



Notice to Plaintiff:

You are hereby notified to file a written response to the enclosed Preliminary Objections in accordance with further Order of the Court or a judgment may be entered against you.

Mary Beth
Attorney for Defendant

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2016 MAR 31 PM 2:00
DEBORAH J. JENSEL
PROthonotary
CENTRE COUNTY, PA

**IN THE COURT OF COMMON PLEAS
CENTRE COUNTY, PENNSYLVANIA**

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

**DEFENDANT THE PENNSYLVANIA STATE UNIVERSITY'S
PRELIMINARY OBJECTIONS TO THE COMPLAINT**

Defendant The Pennsylvania State University (“Penn State” or “the University”), by and through its undersigned attorneys, submits the following preliminary objections to the Complaint of Plaintiff Graham B. Spanier (“Dr. Spanier”). In support thereof, Penn State submits the accompanying Memorandum of Law, which is incorporated herein by reference in its entirety, and avers as follows:

1. This is a breach of contract case.
2. The operative contract is the Separation Agreement (“SA”) entered into by Penn State and its former President Dr. Spanier in November 2011, in the aftermath of the charges against former Penn State football coach Jerry Sandusky of sexual abuse of numerous young boys and charges against two senior Penn State officials, Athletic Director Tim Curley and Senior Vice President Gary Schultz, of perjury and failure to report child abuse.
3. The Complaint fails to plead facts that, even if true, would be sufficient to support a finding of a breach of the SA by Penn State, and it should therefore be dismissed under Pennsylvania Rule of Civil Procedure 1028(a)(4).

**Preliminary Objection to Counts I-V
Pursuant to Pa. R. Civ. P. 1028(a)(4)**

4. Counts I-V of the Complaint purport to allege breaches by Penn State of the “non-disparagement” provision in paragraph 13 of the SA.
5. The Complaint repeatedly asserts that Penn State promised not to make “any negative comments about Dr. Spanier” and to “use reasonable efforts” to cause its Trustees to refrain from making any such comments. See Complaint ¶¶ 2, 158, 177-78, 186-87, 196-97, 208-09, 219-20.
6. The plain language of the SA, however, does not provide for a blanket prohibition regarding negative statements. Rather, the SA explicitly authorizes the making of negative statements if they are “required by law” or “to comply with

legal obligations” and/or “to provide truthful information in connection with ongoing or forthcoming investigations.” SA ¶ 13 (Ex. A to Complaint).

7. Thus, any statement made by Penn State or by its Trustees “in connection with ongoing or forthcoming investigations” is wholly outside the scope of the SA’s non-disparagement language, unless it is not only negative, but also not “truthful.”

8. The Complaint fails to allege that any statement made by Penn State itself or by any Trustee was unrelated to “ongoing or forthcoming investigations” or that it was not “truthful,” and it therefore fails to allege a breach.

9. Accordingly and for the reasons set forth more fully in the accompanying Memorandum of Law, Counts I through V are legally insufficient and should be dismissed.

Preliminary Objection to Count VI
Pursuant to Pa. R. Civ. P. 1028(a)(4)

10. Count VI of the Complaint purports to allege a breach of the SA by Penn State for failure to provide administrative support.

11. Dr. Spanier alleges that “administrative support” was withdrawn in November 2012 (Compl. at ¶¶ 168-69), a full year after the SA had been signed.

12. What Dr. Spanier never clearly says in his Complaint -- but which this Court can consider under Rule 1028(a)(4) -- is that Dr. Spanier was indicted for failure to report child abuse, endangerment of a child, and perjury on November 1,

2012, almost a year after he was terminated as President. The termination of his administrative support a few days later was a direct and immediate consequence of his criminal indictment.

13. Dr. Spanier does not -- and cannot -- identify any provision in the SA that would prevent the University from putting him on a paid leave of absence for circumstances that arose during his employment and seriously undermined his ability to perform his job.

14. Dr. Spanier's claim to "administrative support" is founded directly on terms of his Employment Agreement, which he relies upon in the Complaint and which, in part, is incorporated into the SA. See Employment Agreement at p. 12, attached as Exhibit D to the accompanying Memorandum of Law.

15. The terms of the Employment Agreement explicitly contemplated that Dr. Spanier would forfeit all entitlement to administrative support or other benefits if charged with one or more felonies.

16. Even though his Complaint gives short shrift to his criminal prosecution, the fact that administrative support was not withdrawn until after he was charged negates his claim.

17. Accordingly and for the reasons set forth more fully in the accompanying Memorandum of Law, Count VI is legally insufficient and should be dismissed.

Preliminary Objection to Count VII
Pursuant to Pa. R. Civ. P. 1028(a)(4)

18. Count VII claims Penn State has breached paragraphs 4(f) and 6 of the SA.

19. Paragraph 4(f) provides that Dr. Spanier would be reimbursed for “attorneys’ fees and expenses” which “he has incurred” with respect to “the grand jury presentment and his termination from the position of President of the University.” SA ¶ 4(f).

20. Paragraph 6 of the SA more broadly provides that Penn State would “indemnify” Dr. Spanier “in accordance with the terms of Section J of the Employment Agreement and with the by-laws of the University.” SA ¶ 6.

21. The Complaint identifies only two expenses allegedly incurred by Dr. Spanier as the basis for his claim of breach. First, he claims that Penn State has failed to reimburse him for some sort of undisclosed consultant he apparently hired to defend his “reputation.” Complaint ¶ 242. Second, he claims that Penn State has failed to reimburse him for the costs of a “federal lawsuit” which he allegedly filed against Penn State “to gain access to his emails.” *Id.*

22. Nothing in the SA or the Employment Agreement or the by-laws provides for reimbursement of what are apparently public relations expenses. Nor is there any basis for him to claim reimbursement for fees he unilaterally chose to incur in suing the University.

23. Dr. Spanier does not even allege that he ever sent a bill to the University or made any demand on the University for reimbursement of these bills or what amounts are allegedly owed.

24. Accordingly and for the reasons set forth more fully in the accompanying Memorandum of Law, Count VII is legally insufficient and should be dismissed.

Wherefore, Penn State respectfully requests that the Court sustain its preliminary objections to all Counts of the Complaint and dismiss the Complaint with prejudice.

Respectfully submitted,



Daniel I. Booker (PA 10319)
Donna M. Doblick (PA 75394)

REED SMITH LLP

225 Fifth Avenue

Suite 1200

Pittsburgh, PA 15222

(412) 288-3131

(412) 288-3063 (fax)

dbooker@reedsmith.com

ddoblick@reedsmith.com

Michael T. Scott (PA 23882)

REED SMITH LLP

Three Logan Square

Suite 3100

1717 Arch Street

Philadelphia, PA 19103

(215) 851-8100

(215) 851-1420 (fax)

msscott@reedsmith.com

Joseph P. Green (PA 19238)
LEE, GREEN & REITER, INC.
115 East High Street
P.O. Box 179
Bellefonte, PA 16823
(814) 355-4769
(814) 355-5024 (fax)
jgreen@lmgrlaw.com

*Attorneys for Defendant The
Pennsylvania State University*

Dated: March 31, 2016


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendant The Pennsylvania State University's Preliminary Objections to the Complaint, Memorandum in Support with exhibits, and proposed Order were served via e-mail and U. S. mail, postage prepaid, on March 31, 2016, addressed to the following:

Thomas A. Clare
Elizabeth M. Locke
Andrew C. Philips
CLARE LOCKE LLP
902 Prince Street
Alexandria, Virginia 22314
tom@clairelocke.com
libby@clairelocke.com
andy@clairelocke.com

Kathleen Yurchak
STEINBACHER, STAHL, GOODALL & YURCHAK
328 South Atherton Street
State College, PA 16801
yurchak@centrelaw.com

Attorneys for Plaintiff Graham B. Spanier



Sandra M. Di Iorio