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DEBRA C. INRELL  
PROTHONOTARY  
CENTRE COUNTY, PA  
TO FOR RECORD

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

ESTATE of JOSEPH PATERNO;  
AL CLEMENS, member of the Board of Trustees of  
Pennsylvania State University;

and

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

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC  
ASSOCIATION  
(“NCAA”),

MARK EMMERT, individually and as President of the  
NCAA, and

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

Defendants,

and

THE PENNSYLVANIA STATE UNIVERSITY,  
Nominal Defendant.

) **Docket No.:** 2013-2082  
)  
) **Type of Case:**  
) Declaratory Judgment Injunction  
) Breach of Contract  
) Tortious Interference with  
) Contract  
) Defamation  
) Commercial Disparagement  
) Conspiracy  
)  
) **Type of Pleading:**  
) The NCAA Defendants’  
) Preliminary Objections to  
) Plaintiffs’ Second Amended  
) Complaint with Notice to Plead  
)  
) **Filed on Behalf of:**  
) National Collegiate Athletic  
) Association, Mark Emmert,  
) Edward Ray  
)  
) **Counsel of Record for this**  
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)  
)  
)

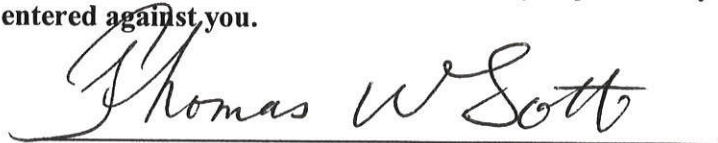


**NOTICE TO PLEAD**

To: Plaintiffs c/o  
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Wick Sollers, Esquire  
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1700 Pennsylvania Avenue, NW  
Washington, DC 20006

**You are hereby notified to file a written response to the enclosed preliminary objections by Dec. 1, 2014 or a judgment may be entered against you.**



Thomas W. Scott, Counsel for the National Collegiate  
Athletic Association, Mark Emmert, and Edward Ray

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DEBRA C. IMHIEL  
PROTHONOTARY  
CENTRE COUNTY, PA  
FILED RECORD



**Objection Pursuant to Pa. R.C.P. No. 1028(a)(2) – Failure of a Pleading to Conform to Law Or Rule of Court**

1. Pursuant to Pennsylvania Rule of Civil Procedure 1033, a party may amend a complaint only “by filed consent of the adverse party or by leave of court.”

2. On September 11, 2014, this Court sustained in part and overruled in part the preliminary objections filed by various Defendants to the First Amended Complaint.

3. In sustaining the Pennsylvania State University’s preliminary objection based on “Insufficient Specificity With Respect To Counts,” this Court granted Plaintiffs limited leave to amend their complaint only in order to cure that specific deficiency. This Court otherwise did not grant Plaintiffs leave to amend their complaint.

4. Plaintiffs have not sought and did not receive the NCAA Defendants’ consent to amend their complaint.

5. Plaintiffs nonetheless have purported to amend their complaint to replead a breach of contract claim on behalf of the Paterno Estate that this Court already has dismissed.

WHEREFORE, the NCAA Defendants request that the Court determine that Plaintiffs’ attempt to amend their complaint beyond the scope permitted by this Court’s September 11, 2014 Order without the NCAA Defendants’ consent or

leave of this Court is improper and such amended allegations should be stricken.

**Objection Pursuant to Pa. R.C.P. No. 1028(a)(5) and 1028(a)(4) – Incapacity to Bring Count I and Demurrer to Count I**

6. Paragraphs 1 through 5 are incorporated by reference herein.

7. The Estate lacks standing to assert its breach of contract claim against the NCAA because it is neither party to Penn State’s membership agreement with the NCAA, nor a third-party beneficiary of that agreement.

8. Plaintiffs claim that the NCAA Bylaws provide that the NCAA and its members intended to bestow procedural rights related to the NCAA sanctions process on “involved individuals.” SAC ¶ 37.

9. As this Court determined in its September 11, 2014 Order, “Joe Paterno was not an involved individual prior to his death, and he cannot, as a matter of law, be an ‘involved individual’ after his death, he had no rights as an ‘involved individual’ at any time, and as a result, his estate has no rights as an ‘involved individual’ now.” Op. & Order 8 (Sept. 11, 2014).

10. As a matter of law, Coach Paterno cannot qualify as an involved individual under the NCAA Bylaws because he never became an involved individual before passing away (if at all).

11. In any event, as Plaintiffs previously have acknowledged, an involved individual’s rights—such as notice, the opportunity to attend hearings, and the chance to submit written information to assist the NCAA in its investigation—were

“fashioned with a living participating individual in mind.” Mem. in Opp. to Defs.’ Prelim. Objs. to FAC 38 (Apr. 16, 2014). It was impossible for the NCAA to extend these rights to Coach Paterno after his death.

12. As this Court already has recognized, even if Coach Paterno had somehow become an involved individual before his death, the Estate cannot assert those rights.

13. An involved individual’s procedural rights are distinctly personal and do not survive death and therefore cannot be exercised by an Estate. By its terms, the procedural rights afforded to involved individuals are intended to afford individuals who are alleged to have been significantly involved in violations of NCAA rules with notice and an opportunity to “present *their* explanation of the alleged violations” and to answer questions “in order to determine the facts of the case.” NCAA Academic and Membership Affairs Staff, *2011-12 NCAA Division I Manual* arts. §§ 32.8.7.3; 32.8.7.6 (emphasis added). Those rights cannot be sensibly exercised by the Estate.

14. The Paterno Estate therefore cannot obtain a declaratory judgment that the actions of the NCAA Defendants were unlawful or violated the Paterno Estate or Joe Paterno’s contractual rights.

15. For the same reasons, the Paterno Estate cannot challenge the validity of the Consent Decree or obtain a declaration that it is void.

WHEREFORE, the NCAA Defendants ask the Court to (i) dismiss the Paterno Estate's breach of contract claim from Count I because the Paterno Estate lacks standing to bring this claim and for failure to state a claim; and (ii) deny the Paterno Estate's request for a declaratory judgment that the actions of the NCAA Defendants were unlawful or violated the Paterno Estate or Joe Paterno's contractual rights, or that the NCAA-imposed Consent Decree was unauthorized, unlawful, and void *ab initio*.

**Objection Pursuant to Pa. R.C.P. No. 1028(a)(2) – Impertinent Material  
1028(a)(1)**

16. Paragraphs 1 through 15 are incorporated by reference herein.

17. For the reasons set out in paragraphs 1-15, Plaintiffs' attempt to amend their complaint to include new matter intended to make or support the Paterno Estate's breach of contract claim, which this Court already has dismissed, is improper.

WHEREFORE, the NCAA Defendants ask this Court to strike the allegations in paragraphs 36, 56-62, 64, 66, 85, 90, 93-94, 96, 98, 111, 115, 119-121, 124(a), 124(b), 124(e), 129, 131(n), 131(o), and all portions of 134 that refer to, make allegations concerning, or seek relief on behalf of the Paterno Estate.

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

18. Paragraphs 1 through 17 are incorporated by reference herein.



19. Defendants Mark Emmert (“Dr. Emmert”) and Edward Ray (“Dr. Ray”) object to the Amended Complaint on the grounds that this Court lacks personal jurisdiction over them, and they should therefore be dismissed from this action.

20. Dr. Emmert and Dr. Ray asserted this same objection in response to the original complaint. *See* Mem. in Supp. of Prelim. Objs. 74-90 (July 23, 2013). On August 21, 2013, the Court entered an order stating that after deciding on all other preliminary objections, it “will set a separate schedule for the objections relating to personal jurisdiction as necessary.” Scheduling Order 1 (Aug. 16, 2013). The SAC does not allege any new grounds for the Court to exercise personal jurisdiction over Dr. Emmert and Dr. Ray. Accordingly, Dr. Emmert and Dr. Ray do not here repeat at length their previously asserted objections on this issue. However, for the avoidance of any doubt, Dr. Emmert and Dr. Ray hereby object to the SAC on the grounds that the Court lacks personal jurisdiction over them, and incorporate by reference the arguments previously set forth in support of their position. *See* Mem. in Supp. of Prelim. Objs. 74-90 (July 23, 2013).

21. As demonstrated more fully in the NCAA Defendants’ prior preliminary objections and supporting brief (which is incorporated by reference hereto), this Court lacks personal jurisdiction over Dr. Emmert and Dr. Ray for the following reasons:

22. Plaintiffs assert only specific jurisdiction over Dr. Emmert and Dr. Ray, and only in their personal, rather than corporate capacities.<sup>1</sup>

23. Specific jurisdiction is proper only when the defendant's contacts with the forum state are purposeful and voluntary and give rise to the cause of action.

24. 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.

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

26. Even if jurisdiction over corporate officers for actions outside the state was available, this Court would lack specific jurisdiction with respect to Plaintiffs' particular claims.

27. 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.

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<sup>1</sup> To the extent Plaintiffs are attempting to assert general jurisdiction over Dr. Emmert and Dr. Ray, they fail to plead any facts suggesting that Dr. Emmert or Dr. Ray maintain continuous and systematic contacts with Pennsylvania.

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

29. Lastly, regarding the claim for civil conspiracy, Plaintiffs’ bald allegations that the NCAA Defendants conspired with a former federal judge and Director of the FBI to deprive Plaintiffs of their rights are not adequate to serve as the basis for personal jurisdiction over Dr. Emmert and Dr. Ray. Plaintiffs also point to no aspect of the supposed conspiracy that took place in Pennsylvania.

WHEREFORE, the NCAA Defendants ask the Court to dismiss all claims against Dr. Emmert and Dr. Ray for lack of personal jurisdiction.

Respectfully submitted,



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Date: November 10, 2014

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## CERTIFICATE OF SERVICE

I, Thomas W. Scott, hereby certify that I am serving the foregoing The NCAA Defendants' Preliminary Objections to Plaintiffs' Second Amended Complaint by First Class Mail and email to:

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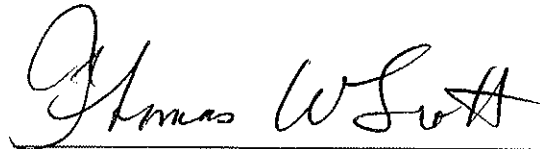
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Senior Judge, Specially Presiding  
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Dated: November 10, 2014



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