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GRAHAM B. SPANIER,

Plaintiff,

v.

LOUIS J. FREEH and
 FREEH SPORKIN & SULLIVAN, LLP,

Defendants.

:
 : COURT OF COMMON PLEAS
 : OF CENTRE COUNTY

:
 : No. 2013-2707

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**PLAINTIFF’S ANSWER TO DEFENDANTS LOUIS J. FREEH AND
 FREEH SPORKIN & SULLIVAN, LLP’S PRELIMINARY OBJECTION
 TO PLAINTIFF’S AMENDED COMPLAINT**

AND NOW comes Plaintiff, Graham B. Spanier, through his attorneys,
 making his Answer to Defendants Louis J. Freeh (“Freeh”) and Freeh Sporkin &
 Sullivan, LLP’s (“FSS”) Preliminary Objection to Plaintiff’s Amended Complaint.

1. DENIED as to Defendants' characterization of the origins of this civil action. As set forth in Plaintiff's First Amended Complaint, Plaintiff's defamation claims arise out of defamatory statements made by Defendants in the July 12, 2012 "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," ("Freeh Report" or the "Report"), defamatory statements made by Defendants during a July 2012 press conference, and defamatory statements made by Defendants in a February 2013 press release. The First Amended Complaint, as a written document, speaks for itself.

2. ADMITTED.

3. ADMITTED.

4. ADMITTED.

5. ADMITTED.

6. DENIED as to Defendants' characterization that Plaintiff's First Amended Complaint is "nearly the same" as the initial Complaint Plaintiff filed. As set forth in Plaintiff's November 16, 2016 Summary of Differences Between the Original Complaint and the First Amended Complaint, Plaintiff's First Amended Complaint was revised significantly in response to the Court's September 27, 2016 Order on Defendants' preliminary objections to the Original Complaint. These changes included, among other things, dropping Freeh Group

International Solutions, LLC as a party, dropping altogether the claim for tortious interference, revising all of the remaining counts in the First Amended Complaint to include only statements deemed actionable by the Court and to discard all statements deemed not actionable, deleting 23 paragraphs that related solely to dropped claims, counts, and statements, and revising numerous paragraphs to omit factual allegations relating to counts, claims, or statements no longer at issue following the Court's ruling.

7. Neither ADMITTED nor DENIED. Defendants do not include a citation to any order or transcript reflecting this supposed observation.

8. Neither ADMITTED nor DENIED. Defendants do not include a citation to any order or transcript reflecting this supposed observation.

9. DENIED. The transcript attached as Exhibit A to Defendants' Preliminary Objection is a document which speaks for itself. Moreover, the portion of the transcript Defendants reference does not support the claim that "the Court again recognized the issue of the length of the Complaint," at that hearing, rather, it reflects that Mr. Heim, counsel for Defendants, raised the issue.

10. ADMITTED only to the extent that Mr. Heim, counsel for Defendants, did send an email on that date to Mr. Clare, counsel for Plaintiff, identifying several paragraphs in the Original Complaint — paragraphs 12, 59, 62-64, 66-69, 94, 97-98, and 222 — that Defendants described as "personal attacks"

on Defendants. DENIED as to the characterization of those paragraphs as “extraneous.” As set forth in Plaintiff’s accompanying Brief in Opposition to Defendants’ Memorandum of Law in Support of Preliminary Objection to Amended Complaint, these allegations are material and specifically evidence that Defendants’ investigation and Report began with a preconceived storyline and intention to scapegoat Plaintiff to serve their client’s interest. Courts have long recognized that evidence of a defamation defendant’s adherence to a “preconceived storyline” is relevant and competent evidence of actual malice. *See, e.g., Eramo v. Rolling Stone, LLC*, 2016 WL 5234688, at *6 (W.D. Va. Sept. 22, 2016) (denying defamation defendants’ summary judgment motion where “plaintiff offers evidence that could lead a jury to determine that [defendant] had a preconceived storyline and may have consciously disregarded contradictory evidence”); *Harris v. City of Seattle*, 152 Fed. App’x 565, 568 (9th Cir. 2005) (“[e]vidence that a defendant conceived a storyline in advance of an investigation and then consciously set out to make the evidence conform to the preconceived story is evidence of actual malice, and may often prove to be quite powerful evidence.”).

11. ADMITTED.

12. ADMITTED.

13. DENIED. As set forth in Plaintiff’s accompanying Brief in Opposition to Defendants’ Memorandum of Law in Support of Preliminary

Objection to Amended Complaint, Plaintiff's Complaint targets many different defamatory statements about Plaintiff, including those in a 267-page Report, and those statements accuse Plaintiff of various supposed acts or omissions occurring over a 13-year period. Plaintiff is required to plead and prove that each statement at issue is false and was made with actual malice. The actual malice inquiry in particular is a subjective, state-of-mind inquiry that must be proven by resort to varying types of circumstantial evidence, including but not limited to evidence of insufficient investigation, reliance on unreliable sources, failure to interview obvious sources, ill will or intent to injure, evidence of a preconceived storyline, conscious disregard of contradictory evidence, and post-publication statements and conduct by the defendant. *See Eramo v. Rolling Stone, LLC*, 2016 WL 5234688, *5-7 (W.D. Va. Sept. 22, 2016) (collecting cases on what constitutes relevant circumstantial evidence of actual malice). Plaintiff's Original Complaint and the First Amended Complaint are necessarily lengthy because Plaintiff must plead material facts demonstrating falsity and actual malice for Defendants' numerous and sweeping accusations regarding Plaintiff. This Court has already held, over Defendants' preliminary objections, that Plaintiff's Original Complaint sufficiently alleged actual malice with respect to the statements that remain at issue following the Court's September 27, 2016 Order.

14. DENIED, for the reasons set forth in Paragraph 13, above.

FIRST (AND ONLY) PRELIMINARY OBJECTION:
Failure to Conform to Law or Rule of Court

15. This is a conclusion of law to which no response is required. To the extent a response is required, DENIED. Plaintiff's First Amended Complaint does not fail to comply with any Pennsylvania pleading requirement.

16. This is a conclusion of law to which no response is required. To the extent a response is required, DENIED. Plaintiff's First Amended Complaint does not fail under Pennsylvania Rule of Civil Procedure 1028(a)(2).

17. DENIED. Defendant fails to identify a single allegation in Plaintiff's First Amended Complaint that constitutes "public relations material and attorney argument." The allegations in Plaintiff's First Amended Complaint are directed toward pleading and proving the elements of Plaintiff's defamation claims, including setting forth material allegations evidencing Defendants' actual malice.

18. This is a conclusion of law to which no response is required. To the extent a response is required, DENIED. As set forth above, the length of Plaintiff's First Amended Complaint is entirely reasonable in light of the scope and breadth of the statements at issue. The First Amended Complaint targets 16 different statements by Defendants, for each of which Plaintiff must plead facts demonstrating falsity and actual malice. Count I of the First Amended Complaint alone concerns several defamatory statements made by Defendants in a 267-page document. Defendants accused Dr. Spanier of various supposed acts or omissions

occurring over a 13-year period of time. Moreover, Defendants previously (and unsuccessfully) argued that Plaintiff's Original Complaint did not contain *enough* allegations of actual malice.

19. DENIED, for the reasons stated in Paragraph 18, above.

20. This is a conclusion of law to which no response is required. To the extent a response is required, DENIED. Pennsylvania Rule of Civil Procedure does not rigidly require that allegations in paragraph form be limited to one sentence or to a single factual assertion. Pennsylvania courts recognize that the Rule allows a pleader flexibility, that it is not a violation or reason for objection that a paragraph contains more than one material allegation, and that it is proper for a pleader to include in the same paragraph subsidiary facts supporting the core allegation. *Gary Lorenzon Contractors, Inc. v. Allstates Mechanical, Ltd.*, 2001 WL 1807395, *4, 52 Pa. D. & C.4th 567, 576 (Com. Pl. Phila. Cnty. 2001); *General State Auth. v. Sutter Corp.*, 24 Pa. Commw. 391, 394, 356 A.2d 377, 380 (1976) ("Mere length, complexity, and verbosity do not in themselves violate Rule 1022 if the subsidiary facts averred fit together into a single allegation.") (quoting 2A Pennsylvania Civil Practice § 1022.3); *Home Builders Ass'n of Metro. Pittsburgh v. Alleghany Cnity. Plumbing Bd.*, 50 Pa. D. & C.2d 275, 282 (Com. Pl.

Allegheny Cnty. 1970) (“A lengthy and complex paragraph does not violate Rule 1022, if the subsidiary facts fit together into a single allegation.”).¹

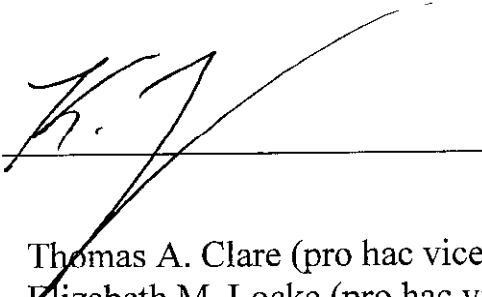
21. DENIED, for the reasons set forth in Paragraph 20, above.

22. For the reasons stated herein and for the reasons stated in Plaintiff’s Brief in Opposition to Defendants’ Preliminary Objection to Plaintiff’s Amended Complaint, Plaintiff’s respectfully request that the Court overrule Defendants’ preliminary objection.

¹ An example of this type of permissible pleading can be found in Defendants’ own Preliminary Objection to Plaintiff’s Amended Complaint. Paragraph 5 of Defendants’ Preliminary Objection contains multiple factual assertions regarding the same subject matter, including (1) that the Court granted in part and denied in part Defendants’ Preliminary Objections on September 27, 2016; (2) that the Court sustained Defendants’ objections as to Plaintiff’s tortious interference claim; (3) that the Court held that six of the 19 statements in the Original Complaint were not defamatory; and (4) that the Court dismissed a defendant from the case.

Respectfully submitted,

Dated: November 23, 2016 By: _____


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CERTIFICATE OF SERVICE

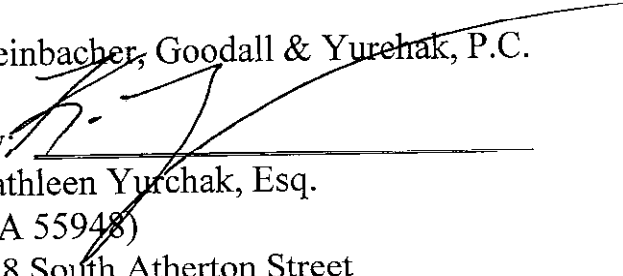
I hereby certify that a true and correct copy of the foregoing was served on the below counsel of record on November 23, 2016.

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Dated: November 23, 2016

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