

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

STEPHANIE BIEDIGER, KAYLA LAWLER)	
ERIN OVERDEVEST, KRISTEN)	
CORINALDESI, and LOGAN RIKER,)	Case No. 3:09-CV-621(SRU)
individually and on behalf of all those)	
similarly situated;)	
)	
Plaintiffs,)	April 26, 2013
v.)	
)	
QUINNIPIAC UNIVERSITY,)	
)	
Defendant.)	

JOINT MOTION FOR ORDER: (1) PRELIMINARILY APPROVING CONSENT DECREE; (2) AUTHORIZING DISTRIBUTION OF NOTICE OF SETTLEMENT; AND (3) SETTING A SCHEDULE FOR FAIRNESS HEARING AND FINAL APPROVAL

Undersigned counsel for Plaintiffs and Defendant in this action have reached an agreement for the resolution of all claims. The agreement is embodied in the proposed Consent Decree filed simultaneously with this motion as Exhibit 1 hereto.

Pursuant to Rule 23(e), Fed. R. Civ. P., the claims of a certified class may be settled only with the Court’s approval. Moreover, the Court must direct notice in a reasonable manner to all class members who would be bound by the proposed settlement, and must conduct a hearing to determine whether the proposed settlement is “fair, reasonable, and adequate.”

The parties have attached a proposed form of notice to the class as Schedule B to the proposed Consent Decree. Once the Court approves the form of notice, the Defendant will promptly transmit it electronically to Class members. Accordingly, the parties jointly request that the Court:

DEFENDANT

By: /s/

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CERTIFICATION

I hereby certify that on the date hereon, a copy of the foregoing ***JOINT MOTION FOR ORDER: (1) PRELIMINARILY APPROVING CONSENT DECREE; (2) AUTHORIZING DISTRIBUTION OF NOTICE OF SETTLEMENT; AND (3) SETTING A SCHEDULE FOR FAIRNESS HEARING AND FINAL APPROVAL*** was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

Dated: April 26, 2013

/s/ Jonathan B. Orleans
Jonathan B. Orleans (ct05440)

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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STEPHANIE BIEDIGER, KAYLA LAWLER)	
ERIN OVERDEVEST, KRISTEN)	
CORINALDESI, and LOGAN RIKER,)	Case No. 3:09-CV-00621 (SRU)
individually and on behalf of)	
all those similarly situated;)	
)	April __, 2013
Plaintiffs,)	
v.)	
)	
QUINNIPIAC UNIVERSITY;)	
)	
Defendant.)	
_____)	

[PROPOSED] CONSENT DECREE

This Consent Decree is made, subject to the Court’s approval, between the above-captioned Plaintiffs, individually and on behalf of the class they represent, and Defendant Quinnipiac University (“Quinnipiac”).

This Consent Decree resolves each of the claims stated in the Amended Complaint dated December 2, 2009, including (1) Title IX athletic participation, (2) Title IX athletic financial assistance, (3) Title IX athletic treatment and benefits, and (4) Title IX retaliation. Claims 1-3 are class claims. Claim 4 was filed on behalf of individual members of the women’s volleyball team.

BACKGROUND

1. In March, 2009, Defendant Quinnipiac University announced its intent to

eliminate varsity women's volleyball, along with two men's teams.

2. In April, 2009, Plaintiffs filed an action against Quinnipiac, alleging that it violated Title IX of the Education Amendments of 1972 (20 U.S.C. §1681 et seq.) by failing to allocate an equitable number of varsity athletic participation opportunities to female students.

3. In April, 2009, Plaintiffs filed a motion for a temporary restraining order and a preliminary injunction, asking the Court to enjoin Quinnipiac from eliminating the varsity women's volleyball team.

4. The Court held a preliminary injunction hearing in May, 2009, after which it entered a preliminary injunction enjoining Quinnipiac from eliminating the varsity women's volleyball team. *Biediger v. Quinnipiac University*, 616 F.Supp.2d 277 (D.Conn. 2009).

5. In December, 2009, Plaintiffs filed an amended complaint alleging that Quinnipiac violated Title IX by:

- a. Failing to allocate an equitable number of varsity athletic participation opportunities to female students;
- b. Failing to allocate an equitable amount of athletic financial aid to female students;
- c. Failing to allocate varsity athletic benefits in an equitable manner; and
- d. Discriminating against the women's varsity volleyball team in retaliation for their complaints about Quinnipiac's Title IX violations.

6. The original complaint and amended complaint also asserted a claim on behalf of the coach of the women's volleyball team. That claim has been resolved and dismissed.

7. In February, 2010, Plaintiffs filed a motion for class certification with respect to

the Title IX athletic participation, athletic financial assistance, and athletic benefits claims (claims 1-3). In May, 2010, the Court granted the motion and certified a class defined as:

All present, prospective, and future female students at Quinnipiac University who are harmed by and want to end Quinnipiac University's sex discrimination in: (1) the allocation of athletic participation opportunities, (2) the allocation of athletic financial assistance, and (3) the allocation of benefits provided to varsity athletes.

Biediger v. Quinnipiac University, 2010 WL 2017773 (D.Conn. 2010).

8. In June, 2010, the Court conducted a trial solely on Plaintiffs' first claim (athletic participation) and Plaintiffs' request for a permanent injunction. On July 22, 2010, the Court ruled in favor of Plaintiffs and entered a permanent injunction. *Biediger v. Quinnipiac University*, 728 F.Supp.2d 62 (D.Conn. 2010).

9. Defendant filed a notice of appeal from the decision of the District Court. The parties argued the appeal in January, 2012. On August 7, 2012, the United States Court of Appeals for the Second Circuit affirmed the District Court. *Biediger v. Quinnipiac University*, 691 F.3d 85 (2d Cir. 2012).

10. While its appeal was pending, Defendant filed a motion to lift the injunction. The Court conducted a hearing on the motion in June, 2012. The Court denied the motion in an order and opinion issued on March 4, 2013. *Biediger v. Quinnipiac University*, 2013 WL 789612 (D. Conn. March 4, 2013).

11. In connection with the proceedings to date, the parties have conducted extensive discovery, including the depositions of over 20 witnesses, the disclosure of thousands of pages of documents, and the preparation of multiple reports by expert witnesses. The action has been

vigorously litigated on both sides. The parties have not yet tried the remaining claims (athletic aid, athletic benefits, and retaliation) in the action.

12. Since mid-December, 2012, the parties have engaged in mediation with the assistance of Michael Dickstein, Esq., a professional mediator. In lieu of continuing the present litigation, the parties have agreed to settle all claims pursuant to the terms set forth in this decree. The parties make the promises and representations contained herein for good and valuable consideration, the adequacy of which they hereby acknowledge.

TERMS

I. TITLE IX POLICY

A. Quinnipiac acknowledges its obligation under the law to comply with Title IX in the operation of its athletic program. Plaintiffs agree that, provided that Quinnipiac complies with the terms of this Consent Decree and the binding recommendations of the Referee named pursuant to Section V.D. herein (the “Referee”), Plaintiffs will not seek further relief against Quinnipiac for alleged violations of Title IX during the term of the decree.

B. Quinnipiac shall promptly develop a Title IX nondiscrimination policy and grievance procedure, which it shall disseminate prominently on its website and annually in its student handbook, athlete handbook, and faculty/staff handbook no later than the beginning of the 2013-2014 academic year, in accordance with 34 C.F.R. §§106.8 and 106.9.

C. Quinnipiac shall ensure that its Title IX coordinator is trained concerning gender equity in athletics and that he/she will participate in ensuring Title IX compliance in the athletic department.

**II. COMPLIANCE WITH 34 C.F.R. §106.41(c)(1) -
EFFECTIVE ACCOMMODATION OF ATHLETIC INTERESTS AND
ABILITIES**

A. Continuation of Women's Varsity Athletic Teams

1. Quinnipiac will not eliminate its women's varsity volleyball team or, during the term of this Consent Decree, announce any plans to eliminate the team. Quinnipiac will support its women's varsity volleyball team in the same manner that it supports other varsity sports in the same tier.
2. Quinnipiac will not eliminate any varsity women's athletic team except as otherwise permitted in Section II.A.3.
3. If Quinnipiac eliminates a women's varsity athletic team, it will replace the team with an NCAA championship sport team(s) that provide a comparable number of participation opportunities. This provision does not apply to women's varsity volleyball, which Quinnipiac will not eliminate.
4. Quinnipiac is not required to add any additional varsity athletic teams during the term of this Consent Decree, except as may be required by Section IV herein.

B. Women's Track & Field

1. Beginning with the 2013-2014 academic year, Quinnipiac will authorize the head coach of the women's cross country and track & field teams to award athletic financial assistance that equals at least four (4) full

scholarships for women's cross country athletes and six (6) full scholarships for women's indoor/outdoor track & field athletes who focus on non-distance events.

2. Quinnipiac will arrange for its outdoor track & field athletes to have access to the outdoor track facility at Cheshire High School (or a comparable outdoor track facility) throughout the academic year. The outdoor track & field athletes will practice at the facility on a regularly scheduled basis that is sufficient, in the judgment of the head coach, to allow the athletes to prepare adequately for competition. Quinnipiac will provide transportation for athletes on the track & field team to and from practices conducted at the outdoor track facility. Athletes will have access to onsite water and restrooms during practices.
3. Quinnipiac will make its best efforts to host one outdoor track & field meet annually at Yale University (or a comparable facility) beginning in the 2013-2014 academic year. This provision does not prevent Quinnipiac from voluntarily hosting more than one outdoor track & field meet annually.
4. By the beginning of the 2013-2014 academic year, Quinnipiac will upgrade one of its part-time assistant track & field coaching positions to full-time. During the term of the Consent Decree Quinnipiac will provide its women's cross country and track & field teams with the maximum number of paid coaches permitted by NCAA rules.

5. Quinnipiac will make good faith efforts to expand the number of events in which the women's track & field athletes compete, including recruiting athletes who focus on non-distance events (e.g., sprints, hurdles, and middle-distance races) and field events.

C. Women's Rugby

1. Quinnipiac will upgrade the quality and condition of the rugby pitch to ensure that it is safe for practices and competitions. Quinnipiac will make good faith efforts to upgrade the quality of the rugby pitch so that it is level, does not contain holes, dangerous rocks, or other hazards, and is maintained to a quality comparable to the varsity soccer field, by the start of the 2013-2014 academic year.
2. Quinnipiac's varsity women's rugby team will have exclusive use of the rugby pitch.
3. Quinnipiac will authorize the head coach of the women's rugby team to award athletic financial assistance equaling at least nine (9) full scholarships by the 2013-2014 academic year.
4. Beginning in the 2013-2014 academic year, Quinnipiac will provide one full-time head coach and one full-time assistant rugby coach for its women's rugby team. Neither of the women's rugby coaches will have responsibility for any men's or women's club rugby team or program or for any other sport or activity.
5. Beginning in the 2013-2014 academic year, Quinnipiac will compete in at

least two-thirds (2/3) of its regular season games against NCAA varsity rugby teams (e.g., Eastern Illinois, Harvard, West Chester, Norwich) or Division I club rugby teams (e.g., Brown, Penn State, Princeton, Army, Navy). For purposes of this provision, "Division I club" is intended to mean the highest level of intercollegiate club competition available. In 2014-2015 and thereafter, Quinnipiac will schedule all of its regular season matches against NCAA varsity and/or Division I club rugby teams except that Quinnipiac may schedule one regular season game each season with Yale University and one regular season game each season with the University of Connecticut, regardless of the competitive level of their women's rugby teams, in order to build an in-state rivalry in the sport.

6. Women's varsity rugby athletes will have access to water and nearby restrooms during all practices and competitions held at Quinnipiac.
7. Quinnipiac will make a good faith effort to promote women's rugby as a varsity sport and to encourage other NCAA Division I schools to sponsor women's rugby as a varsity sport with the goal of establishing a Division I varsity women's rugby athletic conference and a NCAA varsity women's rugby national championship.

D. Club Teams

If Quinnipiac sponsors or otherwise provides support to club sports teams during the term of this Consent Decree, it must allocate those opportunities on a gender equitable basis.

**III. COMPLIANCE WITH 34 C.F.R. 106.37(c) -
ATHLETIC FINANCIAL ASSISTANCE**

A. For all women's sports for which Quinnipiac currently authorizes fewer than 50% of the maximum number of athletic scholarships allowed by NCAA rules, Quinnipiac will increase the authority of the head coach to award at least 50% of the maximum number of athletic scholarships allowed by NCAA rules, beginning in the 2013-2014 academic year. The minimum number of athletic scholarships per team required by this Section III.A and by Sections III.B and V.B.1.a below are listed on Schedule A attached hereto.

B. For all women's sports for which Quinnipiac currently authorizes the head coach to award more than 50% of the maximum number of athletic scholarships allowed by NCAA rules, Quinnipiac will not decrease the coach's authority.

C. Beginning with the 2013-2014 academic year, Quinnipiac will authorize the maximum number of athletic scholarships allowed by the NCAA for all of its women's Tier 1 sports.

D. In addition to the foregoing, Quinnipiac will provide an additional athletic scholarship to the women's volleyball team for the 2014-2015 academic year (so that the team then has 7 full athletic scholarships) and another additional scholarship to the women's volleyball team for the 2015-2016 academic year (so that the team then has 8 full athletic scholarships). The number of scholarships authorized for the women's volleyball team will not be reduced before completion of all the facilities required by this Consent Decree.

E. Quinnipiac will develop and implement a policy requiring gender-neutral allocation of summer, fifth-year, and other extra athletic financial aid.

IV. QUINNIPIAC MEN'S TEAMS

A. During the term of this Consent Decree, Quinnipiac will not create additional men's sports teams unless it also creates additional women's teams that provide at least an equal number of athletic participation opportunities.

B. During the term of the Consent Decree, Quinnipiac will not significantly increase the number of athletic scholarship awards for male athletes unless it simultaneously increases (beyond the requirements of this Consent Decree) the number of athletic scholarship awards for female athletes by at least the same number of athletic scholarships.

C. Quinnipiac may, upon reasonable notice to Plaintiffs, seek relief from the Referee from the requirements of this Section IV in response to circumstances reasonably supporting the need for such relief, which include, by way of example:

1. A significant increase in the proportion of full-time male undergraduate students; or
2. A significant increase in the number of varsity athletic participation opportunities provided to female students.

V. COMPLIANCE WITH 34 C.F.R. 106.41(c)(2)-(10) - TREATMENT AND BENEFITS

A. Facility Improvements

1. Quinnipiac will spend at least \$5 million to improve the permanent athletic facilities (other than TD Bank Sports Center) used by its women's

varsity sports teams, including renovation and/or construction of locker rooms, exercise and weight training facilities, athletic training facilities, practice and competition facilities, and office space for head/assistant coaches, so that they are comparable to the facilities provided to men's varsity sports teams in the same tier.

2. Quinnipiac will increase the dimensions of the women's varsity rugby pitch to the maximum dimensions allowed by the International Rugby Board.
3. Quinnipiac will build an indoor track & field facility for practice and competition. The facility will meet NCAA standards for hosting indoor meets.
4. Quinnipiac will build a superior practice and competition facility dedicated to women's field hockey that meets NCAA Division I standards for the sport.
5. Quinnipiac will consult with the Referee during the planning process for the facility improvements described herein ("facility improvements"). The Referee may, at his/her discretion, consult with Plaintiffs' counsel with respect to the facility improvements.
6. Within six months of the Court's approval of this Consent Decree, Quinnipiac will present to the Referee and Plaintiffs' counsel a projected schedule for completion of the facility improvements, which shall project that all of the facilities improvements will be completed by no later than

June 30, 2018. Quinnipiac shall make good faith efforts to complete all facility improvements in accordance with the schedule. QU shall report to the Referee and Plaintiffs' counsel at such intervals as the Referee shall determine concerning its progress toward completion of the facilities improvements.

7. The provisions of this Consent Decree concerning the Referee's authority to monitor compliance and to investigate and determine disputes, and concerning the Court's authority to enforce the Consent Decree, shall remain in effect until all of the facility improvements described in this Consent Decree are completed.

B. Tiering

The parties recognize that Quinnipiac currently treats men's and women's basketball and ice hockey as tier one sports (also denominated as "sports of emphasis"). Quinnipiac will take measures to elevate two (2) additional women's teams to tier one as follows:

1. Field hockey. By the beginning of 2013-2014 academic year, Quinnipiac will provide the head coach of the field hockey team with the authority to award the maximum number of athletic scholarships allowed by NCAA rules. By the beginning of the 2014-2015 academic year, Quinnipiac will provide the field hockey team with the maximum number of coaches allowed by the NCAA. Quinnipiac shall also build a superior practice and competition facility dedicated to field hockey as previously set forth

herein.

2. Additional tier one team. Within six months of the Court's approval of this Consent Decree, Quinnipiac shall identify an additional, fourth women's team as a tier one sport. Promptly after identifying the additional women's team, Quinnipiac will (a) initiate the process of hiring any additional coaches necessary to provide the team with the maximum number of coaches allowed by NCAA rules and (b) provide the head coach of the team with the authority to award the maximum number of athletic scholarships allowed by NCAA rules. Quinnipiac's obligation to provide this fourth women's tier one team with the maximum number of athletic scholarships allowed by NCAA rules shall extend until at least June 30, 2018, notwithstanding the termination of the Consent Decree. Quinnipiac will also provide this team with a superior practice and competition facility based on NCAA Division I standards for the sport in accordance with the schedule to be presented under in Section V.A.6 above.
3. If Quinnipiac adds more men's teams to tier one during the term of the Consent Decree, then it must also add a proportionate number of women's teams or female athletes to tier one.

C. Equivalence of Other Athletic Benefits

1. By no later than the beginning of the 2013-2014 academic year, Quinnipiac will take (or has already taken) the following steps to improve the benefits provided to female athletes:

- a. Allow all sports to play in the maximum number of competitions in the championship and non-championship seasons permitted by NCAA rules and provide the funding that allows them to do so;
- b. Allow all sports to begin practice at the earliest date permitted by NCAA rules;
- c. Provide athletic training coverage to all sports during the traditional and non-traditional seasons;
- d. Create and fill a full-time position for a head women's golf coach;
- e. Hire an additional full-time employee in academic support for varsity athletes;
- f. For the 2013-2014 academic year, increase the salaries of the coaches of the women's teams to no less than the median salaries in their sports in the Northeast Conference; and
- g. Quinnipiac shall request from its new athletic conference, the Metro Atlantic Athletic Conference ("MAAC"), the data necessary to determine, on a current-year basis, the median salaries of the coaches of women's teams in the MAAC, accounting for the proportion of time devoted to coaching duties. If the MAAC provides the necessary data, then by the 2014-2015 academic year, Quinnipiac shall increase the salaries for the coaches of its women's teams if necessary to ensure that their salaries are no less than the median salaries of the coaches of women's teams in the

MAAC in the same sports. No salaries of coaches of Quinnipiac's women's team shall be decreased based upon this data.

2. Quinnipiac represents that the total estimated cost of the commitments made in the previous paragraph is approximately \$450,000 per year.
3. In addition to the money to be expended pursuant to Section V.C.1, and in addition to any other monetary commitment(s) made under this Consent Decree, Quinnipiac will spend up to \$175,000 per year for the term of the Consent Decree for the purpose of ensuring equitable treatment and benefits for female athletes in the following areas:
 - a. Equipment/supplies/uniforms
 - b. Scheduling of games and practice times
 - c. Transportation/travel/per diem
 - d. Access to coaching and tutoring
 - e. Assignment and compensation of coaches
 - f. Medical/training services
 - g. Housing/dining
 - h. Publicity and sports information
 - I. Recruiting
 - j. Support services

Expenditures pursuant to this paragraph shall be made by Quinnipiac based upon the recommendations of the Referee in accordance with Section V.D.7.

D. Referee

1. The parties will agree upon, and the Court will appoint, a “Referee” who will have responsibility for implementing and monitoring compliance with Quinnipiac’s obligations under this Consent Decree. Subject to his agreement and the Court’s approval, Jeffrey H. Orleans (former Commissioner of the Ivy League) will serve as the Referee.
2. Upon entry of an order approving this Consent Decree, the Referee will conduct a baseline review of the Quinnipiac athletic department’s compliance with the treatment and benefits requirements of Title IX and with the requirements of the Consent Decree.
3. The Referee will prepare a draft report of his/her initial findings and recommendations for all counsel within 120 days after the date of final Court approval of this Consent Decree. The parties will have the opportunity to respond to or further investigate those findings within 60 days thereafter. The Referee will then have 30 days to prepare a final report with recommendations, which shall be provided to all counsel and the Court.
4. In preparing his/her initial report and all subsequent reports, the Referee will have access to the following:
 - a. Interviews with Plaintiffs and Class Counsel
 - b. Interviews with coaches and assistant coaches
 - c. Interviews with student athletes

- d. Interviews with Quinnipiac's athletics department's administrative staff and any Title IX administrators
 - e. All reasonably necessary documents
5. Copies of all documents provided to the Referee will be provided to Class Counsel as expeditiously as reasonably practical. Quinnipiac will provide the Referee and Class Counsel with the squad lists for each varsity team shortly after each team's first date of competition and by May 30 of each year during the Consent Decree.
 6. The Referee may conduct such investigations as s/he deems appropriate throughout the course of the consent decree concerning Quinnipiac's compliance with Title IX and with this Consent Decree. The Referee shall report the results of any investigation s/he conducts to the parties and the Court.
 7. After issuing his/her initial report and by no later than June 15 of 2014, 2015, and 2016, the Referee shall provide an annual report to the Court and to counsel for the parties regarding Quinnipiac's compliance with Title IX and this Consent Decree. In connection with such reports, or at such other times as s/he deems appropriate, the Referee shall recommend actions to be taken by Quinnipiac to comply with this Consent Decree and/or to allocate the funds described in Section V.C.3.
 8. The Referee's recommendations made pursuant to subsections V.D.3 and V.D.7 above shall be entitled to substantial deference. Quinnipiac will

implement the Referee's recommendations expeditiously unless it believes that they are unreasonable, impractical, or exceed Quinnipiac's obligations under the law or this Consent Decree.

9. To the extent either party objects to any report or recommendation by the Referee, the party shall submit its objection in writing to the Referee and to counsel for the other party no more than 30 days after receipt of the recommendation. The Referee may then schedule any proceedings s/he deems appropriate, provided that the Referee shall rule on the objection within 60 days of receiving it. Either party may then appeal to the Court within 30 days of the Referee's ruling.
10. The Referee may, in addition to the above, make non-binding recommendations at any time concerning additional actions that, in the Referee's opinion, Quinnipiac should consider in order to better satisfy its obligations under Title IX in the future. Any such recommendations shall be communicated to both Quinnipiac and Plaintiffs' counsel. During the term of the Consent Decree there shall be no proceedings before the Referee or the Court concerning any such non-binding recommendations made by the Referee.
11. Quinnipiac agrees to pay the Referee up to \$150,000 during the term of this Consent Decree for his/her time spent in connection with exercising his/her responsibilities under this Consent Decree, plus necessary and reasonable out-of-pocket expenses. If the Referee notifies the parties that

he/she expects to incur more than \$150,000 in time-based fees, the parties will promptly engage in good faith negotiations concerning the issue, and if they cannot resolve it between them they will seek resolution by the Court.

VI. MONETARY RELIEF

A. Quinnipiac shall pay to each of the named class representatives – Stephanie Biediger, Kristen Corinaldesi, Kayla Lawler, Erin Overdevest, and Logan Riker – the sum of \$15,000 within 30 days of the Court’s final approval of this Consent Decree, in satisfaction of her individual claims. As a condition of such payment, each of the named class representatives will execute a release of all her individual Title IX claims against Quinnipiac.

B. Quinnipiac shall pay Class Counsel the sum of \$1,900,000 for attorneys’ fees and costs of litigation (including but not limited to expert fees) within 30 days of the Court’s final approval of this Consent Decree. Quinnipiac will also contribute \$50,000 to the Emanuel Margolis Fellowship Fund at the Quinnipiac University School of Law within the same time period.

C. Quinnipiac shall pay Class Counsel’s fees at up to \$450 per hour, plus reasonable expenses including but not limited to expert fees, for drafting, obtaining approval of, and monitoring compliance with this Consent Decree. Quinnipiac’s obligation pursuant to this subparagraph shall not exceed \$150,000 in total for the period beginning on March 21, 2013, and concluding at the termination of the Consent Decree, unless otherwise authorized by the Court in the case of an egregious violation of this Decree by Quinnipiac or other conduct by Quinnipiac that unreasonably increases Plaintiffs’ costs of monitoring compliance.

VII. CLASS NOTICE

A. Pursuant to Federal Rule of Civil Procedure 23(e), the parties agree that notice of this proposed Consent Decree should be provided to all members of the class in a form approved by the Court. The parties propose that the Court approve the form of notice set forth in Schedule B hereto.

B. Upon the Court's approval of the form of the notice, Quinnipiac shall timely transmit the notice by electronic mail and/or such other reasonable means as the Court may direct to all current female Quinnipiac students and all recruited female athletes. Quinnipiac shall also provide informational copies of the notice to the coaches of women's varsity teams.

C. Quinnipiac shall be responsible for all costs of providing the notice.

D. Upon the Court's final approval of this Consent Decree, Quinnipiac shall provide notice of such approval and of the availability of copies of the Decree (at a website to be designated by class counsel) to all current female Quinnipiac students, all recruited female athletes, all personnel in Quinnipiac's Department of Athletics & Recreation, and any other persons whom Quinnipiac expects to participate in the implementation of this Decree. During the term of the Decree, Quinnipiac shall inform all students, prospective students, and parents of students who request information concerning the Decree that that copies may be downloaded at a website to be designated by class counsel.

VIII. GENERAL PROVISIONS

A. This Consent Decree shall remain in effect through June 30, 2016, except as

otherwise provided herein.

B. This Consent Decree embodies a compromise that is intended to resolve the pending litigation between the parties. Neither Plaintiffs nor Quinnipiac intend that this Decree shall have precedential effect with respect to the parties' legal positions regarding the requirements of Title IX, or with respect to their rights or obligations after the termination of the Decree. Nothing in this Decree is intended or shall be construed to limit Plaintiffs' rights to challenge Quinnipiac's compliance with Title IX in all respects (including, but not limited to, Quinnipiac's method of counting varsity athletes, and its contentions that its women's track and rugby programs satisfy Title IX's requirements to be counted as varsity opportunities) after the termination of this Consent Decree, notwithstanding the provisions of this Decree and notwithstanding the termination of the permanent injunction entered by the Court with respect to Plaintiffs' first Claim. Nothing in this Consent Decree is intended to affect Quinnipiac's rights or obligations with respect to its Acrobatics and Tumbling team.

C. Plaintiffs agree that during the term of this Consent Decree, provided that Quinnipiac complies with the requirements of this Consent Decree and the Referee's binding recommendations, they will not challenge Quinnipiac's compliance with its obligations under 34 C.F.R. §106.41(c)(1)(effective accommodation), 34 C.F.R. §106.37(c)(athletic scholarships), or 34 C.F.R. §106.41(2)-(10) (treatment and benefits).

D. Quinnipiac waives any rights it may have to appeal any decision, order, or judgment rendered to date in this litigation.

E. Quinnipiac shall not retaliate against any members of the class or any persons who assisted in this litigation. Quinnipiac shall inform all personnel of its Athletics & Recreation

Department and all employees who may be involved in the implementation of this decree that retaliation is illegal and will not be permitted.

F. The parties mutually release each other from all claims and causes of action that were asserted, could have been asserted, or otherwise relate to this litigation, whether known or unknown, that arose or may arise up to the date of the Court's final approval of this Decree, subject only to Quinnipiac's compliance with the terms of this Consent Decree.

G. The parties have entered into this Consent Decree voluntarily after consultation with counsel. The parties enter into this decree in good faith and intend it to be implemented in good faith in furtherance of the goals of gender equity in Quinnipiac's athletic program.

H. This Consent Decree shall be attached to the Court's Order approving this Decree. The Court will retain jurisdiction over this action for purposes of enforcing the terms of this Consent Decree. Provided that Quinnipiac has complied with the terms hereof, Claims 1-3 of the Amended Complaint (the Class Claims) will be dismissed in their entirety, with prejudice, upon termination of the Consent Decree, and the permanent injunction entered by the Court will then terminate. The parties will submit a stipulation for the dismissal of Claim 4, the Title IX retaliation claim brought by the Individual Plaintiffs, following the Court's approval of this Consent Decree and Quinnipiac's payment of money damages in accordance with Section VI.A. hereof.

I. If the Court declines to approve this Consent Decree, then the parties will return to their positions with respect to this litigation as if they had never executed this Decree.

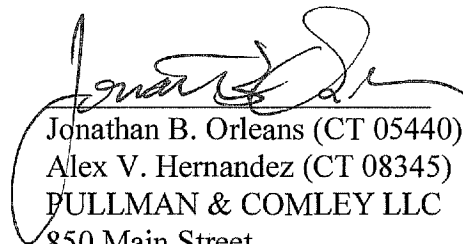
J. This Consent Decree may be executed in counterparts by original, facsimile, or electronic signature. Plaintiffs' counsel will gather all signatures, and the Consent Decree will be

deemed fully executed when all parties and their counsel have returned their executed signature pages to Plaintiffs' counsel.

K. This Consent Decree embodies the entire agreement between the parties concerning its subject matter, and may not be modified except by order of the Court or in a writing signed by all parties and approved by the Court.

DATED: April 25, 2013

Counsel for
STEPHANIE BIEDIGER, et al.,
Plaintiffs



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PLAINTIFFS:

STEPHANIE BIEDIGER

Dated: _____

KAYLA LAWLER

Dated: _____

ERIN OVERDEVEST

Dated: _____

KRISTEN CORINALDESI

Dated: _____

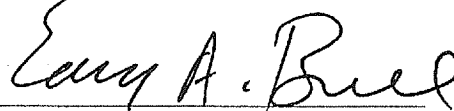
LOGAN RIKER

Dated: _____

Dated: April 25, 2013

Counsel for

QUINNIPIAC UNIVERSITY,
Defendant,



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Dated: April ___, 2013

DEFENDANT QUINNIPIAC
UNIVERSITY

By _____
[Printed name: _____]

Its _____
[Title: _____]

SCHEDULE A

SCHEDULE A

Scholarship Minimums for Women's Teams

Basketball (Tier One)	15 (or NCAA maximum if higher)
Ice Hockey (Tier One)	18 (or NCAA maximum if higher)
Field Hockey (Tier One)	12 (or NCAA maximum if higher)
Golf	3 (or .5 x NCAA max if higher)
Lacrosse	10
Rugby	9
Soccer	10.6
Softball	9
Tennis	5
Volleyball	6 (or .5 x NCAA max if higher)*
XC	4
Track (Indoor & Outdoor)	6

* Volleyball minimum increases to 8 by 2015-16 per Section III.D of the Consent Decree.

SCHEDULE B

**NOTICE OF PROPOSED CLASS-ACTION SETTLEMENT AND
HEARING IN TITLE IX ATHLETICS LITIGATION**

To: All present, prospective, and future female students at Quinnipiac University who are harmed by and want to end Quinnipiac University's sex discrimination in: (1) the allocation of athletic participation opportunities; (2) the allocation of athletic financial assistance; and (3) the allocation of benefits provided to varsity athletes.

**PLEASE READ THIS NOTICE CAREFULLY.
IT CONCERNS A LAWSUIT THAT MAY AFFECT YOUR RIGHTS.**

I. INTRODUCTION

This notice is to inform you about a settlement and proposed Consent Decree in a Title IX class action lawsuit brought against Quinnipiac University ("Quinnipiac" or the "University"). The lawsuit is captioned or otherwise referred to as *Biediger, et al v. Quinnipiac University*, Civil Action No. 3:09-cv-00621 (SRU) (D. Conn.), and is pending in the United States District Court for the District of Connecticut (the "Litigation").

The named plaintiffs in the Litigation are current/former Quinnipiac female student athletes who filed the case on behalf of a class (the "Plaintiff Class") consisting of:

All present, prospective, and future female students at Quinnipiac University who are harmed by and want to end Quinnipiac University's sex discrimination in: (1) the allocation of athletic participation opportunities; (2) the allocation of athletic financial assistance; and (3) the allocation of benefits provided to varsity athletes.

YOU MAY BE A MEMBER OF THE PLAINTIFF CLASS IN THIS LITIGATION.

A settlement has been reached in the Litigation. The settlement is embodied in a proposed Consent Decree that has been preliminarily approved by the Court. The Consent Decree must be approved in final form by the Court, after notice and hearing, before it can go into effect.

The entire Consent Decree, which sets forth all the terms of the settlement, may be downloaded at www.acluct.org. You can also obtain a copy by (1) visiting the office of the Clerk of the U.S. District Court at 915 Lafayette Boulevard, Bridgeport, CT or (2) contacting Jon Orleans (jborleans@pullcom.com), Kristen Galles (kgalles@comcast.net), or Sandra Staub (sstaub@acluct.org), counsel for Plaintiffs.

YOU MAY HAVE A RIGHT TO BE HEARD BEFORE THE COURT CONSIDERS OR APPROVES THE FINAL CONSENT DECREE.

The Court has scheduled a Fairness Hearing for June 20, 2013 at 10:00 a.m. in the courtroom of the Honorable Stefan R. Underhill, Judge of the United States District Court for the District of Connecticut, 915 Lafayette Boulevard, Bridgeport, CT, to determine whether the proposed Consent Decree is fair, reasonable, and adequate, and should be finally approved.

**THIS NOTICE SUMMARIZES THE PROPOSED CONSENT DECREE
AND ADVISES YOU ABOUT:**

- The history of the Litigation
- A summary of the reasons for settling the Litigation rather than proceeding to trial
- A summary of the terms of the proposed Consent Decree
- The opportunity for you to file objections to the Consent Decree with the Court
- The opportunity for you to appear at a Fairness Hearing on June 20, 2013, at which the Court will consider whether to approve the final Consent Decree
- The binding nature of the Consent Decree on all members of the Plaintiff Class

II. HISTORY OF THE LITIGATION .

The Plaintiff Class in the Litigation alleges that Quinnipiac violated Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-88 (“Title IX”) by:

- (1) failing to allocate an equitable number of varsity athletic participation opportunities to female students (the “Participation Claim”);
- (2) failing to allocate an equitable amount of athletic financial aid to female students (the “Scholarships Claim”); and
- (3) failing to allocate varsity athletic benefits in an equitable manner (the “Benefits Claim”).

The named Plaintiffs asserted these claims on behalf of the Plaintiff Class. They also asserted a claim on their own behalf that the University retaliated against them for complaining about Title IX violations (the “Retaliation Claim”). The settlement would resolve all of these claims – both the claims of the Plaintiff Class and the claims of the named Plaintiffs.

Through the Participation Claim, the Plaintiff Class sought:

- (1) to require Quinnipiac to retain the women’s varsity volleyball team, which Quinnipiac had publicly announced its intent to eliminate;

- (2) to require Quinnipiac to add varsity athletic participation opportunities for women until it achieves compliance with Title IX's equal participation requirements; and
- (3) to prohibit Quinnipiac from cutting any other women's varsity programs unless and until Quinnipiac satisfies Title IX's participation requirements.

Through the Scholarship Claim, the Plaintiff Class sought to require Quinnipiac to comply with Title IX by allocating more athletic financial aid to female athletes.

Through the Benefits Claim, the Plaintiff Class sought to require Quinnipiac to comply with Title IX by providing its female and male varsity athletes with the following benefits of athletic participation on an equitable basis:

- (1) Equipment, supplies, & uniforms;
- (2) Scheduling of games and practice times
- (3) Transportation/travel/per diem
- (4) Access to coaching and tutoring
- (5) Assignment and compensation of coaches
- (6) Medical/training services
- (7) Housing/dining
- (8) Publicity and sports information
- (9) Recruiting
- (10) Support services

Quinnipiac argued in its defense in the Litigation that it has complied with Title IX by providing female athletes with an equitable share of varsity athletic participation opportunities, scholarships, and varsity benefits. Quinnipiac denies that it retaliated against the named plaintiffs.

The Plaintiffs filed their initial complaint in April, 2009, along with a motion for temporary restraining order and preliminary injunction on the Participation Claim to prevent the elimination of the women's volleyball program. The Court granted the preliminary injunction in July, 2009, and ordered Quinnipiac to retain the volleyball program and all other women's teams.

In December, 2009, the Plaintiffs filed an amended complaint that added the Scholarship Claim and the Benefits Claim. On May 20, 2010, the Court certified the Participation, Scholarship, and Benefits Claims as a class action, defining the Plaintiff Class as:

All present, prospective, and future female students at Quinnipiac University who are harmed by and want to end Quinnipiac University's sex discrimination in: (1) the allocation of athletic participation opportunities; (2) the allocation of athletic financial assistance; and (3) the allocation of benefits provided to varsity athletes.

The Court appointed plaintiffs Stephanie Biediger, Kristen Corinaldesi, Kayla Lawler, Erin Overdevest, and Logan Riker as representatives of the class. The Court appointed Jonathan Orleans and Alex Hernandez of Pullman & Comley LLC, Kristen Galles of Equity Legal, and David McGuire of the ACLU Foundation of Connecticut as the attorneys for the Plaintiff Class.

In July, 2010, the Court entered a permanent injunction that ordered Quinnipiac to retain the volleyball program and to submit a plan to come into compliance with Title IX's athletic participation requirements. In August, 2012, the United States Court of Appeals for the Second Circuit affirmed the District Court's July, 2010, order.

Quinnipiac submitted a compliance plan as directed by the court and, pursuant to the plan, Quinnipiac added women's varsity golf and rugby teams and expanded its women's track program. The Court directed the University to file a motion to lift the injunction when it believed it had achieved compliance with the participation requirements of Title IX.

In December, 2011, Quinnipiac filed a motion to lift the permanent injunction relating to the Participation Claim. The Court conducted a trial on the motion in June, 2012. On March 4, 2013, the Court issued an order denying the motion and keeping the injunction in place.

The Court has not yet conducted a trial on the Scholarship Claim, the Benefits Claim, or the Retaliation Claim.

III. REASONS FOR THE SETTLEMENT

The case has been litigated vigorously by both sides but, despite the significant expenditures of money and time by the parties and their counsel, the Scholarship Claim, the Benefits Claim, and the Retaliation Claim have not yet been tried. Quinnipiac maintains that it is not in violation of Title IX with respect to scholarships or varsity athletic benefits and denies that it retaliated against the plaintiffs; the plaintiffs contend that the University is in violation of the statute and that they were subjected to retaliatory conduct. Considerable additional resources would be expended by both sides to prepare and try these claims.

Both sides recognize the uncertainties of litigation, and the parties agree that it would be preferable to devote the University's resources to the improvement of athletic opportunities for female students rather than to continued litigation.

Counsel for Quinnipiac and the Plaintiff Class have engaged in extensive negotiations, which were mediated by Michael Dickstein, Esq., a professional mediator. The negotiations culminated in a signed Memorandum of Understanding, which has been embodied in the proposed Consent Decree. Class counsel believe that the terms and conditions of the proposed Consent Decree are fair, reasonable, and in the best interests of the class. In reaching this conclusion, class counsel have analyzed the benefits of the Consent Decree, the possible outcomes of further litigation, and the expense and length of continued proceedings necessary to prosecute the remaining claims through trial and possible appeals.

IV. SUMMARY OF THE PROPOSED CONSENT DECREE

This section summarizes the principal terms of the proposed Consent Decree. It does not include all of the terms. You should read the entire Consent Decree to ensure that it protects your rights and interests.

Title IX Policy

- Quinnipiac will promptly develop and disseminate a Title IX nondiscrimination and grievance policy.
- Quinnipiac will ensure that its Title IX coordinator is trained concerning gender equity in athletics and that he/she will participate in ensuring gender equity in the athletics department.

Participation Claims

- Quinnipiac will not eliminate its women's volleyball team during the term of the Consent Decree.
- Quinnipiac will not eliminate any other women's varsity athletic team during the term of the Consent Decree unless it replaces the team with a team in an NCAA championship sport that provides a comparable number of participation opportunities.
- Quinnipiac will enhance the women's track and field teams by: authorizing additional scholarships for athletes who focus on non-distance events; providing the maximum number of paid full-time coaches allowed by NCAA rules; making good faith efforts to expand the number of events in which women's track and field athletes compete; and providing regular access and transportation to an adequate facility for outdoor track and field practices.
- Quinnipiac will enhance the women's rugby team by: authorizing additional scholarships; engaging a full-time assistant coach; upgrading the quality and condition of the field which will be dedicated to exclusive use of the women's rugby team; scheduling most matches against varsity or upper-level club teams; and making good faith efforts to promote rugby as a varsity sport with the goal of establishing a Division I varsity women's rugby athletic conference.
- Quinnipiac will not add any new men's teams during the term of the Consent Decree unless it also adds additional women's teams with a comparable number of opportunities.

Scholarship Claims

Quinnipiac will authorize additional scholarships for several of its women's teams. In particular:

- Quinnipiac will authorize the maximum number of scholarships permitted by NCAA rules for all of its women's "tier one" teams, and will authorize at least 50% of the maximum number of scholarships permitted by NCAA rules for all of its other women's varsity teams.
- Quinnipiac will not decrease the number of scholarships authorized for any women's varsity team.
- Quinnipiac will also authorize additional scholarships for the track and field and rugby teams, and for the women's volleyball team. By the 2015-16 academic year the volleyball team will have 8 scholarships.
- Quinnipiac will not add more athletic scholarships for its men's teams unless it also adds a comparable number of athletic scholarships for its women's teams.

Treatment and Benefits Claims

A. Facilities

- Quinnipiac will make a number of major improvements to athletics facilities, as indicated below. It is expected that the facility improvements and new construction will take about five years to complete.
- Quinnipiac will spend at least \$5 million to improve the permanent athletic facilities used by its women's varsity sports teams, including renovating and/or construction of locker rooms, exercise and weight training facilities, and other facilities, so that they are comparable to the facilities provided to men's varsity teams in the same tier.
- Quinnipiac will construct an indoor track and field facility for practice and competition.
- Quinnipiac will provide its track athletes with access to an outdoor track & field facility and will provide transportation to and from that facility.
- Quinnipiac will build a superior practice and competition facility dedicated to women's field hockey.
- Quinnipiac will increase the dimensions of the varsity rugby pitch to the maximum dimensions allowed by International Rugby Board.

B. Tiering

- Quinnipiac will elevate women's field hockey to "tier one" status by the beginning of the 2013-14 academic year, and will elevate a fourth women's sport to tier one status within six months of the Court's approval of the Consent Decree. All tier one teams will have the maximum number of scholarships, will have the maximum number of paid coaches, and will schedule the maximum number of competitions allowed by NCAA rules. They will also practice and compete at facilities of superior quality.
- Quinnipiac will not add more men's teams to tier one during the term of the Consent Decree unless it also adds a proportionate number of women's teams or female athletes to tier one.

C. Other Benefits

- Quinnipiac will spend approximately \$450,000 to improve benefits for female athletes by the 2013-14 academic year including:
 - providing the maximum number of competitive opportunities permitted by NCAA rules during both traditional and nontraditional seasons;
 - allowing all teams to begin practice at the earliest date permitted by NCAA rules;
 - providing athletic training coverage for all sports during both traditional and non-traditional seasons;
 - increasing academic support;
 - increasing coaching salaries.
- Quinnipiac will spend up to an additional \$175,000 annually for benefits to female athletes in accordance with the recommendations of the Referee designated under the Consent Decree.

General Provisions

- The Court will appoint a "Referee" to oversee the implementation of the decree and to monitor compliance. Quinnipiac will provide information and reports to plaintiffs' counsel and the Referee on a regular basis. The Referee will have authority to receive and investigate complaints concerning Quinnipiac's compliance with Title IX and the Consent Decree. The parties have jointly proposed that Jeffrey H. Orleans, former Commissioner of the Ivy League, be appointed as the Referee.
- The Court will retain jurisdiction over the lawsuit for the duration of the Consent Decree.

- Most provisions of the Consent Decree will be in effect for three years.
- The terms of the Consent Decree do not apply to the Acrobatics and Tumbling Team.

Payment of Attorney Fees and Expenses

- Quinnipiac will pay class counsel \$1,900,000 for attorneys' fees and costs of litigation, and in addition will contribute \$50,000 to the Emanuel Margolis Fellowship Fund at the Quinnipiac University School of Law. (The Margolis Fellowship supports a Quinnipiac law student to work at the ACLU of Connecticut.)

Payments to Named Plaintiffs

- Quinnipiac will pay each named Plaintiff \$15,000 in satisfaction of her individual claims.

V. YOUR OPPORTUNITY TO OBJECT AND/OR APPEAR AT THE FAIRNESS HEARING

AS A CLASS MEMBER, YOU HAVE THREE OPTIONS:

- (1) if you are satisfied with the settlement, you do not have to do anything, but you will be bound by the terms and conditions of the Consent Decree if the Court approves it;
- (2) if you are satisfied with the settlement and wish to submit comments in favor of it, you may do so; or
- (3) if you object to the settlement or any provisions in it, you may submit written objections or appear at the Fairness Hearing on June 20, 2013.

If you wish to comment on or file objections to the Consent Decree, then you (or an attorney on your behalf) must submit your comments or objections in writing to:

Robin Tabora
Clerk of the Court
United States District Court
141 Church Street
New Haven, CT 06510

with copies to:

Jonathan B. Orleans
Pullman & Comley, LLC
850 Main St., P.O. Box 7006
Bridgeport, CT 06601-7006
Telephone: (203) 330-2000
Facsimile: (203) 576-8888
Email: jborleans@pullcom.com

Edward A. Brill
Proskauer Rose LLP
11 Times Square
New York, NY 10036
Telephone: (212) 969-3000
Facsimile: (212) 969-2900
Email: ebrill@proskauer.com

All comments and objections must be in writing and must be *received* by the Clerk of the Court on or before June 5, 2013.

All objections must state the name and docket number of the Litigation, which are: *Stephanie Biediger, et al v. Quinnipiac University*, Civil Action No. 3:09-cv-00621 (SRU). Objections filed by attorneys should be filed pursuant to the Electronic Case Filing Procedures for the District of Connecticut, which are available online at <http://www.ctd.uscourts.gov/cmecf-notices-instructions-0>.

If you choose to appear at the Fairness Hearing, you may do so either in person or through an attorney. If you wish to appear and be heard at the Fairness Hearing in person or through your own attorney, you or your attorney **must** notify (1) Robin Tabora, Clerk of the Court, United States District Court, 141 Church Street, New Haven, CT 06510 and (2) the lawyers named above, **in writing, by June 5, 2013**. Requests by attorneys should be filed pursuant to the Electronic Case Filing Procedures for the District of Connecticut, which are available online at <http://www.ctd.uscourts.gov/cmecf-notices-instructions-0>.

VI. BINDING EFFECT/RELEASES

The proposed Consent Decree, if finally approved by the Court, will bind all members of the class. As a result, any person who is a member of the Plaintiff Class will be barred from seeking relief for claims relating to Quinnipiac's provision of athletic opportunities for its female students, provision of athletic financial aid for its female students, or provision of varsity athletic benefits for its female students during the term of the Consent Decree.

VII. NO OPT-OUTS

You may not "opt out" of the provisions of the Consent Decree. You may, however, voice objections to the Consent Decree as discussed above.

IX. ADDITIONAL INFORMATION

Unless otherwise ordered by the Court, any class members who do not make known their objections or opposition to the Consent Decree in the manner described above shall be deemed to have waived all objections and opposition to the fairness, reasonableness, and adequacy of the Consent Decree and any other matters pertaining to the claims asserted in the Litigation.

This Notice is a summary and does not describe all of the details of the proposed Consent Decree. The proposed Consent Decree, and all other papers filed in the Litigation, are available for inspection in the office of the Clerk, United States District Court, 915 Lafayette Boulevard, Bridgeport, CT 06604. The documents are also available through the PACER System.

Copies of this notice and of the proposed Consent Decree are available at www.acluct.org. If you have additional questions, you may contact class counsel Jonathan Orleans (203 330 2000; jborleans@pullcom.com), Kristen Galles (703 683 4491 ; kgalles@comcast.net), or Sandra Staub (860 471 8471 ; sstauf@acluct.org).

**PLEASE DO NOT CONTACT THE JUDGE DIRECTLY ABOUT THE SETTLEMENT,
THE PROPOSED CONSENT DECREE, OR THIS NOTICE.**

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

STEPHANIE BIEDIGER, KAYLA LAWLER)	
ERIN OVERDEVEST, KRISTEN)	
CORINALDESI, and LOGAN RIKER,)	Case No. 3:09-CV-621(SRU)
individually and on behalf of all those)	
similarly situated;)	
)	
)	
Plaintiffs,)	
v.)	
)	
QUINNIPIAC UNIVERSITY,)	
)	
Defendant.)	

[PROPOSED] ORDER: (1) PRELIMINARILY APPROVING CONSENT DECREE; (2) AUTHORIZING DISTRIBUTION OF NOTICE OF SETTLEMENT; AND (3) SETTING A SCHEDULE FOR FAIRNESS HEARING AND FINAL APPROVAL

On April 26, 2013, the parties to this class action informed the Court that they have reached a mediated settlement of all claims in the form of a proposed Consent Decree. The parties filed a Joint Motion for Preliminary Approval of Consent Decree, along with the proposed Consent Decree, a proposed notice to class members, the Declaration of Plaintiffs' attorney Jonathan B. Orleans, and a memorandum of law. The motion asks the Court to preliminarily approve the Consent Decree, approve the class notice, direct the defendant to transmit the notice to class members, set a schedule for submission of objections, and schedule a Fairness Hearing.

The Court, having considered the joint submissions of the parties to this action seeking preliminary approval of their proposed Consent Decree, finds and orders as follows:

1. The proposed Consent Decree bears sufficient indicia of fairness, reasonableness, and adequacy to merit preliminary approval, and the motion for preliminary approval is therefore GRANTED;

2. The form of notice to the class proposed by the parties will fairly and adequately advise class members of the proposed terms of the settlement, and is therefore APPROVED by the Court;

3. E-mail distribution of the notice to current female Quinnipiac University students and recruited female athletes is a reasonable means of providing notice to all class members who would be bound by the settlement, and Defendant is therefore ORDERED by the Court to transmit the notice by no later than May 6, 2013;

4. Class members who wish to object to or comment on the settlement, and/or who wish to be heard at the Fairness Hearing, are ORDERED to file their objections, comments, and/or notices of intent to appear so that they are received by the Clerk of the Court and counsel for both parties by June 5, 2013, all as described in the notice to class members;

5. The parties are ORDERED to file any additional submissions in support of final approval of the Consent Decree by no later than June 17, 2013; and

6. A Fairness Hearing is scheduled for June 20, 2013 at 10:00 a.m., before me.

SO ORDERED.

Date

Stefan R. Underhill, U.S.D.J.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

STEPHANIE BIEDIGER, KAYLA LAWLER)	
ERIN OVERDEVEST, KRISTEN)	
CORINALDESI, and LOGAN RIKER,)	Case No. 3:09-CV-621(SRU)
individually and on behalf of all those)	
similarly situated;)	
)	April 26, 2013
Plaintiffs,)	
v.)	
)	
QUINNIPIAC UNIVERSITY,)	
Defendant.)	

**MEMORANDUM IN SUPPORT OF JOINT MOTION FOR ORDER: (1)
PRELIMINARILY APPROVING CONSENT DECREE; (2) AUTHORIZING
DISTRIBUTION OF NOTICE OF SETTLEMENT; AND (3) SETTING A
SCHEDULE FOR FAIRNESS HEARING AND FINAL APPROVAL**

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The parties to this class action – Plaintiffs Stephanie Biediger, Kayla Lawler, Erin Overdevest, Kristen Corinaldesi, and Logan Riker, individually and on behalf of all those similarly situated (“Plaintiffs”), and Defendant Quinnipiac University (“Defendant,” “Quinnipiac,” or the “University”) – have reached a settlement agreement resolving all claims asserted. The settlement has been embodied in a proposed Consent Decree, a copy of which has been filed as Exhibit 1 to the parties’ Joint Motion for Order Preliminarily Approving Consent Decree, Authorizing Distribution of Notice of Settlement, and Setting a Schedule for Fairness Hearing and Final Approval. Accordingly, pursuant to Rule 23(e), Federal Rules of Civil Procedure, the parties jointly seek an order from this Court: (i) preliminarily approving the proposed Consent Decree; (ii) approving the proposed class notice and authorizing its dissemination to the members of the class; and (iii) setting dates and procedures for the fairness hearing, including deadlines for class members to file objections to the proposed settlement.

I. HISTORY OF THE CASE

In March, 2009, Defendant announced its intent to eliminate varsity women’s volleyball, as well as two men’s teams. In April, 2009, Plaintiffs filed a suit against Quinnipiac, alleging that it violated Title IX of the Education Amendments of 1972 (20 U.S.C. §1681 *et seq.*) by failing to allocate an equitable number of varsity athletic participation opportunities to female students.

Plaintiffs filed a motion for a temporary restraining order and a preliminary injunction, asking the Court to enjoin Quinnipiac from eliminating the varsity women’s volleyball team. The Court held a preliminary injunction hearing in May, 2009, after which it entered the requested preliminary injunction. *Biediger v. Quinnipiac University*, 616 F.Supp.2d 277 (D.Conn. 2009).

In December, 2009, Plaintiffs filed an amended complaint alleging that Quinnipiac violated Title IX by:

- a. Failing to allocate an equitable number of varsity athletic participation opportunities to female students;
- b. Failing to allocate an equitable amount of athletic financial aid to female students;
- c. Failing to allocate varsity athletic benefits in an equitable manner; and
- d. Discriminating against the women's varsity volleyball team in retaliation for their complaints about Quinnipiac's Title IX violations.¹

In February, 2010, Plaintiffs filed a motion for class certification with respect to the Title IX athletic participation, athletic financial assistance, and athletic benefits claims (claims 1-3).

In May, 2010, the Court granted the motion and certified a class defined as:

All present, prospective, and future female students at Quinnipiac University who are harmed by and want to end Quinnipiac University's sex discrimination in: (1) the allocation of athletic participation opportunities, (2) the allocation of athletic financial assistance, and (3) the allocation of benefits provided to varsity athletes.

Biediger v. Quinnipiac University, 2010 WL 2017773 (D.Conn. 2010).

In June, 2010, the Court conducted a trial solely on Plaintiffs' first claim (athletic participation) and Plaintiffs' request for a permanent injunction. On July 22, 2010, the Court ruled in favor of Plaintiffs and entered a permanent injunction. *Biediger v. Quinnipiac University*, 728 F.Supp.2d 62 (D.Conn. 2010).

¹ The original complaint and amended complaint also asserted a Title IX claim on behalf of the coach of the women's volleyball team. That claim has been resolved and dismissed upon stipulation. Doc. No. 284.

Defendant appealed the District Court's decision to enter a permanent injunction. The parties argued the appeal in January, 2012, and on August 7, 2012, the United States Court of Appeals for the Second Circuit affirmed the District Court. *Biediger v. Quinnipiac University*, 691 F.3d 85 (2d Cir. 2012).

While its appeal was pending, Defendant filed a motion to lift the injunction. The Court conducted a hearing on the motion in June, 2012. The Court denied the motion in an order and opinion issued on March 4, 2013. *Biediger v. Quinnipiac University*, 2013 WL 789612 (D. Conn. March 4, 2013).

In connection with the proceedings to date, the parties have conducted extensive discovery, including the depositions of over 20 witnesses, the disclosure of thousands of pages of documents, and the preparation of multiple reports by expert witnesses. The Court has conducted three separate evidentiary hearings, each of which lasted several days. The case has been vigorously litigated by both sides. Plaintiffs' counsel have collectively invested well over \$2 million worth of attorney time and \$150,000 in out-of-pocket expenses in the case. Defendant has incurred a similar amount for counsel's services and litigation expenses. Yet despite this significant expenditure of resources, the parties have tried only the "participation" claim in the case; the remaining claims (athletic aid, athletic benefits, and retaliation) must still be tried if the case is not resolved.

II. SETTLEMENT NEGOTIATIONS AND PROPOSED TERMS

The parties made several unsuccessful attempts to settle the case, both in direct negotiations between counsel and with the assistance of judicial and non-judicial mediators. In mid-December, 2012, the parties entered into renewed negotiations with the assistance of Michael Dickstein, Esq., a professional mediator. The negotiations were intense and hard-

fought, and continued over more than three months, both in person and by telephone. Both parties' counsel are experienced and sophisticated, and Attorney Dickstein has specific experience in the resolution of Title IX cases. Ultimately, on March 21, 2013, counsel executed a Memorandum of Understanding, the substantive terms of which appear in the proposed Consent Decree submitted to the Court.

The following are the principal terms of the proposed Consent Decree:

Title IX Policy

- Quinnipiac will promptly develop and disseminate a Title IX nondiscrimination and grievance policy.
- Quinnipiac will ensure that its Title IX coordinator is trained concerning gender equity in athletics and that he/she will participate in ensuring gender equity in the athletics department.

Participation Claims

- Quinnipiac will not eliminate its women's volleyball team during the term of the Consent Decree.
- Quinnipiac will not eliminate any other women's varsity athletic team during the term of the Consent Decree unless it replaces the team with a team in an NCAA championship sport that provides a comparable number of participation opportunities.
- Quinnipiac will enhance the women's track and field teams by: authorizing additional scholarships for athletes who focus on non-distance events; providing the maximum number of paid full-time coaches allowed by NCAA rules; making good faith efforts to expand the number of events in which women's track and field athletes compete; and providing regular access and transportation to an adequate facility for outdoor track and

field practices.

- Quinnipiac will enhance the women's rugby team by: authorizing additional scholarships; engaging a full-time assistant coach; upgrading the quality and condition of the field which will be dedicated to exclusive use of the women's rugby team; scheduling most matches against varsity or upper-level club teams; and making good faith efforts to promote rugby as a varsity sport with the goal of establishing a Division I varsity women's rugby athletic conference.
- Quinnipiac will not add any new men's teams during the term of the Consent Decree unless it also adds additional women's teams with a comparable number of opportunities.

Scholarship Claims

Quinnipiac will authorize additional athletic scholarships for several of its women's teams. At least five additional scholarships will be added in 2013-14, and at least two more scholarships will be added by the 2015-16 academic year. More specifically:

- Quinnipiac will authorize the maximum number of scholarships permitted by NCAA rules for all of its women's "tier one" teams, and will authorize at least 50% of the maximum number of scholarships permitted by NCAA rules for all of its other women's varsity teams.
- Quinnipiac will not decrease the number of scholarships authorized for any women's varsity team.
- Quinnipiac will also authorize additional scholarships for the track and field and rugby teams, and for the women's volleyball team. By the 2015-16 academic year the volleyball team will have 8 scholarships.

- Quinnipiac will not add more athletic scholarships for its men's teams unless it also adds a comparable number of athletic scholarships for its women's teams.

Treatment and Benefits Claims

A. Facilities

- Quinnipiac will make a number of major improvements to athletics facilities, as indicated below. It is expected that the facility improvements and new construction will take about five years to complete.
- Quinnipiac will spend at least \$5 million to improve the permanent athletic facilities used by its women's varsity sports teams, including the renovation and/or construction of locker rooms, exercise and weight training facilities, and other facilities, so that they are comparable to the facilities provided to men's varsity teams in the same tier.
- Quinnipiac will construct an indoor track and field facility for practice and competition.
- Quinnipiac will provide its track athletes with access to an outdoor track & field facility and will provide transportation to and from that facility.
- Quinnipiac will build a superior practice and competition facility dedicated to women's field hockey.
- Quinnipiac will increase the dimensions of the varsity rugby pitch to the maximum dimensions allowed by the International Rugby Board.

B. Tiering

- Quinnipiac will elevate women's field hockey to "tier one" status by the beginning of the 2013-14 academic year, and will elevate a fourth women's sport to tier one status within six months of the Court's approval of the Consent Decree. All tier one teams will have

the maximum number of scholarships, will have the maximum number of paid coaches, and will schedule the maximum number of competitions allowed by NCAA rules. They will also practice and compete at facilities of superior quality.

- Quinnipiac will not add more men's teams to tier one during the term of the Consent Decree unless it also adds a proportionate number of women's teams or female athletes to tier one.

C. Other Benefits

- Quinnipiac will spend approximately \$450,000 to improve benefits for female athletes by the 2013-14 academic year including:
 - providing the maximum number of competitive opportunities permitted by NCAA rules during both traditional and nontraditional seasons;
 - allowing all teams to begin practice at the earliest date permitted by NCAA rules;
 - providing athletic training coverage for all sports during both traditional and non-traditional seasons;
 - increasing academic support;
 - increasing coaching salaries.
- Quinnipiac will spend up to an additional \$175,000 annually for benefits to female athletes in accordance with the recommendations of the Referee designated under the Consent Decree.

General Provisions

- The Court will appoint a "Referee" to oversee the implementation of the decree and to monitor compliance. Quinnipiac will provide information and reports to plaintiffs' counsel and the Referee on a regular basis. The Referee will have authority to receive

and investigate complaints concerning Quinnipiac's compliance with Title IX and the Consent Decree. The parties have jointly proposed that Jeffrey H. Orleans, former Commissioner of the Ivy League, be appointed as the Referee.²

- The Court will retain jurisdiction over the lawsuit for the duration of the Consent Decree.
- Most provisions of the Consent Decree will be in effect for three years.
- The terms of the Consent Decree do not apply to the Acrobatics and Tumbling Team.

Payment of Attorney Fees and Expenses

- Quinnipiac will pay class counsel \$1,900,000 for attorneys' fees and costs of litigation, and in addition will contribute \$50,000 to the Emanuel Margolis Fellowship Fund at the Quinnipiac University School of Law. (The Margolis Fellowship supports a Quinnipiac law student to work at the ACLU of Connecticut.)

Payments to Named Plaintiffs

- Quinnipiac will pay each named Plaintiff \$15,000 in satisfaction of her individual claims under Title IX.

Class counsel believe that the terms and conditions of the proposed Consent Decree are fair, reasonable, and in the best interests of the class. In reaching this conclusion, class counsel have analyzed the benefits of the Consent Decree, the range of possible outcomes of further litigation, the probability of both favorable and unfavorable outcomes, and the expense and length of continued proceedings necessary to prosecute the remaining claims through trial and possible appeals. *See* Declaration of Jonathan B. Orleans, filed herewith as Exhibit 2.

² The parties negotiated intensively concerning both the scope of the Referee's authority and the identity of the Referee. Mr. Orleans – who is a first cousin of Plaintiffs' counsel Jonathan Orleans – was proposed as Referee by Quinnipiac and considered acceptable by both sides after full disclosure and discussion of the familial relationship. A description of Jeffrey Orleans' professional experience relating to Title IX is submitted with this Memorandum as Exhibit 1.

III. ARGUMENT

A. The Proposed Consent Decree Is Fair, Reasonable, and Adequate, and Is Entitled to Preliminary Approval.

Federal Rule of Civil Procedure 23(e) provides that once a class has been certified, a class action may not be settled or compromised without approval by the court. Courts recognize a “strong judicial policy in favor of settlements, particularly in the class action context.” *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (citations omitted; internal quotation marks omitted). The approval process typically involves two steps. In the first step, preliminary approval, the court undertakes a preliminary evaluation of the fairness of the settlement. *In re Nasdaq Mkt.-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997). However, “[i]n the context of a motion for preliminary approval of a class action settlement, the standards are not so stringent as those applied when the parties seek final approval.” *Karvaly v. eBay, Inc.*, 245 F.R.D. 71, 86 (E.D.N.Y. 2007). A full fairness analysis is not necessary at this stage. *Passafiume v. NRA Group, LLC*, 274 F.R.D. 424, 430 (E.D.N.Y. 2010). Rather, preliminary approval requires “at most a determination that there is what might be termed ‘probable cause’ to submit the proposal to class members and hold a full-scale hearing as to its fairness.” *In re Traffic Executive Ass'n-E. Railroads*, 627 F.2d 631, 634 (2d Cir. 1980). As such, preliminary approval is appropriate where the proposed settlement

is the result of serious, informed, and non-collusive negotiations, where there are no grounds to doubt its fairness and no other obvious deficiencies (such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys), and where the settlement appears to fall within the range of possible approval.

Reade-Alvarez v. Eltman, Eltman & Cooper, P.C., 237 F.R.D. 26, 33 (E.D.N.Y. 2006).

Once the court grants preliminary approval, the second step of the process ensues: notice of a hearing is given to the class members. At the hearing, class members and the settling parties may be heard with respect to final court approval. *Nasdaq*, 176 F.R.D. at 102.

Where, as here, the settlement is reached through arm's-length negotiations, sufficient investigation and discovery have taken place to allow counsel and the court to act intelligently, and counsel is experienced in similar litigation, there is a presumption of fairness. *Wal-Mart Stores, Inc.*, 396 F.3d at 116. Thus, because the terms of the proposed Consent Decree here fall well within the range of possible approval – giving deference to the result of the parties arm's-length negotiations and the judgment of experienced counsel following sufficient investigation and discovery – it should be preliminarily approved and a final fairness hearing scheduled.

1. The Proposed Consent Decree Is Presumptively Fair Because It Resulted from the Arm's-Length Negotiations of Experienced and Informed Counsel.

The proposed Consent Decree in this case is entitled to a presumption of fairness because it resulted from arm's-length negotiations between experienced, capable counsel at an advanced stage of the case.

“A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.” *Wal-Mart Stores, Inc.*, 396 F.3d at 116 (citations omitted; internal quotation marks omitted); *see also In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 122 (S.D.N.Y. 2009), *aff'd sub nom. Priceline.com, Inc. v. Silberman*, 405 F. App'x 532 (2d Cir. 2010) (“Where a settlement is the ‘product of arm's length negotiations conducted by experienced counsel knowledgeable in complex class litigation,’ the negotiation enjoys a ‘presumption of fairness.’”) (citations omitted). In this vein, the opinions of experienced and

informed counsel supporting settlement are entitled to considerable weight. *See Currency Conversion Fee*, 263 F.R.D. at 122 (noting that experienced class counsel, like experienced mediators, can lend fairness to a settlement).

In this case, experienced and capable counsel explored settlement possibilities periodically over four years of litigation. Attorney Galles has represented class plaintiffs in numerous Title IX cases. Other counsel on both sides have many years of experience representing plaintiffs and defendants in complex litigation, including both class and individual cases in which plaintiffs have alleged that they were victims of discrimination in violation of federal statutes.

A very large amount of information was exchanged in the discovery process. The mediation with Attorney Dickstein began after the Court of Appeals affirmed this Court's decision granting a permanent injunction, as the parties prepared for potential trial on the remaining claims in the case. Although discovery had not been entirely completed on those claims, enough information had been disclosed to allow for the preparation and exchange of preliminary expert reports. The negotiations were certainly at arm's-length; indeed, at times they were quite contentious. The settlement clearly satisfies this aspect of the standard for preliminary approval.

2. The Proposed Settlement Is Fair Because It Contains No Obvious Deficiencies, and Other Grounds to Doubt Its Fairness Are Not Present.

At this stage, which the Second Circuit has likened to the establishment of "probable cause" that a settlement is fair, only glaring defects in the settlement warrant denial of preliminary approval. *See Reade-Alvarez*, 237 F.R.D. at 33 (noting that "unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for

attorneys” might warrant denial or preliminary approval). Such defects or other indicia of unfairness simply are not present here.

First, the proposed Consent Decree provides myriad benefits to class members and secures promises of significant investment by Quinnipiac in its women’s athletics program. On the participation claim, Quinnipiac has agreed to retain the varsity women’s volleyball program and either has expanded or will expand women’s athletic participation opportunities by adding varsity golf and rugby,³ and by enhancing the women’s track and field program. On the scholarships and benefits claims, female athletes will benefit from new or improved facilities, additional athletic scholarships (including in volleyball), more coaching, additional academic support, higher levels of competition, more practice time, more competitive events, and additional expenditures on such things as uniforms, equipment, and travel. The Referee to be appointed pursuant to the Consent Decree will supervise the expenditure of funds in order to ensure equality in the treatment of women and men in the University’s athletics program. There are no “glaring defects” present in this settlement.

Second, the class representatives do not receive unduly preferential treatment. The \$15,000 payments to each of them under the proposed Consent Decree are well within the range of reasonableness for the release of their individual claims for retaliatory treatment by the Defendant, claims which were not asserted on behalf of the class.

³ In view of this Court’s decision concerning rugby’s current status as a genuine varsity participation opportunity, Plaintiffs and Defendant have agreed that Quinnipiac will raise the level of competition for its rugby team, add scholarships, improve the varsity rugby pitch, provide two full-time coaches, and make good faith efforts to promote rugby as a varsity sport for women. Both parties reserve their rights as to rugby’s status after the termination of the Consent Decree.

Third, the compensation proposed for class counsel is not excessive. The total amount -- \$1,900,000 including out-of-pocket disbursements -- is significantly less than counsel would have sought in fees based on their time expended and their normal hourly rates, had the litigation not been compromised. (The agreement also calls for a contribution of \$50,000 by Quinnipiac to the Emanuel Margolis Fellowship Fund at Quinnipiac University School of Law, the income from which will support a Quinnipiac law student working at the American Civil Liberties Union of Connecticut.)

In short, there are no indicia of unfairness in the proposed Consent Decree, and the benefits it provides the class place it well within the range of possibly appropriate results.

B. In Light of the Fairness of the Proposed Consent Decree, This Court Should Approve the Notice of Settlement and Order Distribution of the Class Notice.

This Court should approve the parties' proposed notice to members of the class, because it reasonably and fairly apprises class members of the proposed Consent Decree and their rights in connection with it. Quinnipiac has also agreed to provide notice to the coaches of the women's teams for informational purposes. Thus all persons with direct stakes in the outcome will be aware of the terms of the Consent Decree.

Although Fed.R.Civ.P. 23 does not require notice to a Rule 23(b)(2) class at the certification stage, Rule 23(e) requires the court to "direct notice in a reasonable manner to all class members who would be bound" by a proposed settlement, voluntary dismissal, or compromise. "The standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules is measured by reasonableness." *Wal-Mart Stores, Inc.*, 396 F.3d at 113 (citing *Soberal-Perez v. Heckler*, 717 F.2d 36, 43 (2d Cir. 1983); Fed. R. Civ. P. 23(e)). The court's sound discretion, not rigid rules, guides the analysis. *See Weinberger*

v. Kendrick, 698 F.2d 61, 70 (2d Cir. 1982). A settlement notice to the class satisfies constitutional and Rule 23(e) requirements if it “fairly apprise(s) the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings,” and if it is neutral. *Id.* (citations omitted; alterations omitted; internal quotation marks omitted). “Notice is adequate if it may be understood by the average class member.” *Wal-Mart Stores, Inc.*, 396 F.3d at 114 (citations omitted; internal quotation marks omitted).

The proposed class notice here (attached to the proposed Consent Decree as Schedule B) is calculated to be read and understood by members of the certified class; *i.e.*, high school and college students. All counsel believe that it fairly apprises members of the class of the terms of the proposed Consent Decree and of their options in connection with it. Counsel further believe that email notice to current female Quinnipiac students and incoming female Quinnipiac recruited athletes is the best way to reach the largest possible proportion of the certified class. Of course, the parties are prepared to be guided by the Court in connection with any other form or means of notice to class members of the proposed settlement.

C. Proposed Schedule for Final Approval of the Consent Decree

The parties believe that if the Court promptly grants this motion for preliminary approval of the proposed Consent Decree, it will be possible to meet the following schedule for a Fairness Hearing:

- Quinnipiac to email notice to class members no later than May 6, 2013;
- Class members to file objections, comments, and/or requests to be heard at the Fairness Hearing so that they are received by the Court no later than June 5, 2013;
- Parties to file memoranda of law in support of final approval, and any supplemental

materials, by June 17, 2013; and

- Fairness Hearing to be held June 20, 2013, at 10:00 a.m.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs and Defendant respectfully request that the Court grant this joint motion for preliminary approval of the proposed Consent Decree, approve the content and authorize the dissemination of the proposed Class Notice, and adopt the proposed schedule of events and deadlines leading to a Fairness Hearing on June 20, 2013.

Respectfully Submitted,

By: /s/
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Attorneys for Defendant

CERTIFICATION

I hereby certify that on the date hereon, a copy of the foregoing *MEMORANDUM IN SUPPORT OF JOINT MOTION FOR ORDER: (1) PRELIMINARILY APPROVING CONSENT DECREE; (2) AUTHORIZING DISTRIBUTION OF NOTICE OF SETTLEMENT; AND (3) SETTING A SCHEDULE FOR FAIRNESS HEARING AND FINAL APPROVAL* was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

Dated: April 26, 2013

/s/ Jonathan B. Orleans
Jonathan B. Orleans (ct05440)

EXHIBIT 1

Jeffrey Orleans – Title IX, Education Amendments of 1972 -- April 1, 2013

U. S. Department of Health, Education and Welfare -- 1971-1974

Staff Attorney, Office of the General Counsel, Civil Rights Division -- One of two OGC/CR members of the working group that produced the initial HEW Title IX regulation as published for comment in the **Federal Register**, primary author of the internal memoranda regarding athletics for the General Counsel and Secretary

Co-authored the first law review article about Title IX and presented it at the 1973 Annual Meeting of the Association of American Law Schools -- Buek and Orleans, "Sex Discrimination—A Bar to a Democratic Education: Overview of Title IX of the Education Amendments of 1972", 6 **Conn. Law Review** 1 (1973)

University of North Carolina General Administration – 1975-1984

Office of the President, Special Assistant – Directed implementation of Title IX in all respects, including athletics, in 16-campus public university system

Council of Ivy Group Presidents (The Ivy League) – 1984-2009

Executive Director/Commissioner – Directed growth of Ivy League women's athletics into one of the two broadest conference athletic programs in NCAA Division I (championships in 16 sports); provided for full representation of women's sports and women administrators in league athletic governance; supported Ivy League coaches and administrators in establishing NCAA women's championships

Initiated, secured support for and directed "Silver Anniversary" Celebration of 25 years of Ivy league Women's championships (1998-99), the first such commemoration by any college athletics conference -- year-long series of league and institutional events including traveling symposia and traveling historical exhibition; published commemorative book, **Silver Era, Golden Moments: A Celebration of Ivy League Women's Athletics**, P. Walsh, Madison Books (1999); Silver Anniversary Celebration received **Athletic Management Magazine's** annual award for contributions to women's athletics

National Collegiate Athletic Association – 1984 to present

Member of NCAA Gender Equity Task Force, 1991-93

Advocate for women's athletics as member of NCAA Membership and Leadership Councils

Invited speaker on Title IX issues to NCAA Annual Gender Equity/Diversity Conferences, 2010 and 2012

Consulting -- 2009 to present

Individually and on behalf of Alden & Associates, Inc., in the past four years have provided Title IX advice and/or campus reviews for three institutions and two conferences in NCAA Division I and five institutions and two conferences in NCAA Division III, as well as Title IX advice as part of overall strategic planning advice to two NCAA Division I conferences, two NCAA Division II conferences and two two-year institutions.

Other Activities

Selected for the Board of Directors of the College Women's Sports [Honda] Awards, 2012 (the most prominent awards program for college women's athletics)

Coauthor (with E.D. Johnson), "Nondiscrimination Doesn't have to Not Work: Restricted Scholarships, H.E.W., and the I.R.S.", 7 **Jnl. of Law and Education** 493 (1978)

Author, "Title IX and Athletics: Time Out?", 63 **Educational Record** 40 (1982)

Presenter on Title IX at various forums within The University of North Carolina and at annual conferences of the National Association of College and University Attorneys, ~ 1975-1990

Author, "An End to the Odyssey: Equal Athletic Opportunities for Women", 3 **Duke Journal of Gender Law & Policy** 131 (1996); presented at Duke in 1995

Author of four-part series of articles commemorating Title IX's 40th anniversary for clients of In2Vate, Inc., 2011-12

In-person and webinar presenter regarding Title IX compliance for clients of Academic Impressions, Inc., 2010-12

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

STEPHANIE BIEDIGER, KAYLA LAWLER)	
ERIN OVERDEVEST, KRISTEN)	
CORINALDESI, and LOGAN RIKER,)	Case No. 3:09-CV-621(SRU)
individually and on behalf of all those)	
similarly situated;)	
)	
Plaintiffs,)	April 26, 2013
v.)	
)	
QUINNIPIAC UNIVERSITY,)	
Defendant.)	

**DECLARATION OF JONATHAN B. ORLEANS IN SUPPORT OF
MOTION FOR PRELIMINARY APPROVAL OF CONSENT DECREE**

I, Jonathan B. Orleans, declare as follows:

1. I am an attorney and a member of the Bar of this Court. I represent the plaintiff class in this action.
2. I make this declaration in order to put before the Court certain facts relevant to the parties' joint motion for preliminary approval of their proposed Consent Decree.
3. This case was filed in April, 2009. It has been litigated vigorously on both sides.
4. In connection with the proceedings to date, the parties have conducted extensive discovery, including the depositions of more than 25 witnesses, the disclosure of more than 25,000 pages of documents, and the preparation of multiple reports by expert witnesses.
5. The Court conducted an evidentiary hearing in May, 2009 on plaintiffs' motion for a preliminary injunction, which was granted.
6. In June 2010, the Court held a trial on the first claim alleged in plaintiffs' amended complaint. The court found in favor of the plaintiffs.

7. Quinnipiac appealed the trial court's decision on the first claim. The appeal was argued in January, 2012, and the Court of Appeals affirmed in August, 2012.

8. In June, 2012, the Court held a hearing on defendant's motion to lift the injunction that had been entered by the Court. The Court denied the motion in March, 2013.

9. Cumulatively, in-court proceedings in this case have consumed more than 10 trial days.

10. Despite the considerable effort devoted to the case, to date, only one of the three claims asserted by the class plaintiffs under Title IX has been tried. Trial of the remaining claims (relating to athletic financial aid and to varsity athletic benefits) would require significant additional work on both sides of the case.

11. Over the course of the litigation through late 2012, counsel frequently discussed settlement possibilities and engaged in both direct and assisted negotiations. In 2009 and 2010, the parties sought the assistance of a currently sitting Magistrate Judge, but the negotiations were not fruitful. Later in 2010, and again in 2011, the parties retained a retired Magistrate Judge as a private mediator, but those negotiations also failed.

12. Late in 2012, counsel agreed to make another attempt at settlement with the assistance of Michael Dickstein, Esq., a professional mediator based in San Francisco, California, who has specific experience in mediating Title IX cases. Counsel (and representatives of the defendant) spent a full day in mediation with Mr. Dickstein in December, 2012, at which substantial progress was made. Counsel continued to negotiate, with Mr. Dickstein's assistance, over the next few months, resulting in the execution of a memorandum of understanding on March 21, 2013, and subsequently the submission of a proposed Consent Decree to this Court.

13. Plaintiffs' counsel are experienced trial attorneys with expertise in matters relating to civil rights, discrimination, and trials in federal court. Attorney Galles has represented plaintiffs in multiple Title IX class actions. Attorney Hernandez is a former Assistant U.S. Attorney. Attorney Staub is Legal Director of the American Civil Liberties Union Foundation of Connecticut. I have practiced in the District of Connecticut for over twenty-five years, have represented both plaintiffs and defendants in a variety of class action and discrimination cases, and currently serve as Legal Advisor to the ACLU of Connecticut. Defendant has also been represented by able, experienced and sophisticated counsel from the firms of Wiggin & Dana and Proskauer Rose.

14. In reaching our decision to recommend this settlement to our clients and the Court, class counsel considered the strengths and weaknesses of plaintiffs' claims, the range of possible outcomes of further litigation, the relief that the Court might order if plaintiffs prevail (as compared to the relief provided by the settlement), the expense and likely length of continued proceedings necessary to prosecute the remaining claims in the case, and the benefits to class members of the proposed Consent Decree. In my opinion and the opinion of my colleagues, the terms and conditions of the proposed Consent Decree are fair, reasonable, and in the best interests of the Class.

15. The parties have requested that the Court approve our agreement for a payment by defendant of \$1.9 million for plaintiffs' attorney fees and costs of litigation in this matter. (An additional \$50,000 is to be contributed by the University to the Emanuel Margolis Fellowship Fund at Quinnipiac University Law School. Income from this Fund will support the work of a Quinnipiac University law student at the ACLU of Connecticut office.) We believe this request

is reasonable in view of the quantity and quality of work devoted to the case by Plaintiffs' counsel.

16. Plaintiffs' counsel have collectively incurred about \$150,000 in out-of-pocket costs (including expert fees) in connection with the prosecution of this case. Attorneys Orleans, Hernandez, Galles and Staub, each of whom has over twenty years of experience, devoted collectively more than 5,000 hours to the case over the course of nearly four years. Associates and paralegals devoted more than 500 additional hours. Had the matter not settled, and plaintiffs' counsel submitted a motion for a fee award, we would have sought a total sum, based upon the usual hourly rates charged by the various attorneys and/or reasonable rates in the market, of at least \$2.5 million, plus costs. Thus, we believe that the agreed figure of \$1.9 million inclusive of costs represents a reasonable compromise by both sides.

17. Should the Court wish to review documentation concerning the hours expended by plaintiffs' counsel on this case and appropriate hourly rates, we can provide such documentation.

18. Finally, it seems appropriate that I address in this Declaration the parties' selection of Jeffrey Orleans, my first cousin, as the "Referee" to be charged with monitoring the implementation of the Consent Decree. The parties negotiated intensively concerning both the scope of the proposed Referee's authority and the identity of the Referee. It clearly was essential that the Referee be a person with significant expertise in college athletics who would be trusted by both sides to be reasonable and fair.

19. All counsel and party representatives were aware from early in the case of my relationship with Jeffrey Orleans, who is former Executive Director of the Council of Ivy League Presidents (*i.e.*, Commissioner of Ivy League Athletics). He also has a number of connections to

persons involved in this litigation other than his familial connection to me. Defendant's Athletic Director, Jack MacDonald, has had contact with Jeffrey Orleans through the NCAA. Similarly, Donna Lopiano, Plaintiffs' principal expert witness, has worked with Jeffrey Orleans in the past. He has also been a consultant for the North East Conference, of which Quinnipiac is currently a member.

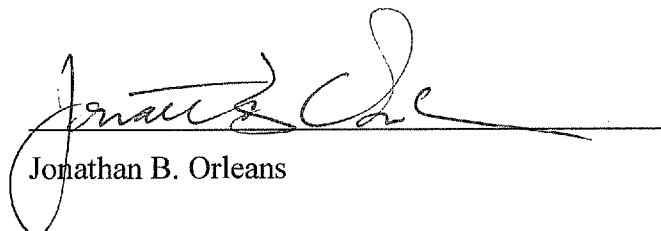
20. Jeffrey Orleans also has very significant Title IX experience (described in Exhibit 1 to the parties' Joint Memorandum of Law in Support of Motion for Preliminary Approval of the Consent Decree).

21. During negotiations, each side proposed several candidates for the Referee position who were met with objections from the other side. Ultimately, Defendant proposed Jeffrey Orleans. Jeffrey Orleans and I have each promised all counsel that we will not discuss this case privately while he serves as the Referee, and all counsel are satisfied both that he is well-qualified for the position and that he will be fair and unbiased in that role.

22. Thus, after full disclosure and open discussion of his relationship with me, the parties have agreed upon the designation of Jeffrey H. Orleans as Referee under the Consent Decree.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Dated at Bridgeport, Connecticut this 26th day of April, 2013.


Jonathan B. Orleans

CERTIFICATION

I hereby certify that on the date hereon, a copy of the foregoing ***DECLARATION OF JONATHAN B. ORLEANS IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CONSENT DECREE*** was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

Dated: April 26, 2013

/s/ Jonathan B. Orleans
Jonathan B. Orleans (ct05440)