



IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

| | | |
|-----------------------------------------------------------|---|----------------------------------------------------|
| The ESTATE of JOSEPH PATERNO; and |) | |
| |) | Civil Division |
| WILLIAM KENNEY and JOSEPH V. ("JAY") |) | |
| PATERNO, |) | Docket No. 2013-2082 |
| former football coaches at Pennsylvania State University, |) | |
| Plaintiffs, |) | Opposition to NCAA's Motion to Compel the |
| |) | Production of Documents from Plaintiffs |
| v. |) | Jay Paterno and William Kenney |
| |) | Filed on Behalf of Plaintiffs |
| NATIONAL COLLEGIATE ATHLETIC |) | Joseph V. ("Jay") Paterno and |
| ASSOCIATION ("NCAA"); |) | William Kenney |
| |) | |
| MARK EMMERT, individually and as President of the |) | |
| NCAA; |) | Counsel of Record: |
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| and |) | GOLDBERG KATZMAN, P.C. |
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CENTRE COUNTY, PA

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| |) | GOLDBERG KATZMAN, P.C. |
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CLERK OF COURT
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OPPOSITION TO THE NCAA'S MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS FROM PLAINTIFFS JAY PATERNO AND WILLIAM KENNEY

The NCAA served its motion to compel production of documents from Plaintiffs Jay Paterno and William Kenney ("Kenney") on July 10, just two hours after a lengthy discovery conference. During that conference, the NCAA's counsel mentioned only some of the NCAA's complaints concerning Jay Paterno's discovery responses, but made no mention of Kenney's discovery responses. The NCAA could have spared both the Court's and Plaintiffs' resources by complying with Local Rule 208.2(e), which requires that a movant in a discovery motion make a

“good faith effort to resolve by agreement the issues raised in the motion without intervention of the court.”¹ Instead of complying with that rule, however, the NCAA’s counsel filed a discovery motion that raises issues never discussed at the parties’ July 10 discovery conference and must have been finalized before that conference. The NCAA is apparently less interested in actually obtaining the documents and information that are the subject of its motion than continuing its bullying tactics, including by propounding unduly burdensome discovery requests and engaging in unnecessary disputes in hopes of avoiding trial.

Had the NCAA made a good-faith effort to present and resolve its discovery disputes during the July 10 conference, it would have learned that some of the documents it demands had already been produced, and that Plaintiffs were willing to produce others subject to their objections. Since the July 10 conference, Jay Paterno has confirmed his willingness to provide the salary information requested by the NCAA’s motion, and has produced the requested tax returns showing his compensation back to 2005. Kenney had already produced the requested tax information before the July 10 conference, and the NCAA did not raise that request or any other issue related to Kenney’s discovery responses at the conference. Maher Decl. ¶ 7, Ex. 1. Nor did the NCAA raise any issue regarding its requests to Kenney and Jay Paterno for documents related to efforts (if any) to obtain coaching jobs going back to 2000. *See* Paterno Objections and Responses, No. 13, Ex. 3 to NCAA Br.; Kenney Objections and Responses, No. 13, Ex. 4 to NCAA Br. Both had responded that despite their objections to the breadth of the request, they would produce non-privileged responsive documents, if any, back to January 1, 2011, but they

¹ Local Rule 208.2(e) provides: **DISCOVERY MOTIONS, STATEMENT OF CONFERENCE TO RESOLVE OBJECTIONS** Counsel for movant in a discovery motion shall file as part of the motion a statement certifying that counsel has conferred with counsel for the opposing party in a good faith effort to resolve by agreement the issues raised by the motion without the intervention of the court. If part of the issues raised by the motion have been resolved by agreement, the statement shall specify the issues so resolved and the issues remaining unresolved.

did not have anything. If the NCAA had raised this request at the discovery conference, Plaintiffs would have conveyed their willingness to produce responsive documents dating back to 2006, but that they do not have any such documents to produce.

Only one of the issues the parties discussed at the July 10 conference remains in dispute. The NCAA's remaining arguments challenge Jay Paterno's objections to the NCAA's request for every document related to his book, *Paterno Legacy: Enduring Lessons from the Life and Death of My Father*. But the NCAA has offered no legal basis to overrule his objections to that burdensome and unreasonable request. Documents about the drafting of his memoir about his father are not relevant to the claims in this case.

The NCAA also contends that Jay Paterno and Kenney have failed to produce documents responsive to requests for which they "actually agreed to produce documents." NCAA Br. 6. In fact, the responses in question stated that they would produce "responsive documents, *if any*." See generally Paterno Objections and Responses, Ex. 3 to NCAA Br.; Kenney Objections and Responses, Ex. 4 to NCAA Br. (emphasis added). The NCAA's motion contains no support for its unfounded assumption that Jay Paterno or Kenney are withholding responsive documents other than those to which Jay Paterno has specifically objected on grounds of relevance or privilege. It goes without saying that a party can be ordered to produce only documents in its possession, custody, or control.

The NCAA's alternative request that the Court impose an extraordinary certification requirement on Jay Paterno and Kenney is unjustified, and would largely duplicate the verifications they have already made pursuant to the Pennsylvania Rules of Civil Procedure. It also confirms that the NCAA's motion is not about obtaining reasonable discovery, but in

violation of yet another rule, Rule 4011, it is merely an attempt to further harass the parties they have already egregiously harmed by imposing unnecessary and unreasonable discovery burdens.

The NCAA's motion to compel should be denied.

ARGUMENT

In the Second Amended Complaint, Jay Paterno and William Kenney have asserted claims for Intentional Interference with Contractual Relations (Count II), Defamation (Count IV), and Conspiracy (Count V). The Pennsylvania Rules of Civil Procedure permit discovery of non-privileged materials that are "relevant to the subject matter involved in the pending action." Pa. R. Civ. P. 4003.1(a), 4011(c); *see also Slayton v. Biebel*, 37 Pa. D. & C. 4th 140, 141 (Pa. Ct. Com. Pl. 1998) (the scope of discovery must be framed by "the facts and circumstances of each particular case"). Moreover, even with respect to non-privileged, relevant materials, "a party's right to discovery is not absolute." *Taylor v. W. Pa. Hosp.*, 48 Pa. D. & C. 3d 178, 181 (Pa. Ct. Com. Pl. 1987). Rule 4011 prohibits discovery that could cause "unreasonable annoyance, embarrassment, oppression, burden, or expense to a deponent or any person or party" or that would require "unreasonable investigation by the deponent or any party or witness." As described below, many of the NCAA's challenges to Jay Paterno's and Kenney's discovery objections are moot and could have been resolved had the NCAA conferred with Plaintiffs before filing its motion. Their remaining challenges are meritless because the underlying discovery requests seek irrelevant information and are unreasonable.

I. MOST OF THE NCAA'S CHALLENGES TO KENNEY AND JAY PATERNO'S OBJECTIONS ARE MOOT.

The NCAA limited its own production to documents generated between January 1, 2011, and May 30, 2013, and agreed that Jay Paterno and Kenney may generally do so, too. *See* April 21, 2015, Letter from Sarah Gragert to Patricia Maher at 2, Ex. 6 to NCAA Br. It contends,

however, that the personal finances of Jay Paterno and Kenney fall into a special category that warrants discovery of documents — including “pay stubs, federal and state income tax returns,” and other financial information — dating back to January 1, 2006. NCAA Br. 14.

This dated financial data — going back before 2011 — is irrelevant to Plaintiffs’ claims and to the NCAA’s defenses. Nonetheless, in an attempt to avoid an unnecessary dispute, Jay Paterno and Kenney have produced responsive documents. Accordingly, while preserving their objections that their pre-2011 financial information is irrelevant and inadmissible, Jay Paterno has produced financial information dating back to 2005 and Kenney has produced financial information dating back to 2006. The NCAA’s assertion that Kenney “refuse[s] to produce materials prior to January 1, 2011” was apparently written before the July 10 discovery conference. NCAA Br. 14. Jay Paterno produced the requested tax documents within a week after that discovery conference. Maher Decl. ¶ 3, Ex. 1.

This part of the NCAA’s motion is therefore moot and had the NCAA complied with the rules — this time, Local Rule 208.2(e) — it could have avoided burdening the Court with this unnecessary dispute. Indeed, during the parties’ July 10 conference, the NCAA’s counsel raised the issue with respect to Jay Paterno’s response to an interrogatory seeking salary information dating back to 2006 and he agreed to provide that information, as well as corresponding tax information to the extent it had not already been produced. Maher Decl. ¶¶ 2–3, Ex. 1. The NCAA did not raise any issue with respect to Kenney’s production, presumably because he had already produced his tax records going back to 2006.

II. THE NCAA’S REMAINING DISCOVERY REQUESTS SEEK IRRELEVANT INFORMATION AND ARE UNREASONABLE.

To the extent the NCAA’s motion to compel is not moot, it should be denied. Plaintiffs properly objected to the NCAA’s discovery requests because they seek either irrelevant

information or information that is not in Plaintiffs' possession. The NCAA's discovery requests are also unreasonable and the NCAA should not be allowed to use the discovery process to harass and impose undue burdens on Plaintiffs.

A. Efforts by Paterno and Kenney to Secure Employment Prior to January 2011 Are Irrelevant.

The NCAA seeks to compel Jay Paterno and Kenney to produce documents related to their "efforts to secure employment" as football coaches back to the year 2000, arguing that it needs that information to determine whether they were "chronically unemployable" for reasons other than the NCAA's allegedly tortious conduct. NCAA Br. 16. This rationale for seeking documents related to purported job searches by two individuals who were *employed* continuously during the period in question borders on the absurd. It is undisputed that before their terminations following the 2011-12 football season, Jay Paterno and Kenney had coached at Penn State for 17 and 24 years, respectively. 2d Am. Compl. ¶¶ 142, 147; *see also* NCAA Am. Answer to 2d Am. Compl. at 148, 152 (admitting these allegations). It is thus unclear how the requested information could even arguably relate to the legal claims in this case.

In any event, neither Jay Paterno nor Kenney has any responsive documents to produce. As their lengthy and stable tenures at Penn State reflect, neither sought employment elsewhere until they were terminated following Penn State's firing of Coach Joe Paterno. Moreover, if there were any potentially relevant documents, those documents would be in their respective Penn State email accounts, to which they no longer have access.

B. Documents Related to Jay Paterno's Book Are Irrelevant to the Claims and Defenses in This Case.

The NCAA seeks "all documents concerning [Jay Paterno's] upcoming book" but it offers no meaningful legal support for this burdensome request. Jay Paterno published his book, *Paterno Legacy: Enduring Lessons from the Life and Death of My Father*, in 2014, more than a

year after the case was filed. The book therefore does not fall within the parties' agreed scope of relevant discovery — from January 1, 2011 to May 30, 2013, the date the complaint was filed. The NCAA already has a copy of the final book and its attempt to require Jay Paterno to collect and gather all of his notes and drafts is a burdensome fishing expedition that should not be permitted.

The NCAA asserts that “[t]he book [and] every draft of it, and every communication about it is a party admission that would be admissible under the rules of evidence.” NCAA Br. 9. That misunderstands Pennsylvania law. Under Pennsylvania Rule of Evidence 803(25), drafts and communications about Jay Paterno’s book are not “admissions.” That rule provides a hearsay exception for “statements . . . made by [a] party in an individual or representative capacity” or that “the party manifested that it adopted or believed to be true.” The exception does not apply here because Jay Paterno’s book drafts reflect, by their nature, non-final thoughts and potential errors that were revised in the process of preparing the final published version. There is no indication that Jay Paterno expressed or adopted the statements contained in his drafts or believed them to be true until he finalized and published them.

Significantly, the NCAA does not argue that Jay Paterno’s drafts contain anything of interest that is not duplicative of his final book, which the NCAA already has. To the contrary, the NCAA’s argument in favor of discovery is premised on its insistence that the drafts consist of exactly the same information as the final book, which the NCAA says contains admissions against interest. It is unreasonable for the NCAA to request that Jay Paterno undertake the burdensome task of searching for, collecting, and reviewing all of his notes and drafts so that the NCAA may obtain information that it already has.

In an effort to justify its overly burdensome discovery request, the NCAA mischaracterizes the book's content. According to the NCAA, the book contains exculpatory admissions by Jay Paterno that his reputational injury was caused by, in the NCAA's words, "Louis Freeh, the grand jury proceedings, Penn State, and the media's rush to judgment — *but not the NCAA.*" NCAA Br. 10 (emphasis added). While that reading is selective, self-serving, and incorrect, it is apparently based on the book itself and undercuts the need for any drafts. In fact, in the book Jay Paterno does refer disapprovingly to the Freeh Report, the investigation by Penn State, and the media's rush to judgment — just as the Plaintiffs do in this suit — but he does not do so to the exclusion of the NCAA. To the contrary, the book also refers to the NCAA as directly responsible for tarnishing the name of his father and causing his reputational injury. And it does so on the very pages that the NCAA excerpts and attaches to its motion. For example, the book notes that "Joe Paterno was disparaged by the baseless conclusions of the Freeh Report and resulting NCAA sanctions against the football program he'd led." *Paterno Legacy* at 52, Ex. 8 to NCAA Br. (emphasis added). The NCAA's attempted use of the book's criticisms of the Freeh Report and Penn State to suggest that Jay Paterno does not cast blame on the NCAA is a non sequitur. Indeed, even if the Freeh Report and Penn State contributed to the harms the NCAA caused to the Estate and to Jay Paterno, that does not relieve the NCAA of liability. Joint tortfeasors are "jointly or severally liable in tort for the same injury to persons or property." 42 Pa. C.S.A. § 8322.

In the final analysis, even if there were any probative value to a draft, it is far outweighed by the diversion of resources necessary to comply with the request and deal with the NCAA's efforts to extract isolated draft statements to support its position. The NCAA's selective and misleading presentation of the book's content indicates that it plans to do the same thing with the

drafts, leading to secondary and unnecessary disputes over what the drafts might say and distracting from the real issues in this case: whether there is any justification for NCAA's knowingly false statements in the Consent Decree and the amount of harm caused by those statements. Accordingly, because the NCAA's improper discovery requests are not likely to lead to relevant information, and because they are burdensome, the NCAA's challenge to Jay Paterno's objections should be rejected.

III. THE VOLUME OF JAY PATERNO'S AND KENNEY'S DOCUMENT PRODUCTIONS DOES NOT SHOW THEM TO BE INCOMPLETE.

The NCAA argues that Kenney has "shirked" his discovery obligations and that Jay Paterno's production is "woefully inadequate" in large part because their productions are comparatively smaller than the NCAA's production of 16,030 documents. NCAA Br. 2, 17–18. The NCAA invites the Court to conclude from this size discrepancy that Jay Paterno and Kenney either did not look hard enough for documents or that they are withholding things. That conclusion is also baseless.

A. Jay Paterno And Kenney Have Complied With Their Discovery Obligations.

The NCAA is a large institution with more than 1,200 members in all fifty states, Canada, and Puerto Rico; annual revenues of more than \$800 million; and monopolistic control over the nation's premium college athletics. Unlike the NCAA, Jay Paterno and Kenney are individuals. They do not have control over the files and emails of hundreds of employees, nor do they have institutionalized filing and document-retention protocols. They were football coaches who spent their time on the field coaching students, not collecting documents. And because they no longer work at Penn State, they do not have access to their email accounts or other files related to the course of their employment there (which are in Penn State's custody). They have, however, sought information from the personnel files, and documents produced by Penn State in response

to that request were provided to the NCAA. *See* First Requests for Production of Documents by Jay Paterno to Penn State, No. 1, at 6, Ex. 2; First Requests for Production of Documents by Kenney to Penn State, No. 1, at 6, Ex. 3.

Neither Jay Paterno nor Kenney has advised the NCAA that he is withholding other responsive documents, and the NCAA does not present any specific facts that would otherwise give rise to such a conclusion. On the contrary, other than Jay Paterno's response to the request for drafts and communications related to his book, they have both consistently responded that they would produce responsive documents, *if any*. The NCAA is not entitled to an order compelling Paterno and Kenney to produce documents that it cannot show they have.

As an alternative, the NCAA urges the Court to order Jay Paterno and Kenney to execute a special certification stating that "they have engaged in a good faith, reasonable effort to search for [materials]." NCAA Br. 3. That is inappropriate and unnecessary. Jay Paterno and Kenney are already subject to the requirements of the Pennsylvania Rules of Civil Procedure, which provide means of assuring their compliance with discovery obligations. *See* Paterno Objections and Responses at 15, Ex. 3 to NCAA Br.; Kenney Objections and Responses at 13, Ex. 4 to NCAA Br. There is no basis to impose an extraordinary and duplicative certification obligation beyond what the rules require, and they have already provided. The discovery requirements for Paterno and Kenney should be the same as the discovery requirements for the NCAA.²

² The NCAA's motion does not outright ask for discovery sanctions against Jay Paterno and Kenney, but the NCAA does cite two cases about sanctions in a footnote to an unrelated sentence. NCAA Br. 18 n.16. It is therefore worth noting that sanctions are plainly inappropriate. Not only does the NCAA's motion lack merit but courts in Pennsylvania apply sanctions only where the court has first granted a motion to compel or denied a motion for a protective order, and the party then refuses to comply with that order. *Dion v. Graduate Hosp. of Univ. of Pa.*, 520 A.2d 876, 882 (Pa. Super. Ct. 1987).

B. The NCAA Offers No Evidence That Kenney “Shirked” His Discovery Obligations.

The NCAA offers no basis for its claim that Kenney “shirked” his discovery obligations. The mere fact that Kenney does not have documents responsive to some of the NCAA’s requests does not make his production “incomplete,” and he cannot be compelled to produce documents he does not have.

The NCAA’s characterization of Kenney’s latest production as consisting of 14 documents is misleading. Kenney produced 14 electronic *files*, but some of those files contain a collection of many *documents*. For example, Kenney produced several tax documents from 2006 through 2013 in a single file, which the NCAA describes as one “document.” The volume of Kenney’s production is more accurately understood by its number of pages: He produced 211 pages, which is certainly reasonable for an individual without control over documents that he may have generated while employed at Penn State. Maher Decl. ¶ 4, Ex. 1.

C. The NCAA Offers No Evidence that Jay Paterno’s Production is “Woefully Inadequate.”

The NCAA offers what it calls a “set of examples that demonstrate the inadequacy of Paterno’s production.” NCAA Br. 18. Although these “examples” amount to nothing more than unsupported speculation, they are addressed below:

The Consent Decree. The NCAA says that Jay Paterno has made an inadequate production of documents related to the Consent Decree, but it offers no evidence that he is withholding anything. Again, this is a point that could have been addressed in a discovery conference. Moreover, there is nothing suspect about Jay Paterno’s production. He is not a party to the Consent Decree, was not involved in negotiating it, and given his claims about its

negative effects on his reputation and his career, the NCAA's assumption that he would have generated non-privileged documents that relate to it is misplaced.³

The NCAA also cites Jay Paterno's interrogatory response in which he referenced receipt of hate mail and death threats following the NCAA's release of its Consent Decree. NCAA Br. 19.

That does not mean, however, that Jay Paterno received or learned about those threats through emails or letters in his possession, or that he printed and saved every threatening internet posting to which he was alerted.

Expert Reports Critiquing the Freeh Report. Even though Jay Paterno's counsel has explained to the NCAA that he does not have documents about the experts who critiqued the Freeh Report, the NCAA argues that he should be compelled to produce those non-existent documents anyway. See April 21, 2015, Letter from Sarah Gragert to Patricia Maher at 2, Ex. 6 to NCAA Br. As the NCAA notes, those experts were engaged by "the Paterno family." NCAA Br. 20. The experts were engaged by counsel for the Estate, in connection with its representation of the family of Joseph Paterno and in preparation for litigation against the NCAA. They were not engaged by or for Jay Paterno; in fact, Jay Paterno was separately represented by other counsel at that time.

Jerry Sandusky and the Second Mile. The NCAA complains that Jay Paterno has produced "only a few" documents about Jerry Sandusky and assumes that he must have more. It notes that Jay Paterno coached with Sandusky at Penn State for five years and continued to coach at Penn State during the period when Sandusky continued to use the school's facilities. NCAA

³ In a footnote, the NCAA makes the illogical implication that because Jay Paterno produced (by its characterization) more documents referencing the Freeh Report than documents referencing the Consent Decree, that somehow "indicate[s] that any purported harm he suffered was caused by the Freeh Firm or the media, not the NCAA." NCAA Br. 19 n.18. That is a desperate defense. The NCAA's misconduct and liability in this case does not depend on the comparative volume of references to the Consent Decree in Jay Paterno's possession.

Br. 20–21. The NCAA’s assumption is without merit. Their overlapping tenure as coaches at Penn State ended in 1999. The NCAA offers no reason to believe that Jay Paterno and Sandusky had any interaction that would have resulted in documents related to “Sandusky’s retirement, interaction or involvement with children, sexual abuse, and/or Penn State privileges and benefits.” Paterno Objections and Responses, No. 9, Ex. 3 to NCAA Br. In any event, communications or documents about Sandusky during Jay Paterno’s tenure at Penn State would be in the possession of Penn State.

Employment Applications. The NCAA complains that Jay Paterno produced only drafts of employment applications and not “formal employment applications.” NCAA Br. 21–22. The NCAA also notes that Jay Paterno says he received communications from other universities and search firms while at Penn State. NCAA Br. 22. But oral communications with recruiters would not necessarily have generated documents, and emails to his Penn State account would be in the possession of Penn State. He has produced the responsive documents in his possession.

Penn State Employment and Termination. Although the NCAA has a copy of Jay Paterno’s personnel file, which includes no documents related to his termination, the NCAA suggests that for some reason Jay Paterno has withheld documents responsive to this request. In fact, he produced what he has and he also requested and obtained from Penn State the personnel file that the NCAA also has.

Considerations about Political Office. Jay Paterno produced documents about his consideration to run for public office that are also relevant to the claims and defenses in this litigation. The NCAA demands more. It wants *all* of Mr. Paterno’s emails with “political strategists, pollsters, public relations consultants, party leaders, or politicians and their staff”

regardless of their content. NCAA Br. 23. But those communications are not inherently relevant to the case and are therefore outside the scope of discovery.

The NCAA speculates that Jay Paterno “*may have* conducted polling or had polling conducted on his behalf that related to him.” *Id.* (emphasis added). He did not. And Jay Paterno cannot produce any polls or data that came to his attention through third parties that he does not have in his possession, custody, or control.

Social Media. To the extent Jay Paterno has posted information online, it is just as accessible to the NCAA as it is to him. Jay Paterno is not required to collect information from the internet that the NCAA can just as easily collect itself. *See Boyle v. Steiman*, 631 A.2d 1025, 1031 (Pa. Super. Ct. 1993) (“It is not a purpose of discovery for a party to supply, at its own expense, information already under the control or readily available to the opposing party.”). Indeed, in the part of its brief demanding Jay Paterno’s social media postings, the NCAA specifically cites *those very postings* and describes their content as responsive. NCAA Br. 24 n.24. Obviously, the NCAA already has access to the social media it wants, and it is no more easily retrievable or reproducible by Jay Paterno.

Text Messages. Jay Paterno made a reasonable search for responsive text messages. His text messages were collected and reviewed for the time frame specified in the NCAA’s requests, Maher Decl. ¶ 6, Ex. 1, but none of them are responsive. He cannot be compelled to produce what he does not have.

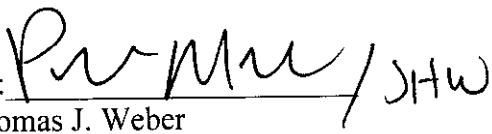
Communications with a Public Relations Specialist. The NCAA has included in its motion its Request No. 28 for “all Communications with a public relations or media consultant or specialist,” but notes that Jay Paterno “incorrectly duplicated” this request in his Responses. That may have been due to the numbering of the Requests to Jay Paterno, which include two

sequences 24 – 29, which Jay Paterno attempted to rectify in his response. *See* Exs. 1, 3 to NCAA Br. The NCAA's motion to compel is the first time the NCAA has demanded these specific documents. With the NCAA having now clarified its request, Jay Paterno is willing to provide a written response to the request and will produce responsive, non-privileged documents. The Court should deny the NCAA's effort to compel production of these documents so that the parties can confer about the NCAA's request as required by the Local Rules. *See Elvin v. Commonwealth*, No. 04-03921, 2004 WL 5907608 (Pa. Ct. Com. Pl. Oct. 25, 2004) (denying motion to compel where moving party failed to certify compliance with discovery-conference requirement).

CONCLUSION

For the forgoing reasons, the Court should deny the NCAA's motion to compel the production of document from Plaintiffs Jay Paterno and William Kenney.

Date: July 20, 2015

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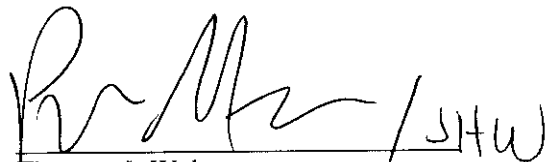
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **OPPOSITION TO THE NCAA'S MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS FROM JAY PATERNO AND WILLIAM KENNEY** was served this 20th day of July, 2015 by first class mail and email to the following:

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A handwritten signature in black ink, appearing to read 'TJ Weber / SJW', written over a horizontal line.

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EXHIBIT 1

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

| | | |
|-----------------------------------------------------------|---|----------------------|
| The ESTATE of JOSEPH PATERNO; and |) | |
| |) | Civil Division |
| WILLIAM KENNEY and JOSEPH V. ("JAY") |) | |
| PATERNO, |) | Docket No. 2013-2082 |
| former football coaches at Pennsylvania State University, |) | |
| Plaintiffs, |) | |
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| |) | |
| 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. |) | |
| |) | |
| |) | |
| |) | |
| |) | |

DECLARATION OF PATRICIA L. MAHER

I, Patricia L. Maher, declare as follows:

1. I am an attorney at King & Spalding LLP, which serves as counsel for Plaintiffs Jay Paterno and William Kenney in this litigation. I have personal knowledge of the facts stated in this declaration.
2. On July 6, 2015, King & Spalding produced documents to the NCAA on behalf of Mr. Kenney. Those documents contained tax records showing Mr. Kenney's income from 2006 to 2013.

3. On July 16, 2013, King & Spalding produced documents to the NCAA on behalf of Mr. Paterno. Those documents consisted of tax records showing Mr. Paterno's income from 2005 to 2013.


4. To date, Mr. Kenney has produced 211 pages of documents to the NCAA in response to its requests for production of documents.

5. On behalf of Jay Paterno and William Kenney, King & Spalding served counsel for Pennsylvania State University with requests for their personnel files March 24, 2015. Penn State subsequently produced documents from those personnel files.

6. After Mr. Paterno received the NCAA's request for production of documents, King & Spalding collected and reviewed Mr. Paterno's text messages from the relevant discovery time period. None of those text messages were responsive to the NCAA's requests.

7. I participated in a discovery conference with the NCAA's counsel, Sarah Gragert and Drew Wisniewski, on July 10, 2015, at Ms. Gragert's request. Neither counsel for the NCAA raised any issues during that conference regarding William Kenney's discovery responses.

Dated: July 18, 2015



Patricia L. Maher

EXHIBIT 2

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

| | | |
|-------------------------------------------------------------|---|----------------|
| The ESTATE of JOSEPH PATERNO; |) | |
| |) | |
| AL CLEMENS, member of |) | Civil Division |
| the Board of Trustees of Pennsylvania State University; and |) | |
| |) | Docket No. |
| WILLIAM KENNEY and JOSEPH V. ("JAY") PATERNO, |) | 2013-2082 |
| 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 |) | |
| |) | |
| PENNSYLVANIA STATE UNIVERSITY, |) | |
| |) | |
| Defendant. |) | |
| |) | |

FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS BY PLAINTIFF JOSEPH V. ("JAY") PATERNO TO DEFENDANT PENNSYLVANIA STATE UNIVERSITY

Plaintiff Joseph V. ("Jay") Paterno ("Jay Paterno"), by and through its counsel, hereby requests, pursuant to Pa. R.C.P. No. 4009.11, that Defendant the Pennsylvania State University ("Penn State") respond to this Second Request for Production of Documents within thirty (30) days of service, in accordance with the Instructions and Definitions set forth herein, and produce the following documents for inspection and copying at the offices of Goldberg Katzman, P.C., 4250 Crums Mill Road, Suite 301, P.O. Box 6991, Harrisburg, PA 17112.

INSTRUCTIONS

The following instructions are applicable throughout these Requests and are incorporated into each individual Request:

1. These instructions and definitions should be construed to require responses based upon the knowledge of, and information available to, the responding party, the Defendant Penn State, as well as its agents, representatives, and, unless privileged, attorneys and accountants, including but not limited to Reed Smith, LLP.

2. These Requests are continuing in character, so as to require that supplemental responses be served promptly if additional or different information is obtained with respect to any Request.

3. No part of a Request should be left unanswered merely because an objection is interposed to another part of the Request. If a partial or incomplete response is provided, the responding party shall state that the response is partial or incomplete.

4. All objections shall be set forth with specificity and shall include a brief statement of the grounds for such objections.

5. Each Request shall be read to be inclusive rather than exclusive. Accordingly, the words "and" as well as "or" shall be construed disjunctively or conjunctively as necessary, in order to bring within the scope of each Request all information that might otherwise be construed to be outside its scope. "Including" shall be construed to mean "including, without any limitation." The word "all" includes "any" and vice versa. The past tense shall include the present tense so as to make the request inclusive rather than exclusive. The singular shall include the plural and vice versa. The masculine includes the feminine and vice versa.

6. Where a claim of privilege is asserted in objecting to any Request or part thereof, and documents or information is not provided on the basis of such assertion:

- A. In asserting the privilege, the responding party shall, in the objection to the Request, or part thereof, identify with specificity the nature of the privilege (including work product) that is being claimed; and
- B. The following information should be provided in the objection, if known or reasonably available, unless divulging such information would cause disclosure of the allegedly privileged information:

(1) For documents:

- a. the type of document;
- b. the general subject matter of the document;
- c. the date of the document; and such other information as is sufficient to identify the document, including, where appropriate, the author, addressee, custodian, and any other recipient of the document, and where not apparent, the relationship of the author, addressee, custodian, and any other recipient to each other.

7. If, in responding to these Requests, you encounter any ambiguity when construing a Request, instruction, or definition, your response shall set forth the matter deemed ambiguous and the construction used in answering.

8. All documents that are responsive, in whole or in part, to any portion or clause of any paragraph of any Request shall be produced in their entirety.

9. Where any item contains marking(s) not appearing in the original, or drafts are altered from the original, then all such items must be considered as separate documents and identified and produced as such.

10. Unless otherwise specified in a particular Request, the time period covered by these Requests is January 1, 1995 through May 31, 2013.

DEFINITIONS

Notwithstanding any definition set forth below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under Pa. R.C.P. No. 4003.1. As used in these Requests, the following terms are to be interpreted in accordance with these definitions:

1. "You," "your," "yours," "Defendant," and "Penn State" shall refer to Defendant Penn State, to whom these Requests are directed, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of the Penn State.
2. "Plaintiff," "Joseph V. ("Jay") Paterno," or "Jay Paterno" shall refer to former Penn State assistant football coach Joseph V. ("Jay") Paterno, or any other person authorized to act on behalf of Jay Paterno.
3. "Communication" means the transmittal of information by any means, and shall mean and be deemed to refer to any writing or oral conversation, including, but not limited to, telephone conversations, conversations in meetings, letters, memoranda, notes, or electronic communications.
4. "Document" is defined as broadly as possible to include anything stored in any medium, including but not limited to, all written, recorded, transcribed, punched, taped, filmed, or graphic matter, however produced or reproduced, of every type and description that is in your possession, control, or custody, or of which you have knowledge, including but not limited to, correspondence; memoranda; transcriptions of any conversation or testimony; tapes; stenographic or hand-written notes; studies; publications; books; diaries; phone records; logs; instant messaging (public and private IM); electronic mail (email), including but not limited to, server-based email, web-based email (i.e. gmail.com, yahoo.com, hotmail.com), dial up email, email attachments, deleted email, and email stored on hard drives or portable media; voicemail; information stored on social media and social networking sites; information created or received with the use of PDAs or

smartphones; information stored in a cloud environment; text messages; information stored on removable hard drives, thumb drives, flash drives, CDs, DVDs, disks and other portable media; pamphlets; pictures (drawings and photographs); films; images; microfilms; recordings (including any analog, digital, electromagnetic, optical, phonographic, or other media of audio and/or visual recordings); maps; reports; recommendations; surveys; appraisals; charts; minutes; statistical computations; spreadsheets; telegrams; telex messages; listings of telephone calls; calendars; datebooks; books of account; ledgers; expense records; accounts payable; accounts receivable; presentations; analyses; computer records, data compilations and/or databases; every draft of each such document; every copy of each such document where the original is not in your possession, custody or control; and every copy of each such document where such copy is not an identical copy of an original, or other copy, or where such copy contains any commentary or notation whatsoever that does not appear on the original or other copy. "Document" includes any electronically stored information ("ESI").

5. "Evidence, reflect, or relate to" means in the broadest sense and includes documents and things alluding to, responding to, concerning, connected with, commenting on, in respect of, about, regarding, discussing, evidencing, contradicting, showing, describing, reflecting, analyzing and/or constituting the subject matter of the request.

6. "Person" means any natural person or any business, corporation, public corporation, municipal corporation, state government, local government, agency, partnership, group, association, or other organization, and also includes all of the person's representatives.

DOCUMENT REQUESTS

Request No. 1:

Please produce all documents contained in Jay Paterno's personnel file at Penn State.

Request No. 2:

Please produce all employment contracts or agreements, memoranda or correspondence between Jay Paterno and Penn State.

Request No. 3:

Please produce all payroll records reflecting payments of salary, wages, bonuses, severance pay or other compensation of any nature to Jay Paterno

Request No. 4:

Please produce all performance appraisals, evaluations, or any other document that includes information regarding Jay Paterno's performance as a football coach at Penn State.

Request No. 5:

Please produce all documents that refer or relate to the decision to terminate Jay Paterno or any reason for that decision.

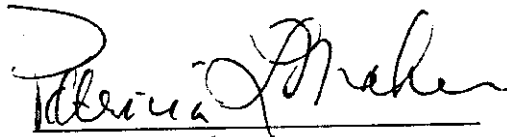
Request No. 6:

Please produce all documents that reflect or refer to information that was considered in the decision to terminate Jay Paterno.

Request No. 7:

Please produce all documents that reflect Penn State's communication to Jay Paterno of the decision to terminate him.

Dated this 24th day of March, 2015.

A handwritten signature in black ink, appearing to read "Patricia L. Maher", written over a horizontal line.

Thomas J. Weber
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 301
P. O. Box 6991
Harrisburg, PA 17112
Telephone: (717) 234-4161

Wick Sollers
L. Joseph Loveland
Ashley C. Parrish
Patricia L. Maher
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 737-0500

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

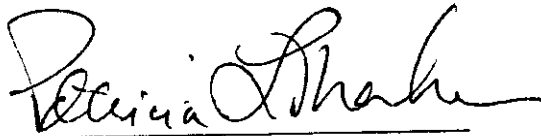
I HEREBY CERTIFY that a true and correct copy of the foregoing **FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS BY PLAINTIFF JOSEPH V. ("JAY") PATERNO TO DEFENDANT PENNSYLVANIA STATE UNIVERSITY** was served this 24th day of March, 2015 by first class mail and email to the following:

Thomas W. Scott
Killian & Gephart
218 Pine Street
P.O. Box 886
Harrisburg, PA 17108-0886
Email: tscott@killiangephart.com

Everett C. Johnson, Jr.
Brian E. Kowalski
Sarah Gragert
Latham & Watkins LLP
555-11th Street, N.W.
Suite 1000
Washington, DC 20004-1304
Email: everett.johnson@lw.com
brian.kowalski@lw.com
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Daniel I. Booker
Jack B. Cobetto
Donna M. Dobblick
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Suite 1200
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ddobblick@reedsmith.com

Joseph P. Green
Lee Green & Reiter Inc.
115 East high Street
Lock Drawer 179
Bellefonte, PA 10823-0179
Email: jgreen@lmgrlaw.com



Thomas J. Weber
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4250 Crums Mill Road, Suite 301
P.O. Box 6991
Harrisburg, PA 17112

Wick Sollers
L. Joseph Loveland
Ashley C. Parrish
Patricia L. Maher
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 737-0500

Counsel for Plaintiffs

EXHIBIT 3

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

| | | |
|-------------------------------------------------------------|---|----------------|
| The ESTATE of JOSEPH PATERNO; |) | |
| |) | |
| AL CLEMENS, member of |) | Civil Division |
| the Board of Trustees of Pennsylvania State University; and |) | |
| |) | Docket No. |
| WILLIAM KENNEY and JOSEPH V. ("JAY") PATERNO, |) | 2013-2082 |
| 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 |) | |
| |) | |
| PENNSYLVANIA STATE UNIVERSITY, |) | |
| |) | |
| Defendant. |) | |
| |) | |

**FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS BY PLAINTIFF WILLIAM
KENNEY TO DEFENDANT PENNSYLVANIA STATE UNIVERSITY**

Plaintiff William Kenney ("Kenney"), by and through its counsel, hereby requests, pursuant to Pa. R.C.P. No. 4009.11, that Defendant the Pennsylvania State University ("Penn State") respond to this Second Request for Production of Documents within thirty (30) days of service, in accordance with the Instructions and Definitions set forth herein, and produce the following documents for inspection and copying at the offices of Goldberg Katzman, P.C., 4250 Crums Mill Road, Suite 301, P.O. Box 6991, Harrisburg, PA 17112.

INSTRUCTIONS

The following instructions are applicable throughout these Requests and are incorporated into each individual Request:

1. These instructions and definitions should be construed to require responses based upon the knowledge of, and information available to, the responding party, the Defendant Penn State, as well as its agents, representatives, and, unless privileged, attorneys and accountants, including but not limited to Reed Smith, LLP.

2. These Requests are continuing in character, so as to require that supplemental responses be served promptly if additional or different information is obtained with respect to any Request.

3. No part of a Request should be left unanswered merely because an objection is interposed to another part of the Request. If a partial or incomplete response is provided, the responding party shall state that the response is partial or incomplete.

4. All objections shall be set forth with specificity and shall include a brief statement of the grounds for such objections.

5. Each Request shall be read to be inclusive rather than exclusive. Accordingly, the words "and" as well as "or" shall be construed disjunctively or conjunctively as necessary, in order to bring within the scope of each Request all information that might otherwise be construed to be outside its scope. "Including" shall be construed to mean "including, without any limitation." The word "all" includes "any" and vice versa. The past tense shall include the present tense so as to make the request inclusive rather than exclusive. The singular shall include the plural and vice versa. The masculine includes the feminine and vice versa.

6. Where a claim of privilege is asserted in objecting to any Request or part thereof, and documents or information is not provided on the basis of such assertion:

- A. In asserting the privilege, the responding party shall, in the objection to the Request, or part thereof, identify with specificity the nature of the privilege (including work product) that is being claimed; and
- B. The following information should be provided in the objection, if known or reasonably available, unless divulging such information would cause disclosure of the allegedly privileged information:

(1) For documents:

- a. the type of document;
- b. the general subject matter of the document;
- c. the date of the document; and such other information as is sufficient to identify the document, including, where appropriate, the author, addressee, custodian, and any other recipient of the document, and where not apparent, the relationship of the author, addressee, custodian, and any other recipient to each other.

7. If, in responding to these Requests, you encounter any ambiguity when construing a Request, instruction, or definition, your response shall set forth the matter deemed ambiguous and the construction used in answering.

8. All documents that are responsive, in whole or in part, to any portion or clause of any paragraph of any Request shall be produced in their entirety.

9. Where any item contains marking(s) not appearing in the original, or drafts are altered from the original, then all such items must be considered as separate documents and identified and produced as such.

10. Unless otherwise specified in a particular Request, the time period covered by these Requests is January 1, 1988 through May 31, 2013.

DEFINITIONS

Notwithstanding any definition set forth below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under Pa. R.C.P. No. 4003.1. As used in these Requests, the following terms are to be interpreted in accordance with these definitions:

1. "You," "your," "yours," "Defendant," and "Penn State" shall refer to Defendant Penn State, to whom these Requests are directed, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of the Penn State.
2. "Plaintiff," "William Kenney," or "Kenney" shall refer to former Penn State assistant football coach William Kenney, or any other person authorized to act on behalf of Kenney.
3. "Communication" means the transmittal of information by any means, and shall mean and be deemed to refer to any writing or oral conversation, including, but not limited to, telephone conversations, conversations in meetings, letters, memoranda, notes, or electronic communications.
4. "Document" is defined as broadly as possible to include anything stored in any medium, including but not limited to, all written, recorded, transcribed, punched, taped, filmed, or graphic matter, however produced or reproduced, of every type and description that is in your possession, control, or custody, or of which you have knowledge, including but not limited to, correspondence; memoranda; transcriptions of any conversation or testimony; tapes; stenographic or hand-written notes; studies; publications; books; diaries; phone records; logs; instant messaging (public and private IM); electronic mail (email), including but not limited to, server-based email, web-based email (i.e. gmail.com, yahoo.com, hotmail.com), dial up email, email attachments, deleted email, and email stored on hard drives or portable media; voicemail; information stored on social media and social networking sites; information created or received with the use of PDAs or smartphones; information stored in a cloud environment; text messages; information stored on

removable hard drives, thumb drives, flash drives, CDs, DVDs, disks and other portable media; pamphlets; pictures (drawings and photographs); films; images; microfilms; recordings (including any analog, digital, electromagnetic, optical, phonographic, or other media of audio and/or visual recordings); maps; reports; recommendations; surveys; appraisals; charts; minutes; statistical computations; spreadsheets; telegrams; telex messages; listings of telephone calls; calendars; datebooks; books of account; ledgers; expense records; accounts payable; accounts receivable; presentations; analyses; computer records, data compilations and/or databases; every draft of each such document; every copy of each such document where the original is not in your possession, custody or control; and every copy of each such document where such copy is not an identical copy of an original, or other copy, or where such copy contains any commentary or notation whatsoever that does not appear on the original or other copy. "Document" includes any electronically stored information ("ESI").

5. "Evidence, reflect, or relate to" means in the broadest sense and includes documents and things alluding to, responding to, concerning, connected with, commenting on, in respect of, about, regarding, discussing, evidencing, contradicting, showing, describing, reflecting, analyzing and/or constituting the subject matter of the request.

6. "Person" means any natural person or any business, corporation, public corporation, municipal corporation, state government, local government, agency, partnership, group, association, or other organization, and also includes all of the person's representatives.

DOCUMENT REQUESTS

Request No. 1:

Please produce all documents contained in Kenney's personnel file at Penn State.

Request No. 2:

Please produce all employment contracts or agreements, memoranda or correspondence between Kenney and Penn State.

Request No. 3:

Please produce all payroll records reflecting the payment by Penn State of salary, wages, bonuses, severance pay or other compensation of any nature to Kenney

Request No. 4:

Please produce all performance appraisals, evaluations, or any other document that includes information regarding Kenney's performance as a football coach at Penn State.

Request No. 5:

Please produce all documents that refer or relate to the decision to terminate Kenney as a football coach at Penn State, or the reasons for that decision.

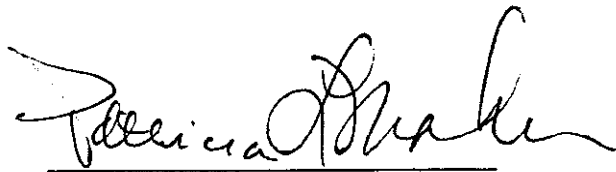
Request No. 6:

Please produce all documents that reflect or refer to information that was considered in the decision to terminate Kenney.

Request No. 7:

Please produce all documents that reflect Penn State's communication to Kenney of the decision to terminate him.

Dated this 24th day of March, 2015.

A handwritten signature in black ink, appearing to read "Patricia L. Maher". The signature is fluid and cursive, with a horizontal line drawn underneath it.

Thomas J. Weber
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 301
P. O. Box 6991
Harrisburg, PA 17112
Telephone: (717) 234-4161

Wick Sollers
L. Joseph Loveland
Ashley C. Parrish
Patricia L. Maher
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 737-0500

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS BY PLAINTIFF WILLIAM KENNEY TO DEFENDANT PENNSYLVANIA STATE UNIVERSITY** was served this 24th day of March, 2015 by first class mail and email to the following:

Thomas W. Scott
Killian & Gephart
218 Pine Street
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Harrisburg, PA 17108-0886
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Brian E. Kowalski
Sarah Gragert
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ddoblick@reedsmith.com

Joseph P. Green
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Lock Drawer 179
Bellefonte, PA 10823-0179
Email: jgreen@lmgrlaw.com

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

Thomas J. Weber
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4250 Crums Mill Road, Suite 301
P.O. Box 6991
Harrisburg, PA 17112

Wick Sollers
L. Joseph Loveland
Ashley C. Parrish
Patricia L. Maher
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 737-0500

Counsel for Plaintiffs