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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

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KAMRYN WHITWORTH, SARA
ABSTEN, ELEANOR DAVIES,
ALEXA DIETZ, and LARISA SULCS,
individually and on behalf of all others
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

**BRIEF IN SUPPORT OF JOINT
MOTION FOR
(1) CLASS CERTIFICATION;
(2) PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;
(3) APPROVAL OF PROPOSED
CLASS NOTICE; AND
(4) SCHEDULING OF FAIRNESS
HEARING**

Judge: Hon. Todd W. Robinson

Date: November 20, 2025

Time: 1:30 P.M. PST

TABLE OF CONTENTS

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

TABLE OF AUTHORITIES.....iv

I. INTRODUCTION.1

II. BACKGROUND FACTS AND PROCEDURAL HISTORY.....2

III. PROPOSED TERMS OF THE SETTLEMENT.....2

 A. Meaningful Relief for the Classes.2

 B. Costs and Attorneys’ Fees.4

 C. Proposed Notice to the Class.....5

 D. Rule 23(e)(3) Statement.5

IV. CLASS DEFINITION AND CLASS NATURE OF TITLE IX CLAIMS. 5

V. THE COURT SHOULD CERTIFY THE PROPOSED CLASSES.6

 A. The Proposed Classes Satisfy the Requirements of Rule 23(a)(1)–
 (4).....7

 1. The proposed class is numerous, and joinder of all Class
 Members is impracticable.7

 a) *Class Size.*7

 b) *Joinder is Impractical.*8

 2. Commonality.....8

 3. The Class Representatives’ Claims are Typical of Those of
 the Class.9

 4. The Class Representatives and Their Counsel Are Adequate
 Representatives.10

 a) *Class Representatives.*10

 b) *Class Counsel.*.....10

 B. THE REQUIREMENTS OF RULE 23(B)(2) ARE SATISFIED. .11

 C. THE REQUIREMENTS OF RULE 23(B)(3) ARE SATISFIED. .12

 1. Common Questions of Law and Fact Predominate.13

 2. Certification for the Purpose of Settlement is Superior to
 Alternate Methods of Adjudication.15

1 VII. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT.....18

2 A. The Proposed Settlement Is Fair, Reasonable, and Adequate.....18

3 1. The Classes have been and are adequately represented by the

4 Class Representatives and Class Counsel.....18

5 2. The settlement was the result of arms-length negotiations...19

6 3. The Parties engaged in discovery and motion practice before

7 discussing settlement.....19

8 4. The settlement avoids the risks, costs, and delay of litigating

9 the case through trial.19

10 5. The value of immediate implementation of the review of

11 equitable treatment of female student-athletes weighs in favor

12 of the settlement.20

13 6. The settlement treats all Class Members equally.....21

14 7. Plaintiffs and their counsel believe the proposed settlement is

15 fair, reasonable, and adequate.21

16 8. The presence of a governmental participant.21

17 9. The reaction of Class Members to the proposed settlement. 22

18 VIII. RULE 23(E)(2)(C) VALUATION.22

19 A. The Proposed Settlement Sum for Class 2 and Allocation Plan

20 Provides Relief That Is Fair, Reasonable, and Adequate.....22

21 IX. The Court Should Approve the Parties’ Proposed Notice Plan.....24

22 X. CONCLUSION.....26

23

24

25

26

27

28

TABLE OF AUTHORITIES

CASES

1
2
3 *A. B. v. Hawaii State Dep’t of Educ.*,
4 30 F.4th 828 (9th Cir. 2022)7
5 *Aldapa v. Fowler Packing Co., Inc.*,
6 323 F.R.D. 316 (E.D. Cal. 2018).....14
7 *Amchem Prods., Inc. v. Windsor*,
8 521 U.S. 591 (1997)..... 10, 12, 13, 15
9 *Anders v. California State Univ., Fresno*,
10 1:21-cv-00179, 2025 WL 755664 (E.D. Cal. Mar. 10, 2025)6
11 *Atkins v. Toan*,
12 595 F. Supp. 104 (W.D. Mo. 1984).....8
13 *Baby Neal v. Casey*,
14 43 F.3d 48 (3d Cir. 1994)11
15 *Barnes v. The American Tobacco Company*,
16 161 F.3d 127 (3d Cir. 1998)11
17 *Biediger v. Quinnipiac Univ.*,
18 928 F. Supp. 2d 414 (D. Conn. 2013).....6
19 *Cannon v. University of Chicago*,
20 441 U.S. 677 (1979).....12
21 *Castillo v. Bank of Am., NA*,
22 980 F.3d 723 (9th Cir. 2020)13
23 *Cohen v. Brown Univ.*,
24 991 F.2d 888 (1st Cir. 1993).....21
25 *Communities for Equity v. Michigan High Sch. Athletic Ass’n*,
26 192 F.R.D. 568 (W.D. Mich. 1999).....9
27 *Evans v. Wal-Mart Stores, Inc.*,
28 No. 2:17-CV-07641, 2022 WL 22879278 (C.D. Cal. June 30, 2022) .18
Fenn v. Hewlett-Packard Co.,
No. 1:11-CV-00244, 2012 WL 6680358 (D. Idaho Dec. 21, 2012)16

1 *Foltz v. Delaware State Univ.*,
 2 269 F.R.D. 419 (D. Del. 2010)8
 3 *Gay v. Waiters’ and Dairy Lunchmen’s Union*,
 4 549 F.2d 1330 (9th Cir. 1977)12
 5 *Grekco v. Diesel, Inc.*,
 6 277 F.R.D. 419 (N.D. Cal. 2011)15
 7 *Hanlon v. Chrysler Corp.*,
 8 150 F.3d 1101 (9th Cir. 1998) 15, 17, 18, 22
 9 *In re Bluetooth Headset Prods. Liab. Litig.*,
 10 654 F.3d 935 (9th Cir. 2011)19
 11 *In re ConAgra Foods, Inc.*,
 12 302 F.R.D. 537 (C.D. Cal. 2014).....12
 13 *In re Hyundai & Kia Fuel Econ. Litig.*,
 14 926 F.3d 539 (9th Cir. 2019)12
 15 *In re Tableware Antitrust Litig.*,
 16 484 F. Supp. 2d 1078 (N.D. Cal. 2007).....17
 17 *Kelley v. Bd. of Trustees*,
 18 35 F.3d 265 (7th Cir. 1994)21
 19 *Lane v. Facebook, Inc.*,
 20 696 F.3d 811 (9th Cir. 2012)22
 21 *Lucas v. Kmart Corp.*,
 22 234 F.R.D. 688 (D. Colo. 2006)20
 23 *Martinez v. Knight Transportation, Inc.*,
 24 No. 1:16-CV-01730, 2023 WL 2655541 (E.D. Cal. Mar. 27, 2023) ...17
 25 *Morgan v. Rohr, Inc.*,
 26 No. 3:20-CV-00574, 2025 WL 1285830 S.D. Cal. May 1, 2025)6, 9
 27 *Mullane v. Central Hanover Trust*,
 28 339 U.S. 306 (1950).....24
Officers for Justice v. Civ. Serv. Comm’n of City & Cnty. of San Francisco,
 688 F.2d 615 (9th Cir. 1982)22

1 *Ollier v. Sweetwater Union High Sch. Dist.*,
 2 251 F.R.D. 564 (S.D. Cal. 2008)6
 3 *Parsons v. Ryan*,
 4 754 F.3d 657 (9th Cir. 2014)9
 5 *Rapuano v. Trustees of Dartmouth College*,
 6 334 F.R.D. 637 (D.N.H. 2020).14
 7 *Retta v. Millennium Prods.*,
 8 CV15–1801, 2017 WL 5479637 (C.D. Cal. Aug. 22, 2017).....23
 9 *Robinson v. Metro-North Commuter R.R. Co.*,
 10 267 F.3d 147 (2d Cir. 2011)11
 11 *Rodriguez v. West Publ’g Corp.*,
 12 563 F.3d 948 (9th Cir. 2009) 17, 22
 13 *Santiago v. City of Philadelphia*,
 14 72 F.R.D. 619 (E.D. Pa. 1976).....8
 15 *Slaven v. BP Am., Inc.*,
 16 190 F.R.D. 649 (C.D. Cal. 2000).....7
 17 *Staton v. Boeing Co.*,
 18 327 F.3d 938 (9th Cir. 2003)6
 19 *Tyson Foods, Inc. v. Bouaphakeo*,
 20 577 U.S. 442 (2016)..... 13, 14
 21 *Uschold v. NSMG Shared Servs., LLC*,
 22 333 F.R.D. 157 (N.D. Cal. 2019)16
 23 *Wal-Mart Stores, Inc. v. Dukes*,
 24 564 U.S. 338 (2011).....8, 17
 25 *Walters v. Reno*,
 26 145 F.3d 1032 (9th Cir. 1998)11
 27 **STATUTES**
 28 20 U.S.C. § 1681 *et. seq.*1
 42 U.S.C. § 19884

OTHER AUTHORITIES

44 Fed. Reg. 71,413 (1979).....14

RULES

FED. R. CIV. P. 23(a) 6, 7, 8, 9, 10, 11

FED. R. CIV. P. 23(b)(2) 11, 12

FED. R. CIV. P. 23(b)(3) 12, 13, 15

FED. R. CIV. P. 23(e) 5, 16, 17, 18, 24, 25

TREATISES

7A Wright & Miller §1776.....11

Conte, I Newberg on Class Actions 3d 4.1111

Manual for Complex Litigation, § 21.632.....18

REGULATIONS

34 C.F.R. § 106.37(c)13

1
2
3
4
5
6
7
8
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12
13
14
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1 Plaintiffs Madison Fisk, Carina Clark, Natalie Figueroa, Olivia Petrine,
2 Kamryn Whitworth, Kaitlin Heri, Raquel Castro, Greta Viss (Castrillon), Helen
3 Bauer, Erica Grotegeer, Aisha Watt, Sara Absten, Eleanor Davies, Alexa Dietz, and
4 Larisa Sulcs (collectively “Plaintiffs”), and Defendant Board of Trustees of California
5 State University (“SDSU”),¹ by and through counsel, submit this Brief in Support of
6 their Motion for Class Certification, Preliminary Approval of Proposed Class Action
7 Settlement, Approval of the Proposed Class Notice, and Scheduling of the Fairness
8 Hearing.

9 **I. INTRODUCTION.**

10 Plaintiffs were members of the varsity women’s track and field and rowing
11 teams at SDSU. On February 7, 2022, Plaintiffs filed suit against SDSU, individually
12 and on behalf of similarly situated persons, alleging violations of Title IX of the
13 Educational Amendments of 1972 (20 U.S.C. § 1681 *et. seq.*) (“Title IX”).

14 Plaintiffs allege that SDSU’s varsity athletic program is not in compliance with
15 Title IX regarding athletic financial aid and athletic benefits and treatment. *See*
16 *generally* Third Amended Complaint, ECF No. 50. Plaintiffs also allege that SDSU
17 retaliated against them for filing their lawsuit in violation of Title IX. *Id.* Plaintiffs
18 and SDSU (“the Parties”) have negotiated in good faith a resolution of all claims,
19 including those asserted on behalf of the Classes.

20 On behalf of the proposed classes, the Parties now request that the Court certify
21 the proposed Rule 23(b)(2) and 23(b)(3) classes for the purposes of settlement
22 pursuant to Federal Rule 23(e). The Parties also request the Court grant preliminary
23 approval of the settlement, which provides meaningful relief to the Classes and
24 SDSU. This is a fair, reasonable, and adequate result for the Classes and SDSU and
25

26
27 ¹ As used in this Brief, “SDSU” refers to Defendant Board of Trustees of California
28 State University, which is the State of California acting in its higher education
capacity (mistakenly also sued as “San Diego State University”).

1 warrants the Court’s preliminary approval, along with approval of the proposed Class
2 notice and scheduling of the Fairness Hearing.

3 **II. BACKGROUND FACTS AND PROCEDURAL HISTORY.**

4 On February 7, 2022, after pre-litigation resolution discussions were
5 unsuccessful, Plaintiffs filed their Complaint against SDSU alleging that the
6 University did not provide male and female student-athletes with equal opportunity
7 for athletic financial aid and equal athletic treatment and benefits. ECF No. 1. On
8 April 21, 2022, Plaintiffs filed their First Amended Complaint, including a count for
9 retaliation in violation of Title IX. ECF No. 24. The University denied, and continues
10 to deny, Plaintiffs’ allegations. After rulings on the University’s dispositive motions,
11 the Court held that Plaintiffs could proceed on all three of Plaintiffs’ claims. *See* ECF
12 No. 60 (Order on Motion to Dismiss Third Amended Compl.); ECF No. 65 (Order
13 Granting Motion to Modify the Court’s Order); *See generally* ECF Nos. 26–38, 41–
14 65.

15 Following extensive discovery by both parties, Plaintiffs filed for class
16 certification on November 22, 2024, which SDSU contested. ECF No. 115. On March
17 7, 2025, while Plaintiffs’ motion was pending, the Parties participated in a full-day
18 settlement conference with Magistrate Judge Michael S. Berg. ECF No. 133. The
19 parties continued to engage in settlement negotiations with Judge Berg serving as the
20 neutral mediator between the parties until August 13, 2025, when the Parties engaged
21 in another half-day settlement conference with Judge Berg and were able to reach a
22 resolution as described below. ECF No. 153.

23 **III. PROPOSED TERMS OF THE SETTLEMENT.**

24 **A. Meaningful Relief for the Classes.**

25 The proposed Settlement Agreement resolves all claims at issue in this lawsuit.
26 Ex. A, Proposed Settlement Agreement. The Settlement Agreement provides
27 injunctive relief for all Class Members and monetary relief as well to the members of
28 proposed Class 2.

1 For the Rule 23(b)(2) class injunctive relief, SDSU agrees to hire a mutually-
2 agreeable neutral third-party to conduct a Gender Equity Review of its athletic
3 department using the process consistent with the U.S. Department of Education’s
4 Office for Civil Rights’ 1990 Title IX Investigator’s Manual. *Id.* ¶¶ 8–13. SDSU
5 further agrees that it will use the findings of the Gender Equity Review to implement
6 a Gender Equity Plan. The third-party Title IX Reviewer must be satisfied that, once
7 implemented, SDSU’s athletic department will be in compliance with Title IX’s
8 requirements regarding athletic financial aid and athletic treatment and benefits by
9 the end of the 2026-27 academic year, as described in the Settlement Agreement. *Id.*
10 ¶¶ 14–18. To monitor compliance, the proposed Settlement Agreement provides that,
11 from July 31, 2026 through July 31, 2028, SDSU will provide an annual summary
12 update regarding its implementation of the Gender Equity Plan. *Id.* ¶ 21. To maintain
13 transparency, SDSU will post the Gender Equity Plan and its annual summary reports
14 on the university’s varsity athletics website. *Id.* ¶¶ 18, 22. SDSU also agrees that in
15 addition to addressing any findings in the Gender Equity Review it will provide
16 specific relief that includes: (1) providing equitable nutrition to a comparable number
17 of male and female student-athletes; (2) providing coaches for men’s and women’s
18 teams the option of having their teams travel by airplane to competitions more than a
19 6-hour drive away from the SDSU campus in an equitable manner; (3) providing
20 coaches for men’s and women’s teams the opportunity to have their teams stay in
21 hotels before competitions in the San Diego area in an equitable manner; (5) making
22 repairs to the women’s outdoor track, which are anticipated to be completed in the
23 2025-26 academic year, and continue to assess the track facility for additional repairs;
24 (6) replacing the turf on the field used by the women’s varsity lacrosse team for
25 practices and competitions no later than the 2027-28 academic year; (6) providing a
26 person who is not a coach or a member of the team to record and/or stream home
27 competitions equitably for men’s and women’s teams, and (7) providing professional
28

1 photography services and publicity equitably to men’s and women’s teams. *Id.* ¶
2 24(a–f).

3 For the Rule 23(b)(3) monetary relief, SDSU agrees to pay a total, gross amount
4 of \$300,000 to members of Class 2. Proposed Class Counsel is responsible for
5 proposing an allocation of these funds that is fair to the class and for administering
6 the distribution. Proposed Class Counsel has identified 826 female student-athletes
7 that are members of proposed Class 2, and they would each be receiving a portion of
8 those funds. SDSU will play no role in determining the proposed allocation of these
9 funds. SDSU maintains these payments are non-precedential and do not constitute an
10 agreement that Plaintiffs or any student-athletes are entitled to the alleged damages
11 sought in the Third Amended Complaint.

12 For Plaintiffs’ retaliation claim, SDSU is agreeing to certain provisions related
13 to the named Plaintiffs only. *Id.* ¶30.²

14 **B. Costs and Attorneys’ Fees.**

15 The Settlement Agreement provides that, subject to approval by the Court,
16 SDSU will pay the total, gross sum of \$1,300,000 to Plaintiffs’ counsel for Plaintiffs’
17 proposed reasonable litigation costs, and attorneys’ fees. *Id.* ¶ 31. This payment will
18 be made in accord with Title IX and the Civil Rights Attorney’s Fees Award Act of
19 1976. *See* 42 U.S.C. § 1988. For purposes of this Settlement Agreement, SDSU does
20 not oppose a \$1,300,000 payment, and it will not seek to have this amount reduced.
21 Ex. A, ¶ 31. Plaintiffs’ counsel agrees not to seek more than that amount. *Id.* This
22 amount will be paid by SDSU, not by the Classes. *Id.* The amount to be paid is a
23 significant reduction from the lodestar calculated by Class Counsel (hours expended
24 multiplied by their usual hourly rates), which Plaintiffs agreed to accept in the interest
25 of concluding the proposed settlement. Ex. C, Bullock Decl. ¶ 27.

26 _____
27 ² Plaintiffs are not seeking approval of a class their retaliation claim as this claim is
28 being settled on an individual basis for the Named Plaintiffs.

1 **C. Proposed Notice to the Class.**

2 The Parties have agreed to the proposed “NOTICE OF PROPOSED CLASS
3 ACTION SETTLEMENT IN TITLE IX ATHLETICS LITIGATION AND NOTICE
4 OF A FAIRNESS HEARING” that will be sent to all members of Class 1 and Class
5 2, defined below, by sending them an email with a link to the Notice and Proposed
6 Settlement Agreement documents and maintaining a link that will be posted on
7 SDSU’s varsity athletic website to provide notice to all Class Members.³ Ex. B,
8 Proposed Notice. As required by Federal Rule of Civil Procedure 23(e)(2), the notice
9 explains the nature of the controversy, the details of the Settlement Agreement, the
10 right of all Class Members to object to it and the right of members of Class 2 to opt
11 out of the Settlement. It also explains the process for submitting a timely objection to
12 the Court, opting out of Class 2, and being heard at the “Fairness Hearing.” *Id.*

13 **D. Rule 23(e)(3) Statement.**

14 Pursuant to Rule 23(e)(3), Plaintiffs hereby notify the Court that, other than as
15 stated in the proposed Settlement Agreement, there are no agreements requiring
16 disclosure that were “made in connection with the proposal.” *See* FED. R. CIV. P.
17 23(e)(3).

18 **IV. CLASS DEFINITION AND CLASS NATURE OF TITLE IX CLAIMS.**

19 The Parties agree, through the Settlement Agreement, that the classes should
20 be defined as:

21 Pursuant to Federal Rule of Civil Procedure 23(b)(2):

22 Class 1: All female students who participate in intercollegiate varsity
23 athletics through the termination of the Settlement Agreement or, since
24 February 7, 2022, participated in intercollegiate varsity athletics at San
25 Diego State University.

26 _____
27 ³ Members of proposed Class 2 are also members of proposed Class 1, but not all
28 members of Class 1 are members of Class 2.

1 Pursuant to Federal Rule of Civil Procedure 23(b)(3):

2 Class 2: All female students who participated in intercollegiate varsity
3 athletics at San Diego State University from the 2018-2019 academic year
4 through the 2024-2025 academic year and did not receive all of the athletic
5 financial aid they could have received.

6 A single class action is appropriate in this case to address the program-wide
7 allegations in Plaintiffs’ operative complaint and ensures that individual students will
8 not be required to bring separate actions. Courts have recognized the class-based
9 nature of Title IX claims and have certified classes including present, prospective,
10 future, and deterred female students. *See, e.g., Ollier v. Sweetwater Union High Sch.*
11 *Dist.*, 251 F.R.D. 564, 565 (S.D. Cal. 2008) (certifying class for participation and
12 treatment and benefits claims); *Anders v. California State Univ., Fresno*, 1:21-cv-
13 00179, 2025 WL 755664, at *1 (E.D. Cal. Mar. 10, 2025) (certifying class for
14 participation and treatment and benefits claims); *Biediger v. Quinnipiac Univ.*, 928 F.
15 Supp. 2d 414 (D. Conn. 2013) (certifying class for participation, athletic financial aid,
16 and treatment and benefit claims).

17 **V. THE COURT SHOULD CERTIFY THE PROPOSED CLASSES.**

18 When determining whether to certify a class, the court looks to Federal Rule of
19 Civil Procedure 23, particularly subsections (a) and (b). Plaintiffs must satisfy all four
20 of the requirements of Rule 23(a). Although SDSU previously disputed that class
21 certification was appropriate in this case, in the interest of resolving this dispute
22 SDSU no longer contests class certification.

23 The Ninth Circuit has a strong judicial policy that favors settlements in class
24 actions. *Morgan v. Rohr, Inc.*, No. 3:20-CV-00574, 2025 WL 1285830, at *4 (S.D.
25 Cal. May 1, 2025). By providing a single forum in which to litigate similar claims, a
26 class action affords an indispensable mechanism for the conservation of judicial
27 resources of federal courts. *Id.* at *7. However, “in the context of a case in which the
28 parties reach a settlement agreement prior to class certification, courts must peruse
the proposed compromise to ratify both the propriety of the certification and the

1 fairness of the settlement.” *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003).
2 “Courts reviewing class action settlements must ensure that unnamed Class Members
3 are protected from unjust or unfair settlements affecting their rights, while also
4 accounting for the strong judicial policy that favors settlements, particularly where
5 complex class action litigation is concerned.” *Campbell v. Facebook, Inc.*, 951 F.3d
6 1106, 1121 (9th Cir. 2020) (cleaned up).

7 **A. The Proposed Classes Satisfy the Requirements of Rule 23(a)(1)–(4).**

8 Rule 23(a) provides that a proposed class must satisfy four requirements:
9 One or more members of a class may sue or be sued as representative
10 parties on behalf of all members only if:

- 11 1. the class is so numerous that joinder of all members is
12 impracticable;
- 13 2. there are questions of law or fact common to the class;
- 14 3. the claims or defenses of the representative parties typical of the
15 claims or defenses of the class; and
- 16 4. the representative parties will fairly and adequately protect the
17 interests of the class.

18 The proposed classes readily satisfy these requirements.

- 19 1. The proposed class is numerous, and joinder of all Class Members is
20 impracticable.

21 Numerosity is satisfied when the class is “so numerous that joinder of all
22 members is impracticable.” FED. R. CIV. P. 23(a)(1). “As a general matter, courts have
23 found that numerosity is satisfied when class size exceeds 40 members, but not
24 satisfied when membership dips below 21.” *Slaven v. BP Am., Inc.*, 190 F.R.D. 649,
25 654 (C.D. Cal. 2000); *see also A. B. v. Hawaii State Dep’t of Educ.*, 30 F.4th 828, 837
26 (9th Cir. 2022) (discussing that a class of over 300 students satisfies numerosity).

27 *a) Class Size.*

28 Here, during the 2023-24 academic year alone, there were 225 female students-
athletes at SDSU. *See, e.g.,* Ex. D (NCAA SDSU Athletic Participation). Each year
during the class period more women were added to the class as women students
matriculated at SDSU. All these individuals are members of the proposed Class 1,

1 because all were allegedly affected by the alleged Title IX violations in SDSU’s
2 intercollegiate athletic program. While Class 2 has less Class Members, it is still over
3 800 women. Ex. C, ¶ 5. There are simply too many female athletes involved to add
4 them all as individual plaintiffs.

5 *b) Joinder is Impractical.*

6 Joinder is also impracticable because of the inherently fluid nature of the
7 proposed class. As discussed, its members have already changed during this litigation
8 and will continue to do so as new female-athletes enroll at SDSU and others transfer
9 or graduate. Approximately 25 percent of SDSU’s female intercollegiate athletes
10 change each year simply because of the nature of academic programs and the athletic
11 eligibility limitations of the NCAA. *See Santiago v. City of Philadelphia*, 72 F.R.D.
12 619, 624 (E.D. Pa. 1976) (constant rotation of juveniles through youth study center
13 made joinder impracticable in an action challenging the legality of the center’s
14 policies); *Atkins v. Toan*, 595 F. Supp. 104, 105 (W.D. Mo. 1984) (joinder
15 impracticable when class membership is fluid).

16 2. Commonality.

17 Commonality is satisfied because it is clear “there are questions of law or fact
18 common to the class.” FED. R. CIV. P. 23(a)(2). Only one common question is
19 necessary. *Dukes*, 564 U.S. at 359. “The common questions of law and fact belonging
20 to both the named plaintiffs and the larger class include whether [SDSU] is in
21 compliance with its obligations under Title IX and, if not, whether any proposed
22 corrective actions [SDSU] might take would bring it into compliance with the
23 statute.” *Foltz v. Delaware State Univ.*, 269 F.R.D. 419, 423 (D. Del. 2010).

24 In the instant case, the claims of all proposed Class Members include the same
25 legal questions: whether SDSU engaged in sex discrimination and violated Title IX
26 through (1) the allocation of athletic financial aid to varsity student-athletes and (2)
27 the allocation of benefits and treatment to varsity student-athletes. As set forth above,
28

1 these claims are inherently class-based because they require a program-wide
2 comparison of how SDSU treats its sex-segregated men’s and women’s teams.

3 The factual questions are also common. For example, they include:

- 4 • Which athletic benefits (such as equipment, supplies, uniforms,
5 coaching, facilities, travel, academic support, recruiting support, etc.) does
6 SDSU provide to male and female athletes?
- 7 • How much athletic financial aid does SDSU provide on a program-
8 wide basis to all its male athletes combined as compared to all its female
9 athletes combined?

10 These are similar to the questions of law and fact that were found to be common
11 to the plaintiffs in the Title IX class actions cited above. As the nature of Title IX
12 claims necessarily depends on how all women are being treated versus how all men
13 are being treated, the proposed class satisfies the requirements of Rule 23(a)(2).

14 3. The Class Representatives’ Claims are Typical of Those of the Class.

15 Rule 23(a)’s third requirement is that “the claims or defenses of the
16 representative parties are typical of the claims or defenses of the class.” FED. R. CIV.
17 P. 23(a). “The representative claims are typical if they are ‘reasonably co-extensive
18 with those of absent class members,’ though they ‘need not be substantially
19 identical.’” *Morgan*, WL 1285830, at *6 (quoting *Parsons v. Ryan*, 754 F.3d 657, 685
20 (9th Cir. 2014)).

21 Here, the named Plaintiffs’ claims are not just typical of the class claims; they
22 are identical. They allege that they (1) have been denied or imminently will be denied
23 an equal allocation of the benefits and treatment provided to varsity male student-
24 athletes at SDSU and (2) have been denied an equal allocation of athletic financial
25 aid provided to male student-athletes at SDSU. *See Communities for Equity v.*
26 *Michigan High Sch. Athletic Ass’n*, 192 F.R.D. 568, 573 (W.D. Mich. 1999) (“[T]he
27 variety of alleged manifestations of discrimination, such as inequitable facilities,
28 scheduling, sanctioning, and rules, present a sufficient case of an underlying policy

1 or practice of discrimination.”). All Class Members would benefit from the relief in
2 the Settlement Agreement to address both claims. Plaintiffs satisfy their burden of
3 showing typicality.

4 4. The Class Representatives and Their Counsel Are Adequate
5 Representatives.

6 Rule 23(a)’s fourth requirement is that “the representative parties will fairly
7 and adequately protect the interests of the class.” FED. R. CIV. P. 23(a). This requires
8 Plaintiffs to demonstrate both that (1) the named Plaintiffs do not have interests that
9 are antagonistic to the class and (2) their attorneys are competent to handle the
10 litigation.

11 a) *Class Representatives.*

12 Two factors generally inform whether class representatives satisfy the Rule
13 23(a)(4) requirement: “(1) absence of conflict and (2) assurance of vigorous
14 prosecution.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625–26 (1997) (holding
15 that a class representative must be part of the class and possess the same interest and
16 suffer the same injury as the class members).

17 Proposed Class Representatives Madison Fisk, Carina Clark, Natalie Figueroa,
18 Olivia Petrine, Kamryn Whitworth, and Kaitlin Heri will fairly, adequately, and
19 vigorously represent the interests of the class. The Class Representatives do not have
20 interests antagonistic to the interests of the members of the class. And they do not
21 expect that any will arise.

22 b) *Class Counsel.*

23 The undersigned counsel has devoted substantial and sufficient efforts to
24 investigating the facts and identifying the potential claims in this action, have detailed
25 knowledge of the applicable law, and have sufficient resources to commit to
26 representing this putative class. Plaintiffs’ counsel will adequately represent the class
27 in this case. Class Counsels’ experience in handling Title IX class and individual
28

1 actions, as well as complex class actions, is addressed in the attached declaration. *See*
2 Ex. C, ¶¶6–10.

3 **B. THE REQUIREMENTS OF RULE 23(B)(2) ARE SATISFIED.**

4 Rule 23(b)(2) authorizes class action certification where “the party opposing
5 the class has acted or refused to act on grounds generally applicable to the class,
6 thereby making appropriate final injunctive relief or corresponding declaratory relief
7 with respect to the class as a whole.” FED. R. CIV. P. 23(b)(2).

8 A Rule 23(b)(2) “class action is intended for cases where broad, class-wide
9 injunctive or declaratory relief is necessary to redress a group-wide injury.” *Robinson*
10 *v. Metro-North Commuter R.R. Co.*, 267 F.3d 147, 162 (2d Cir. 2011) (citing FED. R.
11 CIV. P. 23(b)(2), advisory committee note (1966)); 7A Wright & Miller §1776
12 (“[S]ubdivision (b)(2) was added to Rule 23 in 1966 in part to make it clear that civil
13 rights suits for injunctive or declaratory relief can be brought as class actions.”). The
14 rule is satisfied “even if the action or inaction has taken effect or is threatened only as
15 to one or a few members of the class, provided it is based on grounds which have
16 general application to the class.” FED. R. CIV. P. 23 (b)(2), advisory committee note
17 (1966). Thus, even if only the named Plaintiffs or even if only some of SDSU’s female
18 athletes were subjected to SDSU’s alleged sex discrimination, this action would
19 satisfy the requirements of Rule 23(b)(2) because SDSU’s policies and actions are
20 generally applicable to all members of the prospective class.

21 Here, the relief in the Settlement Agreement is injunctive relief affecting the
22 class as a whole. Plaintiffs’ claims are particularly tailored to injunctive relief. The
23 (b)(2) class “serves most frequently as the vehicle for civil rights actions and other
24 institutional reform cases that receive class action treatment.” *Baby Neal v. Casey*, 43
25 F.3d 48, 58-59 (3d Cir. 1994). “As the Advisory Committee Notes explain, 23(b)(2)
26 was adopted in order to permit the prosecution of civil rights actions.” *Walters v.*
27 *Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998); *see also Barnes v. The American Tobacco*
28 *Company*, 161 F.3d 127 (3d Cir. 1998) (*citing Conte, 1 Newberg on Class Actions* 3d

1 4.11) (noting Rule 23(b)(2) was “designed for civil rights cases seeking broad
2 declaratory or injunctive relief for a numerous and often ascertainable or amorphous
3 class of persons.”); *Gay v. Waiters’ and Dairy Lunchmen’s Union*, 549 F.2d 1330,
4 1333 (9th Cir. 1977) (court reversed district court’s denial of class certification
5 because it failed to consider broad remedial purposes of Title VII); *see also Cannon*
6 *v. University of Chicago*, 441 U.S. 677, 706 (1979) (discussing broad remedial
7 purpose of Title IX).

8 Because all requirements have been met, proposed Class 1 is properly
9 certifiable under Rule 23(b)(2).

10 **C. THE REQUIREMENTS OF RULE 23(B)(3) ARE SATISFIED.**

11 After establishing each of the Rule 23(a) requirements, plaintiffs seeking
12 certification must show the proposed class satisfies at least one subsection of Rule
13 23(b)(3). Here, the Parties seek, for settlement purposes only, certification of Class 2
14 under Rule 23(b)(3).

15 It is permissible in the Ninth Circuit to certify two separate classes, provided
16 that the injunctive relief class satisfies the requirements of Rule 23(b)(2) and the
17 damages class satisfies Rule 23(b)(3). *See, e.g., In re ConAgra Foods, Inc.*, 302 F.R.D.
18 537, 573 (C.D. Cal. 2014) (stating “Rather, Ninth Circuit precedent indicates that the
19 court can separately certify an injunctive relief class and if appropriate, also certify a
20 Rule 23(b)(3) damages class.”). Moreover, courts recognize that Rule 23 factors are
21 relaxed when certifying a class for settlement purposes. *See Amchem Products, Inc.*,
22 521 U.S. at 619 (observing that “[s]ettlement is relevant to a class certification”); *In*
23 *re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 558 (9th Cir. 2019) (“But whether
24 a proposed class is sufficiently cohesive to satisfy Rule 23(b)(3) is informed by
25 whether certification is for litigation or settlement.”). Finally, when considering
26 certification for settlement only, the court need not consider the “manageability”
27 factor of the class action. *Amchem Prods., Inc.*, 521 U.S. at 620. Rule 23(b)(3)
28 requires that “questions of law or fact common to class members predominate over

1 any questions affecting only individual members,” and that class treatment is
2 “superior to other available methods for fairly and efficiently adjudicating the
3 controversy.” FED. R. CIV. P. 23(b)(3).

4 1. Common Questions of Law and Fact Predominate.

5 The predominance inquiry tests whether the “proposed classes are sufficiently
6 cohesive to warrant adjudication by representation.” *Amchem Prods., Inc.*, 521 U.S.
7 at 623. But predominance “does *not* require a plaintiff seeking class certification to
8 prove that every element of their claim is susceptible to classwide proof, so long as
9 one or more common questions predominate.” *Castillo v. Bank of Am., NA*, 980 F.3d
10 723, 730 (9th Cir. 2020) (emphasis added). As the Supreme Court stated:

11 When one or more of the central issues in the action are common to the
12 class and can be said to predominate, the action may be considered proper
13 under Rule 23(b)(3) even though other important matters will have to be
14 tried separately, such as damages or some other affirmative defenses
peculiar to some individual Class Members.

15 *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016).

16 Indeed, district courts should assess predominance keeping in mind that a
17 “class action would achieve economies of time, effort, and expense, and
18 promote...uniformity of decision as to persons similarly situated, without sacrificing
19 procedural fairness or bringing about other undesirable results.” *Amchem Prods. Inc.*,
20 521 U.S. at 615.

21 Common questions of law and fact predominate in the matter *sub judice*: the
22 legal determination of whether SDSU discriminated against female student-athletes
23 by failing to give substantially proportional financial aid as given to their male
24 counterparts is common to *every* member of Class 2, *see*, 34 C.F.R. § 106.37(c)(1),
25 and evidenced by the same common examination of Defendant’s athletic participation
26 and financial aid award records. In its 1979 Policy Interpretation, the Office of Civil
27 Rights instructed that assessing this claim required determination of “the amounts of
28 aid available for the members of each sex” and “the numbers of male or female

1 participants in the athletic program,” and then “comparing the results.” 44 Fed. Reg.
2 71,413, 71,415 (1979).

3 The common facts revolve almost exclusively around SDSU’s proportionality
4 of affording financial aid opportunities to female and male student athletes relative to
5 their participation rates. Such analysis is numbers-driven based on data SDSU
6 maintains and is not subsumed by issues of individualized perception or experience.⁴
7 Thus, the same factual evidence and calculation methodology would suffice for a
8 prima facie showing susceptible to generalized, class-wide proof. *Tyson Foods, Inc.*,
9 577 U.S. at 453.

10 One illustrative case is *Rapuano v. Trustees of Dartmouth College*, where the
11 district court granted preliminary approval (and ultimately final approval) of a Title
12 IX and Rule 23(b)(3) class action settlement. 334 F.R.D. 637, 652 (D.N.H. 2020). In
13 *Rapuano*, named plaintiffs alleged misconduct by college professors that included
14 sexual harassment, coercion into sexual relationships, and a culture of binge drinking
15 and sexual banter. Reviewing the proposed settlement for Rule 23(b)(3) certification,
16 the district court found the predominance factor satisfied even in the nuanced sexual
17 harassment and gender discrimination context. *Id.* at 652, 654. The district court was
18 persuaded that the element of liability for a hostile educational environment that
19 required individualized determination *did not* predominate over the other common
20 questions. *Id.* at 651. Moreover, the proposed settlement obviated any need to litigate
21 said individualized issues and therefore manageability concerns did not undermine a
22 finding of predominance. *Id.* Finding that common questions predominated under
23 Rule 23(b)(3), the district court granted certification of the class for settlement
24 purposes. *Id.* Similar to the court’s finding in *Rapuano*, the predominance element is

25
26
27 ⁴ District courts regularly certify cases where institutional policies can be gleaned
28 from looking to a single body of evidence that is in defendant’s own records. *See*,
e.g., *Aldapa v. Fowler Packing Co., Inc.*, 323 F.R.D. 316, 338 (E.D. Cal. 2018).

1 met here, where common issues hinge on a relatively formulaic proportionality-to-
2 participation rates standard.

3 Finally, any individualized issues relating to damages is not a barrier to Rule
4 23(b)(3) certification. This element is satisfied under Rule 23(b)(3).

5 2. Certification for the Purpose of Settlement is Superior to Alternate
6 Methods of Adjudication.

7 The superiority inquiry under Rule 23(b)(3) requires determination of whether
8 the objectives of the class action procedure will be achieved in the particular case and
9 “necessarily involves a comparative evaluation of alternative mechanisms of dispute
10 resolution.” *Hanlon*, 150 F.3d at 1023. Rule 23(b)(3) provides a list of non-exhaustive
11 factors relevant to superiority of a class action, including: (a) class members’ interest
12 in controlling separate actions; (b) the extent and nature of any suits involving the
13 same controversy already initiated; (c) the desirability of concentrating the litigation
14 of the claims in the particular forum; and (d) manageability concerns. *See* FED. R.
15 CIV. P. 23(b)(3); *Grecco v. Diesel, Inc.*, 277 F.R.D. 419, 428 (N.D. Cal. 2011). Here,
16 class treatment is superior to other methods of adjudication. Plaintiffs’ Counsel is not
17 aware of any other pending related separately filed actions in state or federal courts,
18 *see*, Ex. C, ¶ 14, and there is no indication that Class Members have expressed an
19 interest in controlling separate actions. While no other suits involving the same
20 controversy have been initiated, settling the question of whether SDSU violated Title
21 IX in its allocation of athletic financial aid to male and female student-athletes is best
22 done through the class mechanism to prevent the danger of inconsistent judgments.

23 Finally, there is no more manageable form of adjudication than a voluntary
24 settlement with an efficient and equitable extrajudicial process. *See Amchem*, 521
25 U.S. at 620 (“Confronted with a request for settlement-only class certification, a
26 district court need not inquire whether the case, if tried, would present intractable
27 management problems...for the proposal is that there be no trial.”). This is especially
28 true given that this Settlement allows for the over 800 women comprising Class 2 to

1 receive compensation as absent Class Members—plus many will benefit from the
2 future programmatic measures set forth in the Settlement Agreement and the input of
3 the Title IX Reviewer—without the need for further long and protracted litigation.
4 For the foregoing reasons and pursuant to Rule 23(b)(3), Class 2 should be
5 preliminarily certified for settlement purposes.

6 **VI. ENTRY OF AN ORDER PRELIMINARILY APPROVING THE**
7 **PARTIES’ CLASS SETTLEMENT IS NECESSARY AND APPROPRIATE.**

8 Review and approval of a class action settlement involves three steps. First, the
9 court preliminarily approves the proposed settlement. FED. R. CIV. P. 23(e)(2).
10 Second, members of both classes who would be bound by the proposed settlement
11 must be given “notice in a reasonable manner.” FED. R. CIV. P. 23(e)(1)(B). Finally,
12 the court holds a hearing to determine whether the proposed settlement is fair,
13 reasonable, and adequate. FED. R. CIV. P. 23(e)(1)(C). Preliminary approval of a class
14 action settlement, in contrast to final approval, is “at most a determination that there
15 is what might be termed ‘probable cause’ to submit the proposal to class members
16 and hold a full-scale hearing as to its fairness.” *Fenn v. Hewlett-Packard Co.*, No.
17 1:11-CV-00244, 2012 WL 6680358, at *1 (D. Idaho Dec. 21, 2012). At the
18 preliminary approval stage, “the settlement need only be potentially fair.” *Uschold v.*
19 *NSMG Shared Servs., LLC*, 333 F.R.D. 157, 169 (N.D. Cal. 2019) (cleaned up).

20 Rule 23(e) states that grounds exist for class notice where the parties show that
21 “the court will likely be able to (i) approve the proposal under Rule 23(e)(2); and (ii)
22 certify the class for purposes of judgment on the proposal.” FED. R. CIV. P.
23 23(e)(1)(B). To that end, where, as here, the proposed settlement would bind Class
24 Members, it may only be approved after a hearing and a finding that it is fair,
25 reasonable, and adequate, based on the following factors:

- 26 (A) the class representatives and class counsel have adequately
27 represented the class;
28 (B) the proposal was negotiated at arm’s length;

1 (C) the relief provided for the class is adequate, taking into account: (i)
2 the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any
3 proposed method of distributing relief to the class, including the method of
4 processing class-member claims; (iii) the terms of any proposed award of
5 attorney’s fees, including timing of payment; and (iv) any agreement
6 required to be identified under Rule 23(e)(3); and

7 (D) the proposal treats class members equitably relative to each other.

8 FED. R. CIV. P. 23(e)(2). Prior to the 2018 amendment to Rule 23(e) that added the
9 above factors, the Ninth Circuit had crafted its own set of factors relevant to a
10 proposed settlement’s fairness, reasonableness, and adequacy. “District courts may
11 consider some or all of these factors.” *Campbell*, 951 F.3d at 1121 (citing *Rodriguez*
12 *v. West Publ’g Corp.*, 563 F.3d 948, 963 (9th Cir. 2009)). These include:

13 [1] the strength of the plaintiffs’ case; [2] the risk, expense, complexity, and
14 likely duration of further litigation; [3] the risk of maintaining class action
15 status throughout the trial; [4] the amount offered in settlement; [5] the
16 extent of discovery completed and the stage of the proceedings; [6] the
17 experience and views of counsel; [7] the presence of a governmental
18 participant; and [8] the reaction of the class members to the proposed
19 settlement.

20 *Campbell*, 951 F.3d at 1121 (quoting *Hanlon*, 150 F.3d at 1026, *overruled on other*
21 *grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011)).

22 Courts generally grant preliminary approval if “the proposed settlement
23 appears to be the product of serious, informed, non-collusive negotiations, has no
24 obvious deficiencies, does not improperly grant preferential treatment to class
25 representatives or segments of the class, and falls within the range of possible
26 approval.” *Martinez v. Knight Transportation, Inc.*, No. 1:16-CV-01730, 2023 WL
27 2655541, at *6 (E.D. Cal. Mar. 27, 2023) (citing *In re Tableware Antitrust Litig.*, 484
28 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)). “The Court has broad discretion to grant
preliminary approval of class action settlement under the circumstances here, where
it is fair, adequate, reasonable, and not a product of collusion.” *Evans v. Wal-Mart*

1 *Stores, Inc.*, No. 2:17-CV-07641, 2022 WL 22879278, at *5 (C.D. Cal. June 30, 2022)
2 (cleaned up).

3 If the court preliminarily finds that the settlement is fair, adequate, and
4 reasonable, it then “direct[s] the preparation of notice of the certification, proposed
5 settlement, and date of the final fairness hearing.” Manual for Complex Litigation, §
6 21.632; FED. R. CIV. P. 23(e)(1)(B). Because all the requirements for preliminary
7 approval are satisfied here, the Court should grant preliminary approval, approve the
8 Parties’ proposed form and method of notice of the class action settlement, and
9 schedule the final fairness hearing.

10 **VII. THE COURT SHOULD PRELIMINARILY APPROVE THE**
11 **SETTLEMENT.**

12 **A. The Proposed Settlement Is Fair, Reasonable, and Adequate.**

13 Plaintiffs allege that SDSU has violated and continues to violate Title IX in its
14 varsity intercollegiate athletic program. SDSU disputes that. Thus, the Parties are
15 using settlement to resolve legitimate factual and legal disputes. The proposed
16 settlement is fair, reasonable, and adequate.

17 1. The Classes have been and are adequately represented by the Class
18 Representatives and Class Counsel.

19 After over three and a half years of hard-fought litigation, the Parties have
20 negotiated a resolution of this litigation. From the Plaintiffs’ perspective, the litigation
21 included, among other things, conducting pre-suit investigation, preparing four
22 detailed complaints, successfully defending three motions to dismiss, preparing
23 written discovery, analyzing over 57,000 pages of discovery, defending and taking 31
24 depositions, including those of 16 members of SDSU’s financial aid office and
25 athletic department, submitting two expert reports, advancing a motion for class
26 certification, attending numerous hearings (contributing to 156 docket entries in the
27 District Court), attending several settlement/mediation conferences, and most
28 recently, negotiating and documenting the settlement itself. Ex. C, ¶ 11.

1 2. The settlement was the result of arms-length negotiations.

2 The Settlement Agreement is the product of arm’s-length negotiations between
3 the Parties and their experienced counsel at a point when both the Plaintiffs and SDSU
4 possessed more than sufficient evidence and knowledge to allow them to make
5 informed decisions about the strengths and difficulties of their respective cases. The
6 negotiations involved months of efforts and settlement conferences with United States
7 Magistrate Judge Michael S. Berg.

8 Given the protracted history of this case that ultimately was resolved through
9 mediation with the oversight of the federal magistrate, the Court should find that the
10 negotiations were well-informed, conducted properly, and negotiated at arm’s length.
11 There is no fraud or collusion underlying this Settlement, and it was reached as a
12 result of extensive arm's-length negotiations, occurring over the course of several
13 months and following mediation with a respected mediator. *In re Bluetooth Headset*
14 *Prods. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (presence of a neutral mediator
15 is a factor weighing in favor of a finding of non-collusiveness). Here, the arm’s-length
16 nature of the Parties’ negotiations weighs in favor of preliminary approval.

17 3. The Parties engaged in discovery and motion practice before discussing
18 settlement.

19 As already described above, prior to achieving the proposed settlement, the
20 Parties had already engaged in extensive motion practice, depositions, and exchanged
21 over 57,000 pages of discovery, containing the necessary data for Class Counsel and
22 SDSU’s counsel to evaluate the strengths and weaknesses of this case, which favors
23 preliminarily approving the proposed settlement.

24 4. The settlement avoids the risks, costs, and delay of litigating the case
25 through trial.

26 “Although it is not the role of the Court at this stage of the litigation to evaluate
27 the merits . . . it is clear that the parties could reasonably conclude that there are
28 serious questions of law and fact that exist such that they could significantly impact

1 the case if it were litigated.” *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693–94 (D. Colo.
2 2006) (internal quotations omitted). As strongly as both sides feel about the merits of
3 their stance, each side here recognizes serious questions of law and fact exist in this
4 case.

5 Though the Parties were able to ultimately agree to a settlement, they still
6 disagree on numerous factual and legal issues. SDSU continues its position that its
7 athletic department provides equal athletic financial aid and treatment and benefits to
8 its female student-athletes in compliance with Title IX. Further, while Plaintiffs are
9 optimistic about their chances of success at trial, they also recognize there are a
10 number of significant obstacles they would still have to overcome to achieve success
11 on behalf of the Classes. Importantly, the Settlement Agreement, which provides
12 significant relief to the Classes, renders the resolution of these questions unnecessary
13 and provides a guaranteed resolution in the face of uncertainty. Considering the
14 asserted claims and defenses of the Parties and the risks and delays of litigation, the
15 Settlement Agreement clearly falls within the range of reasonableness contemplated
16 by Rule 23(e).

17 5. The value of immediate implementation of the review of equitable
18 treatment of female student-athletes weighs in favor of the settlement.

19 The complexity, uncertainty, expense, and likely duration of further litigation
20 and appeals also support approval of the proposed Settlement Agreement. As prior
21 Title IX athletics litigation shows, there is a strong likelihood that, without settlement,
22 the Parties would face years of protracted litigation in this Court and the appellate
23 courts. Further, given that each year Class Members graduate from the university,
24 immediate resolution permits more class members to benefit from the steps SDSU
25 will take which in and of themselves will require SDSU to expend resources, through
26 the Gender Equity Review and Gender Equity Plan described in the Settlement
27 Agreement. In addition, it is important to note that, if Plaintiffs were successful at
28 trial, the injunctive remedies would be substantially similar to the relief obtained

1 through the Settlement Agreement, as defendants in Title IX cases are afforded
2 considerable discretion in deciding how to bring their programs into compliance with
3 Title IX. *See, e.g., Kelley v. Bd. of Trustees*, 35 F.3d 265, 272 (7th Cir. 1994)
4 (discussing the discretion of schools about how to equalize athletic benefits); *Cohen*
5 *v. Brown Univ.*, 991 F.2d 888, 906–07 (1st Cir. 1993) (same). Therefore, the value of
6 the Settlement Agreement still outweighs the benefits of possible future relief after
7 lengthy and costly litigation.

8 6. The settlement treats all Class Members equally.

9 The proposed settlement relief treats all Class Members equally. Plaintiffs are
10 not receiving any additional relief (or even a service award) that would suggest that
11 their agreement to the terms of the proposed settlement is motivated by anything other
12 than what is in the best interests of the Classes.

13 7. Plaintiffs and their counsel believe the proposed settlement is fair,
14 reasonable, and adequate.

15 Finally, the Parties believe the Settlement Agreement is fair, reasonable, and
16 adequate. Here, Plaintiffs’ counsel—attorneys with considerable experience in Title
17 IX class actions—only agreed to settle this action after a thorough investigation,
18 written discovery, data analyses, and significant arm’s-length negotiations.
19 Additionally, as noted above, Plaintiffs and Plaintiffs’ counsel have compared the
20 benefits the class will receive from the resolution of the litigation against the risks,
21 delays, and uncertainties of continued litigation and appeals. Plaintiffs were involved
22 in and stayed apprised of the litigation and contributed to settlement negotiations.
23 Plaintiffs and Plaintiffs’ counsel believe the Settlement Agreement is fair, reasonable,
24 and adequate and should be approved.

25 8. The presence of a governmental participant.

26 The Settlement Agreement does not prohibit any government action and
27 affords SDSU discretion regarding the specific actions it takes to bring its athletic
28 program into compliance with Title IX. *See Hanlon*, 150 F.3d at 1028 (upholding a

1 class settlement agreement involving a governmental participant), *overruled on other*
2 *grounds by Dukes*, 564 U.S. 338.

3 9. The reaction of Class Members to the proposed settlement.

4 Class Members have not yet received notice of the proposed settlement. The
5 Court will have an opportunity to revisit this issue at the Fairness Hearing, after
6 Notice has been sent to Class Members and they have had an opportunity to weigh-
7 in on the terms of the settlement.

8 **VIII. RULE 23(E)(2)(C) VALUATION.**

9 **A. The Proposed Settlement Sum for Class 2 and Allocation Plan**
10 **Provides Relief That Is Fair, Reasonable, and Adequate.**

11 In evaluation of a settlement, “the district court’s determination is nothing more
12 than an amalgam of delicate balancing, gross approximations, and rough justice.” *See*
13 *Officers for Justice v. Civ. Serv. Comm’n of City & Cnty. of San Francisco*, 688 F.2d
14 615, 625 (9th Cir. 1982). There is “no single formula” to be applied, but a district
15 court may presume that the parties’ counsel arrived at a reasonable range of settlement
16 by considering the plaintiffs’ likelihood of recovery. *Rodriguez v. West Pub. Corp.*,
17 463 F.3d 948, 965 (9th Cir. 2009). Moreover, the Ninth Circuit has rejected any
18 requirement that the settling parties value maximum damages that can be obtained at
19 trial, as that figure would inherently be speculative. *Lane v. Facebook, Inc.*, 696 F.3d
20 811, 818 (9th Cir. 2012) (“[N]ot only would such a requirement be onerous, it would
21 often be impossible...”) On the contrary, “[t]he very essence of a settlement is
22 compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers*
23 *for Justice*, 688 F.2d at 624. Indeed, “it is the very uncertainty of outcome and
24 avoidance of wasteful and expensive litigation that induce consensual settlements.
25 The proposed settlement is not to be judged against a hypothetical or speculative
26 measure of what might have been achieved by the negotiators.” *Id.* at 625. Rather,
27 any analysis of a fair settlement amount must account for the risks of further litigation
28 and trial, as well as expenses and delays associated with continued litigation. *Retta v.*

1 *Millennium Prods.*, CV15–1801, 2017 WL 5479637, *15 (C.D. Cal. Aug. 22, 2017).

2 Here, in addition to the substantial forward-looking non-monetary benefits to
3 the Class 1, the Settlement provides that Defendant will make a total non-reversionary
4 three hundred thousand dollar (\$300,000.00) cash payment to Class 2 members who
5 do not opt-out and this cash benefit will be sent to such Class Members *without the*
6 *need to submit a Claim Form*. Ex. A, ¶ 32. No attorney’s fees, litigation costs, service
7 awards, administration expenses, or other monies will be deducted from the award.
8 Defendant will make relevant contact information available to Class Counsel and the
9 Disbursement Administrator for each Class 2 member, and at Class Counsel’s
10 direction, allocation and upon the Effective Date, distribution will be made
11 *automatically* to every Athletic Financial Aid Class Members who does not opt-out.
12 Ex. A, ¶¶ 33–34. Further, SDSU will play no role in determining the proposed
13 allocation of these funds.

14 Every participating Class 2 member will receive an individual settlement
15 payment distribution based on her individual total number of qualifying academic
16 years during the Class Period relative to the total years, in the aggregate, for the entire
17 Class 2. Ex. A, ¶ 34; Ex. C, ¶¶ 15–20. For estimation purposes only, the average pro
18 rata award per participating Class 2 members is \$363.20, *see id.*, but because
19 individual allocation is weighted based on the number of qualifying academic years,
20 the recovery range is between \$172.12 and \$860.59. *Id.* Since no allocation is for less
21 than one academic year, at a minimum, each participating Class 2 member will receive
22 \$172.12. *Id.* at ¶ 20. This method of distribution is fair because it accounts for and
23 relativizes the duration of years that a Class 2 member experienced lost opportunity.

24 This Settlement offers a substantial cash benefit to Class 2 members that is also
25 unprecedented. Class Counsel could not identify any prior settlement where, in
26 addition to injunctive relief, a classwide monetary award was provided in a Title IX
27 gender discrimination suit for athletic financial aid disparity.
28

1 The fact that Class 2 members will receive cash relief without the attendant
2 delays, risks, uncertainties, and costs posed by continued litigation is significant. The
3 Settlement was reached after a fully briefed, yet not ruled on contested class
4 certification motion. If the case goes to trial, SDSU will undoubtedly contest liability
5 and Plaintiffs' damage model, calculations, and testimony including those of
6 Plaintiffs' expert. SDSU will also present its own expert testimony and argue, as it
7 has from inception, that Plaintiffs and the Class are not entitled to any damages. For
8 these reasons, the proposed Settlement is within the range of reasonableness that
9 warrants giving notice to Class Members and should be preliminarily approved.

10 **IX. The Court Should Approve the Parties' Proposed Notice Plan.**

11 Once a court makes a preliminary determination that a proposed settlement is
12 fair, reasonable, and adequate, Rule 23(e)(1) requires the court to "direct notice in a
13 reasonable manner to all class members who would be bound by the proposal." FED.
14 R. CIV. P. 23(e)(1). Class notice must be "reasonably calculated, under all the
15 circumstances, to apprise interested parties of the pendency of the action and afford
16 them an opportunity to present their objections." *See Mullane v. Central Hanover*
17 *Trust*, 339 U.S. 306, 314 (1950). Notice also must clearly and concisely state the
18 following in plain, easily understood language: (i) the nature of the action; (ii) the
19 definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a
20 class member may enter an appearance through an attorney if the member so desires;
21 (v) that the court will exclude from the class any member who requests exclusion;
22 and (vi) the binding effect of a class judgment on members under Rule 23(c)(3). FED.
23 R. CIV. P. 23(c)(2)(B). Here, the proposed notice plainly sets forth the required
24 information. Ex. B.

25 The Parties have agreed on both the content and the method of notice. The
26 Parties took special care to ensure the notice was drafted in such a way that the target
27 audience could easily understand the nature of the claims and relief afforded by the
28 Settlement Agreement. *Id.* The proposed Class Notice explains in plain, clear

1 language the nature of the controversy, the details of the Settlement Agreement, the
2 eligibility of class members to participate in the settlement, the right of all Class
3 Members to object to the Settlement, and the right of Class 2 members to opt out. *Id.*

4 The Parties have agreed that the proposed notice, attached as Exhibit B will be
5 provided to the Class. SDSU will send an email to the last known SDSU email address
6 assigned to all female students that fall within the scope of the definition of Class 1,
7 which will include a link to the notice and the full Settlement Agreement that is posted
8 on the University’s athletics website. SDSU will also send an email to the last known
9 SDSU email address assigned to all female students that fall within the scope of the
10 definition of Class 2, which will include a link to the notice and the full Settlement
11 Agreement that is posted on the University’s athletics website. The Parties have
12 agreed they will make reasonable efforts to provide notice to any Class members
13 whose emails “bounceback” as not received. The Disbursement Administrator will
14 utilize appropriate steps to address “bounceback emails”. The Parties will inform the
15 Court of the number of bouncebacks and their efforts to provide notice to those
16 individuals in their Motion for Final Approval.

17 Such notice comports with the requirement to provide “notice in a reasonable
18 manner to all class members,” FED. R. CIV. P. 23(e)(1)(B), (h)(1); and is the most
19 practicable method of notice under the circumstances, particularly given that class
20 members are likely to have consistent access to email and the referenced SDSU
21 webpages. *See* FED. R. CIV. P. 23(c)(2), advisory committee notes (noting that
22 “technological change since 1974 has introduced other means of communication
23 [besides first-class mail] that may sometimes provide a reliable additional or
24 alternative method for giving notice,” and that “courts and counsel have begun to
25 employ new technology to make notice more effective”).

26 Class Counsel proposes CPT Group as the Disbursement Administrator, after
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1 evaluating two proposals for this engagement.⁵ Ex. C, ¶21–26. CPT Group’s
2 experience and scope of work, and estimated costs are set forth in an attached
3 declaration. *See* Ex. E, Julie Green Dec. The cost of the services CPT Group will
4 provide is approximated at \$9,750 and the entirety of the amount will be paid by Class
5 Counsel. Ex. C, ¶ 21Bullock Decl. ¶23.

6 **X. CONCLUSION.**

7 The proposed settlement is a good result for the Classes and for SDSU. It ends
8 years of litigation, avoids future protracted litigation, and provides for both injunctive
9 and compensatory relief. Based on the foregoing, the Parties move this Court for entry
10 of an Order: (1) preliminarily certifying this case as a class action for settlement
11 purposes pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3) on behalf of the
12 previously defined Classes; (2) granting preliminary approval of the proposed
13 settlement, as addressed in the Settlement Agreement (Exhibit A); (3) approving the
14 proposed Class Notice (Exhibit B), and ordering that Notice be sent to Class Members
15 and posted according to the terms of the Notice Plan; (4) appointing CPT Group as
16 the Disbursement Administrator; and (5) setting a date for a “Fairness Hearing”
17 pursuant to FED. R. CIV. P. 23(e)(2).

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27 ⁵ SDSU played no role in the selection of the Disbursement Administrator and makes
28 no representations as to its qualifications.

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2 Dated: October 9, 2025

3 /s/Lori A. Bullock

/s/Brian M. Schwartz

4 Lori Bullock (*pro hac vice*)
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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2025, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system that will send notification of such filing upon all ECF participants.

/s/Lori A. Bullock
Lori A. Bullock

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