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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's Response to Plaintiffs'
) Motion to Overrule Defendant
) NCAA's Objections to Issuance
) of Subpoenas
)
) **Filed on Behalf of:**
) National Collegiate Athletic
) Association, Mark Emmert,
) Edward Ray
)
) **Counsel of Record for this**
) **Party:**
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) PA I.D. Number: 15681

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DEBRA C. IHMEL
PROthonARY
CENTRE COUNTY, PA

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CENTRE COUNTY, PA

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IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

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

**NCAA RESPONSE TO PLAINTIFFS' MOTION TO OVERRULE DEFENDANT
NCAA'S OBJECTIONS TO ISSUANCE OF SUBPOENAS**

Plaintiffs persist in their efforts to take burdensome, cumulative depositions of out-of-state non-parties, and to do so immediately—even for matters in which the Court has already dismissed. The National Collegiate Athletic Association ("NCAA") recognizes that discovery is broad, and indeed the NCAA is eager to move forward with discovery,¹ but the Estate of Joseph Paterno's (the "Estate")

¹ Plaintiffs repeatedly accuse the NCAA of discovery delay tactics, but they know that this is false. *See, e.g.*, Pls' Mem. at 2, 9. The NCAA has already

request to subpoena and disrupt the daily responsibilities of *five* non-party, sitting university presidents² to inquire about a breach of contract claim that the Court already dismissed, and for which discovery is attainable through less burdensome and more appropriate means, is premature and unreasonable. Furthermore, the very viability of that entire claim is now questionable given that the Consent Decree has been dissolved and superseded by another agreement.³ The correspondence between counsel for the NCAA and counsel for the Estate made it clear that the Estate seeks these depositions to, above all else, develop a breach of contract claim that the Court has already refused to allow to move forward. *See* Exs. C, D to NCAA Objs. to Estate's Proposed Subpoenas (Dec. 16, 2014).

Plaintiffs' Motion to Overrule Defendant NCAA's Objections to Issuance of Subpoenas ("Motion") confirms that the Estate's primary goal in pursuing these

produced over 50,000 pages of documents, responded to two separate document requests from the Estate (and requests from the other Plaintiffs), responded to two sets of interrogatories from the Estate, and made Dr. Edward Ray available for a deposition. In contrast, three of the four Plaintiffs have produced no documents in response to the NCAA's document requests, although eight months have passed since the requests were served. And the fourth Plaintiff, the Estate, has produced a meager 243 documents.

² Dr. Albrecht is the President of Utah State University. Dr. Harvey is the President of Hampton University in Virginia (and the 100% owner of the Pepsi Cola Bottling Company of Houghton, Michigan). Dr. Hatch is the President of Wake Forest University in North Carolina. Dr. Pastides is the President of the University of South Carolina. And Dr. Simon is the President of Michigan State University.

³ *See* Superseding Agreement Between the National Collegiate Athletic Association and Pennsylvania State University, attached as Exhibit A hereto.

deposition subpoenas is to chase facts related to the contract claim. *See* Mot. ¶ 3 (“Plaintiffs seek to depose these Directors in order to develop information regarding the process by which the NCAA imposed the Consent Decree.”). The NCAA’s preliminary objections – which are currently pending before the Court – demonstrate that Plaintiffs’ attempt to revive the contract claim is (1) procedurally improper and (2) provides no basis to disturb this Court’s prior holding.⁴

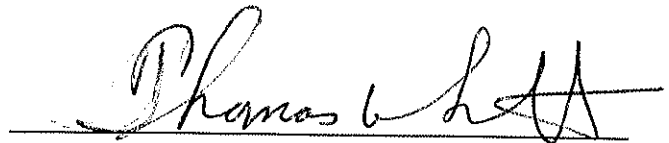
Until the Court rules on those objections and Plaintiffs have attempted to obtain discovery from party witnesses, there is no reason—and Plaintiffs have proffered none—to proceed with these depositions seeking testimony about an irrelevant and dismissed claim, other than to burden, annoy, and cause disruption to third parties at a great expense to them and everyone else. Plaintiffs have already taken testimony from Dr. Ray on these matters, and they have documents and other party witnesses available who can testify to the same issues.

For these reasons, the NCAA offered to Plaintiffs to withdraw its current objections without prejudice to its ability to renew its objections with regard to specific depositions after the Preliminary Objections have been resolved, if the NCAA determines that specific depositions would be unnecessarily burdensome

⁴ Plaintiffs claim that the NCAA waived its relevance objection by not raising it at Dr. Ray’s deposition. But Plaintiffs ignore that the deposition was a joint deposition coordinated with the matter of *Corman v. NCAA*, No. 1 M.D. 2013, where those issues were relevant. In any event, Plaintiffs provide no authority that a failure to object to relevance in one instance constitutes a broader waiver.

and cumulative. Plaintiffs declined this proposal. As such, we are at an impasse. The NCAA now respectfully requests that this Court deny Plaintiffs' request to subpoena the five individuals without prejudice to their ability to renew their request after the Court has resolved the Preliminary Objections and Plaintiffs have made reasonable efforts to obtain the discovery from more reasonable sources.⁵ At such time, the parties may be able to reach agreement without judicial assistance regarding an appropriate number, timing, and scope of the depositions. Alternatively, if the Court is inclined to overrule the NCAA's objections, the NCAA requests that any such order be entered without prejudice to the NCAA's ability to object to specific depositions based on the Court's Preliminary Objections opinion and any testimony that may have been taken by that time.

Respectfully submitted,



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Date: February 4, 2015

⁵ Rule 4007.3 permits the court upon motion to issue orders involving the sequence and timing of discovery "for the convenience of parties and witnesses and in the interests of justice."

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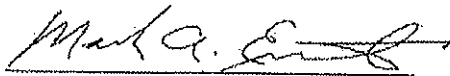
Counsel for Defendants the NCAA, Dr.
Emmert, and Dr. Ray

EXHIBIT A

**SUPERSEDING AGREEMENT BETWEEN THE NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION AND PENNSYLVANIA STATE UNIVERSITY**

1. This agreement shall supersede the "Binding Consent Decree Imposed By The National Collegiate Athletic Association And Accepted By The Pennsylvania State University, dated July 23, 2012" (the "Consent Decree"), and the Consent Decree is hereby dissolved and shall have no continuing effect.
2. Penn State acknowledges the NCAA's legitimate and good faith interest and concern regarding the Jerry Sandusky matter.
3. Penn State commits a total of \$60 million to activities and programs within Pennsylvania and/or at Penn State for the prevention of child sexual abuse, the treatment of victims of child sexual abuse and the study of issues related to child sexual abuse. As part of this commitment, in addition to amounts Penn State has committed to pay under the Endowment Act, Penn State will create, as soon as practicable after July 1, 2015, an appropriate form of endowment at Penn State in the single lump sum amount of \$12 million for these purposes. For the first three years of its existence, Penn State will advise the NCAA regarding the activities and programs that are supported by funds included in the endowment created by Penn State.
4. Penn State and the NCAA will enter into a new Athletics Integrity Agreement that (with concurrence of the Big Ten) deletes or limits part V, that includes a recitation of best practices with which the University is committed to comply and that provides for the University to continue to retain the services of Senator George Mitchell and his firm, in order to support the University's activities under the AIA and in the areas of compliance, ethics and integrity.

**NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION**



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

PENNSYLVANIA STATE UNIVERSITY

Eric J. Barron
President, Penn State University

**SUPERSEDING AGREEMENT BETWEEN THE NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION AND PENNSYLVANIA STATE UNIVERSITY**

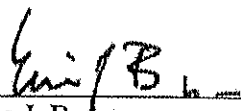
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**NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION**

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

PENNSYLVANIA STATE UNIVERSITY

1/19/15



Eric J. Barron
President, Penn State University

CERTIFICATE OF SERVICE

I, Thomas W. Scott, hereby certify that I am serving the foregoing document, by First Class Mail and email to:

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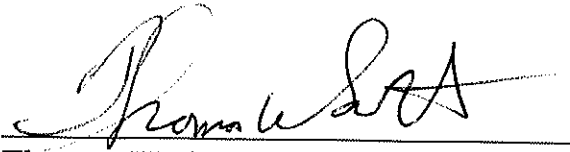
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