

1 Gayle M. Blatt, SBN 122048
2 *gmb@cglaw.com*
3 **CASEY GERRY SCHENK FRANCAVILLA BLATT & PENFIELD, LLP**
4 110 Laurel Street
5 San Diego, CA 92101
6 Telephone: (619) 238-1811
7 Facsimile: (619) 544-9232

8 Arthur H. Bryant (SBN 208365)
9 *abryant@baileyglasser.com*
10 **BAILEY & GLASSER, LLP**
11 1999 Harrison Street, Suite 660
12 Oakland, CA 94612
13 Telephone: (510) 272-8000
14 Facsimile: (304) 342-1110

15 *Attorneys for Plaintiff*
16 *and the proposed classes*

17 [Additional counsel on signature page]

18 **IN THE UNITED STATES DISTRICT COURT**
19 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

20 MADISON FISK, RAQUEL CASTRO,
21 GRETA VISS, CLARE BOTTERILL,
22 MAYA BROSCHE, HELEN BAUER,
23 CARINA CLARK, NATALIE FIGUEROA,
24 ERICA GROTEGEER, KAITLIN HERI,
25 OLIVIA PETRINE, AISHA WATT,
26 KAMRYN WHITWORTH, SARA ABSTEN,
27 ELEANOR DAVIES, ALEXA DIETZ, and
28 LARISA SULCS, individually and on behalf
of all those similarly situated,

Plaintiffs,

v.

BOARD OF TRUSTEES OF THE
CALIFORNIA STATE UNIVERSITY and
SAN DIEGO STATE UNIVERSITY,

Defendants.

Case No. '22CV173 TWRMSB

COMPLAINT

CLASS ACTION

JURY TRIAL DEMANDED

INTRODUCTION

1
2 1. This is a sex discrimination class action against San Diego State
3 University (“SDSU”) for depriving its female varsity student-athletes of equal athletic
4 financial aid in violation of Title IX of the Education Amendments of 1972 (“Title
5 IX”). SDSU has not paid its female varsity student-athletes equal athletic financial aid
6 for over a decade, failed to pay them over \$1,200,000 in equal athletic financial aid in
7 the last two academic years, and is not paying them equal athletic financial aid this
8 academic year. This lawsuit seeks to make SDSU pay its female varsity student-
9 athletes the equal athletic financial aid they have been and are being deprived of—and
10 require SDSU to provide them with equal athletic financial aid in the future.

11 2. Plaintiffs are females who were previously or are currently varsity student-
12 athletes at SDSU. Defendants are the Board of Trustees of the California State
13 University and SDSU (collectively “Defendants”). For years, Defendants have
14 discriminated against SDSU’s female varsity student-athletes by depriving them of
15 equal athletic financial aid on the basis of their sex in violation of Title IX.

16 3. Title IX prohibits all educational institutions receiving federal funds,
17 including SDSU, from discriminating against women (and men) on the basis of their
18 sex.

19 4. As the United States Department of Education’s Office for Civil Rights
20 (“OCR”), responsible for interpreting and enforcing Title IX, explained in 1998, “With
21 regard to athletic financial assistance, the regulations promulgated under Title IX
22 provide that, when a college or university awards athletic scholarships, these
23 scholarship awards must be granted to ‘members of each sex in proportion to the
24 number of students of each sex participating in intercollegiate athletics.’ 34 C.F.R.
25 106.37(c).” Office for Civil Rights, U.S. Department of Education (“DOE”), *Dear*
26 *Colleague Letter* at 2 (July 23, 1998).

1 5. SDSU has not granted athletic financial aid to its female and male varsity
2 athletes in proportion to the number of students of each sex participating in
3 intercollegiate athletics for more than a decade and is not doing so now.

4 6. SDSU has regularly granted and is granting its female varsity student-
5 athletes much less—and its male varsity student-athletes much more—athletic
6 financial aid than they would have received if SDSU had granted such aid in proportion
7 to the number of students of each sex participating in intercollegiate athletics.

8 7. In the 2019-20 academic year, according to the information that SDSU
9 submitted to the federal government under the Equity in Athletics Disclosure Act
10 (“EADA”) and verified as accurate, SDSU granted its 315 female varsity student-
11 athletes over \$690,000 less—and its male varsity student-athletes over \$690,000
12 more—in athletic financial aid than they would have received if SDSU had granted
13 such aid in proportion to the number of students of each sex participating in
14 intercollegiate athletics.

15 8. In the 2020-21 academic year, according to the information that SDSU
16 submitted to the federal government under the EADA and verified as accurate, SDSU
17 granted its 305 female varsity student-athletes over \$570,000 less—and its male
18 varsity student-athletes over \$570,000 more—in athletic financial aid than they would
19 have received if SDSU had granted such aid in proportion to the number of students
20 of each sex participating in intercollegiate athletics.

21 9. A similar or greater unequal and disproportionate allocation of athletic
22 financial aid to varsity female student-athletes at SDSU continues to this day.

23 10. Defendants’ actions have caused and are causing harm to Plaintiffs and
24 those similarly situated and constitute intentional, prohibited discrimination based on
25 sex in violation of Title IX and its implementing regulations at 34 C.F.R. Part 106.
26
27
28

1 Diego, California, which is within this Court's jurisdiction. In addition, the events
2 giving rise to the Complaint occurred in San Diego, California, within this Court's
3 jurisdiction.

4 **THE PARTIES**

5 19. Plaintiffs are past and current female varsity student-athletes at SDSU.

6 20. At all times relevant to this case, varsity student-athletes at SDSU were
7 and are eligible for athletic financial aid up to and including a full scholarship, a cost-
8 of-living stipend, summer aid, fifth-year aid, and NCAA Special Assistance Funds if
9 appropriate.

10 21. SDSU's average cost of attendance for in-state residents for the last four
11 years was \$28,142 per year. A full athletic scholarship at SDSU, which includes a cost-
12 of-living stipend, would have covered the entire cost of attendance.

13 22. SDSU's average cost of attendance for non-residents for the last four years
14 was \$39,230 per year. A full athletic scholarship at SDSU, which includes a cost-of-
15 living stipend, would have covered the entire cost of attendance.

16 23. None of the Plaintiffs received all of the athletic financial aid for which
17 they were eligible at SDSU.

18 24. If SDSU had complied with Title IX and granted athletic financial aid to
19 its female varsity student-athletes proportional to the athletic financial aid it granted to
20 SDSU's male varsity student-athletes, each of the Plaintiffs would have had an
21 opportunity to receive her fair share of equal athletic financial aid.

22 25. If SDSU had complied with Title IX and granted athletic financial aid to
23 its female varsity student-athletes proportional to the athletic financial aid it granted to
24 SDSU's male varsity student-athletes, each of the Plaintiffs would have received more
25 athletic financial aid than she did.

1 45. During her time on the rowing team, Clare received partial athletic
2 financial aid. She received \$38,000 in athletic financial aid in her junior year but did
3 not receive any athletic financial aid as a sophomore, which was her first year at SDSU.

4 46. Clare was harmed by SDSU's failure to provide proportional athletic
5 financial aid to female student-athletes.

6 Maya Brosch

7 47. Maya Brosch graduated from SDSU in May 2021. She is a resident of
8 California for purposes of tuition at SDSU.

9 48. Maya was a member of the women's varsity track and field team until she
10 graduated in May 2021.

11 49. During her time on the track and field team, Maya received partial athletic
12 financial aid. In her freshman and sophomore years, Maya received \$400 per semester
13 in athletic financial aid for books and \$250 per semester in athletic financial aid for
14 tuition. In her junior and senior years, Maya received \$400 per semester in athletic
15 financial aid for books and \$3,860 per semester in athletic financial aid for tuition.
16 Maya received a total of \$19,640 in athletic financial aid as a varsity student-athlete.

17 50. Maya was harmed by SDSU's failure to provide proportional athletic
18 financial aid to female student-athletes.

19 Olivia Petrine

20 51. Olivia Petrine is currently a sophomore at SDSU majoring in Computer
21 Science. She came to SDSU from Arizona to be a Division I varsity athlete and,
22 therefore, is a non-resident for the purposes of tuition at SDSU.

23 52. Olivia was a member of the women's varsity rowing team until SDSU
24 discontinued the women's varsity rowing team in Spring 2021.

25 53. Olivia started rowing in high school and loved the sport from the first
26 practice. Rowing provided Olivia with the ability to learn how to work as a team
27 member and be a leader as well.

28

1 84. During her time on the track and field team, Aisha received partial
2 financial aid. She received 10% of tuition and \$800 for books, per year for her
3 freshman and sophomore years. She is receiving \$3,000 in athletic aid this year. Aisha
4 has received a total of \$4,600 in athletic financial aid as a varsity student-athlete.

5 85. Aisha was harmed by SDSU's failure to provide proportional athletic
6 financial aid to female student-athletes.

7 Kamryn Whitworth

8 86. Kamryn Whitworth graduated from SDSU in May 2021 with a degree in
9 Communication. She was a resident of California for the purposes of tuition at SDSU.

10 87. Kamryn was a member of the women's varsity rowing team until SDSU
11 discontinued the women's varsity rowing team in Spring 2021.

12 88. Kamryn discovered the sport of rowing when she was 13 years old. She
13 gave her heart and soul to her rowing career, and that dedication made it possible for
14 her to be a varsity rower at SDSU.

15 89. During her time on the rowing team, Kamryn received partial athletic
16 financial aid. In her freshman and sophomore years, she received \$800 per year. In her
17 junior and senior years, she received \$5,800 per year. Kamryn received a total of
18 \$13,200 in athletic financial aid as a varsity student athlete.

19 90. Kamryn was harmed by SDSU's failure to provide proportional athletic
20 financial aid to female student-athletes.

21 Sara Absten

22 91. Sara Absten is currently a senior at SDSU majoring in Economics. She is
23 a legal resident of California.

24 92. Sara is a member of the women's varsity track and field team at SDSU.

25 93. Sara loves being a track and field athlete because it makes her proud to set
26 goals for herself and achieve those goals. Sara chose to come to SDSU for track and
27 field because the head coach is a former Olympian.

28

1 Board of Trustees of the California State University must provide equal opportunities
2 for women and men in every program SDSU offers, including equal athletic financial
3 aid to female and male athletes in SDSU’s intercollegiate athletics programs.

4 **FACTUAL ALLEGATIONS**

5 **Title IX’s Equal Athletic Financial Aid Requirements**

6 113. Title IX says, “No person in the United States shall, on the basis of sex,
7 be excluded from participation in, be denied the benefits of, or be subjected to
8 discrimination under any education program or activity receiving Federal financial
9 assistance.” 20 U.S.C. § 1681(a).

10 114. Because SDSU receives federal financial assistance, its varsity athletic
11 program is subject to Title IX, and SDSU must comply with Title IX’s requirements.
12 20 U.S.C. § 1687.

13 115. When schools segregate their varsity athletic programs on the basis of sex,
14 as SDSU does, their violations of Title IX in those programs constitute intentional sex
15 discrimination. *See Neal v. Board of Trustees of the Cal. State Univs.*, 198 F.3d 763,
16 772 n.8 (9th Cir. 1999).

17 116. Applying Title IX to intercollegiate athletics, OCR has adopted
18 regulations requiring educational institutions receiving federal funds to “provide equal
19 athletic opportunity for members of both sexes.” 34 C.F.R. § 106.41(c).

20 117. The regulations, codified at 34 C.F.R. Part 106 (the “Regulations”) are
21 enforced by OCR.

22 118. In 1979, OCR issued a policy interpretation of Title IX and the
23 Regulations as applied to intercollegiate athletics at 44 Fed. Reg. 71,413 (Dec. 11,
24 1979) (the “OCR Policy Interpretation”).

25 119. The OCR Policy Interpretation sets forth three areas of compliance under
26 Title IX as it relates to college sports: (1) equal accommodation of student interests
27
28

1 and abilities; (2) equal athletic financial assistance; and (3) equal treatment and
2 benefits.

3 120. Compliance regarding athletic financial assistance is assessed pursuant to
4 34 C.F.R. §106.37 (c), which provides:

5 (1) To the extent that a recipient awards athletic scholarships or
6 grants-in-aid, it must provide reasonable opportunities for such
7 awards for members of each sex in proportion to the number of
8 students of each sex participating in interscholastic or
9 intercollegiate athletics.

10
11 (2) Separate athletic scholarships or grants-in-aid for members of
12 each sex may be provided as part of separate athletic teams for
13 members of each sex to the extent consistent with this
14 paragraph and § 106.41.

15 121. The OCR Policy Interpretation states, among other things, its
16 interpretation of the athletic financial aid provision quoted above:

17
18 The Policy - The Department will examine compliance with this
19 provision of the regulation primarily by means of a financial
20 comparison to determine whether proportionately equal amounts
21 of financial assistance (scholarship aid) are available to men's and
22 women's athletic programs. The Department will measure
23 compliance with this standard by dividing the amounts of aid
24 available for the members of each sex by the numbers of male or
25 female participants in the athletic program and comparing the
26 results. Institutions may be found in compliance if this
27 comparison results in substantially equal amounts or if a resulting
28

1 disparity can be explained by adjustments to take into account
2 legitimate, nondiscriminatory factors...

3 Application of the Policy - This section does not require a
4 proportionate number of scholarships for men and women or
5 individual scholarships of equal dollar value. It does mean that
6 the total amount of scholarship aid made available to men and
7 women must be substantially proportionate to their participation
8 rates.

9
10 44 Fed. Reg. 71,415.

11 122. On July 23, 1998, the OCR discussed and clarified how it interpreted and
12 would enforce Title IX's athletic financial aid requirements:

13 With regard to athletic financial assistance, the regulations
14 promulgated under Title IX provide that, when a college or
15 university awards athletic scholarships, these scholarships awards
16 must be granted to "members of each sex in proportion to the
17 number of students of each sex participating in ...intercollegiate
18 athletics." 34 C.F.R 106.37(c)...

19
20 It is important to note that it is not enough for a college or
21 university merely to assert a nondiscriminatory justification.
22 Instead, it will be required to demonstrate that its asserted
23 rationale is in fact reasonable and does not reflect underlying
24 discrimination...

25 If any unexplained disparity in the scholarship budget for athletes
26 of either gender is 1% or less for the entire budget for athletic
27
28

1 scholarships, there will be a strong presumption that such a
2 disparity is reasonable and based on legitimate and
3 nondiscriminatory factors. Conversely, there will be a strong
4 presumption that an unexplained disparity of more than 1% is in
5 violation of the “substantially proportionate” requirement.

6 Office for Civil Rights, U.S. DOE, *Dear Colleague Letter* at 2-4 (July 23,
7 1998).

8 123. Because Title IX and its implementing Regulations are federal law,
9 NCAA and conference rules cannot justify violations of them.

10 124. The Title IX Regulations state: “The obligation to comply with this part is
11 not obviated or alleviated by any rule or regulation of any organization ...or
12 association which would render any applicant or student ineligible to participate or
13 limit the eligibility or participation of any applicant or student, on the basis of sex, in
14 any education program or activity operated by a recipient and which receives Federal
15 financial assistance.” 34 C.F.R. 106.6 (c).

16 **SDSU’s Violations of Title IX’s**

17 **Equal Athletic Financial Aid Requirements**

18 125. SDSU is a member of the NCAA, and it participates in Division I athletics,
19 the highest level of intercollegiate competition. SDSU offers athletic financial aid to
20 members of its varsity athletic teams.

21 126. For the past several decades, SDSU has sponsored men’s and women’s
22 varsity Division I intercollegiate athletic teams, segregated based on sex.

23 127. SDSU fails to provide athletic financial aid to its female varsity student-
24 athletes in proportion to their athletic participation rates and, accordingly, intentionally
25 discriminates against female student-athletes in violation of Title IX.
26
27
28

1 128. At all times relevant to this case, Defendants were and are responsible for
2 ensuring that SDSU complied with Title IX and provided proportional athletic
3 financial aid to its female student-athletes.

4 129. For more than a decade, female varsity student-athletes at SDSU have
5 been deprived of athletic financial aid in proportion to their participation in SDSU
6 athletics, and the difference in the proportion has always been greater than 1%.

7 130. The information summarized in the chart and paragraphs below was
8 submitted by SDSU to the federal government under EADA and verified as accurate.

Year	Female Student Athletes	Male Student Athletes	% of females	Female Aid Awarded	Male Aid Awarded	% of aid awarded to females	Amount of aid SDSU deprived female student athletes
2010	269	222	54.79%	\$2,776,419.00	\$2,708,301.00	50.62%	\$228,447.97
2011	302	235	56.24%	\$3,169,134.00	\$3,073,774.00	50.76%	\$341,775.15
2012	312	231	57.46%	\$3,586,299.00	\$3,181,040.00	52.99%	\$302,116.78
2013	322	239	57.40%	\$3,813,759.00	\$3,482,941.00	52.27%	\$374,364.71
2014	310	236	56.78%	\$3,943,771.00	\$3,685,045.00	51.70%	\$387,608.05
2015	304	230	56.93%	\$4,176,824.00	\$3,914,582.00	51.62%	\$429,519.49
2016	315	226	58.23%	\$4,426,056.00	\$4,155,385.00	51.58%	\$570,531.64
2017	303	216	58.38%	\$4,527,853.00	\$4,325,925.00	51.14%	\$641,115.66
2018	316	221	58.85%	\$4,580,663.00	\$4,604,510.00	49.87%	\$824,392.25

17 131. In 2019-20, SDSU's 315 female student-athletes equaled 58.12% of the
18 total student-athletes. But female student-athletes were provided with only 50.57% of
19 the \$9,198,841 in athletic financial aid the school awarded that year, amounting to a
20 loss of \$694,267.88 in athletic financial aid for women.¹

21
22 ¹ Lost athletic financial aid is calculated by subtracting the aid SDSU actually
23 awarded to female student-athletes in a given year from the athletic financial aid
24 female student-athletes *would have been awarded* if SDSU had complied with
25 Title IX by awarding such aid proportionally (i.e., if the percentage of athletic
26 financial aid awarded to female student-athletes matched the percentage of female
27 student-athletes participating in SDSU's varsity athletics program). For example,
28 in 2019-20 the lost athletic financial aid would be $((0.5812 \times \$9,198,841) -$
 $\$4,651,922) = \$694,267.88$ based on the information disclosed by SDSU to the
DOE in its annual EADA report.

1 132. In 2020-21, SDSU’s 305 female student-athletes equaled 57.22% of the
2 total student-athletes. But female student-athletes were provided with only 50.64% of
3 the \$8,679,501.00 in athletic financial aid the school awarded that year, amounting to
4 a loss of \$571,692.82 in athletic financial aid for women.

5 133. Thus, in just the last two academic years, not including the current
6 academic year, SDSU’s female student-athletes have received over \$1.2 million less
7 in athletic financial aid—and its male varsity student-athletes have received over \$1.2
8 million more—than they would have received if SDSU had granted such aid in
9 proportion to the number of students of each sex participating in intercollegiate
10 athletics.

11 134. A similar or greater unequal and disproportionate allocation of athletic
12 financial aid to varsity female student-athletes at SDSU is taking place in the 2021-22
13 academic year and will continue in the future if it is not stopped.

14 135. Defendants have not asserted or attempted to demonstrate any justification
15 for SDSU’s failure to provide female student-athletes with equal athletic financial aid
16 that does not reflect underlying discrimination—and Plaintiffs are not aware of any.

17 136. For example, if more female student-athletes were in-state residents, more
18 male student-athletes were non-residents, and SDSU spent at least as much money
19 trying to recruit female student-athlete non-residents as male student-athlete non-
20 residents (so the in-state/out-of-state difference was not attributable to sex
21 discrimination in recruiting), that might arguably help explain the smaller and
22 disproportionate grants of athletic financial aid to SDSU’s female student-athletes.

23 137. In fact, however, more male athletes at SDSU are in-state residents, more
24 female student-athletes are non-residents, and SDSU spends far more money trying to
25 recruit male student-athletes (approximately \$1,702 per athlete in 2019-20) than it
26 spends trying to recruit female student-athletes (approximately \$593 per athlete in
27 2019-20).

28

CLASS ALLEGATIONS

1
2 138. Plaintiffs bring this action on behalf of themselves and a class and subclass
3 of all those similarly situated, pursuant to Federal Rule of Civil Procedure 23(b)(2) and
4 (b)(3).

5 139. Specifically, Plaintiffs seek to represent a class for damages under Rule
6 23(b)(3) defined as: all current and former female students who participated in
7 intercollegiate varsity athletics at SDSU from the 2019-20 academic year to the present
8 and did not receive all of the athletic financial aid they could have received.

9 140. Plaintiffs also seek to certify a subclass for injunctive relief under Rule
10 23(b)(2) of all female students currently participating in intercollegiate athletics at
11 SDSU who are not receiving all of the athletic financial aid they could receive.

12 141. Plaintiffs reserve the right to revise or amend the above class and subclass
13 definitions based on facts learned in discovery.

14 142. All of the named Plaintiffs are members of the proposed class, at least four
15 are members of the proposed subclass, and all have been and/or are being injured by
16 Defendants’ discrimination on the basis of sex in the distribution of athletic financial
17 aid in SDSU’s varsity athletic program.

18 143. *Numerosity*. The proposed class and subclass meet the “numerosity”
19 requirement of Fed. R. Civ. P. 23(a)(1) because over 300 female student-athletes
20 participated in varsity athletics at SDSU annually in and since the 2019-20 academic
21 year. Joinder of them all is impracticable.

22 144. The proposed class also meets that requirement because joinder of all class
23 members and all persons harmed by Defendants’ past and still-ongoing sex
24 discrimination in SDSU’s varsity intercollegiate athletic program is impracticable.

25 145. The proposed class is known to exist, but the number of female student-
26 athletes in it will increase during this litigation because of the nature of college
27 enrollment and athletic participation. The number of female student-athletes harmed
28

1 by Defendants' discrimination will grow as each outgoing class of students graduates
2 and each incoming class of students starts attending SDSU.

3 146. The exact number of female varsity student-athletes who have been, are
4 being, and will be harmed by Defendants' conduct, while numerous, is unknown,
5 making joinder impracticable for that reason, too.

6 147. **Commonality And Predominance.** Plaintiffs satisfy the "commonality"
7 requirement of Rule 23(a)(2) and the predominance requirement of Rule 23(b)(3)
8 because there are questions of law and fact in common to the proposed class and
9 subclass that predominate over any questions affecting only individual members,
10 making a class action superior to other available methods for fairly and efficiently
11 adjudicating the controversy. These questions include whether Defendants have
12 violated and are violating Title IX by failing to provide female varsity student-athletes
13 at SDSU with proportional athletic financial aid, and, if so, what remedies the female
14 varsity student-athletes are entitled to as a result.

15 148. Because Title IX requires comparison of the sex-segregated men's and
16 women's athletic programs, the Title IX issues in this action are inherently class-based.

17 149. **Typicality.** Plaintiffs satisfy the "typicality" requirement of Federal Rule
18 of Civil Procedure 23(a)(3) because their claims are typical of those of the proposed
19 class. They all have been denied and/or are being denied proportional athletic financial
20 aid at SDSU because of Defendants' ongoing sex discrimination. They all want to end
21 SDSU's continuing violation of Title IX and recover appropriate remedies for
22 themselves and the proposed class.

23 150. In addition, Plaintiffs, like all members of the proposed class, have been,
24 are being, or will be harmed by the ongoing sex discrimination in the distribution of
25 athletic financial aid in SDSU's varsity athletics program.

26 151. **Adequacy.** Plaintiffs are members of the proposed class and they will
27 fairly and adequately represent the interests of the class as required by Rule 23(a)(4).
28

1 At least four Plaintiffs are members of the proposed subclass and they will fairly and
2 adequately represent the interests of the subclass as required by Rule 23(a)(4).
3 Plaintiffs intend to prosecute this action vigorously to secure fair and adequate
4 monetary and equitable relief for the entire class and subclass. There is no conflict
5 between Plaintiffs and class members.

6 152. Plaintiffs have retained counsel who have significant experience and
7 success prosecuting Title IX class actions against universities and will adequately
8 represent the class. Their counsel have devoted substantial time to identifying and
9 investigating the potential claims in this action, have developed detailed knowledge of
10 the facts and the applicable law, have no conflicts with Plaintiffs or the putative class,
11 and have sufficient resources to commit to representing the putative class.

12 153. ***Rule 23(b)(3) Certification: Superiority.*** Plaintiffs satisfy the requirement
13 for certification of their claims for damages under Rule 23(b)(3) because class
14 certification would be superior to other available methods for the fair and efficient
15 adjudication of this controversy. Here, it would be impractical and economically
16 infeasible for class members to seek redress individually. Proof and resolution of their
17 claims require class-wide evidence and findings. No litigation concerning this
18 controversy has already begun by other class members and litigation of these claims
19 in this forum is desirable.

20 154. ***Rule 23(b)(2) Certification: Defendants' Common Conduct.*** Plaintiffs
21 satisfy the requirement for certification of their claims for equitable relief under Rule
22 23(b)(2) in that the Defendants are acting or refusing to act on grounds that apply
23 generally to the class—by denying female student-athletes at SDSU proportional
24 athletic financial aid—so that final injunctive relief or corresponding declaratory relief
25 is appropriate respecting the class as a whole.

26 155. Plaintiffs are seeking equitable relief under Rule 23(b)(2) because they
27 have no adequate remedy at law to prevent Defendants from violating Title IX in the
28

1 future by depriving SDSU’s female varsity student-athletes of equal athletic financial
2 aid.

3 **COUNT I**

4 **Title IX**

5 **Unequal Allocation of Athletic Financial Aid**

6 156. Plaintiffs bring this claim on behalf of the class and subclass defined
7 above.

8 157. SDSU provides athletic financial aid to some of its male and female
9 varsity student-athletes.

10 158. Under Title IX and 34 C.F.R. § 106.37, as interpreted by OCR, SDSU
11 must provide athletic financial aid to its female and male student-athletes in proportion
12 to the number of students of each sex participating in intercollegiate athletics.

13 159. Defendants have not provided and do not provide athletic financial aid to
14 SDSU’s female and male student-athletes in proportion to the number of students of
15 each sex participating in intercollegiate athletics.

16 160. Defendants have provided and continue to provide SDSU’s female varsity
17 student-athletes much less—and its male varsity student-athletes much more—athletic
18 financial aid than they would have received if SDSU had granted such aid in proportion
19 to the number of students of each sex participating in intercollegiate athletics.

20 161. Defendants’ failure to provide SDSU’s female student-athletes with
21 athletic financial aid in proportion to the number of female student-athletes
22 participating in intercollegiate athletics constitutes sex discrimination in violation of
23 Title IX and 34 C.F.R. § 106.37.

24 162. Individuals harmed by violations of Title IX may seek and recover
25 monetary damages, injunctive relief to prevent continuing discrimination, and
26 declaratory relief.

27
28

1 F. Award Plaintiffs their reasonable attorneys' fees and expenses; and

2 G. Order such other and further relief as the Court deems appropriate.

3 Dated: February 7, 2022

Respectfully submitted,

4 /s/ Gayle M. Blatt

Gayle M. Blatt (SBN 122048)

5 **CASEY GERRY SCHENK**

6 **FRANCAVILLA BLATT & PENFIELD, LLP**

110 Laurel Street

7 San Diego, CA 92101

8 Telephone: (619) 238-1811

E-mail: gmb@cglaw.com

9 Arthur H. Bryant (SBN 208365)

10 **BAILEY & GLASSER, LLP**

11 1999 Harrison Street, Suite 660

12 Oakland, CA 94612

13 Tel.: (510) 272-8000

E-mail: abryant@baileyglasser.com

14 Lori Bullock (to be admitted *pro hac vice*)

15 **BAILEY & GLASSER LLP**

16 P.O. Box 197

17 Ankeny, IA 50023

18 Tel.: 515.416.9051

E-mail: lbullock@baileyglasser.com

19 Cary Joshi (to be admitted *pro hac vice*)

20 Joshua I. Hammack (to be admitted *pro hac vice*)

21 **BAILEY & GLASSER LLP**

22 1055 Thomas Jefferson Street NW, Suite 540

23 Washington, DC 20007

24 Tel: (202) 463-2101

25 E-mail: cjoshi@baileyglasser.com

26 E-mail: jhammack@baileyglasser.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Amber Eck (SBN 177882)
Jenna Rangel (SBN 272735)
HAEGGQUIST & ECK, LLP
225 Broadway, Ste 2050
San Diego, CA 92101
Tel: (619) 342-8000
E-mail: ambere@haelaw.com
E-mail: jennar@haelaw.com

ATTORNEYS FOR PLAINTIFFS