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.

Civil Division

Docket No. 2013-2082

PLAINTIFFS' RESPONSE TO NEW MATTER OF DEFENDANT DR. EDWARD J. RAY

Filed on Behalf of the Plaintiffs

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v.	)	
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NATIONAL COLLEGIATE ATHLETIC ASSOCIATION ("NCAA");	)	
	)	
MARK EMMERT, individually and as President of the NCAA;	)	
	)	
and	)	
	)	
EDWARD RAY, individually and as former Chairman of the Executive Committee of the NCAA,	)	
	)	
Defendants.	)	

PLAINTIFFS' RESPONSE TO THE NEW MATTER OF DEFENDANT DR. EDWARD J. RAY

Plaintiffs Estate of Joseph Paterno, William Kenney, and Joseph V. ("Jay") Paterno (collectively "Plaintiffs"), by and through their undersigned counsel, submit the following response to the New Matter of Defendant Dr. Edward J. Ray ("Defendant Ray's New Matter").

Ratification (Count I)

180 –187. In light of the voluntary withdrawal of all claims by former Plaintiff Al Clemens, he is no longer pursuing a claim under Count I, nor seeking relief thereunder. As a result, no response is required to Defendant Ray's New Matter set forth in paragraphs 180–187.

To the extent a response is required, the allegations of paragraph 180 are admitted. The allegations of paragraphs 181 – 184 purport to quote portions of the Consent Decrees, but that document speaks for itself. The allegations of paragraphs 185 – 187 are denied, and Plaintiffs' allegations of paragraphs 68 – 70 and 92 of the Second Amended Complaint are incorporated herein as though set forth in their entirety.

Consent and/or Absolute Privilege

(Plaintiff Clemens — Counts IV and V)

188 – 191. In light of the voluntary withdrawal of all claims by former Plaintiff Al Clemens, he is no longer pursuing claims under Counts IV and V, nor seeking relief thereunder. As a result, no response is required to Defendant Ray's New Matter set forth in paragraphs 188–191. In addition, the allegations of paragraph 191 are conclusions of law to which no response is required.

To the extent a response is required, Plaintiffs' answers to paragraphs 180 – 187 are incorporated herein by reference in response to paragraph 188. The allegations of paragraphs 189 – 190 of Defendant Ray's New Matter are denied and Plaintiffs' allegations of paragraphs 66, 68 – 70, and 104 – 105 of the Second Amended Complaint are incorporated herein as though set forth in their entirety. The allegations of paragraph 191 of Defendant Ray's New Matter are conclusions of law to which no response is required.

Estoppel (Plaintiff Clemens — All Counts)

192–193. In light of the voluntary withdrawal of all claims by former Plaintiff Al Clemens, he is no longer pursuing claims under any Count of the Second Amended Complaint, nor seeking relief thereunder. As a result, no response is required to Defendant Ray's New Matter set forth in paragraphs 192–193. In addition, the allegations of paragraph 193 are conclusions of law to which no response is required.

To the extent a response is required, Plaintiffs' answers to paragraphs 180–191 are incorporated herein as though fully set forth in their entirety. The allegations of paragraph 193 are denied.

Truth or Substantial Truth (Counts II, III, IV and V)

194. In light of the voluntary withdrawal of all claims by former Plaintiff Al Clemens, he is no longer pursuing claims under Counts IV and V, nor seeking relief thereunder. As a result, no response is required by Plaintiff Clemens to Defendant Ray's New Matter set forth in paragraphs 192–193. The remaining Plaintiffs' answers to paragraphs 180–193 are incorporated herein as though fully set forth in their entirety.

195. The allegations of paragraph 195 of Defendant Ray's New Matter are conclusions of law to which no response is required. The assertions in paragraph 195, footnote 2, are also conclusions of law to which no response is required. To the extent a response is required, it is specifically denied that the statements alleged to be defamatory or disparaging were true or substantially true. By way of further answer, Plaintiffs' allegations in paragraphs 1–8 21–50, 54–80, 84–92, 103–105, 157–158, 166–167 and 169 of the Second Amended Complaint are incorporated herein as though fully set forth in their entirety.

Collateral Estoppel

(Plaintiffs Jay Paterno and William Kenney — Counts II, IV and V)

196. Plaintiffs' answers to paragraphs 180 –195 are incorporated herein as though fully set forth in their entirety.

197. Plaintiffs Paterno and Kenney admit the allegations of paragraph 197 of Defendant Ray's New Matter.

198. Plaintiffs Paterno and Kenney admit they alleged in other litigation that the statement that "[s]ome coaches, administrators and football program staff members ignored the red flags of Sandusky's behaviors and no one warned the public about him," was an actionable statement that Penn State knew was "erroneous and based on unreliable and unsubstantiated conclusions made in the Freeh Report," and that they were part of a small readily identifiable group referenced by that statement.

199. Plaintiffs Paterno and Kenney admit they alleged that the statement that "[s]ome coaches, administrators and football program staff members ignored the red flags of Sandusky's behaviors and no one warned the public about him," in addition to other acts by Penn State related to their termination and the Consent Decree, caused them financial harm and future lost employment opportunities, and that they asserted claims against Penn State under 42 U.S.C. §1983 based on those actions by Penn State.

200. Plaintiffs Paterno and Kenney admit the federal court dismissed their Section 1983 claims with prejudice. The remaining allegations of paragraph 200 of Defendant Ray's New Matter are legal conclusions to which no response is required. To the extent a response is required, Plaintiffs deny that the federal court made a legal ruling regarding the "[s]ome coaches

. . ." statement, and further deny that the federal court's comments about that statement were essential to the decision to dismiss the Section 1983 claims.

201. Plaintiffs Paterno and Kenney admit that the "[s]ome coaches . . ." statement concerned them. The remaining allegations of paragraph 201 of Defendant Ray's New Matter are conclusions of law to which no response is required.

202. The allegations of paragraph 202 of Defendant Ray's New Matter are conclusions of law to which no response is required. To the extent a response is required, it is specifically denied that Plaintiffs Paterno and Kenney are collaterally estopped from asserting that the "[s]ome coaches . . ." statement referred to them.

203. The allegations of paragraph 203 of Defendant Ray's New Matter are conclusions of law to which no response is required.

204. The allegations of paragraph 204 of Defendant Ray's New Matter are conclusions of law to which no response is required.

Lack of Personal Jurisdiction (All Applicable Counts)

205. Plaintiffs' answers to paragraphs 180–204 are incorporated herein as if set forth in their entirety.

206. The allegations of paragraph 206 of Defendant Ray's New Matter are conclusions of law to which no response is required. To the extent a response is required, Plaintiffs deny that this Court lacks personal jurisdiction over Dr. Ray.

207. The allegations of paragraph 207 of Defendant Ray's New Matter are conclusions of law to which no response is required.

WHEREFORE, Plaintiffs respectfully request that judgment be entered in their favor and against Defendant Dr. Edward J. Ray.

Respectfully submitted,

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Dated: November 3, 2016

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **PLAINTIFFS' RESPONSE TO DEFENDANT RAY'S NEW MATTER** was served this 3rd day of November, 2016 by email and first class mail to the following:

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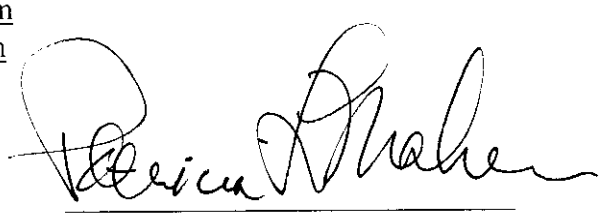

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