IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

CIVIL DIVISION

GRAHAM B. SPANIER,

Plaintiff-Counterdefendant,

v.

THE PENNSYLVANIA STATE UNIVERSITY,

Defendant-Counterplaintiff.

)Docket No. 2016-0571
)
)Type of Pleading: ANSWER, AFFIRMATIVE
)DEFENSES, AND COUNTERCLAIMS
)
)**ANSWER AND NEW MATTER TO**
)**COUNTS I, II, III, AND IV OF THE FIRST**
)**AMENDED COMPLAINT;**
)**COUNTERCLAIMS**
)
)Filed on behalf of The Pennsylvania State
)University
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)NOTICE TO PLEAD:
)
)TO: GRAHAM B. SPANIER:
)
)You are hereby notified to file a written
)response to the enclosed New Matter and the
)Counterclaim within twenty (20) days from
)service hereof or a judgment may be entered
)against you.
)
) Michael T. Scott

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

CIVIL DIVISION

GRAHAM B. SPANIER, Plaintiff-Counterdefendant, v. THE PENNSYLVANIA STATE UNIVERSITY, Defendant-Counterplaintiff.	)	Docket No. 2016-0571

ANSWER AND NEW MATTER TO COUNTS I, II, III, AND IV OF THE FIRST AMENDED COMPLAINT; COUNTERCLAIMS

The Pennsylvania State University ("Penn State" or "the University"), by its undersigned counsel, respectfully submits this Answer and New Matter of Counts I, II, III and IV of the Amended Complaint and files the following Counterclaims against Graham B. Spanier.[1]

NATURE OF THE ACTION

1. The characterizations of the causes of action set forth in the Amended Complaint are conclusions of law to which no response is required. Answering further, Penn States denies the factual allegations of paragraph 1, and, in particular, denies that the University or members of its Board of Trustees made negative, disparaging, or actionable statements about Dr. Spanier. The University further denies that it breached any contract it had with Dr. Spanier. Footnote 1 is an explanation of the background culminating in the filing of the Amended Complaint to which no responsive pleading is required.

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[1] Penn State is simultaneously herewith filing a Preliminary Objection to Count V of the Amended Complaint.

2. Penn State admits that Dr. Spanier served as President of the University until November 9, 2011, and that it executed a Confidential Separation Agreement with Dr. Spanier on November 15, 2011 (the "Separation Agreement"). Penn State denies that Dr. Spanier resigned from the Presidency of Penn State; to the contrary, he was terminated without cause based on the information then-known to the University's Board of Trustees. The second sentence of paragraph 2 is an effort to characterize, inaccurately, the Separation Agreement, which is a written document that speaks for itself. Penn State denies all allegations of paragraph 2 that are different from the language used in the Separation Agreement.

3. Paragraph 3 is an effort to characterize, inaccurately, the Separation Agreement, which is a written document that speaks for itself. Penn State denies all allegations of paragraph 3 that are different from the language used in the Separation Agreement.

4. Paragraph 4 is an effort to characterize, inaccurately, the Separation Agreement, which is a written document that speaks for itself. Penn State denies all allegations of paragraph 4 that are different from the language used in the Separation Agreement.

5. Penn State denies that it breached the Separation Agreement, and denies that any such breach that may have occurred was material. Penn State admits that it scheduled two press conferences in July 2012, and that Penn State's President and two members of its Board of Trustees spoke at those press conferences. Penn State denies that any such person made, much less repeatedly made, a statement about Dr. Spanier that was negative and/or untrue. Penn State admits that it "organized and/or acquiesced in the organization of separate media appearances for members of its Board of Trustees," but denies that the purpose of any such appearance was for the making of negative comments about Dr. Spanier, and denies any member of its Board of

Trustees made any statement about Dr. Spanier during such media appearances that was negative and/or untrue. Penn State denies that any of the statements referenced in paragraph 5 of the Amended Complaint constituted a breach of the Separation Agreement, denies the characterizations of the non-disparagement provision of the Separation Agreement, and denies any remaining allegations of paragraph 5 that are different from or inconsistent with the foregoing limited admissions.

6. Penn State denies as untrue each and every allegation of paragraph 6.

7. Penn State lacks information sufficient to admit or deny the reasons why Dr. Spanier brought this action against it. Penn State denies that it breached the Separation Agreement, denies that it caused Dr. Spanier any harm, and denies that it owes Dr. Spanier any damages. Answering further, any reputational damage Dr. Spanier claims to have suffered was the result of, *inter alia*, the Sandusky-related emails he sent or received in 1998 and 2001, the serious criminal charges that were brought against him, the state grand jury's detailed and public description of his alleged crimes, his own public statements and interviews, and the negative press coverage triggered by all of the above, not by any conduct of the University or its Trustees.

THE PARTIES AND OTHER RELEVANT THIRD PARTIES

8. Penn State admits that Dr. Spanier was the President of Pennsylvania State University between September 1, 1995, and November 9, 2011. Penn State lacks information sufficient to admit or deny the remaining allegations of paragraph 8, and therefore denies them.

9. Penn State admits the allegations of the first sentence of paragraph 9. Penn State admits that, on November 15, 2011, it executed the Separation Agreement with Dr. Spanier that governed the terms on which his Presidency of the University would terminate and the terms and

conditions of his continued employment by the University. Penn State denies as untrue any allegation of paragraph 9 that is different from or inconsistent with the foregoing limited admissions, including without limitation the allegation that Dr. Spanier resigned from the Presidency.

10. Penn State admits the allegations of the first sentence of paragraph 10. Penn State lacks information sufficient to admit or deny the allegation that "Sandusky was generally lauded for his charity work and efforts on behalf of youth, receiving awards and praise from politicians, famous athletes, and others," and therefore denies those allegations. Penn State otherwise admits the factual allegations of paragraph 10.

11. Penn State admits that The Second Mile was a Pennsylvania non-profit charity organization headquartered in State College, Pennsylvania, that served underprivileged youth. Penn State admits, on information and belief, that Jerry Sandusky founded The Second Mile, and that The Second Mile ceased operations following Sandusky's indictment or conviction. The allegation that "[s]everal" unidentified Penn State Trustees had undefined "relationships" with The Second Mile at unspecified times is too vague to permit a response, and Penn State therefore denies that allegation. Penn State lacks information sufficient to admit or deny the remaining allegations of paragraph 11 and therefore denies them.

12. Penn State admits the allegations of paragraph 12, with the caveat that the University, acting through its Board of Trustees, retained the law firm of Freeh Sporkin & Sullivan ("FSS").

13. Admitted.

14. Admitted.

15. Admitted.

JURISDICTION AND VENUE

16. Penn State admits that it has significant contacts with, and regularly transacts business in, Pennsylvania. Penn State also admits that the Separation Agreement was executed and performed in Pennsylvania. Penn State denies that it caused any harm or tortious injury by acts or omissions in Pennsylvania, and denies that it breached any contact with Dr. Spanier.

17. Paragraph 17 is a statement of law to which no response is required, but Penn State responds that it does not contest this Court's jurisdiction.

18. Paragraph 18 is a statement of law to which no response is required, but Penn State responds that it does not contest venue.

FACTUAL BACKGROUND

"Dr. Spanier Serves As President Of Penn State"[2]

19. Penn State admits the allegations of paragraph 19, with the qualification that Dr. Spanier ceased being the President of the University on November 9, 2011.

20. Admitted.

21. Penn State admits the allegations of the first, second, and fourth, sixth, and seventh sentences of paragraph 21. Penn State admits the allegations of the third sentence of paragraph 21, with the qualification that Joseph Paterno was head coach of the football team until November 9, 2011. Penn State admits that, on July 23, 2012, it entered into an Imposed Consent Decree with the NCAA that contained various sanctions, including the vacatur of 112 of

[2] Penn State incorporates in this responsive pleading the sub-headings that appear in the First Amended Complaint solely for ease of reference. These sub-headings are not numbered paragraphs that require a response (*see* Pa. R. Civ. P. 1022); by incorporating them here, Penn State in no way admits the characterizations of the sub-headings.

Penn State's football wins. Penn State denies any allegation of paragraph 21 that is different from the foregoing admissions.

22. Penn State admits the allegations of the first five sentences of paragraph 22. Penn State lacks information sufficient to admit or deny the allegations of the sixth sentence of paragraph 22 and therefore denies those allegations.

23. Admitted, on information and belief.

24. Penn State admits, on information and belief, that Dr. Spanier earned his Ph.D from Northwestern University, where he was a Woodrow Wilson Fellow. Although Penn State admits that, on information and belief, Dr. Spanier has published many books and articles, Penn State lacks information sufficient to admit or deny the precise number of his publications, the precise focus of his scholarship, his affiliations, or his honorary degrees. Accordingly, Penn State denies the remaining allegations of paragraph 24.

25. Although Penn State admits, on information and belief, that Dr. Spanier has received various awards and chaired various commissions and associations., Penn State lacks information sufficient to admit or deny the specific allegations of paragraph 25, and therefore denies them.

26. Although Penn State admits, on information and belief, that Dr. Spanier has led or chaired various commissions and associations, and has received various awards, Penn State lacks information sufficient to admit or deny the specific allegations of paragraph 26, and therefore denies them.

27. Although Penn State admits, on information and belief, that Dr. Spanier has served on the boards of for-profit and not-for-profit organizations and corporations, Penn State

lacks information sufficient to admit or deny the specific allegations of paragraph 27, and therefore denies them.

28. Admitted.

29. Admitted.

30. Penn State admits that, between 1995 and 2011, when Dr. Spanier was the University's President, Penn State experienced significant growth in applications. Penn State further admits that, during this time period, it constructed dozens of new buildings, which resulted in the addition of millions of square feet of space for, *inter alia,* instruction, research, recreation, and community support. Penn State admits that the theme of a recent fund-raising campaign was "For the Future: The Campaign for Penn State Students," and that this campaign raised over $2 billion. Penn State lacks information sufficient to admit or deny the remaining allegations of paragraph 30 and therefore denies them.

31. Penn State admits the allegations of the first sentence of paragraph 31. The second sentence of paragraph 31 -- including the phrase "normal administrative processes" and the reference to unspecified "issues" -- is too vague to permit Penn State to admit or deny it. Although Penn State would have expected Dr. Spanier to delegate certain duties and responsibilities, as appropriate, to vice presidents, vice provosts, deans, chancellors, department heads, and administrative staff, Penn State lacks information sufficient to admit or deny the specific allegations of the second sentence of paragraph 31, and therefore denies them.

32. Penn State lacks information sufficient to admit or deny the allegations of paragraph 32, and therefore denies them.

33. Penn State admits that, on information and belief, Dr. Spanier has, from time to time worked on law enforcement and security issues, and has received various recognitions for his contributions to law enforcement and national security. Penn State lacks information sufficient to admit or deny the specific allegations of paragraph 33, however, and therefore denies them.

Gerald ("Jerry") Sandusky

34. Penn State admits the allegations of paragraph 34, with the qualification that Sandusky retired from Penn State in 1998, and subsequently was re-hired in 1999 to coach an additional season.

35. Admitted, on information and belief.

36. Penn State lacks information sufficient to admit or deny the allegations of paragraph 36, and therefore denies them.

37. Penn State admits the allegations of the first three sentences of paragraph 37, and admits the allegations of the fourth sentence of paragraph 37 on information and belief.

38. Penn State lacks information sufficient to admit or deny the allegations of paragraph 38, and therefore denies them.

39. Penn State incorporates by reference its response to paragraph 38, *supra.* Answering further, the allegations of paragraph 39, including the references to unspecified members of the Board of Trustees, the unspecified time period, the word "involved," and the phrase "direct relationship" are too vague to permit Penn State to admit or deny the allegations of paragraph 39. Accordingly, Penn State denies those allegations.

40. Penn State admits, on information and belief, that many Second Mile personnel likely had extensive contact with Sandusky over the years and likely observed his interactions with Second Mile youth. Penn State lacks information sufficient to admit or deny the specific allegations of paragraph 40, however, and therefore denies them.

Sandusky's Alleged Criminal Activities

41. Penn State admits, on information and belief, that the Office of the Attorney General of Pennsylvania began investigating allegations that Sandusky had sexually abused boys. Penn State lacks information sufficient to admit or deny the specific allegations of paragraph 41, however, regarding the onset and specific scope of that investigation, and therefore denies them.

42. Penn State admits that, in November 2011, a criminal Presentment was lodged against Sandusky that alleged that he had sexually abused a number of minor boys over a period of many years. That Presentment is a written document that speaks for itself, and Penn State denies any allegation of paragraph 42 that is different from the language used in the Presentment.

43. Penn State admits that, in November 2011, criminal Presentments were lodged against Tim Curley, the former Athletic Director at Penn State ("Curley"), and Gary Schultz, the former Senior Vice-President at Penn State ("Schultz"). Those Presentments are written documents that speak for themselves, and Penn State denies any allegation of paragraph 43 that is different from the language used in those Presentments.

44. Penn State admits that the Attorney General did not bring criminal charges against Dr. Spanier in November 2011, but lacks information sufficient to admit or deny the remaining allegations of paragraph 44, and therefore denies them.

Dr. Spanier Enters Into A Separation Agreement With Penn State

45. Penn State admits that, on November 9, 2011, based on the information then known to it, the University's Board of Trustees acted to terminate Dr. Spanier pursuant to the "Termination Without Cause" provision of his Employment Agreement. Penn State denies the allegations of paragraph 45 that vary in any way from this admission, including but not limited to the allegation that Dr. Spanier resigned from, or offered to resign from, his position as President of the University.

46. Penn State denies that Dr. Spanier resigned from his position as President of the University; rather, he was terminated without cause based on the information then known to the University's Board of Trustees. Penn State admits that, at the time of his termination, Penn State and Dr. Spanier were parties to an Employment Agreement dated July 1, 2010 (the "2010 Employment Agreement"). That document speaks for itself, and Penn State denies any allegation of paragraph 46 that is different from the language used in the 2010 Employment Agreement.

47. Admitted.

48. The 2010 Employment Agreement is a written document that speaks for itself, and Penn State denies any allegation of paragraph 48 that is different from the language used in that writing.

49. Penn State admits that, by 2011, Dr. Spanier had received 16 consecutive positive annual reviews, and that the 2010 Employment Agreement was his fifth consecutive multi-year employment contract. Penn State lacks information sufficient to admit or deny the allegations

that this series of events was either "highly unusual" or "affirming" in higher education, and therefore denies those allegations.

50. The 2010 Employment Agreement speaks for itself, and Penn State denies any allegation of paragraph 50 that is different from the language used in the 2010 Employment Agreement.

51. Penn State admits that, on November 9, 2011, the University's Board of Trustees, based on the information then-known to it, removed Dr. Spanier from his position as President pursuant to the "Termination Without Cause" provision of the 2010 Employment Agreement. Penn State admits that the Termination Without Cause provision entitles Dr. Spanier to certain future compensation and continued employment with the University, as more fully described in the Separation Agreement, which speaks for itself. Penn State denies as inaccurate the remaining allegations of paragraph 51, including but not limited to the allegations that Spanier formally "offer[ed] his resignation" and that the University "encouraged [him] not to resign."

52. Penn State denies as untrue each and every allegation of paragraph 52. Answering further, Penn State responds that members of its Board of Trustees made public statements in which they stated, truthfully, that Dr. Spanier had been terminated without cause.

53. Admitted.

54. Admitted.

55. Admitted, with the qualification that Dr. Spanier "continu[ing] to hold a position as a tenured faculty member" was subject to Dr. Spanier continuing to honor his contractual obligations and continuing to comply with applicable University policies and procedures.

56. Admitted.

57. Paragraph 57 is an effort to characterize, inaccurately, the Separation Agreement., which is a written document that speaks for itself. Penn State denies any allegation of paragraph 57 that is different from the language used in that document.

58. Admitted.

59. Admitted.

60. Paragraph 60 is an effort to characterize, inaccurately, the Separation Agreement, which is a written document that speaks for itself. Penn State denies any allegation of paragraph 60 that is different from the language used in that document.

The Freeh Engagement

61. Penn State admits that it removed Joseph Paterno from his position as the head coach of the Penn State football team on the same day as it removed Dr. Spanier from his position as President of the University. Penn State admits that Penn State students took to the streets of Penn State's campus to protest the removal of Coach Paterno from his coaching position, that riots erupted, and that the foregoing activities were reported in the national media. Penn State denies any allegation of paragraph 61 that is different from the foregoing admissions. Penn State lacks information sufficient to admit or deny the authenticity of the illegible documents that are reproduced in paragraph 61, or the truth of any statement contained therein, and therefore denies any and all such allegations.

62. Penn State denies as untrue each and every allegation of paragraph 62.

63. Penn State admits that, on or about November 18, 2011, the University, acting through its Board of Trustees, retained the law firm of Freeh Sporkin & Sullivan ("FSS") to conduct an "independent, full and complete" investigation. The terms of that engagement are set

forth in engagement letters dated November 18, 2011 and December 22, 2011. Those letters speaks for themselves, and Penn State denies any allegation of paragraph 63 that is different from the language used therein.

64. Penn State admits that it considered firms other than FSS to conduct the investigation. Penn State denies the remaining allegations of paragraph 64.

65. Penn State denies as untrue the allegations of paragraph 65. Penn State lacks information sufficient to admit or deny the authenticity of the largely illegible partial document that is reproduced in paragraph 65, or the truth of any statement contained therein, and therefore denies any and all such allegations.

66. Penn State admits that it paid FSS over $8.3 million for work in connection with the investigation. Penn State admits that the November 18, 2011, engagement letter with FSS provides that Penn State will indemnify FSS under certain circumstances. That letter speaks for itself, and Penn State denies any allegation of paragraph 66 that is different from the language used in that document. Penn State denies as untrue the remaining allegations of paragraph 66.

67. Admitted.

Penn State And The Board of Trustees Ignored Contradictory Information In Its Possession And Provided By Dr. Spanier About The Commissioned Report

68. Penn State admits prior to and at the time the Freeh Report was published, it had possession of, and maintained a copy of, certain of the FSS source materials, specifically, certain source materials that University representatives and employees provided to FSS. The allegation in paragraph 68 that unspecified source materials, emails, and calendars "contradicted" unspecified portions of and "conclusions" set forth in the lengthy Freeh Report is too vague to

permit Penn State to admit or deny it, and Penn State therefore denies that allegation. Penn State admits that its Board of Trustees and its General Counsel received a letter from Dr. Spanier dated July 23, 2012. That letter is a writing that speaks for itself, and Penn State denies any allegation of paragraph 68 that is different from the language used in that writing, including but not limited to the allegations that the July 23, 2012, letter "directly contradict[ed] Freeh's conclusions." Penn State denies any allegation of paragraph 68 that is different from or inconsistent with the foregoing limited admissions.

69. Penn State admits that its General Counsel received a letter from Dr. Spanier dated July 23, 2012, that related to the Freeh Report, and admits that Dr. Spanier also requested a meeting with the Board of Trustees. Penn State admits that no such meeting occurred. Penn State denies as untrue any allegation of paragraph 69 that is different from or inconsistent with the foregoing limited admissions.

The Freeh Report Falsely Labeled Dr. Spanier A Pedophile-Enabler Based On A 1998 Incident In Which Authorities Cleared Sandusky Of Any Wrongdoing

70. Penn State admits the allegations of paragraph 70, with the qualification that Penn State denies that the Freeh Report "largely focuses on" the response of Penn State officials to the 1998 and 2001 Sandusky incidents, which allegation Penn State denies as inaccurate given the breadth and scope of the Freeh Report. Penn State lacks information sufficient to admit or deny whether Sandusky was "employed by" The Second Mile in 2001, and therefore denies that allegation.

71. Paragraph 71 is a characterization of the description of the 1998 incident set forth the Freeh Report, which is a written document that speaks for itself. Penn State denies any allegation of paragraph 71 that is different from the language used in that document.

72. Penn State incorporates paragraph 71, *supra,* as if set forth here in full.

73. Penn State incorporates paragraph 71, *supra,* as if set forth here in full.

74. Penn State incorporates paragraph 71, *supra*, as if set forth here in full.

75. Penn State incorporates paragraph 71, *supra*, as if set forth here in full

76. Penn State incorporates paragraph 71, *supra*, as if set forth here in full.

77. Penn State incorporates paragraph 71, *supra*, as if set forth here in full. Answering further, Penn State admits that the Freeh Report indicates that FSS did not interview Ray Gricar or his successor; however, because Penn State lacks information regarding who within the Centre County District Attorney's Office was "involved with" the decision not to press charges against Sandusky in 1998, Penn State denies the second sentence of paragraph 77. The remaining allegations of paragraph 77 is a characterization of the description of the 1998 incident set forth in the Freeh Report, which is a written document that speaks for itself. Penn State denies any allegation of paragraph 77 that is different from the language used in that document.

78. Penn State incorporates paragraph 71, *supra*, as if set forth here in full.

79. Penn State incorporates paragraph 71, *supra*, as if set forth here in full.

80. Penn State incorporates paragraph 71, *supra*, as if set forth here in full. Penn State admits that the Freeh Report notes that Dr. Spanier was copied on a May 5, 1998 email

chain. The May 5, 1998 email chain among Curley, Schulz and Spanier is a written document that speaks for itself. Penn State denies as untrue all remaining allegations of paragraph 80.

81. Penn State admits that the Freeh Report notes that Dr. Spanier was copied on a June 9, 1998 email from Schultz to Curley. That written document speaks for itself, and Penn State denies any allegation of paragraph 81 that is different from or the language used in that document.

82. Penn State lacks information sufficient to admit or deny the allegations of paragraph 82, and therefore denies them.

83. Penn State lacks information sufficient to admit or deny the allegations of paragraph 83, and therefore denies them.

84. Penn State lacks information sufficient to admit or deny the allegations of paragraph 84, and therefore denies them.

85. Penn State admits, on information and belief, that Freeh and FSS had access to Dr. Spanier's calendars. Penn State lacks information sufficient to admit or deny the remaining allegations of paragraph 85, and therefore denies them.

86. Paragraph 86 characterizes and purports to summarize portions of the Freeh Report. That written document speaks for itself. Penn State denies any allegation of paragraph 86 that is different from the language used in that document. Penn State lacks information sufficient to admit or deny the second sentence of paragraph 86, and therefore denies those allegations.

87. Paragraph 87 characterizes and purports to summarize portions of the Freeh Report. That written document speaks for itself, and Penn State denies any allegation of paragraph 87 that is different from the language used therein.

88. Paragraph 88 characterizes and purports to summarize portions of the Freeh Report. That written document speaks for itself, and Penn State denies any allegation of paragraph 88 that is different from the language used therein.

89. Penn State admits that the Freeh Report was authored by a former federal prosecutor and judge. The balance of paragraph 89 characterizes and purports to summarize portions of the Freeh Report. That written document speaks for itself, and Penn State denies any allegation of paragraph 89 that is different from the language used therein.

90. Penn State lacks information sufficient to admit or deny what Freeh and FSS "knew," and therefore denies that allegation . Penn State also lacks information sufficient to admit or deny what Spanier "likely" knew or did not know about the 1998 investigation, and therefore denies that allegation. The balance of paragraph 90 characterizes and purports to summarize portions of the Freeh Report. That written document speaks for itself, and Penn State denies any allegation of paragraph 90 that is different from the language used therein.

The Freeh Report Falsely Accused Dr. Spanier Of Conspiring To Cover Up A Sexual Assault By Sandusky In 2001

91. Penn State admits that the Freeh Report discusses a 2001 incident in which a Penn State graduate assistant working with the football program, Mike McQueary, witnessed Sandusky and a minor male in the showers of an athletic facility on the Penn State campus. Mr. McQueary has given written statements and his testimony has been transcribed; those documents

speak for themselves. Penn State lacks independent knowledge sufficient to admit or deny the remaining allegations of paragraph 91, and therefore denies them.

92. McQueary has given written statements about a 2001 incident involving Sandusky and a child, and his oral testimony has been transcribed; all of those documents speak for themselves. Penn State lacks independent knowledge sufficient to admit or deny the remaining allegations of paragraph 92, and therefore denies them.

93. McQueary has given written statements and his oral testimony has been transcribed; Dr. Dranov's testimony also was transcribed. Those documents speak for themselves. The allegation that Dr. Dranov was required under Pennsylvania law to report suspected child abuse is a conclusion of law to which no response is required. Penn State lacks independent knowledge sufficient to admit or deny the remaining allegations of paragraph 93, and therefore denies them

94. McQueary and Paterno have made oral statements and their oral testimony has been transcribed. Those documents speak for themselves. Penn State lacks independent knowledge sufficient to admit or deny the remaining allegations of paragraph 94, and therefore denies them.

95. Paterno, Curley, and Schultz have given oral statements and their oral testimony has been transcribed. Those documents speak for themselves. Penn State lacks independent knowledge sufficient to admit or deny the remaining allegations of paragraph 95, and therefore denies them. Answering further, Penn State lacks information sufficient to admit or deny what "impression" Schultz may have had, what he may have "speculated" about, and what he "believed," and therefore denies those allegations. Penn State also lacks direct information

sufficient to admit or deny what Paterno, Curley, or Schultz did with respect to the 2001 Sandusky incident other than what is reflected in various documents, including emails, handwritten notes, statements and testimony, and therefore denies those allegations.

96. Schultz and Curley have given oral testimony, which has been transcribed and FSS prepared written notes of the interview of Dr. Spanier. Those documents speak for themselves. Penn State lacks independent knowledge sufficient to admit or deny the remaining allegations of paragraph 96. Penn State also lacks independent knowledge as to what Dr. Spanier told Freeh during his interview, and therefore denies those allegations. Penn State also lacks knowledge sufficient to admit or deny the allegations of the last sentence of paragraph 96, regarding Dr. Spanier's contemporaneous awareness of the 2001 incident, and therefore denies those allegations.

97. FSS prepared written notes of the interview of Dr. Spanier. Those documents speak for themselves. Penn State lacks independent knowledge as to Curley or Schultz told Dr. Spanier or what Dr. Spanier told FSS, and therefore denies the allegations of paragraph 97.

98. Paragraph 98 purports to describe and characterize one or more emails. Those emails are written documents that speak for themselves, and Penn State denies any allegation of paragraph 98 that is different from the language used in those documents. Alternatively, to the extent paragraph 98 purports to summarize what Dr. Spanier told Freeh during his interview, FSS prepared written notes of the interview of Dr. Spanier, and those documents speak for themselves. Because Penn State lacks independent knowledge as to what Dr. Spanier told Freeh, it denies the allegations of paragraph 98.

99. Paragraph 99 purports to describe and characterize one or more emails. Those emails are written documents that speak for themselves, and Penn State denies any allegation of paragraph 99 that is different from the language used in those documents. Alternatively, to the extent paragraph 99 purports to summarize what Dr. Spanier told FSS during his interview, FSS prepared written notes of the interview of Dr. Spanier, and those documents speak for themselves. Because Penn State lacks independent knowledge as to what Dr. Spanier told Freeh, it denies the allegations of paragraph 99.

100. FSS prepared notes of the interview of Dr. Spanier. Those documents speak for themselves, and Penn State denies any allegation of paragraph 100 that is different from the language used therein. Because Penn State lacks independent knowledge as to what Dr. Spanier told Freeh, it denies the allegations of paragraph 100.

101. Penn State lacks information sufficient to admit or deny the allegations of paragraph 101, and therefore denies them.

102. Paragraph 102 contains numerous characterizations of, and abbreviated quotations from, the Freeh Report. That written document speaks for itself, and Penn State denies any allegation of paragraph 102 that is different from the language used therein. Answering further, the allegation in paragraph 102 that the Freeh Report contains "defamatory statements regarding Dr. Spanier and his actions in 2001" is a conclusion of law to which no response is required.

103. Penn State lacks information sufficient to admit or deny the allegations of paragraph 103, and therefore denies them.

104. Penn State lacks information sufficient to admit or deny the allegations of paragraph 104, and therefore denies them.

Penn State And The Board Of Trustees Knew That The Freeh Report Would Scapegoat Dr. Spanier

105. Penn State admits that Freeh stated in the Report and in the accompanying press conference that the FSS investigation had been comprehensive, complete, and independent. Penn State admits that it intended that FSS not only be "viewed as" being, but actually be, an "impartial and disinterested neutral, with no stake, in the ultimate outcome of the investigation." Penn State denies as untrue any allegation of paragraph 105 that is inconsistent with or different from the foregoing limited admissions.

106. Penn State admits that Freeh indicated, truthfully, that the final Freeh Report would be released to the public and to the Penn State Board of Trustees at the same time. Penn State also admits that the fact that its Board did not get an advance copy of the Freeh Report was one indicia of the independence of the FSS investigation. Penn State denies as untrue any allegation of paragraph 106 that is inconsistent with or different from the foregoing admissions.

107. Penn State admits that members of the Special Investigations Task Force had limited conversations with members of FSS about the status of the investigation. Penn State denies as untrue each and every remaining allegation of paragraph 107, including the allegation that Board members had been advised of the "likely outcome" of the FSS investigation before the Report was released.

108. Penn State denies as untrue each and every allegation of paragraph 108, including but not limited to the allegations that any members of its Board of Trustees talked with any representative of FSS about "targeting" Dr. Spanier, or about plotting to deny Dr. Spanier an employment opportunity. Paragraph 108 also is an attempt to characterize the April 12, 2012,

email string that is appended thereto. That written document speaks for itself, and Penn State denies any allegation of 108 that is different from the language used therein. Answering further, Penn State denies that the email string reflects a "plot" by "Freeh and board members" to deny Dr. Spanier an employment opportunity.

109. Penn State denies as untrue each and every allegation of paragraph 109.

110. Penn State admits that the Special Investigations Task Force was formed by the Board of Trustees to oversee the FSS investigation on behalf of the University. Penn State denies as untrue each and every remaining allegation of paragraph 110.

111. The first sentence of paragraph 111 refers to a written engagement letter between Penn State and FSS. That document speaks for itself, and Penn State denies any allegation of paragraph 111 that is different from the language used therein. Penn State denies as untrue each and every allegation in the second sentence of paragraph 111.

112. Paragraph 112 is an attempt to characterize a written engagement letter between Penn State and FSS. That document speaks for itself, and Penn State denies the allegations of paragraph 112 that are different from the language used therein.

113. Penn State admits that criminal charges were brought against Schultz, Curley, and Sandusky before the University retained FSS. Penn State lacks information sufficient to admit or deny the remaining allegations of paragraph 113, and therefore denies them.

114. Penn State admits that, on June 16, 2012, the Associated Press published an article that included, among many other sources, references to an interview with Penn State trustee Keith Masser. That written article speaks for itself, and Penn State denies any allegation of paragraph 114 that is different from the language used therein. Answering further, Penn State

lacks information sufficient to admit or deny whether the Associated Press accurately reported Mr. Masser's statements, and therefore denies those allegations. Answering further, Penn State incorporates paragraph 234, *infra,* as if set forth here in full.

115. Penn State admits that the June 16, 2012 Associated Press article was published nearly three weeks before Freeh interviewed Dr. Spanier and nearly a month before the Freeh Report was released. Penn State lacks information sufficient to admit or deny the allegation that the article was "widely circulated by other media outlets," and therefore denies that allegation.

116. Penn State further denies that it "had publicly accused Dr. Spanier of participating in a cover-up of Sandusky's sexual abuse" before Freeh interviewed him. Penn State denies that its Board of Trustees ever voiced a "public position" about what the Freeh Report should cover (except as set forth in the engagement letters) or the conclusions that should be reached therein. Penn State also denies that its Board of Trustees directed Freeh to issue a report that "echo[ed] the public position of the Board of Trustees" or that "accus[ed] Dr. Spanier of actively participating in a cover-up and actively deciding to conceal Sandusky's criminal activities." Answering further, Penn State denies that it, or any member of its Board of Trustees, influenced the contents of the Freeh Report in any way. Penn State lacks information sufficient to admit or deny the remaining allegations of paragraph 116, and therefore denies them.

117. Penn State admits, on information and belief, that Freeh knew that the University had: removed Dr. Spanier from the Presidency and removed Paterno from his head coaching position, that Schultz had returned to retirement, and that Curley was on leave. Penn State denies that it, or any member of its Board of Trustees, in in any way directed FSS or Freeh to "scapegoat" any individual or "justif[y] the Board's actions." Penn State lacks information

sufficient to admit or deny the remaining allegations of paragraph 117, including the remaining allegations about what Freeh "knew," and therefore denies them.

118. Penn State admits that it learned during discovery in other litigation that: (a) FSS's Omar McNeill had periodic brief conference calls with NCAA General Counsel Donald Remy, and that those calls did not entail the sharing of privileged information; (b) the NCAA provided FSS with questions it hoped FSS would ask potential witnesses; and (c) the NCAA agreed to forego an investigation pending the outcome of the FSS investigation. Penn State denies as untrue the allegation that NCAA officials "provided the blueprint for" the Freeh investigation or influenced the content of the Report or the conclusions reached therein. Penn State denies information sufficient to admit or deny all of the remaining allegations of paragraph 118, including the allegations about what Freeh "knew" or "understood," and therefore denies them.

119. Penn State denies that its Board of Trustees "has not done any meaningful examination" of the Freeh Report. Penn State admits that many individuals have "critiqued" and "scrutinized" the Freeh Report since its publication over four years ago. Paragraph 119 refers to an opinion Hearing Examiner Michael Bangs of the Pennsylvania State Employees Retirement System issued on June 19, 2014. That written document speaks for itself, and Penn State denies any allegation of paragraph 119 that is different from the language used therein. Penn State denies any remaining allegations of paragraph 119.

120. Paragraph 120 refers to an opinion Hearing Examiner Michael Bangs of the Pennsylvania State Employees Retirement System issued on June 19, 2014. That written

document speaks for itself, and Penn State denies any allegation of paragraph 120 that is different from the language used therein.

121. Penn State admits that Rodney Erickson was President during the FSS investigation and when the Report was released. Paragraph 121 purports to quote snippets of statements President Erickson allegedly made, albeit without specifying whether those statements are oral or written, or when, or in what context, they were made. Without such identifying information, Penn State lacks information sufficient to admit or deny those allegations, and therefore denies them.

122. Penn State admits that Eric Barron currently is its President. Paragraph 122 purports to quote snippets of statements President Barron allegedly made, albeit without specifying whether those statements are oral or written, or when, or in what context, they were made. Without such identifying information, Penn State lacks information sufficient to admit or deny those allegations, and therefore denies them. Penn State denies that the Freeh Report has been or continues to be "the basis for many important decisions made by the Trustees," except with respect to the University's implementation of many of the recommendations set forth in the Report. Penn State lacks information sufficient to admit or deny the allegation that the Freeh Report has been and/or continues to be the basis for many important decisions by the NCAA and therefore denies that allegation.

123. Paragraph 123 purports to quote from a written commentary on ESPN.com. That writing speaks for itself, and Penn State denies any allegation of paragraph 123 that is different from the language used therein.

Penn State Brazenly And Repeatedly Breaches The Separation Agreement

124. Penn State denies as untrue each and every allegation of paragraph 124, including the allegation that it breached the Separation Agreement and the allegation that it caused Dr. Spanier any harm or damage.

125. Paragraph 125 purports to characterize the Separation Agreement. That document speaks for itself, and Penn State denies any allegation of paragraph 125 that is different from the language used therein, including but not limited to the allegation that the Separation agreement prohibits Penn State's Board of Trustees from making "any negative comments about Dr. Spanier" except in limited circumstances. Answering further, Penn State denies that it breached the Separation Agreement.

126. Penn State admits that Keith Masser, a member of its Board of Trustees, gave an interview to the Associated Press in June 2012. Answering further, Penn State admits, on information and belief, that Trustee Masser understood that statements he made to the Associated Press might be published to the general public. Penn State lacks information sufficient to admit or deny that the quotation in that story the Associated Press attributed to Trustee Masser accurately reflects his remarks, and therefore denies that allegation. Answering further, Penn State incorporates paragraph 234, *supra* as if set forth here in full.

127. Penn State incorporates paragraph 126, *supra,* by reference as if set forth here in full. Answering further, Penn State denies as untrue the allegations that it failed to comply with its obligations under section 13 of the Separation Agreement with respect to Trustee Masser, and denies any remaining allegations of paragraph 127.

128. Penn State incorporates by reference paragraph 126, *supra*, as if set forth here in full. Answering further, Penn State denies that any information or opinion Trustee Masser made to the Associated Press was "false," or, in the alternative, that any such statement is actionable under section 13 of the Separation Agreement. Penn State lacks information sufficient to admit or deny the allegations in the second sentence of paragraph 128 with respect to Dr. Spanier's knowledge and involvement, and therefore denies those allegations.

129. Penn State admits, on information and belief, that Trustee Masser's Statement was "voluntary," in the sense that it was not the product of duress or coercion. Penn State denies as untrue each and every remaining allegation of paragraph 129.

130. Penn State denies as untrue each and every allegation of paragraph 130.

131. Penn State admits that the July 12, 2012 press release was issued after the publication of the Freeh Report and after the conclusion of FSS's work on behalf of Penn State. The rest of paragraph 131 purports to quote from that written press release. That document speaks for itself, and Penn State denies any allegation of paragraph 131 that is different from the language used therein.

132. Penn State incorporates paragraph 131, *supra,* by reference as if set forth here in full.

133. Admitted.

134. Penn State denies as untrue the allegations of the first sentence of paragraph 134. Penn State lacks information sufficient to admit or deny the allegations of the second sentence of paragraph 134, and therefore denies them.

135. Penn State admits that its dissemination of the July 12, 2012, press release to the news media and the general public was "voluntary," in the sense that it was not the product of duress or coercion. Penn State denies as untrue each and every remaining allegation of paragraph 135.

136. Penn State admits the allegations of the first sentence of paragraph 136. The reference in the second sentence of paragraph 136 to Penn State "permit[ing]" then-Trustees Frazier and Peetz to make various statements is vague and ambiguous and not susceptible of a response; accordingly, Penn State denies that allegation. Penn State also incorporates paragraph 218, *infra*, as if set forth here in full, and, with respect to the five bullets points in paragraph 136, further answers as follows:

Bullet #1: Penn State denies that the statement: "Judge Freeh's Report is both sad and sobering" is either a negative statement about Dr. Spanier or an untrue statement about Dr. Spanier. Penn State denies that the statement: "Our administrative leadership also failed" is either a negative statement about Dr. Spanier or an untrue statement about Dr. Spanier. In the balance of this quote, then-Trustee Frazier summarized one finding of the Freeh Report, and did not make any independent statement about Dr. Spanier that was either negative or untrue.

Bullet #2: Penn State denies that any of the sentences and sentence fragments in this bullet point are either a negative statement about Dr. Spanier or an untrue statement about Dr. Spanier.

Bullet #3: Penn State denies that any of the sentences in this bullet point are either a negative statement about Dr. Spanier or an untrue statement about Dr. Spanier.

Bullet #4: Penn State denies that any of the sentences in this bullet point are either a negative statement about Dr. Spanier or an untrue statement about Dr. Spanier.

Bullet #5: Penn State denies that any of the sentences in this bullet point are either a negative statement about Dr. Spanier or an untrue statement about Dr. Spanier.

137. Penn State incorporates by reference its response to paragraph 136, *supra,* as if set forth here in full. Penn State admits that it organized the July 12, 2012 press conference and that President Erickson was present for and participated in the press conference. Penn State denies that it organized that press conference "with full knowledge that Frazier and Peetz would make negative comments about Dr. Spanier." Answering further, Penn State denies that it failed to use reasonable efforts to cause either then-Trustees Frazier or Peetz not to make negative comments about Dr. Spanier in the July 12, 2012 press conference to the media, to their professional colleagues or to any other members of the public, unless required by law or to comply with legal obligations and/or to provide truthful information in connection with ongoing or forthcoming investigations, and incorporates paragraph 218, *infra,* as if set forth here in full.

138. Penn State denies the allegations of the first sentence of paragraph 138. Penn State lacks information sufficient to admit or deny the allegations of the second sentence of paragraph 138, with respect to Dr. Spanier's alleged knowledge or conduct, and therefore denies those allegations.

139. Penn State denies each and every allegation of paragraph 139.

140. Penn State admits, on information and belief, that, shortly after giving testimony to the grand jury investigating Sandusky in April 2011, Dr. Spanier and then-Penn State General Counsel Cynthia Baldwin had a conference call or meeting with Steve Garban, the then-Chair of

the Board of Trustees. Penn State denies that Dr. Spanier fully, accurately, or adequately "brief[ed]" Mr. Garban about the state of his knowledge about Sandusky-related conduct or the nature or scope of his own involvement in investigating and responding to allegations of Sandusky conduct during that call or meeting, as more fully set forth in paragraphs 304-311, *infra,* which are incorporated as if set forth here in full. Penn State also denies that Dr. Spanier fully, accurately, or adequately briefed Mr. Garban during that call or meeting about the likely impact the grand jury investigation would have on the University. Penn State denies any remaining allegations of paragraph 140 that are different from or inconsistent with the foregoing limited admissions.

141. Penn State admits that, on May 12, 2011, Ms. Baldwin provided information about the grand jury investigation to the Board of Trustees sitting in executive session, and admits that, on information and belief, Dr. Spanier participated in arranging that discussion. Penn State admits that the Trustees who attended that session had an opportunity ask questions. Penn State denies that Dr. Spanier fully, accurately, or adequately "brief[ed]" the Board during this session about his knowledge of Sandusky-related conduct and/or the nature or scope of his own involvement in investigating and responding to allegations of Sandusky conduct, as more fully set forth in the averments of the New Matter, *infra,* which are incorporated by reference as if set forth here in full. Penn State also denies that Dr. Spanier fully, accurately, or adequately briefed the Board during this session about the likely impact the grand jury investigation would have on the University. Penn State denies any remaining allegations of paragraph 141 that are different from or inconsistent with the foregoing limited admissions.

142. Penn State lacks information sufficient to admit or deny the allegations in paragraph 142 regarding what Dr. Spanier may have learned from Ms. Baldwin regarding the Sandusky investigation, and, accordingly, lacks information sufficient to admit or deny the allegation that Dr. Spanier "informed Board members of all the information he learned from Baldwin and did not withhold any relevant information," and therefore denies those allegations. Penn State denies that Dr. Spanier ever fully, accurately, or adequately briefed any individual Board member (including the then-Chair) or the Board as a whole about his knowledge of Sandusky-related conduct and/or the nature or scope of his own involvement in investigating and responding to allegations of Sandusky conduct, as more fully set forth in paragraphs 304-311, *infra,* which are incorporated by reference as if set forth here in full. Penn State also denies that Dr. Spanier fully, accurately, or adequately briefed any individual Board member (including the then-Chair) or the Board as a whole about the likely impact the grand jury investigation would have on the University.

143. Penn State lacks information sufficient to admit or deny when Dr. Spanier learned from Ms. Baldwin that Sandusky, Curley, and Schultz were to be criminally charged, and therefore denies the allegations in the first sentence of paragraph 143. Penn State denies that Dr. Spanier ever fully, accurately, or adequately briefed the Board Chair or Vice Chair about his knowledge of Sandusky-related conduct and/or the nature or scope of his own involvement in investigating and responding to allegations of Sandusky conduct, as more fully set forth in paragraphs 304-311, *infra,* which are incorporated by reference as if set forth here in full. Penn State also denies that Dr. Spanier fully, accurately, or adequately briefed the then-Board Chair or Vice Chair about the likely impact the forthcoming presentment would have on the University.

144. Penn State incorporates by reference paragraphs 136, 137, and 138, *supra,* as if set forth here in full. Answering further, Penn State admits that the statements then-Trustees Frazier and Peetz made at the July 12, 2012, press conference were "voluntary," in the sense that they were not the product of coercion or duress. Penn State denies as untrue each and every remaining allegation of paragraph 144. Answering further, the statements made by then-Trustees Frazier and Peetz were made, in whole or in part, to comply with the fiduciary obligations they owed the University as Trustees, and to provide truthful information in connection with an ongoing or forthcoming investigation.

145. Penn State admits the allegations of the first sentence of paragraph 145. Penn State admits that then-Trustee Frazier offered the opinions attributed to him in paragraph 145 at a press conference on July 13, 2012, but denies that those opinions were "of Dr. Spanier."

146. Penn State denies each and every allegation of paragraph 146.

147. Penn State incorporates by reference its response to paragraphs 145 and 146, *supra,* as if set forth here in full. Penn State admits that it organized the July 13, 2012 press conference. Penn State denies that it organized that press conference "with full knowledge that Frazier and Peetz would make negative comments about Dr. Spanier." Answering further, Penn State denies that it failed to use reasonable efforts to cause then-Trustees Frazier or Peetz not to make negative comments about Dr. Spanier in the July 13, 2012 press conference to the media, to their professional colleagues or to any other members of the public, unless required by law or to comply with legal obligations and/or to provide truthful information in connection with ongoing or forthcoming investigations.

148. Penn State denies the allegations of the first sentence of paragraph 148. Penn State lacks independent knowledge sufficient to admit or deny the allegations of the second sentence of paragraph 148, including with respect to Dr. Spanier's knowledge and conduct, and therefore denies those allegations.

149. Penn State incorporates by reference paragraphs 145, 146, 147, and 148, *supra,* as if set forth here in full. Answering further, Penn State admits that the statements then-Trustee Frazier made at the July 13, 2012, press conference were "voluntary," in the sense that they were not the product of coercion or duress. Penn State denies as untrue each and every remaining allegation of paragraph 149. Answering further, Penn State incorporates paragraph 218, *infra,* as if set forth here in full.

150. Penn State admits that thirteen members of its Board of Trustees participated in a pre-planned, in-person group interview with New York Times reporters in New Jersey on January 18, 2012. Penn State denies that it failed to use reasonable efforts to cause those Trustees not to make negative comments about Dr. Spanier in that interview, unless required by law or to comply with legal obligations and/or to provide truthful information in connection with ongoing or forthcoming investigations. Answering further, Penn State denies that, a comment by a Trustee about Dr. Spanier – even if negative, and even if not (a) required by law, (b) made to comply with legal obligations or (c) to provide truthful information in connection with ongoing or forthcoming investigations – constitutes a breach of the Separation Agreement, provided Penn State made reasonable efforts to cause the Trustee not to make that comment. Penn State denies that any of the statements listed in paragraph 150 are actionable, and incorporates paragraph 246,

infra, as if set forth here in full. In addition, answering further, with respect to the bullet points in paragraph 150:

Bullet #1: The quotation in this bullet point is not a negative comment about Dr. Spanier made by any Trustee; rather, it is the reporter's characterization and summary of a three-hour-long interview, without specific attribution to any Trustee. Moreover, this self-described recitation of how unidentified Trustees "felt" is not actionable as a breach of the Separation Agreement for all of the reasons set forth in paragraph 246, *infra.*

Bullet #2: The quotation in this bullet point is not a "negative comment about Dr. Spanier" made by any Trustee; rather, it is the reporter's characterization and summary of a three-hour-long interview, without specific attribution to any Trustee. Moreover, this self-described recitation of how unidentified Trustees "felt" is not actionable as a breach of the Separation Agreement, for all of the reasons set forth in paragraph 246, *infra.*

Bullet #3: The quotation in this bullet point is not a "negative comment about Dr. Spanier" made by any Trustee; rather, it is the reporter's characterization and summary of a three-hour-long interview, without specific attribution to any Trustee. Moreover, even if this statement were a statement made by a Trustee, it is not actionable as a breach of the Separation Agreement, for all of the reasons set forth in paragraph 246, *infra.*

Bullet #4: The first sentence in this bullet point is not a "negative comment about" Dr. Spanier made by any Trustee. To the contrary, it is the reporter's characterization and summary of a three-hour-long interview, without attribution to any specific Trustee. Penn State lacks information sufficient to admit or deny whether the quotation attributed to Trustee Lubert is an accurate report of Trustee Lubert's statement to the reporter, and

therefore denies that allegation. In any event, the statements attributed to Trustee Lubert not actionable as breaches of the Separation Agreement, for all of the reasons set forth in paragraph 246, *infra.*

Bullet #5: Penn State lacks information sufficient to admit or deny whether the quotation attributed to then-Trustee Peetz is an accurate report of her statement to the reporter and therefore denies that allegation. In any event, the statement attributed to Trustee Peetz is not actionable as a breach of the Separation Agreement, for all of the reasons set forth in paragraph 246, *infra.*

Bullet #6: The quotation in this bullet point is not a "negative comment about" Dr. Spanier made by any Trustee. To the contrary, it is the reporter's characterization and summary of a three-hour-long interview, without attribution to any specific Trustee. In any event, the statement is not actionable as a breach of the Separation Agreement, for all of the reasons set forth in paragraph 246, *infra.*

151. Penn State admits that it was aware of this planned group interview before it occurred. Penn State incorporates paragraph 150, *supra,* as if set forth here in full. Penn State denies each and every allegation of the second sentence of paragraph 151.

152. Penn State incorporates paragraph 150, *supra,* as if set forth here in full. Penn State lacks direct knowledge sufficient to admit or deny the allegation in the second sentence of paragraph 152 regarding Dr. Spanier's knowledge, and accordingly denies that allegation.

153. Penn State incorporates by reference paragraphs 140, 141, 142, and 143, *supra,* as if set forth here in full.

154. Penn State incorporates by reference paragraphs 140, 141, 142, and 143, *supra,* as if set forth here in full.

155. Penn State lacks information sufficient to admit or deny the allegations of paragraph 155, and accordingly denies each and every such allegation.

156. Penn State lacks information sufficient to admit or deny the allegations of the first two sentences of paragraph 156, and therefore denies them. Penn State admits that Dr. Spanier took part in a series of emergency meetings that followed the issuance of the presentment. Answering further, Penn State incorporates paragraphs 140, 141, 142, and 143, *supra,* as if set forth here in full.

157. Penn State admits that the Grand Jury presentment was released on November 5, 2011, and admits that emergency Board meetings were held on Saturday, November 5, and Sunday, November 6. Penn State lacks information sufficient to admit or deny the remaining allegations of paragraph 157, and therefore denies them. Answering further, Penn State incorporates by reference paragraphs 140, 141, 142, and 143, *supra,* as if set forth here in full.

158. Penn State lacks information sufficient to admit or deny the allegations of paragraph 158, and therefore denies them.

159. Penn State denies the allegations of the first sentence of paragraph 159. Penn State admits that the concept of issuing a press release was discussed in a full session of the Board of Trustees on Sunday, November 6, 2011. Penn State denies that the press release that Dr. Spanier issued on Monday, November 7, 2011, "emanated from" the November 6 Board discussion. Penn State lacks information sufficient to admit or deny the remaining allegations of paragraph 159, and therefore denies them.

160. Penn State admits that the statements Trustees made in the January 2012 interview with the New York Times were "voluntary," in the sense that they were not the product of coercion or duress. Penn State denies as untrue each and every remaining allegation of paragraph 160, for the reasons set forth in paragraph 246, *infra,* which is incorporated as if set forth here in full.

161. Penn State denies as untrue the allegations of paragraph 161, for the reasons set forth in paragraph 150, *supra*, and paragraph 246, *infra,* which are incorporated by reference as if set forth here in full.

162. Penn State lacks direct knowledge sufficient to admit or deny the allegations about Dr. Spanier's knowledge of Sandusky's conduct or his own conduct in relation thereto, and therefore denies each and every allegation in paragraph 162.

Dr. Spanier Has Suffered Significant Reputational, Emotional, And Economic Harm As A Result Of Penn State's And The Board Members' Statements

163. Penn State denies as untrue each and every allegation of paragraph 163. Answering further, any reputational damage Dr. Spanier claims to have suffered was the result of, *inter alia*, the Sandusky-related emails he sent or received in 1998 and 2001, the serious criminal charges that were brought against him, the state grand jury's detailed and public description of his alleged crimes, his own public statements and interviews, and the negative press coverage triggered by all of the above, not by any conduct of the University or its Trustees.

164. Penn State denies each and every allegation of paragraph 164. Answering further, Penn State incorporates paragraph 163, *supra,* as if set forth here in full.

165. Penn State lacks information sufficient to admit or deny whether the statements described in the Amended Complaint have caused Dr. Spanier "to endure humiliation and verbal and written personal attacks," but denies that any such statement constitutes a breach of the Separation Agreement or caused Dr. Spanier to suffer any legally-cognizable damage or injury. Answering further, Penn State incorporates paragraph 163, *supra,* as if set forth here in full.

166. Penn State denies as untrue each and every allegation of paragraph 166.

167. Penn State admits that it took initial steps described in University policy HR 70 in connection with Dr. Spanier's tenure, but denies that this action was a breach of the Separation Agreement. Penn State denies any allegation of paragraph 167 that is different from or inconsistent with the foregoing admission, including the allegation that this conduct was undertaken "with the acquiescence of the Board of Trustees."

168. Penn State admits that in November 2012, after Dr. Spanier was charged with committing serious crimes, it instructed Dr. Spanier not to hold himself out as representing the University. The University denies that this action was a breach of the Separation Agreement.

169. Penn State denies the allegations of paragraph 169.

170. Penn State denies the allegations of paragraph 170.

171. Penn State admits that, after Dr. Spanier was charged with committing serious crimes, it terminated his connection and access to the University's computer network and email systems. Penn State denies any allegation of paragraph 171 that is different from or inconsistent with the foregoing admission.

172. Penn State admits that, after Dr. Spanier was charged with committing serious crimes, it retrieved the computer, laptop, iPad and printer the University previously had provided

him. Penn State denies any allegation of paragraph 172 that is different from or inconsistent with the foregoing admission.

173. Penn State admits that, on or about July 13, 2012, the day after the Freeh Report was released, an individual at Penn State arranged to have a "request no contact" code placed on Dr. Spanier's record in the University's Alumni Association database, and that this temporarily resulted in Dr. Spanier from receiving communications and mailings from the Alumni Association. Answering further, Penn State admits that this conduct was temporary, was later reversed, was not authorized by any University official, and was not, in any event a breach of the Separation Agreement.

174. Penn State lacks information sufficient to admit or deny whether Dr. Spanier "has been the subject of excoriation by reporters, activists, columnists, editorial writers, and bloggers," but denies that any such conduct is "because of" any actionable conduct by Penn State. Answering further, any "excoriation" Dr. Spanier claims to have suffered was the result of, *inter alia*, the Sandusky-related emails he sent or received in 1998 and 2001, the serious criminal charges that were brought against him, the state grand jury's detailed and public description of his alleged crimes, his own public statements and interviews, and the negative press coverage triggered by all of the above, not by any conduct of the University or its Trustees.

175. Penn State lacks information sufficient to admit or deny whether Dr. Spanier has "lost a number of rewarding employment opportunities," but denies that any such "loss" is the direct or proximate result of any actionable conduct by Penn State. Answering further, any employment opportunities Dr. Spanier claims to have lost was the result of, *inter alia*, the Sandusky-related emails he sent or received in 1998 and 2001, the serious criminal charges that

were brought against him, the state grand jury's detailed and public description of his alleged crimes, his own public statements and interviews, and the negative press coverage triggered by all of the above, not by any conduct of the University or its Trustees.

176. Penn State denies as untrue each and every allegation of paragraph 176. Answering further, Penn State incorporates paragraph 163, *supra,* as if set forth here in full.

Penn State Breaches The Separation Agreement By Failing To Provide Required Administrative Support

177. Penn State denies as untrue each and every allegation of paragraph 177.

178. Penn State admits that, in or around May 2012, Dr. Spanier was in discussions with the University about securing an office location and an assistant, and admits that no such arrangements ultimately were ever finalized. Penn State admits that its Spring 2012 course list did not contain a course to be taught by Dr. Spanier. Penn State admits that, on November 2, 2012, Provost Pangborn sent Dr. Spanier a letter; that document speaks for itself, and Penn State denies any allegation of paragraph 178 that is different from the language used therein. Penn State denies any remaining allegation of paragraph 178 that is different from or inconsistent with the foregoing admissions.

179. Penn State admits that, on November 14, 2012, it sent individuals from its IT Department to Dr. Spanier's home to retrieve the desktop computer, laptop, iPad, and associated electronics it previously had provided to Dr. Spanier, admits that it terminated Dr. Spanier's access to the University's computer network, and that it directed IT support personnel not to contact Dr. Spanier. Penn State denies any remaining allegation of paragraph 179 that is different from or inconsistent with the foregoing admissions.

180. Paragraph 180 is an effort to characterize the Separation Agreement, which is a written document that speaks for itself. Penn State denies any allegation of paragraph 180 that is different from the language used in that document. Penn State denies that it breached the Separation Agreement.

181. Penn State admits that, in or around August 2016, Dr. Spanier advised it, through litigation counsel, that he was experiencing difficulty accessing the Recreational Hall Building and checking out a library book. Penn State investigated, but could not replicate the problems Dr. Spanier purports to be having with his ID card. Penn State denies that it deactivated Dr. Spanier's ID card or took other steps to limit his access to these facilities, denies that this matter is not resolved, denies that this matter ever reached the desk of the General Counsel, and denies that these incidents constitute a breach of the Separation Agreement.

Penn State Breaches The Separation Agreement By Repeatedly Refusing To Indemnify Dr. Spanier For Legal Fees And Related Costs

182. The allegations of paragraph 182 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

183. The allegations of paragraph 183 relate to Count V, to which Penn State has filed a Preliminary Objection. No answer is required.

184. The allegations of paragraph 184 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

185. The allegations of paragraph 185 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

186. The allegations of paragraph 186 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

187. The allegations of paragraph 187 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

188. The allegations of paragraph 188 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

189. The allegations of paragraph 189 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

190. The allegations of paragraph 190 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

191. The allegations of paragraph 191 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

192. The allegations of paragraph 192 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

193. The allegations of paragraph 193 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

194. The allegations of paragraph 194 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

195. The allegations of paragraph 195 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

196. The allegations of paragraph 196 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

197. The allegations of paragraph 197 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

198. The allegations of paragraph 198 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

199. The allegations of paragraph 199 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

200. The allegations of paragraph 200 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

201. The allegations of paragraph 201 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

202. The allegations of paragraph 202 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

203. The allegations of paragraph 203 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

204. The allegations of paragraph 204 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

205. The allegations of paragraph 205 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

206. The allegations of paragraph 206 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

207. The allegations of paragraph 207 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

208. The allegations of paragraph 208 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

209. The allegations of paragraph 209 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

210. The allegations of paragraph 210 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

211. The allegations of paragraph 211 relate to Count V, to which Penn State has filed a preliminary objection. No answer is required.

COUNT I: BREACH OF CONTRACT FOR NEGATIVE AND UNTRUE COMMENTS BY PENN STATE AND BOARD MEMBERS KENNETH FRAZIER AND KAREN PEETZ

212. Penn State incorporates paragraphs 1 through 181, *supra,* as if set forth here in full.

213. For the reasons set forth in paragraphs 287-356, *infra*, which are incorporated by reference here as if set forth in full, Penn State denies as untrue the allegations of paragraph 213.

214. Penn State admits that the Separation Agreement, exclusive of the page containing the signature of Penn State representative Steve Garban, is attached as Exhibit A to the Amended Complaint.

215. The Separation Agreement, which is a written document, speaks for itself. The operative section of the Separation Agreement, paragraph 13, provides in full: "The University will not, and will use reasonable efforts to cause the members of the Board of Trustees not to, make any negative comments about Dr. Spanier to the media, to their professional colleagues or to any other members of the public, unless required by law or to comply with legal obligations

and/or to provide truthful information in connection with ongoing or forthcoming investigations." Penn State denies any allegation of paragraph 215 that is different from the language used in that document.

216. Penn State incorporates paragraph 215, *supra,* by reference as if set forth here in full.

217. Penn State denies as untrue the allegations of paragraph 217.

218. Penn State admits that it organized and sponsored press conferences on July 12, 2012, and July 13, 2012, and admits that President Erickson, and then-Trustees Kenneth Frazier and Peetz spoke at those press conferences. Penn State denies that President Erickson made any negative comments about Dr. Spanier in either of those press conferences (indeed, paragraph 218 of the Amended Complaint does not identify any allegedly negative comment made by Dr. Erickson in either press conference). Answering further, Penn State responds that the transcripts of those press conferences are written documents that speak for themselves, and denies any allegation of paragraph 218 that is different from the language used in those transcripts. Answering further, Penn State responds that the remarks attributed to Frazier and Peetz in paragraph 218 do not constitute breaches of section 13 of the Separation Agreement because: (a) Penn State used reasonable efforts to cause Frazier and Peetz not to make negative public comments about Dr. Spanier in those press conferences, unless required by law or to comply with legal obligations and/or to provide truthful information in connection with ongoing or forthcoming investigations"; (b) the statements of Frazier and Peetz described in paragraph 218, when considered in context, are not "negative about" Dr. Spanier; (c) the statements of Frazier and Peetz described in paragraph 218 are non-actionable expressions of opinion; and/or (d) the

statements of Frazier and Peetz described in paragraph 218, when considered in context, were truthful statements made in connection with one or more ongoing or forthcoming investigations; and/or (e) Frazier and Peetz made those comments in order as required by law and/or to comply with legal obligations, including the fiduciary duties they owed the University as members of its Board of Trustees. Answering further, Penn State incorporates by reference paragraphs 136, 137, 138, 144, 145, 146, 147 148 and 149, *supra,* as if set forth here in full.

219. Penn State admits that, on July 12, 2012, it published a press release on its website, a true and correct copy of which is attached to the Amended Complaint as Exhibit B. That press release speaks for itself, and Penn State denies any allegations of paragraph 219 that is different from the language used in that press release. Penn State denies that the statements made in that press release constitute a breach of the Separation Agreement, because: (a) the press release refers exclusively to findings and conclusions set forth in the Freeh Report and does not contain any independent statement by the University about Dr. Spanier; (b) in referring to the Freeh Report, the press release does not refer to Dr. Spanier by name; (c) the statements described in paragraph 219, when taken in context, are not "negative about" Dr. Spanier, (d) the statements described in paragraph 219 are non-actionable expressions of opinion; (e) the statements described in paragraph 219 were required by law and/or to comply with legal obligations, including the fiduciary duties owed by the Trustees and University officials; and/or (f) the statements described in paragraph 219 were truthful statements made in connection with one or more ongoing or forthcoming investigations.

220. Penn State incorporates by reference paragraph 219, *supra,* as if set forth here in full. Penn State lacks independent knowledge about Dr. Spanier's knowledge and conduct, and therefore denies each and every allegation of paragraph 220.

221. Penn State admits that the comments by Board members in paragraph 218 were made "voluntarily," in the sense that they were not the product of coercion or duress. Penn State denies as untrue each and every other allegation of paragraph 221. Answering further, Penn State incorporates paragraph 218, *supra,* as if set forth here in full.

222. Penn State admits that it "knowingly" published the July 12, 2012 press release. Answering further, Penn State incorporates paragraph 219, *supra,* as if set forth here in full, and denies as untrue each and every remaining allegation of paragraph 222.

223. Penn State denies as untrue each and every allegation of paragraph 223. Answering further, Penn State incorporates paragraphs 218 and 219, *supra,* as if set forth here in full.

224. For the reasons set forth in paragraphs 287-356, *infra,* Penn State denies as untrue the allegations of paragraph 224.

225. Penn State denies as untrue each and every allegation in paragraph 225, including but not limited to the allegations that Penn State breached the Separation Agreement and that Penn State caused Dr. Spanier to suffer any cognizable damages. Answering further, any reputational damage, lost employment opportunities and other damages Dr. Spanier claims to have suffered were the result of, *inter alia,* the Sandusky-related emails he sent or received in 1998 and 2001, the serious criminal charges that were brought against him, the state grand jury's detailed and public description of his alleged crimes, his own public statements and interviews,

and the negative press coverage triggered by all of the above, not by any conduct of the University or its Trustees.

COUNT II: BREACH OF CONTRACT FOR NEGATIVE AND UNTRUE COMMENTS OF TRUSTEE KEITH MASSER

226. Penn State incorporates paragraphs 1 through 181 and 212 through 225, *supra*, as if set forth here in full.

227. Penn State incorporates paragraph 213, *supra*, as if set forth here in full.

228. Penn State incorporates paragraph 214, *supra,* as if set forth here in full.

229. Penn State incorporates paragraph 215, *supra,* as if set forth here in full.

230. Penn State incorporates paragraph 216, *supra,* as if set forth here in full.

231. Penn State denies as untrue the allegations of paragraph 231.

232. Penn State denies as untrue each and every allegation of paragraph 232 for the reasons set forth in paragraphs 233 through 238, *infra,* which are incorporated as if set forth here in full.

233. Penn State admits that the Associated Press published a story on June 16, 2012, but, due to the poor quality of Exhibit C to the Amended Complaint, Penn State is unable to admit or deny whether it is a true and correct copy of that story, and therefore denies that allegations. Penn State lacks information sufficient to admit or deny that the quotation in that story the Associated Press attributed to Trustee Masser accurately reflect his remarks, and therefore denies that allegation.

234. Penn State denies each and every allegation of paragraph 234. Answering further, Penn State responds that, even if the statement the Associated Press attributes to Trustee Masser

accurately reflects Trustee Masser's remarks, it does not constitute a breach of section 13 of the Separation Agreement because: (a) when considered in context, it is not a "negative comment" about Dr. Spanier; (b) it is a non-actionable statement of opinion; (c) Penn State took reasonable efforts to cause Trustee Masser not to make negative public comments about Dr. Spanier, unless required by law or to comply with legal obligations and/or to provide truthful information in connection with ongoing or forthcoming investigations; (d) the statement attributed to Trustee Masser, when considered in context, was a truthful statement made in connection with one or more ongoing or forthcoming investigations; and/or (e) Trustee Masser made that statement as required by law and/or in order to comply with legal obligations, including the fiduciary duties he owed the University as a member of its Board of Trustees.

235. Penn State denies as untrue the allegations in the first sentence of paragraph 235 for the reasons set forth in paragraph 234, *supra,* which is incorporated by reference as if set forth here in full. Penn State lacks independent knowledge of Dr. Spanier's knowledge and conduct, and therefore denies the allegations of the second sentence of paragraph 235.

236. Penn State admits that, if Trustee Masser made the statement the Associated Press attributes to him, he did so "voluntarily," in the sense that the statement was not the product or duress or coercion. Penn State denies the second sentence of paragraph 236 for the reasons set forth in paragraph 234, *supra,* which is incorporated as if set forth here in full.

237. Penn State incorporates paragraph 224, *supra,* as if set forth here in full.

238. Penn State denies as untrue each and every allegation in paragraph 238, including but not limited to the allegations that Penn State breached the Separation Agreement and that Penn State caused Dr. Spanier to suffer any cognizable damages. . Answering further, any

reputational damage, lost employment opportunities, or other damages Dr. Spanier claims to have suffered were the result of, *inter alia*, the Sandusky-related emails he sent or received in 1998 and 2001, the serious criminal charges that were brought against him, the state grand jury's detailed and public description of his alleged crimes, his own public statements and interviews, and the negative press coverage triggered by all of the above, not by any conduct of the University or its Trustees.

COUNT III: BREACH OF CONTRACT FOR NEGATIVE AND UNTRUE COMMENTS OF TRUSTEES TO THE NEW YORK TIMES

239. Penn State incorporates paragraphs 1 through 181 and 212 through 238, *supra*, as if set forth here in full.

240. Penn State incorporates paragraph 213, *supra*, as if set forth here in full.

241. Penn State incorporates paragraph 214, *supra,* as if set forth here in full.

242. Penn State incorporates paragraph 215, *supra,* as if set forth here in full.

243. Penn State incorporates paragraph 216, *supra,* as if set forth here in full.

244. Penn State denies as untrue the allegations in paragraph 244.

245. Penn State admits that a true and correct copy of a story the New York Times published on January 18, 2012, is attached to the Complaint as Exhibit D. Penn State denies that the Separation Agreement required it to use reasonable efforts to cause members of its Board of Trustees not to meet with reporters for the New York Times in January 2012. Penn State denies that it breached section 13 of the Separation Agreement in connection with the interviews its Trustees gave to those reporters, for all of the reasons set forth in paragraph 246, *infra,* which is incorporated as if set forth here in full.

246. Penn State admits that members of the University's Board of Trustees gave pre-planned, in-person group interviews with reporters for the New York Times in New Jersey on January 18, 2012. Penn State lacks information sufficient to admit or deny the allegations that the quotations in that story that are attributed to members of the Board accurately reflect those individuals' remarks, and therefore denies those allegations. Answering further, Penn State responds that many of the statements described in paragraph 246 are the reporters' impressions, generalizations, and characterizations of statements allegedly made by members of the Board that are not attributed (by quotation or otherwise) to any particular Trustee. Penn State denies that section 13 of the Separation Agreement requires it to use reasonable efforts to cause third parties (other than members of its Board of Trustees under certain enumerated circumstances) not to make negative public comments about Dr. Spanier, and, in particular, Penn State denies that section 13 of the Separation Agreement required it to make reasonable efforts to cause reporters for the New York Times not to make negative comments about Dr. Spanier. Furthermore, Penn State responds that, even if the statements that are directly attributed to individual Trustees in the January 18, 2012, New York Times article accurately reflect those individuals' remarks, they do not constitute a breach of the Separation Agreement because: (a) the University made reasonable efforts to cause its Trustees not to make negative statements about Dr. Spanier in the press conference described in the article , unless required by law or to comply with legal obligations and/or to provide truthful information in connection with ongoing or forthcoming investigations; (b) the statements, when considered in context, are not "negative comments" about Dr. Spanier; (c) the statements are non-actionable expressions of opinion; (d) the statements were truthful statements made in connection with one or more ongoing or

forthcoming investigations; and/or (d) the Trustees made those comments as required by law and/or in order to comply with their legal obligations, including the fiduciary duties they owed the University as members of its Board of Trustees. Answering further, Penn State incorporates by reference paragraphs 150, 151, and 152, *supra.*

247. Penn State incorporates by reference paragraph 151, *supra,* as if set forth here in full.

248. Penn State denies each and every allegation of paragraph 248, for the reasons set forth in paragraphs 150, 151, 152, and 246, *supra,* which are incorporated as if set forth here in full.

249. Penn State incorporates paragraphs 150, 151, 152, 160, and 246, *supra,* as if set forth here in full.

250. Penn State incorporates paragraph 224, *supra,* as if set forth here in full.

251. Penn State denies as untrue each and every allegation in paragraph 251, including but not limited to the allegations that Penn State breached the Separation Agreement and that Penn State caused Dr. Spanier to suffer any cognizable damages. Answering further, any reputational damage, lost employment opportunities, or other damages Dr. Spanier claims to have lost were the result of, *inter alia*, the Sandusky-related emails he sent or received in 1998 and 2001, the serious criminal charges that were brought against him, the state grand jury's detailed and public description of his alleged crimes, his own public statements and interviews, and the negative press coverage triggered by all of the above, not by any conduct of the University or its Trustees.

COUNT IV: BREACH OF CONTRACT FOR FAILURE TO PROVIDE ADMINISTRATIVE SUPPORT

252. Penn State incorporates paragraphs 1 through 181 and 212 through 251, *supra*, as if set forth here in full.

253. Penn State incorporates paragraph 213, *supra*, as if set forth here in full.

254. Penn State incorporates paragraph 214, *supra,* as if set forth here in full.

255. The Separation Agreement, which is a written document, speaks for itself. Penn State denies any allegation of paragraph 255 that is different from the language used in that document.

256. Penn State denies as untrue the allegations of paragraph 256.

257. Penn State incorporates paragraphs 170, 171, 172, 177, 178, 179, 180, and 181, as if set forth here in full.

258. Penn State denies as untrue the allegations of paragraph 418. Answering further, Penn State incorporates paragraphs 170, 171, 172, 177, 178, 179, 180, and 181.

259. Penn State admits that it has not provided Dr. Spanier with an office or a staff assistant, but denies that this conduct constitutes a breach of the Separation Agreement. Penn State denies as untrue any remaining allegations of paragraph 259.

260. Penn State incorporates paragraph 224, *supra,* as if set forth here in full.

261. Penn State denies as untrue each and every allegation in paragraph 261, including but not limited to the allegations that Penn State breached the Separation Agreement and that Penn State caused Dr. Spanier to suffer any cognizable damages.. Answering further, Penn State responds that it has continued to pay Dr. Spanier the sums due him under the Separation

Agreement despite the fact that he is not actively working as a tenured University Professor. Any damages Dr. Spanier claims to have suffered were the result of, *inter alia*, the Sandusky-related emails he sent or received in 1998 and 2001, the serious criminal charges that were brought against him, the state grand jury's detailed and public description of his alleged crimes, his own public statements and interviews, and the negative press coverage triggered by all of the above, not by any conduct of the University or its Trustees.

COUNT V: BREACH OF CONTRACT FOR FAILURE TO PAY LEGAL FEES AND EXPENSES

262. Penn State has filed a preliminary objection to Count V. No answer is required.

263. Penn State has filed a preliminary objection to Count V. No answer is required.

264. Penn State has filed a preliminary objection to Count V. No answer is required..

265. Penn State has filed a preliminary objection to Count V. No answer is required.

266. Penn State has filed a preliminary objection to Count V. No answer is required.

267. Penn State has filed a preliminary objection to Count V. No answer is required.

268. Penn State has filed a preliminary objection to Count V. No answer is required.

269. Penn State has filed a preliminary objection to Count V. No answer is required.

270. Penn State has filed a preliminary objection to Count V. No answer is required.

271. Penn State has filed a preliminary objection to Count V. No answer is required.

272. Penn State has filed a preliminary objection to Count V. No answer is required.

273. Penn State has filed a preliminary objection to Count V. No answer is required.

274. Penn State has filed a preliminary objection to Count V. No answer is required.

275. Penn State has filed a preliminary objection to Count V. No answer is required.

276. Penn State has filed a preliminary objection to Count V. No answer is required.

277. Penn State has filed a preliminary objection to Count V. No answer is required.

278. Penn State has filed a preliminary objection to Count V. No answer is required.

279. Penn State has filed a preliminary objection to Count V. No answer is required.

280. Penn State has filed a preliminary objection to Count V. No answer is required.

281. Penn State has filed a preliminary objection to Count V. No answer is required.

282. Penn State has filed a preliminary objection to Count V. No answer is required.

283. Penn State has filed a preliminary objection to Count V. No answer is required.

284. Penn State has filed a preliminary objection to Count V. No answer is required.

PRAYER FOR RELIEF

285. The Pennsylvania State University respectfully requests that: (a) Counts I, II, III, and IV be dismissed; (b) Dr. Spanier be ordered to amend Count V to plead with more specificity, as set forth in the accompanying preliminary objection; (c) judgment be entered in its favor and against plaintiff Graham B. Spanier on Counts I, II, III, and IV of the Amended Complaint; and (d) the Court award such other and further relief as may be just and proper.

JURY TRIAL DEMAND

286. No answer to paragraph 286 is required.

NEW MATTER

287. Dr. Spanier was President of the University for sixteen years -- from 1995 to November 9, 2011. Dr. Spanier also served as a voting member of the University's Board of Trustees during that same period. Following his termination from the presidency, Dr. Spanier has remained a tenured member of the University's faculty.

288. Dr. Spanier owed the University fiduciary duties throughout this time. These duties included the duty to act with the utmost good faith and loyalty for the furtherance and advancement of the University's interests. Dr. Spanier's fiduciary duties also included the duty to speak, namely, the duty to disclose to the University facts material to the University's decision-making.

289. The University has reposed trust, dependence, and confidence in Dr. Spanier while he served as the University's President, Trustee, and faculty member, and Dr. Spanier stood in a confidential relationship with the University throughout that period.

290. Dr. Spanier was required, at all relevant times, to act in utmost good faith and with due regard of the University's interests in his dealings with the University, and to refrain from using his position to the University's detriment and his own advantage.

291. The 2010 Employment Agreement required Dr. Spanier "to perform such duties and responsibilities that are consistent with his position as President of the University under the Corporate Charter, the Corporate Bylaws, and the Standing Orders of the Board of Trustees," and he was required to devote his "skill and efforts to the faithful performance of the duties for the University." A true and correct copy of the 2010 Employment Agreement is attached hereto as Exhibit 1.

292. Pursuant to Article 7, Section (2) of the University's Bylaws in effect in 2011, Dr. Spanier also was held "to a strict rule of honest and fair dealings" between himself and the University." In that regard, he was obliged not to use his "positions, or knowledge gained therefrom, in such a way that a conflict of interest might arise" between his interests and the University's interests, and he was obliged to report any potential conflict of interest to an

appropriate superior officer. A true and correct copy of those Bylaws is attached hereto as Exhibit 2.

293. During and prior to the negotiation of the Separation Agreement described *infra,* in November 2011, and due to his fiduciary relationship with the University, and especially in light of his 2011 knowledge of the grand jury investigation of Sandusky, Dr. Spanier had the affirmative duty and obligation to disclose to the University facts material to the University's decision-making, including the duty to accurately and completely disclose facts regarding the state of his knowledge about allegations and investigations involving Sandusky, and the duty not to use the state of his knowledge about those matters to his advantage and to the University's detriment.

294. At no time after obtaining his 2011 knowledge of the grand jury investigation of Sandusky or during the negotiation of the terms of the Separation Agreement did Dr. Spanier disclose to the University the contents of emails either sent to or received by him regarding: (1) a 1998 allegation of misconduct by Sandusky with a child on University property, into which government officials and University police had conducted an investigation ("the 1998 Incident"); and (2) Sandusky having been observed showering with a minor boy on Penn State property (the "2001 Incident").

295. Dr. Spanier's 2010 Employment Agreement describes three ways in which Dr. Spanier's employment as President of the University could end (other than by death or permanent disability): (1) by resignation (§ H.3); (2) by a termination for cause (§ H.1); or (3) by termination without cause (§ H.2).

296. If Dr. Spanier had tendered, and if the University had accepted, a resignation from the presidency, Dr. Spanier would not have been entitled "to any further compensation or benefits as President, except as set forth in the University's various benefit plans with respect to vesting and rights after termination of employment." *See* Exhibit 1, 2010 Employment Agreement, § H.3.

297. Similarly, in the event Dr. Spanier were terminated from the presidency For Cause, his employment as President would have "cease[d] immediately," and he would not have been "entitled to any further compensation or benefits as President, except as set forth in the University's various benefit plans with respect to vesting and rights after termination of employment," nor would he have been "entitled to continue employment as a member of the University faculty, including the Post-Presidency Faculty Position set forth in Section E.6 of this Agreement." *Id.*, § H(1).

298. "Cause" is defined in the 2010 Employment Agreement to mean: "conduct reasonably determined by a two-thirds majority of the Board of Trustees to be: (a) gross negligence or willful malfeasance by Dr. Spanier in the performance of his Duties that materially harm the University; . . . ." *Id.*, § H.

299. On November 4, 2011 the Attorney General of the Commonwealth of Pennsylvania filed criminal charges against Sandusky that included multiple counts of involuntary deviate sexual intercourse, aggravated indecent assault, corruption of minors, unlawful contact with minors, and endangering the welfare of minors. Several of the offenses were alleged to have been committed on the University's premises, at a time when Sandusky was

either an employee of the University or had emeritus status that permitted him to have unrestricted access to the University's facilities.

300. That same day, the Attorney General issued a presentment that contained criminal charges against Curley and Schultz for failing to report allegations that Sandusky had engaged in child abuse on the University's premises to law enforcement or child protection authorities and for committing perjury during their grand jury testimony about those allegations.

301. Dr. Spanier knew or should have known that the lodging of these serious criminal charges against former high-ranking University officials would have wide-ranging implications for the University. The issuance of the presentments in 2011 heightened Spanier's fiduciary duties to disclose to the University the state of his knowledge about the information contained in the 2012 Discovered Emails (discussed *infra,* ¶ 307).

302. On November 9, 2011, the University and Dr. Spanier mutually agreed that his position as President would be immediately terminated.

303. The parties then proceeded to negotiate the terms of Spanier's separation from the University. On November 15, 2011, the parties entered into a Separation Agreement in which it was agreed, *inter alia*, that the termination would be deemed to be "Without Cause," pursuant to section H.2 of the 2010 Employment Agreement. A true and correct copy of the Separation Agreement is attached hereto as Exhibit 3.

304. Dr. Spanier remained as a tenured University faculty member following his termination from the Presidency on November 9, 2011. As such, he continued to owe the University the duties described *supra,* at all relevant times during the negotiation of the Separation Agreement.

305. The Separation Agreement provides Dr. Spanier with very significant financial and non-financial benefits. Those benefits include, but are not limited to:

- a lump-sum payment equal to Dr. Spanier's current base salary for eighteen months (§ 3(a));
- a "Retirement Plan Equivalency payment" in the gross amount of $1,248,204.60 (§ 3(b));
- an agreement by the University to contribute to a retirement annuity for Dr. Spanier (§ 3(c));
- a one-year post-presidency transition period during which Dr. Spanier would be paid $700,000 (§ 3(d);
- an agreement by the University to keep Dr. Spanier as a tenured member of the faculty for five years, with an annual salary of $600,000 (§ 3(e));
- an agreement by the University to remise, release, and discharge Dr. Spanier from claims the University has or may have for acts, omissions, practices or events relating to his position as President (§ 8); and
- an agreement by the University not to make negative public comments about, and to make reasonable efforts to cause its Trustees not to make negative, untruthful public comments about, Dr. Spanier except in specific enumerated circumstances (§ 13).

306. In connection with the negotiation of the Separation Agreement in November 2011, Dr. Spanier did not disclose the full state of his knowledge of allegations and investigations involving Sandusky, nor were those facts otherwise known to the University at

that time. To the contrary, Dr. Spanier used his knowledge of those matters to the University's detriment and his own advantage in negotiating the terms of his separation.

307. In 2012, FSS located emails, including emails that were sent to or received from Dr. Spanier, regarding the 1998 and 2001 Incidents (collectively, the "2012 Discovered Emails").

308. The 1998 Incident and the 2001 Incident were described in the November 4, 2011, presentment of criminal charges against Sandusky, Curley, and Schultz. The presentment did not, however, set forth the information contained in the 2012 Discovered Emails.

309. Dr. Spanier did not, either prior to or during the negotiations for the Separation Agreement in November 2011, provide the University with the information contained in the 2012 Discovered Emails or the full state of his knowledge about the 1998 and 2001 Incidents.

310. It was not until the 2012 Discovered Emails that the University first learned of the information reflected in those documents regarding the 1998 Incident and the 2001 Incident.

311. In light of Dr. Spanier's 2011 knowledge of the grand jury investigation of Sandusky, if the information set forth in the 2012 Discovered Emails had been disclosed by Dr. Spanier or otherwise made known to Penn State at the time it negotiated the terms on which Dr. Spanier would cease serving as President of the University, Penn State would have terminated Dr. Spanier on terms materially different than those set forth in the Separation Agreement.

312. Dr. Spanier's failure to divulge that information to the University, especially in light of his 2011 knowledge of the grand jury investigation, was a breach of his fiduciary duties as President, Trustee and faculty member, and a breach of his contractual duties under the 2010 Employment Agreement.

313. In 2012, a presentment was lodged against Dr. Spanier in which he was formally charged with crimes, including felonies, in a court of law in connection with conduct he allegedly engaged in while President of the University, namely, his knowledge of, and grand jury testimony about, the 1998 and 2001 Incidents.

314. Since November 9, 2011, the University has bestowed substantial benefits upon Dr. Spanier pursuant to the provisions of the 2010 Employment Agreement and the Separation Agreement.

FIRST AFFIRMATIVE DEFENSE:
UNILATERAL MISTAKE OF FACT

315. Penn State incorporates paragraphs 1 through 314, *supra*, as if set forth here in full.

316. When Penn State entered into the Separation Agreement, it assumed and believed that, in light of his 2011 knowledge of the grand jury investigation of Sandusky, Dr. Spanier had fulfilled his fiduciary obligations to disclose, accurately and completely, the state of his knowledge about the 1998 and 2001 Incidents.

317. Penn State's assumption and belief in that regard had a material effect on Penn State's decision to enter into the Separation Agreement, including but not limited to its decision to agree to sections 3, 4, 8, and 13 thereof.

318. Based upon the 2012 Discovered Emails, Penn State believes that its assumption and belief was mistaken.

319. Dr. Spanier had reason to know that Penn State was entering into the Separation Agreement, including agreeing to sections 3, 4, 8, and 13 thereof, as a result of this mistaken assumption and belief of a material fact.

320. This unilateral mistake of material fact entitles Penn State to void the Separation Agreement, or, in the alternative, to void sections 3, 4, 8, and 13 thereof.

SECOND AFFIRMATIVE DEFENSE:
RESCISSION

321. Penn State incorporates paragraphs 1 through 320, *supra*, as if set forth here in full.

322. Dr. Spanier had fiduciary duties to provide the University with material facts relevant to its decision to enter into the Separation Agreement and to refrain from using the state of his knowledge about the 1998 and 2001 Incidents to the University's detriment and his own advantage, especially in light of his 2011 knowledge of the grand jury investigation of Sandusky.

323. The University entered into the Separation Agreement in justifiable reliance on Dr. Spanier having fulfilled those duties. Fulfillment of those duties was material to the University's decision to enter into the Separation Agreement.

324. At no time prior to entering into the Separation Agreement did Dr. Spanier provide the University with the information described in the 2012 Discovered Emails or the full state of his knowledge about the 1998 and 2001 Incidents.

325. Dr. Spanier's failure to provide that information to the University constituted a breach of the fiduciary duties Dr. Spanier owed the University and a misuse of the confidential relationship he had with the University.

326. Penn State would have terminated Dr. Spanier on different terms had it been aware of the information Dr. Spanier had failed to disclose to it. In particular, Penn State would not have agreed to the provisions of the Separation Agreement that form the basis of Dr. Spanier's claims against it in this litigation had it been aware of the information set forth in the 2012 Discovered Emails or the full state of Dr. Spanier's knowledge about the 1998 and 2001 Incidents, especially in light of Dr. Spanier's 2011 knowledge of the grand jury investigation of Sandusky.

327. Dr. Spanier had reason to know that Penn State was entering into the Separation Agreement, including agreeing to sections 3, 4, 8, and 13 thereof, as the result of its mistaken belief that he had not failed to disclose one or more material facts.

328. Penn State has been damaged by Dr. Spanier's failures to disclose.

329. The Separation Agreement, including but not limited to sections 3, 4, 8 and 13, should be rescinded.

THIRD AFFIRMATIVE DEFENSE:
ESTOPPEL

330. Penn State incorporates paragraphs 1-329, *supra*, as if set forth here in full.

331. Dr. Spanier had fiduciary duties to provide the University with material facts relevant to its decision to enter into the Separation Agreement and to refrain from using the state of his knowledge about the 1998 and 2001 Incidents to the University's detriment and his own advantage, especially in light of his 2011 knowledge of the grand jury investigation of Sandusky.

332. The University entered into the Separation Agreement in reliance on Dr. Spanier having fulfilled those duties. Fulfillment of those duties was material to the University's decision to enter into the Separation Agreement.

333. Because Dr. Spanier failed to provide the University with the information contained in the 2012 Discovered Emails or the full state of his knowledge about the 1998 and 2001 Incidents at any time prior to the execution of the Separation Agreement, despite having fiduciary duties to do so, Dr. Spanier should be estopped from enforcing the Separation Agreement, including but not limited to sections 3, 4, 8, and 13 thereof, against the University.

FOURTH AFFIRMATIVE DEFENSE:
UNJUST ENRICHMENT

334. Penn State incorporates paragraphs 1-333, *supra*, as if set forth here in full.

335. Dr. Spanier had affirmative fiduciary duties to provide the University with all material facts relevant to its decision to enter into the Separation Agreement.

336. The University entered into the Separation Agreement in reliance on Dr. Spanier having fulfilled those fiduciary duties. Fulfillment of those fiduciary duties was material to the University's decision to enter into the Separation Agreement.

337. Dr. Spanier failed to fulfill those fiduciary duties.

338. As described *supra*, ¶ 305, the Separation Agreement provided Dr. Spanier with significant monetary and non-monetary benefits.

339. For the reasons set forth in ¶¶ 287-335, *supra*, which are incorporated as if set forth here in full, the Separation Agreement should be declared to be void and Dr. Spanier should be estopped from enforcing it, in whole or in part.

340. Because Dr. Spanier failed to inform the University of the information contained in the 2012 Discovered Emails or the full state of his knowledge about the 1998 and 2001 Incidents at any time prior to the execution of the Separation Agreement, despite having fiduciary duties to do so, especially in light of his 2011 knowledge of the grand jury investigation of Sandusky, Dr. Spanier would be unjustly enriched if he were permitted to retain the benefits of the Separation Agreement, including but not limited to the benefits set forth in sections 3, 4, 8, and 13 thereof.

FIFTH AFFIRMATIVE DEFENSE:
NOT LIABLE FOR COMMENTS MADE BY REPORTERS

341. Penn State incorporates paragraphs 1-340, *supra*, as if set forth here in full.

342. Count III of the Amended Complaint is barred, in whole or in part, because section 13 of the Separation Agreement does not require Penn State to make efforts to cause reporters not to make negative public comments about Dr. Spanier, and because Penn State is not liable for any such comments any such reporter made in the New York Times article.

SIXTH AFFIRMATIVE DEFENSE:
UNIVERSITY MADE REASONABLE EFFORTS

343. Penn State incorporates paragraphs 1-342, *supra*, as if set forth here in full.

344. Counts I, II, and III of the Amended Complaint are barred, in whole or in part, because the University made reasonable efforts to cause members of its Board of Trustees not to make negative public statements about Dr. Spanier unless required by law or to comply with legal obligations and/or to provide truthful information in connection with ongoing or forthcoming investigations.

SEVENTH AFFIRMATIVE DEFENSE:
TRUTHFUL STATEMENTS MADE IN CONNECTION WITH ONGOING OR FORTHCOMING INVESTIGATIONS

345. Penn State incorporates paragraphs 1-344, *supra*, as if set forth here in full.

346. Counts I, II, and III of the Amended Complaint are barred, in whole or in part, because the public comments described therein provided truthful information in connection with ongoing or forthcoming investigations.

EIGHTH AFFIRMATIVE DEFENSE:
STATEMENTS REQUIRED BY LAW AND/OR TO COMPLY WITH LEGAL OBLIGATIONS

347. Penn State incorporates paragraphs 1-346, *supra*, as if set forth here in full.

348. Counts I, II, and III of the Amended Complaint are barred, in whole or in part, because the public comments described therein were required by law and/or were made to comply with legal obligations, including fiduciary duties the speakers owed the University.

NINTH AFFIRMATIVE DEFENSE:
COMMENTS NOT NEGATIVE

349. Penn State incorporates paragraphs 1-348, *supra*, as if set forth here in full.

350. Counts I, II, and III of the Amended Complaint are barred, in whole or in part, because the public comments described therein were not reasonably intended or understood, in context and under the circumstances, to be negative statements about Dr. Spanier.

TENTH AFFIRMATIVE DEFENSE:
EXPRESSIONS OF OPINION

351. Penn State incorporates paragraphs 1-350, *supra*, as if set forth here in full.

352. Counts I, II, and III of the Amended Complaint are barred, in whole or in part, because the public comments described therein were non-actionable expressions of opinion.

ELEVENTH AFFIRMATIVE DEFENSE:
VOID AS AGAINST PUBLIC POLICY

353. Penn State incorporates paragraphs 1-352, *supra*, as if set forth here in full.

354. To the extent section 13 of the Separation Agreement is construed as barring the University or its Trustees, when dealing with a matter of public importance, namely, the many Sandusky-related inquiries and investigations, from making good-faith public statements about Dr. Spanier's conduct or role in those matters, it is void as against public policy.

TWELFTH AFFIRMATIVE DEFENSE:
UNCONSCIONABILITY

355. Penn State incorporates paragraphs 1-354, *supra*, as if set forth here in full.

356. To the extent section 13 of the Separation Agreement is construed as barring the University or its Trustees, when dealing with a matter of public importance, namely, the many Sandusky-related inquiries and investigations, from making good-faith public statements about Dr. Spanier's conduct or role in those matters, it is unconscionable and unenforceable.

WHEREFORE, for any and all of the foregoing reasons, The Pennsylvania State University respectfully requests that Counts I, II, and III, and IV of the First Amended Complaint be dismissed with prejudice and that judgment be entered in its favor and against Graham B. Spanier, and that the Court award such other and further relief as may be just and appropriate.

COUNTERCLAIMS

The Pennsylvania State University, by and through its undersigned counsel, brings the following counterclaims against Graham B. Spanier.

FIRST COUNTERCLAIM
Breach of the 2010 Employment Agreement

357. Penn State incorporates the averments set forth in its New Matter, paragraphs 287 to 356, *supra,* as if set forth here in full.

358. Under the terms of the 2010 Employment Agreement, Dr. Spanier was obligated "to perform such duties and responsibilities that are consistent with his position as President of the University under the Corporate Charter, the Corporate Bylaws, and the Standing Orders of the Board of Trustees" and he was required to devote his "skill and efforts to the faithful performance of the duties for the University." *See* Exhibit 1, 2010 Employment Agreement, § B.

359. Pursuant to the terms of the Employment Agreement, Dr. Spanier had duties to act with the utmost good faith, loyalty, and devotion to the interests of Penn State and at all times and under all circumstances to disclose to Penn State all facts material to the University's decision-making.

360. At the time he was negotiating the terms of the Separation Agreement, as well as prior thereto and thereafter, and especially in light of his 2011 knowledge about the grand jury investigation into Sandusky, Dr. Spanier had affirmative duties to accurately and fully disclose to the University everything he knew about his, or the University's, awareness and handling of reports of Sandusky's conduct with minors, including the information contained in the 2012 Discovered Emails.

361. At the time he was negotiating the terms of the Separation Agreement, as well as prior thereto and thereafter, Dr. Spanier failed to make a full and complete disclosure of the above-described information.

362. Dr. Spanier's failure to disclose such information constituted a material breach of the terms of the 2010 Employment Agreement.

363. Dr. Spanier's material breach of the 2010 Employment Agreement damaged the University in the amount of all payments and benefits it conferred on Dr. Spanier after November 9, 2011 pursuant to the terms of the 2010 Employment Agreement and/or the Separation Agreement.

364. The University is entitled to recoup, as damages for Dr. Spanier's breach of the 2010 Employment Agreement, all amounts paid to, or benefits conferred upon, him following his breach of that agreement.

365. The University is entitled, as relief for Dr. Spanier's breach of the 2010 Employment Agreement, to rescind the Separation Agreement and Dr. Spanier should be required to disgorge all sums of money and the value of all non-cash benefits he has received from the University under the terms of the 2010 Employment Agreement and the Separation Agreement from at least November 9, 2011 to the present.

SECOND COUNTERCLAIM
Breach of Fiduciary Duty

366. Penn State incorporates herein the averments in its New Matter, paragraphs 287 to 356, *supra,* as if set forth here in full.

367. As President, Trustee, and a member of the Penn State faculty, Dr. Spanier owed fiduciary duties to the University, including the duty to act with the utmost good faith, loyalty, and devotion to the interests of Penn State and at all times and under all circumstances to disclose to Penn State all facts material to the University's decision making.

368. At the time he was negotiating the terms of the Separation Agreement, as well as prior thereto and thereafter, and especially in light of his 2011 knowledge of the grand jury investigation of Sandusky, Dr. Spanier had affirmative duties to accurately and fully disclose to the University everything he knew about his, or the University's, awareness and handling of reports of Sandusky's conduct with minors, including the information contained in the 2012 Discovered Emails.

369. At the time he was negotiating the terms of the Separation Agreement, as well as prior thereto and thereafter, Dr. Spanier failed to make a full and complete disclosure of the above-described information.

370. Dr. Spanier's failure to disclose such information was a breach of his fiduciary duties.

371. Dr. Spanier's breach of his fiduciary duties damaged the University in the amount of all payments and benefits conferred upon him after November 9, 2011, pursuant to the terms of the 2010 Employment Agreement and/or the terms of the Separation Agreement.

372. The University is entitled to recoup, as damages for Dr. Spanier's breach of his fiduciary duties, all amounts paid to, or benefits conferred upon, him following his breach.

373. The University is entitled, as relief for Dr. Spanier's breach of his fiduciary duties, to rescind the Separation Agreement, and Dr. Spanier should be required to disgorge all sums of money and the value of all non-cash benefits he has received from the University under the terms of the 2010 Employment Agreement and the Separation Agreement from at least November 9, 2011 to the present.

THIRD COUNTERCLAIM
Unilateral Mistake of Fact

374. Penn State incorporates the averments set forth in its New Matter, paragraphs 287 to 356, *supra,* as if set forth here in full.

375. In entering into the Separation Agreement, Penn State reasonably believed in good faith that Spanier had fully disclosed to the University everything he knew about his, or the University's, awareness, and handling, of reports of Sandusky's conduct with minors, including the information set forth in the 2012 Discovered Emails.

376. At the time he was negotiating the terms of the Separation Agreement, as well as prior thereto and thereafter, and especially in light of his 2011 knowledge of the grand jury investigation of Sandusky, Dr. Spanier failed to make a full and complete disclosure of the above-described information.

377. Dr. Spanier knew, or should have known, that Penn State was mistaken in its belief that he had made full disclosure.

378. But for Penn State's unilateral mistake of fact, Penn State would not have entered into the Separation Agreement.

379. The University is entitled to rescind the Separation Agreement, and Dr. Spanier should be required to disgorge all sums of money and the value of all non-cash benefits he has received from the University under the terms of the Separation Agreement.

FOURTH COUNTERCLAIM
Rescission

380. Penn State incorporates the averments in its New Matter, paragraphs 287 to 356, *supra,* as if set forth here in full.

381. Dr. Spanier had fiduciary duties to provide the University with material facts relevant to its decision to enter into the Separation Agreement and to refrain from using the information contained in the 2012 Discovered Emails and the state of his knowledge about the 1998 and 2001 Incidents to the University's detriment and his own advantage, especially in light of his 2011 knowledge of the grand jury investigation of Sandusky.

382. The University entered into the Separation Agreement in justifiable reliance on Dr. Spanier having fulfilled those duties. Fulfillment of those duties was material to the University's decision to enter into the Separation Agreement.

383. At no time prior to entering into the Separation Agreement did Dr. Spanier provide the University with the information described in the 2012 Discovered Emails or the full state of his knowledge about the 1998 and 2001 Incidents.

384. Dr. Spanier's failure to provide that information to the University constituted a breach of the fiduciary duties Dr. Spanier owed the University and a misuse of the confidential relationship he had with the University.

385. Penn State would have terminated Dr. Spanier on different terms had it been aware of the information Dr. Spanier had failed to disclose to it. In particular, Penn State would not have agreed to the provisions of the Separation Agreement that form the basis of Dr. Spanier's claims against it in this litigation had it been aware of the information set forth in the 2012 Discovered Emails.

386. Dr. Spanier had reason to know that Penn State was entering into the Separation Agreement, including agreeing to sections 3, 4, 8, and 13 thereof, as the result of its mistaken belief that he had not failed to disclose one or more material facts.

387. Penn State has been damaged by Dr. Spanier's failures to disclose.

388. The University is entitled to rescind the Separation Agreement, including but not limited to sections 3, 4, 8 and 13, and Dr. Spanier should be required to disgorge all sums of money and the value of all non-cash benefits he has received from the University under the terms of the Separation Agreement.

FIFTH COUNTERCLAIM
Unjust Enrichment

389. Penn State incorporates the averments in its New Matter, paragraphs 287 to 356, *supra,* as if set forth here in full.

390. Dr. Spanier has received benefits under the 2010 Employment Agreement and the Separation Agreement. Given his breach of his contractual duties, his breach of his fiduciary duties, his failure to disclose material facts, and Penn State's unilateral mistake of fact, it would be unjust and inequitable for Dr. Spanier to be permitted to retain all or some of such benefits.

391. Dr. Spanier should therefore be required to disgorge all sums of money and the value of all non-cash benefits he has received from the University from at least November 9, 2011 to the present.

WHEREFORE, Penn State prays that this Court provide the following relief on its counterclaims:

(a) Damages for Dr. Spanier's breach of his contractual and fiduciary duties;

(b) Rescission of the Separation Agreement;

(c) Disgorgement of all payments and benefits Dr. Spanier has wrongfully obtained;

(d) Interest on all sums awarded to the extent provided by law;

(e) Costs and fees incurred by Penn State to the extent provided by law; and

(f) Further relief as this Court shall deem just and proper on the evidence to be presented to the Court.

Penn State demands a trial by jury on all of the Counterclaims so triable.

DATED this the 19th day of December, 2016.

Respectfully submitted,

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VERIFICATION

I, Thomas Poole, verify, based on my knowledge, information and belief, that the facts set forth in the foregoing Answer and New Matter to Counts I, II, III and IV of the First Amended Complaint; Counterclaim are true and correct. I submit this Verification subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement"), entered into by and between The Pennsylvania State University, the only land grant university chartered in the Commonwealth of Pennsylvania, and Graham B. Spanier, Ph.D., is to take effect July 1, 2010.

WITNESS

WHEREAS, Graham B. Spanier, Ph.D. ("Dr. Spanier" or the "President") has been employed by The Pennsylvania State University (the "University") as President of the University since September 1, 1995; and

WHEREAS, the University wishes to continue the employment of Dr. Spanier as President of the University in recognition of his extraordinary achievements, and Dr. Spanier wishes to continue to serve as the President and be its employee, subject to the terms and conditions of this Agreement; and

WHEREAS, The University desires to make further arrangements which will suitably recognize the extraordinary responsibilities and duties of Dr. Spanier and will reward him for his many unique accomplishments thus far during his tenure as President of the University; and

WHEREAS, both the University and Dr. Spanier intend this Agreement to supersede any and all prior agreements with respect to Dr. Spanier's employment relationship, with the exception of Section D.3 of the Employment Agreement effective July 1, 2007 (the "Prior Agreement"); and

WHEREAS, both the University and Dr. Spanier desire to set forth their respective rights

and obligations in this Agreement; and

WHEREAS, by Resolution of January 23, 1982, the Board of Trustees of the University (the "Board of Trustees") authorized the President of the Board of Trustees (the "President of the Board") to enter into employment agreements with certain senior employees in accordance with the terms of said Resolution; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. Term.

The University shall continue the employment of Dr. Spanier as its President for a term from July 1, 2010 through June 30, 2015 (the "Term"), except as provided in Section H ("Termination"). Dr. Spanier hereby accepts such employment upon the terms and conditions set forth in this Agreement.

B. Powers and Duties.

During the Term of this Agreement, Dr. Spanier shall serve as President and perform such duties and responsibilities that are consistent with his position as President of the University under the Corporate Charter, the Corporate Bylaws, and the Standing Orders of the Board of Trustees, as may be amended from time to time, or which may be assigned to him by or under the authority of the Board of Trustees consistent with his position as President of the University, including those duties as are set forth in the Resolution of the Board of Trustees adopted on June 11, 1970, as amended on November 19, 1971, May 30, 1975 and September 23, 1977, and as the same may be amended from time to time during the term of this Agreement (collectively, the

"Duties"). Dr. Spanier shall devote his full business time attention, skill and efforts to the faithful performance of the Duties for the University.

Dr. Spanier and the Board of Trustees acknowledge and agree that the Duties hereunder shall be limited to those duties customarily performed by presidents of universities comparable in size and mission to the University, such as educational leadership, faculty and community relations, budgeting, long range planning, fund raising, development, public relations, student services, recruitment and retention of personnel, and such other duties as may be authorized or directed, from time to time, by the Board.

Dr. Spanier shall serve as a member of the Board of Trustees of the University and as a corporate officer of the University so long as such service is provided for in the Corporate Charter or Bylaws of the University.

C. Compensation.

1. Annual Base Salary. As compensation for the services to be performed by Dr. Spanier pursuant to this Agreement and in accordance with industry norms, the University shall pay to Dr. Spanier an annualized base salary of $700,000 from July 1, 2010 through June 30, 2011 (the "Base Salary"), less applicable deductions. Any increases in Base Salary shall be based upon the President's performance during the preceding fiscal year in connection with the annual evaluation of his performance, set forth in Section D of this Agreement. During the Term of this Agreement, Dr. Spanier's Base Salary may be increased, but not decreased.

2. Signing Bonus. In consideration of executing this Agreement, Dr. Spanier shall receive a one-time signing bonus of $200,000 within sixty (60) days of the execution of this Agreement by both parties.

3. Retention Incentive. Beginning with the 2011-12 contract year, Dr. Spanier shall be eligible to receive an annual retention incentive provided that he completes service as President to the University through the end of each contract year (June 30). The amount of the retention incentive, if any, shall be at the sole discretion of the Compensation Council in accordance with the 1982 resolution of the Board of Trustees authorizing the Council regarding such compensation matters, but shall not exceed twenty percent (20%) of Dr. Spanier's then-current annual base salary. Any retention incentive awarded to Dr. Spanier shall be paid within sixty (60) days of the conclusion of the contract year to which it relates.

4. Retirement Contribution. In addition, the University shall contribute, at its normal Alternate Retirement Plan (the "Retirement Plan") contribution rate (currently 9.29%), to the purchase of an annuity contract within the meaning of Section 403(b) of the Internal Revenue Code and in accordance with the terms of the Retirement Plan as managed by TIAA-CREF. Further, in the event that:

a. limitations of the Internal Revenue Code do not permit the University to contribute on a tax-sheltered basis to the Retirement Plan at its normal contribution rate; or

b. less than fifteen (15%) percent of Dr. Spanier's Base Salary is contributed to Dr. Spanier's Retirement Plan, the University shall pay to Dr. Spanier, as current compensation, an amount equal to the difference between the amount actually contributed to the Retirement Plan and the greater of: (1) the amount that the University cannot contribute to the Retirement Plan because of

Internal Revenue Code limitations; or (2) fifteen (15%) percent of Dr. Spanier's Base Salary.

5. Retirement Plan Equivalency. The Retirement Plan Equivalency referenced in Section D.3 of the Prior Agreement shall continue during this Agreement. The Retirement Plan Equivalency shall be amended such that Dr. Spanier shall be required to remain available to perform services for the University pursuant to Sections B, E.5 and E.6 of this Agreement through June 30, 2017 to vest in the benefits of the plan. Dr. Spanier shall also become vested in the Retirement Plan Equivalency if his employment as President is earlier terminated without Cause, or his death or disability. Dr. Spanier shall not receive the benefits of the Retirement Plan Equivalency if his employment as President is terminated for Cause, or if he voluntarily resigns from his employment as President, or if following the conclusion of his service as President, his faculty appointment is terminated in accordance with the University's rules for tenured members of the faculty. A document separate and apart from this Agreement shall govern the five year extension of the Retirement Plan Equivalency to June 30, 2017.

D. Annual Evaluation.

No later than the week of the May 2011 meeting of the Board of Trustees, and each year thereafter, Dr. Spanier shall provide to the President of the Board of Trustees, the Vice President of the Board, the immediate past President of the Board and the Chairperson of the Committee on Finance and Physical Plant of the Board (the "Review Group") an assessment of his performance as President measured against the goals and objectives for the then-current fiscal year, as well as his proposed goals and objectives for the next fiscal year. The Review Group will review and provide appropriate feedback and direction with respect to Dr. Spanier's past

performance and future goals and objectives. To aid the Review Group in its annual evaluation, Dr. Spanier agrees to furnish to the President of the Board such additional oral or written reports as the Review Group may request.

E. Benefits and Reimbursements.

1. Standard Benefits. Dr. Spanier shall be eligible to participate in all of the employee benefit plans of the University applicable to senior executives.

2. Supplemental Life Insurance.

a. In addition to life insurance provided as a standard benefit in Section E.1, the University has provided a life insurance death benefit of $1,000,000 for Dr. Spanier since September 1, 1997. The death benefit of this life insurance policy has escalated, and shall continue to be escalated annually on each July 1 during the Term of this Agreement, by the percentage increase in the Consumer Price Index (CPI-U, All Items, for All Urban Consumers, 1984=100) by multiplying the amount of life insurance in force for the contract year then ending by the sum of: one (1), plus the cumulative percentage increase in the Consumer Price Index between July 1 of the prior year and June 30 of the current year. There will be no diminution of this life insurance benefit at the conclusion of the Term of this Agreement. Provided, however, CPI increases in the death benefit shall cease as of the conclusion of the Term of this Agreement. In all other respects,

this life insurance coverage shall be maintained in accordance with the terms and conditions of the University's plan of life insurance for its senior executives.

3. Supplemental Health Insurance. The University's policy relating to age and service eligibility requirements for continuation of health insurance coverage shall be waived for Dr. Spanier at the conclusion of his presidency.

4. Disability Coverage. In the event of Dr. Spanier's permanent disability during the Term of this Agreement, the University shall provide Dr. Spanier with disability coverage, having a total disability benefit of (a) not less than eighty percent (80%) of his Base Salary for the contract year in which he becomes disabled through the end of the Term of this Agreement, and (b) thereafter not less than sixty-five percent (65%) of his Base Salary for the contract year in which he becomes disabled until age 70. Any amounts received by Dr. Spanier under the terms of any long term disability plan applicable to senior executives shall be offset against the amounts payable to Dr. Spanier pursuant to the disability coverage provided in this Section E.4.

5. Professional Development and Post-Presidency Transition. Upon the completion of the Term of this Agreement (June 30, 2015) or if this Agreement is terminated without Cause, Dr. Spanier shall be entitled to a paid one year professional development and post-presidency transition period at the level of his then presidential Base Salary plus the benefits provided in Sections E.1, E.2, E.3 and E.4 of this Agreement. The post-presidency transition period shall commence immediately upon the completion of the Term, or the effective date of termination if this Agreement is terminated without Cause. During said period, Dr. Spanier shall

perform scholarly activities in preparation to assume active duties as a tenured member of the University's faculty and shall also be available to assist with various University efforts (such as fundraising and recruiting) as requested by the new President. As a condition of his eligibility for compensation and benefits under this Section E.5, Dr. Spanier shall refrain from performing any type of professional services for any other institution of higher education that will conflict with his duties with Penn State University. Notwithstanding the foregoing, any professional services performed by Dr. Spanier for a non-profit entity, government service, or for-profit boards that do not materially detract from his University responsibilities shall not be considered a conflict with his duties for the University. The Base Salary and benefits that Dr. Spanier receives under this Section E.5 shall not be reduced by the amounts he receives from other earnings. The terms of this Section E.5 shall survive the expiration of this Agreement.

6. Post-Presidency Faculty Position. Following his service as President, Dr. Spanier shall have the title of President Emeritus. In addition, Dr. Spanier shall continue to hold a tenured faculty position as a Professor in the Department of Human Development and Family Studies of the College of Health and Human Development of the University. He may continue to use his current academic title of Professor of Human Development and Family Studies, Sociology, Demography, and Family and Community Medicine. Upon the conclusion of Dr. Spanier's service as President, he may, at his option, elect to assume the title of University Professor. Dr. Spanier's Base Salary following his services as President shall be paid on a twelve month basis and shall be $600,000 annually. Dr. Spanier's compensation at this level shall be limited to five (5) years following the conclusion of his professional development transition period subsequent to the termination of his presidency on June 30, 2015 or the earlier

termination of his presidency without Cause. Dr. Spanier's employment as Professor subsequent to this period, including his eligibility for annual salary adjustments, shall be governed by the University's policies, rules and regulations applicable to other tenured members of the University faculty and not by this Agreement. Dr. Spanier's office location, academic responsibilities, and salary after the five year post-presidency period shall be determined in consultation with the Provost of the University.

The University shall provide Dr. Spanier with administrative support, including an office and a staff assistant to assist him with his responsibilities following the conclusion of his presidency. The terms of this Section E.6 shall survive the expiration of this Agreement.

7. Travel and Other Business Expenses. Dr. Spanier's reasonable travel and other business expenses incurred in his capacity as President of the University shall be paid on a cost reimbursement basis through the University's annual operating budget. When Dr. Spanier's spouse accompanies him on travel for University purposes, the University shall cover the costs of her reasonable travel expenses. The expenses of Dr. Spanier and his spouse shall be reviewed on an annual basis by the President of the Board of Trustees or his/her designee who does not report to the President.

8. Professional Memberships. The University shall pay the annual dues and membership fees for the President in professional associations of benefit to the University.

9. Automobile. The University shall continue to provide Dr. Spanier with a recent model automobile suitable for his role as President, to be owned or leased by the University, for his exclusive use. The University shall provide or reimburse Dr. Spanier for

insurance, maintenance, and other operating costs of the vehicle, including but not limited to, the cost of fuel, taxes, licenses, registration, and other similar operating expenses. On an annual basis, Dr. Spanier shall report all personal use in writing to the Senior Vice President for Finance and Business of the University.

F. Housing.

During the Term of this Agreement, for the benefit and convenience of the University in having the functions of the Office of President efficiently discharged and, in order to enable Dr. Spanier to fully perform the extensive duties of his position, he shall, as a condition of his employment as President of the University, continue to reside at the Schreyer House, an on-campus residence owned by the University for this purpose, located at University Park, Centre County, Pennsylvania, or such other residence as may be determined by the University (the "President's Residence"). The University shall pay for all costs of utilities and maintenance of the structures and grounds of the President's Residence.

For the benefit and convenience of the University, the President's residence shall be available, and shall be used, for University-related business on a regular and continuing basis. Costs associated with such University events shall be borne by the University.

In the event of Dr. Spanier's death during the Term of this Agreement (including all renewals and extensions), Dr. Spanier's family shall be permitted to occupy the President's Residence under the same terms and conditions for no less than 90 calendar days from the date of Dr. Spanier's death.

In the event of Dr. Spanier's permanent disability during the Term of this Agreement (including all renewals and extensions), Dr. Spanier and his family shall be permitted to occupy the President's Residence under the same terms and conditions for no less than 90 calendar days from the date of Dr. Spanier's permanent disability.

Dr. Spanier and his family shall vacate the President's Residence no later than thirty (30) calendar days following the effective date of termination or expiration of this Agreement (including all renewals and extensions).

Upon the termination of this Agreement, the University shall reimburse Dr. Spanier for the reasonable and necessary expenses of moving his personal property from State College, Pennsylvania to a location of his choice in the continental United States.

G. Tax Reporting.

The University shall include in the W-2 issued to Dr. Spanier all payments, benefits, allowances, and reimbursements that are defined as income or otherwise required to be reported by federal, state or local governments. Except as provided in this Agreement, Dr. Spanier shall be responsible for the payment of all personal taxes due and shall make such payments on a "when due" basis.

H. Termination.

1. Termination For Cause. The University may terminate this Agreement at any time for cause upon written notice to Dr. Spanier as provided in this Section H.1. For purposes of this Agreement, the term "Cause" shall mean conduct reasonably determined by a two-thirds majority of the Board of Trustees to be: (a) gross negligence or willful malfeasance by Dr. Spanier in the performance of his Duties that materially harm the University; (b) actions or

omissions by Dr. Spanier that are undertaken or omitted knowingly and are criminal or fraudulent and involve material dishonesty or moral turpitude; or (c) Dr. Spanier being formally indicted in a court of law of any felony, or any other crime involving misuse or misappropriation of University funds. In the event the President is terminated for Cause, Dr. Spanier's employment as President shall cease immediately, and he shall not be entitled to any further compensation or benefits as President, except as set forth in the University's various benefit plans with respect to vesting and rights after termination of employment, nor shall he be entitled to continuing employment as a member of the University faculty, including the Post-Presidency Faculty Position set forth in Section B.6 of this Agreement.

2. Termination Without Cause. The University may terminate this Agreement without Cause upon a majority vote by the Board of Trustees at any time for the convenience of the University upon ninety (90) calendar days prior written notice to the President. Termination of this Agreement by virtue of the President's permanent disability or death (as set forth in Sections H.4 and H.5 of this Agreement, respectively) shall not be construed as termination without Cause. If the University terminates this Agreement without Cause prior to the expiration of the Term of this Agreement, Dr. Spanier shall be entitled to receive payments equal to his then existing Base Salary and benefits for eighteen (18) months from the effective date of his termination of employment as President, plus the Equivalency payment referenced in Section C.5 of this Agreement. In the event of such termination without Cause, Dr. Spanier and his family shall vacate the President's Residence no later than thirty (30) calendar days following the effective date of termination.

3. Resignation. Dr. Spanier may resign as President by providing at least ninety (90) calendar days written notice to the President of the Board of Trustees. Dr. Spanier's employment as President shall cease on the effective date of his resignation, and he shall not be entitled to any further compensation or benefits as President, except as set forth in the University's various benefit plans with respect to vesting and rights after termination of employment.

4. Permanent Disability. If Dr. Spanier shall become permanently disabled during his service as President, this Agreement shall terminate effective on the date of permanent disability and he shall receive all benefits to which he is entitled pursuant to the University's disability coverage referenced in Section B.4, plus the Equivalency payment referenced in Section C.5 of this Agreement.

For purposes of this Agreement and based upon Section 409A of the Internal Revenue Code, "Permanent Disability" shall mean Dr. Spanier is (i) unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months or (ii) by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering the University's employees.

5. Death. In the event of Dr. Spanier's death during the Term of this Agreement, Dr. Spanier's Base Salary shall cease immediately and this Agreement shall

terminate effective on the date of death, provided however that the Equivalency payment referenced in Section C.5 of this Agreement shall be paid to Dr. Spanier's estate no later than thirty (30) days from the date of death.

I. Outside Activities.

The University recognizes that it is both appropriate and beneficial for Dr. Spanier, in his capacity as President to engage in outside activities, such as serving on for-profit and nonprofit boards of directors, consulting, delivering speeches, and writing. However, the President shall seek prior approval from the President of the Board of Trustees before agreeing to serve on the board of directors of any for-profit entities. Dr. Spanier may not engage in any outside activity that conflicts with his Duties under this Agreement.

All income or other compensation earned by Dr. Spanier in connection with his outside activities shall be paid to and retained by Dr. Spanier and reported in accordance with applicable tax law and established University policy. Such income, if any, shall have no effect on the amount of salary, benefits, or other compensation to which Dr. Spanier may be entitled to under this Agreement.

J. Indemnification. The University shall indemnify Dr. Spanier and hold him harmless against legal fees, expenses, judgments, and other financial amounts incurred while serving in his capacity as President of the University to the extent permitted by law. Dr. Spanier shall continue to be indemnified subsequent to termination of employment as President with

respect to acts or omissions occurring while he was serving as President. The terms of this Section J shall survive the expiration of this Agreement.

K. Mediation. The parties agree that any controversy or claim that either party may have against the other arising out of or relating to the construction, application or enforcement of this Agreement, as well as any controversy or claim based upon the alleged breach of any legal right relating to or arising from Dr. Spanier's employment and/or termination of his employment shall be submitted to non-binding mediation. Within fifteen (15) days after delivery of a written notice of request for mediation from one party to the other, the dispute shall be submitted to a single mediator located in the Commonwealth of Pennsylvania chosen by the parties, and the venue for such mediation shall be in University Park or State College, Pennsylvania, as mutually agreed by the parties. The costs and fees associated with mediation, excluding attorney's fees for Dr. Spanier, shall be borne by the University.

L. Notice.

Any notice or other communication contemplated by this Agreement shall be deemed to be given when given in writing and mailed, registered or certified, postage prepaid with return receipt requested, to a party at the address set forth below or such other address as may hereafter be designated in writing:

To Dr. Spanier:

Dr. Graham B. Spanier
Schreyer House
Pennsylvania State University
University Park, PA 16802

To the University:

The Pennsylvania State University
Office of the Board of Trustees
205 Old Main
University Park, PA 16802
Attention: President of the Board of Trustees

M. Severability and Waivers.

If any portion of this Agreement shall be held to invalid, inoperative, or unenforceable, then, so far as possible, effect shall be given to the intent manifested by the portion held invalid, inoperative, or unenforceable, and the remainder of this Agreement not found invalid, inoperative, or unenforceable shall remain in full force and effect. No waiver or failure to enforce any or all rights under this Agreement by either party on any occasion shall constitute a waiver of that party's right to assert the same or any other rights on that or any other occasion.

N. Governing Law.

This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, excluding its choice of laws rules.

O. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute but one of the same instrument. Signatures delivered by facsimile and by email shall be deemed to be an original signature for all purposes, including for purposes of applicable Rules of Evidence.

P. Complete Agreement.

This Agreement fully supersedes any and all prior agreements or understandings, written or oral, with the exception of Section D.3 of the Prior Agreement as amended by Section C.5 of

this Agreement. This Agreement shall not be amended, modified, or changed other than by express written agreement of Dr. Spanier and the President of the Board of Trustees.

Q. Personal Contract.

The obligations and duties of Dr. Spanier shall be personal and not assignable or delegable in any manner whatsoever. This Agreement shall be binding upon and inure to the benefit of Dr. Spanier and his executors, administrators, heirs, successors, and permitted assigns, and upon the University and its successors and assigns.

R. No Trust Fund.

Nothing contained in this Agreement and no action taken pursuant to the provisions of this Agreement shall create or be construed to create a trust of any kind. To the extent that the President acquires a right to receive payments from the University under this Agreement, such rights shall be no greater than the right of any unsecured, general creditor to the University.

S. Miscellaneous.

The headings in this Agreement are for convenience only and shall not be used in construing or interpreting this Agreement. The terms "Board," "Board of Trustees," and "University" as used in this Agreement, where applicable or appropriate, shall be deemed to include or refer to any duly authorized board, committee, officer, or employee of said entity. Whenever the context requires, the masculine shall include the feminine and neuter, the singular shall include the plural, and conversely.

IN WITNESS WHEREOF, the parties have executed this Employment Agreement as of the day and year written below.

ATTEST:

Witness

THE PENNSYLVANIA STATE UNIVERSITY

By: _____
President, Board of Trustees

June 2, 2010
Date

ATTEST:

Witness

Graham B. Spanier, Ph.D.

June 2, 2010
Date

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EXHIBIT 2

THE CORPORATE BYLAWS

ART. 1. ORGANIZATION AND MEETINGS OF THE BOARD*

(1) Corporate Authority: The authority for effecting the corporate purposes and for management and government of The Pennsylvania State University is vested by charter in the Board of Trustees.

(2) Stated Meetings: There shall be such stated meetings of the Board of Trustees each year at such times and places as the Board of Trustees shall from time to time determine.

(3) Special Meetings: Special meetings of the Board of Trustees may be called upon motion of the Board, upon written request of five members, or upon call by the chairperson of the Board or upon call of the President of the University.

(4) Notice of Time and Place of Meetings: Written notice of the time and place of all meetings shall be mailed by the secretary to each member of the Board at his/her post office address at least 10 days in advance of the date of the meeting in the case of stated meetings and 3 days in the case of special meetings.

(5) Quorum: Thirteen (13) members of the Board shall constitute a quorum for the official transaction of all business.

(6) Vacancies: Vacancies in the membership of the Board of Trustees created by death, resignation, or failure to qualify after election by written acceptance may be filled by appointment by the president of the corporation for the unexpired term in all cases except memberships reserved for gubernatorial appointment and ex officio memberships established by charter.

ART. 2. QUALIFICATIONS FOR MEMBERSHIP ON THE BOARD OF TRUSTEES

(1) Members of the Board of Trustees shall be natural persons of full age who need not be residents of the Commonwealth of Pennsylvania.

(2) A person who is employed in any capacity by the University shall not be eligible to serve as a member of the Board of Trustees. This qualification for membership shall not apply to a person who is an ex officio member of the Board, nor to a person who is a student employed part-time by the University.

(3) A person shall not be eligible to serve as a member of the Board of Trustees for a period of three (3) years from the July 1 coincident with or next following the date of last employment in any capacity by the University. This qualification for membership shall not apply to a person who is an ex officio member of the Board, nor to a person who is a student employed part-time by the University.

(4) Only graduates of The Pennsylvania State University who shall have received an associate degree, a bachelor's degree, or an advanced degree from the University shall be eligible to serve as a trustee elected by the Alumni. No member of the faculty or the governing board of any other college or university in Pennsylvania shall be eligible to serve as a trustee elected by the Alumni.

* Use of Proxies at Meetings - In a legal opinion on February 4, 1963, the University's legal counsel determined that proxies could be used at meetings only if the Bylaws so provide. The Bylaws are silent on the matter.

ART. 3. OFFICERS OF THE CORPORATION AND THEIR DUTIES

(1) Officers of the Corporation: The officers of the corporation shall be a president, a vice president, a secretary, an associate secretary, three assistant secretaries, a treasurer, and three assistant treasurers, all of whom except the associate secretary, the assistant secretaries, the treasurer, and the assistant treasurers shall be members of the Board of Trustees.

(2) Secretary of the Board: The President of the University shall be ex officio the Secretary of the Board.

(3) Election and Term of Officers: All other officers of the corporation shall be chosen each year by ballot of the members of the Board of Trustees present at the stated meeting of the Board in January to serve for a period of one year and until their successors are chosen according to these bylaws.

(4) Duties of Officers: The president of the corporation shall perform the corporate duties which pertain to that office and shall also be chairperson of the Board. The president shall appoint all committees of the Board of Trustees and the chairperson thereof except the executive committee unless otherwise ordered by the Board. The vice president shall, in the absence of the president, perform the duties of the president. The secretary shall perform the corporate duties which pertain to that office; he/she shall be custodian of the corporate seal, conduct the ordinary correspondence of the Board of Trustees and maintain an accurate record of all proceedings of the Board and of the executive committee. The associate secretary shall assist the secretary in the performance of his/her duties and shall act for and on behalf of the University in the same manner and with the same authority as the secretary. The assistant secretaries shall assist the associate secretary and shall act for and on behalf of the University in the same manner and with the same authority as the secretary. The treasurer shall receive and disburse all monies of the corporation under procedures and safeguards prescribed by the Board of Trustees. The assistant treasurers shall assist the treasurer in the performance of these duties and shall act for and on behalf of the University in the same manner and with the same authority as the treasurer.

(5) Vacancies in Office: Vacancies in any office or offices may be filled by ballot of the members present at any meeting of the Board of Trustees.

ART. 4. COMMITTEES OF THE BOARD OF TRUSTEES

(1) The Executive Committee: Not less than seven (7) nor more than eleven (11) members of the Board of Trustees to be chosen by ballot of the members present at the stated meeting of the Board in January each year together with the president and the secretary of the corporation shall constitute an executive committee to serve for a period of one year and until their successors are chosen. The president of the corporation shall be chairperson of the executive committee and the secretary of the corporation the recording secretary of the executive committee. The number of elected members of the executive committee, within the above limitations, shall be determined by the Board of Trustees at each said stated meeting.

(a) Purpose of the Executive Committee: The purpose of the executive committee, under the direction of and subject to the approval of the Board of Trustees, shall be to transact all necessary business as may arise in the intervals between meetings of the Board.

(b) Meetings of the Executive Committee: Meetings of the executive committee may be called by the Board of Trustees, by the President of the Board or by the President of the University.

(c) Place of Meetings of the Executive Committee: All meetings of the executive committee shall be held at the executive offices of the University unless otherwise ordered by the chairperson of the committee.

(d) Notice of Meetings of the Executive Committee: Notice of the time and place of all meetings of the executive committee shall be given in the same manner as for meetings of the Board of Trustees.

(2) Standing Committees:

(a) Function of Standing Committees: To facilitate consideration of the business and management of the corporation and of the University, standing committees are established as hereinafter set forth.

1. Referral of Matters to Standing Committees: Any matters appropriate for consideration by a standing committee first shall be referred thereto by the Board of Trustees, the President of the Board or the President of the University, except that a two-thirds (2/3) vote of the trustees present at a meeting of the Board but in no event by an affirmative vote of less than nine (9) Trustees will permit initial consideration by the full Board.

2. Consideration by Board of Matters on Which Standing Committees Make No Recommendation or Report: Provided, however, that any matter referred to and considered by a standing committee, but upon which the committee makes no recommendation or report to the Board, may be brought before the Board for consideration at the request of any trustee.

3. Matters Appropriate to More Than One Committee: Except as otherwise provided in the bylaws, matters determined to be appropriate for consideration by more than one committee may be referred by the President of the Board of Trustees and the President of the University to one committee or more.

4. Final Authority of the Board: Unless otherwise specifically delegated and except as otherwise provided herein, authority to act on all matters is reserved to the Board, and the duty of each standing committee shall be only to consider and to report or make recommendations to the Board upon appropriate matters.

5. Specific Responsibility of Standing Committees: The several standing committees are charged specifically with the immediate care and supervision of the subject matters respectively indicated by and properly relating to their titles.

(b) Standing Committees Established: The following shall be the standing committees of the Board:

Committee on Educational Policy
Committee on Finance and Physical Plant
Committee on Campus Environment

(3) Selection of Committee Members:

(a) Appointment of Members: Members of the standing committees, and the chairperson and vice chairperson thereof, shall be appointed by the President of the Board of Trustees after consultation with the President of the University.

(b) Term of Committee Members: Committee members shall serve for a term of one (1) year commencing upon the date of the election of officers of the corporation, and until their successors are appointed in accordance with this bylaw.

(c) Vacancies on Standing Committees: Vacancies on all standing committees shall be filled through appointment by the President of the Board after consultation with the President of the University to serve the unexpired term created by the vacancy.

(4) Special Committees: Special committees shall be appointed by the President of the Board, after consultation with the President of the University, upon authority of the Board with such powers and duties as the Board may determine, provided that no special committee shall be created to act upon any matter appropriate to be acted upon by a standing committee.

(a) Length of Service of Special Committees: A special committee shall act for no more than one year from the date of appointment and shall be considered discharged upon the expiration of said year unless specifically authorized by the Board at the time of its appointment, or from year to year, to act for a longer period.

(5) Subcommittees: Each committee shall have such subcommittees as may be required for the effective conduct of the business of the committee, provided, however, that subcommittees shall be created only in response to need and to serve a specific purpose.

(a) Appointment of Subcommittees: Each subcommittee shall be appointed by the chairperson of the committee of which it is a part, after consultation with the President of the Board and the President of the University.

(b) Length of Service of Subcommittees: Each subcommittee shall serve for a period of not more than the term of the members of the standing committee of which it is a part.

(6) Ex Officio Members: The President of the Board of Trustees, or in his/her absence the Vice President of the Board, shall be an ex officio member of all standing committees, of all special committees, and of all subcommittees. The President of the University shall be an ex officio member of all standing committees, of all special committees, and of all subcommittees except the Subcommittee on Audit of the Committee on Finance and Physical Plant.

(a) Counted in Determining a Quorum: Ex officio members shall be counted in determining the presence of a quorum.

(b) Chairperson of Committee Ex Officio Member of Subcommittees: The chairperson of each committee shall be an ex officio member of each subcommittee of his/her committee.

(7) Committee on Educational Policy: The committee on educational policy shall:

(a) Consider and report or recommend to the Board on matters pertaining to the educational policies and programs of the University, including the long-range educational development of the University;

(b) Consider and report or recommend to the Board on matters pertaining to the faculty;

(c) Consider and report or recommend to the Board on educational policy matters pertaining to instruction, research, and continuing education;

(d) Consider and report or recommend to the Board on matters pertaining to all phases of student life.

1. Number of Members: The committee on educational policy shall consist of not less than eight (8) appointive members, in addition to the ex officio members.

2. Non-Voting Faculty and Student Representatives: Three non-voting faculty representatives and three non-voting student representatives may be invited to attend and participate in the meetings of the committee on educational policy, except executive sessions of the committee. The faculty and student representatives shall be selected by the President of the University in such manner as he/she deems appropriate.

(8) Committee on Finance and Physical Plant: The committee on finance and physical plant shall:

(a) Consider and report or recommend to the Board on matters pertaining to finance, business, budgets, non-budget expenditures, audits, investments, trust funds, insurance, real estate contracts, government and private contracts, and grants, fees, room and board charges, and the long-range financial planning and development of the University;

(b) Consider and report or recommend to the Board on matters pertaining to endowments, gifts, and fund raising.

(c) Consider and report or recommend to the Board on matters pertaining to purchase and sale of real estate, master plans, construction, the appointment of architects, the selection of architectural styles and materials, architect's plans, rights of way, the award of contracts, and the names of buildings and roads.

(d) Consider and report or recommend to the Board on matters pertaining to the long-range comprehensive physical plant development of the University at each campus, consistent with the long-range educational development of the University.

1. Number of Members: The committee on finance and physical plant shall consist of not less than eight (8) appointive members, in addition to the ex officio members.

2. Non-Voting Faculty and Student Representatives: Three non-voting faculty representatives and three non-voting student representatives may be invited to attend and participate in the meetings of the committee on finance and physical plant, except executive sessions of the committee. The faculty and student representatives shall be selected by the President of the University in such manner as he/she deems appropriate.

(9) Committee on Campus Environment: The committee on campus environment shall:

(a) Consider and report or recommend to the Board on matters pertaining to the learning and work environment for students, faculty, staff and all other members of the University community, with particular emphasis on policies relating to diversity, nondiscrimination and human resources.

1. Number of Members: The committee on campus environment shall consist of not less than eight (8) appointive members, in addition to the ex officio members.

2. Non-Voting Faculty and Student Representatives: Three non-voting faculty representatives and three non-voting student representatives may be invited to attend and participate in the meetings of the committee on campus environment, except executive sessions of the committee. The faculty and student representatives shall be selected by the President of the University in such manner as he/she deems appropriate.

ART. 5. LIABILITY AND INDEMNIFICATION

(1) Limitation on Liability: To the fullest extent permitted by law, no trustee of the University shall be personally liable for monetary damages for any action taken, or any failure to take any action, as a trustee. This Section (1) shall apply to actions filed, and any breach of performance of duty or any failure of performance of duty occurring, on or after January 27, 1987. This Section (1) shall be deemed to be a contract with each trustee of the University who serves while this Section is in effect. Any amendment or repeal of this Section (1) or the adoption of any other provision of the Bylaws which has the effect of increasing trustee liability shall not be retroactive.

(2) Indemnification:

(a) Except as prohibited by law, every trustee and officer of the University shall be entitled as of right to be indemnified by the University against expenses (including counsel fees) and any liability (including judgments, fines, penalties, excise taxes and amounts paid in settlement) paid or incurred by such person in connection with any actual or threatened claim, action, suit or proceeding, civil, criminal, administrative, investigative or other, (hereinafter the "Claim") whether brought by or in the right of the University or otherwise, in which such person may be involved, as a party or otherwise, by reason of such person being or having been a trustee or officer of the University or by reason of the fact that such person is or was serving at the request of the University as a director, officer, employee, fiduciary or other representative of another corporation, partnership, joint venture, trust, employee benefit plan or other entity. No right of indemnification shall exist for such Claim brought by a trustee or officer against the University or other trustees or officers unless the Claim is for indemnity and expenses pursuant to this Section 2(a).

(b) A trustee or officer subject to such Claim, shall be entitled as of right to have expenses (including counsel fees) paid in advance by the University prior to final disposition of the Claim, subject to the right of the University to require the trustee or officer to provide an undertaking to reimburse the University for such expenses if it is finally determined by a court of competent jurisdiction that such trustee's or officer's conduct was such that the University is prohibited by Pennsylvania Law from indemnification.

(c) The University may indemnify and advance the expenses of an agent or employee as though such person was a trustee or officer. To the extent that an agent or employee has been successful on the merits or otherwise in defense of the claim, issue or matter therein, the University shall indemnify such person against expenses (including attorneys fees) actually and reasonably incurred by such person in connection therewith.

(d) The University may provide, at its cost, insurance, or may self insure, to protect itself and any trustee, officer, agent or employee eligible to be indemnified hereunder against any liability or expense whether or not the University would have the power to indemnify such trustee, officer, agent or employee.

(e) To the extent permitted by law, this Section 2 shall apply to every Claim filed on or after January 27, 1987. Article 5 of the Bylaws as it existed on May 14, 1987, shall apply to every other Claim.

ART. 6. CONFLICT OF INTEREST

(1) Disclosure of Potential Conflict of Interest by Members of the Board of Trustees:

Members of the Board of Trustees: Members of the Board of Trustees stand in a fiduciary relationship to the University which reposes special confidence in each member. Members of the Board of Trustees shall act in good faith, with due regard to the interests of the University, and shall comply with the fiduciary principles of conduct hereinafter set forth in addition to any other federal or state reporting requirements.

(a) Contracts and Transactions with University:

1. No member of the Board of Trustees, any member's spouse or any corporation, partnership, association or other organization in which one or more members of the Board of Trustees, or any member's spouse or dependent child has a beneficial ownership of ten (10%) percent or more, shall enter into any contract or transaction valued at $10,000 or more with the University unless the contract has been awarded through an open and public bidding process, in accordance with University Purchasing Policy, or has been fully disclosed to the Board of Trustees and approved by the affirmative votes of a majority of the disinterested members of the Board of Trustees. Full disclosure shall mean disclosure of the material facts as to the relationship or interest of the member or members of the Board of Trustees, or spouse or dependent child of such member or members, and disclosure of the material facts as to the contract or transaction, including a sole source justification. Approval by a majority of disinterested members of the Board of Trustees shall be valid even though the disinterested members are less than a quorum. The member or members interested in the contract or transaction may be counted in determining the presence of a quorum, may briefly state a position on the contract or transaction, and may answer pertinent questions concerning the contract or transaction, but such member or members shall not vote on the matter. The minutes of the meeting shall reflect that disclosure was made, the abstention from voting by the interested member or members and the approval by a majority of disinterested members. A record of such contracts or transactions shall be maintained in the office of the senior vice president for finance and business and shall be available for inspection by members of the Board of Trustees.
2. A contract or transaction valued at less than $10,000 between the University and one or more members of the Board of Trustees, or any member's spouse, or between the University and any other corporation, partnership, association or organization in which one or more members of the Board, or any member's spouse or dependent child has a beneficial ownership of ten (10%) percent or more, shall be subject to disclosure, but shall not be subject to bidding requirements and need not be approved by the Board of Trustees. Disclosure of such contracts and transactions shall be made annually by written report to the Board of Trustees, which report shall include a certification by the appropriate officers of the University that such contracts or transactions were made in the normal course of business and were fair to the University.

3. A contract or transaction between the University and one or more members of the Board of Trustees, or any member's spouse, or between the University and any other corporation, partnership, association or other organization in which one or more members of the Board, or any member's spouse or dependent child, has a beneficial ownership of ten (10%) percent or more, which was made before any such member assumed office as a member of the Board, and which remains to be performed, in whole or in part, at the time of assumption of office as a member of the Board, shall be subject to the disclosure requirements of Section (1)(a) 2 of this Article but shall not be subject to approval by the Board of Trustees.

4. In addition, a record of all spouses, children and family members of members of the Board of Trustees who are employed by the University and whose compensation exceeds $10,000 per tax year shall also be maintained in the office of the senior vice president for finance and business and available for inspection by members of the Board of Trustees.

(b) Misuse of Information: No member of the Board of Trustees shall for personal gain or

for the gain of others use any information not available to the public at large and obtained as a result of service to the University.

(c) Gifts and Favors: No member of the Board of Trustees shall solicit or accept for personal use or for the use of others any gift, loan, gratuity, reward, promise of future employment or any other thing of monetary value based on any understanding that the vote, official action or judgment of the member would be influenced thereby.

(2) Disclosure of Potential Conflict of Interest by Employees of the University:

Employees of the University shall exercise the utmost good faith in all transactions touching upon their duties to the University and its property. In their dealings with and on behalf of the University, they shall be held to a strict rule of honest and fair dealings between themselves and the University. They shall not use their positions, or knowledge gained therefrom, in such a way that a conflict of interest might arise between the interest of the University and that of the individual. Employees shall disclose to the administrative head of the college or other unit in which they are employed, or other appropriate superior officer, any potential conflict of interest of which they are aware before a contract or transaction is consummated. This Bylaw shall be published to the University community at least once annually.

ART. 7. MISCELLANEOUS PROVISIONS

(1) Order of Business: The order of business at all meetings of the Board of Trustees shall be as follows: (a) roll call, (b) approval of minutes of preceding meetings of the Board and the executive committee, (c) report of the President of the University, (d) reports of other officers, (e) reports of committees, (f) unfinished business, (g) new business, (h) election of officers and members of the executive committee (January meeting).

(2) Compensation: No member of the Board shall receive compensation for his/her services, but shall be paid his/her necessary traveling expenses and hotel bills actually incurred while attending a meeting of the Board of Trustees or a meeting of a committee of the Board of Trustees of which he/she is a member, except that travel by personal automobile shall be reimbursed at the same rate established for the use of personally owned automobiles by staff members of the University when traveling on business for the University.

(3) Fiscal Year: The fiscal year of the corporation shall be as fixed by the Board of Trustees from time to time. (On March 31, 1961, the Board voted that the fiscal year of the University shall continue to be from July 1 to June 30.)

(4) Rules of Order: Unless otherwise modified by these Bylaws, the conduct of business in meetings of the Board and its committees shall be in accordance with the parliamentary procedures prescribed in Robert's "Rules of Order."

(5) Amendments: These Bylaws may be amended or repealed by a two-thirds vote of those present at any meeting of the Board provided written notice and copy of the proposed change or changes have been given in the call for the meeting or at a preceding stated or special meeting.

(6) Repeals: All resolutions of the Board inconsistent with these Bylaws are hereby repealed.

(7) Private Inurement: No part of the net earnings of the University shall inure to the benefit of, or be distributable to, its trustees, officers or other private persons, except that the University shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in these Bylaws and the University's Charter.

(8) Term Limits: Term limits for elected members of the Board will be 15 years, effective with terms beginning July 1, 2003 or thereafter. This provision for term limits shall not apply to elected members of the Board while serving in the capacity as President or Vice President of the Board of Trustees. (For Trustees with terms beginning prior to July 1, 2003, the 15 year term limit is effective with the date of the most recent election or re-election as trustees elected by the alumni, elected by delegates of agricultural societies, and/or elected as business and industry trustees.)

Execution counterpart

CONFIDENTIAL SEPARATION AGREEMENT

This Confidential Separation Agreement ("Agreement") is entered into by and between The Pennsylvania State University ("University") and Graham B. Spanier, Ph.D. ("Dr. Spanier"). The University and Dr. Spanier, each intending to be legally bound and in consideration of the following mutual promises and covenants, do agree as follows.

1. Effective November 9, 2011, Dr. Spanier was terminated from the position of President of the University without cause pursuant to Section H.2 of his Employment Agreement dated July 1, 2010 ("Employment Agreement"). By virtue of Dr. Spanier's termination from the position of President, it is understood and agreed that he likewise relinquishes his position on the University's Board of Trustees, the presidency of The Corporation for Penn State (the "Corporation"), all ex-officio positions held with respect to any board of any subsidiary of the Corporation and all other ex-officio positions tied to the Presidency of the University, except that in the case of Dr. Spanier's membership on the National Security Higher Education Advisory Board, Dr. Spanier shall resign as soon as practicable under the policies and practices of such Advisory Board.

2. By virtue of Dr. Spanier's termination from the position of President of the University, it is also understood and agreed that except as otherwise provided below, Dr. Spanier's Employment Agreement was terminated as of November 9, 2011. Dr. Spanier may remain employed by the University, however, as a tenured member of the faculty in the Department of Human Development and Family Studies of the College of Health and Human Development, with the titles of President Emeritus, University Professor and Professor of Human Development and Family Studies, Sociology, Demography, and Family and Community Medicine.

EXHIBIT 3

3. Pursuant to the Employment Agreement and in return for Dr. Spanier agreeing to the terms of this Agreement, Dr. Spanier shall be provided with the following:

(a) A lump sum payment equal to Dr. Spanier's current base salary for a period of eighteen (18) months, with payment to be made on December 15, 2011. This payment is subject to tax withholdings required by federal, state and local laws. Dr. Spanier shall also be eligible to continue to participate in all of the employee benefit plans of the University applicable to senior executives for a period of 18 months from November 9, 2011 pursuant to Section E(1) of the Employment Agreement, and he shall be eligible to continue to receive for a period of 18 months from November 9, 2011 the supplemental life insurance, supplemental health insurance, and disability coverage as provided in Sections E(2), E(3) and E(4) respectively of the Employment Agreement. The University will also comply with the provisions in Section E.2 of the Employment Agreement regarding life insurance at the conclusion of the Term of the Employment Agreement (other than the provision with respect to continued escalation of the death benefit) and in Section E.3 regarding health insurance coverage at the conclusion of his presidency.

(b) The Retirement Plan Equivalency payment (referenced in Section C(5) of the Employment Agreement) in the gross amount of $1,248,204.60 payable in two installments: (1) an amount equal to the applicable federal, state and local tax withholding amount due on the Retirement Plan Equivalency gross payment amount shall be payable to Dr. Spanier on December 15, 2011, and remitted to the applicable taxing authorities; and (2) the remainder shall be paid to Dr. Spanier on June 30, 2017. No taxes shall be withheld from the payment of the second installment and the second installment shall not be reported as taxable income, since the first installment is intended to satisfy the entire tax liability with respect to the Retirement Plan Equivalency payment.

(c) For as long as Dr. Spanier remains employed by the University, the University will continue to contribute, at its normal Alternate Retirement Plan contribution rate (currently 9.29%), as it does for all employees under such Plan, to the purchase of an annuity contract within the meaning of Section 403(b) of the Internal Revenue Code. In addition, the University shall make the 2011 payment to Dr. Spanier as provided in Section C.4(b) of the Employment Agreement, at the time such payments have been made in the past, with the amount of such payment prorated to cover the period from January 1, 2011 to November 9, 2011.

(d) Pursuant to Section E(6) of the Employment Agreement, a paid one-year post-presidency transition period during which Dr. Spanier will be paid his current annual salary of $700,000 (subject

to tax withholdings required by law) and receive the benefits described in Sections E(1) through E(4) of the Employment Agreement. Dr. Spanier agrees to provide substantial services to the University as required by Section 457(f) of the Internal Revenue Code during such period.

(e) Following completion of the one-year post-presidency transition period, Dr. Spanier may continue as a tenured member of the faculty, with a salary of $600,000 annually for a period of five years, with all provisions of Section E(6) of the Employment Agreement being applicable. Thereafter, Dr. Spanier's employment and compensation as a tenured faculty member shall be governed by the University's policies, rules and regulations applicable to other tenured members of the faculty of the University.

(f) With respect to the contents of Schreyer House, as has been the case with prior presidents, it is agreed that all furniture purchased by the University in the public spaces of the house belong to the University and will remain the property of the University. Furniture and contents purchased by the Spanier family will remain the property of the Spanier family. Furniture and contents purchased by the University for the private family spaces of Schreyer House may, at the discretion of the Spanier family, be purchased by the Spanier family at a fair market value to be determined according to existing property inventory unit procedures under the purview of the Corporate Controller. Payment for such any such furniture or contents will be made within 30 days of departure from the residence.

4. In exchange for Dr. Spanier waiving the 90-day notice period described in Section H(2) of the Employment Agreement, the University shall provide the following to Dr. Spanier:

(a) Dr. Spanier shall be paid a lump sum payment equal to ninety (90) days pay at the rate of his current annual salary of $700,000 (subject to tax withholdings required by law), in lieu of the ninety days' notice required by Section H.2 of his Employment Agreement, with payment to be made on December 15, 2011.

(b) Dr. Spanier and his family may remain in the President's Residence for up to seventy-five (75) days from November 9, 2011. The University shall reimburse Dr. Spanier for the reasonable expenses of moving his personal property from the President's Residence as provided in Section F of the Employment Agreement.

(c) Dr. Spanier may retain the automobile provided under Section C(9) of the Employment Agreement for up to sixty (60) days from November 9, 2011.

(d) During the post-Presidency transition period referred to in Section E.5 of the Employment Agreement, the University will provide Dr. Spanier with administrative support to assist him with his responsibilities, including computer access and IT support, in the manner previously provided to past presidents of the University, in addition to all support referred to in the last paragraph of Section E.6 of the Employment Agreement. Following the post-Presidency transition, the University will provide Dr. Spanier with administrative support commensurate with that provided with other tenured faculty members and University Professors, and will continue to provide the administrative support referred to in the last paragraph of Section E.6 of the Employment Agreement.

(e) Dr. Spanier shall be reimbursed promptly for reasonable travel and business expenses incurred up to November 9, 2011 and not submitted prior to the execution of this Agreement as provided in Section E.7 of the Employment Agreement.

(f) In addition to its obligations under paragraph 6 below, the University shall reimburse Dr. Spanier for the attorneys' fees and expenses he has incurred in connection with matters relating to the grand jury presentment and his termination from the position of President of the University.

5. The parties shall cooperate in obtaining an opinion of mutually acceptable independent compensation counsel to the effect that the terms and conditions of this Agreement result in "reasonable compensation" for Dr. Spanier, meaning that the total compensation hereunder is comparable to that paid to similarly situated university officials in similar circumstances. The parties agree to negotiate in good faith to modify the terms of this Agreement if necessary to obtain such opinion. The University shall pay the fees and costs of such compensation counsel.

6. The University agrees to indemnify Dr. Spanier in accordance with the terms of Section J of the Employment Agreement and with the by-laws of the University.

7. Dr. Spanier, on behalf of himself, his heirs, representatives, estates, successors and assigns, does hereby irrevocably and unconditionally remise, release and forever discharge The Pennsylvania State University, its predecessors, parents, subsidiaries, affiliates, constituent organizations, benefits plans, and any successor

thereto, and their past, present and future trustees, officers, directors, administrators, agents, attorneys, insurance carriers, consultants or employees, as well as the heirs, successors and assigns of any such persons or such entities (severally and collectively called "Releasees"), jointly and individually, from any and all claims, known and unknown, that Dr. Spanier has or may have against any of the Releasees for any acts, omissions, practices or events up to and including the effective date of this Agreement and the continuing effects thereof, it being the intention of Dr. Spanier to effect a general release of all such claims. This release includes any and all claims under any possible legal, equitable, tort, contract, common law, statutory, or constitutional theory, including, but not limited to, any claims under 42 U.S.C. Section 1983, Title VII of the Civil Rights Act of 1964, the Pennsylvania Human Relations Act, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Americans With Disabilities Act, and other federal, state, and local statutes, ordinances, executive orders, regulations and other laws prohibiting discrimination in employment or benefits, and federal, state or local law claims of any kind whatsoever arising out of or in any way related to Dr. Spanier's employment as President of the University and his termination from the position of President of the University.

8. The University, on behalf of itself and the Board of Trustees, does hereby irrevocably and unconditionally remise, release and forever discharge Dr. Spanier from any and all claims, known and unknown, that the University has or may have against Dr. Spanier for any acts, omissions, practices or events up to and including the effective date of this Agreement and the continuing effects thereof, to the extent such acts or omissions relate to his position as President of the University, it being the intention of the University to effect a general release of all such claims.

9. It is expressly understood and agreed that by entering into this Agreement, the University in no way admits that it has treated Dr. Spanier unlawfully or wrongfully in any way.

10. Dr. Spanier agrees, and shall use reasonable efforts to cause his attorneys to agree that, except as required by law or to comply with legal obligations, they shall keep the terms and conditions of this Agreement **COMPLETELY CONFIDENTIAL** and they will not discuss, disclose, or reveal those terms and conditions, directly or indirectly, to the media or to any person, corporation, or other entity, other than to Dr. Spanier's attorneys, spouse, accountants and financial advisors or to any government agency or entity with jurisdiction over matters relating to this Agreement.

11. Dr. Spanier acknowledges that the University may be required to make the terms and conditions of this Agreement public in accordance with its policies and procedures or as required by applicable law or regulatory authority. If the University makes the terms and conditions of this Agreement public in accordance with this paragraph, Dr. Spanier will be relieved of his obligations in paragraph 10, but only to the extent of the provisions of this Agreement that are made public by the University.

12. Dr. Spanier will not make any negative comments to the media, to his professional colleagues or to any other members of the public regarding the University, its Board of Trustees or any member of the Board of Trustees, unless required by law or to comply with legal obligations and/or to provide truthful information in connection with ongoing or forthcoming investigations.

13. The University will not, and will use reasonable efforts to cause the members of the Board of Trustees not to, make any negative comments about Dr. Spanier to the media, to their professional colleagues or to any other members of the

public, unless required by law or to comply with legal obligations and/or to provide truthful information in connection with ongoing or forthcoming investigations.

14. In the event of any breach of any provision of this Agreement, the prevailing party in any litigation over such breach shall be entitled, in addition to all relief otherwise available under law, to an award of reasonable counsel fees and expenses incurred in investigating and litigating such breach.

15. Dr. Spanier acknowledges that he has been given the opportunity to consider this Agreement for at least 21 calendar days, which is a reasonable period of time, and that he has been advised to consult with his attorneys about this Agreement prior to executing it. Dr. Spanier further acknowledges that he has had a full and fair opportunity to consult with his attorneys, that he has carefully read and fully understands all of the provisions of this Agreement, and that he is voluntarily executing and entering into this Agreement, intending to be legally bound by it. If Dr. Spanier executes this Agreement in less than 21 days, he acknowledges that he has thereby waived his right to the full 21-day period.

16. For a period of seven calendar days following Dr. Spanier's execution of this Agreement, he may revoke it by delivery of a written notice of revocation to the office of Cynthia A. Baldwin, Esq., Vice President and General Counsel, The Pennsylvania State University, 108 Old Main, University Park, PA 16802. This Agreement shall not become effective or enforceable before the seven-day revocation period has expired.

17. The parties hereto further understand and agree that the terms and conditions of this Agreement constitute the full and complete understandings and arrangements of the parties with respect to the terms of Dr. Spanier's termination from

the position of President of the University and that there are no agreements, covenants, promises or arrangements other than those set forth herein with respect to that subject.

18. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

19. If any of the provisions of this Agreement are declared or determined by any court to be invalid or unenforceable for any reason, the remaining provisions and portions of this Agreement shall be unaffected thereby and shall remain in full force to the fullest extent permitted by law.

20. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the aforesaid parties, having read this Confidential Separation Agreement and intending to be legally bound hereby, have read, signed, sealed and delivered it, voluntarily, without coercion and with knowledge of the nature and consequences thereof.

THE PENNSYLVANIA STATE UNIVERSITY

By:_____
Steve A. Garban
President, Board of Trustees

_____
Date

_____
Graham B. Spanier

11/15/2011
Date

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THE PENNSYLVANIA STATE UNIVERSITY

By: _____
Steve A. Garban
President, Board of Trustees

11-15-11
Date

_____
Graham B. Spanier

_____
Date

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for The Pennsylvania State University, hereby certify that I caused to be served a true and correct copy of the foregoing ANSWER AND NEW MATTER TO COUNTS I, II, III, AND IV OF THE FIRST AMENDED COMPLAINT; COUNTERCLAIMS this 19TH day of December, 2016, by mailing same via U.S. mail, first class, postage prepaid, upon the following counsel of record:

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Michael T Scott

One of the Attorneys for The Pennsylvania State University