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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
[Sacramento Division]

AREZOU MANSOURIAN; LAUREN MANCUSO; NANCY NIEN-LI CHIANG; CHRISTINE WING-SI NG; and all those similarly situated, Plaintiffs v. BOARD OF REGENTS OF THE UNIVERSITY of CALIFORNIA at DAVIS; LAWRENCE "LARRY" VANDERHOEF; GREG WARZECKA; PAM GILL-FISHER; ROBERT FRANKS; and LAWRENCE SWANSON, Defendants.	Case No. S-03-2591-FCD-PAN PLAINTIFFS' BRIEF IN SUPPORT OF CLASS CERTIFICATION

Plaintiffs Arezou Mansourian, Nancy Chiang, and Lauren Mancuso, on behalf of themselves and all those similarly situated ("Class Plaintiffs"), respectfully submit this brief in support of the class action complaint they filed in December, 2003, and in support of the motion for class certification filed herewith pursuant to Federal Rule of Civil Procedure 23.

FACTS

This case is about sex discrimination in the intercollegiate athletic program at the University of California at Davis ("UCD"). Defendants provide male students with substantially more opportunities to participate in varsity intercollegiate athletics than they provide to female students. Defendants also provide some sports for males but not females even though there are females who want to participate (e.g., wrestling). By discriminating against females in this way, Defendants deny them equal opportunity to participate in intercollegiate athletics, to receive

athletic financial assistance, and to receive all the benefits commensurate with such athletic participation (e.g., preferred admissions, priority registration, coaching, tutoring, access to facilities, weight and conditioning training, medical services, equipment, transportation, competition scheduling, etc.).

Named plaintiffs Arezou Mansourian, Lauren Mancuso, and Nancy Chiang are, or at all times relevant herein, were female students at UCD who sought but were denied the opportunity to participate in varsity intercollegiate athletics and to receive athletic financial assistance. More particularly, Plaintiffs participated in the varsity wrestling program at UCD until Defendants eliminated women but not men from the program.[1] Despite numerous complaints and public protests, Defendants continue to refuse to reinstate a women's wrestling program. See accompanying declarations.

There are many other prospective and future UCD female students who participate in women's wrestling in California and elsewhere. There are more than 1,000 females who participate on boys' high school wrestling teams in California alone. Ex. A. There are even more females who participate on girls' high school and club wrestling teams. Others participate as individuals in open meets as part of USAWrestling, the United States Girls' Wrestling Association, the California Women's Wrestling Association, and other groups. Even after Defendants quite publicly eliminated the women's wrestling program and eliminated the women's division of the UCD Aggie Open wrestling tournament, women continued to seek wrestling opportunities at UCD. Ex. B, Deposition of new wrestling coach Lennie Zalesky at pp. 24-28.. Although it is not possible to determine exactly how many of these females would apply to UCD if it offered women's wrestling, given the small number of college opportunities available to women, it is likely that the vast majority of them would do so. Most, if not all, are deterred from applying or enrolling so long as UCD fails to offer it. Certainly, none will be recruited to wrestle at UCD so long as UCD fails

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1/ Named plaintiff Christine Ng also participated in wrestling at UCD and was also denied equal opportunity when Defendants eliminated women's wrestling, but she graduated shortly before the filing of this action. Thus, she is not proposed as a class representative. Complaint ¶¶ 12, 52-58.

to provide the opportunity.

Defendants also fail and refuse to provide athletic participation and scholarship opportunities for females in other sports, even though there are females who have the interest and ability to participate in such varsity intercollegiate sports as wrestling, bowling, field hockey, and rugby. Five years of UCD club sport rosters produced by Defendants indicate that hundreds of UCD female students participate in these sports at the club level each and every year even without recruiting, without scholarships, and without varsity benefits:

Bowling	=	10-15 females
Badminton	=	10-47 females
Cycling	=	10-24 females
Equestrian	=	70-90 females
Fencing	=	15-30 females
Field Hockey	=	15-34 females
Horse Polo	=	10-39 females
Rugby	=	54-62 females
Skating	=	11-15 females
Skiing	=	10-25 females

See UCD club sport rosters for 2000-2001 through 2004-2005 at Exs. C-G. See also UCD women's bowling rosters at Ex. H. Female students have participated in some of these clubs for more than 30 years. Many have formally requested varsity status without success. See sample portions of varsity sport proposals at Exs. I (bowling), J (field hockey), K (rugby), L (horse polo).

These club sport athletes, unlike varsity athletes, must fund their own sports, hire their own coaches, arrange their own schedules, find practice and competition facilities, and pay for their own transportation. Defendants do not provide them with any of the benefits of varsity status or with athletic scholarships. The fact that these women's club teams have existed for so long without any of these benefits, each year attracting new students, confirms the high level of interest that UCD's female students have in participating in these sports. They want to play so badly that they are willing to pay to do it rather than be paid (via scholarships). Yet, Defendants continue to

deny them opportunity to do so on a varsity level.

Many prospective and future UCD female students throughout California and elsewhere also participate in these sports. There are more than 5,000 who participate on CIF-sanctioned high school teams and still more who participate on club teams and as individuals, including 4500 in badminton, over 2900 in field hockey, and 432 in skiing . Ex. A. All of these females are or will be denied the opportunity to participate in these sports at UCD unless and until Defendants are ordered to increase the number of female athletic participation opportunities in order to achieve gender equity.

More than 11,000 female undergraduates attend UCD every year, about 56% of the total undergraduate population. But Defendants provide them with less than 400 varsity athletic opportunities. Thus, there is a huge untapped pool of females who are denied the opportunity to participate in athletics or to receive athletic scholarships and who receive the message of second class status that discrimination against them and their female classmates sends. Ex. M (enrollment and participation numbers from recent UCD disclosures under the Equity in Athletics Disclosure Act; Defendants have not yet produced the EADA form for 2004-2005).

So long as Defendants continue to fail and refuse to provide females with equal opportunity to participate in athletics, to receive athletic financial assistance, and to receive the benefits commensurate therewith, they will continue to violate Title IX of the Education Amendments of 1972 (20 U.S.C. 1621 et seq.), the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution (as enforced through 42 U.S.C. 1983), and various California state laws.

Plaintiffs filed this class action in order to remedy this sex discrimination against themselves and the proposed class of current, prospective, future, and deterred female students who are denied equal opportunity in athletics. On behalf of the class and themselves, they seek declaratory relief that identifies Defendants' discriminatory actions and injunctive relief that requires Defendants to increase athletic participation and scholarship opportunities for women by adding women's varsity sports, including wrestling. On behalf of themselves only, the named plaintiffs seek incidental monetary damages associated with the elimination of their own athletic participation and scholarship opportunities. Complaint ¶¶ 32-33, 42, 51, 120-123.

CLASS DEFINITION

Class Plaintiffs request certification of the following propsed class:

> All current, prospective, and future female students at the University of California-Davis ("UCD") who are denied, and all females who are deterred from enrolling at UCD because they would be denied, an equal opportunity to participate in varsity intercollegiate athletics and/or to receive athletic financial assistance because of their sex.

This definition includes females who want to participate in a varsity intercollegiate sport but are denied the opportunity to do so because Defendants do not offer their sport(s) for women.

Certification of such classes in Title IX athletics cases is common, because the discrimination itself is class-based – especially in sex-segregated programs such as athletics in which males and females do not compete for the same opportunities. Cohen v. Brown Univ., 991 F.2d 888, 893 (1st Cir. 1993)(class of "all present and future Brown University women students and potential students who participate, seek to participate, and/or are deterred from participating in intercollegiate athletics funded by Brown"). Favia v. Indiana University of Pennsylvania, 7 F.3d 332, 335-36 (3rd Cir. 1993) (class of "all present and future women students at I.U.P. who participate, seek to participate, or are deterred from participating in intercollegiate athletics at the University"); Haffer v. Temple Univ., 678 F. Supp. 517, 521 (E.D. Pa. 1987)(class of "all current women students at Temple University who participate, or who are or have been deterred from participating because of sex discrimination in Temple's intercollegiate athletic program."); Boucher v. Syracuse University, 164 F.3d 113 (2nd Cir. 1999); Paton v. New Mexico Highlands University, 275 F.3d 1274 (10th Cir. 2002); Ridgeway v. Montana High School Ass'n, 633 F. Supp. 1564, 1567 (D. Mont. 1986), aff'd 858 F.2d 579 (9th Cir. 1988); Bucha v. Illinois High School Ass'n, 351 F. Supp. 69 (N.D. Ill. 1982); Leffel v. Wisconsin Inter-scholastic Athletic Ass'n, 444 F. Supp. 1117, 1119 (E.D. Wis.1978); Communities for Equity v. Michigan High School Athletic Association, 192 F.R.D. 568 (W.D.Mich. 1999).

CLASS PLAINTIFFS

Named plaintiff Lauren Mancuso is a female student at UCD. She participated in wrestling in high school and enrolled at UCD for the purpose of participating in varsity wrestling. She did so until Defendants eliminated women from the program. She complained about Defendants'

elimination of women from the program and Defendants' withdrawal of her athletic financial assistance. She still seeks reinstatement of women's wrestling and elimination of Defendants' discrimination against females in the UCD athletic program. See accompanying Declaration of Lauren Mancuso.

Named plaintiff Arezou Mansourian was a female student at UCD at the time she filed this class action complaint, at the time she provided Defendants with notice of the class action, and at all times relevant herein. She also participated in wrestling in high school and also enrolled at UCD for the purpose of participating in varsity wrestling. She did so until Defendants eliminated women from the program. She also complained about Defendant' elimination of women from the program and Defendants' withdrawal of her athletic financial assistance. She also seeks reinstatement of women's wrestling and elimination of Defendants' discrimination against females in the UCD athletic program. See accompanying Declaration of Arezou Mansourian.

Named plaintiff Nancy Chiang was a female student at UCD and participated in varsity wrestling until Defendants eliminated women from the wrestling program. She left UCD when it eliminated women's wrestling. She now takes classes part time at Sacramento City College, but she would return to UCD and participate in women's wrestling if Defendants reinstated the program.

Plaintiffs filed this class action in December, 2003. They sought to file a motion for class certification in the spring of 2004, but entered into an agreement with Defendants to delay doing so until Defendants could engage in discovery, including depositions of the named plaintiffs. Accordingly, Plaintiffs instead filed a notice of class action status to further preserve their rights. By the time of the hearing on this matter, Defendants will have completed all such depositions.

ARGUMENT

The Court should certify the proposed class because Class Plaintiffs meet the requirements of FRCP 23(a) and (b)(2). Hanlon v. Chrysler Corp., 150 F.3d 1011, 1020, 1022 (9th Cir. 1998) (class must satisfy all four requirements of 23(a) but only one of the requirements of 23(b)); Armstrong v. Davis, 275 F.3d 849, 868 (9th Cir. 2001)(class of prisoners and parolees who sought injunction to fix ADA violations). Class action status is necessary to effectively remedy

Defendants' ongoing discrimination against female students and to ensure that UCD offers more equitable athletic participation and scholarship opportunities for females.

Courts liberally apply Rule 23 in recognition of the public policy favoring class actions to police wrongdoing. Schwartz v. Harp, 108 F.R.D. 279, 281 (C.D.Cal. 1985), citing Blackie v. Barrack, 524 F.2d 891, 903 (9th Cir. 1975), cert. denied 429 U.S. 816 (1976). Accordingly, any doubts about whether a class should be certified must be resolved in favor of certification. Slaven v. BP America, Inc., 190 F.R.D. 649, 651 (C.D.Cal. 2000), citing 4 Newberg on Class Actions §7540 (3rd ed. 1992).

A. THE PROPOSED CLASS SATISFIES THE FOUR REQUIREMENTS OF RULE 23(a)

Rule 23(a) provides that a proposed class must satisfy four requirements:

> One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

The proposed class satisfies all these requirements.

1. The proposed class is numerous and joinder of all class members is impracticable

The proposed class is too numerous for joinder. As set forth above, it includes hundreds of current female students and thousands of prospective and future female students. A common sense assessment of the number of females who participate or want to participate in sports not offered for women at UCD confirms the impracticability of joinder. Moeller v. Taco Bell Corp., 220 F.R.D. 604, 608 (N.D.Cal. 2004)(census data often used to estimate class size), citing Newberg on Class Actions, §3:3 (4th Ed.2002); Perez-Funez v. District Director, 611 F.Supp. 990, 995 (C.D. Cal. 1984) (reasonable, common sense inferences of class size are sufficient); Orantes-

Hernandez v. Smith, 541 F.Supp. 351, 370 (C.D.Cal. 1982).[2]

Even if the numbers were not so large, the inclusion of prospective, future, and deterred[3] female students also makes joinder impracticable. Jordan v. County of Los Angeles, 669 F.2d 1311, 1319 (9th Cir. 1982), vacated on other grounds 459 U.S. 810 (1982); LaDuke v. Nelson, 762 F.2d 1318 (9th Cir. 1985)(class of current and future migrant worker residents); Jones v. Shalala, 64 F.3d 510 (9th Cir. 1995); Frank v. United Airlines, Inc., 216 F.3d 845 (9th Cir. 2000); Probe v. State Teachers' Retirement System, 780 F.2d 776, 780 (9th Cir. 1986)(future teachers), citing 7A Wright, Miller, & Kane, Fed. Prac. Proc. §1760; Nat'l Ass'n of Radiation Survivors v. Walters, 111 F.R.D. 595, 599 (N.D.Cal. 1986)("Radiation Survivors")("'where the class includes unnamed, unknown future members, joinder of such unknown individuals is impracticable and the numerosity requirement is therefore met,' regardless of class size."); Ballard v. Equifax Check Services, Inc., 186 F.R.D. 589 (E.D.Cal. 1999)(J. Damrell)(class included future victims of offending debt collections practices).[4]

2/ Moreover, the requirement is that joinder be impracticable, not impossible. Harris v. Palm Springs Alpine Estates, Inc., 329 F.2d 909, 913-914 (9th Cir. 1964).

3/ Because UCD fails to offers varsity sports like women's wrestling, bowling, field hockey, rugby, etc., females who want to participate in these sports are deterred from enrolling at or even applying to UCD. Pickern v. Holiday Quality Foods, Inc., 293 F.3d 1133 (9th Cir. 2002)(class included disabled persons who were deterred from patronizing store because of discrimination); Bouman v. Block, 940 F.2d 1211 (9th Cir. 1991)(class included all females who took and all females who were deterred from taking the sergeant exam because it was discriminatory); Domingo v. New England Fish Co., 727 F.2d 1429, 1442 (9th Cir. 1984); Guzman v. Oxnard Lemon Assoc., 1992 WL 510094 (C.D.Cal. 1994) (class included future and deterred female job applicants; "by definition, such members are unknown and cannot be readily identified. By definition, such members are impracticable to join.").

4/ See also Aiken v. Obledo, 442 F.Supp. 628 (E.D.Cal. 1977)(class included future applicants for food stamps); Doe v. Los Angeles Unified School Dist., 48 F.Supp.2d 1233 (C.D.Cal. 1999) (class of current and future limited English proficiency students); Littledove v. JBC & Associates, Inc., 2001 WL 42199 (E.D.Cal. 2001)(class included future recipients of debt collection letter); Cervantez v. Sullivan, 719 F.Supp. 899 (E.D.Cal. 1989)(class included future SSI beneficiaries); Valdivia v. California Dept. of Health Services, 1991 WL 80896 (E.D.Cal. 1991)(class included future residents of nursing home sued for failure to comply with federal nursing home reform law);

The inherently fluctuating nature the class, as each group of graduating students is replaced by a new group of freshmen, also makes joinder impracticable. Doe v. Charleston Area Medical Center, Inc., 529 F.2d 638 (4th Cir. 1975)(fact that class members exist but are not specifically identifiable, supports rather than detracts from class certification, because joinder is impracticable), citing Committee Notes to Revised Rule 23 and 3B Moore's Fed. Prac. ¶23.01 (2nd ed.); Von Colln v. County of Ventura, 189 F.R.D. 583, 590 (C.D.Cal. 1999)(class of pretrial detainees fluctuates over time); Orantes-Hernandez v. Smith, 541 F.Supp. 351, 370 (C.D.Cal. 1982) (fluctuating immigrant class); National Law Center on Homelessness and Poverty v. New York, 224 F.R.D 314, 324 (E.D.N.Y. 2004); Bullock v. Bd. of Ed. of Montgomery County, 210 F.R.D. 556, 559 (D.Md. 2002); Jane B. v. New York City Dept. of Social Services, 117 F.R.D. 64, 70 (S.D.N.Y. 1987). See also Leiken v. Squaw Valley Ski Corp., 1994 WL 494298 (E.D.Cal. 1994)(difficulty identifying class members supports class certification).

Other factors, such as geographic diversity, the unlikelihood that other members will be able to bring separate suits, difficulty locating or identifying class members, and the request for injunctive relief to stop policies or actions applied to the class as a whole, also make joinder impracticable. Jordan v. County of Los Angeles, 669 F.2d 1311, 1319 (9th Cir. 1982), vacated on other grounds 459 U.S. 810 (1982), citing 1 Newberg on Class Actions §1105; Santillan v. Ashcroft, 2004 WL 2297990 at *9 (N.D.Cal. 2004); Radiation Survivors, 111 F.R.D. at 599; Robidoux v. Celani, 987 F.2d 931 (2nd Cir. 1993); Paxton v. Union National Bank, 688 F.2d 552, 559 (8th Cir. 1982), cert. denied 460 U.S. 1083 (1983); Jones v. Diamond, 519 F.2d 1090, 1100 (5th Cir. 1975); Arkansas Ed. Ass'n v. Bd. of Ed of the Portland, Arkansas School Dist., 446 F.2d 763, 765-766 (8th Cir. 1971); Santillan v. Ashcroft, 2004 WL 2297990 at *9 (N.D.Cal. 2004); Haley v. Medtronic, Inc., 169 F.R.D 643, 648 (C.D.Cal. 1996), citing Crown, Cork & Seal Co. v. Parker, 462 U.S. 345 (1983)(primary purposes of class certification: (1) judicial economy by avoiding multiple suits and (2) protect rights of those who could not bring claims on individual basis).

In sum, joinder of all the class members who are harmed by Defendants' discriminatory actions is impracticable if not impossible.

2. Common questions of law and fact apply to the class

A plaintiff class satisfies the commonality requirement in Rule 23(a)(2) if the class claims share a common question of law or fact or arise from the same remedial theory. Institutionalized discrimination claims necessarily involve such common questions, as do challenges to illegal policies or practices. Armstrong, 275 F.3d at 868; LaDuke v. Nelson, 762 F.2d 1318, 1332 (9th Cir. 1985) (commonality satisfied by challenge to system-wide practice or policy that affects all the putative class members.); Bates v. United Parcel Service, 204 F.R.D. 440, 445 (N.D.Cal. 2001), citing Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998); Arnold v. United Artists Theatre Circuit, Inc., 158 F.R.D 439, 448-449 (N.D.Cal. 1994)(commonality "met by alleged existence of common discriminatory practices"); Baird v. California Faculty Ass'n, 2000 WL 1028782, at *3 (E.D.Cal. 2000)(commonality exists when there are underlying facts or legal theories that are common to the class); Ballard v. Equifax Check Services, Inc., 186 F.R.D. 589, 595 (E.D. Cal. 1999)(J. Damrell)(commonality exists when "defendants have engaged in standardized conduct toward members of the proposed class.").

The legal issues in this case are common to all class members. Defendants either engage in sex discrimination or they do not. They either violate Title IX and the other civil rights laws or they do not. They either fail to offer equal athletic participation and scholarship opportunities for females or they do not. If they do, then Defendants will have to remediate their discrimination by adding new sports and new opportunities for females. If they do not, then they need not do so. Walters v. Reno, 145 F.3d 1032, 1047 (9th Cir. 1998); United States v. Sielaff, 546 F.2d 218, 222 (7th Cir. 1976)(class action proper to avoid multiple suits with possibly inconsistent verdicts); Adderly v.Wainright, 58, F.R.D. 389, 405 (M.D.Fla. 1972); Evans v. Buchanan, 416 F.Supp. 328, 337 (D.Del. 1976)(danger of inconsistent verdicts).

The factual issues in this case are also common to all class members. All proposed class members seek to participate in sports that UCD does not offer for females. They all want UCD to provide participation and scholarship opportunities in their sports. They are all currently denied those opportunities.

In sum, all class members suffer the exact same harm, all seek the same remedy, and all rely on the same legal theories of sex discrimination to obtain that remedy – more varsity athletic participation and scholarship opportunities for females. The proposed class clearly satisfies the requirements of Rule 23(a)(2).

3. The class representatives' claims are typical of those of the class

Typicality merely requires that the claims of the class representatives are typical of or "reasonably coextensive with" those of the class as a whole. Hanlon v. Chrysler Corp., 150 F.3d 1011, 1020 (9th Cir. 1998). Typicality exists when "each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." Armstrong, 275 F.3d at 868. It is established whenever the class members all suffer from a discriminatory policy or practice that is applied to the whole class. Armstrong, 275 F.3d at 869; Ballard, 186 F.R.D. at 595 (class representative's claim is typical if it ariases from the same event, practice, or course of conduct that gives rise to the claims of the class).

Plaintiffs' claims here are not only typical, but identical, to those of the class. All want to participate in and to receive athletic scholarships for sports that Defendants do not offer for women. All are denied access to this educational opportunity (varsity athletics) because Defendants fail to offer equal athletic participation and scholarship opportunities for females. All claim that this denial constitutes sex discrimination in violation of Title IX, the Equal Protection Clause, and various California state laws. The legal claims and remedies are exactly the same.

4. The named plaintiffs and their counsel are adequate class representatives

Class representation is adequate if "(1) the attorney representing the class is qualified and competent; and (2) the class representatives do not have interests antagonistic to the remainder of the class." Haley, 169 F.R.D. at 649-650. This requirement ensures that the representatives do not have any conflicts with the other class members and they vigorously have prosecuted and will continue to prosecute this action. Hanlon, 150 F.3d at 1020, citing Lerwill v. Inflight Motion Pictures, Inc., 582 F.2d 507, 512 (9th Cir. 1978).

Class counsel in this case has litigated complex cases for more than 15 years and is experienced in Title IX class actions as both lead and advisory counsel (e.g., Fritson v. Minden; Thomsen v. Fremont; Erickson v. Holdrege; Praster v. North Platte; Sabel v. Danbury; and Price v. Wilton;). Counsel lectures widely on Title IX and has taught classes and continuing legal education on the subject. See accompanying Declaration of Kristen Galles..

Class plaintiffs do not have any conflicts with the class. They all want to enjoin Defendants to comply with gender equity laws and to add more athletic participation and scholarship opportunities for women. Class plaintiffs have also already vigorously prosecuted this case for two years, have responded to hundreds of document requests, have responded to extensive interrogatories posed by each defendant, and have sat for depositions. They have more than demonstrated their commitment to exposing Defendants' discrimination and to fixing it.

B. THE PROPOSED CLASS SATISFIES RULE 23(b)(2)

In addition to satisfying the Rule 23(a) requirements, Plaintiffs must satisfy one of the three categories of Rule 23(b). This action falls squarely under Rule 23(b)(2), under which a class is certifiable if:

> the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole . . . .

Here, Defendants have acted on grounds applicable to the class in that they have discriminated against and continue to discriminate against females by failing to provide them with equal opportunity in varsity athletics. In other words, Defendants choose to allocate more opportunities and more resources to males than females. The class seeks declaratory and injunctive relief to expose this discrimination and to remedy it.

Subsection 23(b)(2) was specifically added by Congress in 1966 to reaffirm that civil rights cases such as this one could be brought as class actions. See 7A Wright & Miller, Federal Practice and Procedure, § 1776, at p. 495 (1984 & Supp. 1994); Penson v. Terminal Transport Co., 634 F.2d 989, 993 (5th Cir. 1981). The advisory committee notes to Rule 23(b)(2) state that the rule is satisfied "even if the action or inaction `has taken effect or is threatened only as to one or a few

members of the class, provided it is based on grounds which have general application to the class.'" Santiago, 72 F.R.D. at 626, citing Advisory Committee's Notes to proposed Rules of Civil Procedure, 39 F.R.D. 69, 102 (1966). Thus, even if the named plaintiffs were the only female athletes immediately threatened by Defendants' discriminatory practices, this action would satisfy the requirements of Rule 23(b)(2) because the discriminatory practices are generally applicable to all members of the prospective class.

Lawsuits alleging class-wide discriminatory practices are particularly well-suited for class treatment, especially under Rule 23(b)(2), because they involve the same legal and factual issues and are subject to a single injunctive remedy. EEOC v. General Telephone Company of the Northwest, Inc., 599 F.2d 322 3228-329 (9th Cir. 1979)(discrimination cases are inherently class-based); Senter v. General Motors Corp., 532 F.2d 511, 525 (6th Cir. 1986).

In order to effectively eradicate such discrimination and to implement the broad remedial purposes of civil rights statutes, courts liberally apply all the requirements of FRCP 23 to such cases. Gay v. Waiters' and Dairy Lunchmen's Union, 549 F.2d 1330, 1333 (9th Cir. 1977)(court reversed district court's denial of class certification because it failed to consider broad remedial purposes of Title VII); Jordan v. County of Los Angeles, 669 F.2d 1311, 1381-1319 (9th Cir. 1982), vacated on other grounds 459 U.S. 810 (1982); Jones v. Diamond, 519 F.2d 1090, 1100 (5th Cir. 1975)(court should consider generous policies underlying class action device in civil rights litigation); Berlowitz v. Nob Hill Masonic Management, Inc., 1996 WL 724776 at *2 (N.D.Cal. 1996)(liberal application of class action rule in civil rights cases); Bartelson v. Dean Witter & Co., 86 F.R.D. 657, 662 (E.D.Pa. 1980)(goal of sex discrimination class action was to create broad-based reform, so FRCP 23 requirements must be applied liberally "to vindicate the important public policy of equal employment opportunity."). See also Cannon v. University of Chicago, 441 U.S. 677, 706 (1979)(discusses broad remedial purpose of Title IX).

The inherent class nation of discrimination cases is even more apparent in athletics cases, because the educational program itself is sex segregated. Defendants offer entirely separate athletic programs for males and females. Males compete against other males on male teams and females compete with against other females. Males and females do not compete against each

other. Thus, Defendants have complete control over how many athletic opportunities to provide only for males and how many to provide only for females. They do this by deciding which sports to offer and how many participation opportunities to provide for each sport (based upon the nature of the sport itself). Defendants also have complete control over how many athletic scholarships to offer to male and athletes and how many to offer to female athletes.

Because Defendants have acted in a discriminatory manner with respect to all class members, and because the named plaintiffs seek declaratory and injunctive relief to remedy that discrimination, the proposed class is properly certifiable under Rule 23(b)(2).

CONCLUSION

The class is so numerous, diverse, and fluid that joinder is impracticable. This action involves facts and issues that are common to all class members, namely whether Defendants discriminate against females in the allocation of athletic participation opportunities and athletic financial assistance. The claims of the named class representatives are typical of those of the proposed class, because Defendants denied them the opportunity to participate in a varsity sport wrestling and to receive athletic financial assistance for that sport. The named plaintiffs and their counsel will also provide adequate representation for the class as they already have for thus far in this litigation. Accordingly, Class Plaintiffs request that this Court certify this case as a class action as set forth herein.

Dated: December 7, 2005

AREZOU MANSOURIAN, et al.,
Plaintiffs.

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PROOF OF SERVICE

I hereby certify that on this7 day of December, 2005, I served the foregoing pleading upon counsel for Defendants via first class mail, postage prepaid, at the addresses listed below.

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