

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

GEORGE SCOTT PATERNO,
as duly appointed representative of the
ESTATE and FAMILY of JOSEPH PATERNO;

RYAN McCOMBIE, ANTHONY LUBRANO,
AL CLEMENS, PETER KHOURY, and
ADAM TALIAFERRO, members of the
Board of Trustees of Pennsylvania State University;

PETER BORDI, TERRY ENGELDER,
SPENCER NILES, and JOHN O'DONNELL,
members of the faculty of Pennsylvania State University;

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

ANTHONY ADAMS, GERALD CADOGAN,
SHAMAR FINNEY, JUSTIN KURPEIKIS,
RICHARD GARDNER, JOSH GAINES, PATRICK MAUTI,
ANWAR PHILLIPS, and MICHAEL ROBINSON,
former football players of Pennsylvania State University,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION
("NCAA"),

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

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

Defendants.

Civil Division

Docket No. _____

COMPLAINT

Plaintiffs, by and through counsel, hereby file this complaint against the National Collegiate Athletic Association (“NCAA”), its President Mark Emmert, and the former Chairman of its Executive Committee Edward Ray.

INTRODUCTION

1. This action challenges the unlawful conduct of the National Collegiate Athletic Association (“NCAA”), its President, and the former Chairman of its Executive Committee in connection with their improper interference in and gross mishandling of a criminal matter that falls far outside the scope of their authority. In particular, this lawsuit seeks to remedy the harms caused by their unprecedented imposition of sanctions on Pennsylvania State University (“Penn State”) for conduct that did not violate the NCAA’s rules and was unrelated to any athletics issue the NCAA could permissibly regulate. As part of their unlawful conduct, and as alleged in more detail below, Defendants breached their contractual obligations and violated their duties of good faith and fair dealing, intentionally and tortiously interfered with Plaintiffs’ contractual relations, and defamed and commercially disparaged Plaintiffs.

2. The NCAA is a voluntary association of member institutions of higher education that operates pursuant to a constitution and an extensive set of bylaws. The constitution and bylaws define and constrain the scope of the NCAA’s authority, and are designed to regulate athletic competition between members in a manner that promotes fair competition and amateurism. The constitution and bylaws authorize the NCAA to prohibit and sanction conduct that is intended to provide any member institution with a recruiting or competitive advantage in athletics.

3. The NCAA has no authority to investigate or impose sanctions on member institutions for criminal matters unrelated to athletic competition at the collegiate level. Moreover, when there is an alleged violation of the NCAA’s rules, the constitution and bylaws

require the NCAA to provide interested parties with certain, well-defined procedural protections, including rights of appeal. The constitution and bylaws are expressly intended to benefit not only the member institutions, but also their staff, students, and other individuals affected by conduct subject to potential NCAA oversight and sanctions.

4. In the course of the events that gave rise to this lawsuit, Defendants engaged in malicious, unjustified, and unlawful acts, including penalizing and irreparably harming Plaintiffs for criminal conduct committed by a former assistant football coach. But the criminal conduct, which occurred in 1998 and 2001, was not an athletics issue properly regulated by the NCAA. Defendants' actions far exceeded the scope of the NCAA's authority and were taken in knowing and reckless disregard of Plaintiffs' rights.

5. Among other things, Defendants circumvented the procedures required by the NCAA's rules and violated and conspired with others to violate Plaintiffs' rights, causing Plaintiffs significant harm. Defendants took these actions based on conclusions reached in a flawed, unsubstantiated, and controversial report that Defendants knew or should have known was not the result of a thorough, reliable investigation; had been prepared without complying with the NCAA's investigative rules and procedures; reached conclusions that were false, misleading, or otherwise unworthy of credence; and reflected an improper "rush to judgment" based on unsound speculation and innuendo. Defendants also knew or should have known that by embracing the flawed report, they would effectively terminate the search for truth and cause Plaintiffs grave harm. Nonetheless, Defendants took their unauthorized and unlawful actions in an effort to deflect attention away from the NCAA's institutional failures and to expand the scope of their own authority by exerting control over matters unrelated to recruiting and athletic competition.

6. In failing to comply with required procedures, Defendants unlawfully accused the members of the Penn State Board of Trustees and the coaching staff of failing to prevent unethical conduct, and deprived them of important procedural protections required under the NCAA's rules. Defendants also breached the NCAA's obligations owed to uninvolved student-athletes, coaches, administrators, and competitors, including the duty to ensure that those individuals are treated fairly in any NCAA enforcement action. In the course of their unlawful conduct, Defendants broadly criticized and disparaged the entire Penn State community, falsely, unfairly, and irresponsibly accusing Plaintiffs of enabling and directly causing reprehensible criminal conduct.

7. Because Defendants breached the NCAA's duties and contractual obligations to Plaintiffs, and because Defendants' unlawful and unauthorized conduct has caused and is continuing to cause substantial harms, Plaintiffs are bringing this lawsuit to remedy the harms caused by the NCAA's conduct, to enforce the NCAA's obligations, and to put an end to Defendants' ongoing misconduct, as well as their misuse and abuse of authority.

PARTIES

8. Plaintiff George Scott Paterno is the son of the former head football coach of Penn State, Joseph ("Joe") Paterno. He brings this action to enforce Joe Paterno's rights and as the duly authorized representative of and on behalf of the Estate and Family of Joe Paterno.

9. Plaintiffs Ryan McCombie, Anthony Lubrano, Al Clemens, Peter Khoury, and Adam Taliaferro are current members of the Board of Trustees of Penn State. As members of the Board, they are vested with legal responsibility and authority for managing and governing the University. Al Clemens was a member of the Board of Trustees in 1998 and 2001.

10. Plaintiffs William Kenney and Joseph V. ("Jay") Paterno are former coaches of the Penn State football team and former employees of Penn State.

11. Plaintiffs Peter Bordi, Terry Engelder, Spencer Niles, and John O'Donnell are current members of the faculty of Penn State.

12. Plaintiffs Anthony Adams, Gerald Cadogan, Shamar Finney, Justin Kurpeikis, Richard Gardner, Josh Gaines, Patrick Mauti, Anwar Phillips, and Michael Robinson are former players on the Penn State football team who participated in the program between the years 1998 and 2011.

13. Defendant NCAA is an unincorporated association headquartered in Indianapolis, Indiana. It has members in all fifty states, the District of Columbia, Puerto Rico, and Canada, and effectively enjoys a monopoly over the popular world of college sports.

14. Defendant Mark Emmert is the current President of the NCAA.

15. Defendant Edward Ray is the president of Oregon State University and the former Chairman of the NCAA's Executive Committee.

JURISDICTION AND VENUE

16. Jurisdiction is proper in this Court under 42 Pa. C.S. § 931(a).

17. The Court has personal jurisdiction over Defendants because they carry on a continuous and systematic part of their general business in Pennsylvania. 42 Pa. C.S. § 5301(a)(3)(iii). The Court also has jurisdiction because, among other things, Defendants transacted business and caused harm in Pennsylvania with respect to the causes of action asserted herein. 42 Pa. C.S. § 5322(a).

18. Venue is proper in Centre County under Pennsylvania Rules of Civil Procedure 1006(a) and 2156(a). The NCAA regularly conducts business and association activities in this County, the causes of action arose in this County, and the transactions and/or occurrences out of which the causes of action arose took place in this County.

GENERAL ALLEGATIONS

The NCAA's Rules, Constitution, And Bylaws

19. The NCAA is an unincorporated association of institutions of higher education with the common goal of achieving athletic and academic excellence. The NCAA was first formed in 1906 and is today made up of three membership classifications — Divisions I, II, and III.

20. The NCAA's basic purpose is to maintain intercollegiate athletics as an integral part of university educational programs and the athlete as an integral part of the student body and, by doing so, to retain a clear line of demarcation between intercollegiate athletics and professional sports.

21. Student athletes are not paid, but the NCAA brings in substantial revenues each year. In 2012 alone, the NCAA generated \$872 million in profits, \$71 million of which was treated as "surplus" and retained by the organization.

22. The NCAA is governed by a lengthy set of rules that define both the scope of the NCAA's authority and the obligations of the NCAA's member institutions. The relevant set of rules for purposes of this lawsuit is the 2011–2012 NCAA Division I Manual, which is available at <http://www.ncaapublications.com/p-4224-2011-2012-ncaa-division-i-manual.aspx>. (A copy of relevant portions of the NCAA's Manual is attached to this Complaint as Exhibit A.)

a. Articles 1 through 6 of the Manual comprise the NCAA's Constitution, which sets forth information relevant to the NCAA's purposes, its structure, its membership, the legislative process, and the more important principles governing the conduct of intercollegiate athletics.

b. Articles 10 through 23 are the Operating Bylaws, which consist of legislation adopted by member institutions to promote the principles enunciated in the Constitution and to achieve the NCAA's stated purposes.

c. Articles 31 through 33 are the Administrative Bylaws, adopted and modified by the NCAA subject to amendment by the membership through the regular legislative process. The Administrative Bylaws implement the NCAA's general legislative actions, setting forth policies and procedures for NCAA championships, the NCAA's business, its enforcement program, and its athletics certification program.

23. The rules governing NCAA sports, as reflected in the Manual, are developed through a membership-led governance system. Under that system, member institutions introduce and vote on proposed legislation. In turn, member institutions are obligated to apply and enforce the member-approved legislation, and the NCAA has the authority to use its enforcement procedures when a member institution fails to fulfill its enumerated obligations.

24. The NCAA's rules are premised on the principle of according fairness to student athletes and staff, whether or not they may be involved in potential rules violations. The rules expressly protect and benefit students, staff, and other interested parties, recognizing that fair and proper procedures are important because the NCAA's actions can have serious repercussions on their lives and careers.

25. In substance, the NCAA's rules govern "basic athletics issues such as admissions, financial aid, eligibility and recruiting." In that context, the rules contain principles of conduct for institutions, athletes, and staff, including the principles of "institutional control" and "ethical conduct."

26. The principle of “institutional control,” found in Article 6 of the Constitution, places the responsibility for “compliance with the rules and regulations of the Association” on each member institution. “Institutional control” is defined as “[a]dministrative control,” “faculty control,” or both. Article 6 contains no enforcement provision.

27. The principle of “ethical conduct,” found in Article 10 of the Bylaws, is intended to “promote the character development of participants.” Article 10 refers to “student-athlete[s]” and defines unethical conduct with reference to a list of examples, all of which involve violations related to securing a competitive athletic advantage. Article 10 provides that any corrective action for the unethical conduct of an athlete or staff member shall proceed through the enforcement process set forth in Article 19 of the Bylaws.

28. The authorized enforcement process, detailed in Articles 19 and 32, begins with an investigation, conducted by the NCAA enforcement staff. In conducting an investigation, the staff is required to comply with the operating policies, procedures, and investigative guidelines established in accordance with Article 19.

29. The staff has responsibility for gathering information relating to possible rules violations and for classifying alleged violations. Information that an institution has failed to meet the conditions and obligations of membership is to be provided to the enforcement staff, and must be channeled to the enforcement staff if received by the NCAA president or by the NCAA’s Committee on Infractions.

30. The rules recognize two types of violations subject to the NCAA’s enforcement authority: (1) “major” violations, and (2) “secondary” violations.

a. Major violations are violations intended to provide a member institution with an extensive recruiting or competitive advantage, such as the provision of significant impermissible benefits to student athletes.

b. Secondary violations are violations that are isolated or inadvertent in nature, and that are intended to provide the institution with only a minimal recruiting, competitive, or other impermissible benefit. Secondary violations occur frequently, are usually resolved administratively, and are not typically made public.

31. The NCAA's enforcement staff may interview individuals suspected of violations, but they must provide notice of the reason for the interview, and the individual has a right to legal counsel. Interviews must be recorded or summarized and, when an interview is summarized, the staff is required to attempt to obtain a signed affirmation of accuracy from the interviewed individual. The enforcement staff is responsible for maintaining evidentiary materials on file at the national office in a confidential and secure manner.

32. If the enforcement staff learns of reasonably reliable information indicating that a member institution has violated the NCAA's rules, it must provide a "notice of inquiry" to the chancellor or president of the institution, disclosing the nature and details of the investigation and the type of charges that appear to be involved. The "notice of inquiry" presents the institution with an opportunity to address the issue and either convince the NCAA that no wrongdoing has occurred or, if there is wrongdoing, cooperate and play a role in the investigation.

33. If the enforcement staff determines after conducting its initial inquiry that there is sufficient information to support a finding of a rules violation, the staff must then send a "notice of allegations" to the institution. That notice must list the NCAA rule alleged to have been

violated and the details of the violations. If the allegations suggest the significant involvement of any individual staff member or student, that individual is considered an “involved individual” and must be notified and provided with an opportunity to respond to the allegations. The issuance of the “notice of allegations” initiates a formal adversarial process, which allows the institution and involved individuals the opportunity to respond and defend themselves.

34. After the notice of allegations is issued, the matter is referred to the Committee on Infractions. A member institution has the right to pre-hearing notice of the charges and the facts upon which the charges are based, and an opportunity to be heard and to produce evidence. The institution and all involved individuals have the right to be represented by legal counsel at all stages of the proceedings.

35. The Committee must base its decision on evidence that is “credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs.” Oral or documentary information may be presented to the Committee, subject to exclusion on the grounds that it is “irrelevant, immaterial or unduly repetitious.” Individuals have the opportunity, and are encouraged, to present all relevant information concerning mitigating factors.

36. The Committee may not under any circumstances rely on information provided anonymously.

37. After the Committee has completed its review, it is authorized to impose sanctions in appropriate circumstances. The sanctions for violating the rules are calibrated to the rules’ substantive prohibitions. Permissible sanctions for major violations include the imposition of probationary periods, reduction in permissible financial aid awards to student athletes, prohibitions on postseason competition, vacation of team records (but only in cases where an

ineligible student athlete has competed), and financial penalties. Those penalties thus aim to erase the competitive advantage that the violations were intended to achieve.

38. The most severe sanction available to the NCAA is the “death penalty,” so called because, in prohibiting an institution’s participation in a sport for a certain period of time, it has enormous consequences for a program’s future ability to recruit players, retain staff, and attract fans and boosters. The rules allow the death penalty to be imposed only on “repeat violators” — *i.e.*, institutions that commit a major violation, seeking to obtain an extensive recruiting or competitive advantage, and that have *also* committed at least one other major violation in the last five years.

39. At the conclusion of the hearing, the Committee is required to issue a formal Infractions Report detailing all the Committee’s findings and the penalties imposed. The Committee must submit the report to the institution and all involved individuals. The report shall only be made publicly available after the institution and all involved individuals have had an opportunity to review the report. Names of individuals must be deleted before the report is released to the public or forwarded to the Infractions Appeals Committee. The report must also describe the opportunities for further administrative appeal.

40. The rules provide a member institution the right to appeal to the Infractions Appeals Committee if the institution is found to have committed major violations. In addition, an individual has the right to appeal if he or she is named in the Committee on Infraction’s report finding violations of the NCAA’s rules.

41. On appeal, the penalties imposed must be overturned if they constitute an abuse of discretion. Factual findings must be overturned if they are clearly contrary to the evidence presented, if the facts found do not constitute a violation of the NCAA’s rules, or if procedural

errors occurred in the investigation process. The Infraction Appeals Committee's decision is final and cannot be reviewed by any other NCAA authority.

42. The rules include certain alternatives to the formal investigative and hearing process outlined above. For example, an institution is encouraged to self-report violations, and a self-report is considered as a mitigating factor when imposing sanctions. A self-report typically involves a formal letter sent to the enforcement staff by a member institution setting forth the relevant facts. After receiving a self-report, the enforcement staff has a duty to conduct an investigation, to determine whether the self-reported violation is "secondary" or "major," and to prepare and send a notice of allegations to the institution. Based on the enforcement staff's investigation, if a major violation is identified and the staff is satisfied with the institution's self-report, the parties may agree to use a summary disposition process.

43. The summary disposition process and an expedited hearing procedure may be used only with the unanimous consent of the NCAA's enforcement staff, all involved individuals, and the participating institution. During the summary disposition process, the Committee on Infractions is required to determine that a complete and thorough investigation of possible violations has occurred, especially where the institution, and not NCAA enforcement staff, conducted the investigation. After the investigation, the involved individuals, the institution, and enforcement staff are required to submit a joint written report. A hearing need not be conducted if the Committee on Infractions accepts the parties' submissions, but the Committee must still prepare a formal written report and publicly announce the resolution of the case.

44. If the Committee accepts the findings that a violation occurred but does not accept the parties' proposed penalties, it must hold an expedited hearing limited to considering the

possibility of imposing additional penalties. After that hearing, the Committee must issue a formal written report, and the institution and all involved individuals have the right to appeal to the Infractions Appeals Committee any additional penalties that may be imposed.

45. These enforcement policies and procedures are subject to amendment only in accordance with the legislative process set forth in Article 5. No other NCAA body, including the Executive Committee and the Board of Directors, has authority to bypass or amend these procedures and impose discipline or sanctions on any member institution. Instead, the Executive Committee and the Board of Directors are authorized only to take actions that are legislative in character, to be implemented association-wide on a prospective basis.

46. These procedural protections are a significant and vital part of the bargain involved in each member's decision to participate in the NCAA. Because of the leverage the NCAA has over its member institutions, and because of the significant consequences NCAA sanctions can have for institutions and their administrators, faculty, staff, and students, the NCAA has an express obligation to ensure that any sanctions are fair and imposed consistent with established procedures.

47. The NCAA's Constitution recognizes that it is the NCAA's responsibility to "afford the institution, its staff and student-athletes fair procedures in the consideration of an identified or alleged failure in compliance." According to the mission statement of the NCAA's enforcement program, "an important consideration in imposing penalties is to provide fairness to uninvolved student-athletes, coaches, administrators, competitors and other institutions."

The Underlying Conduct, The Freeh Report, And The NCAA's Involvement

48. On November 4, 2011, the Attorney General of Pennsylvania charged Jerry Sandusky, a former assistant football coach, former assistant professor of physical education, and former employee of Penn State, with various criminal offenses, including aggravated criminal

assault, corruption of minors, unlawful contact with minors, and endangering the welfare of minors. Sandusky was convicted and, on October 9, 2012, was sentenced to 30 to 60 years in prison.

49. On November 9, 2011, the Penn State Board of Trustees removed University President Graham Spanier from his position. Rodney Erickson was named interim President, and later became the permanent President of the University. The Board also removed Joe Paterno from his position as head football coach.

50. On November 11, 2011, the Penn State Board of Trustees formed a Special Investigations Task Force, which engaged the firm of Freeh Sporkin & Sullivan, LLP (the “Freeh firm”) to investigate the alleged failure of certain Penn State personnel to respond to and report certain allegations against Sandusky. The Freeh firm was also asked to provide recommendations regarding University governance, oversight, and administrative policies and procedures to help Penn State adopt policies and procedures to more effectively prevent or respond to incidents of sexual abuse of minors in the future.

51. The reprehensible incidents involving Sandusky were criminal matters that had nothing to do with securing a recruiting or competitive advantage for Penn State and its athletics program. Defendant Mark Emmert, President of the NCAA, would later acknowledge that “[a]s a criminal investigation, it was none of [the NCAA’s] business.”

52. The Freeh firm was not engaged, and had no authority, to investigate or even consider whether any of the actions under its review constituted violations of the NCAA’s rules. It was never retained by the Penn State Board of Trustees for this purpose.

53. On November 17, 2011, Emmert sent a letter to President Erickson of Penn State expressing concern over the grand jury presentments and asserting that the NCAA had

jurisdiction over the matter and might take action against Penn State. Emmert's letter did not identify any specific provision in the NCAA's Constitution or Bylaws that granted the NCAA authority to become involved in criminal matters outside the NCAA's basic purpose and mission. Nor did the letter identify any NCAA rule that Penn State had allegedly violated. Emmert nonetheless asserted that the NCAA's Constitution "contains principles regarding institutional control and responsibility" and "ethical conduct," and that those provisions may justify the NCAA's involvement. Emmert advised President Erickson that Penn State would need to "prepare for potential inquiry" by the NCAA and posed four written questions to which the NCAA sought responses.

54. Instead of demanding that Penn State provide answers to its questions, the NCAA waited for the Freeh firm to complete its investigation. Attorneys and investigators working for the Freeh firm collaborated with the NCAA and frequently provided information and briefings to the NCAA. During the course of the seven-and-a-half-month investigation, the Freeh firm periodically contacted representatives of the NCAA to discuss areas of inquiry and other strategies. The final report released by the Freeh firm states that as part of its investigative plan, the firm cooperated with "athletic program governing bodies," *i.e.*, the NCAA.

55. According to Emmert in a speech to the Detroit Economic Club on September 21, 2012, the NCAA waited for the results of the Freeh firm's investigation because the firm "had more power than we have — we don't have subpoena power, which was more or less granted to them by the Penn State Board of Trustees."

56. On July 12, 2012, the Freeh firm released its report (the "Freeh Report"), a 144-page document with approximately 120 pages of footnotes and exhibits. The Freeh Report stated that top university officials and Coach Joe Paterno had known about Sandusky's conduct before

Sandusky retired as an assistant coach in 1999 but failed to take action. According to the report, Penn State officials conspired to conceal critical facts relating to Sandusky's abuse from authorities, the Board of Trustees, the Penn State community, and the public at large.

57. Within hours of the release of the Freeh Report — and before members of the Penn State Board of Trustees had an opportunity to read the full report, discuss it, or vote on its contents — certain Penn State officials held a press conference and released a written statement asserting that the Board of Trustees accepted full responsibility for the purported failures outlined in the Freeh Report.

58. Later the same day, Emmert announced that there had been an “acceptance of the report” by the Penn State Board of Trustees. As he and other NCAA officials later explained, the NCAA decided to rely on the Freeh Report, and he publicly announced that once the NCAA “had the Freeh Report, the university commissioned it and released it without comment, so [the NCAA] had a pretty clear sense that the University itself accepted the findings.” According to Emmert, the NCAA “and the University both found the Freeh Report information incredibly compelling” and “so with the University accepting those findings,” the NCAA found “that body of information to be more than sufficient to impose” penalties.

59. In reality, however, no full vote of the Board of Trustees was ever taken. The Freeh Report was not approved by the Board of Trustees. The Board of Trustees never took any official action based on the Freeh Report. Nor did they ever accept its findings or reach any conclusions about its accuracy.

60. The NCAA announced that it had no need to “replicat[e]” what it characterized (incorrectly) as an “incredibly exhaustive effort by the Freeh [firm].” But the Freeh Report did not comply with the NCAA's rules and procedures. In preparing its report, the Freeh firm did

not purport to conduct an investigation into alleged NCAA rule violations. It did not record or summarize witness interviews as specified in the NCAA's rules. Nor did it include in its report any findings concerning alleged NCAA rule violations. The report's conclusions were not based on evidence that is "credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs," as the NCAA's rules require. And individuals named in the report were not given any opportunity to challenge its conclusions.

61. The Freeh Report was an improper and unreliable "rush to injustice," and it has been thoroughly discredited. Three prominent experts, including Richard Thornburgh, a former Attorney General of the United States, have independently concluded that the Freeh Report is deeply flawed and that many of its key conclusions are wrong, unsubstantiated, and unfair. In preparing its report, the Freeh firm did not complete a proper investigation, failed to interview key witnesses, and instead of supporting its conclusions with evidence, relied heavily on speculation and innuendo. The report relies on unidentified, "confidential" sources and on questionable sources lacking any direct or personal knowledge of the facts or support for the opinions they provided. Many of its main conclusions are either unsupported by evidence or supported only by anonymous, hearsay information of the type specifically prohibited by the NCAA rules.

62. Contrary to suggestions made in the Freeh Report, there is no evidence that Joe Paterno covered up known incidents of child molestation by Jerry Sandusky to protect Penn State football, to avoid bad publicity, or for any other reason. There is no reason to believe, as the Freeh firm apparently did, that Joe Paterno understood the threat posed by Jerry Sandusky better than qualified child welfare professionals and law enforcement, who investigated the matter, made no findings of abuse, and declined to bring charges. There is no evidence that Joe Paterno

conspired with Penn State officials to suppress information because of publicity concerns or a desire to protect the football program.

63. Despite the fact that it supposedly conducted 430 interviews, the Freeh firm did not speak to virtually any of the persons who had the most important and relevant information concerning Sandusky's criminal conduct. Three of the most crucial individuals — Gary Schultz, Timothy Curley, and Joe Paterno — were never interviewed. Michael McQueary, the sole witness to the 2001 incident, was also not interviewed.

64. The failure to conduct key interviews was all the more consequential because of the lack of relevant documents. Although the Freeh firm purported to review over 3.5 million documents, the Freeh Report itself references and relies on only approximately 30 documents, including 17 e-mails.

65. The Freeh Report ignored decades of expert research and behavioral analysis concerning the appropriate way to understand and investigate a child sexual victimization case. If the Freeh firm had undertaken a proper investigation, it would have learned that pedophiles are adept at selecting and grooming their subjects, concealing or explaining away their actions from those around them, and covering their tracks. As experts have determined, Sandusky was a master at these techniques, committing his crimes without detection by courts, social service agencies, police agencies, district attorneys' offices, co-workers, neighbors, and even his own family members. Sandusky was also able to conceal his criminal conduct from employees, volunteers, and families affiliated with The Second Mile, a non-profit organization serving underprivileged and at-risk children and youth in Pennsylvania.

66. In short, the Freeh Report provided no evidence of a cover-up by Joe Paterno and no evidence that Sandusky's crimes were caused by Penn State. A reasonable, objective review

of the Report would have revealed that fact to any reader. *See Critique of the Freeh Report: The Rush To Injustice Regarding Joe Paterno* (Feb. 2013), available at <http://paterno.com>.

67. The investigative work of the Freeh firm has come under scrutiny and criticism from highly respected sources in other matters. For example, former U.S. Circuit Judge and U.S. Department of Homeland Security Secretary Michael Chertoff recently found that another report from the Freeh firm was “structurally deficient, one-sided and seemingly advocacy-driven,” was “deeply flawed,” and “lack[ed] basic indicia of a credible investigation.” *Universal Entertainment Corporation: Independent Review Finds the Freeh Report on Allegations Against Kazuo Okado “Deeply Flawed,”* Wall St. J., Apr. 22, 2013 (internal quotation marks omitted), available at <http://online.wsj.com/article/PR-CO-20130422-905271.html>.

The NCAA’s Sanctions

68. The NCAA has been subject to heavy criticism for the arbitrariness of its enforcement program as it is applied, for its mishandling of alleged rules violations, and for an overall lack of integrity and even corruption in its enforcement decisions. Commentators have noted that the NCAA’s enforcement decisions are often driven by improper monetary and political considerations.

69. Recent reports have disclosed problems that have long infected the organization. For example, one report determined that in the course of an investigation against the University of Miami, the NCAA’s enforcement staff acted contrary to its legal counsel’s advice and failed to adhere to the membership’s understanding of the limits of the NCAA’s investigative powers. Emmert has publicly admitted that, under his leadership, the NCAA has failed its membership. *See Report Details Missteps, Insufficient Oversight; NCAA Commits To Improve* (Feb. 19, 2013),

available at <http://www.ncaa.com/news/ncaa/article/2013-02-18/report-details-missteps-insufficient-oversight-ncaa-commits-improve>.

70. Senate majority leader Harry Reid (D-Nev.) recently called for Congress to investigate the NCAA's flawed enforcement process, citing the NCAA's "absolute control over college athlet[ics]" and its infamous handling of the case against Jerry Tarkanian, former head coach of the men's basketball team at the University of Nevada, Las Vegas. Alexander Bolton, *Reid: Congress Should Investigate NCAA's "Absolute" Power*, The Hill, Apr. 9, 2013, available at <http://thehill.com/homenews/senate/292603-reis-congress-should-investigate-ncaa>.

71. Before this matter involving Penn State, the NCAA had never before interpreted its rules to permit intervention in criminal matters unrelated to athletic competition. There are numerous publicly reported examples of criminal conduct by student athletes where the university leadership is alleged to have covered up or enabled the crimes, and the NCAA never became involved.

72. Defendants recognized that, in this case, they did not "have all the facts about individual culpability," and that imposing sanctions could cause "collateral damage" to many innocent parties. Nonetheless, Emmert viewed the scandal involving Jerry Sandusky as an opportunity to deflect attention from mounting criticisms, to shore up the NCAA's faltering reputation, to broaden the NCAA's authority beyond its defined limits, and to impose enormous monetary sanctions on Penn State for his and the NCAA's benefit.

73. Defendants agreed to work together to make Penn State an example and to single out its coaches and administrators for harsh penalties, regardless of the facts and with full knowledge that their actions would cause Plaintiffs substantial harm. In particular, Defendants took a series of unauthorized and unjustified actions intentionally to harm, or in reckless

disregard of, the rights and interests of involved parties. In an abuse of their position, Defendants forced Penn State to accept the sanctions they dictated, even though the sanctions were not authorized, appropriate, or justified by any identified NCAA rule violation.

74. As part of this unlawful course of action, Emmert, Dr. Ray, and other members of the NCAA conspired together and with the Freeh firm to circumvent the NCAA rules, strip Plaintiffs of their procedural protections under those rules, and level allegations against Penn State and certain of its officials in the absence of facts or evidence supporting those allegations. As a result of that agreement, the NCAA's Executive Committee purported to grant Emmert authority to "enter into a consent decree with Penn State University that contains sanctions and corrective measures related to the institution's breach of the NCAA Constitution and Bylaws and core values of intercollegiate athletics based on the findings of the Freeh Report and Sandusky criminal trial." It outlined the sanctions to be taken against Penn State and described its purported authority to act as arising from its power under Article 4 of the Constitution "to resolve core issues of Association-wide import."

75. Penn State's General Counsel and outside counsel pressed the NCAA to abide by its authorized enforcement process, to no avail. On July 13, 2012, Emmert contacted President Erickson to advise him that the NCAA Executive Committee had decided to accept the Freeh Report and to substitute its flawed findings for the NCAA's obligation to conduct its own investigation pursuant to the required procedures set forth in the NCAA rules.

76. Defendants knew or should have known that the Freeh Report was an unreliable rush to judgment and that the conclusions reached in the report had not been substantiated. Defendants also knew or should have known that by accepting the Freeh Report they would dramatically increase the publicity given to its unreliable conclusions, effectively terminate the

search for the truth, and enable the NCAA to force Penn State to accept the imposition of unprecedented sanctions.

77. Defendants knew or should have known that the conduct described in the Freeh Report was not a violation of the NCAA's rules and could not substitute for the procedures required under the NCAA's rules. Among other things, the NCAA's staff had not completed a thorough investigation, as required under the NCAA's rules. The staff had not identified any major or secondary violations committed by Penn State in connection with the criminal matters involving Jerry Sandusky. The actions taken by Defendants were not authorized by any general legislation adopted by the NCAA's member institutions. Neither Penn State nor any involved individual authorized the NCAA to use a summary disposition process and, in any event, the NCAA did not comply with that process.

78. At no time did Penn State self-report any rules violations to the NCAA.

79. Emmert took the position that because the Penn State Board of Trustees had commissioned the Freeh Investigation, the NCAA would take it upon itself to treat the Freeh Report as the equivalent of a self-report in an infractions case. Emmert stated that had there been no Freeh Report, the NCAA would have conducted its own investigation and proceeded through the traditional infractions process, but only after all legal proceedings had concluded, including the criminal trials of Curley and Schultz.

80. Penn State's outside counsel, Eugene Marsh, who was specially engaged to deal with the NCAA on this issue, had several conversations with NCAA representatives between July 16 and July 22, 2012. In the course of those conversations, the NCAA indicated that the "death penalty" was a possibility for the Penn State football program, but that other alternatives would also be considered.

81. As discussions progressed, the NCAA told Marsh that the majority of the NCAA Board of Directors believed that the “death penalty” should be imposed. That statement was used as further leverage to extract a severe package of sanctions from Penn State. But it was untrue. According to published statements by Dr. Ray, made after the issuance of the NCAA’s Consent Decree, the NCAA Board had voted to reject the imposition of the “death penalty.”

82. The discussion was not a negotiation, but an unlawful and non-negotiable “cram down” of a list of predetermined sanctions and penalties. The NCAA’s focus was not on actual bylaw violations, but on purported concerns about the football-centric “culture” at Penn State based on the flawed and unsubstantiated conclusions set out in the Freeh Report. As Emmert later acknowledged, the NCAA’s goal was to force Penn State to change its culture and values, and to punish and penalize Penn State’s football program and individuals associated with the program.

83. In his discussions that same week with President Erickson, Emmert warned Erickson that he was not to disclose the content of their discussions with Penn State’s Board of Trustees. The NCAA threatened Erickson by telling him that if there was a leak about the proposed sanctions to the media, the discussion would end and imposition of the “death penalty” would be all but certain. At no point during that week did Erickson share with the full Board the array of crippling and historic penalties being threatened by Emmert and the NCAA.

84. Although the NCAA frequently takes *years* to conduct and complete an investigation, they moved to impose sanctions on Penn State almost immediately after the Freeh firm released its report.

85. On Friday or Saturday, July 20 or 21, Marsh received an email in the form of a nine page document, the NCAA's draft "Consent Decree." Once this document was received, it remained largely unchanged except for a few minor clarifications.

86. The Consent Decree, titled the "Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University," was signed by Rodney Erickson and Mark Emmert and released to the public on July 23, 2012. (A copy of the Consent Decree imposed by the NCAA is attached to this complaint as Exhibit B.)

87. Before signing the NCAA-imposed Consent Decree, Erickson did not comply with the governing requirements of the Charter, Bylaws, and Standing Orders of Penn State. Erickson failed to present the NCAA-imposed Consent Decree to the Board for its approval, even though the Board is the final repository of all legal responsibility and authority to govern the University. Nor did he call for a meeting of the Board or its Executive Committee. Although Erickson was subject to the threats and coercive tactics of the NCAA, he failed to inform the Board about these issues in advance of signing the Consent Decree.

88. Erickson did not have the legal or delegated authority to bind the Penn State Board of Trustees to the Consent Decree imposed by the NCAA.

The Consent Decree

89. The Consent Decree did not identify any conduct that, under the NCAA's rules, would qualify as either a secondary or a major violation. Nonetheless, the NCAA stipulated that Penn State had violated the principles of "institutional control" and "ethical conduct" contained in the NCAA Constitution, and that Penn State's employees had not conducted themselves as the "positive moral models" expected by Article 19 of the Bylaws.

90. The Consent Decree’s purported “factual findings” related to the alleged conduct of Joe Paterno and the Board of Trustees members in 1998 and 2001, as well as other former Penn State staff and administrators.

a. The decree stated that “Head Football Coach Joseph V. Paterno failed to protect against a child sexual predator harming children for over a decade,” “concealed Sandusky’s activities from the Board of Trustees, the University community and authorities,” and “allow[ed] [Sandusky] to have continued, unrestricted and unsupervised access to the University’s facilities and affiliation with the University’s prominent football program.”

b. The decree stated that “the Board of Trustees . . . did not perform its oversight duties,” and that it “failed in its duties to oversee the President and senior University officials in 1998 and 2001 by not inquiring about important University matters and by not creating an environment where senior University officials felt accountable.”

c. The decree found that “[s]ome coaches, administrators and football program staff members ignored the red flags of Sandusky’s behaviors and no one warned the public about him.”

91. These statements are all erroneous and were based on unreliable and unsubstantiated conclusions in the Freeh Report.

92. The NCAA admitted that, ordinarily, “[t]he sexual abuse of children on a university campus by a former university official” would “not be actionable by the NCAA.” But the NCAA asserted that it had authority to interfere because “it was the fear of or deference to the omnipotent football program that enabled a sexual predator to attract and abuse his victims.” According to the NCAA, “the reverence for Penn State football permeated every level of the

University community,” and “the culture exhibited at Penn State is an extraordinary affront to the values all members of the Association have pledged to uphold.”

93. Based on this erroneous and unsupported conclusion, the NCAA determined that the sanctions must not only be designed to penalize Penn State but also to “change the culture that allowed this activity to occur and realign it in a sustainable fashion with the expected norms and values of intercollegiate athletics.”

94. The imposed Consent Decree is an indictment of the entire Penn State community, including individual institutional leaders, members of the Board of Trustees, those responsible for and participants in athletic programs, the faculty, and the student body. The Consent Decree charges that every level of the Penn State community created and maintained a culture of reverence for, fear of, and deference to the football program, in disregard of the values of human decency and the safety and well-being of vulnerable children.

95. The NCAA and its officials, including Emmert and Dr. Ray, recognized that the issues they sought to address in the Consent Decree were not about disciplining the athletics program for NCAA rules violations. According to Dr. Ray, even though the NCAA never undertook its own investigation or followed its own required processes, it could rely on the Freeh Report because the NCAA’s “executive committee has the authority when it believes something is of a big enough and significant enough nature that it should exercise its ability to expedite the process of reviewing cases.” In fact, no provision of the rules gives the NCAA that authority.

96. As sanctions, the Consent Decree imposed a \$60 million dollar fine, a four-year post-season ban, a four-year reduction of grants-in-aid, five years of probation, vacation of all football wins from 1998 to 2011, waiver of transfer rules and grant-in-aid retention (to allow entering or returning student athletes to transfer to other institutions and play immediately), and a

reservation of rights to initiate formal investigatory and disciplinary process and to impose sanctions on any involved individuals in the future.

97. Under the terms of the Consent Decree imposed by the NCAA, President Erickson was forced to agree not to challenge the decree and to waive any right to a “determination of violations by the NCAA Committee on Infractions, any appeal under NCAA rule, and any judicial process related to the subject matter of the Consent Decree.”

98. Among others, Ryan J. McCombie, William Kenney, Anthony Adams, Gerald Cadogan, Shamar Finney, Justin Kurpeikis, Richard Gardner, Josh Gaines, Anwar Phillips, Michael Robinson, and the family of Joe Paterno filed timely appeals of the Consent Decree with the NCAA Infractions Appeals Committee.

99. The NCAA refused to accept those appeals. It took the position that, because it had not sanctioned Penn State through the traditional enforcement process, the procedural protections (such as the right to an appeal) provided by the rules were unavailable, even for the individuals named or referenced in the Consent Decree. As a result, individuals who were involved and directly harmed by the Consent Decree were given no opportunity to challenge the NCAA’s abuse of discretion.

100. Even though the Consent Decree relied on purported “facts” that were contrary to the evidence and did not establish a violation of the NCAA’s rules, those issues were never considered by the Appeals Committee and involved individuals were denied the procedural protections required by the NCAA’s rules.

Current and Ongoing Harm

101. Plaintiffs have been substantially harmed, and will continue to incur future harm, as a direct and intentional result of Defendants’ unauthorized and unlawful conduct.

102. All Plaintiffs were unlawfully deprived of the required procedures due to them under the NCAA's rules.

103. Other substantial harms suffered by Plaintiffs as a result of Defendants' conduct include, among many other things, the following:

a. Joe Paterno suffered damage to his good name and reputation, resulting in irreparable and substantial pecuniary harm to the current and long-term value of his estate and causing other substantial harms to his family and estate.

b. William Kenney and Jay Paterno have suffered damage to their reputation and standing as football coaches, and have been unable to secure comparable employment despite their qualifications and the existence of employers who would otherwise be willing to hire them.

c. The Members of the Board of Trustees, as fiduciaries of the University, are responsible for the governance and the welfare of the institution. They have been rendered unable to fully carry out their administrative and other functions in managing and governing the University because of the NCAA's interference, and have suffered substantial injuries due to a negative impact on Penn State's budget and the University's ability to attract high-caliber students and faculty, whether associated with the football program or not.

d. The considerable achievements of the former student athletes have been wiped out by the NCAA's unjustified and unlawful sanctions, which vacated all of Penn State's wins during the athletes' careers. This has injured their reputations, negatively affecting their professional careers in football and in other fields.

e. Current members of the faculty have been injured by the Consent Decree's disparaging statements about the entire Penn State community, as well as the decree's punitive

measures, which have diminished the resources available to fund grants, departments, and programs. The Consent Decree has interfered with the administration of Penn State, and limited the faculty's ability to attract and retain high-caliber faculty, administrators, staff, and students, which has reduced the value of the faculty's own positions and their ability to compete within their fields.

104. The NCAA's unauthorized involvement in criminal matters outside its authority and purview has prevented interested parties from being treated fairly and has undermined the search for truth. Instead of allowing the Freeh Report to be properly evaluated, the NCAA has crystallized its errors and flagrantly violated its own rules.

CLAIMS

COUNT I: BREACH OF CONTRACT (The Estate and Family of Joe Paterno on behalf of Joe Paterno, and Al Clemens)

105. Plaintiffs incorporate by reference paragraphs 1 through 104 as if fully set forth herein.

106. At all relevant times, Penn State was an Active Member of the NCAA, and the NCAA had a valid and enforceable agreement with Penn State, in the form of its Constitution, Operating Bylaws, and Administrative Bylaws.

107. The NCAA and Penn State both intended, upon entering into this contract, to give the benefit of the agreement to any third parties that would be involved in findings of rule violations against a member institution.

108. Joe Paterno was specifically named in the Consent Decree, and Al Clemens, as a member of the Board of Trustees in 1998 and 2001, was also alleged to have engaged in conduct that formed the basis for the Consent Decree. They are "involved individuals" under the NCAA's rules, are intended third party beneficiaries of the agreement between the NCAA and

Penn State, and they (or their representatives) may enforce the provisions of that agreement against the NCAA.

109. The agreement between the NCAA and Penn State contains an implied covenant of good faith and fair dealing that requires the NCAA to refrain from taking unlawful, arbitrary, capricious, or unreasonable actions that have the effect of depriving member institutions and involved individuals of their rights under the agreement.

110. Defendant NCAA materially breached its contractual obligations and violated the implied covenant of good faith and fair dealing by, among other things:

a. purporting to exercise jurisdiction over a matter not caused by the football program, much less one related to a basic athletics issue such as admissions, financial aid, eligibility, and recruiting;

b. taking action and imposing sanctions via its Executive Committee, which has power only to address association-wide issues on a prospective basis, and therefore no power to sanction individual members;

c. refusing to proceed against Penn State through the traditional enforcement process, the only method of imposing sanctions that is authorized under the rules;

d. refusing to accept any appeals of the Consent Decree;

e. treating the Freeh Report as a “self-report” even though the Freeh Report was never voted on by the full Board of Trustees; even though the Freeh Report failed to identify, much less analyze, any purported NCAA rules violations; and even though the Freeh Report failed to comply with required procedures and reached conclusions based on irrelevant or inadmissible evidence developed pursuant to an unreliable and deficient investigation;

f. imposing sanctions on the basis of alleged violations of vague, inapplicable principles in the NCAA's Constitution, such as the principle of institutional control and the principle of ethical conduct, both of which relate only to athletics issues or other matters regulated by the NCAA;

g. imposing sanctions that are available only in cases of "major" violations without explaining why the conduct identified in the Consent Decree constituted a "major" violation intended to provide the institution with an extensive recruiting or competitive advantage;

h. imposing the penalty of vacation of wins even though no ineligible student athlete was found to have competed during the years affected;

i. threatening to impose the "death penalty" on Penn State football when it had no authority to do so because Penn State is not and never has been a repeat offender;

j. failing to conduct its own investigation or explain its own investigative procedures, and relying instead on the flawed Freeh Report, a procedurally and substantively inadequate substitute for the NCAA's investigation and compliance with required procedures;

k. failing to recognize that Plaintiffs, who are named or referred to in the Consent Decree, are "involved individuals" under the NCAA's own rules; and

l. failing to afford Plaintiffs "fair procedures" during the NCAA's determinations and deliberations.

111. The President of Penn State, Rodney Erickson, did not, could not, and lacked any authority to, waive Plaintiffs' rights and entitlement to the procedures listed above by signing the Consent Decree imposed by the NCAA.

112. As a direct and proximate result of this breach by the NCAA, Plaintiffs have suffered substantial injuries, economic loss, opportunity loss, reputational damage, emotional distress, and other damages. Those injuries and damages were foreseeable to the NCAA when it breached the contract.

COUNT II: BREACH OF CONTRACT
(William Kenney, Jay Paterno, Ryan McCombie, Anthony Lubrano,
Peter Houry, Adam Taliaferro, Anthony Adams, Gerald Cadogan,
Shamar Finney, Justin Kurpeikis, Richard Gardner, Josh Gaines,
Patrick Mauti, Anwar Phillips, and Michael Robinson)

113. Plaintiffs incorporate by reference paragraphs 1 through 104 as if fully set forth herein.

114. At all relevant times, Penn State was an Active Member of the NCAA, and the NCAA had a valid and enforceable agreement with Penn State, in the form of its Constitution, Operating Bylaws, and Administrative Bylaws.

115. Under this agreement, the NCAA is required to administer its enforcement program in a way that “provide[s] fairness to uninvolved student-athletes, coaches, administrators, competitors and other institutions.”

116. The NCAA and Penn State both intended, on entering into this contract, to give the benefit of the agreement to these third parties uninvolved in rules violations but directly affected by findings of rule violations against a member institution.

117. Plaintiffs William Kenney, Jay Paterno, Ryan McCombie, Anthony Lubrano, Adam Taliaferro Anthony Adams, Gerald Cadogan, Shamar Finney, Justin Kurpeikis, Richard Gardner, Josh Gaines, Patrick Mauti, Anwar Phillips, and Michael Robinson are or were Penn State student-athletes, coaches, or administrators. They are intended third party beneficiaries of the agreement between the NCAA and Penn State and may enforce it against the NCAA.

118. The agreement between the NCAA and Penn State contains an implied covenant of good faith and fair dealing that requires the NCAA and its officials to refrain from taking unlawful, arbitrary, capricious, or unreasonable actions that have the effect of depriving Plaintiffs of their rights under the agreement.

119. The NCAA materially breached its contractual obligations and violated the implied covenant of good faith and fair dealing by, among other things and in addition to the conduct described above, failing to afford Plaintiffs, as adversely affected individuals, “fairness” when acting in this matter.

120. By signing the Consent Decree, the President of Penn State, Rodney Erickson, did not, could not, and failed to, waive Plaintiffs’ rights, including their rights to proper procedures and to be treated with fairness.

121. As a direct and proximate result of this breach by the NCAA, Plaintiffs have suffered substantial economic loss, opportunity loss, reputational damage, emotional distress, and other damages. These damages were foreseeable to the NCAA when it breached the contract.

**COUNT III: INTENTIONAL INTERFERENCE
WITH CONTRACTUAL RELATIONS
(William Kenney and Jay Paterno)**

122. Plaintiffs incorporate by reference paragraphs 1 through 104 as if fully set forth herein.

123. Plaintiffs William Kenney and Jay Paterno had prospective and existing employment, business, and economic opportunities with many prestigious college and professional football programs, including at Penn State, as a result of the favorable reputations that each of them had earned during their service as coaches of the Penn State football program. This was or should have been known to Defendants.

124. With knowledge of Plaintiffs' future prospective employment, business and economic opportunities, Defendants took the purposeful actions described above in order to harm Plaintiffs and interfere with their contractual relations.

125. Defendants lacked justification for their intentional interference with Plaintiffs' contractual relationships, or alternatively, Defendants abused any privilege they had to take the actions outlined above.

126. As a direct and proximate result of the wrongful, arbitrary, capricious, and unreasonable actions of Defendants, Plaintiffs have been unable to secure comparable employment opportunities in their chosen field.

127. Defendants' conduct in tortiously interfering with Plaintiffs' contractual relations was malicious and outrageous and showed a reckless disregard for Plaintiffs' rights.

128. As a direct and proximate result of these actions by Defendants, Plaintiffs have suffered economic loss, opportunity loss, reputational damage, emotional distress, and other damages.

**COUNT IV: INJURIOUS FALSEHOOD/
COMMERCIAL DISPARAGEMENT
(The Estate and Family of Joe Paterno
on behalf of Joe Paterno)**

129. Plaintiffs incorporate by reference paragraphs 1 through 104 as if fully set forth herein.

130. The NCAA's Consent Decree published and relied on statements that disparaged Joe Paterno and the property of the Estate and Family of Joe Paterno. It unfairly and improperly maligned Joe Paterno's moral character and the fulfillment of his duties as Head Coach at Penn State, and concerned his business and property.

131. Before the NCAA's unlawful actions, Joe Paterno or his estate possessed a property interest in his name and reputation, and there was a readily available, valuable commercial market concerning Joe Paterno's commercial property.

132. The statements in the Consent Decree regarding Joe Paterno's character and conduct as Head Coach and concerning the business and property of his estate were false and defamatory.

133. The statements in the Consent Decree regarding Joe Paterno's character and conduct were libel per se, because they imputed dishonest conduct to Joe Paterno.

134. These statements were widely disseminated by the NCAA, on its website and through numerous press outlets across the country.

135. Defendants either intended the publication of these statements to cause pecuniary loss or reasonably should have recognized that publication would result in pecuniary loss to the Estate and Family of Joe Paterno.

136. The Estate and Family of Joe Paterno did in fact suffer pecuniary loss, reputational harm, and other damages, as a result of the publication of these statements due to the actions of third persons relying on the statements. The commercial interests and value of the Estate and Family of Joe Paterno substantially and materially declined as a direct result of Defendants' conduct.

137. Defendants either knew that the statements they made and published were false or acted in reckless disregard of their falsity.

138. Defendants' conduct was malicious and outrageous and showed a reckless disregard for Joe Paterno's rights.

COUNT V: DEFAMATION
(All Plaintiffs Except the Estate and Family of Joe Paterno
on behalf of Joe Paterno)

139. Plaintiffs incorporate by reference paragraphs 1 through 104 as if fully set forth herein.

140. The NCAA adopted the false statements in the Freeh Report and put its imprimatur on baseless allegations that Joe Paterno deliberately covered up information of child abuse against Sandusky because he was concerned about adverse publicity. The NCAA also stated that the Board of Trustees had failed in its oversight duties and that the entire Penn State community was responsible for creating a culture of “fear and deference.”

141. After the issuance of the Consent Decree, the NCAA and its officials, including Emmert and Dr. Ray, stated that the issues they sought to address in the Consent Decree were “about the whole institution,” and that “the Freeh Report . . . revealed [matters] that suggest really inappropriate behavior at every level of the university.”

142. These and other statements were entirely unsupported by evidence and made with intentional, reckless, or negligent disregard for their truth.

143. The statements were published in the Consent Decree, which the NCAA disseminated to the entire world on its website, or were made in front of large audiences and disseminated through national news media.

144. These statements concerned the members of the Penn State community. They were false, defamatory, and irreparably harmed Plaintiffs’ reputations and lowered them in the estimation of the nation. Every recipient of the statements understood their defamatory meaning and understood that the Plaintiffs, individual members of the Penn State community between 1998 and 2011, were the objects of the communication.

145. The publication of the statements resulted in actual harm to Plaintiffs because it adversely affected their reputations; caused them emotional distress, mental anguish, and humiliation; and inflicted financial and pecuniary loss on them.

146. The NCAA had no privilege to publish the false and defamatory statements, or if it did, it abused that privilege.

**COUNT VI: CIVIL CONSPIRACY
(All Plaintiffs)**

147. Plaintiffs incorporate by reference paragraphs 1 through 104 as if fully set forth herein.

148. Emmert, Dr. Ray, and other unknown NCAA employees, along with the Freeh firm, conspired to work together and did work together to impose unwarranted and unprecedented sanctions on Penn State, thereby breaching the contract between the NCAA and Penn State and depriving Plaintiffs of their rights, including their rights under that contract. These actions were unlawful or taken for an unlawful purpose.

149. Among other things, Emmert, Dr. Ray, and other unknown NCAA employees, along with the Freeh firm, agreed to:

- a. bypass the NCAA's rules and procedural requirements in conducting the Penn State investigation;
- b. deprive Plaintiffs of their rights, including their rights to notice and an opportunity to be heard, before imposing unprecedented sanctions; and
- c. impose sanctions on Penn State based on an investigation that did not consider whether Penn State had violated any of the NCAA's rules.

150. Emmert, Dr. Ray, and other NCAA employees, along with the Freeh firm, acted with malice. They intended to injure Plaintiffs through their actions or acted in reckless disregard of Plaintiffs' rights. They had no valid justification for their actions.

151. Emmert, Dr. Ray, and other NCAA employees, along with the Freeh firm, performed a series of overt acts in furtherance of this conspiracy, including but not limited to the following:

a. the Executive Committee and Dr. Ray purported to grant Emmert authority to investigate Penn State and impose sanctions, despite knowing they did not have the power to do so;

b. Emmert, Dr. Ray, and other NCAA employees worked closely and coordinated with the Freeh firm to help it prepare a report that they knew or should have known included false conclusions that had not been reached by means of an adequate investigation;

c. Emmert advised President Erickson that the NCAA would use the Freeh Report as a substitute for its own investigation, in reckless disregard of the falsity and inadequacy of that report, and the various NCAA procedural rules violations committed thereby;

d. unknown NCAA employees communicated to Penn State's counsel that the "death penalty" was on the table for Penn State, despite knowing that no such penalty could have lawfully been imposed under the NCAA rules;

e. Emmert threatened that if Penn State went to the media, the death penalty would be certain, thus extorting silence from President Erickson; and

f. Emmert imposed the Consent Decree on Penn State based on the allegations in the Freeh Report, although doing so was impermissible under the NCAA's own rules.

152. As a result of this conspiracy, Plaintiffs suffered actual damages.

153. Defendants' conduct in engaging in this civil conspiracy was malicious and outrageous and showed a reckless disregard for Plaintiffs' rights.

RELIEF REQUESTED

154. WHEREFORE, Plaintiffs respectfully request the entry of judgment against each of the Defendants, and the following legal and equitable relief:

- (1) A declaratory judgment that the actions of the Defendants were unlawful and constitute a violation of the Plaintiffs' contractual and legal rights;
- (2) A declaratory judgment that the NCAA-imposed Consent Decree was unauthorized, unlawful, and void *ab initio*;
- (3) Issuance of a permanent injunction preventing the NCAA from further enforcing the Consent Decree or the sanctions improperly imposed therein;
- (4) An award of compensatory damages for the tortious and improper conduct and breach of contract resulting in the losses and damages described herein;
- (5) An award of punitive damages for outrageous, reckless, and intentional misconduct resulting in the losses and damages described herein;
- (6) Costs and disbursements of this action; and
- (7) Any other legal or equitable relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a jury on all issues triable to a jury.

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