

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

BARRY J. FENCHAK,

Plaintiff,

vs.

THE PENNSYLVANIA STATE
UNIVERSITY BOARD OF
TRUSTEES AND MATTHEW
SCHUYLER IN HIS OFFICIAL
CAPACITY AS CHAIRMAN,

Defendants.

)
)
)
) Docket No. 2024-CV-1843-CI

) Type of Case: Civil Action - Equity

)
)
) Type of Pleading: Motion for
Protective Order

) Filed on behalf of Defendants

) Counsel of Record for Defendants:

) **MARSHALL DENNEHEY, P.C.**

) Christopher J. Conrad, Esquire

) PA ID No. 202348

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FILED FOR RECORD BY EMAIL

2025 JAN 06 PM 03 40

JEREMY S. BREON

PROTHONOTARY

CENTRE COUNTY, PA

IT IS FURTHER ORDERED that failure to comply with the terms of this Order and the attached Stipulated Confidentiality Agreement may result in sanctions, including, but not limited to, dissolution of the preliminary injunction.

BY THE COURT:

Hon. Brian K. Marshall

MARSHALL DENNEHEY, P.C.

Christopher J. Conrad, Esquire

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*Attorneys for Defendant, Board of Trustees of the
Pennsylvania State University, and Matthew
Schuyler*

BARRY J. FENCHAK,	:	COURT OF COMMON PLEAS
Plaintiff,	:	CENTRE COUNTY, PENNSYLVANIA
	:	
v.	:	CIVIL ACTION
	:	
THE PENNSYLVANIA STATE	:	NO. 2024-cv-1843-CI
UNIVERSITY BOARD OF	:	
TRUSTEES, and MATTHEW	:	
SCHUYLER IN HIS OFFICIAL	:	
CAPACITY AS CHAIRMAN,	:	
Defendants.	:	

DEFENDANTS' MOTION FOR PROTECTIVE ORDER

AND NOW, come Defendants, The Pennsylvania State University Board of Trustees, and Matthew Schuyler, in his official capacity as former Chair of the Board, by and through their attorneys, Marshall Dennehey, P.C., and hereby file this Motion for Protective Order, and in support thereof aver as follows:

RELEVANT BACKGROUND

1. On July 18, 2024, Plaintiff initiated this action with the filing of a Civil Complaint.
2. The Complaint named The Pennsylvania State University Board of Trustees (“Board”) and Matthew Schuyler in his official capacity as now former Chair of the Board as Defendants.
3. On August 7, 2024, Defendants filed Preliminary Objections in response to the Complaint.
4. On August 27, 2024, Plaintiff filed an Amended Complaint.
5. On September 16, 2024, Defendants filed Preliminary Objections to the Amended Complaint.
6. Oral argument on Defendants’ Preliminary Objections has been scheduled for January 16, 2025.

STATEMENT OF ALLEGED FACTS

7. Penn State is a nonprofit corporation subject to the Pennsylvania Nonprofit Corporation Law of 1988, 15 Pa. C.S. § 5512. (Amended Complaint, ¶¶ 2, 124).
8. The Board is the corporate body established by the University’s Charter with overall responsibility for the governance and welfare of the University and all the interests pertaining thereto. (Amended Complaint, ¶ 13).
9. Plaintiff was elected to the Board in 2022. (Amended Complaint, ¶ 15).

10. Plaintiff has requested information regarding administrative fees paid related to the management of the endowment that he alleges is necessary to fulfill his fiduciary duties to as a Board member. (Amended Complaint, ¶¶ 51-62).

11. Plaintiff has also requested information related to the University's contract with Elevate ("Elevate Contract"). (Amended Complaint, ¶ 84).

12. Plaintiff requested underlying data for the figures reflected in the IRS 990 filings. (Amended Complaint, ¶ 57).

13. For example, the underlying data in the IRS 990 filings requested by Plaintiff included an itemization of the "Administrative Expenses" for the Endowment for five years prior to him joining the Board. Plaintiff also requested specific information on "[w]hich specific money investment funds/managers" were used, the "[v]alue of assets with each fund/manager," and "[a]dministrative/management/advisory profit share fees paid to each fund/manager each year." (Amended Complaint, ¶ 57; Complaint, ¶ 23, Exhibit A-2).

14. Plaintiff has made additional, similar requests since 2022, and he claims his requests were either denied or that he was provided with information similar to that set forth in the Form 990. (Amended Complaint, ¶ 61).

15. Plaintiff claims that his "goal has been to receive information; not litigate." (Amended Complaint, ¶ 77).

PLAINTIFF'S CLAIMS IN THE AMENDED COMPLAINT

16.Count I of the Amended Complaint alleges that Defendants have violated certain provisions of the Pennsylvania Nonprofit Corporation Law, specifically 15 Pa. C.S. 5512(a) and (b). (Amended Complaint, ¶¶ 124-132).

17.Count I seeks relief available to Plaintiff under Section 5512(b). (Amended Complaint, ¶ 133).

18.Count II of the Amended Complaint seeks preliminary and permanent injunctive relief to enjoin Defendants from removing Plaintiff from the Board, enjoining Defendants from committing retaliatory acts against Plaintiff, and ordering Defendants to refrain from withholding the information Plaintiff has requested as alleged in the Amended Complaint. (Amended Complaint, ¶¶ 158, 159, 169).

19.With respect to available relief for a violation of the Pennsylvania Nonprofit Corporation Law of 1988, Section 5512(b) provides, in pertinent part:

The court shall summarily order the corporation to permit the requested inspection or to obtain the information unless the corporation establishes that information other than the bylaws to be obtained by the exercise of the right is not reasonably related to the performance of the duties of the director or that the director or the attorney or agent of the director is likely to use that information in a manner that would violate the duty of the director to the corporation.

15 Pa. C.S. § 5512(b).

20.However, the corporation may impose reasonable restrictions on access to and use of information to be furnished, including designating information confidential

and imposing nondisclosure and safeguarding obligations on the recipient. 15 Pa. C.S. § 5512(d).¹

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

21. On September 23, 2024, Plaintiff filed an Emergency Motion for Preliminary Injunction, seeking relief in the form of preventing the Board from removing him as a Trustee.

22. An evidentiary hearing on the Motion was held on October 8, 2024.

23. By Court Order dated October 9, 2024, this Honorable Court granted the Motion and enjoined Defendants from removing Plaintiff from the Board of Trustees by vote.

24. Pursuant to the October 9, 2024 Order, the preliminary injunction remains in effect until the earliest of (i) dissolution by the Court, (2) the conclusion of the underlying litigation in the matter, or (iii) the conclusion of all terms for which Plaintiff has been duly elected to the Board.

¹ The Board's concerns for confidentiality in this matter are heightened by Trustee Fenchak's propensity to publicize Board business, including, but limited to, information on the University's Endowment and the Beaver Stadium renovation project, on publicly available sources. See BarryFenchak.com; Substack.com/@barryfenchak ("Why We Can't Afford the Beaver Stadium Renovation Proposed by the Penn State Board of Trustee Leadership" (posted May 17, 2024)), ("Penn State Endowment Fund Performance" (posted December 14, 2023)).

**DEFENDANTS' PRODUCTION OF DOCUMENTATION REQUESTED BY
PLAINTIFF IN THE AMENDED COMPLAINT AND PROPOSED
CONFIDENTIALITY AGREEMENT**

25. Following the Court's October 9, 2024 Order granting Plaintiff's Motion, and in an effort to produce the documentation sought by Plaintiff as alleged in the Amended Complaint, Defendants provided Plaintiff's counsel with a proposed Stipulated Confidentiality Agreement and Order on November 6, 2024 ("Confidentiality Agreement"). (A true and correct copy of the Confidentiality Agreement in its current form reflecting negotiations with Plaintiff is attached hereto and marked as Exhibit "A").

26. The Confidentiality Agreement incorporates by reference and necessarily includes a separate confidentiality agreement between Plaintiff and Elevate ("Elevate Confidentiality Agreement"), which also was provided to Plaintiff's counsel on November 6, 2024. (A true and correct copy of the Elevate Confidentiality Agreement in its current form is attached hereto and marked as Exhibit "B").

27. On November 8, 2024, Plaintiff's counsel advised that they had some issues with the proposed confidentiality agreement and requested a few days to provide proposed edits.

28. On November 13, 2024, Plaintiff's counsel advised that they were still working on edits to the confidentiality agreement.

29. On November 22, 2024, undersigned counsel advised that a meeting could be scheduled on December 16, 17, or 18, 2024, to review information as requested by Plaintiff.

30. As further example of Defendants' good faith efforts to provide Plaintiff with the information he requested, and ultimately resolve the litigation, Defendants offered to have Joseph Cullen, Chief Investment Officer of the University, present during Plaintiff's review of the requested information to answer any questions that Plaintiff may have related to the University's Endowment.

31. On November 26, 2024, counsel for Plaintiff promised that edits to the confidentiality agreement proposed by Defendants would be provided.

32. On December 4, 2024, undersigned counsel requested a status of Plaintiff's proposed edits.

33. That same day, counsel for Plaintiff advised that the proposed edits would be provided no later than December 9, 2024.

34. Plaintiff's counsel provided proposed edits on December 9, 2024.

35. Defendants' proposed meeting on December 16, 17 or 18, 2024, to permit Plaintiff to review the information requested, including information related to the University's Endowment dating back to 2018, did not occur because Plaintiff has leisurely engaged in negotiations, unnecessarily delaying a resolution to this litigation to the benefit of Plaintiff only.

36. On December 19, 2024, undersigned counsel provided their responses to Plaintiff's proposed edits, incorporating many of those suggested by Plaintiff and including additional comments/revisions, and advised that a Motion for Protective Order would be filed if the parties could not reach an agreement by December 30, 2024 because, *inter alia*, oral argument on Defendants' Preliminary Objections to the Amended Complaint is scheduled for January 16, 2025.

37. On December 23, 2024, counsel for Plaintiff and Defendants discussed revisions to the Confidentiality Agreement and the Elevate Confidentiality Agreement.

38. On December 30, 2024, counsel for the parties further discussed the language of the Confidentiality Agreement and the Elevate Confidentiality Agreement and were not able to reach agreement on final language.

39. On December 31, 2024, counsel for Plaintiff provided further written comments to the proposed Confidentiality Agreement and the Elevate Confidentiality Agreement.

40. On January 2, 2025, counsel for Defendants responded and provided additional written comments to the proposed Confidentiality Agreement, once again accepting and incorporating many of the changes requested by Plaintiff. And on January 3, 2025, counsel for Defendants provided additional written comments to the Elevate Confidentiality Agreement.

41. By email dated January 3, 2025, counsel for Defendants once again contacted Plaintiff's counsel, in one final attempt to resolve this matter without involving the Court, and proposed further changes to the Confidentiality Agreement and the Elevate Confidentiality Agreement, offering additional concessions in response to Plaintiff's proposals.

42. Plaintiff's counsel responded by email on January 6, 2025 to advise that Plaintiff will not agree to sign either Agreement in their current forms as proposed.

43. Despite Defendants' good faith efforts to negotiate with Plaintiff's counsel in a timely fashion, the parties have not been able to reach agreement on the terms of the Confidentiality Agreement or the Elevate Confidentiality Agreement.

**A PROTECTIVE ORDER IS NECESSARY TO PROTECT
CONFIDENTIAL, FINANCIAL AND PROPRIETARY
INFORMATION OF DEFENDANTS**

44. Under Pa. R.C.P. 4012(a), a court may issue a protective order to prevent "annoyance, embarrassment, oppression, burden, or expense."

45. Specifically, Rule 4012(a)(9) permits the entry of an order requiring "that confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way."

46. "If a party establishes that information sought is a trade secret or confidential business information, then it has established good cause under Rule 4012(a)(9)."

Markwest Liberty Midstream & Resources, LLC v. Clean Air Council, 71 A.3d 337, 343 (Pa. Cmwlth. 2013).

47. Defendants have gathered information requested by Plaintiff and are prepared to share that information with him, pending the entry of a protective order.

48. The requested protective order is narrowly tailored to protect the confidentiality of Defendants' proprietary and sensitive financial and operational information, including details related to the University's Endowment and contracts with third parties (Elevate).

49. Defendants provided Plaintiff with the proposed confidentiality agreement on November 6, 2024.

50. Plaintiff repeatedly delayed providing edits or comments despite multiple follow-ups to counsel and only provided their initial response to the proposed confidentiality agreement on December 9, 2024.

51. As a result of Plaintiff's delay, Plaintiff constructively rebuffed the good faith attempts of Defendants to provide Plaintiff with the information requested, including meeting with Plaintiff in December to review the information with the University Chief Investment Officer present to answer any questions Plaintiff may have.

52. Plaintiff's continued delay contravenes the spirit of cooperation mandated by Pa. R.C.P. 4002(a), which emphasizes good faith efforts in discovery.

53.Despite Defendants' good faith efforts to collaborate with Plaintiff's counsel in a timely fashion, Plaintiff has failed to promptly act and negotiate the terms of the proposed confidentiality agreement.

54.Plaintiff's inaction in addressing the proposed confidentiality agreement hampers the discovery process, and potential settlement, creating undue delays and expenses for Defendants.

55.Plaintiff has unnecessarily engaged in unreasonably leisurely negotiations with respect to the proposed confidentiality agreements, which further underscores the necessity of judicial intervention.

56.Despite his averments to the contrary in the Amended Complaint, it is readily apparent that Plaintiff's goal appears to be to litigate, not to receive information.

57.Defendants have afforded Plaintiff the opportunity to receive information pursuant to an appropriate confidentiality agreement, but Plaintiff has not operated in good faith to permit the production of the information.

WHEREFORE, for the reasons set forth herein, and for those reasons set forth in its forthcoming Brief in Support, Defendants, The Pennsylvania State University Board of Trustees and Matthew Schuyler, respectfully request that the Court grant their Motion and enter the confidentiality agreement attached as Exhibit "A" to the Motion.

Respectfully Submitted,

MARSHALL DENNEHEY, P.C.

BY: /s/ Christopher J. Conrad
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Gary H. Dadamo, Esquire
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*Attorneys for Defendants, Board of
Trustees of the Pennsylvania State
University and Matthew Schuyler*

DATE: January 6, 2025

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provision of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Defendant Board of Trustees
of the Pennsylvania State
University, and Matthew
Schuyler

Signature: /s/ Christopher J. Conrad
Name: Christopher J. Conrad, Esquire

Attorney No. (if applicable): 202348

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served upon the following known counsel and parties of record this 6th day of January 2025, **via email and regular mail**, as follows:

Justin J. Boehret, Esq.
Erika L. Silverbreit, Esq.
Terry L Mutchler, Esq.
Obermayer Rebmann Maxwell & Hippel LLP
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MARSHALL DENNEHEY, P.C.

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*Attorneys for Defendants, Board of
Trustees of the Pennsylvania State
University and Matthew Schuyler*

DATE: January 6, 2025

BARRY J. FENCHAK,	:	COURT OF COMMON PLEAS
Plaintiff,	:	CENTRE COUNTY, PENNSYLVANIA
	:	
v.	:	CIVIL ACTION – LAW
	:	
THE PENNSYLVANIA STATE	:	NO. 2024-cv-1843-CI
UNIVERSITY BOARD OF	:	
TRUSTEES, and MATTHEW	:	
SCHUYLER IN HIS OFFICIAL	:	
CAPACITY AS CHAIRMAN,	:	
Defendants.	:	

STIPULATED CONFIDENTIALITY AGREEMENT AND ORDER

Plaintiff Barry Fenchak (“Plaintiff” or “Trustee Fenchak”), and Defendants The Pennsylvania State University Board of Trustees (the “Board”) and Matthew Schuyler (together, “Defendants”), by the stipulation of their respective undersigned counsel in the above-captioned action (“Action”), hereby agree to the terms and conditions described within this Stipulated Confidentiality Agreement (“Agreement”) to facilitate the sharing of documents, information, and other materials produced, as described below, which will fulfill Trustee Fenchak’s requests related to the contract with Elevate Collegiate Ticketing, LLC (the “Elevate Contract”) and endowment information. According to his Amended Complaint, Trustee Fenchak has requested certain information to “familiarize himself with important affairs of the University; intelligently render the decisions necessary to

manage the University; and otherwise faithfully discharge his duty as trustee to protect the interests of the University.” (Am. Compl. at Para. 35). The production of information requested by Plaintiff pursuant to the above-captioned lawsuit shall not limit Trustee Fenchak’s ability in his capacity as Trustee to request information available to him by law in his capacity as Trustee and consistent with the Amended and Restated Bylaws of The Pennsylvania State University, adopted July 30, 2024 (the “Bylaws.”). Each of the parties is referred to herein individually as a “Party” and collectively as the “Parties.”

I. DEFINITIONS

For purposes of this Agreement, the term “Confidential Information” shall mean:

- a. information contained in any document, discovery response, testimony, or other material produced or provided by any Party or third party that is marked or designated as “Confidential” and is reasonably and in good faith considered to include sensitive personal, proprietary and/or financial information;
- b. information protected from disclosure by statute;
- c. trade secrets or other confidential commercial or financial information, as defined by Pennsylvania law;
- d. personnel information related to Party and non-party employees;

- e. information the disclosure of which would breach a legal or contractual obligation;
- f. any and all non-public, confidential, or proprietary information disclosed at any time by or on behalf of Elevate Collegiate Ticketing, LLC (“Elevate”) to Plaintiff, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as “confidential,” as agreed to and further defined in the confidentiality agreement between Plaintiff and Elevate (“Elevate Confidentiality Agreement”), the terms of which are incorporated herein by reference as though set forth in full;
- g. all non-public information about internal Board of Trustees discussions;
- h. all information related to the The Pennsylvania State University’s (the “University’s”) Long Term Investment Pool – Investment Management Fees by Fund, including, but not limited to, the University’s Endowment, for Fiscal Years 2018-2023;
- i. all information related to the Draft Presentation to the Board of The University’s Long Term Investment Pool – Investment Structure and Expense Analysis for Fiscal Year ended June 30, 2024;
- j. all information related to the University’s Long Term Investment Pool

Investment Performance & Allocation Update presented to the Board on September 2024; and

- k. all non-public information related to the The Pennsylvania State University's Long-Term Investment Pool for Fiscal Years 2018-2023.

II. DESIGNATIONS

- a. Any Party or third party with whom Penn State has a contract may identify documents or pages of documents containing Confidential Information by marking such pages with the label "CONFIDENTIAL" in a manner that will not interfere with the legibility of the document.
- b. Deposition testimony or portions of deposition testimony by a Party, a Party's present and former officers, directors, employees, agents, experts, or representatives, or a third party may be marked as "CONFIDENTIAL" by any Party or third party either at the deposition or within fifteen (15) business days after receipt of the transcript provided the testimony so designated concerns Confidential Information or describes documents which have been designated as "CONFIDENTIAL."
- c. Any Party may object to any other Party's designation of information, documents, or testimony as "CONFIDENTIAL" within fifteen (15) business days after receiving notice of such designation by notifying

the designating Party or third party in writing of its objection. Upon receiving a written objection, counsel for all Parties shall meet and confer in an effort to reach agreement on the propriety or scope of the designation in question. In conferring, the challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the designating Party an opportunity to review the designated material, to reconsider the designation, and, if no change in designation is offered, to explain the basis for the designation. In the event that an agreement cannot be reached, the objecting Party shall move for an appropriate order covering the designated material within fifteen (15) business days of the designating party's refusal to change the disputed designation. Documents or materials that are the subject of a dispute over whether they contain Confidential Information shall be treated as protected from disclosure by this Agreement until one of the following occurs: (a) the designating Party withdraws its designation in writing; or (b) the Court rules that the document does not contain Confidential Information and is not subject to this Agreement.

III. PROCEDURES TO REVIEW CONFIDENTIAL INFORMATION OFFERED BY DEFENDANTS

Plaintiff agrees to the following procedures for his review of Confidential Information offered by Defendants:

- a. Confidential Information shall be made available for review over the period of two (2) business days only at the University's designated premises and at a time mutually agreed upon by the Parties;
- b. Should Plaintiff not reasonably complete his in person review of the Confidential Information over the period of two (2) business days, Defendants will accommodate reasonable requests for additional time for Plaintiff to conduct his in person review;
- c. Plaintiff will not make or retain any copies, notes, summaries, or other reproductions of the Confidential Information presented by Defendants, whether physical or electronic, unless expressly authorized in writing by Defendants;
- d. Plaintiff shall not remove any Confidential Information presented by Defendants from the University's premises under any circumstances;
- e. The Elevate Contract will be made available by Defendants to Plaintiff for in person review only;
- f. Plaintiff agrees not to recopy, transcribe, or otherwise reproduce the Elevate Contract at, during, or after his in person review of such Confidential Material; and
- g. After Plaintiff's in person review of the information and materials relating to the University's Endowment, Defendants will accommodate

reasonable requests for the posting of relevant Endowment materials previously requested by Plaintiff to the Diligent platform.

IV. USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION

- a. No Confidential Information shall be used by a receiving Party other than: (i) for the prosecution or defense of this action and any appellate proceedings relating thereto; or (ii) for use consistent with the Bylaws.
- b. Confidential Information shall not be disclosed by any receiving Party to any person other than:
 - i. Any current trustee, administrator, employee, or other authorized representative of the University consistent with the Bylaws. ;
 - ii. The Parties and counsel of record in this Action, including in-house and outside counsel involved in this case and their legal staffs;
 - iii. The officers and employees of a Party who are necessary to assist in the prosecution or defense of this Action;
 - iv. Any actual or proposed deponent or witness, to the extent such information is necessary to prepare that witness to testify, or to question the witness, at deposition or trial;
 - v. The Court and its staff;
 - vi. The jury at trial;

- vii. Any third party that is engaged for the purpose of copying, organizing, converting, storing, or retrieving documents potentially subject to this Agreement (i.e., a copy service or e-discovery provider);
 - viii. Any videographers and court reporters;
 - ix. Any third party retained or appointed as mediator; and
 - x. Other persons only by written consent of the producing Party or upon order of the Court in this Action and on such conditions as may be agreed upon or so ordered.
- c. No Party, person, or entity bound by this Agreement shall disclose or discuss any Confidential Information with anyone other than those individuals and entities listed in Section IV(b) of this Agreement unless required to do so by law or compulsory legal process.

V. FILING OF CONFIDENTIAL INFORMATION

- a. Any Party wishing to file a document or testimony designated as “CONFIDENTIAL” by another Party, or wishing to file a pleading, motion, or brief that quotes from or reveals the substance of Confidential Information contained within such “CONFIDENTIAL” document or testimony (a “Confidential Filing”), shall: (i) file the Confidential Filing in accordance with the procedures set forth in the Case Records Public

Access Policy of the Unified Judicial System of Pennsylvania along with the Confidential Information Form required by that policy; and (ii) at the same time, serve an un-redacted version of the Confidential Filing upon the Parties to this Action bound by this Agreement. Provided, however, that any document or testimony designated as “CONFIDENTIAL” that contains Confidential Information that is unrelated to a Party’s proposed use of the document or testimony, or unnecessary to the Court’s consideration of the document or testimony, shall not be filed if the portions of such document or testimony containing Confidential Information can be redacted in a feasible manner.

- b. The producing Party that designated the document or testimony as “CONFIDENTIAL” shall cooperate in good faith to respond to timely and reasonable requests by another Party seeking to file redacted versions of documents or testimony, including assisting the filing Party to identify those portions of a document or testimony that the producing Party deems to contain Confidential Information.

VI. OTHER OBLIGATIONS

- a. The terms of this Agreement shall not terminate at the conclusion of the Action. Rather, the confidentiality and nondisclosure obligations of this Agreement shall remain in full force and effect following any dismissal or

entry of final judgment in this Action which is not subject to further appeal and shall be consistent with the Bylaws.

- b. Nothing herein shall be construed as a waiver of the right of Plaintiff to obtain information consistent with the Bylaws. , the right to object to the request for any information sought by way of discovery, or object to the admissibility of any testimony or evidence where such objections are based on grounds other than the fact that the testimony or evidence involves Confidential Information.
- c. Prior to the time this Order is entered by the Court, Confidential Information shall be subject to the terms of this Order to the same extent as though the Order has been entered by the Court.
- d. Nothing contained herein shall affect the rights of any Party or third party with respect to his or its own documents or information.
- e. During the course of this Action, any Party is free to propose additional, heightened measures that it believes to be appropriate, such as “Attorney Eyes Only” measures, and the Parties agree to meet and confer regarding any such request in an attempt to reach agreement. Absent agreement, the Party proposing additional measures may seek protection from the Court.

[Signatures on next page]

AGREED AS TO FORM AND SUBSTANCE:

On Behalf of Barry Fenchak:

*On Behalf of The Pennsylvania State
University Board of Trustees and
Matthew Schuyler:*

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cjconrad@mdwecg.com

So Ordered this ___ day of _____, 2025

Marshall, J.

Confidentiality Agreement

This Confidentiality Agreement (this “**Agreement**”), effective as of the date of the last signature set forth below (the “**Effective Date**”), is entered into by and between Elevate Collegiate Ticketing LLC, a Delaware limited liability company having its principal place of business at 6100 Fairview Rd., Suite 1220, Charlotte, NC 28210 (the “**Discloser**”), and Barry J. Fenchak (the “**Recipient**,” and together with the Discloser, the “**Parties**,” and each, a “**Party**”).

WHEREAS, in connection with the request for information by Recipient, a current Trustee on the Board of Trustees of The Pennsylvania State University, a state-related institution and instrumentality of the Commonwealth of Pennsylvania subject to the Pennsylvania nonprofit corporation laws (“**Penn State**”), pursuant to the lawsuit captioned *Barry J. Fenchak v. The Pennsylvania State University Board of Trustees, et al.*, No. 2024-cv-1843, Centre County (PA) Court of Common Pleas (the “**Purpose**”), the Discloser has agreed to share certain information with the Recipient that is non-public, confidential, or proprietary in nature, including a copy of that certain Sales, Marketing, and Strategy Consulting Agreement, dated as of July 11, 2024, by and among the Discloser and Penn State (the “**Consulting Agreement**”).

WHEREAS, the Recipient, by executing this Agreement, acknowledges and agrees that the Consulting Agreement and its terms constitute confidential and proprietary information of the Discloser and may contain trade secrets of the Discloser which are subject to protection under the Uniform Trade Secrets Act (UTSA), the federal Defend Trade Secrets Act of 2016 (DTSA) (18 U.S.C. §§ 1831 to 1839), or other applicable federal, state or local law; and

WHEREAS, the Discloser wishes to protect and preserve the confidentiality of such information.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set out herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Confidential Information. Except as set out in Section 2 below, “**Confidential Information**” means any and all non-public, confidential, or proprietary information, including, but not limited to, any trade secrets, disclosed before, on, or after the Effective Date, by or on behalf of the Discloser to the Recipient, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as “confidential.”

Confidential Information includes, without limitation:

- (a) the Consulting Agreement and its terms;
- (b) all information concerning the past, present, and future business affairs of the Discloser and its affiliates, including, without limitation, finances, customer information, supplier information, products, services, organizational structure and internal practices, forecasts, sales and other financial results, records and budgets, and business, marketing, development, sales, and other commercial strategies;
- (c) all unpatented inventions, ideas, methods, and discoveries, trade secrets, know-how, unpublished patent applications, and other confidential intellectual property;
- (d) any third-party confidential information included with, or incorporated in, any information provided by the Discloser to the Recipient, including any such information provided or otherwise made available by Penn State to the Discloser in connection with their business relationship, including in connection with the negotiation and execution of the Consulting Agreement;

(e) all other information that would reasonably be considered non-public, confidential, or proprietary given the nature of the information and the Discloser's and/or its affiliates' business; and

(f) all notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations, and other materials (the "Notes") prepared by or for the Recipient that contain, are based on, or otherwise reflect or are derived, in whole or in part, from any of the foregoing.

2. Exclusions from Confidential Information. Except as required by applicable federal, state, or local law or regulation, Confidential Information shall not include information that at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any act or omission by the Recipient or any person to whom the Recipient discloses the Confidential Information, whether or not in violation of this Agreement. The Recipient shall have the burden of proving by clear and convincing evidence that the exclusion provided under this Section 2 applies.

3. Recipient Obligations. The Recipient shall:

(a) use his best efforts to protect and safeguard the confidentiality of all such Confidential Information, including protecting and safeguarding the confidentiality of all such Confidential Information with at least the same degree of care as the Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;

(b) not use the Confidential Information, or permit it to be accessed or used by any other person or entity, for any purpose other than the Purpose, or otherwise in any manner to the Discloser's detriment, including without limitation, to reverse engineer, disassemble, decompile, or design, provided, that such restriction shall not prohibit the Recipient from discussing the Confidential Information with other Trustees of the University at non-public meetings of the Board of Trustees of the University;

(c) not disclose or allow access to any such Confidential Information to any person or entity, except Recipient shall be permitted to share Confidential Information with his legal counsel and with other Trustees of the University at non-public meetings of the Board of Trustees of the University;

(d) fully cooperate with the Discloser in any effort undertaken by the Discloser to enforce its rights related to any such unauthorized disclosure;

(e) be responsible for any breach of this Agreement caused by it or any person to whom it discloses such Confidential Information; and

(f) notify the Discloser in writing immediately of any misuse, misappropriation, or unauthorized disclosure of Confidential Information that comes to the Recipient's attention.

4. Additional Confidentiality Obligations. Except as required by applicable federal, state, or local law or regulation, the Recipient shall not disclose to any person:

(a) that the Confidential Information has been made available to the Recipient, or that it has inspected any portion of the Confidential Information;

(b) that discussions or negotiations may be or are underway between the Parties regarding the Confidential Information, including the status thereof; or

(c) any terms, conditions, or other arrangements that are being discussed or negotiated in relation to the Confidential Information.

5. Recipient Representations and Warranties. The Recipient represents and warrants that:

(a) he has read and understands the terms and conditions of this Agreement;

(b) the performance of its obligations herein does not and will not violate any other contract or obligation to which the Recipient is a party, including covenants not to compete and confidentiality agreements; and

6. Required Disclosure. Any Disclosure by the Recipient of any Confidential Information under applicable federal, state, or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction (each a "**Legal Order**") shall be subject to this Section 6. Before making any such disclosure, the Recipient shall provide the Discloser with:

(a) reasonable and prompt written notice of such Legal Order so that the Discloser may seek a protective order or other remedy; and

(b) reasonable assistance in opposing such disclosure or seeking a protective order or other limitations on disclosure.

If, after providing such notice and assistance as required herein, the Recipient remains subject to a Legal Order to disclose any Confidential Information, the Recipient shall disclose no more than that portion of the Confidential Information which, in the written opinion of the Recipient's legal counsel, such Legal Order specifically requires the Recipient to disclose and shall use best efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

7. Return or Destruction of Confidential Information. Upon the expiration or termination of this Agreement, or at the Discloser's request at any time, the Recipient shall promptly, at the Discloser's discretion, return to the Discloser all copies, whether in written, electronic or other form or media, of the Confidential Information, or destroy all such copies and certify in writing to the Discloser that such Confidential Information has been destroyed. In addition, the Recipient shall also destroy all copies of any Notes created by the Recipient and certify in writing to the Discloser that such copies have been destroyed.

8. Term and Termination. The term of this Agreement and the Recipient's rights under this Agreement with respect to the receipt, access and/or use of any Confidential Information disclosed by or on behalf the Discloser hereunder shall commence on the Effective Date and shall expire one (1) year from the Effective Date; provided that either Party may terminate this Agreement at any time by providing written notice to the other Party. Notwithstanding anything to the contrary herein, the Recipient's obligations under this Agreement with respect to any Confidential Information disclosed hereunder (including, for the avoidance of doubt, Sections 3, 4, 6, 7 and 9 of this Agreement) shall survive indefinitely.

9. Indemnification. The Recipient shall defend, indemnify, and hold harmless the Discloser, its affiliates, and their respective shareholders, officers, directors, employees, agents, successors, and permitted assigns from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest,

awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, arising out of or resulting from a breach of this Agreement by the Recipient.

10. No Discloser Representations or Warranties. The Discloser makes no representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information disclosed to the Recipient hereunder. Neither the Discloser nor any person or entity disclosing Confidential Information on its behalf under this Agreement shall be liable to the Recipient relating to or resulting from the Recipient's use of any of the Confidential Information or any errors therein or omissions therefrom.

11. No Transfer of Rights, Title, or Interest. The Discloser hereby retains its entire right, title, and interest, including all intellectual property rights, in and to all Confidential Information. Any disclosure of Confidential Information hereunder shall not be construed as an assignment, grant, option, license, or other transfer of any such right, title, or interest whatsoever to the Recipient.

12. No Other Obligation. The Parties agree that:

(a) this Agreement does not require or compel the Discloser to disclose any Confidential Information to the Recipient;

(b) neither Party shall be under any legal or other obligation of any kind whatsoever, or otherwise be obligated to enter into any business or contractual relationship, investment, or transaction, by virtue of this Agreement, except for the matters specifically agreed to herein; and

(c) either Party may at any time, at its sole discretion with or without cause, terminate discussions and negotiations with the other Party, in connection with the Purpose or otherwise.

13. Remedies.

(a) The Recipient acknowledges and agrees that money damages would not be a sufficient remedy for any breach or threatened breach of this Agreement by the Recipient. Therefore, in addition to all other remedies available at law (which the Discloser does not waive by the exercise of any rights hereunder), the Discloser shall be entitled to specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and the Recipient hereby:

(i) waives any requirement that the Discloser secure or post any bond or show actual monetary damages in connection with such claim; and

(ii) agrees that it shall not oppose the granting of such relief on the basis that the Discloser has an adequate remedy at law.

(b) If the Discloser institutes any legal suit, action, or proceeding against the Recipient to enforce its rights under this Agreement, the Discloser shall be entitled to receive in addition to all other damages to which it may be entitled, the costs incurred by the Discloser in conducting the suit, action, or proceeding, including reasonable attorneys' fees and expenses and court costs.

14. Governing Law, Jurisdiction, and Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania without giving effect to any choice or conflict of law provision or rule that would cause the application of laws of any jurisdiction other than those of Pennsylvania. Any legal suit, action, or proceeding arising out of or related to this Agreement or the matters contemplated hereunder may be instituted in the United States District Court for

the Middle District of Pennsylvania or the courts of Pennsylvania, including: the Court of Common Pleas of Centre County; The Commonwealth Court; and the Supreme Court of Pennsylvania, and each Party irrevocably submits to the jurisdiction of such courts in any such suit, action, or proceeding and waives any objection based on improper venue or *forum non conveniens*.

15. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the Parties at the respective addresses set forth on the first page or last page of this Agreement, respectively, (or to such other address that may be designated by a Party from time to time in accordance with this Section).

16. Entire Agreement. This Agreement constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Party hereto.

17. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

18. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

19. Assignment. The Recipient may not assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the Discloser. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Recipient of any of its obligations hereunder. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

20. Waivers. No waiver by the Discloser of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by an authorized representative of the Discloser. No waiver by the Discloser shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

ELEVATE COLLEGIATE TICKETING LLC

By: _____

Name: Flavil Hampsten

Title: President, Property Sales

Date: _____

BARRY J. FENCHAK

By: _____

Date: _____

Address: _____
