UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CASE NO.:

ISIDORA PEJOVIC, CHAE BEAN KANG, ALBA SALA HUERTA, and CHASSIDY KING, individually and on behalf of all those similarly situated, and GORDON GRAHAM,

Plaintiffs,

vs.

STATE UNIVERSITY OF NEW YORK AT ALBANY, and MARK BENSON,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

This is an action based on long-standing and ongoing violations of Title IX of the Education Amendments of 1972 by the State University of New York at Albany ("SUNY Albany"), and on age discrimination by SUNY Albany, and by its Director of Athletics individually. In March 2016, Defendant SUNY Albany eliminated its women's tennis team just as the players were preparing to compete in the America East Conference Championships. Although entirely consistent with the manner in which Defendant SUNY Albany has discriminated against female athletes in the past, the decision to disband the team nevertheless came as a surprise to the student-athletes and their coach. Shortly after eliminating the women's program, SUNY Albany fired the team's head coach because its Athletic Director thought he was "old enough to retire."

The decision to end women's tennis at SUNY Albany left the players – all but one of whom were foreign students – in limbo. For the foreign players, the option was to withdraw from Defendant SUNY Albany, give-up their visas, and return to their countries of origin, only to restart the process of applying to universities with the hope of gaining admission, obtaining scholarships, winning a spot on another tennis team, and securing a new visa, all before the next season began. The women could have stayed at SUNY Albany and kept their scholarships. But these women are athletes, who trained from an early age to play tennis, who were recruited by SUNY Albany to play tennis, and who came to Defendant's campus to play tennis. The choice to stay and forego their dream – a choice that their male counterparts would never be required to make – was not a real choice or a viable option for these Plaintiffs.

Because Defendant SUNY Albany persists in its misconduct, this action is brought by the female tennis players in their individual capacities as well as on behalf of all similarly situated student-athletes, as well as by their former Head Coach, Plaintiff Gordon Graham, to redress the undisputed historic and ongoing discriminatory conduct perpetrated by Defendant SUNY Albany. For his part, Plaintiff Gordon Graham also sues on the ground that Defendants have discriminated against him on the basis of his age in violation of federal and New York State law.

STATEMENT OF THE CASE

1. Defendant SUNY Albany holds itself out as a university committed to providing top-quality intercollegiate sports programs. The university uses this distinction as part of its efforts to recruit top student athletes and coaching staff. Under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and the regulations adopted pursuant to 34 C.F.R. Part 106 (collectively "Title IX"), Defendant SUNY Albany must

provide equality of opportunity for women and men in every program it offers, including equal opportunities for male and female athletes in intercollegiate sports programs.

2. Defendant SUNY Albany discriminates against women on the basis of their sex by, among other things, intentionally providing substantially fewer and poorer opportunities for women in sports than for male students; by willfully failing to improve women's intercollegiate sports opportunities or add teams; and by willfully or purposefully neglecting even to consider or determine which sports opportunities women want and in which they could participate. This is not a case where SUNY Albany tried to comply with the law and merely missed the mark; it willfully ignored the law.

3. Defendant SUNY Albany compounded its historic Title IX wrongs in March 2016, by terminating the nine-member women's varsity tennis team and with it all opportunities for women to play intercollegiate tennis at SUNY Albany. It piled on to these violations by later terminating the team's coach on the basis of his age.

4. Following a complaint filed by Plaintiff Graham, the women's former tennis coach, the U.S. Department of Education's Office of Civil Rights ("OCR") investigated SUNY Albany's intercollegiate athletics programs. OCR's recently published findings describe Defendant SUNY Albany's Title IX violations ("Official Findings"), including the termination of the women's tennis program. These findings resulted in a toothless negotiated agreement between the Department of Education and SUNY Albany ("Resolution Agreement"). *See* Exhibit A.

5. The Resolution Agreement only requires that Defendant SUNY Albany stop violating Title IX no later than the 2020-2021 academic year. The Resolution Agreement provides for no sanctions against Defendant SUNY Albany for its present misconduct.

Neither does the Resolution Agreement provide any relief for the irreparable harms being done in the meantime to Plaintiffs or to the Plaintiff Class by the historic and continuing unlawful acts of Defendant SUNY Albany. Sadly, the Resolution Agreement does not contain a sanctions provision if Defendant SUNY Albany fails to comply with Title IX on or before the 2020-2021 academic year. Plaintiffs accordingly bring this private cause of action for specific relief for themselves and to secure relief for the Plaintiff Class.

6. Defendant SUNY Albany intentionally concealed its decision to terminate the women's tennis program in order to deprive Plaintiffs of any effective opportunity to contest the decision. This secret decision also denied Plaintiffs any opportunity to plan for, protect themselves against, or mitigate the sudden and devastating impacts on their personal and academic lives and sports careers.

7. Defendant SUNY Albany's termination of the women's varsity tennis program also violated a prior Stipulation and Order of the Albany County Supreme Court signed by the Honorable Justice Lawrence Kahn, now a Senior Judge of this Court, to which SUNY Albany was a party ("Prior Order"). *See* Exhibit B.

8. Plaintiff Graham was also denied his right to freedom from discrimination in his employment based upon his age by Defendant SUNY Albany and by Defendant Mark Benson, individually. Defendant's employee and agent, Mark Benson, demoted, humiliated, and then fired Graham after terminating the tennis program because, as Benson stated publicly, the 65-year old coach was "old enough to retire."

9. Undersigned counsel was first retained by some of the Plaintiffs in April 2017, on a *pro bono* basis. Counsel promptly contacted SUNY's Chancellor, Nancy Zimpher, and then SUNY Albany, to request reconsideration of its unlawful termination of women's tennis.

The Administration of SUNY Albany, including its Acting President, advised counsel that it would "stand by" its decision to eliminate the team.

10. Plaintiffs seek to stop Defendants from discriminating against them and all others similarly situated. They seek injunctive relief to reinstate the women's tennis program and supervise an accelerated Title IX compliance program, monetary damages for compensation of injury caused by Defendants' discrimination on the basis of sex and age, attorneys' fees and costs, and such other relief as may be available from this Court.

JURISDICTION AND VENUE

11. This action arises under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 *et seq.,* and the regulations and policies promulgated pursuant to that law, as well as under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, as enforced through 42 U.S.C. §§ 1983 and 1988. This Court has jurisdiction over Plaintiffs' federal law claims pursuant to 28 U.S.C. §§ 1331, 1343(3), and 1343(4).

12. This action also arises under Title 15 of the Executive Law of the State of New York ("Human Rights Law"). This Court has supplemental jurisdiction to enforce New York's Human Rights Law and the Prior Order of the New York Supreme Court, pursuant to 28 U.S.C. Section 1367.

13. Declaratory and other relief is authorized pursuant to 28 U.S.C. § 2201 and 28 U.S.C. § 2202 to obtain the correct interpretation of the legal requirements described in this Complaint, which are necessary and appropriate to determine the respective rights and duties of the parties to this action.

14. Venue is proper in the United States District Court for the Northern District of New York pursuant to 28 U.S.C. § 1391(b) because the events from which Plaintiff's claims arise occurred in Albany, New York, which is within the jurisdiction of this Court.

THE PARTIES

The Women Plaintiffs

15. Every spot on the women's tennis team represents a lifetime of dreams and the sacrifice that it took to make those dreams a reality, including overcoming life-changing personal, family, economic, and physical challenges both on and off the tennis court. It should be noted that the women Plaintiffs here are not in this alone. While not parties to this lawsuit, their families have done their best to encourage their daughters' dreams and support them through their struggles, and suffer as only parents can, when those dreams are shattered.

16. The women's tennis team at Defendant SUNY Albany consisted of a dedicated 65-year old coach and a group of student-athletes who had developed themselves into community and academic leaders.

17. Plaintiff Isidora Pejovic is a rising junior at Defendant SUNY Albany. She joined the women's team her freshman year in 2014 and played until Defendant SUNY Albany wrongfully terminated the team. Isidora played tennis in her native Serbia beginning at the age of five. At thirteen, she began studying English to pursue her goal of coming to the United States – the only country where a young woman like her could play competitive tennis while obtaining a world-class education. Eventually, Isidora became one of the top players in her country. She passed her Collegiate Scholastic Aptitude Tests in English and successfully navigated the difficult process of obtaining a scarce student visa. Her visa restricted her to

attending only one school - Defendant SUNY Albany. She was recruited by SUNY Albany, and chose it because of the competitive opportunities, great coaching, and the full scholarship it offered. After struggling scholastically and athletically in her first semester, Isidora emerged as a star player for the SUNY Albany Great Danes in the Spring of 2015, and went on to win many matches over the following year, including the clinching match in the America East Championship Tournament in May 2016.

18. After Defendant SUNY Albany disbanded the team, Plaintiff Pejovic received interest from other schools but did not have the resources or ability to transfer. To do so, she would have had to apply for and obtain admission to another institution with room for her on its women's tennis program, obtain a scholarship offer, withdraw from Defendant SUNY Albany, return to Serbia, forfeit her student visa, and re-apply for a new visa to attend a specific new school. Even if she could get a new visa, which was far from a forgone conclusion in her mind, there could be no assurance that the tennis team at the new college would still have scholarships or even room for her by the time she could arrive on campus. Moreover, under the rules of the National Collegiate Athletic Association ("NCAA"), a student athlete in an NCAA Division I program such as Defendant SUNY Albany is only allowed a single transfer to a Division I school. These risks, which were generally applicable to all of the women Plaintiffs, are hereafter referred to as the "Transfer Risks." Plaintiff Pejovic resides in Albany, New York, which is within this Court's jurisdiction.

19. Plaintiff Chae Bean Kang is a rising senior at Defendant SUNY Albany. Plaintiff Kang joined the women's tennis team in her freshman year in 2014 and continued to play until the team was wrongfully terminated. Plaintiff Graham recognized "Bean" as a gifted

athlete who only needed match experience to become a truly competitive NCAA Division I tennis player. A native of South Korea, her family moved often to provide her with opportunities to refine and develop her talent and learn English. A highly sought-after recruit, Bean was persuaded to come to Defendant SUNY Albany. Once there, she established an excellent academic record and was expected to break into the regular tennis team lineup as a junior. Because Plaintiff Kang had fallen in love with the university and established a place for herself in the community over her first two years, the shocking betrayal of her dreams and goals with only two years of eligibility remaining, in addition to the Transfer Risks, left her with no practical choice to pursue her tennis career. Plaintiff Kang resides in Albany, New York, which is within this Court's jurisdiction.

20. Plaintiff Alba Sala Huerta was a junior at Defendant SUNY Albany and a member of its women's tennis team when Defendants suddenly and without warning ended its existence. Plaintiff Graham described Alba Sala as one of the most intelligent tennis players he had seen in thirty-five years of coaching champions in the sport. She was a two-time All-America East player and a three-time Intercollegiate Tennis Association All-Academic award winner. She was a fan favorite and had the chance, if she had been able to play in her senior year, to become one of SUNY Albany's all-time greatest players in terms of total matches won. Alba came to Albany from her native Spain for the same reasons as her teammates – she was a champion player and top student who wanted to study at a university where she could play competitive tennis while obtaining a world-class education. At age sixteen, Alba engaged an agency to help her secure a scholarship. Both Iowa State University and Bryant University offered her scholarships, but like her teammates, Alba ultimately chose Defendant

SUNY Albany. She began her studies and joined the tennis team in the fall semester of 2013 and graduated in May of 2017.

21. The summer after Defendant SUNY Albany terminated women's tennis, the University of Massachusetts invited Alba to join its team. As with her teammates, however, the Transfer Risks posed too great an obstacle and would have resulted in further harm through the loss of course credits and the requirement that she complete an additional semester at her own cost and expense. Because she lost her senior year of eligibility, Plaintiff Sala Huerta was also denied an extra year of graduate eligibility and missed the possibility of additional employment, potentially with a full scholarship, as a graduate tennis assistant coach at Defendant SUNY Albany or elsewhere. Plaintiff Sala Huerta resides in Albany, New York, which is within this Court's jurisdiction.

22. Plaintiff Chassidy King was a junior at Defendant SUNY Albany and a member of the women's tennis team from 2013 until Defendant suddenly and without warning ended the team's existence. Chassidy was the most athletically gifted player that Plaintiff Graham had coached in thirty-five years. The only U.S. Citizen on the team, she grew up in Antigua and lacked only match experience when she came to SUNY Albany on a tennis scholarship as a freshman. Through her passionate effort and skill, she had just earned a spot on the team's lineup, when Defendant SUNY Albany terminated the women's tennis team. In addition to tennis, Plaintiff King served as a role model for many youngsters in the Albany area, working with children in the 15-LOVE program, a local community initiative that helps inner-city children through after-school education enrichment and tennis. She was also enrolled in the university's intensive nursing preparation program and so could not withdraw to play tennis at

another school. Plaintiff King resides in Philadelphia, Pennsylvania, but submits to the Court's jurisdiction for purposes of this lawsuit.

The Women's Tennis Team's Coach

23. Plaintiff Gordon Graham is the former Head Coach of Defendant SUNY Albany's women's tennis team. He originally came to SUNY Albany to rebuild the women's tennis program. Plaintiff Graham was in his fifth year as Head Coach at the time that Defendant unlawfully terminated the team. Shortly after the university's decision, Graham led his now disbanded team to victory at the America East Conference Championship. He has a singularly distinguished resume of coaching championship women's tennis teams at the University of the Pacific and Harvard University, where his teams won nine Ivy League Championships. He has been Pacific Coast Athletic Association Coach of the Year, Intercollegiate Tennis Association Coach of the Year for the East Region, and ITCA Coach of the Year for the Northwest Region. Coach Graham founded The Tennis Camps at Harvard, which served 1200 campers each summer. He also founded a community-based tennis program in greater Boston that serves over 500 juniors and adults. Plaintiff Graham resides in Albany, New York, which is within this Court's jurisdiction.

Defendant SUNY Albany

24. Defendant SUNY Albany is a principal campus of the State University of New York ("SUNY"), which is an Educational Corporation formed and existing under the Education Law of the State of New York. SUNY Albany's campus and principal place of business is located at 1400 Washington Avenue, Albany, New York, which is within this Court's jurisdiction.

25. Although not individually named as defendants in this action, Defendant SUNY Albany was aided and abetted in its discriminatory conduct by a group of high-ranking university officers and employees whose identities and roles in this lawsuit are outlined below:

- Nancy L. Zimpher was, at all relevant times, the Chancellor of SUNY and was an agent and employee of SUNY with authority over and responsibility for the administration of Defendant SUNY Albany;
- Robert J. Jones became the President of Defendant SUNY Albany in January 2013. In July 2016, after only three and one half years in that job and following the termination of the women's tennis program, he left. With respect to his responsibilities as President, Jones was an agent and employee of SUNY Albany with authority and responsibility for the administration of SUNY Albany including its athletics programs and was, at all relevant times, under the direct supervision and control of Chancellor Nancy L. Zimpher;
- Professor James R. Stellar acted as the Interim President of SUNY Albany from September 2016 until September 2017. In his position and with respect to his responsibilities as Interim President, Professor Stellar was an agent and employee of SUNY Albany with authority and responsibility for the administration of SUNY Albany including its athletics programs and, was at all relevant times, under the direct supervision and control of Nancy L. Zimpher; and
- Chantelle Cleary is the Assistant Vice President for Equity and Compliance at SUNY Albany and holds the title of Title IX Coordinator. Upon information and belief,

Defendant Cleary is an attorney licensed to practice in the State of New York. In her position and with respect to her responsibilities, Cleary reported to and was under the supervision and control of President Jones and/or Interim President Stellar at all relevant times.

Defendant Mark Benson

26. Defendant Mark Benson is and has been the Director of Athletics of SUNY Albany, since 2014. Defendant Benson is an employee and agent of Defendant SUNY Albany who reported directly to and was under the direct supervision and control of Robert J. Jones or James R. Stellar at all times relevant to this Complaint.

ALLEGATIONS AS TO THE PLAINTIFF CLASS

27. The named women Plaintiffs (Pejovic, Kang, Sala Huerta, and King) bring this action on behalf of themselves and on behalf of a class of all those similarly situated pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2).

28. The women Plaintiffs seek to represent a class of all present, prospective, and future female students at SUNY Albany who want to participate in the recently eliminated varsity sport of women's tennis or who want to participate in other varsity sports not offered to women by SUNY Albany. They also seek to represent those female student athletes who are deterred from enrolling at SUNY Albany because it does not offer women the sport they wish to play.

29. Each of the named women Plaintiffs is a member of the proposed class and has been or will be injured by Defendant SUNY Albany's sex discrimination and failure to provide female students with an opportunity to participate in varsity intercollegiate athletics at SUNY

Albany. Defendant SUNY Albany's continued elimination of the women's varsity tennis program will exacerbate the discrimination and denial of opportunity by eliminating female athletic participation opportunities at SUNY Albany.

30. The women Plaintiffs seek to represent the proposed class because joinder of all class members and all persons harmed by Defendant SUNY Albany's failure to provide opportunity to participate in varsity intercollegiate athletics would be impossible.

31. The proposed class is known to exist but the identity of its members is and will continue to change without specific names during this litigation because of the nature of college enrollment and athletic participation. Students at SUNY Albany generally aim to graduate four years after they matriculate. Athletes are eligible for only four years, according to the rules of the National Collegiate Athletic Association (NCAA). Accordingly, the members of the class harmed by Defendant SUNY Albany's discriminatory actions constantly change as each class of students graduate and as another class of students enrolls at SUNY Albany.

32. Not all members of the plaintiff class are currently identifiable because the class includes prospective and future students who will enroll at SUNY Albany during this litigation or who will be deterred from enrolling at SUNY Albany because of Defendant SUNY Albany's failure to provide athletic participation opportunities for female student-athletes, including the sports they want to play.

33. Not all members of the plaintiff class are currently identifiable because the class includes not only tennis players, but also all present, prospective, and future female students who want to participate in other varsity intercollegiate sports that are not offered at Defendant SUNY Albany.

34. Upon information and belief, Defendant SUNY Albany has never surveyed its present or prospective student body to assess athletic interests and abilities. Moreover, because SUNY Albany recruits high school students and transfer students from around the world, SUNY Albany could increase and thus realize athletic participation opportunities for female students by starting virtually any new women's varsity sports team and then recruiting women to enroll and participate.

35. It is unknown how many present, prospective, or future female student-athletes would enroll at Defendant SUNY Albany or would participate in athletics at the university if it stopped discriminating against women. The hundreds of additional student-athletes who might apply, who might be recruited, and who might participate in athletics at Defendant SUNY Albany if, for example, it added the approximately ninety-seven athletic opportunities necessary to reach proportional equality of opportunity for women participating in intercollegiate sports at Defendant SUNY Albany, are too numerous to make joinder practicable.

36. The women Plaintiffs satisfy the "commonality" requirement of Federal Rule of Civil Procedure 23(a)(2) because they share questions of law and fact in common with the proposed class, particularly whether Defendant SUNY Albany is violating Title IX by failing to provide female student-athletes with an opportunity to participate in varsity intercollegiate athletics. Because Title IX requires comparison of the sex-segregated men's and women's athletic opportunities as a whole, the Title IX issues in this action are inherently class-based.

37. The women Plaintiffs satisfy the "typicality" requirement of Federal Rule of Civil Procedure 23(a)(3) because their claims are typical of those of the proposed class. They all have been denied, are continuing to be denied, or will be denied an opportunity to participate

in varsity intercollegiate athletics at Defendant SUNY Albany because of its ongoing sex discrimination. All of them want the Court to restrain Defendant SUNY Albany from continuing its elimination of any women's varsity sports opportunities and to require it to restore and reinstate tennis and add more women's varsity sports.

38. The women Plaintiffs are members of the proposed class because each: (a) is or was a female student-athlete at SUNY Albany, (b) is or was a former member of its women's tennis team, (c) was or is currently being subjected to Defendant SUNY Albany's sex-based-discrimination, and (d) was or currently is being denied athletic participation opportunities provided to male student athletes at Defendant SUNY Albany, and they will fairly and adequately represent the interests of the class. They intend to prosecute this action vigorously in order to secure fair and adequate injunctive relief for the entire class.

39. The women Plaintiffs satisfy the requirement that class certification would be superior to other methods available for the fair and efficient adjudication of the controversy required by Federal Rule of Civil Procedure 23(b)(2) because Defendant SUNY Albany has acted or refused to act on grounds generally applicable to the class - denying female student-athletes an opportunity to participate in varsity intercollegiate athletics, including but not limited to, women's varsity tennis, thereby making final declaratory and injunctive relief appropriate with respect to the class as a whole.

40. Undersigned counsel has devoted substantial and sufficient efforts to identify and investigate potential claims in this action, to developing knowledge of the applicable law, and has sufficient resources to commit to representing this putative class as interim counsel

under Federal Rule of Civil Procedure 23(g)(3) until such time as this Court determines whether to certify the action as a class action.

GENERAL ALLEGATIONS

Financial Pressures Lay the Groundwork for Eliminating Women's Tennis

41. Defendant SUNY Albany promotes its athletic programs in order to recruit top athletes. Its website lauds the significant dollars invested by the university on its athletic facilities: "The University at Albany's $19 million multi-sport complex was completed in September 2013. The state-of-the-art 8,500-seat facility includes a distinct press level with four luxury suites, print media area, and booths for radio, television, coaches, and replay, as well as 20 high-definition televisions distributed throughout the level."[1]

42. Defendant SUNY Albany's athletics department has been under financial pressure in recent years. Exacerbating that pressure, in January 2013, while the expensive new sports complex was still being built, the New York Football Giants announced that after sixteen years, they would no longer conduct summer drills at the campus because it lacked an *indoor* football field in which to practice on rainy days.

43. In 2014, Defendant SUNY Albany hired Mark Benson as its Athletics Director. Benson had never been employed as an athletic director at any school, at any level, let alone at an NCAA Division I program. Defendant SUNY Albany hired Benson because of his purported ability to raise money from private contributors and pack stadiums with paying fans.

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1. [1]www.ualbanysports.com/ViewArticle.dbml!?&DB_OEM_ID=15800&ATCLID=209273988 (last visited September 12, 2017)

44. For his part, Benson acknowledged the financial pressures facing the Athletics Department but assured the coaches of all of the intercollegiate teams that he "was not here to cut teams."

45. Benson's efforts failed to regularly pack the football stadium at Defendant SUNY Albany which, upon information and belief, has an 8,500-seat capacity which can be expanded to 24,000 seats. Upon further information and belief, Benson has only filled the 8,500 seats three times since he joined Defendant SUNY Albany in 2014.[2]

46. Upon information and belief, the annual operating budget for SUNY Albany is more than five hundred forty million dollars.[3]

The Department of Education Cites Defendant SUNY Albany

47. A Policy Interpretation issued by OCR in 1979 and codified at 44 Fed. Reg. at 71418 (the "OCR Policy Interpretation"), sets forth three areas of compliance under Title IX: (1) equal athletic financial assistance; (2) equal treatment and benefits for athletic teams; and (3) effective accommodation of student interests and abilities. This lawsuit is about effective accommodation only. The OCR Policy Interpretation provides three ways -- commonly referred to as prongs one, two, and three -- for a university to comply with the requirement to provide effective accommodation of students' interests and abilities:

> "(1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or

[2] https://en.wikipedia.org/wiki/Bob Ford Field (last visited September 23, 2017)
[3] https://en.wikipedia.org/wiki/State University of New York (last visited September 12, 2017).

> (2) Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or
>
> (3) Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program." *Id.*

48. The National Association of College and University Attorneys ("NACUA") publishes and updates authoritative legal guidance on, among other matters, the practice of Title IX compliance. Upon knowledge and belief this guidance is widely available to attorneys with responsibilities as legal counsel in universities, such as Defendant SUNY Albany, its President James Stellar, its Athletic Director Mark Benson, and its Assistant Vice President and Title IX Coordinator Chantelle Cleary.

49. The edition of "NACUA Notes" published as of January 22, 2010, is representative of the widely-published guidance that NACUA promulgates to universities across the nation on the important topic of Title IX, stating under the topic "The Title IX Implications of Eliminating an Intercollegiate Sports Team", that

> If an institution chooses to eliminate an intercollegiate team from the underrepresented sex, then it must do so in a manner that ensures substantial proportionality.
>
> …
>
> If an institution eliminates a team and does not replace it with a team that provides greater participation opportunities, then it is legally impossible to comply with part two ("History & Continuing Practice of Program Expansion") of the three-part test. As explained above, part two requires an institution to demonstrate a history and continuing practice of program expansion for the underrepresented sex. Yet, if a college or university is eliminating a team for the

> underrepresented sex, it is necessarily reducing, not expanding opportunities.
>
> Similarly, if an institution eliminates a team [of the underrepresented sex], it is legally impossible to comply with part three ("Fully Accommodating Interests & Abilities") of the three-part test. As detailed previously, part three of the three-part test requires an institution to demonstrate that its current selection of sports fully and effectively accommodates the interests of the underrepresented sex. However, regardless of whether one uses the narrow definition of the Bush Administration or the broader definition of the Obama Administration, an institution that has eliminated a team cannot prove full and effective accommodation. Quite simply, the fact that the institution recently fielded an intercollegiate team demonstrates that there is interest and ability in the sport as well as an expectation of reasonable competition. The institution really has no viable claim otherwise. NACUANOTES, June 22, 2010 Vol. 8 No. 10 at 4,5.

50. As the following excerpts from its Official Findings attest, OCR has determined SUNY Albany to be in violation of Title IX in all three prongs of the test for compliance, and has found that the termination of the women's tennis team is itself a violation of title IX.

1. "OCR determined that in academic year 2015-2016 [the school year in which Women's Tennis was terminated]…in order to achieve exact proportionality with male opportunities and overall enrollment, female athletic opportunities would [have needed] to be increased by approximately 55 for a total of 310. OCR determined that… the University does not satisfy Part One [of the Three Part Test of compliance] for academic year 2015-2016." Official Findings, p.5.

2. "OCR determined that in academic year 2016-2017…female athletic opportunities would [have needed] to be increased by approximately 97 for a total of 345. OCR determined that… the University does not satisfy Part One for academic year 2016-2017." *Id.*

3. "The University last added a women's sport to its athletic program during 1995-1997, even though the number of female athletes continues to be disproportionate to enrollment. Additionally, OCR determined that the University eliminated

> women's tennis effective at the conclusion of the 2015-2016 season. Based on this information, OCR determined that the University has not demonstrated a record of adding intercollegiate teams, or upgrading teams to intercollegiate status, for the underrepresented sex." Official Findings, p.6. (footnote omitted)

4. "OCR determined that during academic year 2015-2016, the University discontinued the women's tennis team, despite demonstrated interest and ability of the University students. ***** Based on the foregoing, OCR determined that University has not demonstrated a history of program expansion, and there is no policy or procedure for requesting the addition of sports. Therefore, OCR cannot determine that the University has established compliance under Part Two of the Three-Part Test." Official Findings, p.8.

5. "OCR determined that the University has not surveyed the student body to assess students' interests and abilities. ***** The Athletic Director stated that he believes the current program effectively accommodates female students' interests and abilities; however, as stated above, OCR determined that during academic years 2015-2016, the University discontinued the women's tennis team, despite demonstrated interest and ability of University students.

Accordingly, OCR determined that the University has not established compliance under Part Three of the Three-Part Test." *Id.,* p.10.

6. "Based on the above, OCR determined that …the University did not demonstrate that it provides each sex with equitable athletic opportunities under any part of the Three-Part Test. Therefore, OCR determined that the University failed to establish that it has effectively accommodated the athletic interests and abilities of women, the underrepresented sex, as required by the regulation implementing Title IX, at 34 C.F.R. Section 106.41(c)(1)." *Ibid.*, p.11.

51. These official findings understate Defendant SUNY Albany's repeated and successful efforts to sidestep the requirements of Title IX. For years, Defendant SUNY Albany's reports to the Department of Education have employed a variety of methods to short-

change female student-athletes, including double-counting both men and women participating in so-called "Indoor Track and Field and Outdoor Track and Field" and counting males who practice with women's teams *as women*.

The Secret Decision to Terminate Women's Tennis

52. In the fall of 2015, Defendant Mark Benson met with Plaintiff Graham to discuss, among other things, the women's tennis team's eligibility for the NCAA championships. The women's team competed in the America East athletic conference, which had less than six teams at the time. Defendant Benson noted that under the NCAA's rules, the winner of the conference championship would not be automatically eligible for the NCAA championships. As a consequence, Defendant Benson explained that he and his staff were looking for an alternative conference that would provide the women's tennis team an automatic berth. Neither Defendant Benson, nor any of his staff, ever indicated that Defendant SUNY Albany planned to eliminate women's tennis.

53. At no time after this meeting did Defendant Benson solicit any ideas from Plaintiff Graham as to how to structure a competitive schedule that would allow the team to compete for an at-large invitation for post-season play, nor did he request help from Plaintiff Graham as the highly experienced and nationally-recognized head coach of women's tennis, in finding an alternative conference for the women's tennis team.

54. Upon information and belief, Defendant Benson did not conduct a search for an alternative conference during the 2015-2016 academic year.

55. Upon further information and belief, Defendant Benson rejected at least one NCAA athletic conference's offer to accept the women's tennis team.

56. Defendant Benson kept secret from and refused to inform or advise Plaintiffs of any deliberations, opportunities, or considerations concerning women's tennis throughout 2015-2016, notwithstanding inquiries by Plaintiff Graham.

57. For his part, Plaintiff Graham planned a competitive schedule for 2016-2017 and beyond. Graham believed this schedule would help the SUNY Albany team climb the national rankings and become a post-season "at-large" team, potentially qualifying for the NCAA Championships. Defendant Benson never asked for those plans, nor met with Plaintiff Graham during the 2015-2016 academic year.

58. Upon information and belief, Defendant Benson had already decided, with the knowledge and consent of then-President Robert Jones and Vice-President Chantelle Cleary, to terminate the women's tennis team and redistribute its $365,000 operating budget for other uses. This strategy would spare Defendant Benson from having to raise private donations or reduce the budgets from other programs including men's teams in order to account for any financial shortfall.

59. Chantelle Cleary, with the knowledge and consent of then-President Jones and Defendant Benson, and notwithstanding her knowledge of Defendant SUNY Albany's non-compliance and her responsibilities to the student-athletes as Vice-President of Equity and Compliance and Defendant SUNY Albany's designated Title IX Officer, expressly supported the unlawful decision to terminate the women's tennis team.

Defendant SUNY Albany Ends Women's Tennis

60. On the evening of March 23, 2016, in a surprise announcement, Defendant Benson told Plaintiff Graham that Defendant SUNY Albany would terminate women's tennis

immediately following the team's participation in the America East Conference Championships. Defendant Benson then warned Plaintiff Graham, who had personally recruited many of the players that would be impacted by the university's decision, not to tell anyone about SUNY Albany's machinations. Defendant Benson said that he wanted to ensure that word of the decision would not leak to the team, the players' families, or the public before his planned press release.

61. Plaintiff Graham nevertheless told the players about the termination after practice the next morning. The players trusted Graham. He had recruited them from around the world and Plaintiff Graham knew they would be devastated. After breaking the news to his team, Plaintiff Graham and his assistant coaches took the players to meet with Defendant Benson. After that meeting a furious Benson screamed at and threatened Graham.

62. Defendant Benson later materially altered a statement from Plaintiff Graham without the latter's permission and published it in Defendant SUNY Albany's official press release. The unauthorized modification made it seem as if Plaintiff Graham agreed with and supported the decision to terminate the women's tennis team.

Coach Graham is Terminated Because of His Age

63. In the five years prior to the elimination of women's tennis, Plaintiff Graham successfully recruited and built a champion women's tennis team of nine players from the United States and five other countries. Eight of the players were on full scholarships. Following the announcement regarding the termination of the women's tennis team, Plaintiff Graham was given only meaningless administrative tasks and no professional coaching opportunities. Defendant Benson's Deputy, Jerry Koloskie, told Coach Graham that if he did not like the

assignments he was given, "they could always force you to do a 9 to 5 boring job taking attendance in the "Bubble."[4]

64. Defendant Benson made discriminatory and deprecating comments to athletics department staff and to an alumna of Defendant SUNY Albany about Coach Graham's age and readiness for retirement, telling some of them that Graham was "old enough to retire." Ultimately, Plaintiff Graham was stripped of all duties and was expressly told by Defendant Benson's Deputy, Koloskie, that he should focus only on counseling his former team members "…as they transition from being student athletes to being merely students."

65. Plaintiff Graham's early retirement in May of 2016 would have saved the athletic department at Defendant SUNY Albany the equivalent of his salary for 15 months. Having failed to persuade him to retire with demotions and humiliation, in July 2016 Defendant SUNY Albany notified Plaintiff Graham that despite five years of excellent annual reviews and championship results, his contract would not be renewed after it expired on August 14, 2017.

66. In November 2016, Plaintiff Graham filed a complaint with the OCR under Title IX. By letter of January 11, 2017, the OCR notified Graham that it was opening an investigation into his complaint. In the meantime, Plaintiff Graham continued to search for counsel who would help the team on a *pro bono* basis.

[4] The "Bubble" refers to a large inflatable facility at the SUNY Albany campus that is used for intramural sports and practices.

COUNT I
Title IX
(By the Women Plaintiffs and Plaintiff Class Against Defendant SUNY Albany)

67. Plaintiffs re-allege and incorporate by reference all of the foregoing allegations.

68. Plaintiffs are entitled to injunctive relief that restrains Defendant from continuing to discriminate on the basis of sex, restrains Defendant from refusing to support the women's tennis program, and requires Defendant to reinstate the women's tennis program that was unlawfully terminated, until such time, if ever, as Defendant can terminate the team without violating Title IX.

69. Plaintiff Classes are further entitled to injunctive relief requiring Defendant SUNY Albany to come into strict compliance with Title IX on an accelerated basis, irrespective of the leisurely pace and toothless performance requirements for compliance contained in Defendant SUNY Albany's Resolution Agreement with the Department of Education.

70. The OCR has found and Plaintiffs allege Defendant SUNY Albany to be in persistent, continuing, and comprehensive violation of Title IX, but neither OCR's procedures nor the voluntary Resolution Agreement specifies any remedy for individual harms or requires SUNY Albany to reinstate any particular sport or otherwise make Plaintiffs whole.

71. OCR found and Plaintiffs allege that separate and apart from the historical and ongoing violation of Title IX by Defendant SUNY Albany, the act of terminating the varsity intercollegiate women's tennis program violated Title IX.

72. OCR has advised Plaintiff's counsel that because of its narrow mandate, OCR has no objection and is indifferent to the outcome of this private action.

73. Defendant SUNY Albany's actions deny the Plaintiffs their legal right to participate in varsity college sports on an equal basis with men at SUNY Albany. Athletics provides non-academic but crucial training in discipline, health, work ethic, social behavior, camaraderie, and, of course, lifelong networking. SUNY Albany deprived the Plaintiffs of all of these invaluable opportunities and benefits when it eliminated the women's tennis program.

74. If injunctive relief is not granted during the pendency of this action, Plaintiffs Pejovic and Kang will suffer irreparable harm by permitting Defendant SUNY Albany to continue to discriminate against them, and by denying them both an opportunity to participate in varsity intercollegiate athletics. If Defendant SUNY Albany is not required by this Court to reinstate women's varsity tennis, these individual Plaintiffs will never again have the opportunity to participate in this valuable educational experience - one that provides academic, physical, psychological, social, and even economic benefits for the rest of the participants' lives. There is no adequate remedy at law for these harms.

75. Upon information and belief, Defendant SUNY Albany could compensate for the immaterial fraction of its more than $540,000,000 budget that a nine-person women's tennis team represents, merely by rounding the roster caps for a few of its seven men's teams.[5] This would be an even lighter burden for the next year, as there are only two of the women's tennis team's players who remain enrolled at the University. Upon information and belief, Defendant would gain public relations and enrollment advantages from doing so, which could be economically advantageous in attracting more students by demonstrating to student-athletes

[5] Defendant SUNY Albany reports eight men's teams to the U.S. Department of Education, counting both "Indoor track" and "Outdoor track" as separate teams, but the evidence adduced at trial will show that with few exceptions the same individuals populate the rosters of both "teams."

prompt action and commitment to comply with Title IX by offering more opportunities for its female students. The first two championship-level tennis players are currently on campus, the former Head Coach of women's tennis is still present in the community, the coach handles all the organizational, scheduling, logistical, and training for the program, his contract is still warm, and the program's cost is insignificant. If Defendants were not merely retaliating against the Plaintiffs, reinstating women's tennis would be the easiest of baby steps toward both Title IX compliance and mitigation of ongoing harm.

76. The injunctive relief that Plaintiffs request on behalf of themselves and the Plaintiff Class will promote the public interest in that it will increase educational opportunities for female students and will promote compliance with federal law. Congress decided that sex-based discrimination in collegiate athletics was not in the public interest when it enacted Title IX and reaffirmed that public interest over the past thirty-seven years by defeating each and every attempt that has been made to weaken Title IX. Equal opportunity for all students - male and female - is at the core of this case, is at the core of American identity, and is clearly in the public interest.

77. Notwithstanding the irreparable harms which have been done and continue to be imposed on the women Plaintiffs, they have suffered injury which may compensated for, in part, by awards of money damages, including among other things lost professional status and reputation, lost opportunities for employment and professional acclaim, costs of seeking opportunities at other schools, lost past and future employment, lost compensation and benefits, humiliation, emotional pain and distress, lost self-esteem, and other injuries.

COUNT II

Title IX

(By Plaintiff Gordon Graham as Coach of the Women's Tennis Program Against Defendant SUNY Albany)

78. Plaintiff Gordon Graham re-alleges and incorporates by reference all the foregoing allegations.

79. The OCR has found and Plaintiff Graham alleges that Defendant SUNY Albany is in persistent, continuing, and comprehensive violation of Title IX, but neither OCR's procedures nor the voluntary Resolution Agreement specifies any remedy for individual harms or requires SUNY Albany to reinstate any particular sport or Coach or otherwise make Plaintiff Graham whole.

80. OCR found and Plaintiff Graham alleges that separate and apart from the historical and ongoing violation of Title IX by Defendant SUNY Albany, the act of terminating the varsity intercollegiate women's tennis program violated Title IX.

81. The unlawful termination of the varsity intercollegiate women's tennis team by Defendant SUNY Albany intentionally and wrongfully discriminated against Plaintiff Graham on the basis of the sex of the women student-athletes he coached, causing him irreparable harm and injury.

82. Because of Defendant SUNY Albany's unlawful termination of the women's tennis team he recruited, mentored, and coached, and the particular vulnerabilities of its victims in this case as foreign students with a 65-year old coach, which vulnerability was exploited by SUNY Albany in the method and timing of its termination of the team, Plaintiff Graham was forced to contest the University's actions alone. Because he did so, including filing an official complaint with the OCR, he may now be branded as a "whistleblower," with little prospect of

future coaching employment in his chosen profession, and every prospect of retribution by Defendant SUNY Albany.

83. Notwithstanding the irreparable harms which have been done and continue to be imposed on Plaintiff Graham, he has suffered injury which may compensated for in part by an award of money damages, including among other things lost professional status and reputation, lost opportunities for employment and professional acclaim, lost past and future employment, lost income and benefits, lost compensation and benefits, humiliation, emotional pain and distress, lost self-esteem and other injuries.

COUNT III
42 U.S.C Sections 1983 and 1988
(By Plaintiff Graham Against Defendant Benson)

84. Plaintiff Gordon Graham re-alleges and incorporates by reference all of the foregoing allegations.

85. The Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States as codified at 42 U.S.C Sections 1983 and 1988, prohibits discrimination against any person on the basis of age.

86. On or about March 23, 2016, Benson advised Plaintiff Graham for the first time that the women's tennis team was to be terminated. Thereafter, Defendant Benson personally took and ordered repeated acts of age discrimination against Plaintiff Graham in violation of 42 U.S.C. 1983.

87. When, on March 23, 2016, Defendant Benson first announced to Plaintiff Graham that the tennis team would be terminated, Defendant Benson asked the then-65-year-

old coach Graham how old he was. Defendant Benson also said in front of others at that meeting that Plaintiff Graham was "close to retirement."

88. On the morning that the university publicly announced its decision to end women's tennis, Defendant Benson screamed at and threatened Coach Graham in front of others, telling him "While we will honor your contract, how well you handle this situation in the next couple of months will determine how well things go for you for the next fifteen months."

89. Shortly thereafter, Defendant Benson stripped Plaintiff Graham of all meaningful responsibilities and humiliated him by, among other things, assigning him meaningless tasks and denying him coaching opportunities with any other of Defendant's teams.

90. Later, Defendant Benson's deputy and Plaintiff Graham's immediate supervisor advised Graham that he should focus on doing nothing but helping the members of the now disbanded women's tennis team "…as they transition from being student athletes to being merely students."

91. When Plaintiff Graham complained, Defendant Benson's deputy only humiliated Graham further by warning that this decorated tennis coach could spend his days taking attendance at the campus's "inflatable" practice facility, saying "If you don't like it, they could always force you to do a 9 to 5 boring job taking attendance in the Bubble."

92. In a meeting with a dedicated UA tennis alumna who had come to question the decision to terminate the team, Defendant Benson told her that Coach Graham could "retire if he wants to," since he was "old enough."

93. In another meeting with his senior staff, Defendant Benson described the

situation regarding the termination of the women's tennis program and told those in attendance that "Gordon is old enough that he could retire now."

94. In July of 2016, Defendant SUNY Albany notified Plaintiff Graham that upon the determination of Defendant Benson and despite five years of excellent annual reviews and championship results, Graham's contract would not be renewed after it expired on August 14, 2017.

COUNT IV
NEW YORK STATE HUMAN RIGHTS LAW
(By Plaintiff Graham Against Defendant SUNY Albany)

95. Plaintiff Gordon Graham re-alleges and reincorporates by reference all of the foregoing allegations.

96. Defendant SUNY Albany is an Educational Corporation formed and existing under the Education Law of the State of New York.

97. Section 296 (3.a) of Title 15 of New York State's Executive Law ("Human Rights Law") prohibits discrimination in the terms, conditions or privileges of employment by an employer on the basis of age against any person 18 years of age or older.

98. Section 296 (3.d) of the Human Rights Law prohibits termination or retirement from employment by an employer on the basis of age.

99. Defendant SUNY Albany is a covered employer under the Human Rights Law.

100. In 2014, Defendant SUNY Albany hired Defendant Mark Benson as an employee with the title of Director of Athletics. In that position, Benson had supervisory authority over all of the intercollegiate athletics programs and employees including Plaintiff Graham as a subordinate employee and Head Coach of the women's intercollegiate tennis team.

Jerry Koloskie was Benson's Deputy Athletics Director, Plaintiff Graham's immediate supervisor, and an employee and agent of Defendant SUNY Albany.

101. After disbanding the women's tennis team, Benson, Koloskie and other agents and employees of Defendant SUNY Albany, engaged in repeated acts of age discrimination in violation of New York State's Human Rights Law.

102. Defendant SUNY Albany, acting through Benson and Koloskie, stripped Plaintiff Graham of all meaningful job functions, leaving him only to perform meaningless and humiliating administrative tasks.

103. Benson, while employed in his official capacity by Defendant SUNY Albany and in his performance of those duties, made several derogatory remarks regarding Plaintiff Graham's age to members of Defendant SUNY Albany's athletics department staff and at least one alumna.

104. On March 23, 2016, when Athletics Director Benson first announced to Plaintiff Graham that the tennis team was to be terminated, Benson expressly asked the then-65-year-old coach how old he was. Director Benson also said in front of others at that meeting that Plaintiff Graham was "close to retirement."

105. During a formal meeting with a dedicated UA tennis alumna who had come to question the decision to terminate the team, Director Benson told her that Coach Graham could "retire if he wants to", since he was "old enough."

106. In another meeting with the senior staff of the Athletics Department of SUNY Albany, who reported to him in his official capacity, Director Benson described the situation regarding the termination of the women's tennis program and told those in attendance

that "Gordon is old enough that he could retire now."

107. In July of 2016, Defendant SUNY Albany notified Plaintiff Graham that notwithstanding five years of excellent annual performance reviews and championship results, Graham's contract would not be renewed after it expired on August 14, 2017.

108. Upon information and belief, SUNY Albany has involuntarily terminated the contracts of no other Head Coaches of its intercollegiate athletics programs, for any reason, for more than five years prior to its termination of Plaintiff Graham.

COUNT V
DECLARATORY RELIEF
(By All Plaintiffs Against Defendant SUNY Albany)

109. Plaintiffs re-allege and incorporate by reference all of the foregoing allegations.

110. SUNY Albany at all times pertinent to this Complaint remained subject to the Stipulation and Order of the New York State Supreme Court, Albany County dated August 26, 1994 in Case No. 4934-94, in the matter of James *Kane, David Lichten, Michael Wexler, Paul Garnock, Amy Hilton, Kenneth Barclay, Mark Ynagthara and Eric Rose, Petitioners, vs. State University of New York at Albany, Patrick Swygert, President, State University at Albany, Dr. Milton Richards, Gail Cummings-Danson, Dennis Elkin, John Morgan and Richard Hall, Respondents* ("Prior Order"). *See* Exhibit A. The Prior Order states in pertinent part:

> "The Respondent State University of New York at Albany *shall mitigate the impact of any future decision to terminate programs or reduce them to less-than-varsity status*, by:
>
> a. *Giving prompt notice of the decision to all potentially affected parties*, including, but not limited, to coaches, current athletes, the student body generally, the University Undergraduate Admissions Office, and other colleges and universities contacting [the Athletics Department] regarding transfer

admissions for athletes, and

b. *All changes in program shall be in compliance with federal law* and made in accordance with appropriate University procedures.

c. In the event any such programs are to be terminated, *respondents shall provide appropriate notice of such termination so as to give any participant or recruit the opportunity to transfer to another athletic program at another college or university without loss of opportunity in successive years." Prior Order*, at p. 2 (*emphasis supplied).*

111. The actions of Defendant SUNY Albany and its officers, employees, and agents alleged in this Complaint constitute breaches of the Prior Order in each and every one of its three material elements set forth above, which breaches, if committed with knowledge of the Prior Order, would be grounds for sanctions.

112. A present and actual controversy exists between Plaintiffs and Defendant SUNY Albany. Plaintiffs allege, among other things, that their rights have been intentionally violated by Defendant SUNY Albany in breach of the Prior Order. Other potentially affected parties including but not limited to the Plaintiff Class remain at risk to Defendant SUNY Albany's actions. Declaratory relief is necessary and appropriate in the public interest to awaken Defendants and other potentially affected parties to the rights of students at the University at Albany under the Prior Order.

ATTORNEYS' FEES AND COSTS

113. Plaintiffs have been required to retain attorneys to prosecute all claims in this action. Recovery of the costs of such prosecution, including reasonable attorney's fees and fees of experts, may be allowed to the prevailing party by the Court in its discretion pursuant to 42 U.S.C. § 1988 (b) and (c).

114. Plaintiffs claim entitlement to recovery of their costs, including but not limited to reasonable attorneys' fees and expert fees, should Plaintiffs prevail in their action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

(1) Certify the proposed class of plaintiffs;

(2) Issue preliminary and permanent injunctions requiring Defendant SUNY Albany to stop discriminating against women in the operation of its intercollegiate athletics programs and to come into full and complete compliance with Title IX in the operation of its intercollegiate athletics programs within one year;

(3) Issue preliminary and permanent injunctions requiring Defendant SUNY Albany to immediately reinstate its economic, logistical, coaching, and staffing support of the women's tennis program equivalent to the levels present at the time of the March 24, 2016 termination of that program, and further not to eliminate or reduce the status of women's tennis or any women's varsity athletic team or opportunity until such time as the Court shall find that Defendant SUNY Albany is in full and complete compliance with Title IX and that such elimination or reduction in the status of a women's team would not violate Title IX.

(4) Enter an Order declaring that Defendant SUNY Albany violated the terms of the Prior Order of the Supreme Court of the State of New York, Albany County by failing to give notice of the termination of the varsity women's tennis program to all potentially affected parties including without limitation Plaintiff Graham, by terminating the varsity women's tennis program in violation of Federal law under Title IX, and by failing to give appropriate notice of such termination to the women Plaintiffs.

(5) Award monetary damages to the individual women Plaintiffs and Plaintiff Graham by way of partial compensation for substantial injury associated with, among other things, lost professional status and reputation, lost opportunities for employment and professional acclaim, costs of seeking opportunities at other schools, lost past and future employment, lost compensation and benefits, humiliation, emotional pain and distress, lost self-esteem and other injuries set forth in this Complaint, in an amount to be determined at trial.

(6) Plaintiff Graham also prays this Court to issue an injunction to require Defendants to reinstate him as Head Coach of the women's varsity tennis team at SUNY Albany, in a non-hostile environment, without retaliation, under his previously applicable contractual arrangements with the same salary, benefits, and resources he enjoyed prior to Defendants' unlawful termination of the team in March 2016;

(7) Maintain jurisdiction over this action and assign a Special Master to monitor Defendant SUNY Albany's full and timely compliance with the Court's orders;

(8) Award Plaintiffs including the Plaintiffs' Class their reasonable attorneys' fees, costs, expenses, and interest pursuant to 42 U.S.C. § 1988; and

(9) Grant Plaintiffs including Plaintiffs' Class such other and further relief as may be just and proper under the circumstances, including punitive damages, in amounts to be determined at trial, to be distributed or applied as a jury shall determine.

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DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial as to all claims so triable.

Dated: September 29, 2017

Respectfully submitted,

Rimon, P.C.

/s/ Bernays T. Barclay

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