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**To: Student-Athlete Reinstatement Staff  
National Collegiate Athletic Association**

**Re: Ohio State University Student-Athlete DeVier Posey**

Dear Reinstatement Staff:

Please be advised that this office represents the above-named student athlete in regard to his request for reinstatement recently submitted to the NCAA. Please accept this correspondence as his statement in regard to his request for reinstatement and mitigation.

Mr. Posey and this office believe that the information, evidence and data that has been submitted to the NCAA in regard to an allegation of being "overpaid" for work performed by Mr. Posey for Independence Excavating is being interpreted in an arbitrary and capricious manner. Mr. Posey's testimony, and, in fact, the testimony of all student-athletes involved in this matter, has demonstrated that the athletes did not know the precise method by which their wages were being calculated. Mr. Posey knew he was performing casual labor and knew that he was being paid for that work. He had no reason to believe that his wages may have been miscalculated or that he may have been overpaid.

In addition, Mr. Posey's cellular telephone and bank records demonstrate a consistent pattern regarding his work habits that is being ignored. Mr. Posey's cell phone records demonstrate a consistent pattern of making calls to Independence Excavating before and during the times that he was working, and no such calls when he was not working. Further, the "origin" of calls made while Mr. Posey was working, as indicated on his cellular

telephone records, is being unfairly interpreted. Independence Excavating's two locations and the Valley Laser Car Wash, where Mr. Posey worked, are all located in Valley View, Ohio (just north of Independence, Ohio) and all are about one mile from each other. Valley View is bordered by Independence, Garfield Heights, and Bedford, Ohio. However, the current "interpretation" of the "origin" of cell phone calls appears to be that only calls originating in Independence, Ohio, are being considered to support Mr. Posey's hours worked at Independence Excavating. This is a clearly erroneous interpretation.

The Federal Communications Commission's online resource reveals that there are approximately 250 active phone towers and antennas within a 10-mile radius of Independence Excavating and Valley Laser Car Wash. This 10-mile radius includes downtown Cleveland. The 250 total includes cell phone towers and antennas from all cell phone companies, as well as independently-owned towers and antennas. According to a map of towers and antennas owned by Verizon, there are towers and antennas that are nearly the same distance from Independence Excavating and Valley Laser Car Wash. These include an antenna in Seven Hills and the towers in Brooklyn, Garfield Heights, Parma and Bedford. Further, there are ten (10) additional Verizon cell phone towers and antennas in close proximity to downtown Cleveland.

Verizon's customer service was contacted to obtain information regarding the operation of Verizon's cell phone towers and antennas. Victor Johnson, Verizon customer service representative, explained that Verizon's customers are generally connected through a cell phone tower or antenna owned by Verizon. However, this is not always the case. Occasionally the call will be connected through a cell phone tower or antenna not owned by Verizon when a Verizon customer cannot be connected to a Verizon tower or antenna. In this case, Verizon will pay the owner of the tower or antenna a fee pursuant to a lease agreement.

As a result, it is common for a person standing in the same location at different times of the day to get connected through different cell phone towers or antennas. Generally, the phone call will be connected through the closest cell phone tower or antenna owned or leased by Verizon. However, if the closest cell phone tower or antenna is experiencing a high volume of traffic, the call will be connected through a different cell phone tower or antenna. In this situation, the customer's "origination" entry in the phone records may read two different locations, even though the customer is standing in the same location.

The origination of "Cleveland" or other suburbs in Mr. Posey's phone records does not exclude the fact that Mr. Posey worked for Independence Excavating each day as previously recorded. As explained above, the closest Verizon tower does not always transmit

the cell phone call. Thus, Mr. Posey could place a call from Independence Excavating and the call could be transmitted through a cell phone tower with an origination indicating Cleveland, Garfield Heights, Bedford, or any other neighborhood in proximity. This situation explains the patterns of Mr. Posey's phone records. For example, consider the following cell phone activity:

3/23/11	9:19 AM	216-469-1318	DiGeronimo	Independence	Incoming	2
3/23/11	9:40 AM	216-469-1318	DiGeronimo	Cleveland	Cleveland	1
3/23/11	9:44 AM	216-469-1318	DiGeronimo	Independence	Incoming	1
3/23/11	10:06 AM	216-469-4433	Frank Rini	Cleveland	Incoming	2

Within 45 minutes, Mr. Posey's origination bounces from Independence to Cleveland three times, and, in one instance, from Cleveland to Independence over the span of only four (4) minutes. This is explained by Mr. Posey being in the proximity of multiple cell phone towers. Depending on the amount of traffic at each cell phone tower, Mr. Posey's cell phone was transmitted from any number of cell phone towers and antennas owned or leased by Verizon. However, the current interpretation of Mr. Posey's cell phone records has wholly failed to take these undisputed facts into account.

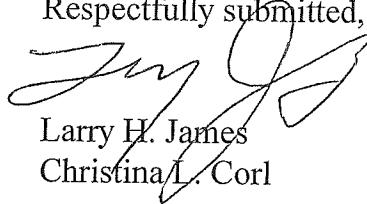
Further, the additional suspension suggested for Mr. Posey ignores that fact that he has already served the maximum suspension contemplated by the NCAA reinstatement regulations. Mr. Posey initially enrolled during the 2008/2009 academic year. He was previously suspended, in December of 2010, for five (5) games for receiving improper benefits for the sale of a conference championship ring for \$1,200 in June 2009, as well as receiving a \$50 discount on a \$75 tattoo, for a total benefit of \$1,250. This conduct, for which he was suspended, occurred in the same general time period (within the same one-year period) as the employment at Independence Excavating during the summer of 2009 and spring of 2010. In addition, the subject employment (June 2009, February and March 2010) at Independence Excavating occurred prior to the imposition of sanctions by the University. If the matter involving the employment at Independence (improper benefit calculated at \$675) had been included in the original calculation, the total amount at issue would have been \$1,925. According to the Reinstatement Policies of the NCAA, if the value of the benefit is greater than \$500, the conditions for reinstatement are "30 percent withholding condition and repayment." The inclusion of the additional \$675 would not have resulted in any additional sanction or reinstatement condition beyond the 5 game suspension and repayment that has already been imposed by the University and NCAA. Any additional suspension would be, quite frankly, punitive.

In closing, Mr. Posey understands that he should have been more diligent regarding payment for his employment at Independence Excavating. He regrets that he let his

teammates, coaches, fans, the University and the NCAA down. This is his Senior year and, by all accounts, were it not for the suspension, he would have been a starter, all Big Ten, all American and, most likely, a serious prospect for a career with the NFL. These things now seem unlikely. Nonetheless, Mr. Posey has stayed in school, has practiced with the team, acted as a de facto "captain" for his teammates and will graduate on time. Based upon all of the irrefutable evidence set forth above, it appears clear that any additional punishment for Mr. Posey will certainly not fit the crime.

Mr. Posey should be reinstated immediately.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Larry H. James" and "Christina L. Corl" written together in a cursive style.

Larry H. James  
Christina L. Corl