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18 **UNITED STATES DISTRICT COURT**  
19 **EASTERN DISTRICT OF CALIFORNIA**  
**[Sacramento Division]**

20 KELSEY BRUST; JESSICA BULALA; LAURA  
LUDWIG; and all those similarly situated,

21 Plaintiffs,

22 vs.

23 REGENTS OF THE UNIVERSITY OF  
24 CALIFORNIA; LARRY VANDERHOEF; and  
GREG WARZECKA,

25 Defendants.

CASE NO.

**CLASS ACTION**

**COMPLAINT WITH JURY DEMAND**

**INTRODUCTION**

1  
2 1. Plaintiffs KELSEY BRUST, JESSICA BULALA, and LAURA LUDWIG (“Plaintiffs”) bring this action on behalf of themselves and similarly situated women students at the University of California, Davis (“UC Davis”) against the Regents of the University of California (“The Regents”) and the Chancellor and other officials at UC Davis. Plaintiffs allege that Defendants have engaged in systemic discrimination on the basis of gender at UC Davis by failing to provide equitable varsity athletic opportunities for women and by eliminating existing female varsity athletic participation and scholarship opportunities at UC Davis. Plaintiffs further allege that, by engaging in such conduct, defendants are in violation of: (1) the Equal Athletic Participation Opportunity requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*) (“Title IX”); (2) the Fourteenth Amendment to the United States Constitution, as enforced through 42 U.S.C. section 1983; (3) the Unruh Civil Rights Act of California state law (Cal. Civ. Code § 51 *et seq.*); and (4) California public policy.

14 2. Under Title IX, defendants are prohibited from engaging in discrimination and from denying participation in or the benefits of any educational program on the basis of gender. 20 U.S.C. § 1681. Further, to comply with Title IX, the intercollegiate athletics program at UC Davis must be structured so that: (1) the participation rate of women is “substantially proportionate” to their undergraduate enrollment rate; or (2) the program demonstrates a “history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities” of women; or (3) the present program “fully and effectively” accommodates women’s interests and abilities. *See* 44 Fed. Reg. 71,413, 71,418 (1979). UC Davis’s intercollegiate athletic program fails to meet any of these standards.

23 3. Defendants continue to violate the civil rights of Plaintiffs and members of the proposed class they seek to represent in this action by failing to provide equitable athletic participation and scholarship opportunities for women, despite the athletic interests and abilities of UC Davis female students and potential students. In addition, Defendants have used and continue to employ a discriminatory process for establishing and maintaining varsity teams for men and women at UC Davis,

1 with the result that women are deprived of an equal opportunity to participate in varsity level sports.

2 4. Plaintiffs seek declaratory, injunctive, and monetary relief and the other judicial remedies  
3 available to them to ensure Defendants' compliance with Title IX, including: (1) a declaration that  
4 Defendants have violated and continue to violate the above-referenced anti-discrimination laws; (2) an  
5 injunction: (a) restraining Defendants from engaging in sex discrimination in the administration of the  
6 UC Davis athletic programs; (b) requiring Defendants to increase varsity athletic participation  
7 opportunities for female students at UC Davis and to provide all corresponding benefits of varsity status;  
8 and (c) requiring Defendants to increase athletic financial assistance for female athletes; and (3)  
9 monetary damages as permitted by law and proven at trial.

10 **JURISDICTION AND VENUE**

11 5. The first claim arises under the equal athletic participation opportunity requirements of  
12 Title IX and its interpreting regulations, particularly 34 C.F.R. section 106.41(c)(1), and the equal  
13 athletic financial assistance requirements of Title IX and its interpreting regulations, particularly 34  
14 C.F.R. section 106.37. Jurisdiction is conferred on this Court by 28 U.S.C. sections 1331, 1343(a)(3),  
15 and 1343(a)(4).

16 6. The second claim arises under the Equal Protection Clause of the Fourteenth Amendment  
17 to the United States Constitution, as enforced through 42 U.S.C. section 1983. Jurisdiction is conferred  
18 on this Court by 28 U.S.C. sections 1331, 1343(a)(3), and 1343(a)(4).

19 7. The third claim arises under the Unruh Civil Rights Act of California state law,  
20 California Civil Code section 51 *et seq.* Supplemental jurisdiction is conferred on this Court by 28  
21 U.S.C. section 1367.

22 8. The fourth claim arises under California state law. More particularly, Defendants' sex  
23 discrimination against female students at UC Davis violates the public policy against discrimination in  
24 education established in, among other things, the California Constitution article I, sections 7 and 31;  
25 California Education Code section 220 *et seq.*; and California Education Code sections 66016, 66030,  
26 and 66250 *et seq.* Supplemental jurisdiction is conferred on this Court by 28 U.S.C. section 1367.

27 9. Jurisdiction for declaratory and other relief is invoked pursuant to 28 U.S.C. sections  
28

1 2201 and 2202.

2 10. Venue in the United States District Court for the Eastern District of California is proper  
3 pursuant to 28 U.S.C. section 1391(b) because a substantial part of the events giving rise to this action  
4 occurred in Davis, California, which is within this judicial district.

5 **THE PARTIES**

6 11. All of the individual plaintiffs are women and current students at UC Davis. All are  
7 highly skilled athletes who participate in club sports at UC Davis and who desire to participate in sports  
8 at the varsity level. All of the plaintiffs are eligible to participate in intercollegiate athletics under the  
9 applicable rules.

10 (a) Plaintiff Kelsey Brust enrolled at UC Davis in September 2006 and will be a  
11 sophomore in the 2007-2008 school year. She is a field hockey player who has been involved in the  
12 sport since childhood, and who played at a high level competitively in high school. She currently plays  
13 on the UC Davis field hockey club team. She has an interest in varsity opportunities, is a skilled player,  
14 and competes at a high level in the team's conference. Ms. Brust is a resident of Davis, California,  
15 which is within the jurisdiction of this Court.

16 (b) Plaintiff Jessica Bulula enrolled at UC Davis in 2005 and will be a junior in the  
17 2007-2008 school year. She is a field hockey player who has been playing the sport since childhood and  
18 played at a high level competitively throughout high school. Ms. Bulala has played on the UC Davis  
19 field hockey club team for the past two years. She has interest in varsity opportunities, is a skilled  
20 player, and competes at a high level in the team's conference. Ms. Bulula is a resident of Davis,  
21 California, which is within the jurisdiction of this Court.

22 (c) Plaintiff Laura Ludwig enrolled at UC Davis in 2004 and is currently a junior.  
23 She is a wrestler and rugby player who wrestled in all four years of high school. Ms. Ludwig wanted to  
24 wrestle at UC Davis, but was unable to do so because UC Davis eliminated women's varsity wrestling.  
25 She currently plays rugby on the UC Davis rugby club team and has an interest in participating in varsity  
26 sports at UC Davis. Ms. Ludwig is a resident of Davis, California, which is within the jurisdiction of  
27 this Court.

1           12. UC Davis is one of the campuses of the University of California, which was created  
2 pursuant to article IX, section 9 of the California Constitution. Under that same provision, it is  
3 administered and governed by the public trust known as the Regents of the University of California.  
4 Defendant Regents of the University of California is the legal party-in-interest for purposes of filing  
5 claims against UC Davis and has the “power to sue and be sued” under that authority. Cal. Const. art. 9,  
6 § 9(f). UC Davis is located in Davis, California, which is within the jurisdiction of this Court.

7           13. Since the passage of Title IX, The Regents and UC Davis have received and continue to  
8 receive federal financial assistance and the benefits associated with such assistance.

9           14. Defendant Regents of the University of California is a public entity of and created by the  
10 Constitution of the State of California and, as such, is a “state actor” for purposes of 42 U.S.C. section  
11 1983.

12           15. Defendant Larry Vanderhoef, Ph.D., is the Chancellor of UC Davis. Dr. Vanderhoef has  
13 overall authority and control over the day-to-day operations of UC Davis, including the athletic  
14 department, the men’s and women’s athletic programs, its coaches, and its students. Dr. Vanderhoef is  
15 also responsible for compliance with anti-discrimination laws at UC Davis under California state law  
16 pursuant to California Education Code section 66292.2. Dr. Vanderhoef is a resident of the state of  
17 California and is employed in Davis, California, which is within the jurisdiction of this Court.  
18 Defendant Vanderhoef is being sued in his individual and official capacity.

19           16. Defendant Greg Warzecka is the athletic director at UC Davis. Mr. Warzecka has  
20 authority and control over the athletic department at UC Davis, including the men’s and women’s  
21 athletic programs, its coaches, and its athletes. Mr. Warzecka is a resident of the state of California and  
22 is employed in Davis, California, which is within the jurisdiction of this Court. Defendant Warzecka is  
23 being sued in his individual and official capacity.

24           17. On information and belief, each of the individual defendants has authority over the  
25 athletic programs at UC Davis and has participated in or is otherwise responsible for the discriminatory  
26 actions and decisions alleged herein, including the continued inequitable provision of athletic  
27 participation opportunities and scholarships to female students.

1 18. On information and belief, Defendant Regents of the University of California is  
2 responsible for and has ratified the discriminatory actions and decisions of the individual defendants,  
3 including the continued inequitable provision of athletic participation opportunities and scholarships to  
4 female students at UC Davis.

5 **CLASS ACTION ALLEGATIONS**

6 19. Plaintiffs bring this action pursuant to Federal Rules of Civil Procedure, rules 23(a) and  
7 23(b)(2), on behalf of themselves and a class of similarly situated individuals consisting of all present  
8 and future women students at UC Davis who participate in, seek to participate in and/or are deterred  
9 from participating in intercollegiate athletics at UC Davis.

10 20. All class members are aggrieved persons under federal civil rights law as a result of the  
11 actions, policies, and practices of Defendants. Plaintiffs seek declaratory and injunctive relief on behalf  
12 of themselves and all class members to prevent Defendants from engaging in future illegal conduct and  
13 to rectify the effects of present and past discrimination.

14 21. This matter is properly maintainable as a class action pursuant to Federal Rules of Civil  
15 Procedure, rule 23(b)(2) in that:

16 (a) The class members are so numerous as to make the joinder of all of them  
17 impracticable. On information and belief, there are more than 12,000 female students at UC Davis, a  
18 substantial number of whom would participate in intercollegiate athletics if additional participation  
19 opportunities were made available to them and if the participants received the same benefits and  
20 treatment provided to other varsity athletes. In addition, thousands of potential future female students at  
21 UC Davis who currently participate in sports at high schools and community colleges in California or  
22 other states, or who participate in organized sports associations in California and other states, would  
23 participate in intercollegiate athletics at UC Davis if the opportunity to do so existed but will be denied  
24 the opportunity to do so or will be deterred from doing so by the lack of such opportunity. Such future  
25 students are putative class members whose joinder in this action is impractical.

26 (b) There are questions of law and fact common to the class members. Among the  
27 questions of law and fact common to the class is: (1) whether the practices and conduct of Defendants,  
28

1 as described below, violate the class members' right to enjoy the benefits of UC Davis's athletic  
2 program on an equal basis with male students; (2) whether Defendants deprive female students at UC  
3 Davis of equal athletic participation opportunities; (3) whether Defendants deprive female students at  
4 UC Davis of equal athletic financial assistance; and (4) whether Defendants violate Title IX, the Equal  
5 Protection Clause of the U.S. Constitution, the Unruh Civil Rights Act of California state law, and/or  
6 California public policy by refusing to provide equitable female athletic participation opportunities and  
7 equitable financial athletic assistance. These common questions of law and fact predominate over  
8 questions affecting individual class members.

9 (c) The claims of Plaintiffs are typical of the claims of the proposed class members.  
10 Plaintiffs, like other class members, are women who have participated in and/or desire to participate in  
11 an intercollegiate athletic program at UC Davis. The discrimination that they experienced and continue  
12 to experience because of their sex, including inequitable athletic participation opportunities and  
13 inequitable athletic scholarship opportunities, are typical of the sex discrimination which members of the  
14 class have suffered, are suffering, or will suffer unless this Court grants the relief requested.

15 (d) Plaintiffs will fairly and adequately protect the interests of the class members and  
16 have interests that are aligned with, and not antagonistic to, those of the class. They are represented by  
17 counsel with extensive experience in Title IX, civil rights, civil liberties, and class action litigation.  
18 They intend to vigorously prosecute this action to obtain the relief sought on behalf of the class. Each  
19 Plaintiff is a member of the proposed class in that she has been and continues to be denied equal athletic  
20 participation and scholarship opportunities at UC Davis.

21 (e) Defendants have acted or refused to act on grounds generally applicable to the  
22 class – denying female students at UC Davis equal athletic participation and scholarship opportunities –  
23 thereby making final declaratory and injunctive relief with respect to the class as a whole appropriate.

24 (f) Any compensatory damages sought by the class are incidental to the injunctive  
25 relief and thus certification as a Rule 23(b)(2) class is appropriate.

26 **GENERAL FACTUAL ALLEGATIONS**

27 22. According to the most recent publicly available report that UC Davis has filed with the  
28

1 United States Department of Education pursuant to the Equity in Athletics Disclosure Act, 20 U.S.C.  
2 section 1092, during the 2005-2006 academic year, women comprised approximately 56% percent of the  
3 student population. However, women comprised only 50% percent of the participants on the  
4 intercollegiate varsity teams offered by UC Davis. Upon information and belief, the disparity between  
5 the rate of participation in intercollegiate athletics among women and women's enrollment is  
6 approximately the same today.

7 23. UC Davis has a practice of providing its male students with greater athletic opportunities  
8 which has continued over time. As alleged above, UC Davis does not offer female students  
9 opportunities to participate in intercollegiate athletics substantially proportionate to the percentage of  
10 women enrolled as students. On information and belief, UC Davis has established and maintained its  
11 men's intercollegiate athletic teams based upon different criteria than women's teams, relying to a  
12 greater extent, in the case of men, on recruiting athletes from various sources to determine which teams  
13 to establish and maintain.

14 24. UC Davis does not have a history or continuing practice of expanding intercollegiate  
15 athletic opportunities for women students to accommodate their existing or developing interests. For  
16 example, at various periods of time since the passage of Title IX, female participation opportunities for  
17 women have actually decreased even though the number of female students has steadily risen over the  
18 years. In addition, UC Davis has eliminated women's varsity teams, including field hockey and  
19 wrestling.

20 25. UC Davis has not fully and effectively satisfied the interest of women students in  
21 intercollegiate varsity athletic opportunities. In particular, in recent years:

22 (a) In 2000-2001, UC Davis cut women from the varsity wrestling program on the  
23 basis of their gender.

24 (b) Several women's sports club teams, including field hockey and rugby, have  
25 expressed interest in obtaining varsity status at UC Davis, through formal applications and otherwise.  
26 UC Davis has failed to effectively respond to such interest, and has denied the varsity applications of  
27 five registered sports club teams, *i.e.*, badminton, bowling, field hockey, horse polo, and rugby. As a  
28



1 result, the members of these teams compete without the significant benefits that UC Davis provides to  
2 varsity athletes, such as health insurance, paid travel to competitions, free coaching, access to personal  
3 training, preferential class scheduling, financial scholarships, and university paid organization of all  
4 practices and competition.

5 (c) Many other women student athletes at UC Davis have an interest in varsity  
6 opportunities and athletic financial assistance at UC Davis that has not been satisfied.

7 (d) Many current and future highly skilled high school and community college female  
8 athletes have an interest in varsity opportunities and athletic financial assistance that UC Davis has not  
9 addressed despite the fact that it addresses the interests of male students by establishing varsity teams  
10 and recruiting athletes from high schools and community colleges to fill the roster of those teams.

11 **FIRST CLAIM FOR RELIEF:**  
12 **TITLE IX EQUAL ATHLETIC PARTICIPATION OPPORTUNITIES AND EQUAL**  
13 **ATHLETIC FINANCIAL ASSISTANCE**  
14 **(Against UC Davis only)**

15 26. Plaintiffs reallege and incorporate by this reference each of the above allegations as if  
16 fully rewritten herein.

17 27. Plaintiffs bring this claim on behalf of themselves and the above-defined class.

18 28. Title IX, enacted in 1972, provides in relevant part:

19 No person in the United States shall, on the basis of sex, be excluded from  
20 participation in, be denied the benefits of, or be subjected to  
21 discrimination under any education program or activity receiving Federal  
22 financial assistance, . . .

23 20 U.S.C. § 1681(a). The Civil Rights Restoration Act of 1987 made Congress' intent plain that  
24 "program or activity," as used in Title IX, applies to any program or activity so long as any part of the  
25 educational institution receives federal financial assistance. 20 U.S.C. § 1687. Thus, UC Davis is  
26 subject to Title IX even if none of the funding for its athletic programs comes from federal sources.

27 29. In 1975, the United States Department of Health, Education and Welfare ("HEW") (the  
28 predecessor of the United States Department of Education ("DOE")) adopted regulations interpreting  
Title IX. These regulations are codified at 34 C.F.R. Part 106 (The DOE regulations adopting the HEW  
regulations are at 45 C.F.R. Part 86)(the "Regulations").

1           30. With regard to athletic programs, section 106.41(a) of 34 C.F.R. provides that  
2 intercollegiate athletics are included within the “program or activity” requirements of Title IX:

3                   No person shall, on the basis of sex, be excluded from participation in, be  
4                   denied the benefits of, be treated differently from another person or  
5                   otherwise be discriminated against in any interscholastic, intercollegiate,  
6                   club or intramural athletics offered by a recipient, and no recipient shall  
7                   provide any such athletics separately on such basis.

8           31. 34 C.F.R. section 106.41(c) specifies the factors for determining the existence of equal  
9 athletic opportunity, including whether the selection of sports and levels of competition effectively  
10 accommodate the interest and abilities of both sexes. In 1979, the DOE’s Office for Civil Rights  
11 (“OCR”) issued a policy interpretation of Title IX and the Regulations. This policy interpretation is  
12 found at 44 Federal Register 71,413 *et seq.* (1979) (the “Policy Interpretation”).

13           32. The Policy Interpretation provides that, in order to comply with Title IX and 34 C.F.R.  
14 section 106.41(c), schools must provide equal athletic opportunities in three general areas:  
15 (1) scholarships; (2) participation opportunities; and (3) treatment and benefits.

16           33. According to the Regulations, to the extent that an educational institution provides  
17 scholarship funding, “it must provide reasonable opportunities for such awards for members of each sex  
18 in proportion to the number of students of each sex participating in . . . intercollegiate athletics.” 34  
19 C.F.R. § 106.37(c); Policy Interpretation, 44 Fed. Reg. at 71,415.

20           34. OCR’s 1979 Policy Interpretation sets forth a three prong test for determining equal  
21 athletic participation opportunities under Title IX. According to the Regulations and Policy  
22 Interpretation, a school provides equal athletic participation opportunities only if it can satisfy one of the  
23 following three prongs:

- 24           (1) [Prong One:] Whether intercollegiate level participation  
25           opportunities for male and female students are provided in  
26           numbers substantially proportionate to their respective  
27           enrollments; or  
28           (2) [Prong Two:] Where the members of one sex have been and are  
                 under-represented among intercollegiate athletes, whether the  
                 institution can show a history and continuing practice of program  
                 expansion which is demonstrably responsive to the developing  
                 interest and abilities of the members of that sex; or  
                 (3) [Prong Three:] Where the members of one sex are under-  
                 represented among intercollegiate athletes, and the institution  
                 cannot show a continuing practice of program expansion such as

1 that cited above, whether it can be demonstrated that the interests  
2 and abilities of the members of that sex have been fully and  
effectively accommodated by the present program.

3 Policy Interpretation, 44 Fed. Reg. at 71,418.

4 35. The Regulations require that sponsors of intercollegiate athletics (such as UC Davis) take  
5 such remedial actions as are necessary to overcome the effects of sex discrimination in violation of Title  
6 IX. 34 C.F.R. § 106.3(a). The Regulations further require that sponsors of intercollegiate athletics  
7 programs comply with the Regulations within three years of their effective date (which was July 21,  
8 1975).

9 36. By offering certain opportunities for male students to participate in intercollegiate  
10 athletics, Defendants have demonstrated their determination that athletic participation opportunities  
11 provide educational benefits that should be supported by UC Davis. Plaintiffs agree with this  
12 determination that athletic participation opportunities provide valuable educational benefits. Thus,  
13 Plaintiffs contend that they and all present and future female students at UC Davis should have equal  
14 access and opportunity to receive these same benefits that male students at UC Davis already have,  
15 including varsity athletic participation opportunities and financial athletic assistance.

16 37. Defendants determine the number of athletic participation opportunities available to male  
17 and female students by choosing which sports to offer to each sex and by choosing how many athletes  
18 they will allow to participate on each sport team.

19 38. Defendants intentionally discriminate against female students at UC Davis by, among  
20 other things, choosing to make fewer athletic participation opportunities available to female students  
21 than to male students and by choosing sports and participant numbers in such a way that fails to provide  
22 female athletes with equal athletic participation opportunities.

23 39. Defendants fail to comply with the Title IX's Three-Prong Test for determining equal  
24 athletic participation opportunities under Title IX, as follows:

25 (a) UC Davis does not comply with the first prong of Title IX's Three Prong Test  
26 because the ratio of female to male athletes at UC Davis is not substantially proportionate to the overall  
27 ratio of female to male students enrolled at UC Davis.

28 (b) UC Davis has not satisfied Prong Two because it cannot show a history and

1 continuing practice of program expansion which is demonstrably responsive to the developing interest  
2 and abilities of women, who have been the underrepresented sex in UC Davis athletics. Any remedial  
3 actions that UC Davis has taken in the past twenty (25) years have been insufficient to satisfy its  
4 obligations under Title IX. In fact, Defendants' elimination of women's varsity athletic opportunities in  
5 field hockey in the early 1980's and wrestling in 2000-2001, and Defendants' refusal to establish  
6 women's varsity teams in other sports, despite the significant interest and ability of women student  
7 athletes, increased the extent of sex discrimination in UC Davis athletic programs.

8 (c) UC Davis has not satisfied Prong Three of Title IX's Three Part Test because UC  
9 Davis does not fully or effectively accommodate the interests or abilities of female students to  
10 participate in varsity athletics, including but not limited to interest and ability in field hockey, wrestling,  
11 rugby, and other sports.

12 40. Defendants' discriminatory actions violate the equal athletic participation requirements of  
13 Title IX, as interpreted by 34 C.F.R. sections 106.31 and 106.41, the Policy Interpretation, and other  
14 applicable law.

15 41. Defendants continue to violate Title IX by continuing to offer too few athletic  
16 participation opportunities for female students despite significant interest and ability of women athletes.

17 42. Defendants have also intentionally discriminated against female students at UC Davis by,  
18 among other things, choosing to make less athletic financial assistance available to female students than  
19 to male students and choosing to make athletic scholarships available in such a way that fails to provide  
20 female students with equal athletic scholarship opportunities. Defendants' discriminatory actions violate  
21 the equal athletic financial assistance (scholarship) requirements of Title IX, as interpreted by 34 C.F.R.  
22 section 106.37, the Policy Interpretation, and other applicable law.

23 43. As a result of Defendants' discriminatory actions, Plaintiffs have been denied their civil  
24 right to enjoy an equal opportunity to participate in varsity athletics.

25 44. Defendants' discriminatory allocation of athletic financial assistance will increase if  
26 Defendants are not ordered to add more athletic scholarship opportunities for female athletes as more  
27 female athletic participation opportunities are added.

1 45. Plaintiffs therefore seek injunctive relief that requires Defendants to increase varsity  
2 athletic participation opportunities to reflect interest in field hockey, wrestling, rugby, and/or other  
3 sports and corresponding athletic financial assistance for female students.

4 46. Plaintiffs have further incurred damages, including, among other things, the damages  
5 associated with lost educational opportunities, emotional distress, lost self-esteem and confidence,  
6 humiliation, and other compensatory damages that result from being denied equal opportunity on the  
7 basis of sex.

8 47. Plaintiffs therefore seek damages on behalf of themselves and the plaintiff class.

9 **SECOND CLAIM FOR RELIEF:**  
10 **EQUAL PROTECTION**  
11 **(Against UC Davis for injunctive relief only**  
12 **Against Individual Defendants for all remedies)**

13 48. Plaintiffs reallege and incorporate by this reference each of the above allegations as if  
14 fully rewritten herein.

15 49. Plaintiffs bring this claim on behalf of themselves and the above-defined class.

16 50. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution  
17 mandates that a state actor shall not “deny to any person within its jurisdiction the equal protection of  
18 the laws.” U.S. Const. amend. XIV, § 1.

19 51. The Equal Protection Clause is enforced through 42 U.S.C. section 1983 (“Section  
20 1983”), which provides:

21 Every person who, under color of any statute, ordinance, regulation,  
22 custom, or usage of any State or Territory or the District of Columbia,  
23 subjects, or causes to be subjected, any citizen of the United States or  
24 other person within the jurisdiction thereof to the deprivation of any rights,  
25 privileges, or immunities secured by the Constitution and laws, shall be  
26 liable to the party injured in an action at law, suit in equity, or other proper  
27 proceeding for redress, . . .

28 52. Under Section 1983, Defendants may be held liable for their violation of the rights of  
female student-athletes under the Fourteenth Amendment, namely by treating them differently than male  
athletes.

53. Defendants violate the Equal Protection rights of UC Davis female students by offering  
them fewer athletic participation and scholarship opportunities than males. Defendants offer more

1 athletic participation and scholarship opportunities for men than for women. The ongoing  
2 discrimination against women students at UC Davis violates the Equal Protection rights of Plaintiffs and  
3 the proposed plaintiff class.

4 54. Defendants intentionally discriminate against female students such as Plaintiffs and  
5 intentionally deprive them of their right to equal protection under the Fourteenth Amendment to the U.S.  
6 Constitution by, among other things, treating them differently from male students by: (1) failing to  
7 provide them with equal athletic participation opportunities (including all the benefits, advantages,  
8 privileges, services, and access to facilities and coaching provided in connection with varsity athletic  
9 participation opportunities); and (2) failing to provide them with equal athletic financial assistance.

10 55. When Defendants engaged in the discriminatory actions described above, they were  
11 acting under color of law under 42 U.S.C. section 1983.

12 56. Defendants' discriminatory actions violate the Equal Protection Clause of the Fourteenth  
13 Amendment to the U.S. Constitution, as enforced through Section 1983.

14 57. Each of the individual defendants had knowledge of, participated in or otherwise had  
15 authority over and approved the discriminatory decisions made and actions taken that deny Plaintiffs of  
16 their right to equal protection. Their actions, which continue to this day, constitute a knowing disregard  
17 and deliberate indifference for Plaintiffs' constitutional rights. Accordingly, each of the individual  
18 defendants is individually liable for his discriminatory actions.

19 58. Plaintiffs seek injunctive relief that requires Defendants to provide them with equal  
20 protection to the class by offering equal athletic participation and scholarship opportunities for female  
21 athletes.

22 59. As a result of Defendants' discriminatory actions, Plaintiffs have been denied their  
23 constitutional right to equal protection and to enjoy an equal opportunity to participate in varsity  
24 athletics and to receive athletic financial assistance. Plaintiffs have further incurred damages, including,  
25 among other things, the damages associated with lost educational opportunities, increased education  
26 expenses, emotional distress, lost self-esteem and confidence, humiliation, and other compensatory  
27 damages that result from being denied equal opportunity on the basis of sex.

**THIRD CLAIM FOR RELIEF:**  
**UNRUH CIVIL RIGHTS ACT**  
**(Against all Defendants)**

1  
2 60. Plaintiffs reallege and incorporate by this reference each of the above allegations as if  
3 fully rewritten herein.

4 61. Plaintiffs bring this claim on behalf of themselves and the above-defined class.

5 62. The Unruh Civil Rights Act, California Civil Code section 51 *et seq.*, prohibits  
6 discrimination in public accommodations and services. It provides in relevant part:

7 (b) All persons within the jurisdiction of this state are free and equal, and  
8 no matter what their sex, . . . are entitled to the full and equal  
9 accommodations, advantages, facilities, privileges, or services in all  
business establishments of every kind whatsoever.

10 Cal. Civ. Code § 51(b).

11 63. California Civil Code section 52 provides for a private right of action for treble damages  
12 against any person who discriminates in violation of Section 51:

13 (a) Whoever denies, aids or incites a denial, or makes any discrimination  
14 or distinction contrary to Section 51, 51.5, or 51.6, is liable for each and  
15 every offense for the actual damages, any amount that may be determined  
by a jury, or a court sitting without a jury, up to a maximum of three times  
the amount of actual damage but in no case less than four thousand dollars  
(\$4,000), and any attorney's fees that may be determined by the court . . . .

16 . . . .  
17 (e) Actions brought pursuant to this section are independent of any other  
18 actions, remedies, or procedures that may be available to an aggrieved  
party pursuant to any other law.

19 Cal. Civ. Code §§ 52(b) & (e).

20 64. Public educational institutions such as UC Davis are subject to the Unruh Civil Rights  
21 Act under California law and thus must not engage in sex discrimination in the provision of any  
22 “accommodations, advantages, facilities, privileges, or services.”

23 65. As set forth above, Defendants decide how many athletic participation opportunities to  
24 provide to male and female students by choosing which sports to offer and how many participants to  
25 allow on each sports team. Defendants also decide how much athletic financial assistance to provide to  
26 male and female students by deciding how many athletic scholarships and other financial benefits to  
27 offer to members of each sex in each sport.

28 66. Defendants' decisions to offer fewer athletic participation opportunities to female

1 students and to offer less athletic financial assistance to female students constitute disparate treatment  
2 and intentional discrimination against female students.

3 67. Defendants violate the Unruh Civil Rights Act by failing to provide female students with:  
4 (1) equal athletic participation opportunities (including all the benefits, advantages, privileges, services,  
5 and access to facilities and coaching provided in connection with varsity athletic participation  
6 opportunities); and (2) equal athletic financial assistance.

7 68. Plaintiffs seek injunctive relief that requires Defendants to provide them with equal  
8 access to public accommodations and services by offering more athletic participation opportunities and  
9 more athletic scholarships for female athletes.

10 69. As a result of Defendants' discriminatory actions, Plaintiffs have been denied their civil  
11 right to enjoy an equal opportunity to participate in varsity athletics and to receive athletic financial  
12 assistance. Plaintiffs have further incurred damages, including, among other things, the damages  
13 associated with lost educational opportunities, increased education expenses, emotional distress, lost  
14 self-esteem and confidence, humiliation, and other compensatory damages that result from being denied  
15 equal opportunity on the basis of sex.

16 70. Plaintiffs seek damages on behalf of themselves and the plaintiff class.

17 **FORTH CLAIM FOR RELIEF:**  
18 **CALIFORNIA PUBLIC POLICY**  
19 **(Against all Defendants)**

20 71. Plaintiffs reallege and incorporate by this reference each of the above allegations as if  
21 fully rewritten herein.

22 72. Plaintiffs bring this claim on behalf of themselves and the above-defined class.

23 73. The State of California has expressed a clear public policy against discrimination in the  
24 provision of educational opportunities, public accommodations, and public services through numerous  
25 constitutional and statutory provisions, including California Constitution article I, sections 7 and 31;  
26 California Education Code section 220 *et seq.*; and California Education Code sections 66016, 66030,  
& 66250 *et seq.*

27 74. California Constitution article I, section 7 expressly declares this public policy:

28 (a) A person may not be deprived of life, liberty, or property without



1 due process of law or denied equal protection of the laws; . . .  
2 . . . .

3 In amending this subdivision, the Legislature and people of the  
4 State of California find and declare that this amendment is  
5 necessary to serve compelling public interests, including those of  
6 making the most effective use of the limited financial resources  
7 now and prospectively available to support public education,  
8 maximizing the educational opportunities, and protecting the  
9 health and safety of all public school pupils, . . .

10 (b) A citizen or class of citizens may not be granted privileges or  
11 immunities not granted on the same terms to all citizens.

12 75. California Constitution article I, section 31 expressly states that:

13 (a) The state shall not discriminate against, or grant preferential  
14 treatment to, any individual or group on the basis of race, sex, . . .  
15 in the operation of public employment, public education, or public  
16 contracting . . . .  
17 . . . .

18 (f) For purposes of this section, “state” shall include, . . . the  
19 University of California, . . .

20 76. California Education Code section 220 states:

21 No person shall be subjected to discrimination on the basis of sex, . . . in  
22 any program or activity conducted by an educational institution that  
23 receives, or benefits from, state financial assistance or enrolls pupils who  
24 receive state student financial aid.

25 77. The discriminatory athletic programs operated by Defendants fall within the requirements  
26 of this section.

27 78. California Education Code section 221.7 expressly prohibits discrimination in  
28 educational athletics:

(a) The Legislature finds and declares that female pupils are not  
accorded opportunities for participation in school-sponsored  
athletic programs equal to those accorded male pupils. It is the  
intent of the Legislature that opportunities for participation in  
athletics be provided equally to male and female pupils.

79. California Education Code section 262.4 declares that the Educational Equity provisions  
of the code “may be enforced through a civil action.” Thus, the educational equity policy dictates of the  
California Legislature are enforceable both directly and through public policy tort.

80. California Education Code section 66016 also expressly prohibits discrimination in  
educational athletics:

It is the intent of the Legislature that opportunities for participation in  
intercollegiate athletic programs . . . in the campuses of the University of

1 California be provided on as equal a basis as is practicable to male and  
female students.

2 81. California Education Code section 66030 expresses the general public policy in favor of  
3 sex equity:

4 (a) It is the intent of the Legislature that public higher education in  
5 California strive to provide educationally equitable environments  
6 which give each Californian, regardless of ethnic origin, race,  
gender, . . . a reasonable opportunity to develop fully his or her  
potential.

7 (b) It is the responsibility of the governing boards of institutions of  
8 higher education to ensure and maintain multicultural learning  
environments free from all forms of discrimination and  
harassment, in accordance with state and federal law.

9 82. California also has a Sex Equity in Education Act, California Education Code section  
10 66250 *et seq.* Section 66251 of that Sex Equity in Education Act states:

11 It is the policy of the State of California to afford all persons, regardless of  
12 their sex, . . . equal rights and opportunities in the postsecondary  
institutions of the state. The purpose of this chapter is to prohibit acts that  
are contrary to that policy and to provide remedies therefor.

13 83. Section 66252 of the Sex Equity in Education Act further states:

14 (a) All students have the right to participate fully in the educational  
15 process, free from discrimination and harassment.

16 (b) California's postsecondary educational institutions have an  
17 affirmative obligation to combat racism, sexism, and other forms  
of bias, and a responsibility to provide equal educational  
opportunities.

18 . . . .  
19 (g) It is the intent of the Legislature that this chapter shall be  
20 interpreted as consistent with . . . Title IX . . . the Unruh Civil  
Rights Act . . . .

21 84. The postsecondary institutions covered by this act include the University of California.  
22 Cal. Educ. Code § 66261.5.

23 85. On information and belief, The Regents has issued the appropriate resolutions to adopt  
24 these rules and principles of nondiscrimination.

25 86. These legislative declarations clearly express that it is the public policy of the State of  
26 California that no educational institution, including UC Davis, engage in sex discrimination in the  
27 provision or operation of any educational program, including athletics.

28 87. As described in the claims above, Defendants violate this public policy by treating male

1 and female students differently by: (1) failing to provide female students with equal athletic  
2 participation opportunities (including all the benefits, advantages, privileges, services, and access to  
3 facilities and coaching provided in connection with varsity athletic participation opportunities); and (2)  
4 failing to provide female students with equal athletic financial assistance.

5 88. Plaintiffs seek injunctive relief that requires Defendants to comply with this public policy  
6 by, among other things, providing them with equal varsity athletic participation opportunities and equal  
7 athletic financial assistance.

8 89. As a result of Defendants' discriminatory actions and violation of California public  
9 policy, Plaintiffs have been denied their civil right to enjoy an equal opportunity to participate in varsity  
10 athletics and to receive athletic financial assistance. Plaintiffs have further incurred damages, including,  
11 among other things, the damages associated with lost educational opportunities, increased education  
12 expenses, emotional distress, lost self-esteem and confidence, humiliation, and other compensatory  
13 damages that result from being denied equal opportunity on the basis of sex.

14 **INJUNCTIVE RELIEF**

15 90. Defendants' unlawful acts deprived Plaintiffs of rights guaranteed by federal law, the  
16 U.S. Constitution, and California state law. Plaintiffs are entitled to injunctive relief to end Defendants'  
17 discriminatory actions, and to compel Defendants to provide equal athletic participation and scholarship  
18 opportunities for female students by establishing varsity opportunities for women at UC Davis sufficient  
19 to eliminate the gender disparities in athletic opportunities and that reflect interest and ability of women  
20 athletes in field hockey, wrestling, rugby, and/or other sports.

21 91. Failure to grant the injunctive relief requested will result in irreparable harm in that  
22 Plaintiffs' rights will continue to be violated and they will forever be denied the opportunity to  
23 participate in college athletics. Plaintiffs do not have an adequate remedy at law for this harm.

24 92. The continuing harm caused by Defendants' discriminatory actions far outweighs any  
25 possible harm that granting injunctive relief might cause Defendants. In fact, Plaintiffs can conceive of  
26 no harm that Defendants will suffer by increasing varsity athletic participation and scholarship  
27 opportunities for women student athletes at UC Davis. Meanwhile, Plaintiffs believe that Defendants  
28

1 will gain public relations and enrollment advantages by complying with federal civil rights laws.

2 93. Finally, the injunctive relief that Plaintiffs seek would in no way disserve the public  
3 interest but, on the contrary, would benefit the public and would promote compliance with and full  
4 equality before the law.

5 **ATTORNEYS' FEES**

6 94. Plaintiffs have been required to retain counsel to prosecute this action. They are entitled  
7 to recover reasonable attorneys' fees and expenses under 42 U.S.C. section 1988 and California state  
8 law. They are also entitled to recover costs under Federal Rules of Civil Procedure, rule 54(d) and other  
9 applicable law.

10 **RELIEF REQUESTED**

11 WHEREFORE, Plaintiffs respectfully pray that this Court:

12 A. Issue an order certifying a class of all present and future women students at UC Davis  
13 who participate in, seek to participate in and/or are deterred from participating in intercollegiate athletics  
14 at UC Davis and appoint Plaintiffs' counsel as Class Counsel pursuant to the Federal Rules of Civil  
15 Procedure, rule 23(g).

16 B. Enter an order declaring that Defendants violated and continue to violate Plaintiffs' civil  
17 and constitutional rights under Title IX, the Equal Protection Clause of the Fourteenth Amendment to  
18 the United States Constitution, the California Unruh Civil Rights Act, and California public policy by  
19 discriminating against female students on the basis of sex by, among other things: (1) failing to provide  
20 female students with equal athletic participation opportunities (including all the benefits, advantages,  
21 privileges, services, and access to facilities and coaching provided in connection with varsity athletic  
22 participation opportunities); and (2) failing to provide female students with equal athletic financial  
23 assistance.

24 C. Issue an injunctive relief order: (1) restraining Defendants from engaging in sex  
25 discrimination in the administration of the UC Davis athletic programs; (2) requiring Defendants to  
26 increase athletic participation opportunities for female students by establishing women's varsity teams  
27 that reflect interest and ability of women athletes in field hockey, wrestling, rugby, and/or other sports  
28

1 (with all the benefits, advantages, privileges, services, and access to facilities and coaching provided in  
2 connection with varsity athletic participation opportunities) or other appropriate measures; and (3)  
3 requiring Defendants to increase athletic financial assistance for female athletes.

- 4 D. Award Plaintiffs and the plaintiff class compensatory damages according to proof.
- 5 E. Award treble and/or punitive damages to the extent permitted by law.
- 6 F. Award Plaintiffs their reasonable attorneys' fees, expenses, and costs.
- 7 G. Order such other and further relief as the Court deems appropriate.
- 8 H. Plaintiffs herein demand trial by jury on these claims.

9  
10 DATED: July 24, 2007

EQUAL RIGHTS ADVOCATES

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