



**NOTICE to Plaintiff:**

You are hereby notified to file a written response to the enclosed New Matter within 20 days hereof or a judgment may be entered Against You.

RECEIVED  
2013 MAY -8 PM 4:43  
COURT OF COMMON PLEAS  
CENTRE COUNTY

GRAHAM B. SPANIER,  
  
Plaintiff,  
  
v.  
  
LOUIS J. FREEH and  
FREEH SPORKIN & SULLIVAN,  
LLP,  
  
Defendants.

COURT OF COMMON PLEAS  
OF CENTRE COUNTY

No. 2013-2707

**ANSWER OF DEFENDANTS LOUIS J. FREEH AND  
FREEH SPORKIN & SULLIVAN LLP TO PLAINTIFF'S  
SECOND AMENDED COMPLAINT**

1. This is a defamation action brought by Dr. Graham B. Spanier (“Dr. Spanier”) against Louis J. Freeh (“Freeh”) and his law firm Freeh Sporkin & Sullivan, LLP (“FSS”).

**ANSWER:** To the extent that Paragraph 1 contains legal conclusions, no response is required. To the extent that a response is required, Plaintiff’s Complaint is a written document that speaks for itself, and Defendants deny any characterizations

inconsistent with its terms. To the extent that Paragraph 1 is deemed to contain allegations of fact that are directed to Defendants and a further response is deemed necessary, Defendants admit that Plaintiff purports to bring a claim sounding in defamation.

2. In a July 12, 2012 report entitled “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” (the “Freeh Report” or “the Report”), Defendants published false and defamatory statements concerning Dr. Spanier.

**ANSWER:** To the extent that Paragraph 2 contains legal conclusions, no response is required. To the extent that a response is required, the 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 (the “Report”) is a written document that speaks for itself, and Defendants deny any characterizations inconsistent with its terms. To the extent that Paragraph 2 is deemed to contain allegations of fact that are directed to Defendants and a further response is deemed necessary, Defendants deny the allegations, and specifically deny that any statement contained in the Report about Plaintiff is false or defamatory. By way of further response, on March 24, 2017, Plaintiff was

criminally convicted of endangering the welfare of a minor based in substantial part on the same occurrences discussed in the Report.

3. Defendants then conducted a nationally televised press conference in which Defendants made further defamatory statements about Dr. Spanier.

**ANSWER:** To the extent that Paragraph 3 contains legal conclusions, no response is required. To the extent that a response is required, Defendants admit that a press conference was held on July 12, 2012 to summarize the findings of the Report, and that Judge Freeh issued remarks (the “Remarks”) with respect to the Report.

Defendants deny that any statement contained in the Report or the Remarks is false or defamatory. Defendants otherwise deny the allegations in Paragraph 3.

4. On February 10, 2013, Freeh issued a press release expanding on the defamatory statements in his Report and press conference.

**ANSWER:** To the extent that Paragraph 4 contains legal conclusions, no response is required. To the extent a response is required, Defendants admit that on February 10, 2013, Judge Freeh issued a statement (the “Statement”) in response to the release of a purported investigation by Richard Thornburgh that was commissioned by the family of Joseph V. Paterno. Defendants deny that any statement contained in the Report, the Remarks, or the Statement is false or defamatory.

5. Dr. Spanier seeks compensatory damages for the reputational and economic harm caused by Defendants' defamatory statements as well as punitive damages.

**ANSWER:** To the extent that Paragraph 5 contains legal conclusions, no response is required. To the extent a response is required, Defendants deny that any statement contained in the Report, the Remarks, or the Statement is false or defamatory. Defendants further deny that Plaintiff is entitled to compensatory or punitive damages, or that punitive damages are an available remedy in the context of this case. Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the allegations relating to Plaintiff's "reputational and economic harm" contained in Paragraph 5, and on that basis they are denied.

**THE PARTIES AND OTHER RELEVANT THIRD PARTIES**

6. Plaintiff Graham B. Spanier resides in Centre County in the Commonwealth of Pennsylvania.

**ANSWER:** On information and belief, Defendants admit the allegations in Paragraph 6.

7. Defendant Louis J. Freeh resides in Wilmington, Delaware. He founded FSS in 2007 and became the head of Pepper Hamilton LLP ("Pepper

Hamilton”) after FSS joined Pepper Hamilton. Freeh recently left Pepper Hamilton and returned to his role as a partner at FSS.

**ANSWER:** Defendants admit that Judge Freeh founded FSS in 2007, had served as the head of Pepper Hamilton LLP, and is currently a partner at FSS. Defendants deny that Judge Freeh resides in Wilmington, Delaware, and aver to the contrary that Judge Freeh one resided in Wilmington, Delaware but no longer resides there.

8. Defendant Freeh Sporkin & Sullivan, LLP (“FSS”) is a limited liability partnership registered in Washington, D.C. FSS participated directly in publishing the defamatory statements in the Freeh Report.

**ANSWER:** Defendants admit that Freeh Sporkin & Sullivan, LLP (“FSS”) is a limited liability partnership registered in Washington, DC and was involved in the investigation into the alleged failure of Penn State personnel to respond to, and to report to the appropriate authorities, the sexual abuse of children by Sandusky and the issuance of the Report. Defendants deny that any statement contained in the Report is false or defamatory.

9. Freeh Group International Solutions, LLC (“FGIS”) is a limited liability company founded by Freeh and formed under the laws of the State of Delaware, with its principal place of business in Wilmington, Delaware. FGIS employees actively participated in the Penn State engagement.

**ANSWER:** Admitted.

10. Pennsylvania State University (“Penn State”) is a public university and nonprofit corporation organized under the laws of the Commonwealth of Pennsylvania.

**ANSWER:** On information and belief, Defendants admit the allegations in Paragraph 10.

11. Gerald A. “Jerry” Sandusky was an assistant football coach at Penn State from 1969 to 1999. In 1977 Sandusky founded The Second Mile, a Pennsylvania non-profit organization that supported at-risk and underprivileged youth.

**ANSWER:** On information and belief, Defendants admit that Sandusky was an assistant football coach at The Pennsylvania State University (“Penn State” or “PSU”) from 1969 to 1999, and that Sandusky founded The Second Mile in approximately 1977.

### **JURISDICTION AND VENUE**

12. The Defendants are subject to personal jurisdiction in this Commonwealth because they have significant contacts with, and regularly transact business in, Pennsylvania, and because they caused harm or tortious injury by acts or omissions in Pennsylvania. Specifically, Freeh and FSS were retained by a Pennsylvania institution to supply services within Pennsylvania, and conducted

interviews and purported fact-gathering within Pennsylvania that form the basis of Freeh's and FSS's false and defamatory statements.

**ANSWER:** The allegations in Paragraph 12 are legal conclusions to which no response is required. To the extent that a response is required, Defendants admit that they transact business in Pennsylvania, and were retained by Penn State to conduct a full, complete, and independent investigation into the alleged failure of Penn State personnel to respond to, and to report to the appropriate authorities, the sexual abuse of children by Sandusky. Defendants deny the remaining allegations in Paragraph 12, and aver to the contrary that Defendants did not cause any harm or tortious injury and that no statement in the Report is false or defamatory. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor based in substantial part on the same occurrences discussed in the Report.

13. The statements were published in Pennsylvania. In addition, Freeh and FSS's false and defamatory statements were directed at Dr. Spanier, who Freeh and FSS knew to be a Pennsylvania resident, and which caused harm within Pennsylvania.

**ANSWER:** The allegations in Paragraph 13 are legal conclusions to which no response is required. To the extent that a response is required, Defendants admit that the statements contained in the Report, the Remarks, and the Statement were

issued in Pennsylvania. Defendants deny the remaining allegations in Paragraph 13, and aver to the contrary that Defendants did not cause any harm and that no statement in the Report, the Remarks, or the Statement is false or defamatory. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor based in substantial part on the same occurrences discussed in the Report.

14. This Court has original subject matter jurisdiction over this action pursuant to 42 Pa.C.S. § 931 because no other Pennsylvania court has exclusive original jurisdiction over this action.

**ANSWER:** Paragraph 14 contains legal conclusions to which no response is required. To the extent that a response is required, Plaintiff's Complaint is a written document that speaks for itself, and Defendants deny any characterizations inconsistent with its terms.

15. Venue is proper in Centre County pursuant to Pennsylvania Rules of Civil Procedure 1006, 2179, and 2130 because the causes of action described herein arose in Centre County and transactions and occurrences from which the causes of action arose took place in Centre County.

**ANSWER:** Paragraph 15 contains legal conclusions to which no response is required. To the extent that a response is required, Plaintiff's Complaint is a

written document that speaks for itself, and Defendants deny any characterizations inconsistent with its terms.

### **FACTUAL BACKGROUND**

#### **Dr. Spanier Serves as President of Penn State**

16. Between 1995 and 2011, Dr. Spanier served as President of Penn State.

**ANSWER:** On information and belief, Defendants admit that Plaintiff was president of Penn State between 1995 and 2011.

17. Much of Dr. Spanier's professional career has been dedicated to the social and emotional development of children, advocacy for the well-being and protection of children, and initiatives to foster improvement in the lives of youth.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 17, and on that basis they are denied.

18. Before Defendants published their defamatory Report, Dr. Spanier had a stellar reputation for honor, integrity, and public service.

**ANSWER:** Defendants deny that any statement contained in the Report is false or defamatory. Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 18, and on that basis they are denied.

## **The Charges Against Sandusky**

19. During his time as President of Penn State, Dr. Spanier spoke with Sandusky in only one formal meeting and encountered him only in passing at football games, events, and the like, but never had a personal conversation with Sandusky.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 19, and on that basis they are denied.

20. Sandusky retired from Penn State in 1999.

**ANSWER:** On information and belief, Defendants admit the allegations in Paragraph 20.

21. By 2001, Sandusky was employed by The Second Mile and was no longer employed in any capacity by Penn State.

**ANSWER:** On information and belief, Defendants admit that Sandusky served as a consultant to The Second Mile in 2001. Defendants also admit, on information and belief, that Sandusky was not employed by Penn State in 2001, but state that Sandusky had emeritus status at Penn State and enjoyed benefits including an office in the Old Lasch Building and keys to the Lasch Building, among other things.

22. On information and belief, during the fall of 2008, the Pennsylvania Attorney General's Office began investigating allegations that Sandusky had sexually abused boys whom he had supervised as an employee of The Second Mile.

**ANSWER:** Defendants admit, on information and belief, that in approximately 2008 the Pennsylvania Attorney General began investigating allegations that Sandusky had sexually abused children.

23. In November 2011, multiple criminal charges were brought against Sandusky alleging that he had sexually abused a number of minors.

**ANSWER:** Admitted.

24. In November 2011, Tim Curley ("Curley"), the former Athletic Director at Penn State, and Gary Schultz ("Schultz"), the former Senior Vice-President for Finance and Business at Penn State, were indicted for failing to report Sandusky's crimes.

**ANSWER:** Admitted.

25. Curley and Schultz were charged in connection with an incident reported to have occurred in 2002 — later found to have been 2001 ("the 2001 incident" or "the McQueary/Sandusky incident") — in which an assistant coach, Michael McQueary ("McQueary"), observed Sandusky in a shower with a young male in one of the Penn State athletic facilities.

**ANSWER:** Admitted.

26. The Attorney General found no evidence to bring charges against Dr. Spanier in November 2011.

**ANSWER:** Defendants admit that in November 2011, the Attorney General did not bring charges against Plaintiff. By way of further response, Plaintiff denied knowing anything about the 2001 allegations of inappropriate behavior against Sandusky, and investigators did not have access to emails from that time period at that time. After investigators uncovered evidence relating to Plaintiff's involvement in the decision not to report Sandusky to authorities, including significant emails among Curley, Schultz, and Plaintiff in 1998 and 2001, a Grand Jury recommended charges against Plaintiff and the Attorney General indicted Plaintiff for obstruction of justice, conspiracy to obstruct justice, endangering the welfare of a child, and perjury. On March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

27. In the immediate aftermath of the November 2011 criminal charges against Sandusky, Curley and Schultz, Dr. Spanier offered to resign as President of Penn State if he would be a distraction for the University as it dealt with the crisis.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 27, and on that basis they are denied.

28. On November 9, 2011, the Penn State Board of Trustees voted to accept Dr. Spanier's resignation under the "Termination Without Cause" provision of his contract.

**ANSWER:** Defendants deny that Plaintiff "resign[ed]" as president, and aver to the contrary that the Penn State Board of Trustees acted to terminate Plaintiff pursuant to the "Termination without Cause" provision of his Employment Agreement.

### **The Freeh Engagement**

29. On the same day that Dr. Spanier's presidency ended, the Board fired Joe Paterno as the head coach of the Penn State football team.

**ANSWER:** Admitted.

30. To address the media frenzy over the Sandusky scandal and Paterno's firing, Penn State's Board of Trustees retained Freeh and FSS on or about November 21, 2011, to conduct an investigation of "the alleged failure of Penn State University personnel to respond to, and report to the appropriate authorities, the sexual abuse of children by former University football coach Gerald A. Sandusky."

**ANSWER:** Defendants admit that Penn State's Board of Trustees retained Defendants on behalf of the Special Investigations Task Force (the "Task Force") on or about November 21, 2011 to conduct an independent, full and complete

investigation into the failure of Penn State personnel to respond to, and report to the appropriate authorities, the sexual abuse of children by former University football coach Gerald A. Sandusky. Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 30, and on that basis they are denied.

31. The Penn State Board of Trustees chose Freeh principally because of his personal experience with, and ability to navigate, the media and public relations aspects of such investigations.

**ANSWER:** Defendants deny the allegations in Paragraph 31, and aver to the contrary that, on information and belief, Judge Freeh was chosen for his unparalleled experience in law and criminal justice. Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 31, and on that basis they are denied.

**Freeh Determined He Was Going to Point the Finger at  
Dr. Spanier Before Interviewing Him**

32. Freeh and FSS insisted to the public, prior to the publication of the Report, that it would be completely independent and that the Board of Trustees would not receive advance notice of the contents of the Report.

**ANSWER:** Admitted. By way of further response, the Board of Trustees did not receive advance notice of the contents of the Report.

33. But Freeh had ongoing discussions with Board members regarding the course of the investigation, and its likely outcome, long before the release of the final Report. Emails between Freeh and Board members show that Freeh regularly briefed Board members on the status of the investigation.

**ANSWER:** Defendants deny the allegations in Paragraph 33, and aver to the contrary that while Judge Freeh briefed the Chair and Vice Chair of the Task Force very generally regarding the status of the investigation, Defendants were entirely independent with respect to the manner in which they conducted the investigation and the overall conclusion reached. By way of further response, the Board did not see the Report prior to its release to the public. Defendants otherwise deny the allegations in Paragraph 33.

34. Through such discussions, which are not revealed in Freeh's Report, Freeh kept his client, the Board, aware of his intentions, and Freeh's client communicated its desires to Freeh.

**ANSWER:** Defendants deny the allegations in Paragraph 34, and aver to the contrary that Defendants were entirely independent with respect to the manner in which they conducted the investigation and the overall conclusion reached. By way of further response, any "desires" of the Board did not impact the content or scope of the Report, nor did the Board see the Report before it was released to the public.

35. The primary goal of the Freeh investigation was to assign blame to specific individuals, which is evidenced by the engagement letter between FSS and the “Special Investigations Task Force,” a group formed by the Board to oversee the Freeh investigation.

**ANSWER:** Defendants admit that the Task Force was a group formed by the Board of Trustees and that the Task Force retained Defendants. Defendants deny the remaining allegations of Paragraph 35, and aver to the contrary that Defendants were retained to conduct an independent, full and complete investigation into the failure of Penn State personnel to respond to, and report to the appropriate authorities, the sexual abuse of children by former University football coach Gerald A. Sandusky. Defendants further state that the engagement letter is a written document that speaks for itself, and Defendants deny any characterization inconsistent with its terms.

36. The engagement letter states that the purposes of Freeh’s investigation, and the Report that would follow, would be to make findings concerning: “i) failures that occurred in the reporting process; ii) the cause for those failures; iii) who had knowledge of the allegations of sexual abuse; and iv) how those allegations were handled by the Trustees, PSU administrators, coaches, and other staff.”

**ANSWER:** Defendants state that the engagement letter is a written document that speaks for itself, and Defendants deny any characterization inconsistent with its terms.

37. Freeh's investigation from the outset assumed that individuals at Penn State were aware of and concealed evidence of sexual abuse by Sandusky, and Freeh's charge was to identify those individuals and conclude they failed to report child abuse.

**ANSWER:** Defendants deny the allegations in Paragraph 37. To the contrary, Defendants were retained to conduct, and did conduct, an independent, full and complete investigation into the failure of Penn State personnel to respond to, and report to the appropriate authorities, the sexual abuse of children by former University football coach Gerald A. Sandusky.

38. The engagement letter also says that Freeh and FSS were to "act under the sole direction of the Task Force in performing the [above-described] services," and that Freeh and FSS would perform these services "for the Task Force's benefit."

**ANSWER:** Defendants state that the engagement letter is a written document that speaks for itself, and Defendants deny any characterization inconsistent with its terms.

39. Freeh also knew that, at the time he was retained, a media narrative was forming that suggested Penn State officials, particularly Schultz, Curley, and Paterno, had concealed allegations regarding Sandusky.

**ANSWER:** Defendants deny the allegations of Paragraph 39, and aver to the contrary that neither Judge Freeh nor his team paid any heed to any supposed “media narrative.” Rather, Defendants were retained to conduct, and did conduct, an independent, full and complete investigation into the failure of Penn State personnel to respond to, and report to the appropriate authorities, the sexual abuse of children by former University football coach Gerald A. Sandusky.

40. Before Freeh interviewed Dr. Spanier and before he issued his Report, Freeh also knew that a member of the Board of Trustees had publicly accused Dr. Spanier of participating with these individuals in a cover-up of Sandusky’s sexual abuse, and thus Freeh knew that his client expected the Report to support this accusation.

**ANSWER:** Defendants admit that Judge Freeh was aware that certain members of the Board of Trustees had expressed concern and disappointment with respect to Plaintiff’s treatment of the reporting of Sandusky and the subsequent investigation into Sandusky, including Plaintiff’s failure to inform the Board of Trustees of the nature, extent, or seriousness of the allegations against Sandusky. Defendants deny that Defendants had an understanding of what the Special Investigative Task

Force “expected,” or that the investigation or Report was in any way affected by what the Task Force “expected,” and aver to the contrary that Defendants were retained to conduct, and did conduct, an independent, full and complete investigation into the failure of Penn State personnel to respond to, and report to the appropriate authorities, the sexual abuse of children by former University football coach Gerald A. Sandusky. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor. Such a charge required the jury to find beyond a reasonable doubt that, *inter alia*, Plaintiff endangered the welfare of a child by violating a duty of care, protection, or support, and that Plaintiff did so knowingly.

41. Freeh determined before interviewing Dr. Spanier that he was going to issue a Report accusing Dr. Spanier of participating in a cover-up.

**ANSWER:** Defendants deny the allegations in Paragraph 41, and aver to the contrary that Defendants conducted an independent, full and complete investigation into the failure of Penn State personnel to respond to, and report to the appropriate authorities, the sexual abuse of children by former University football coach Gerald A. Sandusky. Defendants came to their determination with respect to Plaintiff’s involvement in the failure to report suspected child abuse in part due to Plaintiff’s failure to provide credible answers in response to the questions asked of him at his interview. Defendants had requested an interview

with Plaintiff several months prior to July 2012, but Plaintiff refused to be interviewed until it became apparent that the Report would be issued whether or not he agreed to an interview. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

42. Freeh's investigators informed Dr. Spanier that he would be the last witness interviewed for the investigation — and that Dr. Spanier's interview would be conducted sometime in late July 2012, a month or more prior to the then-expected release date of Freeh's Report.

**ANSWER:** Defendants admit that Plaintiff's interview occurred in July 2012. Defendants deny that Plaintiff was the last witness to be interviewed, and aver to the contrary that other witnesses were interviewed after Plaintiff and before the release of the Report. By way of further response, Defendants had contacted Plaintiff earlier in the investigation, but Plaintiff refused to be interviewed.

43. Upon information and belief, Freeh, FSS, and FGIS made the affirmative decision to make Dr. Spanier the last witness interviewed for the investigation in an effort to purposely avoid hearing exculpatory evidence, and instead, to conduct Dr. Spanier's interview as a formality before publishing the Report.

**ANSWER:** Defendants deny the allegations of Paragraph 43, and aver to the contrary that Plaintiff was not the last witness interviewed, nor was there an

“affirmative decision” that he should be the last witness interviewed. Defendants had contacted Plaintiff earlier in the investigation, but Plaintiff refused to be interviewed. Plaintiff agreed to be interviewed only after it became apparent that the Report would be issued whether or not he agreed to an interview. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor. Plaintiff did not testify or present evidence at trial, and thus failed to present the jury with any allegedly “exculpatory evidence.”

44. According to public statements by the University, Freeh originally had planned to complete his investigation and report in late August or early September 2012. Freeh and FSS, however, suddenly accelerated that schedule in late June 2012 when Sandusky was convicted.

**ANSWER:** Defendants admit that Defendants originally anticipated that the Report would be completed in late August or early September 2012. Defendants deny that they “accelerated” the investigation or the Report, and aver to the contrary that the Report was issued in July 2012 because Defendants’ investigation concluded earlier than previously anticipated.

45. With the Penn State Board of Trustees’ July 2012 meeting less than three weeks away, Freeh and FSS accelerated the release date of the Report to July 12 to coincide with the first day of the Board’s meeting.

**ANSWER:** Defendants deny the allegations in Paragraph 45, and aver to the contrary that the Report was issued on July 12, 2012 because Defendants' investigation concluded earlier than previously anticipated.

46. Freeh and his investigators informed Dr. Spanier on or about Monday, July 2, 2012, that, if he still wished to be interviewed for the investigation, the interview would need to be conducted no later than on Friday, July 6, 2012 — just four days later and coupled with an intervening holiday.

**ANSWER:** Denied. To the contrary, Defendants informed Plaintiff that if he wished to be interviewed, he needed to submit to an interview no later than July 6, 2012 prior to July 2, 2012. By way of further response, Defendants had contacted Plaintiff earlier in the investigation, but Plaintiff refused to be interviewed. Plaintiff agreed to be interviewed only after it became apparent that the Report would be issued whether or not he agreed to an interview.

47. Notwithstanding the short notice and Freeh's refusal to provide Dr. Spanier access to his own documents to prepare, Dr. Spanier agreed to be interviewed.

**ANSWER:** Defendants admit that Plaintiff agreed to be interviewed on July 6, 2012. Defendants deny that Plaintiff needed "access to his own documents to prepare," and aver to the contrary that the purpose of the interview was to obtain

Plaintiff's unbiased testimony regarding his recollection of and involvement in events relating to Sandusky.

48. On July 6, 2012, Freeh and two members of his staff interviewed Dr. Spanier.

**ANSWER:** Admitted.

49. Dr. Spanier answered every single one of Freeh's questions, and also provided Freeh and FSS with a written statement demonstrating his lack of knowledge regarding the two incidents involving Sandusky that had been reported in the media.

**ANSWER:** On information and belief, Defendants admit that Plaintiff provided a response to each question that was asked during his interview. Defendants further admit that Plaintiff provided Defendants a written statement in which he claimed that he did not know, was not aware, and/or did not recall being provided with information regarding the reports of troubling behavior by Sandusky in 1998 or 2001. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor as a result of his actions or failures to act with respect to Sandusky.

50. By the time Freeh and his investigators interviewed Dr. Spanier, Freeh had already reached his defamatory determinations regarding Dr. Spanier's involvement and culpability in the matters under investigation.

**ANSWER:** Denied. To the contrary, Defendants came to their determination with respect to Plaintiff's involvement and culpability in the matters under investigation in part due to Plaintiff's failure to provide credible answers in response to the questions asked of him at his interview. By way of further response, Defendants had requested an interview with Plaintiff several months prior to July 2012, but Plaintiff refused to be interviewed until it became apparent that the Report would be issued whether or not he agreed to an interview.

51. All substantial portions of the Report regarding Dr. Spanier's alleged culpability had already been written before Freeh interviewed Dr. Spanier.

**ANSWER:** Denied. To the contrary, although some portions of the Report were in draft form at the time of Plaintiff's interview, Defendants came to their determination with respect to Plaintiff's involvement and culpability in the matters under investigation in part due to Plaintiff's failure to provide credible answers in response to the questions asked of him at his interview. By way of further response, Defendants had requested an interview with Plaintiff several months prior to July 2012, but Plaintiff refused to be interviewed until it became apparent that the Report would be issued whether or not he agreed to an interview.

52. Only days after Freeh interviewed Dr. Spanier, the Freeh Report was released to the media.

**ANSWER:** Defendants admit that the Report was released to the public on July 12, 2012.

**Freeh Acted with Actual Malice When He Labeled Dr. Spanier a Pedophile-Enabler Based on a 1998 Incident in Which Authorities Cleared Sandusky**

53. The Freeh Report largely focuses on the response of Penn State officials — including Dr. Spanier — to two incidents involving Sandusky. The first occurred in 1998, when Sandusky was employed by The Second Mile and Penn State. The second incident occurred in 2001, after Sandusky had retired, and while Sandusky was employed by The Second Mile.

**ANSWER:** Defendants admit that certain sections of the Report discuss “incidents involving Sandusky” including in 1998 and 2001. Defendants deny that the Report “largely focuses” on those two incidents, and aver to the contrary that the Report (i) summarizes a full, complete, and independent investigation into the alleged failure of Penn State personnel to respond to, and to report to the appropriate authorities, the sexual abuse of children by Sandusky, and (ii) provides recommendations regarding governance, oversight, and administrative policies and procedures that will better enable Penn State to prevent and more effectively respond to incidents of sexual abuse of minors in the future.

54. According to the Freeh Report, on May 4, 1998, a State College woman called the Penn State University Police Department to report that Sandusky

had apparently showered with her 11-year-old son following a workout. The mother did not allege that Sandusky sexually abused her son.

**ANSWER:** Defendants admit that on May 4, 1998, a State College woman reported that Sandusky had showered with her 11-year-old son and had hugged him while they were both naked. Defendants deny that she “did not allege that Sandusky sexually abused her son,” and aver to the contrary that the woman expressed concern that Sandusky’s behavior with her son was inappropriate, perhaps sexually so. By way of further response, the psychologist to whom the woman spoke deemed the incident significant enough that she made a report to the Pennsylvania child abuse line. The woman also reported the incident to the State College police department.

55. The Penn State Police Department, the Department of Public Welfare, Centre County Children and Youth Services, and the Centre County District Attorney’s Office all investigated.

**ANSWER:** Defendants admit that an investigation was conducted into the matter by the Penn State Police Department and Department of Public Welfare (“DPW”). Defendants deny that an investigation was conducted by the Centre County Children and Youth Services (“CYS”), and aver to the contrary that due to several conflicts of interest (including various contracts between CYS and The Second

Mile), the case was referred from CYS to DPW. Defendants further state that the case was referred to the Centre County District Attorney's Office.

56. Over the course of a month, officials would interview the boy multiple times, question Sandusky, interview a friend of the boy who also knew Sandusky, and eavesdrop on two different conversations Sandusky had with the boy's mother.

**ANSWER:** Admitted.

57. A report by a Counselor for Children and Youth Services who interviewed the boy found that nothing sexual occurred between Sandusky and the boy.

**ANSWER:** Defendants admit that a counselor for CYS interviewed the boy involved in the 1998 incident, and that his report stated that he did not find any evidence that "could be termed as sexual abuse." By way of further response, the CYS counselor's findings conflicted with the assessment of the psychologist who took the initial report, who reported the incident to the child abuse line and, after conferring with colleagues, agreed that the incident met all of their definitions of a likely pedophile's pattern of building trust and gradual introduction of physical touch.

58. Defendants were aware of the counselor's conclusion that "there seems to be no incident which could be termed as sexual abuse, nor did there

appear to be any sequential pattern of logic and behavior which is usually consistent with adults who have difficulty with sexual abuse of children.”

**ANSWER:** Defendants admit that the counselor’s report stated that “there seems to be no incident which could be termed as sexual abuse, nor did there appear to be any sequential pattern of logic and behavior which is usually consistent with adults who have difficulty with sexual abuse of children,” and in fact the same text is quoted on page 44 of the Report. By way of further response, the CYS counselor’s findings conflicted with the assessment of the psychologist who took the initial report, who reported the incident to the child abuse line and, after conferring with colleagues, agreed that the incident met all of their definitions of a likely pedophile’s pattern of building trust and gradual introduction of physical touch. Further, after the counselor spoke with the Penn State officer investigating the incident, he admitted that he was not aware of many concerns raised by the officer.

59. Soon after, the same detective and a Department of Public Welfare caseworker named Jerry Lauro interviewed Sandusky. The detective’s notes from the interview state that he and the caseworker agreed after interviewing Sandusky that no sexual assault had occurred.

**ANSWER:** Defendants admit that Detective Schreffler of the Penn State Police Department and DPW caseworker Jerry Lauro interviewed Sandusky, and that the notes prepared by Detective Schreffler state that Mr. Lauro agreed that no sexual

assault occurred. By way of further response, Defendants state that Mr. Lauro has said that he never discussed with Detective Schreffler whether improper interactions took place between Sandusky and the boy, and that he did not close his file until Detective Schreffler told him there was nothing to the case. Mr. Lauro also has stated to the media that if he had seen the reports prepared by the psychologist who interviewed the boy and the CYS counselor, he would not have closed the case.

60. The last entry in the detective's report of the investigation, dated June 3, 1998, states: "As a result of the investigation it could not be determined that a sexual assault occurred and SANDUSKY was advised of such. LAURO also advised that he agreed with Reporting Officer that no sexual assault occurred. Reporting Officer advised Sandusky not to shower with any child. Sandusky stated he wouldn't. CASE CLOSED."

**ANSWER:** Defendants admit that the report prepared by Detective Schreffler states that Mr. Lauro agreed that no sexual assault occurred. The report of investigation is a written document that speaks for itself, and Defendants deny any characterization inconsistent with its terms. By way of further response, Defendants state that Mr. Lauro has stated that he never discussed with Detective Schreffler whether improper interactions took place between Sandusky and the boy, and that he did not close his file until Detective Schreffler told him there was

nothing to the case. Mr. Lauro also has stated to the media that if he had seen the reports prepared by the psychologist who interviewed the boy and the CYS counselor, he would not have closed the case.

61. In late May or June 1998, the Centre County District Attorney's Office decided it would not charge Sandusky in connection with the incident. The Freeh investigators did not interview anyone involved with that decision, but knew that it was due to the fact that the report issued by the Youth Services Counselor found that Sandusky did not abuse the boy.

**ANSWER:** Defendants admit that the Centre County District Attorney's Office declined to prosecute Sandusky, that the District Attorney at the time of the 1998 incident has been missing for several years and has been declared dead, and that the prosecutor in charge of the case declined to speak with Defendants.

Defendants further admit that, as stated in the Report, "the case against Sandusky was 'severely hampered' by [the counselor's] report."

62. Ultimately, the records of the 1998 investigation were expunged from Pennsylvania's statewide "ChildLine" database of suspected child abuse reports because, pursuant to Pennsylvania's Child Protective Services Law, the 1998 report regarding Sandusky was classified as "unfounded."

**ANSWER:** On information and belief, Defendants admit that the 1998 report of suspected child abuse by Sandusky was expunged.

63. The Freeh Report also notes that certain Penn State officials were aware of and kept informed of the investigation. In particular, Tim Curley, Gary Schultz, and the University Police Chief, Tom Harmon, corresponded regarding the investigation.

**ANSWER:** Admitted.

64. On June 1, 1998, Harmon emailed Schultz to tell him that the police had informed Sandusky that no criminal behavior had been established, and the investigation was closed.

**ANSWER:** Admitted.

65. The Freeh Report bases its claim that Dr. Spanier was aware of the 1998 allegation on the existence of two emails between others from 1998 on which Dr. Spanier was merely copied. Dr. Spanier told Freeh, truthfully, that he had no recollection of being made aware of the 1998 allegation regarding Sandusky.

**ANSWER:** Defendants deny the allegations in Paragraph 65, and aver to the contrary that Defendants' determination that Dr. Spanier was aware of the 1998 incident is based not only on "two emails," but also on the other documentary evidence examined and interviews conducted as stated in the Report, the pattern of interactions among Curley, Schultz, and Spanier, and the copious other evidence cited in the Report. By way of further response, at Plaintiff's criminal trial,

Schultz testified under oath that he would have told Plaintiff about the details of the allegations against Sandusky, and that Schultz's email correspondence to Plaintiff would not have been his first contact about the incident. Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the allegation that at the time of his July 2012 interview, Plaintiff had no recollection of the 1998 incident, and on that basis that allegation is denied.

66. The first email, from May 5, 1998, is an email from Curley to Schultz, which does not mention Sandusky's name, and simply states, without any additional context or background: "I have touched base with the coach. Keep us posted. Thanks." Schultz responds, again merely copying Dr. Spanier, "Will do. Since we talked tonight I've learned that the Public Welfare people will interview the individual Thursday."

**ANSWER:** The email quoted in Paragraph 66 is a written document that speaks for itself, and Defendants deny any characterization inconsistent with its terms. By way of further response, at Plaintiff's criminal trial, Schultz testified under oath that his May 5, 1998 email would not have been his first contact with Plaintiff regarding the incident and that he would have given Plaintiff details about the incident.

67. Then, on June 9, 1998, Schultz emailed Curley, copying Dr. Spanier, and wrote that investigators “met with Jerry on Monday and concluded there was no criminal behavior and the matter was closed as an investigation.... I think the matter has been appropriately investigated and I hope it is behind us.”

**ANSWER:** The email quoted in Paragraph 67 is a written document that speaks for itself, and Defendants deny any characterization inconsistent with its terms.

68. Dr. Spanier has no recollection of receiving or reviewing these emails. His calendar entries from 1998 show that he was out of the country on a trip to the United Kingdom from June 8 to June 16, 1998, at a time before BlackBerry-type devices were available.

**ANSWER:** On information and belief, Defendants admit that Plaintiff’s calendar states that Plaintiff was out of the country from June 8 to June 16, 1998.

Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 68, and on that basis they are denied.

69. Dr. Spanier was without email access and believes that he would not have seen the June 9 email until he returned to the United States a week later, if he saw it at all, at which time it would have been among a thousand emails waiting in his inbox.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 69, and on that basis they are denied.

70. There is no record of any response to or acknowledgment of receipt of these emails by Dr. Spanier.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 70, and on that basis they are denied. By way of further response, Defendants state that upgrades to the email systems at Penn State resulted in the loss of certain emails from that time period that were not saved through to the present day, and that Defendants therefore have no way of knowing whether Plaintiff provided a written or oral response to the emails referenced in Paragraph 67 and 68. Further, Schultz testified under oath that he would have given Plaintiff details about the 1998 allegations.

71. Freeh and FSS had access to and made copies of Dr. Spanier's calendars. Freeh was aware that Dr. Spanier had been travelling internationally at the time the June 9, 1998 email was sent, that he would have had up to a thousand emails waiting for him when he got back, and that he therefore may have never even seen the June 9 email, or may have skimmed past it quickly without an understanding of its contents.

**ANSWER:** Defendants admit that Defendants obtained copies of Plaintiff's calendar, and that the calendar is a written document that speaks for itself; Defendants deny any characterization inconsistent with its terms. Defendants deny the remaining allegations in Paragraph 71, and aver to the contrary that Defendants have no way of knowing whether or how often Plaintiff checked his emails during that period of time, how many emails he received, or how he reacted to the receipt of the email. By way of further response, at Plaintiff's criminal trial, Schultz testified under oath that he would have given Plaintiff details about the 1998 allegation.

72. Accordingly, Freeh and FSS knew it was likely that Dr. Spanier did not see the June 9, 1998 email, and that even if he did, he was merely copied on an exchange between others on an email expressly stating that there was "no evidence of criminal behavior."

**ANSWER:** Defendants deny the allegations in Paragraph 72, and aver to the contrary that Defendants cannot speculate as to whether it is "likely" that Plaintiff did not see the June 9 email. By way of further response, it is not credible to conclude that Plaintiff, as the president of a major university, would have wholly ignored emails he received, even if those emails were sent while Plaintiff was out of the country, much less emails reporting such a disturbing topic as a criminal investigation into a long time member of the Penn State football coaching team.

Even if Plaintiff did not see the June 9 email, it is further not credible to conclude that Curley or Schultz would not have given Plaintiff a report of the incident after he returned. By way of further response, at Plaintiff's criminal trial, Schultz testified under oath that his May 5, 1998 email would not have been his first contact with Plaintiff regarding the incident and that he would have given Plaintiff details about the incident. Further, it is suspicious that Plaintiff told the Special Investigative Counsel that his first knowledge of the 1998 incident came when he testified before the Thirty-Third Statewide Investigating Grand Jury (the "Grand Jury") on April 13, 2011, yet notes from his interview with members of the Attorney General's Office reflect that he was asked about the 1998 incident on March 22, 2011, almost a month prior to his appearance before the Grand Jury.

73. Thus, the Freeh Report details an incident in 1998 in which (1) Sandusky allegedly showered with a boy in a locker room after a workout; (2) numerous agencies of the State and County were informed of the situation by appropriate law enforcement authorities who conducted investigations; (3) trained professionals concluded that no sexual abuse or impropriety took place, and the report was determined to be "unfounded," (4) the authorities declined to prosecute, finding no crime; and (5) Dr. Spanier was copied on two emails; the first with a vague reference and no name mentioned, and the second of which consisted of his

subordinate — who was following the investigation — stating that the matter was appropriately investigated and that the case was closed.

**ANSWER:** Defendants deny the allegations in Paragraph 73, and incorporate by reference their Answers to Paragraphs 53 through 72.

74. The Freeh Report then falsely claims that Dr. Spanier’s failure to act on this information renders him a pedophile enabler.

**ANSWER:** Defendants state that the Report is a written document that speaks for itself, and deny any characterization inconsistent with its terms. Defendants deny that any statement in the Report is false or defamatory, and aver to the contrary that Plaintiff’s failure to report Sandusky to the authorities or take other reasonable steps to protect children on the Penn State campus from Sandusky permitted Sandusky to abuse several more children before finally being arrested for child abuse. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

75. The Report states that Dr. Spanier “took no action to limit Sandusky’s access to Penn State facilities or any measures to protect children on their campuses,” and faults Dr. Spanier for not declaring Sandusky a “persona non grata” on the Penn State Campus.

**ANSWER:** Defendants state that the Report is a written document that speaks for itself, and deny any characterization inconsistent with its terms. By way of further

response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

76. The Freeh Report accuses Dr. Spanier of actively deciding “to allow Sandusky to retire in 1999, not as a suspected child predator, but as a valued member of the Penn State football legacy....”

**ANSWER:** Defendants state that the Report is a written document that speaks for itself, and deny any characterization inconsistent with its terms.

77. The Report does not explain how Dr. Spanier could have or should have considered Sandusky a “suspected child predator” in 1999, after state officials determined that Sandusky was not a child predator.

**ANSWER:** Defendants state that the Report is a written document that speaks for itself, and deny any characterization inconsistent with its terms. By way of further response, the 1998 investigation did not result in charges against Sandusky, but did not exonerate Sandusky either. In fact, the psychologist who initially interviewed the child concluded that the incident met all definitions of a likely pedophile’s pattern of building trust and gradual introduction of physical touch. DPW investigator Lauro also has stated to the media that if he had seen the reports prepared by the psychologist who interviewed the boy and the CYS counselor, he would not have closed the case.

78. Defendants' accusations that Dr. Spanier knowingly failed to protect potential sexual abuse victims, and faulting of Dr. Spanier for affirmatively allowing Sandusky to retire in 1999 without labeling him a "suspected child predator" are false and were made with actual knowledge of falsity or, at a minimum, a reckless disregard for the truth.

**ANSWER:** The allegations in Paragraph 78 constitute legal conclusions to which no response is required. To the extent that a response is required, Defendants deny that any statement in the Report is false or defamatory, or made with actual knowledge of falsity or a reckless disregard for truth. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor. Such a charge required the jury to find beyond a reasonable doubt that, *inter alia*, Plaintiff endangered the welfare of a child by violating a duty of care, protection, or support, and that Plaintiff did so knowingly.

**Freeh Acted with Actual Malice When He Accused Dr. Spanier of  
Conspiring to Cover up a Sexual Assault by Sandusky in 2001**

79. The second Sandusky incident that the Freeh Report focuses on is a 2001 incident in which a Penn State football staffer reported witnessing Sandusky and a male in the showers of an athletic facility on the Penn State campus.

**ANSWER:** Defendants admit that the Report presents findings relating to a 2001 incident in which Penn State Graduate Assistant Michael McQueary reported witnessing Sandusky and a young boy naked in the showers of the Lasch Building

on the Penn State campus. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

80. Graduate assistant Mike McQueary is believed to have reported to Joe Paterno on February 10, 2001, that on the evening before, Friday, February 9, 2001, he witnessed something that made him uncomfortable.

**ANSWER:** Admitted.

81. McQueary says he saw Sandusky — who by that time was employed solely by The Second Mile — with a boy McQueary believed to be between 10 and 12 years old.

**ANSWER:** Defendants admit that Sandusky served as a consultant to The Second Mile in 2001. Defendants further state that Sandusky held emeritus status with Penn State and, *inter alia*, had free access to the athletic facilities on campus. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

82. According to McQueary, the first persons he informed after the alleged incident were his father, John McQueary, and a colleague of his father's, a local physician named Dr. Jonathon Dranov, at John McQueary's home.

**ANSWER:** Admitted.

83. During Sandusky's criminal trial, Dr. Dranov — who under Pennsylvania law is required to report suspected child abuse — testified under oath

that McQueary reported that he was upset by the incident, but, when pressed by Dr. Dranov three times, said that he did not witness anything sexual.

**ANSWER:** To the extent that Paragraph 83 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny that Dr. Dranov testified that McQueary told him that he “did not witness anything sexual” and aver to the contrary that at both Sandusky’s criminal trial and Plaintiff’s criminal trial, Dr. Dranov testified that McQueary told him that he heard sexual sounds in the showers of the Lasch Building where Sandusky was showering with a young boy. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

84. Acting on his father and Dr. Dranov’s suggestions, McQueary then set up a meeting with head coach Joe Paterno. Both McQueary and Paterno later testified that McQueary told Paterno nothing specific, but rather advised that he saw something that he felt was inappropriate.

**ANSWER:** Defendants admit that McQueary met with Paterno the day after witnessing Sandusky in the showers of the Lasch building with a young boy, and that he told Paterno that he saw Sandusky and a young boy in the shower and that it was inappropriate. By way of further response, in his Grand Jury testimony, Paterno stated that he understood the incident was of a sexual nature. On March

24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor relating to this incident.

85. On Sunday, February 11, Paterno spoke with Athletic Director Curley. Curley later testified that all he understood was that the graduate assistant saw something in the shower area that made him uncomfortable.

**ANSWER:** Defendants admit that Paterno and Curley spoke on February 11, 2001, and that Curley has stated that Paterno told him that McQueary had seen Sandusky in the shower of the Lasch Building with a young boy and felt uncomfortable about it. By way of further response, at Plaintiff's criminal trial, Curley testified that he thought the 2001 report was something that needed to be taken seriously, and that he thought at the time that it sounded similar to the allegation made against Sandusky in 1998. At Plaintiff's criminal trial, Schultz testified that Curley told him that a graduate assistant had entered the locker room and saw a reflection of Sandusky and a young boy in the shower, then turned around and looked directly in the shower and saw Sandusky and the boy standing there. Schultz testified that because Curley gave him that account after Curley spoke with Paterno, he assumed that Paterno had given the same account to Curley. On March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor relating to this incident.

86. Curley later relayed this information to Senior Vice President Schultz.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the allegation that Curley “relayed this information” to Schultz, and on that basis it is denied. By way of further response, at Plaintiff’s criminal trial, Schultz testified under oath that Curley told him that he understood that McQueary entered the locker room, looked in the mirror and saw a reflection of Sandusky and a young boy at an angle in the shower. McQueary then turned around and looked directly in the shower, and Sandusky and the boy were standing there. On March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor relating to this incident.

87. On February 12, 2001, Schultz and Curley met briefly with Dr. Spanier to give him a “heads up” regarding the situation.

**ANSWER:** Admitted. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

88. During his interview with Freeh and two of his investigators, Dr. Spanier related that this was a short meeting, and that he was told of Sandusky and a youth “horsing around” in the showers. Dr. Spanier specifically asked if that is how the incident was described to Curley, and they answered affirmatively.

**ANSWER:** Defendants admit that in his interview with investigators, Plaintiff claimed that he was told that Sandusky was “horsing around” with a youth in the shower. By way of further response, at Plaintiff’s criminal trial, Schultz testified

under oath that he and Curley met with Plaintiff and that they reviewed the 1998 allegation against Sandusky. Schultz also testified that they agreed that Curley would meet with Sandusky, and that unless Sandusky confessed to having a problem, Curley would indicate the need to have DPW review the matter. Schultz testified that he and Curley subsequently met with McQueary, and McQueary told them that he entered the locker room and saw a reflection in the mirror of Sandusky and a young boy in the shower. He then turned around and saw Sandusky and the young boy standing in the shower. Schultz testified that McQueary did not use the word “horseplay” or “horsing around.” On March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor relating to this incident.

89. Dr. Spanier was and is adamant that neither Curley nor Schultz told him that there was anything criminal or sexual that was reported to have occurred between Sandusky and the young male.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to support a belief as to the truth or falsity of the allegations in Paragraph 89, and on that basis they are denied. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor relating to this incident.

90. Dr. Spanier was told the shower was after a workout and the witness was unsure what he saw because it was “indirect and around a corner.” Dr. Spanier was not aware of the witness’s name, the specific location, or time of day and did not know that The Second Mile youth might be below high school-age.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to support a belief as to the truth or falsity of the allegations in Paragraph 89, and on that basis they are denied. By way of further response, at Plaintiff’s criminal trial, Schultz testified that McQueary told him and Curley that he entered the locker room and saw a reflection in the mirror of Sandusky and a young boy in the shower. He then turned around and saw Sandusky and the young boy standing in the shower. Defendants also have no way of knowing what questions Plaintiff asked or failed to ask when informed that Sandusky was showering with a youth in the Lasch Building shower. Moreover, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor relating to this incident.

91. Dr. Spanier explained to Freeh that he recalled an agreed-upon plan for Curley to advise Sandusky that (1) he was being directed to not shower again with youth, and (2) that the head of The Second Mile should be advised of this directive.

**ANSWER:** Admitted.

92. On February 25, 2001, after Schultz and Curley themselves met with McQueary to discuss the incident, calendars show that Dr. Spanier, Curley, and Schultz may have met for a brief follow-up report.

**ANSWER:** Admitted.

93. On February 27, 2001, Curley emailed Schultz and Dr. Spanier to say that he believed the best course of action was to meet with Sandusky and tell him that bringing young men into the campus facilities was inappropriate. Moreover, Curley would meet with the head of The Second Mile to inform the organization of the allegations.

**ANSWER:** The February 27, 2001 email sent by Curley is a written document that speaks for itself, and Defendants deny any characterization inconsistent with its terms. By way of further response, Defendants admit that on February 27, 2001, the day after Schultz emailed Curley to confirm that he “[had] the ball” to, *inter alia*, “contact[] the Dept of Welfare,” Curley emailed Schultz and Plaintiff and suggested that instead of reporting Sandusky to DPW, he thought the best course of action was to meet with Sandusky and tell him (i) that “we are aware of the first situation,” (ii) that “we feel there is a problem and we want to assist the individual to get professional help,” (iii) that “we feel a responsibility at some point soon to inform his organization and maybe the other one about the situation,” and (iv) that “his guests are not permitted to use our facilities.” On March 24,

2017, Plaintiff was criminally convicted of endangering the welfare of a minor relating to this incident.

94. Dr. Spanier responded to this email to say that this approach was acceptable and a reasonable way to proceed. Dr. Spanier explained to Freeh, to the best of his ability, what he was likely trying to convey in his email reply.

**ANSWER:** The February 27, 2001 email sent by Plaintiff is a written document that speaks for itself, and Defendants deny any characterization inconsistent with its terms. By way of further response, Defendants admit that Plaintiff responded to Curley's suggestion that they speak to Sandusky and the Second Mile rather than reporting Sandusky to DPW as follows:

Tim: This approach is acceptable to me. It requires you to go a step further and means that your conversation will be all the more difficult, but I admire your willingness to do that and I am supportive. The only downside for us is if the message isn't "heard" and acted upon, and we then become vulnerable for not having reported it. But that can be assessed down the road. The approach you outline is humane and a reasonable way to proceed.

On March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor relating to this incident.

95. Dr. Spanier told Freeh investigators that several days later, he saw Curley, who informed him that both the meeting with Sandusky and the meeting with The Second Mile had occurred and gone well, and that Dr. Spanier considered this to have been an appropriate response to what he understood to be mere

horseplay between a Second Mile employee and a youth that took place on campus.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 95, and on that basis they are denied. By way of further response, notes of Plaintiff's interview with investigators do not indicate that Plaintiff told investigators what Curley reported after his discussion with The Second Mile. At Plaintiff's criminal trial, Schultz testified under oath that Sandusky's behavior was not appropriate and was concerning, and that he believed that Spanier, Curley, and he viewed the allegations with the same degree of seriousness. On March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor relating to this incident.

96. Dr. Spanier considered the matter closed at that time.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 96, and on that basis they are denied. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor relating to this incident.

**Freeh Recklessly Disregards Overwhelming Proof That  
Dr. Spanier Was Never Informed of a Sexual Assault in 2001**

97. The Freeh Report makes numerous defamatory statements regarding Dr. Spanier and his actions in 2001.

**ANSWER:** Defendants deny the allegations in Paragraph 97, and aver to the contrary that no statement in the Report is false or defamatory. Rather, the Report is the product of a full, complete, and independent investigation into the alleged failure of Penn State personnel to respond to, and to report to the appropriate authorities, the sexual abuse of children by Sandusky. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor based in substantial part on the same occurrences discussed in the Report.

98. Freeh charges that Dr. Spanier did not “ma[ke] any effort to identify the child victim or determine if he had been harmed.” Freeh accuses Dr. Spanier of “total and consistent disregard ... for the safety and welfare of Sandusky’s child victims,” and of “fail[ing] to protect against a child sexual predator harming children for over a decade.”

**ANSWER:** The Report is a written document that speaks for itself, and Defendants deny any characterization inconsistent with its terms. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor based in substantial part on the same occurrences discussed in the Report.

99. Freeh accuses Dr. Spanier of “conceal[ing] Sandusky’s activities from the Board of Trustees, the University community and authorities,” and of “exhibit[ing] a striking lack of empathy for Sandusky’s victims by failing to inquire as to their safety and well-being, especially by not attempting to determine the identity of the child who Sandusky assaulted in the Lasch Building in 2001.”

**ANSWER:** The Report is a written document that speaks for itself, and Defendants deny any characterization inconsistent with its terms. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor based in substantial part on the same occurrences discussed in the Report.

100. Freeh claims that by knowingly failing to alert the Board of Trustees of “child sexual abuse allegations against Sandusky,” Dr. Spanier is guilty of “empower[ing] Sandusky to attract potential victims to the campus.”

**ANSWER:** The Report is a written document that speaks for itself, and Defendants deny any characterization inconsistent with its terms. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor based in substantial part on the same occurrences discussed in the Report.

101. Defendants made these false statements despite a lack of any evidence that Dr. Spanier was informed of allegations of child abuse by Sandusky in 2001.

**ANSWER:** Defendants deny the allegations in Paragraph 101, and aver to the contrary that none of the foregoing statements are false, and that the full, complete, and independent investigation performed by Defendants uncovered significant evidence of Spanier's involvement in the decision not to report alleged sexual abuse by Sandusky in 2001 including the emails and witness testimony cited at length throughout the Report. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor based in substantial part on the same occurrences discussed in the Report.

102. Defendants knew that McQueary had given multiple inconsistent accounts of the McQueary/Sandusky [*sic*] incident and that it was reckless to rely on any one of McQueary's prior statements as truthful.

**ANSWER:** Defendants deny the allegations in Paragraph 102, and aver to the contrary that McQueary has consistently testified that he witnessed inappropriate behavior of a sexual nature between Sandusky and a young child in the showers of the Lasch building and that he reported that behavior to Paterno, who confirmed in his grand jury testimony that he understood the incident to be of a sexual nature. Defendants also state that the conclusions reached as to Spanier's involvement in the decision not to report Sandusky to DPW are based not only on McQueary's testimony, but also on the documentary evidence (including the 2001 emails referenced *supra*) and witness interviews as summarized in the Report. By way of

further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

103. Freeh knew that Dr. Spanier himself never spoke to McQueary, and Freeh had no evidence showing that Dr. Spanier was ever informed that McQueary witnessed a sexual assault by Sandusky on a minor.

**ANSWER:** Defendants deny the allegations in Paragraph 103, and aver to the contrary that the copious documentary and testimonial evidence summarized in the Report compels the conclusion that, at the least, Plaintiff was aware of a report of inappropriate sexual behavior by Sandusky with a youth. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor based in substantial part on the same occurrences discussed in the Report.

104. Freeh recklessly disregarded and purposefully avoided contrary evidence that shows Dr. Spanier was never so informed, and recklessly or purposefully chose not to interview key witnesses who would have related as much to Freeh.

**ANSWER:** Defendants deny the allegations in Paragraph 104, and aver to the contrary that Defendants' full, complete, and independent investigation resulted in evidence that is more than sufficient to support the findings in the Report.

Defendants further state that while Defendants could not interview every witness

because Defendants lacked subpoena power, Defendants were able to complete interviews of the witnesses most critical to Defendants' investigation. By way of further response, at his criminal trial, Plaintiff did not present any evidence in his defense, including purported "contrary evidence" or testimony from "key witnesses" showing that he was not informed of allegations of improper sexual behavior by Sandusky. To the contrary, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor based in substantial part on the same occurrences discussed in the Report.\

105. Freeh's decisions not to interview these critical first-hand witnesses, and to make these accusations against Dr. Spanier without these witnesses' testimony, reflect a reckless disregard for the truth.

**ANSWER:** Defendants deny the allegations in Paragraph 105, and aver to the contrary that while Defendants were not able to interview every possible witness because Defendants lacked subpoena power, Defendants completed interviews of the witnesses most critical to Defendants' investigation. Defendants further state that Defendants' findings as to Plaintiff's involvement in the decision not to report Sandusky to DPW was based not only on witness testimony, but the documentary evidence cited in the Report (including the 1998 and 2001 emails referenced *supra*). By way of further response, at his criminal trial, Plaintiff did not present any evidence in his defense, including testimony from "critical first-hand

witnesses” showing that he was not informed of allegations of improper sexual behavior by Sandusky. To the contrary, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor based in substantial part on the same occurrences discussed in the Report.

106. In his interview with Freeh investigators, Dr. Spanier was unequivocal in stating that he was only told by Schultz and Curley that Sandusky was seen in the shower with “one of his kids, horsing around,” or engaging in “horseplay,” which Dr. Spanier assumed meant splashing water or snapping towels.

**ANSWER:** Defendants admit that in his interview with investigators, Plaintiff made statements testimony consistent with the allegations in Paragraph 106. Defendants are without information sufficient to form a belief as to the truth or falsity of allegations relating to Plaintiff’s alleged state of mind contained in Paragraph 106, and on that basis they are denied.

107. Freeh failed to interview Athletic Director Tim Curley; Penn State Senior Vice President Gary Schultz; Jerry Sandusky; Victim #2, the youth alleged to have been seen in the shower with Sandusky; Mike McQueary; John McQueary, Sr.; Dr. Jonathan Dranov; Joe Paterno; Jack Raykovitz, the Executive Director of the Second Mile who also learned of the incident from Curley; Bruce Heim, a Second Mile Board Member who spoke with Raykovitz regarding the meeting with

Curley; and Wendell Courtney, Penn State's then-outside counsel who spoke with Schultz regarding the incident at the time.

**ANSWER:** Defendants admit that the individuals identified in Paragraph 107 were not interviewed by investigators, but deny that their testimony was necessary to reach the findings in the Report. To the contrary, the findings of the Report are amply supported by the evidence and testimony cited in the Report. Furthermore, law enforcement officials specifically asked Freeh investigators not to interview certain individuals referenced in Paragraph 107, including McQueary, and still others, including Curley, Schultz, Sandusky, Courtney, Paterno, and Raykovitz, refused to participate. Moreover, the identity of Victim #2 was not known at the time the Report was authored.

By way of further response, at Plaintiff's criminal trial, Curley, Schultz, Michael McQueary, John McQueary, Jonathan Dranov, Jack Raykovitz, and Wendell Courtney each testified under oath. Among other things, McQueary testified that he witnessed inappropriate sexual behavior by Sandusky, and that he had relayed what he had seen to Paterno, Curley, and Schultz. Courtney testified that he recommended that the incident be reported to DPW, and Schultz testified that until the grand jury proceedings in 2011, he had thought that the incident had been reported to DPW. On March 24, 2017, following the testimony of those

witnesses, Plaintiff was criminally convicted of endangering the welfare of a minor.

108. Freeh knew, recklessly disregarded, or purposefully avoided the fact that Gary Schultz's attorney has publicly stated that "Mr. Schultz never told Dr. Spanier that Mr. Sandusky sexually abused a boy."

**ANSWER:** To the extent that Paragraph 108 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny the allegations in Paragraph 108, and aver to the contrary that irrespective of statements made by Gary Schultz's attorney, who was neither present nor involved in the events at issue, the documentary and testimonial evidence cited in the Report fully support the conclusions reached in the Report. By way of further response, at Plaintiff's criminal trial, Schultz testified under oath that Sandusky's behavior was not appropriate and was concerning, and that he believed that Spanier, Curley, and he each viewed the matter with the same degree of seriousness. Following Schultz's testimony, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

109. Freeh knew, recklessly disregarded, or purposefully avoided the fact that Tim Curley's attorney has publicly stated that "there is one thing about which there is no doubt ... Tim Curley did not tell Dr. Spanier that Mr. Sandusky sexually abused a young boy in 2001."

**ANSWER:** To the extent that Paragraph 109 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny the allegations in Paragraph 109, and aver to the contrary that irrespective of statements made by Tim Curley’s attorney, who was neither present nor involved in the events at issue, the documentary and testimonial evidence cited in the Report fully support the conclusions reached in the Report. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

110. Freeh knew, recklessly disregarded, or purposefully avoided the fact that Dr. Jonathan Dranov, a mandatory reporter under Pennsylvania law, did not make any report regarding the 2001 incident based on what McQueary told him.

**ANSWER:** To the extent that Paragraph 110 contains legal conclusions, no response is required. To the extent that a response is required, Defendants admit that, on information and belief, Dr. Dranov did not make a report to authorities in 2001, but testified that McQueary told him that he heard “sexual sounds” in the showers of the Lasch Building where Sandusky was showering with a young boy, and that Dr. Dranov believed “[a]t worst there was a sexual assault going on.” By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor based in substantial part on the same occurrences discussed in the Report.

111. According to the Freeh Report, Curley also told Raykovitz only that Sandusky had been observed in the locker room with a young boy, and that the observer was uncomfortable with the situation.

**ANSWER:** The Report is a written document that speaks for itself, and Defendants deny any characterization inconsistent with its terms. By way of further response, at Plaintiff's criminal trial, Curley testified under oath that he told Raykovitz that someone had seen Sandusky in the shower with a child, and that what he saw made that person uncomfortable. Curley testified that he also told Raykovitz that that was the second time that Sandusky had been reported to be in the shower with a boy. On March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

112. Raykovitz and his wife, Katherine Genovese, have stated through their attorney: "Raykovitz met with Curley in 2001. Tim Curley told Raykovitz that someone (McQueary was not named) was made uncomfortable by Sandusky being in a University shower with a youth. Curley stated that the incident was investigated, and no sexual misconduct was alleged or found."

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 112, and on that basis they are denied. By way of further response, at Plaintiff's criminal trial, Raykovitz testified under oath that Curley told him that someone

saw Sandusky in the shower with a “young man” and that that person was uncomfortable. Raykovitz also testified that Curley told him that the matter was investigated and the investigation revealed that nothing inappropriate had occurred, but that Sandusky was no longer to be allowed on campus with children. Raykovitz testified that he then met with Sandusky to confirm he was aware that he could not bring children on campus, and that the matter was significant enough that he told his wife, Katherine Genovese, trustee Bruce Heim, and board chairman Robert Poole. By way of further response, following Raykovitz’s testimony, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

113. According to Bruce Heim, a former member of The Second Mile Board of Directors, Raykovitz informed Heim and other Second Mile officials that Curley told him only that Sandusky had been seen in the showers on campus with a young male. Raykovitz told Heim that nothing sexually inappropriate happened, based on the description of the incident he received from Curley.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 113, and on that basis they are denied. By way of further response, at Plaintiff’s criminal trial, Raykovitz testified under oath that he told Bruce Heim what he had heard from Curley, and agreed that the report was significant enough that he told

other people within The Second Mile including Heim. Following Raykovitz's testimony, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

114. In addition to Dr. Spanier and Raykovitz, Sandusky himself also received a report of the incident from the same source — Curley. Freeh's Report acknowledges that both agree that when Curley met with Sandusky to discuss the February 9 incident with him, Curley did not suggest that any sexual abuse had occurred.

**ANSWER:** The Report is a written document that speaks for itself, and Defendants deny any characterization inconsistent with its terms. By way of further response, Defendants state that the Report indicates that Curley told Sandusky “[a]bout the information that we received, that we were uncomfortable with the information and that [Curley] was going to take the information and report it to the executive director of the Second Mile and that [Curley] did not want [Sandusky] in the future to be in our athletic facilities with any young people.” The Report states that Sandusky's counsel told investigators that Sandusky was told that Curley had heard that Sandusky had been in the shower with a young child, and someone felt this was inappropriate. The Report also states that according to Sandusky's counsel, Curley never used the word sex or intercourse. By way of further response, Curley testified under oath at Plaintiff's criminal trial

that Sandusky admitted that he was in the Lasch Building on February 9, 2001 but “denied anything happened.” Following Curley’s testimony, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

115. Wendell Courtney, a longtime attorney for Penn State who Schultz consulted with regarding the incident, advised Schultz that based upon what Schultz told him about the incident, the incident did not need to be reported under the Pennsylvania statute requiring certain individuals to report suspected incidences of child abuse.

**ANSWER:** Defendants deny the allegations in Paragraph 115, and aver to the contrary that on February 11, 2001, Schultz had a conference call with Courtney regarding “reporting of suspected child abuse.” Further, at Plaintiff’s criminal trial, Courtney testified under oath that he advised Schultz that he should report the incident to DPW. Following Courtney’s testimony, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

116. Courtney stated in a November 2011 interview that he was not told of allegations of “Jerry Sandusky engaging in sexual misconduct with young children,” and that if he had been told of such misconduct he would have reported it to the police.

**ANSWER:** On information and belief, Defendants admit that Courtney stated in an interview that he was not told of “Jerry Sandusky engaging in sexual

misconduct with young children” and that if he had been told he would have reported it. Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of that statement. By way of further response, on February 11, 2001, Schultz had a conference call with Courtney regarding “reporting of suspected child abuse.” Defendants state that Courtney refused to be interviewed by investigators. At Plaintiff’s criminal trial, however, Courtney testified under oath that he advised Schultz that he should report the incident to DPW. Following Courtney’s testimony, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

117. Freeh’s Report does not identify any evidence that contradicts the testimony and/or statements of six individuals: Dr. Spanier, Schultz, Curley, Raykovitz, Heim, and Courtney, all of which tend to show that Dr. Spanier was only informed of a report of horseplay.

**ANSWER:** The Report is a written document that speaks for itself, and Defendants deny any characterization inconsistent with its terms. Defendants deny that the testimony referenced in Paragraph 117 “tend to show that Dr. Spanier was only informed of a report of horseplay.” To the contrary, at Plaintiff’s criminal trial, Schultz, Curley, Raykovitz, and Courtney each testified under oath. Schultz testified that when he and Curley first met with Plaintiff, they discussed the 1998 incident involving Sandusky, and that he believed that they all considered

Sandusky's behavior in 2001 to be inappropriate and concerning. He stated that he believed they all viewed the incident with the same degree of seriousness, and stated that until the grand jury proceedings in 2011, he thought that the incident had in fact been reported to DPW. Courtney testified that he had advised Schultz that he should report the incident to DPW. Following the testimony of these witnesses, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

118. Defendants' decision to accuse Dr. Spanier of concealing a sexual assault on a minor, in the face of all evidence to the contrary, shows that Defendants' false statements regarding Dr. Spanier were made with actual malice.

**ANSWER:** To the extent that Paragraph 118 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny the allegations in Paragraph 118, and aver to the contrary that no statement in the Report is false, defamatory, or made with actual malice. Defendants further state that the findings in the Report are amply supported by the evidence and testimony cited in the Report, including the 1998 and 2001 emails referenced *supra*. By way of further response, at Plaintiff's criminal trial, Plaintiff introduced no "evidence to the contrary," and was criminally convicted of endangering the welfare of a minor.

**Freeh Rejected Dr. Spanier's Request to Consider the  
Results of a More Complete Federal Investigation**

119. At the beginning of his interview with Freeh, Dr. Spanier told Freeh that the federal government had completed a four-month investigation into Dr. Spanier's continued fitness to hold a Top Secret clearance, including examining his role, if any, in the Sandusky matter, and that the investigation exculpated Dr. Spanier and reaffirmed his fitness to keep his security clearance.

**ANSWER:** Defendants admit that in his interview with investigators, Plaintiff stated that the federal government had assessed Plaintiff's ability to hold a Top Secret security clearance. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor. Such a charge required the jury to find beyond a reasonable doubt that, *inter alia*, Plaintiff endangered the welfare of a child by violating a duty of care, protection, or support, and that Plaintiff did so knowingly.

120. Dr. Spanier told Freeh that he had made a Freedom of Information Act request for a copy of the federal investigative report and asked Freeh not to reach any definitive conclusions until he had an opportunity to review it.

**ANSWER:** Defendants admit that Plaintiff mentioned his federal investigative report during his interview. Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 120, and on that basis they are denied. By way of further response, notes of Plaintiff's interview with investigators do not reflect that he told

investigators that he had made a Freedom of Information Act request for a copy of the federal investigative report. In any event, a report lacking the evidence uncovered by FSS investigators would be of little informational value.

121. Dr. Spanier also told Freeh that Schultz and Curley had been interviewed by the federal investigator performing the security clearance investigation.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 121, and on that basis they are denied. By way of further response, notes of Plaintiff's interview with investigators do not reflect that he told investigators who had been interviewed by the federal investigator performing the security clearance investigation. In any event, a report lacking the evidence uncovered by FSS investigators would be of little informational value.

122. Freeh knew that it would be reckless to make conclusions regarding what knowledge Dr. Spanier had of the McQueary/Sandusky incident without interviewing Schultz and Curley about what they told Dr. Spanier.

**ANSWER:** Defendants deny the allegations in Paragraph 122, and aver to the contrary that the documentary and testimonial evidence in the Report amply supports the conclusions set forth in the Report. By way of further response, Schultz and Curley both testified under oath at Plaintiff's criminal trial. Plaintiff

did not present any evidence in his defense. Following their testimony, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor. Such a charge required the jury to find beyond a reasonable doubt that, *inter alia*, Plaintiff endangered the welfare of a child by violating a duty of care, protection, or support, and that Plaintiff did so knowingly.

123. Freeh rejected Dr. Spanier's request and published the Report just four days later, on July 12, 2012.

**ANSWER:** Defendants admit that the Report was issued on July 12, 2012.

124. The federal security clearance report included material statements by Schultz, Curley, members of the University administration and trustees, former Penn State General Counsel Cynthia Baldwin, and many other witnesses with information relevant to Freeh's investigation.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to support a belief as to the truth or falsity of the allegations in Paragraph 124, and on that basis they are denied. By way of further response, Schultz and Curley both testified under oath at Plaintiff's criminal trial. Following their testimony, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor. Such a charge required the jury to find beyond a reasonable doubt that, *inter alia*, Plaintiff endangered the welfare of a child by violating a duty of care, protection, or support, and that Plaintiff did so knowingly.

125. The federal report contradicted Freeh's claim that Dr. Spanier was aware of and covered up a sexual assault by Sandusky.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to support a belief as to the truth or falsity of the allegations in Paragraph 125, and on that basis they are denied. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor. Such a charge required the jury to find beyond a reasonable doubt that, *inter alia*, Plaintiff endangered the welfare of a child by violating a duty of care, protection, or support, and that Plaintiff did so knowingly.

126. The federal report states: "The circumstances surrounding [Dr. Spanier's] departure from his position as PSU President do not cast doubt on [Dr. Spanier's] current reliability, trustworthiness or good judgment and do not cast doubt on his ability to properly safeguard national security information."

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to support a belief as to the truth or falsity of the allegations in Paragraph 126, and on that basis they are denied.

127. Gary Schultz told the federal investigator that Curley reported to Dr. Spanier that the McQueary/Sandusky incident involved horseplay or wrestling, not sexual abuse or criminal activity.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to support a belief as to the truth or falsity of the allegations in Paragraph 127, and on that basis they are denied. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

128. The federal report also contains notes of an interview with Dr. Thomas G. Poole, Vice President for Administration at Penn State, who recounted a meeting with Dr. Spanier after the Sandusky grand jury presentment became public. Schultz walked in on the meeting, and, speaking of the grand jury presentment, stated that the witness never told Schultz that he saw anything sexual.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to support a belief as to the truth or falsity of the allegations in Paragraph 128, and on that basis they are denied.

#### **Defendants Publish Additional False and Defamatory Statements**

129. On July 12, 2012, Defendants held a public press conference coinciding with the release of the Freeh Report.

**ANSWER:** Defendants admit that on July 12, 2012, Defendants held a conference to release the Report to the public.

130. During the July 12, 2012 press conference Defendants made false and defamatory statements concerning Dr. Spanier, and also distributed to the media

prepared remarks containing false and defamatory statements about Dr. Spanier.

The defamatory statements are set forth in Paragraphs 160 and 174, below.

**ANSWER:** To the extent that Paragraph 130 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny the allegations in Paragraph 130, and aver to the contrary that the Remarks made by Defendants were neither false nor defamatory and were amply supported by the disclosed facts and evidence set forth in the Report.

131. The statements published by Defendants on July 12, 2012 are false. Dr. Spanier was never told of a report of Sandusky sexually abusing a child, did not fail to take action in response to information he never received, and did not attempt to conceal information he never received.

**ANSWER:** To the extent that Paragraph 131 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny the allegations in Paragraph 131, and aver to the contrary that the Remarks made by Defendants were neither false nor defamatory and were amply supported by the disclosed facts and evidence set forth in the Report. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor. Such a charge required the jury to find beyond a reasonable doubt that, *inter alia*, Plaintiff endangered the welfare of a child by violating a duty of care, protection, or support, and that Plaintiff did so knowingly.

132. Defendants made these statements with knowledge that they were false, or with reckless disregard for whether they were true or false.

**ANSWER:** To the extent that Paragraph 132 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny the allegations in Paragraph 132, and aver to the contrary that the Remarks made by Defendants were neither false nor defamatory and were amply supported by the disclosed facts and evidence set forth in the Report. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

133. On February 10, 2013 Defendants published a press release to the media in which they made false and defamatory statements concerning Dr. Spanier. The February 10, 2013 defamatory statements are set forth in Paragraph 189, below.

**ANSWER:** To the extent that Paragraph 133 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny the allegations in Paragraph 133, and aver to the contrary that the Statement released by Defendants on February 10, 2013 was neither false nor defamatory and was amply supported by the disclosed facts and evidence set forth in the Report.

134. The statements made by Defendants on February 10, 2013 are false. Dr. Spanier was never told of a report of Sandusky sexually abusing a child, did

not agree not to report criminal activity by Sandusky, did not fail to protect against Sandusky's criminal activities that he was unaware of, and did not fail to inquire as to the safety of victims he was unaware of.

**ANSWER:** To the extent that Paragraph 134 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny the allegations in Paragraph 134, and aver to the contrary that the Statement released by Defendants on February 10, 2013 was neither false nor defamatory and was amply supported by the disclosed facts and evidence set forth in the Report. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor. Such a charge required the jury to find beyond a reasonable doubt that, *inter alia*, Plaintiff endangered the welfare of a child by violating a duty of care, protection, or support, and that Plaintiff did so knowingly.

135. Defendants made these statements with knowledge that they were false, or with reckless disregard for whether they were true or false.

**ANSWER:** To the extent that Paragraph 135 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny the allegations in Paragraph 135, and aver to the contrary that the Statement released by Defendants on February 10, 2013 was neither false nor defamatory and was amply supported by the disclosed facts and evidence set forth in the Report.

By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

**Defendants' Defamatory Statements Are Repeated and Republished  
in Other Media Outlets**

136. National and local media outlets across the country have republished Defendants' false and defamatory statements in print and online, causing further reputational harm to Dr. Spanier.

**ANSWER:** Defendants, after reasonable investigation, are without knowledge sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 136, and on that basis they are denied.

137. These republications were foreseeable, because Defendants knew that their Report and related statements would be the subject of intense media attention and knew that their statements about Dr. Spanier would be widely republished.

**ANSWER:** Defendants deny the allegations in Paragraph 137, and aver to the contrary that Defendants had no way of knowing what attention would be given to the Report or whether the "Report and related statements" would be "republished."

**Dr. Spanier Has Suffered Significant Harm  
as a Result of Defendants' Statements**

138. Defendants' defamatory statements regarding Spanier impugn his well-earned reputation as an educator, university administrator, advocate for child

and family welfare, and national security expert — and they undermine public confidence in his competence, ethics, and abilities in these areas.

**ANSWER:** Defendants deny that any statement made by Defendants was false or defamatory, and aver to the contrary that the statements in the Report, the Remarks, and the Statement were amply supported by the facts disclosed in the Report. Defendants, after reasonable investigation, are without knowledge to support a belief as to the truth or falsity of the allegations in Paragraph 138 relating to Plaintiff's reputation, and on that basis they are denied. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor relating to this incident. Such a charge required the jury to find beyond a reasonable doubt that, *inter alia*, Plaintiff endangered the welfare of a child by violating a duty of care, protection, or support, and that Plaintiff did so knowingly. Plaintiff has a reputation commensurate with that conviction.

139. Defendants' defamatory statements have caused Dr. Spanier to endure humiliation, embarrassment, mental anguish, emotional distress, and anxiety.

**ANSWER:** Defendants deny that any statement made by Defendants was false or defamatory, and aver to the contrary that the statements in the Report, the Remarks, and the Statement were amply supported by the facts disclosed in the Report. Defendants, after reasonable investigation, are without knowledge to support a belief as to the truth or falsity of the allegations in Paragraph 139 relating

to Plaintiff's state of mind, and on that basis they are denied. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor relating to this incident. Such a charge required the jury to find beyond a reasonable doubt that, *inter alia*, Plaintiff endangered the welfare of a child by violating a duty of care, protection, or support, and that Plaintiff did so knowingly. Plaintiff has a reputation commensurate with that conviction.

140. Because of Defendants' defamatory statements, Dr. Spanier has been the subject of excoriation by reporters, columnists, and bloggers.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 140, and on that basis they are denied. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor relating to this incident. Such a charge required the jury to find beyond a reasonable doubt that, *inter alia*, Plaintiff endangered the welfare of a child by violating a duty of care, protection, or support, and that Plaintiff did so knowingly. Plaintiff has a reputation commensurate with that conviction.

141. Using the Freeh Report as justification, the University has taken a broad range of punitive actions against Dr. Spanier, including prohibiting him from teaching courses and revoking his access to the Penn State network and email.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 141, and on that basis they are denied.

142. Because of Defendants' false statements, Dr. Spanier has lost a number of rewarding employment opportunities.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 142, and on that basis they are denied. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor relating to this incident. Such a charge required the jury to find beyond a reasonable doubt that, *inter alia*, Plaintiff endangered the welfare of a child by violating a duty of care, protection, or support, and that Plaintiff did so knowingly. Plaintiff has a reputation commensurate with that conviction.

143. As a direct and proximate result of Defendants' defamatory statements, Dr. Spanier and has been forced to defend himself from criminal charges brought by prosecutors based upon the false statements in the Freeh Report.

**ANSWER:** Defendants deny the allegations in Paragraph 143, and aver to the contrary that a grand jury recommended charges against Plaintiff, and prosecutors indicted and prosecuted Plaintiff, based on the evidence relating to his knowledge

of allegations of inappropriate sexual conduct by Sandusky towards minors and his treatment of such allegations, not based on any statement in the Report. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor. Such a charge required the jury to find beyond a reasonable doubt that, *inter alia*, Plaintiff endangered the welfare of a child by violating a duty of care, protection, or support, and that Plaintiff did so knowingly.

**COUNT I:**  
**DEFAMATION FOR STATEMENTS IN FREEH REPORT**

144. Plaintiff incorporates by reference paragraphs 1 through 143 of this Complaint as if fully set forth herein.

**ANSWER:** Defendants incorporate by reference their responses to Paragraphs 1 through 143 of the Complaint as if fully set forth herein.

145. Defendants made false and defamatory statements of fact<sup>1</sup> in the Freeh Report when they stated:

- **Dr. Spanier “failed to protect against a child sexual predator harming children for over a decade.”**
- **Dr. Spanier “concealed Sandusky’s activities from the Board of Trustees, the University community and authorities.”**

---

<sup>1</sup> Plaintiff is only asserting claims based on the bolded portions of statements listed in the counts that follow. Non-bolded portions of the statements are included to provide context for the defamatory statements noted in bold text.

- Dr. Spanier “exhibited a striking lack of empathy for Sandusky’s victims **by failing to inquire as to their safety and well-being, especially by not attempting to determine the identity of the child who Sandusky assaulted in the Lasch Building in 2001.**”
- Dr. Spanier “empowered Sandusky to attract potential victims to the campus and football events by **allowing him to have continued, unrestricted and unsupervised access to the University’s facilities and affiliation with the University’s prominent football program.**”
- “[I]n order to avoid the consequences of bad publicity, **the most powerful leaders at the University — Spanier, Schultz, Paterno, and Curley —repeatedly concealed critical facts relating to Sandusky’s child abuse from the authorities, the University’s Board of Trustees, the Penn State community, and the public at large.** The avoidance of the consequences of bad publicity is the most significant, but not the only, cause for this failure to protect child victims and report to authorities.”
- **Dr. Spanier made “[a] decision ... to allow Sandusky to retire in 1999, not as a suspected child predator, but as a valued member of the Penn State football legacy ... essentially granting him license to bring boys to campus facilities for ‘grooming’ as targets for his assaults.”**
- **“Despite their knowledge of the criminal investigation of Sandusky [in 1998], Spanier, Schultz, Paterno and Curley took no action to limit Sandusky’s access to Penn State facilities or took any measures to protect children on their campuses.”**

ANSWER: To the extent that Paragraph 145 contains legal conclusions, no response is required. To the extent that a response is required, Defendants state that the Report is a written document that speaks for itself, and deny any characterization inconsistent with its terms. Defendants deny that the statements in Paragraph 145 are false or defamatory statements of fact, and aver to the contrary that the truth of the statements is amply supported by the disclosed facts and

evidence set forth in the Report. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

146. A copy of the Freeh Report is attached hereto as Exhibit A.

**ANSWER:** Admitted.

147. These defamatory falsehoods impeach the integrity, virtue, and reputation of Dr. Spanier, exposing him to public hatred, contempt, and ridicule.

**ANSWER:** To the extent that Paragraph 147 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny that any statement complained of by Plaintiff is false or defamatory, and aver to the contrary that the truth of the statements is amply supported by the disclosed facts and evidence set forth in the Report. Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the allegations relating to Plaintiff's reputation in Paragraph 147, and on that basis they are denied.

148. Defendants made these defamatory falsehoods with knowledge of their falsity or, at a minimum, with reckless disregard for the truth or falsity of the statements.

**ANSWER:** To the extent that Paragraph 148 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny the allegations in Paragraph 148, and aver to the contrary that the statements

complained of by Plaintiff are not false or defamatory, but are amply supported by the disclosed facts and evidence set forth in the Report. Defendants specifically deny that any statement complained of by Plaintiff was made with knowledge of its falsity or reckless disregard for its truth or falsity. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

149. Defendants made these statements intentionally, willfully, maliciously, and in conscious disregard of Dr. Spanier's rights and reputation, and also of the truth.

**ANSWER:** To the extent that Paragraph 149 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny the allegations in Paragraph 149, and aver to the contrary that the statements complained of by Plaintiff are not false or defamatory, but are amply supported by the disclosed facts and evidence set forth in the Report. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

150. Defendants published these defamatory falsehoods in the Freeh Report, which was published to a worldwide internet audience at [www.TheFreehReportonPSU.com](http://www.TheFreehReportonPSU.com).

**ANSWER:** Defendants admit that the Report was for some period of time available at [www.TheFreehReportonPSU.com](http://www.TheFreehReportonPSU.com). Defendants deny the remaining allegations in Paragraph 150, and aver to the contrary that the statements complained of by Plaintiff are not false or defamatory, but are amply supported by the disclosed facts and evidence set forth in the Report.

151. These defamatory statements have been repeated and republished in other media outlets, which was reasonably foreseeable to Freeh and FSS.

**ANSWER:** On information and belief, Defendants admit that certain statements complained of by Plaintiff were repeated by media outlets. Defendants deny that the statements complained of are defamatory, and aver to the contrary that those statements are amply supported by the disclosed facts and evidence set forth in the Report. Defendants further deny that to the extent statements were repeated, it was reasonably foreseeable to Defendants, and aver to the contrary that Defendants had no way of knowing what, if any, statements would be covered or repeated by the media.

152. These statements were reasonably understood by those who read them to be statements of fact, of and concerning Dr. Spanier.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 152, and on that basis they are denied.

153. These defamatory statements are false.

**ANSWER:** Defendants deny the allegations in Paragraph 153, and aver to the contrary that those statements are not defamatory and are amply supported by the disclosed facts and evidence set forth in the Report.

154. These statements are defamatory per se because they accuse Dr. Spanier of unlawful conduct and impugn Dr. Spanier's fitness for his profession.

**ANSWER:** Defendants deny the allegations in Paragraph 154 se, and aver to the contrary that those statements are not defamatory and are amply supported by the disclosed facts and evidence set forth in the Report. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

155. Freeh's statements were made within the course and scope of his employment by FSS.

**ANSWER:** Admitted.

156. Freeh and FSS had no privilege to publish the false and defamatory statements, or if they did, Freeh and FSS abused that privilege.

**ANSWER:** To the extent that Paragraph 156 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny the allegations in Paragraph 156, and aver to the contrary that the statements

complained of by Plaintiff are not false or defamatory, but are amply supported by the disclosed facts and evidence set forth in the Report. Defendants further deny that Defendants abused any privilege in issuing the Report. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

157. In addition to injuries presumed by law, these defamatory falsehoods have injured — and will continue to injure — Dr. Spanier in at least the following ways:

- (a) By impugning Dr. Spanier’s professional and personal reputations;
- (b) By ascribing to Dr. Spanier conduct that would adversely affect his fitness for proper conduct as a University administrator;
- (c) By causing Dr. Spanier to be criminally charged for crimes he did not commit;
- (d) By causing Dr. Spanier to lose employment opportunities;
- (e) By subjecting Dr. Spanier to unwanted attention, harassment, and persecution; and
- (f) By causing Dr. Spanier damages in other ways yet to be determined.

**ANSWER:** To the extent that Paragraph 157 contains conclusions of law, no response is required. To the extent that a response is required, Defendants deny that they have committed any tort against Plaintiff, and aver to the contrary that those statements are amply supported by the disclosed facts and evidence set forth in the Report. Defendants also deny that any statement of Defendants “caus[ed]

[Plaintiff] to be criminally charged for crimes he did not commit,” and aver to the contrary that the grand jury recommended charges against Plaintiff, and prosecutors indicted and prosecuted Plaintiff, based on the evidence relating to his knowledge of allegations of inappropriate sexual conduct by Sandusky towards minors and his treatment of such allegations, not based on any statement in the Report. In fact, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor. Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 157, and on that basis they are denied.

158. Freeh and FSS are liable to Plaintiff for compensatory and punitive damages.

**ANSWER:** To the extent that Paragraph 158 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny any liability to Plaintiff, and aver to the contrary that Defendants have committed no tort as to Plaintiff. Defendants also deny that punitive damages is an available remedy in the context of this action.

**COUNT II:**  
**DEFAMATION FOR SPOKEN STATEMENTS DURING THE**  
**JULY 12, 2012 PRESS CONFERENCE**

159. Plaintiff incorporates by reference paragraphs 1 through 143 of this Complaint as if fully set forth herein.

**ANSWER:** Defendants incorporate by reference their responses to Paragraphs 1 through 143 of the Complaint as if fully set forth herein.

160. Defendants made false and defamatory statements of fact at a July 12, 2012 public press conference corresponding with the release of the Freeh Report when Freeh stated:

- **“The most powerful men at Penn State failed to take any steps for 14 years to protect the children who Sandusky victimized.”**
- **“Messrs. Spanier, Schultz, Paterno, and Curley never demonstrated, through actions or words, any concern for the safety and well-being of Sandusky’s victims until after Sandusky’s arrest.”**
- **“[I]n order to avoid the consequences of bad publicity, the most powerful leaders at Penn State University — Messrs. Spanier, Schultz, Paterno and Curley — repeatedly concealed critical facts relating to Sandusky’s child abuse from the authorities, the University’s Board of Trustees, the Penn State community, and the public at large.”**

**ANSWER:** To the extent that Paragraph 160 contains legal conclusions, no response is required. To the extent that a response is required, Defendants state that the Report is a written document that speaks for itself, and deny any characterization inconsistent with its terms. Defendants deny that the statements in Paragraph 160 are false or defamatory statements of fact, and aver to the contrary that the truth of the statements is amply supported by the disclosed facts and evidence set forth in the Report. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

161. These defamatory falsehoods impeach the integrity, virtue, and reputation of Dr. Spanier, exposing him to public hatred contempt, and ridicule.

**ANSWER:** To the extent that Paragraph 161 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny that any statement complained of by Plaintiff is false or defamatory, and aver to the contrary that the truth of the statements is amply supported by the disclosed facts and evidence set forth in the Report.

162. Freeh made these defamatory falsehoods with actual knowledge of their falsity or, at a minimum, with reckless disregard for the truth or falsity of the statements.

**ANSWER:** Defendants deny the allegations in Paragraph 162, and aver to the contrary that the statements complained of by Plaintiff are not false or defamatory, but are amply supported by the disclosed facts and evidence set forth in the Report. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor. Defendants specifically deny that any statement complained of by Plaintiff was made with knowledge of its falsity or reckless disregard for its truth or falsity.

163. Freeh made these statements intentionally, willfully, maliciously, and in conscious disregard of Dr. Spanier's rights and reputation, and also of the truth.

**ANSWER:** To the extent that Paragraph 163 contains legal conclusions, no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 163, and aver to the contrary that the statements complained of by Plaintiff are not false or defamatory, but are amply supported by the disclosed facts and evidence set forth in the Report. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

164. Freeh published these defamatory falsehoods during a nationally televised press conference — and to a worldwide internet audience in the form of a video of the press conference.

**ANSWER:** On information and belief, Defendants admit that the conference held to announce the release of the Report was nationally televised and videotaped. Defendants deny the remaining allegations in Paragraph 164, and aver to the contrary that the statements complained of by Plaintiff are not false or defamatory, but are amply supported by the disclosed facts and evidence set forth in the Report.

165. These defamatory statements have been repeated and republished in other media outlets, which was reasonably foreseeable to Freeh and FSS.

**ANSWER:** On information and belief, Defendants admit that certain statements complained of by Plaintiff were repeated by media outlets. Defendants deny the allegation in Paragraph 165 that the statements complained of are defamatory, and

aver to the contrary that those statements are amply supported by the disclosed facts and evidence set forth in the Report. Defendants further deny that to the extent statements were repeated, it was reasonably foreseeable to Defendants, and aver to the contrary that Defendants had no way of knowing what, if any, statements would be covered or repeated by the media.

166. These statements were reasonably understood by those who read them to be statements of fact, of and concerning Dr. Spanier.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 166, and on that basis they are denied.

167. These defamatory statements are false.

**ANSWER:** Defendants deny the allegation in Paragraph 167 that the statements complained of are defamatory or false, and aver to the contrary that those statements are amply supported by the disclosed facts and evidence set forth in the Report. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

168. These statements are defamatory per se because they accuse Dr. Spanier of unlawful conduct and impugn Dr. Spanier's fitness for his profession.

**ANSWER:** Defendants deny the allegation in Paragraph 168 that the statements complained of are defamatory or false, and aver to the contrary that those

statements are amply supported by the disclosed facts and evidence set forth in the Report.

169. Freeh's statements were made within the course and scope of his employment by the FSS.

**ANSWER:** Admitted.

170. Freeh had no privilege to publish the false and defamatory statements, or if he did, Freeh abused that privilege.

**ANSWER:** To the extent that Paragraph 170 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny the allegations in Paragraph 170, and aver to the contrary that the statements complained of by Plaintiff are not false or defamatory, but are amply supported by the disclosed facts and evidence set forth in the Report. Defendants further deny that Defendants abused any privilege in making the statements or issuing the Report. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

171. In addition to injuries presumed by law, these defamatory falsehoods have injured — and will continue to injure — Dr. Spanier in at least the following ways:

- (a) By impugning Dr. Spanier's professional and personal reputations;
- (b) By ascribing to Dr. Spanier conduct that would adversely affect his fitness for proper conduct as a University administrator;

- (c) By causing Dr. Spanier to be criminally charged for crimes he did not commit;
- (d) By causing Dr. Spanier to lose employment opportunities;
- (e) By subjecting Dr. Spanier to unwanted attention, harassment, and persecution; and
- (f) By causing Dr. Spanier damages in other ways yet to be determined.

**ANSWER:** To the extent that Paragraph 171 contains conclusions of law, no response is required. To the extent that a response is required, Defendants deny that they have committed any tort against Plaintiff, and aver to the contrary that those statements are amply supported by the disclosed facts and evidence set forth in the Report. Defendants also deny that any statement of Defendants “caus[ed] [Plaintiff] to be criminally charged for crimes he did not commit,” and aver to the contrary that the grand jury recommended charges against Plaintiff, and prosecutors indicted and prosecuted Plaintiff, based on the evidence relating to his knowledge of allegations of inappropriate sexual conduct by Sandusky towards minors and his treatment of such allegations, not based on any statement in the Report. In fact, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor. Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 171, and on that basis they are denied.

172. Freeh and FSS are liable to Plaintiff for compensatory and punitive damages.

**ANSWER:** To the extent that Paragraph 172 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny any liability to Plaintiff, and aver to the contrary that Defendants have committed no tort as to Plaintiff. Defendants also deny that punitive damages is an available remedy in this defamation action.

**COUNT III:**  
**DEFAMATION FOR WRITTEN REMARKS DISTRIBUTED AT**  
**JULY 12, 2012 PRESS CONFERENCE**

173. Plaintiff incorporates by reference paragraphs 1 through 143 of this Complaint as if fully set forth herein.

**ANSWER:** Defendants incorporate by reference their responses to Paragraphs 1 through 143 of the Complaint as if fully set forth herein.

174. Freeh and FSS made false and defamatory statements of fact in written prepared remarks distributed in connection with the July 12, 2012 press conference when they stated:

- **“The most powerful men at Penn State failed to take any steps for 14 years to protect the children who Sandusky victimized.”**
- **“Messrs. Spanier, Schultz, Paterno, and Curley never demonstrated, through actions or words, any concern for the safety and well-being of Sandusky’s victims until after Sandusky’s arrest.”**
- **“[I]n order to avoid the consequences of bad publicity, the most powerful leaders at Penn State University — Messrs. Spanier, Schultz, Paterno and Curley — repeatedly concealed critical facts relating to Sandusky’s child above from the authorities, the**

**University's Board of Trustees, the Penn State community, and the public at large.”**

**ANSWER:** To the extent that Paragraph 174 contains legal conclusions, no response is required. To the extent that a response is required, Defendants state that the Report is a written document that speaks for itself, and deny any characterization inconsistent with its terms. Defendants deny that the statements in Paragraph 174 are false or defamatory statements of fact, and aver to the contrary that the truth of the statements is amply supported by the disclosed facts and evidence set forth in the Report. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

175. A copy of the July 12, 2012 written prepared remarks are attached hereto as Exhibit B.

**ANSWER:** Admitted.

176. These defamatory falsehoods impeach the integrity, virtue, and reputation of Dr. Spanier, exposing him to public hatred contempt, and ridicule.

**ANSWER:** To the extent that Paragraph 176 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny that any statement complained of by Plaintiff is false or defamatory, and aver to the contrary that the truth of the statements is amply supported by the disclosed facts and evidence set forth in the Report. Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the

allegations relating to Plaintiff's reputation in Paragraph 176, and on that basis they are denied.

177. Freeh and FSS made these statements with actual knowledge of their falsity or, at a minimum, with reckless disregard for the truth or falsity of the statements.

**ANSWER:** To the extent that Paragraph 177 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny the allegations in Paragraph 177, and aver to the contrary that the statements complained of by Plaintiff are not false or defamatory, but are amply supported by the disclosed facts and evidence set forth in the Report. Defendants specifically deny that any statement complained of by Plaintiff was made with knowledge of its falsity or reckless disregard for its truth or falsity. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

178. Freeh and FSS made these statements intentionally, maliciously, and in conscious disregard of Dr. Spanier's rights and reputation, and also of the truth.

**ANSWER:** To the extent that Paragraph 178 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny the allegations in Paragraph 178, and aver to the contrary that the statements complained of by Plaintiff are not false or defamatory, but are amply supported by

the disclosed facts and evidence set forth in the Report. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

179. Freeh and FSS published these defamatory falsehoods to a worldwide audience by distributing the written remarks in the form of a press release and making the prepared remarks available for download on the internet.

**ANSWER:** Defendants admit that, on information and belief, the Remarks was available on the internet for some period of time. Defendants deny the remaining allegations in Paragraph 179, and aver to the contrary that the statements complained of by Plaintiff are not false or defamatory, but are amply supported by the disclosed facts and evidence set forth in the Report.

180. These defamatory statements have been repeated and republished in other media outlets, which was reasonably foreseeable to Freeh and FSS.

**ANSWER:** On information and belief, Defendants admit that certain statements complained of by Plaintiff were repeated by media outlets. Defendants deny the allegation in Paragraph 180 that the statements complained of are defamatory, and aver to the contrary that those statements are amply supported by the disclosed facts and evidence set forth in the Report. Defendants further deny that to the extent statements were repeated, it was reasonably foreseeable to Defendants, and

aver to the contrary that Defendants had no way of knowing what, if any, statements would be covered or repeated by the media.

181. These statements were reasonably understood by those who read them to be statements of fact, of and concerning Dr. Spanier.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 181, and on that basis they are denied.

182. These defamatory statements are false.

**ANSWER:** Defendants deny the allegation in Paragraph 182 that the statements complained of are defamatory or false, and aver to the contrary that those statements are amply supported by the disclosed facts and evidence set forth in the Report. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

183. These statements are defamatory per se because they accuse Dr. Spanier of unlawful conduct and impugn Dr. Spanier's fitness for his profession.

**ANSWER:** Defendants deny the allegation in Paragraph 183 that the statements complained of are defamatory or false, and aver to the contrary that those statements are amply supported by the disclosed facts and evidence set forth in the Report.

184. These statements were made within the course and scope of Freeh's employment by FSS.

**ANSWER:** Admitted.

185. Freeh and FSS had no privilege to publish the false and defamatory statements, or if they did, Defendants abused that privilege.

**ANSWER:** To the extent that Paragraph 185 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny the allegations in Paragraph 185, and aver to the contrary that the statements complained of by Plaintiff are not false or defamatory, but are amply supported by the disclosed facts and evidence set forth in the Report. Defendants further deny that Defendants abused any privilege making the statements or in issuing the Report. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

186. In addition to injuries presumed by law, these defamatory falsehoods have injured — and will continue to injure — Dr. Spanier in at least the following ways:

- (a) By impugning Dr. Spanier's professional and personal reputations;
- (b) By ascribing to Dr. Spanier conduct that would adversely affect his fitness for proper conduct as a University administrator;
- (c) By causing Dr. Spanier to be criminally charged for crimes he did not commit;
- (d) By causing Dr. Spanier to lose employment opportunities;

- (e) By subjecting Dr. Spanier to unwanted attention, harassment, and persecution; and
- (f) By causing Dr. Spanier damages in other ways yet to be determined.

**ANSWER:** To the extent that Paragraph 186 contains conclusions of law, no response is required. To the extent that a response is required, Defendants deny that they have committed any tort against Plaintiff, and aver to the contrary that those statements are amply supported by the disclosed facts and evidence set forth in the Report. Defendants also deny that any statement of Defendants “caus[ed] [Plaintiff] to be criminally charged for crimes he did not commit,” and aver to the contrary that the grand jury recommended charges against Plaintiff, and prosecutors indicted and prosecuted Plaintiff, based on the evidence relating to his knowledge of allegations of inappropriate sexual conduct by Sandusky towards minors and his treatment of such allegations, not based on any statement in the Report. In fact, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor. Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 186, and on that basis they are denied.

187. Freeh and FSS are liable to Plaintiff for compensatory and punitive damages.

**ANSWER:** To the extent that Paragraph 187 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny

any liability to Plaintiff, and aver to the contrary that Defendants have committed no tort as to Plaintiff. Defendants also deny that punitive damages is an available remedy in this defamation action.

**COUNT IV:**  
**DEFAMATION FOR STATEMENTS MADE BY FREER IN THE**  
**FEBRUARY 10, 2013 PRESS RELEASE**

188. Plaintiff incorporates by reference paragraphs 1 through 143 of this Complaint as if fully set forth herein.

**ANSWER:** Defendants incorporate by reference their responses to Paragraphs 1 through 143 of the Complaint as if fully set forth herein.

189. Defendants made false and defamatory statements of fact in a February 10, 2013 Press Release distributed to and republished by media outlets when Freeh stated:

- **“As detailed in my report... four of the most powerful officials at Penn State agreed not to report Sandusky’s activity to public officials.”**
- **“I stand by our conclusion that four of the most powerful people at Penn State failed to protect against a child sexual predator harming children for over a decade.”**
- **“These men exhibited a striking lack of empathy for Sandusky’s victims by failing to inquire as to their safety and well-being, especially by not even attempting to determine the identity of the child who Sandusky assaulted in the Lasch Building in 2001.”**

**ANSWER:** To the extent that Paragraph 189 contains legal conclusions, no response is required. To the extent that a response is required, Defendants state

that the Statement is a written document that speaks for itself, and deny any characterization inconsistent with its terms. Defendants deny that the statements in Paragraph 189 are false or defamatory statements of fact, and aver to the contrary that the truth of the statements is amply supported by the disclosed facts and evidence set forth in the Report. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

190. A copy of the February 10, 2013 press release is attached hereto as Exhibit C.

**ANSWER:** Admitted.

191. These defamatory falsehoods impeach the integrity, virtue, and reputation of Dr. Spanier, exposing him to public hatred, contempt, and ridicule.

**ANSWER:** To the extent that Paragraph 191 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny that any statement complained of by Plaintiff is false or defamatory, and aver to the contrary that the truth of the statements is amply supported by the disclosed facts and evidence set forth in the Report. Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the allegations relating to Plaintiff's reputation in Paragraph 191, and on that basis they are denied.

192. Freeh made these defamatory falsehoods with actual knowledge of their falsity or, at a minimum, with reckless disregard for the truth or falsity of the statements.

**ANSWER:** To the extent that Paragraph 192 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny the allegations in Paragraph 192, and aver to the contrary that the statements complained of by Plaintiff are not false or defamatory, but are amply supported by the disclosed facts and evidence set forth in the Report. Defendants specifically deny that any statement complained of by Plaintiff was made with knowledge of its falsity or reckless disregard for its truth or falsity. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

193. Freeh made these statements intentionally, willfully, maliciously, and in conscious disregard of Dr. Spanier's right and reputation, and also of the truth.

**ANSWER:** To the extent that Paragraph 193 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny the allegations in Paragraph 193, and aver to the contrary that the statements complained of by Plaintiff are not false or defamatory, but are amply supported by the disclosed facts and evidence set forth in the Report. By way of further

response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

194. Freeh published these statements to a worldwide audience by posting them on the internet, and by disseminating them to media outlets such as ESPN.

**ANSWER:** Defendants admit that the Statement was available for some period of time on the internet and that certain media outlets reported on the Statement.

195. These defamatory statements have been repeated and republished in other media outlets, which was reasonably foreseeable to Freeh.

**ANSWER:** On information and belief, Defendants admit that certain statements complained of by Plaintiff were repeated by media outlets. Defendants deny the allegation in Paragraph 195 that the statements complained of are defamatory, and aver to the contrary that those statements are amply supported by the disclosed facts and evidence set forth in the Report. Defendants further deny that to the extent statements were repeated, it was reasonably foreseeable to Defendants, and aver to the contrary that Defendants had no way of knowing what, if any, statements would be covered or repeated by the media.

196. These statements were reasonably understood by those who read them to be statements of fact, of and concerning Dr. Spanier.

**ANSWER:** Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 196, and on that basis they are denied.

197. These defamatory statements are false.

**ANSWER:** Defendants deny the allegation in Paragraph 197 that the statements complained of are defamatory or false, and aver to the contrary that those statements are amply supported by the disclosed facts and evidence set forth in the Report.

198. These statements are defamatory per se because they accuse Dr. Spanier of unlawful conduct and impugn Dr. Spanier's fitness for his profession.

**ANSWER:** Defendants deny the allegation in Paragraph 198 that the statements complained of are defamatory or false, and aver to the contrary that those statements are amply supported by the disclosed facts and evidence set forth in the Report.

199. Freeh's statements were made within the course and scope of his employment by FSS.

**ANSWER:** Admitted.

200. Freeh had no privilege to publish the false and defamatory statements, or if he did, Freeh abused that privilege.

**ANSWER:** To the extent that Paragraph 200 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny the allegations in Paragraph 200, and aver to the contrary that the statements complained of by Plaintiff are not false or defamatory, but are amply supported by the disclosed facts and evidence set forth in the Report. Defendants further deny that Defendants abused any privilege making the statements or in issuing the Report. By way of further response, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor.

201. In addition to injuries presumed by law, these defamatory falsehoods have injured — and will continue to injure — Dr. Spanier in at least the following ways:

- (a) By impugning Dr. Spanier’s professional and personal reputations;
- (b) By ascribing to Dr. Spanier conduct that would adversely affect his fitness for proper conduct as a University administrator;
- (c) By causing Dr. Spanier to be criminally charged for crimes he did not commit;
- (d) By causing Dr. Spanier to lose employment opportunities;
- (e) By subjecting Dr. Spanier to unwanted attention, harassment, and persecution; and
- (f) By causing Dr. Spanier damages in other ways yet to be determined.

**ANSWER:** To the extent that Paragraph 201 contains conclusions of law, no response is required. To the extent that a response is required, Defendants deny

that they have committed any tort against Plaintiff, and aver to the contrary that those statements are amply supported by the disclosed facts and evidence set forth in the Report. Defendants also deny that any statement of Defendants “caus[ed] [Plaintiff] to be criminally charged for crimes he did not commit,” and aver to the contrary that the grand jury recommended charges against Plaintiff, and prosecutors indicted and prosecuted Plaintiff, based on the evidence relating to his knowledge of allegations of inappropriate sexual conduct by Sandusky towards minors and his treatment of such allegations, not based on any statement in the Report. In fact, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor. Defendants, after reasonable investigation, are without information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 201, and on that basis they are denied.

202. Freeh and FSS are liable to Plaintiff for compensatory and punitive damages.

**ANSWER:** To the extent that Paragraph 202 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny any liability to Plaintiff, and aver to the contrary that Defendants have committed no tort as to Plaintiff. Defendants also deny that punitive damages is an available remedy in this defamation action.

### **PUNITIVE DAMAGES**

203. The actions or omissions of Freeh and FSS set forth in this Complaint demonstrate malice, egregious defamation, and insult. Such actions or omissions by Freeh and FSS were undertaken with either: (1) maliciousness, spite, ill will, vengeance, or deliberate intent to harm Dr. Spanier; or (2) reckless disregard of the falsity of the speech and its effects on Dr. Spanier. Accordingly, Plaintiff requests an award of punitive damages and attorneys' fees.

**ANSWER:** To the extent that Paragraph 203 contains legal conclusions, no response is required. To the extent that a response is required, Defendants deny the allegations in Paragraph 203, and aver to the contrary that none of the statements complained of are defamatory or false, but rather are amply supported by the disclosed facts and evidence set forth in the Report. In fact, on March 24, 2017, Plaintiff was criminally convicted of endangering the welfare of a minor. Defendants further state that they did not act with any maliciousness, spite, ill will, vengeance, or deliberate intent to harm toward Plaintiff, or with any reckless disregard of the truth or falsity of their statements. Rather, they conducted a full, complete, and independent investigation into the alleged failure of Penn State personnel to respond to, and to report to the appropriate authorities, the sexual abuse of children by Sandusky, and summarized the evidence, their recommendations, and their findings, including their findings relating to Plaintiff,

in the Report. Defendants further deny that punitive damages are an available remedy in the context of this action.

**PRAYER FOR RELIEF**

204. Plaintiff prays that this Court provide the following relief:

- (a) Compensatory and consequential damages for detraction from good name and reputation and for injuries to Dr. Spanier's professional standing;
- (b) Punitive damages to punish Defendants' reprehensible conduct and to deter its future occurrence;
- (c) Costs and fees incurred in the prosecution of this action; and
- (d) Further relief as this Court shall deem just and proper.

**ANSWER:** Defendants respectfully request that (a) Counts I, II, III, and IV be dismissed; (b) judgment be entered in their favor against Plaintiff Graham Spanier on Counts I, II, III, and IV of the Second Amended Complaint; and (c) the Court award such other and further relief as may be just and proper.

**JURY TRIAL DEMAND**

205. Plaintiff demands a trial by jury on all issues so triable.

**ANSWER:** No answer to Paragraph 205 is required.

**NEW MATTER**

**The 1998 Report of Inappropriate Behavior by Sandusky**

206. On the morning of May 4, 1998, the mother of a young child who participated in the charity The Second Mile contacted Alycia Chambers, a child psychologist.

207. The mother told Chambers that Sandusky had showered with her child in the showers of the Lasch Building the previous evening.

208. Chambers told the mother to report the incident to police.

209. The boy's mother called the Penn State University Police Department later in the day on May 4 and made a report of the incident.

210. Detective Ronald Schreffler interviewed the boy that same day.

211. The boy told Detective Schreffler that Sandusky had showered with him.

212. At Plaintiff's criminal trial, Detective Schreffler testified that the boy told him that he and Sandusky had wrestled and Sandusky then asked the boy if he wanted to take a shower.

213. Detective Schreffler stated that the boy told him that in the shower, Sandusky told the boy that he loved him and picked the boy up by the back of his legs.

214. Detective Schreffler stated that the boy told him that there was another boy who also had showered with Sandusky.

215. Detective Schreffler stated that he felt that the incident definitely needed to be investigated.

216. Chambers also interviewed the boy on May 4. Based on her interview with the boy, she made a report to the Pennsylvania child abuse line.

217. On the afternoon of May 4, Detective Schreffler contacted John Miller, a case worker at Centre County Children and Youth Services. Detective Schreffler also contacted the Centre County District Attorney's Office.

218. On May 5, 1998, the case was reassigned to the Department of Public Welfare, and caseworker Jerry Lauro took over the case.

219. Handwritten notes dated May 4, 1998 and belonging to Gary Schultz state as follows:

- Woman
- 11 ½ yr old son
- Nittany Gardens
- Involved w 2nd Mile
- Jerry picked up son & invited to FB locker rooms
- Behavior – at best inappropriate @ worst sexual improprieties
- Police interviewed
  - Taped
  - May be leaving at [illegible]
  - By themselves, wrestled
  - Give him other clothes – even though he was in shorts
  - Worked out on treadmill etc
  - Jerry – to take a shower – undressed - ? no other shower? 4 in there
  - Shampoo
  - Jerry came up behind & gave him a bear hug – said he would squeeze guts out – all
  - Keep clothes – socks JVP's brand
  - Took home

Mother concerned something more – kid took another shower last night & this a.m.  
Mother – asked how did he give hug  
Had to be genital contact because of age difference but when asked of boy he quickly said no

- Friend Brendan, age 10, also @ Nittany Gardens – claims same thing went on with him

- Mother also asked Brendan
- Children & Youth has been notified – welcome to talk to Brendan – tonight

Mother overreacting - no  
genuinely concerned

At min – poor judgment

Critical issue – contact w genitals?

Assuming same experience w Brendan? Not criminal

220. Handwritten notes taken the next day, May 5, 1998, state as follows:

Tom Harmon

Last evening

- re interview 11 ½ yr old
- only change: added what happened in shower
- demonstrated on chair how Jerry hugged from behind
- hands around abdmn & down to thighs – picked him up & held him at shower head – rinse soap out of ears
- obsessed w PSU FB & concerned about getting Jerry in trouble – getting FB tickets
- Kid has been seeing psychologist
- probably emotional problems but articulate & believable
- Mother to psychologist & said she would call child abuse hotline & will generate an incident no – w Dept of Public Welfare
- other boy – interviewed last night
- similar acct
- locker room
- wrestling
- kissed on head
- Hugging from behind in shower
- No allegation beyond that
- Kids drew diagrams of shower rooms
- he willfully went down to shower 3 yds sticks away & Jerry told him to come down to shower next to his
- Local child abuse people mtg at 9:00 today to decide what to do.
- Either way, case worker felt they would interview Jerry

---

Is this the opening of Pandora's box? Other children?

221. At 5:24 P.M. on May 5, 1998, Curley sent an email to Schultz and Plaintiff.

222. Curley's email was titled "Joe Paterno" and the body of the email stated, "I have touched base with coach. Keep us posted. Thanks."

223. Curley's email of 5:24 P.M. on May 5, 1998 reached Plaintiff's email inbox.

224. On May 6, 1998, Schultz responded to Curley's email, stating, "Will do. Since we talked tonight I've learned the Public Welfare people will interview the individual Thursday."

225. Schultz copied Plaintiff on his email of May 6, 1998 to Curley.

226. Schultz's email reached Plaintiff's email inbox.

227. At Plaintiff's criminal trial, Schultz testified under oath that he did not think that his May 6, 1998 email was his first contact with Plaintiff regarding this incident.

228. Schultz testified that he is sure he would have told Plaintiff that the boy and his mother had made a complaint about Sandusky and it was being investigated.

229. On June 9, 1998, Schultz copied Plaintiff and Thomas Harmon on an email chain of correspondence between Schultz and Curley titled "Jerry."

230. Schultz's email followed up on an email he had sent to Curley on June 8, 1998 about the status of the investigation.

231. The June 9, 1998 email Schultz sent to Curley, Thomas Harmon, and Plaintiff stated that DPW and Penn State police "met with Jerry on Monday and concluded that there was no criminal behavior and the matter was closed as an investigation. He was a little emotional and expressed concern as to how this might have adversely affected the child. I think the matter has been appropriately investigated and I hope it is now behind us."

232. Gary's June 9, 1998 email reached Plaintiff's email inbox.

#### **The 2001 Report of Inappropriate Behavior by Sandusky**

233. On February 9, 2001, McQueary was in the Lasch Building at night, and saw Jerry Sandusky in the shower with a young boy.

234. At Plaintiff's criminal trial, McQueary testified that the incident occurred around 8:00 or 8:30 PM on a Friday.

235. He testified that the Lasch Building was locked and not accessible to the public at that time of night.

236. McQueary testified that he entered the locker rooms and heard a slapping sound.

237. He stated that standing in front of his locker, he looked over his shoulder and saw a reflection in a mirror of Sandusky and a child in the shower.

238. He testified that he turned around and saw Sandusky and a child approximately 10 or 12 years old.

239. McQueary testified that both Sandusky and the child were naked, and that Sandusky was standing behind the child, skin to skin.

240. He stated that he slammed his locker shut and walked to the door. McQueary stated that he looked over his shoulder and saw Sandusky and the child standing separated.

241. On the morning of the next day, a Saturday, McQueary told Paterno what he had seen.

242. Paterno testified to the Grand Jury that McQueary had told him that he had seen Sandusky “fondling, whatever you might call it – I’m not sure what the term would be – a young boy” in the showers of the Lasch Building.

243. Paterno testified, “Obviously, he was doing something with the youngster. It was a sexual nature.”

244. Paterno testified to the Grand Jury that he had a telephone call with Tim Curley and “explained the problem to him.”

245. When asked whether the information that he passed along was substantially the same as that reported by McQueary, Paterno stated, “yes.”

246. At Plaintiff’s criminal trial, Curley testified under oath that he was contacted by Paterno on February 11, 2001.

247. Curley testified that Paterno told him that McQueary had come to him the day before and was uncomfortable because he had seen Sandusky and a child in the showers of the football locker room.

248. At Plaintiff's criminal trial, Schultz testified that he received a phone call on February 11, 2001 from Curley, and that Curley told him that Paterno had passed on that a graduate assistant had observed Sandusky in a football locker room shower with a young boy, and was uncomfortable about it.

249. Schultz testified that when he heard about the 2001 allegations, the 1998 report came to mind in "a nanosecond."

250. Curley testified that at some point the 1998 allegation against Sandusky came to his mind as well.

251. In a time record dated the same day that Paterno told Curley about McQueary's report, Penn State's outside counsel Wendell Courtney recorded a time entry stating, "Conference with G Schultz re reporting of suspected child abuse."

252. At Plaintiff's criminal trial, Courtney testified under oath that he told Schultz that he should report the incident to DPW.

253. Schultz took written notes of a meeting held on Monday, February 12, 2001. At Plaintiff's criminal trial, Schultz testified that he believed the meeting included himself, Curley, and Plaintiff.

254. Schultz's notes state that they "reviewed 1998 history."

255. At Plaintiff's criminal trial, Schultz testified that Plaintiff appeared to understand their discussions of the incident in 1998 at the meeting in 2001.

256. Schultz's notes further state that they agreed that "TMC will discuss with JVP and advise we think TMC should meet w JS on Friday. Unless he 'confesses' to having a problem, TMC will indicate we need to have DPW review the matter as an independent agency concerned w child welfare."

257. Tim Curley's initials are "TMC."

258. Joseph Paterno's initials are "JVP."

259. Jerry Sandusky's initials are "JS."

260. At Plaintiff's criminal trial, Schultz testified that although they had agreed that Curley would speak with Sandusky, by Saturday of that week the meeting still had not yet occurred.

261. Schultz testified that instead, the following week he received a call from Curley in which Curley stated that he had set up a meeting with McQueary.

262. Schultz testified that he attended the meeting with Curley and McQueary.

263. Schultz stated that McQueary told them that he entered the football locker room, glanced in the mirror, and saw a reflection of Sandusky standing

behind a boy with his arms around him. Schultz stated that it was assumed they both were naked.

264. Schultz testified that McQueary told them that he then turned around and saw Sandusky and the young boy standing there directly.

265. Schultz testified that he did not recall hearing McQueary use the words “horseplay” or “horsing around” to describe the incident.

266. Following the meeting with McQueary, Schultz sent Curley and Plaintiff an email on Thursday, February 22, 2001, stating that “Graham, Tim and I will meet at 2:00 p.m. on Sunday in Tim’s office.”

267. Schultz testified that at the meeting, he and Curley informed Plaintiff that they had met with McQueary and heard what McQueary had seen—Sandusky naked in the shower with a child—directly from McQueary.

268. Schultz stated that he believed Sandusky’s behavior to be inappropriate and concerning, and that he expressed that to Plaintiff.

269. Schultz stated that he believed everyone looked at the incident with the same degree of seriousness.

270. Handwritten notes taken by Schultz dated the following Sunday, February 25, 2001, state:

3) Tell chair[] of Board of Second Mile

2) Report to Dept of Welfare

1) Tell J.S. to avoid bringing children alone into Lasch Bldg.

271. On February 26, 2001, Schultz sent Curley an email titled “Confidential” stating “Tim, I’m assuming that you’ve got the ball to 1) talk with the subject ASAP regarding the future appropriate use of the University facility; 2) contacting the chair of the Charitable Organization; and 3) contacting the Dept of Welfare.”

272. Schultz testified that his email meant that Curley should tell Sandusky that he could no longer bring children to PSU’s locker rooms, that they would contact The Second Mile, and that they would contact DPW.

273. On February 27, 2001, Curley sent an email to Plaintiff and Schultz that stated:

I had scheduled a meeting with you this afternoon about the subject we discussed on Sunday. After giving it more thought and talking it over with Joe yesterday—I am uncomfortable with what we agreed were the next steps. I am having trouble with going to everyone, but the person involved. I think I would be more comfortable meeting with the person and tell him about the information we received. I would plan to tell him we are aware of the first situation. I would indicate we feel there is a problem and we want to assist the individual to get professional help. Also, we feel a responsibility at some point soon to inform his organization and [*sic*] maybe the other one about the situation. If he is cooperative we would work with him to handle informing the organization. If not, we do not have a choice and will inform the two groups. Additionally, I will let him know that his guests are not permitted to use our facilities.

I need some help on this one. What do you think about this approach?

274. Curley's email reached Plaintiff's email inbox.

275. Plaintiff read Curley's email.

276. Curley's email used "code" to avoid the use of the names of the individuals involved.

277. At Plaintiff's criminal trial, Curley testified that the reference to "the first situation" in his email referred to the 1998 incident.

278. Curley testified that the reference to "his organization" meant the Second Mile, and that "the other one" referred to DPW or child protective services.

279. Curley stated that his email indicated that if Sandusky was not cooperative "we do not have a choice and will inform the two groups," and that the "two groups" meant The Second Mile and DPW or child protective services.

280. Later on February 27, 2001, Plaintiff responded to Curley's email and stated that the approach Curley proposed is "acceptable to me."

281. Plaintiff's email stated:

It requires you to go a step further and means that your conversation will be all the more difficult, but I admire your willingness to do that and I am supportive. The only downside for us is if the message isn't 'heard' and acted upon, and we then become vulnerable for not having reported it. But that can be assessed down the road. The approach you outline is humane and a reasonable way to proceed.

282. At Plaintiff's criminal trial, Schultz testified that he did not see this email chain until after Spanier had responded to it.

283. Schultz stated that when he read the email, he saw Curley and Plaintiff agreeing to an approach, and at that point Schultz felt that he would go along with it.

284. Plaintiff, Curley, and Schultz agreed not to report Sandusky to DPW.

285. Curley testified that while he told Sandusky that he no longer could bring children on PSU's campus, there was no enforcement mechanism to prevent him from doing so.

286. Curley did not tell police that Sandusky was banned from bringing children on campus.

287. Curley did not tell any member of the athletic department that Sandusky was prohibited from bringing children to PSU's athletic facilities.

288. At Plaintiff's criminal trial, Schultz testified that he subsequently was informed that everything was handled, and that he believes Plaintiff was the one who told him it was handled.

289. At Plaintiff's criminal trial, Schultz testified that until the grand jury proceedings in 2011, he believed that the incident had in fact been reported to DPW.

### **Plaintiff's Failure to Report Sandusky's Suspected Child Abuse**

290. Plaintiff did not contact the Department of Welfare about McQueary's report of Sandusky's conduct.

291. Plaintiff did not direct anyone to contact the Department of Welfare about McQueary's report of Sandusky's conduct.

292. Plaintiff did not report Sandusky's alleged conduct to the police.

293. Plaintiff did not direct anyone to report Sandusky's alleged conduct to the police.

294. Plaintiff did not ask Curley to determine the identity of the child in the Lasch Building showers.

295. Plaintiff did not direct anyone to ask Curley to determine the identity of the child in the Lasch Building showers.

296. Plaintiff did not ask Schultz to determine the identity of the child in the Lasch Building showers.

297. Plaintiff did not direct anyone to ask Schultz to determine the identity of the child in the Lasch Building showers.

298. Plaintiff did not ask Paterno to determine the identity of the child in the Lasch Building showers.

299. Plaintiff did not direct anyone to ask Paterno to determine the identity of the child in the Lasch Building showers.

300. Plaintiff did not ask McQueary to determine the identity of the child in the Lasch Building showers.

301. Plaintiff did not direct anyone to ask McQueary to determine the identity of the child in the Lasch Building showers.

302. Plaintiff did not do anything to investigate the identity of the child or the child's welfare.

303. Plaintiff did not direct anyone to do anything to investigate the identity of the child or the child's welfare.

304. Plaintiff did not take any steps to contact the child's parents.

305. Plaintiff did not direct anyone to take any steps to contact the child's parents.

306. Plaintiff personally did not ban Sandusky from Penn State's campus.

307. Plaintiff did not direct anyone to ban Sandusky from Penn State's campus.

308. Sandusky continued to use Penn State's athletic facilities after February 2001.

309. Sandusky was permitted to retire as a member of the Penn State football program.

310. Sandusky retained his emeritus status.

311. Plaintiff did not express through actions or words concern for Sandusky's victims prior to November 2011.

312. According to the findings of the Grand Jury impaneled to investigate the allegations against Sandusky, five victims were assaulted between the February 2001 assault and the time when Sandusky was finally arrested and criminally charged in 2011.

**Plaintiff's Post-Hac Characterization of the 2001 Report  
of Suspected Child Abuse**

313. After the 2001 report of inappropriate conduct by Sandusky was made public, Plaintiff referred to the incident as an allegation of "horseplay" or "horsing around."

314. In an August 22, 2012 interview with ABC News, Plaintiff stated that he thought of "horseplay" or "horsing around" to involve "throwing water around, snapping towels."

315. On information and belief, Plaintiff had never during his tenure as President of Penn State held a Sunday meeting to investigate a report of "horseplay" or "horsing around."

316. On information and belief, Plaintiff had never during his tenure as President of Penn State held a Sunday meeting to investigate a report of "throwing water around, snapping towels."

317. On information and belief, Plaintiff had never during his tenure as President of Penn State contemplated reporting an allegation of “horseplay” or “horsing around” to DPW.

318. On information and belief, Plaintiff had never during his tenure as President of Penn State contemplated reporting an allegation of “throwing water around, snapping towels” to DPW.

319. On information and belief, Plaintiff has never recommended “professional help” to an individual involved in alleged “horseplay” or “horsing around.”

320. On information and belief, Plaintiff has never recommended “professional help” to an individual involved in alleged “throwing water around, snapping towels.”

321. On information and belief, Plaintiff never had a concern that he would “become vulnerable for not having reported” suspected “horseplay” or “horsing around.”

322. On information and belief, Plaintiff never had a concern that he would “become vulnerable for not having reported” suspected “throwing water around, snapping towels.”

## The Grand Jury Proceedings

323. Plaintiff testified before the Grand Jury empaneled in 2009 to investigate the allegations against Sandusky.

324. In its Presentment, the Grand Jury concluded that Plaintiff had “engaged in a repeated pattern of behavior that evidenced a willful disregard for the safety and well-being of minor children on the Penn State campus.” Nov. 4, 2011 Grand Jury Presentment at 33.

325. The Grand Jury found that when the 2001 incident was reported, “the first response should have been an immediate report to law enforcement and a child protective services agency.” *Id.*

326. The Grand Jury concluded that the evidence showed that Plaintiff was informed of the 2001 incident and had “endorsed the plan of action that involved circumventing any outside agency” even though he “did recognize the potential consequences for their failure to report” Sandusky’s behavior to authorities. *Id.* at 18.

327. The Grand Jury found evidence of a “frightening lack of concern for the yet to be identified child (Victim 2), and an interest in shielding a man who Curley recognized needed ‘professional help’ and who Schultz indicated should ‘confess to having a problem.’” *Id.* at 33.

328. The Grand Jury concluded that Plaintiff, along with Curly and Schultz, “endangered the welfare of children by failing to report the [2001] incident witnessed by Michael McQueary to any law enforcement or child welfare agency.” *Id.* at 34.

329. The Grand Jury further found that “[t]here was never any effort made to locate, identify, or otherwise protect Victim 2 from foreseeable future harm.” *Id.*

330. The Grand Jury found that “by notifying Sandusky [that] they were aware of the incident and not informing the police or a child welfare agency, Spanier, Curley and Schultz placed Victim 2 in even greater danger,” because “Sandusky was placed on notice that others had been informed of his abuse of Victim 2,” and knew the identity of Victim 2. *Id.*

331. The Grand Jury determined that “[t]he continued cover up of this incident and the ongoing failure to report placed every minor male child who would come into contact with Sandusky in the future in grave jeopardy of being abused.” *Id.* at 35.

332. The Grand Jury determined that “[t]he actual harm realized by this wanton failure is staggering.” *Id.*

333. The Grand Jury concluded that despite the fact that Plaintiff, Curly and Schultz had “an ongoing duty to report this behavior,” as well as “overall

supervisory responsibility for minor children” on campus, they failed to report the alleged abuse and as a result “directly endangered” five victims and “allowed Sandusky to abuse them between 2001 and 2008.” *Id.*

334. The Grand Jury determined that Plaintiff had committed perjury in his testimony before the Grand Jury. *Id.* at 36-37.

335. The Grand Jury found that Plaintiff had “engage[d] in many acts to obstruct justice.” *Id.* at 38.

336. The Grand Jury concluded that Plaintiff had failed to report an allegation of sexual assault that should have been reported to law enforcement. *Id.* at 39.

### **Plaintiff’s Criminal Trial**

337. In 2013, Plaintiff was indicted for multiple charges stemming from his treatment of the allegations against Sandusky, including endangering the welfare of a child and conspiracy to endanger the welfare of a child.

338. Following resolution of multiple procedural issues, Plaintiff was tried on charges of endangering the welfare of a child and conspiracy to endanger the welfare of a child from March 20, 2017 through March 23, 2017.

339. Following deliberations, on March 24, 2017, a jury found Plaintiff guilty of endangering the welfare of a child.

340. To convict on that charge, the jury necessarily found beyond a reasonable doubt that Plaintiff endangered the welfare of a child by violating a duty of care, protection, or support, and that Plaintiff did so knowingly.

### **AFFIRMATIVE DEFENSES**

#### **Substantial Truth**

341. The statements complained of by Plaintiff are true or substantially true.

#### **Lack of Actual Malice**

342. Plaintiff is a public figure.

343. Defendants did not act with reckless disregard as to the truth or falsity of the statements, nor did they make statements that were knowingly false.

344. Defendants did not harbor any doubt about the truth of the statements at issue.

345. Defendants acted in good faith and without malice toward Plaintiff.

#### **Preclusion**

346. Plaintiff was convicted of endangering the welfare of children on March 24, 2017.

347. Plaintiff's claims are barred, in whole or in part, by res judicata, collateral estoppel, issue preclusion and/or claim preclusion.

### **Opinion**

348. The statements of which Plaintiff complains are inactionable statements of opinion supported by disclosed facts.

### **Privilege**

349. The statements of which Plaintiff complains are privileged under the First and Fourteenth Amendments to the U.S. Constitution and Article I, Section 7 of the Pennsylvania Constitution.

### **Justification**

350. The statements of which Plaintiff contains are substantially true and proper for public information or investigation.

351. The statements of which Plaintiff contains were not maliciously or negligently made.

352. The Report was made on a lawful occasion, in good faith, without fault, for justifiable purpose, and with a belief founded upon reasonable grounds that the Report was true and correct.

353. The Report was published upon a proper occasion, from a proper motive, in a proper manner, and based on reasonable and proper cause.

### **Immunity**

354. Defendants are entitled to absolute immunity.

### **Lack of Harm Caused by the Report**

355. Plaintiff has suffered no harm by reason of the Report.

356. Any harm Plaintiff allegedly has suffered resulted from his own conduct and/or the criminal investigation into, indictment of, and conviction of Plaintiff.

### **Unavailability of Punitive Damages**

357. Plaintiff is not entitled to punitive damages.

358. The Report discusses matters of public concern.

359. An award of punitive damages for speech concerning matters of public concern is prohibited by the U.S. Constitution, the Pennsylvania Constitution, and the laws of the Commonwealth of Pennsylvania.

360. An award of punitive damages would violate Defendants' procedural and substantive due process rights under the Pennsylvania and U.S. Constitutions.

### **Failure to State a Claim**

361. Plaintiff fails to state a claim upon which relief may be granted.

Respectfully submitted,

Dated: May 8, 2017



Robert C. Heim (Pa. 15758)  
Michael L. Kichline (Pa. 62293)  
DECHERT LLP

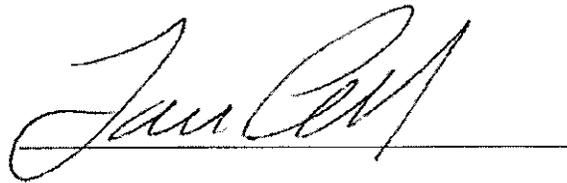
Cira Centre  
2929 Arch Street  
Philadelphia, PA 19104-2808  
(215) 994-4000 (phone)  
(215) 994-2222 (facsimile)

David S. Gaines, Jr. (Pa. 308932)  
Miller, Kistler & Campbell  
720 South Atherton Street, Suite 201  
State College, PA 16801-4669  
(814) 234-1500 (phone)  
(814) 234-1549 (facsimile)

*Attorneys for Defendants Louis J.  
Freeh and Freeh Sporkin & Sullivan,  
LLP*

**VERIFICATION**

I hereby verify that the facts set forth in the Answer and New Matter of Defendants Louis J. Freeh and Freeh Sporkin & Sullivan LLP are true and correct to the best of my knowledge, information and belief. I understand that this declaration is made subject to the penalties of 18 Pa. Cons. Stat. Ann. § 4904 relating to unsworn falsifications to authorities.

A handwritten signature in cursive script, appearing to read "Jan C. M.", is written over a horizontal line.

**CERTIFICATE OF SERVICE**

I, David S. Gaines, Jr., hereby certify that I caused to be served on May 8, 2017, a true and correct copy of the foregoing by first-class mail upon the following:

Kathleen V. Yurchak  
STEINBACHER, GOODALL & YURCHAK P.C.  
328 South Atherton Street  
State College, PA 16801  
(814) 237-4100  
(814) 237-1497 (fax)  
yurchak@centrelaw.com

Thomas A. Clare  
Elizabeth M. Locke  
Andrew C. Phillips  
CLARE LOCKE LLP  
10 Prince Street  
Alexandria, VA 22314  
(202) 628-7400  
tom@clarelocke.com  
libby@clarelocke.com  
andy@clarelocke.com

*Attorneys for Plaintiff*

  
\_\_\_\_\_  
David S. Gaines, Jr.