

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; and)	
ROBIN LAMOTT SPARKS, individually,)	
)	
)	
Plaintiffs,)	
v.)	
)	
QUINNIPIAC UNIVERSITY,)	
)	
Defendant.)	June 10, 2010

JOINT PRE-TRIAL ORDER

The parties shall jointly submit, in one continuous document signed by counsel for all parties, a final pretrial memorandum (in compliance with Rule 16 of the Local Rules of Civil Procedure and in lieu of the pretrial memorandum required by the Standing Order Regarding Trial Memoranda in Civil Cases). **In addition to filing an original of the pretrial memorandum with the Clerk of the Court, counsel shall also provide to Chambers a courtesy copy of the pretrial memorandum and all attachments thereto, both in hard copy and on a 3 ½" computer diskette in WordPerfect or pdf format.** The pretrial memorandum shall contain the following information:

1. **TRIAL COUNSEL:**

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2. **JURISDICTION:** Federal question jurisdiction is not contested.
3. **JURY/NON-JURY:** Non-Jury.
4. **LENGTH OF TRIAL:** 5 days (First Claim for Relief only)
5. **FURTHER PROCEEDINGS:** Unknown
6. **NATURE OF CASE:**

The Plaintiffs allege that Quinnipiac University discriminates on the basis of sex in the operation of its varsity athletics program, in violation of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1682 *et seq.*) and the regulations adopted pursuant thereto (34 C.F.R. Part 106). The Court has certified a 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.

By agreement of the parties approved by the Court, only Plaintiffs' First Claim for Relief, challenging the University's allocation of athletic participation opportunities and seeking, on behalf of the Plaintiff Class, an injunction, will be tried at this time.

7. **STATEMENT OF THE CASE:**

Plaintiffs' Contentions

The Student Plaintiffs are, or at all relevant times were, members of Quinnipiac University's ("QU") women's volleyball team. Robin Lamott Sparks coaches the team. In early March, 2009, QU announced that it would eliminate the volleyball program (which was limited to women), along with men's golf and men's outdoor track, at the end of the 2008-09 academic year. Because the University was not then in compliance with its Title IX obligations, and indeed had never complied with those obligations, the Student Plaintiffs and their coach brought this action, seeking, *inter alia*, reinstatement of the volleyball program. On May 22, 2009, the Court granted Plaintiffs' motion for a preliminary injunction and required QU to maintain the program without reduction pending further order of the Court.

The Court found that QU had failed to offer athletic participation opportunities to male and female student athletes in substantially the same proportions as the gender composition of the undergraduate student body. The Court criticized the University's implementation of "roster management," pursuant to which floors were set under women's team rosters and ceilings were set for men's team rosters in order to create the appearance of gender equity, while genuine participation opportunities remained inequitably allocated.

Plaintiffs expect the evidence at trial to show that the University continues to manage its rosters to create the appearance of gender equity, but also continues to allocate to men's teams more than their proportionate share of genuine participation opportunities. The Defendant maintains the appearance, but not the reality, of Title IX compliance by, among other things: (a) maintaining on women's team rosters student-athletes who are not actually able to compete at the Division 1 level, thus overstating the numbers of genuine participation opportunities provided to women; (b) maintaining women's teams in certain sports that are so large that not all student-athletes get genuine participation opportunities; (c) counting "competitive cheer" as a varsity sport, despite the facts that it is not recognized as a sport by the NCAA or the federal Department of Education and lacks necessary characteristics of a genuine college sport, including but not limited to a sufficient number of participating schools to provide adequate competition, established rules, and a recognized and organized national governing body ; (d) triple-counting female student-athletes who participate in cross-country, indoor track,

and outdoor track, even though such women do not each receive three genuine athletic participation opportunities; and (e) double-counting female student-athletes who do not run cross country but who participate in indoor track and outdoor track, even though such women do not each receive two genuine athletic participation opportunities.

There are several reasons that the multiple counting of cross country and track athletes at Quinnipiac is inappropriate for Title IX purposes. The University operates its women's track program essentially as an adjunct to the cross country team; i.e., as a way to keep its cross country runners training and competing in distance events year-round. It does not offer athletic scholarships to runners who do not run cross country, does not compete in field events (save for the occasional runner with high school experience in, for example, the triple jump), and rarely competes in sprints or hurdles. It is almost mathematically impossible for Quinnipiac's track teams ever to win a meet, because they do not enter enough events and are not sufficiently competitive in any events other than distance running. It is thus factually inaccurate to say that a runner who runs cross country, indoor track, and outdoor track uses three genuine participation opportunities, or that one who runs indoor and outdoor track uses two.

Moreover, Quinnipiac does not sponsor men's indoor or outdoor track teams, but its male cross country runner, like its female cross country runners, train year-round. Under NCAA rules, the men could also enter a limited number of indoor and/or outdoor competitions as Quinnipiac-sponsored runners, although the University did not allow them to do so in the year just ended. Allowing the University to count its women who run twice or three times, while it counts its men who run only once, distorts the true picture of the allocation of athletic participation opportunities at Quinnipiac.

Defendant did not comply with Title IX in the 2009-10 academic year, and has no realistic plan for future compliance, absent volleyball. The preliminary injunction should therefore be made permanent.

Defendant's Contentions:

1. Defendant complies with Title IX by providing women and men athletic opportunities proportional to the number of women and men in Quinnipiac's undergraduate population, satisfying Prong One of the three prongs set out in OCR's Policy Interpretation as a way of providing effective accommodation of students' interests and abilities in athletics.

Roster Management

2. In the 2009-2010 academic year, on the first date of competition for its various sports, Quinnipiac had 166 male athletes and 274 female athletes, making 37.73% of the University’s athletes male and 62.27% female. This was substantially proportionate to the University’s undergraduate population for both 2009-2010 and 2008-2009, as shown below.

	Male	Female	Total
2009-2010 Varsity Athletes (Number)	166	274	440
2009-2010 Varsity Athletes (Percent)	37.73%	62.27%	100%
2009-2010 Undergraduate Population	38.13%	61.87%	100%
2008-2009 Undergraduate Population	38.40%	61.60%	100%

3. On July 1, 2009, Dr. Mark Thompson, Senior Vice President for Academic and Student Affairs at Quinnipiac, assumed responsibility for the Athletics Department. In this capacity, he took charge of the roster management program.
4. During the summer of 2009, Dr. Thompson determined proposed roster numbers based on the past sizes of rosters at Quinnipiac and NCAA averages. Dr. Thompson then met with each coach to discuss the proposed roster numbers to ensure that they could provide genuine athletic opportunities to all of the students on their rosters and invited the coaches to suggest any changes to the proposed numbers they felt appropriate for their teams. After considering the coaches’ comments and suggestions, Dr. Thompson made additional changes in the proposed rosters and notified coaches of the final roster numbers in late July.
5. Once the rosters had been set, any coach who wanted to add or delete an athlete from a team had to get approval from Dr. Thompson by presenting a legitimate reason why the change was necessary. This procedure worked well, and the adds and deletes in 2009-2010 were all for legitimate reasons. For example, certain students were added to teams when the need arose for a player in a specific position because other members of the team were injured. On the other hand, some students quit their teams because of injuries, to focus on their academics, or because they transferred out of Quinnipiac.

6. Dr. Thompson's close supervision over the additions and deletions from teams in 2009-2010 is evidenced by the consistency between the number of students on teams on the first date of competition and the number of students on teams on the last date of competition. On the last date of teams' competitions, there were 162 male athletes at Quinnipiac, equaling 37.67% of the athletes, and 268 female athletes, equaling 62.33% of the athletes (a .05% increase in the proportion of women from the squad sizes on the first date of competition).
7. All of the students on Quinnipiac's athletic teams in 2009-2010 received genuine participation opportunities. The students practiced and trained with their teams, and the vast majority of students competed on behalf of Quinnipiac. Of the few students who did not compete, most did not compete because they were injured.
8. Quinnipiac will remain in compliance with Title IX by satisfying Prong One in 2010-2011. Dr. Thompson engaged in an interactive process with the coaches to set the roster numbers for 2010-2011. Based largely on the needs and requests of the coaches, Dr. Thompson adjusted certain roster sizes for 2010-2011. The projected rosters for 2010-2011 include 168 males and 296 females, giving men 36.21% of the spots on teams and women 63.79% of the spots. If the volleyball team is cut, women would have 282 spots, and would still have 62.67% of the athletic spots at Quinnipiac, which is .4% more than the percentage of female undergraduate students at Quinnipiac this past year.

	Male	Female	Total
2010-2011 Varsity Athletes – With Volleyball			
Number	168	296	464
Percent	36.21%	63.79%	100%
2010-2011 Varsity Athletes – Without Volleyball			
Number	168	282	450
Percent	37.33%%	62.67%	100%
2009-2010 Undergraduate Population	38.13%	61.87%	100%

9. Dr. Thompson will continue monitoring any additions and deletions to teams in 2010-2011, to ensure that any changes to rosters are for legitimate reasons and that roster sizes are determined based on the needs of coaches and NCAA average squad sizes.

10. Quinnipiac expects that Plaintiffs will contend that despite the proportional number of student athletes, the University was not in compliance in 2009-2010 because (a) Quinnipiac's varsity Competitive Cheer team should not count as a sport, and (b) cross country, indoor track and field and outdoor track and field should not count as separate sports. Neither of these contentions has any merit.

Cross Country / Indoor Track and Field / Outdoor Track and Field

11. In 2009-2010, Quinnipiac's women's cross country team had 18 athletes, and its indoor track and field team and outdoor track and field team each had 30 athletes. Quinnipiac properly counts for Title IX purposes athletes who compete on two or three of these separate teams as counting separately in each sport. The NCAA considers these three sports as separate sports and each sport has its own NCAA championship.
12. As the Court stated in its preliminary injunction decision, "Cross country, indoor track, and outdoor track have separate NCAA championships and are, at their heart, different sports."
13. The way Quinnipiac runs its cross country, indoor track and field and outdoor track and field teams is similar to the way many other schools run their teams. Quinnipiac's cross country, indoor track and field and outdoor track and field teams comply with NCAA rules governing the minimum number of athletes on a team and the minimum number of required contests. There is no requirement that a team enter both track and field events or any given number of events or combination of events. The athletes on each of Quinnipiac's cross country, indoor track and field and outdoor track and field teams obtain genuine athletic opportunities. Plaintiffs' arguments that Quinnipiac's teams are not legitimate teams or that athletes on the teams are not varsity level athletes are completely without merit.
14. The way Quinnipiac counts its cross country, indoor track and field and outdoor track and field athletes comports with OCR guidance in its January 16, 1996 Clarification of Intercollegiate Athletics Policy Guidance: The Three Part Test, which states: "In determining the number of participation opportunities for the purposes of the interests and abilities analysis, an athlete who participates in more than one sport will be counted as a participant in each sport in which he or she participates."

Competitive Cheer

15. Competitive Cheer is a varsity sport that offers women at Quinnipiac genuine athletic opportunities. As anyone who observes a Competitive Cheer competition can see, the sport requires a high level of athletic ability.
16. Five schools that currently sponsor varsity Competitive Cheer, including Quinnipiac, and one that has announced that it will sponsor a team in 2010-11, joined together in or about September 2009 to form the National Competitive Stunts and Tumbling Association (NCSTA) – a governing body – to further the development of the sport.

17. The NCSTA designed a new competition format that includes numerous compulsory and optional rounds in which individual or small groups of athletes compete, as well as the traditional group performance. These rounds include 4 partner stunt rounds, 2 pyramid rounds, 2 basket toss rounds, and 7 tumbling rounds. The NCSTA further developed judging criteria and appropriate score-sheets for this new format. Athletes are judged based on the skill with which they complete various athletic feats, testing for strength, endurance, precision, flexibility, and level of difficulty. The meet format is designed so that competitions can be conducted in a head to head meet or a larger invitational.
18. The Quinnipiac Competitive Cheer team competed in ten meets this past season, including two meets under the newly designed NCSTA format. Given the emerging nature of the sport and that this is the NCSTA's first year, Quinnipiac also competed against other college teams in traditional cheer competitions sponsored by various other organizations. In these competitions, the athletes were judged based on a two-and-a-half minute routine. The team was scored based on the difficulty level and execution of a series of skills, including partner stunts, pyramids, basket tosses, and tumbling, as well as overall choreography and synchronization.
19. It is Quinnipiac's intent to increase the number of meets governed by the NCSTA and decrease those governed by other bodies such that, in the near future, all competition will be governed by the NCSTA. The University has already committed to five NCSTA meets for the 2010-11 season against other NCSTA varsity teams. The remainder of the schedule has not yet been set.
20. The NCSTA will also sponsor a national championship in April 2011, which will be structured similarly to a basketball tournament with brackets. The NCSTA intends to apply for NCAA emerging sport status in the next year, and has engaged in preliminary discussions with the NCAA Committee on Women's Athletics towards that goal.
21. OCR considers a number of factors in determining whether an activity is a sport, which are set out in OCR's September 17, 2008 "Dear Colleague" letter. Quinnipiac's Competitive Cheer team satisfies virtually all of these factors, which are broken down into two categories: (1) program structure and administration, and (2) team preparation and competition.
22. In terms of program structure and administration, the Competitive Cheer team is run by the Quinnipiac Athletics Department, just like every other varsity sport at the University. The University requires the Competitive Cheer team to comply with all NCAA rules regarding practice time, academic eligibility, study time ("power hours"), and community service ("positive play"), just like all of the University's other varsity athletes. The team regularly works with trainers, receiving strength and conditioning training, just as all other varsity teams at Quinnipiac do. The team has a full time head coach and part time assistant coaches. The team's coaches also comply with NCAA rules regarding recruiting athletes to the team. The Competitive Cheer team has a number of

scholarships it distributes to aid in its recruiting efforts (just like Quinnipiac's other varsity teams).

23. In terms of team preparation and competition, Quinnipiac's Competitive Cheer team has practice opportunities that are consistent with the school's other varsity sports in terms of number, length and quality. The NCSTA set a defined season in which Competitive Cheer teams compete, which Quinnipiac follows. The team has a competitive schedule that reflects the abilities of the team. Finally, the sole purpose of the Competitive Cheer team is to engage in athletic competition against other collegiate teams. The team does not engage in any sideline cheerleading activities.

Defendant's Statement of Legal Issues

1. Does Quinnipiac currently comply with Title IX by satisfying Prong One of the three prong test set out by OCR in its Policy Interpretation, which requires it to provide athletic participation opportunities for male and female students that are substantially proportionate to their respective enrollments?

- A. Do Quinnipiac's roster numbers reflect genuine athletic participation opportunities for student athletes?

- B. Does Quinnipiac properly count athletes on its cross country, indoor track and field and outdoor track and field teams for purposes of Title IX?

- C. Does Quinnipiac properly count women's varsity Competitive Cheer for purposes of Title IX?

2. If the Court finds Quinnipiac is not currently in compliance with Title IX, what is the appropriate remedy?

- A. Should Quinnipiac be given an opportunity to develop a compliance plan?

- B. What notice, if any, should be given to absent class members who may be affected by a remedial order?

8. **TRIAL BY MAGISTRATE JUDGE:** N/A

9. **LIST OF WITNESSES:** Each party shall provide the name, address, and a brief summary of the anticipated testimony of all witnesses by separately listing: (a) the witnesses the party expects to call at trial; and (b) the witnesses the party may call at trial if the need arises. Witnesses not listed shall not be permitted to testify at trial, except for good cause shown.

Plaintiffs expect to call the following witnesses at trial:

1. **Stephanie Biediger** was a redshirt sophomore member of the volleyball team at Quinnipiac University during the academic year 2009-10, and has three years of athletic eligibility remaining. She will testify about her experience as a member of the QU team, and the impact which the Defendant's elimination of volleyball would have on her personal, academic, social, and athletic life.

2. **Kayla Lawler** was a sophomore member of the volleyball team at Quinnipiac University during the academic year 2009-10, and has two years of athletic eligibility remaining. She will testify about her experience as a member of the QU team, and the impact which the Defendant's elimination of volleyball would have on her personal, academic, social, and athletic life.

3. **Erin Overdevest** was a graduate student member of the volleyball team at Quinnipiac University during the academic year 2009-10. Her athletic eligibility has been exhausted. She will testify about her experience as a member of the QU team, and the impact which the Defendant's attempted elimination of volleyball has had on her personal, academic, social, and athletic life.

4. **Logan Riker** was a freshman member of the volleyball team at Quinnipiac University during the academic year 2009-10. She has three years of athletic eligibility remaining. She will testify about the impact which the Defendant's elimination of volleyball would have on her personal, academic, and athletic life.

5. **Kristen Corinaldesi** was a senior member of the volleyball team at Quinnipiac University during the academic year 2009-10. She has graduated from college. She will testify about her experience as a member of the QU team, and the impact which the Defendant's attempted elimination of volleyball has had on her personal, academic, social, and athletic life.

6. **Robin Lamott Sparks** is the Head Coach of the volleyball team at Quinnipiac University and an adjunct member of the faculty. She will testify concerning the volleyball program and her observations of the operations of other sports at Quinnipiac.

7. **Dr. Donna Lopiano**, an expert in the field of collegiate athletics administration, Title IX and Title IX compliance, will testify as an expert witness concerning gender equity in athletic participation, including an explanation of the "three-part test," measuring gender equity, and the effects of such things as recruitment, athletics administration, budgets, NCAA rules, athletic conferences, and the Equity in Athletics Disclosure Act affect equal opportunity in athletics. She will also testify concerning her assessment of Quinnipiac's compliance with Prong One of the three-part test.

8. **Dr. Athena Yiamouyiannis**, an expert in the field of NCAA athletics rules and compliance, will testify as an expert witness by video deposition. She will testify

concerning (a) NCAA rules and regulations; (b) NCAA championships and sport sponsorship; (c) gender equity, including NCAA gender equity certification; (d) the application of NCAA rules to running sports; (e) whether Defendant operates 2 bona fide varsity running sports; (f) whether Defendant's plan to count women's indoor track and women's outdoor track as separate sports is consistent with NCAA or gender equity rules; (g) whether Defendant's plan to double and triple count runners or any other athletes is consistent with NCAA and gender equity rules; (h) NCAA championship standards for running sports; (i) average squad sizes; and (j) how Defendant's cross country and track programs compare to those of other NCAA and/or NEC schools.

9. **Mr. Jeff Webb**, an expert in cheerleading and related activities, will testify as an expert witness, concerning: (a) the history and background of cheerleading; (b) the nature of cheerleading, including whether it is or should be deemed a varsity sport at the high school or collegiate level; (c) the development of cheerleading competitions; (d) the differences among sideline, club, and competitive cheerleading; (e) the numbers of cheer teams and/or cheerleaders at various levels of competition, including cheer counting by the National Federation of High Schools; (f) the competitions available for college cheer teams; and (g) the nature of the competitions and competitors on Defendant's cheer schedule.

10. **Mr. Jim Lord** will testify as a fact witness concerning (1) the position of the American Association of Cheerleading Coaches and Administrators concerning cheer as a sport, and the bases for that position; (2) numbers of females participating in cheerleading and competitive cheer in U.S. high schools; and (3) insurance costs, safety, and other cost issues pertaining to cheer.

Plaintiffs may call the following witnesses at trial:

1. **Ms. Germaine Fairchild** is the Women's Softball coach at Quinnipiac University.
2. **Mr. Rick Seeley** is the Women's Ice Hockey coach at Quinnipiac University.
3. **Jack McDonald**
4. **Mary Ann Powers**
5. **Tracey Flynn**
6. **Mark Thompson**

Defendant expects to call the following witnesses at trial:

1. **Mark Thompson:** Dr. Thompson will testify as to Quinnipiac's roster management and Title IX compliance.
2. **Tracey Flynn: Ms.** Flynn will testify as to Quinnipiac's roster management and Title IX compliance.
3. **John (Jack) McDonald:** Mr. McDonald will testify as to Quinnipiac's athletic program, Title IX compliance, and the National Competitive Stunts and Tumbling Association.
4. **Mary Ann Powers:** Ms. Powers will testify as to all aspects of Quinnipiac's Competitive Cheer team, its treatment as a varsity team, and the National Competitive Stunts and Tumbling Association.
5. **Carolyn Martin (by deposition):** Ms. Martin testified as to all aspects of Quinnipiac's men's and women's cross country teams and women's indoor track and field and outdoor track and field teams.
6. **Samuel Seemes (Expert – by deposition):** Mr. Seemes is Chief Executive Officer of the U.S. Track & Field and Cross Country Coaches Association. He will testify as to typical practices of cross country teams, indoor track and field teams and outdoor track and field teams, and NCAA rules regarding such teams.

Defendant may call the following witnesses at trial if the need arises:

Since Plaintiffs have not identified any specific teams which they contend do not provide genuine participation opportunities to all women on their rosters, Defendant reserves the right to call the following coaches, if necessary, to rebut testimony by plaintiffs regarding any particular team:

1. Tricia Fabbri (Head Coach, Women's Basketball)
2. Becca Kohli (Head Coach, Women's Field Hockey)
3. Rick Seeley (Head Coach, Women's Ice Hockey)
4. Danie Caro (Head Coach, Women's Lacrosse)
5. Dave Clarke (Head Coach, Women's Soccer)
6. Germaine Fairchild (Head Coach, Women's Softball)
7. Mike Quitko (Head Coach, Women's Tennis)

10. **DEPOSITION TESTIMONY:**

Plaintiffs:

1. **Dr. Athena Yiamouyiannis:** Dr. Yiamouyiannis' testimony is summarized above.

Defendant:

1. Defendant designates the direct and redirect testimony of Carolyn Martin. (pp. 4:8 - 129:25; 191:4 - 196:14) Defendant reserves the right to amend or supplement this designation.

Plaintiffs designate the following testimony of Carolyn Martin (from her deposition on May 18, 2010): 130:17 - 132:3; 139:4 - 140:1; 143:10 - 144:10; 145:4 - 145:14; 147:23 - 148:17; 165:4 - 165:9; 166:18 - 167:23; 179:22 - 180:25; 184:22 - 185:6; 185:12 - 187:14; 197:1 - 197:9. Plaintiffs reserve the right to amend or supplement this designation.

11. **EXHIBITS:** Each party shall identify all exhibits that it may present at trial, by providing a brief description of each exhibit, and by separately listing the exhibits that the party: (a) expects to offer at trial; and (b) may offer at trial if the need arises. Exhibits not listed will not be admitted at trial except for good cause shown.

Plaintiffs: See Plaintiffs' Preliminary List of Exhibits attached as Exhibit A (to be filed).

Defendant: See Defendant's Preliminary List of Exhibits attached as Exhibit B.

12. **ANTICIPATED EVIDENTIARY PROBLEMS/ MOTIONS IN LIMINE:**

Plaintiffs:

1. Plaintiffs have not at this juncture seen the Memorandum of Law referred to below by Defendant, concerning Defendant's objection to evidence regarding its lack of past compliance with Title IX and its roster management practices prior to 2009-10 academic year. Plaintiffs believe, however, that such evidence is relevant, probative, and admissible on their claim that Defendant failed to comply with Title IX in 2009-10 and will not be in compliance in 2010-11.

Defendant:

1. Defendant objects to evidence regarding Quinnipiac's alleged lack of compliance with Title IX and roster management practices in years prior to the 2009-2010 academic year. (See accompanying Memorandum of Law.)
2. With respect to Plaintiffs' experts, Defendant objects to expert testimony outside their respective areas of established expertise and beyond the disclosures made pursuant to Federal Rule of Civil Procedure 26(a)(2). Defendant further objects to duplicative testimony on any issue by more than one expert.

13. **STIPULATIONS OF FACT AND LAW:**

See Stipulations attached as Exhibit C.

14. **TRIAL TO COURT/JURY**

(a) **Court:** Each party shall submit proposed findings of fact and conclusions of law, citing relevant authority where appropriate.

(b) **Jury:** N/A

15. **AVAILABILITY OF WITNESSES:** Each party shall ensure the availability at trial of each witness listed by that party unless the Court and counsel are advised to the contrary not less than forty-eight (48) hours prior to the commencement of the evidence.

16. **PRETRIAL REQUIREMENTS:** The requirements established by this Order may not be modified by agreement of counsel.

17. **OTHER STIPULATIONS:**

(a) The parties stipulate that the deposition testimony of Dr. Donna Lopiano in connection with the preliminary injunction hearing shall not be made part of the trial record.

(b) The parties stipulate that the reports of expert witnesses Dr. Athena Yiamouyiannis and Mr. Samuel Seemes may be introduced into evidence as part of the witnesses' testimony on direct examination. The parties reserve the right to assert any objections to the expert reports that could be asserted if the testimony were offered at trial. The parties do not by this stipulation waive any objections to testimony by either expert that goes beyond the scope of the Rule 26 disclosure concerning the expert.

THE PLAINTIFFS

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ATTORNEYS FOR DEFENDANT

Certification of Service

I hereby certify that on the date hereon, a copy of the foregoing Joint Pretrial Order 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.

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

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