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

Michael J. McQueary,

Plaintiff,

vs.

The Pennsylvania State University,

Defendant.

) Docket No. 2012-1804

) Type of Case:
) Whistleblower

) Medical Professional Liability
) Action (check if applicable)

) Type of Pleading:
) Motion to Stay Proceedings

) Filed on Behalf of:
) Defendant, The Pennsylvania State
) University

) Counsel of Record for this Party:
) Nancy Conrad, Esquire
) White and Williams LLP
) 3701 Corporate Parkway, Suite 300
) Center Valley, PA 18034
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) PA I.D. Number 56157

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2012 OCT 22 A 10:33

DEBRA C. IMMEL
PROTHONOTARY
CENTRE COUNTY, PA

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Attorneys for Defendant,
The Pennsylvania State University

MICHAEL J. MCQUEARY,	:	IN THE COURT OF COMMON
Plaintiff,	:	PLEAS OF CENTRE COUNTY
v.	:	:
THE PENNSYLVANIA STATE	:	CIVIL ACTION NO. 2012-1804
UNIVERSITY,	:	:
Defendant.	:	:
	:	:

THE PENNSYLVANIA STATE UNIVERSITY'S
MOTION TO STAY PROCEEDINGS

Defendant, The Pennsylvania State University (“Penn State”), hereby requests that this Honorable Court Stay this civil action and in support thereof avers as follows:

I. FACTS AND PROCEDURAL POSTURE

1. Plaintiff, Michael J. McQueary (hereinafter “Plaintiff”), commenced this action on or about May 8, 2012 by filing a Praecipe to Issue Writ of Summons against Penn State.

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2. On October 2, 2012, Plaintiff filed a three-count Complaint alleging Whistleblower (Count I), Defamation (Count II), and Misrepresentation (Count III) claims against Penn State (hereinafter “Complaint”).¹

3. Plaintiff supports his Complaint with numerous allegations related to the actions or inactions of former Penn State employees whom are subject to parallel and well-publicized criminal proceedings, including Timothy Curley and Gary Schultz, captioned as Commonwealth of Pennsylvania v. Timothy Mark Curley, Court of Common Pleas, Dauphin County, No. CP-22-CR-5165-2011; and Commonwealth of Pennsylvania v. Gary Charles Schultz, Court of Common Pleas, Dauphin County, No. CP-22-CR-5164-2011. See Complaint, ¶¶ 13-19, 21-23, 26-27, 39, 46-47, 60-64.

4. Plaintiff alleges that Penn State violated the Pennsylvania Whistleblower Law when it discriminated against Plaintiff for “his providing truthful testimony to the Statewide Investigating Grand Jury, his truthful testimony at the criminal preliminary hearing for Athletics Director Curley and Senior Vice President Schultz and further because Plaintiff is expected to be a key prosecution

¹ Plaintiff’s counsel has agreed to extend the deadline for Penn State to file an Answer or otherwise plead to the Complaint until after the Court’s disposition of the instant Motion. In the event the Motion to Stay is not granted, Penn State’s responsive pleading to the Complaint shall be filed within ten (10) days after the Court’s ruling.

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witness at the criminal trials of the Athletics Director Curley and Senior Vice President Schultz.” Complaint, ¶ 46.

5. Plaintiff further alleges that “Athletics Director Curley and Senior Vice President Schultz intentionally misrepresented to the Plaintiff that they thought [the reported incident] was a serious matter, that they would see that it was properly investigated and that appropriate action would be taken.” Id., ¶ 60.

6. Plaintiff claims as a result of the above intentional misrepresentations, Plaintiff has suffered “irreparable harm to his ability to earn a living.” Id., ¶ 63.

7. The alleged conduct of Messers. Curley and Schultz, individually and in connection with Penn State, will be addressed in the instant civil action.

II. DISCRETIONARY FACTORS WEIGH IN FAVOR OF A STAY

8. This Court possesses “broad discretion to grant or deny a stay.” In re Penn-Delco Sch. Dist., 903 A.2d 600, 607 (Pa. Cmwlth. 2006). Whether a stay of the civil case in parallel criminal and civil proceedings should be granted depends upon the “particular circumstances of the case.” United States v. Kordel, 397 U.S. 1 (1970). A court should grant a stay “where refusal to do so would prejudice the rights of one of the parties.” Bierstein v. Whitman, 50 A.2d 334, 335 (Pa. 1947).

9. To determine whether prejudice or interference exists, and whether a stay is justified, courts generally balance the interests of the parties and the public. See e.g. Kordel, 397 U.S. 1 (public interest in protecting consumers from

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misbranded drugs required prompt agency action and justified denial of stay).

Five factors are typically cited in this inquiry, including: (1) the private interests of the plaintiff in proceeding expeditiously within the civil litigation, (2) the private interests of and burden on the defendant, (3) the convenience of the courts, (4) the interests of persons not parties to the civil litigation, and (5) the public's interest.

See e.g. Golden Quality Ice Cream Co. v. Deerfield Specialty Papers, Inc., 87 F.R.D. 53, 56 (E.D. Pa. 1980).

10. Applying the above standard, the Philadelphia Court of Common Pleas has already stayed multiple civil actions that involve Penn State, Curley and Schultz. See Exhibit "A."

11. In this case, Plaintiff will not be prejudiced if this action is stayed.

12. Penn State will be prejudiced if the civil action moves forward while parallel criminal proceedings are active. Penn State is being sued in this action with allegations made against current or former employees, including Curley and Schultz, and those same individuals are criminal defendants, with both Curley and Schultz currently awaiting trial.

13. Penn State would be severely prejudiced if forced to move forward in litigation, and discovery, while its representatives are subject to parallel criminal proceedings.

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14. Staying the instant action will also serve the interests of the Court and the public. The criminal proceedings are moving forward expeditiously, with both Curley and Schultz scheduled for criminal trials in January 2013.

WHEREFORE, Defendant, The Pennsylvania State University, respectfully requests that this Honorable Court Grant its Motion to Stay Proceedings.

Respectfully submitted,

WHITE AND WILLIAMS LLP

By: _____


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Dated: October 19, 2012

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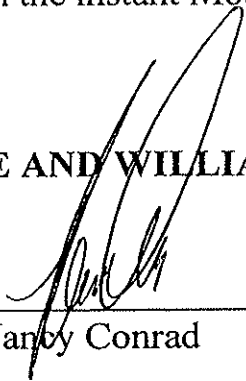
Attorneys for Defendant,
The Pennsylvania State University

MICHAEL J. MCQUEARY,	:	IN THE COURT OF COMMON
	:	PLEAS OF CENTRE COUNTY
Plaintiff,	:	
v.	:	
	:	CIVIL ACTION NO. 2012-1804
THE PENNSYLVANIA STATE	:	
UNIVERSITY,	:	
	:	
Defendant.	:	

CERTIFICATE OF NON-CONCURRENCE

Pursuant to Centre County Rule 208.2(d), I, Nancy Conrad, certify that I made a good faith effort to seek concurrence in the instant Motion from Plaintiff, and that it has been denied.

WHITE AND WILLIAMS LLP

By: 

Nancy Conrad

Date: October 19, 2012

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MICHAEL J. MCQUEARY,	:	IN THE COURT OF COMMON
Plaintiff,	:	PLEAS OF CENTRE COUNTY
v.	:	:
THE PENNSYLVANIA STATE	:	CIVIL ACTION NO. 2012-1804
UNIVERSITY,	:	:
Defendant.	:	:
	:	:

CERTIFICATE OF SERVICE

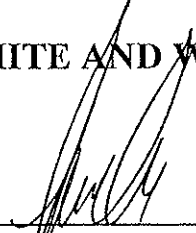
I, Nancy Conrad, Esquire, hereby certify that on this 19th day of October, 2012, a true and correct copy of the foregoing MOTION TO STAY PROCEEDINGS, PROPOSED ORDER, and SCHEDULING REQUEST was served upon the following persons via first class, United States mail, postage prepaid:

Elliot A. Strokoff, Esq.
Strokoff & Cowden, PC
132 State Street
Harrisburg, PA 17101

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WHITE AND WILLIAMS LLP

By: _____


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Attorneys for Defendant,
The Pennsylvania State University

JOHN DOE B

Plaintiff,

v.

THE SECOND MILE;
GERALD SANDUSKY; and
THE PENNSYLVANIA STATE UNIVERSITY

Defendant.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

JUNE TERM, 2012

CASE No. 03727

JURY TRIAL DEMANDED

DOCKETED

OCT 18 2012

F. CLARK
DAY FORWARD

ORDER

AND NOW, this 18th day of Oct, 2012, upon consideration of the

Unopposed Joint Motion For Extraordinary Relief of All Represented Parties, it is hereby

ORDERED that:

- (1) The Motion is GRANTED;
- (2) By Agreement of the Parties, this Civil Action shall be removed from the Expedited Track, and placed onto the Complex Track; however,
- (3) This Civil Action is immediately **STAYED** in light of the parallel criminal proceedings; except that
- (4) Should stay be lifted in any of *Doe A v. The Pennsylvania State University et al.*, *Doe C v. The Pennsylvania State University et al.*, or *C. Miller v. The Pennsylvania State University et al.* for reasons that also apply to this Civil Action, the stay in this case shall be lifted as well..
- (5) The Court shall revisit this stay after the criminal proceedings have concluded.

BY THE COURT:

F. Clark
, J.

Doe B Vs The Second Mil-ORDER



12060372700020

329.1

EXHIBIT A

Case ID: 120603727

JOHN DOE A
Plaintiff,
v.
THE SECOND MILE
and
GERALD SANDUSKY
and
THE PENNSYLVANIA STATE UNIVERSITY
Defendants.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
CIVIL ACTION NO. 111102968

ORDER

AND NOW, this 21st day of March, 2012, upon consideration of the Unopposed Joint Motion For Extraordinary Relief, it is hereby ORDERED that:

(1) The Motion is GRANTED;

(2) ~~This Civil Action shall be removed from the Expedited Track, and placed onto the Complex Track, however,~~

(3) This Civil Action is ~~immediately STAYED~~ *placed in deferred status* in light of the parallel criminal proceedings; and

(4) Any party is permitted to move this Court for a subsequent order lifting the stay, provided that each other party has thirty (30) days to respond.

BY THE COURT:



, J.

Doe A Vs The Second Mil-ORDER



144.1 03/13/2012

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EXHIBIT A

Case ID: 111102968
Control No.: 12031860

Control No. 12033108

C. MILLER	:	COURT OF COMMON PLEAS
	:	OF PHILADELPHIA COUNTY
Plaintiff,	:	CIVIL ACTION
v.	:	TRIAL DIVISION
THE SECOND MILE, GERALD SANDUSKY,	:	DECEMBER TERM, 2011
AND THE PENNSYLVANIA STATE	:	CASE NO. 02933
UNIVERSITY	:	
Defendants.	:	

ORDER

AND NOW, this 29th day of March, 2012, upon consideration of the Unopposed Joint Motion For Extraordinary Relief, it is hereby ORDERED that:

- (1) The Motion is GRANTED;
- (2) This Civil Action shall be removed from the Expedited Track, and placed onto the

Complex Track; however,

- (3) This Civil Action is immediately STAYED in light of the parallel criminal proceedings; and

- (4) The Court shall revisit this stay, after the ^{currently pending} criminal proceedings are completed, upon Motion of any Party.

Miller Vs The Second Mi-ORDER



11120293300026

BY THE COURT:

[Handwritten Signature]

, J.

JOHN DOE C
Plaintiff,
v.
THE PENNSYLVANIA STATE UNIVERSITY
Defendants.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
CIVIL ACTION NO. 120704291

DOCKETED
SEP 28 2012
F. CLARK
DAY FORWARD

ORDER

AND NOW, this 28th day of Sept, 2012, upon consideration of the

Unopposed Joint Motion For Extraordinary Relief, it is hereby ORDERED that:

- (1) The Motion is GRANTED;
- (2) By Agreement of the Parties, this Civil Action shall be removed from the Expedited Track, and placed onto the Complex Track; however,
- (3) This Civil Action is immediately STAYED in light of the parallel criminal proceedings; and
- (4) The Court shall revisit this stay after the criminal proceedings have concluded.

BY THE COURT:

Teresha
J.

Doe C Vs The Pennsylvan-ORDER



Case No. 120704291
Civil Action No. 120704291