

THE REPORT OF THE
INDEPENDENT INVESTIGATION OF
DALLAS BASKETBALL LIMITED

SEPTEMBER 19, 2018

TABLE OF CONTENTS

	<u>Page</u>
I. Introduction.....	1
II. Snapshot of the Mavericks Organization.....	2
III. Summary of Public Allegations.....	3
IV. Sexual Harassment Law and Policy.....	3
V. Allegations and Findings as to Specific Individuals.....	5
A. Terdema Ussery.....	5
i. The 1998 Investigation and Allegations of Sexual Harassment by Ussery between 1997 and 1999.....	6
a. The 1998 Investigation.....	6
b. Investigative Findings and Analysis.....	7
ii. Allegations of Sexual Harassment by Ussery between 2000 and 2015.....	8
a. Specific Allegations.....	8
b. Investigative Findings and Analysis.....	12
1. Ussery’s Narrative.....	13
2. Institutional Response.....	14
a) Buddy Pittman.....	14
b) Mark Cuban.....	15
B. Chris Hyde.....	15
i. Misconduct.....	15
a. Viewing Pornography and Sexually Graphic Content at Work.....	15
b. Sexual Advances.....	16
c. Threatening or Intimidating Workplace Conduct.....	16
d. Stops at Hyde’s Apartment on Arena Tours.....	18
e. Inappropriate Emails.....	18
f. The Condom Incident.....	18
g. Ticket Sales Practices.....	19
ii. Hyde’s Termination.....	19

iii.	Investigative Findings and Analysis	20
a.	Credibility	20
b.	Institutional Response	20
1.	George Prokos.....	20
2.	Terdema Ussery	22
3.	Buddy Pittman	23
4.	Mark Cuban	24
C.	Earl Sneed	25
i.	First Incident	25
a.	Evidence.....	25
b.	Investigative Findings and Analysis	27
1.	Sneed’s Credibility.....	27
2.	Institutional Response.....	28
ii.	Second Incident.....	29
a.	Evidence.....	29
b.	Investigative Findings and Analysis	30
1.	Sneed’s Credibility.....	30
2.	Institutional Response.....	31
VI.	Management and Organizational Issues	32
A.	Terdema Ussery	32
B.	Buddy Pittman	33
i.	Pittman’s Human Resources Responsibilities	33
ii.	Pittman’s Personal Misconduct.....	34
C.	George Prokos.....	34
D.	Mark Cuban	35
VII.	Recommendations.....	36
VIII.	Conclusion	42

I. Introduction

On February 20, 2018, *Sports Illustrated* published an article chronicling multiple allegations of sexual harassment and other workplace misconduct by current and former employees at Dallas Basketball Limited (the “Mavericks” or the “Company”). Within days of the article’s publication, the Mavericks retained our law firms to conduct an independent investigation into these allegations and any other allegations of serious workplace misconduct that we might uncover. The investigation ultimately included the review of misconduct spanning over twenty years.

Over the following seven months, we conducted interviews of 215 witnesses. The witnesses included all current employees of the Mavericks, dozens of former Mavericks employees, and a number of other individuals with knowledge relevant to the investigation. We interviewed most witnesses with the promise of anonymity in this report, and some witnesses would only speak with us if we promised not to name them or otherwise disclose identifying information. One exception to the general rule of maintaining anonymity was for people identified in news articles as engaging in problematic behavior as to whom we found sufficient and credible evidence of misconduct. These individuals have been referenced by name.¹

As part of the investigation, we reviewed a large number of documents and emails. We retained an independent forensics firm to review the Mavericks’ current and former computer servers. Through a combination of manual and technology-assisted review, we reviewed 1.6 million documents. We were successful in obtaining emails and documents from 2015 and after (when the current server went into use). The forensics team was also able to recover a number of emails from a server in use until 2015. We also gathered additional emails and documents from Mark Cuban, Terdema Ussery, and Buddy Pittman. Through the Mavericks, we obtained and reviewed all relevant Human Resources files, some of which contained documents going back twenty years, as well as all employee handbooks, policies, and training.

We also sought to obtain employee data from the Mavericks, including relevant information on hiring, firing, promotions, salaries, salary increases, and bonuses. Due to poor record-keeping and a lack of automated data systems, we were only able to gather a fraction of this information.

In conducting this investigation, we received full cooperation from the Mavericks and Cuban. The Mavericks provided us with complete and unfettered access to employees and to documents within its control. Cuban encouraged all employees and anyone who contacted him to speak with us. Throughout the investigation, we were in regular communication with the NBA and its outside counsel retained to lead the NBA’s oversight function. We updated them weekly on progress and findings and provided access to the investigatory materials for their review. NBA counsel participated directly in questioning Cuban on two occasions. Near the end of the process, we also met with NBA Commissioner Adam Silver to discuss our findings.

¹ The Investigative Team has not included other individuals who were alleged to have engaged in misconduct in news articles where we did not find sufficient and credible evidence to sustain those allegations.

The Investigative Team does not and will not represent the Mavericks in any other capacity related to this report or its findings.² Prior to this investigation, no member of the Investigative Team represented or even met any current or former employees of the Mavericks, including Cuban.

This report contains seven sections: Snapshot of the Mavericks Organization; Summary of Public Allegations; Sexual Harassment Law and Policy; Allegations and Findings as to Specific Individuals; Management and Organizational Issues; Recommendations; and Conclusion.

II. Snapshot of the Mavericks Organization

Mark Cuban, who purchased a majority stake in the Mavericks in 2000, presently operates the Mavericks through a limited partnership, Dallas Basketball Limited.

Dallas Basketball Limited is structured as two distinct divisions: basketball operations and business operations. The divisions are physically separated from one another, with offices in different buildings, and have been since 2001.

The basketball operations division consists of personnel dedicated to running the team and managing its players. The basketball division is led by a President and General Manager.

The business division generates revenue for the team and includes the following departments: Ticket Sales and Services, Marketing and Communications, Corporate Sales, Finance, Human Resources, and Information Technology. The business division has a President and CEO, as well as a senior leadership team made up of Executive Vice Presidents, Senior Vice Presidents, and Vice Presidents. At the time this investigation commenced, the Mavericks did not employ a full-time, in-house General Counsel. Rather, the General Counsel for Mark Cuban Companies served as General Counsel of the Mavericks.³

Prior to this investigation, Cuban was rarely in the Mavericks' business office. Instead, Cuban spent the majority of his time managing the basketball operations division, which until fall of 2017 was located three miles from the business office. Cuban's involvement in business operations was undertaken remotely via email.

² The lead investigators were Evan Krutoy and Anne Milgram. Krutoy was an Assistant District Attorney in the Manhattan District Attorney's Office for more than twenty years, during which time he handled thousands of cases including high-profile homicide and sex crimes cases and also served as the Acting Deputy Bureau Chief of the Sex Crimes Unit. Milgram is a former New Jersey Attorney General, where she served as the state's chief law enforcement officer. Milgram also worked as a state prosecutor in the Manhattan District Attorney's Office and a federal prosecutor in the United States Department of Justice, where she was the Special Litigation Counsel for the prosecution of human trafficking crimes. The following individuals served as members of the Investigative Team: Jamie Gottlieb Furia, Joseph Fischetti, Rebecca Ryan, Alexander Strohmeyer, Natalie Dallavalle, Craig Dashiell, Cruz de Leon, and Angeliq Loffredo.

³ The General Counsel did not have an office in the Mavericks' business office, and estimated that he spent approximately 25 to 30% of his time on Mavericks matters, along with another attorney who dedicated about 35 to 40% of his time to Mavericks matters.

At the time that this investigation commenced in February 2018, the Mavericks had approximately 150 full-time employees across both divisions, with 120 of those employees working in the business division. Approximately 70% of the employees in the business division were men and 30% were women. The corporate sponsorship department, for instance, was 94% white and 76% male. Also at that time, the Mavericks did not employ a single woman or person of color at the executive level (*i.e.*, C-Suite, Vice President, Senior Vice President, Executive Vice President).⁴

III. Summary of Public Allegations

On February 20, 2018, *Sports Illustrated* published an article, “Exclusive: Inside the Corrosive Workplace Culture of the Dallas Mavericks,” chronicling multiple allegations of sexual harassment and other workplace misconduct by current and former employees on the business side of the Mavericks.

In the article, allegations were made against Terdema Ussery (former President and CEO), Buddy Pittman (then-Senior Vice President of Human Resources, who was subsequently suspended), Earl Sneed (then-beat writer for the Mavericks, who was immediately terminated), Paul Monroe (former Vice President of Marketing), and an unnamed former employee later identified in a May 27, 2018 article in *The Dallas Morning News* as Chris Hyde (former senior ticket sales employee).

Over the course of our investigation, we uncovered additional allegations against some of these same individuals. Later news articles included allegations against other individuals who were not named in the initial article: George Prokos (then-Senior Vice President of Ticket Sales and Service, who was later suspended) and Rob Erwin (former Director of Ticket Sales).⁵

Finally, the news articles questioned whether, and to what extent, team owner Mark Cuban knew about serious workplace misconduct within the Mavericks.

IV. Sexual Harassment Law and Policy

In conducting this investigation, we were mindful of the applicable legal frameworks for sexual harassment under both federal and Texas law.

Title VII of the Civil Rights Act of 1964 and Texas Labor Code § 21.051 make it unlawful for an employer to discriminate against any individual because of that individual’s sex. Sexual harassment is a form of sex discrimination. There are two ways in which a person can violate the law: through a hostile work environment or *quid pro quo*.

⁴ One female employee held the title of Vice President of Basketball Communications. However, the position is on the basketball operations side, and the employee did not attend executive level meetings or otherwise serve in a way that suggests she was a part of the executive leadership team. Another female employee briefly held the acting title of Interim Vice President of Marketing on the business side.

⁵ Multiple news outlets published original content articles after the February 20, 2018 *Sports Illustrated* article, including *Sports Illustrated* (an op-ed by a former employee), *The Dallas Morning News*, and *Deadspin*.

A hostile work environment exists when unwelcome sexual advances, requests for sexual favors, sexually abusive or vulgar language, or other verbal, visual, or physical conduct unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment.⁶ Pursuant to federal and Texas law, to establish sexual harassment under a hostile environment claim, an employee must demonstrate that: (1) he or she was subjected to unwelcome harassment; (2) the harassment was based on sex; and (3) the harassment was sufficiently severe or pervasive as to alter the terms or conditions of employment and create an abusive working environment.⁷ The standard is judged both objectively and subjectively. Objectively, the conduct complained of must be severe or pervasive enough that a reasonable person would find it hostile or abusive. Subjectively, the victim must perceive the work environment to be abusive.⁸ The complainant must demonstrate that he or she reasonably perceived the conduct as hostile.⁹

Quid pro quo sexual harassment occurs when submission to or rejection of unwelcome sexual conduct by an individual is used as the basis for employment decisions affecting such individual (*e.g.*, termination, denying or granting a promotion).¹⁰

Over the time period covered in this investigation, the Mavericks issued at least three separate employee handbooks, dated 2000, 2008, and 2017.¹¹ Each of these handbooks contained content regarding sexual harassment and provided accurate statements of what constitutes unlawful sexual harassment.

The Mavericks also provided anti-discrimination and anti-harassment training to employees in 2008 and 2015, to supervisors in 2008, 2013, and 2015, and to scouts in 2014. These trainings included an accurate statement of what constitutes unlawful sexual harassment and advised that harassment should be reported to Human Resources.

⁶ See 29 C.F.R. §1604.11(a); *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 66-67 (1986); *Mackey v. U.P. Enterprises, Inc.*, 935 S.W.2d 446, 455-56 (Tex. App.—Tyler 1996, no writ).

⁷ See 29 C.F.R. § 1604.11(a)(1); *Meritor Sav. Bank FSB*, 477 U.S. at 66-67; *DeAngelis v. El Paso Mun. Police Officers Ass'n*, 51 F.3d 591, 594 (5th Cir. 1995) (citing *Harris v. Forklift Sys., Inc.*, 510 U.S. 17 (1993)); *Cox v. Waste Mgmt. of Texas, Inc.*, 300 S.W.3d 424, 435 (Tex. App.—Fort Worth 2009).

⁸ *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21-22 (1993); *Twigland Fashions, Ltd. v. Miller*, 335 S.W.3d 206, 219 (Tex. App.—Austin 2010).

⁹ *Harris*, 510 U.S. at 21-22; *Waffle House v. Williams*, 313 S.W.3d 796, 806 (Tex. 2010).

¹⁰ 29 C.F.R. § 1604.11(a)(2); 29 C.F.R. § 1604.11(a)(3).

¹¹ The 2000 handbook set forth a procedure calling for any employee who feels that he or she is a victim of sexual harassment to bring those concerns to his or her supervisor, or if the supervisor is the alleged harasser, then to the Vice President of Human Resources. The 2008 and 2017 handbook called for reports to be made in the first instance to the Vice President of Human Resources, and if he is unavailable, then to the CEO. None of the handbooks advised employees on how to proceed if the complaint involved the CEO's conduct.

V. Allegations and Findings as to Specific Individuals

This report sets forth two groups of findings: (1) serious workplace misconduct by former and current employees; and (2) improper or ineffective management (including problematic responses to serious workplace misconduct).¹²

In evaluating allegations, we substantiated claims where we found sufficient, credible evidence to support them. We made a number of determinations as to witness credibility, which we have explained when helpful.

As set forth in more detail below, we have substantiated claims that include: allegations by fifteen current and former employees regarding inappropriate comments and touching by Terdema Ussery; allegations by dozens of current and former employees that Chris Hyde made inappropriate comments, viewed pornographic images and videos at the office, had a used condom fall out of his pants leg onto the office floor, and had violent and threatening outbursts in the workplace; and allegations by two women, including a former Mavericks employee, that they were victims of domestic violence at the hands of Earl Sneed.

To distinguish each witness's account, we have assigned each witness an appellation that consists of their affiliation with the Mavericks and a random witness number (*e.g.*, Current Employee 4, Former Employee 8). In reporting our findings, we have been sensitive to the fact that several of the complainants are still employed by the Mavericks. Therefore, we have not reported on certain facts of a personal or private nature if they were not necessary to our findings or if their disclosure might reveal a witness's identity.

A. Terdema Ussery

Ussery graduated from the Woodrow Wilson School of Public and International Affairs at Princeton University, earned a master's degree from the John F. Kennedy School of Government at Harvard University, and graduated from the University of California, Berkeley, School of Law. After some time as an attorney at Morrison & Foerster LLP, he became Commissioner of the Continental Basketball Association. He later became president of Nike Sports Management and left that company in 1996.

Ussery was the President and CEO of the Mavericks from 1997 to 2015. Ross Perot, Jr., who purchased a majority interest in the Mavericks in 1996, hired Ussery as CEO.

When Ussery joined the Mavericks, the team already had established leadership in the basketball operations division. Specifically, Mavericks minority owner Frank Zaccanelli joined the team with Perot and was actively involved in the management of basketball operations. Upon his arrival, Ussery sought to take an active role in basketball operations, which caused conflict between Ussery and Zaccanelli.¹³

¹² Over the course of our investigation into serious workplace misconduct, we deferred to the new Mavericks leadership to handle allegations of other misconduct that fell outside the scope of our investigation or that we felt would be most appropriately addressed internally.

¹³ Perot and Zaccanelli declined to be interviewed for this investigation.

When Cuban bought the team in 2000, he invited existing staff, including Ussery, to remain with the Company. Ussery continued as CEO until 2015, when he took a senior position at Under Armour. Ussery left Under Armour within three months.¹⁴

Our investigation found that during his time at the Mavericks, Ussery engaged in improper workplace conduct toward fifteen current and former employees. Ussery's conduct ranged from inappropriate comments to touching to forcible kissing, and varied in severity and scope.

i. *The 1998 Investigation and Allegations of Sexual Harassment by Ussery between 1997 and 1999*

a. *The 1998 Investigation*

Sexual harassment allegations against Ussery surfaced less than a year into his tenure as President and CEO of the Mavericks. The individuals who made the allegations have never been identified publicly, and our investigation has not been able to discern with certainty who made the allegations that formed the basis of that investigation. However, our interviews of current and former employees pointed to three former employees who were the most probable sources of the allegations against Ussery in 1998.

We interviewed two of the three former employees. (The third declined to be formally interviewed; however, she did speak briefly with us and stated that she left the organization because of harassment by Ussery.) We found the accounts of the two former employees with whom we spoke to be credible.

First, Former Employee 4 recounted that she and Ussery started at the Mavericks around the same time. Ussery spoke with her about the difficulty of being in a new city, and asked her to call him at his hotel so that they could talk. Ussery then wrote down his hotel room number on a piece of paper and handed it to her. Former Employee 4 called that evening and, during the conversation, Ussery asked Former Employee 4 if she would go to dinner with him sometime. He then asked her, "Are you going to love me someday?" When she asked him to repeat what he had said, not believing that she had heard him correctly, Ussery again said, "Are you going to love me someday?" Former Employee 4 believed that Ussery was asking her to be sexually intimate with him; she quickly ended the phone call after that. She was very upset and immediately told a friend what had happened. The following day, Ussery approached Former Employee 4 in the office. He wrote another note stating "#," which Former Employee 4 interpreted as a request for her telephone number. She refused his request and did not call him at his hotel again. Ussery continued dropping by her desk to speak with her; for instance, on one occasion while they were discussing chocolate at her desk, he suggested that but for his marriage, he would take her to Switzerland so that she could taste Swiss chocolate. During her

¹⁴ During his interview, Ussery refused to answer questions about his time at Under Armour. We contacted Under Armour for information about the circumstances regarding Ussery's departure, but Under Armour declined to comment beyond what had already been said publicly. In its statement after the publication of the *Sports Illustrated* article, Under Armour stated: "While we cannot disclose specific personnel matters, Under Armour takes these matters very seriously."

interview with the Investigative Team, Former Employee 4 produced the two notes that Ussery wrote to her. She also noted Ussery never physically touched her.

Second, Former Employee 2 recounted that Ussery frequently made comments about her appearance. He noted that Former Employee 2, like his college girlfriend, wore glasses that made her look sexy. This caused Former Employee 2 to stop wearing glasses when Ussery was in the office. She also said that when her manager was not present, he would sometimes come up behind her, give her a shoulder rub, and tell her that she was working too hard. Former Employee 2 said that Ussery's comments and touches made her uncomfortable. She eventually reported this to a manager, who said that he would look into it; one week later, Former Employee 2 was terminated by the manager and told that the organization wanted "a quiet, older person" in her role.¹⁵

After supervisors in whom these women had confided alerted senior management, Perot ordered an investigation into Ussery's conduct. Perot's outside attorneys conducted that internal investigation in 1998. No records from the investigation are available and the attorney who handled the witness interviews declined to be interviewed by the Investigative Team, citing concerns about the attorney-client privilege. Two other Perot attorneys, who oversaw the 1998 investigation, agreed to be interviewed. Also, a number of former and current employees provided information regarding the investigation.

None of the three women whom we believe made the initial allegations against Ussery were interviewed as part of the 1998 investigation; two declined to be interviewed and the third said that she was not contacted by the attorney who conducted the investigation.

The attorneys who oversaw the investigation could not specifically recall the substance of the women's complaints. However, they recalled that when confronted with the allegations against him, Ussery did not appear to be particularly offended by the accusations. They also noted that Ussery did not offer an outright denial of the accusations, but rather claimed that his interactions with the women were not exactly as they had been alleged. Perot's attorneys could not recall the specific findings they made, though they recalled that Ussery's behavior was "boorish" and "juvenile." Perot's attorneys remembered that they ordered Ussery to attend counseling and to provide written confirmation that he had done so. Ussery was also warned that further incidents would result in termination. Perot's attorneys also required that the Mavericks hire a full-time Human Resources manager.¹⁶

b. Investigative Findings and Analysis

We found credible the two witnesses who offered accounts of Ussery's misconduct. Both Former Employee 2 and Former Employee 4 contemporaneously confided in colleagues and supervisors that Ussery had acted inappropriately with them. Moreover, the reports were wholly independent of one another. We also found no evidence that either woman conspired with one another, or with anyone else, against Ussery.

¹⁵ The manager, who is a former employee, did not respond to our request for an interview.

¹⁶ Following the investigation, Ussery hired Buddy Pittman as the first head of Human Resources for the Mavericks.

In his interview with the Investigative Team, Ussery stated that he believed the 1998 investigation was a product of false allegations manufactured by Frank Zaccanelli, who wanted him fired. We found no evidence to support this claim.

With respect to the 1998 investigation itself, Ussery recalled being interviewed by an attorney who asked him questions about whether he made certain suggestive comments along the lines of “we should hang out” or “would love to get to know you better.” Ussery stated that after meeting with that attorney, Perot and one of his attorneys separately called Ussery and said that everything was fine and that he could go back to work but that he should be careful. During his interview, Ussery did not recall any findings that he made inappropriate comments, nor did he recall being instructed to go to counseling. However, later in the interview, he conceded that he may have been ordered to attend sensitivity training.

Ussery denied any recollection whatsoever of Former Employee 2 and categorically denied ever commenting to an employee in her position about her appearance or massaging her shoulders. He did recall Former Employee 4, but said that he only tried to develop a rapport with her because he would often contact her in order to get in touch with her boss. Ussery did not recall the phone conversation from his hotel room with Former Employee 4 or asking her if she would love him one day. When the Investigative Team showed Ussery the slips of paper that Former Employee 4 had provided, Ussery noted the handwriting was sloppy but acknowledged that it might have been his handwriting. He then stated that he could have spoken with Former Employee 4 at night if he was trying to find her boss.

The Investigative Team does not credit Ussery’s claim that the 1998 allegations were manufactured by a vindictive colleague vying for power. Rather, we find that the investigation was triggered by Ussery’s inappropriate conduct in the workplace.

ii. *Allegations of Sexual Harassment by Ussery between 2000 and 2015*

a. *Specific Allegations*

In total, we find that Ussery engaged in misconduct towards fifteen current and former employees during his tenure at the Mavericks. In addition to substantiating the above-referenced allegations by two former employees against Ussery in 1998, we also substantiated allegations made against him by an additional thirteen current and former employees between 2000 and 2015.

We have provided a brief summary below of the allegations of misconduct against Ussery.

- Former Employee 8, an entry-level employee, reported that Ussery often held her hand during meetings and kissed her on the hand or cheek at the end of meetings. She also reported that one day, while they were speaking in Ussery’s office, the conversation veered to the topic of an old surgery that resulted in a long scar down the length of her back. Ussery then suggested that they could go somewhere private so that he could see the scar. When Former Employee 8 equivocated, Ussery responded, “Never mind, I want to see it right now.” He then grabbed her hand, stood her up, led her over to his side of

the desk, and lifted the side of her shirt up over her waist to about the bottom of her ribcage. A receptionist then walked into Ussery's office, apologized for intruding, and walked out the door. The meeting then ended and Former Employee 8 returned to her desk. Former Employee 8 was upset about this incident and told several other employees about it; she shared details of the incident with the other employees years before the publication of the *Sports Illustrated* article.

At his interview, Ussery denied having ever asked to see Former Employee 8's scar and instead recalled that when the topic of her scar came up, she walked around his desk and told him to feel it. He said he felt the scar for a "nanosecond" before a receptionist walked into the room.

- Former Employee 7 described how Ussery would touch her thighs and calves and would place his hand in her hand while stating aloud how perfectly they fit together. She stated that he would sometimes touch her leg while in meetings, but that he would do so under the table so that no one else in the room would notice. She described Ussery as very "touchy-feely" and stated that he also made several suggestive comments to her. In 2008, for example, Ussery asked her "if in another life I would marry him"; he repeated similar comments numerous times over the course of several years. When Former Employee 7 was traveling for a dancer photo shoot on the beach, Ussery asked her if she could send him "just one photo" while there. Ussery's conduct made her feel uncomfortable. When Former Employee 7 confided in a male colleague about Ussery's behavior, her colleague advised her to take notes of incidents as they arose. She did so, and she provided them to the Investigative Team. We also spoke with nine current and former employees with whom Former Employee 7 contemporaneously shared all or part of her allegations.

Ussery described Former Employee 7 as "like a little sister" who he tried to get "settled and situated" within the Company.

- Former Employee 9 said that Ussery would often stop by her desk to chat, asking about her personal life and whom she was dating. She stated that he began complimenting her appearance and clothes, and that he would sometimes brush against her hip, chest, or arm. At first, Former Employee 9 thought that these touches happened "accidentally," but over time, she believed that they were intentional. For example, she and Ussery would sometimes be talking in a group and Ussery would put his hand on her back and swirl one finger along her back. At other times, he would make a swirling motion on her hand with his finger. Former Employee 9 said that he would sometimes make this swirling motion with his finger while in the presence of other people but from a position that prevented others from being able to see it. Former Employee 9 recalls that one time, while they were outside in a parking lot, Ussery kissed her on the lips in what she described as a "peck." She found it "shocking" and said it was not something she asked for or wanted. She pushed him back and made clear that she did not want to be kissed.

Ussery denied kissing Female Employee 9 on the lips. Without mentioning Former Employee 9, we asked Ussery whether he ever said anything to anyone at the Mavericks that could have been construed as inappropriate. Ussery responded by noting that when Former Employee 9's pastor invited her to dinner, Ussery told her that the pastor must

have wanted something more. He also noted that he once gave her a CD and said, “if this doesn’t get you going, nothing will,” implying that it contained music suitable for intimacy. However, he denied having kissed her or having other sexual conversations with her.

- Current Employee 7 stated that after her first couple of weeks on the job, Ussery began telling her that she was “good looking” and “sexy.” Ussery continued making these types of comments and escalated them over time. Current Employee 7 said these comments occurred not quite every time she saw him, but at least once a week. Current Employee 7 also noted that Ussery had a semi-private office that was essentially an enclosed cubicle with high walls that did not reach the ceiling. She noted that Ussery had a practice of waiting until the air conditioning turned on before making inappropriate comments, so that nobody outside could hear. In addition to comments, Current Employee 7 reported that Ussery’s touching of her also escalated over time. From the start of her employment, it bothered her when Ussery touched her leg. It did not initially stand out to her when he would touch her arm, but over time, she felt more uncomfortable since he would touch her arm while also making comments like “one time.” Current Employee 7 believed that the term “one time” meant something sexual because of the tone of voice in which he used it and because he would say it while physically touching her. This made Current Employee 7 uncomfortable, especially as Ussery’s touches began lasting longer over time. On one occasion when she was meeting with Ussery in his office, he grabbed her face and forcibly kissed her on the lips. She pushed him away and told him that what he did was “absolutely not ok.” She described the kiss as “sloppy and wet and made me feel really dirty.” She also said that after she pushed him away, he said, “come on” and “just give me a chance.”
- Former Employee 31 stated that her interactions with Ussery were professional at first, but as time went on, he began to act inappropriately with her. For instance, she said that Ussery would hold her hand for too long, hug her tightly, and put his hand around her waist. She also noted that once, when she was speaking to Ussery on the phone, he told her, “I would leave my wife for you.” She thought that he might be “testing the waters” to see if she was receptive to his advances. Former Employee 31 said that Ussery would also brush up against her rear end, which at first she thought was an accident but later came to believe was intentional. She further stated that Ussery would approach her from behind when she was at her desk and massage her back. Other times, while she was standing, he would hug her from behind and put his full body against hers. She also noted that he would hold her hand and tickle her palm with his finger. Former Employee 31 stated that this conduct made her feel uncomfortable.

When asked about Former Employee 31 during his interview, Ussery denied knowing who she was.

- Current Employee 8 stated that Ussery sometimes bumped into her and brushed up against her in a way that caused her to walk away questioning whether it even really happened. But as these incidents kept happening, and even escalating, Current Employee 8 came to believe that the conduct was intentional. Ussery also began touching her hand while wiggling his finger on her hand at the same time or patting her on the back.

Current Employee 8 said that even in front of other people in meetings, he would sometimes discretely put his hand on her thigh under the table.

Ussery stated in his interview that, generally, while he might sometimes tap someone's knee to get their attention during a meeting, he would not have placed his hand on someone's thigh.

- Current Employee 9 stated that Ussery sometimes gave her shoulder massages at her desk, leaned down to touch her knee at her desk, and asked her about her personal life and her sex life.

When asked by the Investigative Team, Ussery conceded that he sometimes squeezed Current Employee 9's shoulders when walking past her desk. He also stated that he sometimes had sexual conversations with Current Employee 9. Ussery contended that Current Employee 9 initiated all of those conversations by remarking that she was lonely and not "getting any."

- Former Employee 10 recalled that Ussery twice came to her desk and, while making a joke about "putting hands on people" that she could not precisely recall, placed his hand on her hand. On each occasion, she pulled her hand away in response. Former Employee 10 also stated that on another occasion, Ussery walked up to her desk and, standing behind her, sniffed her hair. She responded by asking in a deliberately loud voice, "Did you just sniff my hair?" She said that Ussery then tried to turn it into a joke, stating, "Just tell everyone the CEO smelled your hair." Several other employees confirmed that Former Employee 10 told them about the hair-sniffing incident.

When asked at his interview, Ussery stated that he did not recognize Former Employee 10's name and that he had no idea "why I would walk up and smell someone's hair," explaining, "That's just so weird to me."

- Current Employee 10 stated that Ussery had asked her if she was dating anyone, if she was working too hard, and if there was anything "we can do to help you have a personal life." On several occasions, Ussery asked her to go to breakfast or a movie; these offers made her uncomfortable, and she declined. Current Employee 10 also noted that Ussery provided her with his cell phone number and told her that if she needed to talk about anything, she could call him. She also said he later confirmed with her that she still had his number. Current Employee 10 also recalled that after Ussery announced that he was leaving the Mavericks, he took her hand, crossed their fingers together, and said, "That looks nice, doesn't it?" He added, "I'm leaving, you know."
- Former Employee 11 stated that Ussery asked her and another female employee to take a picture with him in a "Charlie's Angels" pose and that, during the pose, he put his hand high on Former Employee 11's thigh, which she then pushed away. Former Employee 11 also recounted that, when offered a position that would require her to interact with the basketball players, Ussery told her that she should not do so because she is an "attractive female" who could get a "bad rap" for being "someone that is just trying to get with players."

- Current Employee 4 recalled that Ussery sometimes gave her extended hugs lasting about twenty seconds while saying “mmm, mmm, mmm” in her ear. Current Employee 4 stated that she grew up as a “hugger” but that these hugs were conspicuously long, and prompted a co-worker to approach her to ask what Ussery was doing and what was going on. She said that these extended hugs with verbal sounds embarrassed her because everyone knew she was married.
- Current Employee 1 recounted an occasion when she was wearing a necklace with a pendant hanging from it; Ussery reached to grab it and his knuckles brushed against her breasts, causing her to tell him to back up. She said he would also make comments like, “Gee, you look really hot; I like that skirt.”
- Former Employee 30 stated that Ussery made a number of inappropriate sexual comments to her. Four current and former employees stated that Former Employee 30 contemporaneously confided in them about Ussery’s comments. Former Employee 20 stated that he heard Ussery make comments “laced with innuendo” to Former Employee 30. Although we substantiate that Ussery made inappropriate sexual comments to Former Employee 30, we cannot fully substantiate one specific comment that Former Employee 30 alleges Ussery made to her in the presence of colleagues: “You’re going to get gang-banged this weekend.” Excluding Ussery and Former Employee 30, only two of the four employees who were present recalled hearing Ussery make an inappropriate comment at all. Those two employees had different recollections of what the comment was. Former Employee 20 recalled Ussery saying something sexual about her “being with a bunch of guys,” but could not recall the term “gang bang” being used. Former Employee 13 specifically recalled the “gang bang” comment, but provided us with a demonstrably false statement about a critical fact, and thus we could not credit Former Employee 13. We credit that Ussery said something inappropriate to Former Employee 30 at that time. However, there is insufficient, credible evidence for us to find that Ussery used the term “gang-banged.”

Ussery denied making the “gang bang” comment or having any sexual conversations with Former Employee 30. He further stated that the term “gang bang” is not part of his “lexicon” and that he does not use vulgar language.

b. Investigative Findings and Analysis

The Investigative Team has determined that there is sufficient, credible evidence to support allegations made against Ussery by thirteen female employees between 2000 and 2015. A number of factors were used to evaluate the credibility of the witnesses interviewed, including whether the witness complained of the conduct within a reasonable time of its commission, whether a witness’s account was consistent or inconsistent over time, the witness’s demeanor during the interview, whether there was other corroborative evidence, and whether a witness’s narrative was logical and sufficiently detailed that it had the “ring of truth.”

After applying these credibility tests to the witness accounts, we find the foregoing witnesses to be credible for a number of reasons. First, many of these women told colleagues about Ussery’s misconduct when it occurred. Second, there are common threads that run

throughout the accusations — at times between women who do not even know one another — that speak to the credibility of each individual accusation. For example, one is hard-pressed to believe that Former Employee 9, Current Employee 8, and Former Employee 31 have all manufactured the unique fact that Ussery subtly made a swirling motion with his finger when his hand was on them. Finally, most of the witnesses gave detailed descriptions about their interactions with Ussery and discussed their experiences in a credible manner.

1. Ussery's Narrative

During his interview, Ussery categorically denied ever inappropriately touching, kissing, or making sexual comments to any female employee. However, when directly asked about specific women, Ussery acknowledged complimenting women in the office and massaging one woman's shoulders. He stated, however, that he was friends with these women and that one of them was "like a little sister" to him. Ussery further claimed that his sexual conversations with Current Employee 9 were prompted by her initiating sexual discussions with him.

We note that many of Ussery's assertions during his interview corroborated the women's accounts in important ways, such as Ussery's confirmation that he touched Former Employee 8's bare back in his office (though he claimed that Former Employee 8, then an entry-level employee just out of college, was the instigator) and that he would sometimes touch a person's leg during a meeting (which he depicted as a brief tap to get their attention). Moreover, when asked about possibly problematic interactions with women, Ussery volunteered the names of Current Employee 9 and Former Employee 9, and noted that he would interact regularly with Current Employee 7. For example, although Ussery denied having kissed Former Employee 9, he admitted to making sexually suggestive comments when she told him that a pastor had asked her to dinner. He also recounted giving Former Employee 9 a CD and saying, "if this doesn't get you going, nothing will," implying that it contained music suitable for intimacy.

While Ussery acknowledged parts of certain interactions with female employees, he denied doing anything inappropriate and, more generally, minimized his conduct. We find that Ussery's blanket denial of the other conduct, including denials that he even recognized the names of some accusers, lacks credibility.

One other issue merits discussion. Ussery, through his attorney, notified the Investigative Team that Cuban had reached out to him shortly after the *Sports Illustrated* article was published. Cuban also informed the Investigative Team about his outreach, and stated that he asked Current Employee 21, whom he knows well, to contact Former Employee 6 (who has a close personal and professional relationship with Ussery) and ask her to deliver a message to Ussery. Cuban's message was that he had no intention of "throwing [Ussery] under the bus." Cuban stated that he directed this outreach to Ussery in an effort to avoid public finger-pointing between Ussery and him. Current Employee 21 said that he tried to use a social media application to contact Former Employee 6, but they instead ended up having two phone conversations in which he conveyed Cuban's message. Ussery's attorney provided the Investigative Team with Former Employee 6's notes from the two phone conversations. Former Employee 6 did not inform the Investigative Team of this outreach. Moreover, Former Employee 6's notes are somewhat unclear and difficult to reconcile. In some places, the notes imply that Cuban would do what he could to minimize the public impact of the allegations

against Ussery if the investigation “comes out OK” for Ussery and he did not make “claims or amplif[y]” the situation. And in other places, the notes suggest that the investigation was completely independent and needed to run its course. We found no indication that this communication through intermediaries affected either Ussery’s or Cuban’s narrative when speaking with the Investigative Team.

2. Institutional Response

a) Buddy Pittman

Notwithstanding the foregoing, Ussery’s Human Resources file does not contain a single allegation of sexual harassment.

We do not find the absence of reports to be an indication that the incidents in question did not happen. Rather, we find that employees did not report the harassment, and that within the organization there was a sense of futility with respect to making complaints to Pittman, the head of Human Resources and, at the time, the only Human Resources employee. This was particularly true with Ussery, who was the highest-ranking leader in the business organization and a close personal friend of Pittman.

In one instance, we found that Pittman took steps to protect Ussery. Former Employee 31, whose allegations against Ussery we substantiated above, stated that Pittman called her to a one-on-one meeting in his office in the old arena and closed the door. Former Employee 31 recounted that Pittman said that he had received reports that she had been “coming on” to Ussery by holding his hand and being flirtatious. Pittman then said, “Well that didn’t happen, did it?” He continued, “Because he’s a married man. You know he’s a good Christian man. He would never do that.” Former Employee 31 said that she was overwhelmed that Ussery’s inappropriate conduct was being turned around against her. Pittman then asked Former Employee 31, “That didn’t happen, right?” Former Employee 31 believed that Pittman was protecting Ussery and that Pittman wanted her to say that nothing had happened. And so, in response to his question, she said that “nothing had happened.” Former Employee 31 recounted that she cried during the meeting in Pittman’s office. At the end of the meeting, Pittman hugged her and joked, “Now you’re not going to report me, are you?” Former Employee 31 told us that she was “devastated” by the conversation with Pittman and “did not know what to do.”

Former Employee 23 saw Former Employee 31 leave Pittman’s office in tears, after which Former Employee 31 confided in her about what had happened. In our interview of Former Employee 23, she corroborated that Former Employee 31 told her what had happened during the meeting with Pittman. Former Employee 23 added that after Former Employee 31 left Pittman’s office, Pittman called Former Employee 23 into his office and told her, “If you hear anything else about this rumor, shut it down.” In other words, when confronted with a rumor that the CEO engaged in improper conduct with an employee, Pittman reacted by summoning the employee who was the subject of the rumor, and another employee who had heard the rumor, and directing their silence.

In his interview, Pittman was asked about Former Employee 31. While Pittman recalled that Former Employee 31 worked for the Mavericks, he denied that he ever met with her about

Ussery or that she ever left his office crying and upset. Pittman broadly stated that he never had a conversation with Former Employee 31 about improper conduct with Ussery.

We find Former Employee 31's and Former Employee 23's accounts credible. Neither has worked for the Mavericks in over a decade and we have uncovered no reason why they would fabricate a story about Pittman. Moreover, both Former Employee 23 and Former Employee 31 were reluctant to cooperate with this investigation and revisit an incident that took place many years ago, believing they had put this behind them.

b) Mark Cuban

In his interview, Cuban stated that he was not aware of Ussery's misconduct prior to the *Sports Illustrated* article. We find credible Cuban's assertion that he did not know about Ussery's misconduct. Not a single current or former employee, including all of the complainants whose accounts we substantiated above, stated that they had told Cuban about Ussery's misconduct. Nor did we uncover any documentary evidence showing that Cuban was informed about Ussery's behavior.

B. Chris Hyde

The Mavericks hired Hyde on May 22, 2000 as a full-time Account Executive in the ticket sales department. During his time with the Company, Hyde was universally considered to be one of the most successful ticket sales employees, with twice the sales of any other employee. Hyde worked for the Company until May 22, 2014, when he was terminated.

Neither Hyde nor his attorney responded to our repeated requests for an interview.

i. Misconduct

Hyde's misconduct commenced shortly after he began working for the Mavericks and continued until he was terminated in 2014. Dozens of current and former employees have alleged that Hyde made inappropriate comments of a sexual nature in the office and viewed pornographic images and videos at his office workspace. Seven current and former employees reported that Hyde made unsolicited and unwanted sexual advances towards them. Hyde's Human Resources file also contains references to more than ten violent and threatening outbursts, often directed at co-workers.

Hyde's misconduct negatively affected those who were the subject of it, and also diminished other employees' respect for management. Based on Hyde's behavior, and management's failure to hold him accountable for it, many employees came to believe that workplace complaints would not be acted upon.

a. Viewing Pornography and Sexually Graphic Content at Work

Fourteen current and former employees personally witnessed Hyde viewing sexually graphic images on his work desktop computer, laptop, or while on his phone in the office. Another *fifty* current and former employees stated that, although they had not personally witnessed Hyde viewing pornography, they had heard from others that Hyde did so.

Furthermore, nine current and former employees expressed an understanding that Hyde's desk was moved to a cubicle against a wall so that fewer people would be exposed to sexual images on his computer screen.

In early 2008, a litigation-related document request led to a search of Hyde's work computer. Through this search, the Company discovered the presence of sexually explicit images on Hyde's computer. The Mavericks' General Counsel notified Cuban of this. In March 2008, Cuban sent an email to Hyde, stating that he "just found out about this" and continued:

If you have any offensive pictures on your PC at the Mavs Chris, I will have you fired on the spot. No questions asked. I dont [sic] give a shit what you do on your own, but when its [sic] on a work computer, that crosses the line.

The email was subsequently forwarded to Ussery and Pittman.

Notwithstanding this warning, Hyde's viewing of pornographic and sexually graphic content at work continued. For example, Ussery recalled that in 2010 or 2011, Hyde asked Ussery to come to his desk to discuss a sale Hyde had made, and while there, Hyde opened an image on his work computer of Hyde standing naked and erect with naked women lying on a bed looking at Hyde in the background. Cuban stated that neither Ussery nor anyone else alerted him that Hyde continued viewing sexual content after Cuban's 2008 warning.

b. Sexual Advances

Seven current and former employees reported to the Investigative Team that Hyde made unsolicited and unwanted sexual advances toward them. For instance, Former Employee 15 said that Hyde made her uncomfortable by discussing his sexual proclivities and that he sometimes attempted to kiss her and "dog lick [her] face." After this conduct persisted for a few weeks, Former Employee 15 reported it to George Prokos, the head of the ticket sales department, whom she described as dismissive, and to Pittman, whom she did not believe considered it to be a serious issue. Moreover, Current Employee 1 stated that Hyde would say things like, "You've been married 40 years, wouldn't it be fun to be with a woman?"

Multiple women reported Hyde's misconduct to Pittman or Prokos (and in some cases, to both). In a January 2003 email to Prokos, Former Employee 21 wrote that Hyde was "verbally abusive to me" and "sexually harassed me . . . and the bottom line is he scares me." Prokos responded by questioning whether Former Employee 21 had made "any other official complaints" and asked for copies of such complaints. Prokos also wrote, "I do think you need to separate threatened from competitive. We are in a sales office where I expect people to be competitive."

c. Threatening or Intimidating Workplace Conduct

Hyde also repeatedly engaged in violent and threatening behavior in the workplace, beginning shortly after he started working at the Mavericks. Ussery, Pittman, and Prokos were alerted to more than ten instances of threatening conduct. For example, in January 2003 and

again in February 2003, Hyde sent “threatening” and “intimidating” emails to a male ticket sales employee.

Hyde’s conduct continued over the years. There are notes in Hyde’s Human Resources file of four departing employees advising that Hyde’s presence and intimidating attitude contributed to their decisions to leave the Company.

In December 2008, Pittman met with Prokos and another supervisor in the ticket sales department off-site for the specific purpose of discussing Hyde’s intimidating behavior toward his co-workers. According to a subsequent summary that Pittman sent to Ussery, Pittman told Prokos and the supervisor that “people perceive that [Hyde] runs the department rather than them, that he is above the law, and his behavior, appropriate and inappropriate, is not only tolerated, but the perception is that he is rewarded for it.” Pittman further told Prokos and the other supervisor that a “[h]ostile work environment will not be tolerated.” Pittman did not advocate for probation or termination of Hyde but instead told Prokos and the supervisor that they must “demonstrate that they can manage” Hyde and “mentor him in how to get along with others, respect others, control his temper, leave non-work problems at the door when he comes into the building, etc.” Pittman stated that “if any future big incidents arise” with Hyde or if another employee quits and states that Hyde “is a primary factor in their decision to leave, [Hyde] will be subject to termination, even if I have to handle it myself.” Pittman noted that Prokos offered “some defense of” Hyde, arguing that other employees were jealous of Hyde’s success and that sales people are naturally “competitive.”

Despite this conversation, Hyde’s aggressive behavior continued. Two ticket sales employees — one female and one male — stated that in the spring of 2009, while in a conversation about a recent mass shooting, Hyde told them that if he were ever going to “take someone out,” the female employee would be first, the male employee would be second, and then he would move on to other departments. Both employees told the Investigative Team that they interpreted Hyde’s remarks as a threat to bring a gun into the office and shoot them. The threat so concerned the female employee that she told her family that if anything bad happened to her, they should consider Hyde a suspect. She also reported the incident to Ussery, Pittman, and Prokos. Although the male employee reported to us that he did not report the incident out of fear that he would be branded as a “whistleblower” and potentially be terminated as a result, he did confirm that this incident took place when Pittman and Prokos questioned him about it.

After this threat, emails between Pittman and Prokos indicate that they collaboratively worked on an agreement for Hyde to sign that explicitly reprimanded Hyde for this threat to “take out” his co-workers. Although there was no executed copy of an agreement in Hyde’s Human Resources file, there was an unsigned document in the file, dated June 2009, that contained a reprimand explicitly referencing Hyde’s threat to “take out” his co-workers. The document stated that Hyde was “hereby placed on indefinite probation and subject to immediate termination should any of these issues persist or any other violation of company policy occur.” In this written reprimand, Pittman noted that Hyde’s conduct violated Mavericks policy and was also unlawful.

Hyde’s aggressive behavior was not limited to co-workers in the office. In March 2012, a fan who had rented a suite at a playoff game the prior year sent an email to Cuban regarding an

interaction he had with Hyde. The fan called Hyde when he had an issue with retrieving his tickets, and Hyde hung up on him. Hyde called the fan back and said, "Listen you worthless prick, don't you ever text me and tell me I am no good at my job." Cuban responded to the fan's email: "i truly apologize. If you ever have an experience you arent [sic] thrilled with PLEASE contact me so i can resolve it."

In Hyde's Human Resources file, there were more than ten documented instances of violent or threatening behavior by Hyde. Hyde's actions were in contravention of the Mavericks' policies and, in at least one incident, Texas law. Although Hyde received warnings and was threatened with termination, he remained employed without any significant consequences for fourteen years.

d. Stops at Hyde's Apartment on Arena Tours

For many years, Hyde took new ticket sales employees on tours of the basketball arena. These tours often included an unauthorized visit to Hyde's apartment. An employee in ticket sales complained about this to Prokos and Pittman in 2009, but four years later, Hyde was still engaging in the same practice.

In November 2013, Pittman wrote to Hyde to chastise him for this conduct. In a subsequent email to another supervisor that same day, Pittman noted that Hyde had "acknowledge[d] taking the group" to his apartment. Pittman further wrote:

[Hyde] said that some of these young ladies have tweeted or texted him at night or on the weekends and asked him about his plans, if he was going out to party, etc. Know we have to take what he says with a grain of salt, but if this has occurred, it makes it appear mutual and not one sided. That is where I think people have to be careful about complaining, if it appears they encouraged the actions in any way.

e. Inappropriate Emails

On several occasions between 2004 and 2011, Hyde emailed sexually explicit images to colleagues from his work email. Hyde's supervisor, Prokos, was a recipient of a number of these emails, but he never disciplined Hyde for sending them. Nor did he report Hyde to Ussery or Pittman for sending inappropriate emails in the workplace.

f. The Condom Incident

In February 2011, several employees noticed a used condom lying on the floor of the office. Pittman reviewed the security camera footage and found that a condom slipped out of Hyde's left pant leg and onto the floor. The next day, Pittman sent an email to Prokos advising of what he had seen in the security camera footage.

In an email addressing this issue with Hyde the day after the incident, Prokos focused on the length of time Hyde was out for lunch, and not on the fact that a used condom was dropped in the middle of the Mavericks' business office. Prokos's email to Hyde stated:

As per our conversation earlier today, I suggest you limit your lunch time away from the office to no more than [sic] one hour. Clearly this is not consistent with actions deemed appropriate for the work place. I trust you understand the message.

In an email to Pittman the next day, Hyde explained that he had been with his girlfriend at his apartment during lunch and must have forgotten “to discard the item in question.” Hyde added: “just my luck that it would happen in the office.” Pittman responded: “What happened was an embarrassment for not only you but for this organization It appears you not only took a two hour lunch period, but brought your personal business into the office in an inappropriate manner. I don’t think luck has anything to do with it. It’s the choices you make, Chris. Maybe time to grow up.”

Pittman emailed an account of his investigation of the condom incident to Ussery. Ussery then forwarded the video of the incident to Cuban as “a confidential heads up,” writing:

[I]t’s just a matter of time before something costly goes wrong with him and that[’]s gonna cost us some money. My request is that at some point you let GP [Prokos] know that he has to control this guy...completely or he has to go. He is a walking lawsuit against us.

Cuban responded to Ussery:

Don’t make a bigger issue out of it than it is. Send [H]yde a letter saying the behavior is unacceptable that he is put on probation or whatever we can do and that another incident will result in termination.

It does not appear that such a letter was ever sent to Hyde by Ussery, Pittman, Prokos, or any other member of Mavericks leadership.

g. Ticket Sales Practices

In 2011, and then again in 2013, it became evident that Hyde was working with a large ticket broker to sell Mavericks tickets and may have been engaged in receiving kickbacks.

Following an internal investigation in 2013, Cuban sent an email to Prokos, the General Counsel of the Mavericks, and another senior manager: “This bullshit with Chris Hyde is going to end . . . and for the record, If there is a reason for us to recommend a customer buying from a broker, i want to see it . . .” Cuban also emailed Hyde directly forbidding this conduct. Hyde responded and commented that he added “millions to our bottom line.” Cuban then wrote: “Let me be clear again. Follow the rules i set or you will lose your job chris. The integrity of the process is more important than the money. Are we clear?”

ii. Hyde’s Termination

On May 15, 2014, Hyde’s direct supervisor emailed Prokos about changes in the ticket sales department, and explained that Hyde had behaved inappropriately towards a new female

account executive. Hyde's direct supervisor forwarded the email exchange to Pittman, who in turn forwarded it to Cuban. In response to Pittman's suggestion that they make "disruptive" account executives into independent contractors who work remotely, Cuban stated, "Just fire chris talk to Terdema to make sure we are all on the same page. We will make up the sales elsewhere."

Hyde was fired a week later, on May 22, 2014.

iii. Investigative Findings and Analysis

a. Credibility

We have substantiated numerous allegations against Hyde, as outlined above. Sexually explicit images were found on Hyde's computer and sexually charged emails associated with his account were recovered through our forensics efforts. Additionally, the condom incident was captured on video surveillance and, after first denying that the condom had come from him, Hyde conceded that he dropped it and attempted to offer an excuse as to why it had happened. These issues — the photographs, emails, and condom incident — also corroborate multiple witness accounts of Hyde's sexual commentary and conduct, which we found independently credible.

Further, on numerous occasions during his tenure, Hyde did not deny the allegations lodged against him, but instead offered excuses for his misconduct. For instance, Hyde did not deny a number of the threats he made against various co-workers; instead, he contended that the comments were made in jest. Even as to the ticket resale issue, Hyde did not deny his relationship with the ticket broker, but instead argued that the long-term financial benefits justified his conduct.

As discussed below, the Mavericks leadership team bears responsibility for allowing Hyde to remain employed with the organization for as long as he was, despite his inappropriate and problematic behavior. Prokos, Pittman, and Ussery knew the full scope of Hyde's problematic behavior, and Cuban, although unaware of most of Hyde's misconduct, failed to adequately address the discrete and troubling incidents that were brought to his attention.

b. Institutional Response

1. George Prokos

Prokos joined the Mavericks in 2000 as Director of New Revenue, and ultimately became Senior Vice President of Ticket Sales and Services. Prokos was Hyde's senior supervisor for the entirety of Hyde's employment with the Mavericks.

We find that Prokos took no meaningful action to discipline Hyde, and failed to initiate even a single disciplinary action against him. Remarkably, during his first interview, when

Prokos was asked about workplace misconduct and sexual harassment, Prokos did not mention Hyde's name once.¹⁷

Moreover, Prokos failed to address employee complaints about Hyde's conduct. On one occasion, Prokos dismissed an employee's complaint that Hyde had verbally and sexually harassed her as "extreme" and admonished her to distinguish "threatened from competitive." When questioned by the Investigative Team, Prokos was critical of the female employee and argued that he responded this way because the female employee and Hyde had a "brother-sister relationship," and would fight and then make up. Prokos's response evidences the dismissive attitude he took to complaints of misconduct by Hyde. Instead of disciplining Hyde, Prokos challenged the female employee who reported the misconduct to him.

Further, although it was common knowledge that Hyde routinely viewed pornographic material at work, during his second interview, Prokos was unable to state whether he ever saw pornography on Hyde's computer or phone. Prokos further claimed that he did not recall receiving any complaints about Hyde viewing pornography at work. Although our investigation found that Hyde's desk was moved against the wall to shield co-workers from seeing the pornography, Prokos claimed not to know the reason for the move. We find that Prokos lacked credibility on these points.

The condom incident also demonstrates Prokos's failure to address significant misconduct by Hyde. After security footage showed that Hyde was the source of the condom, Prokos sent an email to Hyde telling him to "limit your lunch time" to no more than an hour. The email ignores the gravamen of the incident: the dropping of a used condom on the office floor during work hours. Prokos said that he probably had additional conversations with Hyde, in which he expressed that Hyde's actions were inappropriate. We question this assertion; it strains credibility that Prokos would have committed only part of an oral reprimand to writing, and it makes even less sense for the part committed to writing to be the *less* severe part of the misconduct.

In his interview, Prokos also sought to minimize this incident by saying that he thought Hyde dropped the used condom unintentionally and did not mean to offend anyone. Whether or not Hyde intended to drop the condom misses the point: Hyde's behavior, regardless of his intent, was deeply inappropriate and required a severe sanction, such as termination.

In spite of Hyde's misconduct, Prokos routinely rewarded Hyde by giving him access to premium ticket inventory that was generally not available for sale. Prokos said he did this because Hyde asked him about these opportunities, while other ticket salespeople did not. Prokos argued that he was simply rewarding Hyde, an exceptional salesperson with initiative. This preferential treatment of Hyde, when seen by co-workers in concert with Hyde's misconduct, had a deleterious effect on the morale of the ticket sales department.

Prokos conceded during his second interview that he was empowered to terminate Hyde, but said that while Hyde's actions over the course of fourteen years may collectively look bad,

¹⁷ Prokos was one of our first interviews in this investigation; at the time, we did not yet know about Hyde. When we interviewed Prokos for the second time, we asked pointed questions about Hyde.

each discrete action felt small at the time. Prokos further indicated that he was never directed to terminate Hyde by anyone senior to him at the Company, and if he had been so directed, he would have followed the order.

In making excuses for Hyde, and failing to properly supervise him, Prokos allowed Hyde's behavior to continue unabated. This negatively affected the ticket sales department and, indeed, the entire business side of the organization.

2. Terdema Ussery

As President and CEO of the Mavericks, Ussery had the responsibility of ensuring a safe workplace. To do so, he was vested with the power to hire and fire staff, and he did just that on a number of occasions. Further, in emails to Cuban, Ussery referenced his ability to discipline Hyde in particular. For instance, on two separate occasions, Ussery informed Cuban that Hyde had been placed on probation: once in 2009 for a "bullying" incident and again in 2010 for an issue with "tardiness." In the "bullying" email, Ussery asserted his authority to fire Hyde without pre-approval from Cuban, telling him that Hyde is "gone with the next incident." Nonetheless, Ussery never fired Hyde.

In his interview, Ussery stated that Hyde was protected by George Prokos, a personal friend of Cuban's, which made him "untouchable." Ussery further stated that he lacked the authority to fire Hyde and so instead advocated to Cuban for Hyde's dismissal. Ussery claimed that Cuban routinely dismissed his arguments that Hyde should be fired by telling Ussery to let Prokos "handle it." Ussery further said that he advised Cuban of Hyde's more egregious acts by emailing Cuban or attempting to speak to Cuban in person on game days. Ussery stated that he had, in total, between five to ten conversations with Cuban where he vigorously advocated for Hyde's firing. Ussery referenced his inability to fire Hyde as "embarrassing to admit as President and CEO of the organization" and something that caused him great frustration.

There is evidence that Ussery was critical of Prokos's management and handling of Hyde, particularly after the 2011 condom incident. We credit that Ussery was aware that Hyde was a problem in the office and that, from at least 2011 onward, believed Hyde should be terminated. But Ussery's claim that he was a constant and vocal advocate for Hyde's departure is undercut by the emails that we reviewed. Although Hyde's misconduct started shortly after he began working for the Mavericks in 2000, it was not until 2009 that Ussery first wrote to Cuban about an issue related to Hyde's behavior. (The allegation that Hyde had pornography on his work computer in 2008 was elevated to Cuban by the Mavericks' General Counsel, and not by Ussery.) Even then, it was only a vague statement, buried deep in a lengthy email on budgeting issues, that Pittman had been tasked to "watch . . . Chris' relationship with the other employees to ensure that nothing that can be construed as 'bullying' is going on." Ussery went on to write that Hyde had been placed on probation. As such, it was nine years into Hyde's tenure, and after numerous instances of harassing and threatening behavior, when Ussery first wrote to Cuban about Hyde.

The "bullying" noted by Ussery was actually a reference to the incident when Hyde, in discussing a recent mass shooting, identified which of his colleagues he would "take out" if he brought a gun to the office. Ussery's email dilutes Hyde's conduct to the point of being

misleading and belies Ussery's claim that he vehemently advocated for Hyde's departure years before Hyde dropped the used condom on the floor. Given Hyde's history of threatening and abusive behavior, this threat toward co-workers required a serious and immediate response, such as termination. Yet, Ussery did not fire Hyde or provide Cuban with any details of this particularly troubling incident.

Even if Ussery truly wanted Hyde to be terminated for the condom incident, we do not find credible his contention that he aggressively took steps to achieve this goal. In an email to Cuban, Ussery deflected responsibility for addressing this issue by suggesting that Prokos had to control Hyde or that Hyde should be discharged.

Furthermore, Ussery's claim that he repeatedly sought to terminate Hyde is undercut by his admission that, on one occasion in the workplace, Hyde showed Ussery a graphic sexual image of Hyde with naked women. Ussery was aware that Cuban had told Hyde he would be terminated if he had pornography again; however, Ussery did not inform Cuban of this incident, nor did he take action himself to address Hyde's misconduct.

As Ussery conceded, he never approached Cuban with the comprehensive list of Hyde's misconduct that Pittman had drafted, nor did he separately meet with Cuban to address Hyde's behavior, outside of short conversations during basketball games. Hyde's behavior was so extreme that it demanded a greater level of attention and action by Ussery. As President and CEO of the Mavericks, he was duty bound to do more.

3. Buddy Pittman

During his interview with the Investigative Team, Pittman argued that he lacked authority to terminate Hyde. However, Pittman previously claimed to have this authority on more than one occasion. For example, Pittman threatened to terminate Hyde in December 2008 when he held an out-of-office meeting with Prokos and another supervisor in ticket sales to discuss Hyde. Pittman recounted this outing to Ussery via email and related that he told Prokos he could have had Hyde fired "on the spot" when Hyde threatened Pittman. Pittman further stated that he told Prokos that if any more employees left the organization because of Hyde's behavior, Hyde "will be subject to termination even if [Pittman] had to handle it himself." Nonetheless, Hyde engaged in problematic behavior for another six years following Pittman's admonition that he would "handle [Hyde's firing] himself."

During our investigation, we found that Pittman failed to appropriately address Hyde's misconduct. Instead, Pittman alerted Ussery and/or Prokos to reports of misconduct and left it to them to determine whether to discipline Hyde. After the 2009 incident when Hyde threatened to "take out" his co-workers, Pittman worked collaboratively with Prokos to draft a contract placing Hyde on probation; yet Pittman did not recommend any sanction other than the threat of termination should Hyde re-offend. This is especially concerning in light of the fact that six months earlier, as noted above, Pittman had told Prokos that he would fire Hyde himself if there were another "big incident." Hyde's threat to "take out" two colleagues was an act that Pittman deemed unlawful, and was a significant incident that should have triggered Hyde's firing.

The Investigative Team credits that Pittman genuinely believed Hyde was a significant problem. In fact, on two occasions Pittman drafted memoranda outlining Hyde's misconduct. Pittman, however, did not exhibit the leadership required to fire Hyde, or to advocate aggressively for Hyde's termination. Further, at times, Pittman minimized Hyde's transgressions. For instance, in 2013, Pittman emailed Hyde and criticized him for flirting with new female hires and taking new hires to his apartment while on an arena tour. Hyde responded that female employees reached out to him socially. After speaking with Hyde, Pittman expressed concern to another supervisor that some of the complaints may have been based on conduct that was "mutual and not one sided" and cautioned that "people have to be careful about complaining, if it appears they encouraged the actions in any way." Pittman's response was problematic, especially in light of Hyde's history. Regardless of whether female employees reached out to Hyde socially, his conduct in bringing new employees to his apartment during the workday was inappropriate.

4. Mark Cuban

Although the majority of Hyde's misconduct was not elevated to Cuban, Ussery and Pittman brought several discrete and problematic incidents to his attention. This conduct should have prompted Cuban to engage his management team, both to seek their counsel and to learn the full scope of Hyde's behavioral issues. Cuban did not do so, and his piecemeal involvement in Hyde's discipline contributed to Hyde's lengthy tenure with the organization.

In 2008, Cuban was alerted by the Mavericks' General Counsel that a litigation-related document request had led to the discovery of pornography on Hyde's computer. Cuban stated that this was the first time he was notified of problematic behavior by Hyde. Cuban addressed the issue with Hyde directly via email. Cuban imposed a zero tolerance "sanction," writing that Hyde would be fired if he had pornography on his computer again. Prior to making this decision, Cuban should have consulted with Pittman, Ussery, or Prokos. They knew the most about Hyde's issues and were directly responsible for his supervision. Critically, had Cuban sought their input he might have learned that Hyde did not simply have sexual images on his computer but, in fact, regularly viewed them at work in front of other employees.

In 2011, Ussery forwarded a detailed account and video of the condom incident to Cuban, along with a recommendation that Prokos be held responsible for controlling Hyde or Hyde be discharged. Cuban responded, in part: "Don't make a bigger issue out of it than it is." In his interview, Cuban said that, at the time, he saw the condom incident as an isolated event and did not consider it to be a "big deal." He also stated that he believed that Hyde had listened to his warning years before, as he was never informed about Hyde viewing pornography again. Thus, Cuban said that he believed that Hyde would improve his behavior if placed on probation. He also stated that if the incidents had occurred within a matter of months rather than years, he probably would have terminated Hyde immediately.

We find that the condom incident warranted Hyde's termination, unto itself, and that Cuban's decision to retain him following this was a significant error in judgment. At the time of the condom incident, Cuban was aware of the pornography issue from three years earlier. And although Cuban states that he did not recall it at the time, Ussery had also emailed Cuban in 2009 and 2010 with vague references to "bullying" and "tardiness." Problematically, what Ussery had

simply called “bullying” by Hyde was actually a threat of violence against co-workers, and both Ussery and Pittman possessed a great deal of additional information regarding Hyde’s history of misconduct that they did not share with Cuban. Cuban should not have made a sensitive personnel decision about Hyde without learning the totality of Hyde’s conduct in the office; it was incumbent upon him to fully review Hyde’s misconduct before rendering a decision. Cuban also acknowledged that, in retrospect, he failed to consider how other employees would feel about something like the condom incident happening at the office. In fact, given how well known the incident was within the office, it led to a further belief amongst employees that Hyde was untouchable.

In 2014, Cuban instructed Pittman to fire Hyde, after learning of additional misconduct by Hyde against a new female account executive. In his interview, Cuban stated that he gave permission to fire Hyde because he was fed up with dealing with personnel problems in the ticket sales department, and in particular with Hyde.

C. Earl Sneed

In 2009, the Mavericks hired Sneed as a writer for the team’s website. Sneed, who was initially hired on a per-story basis, became a full-time employee on August 1, 2010.¹⁸

i. First Incident

a. Evidence

Jane Doe, who was then Sneed’s fiancée, told the investigative team that Sneed physically assaulted her on January 30, 2011. Doe stated that an argument between them triggered a violent outburst by Sneed, in which he slammed her against a wall, slapped her arm, and covered her mouth so that she could not speak. Doe stated that when Sneed briefly left the apartment, she dead-bolted the door. Sneed broke down the door, according to Doe, while she was on the phone calling 9-1-1. He then took her phone and ended the call.

Doe stated that she suffered a broken wrist and bruising as a result of Sneed’s actions. Doe went to the emergency room the following day and her medical records confirm that she was diagnosed with a broken wrist and a bruise on her hand.

In an interview with the Investigative Team, Sneed denied that he had assaulted Doe. He claimed that she initiated the violence that day. Sneed alleged that Doe lunged at him and clawed at his neck and face. In response, Sneed said that he slapped Doe with his open hand. Sneed told the Investigative Team that he used his left hand to slap Doe because he did not want to actually hurt her (Sneed is right-handed). Sneed also admitted that he physically broke down the door and that Doe was on the phone when he reentered the apartment. He claimed, however, that Doe was on the phone in the kitchen laughing and drinking a glass of water. Sneed claimed that he believed Doe was on the phone with her father.

¹⁸ Sneed was offered the job after he reached out directly to Cuban and asked for the opportunity to work for the Mavericks. Cuban did not know Sneed, but decided to hire him on a trial basis, based on Cuban’s belief that the organization needed to generate more online content.

Sneed stated that he never held Doe's wrist or did anything that would have caused her to break her wrist. He claimed that he heard Doe say "ouch" when a bag of his clothing that she was carrying split open, and alleged that Doe's injuries came from her dropping the bag. (Doe denied that she carried a bag of Sneed's clothes after his assault.)

After the incident, Sneed apologized to Doe via Facebook message. Doe provided the Investigative Team with this Facebook exchange, in which Sneed wrote, in part: "I am very sorry to hear about your wrist and I take responsibility for that. I have zero ego in this situation, and I know what I did. I pray that everything works out according to God's plan."

On March 21, 2011, Doe emailed Cuban and Sneed's direct supervisor at the time, to tell them that Sneed had physically assaulted her. The email detailed, among other facts, that she had been "repeatedly abused by Earl," sustained a broken wrist in her most recent encounter with him, and that a warrant had been issued for Sneed's arrest.

Pittman met with Sneed the next day. In that meeting, Sneed told Pittman that he had never physically assaulted Doe but that they often got into verbal arguments. Sneed further alleged that Doe had physically attacked him, and that she had clawed at his neck and face. Sneed told Pittman that after this he had slapped Doe with his open hand to stop her from attacking him.

Sneed emailed his supervisor and Cuban on March 22, 2011, shortly after his meeting with Pittman, and offered his "deepest apologies" that his personal life had "spilled over into the workplace." He said that he intended "to take legal action against her." Cuban replied to Sneed, copying Pittman and Sneed's supervisor, "[L]et us know if we can do anything Earl."

On March 24, 2011, Pittman sent an email to Cuban and Ussery alerting them that a police detective had asked Sneed to come to the police station. The next morning, Sneed was arrested outside of the Mavericks facility. Upon learning of the arrest, Cuban wrote, "[O]k, if earl is going to be gone, lets find out whether the guy has an anger issue or an old girl friend issue." Cuban also agreed to hire an attorney for Sneed, instructing the Mavericks' General Counsel to retain an attorney for him and send Cuban the bill.

Ussery initially advocated for Sneed with Cuban, writing that Sneed should continue with his assignments: "Earl is young and has done good work for us. Not sure what and where the real issue is yet but one of the things we might want to do is get him on a plane tomorrow and have him rejoin the team . . . get him back up and in the saddle . . . and away from here. Says a lot about our loyalty and will get his mind off of things."

Soon thereafter, Sneed was arraigned on criminal charges of assault and interference with an emergency telephone call. Pittman picked up Sneed after his release on bail, and Sneed later took a commercial flight to join the team at its away game, despite not receiving approval to do so. This prompted Ussery to tell Pittman to "stay close" and watch Sneed.

Sneed pleaded guilty in June 2012 to the two misdemeanors with which he had been charged. He was sentenced to a period of probation, during which time he was forbidden from having any contact with the victim and was required to undergo a domestic violence treatment program and perform community service. He was also ordered to pay a fine. Upon the completion of these court mandates, the charges that Sneed had pleaded guilty to were dismissed.

In his interview with the Investigative Team, Sneed said that he pleaded guilty because he wanted to resolve the case without a trial and avoid potential negative publicity, but that he was not guilty.

There is no indication that Ussery, Pittman, Sneed's supervisor, or Cuban followed Sneed's court case or made any effort to learn how his arrest was resolved.

b. Investigative Findings and Analysis

1. Sneed's Credibility

The Investigative Team found that Sneed was not credible when he described the incident with Jane Doe. First, Sneed pleaded guilty to the charges against him, and we credit that those pleas were both knowing and voluntary. Also, Sneed's apologetic Facebook messages to Doe in the days immediately following the incident serve as admissions of responsibility corroborating the legitimacy of his court plea. Moreover, the notion that Doe was the aggressor or that Sneed did not hurt Doe strains credulity. As her medical records show, Doe suffered serious injuries as a result of this incident.

It was obvious to the Investigative Team that Sneed downplayed the fact that he was physical with Doe. For instance, Sneed stated that he never held Doe's wrist or did anything that could have injured her. However, Sneed's description as to how Doe injured her wrist — by dropping a bag of clothing — is implausible. While Sneed conceded that he slapped Doe, he claimed that, in the middle of a heated dispute, he consciously made the decision to slap her with his left hand so as not to inflict any harm. It strains credulity that someone in such a dispute would make this calculation. The Investigative Team does not credit this assertion, but rather views Sneed as minimizing his conduct. Further, Sneed repeatedly denied causing any physical injury to Doe. He did so as per Pittman's emails and handwritten notes, during a radio interview, and in his interview with the Investigative Team. We find that Sneed's version of events is false, and as such we view his statements as showing consciousness of guilt. If Sneed had not played any role in causing Doe's wrist injury, he would not find it necessary to fabricate an excuse.

Further, Sneed admitted that he broke the door to the apartment to gain entry after Doe had locked him out. This is a particularly violent act and, in our view, corroborative of Doe's narrative that Sneed was the aggressor that day. Sneed also conceded that, upon entering the apartment, he observed Doe on the phone, but claimed that she was drinking water and laughing at the time. Again, it is simply not credible that Doe would be acting in this manner following Sneed's violent entry into the apartment after physically assaulting Doe and breaking her wrist. Sneed admitted what he could not deny and denied what he could not admit: he admitted taking Doe's phone away from her but denied knowing that she was calling 9-1-1 at the time.

During his interview, Sneed stated that he photographed some of the injuries he sustained during two separate incidents with Doe. Sneed's representative subsequently emailed four photographs to the Investigative Team. In that email, Sneed's representative stated that the photographs depicted Sneed's injuries from a 2011 altercation with Doe.¹⁹ We have no way to

¹⁹ The four photographs depict: a scratch and redness near Sneed's Adam's apple and a second scratch on the left side of his neck; a scratch on the right side of Sneed's neck beginning at his jaw line and extending to his upper

substantiate whether any of the injuries in the photographs were a result of the January 30, 2011 incident. Regardless, the photographs do not exonerate Sneed or change our analysis; Doe conceded that she fought back during the incident with Sneed.

Doe's version of events — that Sneed left in haste for fear of the arrival of the police — is the far more credible account and logical explanation as to why Sneed took the phone. Sneed, in fact, offered no meaningful explanation as to why he would have taken the phone if he truly believed Doe was speaking with her father, and the Investigative Team credits that Sneed believed Doe had called the police.

Overall, we conclude that Sneed is unworthy of belief on critical facts and pleaded guilty to assaulting Doe and stopping her from calling 9-1-1 because he was, in fact, guilty.

2. Institutional Response

The organization's failure to explore the underlying facts of Jane Doe's allegations, and its inclination to support Sneed despite this lack of information, is problematic. No one took responsibility for managing the Company's response to this incident. While the email exchanges between multiple managers can be viewed as a collaborative approach, the reality is that it contributed to the failure of any one person to make a potentially difficult decision: whether to discipline or fire Sneed.

On March 21, 2011, Cuban, Ussery, Pittman, and Sneed's supervisor were aware that a woman was alleging a series of serious accusations against Sneed. If the organization questioned Doe's veracity, it would not have been difficult to speak to her to learn more about her allegations. The organization had her name and email address and, as evidenced by the brief exchange she initiated with Sneed's supervisor, Doe was willing to share information about her relationship with Sneed.

Further, on the heels of Doe's email, Sneed was arrested publicly outside the Mavericks facility. Cuban, Ussery, Pittman, Sneed's supervisor, and the General Counsel of the Mavericks were involved in discussions about Sneed's arrest. However, any attention paid to the allegations against Sneed, which were quite serious in nature, dissipated shortly after the arrest. While there might be multiple reasons why this happened, the Investigative Team concludes that a lack of leadership contributed to the failing on this issue.

Moreover, we find that Cuban failed to respond appropriately when he made the consequential decision to retain Sneed without full and complete factual information. Cuban correctly acknowledges that he "didn't dig into the details." This was problematic. Indeed, Cuban has conceded that his approach to the incident was deeply flawed. For instance, Cuban told ESPN, "So we got it [the facts] mostly from Earl's perspective, and because we didn't dig in with the details -- and obviously it was a horrible mistake in hindsight -- we kind of, I don't want to say took his word for it, but we didn't see all the gruesome details until just recently."

neck; what appears to be a bite mark on his right bicep which shows penetration through his skin and the underlying tissue; and a portion of skin that was either pulled up, or torn off, on the left side of his hand.

Had anyone in a leadership position at the Mavericks investigated Doe's allegations, either through Doe or through publicly available court records, they perhaps would have come to the same conclusion that the Investigative Team did: that Sneed is unworthy of belief on critical facts and pleaded guilty because he was guilty. The information the Company would have uncovered would have also revealed that Sneed had not been truthful with the organization, which itself could create separate grounds for discipline and termination.

ii. Second Incident

a. Evidence

Former Employee 29 told the Investigative Team that on March 23, 2014, Sneed physically assaulted her. At the time, Former Employee 29 was Sneed's girlfriend and a fellow Mavericks employee. Former Employee 29 stated that after she and Sneed got into an argument, he grabbed her and pulled her out of a car. Sneed then pinned Former Employee 29 down and pressed hard on her face. As a result of Sneed's actions, Former Employee 29 stated she suffered multiple injuries, including a knot on her chin, a knot under one of her eyes, bruises where he squeezed her head, and a series of scratches and bruises on her chest and back.

This incident came to light when Former Employee 29 tried to call out of work the next day, which was a game day. Her manager told her that, since it was too late to find a replacement, Former Employee 29 had to come in. In the office, Former Employee 29's manager, and a number of other employees, noticed bruising on her face and body. She confided in her manager that night that Sneed had physically assaulted her.

The following work day, Former Employee 29's manager reported the matter to Pittman. A follow-up meeting was held between Pittman, Former Employee 29, and her manager. The outcome of the meeting was that the matter would not be reported to law enforcement, and that Former Employee 29 would leave the Mavericks with a severance payment. Although Pittman and Former Employee 29's manager asked if she wanted Sneed fired, Former Employee 29 felt uncomfortable making this recommendation. The Company did not provide her with counseling or therapy. Instead, according to Pittman, she was provided with severance and vacation pay to help cover the cost of moving out of Dallas.

When he met with the Investigative Team, Sneed said that he and Former Employee 29 got into an argument, which turned physical. He stated that she pushed him in the chest three or four times, and he ultimately pushed her back. Sneed stated that Former Employee 29 later attacked him again when he was showering, hitting him with a strap of some kind. Sneed thought the strap might have been a purse handle, and said that the object left lash marks on his body.

Sneed denied hitting Former Employee 29 in the face and noted that although he had pushed her three or four times, she did not fall or bump into any object that could have caused any injury. He further suggested that Former Employee 29 may have been injured when he "blocked her blows," although he could not specify a particular moment when that might have happened.

According to Sneed, Pittman called him for a meeting shortly after the incident, and Sneed recounted to Pittman the same narrative that he recently told the Investigative Team.

Six weeks later, during an in-person conversation in early May 2014, Ussery informed Cuban of Sneed's assault on Former Employee 29. Cuban responded that he did not want to fire Sneed. Pittman followed up with Cuban in an email questioning Cuban's decision to retain Sneed as an employee. Pittman noted that this was Sneed's "second offense." In response, Cuban explained that he "want[s] to do the right thing" and that "throwing him on the Street could lead to problems elsewhere." Cuban suggested that Sneed could be compelled to attend counseling if he remained an employee. He also drafted a list of rules for Sneed to follow in order to maintain his employment with the Mavericks. Using Cuban's stated rules, Pittman drafted a document entitled "Office Rules Based on Recent Events With Another Employee," for Sneed to sign at Cuban's direction.²⁰

Sneed accepted these conditions and signed the document, as did Pittman. Six months passed before Pittman advised Sneed that he had found a twelve-hour online counseling course for Sneed to take. Sneed promptly completed the course.

b. Investigative Findings and Analysis

1. Sneed's Credibility

Based on interviews with multiple employees, including both Sneed and Former Employee 29, and a review of documents and emails, we find that Sneed physically assaulted Former Employee 29 and was not credible or forthright with the Mavericks or with the Investigative Team regarding his conduct. First, Former Employee 29's version of events is corroborated by a number of Mavericks employees who saw her physical injuries at work, and to whom she disclosed Sneed's violence against her. Second, Former Employee 29 was consistent in her account of the events of March 23, 2014 when speaking to the Mavericks and again in 2018 when she spoke to the Investigation Team. Her version of events portrays Sneed as an abuser, and someone who attempted to dominate and control her from the beginning of the relationship. Former Employee 29's contemporaneous recounting of events in 2014 was memorialized in emails from Pittman to various members of the Mavericks organization. Third, Sneed's attempt to portray Former Employee 29 as the aggressor in the relationship is the same strategy he attempted to use to discredit Doe. Fourth, Sneed admits that he pushed Former Employee 29 three to four times but claims that Former Employee 29 had no visible injuries after the events of March 23, 2014. But, despite Former Employee 29's attempts to cover her bruises with makeup, multiple co-workers reported that she came to work with a black eye the day after the dispute, and Former Employee 29's supervisor told us that he noticed visible bruising on Former Employee 29's arm — which is what prompted him to ask what had happened. Fifth,

²⁰ The document stated:

- 1) We will require you to attend therapy/counseling with a provider of our choice for anger management/domestic violence toward women behavior issues. Counseling will be paid for by the Mavericks.
- 2) You are not allowed to date anyone in the Mavericks organization or who is connected by employment to the organization. Even casually.
- 3) If you go out with a female from the office, a third party must be there. No exceptions.
- 4) Violations of these requirements will result in your termination.

Sneed entered into the “Office Rules Based on Recent Events With Another Employee” agreement with the Mavericks after the incident with Former Employee 29, which required him, among other things, to seek domestic violence counseling.

Former Employee 29’s version of events — that Sneed inflicted physical harm on her the night of March 23, 2014, including squeezing her head which caused visible bruising — is credible, and is supported by contemporaneous documents. The Investigative Team credits that Former Employee 29 feared for her safety and left the Mavericks to get away from Sneed.

2. Institutional Response

The effect of the decision to retain Sneed is best revealed by dozens of current and former employees who expressed surprise and frustration that Sneed could physically assault a co-worker with no apparent consequence. Many employees stated that the Company’s apparent inaction on the Sneed/Former Employee 29 altercation fueled their belief that it was pointless to lodge any Human Resources complaints.

By this point, management had been alerted to two separate violent incidents. At a minimum, Former Employee 29 should have been provided with counseling and Sneed should have been immediately suspended while the Company investigated this matter and made a decision about whether to sanction him. Pittman should also have engaged the General Counsel in this matter as it touched on employee safety and criminality. However, witness interviews (and a lack of any contemporaneous emails) reflect that the General Counsel was not involved at the time.

A lack of effective management within the organization is also evidenced here. Ussery does not appear to have played any meaningful role in the decision-making process and, as noted above, the General Counsel was never advised of the incident.

Further, we find that Cuban’s failure to terminate Sneed after the second domestic violence incident was a significant error in judgment. Sneed’s assault of Former Employee 29 warranted termination for many reasons, including that Sneed: physically assaulted and injured a co-worker; was not truthful about either assault; was now known to have pleaded guilty to the assault in 2011; and had already been given a second chance within the organization after the 2011 incident. Cuban expressed that part of his decision to retain Sneed was predicated on a desire to stop Sneed from bringing his propensity for domestic violence elsewhere and to compel him to attend counseling. Cuban said that he believed that mandatory counseling was an appropriate resolution. Cuban also stated that he had made public comments about race and bias at the time of the Former Employee 29 incident, which made him sensitive to firing Sneed, an African American. Cuban’s rationales, however, did not take into account critical employee concerns or the concerns of the Human Resources Director. Moreover, as Cuban himself acknowledged during his interview, he could have offered counseling and help to Sneed while simultaneously terminating his employment. Cuban’s failure to consider the incident from Former Employee 29’s perspective, or the perspective of other Mavericks employees, was deeply problematic.

Ultimately, the Mavericks failed to handle either of Sneed's domestic violence assaults appropriately. In the Jane Doe incident, they made critical decisions without having gained important information about what had happened. Gaining additional information would have alerted the Company to the fact that Sneed had lied about the Jane Doe incident in his discussion with Pittman. As to the Former Employee 29 incident, the Company failed to terminate Sneed, which would have been the appropriate disciplinary action for his assault of a co-worker.

VI. Management and Organizational Issues

In this section, we address broader questions regarding how the Mavericks leadership handled workplace misconduct issues, including harassment. Specifically, we address: Terdema Ussery, Buddy Pittman, George Prokos, and Mark Cuban.

A. Terdema Ussery

Intertwined with Ussery's inappropriate personal conduct, as discussed above, was his abdication of any meaningful responsibility for personnel issues as the CEO of the Mavericks. Ussery was the highest-ranking individual on the ground at the Mavericks' business office. He, more than anyone else on the business side, had the ability to influence the culture of the organization. Having had the opportunity to personally witness the effect that Hyde was having on his co-workers and to understand the effect that Sneed's continued presence might have on the staff, it was incumbent upon Ussery to assume a more forceful and engaged leadership role in addressing employee misconduct. Although Ussery was frequently out of the office for Mavericks events and unrelated charitable activities, there is sufficient evidence to show that he was kept informed of all significant misconduct issues.

Ussery's responsibility to lead on personnel issues was especially significant because he was aware that employees did not perceive Pittman to be an effective leader in this area. In October 2008, for example, Ussery wrote to Cuban that Pittman "needs to reestablish that he's here to work with the employees on personnel issues" and advised Cuban that many employees did not go to Pittman with such issues "because they didn't think he'd help them work through the issues to a resolution." Five years later, in 2013, Ussery similarly wrote to Cuban in a succession plan that "[w]e are going to need a stronger HR guy going forward" because employees lacked faith in Pittman and "they don't think anything is going to change when they talk to him." By his own concession, Ussery understood that employees did not trust Pittman, the Human Resources Director, to take action in response to workplace complaints. As the CEO, it was incumbent upon Ussery to take an active role in ensuring that personnel complaints were properly handled and to make certain that appropriate protocols for such complaints were in place. He failed to do either.

We find that Ussery failed to ensure the effective operation of the business side of the Mavericks. For example, the Mavericks had virtually no compliance structures or internal controls in place. Similarly, the Mavericks did not employ a full-time general counsel,²¹ nor did

²¹ Effective July 2018, the Company acted on this issue by hiring a full-time General Counsel, who is located in the Mavericks' office.

they have set policies on when and how Cuban should be involved in critical business and personnel decisions. Although the Mavericks had written policies and guidelines governing office conduct, the leadership did not rely on the employee handbook in dealing with personnel-related issues and routinely failed to adhere to its own written policies for dealing with workplace problems. Moreover, the operative handbook lacked direction on certain subjects.

While there is no evidence that Ussery intentionally created such a structure (or lack thereof), the absence of robust protocols and procedures benefitted Ussery, who personally engaged in misconduct. Regardless of Ussery's motive, the bottom line is the Company was an organization in which the CEO engaged in misconduct, there were no internal controls or governance structures in place, and the Human Resources Director was seen as untrustworthy. It is impossible to overstate how helpless this left employees who were subjected to unwelcome comments, advances, and touching in the workplace. Employees, most of whom had never met Cuban and had no reason to view him as someone who might take action in response to complaints, were left with nowhere to turn.

B. Buddy Pittman

i. Pittman's Human Resources Responsibilities

Even though he was the Human Resources Director, Pittman did not prioritize the handling of most personnel and disciplinary issues. The uniform reason that employees gave for not going to Pittman is that they thought it would be a waste of time or, worse, could harm their careers. Many employees shared with us more generally that while they felt that Pittman was capable of handling administrative issues such as adjustments to insurance or benefits questions, they did not trust him to respond to reports of employee misconduct.

This lack of trust in Pittman was evidenced most clearly in connection with the misconduct involving Ussery. Female employees stated that they did not report Ussery's conduct to Pittman because they believed Pittman was there to "protect" Ussery, and would not do anything to fix the problem. Moreover, as noted above, Pittman used his authority to turn the tables against a victim of sexual harassment.

In his interview, Pittman stated that he was the sole Human Resources staff member and that he was thrust into a hopeless situation in which he lacked the authority to do his job effectively. While it is true that his views were sometimes not adopted, such as when Pittman wanted to terminate Sneed while Cuban favored retaining him, Pittman's excuse ultimately falls flat for two reasons. First, as noted above, Pittman, on at least one occasion, intervened when rumors started circulating about Ussery and one of the targets of Ussery's attention. Pittman not only directed the victim not to speak about what had happened, but also gave the same instruction to a co-worker. Second, Pittman's passive response to serious personnel issues was problematic. For example, Pittman sometimes would print out an email related to a personnel incident and put it in the employee's file but take no further action. And despite advocating for Sneed's departure, it took Pittman six months to enroll Sneed in a twelve-hour online domestic violence intervention program.

ii. Pittman's Personal Misconduct

In addition to his managerial deficiencies, Pittman's own conduct further undercut his ability to be an effective Human Resources Director. Throughout his tenure with the Company, and contrary to company policies, Pittman forwarded emails to co-workers from his work email touching on "hot button" political, social, and religious issues. Moreover, we substantiated claims by four female employees that Pittman made inappropriate and suggestive comments in the workplace. Former Employee 15 recounted that Pittman was aware of a particular vacation she had taken and repeatedly inquired as to whether she sunbathed topless. Current Employee 71 stated that Pittman would approach her at her cubicle and put his hands on her shoulders or give her back massages. Former Employee 32 reported that in her first few weeks at the Mavericks, Pittman was making conversation with her in the break room and asked, "What's a pretty young thing like you doing not being married?" She recalled feeling that this was not an appropriate question for the head of Human Resources to ask her, and she recounted the story to her mother shortly after it happened. Current Employee 10 recounted that, after she had gone home to change for a Mavericks game in the evening and then returned to work, Pittman told her, "Good thing you didn't wear that dress all day or [we] wouldn't get any work done." More problematically, he made this comment while rubbing her shoulders, which he did on more than one occasion.

In response to questions about his comments to Current Employee 10, Pittman said that he might have sometimes complimented her when she looked nice, but he could not recall making this specific comment. Pittman acknowledged forwarding emails in the workplace but contended that he only sent the emails to a small group of people who worked for him, and that he stopped sending emails to one of his employees when she asked him to do so.

We find that Pittman's conduct was inappropriate and affected those involved. It also compounded Pittman's credibility problems with the staff with respect to disciplinary and personnel issues.

In sum, Pittman's failure to address misconduct by Ussery and his weak response to serious misconduct by Hyde resulted in an overall office environment in which many employees believed that complaints to Human Resources about personnel issues were unhelpful at best and potentially damaging to their careers. Pittman's own conduct compounded this lack of faith in the Human Resources department. It is impossible for a reporting system related to misconduct to function effectively if employees do not have faith in the person responsible for implementing it.

C. George Prokos

As the head of ticket sales and Hyde's senior supervisor, Prokos had the authority to address Hyde's misconduct. Despite numerous opportunities to do so, Prokos did nothing to address this misconduct. Rather, Prokos minimized the significance of Hyde's misconduct and chastised employees who brought it to his attention.

In his interview with the Investigative Team, Prokos took the position that while Hyde's collective conduct looks egregious in retrospect, it did not seem so to him at the time. He also

asserted that Hyde was a top producer in the ticket sales department and was therefore given a longer leash than other employees. Prokos's attitude toward Hyde's conduct had an enormous effect on the (lack of) discipline meted out to Hyde during his fourteen years at the Company. By failing to either stop Hyde's misbehavior or terminate Hyde during that time, Prokos effectively condoned Hyde's behavior. We therefore find it impossible to separate Hyde's behavior from Prokos's failure to manage it.

D. Mark Cuban

The *Sports Illustrated* article presented no allegations of inappropriate workplace conduct by Mark Cuban personally. Similarly, the Investigative Team has found no evidence of workplace misconduct by Cuban.

The *Sports Illustrated* article questioned how "a proudly hyperattentive owner" could not have been aware of the misconduct within the organization. Cuban is an active owner, and he has played a significant role in the business operations of the Company. Sometimes, his involvement in business decisions was triggered by Ussery, Pittman, or other employees bringing issues to his attention, typically via email. Cuban's input covered a wide range of matters, most of which were related to game days. Furthermore, Cuban regularly took initiative to email the ticket sales, corporate sponsorship, and marketing departments for information.

While there is no question that Cuban is an active owner, he was rarely physically present in the Mavericks' business office. As both Cuban and many employees expressed in their interviews, Cuban spent the majority of his time overseeing the basketball operations division, which until fall of 2017 was located three miles from the Mavericks' business office. His involvement in business operations, on the other hand, was often undertaken remotely via email.

As Cuban acknowledged in his interview, "you have to be around the culture to see the culture; I learned the hard way." Because he so often gave direction remotely and did not have scheduled in-person meetings with Ussery or other senior staff, Cuban was not "around the culture." His absence from the business office kept him from appreciating either the full scope of the misconduct at the Company or the workplace culture at the business office.

As to the specific allegations made against Ussery, we have not identified any instances in which Cuban was informed of misconduct by Ussery. Indeed, not a single victim of Ussery's harassment, or any other person, reported that he or she informed Cuban of the misconduct.

Ussery and Pittman brought some specific disciplinary issues related to Hyde and Sneed to Cuban, and Cuban engaged on those issues. As to both Hyde and Sneed, Cuban was given incomplete and sometimes inaccurate information. Cuban did not ask for, and was never given, a full picture of the allegations or the actors prior to making a decision. Moreover, as detailed above, we find that Cuban made certain decisions as to both Hyde and Sneed that constituted significant errors in judgment.

VII. Recommendations

This section sets forth our recommendations for changes to the Mavericks' organization. Since our investigation began, the Company has implemented several organizational and structural changes that overlap with our recommendations. We have noted a number of these changes and have also attached a letter sent by the current Mavericks CEO and President, Cynthia Marshall, outlining all of the changes made within the organization since February 2018.²²

- **Recommendation 1: Increase the number of women throughout the organization, including in leadership and supervisory positions.**

Research has shown that the single most important thing that companies can do to reduce sexual harassment and gender discrimination in the workplace is to employ, and promote, more women.²³ Having women in executive leadership positions is particularly critical.²⁴

The Company has made significant improvements in this area. When we started this investigation, the organization did not employ a single woman at the executive level. Since March 1, 2018, several women have assumed executive positions or had their roles redefined as executive positions. First, Cuban hired Cynthia Marshall, a former senior executive at AT&T with extensive experience building workplace cultures of inclusion and tolerance, to be the CEO and President of the Mavericks organization. Two other women — Cyndee Wales and Tarsha LaCour — were also hired at senior executive levels. Internally, the Company promoted four female employees to executive positions, some of which were newly created. As such, there are now a total of eighteen executive leadership positions at the Company, with eight women holding such positions.²⁵

²² See Letter from Cynthia Marshall to Anne Milgram received on July 12, 2018, available at <https://f1f64ea4c4b583b18306-3f73a7ab3eff14b4728a55d6928da99b.ssl.cf5.rackcdn.com/Letter-from-Cynt-Marshall.PDF>

²³ See Chai R. Feldblum & Victoria A. Lipnic, EEOC, *Report of the Co-Chairs of the EEOC Select Task Force on the Study of Harassment in the Workplace* 28 (2016) (“EEOC REPORT”), https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf.

²⁴ In an article on why training programs and reporting systems will not end sexual harassment, Frank Dobbin and Alexandra Kalev explain that “[w]e already know how to reduce sexual harassment at work, and the answer is actually pretty simple: Hire and promote more women.” Frank Dobbin & Alexandra Kalev, *Training Programs and Reporting Systems Won’t End Sexual Harassment. Promoting More Women Will*, HARVARD BUSINESS REVIEW (Nov 15, 2017), <https://hbr.org/2017/11/training-programs-and-reporting-systems-wont-end-sexual-harassment-promoting-more-women-will>. The reason, it turns out, is that having more women in the workplace addresses two core issues. *Id.* First, the authors explain that “harassment flourishes in workplaces where men dominate in management and women have little power.” *Id.* And, “[s]econd, harassment flourishes in organizations where few women hold the ‘core’ jobs.” *Id.*

²⁵ The eighth woman in an executive role is the same person who has held the title of Vice President of Basketball Communications since in or around the summer of 2016.

- **Recommendation 2: Improve formal harassment reporting processes and create new paths for victims to report misconduct.**

Traditional grievance practices have not proven effective at stopping sexual harassment.²⁶ Studies have shown that “most victims do not speak out[.]” and that one of the main reasons for this phenomenon — despite traditional human resources practices with industry-standard reporting procedures — is that “[w]omen often believe that no one will do anything about the problem.”²⁷ Moreover, when the harassment is perpetrated by the CEO, the established reporting structures often fail. Best practices today include “providing multiple avenues of redress for those who experience harassment.”²⁸ The Equal Employment Opportunity Commission (EEOC), in its 2016 Select Task Force Report on the Study of Harassment in the Workplace, recommended that employers “offer reporting procedures that are multi-faceted, offering a range of methods, multiple points-of-contact, and geographic and organizational diversity where possible, for an employee to report harassment.”²⁹

The Company has taken steps to encourage employees to voice their concerns about the organization. For example, the organization’s new Respect in the Workplace Policy designates Human Resources representatives that employees can report complaints to and mandates that supervisors report misconduct to that department, regardless of how they learned about it. There is also now an “Ethics Line” staffed by a third-party company that allows employees to call in and voice their concerns while preserving their anonymity.

- **Recommendation 3: Evaluate, and hold accountable, all executives, managers, and supervisors on their efforts to eliminate harassment and improve diversity of all kinds throughout the organization.**

In its 2016 Task Force Report, the EEOC concluded, “Employers should hold mid-level managers and front-line supervisors accountable for preventing and/or responding to workplace harassment, including through the use of metrics and performance reviews.”³⁰ Further, studies have shown that frequent performance reviews (which occur at least twice a year, if not more frequently) — in addition to helping organizations stay abreast and ahead of any problems in the workplace —

²⁶ The Advocates for Human Rights, *Stop Violence Against Women: Sexual Harassment* (last visited Sept. 12, 2018), <http://hrlibrary.umn.edu/svaw/harassment/explore/6reporting.htm>.

²⁷ *Id.*; see also Noam Scheiber & Julie Creswell, *Sexual Harassment Cases Show the Ineffectiveness of Going to H.R.*, NEW YORK TIMES, Dec. 12, 2017, <https://www.nytimes.com/2017/12/12/business/sexual-harassment-human-resources.html> (demonstrating that traditional grievance procedures are ineffective given the authors’ observation of the “recent outpouring of complaints from women about mistreatment in the workplace . . . accounts of being ignored, stymied or retaliated against by human resources units – accounts that portray [the complainants] as part of the problem, not the solution.”).

²⁸ See Doblin & Kalev, *supra* note 24.

²⁹ See EEOC REPORT, *supra* note 23, at 5.

³⁰ *Id.*

have “a huge impact on how satisfied, motivated and productive their employees are.”³¹

While more needs to be done, the Company has started down this path by implementing a plan to use data analytics to make sure that all employees are treated fairly and consistently.

Moreover, the Company has taken steps to hire and promote leaders committed to eliminating harassment and improving diversity.

- **Recommendation 4: Conduct anonymous workplace culture and sexual harassment climate surveys on a regular basis to understand the culture of the organization and whether problems exist.**

The Mavericks should conduct regular, anonymous employee surveys that evaluate both workplace culture more generally and the climate for sexual harassment and discrimination. These anonymous surveys will provide the organization with insight into its workplace culture and whether a problematic climate for harassment exists within the organization.³²

- **Recommendation 5: Establish clear hierarchies and lines of decision-making authority within the organization.**

The Mavericks’ culture lacked any hierarchy and consisted of blurred lines of decision-making on some issues. Numerous studies have concluded that unstructured decision-making leads to increased risk and a higher prevalence of sexual harassment in the workplace, as policies are less likely to be enforced strongly and promptly, and disciplinary consequences become less clear and uniformly applied.³³

³¹ Geoff Fawcett, *7 REASONS WHY YOU SHOULD BE CONDUCTING PERFORMANCE APPRAISALS MORE OFTEN*, HAYS (last visited Sept. 12, 2018), <https://social.hays.com/2015/08/31/7-reasons-why-you-should-be-conducting-performance-appraisals-more-often/>.

³² See EEOC REPORT, *supra* note 23, at 32; see also Linda A. Seabrook, *THE TOP 10 THINGS EMPLOYERS CAN DO RIGHT NOW TO ADDRESS SEXUAL HARASSMENT IN THE WORKPLACE*, FUTURES WITHOUT VIOLENCE (Nov. 2, 2017), <https://www.futureswithoutviolence.org/employers-sexual-harassment/>.

³³ Nicole T. Buchanan et al., *A Review of Organizational Strategies for Reducing Sexual Harassment: Insights from the U. S. Military*, JOURNAL OF SOCIAL ISSUES (Dec. 9, 2014), <https://spssi.onlinelibrary.wiley.com/doi/pdf/10.1111/josi.12086> (stating “a clear and consistent antiharassment message from organizational leaders is essential”); see also Marianne Cooper, *The 3 Things That Make Organizations More Prone to Sexual Harassment*, THE ATLANTIC, Nov. 27, 2017, <https://www.theatlantic.com/business/archive/2017/11/organizations-sexual-harassment/546707/> (stating “[s]trong policies – with real teeth – and training are essential”); EEOC REPORT, *supra* note 23, at v (noting “[t]he importance of leadership cannot be overstated - effective harassment prevention efforts, and workplace culture in which harassment is not tolerated, must start with and involve the highest level of management of the company. But a commitment (even from the top) to a diverse, inclusive, and respectful workplace is not enough. Rather, at all levels, across all positions, an organization must have systems in place that hold employees accountable for this expectation.”)

- **Recommendation 6: Clarify what role team owner Mark Cuban will play in the business organization. If Cuban intends to hold a management role, he and the CEO should explicitly define what his role will be, along with rules for when and how Cuban engages on issues.**

The *ad hoc* basis on which Cuban was involved in employment decisions in the business led to multiple challenges outlined in this report. The lack of clear rules for when and how to engage Cuban added to these challenges.

- **Recommendation 7: Strengthen and expand Human Resources, and implement clear protocols and processes for evaluating and adjudicating workplace misconduct issues. This should include providing clear communication to employees on the anti-harassment policy and how to report harassment.**

An organization like the Mavericks, with over 150 full-time employees, requires more than one Human Resources professional. According to an industry study conducted in 2017, Human Resources staffing levels are now at approximately 1.4 per 100 employees.³⁴ Organizations must also ensure that their Human Resources departments “conduct *effective trainings*” on their policies and procedures. “Trainings must ensure that employees are aware of, and understand, the employer’s policy and reporting systems.”³⁵

The Company now has a fully staffed Human Resources department, which is headed by Tarsha LaCour. In addition to LaCour, the Company hired a Human Resources Director and promoted an employee to Vice President of Diversity and Inclusion.

Moreover, the Chief Ethics and Compliance Officer, Cyndee Wales, created a new Code of Conduct for the Mavericks that is modeled, in part, on the NBA’s 2018 Code of Conduct.³⁶ The organization’s Human Resources policy has also been revised.

- **Recommendation 8: Provide “prompt and proportionate” and “consistent” discipline across the organization when harassment or misconduct has been substantiated.**³⁷

To root out misconduct, employers must ensure that discipline is imposed promptly and proportionately to the infraction. Discipline must also be applied consistently to all employees, so as to not to create the appearance of undue favor to any particular

³⁴ Valerie Bolden-Barrett, *Report: HR staffing is at 1.4 per 100 employees, an all-time high*, HR DIVE, Jul. 20, 2017, <https://www.hrdive.com/news/report-hr-staffing-is-at-14-per-100-employees-an-all-time-high/447480/>

³⁵ EEOC REPORT, *supra* note 23, at 33.

³⁶ In 2018, the NBA issued two policies to address workplace issues such as sexual harassment: (1) 2018 NBA Model Code of Conduct for Teams (the “NBA Code of Conduct”); and (2) the 2018 NBA Model Respect in the Workplace Policy (Equal Employment Opportunity, Anti-Harassment, Reasonable Accommodation of Disabilities, Anti-Bullying & Anti-Retaliation) (the “NBA Model Policy”). The policies were distributed to all of the teams in the League for consideration.

³⁷ EEOC REPORT, *supra* note 23, at 4.

employee.³⁸ Under the new Code of Conduct, the Chief Ethics and Compliance Officer and the Senior Vice President of Human Resources are charged with investigating all claims of workplace misconduct and taking appropriate disciplinary measures.

- **Recommendation 9: Provide regular training for all employees on sexual harassment (including bystander intervention training), and special training directed at managers and supervisors. Leaders across the Company should participate in the trainings and take an active leadership role in providing trust and safety in the workplace.**

While the efficacy of training remains open to some debate, best practices show that training within organizations — particularly when individual leaders are engaged³⁹ — makes a difference. Specific training for managers and supervisors on how to recognize and handle sexual harassment reports has also been found to be effective, and “bystander intervention training” or “workplace civility training” – a harassment training model that has been gaining significant traction in combatting sexual violence on school campuses – has been cited by the EEOC Select Task Force as a new and additional avenue that can be used in fighting all forms of workplace harassment.⁴⁰ Further, mandatory sexual harassment training for all organizational leadership helps convey to employees the seriousness with which senior management takes the subject matter. It also increases management’s ability to articulate the specific behaviors that are expected of employees, rather than merely being able to recite the organization’s values statement or prohibited conduct from an employee handbook.⁴¹

The Company has begun this process by conducting workplace trainings for the leadership team about issues of diversity and inclusion in the workplace, and the standards to which organizational leadership will be held.

³⁸ *Id.* at 37, 43, 67, 68.

³⁹ *See id.* at 52 (noting “[t]raining should be supported at the highest levels . . . [t]he strongest expression of support is for a senior leader to open the training session and attend the entire training session”); Neil Goodman, Ph.D., *Sexual Harassment Training: Myths and Reality*, TRAINING MAGAZINE (last visited Sept. 12, 2018), <https://trainingmag.com/trgmag-article/sexual-harassment-training-myths-and-reality/> (stating “[t]here must be an unequivocal commitment by senior leadership to take responsibility . . . [w]henver possible, senior leaders should deliver the message in person”); Maya Rhodan, *Does Sexual Harassment Training Work? Here's What the Research Shows*, TIME MAGAZINE, Nov. 21, 2017, <http://time.com/5032074/does-sexual-harassment-training-work-heres-what-the-research-shows/> (finding “ultimately it’s not a matter of whether training or is not effective, but the factors that surround it that can make a big difference. Who attends, where the training happens and when, and company leadership’s involvement matter. Research she has conducted suggests that when leaders come to the training or endorse the training, people take more away from the experience.”).

⁴⁰ EEOC REPORT, *supra* note 23, at 57 (stating “[w]e believe that bystander intervention training might be effective in the workplace.”)

⁴¹ *See, e.g.*, Marcel Schwantes, *Yes, We Can Defeat Sexual Harassment in the Workplace. Here Are 6 Powerful Ways to Do It*, INC. MAGAZINE, Dec. 11, 2017, <https://www.inc.com/marcel-schwantes/how-leaders-can-defeat-sexual-harrassment-in-the-workplace.html>.

- **Recommendation 10: Adopt clear, transparent, office-wide processes for hiring, onboarding, promotions, lateral transfers, performance evaluations, salary increases, and discipline within the organization. This should include centralizing key employment functions within the Human Resources department.**

Traditionally, the Mavericks gave department vice presidents authority to hire, fire, discipline, promote, and give raises to employees. This led to individual actors applying different standards across the organization. In addition to the lack of uniformity, decentralizing these tasks provided no checks on the vice presidents' handling of sensitive employee matters, which led to distrust among employees. Indeed, the EEOC Select Task Force has noted that decentralized company operations can cause managers to be "unaccountable for their behavior" and to "act outside the bounds of workplace rules."⁴² Centralizing key employment functions in the Human Resources department will ensure that all employees receive uniform treatment that reflects the Mavericks' organizational values.

- **Recommendation 11: Collect and use data to add value to the Company and to identify weaknesses.**

The lack of employee data was a consistent theme throughout this investigation. It made understanding the organization, as well as the Company's reasons for making key employment decisions on employees, very difficult. Studies have shown that it is critical for Human Resources departments to collect and review data in making decisions, with some experts calling it "probably the greatest asset the HR team has" as data has the potential to be used to improve decisions, make employees happier, and optimize processes, all of which add value to an organization.⁴³

The Company has stated that it plans to use employee data to guide its decision-making in the future and to address any gender or racial discrepancies in its workforce.

- **Recommendation 12: Require that all leaders, managers, and supervisors engage in efforts to improve workplace culture and to ensure a diverse, inclusive workplace.**

As part of its commitment to improving employees' workplace experience, the Company has launched several initiatives to foster a sense of employee wellbeing and participation in the organization. As the EEOC has concluded, leadership must "tak[e] a visible role in stating the importance of having a diverse and inclusive workplace that is free of harassment, articulat[e] clearly the specific behaviors that will not be acceptable in the workplace, set[] the foundation for employees throughout the organization to make

⁴² EEOC REPORT, *supra* note 23, at 29.

⁴³ Bernard Marr, *Why Data Is HR's Most Important Asset*, FORBES, Apr. 13, 2018, <https://www.forbes.com/sites/bernardmarr/2018/04/13/why-data-is-hrs-most-important-asset/#6953b6236b0f> (noting that "HR teams can use data to make better HR decisions, better understand and evaluate the business impact of people, improve the leadership's decision making in people-related matters, make HR processes and operations more efficient and effective, and improve the overall wellbeing and effectiveness of the company's employees. All of this can have a huge impact on a company's ability to achieve its strategic aims, and that's what makes HR data so valuable.")

change (if change is needed), and, once an organizational culture is achieved that reflects the values of the leadership, commit to ensuring that the culture is maintained.”⁴⁴ Leadership must also “back up its statement of urgency about preventing harassment with two of the most important commodities in a workplace: money and time.”⁴⁵

The Mavericks has provided trainings for organizational leadership, created employee resource groups and team building activities, and solicited feedback from employees on ideas for improving workplace culture.

- **Recommendation 13: Employ a full-time, in-house General Counsel.**

We found the lack of a full-time General Counsel to be problematic for the organization. No current or former employees could identify the rules of engagement for when the General Counsel should be engaged on employment issues and, indeed, there was a lack of consistency within the organization regarding when he was brought into discussions on key matters.

The Company hired a full-time General Counsel, effective July 9, 2018.

VIII. Conclusion

This investigation has substantiated numerous instances of sexual harassment and other improper workplace conduct within the Mavericks organization over a period spanning almost twenty years.

The Mavericks was an organization in which the CEO, the leader charged with safeguarding employees, was a serial harasser, and in which a deeply problematic employee, Chris Hyde, was allowed to harass, intimidate, and threaten co-workers for more than a decade with no real consequences. We also found a lack of compliance and internal controls within the organization. Moreover, Terdema Ussery, Buddy Pittman, and George Prokos failed to effectively discipline and terminate employees when warranted. Although Mark Cuban, the team owner, was not a part of the day-to-day management structure, nor was he physically present in the business office, he engaged at times in sensitive decision-making on disciplinary issues, most often without full or accurate information. For the reasons stated in this report, we find that Cuban made certain decisions as to both Hyde and Sneed that constituted significant errors in judgment.

Based on Ussery’s eighteen years of inappropriate conduct toward women while serving as the CEO, and Hyde’s ability to engage in myriad improper workplace activities without consequence, female employees had a valid reason to believe that curbing sexual harassment was not a priority within the organization. Many of the incidents substantiated in this report were never even reported to Pittman or to anyone else because employees thought it would, at best, be useless and, at worst, would hurt their careers. Our investigation leaves us with no question that

⁴⁴ EEOC REPORT, *supra* note 23, at 32.

⁴⁵ *Id.* at 33.

many female employees were subjected to harassment and were justifiably concerned that they might be subjected to such conduct again.

It was not an accident that the individuals discussed in this report were able to thrive for so long at the Mavericks. Rather, it was the Mavericks' organizational shortcomings that permitted the growth of an environment in which these individuals and their misconduct could flourish. Indeed, the failure to appropriately respond to harassment exacerbated the harm caused by the harassment itself.⁴⁶ In the end, what all of these actions have in common is that they hurt the ability of women to work for the Mavericks. As one commentator recently observed about the #MeToo movement in an article entitled "This Moment Isn't (Just) About Sex. It's Really About Work," "the thing that unites these varied revelations isn't necessarily sexual harm, but *professional* harm and power abuse."⁴⁷ It is important for us to note that the harm here went beyond individual touches, sexual comments, pornography, threats, and physical assault. It also included deep impairment of the ability of women to go to work and do their jobs. Indeed, we consider it significant and unsurprising that all of this took place in a workplace where women were completely absent at the executive level, shockingly underrepresented in senior management, and greatly outnumbered overall.

Since the publication of the *Sports Illustrated* article, Mark Cuban and the Mavericks have taken many positive steps in the right direction. The Mavericks organization has installed qualified, empowered, and diverse executives. Wrongdoers have been terminated or suspended. During the course of our investigation, we heard from employees of a sea change in the professional environment at the Mavericks that began almost immediately following the news reports that first publicly raised these allegations. With light shed on these problems, and with a strong leadership team now in place, we have confidence that the Mavericks organization will continue its transformation into a safe, fair, and professional workplace.

⁴⁶ See Jennifer J. Freyd, *When sexual assault victims speak out, their institutions often betray them*, THE CONVERSATION, Jan. 11, 2018, <https://theconversation.com/when-sexual-assault-victims-speak-out-their-institutions-often-betray-them-87050>.

⁴⁷ Rebecca Traister, *This Moment Isn't (Just) About Sex. It's Really About Work*, THE CUT, Dec. 10, 2017, <https://www.thecut.com/2017/12/rebecca-traister-this-moment-isnt-just-about-sex.html>.