

ENFORCEMENT WRITTEN REPLY

University of Louisville – Case No. 00843

December 1, 2020

KEY RECORD LIST

Following is a list of key factual information that the NCAA enforcement staff relied on in bringing forward the allegations. This is not intended to be an all-encompassing list of factual information that supports the case.

1. [FI001_Gatto Complaint](#) – U.S. Government's criminal allegations pertaining to the institution.
2. [FI002_Gatto Superseding Indictment](#) – U.S. Government's criminal allegations pertaining to the institution.
3. [FI003_JCarnsand \[REDACTED\] Testimony Transcript 100418_Gatto Trial](#) – Testimony concerning allegations on Page Nos. 401 through 403, 523 and 564 through 580.
4. [FI140_JCarns TR 081319_Louisville 00843](#) – The institution's athletics compliance staff's monitoring of [REDACTED] recruitment.
5. [FI098_AdidasSponsorshipAgreement 070114_Louisville 00843](#) – Adidas agreement with the institution.
6. [FI035_AudioTranscript 071017_Exhibit57T_Gatto Trial](#) – Discussion about [REDACTED] payment.
7. [FI152 \[REDACTED\] TR 091118_Louisville 00843](#) – Discusses [REDACTED] recruitment and move to Augustine's nonscholastic basketball team.
8. [FI135_TextBetween \[REDACTED\] andBrad 2017_Louisville 00843](#) – [REDACTED] and Augustine's text message records.
9. [FI182_JFair TR 022120_Louisville 00843](#) – Fair's discussion of his and others' involvement in allegations.
10. [FI011_MBlazerTestimonyTranscript 042519_DawkinsTrial](#) – Testimony concerning allegations on Page Nos. 390 through 397, 418 through 420, 437 through 439, 445 and 446.
11. [FI145_MBlazer TR 071819_Louisville 00843](#) – Discusses July 27, 2017, hotel meeting with Augustine and Fair.
12. [FI146_MBlazer TR 082719_Louisville 00843](#) – Discusses July 27, 2017, hotel meeting with Augustine and Fair.
13. [FI097_K.Johnson4-1-17 to 10-2-17, 301-326-0616](#) – Johnson's telephone text message content.
14. [FI004 \[REDACTED\] Testimony Transcript 100918_Gatto Trial](#) – Testimony concerning allegations on Page Nos. 592 through 638, 690 and 691.

KEY RECORD LIST

Case No. 00843

15. [FI147_KJohnson_wExhibits_TR_031919_Louisville_00843](#) – Discusses recruitment and post-enrollment interactions concerning [REDACTED] and other recruiting activities.
16. [FI183_KJohnson_TR_040920_Louisville_00843](#) – Johnson's discussion of alleged violations.
17. [FI139_\[REDACTED\]_IS_111717_Louisville_00843_RefusedtoSign](#) – [REDACTED] recruitment and enrollment at the institution.
18. [FI120_\[REDACTED\]_Chat with Chris Dawkins](#) – [REDACTED] texts with Dawkins.
19. [FI118_\[REDACTED\]_Chat with Coach Kenny \(Louisville\)](#) – [REDACTED] texts with Johnson.
20. [FI144_CCanty_TR_100919_Louisville_00843](#) – Discusses a social function he attended during a nonscholastic event.
21. [FI141_RPitino_TR_112519_Louisville_00843](#) – Pitino's discussion of his involvement in the recruitment of [REDACTED].
22. [FI142_JCarns_TR_122019_Louisville_00843](#) – The institution's athletics compliance staff's knowledge of Pitino's conversation with Gatto and other relevant information.
23. [FI109_\[REDACTED\] - \[REDACTED\]_UV Paperwork](#) – [REDACTED] unofficial visit record.
24. [FI116_Transcript of 10-18-17 Interview with Matt Banker](#) – Banker's statements about the institution's monitoring of [REDACTED] recruitment.
25. [FI154_NLeffler_Letter_RMccall_JFairRefusalCooperateUPS_102319_Louisville_00843](#) – Refusal to cooperate letter for Fair.

INDEX OF AUTHORITIES

Following is a list of key authorities that the NCAA enforcement staff relied on in bringing forward the allegations. This is not intended to be an all-encompassing list of pertinent authorities.

Official/Staff Interpretations.

[FI123_Interp_CorporateEntitiesasRIAs_101899_Louisville_00843](#) – Pertinent to booster status.

[FI192_RepresentativeOfInstitutionsAthleticsInterestsInSportsClubs_082212_Louisville_00843](#) – Pertinent to institution's concerns about booster involvement in local sports.

Case-Specific Interpretation

[FI172_InternalInterpretation_021220_Louisville_00843](#) – Interpretation related to Allegation No. 2-c and impermissible transportation violations.

Educational Columns

None.

Committee on Infractions Decisions.

[December 1, 2017, University of Mississippi](#) – Pertinent to representative of the institution's athletics interests status.

[July 11, 2007, University of Oklahoma](#) – Pertinent to representative of the institution's athletics interests status.

[October 24, 2000, University of Minnesota, Twin Cities](#) – Pertinent to representative of the institution's athletics interests status.

[November 20, 1996, University of Louisville](#) – Pertinent to representative of the institution's athletics interests status.

[June 15, 2017, University of Louisville](#) – Pertinent to the provision of inducements to nonscholastic coaches.

[March 27, 2018, University of Tennessee at Chattanooga](#) – Pertinent to head coach responsibility.

[September 20, 2017, University of the Pacific](#) – Pertinent to failure to cooperate.

INDEX OF AUTHORITIES

Case No. 00843

Infractions Appeals Committee Decisions.

None.

Other Reference Materials.

[FI122_DivisionIManagementCouncilReport_101899_Louisville_00843](#) – Pertinent to shoe apparel companies as boosters.

[FI190_2000ConventionProceedings_Jan2000_Louisville_00843](#) – Discusses concern of and expanding legislation to include shoe apparel companies as representatives of the institution's athletics interests.

[FI195_NAAC_CampusVisitsProspectiveStudentAthletes_090118_Louisville_00843](#) – Pertinent to unofficial visit monitoring standards.

[Division I Enforcement Charging Guidelines](#) – Pertinent to failure to monitor.

I. INTRODUCTION

This case includes one Level I and three Level II allegations related to violations that occurred from July 2016 through September 2017 in the institution's men's basketball program. It also includes two Level I post-separation allegations pertaining to two former assistant men's basketball coaches. The institution and involved individuals disagree with the majority of the allegations.

Allegation No. 1, which is Level I, involves more than \$138,000 in an offer, inducements and benefits provided in connection with the institution's recruitment of then men's basketball prospective student-athletes [REDACTED]

[REDACTED] eventual enrollment at the institution. The violations include a \$100,000 impermissible offer and \$25,000 extra benefit involving the Adidas corporation (Adidas), a representative of the institution's athletics interests, and its employees, Merl Code (Code), a then consultant, and James Gatto (Gatto), then director of global sports marketing for basketball. The violations also include \$11,800 to \$13,500 in impermissible inducements and a \$1,300 extra benefit involving Jordan Fair (Fair), then assistant men's basketball coach, and Kenny Johnson (Johnson), then associate head men's basketball coach.

Allegation No. 2 includes additional recruiting violations by Fair and Johnson related to impermissible transportation and impermissible recruiting contacts. Allegation No. 2 is Level II.

Allegation Nos. 3 and 4 are Level II. Allegation No. 3 addresses Rick Pitino's (Pitino), then head men's basketball coach, failure to promote an atmosphere for compliance, and Allegation No. 4 speaks to the institution's failure to monitor its men's basketball program's recruitment of [REDACTED].

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 2

Additionally, following their separations from the institution, Fair and Johnson committed Level I violations when they failed to cooperate with this investigation. Fair refused to timely interview with and provide requested information to the NCAA enforcement staff and Johnson provided false or misleading information during an interview with the enforcement staff.

This investigation originated from the September 25, 2017, public release of a federal complaint in the Southern District of New York, *United States v. James Gatto, et al (U.S. v. Gatto)*.¹ The complaint and a related April 2018 superseding indictment alleged that between May and July 2017,² Code and Gatto, with the assistance of Christian Dawkins (Dawkins), an associate of [REDACTED] and aspiring sports agent, arranged to provide a \$25,000 cash payment to a highly recruited men's basketball prospective student-athlete's [REDACTED] now known to be [REDACTED] [REDACTED] as part of an offer to provide [REDACTED] \$100,000 in exchange for [REDACTED] commitment to the institution. The complaint and indictment also alleged that in July 2017, Dawkins and others met Brad Augustine (Augustine), [REDACTED] nonscholastic basketball coach and trainer, and one of the institution's assistant men's basketball coaches, now known to be Fair, in a Las Vegas hotel room. During the meeting, Dawkins and the others provided Augustine \$12,700 cash in the presence of Fair with the intent to influence [REDACTED] enrollment at the institution. The initial information contained in the complaint prompted the institution and enforcement staff to conduct a collaborative investigation and gather the factual information that forms the basis for this case's allegations.

¹ FI001, [Gatto Complaint](#).

² FI002, [Gatto Superseding Indictment](#).

II. ALLEGATION NO. 1 – From May through September 2017, Adidas, through Code and Gatto, made a \$100,000 impermissible recruiting offer and arranged for the provision of a \$25,000 extra benefit to [REDACTED]. Additionally, Fair was knowingly involved in the provision of and provided between \$11,800 and \$13,500 in impermissible recruiting inducements to Augustine and Johnson knowingly provided a \$1,300 extra benefit to [REDACTED]. Further, Fair's and Johnson's actions violated the NCAA principles of ethical conduct. [NCAA Division I Manual Bylaws 10.01.1, 10.1, 10.1-(b), 13.2.1, 13.2.1.1-(e), 13.8.2 and 16.11.2.1 (2016-17 and 2017-18)]

A. Overview.

The institution agrees with the facts supporting Allegation Nos. 1-a and b but contests its responsibility for the violations based on its belief that Adidas was not a representative of its athletics interests when Code and Gatto provided a \$100,000 impermissible offer and arranged for the provision of a \$25,000 extra benefit to [REDACTED]. The institution also disagrees with Allegation Nos. 1-d and e because it does not believe the factual information supports that Johnson provided [REDACTED] a \$1,300 extra benefit or Fair provided Augustine an \$800 impermissible inducement. Regarding Allegation No. 1-c, the institution agrees that Fair committed unethical conduct and violated NCAA Bylaw 10 but disagrees he was knowingly involved in the provision of a multiple thousand-dollar inducement to Augustine. Fair disagrees with Allegation No. 1-c and agrees with Allegation No. 1-e. Johnson disagrees with Allegation No. 1-d.

B. Enforcement staff's position as to why the violations should be considered Level I [NCAA Bylaw 19.1.1] and if the institution and involved individuals are in agreement.

The enforcement staff believes a hearing panel of the NCAA Division I Committee on Infractions could conclude that Allegation No. 1 is a severe breach of conduct (Level I) because the violations (a) were not isolated or limited; (b) provided or were intended to provide an extensive recruiting, competitive or other advantage; (c) provided or were intended to provide substantial or extensive

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 4

impermissible benefits; (d) involved third-parties in recruiting violations that institutional officials knew about; (e) involved cash payments intended to secure, and which resulted in, the enrollment of a prospect; (f) were intentional; (g) involved unethical conduct; and (h) seriously undermined or threatened the integrity of the NCAA Collegiate Model. Based on the institution's partial agreement with Allegation No. 1-c and disagreement with Allegation Nos. 1-a, b, d and e, it believes that Allegation No. 1 should be classified as Level II. Fair's and Johnson's responses do not address the level of Allegation No. 1.

C. Enforcement staff's review of facts related to the allegation.

This allegation relates to the institution's recruitment of two men's basketball prospective student-athletes, [REDACTED], and events that occurred after [REDACTED] enrollment at the institution. The violations totaled between \$138,100 and \$139,800 in an offer, inducements and extra benefits; occurred from May through September 2017; and involved Code and Gatto, two then employees of Adidas, a representative of the institution's athletics interests, and Fair and Johnson, two then assistant men's basketball coaches.

1. Allegation Nos. 1-a and b – Adidas as a representative of the institution's athletics interests.

The institution and enforcement staff are in substantial agreement that between the beginning of May 2017 and the end of July 2017, Code and Gatto, as employees of Adidas, offered [REDACTED] \$100,000 for [REDACTED] to attend the institution and arranged for [REDACTED] to receive \$25,000 after [REDACTED] enrollment at the institution. The enforcement staff references the institution's review of the allegation for an overview of those supporting facts.

a. Relevant NCAA legislation and case precedent.

NCAA Constitution 6.4.2, which is mirrored in Bylaw 13.02.15, clearly states that institutions are responsible for the acts of "a corporate entity (e.g., apparel or equipment manufacturer)" when "athletics administration or athletics department staff member has knowledge or should have knowledge" of five outlined behaviors. These behaviors include: (1) participating in an agency or organization outlined in Constitution 6.4.1, (2) making financial contributions to the athletics department or booster organization, (3) assisting in the recruitment of prospects at the request of an athletics department staff member or known to be assisting, (4) providing benefits to enrolled student-athletes, or (5) otherwise promoting the institution's athletics program. A corporate entity or an individual need only meet one subpart to be considered a representative of the institution's athletics interests.

The membership contemplated corporate entities as boosters as early as 1999 and amended the bylaws defining athletics representatives to specifically include shoe apparel companies. An examination of the legislative history of the amendment shows the membership feared the influence shoe apparel companies could have in men's basketball generally and recruiting specifically. In October 1999, the NCAA Division I Management Council unanimously clarified that corporate entities could be considered athletics representatives, confirmed that the provisions of Constitution 6.4.1 were applicable to "corporate entities and other organizations (e.g., apparel and equipment companies)" and directed the NCAA Division I Academics/Eligibility/Compliance Cabinet (AEC) to incorporate that interpretation into Constitutions 6.4.1 and 6.4.2 and Bylaw

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 6

13.02.12 (currently 13.02.15).³ This clarification arose as a part of the membership's expansive review of men's basketball and amateurism deregulation issues resulting from concerns raised by various membership organizations regarding possible interference of outside organizations, specifically including apparel companies. In fact, the 2000 Division I Forum at the NCAA Convention referenced this legislative adjustment. Specifically, speakers at the forum noted that membership groups and the AEC subcommittee shared "concern about outside groups – the shoe companies of the world, so to speak - having influence," and proposed an expansion of the athletics interests legislation to be clear that such companies could be regarded as representative of the institution's athletics interests.⁴

The enforcement staff's analysis on this issue is based upon fundamental and well-established NCAA legislation. In fact, John Carns (Carns), senior associate director of athletics for compliance, a 20-plus-year NCAA compliance veteran and the institution's authority on NCAA compliance matters, acknowledged when he testified in *U.S. v. Gatto* that shoe apparel companies that sponsor NCAA member institutions are considered representatives of the institutions' athletics interests under NCAA legislation.⁵ Additionally, in his August 13, 2019, interview with the enforcement staff, Carns confirmed his October 2018 testimony in *U.S. v. Gatto* and specifically identified Adidas as a representative of the institution's athletics interests according to NCAA legislation.⁶

³ FI122, [Division I Management Council Report 101899 Louisville 00843](#), and FI123, [Interp Corporate Entities as RIAs 101999 Louisville 00843](#).

⁴ FI190, [2000 Convention Proceedings Jan 2000 Louisville 00843](#).

⁵ FI003, [JCarns and \[REDACTED\] Testimony Transcript 100418 Gatto Trial](#), Page Nos. 401 through 403.

⁶ FI140, [JCarns TR 081319 Louisville 00843](#), Page Nos. 15 through 17.

In its response, the institution makes numerous attempts to distance itself from Carns' position that Adidas is a representative of its athletics interests. First, it states that Carns was only asserting his opinion and not the institution's position during his interview with the enforcement staff. The enforcement staff interviewed Carns as the institution's top NCAA compliance administrator, and he was representing the institution in that capacity when he clearly stated that Adidas was a representative of the institution's athletics interests. Additionally, 10 months prior to his enforcement interview and under oath in *U.S. v. Gatto*, Carns testified that a shoe apparel company like Adidas is a representative of the institution's athletics interests.⁷ Clearly if Carns' sworn testimony at trial contradicted the institution's position regarding Adidas' booster status, it had 10 months to clarify its position with Carns before his August 2019 interview with the enforcement staff where he repeated that Adidas was a representative of the institution's athletics interests.

Second, the institution attempts to portray Carns as being uncertain about Adidas' booster status during his August 2019 interview. Carns' interview speaks for itself and a reader of the full transcript will conclude that Carns acknowledged that the shoe apparel sponsor is a representative of the institution's athletics interests, just as he acknowledged under oath and subject to the penalty of perjury 10 months earlier.⁸

Furthermore, Carns' statements are consistent with the plain reading and intended application of Constitutions 6.4.1 and 6.4.2 and Bylaw 13.02.15. The Committee on Infractions applies the

⁷ In its response on Page Nos. 10 and 69, the institution indicated that it assisted the federal authorities in *U.S. v. Gatto* by facilitating Carns' trial testimony, which was "a critical part of [the] trial evidence."

⁸ FI140, [JCarns_TR_081319_Louisville_00843](#), Page Nos. 15 through 17.

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 8

legislation similarly, having found corporate entities to be representatives of an institution's athletics interests in several major infractions cases.⁹

b. Constitutions 6.4.1, 6.4.2-(a), (b) and (e) and Bylaws 13.02.15-(a), (b) and (e): Adidas is a representative of the institution's athletics interests.

It is uncontested that from May through July 2017, Adidas was the institution's athletics department's primary apparel manufacturer.¹⁰ However, the relationship went far beyond providing millions of dollars of athletics apparel at no cost. For example, pursuant to its sponsorship agreement with the University of Louisville Athletic Association through its representative, Tom Jurich, then director of athletics, between the 2014-15 and 2016-17 academic years, Adidas compensated the institution in excess of \$4 million in semi-annual payments and paid the institution and/or its coaches substantial performance bonuses.¹¹ Additionally, Adidas provided tens of thousands of dollars to support the athletics department's internship program and,¹² according to Carns, worked closely with the athletics department's marketing staff in

⁹ [December 1, 2017, University of Mississippi](#) – athletics apparel retail company and car dealership both found to be representatives of the institution's athletics interests; [July 11, 2007, University of Oklahoma](#) – car dealership found to be a representative of the institution's athletics interests; [October 24, 2000, University of Minnesota, Twin Cities](#) – car dealership found to be a representative of the institution's athletics interests; [November 20, 1996, University of Louisville](#) – local company that provided a car stereo to a student-athlete found to be a representative of the institution's athletics interests.

¹⁰ FI098, [AdidasSponsorshipAgreement_070114_Louisville_00843](#) and the institution's response Page No. 3.

¹¹ FI098, [AdidasSponsorshipAgreement_070114_Louisville_00843](#).

¹² Until at least February 2020, the institution advertised its athletics internship program as the "Louisville Athletics Adidas Internship Program" and described the program as an internship developed by "The University of Louisville Athletic Association, Inc. (ULAA) and its partner, adidas" on the institution's athletics web page. FI178, [LouisvilleAdidasInternshipProgram_022020_Louisville_00843](#). However, as of this reply, the institution has removed any reference to Adidas in the current description of the athletics department internship located on its athletics department website.

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 9

creating promotional pieces such as commercials for the institution's athletics department and its athletics teams.¹³

Adidas' financial contributions to the institution's athletics programs were large, formal and well-known by the institution and its athletics department administration. Furthermore, Adidas actively assisted the institution's athletics marketing staff in promoting the institution's athletics department and its athletics teams. Pursuant to Constitutions 6.4.1, 6.4.2-(a), (b) and (e) and Bylaws 13.02.15-(a), (b) and (e), Adidas is a representative of the institution's athletics interests. It is not a violation of NCAA rules for a corporate entity to be a representative of an institution's athletics interests. However, an institution is responsible for NCAA rules violations committed by one of its representatives. Accordingly, here, the institution is responsible for Code's and Gatto's, two then Adidas employees', provision of a \$100,000 impermissible offer and arrangement of a \$25,000 extra benefit to [REDACTED]

On Page Nos. 21 through 23 of its response, the institution asserts that even if Adidas is considered a representative of the institution's athletics interests, Code's and Gatto's actions were not promoting the institution's athletics programs because in *U.S. v. Gatto*, their convictions were based on the government's theory that they were defrauding the institution and the institution did not know Code and Gatto provided and arranged an offer and extra benefit to [REDACTED]. Both arguments fail.

¹³FI098, [AdidasSponsorshipAgreement_070114_Louisville_00843](#); FI178, [LouisvilleAdidasInternshipProgram_022020_Louisville_00843](#); and FI140, [JCarns_TR_081319_Louisville_00843](#), Page Nos. 15 through 17.

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 10

First, the facts of this case demonstrate that Code and Gatto worked to promote the institution's athletics interests. Code and Gatto provided financial assistance to [REDACTED] to assist one of Adidas' "flagship schools," the institution.¹⁴ As described by Code in a July 10, 2017, recorded conversation, "this is kind of one of those instances where we needed to step up and help one of our flagship schools in Louisville, you know, secure a five-star caliber kid."¹⁵ Code and Gatto were promoting the institution's athletics interests by offering and directing tens of thousands of Adidas dollars to [REDACTED] in return for [REDACTED] to attend the University of Louisville (Louisville). This offer and \$25,000 payment were designed to give Louisville an advantage over compliant programs. They were intended to provide a recruiting and competitive edge to Louisville not available to other programs. To the extent the behaviors harm the institution, those harms were unintended and relate to consequences that follow when hidden violations are exposed. For purposes of this proceeding, the harms from Code and Gatto are that their actions compromised a student-athlete's eligibility and the institution's compliance with NCAA rules.

Second, boosters involved in offer, inducement and extra-benefit violations rarely report their impermissible activities to the institution's athletics compliance office. As in any other impermissible inducement or extra-benefit case involving a booster, it is not necessary that the institution knew or should have known that the booster committed the violation. Rather, it is only necessary that the institution knew or should have known that Adidas engaged in one or more behaviors listed in Bylaw 13.02.15.¹⁶ As detailed above, the institution's administration knew or

¹⁴ FI035, [Audio Transcript 071017 Exhibit57T GattoTrial](#), Page Nos. 1 and 2.

¹⁵ FI035, [Audio Transcript 071017 Exhibit57T GattoTrial](#), Page Nos. 1 and 2.

¹⁶ See Constitution 6.4.1 and Bylaw 13.02.15.

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 11

should have known that Adidas was its booster. It should have been very clear to Louisville that if Adidas employees offered or arranged to provide hundreds of thousands of dollars for a prospect to enroll based on his basketball ability, something not available to the general student population or compliant schools, this conduct would be an NCAA violation attributable to the institution.

2. Allegation No. 1-c – Fair was knowingly involved in the provision of an impermissible inducement to Augustine.

██ lived in ██████████
████████████████████ and were unhappy with his nonscholastic and high school basketball teams.¹⁷
At this time, Augustine and ██████████ operated and coached ██████████ a nonscholastic boys' basketball team in the ██████████. On May 4, 2017, ██████████ met with Augustine, ██████████ and ██████████ at a ██████████ and discussed ██████████ joining ██████████.¹⁸ ██████████ agreed to join ██████████ and relocated to the ██████████.¹⁹ Augustine provided ██████████ (a) a job with ██████████, Augustine's non-profit organization, paying ██████████ \$2,500 per month; (b) financial assistance for ██████████ to move and rent an apartment in ██████████; and (c) \$1,500 cash for a deposit at ██████████ new private high school.²⁰ Additionally, Augustine began providing ██████████ training at no cost.²¹ As a result, by July 2017, Augustine had spent thousands of dollars in securing ██████████ for ██████████

¹⁷ FI152, ██████████ [TR_091118_Louisville_00843](#), Page No. 7.

¹⁸ FI135, [TextBetween ██████████ and Brad_2017_Louisville_00843](#) and FI152, ██████████ [TR_091118_Louisville_00843](#), Page No. 8.

¹⁹ FI152, ██████████ [TR_091118_Louisville_00843](#), Page Nos. 9, 10, 11 and 15.

²⁰ FI135, [TextBetween ██████████ and Brad_2017_Louisville_00843](#) and FI152, ██████████ [TR_091118_Louisville_00843](#), Page Nos. 56 through 61.

²¹ FI152, ██████████ [TR_091118_Louisville_00843](#), Page Nos. 10 and 11.

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 12

Augustine and Fair were familiar with each other from Fair's prior experience coaching high school and nonscholastic boys' basketball in [REDACTED].²² [REDACTED] Augustine contacted Fair and recommended that the institution begin recruiting [REDACTED].²³ Shortly thereafter, Fair began communicating with [REDACTED].²⁴ [REDACTED] Fair attended a nonscholastic boys' basketball event in Las Vegas. During the event, Fair agreed to meet Augustine and Dawkins, who Fair became acquainted with during [REDACTED] brief recruitment, at a Las Vegas hotel to discuss [REDACTED] recruitment.²⁵ Although the meeting was originally planned for the hotel's bar, it actually occurred in a guest room with Augustine, Dawkins and two additional individuals, Martin Blazer, a financial advisor, and Jeff DeAngelo (DeAngelo), an undercover FBI agent.²⁶

In Fair's presence, Augustine, Dawkins and the others discussed making payments to secure [REDACTED] enrollment at the institution, and DeAngelo passed an envelope containing between \$11,000 and \$12,700 in cash to Augustine.²⁷ During these discussions, Fair failed to discourage the group from carrying out the plan, leave the room, remove himself from the discussions, or specifically instruct Augustine or Dawkins that the institution was not interested in having any involvement in this effort to impermissibly induce [REDACTED].²⁸ Rather, in response to Dawkins

²² FI182, [JFair_TR_022120_Louisville_00843](#), Page Nos. 81 and 82.

²³ FI182, [JFair_TR_022120_Louisville_00843](#), Page No. 87.

²⁴ FI182, [JFair_TR_022120_Louisville_00843](#), Page No. 90.

²⁵ FI182, [JFair_TR_022120_Louisville_00843](#), Page Nos. 103 through 109.

²⁶ FI182, [JFair_TR_022120_Louisville_00843](#), Page Nos. 104 through 107 and [FI011_MBlazerTestimonyTranscript_042519_DawkinsTrial](#), Page Nos. 437 and 438.

²⁷ FI001, [Gatto Complaint](#), Page Nos. 20 through 22; FI002, [Gatto Superseding Indictment](#), Page Nos. 20 and 21; FI011, [MBlazerTestimonyTranscript_042519_DawkinsTrial](#), Page Nos. 437 through 439; FI182, [JFair_TR_022120_Louisville_00843](#), Page Nos. 103 through 125; FI145, [MBlazer_TR_071819_Louisville_00843](#), Page Nos. 26 through 38; and FI146, [MBlazer_TR_082719_Louisville_00843](#).

²⁸ FI182, [JFair_TR_022120_Louisville_00843](#), Page Nos. 103 through 125.

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 13

stating that the group needed to be careful in how the money was provided to [REDACTED] because the institution was on NCAA probation, Fair instructed the others that, "*we* gotta be very low key."²⁹ Additionally, Fair never reported the incident to the institution or ceased the recruitment of [REDACTED] after leaving the hotel room.³⁰ In fact, within days, Fair [REDACTED] [REDACTED] and the institution's recruitment of [REDACTED] did not cease until after release of the *U.S. v. Gatto* complaint.³¹

The institution asserts that Fair departed the Las Vegas hotel room before DeAngelo passed Augustine the envelope of cash and erroneously refers to paragraph 36-(e) in the *U.S. v. Gatto* complaint as supporting its position. During his February 2020 interview with the enforcement staff, Fair reported that he did not see the envelope of cash passed to anyone in the room; however, both the *U.S. v. Gatto* complaint and its superseding indictment, which were drafted by federal authorities who had access to audio and video recordings of the hotel room meeting, state Fair was present when Augustine received the envelope of cash.³² For purposes of this analysis, it is not material whether Fair actually observed the envelope of cash change hands.

Fair did not attend this meeting as a casual bystander. Fair was at this meeting representing the institution as its assistant men's basketball coach tasked with recruiting [REDACTED] so that everyone involved in providing and benefiting from the financial inducements funneled to [REDACTED] and/or Augustine was in agreement and understood the plan. Fair's subsequent explanation that he wanted nothing to do with the meeting despite being heard on an audio recording telling the group "*we*

²⁹ FI001, [Gatto Complaint](#), Page No. 21 and FI182, [JFair TR 022120 Louisville 00843](#), Page Nos. 115 and 116.

³⁰ FI182, [JFair TR 022120 Louisville 00843](#), Page Nos. 126 and 131 through 133.

³¹ FI182, [JFair TR 022120 Louisville 00843](#), Page Nos. 91 and 126.

³² FI001, [Gatto Complaint](#), Page No. 21 and FI002, [Gatto Superseding Indictment](#), Page No. 20.

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 14

gotta be very low key" is illogical and not credible. It is irrelevant if the multiple thousands of dollars provided to Augustine actually made it to [REDACTED] coffers or if Fair watched the transaction occur. The inducement occurred as soon as the parties provided the envelope of cash to Augustine to persuade [REDACTED] enrollment at the institution.³³ Based on his participation in the [REDACTED], meeting, his silent and verbal endorsement of the plan to induce [REDACTED] through payments to Augustine and his continued recruitment of [REDACTED] after the meeting, Fair acted unethically and was knowingly involved in the provision of between \$11,000 and \$12,700 in an impermissible inducement to Augustine [REDACTED].

3. Allegation No. 1-d – The factual information supports that Johnson provided [REDACTED] an extra benefit.

Following [REDACTED] [REDACTED] enrollment at the institution, [REDACTED] [REDACTED] relocated to the institution's locale. During their transition to the Louisville area, [REDACTED] requested Johnson's assistance in locating storage facilities and realtors.³⁴ Johnson obliged and referred [REDACTED] parents to various individuals who might be of assistance with their move.³⁵ Eventually, [REDACTED] parents found a residence at the Galt House, a hotel and apartment development in downtown Louisville.

[REDACTED] sent Johnson a text message stating, "Hey Kenny how's it going, hey let's meet up today so we can get some things hashed out. Thanks."³⁶ Following [REDACTED]

³³ FI196, [COIPublicReport 061517 Louisville 00843](#). The Committee on Infractions found that a member of the institution's men's basketball staff violated Bylaw 13.2.1 when he provided prostitutes to nonscholastic boys' basketball coaches.

³⁴ FI097, [K.Johnson 4-1-17 to 10-2-17, 301-326-0616](#), June 4 through 12, 2017.

³⁵ FI097, [K.Johnson 4-1-17 to 10-2-17, 301-326-0616](#), June 4 through 12, 2017.

³⁶ FI097, [K.Johnson 4-1-17 to 10-2-17, 301-326-0616](#).

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 15

text message, he met Johnson in the parking lot of a Louisville gas station.³⁷ During the *U.S. v. Gatto* trial, [REDACTED] testified under oath and subject to the penalty of perjury that he and Johnson discussed Johnson providing him \$2,000 to assist with his monthly rent; however, Johnson informed [REDACTED] that he could not fulfill his request and did not provide him any financial assistance at that time.³⁸

On August 23, 2017, at 1:29 p.m., [REDACTED] sent Johnson a text message stating, "Hey Ken how's it going wanna get together to square up."³⁹ Within eight minutes, at 1:37 p.m., Johnson responded and said, "OK. Call you later on."⁴⁰ [REDACTED] testified, again under oath and subject to the penalty of perjury, that his message was referring to money.⁴¹ Within six minutes of Johnson's response to [REDACTED] at 1:41 p.m., Fair sent a text message to Johnson asking, "Where u at."⁴² At 1:42 p.m., Johnson responded, "Bank ... whats up."⁴³ [REDACTED] testified that following his request to "square up," he and Johnson met outside the Galt House and Johnson provided him \$1,300 in cash.⁴⁴

While the financial records Johnson provided to the enforcement staff during this investigation do not reflect a \$1,300 withdrawal August 23, 2017,⁴⁵ Johnson made a \$1,100 cash withdrawal

³⁷ FI004, [REDACTED] [TestimonyTranscript_100918_GattoTrial](#), Page Nos. 615 through 617 and FI147, [K.Johnson_wExhibits_TR_031919_Louisville_00843](#), Page Nos. 18 through 22.

³⁸ FI004, [REDACTED] [TestimonyTranscript_100918_GattoTrial](#), Page Nos. 615 through 617.

³⁹ FI097, [K.Johnson 4-1-17 to 10-2-17, 301-326-0616, August 23, 2017](#).

⁴⁰ FI097, [K.Johnson 4-1-17 to 10-2-17, 301-326-0616, August 23, 2017](#).

⁴¹ FI004, [REDACTED] [TestimonyTranscript_100918_GattoTrial](#), Page No. 618.

⁴² FI097, [K.Johnson 4-1-17 to 10-2-17, 301-326-0616, August 23, 2017](#).

⁴³ FI097, [K.Johnson 4-1-17 to 10-2-17, 301-326-0616, August 23, 2017](#).

⁴⁴ FI004, [REDACTED] [TestimonyTranscript_100918_GattoTrial](#), Page Nos. 617 through 619.

⁴⁵ Johnson provided a number of financial records during this case's investigation. Johnson's bank account records reflected online transfers to an account ending in [REDACTED]; however, Johnson refused to provide records for the [REDACTED] account based on his representation that the account in question belonged to [REDACTED] FI191, [FileExplanation_061919_Louisville_00843](#).

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 16

August 24, 2017.⁴⁶ When asked why he withdrew \$1,100 cash on that day, Johnson stated: "Because I wanted to have \$1,100. I don't -- I don't know -- I don't have a set reason for withdrawing that money."⁴⁷

The factual information is credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs, and the enforcement staff believes the information demonstrates that Johnson provided [REDACTED] an individual who consistently sought compensation related to his son's basketball abilities, a \$1,300 extra benefit.⁴⁸

4. Allegation No. 1-e – Fair provided Augustine an \$800 impermissible inducement.

[REDACTED] Augustine paid for and accompanied [REDACTED] to complete an unofficial visit to the institution. Augustine purchased [REDACTED] roundtrip airfare, hotel room, a portion of their meals and paid for the rental car they used during the visit.⁴⁹

Based on information presented during the *U.S. v. Gatto* trial, the enforcement staff questioned Fair about his possible provision of cash to a men's basketball prospective student-athlete during his February 21, 2020, NCAA interview.⁵⁰ Fair reported that he provided \$800 cash to Augustine through Johnson to compensate Augustine for the money he spent on [REDACTED] unofficial visit to the institution.⁵¹ Fair stated that around [REDACTED] and near the end of [REDACTED] unofficial visit to the institution, Johnson requested Fair provide him \$800.⁵² Fair provided

⁴⁶ FI187, [KJohnson WithdrawalAccount7383_082417_Louisville_00843](#).

⁴⁷ FI183, [KJohnson TR_040920_Louisville_00843](#), Page No. 15.

⁴⁸ [Kenneth Johnson NCAA Response 091620](#), Page Nos. 1, 2, 3 and 6.

⁴⁹ FI152, [\[REDACTED\] TR_091118_Louisville_00843](#), Page Nos. 40 through 51.

⁵⁰ FI003, [JCarnsand \[REDACTED\] TestimonyTranscript_100418_GattoTrial](#), Page No. 401.

⁵¹ FI182, [JFair TR_022120_Louisville_00843](#), Page Nos. 151 through 160.

⁵² FI182, [JFair TR_022120_Louisville_00843](#), Page Nos. 151 through 160.

Johnson, who he considered his mentor, the cash without asking any questions.⁵³ A few weeks after providing Johnson the cash, Fair confirmed through Johnson and Augustine that the \$800 was used to reimburse Augustine for the money he spent on [REDACTED] unofficial visit to the institution.⁵⁴

Fair reported this violation to the enforcement staff during his interview and implicated himself in this violation. This allegation is based on credible factual information.

D. Remaining issues.

1. Is Adidas a representative of the institution's athletics interests?
2. Does the factual information substantiate that Fair was knowingly involved in the provision of an \$11,000 to \$12,700 impermissible inducement to Augustine?
3. Does the factual information substantiate that Johnson provided [REDACTED] a \$1,300 extra benefit?
4. Does the factual information substantiate that Fair provided Augustine an \$800 impermissible inducement?
5. Is Allegation No. 1 Level I?

E. Rebuttal information.

1. Apparel companies' sponsorship of nonscholastic basketball events.

The institution argues that, should Adidas be considered a representative of the institution's athletics interests, any prospects who participate in an apparel company's sponsored nonscholastic

⁵³ FI182, [JFair TR 022120 Louisville 00843](#), Page Nos. 151 through 160.

⁵⁴ FI182, [JFair TR 022120 Louisville 00843](#), Page Nos. 151 through 160.

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 18

basketball event would lose their amateur status pursuant to Bylaw 12.1. The argument is incorrect. NCAA legislation and interpretive guidance specific to boosters providing pre-enrollment expenses specifically addresses the institution's concern that all apparel company nonscholastic basketball event participants would jeopardize their eligibility. Specifically, an August 22, 2012, interpretation regarding boosters' involvement with sports clubs states that it is permissible for a booster to provide pre-enrollment expenses to a sports club "provided the representative acts independently of the institution and does not engage in any recruiting activities." ⁵⁵

2. Fair was present at the Las Vegas hotel room meeting because he was the institution's coach recruiting [REDACTED]

In their responses, the institution and Fair attempt to portray Fair as an unknowing bystander caught in a situation out of his control. However, as previously detailed in section II-C-2, Fair reported that he met Augustine and Dawkins to discuss [REDACTED] recruitment, and he informed the parties that "we gotta be very low key" when the group was discussing providing cash to [REDACTED] to influence his enrollment at the institution. Fair did not say "you" or "they" need to be "low key;" he said "we," and he included himself in the arrangement. Fair's choice in pronouns clearly indicates his knowing involvement in this violation.

3. Importation pursuant to Bylaw 19.7.8.3.1.

Johnson challenges the importation of information from *U.S. v. Gatto*. The institution and enforcement staff agree that the hearing panel has the authority to import information from *U.S. v. Gatto* pursuant to Bylaw 19.7.8.3.1; therefore, facts and evidence taken from this federal case are properly included in the record for consideration by this hearing panel.

⁵⁵ FI192, [RepresentativesOfInstitutionsAthleticsInterestsInSportsClubs_082212_Louisville_00843](#).

Like much of NCAA Article 19, the importation legislation assists the Committee on Infractions in making fully informed decisions by giving hearing panel members access to all available and relevant information. Confirming the hearing panel's permissive authority to take "judicial notice" of evidence admitted in federal court proceedings is wholly unremarkable. Johnson's contrary position on importation is not supported by the bylaw language, the clear purposes of Article 19 or any other authority.

Further, the enforcement staff does not purport to import a jury verdict under appeal. Instead, the enforcement staff simply imported facts and evidence admitted into the proceeding and those facts and that evidence remain probative regardless of whether a verdict is ultimately affirmed or reversed on appeal. Contrary to Johnson's suggestion, the bylaw does not require that he have the ability to confront those who testified in this federal case or the exhaustion of all appellate remedies before underlying facts may be considered in the infractions process. Johnson's position would undermine Article 19 by depriving the hearing panel of pertinent information and delaying the processing of an infractions case. While the hearing panel may opt to assign little or no weight to imported information, its members should at least be permitted to consider facts admitted in federal court proceedings on a related matter.

4. [REDACTED] credibility.

In his response, Johnson works hard to undermine [REDACTED] credibility as it relates to his sworn testimony concerning Johnson providing him \$1,300 in cash. Johnson attacks [REDACTED] credibility as it relates to him; however, he endorses as true [REDACTED] testimony that he received cash and benefits from nonscholastic basketball programs and a prep school and thousands of

dollars in offers from NCAA member institutions.⁵⁶ According to Johnson, [REDACTED] is only reliable when his testimony implicates someone other than Johnson.

Additionally, in its response, the institution relies heavily on the federal government's theory that the institution was an unknowing victim of Code's and Gatto's provision and arrangement of an impermissible offer and extra benefit to [REDACTED].⁵⁷ The federal government presented [REDACTED] as a witness and his testimony about Johnson's impermissible \$1,300 payment. If [REDACTED] credibility was in question regarding Johnson's extra benefit, the federal government would not have risked presenting potentially suspect evidence that could have undermined its theory of the case; i.e., evidence of an institutional representative, Johnson, knowingly providing [REDACTED] \$1,300 in cash, which also rendered [REDACTED] ineligible to compete.

Furthermore, during his March 19, 2019, interview with the enforcement staff, Johnson also attempted to discredit [REDACTED] by reporting that [REDACTED] never mentioned to him that he was supposed to provide [REDACTED] financial assistance with his rent.⁵⁸ However, Fair contradicted Johnson's statements and reported that Johnson was upset that [REDACTED] asked him for money.⁵⁹ Fair's statement corroborates [REDACTED] report that he asked Johnson for money.

5. Fair's confirmation of the \$800 payment to Augustine.

The institution asserts that Fair neither recalled having a conversation with Johnson about the \$800 payment nor identified any conversation in which Augustine discussed receiving the money

⁵⁶ [Kenneth Johnson NCAA Response 091620](#), Page Nos. 1, 2, 3 and 6.

⁵⁷ [NOAResponse_091620_Louisville_00843](#), Page Nos. 1 through 9.

⁵⁸ FI147, [KJohnson_wExhibits_TR_031919_Louisville_00843](#), Page Nos. 20 through 26.

⁵⁹ FI182, [JFair_TR_022120_Louisville_00843](#), Page Nos. 162 and 163.

from Johnson.⁶⁰ On Page Nos. 156 and 158 of his February 21, 2020, interview with the enforcement staff, Fair specifically stated he confirmed by talking with Johnson and Augustine that the \$800 he provided Johnson went to Augustine. Although Fair could not specifically recall the exact timing of those conversations in relation to the publication of the *U.S. v. Gatto* complaint, he never stated that he could not recall either of the conversations occurring.

F. Additional matters that relate to Allegation No. 1.

The enforcement staff's analysis in not naming Johnson in Allegation No. 1-e.

In his April 9, 2020, interview with the enforcement staff, Johnson denied any involvement in Fair's \$800 payment to Augustine. Additionally, Augustine refused to cooperate or interview during this investigation. Based on the conflicting factual information present in support of naming Johnson's and Fair's admission to impermissibly compensating Augustine \$800, the enforcement staff did not name Johnson in Allegation No. 1-e.

III. ALLEGATION NO. 2 – From July 2016 through September 2017, Fair and Johnson participated in impermissible recruiting activities related to a then men's basketball prospective student-athlete and individuals associated with men's basketball prospective student-athletes, which included committing impermissible recruiting contacts and providing impermissible transportation. [NCAA Division I Manual Bylaws 13.02.5.2 (2015-16); 13.1.6.2.1-(b) (2016-17); and 13.5.3 (2016-17 and 2017-18)]

A. Overview.

The institution agrees with Allegation Nos. 2-a and c; however, it disagrees that the factual information supporting Allegation No. 2-b constitutes a violation of Bylaw 13.1.6.2.1-(b). Johnson disagrees with Allegation No. 2 and argues the factual information supporting the allegation is not

⁶⁰ [NOAResponse_091620_Louisville_00843](#), Page No. 41.

credible and/or does not constitute NCAA violations. Fair disagrees with Allegation No. 2-c and states that Bylaw 13.5.3 does not pertain to his provision of transportation to Augustine and Dawkins.

B. Enforcement staff's position as to why the violations should be considered Level II [NCAA Bylaw 19.1.2] and if the institution and involved individuals are in agreement.

The enforcement staff believes a hearing panel could conclude that Allegation No. 2 is a significant breach of conduct (Level II) because the violations (a) were intentional; (b) were not isolated or limited; (c) involved multiple recruiting violations; (d) provided or were intended to provide more than a minimal recruiting advantage; (e) even if individually Level III, are collectively Level II violations; and (f) compromised the integrity of the NCAA Collegiate Model.

The institution agrees with only Allegation Nos. 2-a and c and believes that those violations should be classified as Level III. Fair and Johnson disagree with Allegation No. 2 and did not include a position related to the allegation's level.

C. Enforcement staff's review of facts related to the allegation.

From July 2016 through May 2017, Johnson had impermissible recruiting contacts with [REDACTED] and representatives from a nonscholastic boys' basketball program and provided impermissible transportation to Dawkins during [REDACTED] unofficial visit to the institution. [REDACTED] Fair provided impermissible transportation to Dawkins during [REDACTED] unofficial visit and Augustine during [REDACTED] unofficial visit.

1. Allegation No. 2-a – Johnson had impermissible contact with [REDACTED] while he was competing in an NCAA-certified event during an evaluation period.

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 23

[REDACTED] ⁶¹

Johnson was also present during the [REDACTED] event recruiting for the institution's men's basketball team.⁶² During the period of the event, [REDACTED] was walking through a hotel casino when he came into contact with Johnson, who was also passing through the same area.⁶³ Johnson and [REDACTED] stopped and spoke with each other for approximately five to 10 minutes.⁶⁴ According to [REDACTED] during their conversation, Johnson gave him his "spiel" about the institution.⁶⁵ Johnson and [REDACTED] discussion occurred during a designated NCAA evaluation period, and NCAA legislation prohibited Johnson from having in-person, off-campus contact with [REDACTED] beyond an exchange of a greeting. Johnson's five- to 10-minute "spiel" about the institution violated NCAA recruiting legislation.⁶⁶

2. Allegation No. 2-b – Johnson had impermissible contact with representatives of a nonscholastic boys' basketball program during an evaluation period and while it was competing in an NCAA-certified event.

From April 28 through April 30, 2017, Team United, a nonscholastic boys' basketball team, participated in an NCAA-certified event (event) in the Indianapolis, Indiana area.⁶⁷ Ced Canty

⁶¹ FI139, [REDACTED] [IS 111717 Louisville 00843 RefusedtoSign](#), Page No. 7;

FI111, [LevelIIISelfReport 121117 Louisville 00843](#); and
FI099, [KJContactEvaluationReport June-Aug2016 Louisville 00843](#).

⁶² FI111, [LevelIIISelfReport 121117 Louisville 00843](#);

FI147, [KJohnson wExhibits TR 031919 Louisville 00843](#), Page Nos. 27 through 31; and

FI099, [KJContactEvaluationReport June-Aug2016 Louisville 00843](#).

⁶³ FI139, [REDACTED] [IS 111717 Louisville 00843 RefusedtoSign](#), Page No. 7.

⁶⁴ FI139, [REDACTED] [IS 111717 Louisville 00843 RefusedtoSign](#), Page No. 7.

⁶⁵ FI111, [LevelIIISelfReport 121117 Louisville 00843](#);

FI139, [REDACTED] [IS 111717 Louisville 00843 RefusedtoSign](#), Page No. 7; FI120, [REDACTED] [Chat with Chris Dawkins](#), Page No. 12; and FI118, [REDACTED] [Chat with Coach Kenny \(Louisville\)](#), Page No. 1.

⁶⁶ FI111, [LevelIIISelfReport 121117 Louisville 00843](#).

⁶⁷ FI173, [NCAACertifiedEventSchedule 042817 Louisville 00843](#).

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 24

(Canty), AAU administrator for Team United,⁶⁸ and the Team United coaches accompanied their men's basketball prospective student-athletes to the event.⁶⁸ On April 26, 2017, two days before the event, Johnson contacted Canty and numerous other individuals associated with other nonscholastic boys' basketball teams participating in the event and invited them to a social function (function) hosted by Phillip Thomas (P. Thomas), Johnson's friend, at Epic Ultra Lounge (Epic), a nightclub in Indianapolis.⁶⁹ During the late evening of April 28 and early morning of April 29, 2017, and during the period of the event, Canty, the Team United coaches and other nonscholastic coaches participating in the event attended the function.⁷⁰ Johnson was also present at the function and impermissibly interacted with Canty and at least witnessed the Team United coaches present at the nightclub.⁷¹

Johnson invited Canty and the Team United coaches,⁷² individuals associated with Team United's men's basketball prospective student-athletes, to the function and interacted with at least Canty while Team United was participating in the event. Johnson's contact with Canty and the Team United coaches was prearranged by Johnson when he invited them to the function and then was present to interact with them at Epic. Despite Johnson agreeing that he communicated with those in attendance at Epic April 28 and 29, 2017, which is prohibited under Bylaw 13.1.6.2.1-(b), the institution disagrees that Johnson's level of communication violated the bylaw. The institution

⁶⁸ FI144, [CCanty TR 100919 Louisville 00843](#), Page Nos. 11 and 12.

⁶⁹ FI097, [K.Johnson 4-1-17 to 10-2-17, 301-326-0616](#), April 26, 2017.

⁷⁰ FI144, [CCanty TR 100919 Louisville 00843](#), Page Nos. 11 through 23 and FI097, [K.Johnson 4-1-17 to 10-2-17, 301-326-0616](#), April 28 and 29, 2017.

⁷¹ FI144, [CCanty TR 100919 Louisville 00843](#), Page Nos. 11 through 23; FI097, [K.Johnson 4-1-17 to 10-2-17, 301-326-0616](#), April 28 and 29, 2017; and FI147, [K.Johnson wExhibits TR 031919 Louisville 00843](#), Page Nos. 120 through 129.

⁷² FI097, [K.Johnson 4-1-17 to 10-2-17, 301-326-0616](#), May 23, 2017 at 9:21 P.M., Canty is referring a Team United prospect to Johnson and Johnson begins discussing the institution's interest in recruiting the prospect with Fair.

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 25

asserts that Johnson's interaction with Canty and the other nonscholastic coaches present at Epic amounted to nothing more than an exchange of a greeting. However, the institution disregarded that Johnson prearranged his interaction with Canty and the nonscholastic coaches, which makes any face-to-face encounter a contact regardless of whether any conversation occurs, pursuant to Bylaw 13.02.4.

The institution and Johnson also contest that Canty was either a coach or an individual associated with a prospective student-athlete at the time Johnson had prearranged contact with him, the Team United coaches and the other invited nonscholastic coaches present at Epic. During his enforcement interview, Canty reported that he was a former official Team United coach who currently traveled with and assisted Team United in marketing the program, web development and whatever area was necessary.⁷³ Additionally, Canty reported that Johnson communicated with him when recruiting 2017 Team United men's basketball prospective student-athlete [REDACTED].⁷⁴ Further, as recently as September 2019, a media article identified Canty as the director of Team United. In that article, Canty commented on a Team United men's basketball prospective student-athlete under the "What Banks' Coaches Said" section of the article.⁷⁵ Despite Johnson's and the institution's contentions, Canty and the other nonscholastic coaches present at the prearranged function at Epic were either coaches or individuals associated with prospective student-athletes, and Johnson violated Bylaw 13.1.6.2.1-(b).

⁷³ FI144, [CCanty_TR_100919_Louisville_00843](#), Page Nos. 1 through 11.

⁷⁴ As of November 3, 2020, according to the institution's 2017-18 men's basketball roster located on its public website, [REDACTED] was an enrolled freshman men's basketball student-athlete at the institution for the 2017-18 academic year, just months after the April 2017 function at Epic. FI144, [CCanty_TR_100919_Louisville_00843](#), Page Nos. 4, 5 and 7.

⁷⁵ FI197, [JBanksArticle_090219_Louisville_00843](#).

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 26

3. Allegation Nos. 2-c-(1) and c-(2) – Johnson and Fair provided Dawkins and Fair provided Augustine impermissible transportation during unofficial visits to the institution.

a. Fair's and Johnson's provision of impermissible transportation to Dawkins.

[REDACTED] a friend of [REDACTED] Dawkins and [REDACTED] completed an unofficial visit to the institution.⁷⁶ Johnson, the assistant coach leading the brief recruitment of [REDACTED] communicated about and planned the visit with Dawkins, which included sending Dawkins the visit schedule for his review.⁷⁷ Dawkins travelled by airplane to Louisville separate from [REDACTED] for the visit.⁷⁸ Upon Dawkins' arrival at the Louisville airport, Johnson transported him from the airport to his hotel.⁷⁹ Later in the visit and at Johnson's request, Fair transported Dawkins from his hotel to the institution.⁸⁰ Fair and Johnson provided Dawkins approximately nine miles of impermissible transportation during [REDACTED] unofficial visit.⁸¹ The institution and enforcement staff agree that Fair and Johnson committed NCAA violations, which is supported by interpretive guidance.⁸²

b. Fair's provision of impermissible transportation to Augustine.

⁷⁶ FI147, [KJohnson wExhibits TR 031919 Louisville 00843](#), Page No. 34 and FI109, [REDACTED] [UV Paperwork](#).

⁷⁷ FI097, [KJohnson 4-1-17 to 10-2-17, 301-326-0616](#); May 26 through 28, 2017, and FI147, [KJohnson wExhibits TR 031919 Louisville 00843](#), Page Nos. 41 and 42.

⁷⁸ FI097, [KJohnson 4-1-17 to 10-2-17, 301-326-0616](#), May 28, 2017.

⁷⁹ FI097, [KJohnson 4-1-17 to 10-2-17, 301-326-0616](#), May 26 through 28, 2017, and FI147, [KJohnson wExhibits TR 031919 Louisville 00843](#), Page Nos. 35 and 36.

⁸⁰ FI182, [JFair TR 022120 Louisville 00843](#), Page Nos. 52 and 53.

⁸¹ FI172, [Internal Interpretation 021220 Louisville 00843](#);

FI184, [DistanceBetweenDowntownMarriottandInstitution 040820 Louisville 00843](#); and

FI185, [DistanceBetweenAirportandDowntownMarriott 040820 Louisville 00843](#).

⁸² FI172, [Internal Interpretation 021220 Louisville 00843](#).

From [REDACTED], Augustine, [REDACTED] completed an unofficial visit to the institution.⁸³ During the visit, Fair provided Augustine roundtrip transportation between Augustine's hotel and a Louisville bar.⁸⁴ During his February 21, 2020, interview with the enforcement staff, Fair acknowledged he provided impermissible transportation to Augustine, which was approximately 15 miles. He now contests the allegation, despite interpretive guidance supporting the institution and enforcement staff's agreement that he committed an NCAA violation.⁸⁵

D. Remaining issues.

1. Does the factual information support that Johnson had an impermissible contact with [REDACTED] in [REDACTED]?
2. Does the factual information support that Johnson had impermissible contact and/or communication with coaches and individuals associated with prospective student-athletes during an [REDACTED] NCAA-certified event?
3. Did Fair and Johnson violate Bylaw 13.5.3 when they provided Dawkins off-campus transportation during [REDACTED] unofficial visit?
4. Did Fair violate Bylaw 13.5.3 when he provided Augustine off-campus transportation during [REDACTED] unofficial visit?
5. Is Allegation No. 2 Level II?

⁸³ FI112, [REDACTED] [UV Paperwork](#) and FI182, [JFair_TR_022120_Louisville_00843](#), Page No. 93.

⁸⁴ FI182, [JFair_TR_022120_Louisville_00843](#), Page Nos. 130 and 131.

⁸⁵ FI172, [InternalInterpretation_021220_Louisville_00843](#); FI182, [JFair_TR_022120_Louisville_00843](#), Page No. 131;

FI186, [DistanceBetweenCandlewoodSuitesand8Up_040720_Louisville_00843](#); and [NOAResponse_10:01:2020_Louisville_00843_JFair](#), Page No. 13.

E. Rebuttal information.

1. Johnson's version of the [REDACTED] contact with [REDACTED]

On Page Nos. 25 and 26 of his response, Johnson presents a group of [REDACTED], text messages between him and [REDACTED]. Johnson provides this information in support of his representation that his [REDACTED] communication with [REDACTED] about the institution was limited to these messages rather than the five- to 10-minute conversation [REDACTED] recall he had with [REDACTED] in the lobby of a [REDACTED] hotel. However, when reading these messages, they appear to be Johnson following up on a prior conversation. Johnson is only forwarding his contact information, something that typically occurs after two individuals meet and discuss a topic that requires further communication (e.g., an institution's interest in a prospective student-athlete) and appears to be confirming the topics they previously discussed.

2. The Epic social function.

Johnson presents affidavits from Canty and P. Thomas as exhibits in his response. Johnson and/or his counsel gathered these affidavits without providing notice to the committee or the enforcement staff following the enforcement staff's issuance of the notice of allegations. Despite claiming in his affidavit that he travelled to the Indianapolis area to visit family in April 2017, during his October 9, 2019, interview with the enforcement staff, Canty never reported that he traveled to the Indianapolis area in April 2017 for any reason other than Team United's participation in the NCAA-certified event.

Regarding P. Thomas' affidavit in support of Johnson's position, it should be noted that during this investigation, the institution made numerous attempts to schedule an NCAA interview with P. Thomas; however, he refused to cooperate with those requests.⁸⁶

IV. ALLEGATION NO. 3 – From May 27 through June 1, 2017, Pitino failed to promote an atmosphere for compliance within the men's basketball program after Gatto informed him that he would assist in the recruitment of [REDACTED]. Pitino failed to conduct any additional inquiry or report Gatto's offer of assistance to the institution's compliance staff despite [REDACTED] belated interest in the institution, Pitino's knowledge of another institution's alleged cash offer for [REDACTED] commitment and Gatto possessing inside knowledge of the institution's interest in and recruitment of [REDACTED] [NCAA Division I Manual Bylaw 11.1.1.1 (2016-17)]

A. Overview.

The institution and Pitino do not agree that Pitino failed to promote an atmosphere for compliance within the men's basketball program.

B. Enforcement staff's position as to why the violation should be considered Level II [NCAA Bylaw 19.1.2] and if the institution and involved individual are in agreement.

The enforcement staff believes a hearing panel could conclude that Allegation No. 3 is a significant breach of conduct (Level II) because it is a head coach responsibility violation and compromised the integrity of the NCAA Collegiate Model. The institution and Pitino disagree with Allegation No. 3 and did not provide a position regarding its level.

C. Enforcement staff's review of facts related to the allegation.

[REDACTED] and without any prior notice, Dawkins contacted Pitino and asked if the institution was interested in [REDACTED] enrolling at the institution for the 2017-18 academic year as a

⁸⁶ FI193, [NLeffler Email CSmrt SpaldingMooreThomasBallardInterview_082119_Louisville_00843](#).

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 30

freshman men's basketball student-athlete.⁸⁷ [REDACTED]

[REDACTED]

[REDACTED]

The institution did not actively recruit [REDACTED] and he had not previously shown interest in Louisville. Given Pitino's unfamiliarity with one of the nation's top-ranked prospects, he contacted Johnson via text message and asked if the institution should be interested in [REDACTED].⁸⁸ After Johnson confirmed [REDACTED] basketball skills and reminded Pitino that he previously watched [REDACTED] play against another prominent prospect, Pitino met with his staff via conference call for additional discussion about [REDACTED].⁸⁹ Within 24 hours, Johnson and Pitino began communicating with Dawkins, [REDACTED] about the institution's interest in [REDACTED].⁹⁰ Between [REDACTED] and the institution's public announcement of [REDACTED] commitment [REDACTED] the institution, [REDACTED] and Dawkins quickly and privately worked together to complete a condensed recruitment out of the media spotlight, which included an unofficial visit to the institution.⁹¹ As reflected in a May 25, 2017, text message from Johnson to Pitino, Dawkins was interested in keeping [REDACTED]'s unofficial visit to the institution quiet "so that the other schools don't get wind of it and start blowing [REDACTED] up."⁹²

⁸⁷ FI097, [K.Johnson 4-1-17 to 10-2-17, 301-326-0616](#), May 23, 2017 at 9:26 p.m.

⁸⁸ FI097, [K.Johnson 4-1-17 to 10-2-17, 301-326-0616](#), May 23, 2017 at 9:26 p.m.

⁸⁹ FI097, [K.Johnson 4-1-17 to 10-2-17, 301-326-0616](#), May 23, 2017, at 9:26 through 9:55 p.m.

⁹⁰ FI097, [K.Johnson 4-1-17 to 10-2-17, 301-326-0616](#), May 23 at 9:26 p.m. through May 24, 2017 at 5:44 p.m. and FI120, [Chat with Chris Dawkins](#), Page No.12.

⁹¹ FI097, [K.Johnson 4-1-17 to 10-2-17, 301-326-0616](#), May 25, 2017, at 9:44 and 9:45 p.m.

⁹² FI097, [K.Johnson 4-1-17 to 10-2-17, 301-326-0616](#), May 25, 2017, at 9:45 p.m.

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 31

Despite the absence of media coverage or public knowledge of the institution's and [REDACTED] interest in each other, on [REDACTED], at 1:19 p.m., one day before [REDACTED] unofficial visit was scheduled to commence, Gatto called Pitino and left the following voicemail message:

Coach, Jim Gatto with Adidas. Hope all is well. Um, sorry to bother you over the weekend, but I just got a call about a player I want to discuss with you. Um, so, when you get a chance, if you can call me at [REDACTED]. Thanks, Coach. Bye-bye.⁹³

Two minutes later, Pitino returned Gatto's message and they spoke for approximately two minutes.⁹⁴ During his November 29, 2019, interview with the enforcement staff, Pitino reported that he and Gatto had the following discussion about [REDACTED]:

And he called me out of the clear blue at that point and said do you really want him. I said why do you ask. And his response was well, I know some of the guy's people -- I think he said relatives -- and I can put in a good word for you. I said sure, yeah. I said we want him in our program.⁹⁵

[REDACTED], and after Gatto's discussion with Pitino, [REDACTED] made an unofficial visit to the institution. He was accompanied by Dawkins, [REDACTED].⁹⁶ At the conclusion of the unofficial visit, [REDACTED] did not commit to the institution and Johnson continued his recruitment of him.⁹⁷ [REDACTED] committed to the institution by signing a financial aid agreement.⁹⁸ On that same day, and two days before the institution publicly announced [REDACTED] commitment, Gatto called Pitino again and left the following message:

⁹³ FI069, [AudioTranscriptJGatto_Voicemail_052717_Exhibit58T_GattoTrial](#).

⁹⁴ FI126, [RPitino_PhoneRecords_051117_Louisville_00843](#), Page No. 1.

⁹⁵ FI141, [RPitino_TR_112519_Louisville_00843](#), Page Nos. 12 and 13 and FI147, [KJohnson_wExhibits_TR_031919_Louisville_00843](#), Page Nos. 51 and 52.

⁹⁶ FI109, [REDACTED] [Paperwork](#).

⁹⁷ FI120, [REDACTED] [Chat with Chris Dawkins](#), Page Nos. 26 through 31 and FI097, [K.Johnson 4-1-17 to 10-2-17, 301-326-0616](#), May 30, 2017, at 6:54 p.m. through May 31, 2017, at 11:53 p.m.

⁹⁸ FI103, [REDACTED] [FinancialAidAgreementForm_060117_Exhibit1607_GattoTrial](#).

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 32

Coach, Jim Gatto. Hope all is well. Checking in. Heard the good news. Um, it's going to be great, and I'm excited for you guys. And, uh, just give me a call back, or I'll try you soon. Thanks, Coach. Bye-bye.⁹⁹

Although the institution and [REDACTED] inner circle agreed to keep [REDACTED] recruitment private, Gatto was well-informed of [REDACTED] and the institution's interest in each other and made it known to Pitino, who knew Gatto as an employee of Adidas, the institution's primary apparel manufacturer and representative of its athletics interests. Additionally, sometime before 9:17 p.m. June 2, 2017, Pitino became aware of another institution possibly offering [REDACTED] hundreds of thousands of dollars to enroll as a men's basketball student-athlete and communicated the following to Johnson in two text messages:

From an agent.

Coach DePaul trying to pay [REDACTED] 200 k to come there. Crazy world!¹⁰⁰

This was at least one day before the institution publicly announced [REDACTED] commitment and multiple days after [REDACTED] unofficial visit to the institution where Pitino reported asking [REDACTED] and his parents questions about their late interest in the institution. Pitino's text message to Johnson described learning of the possible offer from someone who he identified as an "agent." During his November 2019 interview with the enforcement staff, Pitino attempted to undermine the credibility of the "agent" by identifying the source as someone who may have worked for an agent and has no connection to basketball; however, in early June 2017, Pitino thought the information from the

⁹⁹ FI070, [AudioTranscriptJGatto_Voicemail_060117_Exhibit59T_GattoTrial](#).

¹⁰⁰ FI097, [K.Johnson 4-1-17 to 10-2-17, 301-326-0616](#), June 2, 2017, at 9:17 p.m.

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 33

"agent" was important enough to pass along to Johnson for discussion. Additionally, Johnson responded by stating, "Oregon, DePaul ... desperate times."¹⁰¹

Clearly, Johnson and Pitino placed some credence in the information from the "agent" because Pitino concluded the text conversation with Johnson by reassuring him that "Yep-we will b ok,"¹⁰² and within seven minutes of receiving the information from Pitino, Johnson sent a text message to Dawkins asking if everything was "All good?"¹⁰³

During his August 2019 interview with the enforcement staff, Carns reported that [REDACTED] commitment to the institution was later than normal for a prospect of his caliber.¹⁰⁴ Carns could not recall the men's basketball program ever obtaining a commitment from any other similarly top-ranked prospects this late in the year during his 20-plus-years of working in the institution's athletics department.¹⁰⁵ Additionally, during his November 2019 interview with the enforcement staff, Pitino stated it was "bizarre" that a "highly touted" 2017 prospect like [REDACTED] was still available in [REDACTED] and felt that it was late for [REDACTED] to be uncommitted to an institution.¹⁰⁶

There were numerous obvious red flags waving in Pitino's direct line of sight, including [REDACTED] abnormally late and sudden interest in the institution;¹⁰⁷ Gatto's intent to impermissibly insert himself in the institution's recruitment of [REDACTED] "out of the clear blue,"¹⁰⁸ which Pitino

¹⁰¹ FI097, [K.Johnson 4-1-17 to 10-2-17, 301-326-0616](#), June 2, 2017, at 9:19 p.m.

¹⁰² FI097, [K.Johnson 4-1-17 to 10-2-17, 301-326-0616](#), June 2, 2017, at 9:20 p.m.

¹⁰³ FI097, [K.Johnson 4-1-17 to 10-2-17, 301-326-0616](#), June 2, 2017, at 9:24 p.m.

¹⁰⁴ FI140, [JCarns TR 081319 Louisville 00843](#), Page No. 29.

¹⁰⁵ FI140, [JCarns TR 081319 Louisville 00843](#), Page No. 29.

¹⁰⁶ FI141, [RPitino TR 112519 Louisville 00843](#), Page Nos. 21, 22 and 24.

¹⁰⁷ FI140, [JCarns TR 081319 Louisville 00843](#), Page No. 29 and FI141, [RPitino TR 112519 Louisville 00843](#), Page Nos. 21, 22 and 24.

¹⁰⁸ See Bylaws 13.1.2.1 and 13.1.3.4.1 (2016-17).

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 34

admitted to thinking was "strange;"¹⁰⁹ and Pitino's knowledge of another institution possibly offering ████████ hundreds of thousands of dollars to enroll. However, Pitino did not (1) ask Gatto any questions about how he learned of the institution's quiet and private recruitment of ████████ his offer of assistance or who he knew in ████████ circle;¹¹⁰ (2) inform Gatto that he should not be involved in the institution's recruitment of ████████ because that could possibly be a violation of NCAA bylaws; (3) return to the ████████ and specifically ask them about the other institution's possible offer that he learned of after his questioning during the unofficial visit; or (4) report Gatto's offer of assistance and the other institution's possible offer to the institution's athletics compliance staff.¹¹¹ Rather, Pitino confirmed the institution's interest in ████████ to Gatto and shared his knowledge of the other institution's possible offer with Johnson.

As detailed in Allegation No. 1 and undisputed by the institution, Gatto's involvement in persuading ████████ to attend the institution went well-beyond communicating a favorable recommendation about the men's basketball program and resulted in the provision of a \$100,000 cash offer and \$25,000 cash extra benefit to ████████ Had Pitino fulfilled his responsibilities as a head coach when he encountered Gatto's "strange" offer and learned of another institution's possible offer to ████████ he would have been promoting an atmosphere for compliance. Pitino did none of the above and was in violation of Bylaw 11.1.1.1.

¹⁰⁹ FI141, [RPitino TR 112519 Louisville 00843](#), Page Nos. 12 and 13.

¹¹⁰ FI141, [RPitino TR 112519 Louisville 00843](#), Page Nos. 33, 34, 39 and 40.

¹¹¹ FI142, [JCarns TR 122019 Louisville 00843](#), Page Nos. 2 through 6.

D. Remaining issue.

Did Pitino fail to promote an atmosphere for compliance in the men's basketball program when he failed to follow up on numerous red flags related to [REDACTED] recruitment?

E. Rebuttal information.

1. Pitino's failure to promote an atmosphere for compliance related to Gatto.

In its response, the institution asserts that Gatto was not a staff member reporting to Pitino; therefore, Pitino is not responsible for promoting rules compliance by Gatto. Although Gatto was not a staff member, he was an employee of Adidas, a representative of the institution's athletics interests, and acting in this capacity when he represented to Pitino that he intended to impermissibly insert himself in the recruitment of [REDACTED] by recommending the institution to [REDACTED] inner circle. Pitino had an affirmative obligation to act but chose not to follow up.

Bylaw 11.1.1.1 establishes an affirmative duty on head coaches to promote an atmosphere of rules compliance.¹¹² Specifically, head coaches are presumed responsible for violations in their program but may rebut this presumption by demonstrating they promoted an atmosphere of compliance.¹¹³ Pitino did not demonstrate that he promoted an atmosphere of compliance and therefore did not satisfy his affirmative obligation under Bylaw 11.1.1.1.

The Committee on Infractions concluded that a violation of Bylaw 11.1.1.1 occurred in a similar situation recently. In the 2018 University of Tennessee at Chattanooga case (Chattanooga), a head coach failed to perform adequate follow-up or report information to the institution's

¹¹² [March 27, 2018, University of Tennessee at Chattanooga](#), Page No. 9.

¹¹³ [March 27, 2018, University of Tennessee at Chattanooga](#), Page No. 9.

compliance staff after learning of a representative of the institution's athletics interests' involvement in student-athletes' housing and transportation.¹¹⁴ As a result, the Committee on Infractions found that the head coach did not sufficiently rebut his presumed responsibility related to the student-athletes' housing and automobile arrangements and concluded that he failed to promote an atmosphere for compliance.¹¹⁵

Similar to the coach in Chattanooga, Pitino learned of Gatto impermissibly inserting himself in the recruitment of [REDACTED] and failed to perform any follow-up or advise compliance of Gatto's involvement. Gatto's involvement went well-beyond impermissible recruiting communication when he offered \$100,000 and arranged for the provision of a \$25,000 extra benefit to [REDACTED]. Because he did not act or take affirmative steps to promote an atmosphere of compliance, Pitino did not rebut his presumed responsibility and should be accountable.

2. The time frame of Pitino's failure to promote an atmosphere for compliance.

The institution attempts to invalidate Allegation No. 3 by asserting that the time frame of May 27 through June 1, 2017, is flawed. The institution agrees [REDACTED] recruitment started suddenly and ended quickly. The brief period outlined in the allegation related to Pitino's failure of responsibility is a result of that rushed process. During that period, either before or within hours after [REDACTED] commitment to the institution, Pitino became aware of numerous red flags that he should have acted on or at least communicated to the athletics compliance office. Gatto's May 27, 2017, offer to insert himself in [REDACTED] recruitment and Pitino's notice that [REDACTED] may have been offered hundreds of thousands of dollars to attend another institution are the types of

¹¹⁴ [March 27, 2018, University of Tennessee at Chattanooga](#), Page No. 9.

¹¹⁵ [March 27, 2018, University of Tennessee at Chattanooga](#), Page No. 9.

red flags that an NCAA head coach cannot ignore. Rather than promoting an atmosphere of compliance, Pitino kept the information between him and Johnson and did nothing with it.

The enforcement staff could have alleged Pitino failed to promote an atmosphere for compliance beginning May 27, 2017, through his date of separation from the institution because there is nothing in the record demonstrating that Pitino ever told Gatto not to participate in [REDACTED] recruitment or asked Gatto questions about his intentions. The enforcement staff opted not to draft the allegation as broadly in this case. The relevant period where Pitino could have appropriately addressed red flags and possibly put an end to a disastrous series of events before they began is appropriately identified in Allegation No. 3.

3. Adidas as a representative of the institution's athletics interests.

In his response, Pitino asserts that Adidas is not a representative of the institution's athletics interests. The institution also refers to its similar position, which it provided in its response to Allegation No. 1. The enforcement staff refers the panel to section II-C-1 of this reply and asserts that Adidas is a representative of the institution's athletics interests.

F. Additional matters that relate to Allegation No. 3.

Pitino spends approximately 10 of his 30-page response voicing complaints about the NCAA national office and enforcement staff. While the hearing process provides Pitino the opportunity to respond to an allegation that names him as an involved individual as he sees fit, his grievance about the NCAA national office and enforcement staff is incorrect, unfounded and nothing more than a verbose attempt to distract the panel from considering the issue before it, which is whether the factual information in this case supports that Pitino failed to demonstrate that he promoted an

atmosphere for compliance in the institution's men's basketball program during the final year of his tenure as the head men's basketball coach.

V. ALLEGATION NO. 4 – From May through August 2017, the institution failed to adequately monitor its men's basketball program's sudden and belated recruitment of [REDACTED] [NCAA Division I Manual Bylaw 2.8.1 (2016-17 and 2017-18)]

A. Overview.

The institution disagrees with this allegation based on its belief that Code and Gatto were not representatives of its athletics interests, and it engaged in extensive rules education and monitoring before and during [REDACTED] recruitment.

B. Enforcement staff's position as to why the violation should be considered Level II [NCAA Bylaw 19.1.2] and if the institution is in agreement.

The enforcement staff believes a hearing panel could conclude that Allegation No. 4 is a significant breach of conduct (Level II) because the failure to monitor (a) is presumed Level II, (b) was not substantial or egregious and (c) compromised the integrity of the NCAA Collegiate Model. The institution does not agree with Allegation No. 4 and did not provide its position regarding the level.

C. Enforcement staff's review of facts related to the allegation.

In May 2017, the institution was awaiting a decision from the Committee on Infractions following an infractions hearing involving alleged Level I recruiting and extra-benefit violations in its men's basketball program. At the same time, [REDACTED] and Dawkins were quietly completing an unofficial visit at the institution [REDACTED] [REDACTED] just five days after Dawkins contacted Pitino to inquire if the institution was interested in

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 39

█████ the uncommitted and highly recruited █████, joining its basketball program for the 2017-18 academic year. Within nine days after falling into the lap of the men's basketball program, █████ signed a financial aid agreement and was officially committed to the institution.¹¹⁶

At the time of █████ recruitment, the institution, through its athletics compliance staff, monitored men's basketball unofficial visits by reviewing post-visit documents completed by the basketball staff, which included a post-visit unofficial visit form (post-visit form) and any related recruiting expense receipts.¹¹⁷ The institution's compliance staff expected the basketball staff to submit the completed post-visit form as soon as possible after the completion of the visit.¹¹⁸ If the compliance staff was aware of the visit and there was a delay in submitting the post-visit form, the compliance staff contacted the basketball staff and reminded it to submit the missing information.¹¹⁹ This was the institution's general protocol, but it did not follow it here.

Despite having just finished an infractions hearing involving Level I recruiting violations in its men's basketball program, the institution did not monitor █████ brief recruitment or follow its established protocols. Indeed, the institution should have heightened its monitoring based on the program's recent alleged violations and the sudden and abnormally late interest in the institution by a highly sought-after prospect.¹²⁰ During his August 13, 2019, interview with the enforcement

¹¹⁶ Shortly after the institution made █████ commitment public, Pitino held a press conference about █████ sudden interest in and commitment to the institution and stated that █████ "fell into our lap" and "we got very lucky." FI141, [RPitino TR 112519 Louisville 00843](#), Page No. 37.

¹¹⁷ FI140, [JCarns TR 081319 Louisville 00843](#), Page Nos. 12 and 13.

¹¹⁸ FI109, █████ - █████ [UV Paperwork](#) and FI142, [JCarns TR 122019 Louisville 00843](#), Page Nos. 6 and 7. See requirement to submit form no later than one week after the visit listed in italics on top of the form.

¹¹⁹ FI142, [JCarns TR 122019 Louisville 00843](#), Page Nos. 6 and 7.

¹²⁰ FI140, [JCarns TR 081319 Louisville 00843](#), Page No. 29.

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 40

staff, Carns reported that he first learned of the institution's recruitment of [REDACTED] immediately before his unofficial visit to the institution.¹²¹ Despite [REDACTED] unusually late interest in the institution, Carns was unaware of any review performed by his staff to determine what brought [REDACTED] to the institution.¹²² Carns reported that (1) a media report; (2) Carns' relative; or (3) a coach informed him that [REDACTED] sudden and late interest in the institution was related to his potential playing time being compromised by a returning student-athlete at another institution [REDACTED] was expected to attend.¹²³ However, Johnson, [REDACTED] primary recruiter, denied that any of the compliance staff asked him about the circumstances that brought [REDACTED] to the institution.¹²⁴

Additionally, the men's basketball staff did not immediately submit the required post-visit form after [REDACTED] visit, and the institution, through its compliance staff, did not pursue collecting the post-visit form or perform any type of review of the visit.¹²⁵ While the compliance staff was aware of [REDACTED] unofficial visit, it was unaware of exactly who accompanied [REDACTED] including Dawkins, an aspiring sports agent who received national media attention in early [REDACTED], a few weeks before [REDACTED] visit to the institution, for alleged misconduct while working for a professional sports agency.¹²⁶ The institution did not begin following its established monitoring protocols until after the federal government published its *U.S. v. Gatto* complaint September 25, 2017, four months after [REDACTED] visit and after Code and Gatto offered \$100,000 cash and

¹²¹ FI140, [JCarns_TR_081319_Louisville_00843](#), Page No. 28.

¹²² FI140, [JCarns_TR_081319_Louisville_00843](#), Page No. 29.

¹²³ FI140, [JCarns_TR_081319_Louisville_00843](#), Page Nos. 29 and 30.

¹²⁴ FI183, [KJohnson_TR_040920_Louisville_00843](#), Page Nos. 3 and 4.

¹²⁵ FI140, [JCarns_TR_081319_Louisville_00843](#), Page Nos. 31, 34 and 35.

¹²⁶ FI140, [JCarns_TR_081319_Louisville_00843](#), Page No. 31 and FI194, [CDawkinsYahooSportsArticle_050417_Louisville_00843](#).

arranged to provide \$25,000 to [REDACTED] through Dawkins for [REDACTED] commitment to the institution.¹²⁷ In response to information in the complaint indicating that Dawkins was associated with [REDACTED] the institution attempted to cure its prior failures by belatedly collecting the post-visit form from the men's basketball staff to review who accompanied [REDACTED] on his visit.¹²⁸ Only at this time did the institution learn of Dawkins' involvement in [REDACTED] recruitment and presence on campus during the prospect's unofficial visit.¹²⁹ As outlined below, this is not sufficient to satisfy the institution's obligation to monitor unofficial visits.

D. Remaining issue.

Does the factual information support that the institution failed to monitor the belated and sudden recruitment of [REDACTED]?

E. Rebuttal information.

1. The application of National Association for Athletics Compliance's (NAAC) reasonable standards and NCAA enforcement charging guidelines.

In its response, the institution asserts that it executed a robust rules-education program for its athletics programs. The enforcement staff agrees that the institution provided adequate NCAA rules education to its coaches, student-athletes and administrators; however, an inadequate rules-education program is not the basis for Allegation No. 4. This allegation is based on factual information that supports the institution failed to adequately monitor its recruitment of [REDACTED]

¹²⁷ FI116, [Transcript of 10-18-17 Interview with Matt Banker](#), Page No. 18 and FI140, [JCarns TR 081319 Louisville 00843](#), Page Nos. 34 and 35.

¹²⁸ FI140, [JCarns TR 081319 Louisville 00843](#), Page Nos. 34 and 35.

¹²⁹ FI140, [JCarns TR 081319 Louisville 00843](#), Page Nos. 34 and 35.

While the institution asserts that its monitoring efforts aligned with or exceeded NAAC's reasonable standards for campus visits, the factual information here does not support the institution's position. The NAAC reasonable standards for monitoring unofficial visits states the following:

Activity: Review records related to all prearranged unofficial visits and other unofficial visits as determined by the institution. Records to be reviewed include:

- Documentation of who received complimentary admissions while accompanying the prospect during his/her unofficial visit.
- Documentation of any activities the prospect was involved in during their campus visit.
- Documentation of who provided or paid for transportation to and from campus for a high-profile prospect or institutionally organized unofficial visit, if applicable.
- Documentation of the prospect's year in school at the time of his/her visit.

Person Responsible: Senior Compliance Administrator or designee.

Frequency: As visits occur.

Time Frame: Year-Round.¹³⁰

As reflected in NAAC's reasonable standards, an institution should review as visits occur the records related to all prearranged visits as determined by the institution. As established by the factual information here, the institution's established protocol was for the men's basketball program to submit a completed post-visit form no later than one week after [REDACTED] visit to the athletics compliance staff for its review. This did not occur. Although the institution had proper monitoring protocols in place, it failed to implement them and fell well-short of meeting NAAC's reasonable standards for monitoring [REDACTED] campus visit and his recruitment.

¹³⁰ FI195, [NAAC CampusVisitsProspectiveStudentAthletes_090118_Louisville_00843](#), Page No. 2. Although the NAAC reasonable standard for campus visits was updated in 2018, the applicable reasonable standard in place in 2017 also required the institution to complete a similar review of records related to all prearranged unofficial visits and other unofficial visits.

Additionally, the institution did not meet monitoring expectations as outlined in NCAA enforcement charging guidelines, which state the following:

Program monitoring and review – Pursuant to its established policies and procedures, the institution monitored its athletics program for compliance with NCAA legislation. The institution heightened its monitoring of individuals who were known to have engaged in prior noncompliant conduct.¹³¹

A few weeks prior to [REDACTED] sudden and abnormally late interest in Louisville, the institution participated in an infractions hearing involving Level I recruiting violations in its men's basketball program; however, it did not perform any type of heightened monitoring of [REDACTED] recruitment. Further, the institution did not follow its established policies and procedures by reviewing [REDACTED] post-visit form no later than seven days after [REDACTED] unofficial visit to the institution.

VI. ALLEGATION NO. 1 [Fair's post-separation notice of allegations] – From August 2019 through January 2020, Fair failed to timely participate in an interview with the institution and enforcement staff and provide information relevant to an investigation. [NCAA Division I Manual Bylaws 10.1, 10.1-(c) and 19.2.3-(b) (2018-19 and 2019-20)]

A. Overview.

Fair disagrees with this allegation and believes he fulfilled his obligation to cooperate with this investigation.

B. Enforcement staff's position as to why the violation should be considered Level I [NCAA Bylaw 19.1.1] and if the involved individual is in agreement.

The enforcement staff believes a hearing panel could conclude that Allegation No. 1 is a severe breach of conduct (Level I) because the failure to cooperate, which is presumed Level I, involved unethical or dishonest conduct and seriously undermined or threatened the integrity of the NCAA

¹³¹ [Division I Enforcement Charging Guidelines](#), Failure to Monitor.

Collegiate Model. Furthermore, it adversely impacted the NCAA's ability to timely investigate alleged violations, which the membership identified as critical to the common interests of the Association and the preservation of its enduring values. Fair does not agree with this allegation and did not provide his position regarding its level.

C. Enforcement staff's review of facts related to the allegation.

On July 29, 2019, the enforcement staff began attempting to obtain Fair's cooperation to participate in an interview.¹³² On August 5, 2019, the enforcement staff spoke to Ryan McCall (McCall), Fair's attorney, and requested that Fair participate in an interview to discuss his possible knowledge of or involvement in violations of NCAA legislation.¹³³ Between August 5 and September 13, 2019, McCall repeatedly referenced the federal government's investigation related to *U.S. v. Gatto* and other associated cases as a basis for Fair's reluctance to cooperate with the enforcement staff's request.¹³⁴

On September 13, 2019, McCall informed the enforcement staff via email that, on the advice of counsel, Fair would not participate in the requested interview.¹³⁵ On September 16, 2019, the enforcement staff responded to McCall's message and informed him that the enforcement staff and involved institution would proceed with the understanding that Fair was choosing to not cooperate with the interview request and asked that Fair provide financial and telephone records relevant to this investigation.¹³⁶ On September 23, 2019, McCall responded to the enforcement staff's request

¹³² FI164, [NLeffler Email RMcCall ReturnCallRequest 073019 Louisville 00843](#).

¹³³ FI160, [NLeffler Email RMcCall JFairCooperationExtension 090419 Louisville 00843](#).

¹³⁴ FI160, [NLeffler Email RMcCall JFairCooperationExtension 090419 Louisville 00843](#).

¹³⁵ FI156, [RMcCall Email NLeffler JordanFairParticipation 091319 Louisville 00843](#).

¹³⁶ FI159, [RecordsRequest 091619 Louisville 00843 RMcCall](#).

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 45

for the records by stating that Fair previously provided this information to the federal government pursuant to a subpoena and permitted the enforcement staff to obtain the information from the federal authorities.¹³⁷ On September 24, 2019, the enforcement staff informed McCall that Fair, a former NCAA staff member, was obligated to cooperate with its interview and information requests pursuant to NCAA legislation, and the enforcement staff and involved institution would proceed with the understanding that Fair was choosing to not cooperate with the requests.¹³⁸ On October 23, 2019, the enforcement staff notified Fair via McCall that because he declined to interview or provide requested relevant information, it would not make any further attempts to secure his cooperation.¹³⁹

On January 17, 2020, the enforcement staff contacted McCall and informed him that enforcement drafted a notice of allegations pertaining to Fair, which would be reviewed at an allegation review board February 3, 2020.¹⁴⁰ On January 23, 2020, approximately six months after the enforcement staff began requesting Fair's cooperation, and within 11 days of the enforcement staff taking the last steps in finalizing and issuing a notice of allegations in this matter, McCall informed the enforcement staff that Fair would agree to sit for an interview and produce the information previously requested.¹⁴¹ Between January 23, 2019, and June 3, 2020, Fair provided the requested financial records and sporadically provided a portion of the requested telephone records. On February 20, 2020, Fair participated in an interview. As of this reply's submission, the

¹³⁷ FI158, [RMcCall Email NLeffler JFairResponseToSept16Letter 092319 Louisville 00843](#).

¹³⁸ FI157, [NLeffler Letter RMcCall JFairFailureToCooperate 09249 Louisville 00843](#).

¹³⁹ FI154, [NLeffler Letter RMcCall JFairRefusalCooperateUPS 102319 Louisville 00843](#).

¹⁴⁰ FI189, [NLeffler Email RMcCall JFairAllegationReviewBoard 012320 Louisville 00843](#).

¹⁴¹ FI189, [NLeffler Email RMcCall JFairAllegationReviewBoard 012320 Louisville 00843](#).

enforcement staff is still waiting for Fair to provide the remainder of the requested telephone information.

Fair's failure to timely cooperate with this investigation prolonged this case's investigation and delayed the enforcement staff's issuance of the notice of allegations by months. In the 2017 University of the Pacific case, a head coach's late cooperation delayed that case's investigation and final resolution by more than 11 months. The Committee on Infractions found that the head coach failed to cooperate.¹⁴² Similarly, Fair's late and partial cooperation in this investigation did not satisfy the expectations articulated in Bylaw 19.2.3.

D. Remaining issue.

Did Fair fail to timely cooperate with this case's investigation?

E. Rebuttal information.

1. Fair's cooperation.

In his response, Fair asserts that he has provided all the requested telephone records. Between January 23, 2019, and June 3, 2020, McCall intermittently provided Fair's text message records. During this period, the enforcement staff was forced to contact McCall on several occasions because Fair failed to provide the requested information on a consistent basis. On June 3, 2020, McCall represented that Fair was working on providing the balance of the requested information. On June 4, 2020, almost six months after Fair finally agreed to provide the information and one month after the issuance of the notice of allegations, the enforcement staff requested that Fair

¹⁴² [September 20, 2017, University of the Pacific](#), Page No. 19.

provide the remainder of the requested records by June 20, 2020. Since June 4, the enforcement staff has not received any additional records from Fair or any updates from McCall.

Fair also asserts that the enforcement staff abused its power when it "urged" him to have a document notarized during the COVID-19 pandemic and in violation of an executive order by the governor of Florida. The enforcement staff informed Fair that it was necessary for a records release to be notarized, suggested that he go to his bank to obtain the proper notarization and provided him a deadline to complete the request; however, at no time, did the enforcement staff force Fair to violate an executive order. Additionally, had Fair timely cooperated starting in July 2019, his participation in this investigation would have concluded well before the commencement of the pandemic and any executive orders in the State of Florida.

VII. ALLEGATION NO. 1 [Johnson's post-separation notice of allegations] – On March 19, 2019, Johnson failed to cooperate with the enforcement staff when he knowingly furnished the NCAA false or misleading information concerning his involvement in violations of NCAA legislation. Johnson denied providing ██████ \$1,300 in cash and having impermissible recruiting contact with ██████ as detailed in Allegation Nos. 1-d and 2-a. [NCAA Division I Manual Bylaws 10.1, 10.1-(c) and 19.2.3-(b) (2018-19)]

A. Overview.

Johnson did not respond to this allegation. Based on his disagreement with Allegation Nos. 1-d and 2-a, the enforcement staff assumes he also disagrees with this allegation.

B. Enforcement staff's position as to why the violation should be considered Level I [NCAA Bylaw 19.1.1] and if the involved individual is in agreement.

The enforcement staff believes a hearing panel could conclude that Allegation No. 1 is a severe breach of conduct (Level I) because the violation involved a failure to cooperate, which is presumed Level I, and unethical and dishonest conduct, which seriously undermined or threatened

the integrity of the NCAA Collegiate Model. Furthermore, the responsibility to cooperate is paramount to a full and complete investigation, which the membership identified as critical to the common interests of the Association and preservation of its enduring values. Johnson did not provide a position regarding the level of this allegation.

C. Enforcement staff's review of facts related to the allegation.

During his March 19, 2019, interview with the enforcement staff, Johnson denied providing ██████ \$1,300 cash outside the Galt House in August 2017 and having a five- to 10-minute impermissible contact with ██████ in the lobby of a ██████ hotel during a designated evaluation period in ██████.¹⁴³ As detailed in sections II-C-3 and III-C-1 of this reply, the enforcement staff believes the factual information supports that Johnson engaged in these behaviors, committed these violations and provided false or misleading information during his interview.

D. Remaining issue.

Does the factual information support that Johnson provided false or misleading information during his April 19, 2019, interview?

VIII. ADDITIONAL MATTERS RELATED TO THE CASE

• Legislative Guidance.

The enforcement staff relied on official/staff interpretations and/or educational columns outlined in the key record list index of authorities and included all case-specific formal interpretations as factual information. The NCAA academic and membership affairs (AMA) staff

¹⁴³ FI147, [KJohnson wExhibits TR 031919 Louisville 00843](#), Page Nos. 15 through 31.

provided enforcement the following general guidance that significantly impacted the charging decisions:

On January 17, 2020, AMA audited the draft notice of allegations and advised the alleged violations supported the bylaw citations listed.

IX. POTENTIAL AGGRAVATING AND MITIGATING FACTORS

The enforcement staff directs the hearing panel to the statement of the case for a summary of aggravating and mitigating factors identified and the parties' positions on each identified factor.

A. Position of enforcement staff regarding institution's response.

The institution agrees with the aggravating factor in Bylaw 19.9.3-(b) and mitigating factor in Bylaw 19.9.4-(d) identified by the enforcement staff and believes mitigating factors in Bylaws 19.9.4-(b), (e) and (i) also apply to it. The institution contends that the aggravating factors in Bylaws 19.9.3-(a), (f), (g), (i), (k) and (m) do not apply to it.

1. Bylaw 19.9.4-(b) - Prompt acknowledgement of the violation, acceptance of responsibility and imposition of meaningful corrective measures and/or penalties.

The institution disputes nearly all allegations detailed in this case and has not promptly acknowledged or accepted responsibility for the violations. Although enforcement does not agree that this mitigating factor applies to the institution, it acknowledges that the institution took corrective measures in response to the violations.

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 50

2. Bylaw 19.9.4-(e) - Implementation of a system of compliance.

The institution had a system of compliance methods to ensure rules compliance in place at the time of this case's violations. However, for this mitigating factor to apply, the institution was required to implement or execute its system of compliance, which it did not do in this case.

3. Bylaw 19.9.4-(i) – Other facts warranting a lower penalty range.

The enforcement staff is unaware of any factual information that warrants a lower penalty range for the institution related to the Level I and II violations present in this case.

4. Bylaws 19.9.3-(a) and (g) - Multiple Level I and II violations by the institution.

The enforcement staff cited this aggravating factor because Allegation No. 1 is a Level I violation and Allegation Nos. 2 through 4 are Level II violations.

5. Bylaw 19.9.3-(f) - Violations were premeditated, deliberate or committed after substantial planning.

The enforcement staff cited this aggravating factor because Allegation No. 1 involves cash payments provided to a then men's basketball student-athlete's [REDACTED] and a nonscholastic boys' basketball coach after substantial planning by representatives of the institution's athletics interests, an aspiring sports agent and a then men's basketball coach.

6. Bylaw 19.9.3-(i) - One or more violations caused significant ineligibility to a student-athlete.

The enforcement staff cited this aggravating factor because as a result of Allegation No. 1,

[REDACTED] was ineligible to compete during the 2017-18 academic year.

7. Bylaw 19.9.3-(k) - A pattern of noncompliance within the sport program involved.

The enforcement staff cited this aggravating factor because at the time of the violations, the institution was awaiting a decision from the Committee on Infractions and subsequently placed on probation as a result of the decision, a prior Level I infractions matter involving the men's basketball program.¹⁴⁴

8. Bylaw 19.9.3-(m) - Intentional, willful or blatant disregard for the NCAA constitution and bylaws.

The enforcement staff believes this aggravating factor applies to the institution because Allegation No. 1 involves over \$100,000 in an impermissible offer and cash payments arranged or provided by employees of a representative of the institution's athletics interests or assistant men's basketball coaches.

B. Position of enforcement staff regarding response of involved individual [Pitino].

Pitino disagrees with the two aggravating factors identified by the enforcement staff and believes the mitigating factors in Bylaws 19.9.4-(c), (g) and (i) should apply to him.

1. Bylaw 19.9.3-(b) - A history of Level I, Level II or major violations by the involved individual.

The enforcement staff cited this aggravating factor because June 15, 2017, the Committee on Infractions found that Pitino violated NCAA head coach responsibility rules when he did not monitor the activities of his former operations director, a Level I violation.

¹⁴⁴ FI196, [COIPublicReport 061517 Louisville 00843](#).

2. Bylaw 19.9.3-(o) - Other facts warranting a higher penalty.

The enforcement staff cited this aggravating factor because at the time that Pitino failed to promote compliance in the men's basketball program, he was awaiting a decision from the Committee on Infractions and subsequently subject to a show-cause order as a result of the decision, a Level I head coach responsibility infraction.

3. Bylaw 19.9.4-(c) – Affirmative steps to expedite final resolution of the matter.

As reflected in the adversarial posture he takes in his response to Allegation No. 3, Pitino has not taken affirmative steps to expedite the final resolution of this case.

4. Bylaw 19.9.4-(g) - The violations were unintentional, limited in scope and represent a deviation from otherwise compliant practices by the involved individual.

As referred to above, Pitino was awaiting a decision from the Committee on Infractions and subsequently subject to a show-cause order as a result of the decision, a Level I head coach responsibility infraction at the time of the violation in Allegation No. 4. Pitino's failure to promote an atmosphere for compliance in May and June 2017 was not a deviation from otherwise compliant practices.

5. Bylaw 19.9.4-(i) – Other facts warranting a lower penalty range.

Despite Pitino's assertions in his response, the enforcement staff is unaware of anything in this case's factual information that warrants a lower penalty range for Pitino.

C. Position of enforcement staff regarding response of involved individual [Fair].

Fair agrees with the mitigating factor in Bylaw 19.9.4-(h) identified by the enforcement staff and also believes the mitigating factor in Bylaw 19.9.4-(b) should apply to him. Fair does not

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 53

believe the aggravating factors identified in Bylaws 19.9.3-(a), (e), (f), (g) and (m) should apply to him.

1. Bylaw 19.9.4-(b) – Prompt acknowledgement and acceptance of responsibility.

Fair refused to cooperate with this investigation for nearly six months and then further delayed the processing of this case due to his delayed decision to participate in an interview. The enforcement staff disagrees that Fair did anything promptly in this case.

2. Bylaws 19.9.3-(a) and (g) – Multiple Level I or II violations.

The enforcement staff cited this aggravating factor because Allegation Nos. 1-c, 1-e and Fair's post-separation allegation for failing to cooperate are Level I, and Allegation No. 2 is Level II.

3. Bylaw 19.9.3-(e) – Unethical conduct.

The enforcement staff cited this aggravating factor because Fair violated the NCAA principles of ethical conduct when he was knowingly involved in an impermissible inducement in the form of an \$11,000 to \$12,700 cash payment and when he refused to timely interview and furnish information and failed to cooperate during an investigation.

4. Bylaw 19.9.3-(f) - Violations were premeditated, deliberate or committed after substantial planning.

The enforcement staff cited this aggravating factor because Fair was involved in a multiple thousand-dollar cash payment provided to a nonscholastic boys' basketball coach as part of a larger scheme that included substantial planning by multiple individuals in a Las Vegas hotel room, hundreds of miles away from the institution and the nonscholastic coach's home.

ENFORCEMENT WRITTEN REPLY

Case No. 00843

December 1, 2020

Page No. 54

5. Bylaw 19.9.3-(m) - Intentional, willful or blatant disregard for the NCAA constitution and bylaws.

The enforcement staff cited this aggravating factor because Fair's involvement in an impermissible inducement in the form of an \$11,000 to \$12,700 cash payment was a blatant disregard for the NCAA constitution and bylaws.

D. Position of enforcement staff regarding response of involved individual [Johnson].

Johnson did not address any aggravating or mitigating factors in his response.

X. LIST OF EXHIBITS¹⁴⁵

[NCAA-1](#) Statement of the case.

[NCAA-2](#) Individuals who may be mentioned during the hearing.

¹⁴⁵ Click on the hyperlinks to view exhibits.

STATEMENT OF THE CASE

University of Louisville – Case No. 00843

I. BRIEF HISTORY (CASE CHRONOLOGY)

September 26, 2017 – The United States Attorney's Office for the Southern District of New York (SDNY) announced a criminal complaint pertaining to *United States v. James Gatto, et. al (U.S. v. Gatto)* involving individuals associated with Adidas and the institution.

November 17, 2017 – The institution, in the presence of the NCAA enforcement staff, interviewed then men's basketball student-athlete [REDACTED]

April 2018 – SDNY released a superseding indictment pertaining to *U.S. v. Gatto*.

September 11, 2018 – The institution and enforcement staff interviewed then men's basketball prospective student-athlete [REDACTED]

March 8, 2019 – The enforcement staff provided a verbal notice of inquiry to the institution.

May 4, 2020 – The notice of allegations was sent to the president of the institution; Jordan Fair (Fair), former assistant men's basketball coach; Kenny Johnson (Johnson), former associate head basketball coach; and Rick Pitino (Pitino), former head men's basketball coach. Fair and Johnson also received post-separation notices of allegations.

September 16, 2020 – The institution submitted its response to the notice of allegations.

September 16, 2020 – Fair submitted his response to the notices of allegations.

September 16, 2020 – Johnson submitted his response to the notices of allegations.

September 16, 2020 – Pitino submitted his response to the notice of allegations.

November 9, 2020 – The enforcement staff conducted a prehearing conference with Fair.

STATEMENT OF THE CASE

Table of Contents

Case No. 00843

December 1, 2020

November 11, 2020 – The enforcement staff conducted a prehearing conference with Pitino.

November 18, 2020 – The enforcement staff conducted a prehearing conference with Johnson.

November 19, 2020 – The enforcement staff conducted a prehearing conference with the institution.

December 1, 2020 – The enforcement staff submitted its reply and statement of the case to a hearing panel of the NCAA Division I Committee on Infractions, the institution and involved individuals.

II. PARTIES' POSITIONS**A. ALLEGATIONS**

		Party Agreement			
No.	Allegation	Institution	Fair	Johnson	Pitino
1-a	Merl Code (Code) and James Gatto's (Gatto), employees of Adidas, a representative of the institution's athletics interests, impermissible offer of \$100,000 cash to [REDACTED]	Does not agree	N/A	N/A	N/A
	Level I	Does not agree	N/A	N/A	N/A
1-b	Code and Gatto's arrangement for the provision of a \$25,000 cash extra benefit to [REDACTED]	Does not agree	N/A	N/A	N/A
	Level I	Does not agree	N/A	N/A	N/A
1-c	Fair's involvement in the provision of an \$11,000 to \$12,700 cash impermissible inducement to Brad Augustine (Augustine), [REDACTED] non-scholastic basketball coach and trainer. Fair's unethical conduct.	Agrees in part ¹	Does not agree	N/A	N/A
	Level I	Does not agree	No position	N/A	N/A
1-d	Johnson's provision of a \$1,300 cash extra benefit to [REDACTED] Johnson's unethical conduct.	Does not agree	N/A	Does not agree	N/A
	Level I	Does not agree	N/A	No position	N/A

¹ The institution agrees that Fair committed a Level II violation and acted unethically when he failed to report the cash payment to the institution but does not agree that Fair was involved in the provision of an impermissible inducement.

STATEMENT OF THE CASE

NCAA-1

Case No. 00843

December 1, 2020

Page No. 2

		Party Agreement			
No.	Allegation	Institution	Fair	Johnson	Pitino
1-e	Fair's provision of an \$800 impermissible inducement to Augustine.	Does not agree	Agrees	N/A	N/A
	Level I	Does not agree	No position	N/A	N/A
2-a	Johnson's impermissible contact with [REDACTED] during a recruiting evaluation period.	Agrees	N/A	Does not agree	N/A
	Level II	Does not agree ²	N/A	No position	N/A
2-b	Johnson's impermissible contact with individuals associated with men's basketball prospective student-athletes.	Does not agree	N/A	Does not agree	N/A
	Level II	Does not agree	N/A	No position	N/A
2-c	Fair and Johnson's provision of impermissible transportation to Christian Dawkins, an associate of [REDACTED] and Augustine.	Agrees	Does not agree	Does not agree	N/A
	Level II	Does not agree ³	No position	No position	N/A
3	Pitino's failure to promote an atmosphere for compliance.	Does not agree	N/A	N/A	Does not agree
	Level II	No position	N/A	N/A	No position
4	The institution's failure to monitor its basketball program's recruitment of [REDACTED]	Does not agree	N/A	N/A	N/A
	Level II	No position	N/A	N/A	N/A

² The institution believes this violation should be classified as Level III.

³ The institution believes these violations should be classified as Level III.

		Party Agreement			
No.	Allegation	Institution	Fair	Johnson	Pitino
1 Johnson's Post-Separation	Johnson's post-separation failure to cooperate and unethical conduct associated with his provision of false or misleading information during an enforcement interview.	N/A	N/A	No position ⁴	N/A
	Level I	N/A	N/A	No position	N/A
1 Fair's Post-Separation	Fair's post-separation failure to cooperate and unethical conduct associated with his failure to timely interview and provide requested information.	N/A	Does not agree	N/A	N/A
	Level I	N/A	No position	N/A	N/A

B. POTENTIAL AGGRAVATING AND MITIGATING FACTORS**1. Institution.**

		Party Agreement	
Aggravating Factors	Identified By	Enforcement Staff	Institution
Multiple Level I violations	Enforcement Staff	Agrees	Does not agree
A history of Level I, Level II or major violations	Enforcement Staff	Agrees	Agrees

⁴ Johnson did not provide a position to this allegation in his response.

STATEMENT OF THE CASE

NCAA-1

Case No. 00843

December 1, 2020

Page No. 4

		Party Agreement	
Aggravating Factors	Identified By	Enforcement Staff	Institution
Violations were premeditated, deliberate or committed after substantial planning	Enforcement Staff	Agrees	Does not agree
Multiple Level II violations	Enforcement Staff	Agrees	Does not agree
One or more violations caused significant ineligibility or other substantial harm to a student-athlete or prospective student-athlete	Enforcement Staff	Agrees	Does not agree
A pattern of noncompliance within the sport program(s) involved	Enforcement Staff	Agrees	Does not agree
Intentional, willful or blatant disregard for the NCAA constitution and bylaws	Enforcement Staff	Agrees	Does not agree
Mitigating Factors	Identified By	Enforcement Staff	Institution
Prompt acknowledgement of the violation(s), acceptance of responsibility and imposition of meaningful corrective measures and/or penalties	Institution	Does not agree	Agrees
An established history of self-reporting Level III or secondary violations	Enforcement Staff	Agrees	Agrees
Implementation of a system of compliance methods designed to ensure rules compliance and satisfaction of institution's/coaches' control standards	Institution	Does not agree	Agrees
Other facts warranting a lower penalty range	Institution	Does not agree	Agrees

2. Involved individual [Fair].

		Party Agreement	
Aggravating Factors	Identified By	Enforcement Staff	Involved Individual
Multiple Level I violations	Enforcement Staff	Agrees	Does not agree
Multiple Level II violations	Enforcement Staff	Agrees	Does not agree
Violations were premeditated, deliberate or committed after substantial planning	Enforcement Staff	Agrees	Does not agree
Intentional, willful or blatant disregard for the NCAA constitution and bylaws	Enforcement Staff	Agrees	Does not agree
Unethical conduct, compromising the integrity of an investigation, failing to cooperate during an investigation or refusing to provide all relevant or requested information	Enforcement Staff	Agrees	Does not agree
Mitigating Factors	Identified By	Enforcement Staff	Involved Individual
Prompt acknowledgement of the violation(s) and acceptance of responsibility	Involved Individual	Does not agree	Agrees
The absence of prior conclusions of Level I, Level II or major violations	Enforcement Staff	Agrees	Agrees

3. Involved individual [Johnson].

		Party Agreement	
Aggravating Factors	Identified By	Enforcement Staff	Involved Individual
Multiple Level I violations	Enforcement Staff	Agrees	No position
Multiple Level II violations	Enforcement Staff	Agrees	No position
Unethical conduct, failing to cooperate during an investigation	Enforcement Staff	Agrees	No position
Intentional, willful or blatant disregard for the NCAA constitution and bylaws	Enforcement Staff	Agrees	No position
Mitigating Factors	Identified By	Enforcement Staff	Involved Individual
The absence of prior conclusions of Level I, Level II or major violations	Enforcement Staff	Agrees	No position

4. Involved individual [Pitino].

		Party Agreement	
Aggravating Factors	Identified By	Enforcement Staff	Involved Individual
A history of Level I, Level II or major violations	Enforcement Staff	Agrees	Does not agree
Other facts warranting a higher penalty range	Enforcement Staff	Agrees	Does not agree

STATEMENT OF THE CASE

Case No. 00843

December 1, 2020

Page No. 7

NCAA-1

Mitigating Factors	Identified By	Party Agreement	
		Enforcement Staff	Involved Individual
Affirmative steps to expedite final resolution of the matter	Involved Individual	Does not agree	Agrees
The violations were unintentional, limited in scope and represent a deviation from otherwise compliant practices	Involved Individual	Does not agree	Agrees
Other facts warranting a lower penalty range	Involved Individual	Does not agree	Agrees

C. REMAINING ISSUES

The enforcement written reply and the parties' responses to the notice of allegations may be referenced for further detail, and all remaining issues and items of disagreement.

INDIVIDUALS WHO MAY BE MENTIONED DURING THE HEARING

Augustine, Brad – then nonscholastic boys basketball coach/trainer and individual associated with [REDACTED].

Bailey, Jill – undercover FBI agent.

Banker, Matt – associate director of athletics for compliance.

Baumann, Logan – former senior director of video operations for men's basketball and current University of Evansville assistant men's basketball coach.

Blazer, Martin – financial advisor.

Bowden, Michael – former director of basketball operations and current University of Washington director of special projects for men's basketball.

[REDACTED] – then men's prospective and enrolled basketball student-athlete.

[REDACTED] – [REDACTED] of then men's basketball prospective and enrolled student-athlete [REDACTED]

Canty, Ced – AAU administrator for Team United.

Carns, John – senior associate director of athletics for compliance.

Casola, Anthony – FBI agent

[REDACTED] – [REDACTED] of then men's basketball prospective student-athlete [REDACTED]

Code, Merl – then Adidas outside consultant.

Dawkins, Christian – associate of the [REDACTED] family and former sports agency runner.

DeAngelo, Jeff – undercover FBI agent, also referred to as "Undercover Agent No. 1".

Fair, Jordan – then assistant men's basketball coach.

Gassnola, Thomas "TJ" – Adidas outside consultant.

Gatto, Jim – then Adidas director of global sports marketing for basketball.

[REDACTED] – AAU coach for [REDACTED]

Harksen, Lindsay – Adidas senior manager of finance.

Johnson, Kenny – then associate head men's basketball coach and current LaSalle University assistant men's basketball coach.

██████████ – then men's prospective basketball student-athlete and current student-athlete at ██████████.

██████████ – ██████████ of then men's basketball prospective and enrolled student-athlete ██████████

██████████ – relative of then men's basketball student-athlete ██████████

Padgett, David – then assistant men's basketball coach.

Pitino, Rick – then head men's basketball coach and current Iona College head men's basketball coach.

Reilingh, Patrick – former director of video operations for men's basketball and current University of Minnesota recruiting coordinator for men's basketball.

Robertson, Ricky – AAU director for Kharolina Khaos.

Sood, Munish – former financial advisor.