INITIAL RESPONSE OF BILL SELF TO NCAA ENFORCEMENT STAFF'S AMENDED NOTICE OF ALLEGATIONS

CASE NO. 00874
MARCH 5, 2020
SUBMITTED BY:
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TOMPSETT COLLEGIATE SPORTS LAW
AND
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Hyperlinked Key Record List

A. Key Factual Information

a. Key Factual Information Currently Identified by the Enforcement Staff

i. FI-001 – Self Tr. on May 17, 2019 – https://app.box.com/file/529690185049

ii. FI-002 – Self Tr. on Aug. 20, 2019 – https://app.box.com/file/529690585892

iii. FI-004 – Townsend Tr. on May 16, 2019 – https://app.box.com/file/529691428581

iv. FI-005 – Townsend Tr. on Dec. 10, 2019 – https://app.box.com/file/529691861726

v. FI-006 – *U.S. v. Gatto, et al.* (SDNY), Tr. of Gassanola Testimony on October 10, 11, and 15, 2018 – https://app.box.com/file/529690079579

vi. FI-007 – [redacted] Tr. on Nov. 29, 2018 – https://app.box.com/file/529692565415

vii. FI-008 – [redacted] Tr. Pt. 1 on Feb. 14, 2019 – https://app.box.com/file/529692902637

viii. FI-015 – Reed Tr. on May 15, 2019 – https://app.box.com/file/529694045502

ix. FI-016 – D. [redacted] and S. [redacted] Tr. on Nov. 13, 2018 – https://app.box.com/file/529693001169

x. FI-019 – Keating Tr. on Feb. 22, 2019 – https://app.box.com/file/529694050302

xi. FI-021 – Lester Tr. on Feb. 21, 2019 – https://app.box.com/file/529690342825

xii. FI-023 – Long Tr. on Feb. 21, 2019 – https://app.box.com/file/529693027441

xiii. FI-024 – Allee Tr. on Jun. 19, 2019 – https://app.box.com/file/529691276594

xiv. FI-027 – [redacted] Tr. on Nov. 11, 2019 – https://app.box.com/file/529698013507

xv. FI-040 – *U.S. v. Gatto, et al.* (SDNY), Defense exhibit 192 – https://app.box.com/file/529690910243

xvi. FI-041 – *U.S. v. Gatto, et al.* (SDNY), Government Exhibit 1096 – https://app.box.com/file/529668736828

xvii. FI-061 – Gassanola and Self Texts on Aug. 9, 2017 – https://app.box.com/file/529691011198

xviii. FI-76 – Evrad Letters on Dec. 21 and 31, 2017 – https://app.box.com/file/529669035533

xix. FI-077 – Brown Tr. on Apr. 4, 2019 – https://app.box.com/file/529697966707

xx. FI-078 – [redacted] Tr. on Dec. 11, 2018 – https://app.box.com/file/529691121164

xxi. FI-080 – Temple Tr. on June 10, 2019 – https://app.box.com/file/529693751434

xxii. FI-081 – Stephens Tr. on June 19, 2019 – https://app.box.com/file/529691454992

xxiii. FI-082 – Hoffman Tr. on June 19, 2019 – https://app.box.com/file/529690276313

xxiv. FI-084 – Quartlebaum Tr. on June 20, 2019 – https://app.box.com/file/529669108134

xxv. FI-086 – Howard Tr. on May 15, 2019 – https://app.box.com/file/529692001541

xxvi. FI-088 – Smith Tr. on Sept. 17, 2019 – https://app.box.com/file/529694325657

xxvii. FI-091 – Roberts Tr. on May 15, 2019 – https://app.box.com/file/529691178054

xxviii. FI-092 – Roberts Tr. on Aug. 13, 2019 – https://app.box.com/file/529691431795

xxix. FI-093 – Sponsorship Agreement between Adidas and Kansas – https://app.box.com/file/529691276013 (pg. 13)

xxx. FI-094 – Adidas and Kansas Partnership Documentation – https://app.box.com/folder/88160423039

xxxi. FI-131 – Sullivan Letter to Hosty re. Cutler Phone Records – https://app.box.com/file/529692478047

xxxii. FI-162 – Evrad Letter to Henderson and Crawford on Dec. 21, 2017 – https://app.box.com/file/529691112502

b. <u>Key Supplemental Factual Information</u>

i. Exhibit 1 – Tompsett Letter to Hosty on Feb. 7, 2020 – https://app.box.com/file/628400197395

ii. Exhibit 2 – Hosty Letter to Tompsett, et al. on Feb. 19, 2020 – https://app.box.com/file/628416690602

iii. Exhibit 3 – Sullivan Letter to Hosty on Feb. 28, 2020 – https://app.box.com/file/628398976853

iv. Exhibit 4 – Heather Dinich, *Notices of allegations coming after hoops scandal*, ESPN.com (May 22, 2019) – https://app.box.com/file/628420297262

v. Exhibit 5 – Dennis Dodd, *At least six college basketball programs will be notified of major NCAA violations by this summer*, cbssports.com (Jun. 12, 2019) – https://app.box.com/file/628401335594

vi. Exhibit 6 – Motley Fool Staff, *Nike, Adidas, and Under Armour Battle for NCAA College Deals*, TheMotleyFool (Mar. 26, 2019) – https://app.box.com/file/628401750840

vii. Exhibit 7 – PSA Top 100 Highschool Sponsorships – https://app.box.com/file/628411460468

viii. Exhibit 8 – Mike Jensen, *Coaches' Shoe Contracts Evoke Concern*, THE SEATTLE TIMES, Aug. 5, 1990 – https://app.box.com/file/628426840209

ix. Exhibit 9 – Case No. 19-783 Docket Sheet as of March 4, 2020 – https://app.box.com/file/628404059269

x. Exhibit 10 – Gatto Notice of Appeal – https://app.box.com/file/628426669702

xi. Exhibit 11 – Code Notice of Appeal – https://app.box.com/file/628454447696

xii. Exhibit 12 – Dawkins Notice of Appeal – https://app.box.com/file/628436180101

xiii. Exhibit 13 – Gatto Oral Argument on Mar. 13, 2020 – https://app.box.com/file/628429426508

xiv. Exhibit 14 – Steve Yanda, *NCAA Offers Inside Look at Investigation, Enforcement Process*, Washington Post, May 11, 2011 – https://app.box.com/file/628449485882

xv. Exhibit 15 – Patrick Engel, [redacted] *Commits to SMU*, 247Sports.com, Apr. 1, 2016 – https://app.box.com/file/628777914465

xvi. Exhibit 16 – *Gatto, et al.* Trial Tr. at 1414-19 – https://app.box.com/file/628799026817

B. Index of Authorities

a. NCAA Division I Manual Bylaw 13.01.2

b. NCAA Division I Manual Bylaw 13.1.2.1

c. NCAA Division I Manual Bylaw 19.7.8.3.1

d. NCAA Division I Manual Constitution 6.4.1

e. NCAA Division I Manual Constitution 6.4.2 (2014-15 through 2017-18)

Introduction

Bill Self, by and through his attorneys, Scott Tompsett, and William M. Sullivan, Jr. submits this Initial Response to the National Collegiate Athletic Association ("NCAA") enforcement staff's Amended Notice of Allegations ("ANOA"). Self cooperated fully with the staff's investigation. He is named in Allegation 2 (which alleges recruiting violations), 3 (which alleges that Self had knowledge of some alleged impermissible recruiting contacts), and 4 (which alleges a lack of head coach control). Self is not named in any allegations involving illicit payments of money.

The allegations directed at Self are based on a misguided, unprecedented, and meritless interpretation and application of NCAA booster and recruiting legislation. All of the alleged improper recruiting contacts and communications by: (1) Self and his staff; (2) individuals alleged to be University of Kansas ("KU" or the "University") boosters; and (3) prospective student-athletes ("PSAs") and their family members, are not NCAA violations, but are, in fact, examples of everyday communications and information-sharing, which are routine and permissible under NCAA rules. Such contacts are essential to the collegiate recruiting process and do not represent violation.

Every allegation lodged against Self except one is based on an erroneous and unprecedented assertion that Adidas and its employees and consultants are representatives of KU's athletics interests a/k/a boosters.[1] Coach Self never had reason to know or understand that Adidas and its employees and consultants were boosters simply because of Adidas' sponsor status. And Self's understanding is consistent with the unanimous assessment of five accomplished, senior athletics' administrators: (1) Jeff Long, KU's current athletic director, with over thirty years of collegiate athletics experience, including prior athletics director experience at Eastern Kentucky, Pittsburgh, and Arkansas, FI-023, Long Tr. (Feb. 21, 2019) at 1, 3, 30 (https://app.box.com/file/529693027441); (2) former KU athletics director Sheahon Zenger, who also has over thirty years of college athletics experience, including prior athletics director experience at Illinois

[1] The only non-Adidas allegation involves former KU men's basketball coach Larry Brown, who the staff erroneously claims was a KU booster.

State, Zenger Tr. (Feb. 21, 2019) at 1, 2, 4, 32, 33; (3) former senior associate athletics director Larry Keating, who himself has nearly fifty years of collegiate athletics experience, including twelve years as athletics director for Seton Hall, Keating Tr. (Feb. 22, 2019) at 1, 3, 6, 25; (4) KU deputy athletics director Sean Lester, with fifteen years' experience at KU, FI-021, Lester Tr. (Feb. 21, 2019) at 4, 43 (https://app.box.com/file/529690342825); and (5) KU's senior associate athletics director David Reed, the 2019 recipient of the National Association of Athletics Compliance Coordinators ("NAAC")'s Frank Kara Leadership Award—the NAAC's highest honor, and premier award. Reed Tr. (May 15, 2019) at 57.

Yet the enforcement staff's allegations against Self hinge *completely* on whether Adidas and its employees and consultants are KU boosters, a concept never previously developed or advanced by the NCAA. Because they are not, Self committed no violations.

In fact, precisely because the ANOA does not make clear how and when the staff thinks Gassnola, Cutler, and Code became boosters of KU athletics, on February 7, 2020, Self's counsel requested the enforcement staff clarify its allegation. Ex. 1, Tompsett Letter to Hosty on Feb. 7, 2020 (https://app.box.com/file/628400197395). Bylaw 19.7.1 (Notice of Allegations) requires the enforcement staff to give notice of "the details of the allegations." In the context of alleging that a head coach committed Level I recruiting violations by having knowledge of multiple impermissible recruiting contacts by boosters of the institution, the staff should give notice of how and when the staff claims the individuals became boosters. On February 19, 2020, counsel for the University, Self and Townsend received the NCAA's response, which was wholly insufficient, and has prejudiced Self by preventing him from responding to the enforcement staff's allegations with a clear understanding of exactly what those allegations are. Ex. 2, Hosty Letter to Tompsett, et al. on Feb. 19, 2020 (https://app.box.com/file/628416690602). And, in fact, Self's counsel submitted a responsive letter identifying the insufficiency of the response and the corresponding burden it placed on Self. Ex. 3, Sullivan Letter to Hosty on Feb. 28, 2020 (https://app.box.com/file/628398976853).

Both the KU administration and Self properly considered Adidas and its employees and consultants

only as parties in an arms-length sponsorship agreement negotiated to include specific terms and obligations to be undertaken by the parties. Neither KU nor Self ever thought—or had reason to think—Adidas or its employees and consultants were KU boosters. "Boosters," as consistently defined and applied by the Committee on Infractions and the NCAA generally, are individuals who buy season tickets to basketball games, or donate tangible benefits to a program—they are not unaffiliated third-party representatives of a corporate apparel company under contract with the University.

It was not until the NCAA and its enforcement staff were compelled to react to the public Department of Justice investigation and the result of the federal criminal prosecutions of certain former Adidas employees and their associates that they embarked upon a unique interpretation of NCAA legislation to define an apparel company sponsor as a booster simply by virtue of its contractual relationship with the University.

That was an unthinkable proposition, unsupported by either NCAA legislation or established case precedent. Prior to the issuance of these NOAs, the NCAA never offered any guidance, official interpretations, or educational materials to member institutions, including KU or Self, to caution about interaction with Adidas (or other apparel companies) and its employees and consultants because they could be considered boosters and, therefore, subject to NCAA recruiting legislation prohibiting boosters from recruiting activities. Neither KU nor Self ever had reason to understand that routine, permissible, and essential information-sharing might one day be considered a violation of existing NCAA rules.

As the federal criminal trial established and the enforcement staff must concede, it is undisputed that neither Self nor anyone on his staff knew about, solicited, or condoned any illicit payments to family members or guardians of any PSAs.[2] As developed in the federal trial, any payments were made secretly and covertly by individuals associated with Adidas, who deliberately concealed the payments from Self and

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[2] The specific PSAs and student-athletes ("SAs") named in the ANOA are: (i) the [redacted] of one PSA, [redacted] (ii) the [redacted] of another SA who later enrolled at KU, [redacted] and (iii) the [redacted] of a KU SA, [redacted]

his staff.[3]

Thus, even assuming the staff's allegations are correct – which they are not – Self at most failed to recognize that Adidas and its employees and consultants could be considered KU boosters and as a result, that the NCAA would consider any contacts between: (1) Adidas' employees and consultants; (2) PSAs and their families or guardians; and (3) Self and his, staff to be impermissible. Stated differently, Self is charged with not monitoring contacts and communications amongst grassroots individuals (Adidas and its employees and consultants), PSAs and their families, as well as between himself and his coaching staff. Self is not charged in any way, shape or form in connection with the alleged improper payments from Adidas to the families and guardians of two PSAs and one SA.

A. The NCAA has Prejudged this Case

The NCAA enforcement staff is understood to be vested with sole and exclusive authority to investigate potential violations and to decide whether to bring allegations of violations for adjudication by the Committee on Infractions. However, well before the staff had finished its investigation and conducted its internal meetings to determine whether to bring formal allegations against KU and Self, the NCAA executive leadership publicly declared that decisions had already been made to move forward with formal allegations and to impose consequences.

For example, according to published reports of a meeting of the Knight Commission on May 22, 2019, Kevin Lennon, NCAA Vice President of Division I Governance, said notices of allegations "will be coming." Ex. 4, Heather Dinich, *Notices of allegations coming after hoops scandal*, ESPN.com (May 22, 2019) (https://app.box.com/file/628420297262). According to the published report, Lennon also said, "now that the court cases are done, now we're in a position where you're likely to see notices of allegations going

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[3] Coach Self notes that it is disappointing to have seen and read irresponsible media accounts contradicting the sworn testimony elicited at the federal criminal trial which emphasized the lack of knowledge or involvement by anyone at KU, and specifically Self and his staff, in payments made by certain Adidas representatives to PSAs or their families. Self condemns any illicit payments to PSAs, SAs or their families and legal guardians. In fact, it was Self who first reported to KU that [redacted] may have received impermissible benefits.

to institutions **that have violated NCAA rules, etc.**" *Id.* (emphasis added).

At the time Lennon stated that institutions "have violated NCAA rules," KU, Self and his counsel were still involved in the investigation phase of this case. In fact, Self's nearly eight-hour interview with the enforcement staff had taken place *just five days earlier*, on May 17, 2019. Other KU coaches and administrators were interviewed around the same time. The staff had not yet even prepared transcripts of the interviews or scheduled its Allegation Review Board meeting, yet the NCAA executive administration had asserted in the press that a notice of allegations was coming and that rules had been violated.

This is the definition of prejudgment.

Stan Wilcox, NCAA Vice President for Regulatory Affairs reinforced Lennon's assertions when he made the following statements to Dennis Dodd of CBSSports.com on June 12, 2019:

- "Two-high profile programs would receive notices of allegations by early July."[4]
- "'We're moving forward and **you'll see consequences**.'"
- "'Those top coaches that were mentioned in the trials where the information shows what was being said was a violation of NCAA rules, yes. **They will be a part of these notices of allegations**.'"[5]
- "'It's a great opportunity for the enforcement staff, the committee on infractions, as well as our whole community to now try to . . . put things back where they need to be.'"[6]

Ex. 5, Dennis Dodd, *At least six college basketball programs will be notified of major NCAA violations by*

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[4] North Carolina State University received its NOA in July 2019, and KU was the second university to be noticed when it received the NCAA's formal NOA on September 23, 2019. Thus, it's clear that Wilcox—who made public comments on June 12, 2019—was referring to KU when he proclaimed that notices of allegations were forthcoming.

[5] Wilcox's statement suggesting head coaches face strict liability for actions of their assistant coaches reveals a startling lack of familiarity with NCAA head coach control legislation. Head coaches are presumed responsible for violations committed by their assistant coaches, but the presumption may be rebutted by demonstrating the head coach promoted an atmosphere of compliance and monitored his staff. Given the evidence of prejudgment, Self was never given a fair opportunity to rebut the presumption of responsibility.

[6] Wilcox made clear he was speaking on behalf of the enforcement staff and the Committee on Infractions when he proclaimed that they were going "to now try to . . . to put things back where they need to be." We now know what Wilcox meant; bring harsh allegations against "top coaches" like Self based on a novel and unprecedented theory that Adidas is a booster of KU.

this summer, cbssports.com (Jun. 12, 2019) (https://app.box.com/file/628401335594).

These public statements of prejudgment by the NCAA executive administration prior to a notice of allegations being issued are unprecedented in an NCAA infractions case. Indeed, it is improper for the NCAA executive administration to state publicly that a notice of allegations will issue in a case in which information is still being gathered, reviewed and analyzed by all relevant parties.

It is difficult to see how Self can obtain the fair hearing to which he is entitled after the NCAA's executive administration has communicated to the public that rules have been violated, that there will be consequences, and that "top coaches" are a part of the violations. The NCAA executive administration publicly implicated Self in NCAA violations before the enforcement staff had even completed its investigation, in violation of the clear dictates and overarching impartial spirit of the NCAA infractions process.[7]

Moreover, as discussed below, the NCAA's prejudicial public statements were based on a legal proceeding that is under appeal, *United States v. Gatto, et al.*, No. 1:17-cr-686-1 (S.D.N.Y. 2018), *appeal docketed*, No. 19-783 (2d Cir. Mar. 28, 1990), meaning that the NCAA enforcement staff was prohibited by its own Bylaws from considering any evidence from that legal proceeding in determining whether to issue a Notice of Allegations, and the Committee on Infractions is prohibited from both considering any evidence submitted in or facts established from that proceeding.

Accordingly, the NCAAs made a public determination of guilt before allegations had been issued, and before an adjudication was completed, in clear violation of NCAA Bylaws and general conceptions of due process. Moreover, by basing this public announcement of predetermined guilt on information under appellate review which the NCAA is prohibited from even considering, the NCAA has indicated that facts and rules matter less than appearances.

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[7] Such a decision was made well before any facts have been found through an infractions hearing, and well before Self has had an opportunity to challenge those alleged facts or any related allegations. Indeed, the NCAA's prejudicial public statements were made not only before Self received the notice of allegations, but before the NCAA's investigation had even concluded.

B. The Staff Misinterprets and Misapplies Existing NCAA Legislation to Create Booster Status for Adidas, Gatto, Gassnola, Code and Cutler to Penalize Self and the Men's Basketball Program[8]

As explained above, the staff's allegations against Self are based entirely on the erroneous premise that Adidas, an independent corporate entity, and its employees and consultants, were boosters of KU's athletics program, because (i) Self allegedly knew that Adidas was promoting the institution's athletics program, and (ii) Self knew or should have known that Adidas and its representatives were assisting in the recruitment of PSAs. If Adidas, its employees and consultants were not boosters of KU's athletics programs, regardless of contractual obligations, and if Self did not know or had no reason to know they were boosters, then Self is not accountable for their actions.

NCAA Constitution 6.4.1 states that an institution may be held responsible for the acts of an independent agency or corporate entity when a member of the institution's executive or athletics administration, or an athletics department staff member, has knowledge that such agency, corporate entity or other organization is promoting the institution's intercollegiate athletics program.

> **6.4.1 Independent Agencies or Organizations.** An institution's 'responsibility' for the conduct of its intercollegiate athletics program shall include responsibility for the acts of an independent agency, 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 that such agency, corporate entity or other organization is promoting the institution's intercollegiate athletics program.**

NCAA Constitution 6.4.1 (emphasis added).

The NCAA has never applied this rule in the context of a shoe company's contractual sponsorship of an institution's athletics program.[9] In fact, according to LSDBi, there have been only five major

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[8] The enforcement staff also has alleged that former KU men's basketball coach Larry Brown is a KU booster. Self responds to that allegation below.

[9] The NCAA's failure to provide guidance or interpretation, to say nothing of its failure to ever apply the legislation in this manner and context may give rise to a defense of estoppel, *CSL Silicones, Inc. v. Midsun Group Inc.*, 301 F. Supp. 3d 328, 366 (D. Conn. 2018) (citation omitted) (explaining that equitable estoppel "is properly invoked where the enforcement of the rights of one party would work an injustice upon the other party due to the latter's justifiable reliance upon the former's words or conduct"), laches, *Veltri v. Building Service 32B-J Pension Fund*, 393 F.3d 318, 326-27 (2d Cir. 2004) (citation and internal quotation marks omitted) (explaining that "the equitable

infractions cases involving this rule and they all involve booster-type organizations which existed for the specific purpose of exclusively promoting and supporting the institutions' athletics programs. The staff's attempt to use Constitution 6.4.1 in this case is both unprecedented and inapplicable.

NCAA Constitution 6.4.2 defines how a corporate entity or an individual attains booster status:

> **6.4.2 Representatives of Athletics Interests.** 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;
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> (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.**

NCAA Constitution 6.4.2 (emphasis added).

Being a KU booster is not in and of itself a violation of any NCAA bylaw. The enforcement staff is claiming that Adidas and its employees are representatives of KU's athletics interests in order to shoehorn

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defenses of laches and estoppel remain available to defendants seeking to avoid unfair surprise from the filing of untimely claims by plaintiffs who seek to rely on equitable tolling on the basis of defective notice" and that "[a] party asserting the equitable defense of laches must establish both plaintiff's unreasonable lack of diligence under the circumstances in initiating an action, as well as prejudice from such a delay"), or waiver, *Clevenger v. Dillard's Dep't Stores, Inc.*, 333 F. App'x 907, 913 (6th Cir. 2009) (citation and internal quotation marks omitted) ("An implied waiver occurs when a party has been prejudicially misled or lulled into believing strict compliance is not required."). The ANOA would be barred in whole or in part, in that the NCAA had unfettered and continuing access to the University, by virtue of its public status, including to KU's personnel and records, and was long aware of the sponsorship relationship between Adidas and the University by virtue of its public contract. Yet the NCAA, for decades, has never demonstrated any diligence, or has deliberately failed to exercise its oversight authority, in detecting, identifying, or addressing the alleged booster status implications of a sponsorship agreement with a corporate apparel company. The NCAA's failure—through its filing of the ANOA—has caused considerable prejudice to the University, and to Self, both of whom were entitled to and did rely on the NCAA's oversight obligations and legislative interpretations.

violations under Bylaws 13.01.2 (Institutional Responsibility in Recruitment) and 13.1.2.1 (Permissible Recruiters – General Rule). These Bylaws state:

> **Bylaw 13.01.2**
>
> A member of an institution's athletics staff or a representative of its athletics interests shall not recruit a prospective student-athlete except as permitted by this Association, the institution and the member conference.
>
> **Bylaw 13.1.2.1**
>
> All in-person, on- and off-campus recruiting contacts with a prospective student-athlete or the prospective student-athlete's family members shall be made only by authorized institutional staff members. Such contact, as well as correspondence and telephone calls, by representatives of an institution's athletics interests is prohibited except as otherwise permitted in this section.

Through the misapplication of these Bylaws, the enforcement staff intends to transform Adidas, its employees and consultants into KU boosters, so that it can argue that any interactions or communications—if known by the University or its athletics staff—between Adidas, its employees or consultants and PSAs are recruiting violations, and KU and Self are therefore responsible for those violations. If the enforcement staff is successful in transforming Adidas, its employees and consultants into boosters of KU, then the enforcement staff can argue that routine and commonplace exchanges and communications between: (1) Adidas, its consultants and employees; and (2) PSAs and their families; or (3) Self and his staff; are violations of Bylaws 13.01.2 and 13.1.2.1.

To achieve this unprecedented and erroneous application of NCAA legislation,[10] the staff appears

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[10] Indeed, the NCAA's theory is extreme that if carried out it would render hundreds, if not thousands, of PSAs and SAs ineligible. NCAA Bylaw 12.1.2.1.4.3 (Expenses from Outside Sponsor) permits PSAs to receive actual and necessary expenses for competition and practice "from an outside sponsor (e.g., team, neighbor, business) **other than** an agent or **a representative of an institution's athletics interests**...(emphasis added)." This is the NCAA Bylaw that permits shoe companies to sponsor AAU programs and pay for teams to travel around the country for competition. Shoe companies may sponsor AAU teams as long as the shoe companies are not boosters. But if Adidas, Nike and Under Armour are boosters of the college athletics programs they sponsor, then any PSA who received gear or actual and necessary expenses from Adidas, Nike, or Under Armour in connection with events, such as Adidas Nation and Gauntlet, Nike Peach Jam and EYBL, and Under Armour Rise, 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. Thus, in its zeal to find a theory to bring charges against Self, the NCAA has placed the eligibility of untold number of PSAs and SAs in jeopardy.

to be relying on subsections (b), (c) and (e) of Constitution 6.4.2 as the linchpin to hold Self responsible for the interactions Adidas, Gatto, Gassnola, Code and Cutler had with PSAs, their families and guardians, as well as those with Self and his staff. Under the staff's groundless interpretation, because Adidas, Gatto, Gassnola, Code and Cutler are not traditional boosters in that they did not make financial contributions, i.e., donations, to KU's athletics department and are not members of KU booster groups, the staff is trying to transform Adidas and its employees and consultants into KU boosters by alleging that:

(1) Adidas is a KU booster as a result of the monies Adidas paid to KU under the Sponsorship Agreement and, therefore, all Adidas employees and consultants are automatically boosters of KU (Constitution 6.4.1(b));

(2) Self and his staff requested Adidas, Gatto, Gassnola, Code and Cutler *to assist in the recruitment* of PSAs and/or that Self and his staff knew that Adidas, Gatto, Gassnola, Code and Cutler were *assisting in the recruitment* of PSAs (Constitution 6.4.2(c)); and/or

(3) Self and his staff knew that Adidas, Gatto, Gassnola, Code and Cutler were *otherwise involved in promoting KU's athletics program* (Constitution 6.4.1 and 6.4.2(e))."

Regarding the first theory, there is no precedent whatsoever for the staff's novel assertion that an institution's apparel sponsor is a booster merely due to monies paid to the institution pursuant to an arms'-length contractual agreement in which both parties are advancing their own business interests. Moreover, if accepted by the Committee on Infractions, the staff's theory would cause the apparel company sponsor of every NCAA member institution to become a booster, and would trigger an avalanche of compliance issues.

Regarding the latter two theories, the legislation does not define what it means "to assist in the recruitment of PSAs" or "otherwise be involved in promoting an institution's athletics interests."[11] But

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[11] While the NCAA has generally been found not to be a state actor, the NCAA nonetheless should require that its bylaws give specific and adequate notice of what conduct is punishable. Under the U.S. Constitution, laws which do not state explicitly and definitely what conduct is punishable are said to be void for vagueness. *See, e.g., Perry v. Ohio High Sch. Athletic Ass'n*, No. 05-CV-937, 2006 WL 8442453, at *3 (S.D. Ohio Mar. 22, 2006) (quoting *Columbia Nat. Res., Inc. v. Tatum*, 58 F.3d 1101, 1104-05 (6th Cir. 1995)) (other citations omitted) (explaining

NCAA precedent and common understanding is clear that generally speaking, more involvement is required than mere communications, interactions, opinions, recommendations, and information gathering and sharing. Because institutions and coaches can be held responsible for their knowledge of booster activity, there should be a well-defined, objective standard defining appropriate parameters.

In order to employ these rarely-invoked and applied sections of the NCAA Constitution,[12] the enforcement staff has taken the commonplace and essential information-gathering and sharing among grassroots basketball representatives, college basketball coaches, and apparel company representatives and weaponized it. The staff is thus manipulating and distorting the phrases "assist in the recruitment of prospective athletes" and "promoting the institution's athletics program" well beyond any reasonable and accepted understanding of those phrases as understood by athletic administrators and coaches, and as previously applied and interpreted by the NCAA. Indeed, this case reveals the extreme and prejudicial lengths to which the NCAA is willing to go to substantiate its strained interpretation of these provisions.[13]

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that the "void-for-vagueness doctrine" is designed to "ensur[e] fair notice and provid[e] standards for enforcement[,]" and establishes that "a statute which either forbids or requires the doing of an act in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process law"). Further, the enforcement staff's unprecedented interpretation and application is arbitrary and capricious. A court of law will intervene when a voluntary association applies its rules and legislation in an arbitrary and capricious manner. *See, e.g., McNair v. Nat'l Collegiate Athletic Ass'n*, No. BC462891, 2016 WL 11263848 (Super. Ct. Cal. Feb. 10, 2016); *see also Levant v. Whitley*, 755 A.2d 1036, 1044 (D.C. 2000) (citations and internal quotation marks omitted) (surveying case law and explaining that courts will intervene in the affairs of incorporated and unincorporated private voluntary membership associations in certain circumstances, including where "the association has breached its fiduciary duty to its members," "contractual rights are implicated" or upon a showing that the "officers [of the association] acted fraudulently or in bad faith" and noting that Maryland law defines "fraud" to include "action unsupported by facts or otherwise arbitrary"); *Jolevare v. Alpha Kappa Alpha Sorority, Inc.*, 521 F. Supp. 2d 1, 9 (D.D.C. 2007) (discussing *Levant*, 755 A.2d at 1043-44) (noting that the D.C. Court of Appeals has "assumed, without deciding, 'that intervention would be appropriate when an organization failed to follow its own rules'" and that judicial intervention would lie where the process accorded to members was not fundamentally fair, was "in conflict with the organization's designated procedures" or otherwise "tainted" by "fraud," "bad faith," or "arbitrary action" by the organization); *Nat'l Collegiate Athletic Ass'n v. Lasege*, 53 S.W.3d 77, 83 n.9 (Ky. 2001) (citation omitted) ("[W]hile courts ordinarily refrain from reviewing decisions of unincorporated private associations, if the organization acts inconsistently with its own rules, its action may be sufficiently arbitrary to invite judicial review.").

12 As discussed fully *infra* in FN13, according to LSDBi, there are only ten major infractions cases have applied NCAA Constitution 6.4.2. None of the cases are even superficially analogous to the enforcement staff's theory in this case.

13 NCAA precedent makes this clear. According to LSDBi, since 2000, there have been 44 major infractions cases involving Bylaw 13.1.2.1. Since its inception, only 10 major infractions cases have applied NCAA Constitution 6.4.2. Only 22 major infractions case have applied Bylaw 13.02.15. And since its inception, only 15 major

The enforcement staff had to go to unprecedented lengths in order to bring these allegations against Self. Of virtually all of the schools involved in the SDNY cases, KU is the only school which does not have a coach allegedly involved in either accepting or providing money.[14] Because no KU coaches were involved in these payments, the enforcement staff was forced to rely on manufactured interpretations to construct allegations against Self and fulfill the NCAA's executive leadership's prior public proclamations that "top coaches" will be named in the notices of allegations.

Under NCAA head coach control legislation, head coaches are presumed responsible for violations committed by those who report to them, i.e., assistant coaches and other staff members who report to the coach.[15] Based on publicly available information, all of the schools implicated in the SDNY cases—with the exception of KU—appear to have a coach involved in either accepting or providing money for an illicit purpose, thereby implicating the head coach at those schools under the head coach control legislation.

But that theory of head coach responsibility is not available in the KU case because neither Self nor anyone on his coaching staff knew of or was involved in any alleged illicit payments. Moreover, Adidas, Gatto, Gassnola, Code and Cutler are not members of Self's staff and, therefore, Self is not responsible for their actions and conduct which may violate NCAA rules unless:

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infractions cases have involved Bylaw 13.01.2. A cursory review of these cases makes clear the NCAA has never sought to designate a third-party representative, employee, or consultant of an apparel company as a "representative of an institution's athletics interests," or "booster." Even setting this aside, however, a close study of precedent establishes there is no factual basis supporting a "booster" designation here. Overwhelmingly—if not universally—NCAA major infractions cases applying these "booster" provisions involve individuals who are direct financial contributors, i.e., donors, to an institution's athletics program, or who otherwise provided tangible benefits or monetary assistance to PSAs. Common examples include cash payments, leisure transportation on boats, vehicular transportation, assistance with traveling, as well as complimentary clothing or goods. In exceptionally rare circumstances, major infractions cases have involved "boosters" who committed major violations solely by communicating with PSAs. *See* July 2, 2019 University of Connecticut Public Infractions Decision at 21 (booster found to have had impermissible communications with PSA during unofficial visit violating Bylaw 13.1.2.1); June 10, 2010 University of Southern California Public Infractions Report at 38 (local restaurant owner found to have violated Bylaw 13.01.2 by having recruiting-related discussions with PSAs during official visits to the institution). In both instances, the third-party individuals were already found to be boosters—the underlying conduct did not *give rise* to a booster designation. And in any event, neither public infractions report explains with any specificity *why* the relevant individuals were deemed boosters.

[14] Coaches at other institutions have been alleged to have either participated in providing money to PSAs or their families, or to have accepted money in exchange for agreeing to steer SAs to financial advisors and agents.

[15] The presumption may be rebutted by a showing that the head coach promoted an atmosphere of compliance and monitored his or her program.

(1) Self and/or his staff knew about or participated in the impermissible conduct (which they did not);

(2) KU is responsible for the acts of Adidas pursuant to NCAA Constitution 6.4.1 (which it is not); or

(3) Adidas, Gatto, Gassnola, Code and Cutler meet the definition of a representative of KU's athletics interests (a/k/a booster) under NCAA Constitution 6.4.2 (which they do not).[16]

However, no evidence was adduced in either the federal criminal trial or the record developed by the enforcement staff's investigation that demonstrates clearly and credibly that KU, Self, or his staff were aware that Adidas employees and consultants were boosters.

In fact, under the sponsorship relationship between Adidas and KU, it was actually KU's obligation to promote Adidas.

1. Adidas and KU had a Legitimate Arms'- Length Sponsorship Agreement

Beginning in 2005, Adidas and KU entered into an arms'-length sponsorship agreement which contractually required that Adidas pay KU monies and provide goods and services in return for KU promoting and marketing the Adidas brand – not for Adidas promoting KU's athletics program. Indeed, the recitals from the 2005 and 2017 sponsorship agreements expressly declare this, as they state that Adidas is contracting with the University "to acquire the designation for certain [A]didas Products as the official Products of Kansas Athletics' athletic programs in the designated categories; to secure the sponsorship recognition and acknowledgement of adidas products" and "to acquire certain sponsorship recognition rights from Kansas Athletics." FI-093, Sponsorship Agreement between Adidas and Kansas (https://app.box.com/file/529691276013); FI-094, Adidas and Kansas Partnership Documentation (https://app.box.com/folder/88160423039).

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[16] As explained above, if the staff can transform Adidas and its employees and consultants into KU boosters, then arguably any communications and contacts by shoe company employees or consultants about PSAs violate Bylaw 13.02.1 and 13.1.2.1.

In furtherance of these recitals, as the University detailed in its Initial Response, numerous provisions of the 2005 and 2017 Agreements establish that monies paid to KU by Adidas are subject to increase or decrease based upon KU's *promotion* of the Adidas brand. KU's total compensation is thus dependent upon *it* promoting Adidas—not the other way around. For example, Section 3(B) of each agreement allows Adidas to pay KU less if men's basketball or football is restricted from appearing on television. FI-093, Sponsorship Agreement between Adidas and Kansas; FI-094, Adidas and Kansas Partnership Documentation. Section 5(A) of the 2017 agreement mandates that Adidas provide KU with more product if KU establishes additional varsity sports programs. *Id.* Section 5B of both agreements permits Adidas to pay KU less if KU, the NCAA, or the Big 12 changes its rules governing corporate logos to Adidas' detriment. *Id.* KU men's and women's teams are required to "exclusively wear Adidas products during all team events." *Id.* KU varsity athletes and athletics personnel are prohibited from covering up the Adidas logo except in rare circumstances. *Id.* Section 7 of both agreements gives Adidas the exclusive right to use KU's brand and logos for marketing and sales. *Id.* Section 8 of both agreements requires each varsity head coach be made "available for three appearances per year to recognize Adidas' sponsorship **and promote the sale of Adidas products.**" *Id.* (emphasis added). Both agreements allow Adidas to terminate the sponsorship under a range of triggering circumstances that hurt Adidas' ability to market and sell its products. *Id.* And Exhibit B to both agreements obligates KU to give Adidas advertising space and opportunities so that Adidas can promote its brand. *Id.*

Standing alone, each of these provisions establishes that the Sponsorship Agreement obligates KU to promote Adidas—not the other way around. Taken together, the conclusion is inescapable. Not only does the sponsorship agreement specifically provide for the promotion of the Adidas brand, but the entire relationship is premised upon KU advancing Adidas's commercial interests and reputation.

2. Adidas Has its Own Interest in Developing and Maintaining Relationships with PSAs and SAs

Adidas, Nike and Under Armour sponsor high school and AAU teams, collegiate sports programs,[17] events and tournaments, and professional athletes. These three apparel companies compete aggressively to sponsor the best teams and the best players. An important part of their business model is developing relationships with top PSAs in what is known as "grassroots basketball," and maintaining those relationships while the young men are in college with the hope that if they enter the NBA, the companies can sign them to highly lucrative endorsement deals. This is an essential component of how apparel companies conduct their business.

Accordingly, Adidas pursues its own commercial interests and purposes in developing relationships with PSAs through the development of brand loyalty in order to position itself to benefit in the future from professional endorsement deals. In fact, according to our research, both the high school team and AAU team of virtually every single men's basketball PSA in the 2019 ESPN 100 was sponsored by either Nike, Adidas or Under Armour. Ex. 7, PSA Top 100 Highschool Sponsorships (https://app.box.com/file/628411460468). Insofar as PSAs start competing for sponsored AAU teams before they enter high school, the top PSAs are known by and have started developing relationships with shoe companies long before NCAA coaches are permitted to start recruiting them. Before NCAA coaches are even able to approach PSAs, virtually all of the top players, their families and advisers will have met and interacted with shoe company employees and consultants whose job and goal is to establish brand loyalty.

This practice is not new, and the NCAA has been aware of it for decades. On August 5, 1990 the Seattle Times published an article titled "Coaches' Shoe Contracts Evoke Concerns," which included the

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[17] According to a financial report, Adidas, Nike and Under Armour spend about $300 million dollars a year on college program contracts so that youth athletes will decide to wear their products after seeing a marquee player wearing the brand on a collegiate basketball team. Ex. 6, Motley Fool Staff, *Nike, Adidas, and Under Armour Battle for NCAA College Deals*, THEMOTLEYFOOL (Mar. 26, 2019) (https://app.box.com/file/628401750840)

following:

- Nike consultant Sonny Vaccaro in 1978 came up with the idea of paying top college coaches to have their teams wear Nike's shoes.
- In 1990 Nike was paying a total of $4 million dollars a year to 60 college coaches so those teams would wear Nike shoes.
- Nike provided 150 pairs of shoes a year, plus clothing and gym bags, to the teams of each top college coach under contract.
- Nike also provided shoes to top high school programs and sponsored basketball camps for high school players.
- Then NCAA director of enforcement David Berst was quoted:
    - "Concern has been expressed by coaches that improper influence is being used - not necessarily by shoe companies, but by individuals who are associated with shoe companies," said David Berst, the NCAA's director of enforcement. "There have been a sufficient number of coaches who have been involved in the recruitment of highly sought-after players - suffice (it to say) that I think we ought to look at it in the near future."
    - Berst, who said he was concerned that "improper payments are being made or that apparel is provided, causing an athlete to enroll in one school over another," said shoe-company representatives had told him that they would cooperate.
- Then Georgia Tech head men's basketball coach Bobby Cremins,[18] who was paid more than $100,000 by Nike, said:
    - "There might be a case where a kid might like wearing Nike shoes and might want to go to a Nike school. I could see that. I could really see that."
    - "I'll call Sonny," Cremins said, "and I'll ask him about a kid, (ask him), 'What do you think about that player?' He might know something about him. But he would jeopardize his whole career and everything he's trying to do by pushing a kid to a certain school."[19]

Ex. 8, Mike Jensen, *Coaches' Shoe Contracts Evoke Concern*, THE SEATTLE TIMES, Aug. 5, 1990 (https://app.box.com/file/628426840209).

The shoe companies have only become increasingly involved in grassroots and college basketball

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[18] Cremins is currently a member of the NCAA's Committee on Infractions.

[19] Thus, Cremins draws a distinction between permissible and essential information sharing and active assistance in recruiting.

since 1990, and their expenditures have increased exponentially. The NCAA has been acutely aware of this process and far from objecting to its development, has condoned it by offering no guidance, direction, or caution to member institutions and coaches concerning the intersection between the sponsorship agreements, grassroots basketball, and the proper navigation by institutions and their coaches of the recruiting process and the shoe companies' ubiquitous presence.

3. Shoe Company Employees and Consultants Heavily Invest in Sponsoring Grassroots Basketball Programs and Youth Player Development

Given this backdrop, it is widely known, understood and accepted that shoe company employees and consultants are heavily involved in grassroots basketball, and they regularly interact and communicate with college coaches, and especially with coaches of programs sponsored by shoe companies. These interactions occur regularly among shoe company employees, representatives and consultants, and coaches all over the country, and no one has ever had reason to believe these interactions transform shoe companies or their representatives into boosters of college athletic programs.

For example, coaches frequently communicate with shoe company representatives about:

- Grassroots programs and PSAs;
- Which PSAs are performing and competing at a superior level;
- Who is involved in a PSA's inner circle and likely will be influential in the PSA's decision about which school to attend;
- Which schools a PSA is considering or may be interested in; and
- Other information that may be useful to a coach in evaluating a PSA.

This is part of the routine, everyday, and perfectly permissible exchange of information attendant to a coach's assessment of a PSA, which has continued without comment from the NCAA for decades. Moreover, shoe company employees and consultants begin forming relationships with PSAs, their families, their inner circle of friends and advisors, and their high school and AAU coaches at an early stage, well before college coaches are permitted under NCAA legislation to contact a prospect. Indeed, because shoe companies sponsor high school and AAU teams as well as camps, clinics and tournaments for PSAs, the

shoe companies' employees and consultants regularly and necessarily interact with PSAs, their families, their inner circle and coaches. This permits shoe companies to forge close relationships with prospects long before the PSAs receive a recruiting call from a college coach. The natural effect of these relationships is that shoe company employees and consultants often develop impressions and share their thoughts and opinions about which colleges they think a PSA should attend.[20]

Until now, no one in college basketball thought, understood, or had reason to believe that the commonplace and important information exchanges, which may include sharing opinions about reputations of coaches of particular programs, would render the shoe company or its employee a booster of a university. This information sharing is in the best interest of PSAs because it gives them valuable information upon which to make a more fully informed decision about which school to attend.

In this case, however, the enforcement staff has cobbled together a series of routine and benign interactions and communications between Adidas representatives Gatto, Gassnola, Code and Cutler on one end, and some members of KU's men's basketball staff on the other, in a strained and contrived effort to establish booster status. The enforcement staff is misinterpreting and misapplying the terms "assist in the recruitment" and "otherwise promoting the institution's athletics program" to transform well-established and perfectly permissible information sharing into purported Level I violations. Again, the enforcement staff must take this meritless approach in order to penalize the KU men's basketball program precisely because no member of the men's basketball staff was involved—either directly or indirectly—or had any knowledge of the secret and, illicit payments made by Adidas employees or consultants.[21]

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[20] Because PSAs and their families and advisors often rely on shoe company employees and consultants in deciding which NCAA school to attend, NCAA coaches strive to have good, positive relationships with shoe company employees and consultants in order to maintain a positive reputation within the grassroots community.

[21] The staff's theory is similar to the vicarious liability theory in tort actions in which the plaintiff alleges that the employer is vicariously liable for the negligent acts of the employee committed in the scope of employment. But the analogy does not fit: (1) Adidas and its employees and consultants were never employees of KU or Self; (2) KU and Self never had the right to control Adidas and its employees and consultants; and (3) even if Adidas and its employees and consultants were somehow under the control and authority of KU and Self, they acted outside of that control and authority when they made illicit, secret, payments to [redacted] and [redacted] to further their own interests.

For example, the enforcement staff has alleged or apparently intends to argue that:

- Adidas, as early as 2014, became a booster of KU athletics merely by virtue of its sponsorship agreement with KU, and, therefore, any interactions or communications between: (1) Gatto, Gassnola, Code and Cutler; and (2) PSAs and their families or advisors; or (3) Self and his staff, in which PSAs were discussed constitute an impermissible recruiting activity under Bylaw 13.01.2 and 13.1.2.1;

- Gatto and Gassnola became boosters of KU when they attended Late Night in the Phog in [redacted] and met with Self and his staff to talk generally about PSAs KU was recruiting.[22]

- Gassnola became a booster of KU when Self and one his assistant coaches knew that Gassnola was communicating with [redacted] about [redacted] interest in obtaining used athletic apparel from Adidas to send to youngsters in Angola.

- Merl Code, another Adidas consultant, became a booster of KU when he shared with Self and Townsend his opinions about what then PSA [redacted] was looking for in an institution to attend.

- Dan Cutler, another Adidas representative who helped run and manage Adidas AAU events, became a booster of KU when Cutler communicated with PSA [redacted] who played on an Adidas AAU team about his interest in attending KU, and then communicated with Self and his assistant coaches to see if KU had any interest in recruiting the young man.[23]

- Former KU head men's basketball coach Larry Brown became a KU booster in 1983 when he was named head men's basketball coach at KU, and thereafter assisted in the recruitment of PSAs when he spoke generally with KU assistant coaches about KU's recruitment of [redacted] and then shared with [redacted] his opinion that KU would be a good institution for [redacted] to attend.[24]

These are the kinds of benign information exchanges which occurred for years in NCAA Division I men's basketball as part of the everyday, routine interactions and networking among grassroots basketball

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22 These kinds of meetings and communications between shoe company employees and coaches have been happening for years. In fact, Gatto and Gassnola had similar meetings with other coaches around the country (who apparently have not been investigated by the NCAA). Moreover, other than having a general discussion, Self and his staff did not ask Gatto and Gassnola to help recruit or do anything improper.

23 Self and his staff did not know anything about Cutler's alleged offer of an impermissible inducement to the PSA. Further, the enforcement staff has failed to delineate exactly which facts support Cutler's designation as a booster. The record actually establishes Cutler had extremely limited contact with the KU men's basketball program, and many of facts relating to the alleged impermissible inducement Cutler made to [redacted] are conflicting, at best.

24 The evidence shows that Brown freely offers his opinions to PSAs about NCAA institutions and coaches is overwhelming, yet only KU and Self have been singled out for charges that Brown is a KU booster and committed recruiting violations.

representatives, apparel company representatives, college coaches, PSAs, and their inner circles. But in this case, because no KU coaches were involved in or aware of illicit money payments, the enforcement staff has intentionally mischaracterized otherwise harmless and commonplace information sharing in order to transform Adidas and its representatives Gatto, Gassnola, Code and Cutler into KU boosters.

Finally, this misconstrual and misapplication of the existing NCAA booster legislation to prohibit routine and permissible information sharing will have virtually unlimited and harmful implications for every collegiate sports program throughout the country that financially benefits from a sponsorship agreement with a major apparel company. That is to say, for every Division I program, necessary and important relationship building efforts benefit coaching staffs across the country by helping them to identify and pursue talented prospects, and enabling those prospects to better understand college opportunities for their own personal academic and athletic development. Indeed, if the staff's theory were adopted by the NCAA and applied across all of Division I, virtually all men's basketball programs would be charged with (or—at a minimum—be at risk for) Level I violations. Gassnola's own communications with Chris Rivers[25] shows that Gassnola was communicating with other DI coaches in the same way that he was communicating with Self and his staff. Putting the alleged illicit payments aside (which Self and his staff did not know about), Gassnola and the other Adidas consultants communicating with DI college coaches about PSAs and grassroots basketball was, and is, the accepted norm. It is truly astounding that the enforcement staff has charged Self with Level I violations based on interactions and communications which the enforcement staff obviously knows regularly, properly, and necessarily, occur in DI men's basketball.

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[25] *See* FI-41, *Gatto, et al.* (SDNY), Gov't Ex. 1096 (https://app.box.com/file/529668736828) (Gassnola's March 9, 2015 email to Chris Rivers concerning activities over the past 90 days).

Procedural Issues

A. Bylaw 19.7.8.3.1 Prohibits the Importation of Facts from or Consideration of Evidence Submitted in *United States v. Gatto, et al.*

Even though nothing adduced in the federal criminal trial established any improper conduct on the part of the University or its coaching staff and, in fact, much of it is supportive of their respective positions, under Bylaw 19.7.8.3.1 (Importation of Facts), facts established or evidence submitted in judicial proceedings that are under appeal may not be considered "in the infractions process."

Adopted August 8, 2018, Bylaw 19.7.8.3.1 reads:

> 19.7.8.3.1 Importation of Facts. Facts established by a decision or judgment of a court, agency, accrediting body, or other administrative tribunal of competent jurisdiction, **which is not under appeal**, or by a commission, or similar review of comparable independence, authorized by a member institution or the institution's university system's board of trustees and regardless of whether the facts are accepted by the institution or the institution's university system's board of trustees, may be accepted as true in the infractions process in concluding whether an institution or individual participating in the previous matter violated NCAA legislation. **Evidence submitted and positions taken in such a matter may be considered in the infractions process.**

Bylaw 19.7.8.3.1 (emphasis added).

By its terms, the bylaw sets forth two categories of "matters" from which facts found may be accepted as true or evidence submitted may be considered "in the infractions process": (1) "a decision or judgment of a court, agency, accrediting body, or other administrative tribunal . . . , **which is not under appeal**"; and (2) "a commission, or similar review of comparable independence, authorized by a member institution or the institution's university system's board of trustees." *Id.* (emphasis added).

Because *Gatto, et al.*[26] is under appeal—and has been—since March 28, 2019, it is not a matter from which facts found may be accepted as true, or evidence submitted may be considered "**in the infractions process**." Thus, not only is the Committee on Infractions prohibited from considering any of the facts found or evidence submitted in the *Gatto, et al.* matter, the enforcement staff also was prohibited

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[26] As noted above, the case number for the pending appeal is United States Court of Appeals for the Second Circuit Case No. 19-783. The case number for the trial-level case is Southern District of New York Case No. 17–cr–0686.

from considering any of the facts found or evidence submitted in *Gatto, et al.* in determining whether to issue a Notice of Allegations.

The case of *Gatto, et al.* was brought by the United States Attorney for the Southern District of New York against three individual defendants: James Gatto, Merl Code, and Christian Dawkins. Ex. 9, Case No. 19-783 Docket Sheet as of March 4, 2020 (https://app.box.com/file/628404059269). Although a jury convicted each defendant, each case is plainly "under appeal." On March 28, 2019, each defendant filed a Notice of Appeal. Ex. 10, Gatto Notice of Appeal (https://app.box.com/file/628426669702); Ex. 11, Code Notice of Appeal (https://app.box.com/file/628454447696); Ex.12 – Dawkins Notice of Appeal (https://app.box.com/file/628436180101). These appeals are currently pending in the United States Court of Appeals for the Second Circuit. Ex. 9 (establishing that the appeal is currently pending). Oral argument is set for Friday, March 13, 2020. Ex. 13, Gatto Oral Argument on Mar. 13, 2020 (https://app.box.com/file/628429426508).

Under Bylaw 19.7.8.3.1, relevant proceedings from which facts, evidence and/or positions may be imported or considered specifically excludes court proceedings that are "under appeal." Bylaw 19.7.8.3.1.

Under the well-established canon of legislative interpretation that when one thing is explicitly authorized, things not explicitly authorized are excluded,[27] by authorizing the importation of facts, and consideration of evidence and positions, from matters that are *not* under appeal, the bylaw establishes that facts, evidence and positions from matters that *are* under appeal may *not* be considered in the infractions process. Bylaw 19.7.8.3.1 does not merely leave matters under appeal off the list of permitted matters; instead, matters under appeal are specifically excluded as matters from which the Committee on Infractions can import facts or consider evidence submitted. This establishes the unmistakable legislative intent to prohibit the use or consideration of facts established or evidence submitted in matters under appeal, and for

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[27] This canon is referred to as *expressio unius est exclusio alterius* (expression of one is the exclusion of another) and has been used to interpret legislation since the founding of this country. *See, e.g., United States v. Arredondo*, 31 U.S. 691, 725 (1832) (United States Supreme Court explaining that "'Expressio unius est exclusio alterius,' is an universal maxim in the construction of statutes.").

which a final judgment has not been rendered, in the infractions process.

Therefore, the hearing panel cannot import facts from or consider evidence submitted (or positions taken) in, the matter of *Gatto, et al.* Furthermore—and of critical importance—allegations brought by the staff against Self that are premised on evidence submitted in *Gatto, et al.*, as well as positions taken by counsel in *Gatto, et al.*, must be withdrawn. Bylaw 19.7.8.3.1 states clearly that evidence submitted, and positions taken, in a matter which is under appeal *may not be considered in the infractions process.*

By operation of Bylaw 19.7.8.3.1, the following Allegations should be withdrawn in their entirety: Allegation 1(a)-(d); Allegation 2(a)-(e); Allegation 3(a) and 3(d); and Allegation 4(b). The staff's own "FI Chart" makes clear that the staff is—at a minimum—at least partially basing Allegations 1-4 directly on documentary evidence, testimony, and counsel's positions taken in *Gatto, et al.* Indeed, no fewer than 44 FIs are imported directly from the Gatto trial record, and every single FI is cited as support for Allegations 1-4.

Furthermore, as explained above, Gatto noticed his appeal from his criminal conviction on March 28, 2019. *United States v. Gatto, et al.*, No. 19-783, Dkt. No. 1. As of this date, the enforcement staff was prohibited under Bylaw 19.7.8.3.1 from using "[e]vidence submitted and positions taken in" the Gatto trial for consideration "in the infractions process." Accordingly, interviews held by the NCAA after this date in connection with this matter—including Townsend's May 16, 2019, as well as Self's May 16, 2019 and August 20, 2019 interviews—could not use evidence from the Gatto trial because it was under appeal. Even a cursory review of these interviews makes clear a significant portion of the staff's questioning was based directly on evidence presented at and argument made in *Gatto, et al.* And, accordingly, it cannot support the allegations identified above. The result is that the allegations outlined above are premised on purported evidence and argument excluded by Bylaw 19.7.8.3.1, in a case currently under appeal, and these allegations must be withdrawn.[28]

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[28] Not only does the staff seek to import facts established and evidence considered the *Gatto, et al.* trial pending appeal, but the staff concurrently disregards sworn testimony and a jury verdict establishing lack of knowledge

To the extent the enforcement staff attempts to argue that its allegations are premised on its own independent investigation, questioning not based directly on excluded evidence, or "evidence" obtained from media reports, this argument fails because the issues are inextricably intertwined with the evidence and positions taken in *Gatto, et al.* It is impossible to separate evidence generated by independent investigation or questioning here, when the enforcement staff's entire investigation was prompted and driven by evidence, testimony, and positions taken in *Gatto, et al.* (evidence that must here be *excluded* because it is under appeal, pending final judicial adjudication).

In conclusion, there is no way the staff can delineate with any particularity what evidence supports Allegations 1(a)-(d), 2(a)-(e), 3(a) and 3(d), and 4(b) and that is *not* directly drawn from *Gatto, et al.* and, therefore, the allegations must be withdrawn.[29]

B. The Enforcement Staff Cannot Establish by Clear and Convincing Evidence that any Allegation Occurred

The NCAA Bylaws articulate an evidentiary standard that must be met for the Committee on Infractions to find that a violation of NCAA rules has occurred. NCAA Bylaw 19.7.8.3 (Basis of Decision) establishes that:

> The committee shall base its decision on information presented to it that it determines to be credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs. The information upon which the panel bases its decision may be information which directly or circumstantially supports the alleged violation.

Although the Bylaws do not further define the enforcement staff's evidentiary burden, this is a high standard. Professor Josephine Potuto, a former chair of the NCAA Division I Committee on Infractions, has explained that Bylaw 19.7.8.3 is equivalent to the "clear and convincing evidence standard" that arises in civil litigation. Potuto drew this analogy in a presentation made at NCAA headquarters during the

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on the part of KU and Self, and instead manipulates the booster legislation to contrive violations which do not exist.

[29] By citing in this response to evidence from the *Gatto, et al.* trial, Self does not waive his argument that Bylaw 19.7.8.3.1 prohibits the consideration of the evidence in the NCAA infractions process because the matter is under appeal. Self cites to the facts established and evidence considered for substantive support for his response in the event the NCAA decides to consider evidence from the trial.

"NCAA Enforcement Experience" presentation, no less. Ex. 14, Steve Yanda, *NCAA Offers Inside Look at Investigation, Enforcement Process*, Washington Post, May 11, 2011 (https://app.box.com/file/628449485882).

In civil litigation, the heightened clear and convincing standard is typically required when substantially important rights and responsibilities are at risk. *See Addington v. Texas*, 441 U.S. 418, 424 (1979) (noting that the standard is used because the "interests at stake in those cases are deemed to be more substantial than mere loss of money and some jurisdictions accordingly reduce the risk to the defendant of having his reputation tarnished erroneously by increasing the plaintiff's burden of proof"); *see also Lutz v. Orinick*, 184 W.Va. 531, 532 (1990). Here, the enforcement staff has alleged unfounded, but serious, violations against Self.

Courts have uniformly explained that the "clear and convincing standard" imposes a substantial evidentiary burden on civil litigants. For example, under Indiana law—the law of the jurisdiction where the NCAA is headquartered—clear-and-convincing evidence is that which "indicat[es] that the thing to be proved is highly probable or reasonably certain," *Hardy v. Hardy*, 910 N.E.2d 851, 859 (Ind. Ct. App. 2009) (citations omitted), and is used in "cases 'where the wisdom of experience has demonstrated the need for greater certainty, and where this high standard is required to sustain claims which have serious social consequences or harsh or far reaching effects on individuals . . . .'" *Civil Commitment of T.K. v. Dep't of Veterans Affairs*, 27 N.E.3d 271, 276 (Ind. 2015) (citations omitted). And as defined by Illinois law, it is "the quantum of proof which leaves no reasonable doubt in the mind of the trier of fact as to the truth of the proposition in question." *See RS&P/WC Fields Ltd. P'ship v. BOSP Invs.*, 829 F. Supp. 928, 962 (N.D. Ill. 1993) (citation omitted) (applying Illinois law); *see also Hornbeck Offshore Servs., L.L.C. v. Salazar*, 713 F.3d 787, 792 (5th Cir. 2013) (citation omitted) (describing clear-and-convincing evidence as that which "produces in the mind of the trier of fact a firm belief or conviction . . . so clear, direct, weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy"). This burden "reflects a heightened standard of proof that indicates that 'the thing to be proved is highly probable or

reasonably certain'" and the "standard places a heavier burden upon one party to prove its case to a reasonable certainty." *Kent K. v. Bobby M.*, 210 Ariz. 279, 285 (2005) (en banc) (citation omitted). And leading secondary sources have described evidence as "clear and convincing" when "it places in the factfinder an abiding conviction that the truth of the factual contentions is highly probable, or if it produces in the factfinder a firm belief or conviction as to the allegation sought to be established." 32A C.J.S. *Evidence* § 1624 (2020).

In sum, under any specific articulation of the "clear and convincing standard," the enforcement staff bears a heavy evidentiary burden, which it cannot satisfy here, in establishing that any violation of NCAA legislation has occurred.

Initial Response to Allegation 1[30]

A. The Allegation

1. [NCAA Division I Manual Bylaws 12.3.1.3, 13.01.2, 13.1, 3.1, 13.1.2.1, 13.1.2.5, 13.2.1 and 13.2.1.1-(e) and 16.11.2.1]

It is alleged that between September and September Adidas, a representative of the institution's athletics interest; TJ Gassnola (Gassnola), a then Adidas outside consultant, representative of the institution's athletics interests and agent; and Jim Gatto (Gatto), a then Adidas director of global sports marketing for basketball, representative of the institution's athletics interest and agent, offered and provided impermissible benefits to and had impermissible recruiting contacts

Specifically:

a. In September and November and January Gassnola had at least three impermissible recruiting contacts with to discuss and later provide recruiting inducements to her and to secure commitment to the institution. During the September 2016 contact, which occurred the same night as the institution's Late Night in the Phog event, Gassnola offered monetary recruiting inducements to to secure enrollment. [NCAA Bylaws 13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1 and 13.2.1.1-(e)]

b. Between November 2016 and February 2017, Gassnola, with Gatto's approval, used approximately $70,000 in Adidas funds to provide the following impermissible recruiting inducements and impermissible agent benefits to and

(1) On or about November 1, Gassnola provided $30,000 to during a meeting in New York City;

(2) Between January 19 and 23, Gassnola provided $20,000 to during a meeting in Las Vegas; and

(3) On or about February 24, Gassnola provided $20,000 via wire transfer to

[NCAA Bylaws 12.3.1.3, 13.2.1 and 13.2.1.1-(e) ( )]

c. On or about June 14, Gassnola, with Gatto's approval, used Adidas funds to provide approximately $15,000 in impermissible agent benefits to via wire transfer after enrolled at the institution. [NCAA Bylaws 12.3.1.3 and 16.11.2.1 ( )]

d. On or about September 23, Gassnola, with Gatto's approval, provided $4,000

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[30] For clarity and consistency, Self has removed from this response citations to footnotes included in the enforcement staff's allegations themselves. The text of each allegation has been repeated herein verbatim.

in impermissible benefits and impermissible agent benefits to [redacted] [NCAA Bylaws 12.3.1.3 and 16.11.2.1 [redacted]

This allegation serves a basis for head coach responsibility and lack of institutional control in Allegation Nos. 4 and 5.

B. Self's Initial Response to Allegation 1

While Self is not named in this allegation, Allegation 4(a)(1) does name him, and it is allegedly based on and derived from Allegation 1(a).[31] Thus, Self will respond to Allegation 4(a)(1) here.

1. Allegation 1(a) – Late Night in the Phog Event

The staff has alleged in Allegation 4(a)(1) that Self knew or should have known that Gassnola had impermissible recruiting contacts with then men's basketball prospective student-athlete [redacted] or his mother, [redacted] during his [redacted] official visit which occurred during the annual Late Night in the Phog event.[32] There is no clear and convincing evidence that Gassnola was a booster, nor is there any such evidence that Self knew or had any reason to know Gassnola had any impermissible recruiting contacts with a family member of a PSA.

The evidence and testimony in the criminal prosecution of Gatto and his associates regarding the lack of knowledge of KU and Self was consistent and compelling. With respect to KU (and Self in particular), Gassnola testified under oath that he undertook numerous, significant steps to hide all of his actions—and, critically, the illicit payments to [redacted] from both the University and Self. FI-006 (*Gatto, et al.*, Trial Tr. at 1023-24, 1040-41, 1044, 1045, 1137-38, 1215. Gassnola even went so far as to have his attorney misrepresent to the University Gassnola's interactions with [redacted] to the University because he "didn't want anybody at Kansas, the coaching staff, to find out that I did that." *Id.* at 1045. Gassnola's testimony makes plain that he secretly met with [redacted] at The Oread, a local hotel during [redacted] official visit and made arrangements to make cash payments to [redacted] *Id.* (*Gatto, et al.*, Trial Tr. 1023-24). It is undisputed that Gassnola and [redacted] deliberately concealed their interactions from the

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31 Self is not named or charged in connection with the remainder of this allegation, i.e., Allegation 1(b), (c) and (d).
32 *See* Allegation 4(a)(1).

University and Self. *Id* (*Gatto, et al.*, Trial Tr. at 915-16, 1017, 1024, 1072, 1160, 1172, 1215); FI-001, Self Tr. (May 17, 2019) at 60-61 (https://app.box.com/file/529690185049); FI-004, Townsend Tr. (May 16, 2019) at 76, 79 (https://app.box.com/file/529691428581).

The staff has not alleged any basis for its allegation that impermissible recruiting contacts occurred, nor cannot prove by clear and convincing evidence that such alleged impermissible contacts actually happened. Nor has the staff alleged how or why Self knew or should have known about Gassnola's secret interactions at The Oread with [redacted] and certainly has not produced evidence of Self's knowledge that such interactions were improper. Gassnola was in Lawrence for the annual Late Night in the Phog event, and [redacted] was accompanying her son on his official visit. Thus, they both had legitimate, independent, and permissible reasons for being in Lawrence. There were no red flags suggesting Gassnola or [redacted] had any intention of doing something illicit or otherwise engaging in impermissible activities or conduct that may violate NCAA rules. Indeed, they were both adults who knew the rules, and took measures to conceal their intentions and actions from Self and his staff.

Head coaches have a responsibility to monitor PSAs' official visits, but they are not strictly liable for the deliberately concealed conduct of others, especially when they are not members of the coach's staff but rather are outside individuals who act in their own interests and do so in covert fashion.[33]

Self acted reasonably and consistent with KU's expectations and NCAA legislation to monitor [redacted] official visit. While he does not today recall any significant details of [redacted] visit, he is certain that consistent with his established custom and practice, and consistent with the University's credentialed and robust compliance program, Self, his staff, and the University monitored the visit and never saw any

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[33] In fact, not only did Gassnola and [redacted] conceal their conduct from Self, but the record is clear [redacted] was able to conceal her actions from her own son, as [redacted] had no knowledge of her actions or even who Gassnola was. 11-13-17 [redacted] Transcript, [redacted] Tr. (Nov. 13, 2017) at 5 (https://app.box.com/file/532756613906), ([redacted] "doesn't know" about the "arrangements" to pay for [redacted] but knows that his grandmother "was willing to help him [redacted]"); *Id.* at 17, 18 (emphatically stating that no one at KU knew about the money because "the loan was based on our personal interaction . . .[i]t didn't have anything to do with [redacted] and "I've never told anybody" that Gassnola had given [redacted] cash).

red flags or other signs suggesting potential violations.[34] Moreover, as required by the University's compliance mandate, [redacted] visit was monitored by the KU athletics compliance office, which found no irregularities or anomalies with the visit.

Given that the alleged impermissible contact was deliberately concealed from Self and occurred in a private setting, there is nothing Self or his coaching staff could have or should have done differently that would have prevented or detected the alleged impermissible activity.

If the enforcement staff provides additional details supporting this allegation, Self reserves the right to supplement his response.

2. Self Reported Information that Led to the Discovery of Gassnola's Payments to [redacted]

While Self is not named in Allegations 1(b), (c) and (d), it is instructive to note that he reported the information to KU which led to the discovery that Gassnola had given money to [redacted] In the fall of [redacted] a confidential source told Self that [redacted] may have accepted money which might be considered impermissible under NCAA rules. Self immediately reported the information to David Reed who then worked with KU's outside counsel to conduct an in-person interview with [redacted] within two days of the report. During that interview, [redacted] admitted to accepting money from Gassnola, but she explained that the money did not relate to her son [redacted] or his enrollment at KU, but instead was a purely personal transaction between her and Gassnola. KU and its outside counsel found [redacted] explanation credible and filed a self-report and reinstatement request with the NCAA. FI-076, Evrad Letters on Dec. 21 and 31, 2017 (https://app.box.com/file/529669035533); FI-162, Evrad Letter to Henderson and Crawford on Dec. 21, 2017 (https://app.box.com/file/529691112502). Specifically, the self-report stated:

> Ms. [redacted] credibly denied that the payment was related to [redacted] or basketball and reported a credible, alternative explanation for the payment.

Id. at 1.

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[34] Nor did KU's exhaustive internal investigation into [redacted] eligibility and [redacted] acceptance of money from Gassnola identify any potential red flags during Late Night in the Phog that were overlooked.

Thus, Self promptly and responsibly initiated the University's internal investigation through which KU disclosed the violation and submitted a reinstatement request.

Initial Response to Allegation 2

A. The Allegation

2. [NCAA Division I Manual Constitution 2.8.1 and Bylaws 12.1.2, 12.3.1.3, 12.11.1, 13.01.2, 13.1, 13.1.2.1, 13.1.3.5.1, 13.2.1, 13.2.1.1-(b), 13.2.1.1-(e) and 16.8.1 (-]

It is alleged that between August and April Self, head men's basketball coach; Kurtis Townsend (Townsend), assistant men's basketball coach; and four representatives of the institution's athletics interests, three of whom also acted as agents, engaged in recruiting violations related to then men's basketball prospective student-athlete This included impermissible recruiting inducements and contacts. As a result of the impermissible inducements, . Specifically:

a. In August Townsend contacted Larry Brown (Brown), a representative of the institution's athletics interests, about Townsend's interest in recruiting At that time, Brown informed Townsend that he would contact (and speak positively about the institution. After Brown impermissibly contacted Brown informed Townsend that wanted sponsorship to outfit a nonscholastic basketball team with which he was affiliated. Townsend failed to report this violation to the institution's compliance staff. [NCAA Constitution 2.8.1 and Bylaws 13.01.2, 13.1, 13.1.2.1 and 13.1.3.5.1 ( )]

b. In August and September 2017, Self and Townsend encouraged and had knowledge that TJ Gassnola (Gassnola), a then Adidas outside consultant, representative of the institution's athletics interests and agent; had impermissible recruiting telephone calls with In the calls, Gassnola encouraged to have enroll at the institution as a student-athlete. Townsend failed to report this violation to the institution's compliance staff. [NCAA Constitution 2.8.1 and Bylaws 13.01.2, 13.1, 13.1.2.1 and 13.1.3.5.1 ( )]

c. On August 9, Adidas, a representative of the institution's athletics interests; Gassnola; Self; and Townsend offered a recruiting inducement to Specifically, Adidas, Gassnola, Self and Townsend worked together to offer shoes and apparel to outfit the nonscholastic basketball team with which he was affiliated. [NCAA Bylaws 12.1.2, 12.3.1.3, 13.2.1 and 13.2.1.1-(b) ( )]

d. Sometime between September 8 and 15, Adidas; Gassnola; and James Gatto (Gatto), a then Adidas director of global marketing for basketball, representative of the institution's athletics interests and agent, provided a $2,500 cash recruiting inducement and impermissible agent benefit to in an effort to secure enrollment at the institution as a student-athlete. [NCAA Bylaws 12.1.2, 12.3.1.3, 13.2.1 and 13.2.1.1-(e) (-

e. On or about September 11, 2017, Adidas, Gassnola and Gatto offered a $20,000

recruiting inducement and impermissible agent benefit to [redacted] in order to persuade [redacted] to have [redacted] enroll at the institution. [NCAA Bylaws 12.1.2, 12.3.1.3, 13.2.1 and 13.2.1.1-(e) ([redacted])]

This allegation serves a basis for head coach responsibility and lack of institutional control in Allegation Nos. 4 and 5.

B. Self's Initial Response to Allegation 2

Allegation 2 claims that Self and Townsend engaged in recruiting violations related to men's basketball PSA [redacted] Furthermore, Allegation 4(b) is premised, in part, on Allegation 2(a), 2(b), and 2(c). Accordingly, Self responds to those allegations here. For the reasons articulated below, the enforcement staff cannot meet its evidentiary burden of clear and convincing evidence that any violations occurred.

1. Allegation 2(a) – Larry Brown Communications with [redacted]

There is no evidence Larry Brown was a KU booster, nor is there any such evidence that Self understood or had reason to understand Brown to be a booster.[35] This allegation derives from the staff's claim that Brown was a booster of KU at the time of the alleged impermissible recruiting contacts, and that Self knew not only of the alleged recruiting contacts, but also that Brown was a KU booster at the time of those contacts. If Brown was not a KU booster at the time of the alleged contacts, then Self did not commit any violation. Similarly, if Self did not know or have reason to know Brown was a KU booster, then he did not know and had no reason to know the contacts were impermissible.[36]

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35 The enforcement staff has taken the remarkable position Brown has been a booster of KU since 1983—the first year Brown was head men's basketball coach at KU. Ex. 2, Hosty Letter to Tompsett, et al. on Feb. 19, 2020.There is no evidence in the record to support the claim Brown has been a KU booster for 37 years, and—in particular—no evidence to explain how Brown was a KU booster from 2012 through 2016, when he was the head men's basketball coach for Southern Methodist University ("SMU")—a Division I member institution. Self trusts the Committee on Infractions will scrutinize the staff's claim appropriately.

36 Allegation 4(b) also alleges in conclusory fashion Self knew or should have known that Townsend was involved in or aware of NCAA violations concerning Brown's purported involvement in [redacted] recruiting, and relies entirely on the staff proving Brown was, in fact, a booster. According to the staff, Self failed to identify red flags, ask pointed questions, or report Brown's alleged involvement to the athletics compliance staff and allow for an independent inquiry into the matters. As explained below, Townsend was not aware—and had no reason to be aware—that Brown was a booster of KU through the very limited contact he had with Brown about [redacted] and [redacted] Accordingly, there were no red flags to identify and report, and there is no basis to hold Self responsible under the head coach control bylaw.

Brown reported to the enforcement staff that he first met [redacted] during a recruiting visit to Montverde Academy when he was the head coach at SMU.[37] FI-077, Brown Tr. (Apr. 4, 2019) at 15-16 (https://app.box.com/file/529697966707). [redacted] coached the girls' team and was [redacted] FI-007, [redacted] Tr. (Nov. 29, 2018) at 40-41, 97 (https://app.box.com/file/529692565415); FI-008, [redacted] Tr. (Feb. 14, 2019) at 73 (https://app.box.com/file/529692902637); FI-077, Brown Tr. (Apr. 4, 2019) at 17. [redacted] was a year ahead of [redacted] and Brown attempted to recruit [redacted] to SMU before Brown left SMU on July 8, 2016. FI-077, Brown Tr. (Apr. 4, 2019) at 17. According to [redacted] was going to attend SMU before Brown resigned. FI-007, [redacted] Tr. (Nov. 29, 2018) at 104; FI-077, Brown Tr. (Apr. 4, 2019) at 16.

[redacted] told the staff that he asked for and relied on Brown's experience and expertise in helping [redacted] choose an institution.[38] FI-007, [redacted] Tr. (Nov. 29, 2018) at 39-43; FI-008, [redacted] Tr. (Feb. 14, 2019) at 75, 79-81, 86, 88-89. [redacted] said based on Brown's advice, [redacted] chose to attend Maryland.[39] FI-007, [redacted] Tr. (Nov. 29, 2018) at 40; FI-008, [redacted] Tr. (Feb. 14, 2019) at 75. [redacted] thereafter asked Brown for recommendations for [redacted] and because [redacted] did not believe Maryland was the best fit for him, [redacted] also chose not to attend Maryland. FI-078, [redacted] Tr. (Dec. 11, 2018) at 31-32 (https://app.box.com/file/529691121164) ("I didn't wanna go there . . . I just thought, I shouldn't, I shouldn't take a visit somewhere where I don't want go."); FI-007, [redacted] Tr. (Nov. 29,

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37 The transcripts of relevant interviews do not make clear, even generally, when this introduction took place. [redacted] initially committed to Brown at SMU on April 1, 2016 (before decommitting and eventually attending Maryland). Ex. 15, Patrick Engel, [redacted] *Commits to SMU*, Apr. 1, [redacted] (https://app.box.com/file/628777914465). Brown and [redacted] initial meeting necessarily occurred prior to that date.

38 [redacted] contradicted some of the statements he made during his first two interviews during a separate interview with the staff on February 14, 2019, which was not attended by KU representatives. Self and his counsel believe most of [redacted] assertions during his separate interview on February 14, 2019, are self-serving and uncorroborated. It does not appear the staff is relying on this separate interview.

39 As far as Self and his counsel know and understand, the enforcement staff has not alleged that Brown is a booster of Maryland for assisting Maryland in the recruitment of [redacted] which is inconsistent with the staff's theory in this case that Brown became a booster of KU because he recommended KU as a good school for [redacted]

2018) at 44-47. Brown spoke positively about KU—as well as about Oregon and UCLA—as good potential fits for [redacted] based on his athletic abilities. FI-007, [redacted] Tr. (Nov. 29, 2018) at 104, 112-13; FI-008, [redacted] Tr. (Feb. 14, 2019) at 76.

KU assistant coach Jerrance Howard knew Brown from his tenure as an assistant coach under Brown while at SMU. At some point prior to [redacted] commitment to KU, Howard had a conversation with Brown during which he hypothetically asked Brown whether if [redacted] inquired of Brown about KU, would Brown be "positive about KU?"[40] FI-077, Brown Tr. (Apr. 4, 2019) at 18. Brown responded that "of course I would" because Howard was at KU and Self was at KU and "why wouldn't I."[41] *Id.*

This kind of communication among coaches who know and have worked with each other happens frequently. And for Brown, this is neither a rare occurrence nor limited to KU, but rather reflects his custom and practice to freely offer his opinions concerning the legions of institutions and staff members with whom he has worked. It does not establish that Brown is a KU booster, and certainly does not establish that Self knew, understood, or should have known Brown to be a booster. Nor is it evidence that the University, Self, or his coaching staff asked Brown to assist in the recruitment of PSAs.

Brown is considered a legend in his profession. He is a member of the Naismith Memorial Basketball Hall of Fame and is the only coach to win both an NBA championship and an NCAA Division I men's basketball national championship. He has extensive professional and personal contacts, and has more than 50 years' of NBA, ABA, NCAA, and Olympic coaching experience. Brown explained to the enforcement staff he is routinely asked for his views on schools and coaching staffs based on this exceptional experience. FI-077, Brown Tr. (Apr. 4, 2019) at 18-19. In fact, Brown answered that he is asked "daily" for his opinions about schools or former players or staff members and confirmed that he

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40 There is no evidence Townsend ever had a similar conversation with Brown. Townsend recalled that in one conversation with Brown, he asked for information about [redacted] recruitment. Townsend Tr. (Dec. 10, 2018) at 12-13. Brown, unprompted, volunteered that he would say "what a great place Kansas is." *Id.* Townsend never asked Brown to contact [redacted] or [redacted] or to assist with KU's recruitment of [redacted]

41 Brown hired Howard as his first assistant coach at SMU based on the recommendation of numerous people. Brown Tr. (Apr. 4, 2019) at 11-12. Self hired Howard away from Brown to join his staff at KU. *Id.*

speaks about them in a good light. *Id.* at 18. And, prior to his interview, Brown was able to identify in only a few minutes more than 40 separate institutions employing men's basketball coaches whom Brown had previously coached. *Id.* at 3-4. Brown made clear he freely dispenses his opinions when asked and has spoken favorably about schools other than KU. *Id.* at 25-26 (explaining this was something he does "all the time," that it was "not just KU," and that Brown "fe[lt] very comfortable doin' that with other people as well").[42]

Further, as it pertains to [redacted] stated that on one occasion, he ([redacted] contacted Brown for advice on good potential fits for [redacted] as [redacted] had in connection with [redacted] and another prospective student-athlete. FI-007, [redacted] Tr. (Nov. 29, 2018) at 39-43; FI-008, [redacted] Tr. (Feb. 14, 2019) at 76, 79–81, 86, 88-89. It was only during this one call initiated by [redacted] that Brown mentioned KU. FI-008, [redacted] Tr. (Feb. 14, 2019) at 84. But Brown indicated he would not tell [redacted] where [redacted] should attend school, *id.* at 78, and Brown also offered his opinion about at least two other universities—Oregon and UCLA. FI-007, [redacted] Tr. (Nov. 29, 2018) at 113; FI-008, [redacted] Tr. (Feb. 14, 2019) at 79, 81–82. There is no evidence Brown contacted either [redacted] or [redacted] about particular schools. [redacted] did not believe Brown was recruiting for KU. FI-008, [redacted] Tr. (Feb. 14, 2019) at 77–79. And Brown had no recollection of speaking to either [redacted] or [redacted] about Kansas. FI-077, Brown Tr. (Apr. 4, 2019) at 18-20.

The record is also clear Brown never made any recommendation or suggestion concerning KU to [redacted] himself, and [redacted] communications with Brown had no impact on his decision. [redacted] met Brown when he was at [redacted]. FI-078, [redacted] Tr. (Dec. 11, 2018) at 17. [redacted] was not being recruited by Brown to SMU while he was head men's basketball coach. *Id.* at 16. In [redacted] conversations with Brown, he made clear the two never talked about basketball—instead, they

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[42] The enforcement staff has apparently not pursued or investigated any of the other institutions or PSAs with whom Brown has communicated about his knowledge, experience and opinions. The staff has singled KU and Self out for allegations involving Brown, even though he made clear to the staff that he has these types of communications all the time with many different institutions and PSAs.

would discuss [redacted] general well-being and "other stuff." *Id.* Indeed, [redacted] plainly stated he "never" felt like Brown was recruiting him. *Id.* And when [redacted] was expressly asked by the enforcement staff if Brown ever discussed Kansas, [redacted] flatly denied it, stating "I never talked to, uh, Larry Brown about basketball." *Id.* [redacted] affirmed his denial when the staff tried to pursue the issue. *Id.* [redacted] never told [redacted] that Brown spoke positively about Kansas, among other institutions. *Id.* at 17. [redacted] made the decision to attend Kansas himself. In fact, [redacted] did not want to attend Maryland, and indeed never even took an official visit to Maryland. *Id.* at 29. And, in [redacted] own words, "[h]onestly, I have been watching Kansas since my freshman and sophomore year," Kansas was always one of his "top one" or "top two schools," and that after his junior year of high school, [redacted] "just had an idea of what school I wanted to go to." *Id.* at 28.

Finally, even if there were sufficient evidence to support a booster designation for Brown, there is no support for the allegation that Self knew or had reason to know Brown was a booster for the program. Brown could not recall ever specifically discussing [redacted] recruitment with Self. FI-077, Brown Tr. (Apr. 4, 2019) at 18). And even if Howard's or Townsend's conversations with Brown were inappropriate—and Self contends they were not—nothing in the record indicates Howard relayed to Self the contents of his conversation with Brown, and there is nothing to suggest Self was otherwise aware of the conversation or should have known of it.

Quite simply, there is no basis for the allegation that Brown acted as a representative of KU's athletics interests with respect to [redacted] commitment and, to the contrary, there is ample evidence in the record disproving such an allegation. And even if a booster designation were somehow appropriate for Brown, there is no evidence Self was or should have known of it at the time.[43]

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[43] A review of the transcripts from Self's interviews with the enforcement staff makes clear the staff was either not concerned with what Self may or may not have been aware of concerning Brown's conversations with his staff, or simply did not want to give Self the opportunity to answer on the record. Self sat with the enforcement staff on two separate dates, May 17, 2019, and August 20, 2019, for approximately eight hours' worth of questions. Brown was not brought up once by the enforcement staff in either interview, nor were questions asked of Self's knowledge of his staff's conversations concerning [redacted] recruitment. In fact, Self was not even asked as a

2. Allegation 2(b) and (c) – T.J. Gassnola's Communications with [redacted] Regarding Used Gear

First, contrary to the allegation, Self did not know or have any reason to know that Gassnola was a representative of KU's athletics interests, nor did he encourage Gassnola to have recruiting calls with [redacted] in order to persuade [redacted] enroll at KU. These are the enforcement staff's summary conclusions and they are not supported by the record.[44] Rather, the record shows that, with respect to the coaching staff's knowledge of Gassnola's activities, no offer of impermissible benefits was ever made or intimated, and only basic contact information was provided to one grassroots representative concerning another grassroots representative. Moreover, it is common knowledge within the industry that AAU sponsorships are frequently sought from the major apparel companies, and interested parties frequently rely on industry networking to obtain sponsorship opportunities and information.

When [redacted] first contacted Townsend, he explained that he was interested in obtaining used basketball gear to ship to young basketball players in Angola. FI-007, [redacted] Tr. (Nov. 29, 2018) at 58-59; FI-005, Townsend Tr. (Dec. 10, 2018) at 20 (https://app.box.com/file/529691861726). [redacted] explained that he wanted only used gear, not new gear, because the Angolan import taxes on new gear would be so high that the team in Angola would be unable to pay them. FI-007, [redacted] Tr. (Nov. 29, 2018) at 58-59. Townsend also believed [redacted] may have been seeking a sponsorship for that team. FI-005, Townsend Tr. (Dec. 10, 2018) at 14; *see also* FI-001, Self Tr. (May 17, 2019) at 97-98 (explaining that he was unsure whether [redacted] was interested in a sponsorship or product for an Angolan team).

Townsend first suggested Nike and Under Armour as possible sources of used gear and then as a

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hypothetical, generally, whether speaking with a former coach or employee of Kansas about that person's opinion of the University would be permissible under existing NCAA rules.

[44] Allegation 4(b) also alleges Self knew or should have known that Townsend was involved in or aware of NCAA violations concerning Gassnola's purported involvement in [redacted] recruiting. According to the staff, Townsend failed to identify red flags, ask pointed questions, or report Gassnola's alleged involvement to the athletics compliance staff and allow for an independent inquiry into the matters. And, as head coach, Self is presumed responsible for that violation. As explained below, Townsend was not aware—and had no reason to be aware—that Gassnola was a booster. Accordingly, there were no red flags to identify and report, and there is no basis to hold Self responsible under the head coach control Bylaw.

third option, he suggested Adidas and put [redacted] in contact with Gassnola. FI-008, [redacted] Tr. (Feb. 14, 2019) at 13; FI-005, Townsend Tr. (Dec. 10, 2018) at 15. The purpose was not to have Gassnola help recruit [redacted] to KU, it was solely to connect [redacted] an individual associated with grassroots basketball, with Adidas, which is in the business of sponsoring grassroots teams and organizations, and which might have been interested in providing gear to [redacted] FI-008, [redacted] Tr. (Feb. 14, 2019) at 66 ("I was in contact with Adidas, but it was through [Gassnola] about the used jerseys, it had nothing to do with [redacted] He was never mentioned."). Moreover, Self had the clear understanding that any arrangements for a sponsorship or gear would be made between the parties. Self did not ask Adidas or Gassnola to provide or give anything to [redacted] he and Townsend simply connected two parties.

On August 9, 2017, Self and Gassnola had a brief exchange of text messages related to [redacted] At 9:33PM, Gassnola texted Self to inform him that he "talked with [redacted] FI-061, Gassanola and Self Texts on Aug. 9, 2017 (https://app.box.com/file/529691011198). Self asked "[w]e good?", prompting the response from Gassnola "[a]lways. That[] was light work. Ball is in his court now."[45] *Id.* While this exchange has been the subject of substantial, irresponsible media speculation and projection, the evidence in the record establishes it was simply in relation to [redacted] efforts to obtain used gear for Angolan amateurs. Gassnola testified under oath his reference to "light work" was simply the "uniforms, bags and stuff that [redacted] wanted for Angola," FI-006 (*Gatto, et al.*, Trial Tr. at 1178), and expressly denied that "light work" referred to any "agreement to pay [redacted] $20,000." *Id.* at 1177. [redacted] separately explained in his 2018 interview that "light work" referred to his contacting Gassnola, and [redacted] emphasized "all I ever asked [Gassnola] was for some gear." FI-007, [redacted] Tr. (Nov. 29, 2018) at 91. Self affirmed [redacted] characterization of the text, noting that "light work" to Self would be "whatever [redacted] talked to [Townsend] about," which was connecting two AAU guys—[redacted] and

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[45] While FI-061 includes a text from Gassnola to Self from eleven hours earlier asking Self to call Gassnola, the record is clear Gassnola was simply interested in getting information from Self as to whether Self believed KU and Adidas would agree to renew their sponsorship agreement. FI-001, Self Tr. (May 17, 2019) at 97.

Gassnola—to discuss a sponsorship, or obtaining product for the Angolan program [redacted] was referencing. FI-001, Self Tr. (May 17, 2019) at 96. There is nothing about this exchange to suggest it is anything other than innocuous and benign.

Beyond this brief exchange with Gassnola, Self had *no* communications regarding [redacted] efforts to obtain used gear. Self was not a party to the communications between Gassnola and [redacted] and, therefore, does not know specifically what they discussed. [redacted] reported that Gassnola never got back to him on his request for used gear. FI-008, [redacted] Tr. (Feb. 14, 2019) at 28.

Following the initial contact, Gassnola apparently stayed in touch with [redacted] Gassnola and [redacted] spoke on at least four occasions. FI-007, [redacted] Tr. (Nov. 29, 2018) at 60-61. Self was not involved in or aware of those communications. His only knowledge of Gassnola speaking to [redacted] was in connection with [redacted] interest in obtaining either gear or a sponsorship from Adidas, which had nothing to do with KU's recruitment of [redacted] *See, e.g.*, FI-001, Self Tr. (May 17, 2019) at 61, 94-96.

Finally, because Gassnola never communicated with [redacted] and [redacted] never told [redacted] about his communications with Gassnola, Gassnola had no influence on [redacted] decision to attend KU. FI-078, [redacted] Tr. (Dec. 11, 2018) at 30-31; FI-007, [redacted] Tr. (Nov. 29, 2018) at 99; FI-008, [redacted] Tr. (Feb. 14, 2019) at 66. In fact, [redacted] had never heard of Gassnola until the trial in October 2018 at which Gassnola testified. FI-078, [redacted] Tr. (Dec. 11, 2018) at 33. [redacted] made clear, and it is undisputed, that he made his own decision to attend to KU and he was not improperly influenced by anyone, including [redacted] *Id.* at 28-30.

3. <u>Allegation 2(d) – Provision of $2500 to</u> [redacted]

Self is not named in this allegation and, therefore, understands he is not expected to respond.

4. <u>Allegation 2 (e) – Alleged Offer of $20,000 to</u> [redacted]

Self is not named in this allegation and, therefore, understands he is not expected to respond.

Initial Response to Allegation 3

A. The Allegation

3. [NCAA Division I Manual Constitution 2.8.1 and Bylaws 12.1.2, 12.3.1.2, 13.01.2,13.1, 13.1.2.1, 13.1.2.5, 13.2.1 and 13.2.1.1-(e) ; 12.1.2,12.3.1.2 and 16.11.2.1 ; 13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1 and 13.2.1.1-(g) (13.01.2, 13.1, 13.1.2.1 and 13.1.3.5.1 ( )]

It is alleged that between December 2014 and September 2017, three consultants of Adidas, who were also representatives of the institution's athletics interests and agents, engaged in impermissible recruiting activities with three prospective student athletes. Bill Self (Self), head men's basketball coach, and Kurtis Townsend (Townsend), assistant men's basketball coach, had knowledge of some impermissible recruiting contacts. Also, one of the representatives of the institution's athletics interest, who was also an agent, provided an impermissible benefit and an impermissible agent benefit to the guardian of a then student-athlete. Specifically:

a. During the academic year, TJ Gassnola (Gassnola), a then Adidas outside consultant, representative of the institution's athletics interests and agent, engaged in violations in an effort to recruit then men's basketball prospective student-athlete to the institution, and later communicated some of his efforts to Self. Specifically, on or about December 11, Gassnola had an impermissible recruiting contact with in San Diego. Then in the winter of Gassnola provided $15,000 to a family friend of who was to provide the money to mother. Finally, on August 19, and after enrolled at another institution, Gassnola communicated in a text message to Self that he had let Self down in the recruitment of [NCAA Bylaws 12.1.2, 12.3.1.2, 13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1 and 13.2.1.1-(e) ( )]

b. On or about March 22, Gassnola provided an impermissible benefit and impermissible agent benefit in the form of an indeterminate amount of cash through a wire transfer to [NCAA Bylaws 12.1.2, 12.3.1.2 and 16.11.2.1 ( )]

c. On or about June 27 through July 1, Dan Cutler (Cutler), a then Adidas outside consultant, representative of the institution's athletics interests and agent, had an impermissible recruiting contact with and offered an impermissible recruiting inducement to men's basketball prospective student-athlete Specifically, Cutler had contact with at an Adidas basketball event in Los Angeles and inquired if would be open to recruitment by the institution. When answered affirmatively, Cutler informed that if he enrolled at the institution, then Cutler and Adidas would ensure parents could attend his games by providing financial assistance for their travel expenses. Within three weeks of Cutler's impermissible contact and offer, Self learned that Cutler had been in contact with and of interest in the institution. Self then telephoned and spoke with him and his mother about attending the institution. [NCAA Bylaws 13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1 and 13.2.1.1-(g) ( )]

d. On or about September 14, [redacted] Merl Code (Code), a then Adidas outside consultant, representative of the institution's athletics interests and agent, had an impermissible recruiting contact with the family of then men's basketball prospective student-athlete [redacted] and learned recruiting information and what it would take for [redacted] to commit to the institution and participate as a men's basketball student-athlete. In a telephone call, Code communicated some of what he learned to Self and Townsend just prior to their scheduled home visit with the [redacted] family. Code provided additional information to Townsend after the home visit. Townsend failed to report this violation to the institution's compliance staff.[46] [NCAA Constitution 2.8.1 and Bylaws 13.01.2, 13.1, 13.1.2.1 and 13.1.3.5.1 ([redacted])]

Allegation Nos. 3-a, 3-c and 3-d serve as a basis for head coach responsibility as noted in Allegation No. 4. Allegation Nos. 3-a through 3-d serve as a basis for lack of institutional control, as noted in Allegation No. 5.

B. Self's Initial Response to Allegation 3

This allegation is premised upon on the enforcement staff's claim that three Adidas consultants (Gassnola, Cutler, and Code) were boosters of KU at the time of the alleged impermissible recruiting contacts, that Self knew or should have known that they were boosters, and that they were engaged in such impermissible contacts. Consistent with the enforcement staff's other allegations, if these three men were *not* boosters—the staff's allegations simply fall apart, as Self could not be accountable for their actions. Similarly, even *if* a booster designation were somehow appropriate, because Self did not know and did not have reason to know these men were engaged in impermissible contacts, there is also no violation.

Based upon the record before the hearing panel, the enforcement staff cannot show in clear and convincing fashion that Gassnola, Cutler, or Code were promoting KU's athletics interests or assisting in the recruitment of PSAs. As explained in the Introduction, the men do not meet the definition of a traditional booster because they have neither donated money to KU's athletic program nor are they members of KU booster groups. Further, there is no precedent for finding that a shoe company becomes a booster of an institution's athletics program by virtue of an arms'-length sponsorship contract, which then automatically converts each and every employee of the shoe company into a booster and thus imposes obligations on the

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[46] Self's failure to report this violation is included in Allegation No. 4.

institution to educate and monitor the conduct of those employees.

However, even if the panel determines that Gassnola, Code and Cutler were KU boosters at the time of the alleged impermissible recruiting contacts, by virtue of their actions to promote the institution's athletics interests or to assist in the recruitment of PSAs, Self did not know and had no reason to know of such activities. Further, neither Self nor the University, including its widely-respected compliance staff, knew or had any reason to know the enforcement staff would misinterpret and misapply existing NCAA legislation to manufacture booster status for third-party sponsors simply by virtue of an arms'-length sponsorship agreement.[47] Such a misapplication of the existing legislation would compel NCAA member institutions throughout the country to undertake the impossible responsibility of policing all employees, consultants, and representatives of their sponsoring apparel company, an impossible task in terms of the human and fiscal resources it would require. To punish Self (or KU) retroactively based solely on the NCAA's wholly novel (and deeply flawed) legislative interpretations raises significant questions of fundamental fairness in the application of the NCAA's rules on member institutions and their employees. Moreover, under such a strained interpretation, as explained in Self's response, countless current and former SAs would be classified as ineligible due to their pre-enrollment participation in non-scholastic events and on grassroots teams that were provided financial support by Nike, Adidas, Under Armour, and others.

1. Allegation 3(a) – Gassnola's Alleged Involvement with [redacted]

The allegation that Self knew or had reason to know of Gassnola's alleged impermissible recruiting contacts with [redacted] is based entirely on a text thread between Gassnola and Self on August 19, 2017, in which they discussed the recent Adidas-KU sponsorship extension, some purported internal fighting at

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[47] The enforcement staff's attempt to *now* proscribe such routine and benign relationship-building interactions with shoe company representatives rings strikingly similar to an attempt to an enact an *ex post facto* criminal law. *See, e.g., United States v. Rose*, 153 F.3d 208, 210 (5th Cir. 1998) (citation omitted) (explaining that the *Ex Post Facto Clause* of the Constitution "prohibits the retrospective application of a criminal law which prejudices a defendant" and that a law "violates the *Ex Post Facto* Clause if (1) it criminalizes conduct that was legal when done; (2) inflicts greater punishment for an offense than was inflicted by the law in existence at the time the offense was committed; or (3) eliminates a defense that was available under the law at the time the offense was committed"); *United States v. Kruger*, 838 F.3d 786, 790-91 (6th Cir. 2016).

Adidas about KU, issues involving Adidas' support of grassroots basketball, and which ends with Gassnola stating, "I promise you. I got this, I have never let you down **Except (lol.**" *See* FI-040, *Gatto, et al.*, Defense Exhibit 192 (https://app.box.com/file/529690910243) (emphasis added); FI-001, Self Tr. (May 17, 2019) at 79-85. Self did not respond to statement and there are no other relevant communications between Self and Gassnola.

Self did not know, and had no reason to know of, Gassnola's alleged improper recruiting contact with in December 2014, three years prior to Gassnola's unsolicited text to Self—if this contact ever even occurred.[48] The enforcement staff does not allege otherwise. Nor did Self know, or have reason to know, of the alleged payment by Gassnola of $15,000 to a family friend in 2015. Again, the enforcement staff does not allege otherwise. In addition to Self's complete lack of knowledge, there is *also* absolutely no evidence that either the December 2014 contact (if it happened) or the payment were for the purpose of assisting in the recruitment of to KU. At trial, Gassnola testified, under oath, that he made the payment, "[b]ecause I felt bad for his family and I wanted to establish a relationship between him, his family and Adidas." FI-006 (*Gatto, et al.*, Trial Tr. at 1010). Thus, the limited evidence available in fact shows Gassnola's contacts with were purely for the purpose of ultimately securing a future Adidas endorsement with when he became a professional.

Because of this lack of evidence supporting its allegation against Self, the enforcement staff is forced to rely entirely on a single text exchange between Self and Gassnola, where Gassnola made an

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[48] The enforcement staff represented to Self during his August 20, 2019 interview that Gassnola said at the Gatto trial that he had contact with on December 11, 2014. Self Tr. (August 20, 2019) at 22. The trial transcript is devoid of any testimony—or even discussion—concerning Gassnola having contact with in 2014. To the extent the enforcement staff is relying on Government Exhibit 1096 from the *Gatto* trial (FI-41), that reliance is misplaced. A review of the exhibit in question—a March 2, 2015 email from Gassnola to Chris Rivers—makes clear there is no evidence to support the claim Gassnola had contact with The email states: "Dec 11 and 12 AC [Anthony Coleman] aka Genuine (1 3rd of the SOUL PATROL) went to san Diego to see and took to Dinner spent time with before hand." The clear and unambiguous text states that only Anthony Coleman of Adidas saw FI-006 - *Gatto, et al.*, Trial Tr. at 996 (https://app.box.com/file/529690079579). This reading is supported by Gassnola's practice of including himself in a group of Adidas representatives when he was present in that same email.

unsolicited comment in the text that he never let Self down "Except (lol." In addition to being entirely unsolicited, Gassnola's comment was made in a text thread completely unrelated to or his recruitment. And Gassnola's single text was punctuated by "lol," which is universally understood to be a way to draw attention to a joke or an amusing statement. In effect, Gassnola's single text is a throwaway comment, i.e., something someone says or writes quickly and is not intended to be serious. It did not (nor should it have) put Self on notice that Gassnola had done something impermissible with or that Gassnola was somehow promoting KU's athletics interests or assisting in the recruitment of Indeed, neither Self nor Townsend knew or understood why Gassnola made this unsolicited, humorous, and sarcastic remark—nor should they—as Gassnola did not assist in the recruitment of and neither Self nor his staff requested that he provide any help whatsoever in that regard. FI-004, Townsend Tr. (May 16, 2019) at 123.

None of the evidence, considered together, establishes clearly and convincingly that Gassnola's unsolicited comment constitutes assisting in the recruitment of or that Self should have understood it to reflect that. In fact, Gassnola's interest in related to promoting Adidas. During the *Gatto, et al.* trial, Gassnola was questioned under oath about the text and gave some insight as to what he meant:

> Q. You testified earlier about this is that right?
>
> A. Yep.
>
> Q. And you tried to recruit for Coach Self to go to the University of Kansas, is that correct?
>
> A. At the time I met at that time it was about grassroots, putting him on one of our grassroots team.
>
> Q. Did Coach Self at Kansas ever tell you that he really wanted to have on the team at the University of Kansas?
>
> A. He was the number one player in the country. Everybody wanted to recruit him.
>
> Q. Did you feel that you let Coach Self down when did not go to the University of Kansas?
>
> A. I did.

FI-006 (*Gatto, et al.*, Trial Tr. at 1106-07).

Although Gassnola's testimony here is limited, it nevertheless demonstrates an important insight regarding his state of mind. Gassnola testified that his interactions with [redacted] were intended to "establish a relationship between him, his family, and Adidas." FI-006 (*Gatto, et al.*, Trial Tr. at 1010). It was never about trying to recruit [redacted] to KU. Nevertheless, [redacted] only attended one Adidas grassroots event: Adidas Nations, *id.*; he never played for an Adidas grassroots team, *id.* at 1011; he went on to enroll at the University [redacted] a Nike-sponsored school, *id.*; and when he did have the good fortune of making it to the NBA, he signed an endorsement deal with Puma. *Id.* at 1010.

Put in context, Gassnola's involvement with [redacted] and payment to [redacted] family was a failed attempt to establish loyalty to Adidas, with the hope [redacted] would join an Adidas grassroots team, and then undertake an endorsement deal as a professional. Thus, Gassnola's conduct was intended to benefit Adidas and, derivatively, himself. Gassnola's personal feelings of subjective guilt, devoid of context or explanation, cannot possibly serve as sufficient evidence to put Self on notice as to any impermissible recruiting contacts.

Indeed, Self would have no reason to believe Gassnola's comment was anything more than unsolicited, friendly banter. As stated above, it is undisputed that Self did not know about Gassnola's interactions with [redacted] And it is illogical to believe that the comment establishes that Gassnola was assisting with recruitment two or three years prior, and that Self had knowledge of these acts. The evidence shows Self and his staff (i) began recruiting [redacted] prior to Gassnola's first purported contact with [redacted] (ii) had superior, longer-lasting contacts with [redacted] and his mother than Gassnola's extremely limited interactions, and (iii) neither Self nor his staff ever asked Gassnola to assist in the recruitment of [redacted] FI-004, Townsend Tr. (May 16, 2019) at 10, 116-118, 122-123.

In sum, there is simply no evidence—and certainly not clear and convincing evidence—to establish Gassnola's dated and limited interactions with Gassnola render him a representative of the University's athletics interests, or that Self was aware of or had reason to be aware of such actions.

2. Allegation 3(b) – Gassnola's Alleged Payment to [redacted]

Self is not named in this allegation and, therefore, understands he is not expected to respond.

3. Allegation 3(c) – Cutler's Alleged Involvement with [redacted]

First, the enforcement staff cannot prove by clear and convincing evidence that Cutler was a representative of KU's athletics interests, assisted in the recruitment of [redacted] or otherwise promoted KU's athletics interests, or that Self knew or should have known that Cutler's fleeting interactions with a single PSA would transform Cutler into a booster.

It is indisputable under decades of NCAA precedent that Cutler is not a KU booster. Cutler never financially supported KU's athletics program, he is not a member of any KU booster group, and he is not a season ticket holder. Furthermore, there is no evidence Cutler worked to promote the University's athletics interests or assist in the recruitment of PSAs. Every coach interviewed from the men's basketball staff denied ever using or asking Cutler to assist with recruiting. *See* FI-086, Howard Tr. (May 15, 2019) at 30-31, 40 (https://app.box.com/file/529692001541); FI-091, Roberts Tr. (May 15, 2019) at 17, 26-27 (https://app.box.com/file/529691178054); FI-092, Roberts Tr. (Aug. 13, 2019) at 5-7 (https://app.box.com/file/529691431795). Multiple members of the men's basketball support staff did not even know who Cutler was. *See* FI-084, Quartlebaum Tr. (June 20, 2019) at 30 (https://app.box.com/file/529669108134); *see also* BBechard_TR_062019_Kansas_00874, Bechard Tr. (June 20, 2019) at 15 (https://app.box.com/file/527323526882); LHare_TR_061919_Kansas_00874, Hare Tr. (June 19, 2019) at 28 (https://app.box.com/file/527321075315). In fact, Adidas' own on-campus licensed property manager, Stephanie Temple, had never met Cutler and had no idea who he was. FI-080, Temple Tr. (June 10, 2019) at 13 (https://app.box.com/file/529693751434). And, as noted *infra*, Self spoke to Cutler "maybe" five times.[49] Simply put, other than pointing to the Adidas sponsorship agreement, the enforcement staff failed to specifically identify the relationship between the facts it relies upon, and how

[49] Despite the fact Cutler is alleged to have been representing KU's athletics interests and assisting in the recruitment of PSAs, the enforcement staff did not ask Townsend a single question about Cutler.

those facts demonstrate support for their designations of booster status or institutional knowledge of that status.[50]

Second, as is the case with Gassnola, even if Cutler was somehow deemed a booster under the enforcement staff's forced interpretation of existing NCAA legislation, there is simply no evidence Self knew or should have known Cutler was promoting KU's athletics program. Cutler and Self did not communicate. Self "probably talked to Dan [Cutler] five times in [Self's] life." FI-001, Self Tr. (May 17, 2019) at 41. There were no direct communications between Self and Cutler from 2013-2017. At most, there were extremely limited communications between Cutler and Norm Roberts. And Self received only general information through Roberts from Cutler that the [redacted] family might be interested in KU. FI-002, Self Tr. (Aug. 20, 2019) at 17 (https://app.box.com/file/529690585892); FI-131, Sullivan Letter to Hosty re. Cutler Phone Records (https://app.box.com/file/529692478047). There is simply no factual basis to find Self knew or should have known Cutler was acting to promote KU's athletics program. And this says nothing of the fact that in 2017 (or, frankly, at any point prior to September 23, 2019) neither Self nor KU (with a robust compliance department) had any reason to believe such innocuous communications might one day be deemed impermissible.

Third, even if the panel finds that Cutler was a KU booster at the time of the alleged improper recruiting inducement, Self did not know, and had no reason to know, that the NCAA would invent a new and novel theory that shoe company employees become boosters of an institution by virtue of the institution's sponsorship agreement with the shoe company. As referenced above, Self's understanding that Cutler was not a booster simply because of his connection with Adidas is consistent with the unanimous assessment of five accomplished, senior athletics administrators who the enforcement staff interviewed in

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[50] On February 19, 2020, the enforcement staff sent a letter to Self's (and Townsend's) counsel purporting to identify specific facts and evidence supporting the enforcement staff's conclusory allegations that Gassnola, Code, Gatto, and Cutler were representatives of KU's athletics interests. Ex. 2, Hosty Letter to Tompsett, et al. on Feb. 19, 2020. The enforcement staff's letter, however, failed entirely to delineate as to which particular facts—or how those facts—support booster designations for identified Adidas affiliates. Instead, the enforcement staff simply pointed to large swaths of the record.

this case.[51]

Further, Self did not know and had no reason to know that Cutler himself had done anything improper. As the allegation states, Self knew only that Cutler had been in contact with [redacted] and of [redacted] interest in attending KU. Cutler was an Adidas employee whose job was to help oversee Adidas' grassroots program. He helped organize and run various Adidas camps and clinics. In his role with Adidas, Cutler had frequent contact with [redacted] and his parents (as well as with many other PSAs). That is precisely the kind of communication shoe company employees, high school and AAU coaches, and others involved with grassroots basketball have *all the time* with PSAs and their families. Moreover, during the three-day period KU spent evaluating [redacted] Cutler did nothing other than share general information. In fact, Self said that he made one call to [redacted] or [redacted] mother shortly after hearing from Cutler and found out that Cutler's information about [redacted] being interested in Kansas, was wrong. On July 20, 2017, Self spoke with [redacted] for three minutes, and [redacted] mother for three minutes—the first time he had ever spoken with either individual.[52] FI-001, Self Tr. (May 17, 2019) at 49. Three days later, [redacted] committed to [redacted] on July 23, 2017. Absolutely nothing from the interview of [redacted] mother even suggests Self discussed anything improper, and [redacted] mother even stated she told Self at that time [redacted] was not interested in being recruited by KU. FI-016, [redacted] Tr. (Nov. 13, 2018) at 20 (https://app.box.com/file/529693001169) ("So Kansas never had a chance to offer. Kansas—I spoke with coach Self on the phone and he asked me straight out if we were interested in an offer and I said no."). There is no evidence Self and his staff had anything more than a single piece of general, outdated information from Cutler.

Finally, at best, the information concerning what Cutler purportedly told [redacted] and when—is conflicting. As the University explains at length in its Response, there were "numerous inconsistencies

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[51] *See* IN-1,2, *infra* (Jeff Long, Sheahon Zenger, Larry Keating, Sean Lester, David Reed—NAAC Frank Kara Leadership Award recipient).

[52] There is also a one-minute outgoing call to [redacted] phone, almost certainly a missed call, as Self called [redacted] mother immediately thereafter. FI-001, Self Tr. (May 17, 2019) at 49.

between the versions of events given by [redacted] and his parents,"[53] and "[t]he 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." Response of the University of Kansas 78-79.[54] Thus, there is no basis to find, based on the weight of the evidence, that Cutler made any offer of an impermissible inducement to [redacted] and even if he had, that Self knew or should have known Cutler was acting as a booster, and therefore no violation occurred.

4. Allegation 3(d) – Merl Code's Alleged Communications to Self and Townsend About [redacted][55]

Allegation 3(d) against Self is nearly identical to Allegation 3(c) concerning Cutler. The enforcement staff has no evidence supporting the idea that Self and his staff had regular—or even infrequent—contact with Merl Code, thus converting him into a representative of KU's athletics interests under the enforcement staff's misguided interpretation of the relevant legislation. Because of this, the

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[53] Counsel for coach Self are disappointed that both [redacted] parents were permitted to interview together before the enforcement staff, and under such informal circumstances. As the University correctly notes in its Response, there were multiple times during the [redacted] interview where they appeared to talk over one another or engaged in "much back and forth" in an effort to agree upon a timeline of events and to relay even basic details concerning Cutler's purported representation to [redacted] Response of the University of Kansas to Allegation at 78-79. Self has full confidence the Committee on Infractions will scrutinize their answers appropriately, but notes the [redacted] interviewing together provided them ample opportunity to give the enforcement staff a version of events eminently unreliable, and not supported in any way by independent and objective recollection.

[54] By way of example, [redacted] claimed Cutler approached him at a tournament in Los Angeles, whereas Cutler's parents claimed it was in Spartanburg, South Carolina. Response of the University of Kansas to Allegation at 78-79. A discrepancy exists as to whether [redacted] told his parents about Cutler's approach immediately after the AAU tournament in Los Angeles or weeks later on a car ride leaving an AAU tournament in Lawrence, Kansas. *Id.* There was also an inconsistency as to whether Self called the [redacted] family in Spartanburg or Lawrence—two entirely different weekends, as well as whether Self spoke to both [redacted] and his mother or only [redacted] mother, *id.*, as well as the length of those calls. There were also discrepancies between the [redacted] representations concerning whether or not they ever informally the University of Kansas: [redacted] claimed they never visited KU, whereas his parents informed the enforcement staff they visited Allen Fieldhouse when they were in Lawrence for the July 2017 AAU tournament. *Id.*

[55] Allegation 4(b) similarly alleges without supporting evidence Self knew or should have known that Townsend was involved in or was aware of NCAA violations involving [redacted] and that Self failed to identify red flags, ask pointed questions, or report the matters to the athletics compliance staff and allow for an independent inquiry into the matters. As explained below, the evidence in the record makes clear there were no violations involving [redacted] recruitment, and thus no red flags or concerns to report to Self.

enforcement staff has pounced on two brief, inconsequential calls with Code. Whether considered independently or together, these calls cannot satisfy by clear and convincing evidence that Code was promoting KU's athletics interests, was a representative of KU's athletics interests, was assisting in the recruitment of PSAs, or that Self knew or should have known such activities were occurring. Accordingly, the allegation is unfounded and should be withdrawn.

Setting aside the two brief calls with Code, discussed fully *infra*, the evidence in the record makes clear Code was far removed from being a representative of KU's athletics interests.[56] Code had very limited contact with the University. Self knew Code only well enough to exchange greetings, but never had a substantive conversation with Code, and did not even know Code in fact worked for Adidas until approximately September 8, 2017. FI-001, Self Tr. (May 17, 2019) at 41-42; FI-002, Self. Tr. (Aug. 20, 2019) at 20-21. Townsend did not know Code well either, explaining that he had spoken with him only approximately 15-20 times during his entire *career*, and Townsend *also* did not know Code had left Nike for Adidas until August of 2017. FI-005, Townsend Tr. (May 16, 2019) at 50, 125. Similarly, Roberts did not know Code beyond exchanging pleasantries and had never seen him at KU. FI-091, Roberts Tr. (May 15, 2019) at 15-16. Further, none of the men's basketball support staff (including Self's assistant, the Director of Operations, the Director of Student Development, or the Equipment Manager) knew Code—or had even heard of Code—until Code was arrested in September 2017. FI-081, Stephens Tr. (June 19, 2019) at 16 (https://app.box.com/file/529691454992); FI-082, Hoffmann Tr. (June 19, 2019) at 13-14 (https://app.box.com/file/529690276313); FI-084, Quartlebaum Tr. (June 20, 2019) at 27; Bechard Tr. (June 20, 2019) at 15; Hare Tr. (June 19, 2019) at 28. The same is true for Deputy Athletic Director Sean Lester, Special Assistant to the Athletic Director Keating, and Assistant Athletic Director of Alumni Relations Jennifer Allee. FI-019, Keating Tr. (Feb. 22, 2019) at 24

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[56] Like Cutler and Gassnola, there is absolutely no evidence in the record even suggesting Code was a "representative of athletics interests" as traditionally understood by member institutions. Code did not financially support KU, did not belong to any affiliated support groups, was not a season ticket holder, and did not provide anything tangible to anyone associated with the program or to any PSAs or SAs.

(https://app.box.com/file/529694050302); FI-021, Lester Tr. (Feb. 21, 2019) at 28; FI-024, Allee Tr. (June 19, 2019) at 22 (https://app.box.com/file/529691276594). And Adidas' on-campus licensed property manager, Stephanie Temple, had never met Code. FI-080, Temple Tr. (June 10, 2019) at 13, 21.

Quite simply, almost no one associated with KU knew who Code was, those who did know who he was, were unaware he even worked for Adidas until August of 2017, and not a single member of the program maintained any kind of substantive relationship with Code. For these reasons alone, Code was not a booster of KU, and the allegations should be withdrawn.

Finally, and importantly, the [redacted] family did not know Code. [redacted] mother told the enforcement staff "[t]here is no relationship" with Code, and that other than being from the same area in [redacted], "there was no relationship." FI-027, [redacted] Tr. (Nov. 1, 2018) at 16 (https://app.box.com/file/529698013507). Indeed, neither of [redacted] parents talked or texted with Code. *Id.*

Self now addresses in turn the two brief, innocuous calls involving Code advanced by the enforcement staff.

a. <u>Self's Communication with Code</u>

This allegation is similar to Allegation 3(c) involving Cutler's communication with Self's staff concerning [redacted] possible interest in attending KU—it was both brief and benign. On September 12, 2017, as Self and Townsend were driving to [redacted] home for an in-home visit with [redacted] family, Townsend received a call from Code. Townsend put Code on speaker phone in an effort to gather any helpful, last minute information that Code might have about [redacted] FI-001, Self Tr. (May 17, 2019) at 91; FI-004, Townsend Tr. (May 16, 2019) at 50-51, 66-67. This is exactly the kind of commonplace information exchange that happens every day—and that the NCAA has been aware of for decades. There was nothing in form or substance to suggest this call, which was short and focused, FI-004, Townsend Tr. (May 16, 2019) at 51-52, was any different from the hundreds of calls Townsend and Self—and every other Division I coach—have had over the last three decades. Indeed, Townsend characterized it as asking if

Code had any "words of wisdom" for Self and Townsend. FI-001, Self Tr. (May 17, 2019) at 89.

Accordingly, there is simply no basis to find this call supports the staff's theory that Code was a representative of KU's athletics interest, and even if he were, that Self knew or should have known he was engaged in actions that could give rise to recruiting violations.[57] First, there was nothing improper discussed during the call or even mentioned by Code that a reasonable person could identify as a "red flag." Self recalled Code noting "don't tell him he's a four-man, tell him he's a guard" because [redacted] wanted [redacted] to be a guard. FI-001, Self Tr. (May 17, 2019) at 89; FI-002, Self Tr. (Aug. 20, 2019) at 22. Self retorted jokingly that he would tell [redacted] and his family "[h]ey he's a point guard far as I'm concerned" or "I'll tell him he's Magic Johnson."[58] FI-001, Self Tr. (May 17, 2019) at 89; FI-002, Self. Tr. (Aug. 20, 2019) at 26; FI-004, Townsend Tr. (May 16, 2019) at 51. Townsend's interview with the enforcement staff confirms both of these points. FI-004, Townsend Tr. (May 16, 2019) at 51. That was the extent of the conversation, save for Code asking Townsend to let him know how the visit went. *Id.* Second, because Self understood Code had some knowledge of [redacted] through his involvement in grassroots basketball, and because Code was from the same area as [redacted] FI-001, Self. Tr. (May 17, 2019) at 83, it made sense that Code might be in a position to pass along anecdotal information about [redacted] and his family.

As with Cutler, this is exactly the type of communication which college basketball coaches have every day with a variety of people involved in grassroots basketball. Information is the lifeblood of recruiting and coaches gather information from a wide variety of sources. It is now, and always has been, permissible under NCAA legislation. 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 general information.

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[57] Indeed, Allegation 3(d) does not allege that Code had any improper recruiting contacts with [redacted] and there is no evidence Code provided improper inducements to [redacted] or his family. There is simply no evidence whatsoever to explain how Code's extremely limited contacts with KU's staff can give rise to violations of existing NCAA rules.

[58] [redacted] stands at [redacted] pounds, and is clearly not a point guard.

There is no evidence of any improper recruiting contact by Code.

b. Townsend's Subsequent Communication with Code

At the outset, Self notes that the allegation concerning Townsend's subsequent call with Code appears to rest principally on the sidebar argument of defense counsel at the trial of *Gatto, et al.* concerning inadmissible evidence, and it should not be considered by the panel. While the enforcement staff does not specifically cite the transcript from Gatto's trial as an FI supporting Allegation 3(d), Townsend's May 16, 2019 interview has been cited as an FI supporting Allegation 3. The transcript of Townsend's interview makes clear the staff's evidence of Code providing "additional information to Townsend after the home visit"[59]is based entirely on the transcript from the criminal trial, FI-004, Townsend Tr. (May 16, 2019) at 52-59, currently under appeal—and which does not cite any admissible evidence in any event, but captures only defense counsel's self-serving argument.

In order to support the allegation, the enforcement staff relies entirely upon a small portion of the *Gatto* trial transcript, that does not constitute fact or evidence.[60] The staff points to defense counsel's argument in the trial concerning the unverified transcript of a call between Code and Townsend. FI-004, Townsend Tr. (May 16, 2019) at 52-53. It is universally recognized that counsel's arguments are not considered evidence. *See, e.g.*, *United States v. Vilella*, 49 F. Supp. 2d 232, 238-39 (S.D.N.Y. 1999), *United States v. Gambone*, 167 F. Supp. 2d 803, 826 n.30 (E.D. Pa. 2001). Defense counsel was referencing a recorded call that had *already* been deemed inadmissible by the court. Ex. 16, *Gatto, et al.* Trial Tr. at 1414-19 (https://app.box.com/file/628799026817). And counsel was purporting to read from very small portions of an unverified transcript of the call, not the potential evidence itself—the recording of the call. *Id.* at 1416. The statements of defense counsel the staff seized upon are multiple steps away from admissible evidence and lack the required indicia of reliability. Moreover, these statements were made by counsel

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59 The quoted statement is from the enforcement staff's allegation.

60 Also, as explained in the Procedural section, any evidence or argument from *Gatto, et al.* may not be considered in the infractions process because the matter is under appeal.

during a sidebar—outside the presence of the jury. The entire "purpose of a sidebar conference is for counsel and the judge to confer without the jury being privy to what is said[,]" *United States v. Day*, 956 F.2d 124, 125 (6th Cir. 1992) (Kennedy, J. concurring), because they concern issues not properly before the jury, arguments from counsel, and materials not yet deemed relevant and of sufficient reliability to be admitted as evidence. That counsel's argument was made at sidebar simply reinforces the lack of evidentiary support and reliability of counsel's cherry-picked statements, and makes clear why the panel should not consider them here. As referenced above, a lawyer's argument is neither fact nor evidence. But, even if the Committee on Infractions were to consider such representations, they plainly fall short of the necessary clear and convincing standard to find a violation was committed.

Moreover, as Townsend explained to the staff about his subsequent communication with Code, there is no basis for the staff's allegation. The day after Self and Townsend visited [redacted] at his family's home, Townsend called Code, at Code's request, to "follow up" on how the visit went. FI-004, Townsend Tr. (May 16, 2019) at 51. During the call, Code "cut [Townsend] off" and claimed he knew what the [redacted] family wanted during [redacted] recruitment. *Id.* Code went on to claim that [redacted] wanted housing, a job, money, and for [redacted] at the school [redacted] attended. *Id.* In response to Code's claim, Townsend stated "if that's what it takes to get him there, I gotta figure out a way to get him there for 10 months." *Id.* Code did not say he had spoken with the [redacted] family. In fact, Code and [redacted] had not spoken in more than a year.

Townsend did not agree to provide or even consider providing inducements or impermissible benefits. As a result, the enforcement staff has not alleged any violation of the impermissible inducement recruiting violation legislation. As Townsend explained, he was referencing the numerous permissible ways [redacted] or his family could earn money in compliance with NCAA rules, including applying for Pell Grant money, teaching basketball lessons and working camps, and receiving the stipend each athlete is allowed. Townsend also explained that he was amenable to arranging a meeting between [redacted] r and KU's track coach. FI-004, Townsend Tr. (May 16, 2019) at 51-52. These opportunities

were shared during the home visit with [redacted] as part of the general information shared with families during such visits. Townsend further explained he answered Code in the way he did because other possible choices were to agree to commit an NCAA violation, which Townsend would "never do," or say "we're out" and substantially damage KU's ability to recruit highly-touted PSAs by refusing to work within existing NCAA rules to make KU as attractive as possible a destination at which to play college basketball. *Id.* at 51.

Townsend also explained that he did not report Code's comments to Self or to KU compliance, as there was no reason to give "much weight" to Code's remarks, FI-004, Townsend Tr. (May 16, 2019) at 60, or believe that Code was acting or communicating on behalf of [redacted] family. *Id.* at 59. Code's anecdotal references are the type of comments that are frequently tossed around in the recruiting world by any number of people who (often falsely) claim to know what a PSA and his family want in exchange for committing to an institution, but, in reality, do not represent or speak for the PSA and his family.

Further, Townsend did not know Code well. FI-004, Townsend Tr. (May 16, 2019) at 58. Townsend had recruited [redacted] since he was a freshman. *Id.* at 59. Townsend had a relationship with [redacted] and [redacted] family. *Id.* No one from the family had ever previously mentioned inducements or impermissible benefits. *Id.* [redacted] was talented enough to be a generational number one pick, had named Kansas in his top five schools, committed to take an official visit to the KU, and Townsend had never previously spoken with Code about [redacted] or his recruitment. *Id.* at 60. Approximately twelve hours before speaking to Code, Townsend was sitting in [redacted] home with his [redacted] discussing the recruitment of [redacted] and [redacted] never mentioned inducements or impermissible benefits—nor did [redacted] mother for that matter *Id.* at 59. And, having developed a relationship with [redacted] family, Townsend knew [redacted] mother was the key figure in his recruitment—not his [redacted] *Id.* at 64. Moreover, Townsend continued recruiting [redacted] after the call with Code, and neither [redacted] nor his family ever mentioned inducements, even after visiting KU, *id.*, confirming

Townsend's belief Code's claims were not truthful or accurate.[61] Consistent with Townsend's finding Code not to be credible, Townsend did not communicate with Code again between September 13, 2017, and the date the criminal indictments were issued against Code, Gatto and others. And Townsend's credibility assessment was vindicated fully as evidenced by the fact that both [redacted] University ("[redacted] and the NCAA cleared [redacted] to compete during the entirety of the 2[redacted] men's basketball season—despite having notice of Code's purported claim in October [redacted]

Finally, when [redacted] parents were interviewed by the enforcement staff in November of 2018, they expressly rejected the idea that KU or its coaches had done, said, or suggested anything improper during [redacted] recruitment. FI-027, [redacted] Tr. (Nov. 11, 2018) at 25-26. [redacted] —who Code purported to know allegedly wanted inducements—explained KU "was very professional in what they did," the coaching staff "said nothing out of the way," and he did not know where the suggestion came from that KU would offer inducements because Kansas "was very professional." *Id.* at 26.

c. Self's Alleged Failure to Monitor

The staff has alleged that Self's failure to report this violation constitutes a failure to monitor.[62] As explained above, Self's brief and insubstantial communication with Code prior to the [redacted] home visit is not a violation and, therefore, he did not have an obligation to report it.

Townsend's post-visit communication with Code also is not a violation. As explained above, Townsend, an NCAA coach for nearly thirty years, did not think that Code spoke on behalf of [redacted] or his family, or that he was credible, nor did Townsend even consider providing an impermissible

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61 Indeed, evidence obtained independently by the enforcement staff during its investigation validated Townsend's belief. During his interview with the staff, Steve Smith, an Assistant Coach with Florida State University's men's basketball program, emphatically stated that Merl Code was "not involved in [redacted] recruitment after [redacted] sophomore year of high school." FI-088, Smith Tr. (Sept. 17, 2019) at 10. This was due to a falling out between Code and [redacted] over [redacted] grassroots affiliation. *Id.* This casts substantial doubt on the idea that Code was in a position to speak knowledgably about [redacted] recruitment at all, let alone to be able to credibly claim he knew what [redacted] wanted.

62 *See* Allegation 4(b).

recruiting inducement. Finally, as the recruitment continued, neither [redacted] nor his family nor anyone else ever raised the issue.

Finally, to the extent the enforcement staff believes that Code's statements to Townsend should have been reported to KU compliance for investigation and subsequently self-reported to the enforcement staff, the same reasoning should apply to the school at which [redacted] ultimately enrolled, [redacted] If Code's assertions merited reporting and investigation, then an inquiry should have been made as to whether Code, or anyone else, made similar assertions to [redacted] and whether [redacted] recruitment of [redacted] was in full compliance with NCAA legislation.[63]

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[63] To be clear, Self has no information, nor does he think that [redacted] recruited [redacted] impermissibly. But if the enforcement staff is going to charge Self with a Level I violation in connection with what the enforcement staff wrongfully believes to be credible requests for recruiting inducements on [redacted] behalf, then it should have investigated the institution at which [redacted] ultimately enrolled.

Initial Response to Allegation 4

A. The Allegation

4. [NCAA Division I Manual Bylaw 11.1.1.1 (

It is alleged that from the 2014-15 to the 2017-18 academic years, Bill Self (Self), head men's basketball coach, is presumed responsible for the violations detailed in Allegation Nos. 1 through 3 and did not rebut the presumption of responsibility. Specifically:

a. Self did not demonstrate that he promoted an atmosphere for compliance based on his personal involvement in violations, and despite having knowledge of potential or actual violations, he did not report any of these matters to athletics compliance staff to allow for an independent inquiry including:

(1) Related to Allegation No. 1-a, Self knew that TJ Gassnola (Gassnola), a then Adidas outside consultant, representative of the institution's athletics interests and agent, interacted with prospective student-athletes and their families during the Late Night in the Phog, a recruiting event at the institution. Self should have known Gassnola was present during and had impermissible recruiting contact with then men's basketball prospective student-athlete or his mother during his official visit to the institution.

(2) As described in Allegation No. 2-b, Self knew of Gassnola's impermissible telephone recruiting calls with (of then men's basketball prospective student-athlete (

(3) As described in Allegation No. 2-c, Self was involved with Adidas; Gassnola; and Kurtis Townsend (Townsend), assistant men's basketball coach, in the impermissible offer to provide shoes and apparel to

(4) As described in Allegation No. 3-a, Self knew that Gassnola had impermissible recruiting contact with then men's basketball prospective student-athlete

(5) As described in Allegation No. 3-c, Self knew Dan Cutler, a then Adidas outside consultant, representative of the institution's athletics interests and agent, had an impermissible recruiting contact with then men's basketball prospective student athlete

(6) As described in Allegation No. 3-d, Self knew Merl Code, a then Adidas outside consultant, representative of the institution's athletics interests and agent, had impermissible recruiting contact with the family of then men's basketball prospective student-athlete (

[NCAA Bylaw 11.1.1.1 (

b. Self did not demonstrate that he monitored his staff because, as noted in Allegation Nos 2-a, 2-b, 2-c and 3-d, Self knew or should have known that Townsend was

involved in or aware of NCAA violations involving [redacted]. However, Self failed to identify the red flags, ask pointed questions, or report the matters to the athletics compliance staff and allow for an independent inquiry into the matters. [NCAA Bylaw 11.1.1.1 ([redacted)]

B. Self's Initial Response to Allegation 4

The allegation is false. Self promoted an atmosphere of compliance and he monitored his staff.[64]

1. The Enforcement Staff Cannot Demonstrate by Clear and Convincing Evidence That Allegations 1(a), 2(a), 2(b), 2(c), 3(a), 3(c) and 3(d) are Violations

The enforcement staff has also brought a "head coach control" allegation against Self in Allegation 4, claiming that, based on Self's personal involvement in or failure to report purported NCAA rule violations articulated in Allegations 1(a), 2(a), 2(b), 2(c), 3(a), 3(c), and 3(d), he thus failed to promote an atmosphere of compliance and to monitor his coaching staff. Allegation 4 must fail, however, as the enforcement staff cannot point to clear and convincing evidence that violations of NCAA rules occurred in Allegations 1(a), 2(b), 2(c), 3(a), 3(c), and 3(d). And, since there are no underlying violations, there is nothing for which Self, the head coach, can be presumed responsible.

First, the enforcement staff has alleged Self did not promote an atmosphere of compliance and monitor his coaching staff based on his personal involvement in violations, and by not reporting potential or actual violations to the KU athletics compliance staff. However, the enforcement staff's allegation is based on a series of erroneous and misguided conclusions that Self and/or Townsend were involved in or knew about potential or actual violations. As explained *supra*, the alleged violations are not, in fact, violations. Thus, Self had no obligation to report the incidents.

Second, as discussed at length *supra*, the entirety of the enforcement staff's case turns on its ability to transform third-party employees and contractors of an apparel company into representatives of KU's athletics interests in order to impute their actions to Self (and the University). If Gatto, Gassnola, Code, and Cutler are not representatives of KU's athletics interests under NCAA Constitution 6.4.2 and Bylaw

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[64] Self includes and incorporates by reference his responses to the underlying allegations upon which this allegation is based.

13.02.15, the enforcement staff's theory is fatally defective, as it rests on a tortured interpretation of the aforementioned provisions, departs significantly from decades of NCAA enforcement precedent, official interpretations, and educational materials, and lacks evidentiary support. Because the enforcement staff cannot transform Code, Gassnola, Cutler, and Gatto into representatives of the University's athletics interests, there are no violations for which Self should be presumed responsible.

But even if the panel finds that violations occurred and the individuals were KU boosters, Self did not know the individuals were boosters at the time, nor could he have known or anticipated that—years after the incidents—the NCAA would apply its legislation in a complete different and unexpected manner to conclude retroactively that Adidas and its employees and consultants were KU boosters. Because the Sponsorship Agreement cannot confer booster status by itself, to establish violations, the enforcement staff must show by clear and convincing evidence that Self either knew or should have known such activities were undertaken by Gatto, Gassnola, Cutler, and Code.[65]

The enforcement staff has failed to do so. The evidence simply shows that Adidas and the University signed a Sponsorship Agreement which promoted the Adidas brand, and was the product of an arms'-length negotiation. The enforcement staff's efforts to convert third-parties into representatives of KU's athletics interests by virtue of such an agreement is an unprecedented misapplication of existing legislation. The record further shows there is no evidence Self or his coaching staff sought or knew of any assistance in the recruitment of PSAs, as that phrase is commonly understood by athletic administrators and coaches, or of any other promotion of the institution's athletics program. With respect to all four Adidas representatives, communications with members of the KU men's basketball coaching staff were of the common information-sharing nature that have been engaged in by every coaching staff in Division I for decades. These communications are neither sufficient to trigger a "representative of athletics interest"

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65 Coaches are required to act in accordance with the rules as they exist and are understood at the time. They are not expected or required to have a crystal ball to predict how rules will be interpreted and applied in the future.

designation itself or place Self or his staff on notice of potential violations. Indeed, the University and its compliance staff were of the same view, as they also do not believe Self or his staff had an obligation to report any of the communications or interactions giving rise to the enforcement staff's allegations. *See* IN-1, 2, *infra*.

2. Self Promoted an Atmosphere of Compliance and He Monitored his Staff

NCAA Bylaw 11.1.1.1 establishes that even where violations of NCAA rules have been found and the head coach is presumed responsible, the head coach can rebut the presumption by demonstrating that he promoted an atmosphere of compliance and monitored his coaching staff. While Self strongly asserts there were no violations committed for which he is presumed responsible, the evidence shows Self also established and promoted an atmosphere of compliance in his program and appropriately monitored his staff. Thus, Self's actions successfully rebut the presumption in Bylaw 11.1.1.1, and Allegation 4 should be dismissed.

Self has been a Division I men's head basketball coach for twenty-seven years at four different institutions.[66] In nearly three decades of coaching Division I basketball, Self has never committed a single major violation of NCAA rules. Self has been a model compliance leader throughout his coaching career and has served on the NCAA Men's Basketball Oversight Committee for the past three years.

Self has applied these high standards of compliance to the men's basketball program at KU. As David Reed, Senior Associate Athletic Director for Compliance and Student Services made clear, the expectation of NCAA rules compliance at Kansas is "unwavering adherence" to the rules. FI-015, Reed Tr. (May 15, 2019) at 14 (https://app.box.com/file/529694045502). This edict comes directly from Chancellor Girod; Self emphatically stated the compliance message communicated to him is "do it the right way or you will not be employed here very long." FI-001, Self Tr. (May 17, 2019) at 6. This message is echoed by Athletic Director Long and Self strongly communicates this message to his staff. *Id.*

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[66] Self was the head men's basketball coach at Oral Roberts University, Tulsa University, and the University of Illinois. Self has been the head coach at the University of Kansas since 2003.

Consistent with this ethos, at the beginning of each year, the University's Chancellor meets with and addresses the entire athletics staff, clearly communicating the expectation that all employees are expected to comply with all NCAA rules. FI-015, Reed Tr. (May 15, 2019) at 14. Self also has an annual meeting with all coaches and support staff for the men's basketball program and affirms this message of unwavering compliance with NCAA rules. *Id.*; FI-001, Self Tr. (May 17, 2019) at 9 (explaining that "I address the entire group[] of what the expectations are and what the ramifications would be if the expectations were not met"). Self and his coaching staff attend rules education meetings ten months out of the year. FI-015, Reed Tr. (May 15, 2019) at 15. Self regularly speaks directly to Reed about compliance issues, averaging about 2-3 conversations a week. *Id.* Self initiates as many of those conversations as Reed. *Id.* And "all members of [Self's] staff have contact with the compliance office on a daily basis," with Director of Student-Athlete Development Fred Quartlebaum being the staff's "primary" contact. FI-001, Self Tr. (May 17, 2019) at 6. In fact, Reed notes his compliance team has "countless conversations, informal conversations" about compliance issues that arise in the ordinary course, touching on issues as minute as an academic "core course update." FI-015, Reed Tr. (May 15, 2019) at 15.

Self made clear the "compliance office work[s] with our basketball staff on a daily basis concerning . . . potential issues, legislation changes and also things that could be coming up in the immediate future." FI-001, Self. Tr. (May 17, 2019) at 5. This frequent contact with compliance is the result of Self's "open-door policy with David Reed and his team in compliance," and that all coaches and staff members believe "they are getting monitored by all the checks and balances that are put forth by [KU's] compliance office." *Id.* at 6. Compliance staff even travels with the men's basketball team and attends "every meeting", Self Tr. (May 17, 2019) at 7 (explaining that "when we travel, our compliance office is part of every meeting. So is my senior sports administrator") and Self's staff regularly receives "friendly reminder emails" from compliance using hypothetical situations to continually educate the staff. *Id.* at 6. These extensive measures directed by, and enthusiastically supported by Self makes clear that he—as evidenced by his three decades of experience as a Division I head coach without a single major rules violation—is a proactive compliance

leader who seeks out the assistance and support of his compliance staff when necessary and that he actively promotes an atmosphere of compliance.

In addition to these numerous, and tangible measures reflecting a robust compliance effort, Self—along with Reed—spearheaded the creation of a unique and comprehensive compliance initiative where Reed and his staff travel to meet with the parents or guardians of top prospective student-athletes as soon as the PSA signs a National Letter of Intent. FI-015, Reed Tr. (May 15, 2019) at 14-15, 32. These meetings are to educate the SA and his or her family concerning rules compliance, to determine if there are any amateurism or eligibility issues, and to provide education on the resources the University provides and how to operate within the rules. *Id.* at 13. This program was been in place since 2014, and was initiated *at the urging of Self and Reed*, KU's most senior compliance employee. *Id.* ("I went to the athletic director and said we need, and Bill Self and said we need to start doing this for every single signee to, as a proactive measure to, umm, educate our parents early and get them engrained before they ever go, uh, even the kids that even get here."). And the program is relatively unique among all Division I member institutions. FI-001, Self Tr. (May 17, 2019) at 12. Indeed, to Self's knowledge and information, KU men's basketball is the only program in the country that has its compliance officer conduct in-person home visits of every highly-recruited PSA prior to enrollment. This initiative reflects Self's and Reed's commitment to working together closely to develop positive and open relationships with PSAs and their families. FI-015, Reed Tr. (May 15, 2019) at 15.

The enforcement staff alleges that impermissible recruiting contacts and a failure to monitor third-party interactions occurred at "Late Night in the Phog," the unofficial annual kickoff to KU basketball.[67] Self's—and the University's—comprehensive compliance efforts are also tailored to ensure compliance with NCAA rules at this event. Among other initiatives, before Late Night in the Phog each year, both Reed

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[67] Self, as explained herein, believes the substantive allegations to be meritless. There is no clear and convincing evidence: (1) to support designating Gassnola or Gatto as representatives of KU's athletics interests; (2) to conclude that Gassnola "had impermissible recruiting contact" with PSA [redacted] in 2016; or (3) to conclude that the University "failed" to "monitor" or "limit" contact between unaffiliated third-parties and PSAs.

and Self meet with all of the PSAs and their parents or guardians attending the event, and Self explains to them his belief in winning the right way. After this speech, the PSAs are excused, and Self and KU's compliance team hold an in-depth meeting with the parents about NCAA rules and compliance. During this meeting, Self stresses the importance of rules compliance, and even tells the parents about previous cases where parents accepted impermissible benefits which led to consequences for the PSAs. FI-015, Reed Tr. (May 15, 2019) at 16 ("Coach Self sets, sets the tone with introducing me, although he knows I already know everybody in the room. He conveys to the families how important it is to follow the rules and that we've had parents cost their children dearly, historically here."); FI-001, Self Tr. (May 17, 2019) at 39-40. The compliance staff also reviews NCAA rules during the meeting. And, while it's impossible for Self or the University to prevent *any* personal contact between two individuals, KU actively sequesters parents and PSAs attending at the event itself in an effort to separate them from other attendees. FI-001, Self Tr. (May 17, 2019) at 39-40. Thus, during this marquee, high-profile event, Self does not just rely on his compliance staff to promote an atmosphere of compliance. Self makes very clear that his expectations are that his program is built to win the right way, and that there will be strict adherence to NCAA rules.

The enforcement staff's interviews with Self's coaching staff also confirms that Self promoted an atmosphere of compliance and monitored their actions appropriately. Howard explained that Quartlebaum is the staff's liaison with compliance, communicating with compliance every day and taking notes of every meeting, and that Self always "knows what's going on" with compliance issues and makes sure any time his staff has a compliance question, it gets answered. FI-086, Howard Tr. (May 15, 2019) at 8. And Self frequently brings up with his staff and his players compliance situations from other schools where NCAA rules were broken and penalties incurred as a means to educate, telling them to "always reach out to" compliance. *Id.* at 8-9. Roberts clearly stated that the expectation in the program is that every potential NCAA violation must be brought directly to Self's attention—and that expectation comes from Self, not from compliance. FI-091, Roberts Tr. (May 15, 2019) at 7-8. Quartlebaum affirmed Self "informs each and every person that you have a role here, and we must abide by all the rules covered by the Big 12 and the

NCAA." FI-084, Quartlebaum Tr. (June 20, 2019) at 8. And Self's "message about NCAA rules compliance" is that "if we break a rule you will be terminated." *Id.* at 10. This message is delivered to the entire staff—down to the managers—at a mandatory meeting to discuss only this issue. *Id.* at 8. Townsend informed the enforcement staff that Reed's compliance team does an "unbelievable job" at rules education, and that Self's expectation is that any potential rules violation should be communicated directly to Reed, Deputy Athletic Director Sean Lester, or Athletic Director Jeff Long. FI-004, Townsend Tr. (May 16, 2019) at 5-6. Self's entire staff made it patently clear in every interview that Self demands adherence to all NCAA rules, expects potential violations to be brought to his attention, will punish violations of the rules by terminating the violator's employment, and that he fosters an open-door policy with compliance. Together, Self's staff painted a clear picture of an impressive and robust culture of compliance.

Consistent with industry practice, KU does not—and is not expected to—monitor coaches' contacts and communications with third-party individuals, such as AAU coaches and affiliates. FI-015, Reed Tr. (May 15, 2019) at 19 ("I don't think there's a compliance staff in America that's monitoring AAU coaches' phone calls with their coaches."). NCAA rules do not prohibit these types of communications. *Id.* Coaches regularly communicate with a variety of third-party individuals involved in grassroots basketball, and this is permissible. As part of its robust compliance program, the University does, however, rely on a software program ("JumpForward") to monitor all calls and texts involving men's basketball coaches in accordance with NCAA rules. *Id.* (explaining that JumpForward "use[s] as a base NCAA rules to say this is what you can and cannot do and so you plug in phone numbers from individuals who you can talk to at certain periods of time in their prospective lives").

Further, and of critical importance, the University's—and Self's— "expectation" is that violations are reported, and violations are investigated. FI-015, Reed Tr. (May 15, 2019) at 17. KU has a track record supporting this, routinely is at the top of the Big 12 conference in reporting violations each year, at times reporting even "minutia." *Id.* Self, a champion of this expectation, has a history of personally reporting concerns and red flags to compliance. Indeed, it was Self who reported red flags concerning [redacted]

recruitment. Upon receiving information from a confidential source in November [redacted] that [redacted] mother, [redacted] may have accepted impermissible benefits, Self immediately reported this red flag to Reed. FI-015, Reed Tr. (May 15, 2019) at 38 (explaining that Self called him on November 11 and told him "I think we have an issue with, we may need to look closer into [redacted] than you already did on the directive from the NCAA."). Self's report caused Reed and KU to notify the University's and KU's outside counsel and begin an investigation. *Id.* This investigation included immediately traveling to and interviewing her, which revealed that she had accepted money from Gassnola.[68] *Id.* As a result, [redacted] was declared ineligible and he never played a single minute at KU.

Self also personally reported what he believed to be a potential concern with [redacted] It was brought to Self's attention that [redacted] appeared to be wearing clothes and accessories inconsistent with an SA's budget, and Self immediately brought the issue to compliance. FI-001, Self Tr. (May 17, 2019) at 10. Compliance investigated the report, determined exactly what happened, and closed the file after [redacted] was able to produce receipts showing the items were inexpensive imitations of designer brands. *Id.* at 10.

In sum, the evidence gathered by the enforcement staff clearly establishes that both Self and the University take the issue of compliance seriously. Self, in concert with Reed and his ample, informed staff and resources, have undertaken numerous steps to: (i) ensure Self's staff, SAs, PSAs, and their families are all educated on NCAA rules compliance; (ii) understand that unequivocal and constant compliance with NCAA rules is expected; and (iii) that any potential violations are to be reported and investigated. Not only does the evidence demonstrate Self has "promote[d] am atmosphere of compliance within his . . . program," but it shows the University—at Self's direction—goes above and beyond the requirements imposed under NCAA legislation. It is impossible to identify additional measures either he or the University could have undertaken in order to better promote an atmosphere of compliance within the men's basketball program.

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[68] KU also interviewed [redacted] Self, Quartlebaum, Allee, Townsend, and interviewed [redacted] a second time following Self's report.

This is particularly so given the inarguable fact that the enforcement staff has based all of its allegations against Self on the meritless theory that by virtue of an arms-length sponsorship agreement between Adidas and the University, Adidas representatives are presumed to be representatives of KU's athletics interests—a theory for which the NCAA has failed to provide any guidance or legislative interpretation or educational materials upon in the last two decades. While Self adamantly disagrees that the Adidas representatives identified by the enforcement staff are indeed representatives of KU's athletics interests, or that underlying violations occurred, to the extent as head coach he can be presumed responsible, Self has undoubtedly rebutted that presumption.

Initial Response to Allegation 5

A. The Allegation

5. [NCAA Constitution 2.1.1, 2.1.2, 2.8.1, 6.01.1, 6.4.1 and 6.4.2 ( ]

It is alleged that the scope and nature of the violations set forth in Allegations Nos. 1 through 3 demonstrate that during the academic years, the institution failed to exercise institutional control and monitor the conduct and administration of its athletics programs. Specifically:

a. Starting as early as October Adidas and its consultants became representatives of the institutions athletics interests when they engaged in activities that promoted the institution's athletics programs and assisted in the institution's recruitment of prospective student-athletes. However, the institution (1) failed to develop policies to deter and prevent Adidas and its consultants from engaging in NCAA violations, (2) failed to provide NCAA rules education to Adidas and all of its consultants with a connection to the institution and (3) failed to monitor its athletics programs and interactions with Adidas and its consultants to ensure compliance with NCAA legislation. [NCAA Constitution 2.1.1, 2.1.2, 2.8.1, 6.01.1, 6.4.1 and 6.4.2 (through]

b. In the academic year and in the summer of three senior athletics department administrators identified red flags or concerns about the role and involvement of TJ Gassnola (Gassnola), a then Adidas outside consultant, representative of the institution's athletics interests and agent, with the institution's athletics program and its men's basketball program in particular. However, the institution took no action to provide rules education to Gassnola or to monitor his involvement with the athletics program to ensure compliance with NCAA legislation. [NCAA Constitution 2.1, 2.1.2, 2.8.1, 6.01.1, 6.4.1 and 6.4.2 ( ]

c. In September athletics administrators failed to monitor and ensure compliance related to the attendance of Gassnola and Jim Gatto (Gatto), a then Adidas director of global sports marketing for basketball, representative of the institution's athletics interests and agent, at Late Night in the Phog (Late Night), an important recruiting event. Specifically, then men's basketball prospective student-athlete (and his family attended Late Night during an official visit to the institution. The institution also knew Gassnola and Gatto were present at Late Night and that Gassnola, Gatto and were staying at the same hotel. However, the institution took no steps to monitor and/or limit Gassnola's and Gatto's interactions with and his family at Late Night or at the hotel. As outlined in Allegation No. 1-a, Gassnola had an impermissible contact with mother and at the hotel and offered them monetary recruiting inducements with Gatto's approval. [NCAA Constitution 2.1.1, 2.1.2, 6.01.1, 6.4.1 and 6.4.2 ( )]

d. In the fall of the institution did not adhere to its policy of monitoring student-athlete vehicles when it failed to ensure had registered his vehicle with the athletics compliance staff. Specifically, at least four members of the institution's athletics staff, including an assistant men's basketball coach, an assistant director of

athletics and a men's basketball director of student-athlete development, were aware that was in possession of a vehicle on campus, yet no one required to register the vehicle with athletics compliance staff to ensure there were no NCAA compliance issues. [NCAA Constitution 2.1.1, 2.8.1 and 6.01.1 ( )].

e. During the 2017-18 academic year, the institution did not promote an atmosphere of compliance, exercise oversight and monitor for NCAA compliance the eligibility of then men's basketball student-athlete (As a result, the institution . Specifically, the institution's athletics department staff had knowledge of several issues and red flags related to Gassnola, his involvement in actual or potential NCAA violations involving another student-athlete's family and one other prospective student-athlete, and Gassnola's involvement in recruitment:

(1) In August the head men's basketball coach and an assistant men's basketball coach knew of some of Gassnola's impermissible recruiting violations involving as noted in Allegation No. 2.

(2) In August the head men's basketball coach knew of Gassnola's statements about trying to assist the institution's recruitment of then men's basketball prospective student-athlete as noted in Allegation No. 3-a.

(3) In September the institution became aware of the federal government's arrests and indictments involving Adidas consultants, including Gassnola's superior, Gatto.

(4) In October the NCAA Division I Board of Directors instructed the institution and all Division I institutions to scrutinize the eligibility of its men's basketball student-athletes prior to first competitions.

(5) In November the institution became aware of Gassnola's role in providing at least $15,000 to which is described in Allegation No. 1.

Despite all of this information and instruction, the institution certified as eligible and hen in fact was ineligible. Finally, just before contests in in which the institution's men's basketball team was scheduled to compete, the institution became aware of more information raising concerns related to Even with this information, the institution still allowed while ineligible. [NCAA Constitution 2.1.1, 2.1.2, 2.8.1, 6.01.1. 6.4.1 and 6.4.2 (2017-18)].

B. Self's Initial Response to Allegation 5

Self understands he is not named in this allegation and, therefore, is not expected to respond.

Conclusion

Bill Self has been a Division I head men's basketball coach for twenty-seven years at four different institutions, and his exceptional record of consistent success through his more than seven hundred wins, including an NCAA National Championship, fourteen consecutive Big 12 Conference titles, and eight league tournament championships, has justly earned him the unique recognition of inclusion in the Naismith Memorial Basketball Hall of Fame. In his nearly three decades of coaching elite college basketball, he has never before been accused of a major violation of NCAA rules, and has uniformly been recognized as a model compliance leader. He has served with distinction as the President of the National Association of Basketball Coaches, as well as on several committees dedicated to the betterment of the sport—including the NCAA Men's Basketball Oversight Committee—to which he has contributed as a member for the past three years.

Notwithstanding Coach Self's well-recognized record of achievement and reputation for strict compliance and integrity, the NCAA enforcement staff has chosen to pursue this infraction matter derived from a high-profile federal criminal trial, which proceeded after a lengthy FBI investigation. At the conclusion of the trial, the jury determined that Adidas representatives Gatto and Gassnola acted together as part of a secret "Black Opps" conspiracy and made certain payments to [redacted] and the [redacted] to enhance the Adidas brand, and their own interests. In fact, the jury determined **beyond a reasonable doubt** that these payments were intentionally concealed from the University and its administration, specifically Coach Self and his athletic staff.

Despite this finding—premised upon the highest standard of legal proof—and while acknowledging as it must that KU, coach Self, and his athletic staff had no knowledge of or role in any illicit payments, the NCAA enforcement arm has nevertheless chosen to opportunistically bring the instant infractions matter in furtherance of its executive leadership's prior and improper public pronouncements of forthcoming charges, issued while the investigation was still underway. In so doing, and in order to upend

the criminal verdict, the enforcement staff has asserted an unprecedented and factually unsupportable booster theory that Adidas, simply by acting as a corporate contractual sponsor, and its representatives Gassnola, Gatto and others, were somehow simultaneously also representatives of the University, despite the University's contractual obligations to promote Adidas, in order to hold the University and Coach Self accountable for those actors' alleged recruiting and impermissible benefits violations. As demonstrated above, such a position is unprecedented, and is contrived precisely because it had been established beyond dispute in the federal trial that KU, coach Self and his staff were unaware of any improper payments, and that in fact such payments were specifically concealed from them. Moreover, the record evidence in this infractions proceeding similarly demonstrates that neither Coach Self nor his coaching staff understood or had reason to understand that Adidas, its employees and consultants were boosters, but instead acted to advance the Adidas brand, or their own personal interests.

Finally, as demonstrated above, as with the enforcement's staff's novel but groundless booster theory, there is no merit to the enforcement staff's allegations that coach Self failed to adhere to his head coach responsibilities under Bylaw 11.1.1.1, and the record is in fact replete with his persistent and successful efforts to both promote a culture of compliance and to pursue effective oversight and monitoring. Accordingly, the NCAA enforcement staff's infractions matter against Coach Self should be dismissed in its entirety.