



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

GEORGE SCOTT PATERNO,  
as duly appointed representative of the  
ESTATE and FAMILY of JOSEPH PATERNO, et al.

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION  
("NCAA"), et al.

Defendants.

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)  
)  
) Docket No. 2013-2082  
)  
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) Type of Case: Commercial  
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) Type of Pleading: Discovery  
) Motion  
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) Filed on Behalf of: Plaintiff  
) George Scott Paterno as Duly  
) Appointed Representative of the  
) Estate and Family of Joseph  
) Paterno  
)  
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2014 APR 14 AM 10:07  
DEBRA C. IMMEL  
PROTHONOTARY  
CENTRE COUNTY, PA

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

GEORGE SCOTT PATERNO,  
as duly appointed representative of the  
ESTATE and FAMILY of JOSEPH PATERNO;

RYAN McCOMBIE, ANTHONY LUBRANO,  
AL CLEMENS, and ADAM TALIAFERRO, members of the  
Board of Trustees of Pennsylvania State University;

PETER BORDI, TERRY ENGELDER, SPENCER NILES,  
and JOHN O'DONNELL, members of  
the faculty of Pennsylvania State University;

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

ANTHONY ADAMS, GERALD CADOGAN, SHAMAR  
FINNEY, JUSTIN KURPEIKIS, RICHARD GARDNER,  
JOSH GAINES, PATRICK MAUTI, ANWAR PHILLIPS,  
and MICHAEL ROBINSON, former football players of  
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.

Civil Division

Docket No. 2013-2082

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**MOTION BY PLAINTIFF GEORGE SCOTT PATERNO AS DULY APPOINTED  
REPRESENTATIVE OF THE ESTATE AND FAMILY OF JOSEPH PATERNO TO COMPEL  
PRODUCTION OF DOCUMENTS BY DEFENDANTS EMMERT, RAY AND THE NCAA**

## **INTRODUCTION**

Plaintiff George Scott Paterno, as duly appointed Representative of the Estate and Family of Joseph Paterno, respectfully moves this Court for an Order directing defendants Mark Emmert (“Emmert”), Edward Ray (“Ray”), and the National College Athletic Association (the “NCAA”) (collectively “the NCAA Defendants”) to produce documents responsive to the First Requests for Production of Documents that were served in mid-January, 2014. These three defendants have not identified the documents that will be produced in response to these requests, nor have they verified their responses. They have also failed to produce responsive documents as to which no objection has been asserted. For the reasons set forth in this motion, Plaintiff Paterno respectfully requests that the Court enter an order directing the NCAA Defendants to provide verified responses to Plaintiffs’ First Requests for Production of Documents, identify what documents will be produced in response to the requests, identify what documents will not be produced and the basis for their non-production, and produce the responsive documents as to which no objection has been asserted or make them available to review.

## **PROCEDURAL BACKGROUND**

1. Plaintiffs filed the instant action against the NCAA, its president, Emmert, and the Chair of the NCAA Committee of Infractions, Ray, on May 30, 2013.
2. The NCAA Defendants submitted preliminary objections to the Complaint, which were briefed during the summer of 2013.
3. The parties agreed to defer consideration of the personal jurisdiction challenges by the individual defendants Emmert and Ray until the other preliminary objections are resolved.

4. The Court held a hearing on the preliminary objections on October 29, 2013, and on January 7, 2014, entered an Opinion and Order (the “Order”) sustaining the preliminary objections in part and overruling them in part. Exh. A.

5. The Order sustained the preliminary objection that plaintiffs had failed to join the Pennsylvania State University (“Penn State”) as an indispensable party to their contract claims, but granted plaintiffs 30 days to file an amended complaint adding Penn State as a defendant. The Court also sustained some and overruled some of the NCAA Defendants’ other preliminary objections to the complaint.

6. None of the parties had propounded discovery pending the Court’s ruling on the preliminary objection.

7. The Order did not restrict the parties’ rights to proceed with discovery, and once it became clear the case could proceed, Plaintiff Paterno served discovery requests to the NCAA Defendants on January 17, 2014.

8. On February 5, 2014, plaintiffs filed their First Amended Complaint adding Penn State as a nominal defendant.

9. On February 18, 2014, each of the NCAA Defendants served responses to the requests for production of documents they had received, copies of which are attached as Exhs. B - D.

10. All of the responses set forth extensive objections, and none of the NCAA Defendants produced or made available documents in connection with the responses they served to the document requests as provided in Pa. R.C.P. No. 4009.12(a)(2), nor did they identify what documents would be produced or indicate in the responses when any document production would be made. *Id.* at (c).



11. Plaintiffs promptly advised the NCAA Defendants that their discovery responses were inadequate under the Pennsylvania Rules of Procedure. *See* Exh. E, February 24, 2014 letter from Patricia L. Maher to Everett C. Johnson, Jr.

12. The individual defendants, Emmert and Ray, objected to producing responsive information or documents other than as relevant to the issue of their amenability to personal jurisdiction of the Court. Exh. B at 2; Exh. D at 2; *see also* Exh. F, February 28, 2014 letter from Brian Kowalski to Wick Sollers.

13. The NCAA represented that it would produce documents responsive to the first 24 requests, if any, subject to the objections asserted and the entry of a mutually agreed protective order, the terms of which would be proposed “in short order.” Exh. F.

14. Although the first 24 requests relate to events involving former Penn State assistant football coach Jerry Sandusky, investigations of the same by the Penn State Board of Trustees, the response of the NCAA, and the Consent Decree entered between the NCAA and Penn State, all of which have received extensive publicity, the NCAA Defendants repeatedly asserted the need for the entry of a protective order. *See* Exh. B at 15; Exh. C at 13; Exh. D at 15; Exh. F at 2; Exh. G, February 24, 2014 letter from Brian Kowalski to Wick Sollers. In response, Plaintiff Paterno indicated willingness to review the terms of a proposed protective order. Exh. E at 2.

15. The NCAA has advised that it will not produce documents responsive to Requests Nos. 25-30, which relate to general policies and procedures of the NCAA not specific to Penn State or the Sandusky matter, until after the Court rules on its preliminary objections to the First Amended Complaint. Exh. H, March 28, 2014 letter from Brian E. Kowalski to Thomas J. Weber, at 2.

16. On March 3, 2014, the parties filed a joint stipulation for briefing on the preliminary objections to the First Amended Complaint pursuant to which briefing would be complete by May 6, 2014. Exh. K.

17. Plaintiffs subsequently had two discovery conferences with the NCAA Defendants, during which they discussed the scope of discovery from the individual defendants, the NCAA Defendants' request for a protective order, a possible timetable for production of documents, the bases for the asserted objections, parameters for production of electronically stored information, and the NCAA's objections to producing any documents responsive to Requests Nos. 25-30 before a ruling on the preliminary objections to the First Amended Complaint.

18. During the first discovery conference on March 13, 2014, the parties agreed that the individual defendants could limit their document production to documents relevant to the issue of their amenability to personal jurisdiction of the Court.

19. The plaintiffs did not agree that the NCAA could defer production of documents responsive to Requests Nos. 25-30 until after a ruling on the preliminary objections because the requested documents are relevant to the First Amended Complaint and to plaintiffs' responses to the preliminary objections.

20. The second conference among the parties took place on March 19, 2014, a month after the NCAA Defendants had served their written discovery responses. As of that date, plaintiffs still had not received verified written responses to their requests for production of documents nor had NCAA Defendants produced any documents.

21. In light of the lack of progress in obtaining production of responsive documents, plaintiffs advised the NCAA Defendants that they would seek a discovery conference with the Court. Exh. J, March 19, 2014 letter from Patricia L. Maher to Brian Kowalski.

22. On March 21, the NCAA Defendants produced 16 documents,<sup>1</sup> most of which consist of copies of documents that plaintiffs obviously already possessed, such as correspondence from plaintiffs themselves and copies of documents attached as exhibits to the First Amended Complaint. Exh. K, March 21, 2014 letter from Brian Kowalski to Thomas J. Weber.

23. On April 2, 2014, the NCAA Defendants produced a disk containing copies of emails to defendant Emmert. Exh. L, April 2, 2014 letter from Brian Kowalski to Thomas J. Weber.

24. Also on April 2, 2014, the NCAA Defendants sent plaintiffs their first proposal for a protective order. Exh. M, April 2, 2014 e-mail transmittal from Brian Kowalski to Trish Maher, Daniel I. Booker, J. Cobetto and D. Doblick (without enclosure).

25. On April 9, 2014, Plaintiffs relayed comments to the NCAA Defendants on the proposed protective order. Exh. N, April 9, 2014 e-mail transmittal from Trish Maher to Brian Kowalski, Daniel I. Booker, J. Cobetto, and D. Doblick (without enclosure).

### **ARGUMENT AND LEGAL AUTHORITY**

26. Plaintiffs waited more than seven months after instituting this action to serve discovery requests, until the Court ruled on preliminary objections to the original complaint, and allowed the case to proceed, out of a desire to ensure that discovery was fair and to limit the burden on defendants.

27. This Court's Order sustained certain preliminary objections as to the two breach of contract counts, with leave to proceed on those counts if Penn State, the party deemed indispensable, was joined.

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<sup>1</sup> The NCAA described its production as "760 pages of responsive documents," more than a third of which consists of the publicly available Freeh Report. Exh. H.

28. Two weeks before the NCAA Defendants responded to plaintiffs' initial discovery requests, plaintiffs filed their First Amended Complaint, adding Penn State as a party and reasserting Count I, a breach of contract claim.

29. The Pennsylvania Rules of Civil Procedure permit discovery of "any matter, not privileged, which is relevant to the subject matter involved," Pa. R.C.P. No. 4003.1, with methods that may be used in any sequence unless the court provides otherwise. Pa. R.C.P. No. 4007.3.

30. The NCAA Defendants have refused to identify what will be produced, or to verify their responses to requests for documents. Exh. F.

31. The NCAA Defendants have produced documents responsive to at most four of the 30 requests to the NCAA.<sup>2</sup>

32. Defendants Emmert and Ray have produced no responsive documents.<sup>3</sup>

33. Despite discussions of potential narrowing of the scope of the last six requests (Nos. 25-30), the NCAA has adhered to its position that it will not produce documents responsive to those requests, because they are "burdensome" and "implicate significant confidentiality obligations." Exh. H.

34. Although the First Amended Complaint joins Penn State as a defendant and Count I is identical to Count I of the original complaint, the NCAA asserts that "these requests [Nos. 25-30] relate solely to the breach of contract claims that the Court dismissed in its January 7, 2014 Order." Exh. H. The NCAA contends, in effect, that it should not have to respond to properly served discovery requests because it has asserted substantial legal objections to certain

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<sup>2</sup> The emails produced as the second production are arguably responsive to Requests Nos. 10, 11, 18 and 20 of the Requests to the NCAA.

<sup>3</sup> Although the second production includes documents addressed to Defendant Emmert, the parties agreed that the individual defendants would only have to produce discovery with respect to the issue of personal jurisdiction. The emails produced do not appear to bear on the issue of personal jurisdiction.

allegations of the amended complaint “which very well could result in their dismissal once again.” *Id.*

35. Despite references to “significant confidentiality obligations,” the NCAA Defendants did not even propose a protective order until six weeks after responding to the document requests.

36. In response to the NCAA’s expressed concern about the burdensome nature of the last six discovery requests, plaintiffs communicated their willingness to consider ways to narrow the requests if the NCAA would commit to producing documents responsive to such narrowed requests. Exh. J.

37. Rather than exploring specific ways of narrowing the requests, the NCAA reiterated its refusal to produce any documents responsive to Requests Nos. 25-30 until the Court rules on the next round of preliminary objections. Exh. H.

38. The NCAA has proposed having a meet and confer with plaintiffs *after* the Court rules on the preliminary objections to the First Amended Complaint. *Id.*

### **The NCAA Defendants Have Not Properly Responded to Document Requests**

39. A party responding to request for production of documents is required to identify what documents will be produced. Pa. R.C.P. No. 4009.12(b).

40. In response to the extensive objections asserted by the NCAA Defendants, Plaintiff Paterno has made unsuccessful efforts to determine what responsive documents the NCAA Defendants will produce and when they will be produced.

41. To date, plaintiffs have been advised that the NCAA is reviewing 800,000 electronic documents, but have not yet learned what responsive documents will be produced in response to

plaintiffs' requests, or when the NCAA Defendants expect to make such productions. *See* Exh. H.

42. A party responding to a request for production of documents is required to verify its response. Pa. R.C.P. No. 4009.12(c).

43. The NCAA Defendants have not verified their responses, and have indicated they will not do so until after they complete their production of documents. Exh. F.

44. A party responding to a request for documents must produce or make available to the requesting party those documents and things described in the request as to which there is no objection. Pa. R.C.P. No. 4009.12(a)(2).

45. The NCAA Defendants have not produced or made available documents as to which there is no objection.

46. The NCAA Defendants' desire for a protective order is not a basis on which to withhold production of documents as to which there is no objection, particularly in light of the extensive publicity and disclosure regarding the subject of the claims in this action, and the NCAA Defendants' delay in even proposing a protective order.

**The NCAA Is Not Entitled to "Stage" Its Responses to Requests Nos. 25-30**

47. Plaintiff Paterno properly served discovery requests to the NCAA Defendants on January 17, 2014.

48. The NCAA Defendants have not sought an order barring or restricting the scope of discovery, nor have they asserted privilege with respect to any of the information requested.

49. To date, however, they have made only minimal production of responsive documents, and refused to produce any documents responsive to six of plaintiffs' 30 requests to the NCAA.

50. The NCAA does not - indeed cannot - contend that Requests Nos. 25-30 are irrelevant to the subject matter of the pending action, but only that the Court might, after briefing and consideration of another round of preliminary objections, dismiss one of the claims to which the requested documents are relevant.

51. The filing of preliminary objections does not restrict a party's right to take discovery. Indeed, Pennsylvania courts routinely permit discovery during the pendency of preliminary objections. In *McKissock & Hoffman v. Polymer Dynamics, Inc.*, 17 Pa. D. & C.5th 541, 551 (2010), the defendant law firm was ordered to respond to the plaintiff's discovery requests before the court ruled on the law firm's preliminary objections to the amended complaint. *See also Rhoads v. Phila. Hous. Auth.*, No. 0090 2008 Phila. Ct. Com. Pl. LEXIS 307, \*4 (2008) (discovery requests issued and disputes briefed while preliminary objections to first amended complaint pending) *rev'd on other grounds*, 978 A.2d 431 (Pa. Commw. Ct. 2009); *Conner v. Tom*, 811 A.2d 6, 8 (Pa. Super. Ct. 2002) (defendant served discovery requests two months after the complaint was filed, but before a ruling on the preliminary objections).

52. The NCAA Defendants' refusal to produce documents and information responsive to properly served discovery because the claims to which it deems that information relevant might, at some point, be dismissed, is not a valid basis on which to withhold discovery. That is particularly true in this instance, where plaintiffs have amended the complaint, adding the party whose absence was central to the Court's ruling that it lacked jurisdiction over the contract claims. *See* Exh. A at 12-13.

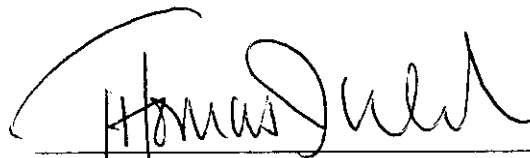
53. In addition, Plaintiff Paterno advised the NCAA Defendants that documents and information responsive to Requests Nos. 25-30 are relevant to his response to the Preliminary

Objections to the First Amended Complaint, such as Requests Nos. 26-27 regarding “involved individuals.”

54. Despite timely discovery requests, the NCAA Defendants’ refusal to produce responsive documents and information hinders plaintiffs’ ability to fully present its response to the Preliminary Objections to the First Amended Complaint.

55. For all of the foregoing reasons, Plaintiff Paterno respectfully requests that the Court enter an Order of the form submitted herewith, requiring each of the NCAA Defendants to provide verified responses to the requests for production of documents, to identify the documents that will and will not be produced in response to the requests, and to produce responsive documents without further delay.

Dated this 11<sup>th</sup> day of April, 2014.



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of Joseph Paterno*



IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

GEORGE SCOTT PATERNO,  
as duly appointed representative of the  
ESTATE and FAMILY of JOSEPH PATERNO;

RYAN McCOMBIE, ANTHONY LUBRANO,  
AL CLEMENS, and ADAM TALIAFERRO, members of the  
Board of Trustees of Pennsylvania State University;

PETER BORDI, TERRY ENGELDER, SPENCER NILES,  
and JOHN O'DONNELL, members of  
the faculty of Pennsylvania State University;

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

ANTHONY ADAMS, GERALD CADOGAN, SHAMAR  
FINNEY, JUSTIN KURPEIKIS, RICHARD GARDNER,  
JOSH GAINES, PATRICK MAUTI, ANWAR PHILLIPS,  
and MICHAEL ROBINSON, former football players of  
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.

Civil Division

Docket No. 2013-2082

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**STATEMENT OF CONFERENCE PURSUANT TO LOCAL RULE 208.2(e)**

Pursuant to Local Rule 208.2(e), the undersigned counsel for movant, Plaintiff George Scott Paterno as duly appointed Representative of the Estate and Family of Joseph Paterno, hereby certifies that on March 13 and 19, 2014, good faith conferences were conducted by telephone with counsel for Defendants Mark Emmert, Edward Ray and the National Collegiate Athletic Association about their responses to Plaintiff Paterno's First Requests for Production of Documents to each of them. The parties reached agreement that Defendants Emmert and Ray could limit their document production to documents relevant to the issue of their amenability to personal jurisdiction of this Court. The parties were unable to resolve the other issues raised in the Motion to Compel Production of Documents by Defendants Emmert, Ray and the NCAA, without the need for intervention by the Court.



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appointed representative of the Estate and Family  
of Joseph Paterno*

## **EXHIBIT A**

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

GEORGE SCOTT PATERNO,  
As duly appointed representative of the  
ESTATE and FAMILY of JOSEPH PATERNO;

RYAN McCOMBIE, ANTHONY LUBRANO,  
AL CLEMENS, and ADAM TALIAFERRO, members of the  
Board of Trustees of Pennsylvania State University;

PETER BORDI, TERRY ENGELDER,  
SPENCER NILES, and JOHN O'DONNELL,  
members of the faculty of Pennsylvania State University;

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

ANTHONY ADAMS, GERALD CADOGAN,  
SHAMAR FINNEY, JUSTIN KURPEIKIS,  
RICHARD GARDNER, JOSH GAINES, PATRICK MAUTI,  
ANWAR PHILLIPS, and MICHAEL ROBINSON,  
former football players of 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.

**OPINION & ORDER**

LEETE, Senior J.

Before the Court are Preliminary Objections filed by Defendants National Collegiate Athletic Association ("NCAA"), Mark Emmert, and Edward Ray to the Complaint of Plaintiffs

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Civil Division  
No. 2013-2082

DEBRA C. LEETE  
PROthonARY  
CENTRE COUNTY, PA

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EXHIBIT A

George Scott Paterno, as duly appointed representative of the Estate and Family of Joseph Paterno ("Paterno's Estate"); Ryan McCombie, Anthony Lubrano, Al Clemens, and Adam Taliaferro, members of the Board of Trustees of Pennsylvania State University ("Trustees"); Peter Bordi, Terry Engelder, Spencer Niles, and John O'Donnell, members of the faculty of Pennsylvania State University ("Faculty"); William Kenney and Joseph V. ("Jay") Paterno, former football coaches at Pennsylvania State University ("Former Coaches"); and Anthony Adams, Gerald Cadogan, Shamar Finney, Justin Kurpeikis, Richard Gardner, Josh Gaines, Patrick Mauti, Anwar Phillips, and Michael Robinson, former football players at Pennsylvania State University ("Former Players").

For the reasons discussed below, Defendants' Preliminary Objections are SUSTAINED in part and OVERRULED in part.

### **BACKGROUND**

This case arises from sanctions the NCAA imposed on the Pennsylvania State University ("Penn State") following the conviction of former Assistant Football Coach Jerry Sandusky related to child sex abuse. The sanctions were premised on Sandusky's use of Penn State facilities and his affiliation with Penn State's football program during the period when the abuse occurred. The pertinent facts alleged in the Complaint, highly summarized, are as follows.

The NCAA is a voluntary association of higher education institutions whose purpose is to promote academic and athletic excellence. Compl. ¶¶ 2, 19. The NCAA operates pursuant to a Constitution and Bylaws, which are incorporated into its contracts with member institutions and are designed promote the goals of fair competition and amateurism. *Id.* at ¶¶ 2, 20, 22. Articles 19 and 32 of the Bylaws contain detailed policies and provisions governing enforcement of NCAA rules, including imposition of sanctions on member institutions for rules violations. *Id.* at

¶¶ 2, 28. These provisions grant numerous procedural protections to member institutions and other parties interested in investigations of NCAA rules violations, including provisions for notice and an opportunity to respond to allegations. Compl. ¶¶ 3, 24, 28-46. The Constitution also requires that institutions and their staff and student-athletes be provided fair procedures in enforcement matters. Id. at ¶¶ 24, 47.

On November 17, 2011, the NCAA notified Penn State that it was concerned about criminal charges filed against Jerry Sandusky for allegedly sexually abusing young boys at Penn State and through his connections to Penn State's football program. Id. at ¶ 53. The NCAA indicated that Penn State should prepare for a possible NCAA inquiry and involvement. Id. At that point, the Penn State Board of Trustees had already taken action in response to the scandal, including removing Penn State's President Graham Spanier from his position and replacing him with Rodney Erickson and removing head football coach Joe Paterno from his position. Compl. ¶ 49. Penn State's Board of Trustees had also commissioned the firm of Freeh, Sporkin & Sullivan, LLP to investigate any failures by Penn State officials and employees in regard to Sandusky's actions and to make recommendations regarding Penn State's policies, procedures and governance. Id. at ¶ 50. Instead of commencing its own investigation, as mandated by its own rules and procedures, the NCAA collaborated with the Freeh firm and waited for the results of the firm's investigation. Id. at ¶ 54.

On July 12, 2012, the Freeh firm released its report (the "Freeh Report") concluding, among other things, that certain Penn State officials and personnel including Joe Paterno had been aware of Sandusky's actions but failed to take action and concealed evidence from investigators. Id. at ¶ 56. Within hours after the Freeh Report was released, certain Penn State officials announced in a press release that the Board of Trustees had accepted full responsibility

for the failures outlined in the Report. Compl. ¶ 57, 58. However, the Board of Trustees never approved or took any official action with respect to the Freeh Report. Id. at ¶ 59.

In lieu of following its own mandated enforcement procedures, the NCAA accepted the conclusions of the Freeh Report as compelling evidence sufficient to justify imposition of sanctions against Penn State. Id. at ¶ 58, 60. The NCAA did so despite serious flaws in the investigation and despite knowing that all the relevant facts were not even available. Id. at ¶¶ 60-88. About ten days after the Freeh report was released, and under threat of the “death penalty” (a complete ban from participation in college football for a period of time), the Consent Decree was executed by the NCAA and President Erickson. Compl. ¶¶ 83-86. The Consent Decree accepts the findings of Freeh Report and the jury findings in Sandusky’s criminal trial as bases for sanctions, which included a \$60 million fine, a 4-year post-season play ban, loss of athletic scholarships, and vacation of wins since 1998. Id. at ¶ 96. President Erickson signed the Decree without following the procedural requirements set forth in Penn State’s Bylaws, Charter, and Standing Orders. Id. at ¶¶ 87, 88.

Some of the Plaintiffs filed appeals from the Consent Decree with the NCAA Infractions Appeals Committee, but the NCAA refused to accept the appeals on the ground that it was not proceeding pursuant to its traditional enforcement process. Id. at ¶¶ 98, 99.

Based on these allegations, Plaintiffs filed the Complaint on May 30, 2013. Count I of the Complaint alleges breach of Penn State’s membership contract with the NCAA on behalf of Paterno and Trustee Clemens as third party beneficiaries. Count II asserts breach of the membership contract on behalf of the remaining Trustees and the Former Coaches and Former Players as third party beneficiaries. Count III asserts a claim for intentional interference with contractual relations on behalf of the Former Coaches. Count IV asserts a claim for injurious

falsehood/commercial disparagement by Paterno's Estate on behalf of Paterno. Count V asserts a claim for defamation on behalf of the Plaintiffs other than Paterno's Estate. Count VI asserts a claim for civil conspiracy by all Plaintiffs. Plaintiffs seek declaratory and injunctive relief and recovery of compensatory and punitive damages and costs of the action.

Defendants filed the instant Preliminary Objections on July 23, 2013, asserting several challenges to the Complaint under Pa. R. Civ. P. 1028, including: (1) Lack of Jurisdiction Due to Failure to Join Indispensable Party; (2) Incapacity to Bring Contract Counts; (3) Impertinent Material; (4) Demurrers to Counts III through VI; and (5) Lack of Personal Jurisdiction. Pursuant to an agreement of the parties, the personal jurisdiction issues are reserved until the other preliminary objections are resolved. The remaining objections were fully briefed, and oral argument was held on October 29, 2013.

### **DISCUSSION**

For purposes of deciding the preliminary objections, the Court must assume the well-pleaded factual allegations in the Complaint are true and must draw all inferences reasonably deducible from those allegations in favor of Plaintiffs. Fofflygen v. R. Zemel, M.D. (P.C.), 420 Pa. Super. 18, 32, 615 A.2d 1345, 1352 (1992).

#### **Failure to Join Indispensable Party (Rule 1028(a)(1))**

##### **Parties' Arguments**

Defendants argue that Penn State is an indispensable party to this action because no judgment can be rendered on Plaintiffs' claims without dramatically affecting Penn State's rights. Specifically, Plaintiffs seek to materially impair Penn State's rights by voiding its contract with the NCAA, and they directly challenge the authority of Penn State and its senior leadership to execute the Consent Decree.



Plaintiffs respond that Penn State is not indispensable because they do not seek any redress from Penn State. Moreover, Penn State signed a waiver in the Consent Decree which prohibits it from participating in any litigation related to the Consent Decree. Based on that waiver, the Pennsylvania Commonwealth Court recently held that Penn State was not an indispensable party in another suit involving different issues in the Consent Decree, Corman v. National Collegiate Athletic Ass'n, 74 A.3d 1149 (Pa. Cmmw. Ct. 2013).

### **Legal Standards**

A party is indispensable to a suit when its rights are so connected with the claims asserted that no decree can be made without impairing those rights. Polydyne, Inc. v. City of Phila., 795 A.2d 495, 496-97 (Pa. Commw. Ct. 2002). If an indispensable party is not joined, the court lacks subject matter jurisdiction and may not address the merits of the case. See id.; see also Erie Ins. Group v. Cavalier, 380 Pa. Super. 601, 606, 552 A.2d 705, 707 (1989) (applying Pennsylvania's Declaratory Judgments Act).

In determining whether a party is indispensable, courts consider the following factors:

- (1) Do absent parties have a right or interest related to the claim?
- (2) If so, what is the nature of that right or interest?
- (3) Is that right or interest essential to the merits of the issue?
- (4) Can justice be afforded without violating the due process rights of absent parties?

See, e.g., Polydyne, 795 A.2d at 496; E-Z Parks, Inc. v. Philadelphia Parking Auth., 103 Pa. Commw. 627, 632, 521 A.2d 71, 73 (1987).

Applying these standards, Pennsylvania courts consistently have found that in breach of contract actions, all parties to the contract are indispensable. See, e.g., Polydyne, 795 A.2d at 496

(in suit to enjoin contract between city and competing bidder, competing bidder was indispensable); Borough of Wilkinsburg v. Horner, 88 Pa. Commw. 594, 597-98, 490 A.2d 964, 965 (1985) (in taxpayers' suit to enjoin performance of refuse contract between borough and sanitation company, sanitation company was indispensable party); Gavigan v. Bookbinders, Mach. Operators and Auxiliary Workers Local Union No. 97, 394 Pa. 400, 401, 147 A.2d 147, 147 (1959) (in suit by union members seeking interpretation of contract between employer and union, employer was indispensable party and failure to join it was "fatal to the action").

Plaintiffs have not cited any persuasive authority to the contrary. Several of the cases they rely on do not involve contract-based claims or are otherwise distinguishable. Campanaro v. Pennsylvania Elec. Co., 440 Pa. Super. 519, 656 A.2d 491 (1995) (employment discrimination); Sprague v. Casey, 520 Pa. 38, 550 A.2d 184 (1988) (election challenge); County of Berks v. Allied Waste Indus. Inc., 66 Pa. D. & C.4<sup>th</sup> 429 (2004) (nuisance and other property claims); see also Comerford v. Factoryville Borough Council, 16 Pa. Commw. 261, 328 A.2d 221 (1974) (state agency not indispensable in action to enjoin contract between borough and engineering firm); Americus Ctr., Inc. v. City of Allentown, 112 Pa. Commw. 308, 535 A.2d 1200 (1988)(potential lessee not indispensable where contract had not yet been executed). French v. Shoemaker, 81 U.S. 314 (1871) involved a contract claim but because it is from 1871 and originated in Virginia, it is not compelling authority in this case.

### Analysis

#### Indispensable Party Test

In this case, all of the factors in the indispensable party test apply with respect to Plaintiffs' contract claims. The contract at issue is the membership contract between Penn State and the NCAA in the form of the NCAA's Bylaws and Constitution. Compl. ¶¶ 105-121.

Plaintiffs allege that Defendants breached the enforcement provision in the Bylaws as well as the covenant of good faith and fair dealing implied in the membership contract. Penn State has an interest and stake in the resolution of these issues as a party to the contract. See Bloom v. National Collegiate Athletic Ass'n, 93 P.3d 621, 622 (Colo. App. 2004) (noting, in another case involving claims under a NCAA membership contract, that the trial court had ordered the member institution joined as an indispensable party). In addition, Penn State has an interest in resolution of Plaintiffs claims that its senior leadership acted ultra vires in accepting the Freeh Report and entering the Consent Decree without ratification by Penn State's Board of Trustees. Likewise, Penn State has an interest in litigating Plaintiffs' claims that it lacked authority to waive the enforcement provisions set forth in the Bylaws.

Penn State's participation is also essential to resolving the threshold issue of standing. Plaintiffs contend that they have standing as third party beneficiaries to the membership contract because the Bylaws bestow various procedural rights upon "involved individuals," defined as student athletes and staff who have received notice of "significant involvement in alleged violations." See Compl. Exh. A, R. 32.1.5. They contend that Paterno and Clemens meet this definition because they were accused of wrongdoing and Paterno was sanctioned by the vacation of his record of wins. The absence of formal notice to Paterno and Clemens does not remove them from the definition of "involved individuals," they argue, because Defendants concede they were not utilizing any of the traditional enforcement procedures. Plaintiffs allege the other Plaintiffs have standing by virtue of the NCAA rule stating that providing fairness to uninvolved individuals is essential to a viable and effective enforcement program. See id. R. 19.01.1. Defendants argue that the NCAA has never interpreted its rules broadly enough to include persons who were not personally sanctioned or under threat of an official finding that they

violated a rule. They argue that Paterno and Clemens did not receive notice of involvement in alleged violations and were not personally sanctioned. According to Defendants, the fairness provisions are too vague to support a third party beneficiary contract claim.

Whether a person has third party beneficiary status depends on the intent of the primary contract parties. Scarpitti v. Weborg, 530 Pa. 366 (1992). Where contract language is clear and unambiguous, it is conclusive as to the parties' intent. See, e.g., Keystone Dedicated Logistics, LLC v. JGB Enters. Inc., 77 A.3d 1, 6-7 (Pa. Super. Ct. 2013). However, when the contract language is susceptible of different reasonable interpretations extrinsic evidence may be needed to resolve the ambiguity. Id.

Here, the contract language is ambiguous. Based on the contract language and the context of this case, Defendants' argument that "involved individuals" means persons who are sanctioned or under threat of an official finding of rules violations is reasonable. Plaintiffs' argument that the phrase may cover a person who is named in the sanctioning document or whose conduct underlies sanctions is also reasonable. Many fact questions remain concerning the meaning and application of the phrase "involved individuals" in this case, including whether Paterno was personally sanctioned. Regarding the fairness provisions, it is not clear whether they were intended to create contract rights in third parties, and neither party has cited a controlling case on point in hundreds of pages of briefing. Cf. Knelman v. Middlebury Coll., 898 F. Supp. 2d 697, 713 (D. Vt. 2012) (applying Vermont law, even if college athlete had standing based on NCAA fairness provisions, he could not establish a concrete and specific promise to support a contract claim); Bloom, 93 P. 3d at 623-24 (in disciplinary matter, college athlete had standing to challenge NCAA eligibility rules); see also Oliver v. National Collegiate Athletic Ass'n, 155 Ohio Misc. 2d 8, 13-14 (2008). Given that Penn State's intentions as a primary contract party are

directly at issue, it would be inappropriate to resolve these ambiguities and determine standing in Penn State's absence.

Penn State is also indispensable because the relief Plaintiffs seek would deprive Penn State of its rights under the Consent Decree. If the Consent Decree is declared void, as Plaintiffs request, Penn State would lose the benefits it bargained for, including avoiding harsher sanctions and limiting further loss that could result from a prolonged investigation. Even at oral argument, the NCAA indicated that the "death penalty" could conceivably result if the Consent Decree was invalidated. Where similar relief voiding a contract has been sought, Pennsylvania courts have held the parties to the contract must be joined. See, e.g., E-Z Parks, Inc. v. Philadelphia Parking Auth., 103 Pa. Commw. 627, 631-33, 521 A.2d 71, 73 (1987)(DOT indispensable party in parking lot operator's suit to void contract between DOT and parking authority as unauthorized); Frushon v. Pittston Twp. Sch. Dist., 8 Pa. D. & C. 2d 165, 167, 1957 WL 6299 at p.\* 2 (1956) (in suit to cancel contract between school district and tax collector, tax collector was indispensable).

Nor can declaratory relief be granted without Penn State's presence as a party to this suit. Section 7540 of the Pennsylvania Declaratory Judgments Act, 42 Pa. C.S.A. §§ 7531-7541, provides that "[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." See also Erie Ins. Group v. Cavalier, 380 Pa. Super. 601, 606, 552 A.2d 705, 707 (Pa. Super. Ct. 1989) (in insurer's suit for declaration of coverage limits, insureds were indispensable parties); ESP Enters., LLC v. Garagozzo, 2005 WL 1580049 at p\* 2 (Pa. Com. Pl. 2005) (parties to agreement of sale indispensable in suit to declare agreement void).

Thus, Penn State has interests in the action arising from its contract rights, and those interests are essential to the merits of the claims. Penn State's interests are distinct from those of Plaintiffs and Defendants, and their interests are not adequately protected by the other parties. See, e.g., Polydyne, 795 A.2d at 496 (in suit to enjoin city's contract with competing bidder, competing bidder's rights were not adequately protected by city's interest in upholding contract). "Inquiry into whether a party is indispensable is viewed from the perspective of protecting rights of absent parties, not from perspective of whether joinder of a party to an action would make matters more difficult to litigate." E-Z Parks, 103 Pa. Cmmw. at 635, 521 A.2d at 72. In this case, it would be unjust to rule upon the meaning of the terms of Penn State's contract and whether its conduct was voluntary and authorized in its absence.

#### Waiver Issue

The waiver provision relied on in Corman v. National Collegiate Athletic Ass'n, does not compel a different conclusion. First, Corman is factually distinguishable. The issue in Corman was whether the fine money received by the NCAA under the Consent Decree was subject to the Institution of Higher Education Monetary Penalty Endowment Act. As "[n]othing in the Consent Decree permits [Penn State] to affect the disposition of the fine being paid," its rights were not essential to the merits of the case. Corman, 74 A.3d at 1163. In Corman, none of the relief requested impacted Penn State. Id. at 1165-66. By contrast, in this case Penn State's contract rights would be determined by the declaratory and other relief sought. Penn State has a direct and material interest in how its own contract is interpreted and enforced and whether its actions are determined to be authorized, voluntary, or appropriate.

Moreover the waiver provision relied on in Corman court does not appear to apply here, based on its plain language. The waiver provides as follows:

Penn State expressly agrees not to challenge the consent decree and waives any claim to further process, including, without limitation, any right to a determination of violations by the NCAA Committee on Infractions, any appeal under NCAA rules, and any judicial process related to the subject matter of this Consent Decree.

Compl. Exh. B at p. 2.

Thus, the waiver applies to Penn State's "challenge to the consent decree." This suit is based on the membership contract, and the only challenge to the consent decree is asserted by Plaintiffs. It is not reasonable to construe the waiver to cover a suit for breach of a different contract based on a non-party's request for voidance of the Consent Decree.

It is also significant that in this case, unlike in Corman, Plaintiffs have alleged the Consent Decree was coerced and is void *ab initio*. In Corman, the court noted that the Consent Decree was a contract and had to be enforced absent fraud or other invalidating grounds, which were not alleged in that case Id. at 1165. Here, Plaintiffs themselves allege the Consent Decree is invalid because President Erickson was "forced to agree not to challenge the decree and to waive any right to a 'determination of violations by the NCAA Committee on Infractions, any appeal under NCAA rule, and any judicial process related to the subject matter of the Consent Decree.'" Compl. ¶ 97. In deciding preliminary objections the Court must accept Plaintiffs' allegations as true. If the Consent Decree is void as alleged, the waiver also is void and has no effect.

### **Conclusion**

The preliminary objection based on failure to join an indispensable party is therefore SUSTAINED. For the same reasons, the preliminary objection seeking to have the request for voidance of the Consent Decree stricken as impertinent is also SUSTAINED. In light of this

disposition, the Court lacks jurisdiction over the contract claims. See Erie Ins. Group v. Cavalier, 380 Pa. Super. 601, 606, 552 A.2d 705, 707 (1989) (declining to address merits of appeal where jurisdiction lacking due to failure to join indispensable parties). Accordingly, the Court does not reach the objection to Plaintiffs' standing to assert the contract claims. See, e.g., Hollinger v. Dep't of Pub. Welfare, 469 Pa. 358, 364, 365 A.2d 1245, 1248 (1976) (declining to reach remaining preliminary objections where objection to jurisdiction was sustained); Barr v. Commonwealth, 110 Pa. Commw. 530, 533, 532 A.2d 1236, 1237 (1987) (same). However, the Court notes for purposes of judicial economy that it appears from the current record that the operative Bylaws language is ambiguous.

Although the court lacks jurisdiction over the contract claims, Penn State's absence does not require dismissal of the entire Complaint. Plaintiffs' tort claims stand on a different footing than the contract claims because they do not require rulings affecting Penn State's rights in any significant way. The Court next addresses Defendants' demurrers pursuant to Rule 1028(a)(4) to each of the four tort claims: Count V (defamation), Count IV (commercial disparagement), Count III (tortious interference with contract), and Count VI (civil conspiracy).

#### **Demurrers (Rule 1028)(a)(4)**

A complaint must allege enough facts to apprise the defendant of the nature of the claims and allow the defendant to prepare an answer and defense. Sevin v. Kelshaw, 417 Pa. Super. 1, 7, 611 A.2d 1232, 1235 (1992). A claim should only be dismissed on preliminary objections when it is clear and free from doubt that the pleader will not be able to prove facts legally sufficient to establish a right to relief. Bower v. Bower, 531 Pa. 54, 57, 611 A.2d 181, 182 (1992). When reviewing preliminary objections in the form of a demurrer, all well-pleaded material facts in the complaint, as well as inferences fairly deducible therefrom, are admitted as true. Strickland v.



University of Scranton, 700 A.2d 979, 983 (Pa. Super. Ct. 1979). A demurrer should be sustained only where, on the facts averred, the law says with certainty that no recovery is possible. Id.

### **Demurrer to Defamation Claim**

Defendants argue that the defamation claim, which is asserted by all of the Plaintiffs except Paterno's Estate, fails because the allegedly defamatory statements are directed to the Penn State community at large or to general groups at Penn State and do not reasonably identify any of the individual Plaintiffs. In addition, the alleged statements are expressions of opinion based on publicly disclosed facts and most Plaintiffs are public figures but have failed to allege malice.

Plaintiffs argue that the defamatory statements were directed at the individual Plaintiffs, and the size of the group defamed does not determine the viability of the claim. They further argue that the statements were factual conclusions and that malice is sufficiently alleged.

To state a claim for defamation, a plaintiff must allege (1) that the communication was defamatory; (2) that the defendant published the communication; (3) that it applied to the plaintiff; (4) that the recipient understood the defamatory meaning; (5) that the recipient understood that it was intended to be applied to the plaintiff; (6) that the plaintiff suffered special harm as a result of the publication; and (7) abuse of any conditional privilege. Alston v. PW-Philadelphia Weekly, 980 A.2d 215, 220 (Pa. Commw. Ct. 2009).

To constitute a defamatory statement, the plaintiff need not be named but may be referenced as part of a group. Klauder v. Philadelphia Newspapers, Inc., 66 Pa. D. & C.2d 271, 276 (1973). However, the plaintiff still must show a reasonable person would identify him as a target of the defamatory statement. Id. In making this determination, group size is an important

factor. Id. at 276-78. As a general guideline, a group consisting of 25 or more members is too large to support a defamation claim. See id. at 280 (police force of 8,200 too large), Schonek v. WJAC, Inc., 436 Pa. 78, 84, 258 A.2d 504, 507 (1969) (committee of several hundred too large); Viola v. A & E Television Networks, 433 F. Supp. 2d 613, 617 (W.D. Pa. 2006) (applying Pennsylvania law)(Roman Catholic Church too large); cf. Farrell v. Triangle Publ'ns, Inc., 399 Pa. 102, 109, 159 A.2d 734, 738-39 (1960)(board of commissioners with 13 members not too large); Mzamane v. Winfrey, 693 F. Supp. 2d 442, 495 (E.D. Pa. 2010) (defamatory statements about school's "leadership" construed as concerning plaintiff); O'Neill v. Motor Transp. Labor Relations, Inc., 41 Pa. D & C.2d 242, 246 (1966) (group of 124 company employees not too large, but each was listed by name).

With these standards in mind, the Court will address the five allegedly defamatory statements alleged in the Complaint:

Statement 1: The Consent Decree stated that "the Board of Trustees ... did not perform its oversight duties," and it "failed in its duties to oversee the President and senior University officials in 1998 and 2001 by not inquiring about important University matters and by not creating an environment where senior University officials felt accountable." See Compl. ¶¶ 90(b), 140.

Statement 2: The Consent Decree found that "[s]ome coaches, administrators and football program staff members ignored the red flags of Sandusky's behaviors and no one warned the public about him." Compl. ¶ 90(c).

Statement 3: "[T]he NCAA asserted that ... 'it was the fear of or deference to the omnipotent football program that enabled a sexual predator to attract and abuse his victims.' According to the NCAA, 'the reverence for Penn State football permeated every level of the University community,'" and was "an extraordinary affront to the values all members of the Association have pledged to uphold." Compl. ¶ 92.

Statements 4: "[E]very level of the Penn State community created and maintained a culture of reverence for, fear of, and deference to the football program, in disregard of the

value of human decency and the safety and well-being of vulnerable children.” Compl. ¶ 94, see also Compl. ¶ 140.

Statement 5: The NCAA and its officials stated that the issues addressed “in the Consent Decree were ‘about the whole institution’” and that “the Freeh Report ... revealed [matters] that suggest really inappropriate behavior at every level of the university.” Compl. ¶ 141.

Accepting Plaintiffs’ allegations as true for purposes of the demurrer, Plaintiffs have adequately pled a defamation claim on behalf of Clemens based on Statement 1 and on behalf of the Former Coaches based on Statements 2. The first two elements of defamation, that the statements are defamatory and are published, are easily met based on Plaintiffs’ allegations. Statement 1 asserts that the Trustees serving in 1998 and 2001 failed in their oversight duties, and Statement 2 asserts that some coaches were basically complicit in child sexual abuse. Both Statements were published in the Consent Decree as conclusions based on fact findings contained in the Freeh Report. See Compl. Exh. B at pp. 2-3.

A closer question is whether the Statements reasonably identify those Plaintiffs. Both Statements refer to groups that are limited in size and consist of people who are well-known in the community or whose identity could easily be discovered upon inquiry. Statement 1 concerns the Board of Trustees serving in 1998 and 2001. Trustees meeting that description are a finite group and include Clemens, but not the other Trustee Plaintiffs. Id. at ¶ 9. Statement 2 is directed as “some coaches,” a limited group of individuals including Former Coaches Paterno and Kinney. These groups are certainly smaller than the 8,200-member police force in Klauder and closer to 13-member board of commissioners in Farrell and the school “leadership” in Mzamane. In addition, the Pennsylvania Supreme Court has recognized that when defamatory statements are made in the course of a public scandal, recipients may be more likely to make

inquiry to determine the specific group members. Farrell, 399 Pa. at 109, 159 A.2d at 738-39.

Thus, Plaintiffs have sufficiently alleged that Clemens and the Former Coaches reasonably could be viewed as targets of Statements 1 and 2, respectively.

Plaintiffs have also sufficiently alleged the element of malice. By virtue of their positions with Penn State and involvement in a public scandal, Clemens and the Former Coaches are at least limited purpose public figures, and thus Plaintiffs must plead malice to establish their defamation claim. See Barry v. Time, Inc., 584 F. Supp. 1110 (N.D. Cal. 1984)(discussing cases finding college players and coaches to be public figures); Mzamane v. Winfrey, 693 F. Supp. 2d 442, 498-99 (E.D. Pa. 2010) (headmistress of school was limited purpose public figure). Malice is shown when a defendant publishes statements with obvious reasons to doubt their veracity, such as when the defendant is aware of internal inconsistencies or apparently reliable contradictory information. Mzamane, 693 F. Supp. 2d at 505-06.

In this case, the Complaint alleges that Defendants accepted the Freeh Report even though they knew it was unreliable and seriously flawed. Compl. ¶¶ 5, 6, 60-88. It also alleges that Defendants intentionally rushed to judgment without a proper investigation, violating the procedural rights of affected individuals, and aware that innocent parties would suffer substantial harm. Id. These allegations are sufficient to support the element of malice with respect to Statements 1 and 2.

However, Statements 3 through 5 are not actionable because nothing in those statements identifies any of the Plaintiffs as targets. Those statements refer to the "Penn State community," and Plaintiffs specifically allege that the statements were directed at all members of the Penn State Community between 1998 and 2011. Id. at ¶ 144. Because that group would consist of hundreds of thousands of people, it is far too large to support a finding that the statements

targeted any of the Plaintiffs personally. See Klauder, 66 Pa. D. & C.2d at 280. The Former Players and Faculty and the Trustees who did not serve in 1998 and 2001 are not otherwise named, directly or indirectly, as individuals or as part of groups. Cf. O'Neill, 41 Pa. D & C.2d at 246 (124 group members were specifically named in defamatory statements). Thus recovery for defamation is not possible based on Statements 3 through 5.

The Demurrer to Count V is OVERRULED as to claims by Clemens and the Former Coaches based on Statements 1 and 2 and is otherwise SUSTAINED.

#### **Demurrer to Commercial Disparagement Claim**

Defendants argue that the commercial disparagement claim fails because Plaintiffs have not alleged any actionable commercial interest, pecuniary loss, or that the NCAA acted with knowing and reckless disregard for the truth. Plaintiffs respond that they have alleged a property interest in Paterno's name and reputation and need not allege specific pecuniary loss because the disparaging statements were widely disseminated and constituted libel per se.

To state a claim for commercial disparagement, a plaintiff must allege that publication of a disparaging statement about another's business where: (1) the statement is false, (2) the publisher intends that the statement will cause pecuniary loss or reasonably should recognize that it will cause pecuniary loss; (3) pecuniary loss in fact; and (3) the publisher knows the statement is false or acts in reckless disregard of its truth or falsity. Pro Golf, Mfg., Inc. v. Tribune Review Newspaper Co., 809 A.2d 243, 246, 570 Pa. 242, 246 (2002). Commercial disparagement is like defamation but protects commercial as opposed to reputational interests. Id. at 247, 570 Pa. at 246.

The Pennsylvania Supreme Court made clear in Menefee v. Columbia Broad. Sys., Inc., 458 Pa. 46, 54, 329 A.2d 216, 220 (1974), that the commercial interest need not be a product or

service. The plaintiff in that case was a radio broadcaster and asserted a commercial disparagement claim based on statements indicating that he was unable to draw an audience and obtain good ratings. The Supreme Court recognized that he had "an intangible property interest in his broadcasting personality and that a statement that his program could no longer attract satisfactory ratings would tend to disparage that property interest." *Id.*

In this case the Complaint alleges that Joe Paterno or his estate "possessed a property interest in his name and reputation, and there was a readily available, valuable commercial market concerning Joe Paterno's commercial property." Compl. ¶ 131. It further alleges that the Consent Decree published various statements maligning Joe Paterno's moral character, including (1) "Head Football Coach Joseph V. Paterno failed to protect against a child sexual predator harming children for over a decade," (2) Paterno "concealed Sandusky's activities from the Board of Trustees, the University community and authorities," and (3) Paterno "allow[ed] [Sandusky] to have continued, unrestricted and unsupervised access to the University's facilities and affiliation with the University's prominent football program." *Id.* at ¶ ¶ 90(a), 130. The Complaint alleges that Plaintiffs knew or should have known the statements were false and that the statements were published across the country, causing the Estate's "commercial interests and value" to "substantially and materially declined as a direct result of Defendant's conduct." *Id.* at ¶¶ 136, 137, see also id. at ¶ 103(a).

The Complaint sets forth sufficient factual allegations to support a plausible claim for commercial disparagement. Based on Mencfee, Plaintiffs have at least a possibility of recovery based on a commercialized interest in Paterno's personality or reputation as a football coach. Plaintiffs identified disparaging statements accusing Joe Paterno of enabling and concealing child sexual abuse and knowledge or reckless disregard with respect to their falsity. Although

Plaintiffs did not specifically plead pecuniary loss, as a plaintiff generally must in a commercial disparagement case (see Swift Bros. v. Swift & Sons, Inc., 921 F. Supp. 267, 276 (E.D. Pa. 1995)), such specificity is not required where the disparaging statements constitute libel per se. See Bro-Tech Corp. v. Thermax, Inc., 651 F. Supp. 2d 378, 415 (E.D. Pa. 2009) (applying Pennsylvania law); Testing Sys., Inc. v. Magnaflux Corp., 251 F. Supp. 286, 291 (D.C. Pa. 1966) (applying libel per se exception in context of trade libel/disparagement of property case but finding test was not met). The statements about Joe Paterno's response to child sexual abuse at Penn State impugn his moral character and conduct in his profession, constituting libel per se. See Testing Sys., Inc., 251 F. Supp. at 291. Alternatively, the pleading standards are relaxed where statements were widely disseminated due to the difficulty of proving particular customers were lost when the disparagement affects an entire market. Menefee, 458 Pa. at 54-55, 329 A.2d at 221 (citing Restatement of Torts § 633). Accordingly, Plaintiffs have stated a claim for commercial disparagement.

The Demurrer to Count IV is **OVERRULED**.

**Demurrer to Intentional Interference with Prospective Contract Claim**

Defendants argue that Plaintiffs have not stated a claim for tortious interference with prospective contractual relations because they failed to identify any contract or opportunity that had a reasonable likelihood of coming to fruition. They further argue that Plaintiffs have failed to allege any acts of intentional interference by Defendants. Finally, Defendants argue that Plaintiffs cannot allege lack of privilege because Defendants' actions were taken in course of official investigation of potential rules violations. Plaintiffs contend that their allegations are more than sufficient to apprise Defendants of the nature of their claim.

The elements of tortious interference with prospective contractual relations are: (1) the

existence of a prospective contractual relationship between the plaintiff and a third party, (2) an intent on the part of the defendant to harm the plaintiff by interfering with that contractual relationship, (3) the absence of a privilege or justification for such interference, and (4) actual damages resulting from the defendant's conduct. Foster v. UPMC South Side Hosp., 2 A.3d 655, 665 (Pa. Super. 2010).

While Pennsylvania law does not require a plaintiff to identify a specific contract that was lost, a mere hope for employment is not enough. Advanced Power Sys., Inc. v. Hi-Tech Sys., Inc., 1992 WL 97826 at p. \*11 (E.D. Pa. 1992) ("The area of prospective relationships is necessarily a murky one."); Alvord-Polk, Inc. v. F. Schumacher & Co., 37 F.3d 996, 1015 (3d Cir. 1994) (A prospective contract "is something less than a contractual right, something more than a mere hope"); Brunson Commc'ns, Inc. v. Arbitron Inc., 239 F. Supp. 2d 550, 578 (E.D. Pa. 2002) (same). There must be a reasonable probability, based on the parties' current dealings, that a contract will arise. Brunson, 239 F. Supp. 2d at 578 (allegations deficient where plaintiffs failed to identify a single prospective customer or plead facts suggesting that any customer was lost).

The Complaint alleges that the coaches had "prospective and existing employment, business, and economic opportunities with many prestigious college and professional football programs, including at Penn State." Compl. ¶ 123. The Complaint further alleges that Defendants knew or should have known of these opportunities and intentionally interfered with them without justification or privilege, causing harm. Id. at ¶ 124. Plaintiffs allegedly suffered damage to their reputations and standing as football coaches and have been unable to secure comparable employment despite qualifications and existence of employers who otherwise would hire them. Id. at ¶¶ 103(b), 128.



Plaintiffs do not allege that any specific prospective contracts would have been consummated but for Defendants' conduct. They do not allege that they were applying for jobs, interviewing, or even job searching. They merely allege that based on their reputations they expected open doors with college and professional football programs. Such a general expectation is not equivalent to a specific contract being contemplated but is more akin to a "mere hope." The allegations here are general and speculative like those held deficient in Advanced Power Systems, Inc., where the plaintiff averred that because the defendant had plaintiff's trade secrets it would have the ability to undercut plaintiff's sales. There, as here, Plaintiffs have not pled facts supporting an inference that actual contracts were probably forthcoming.

The allegations as to the remaining elements of the claim, although sparse on facts, are sufficient. Intent to cause a result may be inferred from circumstances indicating the result is substantially certain to occur. See BTZ, Inc. v. Grove, 803 F. Supp. 1019, 1023-24 (M.D. Pa. 1992). Accepting as true that the Former Coaches were accused of ignoring child sexual abuse, they were substantially certain to be less attractive job candidates, were an employer to contemplate hiring them. Absence of privilege is also sufficiently pled by the allegations that the NCAA violated its own rules for an improper purpose.

The Demurrer to Count III is SUSTAINED without prejudice. Plaintiffs may file an Amended Complaint that provides factual allegations supporting their claims of lost opportunities or contracts.

#### **Demurrer to Civil Conspiracy Claim**

Defendants argue that the conspiracy claim fails because Plaintiffs do not allege that the NCAA and the Freeh firm "combined for an unlawful purpose." Specifically, Defendants argue that Plaintiffs do not plead facts, beyond generic allegations of coordination and communication,

showing that the NCAA and the Freeh firm acted in concert. Defendants further argue that the only unlawful purpose Plaintiffs allege is breach of contract, which cannot form the basis for a civil conspiracy claim. Plaintiffs respond that their allegations that Defendants and the Freeh firm acted in concert and beyond their lawful authority to substantially harm others for their own benefit are sufficient to state a claim for conspiracy.

The elements of civil conspiracy are: (1) a combination of persons with purpose to do an unlawful act or a lawful act by unlawful means; (2) an overt act in furtherance of the purpose; and (3) actual legal damage. Strickland v. University of Scranton, 700 A.2d 979, 987-88 (Pa. Super. Ct. 1997). Although typically based on tort, civil conspiracy cases have been recognized in Pennsylvania based on breach of contract. See, e.g., Fife v. Great Atl. & Pac. Tea Co., 356 Pa. 265, 266, 52 A.2d 24, 32 (1947); Commonwealth v. Musser Forests, Inc., 394 Pa. 205, 207, 146 A.2d 714, 715 (1958).

The Complaint alleges that the NCAA collaborated with the Freeh firm to breach contractual obligations owed to Plaintiffs. Compl. ¶¶ 54, 148. Specifically, over the course of the Freeh firm's investigation, the firm provided frequent briefings to the NCAA, contacted NCAA representatives to discuss areas of inquiry and strategies, and cooperated with the NCAA. Id. at ¶ 150. The Complaint alleges that Defendant took these actions to purposefully injure Plaintiffs to deprive them of their procedural rights, or at least acted in reckless disregard of substantially certain injury to Plaintiffs, with no legitimate purpose. Numerous overt acts are alleged in the Complaint, including working together to prepare a false report and threatening to impose the "death penalty" when the remedy was not authorized in order to extort silence from President Erickson. Id. at ¶ 151(a) through (f).

Accepting the allegations of the Complaint as true, Plaintiffs have alleged that Defendants and the Freeh Firm acted together to commit overt acts in furtherance of their improper purpose to harm Plaintiffs, causing damage. Plaintiffs' general allegations of meetings between the alleged co-conspirators are sufficient, as Pennsylvania law does not require a plaintiff to plead dates, locations, or other specific details in order to state a civil conspiracy claim. Pappert v. TAP Pharmaceutical Prods., Inc., 885 A.2d 1127, 1141 (Pa. Commw. Ct. 2005). Plaintiffs' allegations that Defendants and the Freeh firm recklessly disregarded Plaintiffs' procedural rights in imposing sanctions in a criminal matter unrelated to recruiting and athletic competition, accepted the flawed Freeh report knowing it was not the result of a reliable investigation, and falsely accused Plaintiffs of enabling and causing child sex abuse are sufficient to allege malice. Reading Radio, Inc. v. Fink, 833 A.2d 199, 213 (Pa. Super. Ct. 2003) (malice can be shown by reckless disregard of plaintiff's rights). Thus, the Court cannot say that no recovery is possible on Plaintiffs' civil conspiracy claim.

The Demurrer to Count V is OVERRULED.

**ORDER**

AND NOW, this 6 day of January 2014, upon consideration of Defendant's

Preliminary Objections, the Objections are SUSTAINED in part and OVERRULED in part, as follows:

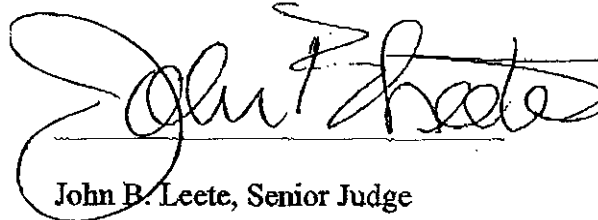
- (1) The Preliminary Objections based on failure to join an indispensable party and impertinent material are SUSTAINED with respect to Counts I and II for Breach of Contract. Plaintiffs are granted leave to file an Amended Complaint that cures the

jurisdictional defect by joining the Pennsylvania State University as a party to this action.

- (2) No decision is made on the Preliminary Objection based on standing.
- (3) The Demurrer to Count III for Intentional Interference with Prospective Contractual Relations is SUSTAINED without prejudice.
- (4) The Demurrer to Count V for Defamation is SUSTAINED, except as to the defamation claims asserted by Trustee Clemens and the Former Coaches, as to which it is OVERRULED.
- (5) The Demurrers to Count IV for Commercial Disparagement and Count VI for Civil Conspiracy are OVERRULED.

Plaintiffs shall have 30 days from the date of this Opinion and Order to file an Amended Complaint.

BY THE COURT:

A handwritten signature in black ink, appearing to read "John B. Leete", is written over a horizontal line. The signature is stylized with a large, looping initial "J".

John B. Leete, Senior Judge

## **EXHIBIT B**

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

GEORGE SCOTT PATERNO, as duly appointed representative of )  
the ESTATE and FAMILY of JOSEPH PATERNO; )

RYAN MCCOMBIE, ANTHONY LUBRANO, )  
AL CLEMENS, PETER KHOURY, and )  
ADAM TALIAFERRO, members of the )  
Board of Trustees of Pennsylvania State University; )

PETER BORDI, TERRY ENGELDER, )  
SPENCER NILES, and JOHN O'DONNELL, )  
members of the faculty of Pennsylvania State University; )

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

ANTHONY ADAMS, GERALD CADOGAN, )  
SHAMAR FINNEY, JUSTIN KURPEIKIS, )  
RICHARD GARDNER, JOSH GAINES, PATRICK MAUTI, )  
ANWAR PHILLIPS, and MICHAEL ROBINSON, former )  
football players of 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.

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**DEFENDANT MARK EMMERT'S RESPONSE TO FIRST REQUESTS FOR  
PRODUCTION OF DOCUMENTS BY PLAINTIFF GEORGE SCOTT PATERNO AS  
DULY APPOINTED REPRESENTATIVE TO THE  
ESTATE AND FAMILY OF JOSEPH PATERNO**

Pursuant to Pennsylvania Rule of Civil Procedure Number 4009.12, Defendant Mark Emmert, by and through his undersigned counsel, hereby submits his responses and objections to

the First Requests for Production of Documents issued by Plaintiff George Scott Paterno, as duly appointed representative of the Estate and Family of Joseph Paterno ("Paterno"), dated January 17, 2014 (the "First Request").

### **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 Request below.

1. Defendant has objected—and continues to object—to this action on the ground that the Court lacks personal jurisdiction over him, and the Court has yet to pass on those objections. As such, Defendant objects to the First Requests on the grounds that they are premature, improper, and needlessly burdensome. Defendant's responses to the First Requests will thus relate solely to the issue of the Court's personal jurisdiction over him and not to the merits of the case.

2. Defendant further objects to the First Requests as premature, improper, and needlessly burdensome because Plaintiff filed an amended complaint on February 5, 2014, and Defendant intends to file preliminary objections, including his objection to the Court's personal jurisdiction over him in this matter. In particular, Defendant objects to the First Requests to the extent they seek information related solely to claims that were dismissed from the action in the Court's January 7, 2014 Order and to the extent they relate to matters other than the issue of the Court's personal jurisdiction over Defendant.

3. Defendant objects to the Requests to the extent they seek documents and information that Plaintiffs have separately requested from the NCAA. The requests are thus unnecessarily cumulative, duplicative, and unduly burdensome.

4. Defendant 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. Defendant objects to the Requests to the extent they would require Defendant to produce multiple copies of a single document. In responding to the Requests, Defendant states that he will conduct a diligent search, reasonable in scope, of those files in his possession, custody, or control that he believes to be the most likely to contain documents responsive to the Requests to the extent they address the issue of the Court’s personal jurisdiction over Defendant. Defendant has not, however, undertaken to search or review each and every file and record in his possession, custody, or control, because to do so would be unduly burdensome and expensive. To the extent the Requests purport to require Defendant to do more than the following or seek information beyond what is available after a reasonable search of Defendant’s files likely to contain relevant or responsive documents, Defendant objects. In the event that further information, documents, records, or files responsive to any of the Requests are identified or brought to Defendant, Defendant reserves the right to amend or supplement his responses.

5. In responding to the Requests, whenever Defendant agrees to produce responsive documents, such response does not represent that responsive documents actually exist, but only that responsive documents will be produced if they exist and can be located with a good faith diligent search, reasonable in scope.

6. The specific responses set forth below are based on Defendant’s interpretation of the language used in the Requests. Defendant reserves the right to amend or supplement his



responses in the event Plaintiff asserts an interpretation that differs from Defendant's interpretation.

7. Defendant 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. Specifically, in responding to these Requests, Defendant does not waive his objection to the Court's personal jurisdiction over him in this action. Defendant's responses and objections are not to be construed as active participation as to the merits of this litigation.

8. Defendant objects to the Requests, including the Instructions and Definitions, to the extent that they seek to impose requirements or obligations on Defendant 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.

9. Defendant objects to the Requests, including the Instructions and Definitions, to the extent the discovery sought is unreasonable, cumulative or duplicative.

10. Defendant 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.

11. Defendant 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 Plaintiff to obtain as the burden imposed upon Defendant.

12. Defendant objects to the Requests, including the Instructions and Definitions, to the extent the discovery sought is obtainable from some other source that is more convenient, less burdensome, or less expensive, including from Plaintiff's own records or witnesses or through other methods and/or sources.

13. Defendant objects to the Requests, including the Instructions and Definitions, to the extent they purport to seek documents and/or things in the possession, custody, or control of third parties. By stating that he will produce documents responsive to a First Request, Defendant does not represent that he will undertake to conduct a search of any third party's documents.

14. Defendant 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. Defendant reserves the right to redact any material covered by this Objection.

15. Defendant objects to the Requests, including the Instructions and Definitions, to the extent that they seek discovery of confidential and/or proprietary business information, including trade secrets or other confidential research, development, or commercial information. Any responses Defendant provides to these Requests are subject to the parties' agreement to be bound by the terms of a negotiated Stipulated Protective Order in this action, prior to approval by the Court. Defendant reserves all of its rights and applicable objections with respect to its private, confidential, proprietary, or other similarly protected confidential materials and information.

16. Defendant objects to the Requests, including the Instructions and Definitions, to the extent that they seek documents or information for which Defendant owes a third party an obligation of confidentiality, whether contractual or otherwise, or the production of which is otherwise prohibited by law.

17. 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**

1. Defendant objects to Instruction No. 1 on the grounds that it is overly broad and unduly burdensome, and to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Defendant 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. Defendant objects to Instruction No. 6 to the extent that it calls for the maintenance of a privilege log for withheld and/or redacted documents that were created, prepared, authored, or edited after Plaintiff initiated or pursued his claim against Defendant. Defendant further objects to Instruction No. 6 to the extent it is unreasonable and to the extent Plaintiff seeks to impose requirements or obligations on Defendant 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.

3. Defendant objects to Instruction No. 10 to the extent that the time period set forth for Requests 25-30 is an arbitrary time period that renders each of these Requests overbroad and unduly burdensome and not reasonably calculated to result in discovery of admissible evidence by calling for production of documents irrelevant to this action.

### **SPECIFIC OBJECTIONS AND RESPONSES TO THE DEFINITIONS**

1. Defendant objects to the definitions of “you,” “your,” “yours,” “Defendant,” “NCAA,” “Penn State,” “Joe Paterno,” “Paterno,” Jerry Sandusky,” “Sandusky,” “Edward Ray,” “Ray,” “NCAA,” and “Freeh Firm” in Definition Nos. 1, 7, 8, 9, 10, 11, and 12 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiff purports 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.

2. Defendant objects to the definition of “communication” in Definition No. 3 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiff purports 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.”

3. Defendant objects to the definition of “document” in Definition No. 4 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiff purports to define this term to include “anything stored in any medium,” including, but not limited to, “phone records,” “instant messaging,” “web-based email,” “information stored on social media and social networking sites,” and “text messages,” and to the extent Plaintiff seeks to impose requirements or obligations on Defendant 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.

4. Defendant 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 Plaintiff seeks to impose requirements or obligations on Defendant 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 Defendant to engage in unduly burdensome searches.

5. Defendant objects to the definition of “person,” in Definition No. 6 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiff purports to define this term to include “all of the person’s representatives.”

6. Defendant objects to the definition of “Freeh Firm” in Definition No. 12 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiff purports to define this term to include “attorneys, investigators, or employees of any other firms that aided or worked with the Freeh Firm on the Freeh investigation.”

7. Defendant objects to the definitions of the “Freeh Report” and the “Consent Decree” in Definitions No. 14 and 16 as vague, ambiguous, overly broad and unduly burdensome to the extent that Plaintiff purports to define these terms to include “all footnotes, exhibits, drafts, or other notes related to” the defined terms.

8. Defendant objects to the definition of the “NCAA investigation” in Definition No. 15 as vague, ambiguous, overly broad and unduly burdensome. The NCAA did not conduct its own investigation of the matters related to Sandusky and Penn State. Those matters were investigated by the law firm of Freeh, Sporkin & Sullivan, LLP, at the direction of Penn State

University. Defendant further objects to this definition to the extent that it implies that NCAA asserted jurisdiction it did not otherwise have and to the extent that it implies that Defendant took action independently from NCAA with respect to matters related to Sandusky and Penn State in November 2011.

9. Defendant objects to the definition of the “NCAA enforcement process” in Definition No. 18 as vague and ambiguous, including in its use of the phrase “required to comply.” Defendant further object to this definition to the extent it purports to characterize NCAA’s Operating Bylaws and Administrative Bylaws inconsistently with the text of the Operating Bylaws and Administrative Bylaws and NCAA practices.

10. Defendant objects to the definition of “NCAA appeals process” in Definition No. 19 as vague and ambiguous, including in its use of the phrase “required to comply.” Defendant further object to this definition to the extent it purports to characterize NCAA’s Operating Bylaws and Administrative Bylaws inconsistently with the text of the Operating Bylaws and Administrative Bylaws and NCAA practices.

11. Defendant objects to the definition of “involved individual” in Definition No. 20 to the extent it is inconsistent with the definition of “Involved Individual” set forth in NCAA Administrative Bylaw, Article 32, which defines “involved individuals” as “former or current student-athletes and former or current institutional staff members who have received notice of signification involvement in alleged violations through notice of allegations or summary disposition process.”

### **SPECIFIC OBJECTIONS AND RESPONSES TO THE DOCUMENT REQUESTS**

#### **Request No. 1:**

Please produce all documents that evidence, reflect, or relate in any way to the NCAA’s investigation of or imposition of sanctions on Penn State, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding the NCAA

investigation or imposition of sanctions, including all drafts of such communications. Without limiting the generality of this request, please include:

- (a) All documents that discuss or relate to the procedures utilized or not to be utilized by the NCAA in investigating or imposing penalties or sanctions on Penn State, including all documents discussing or relating to whether the procedures outlined in the NCAA's Operating Bylaws and Administrative Bylaws would apply to any such investigation;
- (b) All documents that discuss or relate to the committees, individuals, or groups within the NCAA who were involved, or who were considered for involvement, in any investigation or decision-making with regard to possible penalties or sanctions;
- (c) All documents that discuss or relate to the rights of individuals or entities that might be implicated by any investigation or decision-making with regard to possible penalties or sanctions.

**Response to Request No. 1:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks "all documents that discuss or relate to" certain committees, individuals, or groups, and "all documents that discuss or relate to the rights of individuals or entities that might be implicated by any investigation or decision-making with regard to possible penalties or sanctions." Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases "relate in any way," "all documents that discuss or relate to the rights of," "records of telephone calls," and "other forms of communication." Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Subject to and without waiving his General or Specific Objections, including the objection to the definition of "NCAA investigation" in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure

and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 2:**

Please produce all documents that relate in any way to Joe Paterno, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding Joe Paterno.

**Response to Request No. 2:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks "all documents that relate in any way to Joe Paterno" regardless of subject matter. Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases "relate in any way," "records of telephone calls," and "other forms of communication." Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Subject to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 3:**

Please produce all documents that relate in any way to Jerry Sandusky, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding Jerry Sandusky.

**Response to Request No. 3:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of



admissible evidence to the extent it seeks “all documents that relate in any way to Jerry Sandusky” regardless of subject matter. Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases “relate in any way,” “records of telephone calls,” and “other forms of communication.” Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant’s contacts or lack of contacts with the state of Pennsylvania.

**Request No. 4:**

Please produce all documents that evidence, reflect, or relate in any way to the NCAA enforcement process with respect to Penn State or Plaintiffs named in this suit, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding the NCAA enforcement process.

**Response to Request No. 4:**

Defendant objects to this Request as overly broad in that it calls for the production of documents beyond the scope of the allegations in the Amended Complaint. Defendant objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases “relate in any way,” “records of telephone calls,” and “other forms of communication.” Defendant further objects to this Request to the extent that it implies that the procedures set forth in Article 19 and Article 32 of the Bylaws applied to Penn State and Plaintiffs in these circumstances. Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject to and without waiving his General or Specific Objections, including

the objection to the definition of “NCAA enforcement process” in Definition No. 18, and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant’s contacts or lack of contacts with the state of Pennsylvania.

**Request No. 5:**

Please produce all documents that evidence, reflect, or relate to action by the NCAA enforcement staff or NCAA Committee on Infractions (including the committee’s liaisons) with respect to Penn State or Plaintiffs named in this suit, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding action by the NCAA Committee on Infractions.

**Response to Request No. 5:**

Defendant objects to this Request as overly broad in that it calls for the production of documents beyond the scope of the allegations in the Amended Complaint. Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases “records of telephone calls” and “other forms of communication.” Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject to and without waiving its General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant’s contacts or lack of contacts with the state of Pennsylvania.

**Request No. 6:**

Please produce all documents that evidence, reflect, or relate to in any way to the NCAA appeals process with respect to Penn State or Plaintiffs named in this suit, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding the NCAA appeals process.

**Response to Request No. 6:**

Defendant objects to this Request as overly broad in that it calls for the production of documents beyond the scope of the allegations in the Amended Complaint. Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases “relate to in any way,” “records of telephone calls,” and “other forms of communication.” Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject to and without waiving his General or Specific Objections, including the objection to the definition of “NCAA appeals process” in Definition No. 19, and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant’s contacts or lack of contacts with the state of Pennsylvania.

**Request No. 7:**

Please produce all documents that evidence, reflect, or relate to action by the NCAA Infractions Appeals Committee (including the committee’s liaisons) with respect to Penn State or Plaintiffs named in this suit, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding action by the Infractions Appeals Committee.

**Response to Request No. 7:**

Defendant objects to this Request as overly broad in that it calls for the production of documents beyond the scope of the allegations in the Amended Complaint. Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases “records of telephone calls” and “other forms of communication.” Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject

to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 8:**

Please produce all documents that evidence, reflect, or relate to communications between the NCAA and Penn State relating to the NCAA investigation, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication relating to the NCAA investigation.

**Response to Request No. 8:**

Defendant objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases "records of telephone calls" and "other forms of communication." Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Subject to and without waiving his General or Specific Objections, including the objection to the definition of "NCAA investigation" in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 9:**

Please produce all documents that evidence, reflect, or relate to communications between the NCAA and the Freeh Firm, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication relating to the NCAA investigation or the Freeh investigation.

**Response to Request No. 9:**

Defendant objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases "records of telephone calls" and "other

forms of communication.” Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject to and without waiving his General or Specific Objections, including the objection to the definition of “NCAA investigation” in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant’s contacts or lack of contacts with the state of Pennsylvania.

**Request No. 10:**

Please produce all documents that evidence, reflect, or relate to communications between the NCAA and any third party relating to the NCAA investigation, including, but not limited to, communications with involved individuals, witnesses, or sources of information relating to Penn State.

**Response to Request No. 10:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks “communications between the NCAA and any third party.” Defendant further objects to this Request to the extent it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege, to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control, and to the extent it seeks discovery of information that is publicly available and, therefore, of no greater burden to Plaintiff to obtain as the burden imposed upon Defendant. Subject to and without waiving his General or Specific Objections, including the objection to the definition of “NCAA investigation” in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will

produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 11:**

Please produce all documents that evidence, reflect, or relate to communications between the NCAA and any third party relating to the Freeh investigation, including all notes or records of telephone calls, emails, letters, or other forms of communication regarding the Freeh investigation.

**Response to Request No. 11:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks "communications between the NCAA and any third party." Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases "records of telephone calls" and "other forms of communication." Defendant further objects to this Request to the extent it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege, to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control, and to the extent it seeks discovery of information that is publicly available and, therefore, of no greater burden to Plaintiff to obtain as the burden imposed upon Defendant. Subject to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 12:**

Please produce all documents that evidence, reflect, or relate to communications between the NCAA and representatives of the Big Ten athletic conference, including but not limited to the

Commissioner or its outside legal counsel, regarding the Freeh investigation or the NCAA investigation.

**Response to Request No. 12:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks “communications between the NCAA and representatives of the Big Ten athletic conference.” Defendant further objects to this Request as vague and ambiguous in its use of the term “representatives of the Big Ten athletic conference.” Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject to and without waiving his General or Specific Objections, including the objection to the definition of “NCAA investigation” in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant’s contacts or lack of contacts with the state of Pennsylvania.

**Request No. 13:**

Please produce all documents that evidence, reflect, or relate in any way to the Consent Decree, including all drafts of the Consent Decree, all documents reflecting communications regarding any draft of the Consent Decree, and all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding the Consent Decree.

**Response to Request No. 13:**

Defendant objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases “relate in any way,” “records of telephone calls,” and “other forms of communication.” Defendant further objects to this Request to the extent it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege, to the extent it requires Defendant to identify and

produce documents not within Defendant's possession, custody, or control, and to the extent it seeks discovery of information that is publicly available and, therefore, of no greater burden to Plaintiff to obtain as the burden imposed upon Defendant. Subject to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 14:**

Please produce all documents that evidence, reflect, or relate to involvement by you or Ray on any matters involving Penn State, Jerry Sandusky, or Joe Paterno, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication.

**Response to Request No. 14:**

Defendant objects to this Request as overly broad in that it calls for the production of documents beyond the scope of the allegations in the Amended Complaint. Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks documents regarding Emmert or Ray's involvement "on any matters involving Penn State, Jerry Sandusky, or Joe Paterno." Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases "involvement by," "records of telephone calls," and "other forms of communication." Defendant further objects to this Request to the extent it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege, to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control, and to the extent it seeks discovery of information that is publicly available and, therefore, of no greater burden to Plaintiff to obtain as the burden imposed upon Defendant.



Subject to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 15:**

Please produce all documents that evidence, reflect, or relate to the NCAA's decision to deny appeal rights to the Plaintiffs named in this suit.

**Response to Request No. 15:**

Defendant objects to this Request on the grounds that it is vague and ambiguous in its use of the phrase "decision to deny appeal rights." Defendant object to this characterization of the facts, including to the extent it implies Plaintiffs named in this suit had any "appeal rights." Defendant further objects to this Request to the extent it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege, to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control, and to the extent it seeks discovery of information that is publicly available and, therefore, of no greater burden to Plaintiff to obtain as the burden imposed upon Defendant. Subject to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 16:**

Please produce all documents that evidence, reflect, or relate to any travel, communications or contacts by you or Ray with Penn State, the Plaintiffs named in this suit, or any resident in Pennsylvania in connection with any issue addressed in or related to the allegations of the Complaint, including but not limited to the incidents involving Sandusky, the Consent Decree, the NCAA investigation, the Freeh Firm, and the imposition of sanctions on Penn State.

**Response to Request No. 16:**

Defendant objects to this Request as overly broad in that it calls for the production of documents beyond the scope of the allegations in the Amended Complaint. Defendant objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks “travel, communications or contacts . . . [with] any resident in Pennsylvania.” Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject to and without waiving his General or Specific Objections, including the objection to the definition of “NCAA investigation” in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant’s contacts or lack of contacts with the state of Pennsylvania.

**Request No. 17:**

Please produce all documents that evidence, reflect, or relate to communications to or from you, Ray, or any other NCAA employee or committee member (or communications on which either of them was copied or received as a forwarded message) and anyone affiliated with Penn State, including but not limited to Penn State President Rodney Erickson or Gene Marsh.

**Response to Request No. 17:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks “communications . . . [with] anyone affiliated with Penn State” without regard to the subject matter of the communication. Defendant further objects to this Request as vague and ambiguous in its use of the term “any other NCAA employee or committee member.” Defendant further objects to this Request to the extent it requires Defendant

to identify and produce documents not within Defendant's possession, custody, or control and to the extent it seeks discovery of information that is publicly available and, therefore, of no greater burden to Plaintiff to obtain as the burden imposed upon Defendant. Subject to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 18:**

Please produce all documents that evidence, reflect, or relate to communications to or from you, Ray, or any other NCAA employee or committee member (or communications on which either of them was copied or received as a forwarded message) and anyone located in Pennsylvania regarding Penn State, the Consent Decree, the NCAA investigation, the Freeh Firm, the imposition of sanctions on Penn State, or the incidents involving Sandusky.

**Response to Request No. 18:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks "communications . . . [with] anyone located in Pennsylvania." Defendant further objects to this Request as vague and ambiguous in its use of the term "any other NCAA employee or committee member." Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control and to the extent it seeks discovery of information that is publicly available and, therefore, of no greater burden to Plaintiff to obtain as the burden imposed upon Defendant. Subject to and without waiving his General or Specific Objections, including the objection to the definition of "NCAA investigation" in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will

produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 19:**

Please produce all documents that evidence, reflect, or relate to communications between anyone at the Freeh Firm and you, Ray, any NCAA employees, or NCAA committee members, including communications from the Freeh Firm on which you, Ray, or any NCAA employee or committee member was copied or received as a forwarded message.

**Response to Request No. 19:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks "communications . . . [with] anyone at the Freeh Firm" without regard to the subject matter of the communication and to the extent that it seeks "communications . . . [with] any NCAA employee." Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Subject to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 20:**

Please produce all documents that evidence, reflect, or relate to communications to or from you, Ray, or any other NCAA employee or committee member (or communications on which either of them was copied or received as a forwarded message) regarding the Executive Committee resolution authorizing sanctions against Penn State.

**Response to Request No. 20:**

Defendant objects to this Request on the grounds that it is vague and ambiguous in its use of the phrase "Executive Committee resolution authorizing sanctions against Penn State."

Defendant further objects to this Request as vague and ambiguous in its use of the term “any other NCAA employee or committee member.” Defendant further objects to this Request to the extent it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege and to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject to and without waiving its General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant’s contacts or lack of contacts with the state of Pennsylvania.

**Request No. 21:**

Please produce all documents that evidence, reflect, or relate to communications by you, Ray, or any other NCAA employee or committee member that discuss, refer, or relate to the Plaintiffs named in this suit, or other current or former Penn State personnel, including but not limited to Graham Spanier, Timothy Curley, Gary Schultz, Jerry Sandusky, or any current or former football players, football coaches, or Penn State administrators.

**Response to Request No. 21:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks “communications . . . that discuss, refer, or relate to . . . current or former Penn State personnel” including “any current or former football players, football coaches, or Penn State administrators” without regard to the subject matter of the communication. Defendant further objects to this Request as vague and ambiguous in its use of the term “any other NCAA employee or committee member.” Defendant further objects to this Request to the extent it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege and to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject

to and without waiving its General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 22:**

Please produce all documents that evidence, reflect, or relate to the role or authority of you or Ray with respect to the NCAA investigation of Penn State.

**Response to Request No. 22:**

Defendant objects to this Request on the grounds that it is vague and ambiguous in its use of the phrase "role or authority." Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Subject to and without waiving his General or Specific Objections, including the objection to the definition of "NCAA investigation" in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 23:**

Please produce all documents that evidence, reflect, or relate to the role or authority of you or Ray with respect to the NCAA's response to the appeals by the Plaintiffs in this suit to the Consent Decree.

**Response to Request No. 23:**

Defendant objects to this Request on the grounds that it is vague and ambiguous in its use of the phrase "role or authority." Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Subject to and without waiving his General or Specific Objections and

subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 24:**

Please produce all documents that evidence, reflect, or relate to the awareness or belief by you or Ray of effects of the Consent Decree on the Plaintiffs named in this suit.

**Response to Request No. 24:**

Defendant objects to this Request on the grounds that it is vague and ambiguous in its use of the phrase "awareness or belief . . . of effects of the Consent Decree." Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Subject to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 25:**

Please produce all documents that evidence, reflect, or relate to action by the Chair of the NCAA Committee on Infractions without a committee meeting, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding action by the Chair of the NCAA Committee on Infractions without a committee meeting.

**Response to Request No. 25:**

Defendant objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases "action by the Chair of the NCAA Committee on Infractions without a committee meeting," "records of telephone calls" and "other forms of communication." Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or

control. Defendant further objects to this Request on the grounds that it is unduly burdensome, overly broad, premature, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks documents related to a dismissed breach of contract claim and to the extent it seeks documents from the arbitrary and overly broad date range of January 1, 2000 through the present.

**Request No. 26:**

Please produce all documents that evidence, reflect, or relate to the NCAA's interpretation of the term "involved individual," including documents that relate in any way to the contentions that only individuals who are sanctioned in an investigation are "involved individuals."

**Response to Request No. 26:**

Defendant objects to this Request as overly broad and unduly burdensome to the extent it seeks discovery of confidential and/or proprietary business information or documents or information for which Defendant owes a third party an obligation of confidentiality. Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Defendant further objects to this Request on the grounds that it is unduly burdensome, overly broad, premature, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks documents related to a dismissed breach of contract claim and to the extent it seeks documents from the arbitrary and overly broad date range of January 1, 2000 through the present.

**Request No. 27:**

Please produce all documents that evidence, reflect, or relate to the provision of notice to any "involved individual" with regard to any NCAA enforcement action, including copies of the notice.



**Response to Request No. 27:**

Defendant objects to this Request as overly broad and unduly burdensome to the extent it seeks discovery of confidential and/or proprietary business information or documents or information for which Defendant owes a third party an obligation of confidentiality. Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Defendant further objects to this Request on the grounds that it is unduly burdensome, overly broad, premature, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks documents related to a dismissed breach of contract claim and to the extent it seeks documents from the arbitrary and overly broad date range of January 1, 2000 through the present.

**Request No. 28:**

Please produce all documents that evidence, reflect, or relate to any instance in which the NCAA has imposed, as a penalty on a member institution, the vacation or voiding of athletic records that did not involve a student-athlete competing while ineligible.

**Response to Request No. 28:**

Defendant objects to this Request as overly broad and unduly burdensome to the extent it seeks discovery of confidential and/or proprietary business information or documents or information for which Defendant owes a third party an obligation of confidentiality. Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Defendant further objects to this Request on the grounds that it is unduly burdensome, overly broad, premature, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks documents related to a dismissed breach of contract claim and to the extent it

seeks documents from the arbitrary and overly broad date range of January 1, 2000 through the present.

**Request No. 29:**

Please produce all documents that evidence, reflect, or relate to any instance in which the NCAA has expressly required that the career record of a coach reflect the vacation or voiding of wins by an athletic program for any reason.

**Response to Request No. 29:**

Defendant objects to this Request as overly broad and unduly burdensome to the extent it seeks discovery of confidential and/or proprietary business information or documents or information for which Defendant owes a third party an obligation of confidentiality. Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Defendant further objects to this Request on the grounds that it is unduly burdensome, overly broad, premature, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks documents related to a dismissed breach of contract claim and to the extent it seeks documents from the arbitrary and overly broad date range of January 1, 2000 through the present.

**Request No. 30:**

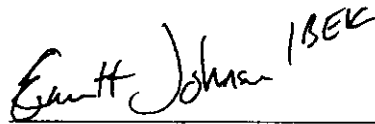
Please produce all documents that evidence, reflect, or relate to the NCAA's response to the assertion of appeal rights by any individual who was identified by name in a notice of violation, consent decree, or other official notice of action by the NCAA, including but not limited to any documents relating to any instance in which the NCAA has taken the position that an individual identified by name in a notice of violation, consent decree, or other official notice of action by the NCAA did not have a right to appeal.

**Response to Request No. 30:**

Defendant objects to this Request as overly broad and unduly burdensome to the extent it seeks discovery of confidential and/or proprietary business information or documents or

information for which Defendant owes a third party an obligation of confidentiality. Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases "NCAA's response to the assert of appeal rights" and "taken the position." Defendant further objects to this Request on the grounds that it is unduly burdensome, overly broad, premature, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks documents related to a dismissed breach of contract claim and to the extent it seeks documents from the arbitrary and overly broad date range of January 1, 2000 through the present.

Dated: February 18, 2014



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

Lori Alvino McGill (admitted *Pro Hac Vice*, DC  
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*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I, Brian E. Kowalski, hereby certify that I am serving the foregoing Response to First Requests for Production of Documents by Plaintiff George Scott Paterno as Duly Appointed Representative of the Estate and Family of Joseph Paterno to Defendant Mark Emmert on the following by First Class Mail and email:

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Dated: February 18, 2014

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*Attorney for Defendants*

## **EXHIBIT C**

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

GEORGE SCOTT PATERNO, as duly appointed representative of )  
the ESTATE and FAMILY of JOSEPH PATERNO; )

RYAN MCCOMBIE, ANTHONY LUBRANO, )  
AL CLEMENS, PETER KHOURY, and )  
ADAM TALIAFERRO, members of the )  
Board of Trustees of Pennsylvania State University; )

PETER BORDI, TERRY ENGELDER, )  
SPENCER NILES, and JOHN O'DONNELL, )  
members of the faculty of Pennsylvania State University; )

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

ANTHONY ADAMS, GERALD CADOGAN, )  
SHAMAR FINNEY, JUSTIN KURPEIKIS, )  
RICHARD GARDNER, JOSH GAINES, PATRICK MAUTI, )  
ANWAR PHILLIPS, and MICHAEL ROBINSON, former )  
football players of 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

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**DEFENDANT NATIONAL COLLEGIATE ATHLETIC ASSOCIATION'S RESPONSE  
TO FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS BY PLAINTIFF  
GEORGE SCOTT PATERNO AS DULY APPOINTED REPRESENTATIVE TO THE  
ESTATE AND FAMILY OF JOSEPH PATERNO**

Pursuant to Pennsylvania Rule of Civil Procedure Number 4009.12, Defendant National Collegiate Athletic Association ("NCAA"), by and through its undersigned counsel, hereby submits its responses and objections to the First Requests for Production of Documents issued by

Plaintiff George Scott Paterno, as duly appointed representative of the Estate and Family of Joseph Paterno ("Paterno"), dated January 17, 2014 (the "First Request").

### **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 Request below.

1. Defendant objects to the Requests on the grounds that they are premature, improper, and needlessly burdensome, as Plaintiff filed an amended complaint on February 5, 2014, and Defendant intends to file preliminary objections thereto. In particular, Defendant objects to the Requests to the extent they seek information related solely to claims that were dismissed from the action in the Court's January 7, 2014 Order.

2. Defendant 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. Defendant objects to the Requests to the extent they would require Defendant to produce multiple copies of a single document. In responding to the Requests, Defendant states that it will conduct 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. Defendant 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 Defendant to do more than the following or seek information beyond what is available after a reasonable search of Defendant's files likely to contain relevant or responsive documents, Defendant objects. In the event that further information, documents, records, or files responsive to any of the Requests are

identified or brought to Defendant, Defendant reserves the right to amend or supplement its responses.

3. In responding to the Requests, whenever Defendant agrees to produce responsive documents, such response does not represent that responsive documents actually exist, but only that responsive documents will be produced if they exist and can be located with a good faith diligent search, reasonable in scope.

4. The specific responses set forth below are based on Defendant's interpretation of the language used in the Requests. Defendant reserves the right to amend or supplement its responses in the event Plaintiff asserts an interpretation that differs from Defendant's interpretation.

5. Defendant 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.

6. Defendant objects to the Requests, including the Instructions and Definitions, to the extent that they seek to impose requirements or obligations on Defendant 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.

7. Defendant objects to the Requests, including the Instructions and Definitions, to the extent the discovery sought is unreasonably cumulative or duplicative.

8. Defendant 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.

9. Defendant 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 Plaintiff to obtain as the burden imposed upon Defendant.

10. Defendant objects to the Requests, including the Instructions and Definitions, to the extent the discovery sought is obtainable from some other source that is more convenient, less burdensome, or less expensive, including from Plaintiff's own records or witnesses or through other methods and/or sources.

11. Defendant objects to the Requests, including the Instructions and Definitions, to the extent they purport to seek documents and/or things in the possession, custody, or control of third parties. By stating that it will produce documents responsive to a Request, Defendant does not represent that it will undertake to conduct a search of any third party's documents.

12. Defendant 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. Defendant reserves the right to redact any material covered by this Objection.

13. Defendant 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, trade secrets or other confidential research, development, or commercial

information. Any responses Defendant provides to these Requests are subject to the parties' agreement to be bound by the terms of a negotiated Stipulated Protective Order in this action, prior to approval by the Court. Defendant reserves all of its rights and applicable objections with respect to its private, confidential, proprietary, or other similarly protected confidential materials and information.

14. Defendant objects to the Requests, including the Instructions and Definitions, to the extent that they seek documents or information for which Defendant owes a third party an obligation of confidentiality, whether contractual or otherwise, or the production of which is otherwise prohibited by law.

15. 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**

1. Defendant objects to Instruction No. 1 on the grounds that it is overly broad and unduly burdensome, and to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Defendant 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. Defendant objects to Instruction No. 6 to the extent that it calls for the maintenance of a privilege log for withheld and/or redacted documents that were created, prepared, authored, or edited after Plaintiff initiated or pursued his claim against Defendant. Defendant further objects to Instruction No. 6 to the extent it is unreasonable and to the extent Plaintiff seeks to impose requirements or obligations on Defendant 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.

3. Defendant objects to Instruction No. 10 to the extent that the time period set forth for Requests 25-30 is an arbitrary time period that renders each of these Requests overbroad and unduly burdensome and not reasonably calculated to result in discovery of admissible evidence by calling for production of documents irrelevant to this action.

#### **SPECIFIC OBJECTIONS AND RESPONSES TO THE DEFINITIONS**

1. Defendant objects to the definitions of “you,” “your,” “yours,” “Defendant,” “NCAA,” “Penn State,” “Joe Paterno,” “Paterno,” Jerry Sandusky,” “Sandusky,” “Mark Emmert,” “Emmert,” “Edward Ray,” “Ray,” and “Freeh Firm” in Definition Nos. 1, 7, 8, 9, 10, and 11 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiff purports 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.

2. Defendant objects to the definition of “communication” in Definition No. 3 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiff purports 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.”

3. Defendant objects to the definition of “document” in Definition No. 4 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiff purports to define

this term to include “anything stored in any medium,” including, but not limited to, “phone records,” “instant messaging,” “web-based email,” “information stored on social media and social networking sites,” and “text messages,” and to the extent Plaintiff seeks to impose requirements or obligations on Defendant 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.

4. Defendant 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 Plaintiff seeks to impose requirements or obligations on Defendant 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 Defendant to engage in unduly burdensome searches.

5. Defendant objects to the definition of “person,” in Definition No. 6 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiff purports to define this term to include “all of the person’s representatives.”

6. Defendant objects to the definition of “Freeh Firm” in Definition No. 12 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiff purports to define this term to include “attorneys, investigators, or employees of any other firms that aided or worked with the Freeh Firm on the Freeh investigation.”

7. Defendant objects to the definitions of the “Freeh Report” and the “Consent Decree” in Definitions No. 14 and 16 as vague, ambiguous, overly broad and unduly burdensome to the extent that Plaintiff purports to define these terms to include “all footnotes, exhibits, drafts, or other notes related to” the defined terms.

8. Defendant objects to the definition of the “NCAA investigation” in Definition No. 15 as vague, ambiguous, overly broad and unduly burdensome. The NCAA did not conduct its own investigation of the matters related to Sandusky and Penn State. Those matters were investigated by the law firm of Freeh, Sporkin & Sullivan, LLP, at the direction of Penn State University. Defendant further objects to this definition to the extent that it implies that NCAA asserted jurisdiction it did not otherwise have and to the extent that it implies that Dr. Emmert took action independently from NCAA with respect to matters related to Sandusky and Penn State in November 2011.

9. Defendant objects to the definition of the “NCAA enforcement process” in Definition No. 18 as vague and ambiguous, including in its use of the phrase “required to comply.” Defendant further objects to this definition to the extent it purports to characterize NCAA’s Operating Bylaws and Administrative Bylaws inconsistently with the text of the Operating Bylaws and Administrative Bylaws and NCAA practices.

10. Defendant objects to the definition of “NCAA appeals process” in Definition No. 19 as vague and ambiguous, including in its use of the phrase “required to comply.” Defendant further objects to this definition to the extent it purports to characterize NCAA’s Operating Bylaws and Administrative Bylaws inconsistently with the text of the Operating Bylaws and Administrative Bylaws and NCAA practices.

11. Defendant objects to the definition of “involved individual” in Definition No. 20 to the extent it is inconsistent with the definition of “Involved Individual” set forth in NCAA Administrative Bylaw, Article 32, which defines “involved individuals” as “former or current student-athletes and former or current institutional staff members who have received notice of

signification involvement in alleged violations through notice of allegations or summary disposition process.”

## **SPECIFIC OBJECTIONS AND RESPONSES TO THE DOCUMENT REQUESTS**

### **Request No. 1:**

Please produce all documents that evidence, reflect, or relate in any way to the NCAA’s investigation of or imposition of sanctions on Penn State, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding the NCAA investigation or imposition of sanctions, including all drafts of such communications. Without limiting the generality of this request, please include:

- (a) All documents that discuss or relate to the procedures utilized or not to be utilized by the NCAA in investigating or imposing penalties or sanctions on Penn State, including all documents discussing or relating to whether the procedures outlined in the NCAA’s Operating Bylaws and Administrative Bylaws would apply to any such investigation;
- (b) All documents that discuss or relate to the committees, individuals, or groups within the NCAA who were involved, or who were considered for involvement, in any investigation or decision-making with regard to possible penalties or sanctions;
- (c) All documents that discuss or relate to the rights of individuals or entities that might be implicated by any investigation or decision-making with regard to possible penalties or sanctions.

### **Response to Request No. 1:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks “all documents that discuss or relate to” certain committees, individuals, or groups, and “all documents that discuss or relate to the rights of individuals or entities that might be implicated by any investigation or decision-making with regard to possible penalties or sanctions.” Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases “relate in any way,” “all documents that discuss or relate to the rights of,” “records of telephone calls,” and “other forms of communication.” Defendant further objects to this Request

to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Subject to and without waiving its General or Specific Objections, including the objection to the definition of "NCAA investigation" in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 2:**

Please produce all documents that relate in any way to Joe Paterno, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding Joe Paterno.

**Response to Request No. 2:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks "all documents that relate in any way to Joe Paterno" regardless of subject matter. Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases "relate in any way," "records of telephone calls," and "other forms of communication." Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Subject to and without waiving its General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 3:**

Please produce all documents that relate in any way to Jerry Sandusky, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding Jerry Sandusky.

**Response to Request No. 3:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks “all documents that relate in any way to Jerry Sandusky” regardless of subject matter. Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases “relate in any way,” “records of telephone calls,” and “other forms of communication.” Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject to and without waiving its General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 4:**

Please produce all documents that evidence, reflect, or relate in any way to the NCAA enforcement process with respect to Penn State or Plaintiffs named in this suit, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding the NCAA enforcement process.

**Response to Request No. 4:**

Defendant objects to this Request as overly broad in that it calls for the production of documents beyond the scope of the allegations in the Amended Complaint. Defendant objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases “relate in any way,” “records of telephone calls,” and “other forms of communication.” Defendant further objects to this Request to the extent that it implies that the procedures set forth in Article 19 and Article 32 of the Bylaws applied to Penn State and Plaintiffs in these circumstances. Defendant further objects to this Request to the extent it



requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Subject to and without waiving its General or Specific Objections, including the objection to the definition of "NCAA enforcement process" in Definition No. 18, and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 5:**

Please produce all documents that evidence, reflect, or relate to action by the NCAA enforcement staff or NCAA Committee on Infractions (including the committee's liaisons) with respect to Penn State or Plaintiffs named in this suit, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding action by the NCAA Committee on Infractions.

**Response to Request No. 5:**

Defendant objects to this Request as overly broad in that it calls for the production of documents beyond the scope of the allegations in the Amended Complaint. Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases "records of telephone calls" and "other forms of communication." Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Subject to and without waiving its General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 6:**

Please produce all documents that evidence, reflect, or relate to in any way to the NCAA appeals process with respect to Penn State or Plaintiffs named in this suit, including all notes or records

of telephone calls, memos, emails, letters, or other forms of communication regarding the NCAA appeals process.

**Response to Request No. 6:**

Defendant objects to this Request as overly broad in that it calls for the production of documents beyond the scope of the allegations in the Amended Complaint. Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases “relate to in any way,” “records of telephone calls,” and “other forms of communication.” Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject to and without waiving its General or Specific Objections, including the objection to the definition of “NCAA appeals process” in Definition No. 19, and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 7:**

Please produce all documents that evidence, reflect, or relate to action by the NCAA Infractions Appeals Committee (including the committee’s liaisons) with respect to Penn State or Plaintiffs named in this suit, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding action by the Infractions Appeals Committee.

**Response to Request No. 7:**

Defendant objects to this Request as overly broad in that it calls for the production of documents beyond the scope of the allegations in the Amended Complaint. Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases “records of telephone calls” and “other forms of communication.” Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject

to and without waiving its General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 8:**

Please produce all documents that evidence, reflect, or relate to communications between the NCAA and Penn State relating to the NCAA investigation, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication relating to the NCAA investigation.

**Response to Request No. 8:**

Defendant objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases “records of telephone calls” and “other forms of communication.” Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject to and without waiving its General or Specific Objections, including the objection to the definition of “NCAA investigation” in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 9:**

Please produce all documents that evidence, reflect, or relate to communications between the NCAA and the Freeh Firm, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication relating to the NCAA investigation or the Freeh investigation.

**Response to Request No. 9:**

Defendant objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases “records of telephone calls” and “other

forms of communication.” Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject to and without waiving its General or Specific Objections, including the objection to the definition of “NCAA investigation” in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 10:**

Please produce all documents that evidence, reflect, or relate to communications between the NCAA and any third party relating to the NCAA investigation, including, but not limited to, communications with involved individuals, witnesses, or sources of information relating to Penn State.

**Response to Request No. 10:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks “communications between the NCAA and any third party.” Defendant further objects to this Request to the extent it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege, to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control, and to the extent it seeks discovery of information that is publicly available and, therefore, of no greater burden to Plaintiff to obtain as the burden imposed upon Defendant. Subject to and without waiving its General or Specific Objections, including the objection to the definition of “NCAA investigation” in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will

produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 11:**

Please produce all documents that evidence, reflect, or relate to communications between the NCAA and any third party relating to the Freeh investigation, including all notes or records of telephone calls, emails, letters, or other forms of communication regarding the Freeh investigation.

**Response to Request No. 11:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks “communications between the NCAA and any third party.” Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases “records of telephone calls” and “other forms of communication.” Defendant further objects to this Request to the extent it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege, to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control, and to the extent it seeks discovery of information that is publicly available and, therefore, of no greater burden to Plaintiff to obtain as the burden imposed upon Defendant. Subject to and without waiving its General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 12:**

Please produce all documents that evidence, reflect, or relate to communications between the NCAA and representatives of the Big Ten athletic conference, including but not limited to the Commissioner or its outside legal counsel, regarding the Freeh investigation or the NCAA investigation.

**Response to Request No. 12:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks “communications between the NCAA and representatives of the Big Ten athletic conference.” Defendant further objects to this Request as vague and ambiguous in its use of the term “representatives of the Big Ten athletic conference.” Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject to and without waiving its General or Specific Objections, including the objection to the definition of “NCAA investigation” in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 13:**

Please produce all documents that evidence, reflect, or relate in any way to the Consent Decree, including all drafts of the Consent Decree, all documents reflecting communications regarding any draft of the Consent Decree, and all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding the Consent Decree.

**Response to Request No. 13:**

Defendant objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases “relate in any way,” “records of telephone calls,” and “other forms of communication.” Subject to and without waiving its General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 14:**

Please produce all documents that evidence, reflect, or relate to involvement by Emmert or Ray on any matters involving Penn State, Jerry Sandusky, or Joe Paterno, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication.

**Response to Request No. 14:**

Defendant objects to this Request as overly broad in that it calls for the production of documents beyond the scope of the allegations in the Amended Complaint. Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks documents regarding Emmert or Ray's involvement "on any matters involving Penn State, Jerry Sandusky, or Joe Paterno." Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases "involvement by," "records of telephone calls," and "other forms of communication." Subject to and without waiving its General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 15:**

Please produce all documents that evidence, reflect, or relate to the NCAA's decision to deny appeal rights to the Plaintiffs named in this suit.

**Response to Request No. 15:**

Defendant objects to this Request on the grounds that it is vague and ambiguous in its use of the phrase "decision to deny appeal rights." Defendant objects to this characterization of the facts, including to the extent it implies Plaintiffs named in this suit had any "appeal rights." Subject to and without waiving its General or Specific Objections and subject to the entry of a

mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 16:**

Please produce all documents that evidence, reflect, or relate to any travel, communications or contacts by Emmert or Ray with Penn State, the Plaintiffs named in this suit, or any resident in Pennsylvania in connection with any issue addressed in or related to the allegations of the Complaint, including but not limited to the incidents involving Sandusky, the Consent Decree, the NCAA investigation, the Freeh Firm, and the imposition of sanctions on Penn State.

**Response to Request No. 16:**

Defendant objects to this Request as overly broad in that it calls for the production of documents beyond the scope of the allegations in the Amended Complaint. Defendant objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks “travel, communications or contacts . . . [with] any resident in Pennsylvania.” Subject to and without waiving its General or Specific Objections, including the objection to the definition of “NCAA investigation” in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 17:**

Please produce all documents that evidence, reflect, or relate to communications to or from Emmert or Ray (or communications on which either of them was copied or received as a forwarded message) and anyone affiliated with Penn State, including but not limited to Penn State President Rodney Erickson or Gene Marsh.



**Response to Request No. 17:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks “communications . . . [with] anyone affiliated with Penn State” without regard to the subject matter of the communication. Subject to and without waiving its General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 18:**

Please produce all documents that evidence, reflect, or relate to communications to or from Emmert or Ray (or communications on which either of them was copied or received as a forwarded message) and anyone located in Pennsylvania regarding Penn State, the Consent Decree, the NCAA investigation, the Freeh Firm, the imposition of sanctions on Penn State, or the incidents involving Sandusky.

**Response to Request No. 18:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks “communications . . . [with] anyone located in Pennsylvania.” Subject to and without waiving its General or Specific Objections, including the objection to the definition of “NCAA investigation” in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 19:**

Please produce all documents that evidence, reflect, or relate to communications between anyone at the Freeh Firm and Ray, Emmert, any NCAA employees, or NCAA committee members,

including communications from the Freeh Firm on which Ray, Emmert or any NCAA employee or committee member was copied or received as a forwarded message.

**Response to Request No. 19:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks “communications . . . [with] anyone at the Freeh Firm” without regard to the subject matter of the communication and to the extent that it seeks “communications . . . [with] any NCAA employee.” Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject to and without waiving its General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 20:**

Please produce all documents that evidence, reflect, or relate to communications to or from Emmert or Ray (or communications on which either of them was copied or received as a forwarded message) regarding the Executive Committee resolution authorizing sanctions against Penn State.

**Response to Request No. 20:**

Defendant objects to this Request on the grounds that it is vague and ambiguous in its use of the phrase “Executive Committee resolution authorizing sanctions against Penn State.” Subject to and without waiving its General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 21:**

Please produce all documents that evidence, reflect, or relate to communications by Emmert or Ray that discuss, refer, or relate to the Plaintiffs named in this suit, or other current or former Penn State personnel, including but not limited to Graham Spanier, Timothy Curley, Gary Schultz, Jerry Sandusky, or any current or former football players, football coaches, or Penn State administrators.

**Response to Request No. 21:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks “communications . . . that discuss, refer, or relate to . . . current or former Penn State personnel” including “any current or former football players, football coaches, or Penn State administrators” without regard to the subject matter of the communication. Subject to and without waiving its General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 22:**

Please produce all documents that evidence, reflect, or relate to the role or authority of Emmert or Ray with respect to the NCAA investigation of Penn State.

**Response to Request No. 22:**

Defendant objects to this Request on the grounds that it is vague and ambiguous in its use of the phrase “role or authority.” Subject to and without waiving its General or Specific Objections, including the objection to the definition of “NCAA investigation” in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 23:**

Please produce all documents that evidence, reflect, or relate to the role or authority of Emmert or Ray with respect to the NCAA's response to the appeals by the Plaintiffs in this suit to the Consent Decree.

**Response to Request No. 23:**

Defendant objects to this Request on the grounds that it is vague and ambiguous in its use of the phrase "role or authority." Subject to and without waiving its General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 24:**

Please produce all documents that evidence, reflect, or relate to the awareness or belief by Emmert or Ray of effects of the Consent Decree on the Plaintiffs named in this suit.

**Response to Request No. 24:**

Defendant objects to this Request on the grounds that it is vague and ambiguous in its use of the phrase "awareness or belief . . . of effects of the Consent Decree." Subject to and without waiving its General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that it will produce responsive documents, if any, that are not privileged or protected from disclosure that respond to the reasonable scope of this Request.

**Request No. 25:**

Please produce all documents that evidence, reflect, or relate to action by the Chair of the NCAA Committee on Infractions without a committee meeting, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding action by the Chair of the NCAA Committee on Infractions without a committee meeting.

**Response to Request No. 25:**

Defendant objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases "action by the Chair of the NCAA

Committee on Infractions without a committee meeting,” “records of telephone calls” and “other forms of communication.” Defendant further objects to this Request on the grounds that it is unduly burdensome, overly broad, premature, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks documents related to a dismissed breach of contract claim and to the extent it seeks documents from the arbitrary and overly broad date range of January 1, 2000 through the present.

**Request No. 26:**

Please produce all documents that evidence, reflect, or relate to the NCAA’s interpretation of the term “involved individual,” including documents that relate in any way to the contentions that only individuals who are sanctioned in an investigation are “involved individuals.”

**Response to Request No. 26:**

Defendant objects to this Request as overly broad and unduly burdensome to the extent it seeks discovery of confidential and/or proprietary information or documents or information for which Defendant owes a third party an obligation of confidentiality. Defendant further objects to this Request on the grounds that it is unduly burdensome, overly broad, premature, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks documents related to a dismissed breach of contract claim and to the extent it seeks documents from the arbitrary and overly broad date range of January 1, 2000 through the present.

**Request No. 27:**

Please produce all documents that evidence, reflect, or relate to the provision of notice to any “involved individual” with regard to any NCAA enforcement action, including copies of the notice.

**Response to Request No. 27:**

Defendant objects to this Request as overly broad and unduly burdensome to the extent it seeks discovery of confidential and/or proprietary information or documents or information for

which Defendant owes a third party an obligation of confidentiality. Defendant further objects to this Request on the grounds that it is unduly burdensome, overly broad, premature, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks documents related to a dismissed breach of contract claim and to the extent it seeks documents from the arbitrary and overly broad date range of January 1, 2000 through the present.

**Request No. 28:**

Please produce all documents that evidence, reflect, or relate to any instance in which the NCAA has imposed, as a penalty on a member institution, the vacation or voiding of athletic records that did not involve a student-athlete competing while ineligible.

**Response to Request No. 28:**

Defendant objects to this Request as overly broad and unduly burdensome to the extent it seeks discovery of confidential and/or proprietary information or documents or information for which Defendant owes a third party an obligation of confidentiality. Defendant further objects to this Request on the grounds that it is unduly burdensome, overly broad, premature, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks documents related to a dismissed breach of contract claim and to the extent it seeks documents from the arbitrary and overly broad date range of January 1, 2000 through the present.

**Request No. 29:**

Please produce all documents that evidence, reflect, or relate to any instance in which the NCAA has expressly required that the career record of a coach reflect the vacation or voiding of wins by an athletic program for any reason.

**Response to Request No. 29:**

Defendant objects to this Request as overly broad and unduly burdensome to the extent it seeks discovery of confidential and/or proprietary information or documents or information for

which Defendant owes a third party an obligation of confidentiality. Defendant further objects to this Request on the grounds that it is unduly burdensome, overly broad, premature, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks documents related to a dismissed breach of contract claim and to the extent it seeks documents from the arbitrary and overly broad date range of January 1, 2000 through the present.

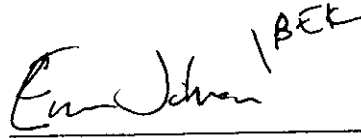
**Request No. 30:**

Please produce all documents that evidence, reflect, or relate to the NCAA's response to the assertion of appeal rights by any individual who was identified by name in a notice of violation, consent decree, or other official notice of action by the NCAA, including but not limited to any documents relating to any instance in which the NCAA has taken the position that an individual identified by name in a notice of violation, consent decree, or other official notice of action by the NCAA did not have a right to appeal.

**Response to Request No. 30:**

Defendant objects to this Request as overly broad and unduly burdensome to the extent it seeks discovery of confidential and/or proprietary information or documents or information for which Defendant owes a third party an obligation of confidentiality. Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases "NCAA's response to the assert of appeal rights" and "taken the position." Defendant further objects to this Request on the grounds that it is unduly burdensome, overly broad, premature, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks documents related to a dismissed breach of contract claim and to the extent it seeks documents from the arbitrary and overly broad date range of January 1, 2000 through the present.

Dated: February 18, 2014



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

Lori Alvino McGill (admitted *Pro Hac Vice*, DC  
No. 976496)

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*Counsel for Defendants*



**CERTIFICATE OF SERVICE**

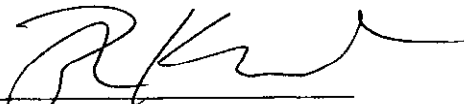
I, Brian E. Kowalski, hereby certify that I am serving the foregoing Response to First Requests for Production of Documents by Plaintiff George Scott Paterno as Duly Appointed Representative of the Estate and Family of Joseph Paterno to Defendant NCAA on the following by First Class Mail and email:

Thomas J. Weber  
GOLDBERG KATZMAN, P.C.  
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Dated: February 18, 2014

  
\_\_\_\_\_  
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*Attorney for Defendants*

## **EXHIBIT D**

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

GEORGE SCOTT PATERNO, as duly appointed representative of )  
the ESTATE and FAMILY of JOSEPH PATERNO; )

RYAN MCCOMBIE, ANTHONY LUBRANO, )  
AL CLEMENS, PETER KHOURY, and )  
ADAM TALIAFERRO, members of the )  
Board of Trustees of Pennsylvania State University; )

PETER BORDI, TERRY ENGELDER, )  
SPENCER NILES, and JOHN O'DONNELL, )  
members of the faculty of Pennsylvania State University; )

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

ANTHONY ADAMS, GERALD CADOGAN, )  
SHAMAR FINNEY, JUSTIN KURPEIKIS, )  
RICHARD GARDNER, JOSH GAINES, PATRICK MAUTI, )  
ANWAR PHILLIPS, and MICHAEL ROBINSON, former )  
football players of 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

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**DEFENDANT EDWARD RAY'S RESPONSE TO FIRST REQUESTS FOR  
PRODUCTION OF DOCUMENTS BY PLAINTIFF GEORGE SCOTT PATERNO AS  
DULY APPOINTED REPRESENTATIVE TO THE  
ESTATE AND FAMILY OF JOSEPH PATERNO**

Pursuant to Pennsylvania Rule of Civil Procedure Number 4009.12, Defendant Edward Ray, by and through his undersigned counsel, hereby submits his responses and objections to the

First Requests for Production of Documents issued by Plaintiff George Scott Paterno, as duly appointed representative of the Estate and Family of Joseph Paterno ("Paterno"), dated January 17, 2014 (the "First Request").

### **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 Request below.

1. Defendant has objected—and continues to object—to this action on the ground that the Court lacks personal jurisdiction over him, and the Court has yet to pass on those objections. As such, Defendant objects to the First Requests on the grounds that they are premature, improper, and needlessly burdensome. Defendant's responses to the First Requests will thus relate solely to the issue of the Court's personal jurisdiction over him and not to the merits of the case.

2. Defendant further objects to the First Requests as premature, improper, and needlessly burdensome because Plaintiff filed an amended complaint on February 5, 2014, and Defendant intends to file preliminary objections, including his objection to the Court's personal jurisdiction over him in this matter. In particular, Defendant objects to the First Requests to the extent they seek information related solely to claims that were dismissed from the action in the Court's January 7, 2014 Order and to the extent they relate to matters other than the issue of the Court's personal jurisdiction over Defendant.

3. Defendant objects to the First Requests to the extent they seek documents and information that Plaintiffs have separately requested from the NCAA. The requests are thus unnecessarily cumulative, duplicative, and unduly burdensome.

4. Defendant objects to the First 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. Defendant objects to the Requests to the extent they would require Defendant to produce multiple copies of a single document. In responding to the First Requests, Defendant states that he will conduct a diligent search, reasonable in scope, of those files in his possession, custody, or control that he believes to be the most likely to contain documents responsive to the First Requests to the extent they address the issue of the Court’s personal jurisdiction over Defendant. Defendant has not, however, undertaken to search or review each and every file and record in his possession, custody, or control, because to do so would be unduly burdensome and expensive. To the extent the First Requests purport to require Defendant to do more than the following or seek information beyond what is available after a reasonable search of Defendant’s files likely to contain relevant or responsive documents, Defendant objects. In the event that further information, documents, records, or files responsive to any of the First Requests are identified or brought to Defendant, Defendant reserves the right to amend or supplement his responses.

5. In responding to the Requests, whenever Defendant agrees to produce responsive documents, such response does not represent that responsive documents actually exist, but only that responsive documents will be produced if they exist and can be located with a good faith diligent search, reasonable in scope.

6. The specific responses set forth below are based on Defendant’s interpretation of the language used in the First Requests. Defendant reserves the right to amend or supplement his

responses in the event Plaintiff asserts an interpretation that differs from Defendant's interpretation.

7. Defendant 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. Specifically, in responding to these First Requests, Defendant does not waive his objection to the Court's personal jurisdiction over him in this action. Defendant's responses and objections are not to be construed as active participation as to the merits of this litigation.

8. Defendant objects to the First Requests, including the Instructions and Definitions, to the extent that they seek to impose requirements or obligations on Defendant 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.

9. Defendant objects to the First Requests, including the Instructions and Definitions, to the extent the discovery sought is unreasonably, cumulative or duplicative.

10. Defendant objects to the First 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.

11. Defendant objects to the First 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 Plaintiff to obtain as the burden imposed upon Defendant.

12. Defendant objects to the First Requests, including the Instructions and Definitions, to the extent the discovery sought is obtainable from some other source that is more convenient, less burdensome, or less expensive, including from Plaintiff's own records or witnesses or through other methods and/or sources.

13. Defendant objects to the First Requests, including the Instructions and Definitions, to the extent they purport to seek documents and/or things in the possession, custody, or control of third parties. By stating that he will produce documents responsive to a First Request, Defendant does not represent that he will undertake to conduct a search of any third party's documents.

14. Defendant objects to the First 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 First 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. Defendant reserves the right to redact any material covered by this Objection.

15. Defendant objects to the First Requests, including the Instructions and Definitions, to the extent that they seek discovery of confidential and/or proprietary business information, including trade secrets or other confidential research, development, or commercial information. Any responses Defendant provides to these First Requests are subject to the parties' agreement to be bound by the terms of a negotiated Stipulated Protective Order in this action, prior to approval by the Court. Defendant reserves all of its rights and applicable objections with

respect to its private, confidential, proprietary, or other similarly protected confidential materials and information.

16. Defendant objects to the First Requests, including the Instructions and Definitions, to the extent that they seek documents or information for which Defendant owes a third party an obligation of confidentiality, whether contractual or otherwise, or the production of which is otherwise prohibited by law.

17. 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**

1. Defendant objects to Instruction No. 1 on the grounds that it is overly broad and unduly burdensome, and to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Defendant 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. Defendant objects to Instruction No. 6 to the extent that it calls for the maintenance of a privilege log for withheld and/or redacted documents that were created, prepared, authored, or edited after Plaintiff initiated or pursued his claim against Defendant. Defendant further objects to Instruction No. 6 to the extent it is unreasonable and to the extent



Plaintiff seeks to impose requirements or obligations on Defendant 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.

3. Defendant objects to Instruction No. 10 to the extent that the time period set forth for Requests 25-30 is an arbitrary time period that renders each of these Requests overbroad and unduly burdensome and not reasonably calculated to result in discovery of admissible evidence by calling for production of documents irrelevant to this action.

### **SPECIFIC OBJECTIONS AND RESPONSES TO THE DEFINITIONS**

1. Defendant objects to the definitions of “you,” “your,” “yours,” “Defendant,” “NCAA,” “Penn State,” “Joe Paterno,” “Paterno,” Jerry Sandusky,” “Sandusky,” “Mark Emmert,” “Emmert,” “NCAA,” and “Freeh Firm” in Definition Nos. 1, 7, 8, 9, 10, 11, and 12 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiff purports 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.

2. Defendant objects to the definition of “communication” in Definition No. 3 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiff purports 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.”

3. Defendant objects to the definition of “document” in Definition No. 4 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiff purports to define this term to include “anything stored in any medium,” including, but not limited to, “phone records,” “instant messaging,” “web-based email,” “information stored on social media and social networking sites,” and “text messages,” and to the extent Plaintiff seeks to impose requirements or obligations on Defendant 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.

4. Defendant 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 Plaintiff seeks to impose requirements or obligations on Defendant 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 Defendant to engage in unduly burdensome searches.

5. Defendant objects to the definition of “person,” in Definition No. 6 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiff purports to define this term to include “all of the person’s representatives.”

6. Defendant objects to the definition of “Freeh Firm” in Definition No. 12 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiff purports to define this term to include “attorneys, investigators, or employees of any other firms that aided or worked with the Freeh Firm on the Freeh investigation.”

7. Defendant objects to the definitions of the “Freeh Report” and the “Consent Decree” in Definitions No. 14 and 16 as vague, ambiguous, overly broad and unduly burdensome to the extent that Plaintiff purports to define these terms to include “all footnotes, exhibits, drafts, or other notes related to” the defined terms.

8. Defendant objects to the definition of the “NCAA investigation” in Definition No. 15 as vague, ambiguous, overly broad and unduly burdensome. Defendant further objects to this definition to the extent that it implies that NCAA asserted jurisdiction it did not otherwise have and to the extent that it implies that Dr. Emmert took action independently from NCAA with

respect to matters related to Sandusky and Penn State in November 2011. The NCAA did not conduct its own investigation of the matters related to Sandusky and Penn State. Those matters were investigated by the law firm of Freeh, Sporkin & Sullivan, LLP, at the direction of Penn State University.

9. Defendant objects to the definition of the “NCAA enforcement process” in Definition No. 18 as vague and ambiguous, including in its use of the phrase “required to comply.” Defendant further object to this definition to the extent it purports to characterize NCAA’s Operating Bylaws and Administrative Bylaws inconsistently with the text of the Operating Bylaws and Administrative Bylaws and NCAA practices.

10. Defendant objects to the definition of “NCAA appeals process” in Definition No. 19 as vague and ambiguous, including in its use of the phrase “required to comply.” Defendant further object to this definition to the extent it purports to characterize NCAA’s Operating Bylaws and Administrative Bylaws inconsistently with the text of the Operating Bylaws and Administrative Bylaws and NCAA practices.

11. Defendant objects to the definition of “involved individual” in Definition No. 20 to the extent it is inconsistent with the definition of “Involved Individual” set forth in NCAA Administrative Bylaw, Article 32, which defines “involved individuals” as “former or current student-athletes and former or current institutional staff members who have received notice of signification involvement in alleged violations through notice of allegations or summary disposition process.”

### **SPECIFIC OBJECTIONS AND RESPONSES TO THE DOCUMENT REQUESTS**

#### **Request No. 1:**

Please produce all documents that evidence, reflect, or relate in any way to the NCAA’s investigation of or imposition of sanctions on Penn State, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding the NCAA

investigation or imposition of sanctions, including all drafts of such communications. Without limiting the generality of this request, please include:

- (a) All documents that discuss or relate to the procedures utilized or not to be utilized by the NCAA in investigating or imposing penalties or sanctions on Penn State, including all documents discussing or relating to whether the procedures outlined in the NCAA's Operating Bylaws and Administrative Bylaws would apply to any such investigation;
- (b) All documents that discuss or relate to the committees, individuals, or groups within the NCAA who were involved, or who were considered for involvement, in any investigation or decision-making with regard to possible penalties or sanctions;
- (c) All documents that discuss or relate to the rights of individuals or entities that might be implicated by any investigation or decision-making with regard to possible penalties or sanctions.

**Response to Request No. 1:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks "all documents that discuss or relate to" certain committees, individuals, or groups, and "all documents that discuss or relate to the rights of individuals or entities that might be implicated by any investigation or decision-making with regard to possible penalties or sanctions." Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases "relate in any way," "all documents that discuss or relate to the rights of," "records of telephone calls," and "other forms of communication." Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Subject to and without waiving his General or Specific Objections, including the objection to the definition of "NCAA investigation" in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure

and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 2:**

Please produce all documents that relate in any way to Joe Paterno, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding Joe Paterno.

**Response to Request No. 2:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks "all documents that relate in any way to Joe Paterno" regardless of subject matter. Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases "relate in any way," "records of telephone calls," and "other forms of communication." Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Subject to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 3:**

Please produce all documents that relate in any way to Jerry Sandusky, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding Jerry Sandusky.

**Response to Request No. 3:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of

admissible evidence to the extent it seeks “all documents that relate in any way to Jerry Sandusky” regardless of subject matter. Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases “relate in any way,” “records of telephone calls,” and “other forms of communication.” Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant’s contacts or lack of contacts with the state of Pennsylvania.

**Request No. 4:**

Please produce all documents that evidence, reflect, or relate in any way to the NCAA enforcement process with respect to Penn State or Plaintiffs named in this suit, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding the NCAA enforcement process.

**Response to Request No. 4:**

Defendant objects to this Request as overly broad in that it calls for the production of documents beyond the scope of the allegations in the Amended Complaint. Defendant objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases “relate in any way,” “records of telephone calls,” and “other forms of communication.” Defendant further objects to this Request to the extent that it implies that the procedures set forth in Article 19 and Article 32 of the Bylaws applied to Penn State and Plaintiffs in these circumstances. Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject to and without waiving his General or Specific Objections,

including the objection to the definition of “NCAA enforcement process” in Definition No. 18, and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure that relate to or reflect Defendant’s contacts or lack of contacts with the state of Pennsylvania.

**Request No. 5:**

Please produce all documents that evidence, reflect, or relate to action by the NCAA enforcement staff or NCAA Committee on Infractions (including the committee’s liaisons) with respect to Penn State or Plaintiffs named in this suit, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding action by the NCAA Committee on Infractions.

**Response to Request No. 5:**

Defendant objects to this Request as overly broad in that it calls for the production of documents beyond the scope of the allegations in the Amended Complaint. Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases “records of telephone calls” and “other forms of communication.” Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant’s contacts or lack of contacts with the state of Pennsylvania.

**Request No. 6:**

Please produce all documents that evidence, reflect, or relate to in any way to the NCAA appeals process with respect to Penn State or Plaintiffs named in this suit, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding the NCAA appeals process.

**Response to Request No. 6:**

Defendant objects to this Request as overly broad in that it calls for the production of documents beyond the scope of the allegations in the Amended Complaint. Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases “relate to in any way,” “records of telephone calls,” and “other forms of communication.” Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject to and without waiving his General or Specific Objections, including the objection to the definition of “NCAA appeals process” in Definition No. 19, and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant’s contacts or lack of contacts with the state of Pennsylvania.

**Request No. 7:**

Please produce all documents that evidence, reflect, or relate to action by the NCAA Infractions Appeals Committee (including the committee’s liaisons) with respect to Penn State or Plaintiffs named in this suit, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding action by the Infractions Appeals Committee.

**Response to Request No. 7:**

Defendant objects to this Request as overly broad in that it calls for the production of documents beyond the scope of the allegations in the Amended Complaint. Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases “records of telephone calls” and “other forms of communication.” Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject



to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 8:**

Please produce all documents that evidence, reflect, or relate to communications between the NCAA and Penn State relating to the NCAA investigation, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication relating to the NCAA investigation.

**Response to Request No. 8:**

Defendant objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases "records of telephone calls" and "other forms of communication." Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Subject to and without waiving his General or Specific Objections, including the objection to the definition of "NCAA investigation" in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 9:**

Please produce all documents that evidence, reflect, or relate to communications between the NCAA and the Freeh Firm, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication relating to the NCAA investigation or the Freeh investigation.

**Response to Request No. 9:**

Defendant objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases "records of telephone calls" and "other

forms of communication.” Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject to and without waiving his General or Specific Objections, including the objection to the definition of “NCAA investigation” in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant’s contacts or lack of contacts with the state of Pennsylvania.

**Request No. 10:**

Please produce all documents that evidence, reflect, or relate to communications between the NCAA and any third party relating to the NCAA investigation, including, but not limited to, communications with involved individuals, witnesses, or sources of information relating to Penn State.

**Response to Request No. 10:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks “communications between the NCAA and any third party.” Defendant further objects to this Request to the extent it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege, to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control, and to the extent it seeks discovery of information that is publicly available and, therefore, of no greater burden to Plaintiff to obtain as the burden imposed upon Defendant. Subject to and without waiving his General or Specific Objections, including the objection to the definition of “NCAA investigation” in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will

produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 11:**

Please produce all documents that evidence, reflect, or relate to communications between the NCAA and any third party relating to the Freeh investigation, including all notes or records of telephone calls, emails, letters, or other forms of communication regarding the Freeh investigation.

**Response to Request No. 11:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks "communications between the NCAA and any third party." Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases "records of telephone calls" and "other forms of communication." Defendant further objects to this Request to the extent it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege, to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control, and to the extent it seeks discovery of information that is publicly available and, therefore, of no greater burden to Plaintiff to obtain as the burden imposed upon Defendant. Subject to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 12:**

Please produce all documents that evidence, reflect, or relate to communications between the NCAA and representatives of the Big Ten athletic conference, including but not limited to the

Commissioner or its outside legal counsel, regarding the Freeh investigation or the NCAA investigation.

**Response to Request No. 12:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks “communications between the NCAA and representatives of the Big Ten athletic conference.” Defendant further objects to this Request as vague and ambiguous in its use of the term “representatives of the Big Ten athletic conference.” Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject to and without waiving his General or Specific Objections, including the objection to the definition of “NCAA investigation” in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant’s contacts or lack of contacts with the state of Pennsylvania.

**Request No. 13:**

Please produce all documents that evidence, reflect, or relate in any way to the Consent Decree, including all drafts of the Consent Decree, all documents reflecting communications regarding any draft of the Consent Decree, and all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding the Consent Decree.

**Response to Request No. 13:**

Defendant objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases “relate in any way,” “records of telephone calls,” and “other forms of communication.” Defendant further objects to this Request to the extent it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege, to the extent it requires Defendant to identify and

produce documents not within Defendant's possession, custody, or control, and to the extent it seeks discovery of information that is publicly available and, therefore, of no greater burden to Plaintiff to obtain as the burden imposed upon Defendant. Subject to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 14:**

Please produce all documents that evidence, reflect, or relate to involvement by you or Emmert on any matters involving Penn State, Jerry Sandusky, or Joe Paterno, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication.

**Response to Request No. 14:**

Defendant objects to this Request as overly broad in that it calls for the production of documents beyond the scope of the allegations in the Amended Complaint. Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks documents regarding Emmert or Ray's involvement "on any matters involving Penn State, Jerry Sandusky, or Joe Paterno." Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases "involvement by," "records of telephone calls," and "other forms of communication." Defendant further objects to this Request to the extent it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege, to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control, and to the extent it seeks discovery of information that is publicly available and, therefore, of no greater burden to Plaintiff to obtain as the burden imposed upon Defendant.

Subject to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 15:**

Please produce all documents that evidence, reflect, or relate to the NCAA's decision to deny appeal rights to the Plaintiffs named in this suit.

**Response to Request No. 15:**

Defendant objects to this Request on the grounds that it is vague and ambiguous in its use of the phrase "decision to deny appeal rights." Defendant object to this characterization of the facts, including to the extent it implies Plaintiffs named in this suit had any "appeal rights." Defendant further objects to this Request to the extent it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege, to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control, and to the extent it seeks discovery of information that is publicly available and, therefore, of no greater burden to Plaintiff to obtain as the burden imposed upon Defendant. Subject to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 16:**

Please produce all documents that evidence, reflect, or relate to any travel, communications or contacts by you or Emmert with Penn State, the Plaintiffs named in this suit, or any resident in Pennsylvania in connection with any issue addressed in or related to the allegations of the Complaint, including but not limited to the incidents involving Sandusky, the Consent Decree, the NCAA investigation, the Freeh Firm, and the imposition of sanctions on Penn State.

**Response to Request No. 16:**

Defendant objects to this Request as overly broad in that it calls for the production of documents beyond the scope of the allegations in the Amended Complaint. Defendant objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks “travel, communications or contacts . . . [with] any resident in Pennsylvania.” Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject to and without waiving his General or Specific Objections, including the objection to the definition of “NCAA investigation” in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant’s contacts or lack of contacts with the state of Pennsylvania.

**Request No. 17:**

Please produce all documents that evidence, reflect, or relate to communications to or from you, Emmert, or any other NCAA employee or committee member (or communications on which either of them was copied or received as a forwarded message) and anyone affiliated with Penn State, including but not limited to Penn State President Rodney Erickson or Gene Marsh.

**Response to Request No. 17:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks “communications . . . [with] anyone affiliated with Penn State” without regard to the subject matter of the communication. Defendant further objects to this Request as vague and ambiguous in its use of the term “any other NCAA employee or committee member.” Defendant further objects to this Request to the extent it requires Defendant

to identify and produce documents not within Defendant's possession, custody, or control and to the extent it seeks discovery of information that is publicly available and, therefore, of no greater burden to Plaintiff to obtain as the burden imposed upon Defendant. Subject to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 18:**

Please produce all documents that evidence, reflect, or relate to communications to or from you, Emmert, or any other NCAA employee or committee member (or communications on which either of them was copied or received as a forwarded message) and anyone located in Pennsylvania regarding Penn State, the Consent Decree, the NCAA investigation, the Freeh Firm, the imposition of sanctions on Penn State, or the incidents involving Sandusky.

**Response to Request No. 18:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks "communications . . . [with] anyone located in Pennsylvania." Defendant further objects to this Request as vague and ambiguous in its use of the term "any other NCAA employee or committee member." Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control and to the extent it seeks discovery of information that is publicly available and, therefore, of no greater burden to Plaintiff to obtain as the burden imposed upon Defendant. Subject to and without waiving his General or Specific Objections, including the objection to the definition of "NCAA investigation" in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will



produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 19:**

Please produce all documents that evidence, reflect, or relate to communications between anyone at the Freeh Firm and you, Emmert, any NCAA employees, or NCAA committee members, including communications from the Freeh Firm on which you, Emmert or any NCAA employee or committee member was copied or received as a forwarded message.

**Response to Request No. 19:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks "communications . . . [with] anyone at the Freeh Firm" without regard to the subject matter of the communication and to the extent that it seeks "communications . . . [with] any NCAA employee." Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Subject to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 20:**

Please produce all documents that evidence, reflect, or relate to communications to or from you, Emmert, or any other NCAA employee or committee member (or communications on which either of them was copied or received as a forwarded message) regarding the Executive Committee resolution authorizing sanctions against Penn State.

**Response to Request No. 20:**

Defendant objects to this Request on the grounds that it is vague and ambiguous in its use of the phrase "Executive Committee resolution authorizing sanctions against Penn State."

Defendant further objects to this Request as vague and ambiguous in its use of the term “any other NCAA employee or committee member.” Defendant further objects to this Request to the extent it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege and to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant’s contacts or lack of contacts with the state of Pennsylvania.

**Request No. 21:**

Please produce all documents that evidence, reflect, or relate to communications by you, Emmert or any other NCAA employee or committee member that discuss, refer, or relate to the Plaintiffs named in this suit, or other current or former Penn State personnel, including but not limited to Graham Spanier, Timothy Curley, Gary Schultz, Jerry Sandusky, or any current or former football players, football coaches, or Penn State administrators.

**Response to Request No. 21:**

Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks “communications . . . that discuss, refer, or relate to . . . current or former Penn State personnel” including “any current or former football players, football coaches, or Penn State administrators” without regard to the subject matter of the communication. Defendant further objects to this Request as vague and ambiguous in its use of the term “any other NCAA employee or committee member.” Defendant further objects to this Request to the extent it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege and to the extent it requires Defendant to identify and produce documents not within Defendant’s possession, custody, or control. Subject

to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 22:**

Please produce all documents that evidence, reflect, or relate to the role or authority of you or Emmert with respect to the NCAA investigation of Penn State.

**Response to Request No. 22:**

Defendant objects to this Request on the grounds that it is vague and ambiguous in its use of the phrase "role or authority." Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Subject to and without waiving his General or Specific Objections, including the objection to the definition of "NCAA investigation" in Definition No. 15, and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 23:**

Please produce all documents that evidence, reflect, or relate to the role or authority of you or Emmert with respect to the NCAA's response to the appeals by the Plaintiffs in this suit to the Consent Decree.

**Response to Request No. 23:**

Defendant objects to this Request on the grounds that it is vague and ambiguous in its use of the phrase "role or authority." Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Subject to and without waiving his General or Specific Objections and

subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 24:**

Please produce all documents that evidence, reflect, or relate to the awareness or belief by you or Emmert of effects of the Consent Decree on the Plaintiffs named in this suit.

**Response to Request No. 24:**

Defendant objects to this Request on the grounds that it is vague and ambiguous in its use of the phrase "awareness or belief . . . of effects of the Consent Decree." Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Subject to and without waiving his General or Specific Objections and subject to the entry of a mutually-agreeable protective order, Defendant responds that he will produce responsive documents, if any, that are not privileged or protected from disclosure and that relate to or reflect Defendant's contacts or lack of contacts with the state of Pennsylvania.

**Request No. 25:**

Please produce all documents that evidence, reflect, or relate to action by the Chair of the NCAA Committee on Infractions without a committee meeting, including all notes or records of telephone calls, memos, emails, letters, or other forms of communication regarding action by the Chair of the NCAA Committee on Infractions without a committee meeting.

**Response to Request No. 25:**

Defendant objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases "action by the Chair of the NCAA Committee on Infractions without a committee meeting," "records of telephone calls" and "other forms of communication." Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or

control. Defendant further objects to this Request on the grounds that it is unduly burdensome, overly broad, premature, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks documents related to a dismissed breach of contract claim and to the extent it seeks documents from the arbitrary and overly broad date range of January 1, 2000 through the present.

**Request No. 26:**

Please produce all documents that evidence, reflect, or relate to the NCAA's interpretation of the term "involved individual," including documents that relate in any way to the contentions that only individuals who are sanctioned in an investigation are "involved individuals."

**Response to Request No. 26:**

Defendant objects to this Request as overly broad and unduly burdensome to the extent it seeks discovery of confidential and/or proprietary business information or documents or information for which Defendant owes a third party an obligation of confidentiality. Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Defendant further objects to this Request on the grounds that it is unduly burdensome, overly broad, premature, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks documents related to a dismissed breach of contract claim and to the extent it seeks documents from the arbitrary and overly broad date range of January 1, 2000 through the present.

**Request No. 27:**

Please produce all documents that evidence, reflect, or relate to the provision of notice to any "involved individual" with regard to any NCAA enforcement action, including copies of the notice.

**Response to Request No. 27:**

Defendant objects to this Request as overly broad and unduly burdensome to the extent it seeks discovery of confidential and/or proprietary business information or documents or information for which Defendant owes a third party an obligation of confidentiality. Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Defendant further objects to this Request on the grounds that it is unduly burdensome, overly broad, premature, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks documents related to a dismissed breach of contract claim and to the extent it seeks documents from the arbitrary and overly broad date range of January 1, 2000 through the present.

**Request No. 28:**

Please produce all documents that evidence, reflect, or relate to any instance in which the NCAA has imposed, as a penalty on a member institution, the vacation or voiding of athletic records that did not involve a student-athlete competing while ineligible.

**Response to Request No. 28:**

Defendant objects to this Request as overly broad and unduly burdensome to the extent it seeks discovery of confidential and/or proprietary business information or documents or information for which Defendant owes a third party an obligation of confidentiality. Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Defendant further objects to this Request on the grounds that it is unduly burdensome, overly broad, premature, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks documents related to a dismissed breach of contract claim and to the extent it

seeks documents from the arbitrary and overly broad date range of January 1, 2000 through the present.

**Request No. 29:**

Please produce all documents that evidence, reflect, or relate to any instance in which the NCAA has expressly required that the career record of a coach reflect the vacation or voiding of wins by an athletic program for any reason.

**Response to Request No. 29:**

Defendant objects to this Request as overly broad and unduly burdensome to the extent it seeks discovery of confidential and/or proprietary business information or documents or information for which Defendant owes a third party an obligation of confidentiality. Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Defendant further objects to this Request on the grounds that it is unduly burdensome, overly broad, premature, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks documents related to a dismissed breach of contract claim and to the extent it seeks documents from the arbitrary and overly broad date range of January 1, 2000 through the present.

**Request No. 30:**

Please produce all documents that evidence, reflect, or relate to the NCAA's response to the assertion of appeal rights by any individual who was identified by name in a notice of violation, consent decree, or other official notice of action by the NCAA, including but not limited to any documents relating to any instance in which the NCAA has taken the position that an individual identified by name in a notice of violation, consent decree, or other official notice of action by the NCAA did not have a right to appeal.

**Response to Request No. 30:**

Defendant objects to this Request as overly broad and unduly burdensome to the extent it seeks discovery of confidential and/or proprietary business information or documents or

information for which Defendant owes a third party an obligation of confidentiality. Defendant further objects to this Request to the extent it requires Defendant to identify and produce documents not within Defendant's possession, custody, or control. Defendant further objects to this Request on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome in its use of the phrases "NCAA's response to the assert of appeal rights" and "taken the position." Defendant further objects to this Request on the grounds that it is unduly burdensome, overly broad, premature, and seeks documents that are not reasonably calculated to result in discovery of admissible evidence to the extent it seeks documents related to a dismissed breach of contract claim and to the extent it seeks documents from the arbitrary and overly broad date range of January 1, 2000 through the present.

Dated: February 18, 2014



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

Lori Alvino McGill (admitted *Pro Hac Vice*, DC No. 976496)

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Email: tscott@killiangephart.com

*Counsel for Defendants*



**CERTIFICATE OF SERVICE**

I, Brian E. Kowalski, hereby certify that I am serving the foregoing Response to First Requests for Production of Documents by Plaintiff George Scott Paterno as Duly Appointed Representative of the Estate and Family of Joseph Paterno to Defendant Edward Ray on the following by First Class Mail and email:

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Email: tjw@goldbergkatzman.com

Wick Sollers  
L. Joseph Loveland  
Mark A. Jensen  
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Dated: February 18, 2014

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John J. Commisso  
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*Attorney for Defendants*

## **EXHIBIT E**

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Patricia L. Maher  
Direct Dial: +1 202 626 5504  
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Via E-mail and First Class Mail

February 24, 2014

Everett C. Johnson, Jr.  
Lori Alvino McGill  
Latham & Watkins LLP  
555 Eleventh Street, N.W.  
Suite 1000  
Washington, D.C. 20004-1304

**Re: *Paterno v NCAA et al*, Docket No. 2013-2082**

Dear Counsel:

We have reviewed the discovery responses served on behalf of Defendants Emmert, Ray and the NCAA, and have discussed them with Pennsylvania counsel. We write to ask you to address immediately clear deficiencies in the responses.

First, none of the responses identifies what will be produced and what won't be produced, and certain responses do not indicate that anything will be produced or that there are no responsive documents, as required. Pa. R.C.P. 4009.12(b).

Second, a written response alone is insufficient and you have not indicated when and where responsive documents or things will be made available. The rules specify that documents be produced or made available for review as well. Pa. R.C.P. 4009.12(a). We find it hard to believe the Defendants do not have any non-objectionable, responsive documents to produce at this time.

Third, the many objections make it impossible to understand what will be made available or produced and what is to be withheld based on the objections. Not only are the objections numerous, but many are unreasonable. For example, the assertions that the definitions of commonplace terms used in the requests such as "You," "Document," and "identify" are "vague, overly broad, and unduly burdensome" are hard to fathom. And the fact that documents may be

Everett C. Johnson, Jr.  
Lori Alvino McGill  
February 24, 2014  
Page 2

available from another source does not relieve Defendants of their obligation under the rules of discovery.

Fourth, the document responses are not signed and verified by the parties as the Pennsylvania rules require. Pa. R.C.P. 4009.12(c).

Finally, while you suggest that you are withholding production of documents pending agreement on a proposed protective order, you have not provided us with a draft of any such order, and we frankly doubt that many, if any, responsive documents are in fact confidential in a matter that has received so much publicity. Certainly the vast majority of documents are not confidential and should be produced immediately. While we are willing to review an appropriate order to protect anything that is truly confidential, we are not agreeable to Defendants withholding production of all documents pending agreement on the terms of the order.

In short, the lack of any document production and the impenetrable written responses are unacceptable. We will not catalogue in this letter every concern we have with the written responses as we would if we were seeking to meet and confer because such a conference would be premature with no documents and very little information. Instead, we request that you provide proper responses and produce responsive documents that are not being withheld because of an objection no later than March 3. If you intend to stand on the responses that have already been provided, please advise so that we may seek a discovery conference with the Court.

Sincerely,



Patricia L. Maher

cc: Thomas W. Scott  
Brian Kowalski  
Sarah Gragert  
Daniel I. Booker  
Paul V. Kelly  
John J. Commisso  
Thomas J. Weber

## **EXHIBIT F**

## LATHAM & WATKINS LLP

February 28, 2014

### VIA EMAIL AND FEDERAL EXPRESS

Wick Sollers  
L. Joseph Loveland  
Mark A. Jensen  
Ashley C. Parrish  
Patricia Maher  
King & Spalding LLP  
1700 Pennsylvania Avenue, NW  
Washington, DC 20006

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Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.

Re: Paterno, et al. v. NCAA, et al., Civil Div. No. 2013-2082

Dear Counsel:

I write in response to your letter dated February 24, 2014. At the outset, we do not believe there are any deficiencies in the objections and responses provided to you by the NCAA and Defendants Emmert and Ray on February 18, 2014. Nor are our written responses “impenetrable” in any way. But, for the sake of clarity and in hopes of a more productive discourse soon, we will set forth our position again:

- As its written responses make plain, the NCAA intends to produce non-privileged documents responsive to Plaintiffs’ Document Requests (the “Requests”) 1-24, if any, subject to the NCAA’s reasonable and limited objections<sup>1</sup> and the entry of a mutually-agreeable protective order.
- Likewise, subject to similar reasonable objections, Defendants Emmert and Ray intend to produce documents responsive to Requests 1-24, if any, to the extent such documents

---

<sup>1</sup> The NCAA’s objections are both reasonable and appropriately tailored to your Requests. Of course, there is nothing unreasonable about objecting on grounds such as privilege or lack of possession, custody or control, or to the extent they require the NCAA to identify and produce “all” responsive documents, rather than those reasonably identified by a diligent search of files that are most likely to contain such documents. Nor have we objected to the “definitions of commonplace terms”; we are objecting to your decidedly uncommon and overbroad definition of those terms. For example, your definition of “Document” required an entire page of single-spaced type. Likewise, your definition of “communication” would require the impossible production of “any . . . oral conversation.” Our objections are thus plainly warranted.

relate to or reflect their contacts or lack of contacts with the state of Pennsylvania. Given their outstanding assertion that the court lacks jurisdiction over them, production tailored to the outstanding jurisdictional question is entirely appropriate. And, naturally, Defendant Emmert—as president of the NCAA—will defer to the NCAA to produce responsive documents that are under its custody and control.

- The NCAA understands Requests 25-30 to relate solely to the breach of contract claims that the Court dismissed in its January 7, 2014 order. Until the Court resolves Defendants' forthcoming preliminary objections to those claims, the NCAA believes it is premature and unduly burdensome to respond to those requests. In any event, as the NCAA explained in its specific objections, Requests 25-30 are extremely overbroad, seek documents dating back more than fourteen years, and implicate significant confidentiality obligations that are owed to third-parties under the NCAA's bylaws. For these reasons, the NCAA proposes that if the Court ultimately determines that Plaintiffs' re-asserted contract claims may move forward, the parties should meet and confer about an appropriate response to Requests 25-30.

As you must be aware, the Requests you served are extraordinarily broad and will require a large-scale review and production. It is not possible to identify with any greater specificity which documents will and will not be produced at this time, in advance of our review of all of the potentially responsive documents. Currently, we have already collected nearly 400,000 documents and continue to collect additional documents and to proceed diligently with the electronic discovery process. We expect that in approximately one week we will be in a position to provide you with a better estimate of the timing of our first production, subject to an agreed upon protective order. As we complete our review of the potentially responsive documents, we intend to produce documents on a rolling basis, and will then be in a position to provide any appropriate verifications under Pa. R. C. P. 4009.12(c). Until that time, party verification of legal responses and objections is not required.

Further, your statements about the need for a protective order in this case do not take proper account of the breadth and subject matter of the Requests. Much of the information you specifically requested is customarily treated as confidential and proprietary by the NCAA, and the NCAA bylaws *require* that a significant portion of what you have requested be kept confidential. Indeed, an appropriate protective order will likely be quite valuable to your clients when they begin production in response to the NCAA's forthcoming discovery requests. We are currently preparing a draft, proposed protective order for the parties' collective consideration, and will be in a position to distribute it in short order. In the meantime, we will continue our diligent efforts to prepare a response to the Requests.

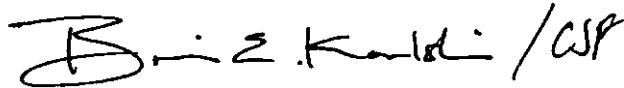
At bottom, your Requests do not call for a small or straightforward production. The suggestion that we identify—right now—what specific documents will and will not be produced is inconsistent with the realities and the scope of your Requests, and also unnecessary given the fact that it remains unclear which of your claims will even survive the next round of preliminary objections. During our telephone call on Monday, February 17, 2014, I proposed that we speak about the Requests once you had the opportunity to review our written responses. Contrary to the sentiment expressed in your letter, we remain open and willing to do so. We certainly

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believe it is a far better course than burdening the Court's limited resources with a request for a discovery conference at this stage in the case.

Please let me know if you would like to arrange a time to discuss these items further. In the meantime, we intend to continue our diligent efforts to respond appropriately to the Requests.

Best Regards,

A handwritten signature in black ink that reads "Brian Kowalski / CSP". The signature is stylized with a large, looped "B" and a cursive "Kowalski".

Brian Kowalski  
of LATHAM & WATKINS LLP

cc: Thomas W. Scott  
Daniel I. Booker  
Thomas J. Weber  
Paul V. Kelly  
John J. Commisso



## **EXHIBIT G**

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## LATHAM & WATKINS LLP

February 24, 2014

### VIA EMAIL

Wick Sollers  
L. Joseph Loveland  
Mark A. Jensen  
Ashley C. Parrish  
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Hamburg	San Francisco
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.

Re: Paterno, et al. v. NCAA, et al., Civil Div. No. 2013-2082

Dear Counsel:

We write on behalf of Defendants National Collegiate Athletic Association ("NCAA"), Mark Emmert, and Edward Ray (collectively, "NCAA Defendants") in the above-captioned litigation. We have received the notices of intent by Plaintiff George Scott Paterno, as duly appointed representative of the Estate and Family of Joseph Paterno ("Paterno"), by and through counsel, to serve subpoenas for the production of documents to the Big Ten Athletic Conference and to Mayer Brown LLP (the "Subpoenas"). The NCAA Defendants will not be filing of record written objections to the Subpoenas pursuant to Pennsylvania Rule of Civil Procedure No. 4009.21(c). However, the NCAA Defendants reserve the right to seek a protective order or object to the production of any particular document(s) requested by the Subpoenas on the basis of privilege, relevance, an obligation of confidentiality owed to a third party, or any other discovery limitation set forth in Pennsylvania Rule of Civil Procedure No. 4011 or any other applicable laws or rules.

Best Regards,



Brian Kowalski  
of LATHAM & WATKINS LLP

cc: Thomas W. Scott  
Daniel I. Booker

**LATHAM & WATKINS<sup>LLP</sup>**

Thomas J. Weber  
Paul V. Kelly  
John J. Commisso

## **EXHIBIT H**

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## LATHAM & WATKINS LLP

March 28, 2014

### VIA EMAIL

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Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.

Re: *Paterno, et al. v. NCAA, et al.*, Civil Div. No. 2013-2082

Dear Counsel:

We wanted to follow up on our discussions of March 13 and 19, 2014 regarding the Paterno Estate's discovery requests to the NCAA, Dr. Mark Emmert, and Dr. Edward Ray (collectively, the "NCAA Defendants").

We have been diligently working to respond to the requests and have made significant progress in that regard. In particular:

- The NCAA responded fully to the Paterno Estate's January 17, 2014 interrogatories. Other than confirming that we believe the responses are complete, you have not identified any concerns to us about the content of our responses.
- The NCAA has agreed to produce documents in response to Requests 1-24 of the Paterno Estate's document requests, which generally relate to the events leading up to and surrounding the NCAA's and Penn State's agreement to enter into the Consent Decree. To that end, we have already collected over 800,000 electronic files from twenty-three custodians; we have applied search terms to that data in order to identify potentially responsive documents; and a team of lawyers is currently reviewing the documents that

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were identified by our search terms for responsiveness, privilege, and confidentiality. At your request, we shared our search terms and list of custodians with you, and we are in the process of evaluating the suggestions you provided. Last week, on March 21, 2014, we produced 760 pages of responsive documents.

- With respect to the document requests you directed to Dr. Emmert and Dr. Ray, we have agreed, subject to certain reasonable objections, to produce documents that are responsive to your requests and that relate to Dr. Emmert's and Dr. Ray's contacts or lack of contacts with Pennsylvania. During our March 13, 2014 call, you agreed that was a reasonable approach given these Defendants' outstanding personal jurisdiction objections. As we have discussed, Dr. Emmert's response to the requests will be subsumed into the NCAA's own production. And we are currently reviewing and readying for production documents collected from Dr. Ray.

At your request, we also wanted to confirm our position with respect to Requests 25-30 of the Paterno Estate's document requests to the NCAA, Dr. Emmert, and Dr. Ray. As you know, those requests call for the production of documents and information that are not related to the Penn State Consent Decree, but instead relate to all pending and historical NCAA enforcement and infractions matters dating back to January 1, 2000. For example, you have asked for "*all* documents that evidence, reflect, or relate to the provision of notice to *any* 'involved individual' with regarding to *any* NCAA enforcement action." First Requests for Production of Documents, Request No. 27 (emphasis added). These six requests are extraordinarily broad and burdensome, as the NCAA handles thousands of enforcement matters every year. These requests also implicate significant confidentiality obligations owed to numerous third parties (including both NCAA member institutions and individuals), which have absolutely nothing to do with this litigation. Moreover, the NCAA understands that these requests relate solely to the breach of contract claims that the Court dismissed in its January 7, 2014 Order. While Plaintiffs have attempted to re-plead these claims (though now on behalf of the Paterno Estate and Trustee Clemens only), we have asserted substantial legal objections to them which very well could result in their dismissal once again.

For these reasons, we continue to propose staging discovery such that, at this time, we would focus our efforts on producing documents responsive to Requests 1-24, subject to our limited and reasonable objections. If the Court ultimately determines that Plaintiffs' re-asserted contract claims may move forward (and we think they should not), the parties should then meet and confer to determine an appropriately narrowed response to Requests 25-30 and, at that time, address the significant confidentiality issues presented by those requests. In the meantime, we do not believe it is appropriate to produce such highly sensitive documents before there is any certainty that the claims to which they relate will even survive preliminary objections.

Under our proposed approach, we would still produce a substantial volume of documents to you on a rolling basis (*i.e.*, those documents responsive to Requests 1-24) without awaiting any ruling on our recently filed preliminary objections. And the ultimate conclusion of discovery in this case would not be delayed at all, because we expect that (to the extent the Court does not dismiss the case in its entirety) substantial discovery will continue following the Court's ruling on our preliminary objections. We believe this approach appropriately balances your

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interests in pursuing discovery in this case with (1) the burden placed on the NCAA Defendants in responding and (2) the important interests of numerous non-party member institutions and individuals.

We very much appreciate the ongoing dialogue concerning discovery matters in this case, and are happy to discuss them further at any time.

Best regards,

A handwritten signature in black ink, appearing to read 'B. Kowalski', with a long horizontal flourish extending to the right.

Brian E. Kowalski  
of LATHAM & WATKINS LLP

cc: Thomas W. Scott  
Daniel I. Booker  
Thomas J. Weber  
Paul V. Kelly  
John J. Commisso

# **EXHIBIT H**



## **EXHIBIT I**

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

GEORGE SCOTT PATERNO, as duly appointed representative of )  
the ESTATE and FAMILY of JOSEPH PATERNO; )

RYAN MCCOMBIE, ANTHONY LUBRANO, )  
AL CLEMENS, and ADAM TALIAFERRO, members of the )  
Board of Trustees of Pennsylvania State University; )

PETER BORDI, TERRY ENGELDER, )  
SPENCER NILES, and JOHN O'DONNELL, )  
members of the faculty of Pennsylvania State University; )

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

ANTHONY ADAMS, GERALD CADOGAN, )  
SHAMAR FINNEY, JUSTIN KURPEIKIS, )  
RICHARD GARDNER, JOSH GAINES, PATRICK MAUTI, )  
ANWAR PHILLIPS, and MICHAEL ROBINSON, former )  
football players of 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. )

Civil Division

Docket No. 2013-  
2082

**JOINT STIPULATION REGARDING**  
**RESPONSES TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

Whereas, on February 5, 2014, Plaintiffs filed a First Amended Complaint (the "Amended Complaint") in this action;

Whereas Plaintiffs and Defendant the National Collegiate Athletic Association, Mark Emmert, and Edward Ray (collectively, "NCAA Defendants") previously agreed that any response to an Amended Complaint, including preliminary objections, would be due on or before March 7, 2014;

Whereas the Amended Complaint named The Pennsylvania State University ("Penn State") as a party;

Whereas, based on the date Penn State was served with a copy of the Amended Complaint, Penn State's preliminary objections, if any, would be due on or before March 17, 2014;

Whereas the parties believe it is proper and efficient to establish a uniform briefing schedule across all parties with respect to any preliminary objections;

Therefore, the parties, by and through undersigned counsel, agree and jointly stipulate as follows:

1. The NCAA Defendants and Penn State shall each file preliminary objections—or otherwise respond—to Plaintiffs' Amended Complaint on or before March 17, 2014;

2. Plaintiffs' response to the NCAA Defendants' preliminary objections and Penn State's preliminary objections shall be due on or before April 16, 2014;
3. The NCAA Defendants' reply and Penn State's reply to Plaintiffs' response shall be due on or before May 6, 2014.

**AGREED TO BY:**

Wick Sollers

Wick Sollers

(admitted *Pro Hac Vice*)

L. Joseph Loveland

(admitted *Pro Hac Vice*)

Mark A. Jensen

(admitted *Pro Hac Vice*)

Ashley C. Parrish

(admitted *Pro Hac Vice*)

KING & SPALDING LLP

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Telephone: (202) 737-0500

Email: wsollers@kslaw.com

jloveland@kslaw.com

mjensen@kslaw.com

aparrish@kslaw.com

[Additional counsel listed on next page]

Thomas W. Scott

Thomas W. Scott (No. 15681)

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Harrisburg, PA 17108-0886

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

Lori Alvino McGill (admitted *Pro Hac Vice*, DC No. 976496)

LATHAM & WATKINS LLP

555 Eleventh Street NW

Suite 1000

Washington, D.C. 20004-1304

Telephone: (202) 637-2200

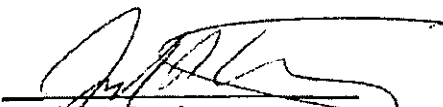
Email: Everett.Johnson@lw.com

Lori.Alvino.Mcgill@lw.com

Counsel for NCAA Defendants

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(admitted *Pro Hac Vice*)  
John J. Commisso  
(admitted *Pro Hac Vice*)  
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*Counsel for Plaintiff*



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Jack B. Cobetto  
Donna M. Doblick  
Reed Smith LLP  
Reed Smith Centre  
225 Fifth Avenue, Suite 1200  
Pittsburgh, PA 15222  
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Michael T. Scott  
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2500 One Liberty Place  
1650 Market Street  
Philadelphia, Pennsylvania 19103  
Telephone: (215) 851-8248  
Email: mscott@reedsmith.com

*Counsel for The Pennsylvania State  
University*

**SO ORDERED.**

BY THE COURT:

---

John B. Leete, Senior Judge  
Specially Presiding

### CERTIFICATE OF SERVICE

I, Thomas W. Scott, hereby certify that I am serving the foregoing Joint Stipulation Regarding Responses to Plaintiffs' First Amended Complaint by First Class Mail and email to:

Thomas J. Weber  
GOLDBERG KATZMAN, P.C.  
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L. Joseph Loveland  
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Email: dbooker@reedsmith.com  
jcobetto@reedsmith.com  
ddoblick@reedsmith.com

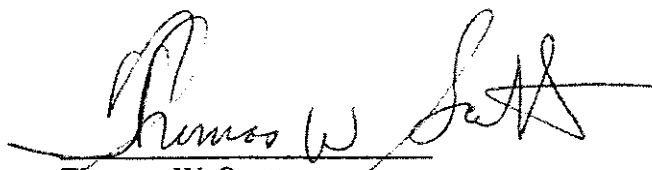
Michael T. Scott  
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Telephone: (215) 851-8248  
Email: mscott@reedsmith.com

*Counsel for The Pennsylvania State  
University*

Via Federal Express, Overnight  
The Honorable John B. Leete, S. J.  
Potter County Courthouse, Room 30  
One East Second Street  
Coudersport, PA 16915

*Counsel for Plaintiffs*

Dated: March 3, 2014

A handwritten signature in black ink, appearing to read "Thomas W. Scott", with a long horizontal flourish extending to the right.

Thomas W. Scott  
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Harrisburg, PA 17108-0886  
Telephone: (717) 232-1851  
Email: tscott@killiangephart.com

*Attorney for NCAA Defendants*

## **EXHIBIT J**



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Patricia L. Maher  
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Direct Fax: +1 202 626 3737  
pmaher@kslaw.com

## Via Email and First Class Mail

March 19, 2014

Brian Kowalski  
Latham & Watkins LLP  
555 Eleventh Street, N.W.  
Suite 1000  
Washington, D.C. 20004-1304

*Re: Paterno v NCAA et al.*

Dear Brian,

I am writing as a follow up to our discussion this afternoon about our outstanding requests for Production of Documents to the NCAA and the individual defendants. We are disappointed that we have made so little progress since receiving written responses to the requests a month ago, on February 18, and that we still have received no documents and no responses identifying what will be produced. As I told you, we have concluded that it appears that we will have to seek a discovery conference with the Court.

When we spoke last week, we discussed the NCAA's responses to Requests Nos. 25-30, and its position that it would not produce responsive documents until after the Court rules on the preliminary objections to the First Amended Complaint. You indicated that you consider these requests "premature" because the Court may dismiss the counts to which you believe they are relevant, and you do not want to undertake burdensome searches and production before the Court rules. We made clear that we consider the requests relevant to claims of the First Amended Complaint, but we agreed to consider whether there were ways in which we might narrow the scope of those requests and you agreed to consider possible narrowing of the temporal scope of the requests. We also asked that you advise us if the NCAA intends to adhere to its position that it will make no production responsive to these requests until after the Court rules on the Preliminary Objections.

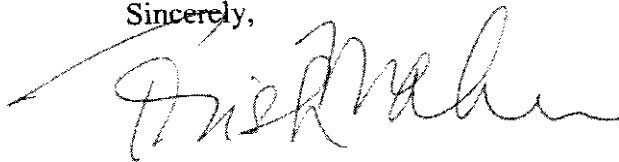
At the outset of our call today, you had been unable to secure any agreement on your side for various reasons, but left open the possibility you might. We told you we were prepared to

Brian Kowalski  
March 19, 2014  
Page 2

discuss possible narrowing of the requests, but you indicated that such narrowing would be just one consideration for the NCAA on whether any production would be made in response to Requests Nos. 25-30. Once you made clear that the NCAA might nevertheless take the position that the Plaintiffs are not entitled to any documents responsive to those six requests until after the Court rules on the preliminary objections to the First Amended Complaint, we were not willing unilaterally to propose narrowing of those requests. We have explained that documents responsive to those requests are relevant to the Preliminary Objections. As such, we are willing to have a discussion about possible narrowing only if the NCAA is willing to undertake production before the Court rules on the preliminary objections. Otherwise, this is something that we will raise at a discovery conference.

Finally, as we advised on the call, we are forwarding a summary the ESI parameters that would be acceptable to all Plaintiffs. We understand that you will provide us with the list of custodians you plan to search for responsive documents, and the search terms you propose to use. We hope that we can work out an ESI protocol acceptable to all parties while we are trying to resolve other discovery issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia L. Maher", with a long, sweeping horizontal line extending to the left.

Patricia L. Maher

Enclosure

cc: Thomas W. Scott  
Everett C. Johnson  
Lori Alvino McGill  
Sarah Gragert  
Daniel I. Booker  
Paul V. Kelly  
John J. Commisso  
Thomas J. Weber

## Document Production Specifications

All documents are to be produced as Group IV single-page TIFF files in the Concordance load-ready format.

- Include associated native files, extracted text, fielded data, OCR, and any linked image files (if applicable).
- Hard copy document are to be produced as imaged files as described below.

When images are produced, they should comply with the following requirements:

- Black and white images must be 300 DPI Group IV single-page TIFF files
- File names cannot contain embedded spaces or special characters
- Images must be endorsed with sequential Bates numbers in lower right corner of each image page

The following fielded data should be included within Concordance load file:

FIELD	DESCRIPTION	TYPE	REQUIRED
Begno	Displays the document identifier of the first page in a document or the entire document of an E-Doc.	Text	YES
Endno	Page ID of the last page in a document (for image collections only).	Text	If it Exists
BegAttach	Displays the document identifier of a parent record.	Text	If it Exists
EndAttach	Displays the document identifier of the last attached document in a family	Text	If it Exists
Custodian	Custodian extracted from metadata of native file	Text	Yes
PgCount	Number of pages in a document (for image collections only).	Text	If it Exists
FileDescription	Description of a native file type.	Text	YES
Filename	Original filename of a native file or the subject of an e-mail message for e-mail records.	Text	YES
RecordType	Displays the record type for each entry in the load file.	Text	YES
ParentID	Displays the document identifier of the attachment record's parent (only for attachments).	Text	If it Exists

NumAttach	Total number of records attached to the document. The value will always be 0 (zero) for the actual attachment records.	Text	If it Exists
Attachmnt	Populates parent records with document identifier of each attached record and is separated by semi-colons.	Text	If it Exists
From	Author of the e-mail message.	Text	If it Exists
To	Main recipient(s) of the e-mail message.	Text	If it Exists
cc	Recipient(s) of "Carbon Copies of the e-mail message,	Text	If it Exists
BCC	Recipient(s) of "Blind Carbon Copies" of the e-mail message.	Text	If it Exists
EMail_Subject	Subject of the e-mail message.	Paragraph	If it Exists
DateSent	Sent date of an e-mail message.	MM/DD/YYYY	If it Exists
TimeSent	Time the e-mail message was sent.	Text	If it Exists
IntMsgID	Internet Message ID assigned to an email message by outgoing server	Text	If it Exists
ConversationIndex	Email Thread identification	Text	If it Exists
EntryID	Unique Identifier of emails in mail stores	Text	If it Exists
Author	Author extracted from metadata of native file	Text	If it Exists
Organization	Company extracted from metadata of native file	Text	If it Exists
Subject	Subject value extracted from metadata of native file	Paragraph	If it Exists
DateCreated	Creation date of Native File	MM/DD/YYYY	If it Exists
DateLastMod	Date Native File last modified	MM/DD/YYYY	If it Exists
MD5HASH	MD5 Hash Value	Text	YES
EDSource	Original Path to source folder, files, and/or mail stores	Text	YES
NativeFile	Hyperlink to Native File	Text	YES
OCRText	Extracted or OCR Text	Paragraph	YES
ImageKey	Page ID of first page of document (for imaged documents)	Paragraph	YES

## **EXHIBIT K**

Brian E. Kowalski  
Direct Dial: (202) 637-1064  
brian.kowalski@lw.com

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www.lw.com

## LATHAM & WATKINS<sup>LLP</sup>

March 21, 2014

### VIA EMAIL AND HAND DELIVERY

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Wick Sollers  
L. Joseph Loveland  
Patricia L. Maher  
Ashley C. Parrish  
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1700 Pennsylvania Avenue, NW  
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#### FIRM / AFFILIATE OFFICES

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Brussels	New York
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Dubai	Riyadh
Düsseldorf	Rome
Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.

Re: Paterno, et al. v. NCAA, et al., Civil Div. No. 2013-2082

Dear Counsel:

Enclosed please find Defendant NCAA's first production of documents in the above-referenced matter bearing the bates-stamps NCAA000000001 – NCAA000000760. As we have discussed with you, we believe a mutually-agreed upon protective order should govern the production of documents in this matter, and we will provide you with a draft for your consideration. We believe such a protective order should memorialize the parties' obligations under Pennsylvania law that documents and information produced in discovery may be used for the purpose of "preparing the litigant's case" only, and that non-public documents obtained through discovery are not to be disseminated to the public. *See MarkWest Liberty Midstream & Res., LLC v. Clean Air Council*, 71 A.3d 337, 345 (Pa. Commw. Ct. 2013) ("[D]iscovery is an open process among the parties to litigation, but it is not an open process between the parties to litigation and the public. Liberal discovery is allowed for the purpose of preparing a litigant's case, and a litigant has no right to disseminate private documents gained through the discovery process. Discovery materials not filed with the court or an agency or used in a litigant's case are not 'public.'") (citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 32-34 (1984)). Pending final agreement on a protective order, we expect that you will treat these materials accordingly.

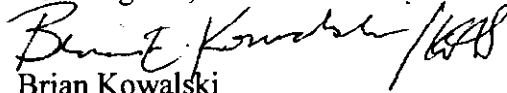
Please note that the enclosed DVD is encrypted. We will send you the password separately via email.

**EXHIBIT K**

LATHAM & WATKINS<sup>LLP</sup>

Please contact me if you have any questions.

Best Regards,

A handwritten signature in black ink, appearing to read "Brian Kowalski", followed by a stylized flourish or set of initials.

Brian Kowalski  
of LATHAM & WATKINS LLP

Enclosure

cc: Daniel I. Booker

## **EXHIBIT L**



Brian E. Kowalski  
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www.lw.com

## LATHAM & WATKINS LLP

April 2, 2014

### VIA EMAIL AND HAND DELIVERY

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4250 Crums Mill Road, Suite 301  
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Harrisburg, PA 17112

Wick Sollers  
L. Joseph Loveland  
Patricia L. Maher  
Ashley C. Parrish  
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Washington, DC 20006

#### FIRM / AFFILIATE OFFICES

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Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.

Re: Paterno, et al. v. NCAA, et al., Civil Div. No. 2013-2082

Dear Counsel:

Enclosed please find Defendant NCAA's second production of documents in the above-referenced matter bearing the bates-stamps NCAA00000761 – NCAA00002941.

As set forth in our previous correspondence, pending final agreement on a protective order, we expect that you will treat the materials in this second production in a manner that is consistent with Pennsylvania law, which provides that documents and information produced in discovery may be used for the sole purpose of "preparing the litigant's case" and that non-public documents obtained through discovery are not to be disseminated to the public. *See MarkWest Liberty Midstream & Res., LLC v. Clean Air Council*, 71 A.3d 337, 345 (Pa. Commw. Ct. 2013) (citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 32-34 (1984)).

Please note that the enclosed DVD is encrypted. We will send you the password separately via email.

EXHIBIT L

LATHAM & WATKINS LLP

Please contact me if you have any questions.

Best Regards,

A handwritten signature in black ink that reads "Brian E. Kowalski" followed by the initials "KAS" in a stylized, cursive script.

Brian Kowalski  
of LATHAM & WATKINS LLP

Enclosure

cc: Daniel I. Booker (without enclosure)  
Jack B. Cobetto  
Donna M. Doblick (without enclosure)

## **EXHIBIT M**

## **Maher, Trish**

---

**From:** Brian.Kowalski@lw.com  
**Sent:** Wednesday, April 02, 2014 5:58 PM  
**To:** Maher, Trish; Daniel I. Booker; JCobetto@ReedSmith.com; DDoblick@ReedSmith.com  
**Cc:** EVERETT.JOHNSON@LW.com; Sarah.Gragert@lw.com; Katherine.Schettig@lw.com; tscott@killiangephart.com  
**Subject:** Paterno v. NCAA -- Protective Order  
**Attachments:** Protective Order 2014\_04\_02.pdf

Counsel –

Attached please find a proposed stipulated confidentiality agreement and protective order for use in the *Paterno v. NCAA* litigation. We are happy to discuss at your convenience.

Regards,

Brian

**Brian E. Kowalski**

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Fax: +1.202.637.2201  
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<http://www.lw.com>

---

To comply with IRS regulations, we advise you that any discussion of Federal tax issues in this e-mail was not intended or written to be used, and cannot be used by you, (i) to avoid any penalties imposed under the Internal Revenue Code or (ii) to promote, market or recommend to another party any transaction or matter addressed herein.

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Latham & Watkins LLP

---

## **EXHIBIT N**

**Maher, Trish**

---

**From:** Maher, Trish  
**Sent:** Wednesday, April 09, 2014 5:40 PM  
**To:** Brian.Kowalski@lw.com; Daniel I. Booker; jcobetto@reedsmith.com; ddoblick@reedsmith.com; Sarah.Gragert@lw.com; katherine.schettig@lw.com; tscott@killiangephart.com; everett.johnson@lw.com  
**Cc:** Sollers, Wick; Loveland, Joe; Parrish, Ashley; Doran, Samuel; Thomas Weber (tjw@goldbergkatzman.com); paul.kelly@jacksonlewis.com; john.commisso@jacksonlewis.com  
**Subject:** Proposed Protective Order



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(7).docx

Brian,

We have reviewed the draft protective order you sent and believe that some of the provisions are overly restrictive in light of the extensive disclosures and publicity about the events giving rise to this litigation. Attached is a markup of the protective order you sent, reflecting our proposed changes. We thought it might be useful for you to see specific revisions in advance of a discussion. Please let us know when you would like to discuss these.

Trish

Trish Maher | King & Spalding LLP  
1700 Pennsylvania Ave., N.W. | Washington, D.C. 20006  
[pmaher@kslaw.com](mailto:pmaher@kslaw.com) | 202-626-5504

**CERTIFICATE OF SERVICE**

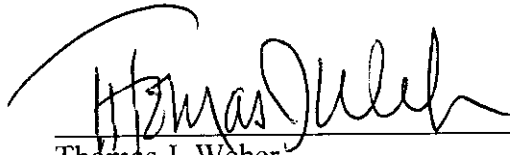
I HEREBY CERTIFY that a true and correct copy of the foregoing **MOTION BY PLAINTIFF GEORGE SCOTT PATERNO AS DULY APPOINTED REPRESENTATIVE OF THE ESTATE AND FAMILY OF JOSEPH PATERNO TO COMPEL PRODUCTION OF DOCUMENTS BY DEFENDANTS EMMERT, RAY AND THE NCAA** was served this 11<sup>th</sup> day of April, 2014 by first class mail and email to the following:

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A handwritten signature in black ink, appearing to read "Thomas J. Weber", written over a horizontal line.

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appointed representative of the Estate and Family  
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