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IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

GEORGE SCOTT PATERNO,
as duly appointed representative of the
ESTATE and FAMILY of JOSEPH PATERNO;

RYAN McCOMBIE, ANTHONY LUBRANO, AL
CLEMENS, PETER KHOURY, and
ADAM TALIAFERRO, members of the Board of
Trustees of Pennsylvania State University;

PETER BORDI, TERRY ENGELDER,
SPENCER NILES, and JOHN O'DONNELL,
members of the faculty of Pennsylvania State
University;

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

ANTHONY ADAMS, GERALD CADOGAN,
SHAMAR FINNEY, JUSTIN KURPEIKIS,
RICHARD GRDNER, JOSH GAINES, PATRICK
MAUTI, ANWAR PHILLIPS, and MICHAEL
ROBINSON, former football players of 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.

-) Docket No.: 2013-2082
-) Type of Case:
 - Declaratory Judgment
 - Injunction
 - Breach of Contract
 - Tortious Interference with contract
 - Defamation
 - Commercial Disparagement
 - Conspiracy
-) Type of Pleading:
 - Preliminary Objections with Notice to Plead
-) Filed on Behalf of:
 - National Collegiate Athletic Association, Mark Emmert, Edward Ray, Defendants
-) Counsel of Record for this Party:
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-) PA I.D. Number: 15681

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IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

GEORGE SCOTT PATERNO, as duly appointed representative of
the ESTATE and FAMILY of JOSEPH PATERNO;

RYAN MCCOMBIE, ANTHONY LUBRANO, AL CLEMENS,
PETER KHOURY, and ADAM TALIAFERRO, members of the
Board of Trustees of Pennsylvania State University;

PETER BORDI, TERRY ENGELDER, SPENCER NILES, and
JOHN O'DONNELL, members of the faculty;

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

ANTHONY ADAMS, GERALD CADOGAN, SHAMAR
FINNEY, JUSTIN KURPEIKIS, RICHARD GARDNER, JOSH
GAINES, PATRICK MAUTI, ANWAR PHILLIPS, and
MICHAEL ROBINSON, former football players

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

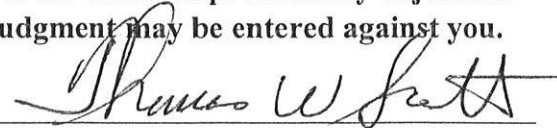
NOTICE TO PLEAD

To: Plaintiffs c/o

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


Thomas W. Scott, Counsel for Defendants

COPY

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IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

GEORGE SCOTT PATERNO, as duly appointed representative of)
the ESTATE and FAMILY of JOSEPH PATERNO;)

RYAN MCCOMBIE, ANTHONY LUBRANO,)
AL CLEMENS, PETER KHOURY, and)
ADAM TALIAFERRO, members of the)
Board of Trustees of Pennsylvania State University;)

PETER BORDI, TERRY ENGELDER,)
SPENCER NILES, and JOHN O'DONNELL,)
members of the faculty of Pennsylvania State University;)

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former football coaches at Pennsylvania State University; and)

ANTHONY ADAMS, GERALD CADOGAN,)
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RICHARD GARDNER, JOSH GAINES, PATRICK MAUTI,)
ANWAR PHILLIPS, and MICHAEL ROBINSON, former)
football players of 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

DEFENDANTS' PRELIMINARY OBJECTIONS

The National Collegiate Athletic Association (“NCAA”), Dr. Mark Emmert (“Dr. Emmert”), and Dr. Edward Ray (“Dr. Ray”) (collectively, “Defendants”) hereby preliminarily object to Plaintiffs’ Complaint, pursuant to Pennsylvania Rule of Civil Procedure Number 1028, for the following reasons:

Objection Pursuant to Pa. R.C.P. No. 1028(a)(1) – Lack of Jurisdiction Due to Failure to Join an Indispensable Party

1. Under Pennsylvania law, failure to join an indispensable party deprives the court of subject matter jurisdiction and requires dismissal.

2. A party is indispensable when “his or her rights are so connected with the claims of the litigants that no decree can be made without impairing those rights.” *Polydyne, Inc. v. City of Phila.*, 795 A.2d 495, 496 (Pa. Commw. Ct. 2002) (citation omitted).

3. The Pennsylvania State University (“Penn State” or the “University”) is not named as a party.

4. Plaintiffs’ Complaint seeks to void the Consent Decree between Penn State and the NCAA dated July 23 2012 (“Consent Decree”), attached as Ex. B to the Complaint, a contract which Penn State agreed to enter into. *See* Compl. ¶ 154.

5. Granting Plaintiffs’ requested relief would impair Penn State’s rights by voiding a contract to which it is a party. Penn State entered into the Consent Decree for valuable consideration. In exchange for consenting to the NCAA’s sanctions, Penn State avoided a protracted investigation, achieved an expedited

resolution of the enforcement process, and avoided imposition of the “death penalty.” Consent Decree at 1, 4. Declaring the Consent Decree void *ab initio*, as Plaintiffs seek, could expose Penn State to a prolonged investigation, with the attendant uncertainty that would bring to the football program, and could potentially result in Penn State receiving harsher sanctions than it had contracted to avoid.

6. The Complaint directly challenges the autonomy of the University. The Complaint alleges that the University “could not, and lacked any authority to, waive Plaintiffs’ rights and entitlement to the [enforcement and appeal] procedures [in the NCAA’s bylaws] by signing the Consent Decree” Compl. ¶ 111.

7. The Complaint also strikes at the authority and responsibilities of the University’s senior leadership. Plaintiffs challenge President Erickson for taking allegedly unlawful and *ultra vires* actions, *see* Compl. ¶ 87, and imply that senior University officials lacked the authority to accept responsibility for the failings addressed in the Freeh Report,¹ Compl. ¶¶ 57-59, which had been necessary to enter into an expedited resolution. Plaintiffs indicate that such an action required ratification by the Board of Trustees. *See id.*

¹ Freeh Sporkin & Sullivan, LLP, *Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky* (2012) (“Freeh Report”), available at http://progress.psu.edu/assets/content/REPORT_FINAL_071212.pdf.

8. As such, Penn State is an indispensable party because its rights are intimately intertwined with the claims of the litigants such that no findings can be made without affecting those rights.

WHEREFORE, Defendants ask the Court to dismiss Plaintiffs' Complaint for failure to join an indispensable party.

Objection Pursuant to Pa. R.C.P. No. 1028(a)(5) – Incapacity to Bring Counts I-II

9. Paragraphs 1 through 8 are incorporated by reference herein.

10. Plaintiffs lack standing to assert their breach of contract claims against the NCAA because they are neither parties to Penn State's membership agreement with the NCAA, nor third-party beneficiaries of that agreement.

11. The NCAA's Constitution and Bylaws do not manifest or express an intent to bestow procedural rights to appeal a member university's sanctions on an unbounded set of former players, former head or assist coaches, trustees, or faculty members from that university.

12. The NCAA Bylaws provide that the NCAA and its members intended to bestow procedural rights related to the NCAA sanctions process only on "[i]nvolved individuals" within the meaning of the Bylaws. *See* NCAA Academic

and Membership Affairs Staff, *2011-12 NCAA Division I Manual* arts. 32.10.1.1-32.10.1.2, 19.1.2.3 (2011) (“Manual”), attached as Ex. A to the Complaint.²

13. Involved individuals are “former or current student-athletes and former or current institutional staff members who have received notice of significant involvement in alleged violations through the notice of allegations or summary disposition process.” Manual art. 32.1.5.

14. The NCAA has never treated former players, former head or assistant coaches, university trustees, or faculty members who were not under consideration for individual sanctions and against whom no individual sanctions were imposed as “involved individuals” as that term is defined in the NCAA Bylaws. Declaration of Dr. Mark Emmert ¶ 8 (“Emmert Decl.”) (July 22, 2013), attached as Ex. 1 hereto.

15. The Complaint alleges that Joseph V. Paterno (“Coach Paterno”) and Al Clemens are involved individuals.

16. Coach Paterno cannot qualify as an “involved individual” because he passed away months before the Freeh Report was released, before Penn State publicly announced its acceptance of its findings, and before the NCAA proceeded to impose sanctions on the basis of those findings. *See* Compl. ¶¶ 56-58; 75.

² As recognized in the official Note accompanying Pa. R.C.P. 1028, preliminary objections under subdivisions (a)(1) and (5) cannot be determined from facts of record. In such a case, the factual averments must be supported by a verification and endorsed with a notice to plead.

17. Additionally, the sanctions imposed by the Consent Decree, including the vacation of wins, are institutional sanctions—not sanctions against individual members or coaches. *See* Manual art. 19.5.2(h)(2).

18. Likewise, Mr. Clemens was not an involved individual.

19. Mr. Clemens is a member of Penn State Board of Trustees. Although the Consent Decree refers generally to the shortcomings of the Board of Trustees discussed in the Freeh Report, Mr. Clemens is not individually identified anywhere in the Consent Decree. The Consent Decree does not single out Mr. Clemens for criticism or suggest that he personally violated any NCAA rules.

20. Plaintiffs can only enforce promises within the Bylaws made for their benefit.

21. Plaintiffs' Complaint fails to point to any actual provision of the Bylaws that they seek to enforce.

22. Additionally, none of the alleged procedural violations that Plaintiffs complain about vest any rights in them, as opposed to Penn State.

23. For these reasons, Coach Paterno and Mr. Clemens are not third-party beneficiaries of Penn State's membership agreement with the NCAA.

24. With regard to Count II, the Plaintiffs that bring that claim do not even allege that they are "involved individuals." Instead, they attempt to rely on a statement within the NCAA Bylaws which broadly states that an "important

consideration” in managing the NCAA Enforcement Program is to “provide fairness to uninvolved student-athletes, coaches, administrators, competitors and other institutions.” Manual art. 19.01.1.

25. This statement simply does not show that the contracting parties intended to confer third-party beneficiary status on all “uninvolved student-athletes, coaches, administrators, competitors and other institutions” and does not create an enforceable third-party right to enforce “fairness” provisions within the manual any time a supporter of an athletic program is disgruntled by sanctions imposed on the program. It was not within the intent of the parties to Penn State’s membership agreement with the NCAA that every uninvolved student or competitor to Penn State would have the right to veto Penn State’s decision to achieve a negotiated resolution to potential violations of NCAA rules.

WHEREFORE, Defendants ask the Court to dismiss Counts I and II because Plaintiffs are not third-party beneficiaries of the agreement alleged to have been breached and, therefore, lack standing to bring these claims.

Objection Pursuant to Pa. R.C.P. No. 1028(a)(2) – Impertinent Material³

26. Paragraphs 1 through 25 are incorporated by reference herein.

³ To the extent that the Court thinks it is more appropriate to consider this objection under a different provision of Pennsylvania Rule of Civil Procedure 1028, such as Rule 1028(a)(4) (the demurrer standard), or Rule 1028(a)(5) (the standard for lack of standing), Defendants welcome it to do so.

27. Plaintiffs' request that this Court void the Consent Decree between Penn State and the NCAA is baseless.

28. Plaintiffs lack standing to request a declaration voiding the Consent Decree in its entirety because they have failed to establish a direct, immediate, and substantial injury by virtue of the Consent Decree—a contract to which they are complete strangers and which imposes no contractual obligations on them. Even if the NCAA did owe Plaintiffs certain due process rights under the Bylaws (which it did not), that alleged breach would not invalidate the entire Consent Decree, including provisions having nothing to do with Plaintiffs (*e.g.*, Penn State's agreement to pay \$60 million into a fund to assist child sexual abuse victims, *see* Consent Decree at 5).

29. Additionally, Plaintiffs have not presented any basis for which declaring the Consent Decree void *ab initio*, an extreme and rare remedy, is appropriate relief. For example, Plaintiffs have not alleged that the Consent Decree imposes a contractual obligation that would violate the law.

WHEREFORE, Defendants request that the Court strike Plaintiffs' request for a declaratory judgment that the NCAA-imposed Consent Decree was unauthorized, unlawful, and void *ab initio*.

Objection Pursuant to Pa. R.C.P. No. 1028(a)(4) – Demurrer to Count V

30. Paragraphs 1 through 29 are incorporated by reference herein.

31. Plaintiffs' Count V is premised on allegedly defamatory statements critical of the Penn State community and the Board of Trustees made by the NCAA in the Consent Decree and contemporaneously therewith.

32. Plaintiffs' defamation claims fails for three reasons.

33. First, none of the alleged defamatory statements even mentions any of the Plaintiffs or could reasonably be interpreted as referring to them.

34. Most of the allegedly defamatory statements are directed toward innumerable members of the Penn State Community at large—for whom no cause of action can lie—and none of the statements reasonably could be viewed as identifying any of the Plaintiffs.

35. Second, Plaintiffs' defamation claim fails for the additional and independent reason that the statements identified by Plaintiffs are expressions of the NCAA's opinion, based on facts that were publicly disclosed, *i.e.*, the Freeh Report.

36. Lastly, the defamation claim fails because Plaintiffs have not alleged facts sufficient to demonstrate that the NCAA acted with actual malice.

37. Plaintiffs must allege that Defendants acted with actual malice because all Plaintiffs (except for the Penn State faculty members) are, at a minimum, limited-purpose public figures. It is undeniable that this action involves

a public controversy, and the nature and extent of Plaintiffs' involvement in this controversy renders them public figures.

38. The eleven former players and coaches are public figures because they chose to become coaches and athletes in an elite athletic program.

39. The five Board of Trustee Plaintiffs are public figures due to the nature of their position as leaders of the University, and their responsibility for overseeing the implementation of the Consent Decree entwines them in the public controversy. Further, the Board's decisions to remove President Graham Spanier and Coach Paterno from their positions, and to hire Freeh Sporkin & Sullivan, LLP ("FSS") to investigate the alleged failure of Penn State personnel to respond to and report allegations against Sandusky place them directly at the center of the controversy.

40. None of Plaintiffs' allegations demonstrate that the NCAA knew or recklessly disregarded the truth by relying on the Freeh Report. Plaintiffs acknowledge that at the time Defendants made their allegedly defamatory statements, Penn State itself had indicated that it accepted the findings in the report, and that the report was authored by the former head of the Federal Bureau of Investigation after an extensive investigation. Compl. ¶¶ 56-57. Plaintiffs only aver in a conclusory fashion that the NCAA made the alleged statements "with

intentional, reckless, or negligent disregard for their truth,” Compl. ¶ 142, which is insufficient to satisfy Plaintiffs’ burden to plead actual malice with particularity.

41. Further, Plaintiffs’ allegations regarding Defendants’ reliance on one source (*i.e.* the Freeh Report) and their failure to investigate or verify the veracity of the source’s information do not rise to the level of actual malice. *See* Compl. ¶ 110.

WHEREFORE, Defendants ask the Court to dismiss Count V for failure state a claim.

Objection Pursuant to Pa. R.C.P. No. 1028(a)(4) – Demurrer to Count IV

42. Paragraphs 1 through 41 are incorporated by reference herein.

43. The Estate and Family of Coach Paterno’s (“the Estate”) claim for commercial disparagement must be dismissed because the Complaint is entirely bereft of any allegation that could make this claim even make sense. The pleadings do not identify any commercial interests allegedly disparaged. Further, none of the statements that the Estate identifies disparage the quality of any goods or services.

44. In addition to its failure to plead any sort of commercial interest, the Estate also fails to sufficiently plead the alleged losses with specificity. The Estate has not even attempted to identify the supposed financial loss that it suffered

during the year between the publication of the Consent Decree and the filing of this lawsuit.

45. Additionally, the Estate fails to allege—and cannot allege—how the disparaging statements contained in the Consent Decree allegedly caused financial damage to a commercial interest. The Estate does not allege any unique diminution in the value of Coach Paterno’s services as a coach—if there even was any—due to the publication of the Consent Decree, separate from the extensive negative media attention given to Coach Paterno in the midst of the Sandusky scandal and statements contained in the Freeh Report.

46. Further still, Coach Paterno passed away on January 23, 2012, well before the NCAA released the Consent Decree. No case suggests that a disparagement claim accrues after an individual’s death based on statements that allegedly impugn that individual’s ability to perform his job.

47. At the root of Plaintiffs’ claim is a criticism of “Joe Paterno’s character and conduct ... because [Defendants] imputed dishonest conduct to Joe Paterno.” Compl. ¶ 133. However, commercial disparagement claims are not proper “to vindicate the plaintiff’s business reputation and good name.” *SNA, Inc. v. Array*, 51 F. Supp. 2d 554, 565 (E.D. Pa. 1999).

48. In short, the Complaint presents no cognizable or understandable theory as to how Coach Paterno has any commercial interest that survived his

death, that could be harmed after his death, and that did, in fact, diminish in value because of the statements in the Consent Decree.

WHEREFORE, Defendants ask the Court to dismiss Count IV for failure to state a claim.

Objection Pursuant to Pa. R.C.P. No. 1028(a)(4) – Demurrer to Count III

49. Paragraphs 1 through 48 are incorporated by reference herein.

50. Two plaintiffs, Jay Paterno and William Kenney, assert that in imposing the penalties outlined in the Consent Decree against Penn State, the Defendants intentionally interfered with Plaintiffs’ “prospective and existing employment, business, and economic opportunities with many prestigious college and professional football programs, including at Penn State” Compl. ¶¶ 123-24.

51. Plaintiffs fail to allege any material facts in support of the claim, and instead assert purely skeletal legal conclusions.

52. Specifically, Plaintiffs fail to identify a single specific contract or opportunity that has been interfered with.

53. The Complaint’s vague references to prospective “opportunities” do not suffice as Plaintiffs still must specify a prospective contract that, but for Defendants’ conduct, had a reasonable probability of coming to fruition.

54. Additionally, Plaintiffs have not sufficiently pled that the NCAA intended to interfere with any contract or prospective contract. Indeed, Plaintiffs have not alleged any action at all by the NCAA. *See id.*

55. Lastly, even if the NCAA intended to interfere with a contract, its actions in imposing penalties on a member institution for violation of the NCAA's own rules are privileged and not improper.

WHEREFORE, Defendants ask the Court to dismiss Count III for failure state a claim.

Objection Pursuant to Pa. R.C.P. No. 1028(a)(4) – Demurrer to Count VI

56. Paragraphs 1 through 55 are incorporated by reference herein.

57. To state a claim for civil conspiracy, Plaintiffs must first demonstrate a combination of persons with a common purpose to do an unlawful act or to do a lawful act by unlawful means or purpose.

58. The Complaint has not sufficiently alleged facts demonstrating a combination between the NCAA and FSS.

59. Specifically, the Complaint asserts only that the NCAA and FSS coordinated and communicated, but it lacks *any* allegations that would depict that coordination and communication as a “combination” sufficient to support a civil conspiracy claim. For example, the pleadings lack any assertion regarding the

manner in which the NCAA and FSS allegedly coordinated, how the NCAA was involved, or which individuals with each entity worked together.

60. Further, Plaintiffs fail to allege that the NCAA and FSS combined for an unlawful purpose, specifically, to commit a tort. In stating their civil conspiracy claim, Plaintiffs allege only that Defendants conspired to “breach[] the contract between the NCAA and Penn State,” Compl. ¶ 148, but a civil conspiracy claim cannot be premised on a breach of contract.

61. Further, no tort alleged in the Complaint can provide the basis of the conspiracy claim because, *inter alia*, Plaintiffs fail to allege that the sole purpose of the alleged combination was to commit the tort, rather than to conduct a legitimate and proper investigation as commissioned by Penn State.

WHEREFORE, Defendants ask the Court to dismiss Count VI for failure state a claim.

Objection Pursuant to Pa. R.C.P. No. 1028(a)(1) – Lack of Personal Jurisdiction
Over Dr. Emmert and Dr. Ray

62. Paragraphs 1 through 61 are incorporated by reference herein.

63. Plaintiffs point to no material facts showing that the exercise of general jurisdiction is proper. Specifically, Plaintiffs fail to plead any facts suggesting that Dr. Emmert or Dr. Ray maintain continuous and systematic contacts with Pennsylvania.

64. General jurisdiction is also unavailable under 42 Pa. C.S.A. § 5301(a)(1)(i)-(iii) (i), because neither Dr. Emmert, nor Dr. Ray was “presen[t] in this Commonwealth at the time when process [was] served”; (ii) was “[d]omicile[d] in this Commonwealth at the time when process is served”; or (iii) “consent[ed]” to jurisdiction.

65. Dr. Emmert currently resides in Indiana. Emmert Decl. ¶ 3.

66. Dr. Ray currently resides in Oregon. Declaration of Dr. Edward Ray ¶ 2 (“Ray Decl.”) (July 19, 2013), attached as Ex. 2 hereto.

67. Neither Dr. Emmert nor Dr. Ray lives in Pennsylvania, works in Pennsylvania, maintains a bank account in Pennsylvania, or owns real estate in Pennsylvania. Emmert Decl. ¶ 4; Ray Decl. ¶ 9.

68. From November 2011 through July 2012, the time period in which the relevant actions occurred, neither Dr. Emmert nor Dr. Ray ever set foot in the state of Pennsylvania. Emmert Decl. ¶ 5; Ray Decl. ¶ 8.

69. During the relevant time period, Dr. Ray never placed phone calls or sent emails or letters to Penn State or anyone in Pennsylvania respecting the Consent Decree. Ray Decl. ¶ 5.

70. From November 2011 through July 2012, Dr. Emmert only communicated with Penn State President Rodney Erickson by letter or phone from outside Pennsylvania. Emmert Decl. ¶ 6.

71. Dr. Emmert negotiated and signed the Consent Decree between the NCAA and Penn State from outside Pennsylvania. Emmert Decl. ¶ 7.

72. Additionally, Plaintiffs have not alleged facts demonstrating that specific jurisdiction is proper over Dr. Emmert or Dr. Ray in either their individual or corporate capacities for any of the claims asserted against them.

73. Jurisdiction over corporate officers in their personal capacities for the alleged commission of a tort can only be exercised based on actions taken *within* the forum state.

74. Here, Plaintiffs fail to plead that Dr. Emmert or Dr. Ray ever set foot in Pennsylvania over the course of their allegedly tortious actions.

75. Dr. Ray never even placed phone calls or emails or sent letters to Penn State or anyone in Pennsylvania respecting the Consent Decree.

76. Plaintiffs' attempt to assert that the Court has personal jurisdiction over Dr. Emmert and Dr. Ray in their corporate capacities is based on an alleged harm caused by Defendants in Pennsylvania.

77. However, as to each claim, Plaintiffs fail to plead that Pennsylvania was the "focal point" of the harm suffered by Plaintiffs or that the tortious activity was "expressly aimed" at Pennsylvania.

a. Regarding Plaintiffs' claim that Dr. Emmert and Dr. Ray interfered with contractual relations, Plaintiffs do not allege any facts indicating that

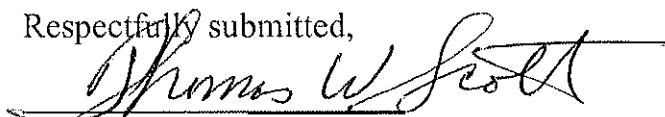
Pennsylvania was the “focal point” of the harm suffered by the tortious activity alleged.

b. Regarding the claims for commercial disparagement and defamation, Plaintiffs fail to allege that the statements were “expressly aimed” at causing harm in Pennsylvania.

c. Lastly, regarding the claim for civil conspiracy, Plaintiffs’ unsubstantiated allegations that Defendants agreed to bypass the NCAA’s rules and deprive Plaintiffs of their rights are not adequate to serve as the basis for personal jurisdiction over Dr. Emmert and Dr. Ray.

WHEREFORE, Defendants ask the Court to dismiss all claims against Dr. Emmert and Dr. Ray individually and in their corporate capacities for lack of personal jurisdiction.

Respectfully submitted,



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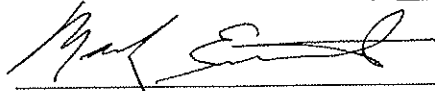
Counsel for Defendants

DECLARATION OF MARK EMMERT IN SUPPORT OF DEFENDANTS'
PRELIMINARY OBJECTIONS

I, Mark Emmert, do hereby declare:

1. I am over the age of eighteen years, and I have personal knowledge of the facts set forth in this declaration.
2. I am the President of the National Collegiate Athletic Association ("NCAA").
3. I currently live in Indiana.
4. I have never resided in Pennsylvania, maintained a bank account in Pennsylvania, owned real estate in Pennsylvania, or transacted business in my personal capacity in Pennsylvania.
5. From November 2011 through July 2012, I never set foot in the state of Pennsylvania.
6. From November 2011 through July 2012, I only communicated with Pennsylvania State University ("Penn State") President Rodney Erickson by letter or phone from outside Pennsylvania.
7. I negotiated and signed the Consent Decree between the NCAA and Penn state from outside Pennsylvania.
8. To the best of my knowledge, the NCAA has never treated former players, former head or assistant coaches, university trustees, or faculty members whom were not under consideration for individual sanctions and against whom no individual sanctions were imposed as "involved individuals" as that term is defined in the NCAA Bylaws.

I declare, under penalty of perjury subject to the penalties of 18 Pa. C.S. § 4904, that the foregoing is true and correct. Executed on July 22, 2013.



Mark Emmert

DECLARATION OF DR. EDWARD RAY

I, Dr. Edward Ray, do hereby declare and swear as follows:

1. I am over the age of eighteen (18) and am otherwise competent to make this Declaration. The information contained in this Declaration is based on my personal knowledge.
2. I have been the President of Oregon State University since July 31, 2003. I served as a volunteer member on the National Collegiate Athletic Association's ("NCAA's") Executive Committee ("Executive Committee") from approximately April 2007 to August 2012. In October 2009, I was named Chairman of the Executive Committee, and I served in that role until I stepped down from the Executive Committee in August 2012.
3. The NCAA has three membership classifications that are known as Divisions I, II and III. Each division creates its own rules governing athletic programs of its members. The Executive Committee has authority through the NCAA's constitution and bylaws to act on behalf of the NCAA and implement policies. During my tenure as the Chairman, the Executive Committee was comprised of twelve to sixteen individuals and met two to four times per year, which occurred outside of Pennsylvania.
4. On July 17, 2012, the Executive Committee and the Division I Board (on which I also served in my volunteer capacity), met by telephone in a call arranged by the NCAA. The Executive Committee and the Division I Board authorized NCAA President Dr. Mark Emmert to conduct discussions with the leadership of Pennsylvania State University ("Penn State") regarding issues raised by the Jerry Sandusky scandal, Sandusky's recent conviction on numerous criminal counts and the report produced by the law firm Freeh Sporkin & Sullivan, LLP ("Freeh Report"). Dr. Emmert was authorized to make recommendations regarding punitive and corrective measures against Penn State, if appropriate.

5. On July 21, 2012, the Executive Committee and Division I Board met again by telephone in a conference call arranged by the NCAA. During the call, Dr. Emmert outlined a list of sanctions and corrective measures against Penn State proposed to be included in an agreement with Penn State. The Executive Committee and the Division I Board voted to authorize Dr. Emmert to enter into an agreement (the "Consent Decree") with Penn State including the proposed terms.

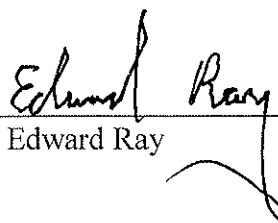
6. On July 23, 2012, I attended a press conference with Dr. Emmert in Indianapolis, Indiana at which time we announced the Consent Decree.

7. I did not negotiate, author or execute the Consent Decree.

8. When Plaintiffs filed their complaint on May 30, 2013, I was shocked that they had named me as a party because I never anticipated that I could personally be sued in Pennsylvania. All of my actions relating to Penn State and the Consent Decree were done in my volunteer capacity as the Chairman of the Executive Committee and as a member of the Division I Board. Throughout the NCAA's investigation and sanctioning of Penn State, I never communicated with anyone in Pennsylvania or visited Pennsylvania. I also did not confer with or even consider Plaintiffs during the sanctioning process.

9. In addition, I have no connection to Pennsylvania. I have never lived, worked, or owned a business or bank account in Pennsylvania. I have never been to Penn State. In fact, the only time I visited Pennsylvania was when I took my children to Hersheypark about twenty five years ago and for academic conferences at Lafayette College in 1984 and Lehigh University in 1989.

I declare, under penalty of perjury subject to the penalties of 18 Pa. C.S. § 4904, that the foregoing is true and correct. Executed on July 19, 2013.



Dr. Edward Ray

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

GEORGE SCOTT PATERNO, as duly appointed representative of)
the ESTATE and FAMILY of JOSEPH PATERNO;)

RYAN MCCOMBIE, ANTHONY LUBRANO, AL CLEMENS,)
PETER KHOURY, and ADAM TALIAFERRO, members of the)
Board of Trustees of Pennsylvania State University;)

PETER BORDI, TERRY ENGELDER, SPENCER NILES, and)
JOHN O'DONNELL, members of the faculty;)

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

ANTHONY ADAMS, GERALD CADOGAN, SHAMAR)
FINNEY, JUSTIN KURPEIKIS, RICHARD GARDNER, JOSH)
GAINES, PATRICK MAUTI, ANWAR PHILLIPS, and)
MICHAEL ROBINSON, former football players)

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

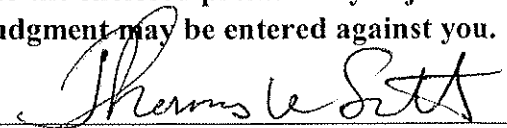
NOTICE TO PLEAD

To: Plaintiffs c/o

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

Wick Sollers, Esquire
KING SPAULDING, LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006

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


Thomas W. Scott, Counsel for Defendants

CERTIFICATE OF SERVICE

I, Thomas W. Scott, hereby certify that I am serving Defendants'

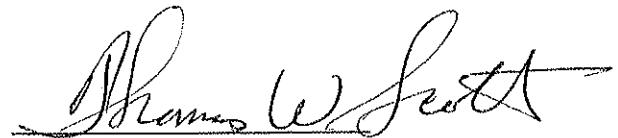
Preliminary Objections on the following by First Class Mail and email:

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Dated: July 23, 2013



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Attorney for Defendants

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GEORGE SCOTT PATERNO, as duly appointed representative of)
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PETER BORDI, TERRY ENGELDER,)
SPENCER NILES, and JOHN O'DONNELL,)
members of the faculty of Pennsylvania State University;)
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former football coaches at Pennsylvania State University; and)
ANTHONY ADAMS, GERALD CADOGAN,)
SHAMAR FINNEY, JUSTIN KURPEIKIS,)
RICHARD GARDNER, JOSH GAINES, PATRICK MAUTI,) Civil Division
ANWAR PHILLIPS, and MICHAEL ROBINSON, former football)
players of Pennsylvania State University,)
Plaintiffs,) Docket No. 2013:-2082
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.

ORDER

And now this _____ day of _____, 2013, it is hereby ORDERED that
the preliminary objections filed by Defendants in the above captioned matter are hereby
SUSTAINED and the case DISMISSED, with prejudice.

BY THE COURT:

J.

☒ Kindly schedule the attached Preliminary Objections for hearing/Argument/Conference before the Court. It is anticipated that the matter will require approximately two minutes/hours/days for resolution.

☐ Opposing counsel/party does not oppose the relief sought, and the attached proposed Order may be signed without appearance.

Date

Name

Phone

E-Mail Address

ORDER

AND NOW, this _____ day of _____,
upon consideration of the Petition/Motion, it is the **ORDER** of this Court
that the hearing/argument/conference is scheduled for the _____ day of
_____, _____, at _____, in the Annex
Courtroom/Courtroom No. _____, Centre County Courthouse Annex/Centre
County Courthouse, Bellefonte, Pennsylvania.

BY THE COURT:

Judge