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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 Answer with New

) Matter to Plaintiff's Second

) Amended Complaint

)

) **Filed on Behalf of:**

) National Collegiate Athletic

) Association, Mark Emmert,

) Edward Ray

)

) **Counsel of Record for this**

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CENTRE COUNTY, PA

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The ESTATE of JOSEPH PATERNO, et al.,  
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ASSOCIATION ("NCAA"), et al.,  
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and

PENNSYLVANIA STATE UNIVERSITY,  
Defendant.

Civil Division

Docket No. 2013-2082

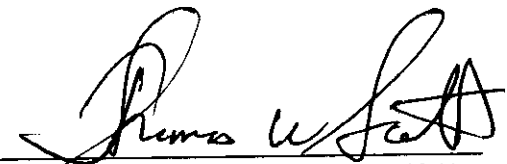
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**NOTICE TO PLEAD**

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.

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

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

Defendants, )

and )

PENNSYLVANIA STATE UNIVERSITY, )

Defendant. )

Civil Division

Docket No. 2013-2082

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

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

1. Denied.
2. The NCAA admits that it is a voluntary association of member institutions of higher education. The NCAA admits that it has a Division

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Constitution and Bylaws,<sup>1</sup> which are written documents that speak for themselves. The NCAA denies any remaining allegations in Paragraph 2.

3. The NCAA denies the first sentence in Paragraph 3. As to the second sentence, the NCAA Constitution and Bylaws are written documents that speak for themselves. To the extent the allegations in Paragraph 3 vary therewith, the NCAA denies those allegations. The allegations in the third sentence of Paragraph 3 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

4. Denied.

5. Denied.

6. Denied.

7. Denied.

8. 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 NCAA denies the remaining allegations in Paragraph 8.

9. 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,

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<sup>1</sup> There is more than one NCAA Constitution and set of bylaws; all references herein refer to the 2012 NCAA Division 1 Constitution and Bylaws.

the allegations are denied. On information and belief, the NCAA admits that Joe Paterno was a resident of Pennsylvania.

10. On information and belief, the NCAA admits the allegations in Paragraph 10.

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

12. 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.

13. Admitted.

14. Admitted.

15. The NCAA admits the allegations in the first sentence of Paragraph 15. The NCAA denies the remaining allegations in Paragraph 15.

16. The allegations in Paragraph 16 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

17. The allegations in Paragraph 17 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

18. Denied.<sup>2</sup>

19. The allegations in Paragraph 19 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

20. The allegations in Paragraph 20 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

21. Admitted.

22. 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. The NCAA admits that student athletes are not paid a salary. The NCAA's publically-available Consolidated Financial Statements are written

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<sup>2</sup> 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.

documents that speak for themselves. To the extent the allegations in Paragraph 23 vary therewith, the NCAA denies those allegations.

24. Paragraph 24 references or 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 the first sentence of Paragraph 24 alleges that the NCAA Division 1 Manual is the exclusive source of the NCAA's authority and obligations of NCAA member institutions, the NCAA denies those allegations. The NCAA denies any remaining allegations in Paragraph 24.

25. 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. The NCAA denies the allegations in Paragraph 25 to the extent they allege that the NCAA Division 1 Manual is the exclusive source of rules governing NCAA sports. The remaining allegations are Plaintiffs' conclusions of law, to which no response is required. To the extent a response is required, the NCAA denies those allegations.

26. Denied as stated. This Paragraph references or characterizes the NCAA Division 1 Manual, Article 19.01.1, a written document that speaks for itself. To the extent the allegations in Paragraph 26 vary therewith, the NCAA denies those allegations. Further, the allegations in Paragraph 26 state Plaintiffs' conclusion of



law, which requires no answer. To the extent an answer is required, the allegations are denied.

27. Paragraph 27 references or characterizes 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 an answer is required, the allegations are denied.

28. Paragraph 28 references or characterizes the NCAA Constitution, which is 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 an answer is required, the allegations are denied.

29. Paragraph 29 references or characterizes the NCAA Bylaws, which 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 an answer is required, the allegations are denied.

30. Paragraph 30 references or characterizes the NCAA Bylaws, including Articles 19 and 32, which are set forth in the NCAA Division I Manual, a written document that speaks for itself. To the extent the allegations in Paragraph 30 vary therewith, the NCAA denies those allegations. Further, the allegations in Paragraph 30 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

31. The allegations in Paragraph 31 pertain to or characterize the NCAA Bylaws, which are set forth in the NCAA Division I Manual, a written document that speaks for itself. To the extent the allegations in Paragraph 31 vary therewith, the NCAA denies those allegations. Further, the allegations in Paragraph 31 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

32. The rules referenced or characterized in Paragraph 32 are set forth in the NCAA Division I Manual, a written document that speaks for itself. To the extent the allegations in Paragraph 32 vary therewith, the NCAA denies those allegations. Further, the allegations in Paragraph 32 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

33. The allegations in Paragraph 33 pertain to or characterize procedures set forth in the NCAA Division I Manual, a written document that speaks for itself.

To the extent the allegations in Paragraph 33 vary therewith, the NCAA denies those allegations. Further, the allegations in Paragraph 33 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

34. The allegations in Paragraph 34 pertain to or characterize procedures set forth in the NCAA Division I Manual, a written document that speaks for itself. To the extent the allegations in Paragraph 34 vary therewith, the NCAA denies those allegations. Further, the allegations in Paragraph 34 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

35. The allegations in Paragraph 35 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied. Further, the allegations in Paragraph 35 pertain to procedures set forth in the NCAA Division I Manual, a written document that speaks for itself. To the extent the allegations in Paragraph 35 vary therewith, the NCAA denies those allegations.

36. 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 denies these allegations.

37. The allegations in Paragraph 37 pertain to or characterize procedures set forth in the NCAA Division I Manual, a written document that speaks for itself. To the extent the allegations in Paragraph 37 vary therewith, the NCAA denies those allegations. Further, the allegations in Paragraph 37 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

38. The allegations in Paragraph 38 pertain to or characterize procedures set forth in the NCAA Division I Manual, a written document that speaks for itself. To the extent the allegations in Paragraph 38 vary therewith, the NCAA denies those allegations. Further, the allegations in Paragraph 38 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

39. The allegations in Paragraph 39 pertain to or characterize procedures set forth in the NCAA Division I Manual, a written document that speaks for itself. To the extent the allegations in Paragraph 39 vary therewith, the NCAA denies those allegations. Further, the allegations in Paragraph 39 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

40. The allegations in the first three sentences of Paragraph 40 pertain to or characterize procedures 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. The NCAA denies the allegations in the last sentence of Paragraph 40 to the extent they allege that the NCAA imposes the referenced penalties only in order to erase a competitive advantage. Further, the allegations in Paragraph 40 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

41. The NCAA admits that suspension of play is a sanction that may impact a program. The NCAA denies any and all remaining allegations in Paragraph 41.

42. The allegations in Paragraph 42 pertain to or characterize procedures set forth in the NCAA Division I Manual, a written document that speaks for itself. To the extent the allegations in Paragraph 42 vary therewith, the NCAA denies those allegations. Further, the allegations in Paragraph 42 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

43. The allegations in Paragraph 43 pertain to or characterize procedures set forth in the NCAA Division I Manual, a written document that speaks for itself. To the extent the allegations in Paragraph 43 vary therewith, the NCAA denies those allegations. Further, the allegations in Paragraph 43 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

44. The allegations in Paragraph 44 pertain to or characterize procedures set forth in the NCAA Division I Manual, a written document that speaks for itself. To the extent the allegations in Paragraph 44 vary therewith, the NCAA denies those allegations. Further, the allegations in Paragraph 44 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

45. The allegations in Paragraph 45 pertain to or characterize procedures set forth in the NCAA Division I Manual, a written document that speaks for itself. To the extent the allegations in Paragraph 45 vary therewith, the NCAA denies those allegations. Further, the allegations in Paragraph 45 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

46. The allegations in Paragraph 46 pertain to or characterize procedures set forth in the NCAA Division I Manual, a written document that speaks for itself. To the extent the allegations in Paragraph 46 vary therewith, the NCAA denies those allegations. Further, the allegations in Paragraph 46 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

47. The allegations in Paragraph 47 pertain to or characterize procedures set forth in the NCAA Division I Manual, a written document that speaks for itself.

To the extent the allegations in Paragraph 47 vary therewith, the NCAA denies those allegations. Further, the allegations in Paragraph 47 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

48. The allegations in the first sentence of Paragraph 48 pertain to or characterize procedures set forth in the NCAA Division I Manual, a written document that speaks for itself. To the extent the allegations vary therewith, the NCAA denies those allegations. The NCAA denies the remaining allegations in Paragraph 48. Further, the allegations in Paragraph 48 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

49. Denied as stated. To the extent the allegations in this Paragraph reference or characterize the NCAA Division 1 Manual, Article 19.01.1, this statement is contained within a written document that speaks for itself. To the extent the allegations in Paragraph 49 vary therewith, the NCAA denies those allegations. Further, the allegations in Paragraph 49 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

50. The allegations in Paragraph 50 reference or characterize written documents that speak for themselves. To the extent the allegations in Paragraph 50 vary therewith, the NCAA denies those allegations. Further, the allegations in

Paragraph 50 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

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

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

53. 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, both which are written documents that speak for themselves. To the extent the allegations in Paragraph 53 vary therewith, the NCAA denies those allegations.

54. Denied as stated.

55. The NCAA admits that the incidents involving Sandusky were reprehensible. Paragraph 55 references or characterizes a statement of Mark Emmert, which is contained in a written document that speaks for itself. To the extent the allegations in Paragraph 55 vary therewith, the NCAA denies those allegations. Further, the NCAA denies the allegations in the second sentence of Paragraph 55 to the extent they characterize Dr. Emmert's statement as acknowledging a lack of NCAA authority to address the issues at Penn State. The NCAA denies any and all remaining allegations in Paragraph 55.



56. 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 denies these allegations.

57. 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 these allegations. As to any remaining allegations, the NCAA responds that the letter referenced or characterized in Paragraph 57 is a written document that speaks for itself. To the extent the allegations in Paragraph 57 vary therewith, the NCAA denies those allegations. The NCAA denies any and all remaining allegations in Paragraph 57.

58. 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 denies these allegations.

59. 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 denies these allegations.

60. 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 these allegations. As to any remaining allegations, the letter referenced or characterized in Paragraph 60 is a written document that speaks for itself. To the extent the allegations in Paragraph 60 vary therewith, the NCAA denies those allegations. The NCAA denies any and all remaining allegations in Paragraph 60.

61. 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 denies the allegation in Paragraph 61. In addition, the NCAA responds that the letter referenced or characterized in Paragraph 61 is a written document that speaks for itself. To the extent the allegations in Paragraph 61 vary therewith, the NCAA denies those allegations. Further, the NCAA admits 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.

62. 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 these allegations. As to any remaining allegations, the NCAA admits that 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 last two sentences of Paragraph 62 reference or characterize the Freeh Report, which is a written document that speaks for itself. To the extent the allegations in those sentences vary therewith, the NCAA denies those allegations. The NCAA denies any and all remaining allegations in Paragraph 62.

63. The statements of Mark Emmert referenced or characterized in Paragraph 63 are contained in written documents that speak for themselves. To the extent the allegations in Paragraph 63 vary therewith, the NCAA denies those allegations.

64. 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 denies these allegations, except that it admits that Joe Paterno died on January 22, 2012.

65. The NCAA is without knowledge or information sufficient to form a belief as to what prompted the Big Ten to send a letter and, on that basis, denies those allegations. The NCAA denies that it had initiated an inquiry as of November 2011. The Big Ten letter referenced or characterized in Paragraph 65 is a written document that speaks for itself. To the extent the allegations in Paragraph 65 vary therewith, the NCAA denies those allegations. The NCAA denies the remaining allegations in Paragraph 65.

66. 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 these allegations. As to any remaining allegations, the NCAA admits the allegations in the first sentence of Paragraph 66. The NCAA denies any and all remaining allegations in Paragraph 66.

67. Paragraph 67 references or characterizes the Freeh Report, which is a written document that speaks for itself. To the extent the allegations in Paragraph 67 vary therewith, the NCAA denies those allegations.

68. 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 denies any and all remaining allegations in Paragraph 68.

69. The statements referenced or characterized in Paragraph 69 are contained in written documents that speak for themselves. To the extent the allegations in Paragraph 69 vary therewith, the NCAA denies those allegations.

70. 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 remaining allegations in Paragraph 70 are denied.

71. The Freeh Report and NCAA statements referenced or characterized in Paragraph 71 are written documents or contained in written documents that speak for themselves. To the extent the allegations in Paragraph 71 vary therewith, the NCAA denies those allegations. The NCAA denies the remaining allegations of Paragraph 71.

72. Denied.

73. Denied.

74. Denied.

75. The article referenced or characterized in Paragraph 75 is a written document that speaks for itself. To the extent the allegations in Paragraph 75 vary therewith, the NCAA denies those allegations.

76. 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 denies the remaining allegations of Paragraph 76.

77. Paragraph 77 references or characterizes the Freeh Report and its exhibits, which are written documents that speak for themselves. To the extent the

allegations in Paragraph 77 vary therewith, the NCAA denies those allegations. The NCAA denies the remaining allegations of Paragraph 77.

78. The NCAA denies the allegations in the first three sentences of Paragraph 78. The NCAA is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 78 and, on that basis, denies them.

79. Denied.

80. The NCAA denies the allegations in the first sentence of Paragraph 80. The Wall Street Journal article and report prepared by Secretary Chertoff referenced or characterized in Paragraph 80 are written documents that speak for themselves. To the extent the allegations in Paragraph 80 vary therewith, the NCAA denies those allegations.

81. Denied.

82. The NCAA denies the allegations in the first sentence of Paragraph 82. The reports referenced or characterized in Paragraph 82 are written documents that speak for themselves. To the extent the allegations in Paragraph 82 vary therewith, the NCAA denies those allegations.

83. The NCAA denies that it has a flawed enforcement process and that its handling of the “case against Jerry Tarkanian” is “infamous.” Further, the Hill article referenced or characterized in Paragraph 83 is a written document that speaks

for itself. To the extent the allegations in Paragraph 83 vary therewith, the NCAA denies those allegations.

84. Denied.

85. 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 denies these allegations.

86. To the extent the allegations in the first sentence of Paragraph 86 are drawn from or characterize statements by the NCAA Defendants, such statements are contained in written documents that speak for themselves. To the extent the allegations in Paragraph 86 vary therewith, the NCAA denies those allegations. The NCAA denies any and all remaining allegations in Paragraph 86.

87. Denied.

88. The NCAA denies the allegations in the first sentence of Paragraph 88. 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. The NCAA denies any and all remaining allegations in Paragraph 88.

89. Denied.

90. 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 these allegations. The NCAA denies any and all remaining allegations in Paragraph 90.

91. Denied.

92. Denied.

93. Denied.

94. 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 these allegations. As to any remaining allegations, the NCAA admits the allegations in the first sentence of Paragraph 94. The NCAA 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. 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 and that it was not reserved exclusively for cases of repeat violators.

95. 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. The statements of Dr. Ray are contained in written documents that speak for themselves. To the extent the allegations vary therewith, the NCAA denies those allegations.

96. 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 these allegations and any remaining allegations in Paragraph 96.

97. Denied.

98. 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 these allegations and any remaining allegations in Paragraph 98.

99. The NCAA admits the allegations in the first sentence of Paragraph 99. The NCAA denies the remaining allegations in Paragraph 99.

100. The NCAA denies allegations in the first sentence of Paragraph 100. The NCAA denies the allegations in the second sentence of Paragraph 100 to the extent they allege that Rodney Erickson and Mark Emmert signed the Consent Decree on July 23, 2012. The Consent Decree was publically announced on July 23, 2012, but signed by President Erickson the day before. The NCAA admits that Exhibit C to the Complaint is a copy of the Consent Decree.

101. Denied.

102. Denied.

103. The NCAA denies the allegations in the first sentence of Paragraph 103. As to the remaining allegations, they reference or characterize the Consent Decree, which is a written document that speaks for itself. To the extent the allegations in Paragraph 103 vary therewith, the NCAA denies those allegations.

104. Paragraph 104 references or characterizes the Consent Decree, which is a written document that speaks for itself. To the extent the allegations in Paragraph 104 vary therewith, the NCAA denies those allegations.

105. Denied.

106. The Consent Decree referenced or characterized in Paragraph 106 is a written document that speaks for itself. To the extent the allegations in Paragraph 106 vary therewith, the NCAA denies those allegations. The NCAA denies any remaining allegations in Paragraph 106.

107. Denied.

108. The NCAA denies the allegations in the first sentence of Paragraph 108. Further, Paragraph 108 references or characterizes the Consent Decree, which is a written document that speaks for itself. To the extent the allegations in Paragraph 108 vary therewith, the NCAA denies those allegations.

109. Denied.

110. The NCAA admits that the NCAA enforcement staff did not undertake their own investigation of the Penn State matter. The NCAA further admits that its Executive Committee had authority to act in this case. The statements of Dr. Ray referenced or characterized in Paragraph 110 are contained in written documents that speak for themselves. To the extent the allegations in Paragraph 110 vary therewith, the NCAA denies those allegations. The NCAA denies the remaining allegations in Paragraph 110.

111. 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.

112. Paragraph 112 references or characterizes the Consent Decree, which is a written document that speaks for itself. To the extent the allegations in Paragraph 112 vary therewith, the NCAA denies those allegations.

113. Paragraph 113 references or characterizes the Consent Decree, which is a written document that speaks for itself. To the extent the allegations in Paragraph 113 vary therewith, the NCAA denies those allegations.

114. Denied.

115. 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 these allegations. As to any remaining allegations, the NCAA denies the allegations in the first sentence of Paragraph 115 as stated. The NCAA declined to accept the referenced purported appeals. The following sentences of Paragraph 115 reference or characterize the denials of appeal, which are written documents that speak for themselves. To the extent the allegations in Paragraph 115 vary therewith, the NCAA denies those allegations. The NCAA denies the remaining allegations in Paragraph 115.

116. Denied.

117. The NCAA admits that the Consent Decree was, and is, a public document. The NCAA denies any remaining allegations in Paragraph 117.

118. 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. The NCAA admits that 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 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 these allegations.

120. 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 denies these allegations.

121. 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 denies these allegations.

122. Denied.

123. Denied.

124. 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 these allegations. As to any remaining allegations, the NCAA admits that Trustee 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. The NCAA denies any and all remaining allegations of Paragraph 124.

125. Denied.

### **COUNT I**

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

127. The NCAA admits that, at all relevant times, Penn State was an Active Member of the NCAA. The remaining allegations in Paragraph 127 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

128. The allegations in Paragraph 128 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

129. 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 these allegations. As to any remaining allegations, the NCAA admits that Joe Paterno was referenced in the Grand Jury Report, and that certain quotes from the Freeh Report referencing Joe Paterno were included in the Consent Decree. The NCAA denies any and all remaining allegations of Paragraph 129.

130. The allegations in Paragraph 130 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

131. 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 these allegations. The NCAA denies any and all remaining allegations in Paragraph 131.

132. Denied.

133. Denied.

134. 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 these allegations. The NCAA denies any and all remaining allegations in Paragraph 134.

## **COUNT II**

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

136. 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 further denies the allegations in the second sentence of Paragraph 136.

137. Denied.

138. Denied.

139. Denied.

140. Denied.

141. Denied.

142. 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. 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. The NCAA denies that the Consent Decree contained a finding regarding Coach Kenney, and it denies 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. 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. The NCAA denies the allegations in the last sentence of Paragraph 145. 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.

146. The NCAA admits that Mr. Kenney is currently a coach at Western Michigan University. The NCAA denies the allegations in the last sentence of Paragraph 146. 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. The NCAA admits that Jay Paterno coached football at Penn State, including as its quarterbacks coach. 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. The NCAA denies that Jay Paterno was let go by Penn State following the 2012 football season. Upon information and belief, the NCAA admits 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. 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. The NCAA denies the allegations in the last sentence of Paragraph 150. 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.

151. The NCAA denies that the Consent Decree contained a finding regarding Coach Jay Paterno, and it denies that the Consent Decree statement that some coaches, administrators, and football program staff members “ignored ‘the red flags of Sandusky’s behaviors’” was unsupported. The NCAA is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 151 and, on that basis, denies them.

152. The NCAA denies the allegations in the last sentence of Paragraph 152. 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.

153. 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**

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

155. Denied.

156. Denied.

157. Denied.

158. Denied.

159. Denied.

160. Denied.

161. Denied.

162. Denied.

163. Denied.

#### **COUNT IV**

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

165. Denied.

166. 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.

167. Denied.

168. The NCAA admits that the Consent Decree was made available on the NCAA's website. The NCAA denies the remaining allegations in Paragraph 168.

169. Denied.

170. Denied.

171. The allegations in Paragraph 171 state Plaintiffs' conclusion of law, which requires no answer. To the extent an answer is required, the allegations are denied.

#### **COUNT V**

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

173. Denied.

174. Denied.

175. Denied.

176. Denied.

177. Denied.

178. Denied.

179. Denied.

### **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



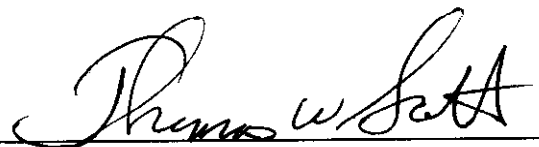
conspiracy) should be dismissed because the statements that Plaintiffs allege were defamatory or disparaging were **true or substantially true**.

\* \* \*

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.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Thomas W. Scott", is written over a horizontal line.

Date: April 29, 2015

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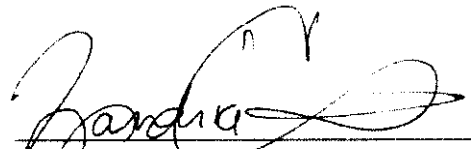
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**VERIFICATION**

I hereby verify that the statements in the foregoing 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: April 29, 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 Answer with New Matter to Plaintiffs' Second Amended Complaint* on the following by First Class Mail and email:

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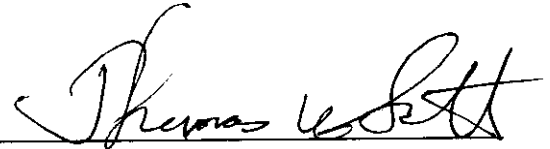
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Dated: April 29, 2015



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