

## **NOTICE OF ALLEGATIONS**

**to the**

**President of University of Memphis**

**Case No. 01051**

### **A. Processing Level of Case.**

Based on the information contained within the following allegations, the Complex Case Unit (CCU) believes this case should be reviewed by the hearing panel of the Independent Resolution Panel (IRP) pursuant to procedures applicable to a severe breach of conduct (Level I violation).<sup>1</sup>

### **B. Allegations.**

1. [NCAA Constitution 2.1.2, 2.8.1 (2018-2019 through 2020-2021); NCAA Division I Manual Bylaw 19.2.3 (2018-2019 through 2020-2021)]

It is alleged that between May 2019 and February 2021, which was the duration of the NCAA enforcement staff's and CCU's investigations that serve as the basis for this notice of allegations, the Institution violated NCAA responsibility to cooperate legislation. Under NCAA responsibility to cooperate legislation, the Institution has an affirmative obligation to cooperate fully with and assist the enforcement staff and/or the CCU to further the objectives of the NCAA and to make full and complete disclosure of any relevant information. The Institution violated this legislation and obstructed both the NCAA enforcement and CCU investigations on multiple occasions, including:

- (a) The Institution failed to affirmatively report instances of noncompliance to the Association in a timely manner

[REDACTED]

2

[REDACTED]

- (b) The Institution failed to disclose and provide access to all electronic devices. Specifically, on June 4, 2020, the CCU requested that the Institution "preserve any and all devices assigned to, used by or accessed by [a former assistant men's

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<sup>1</sup> Pursuant to NCAA Bylaw 19.7.7.1 of the 2020-2021 NCAA Division I Manual, if violations from multiple levels are identified in the notice of allegations, the case shall be processed pursuant to procedures applicable to the most serious violation(s) alleged.

<sup>2</sup> Details relating to the [REDACTED] can be found in Allegation Nos. 2 and 3.

<sup>3</sup> Details of the referenced [REDACTED] can be found in Allegation Nos. 4 and 5.

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basketball coach] during his employ by Memphis.” A subsequent forensic examination revealed that the former assistant men’s basketball coach’s computer hard drive was formatted on June 5, 2020, and as a result, the data on the computer was deleted. The Institution failed to conduct an adequate investigation into why the computer’s hard drive was not preserved. [NCAA Constitution 2.1.2, 2.8.1 (2020-2021); NCAA Bylaws 19.2.3-(c), 19.2.3-(d), 19.2.3-(e) (2020-2021)];

- (c) The Institution failed to timely produce requested and relevant documents. Specifically, on August 26, 2020, the CCU submitted document requests to the Institution seeking various categories of documents including but not limited to communications and text messages of the Institution's men's basketball staff, as well as communications and text messages between [REDACTED]

Pursuant to the Case Management Plan, the Institution's responses were due within 30 days. The Institution failed to timely respond to the reasonable document requests. When responsive documents were finally produced at the close of the CCU's investigation, the Institution both failed to produce all requested records and the records that were produced were not produced in the format requested by the CCU.

[REDACTED] . Further, the Institution produced emails with a filetype and naming convention contrary to the CCU's request and with metadata stripped from the documents, which prevented any meaningful ability to review or search the records. In this regard, the Institution's conduct obstructed the investigation as the CCU was unable to timely follow up with

(d)

As such, the Institution refused to cooperate and potentially actively obstructed the investigation. [REDACTED]

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- [REDACTED]
- (e) The Institution failed to protect the integrity of the CCU's investigation and obstructed the CCU's investigation. Specifically, the Institution significantly delayed the scheduling of interviews and scheduled "prep" sessions [REDACTED] [REDACTED] at least one athletics administrator in the days preceding scheduled CCU interviews demonstrating a lack of commitment to cooperation and a disregard for NCAA directives to avoid communicating with individuals about the subject matter of the investigation prior to their being interviewed. [NCAA Constitution 2.1.2, 2.8.1 (2020-2021); NCAA Bylaws 19.2.3-(b), 19.2.3-(f) (2020-2021)];

This allegation serves as part of the basis for the failure to monitor and lack of institutional control in Allegation No. 7.

**Level of Allegation No. 1:**

The CCU believes the hearing panel of the IRP could conclude that Allegation No. 1 is a severe breach of conduct (Level I) because the failure to cooperate in an NCAA enforcement or Complex Case Unit investigation is presumptively a Level I violation. Further, the alleged conduct seriously undermines or threatens the integrity of the NCAA Collegiate Model, as the Institution's conduct adversely impacted the NCAA's and CCU's ability to investigate the alleged violations, which is critical to the common interests of the Association's membership and the preservation of its enduring values. 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. [REDACTED] [(2020-2021)]

**Involved Individual:**

None.

2. [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

(a) [REDACTED]

[REDACTED]

(b) [REDACTED]

[REDACTED]

(c) [REDACTED]

[REDACTED]

This allegation serves as part of the basis for the failure to monitor and lack of institutional control in Allegation No. 7.

**Level of Allegation No. 2:**

The CCU believes the hearing panel of the IRP could conclude that Allegation No. 2 is a severe breach of conduct (Level I) because the alleged violations contained in this allegation [REDACTED]

[REDACTED]

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**Involved Individual(s):**

None

3. [REDACTED]



This allegation serves as part of the basis for the head coach responsibility, failure to monitor, and lack of institutional control in Allegation Nos. 6 and 7.

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**Level of Allegation No. 3:**

[REDACTED]

**Involved Individual:**

None.

4. [REDACTED] (2018-2019)]

[REDACTED]

(a)

[REDACTED]

(b)

[REDACTED]

(c)

[REDACTED]

(d)

[REDACTED]

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[REDACTED]

This allegation serves as part of the basis for the head coach responsibility, failure to monitor, and lack of institutional control in Allegation Nos. 6 and 7.

**Level of Allegation No. 4:**

[REDACTED]

**Involved Individual(s):**

None.

5. [REDACTED]

[REDACTED]

This allegation serves as part of the basis for the head coach responsibility, failure to monitor, and lack of institutional control in Allegation Nos. 6 and 7.

**Level of Allegation No. 5:**

[REDACTED]

**Involved Individual(s):**

None

6. [NCAA Division I Manual Bylaw 11.1.1.1 (2018-2019; 2019-2020)]

It is alleged that during the 2018-2019 and 2019-2020 academic years, Hardaway violated head coach responsibility legislation when he failed to demonstrate that he promoted an atmosphere of compliance within the men's basketball program. Hardaway is presumed

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responsible for the violations detailed in Allegation Nos. 3, 4, and 5 and did not rebut the presumption of responsibility.

[REDACTED] . The ultimate responsibility for the integrity of the men's basketball program rested with Hardaway and his staff's actions reflect on Hardaway as the head coach.

**Level of Allegation No. 6:**

The CCU believes the hearing panel of the IRP could conclude that Allegation No. 6 is a significant breach of conduct (Level II) because it is a head coach responsibility violation and seriously undermined or threatened the integrity of the NCAA Collegiate Model.

**Involved Individual:**

The CCU believes the hearing panel of the IRP could prescribe head coach restrictions pursuant to NCAA Bylaw 19.9.5.5 regarding Hardaway's involvement in Allegation No. 6.

7. [REDACTED] (2011-2012 through 2020-2021); [REDACTED] (2011-2012 through 2020-2021)]

It is alleged that from 2011 through the 2020-2021 academic year, the scope and nature of the violations set forth in Allegation Nos. 1 through 5 demonstrate that the Institution failed

[REDACTED]

(a) As alleged in Allegation No. 1, the Institution violated NCAA responsibility to cooperate legislation and obstructed the NCAA Enforcement and CCU investigations on multiple occasions.

(b) [REDACTED]

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<sup>5</sup> Subparagraphs a-d are not stand-alone violations, but instead are examples of the Institution's conduct demonstrating a lack of institutional control.

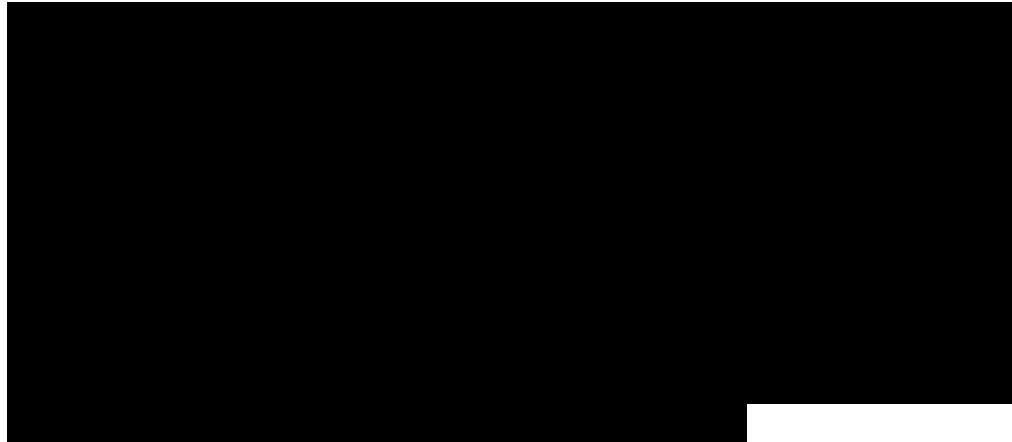
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- (c) The Institution failed to establish a culture of compliance in the men's basketball program. As outlined in Allegations Nos. 2 through 5, Hardaway, an assistant coach, and [REDACTED]

[REDACTED] These actions demonstrate that the Institution failed to effectively establish a compliance program where the men's basketball coaching staff understood that compliance with NCAA legislation is an obligation shared by all athletics staff members and they had an obligation to report all actual or potential violations.

- (d) The Institution failed to implement a structure that created a culture of compliance and failed to provide effective oversight and/or support of its compliance program. [REDACTED]

[REDACTED] During the time period of Allegation Nos. 1 through 5, the compliance staff experienced a lack of resources that limited its ability to identify, investigate and monitor compliance risks. A member of the Institution's compliance staff acknowledged that the compliance procedures in place at the time of the violations were inadequate and that the violations may not have occurred had an adequate structure been in place to create a culture of compliance.

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**Level of Allegation No. 7:**

The CCU believes the hearing panel could conclude that Allegation No. 7 is a severe breach of conduct (Level I) because the violations (1) seriously undermine or threaten the integrity of the NCAA Collegiate Model, (2) include a failure to cooperate in an NCAA enforcement or Complex Case Unit investigation, [REDACTED]

[REDACTED] (4) include multiple Level I, II and III violations, and (5) the lack of institutional control is presumptively a Level I violation. [REDACTED] (2020-2021)]

**Involved Individual:**

None.

**C. Potential Aggravating and Mitigating Factors.**

Pursuant to Bylaw 19.11.5, the CCU has identified the following potential aggravating and mitigating factors that a hearing panel may consider.

**1. Institution:**

a. Aggravating factor(s). [NCAA Bylaw 19.9.3]

(1) A history of Level I or Level II or major violations by the Institution.<sup>6</sup> [NCAA Bylaws 19.9.3-(b)]

- August 20, 2009, Major Infractions Report – [REDACTED]

[REDACTED] Finally, failure to monitor was found against the Institution. The committee found this case involved several major violations of NCAA legislation.

- October 21, 2005 – [REDACTED]

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<sup>6</sup> The dates of previous Level I, II or major infractions violations and the accompanying descriptions are provided from the Legislative Services Database for the Internet (LSDBi).

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[REDACTED] The Institution failed to timely detect and stop the violations. In addition, failure to monitor was found against the Institution and multiple self-imposed penalties were adopted by the committee.

- August 3, 1989 – [REDACTED]

- May 29, 1986 – [REDACTED]

(2) [REDACTED]

The CCU identified the violations in Allegation Nos. 1, 2, 3, and 7 as Level I. The CCU identified the violations in Allegation Nos. 4 and 6 as Level II.

(3) The Institution displayed a lack of institutional control. [NCAA Bylaw 19.9.3-(c)]

As outlined in Allegation No. 7, the CCU alleged a lack of institutional control.

(4) The Institution obstructed the investigation. [NCAA Bylaw 19.9.3-(d)]

As outlined in Allegation No. 1, the CCU alleged the Institution's failure to cooperate in the investigation, including instances where the Institution obstructed the investigation.

(5) The Institution compromised the integrity of the investigation, failed to cooperate during an investigation, and refused to provide all relevant or requested information. [NCAA Bylaw 19.9.3-(e)]

As outlined in Allegation No. 1, the CCU alleged the Institution's failure to cooperate in the NCAA Enforcement and CCU investigation. Throughout the NCAA Enforcement and CCU investigations, the Institution demonstrated a lack of commitment to cooperation. [REDACTED]

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[NCAA Bylaw 19.2.3(f)] "Failing to satisfy the responsibility to cooperate may...be considered an aggravating factor for purposes of determining a penalty."  
[NCAA Bylaw 19.2.3.2]

(6) [REDACTED]

[REDACTED]

(7)

[REDACTED]

(8) The Institution has a pattern of noncompliance within the sport program involved.  
[NCAA Bylaw 19.9.3-(k)]

[REDACTED]

(9) The Institution displayed intentional, willful or blatant disregard for the NCAA constitution and bylaws. [NCAA Bylaw 19.9.3-(m)]

[REDACTED]

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- (10) Other facts warranting a higher penalty range. [NCAA Bylaw 19.9.3-(o)]

As outlined in Allegation No. 1, the Institution unnecessarily delayed the investigation when it did not timely produce certain requested documents, delayed the scheduling of pertinent interviews, and engaged in other obstructionist behavior. In addition, the Institution has refused to accept responsibility for violations and instead, engaged in threatening behavior.



- b. Mitigating factor(s). [NCAA Bylaw 19.9.4]

- (1) An established history of self-reporting Level III or secondary violations. [NCAA Bylaw 19.9.4-(d)]

The Institution has self-reported thirty-two Level III violations over the previous three years, approximately ten violations each year.

**2. Involved Individual [Hardaway]:**

- a. Aggravating factor(s). [NCAA Bylaw 19.9.3]

- (1) Multiple Level I and Level II violations by the individual. [NCAA Bylaws 19.9.3-(a) and 19.9.3-(g)]

As noted in Allegations Nos. 3 through 6, Hardaway was involved in one Level I violation and two Level II violations.



- (3) A pattern of noncompliance within the sport program. [NCAA Bylaw 19.9.3-(k)]

As outlined in Allegations Nos. 3 through 6, there is a pattern of noncompliance within Hardaway's men's basketball program and Hardaway failed to demonstrate that he promoted an atmosphere of compliance within the men's basketball program.

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(4)



b. Mitigating factor(s). [NCAA Bylaw 19.9.4]

- (1) The absence of prior conclusions of Level I, Level II or major violations committed by the involved individual. [NCAA Bylaw 19.9.4-(h)]

In his NCAA coaching career, Hardaway has no prior Level I, II or major violations.

### **D. Hearing Attendance.**

In addition to the involved individuals and institutional representatives as outlined in Bylaw 19.11.5.7.3.2, the hearing panel of the IRP may benefit from asking the following individual(s) to attend the hearing pursuant to Bylaw 19.11.5.7.3: None.

### **E. Factual Information.**

The attached exhibit details the factual information on which the CCU relies for Allegation Nos. 1 through 7. The CCU incorporates the factual information referenced throughout this document, its exhibits and all other documents in the secure filing system.

### **F. Response to Allegations.**

1. Please indicate whether the information contained within these allegations is substantially correct and whether the institution and involved individuals identified in these allegations believe violations of NCAA legislation occurred. Submit materials to support your response.
2. If the institution and involved individuals believe NCAA violations occurred, please indicate whether there is substantial agreement on the level of the violation. Submit materials to support your response.

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3. Please indicate whether the factual information is substantially correct and whether the institution and involved individuals have additional pertinent information and/or facts. Submit facts in support of your response.
4. In accordance with Bylaw 19.11.5.8.3.4, the hearing panel may view the failure by an institution or individual to submit a timely response to a notice of allegations as an admission that an alleged violation, for which the party may be subject to penalty pursuant to Bylaw 19.9, occurred.

**G. Request for Supplemental Information.**

1. Provide mailing and email addresses for all necessary parties to receive communications from the hearing panel of the IRP related to this matter.
2. Indicate how the violations were discovered.
3. Provide a detailed description of any corrective or punitive actions implemented by the institution as a result of the violations acknowledged in this inquiry. In that regard, explain the reasons the institution believes these actions to be appropriate and identify the violations on which the actions were based. Additionally, indicate the date that any corrective or punitive actions were implemented.
4. Provide a detailed description of all disciplinary actions taken against any current or former athletics department staff members as a result of violations acknowledged in this inquiry. In that regard, explain the reasons the institution believes these actions to be appropriate and identify the violations on which the actions were based. Additionally, indicate the date that any disciplinary actions were taken and submit copies of all correspondence from the institution to each individual describing these disciplinary actions.
5. Provide a short summary of every past Level I, Level II or major infractions case involving the institution or individuals named in this notice. In this summary, provide the date of the infractions report(s), a description of the violations found, the individuals involved, and the penalties and corrective actions. Additionally, provide a copy of any major infractions reports involving the institution or individuals named in this notice that were issued within the last 10 years.
6. Provide a chart depicting the institution's reporting history of Level III and secondary violations for the past five years. In this chart, please indicate for each academic year the number of total Level III and secondary violations reported involving the institution or individuals named in this notice. Also include the applicable bylaws for each violation, and then indicate the number of Level III and secondary violations involving just the sports team(s) named in this notice for the same five-year time period.

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7. Provide the institution's overall conference affiliation, as well as the total enrollment on campus and the number of men's and women's sports sponsored.
8. Provide a statement describing the general organization and structure of the institution's intercollegiate athletics department, including the identities of those individuals in the athletics department who were responsible for the supervision of all sport programs during the previous four years.
9. State when the institution has conducted systematic reviews of NCAA and institutional regulations for its athletics department employees. Also, identify the agencies, individuals or committees responsible for these reviews and describe their responsibilities and functions.
10. Provide the following information concerning the sports program(s) identified in this inquiry:
  - The average number of initial and total grants-in-aid awarded during the past four academic years.
  - The number of initial and total grants-in-aid in effect for the current academic year (or upcoming academic year if the regular academic year is not in session) and the number anticipated for the following academic year.
  - The average number of official paid visits provided by the institution to prospective student-athletes during the past four years.
  - Copies of the institution's squad lists for the past four academic years.
  - Copies of the institution's media guides, either in hard copy or through electronic links, for the past four academic years.
  - A statement indicating whether the provisions of [REDACTED]  
[REDACTED]  
[REDACTED]
  - A statement indicating whether the provisions of [REDACTED]  
[REDACTED]  
[REDACTED]
11. Submit the three previous fiscal years' total budgets for all involved sport programs. At a minimum, a sport program's total budget shall include: (a) all contractual compensation

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including salaries, benefits and bonuses paid by the institution or related entities for coaching, operations, administrative and support staff tied to the sport program; (b) all recruiting expenses; (c) all team travel, entertainment and meals; (d) all expenses associated with equipment, uniforms and supplies; (e) game expenses and (f) any guarantees paid associated with the sport program.

Any additional information or comments regarding this case are welcome.

Complex Case Unit

April 19, 2021

[WJB/MTQ/TJC]

## **AMENDED NOTICE OF ALLEGATIONS**

to the

## **President of University of Memphis**

**Case No. 01051**

#### **A. Processing Level of Case.**

Based on the information contained within the following allegations, the Complex Case Unit (CCU) believes this case should be reviewed by the hearing panel of the Independent Resolution Panel (IRP) pursuant to procedures applicable to a severe breach of conduct (Level I violation).<sup>1</sup>

## **B. Allegations.**

1. [NCAA Constitution 2.1.2, 2.8.1 (2018-2019 through 2020-2021); NCAA Division I Manual Bylaw 19.2.3 (2018-2019 through 2020-2021)]

It is alleged that between May 2019 and February 2021, which was the duration of the NCAA enforcement staff's and CCU's investigations that serve as the basis for this notice of allegations, the Institution violated NCAA responsibility to cooperate legislation. Under NCAA responsibility to cooperate legislation, the Institution has an affirmative obligation to cooperate fully with and assist the enforcement staff and/or the CCU to further the objectives of the NCAA and to make full and complete disclosure of any relevant information. The Institution violated this legislation and obstructed both the NCAA enforcement and CCU investigations on multiple occasions, including:

- (a) The Institution failed to affirmatively report instances of noncompliance to the Association in a timely manner [REDACTED]

(b) The Institution failed to disclose and provide access to all electronic devices. Specifically, on June 4, 2020, the CCU requested that the Institution “preserve any and all devices assigned to, used by or accessed by [a former assistant men’s

<sup>1</sup> Pursuant to NCAA Bylaw 19.7.7.1 of the 2020-2021 NCAA Division I Manual, if violations from multiple levels are identified in the notice of allegations, the case shall be processed pursuant to procedures applicable to the most serious violation(s) alleged.

<sup>2</sup> Details relating to the can be found in Allegation Nos. 2 and 3.

<sup>3</sup> Details of the referenced can be found in Allegation Nos. 4 and 5.

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basketball coach] during his employ by Memphis.” A subsequent forensic examination revealed that the former assistant men’s basketball coach’s computer hard drive was formatted on June 5, 2020, and as a result, the data on the computer was deleted. The Institution failed to conduct an adequate investigation into why the computer’s hard drive was not preserved. [NCAA Constitution 2.1.2, 2.8.1 (2020-2021); NCAA Bylaws 19.2.3-(c), 19.2.3-(d), 19.2.3-(e) (2020-2021)];

- (c) The Institution failed to timely produce requested and relevant documents. Specifically, on August 26, 2020, the CCU submitted document requests to the Institution seeking various categories of documents including but not limited to communications and text messages of the Institution’s men’s basketball staff,
- [REDACTED]

Pursuant to the Case Management Plan, the Institution’s responses were due within 30 days. The Institution failed to timely respond to the reasonable document requests. When responsive documents were finally produced at the close of the CCU’s investigation, the Institution both failed to produce all requested records and the records that were produced were not produced in the format requested by the CCU.

[REDACTED]

Further, the Institution produced emails with a filetype and naming convention contrary to the CCU’s request and with metadata stripped from the documents, which prevented any meaningful ability to review or search the records. In this regard, the Institution’s conduct obstructed the investigation as the CCU was unable to timely follow up with the Institution, its representatives, the men’s basketball staff,

[REDACTED]  
regarding the documents produced.

[REDACTED]

- (d)
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

As such, the Institution refused to cooperate and potentially actively obstructed the investigation.

[REDACTED]

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- [REDACTED]
- e) The Institution failed to protect the integrity of the CCU's investigation and obstructed the CCU's investigation. Specifically, the Institution significantly delayed the scheduling of interviews and scheduled "prep" sessions [REDACTED] [REDACTED] at least one athletics administrator in the days preceding scheduled CCU interviews demonstrating a lack of commitment to cooperation and a disregard for NCAA directives to avoid communicating with individuals about the subject matter of the investigation prior to their being interviewed. [NCAA Constitution 2.1.2, 2.8.1 (2020-2021); NCAA Bylaws 19.2.3-(b), 19.2.3-(f) (2020-2021)];

This allegation serves as part of the basis for the failure to monitor and lack of institutional control in Allegation No. 7.

**Level of Allegation No. 1:**

The CCU believes the hearing panel of the IRP could conclude that Allegation No. 1 is a severe breach of conduct (Level I) because the failure to cooperate in an NCAA enforcement or Complex Case Unit investigation is presumptively a Level I violation. Further, the alleged conduct seriously undermines or threatens the integrity of the NCAA Collegiate Model, as the Institution's conduct adversely impacted the NCAA's and CCU's ability to investigate the alleged violations, which is critical to the common interests of the Association's membership and the preservation of its enduring values. 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. [REDACTED] (2020-2021)]

**Involved Individual:**

None.

2. [REDACTED]

[REDACTED]

[REDACTED]

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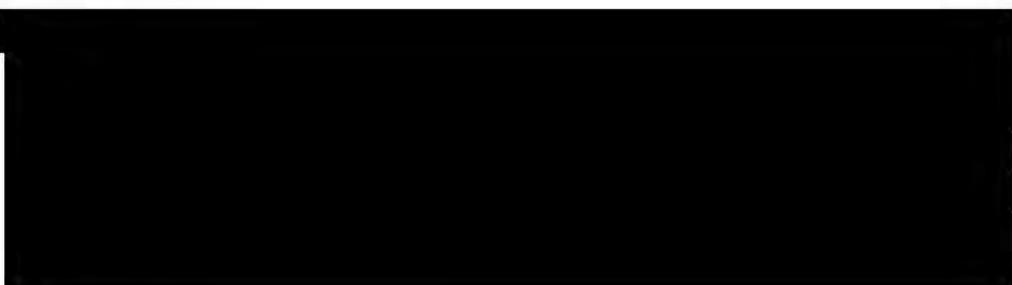
(a)



(b)



(c)



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[REDACTED]

This allegation serves as part of the basis for the failure to monitor and lack of institutional control in Allegation No. 7.

**Level of Allegation No. 2:**

[REDACTED]

**Involved Individual(s):**

None

3. [REDACTED]

[REDACTED]

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This allegation serves as part of the basis for the head coach responsibility, failure to monitor, and lack of institutional control in Allegation Nos. 6 and 7.

**Level of Allegation No. 3:**



**Involved Individual:**

None.

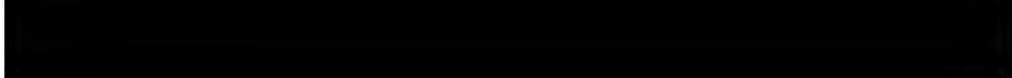
4. [REDACTED] (2018-2019)]



(a) [REDACTED]



(b) [REDACTED]



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(c)



(d)



This allegation serves as part of the basis for the head coach responsibility, failure to monitor, and lack of institutional control in Allegation Nos. 6 and 7.

**Level of Allegation No. 4:**



**Involved Individual(s):**

None.

5.



This allegation serves as part of the basis for the head coach responsibility, failure to monitor, and lack of institutional control in Allegation Nos. 6 and 7.

**Level of Allegation No. 5:**

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**Involved Individual(s):**

None

6. [NCAA Division I Manual Bylaw 11.1.1.1 (2018-2019; 2019-2020)]

It is alleged that during the 2018-2019 and 2019-2020 academic years, Hardaway violated head coach responsibility legislation when he failed to demonstrate that he promoted an atmosphere of compliance within the men's basketball program. Hardaway is presumed responsible for the violations detailed in Allegation Nos. 3, 4, and 5 and did not rebut the presumption of responsibility.

[REDACTED] . The ultimate responsibility for the integrity of the men's basketball program rested with Hardaway and his staff's actions reflect on Hardaway as the head coach.

**Level of Allegation No. 6:**

The CCU believes the hearing panel of the IRP could conclude that Allegation No. 6 is a significant breach of conduct (Level II) because it is a head coach responsibility violation

**Involved Individual:**

The CCU believes the hearing panel of the IRP could prescribe head coach restrictions pursuant to [REDACTED] regarding Hardaway's involvement in Allegation No. 6.

7. [REDACTED] 2011-2012 through 2020-2021) [REDACTED] (2011-2012 through 2020-2021)]

It is alleged that from 2011 through the 2020-2021 academic year, the scope and nature of the violations set forth in Allegation Nos. 1 through 5 demonstrate that the Institution failed

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[REDACTED]

(a) As alleged in Allegation No. 1, the Institution violated NCAA responsibility to cooperate legislation and obstructed the NCAA Enforcement and CCU investigations on multiple occasions.

(b)

[REDACTED]

(c) The Institution failed to establish a culture of compliance in the men's basketball program. As outlined in Allegations Nos. 2 through 5, Hardaway, an assistant coach, [REDACTED]

[REDACTED] These actions demonstrate that the Institution failed to effectively establish a compliance program where the men's basketball coaching staff understood that compliance with NCAA legislation is an obligation shared by all athletics staff members and they had an obligation to report all actual or potential violations.

(d) The Institution failed to implement a structure that created a culture of compliance and failed to provide effective oversight and/or support of its

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<sup>5</sup> Subparagraphs a-d are not stand-alone violations, but instead are examples of the Institution's conduct demonstrating a lack of institutional control.

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compliance program. [REDACTED]

[REDACTED] During the time period of Allegation Nos. 1 through 5, the compliance staff experienced a lack of resources that limited its ability to identify, investigate and monitor compliance risks. A member of the Institution's compliance staff acknowledged that the compliance procedures in place at the time of the violations were inadequate and that the violations may not have occurred had an adequate structure been in place to create a culture of compliance.

**Level of Allegation No. 7:**

The CCU believes the hearing panel could conclude that Allegation No. 7 is a severe breach of conduct (Level I) because the violations [REDACTED]

[REDACTED] (2) include a failure to cooperate in an NCAA enforcement or Complex Case Unit investigation,

[REDACTED] (4) include multiple Level I, II and III violations, and (5) the lack of institutional control is presumptively a Level I violation. [REDACTED] (2020-2021)]

**Involved Individual:**

None.

**C. Potential Aggravating and Mitigating Factors.**

Pursuant to Bylaw 19.11.5, the CCU has identified the following potential aggravating and mitigating factors that a hearing panel may consider.

**1. Institution:**

a. Aggravating factor(s). [NCAA Bylaw 19.9.3]

(1) A history of Level I or Level II or major violations by the Institution.<sup>6</sup> [NCAA Bylaws 19.9.3-(b)]

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<sup>6</sup> The dates of previous Level I, II or major infractions violations and the accompanying descriptions are provided from the Legislative Services Database for the Internet (LSDBi).

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- August 20, 2009, Major Infractions Report –

[REDACTED] Finally, failure to monitor was found against the Institution. The committee found this case involved several major violations of NCAA legislation.

- October 21, 2005 –

[REDACTED] The Institution failed to timely detect and stop the violations. In addition, failure to monitor was found against the Institution and multiple self-imposed penalties were adopted by the committee.

- August 3, 1989 –

[REDACTED]

- May 29, 1986 –

[REDACTED] In addition, improper transportation, improper recruiting contacts and inducements, tryout, eligibility, and institutional control violations were found.

(2) [REDACTED]

The CCU identified the violations in Allegation Nos. 1, 2, 3, and 7 as Level I. The CCU identified the violations in Allegation Nos. 4 and 6 as Level II.

(3) The Institution displayed a lack of institutional control. [NCAA Bylaw 19.9.3-(c)]

As outlined in Allegation No. 7, the CCU alleged a lack of institutional control.

(4) The Institution obstructed the investigation. [NCAA Bylaw 19.9.3-(d)]

As outlined in Allegation No. 1, the CCU alleged the Institution's failure to cooperate in the investigation, including instances where the Institution obstructed the investigation.

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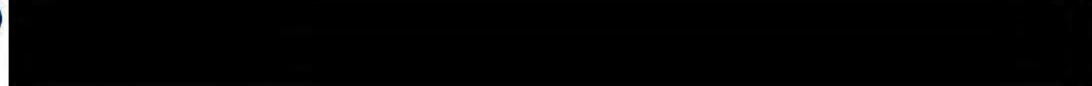
- (5) The Institution compromised the integrity of the investigation, failed to cooperate during an investigation, and refused to provide all relevant or requested information. [NCAA Bylaw 19.9.3-(e)]

As outlined in Allegation No. 1, the CCU alleged the Institution's failure to cooperate in the NCAA Enforcement and CCU investigation. Throughout the NCAA Enforcement and CCU investigations, the Institution demonstrated a lack of commitment to cooperation.

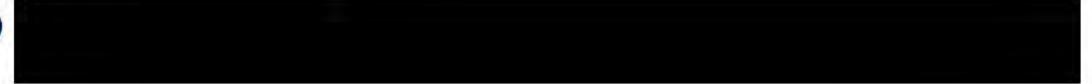


"Failing to satisfy the responsibility to cooperate may...be considered an aggravating factor for purposes of determining a penalty." [NCAA Bylaw 19.2.3.2]

(6)



(7)



- (8) The Institution has a pattern of noncompliance within the sport program involved. [NCAA Bylaw 19.9.3-(k)]



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- [REDACTED]
- (9) The Institution displayed intentional, willful or blatant disregard for the NCAA constitution and bylaws. [NCAA Bylaw 19.9.3-(m)]
- [REDACTED]

- (10) Other facts warranting a higher penalty range. [NCAA Bylaw 19.9.3-(o)]

As outlined in Allegation No. 1, the Institution unnecessarily delayed the investigation when it did not timely produce certain requested documents, delayed the scheduling of pertinent interviews, and engaged in other obstructionist behavior. In addition, the Institution has refused to accept responsibility for violations and instead, engaged in threatening behavior.

[REDACTED]

- b. Mitigating factor(s). [NCAA Bylaw 19.9.4]

- (1) An established history of self-reporting Level III or secondary violations. [NCAA Bylaw 19.9.4-(d)]

The Institution has self-reported thirty-two Level III violations over the previous three years, approximately ten violations each year.

**2. Involved Individual [Hardaway]:**

- a. Aggravating factor(s). [NCAA Bylaw 19.9.3]

- (1) Multiple Level I and Level II violations by the individual. [NCAA Bylaws 19.9.3-(a) and 19.9.3-(g)]

As noted in Allegations Nos. 3 through 6, Hardaway was involved in one Level I violation and two Level II violations.

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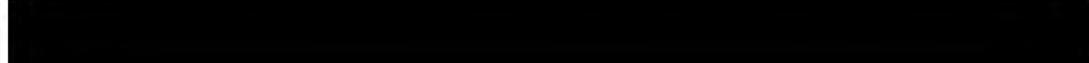
(2)



(3) A pattern of noncompliance within the sport program. [NCAA Bylaw 19.9.3-(k)]

As outlined in Allegations Nos. 3 through 6, there is a pattern of noncompliance within Hardaway's men's basketball program and Hardaway failed to demonstrate that he promoted an atmosphere of compliance within the men's basketball program.

(4)



b. Mitigating factor(s). [NCAA Bylaw 19.9.4]

(1) The absence of prior conclusions of Level I, Level II or major violations committed by the involved individual. [NCAA Bylaw 19.9.4-(h)]

In his NCAA coaching career, Hardaway has no prior Level I, II or major violations.

**D. Hearing Attendance.**

In addition to the involved individuals and institutional representatives as outlined in Bylaw 19.11.5.7.3.2, the hearing panel of the IRP may benefit from asking the following individual(s) to attend the hearing pursuant to Bylaw 19.11.5.7.3: None.

**E. Factual Information.**

The attached exhibit details the factual information on which the CCU relies for Allegation Nos. 1 through 7. The CCU incorporates the factual information referenced throughout this document, its exhibits and all other documents in the secure filing system.

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**F. Response to Allegations.**

1. Please indicate whether the information contained within these allegations is substantially correct and whether the institution and involved individuals identified in these allegations believe violations of NCAA legislation occurred. Submit materials to support your response.
2. If the institution and involved individuals believe NCAA violations occurred, please indicate whether there is substantial agreement on the level of the violation. Submit materials to support your response.
3. Please indicate whether the factual information is substantially correct and whether the institution and involved individuals have additional pertinent information and/or facts. Submit facts in support of your response.
4. In accordance with Bylaw 19.11.5.8.3.4, the hearing panel may view the failure by an institution or individual to submit a timely response to a notice of allegations as an admission that an alleged violation, for which the party may be subject to penalty pursuant to Bylaw 19.9, occurred.

**G. Request for Supplemental Information.**

1. Provide mailing and email addresses for all necessary parties to receive communications from the hearing panel of the IRP related to this matter.
2. Indicate how the violations were discovered.
3. Provide a detailed description of any corrective or punitive actions implemented by the institution as a result of the violations acknowledged in this inquiry. In that regard, explain the reasons the institution believes these actions to be appropriate and identify the violations on which the actions were based. Additionally, indicate the date that any corrective or punitive actions were implemented.
4. Provide a detailed description of all disciplinary actions taken against any current or former athletics department staff members as a result of violations acknowledged in this inquiry. In that regard, explain the reasons the institution believes these actions to be appropriate and identify the violations on which the actions were based. Additionally, indicate the date that any disciplinary actions were taken and submit copies of all correspondence from the institution to each individual describing these disciplinary actions.

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5. Provide a short summary of every past Level I, Level II or major infractions case involving the institution or individuals named in this notice. In this summary, provide the date of the infractions report(s), a description of the violations found, the individuals involved, and the penalties and corrective actions. Additionally, provide a copy of any major infractions reports involving the institution or individuals named in this notice that were issued within the last 10 years.
6. Provide a chart depicting the institution's reporting history of Level III and secondary violations for the past five years. In this chart, please indicate for each academic year the number of total Level III and secondary violations reported involving the institution or individuals named in this notice. Also include the applicable bylaws for each violation, and then indicate the number of Level III and secondary violations involving just the sports team(s) named in this notice for the same five-year time period.
7. Provide the institution's overall conference affiliation, as well as the total enrollment on campus and the number of men's and women's sports sponsored.
8. Provide a statement describing the general organization and structure of the institution's intercollegiate athletics department, including the identities of those individuals in the athletics department who were responsible for the supervision of all sport programs during the previous four years.
9. State when the institution has conducted systematic reviews of NCAA and institutional regulations for its athletics department employees. Also, identify the agencies, individuals or committees responsible for these reviews and describe their responsibilities and functions.
10. Provide the following information concerning the sports program(s) identified in this inquiry:
  - The average number of initial and total grants-in-aid awarded during the past four academic years.
  - The number of initial and total grants-in-aid in effect for the current academic year (or upcoming academic year if the regular academic year is not in session) and the number anticipated for the following academic year.
  - The average number of official paid visits provided by the institution to prospective student-athletes during the past four years.
  - Copies of the institution's squad lists for the past four academic years.

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- Copies of the institution's media guides, either in hard copy or through electronic links, for the past four academic years.
  - A statement indicating whether the provisions [REDACTED]  
[REDACTED]  
[REDACTED]
  - A statement indicating whether the provisions [REDACTED]  
[REDACTED]  
[REDACTED]
11. Submit the three previous fiscal years' total budgets for all involved sport programs. At a minimum, a sport program's total budget shall include: (a) all contractual compensation including salaries, benefits and bonuses paid by the institution or related entities for coaching, operations, administrative and support staff tied to the sport program; (b) all recruiting expenses; (c) all team travel, entertainment and meals; (d) all expenses associated with equipment, uniforms and supplies; (e) game expenses and (f) any guarantees paid associated with the sport program.

Any additional information or comments regarding this case are welcome.

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Complex Case Unit

July 9, 2021

[WJB/MTQ/TJC]

# **University of Memphis, Infractions Case No. 01051**

## **Response to Amended Notice of Allegations**

**OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.**

*Attorneys at Law*

420 20th Street North, Suite 1900  
Birmingham, AL 35203

Telephone: 205-328-1900  
Facsimile: 205-328-6000  
[www.ogletree.com](http://www.ogletree.com)

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## **KEY RECORDS LIST**

### **NCAA Div. 1 Violation Structure and Levels**

<https://ncaa-infractions.box.com/s/aas2pctwpzh5z2hv0xmv5e2zzo1mob29>

### **June 2, 2021 Notice to the Panel of Violations of CCU Operating Procedure 1-2 by the CCU and then-NCAA associate Director of Enforcement**

**Todd Shumaker**

<https://app.box.com/file/819395200591>

### **June 22, 2021 Panel request for citations from the Record showing violations of CCU operating procedure 1-2 by the CCU and then-NCAA associate Director of Enforcement Todd Shumaker**

<https://ncaa-infractions.box.com/s/1ksn08zt7rqoy5f1c8gv1m5eelaret3w>

### **July 6, 2021 Citations from the Record documenting Violations of CCA operating procedure 1-2 by the CCU and then-NCAA associate Director of Enforcement**

**Todd Shumaker submitted to the panel, part 1**

<https://app.box.com/file/830548377293?s=dukhse0f1t5sy850dtxzmtjmr2eg8zyp>

### **July 16, 2021 Citations from the Record documenting Additional Violations of CCU operating procedure 1-2 by the CCU and then-NCAA associate Director of Enforcement**

**Todd Shumaker submitted to the panel, part 2**

<https://app.box.com/file/834730360332?s=u1kdaik96db8b2ug63ty061lyboq8vby>

### **October 13, 2020 Legal opinion by the external Advocate and CCU addressing privacy rights, interpretations and application of the Educational Rights and Privacy Act (FERPA), the Tennessee Public Records Act, and other legal concepts<sup>1</sup>**

<https://ncaa-infractions.box.com/s/mdnt5yf0mia8sfmba8nmxvjnxaxhsake>

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<sup>1</sup> UM also incorporates by reference other legal opinions presented by the CCU during this process, including on August 7, 2020 and described by the CCU as follows on October 13, 2020 (<https://ncaa-infractions.box.com/s/6zxremxz132rkc7ot7wk6gsu2ha3j849>):

The arguments in [your October 5, 2020] letter largely repeat the arguments raised in your email dated July 23, 2020. The CCU continues to disagree with the University's previous arguments and directs your attention to our August 7, 2020 letter refuting those points. The new arguments the University raises are equally unpersuasive.

**UM October 20, 2020 Request for clarification concerning the CCU's October 13, 2020 letter constituting a legal opinion in violation of American Bar Association (ABA) rules and whether members of the CCU are acting in the capacity of an attorney<sup>2</sup>**  
<https://ncaa-infractions.box.com/s/kprb5nqkviem4mz2h9617g23bpt1vz0>

**January 29, 2021 CCU admission of failure to address the UM's months-old request for information concerning ABA rules and issuing legal opinions since neither is acting in the capacity of an attorney**  
<https://ncaa-infractions.box.com/s/lulehtve6rfawiy9haqawu2mgwq0quvn>

**January 29, 2021 CCU admission that it has no authority to issue legal opinions**  
<https://ncaa-infractions.box.com/s/6zxremxz132rkc7ot7wk6gsu2ha3j849>

**Amended Notice of Allegations, Case Number 01051**  
<https://ncaa-infractions.box.com/s/atr027825e6h23q3yfxxovgb0jlpwz2l>

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<sup>2</sup>The members of the CCU would have to be acting in the capacity of legal counsel for the NCAA or CCU and within the scope of a formal, legal representation to be authorized under ABA rules to provide a written legal opinion.

## OVERVIEW

This case presents alleged infractions involving the University of Memphis (UM) [REDACTED]

[REDACTED] that are overcharged and combined with non-violations, accusations involving a separate sport (football) that has not been charged, information UM self-reported, and pandemic-related events over which the parties had no control.<sup>3</sup> The facts do not demonstrate a lack of institutional control, a failure to monitor, a failure to cooperate, or a lack of [REDACTED] responsibility. Simply, this case is about [REDACTED]

[REDACTED]; [REDACTED]  
[REDACTED]  
[REDACTED]; and [REDACTED]  
[REDACTED].<sup>4</sup>

As the facts will show, the [REDACTED]

[REDACTED]  
[REDACTED] Rather, as set forth more fully below, [REDACTED]  
[REDACTED]  
[REDACTED]. [REDACTED]

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<sup>3</sup> Among the pandemic-related events over which UM had no control were UM's closure to staff as a safety measure, layoffs and remote work assignments that impaired UM's ability to retrieve information, furloughs of Athletics Department personnel, and [REDACTED] (FI089).

<sup>4</sup> [REDACTED] (FI090).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED], [REDACTED]

Finally, the NOA contains no specific facts, and it is the specific facts that are imperative for the resolution of this matter. Because the CCU included an enormous number of unsupported, severe allegations, UM needed all 50 pages to respond to the allegations, without an in-depth review of the facts. In NCAA Infractions cases, responses often exceed 100 pages. As a result, UM has attached a “Factual Information From the Case Record”<sup>6</sup> document in the Appendix that is imperative for the Panel’s review.

#### **RESPONSE TO NOTICE OF ALLEGATIONS**

**During the Independent Accountability Resolution Process (“IARP”), UM encountered numerous procedural and investigatory flaws that highlights inherent unfairness in the investigative process and undermines the independent nature of the process.**

As the first member institution to undergo this process, it is important to point out the procedural and investigatory flaws that UM encountered as it navigated uncharted territory. First, Complex Case Unit (“CCU”) Operating Procedure 1-2 specifically limits the composition of the CCU to “not more than one member of the [NCAA] enforcement staff, whose role will be limited to serving as a resource to the independent external investigator and independent external advocate by providing process support and information related to previous investigative efforts connected to the case.” Despite this very clear language, Todd Shumaker, Associate Director of Enforcement, who was assigned as the CCU’s enforcement staff representative, exceeded his scope and served as a primary investigator on the CCU’s

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<sup>5</sup> [REDACTED] ([FI091](#)).  
<sup>6</sup> See Factual Information from the Case Record document ([FI092](#)).

investigative team.<sup>7</sup> Specifically, he asked substantive questions of 25 of the 29 witnesses, directed requests for documents to UM, and expanded the scope of the CCU's investigation to football<sup>8</sup> and led the expanded investigation. The goal and spirit of this process was for a true independent process—Independent from the NCAA. With Mr. Shumaker's participation, this was essentially an NCAA investigation under a new name. As UM set forth in various correspondence to the IRP,<sup>9</sup> this conduct alone was grounds for dismissal, or, at the very least, an elimination of all evidence solicited by Mr. Shumaker.

In addition to violating Procedure 1-2, the CCU's engagement with UM was combative, hostile, abusive, and contradictory to NCAA's representation that it prioritizes collaboration. During interviews with UM personnel and student-athletes, the CCU investigators utilized interrogation-based techniques such as creating a sense of isolation, introducing false information, and responding to witness statement with dismissive and mocking reactions.<sup>10</sup> In fact, UM received complaints from the student-athletes following their interviews, and UM President M. David Rudd described his interview as an "interrogation." In addition, during a conference call between the CCU and UM, the CCU's External Advocate continuously yelled at multiple UM team members until he was told he was being inappropriate. The Advocate's conduct was so extreme that counsel for UM submitted a written complaint to the CCU following the call.<sup>11</sup>

Finally, UM was faced with responding to a NOA that lacked specificity and contained no citations to the record. This left UM guessing as to what evidence constituted the alleged impermissible conduct. Rather than pointing to specific statements in an interview transcript, for example, the CCU broadly cited to an entire interview transcript in support of an allegation. But often times, the transcript showed that the witness's information pointed to the exact opposite. As an example, in support of Allegation 2, the CCU

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<sup>7</sup> After UM notified the panel of the CCU's violations of Procedure 1-2 and, as requested by the panel, provided proof of Mr. Shumaker's violations, UM learned that Mr. Shumaker (NCAA) and Nicole Lamb-Hale (Kroll), the lead investigator assigned to the CCU, were no longer employed by the NCAA or Kroll.

<sup>8</sup> UM also notes that following UM's complaint to the IRP about the CCU's violation of Procedure 1-2, the CCU notified UM that it would be transferring elements of the CCU's investigation to the NCAA enforcement staff. ([FI093](#)).

<sup>9</sup> See UM's July 6, 2021 ([FI094](#)) and July 16, 2021 correspondence ([FI095](#)) to the Panel, sent after UM's initial notice to the IRP of the CCU's violation of operational Procedure 1-2.

<sup>10</sup> See UM President M. David Rudd's December 17, 2020 ([FI096](#)), and December 30, 2020 ([FI097](#)) correspondence.

<sup>11</sup> See December 30, 2020 email between Lisa Karen Atkins and Nicole Lamb-Hale ([FI098](#)).

contends that [REDACTED]

[REDACTED]

[REDACTED] Furthermore, the CCU chose not to include relevant evidence from its investigation that contradicts the claims it makes against UM in the NOA.<sup>12</sup> NCAA Bylaws clearly state that it is the CCU's responsibility to "develop, to the extent reasonably possible, all relevant information about potential violations" and only "[p]rocess violations it believes to be substantiated." The CCU's NOA ignores NCAA Bylaw standards, which deprived UM of a fair opportunity to respond.

The lack of specificity as well as the inherent challenges and unfairness that UM faced during the investigation calls into serious question the validity of this process. This issue remains outstanding for resolution during the hearing. UM has provided information substantiating the violations, and this information is available to the panel for any purpose the panel considers appropriate and consistent with the bylaws, including its assessment of the allegations the CCU has brought forward.

#### **ALLEGATION 1**

**Processing Level of Case:** *The CCU believes all NOA allegations should be reviewed as Level I violations.*

**RESPONSE:** UM denies all allegations and assertions contained within Allegations 1 and 1(a)-(e) of the NOA and denies that they should be considered as Level 1.

**Allegations (summarized – a complete copy is linked in the appendix<sup>13</sup>):** *It is alleged that between May 2019 and February 2021, UM: [REDACTED]*

*[REDACTED]; (b) failed to provide access to a computer assigned to former assistant men's basketball coach Mike Miller and then failed to conduct an "adequate" investigation into the computer's hard drive; (c) was late responding to requests for documents, communications and text messages from the men's basketball staff [REDACTED] [REDACTED] and used a "naming convention" and format that differed from what was requested by the CCU and prevented the CCU from timely follow up regarding the*

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<sup>12</sup> See Norton Hurd Witness Interview, November 11, 2020, pp. 37-39; [REDACTED] Witness Interview, April 16, 2021, pp. 29-30; and Greg Brown II Witness Interview, April 17, 2021, p.33. The CCU did not include these witness transcript or recording in the IARP Record folder. UM does not have the ability to download the documents from Box, so it is not able to provide copies of the transcripts for the Panel.

<sup>13</sup> Amended Notice of Allegations, [FI099](#).

documents produced”<sup>14</sup>; [REDACTED] and (e) delayed scheduling interviews, [REDACTED] and at least one administrator, and failed to avoid communicating about the subject matter of the investigation prior to their being interviewed.<sup>16</sup>

**Involved Individual:** None.

**RESPONSE:** UM denies all allegations and assertions contained within Allegations 1 and 1(a)-(e) of the NOA and denies that they should be considered as Level 1.

### **UM’S POSITION CONCERNING ALLEGATION 1**

**A. The CCU’s failure to initiate IRP Procedure 4-10 during its investigation precludes any claim that UM failed to cooperate in violation of Bylaw 19.2.3.<sup>17</sup>**

IRP Procedure 4-10-2, requires the CCU to follow specific processes if it believes an institution is not cooperating during an investigation, which includes:<sup>18</sup>

The CCU *shall* submit a written petition through the secure filing and case management system asserting that an institution and/or individual failed to satisfy the responsibility to cooperate *pursuant to Bylaw 19.2.3* and requesting immediate penalties. The petition shall include all necessary information to review the petition appropriately, including sufficient detail regarding the circumstances related to the asserted failure to cooperate and any materials on which the enforcement staff may rely. (Effective: 8/1/2019).<sup>19</sup>

In addition, IRP Procedure 8-2 reads: “[a]ll parties must abide by the procedures in the processing of infractions cases. Hearing panels may exclude information that does not conform with the procedures.”

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<sup>14</sup> The CCU does not explain how a document format that does not affect content, a naming convention that does not affect content, or metadata, which was never asked to be preserved, prevented the CCU from timely follow up. This is another example of overcharging without factual support.

<sup>15</sup> [REDACTED]

[REDACTED] The CCU identifies no IARP process or rule or Bylaw that transforms member institutions into investigative arms of the CCU. By blaming UM for its own failure to request information or to follow up with witnesses, the CCU is overcharging.

<sup>16</sup> The CCU literally provides no facts to support the allegation that, prior to their meetings with the CCU, UM communicated with interviewees about the subject matter of the investigation. During each interview, the CCU investigator had an opportunity to ask whether each witness engaged in such communication, but did not. This omission is not a basis for assessing a penalty against UM.

<sup>17</sup> The section is intended to address all claims within the NOA, including Allegation 1, in which the CCU asserts UM failed to cooperate during the CCU’s investigation in violation of [REDACTED]

<sup>18</sup> See IRP Procedure 4-10 ([FI147](#)) and [REDACTED] ([FI148](#)).

<sup>19</sup> See IRP Procedures, 4-10-1 – 4-10-2-1, p. 14 (emphasis added) ([FI147](#)); see also Procedures 4-10-2-1 through 4-10-2-6 for the remaining procedures for allegations that an institution is failing to cooperate during an investigation. ([FI147](#)).

Allegation 1 asserts that UM failed to cooperate with the CCU investigation in violation of Bylaws 19.2.3(a)-(e).<sup>20</sup> If so, the CCU was required to petition the IRP in accordance with Procedure 4-10-2. The CCU acknowledged its responsibilities under that rule in a December 12, 2020 letter to UM reading:

Pursuant to NCAA Bylaw 19.2.3.2.3, the Independent Resolution Panel overseeing the case against the University may impose immediate penalties during the investigation for failure to cooperate,

\* \* \*

... the CCU will seek immediate penalties against the University. . . if the University's delay and lack of cooperation continues.<sup>21</sup>

The CCU never submitted the required petition or initiated any other aspect of Procedure 4-10. In fact, the CCU did not raise any issues to the Panel alleging that UM failed to cooperate during the investigation. As such, the CCU waived this claim, and the Panel should dismiss all failure to cooperate claims.

**B. Allegation 1(a): UM complied with [REDACTED] directive to affirmatively report instances of noncompliance and assist in developing full information regarding a possible violation.**

Allegation 1(a) reads that UM [REDACTED] by: (1) [REDACTED]  
[REDACTED]  
[REDACTED]; and (2) [REDACTED]

[REDACTED]<sup>22</sup> Bylaw 19.2.3-(a) requires members to "cooperate fully with and assist" the CCU by "[a]ffirmatively reporting instances of noncompliance to the Association in a timely manner and assisting in developing full information to determine whether a possible violation has occurred and the details thereof." In this case, there is no evidence that UM failed to comply with this rule. All but one of the records cited by the CCU are emails and letters between the CCU and UM related to the post-allegation investigative process that are

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<sup>20</sup> See Amended Notice of Allegations, pp. 1-2, sections 1 and 1(a) through 1(e). ([FI099](#)).

<sup>21</sup> UM denies all allegations that it failed to cooperate. UM cites the statement by the CCU in the December 8, 2020 letter as proof that it was aware of the requirements of Procedure 4-10.

<sup>22</sup> The CCU states in footnotes 3 and 4 of the NOA that all claims asserted in Allegation 1(a) are detailed from a factual perspective in Allegations 2-5.

unrelated to the allegations.<sup>23</sup> The only other document cited to support Allegation 1(a) is an interview transcript of a former **football** coach,<sup>24</sup> which is irrelevant because there is no NOA allegation related to football. Reviewing the evidence cited by the CCU demonstrates that Allegation 1(a) is a generalized and baseless claim that is not supported by evidence, and therefore should be dismissed.

UM will address all allegations related to [REDACTED] in Response to Allegations 2 and 3 and the claim related to [REDACTED] in Response to Allegations 4 and 5.

**C. Response to Allegation 1(b): UM provided the CCU with access to all requested electronic devices and preserved all devices and information on devices assigned to assistant coaches.**

Allegation 1(b) avers UM violated bylaw 19.2.3-(c)-(e), which requires full cooperation, meaning:

- (c) Making a full and complete disclosure of relevant information, including timely production of materials or information requested, and in the format requested;
- (d) Disclosing and providing access to all electronic devices used in any way for business purposes;
- (e) Providing access to all social media, messaging and other applications that are or may be relevant to the investigation.

Specifically, the CCU alleges that UM failed to (1) “disclose and provide access to all electronic devices;” and (2) “conduct an adequate investigation into why former employee Mike Miller’s<sup>25</sup> computer’s hard drive was not preserved.”<sup>26</sup> The evidence shows that UM did not commit any violation of Bylaws 19.2.3(c)-(e).

**1. UM cooperated with respect to all requested electronic devices.**

During the investigation, the CCU only requested two devices from the UM: a laptop and desktop computer used by former men’s basketball assistant coach Mike Miller, who resigned before UM received the request.<sup>27</sup> On June 4, 2020, the CCU requested that UM “preserve any and all devices assigned to, used by or accessed by Mike Miller during his employment at Memphis, including without limitation, all

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<sup>23</sup> See CCU Record, [FI047-FI074](#) and [FI084](#).

<sup>24</sup> See CCU Record, [FI027](#).

<sup>25</sup> In Allegation 1(b), the CCU references “a former assistant men’s basketball coach.” Based on the information cited in the CCU’s FI Chart in support of Allegation 1(b), the only Coach referenced related to a device is former men’s basketball coach Mike Miller.

<sup>26</sup> Allegation 1(b) does not allege that UM deleted information from Mr. Miller’s hard drive. However, to the extent the CCU attempts to argue that it has made that assertion, UM denies the claim and avers that the CCU has not provided any evidence to support such a claim.

<sup>27</sup> See June 3, 2020, resignation documents for Mike Miller. ([FI100](#)).

computer hard drives and mobile devices.”<sup>28</sup> Between June 5 and 8, 2020, UM worked with its Information Technology (“IT”) Department to preserve Mr. Miller’s emails<sup>29</sup> and obtain physical possession of his UM-issued devices.<sup>30</sup> By June 10, 2020, UM obtained possession of both devices, and UM IT determined that the laptop computer would not boot correctly and produced an error message.<sup>31</sup> UM did not format or remove information from either device or their hard drives,<sup>32</sup> and the CCU presents no proof to the contrary.

On June 17, 2020, UM notified the CCU that IT was unable to turn on the laptop. Because it would not boot, UM suggested that it be sent to a mutually agreed upon, neutral computer expert for a diagnosis. The CCU refused, writing it would only agree to its own diagnosis, imaging, and repair.<sup>33</sup> On July 23, 2020, UM submitted a letter to the CCU outlining the concerns, including concerns related to confidentiality, personally identifiable student information required by state and federal law to be maintained as confidential,<sup>34</sup> and concerns it had with the CCU taking physical possession of the computers, which would allow it complete and unfettered access to information on the devices that might not be relevant to the CCU’s investigation.<sup>35</sup> An additional privacy concern was Mr. Miller’s and his spouse’s personal information unrelated to UM business, access to information protected by the attorney-client privilege and attorney work product, and state law violations of a state employee’s privacy rights. UM provided the CCU with an extensive list of NCAA cases demonstrating that other member institutions had been allowed to – and commended by the NCAA for – image their hard drives, take inventory of all documents on the hard drives, and respond to specific records requests from the NCAA, as opposed to being required to send full computer systems to the NCAA.<sup>36</sup>

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<sup>28</sup> See CCU Record, [FI075](#), p. 9.

<sup>29</sup> [REDACTED]

<sup>30</sup> [REDACTED]

<sup>31</sup> [REDACTED]

<sup>32</sup> [REDACTED]

<sup>33</sup> See CCU Record, [FI080](#).

<sup>34</sup> UM explained to the CCU that Mr. Miller’s computer could contain confidential information related to UM students that were not student-athletes. ([FI104](#)).

<sup>35</sup> See CCU Record, [FI078](#).

<sup>36</sup> See CCU Record, [FI078](#).

On August 7, 2020, the CCU provided legal interpretations of case law, statutes, and constitutional requirements opposing UM’s privacy concerns contending legal opinions supporting the CCU’s argument about taking possession of the devices.<sup>37</sup> UM disagreed with the CCU’s legal opinion, including its legitimacy, but on August 13, 2020, UM notified the CCU that it would comply with the CCU’s request to take possession, but UM maintained its objections to third party, unfettered access to the computers and their contents.<sup>38</sup> On August 28, 2020, a representative of the CCU traveled to UM and physically picked up the two computers,<sup>39</sup> which were in the same state as when UM received them on June 10, 2020. On September 23, 2020, without any logs, printouts, and minimal explanation of its diagnostic test evaluation methodology, the CCU stated that the Kroll cybersecurity team had determined that the laptop’s operating system was formatted on June 5, 2020.<sup>40</sup> The CCU sent UM a list of computer questions for response by September 28, 2020. UM provided responses to all questions on September 28, 2020.<sup>41</sup> The CCU conducted no further investigation or review related to Mr. Miller’s computers.<sup>42</sup>

The CCU’s general assertion that UM “failed to provide access to all electronic devices” is not supported by the evidence. The evidence shows that UM provided direct unfettered access to the laptop and desktop computer.<sup>43</sup> The CCU’s claims, therefore, should be dismissed.

## **2. The CCU’s claim that UM “failed to conduct an adequate investigation into why the computer’s hard drive was not preserved” is without merit and should be dismissed.**

The CCU argues that UM is in violation of Bylaw 19.2.3(d)-(e) because UM failed to investigate why there was no information on Mr. Miller’s laptop hard drive. However, no rule, including Bylaws 19.2.3(c)-(d), requires an institution to conduct an investigation on behalf of the CCU.<sup>44</sup> The rules require institutions to cooperate by “making full and complete disclosures of relevant information,” “providing

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<sup>37</sup> See CCU Record, [FI079](#).

<sup>38</sup> See CCU Record, [FI080](#).

<sup>39</sup> See August 29, 2020, Kroll Chain of Custody Forms. ([FI105](#)).

<sup>40</sup> See CCU Record, [FI081](#).

<sup>41</sup> See CCU Record, [FI082](#).

<sup>42</sup> See CCU Record, [FI075-080](#).

<sup>43</sup> *Id.*

<sup>44</sup> See generally NCAA Division 1 Manual.

access to all electronic devices” used for business purposes, and providing access to social media messaging and other applications relevant to the investigation.<sup>45</sup> On the other hand, the CCU’s duties include “investigating potential violations and processing cases before the Independent Resolution Panel (IRP),” and gathering “information regarding possible violations.”<sup>46</sup> Furthermore, it is the responsibility of the CCU to “[d]etermine whether supplemental investigation of potential NCAA constitution and bylaws is warranted,” and “develop to the extent reasonably possible, all relevant information about potential violations.”<sup>47</sup> In this case, the evidence shows that UM cooperated fully with the CCU and provided it with unfettered access to Mr. Miller’s devices. UM did not prevent the CCU from investigating Mr. Miller’s computers. The CCU **chose** not to investigate further. This is not proof that UM failed to cooperate. As a result, the Panel should dismiss Allegation 1(b) in its entirety.

**D. Response to Allegation 1(c): UM produced all requested documents within the required timeframe.<sup>48</sup>**

In allegation 1(c), the CCU avers UM violated Bylaw 19.2.3-(c), which requires in relevant part:

- (c) Making a full and complete disclosure of relevant information, including timely production of materials or information requested, and in the format requested.

Specifically, the CCU alleges that UM violated Bylaw 19.2.3(c) by failing to (1) timely respond to reasonable document requests; (2) produce all requested documents; and (3) produce documents using a naming convention and including metadata. There is no evidence that UM failed to comply with any obligation under the Bylaw.

**1. UM provided the CCU with all requested and relevant documents by the February 18, 2021 deadline stated in the Case Management Plan.**

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<sup>45</sup> See NCAA Bylaw 19.2.3 ([FI149](#)); and NOA Allegations for 1(b), p. 2 (CCU alleges that UM violated Rule 19.2.3(c)-(e)).

<sup>46</sup> CCU Procedure 1-2 and 3-1, pp. 1, 3 ([FI150](#)).

<sup>47</sup> See NCAA Bylaw 19.11.2.4.3(a)-(b) ([FI151](#)).

<sup>48</sup> The intent of this section is to address all claims within the NOA, including Allegation 1, related to the CCU’s assertion that the investigation was delayed by the UM, including, but not limited to, claims related to delayed responses to document request and delays with scheduling interviews.

UM provided all requested documents to the CCU by the deadline in the Panel's Amended Case Management Plan. As such, this allegation cannot provide a basis for a Level 1 finding of failure to cooperate. On January 31, 2021, UM submitted a request to the Panel for a 10-day extension of the investigation deadline. On February 4, 2021, the Panel approved the request and amended the Case Management Plan and set the deadline for UM to provide all documents requested by the CCU as February 18, 2021. UM provided all responsive documents in its possession on or before the February 18, 2021, deadline. The CCU's baseless allegation to the contrary does not establish a failure to produce requested documents. The CCU also asserts that UM [REDACTED]

[REDACTED]" UM has reviewed the entire case record and can identify no facts to support that allegation. Until the issuance of the NOA, the CCU never alleged that there were any outstanding responses to its requests. The CCU's allegations should, therefore, be dismissed.

**2. Any delays during the investigation were a result of the coronavirus pandemic, its related problems, and the CCU's expansive requests for documents.**

The Covid-19 pandemic ("pandemic") created myriad difficulties for UM, which included layoffs, furloughs, illnesses, stay at home orders, remote work requirements, and many other day-to-day difficulties.

<sup>49</sup> These challenges cannot be understated as the Panel evaluates UM's cooperation, especially since UM was impacted by factors outside of its control. The CCU also experienced pandemic -related difficulties that lead to delays in the investigation including the CCU's requests for delayed and rescheduled witness interviews.<sup>50</sup> A December 8, 2020, CCU letter to UM acknowledged these difficulties, reading:

The CCU understands the difficulties that all parties face due to the pandemic, including furloughs and layoffs associated therewith. [REDACTED]

[REDACTED]. The CCU has and will continue to work with UM and you on the timing of responses to its records requests given

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<sup>49</sup> In March 2020, UM began transitioning its campus to remote work and learning for safety reasons. On September 25, 2020, UM announced that was eliminating nineteen (19) positions within Athletics. In addition, UM implemented furloughs for all Athletics Department staff above a specific salary threshold, effective October 1, 2020. Lauren Ashman, UM's Athletics representative in the IARP process, was furloughed on several dates during the CCU's investigation, including October 26-30, November 16-20, December 14-18, 2020, and January 25-29, 2021.

<sup>50</sup>See December 7, 2020 email from Nicole Lamb-Hale to Lisa Karen Atkins in which CCU stated that it would have to delay all witness interviews between January 18-29, 2021 because its NCAA administrative support person would be on furlough. ([FI106](#)).

these difficult times.<sup>51</sup>

The CCU now contradicts itself by arguing that pandemic-related delays are violations of NCAA Bylaw 19.2.3-(c). In addition to the difficulties created by the pandemic, UM also had to coordinate responses to a significant number of document requests and coordinate numerous interviews for the CCU. Between August and December of 2020, the CCU sent UM three separate requests for documents<sup>52</sup> that covered an extremely broad scope of information,<sup>53</sup> and resulted in UM having to obtain, review, and produce over 45,000 uploaded documents responsive to the CCU's requests, consisting of more than 500,000 pages. At the same time, the CCU also required UM to coordinate [REDACTED] and employee interviews. This was made more challenging by the fact that UM was facing city-wide stay at home orders, remote work requirements, staff shortages, furloughs, and limited access to campus resources. Additionally, interviews with football staff and [REDACTED] had to be coordinated around the football season.

Despite these unprecedented difficulties, UM honored its obligation to cooperate fully with the CCU by prioritizing the investigation during a global pandemic and showing resilience and resourcefulness to ensure that the CCU had what it needed to complete its review. On September 28, 2020, UM provided the CCU its first set of responsive documents to the August 27, 2020, request. In its response UM clearly articulated to the CCU that it was having difficulty compiling all the requested documents, in part due to pandemic, that it was having difficulty converting the requested emails due to the enormous size of the

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<sup>51</sup> See CCU [FI056](#), December 8, 2020, Letter from the Independent External Advocate to the UM, p. 1. UM acknowledges that this letter alleges that the UM was not cooperating with certain elements of the investigation. UM denies those allegations completely and notes that it sent a response to the CCU addressing each allegation, which can be found at [FI107](#).

<sup>52</sup> See CCU's August 26, 2020 Request ([FI047](#)), the NCAA Representative's October 19, 2020 Request ([FI108](#)), and the CCU's December 21, 2020 Request ([FI059](#)). It should also be noted that the CCU only provided UM 30 days to respond each time it requested more information, which, recognizing the challenges UM was facing, was an impossible task, particularly because the majority of the University's employees were not on-site due to the pandemic. UM, however, regularly informed the CCU of all issues and/or delays it faced as a result of the pandemic.

<sup>53</sup> Each request exceeded the CCU's stated scope of investigation, which was [REDACTED]. The CCU, for example, requested "[a]ny and all records of communication in UM custody and/or control" for five current employees and four former employees from their date of hire through their date of termination (or date of the request for all current employees) without limiting the scope of the request in any other way. In addition, on October 19, 2020, NCAA associate Director of Enforcement Todd Shumaker made the decision to expand the scope of the CCU's [REDACTED] to men's football. ([FI108](#))

request, and that it had to retain an outside vendor for assistance. Between October 2020 and February 18, 2021, UM provided the CCU all remaining responsive documents. The CCU has not provided any evidence to show that UM failed to timely produce relevant documents or delayed the scheduling of interviews. As UM has shown, any delays were a direct result of the pandemic and the CCU's expansive requests. The CCU's allegation is not a violation of Bylaw 19.2.3 and should, therefore, be dismissed.

**3. The CCU's claim that UM did not include email metadata and failed to produce documents with the requested naming convention is irrelevant to the Panel's evaluation of this case and should be dismissed.**

The CCU's claim that UM did not include metadata for the documents it provided is irrelevant to the Panel's evaluation because the CCU never requested that UM provide metadata for any documents. In addition, there is no requirement in CCU or IRP Procedures, the IRP Case Management Plans, NCAA Bylaws, or any other applicable authority requiring UM to provide metadata. The Panel should, therefore, dismiss this allegation in its entirety.

UM used the CCU's naming convention to the best of its ability. However, due to the CCU's expansive document requests it became impossible to maintain the complex naming convention for all of the uploaded documents. The CCU is arguing that the UM should be found in violation of NCAA Bylaws because it did not separately name all 45,000 plus documents with its requested naming convention. UM, however, provided all requested documents by February 18, 2021, carefully organized the responsive documents within Box in easily identifiable folders, and provided the CCU with a spreadsheet that outlined all the responses. A naming convention is not a violation of Bylaw 19.2.3(c) and should be dismissed.

**E. Response to Allegation 1(d): UM fully cooperated with obtaining relevant information and records from [REDACTED].<sup>54</sup>**

The CCU's allegations that UM failed to adequately and timely [REDACTED]

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[REDACTED] intent of this section is to address Allegation 1(d), and any other allegations made by the CCU regarding the [REDACTED]

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<sup>58</sup> See FI109.

<sup>59</sup> See CCU Record, FI053.

<sup>60</sup> See CCU Record, FI063.

<sup>61</sup> See CCU Records FI063.

<sup>62</sup> See CCU Records FJ063.

<sup>63</sup> See CCU Record EJ061.

[REDACTED] The evidence shows that UM fully cooperated with the CCU's request. As a result, the Panel should dismiss Allegation 1(d) in its entirety.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This is neither UM's fault nor a Bylaw violation.

**F. Response to Allegation 1(e): Scheduling meetings with student-athletes and UM employees prior to CCU witness interviews is not a violation of NCAA Bylaws.<sup>64</sup>**

The CCU argues that prep sessions with student-athletes and employees before their interviews violates NCAA bylaws and establishes a “lack of commitment to cooperation and disregard for NCAA directives to avoid communicating with individuals about the subject matter of the investigation prior to being interviewed.” There are, however, no rules that prohibit an institution from meeting with employees or student-athletes prior to scheduled interviews. Furthermore, the CCU provides no evidence that UM discussed the substance of the investigation with student-athletes or employees<sup>65</sup> prior to their interviews. The CCU could have but chose not to ask the witnesses questions about their prep during the interviews. This allegation is simply a self-serving statement by the CCU and the claim should be dismissed.

## **ALLEGATION 2**

**Processing Level of Case:** *The CCU believes this case should be a Level I violation.*

**RESPONSE:** *UM denies that this should be reviewed as a Level I violation or a Level I violation occurred.*

**Allegations (summarized and excerpted from the amended NOA).**

[REDACTED]

[REDACTED]

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<sup>64</sup> The Intent of this section it to address Allegation 1(e).

<sup>65</sup> Nothing in the NCAA Bylaws would prevent the UM from discussing an investigation with its employees. Take for example the UM President or Athletic Director. To suggest that the UM cannot discuss the details of an investigation with those employees would make it impossible for the UM to navigate an investigatory process.

[REDACTED]

*Level of Allegation No. 2: The CCU believes this is a Level I. UM disagrees.*

*Involved Individual:* None.

#### **UM'S POSITION CONCERNING ALLEGATION 2**

For the CCU's contentions to be true, there must be evidence that UM [REDACTED]

[REDACTED] [REDACTED] [REDACTED]. But there is absolutely no evidence to support this. The CCU generally cites to 10 interviews<sup>66</sup> and six documents<sup>67</sup> that it states support these allegations. The interviews contain no evidence [REDACTED]

and [REDACTED]

[REDACTED] Furthermore, contrary to the CCU's assertions, there is no evidence that [REDACTED]

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<sup>66</sup> Interviews of Anfernee Hardaway on 7/15/19, 10/23/19, 10/21/20, and 1/25/21 ([FI001](#), [FI002](#), [FI003](#), [FI029](#)); interviews of Kristan Kelly on 10/9/20 and 10/14/20 ([FI007](#), [FI008](#)); [REDACTED]

<sup>67</sup> [REDACTED] ([FI034](#)): [REDACTED]

[REDACTED] As such, UM denies all allegations and assertions in Allegation 2. For a detailed factual account, please see the attached Factual Background.<sup>68</sup>

[REDACTED] . Despite CCU assertions to the contrary, there is no evidence to support this assertion. [REDACTED]

The CCU next contends that UM violated Bylaw

[REDACTED]. The CCU contends

<sup>68</sup> See Factual Information from the Case Record. (FI092).

<sup>69</sup> See CCU Record, FI017, p. 26.

[REDACTED]. But this could not be further from the truth. [REDACTED]  
[REDACTED] [REDACTED]. In fact,  
everyone interviewed said the exact opposite.<sup>70</sup> [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] Accordingly, there was no violation under Bylaw [REDACTED]. The CCU next contends that  
UM violated Bylaw [REDACTED]. Bylaw [REDACTED]:  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

The CCU then continues by pointing to specific prohibitions included under Bylaw [REDACTED] as additional support that UM violated this Bylaw. Not only is this case distinguishable from other cases involving violation of Bylaw [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED], [REDACTED]  
[REDACTED]. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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<sup>70</sup> See CCU Records [FI018](#), p. 23, 35; [FI011](#), p. 24, 41; [FI003](#), p. 15-16.

<sup>71</sup> See CCU Records [FI021](#), p. 19, 29, 33, 36-39; [FI022](#), p. 11-14; [FI002](#), p. 18-19.

<sup>72</sup> See CCU Record [FI019](#), p. 11-12.

<sup>73</sup> See CCU Records [FI002](#), p. 10, 15-16; [FI003](#), p. 10-11.

<sup>74</sup> See CCU Record [FI003](#), p. 13.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Additionally, the facts of this matter are diametrically opposed to recent major infractions cases involving [REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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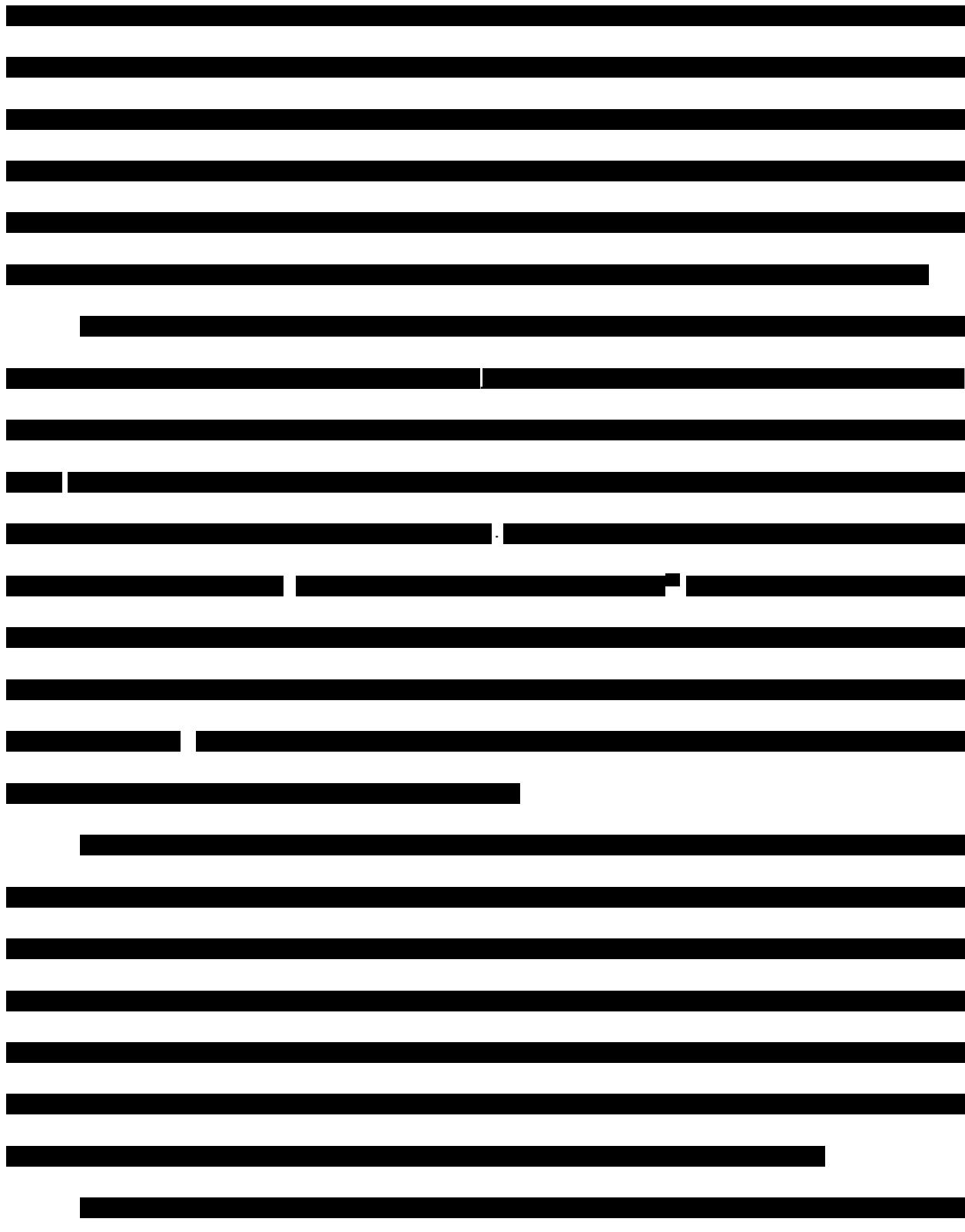
<sup>75</sup> See CCU Records [FI019](#), p. 4-5; [FI020](#), p. 12-16.

<sup>76</sup> See CCU Record [FI020](#), p. 12-16.

<sup>77</sup> See CCU Record [FI019](#), p. 11-12.

<sup>78</sup> [REDACTED]

<sup>79</sup> [REDACTED]



[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED].

The CCU contends that not only were there multiple violations of [REDACTED], but also that the conduct was so severe that it should be classified as Level I. A comparison of recent Level I infractions cases involving [REDACTED], confirms that the allegations as stated are not a Level I violation. The CCU's allegations in this case are nowhere near as egregious as those outlined in the cases above. Furthermore, a recent case involving [REDACTED], which also involved violations of [REDACTED], was found to be a Level I violation.<sup>82</sup> In that case, several

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]

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<sup>81</sup> [REDACTED]. ([FI113](#)).

<sup>82</sup> [REDACTED]. ([FI114](#)).

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

Accordingly, the Panel should determine that the allegations set forth in Allegation No. 2 are unfounded.

### **ALLEGATION 3**

**Processing Level of Case:** *The CCU believes should be reviewed as Level I violation.*

**RESPONSE:** The University denies that this is a Level I and also denies all allegations in the NOA.

**Allegation (summarized):** [REDACTED]  
[REDACTED]. This serves as part of the basis for head coach responsibility, failure to monitor, and lack of institutional control.

**Involved Individual:** None.

#### **UM'S POSITION CONCERNING ALLEGATION 3**

83 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] . [REDACTED]

[REDACTED]

[REDACTED]

<sup>84</sup> See CCU Record [F1007](#), p. 6-7.

<sup>85</sup> See CCU Record [F1007](#), p. 6-7.

<sup>86</sup> See CCU Record [F1007](#), p. 12.

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<sup>87</sup> See CCU Records [FI001](#), [FI019](#), [FI020](#).

<sup>88</sup> See CCU Record FI007, p. 8-9.

<sup>89</sup> See CCU Records [FI007](#), p. 11; [FI037](#).

<sup>90</sup> See CCU Record FI038.

<sup>91</sup> See CCU Record [FI007](#), p. 11.

<sup>92</sup> See CCU Record [FI007](#), p. 11.

<sup>93</sup> See [redacted]

<sup>94</sup> See CCU Record FI015, p. 41-42.

See CCC Record [11013](#), p. 41-42.

<sup>95</sup> See CCU Record FI015, p. 41-44, 51-52.

96 [REDACTED] . See CCU Record  
[FI016](#), p. 6.

<sup>97</sup> See CCU Record [FI015](#), p. 43-44, 51-52.

<sup>98</sup> See CCU Record [FI015](#), p. 44, 51.

<sup>99</sup> See CCU Record [FI015](#), p.43-44, 51.

<sup>100</sup> See CCU Records FI015, p. 43, 53.

<sup>101</sup> See CCU Record F1015, p. 45, 49.

<sup>103</sup> See CCU Record [FI046](#).

<sup>104</sup> See CCU Record F1046, p. 8.

<sup>104</sup> See CCU Record F1046, p. 8.

<sup>103</sup> See CCU Record [F1003](#), p. 101-102.

<sup>106</sup> See CCU Record FI046, p. 8.

<sup>107</sup> See CCU Record FI034.

<sup>108</sup> See CCU Records FI007, p. 13-14; FI046, p. 6-7, 11-13.

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<sup>110</sup> See CCU Record [FI046](#), p. 3.

<sup>111</sup> See CCU Record [FI007](#), p. 12.

<sup>112</sup> See CCU Records [FI046](#), p. 3; [FI001](#), p. 37.

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<sup>114</sup> See CCU Records FI007, p. 12; FI046 at p. 8.

The image consists of a vertical stack of approximately 25 horizontal black bars. These bars vary in length, with some being relatively short and others extending almost the full width of the frame. The pattern suggests a sequence of data blocks that have been obscured or redacted. The bars are evenly spaced and appear to be of uniform thickness.

Furthermore, this situation is far different than other cases where institutions are found to have violated [REDACTED]. A recent [REDACTED] case makes clear [REDACTED]

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Accordingly, there was not, a violation.

Any purported violation should not be deemed a Level I.

In fact, in the [REDACTED] matter referenced above, it was determined that the [REDACTED]

<sup>115</sup> [REDACTED] at p. 7, ([FI116](#)).

[REDACTED] . [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]

#### ALLEGATION 4

*Level of Allegation No. 4: The CCU believes these are collectively a Level II violation.*

**RESPONSE:** UM disagrees with the Level of conduct and denies in their entirety the matters alleged.

**Allegation (summarized):** [REDACTED]

a) [REDACTED]  
[REDACTED]  
[REDACTED], [REDACTED]  
[REDACTED]

**Involved Individual:** None.

#### **UM'S POSITION CONCERNING ALLEGATION 4**

UM acknowledges that three self-reported violations occurred, but this does not support the CCU's assertion that four Level III violations constitute a significant breach of conduct. This is a clear attempt to compound the seriousness of the case against UM in order to justify its charges, specifically the lack of institutional control allegation outlined in No. 7. The NCAA defines "institutional control" as maintaining adequate compliance measures, implementation of coordinated educational efforts, employing significant monitoring practices, and taking swift action upon learning of a violation.<sup>116</sup> UM acted appropriately when addressing each of these violations. NCAA legislation allows for multiple Level III violations to be increased to a Level II charge, but the current facts do not support such an enhancement.

The first referenced violation, [REDACTED] [REDACTED], was discovered by Ms. Kelly

[REDACTED].<sup>117</sup> As detailed in UM's RSRO, [REDACTED]

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<sup>116</sup> See NCAA Enforcement Process, [FI042](#).

<sup>117</sup> See CCU Record [FI031](#).

[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] acted without coaching staff direction, permission or knowledge.<sup>119</sup> [REDACTED]

[REDACTED] In order to appropriately address the violation, UM implemented several penalties and corrective actions including addressing letters of violation to [REDACTED] and head coach, providing rules education to [REDACTED] and coaching staff, prohibiting [REDACTED] from participating in official visits until the start of the next calendar year, and prohibiting the coaching staff from recruiting [REDACTED] for two calendar days during [REDACTED] evaluation period.<sup>121</sup>

The second violation alleges that [REDACTED] [REDACTED]

[REDACTED] Unlike the other Level III violations included in this specific Allegation that were discovered and self-reported by UM, it learned of this minor infraction upon receipt of the NOA. [REDACTED]

UM disagrees with the assertion that this violation should be used to support elevated Level II charges. [REDACTED]

[REDACTED] A perceived violation of this nature is to be treated as a minor infraction, which is contrary to the CCU's belief that it can and should support lack of institutional control, failure to monitor and head coach responsibility. Furthermore, if the CCU viewed this as an aggravated violation, then UM should have been afforded an

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<sup>118</sup> See CCU Record [FI031](#).

<sup>119</sup> See CCU Record [FI031](#).

<sup>120</sup> See CCU Record [FI031](#).

<sup>121</sup> See CCU Record [FI031](#).

opportunity to discuss this during the investigation.

The third violation was also discovered by Ms. Kell

This situation was not egregious and plainly unintentional.

recruiting advantage was gained!

[REDACTED] After investigating the matter, UM self-imposed corrective actions, including [REDACTED]  
[REDACTED] rules education to the coaching staff [REDACTED]. ([FI032\\_1058665](#)).

The fourth and final violation was, again, discovered by Ms. Kelly

<sup>122</sup> See CCU Record FI032.

<sup>123</sup> See CCU Record FI032.

<sup>124</sup> See CCU Record [FI032](#).

<sup>125</sup> See CCU Record [FI032](#).

<sup>126</sup> See CCU Record [FI032](#).

<sup>127</sup> See CCU Record [FI032](#).

<sup>128</sup> See CCU Record [FI033](#).

<sup>129</sup> See CCU Record [FI033](#).

<sup>130</sup> See CCU Record [FI033](#).



The CCU contends that the totality of these four violations constitute a significant breach of conduct because they (1) were not isolated or limited, (2) involved multiple recruiting violations, and (3) provided more than a minimal recruiting advantage. However, there is no evidence to support this.

First, even counting all four as violations, there were four in the span of three years, beginning with Coach Hardaway's hire and ending with the date of the NOA. This confirms that the acts were both isolated and limited. Secondly, [REDACTED] were relatively minor. These isolated incidents involved an [REDACTED]

[REDACTED] and a text to a father regarding the status of his child. Finally, UM gained *no* recruiting advantage. The CCU contends that UM "gained more than a minimal recruiting advantage," but the evidence confirms otherwise:

- [REDACTED]

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<sup>131</sup> See CCU Record [FI033](#).

<sup>132</sup> See CCU Record [FI033](#).

<sup>133</sup> See CCU Record [FI033](#).

<sup>134</sup> See CCU Record [FI033](#).

<sup>135</sup> See CCU Record [FI033](#).

<sup>136</sup> See CCU Record [FI033](#).

- [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - The PSA referenced in violation (d) elected to attend another Division I institution.

As evidenced by each of these events, UM acted appropriately when addressing each of the presented violations. Each violation was discovered at the institutional level, reported immediately through proper channels, and addressed through corrective actions. Discovery and self-reporting of infractions are not only encouraged but expected. These behaviors are outlined within the case record of each violation report and actually signify a commitment to institutional control and operating with integrity. In totality, the violations do not support the CCU's assertion that these should constitute a Level II infraction.

## **ALLEGATION 5**

**Processing Level of Case:** The CCU asserts that this is a Level III violation.

**RESPONSE:** The University denies that the facts support a Level III violation.

***Allegation (summarized):***

***Involved Individual:*** None.

## **UM'S POSITION CONCERNING ALLEGATION 5:**

UM self-reported a violation of NCAA

<sup>137</sup> See CCU Record FI031.

<sup>138</sup> See CCU Record FI030.

<sup>139</sup> See CCU Record FI009, p. 66.

<sup>140</sup> See CCU Record FI030.

Pursuant to NCAA Bylaws,

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Although it was determined to be an occasional meal, Ms. Kelly did not withdraw the original violation filing from the record, so it remained within the system throughout this investigation. This violation should not be part of the record or used as evidence to support the allegations of head coach responsibility, failure to monitor or lack of institutional control as it was discovered during a supplemental review that it could justly be considered a permissible occasional meal for the involved student-athletes.

## **ALLEGATION 6**

**Level of Allegation No. 6:** The CCU believes the hearing panel could conclude this is a Level II.

**RESPONSE:** UM disagrees that the alleged violation as Level II and disagrees with the allegations.

<sup>141</sup> See CCU Record FI030.

<sup>142</sup> See CCU Record FI030.

<sup>143</sup> See CCU Record FI030.

<sup>144</sup> See CCU Record FI030.

<sup>145</sup> See CCU Record FI030.

<sup>146</sup> See CCU Record FI030.

<sup>147</sup> See CCU Record FI030.

<sup>148</sup> See CCU Record F1030.

<sup>149</sup> See CCU Record F1030.

**Allegations (summarized):** [REDACTED], Hardaway violated head coach responsibility legislation when he failed to demonstrate that he promoted an atmosphere of compliance within the men's basketball program

**Involved Individual:** The CCU believes the hearing panel should prescribe head coach restrictions.

## **UM'S POSITION CONCERNING ALLEGATION 6**

### Facts Relating to Allegation Nos. 3, 4, and 5

For brevity, UM refers the Panel to its Responses to Allegation Nos. 3, 4, and 5 for the specific background facts.

#### Coach Hardaway's Commitment to Compliance

Coach Hardaway's commitment to and emphasis on compliance is apparent from the testimony:

- Immediately upon his hire, he began reading the manual and individual packets of information provided to him by compliance to fully understand the Bylaws;<sup>150</sup>
- Whenever he was in the office, he met with the compliance staff to continue his education;<sup>151</sup>
- He always called the compliance office if he had questions relating to permissible behavior and demanded that his staff do the same;<sup>152</sup>
- He monitored compliance issues and communicated constantly with the compliance office relating to compliance issues that involved his staff;<sup>153</sup>
- He demanded that coaches know how to report violations and that they actually report any violations to the compliance office;<sup>154</sup> and
- He welcomed compliance into all aspects of his program. The staff had regular meetings with compliance and compliance was involved with all aspects of the team including watching practice, observing team recruiting weekends, observing recruiting, and traveling to away games.<sup>155</sup>

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<sup>150</sup> See CCU Record [FI003](#), p. 24, 48.

<sup>151</sup> See CCU Record [FI003](#), p. 26, 48-49.

<sup>152</sup> See CCU Record [FI003](#), p. 24, 31, 48-49.

<sup>153</sup> See CCU Record [FI003](#), p. 47.

<sup>154</sup> See CCU Record [FI001](#), p. 10.

<sup>155</sup> See CCU Records [FI001](#), p. 9-10; [FI003](#), p. 50; [FI011](#), p. 13-14; [FI013](#), p. 24, [FI018](#), p. 11-12; [FI006](#), p. 30-31; [FI005](#), p. 14; [FI009](#), p. 17.

Additionally, Coach Hardaway made sure to address any potential rules violations when they occurred. With respect to the situations outlined in Allegation Nos. 4 and 5, the evidence confirms that Coach Hardaway did not direct his staff members to violate the rules, took remedial steps upon learning of violations, and did not attempt to hide any violations.

Allegation No. 4 includes four separate, isolated incidents. First, with regard to the [REDACTED] incident, Coach Hardaway had no knowledge of the plan beforehand and addressed it with his staff member immediately upon learning of the violation.<sup>156</sup> Furthermore, Coach Hardaway took corrective action and prohibited this staff member from [REDACTED]<sup>157</sup> The next alleged incident took place on or around [REDACTED]. Coach Hardaway was interviewed four times and was not asked in *any* of the interviews about this situation. The CCU cannot possibly rest a head coach responsibility violation [REDACTED] for which they did not even elicit any information. The third incident occurred on or around [REDACTED] and involved [REDACTED]. Again, there is no evidence that Coach Hardaway instructed, required, or asked anyone to [REDACTED] In fact, when asked about it, Coach Hardaway had no recollection of [REDACTED] but reiterated that he expected his staff to follow all applicable Bylaws and be educated on applicable Bylaws.<sup>158</sup>

Finally, the CCU contends that the [REDACTED] violation supports that Coach Hardaway failed to monitor his program, but the evidence confirms the opposite. Though Coach Hardaway's account in his October 2020 interview is slightly different than the RSRO, both accounts demonstrate that Coach Hardaway misunderstood the Bylaw and did not ignore it. Furthermore, in both accounts, Coach Hardaway readily admitted his mistake, cooperated with the compliance office, and accepted responsibility.<sup>159</sup>

The incident in Allegation No. 5 also does not demonstrate that Coach Hardaway neglected his responsibilities. Indeed, there is no evidence to suggest that Coach Hardaway permitted this incident to

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<sup>156</sup> See CCU Record [FI003](#), p. 85-88.

<sup>157</sup> See CCU Record [FI003](#), p. 88.

<sup>158</sup> See CCU Record [FI003](#), p. 84-85.

<sup>159</sup> See CCU Record [FI003](#), p. 91.

occur and the assistant coach confirmed that he had receiving training on this particular Bylaw.<sup>160</sup> Additionally, the evidence demonstrates that Coach Hardaway took steps to ensure that similar behavior would not happen in the future. Specifically, after learning about the incident, he called the assistant coach and told him that he could not allow [REDACTED].<sup>161</sup>

Finally, as outlined extensively in Response to Allegation No. 3, there is simply no evidence that Coach Hardaway purposely violated a rule. First, the CCU again alleges [REDACTED]

[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]

[REDACTED] cannot serve as a means to find Coach Hardaway in violation of head coach responsibility Bylaws.

The CCU alleges that Coach Hardaway violated Bylaw 11.1.1.1 when he failed to promote an atmosphere of compliance within the men's basketball program. Specifically, the CCU contends that he allowed [REDACTED], provided [REDACTED], [REDACTED]  
[REDACTED]. The CCU classified this as a Level II violation.

Bylaw 11.1.1.1 states that a head coach is "presumed to be responsible for the actions of all institutional staff members who report, directly or indirectly, to the head coach." It also mandates that head coaches promote an atmosphere of compliance within his/her program and monitor the activities of all staff members involved with the program who report, directly or indirectly, to the head coach. A recent NCAA Public Infractions Decision is instructive on the Bylaw and the specific conduct that could give rise to a violation—"The [Committee on Infractions] has regularly concluded that head coach responsibility violations occur when head coaches are personally involved in violations or direct and permit staff members to engage in violations, as well as fail to consult with the compliance staff."<sup>162</sup> Recent cases illustrate this.

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<sup>160</sup> See CCU Record [F1009](#), p. 66.

<sup>161</sup> This ultimately was deemed a permissible occasional meal.

<sup>162</sup> Siena College March 9, 2020 Public Infractions Decision. ([FI117](#)).

Most recently, the former Georgia Tech head women’s basketball coach was found to have violated head coach responsibility legislation based on her direct involvement in and knowledge of violations.<sup>163</sup> Specifically, over the course of two years, she regularly and intentionally disregarded limitations on CARA by routinely requiring her student-athletes to exceed daily and weekly maximum limits and failed to provide off days, as required under time management legislation. She also, over the course of two years, disregarded coaching limitations by allowing graduate managers to provide tactical or technical instruction to student-athletes during practices, which exceeded coaching limitations. Finally, during the course of the investigation, student-athletes indicated that the head coach instructed the team not to trust the compliance office. This behavior resulted in a Level II violation.

Similarly, the former men’s basketball coach at Siena College was found to have violated head coach responsibility legislation. Specifically, over the course of three academic years, he provided impermissible benefits in the form of cash payments to student-athletes. He also arranged for his director of basketball operations, a student manager, and an assistant coach to provide impermissible long-distance transportation to student-athletes. These violations caused student-athletes to compete and receive expenses while ineligible for over three years. Finally, he also directed and permitted the director of basketball operations to engage in impermissible coaching instruction. With respect to compliance, the head coach never sought guidance from compliance or otherwise took “any meaningful action to ascertain what was permissible.” Rather, “he operated under his own assumptions of what the legislation permitted and his assessment of what was best for his student-athletes.” This also resulted in a Level II violation.

These situations were unlike other cases where the head coach had, in fact, rebutted the presumption. In a case involving the University of the Pacific head baseball coach, the coach rebutted the presumption of responsibility by demonstrating that the underlying benefits violation resulted from a legitimate misunderstanding between the coach and an associate athletics director and by demonstrating

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<sup>163</sup> Georgia Institute of Technology September 21, 2021 Public Infractions Decision. ([FI118](#)).

that the coach followed proper procedures to seek the associate athletic director's input and approval. Furthermore, there was no evidence to suggest that he did not set a tone of commitment to compliance or that he failed to monitor his staff.<sup>164</sup> Similarly, in a case involving Wichita State University's head baseball coach, the coach rebutted the presumption by demonstrating that he promoted an atmosphere for rules compliance and by monitoring the activities of the individuals within his program. As to the specific violation, there was no evidence that he allowed, or even knew that, the violation occurred.<sup>165</sup>

Coach Hardaway's situation is more akin to the latter, not the former. First, though the CCU alleges that the violations span multiple years, the incidents alleged in Allegation Nos. 4 and 5 boil down to, at most, [REDACTED]. Similarly, with respect to Allegation No. 3, [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] but, as stated by the COI in the University of the Pacific case, that does not amount to "knowingly" violating the rules. Taken together, these alleged violations simply do not rise to the level of a violation of Bylaw 11.1.1.1. There were no long-standing violations spanning years, as outlined in the two most recent cases involving confirmed violations. Coach Hardaway also did not direct or invite any member of his staff to commit violations. The evidence confirms the opposite—that Coach Hardaway had no knowledge of the incidents. The situations included in [REDACTED] and do not amount to head coach responsibility violations. Additionally, unlike the head coaches at Georgia Tech and Siena College, there is no evidence that Coach Hardaway shielded his team from compliance or failed to consult

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<sup>164</sup> University of the Pacific September 20, 2017 Public Infractions Decision. ([FI119](#)).

<sup>165</sup> Wichita State University January 29, 2015 Public Infractions Decision. ([FI120](#)).

with compliance. Again, the converse is true. The record establishes that compliance was involved in every single aspect of his program. In fact, with regard to the [REDACTED] incident included in Allegation No. 4, Coach Hardaway readily admitted the violation. Clearly, Coach Hardaway was not skirting his compliance obligations.

## **ALLEGATION 7**

***Level of allegation:*** *The CCU believes this case should be a Level I violation.*

**RESPONSE:** UM denies that this is a Level I violation and denies in their entirety all matters alleged.

***Allegation (summarized):*** *It is alleged that from 2011 through AY 2021, the Institution failed to exercise institutional control and monitor the conduct and administration of its men's basketball program.*

***Involved Individual:*** None.

### **UM'S POSITION CONCERNING ALLEGATION 7**

UM cooperated fully throughout the entire investigation.

Throughout the investigation, UM fully cooperated with the CCU and NCAA, coordinated and participated in all requested interviews, provided all requested materials, and otherwise responded to all requests of the CCU. Evidence of UM's cooperation is detailed in UM's responses to Allegations 1-5. An important fact is that the CCU waived any claims that UM violated Bylaw 19.2.3, because the CCU never initiated any elements of IRP Procedure 4-10, which is a required step if the CCU believes an institution is in violation of Bylaw 19.2.3. However, even if the Panel reviewed the allegations individually, the CCU has not provided any evidence that shows UM failed to comply with its obligations under Bylaw 19.2.3. Instead, the CCU relies on self-serving allegations that are unsupported by the record.<sup>166</sup>

First, the evidence shows that UM produced all the CCU's requested documents by the Panel's February 18, 2021 deadline. UM acknowledges that there were difficulties during the investigation because of the pandemic that required extensions of certain deadlines. However, UM, the Panel, and the CCU recognized these pandemic-related difficulties in the Case Management plan. Furthermore, the evidence

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<sup>166</sup> See UM's Responses to Allegations 1-5.

shows UM regularly communicated with the CCU about its difficulties and requested deadline extensions as necessary. Any delays during the investigation were solely related to the pandemic and the CCU's expansive requests, which resulted in UM producing 45,000 documents. Finally, the CCU has not produced any evidence showing UM failed to produce any requested documents.<sup>167</sup>

The evidence also shows that UM disclosed to the CCU and provided it access to all requested electronic devices. The CCU's contention that UM violated Bylaw 19.2.3 because it did not take on certain investigatory functions on behalf of the CCU is irrelevant to this matter. NCAA Bylaws do not obligate UM to investigate on behalf of the CCU. UM's responsibility is to fully cooperate, and it did so by providing the CCU with unfettered access to all requested electronic devices.<sup>168</sup>

Additionally, UM fully cooperated in obtaining relevant information [REDACTED]

[REDACTED] . [REDACTED]  
[REDACTED]  
[REDACTED] The CCU also presents a dishonest assertion that [REDACTED]

Finally, the CCU's claims that UM failed to produce documents with the requested naming convention, that UM did not produce metadata, and that UM had meetings with its students and employees prior to their witness interviews are irrelevant to the Panel's review and are simply used by the CCU in an attempt to hide that it does not have evidence to support a claim that UM violated Bylaw 19.2.3. First, the CCU never requested metadata. Second, the Bylaws do not prohibit an institution from meeting with its students and employees, and there is no evidence that UM discussed anything with those witnesses that would violate NCAA Bylaws. Lastly, due to the mass amount of documents UM had to produce, it was

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<sup>167</sup> See UM's Response to Allegation 1(c).

<sup>168</sup> See UM's Response to Allegation 1(b).

<sup>169</sup> See UM's Response to Allegation 1(d).

impossible to utilize the requested naming convention. UM did, however, carefully organize the produced documents and provided a detailed key and bates numbering system for the CCU's reference.<sup>170</sup>

At all times, UM appropriately monitored and established a culture of compliance in its men's basketball program (allegations (b) and (c)).

Even prior to the time that Coach Hardaway was hired at UM, the importance of compliance was front and center.<sup>171</sup> Mr. Bowen immediately began conversations with Courtney Vinson, the then Senior Associate Athletic Director for Compliance, to determine what steps UM would need to take with Coach Hardaway, including disassociating him from his high school and AAU programs, developing a compliance program to teach him NCAA rules, and ensuring that he passed the recruiting exam.<sup>172</sup> Once Coach Hardaway was hired, the importance of compliance was paramount. In addition to that outlined in Response to NOA 6, see UM's Commitment to Compliance document.<sup>173</sup>

UM has, and continues, to create a culture of compliance throughout the entire athletics department.

UM has a good compliance culture. Former Coach Smith stated that UM had a culture of compliance and that he could not think of a time when compliance was not supported.<sup>174</sup> UM supported compliance from the highest level. In 2012, Tom Bowen was hired as the new athletic director. UM was coming off of a Level I infraction, and then President Raines made it very clear to Mr. Bowen that he needed to focus on compliance.<sup>175</sup> Under Mr. Bowen, the Athletic Department committed to a zero-tolerance policy on infractions. He maintained an open-door policy as it related to compliance and welcomed coaches coming directly to him. He believed in everyone being "effective, transparent, and immediate."<sup>176</sup>

When President Rudd was hired, the University's commitment continued. He met with Mr. Bowen and continues to meet with Mr. Veatch regularly. During these meetings, President Rudd asked questions to ensure that compliance remained front and center and also asked questions relating to NCAA regulation

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<sup>170</sup> See UM Responses to Allegations 1(c)-(e).

<sup>171</sup> See CCU Record [F1001](#), p. 6-7.

<sup>172</sup> See CCU Record [F1011](#), p. 37 – 39.

<sup>173</sup> See UM's Commitment to Compliance document. ([F1131](#)).

<sup>174</sup> See CCU Record [F1017](#), p. 12.

<sup>175</sup> See CCU Record [F1018](#), p. 6.

<sup>176</sup> See CCU Record [F1018](#), p. 19-20.

and bylaw updates.<sup>177</sup> President Rudd supported the compliance office and never pushed back on compliance initiatives or questioned compliance decisions.<sup>178</sup> Additionally, the athletic compliance office maintained a good working relationship with the Office of University Counsel. Under Mr. Bowen, the compliance office had a dotted line reporting relationship to the General Counsel.<sup>179</sup> Not only was the office helpful and supportive, it provided another mechanism to report issues to the President's level.<sup>180</sup>

Regarding staffing, when Mr. Bowen was hired, there was one compliance officer, who had one graduate assistant and one part-time employee. Ms. Vinson, who was leading the compliance office at the time, requested help, and Mr. Bowen answered the call, adding three full-time staff members throughout his tenure.<sup>181</sup> By 2018, they had a full-time certification officer, three full-time staff members, and a GA position in addition to someone they used part-time/picking up overtime.<sup>182</sup>

Compliance was the focal point of many meetings throughout the year both inside and outside of the athletics department. Importantly, compliance met with coaches on a monthly basis.<sup>183</sup> These meetings focused on topics important for that time of year based on the NCAA calendar.<sup>184</sup> For example, official visits would be reviewed each August or September to refresh everyone at the start of the academic year.<sup>185</sup> Coaches were required to attend, and UM did take attendance to ensure that coaches received the monthly education.<sup>186</sup> In addition to the standing monthly meetings, compliance met separately with head coaches to discuss various issues and topics.<sup>187</sup> They also sent out weekly compliance emails that communicated new legislation, hot topics, or examples of behavior that may be in violation of NCAA rules.<sup>188</sup> Finally, all new coaches underwent a particular training once they were hired at UM.<sup>189</sup> The compliance office was

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<sup>177</sup> See CCU Records [FI018](#), p. 8; [FI015](#), p. 17; [FI016](#), p. 28.

<sup>178</sup> See CCU Records [FI016](#), p. 28-29; [FI011](#), p. 35-36; [FI013](#), p. 19.

<sup>179</sup> See CCU Record [FI018](#), p. 18.

<sup>180</sup> See CCU Records [FI011](#), p. 31; [FI006](#), p. 13; [FI007](#), p. 32, 42.

<sup>181</sup> [FI011](#), p. 11-12.

<sup>182</sup> See CCU Record [FI018](#), p. 6, 13-14.

<sup>183</sup> See CCU Records [FI017](#), p. 11; [FI001](#), p. 9; [FI018](#), p. 7; [FI011](#), p. 12-14; [FI006](#), p. 31; [FI013](#), p. 19, 24.

<sup>184</sup> See CCU Record [FI011](#), p. 13-14.

<sup>185</sup> See CCU Record [FI011](#), p. 12-14.

<sup>186</sup> See CCU Record [FI011](#), p. 14.

<sup>187</sup> See CCU Record [FI018](#), p. 7.

<sup>188</sup> See CCU Records [FI006](#), p. 13, 30-31; [FI013](#), p. 19, 24.

<sup>189</sup> See CCU Record [FI011](#), p. 13.

available any time to answer questions and taught that coaches should always ask before they acted.<sup>190</sup>

In addition to coaches' education, the compliance office conducted education for other groups. It conducted training with various areas throughout the athletics department on applicable NCAA rules and regulations.<sup>191</sup> It also conducted student-athlete training at various points throughout the year – beginning of the year, mid-year, and end of year. Additionally, when there was a pressing issue or a change in legislation, a member of the compliance office would attend practice to address a team.<sup>192</sup>

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 96 [REDACTED]

[REDACTED]. 197

The compliance office also ensured that everyone understood how to report violations and had multiple avenues for reporting. Coaches, student-athletes, and staff members could self-report to their sport administrator, the AD, or the compliance office. Anyone, including the public, could call the general compliance office or the American Athletic Conference office.<sup>198</sup> For violations not otherwise disclosed, the compliance office's monitoring efforts identified potential violations. As part of their monitoring efforts, the compliance office reviewed paperwork, including official and unofficial visits, which sometimes revealed violations.<sup>199</sup> As part of the overall commitment to compliance, any time a report was made or a

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<sup>190</sup> See CCU Records [FI006](#), p. 13, 30-31; [FI017](#), p. 11.

<sup>191</sup> See CCU Records [FI011](#), p. 15; [FI006](#), p. 31; See CCU Record [FI013](#), p. 24; [FI041](#) UM Response to Request No. 9, p. 24 email.

<sup>192</sup> See CCU Record [FI006](#), p. 31-32.

<sup>193</sup> See CCU Records [FI011](#), p. 23; [FI018](#), p. 22.

<sup>194</sup> See CCU Record [FI011](#), p. 23.

<sup>195</sup> See CCU Record [FI018](#), p. 22.

<sup>196</sup> See CCU Record [FI018](#), p. 22.

<sup>197</sup> See CCU Record [FI006](#), p. 30.

<sup>198</sup> See CCU Record [FI018](#), p. 21.

<sup>199</sup> See CCU Record [FI011](#), p. 16-17.

potential violation was reported, the compliance office informed the Athletic Director.<sup>200</sup> Depending on the type of allegations, the compliance office had the discretion to immediately notify the University's General Counsel as well as the American Athletic Conference Office.<sup>201</sup> All reports were investigated.<sup>202</sup>

The same holds true for the current compliance set-up. Mr. Veatch has carried on the importance of reporting violations, asking questions, and being personally informed of potential compliance issues, and he has shown a financial commitment as well.<sup>203</sup> Recently, a new compliance software system, ARMS, was purchased to help increase the efficiency of the department.<sup>204</sup> Additionally, Mr. Veatch hired a new executive associate athletic director in 2020 who brought a significant amount of compliance experience. She now oversees the department and reports directly to Mr. Veatch.<sup>205</sup> Throughout the pandemic, UM made significant budget and staffing cuts. However, no one from compliance was let go.<sup>206</sup>

The University's conduct does not demonstrate a failure to cooperate.

A review of recent NCAA cases involving allegations of failure to cooperate under Bylaw 19.2.3 shows that UM did not engage in any behavior that warrants a finding that it violated the Bylaw. All these cases contain facts in which institution representatives refused to participate in interviews and/or to provide requested documents or information.<sup>207</sup> UM's case is distinguishable. The evidence confirms that UM coordinated interviews with all witnesses requested by the CCU, including multiple follow-up interviews,

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<sup>200</sup> See CCU Record [F1011](#), p. 21-22.

<sup>201</sup> See CCU Record [F1011](#), p. 21-22.

<sup>202</sup> See CCU Record [F1018](#), p. 21-22.

<sup>203</sup> See CCU Record [F1016](#), p. 11-13, 28.

<sup>204</sup> See CCU Record [F1013](#), p. 15.

<sup>205</sup> See CCU Records [F1016](#), p. 9; [F1015](#), p. 26.

<sup>206</sup> See CCU Record [F1016](#), p. 28.

<sup>207</sup> See, e.g., Georgia Institute of Technology (September 21, 2021) (finding an assistant coach violated Bylaw 19.2.3 by refusing to participate in interviews and refusing to provide requested bank statements) ([F1118](#)); Baylor University (2021) (finding an assistant operations director violated Bylaw 19.2.3 by refusing to participate in interviews) ([F1121](#)); University of Houston (2019) (finding a tutor violated bylaw 19.2.3 when the tutor refused to participate in any elements of the case) ([F1122](#)); University of Connecticut (2019) (finding a head coach violated Bylaw 19.2.3 when he provided false statements to enforcement staff and refused to participate in a second interview) ([F123](#)); East Tennessee State University (2018)(finding a former head coach violated Bylaw 19.2.3 by refusing to participate in an interview) ([F124](#)); see also University of Louisiana at Monroe (2018) (finding an assistant coach violated Bylaw 19.2.3 by refusing to participate in a second interview) ([F125](#)).

and that no witness refused to participate in an interview or provided any false or misleading information.<sup>208</sup> In addition, the CCU was able to coordinate interviews with former UM employees, including its former athletic director and head men's basketball coach.<sup>209</sup> Finally, the CCU has not presented any evidence that shows UM failed to cooperate with any of its or the NCAA's requests for information. Rather, the evidence shows that UM worked diligently to review and produce over 45,000 documents.

The University's alleged behavior does not equate to the failure to monitor its basketball program, the failure to implement a culture of compliance, or a lack of institutional control.

The NCAA Constitution requires member institutions to control and monitor their intercollegiate athletics programs to ensure those programs operate in compliance with NCAA legislation. Constitution sections 2.1.1 and 6.01.1 state the responsibility of member institutions to control their athletic programs.

[REDACTED] Constitution section 2.8.1 also relates to an institution's responsibility to control by adequately monitoring its programs to ensure compliance and to identify and report to the NCAA instances in which compliance has not been achieved. An examination of the recent cases involving these sections demonstrates that this case includes nowhere near the level of improper behavior to establish a lack of institutional control or failure to monitor. Moreover, many of these cases, which involve more egregious conduct, were classified as Level II—not Level I.

The recent cases involving a lack of institutional control and failure to monitor all include a specific failure to monitor compliance with a specific bylaw that impacted several student-athletes and led to a wider-spread issue. Most recently, Florida A&M University was in violation as a result of “systemic improper certification violations over a six-year period.”<sup>211</sup> This resulted in Level I penalties. Specifically, from the 2010-11 academic year and continuing through the 2016-17 academic year, FAMU improperly

<sup>208</sup> See CCU Records, [FI001-029](#). It should also be noted that the CCU makes no allegation that a UM representative provided a false or misleading statement to the CCU or NCAA.

<sup>209</sup> See, e.g., CCU Records, [FI009](#), 011, 017-018.

<sup>210</sup> See University of Mississippi December 1, 2017 Public Infractions Decision at p. 49. ([FI114](#)).

<sup>211</sup> Florida A&M University May 21, 2019 Public Infractions Decision. ([FI126](#)).

certified as eligible for practice and/or competition 93 student-athletes on 162 occurrences in 12 sports, which resulted in 93 student-athletes competing and receiving expenses while ineligible.<sup>212</sup> In another recent matter, the University of Mississippi faced several Level I penalties resulting from 21 alleged violations over five (5) years.<sup>213</sup> The University was found to have fostered an unconstrained culture of booster involvement in football recruiting. Six football staff members and 12 boosters were involved in the violations, which included approximately \$37,000 to PSAs, the use of automobiles, lodging, transportation, meals, and apparel. Two staff members also helped arrange fraudulent standardized test scores for three PSAs.

Cases involving only a lack of institutional control are equally distinguishable. In 2020, Siena College was found to have violated 6.4.2 as a result of a booster's attempt to interfere with an NCAA investigation.<sup>214</sup> Specifically, over three academic years, the head coach of the men's basketball team gave impermissible cash payments to his student-athletes in the locker room after games. During the investigation, the assistant strength and conditioning coach told the NCAA that he witnessed the payments. The booster contacted the assistant coach and asked that he recant his story. This amounted to a Level II violation. Similarly, recent cases involving only a failure to monitor include more egregious conduct than that alleged here. Most recently, the University of Idaho was found to have committed multiple financial aid violations when it improperly reduced student-athlete scholarships and incorrectly calculated scholarship equivalencies.<sup>215</sup> Over five academic years, the school reduced scholarships of student-athletes 139 times without providing written notification to those student-athletes or an opportunity for a hearing. This amounted to a Level II violation. In April 2021, Youngstown State University agreed that it failed to monitor its football program by ensuring compliance with NCAA recruiting bylaws.<sup>216</sup> Specifically, an assistant coach had numerous impermissible contacts with a transfer student-athlete, including telephone

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<sup>212</sup> Florida A&M University May 21, 2019 Public Infractions Decision. ([FI126](#), p. 4).

<sup>213</sup> University of Mississippi December 1, 2017 Public Infractions Decision. ([FI114](#)).

<sup>214</sup> Siena College March 9, 2020 Public Infractions Decision. ([FI117](#)).

<sup>215</sup> University of Idaho June 18, 2021 Negotiated Resolution. ([FI127](#)).

<sup>216</sup> Youngstown State University April 02, 2021 Negotiated Resolution. ([FI128](#)).

calls, texts, an off-campus in-person contact, and an unofficial visit and the transfer student-athlete had an official visit without proper written permission, which resulted in additional impermissible contacts. Additionally, three coaches recruited off campus for four months without passing the recruiting exam, which resulted in several impermissible contacts and evaluations. This was a Level II violation.

Additional recent failure to monitor cases all involve long-spanning impermissible behavior. In November 2020, the University of Hartford committed Level II violations when it improperly certified student-athlete eligibility, failed to notify student-athletes that their scholarships were reduced or canceled, and had impermissible recruiting contacts by its men's lacrosse program.<sup>217</sup> In total, the University of Hartford improperly certified 27 student-athletes as eligible in 30 occurrences across eight (8) sports. This resulted in 10 student-athletes competing while ineligible. The University also did not withhold three (3) student-athletes from competition before their eligibility was reinstated. In October 2020, Jackson State University was found to have committed Level II violations as a result of its failure to monitor its certification process.<sup>218</sup> This resulted in 34 student-athletes practicing and competing before receiving final certification from the NCAA Eligibility Center. Also in October 2020, the University of Washington was found to have failed to monitor recruiting travel in its baseball program over the span of three (3) academic years by failing to comply with official visit transportation legislation and provide adequate NCAA rules education and training.<sup>219</sup> Specifically, over the span of three academic years, the baseball program paid for parents of PSAs to travel to campus with their sons on official visits, in violation of NCAA recruiting bylaws. Not only did key staff not know the official visit rules, the systems set up to monitor official visits were inadequate and would not have disclosed impermissible transportation payments.

Unlike the above examples, the CCU has not alleged similar activity by UM officials. Because there is none. The CCU attempts to make the purported violations appear more severe by alleging long time spans (2011-2020) and throwing in [REDACTED] [REDACTED]

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<sup>217</sup> University of Hartford November 5, 2020 Negotiated Resolution Agreement. ([FI129](#)).

<sup>218</sup> Jackson State University October 23, 2020 Negotiated Resolution. ([FI130](#)).

<sup>219</sup> University of Washington October 9, 2020 Public Infractions Decision. ([FI116](#)).

There was nothing that UM did, or failed to do,

■ It did not fail to conduct any education or fail to monitor something ■

The CCU contends that UM failed to heighten its monitoring or take reasonable steps to prevent noncompliant conduct [REDACTED]. This is not on par with other failure to monitor cases. UM did not engage in conduct that permitted ongoing, or several violations. [REDACTED]

Collectively, there are

[REDACTED] included in Allegation Nos. 4 and 5,<sup>220</sup> and no evidence that the men's basketball coaches did not understand their obligations or knowingly failed to report. [REDACTED]

[REDACTED]

Finally, there is no evidence to support that these incidents would not have occurred if the compliance office was better staffed. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Regarding the allegations in No. 3, that activity was unrelated to the size of the compliance team and in no way indicative of a violation of an applicable requirement or bylaw.

#### **CONCLUSION**

UM has presented facts that show institutional control, ongoing and appropriate monitoring, cooperation, a culture of compliance, and head coach responsibility. UM understands the magnitude of this process and looks forward to presenting the above and additional facts at the hearing.

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<sup>220</sup> This is assuming the incident in No. 5 can be characterized as a violation.