



IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO;
and
WILLIAM KENNEY and JOSEPH V (“JAY”) PATERNO,
former football coaches at Pennsylvania State University,

Plaintiffs,

v.
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (“NCAA”);
MARK EMMERT, individually and as President of the NCAA;
and
EDWARD RAY, individually and as former Chairman of the Executive Committee of the NCAA,

Defendants.

Civil Division
Docket No. 2013-2082
Exhibits to Plaintiffs’ Motion to Compel and Memorandum in Support
Filed on Behalf of Plaintiffs
Counsel of Record:
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FILED FOR RECORD
2016 MAY 23 AM 11:19
DEBRA C. IMMEL
PROTHONOTARY
CENTRE COUNTY, PA

EXHIBIT A

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

| | | |
|--|---|--|
| The ESTATE of JOSEPH PATERNO; and |) | |
| |) | Civil Division |
| WILLIAM KENNEY and JOSEPH V. ("JAY") |) | |
| PATERNO, former football coaches at |) | Docket No. 2013-2082 |
| Pennsylvania State University, |) | |
| |) | Discovery |
| Plaintiffs, |) | Filed on Behalf of the Plaintiffs |
| |) | |
| v. |) | |
| |) | Counsel of Record: |
| NATIONAL COLLEGIATE ATHLETIC |) | Thomas J. Weber |
| ASSOCIATION ("NCAA"); |) | GOLDBERG KATZMAN, P.C. |
| |) | 4250 Crums Mill Road, Suite 301 |
| MARK EMMERT, individually and as President |) | P.O. Box 6991 |
| of the NCAA; and |) | Harrisburg, PA 17112 |
| |) | Telephone: (717) 234-4161 |
| EDWARD RAY, individually and as former |) | Email: tjw@goldbergkatzman.com |
| Chairman of the Executive Committee of the |) | |
| NCAA, |) | Wick Sollers (admitted <i>pro hac vice</i>) |
| |) | L. Joseph Loveland (admitted <i>pro hac vice</i>) |
| Defendants. |) | Patricia L. Maher (admitted <i>pro hac vice</i>) |
| |) | Ashley C. Parrish (admitted <i>pro hac vice</i>) |
| |) | KING & SPALDING LLP |
| |) | 1700 Pennsylvania Avenue, NW |
| |) | Washington, DC 20006 |
| |) | Telephone: (202) 737-0500 |
| |) | Email: wsollers@kslaw.com |
| |) | jloveland@kslaw.com |
| |) | pmaher@kslaw.com |
| |) | aparrish@kslaw.com |
| |) | |

THIRD REQUEST FOR PRODUCTION OF DOCUMENTS
FROM PLAINTIFF ESTATE OF JOSEPH PATERNO TO DEFENDANT NATIONAL
COLLEGIATE ATHLETIC ASSOCIATION

Plaintiff Estate of Joseph Paterno, by and through its undersigned counsel, requests, pursuant to Pa. R.C.P. No. 4009.11, that Defendant National Collegiate Athletic Association ("NCAA") respond to this Third Request for Production of Documents within thirty (30) days of service, in accordance with the Instructions and Definitions set forth herein, and produce the

following documents for inspection and copying at the offices of Goldberg Katzman, P.C., 4250 Crums Mill Road, Suite 301, P.O. Box 6991, Harrisburg, PA 17112.

INSTRUCTIONS

The following instructions are applicable throughout these Requests and are incorporated into each individual Request:

1. These instructions and definitions should be construed to require responses based upon the knowledge of, and information available to, the responding party, the Defendant NCAA, as well as its agents, representatives, and, unless privileged, attorneys and accountants, including but not limited to Latham & Watkins, LLP and Killian & Gephart, LLP.
2. These Requests are continuing in character, so as to require that supplemental responses be served promptly if additional or different information is obtained with respect to any Request.
3. No part of a Request should be left unanswered merely because an objection is interposed to another part of the Request. If a partial or incomplete response is provided, the responding party shall state that the response is partial or incomplete.
4. All objections shall be set forth with specificity and shall include a brief statement of the grounds for such objections.
5. Each Request shall be read to be inclusive rather than exclusive. Accordingly, the words "and" as well as "or" shall be construed disjunctively or conjunctively as necessary, in order to bring within the scope of each Request all information that might otherwise be construed to be outside its scope. "Including" shall be construed to mean "including, without any limitation." The word "all" includes "any" and vice versa. The past tense shall include the present tense so as to make the request inclusive rather than exclusive. The singular shall include the plural and vice versa. The masculine includes the feminine and vice versa.

6. Where a claim of privilege is asserted in objecting to any Request or part thereof, and documents or information is not provided on the basis of such assertion:

- A. In asserting the privilege, the responding party shall, in the objection to the Request, or part thereof, identify with specificity the nature of the privilege (including work product) that is being claimed; and
- B. The following information should be provided in the objection, if known or reasonably available, unless divulging such information would cause disclosure of the allegedly privileged information:

(1) For documents:

- a. the type of document;
- b. the general subject matter of the document;
- c. the date of the document; and such other information as is sufficient to identify the document, including, where appropriate, the author, addressee, custodian, and any other recipient of the document, and where not apparent, the relationship of the author, addressee, custodian, and any other recipient to each other.

7. If, in responding to these Requests, you encounter any ambiguity when construing a Request, instruction, or definition, your response shall set forth the matter deemed ambiguous and the construction used in answering.

8. All documents that are responsive, in whole or in part, to any portion or clause of any paragraph of any Request shall be produced in their entirety.

9. Where any item contains marking(s) not appearing in the original, or drafts are altered from the original, then all such items must be considered as separate documents and

identified and produced as such.

10. Unless otherwise specified in a particular Request, the time period covered by these Requests is January 1, 2011 through the present.

DEFINITIONS

Notwithstanding any definition set forth below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under Pa. R.C.P. No. 4003.1. As used in these Requests, the following terms are to be interpreted in accordance with these definitions:

1. "You," "your," "yours," "Defendant," and "NCAA" shall refer to Defendant NCAA, to whom these Requests are directed, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of the NCAA.

2. "Plaintiff," "Joe Paterno," or "Paterno" shall refer to former Penn State head football coach Joseph ("Joe") V. Paterno or his Estate, or any other person authorized to act on behalf of Joe Paterno or his Estate.

3. "Communication" means the transmittal of information by any means, and shall mean and be deemed to refer to any writing or oral conversation, including, but not limited to, telephone conversations, conversations in meetings, letters, memoranda, notes, or electronic communications.

4. "Document" is defined as broadly as possible to include anything stored in any medium, including but not limited to, all written, recorded, transcribed, punched, taped, filmed, or graphic matter, however produced or reproduced, of every type and description that is in your possession, control, or custody, or of which you have knowledge, including but not limited to, correspondence; memoranda; transcriptions of any conversation or testimony; tapes; stenographic or hand-written notes; studies; publications; books; diaries; phone records; logs; instant messaging (public and private IM); electronic mail (email), including but not limited to, server-based email,

web-based email (i.e. gmail.com, yahoo.com, hotmail.com), dial up email, email attachments, deleted email, and email stored on hard drives or portable media; voicemail; information stored on social media and social networking sites; information created or received with the use of PDAs or smartphones; information stored in a cloud environment; text messages; information stored on removable hard drives, thumb drives, flash drives, CDs, DVDs, disks and other portable media; pamphlets; pictures (drawings and photographs); films; images; microfilms; recordings (including any analog, digital, electromagnetic, optical, phonographic, or other media of audio and/or visual recordings); maps; reports; recommendations; surveys; appraisals; charts; minutes; statistical computations; spreadsheets; telegrams; telex messages; listings of telephone calls; calendars; datebooks; books of account; ledgers; expense records; accounts payable; accounts receivable; presentations; analyses; computer records, data compilations and/or databases; every draft of each such document; every copy of each such document where the original is not in your possession, custody or control; and every copy of each such document where such copy is not an identical copy of an original, or other copy, or where such copy contains any commentary or notation whatsoever that does not appear on the original or other copy. "Document" includes any electronically stored information ("ESI").

5. "Evidence, reflect, or relate to" means in the broadest sense and includes documents and things alluding to, responding to, concerning, connected with, commenting on, in respect of, about, regarding, discussing, evidencing, contradicting, showing, describing, reflecting, analyzing and/or constituting the subject matter of the request.

6. "Person" means any natural person or any business, corporation, public corporation, municipal corporation, state government, local government, agency, partnership, group, association, or other organization, and also includes all of the person's representatives.

7. "Penn State" shall refer to employees, administrators, and personnel of The Pennsylvania State University, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of Penn State.

8. "Jerry Sandusky" or "Sandusky" shall refer to former Penn State assistant football coach Gerald A. Sandusky, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of Gerald A. Sandusky.

9. "Mark Emmert" or "Emmert" shall refer to the President of the NCAA, Mark Emmert, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of Mark Emmert.

10. "Edward Ray" or "Ray" shall refer to the former Chairman of the NCAA's Executive Committee, Edward Ray, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of Edward Ray.

11. The "Freeh Firm" refers to the law firm of Freeh, Sporkin & Sullivan, LLP (and any successor entity), as well as attorneys, investigators, or employees that aided or worked with the Freeh Firm on the Freeh investigation, as defined *infra*, including the Freeh Group International Solutions ("FGIS").

12. The "Freeh investigation" shall refer to the investigation conducted by the Freeh Firm into the alleged failure of certain Penn State personnel to respond to and report certain allegations against Sandusky.

13. The "Freeh Report" shall refer to the report issued by the Freeh Firm on July 12, 2012, including all footnotes, exhibits, drafts, or other notes related to that Report.

14. The "NCAA investigation" shall refer to any investigation or evaluation of Penn State undertaken by the NCAA following Defendant Emmert's assertion of NCAA jurisdiction over matters related to Sandusky and Penn State in November 2011.

15. The "Consent Decree" shall refer to the document titled the "Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University," released on July 23, 2012, as well as all footnotes, exhibits, drafts, and other notes related to the Consent Decree.

16. The "NCAA's Operating Bylaws and Administrative Bylaws," "Operating Bylaws," or "Administrative Bylaws," shall refer to the operating policies, procedures, guidelines, and rules set forth in the 2011-2012 NCAA Division I Manual, Second Am. Compl. Ex. A.

17. The "NCAA enforcement process" shall refer to the operating policies, procedures, and investigative guidelines with which the NCAA and the NCAA Committee on Infractions are required to comply in conducting an investigation, as set out in the NCAA's Operating Bylaws and Administrative Bylaws.

18. The "NCAA appeals process" shall refer to the operating policies, procedures, and investigative guidelines with which the NCAA and NCAA Infractions Appeals Committee are required to comply with respect to appeals from the Committee on Infractions as set out in the NCAA's Operating Bylaws and Administrative Bylaws.

19. "Involved individual" shall refer to any individual staff or student who is named in or alleged to be significantly involved in an alleged NCAA rules violation.

DOCUMENT REQUESTS

REQUEST NO. 1:

For the period from November 1, 2011 through August 31, 2012, please produce all agendas for the weekly meetings of the NCAA's Enforcement Directors that contain any reference to Penn State University, the Freeh investigation, the Freeh Report or the Consent Decree.

REQUEST NO. 2:

For the period from November 1, 2011 through August 31, 2012, please produce all notes of the weekly meetings of the NCAA's Enforcement Directors, prepared by the executive assistant to the NCAA Vice President for Enforcement, that contain any reference to Penn State University, the Freeh investigation, the Freeh Report or the Consent Decree.

REQUEST NO. 3:

For the period from January 1, 2013 through February 27, 2015, please produce all documents that evidence, reflect or refer to consideration of, evaluation of, or the bases for, the repeal, dissolution, modification of, or superseding treatment of, the Consent Decree.

Dated this 28th day of March, 2016.



Thomas J. Weber
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L. Joseph Loveland
Mark A Jensen
Ashley C. Parrish
Patricia L. Maher
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
• Washington, DC 20006

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **THIRD REQUEST FOR PRODUCTION OF DOCUMENT PLAINTIFF ESTATE OF JOSEPH PATERNO TO DEFENDANT NATIONAL COLLEGIATE ATHLETIC ASSOCIATION** was served this 28th day of March, 2016 by first class mail and email to the following:

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Washington, DC 20006

Counsel for Plaintiffs

EXHIBIT B

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

| | | |
|--|---|------------------|
| The ESTATE of JOSEPH PATERNO, et al., |) | |
| Plaintiffs, |) | |
| |) | Civil Division |
| v. |) | Docket No. 2013- |
| |) | 2082 |
| NATIONAL COLLEGIATE ATHLETIC ASSOCIATION |) | |
| ("NCAA"), et al., |) | |
| Defendants. |) | |
| |) | |
| |) | |

**THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION'S RESPONSES TO
PLAINTIFFS' THIRD REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Pennsylvania Rule of Civil Procedure Number 40009.12, the National Collegiate Athletic Association ("NCAA"), by and through its undersigned counsel, hereby submits its responses and objections to the Third Requests for Production of Documents issued by Plaintiff Estate of Joseph Paterno, dated March 28, 2016 (the "Requests").

GENERAL OBJECTIONS AND RESPONSES

The following General Objections and Responses are hereby incorporated by reference with the same force and effect as if fully set forth in the specific response to each Interrogatory below.

1. The NCAA objects to the Requests to the extent they seek "all" documents relating to a particular topic or topics when less than "all" documents are either necessary or material to the prosecution or defense of this action and/or provision of "all" documents would duplicate other document requests. The NCAA objects to the Requests to the extent they would require the NCAA to produce multiple copies of a single document. In responding to the Requests, the NCAA states that it has conducted a diligent search, reasonable in scope, of those files in its possession, custody, or control that it believes to be the most likely to contain documents responsive to the Requests. The NCAA has not, however, undertaken to search or

review each and every file and record in its possession, custody, or control, because to do so would be unduly burdensome and expensive. To the extent the Requests purport to require the NCAA to do more than the following or seek information beyond what is available after a reasonable search of the NCAA's files likely to contain relevant or responsive documents, the NCAA objects. In the event that further information, documents, records, or files responsive to any of the Requests are identified or brought to the NCAA, the NCAA reserves the right to amend or supplement its responses.

2. The specific responses set forth below are based on the NCAA's interpretation of the language used in the Requests. The NCAA reserves the right to amend or supplement its responses in the event Plaintiffs assert an interpretation that differs from the NCAA's interpretation.

3. The NCAA generally responds that no incidental or implied admissions are intended by these responses and no such implications should be made. Except as may be expressly stated, nothing stated in these responses is an admission as to a fact or document referred to or assumed in any Request nor an admission that anything stated in these responses is admissible in evidence, nor a waiver of any objection.

4. The NCAA objects to the Requests, including the Instructions and Definitions, to the extent that they seek to impose requirements or obligations on the NCAA in addition to, beyond the scope of, or different from those imposed by the Pennsylvania Rules of Civil Procedure or any other applicable laws or rules.

5. The NCAA objects to the Requests, including the Instructions and Definitions, to the extent they seek documents or information not relevant to the claims or defenses of any party

in the pending action and/or not reasonably calculated to lead to the discovery of admissible evidence.

6. The NCAA objects to the Requests, including the Instructions and Definitions, to the extent that they seek discovery of information that is publicly available and, therefore, of no greater burden to Plaintiffs to obtain as the burden imposed upon the NCAA.

7. The NCAA objects to the Requests, including the Instructions and Definitions, to the extent they seek information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege. To the extent any such information is or may be disclosed in response to the Requests, the disclosure of any such information is inadvertent and is not to be deemed a waiver of the privilege in question (or any other applicable privilege) with respect to the disclosed information or any other information. The NCAA reserves the right to redact any material covered by this Objection.

8. The NCAA objects to the Requests, including the Instructions and Definitions, to the extent that they seek discovery of confidential and/or proprietary information, including, but not limited to, information subject to confidentiality obligations under the NCAA Bylaws or other source, trade secrets or other confidential research, development, or commercial information. Any responses the NCAA provides to these Requests are subject to the Parties' agreement to be bound by the terms of the Stipulated Confidentiality Agreement and Protective Order, entered by the Court on September 11, 2014. The NCAA reserves all of its rights and applicable objections with respect to its private, confidential, proprietary, or other similarly protected confidential materials and information.

9. These objections are made without in any way waiving, but, on the contrary, reserving: (i) all questions as to competency, relevance, materiality, privilege, and admissibility

as evidence for any purpose of any of the information produced hereunder or the subject matter thereof; (ii) the right to object on any ground to the use of the information produced hereunder or the subject matter thereof at any trial or hearing in this matter or in any related or subsequent action or proceeding; (iii) the right to object on any ground to a demand for further response or document production; and (iv) the right at any time to revise, supplement, correct, or add to these objections and responses.

SPECIFIC OBJECTIONS AND RESPONSES TO THE INSTRUCTIONS & DEFINITIONS

1. The NCAA objects to Instruction No. 1 on the grounds that it is overly broad and unduly burdensome, and to the extent it requires The NCAA to produce documents not within The NCAA's possession, custody, or control. The NCAA further objects to Instruction No. 1 to the extent it seeks information protected from discovery by the attorney-client privilege, work production doctrine, or any other applicable privilege.

2. The NCAA objects to the definitions of "NCAA," "Joe Paterno," "Paterno," "Penn State," "Jerry Sandusky," "Sandusky," "Mark Emmert," "Emmert," "Edward Ray," and "Ray" in Definition Nos. 1, 2, and 7-10 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiffs purport to define these terms to include "any other person acting, authorized to act, or purporting to act on behalf of" the defined person or entity.

3. The NCAA objects to the definition of "communication" in Definition No. 3 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiffs purport to define this term to include "the transmittal of information by any means," and to the extent it seeks the production of "any ... oral conversation."

4. The NCAA objects to the definition of "document" in Definition No. 4 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiffs purport to define

this term to include “anything stored in any medium,” including, but not limited to, “correspondence,” “memoranda,” “transcriptions of any conversation or testimony,” “tapes,” “stenographic or hand-written notes,” “studies,” “publications,” “books,” “diaries,” “phone records,” “logs,” instant messaging,” and “email,” and to the extent Plaintiffs seek to impose requirements or obligations on the NCAA in addition to, beyond the scope of, or different from those imposed by the Pennsylvania Rules of Civil Procedure or any other applicable laws or rules.

5. The NCAA objects to the definition of “evidence, reflect, or relate to” in Definition No. 5 as vague, ambiguous, overly broad, and unduly burdensome and to the extent Plaintiffs seek to impose requirements or obligations on the NCAA in addition to, beyond the scope of, or different from those imposed by the Pennsylvania Rules of Civil Procedure or any other applicable laws or rules, and to the extent it calls upon the NCAA to engage in unduly burdensome searches.

6. The NCAA objects to the definition of “person,” in Definition No. 6 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiffs purport to define this term to include “all of the person's representatives.”

7. The NCAA objects to the definition of “NCAA investigation” in Definition No. 14 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiffs purport to define this term to include “any investigation or evaluation of Penn State undertaking by the NCAA following Defendant Emmert’s assertion of NCAA jurisdiction over matters related to Sandusky and Penn State in November 2011.” The NCAA further objects to the definition of “NCAA investigation” to the extent that Plaintiffs purport to define this term in a

manner inconsistent with the meaning of an investigation by the enforcement staff as understood by the NCAA's historical use and the NCAA Division I Manual.

8. The NCAA objects to the definition of the "Freeh Report" in Definition No. 13 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiffs purport to define this term to include "all footnotes, exhibits, drafts, errata sheets, or other notes related to that Report."

9. The NCAA objects to the definition of "Consent Decree" in Definition No. 15 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiffs purport to define this term to include "all footnotes, exhibits, drafts, and other notes related to the Consent Decree."

10. The NCAA objects to the definition of "NCAA's Operating Bylaws and Administrative Bylaws," "Operating Bylaws," and "Administrative Bylaws" in Definition No. 16 to the extent that the definition relies on an NCAA Division I Manual that was not in effect at the time the Consent Decree was agreed to by Penn State and the NCAA.

11. The NCAA objects to the definition of the "NCAA enforcement process" in Definition No. 17 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiffs purport to define this term in a manner inconsistent with the meaning of the infractions and enforcement process as understood by the NCAA's historical use and the NCAA Division I Manual.

12. The NCAA objects to the definition of the "NCAA appeals process" in Definition No. 18 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiffs purport to define this term in a manner inconsistent with the meaning of the infractions and

enforcement process as understood by the NCAA's historical use and the NCAA Division I Manual.

13. The NCAA objects to the definition of "involved individual" in Definition No. 19 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiffs purport to define this term to include "any individual staff or student who is named in or alleged to be significantly involved in an alleged NCAA rules violation" and to the extent that Plaintiffs define the term in a manner inconsistent with the meaning of that term as understood by the NCAA's historical use and the NCAA Division I Manual.

RESPONSES TO THE REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

For the period from November 1, 2011 through August 31, 2012, please produce all agendas for the weekly meetings of the NCAA's Enforcement Directors that contain any reference to Penn State University, the Freeh investigation, the Freeh Report or the Consent Decree.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

The NCAA objects to this Request on the grounds that it seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Plaintiffs' case centers on a limited set of statements contained in the Consent Decree. The Consent Decree was executed by the NCAA and Penn State and was not initiated through, or a part of, the NCAA's traditional enforcement and infractions process. The NCAA further objects on the grounds that the phrase "NCAA's Enforcement Directors" is vague and ambiguous. The NCAA interprets this phrase to refer to NCAA enforcement staff with a title of Director or higher.

Subject to and without waiving its General or Specific Objections, the NCAA responds that it has conducted a diligent search, reasonable in scope, and that it has located no documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 2:

For the period from November 1, 2011 through August 31, 2012, please produce all notes of the weekly meetings of the NCAA's Enforcement Directors, prepared by the executive assistant to the NCAA Vice President for Enforcement, that contain any reference to Penn State University, the Freeh investigation, the Freeh Report or the Consent Decree.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

The NCAA objects to this Request on the grounds that it seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Plaintiffs' case centers on a limited set of statements contained in the Consent Decree. The Consent Decree was executed by the NCAA and Penn State and was not initiated through, or a part of, the NCAA's enforcement or infractions process. The NCAA further objects on the grounds that the terms and phrases "notes" and "NCAA's Enforcement Directors" are vague and ambiguous. The NCAA interprets the phrase "NCAA's Enforcement Directors" to refer to NCAA enforcement staff with a title of Director or higher.

Subject to and without waiving its General or Specific Objections, the NCAA responds that it has conducted a diligent search, reasonable in scope, and that it has located no documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 3:

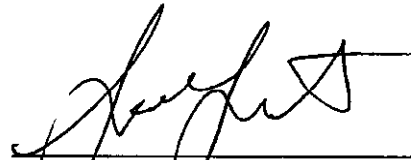
For the period from January 1, 2013 through February 27, 2015, please produce all documents that evidence, reflect or refer to consideration of, evaluation of, or the bases for, the repeal, dissolution, modification of, or superseding treatment of, the Consent Decree.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

The NCAA objects to this Request on the grounds that it seeks seek information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege. The Consent Decree was superseded pursuant to a settlement agreement in the *Corman v. NCAA* litigation pending in the Commonwealth Court. Documents that “reflect or refer” to the “consideration of, evaluation of, or the bases for” that litigation settlement are protected by the attorney-client privilege and work product doctrine.

The NCAA further objects to this Request on the grounds that it is overly broad, unduly burdensome, and seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence because (i) it seeks “all documents” that “reflect or refer” to the “consideration of, evaluation of, or the bases for” a settlement agreement; (ii) the time period is far outside the relevant focus of Plaintiffs’ claims, which is a specific set of statements the NCAA made in the Consent Decree in July 2012; (iii) it seeks information created long after this case was filed that has nothing to do with the underlying claims.

Dated: April 27, 2016



Sarah M. Gragert (admitted *Pro Hac Vice*,
DC No. 977097)

Everett C. Johnson, Jr. (admitted *Pro Hac*
Vice, DC No. 358446)

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*Counsel for the NCAA, Dr. Emmert, and Dr.
Ray*

CERTIFICATE OF SERVICE

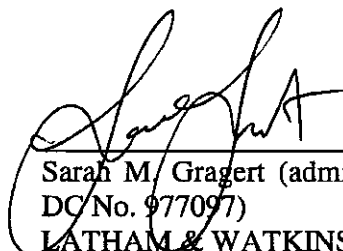
I, Sarah M. Gragert, hereby certify that I am serving *The National Collegiate Athletic Association's Responses and Objections to Plaintiffs' Third Request for Production of Documents* on the following by First Class Mail and email:

Thomas J. Weber, Esquire
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 301
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Harrisburg, PA 17112
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KING & SPALDING LLP
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aparrish@kslaw.com

Counsel for Plaintiffs

Dated: April 27, 2016



Sarah M. Gragert (admitted *Pro Hac Vice*,
DC No. 977097)
LATHAM & WATKINS LLP
555 Eleventh Street NW
Suite 1000
Washington, DC 20004-1304
Telephone: (202) 637-2200
Email: Brian.Kowalski@lw.com

*Counsel for the NCAA, Dr. Emmert, and Dr.
Ray*

EXHIBIT C

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Patricia L. Maher
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VIA EMAIL and FIRST CLASS MAIL

April 29, 2016

Sarah M. Gragert, Esq.
Drew Wisniewski, Esq.
Latham & Watkins LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004-1304

Re: Estate of Paterno v. NCAA et al., Case No. 2013-2082 (Centre Cty. Common Pleas)

Dear Sarah and Drew,

I am writing as a follow-up to our conference this morning regarding the NCAA's responses to Plaintiffs' Third Request for Production of Documents. We discussed each of the three responses the NCAA provided. With respect to Requests Nos. 1 and 2, you told us that there are no weekly meetings of members of the NCAA's enforcement staff at the level of director and above, and that you found no agendas or notes for such meetings. We referred you to such an agenda that the NCAA had produced previously, Bates number NCAA00047468-47473, which includes an item related to Penn State. You agreed to determine whether there are any other such agendas that have entries mentioning Penn State, and corresponding notes of the meetings.

With respect to Request No. 3, you stated in response to my April 28 letter regarding the NCAA's objections that Plaintiffs were misreading the objections to this request. When we spoke this morning, you told us the request was too late and that it calls for documents that are all privileged. However, you also said the NCAA does not have to provide a privilege log for such documents because they are "litigation documents." We disagreed on all three points.

First, the NCAA's responses were due on April 27, before the April 29 discovery cutoff in the Revised Scheduling Order. You did not dispute that the requests were timely; rather you contend that somehow they came too late in the discovery process to require the NCAA to conduct a search for responsive documents, which you contend would all be privileged. We do not understand how the request could require a burdensome search when the repeal of the

Sarah M. Gragert, Esquire
April 29, 2016
Page 2

Consent Decree took place just a little more than a year ago. In any event, although the requests were timely served, we understand that you have not conducted a search for responsive documents.

Second, we disagree that the responsive documents as to which the NCAA asserts privilege need not be logged because they are comparable to drafts of pleadings or internal communications in this case that the parties do not put on a privilege log. In January 2015, the NCAA publicly announced the repeal of the Consent Decree in connection with the settlement of the *Corman v. NCAA* litigation. The Chair of the NCAA's Executive Committee issued a statement about it. There is no reason that the practice of not logging internal documents related to this case would apply to the NCAA's documents related to repeal of the Consent Decree. You also could not confirm that the absence of any responsive documents other than those as to which the NCAA would assert privilege because of your objection to even conducting the search.

Third, you asked why the requested documents that relate to the repeal of the Consent Decree are relevant. The Consent Decree is at the heart of this case. We reiterated that Judge Leete has already entered an order approving a similar request for such documents for a broader time frame from the members of the Committee on Infractions and Infraction Appeals Committee. In addition, the NCAA provided a copy of the *Corman* Settlement Agreement and Superseding Agreement between the NCAA and Penn State to Judge Leete in February 2015. The NCAA's reasons for repealing the Consent Decree, while also publicly citing it as evidence of the NCAA's authority to impose the Consent Decree with respect to Penn State, are relevant to malice and to damages at a minimum.

Because we were unable to reach agreement on these document requests, we told you we will proceed with a motion to compel. Before filing the motion, we would like your response on whether the NCAA has any other documents responsive to Requests Nos. 1 and 2 so the motion can address all three requests if that becomes necessary.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia L. Maher', written over a horizontal line.

Patricia L. Maher

cc: Thomas W. Scott, Esq.
Everett C. Johnson, Esq.
Brian E. Kowalski, Esq.
Drew Wisniewski, Esq.
Thomas J. Weber, Esq.

EXHIBIT D

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| London | Tokyo |
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LATHAM & WATKINS^{LLP}

February 27, 2015

The Honorable John B. Leete
Judge
Court of Common Pleas
for Centre County, Pennsylvania
403 Centre County Courthouse
Bellevue, PA 16823

Re: Estate of Paterno, et al. v. NCAA, Penn State (2013-2083)

Dear Judge Leete:

Enclosed please find a copy of the settlement agreement and accompanying documents from the matter of *Corman v. NCAA*, No. 1 MD 2013. We provide these materials per your request during the February 6, 2015 hearing in the above-referenced matter.

Very truly yours,



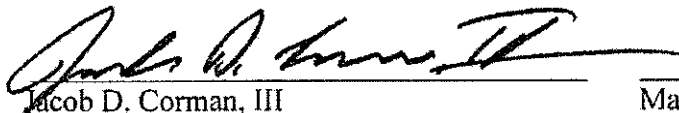
Everett C. Johnson, Jr.
of LATHAM & WATKINS LLP

cc: All counsel of record (with enclosure) (email only)

**SENATOR CORMAN AND TREASURER MCCORD V. NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION
SETTLEMENT AGREEMENT**

1. The parties are Plaintiffs, Senator Jacob D. Corman, III and Treasurer Robert M. McCord (collectively "Plaintiffs"), The National Collegiate Athletic Association ("NCAA") and Pennsylvania State University ("Penn State").
2. Plaintiffs, the NCAA and Penn State agree that the July 23, 2012 Consent Decree is repealed. The effect of this agreement, will include, but not be limited to:
 - a. \$48 million will be paid by Penn State to the Commonwealth under the Endowment Act.
 - b. Elimination of all punitive sanctions against Penn State.
3. All existing litigation among these parties will be ended with stipulations of dismissal with prejudice, and all claims that could have been brought between the Plaintiffs and the Defendants in this case will be resolved.

SENATOR JACOB D. CORMAN, III
in his Official Capacity



Jacob D. Corman, III
Majority Leader, Pennsylvania State Senate

**NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION**

Mark A. Emmert
*President, National Collegiate Athletic
Association*

TREASURER ROBERT M. MCCORD
in his Official Capacity

Robert M. McCord
Treasurer, Commonwealth of Pennsylvania

PENNSYLVANIA STATE UNIVERSITY

Eric J. Barron
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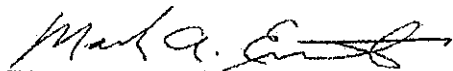
PENNSYLVANIA STATE UNIVERSITY

Eric J. Barron
President, Penn State University

**SUPERSEDING AGREEMENT BETWEEN THE NATIONAL COLLEGIATE
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**NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION**



Mark A. Emmert
*President, National Collegiate Athletic
Association*

PENNSYLVANIA STATE UNIVERSITY

Eric J. Barron
President, Penn State University



**Office of Chief Counsel
127 Finance Building
Harrisburg, PA 17120
717.787.2740**

January 21, 2015

Daniel I. Booker, Esquire
Reed Smith, LLP
Reed Smith Centre
225 Fifth Avenue
Pittsburgh, Pennsylvania 15222

**Re: Side Letter Agreement between the Pennsylvania State University and
Pennsylvania Treasury.**

Dear Mr. Booker:

The Commonwealth of Pennsylvania, Treasury Department ("Treasury") and the Pennsylvania State University ("University") have stated their intention to execute a Settlement Agreement, the purpose of which is to resolve pending state and federal litigation pertaining to and arising from the enforcement of the Institution of Higher Education Monetary Penalty Endowment Act (Act of February 20, 2013 (P.L. 1, No. 1)). The Settlement Agreement provides, in part, for the payment of \$48 million by the University to the Commonwealth for the purpose of supporting child abuse treatment and prevention programs within the Commonwealth.

With the objective of clarifying the obligations of the University, as set forth by Section 2(a) of the accompanying Settlement Agreement, the undersigned parties agree that the following shall apply:

- 1) The University will cause to be transferred, within ten (10) business days following the Commonwealth Court's entry of an order dismissing the matter of *Corman et al v. NCAA* 1 MD 2013 (2013), the amount of \$36 million, plus such interest as has accrued upon the date of transfer, into an account within the custodial care of the State Treasurer.
- 2) State Treasury will provide to the University wire instructions in advance of the transfer date identifying the Commonwealth account into which the transfer is to be completed.
- 3) A second and final payment in the amount of \$12 million will be caused to be transferred by the University into an account within the custodial care of the State Treasurer within ten (10) business days after July 1, 2015.

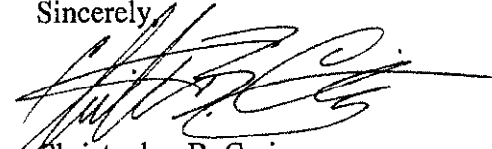
Daniel I. Booker, Esquire
January 21, 2015
Page Two

- 4) All funds received by the State Treasurer pursuant to this Agreement shall be subject to and administered pursuant to the provisions of the Endowment Act and expended by the Pennsylvania Commission on Crime and Delinquency as directed by the Act.

Treasury and the University hereby execute this side letter agreement with the expressed intention to be bound by the provisions contained herein. This side letter agreement may be executed by electronic copy in counterparts, each of which, when so executed and delivered, shall be an original and together shall constitute one agreement binding upon the parties hereto. This letter agreement shall be governed by the substantive and procedural laws of the Commonwealth of Pennsylvania without regard to conflict of law principles.

Please sign this letter in the place provided below acknowledging receipt of this side letter agreement and confirming that this letter reflects your understanding and agreement to be bound by the terms set forth herein.

Sincerely,



Christopher B. Craig
Chief Counsel

AGREED TO AND ACCEPTED ON BEHALF OF
THE PENNSYLVANIA STATE UNIVERSITY:

By: _____

Name:

Title:

Dated:

APPROVED AS TO FORM AND LEGALITY:

By: _____

Name: Jennifer Langan, Esquire

Title: Deputy Chief Counsel, Pennsylvania Treasury

Dated: January 21, 2015

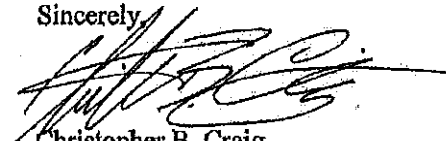
Daniel I. Booker, Esquire
January 21, 2015
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Christopher B. Craig
Chief Counsel

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THE PENNSYLVANIA STATE UNIVERSITY:

By: Daniel I. Booker

Name: Daniel I. Booker

Title: Counsel of Record for The Pennsylvania State University

Dated: January 21, 2015

APPROVED AS TO FORM AND LEGALITY:

By: Jennifer Langan

Name: Jennifer Langan, Esquire

Title: Deputy Chief Counsel, Pennsylvania Treasury

Dated: January 21, 2015

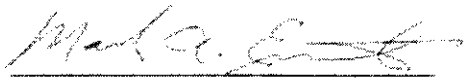
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in his Official Capacity

Jacob D. Corman, III
Majority Leader, Pennsylvania State Senate

**NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION**



Mark A. Emmert
*President, National Collegiate Athletic
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TREASURER ROBERT M. MCCORD
in his Official Capacity

Robert M. McCord
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PENNSYLVANIA STATE UNIVERSITY

Eric J. Barron
President, Penn State University

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**NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION**



Mark A. Emmert
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PENNSYLVANIA STATE UNIVERSITY

Robert M. McCord
Treasurer, Commonwealth of Pennsylvania

 1/19/15

Eric J. Barron
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**NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION**

Mark A. Emmert
*President, National Collegiate Athletic
Association*

PENNSYLVANIA STATE UNIVERSITY


Eric J. Barron
President, Penn State University

1/19/15

EXHIBIT E

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

ESTATE of JOSEPH PATERNO; WILLIAM KENNEY
and JOSEPH ("JAY") V. PATERNO, former football
coaches at Pennsylvania State University,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION ("NCAA"); MARK EMMERT,
individually and as President of the NCAA; and
EDWARD RAY, individually and as former
Chairman of the Executive Committee of the NCAA,

Defendants,

and

THE PENNSYLVANIA STATE UNIVERSITY,

Nominal Defendant.

No: 2013-2082

FILED FOR RECORD
2016 MAR 29 PM 3:44
DEBRA C. JENSEN
PROTHONOTARY
CENTRE COUNTY, PA

Attorney for Plaintiffs:

Attorney for Defendants:

Attorney for Nominal Defendant:

*Thomas J. Weber, Esquire
Joseph Sedwick Sollers, III, Esquire
Thomas W. Scott, Esquire
Everett C. Johnson, Jr., Esquire
Daniel Booker, Esquire
Michael T. Scott, Esquire
Joseph P. Green, Esquire*

OPINION AND ORDER

Presently before the Court are the following outstanding matters: Objections by Plaintiff, Jay Paterno, to Subpoena Pursuant to Rule 4009.21; Defendant NCAA's Motion to Compel the Production of Documents from the Estate and Overrule the Estate's Objections to Related Third Party Subpoenas; Plaintiffs' Motion to Extend Discovery Cutoff and for Entry of Revised Scheduling Order; NCAA's Objections to Plaintiffs' Proposed Subpoena of Britton Banowsky;

■ O □ RD □ S

Defendant NCAA's Motion to Compel Production of a Privilege Log from Plaintiffs; and Plaintiffs' Motion to Compel Discovery Responses and for Entry of Order Overruling Objection to Third Party Discovery.

The following outstanding matters have been rendered moot: Objections by Plaintiff, Jay Paterno, to Subpoena Pursuant to Rule 4009.21; Plaintiffs' Motion to Extend Discovery Cutoff and for Entry of Revised Scheduling Order; and Defendant NCAA's Motion to Compel Production of a Privilege Log from Plaintiffs.

The Court reviewed the briefs submitted by the parties concerning the unresolved motions and heard oral argument on March 11, 2016. The Court is now ready to render a decision on these matters.

DISCUSSION

I. Defendant NCAA's Motion to Compel the Production of Documents from the Estate and Overrule the Estate's Objections to Related Third-Party Subpoenas

a. Documents Related to the *Critique* and its Independent Analyses

The attorney-client privilege protects disclosure of professional advice by an attorney to a client or of communications by a client to an attorney to enable the attorney to render sound professional advice. Gillard v. AIG Ins. Co., 15 A.3d 44, 47 (Pa. 2011). To successfully invoke the attorney-client privilege, the individual claiming it must demonstrate:

- 1) The asserted holder of the privilege is or sought to become a client;
- 2) The person to whom the communication was made is a member of the bar of a court, or his subordinate;
- 3) The communication relates to a fact of which the attorney was informed by his client, without the presence of strangers, for the purpose of securing either an opinion of law, legal services or assistance in a legal matter, and not for the purpose of committing a crime or tort; and
- 4) The privilege has been claimed and is not waived by the client.

Office of Governor v. Davis, 122 A.3d 1185, 1191-92 (Pa. Cmwlth. 2015). The party who has asserted the attorney-client privilege must initially set forth facts showing that the privilege has been properly invoked, then the burden shifts to the party seeking disclosure to set forth facts showing that disclosure will not violate the attorney-client privilege, e.g., because the privilege has been waived or because some exception applies. Carbis Walker, LLP v. Hill, Barth & King, LLC, 930 A.2d 573, 581 (Pa. Super. 2007).

The Pennsylvania Rules of Civil Procedure set forth the attorney work-product doctrine, which provides as follows:

Subject to the provisions of Rules 4003.4 and 4003.5, a party may obtain discovery of any matter discoverable under Rule 4003.1 even though prepared in anticipation of litigation or trial by or for another party or by or for that other party's representative, including his or her attorney, consultant, surety, indemnitor, insurer or agent. The discovery shall not include disclosure of the mental impressions of a party's attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories. With respect to the representative of a party other than the party's attorney, discovery shall not include disclosure of his or her mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy or tactics.

Pa.R.C.P. 4003.3. The underlying purpose of the work-product doctrine is to shield the mental processes of an attorney by providing a privileged area within which the attorney can analyze and prepare a client's case. T.M. v. Elwyn, Inc., 950 A.2d 1050, 1062 (Pa. Super. 2008); Gocial v. Independence Blue Cross, 827 A.2d 1216, 1222 (Pa. Super. 2003). Rule 4003.3 specifically "immunizes the lawyer's mental impressions, conclusions, opinions, memoranda, notes, summaries, legal research and legal theories, nothing more." Pa.R.C.P. 4003.3, Explanatory Comment at ¶ 3.

However, the work-product privilege is not absolute, and items may be deemed discoverable if the "product" sought becomes a relevant issue in the action. Saint Luke's Hosp. of

Bethlehem v. Vivian, 99 A.3d 534, 55051 (Pa. Super. 2014), appeal denied sub nom. Saint Luke's Hosp. of Bethlehem, Pa. v. Vivian, 114 A.3d 417 (Pa. 2015); Barrick v. Holy Spirit Hosp. of the Sisters of Christian Charity, 32 A.3d 800, 812 (Pa. Super. 2011), affirmed sub nom. Barrick v. Holy Spirit Hosp. of Sisters of Christian Charity, 91 A.3d 680 (Pa. 2014) (documents ordinarily protected by the attorney work-product doctrine may be discoverable if the work product itself is relevant to the underlying action); T.M., supra at 1062; Gocial, supra at 1222.

The Explanatory Comment to Rule 4003.3 provides as follows:

There are, however, situations under the Rule where the legal opinion of an attorney becomes a relevant issue in an action; for example, an action for malicious prosecution or abuse of process where the defense is based on a good faith reliance on a legal opinion of counsel. The opinion becomes a relevant piece of evidence for the defendant, upon which defendant will rely. The opinion, even though it may have been sought in anticipation of possible future litigation, is not protected against discovery. A defendant may not base his defense upon an opinion of counsel and at the same time claim that it is immune from pre-trial disclosure to the plaintiff.

Pa.R.C.P. 4003.3, Explanatory Comment at ¶ 4. The work-product privilege cannot be overcome by merely asserting that the protected documents reference relevant subject matter, rather, the attorney's mental impressions, conclusions, opinions, memoranda, notes, summaries, legal research or legal theories must be directly relevant to the action. Barrick, supra.

i. Privileged Material Relevant to Underlying Issue

The remaining claims in the case at bar require a showing of malice. Specifically, Plaintiff Estate has a claim under defamation for commercial disparagement and Plaintiffs Jay Paterno and Bill Kenney have claims under defamation for injurious falsehoods. Additionally, Plaintiffs seek redress in the form of punitive damages, which requires a finding of malice.

A claim for defamation can be proven by a plaintiff upon a showing that:

- 1) The statement is false;

- 2) The publisher either intended the publication to cause pecuniary loss or reasonably should have recognized that publication would result in pecuniary loss;
- 3) Pecuniary loss did in fact result; and
- 4) The publisher either knew that the statement was false or acted in reckless disregard of its truth or falsity.

Pro Golf Mfg. v. Tribune Review Newspaper Co., 809 A.2d 243, 246 (Pa. 2002); see also Commonwealth v. Armao, 286 A.2d 626, 629 (Pa. 1972) (if the plaintiff is a public figure, then the plaintiff must prove actual malice, that is, the publication was made with knowledge of or reckless disregard of its falsity).

Defendants contend the materials underlying the *Critique* and its Independent Analyses are highly-relevant to the case and thus Plaintiffs must disclose said materials. Plaintiffs contend said materials are privileged and are thus not discoverable. The Court finds Defendants are entitled to discovery of the materials underlying the *Critique* and its Independent Analyses.

Plaintiffs' claims for defamation require a finding of malice, which is defined as knowledge of or reckless disregard of falsity. Integral to the issue of malice in this case are the findings of the *Freeh Report* and Defendants' interaction with those findings. Likewise, the *Critique* is integral to the issue of malice in this case because it is an analysis of the findings of the *Freeh Report* and was trumpeted by Plaintiffs as a "comprehensive" and "factual" review with "complete transparency."

Plaintiffs previously argued against any privilege attaching to the *Freeh Report* materials. The Court agreed and ordered Defendants to disclose the *Freeh Report* materials because the materials are relevant to the issues of this case and any remaining privilege was waived by public disbursal of the report. Plaintiffs couch their remaining claims in this case in the alleged falsity

of the *Freeh Report* findings, and have held out the *Critique* as evidence that said findings were “unfounded,” “incorrect,” “unsubstantiated,” “inaccurate,” and “deeply flawed.”

In essence, Plaintiffs rely on the underlying documents of the *Critique* and its Independent Analyses as a foundation to allege the falsity of the *Free Report* findings and Defendants’ malice. However, Plaintiffs contend the underlying documents are irrelevant to any issues in this case. The Court finds this argument to be illogical as it would require Defendants to simply accept the *Critique*’s findings of falsity while Plaintiffs are granted free reign to dissect all of the *Freeh Report* materials to reach their own conclusions.

Plaintiffs bear the burden of proving malice, but this burden does not grant exclusive access to evidence relevant to the issue of malice. Defendants cannot be hindered in their defense to Plaintiffs’ claims of malice simply because the burden rests with Plaintiffs. The Court cannot allow Plaintiffs to transform discovery into a unilateral affair in which Plaintiffs are granted greater latitude to bolster their claims while Defendants are left to speculate as to the basis of Plaintiffs’ claims. Thus, the Court finds Defendants are entitled to discovery of the materials underlying the *Critique* and its Independent Analyses.

ii. Waiver of Privilege

Waiver is the voluntary and intentional abandonment of a known right. Brubacher Excavating, Inc. v. Commerce Bank/Harrisburg, N.A., 995 A.2d 362, 369 n.4 (Pa. Super. 2010). Waiver may be established by either a party’s express declaration or conduct or action so inconsistent with an intention to stand on the party’s right as to leave no opportunity for a reasonable inference to the contrary. Prime Medica Assocs. v. Valley Forge Ins. Co., 970 A.2d 1149, 1156-57 (Pa. Super. 2009); see also Nationwide Mut. Ins. Co. v. Fleming, 924 A.2d 1259 (Pa. Super. 2007), affirmed, 992 A.2d 65 (Pa. 2010) (client can waive the protection afforded by

attorney-client privilege by disclosing the communication at issue to a third party); Joe v. Prison Health Services, Inc., 782 A.2d 24 (Pa. Cmwlth. 2001) (once the attorney-client communications have been disclosed to a third party, the privilege is deemed waived). The critical concern for courts assessing the waiver of a privilege is whether a litigant is attempting to brandish the privilege as both a shield and a sword, and the following is instructive on this focus:

A litigant attempting to use attorney-client privilege as an offensive weapon by selective disclosure of favorable privileged communications has misused the privilege; *waiver of the privilege for all communications on the same subject* has been deemed the appropriate response to such misuse.

Nationwide Mut. Ins. Co., *supra* at 1265 (emphasis added).

In the case at bar, Defendants contend any and all privilege Plaintiffs may have held in the documents related to the *Critique* and its Independent Analyses were waived by the publication of the *Critique* and the extensive public relations media campaign the Plaintiffs undertook to publicize the *Critique*'s findings. Plaintiffs contend there was never an express waiver of privilege and that the involvement of Plaintiffs' counsel in the creation of the *Critique* casts a veil of privilege over all related materials which Plaintiffs did not select for public disclosure. The Court finds Plaintiffs waived any and all privilege in the documents related to the *Critique* and its Independent Analyses.

Plaintiffs pursued their factual review of the *Freeh Report*, which became the *Critique*, through their counsel and experts retained by their counsel. Engagement letters for said review provided as follows:

As part of King & Spalding's representation of the Paterno Family, we have determined that it is in the best interests of the Paterno Family to retain you for the provision of services set forth in this Agreement in *anticipation of possible litigation and in the preparation and defense* of the Paterno Family related to the findings set forth in the Freeh Report issued by Freeh, Sporkin & Sullivan ("Freeh Group") and the National Collegiate Athletic Association's ("NCAA") adoption of those findings in the form of a consent decree.

...

In sum, we request that you provide strategic guidance and advice on how best to educate the public and respond to any unfounded conclusions or interpretations in the *Freeh [R]eport* relating to Joe Paterno.

...

It is *understood that the attorney-client confidentiality privilege and attorney work-product doctrine will apply to communications among King & Spalding, the communications expert we have retained, McGinn and Company ("McGinn"), and you, and it is agreed that you will provide services hereunder for King & Spalding.*

Retainer Agreement for Dr. Fred S. Berlin (September 20, 2012) (emphasis added); Retainer Agreement for Jim Clemente (September 20, 2012) (emphasis added). At the inception of the review, which was approximately two (2) months after the release of the *Freeh Report*, Plaintiffs' counsel's words suggest confidential consulting was to be undertaken in furtherance of counsel's legal representation of Plaintiffs. However, any semblance of this intention was extinguished by Plaintiffs' public course of conduct. Plaintiffs made public statements indicating that their review of the *Freeh Report* was a transparent investigation conducted by independent experts. In addition to a media campaign to publicize the *Critique*, Plaintiffs published the *Critique* and other material related to the review on the website www.paterno.com. Now Plaintiffs seek to place a veil of privilege over any review material they did not choose to disclose to the public. The law does not condone this type of selective disclosure which would grant Plaintiffs discretion to use their review materials as a sword and a shield. Thus, the Court finds any and all privilege Plaintiffs held in the documents related to the *Critique* and its Independent Analyses have been waived.

b. Expert Subpoenas

Providing the rules for discovery as it relates to expert testimony, Pa.R.C.P. 4003.5 states the following in pertinent part:

Rule 4003.5. Discovery of Expert Testimony. Trial Preparation Material

- a) Discovery of facts known and opinions held by an expert, otherwise discoverable under the provisions of Rule 4003.1 and acquired or developed in anticipation of litigation or for trial, may be obtained as follows:
 - 1) A party may through interrogatories require
 - A) any other party to identify each person whom the other party expects to call as an expert witness at trial and to state the subject matter on which the expert is expected to testify and
 - B) the other party to have each expert so identified state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. The party answering the interrogatories may file as his or her answer a report of the expert or have the interrogatories answered by the expert. The answer or separate report shall be signed by the expert.
 - 2) Upon cause shown, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions concerning fees and expenses as the court may deem appropriate.

Pa.R.C.P. 4003.5(a)(1)-(2). "[Pa.R.C.P.] 4003.5 should be read to restrict the scope of all discovery from non-party witnesses retained as experts in trial preparation." Cooper v. Schoffstall, 905 A.2d 482, 492 (Pa. 2006). Any request for discovery not covered under Pa.R.C.P. 4003.5(a)(1) shall be channeled through the Rule's "cause shown" criterion. Id. (adherence to the general standard pertaining to discovery, namely, the requirement that the request be reasonably calculated to lead to discovery of admissible evidence, is an essential prerequisite to establishing "cause shown"); Pa.R.C.P. 4003.5(a)(2). In the absence of

exceptional circumstances, a party cannot be compelled to disclose, in answer to interrogatories, the facts known or opinions held by non-witness experts whom it may have consulted.

Philadelphia Elec. Co. v. Nuclear Energy Liability-Property Ins. Ass'n, 10 Pa. D. & C.3d 340 (C.P. 1979). However, Rule 4003.5 does not apply to experts who are not hired in anticipation of litigation, and does not shield discovery of facts or opinions acquired or developed independently of litigation. Miller v. The Brass Rail Tavern Inc., 664 A.2d 525, 530 (Pa. 1995); Shambach v. Fike, 82 Pa. D. & C.4th 535, 541 (C.P. 2006); Scott v. DeFeo, 46 Pa. D. & C.4th 353, 355 (C.P. 2000).

In the case at bar, Defendants contend the experts retained by Plaintiffs to reach the findings included in the *Critique* were not retained in anticipation of litigation and thus can be subpoenaed in this matter. Plaintiffs contend said experts were retained in anticipation of litigation as non-witness experts and thus cannot be subpoenaed. The Court finds the experts retained by Plaintiffs can be subpoenaed in this matter.

Plaintiffs waived any and all privilege Plaintiffs held in the documents related to the *Critique* and its Independent Analyses through the publication of the *Critique* and select underlying materials and the media campaign the Plaintiffs undertook to publicize the *Critique*'s findings. The Court will not undertake an analysis to determine whether Plaintiffs' experts were retained in anticipation of litigation as this issue is rendered moot by the Court's waiver analysis and finding in the previous section. Thus, the Court finds the experts retained by Plaintiffs in this matter can be subpoenaed.

Therefore, Defendant NCAA's Motion to Compel the Production of Documents from the Estate and Overrule the Estate's Objections to Related Third-Party Subpoenas is **GRANTED**.

II. Plaintiffs' Motion to Compel Discovery Responses and for Entry of Order Overruling Objection to Third Party Discovery

Discovery is confined to matters that are not privileged and to matters that are relevant to the subject matter involved in the pending action. District Council 33, Am. Fed'n of State v. Philadelphia, 511 A.2d 818 (Pa. Super. 1986), reversed by, District Council 33 v. Phila., 537 A.2d 1367 (Pa. 1988). Relevancy to the subject matter is not restricted to relevancy to the issues or to the materiality of what is sought to be discovered. See Bennett v. Graham, 714 A.2d 393 (Pa. 1998) (discovery is not subject to the same evidentiary rules as apply to admissibility at trial; discovery is meant to crystallize issues and therefore broader scope is permitted); Pa.R.C.P. 4003.1(b).

Proof of malice can be founded on circumstantial evidence. Dumont Television & Radio Corp. v. Franklin Elec. Co. of Phila., 154 A.2d 585, 588 (Pa. 1959); Johnson v. Land Title Bank & Trust Co., 198 A. 23 (Pa. 1938). Such circumstantial evidence can consist of deliberate efforts to avoid the truth and the taking of action to achieve a pre-determined outcome. See Harte-Hanks Comms., Inc. v. Connaughton, 491 U.S. 657, 684-85 (1989); Curran v. Philadelphia Newspapers, Inc., 546 A.2d 639, 642 (Pa. Super. 1988).

In the case at bar, Plaintiffs contend the discovery responses and third party discovery they seek are directly related to the issue of malice in the case. Defendants contend said discovery requests are irrelevant and unduly burdensome. The Court finds said discovery requests are relevant, so long as they remain narrowly tailored to the issue of malice.

The broad scope of discovery permits Plaintiffs to investigate the possibility of circumstantial evidence of Defendants' alleged malice. At this juncture, the Court would be abrogating Plaintiffs' right to build their case if it struck down their inquiry regarding a central issue. Plaintiffs have successfully argued that their requests are reasonably related to the issue of

malice, and requiring Plaintiffs to substantiate their requests to any greater degree would amount to imposing the impossible burden of proving the existence of material outside of their control. The Court will, however, require Plaintiffs' discovery requests to be narrowly tailored to the issue of Defendants' alleged malice. Thus, at this time the Court finds third party depositions to be an unduly burdensome means of discovery for the subject matter Plaintiffs' seek.

Therefore, Plaintiffs' Motion to Compel Discovery Responses and for Entry of Order Overruling Objection to Third Party Discovery is **GRANTED** in part and **DENIED** in part.

Accordingly, the Court enters the following Order:

ORDER

AND NOW, this 29 day of March, 2016, the Court hereby ORDERS:

- 1) Defendant NCAA's Motion to Compel the Production of Documents from the Estate and Overrule the Estate's Objections to Related Third-Party Subpoenas is **GRANTED**.
- 2) Plaintiffs' Motion to Compel Discovery Responses and for Entry of Order Overruling Objection to Third Party Discovery is **GRANTED** in part and **DENIED** in part.
 - a. Defendant NCAA's objections to responding to Plaintiffs' discovery requests are **OVERRULED**.
 - i. Defendant NCAA is **ORDERED** to provide, under seal, substantive responses to Plaintiffs' January 8, 2016 Interrogatories and to Plaintiffs' Second Set of Requests for Admissions to the NCAA.
 - b. Defendant NCAA's objections to Plaintiffs' third party deposition subpoenas are **SUSTAINED**.

- c. Defendant NCAA's objections to Plaintiffs' third party document subpoenas are **OVERRULED**. Plaintiffs' third party document subpoenas shall read as follows:


For the period January 1, 2011, through February 28, 2015, all documents, including, but not limited to, memoranda, notes of telephone conversations, handwritten notes, emails from any email account (including but not limited to non-work email account such as Gmail or Yahoo Mail) and text messages or short message service (SMS) messages, that evidence, reflect, or relate in any way to the following:

- a) The Penn State football program and/or Penn State football coaches (including, but not limited to, Joseph Paterno, Jay Paterno, and William Kenney);
- b) The NCAA Consent Decree, titled "Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University," dated July 23, 2012 including, but not limited to, drafts of the Consent Decree and any documents that relate in any way to the repeal, dissolution, modification, and/or superseding of the Consent Decree, such as the NCAA's January 2015 repeal of the Consent Decree and the superseding Athletics Integrity Agreement that the NCAA terminated in December 2015;
- c) The decision-making, evaluation, assessment, basis for, and/or process relating to consideration, imposition, or acceptance of any penalty, sanction, violation, and/or infraction of the NCAA's rules,

bylaws, and/or Constitution by Penn State. This request includes, but is not limited to, documents related to disagreements, concerns, objections, questions, and/or discussions by the NCAA about the authority and/or jurisdiction of the NCAA to impose such penalty, sanction, violation, and/or infraction; as well as documents related to any repeal, dissolution, modification, and/or superseding treatment of such penalty, sanction, violation, and/or infraction; and

- d) The Freeh Report, titled "Report of the Special Investigative Counsel Regarding the Actions of the Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky," prepared by Freeh Sporkin & Sullivan, LLP, and any other actual or stated basis for the statements contained in the Consent Decree.

BY THE COURT



John B. Leete, Senior Judge
Specially Presiding

EXHIBIT F

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO; and

WILLIAM KENNEY and JOSEPH V. ("JAY")
PATERNO, former football coaches at
Pennsylvania State University,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION ("NCAA");

MARK EMMERT, individually and as President
of the NCAA;

and

EDWARD RAY, individually and as former
Chairman of the Executive Committee of the
NCAA,

Defendants.

Civil Division

Docket No. 2013-2082

DEBRA C. IMEL
PROTHONOTARY
CENTRE COUNTY, PA

2016 APR 13 AM 10:49

FILED FOR RECORD

[PROPOSED] ORDER OF COURT

This matter having come before the Court on the MOTION TO QUASH THIRD-PARTY DEPOSITION SUBPOENA DIRECTED TO ERIC J. BARRON AND FOR PROTECTIVE ORDER, filed by non-parties The Pennsylvania State University and its President, Eric J. Barron, and the Court having read the briefs and been duly advised in the premises, it is hereby ORDERED, ADJUDGED, and DECREED that the Motion is DENIED and the deposition of Eric J. Barron shall proceed.

SO ORDERED this 11 day of April, 2016.

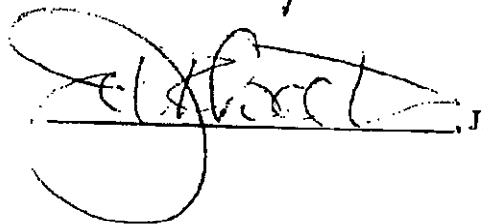
 J.

EXHIBIT G

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW

ESTATE of JOSEPH PATERNO; WILLIAM KENNY : NO. 2013-2082
and JOSEPH ("JAY") PATERNO, former football :
coaches at Pennsylvania State University :
vs.
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION :
("NCAA"); MARK EMMERT, individually and as :
President of the NCAA; and EDWARD RAY, :
individually and as former Chairman of the :
Executive Committee of the NCAA :

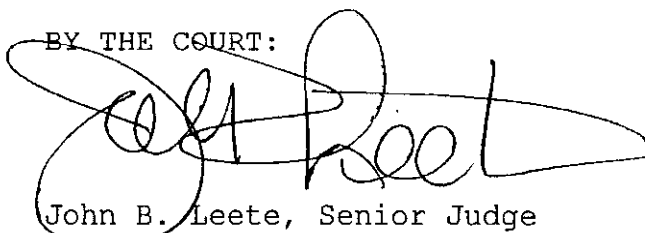
O R D E R

AND NOW, May 16, 2016, pursuant to a conference held this day, it is ORDERED that counsel for Pepper Hamilton promptly furnish to the Court a plan for narrowing and at least in part resolving outstanding discovery issues as mandated by the Superior Court. Further, discovery will be reopened for a period of 45 days from this date to complete discovery, said discovery being limited to outstanding discovery requests and depositions, as well as any discovery relating to recent allegations as contained in documents authored by Judge Glazer of the Philadelphia Court of Common Pleas relative to certain insurance litigation.

Counsel for Penn State University will, as appropriate, approach victims in the Sandusky matter to ascertain their willingness to take part in voluntary discovery in the above-captioned matter. The Court will take all necessary steps to protect the confidentiality and anonymity of any such persons.

In view of the foregoing, the Court will make adjustments to the scheduling order of March 11, 2016, as needed.

BY THE COURT:


John B. Leete, Senior Judge
55th Judicial District
Specially Presiding

DEBRA C. LAMBL
PROTHONOTARY
CENTRE COUNTY, PA

2016 MAY 16 PM 2:04

FILED 1011000081

EXHIBIT H

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

ESTATE OF JOSEPH : NO. 2013-2082
PATERNO; WILLIAM KENNY AND
JOSEPH ("JAY") PATERNO,
FORMER FOOTBALL COACHES AT
PENNSYLVANIA STATE UNIVERSITY

VS.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION ("NCAA"); MARK
EMMERT, INDIVIDUALLY AND AS
PRESIDENT OF THE NCAA; AND
EDWARD RAY, INDIVIDUALLY AND AS
FORMER CHAIRMAN OF THE EXECUTIVE
COMMITTEE OF THE NCAA

Transcript of Proceedings

Before: John B. Leete, Judge Specially Presiding
55th Judicial District

Date: March 11, 2016

Place: Centre County Courthouse
Courtroom Annex
108 South Allegheny Street
Bellefonte, Pa 16823

Notes by: Elise A. Sturges
Official Court Reporter
Room 208, Centre County Courthouse

Bellefonte, Pa 16823

814 355-6734 or fax 814 548-1158

1 Appearances:

2

3 For Plaintiffs:

4 Thomas J. Weber, Esquire

5 Patricia L. Maher, Esquire

6 Ashley C. Parrish, Esquire

7

8

9 For Defendants NCAA, Emmert & Ray:

10 Everett Johnson, Esquire

11 Brian E. Kowalski, Esquire

12 Sarah M. Gragert, Esquire

13 Robert J. Daniels, Esquire

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P R O C E E D I N G S

The Court: Ladies and gentlemen, it's nice to see you all this morning. I do appreciate the kind offer that some of you made to travel to Coudersport, Pennsylvania, my home base. That was a very gracious offer. Some of you may not have liked that. If you think Bellefonte is out in the country we could give you another dimension if you were to come to Potter County. So probably for you collectively this is probably a much more convenient venue.

I did have a request here as we go into the matter of the Paterno Estate v. The NCAA, et al, at 2082 of 13. We did have a request to take one matter first here for the convenience of some of the counsel and I certainly have no problem with that and as I recall that was the NCAA's Motion to Compel documents from the estate and to overrule objections.

So if everyone can live with that we will take that issue first here today.

Mr. Johnson: Thank you, Your Honor.
Everett Johnson, Latham & Watkins on behalf of the NCAA. First of all, thank you for accommodating our schedule and moving the date of

1 you like to do these --

2 The Court: I would like to do them --
3 try to keep them as separate as we can.

4 Ms. Maher: Okay. Thank you.

5 Mr. Johnson: Thank you, Your Honor.

6 The Court: Okay. Mr. Johnson, you are
7 back on.

8 Mr. Johnson: I am back on. Thanks,
9 Judge. Look, I don't think this is the world's
10 biggest thing honestly. Your Honor identified
11 the concern we have. It falls into two pretty
12 basic categories.

13 One is it is undisputed in this case
14 that the NCAA did not follow its Committee on
15 Infractions procedures, that it did something
16 unusual, did something unprecedented. It's been
17 clear publicly and with this Court why it did so
18 and that the Committee on Infractions was,
19 therefore, not involved. And as Your Honor
20 pointed out, the Committee on Infractions are all
21 third parties and so the balancing between burden
22 and relevance is more precisely done when the
23 party being burdened is not a litigant. And so
24 when you think about what they already have to
25 support their argument -- we don't agree with

1 their argument but to the extent that the
2 argument is, hey, this is pretty unusual and
3 that's relevant to something, stipulate. We know
4 that. Individual's reactions to something that
5 they are -- I suspect everybody in the world had
6 some reaction to something here. What we know is
7 that the Committee on Infractions wasn't involved
8 so their reactions to not being involved are at
9 the outer boundary of relevance and we think
10 under these circumstances --

11 The Court: Well could it go to actual
12 -- to the actual malice?

13 Mr. Johnson: Well this is what I was
14 just about to say, Your Honor, and let me speak
15 directly about it. It is going to be important
16 in this case -- the parties agree that actual
17 malice is very much in this case and it is --

18 The Court: Sure is.

19 Mr. Johnson: And it is going to be for
20 both of us at the center of summary judgment
21 eventually in this case. We don't think it's
22 fair to the Court and respectfully request the
23 Court not to make the law of the case on actual
24 malice on very thin pleading on about a very
25 important issue over an objection to a subpoena.

EXHIBIT I

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

| | | |
|--|---|------------------|
| The ESTATE of JOSEPH PATERNO, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| NATIONAL COLLEGIATE ATHLETIC ASSOCIATION |) | Civil Division |
| ("NCAA"), et al., |) | |
| |) | |
| Defendants, |) | Docket No. 2013- |
| |) | 2082 |
| and |) | |
| |) | |
| PENNSYLVANIA STATE UNIVERSITY, |) | |
| |) | |
| Defendant. |) | |
| |) | |

**THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION'S
RESPONSES AND OBJECTIONS TO PLAINTIFFS' REQUESTS FOR ADMISSION**

In accordance with Pennsylvania Rule of Civil Procedure 4014, the National Collegiate Athletic Association (the "NCAA") has attempted in good faith to respond to Plaintiffs' Requests for Admission. The NCAA's responses are based upon information currently available to it. The NCAA has not completed its investigation of the facts relating to this action. Accordingly, the NCAA reserves the right to change or supplement these responses at any time. The fact that the NCAA has responded to any part of any of Plaintiffs' Requests is not intended to be, and shall not be construed to be, a waiver by the NCAA of all or any part of any objection to any Request.

GENERAL OBJECTIONS

1. The NCAA objects to each and every Request on the grounds that they seek to impermissibly shift the burden of proof in this action. It remains Plaintiffs' burden to demonstrate that allegedly disparaging statements were about the Plaintiffs, were demonstrably

false, and were made with actual malice. By responding to these Requests, the NCAA in no way admits or accepts that it has any burden in this case concerning such issues.

2. The NCAA objects to each and every Request for Admission that can be interpreted to ask for an admission by the NCAA that it contends that facts support statements in the Consent Decree. As is now well known by all, and has been stated repeatedly, the NCAA did not participate in the Freeh firm's investigation or the preparation of its report. Before entering into the Consent Decree, senior NCAA staff read the Freeh Report, and reasonably and appropriately relied on its conclusions. The facts utilized and relied upon by the NCAA in the development of the Consent Decree were the facts reported in the Freeh Report. The Freeh investigation was led by a former FBI director and federal judge, Louis Freeh, whom Penn State Trustee Ken Frazier described as having "unimpeachable credentials and unparalleled experience in law and criminal justice." The Freeh investigation's process was robust and consistent with the process regularly used by corporations, universities, and other entities conducting internal investigations in order to develop factual information and make important business, legal, or other strategic decisions, as well as federal prosecutors and regulatory authorities, who routinely base criminal and regulatory settlements on such investigations. As set forth in detail in the Freeh Report, the Freeh firm's findings are supported by documentary evidence, interviews, sworn testimony, and reasonable inferences drawn therefrom that the Freeh firm found credible, relevant and reliable. Indeed, the Freeh firm's investigation, commissioned by the University itself, included reviewing over 3 million documents and conducting over 430 interviews. The NCAA believed then, and it believes now, that the factual findings of the Freeh Report, as accepted by Penn State, were a sound basis upon which to move forward to determine how those findings should be addressed by the NCAA. The veracity of the Freeh firm's findings is also

supported by, *inter alia*, the Sandusky criminal investigation and trial, the indictments of Graham Spanier, Timothy Curley, and Gary Schultz, Penn State's termination of Graham Spanier and Coach Joe Paterno, Penn State's public statements following immediately the release of the Freeh Report, the Penn State Board of Trustees' refusal to repudiate the Freeh Report, statements made by Coach Joseph V. Paterno before he passed away, and public statements made by Frank Fina.

3. The NCAA objects to each Request for Admission that asks for an admission or denial that the NCAA contends or no longer contends "that facts support the statement in the Consent Decree that . . ." to the extent that any inference can be drawn from the response to this sweeping question that would be inconsistent with facts set forth in the Answer and Amended Answer filed by the NCAA, Preliminary Objections filed by the NCAA, or previous Answers to Interrogatories (all sets) provided by the NCAA, the factual averments of which are incorporated herein as if set forth in detail to the extent relevant to the request.

4. The NCAA objects to the Requests to the extent they refer to statements in the Consent Decree that do not refer to or concern any of the three remaining Plaintiffs on the grounds that such Requests are not relevant or reasonably calculated to lead to admissible evidence.

REQUEST FOR ADMISSION NO. 1:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that "[t]he Freeh Report's findings depict an environment shaped by the actions and inactions of members of the leadership and board of Penn State that allowed Sandusky's serial child sexual abuse."

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Subject to and without waiver of its General Objections, the NCAA admits Request No.

1.

REQUEST FOR ADMISSION NO. 2:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that “[t]he Freeh Report’s findings depict an environment shaped by the actions and inactions of members of the leadership and board of Penn State that allowed Sandusky’s serial child sexual abuse.”

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Subject to and without waiver of its General Objections, the NCAA denies Request No.

2.

REQUEST FOR ADMISSION NO. 3:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that “the egregiousness of the predicate conduct [at Penn State] is unprecedented, amounting to a failure of institutional and individual integrity far exceeding a lack of institutional control or individual unethical conduct.”

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

The NCAA objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of this objection and its General Objections, the NCAA admits Request No. 3.

REQUEST FOR ADMISSION NO. 4:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that “the egregiousness of the predicate conduct [at Penn State] is unprecedented, amounting to a failure of institutional and individual integrity far exceeding a lack of institutional control or individual unethical conduct.”

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

The NCAA objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of this objection and its General Objections, the NCAA denies Request No. 4.

REQUEST FOR ADMISSION NO. 5:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that “FSS has established an exhaustive factual record[.]”

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Subject to and without waiver of its General Objections, the NCAA admits Request No. 5.

REQUEST FOR ADMISSION NO. 6:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that “FSS has established an exhaustive factual record[.]”

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Subject to and without waiver of its General Objections, the NCAA denies Request No. 6.

REQUEST FOR ADMISSION NO. 7:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that “Penn State breached the standards expected by and articulated in the NCAA Constitution and Bylaws.”

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

The NCAA objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of this objection and its General Objections, the NCAA admits Request No. 7.

REQUEST FOR ADMISSION NO. 8:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that “Penn State breached the standards expected by and articulated in the NCAA Constitution and Bylaws.”

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

The NCAA objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of this objection and its General Objections, the NCAA denies Request No. 8.

REQUEST FOR ADMISSION NO. 9:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that Penn State failed “to value and uphold institutional integrity demonstrated by inadequate, and in some instances non-existent, controls and oversight surrounding the athletics

program of the University, such as those controls prescribed by Articles 2.1, 6.01.1, and 6.4 of the NCAA Constitution.”

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

The NCAA objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of this objection and its General Objections, the NCAA admits Request No. 9.

REQUEST FOR ADMISSION NO. 10:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that Penn State failed “to value and uphold institutional integrity demonstrated by inadequate, and in some instances non-existent, controls and oversight surrounding the athletics program of the University, such as those controls prescribed by Articles 2.1, 6.01.1, and 6.4 of the NCAA Constitution.”

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

The NCAA objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of this objection and its General Objections, the NCAA denies Request No. 10.

REQUEST FOR ADMISSION NO. 11:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that Penn State and its leadership “fail[ed] to maintain minimal standards of appropriate and responsible conduct.”

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that Penn State “fail[ed] to maintain minimal standards of appropriate and responsible conduct.” The NCAA also objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of these objections and its General Objections, the NCAA admits Request No. 11.

REQUEST FOR ADMISSION NO. 12:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that Penn State and its leadership “fail[ed] to maintain minimal standards of appropriate and responsible conduct.”

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that Penn State “fail[ed] to maintain minimal standards of appropriate and responsible conduct.” The NCAA also objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of these objections and its General Objections, the NCAA denies Request No. 12.

REQUEST FOR ADMISSION NO. 13:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that Penn State and its leadership demonstrated “[a] lack of adherence to fundamental notions of individual integrity.”

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that that Penn State demonstrated “[a] lack of adherence to fundamental notions of individual integrity.” The NCAA also objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of these objections and its General Objections, the NCAA admits Request No. 13.

REQUEST FOR ADMISSION NO. 14:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that Penn State and its leadership demonstrated “[a] lack of adherence to fundamental notions of individual integrity.”

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that that Penn State demonstrated “[a] lack of adherence to fundamental notions of individual integrity.” The NCAA also objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible

scope of requests under Rule 4014. Subject to and without waiver of these objections and its General Objections, the NCAA denies Request No. 14.

REQUEST FOR ADMISSION NO. 15:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that Coach Joe Paterno, as the head football coach at Penn State, did not “promote an atmosphere for compliance and monitor the activities of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach.”

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Subject to and without waiver of its General Objections, the NCAA admits Request No. 15.

REQUEST FOR ADMISSION NO. 16:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that Coach Joe Paterno, as the head football coach at Penn State, did not “promote an atmosphere for compliance and monitor the activities of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach.”

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Subject to and without waiver of its General Objections, the NCAA denies Request No. 16.

REQUEST FOR ADMISSION NO. 17:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that Coach Joe Paterno, as the head football coach at Penn State, did not “serve as [a] positive moral model for students in order ‘for intercollegiate athletics to promote the character

development of participants, to enhance the integrity of higher education and to promote civility in society.’”

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that “the findings of the Criminal Jury and the Freeh Report establish a factual basis from which the NCAA concludes that Penn State breached the standards expected by and articulated in the NCAA Constitution and Bylaws[.]” and provides a list of breached standards, including that Penn State demonstrated:

A lack of adherence to fundamental notions of individual integrity. An institution’s head coach should promote an atmosphere for compliance and monitor the activities of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach. Further, NCAA Bylaw 19.01.2, consistent with Article 2.4 of the NCAA Constitution, demands the employees associated with intercollegiate athletics to serve as positive moral models for students in order “for intercollegiate athletics to promote the character development of participants, to enhance the integrity of higher education and to promote civility in society.”

The NCAA also objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of these objections and its General Objections, the NCAA admits Request No. 17.

REQUEST FOR ADMISSION NO. 18:

Please admit that the NCAA no longer contends that facts support the NCAA’s statement in the Consent Decree that Coach Joe Paterno, as the head football coach at Penn State, did not “serve as [a] positive moral model for students in order ‘for intercollegiate athletics to promote the character development of participants, to enhance the integrity of higher education and to promote civility in society.’”

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that “the findings of the Criminal Jury and the Freeh Report establish a factual basis from which the NCAA concludes that Penn State breached the standards expected by and articulated in the NCAA Constitution and Bylaws[,]” and provides a list of breached standards, including that Penn State demonstrated:

A lack of adherence to fundamental notions of individual integrity. An institution’s head coach should promote an atmosphere for compliance and monitor the activities of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach. Further, NCAA Bylaw 19.01.2, consistent with Article 2.4 of the NCAA Constitution, demands the employees associated with intercollegiate athletics to serve as positive moral models for students in order “for intercollegiate athletics to promote the character development of participants, to enhance the integrity of higher education and to promote civility in society.”

The NCAA also objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of these objections and its General Objections, the NCAA denies Request No. 18.

REQUEST FOR ADMISSION NO. 19:

Please admit that the NCAA contends that facts support the statements in the Consent Decree that Coach Joe Paterno “failed to protect against a child sexual predator harming children for over a decade” and “concealed Sandusky’s activities from the Board of Trustees, the University community, and authorities.”

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree

states that “President Graham B. Spanier, Senior Vice President-Finance and Business Gary C. Shultz, Athletic Director Timothy M. Curley and Head Football Coach Joseph V. Paterno [] failed to protect against a child sexual predator harming children for over a decade. These men concealed Sandusky’s activities from the Board of Trustees, the University community and authorities.” Subject to and without waiver of this objection or its General Objections, the NCAA admits Request No. 19.

REQUEST FOR ADMISSION NO. 20:

Please admit that the NCAA no longer contends that facts support the statements in the Consent Decree that Coach Joe Paterno “failed to protect against a child sexual predator harming children for over a decade” and “concealed Sandusky’s activities from the Board of Trustees, the University community, and authorities.”

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that “President Graham B. Spanier, Senior Vice President-Finance and Business Gary C. Shultz, Athletic Director Timothy M. Curley and Head Football Coach Joseph V. Paterno [] failed to protect against a child sexual predator harming children for over a decade. These men concealed Sandusky’s activities from the Board of Trustees, the University community and authorities.” Subject to and without waiver of this objection or its General Objections, the NCAA denies Request No. 20.

REQUEST FOR ADMISSION NO. 21:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that Coach Joe Paterno “empowered Sandusky to attract potential victims to the campus

and football events by allowing him to have continued, unrestricted and unsupervised access to the University' facilities and affiliation with the University's prominent football program."

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that "[t]hese individuals ... empowered Sandusky to attract potential victims to the campus and football events by allowing him to have continued, unrestricted and unsupervised access to the University's facilities and affiliation with the University's prominent football program." Subject to and without waiver of its General Objections, the NCAA admits Request No. 21.

REQUEST FOR ADMISSION NO. 22:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that Coach Joe Paterno "empowered Sandusky to attract potential victims to the campus and football events by allowing him to have continued, unrestricted and unsupervised access to the University' facilities and affiliation with the University's prominent football program."

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that "[t]hese individuals ... empowered Sandusky to attract potential victims to the campus and football events by allowing him to have continued, unrestricted and unsupervised access to the University's facilities and affiliation with the University's prominent football program." Subject to and without waiver of its General Objections, the NCAA denies Request No. 22.

REQUEST FOR ADMISSION NO. 23:

Please admit that the NCAA contends that facts support the statement that Coach Joe Paterno “ignored the red flags of Sandusky’s behaviors[.]”

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. Subject to and without waiver of this objection and its General Objections, the NCAA admits that it contends that facts support the statement that “[s]ome coaches, administrators and football program staff members ignored the red flags of Sandusky’s behaviors.”

REQUEST FOR ADMISSION NO. 24:

Please admit that the NCAA does not contend that facts support the statement that Coach Joe Paterno “ignored the red flags of Sandusky’s behaviors[.]”

RESPONSE TO REQUEST FOR ADMISSION NO. 24:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. Subject to and without waiver of this objection and its General Objections, the NCAA denies that it no longer contends that facts support the statement that “[s]ome coaches, administrators and football program staff members ignored the red flags of Sandusky’s behaviors.”

REQUEST FOR ADMISSION NO. 25:

Please admit that the NCAA contends that facts support the finding of the Freeh Report, quoted by the Consent Decree as one of its “Findings and Conclusions,” that, in order to avoid the consequences of bad publicity, Coach Joe Paterno (among others) “repeatedly concealed

critical facts relating to Sandusky's child abuse from the authorities, the University's Board of Trustees, the Penn State community and the public at large."

RESPONSE TO REQUEST FOR ADMISSION NO. 25:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that "in order to avoid the consequences of bad publicity, ... Spanier, Schultz, Paterno and Curley – repeatedly concealed critical facts relating to Sandusky's child abuse from the authorities, the University's Board of Trustees, the Penn State community and the public at large." Subject to and without waiver of its General Objections, the NCAA admits Request No. 25.

REQUEST FOR ADMISSION NO. 26:

Please admit that the NCAA no longer contends that facts support the finding of the Freeh Report, quoted by the Consent Decree as one of its "Findings and Conclusions," that, in order to avoid the consequences of bad publicity, Coach Joe Paterno (among others) "repeatedly concealed critical facts relating to Sandusky's child abuse from the authorities, the University's Board of Trustees, the Penn State community and the public at large."

RESPONSE TO REQUEST FOR ADMISSION NO. 26:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that "in order to avoid the consequences of bad publicity, ... Spanier, Schultz, Paterno and Curley – repeatedly concealed critical facts relating to Sandusky's child abuse from the authorities, the University's Board of Trustees, the Penn State community and the public at

large.” Subject to and without waiver of its General Objections, the NCAA denies Request No. 26.

REQUEST FOR ADMISSION NO. 27:

Please admit that the NCAA contends that facts support the finding of the Freeh Report, quoted by the Consent Decree as one of its “Findings and Conclusions,” that “avoiding the consequences of bad publicity was the most significant cause for the University’s failure to protect child victims and report to authorities,” even though “it was not the only cause.”

RESPONSE TO REQUEST FOR ADMISSION NO. 27:

Subject to and without waiver of its General Objections, the NCAA admits Request No. 27.

REQUEST FOR ADMISSION NO. 28:

Please admit that the NCAA no longer contends that facts support the finding of the Freeh Report, quoted by the Consent Decree as one of its “Findings and Conclusions,” that “avoiding the consequences of bad publicity was the most significant cause for the University’s failure to protect child victims and report to authorities,” even though “it was not the only cause.”

RESPONSE TO REQUEST FOR ADMISSION NO. 28:

Subject to and without waiver of its General Objections, the NCAA denies Request No. 28.

REQUEST FOR ADMISSION NO. 29:

Please admit that the NCAA contends that facts support the finding of the Freeh Report, quoted by the Consent Decree as one of its “Findings and Conclusions,” that “[other causes] for the University’s failure to protect child victims and report to authorities” included that Coach Joe

Paterno (among others) “allowed Sandusky to retire as a valued member of the University’s football legacy, with ‘ways ‘to continue to work with young people through Penn State,’ essentially granting him license to bring boys to campus facilities for ‘grooming’ as targets for his assaults[.]””

RESPONSE TO REQUEST FOR ADMISSION NO. 29:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that “Spanier, Schultz, Paterno, and Curley allowed Sandusky to retire as a valued member of the University’s football legacy, with “ways ‘to continue to work with young people through Penn State,’ essentially granting him license to bring boys to campus facilities for ‘grooming’ as targets for his assaults[.]”” Subject to and without waiver of this objection and its General Objections, the NCAA admits Request No. 29.

REQUEST FOR ADMISSION NO. 30:

Please admit that the NCAA no longer contends that facts support the finding of the Freeh Report, quoted by the Consent Decree as one of its “Findings and Conclusions,” that “[other causes] for the University’s failure to protect child victims and report to authorities” included that Coach Paterno (among others) “allowed Sandusky to retire as a valued member of the University’s football legacy, with ‘ways ‘to continue to work with young people through Penn State,’ essentially granting him license to bring boys to campus facilities for ‘grooming’ as targets for his assaults[.]””

RESPONSE TO REQUEST FOR ADMISSION NO. 30:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree

states that “Spanier, Schultz, Paterno, and Curley allowed Sandusky to retire as a valued member of the University’s football legacy, with “ways ‘to continue to work with young people through Penn State,’ essentially granting him license to bring boys to campus facilities for ‘grooming’ as targets for his assaults[.]”” Subject to and without waiver of this objection and its General Objections, the NCAA denies Request No. 30.

REQUEST FOR ADMISSION NO. 31:

Please admit that the NCAA contends that facts support the finding of the Freeh Report, referenced in the Consent Decree as one of its “Findings and Conclusions,” that “[other causes] for the failure to protect child victims and report to authorities” included the University’s “culture of reverence for the football program that is ingrained at all levels of the [Penn State] campus community.”

RESPONSE TO REQUEST FOR ADMISSION NO. 31:

Subject to and without waiver of its General Objections, the NCAA admits Request No. 31.

REQUEST FOR ADMISSION NO. 32:

Please admit that the NCAA no longer contends that facts support the finding in the Freeh Report, referenced in the Consent Decree as one of its “Findings and Conclusions,” that “[other causes] for the University’s failure to protect child victims and report to authorities” included the University’s “culture of reverence for the football program that is ingrained at all levels of the [Penn State] campus community.”

RESPONSE TO REQUEST FOR ADMISSION NO. 32:

Subject to and without waiver of its General Objections, the NCAA denies Request No. 32.

REQUEST FOR ADMISSION NO. 33:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that the evidence described in the Consent Decree “presents an unprecedented failure of institutional integrity leading to a culture in which a football program was held in higher esteem than the values of the institution, the values of the NCAA, the values of higher education, and most disturbingly the values of human decency.”

RESPONSE TO REQUEST FOR ADMISSION NO. 33:

The NCAA objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of this objection and its General Objections, the NCAA admits Request No. 33.

REQUEST FOR ADMISSION NO. 34:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that the evidence described in the Consent Decree “presents an unprecedented failure of institutional integrity leading to a culture in which a football program was held in higher esteem than the values of the institution, the values of the NCAA, the values of higher education, and most disturbingly the values of human decency.”

RESPONSE TO REQUEST FOR ADMISSION NO. 34:

The NCAA objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of this objection and its General Objections, the NCAA denies Request No. 34.

REQUEST FOR ADMISSION NO. 35:

Please admit that the NCAA contends that “[t]he sexual abuse of children on a university campus by a former university official - and even the active concealment of that abuse - while despicable, ordinarily would not be actionable by the NCAA.”

RESPONSE TO REQUEST FOR ADMISSION NO. 35:

The NCAA objects to this request as irrelevant. Questions of NCAA process and authority are not relevant now that Plaintiffs’ breach of contract claims have been dismissed, and this is not a statement directed at any Plaintiff. The NCAA also objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of these objections and its General Objections, the NCAA admits Request No. 35.

REQUEST FOR ADMISSION NO. 36:

Please admit that the NCAA no longer contends that “[t]he sexual abuse of children on a university campus by a former university official - and even the active concealment of that abuse - while despicable, ordinarily would not be actionable by the NCAA.”

RESPONSE TO REQUEST FOR ADMISSION NO. 36:

The NCAA objects to this request as irrelevant. Questions of NCAA process and authority are not relevant now that Plaintiffs’ breach of contract claims have been dismissed, and this is not a statement directed at any Plaintiff. The NCAA also objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of these objections and its General Objections, the NCAA denies Request No. 36.

REQUEST FOR ADMISSION NO. 37:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that at Penn State “it was the fear of or deference to the omnipotent football program that enabled a sexual predator to attract and abuse its victims.”

RESPONSE TO REQUEST FOR ADMISSION NO. 37:

Subject to and without waiver of its General Objections, the NCAA admits Request No. 37.

REQUEST FOR ADMISSION NO. 38:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that at Penn State “it was the fear of or deference to the omnipotent football program that enabled a sexual predator to attract and abuse its victims.”

RESPONSE TO REQUEST FOR ADMISSION NO. 38:

Subject to and without waiver of its General Objections, the NCAA denies Request No. 37.

REQUEST FOR ADMISSION NO. 39:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that “the reverence for Penn State football permeated every level of the University community.”

RESPONSE TO REQUEST FOR ADMISSION NO. 39:

Subject to and without waiver of its General Objections, the NCAA admits Request No. 39.

REQUEST FOR ADMISSION NO. 40:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that “the reverence for Penn State football permeated every level of the University community.”

RESPONSE TO REQUEST FOR ADMISSION NO. 40:

Subject to and without waiver of its General Objections, the NCAA denies Request No. 40.

REQUEST FOR ADMISSION NO. 41:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that “the culture exhibited at Penn State is an extraordinary affront to the values all members of the [NCAA] have pledged to uphold and calls for extraordinary action.”

RESPONSE TO REQUEST FOR ADMISSION NO. 41:

Subject to and without waiver of its General Objections, the NCAA admits Request No. 41.

REQUEST FOR ADMISSION NO. 42:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that “the culture exhibited at Penn State is an extraordinary affront to the values all members of the [NCAA] have pledged to uphold and calls for extraordinary action.”

RESPONSE TO REQUEST FOR ADMISSION NO. 42:

Subject to and without waiver of its General Objections, the NCAA denies Request No. 42.

REQUEST FOR ADMISSION NO. 43:

Please admit that the NCAA contends that the sanctions imposed pursuant to the Consent Decree were an appropriate method by which “to change the culture that allowed [the sexual abuse of children] to occur and realign it in a sustainable fashion with the expected norms and values of intercollegiate athletics.”

RESPONSE TO REQUEST FOR ADMISSION NO. 43:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that the sanctions were “designed to not only penalize the University for contravention of the NCAA Constitution and Bylaws, but also to change the culture that allowed this activity to occur and realign it in a sustainable fashion with the expected norms and values of intercollegiate athletics.” Subject to and without waiver of this objection or its General Objections, the NCAA admits that its position as set forth in the Consent Decree was appropriate.

REQUEST FOR ADMISSION NO. 44:

Please admit that the NCAA no longer contends that the sanctions imposed pursuant to the Consent Decree were an appropriate method by which “to change the culture that allowed [the sexual abuse of children] to occur and realign it in a sustainable fashion with the expected norms and values of intercollegiate athletics.”

RESPONSE TO REQUEST FOR ADMISSION NO. 44:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that the sanctions were “designed to not only penalize the University for contravention of the NCAA Constitution and Bylaws, but also to change the culture that allowed this activity to

occur and realign it in a sustainable fashion with the expected norms and values of intercollegiate athletics.” Subject to and without waiver of this objection or its General Objections, the NCAA denies that its position as set forth in the Consent Decree was not appropriate.

REQUEST FOR ADMISSION NO. 45:

Please admit that the NCAA contends that the Consent Decree appropriately vacated all wins of the Penn State football team from 1998 to 2011.

RESPONSE TO REQUEST FOR ADMISSION NO. 45:

The NCAA objects to this Request as irrelevant. The referenced statement is not a statement or sanction expressly directed at any Plaintiff. Subject to and without waiver of this objection or its General Objections, the NCAA admits Request No. 45.

REQUEST FOR ADMISSION NO. 46:

Please admit that the NCAA no longer contends that the Consent Decree appropriately vacated all wins of the Penn State football team from 1998 to 2011.

RESPONSE TO REQUEST FOR ADMISSION NO. 46:

The NCAA objects to this Request as irrelevant. The referenced statement is not a statement or sanction expressly directed at any Plaintiff. Subject to and without waiver of this objection or its General Objections, the NCAA denies Request No. 46.

REQUEST FOR ADMISSION NO. 47:

Please admit that the NCAA contends that facts support the statement in the Superseding Agreement to the Consent Decree that “the NCAA [had a] legitimate and good faith interest and concern regarding the Jerry Sandusky matter.”

RESPONSE TO REQUEST FOR ADMISSION NO. 47:

The NCAA objects to this request as irrelevant. Questions of NCAA process are not relevant now that Plaintiffs' breach of contract claims have been dismissed, and this is not a statement directed at any Plaintiff. The NCAA further objects to this Request on the grounds that it mischaracterizes the Superseding Agreement, which states that "Penn State acknowledges the NCAA's legitimate and good faith interest and concern regarding the Jerry Sandusky matter." The NCAA also objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of these objections or its General Objections, the NCAA admits Request No. 47.

REQUEST FOR ADMISSION NO. 48:

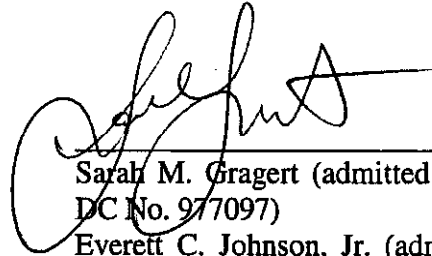
Please admit that the NCAA no longer contends that facts support the statement in the Superseding Agreement to the Consent Decree that "the NCAA [had a] legitimate and good faith interest and concern regarding the Jerry Sandusky matter."

RESPONSE TO REQUEST FOR ADMISSION NO. 48:

The NCAA objects to this request as irrelevant. Questions of NCAA process are not relevant now that Plaintiffs' breach of contract claims have been dismissed, and this is not a statement directed at any Plaintiff. The NCAA further objects to this Request on the grounds that it mischaracterizes the Superseding Agreement, which states that "Penn State acknowledges the NCAA's legitimate and good faith interest and concern regarding the Jerry Sandusky matter." The NCAA also objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests

under Rule 4014. Subject to and without waiver of these objections or its General Objections, the NCAA denies Request No. 48.

Dated: June 18, 2015



Sarah M. Gragert (admitted *Pro Hac Vice*,
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Everett C. Johnson, Jr. (admitted *Pro Hac*
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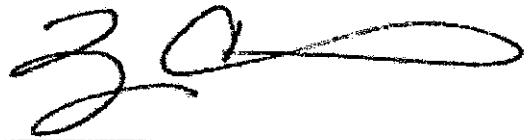
Email: tscott@killiangephart.com

*Counsel for the NCAA, Dr. Emmert, and Dr.
Ray*

VERIFICATION

I hereby verify that the statements of fact made in the foregoing Responses and Objections to Plaintiffs' Requests for Admission are true and correct to the best of my knowledge, information, and belief. I understand that any false statements therein are subject to the penalties contained in 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

Dated: June 18, 2015

A handwritten signature in black ink, appearing to read 'ZC', written over a horizontal line.

Zandria C. Conyers
Director of Legal Affairs and
Associate General Counsel

CERTIFICATE OF SERVICE

I, Sarah M. Gragert, hereby certify that I am serving *The National Collegiate Athletic Association's Responses and Objections to Plaintiffs' Requests for Admission* on the following by First Class Mail and email:

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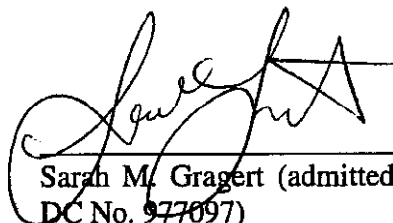
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Dated: June 18, 2015

A handwritten signature in black ink, appearing to read 'Sarah M. Gragert', is written over a horizontal line.

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EXHIBIT J

NCAA reaches proposed settlement in Corman lawsuit

NCAA.com

Last Updated - Jan 16, 2015 13:29 EST

Programs serving child sexual abuse survivors will now receive millions of dollars as part of the NCAA's proposed settlement with Pennsylvania state officials. This lawsuit stemmed from the NCAA's sanctions against Penn State University for its role in allowing serial child sexual abuse to occur on its campus.

The proposed settlement agreement with the NCAA, university and state officials, among other things, restores Penn State's vacated wins from 1998 through 2011.

Subject to board approval from Penn State and the NCAA, the new agreement between the NCAA and Penn State, replacing the 2012 consent decree between the parties, provides the following:

- Penn State agrees to commit a total of \$60 million to activities and programs for the prevention of child sexual abuse and the treatment of victims of child sexual abuse.
- Penn State acknowledges the NCAA's legitimate and good faith interest and concern regarding the Jerry Sandusky matter.
- Penn State and the NCAA will enter into a new Athletics Integrity Agreement that (with concurrence of the Big Ten) includes best practices with which the university is committed to comply and that provides for the university to continue to retain the services of Sen. George Mitchell and his firm to support the university's activities under the Athletics Integrity Agreement and in the areas of compliance, ethics and integrity.

In July 2012, the NCAA Division I Board of Directors and Executive Committee issued unprecedented sanctions for Penn State's role in enabling child sexual abuse to occur on campus. In addition to the \$60 million fine and vacation of wins, these penalties included a four-year postseason ban, scholarship reductions, five-year probation and a waiver of transfer rules. The NCAA Executive Committee restored postseason access and the full complement of scholarships in 2014, based on the recommendation from Athletics Integrity Monitor Sen. George Mitchell in response to the university's progress.

"I am pleased to learn that financial resources to help child sexual abuse survivors will soon become available," Sen. George J. Mitchell said. "I remain impressed with Penn State's progress to date and look forward to its many reforms and improvements continuing to take root."

"Continuing this litigation would further delay the distribution of funds to child sexual abuse survivors for years, undermining the very intent of the fine," said Harris Pastides, University of South Carolina president and member of the NCAA Board of Governors. "While others will focus on the return of wins,

our top priority is on protecting, educating and nurturing young people.”

The lawsuit originally asked the judge to restrict the distribution of the \$60 million fine to child sexual abuse prevention organizations in Pennsylvania rather than national organizations. The NCAA repeatedly attempted to resolve the dispute regarding the fine, even agreeing to move the funds into a state endowment rather than distribute them nationally as originally intended. The judge denied this motion and expanded the lawsuit to include the NCAA's authority to act in this matter, which the plaintiffs did not previously question. Penn State initiated the latest settlement discussions in mid-December.

“Today’s agreement with Penn State reaffirms our authority to act,” said Kirk Schulz, Kansas State University president and chair of the NCAA Board of Governors. “The NCAA has a legitimate role when a member’s actions threaten the integrity of college sports. We acted in good faith in addressing the failures and subsequent improvements on Penn State’s campus. We must acknowledge the continued progress of the university while also maintaining our commitment to supporting the survivors of child sexual abuse.”

The NCAA will aggressively defend the Paterno estate’s challenge to the validity of the now-replaced consent decree.