



support thereof, Plaintiff submits the accompanying Memorandum of Law, which is incorporated herein by reference in its entirety, and avers as follows:

1. Plaintiff filed the instant action on February 10, 2016.
2. On December 19, 2016, PSU filed its Answer and New Matter to Counts I, II, III, and IV of the First Amended Complaint; Counterclaims. After Plaintiff filed Preliminary Objections to PSU's original Counterclaims, PSU filed its First Amended Counterclaims (hereinafter, "Amended Counterclaims" or "Am. Counterclaims") on February 17, 2010.
3. After Plaintiff filed Preliminary Objections to PSU's First Amended Counterclaims, PSU filed its Second Amended Counterclaims on March 30, 2017.
4. Plaintiff is the former President of PSU. (2d. Am. Counterclaims ¶ 1.) On July 1, 2010, Plaintiff and PSU entered into the Employment Agreement attached as Exhibit 1 to PSU's Second Amended Counterclaims. (*Id.* ¶ 6, *id.* at Ex. 1.)
5. On and effective November 9, 2011, Plaintiff and PSU mutually agreed to terminate Dr. Spanier's 2010 Employment Agreement and to terminate Dr. Spanier without cause from the position of President of the University. (*Id.* ¶ 24; *id.* at Ex. 5 ¶¶ 1-2.)
6. Following the termination of the Employment Agreement, Dr. Spanier and PSU negotiated a Separation Agreement, which was executed November 15,

2011 and became effective November 22, 2011. (*Id.* ¶¶ 24-26, 34.) The Separation Agreement is attached as Exhibit 5 to PSU's Second Amended Counterclaims. (*Id.* ¶ 26, *id.* at Ex. 5.)

7. PSU has filed Four Counterclaims, and through its Second Amended Counterclaims seeks rescission of the Separation Agreement and disgorgement of all amounts paid to, or benefits conferred upon, Dr. Spanier by PSU since November 9, 2011. (See generally *id.* ¶¶ 60-106.)

8. PSU's Second Amended Counterclaims fail to set forth facts that, even if true, would be sufficient to state a valid counterclaim against Dr. Spanier, and therefore PSU's Second Amended Counterclaims should be dismissed pursuant to Pennsylvania Rule of Civil Procedure 1028(a).

9. Plaintiff's preliminary objections should be sustained and PSU's Second Amended Counterclaims should be dismissed with prejudice.

**First Preliminary Objection to First Counterclaim  
Pursuant to Pa. R. Civ. P. 1028(a)(4)**

10. PSU's First Counterclaim purports to allege a breach of Dr. Spanier's 2010 Employment Agreement. (*Id.* ¶¶ 60-74.)

11. PSU alleges that Dr. Spanier's supposed failure to inform PSU of information Dr. Spanier supposedly learned about the criminal activities of Jerry Sandusky during his tenure as President of PSU was a breach of Section B of the

Employment Agreement, under which Dr. Spanier allegedly had a duty of disclosure to PSU. (*Id.* ¶¶ 61-64.)

12. Under the plain terms of the Employment Agreement, the obligations and duties imposed by Section B of the Employment Agreement were applicable only during the “Term” of the Agreement, which is defined as July 1, 2010 until the termination of Dr. Spanier’s position as President of the University. (*Id.* at Ex. 1 §§ A-B, H.)

13. PSU admits that Dr. Spanier’s position as President was terminated on November 9, 2011 and that the Employment Agreement was terminated as of November 9, 2011. (*Id.* ¶ 24, *id.* at Ex. 5 ¶ 2.)

14. Thus, any alleged breach of Section B of the Employment Agreement by Dr. Spanier could only have occurred on or before November 9, 2011.

15. The statute of limitations for breach of contract claims in Pennsylvania is four years, and therefore PSU was required to assert any claim for breach of the Employment Agreement no later than November 9, 2015. *See* 42 Pa. Cons. Stat. Ann. § 5525(a).

16. PSU did not assert a claim for breach of Dr. Spanier’s Employment Agreement within the required limitations period.

17. PSU fails to plead facts entitling it to any tolling of the applicable limitations period.

18. As this Court has noted, “[w]hile the Statute of Limitations is ordinarily considered an affirmative defense that must be pleaded as a new matter, where the bar is clear on the face of a complaint, courts have recognized the efficiencies of considering such arguments on preliminary objections.” (Sept. 27, 2016 Op., *Spanier v. Freeh*, No. 2013-2707 (Ct. Com. Pl. Centre Cnty.) (Eby, J.)); *see also Pelagatti v. Cohen*, 536 A.2d 1337, 1346 (Pa. Super. 1987).

19. PSU also claims that Dr. Spanier’s alleged failure to disclose facts regarding Sandusky to PSU was a breach of PSU faculty policy “HR91.” (2d Am. Counterclaims ¶ 61.)

20. PSU fails to plead any material facts demonstrating that this constitutes a breach of the Employment Agreement because PSU fails to allege any facts demonstrating that HR91 was binding on Dr. Spanier during the relevant time period from November 9-15, 2011.

21. Rather, PSU admits that under the plain language of Dr. Spanier’s Employment Agreement faculty policies such as HR91 are not applicable to Dr. Spanier until six years *after* his termination from the position of President. (*Id.* ¶¶ 30-31, *id.* at Ex. 1, § E(6).) Thus, under the plain terms of the Employment Agreement and by PSU’s own admission, Dr. Spanier is not subject to PSU policy HR91 until November 9, 2017.

22. Thus, PSU's pleading is legally insufficient and fails to plead facts that, even if true, could state a valid claim for relief on PSU's First Counterclaim.

23. Accordingly, and for the reasons set forth more fully in the accompanying Memorandum of Law, PSU's First Counterclaim is legally insufficient and should be dismissed.

**Second Preliminary Objection to First Counterclaim  
Pursuant to Pa. R. Civ. P. 1028(a)(4)**

24. PSU's First Counterclaim purports to state a claim against Dr. Spanier for breach of his Employment Agreement. (2d. Am. Counterclaims ¶¶ 60-74.)

25. Section K of the Employment Agreement is a mediation clause that requires that any claim against Dr. Spanier for breach of the agreement must first be submitted to mediation in University Park or State College, Pennsylvania. (*Id.* at Ex. 1, § K.)

26. PSU fails to allege that it has complied with all conditions precedent to bringing a claim under the Employment Agreement, and specifically fails to allege that it has made a demand for mediation prior to bringing this claim against Dr. Spanier. (*See generally* 2d. Am. Counterclaims).

27. Contractual mediation clauses are enforced in Pennsylvania and PSU's failure to comply with the mediation clause requires dismissal of its First Counterclaim. *A.T. Chadwick Co., Inc. v. PFI Const. Corp.*, No. 01998

SEPT.TERM 2003, CONTROL 011431, CONTROL 031986, 2004 WL 2451372, at \*3-4 (Ct. Com. Pl. Phila. Cnty. July 27, 2004) (dismissing case due to failure to comply with contractual mediation clause); *see also Provenzano v. Ohio Valley General Hosp.*, 121 A.3d 1085, 1095-1096 (Pa. Super. 2015) (Pennsylvania law strongly favors enforcement of alternative dispute resolution agreements.)

28. Thus, PSU's pleading is legally insufficient and fails to plead facts that, even if true, could state a valid claim for relief on PSU's First Counterclaim.

29. Accordingly, and for the reasons set forth more fully in the accompanying Memorandum of Law, PSU's First Counterclaim is legally insufficient and should be dismissed.

**Third Preliminary Objection to First, Second, Third, and Fourth  
Counterclaims  
Pursuant to Pa. R. Civ. P. 1028(a)(4)**

30. PSU's First, Second, Third, and Fourth Counterclaims are all based on the claims that Dr. Spanier learned during his tenure as President of the University that Jerry Sandusky had engaged in criminal conduct with minors, that Dr. Spanier had a duty to inform PSU of this knowledge during the negotiation of the Separation Agreement, that Dr. Spanier failed to do so, and that the Separation Agreement should therefore be rescinded and Dr. Spanier's benefits obtained thereunder disgorged. (Am. Counterclaims ¶¶ 60-106.)

31. PSU fails to state a valid claim for relief because its Second Amended Counterclaims are barred by the plain language of the 2010 Employment Agreement and the Separation Agreement attached as Exhibits 1 and 5 to PSU's Second Amended Counterclaims, respectively.

32. PSU fails to adequately plead the existence of any duty on the part of Dr. Spanier to make any disclosure of fact to PSU during the negotiation of, or as a condition precedent to the validity and enforceability of, the Separation Agreement.

33. The only source of such a duty identified by PSU is a supposed duty of disclosure imposed by Dr. Spanier's Employment Agreement; however, that contract was mutually terminated on November 9, 2011 — before the negotiation, execution, and effective date of the Separation Agreement. (*Id.* ¶¶ 24-25; *id.* at Ex. 1 §§ A-B, H, *id.* at Ex. 5 ¶ 2.)

34. Similarly, PSU's conclusory assertion that PSU faculty policy HR91 required Dr. Spanier to disclose information to PSU during the time of the negotiation of the Separation Agreement in mid-November 2011 is conclusively contradicted by PSU's own admission that under the plain language of the Employment Agreement and the Separation Agreement, such a faculty policy is *not* applicable to Dr. Spanier until *six years after* his removal from the position of President. (*See id.* ¶¶ 29-31.)



35. The Separation Agreement does not, and did not, require Dr. Spanier to make any disclosure of facts regarding Sandusky (or any other matter) to PSU as a condition precedent to the validity and enforceability of the Separation Agreement, nor does it require Dr. Spanier to promise, warrant, or represent that he had fully disclosed any facts — whether material to the agreement or not — to PSU. (*See generally id.* at Ex. 5.)

36. Rather, the Separation Agreement itself presumes the potential existence of prior acts or omissions by Dr. Spanier relating to his position as President of the University, and it unconditionally releases Dr. Spanier of all claims regarding such omissions and bars PSU from asserting claims against Dr. Spanier based on any such omissions.

37. Paragraph 8 of the Separation Agreement states: “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.” (*Id.* at Ex. 5 ¶ 8.)

38. The release in Paragraph 8 of the Separation Agreement bars all of PSU's Second Amended Counterclaims because all of PSU's Counterclaims are based on a theory that, prior to the effective date of the Separation Agreement, Dr. Spanier omitted to inform PSU of the supposed knowledge that Dr. Spanier learned of Sandusky's conduct while Dr. Spanier was President of the University. PSU unconditionally released and discharged Dr. Spanier from all such claims.

39. The Separation Agreement does not, and did not, require Dr. Spanier to make any disclosure of facts regarding Sandusky (or any other matter) to PSU as a condition precedent to the validity and enforceability of the Separation Agreement, nor does it require Dr. Spanier to promise, warrant, or represent that he had fully disclosed any facts — whether material to the agreement or not — to PSU. (*See generally id.* at Ex. 5.)

40. Rather, the Separation Agreement contains an integration clause which disclaims the existence of any such condition precedent or promise by Dr. Spanier.

41. Paragraph 17 of the Separation Agreement states: "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.” (*Id.* at Ex. 5 ¶ 17.)

42. Because the Separation Agreement contains an integration clause affirmatively stating that it represents the parties’ entire agreement and that there are no other applicable agreements, covenants, promises, or arrangements, Pennsylvania law prohibits PSU from challenging the validity of the Separation Agreement based on the claim that Dr. Spanier violated a duty of disclosure not reflected explicitly in the parties’ written agreement. *Yocca v. Pittsburgh Steelers Sports, Inc.*, 578 Pa. 479, 498-501 (2004); *Dayhoff, Inc. v. H.J. Heinz Co.*, 86 F.3d 1287, 1300 (3d Cir. 1996); *HCB Contractors v. Liberty Place Hotel Associates*, 539 Pa. 395, 399-400 (1995); *Blumenstock v. Gibson*, 811 A.2d 1029, 1035-1036 (Pa. Super. 2002).

43. Because the Separation Agreement contains an integration clause affirmatively stating that it represents the parties’ entire agreement and there are no other applicable agreements, covenants, promises, or arrangements, and because the Separation Agreement nowhere required Dr. Spanier to make any disclosure or to warrant that he had fully disclosed any information, Pennsylvania law prohibits PSU from seeking rescission of the contract based on the claim that Dr. Spanier’s nondisclosure of information fraudulently induced PSU to enter into the Separation Agreement under false pretenses. *HCB Contractors*, 539 Pa. at 399; *Bray v.*

*DeWese*, No. 07-4011, 2008 WL 623824, at \*2-3 (E.D. Pa. Mar. 6, 2008); *Hart v. Arnold*, 884 A.2d 316, 340 (Pa. Super. 2005); *Youndt v. First Nat'l Bank of Port Allegany*, 868 A.2d 539, 546 (Pa. Super. 2005).

44. Thus, PSU's pleading is legally insufficient and fails to plead facts that, even if true, could state a valid claim for relief on any of PSU's Second Amended Counterclaims.

45. Accordingly, and for the reasons set forth more fully in the accompanying Memorandum of Law, PSU's First, Second, Third, and Fourth Counterclaims are legally insufficient and should be dismissed.

**Fourth Preliminary Objection to Second Counterclaim  
Pursuant to Pa. R. Civ. P. 1028(a)(4)**

46. PSU's Second Counterclaim purports to assert a claim for "Unilateral Mistake of Fact," claiming that PSU entered into the Separation Agreement under a mistake of fact; namely, the belief that Dr. Spanier had disclosed to PSU all of the information Dr. Spanier supposedly had regarding Sandusky's conduct with minors. (2d. Am. Counterclaims ¶¶ 75-89.)

47. PSU fails to adequately plead a required element of a claim for unilateral mistake of fact, which is that the contract at issue did not place the risk of mistake on the complaining party. *See Schrack v. Eisenhower*, No. 115-93,

1995 WL 610260, 23 Pa. D. & C. 4th 289, 298 (Ct. Com. Pl. Clinton Cnty. Mar. 24, 1995) (citing Restatement (Second) of Contracts § 153.)

48. The facts PSU does plead plainly demonstrate that the Separation Agreement placed the risk of the mistake PSU claims squarely on PSU.

49. The Separation Agreement itself presumes the potential existence of acts or omissions by Dr. Spanier with respect to his relationship with PSU prior to, and up through, the effective date of the Separation Agreement, and it bars PSU from asserting any claims against Dr. Spanier based on such omissions. (2d. Am. Counterclaims Ex. 5 ¶ 8.)

50. Thus, PSU's pleading is legally insufficient and fails to plead facts that, even if true, could state a valid claim for relief on PSU's Second Counterclaim.

51. Accordingly, and for the reasons set forth more fully in the accompanying Memorandum of Law, PSU's Second Counterclaim is legally insufficient and should be dismissed.

**Fifth Preliminary Objection to First, Second, Third, and Fourth  
Counterclaims  
Pursuant to Pa. R. Civ. P. 1028(a)(4)**

52. Each of PSU's Second Amended Counterclaims is based explicitly on the claim that Dr. Spanier's intentional nondisclosure of information about Sandusky during the negotiation of the Separation Agreement induced PSU to

enter into the Separation Agreement under false pretenses, and that this entitles PSU to rescission of the agreement and disgorgement of monies and benefits provided to Dr. Spanier thereunder. (*Id.* ¶¶ 60-106.) PSU further alleges that Dr. Spanier intentionally withheld information from PSU in the face of a duty to disclose in order to use that knowledge to his advantage and to the University's detriment. (*Id.* ¶¶ 11-14; 41.)

53. These are claims that sound in fraud. *Smith v. Renault*, 564 A.2d 188, 192 (Pa. Super. 1989); *Guidotti v. Prince*, No. GD 09–008835, 2012 WL 7070494 (Ct. Com. Pl. Allegheny Cnty. Mar. 5, 2012).

54. The statute of limitations on a claim alleging that one party fraudulently induced another to enter into a contract is two years. 42 Pa. Cons. Stat. Ann. § 5524(7); *Aubrey v. Santora*, No. 09-20164, 2013 WL 9770380 (Ct. Com. Pl. Butler Cnty. Aug. 12, 2013); *Albarqawi v. 7-Eleven, Inc.*, No. 12-3506, 2014 WL 616975, at \*4 (E.D. Pa. Feb. 18, 2014).

55. PSU alleges that it discovered Dr. Spanier's supposed nondisclosure in 2012, and thus the latest possible date on which PSU could have discovered the nondisclosure is December 31, 2012. (2d. Am. Counterclaims ¶¶ 14-15, 44.)

56. PSU did not assert its claims against Dr. Spanier alleging fraudulent inducement until December 19, 2016.

57. PSU fails to plead facts entitling it to any tolling of the applicable limitations period.

58. Thus, PSU's pleading is legally insufficient and fails to plead facts that, even if true, could state a valid claim for relief on any of PSU's Counterclaims.

59. Accordingly, and for the reasons set forth more fully in the accompanying Memorandum of Law, PSU's First, Second, Third, and Fourth Counterclaims are legally insufficient and should be dismissed.

**Sixth Preliminary Objection to First, Second, Third, and Fourth  
Counterclaims  
Pursuant to Pa. R. Civ. P. 1028(a)(4)**

60. Each of PSU's Counterclaims is based explicitly on the claim that Dr. Spanier had a fiduciary duty to disclose to PSU information that he was supposedly aware of regarding Sandusky's conduct with minors prior to the execution of the Separation Agreement. (*Id.* ¶¶ 60-106.)

61. In particular, PSU asserts that PSU faculty policy HR91 imposed a "fiduciary" duty on Dr. Spanier, and that Dr. Spanier breached this duty by failing to inform PSU of information regarding Sandusky and by allegedly using this information imbalance to his advantage in negotiating the Separation Agreement with PSU. (*Id.* ¶¶ 2-5, 9-10, 38-39, 57-58, 61-64, 76-80, 91-97, 103.)

62. The statute of limitations on a claim for breach of fiduciary duty is two years. 42 Pa. Cons. Stat. Ann. § 5524(7); *Aquilino v. Phila. Catholic Archdiocese*, 884 A.2d 1269, 1275 (Pa. Super. 2005).

63. PSU alleges that it discovered Dr. Spanier's supposed nondisclosure in 2012, and thus the latest possible date on which PSU could have discovered the alleged breach of duty is December 31, 2012. (2d. Am. Counterclaims ¶¶ 14-15, 44.)

64. PSU did not assert its claims against Dr. Spanier alleging breach of fiduciary duty until December 19, 2016.

65. PSU fails to plead facts entitling it to any tolling of the applicable limitations period.

66. Thus, PSU's pleading is legally insufficient and fails to plead facts that, even if true, could state a valid claim for relief on any of PSU's Counterclaims.

67. Accordingly, and for the reasons set forth more fully in the accompanying Memorandum of Law, PSU's First, Second, Third, and Fourth Counterclaims are legally insufficient and should be dismissed.



**Seventh Preliminary Objection to Second, Third, and Fourth Counterclaims  
Pursuant to Pa. R. Civ. P. 1028(a)(8)**

68. PSU's Second, Third, and Fourth Counterclaims assert what purport to be equitable claims for "Unilateral Mistake of Fact," "Rescission," and "Unjust Enrichment."

69. Each of these Counterclaims is based on the claim that because Dr. Spanier failed to disclose information to PSU despite an alleged duty to do so prior to the execution of the Separation Agreement, PSU was induced to enter into the Separation Agreement under false pretenses, and it should therefore be rescinded, and Dr. Spanier should be required to disgorge monies and benefits conferred on him pursuant to the Separation Agreement. (2d. Am. Counterclaims ¶¶ 75-106.)

70. This is an action for fraudulent inducement/concealment and PSU seeks the same remedies available in a claim for fraudulent inducement. *See Guidotti*, 2012 WL 707094; *Eigen v. Textron Lycoming Reciprocating Engine Div.*, 874 A.2d 1179, 1184 (Pa. Super. 2005); *Neuman v. Corn Exch. Nat'l Bank & Trust Co.*, 356 Pa. 442, 451-455 (1947).

71. Pennsylvania law bars claims sounding in equity when the party has a full and adequate remedy at law. Pa. R. Civ. P. 1028(a)(8); *Sixsmith v. Martsof*, 413 Pa. 150, 153 (1964); *Myshko v. Galanti*, 453 Pa. 412, 414 (1973).

72. Thus, PSU's pleading is legally insufficient and fails to plead facts that, even if true, could state a valid claim for relief on PSU's Second, Third, and Fourth Counterclaims.

73. Accordingly, and for the reasons set forth more fully in the accompanying Memorandum of Law, PSU's Second, Third, and Fourth Counterclaims are legally insufficient and should be dismissed.

**Eighth Preliminary Objection to First, Second, Third, and Fourth  
Counterclaims  
Pursuant to Pa. R. Civ. P. 1028(a)(4)**

74. Each of PSU's Amended Counterclaims seeks as a remedy rescission of the Separation Agreement and disgorgement of all fees paid to Dr. Spanier thereunder. (2d. Am. Counterclaims ¶¶ 60-106.)

75. In Pennsylvania, a party seeking to rescind a contract must do so promptly upon discovery of facts warranting rescission, or it waives the right to rescind. *Fichera v. Gording*, 424 Pa. 404, 406 (1967); *Schwartz v. Rockey*, 593 Pa. 536, 550-553 (2007); *Sixsmith*, 413 Pa. at 152; *Muehlhoff v. Boltz*, 215 Pa. 124, 129 (1906); *Albarqawi*, 2014 WL 616975, at \*2.

76. PSU alleges that it discovered the supposed nondisclosure by Dr. Spanier on which it bases its request for rescission in 2012. (2d. Am. Counterclaims ¶¶ 14-15, 44.)

77. PSU did not seek rescission of the Separation Agreement until December 19, 2016.

78. Similarly, a party to a contract waives the right to seek rescission if it continues to perform on the contract after discovery of facts warranting rescission of the contract. *Albarqawi*, 2014 WL 616975, at \*2-3; *Gray v. Md. Credit Fin. Corp.*, 25 A.2d 104, 106-107 (Pa. Super. 1942); *Fuller Co. v. Brown Minneapolis Tank & Fabricating Co.*, 678 F. Supp. 506, 509 (E.D. Pa. 1987).

79. PSU admits that since its discovery of the facts that it alleges warrant rescission in 2012, PSU has continued to make payments and confer benefits on Dr. Spanier for over four years pursuant to the terms of the Separation Agreement. (2d. Am. Counterclaims ¶¶ 40, 55.)

80. Pennsylvania law holds that rescission is an equitable remedy, to be granted only where the parties to a contract can be placed in their former positions with regard to the subject matter of the contract. *Sullivan v. Alleghany Ford Truck Sales, Inc.*, 423 A.2d 1292, 1295-96 (Pa. Super. 1980).

81. PSU fails to plead facts demonstrating that it would be possible to put the parties back into their original positions at the time of contracting, and the facts it does plead demonstrate that this would be impossible.

82. PSU fails to plead any facts to justify its unreasonable delay in seeking rescission of the Separation Agreement.

83. Thus, PSU's pleading is legally insufficient and fails to plead facts that, even if true, could state a valid claim for relief on PSU's First, Second, Third, and Fourth Counterclaims.

84. Accordingly, and for the reasons set forth more fully in the accompanying Memorandum of Law, PSU's First, Second, Third, and Fourth Counterclaims are legally insufficient and should be dismissed.

**Ninth Preliminary Objection to First, Second, Third, and Fourth  
Counterclaims  
Pursuant to Pa. R. Civ. P. 1028(a)(4)**

85. PSU's First, Second, Third, and Fourth Amended Counterclaims are all based on the claims that Dr. Spanier learned during his tenure as President of the University that Jerry Sandusky had engaged in criminal conduct with minors, that Dr. Spanier had a duty to inform PSU of this knowledge during the negotiation of the Separation Agreement, that Dr. Spanier failed to do so, and that the Separation Agreement should therefore be rescinded and Dr. Spanier's benefits obtained thereunder disgorged. (2d. Am. Counterclaims ¶¶ 60-106.)

86. PSU fails to plead any facts demonstrating that Dr. Spanier's supposed nondisclosure caused any injury to PSU, nor does PSU plead any facts demonstrating proximate causation between the alleged breach of duty by Dr. Spanier and any injury to PSU.

87. The information that PSU claims Dr. Spanier failed to disclose during the negotiation of the Separation Agreement from November 12-15, 2011 is the supposed existence of emails between Dr. Spanier and others concerning allegations of sexual abuse of minors by Jerry Sandusky in 1998 and 2001. (*Id.* ¶¶ 14-15, 41-43.)

88. The facts pled by PSU allege that PSU was fully aware of the existence of the emails and the details of the allegations regarding Sandusky during the period November 9, 2011 to November 15, 2011 and prior thereto.

89. The emails that PSU refers to as the “2012 Discovered Emails” are email communications from 2001 that are attached to PSU’s Second Amended Counterclaims as Exhibit 4.

90. The emails on their face — and PSU’s own admissions — demonstrate that two other high-ranking PSU officials were copied on each of the emails in question, several of which do not reflect that Dr. Spanier was copied on the email. (*See Id.* ¶¶ 21-23, *id.* at Ex. 4.)

91. PSU further alleges that former PSU Senior Vice President Gary Schultz has stated in sworn testimony that he was aware of the “2012 Discovered Emails,” that he had contemporaneous conversations with Dr. Spanier regarding the “1998 Incident,” and he had contemporaneous conversations with Dr. Spanier regarding the “2001 Incident.” (*Id.* ¶¶ 50-53.)

92. In light of its admission that two other high-ranking officials of PSU were aware of the existence and contents of the emails in 2001, and were aware Dr. Spanier's knowledge thereof, PSU admits that PSU — a corporate entity — was aware of the existence and contents of the emails in 2001. *See, e.g., A. Schulman, Inc. v. Baer Co.*, 197 Pa. Super. 429, 434 (1962) (“The corporation can acquire knowledge or notice only through its officers or agents . . . .”); *Commw. Dep't of Transp. v. Michael Moraiti, Upper Darby Auto Ctr., Inc.*, 34 Pa. Cmwlth. 27, 30 n.2 (1978) (“In accordance with a well established rule of the law of agency, a corporation is bound by the knowledge acquired by, or notice given to, its officer or agents . . . .”); *Commw. v. One 1978 Porsche Coupe*, 23 Pa. D. & C.3d 268, 271 (Ct. Com. Pl. 1981) (“A corporation cannot see or know anything except by the eyes of intelligence of its officers . . . Knowledge of the proper corporate agent must be regarded in legal effect, as the knowledge of the corporation.”); *Gray v. Green Lincoln Mercury Mazda, Inc.*, 1998 WL 582746, 16 Phila. Co. Rptr. 411, 417 (Ct. Com. Pl. Phila. Cnty. Oct. 13, 1987) (“A corporation can only act through its agents; as the principal [the corporation] cannot disavow or disclaim knowledge and information acquired by its agents in the course of its business.”); *Phila. v. Westinghouse Elec. Corp.*, 205 F. Supp. 830, 831 (E.D. Pa. 1962) (holding that knowledge acquired by “high ranking officials” was chargeable to the corporation because “[a] corporation acquires knowledge through its officers and agents and is

charged with knowledge of all material facts of which they acquire knowledge” during the course of their employment (internal quotations omitted).)

93. Moreover, this Court has already held that PSU was aware of the 1998 and 2001 incidents due to the contemporary awareness of its officer, Gary Schultz, and principles of collateral estoppel bar PSU from claiming otherwise in this litigation. *See* May 4, 2016 Op., *Pa. State Univ. v. Pa. Mfrs.’ Ass’n Ins. Co.*, Nos. 03195, 15111053, 15111034, 15111035, 2016 WL 2737438, at \*6-8 (Ct. Com. Pl. Phila. Cnty. May 4, 2016) (Glazer, J.) (attached to Dr. Spanier’s Memorandum as Exhibit 1).)

94. PSU further alleges that it became aware of the details of the allegations regarding Sandusky — and PSU officials’ alleged knowledge of those allegations — on November 5, 2011, when a grand jury released a Presentment detailing the charges against Sandusky and two other high-ranking PSU officials. (2d. Am. Counterclaims ¶¶ 20-23.)

95. Accordingly, PSU fails to plead facts demonstrating that it was not independently aware of the very information Dr. Spanier supposedly failed to disclose to PSU at all relevant times, and thus PSU cannot plead facts demonstrating causation or injury due to Dr. Spanier’s supposed breach of a supposed duty of disclosure.

96. Thus, PSU's pleading is legally insufficient and fails to plead facts that, even if true, could state a valid claim for relief on PSU's First, Second, Third, and Fourth Counterclaims.

97. Accordingly, and for the reasons set forth more fully in the accompanying Memorandum of Law, PSU's First, Second, Third, and Fourth Counterclaims are legally insufficient and should be dismissed.

**Tenth Preliminary Objection to Fourth Counterclaim  
Pursuant to Pa. R. Civ. P. 1028(a)(4)**

98. PSU's Fourth Counterclaim purports to assert a claim against Dr. Spanier for unjust enrichment. (*Id.* ¶¶ 102-106.)

99. PSU seeks disgorgement of all monies and benefits conferred upon Dr. Spanier under the Separation Agreement and claims he has been unjustly enriched thereby. (*Id.*)

100. The Separation Agreement, a written contract between Dr. Spanier and PSU, is attached as Exhibit 5 to PSU's Amended Counterclaims. PSU fails to plead facts challenging the validity of the Separation Agreement.

101. The Employment Agreement, attached as Exhibit 1 to PSU's Amended Counterclaims, provides for post-Presidency payments to Dr. Spanier for a period of six years and states that PSU's duty to make those payments survives the expiration of the Employment Agreement. (*Id.* at Ex. 1 §§ 5-6.)



102. PSU nowhere challenges the validity of the Employment Agreement, and in fact PSU affirms the validity and enforceability of the Employment Agreement by purporting to assert a claim against Dr. Spanier for breach of that agreement.

103. Pennsylvania law holds that unjust enrichment, a quasi-contractual doctrine, is inapplicable when the relationship between the parties is founded on an express, written contract. *Wilson Area Sch. Dist. v. Skepton*, 586 Pa. 513, 520 (2006).

104. PSU's failure to demonstrate the invalidity or unenforceability of the Separation Agreement, and its acknowledgment of the validity and enforceability of the Employment Agreement, defeats its claim for unjust enrichment because PSU's duty to make the payments at issue to Dr. Spanier is founded upon an express, written, valid contract.

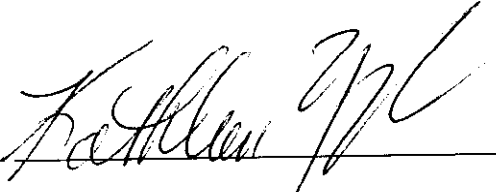
105. Thus, PSU's pleading is legally insufficient and fails to plead facts that, even if true, could state a valid claim for relief on PSU's Fourth Counterclaim.

106. Accordingly, and for the reasons set forth more fully in the accompanying Memorandum of Law, PSU's Fourth Counterclaim is legally insufficient and should be dismissed.

WHEREFORE, Plaintiff respectfully requests that the Court dismiss PSU's  
Second Amended Counterclaims with prejudice.

Dated: April 19, 2017

By:

  
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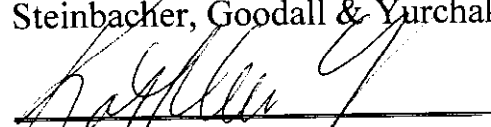
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on the below counsel of record on April 19, 2017.

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