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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

2013 JUN 5 PM 4:25

RESPONSE TO DEFENDANTS' 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.

ANSWER: Plaintiff lacks personal knowledge of the matters asserted in Paragraph 206 and after a reasonable investigation is without sufficient information to form a belief as to the truth or falsity of the allegation that the mother in question first contacted Alycia Chambers, and therefore denies it. Answering further, Plaintiff admits that on May 4, 1998 a State College woman made a report regarding an allegation that her son had showered with Sandusky.

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

ANSWER: Plaintiff lacks personal knowledge of the matters asserted in Paragraph 207 and after a reasonable investigation is without sufficient information to form a belief as to the truth or falsity of the allegation that the mother in question related this information to Alycia Chambers, and therefore denies it. Answering further, Plaintiff admits that on May 4, 1998 a State College woman made a report regarding an allegation that her son had showered with Sandusky.

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

ANSWER: Plaintiff lacks personal knowledge of the matters asserted in Paragraph 208 and after a reasonable investigation is without sufficient information to form a belief as to the truth or falsity of the allegation that Chambers directed the mother to report the incident to police, and therefore denies

it. Answering further, Plaintiff admits that on May 4, 1998 a State College woman made a report to police regarding an allegation that her son had showered with Sandusky.

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.

ANSWER: Admitted.

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

ANSWER: Admitted.

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

ANSWER: Admitted.

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.

ANSWER: Admitted.

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.

ANSWER: Admitted.

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

ANSWER: Admitted.

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

ANSWER: Admitted. Answering further, Plaintiff states that Detective Schreffler testified that at the conclusion of his investigation, he concluded, based on the facts that he had, that no sexual assault occurred.

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.

ANSWER: Plaintiff lacks personal knowledge of the matters asserted in Paragraph 216 and after a reasonable investigation is without sufficient information to form a belief as to the truth or falsity of the allegation that Chambers made the report to the Pennsylvania child abuse line, and therefore denies it. Answering further, Plaintiff admits that the incident in question was reported to the Pennsylvania child abuse line, and the report was thereafter expunged as “unfounded.”

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.

ANSWER: Admitted.

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

ANSWER: Admitted.

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

ANSWER: Plaintiff lacks personal knowledge of the allegations in Paragraph 219 and after a reasonable investigation is without information to form a belief as to the truth of the allegations that Schultz in fact wrote such notes or that Paragraph 219 accurately transcribes the content of those handwritten notes. Plaintiff therefore denies these allegations.

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 and 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 and 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 9:99 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?

ANSWER: Plaintiff lacks personal knowledge of the allegations in Paragraph 220 and after a reasonable investigation is without information to form a belief as to the truth of the allegations that Schultz in fact wrote such notes or that Paragraph 220 accurately transcribes the content of those handwritten notes. Plaintiff therefore denies these allegations.

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

ANSWER: Admitted.

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."

ANSWER: Admitted.

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

ANSWER: Admitted.

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."

ANSWER: Admitted.

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

ANSWER: Admitted.

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

ANSWER: After a reasonable investigation, Plaintiff is without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 226 and therefore denies them. Answering further, Plaintiff states that he does not deny that the email was sent, but Plaintiff has no recollection of seeing the email, there is no record of Plaintiff having replied or responded to the email in any way, and in 1998 the University email system was not totally reliable and experienced occasional outages and lost messages.

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.

ANSWER: Admitted.

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.

ANSWER: Admitted.

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

ANSWER: Admitted.

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

ANSWER: Admitted.

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."

ANSWER: Admitted.

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

ANSWER: After a reasonable investigation, Plaintiff is without information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 232 and therefore denies them. Answering further, Plaintiff states that he does not deny that the email was sent, but Plaintiff has no recollection of seeing the email, there is no record of Plaintiff having replied or responded to the email in any way, and in 1998 the University email system was not totally reliable and experienced occasional outages and lost messages.

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.

ANSWER: Plaintiff admits that McQueary claims to have seen Jerry Sandusky in the shower of the Lasch Building with a young boy on February 9, 2001. Answering further, Plaintiff lacks personal knowledge of what exactly McQueary did or did not see on that date and states that McQueary's story of what he saw has not been consistent.

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

ANSWER: Admitted.

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

ANSWER: Admitted.

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

ANSWER: Admitted.

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.

ANSWER: Admitted.

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

ANSWER: Admitted.

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

ANSWER: Admitted.

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.

ANSWER: Admitted.

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

ANSWER: Plaintiff admits that McQueary met with Paterno the next day and that they discussed what McQueary claimed to have witnessed the night before. Plaintiff lacks personal knowledge of what McQueary did or did not see and of the substance of the conversation between McQueary and Paterno and therefore, after a reasonable investigation, is without information sufficient to form a belief as to the truth or falsity of the allegation that McQueary told Paterno what he had seen. On that basis the remainder of Paragraph 241 is denied.

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.

ANSWER: Admitted.

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

ANSWER: Admitted.

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

ANSWER: Admitted.

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

ANSWER: Admitted.

246. At Plaintiff’s criminal trial, Curley testified under oath that he was contacted by Paterno on February 11, 2011.

ANSWER: Admitted.

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.

ANSWER: Admitted.

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.

ANSWER: Admitted.

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

ANSWER: Admitted.

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

ANSWER: Admitted.

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."

ANSWER: Admitted.

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

ANSWER: Admitted.

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.

ANSWER: Admitted that Schultz so testified. However, answering further, Plaintiff denies that the notes in question accurately reflect the substance of the February 12, 2001 discussion between Plaintiff, Schultz, and Curley.

254. Schultz's notes that [sic] they "reviewed 1998 history."

ANSWER: Plaintiff admits that Schultz testified that his written notes of a February 12, 2001 meeting said "reviewed 1998 history." Answering further, Plaintiff denies that these notes accurately reflect the substance of the February 12, 2001 discussion between Plaintiff, Schultz, and Curley.

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.

ANSWER: Admitted that Schultz so testified.

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."

ANSWER: Plaintiff admits that Schultz testified that his notes so state.

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

ANSWER: Admitted.

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

ANSWER: Admitted.

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

ANSWER: Admitted.

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.

ANSWER: Admitted.

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.

ANSWER: Admitted.

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

ANSWER: Admitted.

263. Schultz stated that McQueary told him 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.

ANSWER: Admitted.

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

ANSWER: Admitted.

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

ANSWER: Admitted.

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.”

ANSWER: Plaintiff admits that Schultz sent Curley and Plaintiff an email on Thursday, February 22, 2001 that says, “Graham, Tim and I will meet at 2:00 p.m. on Sunday in Tim’s office.” Plaintiff further states that Curley testified that he understood this email to mean that Schultz was informing Plaintiff that Curley and Schultz would be meeting at 2:00 p.m. on Sunday.

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

ANSWER: Plaintiff denies that the allegations in Paragraph 267 accurately paraphrase Schultz’s testimony, and therefore denies this allegation.

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

ANSWER: Plaintiff admits that Schultz testified that that he believed the report that Sandusky was naked in the shower with a boy was inappropriate and concerning. Plaintiff denies that the remaining allegations in Paragraph 268 accurately paraphrase Schultz’s testimony, and therefore denies them.

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

ANSWER: Admitted.

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 into Lasch Bldg.

ANSWER: Plaintiff admits that Schultz testified that he wrote these notes and that they so state.

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.”

ANSWER: Admitted.

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.

ANSWER: Admitted.

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 that 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?

ANSWER: Admitted.

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

ANSWER: Admitted.

275. Plaintiff read Curley's email.

ANSWER: Admitted.

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

ANSWER: Plaintiff lacks personal knowledge of the matters asserted in Paragraph 276 and after a reasonable investigation is without sufficient information to form a belief as to the truth or falsity of the allegation and on that basis denies it. Answering further, Plaintiff states that he cannot speak to what Curley's subjective intent was in writing this email, but Plaintiff admits that on occasion he did know Curley to communicate in a similar fashion because Curley appeared to have a general concern about leaks of information from the Athletic Department.

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

ANSWER: Admitted.

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.

ANSWER: Admitted.

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.

ANSWER: Admitted.

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

ANSWER: Admitted.

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.

ANSWER: Admitted.

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

ANSWER: Admitted.

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.

ANSWER: Admitted.

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

ANSWER: Denied.

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.

ANSWER: Admitted.

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

ANSWER: Plaintiff admits that Curley testified that he 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.

ANSWER: Plaintiff admits that Curley testified that he 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.

ANSWER: Admitted that Schultz so testified. Answering further, Plaintiff denies that he had this conversation with Schultz.

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.

ANSWER: Plaintiff denies that the allegation in Paragraph 289 accurately paraphrases Schultz's testimony, and therefore denies it.

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

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

ANSWER: Plaintiff admits that he did not contact the Department of Public Welfare. Plaintiff denies that he received a report from McQueary and denies that he received a report of alleged criminal conduct by Sandusky.

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

ANSWER: Plaintiff admits that he did not direct anyone to contact the Department of Public Welfare. Plaintiff denies that he received a report from McQueary and denies that he received a report of alleged criminal conduct by Sandusky.

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

ANSWER: Plaintiff admits that he did not report Sandusky to the police. Plaintiff denies the implication that he was aware of alleged criminal conduct by Sandusky.

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

ANSWER: Plaintiff admits that he did not direct anyone to report Sandusky to the police. Plaintiff denies the implication that he was aware of alleged criminal conduct by Sandusky.

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

ANSWER: Plaintiff admits that he did not ask Curley to determine the identity of the child. Plaintiff denies that he was aware at the time that the incident allegedly occurred in the Lasch Building showers. Plaintiff denies the implication that he

was aware the child had been victimized or was a potential victim of criminal conduct by Sandusky.

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

ANSWER: Plaintiff admits that he did not direct anyone to ask Curley to determine the identity of the child. Plaintiff denies that he was aware at the time that the incident allegedly occurred in the Lasch Building showers. Plaintiff denies the implication that he was aware the child had been victimized or was a potential victim of criminal conduct by Sandusky.

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

ANSWER: Plaintiff admits that he did not ask Schultz to determine the identity of the child. Plaintiff denies that he was aware at the time that the incident allegedly occurred in the Lasch Building showers. Plaintiff denies the implication that he was aware the child had been victimized or was a potential victim of criminal conduct by Sandusky.

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

ANSWER: Plaintiff admits that he did not direct anyone to ask Schultz to determine the identity of the child. Plaintiff denies that he was aware at the time

that the incident allegedly occurred in the Lasch Building showers. Plaintiff denies the implication that he was aware the child had been victimized or was a potential victim of criminal conduct by Sandusky.

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

ANSWER: Plaintiff admits that he did not ask Paterno to determine the identity of the child. Plaintiff denies that he was aware at the time that the incident allegedly occurred in the Lasch Building showers. Plaintiff denies the implication that he was aware the child had been victimized or was a potential victim of criminal conduct by Sandusky.

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

ANSWER: Plaintiff admits that he did not direct anyone to ask Paterno to determine the identity of the child. Plaintiff denies that he was aware at the time that the incident allegedly occurred in the Lasch Building showers. Plaintiff denies the implication that he was aware the child had been victimized or was a potential victim of criminal conduct by Sandusky.

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

ANSWER: Plaintiff admits that he did not ask McQueary to determine the identity of the child. Plaintiff denies that he was aware at the time that the incident allegedly occurred in the Lasch Building showers, or that the alleged witness was McQueary. Plaintiff denies the implication that he was aware the child had been victimized or was a potential victim of criminal conduct by Sandusky.

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

ANSWER: Plaintiff admits that he did not direct anyone to ask McQueary to determine the identity of the child. Plaintiff denies that he was aware at the time that the incident allegedly occurred in the Lasch Building showers, or that the alleged witness was McQueary. Plaintiff denies the implication that he was aware the child had been victimized or was a potential victim of criminal conduct by Sandusky.

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

ANSWER: Plaintiff admits that he did not do anything personally to investigate the identity of the child. Plaintiff denies the implication that he was aware the child had been victimized or was a potential victim of criminal conduct by Sandusky, or that Plaintiff perceived that there was a need to investigate 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.

ANSWER: Plaintiff admits that he did not direct anyone to do anything to investigate the identity of the child. Plaintiff denies the implication that he was aware the child had been victimized or was a potential victim of criminal conduct by Sandusky, or that Plaintiff perceived that there was a need to investigate the child's welfare.

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

ANSWER: Plaintiff admits that he did not personally take any steps to contact the child's parents. Plaintiff denies the implication that he was aware the child had been victimized or was a potential victim of criminal conduct by Sandusky, or that Plaintiff perceived that there was a need to contact the child's parents.

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

ANSWER: Plaintiff admits that he did not direct anyone to take any steps to contact the child's parents. Plaintiff denies the implication that he was aware the child had been victimized or was a potential victim of criminal conduct by Sandusky, or that Plaintiff perceived that there was a need to contact the child's parents.

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

ANSWER: Admitted.

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

ANSWER: Admitted.

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

ANSWER: Admitted.

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

ANSWER: Plaintiff admits that Sandusky retired and that, prior to his retirement, Sandusky was a Penn State football coach.

310. Sandusky retained his emeritus status.

ANSWER: Admitted.

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

ANSWER: Plaintiff admits that he did not express concerns for Sandusky's victims prior to November 2011. Plaintiff denies the implication that prior to 2011 Plaintiff was aware that Sandusky had victimized anyone.

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 2001.

ANSWER: Plaintiff admits that the November 4, 2011 Grand Jury Presentment so stated. The November 4, 2011 Grand Jury Presentments is a written document that speaks for itself.

Plaintiff's Post-Hac [sic] 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.”

ANSWER: Plaintiff admits that he understood the incident to involve an allegation of “horseplay” or “horsing around” and has so stated publicly.

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.”

ANSWER: Admitted.

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.”

ANSWER: Plaintiff states that after a reasonable investigation, he is without knowledge sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 315, and therefore denies them. Answering further, Plaintiff states that he has no recollection of meeting with Curley and Schultz on Sunday, February 25, 2001, and therefore denies the implication that he did so.

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.”

ANSWER: Plaintiff states that after a reasonable investigation, he is without knowledge sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 316, and therefore denies them. Answering further, Plaintiff states that he has no recollection of meeting with Curley and Schultz on Sunday, February 25, 2001, and therefore denies the implication that he did so.

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.

ANSWER: Admitted.

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.

ANSWER: Admitted.

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

ANSWER: Admitted, however Plaintiff denies the implication that he made such a recommendation to Sandusky.

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

ANSWER: Admitted, however Plaintiff denies the implication that he made such a recommendation to Sandusky.

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

ANSWER: Denied.

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.”

ANSWER: Denied.

The Grand Jury Proceedings

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

ANSWER: Admitted.

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.

ANSWER: Denied as phrased. The quoted language does not appear on page 33 of the November 4, 2011 Grand Jury Presentment, which is only 23 pages long. Answering further, Plaintiff admits that the quoted language appears on page 33 of the November 1, 2012 Grand Jury Presentment. Both the November 4, 2011 and November 1, 2012 Grand Jury Presentments are written documents that speak for themselves, and Plaintiff denies any characterization of those documents inconsistent with their terms.

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.*

ANSWER: Denied as phrased. The quoted language does not appear on page 33 of the November 4, 2011 Grand Jury Presentment, which is only 23 pages long. Answering further, Plaintiff admits that the quoted language appears on page 33 of the November 1, 2012 Grand Jury Presentment. Both the November 4, 2011 and November 1, 2012 Grand Jury Presentments are written documents that speak for themselves, and Plaintiff denies any characterization of those documents inconsistent with their terms.

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.

ANSWER: Denied as phrased. The quoted language does not appear on page 18 of the November 4, 2011 Grand Jury Presentment. Answering further, Plaintiff admits that the quoted language appears on page 18 of the November 1, 2012 Grand Jury Presentment. Both the November 4, 2011 and November 1, 2012 Grand Jury Presentments are written documents that speak for themselves, and

Plaintiff denies any characterization of those documents inconsistent with their terms.

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.

ANSWER: Denied as phrased. The quoted language does not appear on page 33 of the November 4, 2011 Grand Jury Presentment. Answering further, Plaintiff admits that the quoted language appears on page 33 of the November 1, 2012 Grand Jury Presentment. Both the November 4, 2011 and November 1, 2012 Grand Jury Presentments are written documents that speak for themselves, and Plaintiff denies any characterization of those documents inconsistent with their terms.

328. The Grand Jury concluded that Plaintiff, along with Curly [sic] 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.

ANSWER: Denied as phrased. The quoted language does not appear on page 34 of the November 4, 2011 Grand Jury Presentment. Answering further, Plaintiff admits that the quoted language appears on page 34 of the November 1, 2012

Grand Jury Presentment. Both the November 4, 2011 and November 1, 2012 Grand Jury Presentments are written documents that speak for themselves, and Plaintiff denies any characterization of those documents inconsistent with their terms.

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.*

ANSWER: Denied as phrased. The quoted language does not appear on page 34 of the November 4, 2011 Grand Jury Presentment. Answering further, Plaintiff admits that the quoted language appears on page 34 of the November 1, 2012 Grand Jury Presentment. Both the November 4, 2011 and November 1, 2012 Grand Jury Presentments are written documents that speak for themselves, and Plaintiff denies any characterization of those documents inconsistent with their terms.

330. The Grand Jury further 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.*

ANSWER: Denied as phrased. The quoted language does not appear on page 34 of the November 4, 2011 Grand Jury Presentment. Answering further, Plaintiff admits that the quoted language appears on page 34 of the November 1, 2012 Grand Jury Presentment. Plaintiff denies that Defendants' paraphrasing of the document is accurate. Both the November 4, 2011 and November 1, 2012 Grand Jury Presentments are written documents that speak for themselves, and Plaintiff denies any characterization of those documents inconsistent with their terms.

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.

ANSWER: Denied as phrased. The quoted language does not appear on page 35 of the November 4, 2011 Grand Jury Presentment. Answering further, Plaintiff admits that the quoted language appears on page 35 of the November 1, 2012 Grand Jury Presentment. Both the November 4, 2011 and November 1, 2012 Grand Jury Presentments are written documents that speak for themselves, and Plaintiff denies any characterization of those documents inconsistent with their terms.

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

ANSWER: Denied as phrased. The quoted language does not appear on page 35 of the November 4, 2011 Grand Jury Presentment. Answering further, Plaintiff admits that the quoted language appears on page 35 of the November 1, 2012 Grand Jury Presentment. Both the November 4, 2011 and November 1, 2012 Grand Jury Presentments are written documents that speak for themselves, and Plaintiff denies any characterization of those documents inconsistent with their terms.

333. The Grand Jury concluded that despite the fact that Plaintiff, Curly [sic] 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.*

ANSWER: Denied as phrased. The quoted language does not appear on page 35 of the November 4, 2011 Grand Jury Presentment. Answering further, Plaintiff admits that the quoted language appears on page 35 of the November 1, 2012 Grand Jury Presentment. Plaintiff denies that Defendants’ paraphrasing of the document is accurate. Both the November 4, 2011 and November 1, 2012 Grand Jury Presentments are written documents that speak for themselves, and Plaintiff denies any characterization of those documents inconsistent with their terms.

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

ANSWER: Denied as phrased. The conclusion asserted does not appear on pages 35-37 of the November 4, 2011 Grand Jury Presentment. Answering further, Plaintiff admits that the Grand Jury recommended a charge of perjury against Plaintiff in the November 1, 2012 Grand Jury Presentment. Plaintiff further states that this charge was subsequently dismissed and Plaintiff was never tried or convicted on a charge of perjury. Both the November 4, 2011 and November 1, 2012 Grand Jury Presentments are written documents that speak for themselves, and Plaintiff denies any characterization of those documents inconsistent with their terms. Answering further, Plaintiff states that he was never tried or convicted on a charge of perjury.

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

ANSWER: Denied as phrased. The quoted language does not appear on page 38 of the November 4, 2011 Grand Jury Presentment. Answering further, Plaintiff admits that the quoted language appears on page 38 of the November 1, 2012 Grand Jury Presentment. Both the November 4, 2011 and November 1, 2012 Grand Jury Presentments are written documents that speak for themselves, and Plaintiff denies any characterization of those documents inconsistent with their

terms. Answering further, Plaintiff states that he was never tried or convicted on a charge of obstruction of justice.

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.

ANSWER: Denied as phrased. The conclusion asserted does not appear on page 39 of the November 4, 2011 Grand Jury Presentment. Answering further, Plaintiff admits that the Grand Jury recommended a charge of failure to report against Plaintiff in the November 1, 2012 Presentment. Plaintiff denies that Defendants' paraphrasing of the document is accurate. Both the November 4, 2011 and November 1, 2012 Grand Jury Presentments are written documents that speak for themselves, and Plaintiff denies any characterization of those documents inconsistent with their terms. Answering further, Plaintiff states that he was never tried or convicted on a charge of failure to report an allegation of sexual assault to law enforcement.

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 children and conspiracy to endanger the welfare of a child.

ANSWER: Admitted.

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.

ANSWER: Admitted.

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

ANSWER: Admitted.

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.

ANSWER: Plaintiff lacks personal knowledge of the jury's decision-making and therefore, after a reasonable investigation, is without information sufficient to form a belief as to the truth or falsity of this allegation, and therefore denies it. Additionally, this allegation sets forth a conclusion of law to which no response is required. Answering further, Plaintiff admits that Paragraph 340 accurately paraphrases the elements of Pennsylvania Code Title 18 § 4304(a).

AFFIRMATIVE DEFENSES

Substantial Truth

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

ANSWER: Each and every allegation set forth in Paragraph 341 is a conclusion of law to which no response is required; to the extent that a response is deemed required, each and every allegation is specifically denied.

Lack of Actual Malice

342. Plaintiff is a public figure.

ANSWER: Each and every allegation set forth in Paragraph 342 is a conclusion of law to which no response is required.

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.

ANSWER: Each and every allegation set forth in Paragraph 343 is a conclusion of law to which no response is required; to the extent that a response is deemed required, each and every allegation is specifically denied.

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

ANSWER: Each and every allegation set forth in Paragraph 344 is a conclusion of law to which no response is required; to the extent that a response is deemed required, each and every allegation is specifically denied.

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

ANSWER: Each and every allegation set forth in Paragraph 345 is a conclusion of law to which no response is required; to the extent that a response is deemed required, each and every allegation is specifically denied.

Preclusion

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

ANSWER: Admitted.

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

ANSWER: Each and every allegation set forth in Paragraph 347 is a conclusion of law to which no response is required; to the extent that a response is deemed required, each and every allegation is specifically denied.

Opinion

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

ANSWER: Each and every allegation set forth in Paragraph 348 is a conclusion of law to which no response is required; to the extent that a response is deemed required, each and every allegation is specifically denied.

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.

ANSWER: Each and every allegation set forth in Paragraph 349 is a conclusion of law to which no response is required; to the extent that a response is deemed required, each and every allegation is specifically denied.

Justification

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

ANSWER: Each and every allegation set forth in Paragraph 350 is a conclusion of law to which no response is required; to the extent that a response is deemed required, each and every allegation is specifically denied.

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

ANSWER: Each and every allegation set forth in Paragraph 351 is a conclusion of law to which no response is required; to the extent that a response is deemed required, each and every allegation is specifically denied.

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.

ANSWER: Each and every allegation set forth in Paragraph 352 is a conclusion of law to which no response is required; to the extent that a response is deemed required, each and every allegation is specifically denied.

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

ANSWER: Each and every allegation set forth in Paragraph 353 is a conclusion of law to which no response is required; to the extent that a response is deemed required, each and every allegation is specifically denied.

Immunity

354. Defendants are entitled to absolute immunity.

ANSWER: Each and every allegation set forth in Paragraph 354 is a conclusion of law to which no response is required; to the extent that a response is deemed required, each and every allegation is specifically denied.

Lack of Harm Caused by the Report

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

ANSWER: Each and every allegation set forth in Paragraph 355 is a conclusion of law to which no response is required; to the extent that a response is deemed required, each and every allegation is specifically denied.

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

ANSWER: Each and every allegation set forth in Paragraph 356 is a conclusion of law to which no response is required; to the extent that a response is deemed required, each and every allegation is specifically denied.

Unavailability of Punitive Damages

357. Plaintiff is not entitled to punitive damages.

ANSWER: Each and every allegation set forth in Paragraph 357 is a conclusion of law to which no response is required; to the extent that a response is deemed required, each and every allegation is specifically denied.

358. The Report discusses matters of public concern.

ANSWER: Each and every allegation set forth in Paragraph 358 is a conclusion of law to which no response is required; to the extent that a response is deemed required, each and every allegation is specifically denied.

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.

ANSWER: Each and every allegation set forth in Paragraph 359 is a conclusion of law to which no response is required; to the extent that a response is deemed required, each and every allegation is specifically denied.

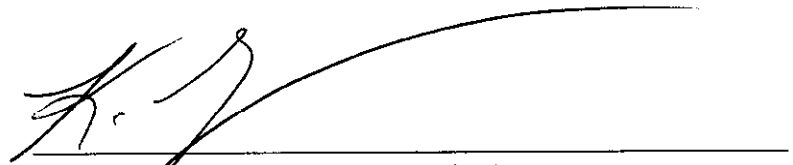
360. An award of punitive damages would violate Defendants' procedural and substantive due process rights under the Pennsylvania and U.S. Constitutions.

ANSWER: Each and every allegation set forth in Paragraph 360 is a conclusion of law to which no response is required; to the extent that a response is deemed required, each and every allegation is specifically denied.

Failure to State a Claim

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

ANSWER: Each and every allegation set forth in Paragraph 361 is a conclusion of law to which no response is required; to the extent that a response is deemed required, each and every allegation is specifically denied.



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Attorneys for Plaintiff Graham B. Spanier

Dated: June 6, 2017

VERIFICATION

I verify that the statements made in the foregoing Response to New Matter and Affirmative Defenses are true and correct to the best of my knowledge, information, and belief. I understand that any false statements herein are made subject to penalties of 18 Pa. C.S. 4909, relating to unsworn falsification to authorities.

Date: June 5, 2017

Graham Spaulier
Dr. Graham Spaulier

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on
the below counsel of record on June 6, 2017.

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