

ORIGINAL



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

ESTATE of JOSEPH PATERNO;
AL CLEMENS, member of the Board of Trustees of
Pennsylvania State University;

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:**

) NCAA Motion for Leave to File

) An Amended Answer with New

) Matter

) **Filed on Behalf of:**

) National Collegiate Athletic

) Association, Mark Emmert,

) Edward Ray

) **Counsel of Record for this**

) **Party:**

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FILED FOR RECORD
2015 JUN 16 PM 4:34
DEBRA C. IMHIEL
PROTHONOTARY
CENTRE COUNTY, PA

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IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY,
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ESTATE of JOSEPH PATERNO, et al.,
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and

THE PENNSYLVANIA STATE UNIVERSITY,
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Docket No. 2013-
2082

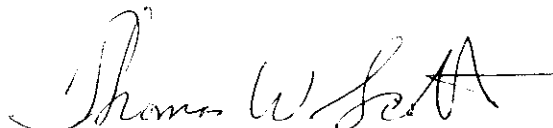
**NCAA MOTION FOR LEAVE TO FILE AN AMENDED
ANSWER WITH NEW MATTER**

The National Collegiate Athletic Association ("NCAA") respectfully submits this Motion for Leave to File an Amended Answer with New Matter pursuant to Pa.R.C.P 1033. The Amended Answer with New Matter¹ is attached hereto as Exhibit 1. In support of this Motion, the NCAA hereby incorporates by

¹ With the exception of one clarification, the NCAA's New Matter has not changed.

reference the attached Brief in Support of the NCAA's Motion to File an Amended Answer with New Matter.

Respectfully submitted,



Dated: June 16, 2015

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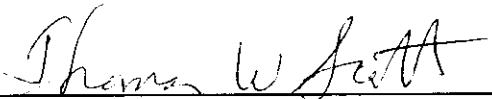
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*Counsel for Defendants the NCAA,
Dr. Emmert, and Dr. Ray*

CERTIFICATE OF NON-CONCURRENCE

Pursuant to L.R. 208.2(d), the NCAA has sought concurrence from all parties with regard to the NCAA's Motion for Leave to File an Amended Answer. Plaintiffs' counsel refused to concur. The NCAA sought the Pennsylvania State University's concurrence but did not receive a response prior to filing.

Dated: June 16, 2015


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EXHIBIT 1

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

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

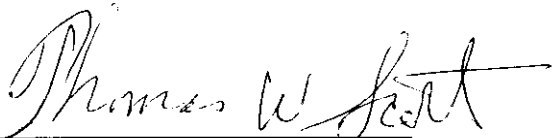
NOTICE TO PLEAD

TO: PLAINTIFFS AND PLAINTIFFS' COUNSEL

You are hereby notified to file a written response to the enclosed New Matter within twenty (20) days from service hereof or a judgment may be entered against you.

Respectfully submitted,

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**IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY,
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Defendants,)	Docket No. 2013-
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PENNSYLVANIA STATE UNIVERSITY,)	
Defendant.)	
)	

**NCAA AMENDED ANSWER WITH NEW MATTER TO PLAINTIFFS'
SECOND AMENDED COMPLAINT**

The National Collegiate Athletic Association ("NCAA") files the following Amended Answer with New Matter in response to the allegations of Plaintiffs' Second Amended Complaint.

1. This action challenges the unlawful conduct of the NCAA Defendants in connection with their improper interference in and gross mishandling of a criminal matter that falls far outside the scope of their authority. In particular, this lawsuit seeks to remedy the harms caused by unprecedented sanctions included in a Consent Decree imposed by the NCAA Defendants for conduct that did not violate the NCAA's rules and was unrelated to any athletics issue the NCAA could permissibly regulate. As part of their unlawful conduct, and as alleged in more detail below, the NCAA Defendants breached their contractual obligations and violated their duties of good faith and fair dealing, intentionally and tortuously interfered with Plaintiffs' contractual relations, and defamed and commercially disparaged Plaintiffs.

RESPONSE: The allegations in Paragraph 1 are irrelevant, and no response is required. All of the contract claims in this case (and all relief requested therefrom) have been dismissed or withdrawn. This case has been reduced to a set of tort claims asserted by only three remaining Plaintiffs: commercial disparagement and defamation, along with derivative tortious interference and civil conspiracy claims. As such, this case now centers exclusively on the statements contained in the Consent Decree that allegedly refer to Plaintiffs. On those claims, Plaintiffs' carry the burden to demonstrate that those statements are demonstrably false *and* that the NCAA

acted with actual malice (*i.e.*, it either “knew” the statements were false, or acted with reckless disregard for their falsity). However, most of the allegations in the Second Amended Complaint, including those in Paragraph 1, relate only to the dismissed contract claims, such as those regarding (1) the process by which the NCAA resolved the Sandusky matter with Penn State; (2) the content of the NCAA’s Division I Constitution and Bylaws; and (3) the procedure by which Penn State accepted the Consent Decree. Those allegations were plainly included to support the contract claims (and/or Plaintiffs’ ongoing public relations campaign), and are not relevant to the remaining tort claims. Thus, to the extent the NCAA responds to such allegations, the NCAA shall not be deemed to have admitted or agreed that any such factual averment is relevant to this matter, or that the NCAA has undertaken the burden to prove such fact at trial.

To the extent a response is required, the NCAA specifically denies that the unprecedented failure of institutional integrity and institutional control at Penn State in connection with the Sandusky matter fell outside the “scope of the NCAA’s authority.” The NCAA also specifically denies that the conduct described in the Freeh Report and Consent Decree did not violate the NCAA’s rules and was “unrelated to any athletics issues the NCAA could permissibly regulate.” To the contrary, the events surrounding the Sandusky matter at

Penn State fell squarely within the NCAA’s authority, indicated a profound lack of institutional integrity and institutional control, and raised serious questions about whether Penn State, as an institution, acted in a manner consistent with the NCAA Constitution and Bylaws. At all times prior to execution of the Consent Decree, the NCAA had the authority to initiate its own enforcement investigation concerning the Sandusky matter or to attempt to pursue an infractions case against Penn State before the NCAA Committee on Infractions. Indeed, when the Sandusky presentment was released in November 2011, it immediately occurred to Penn State President Rodney Erickson that the NCAA might become involved “[b]ecause it involved a relationship to intercollegiate athletics, that our athletics director was charged, and our ... former senior vice president for finance and business.” Further, Penn State’s own outside counsel, Mr. Gene Marsh (who had served for nine years on the NCAA Committee on Infractions) specifically advised Penn State that the findings in the Freeh Report and Penn State’s “embrace” of the Report established violations of the NCAA Constitution and Bylaws and that if Penn State opted for the traditional infractions process, the Committee on Infractions would likely impose harsh sanctions on Penn State, potentially including a suspension in play. Ultimately, because the NCAA and Penn State agreed to the Consent Decree, the NCAA did not invoke its

authority to initiate an enforcement investigation or infractions case against Penn State. Nonetheless, the Consent Decree identified several provisions of the NCAA Constitution and Bylaws that Penn State breached, based on the findings in the Freeh Report.

The remaining allegations in Paragraph 1 constitute Plaintiffs' conclusions of law, which require no response.

2. The NCAA is a voluntary association of member institutions of higher education that operates pursuant to a constitution and an extensive set of bylaws. The constitution and bylaws define and constrain the scope of the NCAA's authority, and are designed to regulate athletic competition between members in a manner that promotes fair competition and amateurism. The constitution and bylaws authorize the NCAA to prohibit and sanction conduct that is intended to provide any member institution with a recruiting or competitive advantage in athletics.

RESPONSE: The NCAA admits that it is a voluntary association of member institutions of higher education. The NCAA further admits that it has a Division I Constitution and Bylaws,¹ which, among many other things, provide that the NCAA may sanction member institutions for violations of the NCAA's Constitution and Bylaws.

¹ There is more than one NCAA Constitution and set of bylaws; all references herein refer to the 2011-2012 NCAA Division 1 Constitution and Bylaws.

The NCAA specifically denies that the only purpose of the NCAA's Constitution and Bylaws is to "regulate competition between members." The Constitution and Bylaws are "designed" to advance numerous important purposes of the Association and its members, including *but not limited to*: upholding the principle of institutional control and responsibility (NCAA Constitution § 2.1), the protection and enhancement of the physical and educational well-being of student-athletes (*id.* § 2.2), gender equity, diversity, and non-discrimination principles (*id.* §§ 2.3, 2.6, 2.7), sportsmanship and ethical conduct (*id.* § 2.4), maintenance of sound academic standards (*id.* § 2.5), principles of honesty (*id.* § 10.01.1), the principle that administrators and coaches involved in intercollegiate athletics must exhibit exemplary conduct, because of their role as teachers of young people (*id.* § 19.01.2), the promotion and development of educational leadership, physical fitness, athletics excellence and athletics participation as a recreational pursuit (*id.* § 1.2(a)), and to ensure that competitive athletics programs of member institutions are designed to be a vital part of the educational system (*id.* § 1.3.1).

The NCAA specifically denies that the Constitution and Bylaws authorize the NCAA to sanction conduct only when it provides a member institution with a recruiting or competitive advantage in athletics. While the

Bylaws identify recruiting and competitive advantage as potentially relevant factors in certain circumstances, no provision of the Constitution or Bylaws precludes the NCAA from imposing sanctions to address rules violations that did not result in such advantages.

The NCAA further specifically denies that the Constitution and Bylaws “define and constrain the scope of the NCAA’s authority.” The Constitution and Bylaws are not the exclusive source of the NCAA’s authority or the obligations of NCAA member institutions.

The remainder of the allegations in Paragraph 2 constitute Plaintiffs’ conclusions of law, which require no response.

3. The NCAA has no authority to investigate or impose sanctions on member institutions for criminal matters unrelated to recruiting or athletic competition at the collegiate level. Moreover, when there is an alleged violation of the NCAA’s rules, the constitution and bylaws require the NCAA to provide interested parties with certain, well-defined procedural protections, including rights of appeal. The constitution and bylaws are expressly intended to benefit not only the member institutions, but also individuals subject to potential NCAA oversight and sanctions.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is

required, the allegations in the first sentence of Paragraph 3 constitute Plaintiffs' conclusions of law, which require no response. The NCAA specifically denies those allegations to the extent they contend that the Sandusky matter at Penn State was a "criminal matter[]" unrelated to recruiting or athletic competition." To the contrary, the NCAA incorporates by reference its response to Paragraph 1.

The NCAA also denies the allegations in the second sentence of Paragraph 3 as stated. The NCAA incorporates by reference its response to Paragraphs 26, 31, 33-40, and 42-48. The remainder of the allegations in Paragraph 3 constitute Plaintiffs' conclusions of law, which require no response (and which the NCAA has contested in three rounds of preliminary objections necessitated by Plaintiffs' serial amendment of their complaint).

4. In the course of the events that gave rise to this lawsuit, the NCAA Defendants engaged in malicious, unjustified, and unlawful acts, including penalizing and irreparably harming Plaintiffs for criminal conduct committed by a former assistant football coach. But the criminal conduct was not an athletics issue properly regulated by the NCAA. The NCAA Defendants' actions far exceeded the scope of the NCAA's lawful authority and were taken in knowing and reckless disregard of Plaintiffs' rights.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA specifically denies that it “penalized” or harmed any of the Plaintiffs. The Consent Decree resolved Penn State’s institutional responsibility for its breaches of the NCAA Constitution and Bylaws in connection with the Sandusky matter, including failures of institutional integrity and institutional control at Penn State. The NCAA admits that the Sandusky matter concerned “criminal conduct” but specifically denies that this conduct was unrelated to any “athletics issue properly regulated by the NCAA.” To the contrary, the NCAA incorporates by reference its response to Paragraph 1. The NCAA also specifically denies that entering into the Consent Decree with Penn State was beyond the scope of its authority. To the contrary, the NCAA incorporates by reference its response to Paragraph 1, and further avers that: (1) as a member institution, Penn State is free to waive any rights or process under the NCAA Constitution and Bylaws, and, as such, agree to accept penalties and corrective measures through a consent decree rather than through the traditional infractions process; (2) the NCAA, like any organization, is free to enter into agreements, and the Consent Decree is an exercise of this basic authority; and (3) the NCAA’s Executive Committee has extensive authority under the law and pursuant the Division I Manual to

act, including, but not limited to, the authority to “[a]ct on behalf of the Association by adopting and implementing policies to resolve core issues and other Association-wide matters” and to “[i]nitiate and settle litigation.” NCAA Constitution and Bylaws (effective Aug. 1, 2011), art. 4.1.2(e), (f). Additionally, after reasonable investigation, the NCAA Defendants are unaware of any “malicious, unjustified or unlawful acts” committed against Plaintiffs or anyone else in conjunction with the Consent Decree. Proof thereof, if relevant, is demanded at trial.

The remaining allegations in Paragraph 4 constitute Plaintiffs’ conclusions of law, to which no response is required.

5. Among other things, the NCAA Defendants circumvented the procedures required by the NCAA’s rules and violated and conspired with others to violate Plaintiffs’ rights, causing Plaintiffs significant harm. The NCAA Defendants took these actions based on conclusions reached in a flawed, unsubstantiated, and controversial report that the NCAA Defendants knew or should have known was not the result of a thorough, reliable investigation; had been prepared without complying with the NCAA’s investigative rules and procedures; reached conclusions that were false, misleading, or otherwise unworthy of credence; and reflected an improper “rush to judgment” based on unsound speculation and innuendo. The NCAA Defendants also knew or should

have known that by embracing the flawed report, they would effectively terminate the search for truth and cause Plaintiffs grave harm. Nonetheless, the NCAA Defendants took their unauthorized and unlawful actions in an effort to deflect attention away from the NCAA's institutional failures and to expand the scope of their own authority by exerting control over matters unrelated to recruiting and athletic competition.

RESPONSE: Paragraph 5 constitutes a barrage of legal conclusions, argument, and characterizations of the NCAA's alleged actions, which require no response. To the extent any statements in this Paragraph can be construed as "averment of fact," the NCAA objects to Paragraph 5 on the grounds that its form and content violate the requirements of Pa.R.C.P. No. 1022, which require that every pleading be divided into paragraphs that contain "as far as practicable only one material allegation." The Paragraph should be stricken. To the extent any further response is required, the NCAA specifically denies each of the allegations in this Paragraph, for the reasons set forth throughout this answer, which are incorporated by reference

By way of further answer, the NCAA is unaware of any facts that substantiate that the Freeh Report was an unreliable "rush to judgment" with unsupported conclusions at the time it was released and communicated to the NCAA and formed a basis for the Consent Decree. To the extent relevant,

and consistent with decades of legal authority concerning the burden of proof in cases like this one, proof of those allegations at trial is demanded. In addition, to the extent Plaintiffs are able to prove that any of the statements in the Freeh Report that were incorporated into the Consent Decree are demonstrably false, the NCAA demands proof at trial that the NCAA “knew” or recklessly disregarded their falsity.

6. In failing to comply with required procedures, the NCAA Defendants unlawfully accused Plaintiffs, members of the coaching staff and the Penn State Board of Trustees, of failing to prevent unethical conduct, and deprived them of important procedural protections required under the NCAA’s rules.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the allegations in Paragraph 6 constitute Plaintiffs’ conclusions of law, to which no response is required. To the extent further response is necessary, the NCAA specifically denies that its entry into the Consent Decree with Penn State violated any “required procedures,” and that Plaintiffs were entitled to any “procedural protections” under the NCAA rules. To the contrary, the NCAA incorporates by reference its responses to Paragraphs 1-4, 49, 59, 88, and 115-116, as well as the arguments set forth in the three

rounds of preliminary objections necessitated by Plaintiffs' serial amendment of their complaint.

7. For its part, Penn State was forced under extreme duress to acquiescence in the NCAA Defendants' violations of the NCAA's rules and to agree to the imposition of an NCAA-imposed Consent Decree that is unlawful, imposes sanctions that are unauthorized, and makes statements concerning Plaintiffs that sanctioned them and caused significant harm.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the allegations in Paragraph 7 constitute Plaintiffs' conclusions of law, to which no response is required. To the extent further response is necessary, the NCAA specifically denies that Penn State was "forced under extreme duress" to enter into the Consent Decree. Penn State was advised by no fewer than five experienced lawyers in the drafting, consideration, negotiation, and execution of the Consent Decree, including a former Chair of the NCAA Committee on Infractions. On information and belief, Penn State understood it remained free to reject an agreed resolution at any time and trigger the traditional enforcement and infractions process or otherwise challenge in litigation the NCAA's authority to act. Ultimately, after extensive

deliberations and advice from counsel, Penn State determined that accepting the Consent Decree was the best option available to the University at the time.

The NCAA further specifically denies that it lacked authority to impose sanctions in the Consent Decree, that entry into the Consent Decree violated NCAA rules, and that NCAA sanctioned any of the Plaintiffs. To the contrary, the NCAA incorporates by reference its response to Paragraphs 1 and 4. The NCAA further denies that it made any statements in the Consent Decree about Jay Paterno or William Kenney and denies that any statements made by the NCAA caused Plaintiffs “significant harm” and, to the contrary, incorporates by reference its response to the allegations in Paragraph 125.

8. Because the NCAA has breached its duties and contractual obligations to Plaintiffs, because Penn State impermissibly acquiesced in those breaches, and because the NCAA Defendants’ unlawful and unauthorized conduct has caused and is continuing to cause substantial harms, Plaintiffs are bringing this lawsuit to remedy the harms caused by the NCAA Defendants’ conduct, to enforce the NCAA’s obligations and rules, and to put an end to the NCAA Defendants’ ongoing misconduct.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA is without knowledge or information sufficient to form a

belief as to the truth or falsity of why Plaintiffs are bringing this lawsuit and, on that basis, denies that allegation. The remainder of the allegations in Paragraph 8 constitute Plaintiffs' conclusions of law, which require no response.

9. The Estate of Joseph Paterno (the "Estate") brings this action to enforce the rights of Joseph ("Joe") Paterno. At all relevant times before his death, Joe Paterno was a resident of Pennsylvania.

RESPONSE: The allegations in the first sentence of Paragraph 9 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied. On information and belief, the NCAA admits that Joe Paterno was a resident of Pennsylvania.

10. Plaintiff Al Clemens served as a member of the Board of Trustees for more than 18 years, from June 1995 until May 2014 (he was therefore a member of the Board of Trustees in both 1998 and 2001). As a member of the Board, he had a fiduciary responsibility to take actions that are in the best interests of the entire University community. At all relevant times, Mr. Clemens has been a resident of Pennsylvania.

RESPONSE: The NCAA states that no response is needed to the allegations in Paragraph 10 because Al Clemens has dismissed his claims. To

the extent a response is required, then on information and belief, the NCAA admits the allegations in Paragraph 10.

11. Plaintiffs William Kenney and Joseph V. (“Jay”) Paterno are former coaches of the Penn State football team and former employees of Penn State. At all relevant times, they were residents of Pennsylvania.

RESPONSE: On information and belief, the NCAA admits the allegations in Paragraph 11.

12. Defendant NCAA is an unincorporated association headquartered in Indianapolis, Indiana. It has members in all fifty states, the District of Columbia, Puerto Rico, and Canada, and effectively enjoys a monopoly over the popular world of college sports.

RESPONSE: The NCAA admits that it is an unincorporated association headquartered in Indianapolis, Indiana with members in all fifty states, the District of Columbia, Puerto Rico, and Canada. The NCAA denies the remaining allegations in Paragraph 12, which set forth conclusions of law, which require no answer.

13. Defendant Mark Emmert is the current president of the NCAA.

RESPONSE: Admitted.

14. Defendant Edward Ray is the president of Oregon State University and the former chairman of the NCAA’s Executive Committee.

RESPONSE: Admitted.

15. Penn State is a state-related institution of higher learning based in Centre County, Pennsylvania, and one of the NCAA's member institutions. As alleged in more detail below, Penn State was forced to enter into the Consent Decree as a result of the NCAA Defendants' ongoing misconduct and abuse of power, including but not limited to threats by the NCAA Defendants that Penn State would be subject to the so-called "death penalty" if the Consent Decree is revoked or voided. Plaintiffs have been damaged as a result of these wrongful acts by the NCAA Defendants and by Penn State's acquiescence in the NCAA's efforts to conceal its wrongful conduct.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA admits the allegations in the first sentence of Paragraph 15. The NCAA specifically denies that Penn State was "forced" to enter into the Consent Decree as a result of the NCAA's "ongoing misconduct and abuse of power." To the contrary, the NCAA incorporates by reference its response to Paragraphs 1, 4, and 7.

The NCAA also specifically denies that it made "threats" that "Penn State would be subject to the so-called 'death penalty' if the Consent Decree is revoked or voided." The NCAA has acknowledged that the Consent Decree

resolved the violations related to the Sandusky matter without application of the traditional infractions process, which carried with it the risk of a suspension in play. In the absence of the Consent Decree, the NCAA would have the right to initiate a traditional infractions investigation and proceeding, which could result in any of the sanctions set forth in the NCAA Bylaws, including the so-called “death penalty.” The last sentence of Paragraph 15 constitutes Plaintiffs’ conclusions of law and argument, to which no answer is required.

16. Jurisdiction is proper in this Court under 42 Pa. C.S. § 931(a).

RESPONSE: The allegations in Paragraph 16 state Plaintiffs’ conclusion of law, which requires no answer.

17. The Court has jurisdiction over the NCAA because it carries on a continuous and systematic part of its general business in Pennsylvania. *See* 42 Pa. C.S. § 5301(a)(3)(iii). The Court also has jurisdiction because, among other things, the NCAA transacted business and caused harm in Pennsylvania with respect to the causes of action asserted herein. *See id.* § 5322(a).

RESPONSE: The allegations in Paragraph 17 state Plaintiffs’ conclusion of law, which requires no answer.

18. The Court has jurisdiction over Emmert and Dr. Ray in their personal capacities because they caused harm in Pennsylvania with respect to the tortious causes of action asserted herein. *See id.*

RESPONSE: The allegations in Paragraph 18 state Plaintiffs' conclusion of law, which requires no answer. By way of further answer, on August 21, 2013, the Court entered an order stating that after deciding on all other preliminary objections, it "will set a separate schedule for the objections relating to personal jurisdiction [as to Dr. Emmert and Dr. Ray] as necessary." Scheduling Order 1 (Aug. 16, 2013). To date, Dr. Emmert's and Dr. Ray's personal jurisdiction objections have not been resolved and, therefore, they have no obligation to answer the Second Amended Complaint at this time. Dr. Emmert and Dr. Ray hereby preserve their objection that the Court lacks personal jurisdiction over them.

19. The Court has jurisdiction over Penn State because it is chartered under state law. *See* Act of February 22, 1855, P.L. 46, § 1 (codified at 24 P.S. § 2531).

RESPONSE: The allegations in Paragraph 19 state Plaintiffs' conclusion of law, which requires no answer.

20. Venue is proper in Centre County under Pennsylvania Rules of Civil Procedure 1006(a) and 2156(a). The NCAA regularly conducts business and

association activities in this County, the causes of action arose in this County, and the transactions and/or occurrences out of which the causes of action arose took place in this County.

RESPONSE: The allegations in Paragraph 20 state Plaintiffs' conclusion of law, which requires no answer.

21. The NCAA is an unincorporated association of institutions of higher education with the common goal of achieving athletic and academic excellence. The NCAA was first formed in 1906 and is today made up of three membership classifications — Divisions I, II, and III.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the allegations in Paragraph 21 are admitted.

22. The NCAA's basic purpose is to maintain intercollegiate athletics as an integral part of university educational programs and the athlete as an integral part of the student body and, by doing so, to retain a clear line of demarcation between intercollegiate athletics and professional sports.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA admits that a purpose of the NCAA is to maintain intercollegiate athletics as an integral part of university educational programs

and the athlete as an integral part of the student body and, by doing so, to retain a clear line of demarcation between intercollegiate athletics and professional sports. The NCAA denies that such purpose is its only purpose. The NCAA denies any remaining allegations in Paragraph 22.

23. Student athletes are not paid, but the NCAA brings in substantial revenues each year. In 2012 alone, the NCAA generated \$872 million in revenue, \$71 million of which was treated as “surplus” and retained by the organization.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA admits that student athletes are not paid a salary. The NCAA’s publicly-available Consolidated Financial Statements are written documents that speak for themselves. To the extent the allegations in Paragraph 23 vary therewith, the NCAA denies those allegations.

24. The NCAA is governed by a lengthy set of rules that define both the scope of the NCAA’s authority and the obligations of the NCAA’s member institutions. The relevant set of rules for purposes of this lawsuit is the 2011–2012 NCAA Division I Manual, which is available at <http://www.ncaapublications.com/p-4224-2011-2012-ncaa-division-i-manual.aspx>. (A copy of relevant portions of the NCAA’s Manual is attached to this Complaint as Exhibit A.)

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent a response is required, the NCAA responds that Paragraph 24 characterizes the NCAA Division 1 Manual, which is a publically available document that speaks for itself. To the extent the allegations in Paragraph 24 vary therewith, the NCAA denies those allegations.

To the extent further response is required, the NCAA denies the allegations in the first sentence of Paragraph 24 as stated. The scope of the NCAA authority is determined by the Division I Manual as well as ordinary principles of law. In addition, each division of the NCAA has a manual containing a constitution, operating bylaws, and administrative bylaws, which instruct the daily operations of the NCAA and obligations of the member institutions. The NCAA denies that the relevant set of rules for purposes of this lawsuit is the 2011-2012 Division I Manual because Plaintiffs' Count I, breach of contract, has been dismissed. The NCAA admits that the 2011-2012 NCAA Division I Manual is available at <http://www.ncaapublications.com/p-4224-2011-2012-ncaa-division-i-manual.aspx>, and that a copy of portions of the NCAA 2011-2012 Manual was attached to the Complaint as Exhibit A. The NCAA denies any remaining allegations in Paragraph 24.

25. The rules governing NCAA sports, as reflected in the Manual, are developed through a membership-led governance system. Under that system, member institutions introduce and vote on proposed legislation. In turn, member institutions are obligated to apply and enforce the member-approved legislation, and the NCAA has authority to use its enforcement procedures when a member institution fails to fulfill its enumerated obligations.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent a response is required, the NCAA responds as follows: Paragraph 25 references or characterizes the NCAA Division I Manual, which is a written document that speaks for itself. To the extent the allegations in Paragraph 25 vary therewith, the NCAA denies those allegations.

To the extent further response is required, the NCAA admits that certain rules governing NCAA sports are developed through a membership-led organization, but it denies that the rules reflected in the Manual are the exclusive source of rules governing NCAA sports. The NCAA admits the allegations in the second sentence, but denies the allegations in the third sentence as stated. Member institutions are obligated to comply with the member-approved legislation, and the NCAA has authority to use its infractions process when a member fails to do.

26. The NCAA's rules are premised on the principle of according fairness to student athletes and staff, whether or not they may be involved in potential rules violations. The rules expressly protect and benefit students, staff, and other interested parties, recognizing that fair and proper procedures are important because the NCAA's actions can have serious repercussions on their lives and careers.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. Moreover, the allegations in this Paragraph attempt to characterize rules and principles that are stated in the Division I Manual, a written document that speaks for itself and which applies to the NCAA's traditional enforcement and infractions process under Articles 19 and 32, as of July 2012. To the extent Plaintiffs mischaracterize the content of the Division I Manual, those allegations are denied. Additionally, Plaintiffs' allegations, which attempt to identify and define certain NCAA legal obligations under the Division I Constitution and Bylaws, are conclusions of law, which require no response. Finally, the allegations in this Paragraph are irrelevant and should be struck.

The NCAA admits that in entering into the Consent Decree it did not undertake a traditional enforcement and infractions process pursuant to Articles 19 and 32 of the Division I Manual. This fact is not in dispute.

Therefore, a discussion of the requirements and principles of the Manual applicable to the traditional enforcement and infractions process is not relevant to any factual dispute. However, the NCAA denies that the Division I Manual precluded it from agreeing with Penn State to enter into the Consent Decree and forego the traditional enforcement and infractions process and incorporates by reference its response to Paragraphs 2 and 4.

27. In substance, the NCAA's rules govern "basic athletics issues such as admissions, financial aid, eligibility and recruiting." In that context, the rules contain principles of conduct for institutions, athletes, and staff, including the principles of "institutional control" and "ethical conduct."

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent a response is required, the NCAA responds as follows: the allegations in Paragraph 27 reference or characterize rules that are set forth in the NCAA Division I Manual, a written document that speaks for itself. To the extent the allegations in Paragraph 27 vary therewith, the NCAA denies those allegations. Further, the allegations in Paragraph 27 state Plaintiffs' conclusion of law, which requires no answer.

To the extent further response is required, the allegations in Paragraph 27 are denied as stated. Plaintiffs mischaracterize Article 1.3.2., which states:

“Legislation governing the conduct of intercollegiate athletics programs of member institutions shall apply to basic athletics issues such as admissions, financial aid, eligibility and recruiting.” The allegations in the second sentence of Paragraph 27 are denied as stated. The Division I Manual recognizes principles of institutional control and ethical conduct, among others, which are important to advancing the numerous important purposes of the Association and its members, including, but not limited to, those listed in response to Paragraph 2 and incorporated herein.

28. The principle of “institutional control,” found in Article 6 of the Constitution, places the responsibility for “compliance with the rules and regulations of the Association” on each member institution. “Institutional control” is defined as “[a]dministrative control,” “faculty control,” or both. Article 6 contains no enforcement provision.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent a response is required, the NCAA responds as follows: the allegations in Paragraph 28 reference or characterize rules that are set forth in the NCAA Division I Manual, a written document that speaks for itself. To the extent the allegations in Paragraph 28 vary therewith, the NCAA denies those

allegations. Further, the allegations in Paragraph 28 state Plaintiffs' conclusion of law, which requires no answer.

To the extent further response is required, the NCAA admits that “institutional control” is defined as “[a]dministrative control,” “faculty control,” or a combination of the two, but it denies the remaining allegations if Paragraph 28 as stated. The NCAA states that the principle of “institutional control” is found in Articles 1, 2, and 6 of the Division I Constitution and in various bylaws. The enforcement provisions for the Division I Manual are set forth in Articles 19 and 32; Article 19 expressly references institutional control. Each member institution has the responsibility to control its own institution in compliance with the rules and regulations of the NCAA. The NCAA denies any remaining allegations in Paragraph 28.

29. The principle of “ethical conduct,” found in Article 10 of the Bylaws, is intended to “promote the character development of participants.” Article 10 refers to “student-athlete[s]” and defines unethical conduct with reference to a list of examples, all of which involve violations related to securing a competitive athletic advantage. Article 10 provides that any corrective action for the unethical conduct of an athlete or staff member shall proceed through the enforcement process set forth in Article 19 of the Bylaws.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent a response is required, the NCAA responds as follows: the allegations in Paragraph 29 reference or characterize rules that are set forth in the NCAA Division I Manual, a written document that speaks for itself. To the extent the allegations in Paragraph 29 vary therewith, the NCAA denies those allegations. Further, the allegations in Paragraph 29 state Plaintiffs' conclusion of law, which requires no answer.

To the extent further response is required, the allegations in Paragraph 29 are denied as stated. The importance of ethics is reinforced throughout the Division I Manual, and "ethical conduct" specifically is found in Articles 2, 10, and 32. Section 2.4 of the Division I Constitution contains the Principle of Sportsmanship and Ethical Conduct, which is intended to not only promote the character development of participants, but also to enhance the integrity of higher education and to promote civility in society. In order to further that purpose, the NCAA Constitution affirms that everyone associated with intercollegiate athletics programs should adhere to such fundamental values as respect, fairness, civility, honesty and responsibility. These values should be manifest not only in athletics participation, but also in the broad spectrum of activities affecting the athletics program. Article 10 is not limited to student

athletes, but also encompasses the conduct of prospective student-athletes and current or former institutional staff members, including individuals who perform uncompensated work for the institution or the athletics department. Article 10 provides a non-exhaustive list of examples of unethical conduct, which are not limited to securing a competitive athletic advantage, including, for example, “[r]efusal to furnish information relevant to an investigation of a possible violation of an NCAA regulation...” Section 10.4 states that institutional staff members who violate the principle of ethical conduct shall be subject to the probationary periods set forth in Bylaw 19.5.2.2, but Article 10 does not identify the enforcement procedures that are to be employed. The NCAA denies any remaining allegations in Paragraph 29.

30. The authorized enforcement process, detailed in Articles 19 and 32, is required to begin with an investigation, conducted by the NCAA enforcement staff. In conducting an investigation, the staff is required to comply with the operating policies, procedures, and investigative guidelines established in accordance with Article 19.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. Moreover, the allegations in this Paragraph attempt to characterize rules and principles that are stated in the Division I Manual, a written document that speaks for itself and which applies

to the NCAA's traditional enforcement and infractions process under Articles 19 and 32, as of July 2012. To the extent Plaintiffs mischaracterize the content of the Division I Manual, those allegations are denied. Additionally, Plaintiffs' allegations, which attempt to identify and define certain NCAA legal obligations under the Division I Constitution and Bylaws, are conclusions of law, which require no response. Finally, the allegations in this Paragraph are irrelevant and should be struck.

The NCAA admits that in entering into the Consent Decree it did not undertake a traditional enforcement and infractions process pursuant to Articles 19 and 32 of the Division I Manual. This fact is not in dispute. Therefore, a discussion of the requirements and principles of the Manual applicable to the traditional enforcement and infractions process is not relevant to any factual dispute. However, the NCAA denies that the Division I Manual precluded it from agreeing with Penn State to enter into the Consent Decree and forego the traditional enforcement and infractions process, and incorporates by reference its response to Paragraphs 2 and 4.

31. The staff has responsibility for gathering information relating to possible rules violations and for classifying alleged violations. Information that an institution has failed to meet the conditions and obligations of membership is to be

provided to the enforcement staff, and must be channeled to the enforcement staff if received by the NCAA president or by the NCAA's Committee on Infractions.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. Moreover, the allegations in this Paragraph attempt to characterize rules and principles that are stated in the Division I Manual, a written document that speaks for itself and which applies to the NCAA's traditional enforcement and infractions process under Articles 19 and 32, as of July 2012. To the extent Plaintiffs mischaracterize the content of the Division I Manual, those allegations are denied. Additionally, Plaintiffs' allegations, which attempt to identify and define certain NCAA legal obligations under the Division I Constitution and Bylaws, are conclusions of law, which require no response. Finally, the allegations in this Paragraph are irrelevant and should be struck.

The NCAA admits that in entering into the Consent Decree it did not undertake a traditional enforcement and infractions process pursuant to Articles 19 and 32 of the Division I Manual. This fact is not in dispute. Therefore, a discussion of the requirements and principles of the Manual applicable to the traditional enforcement and infractions process is not relevant to any factual dispute. However, the NCAA denies that the Division I Manual precluded it from agreeing with Penn State to enter into the Consent

Decree and forego the traditional enforcement and infractions process, and incorporates by reference its response to Paragraphs 2 and 4.

32. The rules recognize two types of violations subject to the NCAA's enforcement authority: (1) "major" violations, and (2) "secondary" violations.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. Moreover, the allegations in this Paragraph attempt to characterize rules and principles that are stated in the Division I Manual, a written document that speaks for itself and which applies to the NCAA's traditional enforcement and infractions process under Articles 19 and 32, as of July 2012. To the extent Plaintiffs mischaracterize the content of the Division I Manual, those allegations are denied. Additionally, Plaintiffs' allegations, which attempt to identify and define certain NCAA legal obligations under the Division I Constitution and Bylaws, are conclusions of law, which require no response. Finally, the allegations in this Paragraph are irrelevant and should be struck.

The NCAA admits that in entering into the Consent Decree it did not undertake a traditional enforcement and infractions process pursuant to Articles 19 and 32 of the Division I Manual. This fact is not in dispute. Therefore, a discussion of the requirements and principles of the Manual applicable to the traditional enforcement and infractions process is not

relevant to any factual dispute. However, the NCAA denies that the Division I Manual precluded it from agreeing with Penn State to enter into the Consent Decree and forego the traditional enforcement and infractions process, and incorporates by reference its response to Paragraphs 2 and 4.

33. The NCAA's enforcement staff may interview individuals suspected of violations, but they must provide notice of the reason for the interview, and the individual has a right to legal counsel. Interviews must be recorded or summarized and, when an interview is summarized, the staff is required to attempt to obtain a signed affirmation of accuracy from the interviewed individual. The enforcement staff is responsible for maintaining evidentiary materials on file at the national office in a confidential and secure manner.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. Moreover, the allegations in this Paragraph attempt to characterize rules and principles that are stated in the Division I Manual, a written document that speaks for itself and which applies to the NCAA's traditional enforcement and infractions process under Articles 19 and 32, as of July 2012. To the extent Plaintiffs mischaracterize the content of the Division I Manual, those allegations are denied. Additionally, Plaintiffs' allegations, which attempt to identify and define certain NCAA legal obligations under the Division I Constitution and Bylaws, are

conclusions of law, which require no response. Finally, the allegations in this Paragraph are irrelevant and should be struck.

The NCAA admits that in entering into the Consent Decree it did not undertake a traditional enforcement and infractions process pursuant to Articles 19 and 32 of the Division I Manual. This fact is not in dispute. Therefore, a discussion of the requirements and principles of the Manual applicable to the traditional enforcement and infractions process is not relevant to any factual dispute. However, the NCAA denies that the Division I Manual precluded it from agreeing with Penn State to enter into the Consent Decree and forego the traditional enforcement and infractions process, and incorporates by reference its response to Paragraphs 2 and 4.

34. If the enforcement staff learns of reasonably reliable information indicating that a member institution has violated the NCAA's rules, it must provide a "notice of inquiry" to the chancellor or president of the institution, disclosing the nature and details of the investigation and the type of charges that appear to be involved. The "notice of inquiry" presents the institution with an opportunity to address the issue and either convince the NCAA that no wrongdoing has occurred or, if there is wrongdoing, cooperate and play a role in the investigation.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. Moreover, the allegations in this

Paragraph attempt to characterize rules and principles that are stated in the Division I Manual, a written document that speaks for itself and which applies to the NCAA's traditional enforcement and infractions process under Articles 19 and 32, as of July 2012. To the extent Plaintiffs mischaracterize the content of the Division I Manual, those allegations are denied. Additionally, Plaintiffs' allegations, which attempt to identify and define certain NCAA legal obligations under the Division I Constitution and Bylaws, are conclusions of law, which require no response. Finally, the allegations in this Paragraph are irrelevant and should be struck.

The NCAA admits that in entering into the Consent Decree it did not undertake a traditional enforcement and infractions process pursuant to Articles 19 and 32 of the Division I Manual. This fact is not in dispute. Therefore, a discussion of the requirements and principles of the Manual applicable to the traditional enforcement and infractions process is not relevant to any factual dispute. However, the NCAA denies that the Division I Manual precluded it from agreeing with Penn State to enter into the Consent Decree and forego the traditional enforcement and infractions process, and incorporates by reference its response to Paragraphs 2 and 4.

35. If the enforcement staff determines after conducting its initial inquiry that there is sufficient information to support a finding of a rules violation, the staff

must then send a “notice of allegations” to the institution. That notice must list the NCAA rule alleged to have been violated and the details of the violation. If the allegations suggest the significant involvement of any individual staff member or student, that individual is considered an “involved individual” and must be notified and provided with an opportunity to respond to the allegations. The issuance of the notice of allegations initiates a formal adversarial process, which allows the institution and involved individuals the opportunity to respond and defend themselves.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. Moreover, the allegations in this Paragraph attempt to characterize rules and principles that are stated in the Division I Manual, a written document that speaks for itself and which applies to the NCAA’s traditional enforcement and infractions process under Articles 19 and 32, as of July 2012. To the extent Plaintiffs mischaracterize the content of the Division I Manual, those allegations are denied. Additionally, Plaintiffs’ allegations, which attempt to identify and define certain NCAA legal obligations under the Division I Constitution and Bylaws, are conclusions of law, which require no response. Finally, the allegations in this Paragraph are irrelevant and should be struck.

The NCAA admits that in entering into the Consent Decree it did not undertake a traditional enforcement and infractions process pursuant to Articles 19 and 32 of the Division I Manual. This fact is not in dispute. Therefore, a discussion of the requirements and principles of the Manual applicable to the traditional enforcement and infractions process is not relevant to any factual dispute. However, the NCAA denies that the Division I Manual precluded it from agreeing with Penn State to enter into the Consent Decree and forego the traditional enforcement and infractions process, and incorporates by reference its response to Paragraphs 2 and 4. The NCAA further denies that any Plaintiff was an “involved individual,” a position it has extensively explained in its multiple rounds of preliminary objections briefing.

36. The rules protect any individual who is alleged to have significant involvement in an alleged rules’ violation, regardless of whether that person is personally available to participate in the investigation process. The rules do not limit the definition of “involved individual” and it is understood that the rules apply to any individual accused of being significantly involved in an alleged rules’ violation. When an individual is not personally available to participate in the process, involved individuals have been allowed to participate through counsel or an appropriate representative.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. Moreover, the Court struck this Paragraph in its March 30, 2015 Opinion and Order dismissing the Paterno Estate's contract claim. Moreover, the allegations in this Paragraph attempt to characterize rules and principles that are stated in the Division I Manual, a written document that speaks for itself and which applies to the NCAA's traditional enforcement and infractions process under Articles 19 and 32, as of July 2012. To the extent Plaintiffs mischaracterize the content of the Division I Manual, those allegations are denied. Additionally, Plaintiffs' allegations, which attempt to identify and define certain NCAA legal obligations under the Division I Constitution and Bylaws, are conclusions of law, which require no response. Finally, the allegations in this Paragraph are irrelevant and should be struck.

The NCAA admits that in entering into the Consent Decree it did not undertake a traditional enforcement and infractions process pursuant to Articles 19 and 32 of the Division I Manual. This fact is not in dispute. Therefore, a discussion of the requirements and principles of the Manual applicable to the traditional enforcement and infractions process is not relevant to any factual dispute. However, the NCAA denies that the Division I Manual precluded it from agreeing with Penn State to enter into the Consent

Decree and forego the traditional enforcement and infractions process, and incorporates by reference its response to Paragraphs 2 and 4. The NCAA further denies that any Plaintiff was an “involved individual,” a position it has extensively explained in its multiple rounds of preliminary objections briefing.

37. After the notice of allegations is issued, the matter is referred to the Committee on Infractions. A member institution has the right to pre-hearing notice of the charges and the facts upon which the charges are based, and an opportunity to be heard and to produce evidence. The institution and all involved individuals have the right to be represented by legal counsel at all stages of the proceedings.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. Moreover, the allegations in this Paragraph attempt to characterize rules and principles that are stated in the Division I Manual, a written document that speaks for itself and which applies to the NCAA’s traditional enforcement and infractions process under Articles 19 and 32, as of July 2012. To the extent Plaintiffs mischaracterize the content of the Division I Manual, those allegations are denied. Additionally, Plaintiffs’ allegations, which attempt to identify and define certain NCAA legal obligations under the Division I Constitution and Bylaws, are conclusions of law, which require no response. Finally, the allegations in this Paragraph are irrelevant and should be struck.

The NCAA admits that in entering into the Consent Decree it did not undertake a traditional enforcement and infractions process pursuant to Articles 19 and 32 of the Division I Manual. This fact is not in dispute. Therefore, a discussion of the requirements and principles of the Manual applicable to the traditional enforcement and infractions process is not relevant to any factual dispute. However, the NCAA denies that the Division I Manual precluded it from agreeing with Penn State to enter into the Consent Decree and forego the traditional enforcement and infractions process, and incorporates by reference its response to Paragraphs 2 and 4.

38. The Committee must base its decision on evidence that is “credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs.” Oral or documentary information may be presented to the Committee, subject to exclusion on the ground that it is “irrelevant, immaterial or unduly repetitious.” Individuals have the opportunity, and are encouraged, to present all relevant information concerning mitigating factors.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. Moreover, the allegations in this Paragraph attempt to characterize rules and principles that are stated in the Division I Manual, a written document that speaks for itself and which applies to the NCAA’s traditional enforcement and infractions process under Articles

19 and 32, as of July 2012. To the extent Plaintiffs mischaracterize the content of the Division I Manual, those allegations are denied. Additionally, Plaintiffs' allegations, which attempt to identify and define certain NCAA legal obligations under the Division I Constitution and Bylaws, are conclusions of law, which require no response. Finally, the allegations in this Paragraph are irrelevant and should be struck.

The NCAA admits that in entering into the Consent Decree it did not undertake a traditional enforcement and infractions process pursuant to Articles 19 and 32 of the Division I Manual. This fact is not in dispute. Therefore, a discussion of the requirements and principles of the Manual applicable to the traditional enforcement and infractions process is not relevant to any factual dispute. However, the NCAA denies that the Division I Manual precluded it from agreeing with Penn State to enter into the Consent Decree and forego the traditional enforcement and infractions process.

39. The Committee may not under any circumstances rely on information provided anonymously.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. Moreover, the allegations in this Paragraph attempt to characterize rules and principles that are stated in the Division I Manual, a written document that speaks for itself and which applies

to the NCAA's traditional enforcement and infractions process under Articles 19 and 32, as of July 2012. To the extent Plaintiffs mischaracterize the content of the Division I Manual, those allegations are denied. Additionally, Plaintiffs' allegations, which attempt to identify and define certain NCAA legal obligations under the Division I Constitution and Bylaws, are conclusions of law, which require no response. Finally, the allegations in this Paragraph are irrelevant and should be struck.

The NCAA admits that in entering into the Consent Decree it did not undertake a traditional enforcement and infractions process pursuant to Articles 19 and 32 of the Division I Manual. This fact is not in dispute. Therefore, a discussion of the requirements and principles of the Manual applicable to the traditional enforcement and infractions process is not relevant to any factual dispute. However, the NCAA denies that the Division I Manual precluded it from agreeing with Penn State to enter into the Consent Decree and forego the traditional enforcement, and infractions process and incorporates by reference its response to Paragraphs 2 and 4.

40. After the Committee has completed its review, it is authorized to impose sanctions in appropriate circumstances. The sanctions for violating the rules are calibrated to the rules' substantive prohibitions. Permissible sanctions for major violations include the imposition of probationary periods, reduction in

permissible financial aid awards to student athletes, prohibitions on postseason competition, vacation of team records (but only in cases where an ineligible student athlete has competed), and financial penalties. Those penalties aim to erase the competitive advantage that the violations were intended to achieve.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent a response is required, the NCAA responds as follows: the allegations in Paragraph 40 reference or characterize rules that are set forth in the NCAA Division I Manual, a written document that speaks for itself. To the extent the allegations in Paragraph 40 vary therewith, the NCAA denies those allegations. Further, the allegations in Paragraph 40 state Plaintiffs' conclusion of law, which requires no answer.

To the extent further response is required, the allegations in Paragraph 40 are denied as stated. If the NCAA undertakes an enforcement proceeding pursuant to Articles 19 and 32, then the allegations in the first sentence of Paragraph 40 are accurate. The NCAA is without knowledge or information sufficient to understand what Plaintiffs mean by "calibrated" in the second sentence, and on that basis denies the allegations in the second sentence of Paragraph 40. However, the NCAA admits that the penalties imposed pursuant to Article 19 and 32 enforcement proceedings for "major violations"

may be more severe than the penalties for “secondary violations.” The NCAA further admits that the Committee on Infractions is permitted to impose the sanctions listed in Paragraph 40, but the NCAA denies that those are the only permissible sanctions. The Committee on Infractions is permitted to impose any other penalties as appropriate for major violations, including vacation of wins for violations not involving competition by an ineligible student. The NCAA admits that the Committee on Infractions is permitted to impose penalties with the purpose of erasing a competitive advantage, but it denies that such must be a purpose in imposing penalties. The NCAA denies that the Division I Manual precluded the NCAA from agreeing with Penn State to enter into the Consent Decree, and incorporates by reference its responses to the allegations in Paragraphs 2 and 4. The NCAA denies any remaining allegations in Paragraph 40.

41. The most severe sanction available to the NCAA is the “death penalty,” so called because, in prohibiting an institution’s participation in a sport for a certain period of time, it has enormous consequences for a program’s future ability to recruit players, retain staff, and attract fans and boosters. It is well known that imposing the “death penalty” can ruin the livelihood of those associated with an institution’s program and harm involved individuals well beyond the penalty’s immediate economic impact. For these and other reasons, the

rules allow the death penalty to be imposed only on “repeat violators” — *i.e.*, institutions that (i) commit a major violation, seeking to obtain an extensive recruiting or competitive advantage, and (ii) have also committed at least one other major violation in the last five years.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent a response is required, the NCAA responds as follows: the allegations in Paragraph 41 reference or characterize rules that are set forth in the NCAA Division I Manual, a written document that speaks for itself. To the extent the allegations in Paragraph 41 vary therewith, the NCAA denies those allegations. Further, the allegations in Paragraph 41 state Plaintiffs’ conclusion of law, which requires no answer.

To the extent further response is required, the NCAA admits that suspension of play is a sanction that may substantially impact a program, but the NCAA denies the remaining allegations in the first two sentences of Paragraph 41. Those allegations contain argument and opinion, not factual averments. The NCAA denies the remaining allegations in Paragraph 41. The most severe sanction available to the NCAA is expulsion from the Association, not a suspension in play, and suspension in play is not limited to repeat violators. In addition, although a repeat violator must have committed

at least one other major violation in the last five years (among other things), there is no requirement that the institution must have sought to obtain an extensive recruiting or competitive advantage in committing a major violation. The NCAA also denies that the Division I Manual precluded the NCAA from agreeing with Penn State to enter into the Consent Decree, and incorporates by reference its responses to the allegations in Paragraphs 2 and 4. The NCAA denies any remaining allegations in Paragraph 41.

42. At the conclusion of the hearing, the Committee is required to issue a formal Infractions Report detailing all the Committee's findings and the penalties imposed. The Committee must submit the report to the institution and all involved individuals. The report shall be made publicly available only after the institution and all involved individuals have had an opportunity to review the report. Names of individuals must be deleted before the report is released to the public or forwarded to the Infractions Appeals Committee. The report must also describe the opportunities for further administrative appeal.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. Moreover, the allegations in this Paragraph attempt to characterize rules and principles that are stated in the Division I Manual, a written document that speaks for itself and which applies to the NCAA's traditional enforcement and infractions process under Articles

19 and 32, as of July 2012. To the extent Plaintiffs mischaracterize the content of the Division I Manual, those allegations are denied. Additionally, Plaintiffs' allegations, which attempt to identify and define certain NCAA legal obligations under the Division I Constitution and Bylaws, are conclusions of law, which require no response. Finally, the allegations in this Paragraph are irrelevant and should be struck.

The NCAA admits that in entering into the Consent Decree it did not undertake a traditional enforcement and infractions process pursuant to Articles 19 and 32 of the Division I Manual. This fact is not in dispute. Therefore, a discussion of the requirements and principles of the Manual applicable to the traditional enforcement and infractions process is not relevant to any factual dispute. However, the NCAA denies that the Division I Manual precluded it from agreeing with Penn State to enter into the Consent Decree and forego the traditional enforcement and infractions process, and incorporates by reference its response to Paragraphs 2 and 4.

43. The rules provide a member institution the right to appeal to the Infractions Appeals Committee if the institution is found to have committed major violations. In addition, an individual has the right to appeal if he or she is named in the Committee on Infractions' report finding violations of the NCAA's rules.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. Moreover, the allegations in this Paragraph attempt to characterize rules and principles that are stated in the Division I Manual, a written document that speaks for itself and which applies to the NCAA's traditional enforcement and infractions process under Articles 19 and 32, as of July 2012. To the extent Plaintiffs mischaracterize the content of the Division I Manual, those allegations are denied. Additionally, Plaintiffs' allegations, which attempt to identify and define certain NCAA legal obligations under the Division I Constitution and Bylaws, are conclusions of law, which require no response. Finally, the allegations in this Paragraph are irrelevant and should be struck.

The NCAA admits that in entering into the Consent Decree it did not undertake a traditional enforcement and infractions process pursuant to Articles 19 and 32 of the Division I Manual. This fact is not in dispute. Therefore, a discussion of the requirements and principles of the Manual applicable to the traditional enforcement and infractions process is not relevant to any factual dispute. However, the NCAA denies that the Division I Manual precluded it from agreeing with Penn State to enter into the Consent Decree and forego the traditional enforcement and infractions process, and incorporates by reference its response to Paragraphs 2 and 4.

44. On appeal, the penalties imposed must be overturned if they constitute an abuse of discretion. Factual findings must be overturned if they are clearly contrary to the evidence presented, if the facts found do not constitute a violation of the NCAA's rules, or if procedural errors occurred in the investigation process. The Infractions Appeals Committee's decision is final and cannot be reviewed by any other NCAA authority.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. Moreover, the allegations in this Paragraph attempt to characterize rules and principles that are stated in the Division I Manual, a written document that speaks for itself and which applies to the NCAA's traditional enforcement and infractions process under Articles 19 and 32, as of July 2012. To the extent Plaintiffs mischaracterize the content of the Division I Manual, those allegations are denied. Additionally, Plaintiffs' allegations, which attempt to identify and define certain NCAA legal obligations under the Division I Constitution and Bylaws, are conclusions of law, which require no response. Finally, the allegations in this Paragraph are irrelevant and should be struck.

The NCAA admits that in entering into the Consent Decree it did not undertake a traditional enforcement and infractions process pursuant to Articles 19 and 32 of the Division I Manual. This fact is not in dispute.

Therefore, a discussion of the requirements and principles of the Manual applicable to the traditional enforcement and infractions process is not relevant to any factual dispute. However, the NCAA denies that the Division I Manual precluded it from agreeing with Penn State to enter into the Consent Decree and forego the traditional enforcement and infractions process, and incorporates by reference its response to Paragraphs 2 and 4.

45. The rules include certain alternatives to the formal investigative and hearing process outlined above. For example, an institution is encouraged to self-report violations, and a self-report is considered as a mitigating factor when imposing sanctions. A self-report typically involves a formal letter sent to the enforcement staff by a member institution setting forth the relevant facts. After receiving a self-report, the enforcement staff has a duty to conduct an investigation, to determine whether the self-reported violation is “secondary” or “major,” and to prepare and send a notice of allegations to the institution. Based on the enforcement staff’s investigation, if a major violation is identified and the staff is satisfied with the institution’s self-report, the parties may agree to use a summary disposition process.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. Moreover, the allegations in this Paragraph attempt to characterize rules and principles that are stated in the

Division I Manual, a written document that speaks for itself and which applies to the NCAA's traditional enforcement and infractions process under Articles 19 and 32, as of July 2012. To the extent Plaintiffs mischaracterize the content of the Division I Manual, those allegations are denied. Additionally, Plaintiffs' allegations, which attempt to identify and define certain NCAA legal obligations under the Division I Constitution and Bylaws, are conclusions of law, which require no response. Finally, the allegations in this Paragraph are irrelevant and should be struck.

The NCAA admits that in entering into the Consent Decree it did not undertake a traditional enforcement and infractions process pursuant to Articles 19 and 32 of the Division I Manual. This fact is not in dispute. Therefore, a discussion of the requirements and principles of the Manual applicable to the traditional enforcement and infractions process is not relevant to any factual dispute. However, the NCAA denies that the Division I Manual precluded it from agreeing with Penn State to enter into the Consent Decree and forego the traditional enforcement and infractions process, and incorporates by reference its response to Paragraphs 2 and 4.

46. The summary disposition process and an expedited hearing procedure may be used only with the unanimous consent of the NCAA's enforcement staff; all involved individuals, and the participating institution. During the summary

disposition process, the Committee on Infractions is required to determine that a complete and thorough investigation of possible violations has occurred, especially where the institution, and not NCAA enforcement staff, conducted the investigation. After the investigation, the involved individuals, the institution, and enforcement staff are required to submit a joint written report. A hearing need not be conducted if the Committee on Infractions accepts the parties' submissions, but the Committee must still prepare a formal written report and publicly announce the resolution of the case.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. Moreover, the allegations in this Paragraph attempt to characterize rules and principles that are stated in the Division I Manual, a written document that speaks for itself and which applies to the NCAA's traditional enforcement and infractions process under Articles 19 and 32, as of July 2012. To the extent Plaintiffs mischaracterize the content of the Division I Manual, those allegations are denied. Additionally, Plaintiffs' allegations, which attempt to identify and define certain NCAA legal obligations under the Division I Constitution and Bylaws, are conclusions of law, which require no response. Finally, the allegations in this Paragraph are irrelevant and should be struck.

The NCAA admits that in entering into the Consent Decree it did not undertake a traditional enforcement and infractions process pursuant to Articles 19 and 32 of the Division I Manual. This fact is not in dispute. Therefore, a discussion of the requirements and principles of the Manual applicable to the traditional enforcement and infractions process is not relevant to any factual dispute. However, the NCAA denies that the Division I Manual precluded it from agreeing with Penn State to enter into the Consent Decree and forego the traditional enforcement and infractions process, and incorporates by reference its response to Paragraphs 2 and 4.

47. If the Committee accepts the findings that a violation occurred but does not accept the parties' proposed penalties, it must hold an expedited hearing limited to considering the possibility of imposing additional penalties. After that hearing, the Committee must issue a formal written report, and the institution and all involved individuals have the right to appeal to the Infractions Appeals Committee any additional penalties that may be imposed.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. Moreover, the allegations in this Paragraph attempt to characterize rules and principles that are stated in the Division I Manual, a written document that speaks for itself and which applies to the NCAA's traditional enforcement and infractions process under Articles

19 and 32, as of July 2012. To the extent Plaintiffs mischaracterize the content of the Division I Manual, those allegations are denied. Additionally, Plaintiffs' allegations, which attempt to identify and define certain NCAA legal obligations under the Division I Constitution and Bylaws, are conclusions of law, which require no response. Finally, the allegations in this Paragraph are irrelevant and should be struck.

RESPONSE: The NCAA admits that in entering into the Consent Decree it did not undertake a traditional enforcement and infractions process pursuant to Articles 19 and 32 of the Division I Manual. This fact is not in dispute. Therefore, a discussion of the requirements and principles of the Manual applicable to the traditional enforcement and infractions process is not relevant to any factual dispute. However, the NCAA denies that the Division I Manual precluded it from agreeing with Penn State to enter into the Consent Decree and forego the traditional enforcement and infractions process, and incorporates by reference its response to Paragraphs 2 and 4.

48. These enforcement policies and procedures are subject to amendment only in accordance with the legislative process set forth in Article 5. No other NCAA body, including the Executive Committee and the Board of Directors, has authority to bypass or amend these procedures and impose discipline or sanctions on any member institution. The Executive Committee and the Board of Directors

are authorized only to take actions that are legislative in character, to be implemented association-wide on a prospective basis.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent a response is required, the NCAA responds as follows: the allegations in Paragraph 48 reference or characterize rules that are set forth in the NCAA Division I Manual, a written document that speaks for itself. To the extent the allegations in Paragraph 48 vary therewith, the NCAA denies those allegations. Further, the allegations in Paragraph 48 state Plaintiffs' conclusion of law, which requires no answer.

To the extent further response is required, the NCAA denies the allegations in the first sentence of Paragraph 48 as stated. The NCAA denies that the enforcement policies and procedures of the Division I Manual are subject to amendment according to the processes set forth only in Article 5. For example, Article 19 also contains relevant procedures. The NCAA also denies that the Division I Manual precluded the NCAA from agreeing with Penn State to enter into the Consent Decree, and incorporates by reference its responses to the allegations in Paragraphs 2 and 4. And the NCAA denies that in acting on matters of Association-wide import, the Executive Committee could only take legislative action on a prospective basis. The

NCAA denies the allegations in the last two sentences of Paragraph 48. The former NCAA governing bodies, the Executive Committee and Division I Board of Directors, were authorized to take all actions in their authority under the general principles of law.

49. These procedural protections are a significant and vital part of the bargain involved in each member's decision to participate in the NCAA. Because of the leverage the NCAA has over its member institutions, and because of the significant consequences NCAA sanctions can have for institutions and their administrators, faculty, staff, and students, the NCAA has an express obligation to ensure that any sanctions are fair and imposed consistent with established procedures.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. Moreover, the allegations in this Paragraph attempt to characterize rules and principles that are stated in the Division I Manual, a written document that speaks for itself and which applies to the NCAA's traditional enforcement and infractions process under Articles 19 and 32, as of July 2012. To the extent Plaintiffs mischaracterize the content of the Division I Manual, those allegations are denied. Additionally, Plaintiffs' allegations, which attempt to identify and define certain NCAA legal obligations under the Division I Constitution and Bylaws, and reach

conclusions under contract law regarding third-party beneficiaries, are conclusions of law, which require no response. The NCAA also lacks sufficient knowledge or information regarding what each member considered to be a significant and vital part of their bargain in deciding to participate in the NCAA, especially given that many joined long before the current procedural protections existed, and on that basis denies those allegations. Finally, the NCAA incorporates by reference its extensive arguments presented in multiple rounds of preliminary objections briefing that no Plaintiff is a third-party beneficiary of the Division I Manual.

50. The NCAA's Constitution recognizes that it is the NCAA's responsibility to "afford the institution, its staff and student-athletes fair procedures in the consideration of an identified or alleged failure in compliance." According to the mission statement of the NCAA's enforcement program, "an important consideration in imposing penalties is to provide fairness to uninvolved student-athletes, coaches, administrators, competitors and other institutions."

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the allegations in Paragraph 50 are admitted.

51. On November 4, 2011, the Attorney General of Pennsylvania charged Jerry Sandusky, a former assistant football coach, former assistant professor of

physical education, and former employee of Penn State, with various criminal offenses, including aggravated criminal assault, corruption of minors, unlawful contact with minors, and endangering the welfare of minors. Sandusky was convicted and, on October 9, 2012, was sentenced to 30 to 60 years in prison.

RESPONSE: On information and belief, the allegations in Paragraph 51 are admitted.

52. On November 9, 2011, the Penn State Board of Trustees removed University President Graham Spanier from his position. Rodney Erickson was named interim president, and later became the permanent president of the University. The Board also removed Joe Paterno from his position as head football coach.

RESPONSE: On information and belief, the allegations in Paragraph 52 are admitted.

53. On November 11, 2011, the Penn State Board of Trustees formed a Special Investigations Task Force, which engaged the law firm of Freeh Sporkin & Sullivan, LLP (the “Freeh firm”) to investigate the alleged failure of certain Penn State personnel to respond to and report certain allegations against Sandusky. The Freeh firm was also asked to provide recommendations regarding University governance, oversight, and administrative policies and procedures to help Penn

State adopt policies and procedures to more effectively prevent or respond to incidents of sexual abuse of minors in the future.

RESPONSE: On information and belief, the NCAA admits that the Penn State Board of Trustees engaged the law firm of Freeh Sporkin & Sullivan, LLP in November 2011. The full purpose and scope of the Freeh Firm's engagement is set forth in an engagement letter and the Freeh Report, as modified or expanded by any additional direction from the Penn State Board of Trustees. To the extent the allegations in Paragraph 53 vary therewith, the NCAA denies those allegations.

54. The Freeh firm was not engaged, and had no authority, to investigate or even consider whether any of the actions under its review constituted violations of the NCAA's rules. It was never retained by the Penn State Board of Trustees for this purpose.

RESPONSE: Denied as stated. The purpose and scope of the Freeh Firm's engagement is set forth in its engagement letter and the Freeh Report, as modified or expanded by any additional direction from the Penn State Board of Trustees. In addition, on information and belief, Penn State was hopeful that facts and information identified in the Freeh firm's investigation could be used to respond to questions set forth in the NCAA's November 17, 2011 letter, which the University received after retaining the Freeh firm.

Penn State further hoped that by conducting its own independent investigation of the Sandusky affair, it would deter the NCAA from conducting its own investigation. Indeed, Penn State explicitly requested that it not answer the NCAA's preliminary questions about the Sandusky Affair until the completion of the Freeh investigation. Ultimately, while the Freeh Report did not expressly analyze whether its findings constituted violations of the NCAA Constitution and Bylaws, Penn State accepted that it could serve as a sufficient factual predicate for the NCAA and Penn State to agree that the findings constituted violations for purposes of entering into the Consent Decree.

55. The reprehensible incidents involving Sandusky were criminal matters that had nothing to do with securing a recruiting or competitive advantage for Penn State and its athletics program. Defendant Mark Emmert, president of the NCAA, would later acknowledge that “[a]s a criminal investigation, it was none of [the NCAA’s] business.”

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA admits that the incidents involving Sandusky were reprehensible. The NCAA specifically denies that the Sandusky scandal at Penn State had “nothing to do with securing a recruiting or competitive

advantage for Penn State or its athletics program,” that President Emmert has “acknowledge[d]” that the Sandusky affair was “none of [the NCAA’s] business,” especially once the Freeh Report was released, or that the NCAA otherwise lacked authority to address the issues at Penn State. To the contrary, NCAA incorporates by reference its response to the allegations in Paragraph 1.

56. Nonetheless, as early as November 2011, the NCAA accused certain Penn State personnel (including Plaintiffs) of being significantly involved in alleged violations of the NCAA’s rules.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA states that no response is needed to the allegations in Paragraph 56 because Count I, breach of contract, has been dismissed. To the extent a response is required, the NCAA responds that the Court struck this Paragraph in its March 30, 2015 Opinion and Order, which, inter alia, dismissed the Paterno Estate’s contract claim. To the extent a response is required, the NCAA specifically denies that the “NCAA accused certain Penn State personnel (including Plaintiffs) of being significantly involved in alleged violations of the NCAA’s rules.” To the contrary, and as the Court has twice held, the NCAA’s November 17, 2011 letter explained that, in light of the

information in the Sandusky presentment, the NCAA would review Penn State's exercise of institutional control over its athletics program, and that the NCAA had not, at that point, determined what action to take with respect to Penn State, if any. The letter, which did not identify any of the Plaintiffs, presented four questions that Penn State should answer to allow the NCAA to determine any next steps. The November 17, 2011 letter was not the initiation of any formal enforcement inquiry or investigation by the NCAA, nor did it "accuse" Plaintiffs of involvement in NCAA rules violations.

57. On November 17, 2011, Emmert sent a letter to President Erickson of Penn State expressing concern over the grand jury presentments and asserting that the NCAA had jurisdiction over the matter and might take action against Penn State. (A copy of the letter is attached to this complaint as Exhibit B.) Emmert's letter stated that "individuals with present or former administrative or coaching responsibilities may have been aware of this behavior" and that such "individuals who were in a position to monitor and act upon learning of potential abuses appear to have been acting starkly contrary to the values of higher education, as well as the NCAA." Emmert's letter also stated that "the NCAA will examine Penn State's exercise of institutional control over its intercollegiate athletics program, as well as the actions, and inactions, of relevant responsible personnel."

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA states that no response is needed to the allegations in Paragraph 57 because Count I, breach of contract, has been dismissed. To the extent a response is required, the NCAA responds that in its March 30, 2015 Opinion and Order, which, inter alia, dismissed the Paterno Estate's contract claim, the Court struck those allegations in this Paragraph that were newly alleged in the Second Amended Complaint, and therefore no response is required. The November 17, 2011 letter to President Erickson was sent and is attached to the Second Amended Complaint as Exhibit B. That letter is in writing and speaks for itself, and the NCAA incorporates by reference its response to the allegations in Paragraph 56.

58. Joe Paterno, the long-standing head coach of Penn State football, was expressly referenced in the grand jury presentment and was one of the individuals that Emmert and the NCAA had decided to investigate. In fact, Emmert referenced Coach Joe Paterno in his letter, stating that, under NCAA Bylaw 11.1.2.1, "[i]t shall be the responsibility of an institution's head coach to promote an atmosphere for compliance within the program supervised by the coach, and to monitor the activities regarding compliance of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach."

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA states that no response is needed to the allegations in Paragraph 58 because Count I, breach of contract, has been dismissed. To the extent a response is required, the NCAA responds that the Court struck this Paragraph in its March 30, 2015 Opinion and Order, which, inter alia, dismissed the Paterno Estate's contract claim. To the extent a response is required, the NCAA admits that the grand jury presentment referenced Joe Paterno. The NCAA specifically denies that the "NCAA had decided to investigate" any individual—or to take any action whatsoever—at the time the November 17, 2011 letter was sent. The letter, which is in writing and speaks for itself, does not reference Coach Joe Paterno, and the NCAA further incorporates by reference its response to the allegations in Paragraph 56.

59. When Emmert sent this letter to President Erickson, Joe Paterno was alive and, as an individual referenced in the letter and involved in the investigation, was entitled to certain rights and protections provided under the NCAA's rules. Contrary to the rules, however, the NCAA Defendants failed to provide Joe Paterno with these essential protections and violated the NCAA's rules.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA states that no response is needed to the allegations in Paragraph 59 because Count I, breach of contract, has been dismissed. To the extent a response is required, the NCAA responds that the Court struck this Paragraph in its March 30, 2015 Opinion and Order, which, inter alia, dismissed the Paterno Estate's contract claim.

To the extent a response is required, the NCAA admits that when President Emmert sent the November 17, 2011 letter to President Erickson, "Joe Paterno was alive." The remainder of the Paragraph sets forth conclusions of law, which requires no answer.

60. Emmert's letter did not identify any specific provision in the NCAA's Constitution or Bylaws that granted the NCAA authority to become involved in criminal matters outside the NCAA's basic purpose and mission. Nor did the letter identify any NCAA rule that Penn State or any of the individuals being investigated, including Joe Paterno and other coaches and administrators, had allegedly violated. Emmert nonetheless asserted that the NCAA's Constitution "contains principles regarding institutional control and responsibility" and "ethical conduct," and that those provisions may justify the NCAA's involvement.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA states that no response is needed to the allegations in Paragraph 60 because Count I, breach of contract, has been dismissed. To the extent a response is required, the NCAA responds that in its March 30, 2015 Opinion and Order, which, inter alia, dismissed the Paterno Estate's contract claim, the Court struck those allegations in this Paragraph that were newly alleged in the Second Amended Complaint, and therefore no response is required. The letter is in writing and speaks for itself, and the NCAA incorporates by reference its responses to the allegations in Paragraphs 56 through 58.

By way of further answer, the letter clearly references several provisions of the NCAA Constitution and Bylaws that could be applicable to the Sandusky matter. The NCAA specifically denies that the Sandusky scandal was "outside the NCAA's basic purpose and mission." The events surrounding the Sandusky matter at Penn State fell squarely within the NCAA's authority, indicated a profound lack of institutional integrity and institutional control, and raised serious questions about whether Penn State, as an institution, acted in a manner consistent with the NCAA Constitution and Bylaws. The NCAA also specifically denies that it was "investigat[ing]"

Penn State or any “individuals” at that time. The NCAA incorporates its response to Paragraph 56.

61. When Emmert sent his November 17, 2011 letter, he posed four written questions to which the NCAA sought responses. Those questions related directly to actions or steps that individuals had taken, including “[h]ave each of the alleged persons to have been involved or have notice of the issues identified in and related to the Grand Jury Report behaved consistent with principles and requirements governing ethical conduct and honesty? If so, how? If not, how?” At the time of the letter, Joe Paterno was alleged to have been involved in the issues identified in the Grand Jury Report.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA states that no response is needed to the allegations in Paragraph 61 because Count I, breach of contract, has been dismissed. To the extent a response is required, the NCAA responds that the Court struck this Paragraph in its March 30, 2015 Opinion and Order, which, inter alia, dismissed the Paterno Estate’s contract claim.

To the extent a response is required, the NCAA admits that the November 17, 2011 letter “posed four written questions to which the NCAA sought responses,” and that at the time of the letter, the Grand Jury publically

alleged that Joe Paterno was involved in the issues identified in the Grand Jury Report. The letter is in writing and speaks for itself, and the NCAA incorporates by reference its responses to the allegations in Paragraphs 56 through 58 and Paragraph 60.

62. Instead of demanding that Penn State provide answers to its questions, and without offering Joe Paterno or other individuals the right to participate in the process, the NCAA waited for the Freeh firm to complete its investigation. Attorneys and investigators working for the Freeh firm collaborated with the NCAA and frequently provided information and briefings to the NCAA. During the course of the seven-and-a-half-month investigation, the Freeh firm regularly contacted representatives of the NCAA to discuss areas of inquiry and other strategies. The final report released by the Freeh firm states that as part of its investigative plan, the firm cooperated with “athletic program governing bodies,” *i.e.*, the NCAA. (The Freeh firm also cooperated with other governing bodies, including the Big Ten Conference (the “Big Ten”).)

RESPONSE: In its March 30, 2015 Opinion and Order, which, *inter alia*, dismissed the Paterno Estate’s contract claim, the Court struck those allegations in this Paragraph that were newly alleged in the Second Amended Complaint, and therefore no response is required.

To the extent a response is required, the NCAA admits that, at Penn State's request, it waited for the Freeh firm to complete its investigation before requesting that Penn State provide answers to the questions set forth in the NCAA's November 17, 2011 letter to Penn State. The NCAA specifically denies that "[a]ttorneys and investigators working for the Freeh firm collaborated with the NCAA and frequently provided information and briefings to the NCAA," and further specifically denies that "the Freeh firm regularly contacted representatives of the NCAA to discuss areas of inquiry and other strategies." The Freeh investigation was an independent investigation, and the NCAA did not determine the scope of the investigation, nor did it play any role in the development of the Freeh firm's conclusions, receive any substantive briefings on findings and conclusions, or review any drafts or partial drafts of the Freeh Report. From November 2011 to July 2012, the contacts between the NCAA and the Freeh firm were limited in nature, primarily involved process updates, and were well-known to Penn State and publicly disclosed in the Freeh Report itself.

63. According to Emmert in a speech to the Detroit Economic Club on September 21, 2012, the NCAA waited for the results of the Freeh firm's investigation because the firm "had more power than we have — we don't have subpoena power, which was more or less granted to them by the Penn State Board

of Trustees.” As late as January 2014, Emmert continued to state publicly that he believed that the Freeh firm had been vested with subpoena power, at least as far as employees of Penn State were concerned.

RESPONSE: The NCAA admits that Dr. Emmert made the statement in the first sentence of Paragraph 63, but denies that he said that the NCAA waited for the results of the Freeh firm’s investigation solely because it had more power than the NCAA. Rather, the NCAA waited for the Freeh firm to complete its investigation at the request of Penn State. The NCAA admits that a news report indicates that Dr. Emmert stated publicly that that he believed the Freeh firm had been vested with subpoena power within Penn State.

64. On January 22, 2012, following the NCAA’s initiating its investigation and during the time the NCAA Defendants were waiting for the Freeh firm to complete its investigation rather than following its own rules for investigations, Joe Paterno died. Plaintiff the Estate of Joseph Paterno succeeded to his rights and interests.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA states that no response is needed to the allegations in Paragraph 64 because Count I, breach of contract, has been dismissed. To the

extent a response is required, the NCAA responds that the Court struck this Paragraph in its March 30, 2015 Opinion and Order, which, inter alia, dismissed the Paterno Estate's contract claim.

To the extent a response is required, the NCAA admits that Joe Paterno died on January 22, 2012 and that the Freeh investigation was not complete at that time. The NCAA specifically denies that it had by that date "initiated an investigation" or that it was not "following its own rules for investigations" at that time. To the contrary, the NCAA incorporates its response to Paragraphs 56 and 60. The allegation that the "Estate of Joseph Paterno succeeded to his rights and interests" upon his death is a conclusion of law, which requires no answer.

65. The NCAA's inquiry prompted an investigation by the Big Ten, which sent a letter to President Erickson requesting that it be given the same treatment as the NCAA in the investigative process. Even though this was a criminal matter that fell far outside their purview, Penn State allowed both the NCAA and the Big Ten to participate in the investigation by the Freeh firm.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA is without knowledge or information sufficient to form a belief as to what prompted the Big Ten to send a letter or whether that letter

initiated a Big Ten investigation and, on that basis, denies those allegations. The NCAA specifically denies that it had initiated an inquiry or investigation as of November 2011, that the Sandusky scandal “fell far outside [the NCAA’s] purview,” and that the NCAA and the Big Ten “participate[d] in the investigation by the Freeh firm.” The NCAA incorporates by reference its responses to the allegations in Paragraphs 60, 62, and 65. The Big Ten letter referenced or characterized in Paragraph 65 is in writing and speaks for itself.

66. On July 12, 2012, the Freeh firm released its report (the “Freeh Report”), a 144-page document with approximately 120 pages of footnotes and exhibits. The report did not disclose that representatives of the NCAA and the Big Ten participated in the process with the Freeh firm from the outset of the investigation.

RESPONSE: In its March 30, 2015 Opinion and Order, which, *inter alia*, dismissed the Paterno Estate’s contract claim, the Court struck those allegations in this Paragraph that were newly alleged in the Second Amended Complaint, and therefore no response is required. To the extent a response is required, the NCAA admits that the Freeh Report was released on July 12, 2012 and that it contains 144 pages with 120 additional pages of footnotes and exhibits. The NCAA specifically denies that the “NCAA and the Big Ten participated in the process with the Freeh Firm from the outset of the

investigation.” The Freeh Report is in writing and speaks for itself, and explicitly states, *inter alia*, that the Freeh Firm “cooperat[ed] with law enforcement, government and non-profit agencies, including the National Center for Missing and Exploited Children (NCMEC), and athletic program governing bodies.” The NCAA’s limited interaction with the Freeh investigation was appropriate and fully known to Penn State. Answering further, the NCAA incorporates by reference its response to the allegations in Paragraph 62.

67. The Freeh Report stated that top university officials and Coach Joe Paterno had known about Sandusky’s conduct before Sandusky retired as an assistant coach in 1999, but failed to take action. According to the report, Penn State officials conspired to conceal critical facts relating to Sandusky’s abuse from authorities, the Board of Trustees, the Penn State community, and the public at large.

RESPONSE: Paragraph 67 references or characterizes the Freeh Report, which is a written document that speaks for itself and details the findings that are characterized in Paragraph 67. The NCAA admits that the Freeh Report found that “[t]aking into account the available witness statements and evidence, the Special Investigative Counsel finds that it is more reasonable to conclude that, in order to avoid the consequences of bad

publicity, the most powerful leaders at the University – Spanier, Schultz, Paterno, and Curley – repeatedly concealed critical facts relating to Sandusky’s child abuse from the authorities, the University’s Board of Trustees, the Penn State community, and the public at large.”

Answering further, the Freeh Report’s findings regarding the response of University officials, including Coach Joe Paterno, to information about Sandusky’s abuse of children in 1998 (referenced in the first sentence of Paragraph 67) are detailed throughout the Report, including, among other places, in the Executive Summary and Chapter 2 (titled “Response of University Officials to the Allegation of Child Sexual Abuse Against Sandusky – 1998”).

68. Within hours of the release of the Freeh Report — and before members of the Penn State Board of Trustees had an opportunity to read the full report, discuss it, or vote on its contents — certain Penn State officials held a press conference and released a written statement asserting that the Board of Trustees accepted full responsibility for the purported failures outlined in the Freeh Report.

RESPONSE: The NCAA admits that within hours of the release of the Freeh Report, certain Penn State representatives held a press conference and released a written statement asserting that the Board of Trustees accepted full responsibility for the purported failures outlined in the Freeh Report. The

NCAA lacks information sufficient to admit or deny the allegation that the press conference was held, and the written statement was released, “before members of the Penn State Board of Trustees had an opportunity to read the full report, discuss it, or vote on its contents.” The NCAA also denies that the Board of Trustees were required to vote on the contents of the Freeh Report.

69. Later the same day, Emmert announced that there had been an “acceptance of the report” by the Penn State Board of Trustees. As he and other NCAA officials later explained, the NCAA decided to rely on the Freeh Report, and he publicly announced that once the NCAA “had the Freeh Report, the university commissioned it and released it without comment, so [the NCAA] had a pretty clear sense that the University itself accepted the findings.” According to Emmert, the NCAA “and the University both found the Freeh Report information incredibly compelling” and “so with the University accepting those findings,” the NCAA found “that body of information to be more than sufficient to impose” penalties.

RESPONSE: The NCAA admits that that Penn State Board of Trustees announced that it accepted the Freeh Report. To the extent that the quotation purportedly from Dr. Emmert in the first sentence is taken from a document, that document speaks for itself. Because the source of the quotation is not identified, the NCAA lacks information sufficient to admit or deny that

allegation. The NCAA denies that Dr. Emmert made the statement alleged in the second sentence. Rather, Dr. Ed Ray made that statement. The third sentence is denied as stated because it omits parts of Dr. Emmert's statement. He stated in full, "We and the university both found the Freeh report information incredibly compelling. They interviewed more than 460 individuals, examined more than 3 million documents and e-mails. They provided an examination that was more exhaustive than anything any of us have ever seen in the university. So with the university accepting those findings, we've found that that body of information to be more than sufficient to impose the penalties that we put into place."

70. In reality, however, no full vote of the Board of Trustees was ever taken. The Freeh Report was not approved by the Board of Trustees. The Board of Trustees never took any official action based on the Freeh Report. Nor did the full Board ever accept its findings or reach any conclusions about its accuracy.

RESPONSE: On information and belief, the NCAA admits that no official vote of the full Board of Trustees was taken regarding the Freeh Report in July, 2012. The NCAA specifically denies that the Freeh Report was never "approved by the Board of Trustees," that the "Board of Trustees never took any official action based on the Freeh Report," "[n]or did the full Board ever accept its findings or reach any conclusions about its accuracy."

To the contrary, the Board of Trustees retained the Freeh Firm to conduct an investigation concerning the Sandusky matter, and specifically directed the Freeh Firm to prepare and publish a report of its investigative findings. The day the Report was released, Penn State publicly released a statement about the Freeh Report. Members of the Penn State Board, with assistance from counsel and other advisors, prepared and released the statement prior to any substantive discussion with NCAA personnel about the Freeh Report. The statement provided that “[t]he Board of Trustees, as the group that has paramount accountability for overseeing and ensuring the proper functioning and governance of the University, accepts full responsibility for the failures that occurred.” The statement further provided that “[t]here can be no ambiguity” about the Report’s conclusion that “certain people at the University who were in a position to protect children or confront the predator failed to do so ... [w]e are deeply sorry...” Further, the Consent Decree stated that Penn State “accepts the findings of the Freeh Report for purposes of this resolution,” and quoted verbatim several of the Freeh Report’s key findings. The Executive Committee of the Board of Trustees met and approved President Erickson’s execution of the Consent Decree on July 22, 2012, and during a full session of the Board in August 2012, members of the Board expressed their support for President Erickson’s decision to execute the

Consent Decree, which included an acceptance of the Freeh Report's findings. In addition, the Board did not rescind or repudiate the Consent Decree and, instead, repeatedly affirmed the University's commitment to compliance with the Consent Decree, including the extensive recommendations set forth in the Freeh Report.

71. The NCAA announced that it had no need to "replicat[e]" what it characterized (incorrectly) as an "incredibly exhaustive effort by the Freeh [firm]." But the Freeh Report did not comply with the NCAA's rules and procedures. In preparing its report, the Freeh firm did not purport to conduct an investigation into alleged NCAA rule violations. It did not record or summarize witness interviews as specified in the NCAA's rules. Nor did it include in its report any findings concerning alleged NCAA rule violations. The report's conclusions were not based on evidence that is "credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs," as the NCAA's rules require. And individuals named in the report were not given any opportunity to challenge its conclusions.

RESPONSE: The Freeh Report details the Freeh firm's investigative process and approach. The NCAA admits that it stated it had no need to duplicate the "effort by the Freeh [firm]" which it characterized as "incredibly exhaustive." The NCAA specifically denies that this

characterization was “incorrect” or that in conducting an investigation on behalf of the Penn State Board the Freeh firm had any obligation to comply with “rules and procedures” that govern the NCAA when it conducts an investigation.

The NCAA further admits that the Freeh Report did not include any conclusions concerning whether its findings constituted violations of the NCAA Constitution and Bylaws. The remaining allegations are denied as stated. Penn State agreed that the Freeh Report could serve as a sufficient factual predicate for the NCAA and Penn State to agree that the findings constituted violations for purposes of entering into the Consent Decree. Indeed, Penn State’s own outside counsel, Mr. Gene Marsh (who had served for nine years on the NCAA Committee on Infractions) specifically advised Penn State that the findings in the Freeh Report and Penn State’s “embrace” of the Report established violations of the NCAA Constitution and Bylaws and that if Penn State opted for the traditional infractions process, the Committee on Infractions would likely impose harsh sanctions on Penn State, potentially including a suspension in play.

The NCAA also specifically denies that the Freeh Report’s conclusions were not based on “evidence that is ‘credible, persuasive, and of a kind on which reasonably prudent persons rely in the conduct of serious affairs.’” To

the contrary, the Freeh investigation was led by a former FBI director and federal judge, Louis Freeh, who Penn State Trustee Ken Frazier described as having “unimpeachable credentials and unparalleled experience in law and criminal justice.” The Freeh investigation’s process was robust and consistent with the process regularly used by corporations, universities, and other entities conducting internal investigations in order to develop factual information and make important business, legal, or other strategic decisions, as well as federal prosecutors and regulatory authorities, who routinely base criminal and regulatory settlements on such investigations. The Freeh firm’s findings are supported by documentary evidence, interviews, sworn testimony, and reasonable inferences drawn therefrom, as set forth explicitly in the Freeh Report. To the extent relevant, and consistent with decades of legal authority concerning the burden of proof in cases like this one, proof of this allegation at trial is demanded.

Finally, the NCAA denies the allegations in the last sentence of Paragraph 71 as stated. Individuals were provided the opportunity to participate in the Freeh investigation and, upon information and belief, Coach Paterno or his representative did participate in the Freeh investigation.

72. In preparing its report, the Freeh firm did not complete a proper investigation, failed to interview key witnesses, and instead of supporting its

conclusions with evidence, relied heavily on speculation and innuendo. The report relies on unidentified, “confidential” sources and on questionable sources lacking any direct or personal knowledge of the facts or support for the opinions they provided. Many of its main conclusions are either unsupported by evidence or supported only by anonymous, hearsay information of the type specifically prohibited by the NCAA rules.

RESPONSE: The NCAA admits that the Freeh Firm did not or was unable to interview all persons with potentially relevant information. The NCAA specifically denies that the Freeh firm did not “complete a proper investigation,” “relied heavily on speculation and innuendo,” relied upon “questionable sources,” and that “many of its main conclusions are either unsupported by evidence or supported only by anonymous, hearsay information.” By way of further answer, the NCAA incorporates by reference its response to the allegations in Paragraph 71.

73. The Freeh Report was an improper and unreliable “rush to injustice,” and it has been thoroughly discredited. Prominent experts, including Richard Thornburgh, former Attorney General of the United States, have independently concluded that the Freeh Report is deeply flawed and that many of its key conclusions are wrong, unsubstantiated, and unfair.

RESPONSE: Denied. The NCAA specifically denies that the “Freeh Report was an improper and unreliable ‘rush to justice,’ and it has been thoroughly discredited.” The NCAA further denies that so-called “[p]rominent experts” have “independently concluded that the Freeh Report is deeply flawed.” (emphasis added). Rather, the Freeh Report is a comprehensive account of an extensive and impressive independent investigation led by a former FBI director and federal judge, Louis Freeh, which took place over the course of seven months. The NCAA incorporates by reference its response to the allegations in Paragraph 71. The NCAA is aware of no information that has “discredited” the Freeh Report. Far from “independent,” the so-called “prominent experts” referenced in this Paragraph were selected, retained, and compensated by the Paterno family itself, and their so-called “critiques” do not succeed in raising any serious questions about the Freeh investigation’s process or findings.

74. Contrary to suggestions made in the Freeh Report, there is no evidence that Joe Paterno covered up known incidents of child molestation by Sandusky to protect Penn State football, to avoid bad publicity, or for any other reason. There is no reason to believe, as the Freeh firm apparently did, that Joe Paterno understood the threat posed by Sandusky better than qualified child welfare professionals and law enforcement, who investigated the matter, made no

findings of abuse, and declined to bring charges. There is no evidence that Joe Paterno or any other members of the athletic staff conspired to suppress information because of publicity concerns or a desire to protect the football program.

RESPONSE: The NCAA specifically denies that “there is no evidence that Joe Paterno covered up known incidents of child molestation by Sandusky to protect Penn State football, to avoid bad publicity, or for any other reason,” and specifically denies the remainder of the allegations in the Paragraph, which constitute argument concerning the same general averment.

The NCAA did not conduct its own investigation of these matters, but instead relied upon the investigation and findings of the Freeh firm, which it believed were credible and accurate. The Freeh investigation was led by a former FBI director and federal judge, Louis Freeh, who Penn State Trustee Ken Frazier described as having “unimpeachable credentials and unparalleled experience in law and criminal justice.” The Freeh investigation’s process was robust and consistent with the process regularly used by corporations, universities, and other entities conducting internal investigations in order to develop factual information and make important business, legal, or other strategic decisions. The Freeh firm’s findings—

including those concerning Coach Paterno—are supported in the Freeh Report by documentary evidence (including contemporaneous email communication), interviews, sworn testimony, and reasonable inferences drawn therefrom. The supporting evidence is set forth throughout the Freeh Report, including in the Executive Summary, chapters 2-4, and the accompanying exhibits, among other places. To the extent relevant, proof of the allegations in Paragraph 74 are demanded at trial.

75. According to Frank Fina, the Chief Deputy Attorney General for Pennsylvania and the architect of the prosecution’s case against Sandusky, no evidence supports the conclusion that Joe Paterno was part of a conspiracy to conceal Sandusky’s crimes. *See* Armen Keteyian, *Sandusky Prosecutors: Penn State Put School’s Prestige Above Abuse*, CBS News, Sept. 4, 2013, available at <http://www.cbsnews.com/news/Sandusky-prosecutors-penn-state-put-schools-prestige-above-abuse>.

RESPONSE: The article referenced or characterized in Paragraph 75 is a written document that speaks for itself. The NCAA specifically denies, however, that Frank Fina stated there was “no evidence [to] support[] the conclusion that Joe Paterno was part of a conspiracy to conceal Sandusky’s crimes.” (emphasis added). The comments attributed to Mr. Fina in the article referenced in Paragraph 75 do not include that purported statement as

a verbatim quote. In any event, Mr. Fina’s full comments also note that as Coach Paterno said himself, he “didn’t do enough. [He] should have done more.” According to the article, Mr. Fina also spoke favorably of the Freeh Report, stating that “[i]n a detailed independent investigative report commissioned by the Penn State Board of Trustees, former FBI Director Louis Freeh found Spanier, Schultz, and Curley repeatedly concealed facts about the abuse from authorities,” that Messrs. Spanier, Schultz and Curley “deserve to be charged” for such conduct, and that he “hope[s] justice will be served...”

76. Despite the fact that it supposedly conducted 430 interviews, the Freeh firm did not speak to virtually any of the persons who had the most important and relevant information concerning Sandusky’s criminal conduct. Three of the most crucial individuals — Gary Schultz, Timothy Curley, and Joe Paterno — were never interviewed. Michael McQueary, the sole witness to the 2001 incident, was also not interviewed.

On information and belief, the NCAA admits that the Freeh Firm conducted over 430 interviews, but that it did not interview Mr. Schultz, Mr. Curley, Mr. Paterno, and Mr. McQueary. The NCAA specifically denies the Freeh firm “did not speak to virtually any of the persons who had the most important information concerning Sandusky’s criminal conduct,” and notes

further than the Freeh Report specifically references sworn testimony provided by Joe Paterno and Michael McQueary. The NCAA incorporates by reference its response to the allegations in Paragraph 71.

77. The failure to conduct key interviews was all the more consequential because of the lack of relevant documents. Although the Freeh firm purported to review over 3.5 million documents, the Freeh Report itself references and relies on only approximately 30 documents, including 17 e-mails. Not one of those e-mails was sent to or from Joe Paterno, and he was not copied on any of them.

RESPONSE: Paragraph 77 references or characterizes the Freeh Report and its exhibits, which are written documents that speak for themselves. The NCAA specifically denies the suggestion that the Freeh firm investigation's process was somehow deficient, that it "failed" to conduct key interviews, or that it did not identify relevant documents. To the contrary, the Freeh investigation identified critical emails and other documents concerning the events surrounding the Sandusky matter, including multiple e-mails referencing communications between certain of the three indicted members of Penn State leadership (Spanier, Curley and Schultz) and Coach Joe Paterno. The NCAA incorporates by reference its response to the allegations in Paragraph 71. Further, the NCAA is without sufficient information to admit or deny whether the Freeh firm "relie[d] on only approximately 30

documents, including 17 emails,” or whether any of the emails it relied upon “was sent to or from Joe Paterno,” or copied him.

78. The Freeh Report ignored decades of expert research and behavioral analysis concerning the appropriate way to understand and investigate a child sexual victimization case. If the Freeh firm had undertaken a proper investigation, it would have learned that pedophiles are adept at selecting and grooming their subjects, concealing or explaining away their actions from those around them, and covering their tracks. As experts have determined, Sandusky was a master at these techniques, committing his crimes without detection by courts, social service agencies, police agencies, district attorneys’ offices, co-workers, neighbors, and even his own family members. Sandusky was also able to conceal his criminal conduct from employees, volunteers, and families affiliated with The Second Mile, a non-profit organization serving underprivileged and at-risk children and youth in Pennsylvania.

RESPONSE: The NCAA specifically denies that the Freeh firm did not “undertake[] a proper investigation,” and incorporates by reference its responses to Paragraphs 71. The NCAA lacks sufficient information to admit or deny whether the Freeh firm considered the “expert research and behavioral analysis” concerning pedophiles referenced in Paragraph 78 when it conducted its investigation and prepared its Report. Nor does the NCAA

have sufficient information to admit or deny whether Sandusky was a “master” at certain “techniques” employed by pedophiles, or whether Sandusky was able to “conceal his criminal conduct from employees, volunteers, and families affiliated with The Second Mile.”

79. In short, the Freeh Report provided no evidence of a cover-up by Joe Paterno or any other Penn State coach and no evidence that Sandusky’s crimes were caused by Penn State’s football program. A reasonable, objective review of the Report would have revealed that fact to any reader. *See Critique of the Freeh Report: The Rush To Injustice Regarding Joe Paterno* (Feb. 2013), available at <http://paterno.com>.

RESPONSE: The NCAA specifically denies that the Freeh Report provided “no evidence of a cover-up by Joe Paterno or any other Penn State coach,” nor that a “reasonable, objective review of the Report would have revealed that fact to any reader.” The NCAA incorporates by reference its response to the allegations in Paragraph 71 and 74, and, to the extent relevant and consistent with decades of legal authority concerning cases like this one, demands proof of these allegations at trial. Numerous “reasonable, objective” observers, including senior leaders at Penn State, concluded that the Freeh Report was reliable and accurate. The NCAA further notes, far from an example of an “objective review,” the “Critique of the Freeh Report”

referenced in Paragraph 79 was prepared by the Paterno family's outside counsel, who also serve as their counsel in the instant litigation.

80. The investigative work of the Freeh firm has come under scrutiny and criticism from highly respected sources in other matters. For example, former U.S. Circuit Judge and U.S. Department of Homeland Security Secretary Michael Chertoff recently found that another report from the Freeh firm was "structurally deficient, one-sided and seemingly advocacy-driven," was "deeply flawed," and "lack[ed] basic indicia of a credible investigation." *Universal Entertainment Corporation: Independent Review Finds the Freeh Report on Allegations Against Kazuo Okado "Deeply Flawed,"* Wall St. J., Apr. 22, 2013 (internal quotation marks omitted), available at <http://online.wsj.com/article/PR-00-20130422-905271.html>.

RESPONSE: The NCAA specifically denies the allegations in the first sentence of Paragraph 80. Director Freeh remains highly respected and continues to serve as investigative counsel in complex, high-stakes matters. The Wall Street Journal article and report prepared by Secretary Chertoff referenced or characterized in Paragraph 80 are written documents that speak for themselves. By way of further answer, the allegations of this Paragraph, which relate a newspaper account of a third party's purported assessment of a different investigative report prepared by the Freeh firm, is so

lacking in relevance, materiality and reliability that it should be stricken as impertinent matter, requiring no further answer.

81. The NCAA has been subject to heavy criticism for the arbitrariness of its enforcement program as it is applied, for its mishandling of alleged rules violations, and for an overall lack of integrity and even corruption in its enforcement decisions. Commentators have noted that the NCAA's enforcement decisions are often driven by improper monetary and political considerations.

RESPONSE: The NCAA states that no response is needed to the allegations in Paragraph 81 because Count I, breach of contract, has been dismissed. To the extent a response is required, the NCAA denies the allegations in Paragraph 81 as stated. The NCAA admits that its enforcement program, which necessarily involves sanctioning university sports programs with ardent followings, often is the subject of criticism. The NCAA operates its enforcement and infractions processes consistent with its rules and imposes appropriate penalties should violations occur.

82. Recent reports have disclosed problems that have long infected the organization. For example, one report determined that in the course of an investigation against the University of Miami, the NCAA's enforcement staff acted contrary to its legal counsel's advice and failed to adhere to the membership's understanding of the limits of the NCAA's investigative powers. Emmert has

publicly admitted that, under his leadership, the NCAA has failed its membership. *See Report Details Missteps, Insufficient Oversight; NCAA Commits To Improve* (Feb. 19, 2013), available at <http://www.ncaa.com/news/ncaa/article/2013-02-18/report-details-missteps-insufficient-oversight-ncaa-commits-improve>.

RESPONSE: Denied as stated. The allegations in the second sentence of Paragraph 82 misstate the referenced document. The NCAA admits that a report prepared by Kenneth L. Wainstein of Cadwalader, Wickersham & Taft LLP concerning certain issues related to an investigation of the University of Miami, which explicitly sets forth its own findings and conclusions.

The NCAA specifically denies that “recent reports have disclosed problems that have long infected the organization,” or that the NCAA has “failed its membership” under President Emmert’s leadership. The NCAA incorporates by reference its response to Paragraph 81. Rather, the Report prepared by Mr. Wainstein (1) concluded that “this series of missteps is not typical of the Enforcement Staff’s operations”; (2) commented that Mr. Wainstein’s team was “uniformly impressed with the caliber of the Staff members and with the depth of their commitment to the mission of the NCAA”; (3) commended the “cooperation and dedication of resources by the NCAA” to the subsequent investigation and review, and (4) concluded that the

“appropriateness of [President Emmert’s] conduct ... is evident from the NCAA’s response” once he became aware of the issue, “and specifically from his decisions to fully disclose the issue and to take all possible steps to ensure that the parties at risk in the investigation suffer no prejudice....”

By way of further answer, the allegations of this Paragraph, which relate to the traditional enforcement and infractions process and an entirely different university and different conduct at that university, is so lacking in relevance, materiality and reliability that it should be stricken as impertinent matter, requiring no further answer.

83. Senate majority leader Harry Reid (D-Nev.) has called for Congress to investigate the NCAA’s flawed enforcement process, citing the NCAA’s “absolute control over college athlet[ics]” and its infamous handling of the case against Jerry Tarkanian, former head coach of the men’s basketball team at the University of Nevada, Las Vegas. Alexander Bolton, *Reid: Congress Should Investigate NCAA’s “Absolute” Power*, The Hill, Apr. 9, 2013, available at <http://thehill.com/homenews/senate/292603-reid-congress-should-investigate-ncaa-powers>.

RESPONSE: The NCAA states that no response is needed to the allegations in Paragraph 83 because Count I, breach of contract, has been dismissed. To the extent a response is required, the NCAA responds that the

NCAA admits that The Hill published an article on April 9, 2013 stating that “Senate Majority Leader Harry Reid (D-Nev.) on Tuesday said Congress should investigate the NCAA over long-running complaints about its enforcement process.” The NCAA specifically denies that it has a flawed enforcement process and that its handling of the “case against Jerry Tarkanian” is “infamous.” The NCAA incorporates by reference its responses to Paragraphs 81 and 82.

By way of further answer, the allegations of this Paragraph, which relate to one senator’s political statement having nothing to do with Penn State is so lacking in relevance, materiality and reliability that it should be stricken as impertinent matter, requiring no further answer.

84. Before this matter involving Penn State, the NCAA had never before interpreted its rules to permit intervention in criminal matters unrelated to athletic competition. There are numerous publicly reported examples of criminal conduct by student athletes where the university leadership is alleged to have covered up or enabled the crimes, and the NCAA never became involved.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA admits that there are other instances of solely “criminal conduct by student athletes.” The NCAA also specifically denies that “this

matter involving Penn State” was solely a “criminal matter[] unrelated to athletic competition” or otherwise beyond the purview of legitimate NCAA concern, or that, in this case, the NCAA “interpreted its rules” in the manner suggested in Paragraph 84. To the contrary, the NCAA incorporates by reference its response to the allegations in Paragraph 1.

85. Before this matter involving Penn State, the NCAA had imposed sanctions for lack of institutional control only in cases involving conduct that violated one of its bylaws. The NCAA had never before cited failure of institutional control as the sole basis for imposing sanctions on any member school.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the Court struck this Paragraph in its March 30, 2015 Opinion and Order, which, *inter alia*, dismissed the Paterno Estate’s contract claim.

86. The NCAA Defendants recognized that, in this case, they did not “have all the facts about individual culpability,” and that imposing sanctions could cause “collateral damage” to many innocent parties. Nonetheless, they viewed the scandal involving Sandusky as an opportunity to deflect attention from mounting criticisms, to shore up the NCAA’s faltering reputation, to broaden the NCAA’s

authority beyond its defined limits, and to impose massive sanctions on Plaintiffs and Penn State for their own benefit.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA admits that Dr. Ed Ray was quoted as stating that the NCAA did not “have all the facts about individual culpability.” The NCAA further responds that that it did not conduct an investigation or institute an infractions case and, in fact, that it expressly reserved the right to do that with respect to any individuals at the conclusion of the criminal proceedings.

The NCAA denies as stated the allegation that the NCAA recognized that “imposing sanctions could cause ‘collateral damage.’” Rather, Dr. Emmert stated that *a suspension in play* could have “collateral damage ... on people who were essentially innocent bystanders.”

The NCAA denies all of the allegations in the second sentence of Paragraph 86. To the contrary, the NCAA agreed to enter into the Consent Decree with Penn State, inter alia, to address an “unprecedented failure of institutional integrity” at Penn State, a breach of the standards expected by and articulated in the NCAA Constitution and Bylaws, and an “extraordinary affront to the values all members of the Association have pledged to uphold.” Further, the NCAA entered into the Consent Decree because Penn State

determined it was the best option available to the University at the time, and viewed it as preferable to the traditional infractions process. No sanctions were imposed on individuals. The NCAA further refers to its response to Paragraphs 1 and 4.

87. The NCAA Defendants agreed to work together to make Penn State an example and to single out its coaches and administrators for harsh penalties, regardless of the facts and with full knowledge that their actions would cause Plaintiffs substantial harm. In particular, the NCAA Defendants took a series of unauthorized and unjustified actions intentionally to harm, or in reckless disregard of, the rights and interests of involved parties. In an abuse of their positions, the NCAA Defendants forced Penn State to accept the sanctions they dictated by threatening to seek the “death penalty,” even though the sanctions were not authorized, appropriate, or justified by any identified NCAA rule violation.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA responds that the allegations in Paragraph 87 constitute conclusions of law and argument that require no response. To the extent a response is required, NCAA specifically denies that it took any action to “make Penn State an example or to single out its coaches and administrators for harsh penalties, regardless of the facts.” As to the reasons the NCAA

entered into the Consent Decree and the factual predicate, the NCAA incorporates by reference its response to Paragraphs 71 and 86. By way of further answer, the NCAA's actions in entering into the Consent Decree were appropriate, and well within its authority. The NCAA further specifically denies that the Consent Decree includes any penalties for "coaches and administrators." All of the sanctions are institutional in nature and were imposed solely upon and accepted by Penn State. The NCAA did not initiate a formal investigatory and disciplinary process with regard to individuals. In addition, the NCAA specifically denies that it "forced Penn State to accept the sanctions they dictated by threatening to seek the death penalty," and, to the contrary, incorporates by reference its response to Paragraphs 7, 95 and 107.

88. As part of this unlawful course of action, Emmert, Dr. Ray, and other members of the NCAA conspired together with the Freeh firm to circumvent the NCAA rules, strip Plaintiffs of their procedural protections under those rules, and level allegations in the absence of facts or evidence supporting those allegations. As a result of that agreement, the NCAA's Executive Committee, under the leadership of Dr. Ray, purported to grant Emmert authority to "enter into a consent decree with Penn State University that contains sanctions and corrective measures related to the institution's breach of the NCAA Constitution and Bylaws and core values of intercollegiate athletics based on the findings of the Freeh Report and

Sandusky criminal trial.” The Committee outlined the sanctions to be taken against Penn State and described its purported authority to act as arising from its power under Article 4 of the NCAA Constitution “to resolve core issues of Association-wide import.”

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the allegations in the first sentence of Paragraph 88 constitute Plaintiffs’ conclusions of law, which require no response. To the extent further response is necessary, the NCAA specifically denies all of the allegations, for the reasons set forth throughout this answer. *See, e.g.,* response to Paragraphs 1, 3-5, 62. The NCAA admits that its Executive Committee authorized Dr. Emmert to enter into a Consent Decree with Penn State and that one source of the Executive Committee’s authority to do so was its Article 4 right to resolve core issues of Association-wide import, and the precise language of that authorization is contained in the July 21, 2012 Report of the NCAA Executive Committee, incorporated by reference herein.

89. On July 13, 2012, Emmert contacted President Erickson to advise him that the NCAA Executive Committee had decided to accept the Freeh Report and substitute its flawed findings for the NCAA’s obligation to conduct its own investigation pursuant to the required procedures set forth in the NCAA rules.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA specifically denies that, on July 13, 2012, President Emmert “advised” President Erickson that the “NCAA Executive Committee had decided to accept the Freeh Report.” By way of further answer, following the release of the Freeh Report, senior NCAA personnel engaged in thoughtful, careful, and extensive internal deliberations concerning the best and most appropriate response to the unprecedented case at Penn State. In addition, also following the release of the Freeh Report, President Erickson and President Emmert engaged in dialogue about the NCAA’s and Penn State’s next steps. At some point during those discussions, they discussed a possible alternative to the traditional infractions process. At the conclusion of this dialogue, this alternate approach became the Consent Decree, to which both parties agreed, including Penn State, which concluded it was preferable to the traditional enforcement and infractions process.

The NCAA also specifically denies that, under the circumstances, the NCAA was obligated to “conduct its own investigation” under the provisions of the NCAA rules or otherwise or that the Division I Manual precluded the NCAA from agreeing with Penn State to enter into the Consent Decree. The NCAA also specifically denies that the Freeh Report’s findings are “flawed,”

incorporates by reference its response to Paragraphs 5,73, 80, and 83, and, to the extent relevant, demands proof of such allegations at trial.

90. The NCAA Defendants and Penn State knew or should have known that the Freeh Report was an unreliable rush to judgment and that the conclusions reached in the report were unsupported. The NCAA Defendants and Penn State also knew or should have known that by accepting the Freeh Report as a basis for imposing sanctions instead of following the NCAA's own rules and procedures, including the rules and procedures that were designed to protect the rights of Plaintiffs, they would dramatically increase the publicity given to its unreliable conclusions and effectively terminate the search for the truth.

RESPONSE: In its March 30, 2015 Opinion and Order, which, inter alia, dismissed the Paterno Estate's contract claim, the Court struck those allegations in this Paragraph that were newly alleged in the Second Amended Complaint, and therefore no response is required. In any event, the allegations in Paragraph 90 constitute Plaintiffs' conclusions of law and argument, to which no response is required.

To the extent a response is required, the NCAA specifically denies that it "knew or should have known" that the Freeh Report was "unreliable" or that its conclusions were "unsupported." To the contrary, the NCAA incorporates by reference its responses to Paragraphs 5, 72, and 73.

The NCAA also specifically denies that by using the Freeh Report and its findings as the main factual predicate for the Consent Decree, the NCAA and Penn State “dramatically increase[d] [the] publicity” of the Freeh Report over the coverage the Report would have independently received or that which an NCAA enforcement proceeding would have garnered. The NCAA also denies that the Freeh Report “effectively terminate[d] the search for the truth.” Plaintiffs’ own allegations and commissioned “expert” critiques demonstrate that those who disagreed with the Freeh Report’s findings were not deterred from criticizing it or otherwise searching for what they consider “the truth.”

91. The NCAA Defendants and Penn State knew or should have known that the conduct described in the Freeh Report was not a violation of the NCAA’s rules and could not substitute for the procedures required under the NCAA’s rules. Among other things, both the NCAA Defendants and Penn State knew that the NCAA’s staff had not completed a thorough investigation, as required under the NCAA’s rules. The staff had not identified any major or secondary violations committed by Penn State in connection with the criminal matters involving Sandusky. The actions taken by the NCAA Defendants were not authorized by any general legislation adopted by the NCAA’s member institutions. Neither Penn

State nor any involved individual authorized the NCAA to use a summary disposition process and, in any event, the NCAA did not comply with that process.

RESPONSE: The allegations in Paragraph 91 constitute Plaintiffs' conclusions of law and argument, to which no response is required. The NCAA incorporates by reference its response to Paragraphs 5 and 90.

To the extent further response is required, the NCAA admits that the NCAA enforcement staff did not conduct an investigation pursuant to Articles 19 and 32 of the Sandusky matter, but specifically denies that it was required to do so.

The NCAA also specifically denies it “knew or should have known” that the findings in the Freeh Report did not violate NCAA rules. The NCAA also specifically denies that its actions were not authorized, or that it could not use the Freeh Report as the main factual predicate for the Consent Decree. The NCAA incorporates by reference its response to Paragraphs 71, 86, 87, and 90.

The NCAA also specifically denies that the Consent Decree was the product of the “summary disposition process” described in Article 32.7, or that there was any obligation that the Consent Decree be consistent with that process. In the Consent Decree, the NCAA and Penn State agreed to resolve

Penn State's institutional responsibility for the Sandusky matter without resort to the traditional infractions process.

92. At no time did Penn State self-report any rules violations to the NCAA.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the allegations in Paragraph 92 are denied. To the contrary, Penn State intended that the NCAA would rely on the results of the Freeh firm's investigation, and Penn State self-reported to the NCAA potential violations of NCAA rules related to other sports.

93. Emmert took the position that because the Penn State Board of Trustees had commissioned the Freeh Investigation, the NCAA would take it upon itself to treat the Freeh Report as the equivalent of a self-report in an infractions case.

RESPONSE: Denied as stated. The NCAA and Penn State agreed that the Freeh Report could be used as the factual predicate for the Consent Decree, and that Penn State's institutional responsibility for the Sandusky matter could be resolved without resort to the traditional infractions process.

94. Penn State's outside counsel, Eugene Marsh, who was specially engaged to deal with the NCAA on this issue, had several conversations with

NCAA representatives between July 16 and July 22, 2012. In the course of those conversations, despite the clear indication in the NCAA's rules that the "death penalty" was reserved for cases of repeat violators of major rules, the NCAA indicated that the "death penalty" was a possibility for the Penn State football program, but that other alternatives would also be considered.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA states that no response is needed to the allegations in Paragraph 94 because Count I, breach of contract, has been dismissed. To the extent a response is required, the NCAA responds that in its March 30, 2015 Opinion and Order, which, inter alia, dismissed the Paterno Estate's contract claim, the Court struck those allegations in this Paragraph that were newly alleged in the Second Amended Complaint, and therefore no response is required.

To the extent a response is required, the NCAA admits that Penn State retained Mr. Gene Marsh—a former Chair of the NCAA Committee on Infractions—to advise it concerning the Sandusky matter and to interface with the NCAA on its behalf. The NCAA further admits that Mr. Marsh had several conversations with NCAA representatives between July 16 and July 22, 2014. The NCAA specifically denies the allegations in the second sentence

as stated, including that the so-called “death penalty” is reserved for cases or repeat violators of major NCAA rules, as described in its response to Paragraph 41. Certain NCAA personnel expressed their view to Mr. Marsh that if Penn State opted for the traditional enforcement process, suspension of play would be a potential sanction.

95. As discussions progressed, the NCAA told Marsh that the majority of the NCAA Board of Directors believed that the “death penalty” should be imposed. That statement was used as further leverage to extract a severe package of sanctions from Penn State. But it was untrue. According to published statements by Dr. Ray, made after the issuance of the NCAA’s Consent Decree, the NCAA Board had voted to reject the imposition of the “death penalty.”

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA states that no response is needed to the allegations in Paragraph 28 because Count I, breach of contract, has been dismissed. To the extent a response is required, the NCAA responds that the allegations in Paragraph 95 are denied as stated. Prior to July 21, 2012, certain NCAA personnel indicated to Marsh an understanding that a majority of the Executive Committee believed that a suspension of play was an appropriate sanction for Penn State. Following negotiations between the NCAA and Penn

State regarding the Consent Decree, on July 21, 2012 the NCAA Executive Committee approved and accepted a negotiated package of sanctions that Penn State voluntarily accepted, which ultimately did not include a suspension of play.

96. The discussion was an unlawful and non-negotiable “cram down” of a list of predetermined sanctions and penalties that was designed to, and in fact did, create an atmosphere of duress and thereby force Penn State to accept sanctions that the NCAA Defendants knew, or should have known, were not proper under the NCAA’s rules and that would violate Plaintiffs’ rights. The NCAA’s focus was not on actual bylaw violations, but on purported concerns about the football-centric “culture” at Penn State based on the flawed and unsubstantiated conclusions set out in the Freeh Report. As Emmert later acknowledged, the NCAA’s goal was to punish and penalize Penn State’s football program and the individuals associated with the program, including Plaintiffs.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, in its March 30, 2015 Opinion and Order, which, inter alia, dismissed the Paterno Estate’s contract claim, the Court struck those allegations in this Paragraph that were newly alleged in the Second Amended Complaint, and therefore no response is required. To the extent a response is

required, the allegations in Paragraph 96 contain Plaintiffs' legal conclusions and argument, which require no response. Further, the allegations in Paragraph 96 are denied for the reasons stated in Paragraphs 5, 7, and 90 and because Penn State successfully negotiated changes in the package of sanctions and initially proposed language of the Consent Decree.

As to the allegations in the second sentence of Paragraph 96, the NCAA admits that the Consent Decree was based in part on the conclusions set forth in the Freeh Report and its acceptance by Penn State, but denies that these conclusions were "flawed and unsubstantiated" for reasons discussed throughout this Answer and the NCAA's multiple preliminary objections memoranda. To the extent relevant, proof of this allegation is demanded at trial.

The NCAA further specifically denies that its "focus" was not on "bylaw violations" but instead on "purported concerns about the football-centric 'culture' at Penn State." The Consent Decree explicitly addresses both issues, among others. The NCAA incorporates by reference its response to Paragraphs 1, 4, 71, 86, and 87, concerning the reasons it entered into the Consent Decree with Penn State.

The NCAA specifically denies the allegations in the third sentence of Paragraph 96. Further, as set forth in the Consent Decree, Penn State's

sanctions were “designed to not only penalize the University for contravention of the NCAA Constitution and Bylaws, but also to change the culture that allowed this activity to occur and realign it in a sustainable fashion with the expected norms and values of intercollegiate athletics.” Accordingly, the Consent Decree included a punitive and corrective component. Further, the Consent Decree’s express purpose was to address institutional violations and not to punish any individual, including Plaintiffs.

97. In his discussions that same week with President Erickson, Emmert warned Erickson that he was not to disclose the content of their discussions with Penn State’s Board of Trustees. The NCAA threatened Erickson by telling him that if there was a leak about the proposed sanctions to the media, the discussion would end and imposition of the “death penalty” would be all but certain. At no point during that week did Erickson share with the full Board the array of crippling and historic penalties being threatened by Emmert and the NCAA.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, upon information and belief, the NCAA admits that while President Erickson briefed the Executive Committee of the Penn State Board of Trustees prior to executing the Consent Decree, he did not brief the full Board in advance. The NCAA otherwise denies Paragraph 97 as stated. It was

entirely Penn State's decision to brief the Executive Committee of the Board of Trustees—but not the full Board—prior to execution of the Consent Decree. The NCAA never told President Erickson not to brief the full Penn State Board of Trustees about the Consent Decree or that a suspension of play was “all but certain” in the case of a leak. Both the NCAA and Penn State believed that confidentiality was important, and that careful deliberations would not be possible if the discussions were engulfed in a media storm.

98. Although the NCAA frequently takes *years* to conduct and complete an investigation, the NCAA Defendants moved to impose sanctions on Penn State almost immediately after the Freeh firm released its report. The NCAA was willing to rely on the Freeh Report as the basis for its sanctions because it had been privy to the work of the Freeh Firm since late 2011 and had taken steps to influence the focus of its investigation and the nature of its findings.

RESPONSE: In its March 30, 2015 Opinion and Order, which, *inter alia*, dismissed the Paterno Estate's contract claim, the Court struck those allegations in this Paragraph that were newly alleged in the Second Amended Complaint, and therefore no response is required. To the extent a response is required, the NCAA denies that it “frequently takes years” to conduct and complete an NCAA investigation; the length of investigations varies and depends on a number of facts and circumstances.

The NCAA denies as stated that it “moved to impose sanctions on Penn State almost immediately after the Freeh firm released its report.” The NCAA waited for many months for the Freeh firm to complete its investigation. Following the release of the Freeh Report the NCAA and Penn State engaged in dialogue about their next steps, which dialogue ultimately resulted in the Consent Decree, and permitted Penn State to resolve any potential NCAA concerns without an extended enforcement process. The NCAA also specifically denies the last sentence of Paragraph 98, including that it “had taken steps to influence the focus of [the Freeh] investigation and the nature of its findings.” The NCAA incorporates by reference its response to Paragraphs 71-72. If relevant, consistent with the applicable burden of proof, proof is demanded at trial that the NCAA had taken steps to influence the focus of the Freeh Firm’s investigation and the nature of its findings.

99. On Friday or Saturday, July 20 or 21, 2012, Marsh received an email in the form of a nine page document, the NCAA’s draft “Consent Decree.” Once this document was received, it remained largely unchanged except for a few minor clarifications.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA admits the allegations in the first sentence of

Paragraph 99. The NCAA specifically denies that “once this document was received, it remained largely unchanged except for a few minor clarifications.” To the contrary, the NCAA incorporates by reference its response to the allegations in Paragraph 96.

100. The Consent Decree’s title, the “Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University,” accurately reflects the coercive nature of the Consent Decree. The Consent Decree was signed by Rodney Erickson and Mark Emmert and released to the public on July 23, 2012. (A copy of the Consent Decree imposed by the NCAA is attached to this Complaint as Exhibit C.)

RESPONSE: The NCAA admits that Exhibit C to the Complaint is a copy of the Consent Decree, which was released to the public on July 23, 2012 and has the full title “Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted By The Pennsylvania State University.” The NCAA denies that Rodney Erickson and Mark Emmert signed the Consent Decree on July 23, 2012; upon information and belief, President Erickson signed the Consent Decree on July 22, 2012. The NCAA specifically denies that the Consent Decree was “coercive” in “nature,” and incorporates by reference its responses to the allegations in Paragraph 7.

101. Before signing the NCAA-imposed Consent Decree, Erickson did not comply with the governing requirements of the Charter, Bylaws, and Standing Orders of Penn State. Erickson failed to present the Consent Decree to the Board for its approval, even though the Board is the final repository of all legal responsibility and authority to govern the University. Nor did he call for a meeting of the Board or its Executive Committee. Erickson complied with the demands of the NCAA, and he failed to inform the Board about these issues in advance of signing the imposed Consent Decree.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA responds that the allegations in Paragraph 101 contain Plaintiffs' conclusions of law, which require no response. To the extent further response is required, then upon information and belief, the NCAA admits that while President Erickson briefed the Executive Committee of the Penn State Board of Trustees prior to executing the Consent Decree, he did not, at Penn State's discretion, brief the full Board in advance. The NCAA specifically denies that President Erickson "did not comply" with Penn State's governing requirements prior to executing the Consent Decree.

The allegations in the last two sentences of Paragraph 101 are denied as stated. Upon information and belief, President Erickson frequently consulted

with members of the Executive Committee of the Board of Trustees in the period leading up to execution of the Consent Decree, including through multiple meetings of the Executive Committee. President Erickson called a meeting of the Executive Committee on July 22, 2012 to discuss the terms of the Consent Decree prior to its execution. During this meeting, the Executive Committee was advised that Penn State could reject the Consent Decree and pursue the infractions process, but that it would not fare well if it did so.

The NCAA also specifically denies that the NCAA demanded that President Erickson not inform the full Board “about these issues in advance” of signing the Consent Decree. The NCAA incorporates by reference its response to Paragraph 97.

102. Erickson did not have the legal or delegated authority to bind the Penn State Board of Trustees to the Consent Decree imposed by the NCAA.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA responds that the allegations in Paragraph 102 state Plaintiffs’ conclusions of law, which require no response. To the extent further response is required, the allegations are denied. Penn State counsel advised President Erickson (correctly) that he was authorized to execute the Consent Decree on behalf of Penn State. The Executive Committee of the

Board of Trustees concurred in this decision. In the Consent Decree, Penn State represented to the NCAA that President Erickson was authorized to execute the agreement.

103. The Consent Decree did not identify any conduct that, under the NCAA's rules, would qualify as either a secondary or a major violation. Nonetheless, the NCAA and Penn State stipulated that Penn State had violated the principles of "institutional control" and "ethical conduct" contained in the NCAA Constitution, and that Penn State's employees had not conducted themselves as the "positive moral models" expected by Article 19 of the Bylaws.

RESPONSE: The NCAA states that no response is needed to the allegations in Paragraph 28 because Count I, breach of contract, has been dismissed. To the extent a response is required, the NCAA specifically denies that the Consent Decree does not identify any conduct that constitutes a violation of the NCAA's rules. The Consent Decree expressly identifies provisions of the NCAA Constitution and Bylaws that, based on the findings in the Freeh Report, Penn State breached. The NCAA denies the allegations in the second sentence as stated. In the Consent Decree, the NCAA and Penn State agreed the "findings of the Freeh Report constitute violations of the Constitutional and Bylaw principles" described in the November 17, 2011 letter, and that "Penn State breached the standards expected by and

articulated” in a number of specific NCAA Constitution and Bylaw provision. The NCAA also denies that the Division I Manual precluded it from agreeing with Penn State to enter into the Consent Decree, for the reasons set forth throughout this Answer.

104. The Consent Decree’s purported “factual findings” related to the alleged conduct of Coach Joe Paterno and the Board of Trustees members in 1998 and 2001, as well as other former Penn State staff and administrators.

RESPONSE: The NCAA specifically denies the allegations in the first sentence as stated. The Consent Decree itself expressly states that its “conclusions rely on” certain of the Freeh Report’s “key factual findings with respect to the University’s oversight and its football program.” Consent Decree at 3 (emphasis added). The NCAA admits that the Consent Decree repeats verbatim the findings from the Freeh Report that are referenced or characterized in Paragraphs 104(a), 104(b), and 104(c).

105. These statements are all erroneous and were based on unreliable and unsubstantiated conclusions in the Freeh Report.

RESPONSE: The NCAA specifically denies that statements in the Consent Decree referenced in the preceding Paragraph are “erroneous,” or that the Freeh Report contains “unreliable and unsubstantiated conclusions.” The referenced statements are, in fact, taken verbatim from the Freeh Report.

The NCAA incorporates by reference its response to the allegations in Paragraph 71. Further, the NCAA is unaware of any facts that substantiate the Plaintiffs' allegation that key factual findings of the Freeh Report were "all erroneous and were based on unreliable and unsubstantiated conclusions." To the extent relevant, proof of those allegations at trial is demanded.

106. The NCAA admitted that, ordinarily, "[t]he sexual abuse of children on a university campus by a former university official" would "not be actionable by the NCAA." But the NCAA asserted that it had authority to interfere because "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 "the culture exhibited at Penn State is an extraordinary affront to the values all members of the Association have pledged to uphold."

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the allegations in Paragraph 106 are denied as stated. The allegation attempts to characterize a paragraph from the Consent Decree that states, in full:

“The NCAA concludes that this evidence presents an unprecedented failure of institutional integrity leading to a culture in which a football program was held in higher esteem than the values of the institution, the values of the NCAA, the values of higher education, and most disturbingly the values of human decency. The sexual abuse of children on a university campus by a former university official—and even the active concealment of that abuse—while despicable, ordinarily would not be actionable by the NCAA. Yet, in this instance, it was the fear of or deference to the omnipotent football program that enabled a sexual predator to attract and abuse his victims. Indeed, the reference for Penn State football permeated every level of the University community. That imbalance of power and its result are antithetical to the model of intercollegiate athletics embedded in higher education. Indeed, the culture exhibited at Penn State is an extraordinary affront to the values all members of the Association have pledged to uphold and calls for extraordinary action.”

Consent Decree at 4.

107. Based on this erroneous and unsupported conclusion, the NCAA determined that the sanctions must not only be designed to penalize Penn State, Plaintiffs, and other involved individuals, but also to “change the culture that allowed this activity to occur and realign it in a sustainable fashion with the expected norms and values of intercollegiate athletics.” In order to avoid the risk of further sanctions, including the ungrounded threat by the NCAA that it would seek the “death penalty,” Penn State executed the Consent Decree despite the fact that, by so doing, it was agreeing to and acquiescing in a direct violation of the rights of Plaintiffs.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA denies the allegations in the first sentence of Paragraph 107 as stated. With respect to the purpose of the sanctions, the Consent Decree itself states: [T]he NCAA has determined that the University's sanctions be designed to not only penalize the University for contravention of the NCAA Constitution and Bylaws, but also to change the culture that allowed this activity to occur and realign it in a sustainable fashion with the expected norms and values of intercollegiate athletics. Moreover, the NCAA recognizes that in this instance no student-athlete is responsible for these events, and therefore, the NCAA has fashioned its sanctions in consideration of the potential impact on all student-athletes." The sanctions in the Consent Decree were not intended to—and did not—penalize Plaintiffs.

The NCAA specifically denies that the findings in the Freeh Report are "erroneous and unsupported," and incorporates by reference the NCAA's response to Paragraphs 71 and 105.

The NCAA admits that Penn State entered into the Consent Decree, in part, to avoid the risk of harsher sanctions that could result from the traditional infractions process. The NCAA specifically denies that it ever

threatened Penn State with a suspension in play. The NCAA incorporates by reference its response to the allegations in Paragraphs 94 and 95.

Paragraph 107's statement that Penn State was "agreeing and acquiescing in a direct violation of the rights of Plaintiffs" is a conclusion of law, which requires no response, and the NCAA has opposed that legal position since the inception of this case.

108. The Consent Decree is an indictment of the entire Penn State community, including individual institutional leaders, members of the Board of Trustees, those responsible for and participants in athletic programs, the faculty, and the student body. The Consent Decree charges that every 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 values of human decency and the safety and well-being of vulnerable children.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA specifically denies the allegations in the first sentence of Paragraph 108, including that the "Consent Decree is an indictment of the entire Penn State community." The Consent Decree resolves Penn State's institutional shortcomings related to the Sandusky matter in that Penn State and the NCAA agreed that the findings of the Freeh Report constitute

violations of the NCAA Constitution and Bylaws and, on that basis, Penn State accepted a set of punitive and corrective measures..

The NCAA denies the allegations in the second sentence of Paragraph 108 as stated. The Consent Decree quotes verbatim the finding of the Freeh Report that Penn State maintained “a culture of reverence for the football program that is ingrained at all levels of the campus community.”

109. The NCAA and its officials, including Emmert and Dr. Ray, recognized that the issues they sought to address in the Consent Decree were not about disciplining the athletics program for NCAA rules violations.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the allegations in Paragraph 109 are denied. In the Consent Decree, the NCAA and Penn State agreed that the findings in the Freeh Report constituted violations of the NCAA Constitution and Bylaws. Further, as the Consent Decree specifically states, the sanctions in the Consent Decree were “designed” both to “penalize the University for contravention of the NCAA Constitution and Bylaws” and “also to change the culture that allowed this activity to occur...”

110. According to Dr. Ray, even though the NCAA never undertook its own investigation or followed its own required processes, it could rely on the

Freeh Report because the NCAA's "executive committee has the authority when it believes something is of a big enough and significant enough nature that it should exercise its ability to expedite the process of reviewing cases." In fact, no provision of the rules gives the NCAA that authority.

RESPONSE: Denied as stated. The NCAA admits that a July 29, 2012 USA Today article titled "Ed Ray: 'I started at this from the scorched earth approach" quotes Dr. Ray as saying: "The executive committee has the authority when it believes something is of a big enough and significant enough nature that it should exercise its ability to expedite the process of reviewing cases." The NCAA denies that statement is, or is intended to be, a precise description of the Executive Committee's authority to authorize President Emmert to enter into the Consent Decree, and also denies that the NCAA Executive Committee lacked such authority under NCAA rules or the law. The NCAA incorporates by reference its response to Paragraphs 1, 2, 4, and 88. The NCAA further denies that the quotation in Paragraph 110 constitutes an explanation for why the NCAA "could rely on the Freeh Report," and incorporates by reference its responses to Paragraphs 1, 2, 4, and 88.

By way of further answer, the NCAA admits that it never undertook its own investigation of the Sandusky matter," but denies that it did not follow

any “required processes” when entering into the Consent Decree. The NCAA incorporates by reference its response to Paragraphs 1, 2, 4, 34, and 45.

111. According to Emmert, the decision not to comply with required procedures was an “experiment” by the NCAA. Emmert has stated that it was appropriate for the NCAA to rely on the Freeh Report because the Freeh firm had “subpoena power.” In fact, the Freeh firm did not have any such power. Emmert has also publicly stated that the NCAA decided not to comply with required procedures because completing a thorough investigation would have “taken another year or two” and, in his view, a proper investigation “would have yielded no more information than what was already in front of the [NCAA’s] executive committee.” In addition the NCAA Defendants had directed the Freeh firm to focus on issues related to institutional control.

RESPONSE: Denied as stated. In the Consent Decree, the NCAA and Penn State agreed that the findings in the Freeh Report, which were based on a lengthy and comprehensive investigation—by a former director of the FBI, and commissioned by Penn State’s own Board of Trustees—established a factual basis to conclude that Penn State breached the standards articulated in the NCAA Constitution and Bylaws. The NCAA specifically denies that it “directed the Freeh firm to focus on issues related to institutional control.” The NCAA also incorporates its response to Paragraphs 62-63.

112. The Consent Decree imposed a \$60 million dollar fine, a four-year post-season ban, a four-year reduction of grants-in-aid, five years of probation, vacation of all football wins from 1998 to 2011, waiver of transfer rules and grant-in-aid retention (to allow entering or returning student athletes to transfer to other institutions and play immediately), and a reservation of rights to initiate formal investigatory and disciplinary process and to impose sanctions on any involved individuals in the future.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the allegations in Paragraph 112 are denied as stated. The NCAA admits that the Consent Decree included a number of punitive and corrective institutional sanctions, including (1) a \$60 million fine; (2) four-year postseason ban; (3) four-year reduction of grants-in-aid; (4) five years of probation; (5) vacation of wins since 1998; (6) waiver of transfer rules and grant-in-aid-retention; (7) adoption of all recommendation presented in Chapter 10 of the Freeh Report; (8) implementation of Athletics Integrity Agreement; and (9) appointment of an independent Athletics Integrity Monitor for a five-year period. The NCAA also admits that the Consent Decree states: “[t]he NCAA reserves the right to initiate a formal

investigatory and disciplinary process and impose sanctions on individuals after the conclusion of any criminal proceeding...”

113. Under the terms of the Consent Decree President Erickson agreed not to challenge the decree and waived 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.”

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the allegations are denied as stated. Under the terms of the Consent Decree, Penn State (not just President Erickson) “expressly agree[d] no to challenge the consent decree and waive[d] 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.”

114. Among others, William Kenney and the Estate of Joseph Paterno filed timely appeals of the Consent Decree with the NCAA Infractions Appeals Committee.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA responds that the allegations in this Paragraph constitute

Plaintiffs' conclusions of law, to which no response is required. To the extent further answer is necessary, the NCAA specifically denies that William Kenney, the Estate of Joseph Paterno, or any others referenced in Paragraph 114 "filed timely appeals of the Consent Decree with the NCAA Infractions Appeals Committee." The NCAA admits that these persons, among others, filed documents with the NCAA that they characterized as "appeals" from the Consent Decree. The NCAA denies that these individuals had a right to file any appeal of the Consent Decree with the Infractions Appeal Committee.

115. The NCAA refused to accept those appeals. It did not contend, however, that the Estate was not entitled to appeal because Joe Paterno had died after it initiated an investigation. Instead, the NCAA took the position that, because it had not sanctioned Penn State through the traditional enforcement process required under the NCAA's own rules, the procedural protections (such as the right to an appeal) provided by those rules were unavailable, even for the individuals named, referenced, or sanctioned in the Consent Decree. In short, the "experiment" authorized by the NCAA Defendants meant that individuals who were involved and directly harmed by the Consent Decree were given no opportunity to challenge the NCAA's abuse of authority or the erroneous factual assertions on which it based the Consent Decree.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA responds that in its March 30, 2015 Opinion and Order, which, inter alia, dismissed the Paterno Estate's contract claim, the Court struck those allegations in this Paragraph that were newly alleged in the Second Amended Complaint, and therefore no response is required. As to any remaining allegations, the NCAA denies the allegations in the two sentences of Paragraph 115 as stated. The NCAA did not accept the referenced purported appeals because the purported appellants had no right to appeal the Consent Decree

The last sentence in Paragraph 115 constitutes Plaintiffs' conclusions of law and argument, which require no response. To the extent further response is necessary, the NCAA specifically denies that any individuals were "involved and directly harmed by the Consent Decree," that the NCAA "abuse[d] [its] authority," and that the "factual assertions on which it based the Consent Decree" were "erroneous." To the contrary, the NCAA incorporates by reference its responses to Paragraphs 71 and 105.

116. Even though the Consent Decree relied on purported "facts" that were contrary to the evidence and did not establish a violation of the NCAA's rules,

those issues were never considered by the Appeals Committee and involved individuals were denied the procedural protections required by the NCAA's rules.

RESPONSE: The NCAA states that no response is needed to the allegations in Paragraph 28 because Count I, breach of contract, has been dismissed. To the extent a response is required, the NCAA admits that the findings of the Freeh Report that are cited in the Consent Decree, and the NCAA's and Penn State's agreement that those findings constituted violations of the NCAA Constitution and Bylaws, "were never considered by the Appeals Committee." The NCAA specifically denies that the findings of the Freeh Report cited in the Consent Decree are "contrary to the evidence," and further specifically denies that such findings "did not establish a violation of the NCAA's rules." To the contrary, the NCAA incorporates by reference its responses to Paragraphs 42-44, 71, and 105 and, to the extent relevant, demands proof at trial of these allegations.

The allegation that "involved individuals were denied the procedural protections required by the NCAA's rules" constitutes a conclusion of law, to which no response is required. The NCAA has set forth its legal arguments in opposition to this contention in at least three rounds of preliminary objections, and incorporates them by reference here.

117. The Consent Decree was widely disseminated and received significant national attention. The NCAA's decision to embrace the Freeh Report was widely viewed as extremely damaging to the Penn State football program and the reputations of those associated with it, including Plaintiffs.

RESPONSE: Denied as stated. The NCAA admits that the Consent Decree was, and is, a public document and that it received significant national media attention. The NCAA specifically denies the allegations in the second sentence of Paragraph 117. The NCAA incorporates its response to Paragraph 124. If relevant, proof is demanded at trial that it was the NCAA's decision to embrace the Freeh Report that was "extremely damaging" to Plaintiffs' reputations.

118. The NCAA announced in September 2013 that it would reduce the penalties against Penn State. Beginning with the 2013-14 year, the number of scholarships available to Penn State is supposed to increase each year, until Penn State returns to a full allocation in 2016.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA admits the allegations in the first sentence of Paragraph 118. The NCAA denies the allegations in the second sentence of Paragraph 118 as stated. Beginning with the 2014-15 academic year, the number of

scholarships available to Penn State would increase each year until Penn State returns to a full allocation in the 2015-16 academic year.

119. The NCAA announced in September 2014 that it would lift the ban on Penn State's participation in post-season bowl games and would restore all of its football scholarships.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the Court struck this Paragraph in its March 30, 2015 Opinion and Order, which, inter alia, dismissed the Paterno Estate's contract claim.

120. Although the NCAA has lifted the most meaningful sanctions against Penn State, it has done nothing to correct the knowingly false statements made against Plaintiffs in the Consent Decree or to remedy the enormous harms caused to Plaintiffs. As a result, many of the most significant sanctions imposed by the Consent Decree that remain in place are those sanctions that have been imposed on Plaintiffs.

RESPONSE: The Court struck this Paragraph in its March 30, 2015 Opinion and Order, which, inter alia, dismissed the Paterno Estate's contract claim. In any event, the allegations are Plaintiffs' conclusions of law which require no response. To the extent a response is required, the NCAA specifically denies that it made any "knowingly false statements" concerning

Plaintiffs in the Consent Decree, or that it caused “enormous harms” to Plaintiffs. The NCAA incorporates by reference its responses to Paragraphs 7, 71, 105, 117, and 164-171.

121. Despite lifting many of the sanctions against Penn State, the NCAA Defendants have continued their unlawful conduct and have continued to abuse their authority, stating that if the Consent Decree is ever voided, Penn State will face the prospect of the NCAA imposing the “death penalty” on its football program.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA responds that the Court struck this Paragraph in its March 30, 2015 Opinion and Order, which, inter alia, dismissed the Paterno Estate’s contract claim. In any event, the allegations are Plaintiffs’ conclusions of law which require no response. To the extent a response is required, the NCAA specifically denies that it has “continued” any “unlawful conduct” or “abuse of authority.” The NCAA incorporates by reference its response to the allegations in Paragraph 15.

122. Plaintiffs have been substantially harmed, and will continue to incur future harm, as a direct and intentional result of the NCAA Defendants’

unauthorized and unlawful conduct and the Consent Decree imposed on Penn State by the NCAA.

RESPONSE: The allegations in Paragraph 122 constitute Plaintiffs' conclusions of law to which no response is required.

123. Plaintiffs were unlawfully deprived of the required procedures due to them under the NCAA's rules.

RESPONSE: The allegations in Paragraph 123 constitute Plaintiffs' conclusions of law to which no response is required.

124. Other substantial harms suffered by Plaintiffs as a result of the conduct by the NCAA Defendants and the Consent Decree imposed on Penn State by the NCAA include, among many other things:

a. Joe Paterno was alive when the NCAA began its investigation and alleged to be significantly involved in the incidents that were the focus of the NCAA's investigations. He was denied the procedures to which he was entitled under the NCAA's rules, and the Estate was denied its right as the successor to the rights of Joe Paterno.

b. Joe Paterno and, after his death, the Estate suffered severe damage to his good name and reputation, resulting in irreparable and substantial pecuniary harm to the current and long-term value of his estate as well as other substantial harms to his family and estate.

c. William Kenney and Jay Paterno suffered damage to their reputations and standing as football coaches, and have been unable to secure comparable employment despite their qualifications and the existence of employers who would otherwise be willing to hire them.

d. Clemens, as a member of the Board of Trustees, was a fiduciary of the University, responsible for the governance and the welfare of the institution. He was rendered unable to fully carry out his administrative and other functions in managing and governing the University because of the NCAA Defendants' interference. As a result, he suffered substantial injury as a Board Member due to a negative impact on Penn State's budget and the University's ability to attract high-caliber students and faculty, whether associated with the football program or not.

e. The considerable achievements of Coach Joe Paterno and former student athletes have been wiped out by the NCAA's unjustified and unlawful sanctions, which were imposed on Penn State, including vacating all of the Penn State football team's wins during the athletes' careers and also separately directing that "the career wins" of Joe Paterno would "reflect the vacated wins." This has injured his reputation, negatively affecting the value of his Estate.

RESPONSE: In its March 30, 2015 Opinion and Order, which, *inter alia*, dismissed the Paterno Estate's contract claim, the Court struck those allegations in this Paragraph that were newly alleged in the Second Amended Complaint, and therefore no response is required. To the extent a response is required, the allegations in Paragraph 124 constitute Plaintiffs' conclusions of law to which no response is required. To the extent further response is necessary:

- The NCAA specifically denies that it ever commenced an investigation concerning the Sandusky matter, much less when Joe Paterno was alive. The NCAA also specifically denies that either Joe Paterno or the Estate were denied any procedures to which they were entitled under the NCAA Bylaws. To the contrary, the NCAA incorporates by reference its responses to Paragraphs 56-58, 60, 71, and 91.
- The NCAA specifically denies that because of the *NCAA's conduct and/or the Consent Decree*, Joe Paterno and, after his death, the Estate, "suffered severe damage to his good name and reputation," resulting in pecuniary harm to the estate. Any such damage or pecuniary harm resulted from a host of other causes, including but not limited to: the Sandusky presentment and

criminal trial, Coach Paterno's termination by Penn State, the Freeh Report, the removal of Coach Paterno's statue, the overwhelming negative media coverage that started with the release of the Sandusky indictment and continued unabated for months, and Coach Paterno's death itself.

- The NCAA specifically denies that because of the *NCAA's conduct and/or the Consent Decree*, William Kenney and Jay Paterno “suffered damage to their reputations and standing as football coaches,” and were “unable to secure comparable employment.” Indeed, the NCAA took no action with respect to William Kenney and Jay Paterno, and they are not referenced in the Consent Decree or even the Freeh Report. Their alleged inability to “secure comparable employment” was primarily the result their own pre-existing reputations and qualifications as coaches.**
- Al Clemens has withdrawn all of his claims in this case, and therefore no response is required to Paragraph 124(d).**
- The NCAA specifically denies that it “wiped out” the “considerable achievements of Coach Joe Paterno and former student athletes.” For instance, despite vacating Penn State team wins in the Consent Decree (and correspondingly reflecting the**

vacated wins in the head coach's career record, consistent with its historical practice), individual records and performances of players who participated in the contests were not altered.

125. The Consent Decree has interfered with the administration of Penn State, and limited the faculty's ability to attract and retain high-caliber faculty, administrators, staff, and students, which has reduced the value of the faculty's own positions and their ability to compete within their fields. The NCAA's unauthorized involvement in criminal matters outside its authority and purview has prevented interested parties from being treated fairly and has undermined the search for truth. Instead of allowing the Freeh Report to be properly evaluated, the NCAA has crystallized its errors and flagrantly violated its own rules.

RESPONSE: All of the Trustees and faculty members identified in the original complaint as purported Plaintiffs have been dismissed by the Court or have withdrawn their claims. As such, no response is required to the allegations in Paragraph 125. Further, the allegations of Paragraph 125 include Plaintiffs' conclusions of law and argument, to which no response is required. To the extent further response is necessary, the NCAA specifically denies that the Sandusky matter fell outside its "authority and purview," that it "undermined the search for truth" and "crystallized" any purported "errors" in the Freeh Report. The NCAA further specifically denies that the Freeh Report contained "errors." To the contrary, the NCAA incorporates by reference its responses to Paragraphs 1-5, 71-74, and 88.

COUNT I: BREACH OF CONTRACT

126. Plaintiffs incorporate by reference paragraphs 1 through 125 as if fully set forth herein.

RESPONSE: The NCAA repeats and realleges its answers to Paragraphs 1 through 125, as if set forth fully herein.

127. At all relevant times, Penn State was an Active Member of the NCAA, and the NCAA had a valid and enforceable agreement with Penn State, in the form of its Constitution, Operating Bylaws, and Administrative Bylaws.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the NCAA admits that at all relevant times, Penn State was an active member of the NCAA, and the Division I Manual contains a Constitution, Operating Bylaws, and Administrative Bylaws. The remaining allegations in Paragraph 127 state Plaintiffs' conclusion of law, which requires no answer.

128. The NCAA and Penn State both intended, upon entering into this contract, to give the benefit of the agreement to any third parties that would be alleged to be involved in any findings of rule violations against a member institution.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the allegations in Paragraph 128 constitute Plaintiffs' conclusions of law to which no response is required. To the extent an answer is required, the allegations are denied. To the contrary, the NCAA intended to provide specific procedural mechanisms only to involved individuals, as that term is defined in Article 32, when it undertakes an enforcement proceeding pursuant to Articles 19 and 32 but did not intend to convey third party beneficiary rights with regard to all provisions of the Division I Manual or to all

individuals with any degree of involvement in a potential rules violation. And on information and belief, the NCAA believes Penn State had the same intention.

129. Joe Paterno was specifically named and sanctioned in the Consent Decree, and he was also specifically named in the grand jury report referenced in Emmert's November 17, 2011 letter. Al Clemens, as a member of the Board of Trustees in 1998 and 2001, was also alleged to have engaged in conduct that formed the basis for the Consent Decree (and, therefore, was deemed significantly involved in violations of the NCAA rules). They were "involved individuals" under the NCAA's rules, were intended third party beneficiaries of the agreement between the NCAA and Penn State, and they (or their representatives) may enforce the provisions of that agreement against the NCAA.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, in its March 30, 2015 Opinion and Order dismissing the Paterno Estate's contract claim, the Court struck those allegations in this Paragraph that were newly alleged in the Second Amended Complaint. To the extent further response is required, the allegations in Paragraph 129 constitute Plaintiffs' conclusions of law to which no response is required. To the extent a response is required, the NCAA denies these allegations. Specifically, the

NCAA admits that Joe Paterno was referenced in the Consent Decree and the grand jury presentment, but it denies that Joe Paterno or Al Clemens were sanctioned in the Consent Decree or that they were involved individuals or third-party beneficiaries of the Division I Manual. The NCAA incorporates its response to Paragraphs 4 and 87 and three rounds of preliminary objections briefing.

130. The agreement between the NCAA and Penn State contains an implied covenant of good faith and fair dealing that requires the NCAA to refrain from taking unlawful, arbitrary, capricious, or unreasonable actions that have the effect of depriving member institutions and involved individuals of their rights under the agreement.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the allegations in Paragraph 130 constitute Plaintiffs' conclusions of law to which no response is required.

131. Defendant NCAA materially breached its contractual obligations and violated the implied covenant of good faith and fair dealing by, among other things:

a. purporting to exercise jurisdiction over a matter not caused by the football program, much less one related to a basic athletics issue such as admissions, financial aid, eligibility, and recruiting;

b. taking action and imposing sanctions via its Executive Committee, which has power only to address association-wide issues on a prospective basis, and no power to sanction individual members;

c. refusing to proceed against Penn State through the required traditional enforcement process, the only method of imposing sanctions that is authorized under the rules;

d. refusing to accept any appeals of the Consent Decree;

e. treating the Freeh Report as a “self-report” even though the Freeh Report was never voted on by the full Board of Trustees; even though the Freeh Report failed to identify, much less analyze, any purported NCAA rules violations; and even though the Freeh Report failed to comply with required procedures and reached conclusions based on irrelevant or inadmissible evidence developed pursuant to an unreliable and deficient investigation;

f. imposing sanctions on the basis of alleged violations of vague, inapplicable principles in the NCAA’s Constitution, such as the principle of institutional control and the principle of ethical conduct, both of which relate

only to athletics issues, recruiting violations, or other matters properly regulated by the NCAA;

g. imposing sanctions that are available only in cases of “major” violations without explaining why the conduct identified in the Consent Decree constituted a “major” violation intended to provide the institution with an extensive recruiting or competitive advantage;

h. imposing the penalty of vacation of wins on Penn State even though no ineligible student athlete was found to have competed during the years affected;

i. stating that the career record of Joe Paterno would reflect the vacated wins;

j. threatening to impose the “death penalty” on Penn State football when it had no authority to do so because Penn State is not and never has been a repeat offender;

k. failing to conduct its own investigation or explain its own investigative procedures, and relying instead on the flawed Freeh Report, a procedurally and substantively inadequate substitute for the NCAA’s investigation and compliance with required procedures;

l. failing to recognize that Plaintiffs, who are named or referred to in the Consent Decree, are “involved individuals” under the NCAA’s own rules;

m. failing to afford Plaintiffs “fair procedures” during the NCAA’s determinations and deliberations;

n. imposing a Consent Decree on Penn State that it knew made false and unsubstantiated statements about Plaintiffs and was based on the flawed Freeh Report; and

o. continuing to threaten to impose the “death penalty” on Penn State football, even after many of the sanctions imposed under the Consent Decree against Penn State have been lifted (but sanctions against Plaintiffs have not).

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, in its March 30, 2015 Opinion and Order dismissing the Paterno Estate’s contract claim, the Court struck those allegations in this Paragraph that were newly alleged in the Second Amended Complaint. To the extent a response is required, the NCAA responds that the allegations in Paragraph 131 are Plaintiffs’ conclusions of law, which require no response. Further, each sub-paragraph of Paragraph 131 repeats allegations stated earlier in the

Complaint, for which the NCAA incorporates its response from those Paragraphs to each respective sub-paragraph.

132. The president of Penn State, Rodney Erickson, did not, could not, and lacked any authority to, waive Plaintiffs' rights and entitlement as "involved individuals" to the procedures listed above by signing the Consent Decree imposed by the NCAA.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the allegations in Paragraph 132 constitute Plaintiffs' conclusions of law to which no response is required. To the extent a response is required, those allegations are denied for the reasons stated in Paragraphs 26, 89, and 113, incorporated herein.

133. Defendant Penn State materially breached its contractual obligations and violated the implied covenant of good faith and fair dealing by, among other things:

- a. acquiescing to a confidential procedure for imposition of sanctions that would directly impact Plaintiffs;
- b. accepting a range of sanctions that deprived involved individuals of their procedural rights under the NCAA enforcement scheme,

ostensibly to avoid any risk of the “death penalty,” even though it would not have been applicable in the circumstances; and

c. executing a Consent Decree that it knew included false and unsubstantiated statements about Plaintiffs and was based on the flawed Freeh Report.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, the allegations in Paragraph 133 constitute Plaintiffs’ conclusions of law to which no response is required. Further, each sub-paragraph of Paragraph 131 repeats allegations stated earlier in the Complaint, for which the NCAA incorporates its response from those Paragraphs to each respective sub-paragraph.

134. As a direct and proximate result of these breaches by the NCAA and Penn State, Plaintiffs have suffered substantial injuries, economic loss, opportunity loss, reputational damage, emotional distress, and other damages. Those injuries and damages were foreseeable to the NCAA and Penn State when they breached the contract and Plaintiffs’ rights.

RESPONSE: The NCAA incorporates its response to Paragraph 1 pertaining to relevance and burden of proof. To the extent further response is required, in its March 30, 2015 Opinion and Order dismissing the Paterno

Estate's contract claim, the Court struck those allegations in this Paragraph that were newly alleged in the Second Amended Complaint, and therefore no response is required. To the extent a response is required, the allegations in Paragraph 134 state Plaintiffs' conclusion of law, which requires no answer.

**COUNT II: INTENTIONAL INTERFERENCE WITH CONTRACTUAL
RELATIONS**

135. Plaintiffs incorporate by reference paragraphs 1 through 125 as if fully set forth herein.

RESPONSE: The NCAA repeats and realleges its answers to Paragraphs 1 through 134, as if set forth fully herein.

136. Plaintiffs William Kenney and Jay Paterno had prospective and existing employment, business, and economic opportunities with many prestigious college and professional football programs, including at Penn State, as a result of the favorable reputations that each of them had earned during their service as coaches of the Penn State football program. This was or should have been known to the NCAA Defendants.

RESPONSE: The NCAA is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the first sentence of Paragraph 136, and on that basis denies them. The NCAA denies that it knew or should have known the information in Paragraph 136 and is unaware

of any fact to support that allegation. Proof of that allegation is demanded at trial.

137. With knowledge of Plaintiffs' future prospective employment, business, and economic opportunities, the NCAA Defendants took the purposeful actions described in this Complaint to harm Coach Kenney and Coach Jay Paterno and to interfere with their contractual relations.

RESPONSE: The allegations in Paragraph 137 constitute Plaintiffs' conclusions of law to which no response is required. To the extent a response is required, the NCAA denies that it had knowledge of Plaintiffs' purported future prospective employment, business, and economic opportunities. The remaining allegations are denied for the reasons stated in response to Paragraphs 1-5, 70-74, and 136, incorporated herein.

138. The NCAA Defendants lacked justification for their intentional interference with Plaintiffs' contractual relationships, or alternatively, the NCAA Defendants abused any privilege they had to take the actions outlined in this Complaint.

RESPONSE: The allegations in Paragraph 138 constitute Plaintiffs' conclusions of law to which no response is required.

139. As a direct and proximate result of the wrongful, arbitrary, capricious, and unreasonable actions of the NCAA Defendants, and as described in more detail

below, Coach Kenney and Coach Jay Paterno have been unable to secure comparable employment opportunities in their chosen field.

RESPONSE: The allegations in Paragraph 139 constitute Plaintiffs' conclusions of law to which no response is required. Further, the NCAA is unaware of any fact to substantiate the allegation that the NCAA was a proximate cause in Plaintiffs' purported inability to secure comparable employment opportunities in their chosen field. To the extent relevant, proof is demanded at trial.

140. The conduct of the NCAA Defendants in tortuously interfering with Plaintiffs' contractual relations was malicious and outrageous and showed a reckless disregard for the rights of Coach Kenney and Coach Jay Paterno.

RESPONSE: The allegations in Paragraph 140 constitute Plaintiffs' conclusions of law to which no response is required.

141. As a direct and proximate result of these actions by the NCAA Defendants, Coach Kenney and Coach Jay Paterno have suffered economic loss, opportunity loss, reputational damage, emotional distress, and other damages.

RESPONSE: The allegations in Paragraph 141 constitute Plaintiffs' conclusions of law to which no response is required. The NCAA denies that is responsible for any damages allegedly suffered by Plaintiffs. In addition, after reasonable investigation, the NCAA is unable to ascertain the truth or falsity

of Plaintiffs' damages claims, both as to causation and amount, and proof thereof, if relevant, is demanded at trial.

142. As of the date of the Consent Decree imposed by the NCAA, Coach Kenney had served as a Division I collegiate football coach for 27 years. He spent three years as a graduate assistant at the University of Nebraska, and 24 years coaching at Penn State. For most of his career, he coached offensive linemen and tight ends. He was well respected within the profession and was responsible for training and developing dozens of college football players who went on to play in the National Football League ("NFL"), including several first-round draft choices.

RESPONSE: On information and belief, the NCAA admits the allegations in the first two sentences of Paragraph 142. The NCAA is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 142, and on that basis denies them.

143. After Coach Kenney was let go by Penn State following the 2012 football season, he made a determined effort to secure other employment as a football coach. He applied for open positions with various Division I college football programs, including Illinois, Wisconsin, Purdue, Virginia Tech, Florida State, Massachusetts, North Carolina State, Boston College, Arizona, Delaware, Syracuse, and several others. He also applied for open coaching positions in the NFL, with franchises such as the New York Giants, the Indianapolis Colts, and the

Cleveland Browns. Coach Kenney was experienced and well-qualified for these positions.

RESPONSE: The NCAA is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 143, and on that basis denies them.

144. Coach Kenney received a few interviews with college and professional teams. His interviewers asked him questions focused on the NCAA's unsupported finding that he and other coaches had ignored "the red flags of Sandusky's behaviors" at Penn State, and not Coach Kenney's credentials and approach as a football coach. Despite interviews or discussions with schools such as the University of Massachusetts and NFL teams such as the New York Giants and the Indianapolis Colts, he was not offered a position. In most instances, the positions he applied for went to less experienced and less qualified candidates.

RESPONSE: For the reasons stated in Paragraphs 4-5, 70-74, 104-105, 139, and 141, incorporated herein, the NCAA specifically denies that the Consent Decree contained a finding regarding Coach Kenney; that the Consent Decree's statement that some coaches, administrators, and football program staff members "ignored 'the red flags of Sandusky's behaviors'" was unsupported; and that the Consent Decree was a cause of Coach Kenney's failed job applications. The NCAA is without knowledge or information

sufficient to form a belief as to the remaining allegations of Paragraph 144, and on that basis denies them.

145. During the course of his pursuit for new employment, Coach Kenney learned that other college teams and NFL programs did not want to deal with the potential recruiting issues and the adverse public reaction that would likely follow their decision to hire him. Coach Kenney made inquiries at or applied to at least one Division I school that instructed its Head Coach not to interview or consider hiring any former coaches from Penn State. Coach Kenney was exceptionally well-qualified for the positions for which he applied and was interviewed, and upon information and belief, he would have received job offers from these programs had it not been for the disparaging accusations leveled against him by the NCAA Defendants.

RESPONSE: The allegations in the last sentence of Paragraph 145 constitute Plaintiffs' conclusions of law to which no response is required. To the extent a response is required, the NCAA denies that it disparaged Coach Kenney, for the reasons described in Paragraphs 5, 70-74, 104-105, 139, 141, and 144, incorporated by reference herein. The NCAA is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 145, and on that basis denies them. Further, after reasonable investigation, the NCAA is unaware of any fact to

substantiate the allegation that William Kenney did not receive job offers from the referenced programs because of allegedly disparaging statements by the NCAA. If relevant, proof at trial is demanded.

146. After over a year of frustration and disappointment, Coach Kenney eventually secured employment as an offensive line coach at Western Michigan University. While Coach Kenney enjoys his new role and greatly appreciates the opportunity, he earns significantly less in salary than he once earned at Penn State, or would have earned had he been hired by one of the larger Division I programs or NFL teams. Coach Kenney's professional career has suffered an extraordinary set-back and his future opportunities and earning potential have been harmed by the NCAA Defendants.

RESPONSE: The allegations in the last sentence of Paragraph 146 constitute Plaintiffs' conclusions of law to which no response is required. To the extent a response is required, the NCAA denies that that it harmed Coach Kenney's future opportunities or earning potential for the reasons stated in Paragraph 5, 7, 70-74, 124, 104-105, 139, and 141, incorporated herein. The NCAA admits that Mr. Kenney is currently a coach at Western Michigan University. The NCAA is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 146, and, on that basis, denies them.

147. As of the date of the Consent Decree, Coach Jay Paterno had served as a Division I collegiate football coach for 21 years. He began his coaching career as a graduate assistant at the University of Virginia, coached for one year each at the University of Connecticut and James Madison University, and then coached for 17 years at Penn State. At Penn State, Coach Jay Paterno spent 12 years as the quarterbacks coach and play-caller. Before the NCAA Defendants imposed the Consent Decree, Coach Jay Paterno was a top candidate for open head coaching positions at other institutions. He had received awards and accolades for his coaching efforts at Penn State, and he had been approached during his time there by other universities and search firms exploring his potential interest in head coaching vacancies.

RESPONSE: Upon information and belief, the NCAA admits the allegations in the first three sentences of Paragraph 147. The NCAA is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 147, and, on that basis, denies them.

148. After Coach Jay Paterno was let go by Penn State following the 2012 football season, he sought other employment either as a head football coach or a media commentator. Transitioning from his position to a head coaching role was a

logical and customary progression for someone with his experience and reputation. He was well-qualified to receive such an offer.

RESPONSE: The NCAA denies that Jay Paterno was let go by Penn State following the 2012 football season. Specifically, upon information and belief, the NCAA believes that Jay Paterno was let go by Penn State following the 2011 football season. The NCAA is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of Paragraph 148 and, on that basis, denies them.

149. He applied for the open head coaching positions at the University of Connecticut and James Madison University, where he had worked earlier in his career. Based on his qualifications and experience, he was a strong candidate for each position. But he was not even interviewed by either school, and the open positions went to candidates with less coaching experience.

RESPONSE: The NCAA is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 149 and, on that basis, denies them.

150. Coach Jay Paterno also applied for head coaching vacancies at the University of Colorado and Boston College. He was not granted an interview at either school. He also inquired about the head coaching position at another Division I school in the mid-Atlantic region, but the university administration

considered the coaches from Penn State “too toxic,” given the findings of the Consent Decree. The program in question did not grant interviews to any candidates from Penn State. Coach Jay Paterno was extremely well-qualified for the positions he sought and would have received job offers from these programs had it not been for the disparaging accusations leveled against him by the NCAA Defendants in the Consent Decree imposed on Penn State.

RESPONSE: The allegations in the last sentence of Paragraph 150 constitute Plaintiffs’ conclusions of law to which no response is required. To the extent a response is required, the NCAA denies that it disparaged for the reasons described in Paragraphs 5, 70-74, 104-105, 139, and 141, and 166, incorporated by reference herein. The NCAA is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 150 and, on that basis, denies them. Further, after reasonable investigation, the NCAA is unaware of any evidence to substantiate the allegation that the Consent Decree or allegedly disparaging statements by the NCAA were the proximate cause of his failure to receive an employment offer at the referenced institutions. If relevant, proof at trial is demanded.

151. Coach Jay Paterno also engaged in discussions with various media companies, including ESPN, CBS Sports, and Fox Sports, about serving as a

college football commentator. He had prior dealings with officials at each company, and they were aware of his experience as a columnist for StateCollege.com for nearly three years. Before the NCAA Defendants imposed the Consent Decree, ESPN advised Coach Jay Paterno that they were interested in his services and suggested that they wanted to have him involved in a spring 2012 telecast and at least a couple of in-studio college football shows. The plan was to have him start working as a commentator during the 2012 football season. These discussions were later discontinued. Upon information and belief, officials at the network were nervous about the Sandusky scandal and the NCAA's unsupported finding that he and other coaches had ignored "the red flags of Sandusky's behaviors" at Penn State.

RESPONSE: For the reasons stated in Paragraphs 4-5, 70-74, 104-105, 139, 141, and 166, incorporated herein, the NCAA specifically denies that the Consent Decree contained a finding regarding Jay Paterno; that the Consent Decree's statement that some coaches, administrators, and football program staff members "ignored 'the red flags of Sandusky's behaviors'" was unsupported; and that the Consent Decree was a cause of Jay Paterno's failed job applications. The NCAA is without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 151, and on that basis denies them. Further, after reasonable investigation, the NCAA is

unaware of any evidence to substantiate the allegation that the Consent Decree was the proximate cause of his failure to receive an employment offer at the referenced institutions. If relevant, proof at trial is demanded.

152. Coach Jay Paterno had further discussions with ESPN during the off-season before the 2013 season about the possibility of having him work as a commentator during lower-profile college football games. Despite these discussions, that position never came to fruition and no offer was forthcoming. During the spring of 2013, Coach Jay Paterno had similar discussions with representatives of CBS Sports and Fox Sports, who had earlier expressed some interest in his services. Again, nothing materialized. His hiring was considered too controversial, because if they placed him on-the-air, the networks would have no choice but to have Coach Jay Paterno publicly address past events and developments arising from the Sandusky scandal, given the statements made by the NCAA Defendants.

RESPONSE: For the reasons stated in Paragraphs 7, 120, 124, 136, 137, 147-150, incorporated herein, the NCAA specifically denies that statements by the NCAA caused Jay Paterno to not be employed. The NCAA is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 152 and, on that basis, denies them. Further, after reasonable investigation, the NCAA is unaware of any evidence

to substantiate the allegation that the Consent Decree was the proximate cause of his failure to receive an employment offer at the referenced institutions. If relevant, proof at trial is demanded.

153. Coach Jay Paterno is not currently employed, other than as a freelance sports columnist.

RESPONSE: The NCAA is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 153 and, on that basis, denies them.

**COUNT III: INJURIOUS FALSEHOOD/ COMMERCIAL
DISPARAGEMENT**

154. Plaintiffs incorporate by reference paragraphs 1 through 125 as if fully set forth herein.

RESPONSE: The NCAA repeats and realleges its answers to Paragraphs 1 through 153, as if set forth fully herein.

155. The Consent Decree published and relied on statements that disparaged Joe Paterno and the property of the Estate. It unfairly and improperly maligned Joe Paterno's moral character and the fulfillment of his duties as Head Coach at Penn State, and concerned his business and property.

RESPONSE: The allegations in Paragraph 155 constitute Plaintiffs' conclusions of law to which no response is required.

156. Before the unlawful action of the NCAA Defendants imposing the Consent Decree on Penn State, 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.

RESPONSE: The allegations in Paragraph 156 constitute Plaintiffs' conclusions of law to which no response is required.

157. The statements in the Consent Decree regarding Joe Paterno's character and conduct as Head Coach and concerning the business and property of his Estate were false and defamatory.

RESPONSE: The allegations in Paragraph 156 constitute Plaintiffs' conclusions of law to which no response is required.

158. The statements in the Consent Decree regarding Joe Paterno's character and conduct were libel per se, because they imputed dishonest conduct to Joe Paterno.

RESPONSE: The allegations in Paragraph 158 constitute Plaintiffs' conclusions of law to which no response is required.

159. These statements were widely disseminated by the NCAA, on its website and through numerous press outlets across the country.

RESPONSE: The NCAA admits that the Consent Decree was available on its website. [Confirm]. The remaining allegations of Paragraph 159 are

denied as stated. The NCAA otherwise objects that the phrase “widely disseminated” is vague and ambiguous. The NCAA further responds that the findings of the Freeh Report that were quoted verbatim in the Consent Decree had already received significant publicity.

160. The NCAA Defendants either intended the publication of these statements to cause pecuniary loss or reasonably should have recognized that publication would result in pecuniary loss to the Estate of Joseph Paterno.

RESPONSE: The allegations in Paragraph 160 constitute Plaintiffs’ conclusions of law to which no response is required.

161. The Estate did in fact suffer pecuniary loss, reputational harm, and other damages, as a result of the publication of these statements due to the actions of third persons relying on the statements. The commercial interests and value of the Estate substantially and materially declined as a direct result of the NCAA Defendants’ conduct.

RESPONSE: The allegations in Paragraph 161 constitute Plaintiffs’ conclusions of law to which no response is required. Further, the NCAA denies that it is responsible for any damages allegedly suffered by the Estate of Joseph Paterno. After reasonable investigation, the NCAA is unable to quantify any damages of any sort suffered or incurred by the Estate of Joseph Paterno and proof thereof, if relevant, is demanded at trial.

162. The NCAA Defendants either knew that the statements they made and published were false or acted in reckless disregard of their falsity.

RESPONSE: The allegations in Paragraph 162 constitute Plaintiffs' conclusions of law to which no response is required.

163. The NCAA Defendants' conduct was malicious and outrageous and showed a reckless disregard for the rights of Joe Paterno and his Estate.

RESPONSE: The allegations in Paragraph 163 constitute Plaintiffs' conclusions of law to which no response is required.

COUNT IV: DEFAMATION

164. Plaintiffs incorporate by reference paragraphs 1 through 125 as if fully set forth herein.

RESPONSE: The NCAA repeats and realleges its answers to Paragraphs 1 through 163, as if set forth fully herein.

165. The NCAA Defendants adopted the false statements in the Freeh Report and put the NCAA's imprimatur on the baseless allegations that the Board of Trustees "did not perform its oversight duties" and "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." These statements concerned Al Clemens, who was a member of the Board of Trustees in 1998 and 2001.

RESPONSE: The NCAA states that no response is needed to the allegations in Paragraph 165 because Count I, breach of contract, has been dismissed. To the extent a response is required, the allegations in Paragraph 165 constitute Plaintiffs' conclusions of law to which no response is required. To the extent a response is required, those allegations are denied for the reasons stated in response to Paragraphs 71 and 120, incorporated herein.

166. The NCAA also stated 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.” This statement concerned Jay Paterno and William Kenney, who were assistant coaches of the Penn State football program during the relevant times.

RESPONSE: The NCAA admits that the Consent Decree quotes verbatim the Freeh Report’s finding 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.” The NCAA denies any remaining allegations in Paragraph 166 for the reasons stated in Paragraphs 1-4, 49, 59, 88, and 115-116, as well as the arguments set forth in the three rounds of preliminary objections necessitated by Plaintiffs’ serial amendment of their complaint, and because neither the statement or the Freeh Report even mentions Jay Paterno or William Kenney.

167. These statements were entirely unsupported by evidence and made with intentional, reckless, or negligent disregard for their truth.

RESPONSE: The allegations in Paragraph 167 constitute Plaintiffs' conclusions of law to which no response is required. To the extent a response is required, those allegations are denied for the reasons stated in response to Paragraphs 72 and 90, incorporated herein. Further, the NCAA is unaware of any facts that substantiate Plaintiffs' allegations in Paragraph 167. To the extent relevant, proof of those allegations at trial is demanded.

168. The statements were published in the Consent Decree imposed on Penn State, which the NCAA disseminated to the entire world on its website, or were made in front of large audiences and disseminated through national news media.

RESPONSE: The NCAA admits that the statements were published in the Consent Decree imposed on Penn State and that the Consent Decree was available on the NCAA's website. The NCAA admits that it held a press conference and made the Consent Decree publicly available, but it denies that the NCAA made each challenged statement in the Consent Decree in front of large audiences or disseminated them through national news media. The NCAA denies the remaining allegations and incorporates its response to Paragraph 159.

169. These statements were false, defamatory, and irreparably harmed Plaintiffs' reputations and lowered them in the estimation of the nation. Every recipient of the statements understood their defamatory meaning and understood that the Plaintiffs were the objects of the communication.

RESPONSE: The allegations in Paragraph 169 constitute Plaintiffs' conclusions of law to which no response is required.

170. The publication of the statements resulted in actual harm to Plaintiffs because it adversely affected their reputations; caused them emotional distress, mental anguish, and humiliation; and inflicted financial and pecuniary loss on them.

RESPONSE: The allegations in Paragraph 170 constitute Plaintiffs' conclusions of law to which no response is required. To the extent a response is required, those allegations are denied for the reasons stated in response to Paragraphs 7, 124 and 141, incorporated herein. Further, the NCAA denies it is responsible for any damages allegedly suffered by Plaintiffs. In addition, after reasonable investigation, the NCAA is unable to ascertain the truth or falsity of Plaintiffs' damages claims, both as to causation and amount, and proof thereof, if relevant, is demanded at trial

171. The NCAA Defendants had no privilege to publish the false and defamatory statements, or if they did, they abused that privilege.

RESPONSE: The allegations in Paragraph 171 constitute Plaintiffs' conclusions of law to which no response is required.

COUNT V: CIVIL CONSPIRACY

172. Plaintiffs incorporate by reference paragraphs 1 through 125 as if fully set forth herein.

RESPONSE: The NCAA repeats and realleges its answers to Paragraphs 1 through 171, as if set forth fully herein.

173. Dr. Ray, Emmert, and other unknown NCAA employees, along with the Freeh firm, conspired to work together to avoid the NCAA enforcement procedures in order to impose unwarranted and unprecedented sanctions on Penn State, thereby unlawfully harming Plaintiffs as set forth herein, breaching the contract between the NCAA and Penn State (as reflected in the NCAA's rules), and depriving Plaintiffs of their rights, including their rights under that contract. These actions were unlawful or taken for an unlawful purpose.

RESPONSE: The allegations in Paragraph 173 constitute Plaintiffs' conclusions of law to which no response is required. To the extent a response is required, those allegations are denied for the reasons stated in response to Paragraphs 6, 123, 130, 133, incorporated herein.

174. Among other things, Dr. Ray, Emmert, and other unknown NCAA employees, along with the Freeh firm, agreed to:

a. bypass the NCAA's rules and procedural requirements in conducting the Penn State investigation;

b. deprive Plaintiffs of their rights, including their rights to notice and an opportunity to be heard, before imposing unprecedented sanctions; and

c. agree to sanction Penn State and implicate the entire Penn State community in wrongdoing, based on an obviously flawed investigation that did not consider whether the conduct at issue had violated any of the NCAA's rules.

RESPONSE: The allegations in Paragraph 174 constitute Plaintiffs' conclusions of law to which no response is required. To the extent a response is required, those allegations are denied for the reasons stated in response to Paragraphs , 6, 48, 71, 73, 80, 83, 89, 123, 130, 133, and 173, incorporated herein.

175. Dr. Ray, Emmert, and other NCAA employees, along with the Freeh firm acted with malice. They intended to injure Plaintiffs through their actions or acted in reckless disregard of Plaintiffs' rights. They had no valid justification for their actions.

RESPONSE: The allegations in Paragraph 175 constitute Plaintiffs' conclusions of law to which no response is required.

176. Dr. Ray, Emmert, and other NCAA employees, along with the Freeh firm, performed a series of overt acts in furtherance of this conspiracy, including but not limited to the following:

a. the NCAA Executive Committee chaired by Dr. Ray and the Division I Board of Directors purported to grant Emmert authority to investigate Penn State and impose sanctions, despite knowing they did not have the power to do so;

b. Dr. Ray, Emmert, and other NCAA employees worked closely and coordinated with the Freeh firm to help it prepare a report that they knew or should have known included false conclusions that had not been reached by means of an adequate investigation;

c. Emmert advised President Erickson that the NCAA would use the Freeh Report as a substitute for its own investigation, in reckless disregard of the falsity and inadequacy of that report, and the various NCAA procedural rules violations committed thereby;

d. Emmert and unknown NCAA employees communicated to Penn State that the “death penalty” was on the table for Penn State, despite knowing that no such penalty could have lawfully been imposed under the NCAA rules;

e. Emmert threatened that if Penn State went to the media, the death penalty would be certain, thus extorting silence from President Erickson; and

f. President Erickson agreed not to discuss the NCAA's demands with anyone, including the Board of Trustees of the University, in order to avoid imposition of the death penalty.

RESPONSE: The allegations in Paragraph 176 constitute Plaintiffs' conclusions of law to which no response is required. Further, each sub-paragraph of Paragraph 131 repeats allegations stated earlier in the Complaint, for which the NCAA incorporates its response from those Paragraphs to each respective sub-paragraph of 176.

177. Emmert imposed the Consent Decree on Penn State based on the allegations in the Freeh Report, although doing so was impermissible under the NCAA's own rules.

RESPONSE: Denied for the reasons stated in response to Paragraphs 56, 60, 64 and 71, incorporated herein, and because President Emmert did not act unilaterally. The Consent Decree is an agreement between the NCAA and Penn State.

178. As a result of this conspiracy, Plaintiffs suffered actual damages.

RESPONSE: The allegations in Paragraph 178 constitute Plaintiffs' conclusions of law to which no response is required. Further, the NCAA denies it is responsible for any damages allegedly suffered by Plaintiffs. In addition, after reasonable investigation, the NCAA Defendants are unable to ascertain the truth or falsity of Plaintiffs' damages claims, both as to causation and amount, and proof thereof, if relevant, is demanded at trial.

179. The conduct of the NCAA Defendants in engaging in this civil conspiracy was malicious and outrageous and showed a reckless disregard for Plaintiffs' rights.

RESPONSE: The allegations in Paragraph 179 constitute Plaintiffs' conclusions of law to which no response is required.

NEW MATTER

By way of further response, the NCAA avers the following New Matter to the Second Amended Complaint:

Ratification (Count I)

180. On July 22, 2012, Penn State University President Rodney Erickson executed the "Binding Consent Decree Imposed By The National Collegiate Athletic Association and Accepted By the Pennsylvania State University" (the "Consent Decree").

181. The Consent Decree identified certain “findings and conclusions,” and specifically quoted certain “key factual findings” from the Freeh Report, including findings related to the Board of Trustees. The Consent Decree stated that Penn State “acknowledges” that the facts set forth in the Freeh Report “constitute violations of the Constitutional and Bylaw principles described in the [November 17, 2011] letter.”

182. The Consent Decree identified certain sanctions to be imposed on Penn State, which included a “punitive component” and a “corrective component.”

183. The Consent Decree states that “the University represents ... that it has taken all actions necessary, to execute and perform this Consent Decree and the AIA and will take all actions necessary to perform all actions specified under this Consent Decree and the AIA in accordance with the terms hereof and thereof.”

184. The Consent Decree also states that “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.”

185. After entering into the Consent Decree, Penn State repeatedly confirmed its commitment to performing its obligations under the Consent Decree,

including in various court proceedings, and never sought to avoid or annul the Consent Decree.

186. The Board of Trustees, and Plaintiff Clemens in particular, expressed their support for President Erickson's decision to execute the Consent Decree. The Board of Trustees did not rescind or repudiate the Consent Decree and, instead, repeatedly affirmed the University's commitment to compliance with the Consent Decree.

187. Based on the actions of Penn State, the Board of Trustees (of which he is a member), and his own individual actions, Plaintiff Clemens' claim in Count I—and any and all relief he seeks thereunder—is barred by the affirmative defense of **ratification**.

Consent and/or Absolute Privilege (Plaintiff Clemens – Counts IV and V)

188. The NCAA incorporates by reference paragraphs 1 through 187 as if fully set forth herein.

189. Before the Consent Decree was executed or made public, (1) the Board of Trustees retained the firm of Freeh, Sporkin & Sullivan, LLP (the "Freeh Firm") to conduct an investigation concerning the Sandusky matter, (2) the Freeh Firm, as directed by the Board of Trustees, prepared and published a report of its investigate findings, which included the exact statements that Plaintiff Clemens alleges are defamatory in this action; and (3) members of the Board of Trustees

prepared and published a statement about the Freeh Report which stated that the Board of Trustees took “full responsibility for the failures that occurred” and acknowledged certain failures by the Board of Trustees.

190. The Consent Decree stated that Penn State “accepts the findings of the Freeh Report for purposes of this resolution,” and quoted verbatim the Freeh Report’s findings about the failures of the Board of Trustees.

191. Based on the actions of the Board of Trustees (of which he is a member), and his own individual actions, Plaintiff Clemens’ claims under Count IV and V are barred by the affirmative defense of **consent** and/or **absolute privilege**.

Estoppel (Plaintiff Clemens – All Counts)

192. The NCAA incorporates by reference paragraphs 1 through 191 as if fully set forth herein.

193. Based on the actions of the Board of Trustees (of which he is a member), and his own individual action, each of Plaintiff Clemens’ claims—and all relief sought thereunder—are barred by the doctrines of **equitable estoppel** and **estoppel by acquiescence**.

Truth or Substantial Truth (Counts II, III, IV, and V)

194. The NCAA incorporates by reference paragraphs 1 through 193 as if fully set forth herein.

195. Plaintiffs' claims under Count II (tortious interference), Count III (commercial disparagement), Count IV (defamation), and Count V (civil conspiracy) should be dismissed because the statements that Plaintiffs allege were defamatory or disparaging were **true or substantially true**.²

* * *

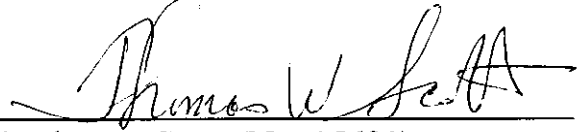
196. To the extent Pennsylvania Rule of Civil Procedure 1032 mandates that any and all affirmative defenses not set forth are waived, the NCAA asserts any and all affirmative defenses contemplated by Pennsylvania Rules of Civil Procedure 1030 and 1032 to the extent that continuing investigation or discovery reveals facts which show that any such defenses may be pertinent up to and including the time of trial.

WHEREFORE, the NCAA demands that judgment be entered in its favor and against Plaintiffs at Plaintiffs' cost.

² Plaintiffs carry the burden to demonstrate that the allegedly disparaging and defamatory statements were false. *See, e.g., Tucker v. Phila. Daily News*, 577 Pa. 598, 625, 848 A.2d 113, 130 (2004) ("The U.S. Supreme Court has also rejected 'the common-law presumption that defamatory speech is false' and has, in its place, set forth 'a constitutional requirement that the plaintiff bear the burden of showing falsity, as well as fault, before recovering damages.'" (citing *Phila. Newspapers, Inc. v. Hepps*, 475 U.S. 767, 777 (1986))). For the avoidance of doubt, however, the NCAA includes "truth or substantial truth" as an affirmative defense in its New Matter. Nothing in the NCAA's new matter should be deemed as an assumption by the NCAA of the burden to demonstrate the truth of the challenged statements.

Date: June 16, 2015

Respectfully submitted,



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VERIFICATION

I hereby verify that the statements in the foregoing Amended Answer with New Matter are true and correct to the best of my knowledge, information and belief. I make this verification subject to 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

Dated: June 15, 2015

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

CERTIFICATE OF SERVICE

I, Thomas W. Scott, hereby certify that I am serving *The National Collegiate Athletic Association's Motion for Leave to File an Amended Answer with New Matter* on the following by First Class Mail and email:

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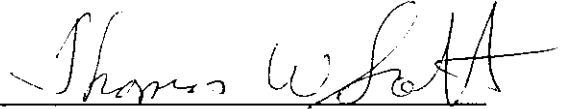
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Dated: June 16, 2015

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

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