The Independent Investigation Summary of Findings

I. Primary Questions to be Answered by the Independent Investigation

- A. In the hiring, retaining, supervising and firing of former Assistant Coach Zach Smith, did Head Coach Urban Meyer ("Coach Meyer") violate any Ohio State University ("OSU") policies or rules, Title IX, NCAA rules, Big Ten Rules, Ohio State Ethics laws, any other state or federal laws, or his contractual obligations to OSU in connection with Zach Smith's alleged commission of domestic violence against his former wife, including any obligations to report the alleged domestic violence?
- B. When Head Coach Urban Meyer spoke at Big Ten Media Days on July 24, 2018 about the firing of Zach Smith on July 23, 2018, did he misrepresent his knowledge of a law enforcement investigation of Zach Smith in 2015 for possible domestic violence and, if so, did he do so intentionally?
- C. What was the role of Athletic Director Gene Smith ("AD Smith") in the above events and did he engage in conduct violative of any laws, rules, policies, or his contractual obligations to OSU in connection with those events?

II. The Independence and Scope of the Investigation

A. The Special, Independent Board Working Group

- 1. The OSU Board of Trustees established a special, independent Board working group to: (a) oversee the independence and work of the Independent Investigation; (b) be available to provide consultation and advice to the investigative team; (c) receive the report of the factual conclusions of the Independent Investigation; and (d) assist with communication with the full Board on this matter. The working group will dissolve upon fulfillment of its responsibilities.
- 2. Former Ohio House Speaker Jo Ann Davidson has served as Chair of the working group. Its other members include current trustees Alex Fischer, Janet Porter and Alex Shumate, as well as former acting U.S.

Deputy Attorney General Craig Morford and former U.S. Attorney for the Southern District of Ohio Carter Stewart.

B. <u>The Independent Investigators</u>

- 1. Mary Jo White, litigation partner and Senior Chair of Debevoise & Plimpton LLP and her partner David Sarratt led the Independent Investigation. Both have extensive investigative experience.
 - (a) Ms. White is also the former United States Attorney for the Southern District of New York and the former Chair of the Securities and Exchange Commission.
 - (b) Mr. Sarratt is also a former Assistant United States Attorney for the Eastern District of New York.

C. The Scope of the Investigative Work

- 1. <u>General Description</u>: Over 40 witnesses were interviewed in the Independent Investigation, many more than once, in person and over the phone. More than 60,000 electronic documents and 10,000 pages of Coach Meyer's text messages from the past year were accessed and reviewed, in addition to relevant media statements, police reports, court filings, the employment contracts of Coach Meyer and AD Smith, other documents, relevant OSU and NCAA rules and policies, and applicable state and federal laws. We also reviewed photos and text messages provided by Courtney Smith, Coach Meyer's calendar entries, and other materials provided by witnesses. We attempted to, but were unable to retrieve text messages for certain witnesses, including AD Smith, Brian Voltolini, Chief of Football Operations, and Zach Smith.
- 2. <u>Particular Witnesses</u>: Key witnesses included Coach Meyer, AD Smith, Courtney Smith, and Zach Smith. We also interviewed key personnel on the football and athletic staff, in the Offices of Legal Affairs and University Compliance and Integrity, and other OSU departments, local law enforcement, family members of certain witnesses, and others. We received extraordinary cooperation from the OSU community throughout this process.

D. The Mandate of the Independent Investigation

- 1. Debevoise & Plimpton's mandate was to find the facts and report our findings to the special, independent Board working group, the Board of Trustees, and the President of OSU, which we have done.
- 2. While we reported the results of the Independent Investigation to the special, independent Board working group, the Board of Trustees and the OSU President, in conducting the investigation and reaching our findings, we have not been influenced by anyone outside of our investigative team. The findings of the Independent Investigation are ours and ours alone.

III. Key Factual Findings

We set forth here our key factual findings. In doing so, we discuss information from witnesses, electronic and written documents and other sources that are relevant to our findings. We do not discuss all of the information obtained by the Independent Investigation, some of which was not relevant to our mandate and some of which was received with assurance of confidentiality. All information material to our findings, however, is discussed.

A. The Events of 2009

- 1. The events of 2009 regarding the arrest in Florida of Zach Smith on June 21, 2009 for aggravated battery on a pregnant female, his then-wife Courtney Smith, while both Coach Urban Meyer and Zach Smith were employed by the University of Florida ("Florida"):
 - (a) Following a party at Coach Meyer's house and afterpartying, Zach Smith, who had been drinking, brought a female coworker to sleep on the couch at his home. Courtney Smith strenuously objected and drove the co-worker home; a verbal altercation between Zach and Courtney Smith occurred upon Mrs. Smith's return home and Zach Smith allegedly picked up his wife and threw her against the wall; Zach Smith disputes that any violence occurred, but was arrested by the Gainesville Police Department following a 911 call by Courtney Smith.

- (b) Coach Urban Meyer and his wife Shelley Meyer were contemporaneously aware of the 2009 arrest, as was Hiram deFries, a Special Assistant to Coach Meyer at both Florida and OSU.
- (c) Courtney Smith decided not to pursue charges following discussions with members of at least Zach Smith's family, including his mother and grandfather, Earle Bruce (former OSU head coach and mentor to Coach Meyer), and likely Hiram deFries. No formal charges were ever filed.
- (d) Coach Meyer maintains that shortly after the 2009 arrest, both Zach and Courtney Smith met with him in his office at Florida to inform him that the arrest of Zach Smith had been based on incorrect information provided to the authorities by Courtney Smith and that, in fact, Zach Smith had not hit or otherwise been violent toward Mrs. Smith. Courtney Smith denies ever meeting with Urban Meyer, although she recalls meeting with Shelley Meyer at that time. Courtney Smith maintains that she has never recanted her allegations to anyone. Zach Smith also recalls that only he met with Urban Meyer, but that Courtney Smith did not. Urban and Shelley Meyer referred the couple to a counselor.
- (e) We find it more likely that only Zach Smith met with Coach Meyer in 2009, and that Courtney Smith likely did not recant her allegations of abuse at that time to Urban or Shelley Meyer, although it is clear that Courtney Smith decided not to pursue charges and that none were ever filed. Coach Meyer and Shelley Meyer took away from the 2009 events that Courtney Smith was not being entirely truthful when she called 911 to have Zach arrested.
- 2. <u>Knowledge of others at OSU of Zach Smith's 2009 arrest prior to his hiring by Coach Meyer as an assistant coach at OSU:</u>
 - (a) OSU performed a standard background check on Zach Smith prior to his being hired as an Assistant Coach at OSU in December 2011 by Coach Meyer; the background check did not call for or return arrest information, and Zach Smith's arrest in 2009 was therefore unknown to others at OSU at the time he was hired.

- (b) Coach Meyer did not inform others at OSU about Zach Smith's 2009 arrest. Coach Meyer has explained that he did not do so because no charges were filed and because he believed Zach Smith had not engaged in domestic violence in 2009.
- (c) Athletic Director ("AD") Gene Smith, although involved in discussions of events related to an investigation of Zach Smith for possible domestic violence in 2015, does not recall becoming aware of Zach Smith's 2009 arrest until July 2018. We discovered no evidence that AD Smith was aware of the 2009 events before July 2018. Rather, AD Gene Smith likely became aware of Zach Smith's 2009 arrest for the first time on or about July 23, 2018.

B. <u>2010 – July 22, 2018</u>

1. <u>No further arrests or charges against Zach Smith for domestic</u> violence:

- (a) Zach Smith left Florida after the 2009 football season, and was employed as an Assistant Coach at Marshall for the 2010 season and at Temple for the 2011 season. On December 22, 2011, he was hired by Urban Meyer as an Assistant Coach for Wide Receivers at OSU, a position which he held until July 23, 2018, when he was fired by Coach Meyer.
- (b) We have found no evidence of further arrests or any criminal charges filed against Zach Smith for domestic violence during the period 2010 present, although a domestic violence civil protection order was issued against him <u>ex parte</u>¹ on July 20, 2018, which he is contesting.
- 2. <u>Other Conduct</u>: There is, however, extensive evidence during this period of misconduct and other problematic, or at least questionable, behavior by Zach Smith while he was employed at OSU, only some of

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An <u>ex parte</u> order is an order pending a formal hearing and is issued when a judge has only heard from one party in a controversy.

which was known to Coach Meyer, AD Smith, and/or others in the Athletics Department. This conduct includes:

- (a) A 2013 arrest for operating a vehicle while impaired; we have seen no evidence that Coach Meyer, AD Smith or anyone else at OSU was aware of this charge.
- (b) In May 2014, in connection with an out-of-town recruiting trip to Florida, Zach Smith ran up a significant bill at a local strip club along with another OSU football coach and one or more high school coaches:
 - (i) according to an iPhone screen-capture of a checking account statement dated May 8, 2014, Zach Smith spent approximately \$600 of his personal funds at a Miami strip club on May 8, 2014;
 - (ii) Brian Voltolini was aware of the strip club visit during a Florida recruiting trip and that a high school coach or coaches were present;
 - (iii) Coach Meyer became aware of this incident, although he maintains not the amount of the expenditure, and reprimanded Zach Smith, warning him that if it happened again, he would be fired; Coach Meyer also revised the 2014 Coaches' Manual to include a "morality clause" instructing staff to "[a]void strip clubs or venues that would embarrass The Ohio State University" and prohibiting "pornography . . . on any university issued computer, phone, IPad, etc." Coach Meyer did not, however, report this incident to Athletic Compliance. We have provided the information obtained by the Independent Investigation of this incident to the Office of University Compliance and Integrity and the Athletic Compliance Office to investigate whether this conduct violated the NCAA legislation. We found no evidence that AD Smith was aware of this incident.

- (c) From approximately 2014-2016, Zach Smith's credit cards were declined on at least three to five occasions (and some replacement cards he provided were also declined) when the travel office was booking rental cars for recruiting trips; staff also recalls that Zach Smith was delinquent in paying for his iPhones and for costs associated with Bowl games; these issues were elevated to AD Gene Smith and Brian Voltolini by Jennifer Bulla, Travel Manager, in an email dated January 23, 2016; Coach Meyer has a vague recollection of being aware of these issues as well.
- (d) From October 2015 through 2016, a long-term investigation by the Powell Police Department and the Delaware County prosecutor of Zach Smith for possible domestic violence and cyber offenses against Courtney Smith.
 - (i) In October 2015, Miechelle Willis, then the Deputy Title IX Coordinator for the Athletics Department, received information from the Ohio State Campus Police about the Powell Police investigation; Willis immediately notified AD Smith, who in turn notified Coach Meyer during a football practice that Zach Smith was under investigation for domestic violence and could be arrested at any time. AD Gene Smith recalls Coach Meyer having an immediate and strong negative reaction to this news;
 - (ii) AD Gene Smith directed Zach Smith to return immediately from a recruiting trip, and Coach Meyer, AD Gene Smith and others met with Zach Smith a number of times to discuss the issue and ongoing investigation. Zach Smith denied any domestic violence, and Coach Meyer told him that if "you hit her, you are fired." AD Gene Smith also told Zach Smith that if charges were filed, he would be fired;
 - (iii) Coach Meyer assisted in arranging professional counseling for Zach Smith at this time; and
 - (iv) Meyer and Gene Smith monitored the Powell Police investigation regularly for a period of months.

- (e) Also in late Fall 2015, Courtney Smith shared, by text and telephone, her allegations of abuse with Shelley Meyer and others, including a number of photographs that have since become public.²
 - (i) Courtney Smith also told Shelley Meyer that she was afraid of Zach, and Shelley advised her that if she was afraid, she should call 911. Shelley Meyer was generally supportive toward Courtney Smith and expressed concern; in one text message, Courtney thanked Shelley Meyer for her support, stating that "I've realized that no matter what he will say anything to hide the truth." Shelley Meyer responded "I am praying for you!!! I wouldn't listen to him anyway. He doesn't talk to anyone about you. I know the truth. Please take care of yourself and let me know what I could [sic] help."
 - (ii) Shelley Meyer contacted the Powell Police Department to seek further information about the investigation of Zach Smith; the Powell PD would not release details other than acknowledging the existence of an ongoing investigation. Coach Meyer was not made aware of Shelley's outreach to the Powell PD;
 - (iii) Shelley Meyer also maintains that she did not relay Courtney Smith's expression of fear or allegations of abuse, including the photographs, to Urban Meyer at the time because she had doubts about the veracity of Courtney Smith's allegations. Coach Meyer also does not recall any discussion with Shelley Meyer about either her or Courtney Smith's concerns about abuse. Given the closeness of their relationship and Shelley's concerns, we believe it is likely that Shelley and Urban Meyer had at least some communication about these allegations in late 2015 and were concerned about them,

² Courtney and Zach Smith were separated in June 2015 and Courtney filed for divorce on November 12, 2015; until she decided to end the marriage in late 2015, Courtney Smith did not share with Shelley Meyer or others her allegations of physical abuse.

although both had doubts about the credibility of Courtney's claims, based on, among other things, Zach Smith's denials and their belief that Courtney Smith's 2009 allegations had been false; by late October 2015, Coach Meyer knew of Courtney Smith's domestic violence complaints against Zach Smith through his knowledge of the 2015-2016 law enforcement investigation.

- (f) During and after his divorce proceedings in 2015 and early 2016,³ Zach Smith's job performance suffered, and he was regularly late to practice and workouts; on other occasions, Zach Smith failed to appear at scheduled recruiting visits at various high schools, despite reporting internally that he had; Coach Meyer was made aware of these issues and Zach Smith recalls that Meyer warned him that if he continued to be late and otherwise unreliable, he would be fired; AD Smith, who was generally aware of Zach Smith's performance issues during this time period, suggested that Coach Meyer consider replacing him; Coach Meyer decided not to do so.
- (g) During this same period, as recent news reports have noted and other information shows, Zach Smith was: (1) engaged in a sexual relationship with a secretary on the football staff who did not report to him; (ii) took sexually explicit photographs of himself in the OSU football facilities and at other locations, including at the White House on a team visit in April 2015 after winning the 2014 National Championship; and (iii) had sex-related toys delivered to him at the OSU athletics facilities. Although certain members of the football staff were aware of these issues to some degree, we do not believe Coach Meyer or AD Smith were aware of them.
- (h) In June 2016, based on medical advice and direction from Coach Meyer, Zach Smith was admitted to a drug treatment facility for addiction to a stimulant prescription drug used to treat ADHD; AD Smith was unaware of this incident.

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³ Courtney and Zach Smith were formally divorced on September 2, 2016.

- (i) On December 19, 2017, Zach Smith was given a trespass warning by the Powell Police because he allegedly entered onto the premises of his former wife, Courtney Smith, while intoxicated on December 17, 2017; neither Coach Meyer nor AD Smith was aware of this warning.
- (j) On May 12, 2018, Zach Smith was charged with criminal trespass after he went to the home of Courtney Smith; Coach Meyer and AD Smith became aware of this misdemeanor citation on July 20, 2018 after it was referenced on social media; Zach Smith is contesting the charge.
- (k) On July 20, 2018, a domestic violence civil protection order was issued against Zach Smith, based on an <u>ex parte</u> finding that Zach Smith posed an immediate danger of domestic violence to Courtney Smith; Coach Meyer and AD Smith became aware of this order after social media reports noted it on July 23, 2018; Zach Smith is contesting the protection order; he was fired by Coach Meyer on the evening of July 23, 2018.

C. <u>July 23, 2018 – August 1, 2018</u>

1. The July 23, 2018 firing of Zach Smith:

(a) After learning, on the morning of July 23, 2018, of the reports about the domestic violence civil protection order issued against Zach Smith on July 20, 2018, and after consulting with AD Gene Smith, Coach Meyer, who was in Chicago for the Big Ten Media Days event the next day, decided to fire Zach Smith. AD Gene Smith, who understood the difficulties of a divorce, was initially considering obtaining counseling for Zach Smith, but did not object to Coach Meyer's decision to terminate him. Meyer told us that his primary reason for firing Zach Smith was because he failed to bring both the order of protection and the criminal trespass matters to his attention, and instead Meyer heard about them from news and social media reports; Coach Meyer considered these failures to be violations of the core value of honesty. In addition, Coach Meyer considered the domestic violence civil protection order to be the first actual evidence

that Zach Smith had engaged in domestic violence, even though Zach Smith continues to deny it and is contesting the order.

- (b) AD Gene Smith and Coach Meyer spoke to Zach Smith by phone on the evening of July 23; Meyer explained that he was making a change, and that Zach would no longer be the Wide Receivers coach. AD Gene Smith and Coach Meyer conveyed to Zach Smith that he would be paid the "buyout" under what they understood was his current contract.⁴
- (c) In speaking with University leadership on July 23rd, Gene Smith and Urban Meyer explained that Zach Smith's termination was based on the football program's zero tolerance policy relating to domestic violence, and a violation of a core value of the program, respect for women; AD Smith also commented that this wasn't the first time "we've had this," although there was no specific mention of the events of either 2009 or 2015, and it is unclear what the intended reference by AD Smith was; there was also no mention that there had been a media report from earlier that morning that discussed Zach Smith's 2009 arrest for aggravated battery and the entry of the domestic violence civil protection order. In the course of the conversation, Coach Meyer said that his decision to fire Zach Smith was difficult because Zach was Earle Bruce's grandson and Bruce had been a close mentor to Meyer.

2. <u>Informing the Football Staff and Preparation for Big Ten Media</u> Days:

(a) On the night of July 23, 2018 at 7:08 p.m., Meyer directed a message to staff stating that the reasons for Zach Smith's dismissal were "Core value violation and cumulative issues. 'Win the Moment'-most important thing is team and players at this time." Meyer further directed "Zero conversation about Zach's past issues. We need to help him as he moves frwd. Team and players!!"

As it turns out, Zach Smith and certain other coaches did not have current signed contracts on July 23, 2018, the date of Zach Smith's termination.

- (b) At 7:35 p.m., Shelley Meyer conveyed, in a text to Coach Meyer, that "I am worried about Zach's response. He drinks a lot and I am just not sure how stable he will be. Afraid he will do something dangerous. It's obvious he has anger/rage issues already." Meyer did not respond to the message.
- Thereafter, still during the evening of July 23, 2018, Meyer received additional media reports discussing Zach Smith's 2009 arrest and a "felony arrest" involving Zach Smith in 2015; at 10:25 p.m., Coach Meyer sent a message to Gene Smith, Jerry Emig, the Assistant Director, Athletic Communications, Brian Voltolini, Director of Football Operations, and Ryan Stamper, Director, Player Development, stating "I know nothing about this"; he asked "Is there a way to find out exactly what his issues were. I know about 2009 [it was dropped] and last week. That's it. Need some guidance here so when I speak to media I'm not wrong." Later that evening, Stamper reported to Meyer that there was no record of Zach Smith being arrested in 2015, only records of a divorce. Meyer acknowledged this, stating "Stamp just confirmed there was no arrest in 2015." As the same text chain continued into the morning of July 24, 2018, AD Smith cautioned "I would be careful. Do not get too detailed." He went on to advise that whatever Coach Meyer says on this subject at Big Ten Media Days should be said in his opening statement "and take no more questions on it." Gene Smith also suggested the following remarks for Meyer for Big Ten Media Days: "As you are aware through our release, we have made a change in our wide receivers coaching position. As Zach dealt with his personal challenge I was aware of two legal instances in 2009 and 2015. This most recent issue is inconsistent with our values. . . . Needs to be cleaned up in your words....just a thought." Meyer responds "Thx." Emig, the Athletic Communications Director, followed up at 7:26 a.m. on July 24th saying "[t]hose are good points" and recommending that Meyer, with respect to the events of 2015, state "[t]here were no charges in 2015 and I really don't even recall any details." Meyer does not respond.

(d) In text messages with his agent, also on the morning of July 24, 2018, Meyer says that it was the "[r]ight thing to do" to fire Zach Smith. Meyer also indicated that he was fired for "cumulative stuff" and stated "I will not tell media." The agent responded that "[f]or sure it was the totality of his choices," and that it was "[o]nly a matter of time before he did something that did substantial harm to you or the program."

3. The Big Ten Media Days and its Aftermath:

(a) Coach Meyer's statements re the 2015 events:

- (i) On July 24, 2018, at Big Ten Media Days, when a reporter asked Meyer, "[t]he 2015 reported incident . . . are you saying that you don't know anything about that or do you believe that, that didn't happen?" Meyer responded that "I can't say that didn't happen because I wasn't there. I was never told about anything, never anything came to light, I've never had a conversation about it. So I know nothing about that . . . First I heard about that was last night [w]hen I asked some people back at the office to call and see what happened and they came back and said they know nothing about it." Meyer also confirmed that the 2015 events were not, in the words of the reporter's question "a factor in [his] decision with Zach";
- (ii) In later comments at the press conference, Meyer reiterated "2015, I got a text late last night something happened in 2015. And there was nothing. Once again, there's nothing once again, I don't know who creates a story like that."

(b) <u>Follow-on conversations with AD Smith and Brian</u> <u>Voltolini</u>:

(i) At some point over the next several days, both AD Smith and Brian Voltolini, who were both surprised at Coach Meyer's statements at Big Ten Media Days about 2015, spoke with Coach Meyer to tell him that he had, in fact, been aware of the law enforcement investigation involving allegations of

abuse against Zach Smith in 2015. Meyer says that he was reminded, to a limited extent, of the 2015 events only in these conversations and maintains that, until that point, he had no recollection whatsoever of the 2015 domestic violence investigation of Zach Smith.

(ii) We interviewed the other parties to the group text of July 23rd and July 24th, who told us that they believed that Coach Meyer's statements at Big Ten Media Days about 2015 were the product of his confusion and fixation on the information he received the night before that the reports of a felony arrest in 2015 were inaccurate.

(c) <u>August 1, 2018 Social Media Reports that Meyer Had</u> Knowledge of the 2015 Events:

- (i) On August 1, 2018, a widely shared news report claimed that Urban and Shelley Meyer had been aware of Courtney's Smith's allegations of abuse in 2015 and of law enforcement's investigation. The reported information included two incident reports from the Powell PD, as well as text messages between Courtney Smith and Shelley Meyer.
- (ii) Upon seeing this report when it first came out (at about 10:17 a.m.), Brian Voltolini, who was on the practice field with Coach Meyer went to speak with him, commenting that this was "a bad article." The two discussed at that time whether the media could get access to Coach Meyer's phone, and specifically discussed how to adjust the settings on Meyer's phone so that text messages older than one year would be deleted.
- (iii) Our review of Coach Meyer's phone revealed no messages older than one year, indicating that at the time it was obtained by OSU on August 2nd, Coach Meyer's phone was set to retain text messages only for that period, as Coach Meyer and Brian Voltolini discussed. We cannot determine, however, whether Coach Meyer's phone was set to retain messages only

for one year in response to the August 1st media report or at some earlier time. It is nonetheless concerning that his first reaction to a negative media piece exposing his knowledge of the 2015-2016 law enforcement investigation was to worry about the media getting access to information and discussing how to delete messages older than a year.

The lack of clarity surrounding this issue is (iv) compounded by the failure of OSU personnel to respond promptly to two July 25, 2018 records requests from the school paper, "The Lantern," for emails and text messages, as well as any call history, between Urban Meyer and Zach Smith from July 18, 2018 through July 24, 2018 and between Oct. 25, 2015 and Dec. 1, 2015, and the same communications between AD Gene Smith and Coach Meyer for the same dates for any materials "pertaining to Zach Smith." On July 25, 2018, these requests were forwarded to Julie Vannatta, Senior Associate General Counsel, who, on July 25th, emailed AD Smith, and Diana Sabau, Senior Associate Athletics Director, and instructed them to retrieve responsive emails and texts from Coach Meyer's phone. On July 26th, Vannatta asked Amy Nicol, Director, Internal Operations for Football, and Brian Voltolini to "go get [Coach Meyer's] phone and check his texts with Zach." Although all of these individuals were aware of the requests – and indeed both AD Smith and Sabau responded that they had no documents on their end – no one appears to have actually checked Coach Meyer's phone or even approached him about the requests. Had Coach Meyer's phone been examined and processed promptly at that time, we would know definitively that the August 1 article's revelations had no impact on the evidence we received for July 23rd and dates in 2015. While the absence of prompt and effective follow-up is problematic and frustrating, we want to be clear that we have found no evidence suggesting that Coach Meyer was aware of the records request before we brought it to his attention during the Independent Investigation.

- (d) Later in the day on August 1, Coach Meyer was placed on administrative leave by AD Gene Smith and an investigation was announced; AD Smith, on August 1st, explained to Chris Davey (Associate Vice President, University Communications), Ann Hamilton (Vice President, University Communications), and Katie Hall (Chief of Staff, Office of the President) that both he and Coach Meyer did not recall the events of 2015 when they were speaking to University leaders on July 23, 2018, but that he (AD Smith) had recalled the events later that evening when the media report of a 2015 arrest came to his attention.
- On August 3, 2018, Coach Meyer posted a message on twitter to "Buckeye Nation" regarding the events of the prior week: "My heart is heavy today as I witness the toll that the events of the past week have taken on the Buckeye Family and the university community that I love so dearly." He took issue with being portrayed as someone who is "indifferent to domestic violence and who did not take appropriate action, when warranted," stating that he has "always followed proper reporting protocols and procedures . . . and did so regarding the Zach Smith incident in 2015." Coach Meyer also admitted that on Big 10 Media Days he was not completely accurate in response to some of the questions and that he made misstatements. He maintained that his "intention was not to say something inaccurate or misleading." He attributed his misstatements to the fact that he was "not adequately prepared to discuss these sensitive personnel issues with the media, and I apologize for the way I handled those questions."
- (f) As noted, in interviews with the investigation team, Coach Meyer consistently maintained that he had no memory of the 2015 events when he stepped on the podium at Big Ten Media Days and that, as he asserted in the August 3rd message, he was not adequately prepared by his staff to handle those questions. His sole focus, he says, was on the accusation of a felony arrest in 2015, which never happened, and which he understood all of the reporters' questions to be about an arrest Coach Meyer knew on July 24th had never occurred, contrary to the erroneous media report of July 23rd.

IV. Potential violations of law, OSU policies and rules and contractual obligations of Coach Meyer and AD Smith

A. The hiring of Zach Smith: Although it would have been better for Coach Meyer to have informed OSU about Zach Smith's 2009 arrest, there was no violation of policy, law or contractual obligation by Coach Meyer in not doing so. No one else at OSU violated any policy, rule or law in connection with the hiring of Zach Smith.

B. Reporting obligations regarding the events of 2015-2016:

- 1. Under his employment contract with OSU, Urban Meyer had at all relevant times an obligation to "immediately report to the [Athletic] Director and to the Department's Office of Compliance Services in writing if any person or entity, including without limitation, representatives of Ohio State's athletic interests, has violated or is likely to violate or may potentially have violated any [applicable] laws," including all federal, state and local laws. (Meyer Employment Contract §4.1.d)
- 2. Gene Smith had an obligation to "immediately report to the Department's Office of Athletic Compliance and the Office of University Compliance and Integrity if the Director had reasonable cause to believe that any person or entity, including without limitation, representatives of Ohio State's athletic interests, has violated or is likely to violate or may potentially have violated any [applicable] laws, policies, rules or regulations." (Smith Employment Contract §4.1.e)⁵
- 3. Because they believed Zach Smith's denials and because there was no charge or arrest in connection with the 2015-2016 events, neither Coach Meyer nor AD Smith believed that there had been a violation or a potential violation of the law and therefore neither had reporting obligations regarding what they knew about the law enforcement investigation of Zach Smith. In addition, Coach Meyer, because he was first informed of the

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The OSU Sexual Misconduct Policy did not require mandatory reporting of domestic abuse that did not involve sexual violence or sexual assault until August 23, 2016.

2015-2016 investigation by AD Smith, believed that he had no further reporting obligations. In assessing their reporting obligations, both Coach Meyer and AD Smith placed heavy reliance on the absence of formal law enforcement or court action. Neither made any report of the matter to Athletic Compliance or University Compliance for consideration of whether an internal investigation should be conducted. Under the broad language of their contracts, reporting obligations can be triggered in the absence of formal, external action. Reporting requirements are intended to be both broad and redundant – in the case of Coach Meyer, they require reporting (in writing) to two places (to the AD and to Athletic Compliance) and the obligation to report is placed on each individual, an obligation not relieved by the knowledge or reporting by another individual. While we find that both Coach Meyer and AD Smith believed in good faith that they did not have sufficient information to trigger any reporting obligation, we believe that they viewed the issue too narrowly through the lens of law enforcement action. Both should have made some report of Zach Smith's potential violation of the domestic violence laws, which was the subject of the law enforcement investigation they came to know about in late October 2015. Such reports would have been made to the Athletic Compliance Office and, for AD Smith, the Office of University Compliance and Integrity.

- 4. The investigation has not discovered evidence in connection with Zach Smith's alleged commission of domestic violence suggesting any Title IX violation. And we note that the designated Title IX Coordinator for Athletics (Miechelle Willis) was the first person in the Department to learn of the 2015-2016 law enforcement investigation. Gene Smith ensured that Ms. Willis remained apprised of the relevant facts as discussions relating to the investigation continued.
- 5. We have found no other facts giving rise to violations of policy, rules, law, or contractual obligations by Coach Meyer or AD Smith in connection with alleged domestic violence by Zach Smith.

C. <u>Obligations regarding Honesty and Ethics</u>:

1. Coach Meyer's contract also requires him to "represent Ohio State positively in public and private forums" and to refrain from any "conduct that reflects adversely on Ohio State or its athletic programs."

(Meyer Employment Contract § 1.5) The contract requires that "Coach shall perform his duties and personally comport himself at all times in a manner consistent with good sportsmanship and with the high moral, ethical and academic standards of Ohio State and its Department of Athletics." (*Id.*) Termination for cause is permitted based on the "Commission of or participation in by Coach of any act, situation, or occurrence which, in Ohio State's judgment, brings Coach and/or Ohio State into public disrepute, embarrassment, contempt, scandal or ridicule or failure by Coach to conform Coach's personal conduct to conventional and contemporary standards of good citizenship, with such conduct offending prevailing social mores and values and/or reflecting unfavorably upon Ohio State's reputation and overall primary mission and objectives, including but not limited to, acts of dishonesty [or] misrepresentation " (Meyer Employment Contract § 5.1.0)

- 2. We cannot logically square Coach Meyer's responses on Big Ten Media Days broadly denying knowledge of the 2015 events regarding Zach Smith with his extensive knowledge of those events in 2015 and the evident knowledge of AD Gene Smith of the 2015 events reflected in the group text message of July 23 and July 24, 2018 sent to Coach Meyer. (As noted, AD Smith says that his recollection of the 2015 events was triggered by the social media report on the evening of July 23rd.) In the group text on the morning of July 24th, AD Smith suggested that Coach Meyer should acknowledge in his Big Ten Media Days remarks later that day the events of both 2009 and 2015 without giving details. Coach Meyer did not do so.
- 3. We accept that in July 2018 Coach Meyer was deeply absorbed in football season and wanted to focus on football at Big Ten Media Days. The firing of Zach Smith the day before the first time Coach Meyer had fired a coach was also on his mind, as was the erroneous media report of a felony arrest of Zach Smith in 2015. We also learned during the investigation that Coach Meyer has sometimes had significant memory issues in other situations where he had prior extensive knowledge of events. He has also periodically taken medicine that can negatively impair his memory, concentration, and focus. All of these factors also need to be considered and weighed in assessing Coach Meyer's mindset on July 24th.

- 4. While we credit that Coach Meyer, in answering reporters' questions on July 24th, was closely focused on the report of the 2015 felony arrest, we also believe that Coach Meyer was determined not to disclose details at the Big Ten Media Days about matters he deemed "personal" involving Zach Smith, of whom he had always been supportive. In a text message he exchanged with his agent just before Media Days began, Coach Meyer wrote "[Zach] was fired for cumulative stuff. I will not tell [the] media." He evidenced the same minimalist approach in announcing Zach Smith's firing to the football staff, instructing them "zero conversation about Zach's past issues."
- 5. Coach Meyer's desire not to publicly discuss Zach Smith's "cumulative issues" may have been motivated, in part, by his loyalty to Earle Bruce, his mentor. When Coach Meyer and Gene Smith informed the University leadership of their decision to terminate Zach Smith, Meyer conveyed his regret in firing Bruce's grandson, not his disappointment in Zach's conduct. Stan White, a venerated OSU athlete, texted Coach Meyer after the termination announcement to say, "Great job handling a very difficult situation. I know it had to be tough considering Earl. It's tough for me because of Earl and I don't really know Zach. Pray for both of them (Zach and his ex-wife)." Coach Meyer responded: "Thx brother. Awful situation. He said she said and 2 kids involved." Meyer's cherished relationship with Earle Bruce may also have diminished his ability to clearly process and assess the severity of Zach's problems or to appropriately discipline him, despite numerous red flags raised by Zach's behavior over the years.
- 6. We believe that Meyer's goal of not revealing unnecessary information about Zach Smith's past issues influenced his judgment and answers at Big Ten Media Days. Meyer appropriately expressed to his colleagues the night before that he did not want to be wrong when he addressed the media. Yet when in response, others proposed that he acknowledge some awareness of the 2015 events, while making clear the allegations did not result in charges, Meyer did not do that and instead made misstatements whether deliberately or not about his knowledge of the events of 2015. He later apologized, but not until after a social media report

exposed his prior knowledge and he had been placed on administrative leave.

- 7. We are also troubled by Coach Meyer's interest following the publication of the negative social media report about how to change the message history setting on his phone. While we do not know if messages older than a year had been on Coach Meyer's phone before August 1st or whether Coach Meyer deleted any messages, we do know that he at least thought about and discussed it with Brian Voltolini in response to learning of the negative article. Often, although not always, such reactions evidence consciousness of guilt.
- 8. As he went to Big Ten Media Days, Coach Meyer clearly intended to deny emphatically the false reports that Zach Smith had been arrested in 2015, and to give no further details about Zach's past issues than he had to. Executing on that plan, Coach Meyer went too far and incorrectly denied any knowledge of allegations of abuse in 2015 or the law enforcement investigation he had closely monitored for several months. As a result, he has cast doubt on his own honesty in a way that reflects adversely on him, the football program and Ohio State. In reaching this conclusion, although Coach Meyer was generally very supportive of Zach Smith, to a fault, we do not find that Coach Meyer's misstatements on Big Ten Media Days were part of a deliberate cover-up for keeping Zach Smith on the coaching staff in the face of evidence of domestic violence by him that Coach Meyer or others in the Athletics Department credited. We believe him, as did Zach Smith, that if he ever came to learn or believe that Zach Smith had physically abused his wife, Coach Meyer would have fired Zach Smith or any other coach on the spot.
- 9. Weighing all of the evidence available to us, including Coach Meyer's answers and demeanor when questioned during the Independent Investigation, we find, <u>first</u>, that Coach Meyer, at Big Ten Media Days, misstated his lack of knowledge of all relevant events regarding alleged domestic violence by Zach Smith in 2015. <u>Second</u>, although it is a close question and we cannot rule out that Coach Meyer was intentionally misleading in his answers, we do not ultimately find that he was. He clearly misspoke and made misstatements, but the reasons that happened are complex. Coach Meyer did not, in our view, deliberately lie.

V. Other Observations

- A. Overall, Coach Meyer impressed us with a sincere commitment to the Respect for Women core value that he espouses and tries to instill in his players. We believe that AD Smith shares that commitment. Zach Smith, however, did not live up to the Respect for Women core value and other core values. And Coach Meyer and AD Smith did not try to determine whether Courtney Smith might have been right in accusing Zach of domestic violence. They both believed Zach's denials and relied on law enforcement or court action to rebut those denials. To be sure, as Coach Meyer and AD Smith told us, they do not themselves investigate allegations of wrongdoing; they appropriately leave that to the experts, including law enforcement. But their responsibilities do not end there.
- B. In the course of our review, as the factual discussion in this summary reflects, we identified a pattern of troubling behavior by Zach Smith: promiscuous and embarrassing sexual behavior, drug abuse, truancy, dishonesty, financial irresponsibility, a possible NCAA violation, and a lengthy police investigation into allegations of criminal domestic violence and cybercrimes. Repeatedly, Zach Smith's conduct was met with reprimands and warnings by Coach Meyer, but never a written report, never an investigation and no disciplinary action until July 23, 2018. While we do not doubt that Coach Meyer respects women and is dedicated to fostering an environment of respect for women in his program, his apparent blind spot for Zach Smith seems to have impaired his judgment and his management of the behavior of at least one of his assistants.
- C. There was a consistent theme in our interviews that OSU may wish to consider in assessing the strength of its policies and procedures applicable to potential incidents of domestic violence and potential violations of its sexual misconduct policy. A number of OSU Athletic Department personnel, including but not limited to Coach Meyer and AD Smith, emphasized the critical importance of there being an actual arrest or charge filed or court order issued to determine whether there has been conduct that violates or potentially violates the law or the OSU sexual misconduct policy, necessitating a report to departmental compliance and the University Office of Compliance and Integrity.

It is well-established in the area of domestic violence and sexual abuse that complainants frequently – indeed, in the overwhelming majority of cases – may decide not to come forward or may cease to pursue charges when there has, in fact, been domestic violence or abuse. While current OSU policies and contracts do not require an arrest or formal charge for a violation or potential violation of law or policy to trigger reporting obligations and investigations, a number of the witnesses we spoke to seemed to regard that as a requirement in matters involving law enforcement. Certainly, that appears to be the case here where Coach Meyer and AD Smith believed Zach Smith's denials in the absence of affirmative law enforcement action on Courtney Smith's complaints. OSU may wish to review its policies and procedures to make its reporting requirements clearer and to implement appropriate training to reinforce them so that they are better understood and followed in the context of law enforcement investigations and in the absence of legal action. We believe that such clarity and training could enhance OSU's ability to address claims of domestic violence and sexual misconduct - whether or not reported or pursued by law enforcement – and result in a stronger program to combat sexual abuse and domestic violence.

VI. Conclusion

We have worked hard in a short period of time to investigate this matter and have arrived at our findings independently. While we know that not everyone will agree with our conclusions, we hope that our work will shed some light and be of some benefit to those who are charged with the weighty responsibility of making the important decisions that will follow this report. We especially want to thank the special, independent Board working group for its invaluable guidance and expertise, as well as the entire OSU community for its cooperation in the Independent Investigation and for its commitment to the integrity and independence of this process.

Columbus, Ohio August 22, 2018