

**DECISION OF THE
INDEPENDENT ACCOUNTABILITY RESOLUTION PROCESS
INDEPENDENT RESOLUTION PANEL
DIVISION I**

OCTOBER 11, 2023

CONFIDENTIAL

PUBLIC INFRACTIONS DECISION

Case No. 00874

University of Kansas

Lawrence, Kansas

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I. INTRODUCTION

a. **The Independent Accountability Resolution Process.**

The Independent Accountability Resolution Process was created in response to recommendations made by the Commission on College Basketball, chaired by former U.S. Secretary of State Condoleezza Rice. Before the creation of the Independent Accountability Resolution Process, all infractions cases were handled within the peer-review structure. Cases are referred to the Independent Accountability Resolution Process when a determination is made that the Association's interests are best served by resolving the case under the independent structure. Such a determination includes the consideration of whether a case involves unique policy issues or factors that, when weighed in totality, could impede the accurate and effective resolution of the case under the peer-review structure.

The Independent Accountability Resolution Process consists of four components:

- The Independent Accountability Oversight Committee;
- The Infractions Referral Committee;
- The Complex Case Unit, its investigative and advocacy body; and
- The Independent Resolution Panel.

The Independent Resolution Panel consists of 13 members with legal, higher education, and/or sports backgrounds. Each hearing panel consists of five Independent Resolution Panel members, who decide complex infractions cases involving member institutions and their staffs (both current and former) that were referred by the Infractions Referral Committee to the Independent Accountability Resolution Process for resolution.¹ On April 14 through 16, 2023, five members of the Independent Resolution Panel heard this case in person.

b. **Basis of the University of Kansas Infractions Case.**

(1) Overview of the Men's Basketball Allegations.

In the fall of 2017, the U.S. Attorney's Office for the Southern District of New York disclosed a scheme that involved money and influence at the intersection of collegiate and professional basketball. The scheme resulted in the arrest and prosecution of multiple individuals — including college basketball coaches — on conspiracy and bribery charges.

¹ Four panel members constitute a quorum for a hearing panel to conduct a hearing and deliberate.

On September 26, 2017, the SDNY announced a criminal complaint detailing a bribery scheme within men's college basketball. The criminal charges included payments made by representatives of apparel company to prospective student-athletes, their family members or individuals otherwise connected to the prospective student-athletes.

In October 2018, a federal jury found that members of a conspiracy, including apparel company employee No. 1 and apparel company employee No. 2, defrauded several NCAA institutions, including Kansas, by providing impermissible benefits or inducements to the families and guardians of prospective student-athletes.

Apparel company outside consultant pleaded guilty to participating in the scheme by, among other things, providing payments to men's basketball prospective student-athlete No. 2's family and men's basketball student-athlete No. 1's guardian. The indictments and convictions led to the men's basketball allegations in this infractions case.

According to the Complex Case Unit and Kansas, apparel company was and continues to be a significant sponsor of Kansas' athletics programs. Based on its sponsorship agreement with Kansas, apparel company had the exclusive right to publicly represent, market and otherwise promote the fact that it was the exclusive supplier to Kansas of designated athletics products and apparel.

However, it is alleged that apparel company employee No. 2's, apparel company employee No. 1's and/or apparel company outside consultant's offers and provision of recruiting inducements and/or extra benefits to men's basketball prospective student-athlete No. 2 and men's basketball student-athlete No. 1 at Kansas, and apparel company employee No. 2's, apparel company employee No. 1's and/or apparel company outside consultant's impermissible recruiting contacts concerning the recruitment and enrollment of men's basketball prospective student-athlete No. 2 and men's basketball student-athlete No. 1 at Kansas.

It was also alleged that apparel company outside consultant and apparel company employee No. 2, who were also allegedly representatives of Kansas' athletics interests and agents, engaged in impermissible recruiting activities with men's basketball prospective student-athlete No. 4, men's basketball student-athlete No. 2 and men's basketball prospective student-athlete No. 3. Further, it was alleged Kansas knew or should have known of certain impermissible recruiting contacts. It was also alleged that head men's basketball coach failed to cooperate, failed to promote an atmosphere

of compliance, and failed to monitor his staff. Further, it was alleged that Kansas failed to cooperate, lacked institutional control and failed to monitor the men's basketball program.

(2) Overview of the Football Allegations.

Kansas' football team allegedly exceeded the limit on the number of coaches between December 2017 and mid-October 2018. Additionally, during the spring practices of the 2018-19 academic year and fall practices of the 2019-20 academic year, Kansas' football program allegedly violated NCAA legislated limits on the number and duties of coaches and noncoaching staff members.

c. Overview of Violations Found in the Case.²

This infractions case consists of allegations of violations that occurred from 2014 through 2021 in the men's basketball and football programs.

(1) Men's Basketball Program.

The hearing panel found three Level II violations and two Level III violations as follows:

- (a) Representative of athletics interests No. 1, a representative of the institution's athletics interests, provided extra benefits to men's basketball student-athletes. Specifically, in approximately 2016, representative of athletics interests No. 1 provided extra benefits in the form of approximately \$200 in cash to a men's basketball student-athlete during a barbeque at the head men's basketball coach's house. The hearing panel finds this to be a Level III violation.
- (b) In August and September 2017, assistant men's basketball coach provided guardian for men's basketball student-athlete No. 1's contact information to apparel company outside consultant for the purpose of facilitating a discussion on the provision of athletics gear. Head men's basketball coach and assistant men's basketball coach encouraged, approved and had knowledge of impermissible recruiting telephone calls that apparel company outside consultant had with guardian for men's basketball student-athlete No. 1. In the

² The full text of the portions of the NCAA constitution and the bylaws cited in this decision, for the applicable academic year in which the conduct occurred, can be found in APPENDIX TWO.

calls, apparel company outside consultant encouraged guardian for men's basketball student-athlete No. 1 to have men's basketball student-athlete No. 1 enroll at Kansas. Head men's basketball coach and assistant men's basketball coach failed to report the introduction of guardian for men's basketball student-athlete No. 1 to apparel company outside consultant and the calls between apparel company outside consultant and guardian for men's basketball student-athlete No. 1 to the institution's compliance staff. The hearing panel finds this to be a Level III violation.

- (c) Sometime in the first half of September 2017, apparel company outside consultant, a representative of athletics interests, provided a \$2,500 cash recruiting inducement to guardian for men's basketball student-athlete No. 1, in an effort to secure men's basketball student-athlete No. 1's enrollment at Kansas, which the hearing panel finds to be a Level II violation.
- (d) Assistant men's basketball coach failed to report to the institution's compliance staff his September 13, 2017, conversation with apparel company employee No. 2 in which apparel company employee No. 2 suggested men's basketball prospective student-athlete No. 3's family had requested recruiting inducements. The hearing panel finds this to be a Level II violation.
- (e) On or about September 23, 2017, apparel company outside consultant, a representative of athletics interests, arranged to provide \$4,000 in extra benefits to mother of men's basketball prospective student-athlete No. 2, which the hearing panel finds to be a Level II violation.

(2) Football Program.

The hearing panel found Level III violations as follows:

- (a) Between December 2017 and mid-October 2018, the institution's football team exceeded the limit on the number of coaches by one. This occurred when the football video coordinator (a noncoaching staff member) participated in technical and tactical instruction with football student-athletes and made or assisted in making tactical decisions with football student-athletes during on-field practices. Specifically:

- i. Between December 2017 and April 2018, the football video coordinator met with the quarterback student-athletes six to 10 times in the quarterback meeting room of the football office and provided instruction while watching videos of practices and games. The football video coordinator's instructions included, but were not limited to, identifying quarterback reads, coverage reads and adjustments and defensive fronts and alignments.
- ii. Between August 2018 and early October 2018, the football video coordinator provided on-field instruction to the quarterbacks on one to three occasions.
- iii. In August 2018, the football video coordinator provided a quarterback an instructional video through a text message via cellphone.

The hearing panel finds these violations to be Level III.

- (b) During the spring practices of the 2018-19 academic year and fall practices of the 2019-20 academic year, the institution's football program violated NCAA legislated limits on the number of coaches and the duties of noncoaching staff members. This occurred when two special teams staff members (both noncoaching staff members with football-specific duties) occasionally participated in on-field activities and assisted with football drills. Additionally, and on a limited basis, the two special teams analysts participated in on-field practices by providing technical or tactical instruction to football student-athletes, which caused the institution's football program to exceed the limit on the number of coaches by two. The hearing panel finds these violations to be Level III.

II. PROCEDURAL HISTORY

This section highlights significant procedural developments in this matter including those that impacted the timing of processing of this infractions case. The complete, extensive procedural history summary is available at <http://iarpc.org/referred-cases/university-of-kansas/>.

Request for Mediation, Review and Resolution (October and November 2021)

a. Procedural Issues Related to the Independent Accountability Resolution Process and Definition of Case Record.

- (1) On October 1, 2021, before the issuance of the second amended notice of allegations, the Complex Case Unit requested a status conference with the chief panel member to discuss mediation and the upcoming deadlines in the amended case management plan No. 2.
- (2) On October 5, 2021, the Complex Case Unit submitted to the chief panel member for her consideration a Confidential Proposed Draft Procedures for Mediation. That same day, the chief panel member held a status conference with the parties to discuss the deadline outlined in the amended case management plan No. 2, and the parties desire to engage in a mediation process to discuss and resolve matters in this infractions case. The chief panel member requested that the parties submit in writing appropriate authority which allows the case in the Independent Accountability Resolution Process to be resolved through a mediation process.
- (3) On October 6, 2021, the Complex Case Unit submitted a draft copy of the second amended notice of allegations which the Complex Case Unit indicated could change depending on the resolution of the request to resolve the case through mediation.
- (4) On October 7, 2021, Kansas submitted a letter stating the Complex Case Unit and the parties' position on the Independent Resolution Panel's authority to allow this matter to proceed with a mediation process. Due to the fact that resolution of a case through mediation was not included in the legislation as an option in the Independent Accountability Resolution Process, the chief panel member referred the question to the Independent Accountability Oversight Committee³ for consideration and resolution. The chief panel member held in abeyance the deadlines as outlined in the amended case management plan No. 2 until resolution of the parties' request.
- (5) On November 17, 2021, the Independent Accountability Oversight Committee considered whether to allow the resolution of an infractions case in the Independent Accountability Resolution Process through mediation or negotiated resolution processes.

³ The Independent Accountability Oversight Committee oversees the independent process and has the authority to request legislative changes to the process.

- (6) On November 29, 2021, the chief panel member informed the parties that “[t]he Independent Accountability Oversight Committee ultimately concluded that the NCAA bylaws do not contemplate or permit the use of any *binding* alternative dispute resolution method, including mediation. This decision was based on the express language of the NCAA bylaws, as well as a review of the legislative history – NCAA Division I Proposal No. 2018-12, in particular, which neither directly nor indirectly contemplated the use of mediation in the Independent Accountability Resolution Process. The Independent Accountability Oversight Committee further declined to recommend any legislative modifications to permit the use of binding mediation in any of the infractions cases currently referred to the Independent Resolution Panel for final disposition and processing.” Therefore, the chief panel member denied the parties’ request to conduct binding mediation.

Issuance of Notice of Allegations, Non-Binding Mediation and Request for Hearing Panel to Accept Negotiated Outcome (December 2021 through March 2022)

- (1) On December 13, 2021, the Complex Case Unit issued the second amended notice of allegations.
- (2) On December 16, 2021, the chief panel member issued amended case management plan No. 3 establishing the deadline for Kansas and any involved individuals to respond to the second amended notice of allegations and provided a deadline for the Complex Case Unit to submit its reply.
- (3) On January 26 and 27, 2022, the parties engaged in a mediation with a private mediator.
- (4) On February 17, 2022, the Complex Case Unit requested a status conference with the chief panel member to discuss the January 26 and 27, 2022, mediation.
- (5) On February 18, 2022, the chief panel member conducted a status conference with the parties.⁴ The chief panel member confirmed that the parties could proceed by submitting the case for review on the written record.⁵ The chief panel member requested that the parties prepare a written submission with a statement by all parties that the submission of the

⁴ Prior to the February 18, 2022, status conference, the parties submitted to the chief panel member a Proposed Agenda and Confidential Term Sheet.

⁵ NCAA Bylaw 19.11.5.7.

stipulations would constitute the parties submitting the infractions case on the written record for resolution.

- (6) On February 23, 2022, the chief panel member confirmed information discussed in the February 18, 2022, status conference including information regarding the submission of an infractions case on the written record.
- (7) On February 24, 2022, the parties submitted a joint letter to the chief panel member stating that they do not intend to proceed on the written record pursuant to Bylaw 19.11.5.7.
- (8) On February 25, 2022, the parties' submitted jointly proposed stipulations to the chief panel member. Included in the proposed stipulations was a two-phase approach to resolve the case. The infractions case would be submitted for review on the written record only if the hearing panel agreed with and accepted the proposed stipulations as written. On the same day, the chief panel member responded that the hearing panel would confer, but reiterated that there is no provision in the NCAA bylaws and the Independent Resolution Panel operating procedures to simply approve the stipulations submitted, without an ability to modify or reject them.
- (9) On February 28, 2022, the chief panel member held a status conference with the parties to discuss matters but reiterated that no final determinations would be made during the status conference. At the February 28, 2022, status conference, the parties reiterated the two-phase approach to resolving this infractions case.
- (10) On March 16, 2022, the chief panel member denied the two-phase approach proposed by the parties in their February 24, 2022, correspondence, February 25, 2022, submission, and at the February 28, 2022, status conference. The chief panel member noted that under the NCAA bylaws and the Independent Resolution Panel operating procedures, the hearing panel's determinations and decisions are provided through the issuance of its final infractions decision after a hearing with the parties or a review of the infractions case on the written record. Therefore, consistent with the guidance from the Independent Accountability Oversight Committee, the hearing panel was not permitted to provide the hearing panel's agreement with or rejection of the proposed stipulations made by the parties (e.g., factual findings, violations, level, classifications and/or penalties) before the submission of the case to the hearing panel.

Issuance of Third Amended Notice Allegations and Resolution of Scope of the Case Record (March 2022 through October 2022)

- (1) On March 30, 2022, the parties submitted a joint letter noting that the Complex Case Unit intended to issue a third amended notice of allegations that would include a narrowed set of allegations for the Independent Resolution Panel’s consideration. The parties also withdrew the jointly proposed stipulations from the case record.
- (2) On April 15, 2022, the Complex Case Unit issued the third amended notice of allegations.
- (3) From April 22, 2022, through September 2022, the chief panel member and the Complex Case Unit exchanged several correspondence regarding: (a) the chief panel member requesting clarification of the basis for the third amended notice of allegations; (b) the role and authority of the chief panel member and hearing panel compared to the Complex Case Unit; (c) the definition of the case record; and (d) the hearing panel’s determination to maintain the full underlying factual information in the case record and discuss the second amended notice of allegations and third amended notice of allegations during the hearing and deliberations.
- (4) On September 21, 2022, Kansas, head men’s basketball coach and assistant men’s basketball coach submitted correspondence to the Independent Accountability Oversight Committee requesting that the committee “direct the IRP to permit the CCU to define the scope of the charges and FIs [factual information] for response by Kansas and [head men's basketball coach] and [assistant men’s basketball coach] and for adjudication by the IRP, subject to the IRP’s authority to make additional findings based on information developed at the hearing.”
- (5) On October 21, 2022, the Independent Accountability Oversight Committee found “that the chief panel member and the hearing panel had not misapplied the legislation or the Independent Resolution Panel Operating Procedures regarding this issue. Therefore, the Independent Accountability Oversight Committee denied Kansas, [head men’s basketball coach], and [assistant men’s basketball coach’s] request.”

Written Responses to Notices of Allegations and Complex Case Unit Reply (October 2022 through January 2023)

- (1) On October 24, 2022, Kansas, head men’s basketball coach and assistant men’s basketball coach submitted responses to the third amended notice of

allegations and positions related to the second amended notice of allegations.

- (2) On November 14, 2022, the Complex Case Unit submitted a letter withdrawing the third amended notice of allegations and reinstating the second amended notice of allegations, which it addressed in its written reply.
- (3) On December 2, 2022, the chief panel member reiterated the hearing panel's position regarding the submission of the third amended notice of allegations, that the second and third amended notices of allegations will remain in the case record. Accordingly, the parties were again notified that they should be prepared to discuss at the hearing the allegations and factual information related to the second and third amended notices of allegations.
- (4) On January 9, 2023, the Complex Case Unit submitted its written reply.

These attempts to find a new alternative resolution path for this infractions case and the resolution of questions and perspectives regarding questioning of the meaning of the legislation and the procedural authority and roles of the Complex Case Unit and the hearing panel coupled with the disputes regarding document production resulted in a nearly 11-month substantial delay in the timing of the resolution of this case.

b. Document Production Requests.

- (1) Between April 14 and April 16, 2021, head men's basketball coach and Kansas wrote to the chief panel member seeking her support in expediting requests for the production of certain documents that Kansas believed was pertinent to the revised amended notice of allegations.
- (2) On April 23, 2021, the NCAA enforcement staff submitted a response, outlining its positions regarding the production request, to Kansas' April 16, 2021, correspondence.
- (3) On May 10, 2021, Kansas and head men's basketball coach submitted supplemental information regarding the production request.
- (4) On July 22, 2021, after receipt of correspondence by the enforcement staff, Kansas and head men's basketball coach outlining and supplementing their respective positions, the chief panel member determined the specific request was premature per Independent Resolution Panel Operating Procedure 3-3

as the Complex Case Unit had not yet issued its final notice of allegations in this infractions case. Thus, the chief panel member was unable to determine what information could be considered pertinent to this infractions case.

- (5) Between July 22, 2021, and March 16, 2022, correspondence was exchanged between the chief panel member and the parties regarding Kansas' and head men's basketball coach's continued requests for access to information they deemed pertinent including the submission of documents for in-camera review.⁶
- (6) On March 16, 2022, the chief panel member sought confirmation that although the parties submitted several requests for in-camera review and document production that remained outstanding, the parties agreed to withdraw any outstanding requests without prejudice. Further, to the extent any renewed requests were submitted, the chief panel member asked the parties to justify why any renewed requests were appropriate.
- (7) On March 30, 2022, the parties informed the chief panel member that: (a) “[g]iven the forthcoming issuance of the CCU’s TANO, the Institution and involved individuals will not seek the Chief Panel Member’s permission to renew their motion to compel”; and (b) “[t]he Institution and involved individuals also will not renew their request that the Chief Panel Member un-redact an email and grant them access to seven ‘potentially pertinent’ documents that the CCU submitted to the Chief Panel Member in camera.”
- (8) On April 8, 2022, the chief panel member informed the parties that pursuant to their request, all outstanding requests for her to conduct an in-camera review were considered withdrawn and no future action would be taken by the chief panel member regarding those requests.
- (9) On September 21, 2022, Kansas, head men's basketball coach and assistant men's basketball coach submitted a renewed request for production of a narrowed list of documents and material they deemed pertinent.
- (10) From September 21, 2022, through April 10, 2023, the Complex Case Unit worked with the enforcement staff regarding the identification and production of documents in response to the request. This included resolving, if possible, any confidentiality issues regarding the document.

⁶ On December 13, 2021, the Complex Case Unit issued the second amended notice of allegations.

- (11) On April 10, 2023, the Complex Case Unit produced the requested documents which the NCAA had in its possession and for which confidentiality issues could be resolved.

c. Statute of Limitations.

Kansas also contended that the allegation between 2016 and 2021, that representative of athletics interests No. 1, a representative of Kansas' athletics interests, provided extra benefits to men's basketball student-athletes, was time-barred by the statute of limitations as prescribed by Bylaw 19.11.4.8. This contention is addressed in Section IV.

III. STATEMENT OF FACTS

- a. This section describes only the most significant events that gave rise to this infractions case; however, the hearing panel ultimately considered all information in the case record. Where facts were in dispute, the hearing panel determined which information it found credible and persuasive.

(1) Kansas' Relationship with Apparel Company.

Kansas was one of apparel company's flagship schools. Since 2005, apparel company has had a sponsorship agreement in place with Kansas. In the 18 years that this sponsorship agreement has been in place, the parties amended it twice. The sponsorship agreement was initially effective as of September 1, 2005, and was amended for the first time July 1, 2012. On July 1, 2017, the sponsorship agreement was amended for a second time.

The sponsorship agreement between apparel company and Kansas is similar to those of other institutions based on the sponsorship agreements submitted into the case record. For example, Kansas' agreement with apparel company is akin to the agreements other NCAA Division I institutions have with other apparel companies.

The sponsorship agreement between apparel company and Kansas provided for various obligations by both apparel company and Kansas. For example, as it relates to apparel company, the sponsorship agreement required that apparel company pay Kansas monies and provide goods and services in return for Kansas promoting and marketing apparel company. The sponsorship agreement further noted that apparel company entered into the sponsorship agreement:

“[T]o acquire the designation for certain [apparel company]’s Products as the official Products of Kansas’ Athletics’ athletics programs in the designated categories; to secure the sponsorship recognition and acknowledgement of [apparel company]’s products by Kansas Athletics’ Athletic Program Staff; and to acquire certain sponsorship recognition rights from Kansas Athletics.”

The “Promotional Rights” section of the sponsorship agreement provided that apparel company shall have “an exclusive license . . . to use the University Marks . . . in connection with the advertisement, promotion, and sale of [apparel company] Products.”

In turn, the sponsorship agreement also placed certain obligations on Kansas. For example, the sponsorship agreement required Kansas to permit its coaches to be available for up to three “promotional appearances” per year “in connection with the sponsorship recognition and promotion and sale of [apparel company] Products.” Moreover, the compensation under the sponsorship agreement depended upon the scope of Kansas’ promotion of apparel company, and was increased or decreased based upon the scope of Kansas’ promotion of apparel company.

When apparel company and Kansas signed the second amendment to the sponsorship agreement July 1, 2017, the sponsorship agreement provided for apparel company sponsored dollars to be used at on-campus athletics related events. One such event was Kansas men’s basketball’s Late Night event. Late Night is an annual event marking the beginning of Kansas’ men’s basketball season. Late Night is also an event that is used to engage with basketball prospective student-athletes who are considering enrolling at Kansas. It is also viewed as a community event to get Kansas’ student body, alumni and fans excited about the upcoming basketball season.

As part of the sponsorship agreement between apparel company and Kansas, apparel company allotted some of the monies from the sponsorship agreement to Late Night amongst other activations opportunities. For example, apparel company sponsored an outdoor basketball court for attendees to shoot around and play basketball. Besides apparel company, other organizations participated and provided sponsorship dollars to Late Night.

Specific to Late Night in 2017, Kansas used promotional money that apparel company was already required to pay under the sponsorship agreement with Kansas to assist with the acquisition of a high-profile music act. Other

activation on the part of apparel company as part of Late Night 2017 included:

- Apparel Company Sponsored the 3 v. 3 and Video Game Tournaments.
 - Kansas noted apparel company's sponsorship in press releases, social media, and Kansas webpages, flyers and ads in the student newspaper promoting the event and providing for a method for signing up.
 - Entrants to the tournaments received apparel company branded t-shirts, bags, water bottles, and coupons for apparel company's apparel and gear.
 - The preliminary rounds of the tournaments occurred prior to Late Night. Apparel company had posters and gear present for the preliminaries. That same week, apparel company held a scavenger hunt in which students and fans could search for multiple pairs of apparel company shoes that were hidden around Kansas' campus. Kansas helped promote this event.
 - The first three events during Late Night in the fieldhouse were the men and women's 3 v. 3 championship games followed by the NBA 2K championship. Competitors were outfitted in apparel company uniforms that they were allowed to keep.
 - During Late Night, the winners of the tournaments were presented with trophies and the winning and losing teams were presented with a number of prizes, including apparel company's apparel.
- Apparel Company Outside Activities During Phog Fest.
 - Attendees engaged in apparel company basketball skill challenges on the apparel company-supplied basketball court to win apparel company shoes as prizes.
 - Apparel company branded apparel was available for purchase.

- Late Night Inside Activities.
 - In addition to the tournament activations noted above, during some of the dance performances of Late Night, the dancers were outfitted in apparel company gear.

In addition, apparel company arranged to honor former NBA player at the Naismith Memorial Basketball Hall of Fame banquet, a private event, for which apparel company paid approximately \$250,000. Later, apparel company decided to include honoring head men's basketball coach and to allow for his invitees to attend. The event was intended to honor their respective careers and lifetime achievements. Former NBA player, head men's basketball coach and another individual associated with the apparel company were inducted into the Hall of Fame.

(2) Kansas' Relationship with Apparel Company Employee No. 2.

Apparel company employee No. 2 was a longtime employee of another apparel company who joined apparel company as an outside consultant in approximately 2016. Apparel company employee No. 2 sought to establish relationships and build brand affiliation with top men's basketball prospective student-athletes hoping to sign them to sponsorship agreements with apparel company when they entered the NBA. In 2016, after men's basketball prospective student-athlete No. 3's sophomore year of high school, apparel company employee No. 2 sought to have men's basketball prospective student-athlete No. 3 join his AAU team. Men's basketball prospective student-athlete No. 3 decided to play for another AAU team. Apparel company employee No. 2 had no interactions with men's basketball prospective student-athlete No. 3's family after this decision. Head men's basketball coach and assistant men's basketball coach spoke with apparel company employee No. 2 at the suggestion of apparel company employee No. 1 about information he had related to the recruitment of men's basketball prospective student-athlete No. 3 on the way to a home visit September 12, 2017. In this call, apparel company employee No. 2 provided information related to men's basketball prospective student-athlete No. 3's playing preferences that were well known in basketball recruiting circles. Following that home visit, assistant men's basketball coach had an additional conversation with apparel company employee No. 2 September 13, 2017.

(3) Kansas' Relationship with Apparel Company Employee No. 1.

Apparel company employee No. 1's primary role with apparel company was signing professional athletes to apparel company marketing contracts. His main objective "was to 'make sure that the coaching staffs' of the universities' basketball teams 'were happy' with apparel company because he understood that the 'basketball coaches' at colleges 'wanted shoe companies to help recruit players to their schools.'"

In 2013, apparel company employee No. 1 began working as an apparel company liaison to Kansas. Between 2014 and 2017, apparel company employee No. 1 attended various events, including attendance at Late Night in 2014 during which he stayed at the Hotel, visit to campus October 10, 2014, and attendance at Kansas men's basketball contests, where he interacted and communicated with head men's basketball coach, assistant men's basketball coach and Kansas personnel. As further described below, such events included the Naismith Memorial Basketball Hall of Fame banquet, which apparel company organized and paid for.

(4) Kansas' Relationship with Apparel Company Outside Consultant.

In 2010, head men's basketball coach became acquainted with apparel company outside consultant during Kansas' recruitment of men's basketball prospective student-athlete No. 5. Men's basketball prospective student-athlete No. 5 played basketball for AAU team No. 2, an apparel company sponsored nonscholastic basketball program. Apparel company outside consultant served as the program director for AAU team No. 2.

In 2013, in addition to serving as the program director for AAU team No. 2, apparel company outside consultant also became an outside consultant for apparel company's college basketball and grassroots divisions. His responsibilities included building and maintaining relationships between apparel company and college coaches, including the Kansas coaches.

Apparel company outside consultant had a known presence around the Kansas men's basketball program as part of his role with apparel company. He was on Kansas' campus for men's basketball contests and events, attended a small number of high-profile Kansas' men's basketball contests at neutral sites, and had various in-person interactions with Kansas' athletics staff. He also attended Late Night from 2011 to 2018. Apparel company outside consultant also attended other events off Kansas' campus, including the Naismith Memorial Basketball Hall of Fame banquet September 8, 2017. There, he interacted with head men's basketball coach,

assistant men's basketball coach and former director of athletics No. 1. Apparel company outside consultant was a source of information about basketball prospective student-athletes in basketball recruiting circles. He would often communicate with coaches at apparel company sponsored institutions, including head men's basketball coach and assistant men's basketball coach, about elite prospective student-athletes. As further described below, the case record contained communications among head men's basketball coach, assistant men's basketball coach and apparel company outside consultant related to men's basketball prospective student-athlete No. 4, men's basketball student-athlete No. 1, men's basketball prospective student-athlete No. 2 and men's basketball prospective student-athlete No. 3.

On at least one occasion noted in the record, apparel company outside consultant reported generally on a series of Division I institutional visits to his supervisor at apparel company. Specifically, March 2, 2015, apparel company outside consultant sent an email, which referenced apparel company outside consultant's visits to several Division I institutions for similar activities, to apparel company employee No. 3. Specific to Kansas, the email informed apparel company employee No. 3 that he and apparel company employee No. 1 visited Kansas' campus October 10, 2014. He reported that he and apparel company employee No. 1 "[m]et with [head men's basketball coach] and his staff. Talked recruiting targets and the upcoming season, assured them that we are here to help."

However, as noted below in relation to specific alleged payments and/or provision of goods, the case record noted specific activity on the part of apparel company outside consultant. These included using sham invoices, routing money indirectly through multiple accounts and meeting for in-person cash handoffs, that were designed to hide this conduct from Kansas, its staff and apparel company.

b. The Recruitment of Men's Basketball Prospective Student-Athlete No. 4.

Men's basketball prospective student-athlete No. 4, from Nassau, Bahamas, was a top men's basketball prospective student-athlete. Kansas started recruiting men's basketball prospective student-athlete No. 4 in the 2013-14 academic year. Assistant men's basketball coach served as Kansas' primary recruiter of men's basketball prospective student-athlete No. 4.

Apparel company outside consultant testified that in the winter of 2015 he provided \$15,000 of apparel company's funds to a family friend of men's basketball prospective student-athlete No. 4, as a means to provide the funds to men's

basketball prospective student-athlete No. 4's mother and for apparel company and apparel company outside consultant to build a relationship with men's basketball prospective student-athlete No. 4's family. Apparel company outside consultant testified that "everybody wanted to recruit [men's basketball prospective student-athlete No. 4]" because he was the number one player in the country. The parties did not contest that the payment was made. However, Kansas, head men's basketball coach and assistant men's basketball coach had no knowledge of this payment prior to federal prosecutors uncovering it in connection with the SDNY trial.

Prior to men's basketball prospective student-athlete No. 4's commitment decision, apparel company representatives reached out to assistant men's basketball coach to request assistance in encouraging men's basketball prospective student-athlete No. 4's attendance at an apparel company event. Assistant men's basketball coach contacted men's basketball prospective student-athlete No.4 to request he attend the apparel company event. Men's basketball prospective student-athlete No. 4 ultimately engaged in the apparel company event.

On September 6, 2016, weeks after the apparel company event, men's basketball prospective student-athlete No. 4 committed to play basketball at another Division I institution.

Apparel company outside consultant stated in an August 19, 2017, text message to head men's basketball coach, "I promise you. I got this, I have never let you down Except [men's basketball prospective student-athlete No. 4] lol."

c. The Recruitment and Enrollment of Men's Basketball Prospective Student-Athlete No. 2.

After men's basketball prospective student-athlete No. 4 committed to play basketball at another Division I institution, Kansas focused its recruitment of men's basketball prospective student-athlete No. 2. Assistant men's basketball coach served as Kansas' primary recruiter of men's basketball prospective student-athlete No. 2. Men's basketball prospective student-athlete No. 2 was also a top men's basketball prospective student-athlete, but Kansas did not highly recruit him until they found out men's basketball prospective student-athlete No. 4 decided not to commit to Kansas. Assistant men's basketball coach and head men's basketball coach called apparel company outside consultant September 6, 2016, the same day they found out men's basketball prospective student-athlete No. 4 had committed to another Division I institution.

(1) Official Visit and \$30,000 Payment.

Men's basketball prospective student-athlete No. 2 took an official visit to Kansas from September 30 through October 2, 2016. Mother of men's basketball prospective student-athlete No. 2 and domestic partner of mother of men's basketball prospective student-athlete No. 2 accompanied him on his visit. On October 1, 2016, they attended Late Night. Apparel company outside consultant and apparel company employee No. 1 also attended Late Night. Assistant men's basketball coach noted seeing both mother of men's basketball prospective student-athlete No. 2 and apparel company outside consultant at some point at the Hotel during the visit and understood that they knew each other previously through grassroots basketball. After Late Night, apparel company outside consultant met domestic partner of mother of men's basketball prospective student-athlete No. 2 and mother of men's basketball prospective student-athlete No. 2 in his room at the Hotel.

On October 2, 2016, apparel company outside consultant informed apparel company employee No. 1 that he had spoken with domestic partner of mother of men's basketball prospective student-athlete No. 2 and mother of men's basketball prospective student-athlete No. 2 during Late Night. He instructed them not to take money from other people and instead go through him. Apparel company outside consultant did not give them any money that night. Apparel company employee No. 1 testified at the SDNY trial that he told apparel company outside consultant, "[o]k do what you got to do." On October 21, 2016, apparel company deposited \$50,000 into apparel company outside consultant's bank account. Apparel company outside consultant withdrew \$50,000 from his account October 31, 2016. Further, apparel company outside consultant testified at the SDNY trial that November 1, 2016, he met with mother of men's basketball prospective student-athlete No. 2 at a hotel in New York City and paid her \$30,000 in cash. Additionally, according to apparel company outside consultant's testimony at the SDNY trial, sometime thereafter, he told apparel company employee No. 1 that men's basketball prospective student-athlete No. 2's family had received the money and that the family was "in a good place." The parties did not contest that the payment was made. However, Kansas, head men's basketball coach and assistant men's basketball coach had no knowledge of this payment prior to federal prosecutors uncovering it in connection with the SDNY trial.

Men's basketball prospective student-athlete No. 2 signed a National Letter of Intent and financial aid agreement with Kansas November 9, 2016. He publicly announced his commitment to Kansas November 18, 2016.

(2) The First \$20,000 Payment.

Apparel company outside consultant testified at the SDNY trial that he withdrew \$27,500 in cash from his AAU team No. 2 bank account January 19, 2017. On January 21, 2017, apparel company outside consultant met mother of men's basketball prospective student-athlete No. 2 at his hotel in Las Vegas. He provided mother of men's basketball prospective student-athlete No. 2 with \$20,000 cash of the \$27,500 he withdrew. The parties did not contest that the payment was made. However, Kansas, head men's basketball coach and assistant men's basketball coach had no knowledge of this payment prior to federal prosecutors uncovering it in connection with the SDNY trial.

(3) The Second \$20,000 Payment.

On February 24, 2017, apparel company outside consultant instructed his fiancée to send \$20,000 to domestic partner of mother of men's basketball prospective student-athlete No. 2. Apparel company outside consultant testified at the SDNY trial that mother of men's basketball prospective student-athlete No. 2, "seemed to be in dire straights for the money." A \$20,000 wire transfer was completed from bank No. 1 to domestic partner of mother of men's basketball prospective student-athlete No. 2 that day. The parties did not contest that the payment was made. However, Kansas, head men's basketball coach and assistant men's basketball coach had no knowledge of this payment prior to federal prosecutors uncovering it in connection with the SDNY trial.

(4) The \$15,000 Payment.

Men's basketball prospective student-athlete No. 2 enrolled at Kansas on or around June 3, 2017. On June 5, 2017, mother of men's basketball prospective student-athlete No. 2 sent apparel company outside consultant a text message with a screenshot of her bank No. 2 account and routing numbers. Apparel company outside consultant responded via text message that it "[w]ill be done Tomorrow." Later that evening, apparel company outside consultant called assistant men's basketball coach and they spoke for eight minutes. The specific details of the content of this call were not in the case record for this infractions case. On June 14, 2017, apparel company outside consultant sent \$15,000 from his AAU team No. 2 account at bank

No. 3 in Ludlow, Massachusetts⁷ to mother of men's basketball prospective student-athlete No. 2's bank No. 2 account.

In early November 2017, head men's basketball coach received a tip that mother of men's basketball prospective student-athlete No. 2 might have received an impermissible payment and reported it to Kansas' compliance staff. Following an investigation, Kansas concluded that this payment was based on a personal relationship between mother of men's basketball prospective student-athlete No. 2 and apparel company outside consultant.

The parties did not contest that the payment was made. However, Kansas, head men's basketball coach and assistant men's basketball coach had no knowledge of payment prior to receipt of the tip and were provided an alternative explanation as to specific reason for this payment counter to the one uncovered in connection with the SDNY trial.

(5) The \$4,000 Payment.

On September 22, 2017, mother of men's basketball prospective student-athlete No. 2 sent a text message to apparel company outside consultant asking him to call her. On September 23, 2017, mother of men's basketball prospective student-athlete No. 2 again texted apparel company outside consultant asking him if something had changed from what he told her September 22, 2017. Apparel company outside consultant responded via text message that he would get \$4,000 in her bank account early September 26, 2017, and possibly September 25, 2017.⁸ On September 26, 2017, apparel company employee No. 1 and apparel company employee No. 2 were arrested and indicted on federal corruption charges. The parties did not contest that this exchange occurred. However, Kansas, head men's basketball coach and assistant men's basketball coach had no knowledge of this exchange prior to federal prosecutors uncovering it in connection with the SDNY trial.

(6) Withholding and Departure.

Kansas withheld men's basketball prospective student-athlete No. 2 from participation in men's basketball while the compliance department looked into potential eligibility concerns as noted above in relation to a \$15,000

⁷ Apparel company outside consultant operated AAU team No. 2, a nonscholastic basketball team. He testified at the SDNY trial that he controlled AAU team No. 2's bank No. 3 account.

⁸ The text message exchange was confirmed during apparel company outside consultant's direct testimony during the SDNY trial. The infractions case record did not contain bank information confirming if apparel company outside consultant actually paid the \$4,000 to mother of men's basketball prospective student-athlete No. 2.

family monetary benefit. Kansas ultimately sought reinstatement for men's basketball prospective student-athlete No. 2 following its investigation which revealed the link of the payments to a personal relationship between mother of men's basketball prospective student-athlete No. 2 and apparel company outside consultant. However, men's basketball prospective student-athlete No. 2 left Kansas in January 2018 and signed a professional basketball contract with a Bosnian basketball team.

d. The Recruitment of Men's Basketball Student-Athlete No. 2 and Apparel Company Outside Consultant's Payment to Guardian for Men's Basketball Student-Athlete No. 2.

Men's basketball student-athlete No. 2 was originally from Kayes, Mali and moved to the United States in 2012 to attend high school in New York. He was a top men's basketball prospective student-athlete. Guardian for men's basketball student-athlete No. 2 was men's basketball student-athlete No. 2's legal guardian. Guardian for men's basketball student-athlete No. 2 was the president of the Foundation and ran a basketball camp in Mali. He also served as the legal guardian for others who moved to the United States from Mali.

From September 18 through 21, 2014, men's basketball student-athlete No. 2 took an official visit to Kansas. Guardian for men's basketball student-athlete No. 2 accompanied men's basketball student-athlete No. 2 on the visit. On April 27, 2015, men's basketball student-athlete No. 2 tweeted that he had committed to play men's basketball at Kansas. He enrolled at Kansas in August 2015 and played on the men's basketball team during the 2015-16 academic year.⁹

Guardian for men's basketball student-athlete No. 2's bank records showed that March 22, 2016, apparel company outside consultant sent an unidentified amount of money to guardian for men's basketball student-athlete No. 2 from his AAU team No. 2 account. The account records do not indicate a specific purpose for the funds sent. Further, Kansas, head men's basketball coach and assistant men's basketball coach had no knowledge of this payment prior to federal prosecutors uncovering it in connection with the SDNY trial.

Men's basketball student-athlete No. 2 declared for the NBA draft March 28, 2016, and was drafted in April 2016.

⁹ Kansas confirmed in its response that men's basketball student-athlete No. 2 officially committed to Kansas April 27, 2015.

e. The Recruitment of Men’s Basketball Prospective Student-Athlete No. 3.

Men’s basketball prospective student-athlete No. 3 was a top men’s basketball prospective student-athlete in the 2018 men’s basketball recruiting class. Several Division I institutions recruited men’s basketball prospective student-athlete No. 3, including Kansas.

On September 8, 2017, head men’s basketball coach and assistant men’s basketball coach attended a celebratory reception for Naismith Memorial Basketball Hall of Fame induction. Apparel company employee No. 1 also attended the event. Assistant men’s basketball coach told apparel company employee No. 1 that he and head men’s basketball coach were scheduled to make an in-home recruiting visit with men’s basketball prospective student-athlete No. 3 and his family September 12, 2017. Apparel company employee No. 1 said assistant men’s basketball coach should speak to apparel company employee No. 2 about men’s basketball prospective student-athlete No. 3 before going on their visit.

As previously discussed, September 12, 2017, assistant men’s basketball coach and head men’s basketball coach spoke with apparel company employee No. 2 on a speaker phone during the car ride to men’s basketball prospective student-athlete No. 3’s home recruiting visit to see what information apparel company employee No. 2 might have to help Kansas have “an edge” in the recruitment of men’s basketball prospective student-athlete No. 3. Assistant men’s basketball coach and head men’s basketball coach attended the in-home recruiting visit that same day with men’s basketball prospective student-athlete No. 3, stepfather of men’s basketball prospective student-athlete No. 3 and mother of men’s basketball prospective student-athlete No. 3.

On September 13, 2017, the FBI wiretapped a follow-up telephone conversation between assistant men’s basketball coach and apparel company employee No. 2. The complete transcript of that call, however, is not a matter of public record or part of the case record for this infractions case, although the dissenting appellate judge in the appellate decision by the United States Court of Appeals for the Second Circuit summarized what was discussed.¹⁰

Men’s basketball prospective student-athlete No. 3 and his family took an official visit to Kansas during the weekend of September 29, 2017. While on campus that weekend, they attended Late Night. Men’s basketball prospective student-athlete No. 3 ultimately committed to playing basketball at another Division I institution.

¹⁰ Portions of the transcript remained under seal. The summary of the telephone conversation, as provided by the appellate judge, is discussed further in Section IV.

f. The Recruitment and Enrollment of Men’s Basketball Student-Athlete No. 1.

Men’s basketball student-athlete No. 1 was from the Republic of Angola. He moved to the United States to attend and play high school basketball at high school No. 1 and high school No. 2 in Florida. Guardian for men’s basketball student-athlete No. 1 served as men’s basketball student-athlete No. 1’s legal guardian. Assistant men’s basketball coach was Kansas’ primary recruiter of men’s basketball student-athlete No. 1.

(1) Discussion of Gear for the Angolan Youth Team, the Provision of Contact Information and Payment of \$2,500.

In mid-August 2017, assistant men’s basketball coach called former head men’s basketball coach to get insight into men’s basketball student-athlete No. 1’s recruitment. According to assistant men’s basketball coach’s interview testimony, former head men’s basketball coach informed him that guardian for men’s basketball student-athlete No. 1 wanted a “sponsorship for an Angolan team.” Assistant men’s basketball coach testified that he told former head men’s basketball coach that he “would definitely see what [he] could do and try to put them together with somebody that could help with that.”

When assistant men’s basketball coach subsequently spoke with guardian for men’s basketball student-athlete No. 1, guardian for men’s basketball student-athlete No. 1 confirmed he was looking to obtain used gear. Assistant men’s basketball coach informed him that Kansas could not provide the gear but offered to connect guardian for men’s basketball student-athlete No. 1 to apparel company outside consultant because apparel company outside consultant was responsible for merchandise at apparel company. Assistant men’s basketball coach asked head men’s basketball coach whether the provision of apparel company outside consultant’s contact information to guardian for men’s basketball student-athlete No. 1 was permissible. After head men’s basketball coach confirmed he believed it was permissible, then assistant men’s basketball coach provided apparel company outside consultant’s contact information to guardian for men’s basketball student-athlete No. 1.

Assistant men’s basketball coach also asked apparel company outside consultant to contact guardian for men’s basketball student-athlete No. 1 and provided guardian for men’s basketball student-athlete No. 1’s contact information to him. According to assistant men’s basketball coach’s interview testimony, he “asked [apparel company outside consultant] to help sponsor a team from Angola.” Apparel company outside consultant

testified at the SDNY trial that he spoke with head men's basketball coach about guardian for men's basketball student-athlete No. 1's request for gear and informed head men's basketball coach and assistant men's basketball coach that he "would take care of it."

On August 8, 2017, assistant men's basketball coach texted guardian for men's basketball student-athlete No. 1's contact information to apparel company outside consultant. The next day, August 9, 2017:

- Apparel company outside consultant texted head men's basketball coach, "[h]all of famer. When you have 5 min and your alone. Call me p."
- Head men's basketball coach called apparel company outside consultant later that day. Assistant men's basketball coach also exchanged phone calls with apparel company outside consultant and guardian for men's basketball student-athlete No. 1 that day.
- Apparel company outside consultant texted assistant men's basketball coach later that day, "[h]it me when u can." Assistant men's basketball coach responded, "[head men's basketball coach] just talked to [guardian for men's basketball student-athlete No. 1] let me know how it goes."
- Apparel company outside consultant replied, "I called no answer. I'll do it again now." Assistant men's basketball coach replied, "[h]e was on with us."
- Apparel company outside consultant then called guardian for men's basketball student-athlete No. 1.
- Later that evening, apparel company outside consultant texted head men's basketball coach, "I talked to [guardian for men's basketball student-athlete No. 1]."
- Head men's basketball coach responded, "[w]e good?"
- Apparel company outside consultant confirmed "[a]lways. That's was light work. Ball is in his court now."

Guardian for men's basketball student-athlete No. 1 and apparel company outside consultant communicated about the potential of apparel company providing used gear to guardian for men's basketball student-athlete No. 1.

According to guardian for men's basketball student-athlete No. 1's interview testimony, apparel company outside consultant told guardian for men's basketball student-athlete No. 1 that "he [could] do something about" guardian for men's basketball student-athlete No. 1's request for the gear. However, guardian for men's basketball student-athlete No. 1 testified in multiple interviews during the investigation of this infractions case, apparel company outside consultant was more interested in who guardian for men's basketball student-athlete No. 1 knew and who he had relationships with in Africa and Angola.

Apparel company outside consultant testified at the SDNY trial that assistant men's basketball coach "kept asking" him about the "Angola thing." Apparel company outside consultant also confirmed in his testimony at the SDNY trial that he did not have any email communications with anybody in which he was asking anyone at apparel company to get uniforms for the Angolan Youth Team. Further, he had not seen any documents showing that anyone from apparel company had ever actually ordered uniforms for the Angolan Youth Team.

Men's basketball student-athlete No. 1 took an official visit to Kansas August 25 through August 27, 2017. Guardian for men's basketball student-athlete No. 1 accompanied him on the official visit. Head men's basketball coach called apparel company outside consultant August 25, 2017. The next day, August 26, 2017:

- Assistant men's basketball coach texted apparel company outside consultant a message he received from guardian for men's basketball student-athlete No. 1 that read, "[c]oach been on the phone with Angola. We are good to go. We will commit tomorrow."
- Apparel company outside consultant responded, "[g]reat. I will follow up tomorrow."
- Assistant men's basketball coach acknowledged, "[t]hank you."

On August 28, 2017, assistant men's basketball coach called apparel company outside consultant. Apparel company outside consultant texted apparel company employee No. 1 that same day, "[men's basketball student-athlete No. 1] commits to KU today." Men's basketball student-athlete No. 1 verbally committed to play men's basketball at Kansas August 30, 2017. He signed his National Letter of Intent November 13, 2017. Kansas issued men's basketball student-athlete No. 1's financial aid

agreement November 8, 2017, but was not signed by men’s basketball student-athlete No. 1 until November 13, 2017. He enrolled at Kansas in spring 2018.

(2) The \$20,000 Offer.

Apparel company outside consultant believed guardian for men’s basketball student-athlete No. 1 “was under the umbrella” of a representative of athletics interests for another Division I institution for \$60,000 of salary that he had been paying guardian for men’s basketball student-athlete No. 1. Apparel company outside consultant testified at the SDNY trial that he told guardian for men’s basketball student-athlete No. 1 that he would give him \$20,000 toward the \$60,000 to “help [guardian for men’s basketball student-athlete No. 1] get out from under this deal” and that he “wanted to . . . make sure that [men’s basketball student-athlete No. 1] stayed at Kansas.”

On September 11, 2017, the FBI wiretapped a conversation between apparel company outside consultant and apparel company employee No. 1. Apparel company outside consultant said, “I can spend some time on this, but just so you know, I gotta send this guy [guardian for men’s basketball student-athlete No. 1] another 20 grand out on Wednesday [Sept. 13] because I gotta get him out from under this apparel company No. 2 deal, and the deal he’s got with this guy who was taking care of him. He wants his money back now because the kid [men’s basketball student-athlete No. 1] didn’t go to [another Division I institution], so I gotta stay on top of that. I just can’t have this thing catapult in my face, but I don’t want to do anything to harm you.” Apparel company outside consultant did not actually pay the \$20,000 and guardian for men’s basketball student-athlete No. 1 denied any such offer occurred. Kansas, head men’s basketball coach and assistant men’s basketball coach had no knowledge of any potential exchange prior to federal prosecutors uncovering it in connection with the SDNY trial.

(3) The \$2,500 Payment.

Following men’s basketball student-athlete No. 1’s August 2017 official visit, Kansas was determining whether men’s basketball student-athlete No. 1 could reclassify and enroll at Kansas in the spring of 2018. One possibility included men’s basketball student-athlete No. 1 taking online courses at high school No. 3 to meet mid-year eligibility requirements. Apparel company outside consultant asked guardian for men’s basketball student-athlete No. 1 how much the courses would cost. Guardian for men’s

basketball student-athlete No. 1 told him “they needed \$2,500 for [men’s basketball student-athlete No. 1] to attend online, night classes.”

On September 15, 2017, assistant men’s basketball coach called guardian for men’s basketball student-athlete No. 1. Shortly thereafter, guardian for men’s basketball student-athlete No. 1 sent a WhatsApp message to apparel company outside consultant saying that he received \$2,500 in the mail and asking what it was for. Apparel company outside consultant responded, “[f]or classes. [Former head men’s basketball coach] said to take care of you. [Former head men’s basketball coach] is family.” Guardian for men’s basketball student-athlete No. 1 said he did not need the money because classes at high school No. 3 were free, to which apparel company outside consultant replied, “[c]an’t give it back now. Just keep it.” Guardian for men’s basketball student-athlete No. 1 deposited \$2,000 in his personal bank account September 20, 2017. He donated the remaining \$500 to his church. The parties did not contest that the payment was made. However, Kansas, head men’s basketball coach and assistant men’s basketball coach had no knowledge of this payment prior to federal prosecutors uncovering it in connection with the SDNY trial.

g. Representative of Athletics Interests No. 1 Plays Cornhole with Student-Athletes at Head Men’s Basketball Coach’s House.

Representative of athletics interests No. 1 was a representative of athletics interests for Kansas. He was a member of and donated money to the Education Fund, donated money to the Kansas University Endowment Association, and was a season-ticket holder.

On July 20, 2019, representative of athletics interests No. 1 had a conversation with local sports journalist, a local sports journalist and radio show host, at a restaurant in Lenexa, Kansas. Local sports journalist recorded portions of his conversation with representative of athletics interests No. 1. In the recording, representative of athletics interests No. 1 described events that occurred at a barbeque event at head men’s basketball coach’s house sometime in 2016. Among the attendees at the event were men’s basketball student-athlete No. 4, men’s basketball student-athlete No. 5, and men’s basketball student-athlete No. 6, who were all men’s basketball student-athletes during the 2014-15 and 2015-16 seasons. Representative of athletics interests No. 1 played a cornhole game at the barbeque event with men’s basketball student-athlete No. 4, men’s basketball student-athlete No. 5 and men’s basketball student-athlete No. 6. They each bet \$100 on the cornhole game. Representative of athletics interests No. 1 and men’s basketball student-athlete No. 4 competed against men’s basketball student-athlete No. 5 and men’s basketball student-athlete No. 6, and representative of athletics interests No. 1 and men’s

basketball student-athlete No. 4 won. Men’s basketball student-athlete No. 5 and men’s basketball student-athlete No. 6 did not pay their \$100 bets, so representative of athletics interests No. 1 placed \$200 near or under a plant for men’s basketball student-athlete No. 4 to cover the bets for men’s basketball student-athlete No. 5 and men’s basketball student-athlete No. 6 and directed men’s basketball student-athlete No. 4 to go look near or under the plant.

h. Kansas Receives Grand Jury Subpoenas Related to the SDNY Investigation and Document Requests.

In late 2017 and early 2018, the enforcement staff advised Kansas to communicate with the NCAA’s outside counsel about matters relating to the ongoing SDNY investigation. On January 8, 2018, the U.S. Department of Justice issued a Grand Jury Subpoena to Kansas regarding the recruitment and enrollment of men’s basketball prospective student-athlete No. 2. Kansas’ outside counsel informed the NCAA’s outside counsel about the Subpoena shortly after receiving it in January 2018.

In late February or early March 2018, the U.S. Attorney’s Office provided notice to Kansas that a Grand Jury Subpoena would be issued relating to men’s basketball student-athlete No. 1’s recruitment and enrollment. The prosecutor informed Kansas’ counsel that the Department of Justice’s interest was in guardian for men’s basketball student-athlete No. 1, that there was no indication that men’s basketball student-athlete No. 1 or his family had received any money, and that Kansas and its coaches were not targets of the investigation. Kansas concluded after the Department of Justice’s initial outreach that there were no violations of NCAA bylaws to report to the NCAA.

On March 14, 2018, an Assistant U.S. Attorney sent an email to head men’s basketball coach’s counsel “to follow-up on the records we requested a couple of weeks ago related to [men’s basketball student-athlete No. 1].” That same day, the U.S. Department of Justice issued another Grand Jury Subpoena to Kansas seeking “[a]ll documents regarding the recruitment and enrollment of [men’s basketball student-athlete No. 1],” which included communications between the Kansas coaching staff and men’s basketball student-athlete No. 1 or guardian for men’s basketball student-athlete No. 1 and documents obtained from guardian for men’s basketball student-athlete No. 1. It did not reference apparel company or apparel company outside consultant. The government requested that Kansas “voluntarily refrain from disclosing the existence of the subpoena to any third party” to preserve the confidentiality of and prevent any impediments to its investigation. Kansas’ outside counsel informed the NCAA’s outside counsel about the substance of the Subpoena before the end of March 2018, but refrained from providing NCAA outside counsel a physical copy of the Subpoena.

Prior to Kansas' March 31, 2018, men's basketball contest, Kansas' outside counsel notified former director of athletics No. 1 that "there may be an issue" with men's basketball student-athlete No. 1. Former director of athletics No. 1 informed senior associate athletic director for compliance and student services, and senior associate athletic director for compliance and student services spoke with Kansas' outside counsel who informed senior associate athletic director for compliance and student services that "there may be some concern with [men's basketball student-athlete No. 1] coming down the road." Meanwhile, April 5, 2018, the enforcement staff issued records requests to Kansas seeking, among other things, documents, or information that Kansas provided to the Department of Justice as part of the ongoing SDNY investigation. On April 10, 2018, the Department of Justice issued a superseding indictment against the individuals associated with apparel company, which included allegations about men's basketball student-athlete No. 1. On April 12, 2018, Kansas' outside counsel communicated with the enforcement staff concerning the information in the superseding indictment.

On June 21, 2018, the enforcement staff requested additional records to further analyze whether violations occurred within Kansas' men's basketball program, and renewed the April 5, 2018, records request. On July 26, 2018, it became public that Kansas had received Grand Jury Subpoenas based on the institution publicly providing redacted forms of the Subpoenas in response to freedom of information requests. Beginning in August of 2018, as soon as clearance was obtained from the SDNY, Kansas provided documents in response to enforcement staff requests that were in part responsive to the Subpoena. Kansas provided an unredacted physical copy of the Subpoena to the Complex Case Unit in 2021.

i. Kansas and Head Men's Basketball Coach Issue Public Statements Regarding This Infractions Case.

On September 23, 2019, the same day that Kansas received the enforcement staff's notice of allegations, Kansas' Office of Public Affairs and head men's basketball coach issued public statements about this infractions case.

On May 7, 2020, following receipt of the enforcement staff's written reply, Kansas' Office of Public Affairs and head men's basketball coach issued additional public statements about this infractions case.¹¹

¹¹ Additional details regarding Kansas' and head men's basketball coach's public statements are included in Section IV.

On June 8, 2020, Kansas issued another statement commenting on the notice of allegations issued by the enforcement staff and the enforcement staff's written reply, which were made public pursuant to the Kansas Open Records Act.

j. Kansas' Football Video Coordinator.

In July 2016, Kansas hired former director of football technology as the director of football technology. Former director of football technology's responsibilities included videotaping, editing and distributing videos for Kansas' football program. At the conclusion of the 2017 football season, former head football coach No. 1 asked former director of football technology to create videos to assist the quarterbacks with mental muscle memory. Former director of football technology created the videos that ranged in duration from 15 to 25 minutes. Between December 2017 and April 2018, former director of football technology met with the quarterbacks six to 10 times in the quarterback meeting room of the football office and provided instruction while watching the videos of practices and games. His instructions included, but were not limited to, identifying quarterback reads, coverage reads and adjustments and defensive fronts and alignments. He offered tips and quizzed the quarterbacks on what they learned.

Between August 2018 and early October 2018, former director of football technology provided on-field instruction to the quarterbacks on one to three occasions. He explained to the quarterbacks what they should do during certain plays and how to read defensive coverages and formations. On August 30, 2018, former director of football technology sent former football student-athlete a link to a video of a football play in a text message that read, "[r]emember on the stick snag out of the late tite. If the backer doesn't move, the ball goes to the back." Former director of football technology sent the video and text message as an instruction to help former football student-athlete understand how to watch tape.

k. Kansas' Football Special Teams Staff Members.

Kansas hired former head football coach No. 2 to replace former head football coach No. 1 as the head football coach in or about November 2018. On September 27, 2019, a newspaper published an article questioning the involvement of senior special teams analyst, a noncoaching staff member assigned to the special teams of the football program, in athletically related activities related to Kansas' football special teams. Specifically, practice videos revealed that senior special teams analyst provided instructions during a drill. The videos also revealed senior special teams consultant, another noncoaching staff member assigned to the special teams of the football program, providing similar instructions. Video footage revealed that senior special teams analyst and senior special teams consultant could have provided tactical instruction approximately 18 times.

IV. ANALYSIS

This section provides a detailed analysis of the hearing panel’s decisions with respect to each of the allegations.

a. Determination of Whether Apparel Company, Apparel Company Employee No. 2, Apparel Company Employee No. 1 and/or Apparel Company Outside Consultant Triggered Status as Representatives of Athletics Interests.

Central to the hearing panel’s analysis of the allegations before it in this infractions case is whether certain individuals or an apparel company are representatives of Kansas’ athletics interests pursuant to NCAA Constitution 6.4.2.¹² which attach responsibility to Kansas for the conduct alleged. The hearing panel finds it appropriate to provide the analysis for apparel company, apparel company employee No. 2, apparel company employee No. 1 and apparel company outside consultant each as a standalone section based on the specific facts found by the hearing panel in this infractions case.

(1) NCAA Legislation Relating to Representatives of Athletics Interests.

Constitution 6.4.1 provides that 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.

Further, Constitution 6.4.2 provides an institution’s “responsibility” for the conduct of its intercollegiate athletics program shall include responsibility for the acts of individuals, a corporate entity (e.g., apparel or equipment manufacturer) or other organization when a member of the institution’s executive or athletics administration or an athletics department staff member has knowledge or should have knowledge that such an individual, corporate entity or other organization:

- (a) Has participated in or is a member of an agency or organization as described in Constitution 6.4.1;

¹² For purposes of the hearing panel’s analysis, Constitution 6.4.2 is substantively similar to Bylaw 13.02.15. Therefore, the hearing panel will refer to Constitution 6.4.2 throughout this decision.

- (b) Has made financial contributions to the athletics department or to an athletics booster organization of that institution;
- (c) Has been requested by the athletics department staff to assist in the recruitment of prospective student-athletes or is assisting in the recruitment of prospective student-athletes;
- (d) Has assisted or is assisting in providing benefits to enrolled student-athletes; or
- (e) Is otherwise involved in promoting the institution’s athletics program.

In addition, Constitution 6.4.2.2 provides that any individual participating in the activities set forth in Constitution 6.4.2 shall be considered a “representative of the institution’s athletics interests,” and once so identified as a representative, it is presumed the person retains that identity.

The crux of the analysis in this case involves subparts-(c) and -(e) of Constitution 6.4.2.

Constitution 6.4.2 does not require that an institutional staff member have actual knowledge that an individual or entity have engaged in one of the triggering activities. Instead, if an institution knew or should have known of any activities described in the legislation, it is sufficient to trigger status as a representative of an institution’s athletics interests.¹³

(2) The Parties’ Positions.

In October 1999, the NCAA Division I Management Council clarified that corporate entities and other organizations such as apparel and equipment companies could be considered representatives of athletics interests. Therefore, in this infractions case, the Complex Case Unit contended that the apparel company and apparel company employee No. 2, apparel company employee No. 1 and apparel company outside consultant were representatives of Kanas’ athletics interests because: (a) Kansas, head men’s basketball coach and assistant men’s basketball coach stipulated that as of June 14, 2017, apparel company outside consultant was a representative of the institution’s athletics interests; (b) Kansas, head men’s basketball coach and assistant men’s basketball coach knew or should have

¹³ Constitution 6.4.2.2 provides that once an individual becomes a representative of the institution’s athletics interests, he or she remains as such in perpetuity, and the institution is responsible for his or her violations, regardless of whether the institution knew of the underlying conduct.

known that apparel company, apparel company outside consultant and apparel company employee No. 1 promoted Kansas' men's basketball program; and (c) head men's basketball coach and assistant men's basketball coach requested, knew or should have known that apparel company, apparel company outside consultant, apparel company employee No. 1 and apparel company employee No. 2 assisted in the recruitment of prospective student-athletes.

More specifically, the Complex Case Unit highlighted the following three factual circumstances that demonstrate apparel company was a representative of athletics interest for Kansas under Constitution 6.4.2-(e):

- (a) Apparel company's sponsorship agreement with Kansas demonstrates a relationship that went far beyond providing athletics apparel.
- (b) Apparel company provided promotional funds to promote Late Night in 2016 and 2017.
- (c) Apparel company paid approximately \$250,000 and organized a banquet at the Naismith Memorial Basketball Hall of Fame, where head men's basketball coach was also inducted, and attended by apparel company outside consultant, apparel company employee No. 1, head men's basketball coach, assistant men's basketball coach and former director of athletics No. 1.

In addition, the Complex Case Unit proposed four separate circumstances of which Kansas knew or should have known that either apparel company, apparel company employee No. 2, apparel company outside consultant or apparel company employee No. 1 were representatives of athletics interests under Constitution 6.4.2-(c) in this infractions case. Those four circumstances were:

- (a) In September 2016, apparel company outside consultant and apparel company employee No. 1 attended Late Night, an annual event for Kansas' men's basketball team and marks the beginning of the basketball season, while men's basketball prospective student-athlete No. 2 and his family also attended the event during an official recruiting visit to Kansas. The Complex Case Unit contended that Kansas knew apparel company outside consultant and apparel company employee No. 1 were present at Late Night and that apparel company outside consultant, apparel company employee

No. 1 and men's basketball prospective student-athlete No. 2 stayed at the same hotel.

- (b) In August and September 2017, head men's basketball coach and assistant men's basketball coach encouraged, approved and had knowledge of telephone calls between apparel company outside consultant and guardian for men's basketball student-athlete No. 1 for the purpose of arranging for the provision of used gear to guardian for men's basketball student-athlete No. 1. In those calls, apparel company outside consultant encouraged guardian for men's basketball student-athlete No. 1 to influence men's basketball student-athlete No. 1 to enroll at Kansas.

During the 2014-15 academic year, apparel company outside consultant attempted to secure men's basketball prospective student-athlete No. 4's enrollment at Kansas by providing \$15,000 to a family friend of men's basketball prospective student-athlete No. 4's who was to provide the money to men's basketball prospective student-athlete No. 4's mother. On August 19, 2017, after men's basketball prospective student-athlete No. 4 enrolled at another institution, apparel company outside consultant communicated in a text message to head men's basketball coach that he had let head men's basketball coach down in the recruitment of men's basketball prospective student-athlete No. 4. The Complex Case Unit contended that such communications demonstrated head men's basketball coach's knowledge of apparel company outside consultant's recruiting activities on the behalf of Kansas.

- (c) On or about September 13, 2017, apparel company employee No. 2 had a recruiting contact with men's basketball prospective student-athlete No. 3 and learned information about what it would take for men's basketball prospective student-athlete No. 3 to commit to Kansas. In a telephone call September 12, 2017, apparel company employee No. 2 provided information to head men's basketball coach and assistant men's basketball coach regarding men's basketball prospective student-athlete No. 3's recruitment prior to head men's basketball coach and assistant men's basketball coach attending an in-home recruiting visit with men's basketball prospective student-athlete No. 3 and his family. Apparel company employee No. 2 provided additional information to assistant men's basketball coach September 13, 2017, after head men's basketball coach and assistant men's basketball coach completed the men's

basketball prospective student-athlete No. 3 in-home recruiting visit.

Kansas responded that apparel company, apparel company employee No. 2, apparel company employee No. 1 and apparel company outside consultant were not representatives of Kansas' athletics interests at any time relevant to the alleged conduct in this infractions case for the following reasons:

- (a) Any contact apparel company outside consultant had with men's basketball prospective student-athlete No. 4's family friend during winter 2015 was unrelated to Kansas and Kansas lacked any knowledge of it.
- (b) Kansas was obligated to promote apparel company pursuant to the terms of its sponsorship agreement with apparel company, and not vice versa.
- (c) Apparel company employee No. 1 approved apparel company funds for apparel company outside consultant's concealed payments to mother of men's basketball prospective student-athlete No. 2 to build relationships with mother of men's basketball prospective student-athlete No. 2 and men's basketball prospective student-athlete No. 2. It was not done to recruit men's basketball prospective student-athlete No. 2 for Kansas.
- (d) Apparel company, apparel company employee No. 1 and apparel company outside consultant were not acting as representatives of Kansas' athletics interests at the time of their alleged conduct because their objectives were to develop relationships and drive business to apparel company.

Head men's basketball coach responded with his own contentions:

- (a) Apparel company pursued its own commercial interests and purposes in developing relationships with prospective student-athletes through the development of brand loyalty to position itself to benefit from future professional endorsement deals.
- (b) It would be unprecedented to find that an apparel company becomes a representative of an institution's athletics interests by virtue of an arms-length sponsorship agreement.

- (c) Even if the hearing panel could conclude that apparel company employee No. 2 and apparel company outside consultant were representatives of athletics interests for Kansas at the time of the alleged conduct relating to men's basketball prospective student-athlete No. 3 and men's basketball prospective student-athlete No. 4, head men's basketball coach did not know, and had no reason to know, of their activities.

Assistant men's basketball coach also responded with his own contentions:

- (a) The case record contains no information indicating that apparel company outside consultant or apparel company employee No. 2: (i) participated in any organizations affiliated with Kansas that would trigger their status as a representative of athletics interests for Kansas; or (ii) contributed financially to Kansas' athletics department.
- (b) The case record also does not demonstrate that apparel company employee No. 2: (i) was asked by assistant men's basketball coach or anyone else at Kansas to recruit for Kansas; (ii) recruited for Kansas, provided benefits to Kansas student-athletes, prospective student-athletes being recruited by Kansas, or family members of Kansas student-athletes or prospective student-athletes; or (iii) promoted Kansas' interest.
- (c) Assistant men's basketball coach contended that an apparel company employee who supplies gear to an institution's athletics department does not make that person a representative of athletics interests of the institution.

(3) Determining Whether Apparel Company, Apparel Company Employee No. 1 or Apparel Company Outside Consultant Were Promoting Kansas' Athletics Program [Constitution 6.4.2-(e)].

The hearing panel concludes that credible and persuasive information does not show that apparel company, apparel company employee No. 1 or apparel company outside consultant were promoting Kansas' athletics program pursuant to Constitution 6.4.2-(e).

- Apparel Company.
 - i. Sponsorship Agreement.

The Complex Case Unit acknowledged that the mere existence of a sponsorship agreement does not make apparel company a representative of Kansas’ athletics interests. Instead, the Complex Case Unit contended that apparel company was a representative of Kansas’ athletics interests pursuant to Constitution 6.4.2-(e) because apparel company’s sponsorship agreement with Kansas demonstrates a relationship that went far beyond providing athletics apparel at no cost.

Kansas provided information that its sponsorship agreement with apparel company was materially indistinguishable compared to similar agreements with other institutions. Kansas further contended that its sponsorship agreement was not designed to promote Kansas’ athletics program. Kansas’ sponsorship agreement required apparel company to pay Kansas monies and provide goods and services in return for Kansas to promote and market the apparel company brand. For example, the recitals in Kansas’ sponsorship agreement provided that apparel company entered into the agreement:

“[T]o acquire the designation for certain [apparel company]’s Products as the official Products of Kansas Athletics’ athletics programs in the designated categories; to secure the sponsorship recognition and acknowledgement of [apparel company]’s products by Kansas Athletics’ Athletic Program Staff; and to acquire certain sponsorship recognition rights from Kansas Athletics.”

Additionally, the “Promotional Rights” section of the agreement stated that apparel company shall have “an exclusive license . . . to use the University Marks . . . in connection with the advertisement, promotion, and sale of [apparel company] Products.”

The sponsorship agreement also required Kansas to permit its coaches to be available for up to three “promotional appearances” per year “in connection with the sponsorship

recognition and promotion and sale of [apparel company] Products.” Further, the compensation that apparel company pays to Kansas is increased or decreased based upon the scope of Kansas’ promotion of the apparel company brand.

The hearing panel finds that Kansas’ sponsorship agreement with apparel company was standard compared to the other similar agreements in the case record. Nothing in apparel company’s sponsorship agreements with Kansas was unique to elevate Kansas in a manner to demonstrate that apparel company was promoting Kansas, nor did the sponsorship agreement require, authorize, or contemplate apparel company promoting Kansas’ athletics program. Rather, the sponsorship was designed to promote apparel company, not Kansas. Therefore, the hearing panel concludes that credible and persuasive information does not support the conclusion that apparel company was promoting Kansas and therefore apparel company is not a representative of athletics interests for Kansas pursuant to Constitution 6.4.2-(e) based on the sponsorship agreement.

ii. Late Night in 2016 and 2017.

Kansas sought to revamp its Late Night event following poor attendance in 2015. Kansas’ enhancement efforts included arranging for musical acts to perform at Late Night in 2016 and 2017 and adding an outdoor community event, known as Phog Fest, with activities, contests and vendors.

The Complex Case Unit contended that apparel company provided \$125,000 of allocated promotional money to promote Late Night in 2016. The hearing panel finds that the 2016 enhancements to Late Night came from Kansas’ operational budget, not from promotional money from apparel company. Assistant athletics director for alumni engagement developed the 2016 enhancement concepts on her own. She stated that the budget for Late Night in 2015, which was approximately \$75,000 to \$80,000, came out of her regular operating budget. The addition of a musical artist in 2016 added approximately \$50,000 in additional cost, so Kansas added this amount to her operational budget for Late Night with “zero dollars from any outside promotional budget to support 2016.” Kansas did not allocate

promotional money from apparel company for Late Night in 2016.

As part of Kansas' continued enhancements to Late Night in 2017, Kansas arranged for a more expensive musical artist to perform. Assistant athletics director for alumni engagement negotiated the musical artist deal on her own. The increased cost in 2017 was outside of Kansas' operational budget for the event. To cover the increased cost, Kansas used promotional money that apparel company was already required to pay under the existing sponsorship agreement with Kansas. Pursuant to the terms of the sponsorship agreement, apparel company consented to Kansas using funds from the Marketing Fund that apparel company was required to provide to Kansas for various activations, including events for the 2017-18 academic year.

The hearing panel finds that apparel company provided promotional money pursuant to the sponsorship agreement to be used for and/or to enhance apparel company's activation activities.

Kansas identified some of the final, agreed-upon elements of the apparel company's sponsorship for Phog Fest 2017, which included:

3 v. 3 and Video Game Tournaments.

- Kansas publicized the tournaments (3 v. 3 and video game tournament) and apparel company's sponsorship in press releases, social media, Kansas webpages promoted the event and provided for a method for signing up, flyers and ads in the student newspaper.
- Entrants to the tournaments received apparel company branded t-shirts, bags, water bottles, and coupons for apparel company's apparel and gear.
- The preliminary rounds of the tournaments occurred on the days prior to Late Night. Apparel company had posters and gear present for the preliminaries. That same week, apparel company held a scavenger

hunt in which students and fans could search for multiple pairs of apparel company's shoes that were hidden around Kansas' campus. Kansas helped promote this event.

- The first three events during Late Night in the fieldhouse were the men and women's 3 v. 3 championship games followed by the NBA 2K championship. Competitors were outfitted in apparel company uniforms that they were allowed to keep.
- During Late Night, the winners of the tournaments were presented with trophies and the winning and losing teams were presented with a number of prizes, including apparel company's apparel.

During Phog Fest (Outside Activities).

- At Phog Fest, the attendees engaged in apparel company's shoes basketball skill challenges on the apparel company-supplied basketball court to win apparel company shoes as prizes.
- Apparel company branded apparel was available for purchase by fans at Phog Fest.

Late Night (Inside Activities).

- During some of the dance performances of Late Night, the dancers were outfitted in apparel company gear.

Based on these sponsorship activities as part of the apparel company's activation, it is reasonable to conclude that the additional money apparel company provided to be used to bring in a national act for Late Night could increase overall attendance and success of apparel company's various product placements as part of its activations.

Therefore, the hearing panel concludes that credible and persuasive information does not demonstrate that apparel company was promoting Kansas' athletics program pursuant

to Constitution 6.4.2-(e) based on Kansas' Late Night in 2016 and 2017.

iii. Naismith Memorial Basketball Hall of Fame Banquet.

The Complex Case Unit also contended that apparel company promoted both head men's basketball coach and Kansas' men's basketball program at the Naismith Memorial Basketball Hall of Fame banquet September 8, 2017. Apparel company paid approximately \$250,000 and organized the banquet, where head men's basketball coach was inducted into the Hall of Fame along with former NBA player and another one of apparel company's key brand ambassadors. Apparel company outside consultant and apparel company employee No. 1 attended the event and interacted with head men's basketball coach, assistant men's basketball coach and former director of athletics No. 1.

The hearing panel finds that the purpose of the Hall of Fame banquet was to celebrate apparel company's key clients, head men's basketball coach and former NBA player, for lifetime achievements. Head men's basketball coach's coaching career included positions at several Division I institutions other than Kansas, including NCAA Division I institution C, NCAA Division I institution D, NCAA Division I institution E and NCAA Division I institution F. Further, the event was private and there was no publicity prior to the event. Therefore, the hearing panel concludes that credible and persuasive information does not support the conclusion that apparel company was promoting Kansas' athletics program pursuant to Constitution 6.4.2-(e) based on the Naismith Memorial Basketball Hall of Fame banquet.

In addition, because the Naismith Memorial Basketball Hall of Fame banquet was not an event designed to promote Kansas' athletics program, the hearing panel concludes that credible and persuasive information does not support the conclusion that apparel company employee No. 1 or apparel company outside consultant promoted Kansas' athletics program pursuant to Constitution 6.4.2-(e) based on the Naismith Memorial Basketball Hall of Fame banquet.

(4) Determining Whether Apparel Company, Apparel Company Employee No. 2, Apparel Company Employee No. 1 or Apparel Company Outside Consultant Were Assisting or Had Been Requested to Assist in the Recruitment of Prospective Student-Athletes [Constitution 6.4.2-(c)].

Under NCAA legislation, recruiting is any solicitation of a prospective student-athlete or a prospective student-athlete's family members by an institutional staff member or by a representative of the institution's athletics interests for the purpose of securing the prospective student-athlete's enrollment and ultimate participation in the institution's intercollegiate athletics program. Solicitation can include attempts to curry favor with prospective student-athletes, their family members or family friends.

(a) Apparel Company.

The hearing panel concludes that credible and persuasive information does not support the conclusion that apparel company assisted or had been requested to assist in the recruitment of prospective student-athletes pursuant to Constitution 6.4.2-(c).

The activities undertaken by apparel company outside consultant described below, which included using sham invoices, routing money indirectly through multiple accounts and meeting for in-person cash handoffs, were designed to hide the conduct. The hearing panel concludes that the case record did not contain sufficient information to suggest that apparel company's leadership had awareness of apparel company outside consultant's activities, and therefore, apparel company did not acquiesce to such activities. Nobody at apparel company beyond apparel company outside consultant knew or facilitated his actions. Therefore, the hearing panel concludes that apparel company did not trigger status as a representative of Kansas' athletics interests under Constitution 6.4.2-(c).

(b) Apparel Company Employee No. 2.

The hearing panel concludes that credible and persuasive information does not support the conclusion that apparel company employee No. 2 assisted or had been requested to assist in the recruitment of prospective student-athletes pursuant to Constitution 6.4.2-(c).

The Complex Case Unit contended that apparel company employee No. 2 assisted assistant men's basketball coach in the recruitment of men's basketball prospective student-athlete No. 3. Specifically, that assistant men's basketball coach called apparel company employee No. 2 to get information to "help" Kansas have "an edge" in recruiting men's basketball prospective student-athlete No. 3. Additionally, the Complex Case Unit contended that September 13, 2017, the FBI wiretapped assistant men's basketball coach's call with apparel company employee No. 2 about the recruitment of men's basketball prospective student-athlete No. 3. Assistant men's basketball coach and apparel company employee No. 2 discussed trying to "figure out a way" to get men's basketball prospective student-athlete No. 3's stepfather a job, housing, and "money in the pocket." Kansas contended there was no information in the case record about the nature of apparel company employee No. 2's activities at the time he allegedly had contact with men's basketball prospective student-athlete No. 3's family, nor was there information regarding when he allegedly had such contact.

The hearing panel finds that apparel company employee No. 2 sought to establish relationships and build brand affiliation with top men's basketball prospective student-athletes hoping to sign them to sponsorship agreements with apparel company when they entered the NBA. When men's basketball prospective student-athlete No. 3 was deciding which AAU team to play for at the end of his sophomore year of high school in 2016, apparel company employee No. 2 wanted him to join his AAU team. Instead, stepfather of men's basketball prospective student-athlete No. 3 approached three shoe companies and ultimately negotiated a sponsorship agreement to establish and coach his own AAU team, AAU team No. 1. Men's basketball prospective student-athlete No. 3 played for AAU team No. 1. Thereafter, apparel company employee No. 2 had no relationship or interactions with the men's basketball prospective student-athlete No. 3's family, for multiple years prior to the conversations at issue in this case. Therefore, apparel company employee No. 2 was not recruiting men's basketball prospective student-athlete No. 3 after the end of men's basketball prospective student-athlete No. 3's sophomore year in high school in spring 2016. Furthermore, although the Department of Justice's April 10, 2018, superseding indictment alleged that coaches knew of some of the payments or participated in the scheme, it did not allege that any Kansas personnel were aware of the payments or the scheme. Kansas did not know and should not have known of apparel

company employee No. 2's alleged activities related to payments and the scheme.

The hearing panel also finds that September 8, 2017, at the Naismith Memorial Basketball Hall of Fame banquet, assistant men's basketball coach told apparel company employee No. 1 that he and head men's basketball coach were scheduled to make an in-home recruiting visit with men's basketball prospective student-athlete No. 3 and his family September 12, 2017. Apparel company employee No. 1 said assistant men's basketball coach should speak to apparel company employee No. 2 about men's basketball prospective student-athlete No. 3 before going on their visit. On September 12, 2017, assistant men's basketball coach and head men's basketball coach spoke with apparel company employee No. 2 on a speaker phone during the car ride to men's basketball prospective student-athlete No. 3's home recruiting visit to see what information apparel company employee No. 2 might have to help Kansas have "an edge" in the recruitment of men's basketball prospective student-athlete No. 3. Apparel company employee No. 2 provided information related to men's basketball prospective student-athlete No. 3's preferences in terms of scheme and usage that were well known in basketball recruiting circles. Assistant men's basketball coach and head men's basketball coach attended the in-home recruiting visit that same day with men's basketball prospective student-athlete No. 3, stepfather of men's basketball prospective student-athlete No. 3 and mother of men's basketball prospective student-athlete No. 3.

The FBI's September 13, 2017, complete wiretapped telephone follow-up conversation between assistant men's basketball coach and apparel company employee No. 2 has not been made public, but the case record included a summary noted by an appellate judge as follows:

- Assistant men's basketball coach: "Hey, but between me and you, you know, he asked about some stuff. You know? And I said, well, we'll talk about that if you decide."
- Apparel company employee No. 2: "I know what he's asking for . . . He's asking for opportunities from an occupational perspective. He's asking for money in the pocket. And he's asking for housing for him and the family."

- Assistant men's basketball coach: “I’ve got to just try to work and figure out a way. Because if that’s what it takes to get him for ten months, we’re going to have to do it some way . . . [I will] talk with [apparel company employee No. 1]” about funneling money to the family through an amateur team.
- Apparel company employee No. 2: “[I will] talk to [apparel company employee No. 1] today too.”
- Assistant men's basketball coach: [I] might also ask [apparel company employee No. 1] to help pay for the recruit’s brother to visit Kansas despite acknowledging “not [being] allowed to pay for it.”

Accordingly, the hearing panel concludes that credible and persuasive information does not support the conclusion that apparel company employee No. 2 assisted or had been requested to assist in the recruitment of men’s basketball prospective student-athlete No. 3 pursuant to Constitution 6.4.2-(c).

(5) Apparel Company Employee No. 1.

The hearing panel concludes that credible and persuasive information does not show that apparel company employee No. 1 assisted or had been requested to assist in the recruitment of prospective student-athletes pursuant to Constitution 6.4.2-(c).

The Complex Case Unit made three contentions to support that apparel company employee No. 1 assisted or had been requested to assist in the recruitment of prospective student-athletes for Kansas:

- (a) Head Men’s basketball coach and assistant men’s basketball coach regularly consulted with apparel company outside consultant and apparel company employee No. 1 regarding the recruitment of prospective student-athletes and provided apparel company outside consultant and apparel company employee No. 1 with broad access to the men’s basketball program. Such access included visits to the secure men’s basketball coaches’ office and the coaches’ locker room, access to closed practices and shoot-arounds where they interacted with student-athletes, access to the secure area where families waited for student-athletes to exit the team locker room after contests, access to gatherings with Kansas coaches and their recruits and families, and access to complimentary tickets to sold-

out contests from head men’s basketball coach’s or Kansas’ ticket allotments. Apparel company employee No. 1 agreed with apparel company outside consultant that their objective “was to ‘make sure that the coaching staffs’ of the universities’ basketball teams ‘were happy’ with [apparel company] be he understood that the ‘basketball coaches’ at colleges ‘wanted shoe companies to help recruit players to the schools.’”

- (b) Apparel company outside consultant and apparel company employee No. 1 received hotel rooms in Kansas’ room block through Kansas’ group rooming list for Late Night in 2014.
- (c) In an email from apparel company outside consultant to apparel company employee No. 3 dated March 2, 2015, apparel company outside consultant informed apparel company employee No. 3 that he and apparel company employee No. 1 were on Kansas’ campus October 10, 2014, and that he and apparel company employee No. 1 “[m]et with [head men’s basketball coach] and his staff. Talked recruiting targets and the upcoming season, assured them that we are here to help.”

The hearing panel finds these to be tenuous contentions and declines to rely on these arguments to find that apparel company employee No. 1 assisted or had been requested to assist in the recruitment of prospective student-athletes pursuant to Constitution 6.4.2-(c) for the following reasons.

- (a) Apparel Company Employee No. 1’s Access to the Kansas Men’s Basketball Program.

The hearing panel is unpersuaded by the Complex Case Unit’s litany of examples of apparel company employee No. 1’s “access” to the Kansas men’s basketball program. These examples do not demonstrate that Kansas, head men’s basketball coach or assistant men’s basketball coach requested apparel company employee No. 1 to recruit for Kansas, nor does the case record reflect that these interactions constituted recruiting by apparel company employee No. 1.

- (b) Hotel Room Block.

The hearing panel finds that the Hotel made the room assignments independent of Kansas. The fact that apparel company outside consultant and apparel company employee No. 1 secured rooms in

Kansas' hotel room block for Late Night in 2014, at the same time other rooms were given to prospective student-athletes and their families, is an insufficient basis to find apparel company employee No. 1 was a representative of athletics interests for Kansas for the reasons described below in Section IV regarding the representative of athletics interests status for apparel company outside consultant.

(c) Apparel Company Outside Consultant's March 2, 2015, Email to Apparel Company Employee No. 3.

Later in this decision, in Section IV related to the status of apparel company outside consultant, the hearing panel discusses the insufficiencies related to this email and the triggering status as a representative of athletics interests. The hearing panel finds that there is insufficient information to find that apparel company employee No. 1 assisted or had been requested to assist in the recruitment of prospective student-athletes.

Accordingly, the hearing panel finds these engagements and actions do not demonstrate that apparel company employee No. 1 was asked to assist in the recruitment of prospective student-athletes, nor that these engagements and actions constituted recruiting. Further, these engagements and actions do not demonstrate that Kansas, head men's basketball coach and assistant men's basketball coach should have been aware there was actual recruitment or payment by apparel company employee No. 1. Therefore, the hearing panel concludes that credible and persuasive information does not show that apparel company employee No. 1 was a representative of athletics interests for Kansas pursuant to Constitution 6.4.2-(c).

(6) Apparel Company Outside Consultant.

The hearing panel concludes that credible and persuasive information supports the conclusion that apparel company outside consultant assisted or had been requested to assist in the recruitment of men's basketball student-athlete No. 1 pursuant to Constitution 6.4.2-(c) as of August 9, 2017.

(a) Apparel Company Outside Consultant's March 2, 2015, Email to Apparel Company Employee No. 3.

On March 2, 2015, apparel company outside consultant sent an email, which referenced apparel company outside consultant's visits to several Division I institutions for similar activities, to apparel company employee No. 3, informing apparel company employee

No. 3 that he and apparel company employee No. 1 visited Kansas' campus October 10, 2014. He reported that he and apparel company employee No. 1 “[m]et with [head men’s basketball coach] and his staff. Talked recruiting targets and the upcoming season, assured them that we are here to help.”

The hearing panel finds there is insufficient information to interpret anything impermissible from the use of the word “help” in that email. The offer to help, in and of itself, is not akin to a request to recruit or engagement in recruiting activities. There is no additional information in the case record to provide further context of the meaning or intentions in the use of “help” in the email. Further, there is nothing in the case record to suggest that Kansas, head men’s basketball coach or assistant men’s basketball coach had or should have had any further insight into the use or meaning of “help” by apparel company outside consultant.

Therefore, the hearing panel concludes that credible and persuasive information does not demonstrate that apparel company outside consultant assisted or had been requested to assist in the recruitment of prospective student-athletes pursuant to Constitution 6.4.2-I based on the information in the email from apparel company employee No. 3.

(b) Communications Concerning Men’s Basketball Prospective Student-Athlete No. 4.

During the 2014-15 academic year, apparel company outside consultant attempted to secure men’s basketball prospective student-athlete No. 4’s enrollment at Kansas by providing \$15,000 to a family friend of men’s basketball prospective student-athlete No. 4’s who was to provide the money to men’s basketball prospective student-athlete No. 4’s mother.

On August 19, 2017, after men’s basketball prospective student-athlete No. 4 enrolled at another institution, apparel company outside consultant communicated through text messages to head men’s basketball coach as follows:

- Apparel company outside consultant wrote, “Hall of Famer. Thank you for the help with Getting this extension done. Thx brotha.”

- Head men’s basketball coach replied, “I’m happy with [apparel company]. Just got to get a couple real guys.”
- Apparel company outside consultant responded, “[i]n my mind it’s KU [head men’s basketball coach]. Everyone else fall into line, to [expletive] bad, that what’s right for [apparel company] Basketball. And I know I am RIGHT. The more you win, have lottery pics. And you happy. That’s how it should work in my mind.”
- Head men’s basketball coach wrote, “[t]hat’s how [it] works. At [NCAA Division I institution A] and [NCAA Division I institution B].”
- Apparel company outside consultant replied, “[NCAA Division I institution G] as well. I promise you. I got this, I have never let you down. Except [men's basketball prospective student-athlete No. 4] lol. We will get it right.”

It is alleged that this text message exchange demonstrated that head men’s basketball coach knew or should have known that apparel company outside consultant was involved in recruiting on behalf of Kansas.

The hearing panel finds that the August 19, 2017, text message, when placed in appropriate context, did not, nor should have, put head men’s basketball coach on notice that apparel company outside consultant had assisted Kansas in the recruitment of men’s basketball prospective student-athlete No. 4. For instance, apparel company outside consultant punctuated the end of his text message with “lol,” an abbreviation commonly understood to mean “laugh out loud.” Additionally, the hearing panel finds that head men’s basketball coach did not know, and had no reason to know, about apparel company outside consultant’s \$15,000 payment in the winter of 2015, which occurred almost two years prior to the August 19, 2017, text messages. Further, the hearing panel found head men’s basketball coach’s testimony at the hearing credible when he described that apparel company outside consultant referred to never letting head men’s basketball coach down except for men’s basketball prospective student-athlete No. 4 in jest. Head men’s basketball coach emphasized that text message was a plainly understood inside joke because of apparel company’s inability to

establish any brand loyalty impact with men's basketball prospective student-athlete No. 4 over apparel company No. 1 as part of his attendance at an apparel company event. Specifically, assistant men's basketball coach encouraged men's basketball prospective student-athlete No. 4 to attend an apparel company event after prompting from apparel company representatives, and men's basketball prospective student-athlete No. 4 then promptly committed to an apparel company No. 1 school after participating in the event. Accordingly, the hearing panel finds that the August 19, 2017, text message did not, nor should have, put head men's basketball coach on notice that apparel company outside consultant had assisted Kansas in the recruitment of men's basketball prospective student-athlete No. 4.

Therefore, the hearing panel concludes that credible and persuasive information does not demonstrate that apparel company outside consultant assisted or had been requested to assist in the recruitment of prospective student-athletes pursuant to Constitution 6.4.2-(c) related to apparel company outside consultant's recruitment of men's basketball prospective student-athlete No. 4.

(c) Hotel Room Block.

In 2014 for the Late Night event, Kansas included hotel rooms for apparel company outside consultant and apparel company employee No. 1 in Kansas' room block with prospective student-athletes and their families. In 2016 for the Late Night event, men's basketball prospective student-athlete No. 2 and mother of men's basketball prospective student-athlete No. 2 stayed at the Hotel as part of Kansas' room block, but apparel company outside consultant was not listed in Kansas' list of reservations. The hearing panel finds the fact that Kansas gave a hotel room in its room block to each of the apparel company representatives at the same time other rooms were given to prospective student-athletes and their families is insufficient, in and of itself, to evidence that apparel company outside consultant was requested to recruit on behalf of Kansas or that Kansas staff knew or should have known that apparel company outside consultant was engaged in any potential recruiting activities. Mere inclusion of apparel company representatives within a room block provides no information as to the nature of any contact that may have occurred with prospective student-athletes and their families. Additionally, there is no information in the case record to indicate that representatives of apparel company in the room block

interacted with any prospective student-athletes or their families during the 2016 Late Night event. Moreover, the information demonstrates that apparel company representatives had access to such prospective student-athletes and their families through grassroots basketball and there was an expectation of interaction given the grassroots connections and brand development.

Therefore, the hearing panel concludes that credible and persuasive information does not support the conclusion that apparel company outside consultant was a representative of athletics interests for Kansas pursuant to Constitution 6.4.2-(c) based on his inclusion in the Kansas room block.

(d) Recruitment of Men’s Basketball Student-Athlete No. 1.

The hearing panel thoroughly reviewed the circumstances surrounding the recruitment of men’s basketball student-athlete No. 1. There were several calls in early August 2017 that pertained to the provision of guardian for men’s basketball student-athlete No. 1’s contact information to apparel company outside consultant by assistant men’s basketball coach and follow-up conversations by head men’s basketball coach and assistant men’s basketball coach with apparel company outside consultant regarding the status of the provision of athletics gear conversations between guardian for men’s basketball student-athlete No. 1 and apparel company outside consultant. The hearing panel determined that this cluster of communications when taken together provide sufficient credible and persuasive information to demonstrate a request on the part of assistant men’s basketball coach and head men’s basketball coach for apparel company outside consultant to engage in recruitment activities relative to men’s basketball student-athlete No. 1 by “currying favor” with guardian for men’s basketball student-athlete No. 1 through discussions regarding the provision of athletics gear. According to assistant men’s basketball coach, guardian for men’s basketball student-athlete No. 1 was men’s basketball student-athlete No. 1’s guardian and would be highly involved in men’s basketball student-athlete No. 1’s likely college decision.

Specifically, as of early August 2017, assistant men’s basketball coach was aware that guardian for men’s basketball student-athlete No. 1 was seeking used athletics gear for an African team that assistant men’s basketball coach understood to be important to guardian for men’s basketball student-athlete No. 1 and ultimately

suggested apparel company outside consultant as a potential contact as a source for the gear. On August 8, 2017, assistant men's basketball coach called apparel company outside consultant. That same day, assistant men's basketball coach sent a text message to apparel company outside consultant with guardian for men's basketball student-athlete No. 1's contact information. Both assistant men's basketball coach and head men's basketball coach followed up with apparel company outside consultant August 9, 2017, as to whether he had acted on this information as follows:

- Apparel company outside consultant texted assistant men's basketball coach asking him to “[h]it me when you can.”
- Assistant men's basketball coach responded, “[head men's basketball coach] just talked to [guardian for men's basketball student-athlete No. 1] let me know how it goes.”
- Apparel company outside consultant replied, “I called no answer . . . I'll do it again now.”
- Assistant men's basketball coach responded, “[h]e was on with us.”

Shortly thereafter, apparel company outside consultant and assistant men's basketball coach called one another, and then assistant men's basketball coach called guardian for men's basketball student-athlete No. 1 and spoke with him for 22 minutes. Assistant men's basketball coach then called apparel company outside consultant and spoke for 10 minutes. During the time that assistant men's basketball coach was speaking with guardian for men's basketball student-athlete No. 1, apparel company outside consultant texted head men's basketball coach,

- “Hall of famer. When you have 5 min and your alone. Call me p . . . I talked with [guardian for men's basketball student-athlete No. 1].”
- Head men's basketball coach replied, “[w]e good?”
- Apparel company outside consultant responded, “[a]lways . . . [t]hat's was light work . . . [b]all is in his court now.” Apparel company outside consultant testified at the SDNY trial that the “light work” mentioned in his text exchange

referred to “uniforms, bags and other stuff that [guardian for men’s basketball student-athlete No. 1] wanted for Angola.”

Head men's basketball coach and assistant men’s basketball coach confirmed these August 9, 2017, communications were in reference to apparel company outside consultant discussing with guardian for men’s basketball student-athlete No. 1 the possibility of apparel company providing athletics gear for guardian for men’s basketball student-athlete No. 1’s Angola team. Head men's basketball coach ultimately conceded at the hearing and in his Response that he “should have recognized that introducing [guardian for men’s basketball student-athlete No. 1] to [apparel company outside consultant] for the purpose of them discussing whether apparel company would provide used athletics gear or sponsorship of an Angolan youth basketball team was prohibited under NCAA bylaw 13.2.1.1” as further described below. Unfortunately for head men’s basketball coach and assistant men’s basketball coach, they failed to recognize the impact under Constitution 6.4.2-(c) when they continued communicating with apparel company outside consultant and pushed his actions as a means to execute on an important aspect of making the Kansas coaches look good in the eyes of guardian for men’s basketball student-athlete No. 1 who had “all the juice” relative to men’s basketball student-athlete No. 1.

Therefore, the hearing panel concludes that credible and persuasive information supports the conclusion that apparel company outside consultant was a representative of athletics interests for Kansas pursuant to Constitution 6.4.2-(c) on this basis.

However, the hearing panel does not believe that its determination of apparel company outside consultant as a representative of athletics interests for Kansas automatically binds his employer to that same status. Instead, the entire episode appears to be individualized to potential actions by apparel company outside consultant regardless of whether they would be backed by anyone within the apparel company hierarchy. Therefore, the hearing panel concludes that apparel company’s status as a representative of Kansas’ athletics interests was not triggered under Constitution 6.4.2-(c) on the basis of apparel company outside consultant’s representative status.

Based on the foregoing analysis above, the hearing panel concludes the following regarding the status as a representative of athletics interests:

- i. Apparel company did not trigger status as a representative of athletics interests for Kansas in this infractions case.
- ii. Apparel company employee No. 2 did not trigger status as a representative of athletics interests for Kansas in this infractions case.
- iii. Apparel company employee No. 1 did not trigger status as a representative of athletics interests for Kansas in this infractions case.
- iv. Apparel company outside consultant triggered status as a representative of athletics interests for Kansas in this infractions case as of August 9, 2017.

b. Determination of Whether Apparel Company Employee No. 2, Apparel Company Employee No. 1 and/or Apparel Company Outside Consultant Triggered Status as an Agent.

The hearing panel does not conclude that apparel company outside consultant, apparel company employee No. 1 or apparel company employee No. 2 met the definition of an agent under Bylaw 12.02.1. That bylaw provides that an agent is any individual who, directly or indirectly:

- (a) represents or attempts to represent an individual for the purpose of marketing his or her athletics ability or reputation for financial gain; or
- (b) seeks to obtain any type of financial gain or benefit from securing a prospective student-athlete's enrollment at an educational institution or from a student-athlete's potential earnings as a professional athlete.

There is no information in the record before the hearing panel to suggest that apparel company employee No. 1, apparel company outside consultant, or apparel company employee No. 2 were representing or attempting to represent any individuals for the purpose of marketing his or her athletics ability or reputation for financial gain. Nor is there credible and persuasive information that any of them were seeking a financial benefit from securing enrollment or from potential earnings as a professional athlete. Rather, the Complex Case Unit is relying on their status as apparel company representatives whose job responsibilities could include signing professional athletes to endorse their employer, apparel company. However, Bylaw 12.02.1's definition of "agent" does not include the act of

soliciting athletes to endorse a company. This is not the type of representation contemplated under Bylaw 12.02.1-(a).

Additionally, there is no other benefit noted in the record other than the potential that these individuals may maintain their employment if ultimately successful in their job responsibilities several years removed from any of their interactions in relation to prospective student-athletes. The hearing panel finds this potential employment benefit too speculative to tie to the even expanded definition of agent as noted in Bylaw 12.02.1-(b). Accordingly, the hearing panel concludes that credible and persuasive information does not support the conclusion that apparel company outside consultant, apparel company employee No. 1 or apparel company employee No. 2 were agents under Bylaw 12.02.1.

For the remainder of this Analysis Section, the hearing panel's analysis and outcomes are grouped by topic for the purpose of clarity due to the complexities of a review of the second amended notice of allegations and the third amended notice of allegations, and the potential allegation numbering conflicts. The full language of the second amended notice of allegations is in APPENDIX THREE. The full language of the third amended notice of allegations is in APPENDIX FOUR.

c. Men's Basketball Prospective Student-Athlete No. 2.

(1) Provision of an Extra Benefit of \$15,000. [Bylaws 12.3.1.3 and 16.11.2.1 (2016-17 NCAA Division I Manual)] [Asserted Against Kansas].

Second Amended Notice of Allegations (1-(c))

On or about June 14, 2017, [apparel company outside consultant], with [apparel company employee No. 1's] approval, used apparel company funds to provide approximately \$15,000 in impermissible benefits and impermissible agent benefits to [mother of men's basketball prospective student-athlete No. 2] via wire transfer after [men's basketball prospective student-athlete No. 2] enrolled at the institution. [NCAA Bylaws 12.3.1.3 and 16.11.2.1 (2016-17)]¹⁴

¹⁴ After receiving approximately \$85,000 from [apparel company outside consultant], [mother of men's basketball prospective student-athlete No. 2] purchased a 2016 [vehicle] for [men's basketball prospective student-athlete No. 2] in August 2017, which is referenced in Allegation No. 5-d. (While [mother of men's basketball prospective student-athlete No. 2] stated during her interview that her mother made the first monthly payment on the car, [mother of men's basketball prospective student-athlete No. 2] also confirmed that she herself was "robbing Peter to pay Paul so [men's basketball prospective student-athlete No. 2] [could] have a car.")

Third Amended Notice of Allegations (1-(a))

On or about June 14, 2017, [apparel company outside consultant] provided approximately \$15,000 in impermissible benefits to [mother of men's basketball prospective student-athlete No. 2] via wire transfer after [men's basketball prospective student-athlete No. 2] enrolled at the institution. [NCAA Bylaw 16.11.2.1 (2016-17)]

The Complex Case Unit and Kansas agreed on the underlying facts, but Kansas disputed that a violation occurred.

(a) NCAA Legislation Relating to Extra Benefits.

The applicable portions of the bylaws may be found in APPENDIX TWO.

(b) Apparel Company Outside Consultant was not a Representative of Athletics Interests for Kansas at the Time of the Alleged Conduct.

The legislation applicable to these allegations requires action by the institution, a staff member or a representative of athletics interests. For the reasons described above, the hearing panel finds that apparel company outside consultant was not a representative of athletics interests at the time of the alleged conduct in this allegation.¹⁵ Accordingly, the hearing panel finds that these actions as alleged do not constitute a violation for Kansas.

(2) Provision of an Extra Benefit of \$4,000. [Bylaw 16.11.2.1 (2017-18 NCAA Division I Manual)] [Asserted Against Kansas].

Second Amended Notice of Allegations (1-(d))

On or about September 23, 2017, [apparel company outside consultant], with [apparel company employee No. 1's] approval, arranged to provide \$4,000 in impermissible benefits to [mother of men's basketball prospective student-athlete No. 2]. [NCAA Bylaw 16.11.2.1 (2017-18)]

¹⁵ The determination of whether apparel company, apparel company employee No. 2, apparel company employee No. 1 and/or apparel company outside consultant triggered status as representatives of athletics interests begins on Page No. 32.

Third Amended Notice of Allegations (1-(b))

On or about September 23, 2017, [apparel company outside consultant] arranged to provide \$4,000 in impermissible benefits to [mother of men's basketball prospective student-athlete No. 2]. [NCAA Bylaw 16.11.2.1 (2017-18)]

The Complex Case Unit and Kansas agreed on the underlying facts, but Kansas disputed that a violation occurred.

(a) NCAA Legislation Relating to Extra Benefits.

The applicable portions of the bylaws may be found in APPENDIX TWO.

(b) Apparel Company Outside Consultant was a Representative of Athletics Interests for Kansas at the Time of the Conduct and Provided Extra Benefits to Mother of Men's Basketball Prospective Student-Athlete No. 2.

The hearing panel concludes that credible and persuasive information supports the conclusion that on or about September 23, 2017, apparel company outside consultant arranged to provide \$4,000 in impermissible benefits to mother of men's basketball prospective student-athlete No. 2.

Bylaw 16.11.2.1 restricts student-athletes from receiving an extra benefit. The bylaw defines the term “extra benefit” as any special arrangement by an institutional employee or a representative of athletics interests to provide the student-athlete or his or her family members or friends with a benefit not expressly authorized by NCAA legislation.

For the reasons described above, the hearing panel finds that apparel company outside consultant was a representative of athletics interests at the time of the alleged conduct. On September 22, 2017, mother of men's basketball prospective student-athlete No. 2 sent a text message to apparel company outside consultant asking him to call her. On September 23, 2017, mother of men's basketball prospective student-athlete No. 2 again texted apparel company outside consultant asking him if something had changed from what he told her September 22, 2017. Apparel company outside

consultant responded that he would get \$4,000 in her bank account early September 26, 2017, and possibly September 25, 2017.

Although there is no corresponding deposit reflected in mother of men's basketball prospective student-athlete No. 2's bank records for September 23, 2017, whether apparel company outside consultant actually paid \$4,000 to mother of men's basketball prospective student-athlete No. 2 is irrelevant because Bylaw 16.11.2.1 prohibits any "arrangement . . . to provide the student-athlete or his or her family members or friends with a benefit not expressly authorized by NCAA legislation." Delivery of payment is not required for the hearing panel to find a violation.

Accordingly, the hearing panel finds credible and persuasive information supports the conclusion that apparel company outside consultant provided extra benefits to mother of men's basketball prospective student-athlete No. 2.

Therefore, the hearing panel concludes that pursuant to Bylaw 19.1.2-(a), this violation is Level II because it does not rise to the level of a Level I violation but is more serious than a Level III violation.

- (3) **Recruiting Contacts and Inducements. [Bylaws 13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1, and 13.2.1.1-(e) (2016-17 Manual)] [Asserted Against Kansas].**

Second Amended Notice of Allegations (1-(a))

Between October 2016 and January 2017, [apparel company outside consultant] had at least three impermissible recruiting contacts with [mother of men's basketball prospective student-athlete No. 2] to discuss and later provide recruiting inducements to her and [domestic partner of mother of men's basketball prospective student-athlete No. 2] to secure [men's basketball prospective student-athlete No. 2's] commitment to the institution. During the October 2016 contact, which occurred the same night as the institution's [Late Night] event, [apparel company outside consultant] offered monetary recruiting inducements to [mother of men's basketball prospective student-athlete No. 2] to secure [men's basketball prospective student-athlete No. 2's] 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) (2016-17)]

The Complex Case Unit and Kansas agreed on the underlying facts, but Kansas disputed that a violation occurred.

(a) NCAA Legislation Relating to Recruiting Contacts.

The applicable portions of the bylaws may be found in APPENDIX TWO.

(b) Apparel Company Outside Consultant was not a Representative of Athletics Interests for Kansas at the Time of the Alleged Conduct.

The legislation applicable to these allegations requires action by the institution, a staff member or a representative of athletics interests. For the reasons described above, the hearing panel finds that apparel company outside consultant was not a representative of athletics interests at the time of alleged conduct.¹⁶ Accordingly, the hearing panel finds that these actions as alleged do not constitute a violation for Kansas.

(4) Provision of Extra Benefits of \$70,000. [Bylaws 12.3.1.3, 13.2.1 and 13.2.1.1-(e) (2016-17 Manual)] [Asserted Against Kansas].

Second Amended Notice of Allegations (1-(b))

Between November 2016 and February 2017, [apparel company outside consultant], with [apparel company employee No. 1's] approval, used approximately \$70,000 in apparel company funds to provide the following impermissible recruiting inducements and impermissible agent benefits to [mother of men's basketball prospective student-athlete No. 2] and [domestic partner of mother of men's basketball prospective student-athlete No. 2]: (1) On or about November 1, 2016, [apparel company outside consultant] provided \$30,000 to [mother of men's basketball prospective student-athlete No. 2] during a meeting in New York City; (2) Between January 19 and 23, 2017, [apparel company outside consultant] provided \$20,000 to [mother of men's basketball prospective student-athlete No. 2] during a meeting in Las Vegas; and (3) On or about February 24, 2017, [apparel company outside consultant] provided \$20,000 via wire transfer to

¹⁶ The determination of whether apparel company, apparel company employee No. 2, apparel company employee No. 1 and/or apparel company outside consultant triggered status as representatives of athletics interests begins on Page No. 32.

[domestic partner of mother of men's basketball prospective student-athlete No. 2]. [NCAA Bylaws 12.3.1.3, 13.2.1 and 13.2.1.1-(e) (2016-17)]

The Complex Case Unit and Kansas agreed on the underlying facts, but Kansas disputed that a violation occurred.

(a) NCAA Legislation Relating to Extra Benefits.

The applicable portions of the bylaws may be found in APPENDIX TWO.

(b) Apparel Company Outside Consultant was not a Representative of Athletics Interests for Kansas at the Time of the Alleged Conduct.

The legislation applicable to these allegations requires action by the institution, a staff member or a representative of athletics interests. For the reasons described above, the hearing panel finds that apparel company outside consultant was not a representative of athletics interests at the time of alleged conduct.¹⁷ Accordingly, the hearing panel finds that these actions as alleged do not constitute a violation for Kansas.

d. Men's Basketball Student-Athlete No. 1.

(1) Recruiting Contacts. [Constitution 2.8.1 and Bylaws 13.01.2, 13.1, 13.1.2.1, and 13.1.3.5.1 (2017-18 Manual)] [Asserted Against Head Men's Basketball Coach, Assistant Men's Basketball Coach and Kansas].

Second Amended Notice of Allegations (2-(b))

In August and September 2017, [head men's basketball coach] and [assistant men's basketball coach] encouraged, approved, and had knowledge of impermissible recruiting telephone calls that [apparel company outside consultant] ([apparel company outside consultant]), then an apparel company¹⁸ outside consultant, representative of the institution's athletics interests, and agent, had with [guardian for men's basketball student-athlete No. 1]. In the calls, [apparel company outside consultant] encouraged

¹⁷ The determination of whether apparel company, apparel company employee No. 2, apparel company employee No. 1 and/or apparel company outside consultant triggered status as representatives of athletics interests begins on Page No. 32.

¹⁸ Apparel company is a representative of the institution's athletics interests.

[guardian for men's basketball student-athlete No. 1] to have [men's basketball student-athlete No. 1] enroll at the institution as a student-athlete. [assistant men's basketball coach] failed to report this violation to the institution's compliance staff.¹⁹ [NCAA Constitution 2.8.1 and Bylaws 13.01.2, 13.1, 13.1.2.1, and 13.1.3.5.1 (2017-18)]

Third Amended Notice of Allegations (1-(c))

On August 8, 2017, [assistant men's basketball coach] sent [apparel company outside consultant] a text message containing [guardian for men's basketball student-athlete No. 1's] contact information, thereby facilitating [apparel company outside consultant's] recruiting contacts with [guardian for men's basketball student-athlete No. 1]. [Guardian for men's basketball student-athlete No. 1] had told [assistant men's basketball coach] he was interested in obtaining athletic gear for an Angolan youth basketball team. [Head men's basketball coach] was aware that [assistant men's basketball coach] provided [guardian for men's basketball student-athlete No. 1's] contact information to [apparel company outside consultant]. [Head men's basketball coach] and [assistant men's basketball coach] knew that [apparel company outside consultant] was in contact with [guardian for men's basketball student-athlete No. 1]. At the time, [apparel company outside consultant] wanted to encourage [guardian for men's basketball student-athlete No. 1] to have [men's basketball student-athlete No. 1] enroll at the institution as a student-athlete. [Head men's basketball coach] and [assistant men's basketball coach] failed to report this contact 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 (2017-18)]

The parties had disagreements regarding the underlying facts relative to this allegation. The parties acknowledged that the violation occurred but disagreed that it should be classified as Level I. Head men's basketball coach and assistant men's basketball coach disagreed that the introduction was for the purpose of assisting Kansas in recruiting men's basketball student-athlete No. 1.

(a) NCAA Legislation Relating to Recruiting Contacts.

The applicable portions of the bylaws may be found in APPENDIX TWO.

¹⁹ [Head men's basketball coach's] failure to report this violation is included in Allegation No. 4.

(b) Assistant Men's Basketball Coach's Provision of Guardian for Men's Basketball Student-Athlete No. 1's Contact Information to Apparel Company Outside Consultant Constituted a Recruiting Inducement.

The hearing panel concludes that credible and persuasive information supports the conclusion that assistant men's basketball coach's provision of guardian for men's basketball student-athlete No. 1's contact information to apparel company outside consultant constituted recruiting inducement.

Additionally, Bylaw 13.1.2.1 permits only authorized institutional staff members to make in-person, on- and off-campus recruiting contacts with a prospective student-athlete or the prospective student-athlete's relatives or legal guardians, except as otherwise permitted by the bylaws. The hearing panel concludes that there is credible and persuasive information to support the conclusion that communications between apparel company outside consultant and guardian for men's basketball student-athlete No. 1 in relation to the gear post apparel company outside consultant becoming a representative of athletics interests and at the direction of Kansas athletics personnel were impermissible.

Finally, the hearing panel concludes that there is credible and persuasive information to support the conclusion that head men's basketball coach and assistant men's basketball coach failed to report either the impermissible inducement or impermissible recruiting contacts to the Kansas compliance office.

i. Assistant Men's Basketball Coach Provides Guardian for Men's Basketball Student-Athlete No. 1's Contact Information to Apparel Company Outside Consultant and Initial Follow-up Communications.

On August 8, 2017, assistant men's basketball coach texted guardian for men's basketball student-athlete No. 1's contact information to apparel company outside consultant. The next day, August 9, 2017, apparel company outside consultant texted head men's basketball coach, "[h]all of famer. When you have 5 min and your alone. Call me p." Head men's basketball coach called apparel company outside consultant later that day.

Assistant men's basketball coach also corresponded with apparel company outside consultant and guardian for men's basketball student-athlete No. 1 August 9, 2017. Apparel company outside consultant texted assistant men's basketball coach later that day,

- “[h]it me when u can.”
- Assistant men's basketball coach responded, “[head men's basketball coach] just talked to [guardian for men's basketball student-athlete No. 1] let me know how it goes.”
- Apparel company outside consultant replied, “I called no answer. I'll do it again now.”
- Assistant men's basketball coach replied, “[h]e was on with us.”

Apparel company outside consultant then called guardian for men's basketball student-athlete No. 1.

Later in the evening of August 9, 2017, apparel company outside consultant texted head men's basketball coach,

- “I talked to [guardian for men's basketball student-athlete No. 1].”
- Head men's basketball coach responded, “[w]e good?”
- Apparel company outside consultant confirmed “[a]lways. That's was light work. Ball is in his court now.”
- Head men's basketball coach then responded, “[s]poke with [deputy director of athletics]. All good.”
- Apparel company outside consultant then inquired about the status of the extension of the sponsorship agreement between Kansas and apparel company, “[w]ill be done by Tuesday Deadline?”

- Head men's basketball coach replied, “[f]rom what I was told yes.”
 - Apparel company outside consultant acknowledged, “[g]reat. Thank u boss.” Assistant men's basketball coach then called apparel company outside consultant.
- ii. Additional Head Men’s Basketball Coach, Apparel Company Outside Consultant, Assistant Men’s Basketball Coach and Guardian for Men’s Basketball Student-Athlete No. 1 Communications About Recruitment of Men’s Basketball Student-Athlete No. 1.

In addition to the August 9, 2017, text messages, phone records revealed a cluster of telephone calls among head men’s basketball coach, apparel company outside consultant, assistant men’s basketball coach, apparel company employee No. 2 and guardian for men’s basketball student-athlete No. 1. Assistant men's basketball coach continued communicating with apparel company outside consultant until men’s basketball student-athlete No. 1 took an official recruiting visit to Kansas August 25 through August 27, 2017. Guardian for men's basketball student-athlete No. 1 accompanied him on the official recruiting visit. Head men's basketball coach called apparel company outside consultant August 25, 2017.

The next day, August 26, 2017, assistant men’s basketball coach texted apparel company outside consultant a message he received from guardian for men’s basketball student-athlete No. 1 that read, “[c]oach been on the phone with Angola. We are good to go. We will commit tomorrow.” Apparel company outside consultant responded, “[g]reat. I will follow up tomorrow.” Assistant men's basketball coach acknowledged, “[t]hank you.”

On August 28, 2017, assistant men’s basketball coach called apparel company outside consultant. Apparel company outside consultant texted apparel company employee No. 1 that same day, “[men's basketball student-athlete No. 1] commits to KU today.” Men’s basketball student-athlete

No. 1 verbally committed to play men’s basketball at Kansas August 30, 2017.

- iii. Head Men's Basketball Coach and Assistant Men's Basketball Coach Fail to Report the Introduction of Guardian for Men's Basketball Student-Athlete No. 1 to Apparel Company Outside Consultant and Apparel Company Outside Consultant's Subsequent Communications with Guardian for Men's Basketball Student-Athlete No. 1.

Assistant men's basketball coach provided guardian for men's basketball student-athlete No. 1's contact information to apparel company outside consultant to "curry favor" to recruit men's basketball student-athlete No. 1 to Kansas. Additionally, head men's basketball coach and assistant men's basketball coach failed to report their awareness of subsequent communications between apparel company outside consultant and guardian for men's basketball student-athlete No. 1 that could impact the recruiting process. While in hindsight, both head men's basketball coach and assistant men's basketball coach should have recognized that introducing guardian for men's basketball student-athlete No. 1 to apparel company outside consultant and continuing to communicate with apparel company outside consultant throughout the recruitment of men's basketball student-athlete No. 1, including continued direction to apparel company outside consultant in relation to completing gear related conversations with guardian for men's basketball student-athlete No. 1, was prohibited under Bylaws 13.1.2.1 and 13.2.1, their lack of awareness does not shield them from the impact of these specific impermissible activities or their obligation to make compliance aware of the potential impacts to the institution and its athletics program. Head men's basketball coach and assistant men's basketball coach should have reported these communications to Kansas' compliance staff.

Head men's basketball coach and assistant men's basketball coach are accountable for the provision of the improper inducement and lack of reporting. Kansas is also accountable for the actions of its athletics staff, and by designation of apparel company outside consultant's status

as a representative of athletics interests, the impermissible contacts violation by apparel company outside consultant is also attributable to Kansas.

Pursuant to Bylaw 19.1.3-(b), these violations are Level III. They were isolated or limited in nature and provided no more than a minimal competitive or other advantage.

(2) Provision of Recruiting Inducements of Gear for Angolan Youth Basketball Team. [Bylaws 13.2.1 and 13.2.1.1-(b) (2017-18 Manual)] [Asserted Against Head Men's Basketball Coach, Assistant Men's Basketball Coach and Kansas].

Second Amended Notice of Allegations (2-(c))

In August and September 2017, apparel company, a representative of the institution's athletics interests; [apparel company outside consultant]; [head men's basketball coach]; and [assistant men's basketball coach] offered a recruiting inducement to [guardian for men's basketball student-athlete No. 1]. Specifically, apparel company, [apparel company outside consultant], [head men's basketball coach], and [assistant men's basketball coach] were together involved, directly or indirectly, in offering to give [guardian for men's basketball student-athlete No. 1] apparel company shoes and/or apparel to outfit the nonscholastic basketball team with which he was affiliated. [NCAA Bylaws 13.2.1 and 13.2.1.1-(b) (2017-18)]

Third Amended Notice of Allegations (1-(c))

On August 8, 2017, [assistant men's basketball coach] sent [apparel company outside consultant] a text message containing [guardian for men's basketball student-athlete No. 1's] contact information, thereby facilitating [apparel company outside consultant's] recruiting contacts with [guardian for men's basketball student-athlete No. 1]. [Guardian for men's basketball student-athlete No. 1] had told assistant men's basketball coach he was interested in obtaining athletic gear for an Angolan youth basketball team. [Head men's basketball coach] was aware that [assistant men's basketball coach] provided [guardian for men's basketball student-athlete No. 1's] contact information to [apparel company outside consultant]. [Head men's basketball coach] and [assistant men's basketball coach] knew that [apparel company outside consultant] was in contact with [guardian for men's basketball student-athlete No. 1]. At the time, [apparel company outside consultant] wanted to encourage [guardian for men's basketball student-athlete No. 1] to have [men's basketball student-athlete No. 1] enroll at the

institution as a student-athlete. [head men's basketball coach] and [assistant men's basketball coach] failed to report this contact 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 (2017-18)]

The Complex Case Unit and Kansas agreed on the underlying facts, but Kansas, head men's basketball coach and assistant men's basketball coach disputed that a violation occurred as to the provision of or arrangement for any benefit provided by apparel company outside consultant to guardian for men's basketball student-athlete No. 1.

(a) NCAA Legislation Relating to Recruiting Inducements.

The applicable portions of the bylaws may be found in APPENDIX TWO.

(b) Apparel Company, Apparel Company Outside Consultant, Head Men's Basketball Coach and Assistant Men's Basketball Coach Did Not Offer a Recruiting Inducement to Guardian for Men's Basketball Student-Athlete No. 1.

The hearing panel concludes that credible and persuasive information does not support the conclusion that apparel company, apparel company outside consultant, head men's basketball coach and assistant men's basketball coach offered a recruiting inducement to guardian for men's basketball student-athlete No. 1.

Bylaw 13.2.1 prohibits an institution's staff member from being involved, directly or indirectly, in making arrangements for any benefits to a prospective student-athlete other than those expressly permitted by those bylaws. Bylaw 13.2.1.1-(b) specifically prohibits gifts of clothing or equipment.

In mid-August 2017, assistant men's basketball coach called former head men's basketball coach to get insight into men's basketball student-athlete No. 1's recruitment. Former head men's basketball coach informed him that guardian for men's basketball student-athlete No. 1 wanted a "sponsorship for an Angolan team." Assistant men's basketball coach told former head men's basketball coach that he "would definitely see what [he] could do and try to put them together with somebody that could help with that." When assistant men's basketball coach spoke with guardian for men's basketball student-athlete No. 1, guardian for men's basketball

student-athlete No. 1 confirmed he was looking to obtain used gear. Assistant men's basketball coach informed him that Kansas could not provide the gear, but offered to connect guardian for men's basketball student-athlete No. 1 to apparel company outside consultant because apparel company outside consultant was responsible for merchandise at apparel company. Assistant men's basketball coach told head men's basketball coach that he had provided apparel company outside consultant's contact information to guardian for men's basketball student-athlete No. 1 because guardian for men's basketball student-athlete No. 1 wanted the gear. On August 8, 2017, assistant men's basketball coach provided guardian for men's basketball student-athlete No. 1's contact information to apparel company outside consultant. On August 9, 2017, he also asked apparel company outside consultant to contact guardian for men's basketball student-athlete No. 1. In addition, according to assistant men's basketball coach's interview testimony, he "asked [apparel company outside consultant] to help sponsor a team from Angola." Apparel company outside consultant testified at the SDNY trial that he spoke with head men's basketball coach about guardian for men's basketball student-athlete No. 1's request for gear and informed head men's basketball coach and assistant men's basketball coach that he "would take care of it." Guardian for men's basketball student-athlete No. 1 and apparel company outside consultant communicated about apparel company providing used gear to guardian for men's basketball student-athlete No. 1. According to guardian for men's basketball student-athlete No. 1's interview testimony, apparel company outside consultant told guardian for men's basketball student-athlete No. 1 that "he [could] do something about" guardian for men's basketball student-athlete No. 1's request for the gear. Apparel company outside consultant testified at the SDNY trial that thereafter, assistant men's basketball coach "kept asking" him about the "Angola thing."

Further, neither apparel company outside consultant nor apparel company offered or actually provided gear to guardian for men's basketball student-athlete No. 1. Other than a few phone calls between apparel company outside consultant and guardian for men's basketball student-athlete No. 1, apparel company outside consultant confirmed in his testimony at the SDNY trial that he had not seen any documents showing that anyone from apparel company had ever actually ordered uniforms for the Angolan Youth Team. He also confirmed that he did not have any email communications with anybody in which he was asking anyone at apparel company to

get uniforms for the Angolan Youth Team. Instead, as guardian for men's basketball student-athlete No. 1 testified in multiple interviews during the investigation of this infractions case, apparel company outside consultant was more interested in who guardian for men's basketball student-athlete No. 1 knew and had relationships in Africa and Angola. In the absence of an offer of gear, the hearing panel cannot find a violation.

Accordingly, the hearing panel concludes that there was no violation of Bylaw 12.3.1.3 and Bylaw 13.2.1.1-(b) as alleged. The extensive case record, including apparel company outside consultant's federal trial testimony and guardian for men's basketball student-athlete No. 1's consistent statements during several interviews in this infractions case, indicates that neither apparel company outside consultant, Kansas, nor apparel company offered or provided gear to guardian for men's basketball student-athlete No. 1. Therefore, the hearing panel finds that there is insufficient credible and persuasive information to conclude that apparel company, apparel company outside consultant, head men's basketball coach or assistant men's basketball coach offered a recruiting inducement to guardian for men's basketball student-athlete No. 1.

(3) Provision of a Recruiting Inducement of \$2,500 Recruiting Inducements. [Bylaws 12.1.2, 12.3.1.3, 13.2.1, and 13.2.1.1-(e) (2017-18 Manual)] [Asserted Against Head Men's Basketball Coach, Assistant Men's Basketball Coach and Kansas].

Second Amended Notice of Allegations (2-(d))

Sometime in the first half of September 2017, apparel company, [apparel company outside consultant], and [apparel company employee No. 1] ([apparel company employee No. 1]), then an apparel company 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 [guardian for men's basketball student-athlete No. 1] in an effort to secure [men's basketball student-athlete No. 1's] 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) (2017-18)]

Third Amended Notice of Allegations (1-(d))

Sometime in the first half of September 2017, [apparel company outside consultant] provided a \$2,500 cash recruiting inducement to [guardian for

men’s basketball student-athlete No. 1] in an effort to secure [men’s basketball student-athlete No. 1’s] enrollment at the institution as a student-athlete. [NCAA Bylaws 13.2.1 and 13.2.1.1-(e) (2017-18)]

The Complex Case Unit and Kansas agreed on the underlying facts, but Kansas disputed that a violation occurred.

(a) NCAA Legislation Relating to Recruiting Inducements.

The applicable portions of the bylaws may be found in APPENDIX TWO.

(b) Apparel Company Outside Consultant Provided a \$2,500 Cash Recruiting Inducement to Guardian for Men’s Basketball Student-Athlete No. 1.

The hearing panel concludes that credible and persuasive information supports the conclusion that apparel company outside consultant provided a \$2,500 cash recruiting inducement to guardian for men’s basketball student-athlete No. 1 to secure men’s basketball student-athlete No. 1’s enrollment at Kansas as a student-athlete.

Bylaw 13.2.1 prohibits an institution’s staff member from being involved, directly or indirectly, in making arrangements for any benefits to a prospective student-athlete other than those expressly permitted by those bylaws. Bylaw 13.2.1.1-(e) specifically prohibits cash or like items.

It is uncontroverted that apparel company outside consultant provided \$2,500 to guardian for men’s basketball student-athlete No. 1. Apparel company outside consultant testified at the SDNY trial, “[a]s I got to know [guardian for men’s basketball student-athlete No. 1], later on in our relationship, he informed me that . . . [men’s basketball student-athlete No. 1] was going to attend online classes at night . . . and he needed money to pay for those classes” and that guardian for men’s basketball student-athlete No. 1 told him that “they needed \$2,500 for [men’s basketball student-athlete No. 1] to attend online, night classes.”

On September 15, 2017, guardian for men’s basketball student-athlete No. 1 wrote to apparel company outside consultant via WhatsApp:

- “I got \$2500 in the mail? Car repair?”
- Apparel company outside consultant responded: “For classes. [Former head men's basketball coach] said to take care of you. [Former head men's basketball coach] is family.”
- Guardian for men's basketball student-athlete No. 1 replied, “I appreciate the gesture [sic] but I’m good. No need for the money” because the classes at high school No. 3 were free. Apparel company outside consultant responded, “[c]an’t give it back now. Just keep it.”

Guardian for men's basketball student-athlete No. 1 stated in an interview in this infractions case that he “gave \$500 to the church and kept \$2,000.” Guardian for men's basketball student-athlete No. 1’s bank records showed a \$2,000 deposit September 20, 2017.

Kansas, head men’s basketball coach and assistant men’s basketball coach were unaware of the \$2,500 payment. However, by designation of apparel company outside consultant’s status as a representative of athletics interests for Kansas, his \$2,500 payment to guardian for men’s basketball student-athlete No. 1 is a violation attributable to Kansas.

Accordingly, the hearing panel finds that credible and persuasive information supports the conclusion that apparel company outside consultant provided a \$2,500 cash recruiting inducement to guardian for men’s basketball student-athlete No. 1. The hearing panel concludes that pursuant to Bylaw 19.1.2-(a), this violation is Level II because it does not rise to the level of a Level I violation but is more serious than a Level III violation.

- (4) Provision of a Recruiting Inducement of \$20,000. [Bylaws 12.1.2, 12.3.1.3, 13.2.1, and 13.2.1.1-(e) (2017-18 Manual)] [Asserted Against Kansas].**

Second Amended Notice of Allegations (2-(e))

On or about September 11, 2017, apparel company, [apparel company outside consultant], and [apparel company employee No. 1] offered a \$20,000 recruiting inducement and impermissible agent benefit to [guardian

for men's basketball student-athlete No. 1] in order to persuade [guardian for men's basketball student-athlete No. 1] to have [men's basketball student-athlete No. 1] enroll at the institution. [NCAA Bylaws 12.1.2, 12.3.1.3, 13.2.1, and 13.2.1.1-(e) (2017-18)]

Third Amended Notice of Allegations (1-(e))

On or about September 11, 2017, apparel company outside consultant] offered a \$20,000 recruiting inducement to [guardian for men's basketball student-athlete No. 1] in order to ensure that [men's basketball student-athlete No. 1] enrolled at the institution. [NCAA Bylaws 13.2.1 and 13.2.1.1-(e) (2017-18)]

The Complex Case Unit and Kansas agreed on the underlying facts, but Kansas disputed that a violation occurred.

(a) NCAA Legislation Relating to Recruiting Inducements.

The applicable portions of the bylaws may be found in APPENDIX TWO.

(b) Insufficient Information to Support a Determination that the Apparel Company Outside Consultant Offered \$20,000 to Guardian for Men's Basketball Student-Athlete No. 1.

The hearing panel concludes that credible and persuasive information does not support the conclusion that apparel company outside consultant offered \$20,000 offer to guardian for men's basketball student-athlete No. 1. Therefore, a recruiting inducement was not provided.

Bylaw 13.2.1 prohibits an institution's staff member from being involved, directly or indirectly, in making arrangements for any benefits to a prospective student-athlete other than those expressly permitted by those bylaws. Bylaw 13.2.1.1-(e) specifically prohibits cash or like items.

Guardian for men's basketball student-athlete No. 1 “was under the umbrella” of a representative of athletics interests for another Division I institution for \$60,000 of salary that he had been paying guardian for men's basketball student-athlete No. 1. Apparel company outside consultant testified at the SDNY trial that he told guardian for men's basketball student-athlete No. 1 that he would

give him \$20,000 toward the \$60,000 to “help [guardian for men’s basketball student-athlete No. 1] get out from under this deal” and that he “wanted to . . . make sure that [men's basketball student-athlete No. 1] stayed at Kansas.”

On September 11, 2017, the FBI wiretapped a conversation between apparel company outside consultant and apparel company employee No. 1. Apparel company outside consultant said, “I can spend some time on this, but just so you know, I gotta send this guy [guardian for men’s basketball student-athlete No. 1] another 20 grand out on Wednesday [Sept. 13] because I gotta get him out from under this [other apparel company] deal, and the deal he’s got with this guy who was taking care of him. He wants his money back now because the kid [men's basketball student-athlete No. 1] didn’t go to [another Division I institution], so I gotta stay on top of that. I just can’t have this thing catapult in my face, but I don’t want to do anything to harm you.”

Apparel company outside consultant concealed the \$20,000 payment offer from Kansas. In fact, he testified that he never actually gave the \$20,000 to guardian for men’s basketball student-athlete No. 1 and the guardian for men’s basketball student-athlete No.1 denied, in his interview, that such payment was discussed.

In light of this denial, the hearing panel declines to rely on apparel company outside consultant’s testimony or apparel company outside consultant’s reference to apparel company employee No. 1 about his planned unilateral action, which never occurred, as the basis for determining a \$20,000 offer occurred. Accordingly, the hearing panel finds that there is insufficient credible and persuasive information to conclude that apparel company outside consultant offered \$20,000 to guardian for men’s basketball student-athlete No. 1. Therefore, a recruiting inducement was not provided.

e. Men's Basketball Prospective Student-Athlete No. 3.

- **Recruiting Contacts.** [Constitution 2.8.1 and Bylaws 13.01.2, 13.1, 13.1.2.1, and 13.1.3.5.1 (2017-18 Manual)] [Asserted Against Assistant Men's Basketball Coach and Kansas].

Second Amended Notice of Allegations (3-(d))

On or about September 13, 2017, [apparel company employee No. 2] ([apparel company employee No. 2]), then an apparel company 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 [men's basketball prospective student-athlete No. 3] ([men's basketball prospective student-athlete No. 3]) and learned recruiting information and what it would take for [men's basketball prospective student-athlete No. 3] to commit to the institution and participate as a men's basketball student-athlete. In a telephone call on September 12, 2017, [apparel company employee No. 2] provided some information to [head men's basketball coach] and [assistant men's basketball coach] regarding [men's basketball prospective student-athlete No. 3's] recruitment just prior to their scheduled home visit with the [men's basketball prospective student-athlete No. 3] family. [Apparel company employee No. 2] provided additional information to [assistant men's basketball coach] on September 13, 2017, after the [men's basketball prospective student-athlete No. 3] home visit. [Assistant men's basketball coach] failed to report this violation to the institution's compliance staff.²⁰ [NCAA Constitution 2.8.1 and Bylaws 13.01.2, 13.1, 13.1.2.1, and 13.1.3.5.1 (2017-18)]

Third Amended Notice of Allegations (3)

The CCU alleges that in September 2017, a consultant of apparel company, who was also a representative of the institution's athletics interests, engaged in impermissible recruiting activities with a prospective student-athlete. Specifically, on or about September 13, 2017, [apparel company employee No. 2] ([apparel company employee No. 2]), then an apparel company outside consultant and representative of the institution's athletics interests, had an impermissible recruiting contact with the family of then men's basketball prospective student-athlete [men's basketball prospective student-athlete No. 3] ([men's basketball prospective student-athlete No. 3]). On September 13, 2017, the day after head men's basketball coach [head men's basketball coach] ([head men's basketball coach]) and assistant men's basketball coach [assistant men's basketball coach] ([assistant men's basketball coach]) made a home visit to the [men's basketball prospective student-athlete No. 3] family, [assistant men's basketball coach] had a telephone call with [apparel company employee No. 2] during which [apparel company employee No. 2] provided him with information about

²⁰ [Head men's basketball coach's] failure to report this violation is included in Allegation No. 4.

what it would purportedly take for [men’s basketball prospective student-athlete No. 3] to commit to the institution and participate as a men’s basketball student-athlete. [Assistant men's basketball coach] failed to report his telephone call with [apparel company employee No. 2], and what [apparel company employee No. 2] told him about the [men’s basketball prospective student-athlete No. 3] family during that telephone call, to the institution’s athletics compliance staff. [NCAA Constitution 2.8.1 and Bylaws 13.01.2, 13.1, 13.1.2.1, and 13.1.3.5.1 (2017-18)]

The parties did not dispute the underlying facts relative to this allegation, but head men’s basketball coach disagreed that a violation occurred. Kansas and assistant men’s basketball coach agreed that a violation occurred, in part, but disagreed that it should be classified as Level I.

(a) NCAA Legislation Relating to Recruiting Contacts.

The applicable portions of the bylaws may be found in APPENDIX TWO.

(b) Assistant Men's Basketball Coach Failed to Report Apparel Company Employee No. 2’s Statements to Kansas.

The hearing panel concludes that credible and persuasive information supports the conclusion that assistant men’s basketball coach failed to report apparel company employee No. 2’s statement about recruiting inducements to Kansas.

Bylaw 19.2.1 requires all institutions to monitor and control their athletics programs, its representatives and its student-athletes to assure compliance with the constitution and bylaws of the Association. Further, Bylaw 19.2.2 places an affirmative obligation on each institution to report all instances of noncompliance to the Association in a timely manner.

On September 8, 2017, at the Naismith Memorial Basketball Hall of Fame banquet, assistant men’s basketball coach told apparel company employee No. 1 that he and head men’s basketball coach were scheduled to make an in-home recruiting visit with men’s basketball prospective student-athlete No. 3 and his family September 12, 2017. Apparel company employee No. 1 said assistant men’s basketball coach should speak to apparel company employee No. 2 about men’s basketball prospective student-athlete No. 3 before going on their visit. On September 12, 2017, assistant

men's basketball coach and head men's basketball coach spoke with apparel company employee No. 2 on a speaker phone during the car ride to men's basketball prospective student-athlete No. 3's home recruiting visit to see what information apparel company employee No. 2 might have to help Kansas have "an edge" in the recruitment of men's basketball prospective student-athlete No. 3. Apparel company employee No. 2 merely provided information regarding men's basketball prospective student-athlete No. 3's preferred position in college during that conversation. Assistant men's basketball coach and head men's basketball coach attended the in-home recruiting visit that same day with men's basketball prospective student-athlete No. 3, stepfather of men's basketball prospective student-athlete No. 3 and mother of men's basketball prospective student-athlete No. 3.

Assistant men's basketball coach and apparel company employee No. 2 spoke again September 13, 2017. Portions of the call were revealed during a sidebar discussion at the SDNY trial. On appeal, additional portions of the call were unsealed by the Second Circuit. From these records, the conversation between assistant men's basketball coach and apparel company employee No. 2 included the following discussion:

- Assistant men's basketball coach: "Hey, but between me and you, you know, he asked about some stuff. You know? And I said, well, we'll talk about that if you decide."
- Apparel company employee No. 2: "I know what he's asking for . . . He's asking for opportunities from an occupational perspective. He's asking for money in the pocket. And he's asking for housing for him and the family."

The hearing panel concludes that assistant men's basketball coach and Kansas failed to meet the expectations and shared responsibility required by Bylaws 19.2.1 and 19.2.2. On September 13, 2017, when assistant men's basketball coach learned through apparel company employee No. 2 that stepfather of men's basketball prospective student-athlete No. 3 was "asking for money in the pocket," he should have immediately reported what he learned to Kansas. Kansas is responsible for assistant men's basketball coach's failure to report.

The obligation to report potentially violative behavior has been a longstanding cornerstone of the membership's infractions process. This obligation became even more relevant due to the August 2018 enhancements to the legislated responsibility to cooperate that were part of broader reforms stemming from the Commission on College Basketball recommendations. These enhancements placed more explicit and express requirements on institutional staff members to further the objectives of the membership's infractions program. Assistant men's basketball coach failed to meet his and Kansas' obligations under Bylaws 19.2.1 and 19.2.2. Accordingly, the hearing panel finds that credible and persuasive information supports the conclusion that assistant men's basketball coach failed to report apparel company employee No. 2's statements to Kansas.

The hearing panel concludes that pursuant to Bylaw 19.1.2-(a), this violation is Level II because it does not rise to the level of a Level I violation but is more serious than a Level III violation.

f. Men's Basketball Prospective Student-Athlete No. 4.

- **Provision of Recruiting Inducement of \$15,000. [Bylaws 13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1, and 13.2.1.1-(e) (2014-15 NCAA Division I Manual)] [Asserted Against Kansas].**

Second Amended Notice of Allegations (3-(a))

During the 2014-15 academic year, [apparel company outside consultant] ([apparel company outside consultant]), then an apparel company²¹ 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 [men's basketball prospective student-athlete No. 4] ([men's basketball prospective student-athlete No. 4]) to the institution, and later communicated some of his efforts to [head men's basketball coach]. Specifically, in the winter of 2015, [apparel company outside consultant] provided \$15,000 to a family friend of [men's basketball prospective student-athlete No. 4's] who was to provide the money to [men's basketball prospective student-athlete No. 4's] mother. On August 19, 2017, after [men's basketball prospective student-athlete No. 4] enrolled at another institution, [apparel company outside consultant] communicated in a text message to head men's basketball coach that he had let [head men's basketball coach] down in the recruitment of [men's basketball prospective

²¹ Apparel company is a representative of the institution's athletics interest.

student-athlete No. 4]. [NCAA Bylaws 13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1, and 13.2.1.1-(e) (2014-15)]

The Complex Case Unit and Kansas agreed on the underlying facts, but Kansas disputed that a violation occurred.

(a) NCAA Legislation Relating to Recruiting Inducements.

The applicable portions of the bylaws may be found in APPENDIX TWO.

(b) Apparel Company Outside Consultant was not a Representative of Athletics Interests for Kansas at the Time of the Alleged Conduct.

The legislation applicable to these allegations requires action by the institution, a staff member or a representative of athletics interests. For the reasons described above, the hearing panel finds that apparel company outside consultant was not a representative of athletics interests at the time of alleged conduct.²² Accordingly, the hearing panel finds that these actions as alleged do not constitute a violation for Kansas.

g. Men's Basketball Student-Athlete No. 2.

- **Provision of an Extra Benefit. [Bylaws 12.1.2, 12.3.1.2, and 16.11.2.1 (2015-16 NCAA Division I Manual)] [Asserted Against Kansas].**

Second Amended Notice of Allegations (3-(b))

On or about March 22, 2016, [apparel company outside consultant] provided an impermissible benefit and impermissible agent benefit in the form of an indeterminate amount of cash through a wire transfer to [guardian for men's basketball student-athlete No. 2], guardian of then men's basketball student-athlete [men's basketball student-athlete No. 2]. [NCAA Bylaws 12.1.2, 12.3.1.2, and 16.11.2.1 (2015-16)]

The Complex Case Unit and Kansas agreed on the underlying facts, but Kansas disputed that a violation occurred.

²² The determination of whether apparel company, apparel company employee No. 2, apparel company employee No. 1 and/or apparel company outside consultant triggered status as representatives of athletics interests begins on Page No. 32.

(a) NCAA Legislation Relating to Recruiting Inducements.

The applicable portions of the bylaws may be found in APPENDIX TWO.

(b) Apparel Company Outside Consultant was not a Representative of Athletics Interests for Kansas at the Time of the Alleged Conduct.

The legislation applicable to these allegations requires action by the institution, a staff member or a representative of athletics interests. For the reasons described above, the hearing panel finds that apparel company outside consultant was not a representative of athletics interests at the time of alleged conduct.²³ Accordingly, the hearing panel finds that these actions as alleged do not constitute a violation for Kansas.

h. Cornhole Game.

- **Provision of an Extra Benefit of \$200. [Bylaws 16.11.2.1 and 16.11.2.2 (2015-16 through 2020-21 NCAA Division I Manuals)] [Asserted Against Kansas].**

Second Amended Notice of Allegations (11-(b))

The CCU alleges that in approximately 2016, [representative of athletics interests No. 1] provided impermissible benefits in the form of approximately \$200 in cash to a then current men's basketball student-athlete during a barbeque at the head men's basketball coach's house. [NCAA Bylaws 16.11.2.1 and 16.11.2.2 (2015-16)]

Kansas disagreed with the underlying facts and that the facts constitute a violation.

(a) NCAA Legislation Relating to Extra Benefits.

The applicable portions of the bylaws may be found in APPENDIX TWO.

²³ The determination of whether apparel company, apparel company employee No. 2, apparel company employee No. 1 and/or apparel company outside consultant triggered status as representatives of athletics interests begins on Page No. 32.

(b) Representative of Athletics Interests No. 1 Provided Extra Benefits to a Men’s Basketball Student-Athlete.

The hearing panel concludes that credible and persuasive information supports the conclusion that representative of athletics interests No. 1 provided approximately \$200 in cash to a then current men’s basketball student-athlete during a barbeque at head men’s basketball coach’s house.

Bylaw 16.11.2.1 restricts student-athletes from receiving an extra benefit. The bylaw defines the term “extra benefit” as any special arrangement by an institutional employee or a representative of athletics interests to provide the student-athlete or his or her family members or friends with a benefit not expressly authorized by NCAA legislation. Bylaw 16.11.2.2 restricts an institutional employee or representative of the institution’s athletics interests from providing a student-athlete with extra benefits or services.

The parties did not dispute that representative of athletics interests No. 1 was a representative of Kansas’ athletics interests at the time of the alleged conduct. He was a member of the Education Fund, donated money to the Education Fund and the Kansas University Endowment Association and was a season-ticket holder. Pursuant to Bylaw 13.02.15-(b), he was a representative of Kansas’ athletics interests.

On July 20, 2019, representative of athletics interests No. 1 had a conversation with local sports journalist, a local sports journalist and radio show host, at a restaurant in Lenexa, Kansas. Local sports journalist recorded portions of his conversation with representative of athletics interests No. 1. In the recording, representative of athletics interests No. 1 described events that occurred at a barbeque event at head men’s basketball coach’s house sometime in 2016. Among the attendees at the event were men’s basketball student-athlete No. 4, men’s basketball student-athlete No. 5, and men’s basketball student-athlete No. 6, who were all student-athletes on Kansas’ men’s basketball team during the 2014-15 and 2015-16 seasons. Representative of athletics interests No. 1 played a cornhole game at the event with men’s basketball student-athlete No. 4, men’s basketball student-athlete No. 5 and men’s basketball student-athlete No. 6. They each bet \$100 on the cornhole game. Representative of athletics interests No. 1 and men’s basketball

student-athlete No. 4 competed against men's basketball student-athlete No. 5 and men's basketball student-athlete No. 6, and representative of athletics interests No. 1 and men's basketball student-athlete No. 4 won. Men's basketball student-athlete No. 5 and men's basketball student-athlete No. 6 did not pay their \$100 bets, so representative of athletics interests No. 1 placed \$200 under or near a plant for men's basketball student-athlete No. 5 and men's basketball student-athlete No. 6 and directed men's basketball student-athlete No. 4 to go look under or near the plant.

The hearing panel received conflicting accounts from representative of athletics interests No. 1 and local sports journalist about whether it was representative of athletics interests No. 1's voice on the recording. The hearing panel determined and weighed the credibility of representative of athletics interests No. 1 and local sports journalist to address the conflicting accounts. Local sports journalist confirmed representative of athletics interests No. 1 was the individual speaking with him in the recording during his interview with the Complex Case Unit. Representative of athletics interests No. 1 did not recall giving money near the plant or telling men's basketball student-athlete No. 4 about the money near or in the plant during his interview with the Complex Case Unit. However, representative of athletics interests No. 1 accurately recalled attending a barbecue at head men's basketball coach's house and playing the cornhole game.

Pursuant to Bylaw 19.11.5.8.3, the hearing panel concludes that the recording and local sports journalist's confirmation of the recorded discussion during his interview with the Complex Case Unit are credible and persuasive information and of a kind on which reasonably prudent persons rely in the conduct of serious affairs. Portions of representative of athletics interests No. 1's selective recollection of facts from the barbecue corroborate local sports journalist's recording and recollection. Accordingly, representative of athletics interests No. 1's provision of \$200 to men's basketball student-athlete No. 5 and men's basketball student-athlete No. 6 was impermissible pursuant to Bylaws 16.11.2.1 and 16.11.2.2 and constitutes a violation for Kansas.

Kansas also contended that this allegation was time-barred by the statute of limitations as prescribed by Bylaw 19.11.4.8. That bylaw requires, in pertinent part, that allegations contained in a notice of allegations be limited to those that occurred "not earlier than four

years before the date the notice of inquiry is provided to the institution.” The NCAA provided its notice of inquiry on Kansas August 24, 2018. Accordingly, the statute of limitations would cover violations occurring subsequent to August 24, 2014. Men's basketball student-athlete No. 4, men's basketball student-athlete No. 5 and men's basketball student-athlete No. 6 were all on the Kansas men's basketball team during the 2014-15 and 2015-16 seasons. Head men's basketball coach noted in his interview that if men's basketball student-athlete No. 4, men's basketball student-athlete No. 5 and men's basketball student-athlete No. 6 were present, then it must have been around the 2016 timeframe. Therefore, these allegations were within the statute of limitations.

Accordingly, the hearing panel finds the facts as alleged constitute a violation. Pursuant to Bylaw 19.1.3-(b), this violation is Level III. It was isolated or limited in nature and provided no more than a minimal competitive or other advantage.

i. Head Men's Basketball Coach.

**(1) Public Disclosures. [Bylaws 19.01.3 and 19.2.3-(f) (2019-20 Manual)]
[Asserted Against Kansas and Head Men's Basketball Coach].**

Second Amended Notice of Allegations (10-(a))

[Head men's basketball coach] failed to preserve the integrity of the NCAA's investigation and abide by applicable confidentiality rules. Specifically, on or about September 23, 2019 and May 7, 2020, while this case was pending, [head men's basketball coach] made public disclosures about the case. [NCAA Bylaws 19.01.3 and 19.2.3-(f) (2019-20)]

The parties agreed on the underlying facts, but Kansas and head men's basketball coach disputed that a violation occurred.

(a) NCAA Legislation Relating to Public Disclosures.

The applicable portions of the bylaws may be found in APPENDIX TWO.

(b) Head Men's Basketball Coach Did Not Fail to Preserve the Integrity of the NCAA's Investigation and Abide by Applicable Confidentiality Rules.

The hearing panel concludes that there is no credible and persuasive information to support the conclusion that head men's basketball coach failed to preserve the integrity of the NCAA's investigation and abide by applicable confidentiality rules when on or around September 23, 2019, and May 7, 2020, while this infractions case was pending, head men's basketball coach, through counsel, made public disclosures about this infractions case.

Bylaw 19.01.3 requires individuals subject to the NCAA constitution and bylaws, including any representative or counsel, to not make any public disclosures until a final decision has been released.²⁴ The bylaw is intended to protect the membership's infractions process in three main areas: (i) the integrity of the investigation; (ii) individuals associated with or subject to the investigation; and (iii) those involved in the process, including the Independent Accountability Resolution Process. Bylaw 19.2.3-(f) provides that institutions, current and former institutional staff members, and prospective and enrolled student-athletes of member institutions have an affirmative obligation to cooperate fully with and assist the enforcement staff, the Complex Case Unit, the NCAA Division I Committee on Infractions, the Independent Resolution Panel and the NCAA Division I Infractions Appeals Committee to further the objectives of the Association and its infractions program, including the Independent Accountability Resolution Process. Full cooperation includes, but is not limited to, preserving the integrity of an investigation and abiding by all applicable confidentiality rules and instructions. Bylaw 19.5.2 permits a minor exception for individuals to confirm, correct or deny information that has been made public.

Head men's basketball coach's September 23, 2019, statement read, in part:

- Compelled to reassure member institutions and the general public that it can police its member institutions, the NCAA enforcement staff has responded in an unnecessarily aggressive manner in submitting today's unsubstantiated

²⁴ NCAA Division I institution A – Public Infractions Decision (October 13, 2017).

Notice of Allegations, and I, as well as the University, will vigorously dispute what has been alleged.

- In its haste and attempt to regain control, the enforcement staff has created a false narrative regarding me and our basketball program. The narrative is based on innuendo, half-truths, misimpressions and mischaracterizations.
- These allegations are serious and damaging to the University and to myself, and I hate that KU has to go through this process.

Head men's basketball coach's May 7, 2020, statement read, in part:

- As does the University of Kansas in its public statement of today regarding the NCAA enforcement staff's Reply, [head men's basketball coach] continues to vigorously maintain that the allegations claimed are simply an incomplete collection of misleading assertions, conclusory statements and groundless insinuations. The NCAA's false narrative starkly contradicts both the developed factual record in this matter as well as the federal criminal trial testimony and verdict, and it is undisputed that the enforcement staff's own Notice of Allegations includes no claims that [head men's basketball coach] knew or should have known of any improper payments, which is consistent with the trial evidence and testimony that proved through the jury verdict that [apparel company] employees intentionally concealed these payments from both [head men's basketball coach] and his assistant coaches. The enforcement staff's most recent submission only highlights its unrepentant and misguided insistence upon misapplying NCAA Bylaws and misinterpreting case precedent to achieve a preconceived result, and has only reinforced [head men's basketball coach's] resolve, with the public support of chancellor, former director of athletics No. 2 and all of KU, to defeat these meritless and irresponsible allegations once and for all.

This infractions case was public in nature and attracted significant public interest. The public narrative of a case, however, does not supersede the membership's strict confidentiality rules. To the contrary, the enhanced public nature of a case only reinforces the need for participants' commitment to confidentiality. Although it is

within the hearing panel's authority to conclude a violation occurred and prescribe an appropriate penalty, the hearing panel concludes neither is appropriate here given the posture of this case.

The hearing panel appreciates the Complex Case Unit for bringing the conduct to the hearing panel's attention. The Complex Case Unit and the enforcement staff remain in the best position to identify potential breaches of confidentiality. The hearing panel retains the authority to consider confidentiality breaches identified by the Complex Case Unit or enforcement staff after the issuance of a notice of allegations. Based on that information, the hearing panel may conclude violations occurred and that such conduct constitutes an aggravating factor and may thereby penalize conduct in future cases.

Accordingly, the hearing panel finds that there is insufficient credible and persuasive information to conclude that head men's basketball coach failed to preserve the integrity of the NCAA's investigation and abide by applicable confidentiality rules. However, the hearing panel is troubled by the excerpts referenced above. Statements that go beyond simply denying the allegations and attack the integrity of the staff involved in the investigation are wholly inappropriate and distasteful.

(2) Head Coach Responsibility. [Bylaw 11.1.1.1 (2014-15, 2016-17, and 2017-18 Manuals)] [Asserted Against Kansas and Head Men's Basketball Coach].

Second Amended Notice of Allegations (4)

The CCU alleges that during the 2014-15, 2016-17, and 2017-18 academic years, [head men's basketball coach] ([head men's basketball coach]), head men's basketball coach, is presumed responsible for the violations detailed in Allegation Nos. 1, 2, and 3(a) and did not rebut the presumption of responsibility.

Third Amended Notice of Allegations (4)

The CCU alleges that during the 2017-18 academic year, [head men's basketball coach] ([head men's basketball coach]), head men's basketball coach, is presumed responsible for the violations detailed in Allegation No. 1-c and did not rebut the presumption of responsibility.

Kansas and head men’s basketball coach disagreed with the underlying facts and also disagreed that the facts alleged constitute a violation. Further, head men’s basketball coach maintained that he rebutted the presumption of responsibility by demonstrating that he promoted an atmosphere of compliance and adequately monitored his staff.

(a) NCAA Legislation Relating to Head Coach Responsibility.

The applicable portions of the bylaws may be found in APPENDIX TWO.

(b) Head Men's Basketball Coach Promoted an Atmosphere of Compliance and Appropriately Monitored His Staff.

The hearing panel concludes that credible and persuasive information does not support the conclusion that head men’s basketball coach failed to promote an atmosphere of compliance as alleged.

The head coach responsibility legislation is predicated on a showing of Level I or Level II violations. As described above in this Section, the hearing panel found the following:²⁵

- i. Second amended notice of allegations No. 1-(a): the hearing panel found no violation.
- ii. Second amended notice of allegations No. 2-(b): the hearing panel found a violation, but it was determined to be a Level III violation.
- iii. Second amended notice of allegations No. 2-(c): the hearing panel found no violation.
- iv. Second amended notice of allegations No. 3-(a): the hearing panel found no violation.
- v. Third amended notice of allegations No. 1-(c): the hearing panel found a violation, but it was determined to be a Level III violation.

²⁵ Allegation No. 2-(a) from the second amended notice of allegations, which served as one of the bases for the head coach responsibility allegation, was withdrawn by the Complex Case Unit.

Therefore, the hearing panel concludes that there is no credible or persuasive information to find that head men's basketball coach violated head coach responsibility legislation.

j. Football Allegations.

(1) December 2017 Through Mid-October 2018 Football Coaching Limits. [Bylaws 11.7.1.1, 11.7.3, and 11.7.6 (2017-18 and 2018-19 Manuals)] [Asserted Against Kansas].

Second Amended Notice of Allegations (6) and Third Amended Notice of Allegations (6)

The Complex Case Unit alleged that between December 2017 and mid-October 2018, the institution's football team exceeded the limit on the number of coaches who may be employed by one. This occurred when the football video coordinator (a noncoaching staff member), participated in technical and tactical instruction with football student-athletes and made or assisted in making tactical decisions with football student-athletes during on-field practices. Specifically:

- a. Between December 2017 and April 2018, the football video coordinator met with the quarterback student-athletes six to ten times in the quarterback meeting room of the football office and provided instruction [to the quarterbacks] while [they were] watching videos of practices and games. The football video coordinator's instructions included, but were not limited to, identifying quarterback reads, coverage reads and adjustments and defensive fronts and alignments. [NCAA Bylaws 11.7.1.1, 11.7.3, 11.7.6 (2017-18)]²⁶
- b. Between August 2018 and early-October 2018, the football video coordinator provided on-field instruction to the quarterbacks on one to three occasions. [NCAA Bylaws 11.7.1.1, 11.7.3, and 11.7.6 (2018-19)]
- c. In August 2018, the football video coordinator provided a quarterback an instructional video through a text message via cellphone. [NCAA Bylaws 11.7.1.1 and 11.7.6 (2018-19)]

²⁶ The second amended notice of allegations and the third amended notice of allegations are substantially the same. The information in brackets in subpart (a) of this allegation is language that the Complex Case Unit included in the third amended notice of allegations that it did not include in the second amended notice of allegations.

Kansas agreed with the underlying facts, that the facts alleged constitute a violation and that violation is Level III.

(a) NCAA Legislation Relating to Football Coaching Limits.

The applicable portions of the bylaws may be found in APPENDIX TWO.

(b) Kansas' Football Program Exceeded the Limit on the Number of Coaches.

The hearing panel concludes that credible and persuasive information supports the conclusion that between December 2017 and mid-October 2018, the institution's football program exceeded the limit on the number of coaches who may be employed.

Bylaw 11.7.1.1 provides that an institutional staff member or any other individual outside the institution (e.g., consultant, professional instructor) with whom the institution has made arrangements must count against coaching limits in the applicable sport as soon as the individual participates (in any manner) in any of the following:

- Provides technical or tactical instruction related to the sport to a student-athlete at any time;
- Makes or assists in making tactical decisions related to the sport during on-court or on-field practice or competition; or
- Engages in any off-campus recruiting activities.

Further, Bylaw 11.7.3 provides that a noncoaching staff member with sport-specific responsibilities (e.g., director of operations, administrative assistant) is prohibited from participating in on-court or on-field activities (e.g., assist with drills, throw batting practice, signal plays) and is prohibited from participating with or observing student-athletes in the staff member's sport who are engaged in nonorganized voluntary athletically related activities (e.g., pick-up games).

In the sport of football, bowl subdivision, Bylaw 11.7.6 limits the number of coaches (other than graduate assistant coaches per Bylaws 11.01.3 and 11.01.4, student assistant coaches per Bylaw 11.01.5 and volunteer coaches per Bylaw 11.01.6) who may be

employed by an institution and who may contact or evaluate prospective student-athletes off campus to 11.

The hearing panel finds:

- i. Between December 2017 and April 2018, the football video coordinator met with the quarterback student-athletes six to 10 times in the quarterback meeting room of the football office and provided instruction while watching videos of practices and games. The football video coordinator's instructions included, but were not limited to, identifying quarterback reads, coverage reads and adjustments and defensive fronts and alignments.
- ii. Between August 2018 and early-October 2018, the football video coordinator provided on-field instruction to the quarterbacks on one to three occasions.
- iii. In August 2018, the football video coordinator provided a quarterback an instructional video through a text message via cellphone.

Accordingly, the hearing panel finds the facts as alleged constitute a violation. Pursuant to Bylaw 19.1.3-(b), this violation is Level III. It was isolated or limited in nature and provided no more than a minimal competitive or other advantage.

- (2) **2018-19 Academic Year Spring Football Practices and 2019-20 Academic Year Fall Football Practices Coaching Limits. [Bylaws 11.7.1.1-(a), 11.7.3, and 11.7.6 (2018-19 and 2019-20 Manuals)].**

Second Amended Notice of Allegations (8) and Third Amended Notice of Allegations (8)

The Complex Case Unit alleged that during the spring practices of the 2018-19 academic year and fall practices of the 2019-20 academic year, the institution's football program violated NCAA legislated limits on the number and duties of coaches and noncoaching staff members. This occurred when two special teams staff members (both noncoaching staff members with football specific duties) occasionally participated in on-field activities and assisted with football drills. Additionally, and on a limited basis, the two special teams analysts participated in on-field practices by providing technical or tactical instruction to football student-athletes, which

caused the institution's football program to exceed the limit on the number of coaches who may be employed by two.

Kansas agreed with the underlying facts, that the facts alleged constitute a violation and that violation is Level III.

(a) NCAA Legislation Relating to Football Coaching Limits.

The applicable portions of the bylaws may be found in APPENDIX TWO.

(b) Kansas' Football Program Violated NCAA Legislated Limits on the Number and Duties of Coaches and Noncoaching Staff Members.

The hearing panel concludes that credible and persuasive information supports the conclusion that during the spring practices of the 2018-19 academic year and fall practices of the 2019-20 academic year, Kansas' football program violated NCAA legislated limits on the number and duties of coaches and noncoaching staff members.

Bylaw 11.7.1.1 provides that an institutional staff member or any other individual outside the institution (e.g., consultant, professional instructor) with whom the institution has made arrangements must count against coaching limits in the applicable sport as soon as the individual participates (in any manner) in any of the following:

- Provides technical or tactical instruction related to the sport to a student-athlete at any time;
- Makes or assists in making tactical decisions related to the sport during on-court or on-field practice or competition; or
- Engages in any off-campus recruiting activities.

Further, Bylaw 11.7.3 provides that a noncoaching staff member with sport-specific responsibilities (e.g., director of operations, administrative assistant) is prohibited from participating in on-court or on-field activities (e.g., assist with drills, throw batting practice, signal plays) and is prohibited from participating with or observing student-athletes in the staff member's sport who are engaged in

nonorganized voluntary athletically related activities (e.g., pick-up games).

In the sport of football, bowl subdivision, Bylaw 11.7.6 limits the number of coaches (other than graduate assistant coaches per Bylaws 11.01.3 and 11.01.4, student assistant coaches per Bylaw 11.01.5 and volunteer coaches per Bylaw 11.01.6) who may be employed by an institution and who may contact or evaluate prospective student-athletes off campus to 11.

The hearing panel finds that two special teams staff members (both noncoaching staff members with football-specific duties) occasionally participated in on-field activities and assisted with football drills. Additionally, and on a limited basis, the two special teams analysts participated in on-field practices by providing technical or tactical instruction to football student-athletes, which caused the institution's football program to exceed the limit on the number of coaches who may be employed by two.

Accordingly, the hearing panel finds the facts as alleged constitute a violation. Pursuant to Bylaw 19.1.3-(b), this violation is Level III. It was isolated or limited in nature and provided no more than a minimal competitive or other advantage.

k. Kansas.

(1) Public Disclosures. [Bylaws 19.01.3 and 19.2.3-(f) (2019-20 Manual)] [Asserted Against Kansas].

Second Amended Notice of Allegations (9-(b))

The institution failed to preserve the integrity of the NCAA's investigation and abide by applicable confidentiality rules. Specifically, on or around September 23, 2019 and May 7, 2020, while this case was pending, the institution made public disclosures about the case. [NCAA Bylaws 19.01.3 and 19.2.3-(f) (2019-20)]

The Complex Case Unit and Kansas agreed on the underlying facts, but Kansas disputed that a violation occurred.

(a) NCAA Legislation Relating to Public Disclosures.

The applicable portions of the bylaws may be found in APPENDIX TWO.

(b) Kansas Did Not Fail to Preserve the Integrity of the NCAA’s Investigation and Aide by Applicable Confidentiality Rules.

Kansas’ September 23, 2019, statement read, in part:

- First and foremost, the University emphasizes that it emphatically rejects the assertion that [apparel company] and [apparel company] employees and associates were boosters and agents of the University (as defined by NCAA legislation) during the period of the alleged violations and therefore acting on the University’s behalf when they engaged in alleged violations of NCAA bylaws.
- As for the allegations regarding Head Men’s Basketball [head men’s basketball coach], voluminous evidence demonstrates uncontestably that he did, in fact, promote an atmosphere of compliance and fully monitor his staff. The University firmly and fully supports [head men's basketball coach] and his staff.
- Regarding the self-reported football violations, the University’s monitoring systems worked to identify the issues, and KU self-reported violations to the NCAA related to the conduct of two members of the previous coaching staff. Those involved in the football violations are no longer associated with the University.
- The University strongly disagrees with the assertion that it “lacks of institutional control.” In fact, the University believes that the record will demonstrate just the opposite. The University of Kansas takes seriously all NCAA and Big XII bylaws, consistently provides education to its staff members, and monitors its programs to ensure compliance with these bylaws. Additionally, the University has taken several actions to enhance its already strong compliance programs. [Chancellor] and [former director of athletics No. 2] also retained an outside compliance expert to review the entire compliance program and provide recommendations, if

warranted, about opportunities for improvement in light of the changes in the national landscape around college basketball. The report found that our compliance program meets or exceeds industry standard in all facets. Furthermore, the University proactively established a reporting line from the senior compliance administrator directly to the Chancellor and enhanced the frequency and depth of compliance education programs for student-athletes, staff, parents, donors and local businesses. As a result of these actions, the University's already strong compliance programs are now even more robust.

Kansas' May 7, 2020, statement read, in part:

- The NCAA enforcement staff's reply does not in any way change the University of Kansas' position that the allegations brought against our men's basketball program are simply baseless and littered with false representations. As the federal trial proved, [apparel company] employees intentionally concealed impermissible payments from the University and its coaching staff. The University has never denied these impermissible payments were made. For the NCAA enforcement staff to allege that the University should be held responsible for these payments is a distortion of the facts and a gross misapplication of NCAA Bylaws and case precedent. In addition, the enforcement staff's assertion that KU refuses to accept responsibility is wrong. The University absolutely would accept responsibility if it believed that violations had occurred, as we have demonstrated with other self-reported infractions. [Chancellor], [former director of athletics No. 2] and KU stand firmly behind [head men's basketball coach], his staff and our men's basketball program, as well as our robust compliance program.

For similar reasons the hearing panel analyzed above regarding head men's basketball coach's public statements, the hearing panel concludes that credible and persuasive information does not support the conclusion that Kansas failed to preserve the integrity of the NCAA's investigation and abide by applicable confidentiality rules when on or around September 23, 2019, and May 7, 2020, while this infractions case was pending, Kansas made public disclosures about the case.

The applicable bylaws and portions of the public statements are described above. Accordingly, the hearing panel finds that there is insufficient credible and persuasive information to conclude that Kansas failed to preserve the integrity of the NCAA's investigation and abide by applicable confidentiality rules. However, the hearing panel is troubled by the excerpts referenced above. Statements that go beyond simply denying the allegations and attack the integrity of the staff involved in the investigation are wholly inappropriate and distasteful.

- (2) **Responsibility to Cooperate Regarding Grand Jury Subpoena. [Constitution 2.1.2 and 2.8.1 (2017-18 through 2020-21 Manuals); Bylaws 19.2.3 (2017-18 and 2018-19 Manuals); and 19.2.3-(a) and 19.2.3-(c) (2019-20 and 2020-21 Manuals)] [Asserted Against Kansas].**

Second Amended Notice of Allegations (9-(a))

The institution failed to affirmatively report instances of noncompliance to the NCAA's enforcement staff, failed to assist in developing full information to determine whether a possible violation had occurred and the details thereof, and failed to make a full and complete disclosure of relevant information including timely production of materials or information requested. Specifically, on or about March 2, 2018, the institution received notice from the United States Attorney's Office in the Southern District of New York that a Grand Jury Subpoena would be issued relating to potential violations involving the recruitment and enrollment of men's basketball student-athlete, [men's basketball student-athlete No. 1] ([men's basketball student-athlete No. 1]). The government informally requested records regarding [men's basketball student-athlete No. 1] at that time. The institution received the Grand Jury Subpoena on March 14, 2018. However, the institution failed to report the existence or receipt of the Subpoena to the NCAA enforcement staff or the CCU until February 24, 2021. Despite possessing such information, the institution allowed [men's basketball student-athlete No. 1] to compete in the Big 12/SEC Challenge, three Big 12 Conference Tournament games, and five games during the 2018 NCAA Men's Division I Basketball Tournament, including an NCAA Final Four game on March 31, 2018. As such, the institution refused to cooperate and failed to comply with NCAA responsibility to cooperate legislation. [NCAA Constitution 2.1.2 and 2.8.1 (2017-18 through 2020-2021); NCAA Bylaws 19.2.3 (2017-18 and 2018-19); and 19.2.3-(a) and 19.2.3-(c) (2019-20 and 2020-21)]

Third Amended Notice of Allegations (9)

The CCU alleges that in or around March 2018, the institution violated NCAA responsibility to cooperate legislation. Under NCAA responsibility to cooperate legislation, the institution has an affirmative obligation to cooperate fully with and assist the enforcement staff and the CCU to further the objectives of the NCAA. The institution failed to timely provide to the NCAA enforcement staff a Grand Jury Subpoena the Institution received from the United States Attorney’s Office in the Southern District of New York. On or about March 2, 2018, the Institution received notice from the government that a Grand Jury Subpoena would be issued requesting documents relating to the recruitment and enrollment of then men’s basketball student-athlete [men's basketball student-athlete No. 1] ([men's basketball student-athlete No. 1]). The government informally requested records regarding [men's basketball student-athlete No. 1] at that time. The institution received the Grand Jury Subpoena on March 14, 2018. However, the institution failed to timely provide the Grand Jury Subpoena to the enforcement staff. As such, the institution failed to comply with NCAA responsibility to cooperate legislation. [NCAA Constitution 2.1.2 and 2.8.1 and Bylaw 19.2.3 (2017-18)]

The Complex Case Unit and Kansas agreed on the underlying facts, but Kansas disputed that a violation occurred.

(a) NCAA Legislation Relating to Responsibility to Cooperate.

The applicable portions of the bylaws may be found in APPENDIX TWO.

(b) Kansas Did Not Fail to Cooperate.

The hearing panel concludes that credible and persuasive information does not support the conclusion that Kansas failed to cooperate when it did not initially provide the Grand Jury Subpoena during the investigation of this infractions case.

Bylaw 19.2.3 provides, in relevant part, that current and former institutional staff members, and prospective and enrolled student-athletes of member institutions have an affirmative obligation to cooperate fully with and assist the enforcement staff, the Complex Case Unit and the Independent Resolution Panel to further the objectives of the Association and its infractions program, including the Independent Accountability Resolution Process. Full

cooperation includes, but is not limited to, affirmatively reporting instances of noncompliance to the Association in a timely manner and assisting in developing full information to determine whether a possible violation has occurred and the details thereof and making a full and complete disclosure of relevant information, including timely production of materials or information requested, and in the format requested.

Kansas' outside counsel informed the NCAA's outside counsel about the Subpoena before the end of March 2018. In July 2018 it became public that Kansas had received a Grand Jury Subpoena based on the institution publicly providing redacted forms of the Subpoenas in response to freedom of information requests.

Beginning in August of 2018, as soon as clearance was obtained from the SDNY, Kansas responded to the enforcement staff's requests and provided documents that it had submitted to the government in response to the Subpoena.

The absence of a physical copy of the unredacted Subpoena until Kansas provided it to the Complex Case Unit in no way impeded the enforcement staff's investigation. Kansas was otherwise responsive to document requests from the enforcement staff upon authorization to do so by the SDNY following the release of the redacted Subpoena to the public.

Accordingly, the hearing panel finds that there is insufficient credible and persuasive information to conclude that Kansas' timing in provision of a physical copy of the Grand Jury Subpoena to the Complex Case unit was an untimely failure to cooperate recognizing the timely substantive awareness of the Subpoena across the NCAA relative to enforcement's actual investigative timeline.

- (3) Lack of Institutional Control and Failure to Monitor. [Constitution 2.1.1, 2.1.2, 2.8.1, 6.01.1, 6.4.1, and 6.4.2 (2014-15 through 2017-18 Manuals) [Asserted Against Kansas].**

Second Amended Notice of Allegations (5)

The CCU alleges that the scope and nature of the violations set forth in Allegation Nos. 1 through 3 demonstrate that during the 2014-15 through 2017-18 academic years, the institution failed to exercise institutional

control and monitor the conduct and administration of its athletics programs.

Third Amended Notice of Allegations (5)

The CCU alleges that the scope and nature of the violations set forth in Allegation Nos. 1 and 3 demonstrate that during the 2016-17 and 2017-18 academic years, the institution failed to adequately monitor the conduct and administration of its athletics programs.

The Complex Case Unit and Kansas agreed on the underlying facts, but Kansas disputed that a violation occurred.

(a) NCAA Legislation Relating to Responsibility to Cooperate.

The applicable portions of the bylaws may be found in APPENDIX TWO.

(b) Kansas Did Not Lack Institutional Control or Fail to Monitor Its Men’s Basketball Program.

The hearing panel concludes that credible and persuasive information does not support the conclusion that Kansas lacked institutional control or failed to monitor its men’s basketball program.

Constitution 2.1.1 provides, in pertinent part, that “[i]t is the responsibility of each member institution to control its intercollegiate athletics program in compliance with the rules and regulations of the Association.” Constitution 6.01.1 similarly provides, in pertinent part, that the institution has the “control and responsibility for the conduct of intercollegiate athletics.”

Several reasons were alleged as to why Kansas failed to exercise institutional control and monitor the conduct of its men’s basketball program.

It was alleged by at least October 2014, apparel company and, by extension, its consultants with a connection to the institution (apparel company employee No. 1, apparel company outside consultant and apparel company employee No. 2) became representatives of the institution’s 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 (i) failed to develop policies to deter and prevent apparel company and its consultants with a connection to the institution from engaging in NCAA violations; (ii) failed to provide NCAA rules education to apparel company and all of its consultants with a connection to the institution; and (iii) failed to monitor its athletics programs and interactions with apparel company and its consultants to ensure compliance with NCAA legislation.

The hearing panel determined that there was insufficient information to support that apparel company triggered representative of athletics interests status based on the information in the case record. Further, pursuant to determinations of the hearing panel, apparel company outside consultant was the only apparel company consultant to trigger representative of athletics interests status. Apparel company outside consultant, as an individual, did not trigger representatives of athletics interests status prior to August 9, 2017, and was subject to a criminal complaint as of late September of the same year. Therefore, any suggestion that the institution was required to direct what the Complex Case Unit admittedly noted was a robust compliance education apparatus toward either apparel company at all or toward apparel company outside consultant prior to August 9, 2017, based on their status as a representative of athletics interests are misplaced. Therefore, the hearing panel finds that prior to August 9, 2017, Kansas was not required to educate and monitor the apparel company and its consultants as it is required to do for representatives of athletics interests. Further, on or after August 9, 2017, once apparel company outside consultant triggered representative of athletics interests, Kansas did have an obligation under NCAA legislation to provide education to apparel company outside consultant and monitor his activities. However, apparel company outside consultant was arrested September 26, 2017. The hearing panel does not believe the limited delay in providing such education to apparel company outside consultant prior to his arrest is sufficient for a finding of lack of institutional control under the circumstances of this case.

It was further alleged that in the 2016-17 academic year and in the summer of 2017, three senior athletics department administrators identified red flags or concerns about the role and involvement of apparel company outside consultant 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 apparel company outside consultant or to monitor his involvement with the athletics program to ensure compliance with NCAA legislation. Rather than showing a lack of institutional control and failure to monitor, the record before the hearing panel supports that compliance addressed these concerns by confirming apparel company outside consultant's employment status and responsibilities that supported his need to be engaged with the men's basketball program on an intermittent basis to fulfill those responsibilities.

An additional allegation put forward to demonstrate that a finding of a violation should be made centered on a failure to monitor apparel company outside consultant and apparel company employee No. 1 at Late Night in 2016. Specifically, men's basketball prospective student-athlete No. 2 and his family attended Late Night during his official visit to Kansas. Kansas knew apparel company outside consultant and apparel company employee No. 1 were present at Late Night and that apparel company outside consultant, apparel company employee No. 1 and men's basketball prospective student-athlete No. 2 were staying at the same hotel. However, Kansas took no steps to monitor and/or limit apparel company outside consultant's and apparel company employee No. 1's interactions with men's basketball prospective student-athlete No. 2 and his family at Late Night or at the Hotel. Again, apparel company outside consultant and apparel company employee No. 1 were not representatives of athletics interests as of this event. Additionally, there is not sufficient information in the record to support that Kansas was or should have been aware of any impermissible interaction, which deliberately occurred behind closed doors. Further, any potential interaction that could have been anticipated was appropriately contextualized by their previous grassroots basketball connections - apparel company outside consultant and mother of men's basketball prospective student-athlete No. 2 knew each other before that weekend from interactions they had with each other connected to an apparel company event. While assistant men's basketball coach did see both mother of men's basketball prospective student-athlete No. 2 and apparel company outside consultant at the Hotel, that in and of itself was not sufficient to raise heightened concern as to the likelihood of potentially impermissible behavior because he understood that apparel company outside consultant and mother of men's basketball prospective student-athlete No. 2 knew each other previously, and according to him,

“[shoe company representatives] get to know [the parents and prospects] more than us because they don’t have restrictions on how much they can see them . . . where ours is, you know, seven [recruiting opportunities] a year. They can see them as many times as they want.” Therefore, there is not sufficient information in the record to support a determination that Kansas failed to exercise institutional control and monitor the conduct and administration of its men’s basketball program on the basis of the 2016 Late Night event.

Finally, several additional red flags and/or specific inactions by Kansas were alleged spanning from August 2017 through March or April 2018 that related to apparel company outside consultant and his involvement in impermissible activities and/or the ongoing SDNY investigation and prosecution that should have resulted in men’s basketball student-athlete No. 1’s ineligibility and that allowing men’s basketball student-athlete No. 1 to compete during the 2017-18 season was a lack of institutional control.²⁷ The hearing panel determines that Kansas’ actions, specifically in relation to determinations as to men’s basketball student-athlete No. 1’s continued playing, placed in context of the information made available at the time did not support a finding of lack of institutional control. Specifically:

- i. Kansas had no knowledge that apparel company outside consultant had engaged in impermissible payments with direct respect to men’s basketball student-athlete No. 1 until the Department of Justice issued the superseding indictment April 10, 2018.
- ii. The August 19, 2017, text message thread between head men’s basketball coach and apparel company outside consultant, when apparel company outside consultant told head men’s basketball coach, “I have never let you down Except ([men’s basketball prospective student-athlete No. 4]) lol.” was not only sent in a joking context but was also sent at the time when men’s basketball prospective student-athlete No. 4 had already enrolled at another Division I institution.

²⁷ APPENDIX THREE, second amended notice of allegations allegation No. 5-(e).

- iii. Kansas was not aware of apparel company outside consultant's other impermissible payment activities until April 10, 2018, when the Department of Justice issued the superseding indictment. Further, any knowledge of impermissible payments by apparel company outside consultant to another family would not require a wholesale investigation of other student-athletes when no additional indication existed as to their specific involvement, especially when noting (No. v) below.
- iv. Kansas complied with the NCAA Division I Board of Directors' October 11, 2017, Directed Review of Eligibility of its men's basketball student-athletes prior to the start of the 2017-18 men's basketball season. When Kansas took these measures, men's basketball student-athlete No. 1 had not yet signed a National Letter of Intent and was not a student-athlete at Kansas. The NCAA specifically stated the eligibility review was not for prospective student-athletes, and that the Board actions were specific to the eligibility review of student-athletes currently enrolled at NCAA institutions.
- v. When Kansas' outside counsel spoke with a prosecutor regarding the SDNY investigation in late February or early March 2018, the prosecutor stated that the Department of Justice did not believe men's basketball student-athlete No. 1, or his family had received impermissible payments. Further, the prosecutor said that Kansas was not a target of the investigation.
- vi. Kansas' counsel understood that the Department of Justice was primarily focused on guardian for men's basketball student-athlete No. 1, and not improper benefits to men's basketball student-athlete No. 1 or his family.
- vii. On the night before the 2018 Men's Final Four, Kansas learned that there may be an issue regarding men's basketball student-athlete No. 1. Kansas believed the information related to guardian for men's basketball student-athlete No. 1, not men's basketball student-athlete No. 1.

Further, given the contractual relationship between apparel company and Kansas, it was not unusual for a similarly situated

employee for apparel company like apparel company outside consultant to have a presence around the men's basketball program or to visit Kansas' campus to attend contests and events such as Late Night. The mere presence of apparel company representatives on Kansas' campus is not enough to find a violation for a lack of institutional control or failure to monitor. Here, other than an isolated issue when apparel company outside consultant inadvertently received an access pass, Kansas appropriately monitored apparel company outside consultant based on the information reasonably anticipated to be available to the institution.

Finally, the hearing panel recognizes the institution's overall compliance education efforts, policies and procedures associated with investigating substantive information made available as to potential violations and/or eligibility concerns regarding men's basketball prospective student-athlete No. 2, including Kansas' decision to withhold him.

For these reasons, the hearing panel finds that Kansas did not lack institutional control and did not fail to monitor its men's basketball program.

V. VIOLATIONS

a. Level I Violations.

- None.

b. Level II Violations.

- (1) Provision of an Extra Benefit of \$4,000. [Bylaw 16.11.2.1 (2017-18 Manual)].

On or about September 23, 2017, apparel company outside consultant, a representative of athletics interests, arranged to provide \$4,000 in extra benefits to mother of men's basketball prospective student-athlete No. 2. Accordingly, pursuant to Bylaw 19.1.3-(b), this violation is Level II.

- (2) Provision of a Recruiting Inducement of \$2,500. [Bylaws 12.1.2, 12.3.1.3, 13.2.1, and 13.2.1.1-(e) (2017-18 Manual)].

Sometime in the first half of September 2017, apparel company outside consultant, a representative of athletics interests, provided a \$2,500 cash

recruiting inducement to guardian for men's basketball student-athlete No. 1 in an effort to secure men's basketball student-athlete No. 1's enrollment at the institution as a student-athlete. Accordingly, pursuant to Bylaw 19.1.3-(b), this violation is Level II.

- (3) Recruiting Contacts. [Constitution 2.8.1 and Bylaws 13.01.2, 13.1, 13.1.2.1, and 13.1.3.5.1 (2017-18 Manual)].

Assistant men's basketball coach failed to report to the institution's compliance staff his September 13, 2017, conversation with apparel company employee No. 2 in which apparel company employee No. 2 suggested the family had requested recruiting inducements. Accordingly, pursuant to Bylaw 19.1.3-(b), this violation is Level II.

c. Level III Violations.

- (1) December 2017 Through Mid-October 2018 Football Coaching Limits. [Bylaws 11.7.1.1, 11.7.3, and 11.7.6 (2017-18 and 2018-19 Manuals)].

Between December 2017 and mid-October 2018, the institution's football team exceeded the limit on the number of coaches who may be employed by one. This occurred when the football video coordinator (a noncoaching staff member), participated in technical and tactical instruction with football student-athletes and made or assisted in making tactical decisions with football student-athletes during on-field practices. Specifically:

- (a) Between December 2017 and April 2018, the football video coordinator met with the quarterback student-athletes six to 10 times in the quarterback meeting room of the football office and provided instruction while watching videos of practices and games. The football video coordinator's instructions included, but were not limited to, identifying quarterback reads, coverage reads and adjustments and defensive fronts and alignments.
- (b) Between August 2018 and early-October 2018, the football video coordinator provided on-field instruction to the quarterbacks on one to three occasions.
- (c) In August 2018, the football video coordinator provided a quarterback an instructional video through a text message via cellphone.

Accordingly, pursuant to Bylaw 19.1.3-(b), these violations are Level III.

- (2) 2018-19 Academic Year Spring Football Practices and 2019-20 Academic Year Fall Football Practices Coaching Limits. [Bylaws 11.7.1.1-(a), 11.7.3, and 11.7.6 (2018-19 and 2019-20 Manuals)].

During the spring practices of the 2018-19 academic year and fall practices of the 2019-20 academic year, the institution's football program violated NCAA legislated limits on the number and duties of coaches and noncoaching staff members. This occurred when two special teams staff members (both noncoaching staff members with football-specific duties) occasionally participated in on-field activities and assisted with football drills. Additionally, and on a limited basis, the two special teams analysts participated in on-field practices by providing technical or tactical instruction to football student-athletes, which caused the institution's football program to exceed the limit on the number of coaches who may be employed by two. Accordingly, pursuant to Bylaw 19.1.3-(b), these violations are Level III.

- (3) Provision of a Recruiting Inducement, Recruiting Contacts and Failure to Report. [Constitution 2.8.1 and Bylaws 13.01.2, 13.1, 13.1.2.1, and 13.1.3.5.1 (2017-18 Manual)].

In August and September 2017, assistant men's basketball coach provided guardian for men's basketball student-athlete No. 1's contact information to apparel company outside consultant for the purpose of facilitating a discussion on the provision of athletics gear. Head men's basketball coach and assistant men's basketball coach encouraged, approved, and had knowledge of impermissible recruiting telephone calls that apparel company outside consultant had with guardian for men's basketball student-athlete No. 1. In the calls, apparel company outside consultant encouraged guardian for men's basketball student-athlete No. 1 to have men's basketball student-athlete No. 1 enroll at Kansas.

Head men's basketball coach and assistant men's basketball coach failed to report the introduction of guardian for men's basketball student-athlete No. 1 to apparel company outside consultant and the calls between apparel company outside consultant and guardian for men's basketball student-athlete No. 1 to the institution's compliance staff.

Accordingly, pursuant to Bylaw 19.1.3-(b), this violation is Level III.

- (4) Provision of an Extra Benefit of \$200. [Bylaws 16.11.2.1 and 16.11.2.2 (2015-16 through 2020-21 Manuals)] [Asserted Against Kansas].

Between 2016 and 2021, representative of athletics interests No. 1, a representative of the institution's athletics interests, provided impermissible benefits to both former and then current men's basketball student athletes. Specifically, in approximately 2016, representative of athletics interests No. 1 provided impermissible benefits in the form of approximately \$200 in cash to a then current men's basketball student-athlete during a barbeque at the head men's basketball coach's house. Accordingly, pursuant to Bylaw 19.1.3-(b), this violation is Level III.

VI. VIOLATIONS NOT DEMONSTRATED

The full language of the second amended notice of allegations is in APPENDIX THREE. The full language of the third amended notice of allegations is in APPENDIX FOUR. Please refer to these Appendices for the full details of the allegations which were not found by the hearing panel.

VII. PENALTIES

Introduction.

For the reasons set forth above in Section IV of this decision, the hearing panel concludes that this case involves Level II and Level III violations of NCAA legislation. Level II violations are significant breaches of conduct that provide or are intended to provide more than a minimal, but less than a substantial or extensive advantage or benefit. Level III violations are breaches that are isolated or limited and that provide no more than a minimal advantage or benefit.

In considering penalties, the hearing panel first reviewed aggravating and mitigating factors pursuant to Bylaws 19.9.2, 19.9.3 and 19.9.4 to determine the appropriate violation classifications for Kansas and assistant men's basketball coach. The hearing panel used the 2022-23 penalty guidelines (Figure 19-1), and Bylaws 19.9.5, 19.9.7 and 19.9.8 to prescribe penalties.

The hearing panel determined that the below-listed factors applied and assessed the factors by weight and number. Based on its assessment, the hearing panel classifies this case as Level II-Standard for Kansas, Level III for head men's basketball coach and Level II-Mitigated for assistant men's basketball coach.

In addressing the specific penalties applied to the institution and involved individuals, the hearing panel weighed the need for meaningful penalties to address behavior with the types

of violations found as well as the potential impact on those individuals that had little to nothing to do with the behaviors at issue,

a. Aggravating and Mitigating Factors.

(1) Kansas Aggravating Factors.

Based on the information presented and the information contained in Section IV, the hearing panel finds that the following aggravating factors apply to Kansas:

(a) Aggravating Factor 19.9.3-(g). Multiple Level II violations by the institution or involved individual.

As discussed more fully above in Section IV, this matter involved multiple Level II violations attributable to Kansas.

(b) Aggravating Factor 19.9.3-(i). One or more violations causes significant ineligibility or other substantial harm to a student-athlete or prospective student-athlete.

The violations in this case caused significant ineligibility to men's basketball student-athlete No. 1 and men's basketball prospective student-athlete No. 2. The violations resulted in men's basketball student-athlete No. 1 competing while ineligible during the 2017-18 men's basketball season. Additionally, men's basketball prospective student-athlete No. 2 was ultimately deemed ineligible by Kansas prior to participating at Kansas, was withheld from 12 contests and left Kansas in January 2018 without having competed for Kansas' men's basketball team while the processing of his reinstatement request was pending.

(c) Aggravating Factor 19.9.3-(o). Other facts warranting a higher penalty range.

The hearing panel concludes that Kansas' press statement warrants the application of this aggravating factor. The statement went beyond simply confirming, correcting or denying the information made public pursuant to the Kansas Open Records Act. Accordingly, the statement warrants the application of aggravating factor 19.9.3-(o). Although the statement was not unethical, nor did it represent a failure to cooperate, it did not simply confirm, correct or deny information. Kansas used the opportunity to issue a public

statement that included overt criticism of the enforcement staff and their lack of professionalism. For example, the statement included language that “[t]he NCAA enforcement staff’s reply . . . [is] simply baseless and littered with false representations” and “[f]or the NCAA enforcement staff to allege that the University should be held responsible for these payments is a distortion of the facts and a gross misapplication of NCAA Bylaws and case precedent.” The opportunity to confirm, correct or deny information is not an invitation to publicly criticize the enforcement staff.

Based on the information presented and the information contained in Section IV, the hearing panel concludes that no additional aggravating factors apply to Kansas. Specifically, the hearing panel declines to find the following aggravating factors, which the Complex Case Unit argued applied:

(a) Aggravating Factor 19.9.3-(a). Multiple Level I violations by the institution or involved individual.

This hearing panel concludes that this case did not involve Level I violations.

(b) Aggravating Factor 19.9.3-(c). Lack of institutional control.

The hearing panel did not find a lack of institutional control violation for Kansas.

(c) Aggravating Factor 19.9.3-(d). Obstructing an investigation or attempting to conceal the violation.

The hearing panel concludes that Kansas’ failure to provide the Grand Jury Subpoena did not constitute obstruction, and the hearing panel does not conclude that Kansas attempted to conceal the violation. On April 12, 2018, two days after the Department of Justice issued a superseding indictment against the individuals associated with apparel company, Kansas’ outside counsel communicated with the enforcement staff concerning the information in the superseding indictment. Ultimately, in July 2018 it became public that Kansas had received a Grand Jury Subpoena. The enforcement staff learned of the existence of the Grand Jury Subpoena at that time. Accordingly, the hearing panel declines to apply this aggravating factor.

- (d) Aggravating Factor 19.9.3-(e). Unethical conduct, compromising the integrity of an investigation, failing to cooperate during an investigation or refusing to provide all relevant or requested information.**

The hearing panel did not find conduct that compromised the integrity of the investigation, or a failure to cooperate during the investigation or refusing to provide all relevant or requested information.

- (e) Aggravating Factor 19.9.3-(f). Violations were premeditated, deliberate or committed after substantial planning.**

The hearing panel concludes that Kansas' violations were not premeditated, deliberate or committed after substantial planning because Kansas lacked knowledge of the payments related to the violations found with respect to the \$4,000 and \$2,500 payments. Kansas should have known that apparel company outside consultant was a representative of athletics interests for Kansas, but it had no knowledge of the payments. With respect to the conversations regarding the gear, guardian for men's basketball student-athlete No. 1 initiated those conversations. Therefore, the violation was not premeditated, deliberate or committed after substantial planning for Kansas, head men's basketball coach or assistant men's basketball coach. Further, to the extent Kansas should have known about the violations, such violations were not premeditated.

- (f) Aggravating Factor 19.9.3-(h). Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct.**

The hearing panel concludes that aggravating factor 19.9.3-(h), which requires a finding that a person of authority condoned, participated in, or negligently disregarded the violation or wrongful conduct, does not apply as an aggravating factor. The hearing panel need only to analyze this aggravating factor as it relates to assistant men's basketball coach. Head men's basketball coach was involved in Level III violations applicable to the institution, and therefore the application of aggravating factor 19.9.3-(h) to Kansas based on his violations is inappropriate.

The Complex Case Unit alleged in a conclusory fashion that assistant men's basketball coach was a person of authority but

offered no information other than mere citations to certain infractions decisions from the peer-review process, which may be instructive, but are not binding on this hearing panel. There was insufficient information in the case record to provide a basis on which the hearing panel can find that assistant men's basketball coach had any authority, including, but not limited to, the authority to hire, fire, or even to approve the recruitment of prospective student-athletes. Thus, the hearing panel concludes that assistant men's basketball coach was not a person of authority.

(g) Aggravating Factor 19.9.3-(k). A pattern of noncompliance within the sport program(s) involved.

The hearing panel concludes that aggravating factor 19.9.3-(k), which requires a finding of a pattern of noncompliance in the athletics program, does not apply to Kansas. But for Level II and Level III violations found for allegations described in Section IV, the record does not show an overall pattern of noncompliance within the Kansas men's basketball or football programs.

(h) Aggravating Factor 19.9.3-(m). Intentional, willful or blatant disregard for the NCAA constitution and bylaws.

The hearing panel concludes that Kansas did not intentionally, willfully or blatantly disregard the NCAA constitution and bylaws because although Kansas should have known that apparel company outside consultant was a representative of athletics interests for Kansas, it had no knowledge of the payments related to the violations found with respect to the \$4,000 and \$2,500 payments. In addition, the football violations were not intentional.

(2) Kansas Mitigating Factors.

Based on the information presented and the information contained in Section IV, the hearing panel finds that the following mitigating factors apply to Kansas:

(a) Mitigating Factor 19.9.4-(a). Prompt self-detection and self-disclosure of the violations.

Kansas self-detected and self-disclosed the football violations. Further, when Kansas became aware of potential violations relating to men's basketball prospective student-athlete No. 2, head men's

basketball coach immediately withheld men's basketball prospective student-athlete No. 2 from a competition scheduled that day. Additionally, when head men's basketball coach received a tip pertaining to the potential receipt of improper benefits by mother of men's basketball prospective student-athlete No. 2, he immediately reported it to Kansas' compliance staff. This fact led to Kansas uncovering the \$15,000 payment referenced above, which Kansas then self-reported to the NCAA and the U.S. Attorney's Office. Regarding many of the other men's basketball violations, apparel company outside consultant's scheme included using sham invoices, routing money indirectly through multiple accounts and meeting for in-person cash handoffs.

(b) Mitigating Factor 19.9.4-(b). Prompt acknowledgment of the violation, acceptance of responsibility and imposition of meaningful corrective measures and/or penalties.

The hearing panel finds Kansas' self-imposed meaningful penalties on itself and on its coaches in light of the circumstances and warrants application of this mitigating factor.

(c) Mitigating Factor 19.9.4-(c). Affirmative steps to expedite final resolution of the matter.

The hearing panel finds that Kansas engaged in affirmative steps intended to expedite final resolution of this matter, including efforts to pursue mediation that ultimately required the involvement by the Independent Accountability Oversight Committee resolving that mediation is not available in the Independent Accountability Resolution Process. Following the Independent Accountability Oversight Committee's confirmation regarding the inability to use mediation to resolve an infractions case in the Independent Accountability Resolution Process, Kansas took affirmative steps to make timely and comprehensive filings, cooperate with the setting of hearings, and promptly respond to staff and hearing panel inquiries.

(d) Mitigating Factor 19.9.4-(d). An established history of self-reporting Level III or secondary violations.

Kansas and the Complex Case Unit agreed that mitigating factor 19.9.4-(d) applies. The hearing panel concurs. Kansas self-reported 101 Level III violations across all 16 sponsored athletics teams from

July 1, 2015, to June 30, 2022, averaging more than 14.4 reportable violations per year. The hearing panel encourages NCAA member institutions to find and report Level III violations.

Based on the information presented and the information contained in Section IV, the hearing panel finds that no additional mitigating factors apply to Kansas.

(3) Head Men's Basketball Coach.²⁸

(a) Aggravating Factors – not applicable.

(b) Mitigating Factors – not applicable.

(4) Assistant Men's Basketball Coach Aggravating Factors.

Based on the information presented and the information contained in Section IV, the hearing panel finds that the following aggravating factor applies to assistant men's basketball coach:

- **Aggravating Factor 19.9.3-(g). Multiple Level II violations.**

As discussed more fully above in Section IV, this matter involved multiple Level II violations attributable to assistant men's basketball coach.

Based on the information presented and the information contained in Section IV, the hearing panel finds that no additional aggravating factors apply to assistant men's basketball coach. Specifically, the hearing panel declines to find that the following aggravating factors apply:

(a) Aggravating Factor 19.9.3-(a). Multiple Level I violations by the institution or involved individual.

This hearing panel concludes that this case did not involve Level I violations.

²⁸ Head men's basketball coach has no Level I or Level II violations. Therefore, there is no need to assess aggravating and mitigating factors for him. However, the hearing panel did want to identify its concerns regarding his public statements relating to this infractions case. The hearing panel wants to discourage head coaches from issuing public statements that could be perceived as a public criticism of the enforcement staff.

(b) Aggravating Factor 19.9.3-(h). Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct.

The hearing panel concludes that aggravating factor 19.9.3-(h), which requires a finding that a person of authority condoned, participated in, or negligently disregarded the violation or wrongful conduct, is not an aggravating factor.

The Complex Case Unit alleged in a conclusory fashion that assistant men's basketball coach was a person of authority but offered no information other than mere citations to certain cases from the Committee on Infractions, which may be instructive, but are not binding on the hearing panel. The Complex Case Unit failed to provide a basis on which the hearing panel can find that assistant men's basketball coach had any authority, including, but not limited to, the authority to hire, fire, or even to approve the recruitment of prospective student-athletes. On this basis, the hearing panel concludes that assistant men's basketball coach was not a person of authority.

(5) Assistant Men's Basketball Coach Mitigating Factors.

Based on the information presented and the information contained in Section IV, the hearing panel finds that the following mitigating factors apply to assistant men's basketball coach:

(a) Mitigating Factor 19.9.4-(b). Prompt acknowledgment of the violation, acceptance of responsibility and imposition of meaningful corrective measures and/or penalties.

Assistant men's basketball coach fulfilled, substantial corrective measures and sanctions, including personal recruiting restrictions, enhanced compliance education, and suspensions from contests, as part of Kansas' self-imposed penalties in this case described further in this Section and APPENDIX ONE.

(b) Mitigating Factor 19.9.4-(c). Affirmative steps to expedite final resolution of the matter.

The hearing panel finds that assistant men's basketball coach engaged in affirmative steps intended to expedite final resolution of this matter, including efforts to pursue mediation that ultimately

required the involvement by the Independent Accountability Oversight Committee resolving that mediation is not available in the Independent Accountability Resolution Process. Following the Independent Accountability Oversight Committee's confirmation regarding the inability to use mediation to resolve an infractions case in the Independent Accountability Resolution Process, assistant men's basketball coach took affirmative steps to make timely and comprehensive filings, cooperate with the setting of hearings, and promptly respond to staff and hearing panel inquiries.

(c) Mitigating Factor 19.9.4-(h). The absence of prior conclusions of Level I, Level II or major violations.

Assistant Men's Basketball Coach has no prior conclusions of any violations of the NCAA constitution or bylaws.

b. Core Penalties.

(1) Kansas – Level II-Standard Case (Bylaw 19.12.6).

(a) Financial Penalties. Pursuant to Bylaw 19.12.6.2:

A financial penalty fine in the amount of \$5,000 plus 1% of its average men's basketball budget based on the average of the men's basketball programs' previous three total budgets (self-imposed).²⁹

(b) Scholarship Reductions. Pursuant to Bylaw 19.12.6.3:

Kansas reduced its men's basketball scholarships by a total of three over the course of the 2023-24, 2024-25, and 2025-26 academic years (self-imposed).³⁰

²⁹ At a minimum, a sport program's total budget shall include (1) all contractual compensation, including salaries, benefits, and bonuses paid by the institution or related entities for coaching, operations, administrative and support staff associated with the sport program; (2) all recruiting expenses; (3) all team travel, entertainment, and meals; (4) all expenses associated with equipment, uniforms, and supplies; (5) game expenses; and (6) any guarantees paid associated with the sport program. The total budget calculation shall not include any severance payments associated with a sport program's former coaching staff members.

³⁰ Kansas clarified the application of its self-imposed scholarship reductions in its July 27, 2023, correspondence to the hearing panel.

(c) Recruiting Restrictions in Men’s Basketball. Pursuant to Bylaw 19.12.6.6:

- i. Reduce the number of official visits by a total of four over the 2022-23 and 2023-24 academic years, with Kansas having the option of reducing visits by any combination (e.g., four in one year, three in one year and one in one year, or two in each year) (self-imposed). In addition, Kansas shall reduce the number of official visits by a total of two over the 2024-25 academic year.
- ii. A six-week ban on recruiting communications in the 2022-23 academic year (self-imposed).
- iii. A six-week ban on unofficial visits in the 2022-23 academic year (self-imposed).
- iv. A 14-day reduction in the number of recruiting person days for the 2022-23 academic year (self-imposed). In addition, Kansas shall reduce the number of recruiting persons days by three for the 2023-24 academic year.
- v. The men’s basketball program was prohibited from hosting any official visits by any men’s basketball prospective student-athletes (including their families, guardians, and/or representatives) during its 2022 Late Night event (self-imposed).

(d) Probation. Pursuant to Bylaw 19.12.6.7:

- i. Three years of probation October 11, 2023, to October 10, 2026.
- ii. During the period of probation, Kansas shall:
 - (1) Require all members of the compliance staff and men’s basketball staff to attend NCAA Regional Rules Seminar in each year of the probation period. At a minimum, the attendees shall attend sessions related to infractions, recruiting, benefits to student-athletes and prospective student-athletes, and best practices regarding compliance programs. Further, the compliance staff shall share and disseminate

information it learned to the other members of the athletics department, including coaching staff. Information regarding Regional Rules Seminars attendance and the dissemination of information learned shall be included in the institution's compliance report.

- By April 1, 2024, 2025 and 2026, Kansas shall file with the NCAA Office of the Committees on Infractions a plan outlining who will attend the Regional Rules Seminars and how information learned from the Regional Rules sessions will be distributed to the other members of the athletics compliance office.
- (2) During the period of probation, inform all men's basketball prospective student-athletes in writing that the institution is on probation for three years, and detail the violations committed. If a prospective student-athlete takes an official paid visit, the information regarding violations, penalties, and terms of probation must be provided in advance of the visit. Otherwise, the information must be provided before a prospective student-athlete signs a National Letter of Intent.
 - (3) During the period of probation, publicize specific and understandable information concerning the nature of the infractions by providing, at a minimum, a statement to include the types of violations and the affected sport programs and a direct, conspicuous link to the public infractions report located on the athletics department's main or "landing" webpage. The information shall also be included in media guides and in an alumni publication. The institution's statement must: (1) clearly describe the infractions; (2) include the length of the probationary period associated with the infractions case; and (3) provide a clear indication of what occurred in the infractions case. A statement that refers only to the probationary period with no further explanation is not sufficient.

- (4) File with the Office of the Committees on Infractions annual compliance reports regarding the implementation of the prescribed penalties and educational efforts for the athletics department staff, including men's basketball coaches, by October 1 during each year of probation.
- (5) Following the submission of the final compliance report and prior to the conclusion of probation, the chancellor of Kansas shall provide a letter to the Committee on Infractions affirming that Kansas' current athletics policies and practices conform to all requirements of NCAA regulations.

(2) **Head Men's Basketball Coach** – not applicable.

(3) **Assistant Men's Basketball Coach – Level II-Mitigated Case (Bylaw 19.12.6).** The hearing panel accepted Kansas' self-imposed penalties for assistant men's basketball coach and chose not to apply a show-cause order for him.

c. **Additional Penalties. Pursuant to Bylaw 19.12.8, the hearing panel prescribes the following additional penalties for Kansas:**

(1) **Public reprimand and censure.**

(2) **Vacation of team and individual records.**

Men's basketball student-athlete No. 1 competed while ineligible as a result of impermissible inducements or benefits. Therefore, pursuant to Bylaws 19.12.8-(g) and 31.2.2.3, Kansas shall vacate all regular season and conference tournament wins, records and participation in which men's basketball student-athlete No. 1 competed in the 2017-18 academic year.

Further, if men's basketball student-athlete No. 1 participated in NCAA postseason competition at any time that he was ineligible, Kansas' participation in the postseason contests in which the ineligible competition occurred shall be vacated. The individual records of men's basketball student-athlete No. 1 shall also be vacated. However, the individual finishes and any awards for all eligible student-athletes shall be retained. Further, Kansas' records regarding its men's basketball program, as well as the records of its then head men's basketball coach shall reflect the vacated records and be recorded in all publications in which such records are

reported, including, but not limited to, institutional media guides, recruiting material, electronic and digital media, plus institutional, conference and NCAA archives. Any institution that may subsequently hire the affected then head men's basketball coach shall similarly reflect the vacated wins in his career records documented in media guides and other publications cited above. Head coaches with vacated wins on their records may not count the vacated wins toward specific honors or victory "milestones" such as 100th, 200th or 500th career victories. Any public reference to the vacated records shall be removed from the athletics department stationery, banners displayed in public areas and any other forum in which they may appear. Any trophies awarded by the NCAA in the affected sport program shall be returned to the Association.

Finally, to aid in accurately reflecting all institutional and student-athlete vacations, statistics and records in official NCAA publications and archives, the institution's media relations director (or other designee as assigned by the director of athletics) must contact NCAA media coordination and statistics and appropriate conference officials to identify the specific student-athletes and contests impacted by the penalties. In addition, the institution must provide media coordination and statistics with a written report detailing those discussions. This written report will be maintained in the permanent files of media coordination and statistics. This written report must be delivered to media coordination and statistics no later than 14 days following the release of this decision. A copy of the written report shall also be delivered to the NCAA hearing operations staff at the same time.

- d. **Level III Penalties.** Pursuant to Bylaw 19.12.9, the hearing panel prescribes the following penalties for Level III violations as they pertain to the football program:
- (1) Two-week suspensions of individuals who committed violations (self-imposed).
 - (2) Letters of reprimand (self-imposed).
 - (3) Education of the entire football program (self-imposed).
 - (4) Compliance continuing to be present at all practices (self-imposed).
 - (5) All noncoaching staff continuing to wear identifiable clothing (self-imposed).

INDEPENDENT RESOLUTION PANEL
HEARING PANEL

Christina Guerola Sarchio, chief panel member

Jodi Balsam

Javier Flores

Nona Lee

Tracy Porter

APPENDIX ONE

Kansas has or intends to self-impose certain penalties as outlined below.

- In recognition of the fact that misconduct occurred, including conduct not covered by NCAA legislation, the University acknowledges that an additional financial penalty may be imposed in the amount of one percent of the total budget for the Institution's men's basketball program, payable over time for up to five years.
- The University intends to self-impose a reduction in the total number of athletics awards in the sport of men's basketball for the incoming classes for the 2023-24, 2024-25, and 2025-26 academic years by one each year (from the permissible total of 13 to 12 in each of the three years).
- The University has self-imposed or intends to self-impose the following recruiting restrictions.
 1. Reduce the number of official visits by a total of four during the 2022-23 and 2023-24 academic years, with the University having the option of reducing visits by any combination (4 in one year, 3 in one year and 1 in one year, or 2 in each year).
 2. A six-week ban on recruiting communications in the 2022-23 academic year.
 3. A six-week ban on unofficial visits in the 2022-23 academic year.
 4. A 14-day reduction in the number of recruiting person days for the 2022-23 academic year (equivalent to a 12.5% reduction).
 5. Head men's basketball coach and assistant men's basketball coach did not travel off campus for any recruiting related activities in April 2022 through July 2022.
 6. The men's basketball program was prohibited from hosting any official recruiting visits by any men's basketball prospective student-athletes (including their families, guardians, and/or representatives) during its 2022 Late Night event (i.e., the University's important recruiting and fan engagement event at the start of the academic year season for its men's and women's basketball programs).
 7. The University recommends that it shall be on probation for 3 years from the date of the IRP's decision.
 8. The University recommends that no show cause order be imposed on head men's basketball coach or assistant men's basketball coach because the University has imposed appropriate disciplinary action against them, including suspending them for four contests (including the nationally televised State Farm Champions Classic contest against NCAA Division I institution B) and not permitting them to recruit for a four-month period.

9. The University recommends that no additional head coach restriction be imposed on head men's basketball coach because the University has imposed a four-contest restriction on head men's basketball coach.

APPENDIX TWO

This Appendix includes the relevant NCAA bylaws and portions of the NCAA Constitution.

Constitution 2.1.1 Responsibility for Control (2014-15)

It is the responsibility of each member institution to control its intercollegiate athletics program in compliance with the rules and regulations of the Association. The institution's president or chancellor is responsible for the administration of all aspects of the athletics program, including approval of the budget and audit of all expenditures. (Revised: 3/8/06)

Constitution 2.1.1 Responsibility for Control (2015-16)

It is the responsibility of each member institution to control its intercollegiate athletics program in compliance with the rules and regulations of the Association. The institution's president or chancellor is responsible for the administration of all aspects of the athletics program, including approval of the budget and audit of all expenditures. (Revised: 3/8/06)

Constitution 2.1.1 Responsibility for Control (2016-17)

It is the responsibility of each member institution to control its intercollegiate athletics program in compliance with the rules and regulations of the Association. The institution's president or chancellor is responsible for the administration of all aspects of the athletics program, including approval of the budget and audit of all expenditures. (Revised: 3/8/06)

Constitution 2.1.1 Responsibility for Control (2017-18)

It is the responsibility of each member institution to control its intercollegiate athletics program in compliance with the rules and regulations of the Association. The institution's president or chancellor is responsible for the administration of all aspects of the athletics program, including approval of the budget and audit of all expenditures. (Revised: 3/8/06)

Constitution 2.1.2 Scope of Responsibility (2014-15)

The institution's responsibility for the conduct of its intercollegiate athletics program includes responsibility for the actions of its staff members and for the actions of any other individual or organization engaged in activities promoting the athletics interests of the institution.

Constitution 2.1.2 Scope of Responsibility (2015-16)

The institution's responsibility for the conduct of its intercollegiate athletics program includes responsibility for the actions of its staff members and for the actions of any other individual or organization engaged in activities promoting the athletics interests of the institution.

Constitution 2.1.2 Scope of Responsibility (2016-17)

The institution's responsibility for the conduct of its intercollegiate athletics program includes responsibility for the actions of its staff members and for the actions of any other individual or organization engaged in activities promoting the athletics interests of the institution.

Constitution 2.1.2 Scope of Responsibility (2017-18 through 2020-21)

Scope of Responsibility. [*] The institution's responsibility for the conduct of its intercollegiate athletics program includes responsibility for the actions of its staff members and for the actions of any other individual or organization engaged in activities promoting the athletics interests of the institution.

Constitution 2.8.1 Responsibility of Institution (2014-15)

Each institution shall comply with all applicable rules and regulations of the Association in the conduct of its intercollegiate athletics programs. It shall monitor its programs to ensure compliance and to identify and report to the Association instances in which compliance has not been achieved. In any such instance, the institution shall cooperate fully with the Association and shall take appropriate corrective actions. Members of an institution's staff, student-athletes, and other individuals and groups representing the institution's athletics interests shall comply with the applicable Association rules, and the member institution shall be responsible for such compliance.

Constitution 2.8.1 Responsibility of Institution (2015-16)

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Constitution 2.8.1 Responsibility of Institution (2017-18 through 2020-21)

Responsibility of Institution. [*] Each institution shall comply with all applicable rules and regulations of the Association in the conduct of its intercollegiate athletics programs. It shall monitor its programs to ensure compliance and to identify and report to the Association instances in which compliance has not been achieved. In any such instance, the institution shall cooperate fully with the Association and shall take appropriate corrective actions. Members of

an institution's staff, student-athletes, and other individuals and groups representing the institution's athletics interests shall comply with the applicable Association rules, and the member institution shall be responsible for such compliance.

Constitution 2.8.1 Responsibility of Institution (2019-20 through 2021-22)

Responsibility of Institution. [*] Each institution shall comply with all applicable rules and regulations of the Association in the conduct of its intercollegiate athletics programs. It shall monitor its programs to ensure compliance and to identify and report to the Association instances in which compliance has not been achieved. In any such instance, the institution shall cooperate fully with the Association and shall take appropriate corrective actions. Members of an institution's staff, student-athletes, and other individuals and groups representing the institution's athletics interests shall comply with the applicable Association rules, and the member institution shall be responsible for such compliance.

Constitution 6.01.1 Institutional Control (2014-15)

The control and responsibility for the conduct of intercollegiate athletics shall be exercised by the institution itself and by the conference(s), if any, of which it is a member. Administrative control or faculty control, or a combination of the two, shall constitute institutional control.

Constitution 6.01.1 Institutional Control (2015-16)

The control and responsibility for the conduct of intercollegiate athletics shall be exercised by the institution itself and by the conference(s), if any, of which it is a member. Administrative control or faculty control, or a combination of the two, shall constitute institutional control.

Constitution 6.01.1 Institutional Control (2016-17)

The control and responsibility for the conduct of intercollegiate athletics shall be exercised by the institution itself and by the conference(s), if any, of which it is a member. Administrative control or faculty control, or a combination of the two, shall constitute institutional control.

Constitution 6.01.1 Institutional Control (2017-18)

The control and responsibility for the conduct of intercollegiate athletics shall be exercised by the institution itself and by the conference(s), if any, of which it is a member. Administrative control or faculty control, or a combination of the two, shall constitute institutional control.

Constitution 6.4.1 Independent Agencies or Organizations (2014-15)

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. (Revised: 2/16/00)

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Constitution 6.4.2 Representatives of Athletics Interests (2014-15)

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: (Revised: 2/16/00)

- (a) Has participated in or is a member of an agency or organization as described in Constitution 6.4.1;
- (b) Has made financial contributions to the athletics department or to an athletics booster organization of that institution;
- (c) Has been requested by the athletics department staff to assist in the recruitment of prospective student-athletes or is assisting in the recruitment of prospective student-athletes;
- (d) Has assisted or is assisting in providing benefits to enrolled student-athletes; or

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

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(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.

Bylaw 11.1.1.1 Responsibility of Head Coach (2014-15)

An institution's head coach is presumed to be responsible for the actions of all institutional staff members who report, directly or indirectly, to the head coach. An institution's head coach shall promote an atmosphere of compliance within the program and shall monitor the activities of all institutional staff members involved with the program who report, directly or indirectly, to the coach. (Adopted: 4/28/05, Revised: 10/30/12, 7/16/14)

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Bylaw 11.7.1.1 Countable Coach (2017-18)

An institutional staff member or any other individual outside the institution (e.g., consultant, professional instructor) with whom the institution has made arrangements must count against coaching limits in the applicable sport as soon as the individual participates (in any manner) in any of the following: (Revised: 1/18/14 effective 8/1/14)

- (a) Provides technical or tactical instruction related to the sport to a student-athlete at any time;
- (b) Makes or assists in making tactical decisions related to the sport during on-court or on-field practice or competition; or
- (c) Engages in any off-campus recruiting activities.

Bylaw 11.7.1.1 Countable Coach (2018-19)

An institutional staff member or any other individual outside the institution (e.g., consultant, professional instructor) with whom the institution has made arrangements must count against coaching limits in the applicable sport as soon as the individual participates (in any manner) in any of the following: (Revised: 1/18/14 effective 8/1/14)

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- (c) Engages in any off-campus recruiting activities.

Bylaw 11.7.1.1 Countable Coach (2019-20)

An institutional staff member or any other individual outside the institution (e.g., consultant, professional instructor) with whom the institution has made arrangements must count against coaching limits in the applicable sport as soon as the individual participates (in any manner) in any of the following: (Revised: 1/18/14 effective 8/1/14)

- (a) Provides technical or tactical instruction related to the sport to a student-athlete at any time;

(b) Makes or assists in making tactical decisions related to the sport during on-court or on-field practice or competition; or

(c) Engages in any off-campus recruiting activities.

Bylaw 11.7.3 Noncoaching Staff Member with Sport-Specific Responsibilities (2017-18)

A noncoaching staff member with sport-specific responsibilities (e.g., director of operations, administrative assistant) is prohibited from participating in on-court or on-field activities (e.g., assist with drills, throw batting practice, signal plays) and is prohibited from participating with or observing student-athletes in the staff member's sport who are engaged in nonorganized voluntary athletically related activities (e.g., pick-up games). (Adopted: 1/16/10, Revised: 1/18/14 effective 8/1/14)

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Bylaw 11.7.3 Noncoaching Staff Member with Sport-Specific Responsibilities (2019-20)

A noncoaching staff member with sport-specific responsibilities (e.g., director of operations, administrative assistant) is prohibited from participating in on-court or on-field activities (e.g., assist with drills, throw batting practice, signal plays) and is prohibited from participating with or observing student-athletes in the staff member's sport who are engaged in nonorganized voluntary athletically related activities (e.g., pick-up games). (Adopted: 1/16/10, Revised: 1/18/14 effective 8/1/14)

Bylaw 11.7.6 Limitations on Number of Coaches and Off-Campus Recruiters (2017-18)

There shall be a limit on the number of coaches (other than graduate assistant coaches per Bylaw 11.01.3 and 11.01.4 , student assistant coaches per Bylaw 11.01.5 and volunteer coaches per Bylaw 11.01.6) who may be employed by an institution and who may contact or evaluate prospective student-athletes off campus in each sport as follows: (Revised: 1/10/91 effective 8/1/92, 1/10/92 effective 8/1/92, 1/9/96 effective 8/1/96, 1/14/97, 4/25/02 effective 8/1/02, 1/12/04 effective 8/1/04, 4/29/04 effective 8/1/04, 4/28/05, 2/3/06, 12/15/06, 4/26/07 effective 8/1/07, 1/17/09 effective 8/1/09, 1/15/11 effective 8/1/11, 4/28/11 effective 8/1/12, 8/11/11, 1/19/13 effective 8/1/13, 1/18/14 effective 8/1/14, 7/31/15, 1/15/16 effective 8/1/16, 4/26/17 effective 8/1/17) Sport Limit Sport Limit Baseball 3 Soccer, Men's 3 Basketball, Men's 4 Soccer, Women's 3 Basketball, Women's 4 Softball 3 Beach Volleyball, Women's 2 Swimming, Men's 2 Bowling, Women's 2 Swimming and Diving, Men's 3 Equestrian, Women's 3 Swimming, Women's 2 Fencing, Men's 2 Swimming and Diving, Women's 3 Fencing, Women's 2 Tennis,

Men's 2 Football, Bowl Subdivision (See Bylaw 11.7.4) 11 Tennis, Women's 2 Football, Championship Subdivision (See Bylaw 11.7.5) 11 Cross Country, Men's (No Track and Field) 2 Field Hockey 3 Track and Field, Men's 3 Golf, Men's 2 Cross Country/Track and Field, Men's 3 Golf, Women's 2 Cross Country, Women's (No Track and Field) 2 Gymnastics, Men's 3 Track and Field, Women's 3 Gymnastics, Women's 3 Cross Country/Track and Field, Women's 3 Ice Hockey, Men's 3 Triathlon, Women's 2 Ice Hockey, Women's 3 Volleyball, Men's 3 Lacrosse, Men's 3 Volleyball, Women's 3 Lacrosse, Women's 3 Water Polo, Men's 3 Rifle, Men's 2 Water Polo, Women's 3 Rifle, Women's 2 Wrestling 3 Rowing, Women's 4 Rugby, Women's 3 Skiing, Men's 2 Skiing, Women's 2

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Bylaw 11.7.6 Limitations on Number of Coaches and Off-Campus Recruiters (2019-20)

There shall be a limit on the number of coaches (other than graduate assistant coaches per Bylaw 11.01.3 and 11.01.4 , student assistant assistant coaches per Bylaw 11.01.5 and volunteer coaches per Bylaw 11.01.6) who may be employed by an institution and who may contact or evaluate prospective student-athletes off campus in each sport as follows: (Revised: 1/10/91 effective 8/1/92, 1/10/92 effective 8/1/92, 1/9/96 effective 8/1/96, 1/14/97, 4/25/02 effective 8/1/02, 1/12/04 effective 8/1/04, 4/29/04 effective 8/1/04, 4/28/05, 4/28/05 effective 8/1/05, 2/3/06, 12/15/06, 4/26/07 effective 8/1/07, 1/17/09 effective 8/1/09, 1/15/11 effective 8/1/11, 4/28/11 effective 8/1/12, 8/11/11, 1/19/13 effective 8/1/13, 1/18/14 effective 8/1/14, 7/31/15,

1/15/16 effective 8/1/16, 4/26/17 effective 1/9/18) Sport Limit Baseball 3 Basketball, Men's 4 Basketball, Women's 4 Beach Volleyball, Women's 2 Bowling, Women's 2 Equestrian 3 Fencing, Men's 2 Fencing, Women's 2 Football, Bowl Subdivision (See Bylaw 11.7.2) 11 Football, Championship Subdivision (See Bylaw 11.7.3) 11 Field Hockey 3 Golf, Men's 2 Golf, Women's 2 Gymnastics, Men's 3 Gymnastics, Women's 3 Ice Hockey, Men's 3 Ice Hockey, Women's 3 Lacrosse, Men's 3 Lacrosse, Women's 3 Rifle, Men's 2 Rifle, Women's 2 Rowing, Women's 4 Rugby, Women's 3 Skiing, Men's 2 Skiing, Women's 2 Soccer, Men's 3 Soccer, Women's 3 Softball 3 Swimming, Men's 2 Swimming and Diving, Men's 3 Swimming, Women's 2 Swimming and Diving, Women's 3 Tennis, Men's 2 Tennis, Women's 2 Cross Country, Men's (Without Track and Field) 2 Track and Field, Men's 3 Cross Country/Track and Field, Men's 3 Cross Country, Women's (Without Track and Field) 2 Track and Field, Women's 3 Cross Country/Track and Field, Women's 3 Triathlon, Women's 2 Volleyball, Men's 3 Volleyball, Women's 3 Water Polo, Men's 2 Water Polo, Women's 2 Wrestling 3

Bylaw 12.02.1 Agent (2014-15 through 2017-18)

An agent is any individual who, directly or indirectly: (*Adopted: 1/14/12*)

- (a) Represents or attempts to represent an individual for the purpose of marketing the individual's athletics ability or reputation for financial gain; or
- (b) Seeks to obtain any type of financial gain or benefit from securing a prospective student-athlete's enrollment at an educational institution or from a student-athlete's potential earnings as a professional athlete.

Bylaw 12.1.2 Amateur Status (2014-15)

An individual loses amateur status and thus shall not be eligible for intercollegiate competition in a particular sport if the individual: (Revised: 4/25/02 effective 8/1/02, 4/23/03 effective 8/1/03, 4/29/10 effective 8/1/10)

- (a) Uses his or her athletics skill (directly or indirectly) for pay in any form in that sport;
- (b) Accepts a promise of pay even if such pay is to be received following completion of intercollegiate athletics participation;
- (c) Signs a contract or commitment of any kind to play professional athletics, regardless of its legal enforceability or any consideration received, except as permitted in Bylaw 12.2.5.1;
- (d) Receives, directly or indirectly, a salary, reimbursement of expenses or any other form of financial assistance from a professional sports organization based on athletics skill or participation, except as permitted by NCAA rules and regulations;

(e) Competes on any professional athletics team per Bylaw 12.02.11 , even if no pay or remuneration for expenses was received, except as permitted in Bylaw 12.2.3.2.1;

(f) After initial full-time collegiate enrollment, enters into a professional draft (see Bylaw 12.2.4); or

(g) Enters into an agreement with an agent.

Bylaw 12.1.2 Amateur Status (2015-16)

An individual loses amateur status and thus shall not be eligible for intercollegiate competition in a particular sport if the individual: (Revised: 4/25/02 effective 8/1/02, 4/23/03 effective 8/1/03, 4/29/10 effective 8/1/10)

(a) Uses his or her athletics skill (directly or indirectly) for pay in any form in that sport;

(b) Accepts a promise of pay even if such pay is to be received following completion of intercollegiate athletics participation;

(c) Signs a contract or commitment of any kind to play professional athletics, regardless of its legal enforceability or any consideration received, except as permitted in Bylaw 12.2.5.1;

(d) Receives, directly or indirectly, a salary, reimbursement of expenses or any other form of financial assistance from a professional sports organization based on athletics skill or participation, except as permitted by NCAA rules and regulations;

(e) Competes on any professional athletics team per Bylaw 12.02.11, even if no pay or remuneration for expenses was received, except as permitted in Bylaw 12.2.3.2.1;

(f) After initial full-time collegiate enrollment, enters into a professional draft (see Bylaw 12.2.4); or

(g) Enters into an agreement with an agent.

Bylaw 12.1.2 Amateur Status (2017-18)

An individual loses amateur status and thus shall not be eligible for intercollegiate competition in a particular sport if the individual: (Revised: 4/25/02 effective 8/1/02, 4/23/03 effective 8/1/03, 4/29/10 effective 8/1/10)

(a) Uses his or her athletics skill (directly or indirectly) for pay in any form in that sport;

(b) Accepts a promise of pay even if such pay is to be received following completion of intercollegiate athletics participation;

(c) Signs a contract or commitment of any kind to play professional athletics, regardless of its legal enforceability or any consideration received, except as permitted in Bylaw 12.2.5.1;

(d) Receives, directly or indirectly, a salary, reimbursement of expenses or any other form of financial assistance from a professional sports organization based on athletics skill or participation, except as permitted by NCAA rules and regulations;

(e) Competes on any professional athletics team per Bylaw 12.02.11, even if no pay or remuneration for expenses was received, except as permitted in Bylaw 12.2.3.2.1;

(f) After initial full-time collegiate enrollment, enters into a professional draft (see Bylaw 12.2.4); or

(g) Enters into an agreement with an agent.

Bylaw 12.3.1.2 Representation for Future Negotiations (2014-15)

An individual shall be ineligible per Bylaw 12.3.1 if he or she enters into an oral or written agreement with an agent for representation in future professional sports negotiations that are to take place after the individual has completed his or her eligibility in that sport.

Bylaw 12.3.1.2 Representation for Future Negotiations (2015-16)

An individual shall be ineligible per Bylaw 12.3.1 if he or she enters into an oral or written agreement with an agent for representation in future professional sports negotiations that are to take place after the individual has completed his or her eligibility in that sport.

Bylaw 12.3.1.3 Benefits from Prospective Agents (2016-17)

An individual shall be ineligible per Bylaw 12.3.1 if he or she (or his or her relatives or friends) accepts transportation or other benefits from: (Revised: 1/14/97)

(a) Any person who represents any individual in the marketing of his or her athletics ability. The receipt of such expenses constitutes compensation based on athletics skill and is an extra benefit not available to the student body in general; or

(b) An agent, even if the agent has indicated that he or she has no interest in representing the student-athlete in the marketing of his or her athletics ability or reputation and does not represent individuals in the student-athlete's sport.

Bylaw 12.3.1.3 Benefits from Prospective Agents (2017-18)

An individual shall be ineligible per Bylaw 12.3.1 if he or she (or his or her relatives or friends) accepts transportation or other benefits from: (Revised: 1/14/97)

(a) Any person who represents any individual in the marketing of his or her athletics ability. The receipt of such expenses constitutes compensation based on athletics skill and is an extra benefit not available to the student body in general; or

(b) An agent, even if the agent has indicated that he or she has no interest in representing the student-athlete in the marketing of his or her athletics ability or reputation and does not represent individuals in the student-athlete's sport.

Bylaw 12.11.1 Obligation of Member Institution to Withhold Student-Athlete From Competition (2017-18)

If a student-athlete is ineligible under the provisions of the constitution, bylaws or other regulations of the Association, the institution shall be obligated to apply immediately the applicable rule and to withhold the student-athlete from all intercollegiate competition. The institution may appeal to the Committee on Student-Athlete Reinstatement for restoration of the student-athlete's eligibility as provided in Bylaw 12.12 if it concludes that the circumstances warrant restoration. (Revised: 7/31/14)

Bylaw 13.01.2 Institutional Responsibility in Recruitment (2014-15)

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, if any.

Bylaw 13.01.2 Institutional Responsibility in Recruitment (2016-17)

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, if any.

Bylaw 13.01.2 Institutional Responsibility in Recruitment (2017-18)

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, if any.

Bylaw 13.1 Contacts and Evaluations (2014-15)

Recruiting contacts (per Bylaw 13.02.4) and telephone calls by institutional staff members or representatives of the institution's athletics interests are subject to the provisions set forth in this bylaw.[D] (Revised: 1/10/91 effective 7/1/91, 6/13/08, 10/30/14)

Bylaw 13.1 Contacts and Evaluations (2016-17)

Recruiting contacts (per Bylaw 13.02.4) and telephone calls by institutional staff members or representatives of the institution's athletics interests are subject to the provisions set forth in this bylaw. [D] (Revised: 1/10/91 effective 7/1/91, 6/13/08, 10/30/14)

Bylaw 13.1 Contacts and Evaluations (2017-18)

Recruiting contacts (per Bylaw 13.02.4) and telephone calls by institutional staff members or representatives of the institution's athletics interests are subject to the provisions set forth in this bylaw. [D] (Revised: 1/10/91 effective 7/1/91, 6/13/08, 10/30/14)

Bylaw 13.1.2.1 General Rule (2014-15)

All in-person, on- and off-campus recruiting contacts with a prospective student-athlete or the prospective student-athlete's relatives or legal guardians 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. [D] (Revised: 8/5/04, 10/30/14)

Bylaw 13.1.2.1 General Rule (2016-17)

All in-person, on- and off-campus recruiting contacts with a prospective student-athlete or the prospective student-athlete's relatives or legal guardians 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. [D] (Revised: 8/5/04, 10/30/14)

Bylaw 13.1.2.1 General Rule (2017-18)

All in-person, on- and off-campus recruiting contacts with a prospective student-athlete or the prospective student-athlete's relatives or legal guardians 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. [D] (Revised: 8/5/04, 10/30/14)

Bylaw 13.1.2.5 Off-Campus Contacts or Evaluations (2014-15)

Only those coaches who are identified by the institution, in accordance with Bylaws 11.7.4.2 , 11.7.5.2 and 11.7.6, may contact or evaluate prospective student-athletes off campus. Institutional staff members (e.g., faculty members) may contact prospective student-athletes for recruiting purposes in all sports, on campus, or within 30 miles of campus during the prospective student-athlete's official visit. [D] (Revised: 1/10/91 effective 8/1/92, 8/5/04, 5/26/06, 7/31/13)

Bylaw 13.1.2.5 Off-Campus Contacts or Evaluations (2016-17)

Only those coaches who are identified by the institution, in accordance with Bylaws 11.7.4.2 , 11.7.5.2 and 11.7.6, may contact or evaluate prospective student-athletes off campus. Institutional staff members (e.g., faculty members) may contact prospective student-athletes for recruiting purposes in all sports, on campus, or within 30 miles of campus during the prospective student-athlete's official visit. [D] (Revised: 1/10/91 effective 8/1/92, 8/5/04, 5/26/06, 7/31/13)

Bylaw 13.1.3.5.1 Representatives of Athletics Interests (2017-18)

Representatives of an institution's athletics interests (as defined in Bylaw 13.02.14) are prohibited from making telephonic communications with a prospective student-athlete or the prospective student-athlete's relatives or legal guardians. [D] (Revised: 10/30/14)

Bylaw 13.2.1 General Regulation (2014-15)

An institution's staff member or any representative of its athletics interests shall not be involved, directly or indirectly, in making arrangements for or giving or offering to give any financial aid or other benefits to a prospective student-athlete or his or her relatives or friends, other than expressly permitted by NCAA regulations. Receipt of a benefit by a prospective student-athlete or his or her relatives or friends is not a violation of NCAA legislation if it is determined that the same benefit is generally available to the institution's prospective students or their relatives or friends or to a particular segment of the student body (e.g., international students, minority students) determined on a basis unrelated to athletics ability. [R] (Revised: 10/28/97, 11/1/00, 3/24/05)

Bylaw 13.2.1 General Regulation (2016-17)

An institution's staff member or any representative of its athletics interests shall not be involved, directly or indirectly, in making arrangements for or giving or offering to give any financial aid or other benefits to a prospective student-athlete or his or her relatives or friends, other than expressly permitted by NCAA regulations. Receipt of a benefit by a prospective student-athlete or his or her relatives or friends is not a violation of NCAA legislation if it is determined that the same benefit is generally available to the institution's prospective students or their relatives or friends or to a particular segment of the student body (e.g., international students, minority students) determined on a basis unrelated to athletics ability. [R] (Revised: 10/28/97, 11/1/00, 3/24/05)

Bylaw 13.2.1 General Regulation (2017-18)

An institution's staff member or any representative of its athletics interests shall not be involved, directly or indirectly, in making arrangements for or giving or offering to give any financial aid or other benefits to a prospective student-athlete or his or her relatives or friends, other than expressly permitted by NCAA regulations. Receipt of a benefit by a prospective student-athlete or his or her relatives or friends is not a violation of NCAA legislation if it is determined that the same benefit is generally available to the institution's prospective students or their relatives or friends or to a particular segment of the student body (e.g., international students, minority students) determined on a basis unrelated to athletics ability. [R] (Revised: 10/28/97, 11/1/00, 3/24/05)

Bylaw 13.2.1.1 Specific Prohibitions (2014-15)

Specifically prohibited financial aid, benefits and arrangements include, but are not limited to, the following: [R] (Revised: 10/28/97, 11/1/00, 4/23/08)

- (a) An employment arrangement for a prospective student-athlete's relatives;
- (b) Gift of clothing or equipment;
- (c) Co-signing of loans;
- (d) Providing loans to a prospective student-athlete's relatives or friends;
- (e) Cash or like items;
- (f) Any tangible items, including merchandise;
- (g) Free or reduced-cost services, rentals or purchases of any type;
- (h) Free or reduced-cost housing;
- (i) Use of an institution's athletics equipment (e.g., for a high school all-star game);
- (j) Sponsorship of or arrangement for an awards banquet for high school, preparatory school or two-year-college athletes by an institution, representatives of its athletics interests or its alumni groups or booster clubs; and
- (k) Expenses for academic services (e.g., tutoring, test preparation) to assist in the completion of initial-eligibility or transfer-eligibility requirements or improvement of the prospective student-athlete's academic profile in conjunction with a waiver request.

Bylaw 13.2.1.1 Specific Prohibitions (2016-17)

Specifically prohibited financial aid, benefits and arrangements include, but are not limited to, the following: [R] (Revised: 10/28/97, 11/1/00, 4/23/08)

- (a) An employment arrangement for a prospective student-athlete's relatives;
- (b) Gift of clothing or equipment;
- (c) Co-signing of loans;
- (d) Providing loans to a prospective student-athlete's relatives or friends;
- (e) Cash or like items;
- (f) Any tangible items, including merchandise;

- (g) Free or reduced-cost services, rentals or purchases of any type;
- (h) Free or reduced-cost housing;
- (i) Use of an institution's athletics equipment (e.g., for a high school all-star game);
- (j) Sponsorship of or arrangement for an awards banquet for high school, preparatory school or two-year-college athletes by an institution, representatives of its athletics interests or its alumni groups or booster clubs; and
- (k) Expenses for academic services (e.g., tutoring, test preparation) to assist in the completion of initial-eligibility or transfer-eligibility requirements or improvement of the prospective student-athlete's academic profile in conjunction with a waiver request.

Bylaw 13.2.1.1 Specific Prohibitions (2017-18)

Specifically prohibited financial aid, benefits and arrangements include, but are not limited to, the following: [R] (Revised: 10/28/97, 11/1/00, 4/23/08)

- (a) An employment arrangement for a prospective student-athlete's relatives;
- (b) Gift of clothing or equipment;
- (c) Co-signing of loans;
- (d) Providing loans to a prospective student-athlete's relatives or friends;
- (e) Cash or like items;
- (f) Any tangible items, including merchandise;
- (g) Free or reduced-cost services, rentals or purchases of any type;
- (h) Free or reduced-cost housing;
- (i) Use of an institution's athletics equipment (e.g., for a high school all-star game);
- (j) Sponsorship of or arrangement for an awards banquet for high school, preparatory school or two-year-college athletes by an institution, representatives of its athletics interests or its alumni groups or booster clubs; and

(k) Expenses for academic services (e.g., tutoring, test preparation) to assist in the completion of initial-eligibility or transfer-eligibility requirements or improvement of the prospective student-athlete's academic profile in conjunction with a waiver request.

Bylaw 16.8.1 Permissible (2017-18)

An institution, conference or the NCAA may provide actual and necessary expenses to a student-athlete to represent the institution in practice and competition (including expenses for activities/travel that are incidental to practice or competition). In order to receive competition-related expenses, the student-athlete must be eligible for competition. [D] (Revised: 1/19/13 effective 8/1/13, 8/7/14)

Bylaw 16.11.2.1 General Rule (2015-16 through 2020-21)

General Rule. [A] The student-athlete shall not receive any extra benefit. The term "extra benefit" refers to any special arrangement by an institutional employee or representative of the institution's athletics interests to provide the student-athlete or the student-athlete's family members or friends with a benefit not expressly authorized by NCAA legislation. [R] (Revised: 1/19/13 effective 8/1/13)

Bylaw 16.11.2.2 Other Prohibited Benefits (2015-16 through 2020-21)

Other Prohibited Benefits. [A] An institutional employee or representative of the institution's athletics interests may not provide a student-athlete with extra benefits or services, including, but not limited to: [R]

- (a) [A] A loan of money;
- (b) [A] A guarantee of bond;
- (c) [A] An automobile or the use of an automobile;
- (d) [A] Transportation (e.g., a ride home with a coach), except as permitted in Bylaw 16.9.1, even if the student-athlete reimburses the institution or the staff member for the appropriate amount of the gas or expense; or
- (e) [A] Signing or co-signing a note with an outside agency to arrange a loan.

Bylaw 19.01.3 Public Disclosure (2018-19 through 2020-21)

Public Disclosure. Except as provided in this article, the Committee on Infractions, Infractions Appeals Committee, Independent Resolution Panel, enforcement staff and Complex Case Unit shall not make public disclosures about a pending case until the case has been announced in accordance with prescribed procedures. An institution and any individual subject to the NCAA constitution and bylaws involved in a case, including any representative or counsel, shall not make public disclosures about the case until a final decision has been announced in accordance

with prescribed procedures. (Adopted: 10/30/12 effective 8/1/13, Revised: 1/23/19 effective 8/1/19)

Bylaw 19.2.3 Responsibility to Cooperate (2017-18 through 2020-21)

Responsibility to Cooperate. Current and former institutional staff members or prospective or enrolled student-athletes of member institutions have an affirmative obligation to cooperate fully with and assist the NCAA enforcement staff, the Committee on Infractions and the Infractions Appeals Committee to further the objectives of the Association and its infractions program. The responsibility to cooperate requires institutions and individuals to protect the integrity of investigations and to make a full and complete disclosure of any relevant information, including any information requested by the enforcement staff or relevant committees. Current and former institutional staff members or prospective or enrolled student-athletes of member institutions have an affirmative obligation to report instances of noncompliance to the Association in a timely manner and assist in developing full information to determine whether a possible violation has occurred and the details thereof. (Adopted: 11/1/07 effective 8/1/08, Revised: 10/30/12 effective 8/1/13, 7/31/14)

APPENDIX THREE

TEXT OF THE ALLEGATIONS IN THE SECOND AMENDED NOTICE OF ALLEGATIONS ISSUED BY THE COMPLEX CASE UNIT

1. [NCAA Division I Manual Bylaws 12.3.1.3, 13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1, and 13.2.1.1-(e) (2016-17) and 16.11.2.1 (2016-17 through 2017-18)]

The CCU alleges that between October 2016 and September 2017, [apparel company], a representative of the institution's athletics interest; [apparel company outside consultant] ([apparel company outside consultant]), then an [apparel company] outside consultant, representative of the institution's athletics interests,³¹ and agent³²; and [apparel company employee No. 1] ([apparel company employee No. 1]), then an [apparel company] 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 with [mother of men's basketball prospective student-athlete No. 2] ([mother of men's basketball prospective student-athlete No. 2]), mother of then men's basketball prospective student-athlete and later men's basketball student-athlete [men's basketball prospective student-athlete No. 2] ([men's basketball prospective student-athlete No. 2]), and [domestic partner of mother of men's basketball prospective student-athlete No. 2] ([domestic partner of mother of men's basketball prospective student-athlete No. 2]), [mother of men's basketball prospective student-athlete No. 2's] domestic partner. Specifically:

- a. Between October 2016 and January 2017, [apparel company outside consultant] had at least three impermissible recruiting contacts with [mother of men's basketball prospective student-athlete No. 2] to discuss and later provide recruiting inducements to her and [domestic partner of mother of men's basketball prospective student-athlete No. 2] to secure [men's basketball prospective student-athlete No. 2's] commitment to the institution. During the October 2016 contact, which occurred the same night as the institution's [Late Night] event, [apparel company outside consultant] offered monetary recruiting inducements to [mother of men's basketball prospective student-athlete No. 2] to secure [men's basketball

³¹ [Apparel company] is a corporate entity (e.g., apparel or equipment manufacturer) that, by at least October 2014, was known by members of the institution's men's basketball staff and athletics department to have participated in promoting the institution's intercollegiate athletics program. [NCAA Constitution 6.4.1 and 6.4.2] [Apparel company outside consultant], as an [apparel company] outside consultant, was known by October 2014 by members of the institution's men's basketball staff and athletics department staff to be a member of a corporate entity promoting the institution's intercollegiate athletics program, and was known by members of the institution's men's basketball staff to be assisting in the recruitment of prospective student-athletes. [NCAA Constitution 6.4.2] [apparel company employee No. 1], as an [apparel company] director of global sports marketing for basketball, was known by October 2014 by members of the institution's men's basketball staff and athletics department to be a member of a corporate entity promoting the institution's athletics program. [NCAA Constitution 6.4.2]

³² [Apparel company] is a corporate entity that is publicly known to enter into marketing contracts with professional basketball players based upon their athletics abilities and skills. [Apparel company outside consultant], as an [apparel company] outside consultant, and [apparel company employee No. 1], as an [apparel company] director of global marketing for basketball, supported [apparel company's] efforts in the pursuit of these marketing contracts. [NCAA Bylaw 12.3.1.3 (2016-17)]

prospective student-athlete No. 2's] 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) (2016-17)]

- b. Between November 2016 and February 2017, [apparel company outside consultant], with [apparel company employee No. 1's] approval, used approximately \$70,000 in [apparel company] funds to provide the following impermissible recruiting inducements and impermissible agent benefits to [mother of men's basketball prospective student-athlete No. 2] and [domestic partner of mother of men's basketball prospective student-athlete No. 2]:

- (1) On or about November 1, 2016, [apparel company outside consultant] provided \$30,000 to [mother of men's basketball prospective student-athlete No. 2] during a meeting in New York City;
- (2) Between January 19 and 23, 2017, [apparel company outside consultant] provided \$20,000 to [mother of men's basketball prospective student-athlete No. 2] during a meeting in Las Vegas; and
- (3) On or about February 24, 2017, [apparel company outside consultant] provided \$20,000 via wire transfer to [domestic partner of mother of men's basketball prospective student-athlete No. 2].

[NCAA Bylaws 12.3.1.3, 13.2.1 and 13.2.1.1-(e) (2016-17)]

- c. On or about June 14, 2017, [apparel company outside consultant], with [apparel company employee No. 1's] approval, used [apparel company] funds to provide approximately \$15,000 in impermissible benefits and impermissible agent benefits to [mother of men's basketball prospective student-athlete No. 2] via wire transfer after [men's basketball prospective student-athlete No. 2] enrolled at the institution. [NCAA Bylaws 12.3.1.3 and 16.11.2.1 (2016-17)]³³
- d. On or about September 23, 2017, [apparel company outside consultant], with [apparel company employee No. 1's] approval, arranged to provide \$4,000 in impermissible benefits to [mother of men's basketball prospective student-athlete No. 2]. [NCAA Bylaw 16.11.2.1 (2017-18)]

³³ After receiving approximately \$85,000 from [apparel company outside consultant], [mother of men's basketball prospective student-athlete No. 2] purchased a 2016 vehicle for [men's basketball prospective student-athlete No. 2] in August 2017, which is referenced in Allegation No. 5-d. (While [mother of men's basketball prospective student-athlete No. 2] stated during her interview that her mother made the first monthly payment on the car, [mother of men's basketball prospective student-athlete No. 2] also confirmed that she herself was "robbing Peter to pay Paul so [men's basketball prospective student-athlete No. 2] [could] have a car.")

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

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 (2017-18)]

The CCU alleges that between August 2017 and April 2018, [head men’s basketball coach] ([head men's basketball coach]), head men's basketball coach; [assistant men's basketball coach] ([assistant men's basketball coach]), 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 [men's basketball student-athlete No. 1] ([men's basketball student-athlete No. 1]). This included impermissible recruiting inducements and contacts. As a result of the impermissible inducements, [men's basketball student-athlete No. 1] competed in 20 contests and received actual and necessary expenses while ineligible. Specifically:

- a. In August 2017, [assistant men’s basketball coach] contacted [former head men's basketball coach] ([former head men's basketball coach]), a representative of the institution's athletics interests, about [assistant men’s basketball coach's] interest in recruiting [men's basketball student-athlete No. 1]. At that time, [former head men's basketball coach] informed [assistant men’s basketball coach] that he would contact [guardian for men's basketball student-athlete No. 1] ([guardian for men's basketball student-athlete No. 1]), [men's basketball student-athlete No. 1's] guardian, and speak positively about the institution. [Guardian for men’s basketball student-athlete No. 1] confirmed that [former head men’s basketball coach] contacted him and recruited [men's basketball student-athlete No. 1] on behalf of Kansas. After [former head men’s basketball coach] impermissibly contacted [guardian for men’s basketball student-athlete No. 1], [former head men’s basketball coach] informed [assistant men’s basketball coach] that [guardian for men’s basketball student-athlete No. 1] wanted sponsorship to outfit a nonscholastic basketball team with which he was affiliated. [Assistant men's basketball coach] 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 (2017-18)]
- b. In August and September 2017, [head men's basketball coach] and [assistant men’s basketball coach] encouraged, approved, and had knowledge of impermissible recruiting telephone calls that [apparel company outside consultant] ([apparel company outside consultant]), then an [apparel company]³⁴ outside consultant, representative of the institution’s athletics interests, and agent, had with [guardian

³⁴ [Apparel company] is a representative of the institution's athletics interest.

for men’s basketball student-athlete No. 1]. In the calls, [apparel company outside consultant] encouraged [guardian for men’s basketball student-athlete No. 1] to have [men's basketball student-athlete No. 1] enroll at the institution as a student-athlete. [Assistant men's basketball coach] failed to report this violation to the institution’s compliance staff.³⁵ [NCAA Constitution 2.8.1 and Bylaws 13.01.2, 13.1, 13.1.2.1, and 13.1.3.5.1 (2017-18)]

- c. In August and September 2017, [apparel company], a representative of the institution’s athletics interests; [apparel company outside consultant]; [head men’s basketball coach]; and [assistant men’s basketball coach] offered a recruiting inducement to [guardian for men’s basketball student-athlete No. 1]. Specifically, [apparel company], [apparel company outside consultant], [head men’s basketball coach], and [assistant men’s basketball coach] were together involved, directly or indirectly, in offering to give [guardian for men’s basketball student-athlete No. 1] [apparel company] shoes and/or apparel to outfit the nonscholastic basketball team with which he was affiliated. [NCAA Bylaws 13.2.1 and 13.2.1.1-(b) (2017-18)]
- d. Sometime in the first half of September 2017, [apparel company], [apparel company outside consultant], and [apparel company employee No. 1] ([apparel company employee No. 1]), then an [apparel company] 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 [guardian for men’s basketball student-athlete No. 1] in an effort to secure [men's basketball student-athlete No. 1's] 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) (2017-18)]
- e. On or about September 11, 2017, [apparel company], [apparel company outside consultant], and [apparel company employee No. 1] offered a \$20,000 recruiting inducement and impermissible agent benefit to [guardian for men’s basketball student-athlete No. 1] in order to persuade [guardian for men’s basketball student-athlete No. 1] to have [men's basketball student-athlete No. 1] enroll at the institution. [NCAA Bylaws 12.1.2, 12.3.1.3, 13.2.1, and 13.2.1.1-(e) (2017-18)]

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

³⁵ [Head men’s basketball coach]’s failure to report this violation is included in Allegation No. 4.

3. [NCAA Division I Manual Constitution 2.8.1 and Bylaws 13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1, and 13.2.1.1-(e) (2014-15); 12.1.2, 12.3.1.2, and 16.11.2.1 (2015-16); and 13.01.2, 13.1, 13.1.2.1, and 13.1.3.5.1 (2017-18)]

The CCU alleges that between December 2014 and September 2017, two consultants of [apparel company], who were also representatives of the institution's athletics interests and agents, engaged in impermissible recruiting activities with two prospective student-athletes. [head men's basketball coach] ([head men's basketball coach]), head men's basketball coach, and [assistant men's basketball coach] ([assistant men's basketball coach]), assistant men's basketball coach, knew or should have known 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 2014-15 academic year, [apparel company outside consultant] ([apparel company outside consultant]), then an [apparel company]³⁶ 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 [men's basketball prospective student-athlete No. 4] ([men's basketball prospective student-athlete No. 4]) to the institution, and later communicated some of his efforts to [head men's basketball coach]. Specifically, in the winter of 2015, [apparel company outside consultant] provided \$15,000 to a family friend of [men's basketball prospective student-athlete No. 4's] who was to provide the money to [men's basketball prospective student-athlete No. 4's] mother. On August 19, 2017, after [men's basketball prospective student-athlete No. 4] enrolled at another institution, [apparel company outside consultant] communicated in a text message to [head men's basketball coach] that he had let [head men's basketball coach] down in the recruitment of [men's basketball prospective student-athlete No. 4]. [NCAA Bylaws 13.01.2, 13.1, 13.1.2.1, 13.1.2.5, 13.2.1, and 13.2.1.1-(e) (2014-15)]
- b. On or about March 22, 2016, [apparel company outside consultant] provided an impermissible benefit and impermissible agent benefit in the form of an indeterminate amount of cash through a wire transfer to [guardian for men's basketball student-athlete No. 2], guardian of then men's basketball student-athlete men's basketball student-athlete No. 2. [NCAA Bylaws 12.1.2, 12.3.1.2, and 16.11.2.1 (2015-16)]

³⁶ [Apparel company] is a representative of the institution's athletics interest.

- c. *[The CCU has withdrawn Allegation No. 3-c.]*
- d. On or about September 13, 2017, [apparel company employee No. 2] ([apparel company employee No. 2]), then an [apparel company] 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 [men's basketball prospective student-athlete No. 3] ([men's basketball prospective student-athlete No. 3]) and learned recruiting information and what it would take for [men's basketball prospective student-athlete No. 3] to commit to the institution and participate as a men's basketball student-athlete. In a telephone call on September 12, 2017, [apparel company employee No. 2] provided some information to [head men's basketball coach] and [assistant men's basketball coach] regarding [men's basketball prospective student-athlete No. 3's] recruitment just prior to their scheduled home visit with the [men's basketball prospective student-athlete No. 3] family. [Apparel company employee No. 2] provided additional information to [assistant men's basketball coach] on September 13, 2017, after the [men's basketball prospective student-athlete No. 3] home visit. [Assistant men's basketball coach] failed to report this violation to the institution's compliance staff.³⁷ [NCAA Constitution 2.8.1 and Bylaws 13.01.2, 13.1, 13.1.2.1, and 13.1.3.5.1 (2017-18)]

Allegation No. 3-a serves as a basis for head coach responsibility as noted in Allegation No. 4. Allegation No. 3 serves as a basis for lack of institutional control, as noted in Allegation No. 5.

4. [NCAA Division I Manual Bylaw 11.1.1.1 (2014-15, 2016-17, and 2017-18)]

The CCU alleges that during the 2014-15, 2016-17, and 2017-18 academic years, [head men's basketball coach] ([head men's basketball coach]), head men's basketball coach, is presumed responsible for the violations detailed in Allegation Nos. 1, 2, and 3(a) and did not rebut the presumption of responsibility. Specifically:

- a. [Head men's basketball coach] 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 the institution's athletics compliance staff to allow for an independent inquiry including:
- (1) Related to Allegation No. 1-a, [head men's basketball coach] knew that [apparel company outside consultant] ([apparel company outside

³⁷ [Head men's basketball coach]'s failure to report this violation is included in Allegation No. 4.

consultant]), then an [apparel company] outside consultant, representative of the institution's athletics interests, and agent, interacted with prospective student-athletes and their families during [Late Night], a recruiting event at the institution. [Head men's basketball coach] should have known [apparel company outside consultant] was present during and had impermissible recruiting contact with then men's basketball prospective student-athlete [men's basketball prospective student-athlete No. 2] or his mother during his 2016 official visit to the institution.

- (2) As described in Allegation No. 2-b, [head men's basketball coach] knew of and approved [apparel company outside consultant]'s impermissible telephone recruiting calls with [guardian for men's basketball student-athlete No. 1] ([guardian for men's basketball student-athlete No. 1]), guardian of then men's basketball prospective student-athlete [men's basketball student-athlete No. 1] ([men's basketball student-athlete No. 1]).
- (3) As described in Allegation No. 2-c, [head men's basketball coach] was involved together with [apparel company], [apparel company outside consultant], and [assistant men's basketball coach] ([assistant men's basketball coach]), assistant men's basketball coach, in impermissibly offering to provide shoes and/or apparel to outfit a nonscholastic basketball team with which [guardian for men's basketball student-athlete No. 1] was affiliated.
- (4) As described in Allegation No. 3-a, [head men's basketball coach] knew or should have known that [apparel company outside consultant] had impermissible recruiting contact with then men's basketball prospective student-athlete [men's basketball prospective student-athlete No. 4] ([men's basketball prospective student-athlete No. 4]). [Head men's basketball coach] also failed to ask any follow up questions regarding an August 19, 2017 text message from [apparel company outside consultant] regarding [men's basketball prospective student-athlete No. 4] and failed to report the text or the violation to compliance.
- (5) *[The CCU has withdrawn Allegation No. 4-a-(5).]*
- (6) *[The CCU has withdrawn Allegation No. 4-a-(6).]*

[NCAA Bylaw 11.1.1.1 (2014-15, 2016-17, and 2017-18)]

- b. [Head men's basketball coach] did not demonstrate that he monitored his staff because, as noted in Allegation Nos. 2-a, 2-b, and 2-c, [head men's basketball coach] knew or should have known that [assistant men's basketball coach] was involved in or aware of NCAA violations involving [men's basketball student-athlete No. 1]. However, [head men's basketball coach] 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 (2017-18)]
5. [NCAA Constitution 2.1.1, 2.1.2, 2.8.1, 6.01.1, 6.4.1, and 6.4.2 (2014-15 through 2017-18)]

The CCU alleges that the scope and nature of the violations set forth in Allegation Nos. 1 through 3 demonstrate that during the 2014-15 through 2017-18 academic years, the institution failed to exercise institutional control and monitor the conduct and administration of its athletics programs. Specifically:

- a. By at least October 2014, [apparel company] and its consultants became representatives of the institution's 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 [apparel company] and its consultants from engaging in NCAA violations, (2) failed to provide NCAA rules education to [apparel company] and all of its consultants with a connection to the institution and (3) failed to monitor its athletics programs and interactions with [apparel company] 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 (2014-15 through 2017-18)]
 - b. In the 2016-17 academic year and in the summer of 2017, three senior athletics department administrators identified red flags or concerns about the role and involvement of [apparel company outside consultant] ([apparel company outside consultant]), then an [apparel company] 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 [apparel company outside consultant] 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 (2016-17)]
 - c. In September 2016, athletics administrators failed to monitor and ensure compliance related to the attendance of [apparel company outside consultant] and [apparel company employee No. 1] ([apparel company employee No. 1]), then an

[apparel company] director of global sports marketing for basketball, representative of the institution's athletics interests, and agent, at [Late Night] ([Late Night]), an important recruiting event. Specifically, then men's basketball prospective student-athlete [men's basketball prospective student-athlete No. 2] ([men's basketball prospective student-athlete No. 2]) and his family attended [Late Night] during an official visit to the institution. The institution also knew [apparel company outside consultant] and [apparel company employee No. 1] were present at [Late Night] and that [apparel company outside consultant], [apparel company employee No. 1], and [men's basketball prospective student-athlete No. 2] were staying at the same hotel. However, the institution took no steps to monitor and/or limit [apparel company outside consultant's] and [apparel company employee No. 1's] interactions with [men's basketball prospective student-athlete No. 2] and his family at [Late Night] or at the Hotel. As outlined in Allegation No. 1-a, [apparel company outside consultant] had an impermissible contact with [men's basketball prospective student-athlete No. 2's] mother and her domestic partner at the Hotel and offered them monetary recruiting inducements with [apparel company employee No. 1's] approval. [NCAA Constitution 2.1.1, 2.1.2, 6.01.1, 6.4.1, and 6.4.2 (2016-17)]

- d. In the fall of 2017, the institution did not adhere to its policy of monitoring student-athlete vehicles when it failed to ensure [men's basketball prospective student-athlete No. 2] 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, a deputy director of athletics, and a men's basketball director of student-athlete development, were aware or received information showing that [men's basketball prospective student-athlete No. 2] was in possession of a vehicle on campus, yet no one monitored [men's basketball prospective student-athlete No. 2] to ensure he registered 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 (2017-18)]
- 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 [men's basketball student-athlete No. 1] ([men's basketball student-athlete No. 1]). As a result, the institution allowed [men's basketball student-athlete No. 1] to compete in 20 games while ineligible. Specifically, the institution's athletics department staff had knowledge of several issues and red flags related to [apparel company outside consultant], his involvement in actual or potential NCAA violations involving another student-athlete's family, and one other prospective student-athlete, and [apparel company outside consultant's] involvement in [men's basketball student-athlete No. 1's] recruitment:

- (1) In August 2017, the head men's basketball coach and an assistant men's basketball coach knew of some of [apparel company outside consultant's] impermissible recruiting violations involving [men's basketball student-athlete No. 1], as noted in Allegation No. 2.
- (2) In August 2017, the head men's basketball coach knew of [apparel company outside consultant's] statements about trying to assist the institution's recruitment of then men's basketball prospective student-athlete [men's basketball prospective student-athlete No. 4], as noted in Allegation No. 3-a.
- (3) In September 2017, the institution became aware of the federal government's arrests and indictments involving [apparel company] consultants, including [apparel company outside consultant's] superior, [apparel company employee No. 1].
- (4) In October 2017, 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 2017, the institution became aware of [apparel company outside consultant's] role in providing at least \$15,000 to [mother of men's basketball prospective student-athlete No. 2], mother of [men's basketball prospective student-athlete No. 2], which is described in Allegation No. 1.
- (6) On or about March 2, 2018, just prior to the 2018 Big 12 Tournament, the institution received notice from the United States Attorney's Office in the Southern District of New York that a Grand Jury Subpoena would be issued relating to potential violations involving the recruitment and enrollment of [men's basketball student-athlete No. 1]. The government informally requested records regarding [men's basketball student-athlete No. 1] at that time.
- (7) On March 14, 2018, just prior to the 2018 NCAA Men's Division I Basketball Tournament, the institution received the [men's basketball student-athlete No. 1] Grand Jury Subpoena. The institution e or receipt of the Subpoena to the NCAA enforcement staff or the CCU until February 24, 2021.
- (8) On the eve of the 2018 Final Four, in which the institution's men's basketball team was scheduled to compete, the institution became aware

of more information raising concerns relating to [men’s basketball student-athlete No. 1].

Despite all of this information and instruction, the institution certified [men’s basketball student-athlete No. 1] as eligible and allowed him to compete in 20 contests for the institution during the 2017-18 academic year, when in fact [men’s basketball student-athlete No. 1] was ineligible, including the Big 12 Tournament, the 2018 NCAA Men's Division I Basketball Tournament, and the Final Four. [NCAA Constitution 2.1.1, 2.1.2, 2.8.1, 6.01.1, 6.4.1, and 6.4.2 (2017-18)]

6. [NCAA Division I Manual Bylaws 11.7.1.1, 11.7.3, and 11.7.6 (2017-18 and 2018-19)]

The CCU alleges that between December 2017 and mid-October 2018, the institution's football team exceeded the limit on the number of coaches who may be employed by one. This occurred when the football video coordinator (a noncoaching staff member), participated in technical and tactical instruction with football student-athletes and made or assisted in making tactical decisions with football student-athletes during on-field practices. Specifically:

- a. Between December 2017 and April 2018, the football video coordinator met with the quarterback student-athletes six to ten times in the quarterback meeting room of the football office and provided instruction while watching videos of practices and games. The football video coordinator's instructions included, but were not limited to, identifying quarterback reads, coverage reads and adjustments and defensive fronts and alignments. [NCAA Bylaws 11.7.1.1, 11.7.3, and 11.7.6 (2017-18)]
- b. Between August 2018 and early-October 2018, the football video coordinator provided on-field instruction to the quarterbacks on one to three occasions. [NCAA Bylaws 11.7.1.1, 11.7.3, and 11.7.6 (2018-19)]
- c. In August 2018, the football video coordinator provided a quarterback an instructional video through a text message via cellphone. [NCAA Bylaws 11.7.1.1 and 11.7.6 (2018-19)]

7. *[The CCU has withdrawn Allegation No. 7.]*

8. [NCAA Division I Manual Bylaws 11.7.1.1(a), 11.7.3, and 11.7.6 (2018-19 and 2019-20)]

The CCU alleges that during the spring practices of the 2018-19 academic year and fall practices of the 2019-20 academic year, the institution's football program violated NCAA legislated limits on the number and duties of coaches and noncoaching staff members. This

occurred when two special teams staff members (both noncoaching staff members with football specific duties) occasionally participated in on-field activities and assisted with football drills. Additionally, and on a limited basis, the two special teams analysts participated in on-field practices by providing technical or tactical instruction to football student-athletes, which caused the institution's football program to exceed the limit on the number of coaches who may be employed by two.

9. [NCAA Constitution 2.1.2 and 2.8.1 (2017-18 through 2020-21); NCAA Division I Manual Bylaws 19.2.3 (2017-18 and 2018-19); 19.01.3 (2019-2020); and 19.2.3-(a), 19.2.3-(c), and 19.2.3-(f) (2019-20 through 2020-21)]

The CCU alleges that between March 2018 and February 24, 2021, the institution violated NCAA responsibility to cooperate legislation. Under NCAA responsibility to cooperate legislation, the institution has an affirmative obligation to cooperate fully with and assist the enforcement staff and the CCU to further the objectives of the NCAA. The institution violated this legislation and obstructed both the NCAA enforcement staff's and CCU's investigations, including:

- a. The institution failed to affirmatively report instances of noncompliance to the NCAA's enforcement staff, failed to assist in developing full information to determine whether a possible violation had occurred and the details thereof, and failed to make a full and complete disclosure of relevant information including timely production of materials or information requested. Specifically, on or about March 2, 2018, the institution received notice from the United States Attorney's Office in the Southern District of New York that a Grand Jury Subpoena would be issued relating to potential violations involving the recruitment and enrollment of men's basketball student-athlete, [men's basketball student-athlete No. 1] ([men's basketball student-athlete No. 1]). The government informally requested records regarding [men's basketball student-athlete No. 1] at that time. The institution received the Grand Jury Subpoena on March 14, 2018. However, the institution failed to report the existence or receipt of the Subpoena to the NCAA enforcement staff or the CCU until February 24, 2021. Despite possessing such information, the institution allowed [men's basketball student-athlete No. 1] to compete in the Big 12/SEC Challenge, three Big 12 Conference Tournament games, and five games during the 2018 NCAA Men's Division I Basketball Tournament, including an NCAA Final Four game on March 31, 2018. As such, the institution refused to cooperate and failed to comply with NCAA responsibility to cooperate legislation. [NCAA Constitution 2.1.2 and 2.8.1 (2017-18 through 2020-2021); NCAA Bylaws 19.2.3 (2017-18 and 2018-19); and 19.2.3-(a) and 19.2.3-(c) (2019-20 and 2020-21)]

- b. The institution failed to preserve the integrity of the NCAA's investigation and abide by applicable confidentiality rules. Specifically, on or around September 23, 2019 and May 7, 2020, while this case was pending, the institution made public disclosures about the case. [NCAA Bylaws 19.01.3 and 19.2.3-(f) (2019-20)]

This allegation serves as part of the basis for the lack of institutional control in Allegation No. 5.

10. [NCAA Constitution 2.8.1 (2019-20 through 2021-22); NCAA Division I Manual Bylaws 19.01.3 (2019-2020); and 19.2.3-(a), 19.2.3-(c), and 19.2.3-(f) (2019-20 through 2021-22)]

The CCU alleges that on September 23, 2019, May 7, 2020, and from February 26, 2021 to the present, [head men's basketball coach] ([head men's basketball coach]) violated NCAA responsibility to cooperate legislation. Under NCAA responsibility to cooperate legislation, [head men's basketball coach] has an affirmative obligation to cooperate fully with and assist the enforcement staff and the CCU to further the objectives of the NCAA. [Head men's basketball coach] violated this legislation and obstructed both the NCAA enforcement staff's and CCU's investigations, including:

- a. [Head men's basketball coach] failed to preserve the integrity of the NCAA's investigation and abide by applicable confidentiality rules. Specifically, on or about September 23, 2019 and May 7, 2020, while this case was pending, [head men's basketball coach] made public disclosures about the case. [NCAA Bylaws 19.01.3 and 19.2.3-(f) (2019-20)]
- b. [Head men's basketball coach] failed to assist in developing full information to determine whether a possible violation had occurred and the details thereof and failed to make a full and complete disclosure of relevant information. Specifically, on February 26, 2021 and thereafter, [head men's basketball coach] refused to disclose the identity of an alleged "source" who notified [head men's basketball coach] of issues that may have impacted [men's basketball prospective student-athlete No. 2's] eligibility. [NCAA Constitution 2.8.1 (2020-21 and 2021-22); and NCAA Bylaws 19.2.3-(a) and 19.2.3-(c) (2020-21 and 2021-22)]

11. [NCAA Division I Manual Bylaws 16.11.2.1 and 16.11.2.2 (2015-16 through 2020-21)]

The CCU alleges that between 2016 and 2021, [representative of athletics interests No. 1] ([representative of athletics interests No. 1]), a representative of the institution's athletic interests, provided impermissible benefits to both former and then current men's basketball student athletes. Specifically:

- a. The CCU alleges that from August 2017 through at least February 2021, [representative of athletics interests No. 1] provided impermissible benefits in the form of cash and other payments to [men’s basketball student-athlete No. 7] ([men’s basketball student-athlete No. 7]), a former men's basketball student athlete. In particular, [representative of athletics interests No. 1] provided impermissible benefits in the amount of at least \$46,264.62 relating to [men’s basketball student-athlete No. 7’s] moving expenses, rent, tuition, utilities, cell phone payments, car insurance payments, education expenses, and other cash payments associated with [men’s basketball student-athlete No. 7’s] completion of his degree at Kansas. [NCAA Bylaws 16.11.2.1 and 16.11.2.2 (2017-18 through 2020-21)]

- b. The CCU alleges that in approximately 2016, [representative of athletics interests No. 1] provided impermissible benefits in the form of approximately \$200 in cash to a then current men's basketball student athlete during a barbeque at the head men's basketball coach's house. [NCAA Bylaws 16.11.2.1 and 16.11.2.2 (2015-16)]

APPENDIX FOUR

TEXT OF THE ALLEGATIONS IN THE THIRD AMENDED NOTICE OF ALLEGATIONS ISSUED BY THE COMPLEX CASE UNIT

1. [NCAA Constitution 2.8.1 and Bylaws 13.01.2, 13.1, 13.1.2.1, 13.1.3.5.1, 13.2.1, and 13.2.1.1-(e) (2017-18); and NCAA Bylaw 16.11.2.1 (2016-17 through 2017-18)]

The CCU alleges that no later than June 14, 2017, [apparel company outside consultant] ([apparel company outside consultant]), then an [apparel company]³⁸ outside consultant, was a representative of the institution's athletics interests. On or after June 14, 2017, and without the knowledge of the institution, head men's basketball coach [head men's basketball coach] ([head men's basketball coach]), or assistant men's basketball coach [assistant men's basketball coach] ([assistant men's basketball coach]), [apparel company outside consultant] provided approximately \$15,000 and arranged to provide an additional \$4,000 in impermissible benefits to [mother of men's basketball prospective student-athlete No. 2] ([mother of men's basketball prospective student-athlete No. 2]), mother of then men's basketball student-athlete [men's basketball prospective student-athlete No. 2] ([men's basketball prospective student-athlete No. 2]). Moreover, without the knowledge of the institution, [head men's basketball coach], or [assistant men's basketball coach], [apparel company outside consultant] provided \$2,500 and offered an additional \$20,000 in impermissible recruiting inducements to [guardian for men's basketball student-athlete No. 1] ([guardian for men's basketball student-athlete No. 1]), guardian of then men's basketball prospective student-athlete [men's basketball student-athlete No. 1] ([men's basketball student-athlete No. 1]) and a nonscholastic basketball coach. As a result, [men's basketball student-athlete No. 1] competed in 20 contests and received actual and necessary expenses while ineligible. Specifically:

- a. On or about June 14, 2017, [apparel company outside consultant] provided approximately \$15,000 in impermissible benefits to [mother of men's basketball prospective student-athlete No. 2] via wire transfer after [men's basketball prospective student-athlete No. 2] enrolled at the institution. [NCAA Bylaw 16.11.2.1 (2016-17)]
- b. On or about September 23, 2017, [apparel company outside consultant] arranged to provide \$4,000 in impermissible benefits to [mother of men's basketball prospective student-athlete No. 2]. [NCAA Bylaw 16.11.2.1 (2017-18)]
- c. On August 8, 2017, [assistant men's basketball coach] sent [apparel company outside consultant] a text message containing [guardian for men's basketball student-athlete No. 1's] contact information, thereby facilitating [apparel company

³⁸ [Apparel company] is a corporate entity (e.g., apparel or equipment manufacturer) that is publicly known to enter into marketing contracts with professional basketball players based upon their athletics abilities and skills. [Apparel company outside consultant], as an [apparel company] outside consultant, supported [apparel company's] efforts in the pursuit of these marketing contracts.

outside consultant's] recruiting contacts with [guardian for men's basketball student-athlete No. 1]. [Guardian for men's basketball student-athlete No. 1] had told [assistant men's basketball coach] he was interested in obtaining athletic gear for an Angolan youth basketball team. [Head men's basketball coach] was aware that [assistant men's basketball coach] provided [guardian for men's basketball student-athlete No. 1]'s contact information to [apparel company outside consultant]. [Head men's basketball coach] and [assistant men's basketball coach] knew that [apparel company outside consultant] was in contact with [guardian for men's basketball student-athlete No. 1]. At the time, [apparel company outside consultant] wanted to encourage [guardian for men's basketball student-athlete No. 1] to have [men's basketball student-athlete No. 1] enroll at the institution as a student-athlete. [Head men's basketball coach] and [assistant men's basketball coach] failed to report this contact 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 (2017-18)]

- d. Sometime in the first half of September 2017, [apparel company outside consultant] provided a \$2,500 cash recruiting inducement to [guardian for men's basketball student-athlete No. 1] in an effort to secure [men's basketball student-athlete No. 1's] enrollment at the institution as a student-athlete. [NCAA Bylaws 13.2.1 and 13.2.1.1-(e) (2017-18)]
- e. On or about September 11, 2017, [apparel company outside consultant] offered a \$20,000 recruiting inducement to [guardian for men's basketball student-athlete No. 1] in order to ensure that [men's basketball student-athlete No. 1] enrolled at the institution. [NCAA Bylaws 13.2.1 and 13.2.1.1-(e) (2017-18)]

Allegation No. 1-c serves as a basis for head coach responsibility in Allegation No. 4.

2. *[The CCU has withdrawn Allegation No. 2 because it has amended and incorporated these allegations into Allegation No. 1.]*
3. [NCAA Constitution 2.8.1 and Bylaws 13.01.2, 13.1, 13.1.2.1, and 13.1.3.5.1 (2017-18)]

The CCU alleges that in September 2017, a consultant of [apparel company], who was also a representative of the institution's athletics interests, engaged in impermissible recruiting activities with a prospective student-athlete. Specifically, on or about September 13, 2017, [apparel company employee No. 2] ([apparel company employee No. 2]), then an [apparel company] outside consultant and representative of the institution's athletics interests, had an impermissible recruiting contact with the family of then men's basketball prospective student-athlete [men's basketball prospective student-athlete No. 3] ([men's basketball prospective student-athlete No. 3]). On September 13, 2017, the day after head men's

basketball coach [head men's basketball coach] ([head men's basketball coach]) and assistant men's basketball coach [assistant men's basketball coach] ([assistant men's basketball coach]) made a home visit to the [men's basketball prospective student-athlete No. 3] family, [assistant men's basketball coach] had a telephone call with [apparel company employee No. 2] during which [apparel company employee No. 2] provided him with information about what it would purportedly take for [men's basketball prospective student-athlete No. 3] to commit to the institution and participate as a men's basketball student-athlete. [Assistant men's basketball coach] failed to report his telephone call with [apparel company employee No. 2], and what [apparel company employee No. 2] told him about the [men's basketball prospective student-athlete No. 3] family during that telephone call, to the institution's athletics compliance staff. [NCAA Constitution 2.8.1 and Bylaws 13.01.2, 13.1, 13.1.2.1, and 13.1.3.5.1 (2017-18)]

4. [NCAA Division I Manual Bylaw 11.1.1.1 (2017-18)]

The CCU alleges that during the 2017-18 academic year, [head men's basketball coach] ([head men's basketball coach]), head men's basketball coach, is presumed responsible for the violations detailed in Allegation No. 1-c and did not rebut the presumption of responsibility. Specifically:

- a. [Head men's basketball coach] did not demonstrate that he promoted an atmosphere for compliance. As noted in Allegation No. 1-c, [head men's basketball coach] knew that [assistant men's basketball coach] ([assistant men's basketball coach]), assistant men's basketball coach, provided the contact information of [guardian for men's basketball student-athlete No. 1], guardian of then men's basketball prospective student-athlete [men's basketball student-athlete No. 1] ([men's basketball student-athlete No. 1]), to [apparel company outside consultant] ([apparel company outside consultant]), then an [apparel company] outside consultant, and knew that [apparel company outside consultant] contacted [guardian for men's basketball student-athlete No. 1]. Hence, [head men's basketball coach] did not promote an atmosphere of compliance based on his personal involvement and his failure to report the matter to the institution's athletics compliance staff to allow for an independent inquiry. [NCAA Bylaw 11.1.1.1 (2017-18)]
- b. [Head men's basketball coach] did not demonstrate that he monitored his staff. As noted in Allegation No. 1-c, [head men's basketball coach] knew that [assistant men's basketball coach] provided [guardian for men's basketball student-athlete No. 1]'s contact information to [apparel company outside consultant]. However, [head men's basketball coach] failed to identify the red flags, ask pointed questions, or report the matter to the institution's athletics compliance staff to allow for an independent inquiry. [NCAA Bylaw 11.1.1.1 (2017-18)]

5. [NCAA Constitution 2.1.1, 2.1.2, 2.8.1, 6.01.1, and 6.4.2 (2016-17 and 2017-18)]

The CCU alleges that the scope and nature of the violations set forth in Allegation Nos. 1 and 3 demonstrate that during the 2016-17 and 2017-18 academic years, the institution failed to adequately monitor the conduct and administration of its athletics programs. Specifically:

- a. Senior athletics department administrators identified red flags or concerns about the role and involvement of [apparel company outside consultant] ([apparel company outside consultant]), then an [apparel company] outside consultant, with the institution's athletics program and its men's basketball program in particular. However, the institution failed to take sufficient action to provide rules education to [apparel company outside consultant] or to sufficiently 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, and 6.4.2 (2016-17 and 2017-18)]
- b. In September 2016, the Institution failed to monitor and ensure compliance related to the attendance of [apparel company outside consultant] at [Late Night] ([Late Night]), an important recruiting and fan engagement event for the institution. Specifically, then men's basketball prospective student-athlete [men's basketball prospective student-athlete No. 2] ([men's basketball prospective student-athlete No. 2]) and his family attended [Late Night] during an official visit to the institution. The institution also knew that [apparel company outside consultant] was present at [Late Night] and, following the [Late Night] event, was seen at the Hotel adjacent to campus where [men's basketball prospective student-athlete No. 2] and his family were staying. However, the institution failed to adequately monitor and/or limit [apparel company outside consultant's] interactions with [men's basketball prospective student-athlete No. 2's] family. [NCAA Constitution 2.1.1, 2.1.2, 6.01.1, and 6.4.2 (2016-17)]

6. [NCAA Division I Manual Bylaws 11.7.1.1, 11.7.3, and 11.7.6 (2017-18 and 2018-19)]

The CCU alleges that between December 2017 and mid-October 2018, the institution's football team exceeded the limit on the number of coaches who may be employed by one. This occurred when the football video coordinator (a noncoaching staff member), participated in technical and tactical instruction with football student-athletes and made or assisted in making tactical decisions with football student-athletes during on-field practices. Specifically:

- a. Between December 2017 and April 2018, the football video coordinator met with the quarterback student-athletes six to ten times in the quarterback meeting room

of the football office and provided instruction to the quarterbacks while they were watching videos of practices and games. The football video coordinator's instructions included, but were not limited to, identifying quarterback reads, coverage reads and adjustments and defensive fronts and alignments. [NCAA Bylaws 11.7.1.1, 11.7.3, and 11.7.6 (2017-18)]

- b. Between August 2018 and early-October 2018, the football video coordinator provided on-field instruction to the quarterbacks on one to three occasions. [NCAA Bylaws 11.7.1.1, 11.7.3, and 11.7.6 (2018-19)]
- c. In August 2018, the football video coordinator provided a quarterback an instructional video through a text message via cellphone. [NCAA Bylaws 11.7.1.1 and 11.7.6 (2018-19)]

7. *[The CCU previously withdrew Allegation No. 7 when it issued its Second Amended Notice of Allegations.]*

8. [NCAA Division I Manual Bylaws 11.7.1.1(a), 11.7.3, and 11.7.6 (2018-19 and 2019-20)]

The CCU alleges that during the spring practices of the 2018-19 academic year and fall practices of the 2019-20 academic year, the institution's football program violated NCAA legislated limits on the number and duties of coaches and noncoaching staff members. This occurred when two special teams staff members (both noncoaching staff members with football specific duties) occasionally participated in on-field activities and assisted with football drills. Additionally, and on a limited basis, the two special teams analysts participated in on-field practices by providing technical or tactical instruction to football student-athletes, which caused the institution's football program to exceed the limit on the number of coaches who may be employed by two.

9. [NCAA Constitution 2.1.2 and 2.8.1 and Bylaw 19.2.3 (2017-18)]

The CCU alleges that in or around March 2018, the institution violated NCAA responsibility to cooperate legislation. Under NCAA responsibility to cooperate legislation, the institution has an affirmative obligation to cooperate fully with and assist the enforcement staff and the CCU to further the objectives of the NCAA. The institution failed to timely provide to the NCAA enforcement staff a Grand Jury Subpoena the Institution received from the United States Attorney's Office in the Southern District of New York. On or about March 2, 2018, the Institution received notice from the government that a Grand Jury Subpoena would be issued requesting documents relating to the recruitment and enrollment of then men's basketball student-athlete [men's basketball student-athlete No. 1] ([men's basketball student-athlete No. 1]). The government informally requested records regarding [men's basketball student-athlete No. 1] at that

time. The institution received the Grand Jury Subpoena on March 14, 2018. However, the institution failed to timely provide the Grand Jury Subpoena to the enforcement staff. As such, the institution failed to comply with NCAA responsibility to cooperate legislation. [NCAA Constitution 2.1.2 and 2.8.1 and Bylaw 19.2.3 (2017-18)]