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

ESTATE of JOSEPH PATERNO;

and

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

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (“NCAA”),

MARK EMMERT, individually and as President of the NCAA, and

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

Defendants,

and

THE PENNSYLVANIA STATE UNIVERSITY,

Nominal Defendant.

) **Docket No.:** 2013-2082

) **Type of Case:**

-) Declaratory Judgment Injunction
-) Breach of Contract
-) Tortious Interference with Contract
-) Defamation
-) Commercial Disparagement
-) Conspiracy

) **Type of Pleading:**

-) The National Collegiate
-) Athletic Association’s Motion
-) to Compel Production of a
-) Privilege Log from Plaintiffs

) **Filed on Behalf of:**

-) National Collegiate Athletic
-) Association, Mark Emmert, Edward
-) Ray

) **Counsel of Record for this Party:**

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-) PA I.D. Number: 15681

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2016 FEB 25 PM 4:14
DEBRA C. IMMEL
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IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY,
PENNSYLVANIA

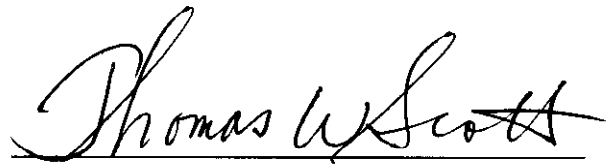
ESTATE of JOSEPH PATERNO, et al.,)	
Plaintiffs,)	Civil Division
)	
v.)	Docket No. 2013-
NATIONAL COLLEGIATE ATHLETIC)	2082
ASSOCIATION, et al.,)	
Defendants.)	EXPEDITED
)	CONSIDERATION
)	REQUESTED

MOTION TO COMPEL PRODUCTION OF A PRIVILEGE LOG FROM PLAINTIFFS

The National Collegiate Athletic Association ("NCAA") submits this Motion to Compel Production of a Privilege Log From Plaintiffs pursuant to Pennsylvania Rule of Civil Procedure 4019(a). In support of this Motion, the NCAA incorporates by reference the attached Brief in Support of the NCAA's Motion to Compel Production of a Privilege Log From Plaintiffs. In order to permit resolution of this Motion, production of a privilege log, and any further discovery or privilege challenges arising from the log before the end of fact discovery, the NCAA respectfully requests that Plaintiffs be compelled to produce a privilege log by **March 16, 2016**. Accordingly, the NCAA also requests that the Court issue an order for an expedited briefing schedule and that it hear argument on this motion at the upcoming Mach 11, 2016 argument and status conference.

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Respectfully submitted,



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

Dated: February 25, 2016

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

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

**DECLARATION OF SARAH M. GRAGERT ACCOMPANYING THE
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION'S
MOTION TO COMPEL PRODUCTION OF A PRIVILEGE LOG FROM
PLAINTIFFS**

I, Sarah M. Gragert, do hereby declare:

1. I am over the age of eighteen years, and I am an attorney licensed to practice and a member in good standing of the bar of the District of Columbia (membership no. 977097) and the state of Maryland (membership no. 12-11-2007). I am providing information based on my personal knowledge.
2. On October 25, 2013, I was admitted *pro hac vice* in this case as counsel for the National Collegiate Athletic Association ("NCAA"), Dr. Mark Emmert, and Dr. Edward Ray.
3. On May 21, 2014, the NCAA served requests for the production of documents on Plaintiffs Jay Paterno, Bill Kenney, and the Paterno Estate. (The NCAA has also served several supplemental requests since that time.)
4. In their responses to the NCAA's requests for the production of documents, Plaintiffs repeatedly objected to producing documents on grounds of the attorney-client privilege and/or attorney work product doctrine.
5. To date, despite numerous requests by letter, email, and telephone over the course of many months for a privilege and redaction log, neither the Estate

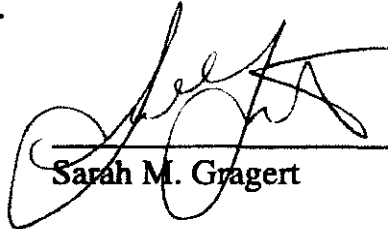
nor Mr. Kenney has produced any such log or informed the NCAA when they expect to produce one. Jay Paterno produced a privilege log on November 7, 2015 containing 81 entries.

6. Pursuant to L.R. 208.2(e), Counsel for the NCAA has sought to resolve the issues presented by its Motion to Compel by conferring with opposing counsel in a good faith effort to resolve the issues by agreement, without the intervention of the Court. In particular, counsel for the NCAA and Plaintiffs have discussed Plaintiffs' failure to produce a privilege log during several meet-and-confer teleconferences.
7. On July 10, 2015, the parties discussed the status of Plaintiffs' productions. During this discussion, counsel for the NCAA asked whether Plaintiffs would be providing a privilege log. Counsel for Plaintiffs indicated they would do so. I sent a letter memorializing this discussion to Plaintiffs' counsel on July 16, 2015 ("[We] look forward to receiving the log at the earliest possible opportunity"). On August 4, 2015, counsel for the NCAA sent an email to Plaintiffs' counsel requesting that Plaintiffs' counsel inform the NCAA on what date Plaintiffs would produce a log.
8. On July 31, 2015, Samuel Doran, then counsel for Plaintiffs, represented to my colleague, Drew Wisniewski, that privilege logs were being prepared. But no such logs were produced.
9. On September 18, 2015, the parties participated in a meet and confer teleconference to discuss privilege and scheduling issues. During this discussion, counsel for the NCAA noted that Plaintiffs had not yet produced a privilege log. In a letter memorializing this discussion, dated October 29, 2015, counsel for the NCAA once again requested that Plaintiffs' counsel inform the NCAA when Plaintiffs would provide a privilege log.
10. On October 26, 2015, my colleague, Brian Kowalski, again requested a privilege log via email to Plaintiffs' counsel.
11. On November 16, 2015, counsel for the NCAA sent a letter to Plaintiffs' counsel requesting that all Plaintiffs provide a complete privilege log by December 4, 2015 ("We have made repeated requests for the Estate to produce a privilege log...Please confirm by the end of the week that the Estate will produce a privilege log by December 4, 2015. Likewise, if Jay

Paterno or Bill Kenney have withheld any other response materials not yet identified on a privilege log, please provide such log(s) at that time as well.”).

12. Neither the Estate nor Mr. Kenney produced a log, and Mr. Paterno has never updated his log, despite making subsequent document productions. Counsel for the NCAA then made additional requests for privilege logs in letters to Plaintiffs’ counsel dated January 11, 2016 (“We again reiterated our request for privilege logs. The NCAA has been exceedingly patient in waiting for these materials, but it is time for Plaintiffs to meet their obligation to provide these materials.”) and January 23, 2016 (“Plaintiffs have still not provided a date by which the NCAA can expect to see privilege logs for the Estate and Mr. Kenney and an updated log for Jay Paterno (if the first log is incomplete).”).
13. During a meet and confer teleconference on February 8, 2016, counsel for Plaintiffs stated that the Paterno Estate would produce a privilege log the following day. No such production was made. Later that week, I asked Plaintiffs’ counsel to confirm that a log was still forthcoming, but Plaintiffs’ counsel did not respond.
14. Through the exchange of correspondence and the meet and confer process, the parties have been unable to resolve the issues presented in the NCAA’s Motion.

Executed on February 23, 2016.

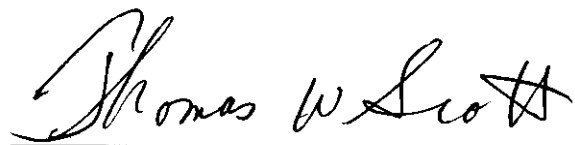


Sarah M. Gragert

CERTIFICATE OF NON-CONCURRENCE

Pursuant to L.R. 208.2(d), the Parties have had numerous discussions about the issued raised in the NCAA's Motion to Compel Production of a Privilege Log From Plaintiffs. To date, despite numerous requests by letter, email, and telephone over the course of many months for a privilege and redaction log, Plaintiffs Bill Kenney and the Paterno Estate have not produced any such log nor have they informed the NCAA when they expect to produce one. Plaintiff Jay Paterno has not produced a supplemental log or informed the NCAA when he expects to do so. See Gragert Decl. ¶¶ 5-14. Counsel for Plaintiffs have ignored several of the NCAA's attempts to discuss the status of any forthcoming privilege logs. Thus, over the course of the NCAA's numerous unsuccessful attempts to resolve these issues through meet and confer teleconferences and written communications, Plaintiffs have indicated they would not concur with the relief sought in this Motion.

Dated: February 25, 2016



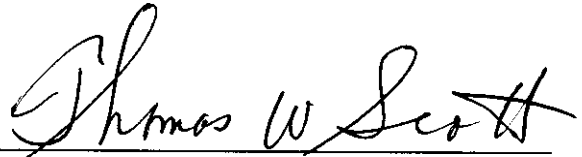
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*Counsel for the NCAA, Dr. Emmert,
and Dr. Ray*

**CERTIFICATE OF COMPLIANCE WITH L.R. 208.2(e) – GOOD FAITH
ATTEMPTS TO RESOLVE THE ISSUES PRESENTED HEREIN**

Pursuant to L.R. 208.2(e), Counsel for the NCAA has sought to resolve the issues presented by this Motion by conferring with opposing counsel in a good faith effort to resolve the issues without the intervention of the Court. To that end, as set forth in the Brief accompanying this Motion, and specifically in the Declaration of Sarah Gragert, Esq., attached to the Motion, despite written entreaties and meet and confer conferences to address Plaintiffs' failures to produce complete privilege and redaction logs, Defendant NCAA has been unable to secure agreement from Plaintiffs. Indeed, Plaintiffs' counsel has ignored many of the NCAA's recent attempts to confer regarding the issues presented by the Motion without having to seek the Court's assistance.

Dated: February 25, 2016



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

CERTIFICATE OF SERVICE

I, Thomas W. Scott, hereby certify that I am serving *The National Collegiate Athletic Association's Motion to Compel Production of a Privilege Log From Plaintiffs* on the following by First Class Mail and email:

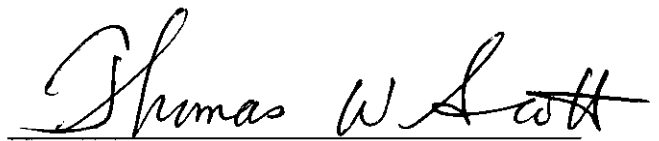
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Counsel for Plaintiffs

Via FedEx Overnight Delivery
The Honorable John B. Leete
Senior Judge, Specially Presiding
Potter County Courthouse, Room 30
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Dated: February 25, 2016

A handwritten signature in black ink that reads "Thomas W. Scott". The signature is written in a cursive style and is positioned above a horizontal line.

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