

David S. Casey, Jr., SBN 60768
dcasey@cglaw.com

Gayle M. Blatt, SBN 122048
gmb@cglaw.com

CASEY GERRY SCHENK FRANCAVILLA BLATT & PENFIELD, LLP
110 Laurel Street
San Diego, CA 92101
Telephone: (619) 238-1811

Arthur H. Bryant, SBN 208365
abryant@baileyglasser.com

BAILEY & GLASSER, LLP
1999 Harrison Street, Suite 660
Oakland, CA 94612
Telephone: (510) 272-8000

Attorneys for Plaintiff and the proposed classes

[Additional counsel on signature page]

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

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

Plaintiffs,

v.

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

Defendants.

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

**FIRST 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

INTRODUCTION	3
FACTUAL ALLEGATIONS	16
TITLE IX BARS SDSU FROM DISCRIMINATING AGAINST ITS FEMALE STUDENT-ATHLETES ON THE BASIS OF THEIR SEX.	16
Title IX’s Equal Athletic Financial Aid Requirements	18
Title IX’s Equal Athletic Treatment and Benefit Requirements	20
Title IX’s Prohibition Against Retaliation.....	22
SDSU HAS BEEN AND IS DISCRIMINATING AGAINST ITS FEMALE STUDENT-ATHLETES ON THE BASIS OF THEIR SEX.	23
SDSU’s Violations of Title IX’s Equal Athletic Financial Aid Requirements	24
SDSU’s Violations of Title IX’s Equal Athletic Treatment and Benefits Requirements	28
SDSU’s Violation of Title IX’s Prohibition Against Retaliation.....	35
CLASS ALLEGATIONS	39
Denial of Equal Allocation of Athletic Financial Aid	43
Denial of Equal Athletic Treatment and Benefits.....	44
Retaliation	46
PRAYER FOR RELIEF	47

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 last two academic years, and is not paying them equal athletic
10 financial aid this academic year.

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

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

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

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

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

26 8. That action both adversely affected those Plaintiffs and deterred other
27 female varsity student-athletes from helping them fight sex discrimination at SDSU.
28
29

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

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

7 **JURISDICTION AND VENUE**

8 11. This action arises under Title IX of the Education Amendments of 1972,
9 20 U.S.C. §§ 1681 *et seq.*, and the regulations and policies promulgated pursuant to
10 that law.

11 12. This Court has jurisdiction over Plaintiffs' federal law claims pursuant to
12 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

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

17 14. Venue is proper in the United States District Court for the Southern
18 District of California pursuant to 28 U.S.C. § 1391(b) because SDSU is located in San
19 Diego, California, which is within this Court's jurisdiction. In addition, the events
20 giving rise to the Complaint occurred in San Diego, California, within this Court's
21 jurisdiction.

22 **THE PARTIES**

23 *Plaintiffs*

24 15. Plaintiffs are past and current female varsity student-athletes at SDSU.

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

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

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

7 19. None of the Plaintiffs received all of the athletic financial aid for which
8 they were eligible at SDSU.

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

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

17 22. Each of the Plaintiffs who are current student-athletes has athletic
18 eligibility remaining and intends to continue to participate as a varsity student-athlete
19 until she has graduated or exhausted her eligibility to participate in intercollegiate
20 varsity sports.

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

23 24. Each of the Plaintiffs was retaliated against by SDSU because SDSU
24 directly retaliated against some of them for filing this lawsuit on behalf of all female
25 varsity student-athletes and SDSU's retaliatory actions had a chilling effect on the
26 willingness of other female varsity student-athletes to challenge, expose, and remedy
27 SDSU's sex discrimination.
28
29

1 25. Each of the Plaintiffs was also injured because she was subjected by SDSU
2 to discrimination on the basis of her sex.

3 Madison Fisk

4 26. Madison Fisk is currently a senior at SDSU majoring in Economics. She
5 is a resident of California for purposes of tuition at SDSU.

6 27. Madison was a member of the women's varsity rowing team until SDSU
7 discontinued the team in Spring 2021.

8 28. Madison began rowing before high school. She worked hard throughout
9 high school to earn a spot as a coxswain for the SDSU women's rowing team.

10 29. During her time on the rowing team, Madison received partial athletic
11 financial aid. She received a total of \$800 her freshman year, \$5,800 her sophomore
12 year, \$10,800 her junior year, and \$10,800 for this current academic year. Madison
13 received a total of \$28,200 in athletic financial aid as a varsity student-athlete.

14 30. Madison was harmed by SDSU's failure to provide proportional athletic
15 financial aid to female student-athletes.

16 31. Madison was also harmed because SDSU retaliated against her and the
17 other Plaintiffs for filing this lawsuit.

18 Raquel Castro

19 32. Raquel Castro is currently a junior at SDSU majoring in Kinesiology. She
20 is a resident of California for purposes of tuition at SDSU.

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

23 34. Raquel trained hard throughout high school so she could pursue rowing as
24 a varsity sport in college.

25 35. During her time on the rowing team, Raquel received partial athletic
26 financial aid. She received a total of \$800 in athletic financial aid for books each year.
27 Raquel received a total of \$2,400 in athletic financial aid as a varsity student-athlete.
28
29

1 to earn a spot on the Canadian national team and, subsequently, a spot on the team at
2 SDSU.

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

6 48. Clare was harmed by SDSU's failure to provide proportional athletic
7 financial aid to female student-athletes.

8 49. Clare was also harmed because SDSU retaliated against her and the other
9 Plaintiffs for filing this lawsuit.

10 Maya Brosch

11 50. Maya Brosch graduated from SDSU in May 2021. She is a resident of
12 California for purposes of tuition at SDSU.

13 51. Maya was a member of the women's varsity track and field team until she
14 graduated in May 2021.

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

21 53. Maya was harmed by SDSU's failure to provide proportional athletic
22 financial aid to female student-athletes.

23 54. Maya was also harmed because SDSU retaliated against her and the other
24 Plaintiffs for filing this lawsuit.

25 Olivia Petrine

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

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

3 Kaitlin Heri

4 87. Kaitlin Heri is currently a senior at SDSU majoring in Business. She is a
5 resident of California for purposes of tuition at SDSU.

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

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

10 90. During her time on the track and field team, Kaitlin has received partial
11 athletic financial aid. She received \$3,000 her freshman year, she received \$8,800 her
12 sophomore year. She received \$13,200 per year in her junior and senior years. Kaitlin
13 is currently receiving fifth year aid in the amount of \$26,400. Kaitlin received a total
14 of \$64,600 in athletic financial aid as a varsity student-athlete.

15 91. Kaitlin was harmed by SDSU's failure to provide proportional athletic
16 financial aid to female student-athletes.

17 92. During her time on the track and field team, SDSU also discriminated
18 against Kaitlin as a female athlete by failing to provide her equal athletic treatment and
19 benefits.

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

22 Aisha Watt

23 94. Aisha Watt is currently a junior at SDSU majoring in Kinesiology. She
24 came to SDSU from Seattle, Washington, and, therefore, is a non-resident for the
25 purposes of tuition at SDSU.

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

27 96. Aisha loves being a student-athlete because it allows her to keep
28 improving herself and achieving accomplishments that she never thought possible.
29

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

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

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

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

12 Kamryn Whitworth

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

15 102. Kamryn was a member of the women's varsity rowing team until SDSU
16 discontinued the women's varsity rowing team in Spring 2021.

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

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

23 105. Kamryn was harmed by SDSU's failure to provide proportional athletic
24 financial aid to female student-athletes.

25 106. Kamryn was also harmed because SDSU retaliated against her and the
26 other Plaintiffs for filing this lawsuit.

Sara Absten

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

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

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

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

111. Sara was harmed by SDSU's failure to provide proportional athletic financial aid to female student-athletes.

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

113. Sara as also harmed because SDSU retaliated against her and the other Plaintiffs for filing this lawsuit.

Eleanor Davies

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

115. Eleanor was a member of the women's varsity rowing team until SDSU discontinued the women's varsity rowing team in Spring 2021.

116. During her time on the rowing team, Eleanor received partial athletic financial aid. She received \$7,500 a semester in athletic financial aid. Eleanor received a total of \$22,500 in athletic financial aid at SDSU.

1 117. Eleanor was harmed by SDSU's failure to provide proportional athletic
2 financial aid to female student-athletes.

3 118. Eleanor was also harmed because SDSU retaliated against her and the
4 other Plaintiffs for filing this lawsuit.

5 Alexa Dietz

6 119. Alexa Dietz is currently a senior at SDSU. Alexa came to SDSU from
7 Washington and therefore, is a non-resident for the purposes of tuition at SDSU.

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

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

13 122. Alexa was harmed by SDSU's failure to provide proportional athletic
14 financial aid to female student-athletes.

15 123. Alexa was also harmed because SDSU retaliated against her and the other
16 Plaintiffs for filing this lawsuit.

17 Larisa Sulcs

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

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

23 126. 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.

1 127. Larisa was harmed by SDSU's failure to provide proportional athletic
2 financial aid to female student-athletes.

3 128. Larisa was also harmed because SDSU retaliated against her and the other
4 Plaintiffs for filing this lawsuit.

5 **Defendants**

6 129. Defendant San Diego State University is a constituent institution of the
7 California State University System.

8 130. Defendant San Diego State University is a recipient of federal funds and
9 is required to comply with Title IX and all of its implementing regulations.

10 131. Defendant Board of Trustees of the California State University is a public
11 entity that does business in San Diego, California, by operating the university campus
12 of SDSU.

13 132. Defendant Board of Trustees of the California State University is a
14 recipient of federal funds and is required to comply with Title IX and all implementing
15 regulations.

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

24 **FACTUAL ALLEGATIONS**

25 **TITLE IX BARS SDSU FROM DISCRIMINATING AGAINST ITS FEMALE 26 STUDENT-ATHLETES ON THE BASIS OF THEIR SEX.**

27 134. Title IX says, "No person in the United States shall, on the basis of sex,
28 be excluded from participation in, be denied the benefits of, or be subjected to
29

1 discrimination under any education program or activity receiving Federal financial
2 assistance.” 20 U.S.C. § 1681(a).

3 135. Because SDSU receives federal financial assistance, its varsity athletic
4 program is subject to Title IX, and SDSU must comply with Title IX’s requirements.
5 20 U.S.C. § 1687.

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

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

13 138. The regulations, codified at 34 C.F.R. Part 106 (the “Regulations”) are
14 enforced by OCR.

15 139. In 1979, OCR issued a policy interpretation of Title IX and the
16 Regulations as applied to intercollegiate athletics at 44 Fed. Reg. 71,413 (Dec. 11,
17 1979) (the “OCR Policy Interpretation”).

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

21 141. In addition, Title IX prohibits SDSU from “retaliating against a person
22 who speaks out against sex discrimination, because such retaliation is intentional
23 ‘discrimination’ ‘on the basis of sex.’” *Jackson v. Birmingham Bd. of Educ.*, 544 U.S.
24 167, 178 (2005); *see also* 34 C.F.R. § 106.71.

25 142. As the U. S. Supreme Court explained, it would be “difficult, if not
26 impossible” to achieve Title IX’s goal of protecting citizens from discriminatory
27 practices “if persons who complain about sex discrimination did not have effective
28 protection against retaliation.” *Jackson*, 544 U.S. at 180–81 (noting that, without
29

1 protection against retaliation, “individuals who witness discrimination would likely
2 not report it . . . and the underlying discrimination would go unremedied”).

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

4 143. Title IX’s requirements for equal athletic financial aid have been in
5 existence since 1979.

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

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

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

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

22 146. The OCR Policy Interpretation states, among other things, its
23 interpretation of the athletic financial aid provision quoted above:

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

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

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

15 44 Fed. Reg. 71,415.

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

18 With regard to athletic financial assistance, the regulations
19 promulgated under Title IX provide that, when a college or
20 university awards athletic scholarships, these scholarships
21 awards must be granted to "members of each sex in
22 proportion to the number of students of each sex
23 participating in ...intercollegiate athletics." 34 C.F.R.
24 106.37(c)...

25 It is important to note that it is not enough for a college or
26 university merely to assert a nondiscriminatory justification.
27 Instead, it will be required to demonstrate that its asserted
28

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).

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

14 149. 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).

20 150. 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.

24 151. Any NCAA or conference limits would not justify SDSU’s violation of
25 the law.

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

27 152. Title IX’s requirements for equal treatment and benefits are codified
28 at 34 C.F.R. § 106.41(c). The Regulations identify nine non-exclusive areas in
~ ~

1 which recipients must provide equal treatment and benefits to female and male
2 student-athletes:

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

12 153. Additionally, “[e]qual efforts to recruit male and female athletes are
13 required under Title IX.” *Ollier v. Sweetwater Union High Sch. Dist.*, 858 F. Supp. 2d
14 1093, 1110–11 (S.D. Cal. 2012) (citing Policy Interpretation, 44 Fed. Reg. at 71,417).

15 154. “Although recruiting is not listed as a factor under 34 C.F.R. section
16 106.41(c), the Policy Interpretations do identify this area as significant.” *Barrett v. W.*
17 *Chester Univ. of Pennsylvania of State Sys. of Higher Educ.*, No. CIV.A. 03-CV-4978,
18 2003 WL 22803477, at *6 (E.D. Pa. Nov. 12, 2003) (citing *Cohen v. Brown Univ.*, 809
19 F. Supp. 978, 997 (D. R.I.1992) (identifying recruiting dollars as a “target area” under
20 the Policy considerations and finding a disparity in Brown University's allocation of
those funds)).

21 155. The items listed above are not exhaustive and do not include every
22 area in which a school must provide equal treatment and benefits to its female
23 and male student-athletes, but they provide a good overview of the areas to be
24 examined.

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

1 157. The OCR Policy Interpretation states, among other things, OCR’s
2 interpretation of the equal treatment and benefits provisions quoted above:

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

13 44 Fed. Reg. 71,415.

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

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

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

25 160. The Court said it would be “difficult, if not impossible” to achieve Title
26 IX’s goal of protecting citizens from discriminatory practices “if persons who
27 complain about sex discrimination did not have effective protection against
28 retaliation.” *Id.* at 180–81 (noting that, without protection against retaliation,
29

1 “individuals who witness discrimination would likely not report it . . . and the
2 underlying discrimination would go unremedied”).

3 161. “Reporting incidents of discrimination is integral to Title IX enforcement,
4 and would be discouraged if retaliation against those who report went unpunished.”
5 *Id.* at 180.

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

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

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

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

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

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

27 167. SDSU is a member of the NCAA, and it participates in Division I athletics,
28 the highest level of intercollegiate competition.

1 168. For the past several decades, SDSU has sponsored women's and men's
2 varsity Division I intercollegiate athletic teams, segregated based on sex.

3 169. In regard to the members of its women's teams, SDSU has violated and is
4 violating Title IX's equal athletic financial aid requirements, equal treatment and
5 benefits requirements, and prohibition against retaliation.

6 **SDSU's Violations of Title IX's Equal Athletic Financial Aid**
7 **Requirements**

8 170. SDSU offers athletic financial aid to members of its women's and men's
9 varsity athletic teams.

10 171. SDSU has not provided and does not provide athletic financial aid to its
11 female varsity student-athletes in proportion to their athletic participation rates and,
12 accordingly, intentionally discriminates against its female varsity student-athletes on
13 the basis of their sex in violation of Title IX.

14 172. At all times relevant to this case, SDSU has been and is responsible for
15 ensuring its compliance with Title IX's requirements to provide proportional athletic
16 financial aid to its female student-athletes; which is independent from SDSU's
17 obligations to provide proportional participation opportunities under Title IX.

18 173. SDSU's compliance with Title IX's equal athletic participation
19 requirements does not absolve the school of its obligations to comply with Title IX's
20 equal athletic financial aid requirements.

21 174. Such an allowance could make it possible for a school to provide
22 proportional participation opportunities to its female and male student-athletes and
23 award *no financial aid* to its female student-athletes.

24 175. For more than a decade, female varsity student-athletes at SDSU have
25 been deprived of athletic financial aid in proportion to their participation in SDSU
26 athletics, and the difference in the proportion has always been greater than 1%.
27
28
29

176. The information summarized in the chart and paragraphs below was submitted and verified as accurate by SDSU to the federal government pursuant to the Equity in Athletics Disclosure Act (EADA).²

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

177. 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 the \$9,198,841 in athletic financial aid the school awarded that year, amounting to a loss of \$694,267.88 in athletic financial aid for women.³

² 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 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).

³ Lost athletic financial aid is calculated by subtracting the aid SDSU actually awarded to female student-athletes in a given year from the athletic financial aid female student-athletes *would have been awarded* if SDSU had complied with Title IX by awarding such aid proportionally (i.e., if the percentage of athletic financial aid awarded to female student-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 $((0.5812 \times \$9,198,841) - \$4,651,922) = \$694,267.88$ based on the information disclosed by SDSU to the DOE in its annual EADA report.

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

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

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

14 181. Plaintiffs are entitled to damages going back a minimum of two years from
15 August 19, 2021, for SDSU's Title IX's athletic financial aid violations.⁴

16 182. For the 2019-20 academic year, the fall semester started August 22 and
17 classes began August 26.

18 183. SDSU is permitted to award athletic financial aid at any point in the
19 academic year and, until the academic year is over and the school makes the amount
20 of aid awarded to each gender public, only the school can determine whether the
21 allocation of athletic financial aid meets the proportionality requirements of Title IX.

22 184. Any athletic financial aid awarded in the middle of an academic year can
23 be retroactive back to start of that academic year. SDSU can correct its discriminatory
24 allocation of athletic financial aid at any point during an academic year.

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26
27 ⁴ The parties entered into a tolling agreement on August 19, 2021, preserving all Title
28 IX athletic financial aid claims for at least two years prior to that date.

1 185. As a result, the earliest Plaintiffs could have known about the unequal
2 allocation of athletic financial aid to male student-athletes for the 2019-20 academic
3 year was January 1, 2021.⁵

4 186. Defendants have not asserted or attempted to demonstrate any justification
5 for SDSU's failure to provide female student-athletes with equal athletic financial aid
6 that does not reflect underlying discrimination—and Plaintiffs are not aware of any.

7 187. For example, if more female student-athletes were in-state residents, more
8 male student-athletes were non-residents, and SDSU spent at least as much money
9 trying to recruit female student-athlete non-residents as male student-athlete non-
10 residents (so the in-state/out-of-state difference was not attributable to sex
11 discrimination in recruiting), that might arguably help explain the smaller and
12 disproportionate grants of athletic financial aid to SDSU's female student-athletes.

13 188. In fact, however, more male athletes at SDSU are in-state residents, more
14 female student-athletes are non-residents, and SDSU spends far more money trying to
15 recruit male student-athletes (approximately \$1,702 per athlete in 2019-20) than it
16 spends trying to recruit female student-athletes (approximately \$593 per athlete in
17 2019-20).

18 189. After the original Complaint in this lawsuit was filed, charging SDSU with
19 depriving its female varsity student-athletes of equal athletic financial aid, SDSU
20 issued a statement saying, "SDSU awards approximately 95% of all possible
21 scholarships permitted under NCAA rules for both its men's and women's
22 teams...NCAA rules prohibit all schools, including SDSU, from giving unlimited

23 ⁵ Typically, institutions are required to file their EADA reports with the U.S.
24 Department of Education by October 15 for the prior years' athletic expenditures and
25 participation. Covid-19 extended this deadline beyond October 15 for submissions for the
26 2019-20 academic year. *See* 85 Fed. Reg. 79,861 (Dec. 11, 2020) ("[T]he October 15
27 deadline established in § 668.41(g)(1) for IHEs to distribute their annual Equity in Athletics
28 Disclosure Act (EADA) disclosures (required under § 668.47(c)) to required recipients is
extended to December 31, 2020.").

1 athletic scholarships. To exceed these limits would make student-athletes ineligible to
 2 compete.” [https://www.insidehighered.com/quicktakes/2022/02/09/female-athletes-](https://www.insidehighered.com/quicktakes/2022/02/09/female-athletes-file-title-ix-suit-against-san-diego-state)
 3 [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)

4 190. If SDSU’s statement is accurate, SDSU chose to sponsor women’s and
 5 men’s varsity athletic teams with NCAA scholarship limits that allow SDSU to award
 6 its male student-athletes far more athletic financial aid than its female student-athletes,
 7 and SDSU is depriving women of equal athletic financial aid because it chose to award
 8 close to 95% of all scholarships the NCAA limits permit.

9 191. SDSU’s compliance with NCAA limits does not authorize or permit its
 10 violation of Title IX’s equal athletic financial aid requirements.

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

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

17 **Provision of equipment and supplies**

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

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

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

26 196. The men on the men’s teams are also provided with equipment and
 27 supplies of superior quality to the equipment and supplies that SDSU provides to the
 28 women on its women’s teams.

1 197. 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*

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

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

9 200. 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.

13 201. 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*

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

19 203. 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.

24 204. 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.
28
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1 205. 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.

4 206. 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

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

10 208. 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

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

15 210. 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.

17 211. 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

212. 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.⁶

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

⁶ 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

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

215. 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

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

217. 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.

218. 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.

3 219. 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.

5 220. 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

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

11 222. 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.

17 223. 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.

20 224. 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

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

27 226. 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.

1 227. 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.

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

6 229. 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.

9 230. 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.

13 231. 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.

16 232. 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

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

23 234. 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.

27 235. The information summarized in the chart was submitted and verified as
28 accurate by SDSU to the federal government under EADA.

	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

236. 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.

237. 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.

SDSU's Violation of Title IX's Prohibition Against Retaliation

238. On February 7, 2022, Plaintiffs filed the initial class action Complaint in this case, charging SDSU with intentionally discriminating against its female student-

1 athletes on the basis of their sex by depriving them of equal athletic financial aid of
2 over half a million dollars each year.

3 239. Just over one week later, on February 16, 2022, a previously unscheduled
4 Zoom meeting with the women's varsity track and field team was called and recorded
5 to discuss, among other things, the team's upcoming track and field competition.

6 240. Five of the named Plaintiffs are currently members of the women's varsity
7 track and field team and were present for this meeting, as were almost all of the more
8 than forty other members of the team.

9 241. At the outset of the meeting, before discussing the upcoming track and
10 field competition, SDSU made clear that it was disappointed and unhappy with the
11 five women who had brought the Title IX lawsuit against the school.

12 242. SDSU described the Title IX lawsuit as a distraction to the women
13 participating in the lawsuit and to the team as a whole.

14 243. At the time it made these comments, SDSU knew that the five plaintiffs
15 on the women's track and field team were already suing it for sex discrimination in
16 violation of Title IX on behalf of all of the other female varsity student-athletes at
SDSU.

17 244. SDSU also knew that Plaintiffs were preparing to file a second class action
18 claim against the school, seeking equal treatment and benefits for SDSU's current
19 female student-athletes, unless SDSU would agree to provide equal treatment and
20 benefits to its current female varsity student-athletes without the need for a lawsuit to
21 be filed.

22 245. SDSU was also aware that such a claim could be raised only by current
23 female varsity student-athletes.

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

1 247. SDSU further knew that the women's track and field team was the most
2 obvious source for additional current female varsity student-athletes to pursue claims
3 against SDSU for depriving its current female student-athletes of equal treatment and
4 benefits.

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

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

15 250. Because of SDSU's comments, other women's track and field team
16 members were immediately wary and are wary of pursuing Title IX claims against
17 SDSU, including by joining as named Plaintiffs or otherwise participating or assisting
18 in this case.

19 251. Additionally, because of SDSU's comments, the other Plaintiffs and the
20 past and current female varsity student-athletes on behalf of whom the Plaintiffs filed
21 this case were damaged because the prosecution of Plaintiffs' claims and the ability of
22 other female varsity student-athletes to pursue their own Title IX claims have been
23 adversely affected, the discriminatory impact of SDSU's retaliation will increase as
24 knowledge of it spreads, and all of the past and current SDSU female varsity student-
25 athletes whose claims are at issue in this case are in the zone of interest protected by
26 Title IX. *See A. B. v. Hawaii State Dep't of Educ.*, No. 20-15570, 2022 WL 996575,
27 at *11 (9th Cir. Apr. 4, 2022).
28
29

1 252. Moreover, SDSU's refusal to take action to ameliorate or minimize the
2 harm done by its retaliatory comments has made things worse.

3 253. On February 28, 2022, Plaintiffs reached out to SDSU regarding the
4 retaliatory comments and asked SDSU to preserve and provide them a video of the
5 Zoom meeting, which had been recorded.

6 254. Plaintiffs requested that SDSU hold another meeting of the women's track
7 and field team and make an agreed-upon statement to mitigate the damage done by its
8 comments in the February 16 meeting.

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

12 256. Finally, Plaintiffs asked SDSU to produce a copy of the recording of the
13 Zoom meeting to ensure that there were no misunderstandings about what was said
14 during the meeting.

15 257. Having received no response, Plaintiffs followed up on these requests on
16 March 2, 2022.

17 258. On March 7, 2022, SDSU responded that it "disagreed" with Plaintiffs'
18 "characterization of what transpired" at the meeting, claimed there was "no evidence
19 of retaliatory actions or intent," and said that "the University will address the situation
20 internally."

21 259. In response, on March 8, 2022, because SDSU "disagreed" with Plaintiffs'
22 "characterization of what transpired" and claimed "there was no evidence of retaliatory
23 actions or intent," Plaintiffs again requested that SDSU simply provide the recorded
24 video of the February 16 meeting with the team.

25 260. Plaintiffs also requested, again, that SDSU explain how it planned to
26 address the situation.

27 261. SDSU declined to provide the video of the meeting and refused to provide
28 any details about how it would address the comments made during that meeting.

1 262. Despite repeated requests, SDSU never explained why it would not share
2 the video or explain how it intended to address the comments.

3 263. As a result, Plaintiffs were left no choice but to vindicate their rights in
4 this lawsuit.

5 **CLASS ALLEGATIONS**

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

9 265. Specifically, in regard to their claims for equal athletic financial aid:

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

15 b. Plaintiffs currently participating in varsity athletics at SDSU
16 seek to represent a subclass for injunctive relief under Rule 23(b)(2)
17 of all current and future female students who participate in
18 intercollegiate varsity athletics at SDSU and do not receive all of the
19 athletic financial aid they could receive.

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

24 267. In regard to their claim for retaliation:

25 a. Plaintiffs seek to represent a class for damages under Rule
26 23(b)(3) of all former female students who participated in
27 intercollegiate varsity athletics at SDSU from the 2019-20 academic
28

1 year to the present and did not receive all of the athletic financial aid
2 they could have received, and

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

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

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

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

17 270. The proposed classes and subclass also meet that requirement because
18 joinder of all class members and all persons harmed by Defendants’ past and still-
19 ongoing sex discrimination in SDSU’s varsity intercollegiate athletic program is
20 impracticable.

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

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

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

13 274. Because Title IX requires comparison of the sex-segregated men’s and
14 women’s athletic programs, the Title IX issues in this action are inherently class-based.

15 275. ***Typicality.*** The Plaintiffs proposed as representatives of the classes and
16 subclass satisfy the “typicality” requirement of Federal Rule of Civil Procedure
17 23(a)(3) because their claims are typical of those of the proposed classes and subclass.
18 They all have been denied and/or are being denied proportional athletic financial aid
19 at SDSU because of Defendants’ ongoing sex discrimination. The Plaintiffs who are
20 current student-athletes are all being denied equal treatment and benefits. The
21 Plaintiffs have all been retaliated against in violation of Title IX, as have all of the
22 proposed retaliation damages class members, and the Plaintiffs who are current
23 student-athletes all seek injunctive protection from retaliation going forward against
24 current and future female student-athletes at SDSU. Plaintiffs all want to end SDSU’s
25 continuing violation of Title IX and recover appropriate remedies for themselves and
26 the proposed class and subclass members.

1 276. In addition, Plaintiffs, like all members of the proposed classes and
2 subclass, have been, are being, or will be harmed by the ongoing sex discrimination in
3 SDSU's varsity athletics program.

4 277. **Adequacy.** The Plaintiffs proposed as representatives of the classes and
5 subclass are members of the proposed classes and subclass and will fairly and
6 adequately represent the interests of the classes and subclass as required by Rule
7 23(a)(4). They each intend to prosecute this action vigorously to secure fair and
8 adequate monetary and equitable relief, as appropriate, for the classes and subclass.
9 There is no conflict between the Plaintiffs proposed as class and subclass
10 representatives and the class or subclass members.

11 278. Plaintiffs have retained counsel who have significant experience and
12 success prosecuting Title IX class actions against universities and will adequately
13 represent the class. Their counsel has devoted substantial time to identifying and
14 investigating the potential claims in this action, have developed detailed knowledge of
15 the facts and the applicable law, have no conflicts with Plaintiffs or the putative classes
16 or subclass, and have sufficient resources to commit to representing the putative
17 classes and subclass.

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

26 280. **Rule 23(b)(2) Certification: Defendants' Common Conduct.** Plaintiffs
27 satisfy the requirement for certification of their claims for equitable relief under Rule
28 23(b)(2) in that the Defendants are acting or refusing to act on grounds that apply
29

generally to the class—by denying female student-athletes at SDSU proportional athletic financial aid, by denying them equal treatment and benefits, and by retaliating against them when they raise concerns about the school’s sex discrimination—so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

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

COUNT I

Title IX

Denial of Equal Allocation of Athletic Financial Aid

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

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

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

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

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

287. SDSU has provided and continues to provide its female varsity student-athletes much less—and its male varsity student-athletes much more—athletic

1 financial aid than they would have received if SDSU had granted such aid in proportion
2 to the number of students of each sex participating in intercollegiate athletics.

3 288. SDSU's failure to provide its female student-athletes with athletic
4 financial aid in proportion to the number of female student-athletes participating in
5 intercollegiate athletics constitutes sex discrimination in violation of Title IX and 34
6 C.F.R. § 106.37.

7 289. Individuals harmed by violations of Title IX may seek and recover
8 monetary damages, injunctive relief to prevent continuing discrimination, declaratory
9 relief, and attorneys' fees and costs.

10 290. Plaintiffs and the class members have been and are harmed by Defendants'
11 failure to provide SDSU's female student-athletes with athletic financial aid in
12 proportion to the number of female student-athletes participating in intercollegiate
13 athletics. Such harm includes, but is not limited to, lost athletic financial aid and being
14 subjected to sex discrimination. Accordingly, they are entitled to the relief requested
15 herein.

16 **COUNT II**

17 **Title IX**

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

19 291. Plaintiffs re-allege and incorporate here by reference each and every
20 allegation in paragraphs 1 through 281.

21 292. Plaintiffs bring this claim as a class action as set forth under the Class
22 Allegations and on behalf of the class defined above.

23 293. SDSU provides its varsity student-athletes with certain benefits,
24 including but not limited to, equipment, supplies, uniforms, locker rooms,
25 scheduling for competitions, transportation and accommodations for travel, per
26 diem for travel, coaching, tutoring and academic support services, practice and
27 competition facilities, medical and training services, weight training and
28

1 conditioning services, housing and dining services, sports information and
2 publicity services, recruiting, video support, and other services.

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

7 295. Defendants fail to provide female student-athletes with an equal
8 allocation of these benefits. This failure constitutes sex discrimination in
9 violation of Title IX.

10 296. SDSU has not sufficiently allocated benefits (or the resources and
11 budgets necessary to provide the benefits) to its female athletes.

12 297. Defendants fail to provide equal athletic benefits in some or all of
13 the categories set forth in the Regulations and the Policy Interpretation, including
14 but not limited to:

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

1 Division I athletic experience.

2 298. Plaintiffs are harmed by SDSU's failure to provide its female
3 student-athletes with an equal allocation of benefits and resources. Such harm
4 includes lost educational opportunities, lost competitive advantage, less quality
5 in participation opportunities, and being subjected to sex discrimination.
6 Accordingly, they are entitled to the relief requested herein.

7 **COUNT III**

8 **Title IX**

9 **Retaliation**

10 299. Plaintiffs re-allege and incorporate here by reference each and every
11 allegation in paragraphs 1 through 281.

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

14 301. Title IX and its implementing regulations prohibit retaliation for
15 complaints of sex discrimination. 20 U.S.C. §1681; 34 C.F.R. § 106.71; *Jackson*, 544
16 U.S. at 174, 178, 183. Such retaliation includes "intimidat[ing], threaten[ing],
17 coerc[ing], or discriminat[ing] against any individual for the purpose of interfering
18 with any right or privilege secured by title IX." 34 C.F.R. § 106.71.

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

23 303. On February 7, 2022, Plaintiffs engaged in protected activity by filing this
24 class action lawsuit against SDSU alleging sex discrimination in SDSU's intentional
25 deprivation of equal athletic financial aid on the basis of their sex in violation of Title
26 IX. *See Ollier*, 768 F.3d at 868.

27 304. Just over one week later, on February 16, 2022, SDSU unlawfully
28 retaliated against Plaintiffs by making negative statements about Plaintiffs and this
29

lawsuit and expressing unhappiness and disappointment with their participation in the lawsuit.

305. SDSU subjected Plaintiffs to this retaliation because they engaged in protected activity by filing this class action lawsuit against SDSU alleging sex discrimination.

306. In addition, SDSU refused to agree to Plaintiffs' requests that it take action to mitigate the harm caused by its retaliation, causing and allowing that harm to increase.

307. As a result of SDSU's retaliation, Plaintiffs and others similarly situated have suffered and continue to suffer harm, including, but not limited to, anger, upset, frustration, interference with their ability to pursue and vindicate their rights under Title IX, and being subjected to sex discrimination.

308. Plaintiffs and others similarly situated are entitled to relief including monetary damages, declaratory relief, injunctive relief, and their attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

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

In regard to their claim for equal athletic financial aid:

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

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

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

5 In regard to their claim for retaliation:

- 6 • A class for damages under Rule 23(b)(3) of all former female
- 7 students who participated in intercollegiate varsity athletics at
- 8 SDSU from the 2019-20 academic year to the present and did not
- 9 receive all of the athletic financial aid they could have received, and
- 10 • A subclass for damages under Rule 23(b)(3) of all female
- 11 students who are currently participating in intercollegiate athletics
- 12 at SDSU.
- 13 • A subclass for injunctive relief under Rule 23(b)(2) of all
- 14 current and future female students who participate in intercollegiate
- 15 varsity athletics at SDSU.

16 B. Appoint the Plaintiffs referred to in the Class Allegations above as

17 representatives of the respective classes and subclass, and appoint Plaintiffs' counsel

18 as class counsel;

19 C. Enter an order declaring that SDSU has discriminated and is

20 discriminating against its past and current female varsity student-athletes on the basis

21 of their sex in the distribution of athletic financial aid in violation of Title IX and the

22 Regulations promulgated thereunder;

23 D. Enter an order declaring that SDSU is discriminating against its current

24 female varsity student-athletes on the basis of their sex in the provision of treatment

25 and benefits in violation of Title IX and the Regulations promulgated thereunder;

26 E. Enter an order declaring that SDSU has illegally retaliated against its past

27 and current female varsity student-athletes in violation of Title IX and the Regulations

28 promulgated thereunder;

1 F. Issue a permanent injunction barring SDSU from discriminating against
2 its female student-athletes on the basis of their sex by (a) depriving them of equal
3 athletic financial aid, (b) denying them equal treatment and benefits in SDSU's varsity
4 intercollegiate athletics program, and (c) retaliating against them for speaking about
5 and challenging SDSU's sex discrimination in violation of Title IX.

6 G. Award compensatory damages and other monetary relief as permitted by
7 law to Plaintiffs and all members of the athletic financial aid damages class for SDSU's
8 violation of their right to equal athletic financial aid;

9 H. Award nominal, compensatory, as appropriate and other monetary relief
10 as permitted by law to Plaintiffs and all members of the retaliation damages classes for
11 SDSU's retaliation in violation of Title IX.

12 I. Maintain jurisdiction over this action to monitor SDSU's compliance with
13 this Court's orders;

14 J. Award Plaintiffs their reasonable attorneys' fees and expenses; and

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

16 Dated: April 20, 2022

Respectfully submitted,

17 /s/ Joshua I. Hammack

Joshua I. Hammack (*pro hac vice*)

18 Cary Joshi (*pro hac vice*)

BAILEY & GLASSER LLP

19 1055 Thomas Jefferson Street NW, Suite 540

20 Washington, DC 20007

21 Tel: (202) 463-2101

E-mail: jhammack@baileyglasser.com

22 E-mail: cjoshi@baileyglasser.com

23 Arthur H. Bryant SBN 208365

BAILEY & GLASSER, LLP

24 1999 Harrison Street, Suite 660

25 Oakland, CA 94612

26 Tel.: (510) 272-8000

27 E-mail: abryant@baileyglasser.com

1 Lori Bullock (*pro hac vice*)
2 **BAILEY & GLASSER LLP**
3 309 E. 5th Street, Suite 202B
4 Des Moines, IA 50309
5 Tel.: 515.416.9051
6 E-mail: lbullock@baileyglasser.com

7 David S. Casey, Jr. SBN 69768
8 Gayle M. Blatt SBN 122048
9 **CASEY GERRY SCHENK**
10 **FRANCAVILLA BLATT & PENFIELD, LLP**
11 110 Laurel Street
12 San Diego, CA 92101
13 Telephone: (619) 238-1811
14 E-mail: dcasey@cglaw.com
15 E-mail: gmb@cglaw.com

16 Amber Eck SBN 177882
17 Jenna Rangel SBN 272735
18 **HAEGGQUIST & ECK, LLP**
19 225 Broadway, Ste 2050
20 San Diego, CA 92101
21 Tel: (619) 342-8000
22 E-mail: ambere@haelaw.com
23 E-mail: jennar@haelaw.com

24 *ATTORNEYS FOR PLAINTIFFS*
25
26
27
28
29