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

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

27 *Plaintiffs,*

28 v.

29 BOARD OF TRUSTEES OF THE  
30 CALIFORNIA STATE UNIVERSITY and  
31 SAN DIEGO STATE UNIVERSITY,

32 *Defendants.*

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

**THIRD AMENDED CLASS  
ACTION COMPLAINT**

Judge: Honorable Todd W. Robinson  
Courtroom: 3A

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

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

DEMAND FOR JURY TRIAL

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**INTRODUCTION**

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

7 2. SDSU has not paid its female varsity student-athletes equal athletic  
8 financial aid for over a decade, failed to pay them over \$2,500,000 in equal athletic  
9 financial aid in the 2018-19, 2019-20, 2020-21, and 2021-22 academic years, and is  
10 not paying them equal athletic financial aid this academic year.

11 3. This lawsuit seeks to make SDSU pay damages to its female varsity  
12 student-athletes for depriving them of equal athletic financial aid, including by  
13 depriving them of the opportunity to compete for aid on an equal basis with men, and  
14 to require SDSU to provide them with equal athletic financial aid, including the  
15 opportunity to compete for aid on equal footing, in the future.

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

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

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

25 7. Shortly after this lawsuit was filed, SDSU informed the Plaintiffs who are  
26 current varsity student-athletes—at a quickly-called Zoom meeting with all of their  
27 teammates—that it was not happy with them because they filed this suit.  
28  
--



1 giving rise to the Complaint occurred in San Diego, California, within this Court's  
2 jurisdiction.

3 **THE PARTIES**

4 *Plaintiffs*

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

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

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

13 20. SDSU's average cost of attendance for non-residents from 2018-19 to  
14 2021-22 was \$39,230 per year. A full athletic scholarship at SDSU, which includes a  
15 cost-of-living stipend, would have covered the entire cost of attendance.

16 21. SDSU is a member of the NCAA and it participates in NCAA Division I  
17 athletics, the highest level of intercollegiate competition.

18 22. For the past several decades, SDSU has sponsored women's and men's  
19 varsity NCAA Division I intercollegiate athletic teams, segregated based on sex.

20 23. Each of the Plaintiffs and all of the female varsity student-athletes at  
21 SDSU have participated on women's NCAA Division I intercollegiate athletic teams.

22 24. NCAA rules place maximums, but not minimums, on the athletic financial  
23 aid SDSU can award to student-athletes on its men's and women's teams.

24 25. NCAA rules do not and cannot authorize SDSU to violate Title IX.

25 26. SDSU could comply with Title IX and NCAA athletic financial aid  
26 limitations.  
27  
28  
29

1 27. SDSU has chosen, however, both to deprive its female student-athletes of  
2 equal athletic financial aid in violation of Title IX and to deprive them of athletic  
3 financial aid allowed by the NCAA.

4 28. One way SDSU deprives Plaintiffs and all of its female varsity student-  
5 athletes of equal athletic financial aid in violation of Title IX is by placing limits on  
6 the athletic financial aid that can be awarded to them and their teams that are *below*  
7 the NCAA limits.

8 29. The NCAA's scholarship limits work in two different ways: head-count  
9 sports must award full athletic scholarships on a per-athlete basis; equivalency sports  
10 may split up a full athletic scholarship among many athletes.

11 30. The NCAA limits the number of scholarships that may be awarded for  
12 each sport, but it does not limit the *dollar amount* of athletic financial aid that can be  
13 offered for any sport.

14 31. SDSU, however, imposes *dollar-amount* limitations on all of the women's  
15 sports and some of the men's sports.

16 32. This intentional decision—not dictated by the NCAA's rules—at least  
17 partially explains why female student-athletes at SDSU receive smaller individual  
18 athletic financial aid awards than male student-athletes and a disproportionately small  
19 amount of overall athletic financial aid.

20 33. For example, per NCAA rules, before its elimination, the women's rowing  
21 team was permitted to have the equivalent of twenty athletic scholarships awarded to  
22 its student-athletes, while the men's football team was and is permitted to award  
23 eighty-five athletic scholarships to eighty-five student athletes.

24 34. At SDSU, the coach of the women's rowing team was typically given a  
25 dollar amount of athletic financial aid to award that equaled fifteen in-state  
26 scholarships and five out-of-state scholarships.<sup>1</sup>

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27 <sup>1</sup> This information was not publicly available for women's rowing and is not publicly  
28 available for SDSU's other women's teams. While Plaintiffs allege the in-state/out-of-state  
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1           35. This dollar cap, imposed by SDSU, meant the coach could offer no more  
2 than that amount of athletic financial aid dollars to female student-athletes on the  
3 rowing team—no matter how many were in-state or out-of-state, whether they received  
4 partial or full athletic scholarships.

5           36. Similar dollar caps were placed on all women’s teams, including women’s  
6 track and field.

7           37. This dollar cap meant that the *only* way the rowing coach could award the  
8 equivalent of twenty scholarships (*i.e.*, the figure permitted by the NCAA) was to  
9 award no more than the equivalent of five out-of-state scholarships.

10           38. Because out-of-state scholarships cost more than in-state scholarships, any  
11 additional out-of-state scholarship awarded to women’s rowing team members would  
12 mean that SDSU could not offer the allowed twenty scholarships for that sport.

13           39. For example, the fifteen-and-five monetary cap meant the rowing coach  
14 had \$618,280 to allocate among the team. If the coach wished to offer full scholarships  
15 to ten out-of-state rowers ( $10 \times 39,230 = 392,300$ ), the coach would have only  
16 \$225,980 left to allocate to the remaining members of the team.<sup>2</sup> This figure represents  
17 a *maximum* of 8.03 scholarships ( $225,980 \div 28,142$ ). Because of SDSU’s self-imposed  
18 cap, then, the rowing coach in this example could award just 18.03 scholarships.

19           40. Put otherwise, in this example, because of SDSU’s monetary cap,  
20 members of the rowing team could not be awarded the equivalent of twenty  
21 scholarships. Instead, SDSU’s self-imposed cap would operate to eliminate nearly two  
22 full scholarship positions permitted by the NCAA’s rules.

23 \_\_\_\_\_  
24 split for women’s rowing, they do not—and cannot—know or allege the precise split for  
25 other women’s sports. That information is uniquely within SDSU’s control and can be  
26 unearthed only in discovery. As discussed in greater detail below, Plaintiffs allege that, for  
27 all women’s teams, SDSU imposed similar monetary caps that artificially restricted athletic  
28 financial aid to female student-athletes *below* the amounts permitted by the NCAA’s rules.

29           <sup>2</sup> The same is true if the coach wished to split the equivalent of ten scholarships among  
30 any number of out-of-state student-athletes.

1           41. The more scholarships offered to out-of-state student-athletes, the further  
2 the total number of scholarships would have to move below twenty. For example,  
3 assume a coach wished to award all the money SDSU chose to allocate to the rowing  
4 team to out-of-state student-athletes (*i.e.*,  $618,280 \div 39,230 = 15.76$ ). In this scenario,  
5 SDSU's self-imposed monetary cap would have the effect of eliminating more than  
6 four scholarship positions permitted by the NCAA's rules.

7           42. In effect, SDSU's monetary cap on the women's rowing team prevented  
8 the team from having the equivalent of the twenty scholarships permitted by the NCAA  
9 if the coach wanted to award more than the equivalent of five scholarships to out-of-  
10 state women.

11           43. As a result, in the eight years leading up to the women's rowing team's  
12 elimination, members of that team never once received the equivalent of twenty  
13 scholarships.

14           44. For eight consecutive years, scholarships permitted by the NCAA's rules  
15 to be awarded to members of the women's rowing team simply went unawarded—all  
16 because SDSU artificially capped the dollar amount allocated to that team.

17           45. Likewise, for eight consecutive years, scholarship *dollars* permitted by the  
18 NCAA's rules to be awarded to members of the women's rowing team simply went  
19 unawarded—all because SDSU artificially capped the dollar amount allocated to the  
20 women's rowing team.

21           46. Put otherwise, in each of the last eight years, including the 2020-21 season  
22 (the team's last), SDSU simply chose not to award the equivalent of twenty  
23 scholarships to members of the women's rowing team.

24           47. In each of those years, members of the women's rowing team who  
25 received *no athletic financial aid* could have been awarded full or partial scholarships  
26 in compliance with the NCAA's rules.  
27  
28  
29

1           48. Likewise, in each of those years, members of the women’s rowing team  
2 who received *partial athletic financial aid* could have been awarded additional money  
3 in compliance with the NCAA’s rules.

4           49. Members of the women’s track and field team confronted a similar reality.

5           50. Under NCAA rules, the women’s track and field team was allowed to  
6 award the equivalent of eighteen scholarships, but SDSU imposed a cap on the amount  
7 of athletic financial aid dollars the team could award.

8           51. SDSU’s cap for the women’s track and field team was *below* the amount  
9 permitted by the NCAA’s rules (*i.e.*,  $18 \times \$39,230 = \$706,140$ ).

10           52. In each year the track-and-field Plaintiffs participated on the team,  
11 scholarships permitted by the NCAA’s rules to be awarded to members of the women’s  
12 track and field team simply went unawarded—all because SDSU artificially capped  
13 the dollar amount allocated to the women’s track and field team.

14           53. Likewise, in each year the track-and-field Plaintiffs participated on the  
15 team, scholarship *dollars* permitted by the NCAA’s rules to be awarded to members  
16 of the women’s track and field team simply went unawarded—all because SDSU  
17 artificially capped the dollar amount allocated to the women’s track and field team.

18           54. Put otherwise, in each year the track-and-field Plaintiffs participated on  
19 the team, SDSU simply chose not to award the equivalent of eighteen scholarships to  
20 members of the women’s track and field team.

21           55. In each of those years, members of the women’s track and field team who  
22 received *no athletic financial aid* could have been awarded full or partial scholarships  
23 in compliance with the NCAA’s rules.

24           56. Likewise, in each of those years, members of the women’s track and field  
25 team who received *partial athletic financial aid* could have been awarded additional  
26 money in compliance with the NCAA’s rules.

27           57. Because SDSU imposed a cap on the amount of athletic financial aid the  
28 track and field team members could be awarded and failed to provide female student-  
29

1 athletes with athletic financial aid proportional to their intercollegiate athletic  
2 participation rates, when women’s track and field team members asked their coach for  
3 more athletic financial aid, she told them there was no more money available—even if  
4 she had previously promised it to them.

5 58. As to both women’s rowing and women’s track and field, SDSU did not  
6 offer the full *amount of athletic financial aid* permitted by the NCAA’s rules (*i.e.*,  
7 twenty and eighteen, respectively, multiplied by the out-of-state cost of attendance)  
8 and also did not offer the full *number of scholarships* permitted by the NCAA’s rules  
9 (*i.e.*, twenty and eighteen, respectively).

10 59. Members of the women’s rowing team and the women’s track and field  
11 team who did not already receive full athletic scholarships, including all Plaintiffs here,  
12 were ready and able to receive that athletic financial aid—and would have competed  
13 for it if SDSU had not withheld it.

14 60. The only impediment to these additional or larger awards of athletic  
15 financial aid was SDSU’s intentional decision to create disproportional pools of  
16 athletic financial aid for men and women.

17 61. SDSU intentionally chose not to fund women’s sports for the full amount  
18 of aid permitted by the NCAA’s rules. It likewise intentionally chose not to permit the  
19 coaches of women’s teams to award the full amount of aid permitted by the NCAA’s  
20 rules. Those decisions harmed all Plaintiffs.

21 62. The same dollar limits were not placed on many of SDSU’s men’s teams,  
22 including, for example, the men’s football team. As such, aid to male student-athletes  
23 on the football team was not artificially capped by SDSU’s dollar amount. Instead, aid  
24 to those male student-athletes was capped only by the NCAA’s limit of eighty-five  
25 scholarships, in the full amount of out-of-state cost of attendance.

26 63. Overall, SDSU chose to create two pools of athletic financial aid—a  
27 disproportionately large one for male student-athletes and a disproportionately small  
28 one for female student-athletes.

1           64. All money SDSU allocated to the men’s teams’ pool had to go to male  
2 student-athletes, and all money SDSU allocated to the women’s teams’ pool had to go  
3 to female student-athletes.

4           65. If SDSU had created proportional pools of scholarship money for men and  
5 women, additional money could have flowed to Plaintiffs, members of the women’s  
6 rowing team, members of the women’s track and field team, and all female student-  
7 athletes not already receiving full scholarships.

8           66. Each Plaintiff was entitled, under Title IX, to an opportunity to compete  
9 for athletic financial aid on an equal basis with male student-athletes. Because of the  
10 disproportionate pools of aid allocated to men and women, each Plaintiff was denied  
11 that opportunity.

12           67. SDSU’s monetary cap on the amount of athletic financial aid women’s  
13 sports were permitted to award resulted in unequal opportunities for athletic financial  
14 aid for female student-athletes, including Plaintiffs, and less overall athletic financial  
15 aid being awarded to female student-athletes, including Plaintiffs.

16           68. None of the Plaintiffs received all of the athletic financial aid for which  
17 she was eligible at SDSU.

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

22           70. Instead, each of the Plaintiffs was denied the *opportunity* to receive equal  
23 financial aid, despite Title IX’s express protection of that opportunity. *See, e.g.*, 34  
24 C.F.R. §106.37(c) (providing that, when a school offers athletic financial awards, it  
25 “must provide reasonable *opportunities* for such awards for members of each sex in  
26 proportion to the number of students of each sex participating in interscholastic or  
27 intercollegiate athletics” (emphasis added)).  
28  
29  
30

1           71. Similarly, each of the Plaintiffs was forced to confront a sex-based barrier  
2 to receiving athletic financial aid that male student-athletes did not confront and that  
3 made it more difficult for female student-athletes to receive athletic financial aid than  
4 it was for their male counterparts.

5           72. Put simply, compared to the male student-athletes at SDSU, each of the  
6 Plaintiffs was forced to compete for athletic financial aid on an unequal basis because  
7 of her sex.

8           73. In addition to being deprived of the equal opportunity to receive athletic  
9 financial aid, each of the Plaintiffs was actually denied her fair share of equal athletic  
10 financial aid.

11           74. If SDSU complied with Title IX and granted athletic financial aid to its  
12 female varsity student-athletes proportional to the athletic financial aid it granted to  
13 SDSU's male varsity student-athletes, each of the Plaintiffs would have received at  
14 least \$1 more in athletic financial aid than she did.

15           75. Instead, as set forth below, each of the Plaintiffs received a smaller  
16 financial-aid award than she would have received if SDSU had awarded financial aid  
17 in compliance with Title IX.

18           76. If SDSU complied with Title IX and granted athletic financial aid to its  
19 female varsity student-athletes proportional to the athletic financial aid it granted to  
20 SDSU's male varsity student-athletes, each of the Plaintiffs would have been free of  
21 second-class treatment in the allocation of financial aid at SDSU.

22           77. Instead, each of the Plaintiffs was forced to endure an environment in  
23 which her school actively discriminated against her because of her sex.

24           78. This unequal treatment is inherently degrading and stigmatizing, and each  
25 of the Plaintiffs experienced the harms and injuries caused by SDSU's intentional  
26 decision to treat female student-athletes like second-class citizens.

27           79. Each of the Plaintiffs who are current student-athletes has athletic  
28 eligibility remaining and intends to continue to participate as a varsity student-athlete  
29

1 until she has graduated and/or exhausted her eligibility to participate in intercollegiate  
2 varsity sports.

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

5 81. Each of the Plaintiffs was retaliated against by SDSU because SDSU  
6 directly retaliated against some of them for filing this lawsuit on behalf of all female  
7 varsity student-athletes and SDSU's retaliatory actions had a chilling effect on the  
8 willingness of other female varsity student-athletes to challenge, expose, and remedy  
9 SDSU's sex discrimination.

10 82. Each of the Plaintiffs was also injured because she was subjected by SDSU  
11 to discrimination on the basis of her sex.

12 83. Each of the Plaintiffs was treated like a second-class citizen at SDSU  
13 because of her sex, which is inherently degrading, stigmatizing, and affected each of  
14 the Plaintiff's experiences.

15 Madison Fisk

16 84. Madison Fisk graduated from SDSU in May 2022 with a degree in  
17 Economics. She was a resident of California for purposes of tuition at SDSU during  
18 her time as a student at SDSU.

19 85. Madison was a member of the women's varsity rowing team until SDSU  
20 discontinued the team in Spring 2021.

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

23 87. During her time on the rowing team, Madison received partial athletic  
24 financial aid. She received a total of \$800 her freshman year, \$5,800 her sophomore  
25 year, \$10,800 her junior year, and \$10,800 for her senior year. Madison received a  
26 total of \$28,200 in athletic financial aid as a varsity student-athlete.

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

- 1 • She was denied the *opportunity* to compete for and receive equal
- 2 athletic financial aid because of her sex;
- 3 • She was forced to confront a sex-based *barrier* to receiving athletic
- 4 financial aid that male student-athletes did not confront and that
- 5 made it more difficult for her to receive athletic financial aid than it
- 6 was for male student-athletes;
- 7 • She received a *smaller athletic financial aid award*, simply because
- 8 of her sex, in an amount that exceeded \$1.00<sup>3</sup>;
- 9 • Because SDSU continued to award athletic financial aid to Madison
- 10 based on the disproportional pools it created for male and female
- 11 student-athletes even after the women’s rowing team was
- 12 eliminated, Madison was denied the equal opportunity to compete
- 13 for aid and was awarded a smaller scholarship even after her team
- 14 was eliminated; and
- 15 • She was forced to endure *degrading and stigmatizing second-class*
- 16 *treatment* as SDSU intentionally treated her and other female
- 17 student-athletes worse than male student-athletes when it came to
- 18 athletic financial aid, and the psychological harm resulting from that
- 19 degrading and stigmatizing treatment is ongoing and persists even
- 20 today.

21 89. The precise amount of damages in unequal athletic financial aid Madison  
22 was deprived of cannot be determined from publicly available information. Instead, it  
23 will depend on information that is uniquely in SDSU’s control.

24 90. The amount of unequal athletic financial aid Madison was illegally  
25 deprived of can, however, be conceptualized based on publicly available information.

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26 <sup>3</sup> The Ninth Circuit has recently confirmed that “[a]ny monetary loss, even one as  
27 small as a fraction of a cent, is sufficient to support standing.” *Van v. LLR, Inc.*, 61 F.4th  
28 1053, 1064 (9th Cir. 2023).

1 Madison was a varsity athlete in 2018-19, when SDSU deprived each female student-  
2 athlete of an average of \$2,608.84; she was a varsity athlete in 2019-20, when SDSU  
3 deprived each female student-athlete of an average of \$2,204.03; she was a varsity  
4 athlete in 2020-21, when SDSU deprived each female student-athlete of an average of  
5 \$1,874.40; and, given SDSU's commitment to honor her athletic financial aid  
6 agreement after eliminating the women's rowing team, she was eligible for aid in 2021-  
7 22, when SDSU deprived each female student-athlete of an average of \$1,709.

8 91. This potential damages calculation and distribution—the athletic financial  
9 aid dollars the class members were illegally deprived of divided by and among the  
10 number of people in the class—comports with damages theories in similar contexts.  
11 *See, e.g., Dougherty v. Barry*, 869 F.2d 605, 615 (D.C. Cir. 1989) (dividing, in the  
12 context of employment discrimination, the value of withheld promotions among  
13 multiple plaintiffs eligible for such promotions when the court could not discern with  
14 certainty which plaintiffs would have been promoted).

15 92. But the ultimate calculation of damages is unnecessary when considering  
16 whether Madison suffered cognizable harm. As alleged above, SDSU's intentional  
17 discrimination deprived her of at least \$1 in athletic financial aid each year.

18 93. If SDSU had created proportional pools for men and women and/or had  
19 fully funded scholarships for the women's rowing team, rather than self-imposing an  
20 artificial monetary cap that prevented the women's rowing coach from awarding all  
21 the aid permitted by NCAA rule, Madison would have been ready and able to  
22 receive—and would have competed for—the additional athletic financial aid that  
23 SDSU instead chose to withhold.

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

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

3 Raquel Castro

4 95. Raquel Castro is currently a senior at SDSU majoring in Kinesiology. She  
5 is a resident of California for purposes of tuition at SDSU.

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

8 97. Raquel trained hard throughout high school so she could pursue rowing as  
9 a varsity sport in college.

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

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

- 15 • She was denied the *opportunity* to compete for and receive equal  
16 athletic financial aid because of her sex;
- 17 • She was forced to confront a sex-based *barrier* to receiving athletic  
18 financial aid that male student-athletes did not confront and that  
19 made it more difficult for her to receive athletic financial aid than it  
20 was for male student-athletes;
- 21 • She received a *smaller athletic financial aid award*, simply because  
22 of her sex, in an amount that exceeded \$1.00;
- 23 • Because SDSU continued to award athletic financial aid to Raquel  
24 based on the disproportional pools it created for male and female  
25 student-athletes even after the women's rowing team was  
26 eliminated, Raquel was denied the equal opportunity to compete for  
27 aid and was awarded a smaller scholarship even after her team was  
28 eliminated, and, as a current student who receives athletic financial  
29

1 aid, she continues to be denied that equal opportunity to compete  
2 and to receive a smaller award even today; and

- 3 • She was forced to endure *degrading and stigmatizing second-class*  
4 *treatment* as SDSU intentionally treated her and other female  
5 student-athletes worse than male student-athletes when it came to  
6 athletic financial aid, and the psychological harm resulting from that  
7 degrading and stigmatizing treatment is ongoing and persists even  
8 today.

9 100. The precise amount of damages in unequal athletic financial aid Raquel  
10 was deprived of cannot be determined from publicly available information. Instead, it  
11 will depend on information that is uniquely in SDSU's control.

12 101. The amount of unequal athletic financial aid Raquel was illegally deprived  
13 of can, however, be conceptualized based on publicly available information. Raquel  
14 she was a varsity athlete in 2019-20, when SDSU deprived each female student-athlete  
15 of an average of \$2,204.03; she was a varsity athlete in 2020-21, when SDSU deprived  
16 each female student-athlete of an average of \$1,874.40; and, given SDSU's  
17 commitment to honor her athletic financial aid agreement after eliminating the  
18 women's rowing team, she was eligible for aid in 2021-22, when SDSU deprived each  
19 female student-athlete an average of \$1,709, and in 2022-23, when SDSU deprived  
20 (and is depriving) female students of equal financial aid in presently unknown  
21 amounts.

22 102. This potential damages calculation and distribution—the athletic financial  
23 aid dollars the class members were illegally deprived of divided by and among the  
24 number of people in the class—comports with damages theories in similar contexts.  
25 *See, e.g., Dougherty v. Barry*, 869 F.2d 605, 615 (D.C. Cir. 1989) (dividing, in the  
26 context of employment discrimination, the value of withheld promotions among  
27 multiple plaintiffs eligible for such promotions when the court could not discern with  
28 certainty which plaintiffs would have been promoted).



- 1 • She was denied the *opportunity* to compete for and receive equal  
2 athletic financial aid because of her sex;
- 3 • She was forced to confront a sex-based *barrier* to receiving athletic  
4 financial aid that male student-athletes did not confront and that  
5 made it more difficult for her to receive athletic financial aid than it  
6 was for male student-athletes;
- 7 • She received a *smaller athletic financial aid award*, simply because  
8 of her sex, in an amount that exceeded \$1.00;
- 9 • Because SDSU continued to award athletic financial aid to Greta  
10 based on the disproportional pools it created for male and female  
11 student-athletes even after the women’s rowing team was  
12 eliminated, Greta was denied the equal opportunity to compete for  
13 aid and was awarded a smaller scholarship even after her team was  
14 eliminated; and
- 15 • She was forced to endure *degrading and stigmatizing second-class*  
16 *treatment* as SDSU intentionally treated her and other female  
17 student-athletes worse than male student-athletes when it came to  
18 athletic financial aid, and the psychological harm resulting from that  
19 degrading and stigmatizing treatment is ongoing and persists even  
20 today.

21 111. The precise amount of damages in unequal athletic financial aid Greta was  
22 deprived of cannot be determined from publicly available information. Instead, it will  
23 depend on information that is uniquely in SDSU’s control.

24 112. The amount of unequal athletic financial aid Greta was illegally deprived  
25 of can, however, be conceptualized based on publicly available information. Greta was  
26 a varsity athlete in 2018-19, when SDSU deprived each female student-athlete of an  
27 average of \$2,608.84; she was a varsity athlete in 2019-20, when SDSU deprived each  
28

1 female student-athlete of an average of \$2,204.03; and she was a varsity athlete in  
2 2020-21, when SDSU deprived each female student-athlete of an average of \$1,874.40.

3 113. This potential damages calculation and distribution—the athletic financial  
4 aid dollars the class members were illegally deprived of divided by and among the  
5 number of people in the class—comports with damages theories in similar contexts.  
6 *See, e.g., Dougherty v. Barry*, 869 F.2d 605, 615 (D.C. Cir. 1989) (dividing, in the  
7 context of employment discrimination, the value of withheld promotions among  
8 multiple plaintiffs eligible for such promotions when the court could not discern with  
9 certainty which plaintiffs would have been promoted).

10 114. But the ultimate calculation of damages is unnecessary when considering  
11 whether Greta suffered cognizable harm. As alleged above, SDSU’s intentional  
12 discrimination deprived her of at least \$1 in athletic financial aid each year.

13 115. If SDSU had created proportional pools for men and women and/or had  
14 fully funded scholarships for the women’s rowing team, rather than self-imposing an  
15 artificial monetary cap that prevented the women’s rowing coach from awarding all  
16 the aid permitted by NCAA rule, Greta would have been ready and able to receive—  
17 and would have competed for—the additional athletic financial aid that SDSU instead  
18 chose to withhold.

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

25 Clare Botterill

26 117. Clare Botterill is currently a senior at SDSU majoring in Journalism and  
27 Media Studies. She came to SDSU from Alberta, Canada, to be a part of the women’s  
28 varsity rowing team and, therefore, is a non-resident for purposes of tuition at SDSU.  
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1 118. Clare was a member of the women’s varsity rowing team until SDSU  
2 discontinued the women’s varsity rowing team in Spring 2021.

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

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

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

- 12 • She was denied the *opportunity* to compete for and receive equal  
13 athletic financial aid because of her sex;
- 14 • She was forced to confront a sex-based *barrier* to receiving athletic  
15 financial aid that male student-athletes did not confront and that  
16 made it more difficult for her to receive athletic financial aid than it  
17 was for male student-athletes;
- 18 • She received a *smaller athletic financial aid award*, simply because  
19 of her sex, in an amount that exceeded \$1.00;
- 20 • Because SDSU continued to award athletic financial aid to Clare  
21 based on the disproportional pools it created for male and female  
22 student-athletes even after the women’s rowing team was  
23 eliminated, Clare was denied the equal opportunity to compete for  
24 aid and was awarded a smaller scholarship even after her team was  
25 eliminated, and, as a current student who receives athletic financial  
26 aid, she continues to be denied that equal opportunity to compete  
27 and to receive a smaller award even today; and  
28

- She was forced to endure *degrading and stigmatizing second-class treatment* as SDSU intentionally treated her and other female student-athletes worse than male student-athletes when it came to athletic financial aid, and the psychological harm resulting from that degrading and stigmatizing treatment is ongoing and persists even today.

122. The precise amount of damages in unequal athletic financial aid Clare was deprived of cannot be determined from publicly available information. Instead, it will depend on information that is uniquely within SDSU’s control.

123. The amount of unequal athletic financial aid Clare was illegally deprived of can, however, be conceptualized based on publicly available information., Clare was a varsity athlete in 2019-20, when SDSU deprived each female student-athlete of an average of \$2,204.03; she was a varsity athlete in 2020-21, when SDSU deprived each female student-athlete of an average of \$1,874.40; and, given SDSU’s commitment to honor her athletic financial aid agreement after eliminating the women’s rowing team, she was eligible for aid in 2021-22, when SDSU deprived each female student-athlete of an average of \$1,709, and in 2022-23, when SDSU deprived (and is depriving) female students of equal financial aid in presently unknown amounts.

124. This potential damages calculation and distribution—the athletic financial aid dollars the class members were illegally deprived of divided by and among the number of people in the class—comports with damages theories in similar contexts. *See, e.g., Dougherty v. Barry*, 869 F.2d 605, 615 (D.C. Cir. 1989) (dividing, in the context of employment discrimination, the value of withheld promotions among multiple plaintiffs eligible for such promotions when the court could not discern with certainty which plaintiffs would have been promoted).



- 1 • She was denied the *opportunity* to compete for and receive equal
- 2 athletic financial aid because of her sex;
- 3 • She was forced to confront a sex-based *barrier* to receiving athletic
- 4 financial aid that male student-athletes did not confront and that
- 5 made it more difficult for her to receive athletic financial aid than it
- 6 was for male student-athletes;
- 7 • She received a *smaller athletic financial aid award*, simply because
- 8 of her sex, in an amount that exceeded \$1.00;
- 9 • She was forced to endure *degrading and stigmatizing second-class*
- 10 *treatment* as SDSU intentionally treated her and other female
- 11 student-athletes worse than male student-athletes when it came to
- 12 athletic financial aid, and the psychological harm resulting from that
- 13 degrading and stigmatizing treatment is ongoing and persists even
- 14 today.

15 132. The precise amount of damages in unequal athletic financial aid Maya was  
16 deprived of cannot be determined from publicly available information. Instead, it will  
17 depend on information that is uniquely in SDSU’s control.

18 133. The amount of unequal athletic financial aid Maya was illegally deprived  
19 of can, however, be conceptualized based on publicly available information. Maya was  
20 a varsity athlete in 2018-19, when SDSU deprived each female student-athlete of an  
21 average of \$2,608.84; she was a varsity athlete in 2019-20, when SDSU deprived each  
22 female student-athlete of an average of \$2,204.03; and she was a varsity athlete in  
23 2020-21, when SDSU deprived each female student-athlete of an average of \$1,874.40.

24 134. This potential damages calculation and distribution—the athletic financial  
25 aid dollars the class members were illegally deprived of divided by and among the  
26 number of people in the class—comports with damages theories in similar contexts.  
27 *See, e.g., Dougherty v. Barry*, 869 F.2d 605, 615 (D.C. Cir. 1989) (dividing, in the  
28 context of employment discrimination, the value of withheld promotions among  
29

1 multiple plaintiffs eligible for such promotions when the court could not discern with  
2 certainty which plaintiffs would have been promoted).

3 135. But the ultimate calculation of damages is unnecessary when considering  
4 whether Maya suffered cognizable harm. As alleged above, SDSU’s intentional  
5 discrimination deprived her of at least \$1 in athletic financial aid each year.

6 136. If SDSU had created proportional pools for men and women and/or had  
7 fully funded scholarships for the women’s rowing team, rather than self-imposing an  
8 artificial monetary cap that prevented the women’s rowing coach from awarding all  
9 the aid permitted by NCAA rule, Maya would have been ready and able to receive—  
10 and would have competed for—the additional athletic financial aid that SDSU instead  
11 chose to withhold.

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

18 Olivia Petrine

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

22 139. Olivia was a member of the women’s varsity rowing team until SDSU  
23 discontinued the women’s varsity rowing team in Spring 2021.

24 140. Olivia started rowing in high school and loved the sport from the first  
25 practice. Rowing provided Olivia with the ability to learn how to work as a team  
26 member and be a leader as well.

27 141. During her time on the rowing team, Olivia received partial athletic  
28 financial aid. She received \$400 per semester in athletic financial aid for books. Olivia  
29

1 received a total of \$800 in athletic financial aid as a varsity student-athlete. She  
2 received \$800 during the 2021-22 academic year because SDSU honored its  
3 commitment to grant her promised aid after eliminating the women’s rowing team.

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

- 6 • She was denied the *opportunity* to compete for and receive equal  
7 athletic financial aid because of her sex;
- 8 • She was forced to confront a sex-based *barrier* to receiving athletic  
9 financial aid that male student-athletes did not confront and that  
10 made it more difficult for her to receive athletic financial aid than it  
11 was for male student-athletes;
- 12 • She received a *smaller athletic financial aid award*, simply because  
13 of her sex, in an amount that exceeded \$1.00;
- 14 • Because SDSU continued to award athletic financial aid to Olivia  
15 based on the disproportional pools it created for male and female  
16 student-athletes even after the women’s rowing team was  
17 eliminated, Olivia was denied the equal opportunity to compete for  
18 aid and was awarded a smaller scholarship even after her team was  
19 eliminated, and, as a current student who receives athletic financial  
20 aid, she continues to be denied that equal opportunity to compete  
21 and to receive a smaller award even today; and She was forced to  
22 endure *degrading and stigmatizing second-class treatment* as SDSU  
23 intentionally treated her and other female student-athletes worse  
24 than male student-athletes when it came to athletic financial aid, and  
25 the psychological harm resulting from that degrading and  
26 stigmatizing treatment is ongoing and persists even today.

1           143. The precise amount of damages in unequal athletic financial aid Olivia  
2 was deprived of cannot be determined from publicly available information. Instead, it  
3 will depend on information that is uniquely in SDSU’s control.

4           144. The amount of unequal athletic financial aid Olivia was illegally deprived  
5 of can, however, be conceptualized based on publicly available information. Olivia  
6 was a varsity athlete in 2020-21, when SDSU deprived each female student-athlete of  
7 an average of \$1,874.40; and, given SDSU’s commitment to honor her athletic  
8 financial aid agreement after eliminating the women’s rowing team, she was eligible  
9 for aid in 2021-22, when SDSU deprived each female student-athlete of an average of  
10 \$1,709, and 2022-23, when SDSU deprived (and is depriving) female students of equal  
11 financial aid in presently unknown amounts; she will remain eligible for such aid in  
12 2023-24 as well.

13           145. This potential damages calculation and distribution—the athletic financial  
14 aid dollars the class members were illegally deprived of divided by and among the  
15 number of people in the class—comports with damages theories in similar contexts.  
16 *See, e.g., Dougherty v. Barry*, 869 F.2d 605, 615 (D.C. Cir. 1989) (dividing, in the  
17 context of employment discrimination, the value of withheld promotions among  
18 multiple plaintiffs eligible for such promotions when the court could not discern with  
19 certainty which plaintiffs would have been promoted).

20           146. But the ultimate calculation of damages is unnecessary when considering  
21 whether Olivia suffered cognizable harm. As alleged above, SDSU’s intentional  
22 discrimination deprived her of at least \$1 in athletic financial aid each year.

23           147. If SDSU had created proportional pools for men and women and/or had  
24 fully funded scholarships for the women’s rowing team, rather than self-imposing an  
25 artificial monetary cap that prevented the women’s rowing coach from awarding all  
26 the aid permitted by NCAA rule, Olivia would have been ready and able to receive—  
27 and would have competed for—the additional athletic financial aid that SDSU instead  
28 chose to withhold.

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

7 Helen Bauer

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

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

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

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

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

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

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

- 3 • She received a *smaller athletic financial aid award*, simply because  
4 of her sex, in an amount that exceeded \$1.00;
- 5 • Because SDSU continued to award athletic financial aid to Helen  
6 based on the disproportional pools it created for male and female  
7 student-athletes even after the women’s rowing team was  
8 eliminated, Helen was denied the equal opportunity to compete for  
9 aid and was awarded a smaller scholarship even after her team was  
10 eliminated; and
- 11 • She was forced to endure *degrading and stigmatizing second-class*  
12 *treatment* as SDSU intentionally treated her and other female  
13 student-athletes worse than male student-athletes when it came to  
14 athletic financial aid, and the psychological harm resulting from that  
15 degrading and stigmatizing treatment is ongoing and persists even  
16 today.

17 154. The precise amount of damages in unequal athletic financial aid Helen was  
18 deprived of cannot be determined from publicly available information. Instead, it will  
19 depend on information that is uniquely in SDSU’s control.

20 155. The amount of unequal athletic financial aid Helen was illegally deprived  
21 of can, however, be conceptualized based on publicly available information. Helen was  
22 a varsity athlete in 2018-19, when SDSU deprived each female student-athlete of an  
23 average of \$2,608.84; she was a varsity athlete in 2019-20, when SDSU deprived each  
24 female student-athlete of an average of \$2,204.03; she was a varsity athlete in 2020-  
25 21, when SDSU deprived each female student-athlete of an average of \$1,874.40; and,  
26 given SDSU’s commitment to honor her athletic financial aid agreement after  
27 eliminating the women’s rowing team, she was eligible for aid in 2021-22, when SDSU  
28 deprived each female student-athlete of an average of \$1,709.



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

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

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

- 8 • She was denied the *opportunity* to compete for and receive equal  
9 athletic financial aid because of her sex;
- 10 • She was forced to confront a sex-based *barrier* to receiving athletic  
11 financial aid that male student-athletes did not confront and that  
12 made it more difficult for her to receive athletic financial aid than it  
13 was for male student-athletes;
- 14 • She received a *smaller athletic financial aid award*, simply because  
15 of her sex, in an amount that exceeded \$1.00;
- 16 • She was forced to endure *degrading and stigmatizing second-class*  
17 *treatment* as SDSU intentionally treated her and other female  
18 student-athletes worse than male student-athletes when it came to  
19 athletic financial aid, and the psychological harm resulting from that  
20 degrading and stigmatizing treatment is ongoing and persists even  
21 today.

22 165. The precise amount of damages in unequal athletic financial aid Carina  
23 was deprived of cannot be determined from publicly available information. Instead, it  
24 will depend on information that is uniquely in SDSU’s control.

25 166. The amount of unequal athletic financial aid Carina was illegally deprived  
26 of can, however, be conceptualized based on publicly available information. Carina

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

1 was a varsity athlete in 2018-19, when SDSU deprived each female student-athlete of  
2 an average of \$2,608.84; she was a varsity athlete in 2019-20, when SDSU deprived  
3 each female student-athlete of an average of \$2,204.03; and she was a varsity athlete  
4 in 2020-21, when SDSU deprived each female student-athlete of an average of  
5 \$1,874.40; and she remained a varsity athlete in 2021-22, when SDSU deprived each  
6 female student-athlete of an average of \$1,709.

7 167. This potential damages calculation and distribution—the athletic financial  
8 aid dollars the class members were illegally deprived of divided by and among the  
9 number of people in the class—comports with damages theories in similar contexts.  
10 *See, e.g., Dougherty v. Barry*, 869 F.2d 605, 615 (D.C. Cir. 1989) (dividing, in the  
11 context of employment discrimination, the value of withheld promotions among  
12 multiple plaintiffs eligible for such promotions when the court could not discern with  
13 certainty which plaintiffs would have been promoted).

14 168. But the ultimate calculation of damages is unnecessary when considering  
15 whether Carina suffered cognizable harm. As alleged above, SDSU’s intentional  
16 discrimination deprived her of at least \$1 in athletic financial aid each year.

17 169. If SDSU had created proportional pools for men and women and/or had  
18 fully funded scholarships for the women’s track and field team, rather than self-  
19 imposing an artificial monetary cap that prevented the women’s track and field coach  
20 from awarding all the aid permitted by NCAA rule, Carina would have been ready and  
21 able to receive—and would have competed for—the additional athletic financial aid  
22 that SDSU instead chose to withhold.

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

26 171. Carina was also harmed because she participated in the Zoom meeting at  
27 which SDSU retaliated against her and the other Plaintiffs for filing this lawsuit.  
28  
29

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

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

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

11 Natalie Figueroa

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

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

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

19 178. During her time on the rowing team, Natalie rowed in the second varsity  
20 eight boat and then was moved to the first varsity eight boat.

21 179. Natalie did not receive any athletic financial aid while she was on the  
22 women’s rowing team, but she would have received athletic financial aid while she  
23 was on the team if more aid had been made available by SDSU.

24 180. Natalie was honored as an American Athletic Conference All-Academic  
25 Team member. *See* 34 Rowers Earn AAC All-Academic Honors, *available at*  
26 [https://goaztecs.com/news/2021/7/8/womens-rowing-34-rowers-earn-aac-all-](https://goaztecs.com/news/2021/7/8/womens-rowing-34-rowers-earn-aac-all-academic-honors.aspx)  
27 [academic-honors.aspx](https://goaztecs.com/news/2021/7/8/womens-rowing-34-rowers-earn-aac-all-academic-honors.aspx) (last visited April 20, 2023). SDSU nominated Natalie for this  
28

1 distinction based on *both* her academic credentials and her athletic contributions. *See*  
2 *id.*

3 181. She was also named a Collegiate Rowing Coaches Association Scholar-  
4 Athlete. *See* Seven Aztecs Named CRCA Student-Athletes, *available at*  
5 [https://goaztecs.com/news/2021/6/10/womens-rowing-seven-aztecs-named-crca-](https://goaztecs.com/news/2021/6/10/womens-rowing-seven-aztecs-named-crca-scholar-athletes.aspx)  
6 [scholar-athletes.aspx](https://goaztecs.com/news/2021/6/10/womens-rowing-seven-aztecs-named-crca-scholar-athletes.aspx) (last visited April 20, 2023). This award, too, was based on  
7 Natalie’s academic credentials *and* her athletic performance. Natalie was eligible for  
8 the award based on her performance because she “rowed in her institution’s NCAA or  
9 IRA eligible boat(s) for a minimum of 75% of the current spring races.” *Id.*

10 182. If SDSU had created proportional pools for men and women and/or had  
11 fully funded scholarships for the women’s rowing team, rather than self-imposing an  
12 artificial monetary cap that prevented the women’s rowing coach from awarding all  
13 twenty scholarships permitted by the NCAA’s rules, Natalie would have been ready  
14 and able to receive athletic financial aid—and would have competed for the additional  
15 athletic financial aid that SDSU instead chose to withhold.

16 183. Both the head coach and the assistant coach of the women’s rowing team  
17 told Natalie that she would have received athletic financial aid if the team had not been  
18 eliminated and would receive athletic financial aid if the team were reinstated.

19 184. Natalie was harmed by SDSU’s failure to provide proportional athletic  
20 financial aid in at least the following ways:

- 21 • She was denied the *opportunity* to compete for and receive equal  
22 athletic financial aid because of her sex;
- 23 • She was forced to confront a sex-based *barrier* to receiving athletic  
24 financial aid that male student-athletes did not confront and that  
25 made it more difficult for her to receive athletic financial aid than it  
26 was for male student-athletes;
- 27 • She received a *smaller athletic financial aid award*, simply because  
28 of her sex, in an amount that exceeded \$1.00;

- 1 • Because SDSU continued to award athletic financial aid to Natalie  
2 based on the disproportional pools it created for male and female  
3 student-athletes even after the women’s rowing team was  
4 eliminated, Natalie was denied the equal opportunity to compete for  
5 aid and was awarded a smaller scholarship even after her team was  
6 eliminated, and, as a current student who receives athletic financial  
7 aid, she continues to be denied that equal opportunity to compete  
8 and to receive a smaller award even today; and
- 9 • She was forced to endure *degrading and stigmatizing second-class*  
10 *treatment* as SDSU intentionally treated her and other female  
11 student-athletes worse than male student-athletes when it came to  
12 athletic financial aid, and the psychological harm resulting from that  
13 degrading and stigmatizing treatment is ongoing and persists even  
14 today.

15 185. The precise amount of damages in unequal athletic financial aid Natalie  
16 was deprived of cannot be determined from publicly available information. Instead, it  
17 will depend on information that is uniquely in SDSU’s control.

18 186. The amount of unequal athletic financial aid Natalie was illegally deprived  
19 of can, however, be conceptualized based on publicly available information. Natalie  
20 was a varsity athlete in 2019-20, when SDSU deprived each female student-athlete of  
21 an average of \$2,204.03; she was a varsity athlete in 2020-21, when SDSU deprived  
22 each female student-athlete of an average of \$1,874.40; and, given SDSU’s  
23 commitment to honor her athletic financial aid agreement after eliminating the  
24 women’s rowing team, she was eligible for aid in 2021-22, when SDSU deprived each  
25 female student-athlete of an average of \$1,709, and 2022-23, when SDSU deprived  
26 (and is depriving) female students of equal financial aid in presently unknown  
27 amounts.  
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1 193. Erica started participating in track when she was 13 years old, and she  
2 loves being an athlete.

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

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

- 9 • She was denied the *opportunity* to compete for and receive equal  
10 athletic financial aid because of her sex;
- 11 • She was forced to confront a sex-based *barrier* to receiving athletic  
12 financial aid that male student-athletes did not confront and that  
13 made it more difficult for her to receive athletic financial aid than it  
14 was for male student-athletes;
- 15 • She received a *smaller athletic financial aid award*, simply because  
16 of her sex, in an amount that exceeded \$1.00;
- 17 • She was forced to endure *degrading and stigmatizing second-class*  
18 *treatment* as SDSU intentionally treated her and other female  
19 student-athletes worse than male student-athletes when it came to  
20 athletic financial aid, and the psychological harm resulting from that  
21 degrading and stigmatizing treatment is ongoing and persists even  
22 today.

23 196. The precise amount of damages in unequal athletic financial aid Erica was  
24 deprived of cannot be determined from publicly available information. Instead, it will  
25 depend on information that is uniquely in SDSU's control.

26 197. The amount of unequal athletic financial aid Erica was illegally deprived  
27 of can, however, be conceptualized based on publicly available information. Erica was  
28 a varsity athlete in 2018-19, when SDSU deprived each female student-athlete of an  
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1 average of \$2,608.84; she was a varsity athlete in 2019-20, when SDSU deprived each  
2 female student-athlete of an average of \$2,204.03; she was a varsity athlete in 2020-  
3 21, when SDSU deprived each female student-athlete of an average of \$1,874.40; she  
4 was a varsity athlete in 2021-22, , when SDSU deprived each female student-athlete  
5 of an average of \$1,709; and she is a varsity student-athletes in 2022-23, when SDSU  
6 deprived (and is depriving) female students of equal financial aid in presently unknown  
7 amounts.

8 198. This potential damages calculation and distribution—the athletic financial  
9 aid dollars the class members were illegally deprived of divided by and among the  
10 number of people in the class—comports with damages theories in similar contexts.  
11 *See, e.g., Dougherty v. Barry*, 869 F.2d 605, 615 (D.C. Cir. 1989) (dividing, in the  
12 context of employment discrimination, the value of withheld promotions among  
13 multiple plaintiffs eligible for such promotions when the court could not discern with  
14 certainty which plaintiffs would have been promoted).

15 199. But the ultimate calculation of damages is unnecessary when considering  
16 whether Erica suffered cognizable harm. As alleged above, SDSU’s intentional  
17 discrimination deprived her of at least \$1 in athletic financial aid every year.

18 200. If SDSU had created proportional pools for men and women and/or had  
19 fully funded scholarships for the women’s track and field team, rather than self-  
20 imposing an artificial monetary cap that prevented the women’s track and field coach  
21 from awarding all the aid permitted by NCAA rule, Erica would have been ready and  
22 able to receive—and would have competed for—the additional athletic financial aid  
23 that SDSU instead chose to withhold.

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

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



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

- 3 • She received a *smaller athletic financial aid award*, simply because  
4 of her sex, in an amount that exceeded \$1.00;
- 5 • She was forced to endure *degrading and stigmatizing second-class*  
6 *treatment* as SDSU intentionally treated her and other female  
7 student-athletes worse than male student-athletes when it came to  
8 athletic financial aid, and the psychological harm resulting from that  
9 degrading and stigmatizing treatment is ongoing and persists even  
10 today.

11 211. The precise amount of damages in unequal athletic financial aid Kaitlin  
12 was deprived of cannot be determined from publicly available information. Instead, it  
13 will depend on information that is uniquely in SDSU's control.

14 212. The amount of unequal athletic financial aid Kaitlin was illegally deprived  
15 of can, however, be conceptualized based on publicly available information. Kaitlin  
16 was a varsity athlete in 2018-19, when SDSU deprived each female student-athlete of  
17 an average of \$2,608.84; she was a varsity athlete in 2019-20, when SDSU deprived  
18 each female student-athlete of an average of \$2,204.03; she was a varsity athlete in  
19 2020-21, when SDSU deprived each female student-athlete of an average of  
20 \$1,874.40; she was a varsity athlete in 2021-22, when SDSU deprived each female  
21 student-athlete of an average of \$1,709.

22 213. This potential damages calculation and distribution—the athletic financial  
23 aid dollars the class members were illegally deprived of divided by and among the  
24 number of people in the class—comports with damages theories in similar contexts.  
25 *See, e.g., Dougherty v. Barry*, 869 F.2d 605, 615 (D.C. Cir. 1989) (dividing, in the  
26 context of employment discrimination, the value of withheld promotions among  
27 multiple plaintiffs eligible for such promotions when the court could not discern with  
28 certainty which plaintiffs would have been promoted).



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

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

4 224. During her time on the track and field team, Aisha received partial  
5 financial aid. She received 10% of tuition and \$800 for books, per year for her  
6 freshman and sophomore years. She received \$3,000 in athletic aid during the 2021-  
7 22 academic year. She is receiving \$9,600 in athletic financial aid for each semester in  
8 the current academic year, 2022-23. Aisha has received a total of \$14,200 in athletic  
9 financial aid as a varsity student-athlete.

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

- 12 • She was denied the *opportunity* to compete for and receive equal  
13 athletic financial aid because of her sex;
- 14 • She was forced to confront a sex-based *barrier* to receiving athletic  
15 financial aid that male student-athletes did not confront and that  
16 made it more difficult for her to receive athletic financial aid than it  
17 was for male student-athletes;
- 18 • She received a *smaller athletic financial aid award*, simply because  
19 of her sex, in an amount that exceeded \$1.00;
- 20 • She was forced to endure *degrading and stigmatizing second-class*  
21 *treatment* as SDSU intentionally treated her and other female  
22 student-athletes worse than male student-athletes when it came to  
23 athletic financial aid, and the psychological harm resulting from that  
24 degrading and stigmatizing treatment is ongoing and persists even  
25 today.

26 226. The precise amount of damages in unequal athletic financial aid Aisha was  
27 deprived of cannot be determined from publicly available information. Instead, it will  
28 depend on information that is uniquely in SDSU’s control.

1           227. The amount of unequal athletic financial aid Aisha was illegally deprived  
2 of can, however, be conceptualized based on publicly available information. Aisha was  
3 a varsity athlete in 2019-20, when SDSU deprived each female student-athlete of an  
4 average of \$2,204.03; she was a varsity athlete in 2020-21, when SDSU deprived each  
5 female student-athlete of an average of \$1,874.40; she was a varsity athlete in 2021-  
6 22, when SDSU deprived each female student-athlete of an average of \$1,709; and she  
7 was a varsity athlete in 2022-23, when SDSU deprived (and is depriving) female  
8 students of equal financial aid in presently unknown amounts.

9           228. This potential damages calculation and distribution—the athletic financial  
10 aid dollars the class members were illegally deprived of divided by and among the  
11 number of people in the class—comports with damages theories in similar contexts.  
12 *See, e.g., Dougherty v. Barry*, 869 F.2d 605, 615 (D.C. Cir. 1989) (dividing, in the  
13 context of employment discrimination, the value of withheld promotions among  
14 multiple plaintiffs eligible for such promotions when the court could not discern with  
15 certainty which plaintiffs would have been promoted).

16           229. But the ultimate calculation of damages is unnecessary when considering  
17 whether Aisha suffered cognizable harm. As alleged above, SDSU’s intentional  
18 discrimination deprived her of at least \$1 in athletic financial aid every year.

19           230. If SDSU had created proportional pools for men and women and/or had  
20 fully funded scholarships for the women’s track and field team, rather than self-  
21 imposing an artificial monetary cap that prevented the women’s track and field coach  
22 from awarding all the aid permitted by NCAA rule, Aisha would have been ready and  
23 able to receive—and would have competed for—the additional athletic financial aid  
24 that SDSU instead chose to withhold.

25           231. During her time on the track and field team, SDSU also discriminated  
26 against Aisha as a female athlete by failing to provide her equal athletic treatment and  
27 benefits.  
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1 232. Aisha was also harmed because she participated in the Zoom meeting at  
2 which SDSU retaliated against her and the other Plaintiffs for filing this lawsuit.

3 233. As a result of SDSU’s retaliatory conduct, Aisha was singled out in front  
4 of her teammates.

5 234. SDSU’s comments, which were directed at her in front of her teammates,  
6 were embarrassing, humiliating, and anxiety-provoking.

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

13 Kamryn Whitworth

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

16 237. Kamryn was a member of the women’s varsity rowing team until SDSU  
17 discontinued the women’s varsity rowing team in Spring 2021.

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

21 239. During her time on the rowing team, Kamryn received partial athletic  
22 financial aid. In her freshman and sophomore years, she received \$800 per year. In her  
23 junior and senior years, she received \$5,800 per year. Kamryn received a total of  
24 \$13,200 in athletic financial aid as a varsity student-athlete.

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

- 27 • She was denied the *opportunity* to compete for and receive equal  
28 athletic financial aid because of her sex;

- 1 • She was forced to confront a sex-based *barrier* to receiving athletic  
2 financial aid that male student-athletes did not confront and that  
3 made it more difficult for her to receive athletic financial aid than it  
4 was for male student-athletes;
- 5 • She received a *smaller athletic financial aid award*, simply because  
6 of her sex, in an amount that exceeded \$1.00;
- 7 • She was forced to endure *degrading and stigmatizing second-class*  
8 *treatment* as SDSU intentionally treated her and other female  
9 student-athletes worse than male student-athletes when it came to  
10 athletic financial aid, and the psychological harm resulting from that  
11 degrading and stigmatizing treatment is ongoing and persists even  
12 today.

13 241. The precise amount of damages in unequal athletic financial aid Kamryn  
14 was deprived of cannot be determined from publicly available information. Instead, it  
15 will depend on information that is uniquely in SDSU's control.

16 242. The amount of unequal athletic financial aid Kamryn was illegally  
17 deprived of can, however, be conceptualized based on publicly available information.  
18 Kamryn was a varsity athlete in 2018-19, when SDSU deprived each female student-  
19 athlete of an average of \$2,608.84; she was a varsity athlete in 2019-20, when SDSU  
20 deprived each female student-athlete of an average of \$2,204.03; she was a varsity  
21 athlete in 2020-21, when SDSU deprived each female student-athlete of an average of  
22 \$1,874.40.

23 243. This potential damages calculation and distribution—the athletic financial  
24 aid dollars the class members were illegally deprived of divided by and among the  
25 number of people in the class—comports with damages theories in similar contexts.  
26 *See, e.g., Dougherty v. Barry*, 869 F.2d 605, 615 (D.C. Cir. 1989) (dividing, in the  
27 context of employment discrimination, the value of withheld promotions among  
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1 multiple plaintiffs eligible for such promotions when the court could not discern with  
2 certainty which plaintiffs would have been promoted).

3 244. But the ultimate calculation of damages is unnecessary when considering  
4 whether Kamryn suffered cognizable harm. As alleged above, SDSU’s intentional  
5 discrimination deprived her of at least \$1 in athletic financial aid every year.

6 245. If SDSU had created proportional pools for men and women and/or had  
7 fully funded scholarships for the women’s rowing team, rather than self-imposing an  
8 artificial monetary cap that prevented the women’s rowing coach from awarding all  
9 the aid permitted by NCAA rule, Kamryn would have been ready and able to receive—  
10 and would have competed for—the additional athletic financial aid that SDSU instead  
11 chose to withhold.

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

19 Sara Absten

20 247. Sara Absten graduated from SDSU in May 2022 with a degree in  
21 Economics. Sara came to SDSU from the East Coast and, therefore, was a non-resident  
22 for the purposes of tuition at SDSU.

23 248. Sara was a member of the women’s varsity track and field team at SDSU.

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

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

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

- 5 • She was denied the *opportunity* to compete for and receive equal  
6 athletic financial aid because of her sex;
- 7 • She was forced to confront a sex-based *barrier* to receiving athletic  
8 financial aid that male student-athletes did not confront and that  
9 made it more difficult for her to receive athletic financial aid than it  
10 was for male student-athletes;
- 11 • She received a *smaller athletic financial aid award*, simply because  
12 of her sex, in an amount that exceeded \$1.00;
- 13 • She was forced to endure *degrading and stigmatizing second-class*  
14 *treatment* as SDSU intentionally treated her and other female  
15 student-athletes worse than male student-athletes when it came to  
16 athletic financial aid, and the psychological harm resulting from that  
17 degrading and stigmatizing treatment is ongoing and persists even  
18 today.

19 252. The precise amount of damages in unequal athletic financial aid Sara was  
20 deprived of cannot be determined from publicly available information. Instead, it will  
21 depend on information that is uniquely in SDSU's control.

22 253. The amount of unequal athletic financial aid Sara was illegally deprived  
23 of can, however, be conceptualized based on publicly available information. Sara was  
24 a varsity athlete in 2018-19, when SDSU deprived each female student-athlete of an  
25 average of \$2,608.84; she was a varsity athlete in 2019-20, when SDSU deprived each  
26 female student-athlete of an average of \$2,204.03; she was a varsity athlete in 2020-  
27 21, when SDSU deprived each female student-athlete of an average of \$1,874.40; and  
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1 she remained a varsity athlete in 2021-22, when SDSU deprived each female student-  
2 athlete of an average of \$1,709.

3 254. This potential damages calculation and distribution—the athletic financial  
4 aid dollars the class members were illegally deprived of divided by and among the  
5 number of people in the class—comports with damages theories in similar contexts.  
6 *See, e.g., Dougherty v. Barry*, 869 F.2d 605, 615 (D.C. Cir. 1989) (dividing, in the  
7 context of employment discrimination, the value of withheld promotions among  
8 multiple plaintiffs eligible for such promotions when the court could not discern with  
9 certainty which plaintiffs would have been promoted).

10 255. But the ultimate calculation of damages is unnecessary when considering  
11 whether Sara suffered cognizable harm. As alleged above, SDSU’s intentional  
12 discrimination deprived her of at least \$1 in athletic financial aid every year.

13 256. If SDSU had created proportional pools for men and women and/or had  
14 fully funded scholarships for the women’s track and field team, rather than self-  
15 imposing an artificial monetary cap that prevented the women’s track and field coach  
16 from awarding all the aid permitted by NCAA rule, Sara would have been ready and  
17 able to receive—and would have competed for—the additional athletic financial aid  
18 that SDSU instead chose to withhold.

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

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

24 259. As a result of SDSU’s retaliatory conduct, Sara was singled out in front of  
25 her teammates.

26 260. SDSU’s comments, which were directed at her in front of her teammates,  
27 were embarrassing, humiliating, and anxiety-provoking.  
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1 student-athletes even after the women’s rowing team was  
2 eliminated, Eleanor was denied the equal opportunity to compete for  
3 aid and was awarded a smaller scholarship even after her team was  
4 eliminated; and

- 5 • She was forced to endure *degrading and stigmatizing second-class*  
6 *treatment* as SDSU intentionally treated her and other female  
7 student-athletes worse than male student-athletes when it came to  
8 athletic financial aid, and the psychological harm resulting from that  
9 degrading and stigmatizing treatment is ongoing and persists even  
10 today.

11 266. The precise amount of damages in unequal athletic financial aid Eleanor  
12 was deprived of cannot be determined from publicly available information. Instead, it  
13 will depend on information that is uniquely in SDSU’s control.

14 267. The amount of unequal athletic financial aid Madison was illegally  
15 deprived of can, however, be conceptualized based on publicly available information.  
16 Eleanor was a varsity athlete 2020-21, when SDSU deprived each female student-  
17 athlete of an average of \$1,874.40; and, given SDSU’s commitment to honor her  
18 athletic financial aid agreement after eliminating the women’s rowing team, she was  
19 eligible for aid in 2021-22 (before she transferred), when SDSU deprived each female  
20 student-athlete of an average of \$1,709.

21 268. This potential damages calculation and distribution—the athletic financial  
22 aid dollars the class members were illegally deprived of divided by and among the  
23 number of people in the class—comports with damages theories in similar contexts.  
24 *See, e.g., Dougherty v. Barry*, 869 F.2d 605, 615 (D.C. Cir. 1989) (dividing, in the  
25 context of employment discrimination, the value of withheld promotions among  
26 multiple plaintiffs eligible for such promotions when the court could not discern with  
27 certainty which plaintiffs would have been promoted).



- 1 • She was denied the *opportunity* to compete for and receive equal
- 2 athletic financial aid because of her sex;
- 3 • She was forced to confront a sex-based *barrier* to receiving athletic
- 4 financial aid that male student-athletes did not confront and that
- 5 made it more difficult for her to receive athletic financial aid than it
- 6 was for male student-athletes;
- 7 • She received a *smaller athletic financial aid award*, simply because
- 8 of her sex, in an amount that exceeded \$1.00;
- 9 • Because SDSU continued to award athletic financial aid to Alexa
- 10 based on the disproportional pools it created for male and female
- 11 student-athletes even after her the women’s rowing team was
- 12 eliminated, Alexa was denied the equal opportunity to compete for
- 13 aid and was awarded a smaller scholarship even after her team was
- 14 eliminated; and
- 15 • She was forced to endure *degrading and stigmatizing second-class*
- 16 *treatment* as SDSU intentionally treated her and other female
- 17 student-athletes worse than male student-athletes when it came to
- 18 athletic financial aid, and the psychological harm resulting from that
- 19 degrading and stigmatizing treatment is ongoing and persists even
- 20 today.

21 276. The precise amount of damages in unequal athletic financial aid Alexa was  
22 deprived of cannot be determined from publicly available information. Instead, it will  
23 depend on information that is uniquely in SDSU’s control.

24 277. The amount of unequal athletic financial aid Alexa was illegally deprived  
25 of can, however, be conceptualized based on publicly available information. Alexa was  
26 a varsity athlete in 2018-19, when SDSU deprived each female student-athlete of an  
27 average of \$2,608.84; she was a varsity athlete in 2019-20, when SDSU deprived each  
28 female student-athlete of an average of \$2,204.03; she was a varsity athlete in 2020-

1 21, when SDSU deprived each female student-athlete of an average of \$1,874.40; and,  
2 given SDSU’s commitment to honor her athletic financial aid agreement after  
3 eliminating the women’s rowing team, she was eligible for aid in 2021-22, when SDSU  
4 deprived each female student-athlete of an average of \$1,709

5 278. This potential damages calculation and distribution—the athletic financial  
6 aid dollars the class members were illegally deprived of divided by and among the  
7 number of people in the class—comports with damages theories in similar contexts.  
8 *See, e.g., Dougherty v. Barry*, 869 F.2d 605, 615 (D.C. Cir. 1989) (dividing, in the  
9 context of employment discrimination, the value of withheld promotions among  
10 multiple plaintiffs eligible for such promotions when the court could not discern with  
11 certainty which plaintiffs would have been promoted).

12 279. But the ultimate calculation of damages is unnecessary when considering  
13 whether Alexa suffered cognizable harm. As alleged above, SDSU’s intentional  
14 discrimination deprived her of at least \$1 in athletic financial aid every year.

15 280. If SDSU had created proportional pools for men and women and/or had  
16 fully funded scholarships for the women’s rowing team, rather than self-imposing an  
17 artificial monetary cap that prevented the women’s rowing coach from awarding all  
18 the aid permitted by NCAA rule, Alexa would have been ready and able to receive—  
19 and would have competed for—the additional athletic financial aid that SDSU instead  
20 chose to withhold.

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

26 Larisa Sulcs

1           282. Larisa Sulcs is currently on leave from SDSU. Before taking leave, she  
2 was in her senior year. She came to SDSU from Seattle, Washington and, therefore, is  
3 a non-resident for the purposes of tuition at SDSU.

4           283. Larisa was a member of the women’s varsity rowing team until SDSU  
5 discontinued the women’s varsity rowing team in Spring 2021.

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

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

- 12           • She was denied the *opportunity* to compete for and receive equal  
13 athletic financial aid because of her sex;
- 14           • She was forced to confront a sex-based *barrier* to receiving athletic  
15 financial aid that male student-athletes did not confront and that  
16 made it more difficult for her to receive athletic financial aid than it  
17 was for male student-athletes;
- 18           • She received a *smaller athletic financial aid award*, simply because  
19 of her sex, in an amount that exceeded \$1.00;
- 20           • Because SDSU continued to award athletic financial aid to Larisa  
21 based on the disproportional pools it created for male and female  
22 student-athletes even after the women’s rowing team was  
23 eliminated, Larisa was denied the equal opportunity to compete for  
24 aid and was awarded a smaller scholarship even after her team was  
25 eliminated, and, as a current student who receives athletic financial  
26 aid, she continues to be denied that equal opportunity to compete  
27 and to receive a smaller award even today; and  
28

- She was forced to endure *degrading and stigmatizing second-class treatment* as SDSU intentionally treated her and other female student-athletes worse than male student-athletes when it came to athletic financial aid, and the psychological harm resulting from that degrading and stigmatizing treatment is ongoing and persists even today.

286. The precise amount of damages in unequal athletic financial aid Larisa was deprived of cannot be determined from publicly available information. Instead, it will depend on information that is uniquely in SDSU’s control.

287. The amount of unequal athletic financial aid Larisa was illegally deprived of can, however, be conceptualized based on publicly available information. Larisa was a varsity athlete in in 2019-20, when SDSU deprived each female student-athlete of an average of \$2,204.03; she was a varsity athlete in 2020-21, when SDSU deprived each female student-athlete of an average of \$1,874.40; and, given SDSU’s commitment to honor her athletic financial aid agreement after eliminating the women’s rowing team, she was eligible for aid in 2021-22, when SDSU deprived each female student-athlete of an average of \$1,709, and in 2022-23, when SDSU deprived (and is depriving) female students of equal financial aid in presently unknown amounts.

288. This potential damages calculation and distribution—the athletic financial aid dollars the class members were illegally deprived of divided by and among the number of people in the class—comports with damages theories in similar contexts. *See, e.g., Dougherty v. Barry*, 869 F.2d 605, 615 (D.C. Cir. 1989) (dividing, in the context of employment discrimination, the value of withheld promotions among multiple plaintiffs eligible for such promotions when the court could not discern with certainty which plaintiffs would have been promoted).



1 University and the Board of Trustees of the California State University must provide  
2 equal opportunities to women and men in every program SDSU offers, including equal  
3 athletic financial aid and equal treatment and benefits to SDSU’s female and male  
4 varsity student-athletes, and cannot retaliate against any female student-athlete for  
5 speaking out against sex discrimination at SDSU or attempting to enforce her rights  
6 under Title IX.

7 **FACTUAL ALLEGATIONS**

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

10 297. Title IX says, “No person in the United States shall, on the basis of sex,  
11 be excluded from participation in, be denied the benefits of, or be subjected to  
12 discrimination under any education program or activity receiving Federal financial  
13 assistance.” 20 U.S.C. § 1681(a).

14 298. Because SDSU receives federal financial assistance, its varsity athletic  
15 program is subject to Title IX, and SDSU must comply with Title IX’s requirements.  
16 20 U.S.C. § 1687.

17 299. When schools segregate their varsity athletic programs on the basis of sex,  
18 as SDSU does, their violations of Title IX in those programs constitute intentional sex  
19 discrimination. *See Neal v. Board of Trustees of the Cal. State Univs.*, 198 F.3d 763,  
20 772 n.8 (9th Cir. 1999).

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

24 301. The regulations, codified at 34 C.F.R. Part 106 (the “Regulations”) are  
25 enforced by OCR.

26 302. In 1979, OCR issued a policy interpretation of Title IX and the  
27 Regulations as applied to intercollegiate athletics at 44 Fed. Reg. 71,413 (Dec. 11,  
28 1979) (the “OCR Policy Interpretation”).  
29

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

4           304. In addition, Title IX prohibits SDSU from “retaliating against a person  
5 who speaks out against sex discrimination, because such retaliation is intentional  
6 ‘discrimination’ ‘on the basis of sex.’” *Jackson v. Birmingham Bd. of Educ.*, 544 U.S.  
7 167, 178 (2005); *see also* 34 C.F.R. § 106.71.

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

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

15           306. Title IX’s requirements for equal athletic financial aid have been in  
16 existence since 1979.

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

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

- 24           (1) To the extent that a recipient awards athletic scholarships  
25 or grants-in-aid, it must provide reasonable opportunities for  
26 such awards for members of each sex in proportion to the  
27  
28  
29

1 number of students of each sex participating in interscholastic  
2 or intercollegiate athletics.

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

7 309. The OCR Policy Interpretation states, among other things, its  
8 interpretation of the athletic financial aid provision quoted above:

9 The Policy - The Department will examine compliance with  
10 this provision of the regulation primarily by means of a  
11 financial comparison to determine whether proportionately  
12 equal amounts of financial assistance (scholarship aid) are  
13 available to men's and women's athletic programs. The  
14 Department will measure compliance with this standard by  
15 dividing the amounts of aid available for the members of  
16 each sex by the numbers of male or female participants in  
17 the athletic program and comparing the results. Institutions  
18 may be found in compliance if this comparison results in  
19 substantially equal amounts or if a resulting disparity can be  
20 explained by adjustments to take into account legitimate,  
21 nondiscriminatory factors...

22 Application of the Policy - This section does not require a  
23 proportionate number of scholarships for men and women or  
24 individual scholarships of equal dollar value. It does mean  
25 that the total amount of scholarship aid made available to  
26  
27  
28  
29

1 men and women must be substantially proportionate to their  
2 participation rates.

3 44 Fed. Reg. 71,415.

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

6 With regard to athletic financial assistance, the regulations  
7 promulgated under Title IX provide that, when a college or  
8 university awards athletic scholarships, these scholarships  
9 awards must be granted to "members of each sex in  
10 proportion to the number of students of each sex  
11 participating in ...intercollegiate athletics." 34 C.F.R  
12 106.37(c)...

13 It is important to note that it is not enough for a college or  
14 university merely to assert a nondiscriminatory justification.  
15 Instead, it will be required to demonstrate that its asserted  
16 rationale is in fact reasonable and does not reflect underlying  
17 discrimination...

18 If any unexplained disparity in the scholarship budget for  
19 athletes of either gender is 1% or less for the entire budget  
20 for athletic scholarships, there will be a strong presumption  
21 that such a disparity is reasonable and based on legitimate  
22 and nondiscriminatory factors. Conversely, there will be a  
23 strong presumption that an unexplained disparity of more  
24

1 than 1% is in violation of the “substantially proportionate”  
2 requirement.

3 OCR, U.S. DOE, *Dear Colleague Letter* at 2-4 (July 23, 1998).<sup>5</sup>

4 311. Because Title IX and its implementing Regulations are federal law,  
5 NCAA and conference rules cannot justify violations of them.

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

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

16 314. Any NCAA or conference limits would not justify SDSU’s violation of  
17 the law.

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

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

- 23 ■ The provision of equipment and supplies;
- 24 ■ Scheduling of games and practice time;
- 25 ■ Travel and per diem allowance;

26 <sup>5</sup> The OCR’s Title IX Investigator’s Manual states that the unduplicated participation  
27 count should be used in this analysis. *See, e.g., Investigator’s Manual*,  
28 <https://eric.ed.gov/?id=ED400763>, at 21 (stating that “[p]articipants who participate on  
more than one team are to be counted only once” in assessing financial-aid claims).

- 1           ▪ Opportunity to receive coaching and academic tutoring;
- 2           ▪ Assignment and compensation of coaches and tutors;
- 3           ▪ Provision of locker rooms, practice and competitive facilities;
- 4           ▪ Provision of medical and training services;
- 5           ▪ Provision of housing and dining facilities and services; and
- 6           ▪ Publicity.

7           316. Additionally, “[e]qual efforts to recruit male and female athletes are  
8 required under Title IX.” *Ollier v. Sweetwater Union High Sch. Dist.*, 858 F. Supp. 2d  
9 1093, 1110–11 (S.D. Cal. 2012) (citing Policy Interpretation, 44 Fed. Reg. at 71,417).

10           317. “Although recruiting is not listed as a factor under 34 C.F.R. section  
11 106.41(c), the Policy Interpretations do identify this area as significant.” *Barrett v. W.*  
12 *Chester Univ. of Pennsylvania of State Sys. of Higher Educ.*, No. CIV.A. 03-CV-4978,  
13 2003 WL 22803477, at \*6 (E.D. Pa. Nov. 12, 2003) (citing *Cohen v. Brown Univ.*, 809  
14 F. Supp. 978, 997 (D. R.I.1992) (identifying recruiting dollars as a “target area” under  
15 the Policy considerations and finding a disparity in Brown University's allocation of  
16 those funds)).

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

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

22           320. The OCR Policy Interpretation states, among other things, OCR’s  
23 interpretation of the equal treatment and benefits provisions quoted above:

24           The Policy—The Department will assess compliance with  
25 both the recruitment and the general athletic program  
26 requirements of the regulation by comparing the availability,  
27 quality and kinds of benefits, opportunities, and treatment  
28 afforded members of both sexes. Institutions will be in  
--

1 compliance if the compared program components are  
2 equivalent, that is, equal or equal in effect. Under this  
3 standard, identical benefits, opportunities, or treatment are not  
4 required, provided the overall effect of any differences is  
5 negligible.

6 44 Fed. Reg. 71,415.

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

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

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

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

24 324. “Reporting incidents of discrimination is integral to Title IX enforcement,  
25 and would be discouraged if retaliation against those who report went unpunished.”  
26 *Id.* at 180.

27 325. The Ninth Circuit has likewise explained that “Title IX empowers a  
28 woman student to complain, without fear of retaliation, that the educational  
29

1 establishment treats women unequally.” *Emeldi v. Univ. of Oregon*, 698 F. 3d 715, 725  
2 (9th Cir. 2012) (noting that “[i]t is a protected activity to protest or otherwise oppose  
3 unlawful discrimination” and that “speak[ing] out against sex discrimination . . . is  
4 protected activity.” (internal quotation marks and citations omitted)).

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

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

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

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

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

20 330. SDSU has discriminated and is discriminating against its female student-  
21 athletes in violation of Title IX’s equal athletic financial aid requirements, equal  
22 treatment and benefits requirements, and prohibition against retaliation.

23 **SDSU’s Violations of Title IX’s Equal Athletic Financial Aid**  
24 **Requirements**

25 331. SDSU offers athletic financial aid to members of its women’s and men’s  
26 varsity athletic teams.

27 332. SDSU has not provided and does not provide athletic financial aid to its  
28 female varsity student-athletes in proportion to their athletic participation rates and,  
--

1 accordingly, intentionally discriminates against its female varsity student-athletes on  
2 the basis of their sex in violation of Title IX.

3 333. At all times relevant to this case, SDSU has been and is responsible for  
4 ensuring its compliance with Title IX’s requirements to provide proportional athletic  
5 financial aid to its female student-athletes, which is independent from SDSU’s  
6 obligations to provide proportional participation opportunities under Title IX.

7 334. SDSU’s compliance with Title IX’s equal athletic participation  
8 requirements does not absolve the school of its obligations to comply with Title IX’s  
9 equal athletic financial aid requirements.

10 335. Such an allowance could make it possible for a school to provide  
11 proportional participation opportunities to its female and male student-athletes and  
12 award *no financial aid* to its female student-athletes.

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

16 337. The information summarized in the chart and paragraphs below (all of  
17 which use *unduplicated* participation counts) was submitted and verified as accurate  
18 by SDSU to the federal government pursuant to the Equity in Athletics Disclosure Act  
19 (EADA).<sup>6</sup>

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21 <sup>6</sup> SDSU has exclusive access to its Title IX athletic participation and athletic financial  
22 aid data and has not yet disclosed that information to Plaintiffs or the public. For that  
23 reason, Plaintiffs must rely on public EADA data that SDSU has certified as accurate in  
24 this Second Amended Complaint. *See Balow v. Michigan State Univ.*, 24 F.4th 1051, 1060  
25 (6th Cir. 2022), *reh’g denied*, No. 21-1183, 2022 WL 1072866 (6th Cir. Mar. 31, 2022)  
26 (recognizing that, in the early stages of litigation, it is appropriate to rely upon the  
27 university’s EADA data); *Ohlensehlen v. Univ. of Iowa*, 509 F. Supp. 3d 1085, 1101 (S.D.  
28 Iowa 2020) (“Defendants’ argument that EADA reports cannot be relied on carries no  
29 force, considering that other courts have specifically relied on such records at the early  
30 stages of Title IX litigation.” (collecting cases)).

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

338. In 2018-19, the \$824,392 shortfall amounted to an average of \$2,608 denied to *each* female student-athlete at SDSU.

339. In 2019-20, SDSU's 315 female student-athletes equaled 58.12% of the total student-athletes. But female student-athletes were provided with only 50.57% of the \$9,198,841 in athletic financial aid the school awarded that year, amounting to a loss of \$694,268 in athletic financial aid for women.<sup>7</sup>

340. In 2019-20, the \$694,268 shortfall amounted to an average of \$2,204 denied to *each* female student-athlete at SDSU.

341. In 2020-21, SDSU's 305 female student-athletes equaled 57.22% of the total student-athletes. But female student-athletes were provided with only 50.64% of the \$8,679,501.00 in athletic financial aid the school awarded that year, amounting to a loss of \$571,693 in athletic financial aid for women.

<sup>7</sup> Lost athletic financial aid is calculated by subtracting the aid SDSU actually awarded to female student-athletes in a given year from the athletic financial aid female student-athletes *would have been awarded* if SDSU had complied with Title IX by awarding such aid proportionally (i.e., if the percentage of athletic financial aid awarded to female student-athletes matched the percentage of female student-athletes participating in SDSU's varsity athletics program). For example, in 2019-20 the lost athletic financial aid would be  $((0.5812 \times \$9,198,841) - \$4,651,922) = \$694,267.88$  based on the information disclosed by SDSU to the DOE in its annual EADA report.

1           342. In 2020-21, the \$571,693 shortfall amounted to an average of \$1,874  
2 denied to *each* female student-athlete at SDSU.

3           343. In 2021-22, SDSU’s 253 female student-athletes equaled 51.6% of the  
4 total student-athletes. But female student-athletes were provided with only 46.85% of  
5 the \$9,102,926 in athletic financial aid the school awarded that year, amounting to a  
6 loss of \$432,408 in athletic financial aid for women.

7           344. In 2021-22, the \$432,408 shortfall amounted to an average of \$1,709  
8 denied to *each* female student-athlete at SDSU.

9           345. Thus, in just the last four academic years for which data is publicly  
10 available, not including the current academic year, SDSU’s female student-athletes  
11 received over \$2.5 million less in athletic financial aid—and its male varsity student-  
12 athletes received over \$2.5 million more—than they would have if SDSU had granted  
13 such aid in proportion to the number of students of each sex participating in  
14 intercollegiate athletics.<sup>8</sup>

15           346. Moreover, because SDSU already paid its male student-athletes these  
16 amounts and deprived its female student-athletes of them—and cannot change that  
17 fact—the figures above do not accurately reflect the amounts of money that SDSU  
18 needs to pay its female students-athletes to provide them with funds proportional to  
19 those it paid to its male student-athletes in violation of Title IX.

20           347. If SDSU could travel back in time and magically reallocate the athletic  
21 financial aid it disproportionately awarded to its male student-athletes in the past to its  
22 female students-athletes in the past instead, the figures above, which were calculated  
23 by holding the total amount of aid awarded constant, might accurately reflect the  
24 amounts of money that SDSU needs to pay its female student-athletes to make what  
25 they received proportional.

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26 <sup>8</sup> The U.S. Department of Education has not published EADA data for the 2022-23  
27 academic year, which is still ongoing. As a result, the most recent publicly available  
28 information concerns the 2021-22 academic year.

1           348. But SDSU cannot do that. And SDSU likely will not do the functional  
2 equivalent—claw back the dollars it awarded to the men in the past and give them to  
3 the women now with interest.

4           349. So the most accurate way to measure the amount of money that SDSU  
5 needs to pay its female students-athletes to provide them with funds proportional to  
6 those it paid to its male student-athletes during those years is to hold the amount of  
7 money paid to the men each year constant (because it has not changed and cannot be  
8 changed) and calculate how much money the women should have received because  
9 the men received those amounts.

10           350. For example, for the 2018-19 academic year, instead of asking what  
11 percentage of the \$9,185,173 in athletic financial aid SDSU awarded should have been  
12 given to women, this method calculates the shortfall by asking what amount of aid  
13 would have rendered the allocation proportional given that men were awarded  
14 \$4,604,510.

15           351. In 2018-19, using this method, proportionality demanded that women be  
16 awarded \$6,585,065 given that men were awarded \$4,604,510, amounting to a  
17 shortfall of \$2,004,402 (or \$6,343 per female student-athlete).<sup>9</sup>

18           352. Applying the same method, the shortfall in 2019-20 was \$1,658,339 (or  
19 \$5,265 per female student-athlete).

20           353. Applying the same method, the shortfall in 2020-21 was \$1,334,996 (or  
21 \$4,377 per female student-athlete).

22           354. Applying the same method, the shortfall in 2021-22 was \$893,366 (or  
23 \$3,531 per female student-athlete).

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24 <sup>9</sup> This figure is calculated by multiplying the amount of aid SDSU provided to men  
25 (*i.e.*, \$4,604,510) by the ratio of women in the athletics program (*i.e.*, 0.5885), then  
26 dividing by the ratio of men in the athletics program (*i.e.*, 0.4115), and, finally, subtracting  
27 the amount of aid SDSU actually awarded to women (*i.e.*, \$4,580,663).  $(4,604,510 \times$   
28  $(0.5885 \div 0.4115)) - 4,580,663 = 2,004,402$ . And there were 316 women (unduplicated)  
-- participating in SDSU's athletics program.  $2,004,402 \div 316 = 6,343$ .

1 355. Using this method, for the four most recent academic years for which  
2 information is publicly available, and based on that information, SDSU's female  
3 student-athletes should receive over \$5.89 million to recover amounts proportional to  
4 those awarded to SDSU's male student-athletes.

5 356. Similar or greater unequal and disproportionate allocations of athletic  
6 financial aid to varsity female student-athletes at SDSU are taking place in the current  
7 academic year, and will continue in the future if they are not stopped, with similar  
8 calculations required to determine the amount of money SDSU's female student-  
9 athletes should be paid to receive proportional amounts.

10 357. Plaintiffs are entitled to damages going back a minimum of two years from  
11 August 19, 2021, for SDSU's Title IX's athletic financial aid violations.<sup>10</sup>

12 358. For the 2019-20 academic year, the fall semester started August 22 and  
13 classes began August 26.

14 359. SDSU is permitted to award athletic financial aid at any point in the  
15 academic year and, until the academic year is over and the school makes the amount  
16 of aid awarded to each gender public, only the school can determine whether the  
17 allocation of athletic financial aid meets the proportionality requirements of Title IX.

18 360. Any athletic financial aid awarded in the middle of an academic year can  
19 be retroactive back to start of that academic year. SDSU can correct its discriminatory  
20 allocation of athletic financial aid at any point during an academic year.

21 361. As a result, the earliest Plaintiffs could have known about the unequal  
22 allocation of athletic financial aid to male student-athletes for the 2019-20 academic  
23 year was January 1, 2021.<sup>11</sup>

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24 <sup>10</sup> The parties entered into a tolling agreement on August 19, 2021, preserving all Title  
25 IX athletic financial aid claims for at least two years prior to that date. As of August 19,  
26 2019 (*i.e.*, two years prior to the tolling agreement), SDSU had not filed its EADA data for  
27 the 2018-19 academic year. So, as of that date, Plaintiffs had no way to know that they had  
28 been deprived of equal financial aid in the 2018-19 academic year.

<sup>11</sup> Typically, institutions are required to file their EADA reports with the U.S.

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

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

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

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

22  
23  
24 Department of Education by October 15 for the prior years’ athletic expenditures and  
25 participation. Covid-19 extended this deadline beyond October 15 for submissions for the  
26 2019-20 academic year. *See* 85 Fed. Reg. 79,861 (Dec. 11, 2020) (“[T]he October 15  
27 deadline established in § 668.41(g)(1) for IHEs to distribute their annual Equity in Athletics  
28 Disclosure Act (EADA) disclosures (required under § 668.47(c)) to required recipients is  
29 extended to December 31, 2020.”).

1 366. If SDSU’s statement is accurate, SDSU chose to sponsor women’s and  
2 men’s varsity athletic teams with NCAA scholarship limits that allow SDSU to award  
3 its male student-athletes far more athletic financial aid than its female student-athletes,  
4 SDSU is depriving women of equal athletic financial aid because it chose to award  
5 male student-athletes close to 95% of all scholarships the NCAA limits permit (when  
6 it was not required to do so), and, at a minimum, SDSU admittedly deprived its female  
7 student-athletes of close to 5% of the possible scholarships the NCAA limits *permitted*  
8 it to grant (when nothing prevented it from providing that additional 5% to female  
9 student-athletes).

10 367. In any event, SDSU’s compliance with NCAA limits does not authorize  
11 or permit its violation of Title IX’s equal athletic financial aid requirements.

12 368. When SDSU announced the elimination of the women’s rowing team, it  
13 pledged to honor the scholarships for all members of the team *through* their graduation  
14 date if those members of the former team remained at SDSU.

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

18 370. That discrimination against them, which repeats each day their smaller  
19 awards on the basis of a sex-based barrier, will persist until those former members of  
20 the women’s rowing team graduate or otherwise leave SDSU.

21 **SDSU’s Violations of Title IX’s Equal Athletic Treatment and Benefits**  
22 **Requirements**

23 371. SDSU fails to provide athletic treatment and benefits to its female varsity  
24 student-athletes equal to those it provides to its male varsity student-athletes and  
25 accordingly, intentionally discriminates against its female varsity student-athletes in  
26 violation of Title IX.

27 *Provision of equipment and supplies*  
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1 372. SDSU does not give its female and male student-athletes an equal  
2 provision of equipment and supplies.

3 373. SDSU provides more equipment and supplies to the men on its men's  
4 teams than it provides to the women on its women's teams.

5 374. For example, many of the men on the men's teams receive four or more  
6 pairs of athletic shoes for the season while the women on the women's teams receive  
7 only two to three pairs of athletic shoes for the season and the women on some  
8 women's teams are not given even one pair of athletic shoes for their use.

9 375. The men on the men's teams are also provided with equipment and  
10 supplies of superior quality to the equipment and supplies that SDSU provides to the  
11 women on its women's teams.

12 376. Likewise, women on SDSU's women's teams, such as track and field, are  
13 required to reuse equipment and supplies over a number of years while men on SDSU's  
14 men's team, such as football, are given new equipment and supplies every year.

15 Scheduling of games and practice time

16 377. SDSU does not provide its female and male student-athletes with equal  
17 scheduling of games and practice times.

18 378. Men on SDSU's men's teams are given priority for scheduling practice  
19 times and weight room training.

20 379. SDSU requires women on its women's teams, such as the women's track  
21 and field team, to schedule their practices around the men on the men's teams, such as  
22 soccer, even when the men's team is not in its NCAA competitive season and the  
23 women's team is in its competitive season.

24 380. SDSU gives the men's football team members priority scheduling over all  
25 the women on the women's teams for practices, weightlifting, and time in the athletic  
26 training center, even when football is not in its competitive season.

27 Travel and per diem allowance

1 381. SDSU does not provide its female and male student-athletes with equal  
2 travel benefits and per diem allowances.

3 382. SDSU provides the men on its football team with a private plane for travel  
4 to some away games and does not provide that same benefit to the women on any of  
5 the women's teams. The university also provides funding for the men on other men's  
6 teams to fly to away competitions while the women on women's teams are required to  
7 take a bus to competitions, even competitions that are more than ten hours away.

8 383. SDSU provides the men on its men's teams with higher per diems for away  
9 travel—\$200 to \$300 for a competition weekend—and the women on its women's  
10 teams much smaller per diems for away travel—\$75 to \$100 for a competition  
11 weekend.

12 384. SDSU pays for the men on the men's football team to stay at a hotel the  
13 night before all home competitions and does not provide that same benefit to the  
14 women on any of the women's teams.

15 385. SDSU also provides the men on its men's teams with catered meals during  
16 travel, while requiring the women on its women's teams to provide their own sack  
17 lunches while traveling.

18 *Opportunity to receive coaching and academic tutoring*

19 386. SDSU does not provide its female and male student-athletes with equal  
20 opportunities to receive coaching and academic tutoring.

21 387. SDSU gives the men on its men's teams, particularly the men's football  
22 and basketball teams, priority access to scheduling tutoring.

23 *Assignment and compensation of coaches and tutors*

24 388. SDSU does not provide its female and male student-athletes with equal  
25 compensation of coaches.

26 389. In the past two decades, SDSU has compensated the head coaches of its  
27 women's teams significantly less than the coaches of its men's teams.  
28  
29

1 390. The information summarized in the charts below was submitted and  
 2 verified as accurate by SDSU to the federal government under EADA.

	<b>Men's Teams Average Annual Salary per Head Coach</b>	<b>Men's Teams Number of Head Coaches</b>	<b>Women's Teams Average Annual Salary per Head Coach</b>	<b>Women's Teams Number of Head Coaches</b>
2003	\$229,455.00	6	\$90,385.00	10
2004	\$220,798.00	6	\$89,716.00	10
2005	\$269,509.00	6	\$102,469.00	10
2006	\$301,611.00	6	\$113,973.00	10
2007	\$345,744.00	6	\$123,965.00	10
2008	\$297,947.00	6	\$97,653.00	10
2009	\$318,864.00	6	\$122,652.00	10
2010	\$384,166.00	6	\$143,071.00	10
2011	\$422,181.00	6	\$142,932.00	11
2012	\$447,068.00	6	\$160,315.00	11
2013	\$448,049.00	6	\$155,113.00	11
2014	\$474,294.00	6	\$162,668.00	11
2015	\$487,877.00	6	\$170,778.00	11
2016	\$513,658.00	6	\$176,952.00	11
2017	\$458,683.00	6	\$178,840.00	11
2018	\$458,570.00	6	\$188,885.00	11
2019	\$534,335.00	6	\$202,715.00	11

17 391. While some fluctuation in compensation is to be expected between sports,  
 18 on average SDSU pays the head coaches of its women's teams less than half the  
 19 amount that it pays the head coaches of its men's teams, and it has done so for almost  
 20 twenty years.<sup>12</sup>

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

27 \_\_\_\_\_  
 28 <sup>12</sup> SDSU only reports average salaries for all of its coaches combined through EADA.

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

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

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

*Provision of locker rooms, practice, and competitive facilities*

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

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

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

1 to their locker rooms rather than having them next to their practice or competition  
2 facilities.

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

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

7 Provision of medical and training services

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

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

15 402. The women on women's teams at SDSU are frequently required to wait  
16 for hours for an athletic trainer, while the men on men's teams are provided with  
17 athletic trainers at all times.

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

21 Publicity

22 404. SDSU does not provide its female and male student-athletes with equal  
23 publicity.

24 405. SDSU provides more publicity for the men on its football and men's  
25 basketball teams than it provides for the women on any women's team.

26 406. SDSU posts more regularly on its website and SDSU's official social  
27 media accounts about the men on its football and basketball teams than any female  
28 sport.

1 407. SDSU provides billboards around campus advertising the men’s football  
2 team and does not do so for any women’s teams.

3 408. SDSU posts on the athletic department’s social media accounts when the  
4 men on the men’s teams are competing but does not post when the women on the  
5 women’s teams are competing.

6 409. SDSU provides the men on SDSU’s football team with professional  
7 photographers at their practices and games, but the women on SDSU’s women’s teams  
8 are rarely provided with a photographer at competitions or even at conference  
9 championships when they are competing.

10 410. SDSU closes off the athletic center in the front to interview the men on its  
11 football team before every football game to be posted on SDSU’s official social media  
12 accounts. This treatment is not offered for any women’s sports.

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

17 Recruiting

18 412. SDSU does not provide its female and male student-athletes with equal  
19 funding and opportunities for recruiting.

20 413. For almost twenty years, the women on SDSU’s women’s varsity teams  
21 have been given much smaller recruiting budgets than the men on SDSU’s varsity  
22 teams, resulting in SDSU spending far more on male student-athletes for recruiting.

23 414. The information summarized in the chart was submitted and verified as  
24 accurate by SDSU to the federal government under EADA.  
25  
26  
27  
28  
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	Unduplicated Men's Participation	Unduplicated Women's Participation	Men's Team Recruiting Expenses	Women's Team Recruiting Expenses	% of women student athletes	% of recruiting expenses for women's teams	Recruiting dollars per female student	Recruiting dollars per male student
2003	233	246	\$242,783.00	\$138,699.00	51.36%	36.36%	\$563.82	\$1,041.99
2004	227	269	\$301,065.00	\$141,574.00	54.23%	31.98%	\$526.30	\$1,326.28
2005	219	273	\$334,877.00	\$193,768.00	55.49%	36.65%	\$709.77	\$1,529.12
2006	234	273	\$336,880.00	\$200,511.00	53.85%	37.31%	\$734.47	\$1,439.66
2007	240	296	\$348,842.00	\$239,490.00	55.22%	40.71%	\$809.09	\$1,453.51
2008	239	293	\$267,110.00	\$236,812.00	55.08%	46.99%	\$808.23	\$1,117.62
2009	219	283	\$289,117.00	\$241,918.00	56.37%	45.56%	\$854.83	\$1,320.17
2010	222	269	\$221,214.00	\$184,276.00	54.79%	45.45%	\$685.04	\$996.46
2011	235	302	\$256,567.00	\$202,353.00	56.24%	44.09%	\$670.04	\$1,091.77
2012	231	312	\$323,204.00	\$213,019.00	57.46%	39.73%	\$682.75	\$1,399.15
2013	239	322	\$313,160.00	\$212,557.00	57.40%	40.43%	\$660.11	\$1,310.29
2014	236	310	\$396,690.00	\$199,810.00	56.78%	33.50%	\$644.55	\$1,680.89
2015	230	304	\$340,168.00	\$239,647.00	56.93%	41.33%	\$788.31	\$1,478.99
2016	226	315	\$368,555.00	\$227,700.00	58.23%	38.19%	\$722.86	\$1,630.77
2017	216	303	\$426,171.00	\$258,095.00	58.38%	37.72%	\$851.80	\$1,973.01
2018	221	316	\$443,370.00	\$232,419.00	58.85%	34.39%	\$735.50	\$2,006.20
2019	227	315	\$386,285.00	\$186,558.00	58.12%	32.57%	\$592.25	\$1,701.70

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

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

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

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

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

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

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

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

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

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

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

25                    425. Burrell also described the Title IX lawsuit as a distraction to the women  
26 participating in the lawsuit and to the team as a whole.  
27  
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1           426. Burrell told them that being a member of the varsity women’s track and  
2 teams is not a right, suggesting to some of the women that those who participated in  
3 or assisted with the lawsuit could be removed from the team.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **CLASS ALLEGATIONS**

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

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

- 23 a. Plaintiffs seek to represent a class for damages under Rule  
24 23(b)(3) of all current and former female students who participated  
25 in intercollegiate varsity athletics at SDSU from the 2018-19  
26 academic year to the present and did not receive all of the athletic  
27 financial aid they could have received, and  
28  
29

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

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

10           459. In regard to their claim for retaliation:

11           a. Plaintiffs seek to represent a class for damages under Rule  
12 23(b)(3) of all former female students who participated in  
13 intercollegiate varsity athletics at SDSU from the 2018-19 academic  
14 year to the present and did not receive all of the athletic financial aid  
15 they could have received, and

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

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

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

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

1 participated in varsity athletics at SDSU annually in and since the 2018-19 academic  
2 year. Joinder of them all is impracticable.

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

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

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

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

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

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

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

25 470. Plaintiffs have retained counsel who have significant experience and  
26 success prosecuting Title IX class actions against universities and will adequately  
27 represent the class. Their counsel has devoted substantial time to identifying and  
28 investigating the potential claims in this action, have developed detailed knowledge of  
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1 the facts and the applicable law, have no conflicts with Plaintiffs or the putative classes  
2 or subclass, and have sufficient resources to commit to representing the putative  
3 classes and subclass.

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

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

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

**Title IX**

**Denial of Equal Allocation of Athletic Financial Aid**

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

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

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

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

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

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

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

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

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

7 **COUNT II**

8 **Title IX**

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

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

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

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

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

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

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

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

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

**Title IX**

**Retaliation**

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

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

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

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

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

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

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

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

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs pray that this Court:

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

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

- 13 • A class for damages and declaratory relief under Rule  
14 23(b)(3) of all current and former female students who participated  
15 in intercollegiate varsity athletics at SDSU from the 2018-19  
16 academic year to the present and did not receive all of the athletic  
17 financial aid they could have received, and
- 18 • A subclass for injunctive relief under Rule 23(b)(2) of all  
19 current and future female students who participate in intercollegiate  
20 varsity athletics at SDSU and do not receive all of the athletic  
21 financial aid they could receive.

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

- 23 • A class for injunctive relief under Rule 23(b)(2) of all current  
24 and future female students who participate in intercollegiate varsity  
25 athletics at SDSU.

26 In regard to their claim for retaliation:

- 27 • A class for damages under Rule 23(b)(3) of all former female  
28 students who participated in intercollegiate varsity athletics at  
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1 SDSU from the 2018-19 academic year to the present and did not  
2 receive all of the athletic financial aid they could have received, and

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

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

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

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

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

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

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

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

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

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

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

11 Dated: May 12, 2023

Respectfully submitted,

12 /s/ Joshua I. Hammack

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14 Cary Joshi (*pro hac vice*)

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