas, and either King or one of his staff indicated that Gassnola was a consultant in the basketball space. (See Id., pp. 14, 30, 46-47).[57] In sum, contrary to the assertions in the ANOA, neither Lester nor Zenger viewed Gassnola as presenting a "red flag" or concern.

To the extent that Allegation 5-b asserts that the University should have educated Gassnola concerning NCAA rules, Gassnola repeatedly testified in the SDNY trial that he knew the NCAA rules regarding payments to prospective and current student-athletes and intentionally chose to nonetheless make the payments and to conceal the payments, so that the University (and the NCAA) would not be aware of them and student-athletes would not lose eligibility. (See FI-6, pp. 979, 1024, 1137, 1172, 1215, 1257). He also testified that he previously had received training sessions from the NCAA staff on NCAA rules. (See Id., pp. 978-79). Thus, education and monitoring by the University would not have been effective.

Allegation 5-c

Contrary to the allegation in the ANOA, there is no credible and persuasive evidence that the University knew or should have known that Gassnola and Gatto were staying at The Oread for Late Night in the Phog in [redacted] or that they interacted with [redacted] or [redacted] The list of individuals who were assigned to the rooms reserved by the University that The Oread produced did not include Gassnola or Gatto. (See FI-97). There is no evidence in the record that anyone from the University knew where Gassnola and Gatto were staying for Late Night in the Phog in [redacted] In addition, there is no evidence in the record that Gatto or Gassnola met with [redacted] or [redacted] in public during Late Night in the Phog in [redacted] or that they met with [redacted] at any time.[58] Gassnola claimed in the SDNY trial that he met with [redacted] and [redacted] in his hotel room. The men's basketball staff denied knowing about that alleged meeting. (See FI-1, pp. 61-62 [Self]; FI-4, p. 77 [Townsend]; FI-84, p. 32 [Quartlebaum]). Moreover, Gassnola testified under oath

[57] Zenger provided essentially the same version of events as Lester. Zenger stated that Lester had nonspecific concerns about Gassnola based solely on his gut instinct. (See FI-22, pp. 15-16). Zenger and Lester agreed that Lester would ask Adidas what Gassnola's role is with Adidas. In response, Adidas assured Lester that Gassnola was on the "up-and-up." (See Id., pp. 15-16, 35).

[58] When interviewed by the institution in November 2017, [redacted] denied knowing Gassnola. (See Exhibit 16, pp. 7,15).

in the SDNY trial that he concealed all of his payment arrangements with [redacted] and [redacted] from everyone at the University, including the men's basketball staff. (See FI-6, pp. 1024, 1040, 1231). The remainder of the evidence pertaining to the alleged impermissible recruiting contact between Gassnola and [redacted] during [redacted] official visit and Self's lack of knowledge about that purported impermissible recruiting contact is set forth in Section V(H)(1) and the University's response to Allegation 1-a in Section VI(A).

Allegation 5-d

On July 27, 2017, the University learned that [redacted] was certified in amateurism by the NCAA's Eligibility Center. (See FI-102 [Reed email]). On July 28, 2017, [redacted] completed the compliance office's information form. On that form, [redacted] accurately stated that he did not have [redacted]. (See FI-67). Shortly thereafter, [redacted] grandmother obtained a [redacted] that he brought to campus [redacted] (See FI-54 [[redacted] text]; Exhibit 16, pp. 10-11 [[redacted] did not realize that he also needed to separately advise the compliance office [redacted]. (See Exhibit 16, p. 12 [[redacted]

The compliance office first became aware that [redacted] had [redacted] in very late October or early November. (See FI-17, p. 52 [Reed]).[59] At that point, an employee from the compliance office began collecting information [redacted]. (See Id.). On November 11, [redacted] (See Exhibit 16, p. 13). Reed, the Senior Associate Director - Compliance & Student Services, was out of town [redacted] and learned that day about the incident and [redacted]. (See FI-17, pp. 37-38 [Reed]). The compliance office and the University's outside counsel conducted interviews of [redacted] and [redacted] grandmother over the next three days and obtained documentation concerning [redacted]. (See FI-74 [investigation file

[59] Allegation 5-d states that four members of the athletics staff knew [redacted] was in possession [redacted] but no one required [redacted]. Although certain athletics staff were aware that [redacted] had a [redacted], there is no evidence that any of those staff members were aware that [redacted] had not reported [redacted] to the compliance office. Moreover, even if they had told [redacted] to report [redacted], that would have just resulted in a little quicker finding that there was no violation of NCAA legislation relating to the acquisition [redacted]

including notes of [redacted] grandmother's interview]; Exhibit 12, [redacted] interview]; Exhibit 16 [redacted] interview]). The investigation indicated that [redacted] grandmother was paying [redacted]. (See FI-74). The enforcement staff has not alleged or produced any evidence that any NCAA legislation was violated in connection with [redacted]

[redacted] Thus, the less than two-month delay between when [redacted] obtained [redacted] and when the compliance office learned about [redacted] and investigated the circumstances around [redacted] did not result in any ineligible participation and does not establish a failure to monitor or a lack of institutional control.

Allegation 5-e(1)

The facts relating to why (1) Gassnola was not a representative of the University's athletics interests in August 2017, and (2) Gassnola's contacts with [redacted] in August 2017 did not violate NCAA legislation are set forth in Sections V(B) – V(J), and VI(B). Because Gassnola was not a representative of the University's athletics interests and there was no violation of NCAA legislation, the University had no red flag concerning the eligibility of [redacted] and it did not violate its duties to promote an atmosphere of compliance and to exercise oversight and monitoring.

Allegation 5-e(2)

The facts relating to whether and to what extent Gassnola had contact with [redacted] or individuals associated with [redacted] in December [redacted] and/or a person associated with [redacted] in early [redacted] are set forth in Sections V(F) and VI(C). Specifically, there is no credible and persuasive evidence that Gassnola had contact with [redacted] in December [redacted] or, if there was contact, that Self ever had any knowledge of that contact until the SDNY trial. Likewise, there is no credible and persuasive evidence that (1) Gassnola's alleged $15,000 payment to [redacted], purportedly an [redacted] family friend, was related to Kansas, or (2) Self ever had any knowledge of that alleged payment until the SDNY trial. Further, the only credible and

persuasive evidence was that the alleged $15,000 payment was an effort to create a relationship between Adidas and [redacted] family. (See FI-6, pp. 1010, 1106-07 [Gassnola]).

This allegation appears to be based solely on the fact that during an August 19, 2017 text thread with Self on a completely different subject, Gassnola stated out-of-the-blue, "I have never let you down Except ([redacted]) lol." (See FI-40). Self had no idea what Gassnola meant by this non-sequitur, joking remark and Self and Townsend stated that Gassnola was not involved in their recruiting of [redacted] (FI-1, p. 85; FI-4, p. 121). At the time of this text, [redacted] was attending another institution. There is no logical or credible basis for the enforcement staff's allegation that (1) this off-hand remark establishes that three years earlier, Gassnola had been recruiting [redacted] for the University **and** Self knew it, and (2) therefore, the University should have investigated Gassnola's relationship with [redacted] and [redacted] and determined that [redacted] was ineligible.

Allegation 5-e(3)

The University became aware that Gatto was arrested on September 26, 2017. However, the University also became aware that Gatto was arrested along with four other individuals, none of whom were Gassnola, relating to an alleged scheme among those five to work with coaches at the University of Louisville and the University of Miami related to three prospective student-athletes, none of whom are involved in this case. (See Exhibit 25 [original criminal complaint]). According to the original criminal complaint, the FBI had been investigating issues pertaining to corruption in intercollegiate men's basketball through the use of wiretaps, subpoenas, a cooperating witness (not Gassnola), and undercover agents since 2015. (See Id.). In addition, a second criminal proceeding was brought against four assistant men's basketball coaches relating to their alleged criminal conduct at five other institutions involving nine prospective student-athletes. Neither the University, its men's basketball staff, nor Gassnola were implicated in this second criminal proceeding. Contrary to the implication of the enforcement staff, the arrest of Gatto and others on September 26, 2017 did not raise red flags about Gassnola and [redacted] recruitment that should have caused the University to withhold him from competition after he enrolled three

months after the arrests. The University and its men's basketball staff had no reason to know until much later that at some point Gassnola began secretly cooperating with the United States Attorney's Office for the Southern District of New York. The matters pertaining to the ANOA did not get added to the SDNY trial until the superseding indictment was issued. (See FI-30). Thus, based on what was then known, there was no reason to suspect that Gassnola was involved in any of the conduct in the SDNY trial under much later.

Allegation 5-e(4)

After the arrests, the University's outside NCAA counsel, which also represents a number of other institutions, contacted the Vice President of Enforcement to seek guidance as to the approach that the enforcement staff intended to take in response to both criminal proceedings. In this regard, the University, like a number of other institutions, wanted to ensure that it was working cooperatively with the enforcement staff and that it did not inadvertently interfere with the enforcement staff's investigative plan. The enforcement staff initially said that it was setting up two investigative teams to look into the matters at a number of institutions. Shortly thereafter, the enforcement staff advised that they had been asked by the United States Attorney's Office to hold off on investigating potential NCAA violations while the criminal matters were proceeding. A few days later, the NCAA Division I Board of Directors ("the Board") issued a memo on October 11, 2017 requiring all Division I institutions to "complete immediately" eligibility examinations of their men's basketball student-athletes relating to improper inducements, agents, and extra benefits so that any eligibility concerns could be addressed before the start of the season, which was "imminent". (See FI-99). The Board of Directors stressed "Having as much certainty about eligibility before the start of the season is important for the stability of the season." (See Id.).

In compliance with the Board's directive, the University worked with its outside counsel to prepare questionnaires that it required all of its current student-athletes and men's basketball staff to complete on an expedited basis concerning the issues identified by the Board and in light of the limited information that was then known. At the same time, other institutions and conferences were consulting with their attorneys

and among themselves regarding how to comply with the Board's memo. These discussions resulted in a questionnaire to student-athletes that is very similar to the one that the University prepared. In addition, some institutions required their men's basketball staffs to complete a questionnaire while other institutions and conferences did not.

[redacted] had not yet signed a National Letter of Intent and was not a student-athlete at the University at the time that the questionnaire was filled out. The University did not even know that [redacted] was going to attend the University for the Spring 2018 semester until a few days before Christmas. (See FI-18, pp. 11-12). Although the University did not ask [redacted] to complete a questionnaire for the foregoing reasons, if he had completed one, it would not have revealed anything because [redacted] did not know who Gassnola was and did not know of any payment or promised payment to [redacted] (See FI-78, pp. 33). Moreover, Reed, the Senior Associate Director - Compliance & Student Services, met with [redacted] after he signed his National Letter of Intent and before he enrolled. Reed inquired extensively about all of the eligibility issues identified in the Board's memo, including impermissible recruiting contacts and benefits. [redacted] knew of no violations or issues pertaining to his ineligibility and reported none to Reed. (See FI-18, p. 18; FI-78, pp. 2-3, 34-35). Reed also met with [redacted] prior to [redacted] enrollment and extensively questioned him about potential eligibility issues, including those that were identified in the Board's memo. [redacted] was adamant that he had done nothing that would put [redacted] eligibility at risk. [redacted] did not mention the unsolicited $2,500 that Gassnola sent to him. (See FI-18, pp. 15-17).

[redacted] was initially denied certification in amateurism by the NCAA for reasons unrelated to Gassnola's conduct. That decision was subsequently reversed after a fact-finding hearing. At no point during the amateurism process or the Spring 2018 season did the NCAA or the University learn of Gassnola's alleged payment and promised payment to [redacted]

Allegation 5-e(5)

On November 13, 2017, the University interviewed both [redacted] and [redacted] about: (1) the acquisition of the [redacted] that [redacted] was using; (2) who paid the acquisition costs and was paying the

ongoing monthly payments and other costs; (3) [redacted] sources of income; and (4) the source of any monies that [redacted] received. (See Exhibit 12, pp. 3-8 [redacted] Exhibit 16, pp. 9-12, 14, 18-19 [redacted] As part of her interview, [redacted] identified her primary source of income being from illegal activity. (See Exhibit 12, pp. 3-4, 8).

In addition, the University asked both [redacted] and [redacted] about the defendants and student-athletes that were referenced in the original criminal complaint in the SDNY trial and the criminal complaint in the second matter that is unrelated to the University. (See Exhibit 12, pp. 9-11, 26-28 [redacted] Exhibit 16 pp. 4-8 [redacted] With one exception that is unrelated to this infractions proceeding, [redacted] and [redacted] did not know any of the individuals who were known at that time to be involved with the two criminal proceedings. The University also asked [redacted] and [redacted] if they knew Gassnola. [redacted] denied knowing or having ever met Gassnola both in his interview and in a written statement. (See Exhibit 16, pp. 7, 15; Exhibit 17). [redacted] stated that she knew Gassnola and first met him a couple years earlier at the last Adidas grassroots event that [redacted] participated in, which would have been after [redacted] ninth grade year. (See Exhibit 12, pp. 13-14, 36).

[redacted] stated that she had an intimate relationship with Gassnola over the years and understood he was an AAU coach, but did not know he worked for Adidas. (See Id., pp. 14-15). [redacted] stated that she was having financial issues in late spring 2017, and asked Gassnola for money. She admitted that she received $15,000 from Gassnola on June 14, 2017, and said that although the transaction was initially a loan, she never intended to pay it back. (See Id., pp. 14-16, 19; Exhibit 15, pp. 2, 6-7, 10). [redacted] denied receiving any other money from Gassnola and produced six months of bank records that showed the $15,000 wire transfer and no other deposits from Gassnola. (See Exhibit 12, p. 33; Exhibit 13; Exhibit 15; pp. 6, 12-13). [redacted] prepared a written statement relating to this payment that confirmed her interview statements. (See Exhibit 14). She also produced a number of text messages she exchanged with Gassnola to support their intimate relationship. (See FI-74).

[redacted] also advised the University that she had joined a web site several years earlier and had begun having relationships with a number of men in addition to Gassnola. [redacted] stated that Gassnola was not the only male who had provided her with money or paid her bills. [redacted] identified the other men and identified deposits in her bank account from these other men. (See Exhibit 13; Exhibit 15, pp. 1-2, 13-14). The University questioned [redacted] about these other men to determine if any of these other payments constituted NCAA violations. It determined that no other violations occurred.

The University attempted to interview Gassnola, but he declined to be interviewed. However, on November 15, 2017, his attorney stated writing to the University's outside counsel that Gassnola "knows absolutely nothing that would be in violation of any criminal statute or NCAA regulation with respect to the University of Kansas or any of its student-athletes." (See FI-76).

The University found [redacted] explanation, supplemented by supporting documentary evidence, to be credible and sought [redacted] reinstatement after having sat out for 12 contests conditioned on his repayment of not more than $1,000. (See Id.). In response, NCAA Academic and Membership Affairs asked a number of questions that the University responded to. (See Id.). Ultimately, [redacted] left the University without having competed when Academic and Membership Affairs decided to delay processing the reinstatement request during the pendency of this infractions matter.

At no point during the investigation of the $15,000 payment by Gassnola to [redacted] was there any indication that there were any other payments to [redacted] of that Gassnola had made payments to the families of any other prospective or current student-athletes.

The University Monitors and Controls its Athletics Programs

The University's athletics staff is comprised of a Senior Associate Athletic Director, three Assistant Athletic Directors, a Director of Compliance, two Associate Compliance Directors, and a graduate assistant and two interns. (See FI-18, p. 3). Among the innumerable efforts to educate, monitor, and control the University's compliance with NCAA legislation, particularly in the areas of recruiting, impermissible inducements and impermissible benefits, boosters, are the following:

- Coaches' recruiting contacts are logged and tracked.
- Official visits are reviewed, approved prior to the visit, and audited after the visit.
- Prior to Late Night in The Phog every year, a meeting is held with all of the parents and Self stresses the importance of rules compliance and the compliance office reviews NCAA rules.
- After a prospective men's basketball student-athlete signs a National Letter of Intent, a member of the compliance office personally visits with the prospect and his parents or guardian to educate them on NCAA rules and inquire as to any possible NCAA violations.
- At the beginning of each year the University's Chancellor meets with the entire athletics staff and communicates the expectation that there will be compliance with all NCAA rules.
- Self communicates the same message in an annual meeting with all persons involved with the men's basketball program.
- Student-athlete are required to complete a University compliance questionnaire in addition to the NCAA's Student-Athlete Statement.
- The Director of Athletics stresses compliance in his monthly all-staff meetings.
- The Compliance Office holds mandatory all-coaches meetings in which compliance issues are discussed.
- The Compliance Office holds mandatory rules education sessions for all student-athletes twice a year and annually holds approximately 10 mandatory rules education sessions just for the men's basketball team.
- The Compliance staff annually visits every local business (e.g. restaurants, hotels, bars, pawn shops, tattoo parlors) in the locale of campus to provide rules education.
- The Compliance office provides written educational materials concerning extra benefits and how one becomes a representative of the University's athletics interests to every business that is registered in the state of Kansas.
- The Compliance Office travels to away men's basketball, women's basketball, and football contests and monitors the ticket pass gate and maintains a Compliance presence.
- The Compliance Office issues in writing an abundant number of rules interpretations each year and sends pertinent information to parents.
- The Compliance staff interacts with the men's basketball staff on a daily basis; the Senior Associate Athletic Director personally talks with Self on an average of two to three times per week.
- The Compliance Office consistently reports all violations and is frequently near the top of the conference in the number of self-reported violations.

- The Compliance Office holds over 350 rules education sessions over the course of each year for all audiences.

The following is a brief summary of the numerous compliance rules education initiatives.

1. **Student-Athletes and Parents**
    a. Two in-person sessions (beginning and end of year)
    b. Monthly newsletter
    c. Elite student-athletes (entire MBB team and select football)
        i. Monthly meetings
        ii. Weekly meetings for "high liability" student-athletes
        iii. Meeting with parents for MBB and MFB at the beginning of the year
        iv. Meet with MBB signees and family in-person after signing NLI
    d. Student-athlete brochure sent to all student-athletes
    e. Additional reminders (eg. Gambling, Employment, Academic Integrity, etc) throughout the year via text

2. **Kansas Athletics Employees**
    a. Coaches and sport specific staff
        i. Daily Compliance Item
        ii. Monthly meetings
        iii. "Friendly Reminders"
    b. Departments in athletics (Equipment, Business Office, etc.)
        i. Two to three in-person sessions a year
    c. Monthly Compliance newsletter
    d. Compliance presentations at "Athletic Director's All Staff Meetings"

3. **University of Kansas Institutional Staff**
    a. Annual email sent through University email system to all staff
    b. Brochure emailed to all staff members
    c. In-person meeting with select on-campus units one to two times a year (Alumni Association, financial aid, admissions, housing, etc.)
    d. Additional sessions as requested/identified

4. **Boosters and General Public**
    a. In-person meeting with local businesses (e.g. bar, restaurants, hotels, pawn shops, and tattoo parlors, etc.)
    b. Local business brochure
    c. Direct mailings to businesses in Kansas and Kansas City, MO
    d. Compliance mailing included in season ticket purchases
    e. Local business reminder sent quarterly to all businesses registered with Lawrence Chamber of Commerce

f. Annual email sent through KU Alumni Association database
g. Monthly email sent through Williams Education Fund database
h. Compliance videos encouraging engagement with Compliance played at basketball and football competitions
i. Compliance posters displayed in restrooms of Memorial Stadium and Allen Fieldhouse
j. High School Initial Eligibility Seminars
k. Compliance swag (e.g. pens, and letter openers, etc.)

Although the University was highly confident that its Compliance Office did an outstanding job in educating, monitoring, and controlling its athletics programs, the University retained The Compliance Group ("TCG") in the summer of 2019 to perform a Compliance Systems Review. TCG has been performing compliance reviews for nearly 20 years and has contracts with a number of conferences to perform reviews for their member institutions, including two of the five power conferences. (See **Exhibit 26**, pp, 1-2 [TCG Report]). As part of its review, TCG interviewed 20 University employees and two student-athletes. (See Id., p. 1). TCG noted that industry standards evolve over time and in response to significant events, such as the SDNY trial. (See Id., p. 2). TCG analyzed the University's compliance systems based on 2019 industry standards while noting that this proceeding is based on the industry standards in place during the time period covered by the ANOA, October 2014 to September 2017. (See Id., p. 3). TCG performed a review of all 10 generally accepted compliance areas while giving specific attention to the recruitment of student-athletes. (See Id., pp. 2-3).

Among TCG's findings are the following:

- The University "does extensive rules education" of coaching staff, athletic department non-coaching staff, other institutional personnel, student-athletes, and boosters. (See Id., p.3).
- The University "exceeds all expectations for educational programming for each of these five groups" and"[i]ts efforts are in the top echelon of other programs in the country." (See Id., pp. 3-4).
- The University's Compliance Office's administrative procedures "are very detailed and could be a model for many institutions." Further, the procedures "would be in the top 10 percent of all institutions reviewed by TCG." (See Id., p.4).
- The University's monitoring activities "would meet the activities undertaken by the majority of NCAA institutions." TCG only recommended a few activities to broaden the University's existing

efforts in response to the SDNY trial. Significantly, TCG noted that "[s]ome of these recommendations would not have been made if TCG came to campus two years ago." (See Id.).

- One of the few TCG recommendations was to expand the University's already existing pre-enrollment, in-person education of prospective student-athletes beyond men's basketball and a few other elite student-athletes. TCG noted that the University's existing program (which was used with [redacted] his family, [redacted] and his [redacted]) "is a unique activity that few other institutions undertake and is a very effective educational activity." (See Id., p.6).

- TCG also noted, as is apparent from the facts discussed above, "no amount of monitoring will eliminate the possibility of violations." (See Id., p. 3).

In light of the foregoing, the University submits that the overwhelming evidence establishes that it properly educates, monitors, and controls its athletics programs within the meaning of NCAA legislation. This case is an example of how even an outstanding compliance effort cannot prevent someone from engaging in concealed misconduct and even the best compliance systems can be updated after-the-fact based on lessons learned. That does not mean that the prior system was deficient. Otherwise, every case would involve a lack of monitoring and/or a failure to control.

F. Allegation 6

UNIVERSITY'S CONCLUSION

The University agrees that the weight of the evidence supports a conclusion that the facts and circumstances described in Allegation 6 occurred as alleged and constitute violations of NCAA rules. The University notes that, taken separately, the activities involving Jeff Love described in Allegations 6-(b) and 6-(c) would likely be deemed Level III violations. However, in combination with the facts and circumstances described in Allegation 6-(a), which the University believes standing alone could be found by the hearing panel to be a Level II violation, the University agrees that Allegation 6 as a whole constitutes a Level II violation .

REVIEW OF THE EVIDENCE

Background

David Beaty was the head football coach at the University of Kansas (University) from December of 2014 to November of 2018. See FI-163, p. 3. Jeff Love was hired by Beaty in July 2016 to serve as the

football program's director of football technology, a sport specific noncoaching staff position. See FI-163, p. 4. Love was responsible for all of the videotaping, video editing and distribution of video in the football program. See FI-165, p. 5. Prior to accepting the position on Beaty's staff, Love was an assistant football coach at Houston Baptist University where he coached quarterbacks. See FI-165, p. 6 and FI-163, p. 16. Upon arriving at the University, and multiple times each year that Love was employed at the University, the University's athletics compliance office provided Love with NCAA rules education regarding permissible activities for an individual employed in a noncoaching staff position.[60] See Exemplar Rules Education. Specifically, it was made clear to Love that he could not engage in any technical or tactical instruction of student-athletes. See Id. In the summer of 2018, Love hired and oversaw [redacted], an assistant video coordinator for football. See FI-165, p. 5.

In October 2018, Beaty fired offensive coordinator and quarterbacks coach Doug Meacham. See FI-163, p. 15. On October 11, 2018, Beaty promoted Love to a countable coach position overseeing the quarterback group. See FI-163, p. 15 and FI-165, p. 4. Love and Beaty appear to have a different understanding of Love's role as a countable coach. Beaty described Love as an individual that "assisted" Beaty with the quarterback position, as opposed to Love being responsible for coaching the quarterbacks himself. See FI-163, pp. 15-16 and 60-61. Beaty also indicated that Love did not have any role in play calling or as the offensive coordinator. See Id. However, Love viewed himself as the quarterback coach, touted his involvement in calling plays during his two months as a countable coach and expected to continue in a coaching position even once Beaty was no longer the head coach. See FI-165, pp. 1, 11 and Exhibit 27.

Following the 2018 football season Beaty was dismissed as the head football coach at the University, and Love was reassigned back to a noncoaching staff position. See FI-163, pp. 3-5. Love resigned his employment with the University on or about December 3, 2018. See FI-165, p. 13.

[60] Between August 2016 and October 2018, the athletics compliance staff conducted 11 NCAA rules education sessions with the football staff (including Beaty and Love) wherein the football staff was educated regarding the specific NCAA rules related to permissible and impermissible activities involving sport specific noncoaching staff members.

Discovery of Potential Violations

In late November 2018, following Beaty's dismissal and in the course of the transition of the football staff, Love's assistant video coordinator [redacted] decided to resign her position and return to her home in [redacted]. See FI-170, pp. 17-18. As part of the University's athletics human resource exit process all employees are required to attest that the individual is not aware of any potential NCAA rules violations at the institution. See FI-170, p. 18. During her exit interview, [redacted] stated that she could not make the attestation as she was aware of potential NCAA violations involving Love engaging in coaching activities with quarterbacks. See FI-170, pp. 18-19. Thereafter, the University notified the NCAA enforcement staff of the potential issue, initiated an investigation and worked collaboratively with the NCAA enforcement staff to finalize the review.

[redacted] was hired as an assistant video coordinator by Love in [redacted], and arrived in Lawrence, Kansas on [redacted]. See FI-170, pp 2-3. When [redacted] arrived in Lawrence, she reported that Love took her to a local restaurant for lunch and informed [redacted] that Love was not just responsible for video, but that Love also worked with quarterbacks. [redacted] stated:

> Yes. Umm, the first day I got here, I met Jeff [Love]. We went to Jefferson's and he said that it's kinda under the table but he helped out and coaches the quarterbacks. And it, was not, it's not very well known or spoken of. But he made me nervous because I, I don't like accidentally say something and it being questioned. So I just didn't feel, I was confused as to why it was such a secret if it was known that he helped. So I didn't wanna accidentally say the wrong thing and potentially get in a situation. See FI-170, p. 6.

[redacted] is a young professional and did not report this interaction with Love, her direct supervisor, to anyone at the time despite having received NCAA rules education in the course of her orientation to the University. See FI-170, pp. 18-19. [redacted] believed that some of Love's interactions with quarterbacks during regular practice activities in the fall of 2018 may have been impermissible and provided the University with video clips that she created from practice film demonstrating Love's involvement with quarterbacks at practice prior to his designation as a countable coach in October 2018. See FI-187.

The video clips, along with the subsequent statements of football student-athletes who played the quarterback position during the 2018 football season, and Love himself, confirmed that the violations set forth in 6-(b) and 6-(c) occurred as alleged. In addition, the student-athletes also described quarterback group meetings with Love prior to his designation as a countable coach where he provided impermissible technical and tactical instruction as set forth in 6-(a).

Information from Quarterbacks and Assistant Coaches

Football student-athletes [redacted] (collectively referred to as "quarterbacks"), who participated on the 2018 football team, [redacted] provided similar information – that prior to becoming a countable coach Love provided the quarterbacks with technical and tactical instruction.[61] See FI-173, pp. 4-5, FI-175, pp. 3-5, FI-176, pp. 3-5 and FI-177, p. 3-4. Specifically, [redacted] reported that following the 2017 football season, Love assumed more of a hands-on role with the quarterback position. See FI-173, pp. 4-5. Following the 2017 football season, [redacted] and Love would engage in one-on-one video sessions wherein Love would instruct [redacted] on identifying and reading defensive formations and coverages. See FI-173, pp. 4 and 6. Once the quarterbacks returned from winter break, in approximately January 2018, Love began meeting with quarterbacks as a group at 6:30 or 7:00 am, two times per week for approximately one hour each session, to instruct the quarterbacks on recognizing defensive formations.[62] See FI-173, pp. 5-7. Love informed [redacted] and the other quarterbacks that a big focus of the off season would be the quarterbacks learning to recognize defensive fronts and the student-athletes called it "QB School." See FI-173, pp. 4-5 and 13. The quarterbacks also reported that then head football coach David Beaty participated in some of the morning video sessions with Love in the early months of 2018. See FI-164, pp. 9-10, FI-167, pp. 5-7, FI-175, p. 3-4[63], FI-176, pp. 8-

[61] [redacted], a [redacted] student-athlete [redacted] who first enrolled at the University in [redacted] was also interviewed and also described receiving technical and tactical instruction from Love prior to Love's designation. See FI-172, p. 3.

[62] Love was designated as a replacement countable coach for four days from January 10-13, 2018, and engaged in permissible recruiting activities out of the office on January 11-12, 2018. Love returned to his regular noncoaching position on January 14, 2018.

[63] For example, [redacted] reported that the meetings began after the 2017 season during the winter, specifically recalling the quarterbacks and Love watched film on Nichols State, the team the University was to compete against on September 1, 2018.

9, and FI-177, p. 7. Beaty told the quarterbacks that they should listen to Love because he knew what he was talking about with respect to defensive formations. See FI-175, p. 9 and FI-177, p. 10. These circumstances, where Love provided technical and tactical instruction to student-athletes, occurred well before the short two-month period from October 11 to November 30, 2018, when Love was designated as a countable coach.

When quarterbacks were meeting with Love after the 2017 season, the assistant football coach assigned to coach quarterbacks was Garrett Riley. See FI-174, p. 3. Riley, along with the other assistant football coaches, were out of the office in January and early February 2018 recruiting. See FI-174, pp. 6-7. Riley stated that he met with Beaty at some point in February 2018, at which point Riley was informed that he would no longer be responsible for the quarterback position group, and instead Riley would coach tight ends. See FI-174, p. 3. Then offensive coordinator Doug Meacham was assigned to coach the quarterback position moving forward. See FI-174, pp. 4-5. Riley reported that sometime in the winter 2018 he heard a rumor, possibly from a strength coach, that Love had been meeting with quarterbacks. See FI-174, pp. 7-8. Riley told Beaty at that time that "it was not right" if Beaty had instructed Love to meet with quarterbacks, but that Riley was a "soldier" and would do what was necessary for the team. See FI-174, pp. 8-9.

Meacham reported that he was wholly unaware that Love met with quarterbacks to review video and learn defensive coverages in the winter of 2018. See FI-169, pp. 13-14. However, Meacham indicated that Love would sit-in on his meetings with quarterbacks at Beaty's request, but that Love would not engage in any instruction when Meacham was present. See FI-169, p. 15. Meacham explained that he and Beaty had philosophical differences regarding what the quarterbacks should be "reading" based on the offensive scheme that Meacham implemented. See FI-169, pp. 6-7. Meacham taught quarterbacks to read specific keys whereas Beaty believed quarterbacks should also be reading defensive alignments. See Id. Ultimately, Meacham expressed his belief that his coaching of the quarterbacks was undermined by Love and Beaty. See FI-169, p. 12.

The quarterbacks also reported that during 2018 spring and fall practices that Love would observe quarterback drills during individual position sessions. See FI-173, p. 9, FI-175, p. 7, FI-176, p. 6 and FI-177, pp 8-9. During offensive team sessions, Love would stand approximately twenty yards behind the offense with the quarterbacks who were not working with the team. See FI-187. The quarterbacks noted that they would take "mental reps" and that Love would occasionally discuss the defensive coverage or what the quarterback who was involved in the play should have done. See FI-173, pp. 9-10, FI-175, p. 7, FI-176, p. 6 and FI-177, pp. 8-9. [redacted] also shared an August 30, 2018, text message from Love wherein Love shared a video clip from practice and stated:

> Remember on stick snag out of the late title. If the backer doesn't move the ball goes to the back. See FI-183.

Further, [redacted] reported following the first regular season game on September 1, 2018, against Nichols State that the quarterbacks were called to a meeting on Monday morning wherein Beaty informed the quarterbacks that he and Love would be running the offense moving forward. See FI-167, pp. 10-11. Specifically, [redacted] stated:

> Yeah, so again, he (Beaty) was just going over basically what he felt like we didn't do very well schematically during Nicholls State – the Nicholls State game and basically his frustration with some of the play calling and some of the decisions that were made in the game. So he basically told us that coach Meacham was going to not be running the offense anymore and calling plays, that he would help out with the offensive line and that him and coach Love would take over the offense from that point on. See Id., p. 11.

However, Meacham was not replaced at that time and continued coaching the quarterbacks and serving as the offensive coordinator.

In mid-October 2018, Meacham was relieved of his duties as offensive coordinator and Love was promoted to an assistant coach position responsible for quarterbacks. Then assistant football coach AJ Ricker, although unaware of Love's interaction with quarterbacks in the winter of 2018, reported that once Love became a countable coach during the 2018 football season that Love shared with Ricker that he had been meeting with the quarterbacks for some time. Ricker stated:

> You know, I was like many, why, why are they doin' that? You know, because we sit here and, and complain about, you know, Meacham and the quarterbacks and still goin' on. [Referencing Jeff Love] He's like coach, I don't know. You know, I've been meetin' with 'em, you know, even when you were you all were gone out recruiting, I've been meetin' with these guys. These guys aren't changing so. See FI-171, p. 6.

Love and Beaty Interviews with the NCAA

Love admitted that he provided technical and tactical instruction to [redacted] via text message, as noted in FI-183, and did so on an occasional basis with student-athletes. See FI-165, pp. 25-26. However, Love characterized his text to [redacted] as, "helping him understand how to watch tape." See Id. However, Love denied engaging in the type of instruction described by the quarterbacks that occurred in the winter of 2018. See FI-165, p. 19. Instead Love stated:

> Jeff Love: Yeah, what I said was if I turned on a cut-up they wanted to ensure it was what they wanted to watch or what they had been instructed to watch, if they were to come watch film, you know what I'm saying.
>
> Enforcement Staff: No, I mean, what are you saying? Like –
>
> Jeff Love: So I would open up a cut-up and they would turn it on and they would go is this – is this the cover four cut-up that I'm supposed to be watching and I go – I would look and I'd go I think, you know what I mean. But the Power Points and the cut-ups were designed so that they could run themselves specifically when the coaches were on the road because, again, I know the rules, you know what I mean. And then when – which was what, a week-and-a-half because when the coaches came off the road, coach Meachum was there – coach Meachum or coach Beaty. See FI-165, p. 20.

Beaty denied any knowledge that Love met with quarterbacks or engaged in any technical or tactical instruction of student-athletes when he was the director of football technology. See FI-163, pp. 23-24, 29-33 and 73. Beaty repeatedly referred to Love as the "IT guy." See FI-163, pp. 33-34. In addition, like Love, Beaty referenced the computer program, XOS, that the football staff used to teach quarterbacks defensive alignments as the only reason that Love would engage with the quarterbacks. See FI-163, pp. 21-22. However, the XOS software did not require anyone with "IT" expertise to independently

run-it for the quarterbacks. See Exhibit 28. Rather, XOS allowed quarterbacks to review "cut-ups" and game film on their own at any time on their phones or tablets. See FI-164, p. 15.

Based on the totality of the evidence including independent video, text, and corroborating statements from student-athletes and former staff, the credible and persuasive evidence supports that the violations set forth.

G. Allegation 7

UNIVERSITY'S CONCLUSION

The University agrees with the facts set forth by the NCAA enforcement staff in Allegation 7, and that based on those facts that Beaty failed to rebut the presumption that he is responsible for the violations detailed in Allegation 6.

H. Allegation 8

UNIVERSITY'S CONCLUSION

The University agrees that the facts and circumstances set forth in Allegation 8 occurred as alleged and constitute a Level III violation because the scope and nature of the violations were limited and did not create more than a minimal advantage.[64]

REVIEW OF THE EVIDENCE

On September 27, 2019, the Kansas City Star, relying on video clips taken by journalists or others outside the institution, published an article questioning the involvement of football noncoaching staff member (Staff Member 1) in athletics activities related to special teams. The University immediately communicated with the Big 12 compliance leadership and jointly agreed that the video as presented by the Kansas City Star did not reflect definite NCAA violations. Thereafter, out of an abundance of caution, the athletics compliance office reviewed all practice video dating back to the first spring practice in 2019 that

[64] The conclusion by the staff to classify the violation as Level III is consistent with the hearing panel of the Committee on Infractions direction where a noncoaching staff member engages in some instances of impermissible activity but those instances are not substantive in nature. See University of Oregon Public Infractions Decision (2018), p. 23.

Staff Member 1 was employed by the University. In total the athletics compliance office reviewed over 80 hours of practice film.

The University determined that a majority of the time Staff Member 1 and another noncoaching staff member, Staff Member 2, were supporting the special teams' coaches (countable coaches), were on the periphery of drills and were not engaged in technical or tactical instruction. However, the University identified five circumstances where it appeared that Staff Member 1 (two instances) and Staff Member 2 (three instances) were providing impermissible instruction in the course of a drill. The University promptly self-reported those violations to the NCAA enforcement staff. In addition, the University produced a total of 41 minutes and 53 seconds of video clips from 2019 spring and fall practices which included any time there was the possibility of a questionable activity on the part of Staff Member 1 and Staff Member 2. At the time of providing the video, the University had not interviewed either Staff Member 1 or Staff Member 2 to ascertain their explanations as to what occurred in the video, deferring to the NCAA enforcement staff to conduct interviews in that regard.

Thereafter, based on a thorough investigation including interviews of the two involved staff members and ten other individuals, the NCAA enforcement staff and University concluded that the violations that occurred over 80 hours of practice were limited in nature and provided no more than a minimal competitive advantage. In fact, out of approximately 4,800 minutes of practice, less than 10 minutes contain violations or 0.2% of the total practice time. See **Bylaw 19.1.3**. Indeed, in none of the video clips was Staff Member 1 or Staff Member 2 ever charged with running a drill – this was always, appropriately, the responsibility of the countable coaches. See **FI-190, pp. 14-15** and **FI-191, pp. 37-38.** Both Staff Member 1 and Staff Member 2's engagement during practice was intended to be administrative, e.g. timing punts and charting plays.[65] See **FI-190, pp. 14-15** and **FI-191, p. 13.**

[65] See **July 24, 2014, NCAA Education Column – Responsibilities of Noncoaching Staff Members and Managers during Practice or Competition and Use of Outside Consultants, Question and Answer No. 5.**

Both noncoaching staff members provided explanations of clips where they were conducting administrative activities and reporting their results to coaches. See FI-190, pp. 16-30 and FI-191, pp. 14-44. Further, both noncoaching staff members acknowledged the extensive education provided to the football staff regarding permissible activities related to noncoaching staff members. See FI-197. That said, in addition to imposing significant penalties on Staff Members 1 and 2 that included suspension from their employment, the University also instituted a new policy that all noncoaching staff members must where a red shirt to identify themselves during practice and had to observe all activities from the sideline.

Conclusion

The University takes the violations seriously and has imposed significant penalties and corrective actions in response. The University agrees with the enforcement staff that the limited self-reported violations in this circumstance is a Level III violation.

VII. Response to Potential Aggravating and Mitigating Factors

A. Aggravating Factors Proposed in the ANOA

Aggravating Factors Asserted by Enforcement Staff	University's Positions	Rationale
Multiple Level I and II violations by the institution. NCAA Bylaw 19.9.3-(a) and –(g)	Agrees in part – Disagrees in part.	As set forth in its responses to Allegations 1, 2, 3, 4, and 5, the University disagrees that any Level I violations occurred, so 19.9.3-(a) is inapplicable. As is set forth its responses to Allegations 6 and 7, the University agrees that the allegations are substantially correct and that multiple Level II violations occurred. Therefore, 19.9.3-(g) is applicable.
A history of Level I, Level II or major violations by the institution. NCAA Bylaw 19.9.3-(b)	Acknowledges history, but disagrees that this factor applies	The University acknowledges the six infractions cases identified by the staff, but notes that five of the six cases occurred between 32 and 63 years ago. The most recent case occurred in 2006, some 14 years ago. In light of this record, the nature of the violations, and case precedent, this factor should not apply.

Lack of Institutional control. NCAA Bylaw 19.9.3-(c)	Disagrees	The ANOA bases the University's alleged lack of control on the violations asserted in Allegations 1, 2, and 3. However, as set forth in the University's responses to those allegations, there were no violations. Accordingly, there was no lack of control. Moreover, for the reasons stated in the University's response to Allegation 5, the University controlled its athletics program.
Violations were premediated, deliberate or committed after substantial planning. NCAA Bylaw 19.9.3-(f)	Disagrees	The enforcement staff bases this factor on its allegation that Adidas and its representatives engaged in conduct that was premediated, deliberate, and committed after substantial planning, and resulted in the violations that are asserted in Allegations 1, 2, and 3. As stated in Section V and the University's responses to Allegations 1, 2, and 3, Adidas and its employees and consultants were not representatives of the University's athletics interests, so it is not responsible for their conduct and no institutional violations occurred. In addition, this factor does not apply when the premediated and deliberate conduct was engaged in by boosters. The enforcement staff has not alleged that any institutional employee engaged in premediated and deliberate violations.
Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct. NCAA Bylaw 19.9.3-(h)	Disagrees	Contrary to the assertion of the enforcement staff regarding this factor, Allegations 1, 2, 3, 4, and 5 are not substantiated. Therefore, those allegations cannot be used to support this aggravating factor. Moreover, as is outlined in the University's responses to Allegations 1, 2, 3, 4, and 5, persons of authority did not condone, participate in, or negligently disregard any alleged violations. In fact, for all of the alleged payments and promised payments (Allegations 1, 2-d, 2-e, 3-a, and 3-b), the staff does not even allege that anyone at the University had contemporaneous knowledge. For the remaining allegations, the facts alleged are not supported by the record, and/or the facts alleged do not constitute a violation. Further, to the extent that this allegation pertains to assistant men's basketball coach Kurtis Townsend, the University does not consider him to be a "person of authority." Townsend has no hiring or firing power, has no control of the University, men's basketball or athletics budgets, and is not responsible for other employees.
One or more violations caused significant ineligibility or other substantial harm to a student-athlete or a prospective student-athlete. NCAA Bylaw 19.9.3-(i)	Disagrees	The institution agrees with the enforcement staff that [redacted] and [redacted] were initially declared ineligible as a result of the $15,000 payment made by Gassnola to [redacted] and the $2,500 payment made by Gassnola to [redacted] However, for the reasons stated in Section V and the University's responses to Allegations 1 and 2, Gassnola was not a representative of the University's athletics interests, the University was not responsible for Gassnola's conduct, and

		there were no institutional violations that caused the ineligibilities. As a result, this aggravating factor should not be applied to the University.
A pattern of noncompliance within the sport program involved. NCAA Bylaw 19.9.3-(k)	Disagrees	For the reasons stated in the response to Allegations 1, 2, 3, 4, and 5, no violations occurred in connection with the men's basketball program. Therefore, this aggravating factor is not applicable to the men's basketball program. Contrary to the staff's assertion, the violations alleged in Allegations 6, 7, and 8 do not demonstrate a pattern of noncompliance consistent with case precedent.
Intentional, willful or blatant disregard for the NCAA constitution or bylaws. Bylaw 19.9.3-(m)	Disagrees	As stated in Section V and in the University's responses to Allegations 1, 2, and 3, Adidas and its employees and consultants were not representatives of the University's athletics interests, so the University is not responsible for their conduct and no institutional violations occurred as a result of their conduct. In addition, as stated in the University's responses to Allegations 1, 2, and 3, neither Self nor Townsend violated any NCAA constitution or bylaw much less intentionally, willfully, or in blatant disregard of an NCAA rule. No case precedent has ever held an institution responsible for conduct of third parties. Further, this allegation is largely duplicative of aggravating factor 19.9.3-(f). If both factors are found, the overlap should result in reduced weight in determining the classification.
Other factors warranting a higher penalty range. Bylaw 19.9.3-(o)	Disagrees	The enforcement staff has asserted that there was a delay in the production of the University's complete file on its investigation of the $15,000 payment to [redacted] and of certain phone records for additional phones for Self. As is explained below, neither the facts nor the case precedent warrant application of this factor.

B. Mitigating Factor Proposed in the ANOA

Mitigating Factors Asserted by Enforcement Staff	**University's Positions**	**Rationale**
An established history of self-reporting Level III or secondary violations. NCAA Bylaw 19.9.3-(d)	Agrees	The University has self-reported a total of 71 Level III violations over the past four academic years for an average of approximately 18 Level III violations per year.

C. Additional Mitigating Factors Proposed by the University

Mitigating Factors Asserted by University	Rationale
Prompt self-detection and self-disclosure of the violation(s). NCAA Bylaw 19.9.4-(a)	The initial criminal complaint did not pertain to the University. The University began an investigation into the facts relating to the acquisition of and payment for [redacted]. During that investigation, the University uncovered the June 14, [redacted] payment from Gassnola to [redacted] The University immediately disclosed this payment to the NCAA. The University's discovery of this initial payment commenced the investigation that ultimately led to the remaining payments that are the subject of the ANOA. Under case precedent, the University should be given credit for this factor.
Prompt acknowledgement of the violation, acceptance of responsibility and imposition of meaningful corrective measures and/or penalties. NCAA Bylaw 19.9.4-(b)	The violations alleged in Allegations 6, 7, and 8 satisfy the requirements of this mitigating factor. Allegations 1, 2, 3, 4, and 5 are not substantiated. Therefore, the University should be given credit under this factor.
Other facts warranting a lower penalty range. NCAA Bylaw 19.9.3-(i)	No prior case has held an institution responsible for the conduct of the employees or consultants of a corporate sponsor. For the reasons set forth in Sections V and VI(A) – VI(C), the Panel should find that the University is not responsible for the conduct of Adidas or its employees or consultants. If the Panel disagrees and holds the University responsible, the University should receive credit for this factor since this would be a completely new area of responsibility, the undisputed evidence is that all of the payments were intentional concealed from the University, and the University had no ability to control the alleged conduct of Gassnola and Gatto.

D. Case Precedent in Support of the University's Positions

The NCAA enforcement staff has alleged nine separate aggravating factors and one mitigating factor in this case. The University disputes that eight of the aggravating factors should be found.[66]

[66] The University also disagrees that factor (a) applies, but agrees that factor (g) applies.

Specifically, the University does not believe that the facts and/or case precedent support application of Bylaws 19.9.3 - (b), (c), (f), (h), (i), (k), (m), and (o). In addition, the University has identified three additional mitigating factors that are supported by the facts of this case and have commonly been agreed upon by the NCAA enforcement staff and cited by a hearing panel of the Committee on Infractions in other cases with similar fact patterns. Specifically, the University asserts that mitigating factors 19.9.4 (a), (b), and (i) should be found.

1. Aggravating Factors

Bylaw 19.9.3-(b) – a history of Level I, Level II or major violations by the institution or involved individuals. Fourteen years have passed since the University's most recent infractions decision and between 32 and 63 years have passed since the University's other infractions decisions. The Committee on Infractions has rejected the application of Bylaw 19.9.3-(b) in similar situations. See *San Diego State University*, p. 5 (2020) (three prior cases, most recent case 15 years earlier); *University of Utah*, p. 7 (2018) (four prior cases, most recent case 15 years earlier); *Rutgers, The State University of New Jersey, New Brunswick*, p. 20 (2017) (prior case 14 years earlier); *University of Notre Dame*, p. 14 (2016) (three cases, most recent case 17 years earlier); *University of California, Los Angeles*, p. 8 (2016) (four prior cases, most recent 18 years earlier); *California State University, Northridge*, p. 12 (2015) (three prior cases, most recent case 22 years earlier).

Bylaw 19.9.3-(f) – violations were premediated, deliberate or committed after substantial planning. In the nearly 100 cases decided under the current infractions procedure and penalty structure, there are only two cases in which this factor was applied to an institution. In both of those cases, the premeditated and deliberate conduct was engaged in by an employee of the institution. See *DePaul University* (2019); *Weber State University* (2014). Here, there is no allegation that any University employee engaged in violations that were premediated, deliberate, or committed after substantial planning. Rather, the staff is alleging for the first time that an institution is responsible for the allegedly premeditated or deliberate conduct of third parties. As noted, neither Adidas nor its employees and consultants were representatives of the University's

athletics interests, so the University is not responsible for their conduct. Moreover, there are dozens of cases in which boosters deliberately violated recruiting and/or impermissible benefits rules, yet not once has this aggravating factor been applied to the institution.[67]

Bylaw 19.9.3-(k) – a pattern of noncompliance within the sports program involved. Only eight of the nearly 100 cases that have been decided under the current infractions procedure and penalty structure have found that this mitigating factor applies. In those cases, there have been multiple different types of violations, the violations occurred over several years, multiple staff members were involved, the violations were of a very serious nature, and/or there were numerous instances of violations.[68] Here, the violations related to the football program were limited in time, scope, and seriousness. This is not indicative of a pattern in a sports program that went undiscovered by the University which should result in additional institutional culpability.

Bylaw 19.9.3-(m) – intentional, willful or blatant disregard for the NCAA constitution or bylaws. To the extent that the staff is basing this factor on the conduct of Adidas and its employees and consultants,

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[67] This aggravating factor has not been found even when an institutional employee asked a booster to engage in the impermissible conduct. See *University of South Carolina, Columbia* (2019); *East Tennessee State University* (2018); *University of Mississippi* (2017); *Prairie View A&M University* (2017). Of course, in this case, no University employee asked a booster to engage in impermissible conduct.

[68] See *University of Connecticut* (2019) (head coach unethical conduct in providing false and misleading information and failing to cooperate, impermissible coaching activity over three years, CARA violations over four years, extra benefits to multiple student-athletes, impermissible recruiting contacts and inducements); *University of Oregon* (2018) (impermissible coaching activity on more than 80 occasions over four years); *California State University, Sacramento* (2018) (numerous types and instances over violations over five years including recruiting, eligibility, financial aid, awards, excessive number of coaches, CARA, violations as well as unethical conduct for failing to cooperate); *University of Northern Colorado* (2017) (head coach and eight staff members engaged in academic fraud and providing impermissible recruiting inducements over four years, excessive number of coaches, and unethical conduct by three coaches for providing false and misleading information and/or failing to cooperate); *University of Mississippi* (2017) (21 violations over five years including multiple coaches and staff members engaged in academic misconduct over multiple years, impermissible recruiting inducements, and unethical conduct for providing false and misleading information and interfering with the investigation); *Rutgers, The State University of New Jersey, New Brunswick* (2017) (ambassador program violation over five years and head coach provided improper academic benefit); *University of Southern Mississippi* (2016) (head coach directed multiple staff members to engage in academic fraud with seven prospective student-athletes over two year, head coach passed on monetary impermissible benefits to partial qualifiers over two years, head coach provided false and misleading information and obstructed the investigation); *University of Hawaii, Manoa* (2015) (extensive impermissible coaching over one year, impermissible benefit from a booster that resulted in two years of ineligible competition, impermissible recruiting inducement by assistant coach, assistant coach falsely modifying admissions form, multiple impermissible tryouts and other impermissible recruiting inducements, head coach unethical conduct for providing false and misleading information, obstructing the investigation, and failing to report the assistant coach's violation).

the case precedent does not support the staff's position. There are have been 39 cases that have cited to this factor. Not a single case has held that this factor applies to an institution for the conduct of a third party (i.e., not an employee of the institution), even if the third party qualified as representative of the institution's athletics interests. To the extent that the staff is alleging that Self or Townsend showed "intentional, willful or blatant disregard for the NCAA constitution or bylaws," the staff's assertion is without merit for multiple reasons. Initially, none of the violations involving the men's basketball team are substantiated by the record. Moreover, most of the alleged violations pertaining to the men's basketball program do not assert that Self or Townsend were involved in them in any way. For the few allegations that contend that Self or Townsend were involved, the record does not support a finding that they acted with an "intentional, willful or blatant disregard for the NCAA constitution or bylaws." Finally, the weight of authority would not support applying this factor to the University even if Self or Townsend had acted with an "intentional, willful or blatant disregard for the NCAA constitution or bylaws," which they did not. (See Exhibit 29 [list of cases citing 19.9.3-(m)]).

Bylaw 19.9.3-(o) – other factors warranting a higher penalty range. The staff has alleged that the University delayed in producing the full contents of its investigation file into [redacted] (See FI-74), and all of the phone records for the men's basketball coaches. At the outset, the staff has not alleged that it was prejudiced by any delay. In addition, the facts relating to each item reveals that there is no basis for the staff's assertion that the University acted improperly.

Regarding the [redacted] investigation file, this case is unique in that for a significant period of time it overlapped with an ongoing federal criminal investigation and trial. During the SDNY trial, the federal government subpoenaed a number of documents from the University, including the [redacted] investigation file. The University withheld, without objection from the federal government, certain documents from the [redacted] investigation based on attorney/client privilege. On August 1 and October 1, 2018, the University supplied the enforcement staff with the same portion of the [redacted] investigation file that it provided to the federal prosecutors. The University could not supply the remaining documents to the NCAA without

waiving its privilege claim in connection with the SDNY trial. On August 14, 2019, after completion of the SDNY trial, when there was no longer a concern about waiving the privilege in that matter, the University voluntarily chose to waive its privilege and produce the remainder of the [redacted] file to the enforcement staff. In addition, during the NCAA investigation and the SDNY proceedings, the University submitted a detailed summary of the results of the University's [redacted] investigation to the NCAA in connection with [redacted]. (See FI-76; FI-162). A more detailed recitation of the key facts relating to the University's temporary withholding of the privileged portion of the [redacted] investigation file is contained in FI-122. Under the circumstances, there is no basis for the staff's allegation that they University acted improperly in connection with its [redacted] investigation file and no basis for finding that factor (o) applies.

Regarding the men's basketball coaches' phone records, the University supplied all of the phone records that it possessed for the men's basketball coaches on October 16, 2018. On January 3, 2019, the NCAA asked for the production of additional phone records pertaining to a second phone used by Self and for Self's wife's phone. (See FI-146). The University forwarded this request to Self after determining it had no responsive records beyond what it already produced. The details of Self's efforts to obtain additional information are set forth in FI-152. In sum, the University timely produced the phone records that it possessed, it forwarded the request to Self, and he made substantial efforts to comply but certain items were beyond his control.

Finally, only one of the nearly 100 cases that have been decided under the current infractions procedure and penalty structure have found that this aggravating factor applies. See *University of Utah*, p. 5 (2019). In that case, an assistant coach chose to withhold information during his initial interview. Here, the University did not withhold any information within its control, and/or without a legitimate basis.

2. Mitigating Factors

Bylaw 19.9.4-(a) – prompt self-detection and self-disclosure of the violation. Case precedent is clear that this factor can be applied when the institution self-detects some of the violations. See *University*

of Mississippi, p. 54 (2017) (applying 19.9.4-(a) where some violations were self-detected even though the most serious violations resulted from tips to the enforcement staff); *Rutgers, The State University of New Jersey New Brunswick* (2017) (applying 19.9.4-(a) even though the investigation was initiated by tips to the enforcement staff because the University discovered some violations.).

E. University's Overall Position on Level and Classification of Case

For the reasons set forth above, the only allegations that are substantiated are 6, 7, and 8. The University agrees that Allegations 6 and 7 are Level II violations and Allegation 8 is a Level III violation. In accordance with Bylaw 19.7.7.1, the overall case is a Level II.[69]

The Panel should conclude that there is one aggravating factor and five mitigating factors. After weighing the aggravating and mitigating factors as to number and weight and considering the facts pertaining to the violations that are substantiated by the record, this case should be classified as Mitigated pursuant to Bylaw 19.9.2.3.

[69] In the event that the Panel finds that some of the violations asserted in Allegations 1-5 are supported by credible and substantial evidence, the Panel should consider its Internal Operating Procedures 5-15-2, 5-15-2-1 and 5-15-2-2 in leveling and classifying the case and imposing penalties on a sport-specific basis.

G. REQUEST FOR SUPPLEMENTAL INFORMATION.

1. Provide mailing and email addresses for all necessary parties to receive communications from the hearing panel related to this matter.

Please direct all communications from the hearing panel to the University's outside counsel for this matter:

Mike Glazier
mglazier@bsk.com

Bob Kirchner
rkirchner@bsk.com

Jason Montgomery
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David Reed
Senior Associate Athletics Director – Compliance & Student Services
davidreed@ku.edu

2. Indicate how the violation was discovered.

See Introduction to this Response.

3. Provide a detailed description of any corrective or punitive actions implemented by the institution as a result of the violation acknowledged in this inquiry. In that regard, explain the reasons the institution believes these actions to be appropriate and identify the violation on which the actions were based. Additionally, indicate the date that any corrective or punitive actions were implemented.

The University acknowledges and self-reported that violations in the sport of football set forth as Allegations 6, 7 and 8.

With respect to Allegations 6 and 7, the involved individuals identified as responsible for the violations are no longer employed with the institution.

With respect to Allegation 8, in addition to the University's already comprehensive education and monitoring related to football noncoaching staff members, the University implemented the following corrective actions:

- Suspended the involved two noncoaching staff members for two weeks,
- Noncoaching staff members are no longer permitted on the football field during practice or competition and instead must be on the sideline during practice,
- Noncoaching staff members must wear red shirts during practice and competition to identify them clearly as noncoaching staff members,
- Additional rules education related to permissible activities involving noncoaching staff members was provided to the football staff related to this issue.

4. Provide a detailed description of all disciplinary actions taken against any current or former athletics department staff members as a result of violations acknowledged in this inquiry. In that regard, explain the reasons the institution believes these actions to be appropriate and identify the violation on which the actions were based. Additionally, indicate the date that any disciplinary actions were taken and submit copies of all correspondence from the institution to each individual describing these disciplinary actions.

See response to Item 3.

5. Provide a short summary of every past Level I, Level II or major infractions case involving the institution or individuals named in this notice. In this summary, provide the date of the infractions report(s), a description of the violations found, the individuals involved, and the penalties and corrective actions. Additionally, provide a copy of any major infractions reports involving the institution or individuals named in this notice that were issued within the last 10 years.

Date

January 11, 1957

Description

Improper recruiting inducement and transportation

Individuals Involved

Men's basketball staff member
Prospective student-athlete
Friend of the University

Sports Involved

Men's Basketball

Penalties and Corrective Actions

- One year of probation

Date

October 26, 1960

Description

Extra benefits; improper recruiting contacts and entertainment

Individuals Involved

Representations of the institution's athletics interests, student-athletes, prospective student-athletes,

Sports Involved

Men's Basketball
Football

Penalties and Corrective Actions

- Two years of probation
- Football – one-year postseason ban
- Football – one-year television ban
- Men's basketball – two-year postseason ban

Date

August 17, 1972

Description

Improper financial aid and transportation; extra benefits; improper recruiting entertainment, inducements and transportation; academic fraud; eligibility; unethical conduct

Individuals Involved

Department of athletics, head track coach, assistant football coach, student-athletes, prospective student-athletes, representatives of the institution's athletics interests, graduate assistant

Sports Involved

Football
Men's Basketball
Men's Track, Indoor
Men's Track, Outdoor

Penalties and Corrective Actions

- Two years of probation
- Assistant track coach recruiting and contract restriction
- Forfeiture of all of the institution's 1969-70 freshman basketball games in which an ineligible student-athlete participated
- Private reprimand and censure of assistant track coach

Date

November 30, 1983

Description

Improper financial aid and transportation, extra benefits, improper recruiting contacts, employment, entertainment, inducements, lodging and transportation, excessive number of official visits, eligibility, unethical conduct, coaching staff limitations, and certification of compliance.

Individuals Involved

Football coaches, prospective student-athletes

Sports Involved

Football

Penalties and Corrective Actions

- Two years of probation
- Football – one-year postseason ban
- Football – one-year television ban
- Three-year show cause for former assistant football coach

Date

November 1, 1988

Description

IMPERMISSIBLE RECRUITING: airline ticket provided by athletics representative; local automobile transportation provided by coaches; loan, local automobile transportation and clothing provided by athletics representatives; payment for work not performed; head coach provided cash for an airline ticket; lodging on a credit basis; basketball shoes; impermissible involvement of an athletics representative in off-campus recruiting; meals; assistance in purchasing an airline ticket; entertainment during official visit more than 30 miles from campus. ERRONEOUS CERTIFICATION OF COMPLIANCE. LACK OF INSTITUTIONAL CONTROL. REPEAT VIOLATOR.

Individuals Involved

Men's basketball coaches, student-athlete, representative of the institution's athletics interests, student equipment manager

Sports Involved

Men's Basketball

Penalties and Corrective Actions

- Three years of probation
- One-year postseason ban
- No official visits from 1/1/89 to 12/31/89
- Reduction by one grant for 1989-90
- Disassociation of athletics representative
- Recertification

Date

October 12, 2006

Description

Violations in the men's basketball regarding impermissible inducements and benefits involving representatives of the university's athletics interests. Violations also occurred in the football program regarding academic fraud involving two former graduate assistant football coaches and impermissible inducements to prospective two-year college transfers.

Individuals Involved

Men's basketball coaches, men's basketball student-athletes, representative of the institution's athletics interests, graduate assistant football coaches, transfer football student-athletes, athletics department staff members

Sports Involved

Football
Men's Basketball

Penalties and Corrective Actions

- Three years of probation (institution self-imposed two years)
- One-year postseason ban
- Reduction of official visits to eight for 2006-07 and 2007-08
- Reduction by one grant for 2007-08 and 2008-09
- Four-year disassociation of athletics representative
- Three-year show cause for former graduate assistant coach

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6. Provide a chart depicting the institution's reporting history of Level III and secondary violations for the past five years. In this chart, please indicate for each academic year the number of total Level III and secondary violations reported involving the institution or individuals named in this notice. Also include the applicable bylaws for each violation, and then indicate the number of Level III and secondary violations involving just the sports team(s) named in this notice for the same five-year time period.

See **Exhibit 31**.

7. Provide the institution's overall conference affiliation, as well as the total enrollment on campus and the number of men's and women's sports sponsored.

The University of Kansas is a member of the Big 12 Conference. Kansas sponsors seven men's sport programs and 11 women's sport programs.

Kansas' total enrollment for the 2019-20 academic year was 28,423 (19,059 undergraduate, 5,570 graduate and 3,794 medical).

8. Provide a statement describing the general organization and structure of the institution's intercollegiate athletics department, including the identities of those individuals in the athletics department who were responsible for the supervision of all sport programs during the previous four years.

See **Exhibit 32**.

9. State when the institution has conducted systematic reviews of NCAA and institutional regulations for its athletics department employees. Also, identify the agencies, individuals or committees responsible for these reviews and describe their responsibilities and functions.

August 12, 2008 – Conducted by The Compliance Group

November 17, 2014 – Conducted by The Compliance Group

September 16, 2019 – Conducted by The Compliance Group

10. Provide the following information concerning the sports program(s) identified in this inquiry:

- The average number of initial and total grants-in-aid awarded during the past four academic years.

Average Initial Men's Basketball Grants-in-Aid:

Initial Counters: 5

Average Total Men's Basketball Grants-in-Aid:

Average Total Counters: 12.75

Average Initial Football Grants-in-Aid:

Initial Counters: 25

Average Total Football Grants-in-Aid:

Average Total Counters: 85

- The number of initial and total grants-in-aid in effect for the current academic year (or upcoming academic year if the regular academic year is not in session) and the number anticipated for the following academic year.

Initial Men's Basketball Grants-in-Aid (2019-20): 6

Total Men's Basketball Grants-in-Aid (2019-20): 13

Initial Men's Basketball Grants-in-Aid (2020-21): 4

Total Men's Basketball Grants-in-Aid (2020-21): 13

Initial Football Grants-in-Aid (2019-20): 25 Total Football Grants-in-Aid (2019-20): 85 Initial Football Grants-in-Aid (2020-21): 25 Total Football Grants-in-Aid (2020-21): 85

- The average number of official paid visits provided by the institution to prospective student-athletes during the past four years.

Average Official Paid Visits in the sport of men's basketball: 2016-15: 12 2017-18: 10 2018-19: 16 2019-20: 8 Total 46 **Average: 11.5**

Average Official Paid Visits in the sport of football: 2016-17: 26 2017-18: 34 2018-19: 61 2019-20: 26 Total 147 **Average: 36.75**

- Copies of the institution's squad lists for the past four academic years.

See Exhibit 33 (men's basketball) and Exhibit 34 (football).

- Copies of the institution's media guides, either in hard copy or through electronic links, for the past four academic years.

Men's Basketball
2016
2017
2018
2019

Football
2016
2017
2018
2019

- A statement indicating whether the provisions of Bylaws 31.2.2.3 and 31.2.2.4 apply to the institution as a result of the involvement of student-athletes in violations noted in this inquiry.

Not applicable.

- A statement indicating whether the provisions of Bylaw 19.9.7-(g) apply to the institution as a result of the involvement of student-athletes in violations noted in this inquiry.

Not applicable for the reasons set forth in the University's Response.

11. Consistent with the Committee on Infractions Internal Operating Procedures 4-16-2-1 (Total Budget for Sport Program) and 4-16-2-2 (Submission of Total Budget for Sport Program), please submit the three previous fiscal years' total budgets for all involved sport programs. At a minimum, a sport program's total budget shall include: (a) all contractual compensation including salaries, benefits and bonuses paid by the institution or related entities for coaching, operations, administrative and support staff tied to the sport program; (b) all recruiting expenses; (c) all team travel, entertainment and meals; (d) all expenses associated with equipment, uniforms and supplies; (e) game expenses and (0 any guarantees paid associated with the sport program.

Three years of actual expenditures in the sport of men's basketball:

2017-18 $9,944,824
2018-19 $12,759,750
2019-20 $11,491,260

Three years of actual expenditures in the sport of football:

2017-18 $10,346,889
2018-19 $11,843,951
2019-20 $13,516,954

Any additional information or comments regarding this case are welcome.

EXHIBITS LIST

Exhibit 1	Closing Statement in SNDY Trial (not in FI-33)
Exhibit 2	Jury Charge in SDNY Trial
Exhibit 3	NCAA Eligibility Center Manual
Exhibit 4	Self and Townsend 2/7/20 letters and Kansas 2/10/20 and 2/28/20 letters requesting identification of when Adidas et al became boosters
Exhibit 5	Hosty 2/19/20 letter in response to 4
Exhibit 6	Cutler LinkedIn excerpt
Exhibit 7	NCAA Website listing Corporate Partners
Exhibit 8	Article re [redacted]
Exhibit 9	[redacted]
Exhibit 10	ESPN article re [redacted]
Exhibit 11	Article re [redacted] signing with Adidas
Exhibit 12	[redacted] 11/13/17 Interview
Exhibit 13	[redacted] Bank Statements
Exhibit 14	[redacted] Written Statement
Exhibit 15	[redacted] 12/12/17 Interview
Exhibit 16	[redacted] 11/13/17 Interview
Exhibit 17	[redacted] Written Statement
Exhibit 18	[redacted] Wikipedia entry
Exhibit 19	Article re Larry Brown Coaching Tree
Exhibit 20	EBL Registration [redacted]
Exhibit 21	Article re [redacted] NBA contract
Exhibit 22	Article re [redacted]
Exhibit 23	Article re [redacted] Commitment to [redacted]

Exhibit 24	Agenda for 2017 Midwest Compliance Summit
Exhibit 25	Original Complaint in SDNY matter
Exhibit 26	The Compliance Group Report and Kansas Response
Exhibit 27	https://app.box.com/file/628163324433
Exhibit 28	University of Kansas Response to Follow-up Questions to Follow-up Questions from the NCAA Enforcement Staff – August 16, 2019
Exhibit 29	Case Law Under Bylaw 19.9.3-m
Exhibit 30	Dr. Cartwright 9/19/19 Letter Cartwright 9/19/19 Letter