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13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

15 MADISON FISK, RAQUEL CASTRO,
16 GRETA VISS, CLARE BOTTERILL,
MAYA BROSCHE, HELEN BAUER,
17 CARINA CLARK, NATALIE FIGUEROA,
ERICA GROTEGEER, KAITLIN HERI,
18 OLIVIA PETRINE, AISHA WATT,
KAMRYN WHITWORTH, SARA ABSTEN,
19 ELEANOR DAVIES, ALEXA DIETZ, and
LARISA SULCS, individually and on behalf
20 of all those similarly situated,

21 *Plaintiffs,*

22 v.

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

25 *Defendants.*

Case No. 3:22-cv-00173-TWR-MSB

**SECOND AMENDED CLASS
ACTION COMPLAINT**

Judge: Honorable Todd W. Robinson
Courtroom: 3A

Mag. Judge: Hon. Michael S. Berg
Courtroom: 2C

Complaint Filed: February 10, 2022
Trial date: Not set.

DEMAND FOR JURY TRIAL

TABLE OF CONTENTS

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
~ ~

INTRODUCTION 3

FACTUAL ALLEGATIONS.....36

TITLE IX BARS SDSU FROM DISCRIMINATING AGAINST ITS FEMALE STUDENT-ATHLETES ON THE BASIS OF THEIR SEX......36

 Title IX’s Equal Athletic Financial Aid Requirements38

 Title IX’s Equal Athletic Treatment and Benefit Requirements41

 Title IX’s Prohibition Against Retaliation.....42

SDSU HAS BEEN AND IS DISCRIMINATING AGAINST ITS FEMALE STUDENT-ATHLETES ON THE BASIS OF THEIR SEX.44

 SDSU’s Violations of Title IX’s Equal Athletic Financial Aid Requirements44

 SDSU’s Violations of Title IX’s Equal Athletic Treatment and Benefits Requirements49

 SDSU’s Violation of Title IX’s Prohibition Against Retaliation.....57

CLASS ALLEGATIONS 61

 Denial of Equal Allocation of Athletic Financial Aid66

 Denial of Equal Athletic Treatment and Benefits.....67

 Retaliation69

PRAYER FOR RELIEF 70

INTRODUCTION

1
2 1. This is a sex discrimination class action against San Diego State
3 University (“SDSU”) for violating Title IX of the Education Amendments of 1972
4 (“Title IX”) by depriving its female varsity student-athletes of equal athletic financial
5 aid, denying them equal athletic benefits and treatment, and retaliating against them
6 because some of them sued SDSU for violating Title IX.

7 2. SDSU has not paid its female varsity student-athletes equal athletic
8 financial aid for over a decade, failed to pay them over \$1,200,000 in equal athletic
9 financial aid in the 2019-20 and 2020-21 academic years, did not pay them equal
10 athletic financial in the 2021-22 academic year, and is not paying them equal athletic
11 financial aid this academic year.

12 3. This lawsuit seeks to make SDSU pay its female varsity student-athletes
13 the equal athletic financial aid they have been and are being deprived of—and to
14 require SDSU to provide them with equal athletic financial aid in the future.

15 4. SDSU also has not provided its female varsity student-athletes with
16 treatment and benefits equal to those it has provided its male varsity student-athletes
17 for over a decade and, instead, has given its female varsity student-athletes much worse
18 treatment and benefits.

19 5. This lawsuit also aims to force SDSU to treat its female and male student-
20 athletes equally going forward.

21 6. Finally, this lawsuit seeks to hold SDSU accountable for retaliating
22 against its female varsity student-athletes because some of them sued SDSU for
23 violating the rights of all of them under Title IX.

24 7. Shortly after this lawsuit was filed, SDSU informed the Plaintiffs who are
25 current varsity student-athletes—at a quickly-called Zoom meeting with all of their
26 teammates—that it was not happy with them because they filed this suit.

27 8. During that meeting, SDSU also threatened those Plaintiffs and the other
28 team members by reminding them that being a varsity student-athlete was not a right,
29

1 suggesting that those who brought, participated in, or supported the lawsuit—including
2 Plaintiffs—could be removed from the team altogether.

3 9. That action both adversely affected those Plaintiffs and deterred other
4 female varsity student-athletes from helping them fight sex discrimination at SDSU.

5 10. Indeed, several members of the women’s track and field team who had
6 been considering joining the lawsuit told Plaintiffs they would not join because of the
7 comments made on the Zoom call.

8 11. When Plaintiffs asked SDSU to take specific steps to minimize the harm
9 caused by this illegal retaliation, SDSU refused.

10 12. This lawsuit, therefore, seeks to make SDSU pay damages to its varsity
11 female student-athletes for retaliating against them in violation of Title IX and to
12 prohibit SDSU from violating Title IX by retaliating against its varsity female student-
13 athletes in the future.

14 **JURISDICTION AND VENUE**

15 13. This action arises under Title IX of the Education Amendments of 1972,
16 20 U.S.C. §§ 1681 *et seq.*, and the regulations and policies promulgated pursuant to
17 that law.

18 14. This Court has jurisdiction over Plaintiffs’ federal law claims pursuant to
19 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

20 15. Declaratory relief is authorized pursuant to 28 U.S.C. §§ 2201 and 2202
21 to obtain the correct interpretation of the legal requirements described in this
22 Complaint, which is necessary and appropriate to determine the parties’ respective
23 rights and duties.

24 16. Venue is proper in the United States District Court for the Southern
25 District of California pursuant to 28 U.S.C. § 1391(b) because SDSU is located in San
26 Diego, California, which is within this Court’s jurisdiction. In addition, the events
27 giving rise to the Complaint occurred in San Diego, California, within this Court’s
28 jurisdiction.

THE PARTIES

Plaintiffs

1
2
3 17. Plaintiffs are past and current female varsity student-athletes at SDSU.

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

8 19. SDSU’s average cost of attendance for in-state residents from 2018-19 to
9 2021-22 was \$28,142 per year. A full athletic scholarship at SDSU, which includes a
10 cost-of-living stipend, would have covered the entire cost of attendance.

11 20. SDSU’s average cost of attendance for non-residents from 2018-19 to
12 2021-22 was \$39,230 per year. A full athletic scholarship at SDSU, which includes a
13 cost-of-living stipend, would have covered the entire cost of attendance.

14 21. The NCAA does not impose a limit on the dollar amount of aid that can
15 be offered for any sport. Instead, the NCAA limits the number of scholarships that may
16 be awarded for each sport.

17 22. The NCAA’s scholarship limits work in two different ways: head-count
18 sports must award full athletic scholarships on a per-athlete basis; equivalency sports
19 may split up to a full athletic scholarship among many athletes.

20 23. SDSU imposes additional dollar-amount limitations on coaches of all of
21 the women’s sports and some of the men’s sports.

22 24. This intentional decision—not dictated by the NCAA’s rules—at least
23 partially explains why female student-athletes at SDSU receive smaller individual
24 awards than their male counterparts and a disproportionately small amount of overall
25 aid.

26 25. For example, per NCAA rules, before its elimination, the women’s rowing
27 team was permitted to have the equivalent of twenty athletic scholarships awarded to
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29

1 its student-athletes, while the men’s football team was and is permitted to award
2 eighty-five athletic scholarships to eighty-five student athletes.

3 26. At SDSU, the coach of the women’s rowing team was typically given a
4 dollar amount of athletic financial aid that equaled fifteen in-state scholarships and five
5 out of state scholarships.

6 27. This dollar cap, imposed by SDSU, meant the coach could offer only that
7 dollar amount of aid to female student-athletes on the rowing team—with some
8 receiving partial athletic scholarships and some receiving full athletic scholarships.
9 These same caps were placed on head-count sports, like women’s golf, which was also
10 given a dollar-amount limitation rather than total number of full scholarships
11 limitation.

12 28. However, the same dollar limits were not placed, for example, on the
13 men’s football team. As such, aid to male student-athletes on the football team was not
14 artificially capped by SDSU’s dollar amount. Instead, aid to those male student-
15 athletes was capped only by the NCAA’s limit of eighty-five scholarships, in the full
16 amount of out-of-state cost of attendance.

17 29. SDSU’s monetary cap on the amount of athletic financial aid women’s
18 sports were permitted to award and resulted in unequal opportunities for athletic
19 financial aid for female student-athletes, including Plaintiffs, and less overall athletic
20 financial aid being awarded to female student-athletes, including Plaintiffs.

21 30. None of the Plaintiffs received all of the athletic financial aid for which
22 she was eligible at SDSU.

23 31. If SDSU complied with Title IX and granted athletic financial aid to its
24 female varsity student-athletes proportional to the athletic financial aid it granted to
25 SDSU’s male varsity student-athletes, each of the Plaintiffs would have had an
26 opportunity to receive her fair share of equal athletic financial aid.

27 32. Instead, each of the Plaintiffs was denied the *opportunity* to receive equal
28 financial aid, despite Title IX’s express protection of that opportunity. *See, e.g.*, 34
29

1 C.F.R. §106.37(c) (providing that, when a school offers athletic financial awards, it
2 “must provide reasonable *opportunities* for such awards for members of each sex in
3 proportion to the number of students of each sex participating in interscholastic or
4 intercollegiate athletics” (emphasis added)).

5 33. Similarly, each of the Plaintiffs was forced to confront a sex-based barrier
6 to receiving athletic financial aid that male student-athletes did not confront and that
7 made it more difficult for female student-athletes to receive athletic financial aid than
8 it was for their male counterparts.

9 34. Put simply, compared to the male student-athletes at SDSU, each of the
10 Plaintiffs was forced to compete for athletic financial aid on an unequal basis because
11 of her sex.

12 35. In addition to being deprived of the equal opportunity to receive athletic
13 financial aid, each of the Plaintiffs was actually denied her fair share of equal athletic
14 financial aid.

15 36. If SDSU complied with Title IX and granted athletic financial aid to its
16 female varsity student-athletes proportional to the athletic financial aid it granted to
17 SDSU’s male varsity student-athletes, each of the Plaintiffs would have received more
18 athletic financial aid than she did.

19 37. Instead, as set forth below, each of the Plaintiffs received a smaller
20 financial-aid award than she would have received if SDSU had awarded financial aid
21 in compliance with Title IX.

22 38. If SDSU complied with Title IX and granted athletic financial aid to its
23 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 been free of
25 second-class treatment in the allocation of financial aid at SDSU.

26 39. Instead, each of the Plaintiffs was forced to endure an environment in
27 which her school actively discriminated against her because of her sex.
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1 40. This unequal treatment is inherently degrading and stigmatizing, and each
2 of the Plaintiffs experienced the harms and injuries caused by SDSU’s intentional
3 decision to treat female student-athletes like second-class citizens.

4 41. Each of the Plaintiffs who are current student-athletes has athletic
5 eligibility remaining and intends to continue to participate as a varsity student-athlete
6 until she has graduated and/or exhausted her eligibility to participate in intercollegiate
7 varsity sports.

8 42. Each of the Plaintiffs who are current student-athletes is being deprived of
9 treatment and benefits equal to those provided to male student-athletes at SDSU.

10 43. Each of the Plaintiffs was retaliated against by SDSU because SDSU
11 directly retaliated against some of them for filing this lawsuit on behalf of all female
12 varsity student-athletes and SDSU’s retaliatory actions had a chilling effect on the
13 willingness of other female varsity student-athletes to challenge, expose, and remedy
14 SDSU’s sex discrimination.

15 44. Each of the Plaintiffs was also injured because she was subjected by SDSU
16 to discrimination on the basis of her sex.

17 45. Each of the Plaintiffs was treated like a second-class citizen at SDSU
18 because of her sex, which is inherently degrading, stigmatizing, and affected each of
19 the Plaintiff’s experiences.

20 Madison Fisk

21 46. Madison Fisk graduated from SDSU in May 2022 with a degree in
22 Economics. She was a resident of California for purposes of tuition at SDSU during
23 her time as a student at SDSU.

24 47. Madison was a member of the women’s varsity rowing team until SDSU
25 discontinued the team in Spring 2021.

26 48. Madison began rowing before high school. She worked hard throughout
27 high school to earn a spot as a coxswain for the SDSU women’s rowing team.
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1 49. During her time on the rowing team, Madison received partial athletic
2 financial aid. She received a total of \$800 her freshman year, \$5,800 her sophomore
3 year, \$10,800 her junior year, and \$10,800 for her senior year. Madison received a
4 total of \$28,200 in athletic financial aid as a varsity student-athlete.

5 50. Madison was harmed by SDSU's failure to provide proportional athletic
6 financial aid to female student-athletes in at least the following ways:

- 7 • She was denied the *opportunity* to compete for and receive equal
8 athletic financial aid because of her sex;
- 9 • She was forced to confront a sex-based *barrier* to receiving athletic
10 financial aid that male student-athletes did not confront and that
11 made it more difficult for her to receive athletic financial aid than it
12 was for male student-athletes;
- 13 • She received a *smaller athletic financial aid award*, simply because
14 of her sex, in an amount that exceeded \$1.00, but the precise amount
15 of her damages cannot currently be determined from publicly
16 available information;
- 17 • She was forced to endure *degrading and stigmatizing second-class*
18 *treatment* as SDSU intentionally treated female student-athletes
19 worse than their male counterparts when it came to athletic financial
20 aid.

21 51. The amount of damages in unequal athletic financial aid Madison suffered
22 can be calculated by using the following information, along with other information not
23 currently public available: Madison was a varsity athlete in 2018-19, when SDSU
24 deprived each female student-athlete of an average of \$2,608.84; she was a varsity
25 athlete in 2019-20, when SDSU deprived each female student-athlete of an average of
26 \$2,204.03; she was a varsity athlete in 2020-21, when SDSU deprived each female
27 student-athlete of an average of \$1,874.40; and, given SDSU's commitment to honor
28 her financial aid after eliminating the women's rowing team, she was eligible for aid
29

1 in 2021-22, when SDSU deprived female students of equal financial aid in presently
2 unknown amounts.

3 52. Madison was also harmed because SDSU retaliated against her and the
4 other Plaintiffs for filing this lawsuit, including because—as a result of SDSU’s
5 retaliation—additional student-athletes declined to join the case as plaintiffs, they and
6 other student-athletes were deterred from assisting the Plaintiffs in prosecuting the case
7 (e.g., by agreeing to participate as witnesses), and her ability to prove that SDSU was
8 and is discriminating against her and its other female student-athletes was adversely
9 affected.

10 Raquel Castro

11 53. Raquel Castro is currently a senior at SDSU majoring in Kinesiology. She
12 is a resident of California for purposes of tuition at SDSU.

13 54. Raquel was a member of the women’s varsity rowing team until SDSU
14 discontinued the team in Spring 2021.

15 55. Raquel trained hard throughout high school so she could pursue rowing as
16 a varsity sport in college.

17 56. During her time on the rowing team, Raquel received partial athletic
18 financial aid. She received a total of \$800 in athletic financial aid for books each year.
19 Raquel received a total of \$3,200 in athletic financial aid as a varsity student-athlete.

20 57. Raquel was harmed by SDSU’s failure to provide proportional athletic
21 financial aid to female student-athletes in at least the following ways:

- 22 • She was denied the *opportunity* to compete for and receive equal
23 athletic financial aid because of her sex;
- 24 • She was forced to confront a sex-based *barrier* to receiving athletic
25 financial aid that male student-athletes did not confront and that
26 made it more difficult for her to receive athletic financial aid than it
27 was for male student-athletes;
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- 1 • She received a *smaller athletic financial aid award*, simply because
- 2 of her sex, in an amount that exceeded \$1.00, but the precise amount
- 3 of her damages cannot currently be determined from publicly
- 4 available information;
- 5 • She was forced to endure *degrading and stigmatizing second-class*
- 6 *treatment* as SDSU intentionally treated female student-athletes
- 7 worse than their male counterparts when it came to athletic financial
- 8 aid.

9 58. The amount of damages in unequal athletic financial aid Raquel suffered
10 can be calculated by using the following information, along with other information not
11 currently public available: Raquel she was a varsity athlete in 2019-20, when SDSU
12 deprived each female student-athlete of an average of \$2,204.03; she was a varsity
13 athlete in 2020-21, when SDSU deprived each female student-athlete of an average of
14 \$1,874.40; and, given SDSU's commitment to honor her financial aid after eliminating
15 the women's rowing team, she was eligible for aid in 2021-22 and 2022-23, when
16 SDSU deprived female students of equal financial in presently unknown amounts.

17 59. Raquel was also harmed because SDSU retaliated against her and the other
18 Plaintiffs for filing this lawsuit, including because—as a result of SDSU's retaliation—
19 additional student-athletes declined to join the case as plaintiffs, they and other
20 student-athletes were deterred from assisting the Plaintiffs in prosecuting the case (*e.g.*,
21 by agreeing to participate as witnesses), and her ability to prove that SDSU was and is
22 discriminating against her and its other female student-athletes was adversely affected.

23 Greta Viss

24 60. Greta Viss is a graduate of SDSU with a major in Psychology and a minor
25 Biology. She was a resident of California when she attended SDSU and was a resident
26 for purposes of tuition at SDSU.

27 61. Greta was a member of the women's varsity rowing team until SDSU
28 discontinued the women's varsity rowing team in Spring 2021.

1 62. Greta has been playing sports since she was four years old. Greta walked
2 onto the women’s rowing team at SDSU.

3 63. During her time on the rowing team, Greta received partial athletic
4 financial aid during her freshman and sophomore years. She received \$7,000 in athletic
5 financial aid in her freshman year and \$17,000 in her sophomore year.

6 64. Greta was harmed by SDSU’s failure to provide proportional athletic
7 financial aid to female student-athletes in at least the following ways:

- 8 • She was denied the *opportunity* to compete for and receive equal
9 athletic financial aid because of her sex;
- 10 • She was forced to confront a sex-based *barrier* to receiving athletic
11 financial aid that male student-athletes did not confront and that
12 made it more difficult for her to receive athletic financial aid than it
13 was for male student-athletes;
- 14 • She received a *smaller athletic financial aid award*, simply because
15 of her sex, in an amount that exceeded \$1.00, but the precise amount
16 of her damages cannot currently be determined from publicly
17 available information;
- 18 • She was forced to endure *degrading and stigmatizing second-class*
19 *treatment* as SDSU intentionally treated female student-athletes
20 worse than their male counterparts when it came to athletic financial
21 aid.

22 65. The amount of damages in unequal athletic financial aid Greta suffered
23 can be calculated by using the following information, along with other information not
24 currently public available: Greta was a varsity athlete in 2018-19, when SDSU
25 deprived each female student-athlete of an average of \$2,608.84; she was a varsity
26 athlete in 2019-20, when SDSU deprived each female student-athlete of an average of
27 \$2,204.03; and she was a varsity athlete in 2020-21, when SDSU deprived each female
28 student-athlete of an average of \$1,874.40.

1 66. Greta was also harmed because SDSU retaliated against her and the other
2 Plaintiffs for filing this lawsuit, including because—as a result of SDSU’s retaliation—
3 additional student-athletes declined to join the case as plaintiffs, they and other
4 student-athletes were deterred from assisting the Plaintiffs in prosecuting the case (e.g.,
5 by agreeing to participate as witnesses), and her ability to prove that SDSU was and is
6 discriminating against her and its other female student-athletes was adversely affected.

7 Clare Botterill

8 67. Clare Botterill is currently a senior at SDSU majoring in Journalism and
9 Media Studies. She came to SDSU from Alberta, Canada, to be a part of the women’s
10 varsity rowing team and, therefore, is a non-resident for purposes of tuition at SDSU.

11 68. Clare was a member of the women’s varsity rowing team until SDSU
12 discontinued the women’s varsity rowing team in Spring 2021.

13 69. Clare started rowing after being a long-time soccer player. After her first
14 summer rowing, Clare loved the sport and dedicated herself to becoming good enough
15 to earn a spot on the Canadian national team and, subsequently, a spot on the team at
SDSU.

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

19 71. Clare was harmed by SDSU’s failure to provide proportional athletic
20 financial aid to female student-athletes in at least the following ways:

- 21 • She was denied the *opportunity* to compete for and receive equal
22 athletic financial aid because of her sex;
23 • She was forced to confront a sex-based *barrier* to receiving athletic
24 financial aid that male student-athletes did not confront and that
25 made it more difficult for her to receive athletic financial aid than it
26 was for male student-athletes;

- 1 • She received a *smaller athletic financial aid award*, simply because
- 2 of her sex, in an amount that exceeded \$1.00, but the precise amount
- 3 of her damages cannot currently be determined from publicly
- 4 available information;
- 5 • She was forced to endure *degrading and stigmatizing second-class*
- 6 *treatment* as SDSU intentionally treated female student-athletes
- 7 worse than their male counterparts when it came to athletic financial
- 8 aid.

9 72. The amount of damages in unequal athletic financial aid Clare suffered
10 can be calculated by using the following information, along with other information not
11 currently public available: Clare was a varsity athlete in 2019-20, when SDSU
12 deprived each female student-athlete of an average of \$2,204.03; she was a varsity
13 athlete in 2020-21, when SDSU deprived each female student-athlete of an average of
14 \$1,874.40; and, given SDSU's commitment to honor her financial aid after eliminating
15 the women's rowing team, she was eligible for aid in 2021-22 and 2022-23, when
16 SDSU deprived female students of equal financial in presently unknown amounts.

17 73. Clare was also harmed because SDSU retaliated against her and the other
18 Plaintiffs for filing this lawsuit, including because—as a result of SDSU's retaliation—
19 additional student-athletes declined to join the case as plaintiffs, they and other
20 student-athletes were deterred from assisting the Plaintiffs in prosecuting the case (*e.g.*,
21 by agreeing to participate as witnesses), and her ability to prove that SDSU was and is
22 discriminating against her and its other female student-athletes was adversely affected.

23 Maya Brosch

24 74. Maya Brosch graduated from SDSU in May 2021. She was a resident of
25 California for purposes of tuition at SDSU.

26 75. Maya was a member of the women's varsity track and field team until she
27 graduated in May 2021.

1 76. During her time on the track and field team, Maya received partial athletic
2 financial aid. In her freshman and sophomore years, Maya received \$400 per semester
3 in athletic financial aid for books and \$250 per semester in athletic financial aid for
4 tuition. In her junior and senior years, Maya received \$400 per semester in athletic
5 financial aid for books and \$3,860 per semester in athletic financial aid for tuition.
6 Maya received a total of \$19,640 in athletic financial aid as a varsity student-athlete.

7 77. Maya was harmed by SDSU's failure to provide proportional athletic
8 financial aid to female student-athletes in at least the following ways:

- 9 • She was denied the *opportunity* to compete for and receive equal
10 athletic financial aid because of her sex;
- 11 • She was forced to confront a sex-based *barrier* to receiving athletic
12 financial aid that male student-athletes did not confront and that
13 made it more difficult for her to receive athletic financial aid than it
14 was for male student-athletes;
- 15 • She received a *smaller athletic financial aid award*, simply because
16 of her sex, in an amount that exceeded \$1.00, but the precise amount
17 of her damages cannot currently be determined from publicly
18 available information;
- 19 • She was forced to endure *degrading and stigmatizing second-class*
20 *treatment* as SDSU intentionally treated female student-athletes
21 worse than their male counterparts when it came to athletic financial
22 aid.

23 78. The amount of damages in unequal athletic financial aid Maya suffered
24 can be calculated by using the following information, along with other information not
25 currently public available: Maya was a varsity athlete in 2018-19, when SDSU
26 deprived each female student-athlete of an average of \$2,608.84; she was a varsity
27 athlete in 2019-20, when SDSU deprived each female student-athlete of an average of
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1 \$2,204.03; and she was a varsity athlete in 2020-21, when SDSU deprived each female
2 student-athlete of an average of \$1,874.40.

3 79. Maya was also harmed because SDSU retaliated against her and the other
4 Plaintiffs for filing this lawsuit, including because—as a result of SDSU’s retaliation—
5 additional student-athletes declined to join the case as plaintiffs, they and other
6 student-athletes were deterred from assisting the Plaintiffs in prosecuting the case (*e.g.*,
7 by agreeing to participate as witnesses), and her ability to prove that SDSU was and is
8 discriminating against her and its other female student-athletes was adversely affected.

9 Olivia Petrine

10 80. Olivia Petrine is currently a junior at SDSU majoring in Computer
11 Science. She came to SDSU from Arizona to be a Division I varsity athlete and,
12 therefore, is a non-resident for the purposes of tuition at SDSU.

13 81. Olivia was a member of the women’s varsity rowing team until SDSU
14 discontinued the women’s varsity rowing team in Spring 2021.

15 82. Olivia started rowing in high school and loved the sport from the first
16 practice. Rowing provided Olivia with the ability to learn how to work as a team
17 member and be a leader as well.

18 83. During her time on the rowing team, Olivia received partial athletic
19 financial aid. She received \$400 per semester in athletic financial aid for books. Olivia
20 received a total of \$800 in athletic financial aid as a varsity student-athlete. She
21 received \$800 during the 2021-22 academic year because SDSU honored its
22 commitment to grant her promised aid after eliminating the women’s rowing team.

23 84. Olivia was harmed by SDSU’s failure to provide proportional athletic
24 financial aid to female student-athletes in at least the following ways:

- 25 • She was denied the *opportunity* to compete for and receive equal
26 athletic financial aid because of her sex;
- 27 • She was forced to confront a sex-based *barrier* to receiving athletic
28 financial aid that male student-athletes did not confront and that

1 made it more difficult for her to receive athletic financial aid than it
2 was for male student-athletes;

- 3 • She received a *smaller athletic financial aid award*, simply because
4 of her sex, in an amount that exceeded \$1.00, but the precise amount
5 of her damages cannot currently be determined from publicly
6 available information;
- 7 • She was forced to endure *degrading and stigmatizing second-class*
8 *treatment* as SDSU intentionally treated female student-athletes
9 worse than their male counterparts when it came to athletic financial
10 aid.

11 85. The amount of damages in unequal athletic financial aid Olivia suffered
12 can be calculated by using the following information, along with other information not
13 currently public available: Olivia was a varsity athlete in 2020-21, when SDSU
14 deprived each female student-athlete of an average of \$1,874.40; and, given SDSU's
15 commitment to honor her financial aid after eliminating the women's rowing team, she
16 was eligible for aid in 2021-22 and 2022-23, when SDSU deprived female students of
17 equal financial in presently unknown amounts; she will remain eligible for such aid in
18 2023-24 as well.

19 86. Olivia was also harmed because SDSU retaliated against her and the other
20 Plaintiffs for filing this lawsuit, including because—as a result of SDSU's retaliation—
21 additional student-athletes declined to join the case as plaintiffs, they and other
22 student-athletes were deterred from assisting the Plaintiffs in prosecuting the case (*e.g.*,
23 by agreeing to participate as witnesses), and her ability to prove that SDSU was and is
24 discriminating against her and its other female student-athletes was adversely affected.

25 Helen Bauer

26 87. Helen Bauer graduated from SDSU in May 2022 with a degree in
27 Business Management. She came to SDSU from Seattle, Washington, and, therefore,
28 is a non-resident for the purposes of tuition at SDSU.

1 88. Helen was a member of the women’s varsity rowing team until SDSU
2 discontinued the women’s varsity rowing team in Spring 2021.

3 89. Helen is very passionate about women’s fitness and women’s
4 opportunities to participate in sports. Helen began rowing in high school. She chose to
5 attend SDSU because it would offer her an opportunity to participate on an up-and-
6 coming varsity Division I rowing team and obtain a quality education. Helen worked
7 her way to becoming team captain in the 2020 season.

8 90. During her freshman and sophomore year, Helen received partial athletic
9 financial aid. During her freshman year she received \$10,000 in athletic financial aid.
10 During her sophomore year she received \$20,000. Helen received a total of \$30,000 in
11 athletic financial aid up to her sophomore year as a student-athlete.

12 91. Helen was harmed by SDSU’s failure to provide proportional athletic
13 financial aid to female student-athletes in at least the following ways:

- 14 • She was denied the *opportunity* to compete for and receive equal
15 athletic financial aid because of her sex;
- 16 • She was forced to confront a sex-based *barrier* to receiving athletic
17 financial aid that male student-athletes did not confront and that
18 made it more difficult for her to receive athletic financial aid than it
19 was for male student-athletes;
- 20 • She received a *smaller athletic financial aid award*, simply because
21 of her sex, in an amount that exceeded \$1.00, but the precise amount
22 of her damages cannot currently be determined from publicly
23 available information;
- 24 • She was forced to endure *degrading and stigmatizing second-class*
25 *treatment* as SDSU intentionally treated female student-athletes
26 worse than their male counterparts when it came to athletic financial
27 aid.
28

1 92. The amount of damages in unequal athletic financial aid Helen suffered
2 can be calculated by using the following information, along with other information not
3 currently public available: Helen was a varsity athlete in 2018-19, when SDSU
4 deprived each female student-athlete of an average of \$2,608.84; she was a varsity
5 athlete in 2019-20, when SDSU deprived each female student-athlete of an average of
6 \$2,204.03; and she was a varsity athlete in 2020-21, when SDSU deprived each female
7 student-athlete of an average of \$1,874.40.

8 93. Helen was also harmed because SDSU retaliated against her and the other
9 Plaintiffs for filing this lawsuit, including because—as a result of SDSU’s retaliation—
10 additional student-athletes declined to join the case as plaintiffs, they and other
11 student-athletes were deterred from assisting the Plaintiffs in prosecuting the case (*e.g.*,
12 by agreeing to participate as witnesses), and her ability to prove that SDSU was and is
13 discriminating against her and its other female student-athletes was adversely affected.

14 Carina Clark

15 94. Carina Clark graduated from SDSU in May 2022 with a degree in Media
16 Studies. She came to SDSU from Florida to be a varsity athlete and, therefore, is a
17 non-resident for the purposes of tuition at SDSU.

18 95. Carina is a member of the women’s varsity track and field team at SDSU.¹

19 96. Carina has run track for most of her life. Both of Carina’s parents were
20 professional athletes, and they instilled in her a love for sports.

21 97. During her time on the track and field team, Carina received partial athletic
22 financial aid for her senior year only in the amount of \$400 per semester. Carina
23 received a total of \$800 in athletic financial aid as a varsity student-athlete.

24 98. Carina was harmed by SDSU’s failure to provide proportional athletic
25 financial aid to female student-athletes in at least the following ways:

26 ¹ SDSU’s women’s varsity track and field student-athletes are members of three
27 different teams: the indoor track & field team, the outdoor track & field team, and the cross
28 country team. For the sake of brevity, this Amended Complaint refers to them as members
of SDSU’s women’s track and field team.

- 1 • She was denied the *opportunity* to compete for and receive equal
- 2 athletic financial aid because of her sex;
- 3 • She was forced to confront a sex-based *barrier* to receiving athletic
- 4 financial aid that male student-athletes did not confront and that
- 5 made it more difficult for her to receive athletic financial aid than it
- 6 was for male student-athletes;
- 7 • She received a *smaller athletic financial aid award*, simply because
- 8 of her sex, in an amount that exceeded \$1.00, but the precise amount
- 9 of her damages cannot currently be determined from publicly
- 10 available information;
- 11 • She was forced to endure *degrading and stigmatizing second-class*
- 12 *treatment* as SDSU intentionally treated female student-athletes
- 13 worse than their male counterparts when it came to athletic financial
- 14 aid.

15 99. T The amount of damages in unequal athletic financial aid Carina suffered
16 can be calculated by using the following information, along with other information not
17 currently public available: Carina was a varsity athlete in 2018-19, when SDSU
18 deprived each female student-athlete of an average of \$2,608.84; she was a varsity
19 athlete in 2019-20, when SDSU deprived each female student-athlete of an average of
20 \$2,204.03; and she was a varsity athlete in 2020-21, when SDSU deprived each female
21 student-athlete of an average of \$1,874.40; and she remained a varsity athlete in 2021-
22 22, when SDSU deprived female students of equal financial in presently unknown
23 amounts.

24 100. During her time on the track and field team, SDSU also discriminated
25 against Carina as a female athlete by failing to provide her equal athletic treatment and
26 benefits.

27 101. Carina was also harmed because she participated in the Zoom meeting at
28 which SDSU retaliated against her and the other Plaintiffs for filing this lawsuit.

1 102. As a result of SDSU’s retaliatory conduct, Carina was singled out in front
2 of her teammates.

3 103. SDSU’s comments, which were directed at her in front of her teammates,
4 were embarrassing, humiliating, and anxiety-provoking.

5 104. Carina was also harmed because SDSU retaliated against her and the other
6 Plaintiffs for filing this lawsuit, including because—as a result of SDSU’s retaliation—
7 additional student-athletes declined to join the case as plaintiffs, they and other
8 student-athletes were deterred from assisting the Plaintiffs in prosecuting the case (*e.g.*,
9 by agreeing to participate as witnesses), and her ability to prove that SDSU was and is
10 discriminating against her and its other female student-athletes was adversely affected.

11 Natalie Figueroa

12 105. Natalie Figueroa is currently a senior at SDSU majoring in Psychology.
13 She is a resident of California for purposes of tuition at SDSU.

14 106. Natalie was a member of the women’s varsity rowing team until SDSU
15 discontinued the women’s varsity rowing team in Spring 2021.

16 107. Natalie loved being a part of the women’s rowing team, and she chose
17 SDSU because she wanted a college with great academic programs and great athletic
18 teams.

19 108. During her time on the rowing team, Natalie did not receive any athletic
20 financial aid.

21 109. Natalie was harmed by SDSU’s failure to provide proportional athletic
22 financial aid in at least the following ways:

- 23 • She was denied the *opportunity* to compete for and receive equal
24 athletic financial aid because of her sex;
- 25 • She was forced to confront a sex-based *barrier* to receiving athletic
26 financial aid that male student-athletes did not confront and that
27 made it more difficult for her to receive athletic financial aid than it
28 was for male student-athletes;

- 1 • She received a *smaller athletic financial aid award*, simply because
- 2 of her sex, in an amount that exceeded \$1.00, but the precise amount
- 3 of her damages cannot currently be determined from publicly
- 4 available information;
- 5 • She was forced to endure *degrading and stigmatizing second-class*
- 6 *treatment* as SDSU intentionally treated female student-athletes
- 7 worse than their male counterparts when it came to athletic financial
- 8 aid.

9 110. The amount of damages in unequal athletic financial aid Natalie suffered
10 can be calculated by using the following information, along with other information not
11 currently public available: Natalie was a varsity athlete in 2019-20, when SDSU
12 deprived each female student-athlete of an average of \$2,204.03; she was a varsity
13 athlete in 2020-21, when SDSU deprived each female student-athlete of an average of
14 \$1,874.40; and, given SDSU's commitment to honor her financial aid after eliminating
15 the women's rowing team, she was eligible for aid in 2021-22 and 2022-23, when
16 SDSU deprived female students of equal financial in presently unknown amounts.

17 111. Natalie was also harmed because SDSU retaliated against her and the other
18 Plaintiffs for filing this lawsuit, including because—as a result of SDSU's retaliation—
19 additional student-athletes declined to join the case as plaintiffs, they and other
20 student-athletes were deterred from assisting the Plaintiffs in prosecuting the case (*e.g.*,
21 by agreeing to participate as witnesses), and her ability to prove that SDSU was and is
22 discriminating against her and its other female student-athletes was adversely affected.

23 Erica Grotegeer

24 112. Erica Grotegeer is currently a senior at SDSU majoring in Criminal
25 Justice, Sociology, and Journalism. She is a resident of California purposes of tuition
26 at SDSU.

27 113. Erica is a member of the women's varsity track and field team at SDSU.
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1 114. Erica started participating in track when she was 13 years old, and she
2 loves being an athlete.

3 115. During her time on the track and field team, Erica has received partial
4 athletic financial aid. She received \$3,461 her freshman year, \$3,629 her sophomore
5 year, \$11,630 her junior year and \$19,159 this academic year. Erica received a total of
6 \$37,879 in athletic financial aid as a varsity student-athlete.

7 116. Erica was harmed by SDSU's failure to provide proportional athletic
8 financial aid to female student-athletes in at least the following ways:

- 9 • She was denied the *opportunity* to compete for and receive equal
10 athletic financial aid because of her sex;
- 11 • She was forced to confront a sex-based *barrier* to receiving athletic
12 financial aid that male student-athletes did not confront and that
13 made it more difficult for her to receive athletic financial aid than it
14 was for male student-athletes;
- 15 • She received a *smaller athletic financial aid award*, simply because
16 of her sex, in an amount that exceeded \$1.00, but the precise amount
17 of her damages cannot currently be determined from publicly
18 available information;
- 19 • She was forced to endure *degrading and stigmatizing second-class*
20 *treatment* as SDSU intentionally treated female student-athletes
21 worse than their male counterparts when it came to athletic financial
22 aid.

23 117. The amount of damages in unequal athletic financial aid Erica suffered
24 can be calculated by using the following information, along with other information not
25 currently public available: Erica was a varsity athlete in 2018-19, when SDSU
26 deprived each female student-athlete of an average of \$2,608.84; she was a varsity
27 athlete in 2019-20, when SDSU deprived each female student-athlete of an average of
28 \$2,204.03; she was a varsity athlete in 2020-21, when SDSU deprived each female
29

1 student-athlete of an average of \$1,874.40; and she remained a varsity athlete in 2021-
2 22, when SDSU deprived female students of equal financial in presently unknown
3 amounts.

4 118. During her time on the track and field team, SDSU also discriminated
5 against Erica as a female athlete by failing to provide her equal athletic treatment and
6 benefits.

7 119. Erica was also harmed because she participated in the Zoom meeting at
8 which SDSU retaliated against her and the other Plaintiffs for filing this lawsuit.

9 120. As a result of SDSU's retaliatory conduct, Erica was singled out in front
10 of her teammates.

11 121. SDSU's comments, which were directed at her in front of her teammates,
12 were humiliating, and anxiety-provoking.

13 122. Erica was also harmed because SDSU retaliated against her and the other
14 Plaintiffs for filing this lawsuit, including because—as a result of SDSU's retaliation—
15 additional student-athletes declined to join the case as plaintiffs, they and other
16 student-athletes were deterred from assisting the Plaintiffs in prosecuting the case (*e.g.*,
17 by agreeing to participate as witnesses), and her ability to prove that SDSU was and is
18 discriminating against her and its other female student-athletes was adversely affected.

19 Kaitlin Heri

20 123. Kaitlin Heri graduated from SDSU in May 2022 with a degree in Business.
21 She was a resident of California for purposes of tuition at SDSU.

22 124. Kaitlin is a member of the women's varsity track and field team at SDSU.

23 125. Kaitlin has been an athlete for most of her life. Kaitlin chose SDSU
24 because of its pole-vaulting program, and she loves the people she has been able to
25 meet and the experiences she has had as a varsity student-athlete.

26 126. During her time on the track and field team, Kaitlin has received partial
27 athletic financial aid. She received \$3,000 her freshman year, she received \$8,800 her
28 sophomore year. She received \$13,200 per year in her junior and senior years. Kaitlin
29

1 is currently receiving fifth year aid in the amount of \$26,400. Kaitlin received a total
2 of \$64,600 in athletic financial aid as a varsity student-athlete.

3 127. Kaitlin was harmed by SDSU's failure to provide proportional athletic
4 financial aid to female student-athletes in at least the following ways:

- 5 • She was denied the *opportunity* to compete for and receive equal
6 athletic financial aid because of her sex;
- 7 • She was forced to confront a sex-based *barrier* to receiving athletic
8 financial aid that male student-athletes did not confront and that
9 made it more difficult for her to receive athletic financial aid than it
10 was for male student-athletes;
- 11 • She received a *smaller athletic financial aid award*, simply because
12 of her sex, in an amount that exceeded \$1.00, but the precise amount
13 of her damages cannot currently be determined from publicly
14 available information;
- 15 • She was forced to endure *degrading and stigmatizing second-class*
16 *treatment* as SDSU intentionally treated female student-athletes
17 worse than their male counterparts when it came to athletic financial
18 aid.

19 128. The amount of damages in unequal athletic financial aid Kaitlin suffered
20 can be calculated by using the following information, along with other information not
21 currently public available: Kaitlin was a varsity athlete in 2018-19, when SDSU
22 deprived each female student-athlete of an average of \$2,608.84; she was a varsity
23 athlete in 2019-20, when SDSU deprived each female student-athlete of an average of
24 \$2,204.03; she was a varsity athlete in 2020-21, when SDSU deprived each female
25 student-athlete of an average of \$1,874.40; and she remained a varsity athlete in 2021-
26 22, when SDSU deprived female students of equal financial in presently unknown
27 amounts.
28
29

1 129. During her time on the track and field team, SDSU also discriminated
2 against Kaitlin as a female athlete by failing to provide her equal athletic treatment and
3 benefits.

4 130. Kaitlin was also harmed because she participated in the Zoom meeting at
5 which SDSU retaliated against her and the other Plaintiffs for filing this lawsuit.

6 131. As a result of SDSU's retaliatory conduct, Kaitlin was singled out in front
7 of her teammates.

8 132. SDSU's comments, which were directed at her in front of her teammates,
9 were embarrassing, humiliating, and anxiety-provoking.

10 133. Kaitlin was also harmed because SDSU retaliated against her and the other
11 Plaintiffs for filing this lawsuit, including because—as a result of SDSU's retaliation—
12 additional student-athletes declined to join the case as plaintiffs, they and other
13 student-athletes were deterred from assisting the Plaintiffs in prosecuting the case (*e.g.*,
14 by agreeing to participate as witnesses), and her ability to prove that SDSU was and is
15 discriminating against her and its other female student-athletes was adversely affected.

16 Aisha Watt

17 134. Aisha Watt is currently a senior at SDSU majoring in Kinesiology. She
18 came to SDSU from Seattle, Washington, and, therefore, is a non-resident for the
19 purposes of tuition at SDSU.

20 135. Aisha is a member of the women's varsity track and field team at SDSU.

21 136. Aisha loves being a student-athlete because it allows her to keep
22 improving herself and achieving accomplishments that she never thought possible.

23 137. During her time on the track and field team, Aisha received partial
24 financial aid. She received 10% of tuition and \$800 for books, per year for her
25 freshman and sophomore years. She received \$3,000 in athletic aid during the 2021-
26 22 academic year. She is receiving \$9,600 in athletic financial aid for each semester in
27 the current academic year, 2022-23. Aisha has received a total of \$14,200 in athletic
28 financial aid as a varsity student-athlete.

1 138. Aisha was harmed by SDSU’s failure to provide proportional athletic
2 financial aid to female student-athletes in at least the following ways:

- 3 • She was denied the *opportunity* to compete for and receive equal
4 athletic financial aid because of her sex;
- 5 • She was forced to confront a sex-based *barrier* to receiving athletic
6 financial aid that male student-athletes did not confront and that
7 made it more difficult for her to receive athletic financial aid than it
8 was for male student-athletes;
- 9 • She received a *smaller athletic financial aid award*, simply because
10 of her sex, in an amount that exceeded \$1.00, but the precise amount
11 of her damages cannot currently be determined from publicly
12 available information;
- 13 • She was forced to endure *degrading and stigmatizing second-class*
14 *treatment* as SDSU intentionally treated female student-athletes
15 worse than their male counterparts when it came to athletic financial
16 aid.

17 139. The amount of damages in unequal athletic financial aid Aisha suffered
18 can be calculated by using the following information, along with other information not
19 currently public available: Aisha was a varsity athlete in 2019-20, when SDSU
20 deprived each female student-athlete of an average of \$2,204.03; she was a varsity
21 athlete in 2020-21, when SDSU deprived each female student-athlete of an average of
22 \$1,874.40; and she remained a varsity athlete in 2021-22 and 2022-23, when SDSU
23 deprived female students of equal financial in presently unknown amounts.

24 140. During her time on the track and field team, SDSU also discriminated
25 against Aisha as a female athlete by failing to provide her equal athletic treatment and
26 benefits.

27 141. Aisha was also harmed because she participated in the Zoom meeting at
28 which SDSU retaliated against her and the other Plaintiffs for filing this lawsuit.

1 142. As a result of SDSU’s retaliatory conduct, Aisha was singled out in front
2 of her teammates.

3 143. SDSU’s comments, which were directed at her in front of her teammates,
4 were embarrassing, humiliating, and anxiety-provoking.

5 144. Aisha was also harmed because SDSU retaliated against her and the other
6 Plaintiffs for filing this lawsuit, including because—as a result of SDSU’s retaliation—
7 additional student-athletes declined to join the case as plaintiffs, they and other
8 student-athletes were deterred from assisting the Plaintiffs in prosecuting the case (*e.g.*,
9 by agreeing to participate as witnesses), and her ability to prove that SDSU was and is
10 discriminating against her and its other female student-athletes was adversely affected.

11 Kamryn Whitworth

12 145. Kamryn Whitworth graduated from SDSU in May 2021 with a degree in
13 Communication. She was a resident of California for the purposes of tuition at SDSU.

14 146. Kamryn was a member of the women’s varsity rowing team until SDSU
15 discontinued the women’s varsity rowing team in Spring 2021.

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

19 148. During her time on the rowing team, Kamryn received partial athletic
20 financial aid. In her freshman and sophomore years, she received \$800 per year. In her
21 junior and senior years, she received \$5,800 per year. Kamryn received a total of
22 \$13,200 in athletic financial aid as a varsity student-athlete.

23 149. Kamryn was harmed by SDSU’s failure to provide proportional athletic
24 financial aid to female student-athletes in at least the following ways:

- 25 • She was denied the *opportunity* to compete for and receive equal
26 athletic financial aid because of her sex;
- 27 • She was forced to confront a sex-based *barrier* to receiving athletic
28 financial aid that male student-athletes did not confront and that
29

1 made it more difficult for her to receive athletic financial aid than it
2 was for male student-athletes;

- 3 • She received a *smaller athletic financial aid award*, simply because
4 of her sex, in an amount that exceeded \$1.00, but the precise amount
5 of her damages cannot currently be determined from publicly
6 available information;
- 7 • She was forced to endure *degrading and stigmatizing second-class*
8 *treatment* as SDSU intentionally treated female student-athletes
9 worse than their male counterparts when it came to athletic financial
10 aid.

11 150. The amount of damages in unequal athletic financial aid Kamryn suffered
12 can be calculated by using the following information, along with other information not
13 currently public available: Kamryn was a varsity athlete in 2018-19, when SDSU
14 deprived each female student-athlete of an average of \$2,608.84; she was a varsity
15 athlete in 2019-20, when SDSU deprived each female student-athlete of an average of
16 \$2,204.03; she was a varsity athlete in 2020-21, when SDSU deprived each female
17 student-athlete of an average of \$1,874.40.

18 151. Kamryn was also harmed because SDSU retaliated against her and the
19 other Plaintiffs for filing this lawsuit, including because—as a result of SDSU’s
20 retaliation—additional student-athletes declined to join the case as plaintiffs, they and
21 other student-athletes were deterred from assisting the Plaintiffs in prosecuting the case
22 (*e.g.*, by agreeing to participate as witnesses), and her ability to prove that SDSU was
23 and is discriminating against her and its other female student-athletes was adversely
24 affected.

25 Sara Absten

26 152. Sara Absten graduated from SDSU in May 2022 with a degree in
27 Economics. Sara came to SDSU from the East Coast and, therefore, was a non-resident
28 for the purposes of tuition at SDSU.

1 153. Sara is a member of the women’s varsity track and field team at SDSU.

2 154. Sara loves being a track and field athlete because it makes her proud to set
3 goals for herself and achieve those goals. Sara chose to come to SDSU for track and
4 field because the head coach is a former Olympian.

5 155. During her time on the track and field team, Sara has received partial
6 athletic financial aid. The amount of athletic financial aid has fluctuated significantly
7 from semester to semester; some semesters she received almost full tuition and other
8 semesters she only received 10% of the cost of attendance.

9 156. Sara was harmed by SDSU’s failure to provide proportional athletic
10 financial aid to female student-athletes in at least the following ways:

- 11 • She was denied the *opportunity* to compete for and receive equal
12 athletic financial aid because of her sex;
- 13 • She was forced to confront a sex-based *barrier* to receiving athletic
14 financial aid that male student-athletes did not confront and that
15 made it more difficult for her to receive athletic financial aid than it
16 was for male student-athletes;
- 17 • She received a *smaller athletic financial aid award*, simply because
18 of her sex, in an amount that exceeded \$1.00, but the precise amount
19 of her damages cannot currently be determined from publicly
20 available information;
- 21 • She was forced to endure *degrading and stigmatizing second-class*
22 *treatment* as SDSU intentionally treated female student-athletes
23 worse than their male counterparts when it came to athletic financial
24 aid.

25 157. The amount of damages in unequal athletic financial aid Sara suffered can
26 be calculated by using the following information, along with other information not
27 currently public available: Sara was a varsity athlete in 2018-19, when SDSU deprived
28 each female student-athlete of an average of \$2,608.84; she was a varsity athlete in
29

1 2019-20, when SDSU deprived each female student-athlete of an average of
2 \$2,204.03; she was a varsity athlete in 2020-21, when SDSU deprived each female
3 student-athlete of an average of \$1,874.40; and she remained a varsity athlete in 2021-
4 22, when SDSU deprived female students of equal financial in presently unknown
5 amounts.

6 158. During her time on the track and field team, SDSU also discriminated
7 against Sara as a female athlete by failing to provide her equal athletic treatment and
8 benefits.

9 159. Sara was also harmed because she participated in the Zoom meeting at
10 which SDSU retaliated against her and the other Plaintiffs for filing this lawsuit.

11 160. As a result of SDSU's retaliatory conduct, Sara was singled out in front of
12 her teammates.

13 161. SDSU's comments, which were directed at her in front of her teammates,
14 were embarrassing, humiliating, and anxiety-provoking.

15 162. Sara was also harmed because SDSU retaliated against her and the other
16 Plaintiffs for filing this lawsuit, including because—as a result of SDSU's retaliation—
17 additional student-athletes declined to join the case as plaintiffs, they and other
18 student-athletes were deterred from assisting the Plaintiffs in prosecuting the case (*e.g.*,
19 by agreeing to participate as witnesses), and her ability to prove that SDSU was and is
20 discriminating against her and its other female student-athletes was adversely affected.

21 Eleanor Davies

22 163. Eleanor Davies is currently a sophomore in college. She attended SDSU
23 majoring in Business Marketing until transferring in January 2022, after SDSU
24 eliminated her sport. She came to SDSU from Connecticut and, therefore, was a non-
25 resident for the purposes of tuition at SDSU.

26 164. Eleanor was a member of the women's varsity rowing team until SDSU
27 discontinued the women's varsity rowing team in Spring 2021.
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1 165. During her time on the rowing team, Eleanor received partial athletic
2 financial aid. She received \$7,500 a semester in athletic financial aid. Eleanor received
3 a total of \$22,500 in athletic financial aid at SDSU.

4 166. Eleanor was harmed by SDSU's failure to provide proportional athletic
5 financial aid to female student-athletes in at least the following ways:

- 6 • She was denied the *opportunity* to compete for and receive equal
7 athletic financial aid because of her sex;
- 8 • She was forced to confront a sex-based *barrier* to receiving athletic
9 financial aid that male student-athletes did not confront and that
10 made it more difficult for her to receive athletic financial aid than it
11 was for male student-athletes;
- 12 • She received a *smaller athletic financial aid award*, simply because
13 of her sex, in an amount that exceeded \$1.00, but the precise amount
14 of her damages cannot currently be determined from publicly
15 available information;
- 16 • She was forced to endure *degrading and stigmatizing second-class*
17 *treatment* as SDSU intentionally treated female student-athletes
18 worse than their male counterparts when it came to athletic financial
19 aid.

20 167. The amount of damages in unequal athletic financial aid Eleanor suffered
21 can be calculated by using the following information, along with other information not
22 currently public available: Eleanor was a varsity athlete 2020-21, when SDSU
23 deprived each female student-athlete of an average of \$1,874.40.

24 168. Eleanor was also harmed because SDSU retaliated against her and the
25 other Plaintiffs for filing this lawsuit, including because—as a result of SDSU's
26 retaliation—additional student-athletes declined to join the case as plaintiffs, they and
27 other student-athletes were deterred from assisting the Plaintiffs in prosecuting the case
28 (e.g., by agreeing to participate as witnesses), and her ability to prove that SDSU was
29

1 and is discriminating against her and its other female student-athletes was adversely
2 affected.

3 Alexa Dietz

4 169. Alexa Dietz is graduated from SDSU in May 2022 with a degree in
5 Communication. Alexa came to SDSU from Washington and therefore, was a non-
6 resident for the purposes of tuition at SDSU.

7 170. Alexa was a member of the women's varsity rowing team until SDSU
8 discontinued the women's varsity rowing team in Spring 2021.

9 171. During her time on the rowing team, Alexa received partial athletic
10 financial aid. She received \$800 her freshman year and \$8,800 per year in both her
11 sophomore and junior years. Alexa received a total of \$18,400 in athletic financial as
12 during her freshman to junior years.

13 172. Alexa was harmed by SDSU's failure to provide proportional athletic
14 financial aid to female student-athletes in at least the following ways:

- 15 • She was denied the *opportunity* to compete for and receive equal
16 athletic financial aid because of her sex;
- 17 • She was forced to confront a sex-based *barrier* to receiving athletic
18 financial aid that male student-athletes did not confront and that
19 made it more difficult for her to receive athletic financial aid than it
20 was for male student-athletes;
- 21 • She received a *smaller athletic financial aid award*, simply because
22 of her sex, in an amount that exceeded \$1.00, but the precise amount
23 of her damages cannot currently be determined from publicly
24 available information;
- 25 • She was forced to endure *degrading and stigmatizing second-class*
26 *treatment* as SDSU intentionally treated female student-athletes
27 worse than their male counterparts when it came to athletic financial
28 aid.

1 173. The amount of damages in unequal athletic financial aid Alexa suffered
2 can be calculated by using the following information, along with other information not
3 currently public available: Alexa was a varsity athlete in 2018-19, when SDSU
4 deprived each female student-athlete of an average of \$2,608.84; she was a varsity
5 athlete in 2019-20, when SDSU deprived each female student-athlete of an average of
6 \$2,204.03; she was a varsity athlete in 2020-21, when SDSU deprived each female
7 student-athlete of an average of \$1,874.40; and, given SDSU's commitment to honor
8 her financial aid after eliminating the women's rowing team, she was eligible for aid
9 in 2021-22, when SDSU deprived female students of equal financial in presently
10 unknown amounts.

11 174. Alexa was also harmed because SDSU retaliated against her and the other
12 Plaintiffs for filing this lawsuit, including because—as a result of SDSU's retaliation—
13 additional student-athletes declined to join the case as plaintiffs, they and other
14 student-athletes were deterred from assisting the Plaintiffs in prosecuting the case (*e.g.*,
15 by agreeing to participate as witnesses), and her ability to prove that SDSU was and is
16 discriminating against her and its other female student-athletes was adversely affected.

17 Larisa Sulcs

18 175. Larisa Sulcs is currently a senior at SDSU. She came to SDSU from
19 Seattle, Washington and, therefore, is a non-resident for the purposes of tuition at
20 SDSU.

21 176. Larisa was a member of the women's varsity rowing team until SDSU
22 discontinued the women's varsity rowing team in Spring 2021.

23 177. During her time on the rowing team, Larisa received partial athletic
24 financial aid. She received \$7,600 her freshman year, \$15,200 her sophomore year per
25 semester in athletic financial aid for books. Larisa has received a total of \$22,800 in
26 athletic financial aid as a varsity student-athlete.

27 178. Larisa was harmed by SDSU's failure to provide proportional athletic
28 financial aid to female student-athletes in at least the following ways:
29

- 1 • She was denied the *opportunity* to compete for and receive equal
2 athletic financial aid because of her sex;
- 3 • She was forced to confront a sex-based *barrier* to receiving athletic
4 financial aid that male student-athletes did not confront and that
5 made it more difficult for her to receive athletic financial aid than it
6 was for male student-athletes;
- 7 • She received a *smaller athletic financial aid award*, simply because
8 of her sex, in an amount that exceeded \$1.00, but the precise amount
9 of her damages cannot currently be determined from publicly
10 available information;
- 11 • She was forced to endure *degrading and stigmatizing second-class*
12 *treatment* as SDSU intentionally treated female student-athletes
13 worse than their male counterparts when it came to athletic financial
14 aid.

15 179. The amount of damages in unequal athletic financial aid Larisa suffered
16 can be calculated by using the following information, along with other information not
17 currently public available: Larisa was a varsity athlete in in 2019-20, when SDSU
18 deprived each female student-athlete of an average of \$2,204.03; she was a varsity
19 athlete in 2020-21, when SDSU deprived each female student-athlete of an average of
20 \$1,874.40; and, given SDSU's commitment to honor her financial aid after eliminating
21 the women's rowing team, she was eligible for aid in 2021-22 and 2022-23, when
22 SDSU deprived female students of equal financial in presently unknown amounts.

23 180. Larisa was also harmed because SDSU retaliated against her and the other
24 Plaintiffs for filing this lawsuit, including because—as a result of SDSU's retaliation—
25 additional student-athletes declined to join the case as plaintiffs, they and other
26 student-athletes were deterred from assisting the Plaintiffs in prosecuting the case (*e.g.*,
27 by agreeing to participate as witnesses), and her ability to prove that SDSU was and is
28 discriminating against her and its other female student-athletes was adversely affected.

Defendants

1
2 181. Defendant San Diego State University is a constituent institution of the
3 California State University System.

4 182. Defendant San Diego State University is a recipient of federal funds and
5 is required to comply with Title IX and all of its implementing regulations.

6 183. Defendant Board of Trustees of the California State University is a public
7 entity that does business in San Diego, California, by operating the university campus
8 of SDSU.

9 184. Defendant Board of Trustees of the California State University is a
10 recipient of federal funds and is required to comply with Title IX and all implementing
11 regulations.

12 185. Under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681
13 *et seq.*, and the regulations adopted pursuant to 34 C.F.R. Part 106, San Diego State
14 University and the Board of Trustees of the California State University must provide
15 equal opportunities to women and men in every program SDSU offers, including equal
16 athletic financial aid and equal treatment and benefits to SDSU’s female and male
17 varsity student-athletes, and cannot retaliate against any female student-athlete for
18 speaking out against sex discrimination at SDSU or attempting to enforce her rights
19 under Title IX.

FACTUAL ALLEGATIONS

TITLE IX BARS SDSU FROM DISCRIMINATING AGAINST ITS FEMALE
20 STUDENT-ATHLETES ON THE BASIS OF THEIR SEX.

21
22 186. Title IX says, “No person in the United States shall, on the basis of sex,
23 be excluded from participation in, be denied the benefits of, or be subjected to
24 discrimination under any education program or activity receiving Federal financial
25 assistance.” 20 U.S.C. § 1681(a).
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1 187. Because SDSU receives federal financial assistance, its varsity athletic
2 program is subject to Title IX, and SDSU must comply with Title IX’s requirements.
3 20 U.S.C. § 1687.

4 188. When schools segregate their varsity athletic programs on the basis of sex,
5 as SDSU does, their violations of Title IX in those programs constitute intentional sex
6 discrimination. *See Neal v. Board of Trustees of the Cal. State Univs.*, 198 F.3d 763,
7 772 n.8 (9th Cir. 1999).

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

11 190. The regulations, codified at 34 C.F.R. Part 106 (the “Regulations”) are
12 enforced by OCR.

13 191. In 1979, OCR issued a policy interpretation of Title IX and the
14 Regulations as applied to intercollegiate athletics at 44 Fed. Reg. 71,413 (Dec. 11,
15 1979) (the “OCR Policy Interpretation”).

16 192. The OCR Policy Interpretation sets forth two areas of Title IX compliance
17 applicable to SDSU’s varsity intercollegiate athletics programs at issue in this case:
18 equal athletic financial assistance and equal treatment and benefits.

19 193. In addition, Title IX prohibits SDSU from “retaliating against a person
20 who speaks out against sex discrimination, because such retaliation is intentional
21 ‘discrimination’ ‘on the basis of sex.’” *Jackson v. Birmingham Bd. of Educ.*, 544 U.S.
22 167, 178 (2005); *see also* 34 C.F.R. § 106.71.

23 194. As the U. S. Supreme Court explained, it would be “difficult, if not
24 impossible” to achieve Title IX’s goal of protecting citizens from discriminatory
25 practices “if persons who complain about sex discrimination did not have effective
26 protection against retaliation.” *Jackson*, 544 U.S. at 180–81 (noting that, without
27 protection against retaliation, “individuals who witness discrimination would likely
28 not report it . . . and the underlying discrimination would go unremedied”).

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

2 195. Title IX’s requirements for equal athletic financial aid have been in
3 existence since 1979.

4 196. As OCR explained in 1998: “With regard to athletic financial assistance,
5 the regulations promulgated under Title IX provide that, when a college or university
6 awards athletic scholarships, these scholarship awards must be granted to ‘members of
7 each sex in proportion to the number of students of each sex participating in
8 intercollegiate athletics.’ 34 C.F.R. 106.37(c).” Office for Civil Rights, U.S.
9 Department of Education (“DOE”), *Dear Colleague Letter* at 2 (July 23, 1998).

10 197. The regulation cited by OCR, 34 C.F.R. §106.37 (c), provides:

11 (1) To the extent that a recipient awards athletic scholarships
12 or grants-in-aid, it must provide reasonable opportunities for
13 such awards for members of each sex in proportion to the
14 number of students of each sex participating in interscholastic
15 or intercollegiate athletics.

16 (2) Separate athletic scholarships or grants-in-aid for
17 members of each sex may be provided as part of separate
18 athletic teams for members of each sex to the extent consistent
19 with this paragraph and § 106.41.

20 198. The OCR Policy Interpretation states, among other things, its
21 interpretation of the athletic financial aid provision quoted above:

22 The Policy - The Department will examine compliance with
23 this provision of the regulation primarily by means of a
24 financial comparison to determine whether proportionately
25 equal amounts of financial assistance (scholarship aid) are
26 available to men’s and women’s athletic programs. The
27 Department will measure compliance with this standard by
28 dividing the amounts of aid available for the members of
29

1 each sex by the numbers of male or female participants in
2 the athletic program and comparing the results. Institutions
3 may be found in compliance if this comparison results in
4 substantially equal amounts or if a resulting disparity can be
5 explained by adjustments to take into account legitimate,
6 nondiscriminatory factors...

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

13 44 Fed. Reg. 71,415.

14 199. On July 23, 1998, OCR discussed and clarified how it interpreted and
15 would enforce Title IX's athletic financial aid requirements:

16 With regard to athletic financial assistance, the regulations
17 promulgated under Title IX provide that, when a college or
18 university awards athletic scholarships, these scholarships
19 awards must be granted to "members of each sex in
20 proportion to the number of students of each sex
21 participating in ...intercollegiate athletics." 34 C.F.R
22 106.37(c)...

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

3 If any unexplained disparity in the scholarship budget for
4 athletes of either gender is 1% or less for the entire budget
5 for athletic scholarships, there will be a strong presumption
6 that such a disparity is reasonable and based on legitimate
7 and nondiscriminatory factors. Conversely, there will be a
8 strong presumption that an unexplained disparity of more
9 than 1% is in violation of the “substantially proportionate”
10 requirement.

11 OCR, U.S. DOE, *Dear Colleague Letter* at 2-4 (July 23, 1998).²

12 200. Because Title IX and its implementing Regulations are federal law,
13 NCAA and conference rules cannot justify violations of them.

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

20 202. As a result, if SDSU chose to sponsor women’s and men’s varsity athletic
21 teams with NCAA or conference scholarship limits that allowed SDSU to award its
22 male student-athletes far more athletic financial aid than its female student-athletes—
23 and then did so—SDSU would be violating Title IX.

24
25 _____
26 ² The OCR’s Title IX Investigator’s Manual states that the unduplicated participation count
27 should be used in this analysis. *See, e.g.,* Investigator’s Manual,
28 <https://eric.ed.gov/?id=ED400763>, at 21 (stating that “[p]articipants who participate on
more than one team are to be counted only once” in assessing financial-aid claims).

1 203. Any NCAA or conference limits would not justify SDSU’s violation of
2 the law.

3 **Title IX’s Equal Athletic Treatment and Benefit Requirements**

4 204. Title IX’s requirements for equal treatment and benefits are codified
5 at 34 C.F.R. § 106.41(c). The Regulations identify nine non-exclusive areas in
6 which recipients must provide equal treatment and benefits to female and male
7 student-athletes:

- 8 ▪ The provision of equipment and supplies;
- 9 ▪ Scheduling of games and practice time;
- 10 ▪ Travel and per diem allowance;
- 11 ▪ Opportunity to receive coaching and academic tutoring;
- 12 ▪ Assignment and compensation of coaches and tutors;
- 13 ▪ Provision of locker rooms, practice and competitive facilities;
- 14 ▪ Provision of medical and training services;
- 15 ▪ Provision of housing and dining facilities and services; and
- 16 ▪ Publicity.

17 205. Additionally, “[e]qual efforts to recruit male and female athletes are
18 required under Title IX.” *Ollier v. Sweetwater Union High Sch. Dist.*, 858 F. Supp. 2d
19 1093, 1110–11 (S.D. Cal. 2012) (citing Policy Interpretation, 44 Fed. Reg. at 71,417).

20 206. “Although recruiting is not listed as a factor under 34 C.F.R. section
21 106.41(c), the Policy Interpretations do identify this area as significant.” *Barrett v. W.*
22 *Chester Univ. of Pennsylvania of State Sys. of Higher Educ.*, No. CIV.A. 03-CV-4978,
23 2003 WL 22803477, at *6 (E.D. Pa. Nov. 12, 2003) (citing *Cohen v. Brown Univ.*, 809
24 F. Supp. 978, 997 (D. R.I.1992) (identifying recruiting dollars as a “target area” under
25 the Policy considerations and finding a disparity in Brown University's allocation of
26 those funds)).

27 207. The items listed above are not exhaustive and do not include every
28 area in which a school must provide equal treatment and benefits to its female
29

1 and male student-athletes, but they provide a good overview of the areas to be
2 examined.

3 208. In addition, a school’s “failure to provide necessary funds for teams
4 for one sex” may also be indicative of sex discrimination. 34 C.F.R. § 106.41(c).

5 209. The OCR Policy Interpretation states, among other things, OCR’s
6 interpretation of the equal treatment and benefits provisions quoted above:

7 The Policy—The Department will assess compliance with
8 both the recruitment and the general athletic program
9 requirements of the regulation by comparing the availability,
10 quality and kinds of benefits, opportunities, and treatment
11 afforded members of both sexes. Institutions will be in
12 compliance if the compared program components are
13 equivalent, that is, equal or equal in effect. Under this
14 standard, identical benefits, opportunities, or treatment are not
15 required, provided the overall effect of any differences is
negligible.

16 44 Fed. Reg. 71,415.

17 **Title IX’s Prohibition Against Retaliation**

18 210. Title IX’s prohibition on retaliation was recognized and emphasized by
19 the U.S. Supreme Court in *Jackson*, 544 U.S. at 178: “[T]he text of Title IX prohibits
20 a funding recipient from retaliating against a person who speaks out against sex
21 discrimination, because such retaliation is intentional ‘discrimination’ ‘on the basis of
22 sex.’” *See also* 34 C.F.R. § 106.71 (“No recipient or other person may intimidate,
23 threaten, coerce, or discriminate against any individual for the purpose of interfering
24 with any right or privilege secured by Title IX[.]”).

25 211. As the Supreme Court explained, such retaliation “is discrimination ‘on
26 the basis of sex’ because it is an intentional response to the nature of the complaint: an
27 allegation of sex discrimination.” *Jackson*, 544 U.S. at 174.
28

1 212. The Court said it would be “difficult, if not impossible” to achieve Title
2 IX’s goal of protecting citizens from discriminatory practices “if persons who
3 complain about sex discrimination did not have effective protection against
4 retaliation.” *Id.* at 180–81 (noting that, without protection against retaliation,
5 “individuals who witness discrimination would likely not report it . . . and the
6 underlying discrimination would go unremedied”).

7 213. “Reporting incidents of discrimination is integral to Title IX enforcement,
8 and would be discouraged if retaliation against those who report went unpunished.”
9 *Id.* at 180.

10 214. The Ninth Circuit has likewise explained that “Title IX empowers a
11 woman student to complain, without fear of retaliation, that the educational
12 establishment treats women unequally.” *Emeldi v. Univ. of Oregon*, 698 F.3d 715, 725
13 (9th Cir. 2012) (noting that “[i]t is a protected activity to protest or otherwise oppose
14 unlawful discrimination” and that “speak[ing] out against sex discrimination . . . is
15 protected activity.” (internal quotation marks and citations omitted)).

16 215. Put simply, “[w]omen students should not be deterred from advancing
17 pleas that they be treated as favorably as male students.” *Id.* at 726.

18 216. To the contrary, “[i]ndividuals should be commended when they raise
19 concerns about compliance with the Federal civil rights laws, not punished for doing
20 so.” OCR, U.S. DOE, *Dear Colleague Letter* at 1 (April 24, 2013).

21 217. For all these reasons, OCR has explained that “once a student . . .
22 complains formally or informally to a school about a potential civil rights violation
23 . . . , the recipient [school] is prohibited from retaliating (including intimidating,
24 threatening, coercing, or in any way discriminating against the individual) because of
25 the individual’s complaint.” *Id.*

26 218. “[A]ny plaintiff with an interest arguably sought to be protected by’ a
27 statute with an anti-retaliation provision has standing to sue under that statute.” *Ollier*
28 *v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 866 (9th Cir. 2014).

1 **SDSU HAS BEEN AND IS DISCRIMINATING AGAINST ITS FEMALE**
2 **STUDENT-ATHLETES ON THE BASIS OF THEIR SEX.**

3 219. SDSU is a member of the NCAA, and it participates in Division I athletics,
4 the highest level of intercollegiate competition.

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

7 221. In regard to the members of its women’s teams, SDSU has violated and is
8 violating Title IX’s equal athletic financial aid requirements, equal treatment and
9 benefits requirements, and prohibition against retaliation.

10 **SDSU’s Violations of Title IX’s Equal Athletic Financial Aid**
11 **Requirements**

12 222. SDSU offers athletic financial aid to members of its women’s and men’s
13 varsity athletic teams.

14 223. SDSU has not provided and does not provide athletic financial aid to its
15 female varsity student-athletes in proportion to their athletic participation rates and,
16 accordingly, intentionally discriminates against its female varsity student-athletes on
17 the basis of their sex in violation of Title IX.

18 224. At all times relevant to this case, SDSU has been and is responsible for
19 ensuring its compliance with Title IX’s requirements to provide proportional athletic
20 financial aid to its female student-athletes; which is independent from SDSU’s
21 obligations to provide proportional participation opportunities under Title IX.

22 225. SDSU’s compliance with Title IX’s equal athletic participation
23 requirements does not absolve the school of its obligations to comply with Title IX’s
24 equal athletic financial aid requirements.

25 226. Such an allowance could make it possible for a school to provide
26 proportional participation opportunities to its female and male student-athletes and
27 award *no financial aid* to its female student-athletes.
28
29

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

228. The information summarized in the chart and paragraphs below (all of which use *unduplicated* participation counts) was submitted and verified as accurate by SDSU to the federal government pursuant to the Equity in Athletics Disclosure Act (EADA).³

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

229. In 2018-19, the \$824,392.25 shortfall amounted to an average of \$2,608.84 denied to *each* female student-athlete at SDSU.

230. In 2019-20, SDSU's 315 female student-athletes equaled 58.12% of the total student-athletes. But female student-athletes were provided with only 50.57% of

³ SDSU has exclusive access to its Title IX athletic participation and athletic financial aid data and has not yet disclosed that information to Plaintiffs or the public. For that reason, Plaintiffs must rely on public EADA data that SDSU has certified as accurate in this Second Amended Complaint. *See Balow v. Michigan State Univ.*, 24 F.4th 1051, 1060 (6th Cir. 2022), *reh'g denied*, No. 21-1183, 2022 WL 1072866 (6th Cir. Mar. 31, 2022) (recognizing that, in the early stages of litigation, it is appropriate to rely upon the university's EADA data); *Ohlensehlen v. Univ. of Iowa*, 509 F. Supp. 3d 1085, 1101 (S.D. Iowa 2020) ("Defendants' argument that EADA reports cannot be relied on carries no force, considering that other courts have specifically relied on such records at the early stages of Title IX litigation." (collecting cases)).

1 the \$9,198,841 in athletic financial aid the school awarded that year, amounting to a
2 loss of \$694,267.88 in athletic financial aid for women.⁴

3 231. In 2019-20, the \$694,267.88 shortfall amounted to an average of
4 \$2,204.03 denied to *each* female student-athlete at SDSU.

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

9 233. In 2020-21, the \$571,692.82 shortfall amounted to an average of
10 \$1,874.40 denied to *each* female student-athlete at SDSU.

11 234. Thus, in just the last two academic years for which data is publicly
12 available,⁵ not including 2021-22 or the current academic year, SDSU's female
13 student-athletes have received over \$1.2 million less in athletic financial aid—and its
14 male varsity student-athletes have received over \$1.2 million more—than they would
15 have received if SDSU had granted such aid in proportion to the number of students
16 of each sex participating in intercollegiate athletics.

17 235. A similar or greater unequal and disproportionate allocation of athletic
18 financial aid to varsity female student-athletes at SDSU took place in the 2021-22
19 academic year, is taking place in the current academic year, and will continue in the
20 future if it is not stopped.

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

28 ⁵ The U.S. Department of Education has not published EADA data for the 2021-22
academic year, and the 2022-23 academic year is ongoing. As a result, the most recent
publicly available information concerns the 2020-21 academic year.

1 236. Plaintiffs are entitled to damages going back a minimum of two years from
2 August 19, 2021, for SDSU’s Title IX’s athletic financial aid violations.⁶

3 237. For the 2019-20 academic year, the fall semester started August 22 and
4 classes began August 26.

5 238. SDSU is permitted to award athletic financial aid at any point in the
6 academic year and, until the academic year is over and the school makes the amount
7 of aid awarded to each gender public, only the school can determine whether the
8 allocation of athletic financial aid meets the proportionality requirements of Title IX.

9 239. Any athletic financial aid awarded in the middle of an academic year can
10 be retroactive back to start of that academic year. SDSU can correct its discriminatory
11 allocation of athletic financial aid at any point during an academic year.

12 240. As a result, the earliest Plaintiffs could have known about the unequal
13 allocation of athletic financial aid to male student-athletes for the 2019-20 academic
14 year was January 1, 2021.⁷

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

18 242. For example, if more female student-athletes were in-state residents, more
19 male student-athletes were non-residents, and SDSU spent at least as much money

20 ⁶ The parties entered into a tolling agreement on August 19, 2021, preserving all Title
21 IX athletic financial aid claims for at least two years prior to that date. As of August 19,
22 2019 (*i.e.*, two years prior to the tolling agreement), SDSU had not filed its EADA data for
23 the 2018-19 academic year. So, as of that date, Plaintiffs had no way to know that they had
24 been deprived of equal financial aid in the 2018-19 academic year.

25 ⁷ Typically, institutions are required to file their EADA reports with the U.S.
26 Department of Education by October 15 for the prior years’ athletic expenditures and
27 participation. Covid-19 extended this deadline beyond October 15 for submissions for the
28 2019-20 academic year. *See* 85 Fed. Reg. 79,861 (Dec. 11, 2020) (“[T]he October 15
deadline established in § 668.41(g)(1) for IHEs to distribute their annual Equity in Athletics
Disclosure Act (EADA) disclosures (required under § 668.47(c)) to required recipients is
extended to December 31, 2020.”).

1 trying to recruit female student-athlete non-residents as male student-athlete non-
2 residents (so the in-state/out-of-state difference was not attributable to sex
3 discrimination in recruiting), that might arguably help explain the smaller and
4 disproportionate grants of athletic financial aid to SDSU’s female student-athletes.

5 243. In fact, however, more male athletes at SDSU are in-state residents, more
6 female student-athletes are non-residents, and SDSU spends far more money trying to
7 recruit male student-athletes (approximately \$1,702 per athlete in 2019-20) than it
8 spends trying to recruit female student-athletes (approximately \$593 per athlete in
9 2019-20).

10 244. After the original Complaint in this lawsuit was filed, charging SDSU with
11 depriving its female varsity student-athletes of equal athletic financial aid, SDSU
12 issued a statement saying, “SDSU awards approximately 95% of all possible
13 scholarships permitted under NCAA rules for both its men’s and women’s teams
14 NCAA rules prohibit all schools, including SDSU, from giving unlimited athletic
15 scholarships. To exceed these limits would make student-athletes ineligible to
16 compete.” [https://www.insidehighered.com/quicktakes/2022/02/09/female-athletes-
file-title-ix-suit-against-san-diego-state](https://www.insidehighered.com/quicktakes/2022/02/09/female-athletes-file-title-ix-suit-against-san-diego-state)

17 245. If SDSU’s statement is accurate, SDSU chose to sponsor women’s and
18 men’s varsity athletic teams with NCAA scholarship limits that allow SDSU to award
19 its male student-athletes far more athletic financial aid than its female student-athletes,
20 SDSU is depriving women of equal athletic financial aid because it chose to award
21 male student-athletes close to 95% of all scholarships the NCAA limits permit (when
22 it was not required to do so), and, at a minimum, SDSU admittedly deprived its female
23 student-athletes of close to 5% of the possible scholarships the NCAA limits *permitted*
24 it to grant (when nothing prevented it from providing that additional 5% to female
25 student-athletes).

26 246. In any event, SDSU’s compliance with NCAA limits does not authorize
27 or permit its violation of Title IX’s equal athletic financial aid requirements.
28

1 247. When SDSU announced the elimination of the women’s rowing team, it
2 pledged to honor the scholarships for all members of the team *through* their graduation
3 date if those members of the former team remained at SDSU.

4 248. As a result, Plaintiffs who were on the women’s rowing team and who
5 remain at SDSU continue to be harmed by SDSU’s discriminatory choice to offer
6 proportionately more athletic financial aid to male student-athletes.

7 249. That ongoing discrimination against them, which locks their smaller
8 awards into place on the basis of a sex-based barrier, will persist until those former
9 members of the women’s rowing team graduate or otherwise leave SDSU.

10 **SDSU’s Violations of Title IX’s Equal Athletic Treatment and Benefits**
11 **Requirements**

12 250. SDSU fails to provide athletic treatment and benefits to its female varsity
13 student-athletes equal to those it provides to its male varsity student-athletes and
14 accordingly, intentionally discriminates against its female varsity student-athletes in
15 violation of Title IX.

16 **Provision of equipment and supplies**

17 251. SDSU does not give its female and male student-athletes an equal
18 provision of equipment and supplies.

19 252. SDSU provides more equipment and supplies to the men on its men’s
20 teams than it provides to the women on its women’s teams.

21 253. For example, many of the men on the men’s teams receive four or more
22 pairs of athletic shoes for the season while the women on the women’s teams receive
23 only two to three pairs of athletic shoes for the season and the women on some
24 women’s teams are not given even one pair of athletic shoes for their use.

25 254. The men on the men’s teams are also provided with equipment and
26 supplies of superior quality to the equipment and supplies that SDSU provides to the
27 women on its women’s teams.
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1 255. Likewise, women on SDSU’s women’s teams, such as track and field, are
2 required to reuse equipment and supplies over a number of years while men on SDSU’s
3 men’s team, such as football, are given new equipment and supplies every year.

4 *Scheduling of games and practice time*

5 256. SDSU does not provide its female and male student-athletes with equal
6 scheduling of games and practice times.

7 257. Men on SDSU’s men’s teams are given priority for scheduling practice
8 times and weight room training.

9 258. SDSU requires women on its women’s teams, such as the women’s track
10 and field team, to schedule their practices around the men on the men’s teams, such as
11 soccer, even when the men’s team is not in its NCAA competitive season and the
12 women’s team is in its competitive season.

13 259. SDSU gives the men’s football team members priority scheduling over all
14 the women on the women’s teams for practices, weightlifting, and time in the athletic
15 training center, even when football is not in its competitive season.

16 *Travel and per diem allowance*

17 260. SDSU does not provide its female and male student-athletes with equal
18 travel benefits and per diem allowances.

19 261. SDSU provides the men on its football team with a private plane for travel
20 to some away games and does not provide that same benefit to the women on any of
21 the women’s teams. The university also provides funding for the men on other men’s
22 teams to fly to away competitions while the women on women’s teams are required to
23 take a bus to competitions, even competitions that are more than ten hours away.

24 262. SDSU provides the men on its men’s teams with higher per diems for away
25 travel—\$200 to \$300 for a competition weekend—and the women on its women’s
26 teams much smaller per diems for away travel—\$75 to \$100 for a competition
27 weekend.
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1 263. SDSU pays for the men on the men’s football team to stay at a hotel the
2 night before all home competitions and does not provide that same benefit to the
3 women on any of the women’s teams.

4 264. SDSU also provides the men on its men’s teams with catered meals during
5 travel, while requiring the women on its women’s teams to provide their own sack
6 lunches while traveling.

7 Opportunity to receive coaching and academic tutoring

8 265. SDSU does not provide its female and male student-athletes with equal
9 opportunities to receive coaching and academic tutoring.

10 266. SDSU gives the men on its men’s teams, particularly the men’s football
11 and basketball teams, priority access to scheduling tutoring.

12 Assignment and compensation of coaches and tutors

13 267. SDSU does not provide its female and male student-athletes with equal
14 compensation of coaches.

15 268. In the past two decades, SDSU has compensated the head coaches of its
16 women’s teams significantly less than the coaches of its men’s teams.

17 269. The information summarized in the charts below was submitted and
18 verified as accurate by SDSU to the federal government under EADA.
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	Men's Teams Average Annual Salary per Head Coach	Men's Teams Number of Head Coaches	Women's Teams Average Annual Salary per Head Coach	Women's Teams Number of Head Coaches
2003	\$229,455.00	6	\$90,385.00	10
2004	\$220,798.00	6	\$89,716.00	10
2005	\$269,509.00	6	\$102,469.00	10
2006	\$301,611.00	6	\$113,973.00	10
2007	\$345,744.00	6	\$123,965.00	10
2008	\$297,947.00	6	\$97,653.00	10
2009	\$318,864.00	6	\$122,652.00	10
2010	\$384,166.00	6	\$143,071.00	10
2011	\$422,181.00	6	\$142,932.00	11
2012	\$447,068.00	6	\$160,315.00	11
2013	\$448,049.00	6	\$155,113.00	11
2014	\$474,294.00	6	\$162,668.00	11
2015	\$487,877.00	6	\$170,778.00	11
2016	\$513,658.00	6	\$176,952.00	11
2017	\$458,683.00	6	\$178,840.00	11
2018	\$458,570.00	6	\$188,885.00	11
2019	\$534,335.00	6	\$202,715.00	11

270. While some fluctuation in compensation is to be expected between sports, on average SDSU pays the head coaches of its women's teams less than half the amount that it pays the head coaches of its men's teams, and it has done so for almost twenty years.⁸

271. The same is true of the assistant coaches of men's and women's teams at SDSU.

⁸ SDSU only reports average salaries for all of its coaches combined through EADA.

	Men's Teams Average Annual Salary per Assistant Coach	Men's Teams Number of Assistant Coaches	Women's Teams Average Annual Salary per Assistant Coach	Women's Teams Number of Assistant Coaches
2003	\$91,889.00	16	\$39,928.00	17
2004	\$97,892.00	17	\$47,090.00	18
2005	\$126,896.00	17	\$49,452.00	18
2006	\$146,504.00	17	\$57,285.00	18
2007	\$139,062.00	18	\$58,652.00	18
2008	\$113,777.00	18	\$42,092.00	19
2009	\$132,846.00	18	\$60,209.00	18
2010	\$166,425.00	17	\$70,599.00	16
2011	\$189,731.00	16	\$75,346.00	17
2012	\$204,229.00	16	\$85,974.00	17
2013	\$199,606.00	17	\$84,410.00	18
2014	\$211,241.00	17	\$85,567.00	18
2015	\$191,821.00	18	\$89,463.00	18
2016	\$216,300.00	18	\$93,241.00	18
2017	\$205,252.00	18	\$87,817.00	20
2018	\$209,792.00	19	\$95,496.00	20
2019	\$229,342.00	19	\$101,016.00	20

272. This unequal compensation hinders SDSU's ability to attract and retain high-quality coaching staffs for its women's teams.

273. This unequal compensation also ensures that female student-athletes will not receive coaching as valuable as the male student-athletes receive.

Provision of locker rooms, practice, and competitive facilities

274. SDSU does not give its female and male student-athletes an equal provision of locker rooms and facilities.

275. SDSU provides the men on its football team with their own private locker room, which was remodeled three years ago, within the football training center, and it provides the men on its baseball team with a state-of-the-art private locker room next to their baseball field.

276. The locker rooms provided to the women on SDSU's women's water polo and swimming and diving teams are outdated and are not located at the facility where they practice and compete. These women are required to

1 travel—while soaking wet—to their locker rooms rather than having them next
2 to their practice or competition facilities.

3 277. The women’s locker rooms at SDSU are furnished with furniture so
4 old that the student-athletes do not even want to sit on it.

5 278. SDSU also requires the women on some women’s teams to share a
6 single locker room, while the men on men’s teams are not required to share
7 locker rooms.

8 Provision of medical and training services

9 279. SDSU does not give its female and male student-athletes an equal
10 provision of medical and training services.

11 280. Women on some women’s teams at SDSU often have to share
12 athletic trainers with the men on men’s teams. When they do, these athletic
13 trainers are present at every practice and competition for the men’s teams, but
14 not at every practice and competition for the women’s teams, even if that means
15 they are present at a men’s team’s practice instead of a women’s team’s
16 competition.

17 281. The women on women’s teams at SDSU are frequently required to
18 wait for hours for an athletic trainer, while the men on men’s teams are provided
19 with athletic trainers at all times.

20 282. The women on many women’s teams at SDSU are also required to
21 share one athletic trainer among multiple teams, while the men’s football team
22 is provided with three full-time athletic trainers and up to twelve student trainers
23 every year.

24 Publicity

25 283. SDSU does not provide its female and male student-athletes with
26 equal publicity.

27 284. SDSU provides more publicity for the men on its football and men’s
28 basketball teams than it provides for the women on any women’s team.

1 285. SDSU posts more regularly on its website and SDSU's official
2 social media accounts about the men on its football and basketball teams than
3 any female sport.

4 286. SDSU provides billboards around campus advertising the men's
5 football team and does not do so for any women's teams.

6 287. SDSU posts on the athletic department's social media accounts
7 when the men on the men's teams are competing but does not post when the
8 women on the women's teams are competing.

9 288. SDSU provides the men on SDSU's football team with professional
10 photographers at their practices and games, but the women on SDSU's women's
11 teams are rarely provided with a photographer at competitions or even at
12 conference championships when they are competing.

13 289. SDSU closes off the athletic center in the front to interview the men
14 on its football team before every football game to be posted on SDSU's official
15 social media accounts. This treatment is not offered for any women's sports.

16 290. SDSU sends out emails to all SDSU students regarding when
17 sporting events and games will be, but it always provides the men on the men's
18 teams with greater focus and attention, even if there are women's games or
19 events taking place the same day or week.

20 Recruiting

21 291. SDSU does not provide its female and male student-athletes with
22 equal funding and opportunities for recruiting.

23 292. For almost twenty years, the women on SDSU's women's varsity
24 teams have been given much smaller recruiting budgets than the men on SDSU's
25 varsity teams, resulting in SDSU spending far more on male student-athletes for
26 recruiting.

27 293. The information summarized in the chart was submitted and verified as
28 accurate by SDSU to the federal government under EADA.
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	Unduplicated Men's Participation	Unduplicated Women's Participation	Men's Team Recruiting Expenses	Women's Team Recruiting Expenses	% of women student athletes	% of recruiting expenses for women's teams	Recruiting dollars per female student	Recruiting dollars per male student
2003	233	246	\$242,783.00	\$138,699.00	51.36%	36.36%	\$563.82	\$1,041.99
2004	227	269	\$301,065.00	\$141,574.00	54.23%	31.98%	\$526.30	\$1,326.28
2005	219	273	\$334,877.00	\$193,768.00	55.49%	36.65%	\$709.77	\$1,529.12
2006	234	273	\$336,880.00	\$200,511.00	53.85%	37.31%	\$734.47	\$1,439.66
2007	240	296	\$348,842.00	\$239,490.00	55.22%	40.71%	\$809.09	\$1,453.51
2008	239	293	\$267,110.00	\$236,812.00	55.08%	46.99%	\$808.23	\$1,117.62
2009	219	283	\$289,117.00	\$241,918.00	56.37%	45.56%	\$854.83	\$1,320.17
2010	222	269	\$221,214.00	\$184,276.00	54.79%	45.45%	\$685.04	\$996.46
2011	235	302	\$256,567.00	\$202,353.00	56.24%	44.09%	\$670.04	\$1,091.77
2012	231	312	\$323,204.00	\$213,019.00	57.46%	39.73%	\$682.75	\$1,399.15
2013	239	322	\$313,160.00	\$212,557.00	57.40%	40.43%	\$660.11	\$1,310.29
2014	236	310	\$396,690.00	\$199,810.00	56.78%	33.50%	\$644.55	\$1,680.89
2015	230	304	\$340,168.00	\$239,647.00	56.93%	41.33%	\$788.31	\$1,478.99
2016	226	315	\$368,555.00	\$227,700.00	58.23%	38.19%	\$722.86	\$1,630.77
2017	216	303	\$426,171.00	\$258,095.00	58.38%	37.72%	\$851.80	\$1,973.01
2018	221	316	\$443,370.00	\$232,419.00	58.85%	34.39%	\$735.50	\$2,006.20
2019	227	315	\$386,285.00	\$186,558.00	58.12%	32.57%	\$592.25	\$1,701.70

294. In 2019-20, the 315 female student-athletes equaled 58.12% of SDSU's total student-athletes. But female student-athletes were provided with only 32.57% of the \$572,843 in recruiting dollars SDSU provided its coaches that year to recruit student-athletes to its varsity sport teams. On average, SDSU spent only \$592.25 to recruit each female student-athlete versus the \$1,701.70 it spent to recruit each male student-athlete.

295. In 2020-21, the 305 female student-athletes equaled 57.22% of the total student-athletes. But female student-athletes were provided with only 34.39% of the \$675,789 in recruiting dollars SDSU provided its coaches that year to recruit student-athletes to its varsity sport teams. On average, SDSU spent only \$735.50 to recruit each female student-athlete versus the \$2,006.20 it spent to recruit each male student-athlete.

296. Data from more recent years is not yet available.

1 **SDSU’s Violation of Title IX’s Prohibition Against Retaliation**

2 297. On February 7, 2022, Plaintiffs filed the initial class action Complaint in
3 this case, charging SDSU with intentionally discriminating against its female student-
4 athletes on the basis of their sex by depriving them of equal athletic financial aid of
5 over half a million dollars each year.

6 298. Just over one week later, on February 16, 2022, a previously unscheduled
7 Zoom meeting with the women’s varsity track and field team was called and recorded
8 to discuss, among other things, the team’s upcoming track and field competition.

9 299. Five of the named Plaintiffs are or were, at the relevant time, members of
10 the women’s varsity track and field team and were present for this meeting, as were
11 almost all of the more than forty other members of the team.

12 300. At the outset of the meeting, before discussing the upcoming track and
13 field competition, SDSU told all of the team members that it was disappointed and
14 unhappy with the five women on the team who had brought the Title IX lawsuit against
15 the school.

16 301. In particular, SDSU, through its employee, women’s track and field team
17 head coach Shelia Burrell, stated—to virtually the entire varsity track and field team—
18 that five members of the team were involved in a lawsuit against the school and that
19 she was disappointed in those five members of the team *because* they were involved
20 in the lawsuit.

21 302. In fact, Burrell stated she was especially unhappy with members of the
22 team who had filed a lawsuit.

23 303. Burrell said those involved in the lawsuit were putting their individual
24 interests above the team’s.

25 304. Burrell also described the Title IX lawsuit as a distraction to the women
26 participating in the lawsuit and to the team as a whole.
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1 305. Burrell told them that being a member of the varsity women’s track and
2 teams is not a right, suggesting to some of the women that those who participated in
3 or assisted with the lawsuit could be removed from the team.

4 306. In other words, SDSU implicitly threatened those who participated or
5 assisted in the lawsuit with removal from a team they had worked their whole lives to
6 join.

7 307. In addition, Burrell stated that she had received backlash from the school’s
8 athletic department because of the lawsuit.

9 308. These comments suggest that SDSU’s athletics department was also
10 retaliating against Burrell, who was, in turn, delivering a clear message of disapproval
11 to those involved—or who might consider becoming involved—in this lawsuit.

12 309. These comments singled out the five Plaintiffs and criticized them
13 explicitly for being involved in this lawsuit, strongly suggesting that other members of
14 the women’s track and field team should not join or participate in the lawsuit.

15 310. It also subjected the five Plaintiffs present on the Zoom call to
16 embarrassment, humiliation, and anxiety solely because they had filed a Title IX
17 lawsuit against SDSU.

18 311. At the time SDSU made these comments through Coach Burrell, it knew
19 that the five Plaintiffs on the women’s track and field team were already suing it for
20 sex discrimination in violation of Title IX on behalf of all of the other female varsity
21 student-athletes at SDSU.

22 312. SDSU also knew that Plaintiffs were preparing to file a second class action
23 claim against the school, seeking equal treatment and benefits for SDSU’s current
24 female student-athletes, unless SDSU would agree to provide equal treatment and
25 benefits to its current female varsity student-athletes without the need for a lawsuit to
26 be filed.

27 313. SDSU was also aware that such a claim was likely to be raised only by
28 current female varsity student-athletes.

1 314. SDSU likewise knew that, since the five Plaintiffs on the women’s track
2 and field team were already suing the school for depriving them of equal financial aid,
3 there was a strong possibility that they would participate in the equal-treatment case.

4 315. SDSU further knew that the women’s track and field team was the most
5 obvious source for additional current female varsity student-athletes to pursue claims
6 against SDSU for depriving its current female student-athletes of equal treatment and
7 benefits.

8 316. And SDSU knew that, if the Plaintiffs on the women’s track and field team
9 were directly and openly retaliated against for pursuing Title IX sex discrimination
10 claims against the school, that would have a chilling effect on the rest of the women’s
11 track and field team members and other female student-athletes at SDSU, who would
12 be deterred from pursuing their rights under Title IX and from working with Plaintiffs
13 to challenge, expose, and remedy SDSU’s sex discrimination.

14 317. As a result of SDSU’s comments at the Zoom meeting, the five members
15 of the women’s track and field team who are Plaintiffs were adversely affected,
16 disturbed, upset, and harmed in their ability to pursue Title IX claims on behalf of
17 themselves and the other female student-athletes at SDSU.

18 318. Because of SDSU’s comments, other women’s track and field team
19 members were immediately wary and are wary of pursuing Title IX claims against
20 SDSU, including by joining as named Plaintiffs or otherwise participating or assisting
21 in this case.

22 319. In particular, shortly after the Zoom meeting, several members of the
23 women’s track and field team told Plaintiffs that they had been considering joining the
24 lawsuit but were glad they had not done so and would not do so now as a result of
25 SDSU’s comments through Coach Burrell to the team.

26 320. Additionally, because of these comments, the other Plaintiffs and the past
27 and current female varsity student-athletes on behalf of whom the Plaintiffs filed this
28 case were damaged because the prosecution of Plaintiffs’ claims and the ability of
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1 other female varsity student-athletes to pursue their own Title IX claims have been
2 adversely affected, the discriminatory impact of SDSU’s retaliation will increase as
3 knowledge of it spreads, and all of the past and current SDSU female varsity student-
4 athletes whose claims are at issue in this case are in the zone of interest protected by
5 Title IX. *See A. B. v. Hawaii State Dep’t of Educ.*, No. 20-15570, 2022 WL 996575,
6 at *11 (9th Cir. Apr. 4, 2022).

7 321. Moreover, SDSU’s refusal to take action to ameliorate or minimize the
8 harm done by its retaliatory comments has made things worse.

9 322. On February 28, 2022, Plaintiffs reached out to SDSU regarding the
10 retaliatory comments and asked SDSU to preserve and provide them a video of the
11 Zoom meeting, which had been recorded.

12 323. Plaintiffs requested that SDSU hold another meeting of the women’s track
13 and field team and make an agreed-upon statement to mitigate the damage done by its
14 comments in the February 16 meeting.

15 324. Plaintiffs also asked SDSU what actions it would take to ensure that no
16 SDSU employee would retaliate against Plaintiffs and class members in the future or
17 otherwise attempt to deter women from exercising their rights under Title IX.

18 325. Finally, Plaintiffs asked SDSU to produce a copy of the recording of the
19 Zoom meeting to ensure that there were no misunderstandings about what was said
20 during the meeting.

21 326. Having received no response, Plaintiffs followed up on these requests on
22 March 2, 2022.

23 327. On March 7, 2022, SDSU responded that it “disagreed” with Plaintiffs’
24 “characterization of what transpired” at the meeting, claimed there was “no evidence
25 of retaliatory actions or intent,” and said that “the University will address the situation
26 internally.”

27 328. In response, on March 8, 2022, because SDSU “disagreed” with Plaintiffs’
28 “characterization of what transpired” and claimed “there was no evidence of retaliatory
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1 actions or intent,” Plaintiffs again requested that SDSU simply provide the recorded
2 video of the February 16 meeting with the team.

3 329. Plaintiffs also requested, again, that SDSU explain how it planned to
4 address the situation.

5 330. SDSU declined to provide the video of the meeting and refused to provide
6 any details about how it would address the comments made during that meeting.

7 331. Despite repeated requests, SDSU never explained why it would not share
8 the video or explain how it intended to address the comments. Nor did SDSU ever
9 offer any assurance that it would not retaliate against Plaintiffs or anyone else who
10 participated in, supported, or provided information to help advance this case.

11 332. In addition, any members of the team—including the Plaintiffs—who
12 approached Coach Burrell about her comments were flatly rebuffed. Coach Burrell
13 refused to discuss her comments or reassure Plaintiffs and others in any way.

14 333. SDSU’s conduct sent Plaintiffs, all female student-athletes at SDSU, and
15 anyone who might help them, a very clear message: be afraid.

16 334. As a result, Plaintiffs were left no choice but to seek to vindicate their
17 rights in this lawsuit.

18 CLASS ALLEGATIONS

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

22 336. Specifically, in regard to their claims for equal athletic financial aid:

- 23 a. Plaintiffs seek to represent a class for damages under Rule
24 23(b)(3) of all current and former female students who participated
25 in intercollegiate varsity athletics at SDSU from the 2019-20
26 academic year to the present and did not receive all of the athletic
27 financial aid they could have received, and
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1 b. Plaintiffs currently participating in varsity athletics at SDSU
2 seek to represent a subclass for injunctive relief under Rule 23(b)(2)
3 of all current and future female students who participate in
4 intercollegiate varsity athletics at SDSU and do not receive all of the
5 athletic financial aid they could receive.

6 337. In regard to their claim for equal benefits and treatment, Plaintiffs
7 currently participating in varsity athletics at SDSU seek to represent a class for
8 injunctive relief under Rule 23(b)(2) of all current and future female students who
9 participate in intercollegiate athletics at SDSU.

10 338. In regard to their claim for retaliation:

11 a. Plaintiffs seek to represent a class for damages under Rule
12 23(b)(3) of all former female students who participated in
13 intercollegiate varsity athletics at SDSU from the 2019-20 academic
14 year to the present and did not receive all of the athletic financial aid
15 they could have received, and

16 b. Plaintiffs currently participating in varsity athletics at SDSU
17 seek to represent a class for damages under Rule 23(b)(3) of all
18 female students who are currently participating in intercollegiate
19 varsity athletics at SDSU.

20 c. Plaintiffs currently participating in varsity athletics at SDSU
21 seek to represent a class for injunctive relief under Rule 23(b)(2) of
22 all female current and future students who participate in
23 intercollegiate varsity athletics at SDSU.

24 339. Plaintiffs reserve the right to revise or amend the above class and subclass
25 definitions based on facts learned in discovery.

26 340. **Numerosity.** The proposed classes and subclass meet the “numerosity”
27 requirement of Fed. R. Civ. P. 23(a)(1) because over 300 female student-athletes
28

1 participated in varsity athletics at SDSU annually in and since the 2019-20 academic
2 year. Joinder of them all is impracticable.

3 341. The proposed classes and subclass also meet that requirement because
4 joinder of all class members and all persons harmed by Defendants’ past and still-
5 ongoing sex discrimination in SDSU’s varsity intercollegiate athletic program is
6 impracticable.

7 342. The proposed classes and subclass are known to exist, but the number of
8 female student-athletes in some of them will increase during this litigation because of
9 the nature of college enrollment and athletic participation. The number of female
10 student-athletes harmed by Defendants’ discrimination will grow as each outgoing
11 class of students graduates and each incoming class of students starts attending SDSU.

12 343. The exact number of female varsity student-athletes who have been, are
13 being, and will be harmed by Defendants’ conduct, while numerous, is unknown,
14 making joinder impracticable for that reason, too.

15 344. ***Commonality And Predominance.*** Plaintiffs satisfy the “commonality”
16 requirement of Rule 23(a)(2) and the predominance requirement of Rule 23(b)(3)
17 because there are questions of law and fact in common to the proposed classes and
18 subclass that predominate over any questions affecting only individual members,
19 making a class action superior to other available methods for fairly and efficiently
20 adjudicating the controversy. These questions include whether Defendants have
21 violated and are violating Title IX (a) by failing to provide female varsity student-
22 athletes at SDSU with proportional athletic financial aid, and, if so, what remedies the
23 female varsity student-athletes are entitled to as a result; (b) by depriving female
24 varsity student-athletes at SDSU of equal benefits and treatment and, if so, what
25 remedies they are entitled to as a result; and (c) by retaliating against former and
26 present female varsity student- athletes at SDSU and, if so, what remedies they are
27 entitled to as a result.
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1 345. Because Title IX requires comparison of the sex-segregated men’s and
2 women’s athletic programs, the Title IX issues in this action are inherently class-based.

3 346. **Typicality.** The Plaintiffs proposed as representatives of the classes and
4 subclass satisfy the “typicality” requirement of Federal Rule of Civil Procedure
5 23(a)(3) because their claims are typical of those of the proposed classes and subclass.
6 They all have been denied and/or are being denied proportional athletic financial aid
7 at SDSU because of Defendants’ ongoing sex discrimination. The Plaintiffs who are
8 current student-athletes are all being denied equal treatment and benefits. The
9 Plaintiffs have all been retaliated against in violation of Title IX, as have all of the
10 proposed retaliation damages class members, and the Plaintiffs who are current
11 student-athletes all seek injunctive protection from retaliation going forward against
12 current and future female student-athletes at SDSU. Plaintiffs all want to end SDSU’s
13 continuing violation of Title IX and recover appropriate remedies for themselves and
14 the proposed class and subclass members.

15 347. In addition, Plaintiffs, like all members of the proposed classes and
16 subclass, have been, are being, or will be harmed by the ongoing sex discrimination in
17 SDSU’s varsity athletics program.

18 348. **Adequacy.** The Plaintiffs proposed as representatives of the classes and
19 subclass are members of the proposed classes and subclass and will fairly and
20 adequately represent the interests of the classes and subclass as required by Rule
21 23(a)(4). They each intend to prosecute this action vigorously to secure fair and
22 adequate monetary and equitable relief, as appropriate, for the classes and subclass.
23 There is no conflict between the Plaintiffs proposed as class and subclass
24 representatives and the class or subclass members.

25 349. Plaintiffs have retained counsel who have significant experience and
26 success prosecuting Title IX class actions against universities and will adequately
27 represent the class. Their counsel has devoted substantial time to identifying and
28 investigating the potential claims in this action, have developed detailed knowledge of
29

1 the facts and the applicable law, have no conflicts with Plaintiffs or the putative classes
2 or subclass, and have sufficient resources to commit to representing the putative
3 classes and subclass.

4 350. **Rule 23(b)(3) Certification: Superiority.** Plaintiffs satisfy the requirement
5 for certification of their claims for damages under Rule 23(b)(3) because class
6 certification would be superior to other available methods for the fair and efficient
7 adjudication of this controversy. Here, it would be impractical and economically
8 infeasible for class members to seek redress individually. Proof and resolution of their
9 claims require class-wide evidence and findings. No other litigation concerning this
10 controversy has already begun by other class members and litigation of these claims
11 in this forum is desirable.

12 351. **Rule 23(b)(2) Certification: Defendants' Common Conduct.** Plaintiffs
13 satisfy the requirement for certification of their claims for equitable relief under Rule
14 23(b)(2) in that the Defendants are acting or refusing to act on grounds that apply
15 generally to the class—by denying female student-athletes at SDSU proportional
16 athletic financial aid, by denying them equal treatment and benefits, and by retaliating
17 against them when they raise concerns about the school's sex discrimination—so that
18 final injunctive relief or corresponding declaratory relief is appropriate respecting the
19 class as a whole.

20 352. Plaintiffs are seeking equitable relief under Rule 23(b)(2) because they
21 have no adequate remedy at law to prevent Defendants from violating Title IX in the
22 future by depriving SDSU's female varsity student-athletes of equal athletic financial
23 aid, by denying them equal treatment and benefits, and by retaliating against them
24 when they raise concerns about the school's sex discrimination.
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COUNT I

Title IX

Denial of Equal Allocation of Athletic Financial Aid

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4 353. Plaintiffs re-allege and incorporate here by reference each and every
5 allegation in the paragraphs above.

6 354. Plaintiffs bring this claim as a class action as set forth under the Class
7 Allegations and on behalf of the class defined above.

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

10 356. 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.

13 357. SDSU has not provided and does not provide athletic financial aid to its
14 female and male student-athletes in proportion to the number of students of each sex
15 participating in intercollegiate athletics.

16 358. SDSU has provided and continues to provide its female varsity student-
17 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.

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

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

27 361. Plaintiffs and the class members have been and are harmed by Defendants’
28 failure to provide SDSU’s female student-athletes with athletic financial aid in
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1 proportion to the number of female student-athletes participating in intercollegiate
2 athletics. Such harm includes, but is not limited to, lost opportunities to compete on an
3 equal basis for aid, being forced to endure a sex-based barrier to aid, lost athletic
4 financial aid, being subjected to sex discrimination, as well as the degrading and
5 stigmatizing effects of that treatment. Accordingly, they are entitled to the relief
6 requested herein.

7 **COUNT II**

8 **Title IX**

9 **Denial of Equal Athletic Treatment and Benefits**

10 362. Plaintiffs re-allege and incorporate here by reference each and every
11 allegation in the paragraphs above.

12 363. Plaintiffs bring this claim as a class action as set forth under the Class
13 Allegations and on behalf of the class defined above.

14 364. SDSU provides its varsity student-athletes with certain benefits,
15 including but not limited to, equipment, supplies, uniforms, locker rooms,
16 scheduling for competitions, transportation and accommodations for travel, per
17 diem for travel, coaching, tutoring and academic support services, practice and
18 competition facilities, medical and training services, weight training and
19 conditioning services, housing and dining services, sports information and
20 publicity services, recruiting, video support, and other services.

21 365. Under Title IX and 34 C.F.R. §106.41(c), SDSU must allocate these
22 benefits equally between male athletes and female athletes. On a program-wide
23 basis, it must provide female athletes with benefits that are comparable to those
24 that it provides to male athletes.

25 366. Defendants fail to provide female student-athletes with an equal
26 allocation of these benefits. This failure constitutes sex discrimination in
27 violation of Title IX.
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1 367. SDSU has not sufficiently allocated benefits (or the resources and
2 budgets necessary to provide the benefits) to its female athletes.

3 368. Defendants fail to provide equal athletic benefits in some or all of
4 the categories set forth in the Regulations and the Policy Interpretation, including
5 but not limited to:

- 6 1. The provision of equipment, uniforms, and supplies;
- 7 2. Scheduling of games and practice time;
- 8 3. Travel, transportation, and per diem allowance;
- 9 4. Opportunity to receive coaching and academic tutoring;
- 10 5. Assignment and compensation of coaches and tutors;
- 11 6. Provision of locker rooms, practice and competitive
12 facilities;
- 13 7. Provision of medical and training services;
- 14 8. Provision of housing and dining facilities and services;
- 15 9. Publicity & sports information services;
- 16 10. Administrative support;
- 17 11. Recruiting resources and support; and
- 18 12. Resources necessary to provide any of the foregoing
19 benefits or to provide the female athletes with a genuine
20 Division I athletic experience.

21 369. Plaintiffs are harmed by SDSU's failure to provide its female
22 student-athletes with an equal allocation of benefits and resources. Such harm
23 includes lost educational opportunities, lost competitive advantage, less quality
24 in participation opportunities, being subjected to sex discrimination, and the
25 degrading and stigmatizing effects of that treatment. Accordingly, they are
26 entitled to the relief requested herein.
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COUNT III

Title IX

Retaliation

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4 370. Plaintiffs re-allege and incorporate here by reference each and every
5 allegation in the paragraphs above.

6 371. Plaintiffs bring this claim as a class action as set forth under the Class
7 Allegations and on behalf of the class defined above.

8 372. Title IX and its implementing regulations prohibit retaliation for
9 complaints of sex discrimination. 20 U.S.C. §1681; 34 C.F.R. § 106.71; *Jackson*, 544
10 U.S. at 174, 178, 183. Such retaliation includes “intimidat[ing], threaten[ing],
11 coerc[ing], or discriminat[ing] against any individual for the purpose of interfering
12 with any right or privilege secured by title IX.” 34 C.F.R. § 106.71.

13 373. Plaintiffs are females who were previously or are currently varsity student-
14 athletes at SDSU who have been and are continuing to be discriminated against by
15 SDSU due to its intentional deprivation of equal athletic financial aid and equal
16 treatment and benefits on the basis of their sex in violation of Title IX.

17 374. On February 7, 2022, Plaintiffs engaged in protected activity by filing this
18 class action lawsuit against SDSU alleging sex discrimination in SDSU’s intentional
19 deprivation of equal athletic financial aid on the basis of their sex in violation of Title
20 IX. *See Ollier*, 768 F.3d at 868.

21 375. Just over one week later, on February 16, 2022, SDSU unlawfully
22 retaliated against Plaintiffs by making negative statements about Plaintiffs and this
23 lawsuit and expressing unhappiness and disappointment with their participation in the
24 lawsuit.

25 376. SDSU subjected Plaintiffs to this retaliation because they engaged in
26 protected activity by filing this class action lawsuit against SDSU alleging sex
27 discrimination.
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1 377. In addition, SDSU refused to agree to Plaintiffs’ requests that it take action
2 to mitigate the harm caused by its retaliation, causing and allowing that harm to
3 increase.

4 378. As a result of SDSU’s retaliation, Plaintiffs and others similarly situated
5 have suffered and continue to suffer harm, including, but not limited to, anger, upset,
6 frustration, interference with their ability to pursue and vindicate their rights under
7 Title IX, and being subjected to sex discrimination. Accordingly, they are entitled to
8 the relief requested herein.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs pray that this Court:

11 A. Certify this case as a class action for the following:

12 In regard to their claim for equal athletic financial aid:

- 13 • A class for damages under Rule 23(b)(3) of all current and
- 14 former female students who participated in intercollegiate varsity
- 15 athletics at SDSU from the 2019-20 academic year to the present
- 16 and did not receive all of the athletic financial aid they could have
- 17 received, and
- 18 • A subclass for injunctive relief under Rule 23(b)(2) of all
- 19 current and future female students who participate in intercollegiate
- 20 varsity athletics at SDSU and do not receive all of the athletic
- 21 financial aid they could receive.

22 In regard to their claim for equal treatment and benefits:

- 23 • A class for injunctive relief under Rule 23(b)(2) of all current
- 24 and future female students who participate in intercollegiate varsity
- 25 athletics at SDSU who did not receive equal treatment and benefits.

26 In regard to their claim for retaliation:

- 27 • A class for damages under Rule 23(b)(3) of all former female
- 28 students who participated in intercollegiate varsity athletics at
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1 SDSU from the 2019-20 academic year to the present and did not
2 receive all of the athletic financial aid they could have received, and

3 • A subclass for damages under Rule 23(b)(3) of all female
4 students who are currently participating in intercollegiate athletics
5 at SDSU.

6 • A subclass for injunctive relief under Rule 23(b)(2) of all
7 current and future female students who participate in intercollegiate
8 varsity athletics at SDSU.

9 B. Appoint the Plaintiffs referred to in the Class Allegations above as
10 representatives of the respective classes and subclass, and appoint Plaintiffs' counsel
11 as class counsel;

12 C. Enter an order declaring that SDSU has discriminated and is
13 discriminating against its past and current female varsity student-athletes on the basis
14 of their sex in the distribution of athletic financial aid in violation of Title IX and the
15 Regulations promulgated thereunder;

16 D. Enter an order declaring that SDSU is discriminating against its current
17 female varsity student-athletes on the basis of their sex in the provision of treatment
18 and benefits in violation of Title IX and the Regulations promulgated thereunder;

19 E. Enter an order declaring that SDSU has illegally retaliated against its past
20 and current female varsity student-athletes in violation of Title IX and the Regulations
21 promulgated thereunder;

22 F. Issue a permanent injunction barring SDSU from discriminating against
23 its female student-athletes on the basis of their sex by (a) depriving them of equal
24 athletic financial aid, (b) denying them equal treatment and benefits in SDSU's varsity
25 intercollegiate athletics program, and (c) retaliating against them for speaking about
26 and challenging SDSU's sex discrimination in violation of Title IX.
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1 G. Award compensatory damages and other monetary relief as permitted by
2 law to Plaintiffs and all members of the athletic financial aid damages class for SDSU’s
3 violation of their right to equal athletic financial aid;

4 H. Award nominal, compensatory, as appropriate, and other monetary relief
5 as permitted by law to Plaintiffs and all members of the retaliation damages classes for
6 SDSU’s retaliation in violation of Title IX.

7 I. Maintain jurisdiction over this action to monitor SDSU’s compliance with
8 this Court’s orders;

9 J. Award Plaintiffs their reasonable attorneys’ fees and expenses; and

10 K. Order such other and further relief as the Court deems appropriate.

11 Dated: April 20, 2022

Respectfully submitted,

/s/ Joshua I. Hammack

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