

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

----- X	:	
STEPHANIE BIEDIGER, KAYLA LAWLER,	:	
ERIN OVERDEVEST, and KRISTEN	:	CIVIL ACTION NO:
CORINALDESI, individually and on	:	
behalf of all those similarly situated;	:	3:09-CV-00621 (SRU)
LESLEY RIKER on behalf of her minor	:	
daughter, Logan Riker, individually	:	
and on behalf of all those	:	<b><u>DEFENDANT’S ANSWER TO</u></b>
similarly situated; and	:	<b><u>THE FIRST AMENDED CLASS</u></b>
ROBIN LAMOTT SPARKS, individually.,	:	<b><u>ACTION COMPLAINT</u></b>
	:	
Plaintiffs,	:	January 13, 2010
	:	
against	:	
	:	
QUINNIPIAC UNIVERSITY,	:	
	:	
Defendant.	:	
----- X	:	

Defendant Quinnipiac University, by and through its attorneys, states as follows for its answer to the First Amended Class Action Complaint (“Amended Complaint”):

1. Denies the allegations in paragraph 1 of the Amended Complaint, except admits that Plaintiffs purport to assert class claims as set forth in paragraph 1.
2. Denies the allegations in paragraph 2 of the Amended Complaint, except admits that Plaintiffs make the allegations as set forth in paragraph 2.
3. Denies the allegations in paragraph 3 of the Amended Complaint, except admits that Plaintiffs make the allegations as set forth in paragraph 3.
4. Denies the allegations in paragraph 4 of the Amended Complaint, except admits that Plaintiffs make the allegations as set forth in paragraph 4.

5. Denies the allegations in paragraph 5 of the Amended Complaint, except admits that Plaintiffs make the allegations as set forth in paragraph 5.

6. The allegations contained in paragraph 6 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant respectfully refers the Court to the statutes and regulations for their contents.

7. The allegations contained in paragraph 7 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant respectfully refers the Court to the statutes and regulations for their contents.

8. The allegations contained in paragraph 8 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant respectfully refers the Court to the statutes and regulations for their contents.

9. The allegations contained in paragraph 9 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant respectfully refers the Court to the statutes for their contents.

10. Admits that Defendant is located in Hamden, Connecticut and otherwise states that the allegations contained in paragraph 10 of the Amended Complaint contain legal conclusions, which Defendant is required neither to admit nor deny and respectfully refers the Court to the statute for its contents.

11. Admits the allegations set forth in paragraph 11 of the Amended Complaint.

12. Admits the allegations set forth in paragraph 12 of the Amended Complaint.

13. Admits the allegations set forth in paragraph 13 of the Amended Complaint.

14. Admits the allegations set forth in paragraph 14 of the Amended Complaint.

15. Admits the allegations set forth in paragraph 15 of the Amended Complaint.

16. Admits the allegations set forth in paragraph 16 of the Amended Complaint.

17. Admits the allegations set forth in paragraph 17 of the Amended Complaint.

18. Admits the allegations set forth in the first sentence of paragraph 18 of the Amended Complaint. The allegations contained in the second sentence of paragraph 18 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny.

19. Denies the allegations set forth in paragraph 19 of the Amended Complaint, except admit that Plaintiffs purport to bring this action on behalf of themselves and others similarly situated as set forth in paragraph 19.

20. Denies the allegations set forth in paragraph 20 of the Amended Complaint.

21. Denies the allegations set forth in paragraph 21 of the Amended Complaint.

22. Denies the allegations set forth in paragraph 22 of the Amended Complaint.

23. Denies the allegations set forth in paragraph 23 of the Amended Complaint.

24. Denies the allegations set forth in paragraph 24 of the Amended Complaint, except admits that Quinnipiac is a university whose students typically graduate after approximately four years of enrollment, that its varsity athletes in sports, other than competitive cheer, are subject to the rules of the National Collegiate Athletic Association (“NCAA”) and refers to the rules for their contents.

25. Denies the allegations set forth in paragraph 25 of the Amended Complaint, except admits that it is not known how many female students may enroll at Quinnipiac in the future.

26. Denies the allegations set forth in paragraph 26 of the Amended Complaint.

27. Denies the allegations set forth in paragraph 27 of the Amended Complaint.

28. Denies the allegations set forth in paragraph 28 of the Amended Complaint.

29. Denies the allegations set forth in paragraph 29 of the Amended Complaint, except denies knowledge or information to form a belief as to the student plaintiffs' intents.

30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 30 of the Amended Complaint.

31. Denies the allegations set forth in paragraph 31 of the Amended Complaint.

32. Denies the allegations set forth in paragraph 32 of the Amended Complaint.

33. The allegations contained in paragraph 33 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant respectfully refers the Court to the statute for its contents.

34. The allegations contained in paragraph 34 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant respectfully refers the Court to the statute for its contents.

35. The allegations contained in paragraph 35 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant respectfully refers the Court to the statute and regulations for their contents.

36. The allegations contained in paragraph 36 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant respectfully refers the Court to the regulations for their contents.

37. Denies the allegations set forth in paragraph 37 of the Amended Complaint.

38. The allegations contained in paragraph 38 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant respectfully refers the Court to the regulations for their contents.

39. The allegations contained in paragraph 39 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant respectfully refers the Court to the regulations for their contents.

40. Denies the allegations set forth in paragraph 40 of the Amended Complaint, except admits that Quinnipiac has completed and submitted Assurance of Compliance forms to the Department of Education and received federal funds.

41. The allegations contained in paragraph 41 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant respectfully refers the Court to the regulations for their contents.

42. The allegations contained in paragraph 42 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant respectfully refers the Court to the regulations for their contents.

43. Denies the allegations set forth in paragraph 43 of the Amended Complaint.

44. The allegations contained in paragraph 44 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant respectfully refers the Court to the regulations for their contents.

45. The allegations contained in paragraph 45 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant respectfully refers the Court to the regulations for their contents.

46. The allegations contained in paragraph 46 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant respectfully refers the Court to the regulations for their contents.

47. The allegations contained in paragraph 47 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant respectfully refers the Court to the regulations and the referenced OCR policy interpretation for their contents.

48. The allegations contained in paragraph 48 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant respectfully refers the Court to the referenced policy interpretation for its contents.

49. The allegations contained in paragraph 49 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant respectfully refers the Court to the referenced policy interpretation for its contents.

50. The allegations contained in paragraph 50 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant respectfully refers the Court to the referenced policy interpretation for its contents.

51. The allegations contained in paragraph 51 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant respectfully refers the Court to the referenced policy clarification for its contents.

52. The allegations contained in paragraph 52 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant respectfully refers the Court to the regulations and referenced policy interpretation for their contents.

53. The allegations contained in paragraph 53 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant

respectfully refers the Court to the regulations and referenced policy interpretation and “Dear Colleague” letter for their contents.

54. The allegations contained in paragraph 54 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and Defendant respectfully refers the Court to the statute and referenced website for their contents. Defendant further denies knowledge or information sufficient to form a belief as to what guidelines OCR uses when it investigates and enforces Title IX.

55. The allegations contained in paragraph 55 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny.

56. Denies the allegations set forth in the last sentence of paragraph 56 of the Amended Complaint and otherwise states that the allegations contained in paragraph 56 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and respectfully refers the Court to the regulations for their contents.

57. Denies the allegations set forth in the last two sentences of paragraph 57 of the Amended Complaint and otherwise states that the allegations contained in paragraph 57 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and respectfully refers the Court to the regulations for their contents.

58. The allegations contained in paragraph 58 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny, and Defendant respectfully refers the Court to the regulations for their contents.

59. The allegations contained in paragraph 59 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny, and Defendant respectfully refers the Court to the regulations for their contents.

60. The allegations contained in paragraph 60 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny, and Defendant respectfully refers the Court to the statute and regulations for their contents.

61. Admits the allegations set forth in paragraph 61 of the Amended Complaint.

62. Denies the allegations set forth in paragraph 62 of the Amended Complaint, except admits that Quinnipiac offers women's indoor track and women's outdoor track and that prior to the 2009-10 academic year, Quinnipiac also offered men's indoor track and men's outdoor track.

63. Denies the allegations set forth in paragraph 63 of the Amended Complaint, except admits that neither Quinnipiac's women's indoor track team nor its outdoor track team currently competes in, recruits athletes to compete in, or offers athletic scholarships for competition in hurdles, throwing, jumping, or pole vaulting nor do they target sprinters for recruiting or offer them athletic scholarships.

64. Denies the allegations set forth in paragraph 64 of the Amended Complaint.

65. Denies the allegations set forth in paragraph 65 of the Amended Complaint.

66. Admits the allegations set forth in paragraph 66 of the Amended Complaint.

67. Denies the allegations set forth in paragraph 67 of the Amended Complaint.

68. Admits the allegations set forth in paragraph 68 of the Amended Complaint.

69. Admits the allegations set forth in paragraph 69 of the Amended Complaint.

70. Admits the allegations set forth in the first sentence of paragraph 70 of the Amended Complaint and denies knowledge or information sufficient to form a belief as to the last two sentences in paragraph 70 of the Amended Complaint.

71. Admits the allegations set forth in paragraph 71 of the Amended Complaint.



72. Admits the allegations set forth in paragraph 72 of the Amended Complaint.

73. Denies the allegations set forth in paragraph 73 of the Amended Complaint, except admits that Plaintiffs' counsel sent Defendant a letter dated March 27, 2009 and respectfully refers the Court to the letter for its contents.

74. Admits the allegations set forth in paragraph 74 of the Amended Complaint.

75. Admits that the Court held a hearing on the motion for preliminary injunction in May, 2009 and that the Court entered a preliminary injunction on May 22, 2009 and respectfully refers the Court to the preliminary injunction for its contents.

76. Denies the allegations set forth in paragraph 76 of the Amended Complaint.

77. Denies the allegations set forth in paragraph 77 of the Amended Complaint.

78. Denies the allegations set forth in paragraph 78 of the Amended Complaint.

79. Denies the allegations set forth in paragraph 79 of the Amended Complaint.

80. Denies the allegations set forth in paragraph 80 of the Amended Complaint.

81. Denies the allegations set forth in paragraph 81 of the Amended Complaint.

82. Denies the allegations set forth in paragraph 82 of the Amended Complaint.

83. Denies the allegations set forth in paragraph 83 of the Amended Complaint, except admits that Defendant need not incur additional costs to comply with the law as it is already in compliance.

84. The allegations contained in the first two sentences of paragraph 84 of the Amended Complaint set forth legal conclusions Defendant is required neither to admit nor deny. Defendant denies the allegations set forth in the remainder of paragraph 84 of the Amended Complaint.

85. Denies the allegations set forth in paragraph 85 of the Amended Complaint.

86. Denies the allegations set forth in paragraph 86 of the Amended Complaint.

87. Repeats and realleges each and every response set forth in paragraphs 1 through 86 of this Answer with the same force and effect as if fully set forth herein.

88. Denies the allegations set forth in paragraph 88 of the Amended Complaint, except admits that the Student Plaintiffs purport to bring this claim as a class action.

89. Admits the allegations set forth in paragraph 89 of the Amended Complaint.

90. Denies the allegations set forth in paragraph 90 of the Amended Complaint.

91. Denies the allegations set forth in paragraph 91 of the Amended Complaint.

92. The allegations contained in paragraph 92 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny, and Defendant respectfully refers the Court to the referenced policy clarification for its contents.

93. The allegations contained in paragraph 93 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny, and Defendant respectfully refers the Court to the referenced policy interpretation and policy clarification for their contents.

94. Denies the allegations set forth in the second and third sentences of paragraph 94 of the Amended Complaint and states that the allegations contained in the first sentence of paragraph 94 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny, and Defendant respectfully refers the Court to the statute for its contents.

95. Denies the allegations set forth in paragraph 95 of the Amended Complaint.

96. Denies the allegations set forth in paragraph 96 of the Amended Complaint.

97. Denies the allegations set forth in paragraph 97 of the Amended Complaint.

98. Denies the allegations set forth in paragraph 98 of the Amended Complaint.

99. Denies the allegations set forth in paragraph 99 of the Amended Complaint.

100. Denies the allegations set forth in paragraph 100 of the Amended Complaint.

101. Denies the allegations set forth in the first sentence of paragraph 101 of the Amended Complaint and denies knowledge or information sufficient to form a belief as to the truth of the allegations asserted in the second and third sentences of paragraph 101.

102. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 102 of the Amended Complaint.

103. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 103 of the Amended Complaint.

104. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 104 of the Amended Complaint.

105. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 105 of the Amended Complaint.

106. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 106 of the Amended Complaint.

107. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 107 of the Amended Complaint.

108. Denies the allegations set forth in paragraph 108 of the Amended Complaint.

109. Denies the allegations set forth in paragraph 109 of the Amended Complaint, except admits that competition exists in intercollegiate volleyball.

110. Admits the allegations set forth in paragraph 110 of the Amended Complaint.

111. Denies the allegations set forth in paragraph 111 of the Amended Complaint, except admits, upon information and belief, that some NCAA member schools sponsor teams in and the NCAA sponsors women's national championships in basketball, bowling, cross country, fencing, field hockey, golf, gymnastics, ice hockey, indoor track and field, lacrosse, outdoor track and field, rifle, rowing, skiing, soccer, softball, swimming and diving, tennis, volleyball, and water polo.

112. Denies the allegations set forth in 112 of the Amended Complaint, except admits that QU is a member of the Northeast Conference ("NEC"), that the NEC women's sports include basketball, bowling, cross country, field hockey, golf, indoor track and field, lacrosse, outdoor track and field, soccer, softball, swimming, tennis, and volleyball and that there is competition available for QU in these sports.

113. Denies the allegations set forth in paragraph 113 of the Amended Complaint, except admits that QU sponsors ice hockey even though the NEC does not sponsor ice hockey, that QU joined the Eastern Collegiate Athletic Conference ("ECAC") to give its ice hockey teams intercollegiate competition, that, upon information and belief, the ECAC sponsors the following women's sports: basketball, bowling, cross country, field hockey, golf, gymnastics, indoor track and field, lacrosse, outdoor track and field, soccer, softball, swimming & diving, tennis, synchronized swimming, volleyball, and water polo, and that there is competition for QU in these sports.

114. Admits the allegations set forth in paragraph 114 of the Amended Complaint.

115. Denies the allegations set forth in paragraph 115 of the Amended Complaint.

116. Denies the allegations set forth in paragraph 116 of the Amended Complaint.

117. Denies the allegations set forth in paragraph 117 of the Amended Complaint.

118. Denies the allegations set forth in paragraph 118 of the Amended Complaint, except admits that Quinnipiac was required to engage in a self study of its atheletic program in connection with maintaining its status as an NCAA Division I school and respectfully refers the Court to the report for its contents.

119. Denies the allegations set forth in paragraph 119 of the Amended Complaint.

120. Denies the allegations set forth in paragraph 120 of the Amended Complaint.

121. Repeats and realleges each and every response set forth in paragraphs 1 through 120 of this Answer with the same force and effect as if fully set forth herein.

122. Denies the allegations set forth in paragraph 122 of the Amended Complaint, except admits that the Student Plaintiffs purport to bring their claim as a class claim.

123. Admits the allegations set forth in paragraph 123 of the Amended Complaint.

124. The allegations contained in paragraph 124 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and respectfully refers the Court to the statute and regulations for their contents.

125. Denies the allegations set forth in paragraph 125 of the Amended Complaint.

126. Denies the allegations set forth in paragraph 126 of the Amended Complaint.

127. Denies the allegations set forth in paragraph 127 of the Amended Complaint.

128. Repeats and realleges each and every response set forth in paragraphs 1 through 127 of this Answer with the same force and effect as if fully set forth herein.

129. Denies the allegations set forth in paragraph 129 of the Amended Complaint, except admits that the Student Plaintiffs purport to bring their claim as a class claim.

130. Admits the allegations set forth in paragraph 130 of the Amended Complaint, except denies that Defendant provides its varsity student athletes with housing and dining services that differ from those provided to all students.

131. The allegations contained in paragraph 131 of the Amended Complaint set forth legal conclusions that Defendant is required neither to admit nor deny and respectfully refers the Court to the statute and regulations for their contents.

132. Denies the allegations set forth in paragraph 132 of the Amended Complaint.

133. Denies the allegations set forth in paragraph 133 of the Amended Complaint.

134. Denies the allegations set forth in paragraph 134 of the Amended Complaint.

135. Denies the allegations set forth in paragraph 135 of the Amended Complaint.

136. Denies the allegations set forth in paragraph 136 of the Amended Complaint.

137. (Misnumbered in the Complaint as 147) Repeats and realleges each and every response set forth in paragraphs 1 through 136 of this Answer with the same force and effect as if fully set forth herein.

138. Denies the allegations set forth in paragraph 138 of the Amended Complaint.

139. Admits the allegations set forth in paragraph 139 of the Amended Complaint, except denies knowledge or information sufficient to form a belief as to Coach Sparks's state of mind and denies considering eliminating volleyball in 2006.

140. Denies knowledge or information sufficient to form a belief as to the truth of the allegations asserted in paragraph 140 of the Amended Complaint, except admits that Coach Sparks accepted the job and moved to Hamden, Connecticut.

141. Admits the allegations set forth in paragraph 141 of the Amended Complaint.

142. Denies the allegations set forth in paragraph 142 of the Amended Complaint, except admits that, in March 2009, Defendant announced its intention to eliminate women's varsity volleyball and Coach Sparks's job effective July 2009.

143. Denies the allegations set forth in paragraph 143 of the Amended Complaint.

144. Denies the allegations set forth in paragraph 144 of the Amended Complaint.

145. Denies the allegations set forth in paragraph 145 of the Amended Complaint.

146. Denies the allegations set forth in paragraph 146 of the Amended Complaint.

147. Denies the allegations set forth in paragraph 147 of the Amended Complaint, except admits that Coach Sparks purports to seek the relief described in paragraph 147 of the Amended Complaint.

148. Repeats and realleges each and every response set forth in paragraphs 1 through 147 of this Answer with the same force and effect as if fully set forth herein.

149. Denies the allegations set forth in paragraph 149 of the Amended Complaint, except admits that the named Plaintiffs filed a Complaint with this Court on or about April 16, 2009 and that Plaintiffs' counsel sent a letter to Defendant on March 27, 2009 and respectfully refers the Court to the letter for its contents. Defendant further admits that Plaintiff Sparks complained about the planned elimination of the volleyball team and her job and indicated her belief that the action may raise gender equity concerns under Title IX.

150. Denies the allegations set forth in paragraph 150 of the Amended Complaint.

151. Denies the allegations set forth in paragraph 151 of the Amended Complaint.

152. Denies the allegations set forth in paragraph 152 of the Amended Complaint.

153. Denies the allegations set forth in paragraph 153 of the Amended Complaint.

154. Denies the allegations set forth in paragraph 154 of the Amended Complaint, except admits that the competitive cheer team has been using the Burt Khan court, among other facilities.

155. Denies the allegations set forth in paragraph 155 of the Amended Complaint.

156. Denies the allegations set forth in paragraph 156 of the Amended Complaint.

157. Denies the allegations set forth in paragraph 157 of the Amended Complaint.

158. Denies the allegations set forth in paragraph 158 of the Amended Complaint.

**AFFIRMATIVE DEFENSES TO PLAINTIFFS' FIRST CLAIM FOR RELIEF**

**FIRST AFFIRMATIVE DEFENSE**

The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitation and/or filing periods.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff has failed to state a basis for an award of exemplary and/or punitive damages.

**AFFIRMATIVE DEFENSES TO PLAINTIFFS' SECOND CLAIM FOR RELIEF**

**FIRST AFFIRMATIVE DEFENSE**

The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.



**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitation and/or filing periods.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff has failed to state a basis for an award of exemplary and/or punitive damages.

**AFFIRMATIVE DEFENSES TO PLAINTIFFS' THIRD CLAIM FOR RELIEF**

**FIRST AFFIRMATIVE DEFENSE**

The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitation and/or filing periods.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff has failed to state a basis for an award of exemplary and/or punitive damages.

**AFFIRMATIVE DEFENSES TO PLAINTIFFS' FOURTH CLAIM FOR RELIEF**

**FIRST AFFIRMATIVE DEFENSE**

The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff has failed to state a basis for an award of exemplary and/or punitive damages.

**AFFIRMATIVE DEFENSES TO PLAINTIFFS' FIFTH CLAIM FOR RELIEF**

**FIRST AFFIRMATIVE DEFENSE**

The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff has failed to state a basis for an award of exemplary and/or punitive damages.

Dated: January 13, 2010

PROSKAUER ROSE LLP

By: /s/ Edward A. Brill  
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*Attorneys for Defendant*

CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2010, a copy of the foregoing Opposition to Plaintiffs' Motion for Miscellaneous Relief 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. Parties may access this filing through the Court's system.

/s/ Edward A. Brill  
Edward A. Brill  
Federal Bar No. phv015747