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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
)
) **Reply Brief in Support of**
) **Motion for Judgment on Pleadings**
) Filed on Behalf of the Plaintiffs Against
) Defendant NCAA
)
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CENTRE COUNTY, PA

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PLAINTIFFS' REPLY BRIEF IN SUPPORT OF
MOTION FOR JUDGMENT ON THE PLEADINGS

INTRODUCTION

The National Collegiate Athletic Association's response to the motion for judgment on the pleadings boils down to the view that, no matter the harm or prejudice, "rules are made to be broken." Two years into this litigation, after exhausting all of the procedural roadblocks it could erect through multiple rounds of preliminary objections, the NCAA now claims that its short-form Answer with blanket denials of virtually every operative paragraph — a clear violation of Pennsylvania law that has exacerbated the harms inflicted on plaintiffs — contains at most "technical flaws" that should be overlooked. The NCAA also seeks leave to substitute a new 173-page Answer, but an additional 134 pages to address "technical flaws" makes no sense. The NCAA's proposed amendment serves only to demonstrate that its original Answer was a calculated decision by skilled and experienced counsel to circumvent the rules and avoid coming to grips with the issues. In addition, the proposed new Answer, while much longer, maintains the charade by asserting irrelevant and extraneous objections to the Second Amended Complaint while continuing to avoid the pleading requirements of Pennsylvania law.

None of this comes as a surprise. The NCAA's involvement in this matter has, from the beginning, been marked by a choice to violate its own rules for investigations and enforcement in favor of a jury-rigged process of making things up as it went along, relying on bullying tactics and threats, and then saying that it cannot be held accountable to those harmed by its misconduct precisely because it ignored its rules. Having played this string out for maximum delay, the NCAA now suggests that the Court should allow it to amend its Answer so that the parties can promptly address the merits — a newfound desire for haste that conveniently corresponds with Penn State's ongoing refusals to comply with its discovery obligations, as set forth in both this Court and the Superior Court's orders granting access to the files and records of the Freeh firm that formed the central focus of the Consent Decree imposed by the NCAA.

The NCAA should be held to its strategic decision to respond to the Second Amended Complaint with blanket denials, its motion for leave to amend should be denied, and judgment on the pleadings should be entered in plaintiffs' favor. Regardless of how the Court rules on the pending motion for judgment and on the NCAA's motion for leave to amend, however, plaintiffs join in the request to move this litigation forward and for a prompt trial. If Penn State and its lawyers will accept the multiple rulings rejecting the meritless objections to production of the Freeh files, this case can and should be set for trial this year.

ARGUMENT

I. The NCAA's Motion For Leave To Amend Should Be Denied.

There can be no meaningful dispute that the NCAA's Answer generally denies the allegations in plaintiffs' Second Amended Complaint and that, under Pennsylvania law, those general denials are properly deemed admissions. Rule 1029(b) unequivocally states that a "general denial ... shall have the effect of an admission." Pa. R. Civ. P. 1029(b). And Pennsylvania courts have consistently held that responding to a complaint's allegations with the word "denied" is "an insufficient responsive pleading, tantamount to an admission." *Bogley, Harting & Reese, Inc.*, 11 Pa. D.&C.3d 303, 310 (C.C.P. 1979). In short, where, as here, a defendant 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 the plaintiffs." *Safeguard v. Standard Mach. & Equip. Co.*, 34 Pa. D.&C.4th 1, 4 (C.C.P. 1996).

The NCAA nonetheless wants a do-over, arguing that it should be entitled to take advantage of Pennsylvania's liberal pleading requirements and granted leave to file an amended Answer. That request should be denied, for at least five reasons.

First, the NCAA's decision to answer the Second Amended Complaint with general denials was no accident. The NCAA does not dispute that it is represented by experienced Pennsylvania counsel. Nor can it deny that it had months and months to consider and formulate its Answer. And it has offered no word of explanation (much less an apology to the Court) for its clear failure to comply with Pennsylvania's pleading requirements. Where, as here, a party deliberately violates the rules and then, when the violation is pointed out, offers no excuse or reasonable explanation, it should not be rescued from its own strategic litigation decisions. If a well counseled and legally sophisticated party like the NCAA can file an answer replete with general denials and then simply take a mulligan, the rule that makes a general denial equivalent to an admission would be reduced to a dead letter.

The Pennsylvania Supreme Court has recognized that “[a]dmissions ... contained in pleadings, stipulations, and the like, are usually termed ‘judicial admissions’ and as such cannot later be contradicted by the party who has made them.” *Rizzo v. Haines*, 530 Pa. 484, 506, 555 A.2d 58, 69 (1989) (internal quotation marks omitted). Such judicial admissions cannot be avoided by amendment. *See, e.g., Stillwater Lake Civic Ass’n v. McGinley*, 31 Pa. D.&C. 5th 302, 307–08 (C.C.P. 2013). While this doctrine has not been strictly applied to constructive admissions under Rule 1029(b), the logic certainly applies — especially where, as here, the party seeking leave to amend offers no explanation for its failure to comply with Pennsylvania rules. *See Kaiser v. W. States Adm’rs*, 702 A.2d 609, 613 (Pa. Commw. Ct. 1997) (party must offer “reasonable explanation” when proposed amendment is inconsistent with initial pleading).

Second, Pennsylvania cases hold that a party should be granted leave to file an amended pleading only when there is no prejudice to the non-moving party. *See, e.g., Pilotti v. Mobil Oil Corp.*, 388 Pa. Super. 514, 518–19, 565 A.2d 1227, 1229 (1989) (denying leave to amend

because “[n]o prejudice is even suggested in this case”). Accordingly, while Pennsylvania pleading rules are to be liberally construed, that is only the case when doing so would “secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable” and only when it would not affect “the substantial rights of the parties.” Pa. R. Civ. P. 126. In this case, the NCAA has made neither showing. Granting the NCAA leave to amend would affect plaintiffs’ substantial rights and work against the just, speedy, and inexpensive resolution of this case.

The prejudice to plaintiffs from the NCAA’s blanket denials has been significant. The case has been pending for more than two years and strategically delayed through countless maneuvers by the NCAA, Penn State, and Pepper Hamilton, acting in concert to prevent plaintiffs from gaining access to the documents essential to uncover the full truth behind the NCAA’s appalling misconduct. The NCAA’s blanket denials were part of that strategy of extended delay. The NCAA’s general denials have also increased the burden of litigation, including particularly the burden of discovery, by preventing either the Court or parties from knowing what specific issues are in dispute and what, if any, specific facts the NCAA intends to rely on for its defense. Faced with the blanket denials throughout the NCAA’s Answer, plaintiffs have been forced to resort to serving interrogatories and lengthy requests for admission in an effort to determine the NCAA’s position with respect to key aspects of the Consent Decree. *See* Exhibits C and D. The upshot is that the NCAA has been able to hide behind its blanket denials, while failing to provide any specific averments of facts that could possibly justify its unlawful abuse of authority.

Third, leave to amend should not be granted when the proposed amendment will not cure the defects in the original pleading. *See Raleigh v. Pa. Human Relations Comm’n*, 660 A.2d

177, 180 (Pa. Commw. Ct. 1995) (“Leave to amend a pleading will not be granted where an amendment will not likely cure the defects in the pleading”). The NCAA’s proposed amendment certainly offers more detail and includes improper legal argument as to why the NCAA maintains that it has done nothing wrong. But the amended pleading continues to omit the types of specific factual averments required under Pennsylvania law.

For example, paragraph 55 of the Second Amended Complaint alleges that 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 department.” SAC ¶ 55. The NCAA’s Proposed Amended Answer merely states that the “NCAA specifically denies that the Sandusky scandal at Penn State had ‘nothing to do with securing a recruiting or competitive advantage for Penn State or its athletics program.’” Proposed Amended Answer pp. 60–61. But it provides no factual basis for that assertion, as Pennsylvania law requires. The notion that Sandusky’s horrific child abuse provided Penn State with a recruiting or competitive advantage is facially absurd. If there are any facts that could support that outlandish conclusion, the NCAA was required to identify them, but its Proposed Amended Answer still fails to do what the law mandates. *See, e.g., Gwinn v. Empire State Chair Co.*, 48 Pa. D.&C.4th 176, 180 (C.C.P. 2000) (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”).

To give another example, paragraph 30 of the Second Amended Complaint alleges that “[t]he authorized enforcement process, detailed in Articles 19 and 32, is required to begin with an investigation, conducted by the NCAA enforcement staff” and that “[i]n conducting an investigation, the staff is required to comply with the operating policies, procedures, and investigative guidelines established in accordance with Article 19.” SAC ¶ 30. The NCAA

should either admit that the allegation is true (which it is) or respond with specific facts putting the allegation into dispute. Instead, the NCAA's response is filled with evasive legal arguments and non-responsive assertions, including stating that the NCAA's manual "speaks for itself" and that "[t]o the extent" plaintiffs have mischaracterized what the manual requires, the allegations are denied. Proposed Amended Answer pp. 29–30. *See, e.g., Beal Bank v. PIDC Fin. Corp.*, No. 02522, 2002 WL 31012320, at *5 (Pa. C.C.P. Sept. 9, 2002) (response that document "speaks for itself" deemed an admission) (internal quotation marks omitted). Nowhere does the NCAA state what Pennsylvania law requires — the specific reasons it denies the factual allegations in paragraph 30. These examples are merely that — examples of the repeated failure of the NCAA, even in its proposed 173-page amendment, to comply with Pennsylvania law rather than to set out legal arguments and objections.¹

Similarly, the NCAA repeatedly avoids responding to factual allegations by claiming that the allegations relate in some way or another to an underlying document that according to the NCAA speaks for itself. *See, e.g.,* Proposed Amended Answer ¶ 23 (avoiding responding to allegations about NCAA's revenue, by claiming that the NCAA's publicly-available financials statements speak for themselves); *id.* ¶¶ 26–49 (refusing to admit or deny factual statements about what the NCAA's rules and procedures require by asserting that its rules speak for themselves). Contrary to the NCAA's assertions, *see* NCAA Opp. to Plfs.' Mot. for Judgment on the Pleadings 39–40 ("NCAA Br."), the allegations in the Second Amended Complaint do not

¹ There are numerous other examples where, despite its length, the NCAA's Proposed Amended Answer is inadequate. For instance, in paragraph 2, the NCAA states that "no provision of the Constitution or Bylaws precludes the NCAA from imposing sanctions to address rule violations that did not result in [a competitive athletic] advantage." Proposed Amended Answer p. 7. But that is not the issue; the issue is whether the NCAA can point to any provision that *authorized* the NCAA to impose sanctions. Relatedly, the NCAA denies that its Constitution and Bylaws define and constrain the scope of its authority, and claims they are not the exclusive source of its authority, but the NCAA offers no facts to support either assertion.

“go to the [document] itself”—indeed, in most instances, the relevant factual allegations do not even refer to any underlying document—but instead state what plaintiffs aver is required of the NCAA. There is no reason the NCAA should not indicate whether it agrees with those factual allegations and, if it disagrees, to set forth specifically what it believes its rules and policies require. *See, e.g., Beal Bank*, 2002 WL 31012320, at *1. That is especially important given the relevance of the NCAA’s knowledge, bad faith, and failure to comply with its own rules to the merits of plaintiffs’ claims for commercial disparagement, defamation, intentional interference with contractual relations, and civil conspiracy.

Fourth, there is precedent in this case for applying the rules strictly and without granting leave to amend. At the pleading stage, plaintiffs were accused by the NCAA of improperly amending their complaint to include allegations to reflect the fact that the NCAA began its investigation before Coach Paterno died. Although plaintiffs apologized to the Court for any violation of the rules and expressly invoked the liberal pleading requirements of Pennsylvania law to justify their filing, the NCAA urged the Court to deny plaintiffs any right to amend. Moreover, although the NCAA made no showing of prejudice, the Court ruled in the NCAA’s favor, resulting ultimately in dismissal of plaintiffs’ breach-of-contract claim. Having applied the rules strictly against plaintiffs at the NCAA’s urging, the Court should act with an even hand and also apply the rules strictly against the NCAA.

Fifth, the motion for leave to amend should be denied because the NCAA is still not being forthright with the Court. Instead of responding directly to the grounds for judgment, much of the NCAA’s brief can only be characterized as an attempt to confuse the underlying issues. The NCAA argues, for example, that the Consent Decree merely re-published statements

made in the Freeh Report. NCAA Br. 1. It also asserts that it has no obligation to identify the factual bases for the purported “findings” adopted by the Consent Decree. *Id.* at 19 n.6.

These assertions are misleading and wrong. The NCAA did not just reprint the “findings” of the Freeh Report, although that alone would be enough to hold it responsible. *See Hoover v. Peerless Publ’ns, Inc.*, 461 F. Supp. 1206, 1209 (E.D. Pa. 1978) (under Pennsylvania law “one who republishes a libel is subject to liability just as if he had published it originally, even though he attributes the libelous statement to the original publisher”). Instead, the NCAA embraced them as its own and then announced to the world (falsely) that those “findings” provided a lawful basis for imposing massive sanctions under the Consent Decree and, as the Court has noted in the past, included language in the Consent Decree that damaged the plaintiffs. *See Opinion & Order* at 5 (Sept. 11, 2014). In this context, the question is not whether the NCAA knew the defamatory and disparaging statements in the Freeh Report were false (it surely did), but more specifically whether it knew that the Freeh Report was not prepared consistent with the binding requirements of the NCAA’s own rules and therefore provided no lawful basis for imposing massive sanctions (which it also surely knew). *See Mzamane v. Winfrey*, 693 F. Supp. 2d 442, 479 (E.D. Pa. 2010) (when considering whether a statement is defamatory, “a court must weigh both the language of the communication, and the context in which the communication is made”) (internal quotation marks omitted). By telling the world that the “findings” in the Freeh Report provided a legitimate evidentiary basis for imposing enormous sanctions, the NCAA ensured that those “findings” received far more attention than they otherwise would have received and dramatically increased the harm by blaming plaintiffs for the sanctions the NCAA unlawfully imposed.

With respect to that critical issue, the NCAA has never provided any satisfactory answer. It cannot deny that the Freeh Report did not comply with the NCAA's rules. Nor has it identified any valid basis for claiming that plaintiffs' conduct justified the Consent Decree. Its only defense is to assert that certain Penn State officials "accepted" the Freeh Report. But as alleged in the Second Amended Complaint, the Freeh Report has never been formally accepted by the University. *Compare* SAC ¶ 70 (alleging that "no full vote of the Board of Trustees was ever taken," that the Board "never took any official action based on the Freeh Report," and that the "full Board" has never "accept[ed] its findings or reach[ed] any conclusions about its accuracy") *with* Proposed Amended Answer p. 76 (denying these allegations in blanket fashion and offering in response only facts about unofficial actions taken by certain members of the Board, not by the full Board). In any event, just as the NCAA had no authority to violate its own rules and claim falsely that plaintiffs' supposed conduct provided a basis for imposing massive sanctions, Penn State also had no authority to allow the NCAA to falsely accuse plaintiffs of wrongdoing. A knowingly false and defamatory statement does not become any less knowingly false and defamatory merely because some third party does nothing to stop the tort.

For each of these reasons, the Court should deny the NCAA's motion for leave to file its 173-page Proposed Amended Answer.

II. The NCAA's Original Answer Clearly Violates Pennsylvania's Pleading Rules.

While asserting on one hand that it should be allowed to file a massive amendment, the NCAA also argues on the other hand that the general denials included in its original Answer are sufficient and that the fact that the NCAA has taken other positions in other papers in this and other cases somehow cures any defects. The NCAA's arguments only underscore how clearly the original Answer fails to comply with Pennsylvania law.

The NCAA first contends that because Count I (the breach of contract claim) is no longer part of the case, the allegations concerning the NCAA's failure to comply with its own rules are irrelevant. NCAA Br. 20–21. That is wrong. The NCAA's failure to comply with its own rules is directly relevant to whether it acted knowingly, recklessly, and maliciously when it falsely accused plaintiffs of wrongdoing and claimed that defamatory statements regarding plaintiffs provided a valid basis for imposing massive sanctions. *See Coleman v. Philadelphia Newspapers, Inc.*, 391 Pa. Super. 140, 149, 570 A.2d 552, 556–57 (1990) (“Actual malice may be demonstrated ... [i]nferentially, through ... the failure of the publisher to follow established procedures of investigation”) (internal citation omitted). As noted above, the critical issue in this case is not just that the NCAA re-published the defamatory statements contained in the Freeh Report, but that it endorsed them as its own and announced to the world that they provided a basis for imposing sanctions for purported violations of the NCAA's rules.

The NCAA next contends that its original Answer was “replete with specific denials,” but that too is false. For example, the NCAA asserts that it “specifically denied that the NCAA Division I Manual” — which includes the Constitution, Operating Bylaws, and Administrative Bylaws of the NCAA — “is the ‘exclusive source of the NCAA's authority.’” NCAA Br. 21 (quoting Answer ¶ 24). If that were true, the NCAA should have included a factual averment in its Answer explaining the alternative sources of its authority. *See, e.g., Gwinn*, 48 Pa. D.&C.4th at 180 (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”). But its original Answer merely states: “To the extent the first sentence of Paragraph 24 alleges that the NCAA Division I Manual is the exclusive source of the NCAA's authority and obligations of NCAA member institutions, the NCAA denies those allegations.” Answer ¶ 24; *see also Sincavage v. Howells*, 8 Pa. D.&C.2d

515, 517 (C.C.P. 1956) (“A denial is not a specific denial when it merely states that the averment of the adverse party is ‘denied’ or which states that ‘it is denied that’ and then repeats word for word the averments of the opposing pleading.”). Similarly, the NCAA also claims that it “specifically denied that the so-called ‘death penalty’ is reserved solely for cases of repeat violators of major NCAA rules.” NCAA Br. 21 (citing Answer ¶ 94). But, again, its Answer does not provide any factual averments supporting its denial; it merely states:

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.

Answer ¶ 94. Personnel “expressing their view” is certainly not a reference to the Constitution or Bylaws of the NCAA, but it does confirm that the NCAA chose to make things up as it went along.

The NCAA next argues that its preliminary objections, and the position it took in the *Corman* litigation, were sufficient to satisfy the NCAA’s obligations and excuse its failure to respond to the Second Amended Complaint with specificity. See NCAA Br. 5, 13, 23. That makes no sense. A preliminary objection is a challenge to the legal sufficiency of the complaint, not an averment of fact. Moreover, the Court largely overruled the NCAA’s preliminary objections as they related to the remaining Counts of the Second Amended Complaint.

There is likewise no basis for suggesting that positions staked out by the NCAA in *Corman* can possibly substitute for proper pleading in this case. Far from putting plaintiffs on notice of the NCAA’s positions in this case, the NCAA’s positions in *Corman* only underscore the unfair surprise and prejudice that has occurred as a result of the NCAA’s request for leave to amend. See, e.g., *Dep’t of Transp. v. Pa. Indus. for Blind & Handicapped*, 886 A.2d 706, 715

(Pa. Commw. Ct. 2005) (“leave [to amend] should not be granted if it results in surprise or prejudice to the other party”). In *Corman*, the NCAA agreed to a settlement that voided the Consent Decree and, shortly after the settlement was announced, Penn State’s new President sent a letter to the university community making clear that the Freeh Report was seriously flawed. His letter correctly notes that Freeh did not interview “many of the most salient witnesses” and relied on his “personal opinions and conclusions about the motivation of individuals, rather than simply presenting factual information.” Exhibit A (“There are significant problems with the Freeh Report”). His letter also notes that “the Board of Trustees did not accept the Freeh [R]eport as truth,” and makes clear that “the limitations of the Freeh [R]eport prevent it from being the basis of any decision facing Penn State.” *Id.*

In the wake of the *Corman* settlement, plaintiffs reasonably expected the NCAA to take steps to remedy the remarkable harms caused by its failure to comply with its own rules. Instead, to everyone’s surprise, the NCAA has further dug in its heels and is now attempting to defend the indefensible, claiming what every informed person now knows to be demonstrably false — that the Freeh Report was based on a “robust” and “comprehensive” investigation. Proposed Amended Answer pp. 80, 122. Indeed, in a recent response to requests for admission, the NCAA continues to assert that the facts support the false statements contained in the Consent Decree. *See* Exhibit B.

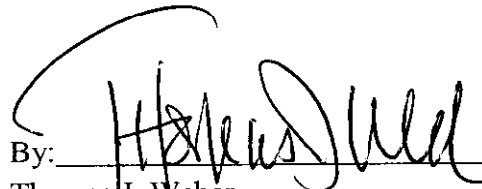
Finally, the NCAA argues that general denials to the Commercial Disparagement claim are sufficient under Rule 1029(e). *See* NCAA Br. 40. But the cases it relies on all deal with claims concerning real property or are otherwise inapposite. The explanatory notes to Rule 1029(e) make clear that the exception to the prohibition on general denials applies to “real property actions.” *See* Pa. R. Civ. P. 1029(e) explanation comment – 1994 (“1. Scope of rule”).

As the comments also make clear, Rule 1029(e) covers the same actions covered by Rule 238, which provides “delay damages” for claims seeking “monetary relief for bodily injury, death or property damage.” *Id.* Pennsylvania courts have interpreted that provision to apply only to “tangible personal property, ... such as automobiles [and] homes.” *Butler v. Flo-Ron Vending Co.*, 383 Pa. Super. 633, 653-54, 557 A.2d 730, 740 (1989); *id.* at 653, 557 A.2d at 741 (“property” as used in Rule 238 does not apply to “intangible property,” such as claim concerning improper “interference with one’s right to pursue an occupation”); *see also Wescoat v. Nw. Sav. Ass’n*, 378 Pa. Super. 295, 300, 548 A.2d 619, 622 (1988) (concluding that phrase “injury to property” in statute referred only to tangible property). Rule 1029(e)’s exception to specific pleading therefore does not apply to claims for commercial disparagement.

CONCLUSION

The NCAA spent two years attempting to poke holes in the Complaint in this case through preliminary objections. It then filed an Answer that, as a matter of law, admitted the substance of the plaintiffs’ remaining claims and now seeks to disavow its legal admissions. In the face of these facts, allowing such a “do over” renders Section 1029 a nullity and rewards the delay tactics and obfuscation that the NCAA has followed for years. Plaintiffs respectfully request that the Court deny the motion for leave to file an amended answer, 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.

Dated: June 30, 2015

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EXHIBIT A

On the Challenges facing Penn State University Post-Sandusky

Penn State University is an extraordinarily successful academic institution, highly ranked, with robust finances and applications for admission breaking all-time records, and with a dedicated faculty who are competitive with the best in the world. Research expenditures consistently exceed \$800 million a year in spite of significant declines in federal research funding, our commitment to teaching is noteworthy, and our online undergraduate programs through the World Campus are ranked as the very best in the world. Need-based students graduate at a much higher rate than predicted by organizations that rank the university. Our alumni have demonstrated their commitment to the university as evidenced by a capital campaign that exceeded its \$2 billion dollar goal and achieved \$530 million dollars in new student scholarships. Our students achieve, whether through national championships, international medals, or competitive fellowships. We can be extremely proud of our institution. And, most importantly, our long-held culture ensures that, despite the level of excellence we have reached, we are not satisfied. Our faculty, our students, our staff and the administration are still reaching higher. My personal pride in this institution could not be greater.

Yet these extraordinary accomplishments are rarely the focus of either national or local media, and even many of our alumni do not have a full sense of what we are accomplishing and the level of promise that exists for our future. Instead, recognition of our accomplishments is overshadowed by the actions and reactions that have followed the arrest and ultimate conviction of Jerry Sandusky and by the fact that so many issues of national discussion today are more focused on creating polarity and controversy than they are on providing clarity or finding solutions.

For this reason, I believe that I owe you, as your president, a clear description of my views and my thoughts on this important topic.

Our commitment to combatting child sexual abuse is unwavering

I can think of few crimes more heinous than the sexual assault of a child. The fact is that Jerry Sandusky was convicted of multiple counts of this terrible crime, and sadly, Sandusky was connected to Penn State. We are, as individuals and as an institution, appalled by his actions and we are committed to stronger educational programs focused on child abuse, greater efforts focused on prevention and higher levels of support so that victims have the greatest chance to become survivors. We will strive to become ever better in our efforts, and to be a national leader in this cause. I know of no Penn Stater who feels differently.

The judicial process must run its course

We also have faced, and continue to face, a trial of the institution in various media reacting to the Freeh report and based on the indictment of three former University administrators. This "pre-trial" appears to have found our institution guilty. Further, the burden of this guilt has somehow been on the shoulders of tens of thousands of employees, students and alumni. The latter is absurd and undeserved. The guilt of the former administrators has not yet been determined in a court of law. Outside of Penn State we repeatedly see cases tried in the media. People are convicted in the court of public opinion, only to find a different outcome when all the facts are presented. Unfortunately, we have to wait impatiently for our judicial process to run its course. Regardless of the wide range of individual opinion or desires, as an institution, it is very difficult to either defend or assail until a judgment based on a full set of facts is rendered.

There are significant problems with the Freeh Report

The Freeh report presents a number of additional challenges. The report was intended to create an independent assessment, as few would trust an institution's self-assessment under such high-profile negative attention and serious allegations. Independent investigations are a frequent course of action in such cases. Consequently, this was a logical option for our Board of Trustees. But, the report is limited in significant ways:

- Freeh did not have subpoena power and could not interfere with on-going criminal investigations, and as a consequence his team could not interview many of the most salient individuals. Regardless of how many times we might try to redo this investigation, the same limitations will appear for the identical reasons.
- Equally important, Freeh expressed his personal opinions and conclusions about the motivation of individuals, rather than simply presenting factual information. Certainly, some of the content raises real questions, but only through criminal proceedings do you have access to all witnesses and only through this process do you view information from the counter-balanced perspective of both defense and prosecutor.

What Penn State needed was immediate and unvarnished information. We needed an outsider's insights into improved governance practices. Recognizing the limitations of an investigative report, the Board of Trustees did not accept the Freeh report as truth, but rather, adopted the specific recommendations on governance and compliance with the objective of making our University better. Unfortunately, nuanced acceptances and carefully worded messages are completely lost in the world of sound bites and headlines. I would like my personal views to be clear:

- *I am committed to compliance and ethics.* When I was a faculty member at Penn State during a period of twenty years, I was proud of our commitment to excellence and to student athletes, and I am even more proud that our commitment continues today and that our programs in compliance and ethics are clearly best practices in athletics. I am proud to stack our program against any in the nation and I am fully committed to maintaining those practices.
- At the same time, my view is that *the limitations of the Freeh report prevent it from being the basis of any decision facing Penn State.*

The recent NCAA settlement was a good compromise

I also wish to address the role of the NCAA and the recent settlement in the Corman-NCAA case. In signing the Consent Decree, the University committed that it would not challenge the Consent Decree. With its dissolution, I would like to publically add my viewpoint on this important settlement. It is a compromise, and with most compromises individuals and organizations on all sides are not completely satisfied. But, I believe it is a significant milestone and well worth supporting for several reasons. The press has focused on the 112 wins, and Joe Paterno's place in football history, so I will cover that point last.

First, the Consent Decree was the basis for the \$60 million fine. State officials Corman and McCord sued to keep the \$60 million fine in the Commonwealth of Pennsylvania through the Endowment Act to support victims of child abuse. Fundamentally, the importance of supporting victims and educational programming related to child abuse controlled the nature of the settlement. The importance of this issue to all parties meant that the Consent Decree would be dissolved with superseding terms rather than repudiated.

Second, the Athletics Integrity Agreement (AIA) was left to future discussion between the NCAA, Big Ten, and Penn State with the agreed stipulation that all punitive conditions would be removed. Some have expressed concern that this keeps the monitor in place and questioned whether this fact (as well as payment of the \$60 million) is an admission of guilt. The University's desire to remediate harm is not an admission of guilt. It is much more an act of human concern, compassion and empathy. As stated above, establishing levels of guilt depends on pending criminal cases, not on the terms of a compromise that settled litigation against the University and terminated the Consent Decree.

The terms of the compromise have a clear reasoning. First, no party of the settlement wanted to minimize the importance of addressing child abuse. Second, athletic integrity is an appropriate topic for any institution. I have little concern that we may have to continue to have a monitor under the AIA for a while longer. The monitor provides an independent and highly credible voice, external to the University, that has consistently recognized the strength of our ethics and compliance program. With the monitor in place, no one can doubt the quality of our programs and our commitment to doing it right.

As to the restoration of wins, I believe that (1) the NCAA should not have stepped outside of its normal infractions process as it inevitably raises questions of fairness and appropriateness, and (2) the actions of Sandusky had no bearing on recruiting or eligibility that would have influenced the outcome of any game, and therefore the wins should not have been removed in the first place. I am also on record stating that I believe that the NCAA had a legitimate interest in the Sandusky matter and that I believe, from speaking with many of the presidents who make up the governance of the NCAA, they acted in good faith based on the overall principles of institutional control. I respect their views even though I believe it was inappropriate for the NCAA to step outside of its infractions process.

We must hold each other up, not tear each other down

Many issues remain, not the least of which is the polarity surrounding the above topics. A survey of the multitude of lawsuits facing Penn State is instructive. Penn State is being sued both by those who think we did not do enough and by those who think we over-reacted and did too much. The financial impacts are significant, and so is the toll of having this subject a constant focus of the media, particularly in Pennsylvania. As the settlement of the Corman case reached its conclusion, we were equally bombarded by hundreds of emails and social media posts that assailed us for insensitivity and not caring about victims and those that assailed us for not celebrating the return of the football record. Many of the messages Penn State has received over the last several months are the nastiest that I have ever read in my career as an administrator. Sadly, some crossed into the territory of threats that violate the law. And, of course, much of the conflict is occurring in public venues and is reported. Interestingly, a recent alumni survey demonstrated an overwhelmingly high regard of Penn State as an academic institution but, equally interesting, the satisfaction rate was lower in Pennsylvania, with those in Pennsylvania reporting that their greatest source of information was newspapers.

Now we realize that Penn State has paid a great price, far greater even than those who imposed the sanctions realized. The University is focused on our mission and we are serving students better than any time in our history, but the sanctions and the resulting drawn out process have created an enduring conflict between Penn State alumni. Although the alumni have the same foundation of love and commitment to Penn State, and the same belief that the Freeh report is limited and an indictment of the culture of thousands of students, faculty, staff and alumni is unwarranted, their views about the right approach to reaching an end of

the conflict and gaining an honest accounting of history is very different. For many of the alumni who have put their voice to these issues, there has been little middle ground. Your University will continue to set new achievement records for faculty, staff and students, but the level of conflict among alumni means that, even with the full reversal or approaching end of all sanctions, the healing process will continue to take time.

Thank you for reading this rather long letter to you. I will continue to take pride in your accomplishments and I will do my best to navigate Penn State to a place where mission and accomplishment are clear to all.

EXHIBIT B

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

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

**THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION'S
RESPONSES AND OBJECTIONS TO PLAINTIFFS' REQUESTS FOR ADMISSION**

In accordance with Pennsylvania Rule of Civil Procedure 4014, the National Collegiate Athletic Association (the "NCAA") has attempted in good faith to respond to Plaintiffs' Requests for Admission. The NCAA's responses are based upon information currently available to it. The NCAA has not completed its investigation of the facts relating to this action. Accordingly, the NCAA reserves the right to change or supplement these responses at any time. The fact that the NCAA has responded to any part of any of Plaintiffs' Requests is not intended to be, and shall not be construed to be, a waiver by the NCAA of all or any part of any objection to any Request.

GENERAL OBJECTIONS

1. The NCAA objects to each and every Request on the grounds that they seek to impermissibly shift the burden of proof in this action. It remains Plaintiffs' burden to demonstrate that allegedly disparaging statements were about the Plaintiffs, were demonstrably

false, and were made with actual malice. By responding to these Requests, the NCAA in no way admits or accepts that it has any burden in this case concerning such issues.

2. The NCAA objects to each and every Request for Admission that can be interpreted to ask for an admission by the NCAA that it contends that facts support statements in the Consent Decree. As is now well known by all, and has been stated repeatedly, the NCAA did not participate in the Freeh firm's investigation or the preparation of its report. Before entering into the Consent Decree, senior NCAA staff read the Freeh Report, and reasonably and appropriately relied on its conclusions. The facts utilized and relied upon by the NCAA in the development of the Consent Decree were the facts reported in the Freeh Report. The Freeh investigation was led by a former FBI director and federal judge, Louis Freeh, whom Penn State Trustee Ken Frazier described as having "unimpeachable credentials and unparalleled experience in law and criminal justice." The Freeh investigation's process was robust and consistent with the process regularly used by corporations, universities, and other entities conducting internal investigations in order to develop factual information and make important business, legal, or other strategic decisions, as well as federal prosecutors and regulatory authorities, who routinely base criminal and regulatory settlements on such investigations. As set forth in detail in the Freeh Report, the Freeh firm's findings are supported by documentary evidence, interviews, sworn testimony, and reasonable inferences drawn therefrom that the Freeh firm found credible, relevant and reliable. Indeed, the Freeh firm's investigation, commissioned by the University itself, included reviewing over 3 million documents and conducting over 430 interviews. The NCAA believed then, and it believes now, that the factual findings of the Freeh Report, as accepted by Penn State, were a sound basis upon which to move forward to determine how those findings should be addressed by the NCAA. The veracity of the Freeh firm's findings is also

supported by, *inter alia*, the Sandusky criminal investigation and trial, the indictments of Graham Spanier, Timothy Curley, and Gary Schultz, Penn State's termination of Graham Spanier and Coach Joe Paterno, Penn State's public statements following immediately the release of the Freeh Report, the Penn State Board of Trustees' refusal to repudiate the Freeh Report, statements made by Coach Joseph V. Paterno before he passed away, and public statements made by Frank Fina.

3. The NCAA objects to each Request for Admission that asks for an admission or denial that the NCAA contends or no longer contends "that facts support the statement in the Consent Decree that . . ." to the extent that any inference can be drawn from the response to this sweeping question that would be inconsistent with facts set forth in the Answer and Amended Answer filed by the NCAA, Preliminary Objections filed by the NCAA, or previous Answers to Interrogatories (all sets) provided by the NCAA, the factual averments of which are incorporated herein as if set forth in detail to the extent relevant to the request.

4. The NCAA objects to the Requests to the extent they refer to statements in the Consent Decree that do not refer to or concern any of the three remaining Plaintiffs on the grounds that such Requests are not relevant or reasonably calculated to lead to admissible evidence.

REQUEST FOR ADMISSION NO. 1:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that "[t]he Freeh Report's findings depict an environment shaped by the actions and inactions of members of the leadership and board of Penn State that allowed Sandusky's serial child sexual abuse."

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Subject to and without waiver of its General Objections, the NCAA admits Request No. 1.

REQUEST FOR ADMISSION NO. 2:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that “[t]he Frech Report’s findings depict an environment shaped by the actions and inactions of members of the leadership and board of Penn State that allowed Sandusky’s serial child sexual abuse.”

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Subject to and without waiver of its General Objections, the NCAA denies Request No. 2.

REQUEST FOR ADMISSION NO. 3:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that “the egregiousness of the predicate conduct [at Penn State] is unprecedented, amounting to a failure of institutional and individual integrity far exceeding a lack of institutional control or individual unethical conduct.”

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

The NCAA objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of this objection and its General Objections, the NCAA admits Request No. 3.

REQUEST FOR ADMISSION NO. 4:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that “the egregiousness of the predicate conduct [at Penn State] is unprecedented, amounting to a failure of institutional and individual integrity far exceeding a lack of institutional control or individual unethical conduct.”

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

The NCAA objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of this objection and its General Objections, the NCAA denies Request No. 4.

REQUEST FOR ADMISSION NO. 5:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that “FSS has established an exhaustive factual record[.]”

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Subject to and without waiver of its General Objections, the NCAA admits Request No. 5.

REQUEST FOR ADMISSION NO. 6:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that “FSS has established an exhaustive factual record[.]”

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Subject to and without waiver of its General Objections, the NCAA denies Request No. 6.

REQUEST FOR ADMISSION NO. 7:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that “Penn State breached the standards expected by and articulated in the NCAA Constitution and Bylaws.”

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

The NCAA objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of this objection and its General Objections, the NCAA admits Request No. 7.

REQUEST FOR ADMISSION NO. 8:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that “Penn State breached the standards expected by and articulated in the NCAA Constitution and Bylaws.”

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

The NCAA objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of this objection and its General Objections, the NCAA denies Request No. 8.

REQUEST FOR ADMISSION NO. 9:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that Penn State failed “to value and uphold institutional integrity demonstrated by inadequate, and in some instances non-existent, controls and oversight surrounding the athletics

program of the University, such as those controls prescribed by Articles 2.1, 6.01.1, and 6.4 of the NCAA Constitution.”

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

The NCAA objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of this objection and its General Objections, the NCAA admits Request No. 9.

REQUEST FOR ADMISSION NO. 10:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that Penn State failed “to value and uphold institutional integrity demonstrated by inadequate, and in some instances non-existent, controls and oversight surrounding the athletics program of the University, such as those controls prescribed by Articles 2.1, 6.01.1, and 6.4 of the NCAA Constitution.”

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

The NCAA objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of this objection and its General Objections, the NCAA denies Request No. 10.

REQUEST FOR ADMISSION NO. 11:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that Penn State and its leadership “fail[ed] to maintain minimal standards of appropriate and responsible conduct.”

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that Penn State “fail[ed] to maintain minimal standards of appropriate and responsible conduct.” The NCAA also objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of these objections and its General Objections, the NCAA admits Request No. 11.

REQUEST FOR ADMISSION NO. 12:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that Penn State and its leadership “fail[ed] to maintain minimal standards of appropriate and responsible conduct.”

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that Penn State “fail[ed] to maintain minimal standards of appropriate and responsible conduct.” The NCAA also objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of these objections and its General Objections, the NCAA denies Request No. 12.

REQUEST FOR ADMISSION NO. 13:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that Penn State and its leadership demonstrated “[a] lack of adherence to fundamental notions of individual integrity.”

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that that Penn State demonstrated “[a] lack of adherence to fundamental notions of individual integrity.” The NCAA also objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of these objections and its General Objections, the NCAA admits Request No. 13.

REQUEST FOR ADMISSION NO. 14:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that Penn State and its leadership demonstrated “[a] lack of adherence to fundamental notions of individual integrity.”

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that that Penn State demonstrated “[a] lack of adherence to fundamental notions of individual integrity.” The NCAA also objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible

scope of requests under Rule 4014. Subject to and without waiver of these objections and its General Objections, the NCAA denies Request No. 14.

REQUEST FOR ADMISSION NO. 15:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that Coach Joe Paterno, as the head football coach at Penn State, did not “promote an atmosphere for compliance and monitor the activities of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach.”

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Subject to and without waiver of its General Objections, the NCAA admits Request No. 15.

REQUEST FOR ADMISSION NO. 16:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that Coach Joe Paterno, as the head football coach at Penn State, did not “promote an atmosphere for compliance and monitor the activities of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach.”

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Subject to and without waiver of its General Objections, the NCAA denies Request No. 16.

REQUEST FOR ADMISSION NO. 17:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that Coach Joe Paterno, as the head football coach at Penn State, did not “serve as [a] positive moral model for students in order ‘for intercollegiate athletics to promote the character

development of participants, to enhance the integrity of higher education and to promote civility in society.’”

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that “the findings of the Criminal Jury and the Freeh Report establish a factual basis from which the NCAA concludes that Penn State breached the standards expected by and articulated in the NCAA Constitution and Bylaws[,]” and provides a list of breached standards, including that Penn State demonstrated:

A lack of adherence to fundamental notions of individual integrity. An institution’s head coach should promote an atmosphere for compliance and monitor the activities of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach. Further, NCAA Bylaw 19.01.2, consistent with Article 2.4 of the NCAA Constitution, demands the employees associated with intercollegiate athletics to serve as positive moral models for students in order “for intercollegiate athletics to promote the character development of participants, to enhance the integrity of higher education and to promote civility in society.”

The NCAA also objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of these objections and its General Objections, the NCAA admits Request No. 17.

REQUEST FOR ADMISSION NO. 18:

Please admit that the NCAA no longer contends that facts support the NCAA’s statement in the Consent Decree that Coach Joe Paterno, as the head football coach at Penn State, did not “serve as [a] positive moral model for students in order ‘for intercollegiate athletics to promote the character development of participants, to enhance the integrity of higher education and to promote civility in society.’”

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that “the findings of the Criminal Jury and the Freeh Report establish a factual basis from which the NCAA concludes that Penn State breached the standards expected by and articulated in the NCAA Constitution and Bylaws[,]” and provides a list of breached standards, including that Penn State demonstrated:

A lack of adherence to fundamental notions of individual integrity. An institution’s head coach should promote an atmosphere for compliance and monitor the activities of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach. Further, NCAA Bylaw 19.01.2, consistent with Article 2.4 of the NCAA Constitution, demands the employees associated with intercollegiate athletics to serve as positive moral models for students in order “for intercollegiate athletics to promote the character development of participants, to enhance the integrity of higher education and to promote civility in society.”

The NCAA also objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of these objections and its General Objections, the NCAA denies Request No. 18.

REQUEST FOR ADMISSION NO. 19:

Please admit that the NCAA contends that facts support the statements in the Consent Decree that Coach Joe Paterno “failed to protect against a child sexual predator harming children for over a decade” and “concealed Sandusky’s activities from the Board of Trustees, the University community, and authorities.”

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree

states that “President Graham B. Spanier, Senior Vice President-Finance and Business Gary C. Shultz, Athletic Director Timothy M. Curley and Head Football Coach Joseph V. Paterno [] failed to protect against a child sexual predator harming children for over a decade. These men concealed Sandusky’s activities from the Board of Trustees, the University community and authorities.” Subject to and without waiver of this objection or its General Objections, the NCAA admits Request No. 19.

REQUEST FOR ADMISSION NO. 20:

Please admit that the NCAA no longer contends that facts support the statements in the Consent Decree that Coach Joe Paterno “failed to protect against a child sexual predator harming children for over a decade” and “concealed Sandusky’s activities from the Board of Trustees, the University community, and authorities.”

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that “President Graham B. Spanier, Senior Vice President-Finance and Business Gary C. Shultz, Athletic Director Timothy M. Curley and Head Football Coach Joseph V. Paterno [] failed to protect against a child sexual predator harming children for over a decade. These men concealed Sandusky’s activities from the Board of Trustees, the University community and authorities.” Subject to and without waiver of this objection or its General Objections, the NCAA denies Request No. 20.

REQUEST FOR ADMISSION NO. 21:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that Coach Joe Paterno “empowered Sandusky to attract potential victims to the campus

and football events by allowing him to have continued, unrestricted and unsupervised access to the University' facilities and affiliation with the University's prominent football program."

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that "[t]hese individuals ... empowered Sandusky to attract potential victims to the campus and football events by allowing him to have continued, unrestricted and unsupervised access to the University's facilities and affiliation with the University's prominent football program." Subject to and without waiver of its General Objections, the NCAA admits Request No. 21.

REQUEST FOR ADMISSION NO. 22:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that Coach Joe Paterno "empowered Sandusky to attract potential victims to the campus and football events by allowing him to have continued, unrestricted and unsupervised access to the University' facilities and affiliation with the University's prominent football program."

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that "[t]hese individuals ... empowered Sandusky to attract potential victims to the campus and football events by allowing him to have continued, unrestricted and unsupervised access to the University's facilities and affiliation with the University's prominent football program." Subject to and without waiver of its General Objections, the NCAA denies Request No. 22.

REQUEST FOR ADMISSION NO. 23:

Please admit that the NCAA contends that facts support the statement that Coach Joe Paterno “ignored the red flags of Sandusky’s behaviors[.]”

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. Subject to and without waiver of this objection and its General Objections, the NCAA admits that it contends that facts support the statement that “[s]ome coaches, administrators and football program staff members ignored the red flags of Sandusky’s behaviors.”

REQUEST FOR ADMISSION NO. 24:

Please admit that the NCAA does not contend that facts support the statement that Coach Joe Paterno “ignored the red flags of Sandusky’s behaviors[.]”

RESPONSE TO REQUEST FOR ADMISSION NO. 24:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. Subject to and without waiver of this objection and its General Objections, the NCAA denies that it no longer contends that facts support the statement that “[s]ome coaches, administrators and football program staff members ignored the red flags of Sandusky’s behaviors.”

REQUEST FOR ADMISSION NO. 25:

Please admit that the NCAA contends that facts support the finding of the Freeh Report, quoted by the Consent Decree as one of its “Findings and Conclusions,” that, in order to avoid the consequences of bad publicity, Coach Joe Paterno (among others) “repeatedly concealed

critical facts relating to Sandusky's child abuse from the authorities, the University's Board of Trustees, the Penn State community and the public at large."

RESPONSE TO REQUEST FOR ADMISSION NO. 25:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that "in order to avoid the consequences of bad publicity, ... Spanier, Schultz, Paterno and Curley – repeatedly concealed critical facts relating to Sandusky's child abuse from the authorities, the University's Board of Trustees, the Penn State community and the public at large." Subject to and without waiver of its General Objections, the NCAA admits Request No. 25.

REQUEST FOR ADMISSION NO. 26:

Please admit that the NCAA no longer contends that facts support the finding of the Freeh Report, quoted by the Consent Decree as one of its "Findings and Conclusions," that, in order to avoid the consequences of bad publicity, Coach Joe Paterno (among others) "repeatedly concealed critical facts relating to Sandusky's child abuse from the authorities, the University's Board of Trustees, the Penn State community and the public at large."

RESPONSE TO REQUEST FOR ADMISSION NO. 26:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that "in order to avoid the consequences of bad publicity, ... Spanier, Schultz, Paterno and Curley – repeatedly concealed critical facts relating to Sandusky's child abuse from the authorities, the University's Board of Trustees, the Penn State community and the public at

large.” Subject to and without waiver of its General Objections, the NCAA denies Request No. 26.

REQUEST FOR ADMISSION NO. 27:

Please admit that the NCAA contends that facts support the finding of the Freeh Report, quoted by the Consent Decree as one of its “Findings and Conclusions,” that “avoiding the consequences of bad publicity was the most significant cause for the University’s failure to protect child victims and report to authorities,” even though “it was not the only cause.”

RESPONSE TO REQUEST FOR ADMISSION NO. 27:

Subject to and without waiver of its General Objections, the NCAA admits Request No. 27.

REQUEST FOR ADMISSION NO. 28:

Please admit that the NCAA no longer contends that facts support the finding of the Freeh Report, quoted by the Consent Decree as one of its “Findings and Conclusions,” that “avoiding the consequences of bad publicity was the most significant cause for the University’s failure to protect child victims and report to authorities,” even though “it was not the only cause.”

RESPONSE TO REQUEST FOR ADMISSION NO. 28:

Subject to and without waiver of its General Objections, the NCAA denies Request No. 28.

REQUEST FOR ADMISSION NO. 29:

Please admit that the NCAA contends that facts support the finding of the Freeh Report, quoted by the Consent Decree as one of its “Findings and Conclusions,” that “[other causes] for the University’s failure to protect child victims and report to authorities” included that Coach Joe

Paterno (among others) “allowed Sandusky to retire as a valued member of the University’s football legacy, with ‘ways ‘to continue to work with young people through Penn State,’ essentially granting him license to bring boys to campus facilities for ‘grooming’ as targets for his assaults[.]”

RESPONSE TO REQUEST FOR ADMISSION NO. 29:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that “Spanier, Schultz, Paterno, and Curley allowed Sandusky to retire as a valued member of the University’s football legacy, with “ways ‘to continue to work with young people through Penn State,’ essentially granting him license to bring boys to campus facilities for ‘grooming’ as targets for his assaults[.]”” Subject to and without waiver of this objection and its General Objections, the NCAA admits Request No. 29.

REQUEST FOR ADMISSION NO. 30:

Please admit that the NCAA no longer contends that facts support the finding of the Freeh Report, quoted by the Consent Decree as one of its “Findings and Conclusions,” that “[other causes] for the University’s failure to protect child victims and report to authorities” included that Coach Paterno (among others) “allowed Sandusky to retire as a valued member of the University’s football legacy, with ‘ways ‘to continue to work with young people through Penn State,’ essentially granting him license to bring boys to campus facilities for ‘grooming’ as targets for his assaults[.]”

RESPONSE TO REQUEST FOR ADMISSION NO. 30:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree

states that “Spanier, Schultz, Paterno, and Curley allowed Sandusky to retire as a valued member of the University’s football legacy, with “ways ‘to continue to work with young people through Penn State,’ essentially granting him license to bring boys to campus facilities for ‘grooming’ as targets for his assaults[.]”” Subject to and without waiver of this objection and its General Objections, the NCAA denies Request No. 30.

REQUEST FOR ADMISSION NO. 31:

Please admit that the NCAA contends that facts support the finding of the Freeh Report, referenced in the Consent Decree as one of its “Findings and Conclusions,” that “[other causes] for the failure to protect child victims and report to authorities” included the University’s “culture of reverence for the football program that is ingrained at all levels of the [Penn State] campus community.”

RESPONSE TO REQUEST FOR ADMISSION NO. 31:

Subject to and without waiver of its General Objections, the NCAA admits Request No. 31.

REQUEST FOR ADMISSION NO. 32:

Please admit that the NCAA no longer contends that facts support the finding in the Freeh Report, referenced in the Consent Decree as one of its “Findings and Conclusions,” that “[other causes] for the University’s failure to protect child victims and report to authorities” included the University’s “culture of reverence for the football program that is ingrained at all levels of the [Penn State] campus community.”

RESPONSE TO REQUEST FOR ADMISSION NO. 32:

Subject to and without waiver of its General Objections, the NCAA denies Request No. 32.

REQUEST FOR ADMISSION NO. 33:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that the evidence described in the Consent Decree “presents an unprecedented failure of institutional integrity leading to a culture in which a football program was held in higher esteem than the values of the institution, the values of the NCAA, the values of higher education, and most disturbingly the values of human decency.”

RESPONSE TO REQUEST FOR ADMISSION NO. 33:

The NCAA objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of this objection and its General Objections, the NCAA admits Request No. 33.

REQUEST FOR ADMISSION NO. 34:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that the evidence described in the Consent Decree “presents an unprecedented failure of institutional integrity leading to a culture in which a football program was held in higher esteem than the values of the institution, the values of the NCAA, the values of higher education, and most disturbingly the values of human decency.”

RESPONSE TO REQUEST FOR ADMISSION NO. 34:

The NCAA objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of this objection and its General Objections, the NCAA denies Request No. 34.

REQUEST FOR ADMISSION NO. 35:

Please admit that the NCAA contends that “[t]he sexual abuse of children on a university campus by a former university official - and even the active concealment of that abuse - while despicable, ordinarily would not be actionable by the NCAA.”

RESPONSE TO REQUEST FOR ADMISSION NO. 35:

The NCAA objects to this request as irrelevant. Questions of NCAA process and authority are not relevant now that Plaintiffs’ breach of contract claims have been dismissed, and this is not a statement directed at any Plaintiff. The NCAA also objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of these objections and its General Objections, the NCAA admits Request No. 35.

REQUEST FOR ADMISSION NO. 36:

Please admit that the NCAA no longer contends that “[t]he sexual abuse of children on a university campus by a former university official - and even the active concealment of that abuse - while despicable, ordinarily would not be actionable by the NCAA.”

RESPONSE TO REQUEST FOR ADMISSION NO. 36:

The NCAA objects to this request as irrelevant. Questions of NCAA process and authority are not relevant now that Plaintiffs’ breach of contract claims have been dismissed, and this is not a statement directed at any Plaintiff. The NCAA also objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of these objections and its General Objections, the NCAA denies Request No. 36.

REQUEST FOR ADMISSION NO. 37:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that at Penn State “it was the fear of or deference to the omnipotent football program that enabled a sexual predator to attract and abuse its victims.”

RESPONSE TO REQUEST FOR ADMISSION NO. 37:

Subject to and without waiver of its General Objections, the NCAA admits Request No. 37.

REQUEST FOR ADMISSION NO. 38:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that at Penn State “it was the fear of or deference to the omnipotent football program that enabled a sexual predator to attract and abuse its victims.”

RESPONSE TO REQUEST FOR ADMISSION NO. 38:

Subject to and without waiver of its General Objections, the NCAA denies Request No. 37.

REQUEST FOR ADMISSION NO. 39:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that “the reverence for Penn State football permeated every level of the University community.”

RESPONSE TO REQUEST FOR ADMISSION NO. 39:

Subject to and without waiver of its General Objections, the NCAA admits Request No. 39.

REQUEST FOR ADMISSION NO. 40:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that “the reverence for Penn State football permeated every level of the University community.”

RESPONSE TO REQUEST FOR ADMISSION NO. 40:

Subject to and without waiver of its General Objections, the NCAA denies Request No. 40.

REQUEST FOR ADMISSION NO. 41:

Please admit that the NCAA contends that facts support the statement in the Consent Decree that “the culture exhibited at Penn State is an extraordinary affront to the values all members of the [NCAA] have pledged to uphold and calls for extraordinary action.”

RESPONSE TO REQUEST FOR ADMISSION NO. 41:

Subject to and without waiver of its General Objections, the NCAA admits Request No. 41.

REQUEST FOR ADMISSION NO. 42:

Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that “the culture exhibited at Penn State is an extraordinary affront to the values all members of the [NCAA] have pledged to uphold and calls for extraordinary action.”

RESPONSE TO REQUEST FOR ADMISSION NO. 42:

Subject to and without waiver of its General Objections, the NCAA denies Request No. 42.

REQUEST FOR ADMISSION NO. 43:

Please admit that the NCAA contends that the sanctions imposed pursuant to the Consent Decree were an appropriate method by which “to change the culture that allowed [the sexual abuse of children] to occur and realign it in a sustainable fashion with the expected norms and values of intercollegiate athletics.”

RESPONSE TO REQUEST FOR ADMISSION NO. 43:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that the sanctions were “designed to not only penalize the University for contravention of the NCAA Constitution and Bylaws, but also to change the culture that allowed this activity to occur and realign it in a sustainable fashion with the expected norms and values of intercollegiate athletics.” Subject to and without waiver of this objection or its General Objections, the NCAA admits that its position as set forth in the Consent Decree was appropriate.

REQUEST FOR ADMISSION NO. 44:

Please admit that the NCAA no longer contends that the sanctions imposed pursuant to the Consent Decree were an appropriate method by which “to change the culture that allowed [the sexual abuse of children] to occur and realign it in a sustainable fashion with the expected norms and values of intercollegiate athletics.”

RESPONSE TO REQUEST FOR ADMISSION NO. 44:

The NCAA objects to this Request on the grounds that it mischaracterizes the Consent Decree, which was based on the Freeh Report as accepted by Penn State. The Consent Decree states that the sanctions were “designed to not only penalize the University for contravention of the NCAA Constitution and Bylaws, but also to change the culture that allowed this activity to

occur and realign it in a sustainable fashion with the expected norms and values of intercollegiate athletics.” Subject to and without waiver of this objection or its General Objections, the NCAA denies that its position as set forth in the Consent Decree was not appropriate.

REQUEST FOR ADMISSION NO. 45:

Please admit that the NCAA contends that the Consent Decree appropriately vacated all wins of the Penn State football team from 1998 to 2011.

RESPONSE TO REQUEST FOR ADMISSION NO. 45:

The NCAA objects to this Request as irrelevant. The referenced statement is not a statement or sanction expressly directed at any Plaintiff. Subject to and without waiver of this objection or its General Objections, the NCAA admits Request No. 45.

REQUEST FOR ADMISSION NO. 46:

Please admit that the NCAA no longer contends that the Consent Decree appropriately vacated all wins of the Penn State football team from 1998 to 2011.

RESPONSE TO REQUEST FOR ADMISSION NO. 46:

The NCAA objects to this Request as irrelevant. The referenced statement is not a statement or sanction expressly directed at any Plaintiff. Subject to and without waiver of this objection or its General Objections, the NCAA denies Request No. 46.

REQUEST FOR ADMISSION NO. 47:

Please admit that the NCAA contends that facts support the statement in the Superseding Agreement to the Consent Decree that “the NCAA [had a] legitimate and good faith interest and concern regarding the Jerry Sandusky matter.”

RESPONSE TO REQUEST FOR ADMISSION NO. 47:

The NCAA objects to this request as irrelevant. Questions of NCAA process are not relevant now that Plaintiffs' breach of contract claims have been dismissed, and this is not a statement directed at any Plaintiff. The NCAA further objects to this Request on the grounds that it mischaracterizes the Superseding Agreement, which states that "Penn State acknowledges the NCAA's legitimate and good faith interest and concern regarding the Jerry Sandusky matter." The NCAA also objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests under Rule 4014. Subject to and without waiver of these objections or its General Objections, the NCAA admits Request No. 47.

REQUEST FOR ADMISSION NO. 48:

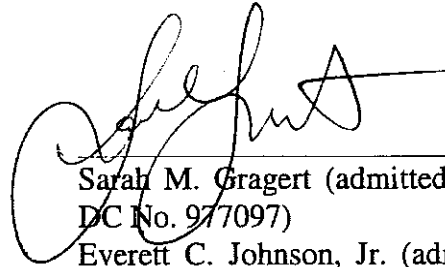
Please admit that the NCAA no longer contends that facts support the statement in the Superseding Agreement to the Consent Decree that "the NCAA [had a] legitimate and good faith interest and concern regarding the Jerry Sandusky matter."

RESPONSE TO REQUEST FOR ADMISSION NO. 48:

The NCAA objects to this request as irrelevant. Questions of NCAA process are not relevant now that Plaintiffs' breach of contract claims have been dismissed, and this is not a statement directed at any Plaintiff. The NCAA further objects to this Request on the grounds that it mischaracterizes the Superseding Agreement, which states that "Penn State acknowledges the NCAA's legitimate and good faith interest and concern regarding the Jerry Sandusky matter." The NCAA also objects to the Request on the grounds that it does not relate to factual matters, but rather to a conclusion of law which is not within the permissible scope of requests

under Rule 4014. Subject to and without waiver of these objections or its General Objections, the NCAA denies Request No. 48.

Dated: June 18, 2015



Sarah M. Gragert (admitted *Pro Hac Vice*,
DC No. 977097)

Everett C. Johnson, Jr. (admitted *Pro Hac*
Vice, DC No. 358446)

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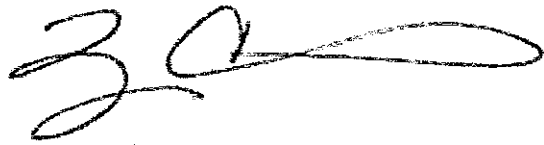
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*Counsel for the NCAA, Dr. Emmert, and Dr.
Ray*

VERIFICATION

I hereby verify that the statements of fact made in the foregoing Responses and Objections to Plaintiffs' Requests for Admission are true and correct to the best of my knowledge, information, and belief. I understand that any false statements therein are subject to the penalties contained in 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

Dated: June 18, 2015

A handwritten signature in black ink, appearing to read 'ZC', written over a horizontal line.

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

CERTIFICATE OF SERVICE

I, Sarah M. Gragert, hereby certify that I am serving *The National Collegiate Athletic Association's Responses and Objections to Plaintiffs' Requests for Admission* on the following by First Class Mail and email:

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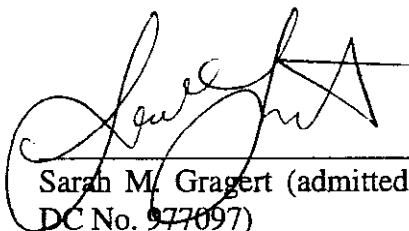
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*Counsel for The Pennsylvania State
University*

Dated: June 18, 2015

A handwritten signature in black ink, appearing to read 'Sarah M. Gragert', is written over a horizontal line.

Sarah M. Gragert (admitted *Pro Hac Vice*,
DC No. 977097)

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

EXHIBIT C

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.

THIRD SET OF INTERROGATORIES BY PLAINTIFFS TO DEFENDANT NCAA

Plaintiffs, by and through counsel, hereby propound, pursuant to Pa. R.C.P. No. 4005, the following Interrogatories, numbered 1 through 19 to Defendant National Collegiate Athletic Association (“NCAA”) to be answered separately and fully in writing and under oath within thirty (30) days of service, in accordance with the Instructions and Definitions set forth herein.

INSTRUCTIONS

The following instructions are applicable throughout these Interrogatories and are incorporated into each specific Interrogatory:

1. These instructions and definitions should be construed to require responses based upon the knowledge of, and information available to, the responding party, the Defendant NCAA, as well as its agents, representatives, and, unless privileged, attorneys and accountants, including but not limited to Latham & Watkins, LLP and Killian & Gephart, LLP.

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

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

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

5. Each Interrogatory shall be read to be inclusive rather than exclusive. Accordingly, the words “and” as well as “or” shall be construed disjunctively or conjunctively as necessary, in order to bring within the scope of each Interrogatory all information that might

otherwise be construed to be outside its scope. "Including" shall be construed to mean "including, without any limitation." The word "all" includes "any" and vice versa. The past tense shall include the present tense so as to make the request inclusive rather than exclusive. The singular shall include the plural and vice versa. The masculine includes the feminine and vice versa.

6. If you elect to specify and produce business records in answer to any Interrogatory, the specification shall be in sufficient detail to permit the interrogating party to readily locate and identify the business records from which the answer may be ascertained. You may identify such documents by Bates numbering them.

7. If, in answering these Interrogatories, you encounter any ambiguity when construing a question, instruction, or definition, your answer shall set forth the matter deemed ambiguous and the construction used in answering.

DEFINITIONS

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

1. "You," "your," "yours," "Defendant," and "NCAA" shall refer to Defendant NCAA, to whom these Requests are directed, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of the NCAA.

2. "Penn State" or the "University" shall refer to employees, administrators, and personnel of Pennsylvania State University, as well as any attorney, assignee, agent,

representative, or any other person acting, authorized to act, or purporting to act on behalf of Penn State.

3. “Joe Paterno” or “Paterno” shall refer to former Penn State head football coach Joseph (“Joe”) Paterno, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of Joe Paterno.

4. “William Kenney” or “Kenney” shall refer to former Penn State assistant football coach William Kenney, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of William Kenney.

5. “Joseph V. (‘Jay’) Paterno” or “Jay Paterno” shall refer to former Penn State assistant football coach Joseph V. (“Jay”) Paterno, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of Jay Paterno.

6. “Jerry Sandusky” or “Sandusky” shall refer to former Penn State assistant football coach Gerald A. Sandusky, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of Gerald A. Sandusky.

7. The “Freeh Firm” or “FSS” refers to the law firm of Freeh, Sporkin & Sullivan, LLP.

8. The “Freeh investigation” shall refer to the investigation conducted by the Freeh Firm into the alleged failure of certain Penn State personnel to respond to and report certain allegations against Sandusky.

9. The “Freeh Report” shall refer to the report of the investigation conducted by the Freeh Firm that was published on July 12, 2012, including all footnotes, exhibits, drafts, other notes, related to that Report.

10. The “NCAA” shall refer to the National Collegiate Athletic Association.

11. The “Consent Decree” shall refer to the document, titled the “Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University,” released on July 23, 2012, as well as all footnotes, exhibits, drafts, and other notes related to the Consent Decree.

12. The “Superseding Agreement” shall refer to the document, titled the “Superseding Agreement Between The National Collegiate Athletic Association and Pennsylvania State University,” announced on January 16, 2015, as well as all footnotes, exhibits, drafts, and other notes related to the Superseding Agreement.

INTERROGATORIES

Interrogatory No. 1:

Please state with specificity all facts that demonstrate the truth of the statement in the Consent Decree that “[s]ome coaches, administrators and football program staff members ignored the red flags of Sandusky’s behaviors[,]” and describe all steps taken by the NCAA before entering the Consent Decree to determine the accuracy of the statement.

RESPONSE:

Interrogatory No. 2:

Please state with specificity all facts that demonstrate the truth of the statement in the Consent Decree that Coach Joe Paterno “failed to protect against a child sexual predator harming children for over a decade,” and describe all steps taken by the NCAA before entering the Consent Decree to determine the accuracy of the statement.

RESPONSE:

Interrogatory No. 3:

Please state with specificity all facts that demonstrate the truth of the statement that Coach Joe Paterno “concealed Sandusky’s activities from the Board of Trustees, the University community and authorities[,]” and describe all steps taken by the NCAA before entering the Consent Decree to determine the accuracy of the statement.

RESPONSE:

Interrogatory No. 4:

Please state with specificity all facts that demonstrate the truth of the statement that Coach Joe Paterno “empowered Sandusky to attract potential victims to campus and football events by allowing him to have continued, unrestricted and unsupervised access to the University’s facilities and affiliation with the University’s prominent football program,” and describe all steps taken by the NCAA before entering the Consent Decree to determine the accuracy of the statement.

RESPONSE:

Interrogatory No. 5:

Please state with specificity all facts that demonstrate the truth of the statement in the Consent Decree that it is reasonable to conclude that, in order to avoid the consequences of bad publicity, Coach Joe Paterno “repeatedly concealed critical facts relating to Sandusky’s child abuse from the authorities, the University’s Board of Trustees, the Penn State community and the public at large,” and describe all steps taken by the NCAA before entering the Consent Decree to determine the accuracy of the statement.

RESPONSE:

Interrogatory No. 6:

Please state with specificity all facts that demonstrate the truth of the statement that Coach Joe Paterno “ignored the red flags of Sandusky’s behaviors[.]” and describe all steps taken by the NCAA before entering the Consent Decree to determine the accuracy of the statement.

RESPONSE:

Interrogatory No. 7:

Please state with specificity all facts that demonstrate the truth of the statement in the Consent Decree that Coach Joe Paterno “allowed Sandusky to retire as a valued member of the University’s football legacy, with ‘ways to continue to work with young people through Penn State,’ essentially granting him license to bring boys to campus for ‘grooming’ as targets for his assaults,” and describe all steps taken by the NCAA before entering the Consent Decree to determine the accuracy of the statement.

RESPONSE:

Interrogatory No. 8:

Please state with specificity all facts that demonstrate the truth of the statement that Coach Joe Paterno demonstrated “[a] lack of adherence to fundamental notions of individual integrity,” and describe all steps taken by the NCAA before entering the Consent Decree to determine the accuracy of the statement.

RESPONSE:

Interrogatory No. 9:

Please state with specificity all facts that demonstrate the truth of the statement that Coach Joe Paterno, as the head football coach at Penn State, did not “promote an atmosphere for compliance and monitor the activities of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach,” and describe all steps taken by the NCAA before entering the Consent Decree to determine the accuracy of the statement.

RESPONSE:

Interrogatory No. 10:

Please state with specificity all facts that demonstrate the truth of the statement that Coach Joe Paterno, as the head football coach at Penn State, did not “serve as [a] positive moral model for students in order ‘for intercollegiate athletics to promote the character development of participants, to enhance the integrity of higher education and to promote civility in society,’” and describe all steps taken by the NCAA before entering the Consent Decree to determine the accuracy of the statement.

RESPONSE:

Interrogatory No. 11:

Please state with specificity all facts that demonstrate the truth of the statement that William Kenney “ignored the red flags of Sandusky’s behaviors[,]” and describe all steps taken by the NCAA before entering the Consent Decree to determine the accuracy of the statement.

RESPONSE:

Interrogatory No. 12:

Please state with specificity all facts that demonstrate the truth of the statement that Jay Paterno “ignored the red flags of Sandusky’s behaviors[,]” and describe all steps taken by the NCAA before entering the Consent Decree to determine the accuracy of the statement.

RESPONSE:

Interrogatory No. 13:

Please state with specificity all facts that demonstrate the truth of the statement that “avoiding the consequences of bad publicity was the most significant cause for the University’s failure to protect child victims and report to authorities,” even though “it was not the only cause,” and describe all steps taken by the NCAA before entering the Consent Decree to determine the accuracy of the statement.

RESPONSE:

Interrogatory No. 14:

Please state with specificity all facts that demonstrate the truth of the statement that “[other causes] for the University’s failure to protect child victims and report to authorities” included “a ‘culture of reverence for the football program that is ingrained at all levels of the [Penn State] campus community,’” and describe all steps taken by the NCAA before entering the Consent Decree to determine the accuracy of the statement.

RESPONSE:

Interrogatory No. 15:

Please state with specificity all facts that demonstrate the truth of the statement that the evidence described in the Consent Decree “presents an unprecedented failure of institutional integrity leading to a culture in which a football program was held in higher esteem than the values of the institution, the values of the NCAA, the values of higher education, and most disturbingly the values of human decency,” and describe all steps taken by the NCAA before entering the Consent Decree to determine the accuracy of the statement

RESPONSE:

Interrogatory No. 16:

Please state with specificity all facts that demonstrate the truth of the statement in the Consent Decree that, at Penn State, “it was the fear of or deference to the omnipotent football program that enabled a sexual predator to attract and abuse its victims,” and describe all steps taken by the NCAA before entering the Consent Decree to determine the accuracy of the statement.

RESPONSE:

Interrogatory No. 17:

Please state with specificity all facts that demonstrate the truth of the statement in the Consent Decree that “the reverence for Penn State football permeated every level of the University community,” and describe all steps taken by the NCAA before entering the Consent Decree to determine the accuracy of the statement.

RESPONSE:

Interrogatory No. 18:

Please state with specificity all facts that demonstrate the truth of the statement in the Consent Decree that “the culture exhibited at Penn State is an extraordinary affront to the values all members of the [NCAA] have pledged to uphold and calls for extraordinary action,” and describe all steps taken by the NCAA before entering the Consent Decree to determine the accuracy of the statement.

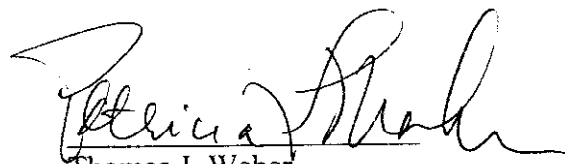
RESPONSE:

Interrogatory No. 19:

Please state with specificity all facts that demonstrate the truth of the statement in the Superseding Agreement to the Consent Decree that “the NCAA [had a] legitimate and good faith interest and concern regarding the Jerry Sandusky matter.”

RESPONSE:

Dated this 19th day of May, 2015.



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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing THIRD SET OF INTERROGATORIES BY PLAINTIFFS TO DEFENDANT NCAA were served this 19th day of May, 2015 by first class mail and email to the following:

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Counsel for Plaintiffs

EXHIBIT D

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO;)	
	)	Civil Division
)	
WILLIAM KENNEY and JOSEPH V. ("JAY")	)	Docket No. 2013-2082
PATERNO,)	
former football coaches at Pennsylvania State	)	Discovery
University,	)	Filed on Behalf of the Plaintiffs
Plaintiffs,)	
)	
v.	)	Counsel of Record:
	)	Thomas J. Weber
NATIONAL COLLEGIATE ATHLETIC	)	GOLDBERG KATZMAN, P.C.
ASSOCIATION ("NCAA");	)	4250 Crums Mill Road, Suite 301
	)	P.O. Box 6991
MARK EMMERT, individually and as	)	Harrisburg, PA 17112
President of the NCAA;	)	Telephone: (717) 234-4161
	)	Email: tjw@goldbergkatzman.com
And)	
	)	Wick Sollers (admitted <i>pro hac vice</i>)
EDWARD RAY, individually and as former	)	L. Joseph Loveland (admitted <i>pro hac vice</i>)
Chairman of the	)	Patricia L. Maher (admitted <i>pro hac vice</i>)
Executive Committee of the NCAA,)	Ashley C. Parrish (admitted <i>pro hac vice</i>)
)	KING & SPALDING LLP
Defendants,)	1700 Pennsylvania Avenue, NW
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And)	Telephone: (202) 737-0500
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PENNSYLVANIA STATE UNIVERSITY,)	jloveland@kslaw.com
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Defendant.)	aparrish@kslaw.com
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)	
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)	

REQUESTS FOR ADMISSION TO

DEFENDANT NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

Plaintiffs request that defendant National Collegiate Athletic Association respond to the following requests for admission in conformity with Pa. R.C.P. No. 4014 within thirty (30) days from the date of service of these Requests.

DEFINITIONS

1. “Penn State” or the “University” shall refer to employees, administrators, and personnel of Pennsylvania State University, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of Penn State.

2. “Joe Paterno” or “Paterno” shall refer to former Penn State head football coach Joseph (“Joe”) Paterno, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of Joe Paterno.

3. “Jerry Sandusky” or “Sandusky” shall refer to former Penn State assistant football coach Gerald A. Sandusky, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of Gerald A. Sandusky.

4. The “Freeh Firm” or “FSS” refers to the law firm of Freeh, Sporkin & Sullivan, LLP.

5. The “Freeh investigation” shall refer to the investigation conducted by the Freeh Firm into the alleged failure of certain Penn State personnel to respond to and report certain allegations against Sandusky.

6. The “Freeh Report” shall refer to the report of the investigation conducted by the Freeh Firm that was published on July 12, 2012, including all footnotes, exhibits, drafts, other notes, related to that Report.

7. The “NCAA” shall refer to the National Collegiate Athletic Association.

8. The “Consent Decree” shall refer to the document, titled the “Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The

Pennsylvania State University,” released on July 23, 2012, as well as all footnotes, exhibits, drafts, and other notes related to the Consent Decree.

9. The “Superseding Agreement” shall refer to the document, titled the “Superseding Agreement Between The National Collegiate Athletic Association and Pennsylvania State University,” announced on January 16, 2015, as well as all footnotes, exhibits, drafts, and other notes related to the Superseding Agreement.

REQUESTS FOR ADMISSION

1. Please admit that the NCAA contends that facts support the statement in the Consent Decree that “[t]he Freeh Report’s findings depict an environment shaped by the actions and inactions of members of the leadership and board of Penn State that allowed Sandusky’s serial child sexual abuse.”
2. Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that “[t]he Freeh Report’s findings depict an environment shaped by the actions and inactions of members of the leadership and board of Penn State that allowed Sandusky’s serial child sexual abuse.”
3. Please admit that the NCAA contends that facts support the statement in the Consent Decree that “the egregiousness of the predicate conduct [at Penn State] is unprecedented, amounting to a failure of institutional and individual integrity far exceeding a lack of institutional control or individual unethical conduct.”
4. Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that “the egregiousness of the predicate conduct [at Penn State] is unprecedented, amounting to a failure of institutional and individual integrity far exceeding a lack of institutional control or individual unethical conduct.”
5. Please admit that the NCAA contends that facts support the statement in the Consent Decree that “FSS has established an exhaustive factual record[.]”
6. Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that “FSS has established an exhaustive factual record[.]”
7. Please admit that the NCAA contends that facts support the statement in the Consent Decree that “Penn State breached the standards expected by and articulated in the NCAA Constitution and Bylaws.”

8. Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that “Penn State breached the standards expected by and articulated in the NCAA Constitution and Bylaws.”
9. Please admit that the NCAA contends that facts support the statement in the Consent Decree that Penn State failed “to value and uphold institutional integrity demonstrated by inadequate, and in some instances non-existent, controls and oversight surrounding the athletics program of the University, such as those controls prescribed by Articles 2.1, 6.01.1, and 6.4 of the NCAA Constitution.”
10. Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that Penn State failed “to value and uphold institutional integrity demonstrated by inadequate, and in some instances non-existent, controls and oversight surrounding the athletics program of the University, such as those controls prescribed by Articles 2.1, 6.01.1, and 6.4 of the NCAA Constitution.”
11. Please admit that the NCAA contends that facts support the statement in the Consent Decree that Penn State and its leadership “fail[ed] to maintain minimal standards of appropriate and responsible conduct.”
12. Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that Penn State and its leadership “fail[ed] to maintain minimal standards of appropriate and responsible conduct.”
13. Please admit that the NCAA contends that facts support the statement in the Consent Decree that Penn State and its leadership demonstrated “[a] lack of adherence to fundamental notions of individual integrity.”
14. Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that Penn State and its leadership demonstrated “[a] lack of adherence to fundamental notions of individual integrity.”
15. Please admit that the NCAA contends that facts support the statement in the Consent Decree that Coach Joe Paterno, as the head football coach at Penn State, did not “promote an atmosphere for compliance and monitor the activities of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach.”
16. Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that Coach Joe Paterno, as the head football coach at Penn State, did not “promote an atmosphere for compliance and monitor the activities of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach.”
17. Please admit that the NCAA contends that facts support the statement in the Consent Decree that Coach Joe Paterno, as the head football coach at Penn State, did not “serve

as [a] positive moral model for students in order ‘for intercollegiate athletics to promote the character development of participants, to enhance the integrity of higher education and to promote civility in society.’”

18. Please admit that the NCAA no longer contends that facts support the NCAA’s statement in the Consent Decree that Coach Joe Paterno, as the head football coach at Penn State, did not “serve as [a] positive moral model for students in order ‘for intercollegiate athletics to promote the character development of participants, to enhance the integrity of higher education and to promote civility in society.’”
19. Please admit that the NCAA contends that facts support the statements in the Consent Decree that Coach Joe Paterno “failed to protect against a child sexual predator harming children for over a decade” and “concealed Sandusky’s activities from the Board of Trustees, the University community, and authorities.”
20. Please admit that the NCAA no longer contends that facts support the statements in the Consent Decree that Coach Joe Paterno “failed to protect against a child sexual predator harming children for over a decade” and “concealed Sandusky’s activities from the Board of Trustees, the University community, and authorities.”
21. Please admit that the NCAA contends that facts support the statement in the Consent Decree that Coach Joe Paterno “empowered Sandusky to attract potential victims to the campus and football events by allowing him to have continued, unrestricted and unsupervised access to the University’ facilities and affiliation with the University’s prominent football program.”
22. Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that Coach Joe Paterno “empowered Sandusky to attract potential victims to the campus and football events by allowing him to have continued, unrestricted and unsupervised access to the University’ facilities and affiliation with the University’s prominent football program.”
23. Please admit that the NCAA contends that facts support the statement that Coach Joe Paterno “ignored the red flags of Sandusky’s behaviors[.]”
24. Please admit that the NCAA does not contend that facts support the statement that Coach Joe Paterno “ignored the red flags of Sandusky’s behaviors[.]”
25. Please admit that the NCAA contends that facts support the finding of the Freeh Report, quoted by the Consent Decree as one of its “Findings and Conclusions,” that, in order to avoid the consequences of bad publicity, Coach Joe Paterno (among others) “repeatedly concealed critical facts relating to Sandusky’s child abuse from the authorities, the University’s Board of Trustees, the Penn State community and the public at large.”

26. Please admit that the NCAA no longer contends that facts support the finding of the Freeh Report, quoted by the Consent Decree as one of its "Findings and Conclusions," that, in order to avoid the consequences of bad publicity, Coach Joe Paterno (among others) "repeatedly concealed critical facts relating to Sandusky's child abuse from the authorities, the University's Board of Trustees, the Penn State community and the public at large."
27. Please admit that the NCAA contends that facts support the finding of the Freeh Report, quoted by the Consent Decree as one of its "Findings and Conclusions," that "avoiding the consequences of bad publicity was the most significant cause for the University's failure to protect child victims and report to authorities," even though "it was not the only cause."
28. Please admit that the NCAA no longer contends that facts support the finding of the Freeh Report, quoted by the Consent Decree as one of its "Findings and Conclusions," that "avoiding the consequences of bad publicity was the most significant cause for the University's failure to protect child victims and report to authorities," even though "it was not the only cause."
29. Please admit that the NCAA contends that facts support the finding of the Freeh Report, quoted by the Consent Decree as one of its "Findings and Conclusions," that "[other causes] for the University's failure to protect child victims and report to authorities" included that Coach Joe Paterno (among others) "allowed Sandusky to retire as a valued member of the University's football legacy, with 'ways 'to continue to work with young people through Penn State,' essentially granting him license to bring boys to campus facilities for 'grooming' as targets for his assaults[.]'"
30. Please admit that the NCAA no longer contends that facts support the finding of the Freeh Report, quoted by the Consent Decree as one of its "Findings and Conclusions," that "[other causes] for the University's failure to protect child victims and report to authorities" included that Coach Paterno (among others) "allowed Sandusky to retire as a valued member of the University's football legacy, with 'ways 'to continue to work with young people through Penn State,' essentially granting him license to bring boys to campus facilities for 'grooming' as targets for his assaults[.]'"
31. Please admit that the NCAA contends that facts support the finding of the Freeh Report, referenced in the Consent Decree as one of its "Findings and Conclusions," that "[other causes] for the failure to protect child victims and report to authorities" included the University's "culture of reverence for the football program that is ingrained at all levels of the [Penn State] campus community."
32. Please admit that the NCAA no longer contends that facts support the finding in the Freeh Report, referenced in the Consent Decree as one of its "Findings and Conclusions," that "[other causes] for the University's failure to protect child victims

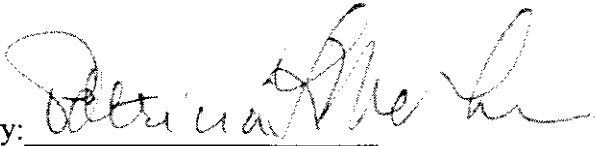
and report to authorities” included the University’s “culture of reverence for the football program that is ingrained at all levels of the [Penn State] campus community.”

33. Please admit that the NCAA contends that facts support the statement in the Consent Decree that the evidence described in the Consent Decree “presents an unprecedented failure of institutional integrity leading to a culture in which a football program was held in higher esteem than the values of the institution, the values of the NCAA, the values of higher education, and most disturbingly the values of human decency.”
34. Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that the evidence described in the Consent Decree “presents an unprecedented failure of institutional integrity leading to a culture in which a football program was held in higher esteem than the values of the institution, the values of the NCAA, the values of higher education, and most disturbingly the values of human decency.”
35. Please admit that the NCAA contends that “[t]he sexual abuse of children on a university campus by a former university official — and even the active concealment of that abuse — while despicable, ordinarily would not be actionable by the NCAA.”
36. Please admit that the NCAA no longer contends that “[t]he sexual abuse of children on a university campus by a former university official — and even the active concealment of that abuse — while despicable, ordinarily would not be actionable by the NCAA.”
37. Please admit that the NCAA contends that facts support the statement in the Consent Decree that at Penn State “it was the fear of or deference to the omnipotent football program that enabled a sexual predator to attract and abuse its victims.”
38. Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that at Penn State “it was the fear of or deference to the omnipotent football program that enabled a sexual predator to attract and abuse its victims.”
39. Please admit that the NCAA contends that facts support the statement in the Consent Decree that “the reverence for Penn State football permeated every level of the University community.”
40. Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that “the reverence for Penn State football permeated every level of the University community.”
41. Please admit that the NCAA contends that facts support the statement in the Consent Decree that “the culture exhibited at Penn State is an extraordinary affront to the values all members of the [NCAA] have pledged to uphold and calls for extraordinary action.”
42. Please admit that the NCAA no longer contends that facts support the statement in the Consent Decree that “the culture exhibited at Penn State is an extraordinary affront to

the values all members of the [NCAA] have pledged to uphold and calls for extraordinary action.”

43. Please admit that the NCAA contends that the sanctions imposed pursuant to the Consent Decree were an appropriate method by which “to change the culture that allowed [the sexual abuse of children] to occur and realign it in a sustainable fashion with the expected norms and values of intercollegiate athletics.”
44. Please admit that the NCAA no longer contends that the sanctions imposed pursuant to the Consent Decree were an appropriate method by which “to change the culture that allowed [the sexual abuse of children] to occur and realign it in a sustainable fashion with the expected norms and values of intercollegiate athletics.”
45. Please admit that the NCAA contends that the Consent Decree appropriately vacated all wins of the Penn State football team from 1998 to 2011.
46. Please admit that the NCAA no longer contends that the Consent Decree appropriately vacated all wins of the Penn State football team from 1998 to 2011.
47. Please admit that the NCAA contends that facts support the statement in the Superseding Agreement to the Consent Decree that “the NCAA [had a] legitimate and good faith interest and concern regarding the Jerry Sandusky matter.”
48. Please admit that the NCAA no longer contends that facts support the statement in the Superseding Agreement to the Consent Decree that “the NCAA [had a] legitimate and good faith interest and concern regarding the Jerry Sandusky matter.”

Date: May 19, 2015

By: 

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PLAINTIFFS' FIRST REQUESTS FOR ADMISSION TO DEFENDANT NATIONAL COLLEGIATE ATHLETIC ASSOCIATION were served this 19th day of May, 2015 by first class mail and email to the following:

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

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CERTIFICATE OF SERVICE

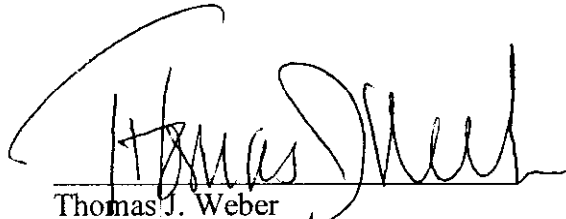
I HEREBY CERTIFY that a true and correct copy of the foregoing MOTION FOR JUDGMENT ON THE PLEADINGS was served this 30th day of June, 2015 by first class mail and email to the following:

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

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