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

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.

) **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's Brief in

) Response to Pennsylvania State

) University's Motion to Quash

) and John Doe 150's Motion for

) a Protective Order

) **Filed on Behalf of:**

) National Collegiate Athletic

) Association, Mark Emmert, Edward

) Ray

) **Counsel of Record for this**

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CENTRE COUNTY, PA

ORIGINAL

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

ESTATE of JOSEPH PATERNO, et al.,)	
Plaintiffs,)	Civil Division
)	
v.)	Docket No. 2013-
NATIONAL COLLEGIATE ATHLETIC)	2082
ASSOCIATION, et al.,)	
Defendants.)	
)	
)	

**THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION'S BRIEF IN
RESPONSE TO THE PENNSYLVANIA STATE UNIVERSITY'S MOTION
TO QUASH AND JOHN DOE 150'S MOTION FOR A PROTECTIVE ORDER**

The motion to quash the NCAA's subpoena by the Pennsylvania State University ("Penn State") largely raises legal issues and concerns that can be entirely avoided.¹ As the Court is aware from our telephone call, the NCAA has agreed to narrow the subpoena to asking for only one document and two individuals' names. Thus, the NCAA's requests to Penn State are exceedingly narrow and can be easily satisfied in a manner that imposes no burden on Penn State and respects the wishes that John Doe 150 outlined in his motion for a

¹ Penn State's Mem. of Law in Supp. of Mot. to Quash Third-Party Subpoena Duces Tecum Seeking Documents Concerning 1971 and 1976 Sandusky Incidents and for Protective Order (June 20, 2016) ("PSU Mem.").

protective order.² To be clear, the NCAA has no desire to embarrass or harass the victims of this horrific tragedy—quite the opposite. As discussed below, the NCAA is fully committed to taking all necessary steps to protect the victims’ identity and prevent any additional harm or embarrassment.

As this Court is well aware, allegations recently surfaced that two individuals were victimized by Jerry Sandusky in the 1970s and reported their abuse to the late Coach Joe Paterno.³ The NCAA simply seeks admissible testimony from the two victims, in any form, which can be obtained under any number of possible protections—including the robust protective order already in place. To start this process, the NCAA has asked Penn State to produce only John Doe 150’s deposition transcript from the insurance litigation (“*PMA* Litigation”) and the identity of the two individuals (one of whom has counsel that has entered an appearance in this case). That is it. From there, the NCAA can evaluate what additional discovery, if any, might be required from the individuals.

There can be no question that information about what these individuals may have told Joe Paterno about Sandusky’s abuse in the 1970s is extremely relevant to

² Despite the Court’s order that all oppositions be filed by Monday June 20th, at the time of filing, John Doe 71 has not yet filed a brief in response to the NCAA’s discovery requests.

³ Years later, Penn State paid these victims to settle claims against the University, and then sued its insurer to help recover some of the settlement fees in the *PMA* Litigation. PSU Mem. at 5-6. John Doe 150, the 1976 victim, was then deposed in that litigation. *Id.* at 6.

this case—indeed, potentially dispositive.⁴ Plaintiffs claim the NCAA defamed or disparaged them by republishing the Freeh Report’s findings that “Head Football Coach Joseph V. Paterno failed to protect against a child sexual predator harming children for over a decade,” “concealed Sandusky’s activities,” and “allow[ed] [Sandusky] to have continued, unrestricted and unsupervised access to the University’s facilities.” Second Am. Compl. ¶104 (“SAC”). To prevail in this litigation, Plaintiffs must prove that the statements in the Consent Decree (taken verbatim from the Freeh Report) are *demonstrably false*. See, e.g., *Joseph v. Scranton Times, L.P.*, 2008 PA Super 217, ¶ 27, 959 A.2d 322, 335 (2008) (explaining that plaintiffs bear “the burden of proving, by a preponderance of the evidence, that the [alleged defamatory statements] [a]re, in fact, false” (citing *Phila. Newspapers, Inc. v. Hepps*, 475 U.S. 767, 777 (1986))). The NCAA enjoys an absolute defense if those statements are true. The events described in the Freeh Report concerning the shameful response to allegations of Mr. Sandusky’s misconduct in 1998 and 2001 are plainly sufficient to resolve the case in the

⁴ Plaintiffs’ public statements suggest that they too want this evidence on the record in this case. Immediately after these allegations surfaced, the Paterno family issued a statement confirming their desire for a “*total pursuit of the truth*” and a “*full fair review of the evidence*.” Matt Bonesteel, *Joe Paterno’s son says newly revealed allegations are “bunk,”* Wash. Post (May 6, 2016), available at <https://www.washingtonpost.com/news/early-lead/wp/2016/05/06/joe-paternos-son-says-newly-revealed-allegations-are-bunk/>. And on May 6, 2016, Scott Paterno tweeted: “Well, the NCAA wants to explore the evidence regarding these new allegations. Finally, we agree on something.” @ScottPaterno, Twitter (May 6, 2016, 3:03 PM), <https://twitter.com/ScottPaterno/status/728706675314728961>.

NCAA's favor. But the recent allegations, if corroborated, squarely and independently support the challenged statements in this case. For example, John Doe 150's motion states that he "testified under oath and at length concerning....his reporting of the abuse to Coach Joseph Paterno" in or around 1976. John Doe 150 Mot. for Protective Order at 3 (June 21, 2016) ("John Doe 150 Mot. for PO"). John Doe 71 (the 1971 victim) spoke with CNN in "great detail" about telling Joe Paterno about Jerry Sandusky's horrific abuse and Joe Paterno's failure to do anything beyond "accus[ing] him of making it up."⁵ These allegations would not only prove that statements in the Consent Decree (taken verbatim from the Freeh Report) are *not* demonstrably false, but that they were *true*.⁶

A. Limited Discovery and John Doe 150's Motion for a Protective Order

John Doe 150's motion primarily emphasized the need for safeguards in the case of any additional discovery beyond the subpoena to Penn State. The NCAA

⁵ John Doe 71 told CNN that "I'd be willing to sit on a witness stand and confront Joe Paterno.... Unfortunately he died and I didn't get to." Sara Ganim, Sandusky victim: Joe Paterno told me to drop abuse accusation, CNN (May 8, 2016), <http://www.cnn.com/2016/05/06/us/jerry-sandusky-victims-paterno-penn-state/>. He also said that "speaking out is his only form of justice." *Id.*

⁶ To be clear, it makes no difference whether these allegations came to light after the Freeh Report or Consent Decree were published. A statement must be false to be defamatory, *see, e.g., Joseph*, 2008 PA Super 217, ¶ 27, 959 A.2d at 335, even if the author did not know it was true.

notes that, at this time, John Doe 150's motion is premature. Subsequent discovery may not be necessary—the NCAA has not yet reviewed his original deposition transcript (which it is trying to obtain from Penn State) to determine its sufficiency. Should the parties pursue additional discovery, the NCAA agrees that safeguards are appropriate and believes that any concerns can be readily accommodated.

The NCAA's primary interest here is to preserve admissible evidence for summary judgment and trial. John Doe 150 notes that he was willing to provide "whatever [the parties] contend they need concerning John Doe 150's testimony," such as an affidavit, interrogatory responses, or other reasonable accommodations, but he wanted to avoid a second deposition. John Doe 150 Mot. for PO ¶ 7. He was apparently under the mistaken impression that the NCAA would settle for nothing short of another deposition. *Id.* If, after reviewing the deposition transcript, the NCAA determines that the transcript is sufficient, then the NCAA would not require further discovery from John Doe 150—provided that Plaintiffs would agree to permit that transcript to be treated for admissibility purposes as though it were taken in this case. If the transcript proves insufficient or Plaintiffs will not stipulate to its admissibility, then the NCAA still anticipates that only narrow additional discovery would be needed, which could occur along the lines outlined below for John Doe 71.

Unlike John Doe 150, John Doe 71 has not been previously deposed (as far as we know), although he has told his story to CNN. Accordingly, at least limited discovery is needed to preserve his testimony (once the NCAA learns his identity through Penn State). But a large array of potential safeguards can be imposed to protect his anonymity and limit the burden on him. The parties could first explore methods to preserve John Doe 71's testimony through means other than an oral deposition, much as John Doe 150 suggested, such as by affidavit, written deposition, or interrogatories. Each of these could be conducted pursuant to the Protective Order in this case.

If an oral deposition is required of either John Doe 71 or John Doe 150, the NCAA would be willing to undertake any of the following restrictions (and consider any others proposed):

- The deposition transcript would be designated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"—the strictest protection under the Protective Order.
- The deposition would be taken under a pseudonym, and the deponents' actual names the names of others who might lead to identification of the victims from the transcript would not appear on the transcript. Only counsel for the parties here would know the individuals' true names.
- The deposition would be time limited to two hours.
- Only one attorney for all Plaintiffs collectively, and one attorney for all Defendants collectively, would be permitted to attend the deposition, unless otherwise allowed by the deponent.

- The videotape of the deposition would be kept in the possession of the deponent's counsel to ensure its total privacy, and only be made available to counsel for the parties here if reasonably necessary.

The NCAA is certainly mindful of the privacy, confidentiality, and other concerns about this limited discovery and believes these robust protections should relieve nearly all concerns and provide the best path forward for securing this potentially dispositive evidence.

B. Penn State's Motion to Quash

With regard to Penn State, the NCAA merely asked the university to produce one deposition transcript from the *PMA* Litigation (of John Doe 150) and the identity of the two individuals who claim to have informed Coach Paterno about Mr. Sandusky's sexual abuse in the 1970s.⁷ Penn State could produce this information to counsel in an instant—they have it in their custody right now. Any claims of burden ring hollow. Even John Doe 150 does not appear to object to Penn State producing his transcript. *See, e.g.*, John Doe 150 Mot. for PO ¶¶ 7, 9 (indicating a willingness to provide information but expressing concern about the need for protection in any additional deposition). And Judge Glazer recently

⁷ Penn State's position appears to be a new one. Counsel for the NCAA has not located any record of Penn State attempting to block the victim's deposition in the *PMA* Litigation, where Penn State is the plaintiff seeking to recover from its insurers. Nor is there any indication that Penn State hesitated to provide its insurer, Pennsylvania Manufacturers Association, with the names of the victims. Penn State later used the testimony of the victim offensively in motions practice.

granted the media's request to unseal portions of John Doe 150's transcript that *Penn State* had filed with the court.⁸ Ex. 7 to PSU Mot.

Penn State's opposition makes this issue seem far more complicated than it is. Penn State addresses the purported "full scope" of the NCAA's original subpoena, a clear strawman, while ignoring the fact that the NCAA has limited its request to one transcript and two identities. PSU Mem. at 8. For example, Penn State spends pages arguing that the mediation privilege protects mediation materials. *Id.* at 9-11. But the NCAA does not seek mediation materials. It simply seeks a transcript created in separate litigation and the names of the individuals Penn State released in that litigation.⁹ In fact, Judge Glazer recently rejected the same mediation privilege argument that Penn State now attempts to assert here. *See* Ex. 7 to PSU Mem. at 1 n.2 ("The mediation privilege does not protect materials prepared for and submitted in these consolidated civil cases.").

Penn State also claims that the requested materials are protected by confidentiality requirements in engagement letters, settlement agreements, and the

⁸ Judge Glazer is requiring that the victims' names be redacted. In granting the media's motion, Judge Glazer found "the public's continued concern regarding the unfortunate events underlying this coverage action, weigh heavily in favor of unsealing the record." Ex. 7 to PSU Mot. at 1 n.2

⁹ Penn State disclosed the individuals' names in the *PMA* Litigation. PSU Mem. at 6. Penn State also would have learned the identities of the two victims prior to the mediation sessions in order to have entered into mediation with them. Thus, their identities cannot be information learned only through the course of mediation.

protective order in the *PMA* Litigation. PSU Mem. at 4-6. But these documents do not permit a party to refuse to comply with compulsory process. One cannot contract out of the obligation to comply with a valid subpoena issued by a third party. While Penn State does not attach any of the documents, we believe they likely have the standard language in such agreements providing exception to confidentiality requirements for subpoenas.¹⁰ The same protection provided under those documents is available here. Penn State is free to designate these materials as highly confidential, “attorneys’ eyes only” under the operative protective order in the instant litigation—a higher level of protection than is available under the *PMA* Litigation protective order. *See* Ex. 1, Stipulation and Order Governing the Exchange of Confidential Information ¶ 10 (Apr. 8, 2014).¹¹

CONCLUSION

For the foregoing reasons, the NCAA respectfully requests that Penn State’s Motion to Quash be denied and that a ruling on John Doe 150’s Motion for a

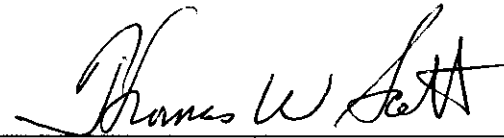
¹⁰ Indeed, the NCAA has located the protective order in the *PMA* Litigation. It contains just such a provision, and mandates that the party that asserted the confidentiality designation (here the victims), must lead any effort to challenge a legally served subpoena. *See* Ex. 1, Stipulation and Order Governing the Exchange of Confidential Information ¶ 21.

¹¹ In addition, Penn State advocated for the Protective Order here to protect confidential information, noting in a statement of support that the “University is also *fully committed to the development of the factual record* in accordance with the legitimate processes and purposes of the litigation and other legal proceedings.” Penn State Statement Regarding Joint Mot. for Protective Order at 3 (July 3, 2014) (emphasis added).

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Protective Order be stayed until Penn State complies with the NCAA's narrowed request to produce John Doe 150's deposition transcript and identify the names of John Doe 71 and John Doe 150.

Respectfully submitted,



Dated: June 27, 2016

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EXHIBIT 1

PENNSYLVANIA MANUFACTURERS'
ASSOCIATION INSURANCE COMPANY,

Plaintiff,

v.

THE PENNSYLVANIA STATE
UNIVERSITY

and

JOHN DOE A,

Defendants.

COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY,
PENNSYLVANIA

CIVIL ACTION NO. 04126

JANUARY TERM, 2012

COMMERCE PROGRAM

DOCKETED

APR 9 2014

C. HART
CIVIL ADMINISTRATION

THE PENNSYLVANIA STATE
UNIVERSITY,

Plaintiff,

v.

PENNSYLVANIA MANUFACTURERS'
ASSOCIATION INSURANCE COMPANY,

Defendant.

COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY,
PENNSYLVANIA

CIVIL ACTION NO. 03195

NOVEMBER TERM, 2013

COMMERCE PROGRAM

THE PENNSYLVANIA STATE
UNIVERSITY,

Plaintiff,

v.

PENNSYLVANIA MANUFACTURERS'
ASSOCIATION INSURANCE COMPANY,

Defendant.

COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY,
PENNSYLVANIA

CIVIL ACTION NO. 03197

NOVEMBER TERM, 2013

COMMERCE PROGRAM

**STIPULATION AND ORDER GOVERNING THE
EXCHANGE OF CONFIDENTIAL INFORMATION**

{00708004;v1 }

Pennsylvania State University Vs Pennsylvania-STPAP



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WHEREAS, the Parties (together, the "Parties," or individually, a "Party") to the captioned litigation (the "Litigation") have conferred and agree that the preparation for trial and trial of the Litigation may require the discovery, production, and use of documents, information and other materials that contain information that is confidential, as herein defined; and

WHEREAS, the Parties desire to be protected against potential inconvenience, disadvantage, financial loss, hardship and/or substantial prejudice that may result from the unauthorized disclosure of Confidential Information, as herein defined; and

WHEREAS, the Parties agree that the ends of justice will be served by the entry of an Order which sets forth procedures and rules governing the discovery, use and disclosure of such documents, information and other materials;

NOW THEREFORE, IT IS HEREBY STIPULATED, by and between the Parties through their undersigned counsel; and

IT IS HEREBY ORDERED, that the following "Stipulation and Order" shall govern the use and handling of documents including deposition testimony and transcripts, deposition notices and exhibits, interrogatories and interrogatory responses, requests for admissions and admissions, and any other information or material provided, disclosed, produced, given, or exchanged by, between, and among the Parties and any non-parties to the Litigation in connection with proceedings in the Litigation (such information or material hereinafter referred to as "Covered Material") and any briefs, affidavits or other court documents containing or otherwise disclosing such Covered Material:

1. Any Party or non-party to the Litigation disclosing, producing, giving or exchanging any documents, information or material in connection with proceedings in the

Litigation (the "Disclosing Party") may designate any Covered Material as "Confidential" under the terms of this Stipulation and Order if such Party in good faith reasonably believes that such Covered Material arises out of or relates to any investigation into or concerning Gerald Sandusky's alleged improper and/or wrongful acts or is proprietary information, personally sensitive information or confidential financial information and requires the protections provided in this Stipulation and Order. Information that is publicly available in the form sought to be used in this circumstance or that has been disclosed by the Disclosing Party to another person not subject to a confidentiality agreement is not Confidential Information for the purposes of this Stipulation and Order.

2. The designation by any Disclosing Party of Covered Material as Confidential shall constitute a representation that such Confidential Information (as defined below) has been reviewed by an attorney or paralegal for the designating Party and that there is a reasonable good faith basis for such designation.

3. Confidential Information (as defined below), or information contained therein or derived therefrom, shall be used for prosecution and/or defense of this Litigation or any appeals therefrom, for prosecution or defense of any proceeding, claim, litigation or arbitration to which the Confidential Information is pertinent ("Pertinent Matters") or as otherwise permitted by this Stipulation and Order.

4. For purposes of this Stipulation and Order "Confidential Information" shall mean Covered Material designated as Confidential in compliance with Paragraph 1 of this Stipulation and Order in the following manner by the Disclosing Party:

(a) For documents or other materials (apart from depositions or other pretrial testimony), by affixing the legend "Confidential" to each page containing any Confidential

Information; provided that the failure to designate a document as Confidential shall not constitute a waiver of such claim, and the Disclosing Party may so designate a document by providing written notice to all other Parties together with properly designated copies of said document within ten (10) business days of becoming aware of such failure to designate, with the effect that such document is thereafter subject to the protections of this Stipulation and Order;

(b) For depositions or other pretrial testimony, (i) by a statement on the record, by counsel, at the time of such disclosure; or (ii) by written notice, sent to all Parties within ten (10) business days after receiving a copy of the final certified transcript thereof, and in both of the foregoing instances, by directing the court reporter that the appropriate confidentiality legend be affixed to all pages of the original and all copies of the transcript containing any Confidential Information. The Parties may modify this procedure for any particular deposition, through agreement on the record at such deposition, without further order of the Court; and

(c) For Covered Material which is disclosed or produced in a non-paper medium (*e.g.*, videotape, DVD, CD, audiotape, computer disks, etc.), by affixing the legend "Confidential" on the medium, if possible, and its container, if any, so as to clearly give notice that the medium contains Confidential Information. Documents produced in PDF or TIFF image format on a CD-ROM or other non-paper medium shall be marked in the manner provided for in Paragraph 4(a) above.

5. Except as specifically provided for in this Stipulation and Order or subsequent Court orders or stipulations among the Parties (and the relevant non-party if the Confidential Information in question was produced by a non-party), Confidential Information may be disclosed, summarized, described, characterized or otherwise communicated or made available in whole or in part only to the following persons:

(a) Counsel for the Parties, and regular and temporary employees and service vendors of such counsel (including outside copying and litigation support services);

(b) The Parties, which for any Party that is an entity means any of its current or former directors, officers, in-house counsel, or employees who are actively participating in or assisting those Parties in any Pertinent Matter, any affiliated entity of a Party and any auditor or regulator of a Party or such affiliated entity;

(c) Subject to and in accordance with Paragraph 6 hereof, experts, advisors, vendors or consultants (together with their staff) assisting the Parties or their counsel; provided that any report created by such expert, advisor or consultant relying on or incorporating Confidential Information, in whole or in part, shall be designated Confidential;

(d) Any person indicated on the face of a document to be the author, addressee, or a copy recipient of the document, or as to whom there has been deposition or trial testimony that the person was the author or a recipient of the document;

(e) Subject to and in accordance with Paragraph 6, witnesses or deponents and their counsel, during the course of and, to the extent necessary, in preparation for depositions or testimony in a Pertinent Matter; provided, however, that no copies or notes relating to the Confidential Information shall be made by such person;

(f) The Court and its employees and the persons, entities or bodies (and their employees) involved in officiating any Pertinent Matter;

(g) Court reporters employed in connection with any Pertinent Matter;

(h) Pennsylvania Manufacturers' Association Insurance Company's ("PMA") reinsurers with respect to the General Liability policies issued to Pennsylvania State University.

6. Persons identified in Paragraphs 5(c), 5(d), or 5(e) above who are involved in this Litigation who do not fall within the descriptions in Paragraphs 5(b) and who receive Confidential Information from a Party shall be required to sign an undertaking (a "Confidentiality Undertaking") in the form attached as Exhibit A hereto, agreeing in writing to be bound by the terms and conditions of this Stipulation and Order, consenting to the jurisdiction of the Court for purposes of the enforcement of this Stipulation and Order and agreeing not to disclose or use any Confidential Information in a manner or for purposes other than those permitted hereunder; provided, however, that a non-party witness to whom Confidential Information is first disclosed at deposition need not be required to sign a copy of the Confidentiality Undertaking in order to be bound by the terms hereof. The attorneys of record making Confidential Information available to any person required to execute a copy of the Confidentiality Undertaking pursuant to this paragraph shall be responsible for obtaining such signed undertaking and for maintaining all original, executed copies of such Confidentiality Undertakings. Copies of any executed Confidentiality Undertaking shall be disclosed to counsel for the Disclosing Party upon agreement of the Parties, which agreement shall not be unreasonably withheld, or upon further Court order.

7. Every person given access to Confidential Information shall be advised that the information is being disclosed pursuant and subject to the terms of this Stipulation and Order and may not be disclosed other than pursuant to the terms hereof. PMA's affiliates and reinsurers may disclose any Confidential Information they determine in good faith must be disclosed to a reinsurer, auditor or regulator or pursuant to applicable laws or regulations.

8. Any Party seeking discovery from a non-party shall provide a copy of this Stipulation and Order to the non-party and notify the non-party that the protections of this

Stipulation and Order are available to such non-party. Any non-party from whom discovery is sought in the Litigation may obtain the protection of this Stipulation and Order by signing and providing to outside counsel for the Party seeking the discovery a certification and agreement, substantially in the form attached hereto as Exhibit B, stating that the non-party has read the Stipulation and Order, understands the terms of the Stipulation and Order, agrees to be fully bound by the Stipulation and Order, submits to the jurisdiction of the this Court for purposes of enforcement of the Stipulation and Order, and understands that any violation of the terms of the Stipulation and Order shall be punishable by relief deemed appropriate by the Court.

9. Counsel for any Disclosing Party shall have the right to exclude from depositions any person who is not authorized by this Stipulation and Order to receive documents or Confidential Information. Such right of exclusion shall be applicable only during periods of examination or testimony directed to or comprising Confidential Information.

10. Counsel for any Party wishing to file documents of any nature, including briefs, which have been designated as Confidential Information, or that would disclose information from a document that has either been designated as Confidential Information, or would otherwise be required to be filed under seal, shall move to file such documents with the Court, and, providing that the Court approves the motion to file under seal, a statement shall be endorsed on the cover:

“CONFIDENTIAL – SUBJECT TO COURT ORDER”

It is understood that all such materials so filed shall be shall be maintained by the Clerk separate from public records and shall be released only upon further Order of this Court, in accordance with the procedures of the Clerk.

11. Entering into, agreeing to and/or producing or receiving Confidential Information or otherwise complying with the terms of this Stipulation and Order shall not:

(a) Operate as an admission that any document designated Confidential contains or reflects trade secrets or any other type of confidential information;

(b) Prejudice in any way the rights of the Parties to object to the production of documents they consider not subject to discovery (including, but not limited to, pursuant to the business strategy privilege), or operate as an admission by any Party that the restrictions and procedures set forth herein constitute adequate protection for any particular information deemed by any Party to be Confidential Information;

(c) Prevent the Parties to this Stipulation and Order from agreeing to alter or waive the provisions or protections provided herein with respect to any particular Covered Material;

(d) Prejudice in any way the rights of any Party to object to the authenticity or admissibility into evidence of any document, testimony or other evidence subject to this Stipulation and Order; or

(e) Prejudice in any way the right of a Party to seek a determination by the Court whether any Confidential Information should be subject to the terms of this Stipulation and Order;

(f) Prejudice in any way the right of a Party to petition the Court for a further protective order relating to any purportedly Confidential Information; or

(g) Waive, supersede, or amend the provisions of any prior confidentiality agreement between defendants, any of the Parties or non-parties and any person.

(h) Be construed or operate as a waiver of any claim of privilege or immunity (including, without limitation, the business strategy immunity) with respect to the production of any document.

12. This Stipulation and Order has no effect upon, and shall not apply to, the Parties' or non-parties' use of their own Confidential Information for any purpose. Nothing herein shall impose any restrictions on the use or disclosure by a Party of documents, materials or information designated as Confidential lawfully obtained by such Party independently of the discovery proceedings in this Litigation.

13. The production, transmission, or disclosure of any material that is arguably or actually subject to a claim of privilege or of protection as trial preparation material ("Privileged Covered Material") shall not prejudice, or constitute a waiver (either as to the specific document disclosed or as to other documents or communications concerning the same subject matter) of, or estop a Party from asserting, any claim of privilege, work product or other ground for withholding production of that material. This "non-waiver" provision shall apply irrespective of whether the production, transmission, or disclosure is inadvertent and irrespective of whether or to what extent a Party took reasonable steps to prevent its production, transmission, or disclosure. If Privileged Covered Material has been produced, transmitted, or disclosed, the Party making the claim of privilege, work product or other ground for withholding may notify the receiving Party and state the basis for the claim. After being notified, the receiving Party (i) must promptly return or destroy the Privileged Covered Material and any copies (paper or electronic) the receiving Party has of it and (ii) may not make any disclosure of the Privileged Covered Material or use the Privileged Covered Material, or information gleaned from Privileged Covered Material, in connection with the Litigation or for any other purpose until the

claim is resolved (even if such a disclosure were otherwise permissible hereunder); provided, however, that a receiving Party may retain one copy of the Privileged Covered Material solely for purposes of submitting the Privileged Covered Material to the Court under seal for a determination of the claim, but in no event shall the inadvertent production, disclosure, or transmission of the Privileged Covered Material form the basis for a claim that the material is not privileged. If a receiving Party disclosed the Privileged Covered Material before being notified, the receiving Party must make reasonable steps to retrieve it. This provision is intended to facilitate the production of electronic or paper records. No Party, by virtue of agreeing to this paragraph, is assuming any obligation, or in any way undertaking, to produce privileged matter, and no Party is agreeing to waive any privilege.

14. In the event additional Parties join or intervene in this Litigation, such Parties shall not have access to Confidential Information until counsel for each newly joined or intervening Party has executed a Confidentiality Undertaking evidencing the newly joined Party's intent to be bound by this Stipulation and Order, which shall be filed with the Court promptly.

15. The Parties agree to be bound by the terms of this Stipulation and Order pending the entry by the Court of this Stipulation and Order and any violation of its terms shall be subject to the same sanctions and penalties, as if this Stipulation and Order had been entered by the Court.

16. The attorneys of record shall take reasonable measures, consistent with this Stipulation and Order, to prevent the unauthorized disclosure or use of Confidential Information and are responsible for employing reasonable measures to control the duplication of, access to, and distribution of, Confidential Information.

17. The provisions of this Stipulation and Order shall, absent written permission of the Disclosing Party or further order of the Court, continue to be binding throughout and after the conclusion of the Litigation, including without limitation any appeals therefrom. Within ninety (90) days after receiving notice of the entry of an order, judgment or decree finally disposing of this Litigation, including the exhaustion of all possible appeals, all persons having received Confidential Information shall either return such material and all copies thereof (including summaries and excerpts) to counsel for the Party that produced it or destroy all such Confidential Information, and, in either case, certify that fact to counsel for the Disclosing Party provided, however, that any Confidential Information being used in another Pertinent Matter prior to the 90th day following receipt of notice of disposition of the Litigation may be retained by the receiving Party for use in accordance with the terms of this Stipulation and Order. Outside counsel for the Parties shall be entitled to retain court papers, depositions and trial transcripts and attorney work product (including discovery material containing Confidential Information); provided that such outside counsel, and employees of such outside counsel, shall maintain the confidentiality thereof and shall not disclose such court papers or attorney work product to any person except pursuant to court order or agreement by the Disclosing Party.

18. After the termination of this Litigation, this Stipulation and Order shall continue to be binding upon the Parties hereto, and upon all persons to whom Confidential Information has been disclosed or communicated, and this Court shall retain jurisdiction over all such Parties and persons for enforcement of its provisions.

19. During the pendency of this Litigation, any Party objecting to the designation of any Covered Material or testimony as Confidential Information or the application of any provision of this Stipulation and Order may, after making a good faith effort to resolve any such

objection, move promptly for an order vacating the designation or the application of said provision. While such an application is pending, the Covered Material or testimony in question shall continue to be treated as Confidential Information pursuant to this Stipulation and Order. The provisions of this paragraph are not intended to shift the burden of establishing confidentiality.

20. In the event that any Confidential Information is used in any court proceeding in this Litigation or any appeal therefrom, such Confidential Information shall not lose its status as Confidential Information through such use. Counsel shall confer on such procedures that are necessary to protect the confidentiality of any documents, information and transcripts used in the course of any court proceedings.

21. If any person receiving documents covered by this Stipulation and Order (the "Receiver") is subpoenaed or receives other compulsory process in another action or proceeding or is served with a document demand, and such subpoena, process or document demand seeks Covered Material which was produced or designated as Confidential by someone other than the Receiver, the Receiver shall (i) give written notice by e-mail, hand or facsimile transmission within ten (10) business days of receipt of such subpoena, process or document demand to those who produced or designated the information Confidential and (ii) refrain from producing any Covered Material that has been designated Confidential in response to such a subpoena or document demand until the earlier of (a) receipt of written notice from the Disclosing Party that such Party does not object to production of the designated Covered Material, or (b) resolution of any objection asserted by the Disclosing Party either by agreement or by final order of the Court with jurisdiction over the objection of the Disclosing Party; provided however that the burden of opposing the enforcement of the subpoena or document demand shall fall solely upon the Party

who produced or designated the Confidential Information, and unless the Party who produced or designated the Confidential Information submits a timely objection with the court or panel having appropriate jurisdiction seeking an order that the subpoena or document demand not be complied with, and serves such objection upon the Receiver by hand delivery prior to production pursuant to the subpoena or document demand, the Receiver shall be permitted without violating this Stipulation and Order to produce documents responsive to the subpoena or document demand on the response date. Compliance by the Receiver with any order directing production pursuant to the subpoena or document demand of any Confidential Information shall not constitute a violation of this Stipulation and Order. Nothing herein shall be construed as requiring the Receiver or anyone else covered by this Stipulation and Order to challenge or appeal any order directing production of Confidential Information covered by this Stipulation and Order, or to subject himself or itself to any penalties for non-compliance with a legal process or order, or to seek any relief from this Court.

22. Nothing in this Stipulation and Order shall preclude any Party from seeking judicial relief, upon notice to the other Parties, with regard to any provision hereof.

Dated: March 27, 2014

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SO ORDERED: April 8, 2014

Glazer, J.
Glazer, J.

CERTIFICATE OF SERVICE

I, Thomas W. Scott, hereby certify that I am serving the NCAA's Brief in Response to Pennsylvania State University's Motion to Quash and John Doe 150's Motion for a Protective Order on the following by First Class Mail and email:

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ORIGINAL

Dated: June 27, 2016

A handwritten signature in black ink, appearing to read "Thomas W. Scott", written over a horizontal line.

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