

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet



For Prothonotary Use Only:

Docket No:

2016-571

CENTRE

County

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- ☒ Complaint ☐ Writ of Summons ☐ Petition
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name: GRAHAM B. SPANIER

Lead Defendant's Name: PENNSYLVANIA STATE UNIVERSITY

Are money damages requested? ☒ Yes ☐ No

Dollar Amount Requested: ☐ within arbitration limits
☒ outside arbitration limits
(check one)

Is this a Class Action Suit? ☐ Yes ☒ No

Is this an MDJ Appeal? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: Thomas A. Clare, Elizabeth M. Locke, Andrew C. Phillips
(pro hoc forthcoming); Kathleen V. Yurchak

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- ☐ Intentional
☐ Malicious Prosecution
☐ Motor Vehicle
☐ Nuisance
☐ Premises Liability
☐ Product Liability (does not include mass tort)
☐ Slander/Libel/ Defamation
☐ Other:

CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff
☐ Debt Collection: Credit Card
☐ Debt Collection: Other
☐ Employment Dispute: Discrimination
☐ Employment Dispute: Other
☒ Other: Breach of Contract

CIVIL APPEALS

- Administrative Agencies
☐ Board of Assessment
☐ Board of Elections
☐ Dept. of Transportation
☐ Statutory Appeal: Other

- ☐ Zoning Board
☐ Other:

MASS TORT

- ☐ Asbestos
☐ Tobacco
☐ Toxic Tort - DES
☐ Toxic Tort - Implant
☐ Toxic Waste
☐ Other:

REAL PROPERTY

- ☐ Ejectment
☐ Eminent Domain/Condemnation
☐ Ground Rent
☐ Landlord/Tenant Dispute
☐ Mortgage Foreclosure: Residential
☐ Mortgage Foreclosure: Commercial
☐ Partition
☐ Quiet Title
☐ Other:

MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration
☐ Declaratory Judgment
☐ Mandamus
☐ Non-Domestic Relations Restraining Order
☐ Quo Warranto
☐ Replevin
☐ Other:

PROFESSIONAL LIABILITY

- ☐ Dental
☐ Legal
☐ Medical
☐ Other Professional:

SECTION B

IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION

GRAHAM B. SPANIER

Plaintiff,

v.

PENNSYLVANIA STATE
UNIVERSITY

Defendant.

) Docket No. 2016-571
)
) Type of Case:
) Breach of Contract
)
) Type of Pleading: **COMPLAINT**
)
) Filed on behalf of: Plaintiff
)
) Counsel of record for this party:
)
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GRAHAM B. SPANIER,

Plaintiff,

v.

PENNSYLVANIA STATE UNIVERSITY

Defendant.

COURT OF COMMON PLEAS
OF CENTRE COUNTY

No. 2016-571

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

Court Administrator
Courthouse
Bellefonte, PA 16823
(814) 355-6727

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GRAHAM B. SPANIER,

Plaintiff,

v.

PENNSYLVANIA STATE UNIVERSITY

Defendant.

COURT OF COMMON PLEAS
OF CENTRE COUNTY

No. 2016-571

COMPLAINT

NATURE OF THE ACTION

1. This is a breach of contract action brought by Dr. Graham B. Spanier ("Dr. Spanier") against Pennsylvania State University ("Penn State" or "University"). The lawsuit arises out of the Freeh Report commissioned by Penn State, as well as negative and disparaging statements made by certain members of

the University's Board of Trustees, and other breaches of contract by Penn State — following Dr. Spanier's separation from Penn State as president of the University.

2. Dr. Spanier brings breach of contract claims against Penn State, his employer, for multiple breaches of his separation agreement as president of the University. Upon his resignation from the Presidency of Penn State in November 2011, Dr. Spanier and Penn State entered into a contract setting forth the terms of the separation ("Separation Agreement"). The contract prohibited Penn State from making any negative comments about Dr. Spanier, and required Penn State to take actions to ensure that no members of the Board of Trustees made negative comments about Dr. Spanier. In addition, Penn State was (and remains) required to provide Dr. Spanier administrative support commensurate with that received by other tenured Penn State professors and former presidents, including an office location, a secretary, and IT support. The contract also requires Penn State to pay all expenses and legal fees incurred by Dr. Spanier arising out of any alleged acts or omissions occurring during his time as President, specifically including all such legal fees and expenses arising out of the Grand Jury's indictments relating to Jerry Sandusky's acts, criminal charges, and/or Dr. Spanier's resignation from his position as President.

3. Penn State has repeatedly breached the Separation Agreement in several material respects. Penn State has breached the contract's prohibition on

negative statements regarding Dr. Spanier by commissioning, publicizing, permitting, encouraging, and facilitating Louis Freeh (“Freeh”) and Freeh Sporkin & Sullivan, LLP’s (“FSS”) multiple negative public statements about Dr. Spanier, including those contained in the Freeh Report, which was published for an extended period of time on Penn State’s own website. Moreover, as part of the media strategy for the release of the Freeh Report, Penn State scheduled two press conferences in which Penn State’s President and two members of Penn State’s Board of Trustees (“Board”) repeatedly made negative comments about Dr. Spanier. Penn State also organized separate media appearances for members of its Board of Trustees to make negative comments about Dr. Spanier in breach of the contract.

4. Penn State has also failed to provide Dr. Spanier with administrative support, office space, and teaching opportunities as required by the Separation Agreement. Moreover, Penn State has repeatedly refused to reimburse Dr. Spanier for legal fees and related expenses despite being contractually obligated to do so.

5. Dr. Spanier brings this action to vindicate his rights under civil law, to restore his reputation as a highly-regarded educator and university administrator, and to obtain redress and damages for Penn State’s repeated breaches of Dr. Spanier’s Separation Agreement.

THE PARTIES AND OTHER RELEVANT THIRD PARTIES

6. Plaintiff Graham B. Spanier is an individual residing in Centre County in the Commonwealth of Pennsylvania. Between 1995 and 2011, Dr. Spanier was the President of Pennsylvania State University. Dr. Spanier has resided in Centre County, Pennsylvania for over 29 years and continues to do so today.

7. Defendant Pennsylvania State University is a nonprofit corporation organized under the laws of the Commonwealth of Pennsylvania, with its principal place of business at 201 Old Main, University Park, Pennsylvania 16802. Following his resignation as President of Penn State, Penn State contracted with Dr. Spanier to govern the terms of his resignation and continuing employment. At the same time, a task force created by Penn State's Board of Trustees retained Freeh and FSS to produce the Freeh Report.

8. Louis J. Freeh is an individual who resides in Wilmington, Delaware. He founded FSS in 2007 and became the head of Pepper Hamilton after FSS joined Pepper Hamilton. In January 2016, Pepper Hamilton announced that Freeh was leaving the firm and returning to his position as partner of FSS. Freeh is also the founder of Freeh Group International Solutions, LLC ("FGIS"), which is a wholly-owned subsidiary of Pepper Hamilton. Trading on his professional background as a former federal judge and the former Director of the FBI, Freeh and his affiliated firms have been retained to conduct internal investigations into some of the highest

profile organized or corporate investigations in the past decade, including an investigation of possible misconduct in the administration of the BP settlement fund following the Deepwater Horizon oil spill, and an investigation on behalf of Wynn Resorts that led to the ousting of the company's largest shareholder.

9. In November 2011, the Board of Trustees for Penn State retained Freeh and FSS to conduct an internal investigation into matters surrounding the handling of Sandusky's behavior. Approximately eight months later, on July 12, 2012, Freeh released his defamatory "findings" in a 267-page report, in a written press release, and during a nationally televised press conference.

10. Freeh Sporkin & Sullivan, LLP is a limited liability partnership registered in Washington, D.C. FSS participated directly in publishing the defamatory statements in the Freeh Report. Freeh is one of two partners of FSS.

11. Freeh Group International Solutions, LLC is a limited liability company formed under the laws of the State of Delaware, with its principal place of business in Wilmington, Delaware. In August 2012, as part of the joining of Pepper Hamilton and FSS, FGIS became a wholly owned subsidiary of Pepper Hamilton LLP, a Pennsylvania limited liability partnership. FGIS employees actively participated in the Penn State engagement and publication of the Report.

12. Gerald A. "Jerry" Sandusky ("Sandusky") was an assistant football coach at Penn State from 1969 to 1999. In 1977 Sandusky founded The Second

Mile, a Pennsylvania non-profit organization that supported at-risk and underprivileged youth. Before his indictment, Sandusky was generally lauded for his charity work and efforts on behalf of youth, receiving awards and praise from politicians, famous athletes, and others. Following a three-year investigation, Sandusky was indicted in November 2011 and subsequently arrested and charged with dozens of counts relating to alleged sexual crimes involving underage youth. On June 22, 2012 a jury found Sandusky guilty of 45 of 48 counts. On October 9, 2012 Sandusky was sentenced to serve 60 years in prison.

13. The Second Mile was a Pennsylvania non-profit charity organization that served underprivileged youth. Headquartered in State College, Pennsylvania, it was founded by Sandusky in 1977 and claimed to serve up to 100,000 Pennsylvania kids a year. By 2009, The Second Mile had revenues of \$3 million per year. Several Penn State Trustees also had relationships with the organization. The Second Mile ceased operations following the fallout from the Sandusky scandal.

14. The Special Investigations Task Force (“Task Force”) was a working group convened by the Penn State Board of Trustees in November 2011. Penn State Trustee Kenneth Frazier served as Chair of the Task Force, and Trustee Ronald Tomalis was Vice Chair. In November 2011, the Task Force engaged FSS to investigate and prepare a written report regarding “the recently publicized

allegations of sexual abuse at the facilities and the alleged failure of the Pennsylvania State University (“PSU”) personnel to report such sexual abuse to appropriate police and government authorities.”

15. Kenneth C. Frazier (“Frazier”) is currently the Chairman, President, and Chief Executive Officer of Merck & Co., Inc. He was elected to the Penn State Board of Trustees as a business and industry Trustee for a three-year term beginning in July 2009, and was reelected in 2012. Frazier served as Chair of the Task Force.

16. Ronald Tomalis (“Tomalis”) was nominated by former Governor Tom Corbett to serve as Pennsylvania’s Secretary of Education in January 2011. He was confirmed in April 2011 and served in the position until he resigned in May 2013. By virtue of his position as Secretary of Education of the Commonwealth, Tomalis served on the Penn State Board of Trustees in an ex officio capacity. Tomalis was the Vice Chair of the Task Force.

17. Keith Masser (“Masser”) is currently the Chairman and Chief Executive Officer of Stermann Masser, Inc. He was elected to the Penn State Board of Trustees by delegates from agricultural societies effective July 2008, and was subsequently reelected for second and third terms. He was elected Chair of the Board in January 2013.

18. Karen Peetz (“Peetz”) is currently the President of BNY Melton. Peetz was elected to the Penn State Board of Trustees in 2010 as a business and industry Trustee and became Chairman of the Board of Trustees in 2012. Peetz resigned from the Board of Trustees effective January 15, 2015.

19. Pepper Hamilton LLP is a large national law firm founded in Philadelphia that today has 13 U.S. offices, including offices in Philadelphia, Harrisburg, Pittsburgh, and Berwyn. In September 2012, Pepper Hamilton combined with FSS, and also acquired FGIS as a wholly owned subsidiary. Following the combination of FSS and Pepper Hamilton, Freeh became Chairman of Pepper Hamilton and held that position until October 2014. On October 1, 2012 Penn State Board of Trustees Chairman Karen Peetz signed an updated engagement letter formally memorializing an agreement that Pepper Hamilton would continue to represent Penn State in the “Task Force” engagement.

20. Omar McNeill (“McNeill”) is currently the Head of Compliance, Regulatory Relations, and Government Affairs for Barclaycard US. From September 2009 through September 2012, he was General Counsel and Secretary of FGIS. McNeill became a partner of Pepper Hamilton after the combination of FSS, FGIS, and Pepper Hamilton in September 2012 prior to joining Barclaycard.

21. Michael J. McQueary was a quarterback for the Penn State football team from 1994 through 1997. He returned to Penn State in 2000 as a graduate

assistant coach for the football team and held positions as an administrative assistant, wide receivers coach, and recruiting coordinator before being placed on indefinite leave in November 2011. He was not retained on the staff when Bill O'Brien took over as head coach in 2012. McQueary told investigators in November 2010 that he witnessed an incident between Sandusky and a male youth in the Lasch Building showers in 2002 (later corrected to February 2001).

22. Dr. Jonathon Dranov ("Dr. Dranov") is a prominent State College physician. In 2001, Dr. Dranov employed McQueary's father, John Sr., and was a friend of the McQueary family. On the night of February 9, 2011, McQueary met with his father and Dr. Dranov to tell them about the alleged incident he witnessed in the Lasch Building showers.

23. The National Collegiate Athletic Association ("NCAA") is a non-profit association headquartered in Indianapolis, Indiana that organizes and regulates college athletics. Its membership is comprised of over 1,000 schools, universities, conferences, and affiliate organizations organized into three divisions. Member schools pledge to follow the rules promulgated by the NCAA, and the NCAA maintains an investigative staff and a Committee on Infractions to investigate and punish violations of NCAA rules. The NCAA claims broad authority to mete out punishment to institutions that violate NCAA rules, up to and including banning schools from participating in a particular sport — the so-called

“death penalty.” Mark Emmert is the current President of the NCAA and has served in that role since 2011.

JURISDICTION AND VENUE

24. The Defendant is subject to personal jurisdiction in this Commonwealth because it is incorporated in Pennsylvania, its principle place of business is in Pennsylvania, it has significant contacts with Pennsylvania, it regularly transacts business in Pennsylvania, it caused harm or injury by acts or omissions in Pennsylvania, and breached a contract executed and performed in Pennsylvania.

25. This Court has original subject matter jurisdiction over this action pursuant to 42 Pa.C.S. § 931 because no other Pennsylvania court has exclusive original jurisdiction over this action.

26. Venue is proper in Centre County pursuant to Pennsylvania Rules of Civil Procedure 1006, 2179, and 2130 because the causes of action described herein arose in Centre County and transactions and occurrences from which the causes of action arose took place in Centre County.

FACTUAL BACKGROUND

Dr. Spanier Serves As President Of Penn State

27. Between 1995 and 2011, Dr. Spanier served as the President of The Pennsylvania State University and worked primarily in University Park, Centre County, Pennsylvania.

28. Penn State is one of the largest and most comprehensive universities in the United States. Penn State's academic, research, and athletic operations are highly decentralized; the university operates in more than 140 locations, with 24 campuses, more than 97,000 students and approximately 47,000 employees. It was founded in 1855 and has enjoyed an excellent worldwide reputation for academic excellence.

29. Penn State is not only a national leader in academics, it is also a national leader in a broad range of endeavors, including intercollegiate athletics, with its sports teams participating in NCAA Division I and the Big Ten Conference. Among its 31 teams competing at the highest levels of NCAA competition, Penn State is particularly known for the tradition and success of its football program, which represents the University as a member of the Big Ten Conference. Joe Paterno became head coach of the Nittany Lions in 1966, after 16 years as an assistant coach, and remained head coach until 2011. As head coach, Paterno led the Nittany Lions to 409 victories, two national championships, and 24

bowl victories. Although Penn State had not been previously punished in its 156-year existence for athletic infractions by the NCAA, on July 23, 2012 the NCAA removed 112 of those victories, based solely and directly on the Freeh Report's conclusions. The NCAA restored these wins in January 2015 as part of a settlement of a lawsuit filed by officials of the Commonwealth of Pennsylvania. Paterno's motto of "Success with Honor" was, in fact, practiced by the football program, which graduated 85% of its players during Paterno's tenure, with many named Academic All Americans.

30. Penn State is also an important center of research in dozens of disciplines, including national defense-related research. The University is home to the Applied Research Laboratory ("ARL"), a Department of Defense-designated, University Advanced Research Center. The ARL was established at Penn State in 1945 and maintains a long-term strategic relationship with the U.S. Navy in addition to providing support for other government agencies. The ARL performs basic and applied research, exploratory development, advanced development in systems engineering, and manufacturing technology in support of national security. The ARL is also the largest research unit within Penn State, with more than 1,000 faculty and staff. It was in the context of overseeing such research that Dr. Spanier was first required to maintain a top-secret security clearance.

31. Before becoming President, Dr. Spanier had been Chancellor of the University of Nebraska-Lincoln, Provost and Vice President for Academic Affairs at Oregon State University, Vice Provost for Undergraduate Studies at the State University of New York at Stony Brook, and had held faculty and administrative posts at Penn State.

32. Dr. Spanier is a family sociologist, demographer, and marriage and family therapist. He earned his Ph.D. from Northwestern University, where he was a Woodrow Wilson Fellow. He is the author of more than 100 publications in his field, including 10 books. His scholarship has focused on children, youth, and families. He is a clinical member and fellow of the American Association for Marriage and Family Therapy and former president of the National Council on Family Relations. He was the founding editor of the Journal of Family Issues. He is considered a leading scholar in his field and is the recipient of three honorary doctorates.

33. A national leader in higher education, Dr. Spanier was the first university president to receive the TIAA-CREF Theodore M. Hesburgh Award for Leadership Excellence. Dr. Spanier has chaired the Association of American Universities, the National Association of State Universities and Land-Grant Colleges, the Big Ten Conference Council of Presidents/Chancellors, and the NCAA Division I Board of Directors. He led the Kellogg Commission on the

Future of State and Land-Grant Universities, was a founding member of the Internet2 Board, U.S. Chair and international Vice Chair of the Worldwide Universities Network, and co-chair, with the President of the Recording Industry Association of America, of the Committee on Higher Education and the Entertainment Industry. Spanier served as chair of the Bowl Championship Series (BCS) Presidential Oversight Board.

34. Much of Dr. Spanier's professional career has been dedicated to the social and emotional development of children and youth, advocacy for the well-being and protection of children, and national and international initiatives to foster improvement in the lives of children and youth. He has served on the boards of several child development and youth development organizations, including the Board of Directors of 4-H and the Board of Governors of Junior Achievement Worldwide. He was also Chair of the Board of Christian Children's Fund (now known as Child Fund International).

35. Dr. Spanier has served on the boards of numerous not-for-profit organizations, community groups, and charities. He has also served on the boards of directors of three corporations overseen by regulatory bodies such as the Security and Exchange Commission and the Federal Reserve.

36. As President of Penn State, Dr. Spanier oversaw one of the nation's largest and most comprehensive universities, with 47,000 employees on 24

campuses, annual revenues approaching \$5 billion, and a physical plant of 1,700 buildings. He led two capital campaigns for Penn State and enhanced the resources of the University by managing to raise approximately \$3.5 billion in philanthropic contributions.

37. During his presidency, Dr. Spanier created the Penn State World Campus, the Schreyer Honors College, and the Presidential Leadership Academy. He led the creation of numerous academic units, including the College of Information Sciences and Technology, the School of International Affairs, and programs in forensic sciences and security and risk analysis. He launched the International Center for the Study of Terrorism. Dr. Spanier also oversaw the merger with the Dickinson School of Law.

38. During his tenure, applications soared to more than 120,000 per year, enrollments grew to 97,000, and the academic standing of dozens of programs rose in national and international rankings. His goals were to make Penn State the “top student-centered research university in America” and for the university to lead the nation in “the integration of teaching, research, and service.” The theme of the recently-completed, \$2 billion fund raising campaign was “For the Future: The Campaign for Penn State Students.” He oversaw the design and construction of dozens of new buildings, adding millions of square feet of space for instruction, research, recreation, and community support. He was recognized with the

American Institute for Architects award for outstanding contributions by a non-architect, and received the Elizabeth Holtzman Award for his improvements to campus landscaping, master planning, and community relations.

39. Dr. Spanier's work as President of Penn State was supported by 12 vice presidents and more than 40 vice provosts, deans, and chancellors, whose work was in turn supported by several hundred department heads and administrative staff. As is common for chief executives of institutions of the size and complexity of Penn State, Dr. Spanier substantially relied on normal administrative processes to address issues in the University community as they arose.

40. Dr. Spanier has worked with the federal government on various projects pertaining to law enforcement, defense, homeland security, intelligence, and national security, and — until Freeh and FSS published their defamatory Report — Dr. Spanier had held several high-level security clearances dating back to 1995. The federal government has accordingly performed numerous investigations into Dr. Spanier's conduct over the years — including a four-month investigation lead by the Federal Investigative Service after the Sandusky scandal broke publicly (but before Freeh and FSS published the defamatory Report) that reconfirmed Dr. Spanier's fitness to continue to hold a Top Secret security

clearance. Special clearances he has held require a polygraph administered by highly trained federal specialists.

41. Dr. Spanier served as chair of the National Security Higher Education Advisory Board, a member of the National Counterintelligence Working Group, and a member of the Board of Advisors of the Naval Postgraduate School and the Naval War College. He has received numerous recognitions for his contributions to law enforcement and national security, including being honored as one of the “Most Influential People in Security,” the “Wings of Law” Award from the Respect for Law Alliance, and the award for “Exceptional Public Service” presented by the FBI. He has been a frequent speaker at FBI and other governmental and educational conferences and seminars throughout the nation on topics related to national security. He is the recipient of the Warren Medal “for outstanding contributions to the national security of the United States of America.”

Gerald (“Jerry”) Sandusky

42. Gerald “Jerry” Sandusky was an assistant coach for the Penn State football team from 1969 to 1999, and separately managed the charity organization he founded called The Second Mile. He held the position of defensive coordinator from 1977 until his retirement.

43. Before his criminal indictment and conviction, Sandusky was a man with a reputation for helping young people. As noted, he was founder of The

Second Mile, an organization devoted to the social development of disadvantaged youth. He and his wife served as foster-parents to numerous children and themselves adopted six children.

44. Dr. Spanier did not interact with Sandusky personally. Dr. Spanier had spoken with Sandusky in only one formal meeting and encountered him only in passing at football games, events, and the like, but Dr. Spanier has never had a personal conversation with Sandusky.

45. In 1998, Sandusky retired from Penn State after being informed by head coach Joe Paterno that Sandusky was not being considered as Joe Paterno's replacement. He coached one additional season following his 1998 retirement. By 2001, Sandusky was no longer employed in any capacity by Penn State. Sandusky did, however, retain his leadership role at The Second Mile.

46. Dr. Spanier had no direct relationship with The Second Mile. He never served on its board, never attended a meeting, and had no awareness of its operations, staff, or the many young people served by The Second Mile organization.

47. In sharp contrast to Dr. Spanier, several members of the Penn State Board of Trustees were involved and had a direct relationship with The Second Mile.

48. Additionally, The Second Mile personnel, including child psychologists, along with members of the Penn State Board of Trustees had extensive contact with Sandusky over the many years of his leadership of The Second Mile and actually regularly observed Sandusky and his interactions with The Second Mile youth.

The Sandusky Scandal

49. On information and belief, during the fall of 2008, the Pennsylvania Attorney General's Office began investigating allegations that Sandusky had sexually abused boys whom he had supervised as an employee of The Second Mile.

50. In November 2011, multiple criminal charges were brought against Sandusky alleging that he had sexually abused a number of minors associated with The Second Mile organization over the years.

51. In November 2011 Tim Curley ("Curley"), the former Athletic Director at Penn State, and Gary Schultz ("Schultz"), the former Senior Vice-President for Finance and Business at Penn State, were criminally indicted for failing to report Sandusky's crimes. Curley and Schultz were each charged in connection with an incident reported to have occurred in 2002 — later found to have been 2001 ("the 2001 incident" or "the McQueary/Sandusky incident") — in which an assistant coach, Michael McQueary ("McQueary"), observed Sandusky

taking a shower and allegedly engaging in inappropriate contact with a 10- or 12-year-old boy in one of the Penn State athletic facilities.

52. Notwithstanding the Attorney General's comprehensive investigation into Sandusky's sexual abuse of children, the Attorney General found no evidence to bring charges against Dr. Spanier in November 2011.

Dr. Spanier Enters Into A Separation Agreement With Penn State

53. In the immediate aftermath of the November 2011 criminal charges against Sandusky, Curley and Schultz, Dr. Spanier offered to resign as President of Penn State if he would be a distraction for the University as it dealt with the crisis. On November 9, 2011 the Penn State Board of Trustees voted to accept Dr. Spanier's resignation as President of Penn State under the "Termination Without Cause" provision of his employment contract.

54. At the time of his resignation, Dr. Spanier and Penn State were parties to a July 1, 2010 Employment Agreement that set forth the terms of Dr. Spanier's employment with Penn State. The 2010 Employment Agreement stated that Penn State "wishes to continue the employment of Dr. Spanier as President of the University in recognition of his extraordinary achievements," and that "[t]he 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 time as President of the University.”

55. By 2011 Dr. Spanier had received 16 consecutive exceptionally positive annual reviews and the 2010 Employment Agreement was his fifth consecutive such multi-year contract, a highly unusual and affirming circumstance in higher education.

56. In the 2010 Employment Agreement, there were three provisions under which Dr. Spanier’s position as President could have been terminated, including “For Cause,” “Without Cause,” and by “Resignation.” Under either the “For Cause” or “Resignation” provisions of the 2010 Employment Agreement, Dr. Spanier would have foregone any future compensation and/or benefit from Penn State. Under the termination “Without Cause” provision, Dr. Spanier was entitled to certain ongoing compensation and benefits.

57. Contrary to media reports, Dr. Spanier was not fired from his position as President. Indeed, Dr. Spanier offered to resign his position. After offering his resignation on November 8, 2011, and being encouraged not to resign, on November 9 the Board of Trustees accepted his resignation. Far from firing Dr. Spanier, the Penn State Board of Trustees determined Dr. Spanier’s resignation would be treated as a termination “Without Cause” for purposes of the 2010

Employment Agreement. Accordingly, Dr. Spanier was entitled to future compensation and continued employment with the University.

58. Nevertheless, in subsequent public statements and media statements, members of the Board of Trustees shifted their commentary to reflect the notion that Dr. Spanier was fired, including a false story that they fired Dr. Spanier for issuing unauthorized statements and for failing to keep the Board of Trustees informed during the Sandusky investigation, further disparaging Dr. Spanier, suggesting the appearance of wrongdoing, and setting the stage for Freeh's defamation of Dr. Spanier and the disrepute that would follow Dr. Spanier professionally and in the court of public opinion.

59. To memorialize the terms of his separation as President of Penn State, Dr. Spanier and Penn State entered into a Confidential Separation Agreement on November 15, 2011 ("Separation Agreement").

60. Under the terms of the Separation Agreement, Dr. Spanier relinquished his position on the University's Board of Trustees, the presidency of the Corporation for Penn State, and other duties tied specifically to his presidency. At the same time, however, Dr. Spanier remained a tenured member of the Penn State 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.

61. The Separation Agreement incorporates the terms of Sections E.5 and E.6 of Dr. Spanier's 2010 Employment Agreement, which provides for a one-year post-Presidency sabbatical transition period, after which Dr. Spanier would continue to hold a position as a tenured faculty member. Section 4(d) of the Separation Agreement states:

(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.

62. The last paragraph of Section E.6 of the 2010 Employment Agreement states: "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 the presidency. The terms of Section E.6 shall survive the expiration of this Agreement.”¹

63. The Separation Agreement also provides that Penn State will reimburse Dr. Spanier for all attorneys’ fees and all expenses he incurs in connection with “matters relating to the grand jury presentment and his termination from the position of President of the University.” The Separation Agreement further provides that Penn State will continue to indemnify Dr. Spanier in accordance with the terms of Section J of the 2010 Employment Agreement. Section J of the 2010 Employment Agreement provides that Penn State shall indemnify Dr. Spanier for all legal fees, expenses, judgments, and other financial amounts incurred while serving in his capacity as President of the University. Section J further provides that Dr. Spanier shall continue to be indemnified subsequent to termination of his employment as President with respect to acts or omissions occurring while he was serving as President.

64. Paragraph 13 of the Separation Agreement contains a non-disparagement clause. Paragraph 13 states:

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

¹ Emphasis added unless otherwise noted.

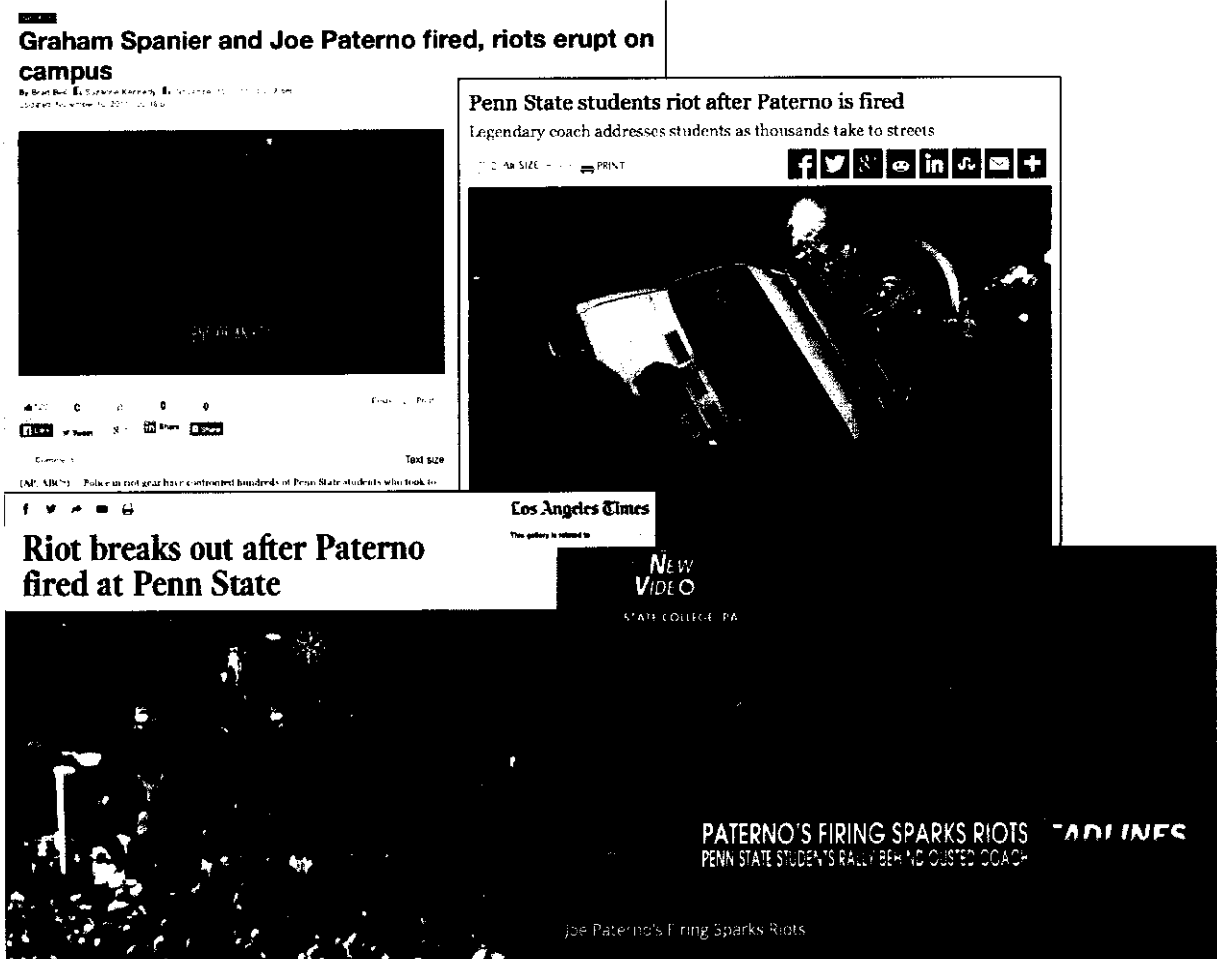
professional colleagues or to any other members of the public, unless required by law or to comply with legal obligations and/or to provide truthful information in connection with ongoing or forthcoming investigations.

65. Paragraph 14 of the Separation Agreement states that in the event of a breach of any provision of the Separation Agreement, the prevailing party in any litigation over such breach shall be entitled to an award of reasonable counsel fees and expenses incurred in investigating and litigating such breach.

66. The Separation Agreement does not in any way provide that the Agreement shall be terminated or cease to operate in the event that Dr. Spanier is criminally charged. Accordingly, the Separation Agreement survives and remains in effect to this day.

The Freeh Engagement

67. On the same day that Dr. Spanier's presidency ended, the Board of Trustees fired Joe Paterno as the head coach of the Penn State football team. Thousands of Penn State students took to the streets of Penn State's campus, riots erupted, and the national media feverishly reported the growing controversy:



68. The Board of Trustees's premature and careless firing of Coach Paterno created a full-scale media and public relations disaster.

69. To address the growing media frenzy — and to vindicate its hasty decision to terminate Coach Paterno — Penn State's Board of Trustees retained Freeh and FSS on or about November 21, 2011 to conduct a purportedly "independent, full, and complete" investigation of "the alleged failure of Penn State University personnel to respond to, and report to the appropriate authorities,

the sexual abuse of children by former University football coach Gerald A. Sandusky.”

70. Freeh’s firm was not the only option that Penn State officials considered. In fact, Penn State officials were concerned that FSS was too small and simply did not have the manpower to conduct a complete and comprehensive investigation. There was also concern about the close association between FSS and Pepper Hamilton LLP, a Philadelphia-based law firm, because Pepper Hamilton has many attorneys that are active and involved in Pennsylvania politics.

71. In the end the Penn State Board of Trustees chose Freeh principally because of his personal experience with, and ability to navigate, the media and public relations aspects of such investigations. The fact that Freeh was known as being very focused on the media narrative was a deciding factor in his retention.

From: Frazier, Kenneth C. (mailto:ken_frazier@merck.com)
Sent: Thursday, November 17, 2011 3:21 PM
To: Ammerman, Paula
Cc: Garban, John P.; Surma (jsurma@uss.com); Baldwin, Cynthia
Subject: Special Committee

Dear Colleagues,

I write to report on the progress Ron Tomalis and I made today with regard to the vetting of candidates for the independent counsel role. This morning we interviewed Louis Freeh (former Director of the FBI) and Michael Chertoff (former Secretary of the Department of Homeland Security). In addition to the roles described in the foregoing

parentheticals, both men have served as former U.S. Attorneys and federal judges. They are both highly experienced in these kinds of investigations and are eminently qualified. On balance, Ron and I recommend Judge Freeh. He strikes us as more at ease with the media side of things and it is clear that this will be his #1 priority. We also think the FBI credential lends itself to an investigation of this type.

Both could independently gain your approval and consent. Of course, if anyone wants us to set up a call for tonight or early tomorrow, we will be happy to do so.

Please forgive my initial choice of e-mail for this report. However, given the time pressures, I thought this would allow us to more efficiently gain your approval and consent. Of course, if anyone wants us to set up a call for tonight or early tomorrow, we will be happy to do so.

Thank you and please advise whether you will allow us to proceed.

72. Penn State paid Freeh and FSS over \$8.3 million for their work to date on the Sandusky matter. Moreover, the University indemnified Freeh and FSS, thus pre-insuring Freeh against the risk of the adverse legal consequences arising from his defamatory Report, and effectively giving him carte blanche to make statements he deemed necessary to accomplish the Board of Trustees's objectives.

73. Freeh and FSS issued the Freeh Report on the Sandusky matter on July 12, 2012, at which time he described his work on the Penn State engagement as "largely completed." Thus, Freeh and FSS were paid more than \$8 million dollars for less than 8 months of work.

The Task Force Secretly Directs Freeh To Use His Investigation To Placate The NCAA

74. On November 17, 2011, shortly after the Sandusky presentment became public and just days before Penn State hired Freeh, NCAA President Mark A. Emmert sent a letter to new Penn State President Rodney Erickson. Emmert informed Erickson that the NCAA believed, based on the Sandusky presentment, that there may have been "failures in the management of athletics programs [at Penn State] — both real and perceived." Therefore, the NCAA threatened to initiate an investigation and punish Penn State for lack of "institutional control" over the football program.

75. Penn State officials, including President Rod Erickson, were deeply concerned that the NCAA might impose the “death penalty” on the Penn State football program. This draconian sanction would have meant that the football program would cease to exist for an extended period of time, eliminating an indispensable source of pride — and revenue — for the University. In fact, the NCAA explicitly threatened Penn State officials with the death penalty, informing them that a majority of NCAA voting members favored it, and that it was a likely result unless Penn State kowtowed to the NCAA entirely.

76. Penn State officials were also deeply concerned about an NCAA investigation because of the potential that unknown violations, unrelated to Sandusky, could be discovered during such an investigation, further harming the football program or other athletics programs. Penn State officials had reservations about whether the NCAA had any jurisdiction to investigate or punish Penn State for the criminal acts of a former employee but worried that questioning the NCAA’s authority might anger NCAA officials and result in even harsher sanctions. Penn State Trustees and other officials were frightened and thus highly motivated to prevent a hands-on NCAA investigation at Penn State, and to avoid the NCAA’s threat to impose the death penalty.

77. Kenneth Frazier and Ronald Tomalis, Penn State Board of Trustees members appointed by the Business and Industry Trustees and then-Governor

Corbett, respectively, both led the Special Investigations Task Force, which reached an agreement with the NCAA designed to meet NCAA objectives. The NCAA and the Big Ten Conference agreed to forego performing their own investigation into Penn State and to defer punishment of Penn State until after Freeh's investigation was finished. In return, the NCAA and Big Ten were to collaborate with Freeh, receiving regular briefings on the investigation and, at times, directing the investigation.

78. Freeh thus understood that in order to meet the Trustees' objectives, he needed to tailor his investigation in a way that would also satisfy the NCAA, as well as absolve the existing Trustees of direct responsibility. Thus, Freeh agreed to collaborate with the NCAA and to allow the NCAA to participate in the overall coordination of his investigation. He also understood that the NCAA's only jurisdictional basis for imposing sanctions would be to find "lack of institutional control," meaning Freeh would need to find that noteworthy individuals such as Dr. Spanier and Coach Paterno — not the Trustees — were ultimately responsible for the actions of former employee Sandusky. Freeh understood that this would also need to be characterized as an "athletic scandal" related to the football program.

79. Frazier and Tomalis arranged a conference call with Freeh and NCAA President Emmert just a week after Freeh and FSS were retained. On December 7,

2011, Freeh met with the NCAA's General Counsel and Vice President of Enforcement in State College, at which time the NCAA made it clear to Freeh that they expected to have a say in how the investigation was conducted, and that they expected him to target former Penn State officials for failing to "control" Sandusky.

80. On December 28, 2011, the NCAA's General Counsel Donald Remy sent FGIS employee Omar McNeill a list of 32 questions and topic areas it wanted FGIS and FSS to investigate. These questions underscored and reinforced the NCAA's goal, which was for Freeh to find that Sandusky was intentionally permitted to continue his criminal activities because, in the NCAA's view, the preeminence of the football culture at the University, an elevation of "winning" over integrity, and the fear that bad publicity from Sandusky's behavior would harm the football program and Coach Paterno.

81. On January 7, 2012, Julie Roe, the NCAA's Vice President of Enforcement, travelled to State College to give a PowerPoint presentation to over a dozen FSS, FGIS, and Pepper Hamilton employees. Referred to by the NCAA as an "education session," for these governance experts the presentation was essentially an investigative blueprint where the NCAA informed Freeh's investigators what they were expected to find and therefore conclude.

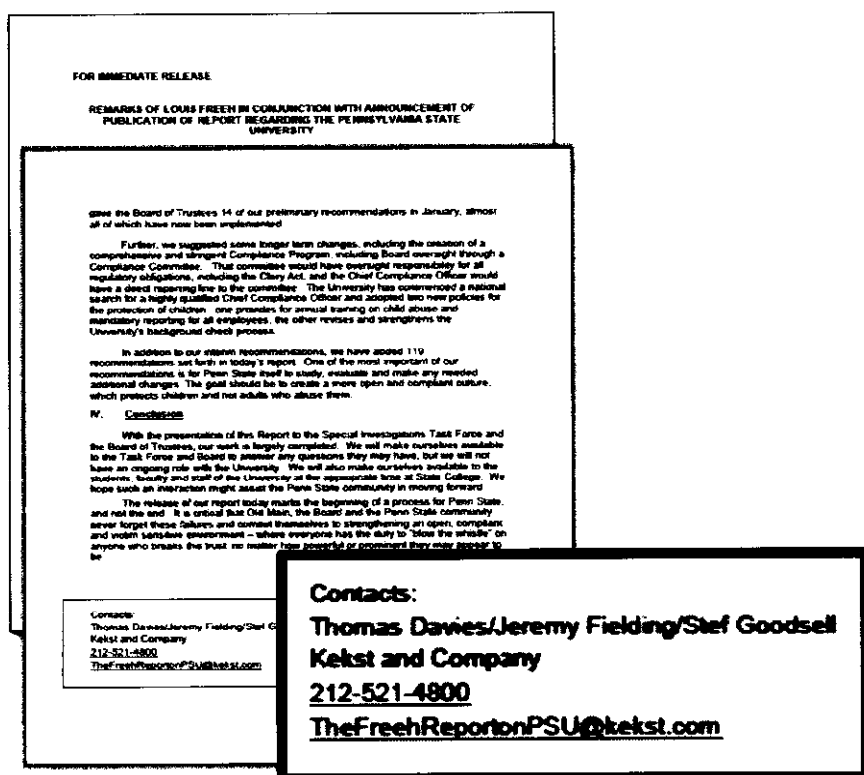
82. Thereafter and throughout the course of the investigation, McNeill held regular conference calls with NCAA representatives to discuss the progress of the investigation.

83. Freeh, FSS, and FGIS tailored their investigation to find and manufacture the “lack of institutional control” the NCAA needed. For example, writing about his own interview with Freeh’s investigators, including FSS partner Eugene Sullivan, Jay Paterno said: “It was obvious they had an agenda. Very few of the questions were about Jerry Sandusky. There were a lot of questions about Joe Paterno and the power relationships as they related to president Graham Spanier and athletic director Tim Curley.”

84. Shortly after the release of the Freeh Report, the NCAA contacted Penn State officials and stated that they intended to sanction Penn State, using the Freeh Report as a justification. Although the football program was targeted for severe penalties, Penn State avoided the death penalty, a total ban from competing in football for at least one year and the harshest athletics penalty a university can receive. The sanctions were essentially removed two years later. Freeh and FSS thus successfully achieved the Trustees’ goal of placating the NCAA by following its suggested agenda and concluding Sandusky’s crimes were abetted by “a lack of institutional control” stemming from administrators who valued winning football games above all else.

Penn State And The Board of Trustees Were Determined To Point The Finger at Dr. Spanier Before Freeh Completed His Investigation

85. The final Freeh Report was released to the media, on July 12, 2012. To maximize its media exposure, Freeh held a nationally televised press conference and issued a press release that, upon information and belief, was drafted by Freeh's nationally known public relations firm and timed to coincide with the release of the Report.



86. The very same morning Freeh and FSS issued the Report, the leaders of Penn State's Board of Trustees also issued a press release adopting the conclusions in the Freeh Report.

87. Upon information and belief, Freeh shared with his and/or Penn State's public relations firm Freeh's conclusions about Dr. Spanier's purported culpability long before interviewing Dr. Spanier in an effort to coordinate the public relations and media campaign associated with the Freeh Report, Freeh's nationally televised press conference, Freeh's press release, and the Board of Trustees' July 2012 meeting.

Penn State And The Board Of Trustees Ignored Contradictory Information In Its Possession And Provided By Dr. Spanier About The Commissioned Report After It Was Published

88. Penn State began to substantially breach Dr. Spanier's separation agreement after the Freeh report was issued, accepting it as fact. Prior to and at the time of publication, Penn State had access to Freeh's source materials, Spanier's emails, and his calendar which all included information that contradicted the Freeh Report and its conclusions. Moreover, the Board of Trustees received a letter from Dr. Spanier specifically rebutting Freeh's conclusions, providing additional information directly contradicting Freeh's conclusions. Dr. Spanier's attorneys also privately submitted to the university's general counsel a detailed summary of errors and omissions in the Freeh Report. Dr. Spanier even requested a meeting with the Board to answer any and all questions and to set the record straight. His written and oral requests were all ignored.

Penn State And The Board Of Trustees Breached The Separation Agreement When Its Commissioned Report Labeled Dr. Spanier A Pedophile-Enabler Based On A 1998 Incident In Which Authorities Cleared Sandusky Of Any Wrongdoing

89. The Freeh Report largely focuses on the response of Penn State officials — including Dr. Spanier — to two incidents involving Sandusky. The first occurred in 1998, when Sandusky was employed by The Second Mile and still employed by Penn State. The second incident occurred in 2001, long after Sandusky had retired, and while Sandusky was employed by The Second Mile.

90. According to the Freeh Report, on May 4, 1998, a State College woman called the University Police Department — the police agency for the Penn State campus — to report that Sandusky had apparently showered with her 11-year-old son in an athletic facility on the Penn State campus following a workout. The mother did not allege that Sandusky sexually abused or assaulted her son.

91. The Penn State Police Department immediately launched an investigation, and the detective assigned to the case interviewed the boy that same day. In addition to the Police Department, the Department of Public Welfare, Centre County Children and Youth Services, and the Centre County District Attorney's Office also investigated the matter.

92. Over the course of that month, officials would interview the boy multiple times, question Sandusky, interview a friend of the boy who also had

contact with Sandusky, and actually eavesdrop on two different conversations Sandusky had with the boy's mother about the matter.

93. As the Freeh Report notes, a report by a Counselor for Children and Youth Services who interviewed the boy found that *nothing* sexual occurred between Sandusky and the boy. The Freeh Report quotes from the Counselor's written opinions, which stated that "there seems to be no incident which could be termed as sexual abuse, nor did there appear to be any sequential pattern of logic and behavior which is usually consistent with adults who have difficulty with sexual abuse of children." The Counselor informed the University Police detective investigating the case that he too found no evidence of sexual abuse.

94. Soon after, the same detective and a Department of Public Welfare caseworker named Jerry Lauro interviewed Sandusky. The detective's notes from the interview state that both he and the caseworker agreed after interviewing Sandusky that *no sexual assault* had occurred.

95. The last entry in the detective's report of the investigation, dated June 3, 1998, states: "As a result of the investigation it could not be determined that a sexual assault occurred and SANDUSKY was advised of such. LAURO also advised that he agreed with Reporting Officer that no sexual assault occurred. Reporting Officer advised Sandusky not to shower with any child. Sandusky stated he wouldn't. CASE CLOSED."

96. In late May or June 1998, the Centre County District Attorney's Office decided it would not press any charges against Sandusky regarding the incident. The Freeh investigators did not interview anyone involved with that decision, but acknowledged that it was due to the fact that the report issued by the Youth Services Counselor explicitly found that nothing sexual occurred between Sandusky and the boy that night. Therefore, there was no crime to prosecute.

97. Ultimately, the records of the 1998 investigation were even expunged from Pennsylvania's statewide "ChildLine" database of suspected child abuse reports. This was because, pursuant to Pennsylvania's Child Protective Services Law, the 1998 report regarding Sandusky was classified as "*unfounded*."

98. The Freeh Report also notes that certain Penn State officials were aware of and kept informed of the investigation. In particular, Athletic Director Tim Curley, Senior Vice President of Finance and Business Gary Schultz, and the University Police Chief, Tom Harmon, corresponded regarding the course of the investigation. On June 1, 1998, Harmon emailed Schultz to tell him that the police had informed Sandusky that no criminal behavior had been established, and the investigation was closed.

99. According to the Freeh Report itself, there was no evidence of any awareness by Dr. Spanier of the 1998 report other than the possibility that he could have seen two emails between others on which Dr. Spanier was merely copied.

The first, from May 5, 1998, is an email from Curley to Schultz, which does not mention Sandusky's name, and simply states, without any additional context or background: "I have touched base with the coach. Keep us posted. Thanks." Schultz responds, again merely copying Dr. Spanier, "Will do. Since we talked tonight I've learned that the Public Welfare people will interview the individual Thursday." The Freeh Report claims that because Dr. Spanier was copied on this email, Dr. Spanier was necessarily aware of the 1998 investigation of Sandusky. But there is no evidence that this email even involved Sandusky at all.

100. Then, on June 9, 1998, Schultz emailed Curley, copying Dr. Spanier, and wrote that investigators "met with Jerry on Monday and concluded there was *no criminal behavior and the matter was closed as an investigation....* I think the matter has been appropriately investigated and I hope it is behind us."

101. Dr. Spanier has no recollection of receiving or reviewing these emails. But Dr. Spanier's detailed calendar entries from 1998 show that he was out of the country on an international trip to the United Kingdom from June 8 to June 16, 1998. This occurred at a time before BlackBerry-type devices were available, and during a trip when Dr. Spanier was moving each day from one U.K. university to another. Dr. Spanier was without email access and could not have possibly seen the June 9 email until he returned to the United States a week later, if he saw it at all, at which time it would have been among a thousand emails waiting in his

inbox. At the time, Dr. Spanier received approximately 25,000 emails a year. Moreover, Dr. Spanier's calendar shows he turned right around and left town on the morning of June 17 for a board meeting in Washington, D.C. for two days. Furthermore, there is no record of any response to or acknowledgment of receipt of such emails.

102. Freeh and FSS had access to and made copies of Dr. Spanier's calendars. Freeh was aware that Dr. Spanier had been travelling internationally at the time the June 9, 1998 email was sent, that he would have had up to a thousand emails waiting for him when he got back, and that he therefore may have never even seen the June 9 email, or may have skimmed past it quickly without an understanding of who or what the email referred to.

103. Accordingly, Freeh and FSS knew it was likely that Dr. Spanier did not see the June 9, 1998 email, and that even if he did, he was merely copied on an exchange between others on an email expressly stating that there was "*no evidence of criminal behavior.*" Freeh recklessly and intentionally minimized the import of this information to reinforce his claim that Dr. Spanier knew Sandusky was a pedophile and chose to conceal that information.

104. Thus, the Freeh Report details an incident in 1998 in which (1) Sandusky allegedly showered with a boy in a locker room after a workout; (2) numerous agencies of the State and County were informed of the situation by

appropriate law enforcement authorities who conducted investigations; (3) trained professionals concluded that no sexual abuse or impropriety took place, and the report was determined to be “unfounded,” (4) the authorities declined to prosecute, finding no crime; and (5) Dr. Spanier was copied on two emails; the first with a vague reference and no name mentioned, and the second of which was sent while he was out of the country and may never have seen, and consisted of his subordinate — who was following the investigation — stating that the matter was appropriately investigated and that the case was closed.

105. The Freeh Report then claims that Dr. Spanier’s failure to act on this information renders him a pedophile enabler. The Report rails that Dr. Spanier “took no action to limit Sandusky’s access to Penn State facilities or [] any measures to protect children on their campuses.” And despite begrudgingly acknowledging that Sandusky was effectively cleared of any wrongdoing, the Freeh Report then faults Dr. Spanier, who was not involved in any way, for not declaring Sandusky a “persona non grata” on the Penn State Campus.

106. Finally, the Freeh Report, after concluding that the 1998 incident had nothing to do with Sandusky’s retirement, then accuses Dr. Spanier of actively deciding “to allow Sandusky to retire in 1999, not as a suspected child predator, but as a valued member of the Penn State football legacy....” This Report, authored by a former federal prosecutor and judge, makes this accusation with

absolutely no explanation as to how or why Dr. Spanier could have or should have considered Sandusky a “suspected child predator” in 1999, after law enforcement officials determined that Sandusky *did not* abuse the boy or commit any other criminal act.

107. The Freeh Report’s accusations that Dr. Spanier knowingly failed to protect potential sexual abuse victims, and his faulting of Dr. Spanier for affirmatively choosing to allow Sandusky to retire in 1999 without labeling him a “suspected child predator” — even though Freeh and FSS knew no sexual abuse was alleged or occurred, and that Dr. Spanier likely did not even know of the investigation — are false, negative, and disparaging. Penn State’s actions in commissioning, encouraging, facilitating and publishing this disparaging report amount to a material breach of the Separation Agreement.

Penn State And The Board Of Trustees Breached The Separation Agreement When Its Commissioned Report Accused Dr. Spanier Of Conspiring To Cover Up A Sexual Assault By Sandusky In 2001

108. The second Sandusky incident that the Freeh Report focuses on is a 2001 incident in which a Penn State football staffer reported witnessing Sandusky and a male in the showers of an athletic facility on the Penn State campus. Graduate assistant Mike McQueary is believed to have reported to Joe Paterno on February 10, 2001 that on the evening before, Friday, February 9, 2001, he

witnessed something that made him uncomfortable. More than a decade later McQueary testified that he entered the locker room of the Lasch Building between 9:00 p.m. and 9:30 p.m. and heard what he described as “sexual sounds.” McQueary’s story about what he saw that night has been inconsistent at best.

109. McQueary says he saw Sandusky — who by that time was employed solely by The Second Mile — with a boy McQueary believed to be between 10 and 12 years old. Exactly what McQueary saw that night may never be known. As multiple news outlets have reported, McQueary’s stories of what he saw and what he reported varied widely and changed multiple times.

110. According to McQueary, the first persons he informed immediately after the alleged incident were his father, John McQueary, and a family friend and colleague of his father’s, a prominent local physician named Dr. Jonathon Dranov at John McQueary’s home. During Sandusky’s criminal trial, Dr. Dranov — who under Pennsylvania law is *required* to report suspected child abuse — testified under oath that McQueary reported that he was upset by the incident, but, when pressed by Dr. Dranov three times, said that he *did not witness anything sexual*.

111. Acting on his father and Dr. Dranov’s suggestions, McQueary then set up a meeting with head coach Joe Paterno. Both McQueary and Paterno later testified that McQueary told Paterno nothing specific, but rather advised that he saw something that he felt was inappropriate.

112. On Sunday, February 11, Paterno spoke with Athletic Director Curley. Paterno passed along substantially the same information that was related to him by McQueary, and Curley later testified that all he understood was that the graduate assistant saw something in the shower area that made him uncomfortable. Curley later relayed this information to Senior Vice President Schultz, who had the impression that Paterno described the events very generally, and speculated that the incident may have involved “wrestling around” activity. Schultz believed that the incident was inappropriate, but not a crime.

113. On February 12, 2001 Schultz and Curley met briefly with Dr. Spanier to give him a “heads up” regarding the situation. During his interview with Freeh and two of his investigators, Dr. Spanier related that this was a short meeting, and that he was told of Sandusky and a youth “horsing around” in the showers. Dr. Spanier specifically asked if that is how the incident was described to Curley and Schultz, and they answered affirmatively. Dr. Spanier was and is adamant that neither Curley or Schultz told him that there was anything abusive, criminal or sexual that occurred between Sandusky and the young male. Curley and Schultz independently have verified Dr. Spanier’s account. Dr. Spanier was told the shower was after a workout and the witness was unsure what he saw because it was “indirect and around a corner.” McQueary’s name was not mentioned. Dr. Spanier was not aware of the witness, the specific location, or time

of day and did not know that The Second Mile youth might be below high school age.

114. Dr. Spanier explained to Freeh that he recalled an agreed-upon plan for Curley to advise Sandusky that (1) he was being directed to not shower again with youth, and (2) that the head of The Second Mile should be advised of this directive.

115. On February 25, 2001, after Schultz and Curley themselves met with McQueary to discuss the incident, calendars show that Dr. Spanier, Curley, and Schultz may have met for a brief follow-up report. On February 27, 2001, Curley emailed Schultz and Dr. Spanier to say that he believed the best course of action was to meet with Sandusky and tell him that bringing young men into the campus facilities was inappropriate. Moreover, Curley would meet with the head of The Second Mile, the youth charity that employed Sandusky, to inform the organization of the allegations. Dr. Spanier responded to this email to say that this approach was acceptable and a reasonable way to proceed. Dr. Spanier explained to Freeh, to the best of his ability, what he was likely trying to convey in his email reply.

116. Dr. Spanier told Freeh investigators that several days later, he saw Curley, who informed him that both the meeting with Sandusky and the meeting with The Second Mile had occurred and gone well. Dr. Spanier considered this to have been an appropriate response to what he understood to be mere horseplay

between a Second Mile employee and a youth that took place on campus. Dr. Spanier considered the matter closed at that time.

117. Dr. Spanier did not hear whatsoever of any other incidents involving Sandusky, including any allegations of abuse by Sandusky, until Sandusky was criminally indicted a decade later.

118. The Freeh Report makes numerous sweeping and defamatory statements regarding Dr. Spanier and his actions in 2001. The Report charges that nothing indicates that Dr. Spanier “made any effort to identify the child victim or determine if he had been harmed.” Freeh accuses Dr. Spanier of “total and consistent disregard ... for the safety and welfare of Sandusky’s child victims,” and of “fail[ing] to protect against a child sexual predator harming children for over a decade.” Freeh further accuses Dr. Spanier of “conceal[ing] Sandusky’s activities from the Board of Trustees, the University community and authorities,” and of “exhibit[ing] a striking lack of empathy for Sandusky’s victims by failing to inquire as to their safety and well-being, especially by not attempting to determine the identity of the child who Sandusky assaulted in the Lasch Building in 2001.” Finally, Freeh claims that by knowingly failing to alert the Board of Trustees of “child sexual abuse allegations against Sandusky,” Dr. Spanier is guilty of intentionally “empower[ing] Sandusky to attract potential victims to the campus.”

119. Freeh and his colleagues made these severe, irreparably harmful allegations despite a lack of any evidence whatsoever that Dr. Spanier was informed of any allegations of sexual assault or child abuse in 2001 or at any other time. Not only did Freeh know that his investigation was glaringly deficient and far too inadequate to allow him a basis to make such accusations, he in fact willfully ignored, purposefully avoided, or downplayed actual evidence regarding exactly what Dr. Spanier knew — evidence that uniformly shows that Dr. Spanier was *not* informed of any allegation of sexual abuse of any child by Sandusky.

120. The Freeh Report's claims regarding Dr. Spanier's knowledge of, and response to, the 2001 incident are false, negative, and disparaging. Penn State's actions in commissioning, encouraging, facilitating and publishing this disparaging report amount to a material breach of the Separation Agreement.

Penn State And The Board Of Trustees Breached The Separation Agreement When It Commissioned A Rushed And Biased Investigation

121. Freeh went to great lengths in his Report and accompanying press conference to stress that his investigation was comprehensive, complete, and independent. Freeh and the Penn State Board of Trustees knew that, to serve the Report's intended purpose to convince the public that the "bad apples" had been rooted out, that "closure" had been achieved, and so they could "move on," it was

essential that Freeh be viewed as an impartial and disinterested neutral, with no stake in the ultimate outcome of the investigation.

122. One way Freeh perpetrated this illusion was by trumpeting the claim that the final Freeh Report was released to the public and the Penn State Board of Trustees at the same time. The fact that the Board did not get an advance copy of the Report was held up as an example of the independence of Freeh's investigation.

123. But in fact Freeh had ongoing discussions with selected Board members regarding the course of the investigation, and its likely outcome, long before the release of the final Report. Emails between Freeh and Board members show that Freeh regularly briefed Board members on the status of the investigation.

124. For example, in April 2012 — three months before Freeh even interviewed Dr. Spanier, and three months before the Report was released — Freeh and two members of the Board openly discussed targeting Dr. Spanier. When a media outlet reported that Dr. Spanier had been asked to take on a national security position with a government agency, Freeh and Board members plotted to deny Dr. Spanier this employment opportunity. Freeh went so far as to refer to the coordinated targeting of Dr. Spanier by the Board and FSS as “our job.”

From: Frazier, Kenneth C. <ken_frazier@merck.com>
Sent: Thursday, April 12, 2012 8:31 AM
To: Louis Freeh
Cc: Tomalis, Ronald; Omar McNeil -- Freeh Group
Subject: Re: Former Penn State University president Graham Spanier to begin new job for federal government

Oh brother...

Sent from my iPad

On Apr 12, 2012, at 8:22 AM, "Louis Freeh" <freeh@freehgroup.com> wrote:

Very interesting--we have done our job notifying the Federal prosecutors regarding the latest information.

Sent from my iPhone

On Apr 12, 2012, at 8:18 AM, "Tomalis, Ronald" <<mailto:rtomalis@pa.gov>rtomalis@pa.gov> wrote:

Seems someone might not have done their homework...

Former Penn State University president Graham Spanier to begin new job for federal government

Sara Ganim

Patriot News

April 11, 2012

Former Penn State University president Graham Spanier said he will soon begin working for the federal government on projects related to national security.

"For the next several months, as I transition to my post-presidential plans, I will be working on a special project for the U.S. government relating national security. This builds on my prior positions working with federal agencies to foster improved cooperation between our nation's national security agencies and other entities," Spanier said in an Email.

Spanier was ousted as the university's leader on Nov. 9, less than a week after former assistant football coach Jerry Sandusky was charged with child sex abuse.

125. Through such discussions, which are not revealed in Freeh's "independent" Report, Freeh kept his client aware of his intentions, and Freeh's client communicated its desires to Freeh. The claim that Freeh released his Report to the Board at the same time as it was released to the public was a public relations

ploy meant to create the illusion that the Board had no involvement at all in Freeh's "independent" investigation. In fact some members of the Board knew the ultimate accusations the Report would contain before it was released.

126. Indeed, the primary goal of the Freeh investigation was to assign blame to specific individuals, which is evidenced by the engagement letter memorializing the agreement between FSS and the "Special Investigations Task Force," a group formed by the Board of Trustees to oversee the Freeh investigation.

127. The engagement letter states that the express purposes of Freeh's investigation, and the Report that would follow, would be to make findings concerning: "i) failures that occurred in the reporting process; ii) the cause for those failures; iii) who had knowledge of the allegations of sexual abuse; and iv) how those allegations were handled by the Trustees, PSU administrators, coaches, and other staff." Thus, Freeh's investigation from the outset *assumed* that certain individuals at Penn State were aware of and concealed evidence of sexual abuse by Sandusky, and Freeh's charge was to identify those individuals and explain why they failed to report suspected child abuse.

128. The engagement letter also makes clear that Freeh and FSS were to "act under the sole direction of the Task Force in performing the [above-described]

services,” and that Freeh and FSS would perform these services “for the Task Force’s benefit.”

129. Freeh also knew that, at the time he was retained, a media narrative was forming that suggested Penn State officials, particularly Schultz, Curley, and Paterno, had been aware of allegations regarding Sandusky but had not done enough to intervene. In particular, Schultz and Curley were indicted in connection with the investigation along with Sandusky, before Freeh was retained.

130. On June 16, 2012 — a month before the Report was published — the Associated Press published an interview with Penn State University Trustee Keith Masser, in which Masser defended the Board of Trustees’ purported decision to oust Dr. Spanier as President of the University. Masser was quoted as saying that Dr. Spanier was “involved in a cover-up,” and that “top administration officials and top athletic officials were involved in making the decision to not inform the proper authorities” of Sandusky’s criminal activities.

131. The Masser interview was published by the Associated Press and widely circulated by other media outlets nearly three weeks before Freeh interviewed Dr. Spanier, and nearly a month before the Freeh Report was released.

132. Before Freeh interviewed Dr. Spanier and before he issued his Report, Freeh knew that his client had publicly accused Dr. Spanier of participating in a cover-up of Sandusky’s sexual abuse. Freeh knew that his client expected the

Report to echo the public position of the Board of Trustees. Based on the Board's directions, Freeh thus determined before interviewing Dr. Spanier that he was going to issue a Report accusing Dr. Spanier of actively participating in a cover-up and actively deciding to conceal Sandusky's criminal activities.

133. Freeh also knew that in addition to securing the resignation of Dr. Spanier, the Board of Trustees had also fired Paterno, returned Schultz to retirement, and determined that they would not renew Curley's contract. Freeh knew that by accusing Dr. Spanier of being a "wrongdoer" along with Schultz, Curley, and Paterno, he could release a report that not only justified the Board's actions, but that also reinforced then-Vice Chair Masser's preexisting media narrative. By claiming that Dr. Spanier joined Schultz, Curley, and Paterno in a "cover up" of Sandusky's actions, Freeh knew that he could advance his client's interests by scapegoating a discrete set of individuals and providing a reason — a supposed cover-up — for why the Board should be considered substantively blameless by the public.

134. Freeh also knew that the NCAA expected him to target the University's highest-level officials like Dr. Spanier and Coach Paterno to justify the NCAA's highly dubious claim to have jurisdiction to punish Penn State for Sandusky's actions. Freeh's Report, which claims that the investigation was entirely independent, intentionally omits mention of the fact that Freeh and his

investigators held multiple meetings and at least 15 conference calls with NCAA officials, that NCAA officials provided the blueprint for the investigation, or that NCAA officials provided Freeh with 32 questions the NCAA expected Freeh to investigate. Nor does the Report mention that it was understood that Freeh's "independent" investigation was expected to substitute for an NCAA investigation, and that the prospect of a separate, additional NCAA investigation loomed unless the NCAA was satisfied with Freeh's conclusions.

135. Although the Board of Trustees still has not done any meaningful examination of the credibility of the Freeh Report, others have; it has been the subject of numerous critiques, and many of its claims have since been heavily scrutinized. On June 19, 2014, Hearing Examiner Michael Bangs of the Pennsylvania State Employees Retirement System issued an opinion recommending that Sandusky's state pension be restored. Bangs's findings and conclusions addressed the Freeh Report, and specifically rebutted the Report's claim that "Penn State made 71 separate payments to Sandusky for travel, meals, lodging, speaking engagements, camps and other activities from January 5, 2000 through July 22, 2008."

136. Hearing Examiner Bangs's opinion found that "there is no factual support whatsoever that Penn State made 71 separate payments to [Sandusky] between 2000 and 2008, as set forth in the Freeh Report." Instead, "an

examination of [Sandusky's] tax records and the records provided by Penn State's legal counsel reveal[ed] that there were no more than six payments made to [Sandusky], with several being reimbursement for travel expenses." Noting that the Freeh Report was "based on significant hearsay and was mostly ruled inadmissible," Bangs found that "[t]he *terrifically significant disparity between the findings in the Freeh Report and the actual truth is disturbing.*" He went on to opine that "the use of this remarkably incorrect statistic by the Freeh Report, which was then relied upon to form the basis for a number of its other conclusions, calls into question the accuracy and veracity of the entire report."

137. Former Penn State President Rodney Erickson, who was President during the investigation and when the Report was released, has also stated that aspects of the Freeh Report are "inaccurate and unfortunate," and that the Report will "never be a complete record in the sense that not everyone who was involved had an opportunity to or was able to be interviewed."

138. Indeed, even the current President of Penn State, Eric Barron, has recently said that "[t]here are significant problems with the Freeh Report," "Freeh did not have subpoena power" and thus he did not "interview many of the most salient individuals," "Freeh expressed his personal opinions and conclusions about the motivation of individuals, rather than simply presenting factual information," and finally that "*the limitations of the Freeh report prevent it from being the basis*

of any decision facing Penn State.” (Emphasis in original.) Of course as this Complaint details, the Freeh Report has been and continues to be the basis for many important decisions made by the Trustees and the NCAA.

139. In a commentary on ESPN.com following a settlement between Penn State and the NCAA regarding the sanctions that followed the release of the Freeh Report, college football reporter Ivan Maisel stated, “The Freeh Report, as it turned out, carried all the factual gravitas of a high school term paper.”

**Penn State’s and Freeh’s Negative and Disparaging Statements
Are Repeated And Republished In Other Media Outlets,
Compounding The Harm To Dr. Spanier**

140. Penn State’s and Freeh’s publication of the Freeh Report set off a media firestorm.

141. National and local media outlets across the country have republished the highly negative statements about Dr. Spanier. Just a few of the examples include:

- “Penn State leaders including the late football coach Joe Paterno covered up Jerry Sandusky’s abuse of children for years, showing a callous disregard for the victims to protect a multimillion-dollar football program, former FBI director Louis Freeh said on Thursday. Laying out the conclusions of his eight-month probe into the Sandusky scandal, Freeh singled out former university President Graham Spanier for criticism.... ‘Our most saddening

and sober finding is the total disregard for the safety and welfare of Sandusky's child victims by the most senior leaders at Penn State,' Freeh said. 'The most powerful men at Penn State failed to take any steps for 14 years to protect the children who Sandusky victimized.'" -- Dave Warner & Mark Shade, "Scathing report faults Penn State leaders in child sex case," CHICAGO TRIBUNE, July 12, 2012, *available at* http://articles.chicagotribune.com/2012-07-12/sports/sns-rt-us-usa-crime-sanduskybre86b05d-20120711_1_jerry-sandusky-president-graham-spanier-sandusky-scandal.

- "The most powerful leaders at Penn State University showed 'total and consistent disregard' for child sex abuse victims while covering up the attacks of a longtime sexual predator, according to an internal review into how the school handled a scandal involving its former assistant football coach.... In a scandal that has shaken Pennsylvania residents and gripped the nation, leading to Paterno's dismissal and the ouster of longtime president Graham Spanier, Louis Freeh, the former FBI director who led the review, said top university officials forged an agreement to conceal Sandusky's sexual attacks more than a decade ago." -- Susan Candiotti, *et al.*, "Penn State leaders disregarded victims, 'empowered' Sandusky, review finds," CNN, July 12, 2012, *available at*

<http://www.cnn.com/2012/07/12/us/pennsylvania-penn-state-investigation/>.

- “A scathing report that excoriated top Pennsylvania State University officials, including legendary football coach Joe Paterno, for failing to protect boys from a sexual predator sent a warning to other universities about the need to fully disclose suspected crimes on campus.... The 267-page report, commissioned by university Trustees after allegations surfaced about abuse by former assistant football coach Jerry Sandusky, said top Penn State officials, including former President Graham Spanier and the late Mr. Paterno, ‘failed to protect against a child sexual predator harming children for over a decade.’” -- Kris Maher & John W. Miller, “Penn State Concealed Sex Abuse, Report Says,” THE WALL STREET JOURNAL, July 13, 2012, *available at* <http://online.wsj.com/news/articles/SB10001424052702303740704577522603440183734>.

**Dr. Spanier Has Suffered Significant Reputational, Emotional,
And Economic Harm As A Result Of Penn State’s and Freeh’s
Statements**

142. Penn State’s and Freeh’s disparaging statements regarding Dr. Spanier have caused him severe damage.

143. Dr. Spanier has suffered severe reputational harm as a result of these negative statements. The false, malicious and disparaging statements regarding

Spanier impugn his well-earned reputation as an educator, university administrator, civic leader, advocate for child and family welfare, and national security expert — and they undermine public confidence in his competence, ethics, and abilities in these areas. Dr. Spanier has spent a lifetime building his reputation, and Penn State's and Freeh's statements falsely and wrongfully tarnish his strong reputation in these and other areas.

144. Penn State's and Freeh's false, malicious, and disparaging statements regarding Dr. Spanier have caused him to endure humiliation and verbal and written personal attacks.

145. The Freeh Report caused the NCAA and Big Ten Conference, organizations Dr. Spanier formerly led, to condemn and censure him.

146. Using the Freeh Report as justification, the University has also taken a broad range of punitive actions against Dr. Spanier, in blatant breach of the Separation Agreement.

147. Penn State, with the acquiescence of the Board of Trustees, initiated proceedings to revoke Dr. Spanier's tenure.

148. Penn State prohibited Dr. Spanier from representing the University in any capacity.

149. Penn State cancelled a course Dr. Spanier was scheduled to teach.

150. Penn State revoked Dr. Spanier's assignment of an office at the University.

151. Penn State revoked any and all of Dr. Spanier's access to the University and its systems, including cutting him off from the University network and email.

152. Penn State confiscated Dr. Spanier's computer, laptop, iPad and printer.

153. On 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 file in the Penn State Alumni Association database, barring Dr. Spanier from receiving communications and mailings from the Alumni Association.

154. Because of the narrative published by Penn State and Freeh, Dr. Spanier has been the subject of excoriation by reporters, activists, columnists, editorial writers, and bloggers.

155. The disparaging statements regarding Dr. Spanier have caused him economic harm. Because of the narrative spoken and written by Freeh, Dr. Spanier has lost a number of rewarding employment opportunities, including being forced to resign from a position on the board of directors of a corporation that paid Dr. Spanier handsomely.

156. The disparaging statements have caused Dr. Spanier to suffer emotionally and physically.

**Penn State Brazenly And Repeatedly
Breaches The Separation Agreement**

157. In connection with the Freeh engagement and its aftermath, Penn State has willfully and repeatedly breached the Separation Agreement and caused further harm and damage to Dr. Spanier.

158. Although the Separation Agreement expressly prohibits Penn State and its Board of Trustees from making “any negative comments about Dr. Spanier” to the media or any other members of the public, Penn State and certain members of the Board of Trustees have repeatedly done so in breach of the Separation Agreement.

159. As explained herein, Penn State, the Board of Trustees, and the Board’s Special Investigations Task Force hired Freeh and FSS specifically because Freeh was considered the candidate that would make shaping the media narrative “his #1 priority.” Several members of the Board of Trustees were aware, months before the Freeh Report was released, that Freeh intended to disparage Dr. Spanier in the report and to publicly issue a report making extraordinarily negative, damaging, and false statements about Dr. Spanier.

160. Penn State not only acquiesced in Freeh's disparagement of Dr. Spanier, but in fact hired him to do so, and provided material support, encouragement, and facilitation of Freeh's action towards Dr. Spanier. The Board's Retention Agreement with Freeh in fact contemplates that Freeh would publicly issue a report accusing certain Penn State personnel of failing to report allegations of child sexual abuse, and members of the Board of Trustees knew months before the release of the Freeh Report that Freeh was targeting Dr. Spanier. Penn State knew it should not hire an agent to do that which the University and Trustees were contractually forbidden to do, and that such statements by an agent hired by Penn State would breach the Separation Agreement.

161. For example, Penn State Board of Trustees member Keith Masser stated in a June 2012 interview with the Associated Press that Dr. Spanier was "involved in a cover-up" of Sandusky's criminal activities.

162. Penn State also breached the Separation Agreement in connection with the Freeh engagement by itself publicly releasing the Freeh Report online to a worldwide audience. Following Freeh's press conference on July 12, 2012, Penn State published the Freeh Report, a copy of Freeh's prepared remarks, and a video of Freeh's press conference on the website <http://progress.psu.edu/the-freeh-report>.

163. In connection with the Freeh engagement and the release of the Freeh Report, members of the Penn State administration and the Board of Trustees have

repeatedly and willfully made disparaging comments about Dr. Spanier in breach of the Separation Agreement.

164. In a July 12, 2012 press release concerning the Freeh Report, Penn State stated: “Today’s comprehensive report is sad and sobering in that it concludes that at the moment of truth, people in positions of authority and responsibility did not put the welfare of children first.” The press release also states “Judge Freeh’s report concludes that certain people at the University who were in a position to protect children or confront the predator failed to do so. There can be no ambiguity about that.” Penn State publicly disseminated this press release, thereby effectively accepting its fallacious conclusions on its website at <http://progress.psu.edu/resource-library/story/penn-state-issues-statement-on-freeh-report>.

165. Also on July 12, 2012 Board of Trustees members Kenneth Frazier and Karen Peetz held a press conference along with Penn State President Rodney Erickson in conjunction with the release of the Freeh Report. During that press conference, Penn State permitted Frazier and Peetz to make numerous negative statements about Dr. Spanier, including:

- “Judge Freeh’s Report is both sad and sobering.... Our administrative leadership also failed. Judge Freeh’s Report concludes that at the moment of truth, people who are in a position to protect children, and to confront a

predator – including people at the highest levels of responsibility in the University – specifically, Graham Spanier, Joe Paterno, Tim Curley, and Gary Schultz, did not put the welfare of children first.” (Kenneth Frazier)

- In response to a question about whether the Board felt misled by Dr. Spanier: “I would say that we feel concerned and misled in the entire situation. Though we’re taking responsibility... And so each of the individuals I would say have let us down significantly.” (Peetz)
- In response to questioning about what Frazier wishes he had asked Spanier: “I can’t answer that question because I don’t think it was a question of asking the wrong questions. I think it was a reticence about sharing the information. It’s not a question of, if we’d asked a magic question, these folks would have said, ‘Ok, we’re not going to conceal what’s going on, now that you asked it that way we’ll answer it a different way.’” (Frazier)
- In response to questioning about why the Board didn’t rally behind attempts to get more information from Dr. Spanier: “I’ll make the point again for everybody to understand. In retrospect, we wish that we had pressed upon someone that we had complete trust in. The questions were asked, the answers were given, they were not complete, thorough, open answers. We could have asked more questions but again I want to say its not simply a question of us finding a magic formulation of the question. We asked

enough questions that if someone wanted to share what was going on they could have shared what was going on. Am I clear?" (Frazier)

- In response to a question about whether the Board had too much trust in Spanier: "There is a distinction between board oversight and management. The president of the school has an obligation to make sure that the school is run in an appropriate way and before this issue arose I think Graham Spanier was one of the most respected college presidents in the United States. I would say that we were delighted as a Board to have Graham Spanier as our president. We trusted him based on all external appearances, we believed what we were being told was accurate. In retrospect, we were not told what was being accurate [sic]." (Frazier)

166. Frazier and Peetz held another press conference on the following day, July 13, 2012, again to discuss the release of the Freeh Report. At that press conference, Frazier said of Dr. Spanier: "I think the Report shows that there was a breakdown or gap in terms of some of our oversight as a Board. I think it also says that some people, in a particular instance, because they wanted to avoid bad publicity, might have concealed the criminal acts of Jerry Sandusky."

167. Penn State has also breached the Separation Agreement by failing to allow Dr. Spanier to teach any courses and by failing to provide administrative

support commensurate with that received by other tenured faculty members and former presidents.

168. In preparation for the 2012 fall semester posting of spring semester courses, Dr. Spanier developed a new course. In May 2012 he identified an office location and prepared the paperwork necessary to hire a secretary. President Erickson and Acting Provost Pangborn did not respond to Dr. Spanier's emails about these matters and did not assign Dr. Spanier an office location or allow him to hire a secretary. When the spring course list was posted, Dr. Spanier's name was not on it. On November 2, 2012, Provost Pangborn sent Dr. Spanier a letter notifying Dr. Spanier that he was being placed on an indefinite suspension from any and all teaching duties.

169. On November 14, 2012, Penn State sent individuals to Dr. Spanier's home to confiscate and remove his desktop computer, laptop, iPad, and all associated electronics and means of accessing the Penn State network. IT support personnel were directed to have no contact with Dr. Spanier.

170. Despite the fact that the Separation Agreement expressly requires that Dr. Spanier be provided with the same administrative support as other faculty members, as well as an office on campus and a staff assistant, Penn State has breached the Separation Agreement by knowingly and intentionally failing to so provide.

171. Penn State has also breached the Separation Agreement by failing to pay for selected expenses Dr. Spanier incurred in connection with the Freeh Report, the Grand Jury presentment, and his prosecution based on the false claims in the Freeh Report.

172. Specifically, Dr. Spanier's legal team had to engage a firm to attempt to address the unfathomable reputational harm caused by Penn State's disparaging statements. Penn State has refused to reimburse Dr. Spanier for a substantial portion of this expense.

173. In connection with the Freeh engagement, Dr. Spanier also had to file a lawsuit, suggested by Penn State's legal counsel in the matter, in an attempt to gain access to his own emails, which Penn State provided to Freeh but refused to provide to Dr. Spanier. Penn State and Freeh denied and refused Dr. Spanier's request that he be provided such access in order to aid the Freeh probe and to prepare for Dr. Spanier's own interview with Freeh. Penn State refused to reimburse Dr. Spanier for any of the legal bills associated with this suit.

**COUNT I: BREACH OF CONTRACT FOR NEGATIVE
COMMENTS IN THE FREEH REPORT AND THE FREEH
PRESS CONFERENCE**

174. Plaintiff incorporates by reference paragraphs 1 through 173 of this Complaint as if fully set forth herein.

175. The Separation Agreement between Dr. Spanier and Penn State is a valid and enforceable contract.

176. A copy of the Separation Agreement is attached to this Complaint as Exhibit A.

177. The Separation Agreement prohibits Penn State from making any negative comments about Dr. Spanier to the media, to his professional colleagues, or to any other members of the public.

178. The Separation Agreement requires Penn State to 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 his professional colleagues, or to any other members of the public.

179. Penn State has materially breached the Separation Agreement.

180. Penn State breached the Separation Agreement by hiring Freeh and directing Freeh and FSS to publicly accuse Penn State administrators of concealing Sandusky's criminal activities, by encouraging and facilitating Freeh and FSS's making of the many numerous negative statements about Dr. Spanier set forth in Counts I-III, and by knowingly employing an agent, FSS, to make negative comments about Dr. Spanier despite the Separation Agreement's prohibition on making such statements.

181. Dr. Spanier has performed all of his obligations under the Separation Agreement.

182. Dr. Spanier has been damaged by Penn State's contractual breach by, among other things, having his reputation tarnished, by having negative statements about him widely published and disseminated, by loss of employment opportunities, by having to hire a professional firm to attempt to repair the damage to his reputation, and by having to incur the substantial burden and expense of bringing and pursuing this action in order to enforce his rights under the Separation Agreement.

**COUNT II: BREACH OF CONTRACT FOR PUBLISHING THE
FREEH REPORT, THE FREEH PRESS CONFERENCE, AND
FREEH'S JULY 12, 2012 MEDIA STATEMENT**

183. Plaintiff incorporates by reference paragraphs 1 through 182 of this Complaint as if fully set forth herein.

184. The Separation Agreement between Dr. Spanier and Penn State is a valid and enforceable contract.

185. A copy of the Separation Agreement is attached to this Complaint as Exhibit A.

186. The Separation Agreement prohibits Penn State from making any negative comments about Dr. Spanier to the media, to his professional colleagues, or to any other members of the public.

187. The Separation Agreement requires Penn State to 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 his professional colleagues, or to any other members of the public.

188. Penn State has materially breached the Separation Agreement.

189. Penn State breached the Separation Agreement by publishing the Freeh Report, a video of the Freeh Press Conference, and the written prepared remarks of Freeh distributed on July 12, 2012 on its website. In doing so Penn State knowingly published the negative statements about Dr. Spanier contained therein.

190. Penn State published these materials to the media and general public with the knowledge that they contain numerous negative comments about Dr. Spanier, despite the Separation Agreement's prohibition on making such statements.

191. Dr. Spanier has performed all of his obligations under the Separation Agreement.

192. Dr. Spanier has been damaged by Penn State's contractual breach by, among other things, having his reputation tarnished, by having negative statements about him widely published and disseminated, by loss of employment opportunities, by having to hire a professional media relations firm to attempt to

repair the damage to his reputation, and by having to incur the substantial burden and expense of bringing and pursuing this action in order to enforce his rights under the Separation Agreement.

**COUNT III: BREACH OF CONTRACT FOR NEGATIVE
COMMENTS BY KENNETH FRAZIER AND KAREN PEETZ**

193. Plaintiff incorporates by reference paragraphs 1 through 192 of this Complaint as if fully set forth herein.

194. The Separation Agreement between Dr. Spanier and Penn State is a valid and enforceable contract.

195. A copy of the Separation Agreement is attached to this Complaint as Exhibit A.

196. The Separation Agreement prohibits Penn State from making any negative comments about Dr. Spanier to the media, to his professional colleagues, or to any other members of the public.

197. The Separation Agreement requires Penn State to 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 his professional colleagues, or to any other members of the public.

198. Penn State has materially breached the Separation Agreement.

199. Penn State breached the Separation Agreement by holding Penn State-organized and sponsored press conferences on July 12, 2012 and July 13, 2012 in

which President Erickson, Trustee Kenneth Frazier, and Trustee Karen Peetz made numerous negative comments about Dr. Spanier, including:

- “Judge Freeh’s Report is both sad and sobering.... Our administrative leadership also failed. Judge Freeh’s Report concludes that the moment of truth, people who are in a position to protect children, and to confront a predator – including people at the highest levels of responsibility in the University – specifically, Graham Spanier, Joe Paterno, Tim Curley, and Gary Schultz, did not put the welfare of children first.” (Kenneth Frazier)
- In response to a question about whether the Board felt misled by Dr. Spanier: “I would say that we feel concerned and misled in the entire situation. Though we’re taking responsibility... And so each of the individuals I would say have let us down significantly.” (Peetz)
- In response to questioning about what Frazier wishes he had asked Spanier: “I can’t answer that question because I don’t think it was a question of asking the wrong questions. I think it was a reticence about sharing the information. It’s not a question of, if we’d asked a magic question, these folks would have said, ‘Ok, we’re not going to conceal what’s going on, now that you asked it that way we’ll answer it a different way.’” (Frazier)
- In response to questioning about why the Board didn’t rally behind attempts to get more information from Dr. Spanier: “I’ll make the point again for

everybody to understand. In retrospect, we wish that we had pressed upon someone that we had complete trust in. The questions were asked, the answers were given, they were not complete, thorough, open answers. We could have asked more questions but again I want to say its not simply a question of us finding a magic formulation of the question. We asked enough questions that if someone wanted to share what was going on they could have shared what was going on. Am I clear?" (Frazier)

- In response to a question about whether the Board had too much trust in Spanier, Frazier said: "There is a distinction between board oversight and management. The president of the school has an obligation to make sure that the school is run in an appropriate way and before this issue arose I think Graham Spanier was one of the most respected college presidents in the United States. I would say that we were delighted as a Board to have Graham Spanier as our president. We trusted him based on all external appearances, we believed what we were being told was accurate. In retrospect, we were not told what was being accurate [sic]."
- Frazier further said that, "I think the Report shows that there was a breakdown or gap in terms of some of our oversight as a Board. I think it also says that some people, in a particular instance, because they wanted to avoid bad publicity, might have concealed the criminal acts of Jerry

Sandusky.”

200. Penn State breached the Separation Agreement by publishing a July 12, 2012 press release on its website in which Penn State stated “Today’s comprehensive report is sad and sobering in that it concludes that at the moment of truth, people in positions of authority and responsibility did not put the welfare of children first,” and that “Judge Freeh’s report concludes that certain people at the University who were in a position to protect children or confront the predator failed to do so. There can be no ambiguity about that.” A copy of this press release is attached to this Complaint as Exhibit B.

201. Penn State knowingly published these negative statements to the media and general public, despite the Separation Agreement’s prohibition on making such statements.

202. Penn State failed to use reasonable efforts to cause Frazier and Peetz not to make negative comments about Dr. Spanier to the media, his professional colleagues, and the public. Penn State in fact organized the press conference and published it on its website, and Penn State President Erickson appeared at and participated in the press conference with Frazier and Peetz.

203. Dr. Spanier has performed all of his obligations under the Separation Agreement.

204. Dr. Spanier has been damaged by Penn State's contractual breach by, among other things, having his reputation tarnished, by having negative statements about him widely published and disseminated, by loss of employment opportunities, by having to hire a professional media relations firm to attempt to repair the damage to his reputation, and by having to incur the substantial burden and expense of bringing and pursuing this action in order to enforce his rights under the Separation Agreement.

**COUNT IV: BREACH OF CONTRACT FOR NEGATIVE
COMMENTS OF TRUSTEE KEITH MASSER**

205. Plaintiff incorporates by reference paragraphs 1 through 204 of this Complaint as if fully set forth herein.

206. The Separation Agreement between Dr. Spanier and Penn State is a valid and enforceable contract.

207. A copy of the Separation Agreement is attached to this Complaint as Exhibit A.

208. The Separation Agreement prohibits Penn State from making any negative comments about Dr. Spanier to the media, to his professional colleagues, or to any other members of the public.

209. The Separation Agreement requires Penn State to 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 his professional colleagues, or to any other members of the public.

210. Penn State has materially breached the Separation Agreement.

211. Penn State breached the Separation Agreement by failing to use reasonable efforts to cause Trustee Keith Masser not to make negative comments about Dr. Spanier to the media.

212. Trustee Masser stated in a June 2012 interview with the Associated Press that Dr. Spanier was “involved in a cover-up” of Sandusky’s criminal activities. A copy of this interview is attached to this Complaint as Exhibit C.

213. Penn State undertook no efforts to cause Trustee Masser not to make this negative comment about Dr. Spanier to the media, despite the Separation Agreement’s prohibition on making such statements.

214. Dr. Spanier has performed all of his obligations under the Separation Agreement.

215. Dr. Spanier has been damaged by Penn State’s contractual breach by, among other things, having his reputation tarnished, by having Trustee Masser’s statement widely published and disseminated in the media, by loss of employment opportunities, by having to hire a professional media relations firm to attempt to repair the damage to his reputation, and by having to incur the substantial burden

and expense of bringing and pursuing this action in order to enforce his rights under the Separation Agreement.

**COUNT V: BREACH OF CONTRACT FOR NEGATIVE
COMMENTS OF TRUSTEES TO THE NEW YORK TIMES**

216. Plaintiff incorporates by reference paragraphs 1 through 215 of this Complaint as if fully set forth herein.

217. The Separation Agreement between Dr. Spanier and Penn State is a valid and enforceable contract.

218. A copy of the Separation Agreement is attached to this Complaint as Exhibit A.

219. The Separation Agreement prohibits Penn State from making any negative comments about Dr. Spanier to the media, to his professional colleagues, or to any other members of the public.

220. The Separation Agreement requires Penn State to 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 his professional colleagues, or to any other members of the public.

221. Penn State has materially breached the Separation Agreement.

222. Penn State breached the Separation Agreement by failing to use reasonable efforts to cause thirteen members of the Board of Trustees not to meet with the New York Times in January 2012 and make numerous negative comments

about Dr. Spanier. A copy of the January 2012 New York Times story is attached as Exhibit D.

223. During a pre-planned, in-person, group interview with a New York Times reporter in New Jersey on January 18, 2012, the Trustees made the following statements about Dr. Spanier, all of which breach the Separation Agreement:

- “The trustees, over three hours, described how they had felt blindsided by Spanier’s failure to keep them informed of the nature and scope of the Pennsylvania attorney general’s investigation of Sandusky, along with the investigation of university officials.”
- “The trustees on [a Saturday, November 5, 2011 conference call] who had read the details of the charges against Sandusky and the two senior university officials felt a distinct lack of urgency by the university. Many were irked that Spanier had released a statement in full support of Curley and Schultz, who were indicted for perjury. The trustees were floored, they said, that Spanier did not seem to recognize the severity of the situation.”
- “The trustees quickly realized that Spanier had chosen not to keep them informed.”
- “The trustees said this week that they were disappointed that Spanier, who was legally allowed to speak about his grand jury testimony, did not brief

the board on the nature of the questions by the grand jury about the 2002 episode. ‘He should have told us a lot more,’ [Trustee] Lubert said. ‘He should have let us know much more of the background. He was able to legally share his testimony and I think that he had an obligation to do that with the board so we could get more engaged with the problem.’”

- “Part of being a leader at this level is to be a risk manager and to think through what might happen,’ the trustee Karen B. Peetz, an executive with Bank of New York Mellon, said of Spanier.”
- “The Sunday meeting ended with the trustees eager to issue a news release, expressing a commitment to a full internal investigation and sympathy for any victims. In the interviews this week, they accused Spanier of having altered the release.”

224. Penn State undertook no efforts to cause the Trustees not to make these negative comments about Dr. Spanier to the media, despite the Separation Agreement’s prohibition on making such statements.

225. Dr. Spanier has performed all of his obligations under the Separation Agreement.

226. Dr. Spanier has been damaged by Penn State’s contractual breach by, among other things, having his reputation tarnished, by having the Trustee’s statements widely published and disseminated in the media, by loss of employment

opportunities, by having to hire a professional media relations firm to attempt to repair the damage to his reputation, and by having to incur the substantial burden and expense of bringing and pursuing this action in order to enforce his rights under the Separation Agreement.

**COUNT VI: BREACH OF CONTRACT FOR FAILURE TO
PROVIDE ADMINISTRATIVE SUPPORT**

227. Plaintiff incorporates by reference paragraphs 1 through 226 of this Complaint as if fully set forth herein.

228. The Separation Agreement between Dr. Spanier and Penn State is a valid and enforceable contract.

229. A copy of the Separation Agreement is attached to this Complaint as Exhibit A.

230. The Separation Agreement requires Penn State to provide Dr. Spanier computer access, IT support, administrative support commensurate with that provided to other tenured faculty members and University Professors, an office, and a staff assistant.

231. Penn State has materially breached the Separation Agreement.

232. Penn State has not provided Dr. Spanier with computer access or IT support. Penn State in fact confiscated from Dr. Spanier his University-issued desktop computer, laptop computer, and iPad, and cut off his ability to access the Penn State network.

233. Penn State has not provided Dr. Spanier with administrative support commensurate with that provided to other faculty members and former presidents. Penn State in fact has not provided Dr. Spanier with any administrative support.

234. Penn State has not provided Dr. Spanier with an office or a staff assistant. Penn State has knowingly and intentionally ignored Dr. Spanier's requests for an assigned office space and a staff assistant.

235. Dr. Spanier has performed all of his obligations under the Separation Agreement.

236. Dr. Spanier has been damaged by Penn State's contractual breach by, among other things, having no access to the University network, by having no ability to teach courses or otherwise work as a tenured University Professor as required by the Separation Agreement, and by having to incur the substantial burden and expense of bringing and pursuing this action in order to enforce his rights under the Separation Agreement.

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

237. Plaintiff incorporates by reference paragraphs 1 through 236 of this Complaint as if fully set forth herein.

238. The Separation Agreement between Dr. Spanier and Penn State is a valid and enforceable contract.

239. A copy of the Separation Agreement is attached to this Complaint as Exhibit A.

240. The Separation Agreement requires Penn State to reimburse Dr. Spanier for attorneys fees and expenses incurred in connection with matters relating to the grand jury presentment and his termination from the position of President of the University, and to indemnify Dr. Spanier for all legal fees and expenses with respect to acts or omissions occurring while he was serving as President of Penn State.

241. Penn State has materially breached the Separation Agreement.

242. Penn State breached the Separation Agreement by failing to reimburse Dr. Spanier for his law firm's expenses for consultant services to defend Dr. Spanier's reputation and address the damage caused by Penn State, Freeh, and FSS, and the cost of having to initiate a federal lawsuit to gain access to his email in order to properly defend himself against the damaging statements made by Penn State, Freeh, and FSS. Dr. Spanier's damages continue to increase as Penn State refuses to reimburse him for ongoing fees and expenses.

243. Dr. Spanier has performed all of his obligations under the Separation Agreement.

244. Dr. Spanier has been damaged by Penn State's contractual breach by, among other things, having to expend funds to defend himself from the very false

and damaging statement sanctioned and published by Penn State in the Freeh Report, having to expend funds to initiate and prosecute the lawsuit to obtain his own emails that Penn State provided to Freeh, and by having to incur the substantial burden and expense of bringing and pursuing this action in order to enforce his rights under the Separation Agreement.

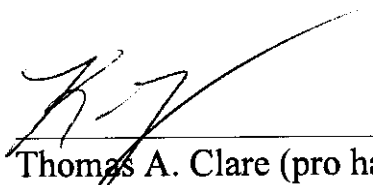
PRAYER FOR RELIEF

245. Plaintiff prays that this Court provide the following relief:

- (a) Damages for Penn State's breach of contract;
- (b) Costs and fees incurred in the prosecution of this action;
and
- (c) Further relief as this Court shall deem just and proper.

JURY TRIAL DEMAND

246. Plaintiff demands a trial by jury on all issues so triable.



Thomas A. Clare (pro hac forthcoming)
(Va 39299)
Elizabeth M. Locke (pro hac forthcoming)
(Va 71784)
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Attorneys for Plaintiff Graham B. Spanier

Dated: February 10, 2016

VERIFICATION

I verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief. I understand that any false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: 2/10/16

Graham B. Spanier
Graham B. Spanier

Exhibit A

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.

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.

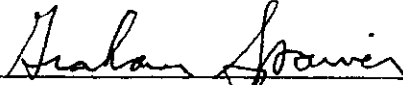
20. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

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.

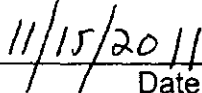
THE PENNSYLVANIA STATE
UNIVERSITY

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

Date



Graham B. Spanier



Date

Exhibit B

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Jul 12, 2012

Penn State issues statement on Freeh Report



university community.

July 12, 2012, SCRANTON, PA - Today's comprehensive report is sad and sobering in that it concludes that at the moment of truth, people in positions of authority and responsibility did not put the welfare of children first. The Board of Trustees, as the group that has paramount accountability for overseeing and ensuring the proper functioning and governance of the University, accepts full responsibility for the failures that occurred. The Board, in cooperation with the Administration, will take every action to ensure that events like these never happen again in our

The focus of all of our actions going forward will be on driving a culture of honesty, integrity, responsible leadership and accountability at all levels and within all units of our institution.

Judge Freeh's report concludes that certain people at the University who were in a position to protect children or confront the predator failed to do so. There can be no ambiguity about that. The defenseless victims and their families are at the forefront of our thoughts and prayers. We are deeply sorry for the failure to protect these vulnerable young boys from the pain and anguish they suffered. At the same time, we are filled with admiration for the bravery shown by the young men and their families who came forward to ensure that justice will be done.

While today's issuance of the Freeh Report provides some level of clarity for our community, it does not undo the pain that the victims of Jerry Sandusky have experienced, and continue to experience. We will continue to offer counseling to Mr. Sandusky's victims, listen to them and take affirmative steps to address the harm they have suffered.

Beyond our campuses, the University is undertaking a number of actions to help build greater awareness of the societal issue of child sexual abuse. We are partnering with the Pennsylvania Coalition Against Rape (PCAR) and have also created the Center for the Protection of Children at the Hershey Medical Center. Penn State University intends to be a constructive leader in preventing, reporting and responding to such abuse. This is a problem that plagues our nation, and we have a special duty to increase awareness, prevention and treatment of child sexual abuse.

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progress@psu.edu

Office of Strategic Communications
The Pennsylvania State University

309 Old Main

University Park, PA 16802

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Judge Freeh's investigation was intended to identify where failures occurred and what changes should be made for the future. As the Freeh report noted, the University has already taken steps to begin addressing some of the shortcomings.

The Board of Trustees acknowledges that it failed to create an environment of accountability and transparency and did not have optimal reporting procedures or committee structures. Beginning in March 2011 and continuing until the publication of the Grand Jury presentment in November 2011, the Board failed to make proper inquiry of President Spanier and others regarding the Sandusky matter. As a result, the Board was unprepared to deal with the events that occurred in November 2011.

The Board has begun taking a more active oversight role and has implemented specific oversight committees, focused on Risk, Audit, Legal, Compliance, Academic Excellence, Governance and Human Resources. Furthermore, the Board is committed to greater transparency and communications with the entire University community.

Additionally, the University Administration has strengthened policies and programs involving minors, child abuse and mandated reporter training; ensuring a process for prompt reporting of abuse and sexual misconduct; hiring a new, full-time Clery Compliance Coordinator and providing Clery Act training for employees; and establishing a position of, and commencing a national search for, a director of University Compliance. Further information can be found here: www.progress.psu.edu.

In the weeks ahead, the University will carefully review and consider each of the report's recommendations. Tomorrow at its regularly scheduled meeting, the Board of Trustees will consider a series of immediate next steps. President Rodney Erickson has appointed three members of his senior leadership team to coordinate and implement operational changes suggested by the Freeh Report.

As the Freeh Report notes Penn State "is an outstanding institution, nationally renowned for its excellence in academics and research." Nothing in this report detracts from the many significant accomplishments of our faculty, staff, students and alumni. We also remain proud of the accomplishments of Penn State's student athletes over many years, and we reaffirm the fundamental premise that academic excellence and athletic achievement are wholly consistent and complementary goals.

With the release of the Freeh Report we are beginning to correct our failures, promote healing and build a stronger tomorrow for Penn State. We are continuing the process of addressing the most painful chapter in the University's history so that we can heal and move forward.

Topics: freeh, freeh report, the freeh report, judge freeh, special investigations task force, pcar, board of trustees, bot, center for the protection of children, clery compliance coordinator

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Eight to receive distinguished alumni awards in 2015

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Exhibit C

Testimony at Sandusky trial shows missed chances

By The Associated Press Jun. 16, 2012 12:14 PM EDT



Former Penn State University assistant football coach Jerry Sandusky leaves the Centre County... [Read more](#)

The eyewitness testimony that confronted jurors in Jerry Sandusky's child molestation trial this week was disturbing not only for its graphic descriptions of sex with boys, but for what it said about the people who surrounded and maybe even protected the once revered Penn State assistant coach.

Eight accusers took the witness stand and described how Sandusky molested them in campus showers, hotel bathrooms, a basement bedroom, a sauna used by the football team — right under the noses of his friends, colleagues, family members and acquaintances.

The Sandusky story, the way authorities have framed it, is one littered with missed chances to stop a rapist who preyed on children for years.

Prosecutors have hinted that top university officials knew far more about Sandusky's alleged proclivities than they

EXHIBIT C

have let on, submitting a document Monday that says Penn State's former vice president -- himself facing charges related to the scandal -- maintained a file on Sandusky a decade ago. A Penn State trustee told The Associated Press he now suspects a cover-up.

Yet evidence and testimony from the trial also show there were plenty of people, not just those at the highest levels of the university, who had ample opportunity to stop a man accused of violating 10 boys over 15 years.

A janitor failed to tell authorities he allegedly caught Sandusky performing oral sex on a boy in a campus shower a dozen years ago.

— A district attorney with a reputation for prosecuting cases involving children and sexual abuse victims declined to charge Sandusky over a 1998 molestation allegation even though the detective who investigated thought it was a solid case. The DA, Ray Gricar, disappeared in 2005 and was declared legally dead last year.

— School district officials were skeptical of abuse claims brought by the young man known in court papers as Victim 1 because, the accuser testified, Sandusky was considered to have a "heart of gold." Victim 1's allegations eventually triggered the state investigation that produced charges.

— One accuser testified he screamed out for help at least once when Sandusky's wife, Dottie, was in the house. He doesn't know whether she heard his cries.

— And, famously, coaching assistant Mike McQuary saw Sandusky having what he believed to be anal sex with a young boy in 2001. But his report to Athletic Director Tim Curley and Vice President Gary Schultz went nowhere. McQuary's dad testified that during a conversation, Schultz said he was suspicious of Sandusky, and NBC reported this week that e-mails between former university President Graham Spanier and Schultz aiming to keep McQuary's allegation from going further were turned over to the attorney general.

— Others also saw Sandusky engaging in behavior that was at least odd, if not criminal. Longtime assistant coach Tom Bradley walked into the shower when one boy was with Sandusky, the accuser testified, and a wrestling coach told jurors he saw Sandusky and a child rolling on the floor.

— Several accusers said their parents or caregivers failed to grasp what was happening to them. Victim 4 testified that one weekend he did not want to go with Sandusky and told his mother, "I'm pretty sure he's gay," but she dismissed the idea. "She said, oh, whatever, this is just one of your lies," he told jurors. He also said at one point he told his grandmother to tell Sandusky he wasn't home when he called.

Victim 1 testified that when he asked his mother about "a website for people who do things to children," and she asked why, he said it was "to see if Jerry was on there." He said he didn't think she totally understood. And Victim 9 told jurors he described Sandusky to his mother as "a touchy-feely type of a person," but she pressured him to spend time with the former coach.

Koith Masser, a Penn State trustee, said in an interview that he initially thought the scandal was about a failure of administrative oversight of the football program. Now he suspects it goes deeper.

When the board of trustees ousted Spanier on Nov. 9, four days after Sandusky's arrest, it was "because we didn't have confidence in his ability to lead us through this crisis," Masser said. "We had no idea (at the time) he

would be involved in a cover up."

Vassor stressed he was speaking for himself and not the board at large, and said he wants to be careful not to draw premature conclusions. But he said it now appears like "top administration officials and top athletic officials were involved in making the decision to not inform the proper authorities."

With prosecutors focused on the sex-abuse allegations against Sandusky, the trial isn't intended to prove evidence of a possible cover up. That's the job of Louis Froeh, the former FBI director hired by the board of trustees to investigate the scandal. His report could be released in late summer.

Spanier, who has not been charged with any crime, did not respond to email and phone messages. His attorney did not return a phone call.

The law firm defending Curley and Schultz against charges they lied in their grand jury testimony and failed to report suspect abuse said in a statement this week they "conscientiously considered" McQueary's account and "debated about how to responsibly deal with the conduct and handle the situation properly." They did not respond to follow-up questions posed by the AP.

Massor said the Froeh investigation is helping Penn State get to the bottom of the scandal.

"I hope the truth comes out, and from a board standpoint it was Judge Froeh's investigation that found those emails that relate Spanier, Curley and Schultz to the suspected cover-up," he said. "I want the alumni to understand and the stakeholders to understand that this independent investigation is uncovering this information."

Sandusky was charged in November and December with more than 50 counts of abuse. The scandal brought disgrace to Penn State and led to the ousters of both Spanier and Paterno, the Hall of Fame coach who died in January at age 85.

The testimony of eight of the 10 alleged victims named in a grand jury report prompted disgust and revulsion from Penn State alumni and others who took to Twitter last week to express their dismay — and to call for the heads of anyone involved in concealing abuse. "Anyone who knew and didn't report should burn!" tweeted one.

The grim depictions of abuse also hit at least one former player hard.

The accuser known as Victim 4 told jurors that Sandusky let him wear star linebacker Lavar Arrington's jersey and gave him a magazine autographed by the former NFL All-Pro, who played at Penn State in the late 1990s.

Arrington apologized to the man a day after his testimony, writing in The Washington Post that he felt awful for having missed the warning signs.

"I've always seemed mad or kind of distant. I remember distinctly asking him, 'Why are you always walking around all mad, like a tough guy?'" Arrington wrote. "I guess with everything that I had going on, it certainly wasn't a priority for me to try to figure him out."

Arrington continued, "I hate everything that has happened, and now I must admit I feel even worse knowing what allegedly was happening so close to me, and that I was unaware."

Ann Tenbrunsel, a professor of business ethics at the University of Notre Dame, attributes the failure to stop

EXHIBIT C

Sandusky to a phenomenon she calls "motivated blindness," a tendency, whether subconscious or deliberate or sometimes both, to ignore unethical or even criminal behavior by others when you perceive it to be in your best interest to do so. Motivated blindness "means I don't probe, I don't ask, I don't believe," Tenbrunsel said. "I have evidence in front of me but choose to disregard facts."

Some people could have kept quiet about their suspicions because they wanted to protect Penn State and its beloved — and highly lucrative — football program, or their own jobs, she said. Others might not have wanted to believe the sainted Sandusky capable of the abuse he's now charged with.

"You have all kinds of examples of people who either did not notice, or when they did notice didn't engage in behaviors that would have stopped it because it wasn't in their best interests to do so," said Tenbrunsel, co-author of "Blind Spots," a book that explores why otherwise decent people sometimes fail to do the right thing.

Some of the alleged assaults appear to have been interrupted, if unwittingly. One young man said Sandusky coerced him into engaging in oral sex in a hotel bathroom in Texas around the time of the 1999 Aarmu Bow — Sandusky's last game before retiring — stopping only when the coach's wife entered the hotel room. The same accuser, Victim 4, testified about another occasion in which Bradley was showering in the team headquarters while the alleged victim and Sandusky were behind a curtain in another stall.

"I can't say what (Bradley's) thoughts were, but I think he was suspicious of something because he stayed in the shower until everything was done," the man testified without elaborating.

Bradley did not return several messages from The Associated Press.

A wrestling coach told jurors that he found Victim 1 and Sandusky roiling around on the floor in the high school weight room one evening.

Joseph Miller said that while he found it odd, he gave the famed coach a pass. "It was Jerry, Jerry Sandusky. He's a saint. What he's doing with kids, it's fantastic," Miller recalled thinking. "So I didn't think anything of it."

The trial is scheduled to enter its fifth day Monday as prosecutors near the end of their case. Sandusky denies all the charges, saying that while he showered with boys, he never touched them sexually. His attorney has suggested the accusers are twisting the truth because they intend to sue.

Associated Press writers Mark Scollaro and Genaro C. Armas in Ballston Spa, N.Y., contributed to this report.

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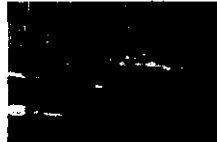
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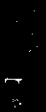
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Exhibit D

The New York Times**COLLEGE FOOTBALL**

Penn State's Trustees Recount Painful Decision to Fire Paterno

By PETE THAMEL and MARK VIERA JAN. 18, 2012

It was growing late on the night of Nov. 9, 2011. John P. Surma, the chief executive of U.S. Steel and the vice chairman of Penn State University's board of trustees, sat at a rectangular table at the Penn Stater Hotel. Gov. Tom Corbett of Pennsylvania was on the speaker phone. Other trustees were present, many emotionally spent.

The board, scrambling to address the child sexual abuse scandal involving the university and its football program, had already decided to remove Graham B. Spanier as president. Then, many of those present recalled this week, the tension in the room mounted. Joe Paterno's future was next up. Surma announced that an agreement appeared to have been reached to fire Paterno, too — the trustees having determined that he had failed to take adequate action when he was told that one of his longtime assistants had been seen molesting a 10-year-old boy in Paterno's football facility.

Surma, those present recalled, surveyed the other trustees — there are 32 — for their opinions and emotions before asking one last question: "Does anyone have any objections? If you have an objection, we're open to it."

No one in the room spoke. There was silence from the phone speakers. Paterno's 46-year tenure as head coach of one of the country's storied college football programs was over, and the gravity of the action began to sink in.

"It was hard for us to want to get to the point where we were going to say that," said Ira M. Lubert, a board member who works in private equity. "I was laying in bed that night shaking. And I couldn't sleep — thinking: We just terminated Joe Paterno."

The 100 or so hours beginning with the arrest of Jerry Sandusky, a former defensive coordinator for the football team, had built to a crescendo by that Wednesday night's meeting of the trustees. By then, the campus was aflame with discontent. Penn State students and faculty, its alumni and its growing number of outside critics had been roiled by anger and confusion, embarrassment and sorrow. Reporters had inundated State College. It was, plainly put, the most trying time in Penn State's 156-year history.

On Wednesday, in a conference room in New Jersey, a group of 13 trustees spoke to The New York Times in detail about that week — a somewhat frantic, certainly exhausting week that led to the firings of Paterno and Spanier and to the disturbances on campus that those dismissals set off.

The board decided to share its story because it grew weary of hearing criticism, which included calls from alumni who started a group known as Penn Staters for Responsible Stewardship in an effort to replace the current board members. The trustees, over three hours, described how they had felt blindsided by Spanier's failure to keep them informed of the nature and scope of the Pennsylvania attorney general's investigation of Sandusky, along with the investigation of university officials.

Spanier, two other senior university administrators and Paterno had all given testimony before a criminal grand jury by late spring of 2011. They had been questioned extensively about what they had done after learning of a report in 2002 that said Sandusky had molested a young boy in the showers of the football building. According to the trustees, Spanier never informed them of any of that before Sandusky's arrest on Nov. 5.

The trustees also laid out what they said were three key reasons for firing Paterno: his failure to do more when told about the suspected sexual assault in 2002; what they regarded as his questioning of the board's authority in the days after Sandusky's arrest; and what they determined to be his inability to effectively continue coaching in the face of continuing questions surrounding the program.

The trustees, who had not spoken publicly in any detail since the firings, also disclosed that, while having fired Paterno, they were still honoring the terms of his contract and are treating him financially as if he had retired at the end of the 2011

season.

To some trustees, Paterno failed in not reporting to the police what he had been told of Sandusky's suspected assault. Some of the trustees were also upset that Paterno was seen leading "We are Penn State" cheers on his lawn with students and fans who had gathered after Sandusky's arrest, which some board members viewed as insensitive.

That Paterno knew of the nature of the suspected 2002 assault, which he stated in his grand jury testimony, was enough for some to decide that he had not acted appropriately in simply informing the university's athletic director, Tim Curley, and another top official, Gary Schultz. Both of them have been charged with failure to report to the authorities what they knew about the incident and for subsequently lying to a grand jury.

"To me, it wasn't about guilt or innocence in a legal sense," the trustee Kenneth C. Frazier, the chief executive at Merck, said of Paterno's decision not to go to police. "It was about these norms of society that I'm talking about: that every adult has a responsibility for every other child in our community. And that we have a responsibility not to do the minimum, the legal requirement. We have a responsibility for ensuring that we can take every effort that's within our power not only to prevent further harm to that child, but to every other child."

Saturday, Nov. 5

At 5 p.m., the trustees met via telephone for an emergency session.

The trustees on the conference call who had read the details of the charges against Sandusky and the two senior university officials felt a distinct lack of urgency by the university. Many were irked that Spanier had released a statement in full support of Curley and Schultz, who were indicted for perjury. The trustees were floored, they said, that Spanier did not seem to recognize the severity of the situation.

"We deal with crisis every day at this university," they recalled Spanier saying. "We won't have a problem with this."

The trustees, meanwhile, were shocked by the charges — and caught completely unaware. There had been reports in The Patriot News of Harrisburg that a grand jury was investigating a claim that Sandusky had molested a local high

school boy. But Sandusky had been retired from Penn State for years.

“There was a lack of information being provided to us,” said Mark H. Dambly, a trustee and the president of a real estate development company. “We found out about it when the rest of the world found out about it.”

Lubert, for his part, had just dropped off his son and daughter-in-law after brunch when he got a call from his son while driving home to Philadelphia. His son told him that Curley and Schultz had just been indicted on perjury charges.

“That’s impossible,” Lubert said. “If they were, I would know that.”

His son responded: “Do yourself a favor and when you get home turn on the television. It doesn’t matter what channel.”

Anne Riley, another trustee, said she would always remember being at the opera, sitting in seat 15, Row B, of the balcony, when she heard the news. The trustee Keith E. Masser was playing golf in Naples, Fla., and found out by peeking at his phone. Frazier heard about the severity of the situation while sitting in his car outside a burger place.

The trustees quickly realized that Spanier had chosen not to keep them informed.

During a board meeting last May, after Spanier had testified before the grand jury, the board received a short briefing — the trustees estimated it was 5 to 10 minutes — on Sandusky’s being under investigation by a grand jury.

The briefing, which took place during a “seminar” session not open to the public, included an explanation of what a grand jury investigation was by the university counsel Cynthia Baldwin. (Baldwin had sat in on the grand jury testimony but was not legally allowed to speak to the trustees about the contents of the testimony, according to Lanny J. Davis, external counsel and crisis management adviser to the office of the Penn State president and to the board of trustees.)

The trustees this week said that they were disappointed that Spanier, who was legally allowed to speak about his grand jury testimony, did not brief the board on the nature of the questions by the grand jury about the 2002 episode.

“He should have told us a lot more,” Lubert said. “He should have let us know much more of the background. He was able to legally share his testimony and I

think that he had an obligation to do that with the board so we could get more engaged with the problem.”

The mention of the grand jury investigation by Baldwin and Spanier was so brief that Surma barely remembered it. No one asked questions.

“Part of being a leader at that level is to be a risk manager and to think through what might happen,” the trustee Karen B. Peetz, an executive with Bank of New York Mellon, said of Spanier.

Spanier has not been charged in the perjury case. He told the grand jury he was never told that Sandusky’s encounter with the young boy in the showers in 2002 involved sexual assault.

Spanier declined to comment for this article when reached on his cellphone. He listened, but would not respond, when told how the trustees had described his actions.

Paul Suhey, a former football captain for Paterno and an orthopedic surgeon in the State College area, was the only trustee on campus for the 5 p.m. conference call as others dialed in from around the country.

“I was pretty upset,” Suhey said. “I knew we had a problem.”

Steve Garban, the board’s chairman, admitted to not reading the grand jury’s charges until late Sunday night, more than 24 hours after it went public. After he did, he felt that Paterno, his former coach, lifelong friend and occasional drinking buddy, needed to be let go.

But the trustees concluded their call with a deepening skepticism about how the university administrators would handle it.

Peetz, the bank executive, said she came to a simple conclusion: “We are up against the challenge of our lives.”

Sunday, Nov. 6

The trustees met again Sunday night, some of them now on the scene in State College, having arrived by private plane or car. When they met, they realized that Spanier and others had already arranged for lawyers from two firms to be present, as well as representatives from a public relations firm. They were meant to brief the trustees on how to handle the crisis.

“It was indicative of the culture,” Dambly said. “We showed up and it was

already determined what law firm it was going to be.”

The Sunday meeting ended with the trustees eager to issue a news release, expressing a commitment to a full internal investigation and sympathy for any victims.

In the interviews this week, they accused Spanier of having altered the release. It was made to appear as a joint release from Spanier and the board, and diluted the language involving the promised investigation.

“I got up the next morning to read the press release online and it really didn’t reflect what we had come to the conclusion of as a board,” Lubert said. “I remember reading that, and I was sick. I then knew we had a serious problem.”

Surma added: “The big difference that I remember was that we had very explicit comments about the independent investigation and what it would investigate and its freedom of access. What came out was something much different than that.”

Garban said he soon informed Spanier that he could no longer speak for the university on the issue.

“I have to take some blame for this,” Garban said. “I still sort of thought Graham could get us through this or help get us through this. And he participated in writing the press release, and after it came out, I knew it wasn’t right.”

Garban read the grand jury report after the meeting and regretted not reading it sooner: “It was like, ‘Oh my God, Steve, where’ve you been?’ It floored me.”

Tuesday, Nov. 8

On Tuesday, Surma and Garban met to have breakfast at the Nittany Lion Inn around 7:30 a.m. Sandusky’s arrest had been headline news for four days. Paterno was supposed to meet with reporters for his weekly conversation about the team’s next game.

A 1959 Penn State graduate, Garban was a former captain of the football team, and he subsequently had a 33-year career at the university. But several members of the board were upset with his leadership during the days after Sandusky’s arrest. Garban had remained loyal to Spanier for too long, some felt; other trustees wanted Spanier gone.

The trustees, indeed, were clamoring for a change. Garban recognized the

discontent among the board members. So Garban and Surma asked for time alone. Sitting at the breakfast table, Garban broached the subject of changing the board's leadership before Surma could even bring it up.

"John, let's not go there," Garban recalled telling Surma. "You need to take this over. And let's agree — take it over."

Stepping into the power vacuum, Surma joined Garban at Old Main, the central administration building on campus, to meet with university personnel, including Spanier. Surma said that it became clear to him that Spanier was no longer in control of the university. Surma said Spanier seemed to realize as much himself.

"Do I have support of the board?" Spanier asked Garban.

"I can't answer that question," Garban recalled replying.

The trustees promptly canceled Paterno's weekly news conference. It was evidence of how much the board's confidence in Paterno had eroded.

Then Surma said he started making preparations for what might come next with Spanier. He handed out orders to the university's counsel and the public relations firms working on its behalf.

Perhaps the most important moment came when Surma met with Rodney A. Erickson, the university's executive vice president and provost. Erickson explained to Surma that he did not know anything about the allegations until shortly before Sandusky was arrested. Surma believed Erickson was sincere.

Then Surma hinted that Erickson, who had been looking to retire in the near future, might be asked to take over the presidency.

"If it comes to it, we may need you," Surma told Erickson.

Erickson simply replied, "O.K."

Spanier's inquiry about the board's support set the agenda for what would be a conference call among trustees at 7 p.m. The call lasted two to three hours. Surma chaired the discussion and told the trustees that Erickson could be an alternative to Spanier.

That Erickson, who was widely respected by the trustees for his broad understanding of the university, said he would be willing to replace Spanier gave the trustees confidence about firing Spanier. But the trustees still had to make a

final decision on Paterno. The seriousness of the task was not lost on the board members, and it was decided that the board would meet in person the next night.

“I’d like everyone to come together tomorrow and look people in the eyes,” Lubert recalled saying during the call.

Wednesday, Nov. 9

The trustees glumly descended on State College for what they knew would be a long and painful day. Lubert said that he had trouble sleeping. Peetz recalled feeling as if she were an executioner going to the guillotine. Stephanie Nolan Deviney, a trustee and a partner at the law firm Fox Rothschild in Exton, Pa., remembered going to the bedroom of her 7-year-old to kiss him before she left for State College.

“I thought of the mothers of all those boys in the presentment,” Deviney recalled this week. “And I thought about what they must feel when they kiss their sons good night.”

The trustees gathered in a conference room at the Penn Stater at 7 p.m. In a rare occurrence, the governor joined the meeting by telephone for its duration. However, the soberness of the discussion was broken up by the clamor of tool-belted workers crawling around under the table trying to fix the telephone line. “Governor,” Surma asked every few minutes, “are you still with us?”

The trustees first discussed Spanier’s status. The trustees said that they sensed there was a consensus about Spanier’s future as the president. Earlier, Spanier had tried to submit his resignation, but Garban and Surma did not accept it. Garban told Spanier that the board felt it needed to deal with the matter itself. So, instead, the trustees paged through Spanier’s contract, and then decided to fire him. They named Erickson the interim president.

Then the trustees decided the fate of Paterno, who had come to Penn State as a young assistant coach in 1950 and who had helped build it into a national university, to which he donated more than \$4 million. The 13 trustees interviewed Wednesday said that Paterno did not reach out to them before the Nov. 9 board meeting, and some said that it would not have mattered, because they did not believe that he could say anything to save his job.

Wick Sollers, Paterno’s lawyer, issued a statement Wednesday in response to

the accounts offered by the trustees: “After learning of the alleged incident in 2002, Joe Paterno reported it immediately and fully to his superiors at the university. He believed these officials, who had the authority and responsibility to conduct investigations, would act appropriately. He did what he thought was right with the information he had at the time. Blaming Joe Paterno for the failure of administration officials and the board to properly investigate Jerry Sandusky is unjustified.”

On that Wednesday night in November, though, the only thing left for the board to do was to figure out how to carry out the firing. Could representatives safely show up at Paterno’s home amid the media frenzy? Was it realistic to expect Paterno, then 84, to meet with the trustees? The trustees decided to fire him by telephone, a decision that many board members interviewed expressed as their biggest regret.

Shortly before 10 p.m., Fran Ganter, the associate athletic director for football, delivered an envelope to Paterno’s home, just off Penn State’s campus. Inside the envelope was a telephone number. Paterno called the number, and Garban answered. Then he passed the telephone to Surma, who was seated next to him. Surma asked if Paterno could hear him O.K. Paterno said that he could. Then Surma told Paterno of the trustees’ decision. “The board of trustees has determined effective immediately you are no longer the football coach,” Surma recalled saying.

Then he heard a click. Paterno hung up.

Surma and Garban sat at the table for a moment, numb. Then the telephone rang again. Surma answered. It was Paterno’s wife, Sue, who said, during a short conversation: “After 61 years, he deserved better.” Then she hung up on Surma.

Board members at the meeting lingered and eventually decided that they would join Surma at a news conference at a ballroom elsewhere in the Penn State. The ballroom quickly filled as hundreds of onlookers gathered. Trustees sat on a raised dais behind Surma, who sat stoically as Garban turned over the news conference to him.

Then Surma announced to a room full of reporters and television cameras, and to the country watching at home, that Penn State’s board of trustees had fired Joe Paterno.

A version of this article appears in print on January 19, 2012, on page B15 of the New York edition with the

headline: We Just Terminated Joe Paterno.

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