



IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO;

and

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

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION ("NCAA");

MARK EMMERT, individually and as
President of the NCAA;

And

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

Defendants,

And

PENNSYLVANIA STATE UNIVERSITY,

Defendant.

)

) Civil Division

)

) Docket No. 2013-2082

)

) **Type of Action:**

) Declaratory Judgment

) Tortious Interference

) Defamation

) Commercial Disparagement

) Conspiracy

)

) **Type of Filing:**

) **Motion for Judgment on Pleadings**

) Filed on Behalf of the Plaintiffs Against

) Defendant NCAA

)

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CLERK OF COURT
CENTRE COUNTY, PA

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO;)	
)	Civil Division
and)	
)	Docket No. 2013-2082
WILLIAM KENNEY and JOSEPH V. ("JAY"))	
PATERNO,)	
former football coaches at Pennsylvania State)	
University,)	Counsel of Record:
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Plaintiffs,)	GOLDBERG KATZMAN, P.C.
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ASSOCIATION ("NCAA");)	Email: tjw@goldbergkatzman.com
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MARK EMMERT, individually and as)	Wick Sollers (admitted <i>pro hac vice</i>)
President of the NCAA;)	L. Joseph Loveland (admitted <i>pro hac vice</i>)
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PENNSYLVANIA STATE UNIVERSITY,)	
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Defendant.)	
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PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS

INTRODUCTION

Plaintiffs Estate of Joseph Paterno (“the Estate”), William Kenney, and Joseph V. (“Jay”) Paterno respectfully move this Court for judgment on the pleadings on Counts II, III, IV, and V of the Second Amended Complaint pursuant to Rule 1034 of the Pennsylvania Rules of Civil Procedure. Judgment on the issue of liability is appropriate because, as described in more detail below, the National Collegiate Athletic Association (“NCAA”) has failed to comply with applicable rules and, in doing so, has by law admitted all of the material allegations in the Second Amended Complaint. The only remaining issue for the Court and parties to litigate is the appropriate remedy for each of the claims against the NCAA.

FACTUAL AND PROCEDURAL BACKGROUND

1. Plaintiffs filed this action on May 30, 2013. Since then, as the Court is aware, the parties have engaged in three rounds of preliminary objections and have started discovery.
2. Plaintiffs filed their Second Amended Complaint on or about October 13, 2014. *See* Second Amended Complaint, without exhibits, attached as Exhibit A. The Second Amended Complaint includes five counts. The Court dismissed the Estate’s claim for breach of contract (on Count I) by order dated March 30, 2014. The other plaintiff on Count I, Al Clemens, withdrew his claims on May 18, 2015.
3. The remaining claims are brought by plaintiffs Joseph V. (“Jay”) Paterno and William Kenney against the NCAA in Count II (Defamation) and Count IV (Tortious Interference With Contract), by the Estate against the NCAA in Count III (Injurious Falsehood/Commercial Disparagement), and by all plaintiffs against the NCAA in Count V (Civil Conspiracy).

4. On or about April 29, 2015, almost two years after Plaintiffs had set forth the substance of their claims in their initial Complaint, the NCAA filed its Answer to the Second Amended Complaint. *See* NCAA Answer and New Matter, attached as Exhibit B. (The individual NCAA defendants have not yet responded to the Second Amended Complaint, pending a ruling on their objections that the Court lacks personal jurisdiction over them. *See* NCAA Answer and New Matter at 4 n.2.)

5. In answering the Second Amended Complaint, the NCAA failed to respond specifically to the complaint's allegations as required under Pennsylvania law. The NCAA has asserted one-word general denials ("Denied") to approximately one third of the 196 paragraphs of the Second Amended Complaint, including to many of the General Allegations and to all of the allegations of Count III (Injurious Falsehood/Commercial Disparagement) and Count V (Civil Conspiracy). In addition, the NCAA has asserted general denials to virtually all of the remaining factual allegations in the Second Amended Complaint, including the material allegations of Count II (Intentional Interference With Contractual Relations) and Count IV (Defamation).

6. Apart from boilerplate objections, the only specific denials included in the Answer appear in paragraphs 95, 100, 111, and 115. Every other factual allegation has either been expressly admitted or denied generally.

ARGUMENT AND LEGAL AUTHORITY

Under Pennsylvania Law General Denials Are Treated As Admissions.

7. Under well settled Pennsylvania law, a party responding to a pleading to which a responsive pleading is required must admit or deny *with specificity* the pleading's factual averments. Rule 1029(b) of the Pennsylvania Rules of Civil Procedure provides: "Averments in a pleading to which a responsive pleading is required are admitted when not denied specifically

or by necessary implication” and that, with limited exceptions not applicable here, a “general denial . . . shall have the effect of an admission.” Pa. R. Civ. P. 1029(b); *see also* Pa. R. Civ. P. 1017(a)(1) (listing an “[A]nswer” as a “pleading” to which Rule 1029(b) applies). A denial is specific only “if it denies the fact[s] averred and affirmatively avers that which did or did not occur instead of the fact averred.” *Gwinn v. Empire State Chair Co.*, 48 Pa. D.& C. 4th 176, 180 (C.C.P. 2000).

8. The purpose of Rule 1029(b) is to identify the issues in dispute between the parties and thereby narrow the scope of discovery, which aids the parties in preparing their case and promotes efficiency in the court system. *See Alwine v. Sugar Creek Rest, Inc.*, 2005 PA Super 291, ¶ 7, 883 A.2d 605, 609 (2005) (noting that the purpose of Rule 1029(b) “is to identify the issues in dispute between the parties”); *Bogley, Harting & Reese, Inc. v. Stuart*, 11 Pa. D.& C.3d 303, 310 (C.C.P. 1979) (noting that the rule “not only aids the parties in preparing the case, but is of appreciable assistance to the court, as it reduces the time taken for trial, eliminating the unnecessary”).

9. A party’s failure to deny specifically the factual allegations of a complaint and to aver affirmatively what occurred constitutes an admission of the facts alleged. *See Gwinn*, 48 Pa. D.& C. 4th at 180 (“Responses which are merely general denials of allegations are not sufficient and, in such a case, the allegations will be deemed admitted”). As Pennsylvania courts have held, responding to allegations in a complaint with the word “denied” is “an insufficient responsive pleading, tantamount to an admission” that “fails to demonstrate even the most rudimentary good faith compliance with [the] rules.” *Bogley, Harting & Reese, Inc.*, 11 Pa. D.&C.3d at 309, 310. Similarly, an answer stating merely that a document “is a writing which speaks for itself” is an “unresponsive” general denial that must be deemed an admission. *Beal*

Bank v. PIDC Fin. Corp., No. 02522, 2002 WL 31012320, at *5 (Pa. C.C.P. Sept. 9, 2002); *id.* (response to allegation that party defaulted on note with statement that “Note is a writing which speaks for itself” deemed an admission).

10. Pennsylvania courts enforce the requirements of Rule 1029(b) as “mandatory,” and have not hesitated to treat general denials in an answer as admissions and to grant judgment based on those general denials. *James J. Gory Mech. Contracting, Inc. v. Philadelphia Hous. Auth.*, No. 453, 2001 WL 1807905, at *13 (Pa. C.C.P. July 11, 2001) (concluding that failure to set forth specific denials constituted admissions that plaintiff fully performed its obligations under the contract, precluding any limitation on damages); *Swift v. Milner*, 371 Pa. Super. 302, 308, 538 A.2d 28, 30–31 (1988) (deeming a general denial with the single word “Denied” an admission of the facts averred in the corresponding paragraph of the complaint); *see also Bank of Am., N.A. v. Gibson*, 2014 PA Super 217, 102 A.3d 462, 467 (2014) (where mortgagor responded with general denials in its answer to complaint for foreclosure, it admitted the material allegations of the complaint which permitted the court to enter summary judgment on those admissions), *appeal denied*, 112 A.3d 648 (Table) (Pa. 2015); *Hydrair Inc. v. Nat’l Env’tl. Balancing Bureau*, No. 2846, 2001 WL 1855055, at *2 (Pa. C.C.P. 2001) (because party “did not specifically admit or deny” allegation “or assert a lack of knowledge, the court *must* deem” that party to have admitted the allegation) (emphasis added). In short, when a party fails “to deny specifically the factual allegations of [a] complaint, . . . the answer of the defendant effectively manifests the defendant’s admission to the facts averred in the complaint” and “judgment on the pleadings *must* be entered in favor of plaintiffs.” *Safeguard v. Standard Mach. & Equip Co.*, No. 853, 1996 WL 943774, at *2 (Pa. C.C.P. Oct. 29, 1996) (emphasis added).

The NCAA Has No Excuse For Failing To Comply With Pennsylvania Procedures.

11. The NCAA has asserted only general denials in response to the material allegations in the Second Amended Complaint. As described in more detail below, the NCAA has asserted one-word general denials (“Denied”) to approximately one third of the 196 paragraphs of the Second Amended Complaint, and has generally denied — either in a one-word response or in an otherwise summary response — all of the material allegations of Count II (Intentional Interference With Contractual Relations), Count III (Injurious Falsehood/Commercial Disparagement), Count IV (Defamation), and Count V (Civil Conspiracy).

12. Because these general denials constitute binding judicial admissions, they have “the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact.” *James J. Gory*, 2001 WL 1807905, at *14 (quoting *Durking v. Equine Clinics, Inc.*, 376 Pa. Super. 557, 567, 546 A.2d 665, 670 (1988)) (stating that such admissions are “conclusive”). As a result, all of these material allegations have been admitted by the NCAA.

13. There is no excuse for the NCAA’s failure to comply with required Pennsylvania procedures. The NCAA has retained sophisticated and experienced counsel in this case. Its lead Pennsylvania counsel has more than 40 years of experience, gaining “the knowledge, insight, and ability that makes him peerless in his practice,” <http://killiangephart.com/attorneys-Thomas-W-Scott.php>, and its lead national counsel has more than 30 years of litigation experience, *see* <http://www.lw.com/people/kip-johnson/>. The NCAA and its counsel have taken every opportunity to probe every potential weakness in the pleadings, including the Second Amended Complaint, filing multiple rounds of preliminary objections. Moreover, because this case has been pending since May 2013 and because the Second Amended Complaint was filed in October 2014, the NCAA has had months and months to consider and formulate its Answer. (Indeed,

even after the Court ruled on its third set of preliminary objections by Order dated March 30, 2015, the NCAA sought a further extension of time to respond and did not file its Answer and New Matter until April 29, 2015.)

14. The prejudice to Plaintiffs and the Court resulting from the NCAA's failure to comply with the rules is significant. For example, the Second Amended Complaint alleges that (i) the Sandusky scandal involved "criminal conduct" that "was not an athletics issue properly regulated by the NCAA," *see* 2d Am. Compl. ¶ 4; (ii) the NCAA "had never before interpreted its rules to permit intervention in criminal matters unrelated to athletics competition," *id.* ¶ 84; (iii) the NCAA "knew or should have known that the conduct described in the Freeh Report was not a violation of the NCAA's rules and could not substitute for the procedures required under the NCAA's rules," *id.* ¶ 91; and (iv) the "NCAA and its officials . . . recognized that the issues they sought to address in the Consent Decree were not about disciplining the athletics programs for NCAA rules violations," *id.* ¶ 109. These allegations are important because they are directly relevant to the NCAA's intent when it published the false and highly damaging statements in the Consent Decree as "findings" that supported the imposition of massive sanctions. Nonetheless, although the NCAA must know the factual basis for its investigation and whether the averments are correct, the NCAA has responded to each of these allegations with nothing more than blanket one-word denials ("Denied"). *See* NCAA Answer and New Matter ¶¶ 4, 84, 91, 109.

15. The NCAA's blanket denials are also highly prejudicial because they have left both the Plaintiffs and the Court with no understanding of what issues are actually in dispute and, therefore, would greatly expand the necessary discovery and interfere with Plaintiffs' ability to prepare their case. For instance, the Second Amended Complaint alleges that "[o]n July 13, 2012, Emmert contacted President Erickson to advise him that the NCAA Executive Committee

had decided to accept the Freeh Report and substitute its flawed findings for the NCAA's obligation to conduct its own investigation pursuant to the required procedures set forth in the NCAA rules." 2d Am. Compl. ¶ 89. In response, the NCAA has "denied" the allegation with no explanation. *See* NCAA Answer and New Matter ¶ 89 ("Denied"). But what does that one-word denial mean? Does the NCAA dispute that Emmert advised Erickson that the NCAA Executive Committee had decided to accept the Freeh Report? Does the NCAA dispute that the Freeh Report's findings are flawed (and, if so, what is the factual basis for its conclusion that they are not flawed)? Does the NCAA dispute that it had an obligation to conduct its own investigation? Requiring Plaintiffs and the Court to guess at the NCAA's true position and to conduct discovery to fill in the gaps would be directly contrary to both the purpose and the letter of Rule 1029(b).

16. To give another example, a key issue in the case is whether the NCAA had any basis at all for the "factual findings" included in the Consent Decree relating to the alleged conduct of Coach Paterno. The Second Amended Complaint alleges that the statements included in the Consent Decree — for instance, that Coach Paterno "concealed Sandusky's activities from the Board of Trustees, the University community and authorities" — are "erroneous" and "based on unreliable and unsubstantiated conclusions in the Freeh Report." 2d Am. Compl. ¶¶ 104(a), 105. The NCAA has also denied these allegations in blanket fashion, leaving it unclear as to what issues are in dispute and what basis the NCAA had (if any) for the purported "findings" included in the Consent Decree. *See* NCAA Answer and New Matter ¶¶ 104, 105. Does the NCAA deny that the conclusions in the Freeh Report are unreliable and unsubstantiated? And, if so, what are the specific factual bases the NCAA had for believing that the conclusions are correct?

17. The NCAA's failure to respond with specific denials to the factual allegations contained in the Second Amended Complaint is no accident but a reflection of its overall strategy for litigating this case — cover up the real facts and delay this litigation and the NCAA's day of reckoning as long as possible. In short, the NCAA has not specifically denied the factual allegations contained in the Second Amended Complaint because it cannot deny them (at least not truthfully). It has no viable response other than simply to claim generally that it has done nothing wrong and hope to buy as much time as possible.

18. In these circumstances, there is no reason to depart from Rule 1029(b) and the specific requirements of Pennsylvania procedure. The NCAA's general denials are insufficient and should be treated as binding admissions.

Because The NCAA Has Generally Denied All Of The Second Amended Complaint's Material Allegations, The Only Remaining Issue Is One Of Remedy.

19. The NCAA has affirmatively admitted or asserted general denials to all of the material allegations in the Second Amended Complaint.

20. *General Allegations.* The NCAA has admitted or generally denied many of the General Allegations of the Second Amended Complaint, including¹, among other things, that:

- Penn State officials accepted full responsibility for conduct described in the Freeh Report within hours of the Report's release, although no vote of the Board of Trustees was ever taken. (¶¶ 68–70);
- In preparing the Report, the Freeh Firm did not complete a proper investigation and, as a result, many of its main conclusions are unsupported or supported only by anonymous hearsay. (¶¶ 72–74);
- The Freeh Firm failed to interview key witnesses, including Coach Paterno. (¶ 76);

¹ This summary does not include reference to any of the allegations that the NCAA has unilaterally deemed "stricken" from the Second Amended Complaint based on the Court's May 8 Order, although that Order did not include any rulings striking allegations of the Complaint.

- The Freeh Report provided no evidence of a cover-up by Coach Paterno or any other Penn State coach or that Sandusky's crimes were caused by the football program. (§ 79);
- The NCAA had never before interpreted its rules to permit intervention in criminal matters unrelated to athletic competition. (§ 84);
- The NCAA Defendants agreed to make Penn State an example and to single out its coaches for harsh penalties regardless of facts and with full knowledge that their actions would cause Plaintiffs substantial harm. (§ 87)
- The NCAA forced Penn State to accept sanctions it dictated by threatening the death penalty even though it was not an authorized or appropriate sanction. (§ 87);
- The NCAA Executive Committee purported to grant President Emmert authority to enter the Consent Decree with Penn State under Article 4 of its Constitution. (§ 88);
- The NCAA advised Penn State that it had accepted the Freeh Report as a substitute for its own investigation. (§ 89);
- The NCAA Defendants knew or should have known the conduct described in the Freeh Report was not a violation of NCAA rules; that no major or secondary violations had been found; that Penn State had not agreed to the summary disposition process; and in any event, that the way this matter was handled did not comport with the NCAA's summary disposition process. (§ 91);
- Penn State did not self-report violations to the NCAA, but the NCAA treated the Freeh Report as the equivalent of a self-report by Penn State because Penn State had commissioned the Freeh Report. (§§ 92–93);
- The NCAA threatened Penn State with the “death penalty” if any leaks about their discussions and proposed sanctions occurred. (§ 97);
- The NCAA sent Penn State's counsel a draft Consent Decree that remained largely unchanged when finalized. (§ 99);
- Penn State's President did not comply with his obligation to consult the Penn State Board of Trustees because of threats from the NCAA that the death penalty would result if he did. He did not have the authority to bind the school to the Consent Decree in the way that he did. (§§ 101–02);
- The Consent Decree included erroneous statements, including that Penn State had violated principles of institutional control, Coach Paterno had failed to protect against a child sexual predator for over a decade and concealed

Sandusky's activities, and some coaches had ignored the red flags of Sandusky's behavior, based on unsubstantiated conclusions of the Freeh Report. (§§ 103–05);

- Based on an erroneous and unsupported conclusion that fear of and deference to the Penn State football program enabled Sandusky to attract and abuse his victims, the NCAA imposed sanctions intended to change the culture at Penn State. (§§ 106–07);
- Penn State agreed to accept the sanctions imposed by the NCAA to avoid the risk of greater sanctions, including the unfounded threat that the NCAA would seek the death penalty. (§ 107);
- The NCAA understood the sanctions it imposed on Penn State were not as discipline for NCAA rules violations. (§ 109);
- Plaintiffs Kenney and the Estate filed timely appeals following the Consent Decree, which were never considered by the NCAA appeals committee. (§§ 114, 116);
- Plaintiffs have been substantially harmed and will incur future harm as a direct result of the NCAA Defendants' unauthorized conduct, and the Consent Decree imposed on Penn State by the NCAA. (§ 122);
- Plaintiffs were unlawfully deprived of required procedures due to them under the NCAA's rules. (§ 123);
- The Consent Decree has interfered with the administration of Penn State. The NCAA's unauthorized involvement in criminal matters outside its authority has undermined the search for truth. (§ 125).

21. ***Count II — Intentional Interference with Contractual Relations.*** The NCAA has asserted general denials to the material allegations of Count II (Intentional Interference with Contractual Relations). It has therefore admitted those allegations, which can be summarized as follows:

With knowledge of their future existing and prospective business opportunities, the NCAA took purposeful, wrongful actions, described in the Second Amended Complaint, to interfere with the contractual relations of Coach Kenney and Coach Jay Paterno. As a result of those actions, Coach Kenney and Coach Paterno have been unable to secure comparable employment opportunities in their chosen field, and they have suffered economic loss, opportunity loss, reputational damage, emotional distress and other damages.

2d Am. Compl. ¶¶ 137–41.

22. In addition to its general denials, the NCAA responded to the other allegations of Count II in paragraphs 136, 142–145, and 147–152 with statements that the NCAA “is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations . . . and on that basis denies them.”

23. Rule 1029(c) provides that “[a] statement by a party that after reasonable investigation the party is without knowledge or information sufficient to form a belief as to the truth of an averment shall have the effect of a denial.” Pa. R. Civ. P. 1029(c). But the NCAA did not assert that it made a reasonable, good faith investigation as to the truth of the averments in those paragraphs of Count II. As a result, the NCAA’s responses to these allegations in Count II also constitute admissions. *See Beal Bank, 2002 WL 31012320, at *5* (response to allegation that party defaulted on note with statement that “Note is a writing which speaks for itself” deemed an admission); *Equibank v. Interstate Motels, Inc.*, 25 Pa. D. & C. 3d 149, 153 (C.C.P. 1982) (“We find the majority of Interstate’s responses to be untenable as it should have had sufficient knowledge with which to formulate its answer. Even if it did not have adequate information with which to draft its answer, we feel that a good faith investigation would have revealed the facts to do so.”); *City of Philadelphia v. Kenny*, 28 Pa. Cmwlth. 531, 544, 369 A.2d 1343, 1350 (1977) (denial in answer based on lack of sufficient knowledge or information was insufficient, and was deemed an admission, where it failed to allege that defendant’s lack of knowledge of information existed “after reasonable investigation”); *see also Target Nat’l Bank v. Guida*, 11 Pa. D. & C.5th 363, 365–66 (C.C.P. 2010) (because party “must know whether or not these averments are true or false,” general denial constituted an admission).

24. The NCAA has therefore admitted the allegations of paragraphs 136, 142–145, and 147–152, which can be summarized as follows:

William Kenney and Jay Paterno were respected football coaches with long experience and successful reputations as coaches at Penn State. Coach Kenney trained numerous players at Penn State who went on to play in the National Football League. After he was terminated by Penn State, he was unable to secure comparable employment as a coach and lost out to less qualified candidates because teams wanted to avoid the adverse publicity of hiring a coach who had worked at Penn State under Coach Joe Paterno. Coach Jay Paterno was an experienced quarterback coach and had been a candidate for head coaching positions. After the Consent Decree, because of his connection to Penn State, he could not get interviews for open positions that often went to candidates with less experience. In addition, discussions with national sports media about serving as a commentator were all discontinued after the Consent Decree.

25. ***Count III — Injurious Falsehood/Commercial Disparagement.*** The NCAA has asserted general denials to every averment in Count III. As a result, the NCAA has admitted the material allegations of that count, which can be summarized as follows:

The Consent Decree the NCAA imposed on Penn State set out and published statements that were libel per se, that improperly maligned Joe Paterno's moral character and his fulfillment of his duties as head football coach at Penn State, which affected the business and property interest of his Estate. Coach Paterno's commercial interests substantially declined in value after the NCAA defendants imposed the Consent Decree on Penn State.

2d Am. Compl. ¶¶ 155–63.

26. ***Count IV — Defamation.*** The NCAA has asserted one-word general denials to the material allegations of Count IV (Defamation). It has therefore admitted those allegations, which can be summarized as follows:

The Consent Decree quotes verbatim the statement in the Freeh Report that some coaches ignored the red flags of Sandusky's behavior, which was false, and defamatory and irreparably harmed the reputations of Coach Kenney and Coach Jay Paterno, and lowered them in the estimation of the public. These statements resulted in actual harm to plaintiffs because they adversely affected their reputations; caused them emotional distress, mental anguish and humiliation; and inflicted financial and pecuniary loss on them.

2d Amend. Compl. ¶¶ 165–70.

27. **Count V — Civil Conspiracy.** The NCAA has asserted general denials to every averment in Count V. As a result, the NCAA has admitted the material allegations of that count, which can be summarized as follows:

The NCAA conspired with the firm of Freeh Sporkin & Sullivan to avoid NCAA enforcement procedures and impose unprecedented sanctions on Penn State, thereby depriving plaintiffs of their rights under Penn State’s contract with the NCAA. Overt acts by the NCAA included: (1) the NCAA Executive Committee purported to authorize NCAA President Defendant Emmert to investigate Penn State and impose sanctions despite knowing they did not have the power to do so; (2) NCAA President Defendant Emmert told Penn State President Erickson that the NCAA would use the Freeh Report as a substitute for its own investigation in reckless disregard of the inadequacy of the Report, and (3) NCAA President Defendant Emmert communicated that the death penalty was “on the table” despite knowing that it could not lawfully be imposed under NCAA rules, all of which caused the plaintiffs actual damages.

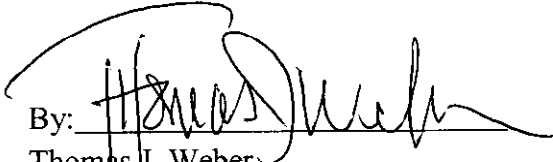
2d Amend. Compl. ¶¶ 173–79.

19. As a result of the general denials to Counts II, III, IV, and V, which constitute binding admissions, the only remaining issues to be resolved in this litigation are the scope of appropriate injunctive and declaratory relief, and the amount of damages to which Plaintiffs are entitled.

CONCLUSION

For these reasons, Plaintiffs respectfully request that the Court grant judgment on the pleadings against the NCAA on Counts II, III, IV, and V of the Second Amended Complaint, and enter judgment for Plaintiffs on their claims in each of those Counts.

Date: June 5, 2015

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EXHIBIT A

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) **SECOND AMENDED COMPLAINT**

)
) Filed on Behalf of the Plaintiffs

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NOTICE TO DEFEND

DEFENDANTS

c/o Counsel of Record

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Answer, New Matter, Cross Claim and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned

that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

CENTRE COUNTY LAWYER REFERRAL SERVICE

Court Administrator

102 S. Allegheny Street

Bellefonte, PA 16823

(814) 355-6727

NOTICIA

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Usted debe presentar una apariciencia escrita o en persona o por abogado y archivar en la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea adisado que si usted no se defiende, la sin previo aviso o notificacion y por cualquier quja o puede perder dinero o sus propiedades o otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

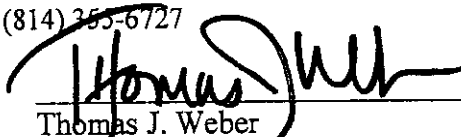
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Counsel for Plaintiffs

October 13, 2014

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The 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

PENNSYLVANIA STATE UNIVERSITY,

Defendant.

Civil Division

Docket No.
2013-2082

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SECOND AMENDED COMPLAINT

Plaintiffs, by and through counsel, hereby file this Second Amended Complaint (the "Complaint") against the National Collegiate Athletic Association ("NCAA"), its President Mark Emmert, the former Chairman of its Executive Committee Edward Ray (collectively, the "NCAA Defendants"), and Pennsylvania State University ("Penn State").

INTRODUCTION

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

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

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

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

5. Among other things, the NCAA Defendants circumvented the procedures required by the NCAA's rules and violated and conspired with others to violate Plaintiffs' rights, causing Plaintiffs significant harm. The NCAA Defendants took these actions based on conclusions reached in a flawed, unsubstantiated, and controversial report that the NCAA Defendants knew or should have known was not the result of a thorough, reliable investigation; had been prepared without complying with the NCAA's investigative rules and procedures; reached conclusions that were false, misleading, or otherwise unworthy of credence; and reflected an improper "rush to judgment" based on unsound speculation and innuendo. The NCAA Defendants also knew or should have known that by embracing the flawed report, they would effectively terminate the search for truth and cause Plaintiffs grave harm. Nonetheless, the NCAA Defendants took their unauthorized and unlawful actions in an effort to deflect attention away from the NCAA's institutional failures and to expand the scope of their own authority by exerting control over matters unrelated to recruiting and athletic competition.

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

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

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

PARTIES

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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

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

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

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

20. Venue is proper in Centre County under Pennsylvania Rules of Civil Procedure 1006(a) and 2156(a). The NCAA regularly conducts business and association activities in this County, the causes of action arose in this County, and the transactions and/or occurrences out of which the causes of action arose took place in this County.

GENERAL ALLEGATIONS

The NCAA's Rules, Constitution, And Bylaws

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

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

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

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

a. Articles 1 through 6 of the Manual comprise the NCAA's Constitution, which sets forth information relevant to the NCAA's purposes, its structure, its membership, the legislative process, and the more important principles governing the conduct of intercollegiate athletics.

b. Articles 10 through 23 are the Operating Bylaws, which consist of legislation adopted by member institutions to promote the principles enunciated in the Constitution and to achieve the NCAA's stated purposes.

c. Articles 31 through 33 are the Administrative Bylaws, adopted and modified by the NCAA subject to amendment by the membership through the regular legislative process. The Administrative Bylaws implement the NCAA's general legislative actions, setting forth policies and procedures for NCAA championships, the NCAA's business, its enforcement program, and its athletics certification program.

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

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

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

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

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

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

31. The staff has responsibility for gathering information relating to possible rules violations and for classifying alleged violations. Information that an institution has failed to meet the conditions and obligations of membership is to be provided to the enforcement staff, and must be channeled to the enforcement staff if received by the NCAA president or by the NCAA's Committee on Infractions.

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

a. Major violations are violations intended to provide a member institution with an extensive recruiting or competitive advantage, such as the provision of significant impermissible benefits to student athletes.

b. Secondary violations are violations that are isolated or inadvertent in nature, and that are intended to provide the institution with only a minimal recruiting, competitive, or other impermissible benefit. Secondary violations occur frequently, are usually resolved administratively, and are not typically made public.

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

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

35. If the enforcement staff determines after conducting its initial inquiry that there is sufficient information to support a finding of a rules violation, the staff must then send a "notice of allegations" to the institution. That notice must list the NCAA rule alleged to have been violated and the details of the violation. If the allegations suggest the significant involvement of any individual staff member or student, that individual is considered an "involved individual" and must be notified and provided with an opportunity to respond to the allegations. The issuance of the notice of allegations initiates a formal adversarial process, which allows the institution and involved individuals the opportunity to respond and defend themselves.

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

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

38. The Committee must base its decision on evidence that is "credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs." Oral or documentary information may be presented to the Committee, subject to exclusion on the

ground that it is “irrelevant, immaterial or unduly repetitious.” Individuals have the opportunity, and are encouraged, to present all relevant information concerning mitigating factors.

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

40. After the Committee has completed its review, it is authorized to impose sanctions in appropriate circumstances. The sanctions for violating the rules are calibrated to the rules’ substantive prohibitions. Permissible sanctions for major violations include the imposition of probationary periods, reduction in permissible financial aid awards to student athletes, prohibitions on postseason competition, vacation of team records (but only in cases where an ineligible student athlete has competed), and financial penalties. Those penalties aim to erase the competitive advantage that the violations were intended to achieve.

41. The most severe sanction available to the NCAA is the “death penalty,” so called because, in prohibiting an institution’s participation in a sport for a certain period of time, it has enormous consequences for a program’s future ability to recruit players, retain staff, and attract fans and boosters. It is well known that imposing the “death penalty” can ruin the livelihood of those associated with an institution’s program and harm involved individuals well beyond the penalty’s immediate economic impact. For these and other reasons, the rules allow the death penalty to be imposed only on “repeat violators” — *i.e.*, institutions that (i) commit a major violation, seeking to obtain an extensive recruiting or competitive advantage, and (ii) have also committed at least one other major violation in the last five years.

42. At the conclusion of the hearing, the Committee is required to issue a formal Infractions Report detailing all the Committee’s findings and the penalties imposed. The Committee must submit the report to the institution and all involved individuals. The report shall

be made publicly available only after the institution and all involved individuals have had an opportunity to review the report. Names of individuals must be deleted before the report is released to the public or forwarded to the Infractions Appeals Committee. The report must also describe the opportunities for further administrative appeal.

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

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

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

46. The summary disposition process and an expedited hearing procedure may be used only with the unanimous consent of the NCAA's enforcement staff, all involved individuals, and the participating institution. During the summary disposition process, the Committee on Infractions is required to determine that a complete and thorough investigation of possible violations has occurred, especially where the institution, and not NCAA enforcement staff, conducted the investigation. After the investigation, the involved individuals, the institution, and enforcement staff are required to submit a joint written report. A hearing need not be conducted if the Committee on Infractions accepts the parties' submissions, but the Committee must still prepare a formal written report and publicly announce the resolution of the case.

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

48. These enforcement policies and procedures are subject to amendment only in accordance with the legislative process set forth in Article 5. No other NCAA body, including the Executive Committee and the Board of Directors, has authority to bypass or amend these procedures and impose discipline or sanctions on any member institution. The Executive Committee and the Board of Directors are authorized only to take actions that are legislative in character, to be implemented association-wide on a prospective basis.

49. These procedural protections are a significant and vital part of the bargain involved in each member's decision to participate in the NCAA. Because of the leverage the

NCAA has over its member institutions, and because of the significant consequences NCAA sanctions can have for institutions and their administrators, faculty, staff, and students, the NCAA has an express obligation to ensure that any sanctions are fair and imposed consistent with established procedures.

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

The Underlying Conduct, The Freeh Report, And The NCAA's Involvement

51. On November 4, 2011, the Attorney General of Pennsylvania charged Jerry Sandusky, a former assistant football coach, former assistant professor of physical education, and former employee of Penn State, with various criminal offenses, including aggravated criminal assault, corruption of minors, unlawful contact with minors, and endangering the welfare of minors. Sandusky was convicted and, on October 9, 2012, was sentenced to 30 to 60 years in prison.

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

53. On November 11, 2011, the Penn State Board of Trustees formed a Special Investigations Task Force, which engaged the law firm of Freeh Sporkin & Sullivan, LLP (the "Freeh firm") to investigate the alleged failure of certain Penn State personnel to respond to and report certain allegations against Sandusky. The Freeh firm was also asked to provide

recommendations regarding University governance, oversight, and administrative policies and procedures to help Penn State adopt policies and procedures to more effectively prevent or respond to incidents of sexual abuse of minors in the future.

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

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

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

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

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

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

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

61. When Emmert sent his November 17, 2011 letter, he posed four written questions to which the NCAA sought responses. Those questions related directly to actions or steps that individuals had taken, including “[h]ave each of the alleged persons to have been involved or have notice of the issues identified in and related to the Grand Jury Report behaved consistent

with principles and requirements governing ethical conduct and honesty? If so, how? If not, how?" At the time of the letter, Joe Paterno was alleged to have been involved in the issues identified in the Grand Jury Report.

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

63. According to Emmert in a speech to the Detroit Economic Club on September 21, 2012, the NCAA waited for the results of the Freeh firm's investigation because the firm "had more power than we have — we don't have subpoena power, which was more or less granted to them by the Penn State Board of Trustees." As late as January 2014, Emmert continued to state publicly that he believed that the Freeh firm had been vested with subpoena power, at least as far as employees of Penn State were concerned.

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

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

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

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

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

69. Later the same day, Emmert announced that there had been an "acceptance of the report" by the Penn State Board of Trustees. As he and other NCAA officials later explained, the NCAA decided to rely on the Freeh Report, and he publicly announced that once the NCAA "had the Freeh Report, the university commissioned it and released it without comment, so [the

NCAA] had a pretty clear sense that the University itself accepted the findings.” According to Emmert, the NCAA “and the University both found the Freeh Report information incredibly compelling” and “so with the University accepting those findings,” the NCAA found “that body of information to be more than sufficient to impose” penalties.

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

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

72. In preparing its report, the Freeh firm did not complete a proper investigation, failed to interview key witnesses, and instead of supporting its conclusions with evidence, relied heavily on speculation and innuendo. The report relies on unidentified, “confidential” sources and on questionable sources lacking any direct or personal knowledge of the facts or support for the opinions they provided. Many of its main conclusions are either unsupported by evidence or

supported only by anonymous, hearsay information of the type specifically prohibited by the NCAA rules.

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

74. Contrary to suggestions made in the Freeh Report, there is no evidence that Joe Paterno covered up known incidents of child molestation by Sandusky to protect Penn State football, to avoid bad publicity, or for any other reason. There is no reason to believe, as the Freeh firm apparently did, that Joe Paterno understood the threat posed by Sandusky better than qualified child welfare professionals and law enforcement, who investigated the matter, made no findings of abuse, and declined to bring charges. There is no evidence that Joe Paterno or any other members of the athletic staff conspired to suppress information because of publicity concerns or a desire to protect the football program.

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

76. Despite the fact that it supposedly conducted 430 interviews, the Freeh firm did not speak to virtually any of the persons who had the most important and relevant information concerning Sandusky’s criminal conduct. Three of the most crucial individuals — Gary Schultz,

Timothy Curley, and Joe Paterno — were never interviewed. Michael McQueary, the sole witness to the 2001 incident, was also not interviewed.

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

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

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

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

The NCAA’s Sanctions

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

82. Recent reports have disclosed problems that have long infected the organization. For example, one report determined that in the course of an investigation against the University of Miami, the NCAA’s enforcement staff acted contrary to its legal counsel’s advice and failed to adhere to the membership’s understanding of the limits of the NCAA’s investigative powers. Emmert has publicly admitted that, under his leadership, the NCAA has failed its membership. *See Report Details Missteps, Insufficient Oversight; NCAA Commits To Improve* (Feb. 19, 2013), available at <http://www.ncaa.com/news/ncaa/article/2013-02-18/report-details-missteps-insufficient-oversight-ncaa-commits-improve>.

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

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

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

86. The NCAA Defendants recognized that, in this case, they did not "have all the facts about individual culpability," and that imposing sanctions could cause "collateral damage" to many innocent parties. Nonetheless, they viewed the scandal involving Sandusky as an opportunity to deflect attention from mounting criticisms, to shore up the NCAA's faltering reputation, to broaden the NCAA's authority beyond its defined limits, and to impose massive sanctions on Plaintiffs and Penn State for their own benefit.

87. The NCAA Defendants agreed to work together to make Penn State an example and to single out its coaches and administrators for harsh penalties, regardless of the facts and

with full knowledge that their actions would cause Plaintiffs substantial harm. In particular, the NCAA Defendants took a series of unauthorized and unjustified actions intentionally to harm, or in reckless disregard of, the rights and interests of involved parties. In an abuse of their positions, the NCAA Defendants forced Penn State to accept the sanctions they dictated by threatening to seek the “death penalty,” even though the sanctions were not authorized, appropriate, or justified by any identified NCAA rule violation.

88. As part of this unlawful course of action, Emmert, Dr. Ray, and other members of the NCAA conspired together with the Freeh firm to circumvent the NCAA rules, strip Plaintiffs of their procedural protections under those rules, and level allegations in the absence of facts or evidence supporting those allegations. As a result of that agreement, the NCAA’s Executive Committee, under the leadership of Dr. Ray, purported to grant Emmert authority to “enter into a consent decree with Penn State University that contains sanctions and corrective measures related to the institution’s breach of the NCAA Constitution and Bylaws and core values of intercollegiate athletics based on the findings of the Freeh Report and Sandusky criminal trial.” The Committee outlined the sanctions to be taken against Penn State and described its purported authority to act as arising from its power under Article 4 of the NCAA Constitution “to resolve core issues of Association-wide import.”

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

90. The NCAA Defendants and Penn State knew or should have known that the Freeh Report was an unreliable rush to judgment and that the conclusions reached in the report were

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

91. The NCAA Defendants and Penn State knew or should have known that the conduct described in the Freeh Report was not a violation of the NCAA's rules and could not substitute for the procedures required under the NCAA's rules. Among other things, both the NCAA Defendants and Penn State knew that the NCAA's staff had not completed a thorough investigation, as required under the NCAA's rules. The staff had not identified any major or secondary violations committed by Penn State in connection with the criminal matters involving Sandusky. The actions taken by the NCAA Defendants were not authorized by any general legislation adopted by the NCAA's member institutions. Neither Penn State nor any involved individual authorized the NCAA to use a summary disposition process and, in any event, the NCAA did not comply with that process.

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

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

94. Penn State's outside counsel, Eugene Marsh, who was specially engaged to deal with the NCAA on this issue, had several conversations with NCAA representatives between July 16 and July 22, 2012. In the course of those conversations, despite the clear indication in the NCAA's rules that the "death penalty" was reserved for cases of repeat violators of major

rules, the NCAA indicated that the "death penalty" was a possibility for the Penn State football program, but that other alternatives would also be considered.

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

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

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

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

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

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

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

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

The Consent Decree

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

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

a. The decree stated that "Head Football Coach Joseph V. Paterno failed to protect against a child sexual predator harming children for over a decade," "concealed Sandusky's activities from the Board of Trustees, the University community and authorities," and "allow[ed] [Sandusky] to have continued, unrestricted and unsupervised access to the University's facilities and affiliation with the University's prominent football program."

b. The decree stated that "the Board of Trustees . . . did not perform its oversight duties," and that it "failed in its duties to oversee the President and senior University officials in 1998 and 2001 by not inquiring about important University matters and by not creating an environment where senior University officials felt accountable."

c. The decree found 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."

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

106. The NCAA admitted that, ordinarily, “[t]he sexual abuse of children on a university campus by a former university official” would “not be actionable by the NCAA.” But the NCAA asserted that it had authority to interfere because “it was the fear of or deference to the omnipotent football program that enabled a sexual predator to attract and abuse his victims.” According to the NCAA, “the reverence for Penn State football permeated every level of the University community,” and “the culture exhibited at Penn State is an extraordinary affront to the values all members of the Association have pledged to uphold.”

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

108. The Consent Decree is an indictment of the entire Penn State community, including individual institutional leaders, members of the Board of Trustees, those responsible for and participants in athletic programs, the faculty, and the student body. The Consent Decree charges that every level of the Penn State community created and maintained a culture of reverence for, fear of, and deference to the football program, in disregard of the values of human decency and the safety and well-being of vulnerable children.

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

110. According to Dr. Ray, even though the NCAA never undertook its own investigation or followed its own required processes, it could rely on the Freeh Report because the NCAA's "executive committee has the authority when it believes something is of a big enough and significant enough nature that it should exercise its ability to expedite the process of reviewing cases." In fact, no provision of the rules gives the NCAA that authority.

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

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

113. Under the terms of the Consent Decree President Erickson agreed not to challenge the decree and waived any right to a "determination of violations by the NCAA Committee on

Infractions, any appeal under NCAA rule, and any judicial process related to the subject matter of the Consent Decree.”

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

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

116. Even though the Consent Decree relied on purported “facts” that were contrary to the evidence and did not establish a violation of the NCAA’s rules, those issues were never considered by the Appeals Committee and involved individuals were denied the procedural protections required by the NCAA’s rules.

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

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

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

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

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

Current and Ongoing Harm

122. Plaintiffs have been substantially harmed, and will continue to incur future harm, as a direct and intentional result of the NCAA Defendants' unauthorized and unlawful conduct and the Consent Decree imposed on Penn State by the NCAA.

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

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

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

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

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

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

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

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

CLAIMS

COUNT I: BREACH OF CONTRACT (Against The NCAA Defendants And Penn State By Plaintiffs The Estate of Joseph Paterno and Al Clemens)

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

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

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

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

between the NCAA and Penn State, and they (or their representatives) may enforce the provisions of that agreement against the NCAA.

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

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

- a. purporting to exercise jurisdiction over a matter not caused by the football program, much less one related to a basic athletics issue such as admissions, financial aid, eligibility, and recruiting;
- b. taking action and imposing sanctions via its Executive Committee, which has power only to address association-wide issues on a prospective basis, and no power to sanction individual members;
- c. refusing to proceed against Penn State through the required traditional enforcement process, the only method of imposing sanctions that is authorized under the rules;
- d. refusing to accept any appeals of the Consent Decree;
- e. treating the Freeh Report as a "self-report" even though the Freeh Report was never voted on by the full Board of Trustees; even though the Freeh Report failed to identify, much less analyze, any purported NCAA rules violations; and even though the Freeh Report failed to comply with required procedures and reached conclusions based on irrelevant or inadmissible evidence developed pursuant to an unreliable and deficient investigation;

f. imposing sanctions on the basis of alleged violations of vague, inapplicable principles in the NCAA's Constitution, such as the principle of institutional control and the principle of ethical conduct, both of which relate only to athletics issues, recruiting violations, or other matters properly regulated by the NCAA;

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

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

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

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

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

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

m. failing to afford Plaintiffs "fair procedures" during the NCAA's determinations and deliberations;

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

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

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

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

- a. acquiescing to a confidential procedure for imposition of sanctions that would directly impact Plaintiffs;
- b. accepting a range of sanctions that deprived involved individuals of their procedural rights under the NCAA enforcement scheme, ostensibly to avoid any risk of the “death penalty,” even though it would not have been applicable in the circumstances; and
- c. executing a Consent Decree that it knew included false and unsubstantiated statements about Plaintiffs and was based on the flawed Freeh Report.

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

WHEREFORE, Plaintiffs respectfully request the entry of judgment against each of the NCAA Defendants and Penn State, and the following legal and equitable relief:

- (1) A declaratory judgment that the actions of the NCAA Defendants were unlawful and violated Plaintiffs’ contractual and legal rights;

- (2) Issuance of a permanent injunction preventing either the NCAA Defendants or Penn State from further enforcing the Consent Decree or the sanctions improperly set forth therein;
- (3) A declaratory judgment that
 - a. Joe Paterno was harmed by statements made in the Consent Decree and/or was an "involved individual" within the meaning of the NCAA's rules;
 - b. Al Clemens was harmed by statements made in the Consent Decree and/or was an "involved individual" within the meaning of the NCAA's rules;
 - c. Neither the NCAA Defendants nor Penn State had the authority to execute the Consent Decree or to waive any rights that Joe Paterno or Al Clemens had under the NCAA's rules; and
 - d. The NCAA-imposed Consent Decree was unauthorized, unlawful, and void *ab initio*.
- (4) Such other and further equitable relief as may be necessary to remedy the harm caused by the Consent Decree and the Defendants' conduct.

Plaintiffs respectfully request the additional following legal and equitable relief against each of the NCAA Defendants:

- (1) An award of compensatory damages for the breach of contract resulting in the losses and damages described herein;
- (2) Costs and disbursements of this action; and
- (3) Any other legal or equitable relief as the Court may deem just and proper.

**COUNT II: INTENTIONAL INTERFERENCE
WITH CONTRACTUAL RELATIONS
(Against the NCAA Defendants
By Plaintiffs William Kenney and Jay Paterno)**

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

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

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

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

139. As a direct and proximate result of the wrongful, arbitrary, capricious, and unreasonable actions of the NCAA Defendants, and as described in more detail below, Coach Kenney and Coach Jay Paterno have been unable to secure comparable employment opportunities in their chosen field.

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

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

Coach William ("Bill") Kenney

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

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

144. Coach Kenney received a few interviews with college and professional teams. His interviewers asked him questions focused on the NCAA's unsupported finding that he and other coaches had ignored "the red flags of Sandusky's behaviors" at Penn State, and not Coach Kenney's credentials and approach as a football coach. Despite interviews or discussions with schools such as the University of Massachusetts and NFL teams such as the New York Giants

and the Indianapolis Colts, he was not offered a position. In most instances, the positions he applied for went to less experienced and less qualified candidates.

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

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

Coach Joseph ("Jay") Paterno

147. As of the date of the Consent Decree, Coach Jay Paterno had served as a Division I collegiate football coach for 21 years. He began his coaching career as a graduate assistant at the University of Virginia, coached for one year each at the University of Connecticut and James Madison University, and then coached for 17 years at Penn State. At Penn State, Coach Jay Paterno spent 12 years as the quarterbacks coach and play-caller. Before the NCAA Defendants imposed the Consent Decree, Coach Jay Paterno was a top candidate for open head coaching

positions at other institutions. He had received awards and accolades for his coaching efforts at Penn State, and he had been approached during his time there by other universities and search firms exploring his potential interest in head coaching vacancies.

148. After Coach Jay Paterno was let go by Penn State following the 2012 football season, he sought other employment either as a head football coach or a media commentator. Transitioning from his position to a head coaching role was a logical and customary progression for someone with his experience and reputation. He was well-qualified to receive such an offer.

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

150. Coach Jay Paterno also applied for head coaching vacancies at the University of Colorado and Boston College. He was not granted an interview at either school. He also inquired about the head coaching position at another Division I school in the mid-Atlantic region, but the university administration considered the coaches from Penn State "too toxic," given the findings of the Consent Decree. The program in question did not grant interviews to any candidates from Penn State. Coach Jay Paterno was extremely well-qualified for the positions he sought and would have received job offers from these programs had it not been for the disparaging accusations leveled against him by the NCAA Defendants in the Consent Decree imposed on Penn State.

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

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

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

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

WHEREFORE, Plaintiffs, Jay Paterno and William Kenney, respectfully request the entry of judgment against each of the NCAA Defendants and the following legal and equitable relief:

- (1) An award of compensatory damages for the tortious and improper conduct and interference with contract resulting in the losses and damages described herein;
- (2) An award of punitive damages for outrageous, reckless, and intentional misconduct resulting in the losses and damages described herein;
- (3) Costs and disbursements of this action; and
- (4) Any other legal or equitable relief as the Court may deem just and proper.

**COUNT III: INJURIOUS FALSEHOOD/
COMMERCIAL DISPARAGEMENT
(Against The NCAA Defendants
By Plaintiff The Estate of Joseph Paterno)**

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

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

156. Before the unlawful action of the NCAA Defendants imposing the Consent Decree on Penn State, Joe Paterno or his Estate possessed a property interest in his name and reputation, and there was a readily available, valuable commercial market concerning Joe Paterno's commercial property.

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

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

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

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

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

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

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

WHEREFORE, Plaintiff the Estate of Joe Paterno respectfully requests the entry of judgment against each of the NCAA Defendants, and the following legal and equitable relief:

- (1) An award of compensatory damages for the tortious and improper conduct and disparagement resulting in the losses and damages described herein;
- (2) Issuance of a permanent injunction preventing the enforcement of the Consent Decree or the sanctions improperly set forth therein;
- (3) An award of punitive damages for outrageous, reckless, and intentional misconduct resulting in the losses and damages described herein;
- (4) Costs and disbursements of this action; and
- (5) Any other legal or equitable relief as the Court may deem just and proper.

COUNT IV: DEFAMATION
(Against The NCAA Defendants
By Plaintiffs William Kenney, Jay Paterno, and Al Clemens)

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

165. The NCAA Defendants adopted the false statements in the Freeh Report and put the NCAA's imprimatur on the baseless allegations that the Board of Trustees "did not perform its oversight duties" and "failed in its duties to oversee the President and senior University officials in 1998 and 2001 by not inquiring about important University matters and by not creating an environment where senior University officials felt accountable." These statements concerned Al Clemens, who was a member of the Board of Trustees in 1998 and 2001.

166. The NCAA also stated that "[s]ome coaches, administrators and football program staff members ignored the red flags of Sandusky's behaviors and no one warned the public about him." This statement concerned Jay Paterno and William Kenney, who were assistant coaches of the Penn State football program during the relevant times.

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

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

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

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

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

WHEREFORE, Plaintiffs Jay Paterno, William Kenney, and Al Clemens respectfully request the entry of judgment against each of the NCAA Defendants, and the following legal and equitable relief:

- (1) An award of compensatory damages for the tortious and improper conduct and defamatory statements resulting in the losses and damages described herein;
- (2) Issuance of a permanent injunction preventing the enforcement of the Consent Decree or the sanctions improperly set forth therein;
- (3) An award of punitive damages for outrageous, reckless, and intentional misconduct resulting in the losses and damages described herein;
- (4) Costs and disbursements of this action; and
- (5) Any other legal or equitable relief as the Court may deem just and proper.

COUNT V: CIVIL CONSPIRACY
(Against The NCAA
By All Plaintiffs)

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

173. Dr. Ray, Emmert, and other unknown NCAA employees, along with the Freeh firm, conspired to work together to avoid the NCAA enforcement procedures in order to impose unwarranted and unprecedented sanctions on Penn State, thereby unlawfully harming Plaintiffs as set forth herein, breaching the contract between the NCAA and Penn State (as reflected in the

NCAA's rules), and depriving Plaintiffs of their rights, including their rights under that contract. These actions were unlawful or taken for an unlawful purpose.

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

- a. bypass the NCAA's rules and procedural requirements in conducting the Penn State investigation;
- b. deprive Plaintiffs of their rights, including their rights to notice and an opportunity to be heard, before imposing unprecedented sanctions; and
- c. agree to sanction Penn State and implicate the entire Penn State community in wrongdoing, based on an obviously flawed investigation that did not consider whether the conduct at issue had violated any of the NCAA's rules.

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

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

- a. the NCAA Executive Committee chaired by Dr. Ray and the Division I Board of Directors purported to grant Emmert authority to investigate Penn State and impose sanctions, despite knowing they did not have the power to do so;
- b. Dr. Ray, Emmert, and other NCAA employees worked closely and coordinated with the Freeh firm to help it prepare a report that they knew or should have known included false conclusions that had not been reached by means of an adequate investigation;

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

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

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

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

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

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

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

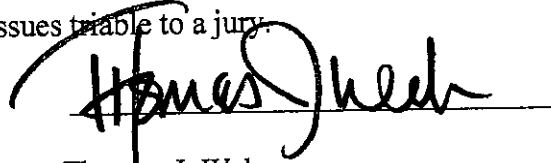
WHEREFORE, all Plaintiffs respectfully request the entry of judgment against each of the NCAA Defendants, and the following legal and equitable relief:

- (1) An award of compensatory damages for the tortious and improper conduct and breach of contract resulting in the losses and damages described herein;
- (2) Issuance of a permanent injunction preventing the enforcement of the Consent Decree or the sanctions improperly set forth therein;
- (3) An award of punitive damages for outrageous, reckless, and intentional misconduct resulting in the losses and damages described herein;
- (4) Costs and disbursements of this action; and

- (5) Any other legal or equitable relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a jury on all issues triable to a jury.



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Counsel for Plaintiffs

Dated: October 13, 2014

EXHIBIT B

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**
) **Party:**
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)

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

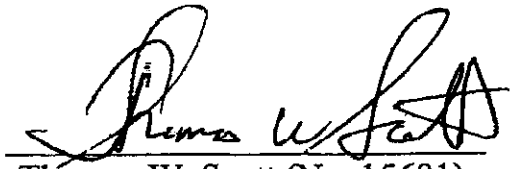
The ESTATE of JOSEPH PATERNO, et al.,)	
)	
Plaintiffs,)	
)	
v.)	
NATIONAL COLLEGIATE ATHLETIC)	Civil Division
ASSOCIATION ("NCAA"), et al.,)	
)	Docket No. 2013-2082
Defendants,)	
)	
and)	
PENNSYLVANIA STATE UNIVERSITY,)	
)	
Defendant.)	

NOTICE TO PLEAD

TO: PLAINTIFFS AND PLAINTIFFS' COUNSEL

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

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

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

**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

Constitution and Bylaws,¹ 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,

¹ 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.²

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

² 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 I 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

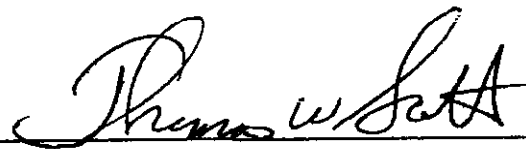
conspiracy) should be dismissed because the statements that Plaintiffs allege were defamatory or disparaging were **true or substantially true**.

* * *

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,



Date: April 29, 2015

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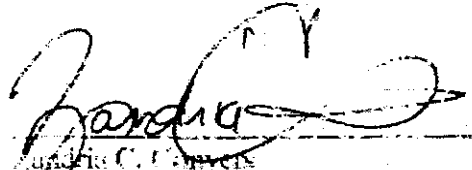
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Counsel for Defendants the NCAA, Dr.
Emmert, and Dr. Ray

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 P.S. A., §4904, relating to unsworn falsification to authorities.

Dated: April 29, 2015


Jennifer C. Myers
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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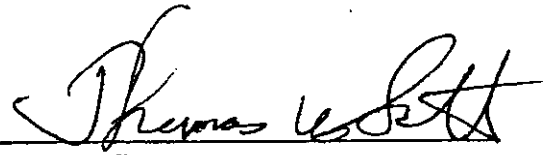
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Dated: April 29, 2015



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CERTIFICATE OF SERVICE

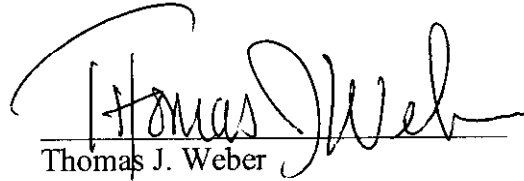
I HEREBY CERTIFY that a true and correct copy of the foregoing MOTION FOR JUDGMENT ON THE PLEADINGS was served this 5th day of June, 2015 by first class mail and email to the following:

Thomas W. Scott
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A handwritten signature in black ink, reading "Thomas J. Weber". The signature is fluid and cursive, with a large initial "T" and "W".

Thomas J. Weber
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June 5, 2015

VIA HAND DELIVERY

Debra C. Immel, Prothonotary
Office of the Prothonotary
Centre County Courthouse
102 S. Allegheny Street
Bellefonte, PA 16823

Re: George Scott Paterno, et al. v. National Collegiate Athletic Association, et al.
No. 2013-2082

Dear Ms. Immel:

Enclosed for filing in the above matter is Plaintiffs' Motion for Judgment on the Pleadings. Kindly file the original, and return a time-stamped copy to the courier.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Thomas J. Weber

TJW/jlb
Enclosures

cc: All counsel of record (via email and U.S. Mail)

{00649002;v6}