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18 **IN THE UNITED STATES DISTRICT COURT**

19 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

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

Plaintiffs,

v.

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

Defendants.

Case No. **'22CV173 TWRMSB**

COMPLAINT

CLASS ACTION

JURY TRIAL DEMANDED

INTRODUCTION

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

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

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

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

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

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

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

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

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

23 10. Defendants’ actions have caused and are causing harm to Plaintiffs and
24 those similarly situated and constitute intentional, prohibited discrimination based on
25 sex in violation of Title IX and its implementing regulations at 34 C.F.R. Part 106.
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1 11. Plaintiffs and those similarly situated have been and will continue to be
2 harmed by this past and ongoing sex discrimination in SDSU's varsity athletics
3 program.

4 12. The female student-athletes harmed by Defendants' past and ongoing sex
5 discrimination include the members of SDSU's former women's varsity rowing team.

6 13. On November 20, 2020, SDSU announced that it was eliminating the
7 women's rowing team, effective at the end of the 2020-21 academic year, ending the
8 varsity athletic careers of nearly 60 female student-athletes. When it did so, SDSU said
9 that it would honor "all athletic scholarships" awarded to members of the women's
10 rowing team who remained at SDSU "through the date of their graduation."

11 14. Through this class action, Plaintiffs seek to end Defendants' long-
12 standing, ongoing discrimination against SDSU's female varsity student-athletes in the
13 provision of athletic financial aid, require Defendants to compensate SDSU's female
14 varsity student-athletes for depriving them of equal athletic financial aid, and ensure
15 SDSU's future compliance with Title IX's equal athletic financial aid requirements.

16 **JURISDICTION AND VENUE**

17 15. This action arises under Title IX of the Education Amendments of 1972,
18 20 U.S.C. §§ 1681 *et seq.*, and the regulations and policies promulgated pursuant to
19 that law.

20 16. This Court has jurisdiction over Plaintiffs' federal law claims pursuant to
21 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

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

26 18. Venue is proper in the United States District Court for the Southern
27 District of California pursuant to 28 U.S.C. § 1391(b) because SDSU is located in San
28

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

4 **THE PARTIES**

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

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

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

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

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

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

22 25. If SDSU had complied with Title IX and granted athletic financial aid to
23 its female varsity student-athletes proportional to the athletic financial aid it granted to
24 SDSU's male varsity student-athletes, each of the Plaintiffs would have received more
25 athletic financial aid than she did.
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1 26. In addition to being deprived of an equal opportunity to receive equal
2 athletic financial aid and more financial aid than she did, each of the Plaintiffs was
3 injured because she was subjected to discrimination on the basis of her sex.

4 Madison Fisk

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

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

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

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

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

17 Raquel Castro

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

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

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

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

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

3 Greta Viss

4 37. Greta Viss is a SDSU graduate with majors in Psychology and Biology
5 and is an applicant to SDSU's master's program. She was a resident of California when
6 she attended SDSU and was a resident for purposes of tuition at SDSU.

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

9 39. Greta has been playing sports since she was four years old. Greta walked
10 onto the women's rowing team after an injury caused her to be unable to compete in
11 varsity water polo at SDSU.

12 40. During her time on the rowing team, Greta received partial athletic
13 financial aid during her freshman and sophomore years. She received \$7,000 in athletic
14 financial aid in her freshman year and \$17,000 in her sophomore year.

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

17 Clare Botterill

18 42. Clare Botterill is currently a junior at SDSU majoring in Journalism and
19 Media Studies. She came to SDSU from Alberta, Canada, to be a part of the women's
20 varsity rowing team and, therefore, is a non-resident for purposes of tuition at SDSU.

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

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

1 54. During her time on the rowing team, Olivia received partial athletic
2 financial aid. She received \$400 per semester in athletic financial aid for books. Olivia
3 received a total of \$800 in athletic financial aid as a varsity student-athlete.

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

6 Helen Bauer

7 56. Helen Bauer is currently a senior at SDSU majoring in Business
8 Management. She came to SDSU from Seattle, Washington, and, therefore, is a non-
9 resident for the purposes of tuition at SDSU.

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

12 58. Helen is very passionate about women's fitness and women's
13 opportunities to participate in sports. Helen began rowing in high school. She chose to
14 attend SDSU because it would offer her an opportunity to participate on an up-and-
15 coming varsity Division I rowing team and obtain a quality education. Helen worked
16 her way to becoming team captain in the 2020 season.

17 59. During her freshman and sophomore year, Helen received partial athletic
18 financial aid. During her freshman year she received \$10,000 in athletic financial aid.
19 During her sophomore year she received \$20,000. Helen received a total of \$30,000 in
20 athletic financial aid up to her sophomore year as a student-athlete.

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

23 Carina Clark

24 61. Carina Clark is currently a senior at SDSU majoring in Media Studies. She
25 came to SDSU from Florida to be a varsity athlete and, therefore, is a non-resident for
26 the purposes of tuition at SDSU.

27 62. Carina is a member of the women's track and field team at SDSU.
28

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

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

7 Kaitlin Heri

8 76. Kaitlin Heri is currently a senior at SDSU majoring in Business. She is a
9 resident of California for purposes of tuition at SDSU.

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

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

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

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

21 Aisha Watt

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

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

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

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

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

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

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

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

93. 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.

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

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

98. 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.

19 | Alexa Dietz

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

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

3 Larisa Sulcs

4 104. Larisa Sulcs is currently a junior at SDSU. She came to SDSU from
5 Seattle, Washington and, therefore, is a non-resident for the purposes of tuition at
6 SDSU.

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

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

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

15 ***Defendants***

16 108. Defendant San Diego State University is a constituent institution of the
17 California State University System.

18 109. Defendant SDSU is a recipient of federal funds and is required to comply
19 with Title IX and all of its implementing regulations.

20 110. Defendant Board of Trustees of the California State University is a public
21 entity that does business in San Diego, California, by operating the university campus
22 of SDSU.

23 111. Defendant Board of Trustees of the California State University is a
24 recipient of federal funds and is required to comply with Title IX and all implementing
25 regulations.

26 112. Under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681
27 *et seq.*, and the regulations adopted pursuant to 34 C.F.R. Part 106, SDSU and the
28

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

4 **FACTUAL ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 44 Fed. Reg. 71,415.

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

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

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

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

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

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

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

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

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

17 **Equal Athletic Financial Aid Requirements**

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

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

23 127. SDSU fails to provide athletic financial aid to its female varsity student-
 24 athletes in proportion to their athletic participation rates and, accordingly, intentionally
 25 discriminates against female student-athletes in violation of Title IX.
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128. At all times relevant to this case, Defendants were and are responsible for ensuring that SDSU complied with Title IX and provided proportional athletic financial aid to its female student-athletes.

129. 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%.

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

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

131. 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.¹

¹ 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.

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

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

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

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

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

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

CLASS ALLEGATIONS

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

139. Specifically, Plaintiffs seek to represent a class for damages under Rule 23(b)(3) defined as: 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **COUNT I**

4 **Title IX**

5 **Unequal Allocation of Athletic Financial Aid**

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

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

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

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

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

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

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

1 163. Plaintiffs and the class members have been and are harmed by Defendants'
2 failure to provide SDSU's female student-athletes with athletic financial aid in
3 proportion to the number of female student-athletes participating in intercollegiate
4 athletics. Such harm includes, but is not limited to, lost athletic financial aid and being
5 subjected to sex discrimination. Accordingly, they are entitled to the relief requested
6 herein.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs pray that this Court:

9 A. Certify this case as a class action for damages under Rule 23(b)(3) on
10 behalf of all current and former female students who participated in intercollegiate
11 varsity athletics at SDSU in or since the 2019-20 academic year and did not receive all
12 of the athletic financial aid they could have received, certify a subclass for equitable
13 relief under Rule 23(b)(2) of all female students currently participating in in
14 intercollegiate athletics at SDSU who are not receiving all of the athletic financial aid
15 they could receive, appoint Plaintiffs as class representatives, and appoint Plaintiffs'
16 counsel as class counsel;

17 B. Enter an order declaring that Defendants have engaged in a past and
18 continuing pattern and practice of discrimination against female students on the basis
19 of sex in the distribution of athletic financial aid in SDSU's varsity intercollegiate
20 athletics program, in violation of Title IX and the Regulations promulgated thereunder;

21 C. Issue a permanent injunction barring Defendants from discriminating
22 against female students in the distribution of athletic financial aid in on the basis of
23 sex in SDSU's varsity intercollegiate athletics program;

24 D. Award Plaintiffs compensatory damages and other monetary relief as
25 permitted by law;

26 E. Maintain jurisdiction over this action to monitor Defendants' compliance
27 with this Court's orders;
28

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

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

3 Dated: February 7, 2022

Respectfully submitted,

4 /s/ Gayle M. Blatt

5 Gayle M. Blatt (SBN 122048)

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