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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

MELISSA BATIE-SMOOSE,

Plaintiff,

v.

THE BOARD OF TRUSTEES OF THE CALIFORNIA
 STATE UNIVERSITY (ON BEHALF OF SAN JOSE
 STATE UNIVERSITY); and TODD KRESS, LAURA
 ALEXANDER, MICHELLE SMITH MCDONALD,
 JOANNE WRIGHT, CHARLIE FAAS, JEFF KONYA,
 JULIE PAISANT, MARY QUINTANAR, JULIANNE
 MIYASHIRO, and LAURYN MILLER, in their
 individual capacities, and DR. CYNTHIA TENIENTE-
 MATSON, in her individual and official capacity, as
 employees of San Jose State University,

Defendants.

Case No.: 5:26-cv-11808

COMPLAINT

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Melissa Batie-Smoose, by and through undersigned counsel, brings this action against Defendant The Board of Trustees of the California State University (“CSU”), to redress sex discrimination and retaliation prohibited by Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”). Plaintiff also asserts claims under 42 U.S.C. § 1983 against Defendants Todd Kress, Laura Alexander, Michelle Smith McDonald, Joanne Wright, Dr. Cynthia Teniente-Matson, Charlie Faas, Jeff Konya, Julie Paisant, Mary Quintanar, Julianne Miyashiro, and Lauryn Miller (collectively, the “Individual Defendants”), to redress violations of Plaintiff’s rights under the First and Fourteenth Amendments to the United States Constitution.

INTRODUCTION

In volleyball, lines matter. So do the people willing to call out when those lines have been crossed. Plaintiff Melissa Batie-Smoose did just that. As Associate Head Coach of the SJSU women’s volleyball team, she raised concerns about unequal treatment of female athletes, asserted her religious beliefs about the presence of a male athlete on the court and in the locker room on a women’s team, supported players asserting their Title IX rights, and ultimately filed a sworn Title IX complaint. Within days, SJSU took her off the court and suspended her before even interviewing her, and later declined to renew her appointment. Rather than address the discrimination Plaintiff reported, Defendants punished the coach who called it out. This action seeks to hold them accountable for that retaliation, for treating Plaintiff less favorably than her male counterpart, and for attempting to silence her protected speech and chill her religiously motivated conduct.

I. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as this case arises under the laws of the United States, specifically Title IX, and the First and Fourteenth Amendments to the United States Constitution, as enforced through 42 U.S.C. § 1983.

1 the constitutional claims alleged in Count V. At all relevant times, Smith McDonald acted under
2 color of state law within the meaning of 42 U.S.C. § 1983.

3 8. Defendant Joanne Wright (“Wright”) was at all relevant times the Senior
4 Associate Vice President, University Personnel, at SJSU. Upon information and belief, Wright
5 is no longer employed by SJSU. Wright is sued in her individual capacity for damages for the
6 constitutional claims alleged in Counts V and VI. At all relevant times, Wright acted under color
7 of state law within the meaning of 42 U.S.C. § 1983.

8 9. Defendant Dr. Cynthia Teniente-Matson (“Teniente-Matson”) is, and at all
9 relevant times was the President of SJSU. Teniente-Matson is sued in her individual capacity for
10 damages for the constitutional claims alleged in Counts V and VI, and in her official capacity
11 for prospective declaratory and injunctive relief for the constitutional claims alleged in Counts
12 IV, V, VI, and VII. At all relevant times, Teniente-Matson acted under color of state law within
13 the meaning of 42 U.S.C. § 1983.

14 10. Defendant Charlie Faas (“Faas”) at all relevant times was the Vice President for
15 Administration and Finance at SJSU, who oversaw University Personnel along with business
16 services, facilities, university police, and auxiliary services. He left SJSU in or around February
17 1, 2025. Faas is sued in his individual capacity for damages for the constitutional claims alleged
18 in Count V. At all relevant times, Faas acted under color of state law within the meaning of 42
19 U.S.C. § 1983.

20 11. Defendant Jeff Konya (“Konya”) is, and at all relevant times was the Director of
21 Athletics of SJSU. Konya is sued in his individual capacity for damages for the constitutional
22 claims alleged in Counts V and VI. At all relevant times, Konya acted under color of state law
23 within the meaning of 42 U.S.C. § 1983.

24 12. Defendant Julie Paisant (“Paisant”) at all relevant times was the Senior Director,
25 Employee and Labor Relations and Compliance at SJSU. (She is now Associate Vice President,
26 Employee and Labor Relations.) Paisant is sued in her individual capacity for damages for the
27 constitutional claims alleged in Count V. At all relevant times, Paisant acted under color of state
28 law within the meaning of 42 U.S.C. § 1983.

1 18. Plaintiff is an experienced women's collegiate volleyball coach who began
2 serving as Associate Head Coach of the San Jose State University ("SJSU") women's volleyball
3 team in January 2023. Defendant renewed her appointment on March 1, 2024.

4 19. Upon learning of the presence of a male athlete (Blair Fleming) on the women's
5 team and observing related discriminatory conduct by CSU, Kress and other Individual
6 Defendants, Plaintiff raised concerns regarding sex discrimination and the integrity and fairness
7 of the SJSU women's volleyball team and of women's sports in general.

8 20. On October 29, 2024, Plaintiff filed a sworn and written complaint and request
9 for investigation with Peter Lim, the Interim Director and Title IX Office at SJSU, Gloria
10 Nevarez, the Mountain West Conference Commissioner, Scott Bearby, the Mountain West
11 Conference Senior Vice President of Legal Affairs and General Counsel, and the National
12 Collegiate Athletic Association ("NCAA"), alleging discrimination based on sex and retaliation
13 in violation of Title IX regarding transgender eligibility policies. Plaintiff's complaints and
14 opposition to these practices constituted protected activity under Title IX.

15 21. Title IX protects persons who oppose sex discrimination or participate in the Title
16 IX complaint process. It also independently prohibits discrimination on the basis of sex in
17 employment by any recipient of federal financial assistance. 34 C.F.R. § 106.51(a).

18 22. On November 1, 2024, Plaintiff was suspended from her position as Associate
19 Head Coach. A true and correct copy of Plaintiff's suspension letter is attached as Exhibit A
20 ("Suspension Letter").

21 23. On or about January 31, 2025, Jeff Konya sent Plaintiff a notice of nonrenewal
22 of her position at SJSU. A true and correct copy of Plaintiff's termination letter is attached as
23 Exhibit B ("Termination Letter").

24 24. Defendant punished Plaintiff for engaging in protected activity under Title IX,
25 and separately subjected Plaintiff to discrimination in the terms and conditions of her
26 employment because of her sex, including by treating her male counterpart, Kress, more
27 favorably than Plaintiff when both were investigated for substantially similar alleged
28 misconduct.

1 29. At the end of the 2022 volleyball season, Kress was offered a position at SJSU as
2 the head coach of the women’s volleyball team. Kress asked Plaintiff to continue to be his
3 assistant coach.

4 30. On or about January 22, 2023, Plaintiff accepted an offer of employment from
5 Defendant CSU to serve as the Associate Head Coach for the Women’s Volleyball team at SJSU.
6 A true and correct copy of Plaintiff’s offer of employment is attached as Exhibit D (“Offer
7 Letter”).

8 31. At the time Plaintiff accepted the position, she had not been informed by CSU or
9 any Individual Defendant that a male student-athlete was a member of the SJSU’s women’s
10 volleyball team.

11 32. Defendant renewed Plaintiff’s appointment on March 1, 2024, for her to continue
12 as Associate Head Coach. A true and correct copy of Plaintiff’s renewed employment contract
13 is attached as Exhibit E (“Employment Contract”).

14 33. The Employment Contract required Plaintiff to “provide full support and abide
15 by the CSU and SJSU commitment to gender equity in education, including athletics, and *its full*
16 *compliance with Title IX* of the Education Amendment to the Civil Rights Act of 1964 [sic].”
17 Employment Contract ¶ 8 (Ex. E) (emphasis added).

18 34. In reliance on Defendant’s employment offer, Plaintiff relocated her family
19 across the country from Connecticut to Scotts Valley, California, to begin her employment at
20 SJSU with the understanding that she would be coaching a women’s collegiate volleyball team
21 composed of female athletes.

22 35. In or around January 2022—approximately one year before Plaintiff was hired—
23 then-Head Coach Trent Kersten recruited Fleming, a male student-athlete who identifies as a
24 “transgender woman,” to join the SJSU women’s volleyball team on a full athletic scholarship.
25 Kersten and Defendant’s administration were aware of Fleming’s sex at the time of his
26 recruitment. Upon information and belief, each of the Individual Defendants knew of Fleming’s
27 sex.
28

1 36. Plaintiff is informed and believes, and on that basis alleges, that Defendant's
2 administration, including the Individual Defendants and Kersten, did not disclose Fleming's sex
3 to incoming players or existing volleyball players, and that this information was known within
4 the athletics department at SJSU well before Plaintiff was hired in January 2023.

5 37. Kress had an approximately two-decade professional relationship with Plaintiff
6 and was familiar with Plaintiff's religious beliefs and related views regarding the participation
7 of male athletes on women's athletic teams.

8 38. Yet Kress did not disclose to Plaintiff—before she accepted the Associate Head
9 Coach position and relocated her family to California—that a male athlete was a member of the
10 SJSU women's volleyball team.

11 39. Kress disclosed Fleming's sex to Plaintiff within weeks after she began working
12 at SJSU. Based on the timing and manner of that disclosure, Plaintiff believed Kress may have
13 known the information before she accepted the position, although she does not know when Kress
14 first learned it. Plaintiff is further informed and believes, based upon a conversation with
15 Defendant Smith McDonald and two female volleyball players, that Fleming had disclosed his
16 sex to at least two of his SJSU teammates in the 2022–2023 season, and that rumors regarding
17 Fleming's sex circulated among other SJSU student-athletes, including on the football and
18 baseball teams, as early as December 2022. Yet CSU went to great lengths to intimidate Plaintiff
19 and the female players to keep this information secret.

20 Plaintiff's Religious Beliefs and Kress's Response

21 40. Plaintiff is a practicing Christian and holds a sincere religious belief that God
22 created human beings male and female, and that sex is binary and immutable. Plaintiff's
23 opposition to Fleming's participation on the women's team was informed by, and was in part an
24 expression of, this religious belief.

25 41. On multiple occasions beginning in approximately 2023 and continuing through
26 2024, Plaintiff told Kress, in substance, that "God made man and woman" and that she could not
27 in good conscience treat a male athlete as female. Plaintiff made these statements to Kress
28 directly, in the course of their disputes over Fleming's participation and treatment.

42. Plaintiff is informed and believes, and on that basis alleges, that Kress's hostility toward Plaintiff, and his threats to terminate her employment, were motivated in part by the religious character of Plaintiff's objections, and not solely by her secular policy disagreement regarding fairness in women's athletics. Kress was aware, from Plaintiff's repeated statements and from their long association, that her opposition to Fleming's participation was grounded in her religious convictions regarding sex and creation.

43. Thus, Plaintiff is informed and believes, and on that basis alleges, that Kress's conduct toward Plaintiff, including his threats of termination and his influence over the suspension and nonrenewal alleged here, was motivated in whole or in part by hostility to the religious character of Plaintiff's speech and beliefs, in violation of the First Amendment to the United States Constitution, as alleged below.

Plaintiff's Protected Activity

44. In January 2023, after beginning her employment at SJSU, Plaintiff observed that one student-athlete on the women's volleyball team, Fleming, exhibited physical and athletic abilities that were markedly superior to the other players on the women's volleyball team.

45. After watching Fleming practice with the SJSU female beach volleyball team in January 2023, when asked by Kress what she thought of Fleming's performance, Plaintiff remarked that Fleming hits like a "dude." Kress only asked about Fleming's playing abilities while Plaintiff temporarily coached beach volleyball. Kress's focus on Fleming, the only male on the team, continued through Plaintiff's tenure at SJSU.

46. With approximately two to three weeks after Plaintiff began working at SJSU, and shortly after her comment regarding her own observation of Fleming, Kress confirmed Plaintiff's observations, that Fleming identified as transgender and was male.¹ During the same conversation, or shortly thereafter, Kress instructed Plaintiff not to disclose Fleming's sex to players, recruits, families, or staff and warned Plaintiff that she could be terminated if she did so. Kress subsequently repeated employment-related warnings when Plaintiff raised concerns

¹ Out of respect for Plaintiff's religious views and candor to the Court, pronoun usage for Fleming aligns with Fleming's sex.

1 about unequal treatment of female student-athletes. These threats were designed to intimidate
2 Plaintiff to deter her from asserting her rights under Title IX.

3 47. Plaintiff's interactions with Fleming were limited in the spring of 2023 after SJSU
4 hired a coach for the female beach volleyball team. Plaintiff moved to coaching the indoor team
5 while Fleming practiced and played on the spring beach volleyball team.

6 48. When Fleming joined the indoor team practices, Plaintiff subsequently became
7 concerned that the treatment of Fleming compared to the female athletes, including the unequal
8 enforcement of team rules and related decisions by Kress and SJSU administrators, constituted
9 sex discrimination prohibited by Title IX (by denying female athletes equal treatment and
10 opportunities).

11 49. Plaintiff also observed materially different treatment of Elle Patterson, a female
12 athlete who played the same position as Fleming. Kress and Plaintiff recruited Patterson to
13 transfer to SJSU and offered her a full scholarship to play outside hitter. After Patterson arrived,
14 however, Kress informed her that she would not receive a scholarship for the 2023 season, while
15 promising that she would receive one for subsequent seasons. Patterson remained at SJSU in
16 reliance on that promise and paid out-of-state tuition and room-and-board expenses.

17 50. Kress also told Patterson that indoor volleyball players would not be permitted to
18 participate in beach volleyball. Kress nevertheless permitted Fleming to participate in beach
19 volleyball despite Fleming's lack of prior beach volleyball experience, while denying Patterson
20 the same opportunity.

21 51. In or around August 2023, a recruiting visit for the program's top recruit was
22 disrupted when a hurricane canceled the recruit's flight. Plaintiff, who was responsible for
23 recruiting, went to the airport and then returned to the SJSU gym to inform Kress of the situation.
24 Upon her return, Kress ignored her greeting twice in a hallway. When Plaintiff remarked on his
25 behavior, Kress followed her into her office, closed the door, and cornered, yelled at, and berated
26 her in a manner she found physically intimidating, including telling her that he could get her
27 fired. This was the first time in Plaintiff's career that she felt physically unsafe in a professional
28

1 interaction. Kress's actions were taken in retaliation for Plaintiff voicing her objections to the
2 discriminatory treatment of the female student-athletes.

3 52. Plaintiff reported this incident to Athletics Human Resources, including
4 Quintanar, and to Alexander, her sport administrator. In response, Plaintiff was told that Kress
5 was her boss and that she needed to listen to him. Kress received no disciplinary action for his
6 behavior towards Plaintiff.

7 53. During the 2023 indoor fall volleyball season, Alexander pressed for Fleming to
8 take the required blood test needed for his participation in Mountain West Conference games.
9 Fleming eventually took the test, but his testosterone levels were too high to play in the
10 Conference matches. Alexander revealed Fleming's testosterone levels to Plaintiff.

11 54. Plaintiff had been noticing that throughout the fall season, Fleming's strength had
12 been increasingly elevated and his strikes had become markedly harder and faster.

13 55. Around the same time the testosterone results were revealed, Fleming thereafter
14 missed conference matches because of a reported hand injury, which Plaintiff believes was an
15 excuse to hide his ineligibility to play because of his hormone level.

16 56. When Fleming returned to play in or about November 2023, the coaching staff
17 frequently substituted Patterson for Fleming because Patterson was the superior passer and
18 defensive player. Nevertheless, after the season, Kress withdrew the promised scholarship for
19 Patterson while retaining Fleming's full scholarship.

20 57. Patterson informed Plaintiff and Kress that she could not afford to return to SJSU
21 without a scholarship because of the cost of out-of-state tuition, room, and board. Kress
22 nevertheless declined to award Patterson a scholarship. Plaintiff believed that the disparate
23 scholarship and participation decisions denied a female athlete an athletic opportunity because
24 of sex, and Plaintiff raised those concerns with Kress.

25 58. These and other disparities contributed to Plaintiff's reasonable and good-faith
26 belief that female athletes were being subjected to unequal treatment and denied athletic
27 opportunities because of sex under Title IX and constitutes a discriminatory employment
28 practice.

59. Beginning in approximately March 2023 and continuing through the 2023 and 2024 seasons, Plaintiff repeatedly communicated concerns to Kress regarding what Plaintiff believed was sex-based unequal treatment of female student-athletes on the women's volleyball team. Plaintiff specifically objected that Fleming was permitted to violate practice, uniform, travel, and team-conduct requirements without discipline while female athletes were disciplined for comparable conduct. Plaintiff told Kress that this treatment was unfair to the women on the team and that the female athletes were entitled to equal treatment and protection. Still, Kress did nothing to address the discriminatory treatment of the female players and instead continued to retaliate against Plaintiff for opposing such practices.

60. On April 17, 2024, *Reduxx*, an online, widely circulated publication, revealed that Fleming, a male, was playing on SJSU's women's volleyball team.

61. On or about April 2024, Plaintiff was directed to travel with the beach volleyball team to assist with the team meals, accommodations, and other logistics. Plaintiff was the only female member of the coaching staff.

62. On this trip, when the plane landed, Alexander informed Plaintiff that an article about Fleming was coming out. The article was shared with Plaintiff and during the volleyball tournament Plaintiff complained to Alexander about the effect of SJSU's conduct on the rights and athletic opportunities of female student-athletes. Plaintiff specifically raised Title IX, the history of women's scholarship opportunities, and her concern that female athletes were receiving unequal treatment. Alexander defended SJSU's position and told Plaintiff, in substance, that Fleming would not be leaving the team, and that if Plaintiff had a problem with it, she needed to seek counseling. Plaintiff understood that she must stay out of the matter if she wanted to retain her employment.

63. Throughout Plaintiff's tenure at SJSU, Kress and the SJSU administrators, including Alexander and Smith McDonald, instructed Plaintiff, other coaches and the student athletes not to speak about Fleming's sex or "transgender" status to anyone on or off the team as such speech could be considered "transphobic" and a violation of Title IX or school policy. These instructions were accompanied by warnings concerning employment, scholarship, or team

1 status. These repeated warnings to suppress speech and deter Plaintiff from exercising her rights
2 under Title IX created an environment of fear and intimidation, causing females, including
3 Plaintiff, to remain silent about their concerns.

4 64. SJSU used intimidation to keep Plaintiff quiet by threatening her job, and by
5 assigning a “watch dog,” Lauryn Miller (the Assistant Athletic Director of Diversity, Equity &
6 Inclusion), to observe her in practices and accompany her during team travel.

7 65. While preparing hotel room assignments for a road trip, Plaintiff suggested that
8 Fleming receive the single room available because the trip included an odd number of players.
9 Plaintiff made that suggestion to avoid assigning Fleming to share a room with a female
10 teammate. Kress rejected Plaintiff’s suggestion. Rather, when Fleming specifically requested to
11 room with either Brooke Slusser or Brooke Bryant, Kress granted that request. Slusser
12 complained to Plaintiff about the room assignments with Fleming, but Plaintiff did not control
13 the assignments. Plaintiff advised Slusser to bring the issue up with Kress, as she had, explaining
14 that she requested that Fleming have his own room.

15 Public Disclosure and Plaintiff’s Continued Advocacy

16 66. Shortly after the *Reduxx* article revealed on April 17, 2024, that Fleming was a
17 male playing on SJSU’s women’s volleyball team, *Outkick* published a similar article.

18 67. On or about April 18, 2024, immediately after the *Reduxx* article was published,
19 Plaintiff discussed the matter with Alexander, who was with her at the beach volleyball match.
20 Plaintiff again objected to what she believed was sex-based unequal treatment resulting from
21 Fleming’s participation on the women’s team. Alexander told Plaintiff, in substance, that if
22 Plaintiff did not agree with SJSU’s decision, she needed to leave the team.

23 68. A team meeting was called the day following the publication of the *Reduxx*
24 article, with the coaching staff and administrators, in which Smith McDonald reiterated that the
25 coaching staff was required to support Defendant’s decision and should leave the team if they
26 disagreed.

27 69. During that meeting, Fleming, along with Alexander, Smith McDonald, and
28 Kress, informed the entire team of Fleming’s “transgender” identification.

1 70. Upon information and belief, the team players held their own informal meeting
2 without the coaching staff. Fleming informed the team of his “transgender” status. During this
3 informal meeting, Fleming told the team that if he was hurting the team, he would quit. The team
4 captains asked Kress, on multiple occasions, to ask Fleming to quit, including during the team
5 meeting with the coaches.

6 71. Upon information and belief, Kress berated Co-Captains Slusser and Brooke
7 Bryant for asking that Fleming leave the team. Kress was unsupportive of their feelings.

8 72. Following Plaintiff’s increasing vocal complaints to Kress and Alexander, SJSU
9 administrators assigned Miller to attend practices and monitor Plaintiff. Plaintiff’s travel van
10 assignment was also changed so that Miller traveled in Plaintiff’s van. Plaintiff believes that
11 Miller was required to be with Plaintiff to ensure that she did not speak of Fleming’s male sex.
12 This monitoring was not imposed on other coaches.

13 73. During the summer of 2024, after Slusser participated in the Mountain West
14 Conference team at the World Challenge, Slusser reported concerns to Plaintiff and Kress
15 regarding Fleming’s participation on the women’s team. Slusser stated that she believed the
16 participation was unfair to female athletes and created physical-safety concerns, and that players
17 from other conference teams were discussing protests or refusals to compete against SJSU.

18 74. In September 2024, at Kress’s request, Smith McDonald addressed the team
19 because team members wanted to speak out about their views regarding Fleming’s participation.
20 Smith McDonald instructed the players and the coaches that, if asked about Fleming’s
21 participation, they should respond that it was “not their story to tell,” told them Fleming was
22 entitled to privacy, and warned them to be cautious when speaking about Fleming’s participation
23 on the team. Smith McDonald said Plaintiff and the athletes were not to speak to the press.

24 75. At a subsequent team meeting convened by Kress in September 2024, a player
25 stated, “I feel like we were lied to Why isn’t anyone sticking up for us?” Smith McDonald
26 responded that she had “tried to explain keeping a low temperature six weeks from the election
27 [because] people would love to blow this up.” The player responded, “I feel like we’re being
28 silenced,” and Slusser was observed “nodding furiously” at that comment. Other players stated,

1 “I didn’t sign up for this,” and asked why they could not discuss a matter that was already
2 publicly known. Smith McDonald reiterated, “Again, I would ask yourself if this is your story
3 to tell?”

4 76. Plaintiff alleges that Smith McDonald’s own stated rationale—“keeping a low
5 temperature six weeks from the election”—demonstrates that the speech restriction she
6 personally articulated and enforced was motivated by political and public-relations
7 considerations, and not by any legitimate, narrowly tailored institutional interest, and that Smith
8 McDonald was aware her instruction was causing players, including Slusser, to feel silenced.
9 Nor was any consideration being given to the impact on the female athletes.

10 77. The revelation about Fleming’s sex spread through social media platforms, most
11 notably by Riley Gaines, who posted video of Fleming striking the ball against Iowa State on
12 September 2, 2024, with 3.2 million views on X (formerly Twitter), and again on October 18,
13 2024, striking the ball into the face of a female opponent with such velocity that the player fell
14 to the court. The latter post received 4.5 million views on X.

15 78. Beginning in September 2024, various collegiate women’s volleyball teams
16 began forfeiting games rather than play against SJSU, which had a male on its roster, to protect
17 fairness and the safety of their players. At least four universities refused to compete against
18 SJSU.

19 79. In late September 2024, the Co-Captain of the volleyball team, Brooke Slusser,
20 joined a lawsuit against the NCAA for its policy allowing males to compete in women’s sports.
21 She was motivated in part by the participation of male Fleming on the SJSU women’s volleyball
22 team.

23 80. On or about September 23, 2024, Slusser also directly notified SJSU that she was
24 joining the lawsuit described above, and that her notice to SJSU raised Title IX claims against
25 Defendant stemming from the conduct of Kress, Alexander, and Smith McDonald. As alleged
26 in greater detail below, Kress subsequently engaged in a sustained pattern of retaliatory conduct
27 against Slusser because of that notice and her related Title IX activity. Kress was not suspended
28 after Slusser raised her Title IX claim against him.

1 81. Kress personally described women who opposed Fleming's participation on the
2 team as "hateful."

3 82. Slusser spoke publicly about Fleming's sex on Outkick on September 20, 2024,
4 and on *The Megyn Kelly Show* on October 13, 2024. Slusser revealed that Fleming admitted to
5 her that he was really a male on or around the date of the publication of the *Reduxx* article.

6 83. In an October 17, 2024 interview with the Associated Press, Mountain West
7 Conference Commissioner Gloria Nevarez indicated that Fleming was a male, stating in relevant
8 part: "I'm learning a lot about the issue . . . I don't know a lot of the language yet, or the science,
9 or the understanding nationally on how this issue plays out."

10 84. Plaintiff also complained to Kress that his preferential treatment of Fleming was
11 unfair to the female athletes. Plaintiff explained that women historically had been subjected to
12 discrimination in athletics and were entitled to protection. Kress rejected Plaintiff's concerns,
13 accused her of focusing on Fleming because Fleming was male, and warned Plaintiff that
14 continuing to raise or disclose the issue could jeopardize her employment.

15 85. Plaintiff supported Slusser's concerns and urged Kress to address them. Kress
16 became angry, dismissed the possibility that other teams would protest, and reported the
17 conversation to Alexander. Thus, by the summer of 2024, both Kress and Alexander knew that
18 Plaintiff was supporting a female student-athlete who was raising sex-discrimination and Title
19 IX concerns. And Kress knew that Plaintiff's objections were motivated in part by her religious
20 beliefs.

21 86. In August 2024, Kress berated and mistreated player Teya Nguyen so harshly for
22 not passing her running test that she experienced panic attacks. Plaintiff reported this
23 mistreatment to Alexander. Upon information and belief, Kress was not disciplined.

24 87. In the fall of 2024, player Nayeli Ti'a was excoriated by Kress in front of the
25 team for being a few minutes late to the locker room after a losing match. The ferocity of his
26 interaction resulted in both Plaintiff and Ti'a informing Alexander about the incident. Upon
27 information and belief, Kress was not disciplined.
28

1 88. During practices in August 2024, Plaintiff personally observed Fleming striking
2 and blocking the ball with substantially greater force than Plaintiff had observed from female
3 collegiate volleyball players. Female athletes on SJSU's team reported bruising, pain, and fear
4 of being struck in the head, and Plaintiff observed players attempt to avoid Fleming's hardest
5 hits during practice. Plaintiff reported these concerns to Kress. Plaintiff raised these matters
6 because she reasonably and in good faith believed SJSU was providing female athletes unequal
7 protection and subjecting them to risks it would not otherwise impose in a women's athletic
8 program.

9 89. During the 2024 season, female student-athletes, including Brooke Slusser and
10 others, reported to Plaintiff concerns regarding unequal treatment, personal safety, retaliation,
11 and restrictions on their ability to raise Title IX concerns. Slusser specifically raised concerns
12 regarding a male athlete competing on the women's volleyball team. Plaintiff again relayed the
13 athletes' concerns to Kress and urged him to seek administrative intervention and protect the
14 female athletes from retaliation.

15 90. After Slusser and other female student-athletes raised concerns about fairness,
16 equal athletic opportunities, and safety, Plaintiff observed that Kress reduced or ceased his direct
17 communications with Slusser except as needed to oversee her play on the court; directed Plaintiff
18 to communicate with Slusser on his behalf; and spoke negatively about Slusser to other players.

19 91. Following an October 3, 2024 match against Colorado State University, an SJSU
20 women's volleyball player reported to Plaintiff and Kress that Fleming had disclosed SJSU's
21 scouting information to an opposing Colorado State player and discussed leaving portions of the
22 court open so the opposing player could direct hard spikes at Slusser. Plaintiff urged Kress and
23 SJSU to investigate the report and to protect Slusser, understanding it as a potential effort to
24 retaliate against Slusser for her Title IX activity. During that trip, Fleming had also left the hotel
25 against strict instructions from Kress and the undercover police officer hired to watch over the
26 team because of threats the team had received.

27 92. In response, Kress stated he did not believe the report against Fleming but later
28 told Plaintiff the matter had been reported to Alexander and the Title IX Office. He did not

1 discipline Fleming for his violation of his directive not to leave the hotel. Plaintiff was not
2 interviewed concerning the report until on or around November 12, 2024, more than one month
3 later and after Defendant had already suspended her, reinforcing Plaintiff's reasonable and good-
4 faith belief that Defendant was permitting sex discrimination and retaliation against female
5 athletes in violation of Title IX.

6 93. On October 27, 2024, Kress forwarded Plaintiff an email from an attorney, Gary
7 Brickwood, advocating that Slusser lose her playing position, co-captain status, and scholarship
8 because of her public opposition to Fleming's participation. The email also accused Slusser and
9 her mother of hatred toward "transgender" persons. Kress forwarded the email while Plaintiff
10 was supporting Slusser and opposing what Plaintiff believed was sex-based unequal treatment
11 of female athletes. Plaintiff reasonably understood Kress's decision to forward the email as an
12 attempt to intimidate her and as a warning about the consequences Plaintiff could face if she
13 continued supporting student-athletes who asserted Title IX rights.

14 94. On October 29, 2024, Plaintiff submitted a sworn written Title IX complaint and
15 request for investigation to SJSU, the Mountain West Conference, and the NCAA. Under SJSU
16 policy, Plaintiff was a mandatory reporter of Title IX discrimination.² As later confirmed by
17 OCR's own quotation of the complaint in its Letter of Findings, the complaint alleged, in relevant
18 part:

- 19 (1) that SJSU was engaged in illegal discrimination "on the basis of subjective
20 identity";
21 (2) that a female outside hitter was wrongfully refused a women's volleyball
22 scholarship while Fleming was permitted to retain his;
23 (3) that Alexander stated "anyone who disagrees with [Fleming] being on the
24 women's volleyball team needs to get therapy and needs to leave SJSU";
25 (4) that Fleming's physical abilities and strength placed women on the team and
26 opponents' teams at increased risk of injury;

27
28 ² See *Duty to Report*, Off. for Civ. Rts. & Title IX, San Jose State Univ.,
<https://www.sjsu.edu/titleixeo/duty-to-report/index.php> (last visited Sep. 25, 2026).

- 1 (5) that Kress was giving Fleming preferential treatment over the women on the
2 team;
- 3 (6) that women on the team were being denied opportunities and benefits on the
4 basis of sex;
- 5 (7) that University officials took action to dissuade women on the team from
6 filing a complaint or speaking out in opposition to Fleming's participation;
- 7 (8) that Kress retaliated against Slusser after she joined a Title IX lawsuit
8 challenging Fleming's participation; and
- 9 (9) that University officials were not responding properly to student, parent, and
10 Plaintiff's concerns regarding Fleming's participation on the team.

11 Exhibit C at 21.

12 95. On October 31, 2024, SJSU's Title IX office acknowledged receipt of Plaintiff's
13 complaint, requested a meeting, and stated that it intended to contact the student-athletes
14 identified in the complaint. Nevertheless, SJSU did not interview Plaintiff concerning her sworn
15 complaint and the reported threat to Slusser until on or around November 12, 2024. By that time,
16 Defendant had already removed Plaintiff from the volleyball program and placed her on
17 administrative leave.

18 96. The delay in interviewing Plaintiff, in contrast to Defendant's immediate decision
19 to suspend her, supports Plaintiff's allegation that Defendant retaliated against her for seeking
20 protection under Title IX.

21 Retaliatory Suspension

22 97. On or about November 1, 2024, a couple of days after Plaintiff submitted her
23 written Title IX complaint and SJSU's Title IX office acknowledged it, Defendant placed
24 Plaintiff on administrative leave from her position as Associate Head Coach. Plaintiff was orally
25 notified of this action on November 2, 2024, approximately ninety minutes before a scheduled
26 match. Defendant conveyed that decision through Scott McDonald, the Senior Deputy Athletic
27 Director for External Affairs, a man who had not interacted with the team. McDonald stopped
28 Plaintiff from entering SJSU's Spartan Gym and informed her that she was being placed on

1 indefinite administrative leave, effective immediately. Plaintiff believes that McDonald was
2 chosen for this task to further intimidate her, as McDonald was the immediate supervisor of her
3 husband, who was also employed at SJSU.

4 98. Defendant required Plaintiff to surrender her university identification and keys,
5 prohibited her from retrieving her belongings from her office, directed her to leave campus, and
6 instructed her not to return until further notice.

7 99. The official letter notifying Plaintiff that she was placed on administrative leave
8 (“Suspension Letter”) was signed by Joanne Wright and copied to Jeff Konya, Julie Paisant,
9 Mary Quintanar, and Julianne Miyashiro. Before Defendant suspended Plaintiff, the officials
10 responsible for or participating in that decision knew that Plaintiff had repeatedly opposed what
11 she believed was sex-based unequal treatment of female student-athletes and had submitted a
12 formal written Title IX complaint. Those officials knew that the document Defendant accused
13 Plaintiff of providing to the media was Plaintiff’s Title IX complaint reporting alleged sex
14 discrimination and retaliation.

15 100. The Suspension Letter stated that Plaintiff was suspended pursuant to Article 17
16 of the Collective Bargaining Agreement between CSU and the California Faculty Association,
17 based on three categories of asserted grounds: (1) an October 24, 2024 complaint, then under
18 investigation by SJSU’s Title IX Office, alleging that Plaintiff had treated one or more student-
19 athletes differently because of a protected status; (2) Plaintiff’s alleged disclosure of confidential
20 student information, including medical, scholarship, and financial information, in violation of
21 FERPA and CSU policy; and (3) unspecified reports that Plaintiff drank alcohol with student-
22 athletes while traveling for an away game, used derogatory language toward her supervisor, and
23 refused to coach one or more student-athletes. *See Exhibit A.* None of these additional grounds
24 had previously been communicated to Plaintiff, documented in any prior performance record, or
25 raised with her before November 1, 2024. A true and correct copy of Plaintiff’s performance
26 review for year one of her employment with SJSU is attached as Exhibit F.

27 101. Moreover, each allegation is easily refuted. As to treating a player differently
28 because of a protected status, an appeal of Defendant’s final investigation found just the

1 opposite: Whereas Plaintiff would regularly high-five Fleming at the end of matches, after a
2 while, Fleming chose to stop high-fiving Plaintiff, and when asked to high-five Plaintiff, Fleming
3 responded, “fu-- that.” Plaintiff’s behavior obviously could not be understood as treating
4 Fleming differently because of a protected status because Fleming, as everyone now knew, was
5 male, not female.

6 102. Regarding Plaintiff’s alleged disclosure of confidential student information in
7 violation of FERPA, as noted above, everything Plaintiff disclosed was from public or personal
8 knowledge, not student records protected by FERPA. And Kress’s identical behavior during the
9 ESPN interview he conducted later in November 2024—which Defendant viewed as violating
10 FERPA—received no adverse employment action.

11 103. As to the last set of allegations, regarding drinking, Plaintiff was in the airport
12 club room of the airline lounge after a game before a flight home. The players over the age of 21
13 were with her and Plaintiff had a drink. She neither bought players drinks nor encouraged the
14 players to drink with her. Another (male) coach was also in the club room drinking. But Kress
15 made no complaint about his drinking in front of the players. And there was no policy that
16 prohibited drinking after games if the players were 21 or older. Additionally, Kress and Fleming
17 drank together at another airport on a different trip.

18 104. Plaintiff also never used derogatory language towards her supervisor, unlike
19 Kress’s language towards her. And Plaintiff did not direct inappropriate language at any student-
20 athlete.

21 105. Plaintiff also never refused to coach any student-athlete. To the extent this
22 allegation referred to Fleming, Plaintiff’s coaching responsibilities were unrelated to Fleming’s
23 outside hitter position. And, while Plaintiff did coach blocking until Kress removed her from
24 that coaching responsibility, she never refused to coach Fleming or any other player for whom
25 she had coaching responsibility.

26 106. Plaintiff alleges that Defendant’s simultaneous invocation of several previously
27 undocumented and unparticularized grounds for suspension, asserted for the first time
28 immediately after Plaintiff’s October 29, 2024 Title IX complaint and without any prior warning,

1 is itself evidence that Defendant's stated reasons were pretextual and that the true motivating
2 factor was Plaintiff's protected activity and speech.

3 107. Plaintiff further alleges that the October 24, 2024 complaint against her—which
4 the Title IX Office had not yet investigated or substantiated as of the date of her suspension—
5 was lodged only days before Plaintiff's own October 29, 2024 Title IX complaint and her
6 suspension, further supporting an inference of pretext and retaliation for Plaintiff's complaints
7 about unequal treatment.

8 108. The Suspension Letter further directed Plaintiff not to discuss the investigation
9 or its subject matter with any SJSU employee other than University personnel, her union
10 representative, or legal counsel, and directed her to route any contact from student-athletes to
11 Quintanar. Upon information and belief, Scott McDonald warned the athletes that speaking to
12 Plaintiff could jeopardize their scholarships. Plaintiff alleges this directive, imposed
13 contemporaneously with and in addition to the categorical prohibition on discussing Fleming's
14 sex or transgender status alleged above, further restricted Plaintiff's speech regarding matters of
15 public concern.

16 109. Plaintiff is informed and believes, and on that basis alleges, that Kress, as
17 Plaintiff's immediate supervisor, had input into, and influenced, Defendant's decision to suspend
18 Plaintiff, consistent with SJSU's practice, alleged above, of relying on a head coach's input,
19 evaluation, and recommendation in personnel decisions affecting an assistant coach he
20 supervises. Plaintiff alleges that CSU, Wright, Konya (who signed the Offer Letter and
21 Employment Contract) and the other Individual Defendants who formally executed the
22 suspension, relied upon information, characterizations, or recommendations originating with
23 Kress, whose retaliatory and discriminatory motives, as alleged throughout this Fourth Amended
24 Complaint, were a proximate cause of the decision to suspend Plaintiff, regardless of whether
25 Kress signed the suspension letter himself.

26 110. As noted, Defendant asserted that Plaintiff was suspended because she disclosed
27 student information by providing her Title IX complaint to the media. But Plaintiff does not base
28 this action on an asserted right to disclose confidential education records. Plaintiff alleges,

1 instead, that the information she disclosed concerning Fleming's sex and about SJSU's coaching
2 practices, its enforcement of team rules, its travel practices, its player-safety concerns, and events
3 occurring during practices and competition, was learned through her own firsthand observations
4 and experiences as Associate Head Coach, rather than obtained from education records
5 maintained by SJSU, and that Fleming's sex was already public knowledge.

6 111. Plaintiff alleges that she did not disclose personally identifiable information
7 obtained from or contained in an education record maintained by SJSU.

8 112. To the extent Defendant contends that some portion of Plaintiff's complaint
9 disclosed information protected by FERPA or another confidentiality policy, Plaintiff alleges
10 that Defendant selectively invoked that rationale as the purported reason for a suspension
11 imposed after repeated employment threats and approximately one day after SJSU
12 acknowledged Plaintiff's formal Title IX complaint. Similar information concerning Fleming's
13 sex and participation and the resulting controversy had been publicly reported beginning in April
14 2024, and multiple teams had publicly forfeited matches against SJSU because of the presence
15 of a male player on the team before Plaintiff's suspension. Plaintiff alleges that these
16 circumstances, together with the timing and preceding threats, support an inference that
17 Defendant's asserted confidentiality rationale was pretextual.

18 113. FERPA restricts the disclosure of personally identifiable information from a
19 student's education records by an educational institution and its employees acting on the
20 institution's behalf. FERPA does not restrict, and has no application to, a student's own
21 voluntary disclosure of information about himself to other students, to the media, or to the public.
22 Fleming himself voluntarily disclosed his sex and transgender status directly to Slusser, other
23 teammates, and the SJSU coaches, and openly discussed his participation on the team as a trans-
24 identified person. Kress publicly discussed Fleming's transgender status with ESPN reporter
25 Katie Barnes in an interview published November 26, 2024. Yet Kress was not disciplined nor
26 was his speech censored.

27 114. Because the information Defendant characterized as protected under FERPA had
28 already been voluntarily disclosed by Fleming himself and had been extensively and

1 independently reported in the media beginning in April 2024, Defendant's invocation of FERPA
2 as the stated basis for Plaintiff's suspension was not a good-faith application of that policy, but
3 a pretextual justification for retaliating against Plaintiff's protected activity.

4 115. On or about January 31, 2025, Jeff Konya sent Plaintiff a notice of nonrenewal
5 of her position at SJSU. As alleged above, the Suspension Letter provided that Plaintiff's
6 suspension would automatically terminate upon formal notice of disciplinary action or sixty days
7 after its commencement, whichever occurred first—meaning no later than December 31, 2024.
8 Defendant issued no formal notice of disciplinary action during that period. Konya's nonrenewal
9 notice instead issued after that sixty-day period had already lapsed, and while the Title IX
10 Office's investigation into Plaintiff's October 29, 2024 complaint remained pending.

11 Adverse Performance Documentation

12 116. Plaintiff had coached collegiate volleyball since 2005 and consistently performed
13 the responsibilities assigned to her as Associate Head Coach. SJSU's players valued Plaintiff's
14 coaching and support, and multiple players regarded Plaintiff as the coach willing to listen to
15 and communicate their concerns. Before Plaintiff's protected Title IX activity escalated,
16 Plaintiff's first performance evaluation, completed by Kress, rated her overall performance as
17 "Meets Standards," with only one "Needs Improvement" rating in "Professionalism/Individual
18 Development" that was unrelated to the later actions taken against her: "Competitive success of
19 team in conference and post season performance (standing in conference)." *See* Exhibit F. In
20 other words, the only thing Plaintiff needed to improve was for her team to win more games.
21 After Plaintiff's protected activity became known, Kress completed a 2024–2025 evaluation that
22 he signed on January 24, 2025, months after Plaintiff's suspension. The evaluation rated
23 Plaintiff's overall performance as "Needs Improvement." But Plaintiff alleges that this negative
24 evaluation was a pretextual, post hoc attempt to justify her illegal termination. A true and correct
25 copy of Plaintiff's performance review for year two of her employment with SJSU is attached
26 as Exhibit G.

27 117. After Plaintiff began stating concerns about sex-based unequal treatment and
28 supporting female student-athletes who asserted Title IX rights, including her religious

1 objections to a male player on the women's team, Kress materially reduced Plaintiff's
2 responsibilities and access as Associate Head Coach. Among other things, Kress excluded
3 Plaintiff from meetings with players, other coaches, and administrators; stopped regularly
4 communicating with her; and removed or reduced her responsibility for training blocking and
5 middle-position players. Kress would also berate her during practice in front of the athletes,
6 calling her "Trump-loving" or a "Trump lover" and mocking her political affiliation. He did this
7 routinely, finding opportunities when the team was hanging out or while traveling in an attempt
8 to turn the players on the team against her. (Kress knew that Plaintiff was a Republican.) He
9 was not suspended for his hostile behavior towards her.

10 118. After reducing Plaintiff's responsibilities, Kress criticized her performance in
11 areas over which he had reduced or removed her authority. He also reported that Plaintiff was
12 not adequately performing recruiting and communication duties, even though the team met its
13 recruiting targets (targets that were made more difficult to meet with a known male on the team)
14 and Plaintiff had not received comparable criticisms during her prior years working with Kress.
15 The criticisms reflected in Plaintiff's 2024–2025 evaluation arose only after Plaintiff's protected
16 activity and speech and included duties Kress had prevented or limited her from performing. The
17 criticisms were minor, subjective, or based on responsibilities from which Plaintiff had been
18 excluded. They were pretextual.

19 119. Kress's negative criticisms arose only after Plaintiff opposed his treatment of
20 female student-athletes, supported Slusser, and raised Title IX concerns. Before that protected
21 activity, Plaintiff had worked with Kress during multiple prior periods without receiving
22 comparable criticism. The timing, subjective nature of the new criticisms, and Kress's prior
23 threats support an inference that the criticisms were generated to create a record supporting
24 Plaintiff's removal and nonrenewal. Head coaches typically choose their own assistant coaches.
25 Kress's recommendation materially influenced whether Defendant would renew her
26 appointment.

Retaliatory Nonrenewal and Resulting Harm

120. Plaintiff's renewed appointment was scheduled to expire on January 31, 2025. Defendant declined to renew the appointment, thereby terminating Plaintiff's employment effective January 31, 2025.

121. Under SJSU's practices governing renewal of assistant coach appointments, Kress controlled or exercised substantial influence over whether Plaintiff's appointment would be renewed. Specifically, Kress provided personnel information to the appointing authority. Plaintiff's appointment ordinarily would have been renewed if Kress supported renewal. Plaintiff bases this allegation on prior renewal practice.

122. After Plaintiff engaged in protected Title IX activity, Kress reduced Plaintiff's duties, excluded her from communications and meetings, prepared adverse performance documentation, and expressed a desire to remove her, evidencing pretext. Kress undertook those actions with the intention that Plaintiff be removed from the program or that her appointment not be renewed.

123. Defendant considered or materially relied upon Kress's evaluation, recommendation or other adverse input when deciding not to renew Plaintiff's appointment. Kress's retaliatory conduct therefore materially influenced and was a but-for cause of Defendant's nonrenewal decision.

124. Plaintiff alleges that Defendant would have renewed her appointment but for her repeated opposition to sex-based unequal treatment, her support for female student-athletes asserting Title IX rights, her filing of a formal Title IX complaint, her speech about these issues, and her religious beliefs. In deciding not to renew Plaintiff's appointment, Defendant reviewed and relied upon Plaintiff's personnel file. That file contained Plaintiff's Title IX complaint along with other documents.

125. After Plaintiff's repeated internal objections, support for female student-athletes, and her October 29 written Title IX complaint, her suspension approximately one day after SJSU acknowledged the complaint, her continuing exclusion from the volleyball program, her adverse performance documentation, and her nonrenewal formed a continuous sequence of retaliatory

1 conduct and continuing violations of her constitutional rights. These circumstances, including
 2 Kress's employment threats and role in the renewal process, support the inference that
 3 Defendant's asserted confidentiality and performance deficiencies were pretextual and that
 4 Defendant would not have subjected Plaintiff to these actions but for her activity protected under
 5 Title IX and the Constitution.

6 Subsequent Federal Actions and Findings

7 126. On January 20, 2025, President Trump signed Executive Order 14168, Defending
 8 Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal
 9 Government. *See* 90 Fed. Reg. 8516 (Jan. 30, 2025).

10 127. On January 28, 2026, OCR issued its Letter of Findings in response to its
 11 investigation of claims of Title IX violations by SJSU. It concluded after a lengthy investigation
 12 that SJSU violated Title IX with respect to both Plaintiff and the team's female athletes by,
 13 among other things: (a) denying female athletes equal educational opportunities and benefits;
 14 (b) failing to promptly and equitably investigate Title IX complaints submitted by female
 15 athletes; (c) taking actions that discouraged women from participating in the Title IX process;
 16 and (d) subjecting Plaintiff to disparate treatment in employment on the basis of sex, as described
 17 further below. *See* Exhibit C.

18 128. OCR found that both Plaintiff and Kress had complaints filed against them during
 19 the 2024 season relating to alleged Title IX violations and employee-conduct violations, and that
 20 "[d]uring the pendency of the employee conduct investigations, the University suspended
 21 [Plaintiff] (a woman) but chose to not suspend [Kress] (a man), for similar alleged conduct at
 22 the beginning of both investigations." Exhibit C at 32. OCR further found that both personnel
 23 investigations—the investigation into allegations that Plaintiff did not treat Fleming the same as
 24 she treated the women on the team, and the investigation into whether Kress retaliated against
 25 Slusser—were opened by Defendant on the identical date, November 12, 2024, and that both
 26 allegations "involved similar conduct relating to the alleged unauthorized release of Student
 27 information to the public." Exhibit C at 32.
 28

1 129. OCR found that Defendant’s own internal records reflect that “the decision to
2 suspend [Plaintiff] was primarily based on allegations that [Plaintiff] committed a ‘FERPA
3 violation’ when she ‘openly went to the press and trashed a student.’” Exhibit C at 32. OCR
4 found that the personnel investigation into Kress, opened the same date as the investigation into
5 Plaintiff, ultimately included a finding in the investigator’s notes that Kress “crossed the FERPA
6 line in his interview with ESPN.” Exhibit C at 32. Plaintiff is informed and believes that this
7 refers to Kress’s statements to ESPN reporter Katie Barnes, published November 26, 2024—
8 approximately two weeks after the investigation into Kress was opened, and therefore
9 necessarily addressed by the investigator over the course of that investigation rather than at its
10 inception. In that interview, Kress discussed Slusser’s protected Title IX activity by name,
11 stating: “I think Brooke knows that I’m not the biggest fan of some of the things that she’s said
12 in the lawsuit because it did damage to some of our other student-athletes.” Katie Barnes, *Inside*
13 *San Jose State’s polarizing volleyball season*, ESPN (Nov. 26, 2024),
14 <https://tinyurl.com/mr2rwe7x>.

15 130. In that same article, Kress effectively confirmed Fleming’s “transgender”
16 identity, with the reporter stating that “Kress was surprised by the apprehension because he
17 thought everyone had been aware of the player’s gender identity for three years. But even if they
18 weren’t, they’d been playing against her for all that time.” *Id.* Kress’s statement indicates that
19 the other volleyball teams knew of Fleming’s male sex in 2021, and therefore Fleming’s sex was
20 not a secret according to Kress himself.

21 131. OCR found that, notwithstanding the substantially similar nature of these
22 allegations, Defendant suspended Plaintiff, a woman, but did not suspend Kress, a man. OCR
23 also found that Defendant’s own internal records reflect that the decision not to suspend Kress
24 was based, in part, on the improper consideration that suspending him could “spark more media
25 attention.” Exhibit C at 32. OCR further found that officials of Defendant, including the
26 President of the University, personally approved the decision not to suspend Kress based on a
27 stated concern that his suspension would “unduly disrupt the team”—a consideration not
28 extended to Plaintiff. Exhibit C at 32.

1 132. OCR found that Defendant’s own internal records reflect that, upon Kress’s
2 receiving notice of the investigation into his conduct, Defendant’s personnel arranged to have
3 Alexander—described in Defendant’s own records as Kress’s “closest friend at SJSU”—contact
4 him to provide emotional support because he “may need a shoulder to lean on.” Exhibit C at 32.
5 OCR found no comparable record of any similar outreach or support extended to Plaintiff upon
6 her receipt of notice of the investigation into her conduct or upon her suspension.

7 133. OCR further found that a contemporaneous October 17, 2024 email from
8 Defendant’s Title IX coordinator observed that “[t]he team has rallied around [Slusser] and
9 [Plaintiff],” while Kress was “borderline ignored or not even acknowledged,” Exhibit C at 32,
10 reflecting that Defendant’s decision to shield Kress from suspension was not motivated by any
11 legitimate concern for team cohesion, but by his sex.

12 134. OCR concluded, based on the foregoing, that it had “a compliance concern to the
13 effect that the University may have treated [Plaintiff] and women on the indoor volleyball team
14 differently than the University treated men, including [Kress] and Student 1 [Fleming], in
15 violation of Title IX,” and that “the evidence obtained indicates that the University treated
16 [Kress] and Student 1 [Fleming], both men, more favorably than [Plaintiff] and women on the
17 indoor volleyball team.” Exhibit C at 43.

18 135. OCR found additional, independent corroboration of this same pattern of
19 favoritism toward male comparators and those aligned with Fleming’s participation. OCR found
20 that Student 2, a female player, lost her athletic scholarship after sustaining an injury during the
21 2023 season, while Fleming, who was also injured that season and missed more games than
22 Student 2, was permitted to retain his scholarship. OCR further found that Fleming was permitted
23 to violate team rules without facing discipline under circumstances in which female players on
24 the team were disciplined for comparable violations. Plaintiff alleges this recurring pattern of
25 favorable treatment toward Fleming and toward male comparators such as Kress, contrasted with
26 the treatment of Plaintiff and other similarly situated women, is further evidence of the sex-based
27 motivation underlying Defendant’s conduct toward Plaintiff.
28

136. OCR found that multiple complaints were filed against Kress but were not investigated by CSU and that CSU's failure to provide complete and unredacted records concerning the comparative treatment of Plaintiff and Kress was intentional. Plaintiff alleges that Defendant's intentional withholding of comparative personnel records from a federal civil rights investigator is itself evidence of Defendant's consciousness that full disclosure would have further substantiated the disparate treatment alleged herein.

137. Plaintiff alleges that Brooke Slusser, Elle Patterson, and Alysa Sugai each independently alleged serious misconduct by Kress, including retaliation by not talking to Slusser or treating her differently, breaking scholarship promises, non-disclosure of Fleming's sex, permitting Fleming to use locker rooms and share sleeping quarters where female student athletes were undressed, and permitting a male on the female team. Defendant CSU took no disciplinary action against Kress for this misbehavior over an extended period, while suspending and later declining to renew Plaintiff's contract based on disputed, unsubstantiated allegations. Plaintiff alleges that this disparity between Defendant's treatment of the numerous claims made against Kress and its treatment of the claims made against Plaintiff is itself further evidence that Defendant's stated rationale for suspending and not renewing Plaintiff's contract was pretextual, and that Defendant's true motivation was Plaintiff's sex and her protected activity.

The Notice of Investigation Outcome and Its Express Reliance on Plaintiff's Speech

138. In November 2024, Defendant California State University retained the law firm London & Naor, P.C. ("L&N") to investigate Fleming's allegations against Plaintiff. In the Final Investigation Report, one of the findings was that Plaintiff "expressly stated her stance against transgender women playing in women's collegiate sports."

139. Plaintiff alleges, on information and belief, that Defendant's violation finding for the 2024 season relied at least in part upon Plaintiff's statement of her religious and personal views regarding the participation of biological males in women's sports, and that this reliance demonstrates that Defendant disciplined Plaintiff, at least in part, for the content and viewpoint of her protected speech and the exercise of her religious beliefs, rather than solely for conduct independent of that speech.

140. OCR further found that Defendant acknowledged receiving only two of the numerous Title IX complaints related to Fleming’s participation on the team, and that Defendant failed to open an investigation into the majority of the specific allegations raised in Plaintiff’s own October 29, 2024 complaint. CSU ignored all but two of the complaints presented to it.

CSU’s Prior Notice of Serious Misconduct Allegations Against Kress

141. Additionally, a former player coached by Kress at Fairfield University alleged an incident in which Kress physically assaulted her in a hotel room in 1998. *See* Jackson Thompson, *SJSU was told of decades-old allegations against volleyball coach during controversial 2024 season*, Fox Sports (July 7, 2026), <https://tinyurl.com/mr3swaxa>; *SJSU volleyball coach’s alleged assault victim speaks out for the first time since allegations surfaced*, WFMD.com (July 21, 2026), <https://tinyurl.com/mr2xy34r> (“WFMD article”). Plaintiff is informed by this individual and believes, based on public reporting, that this individual separately notified Defendant of these allegations on or about October 24, 2024—five days before Plaintiff filed her own Title IX complaint—and that Defendant’s then-interim Title IX and Gender Equity Officer, Peter Lim, corresponded with this individual, acknowledging in writing “the safety threat that you believe [Kress] presents to SJSU’s volleyball team.” WFMD article.

142. Plaintiff is further informed and believes, based on public reporting, that Defendant took no further action following this correspondence, and that Kress continued to coach and travel with the SJSU women’s volleyball team without interruption or restriction. Plaintiff alleges that Defendant’s handling of this report is consistent with, and corroborates, the pattern of disparate treatment against Plaintiff alleged throughout this Complaint.

Resulting Harm

143. As a result of Defendant’s retaliatory and discriminatory suspension and nonrenewal, Plaintiff lost salary, employment benefits, and other pecuniary compensation she would have received had her employment continued beyond January 31, 2025. Plaintiff also suffered lost professional opportunities, emotional distress, diminished earning capacity, and other measurable economic losses and damages.

V. LEGAL CLAIMS UNDER TITLE IX

COUNT I (Against Defendant CSU)

Retaliation in Violation of Title IX—Suspension (20 U.S.C. § 1681 *et seq.*)

144. Plaintiff realleges and incorporates by reference the factual allegations of all preceding paragraphs as though fully set forth herein.

145. Title IX's private right of action encompasses retaliation by a federally funded educational institution against an individual because that individual complained about sex discrimination. *See Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 174 (2005). A coach may bring such a claim based on retaliation for advocating on behalf of female student-athletes even though the coach was not personally subjected to the underlying discrimination. In the Ninth Circuit, a Title IX retaliation plaintiff must allege protected activity, a materially adverse action, and a causal relationship between the two. *See Emeldi v. Univ. of Oregon*, 698 F.3d 715 (9th Cir. 2012); *Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843 (9th Cir. 2014); *Grabowski v. Ariz. Bd. of Regents*, 69 F.4th 1110 (9th Cir. 2023).

146. Opposition to a practice is protected under this framework where it is based on a reasonable belief that the employer has engaged in a practice that is unlawful under Title IX. Plaintiff's protected activity was, at the time, based on a reasonable and good-faith belief that Defendant was violating Title IX. The reasonableness of that belief has since been independently confirmed through OCR's Letter of Findings, which, applying a preponderance-of-the-evidence standard, concluded that the conduct Plaintiff opposed—the participation policy, the scholarship disparities, the preferential treatment of Fleming, and the suppression of speech—in fact violated Title IX.

147. Plaintiff engaged in protected activity by repeatedly (1) reporting to Kress and Alexander that she reasonably and in good faith believed female student-athletes were being subjected to sex-based disparities in scholarships, athletic opportunities, enforcement of team rules, discipline, and protection from retaliation; (2) supporting student-athletes who asserted Title IX rights; (3) reporting alleged retaliation against those athletes; (4) requesting

1 investigation and protective measures; and (5) submitting her October 29, 2024 sworn Title IX
2 complaint as a mandatory reporter.

3 148. Defendant, including the administrators and employees who participated in the
4 challenged actions, knew of Plaintiff's protected activity before suspending her.

5 149. On or about November 1, 2024—within days of Plaintiff's October 29, 2024 Title
6 IX complaint and Defendant's October 31, 2024 acknowledgment of it—Defendant suspended
7 Plaintiff and removed her from the volleyball program. This action is materially adverse for
8 purposes of Title IX retaliation.

9 150. Defendant's asserted confidentiality and disciplinary rationales for the
10 suspension were pretextual. Defendant suspended Plaintiff before interviewing her concerning
11 the reported discrimination, threats, and retaliation. As set forth above, OCR independently
12 found that Defendant treated a similarly situated male comparator, Kress, more favorably than
13 Plaintiff on substantially identical FERPA-related allegations and alleged mistreatment of other
14 coaches and players, and that Defendant simultaneously invoked several previously
15 undocumented grounds for the suspension immediately after Plaintiff's protected activity,
16 further evidencing pretext.

17 151. Additionally, Plaintiff was harassed, threatened, babysat, and given a negative
18 performance review to deter her or punish her for asserting her rights, which is retaliation. *See*
19 *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) (holding that it is retaliation
20 where "a reasonable employee would have found the challenged action materially adverse,
21 which in this context means it well might have 'dissuaded a reasonable worker from making or
22 supporting a charge of discrimination'" (cleaned up)).

23 152. But for Plaintiff's repeated opposition to what she reasonably believed was sex
24 discrimination, her support for female student-athletes asserting Title IX rights and her October
25 29, 2024 complaint, Defendant would not have suspended her.

26 153. Defendant's suspension of Plaintiff for her advocacy on behalf of female athletes
27 undermines the statutory protections intended by Congress in Title IX and has a chilling effect
28

on other coaches, staff, and players who might otherwise seek to enforce or advocate for sex equality in collegiate athletics.

154. As a direct and proximate result of Defendant's retaliatory suspension of Plaintiff, Plaintiff suffered loss of professional reputation and coaching opportunities, and removal from her coaching duties.

155. Defendant's retaliatory suspension of Plaintiff was willful, intentional, and/or taken with reckless disregard for Plaintiff's federally protected rights.

COUNT II (Against Defendant CSU)

Retaliation in Violation of Title IX—Nonrenewal (20 U.S.C. § 1681 *et seq.*)

156. Plaintiff realleges and incorporates by reference the factual allegations of all preceding paragraphs as though fully set forth herein, including the legal standards set forth in Count I above.

157. Plaintiff engaged in the protected activity alleged in Count I above, including her October 29, 2024 sworn Title IX complaint as a mandatory reporter, and continued to be perceived by Defendant as having engaged in that protected activity throughout the pendency of Defendant's investigation.

158. Defendant, including the administrators and employees who participated in the challenged actions, knew of Plaintiff's protected activity before declining to renew her appointment.

159. On or about January 31, 2025, Konya issued Plaintiff a notice of nonrenewal of her appointment at SJSU, ending her employment. This action is materially adverse for purposes of Title IX retaliation.

160. Defendant's stated rationale for declining to renew Plaintiff's appointment was pretextual.

161. As alleged above, the November 1, 2024 administrative leave letter provided that Plaintiff's suspension would automatically terminate upon formal notice of disciplinary action or sixty days after its commencement, whichever occurred first—no later than December 31, 2024. Defendant issued no formal notice of disciplinary action during that period, and the Title

IX Office's investigation into Plaintiff's October 29, 2024 complaint remained pending when Konya issued the nonrenewal notice a full month after the suspension had already lapsed under its own terms.

162. Kress's retaliatory evaluation and input materially influenced Defendant's nonrenewal decision. As set forth above, OCR independently found that Defendant treated a similarly situated male comparator, Kress, more favorably than Plaintiff on substantially identical FERPA-related allegations and alleged treatment of other coaches and players, and Kress was not suspended, disciplined, or terminated notwithstanding his role in the conduct Plaintiff opposed, further evidencing that Defendant's stated rationale for declining to renew Plaintiff's appointment was pretextual.

163. Additionally, Plaintiff was harassed, threatened, babysat, and given a negative performance review to deter her or punish her for asserting her rights, which is retaliation. *See Burlington N. & Santa Fe Ry. Co.*, 548 U.S. at 68.

164. But for Plaintiff's repeated opposition to what she reasonably believed was sex discrimination, her support for female student-athletes asserting Title IX rights, and her October 29, 2024 complaint, Defendant would not have declined to renew her appointment.

165. Defendant's nonrenewal of Plaintiff's appointment for her advocacy on behalf of female athletes undermines the statutory protections intended by Congress in Title IX and has a chilling effect on other coaches, staff, and players who might otherwise seek to enforce or advocate for sex equality in collegiate athletics.

166. As a direct and proximate result of Defendant's retaliatory nonrenewal of Plaintiff's appointment, Plaintiff has suffered and continues to suffer lost salary, wages, employment benefits, and other pecuniary losses.

167. Defendant's retaliatory nonrenewal of Plaintiff's appointment was willful, intentional, and/or taken with reckless disregard for Plaintiff's federally protected rights.

COUNT III (Against Defendant CSU)**Sex Discrimination in Violation of Title IX****(20 U.S.C. § 1681 *et seq.*; 34 C.F.R. § 106.51)**

168. Plaintiff realleges and incorporates by reference the factual allegations of all preceding paragraphs as though fully set forth herein.

169. Title IX and its implementing regulations prohibit discrimination on the basis of sex in employment by any recipient of federal financial assistance. 34 C.F.R. § 106.51(a) provides that “[n]o person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment . . . under any education program or activity operated by a recipient which receives Federal financial assistance.” 34 C.F.R. § 106.51(b)(2)–(3) further extends this prohibition to decisions regarding termination, layoff, and compensation of employees.

170. At all relevant times, Defendant was a recipient of federal financial assistance within the meaning of Title IX and operated an education program, including its intercollegiate athletics program, subject to 34 C.F.R. § 106.51.

171. At all relevant times, Plaintiff was employed by Defendant in an education program or activity receiving federal financial assistance, within the meaning of 34 C.F.R. § 106.51(a).

172. On or about November 1, 2024, Defendant suspended Plaintiff based on allegations that she committed a violation of the Family Educational Rights and Privacy Act (“FERPA”) by disclosing student information to the media.

173. Defendant’s stated rationale for Plaintiff’s suspension is a misapplication of FERPA and was pretextual.

174. Kress, a man, was separately investigated, beginning the same date as the investigation into Plaintiff, for substantially identical conduct—the disclosure of student information to the media. Over the course of that investigation, which remained open until October 16, 2025, Defendant’s own personnel determined that Kress had “crossed the FERPA

1 line in his interview with ESPN,” referring to statements Kress made to ESPN on or after
2 November 26, 2024.

3 175. Notwithstanding the substantially similar nature of the allegations against
4 Plaintiff and Kress, Defendant suspended Plaintiff, a woman, but did not suspend Kress, a man.

5 176. One of the claimed bases for Plaintiff’s suspension was her alleged poor treatment
6 of Fleming. But Slusser complained to CSU that Kress was ignoring her and mistreating her. Yet
7 Plaintiff was suspended, while Kress, the male coach, was not.

8 177. Another claimed basis for Plaintiff’s suspension was her alleged “unprofessional
9 behavior” towards Kress. But Kress’s unprofessional behavior toward Plaintiff, a woman, and
10 the female athletes was ignored.

11 178. Unlike Plaintiff, Kress was not “assigned a watch dog” to monitor his behavior
12 and speech despite multiple complaints from student athletes about his behavior and speech.

13 179. Defendant’s own contemporaneous internal records reflect that the decision not
14 to suspend Kress was based, in part, on the improper consideration that suspending him could
15 “spark more media attention.” But that internal analysis also underscores the disparity in
16 treatment between Kress and Plaintiff, given that Plaintiff’s termination was equally likely to
17 “spark more media attention.” Yet Defendant was willing to incur that risk in terminating
18 Plaintiff.

19 180. Defendant’s own contemporaneous internal records further reflect that officials
20 of Defendant, including the President of the University, personally approved the decision not to
21 suspend Kress based on a stated concern that his suspension would “unduly disrupt the team”—
22 a consideration not extended to Plaintiff, the only female coach, and the coach to whom the
23 female players felt safe to voice their concerns about Fleming.

24 181. Defendant’s own contemporaneous internal records reflect that, upon Kress’s
25 receiving notice of the investigation into his conduct, Defendant’s personnel arranged to have
26 Alexander—described in Defendant’s own records as Kress’s “closest friend at SJSU”—contact
27 him to provide emotional support because he “may need a shoulder to lean on.” Defendant
28 maintains no comparable record of any similar outreach or support extended to Plaintiff upon

1 her receipt of notice of the investigation into her conduct or upon her suspension. And no such
2 outreach or support was provided to her.

3 182. A contemporaneous October 17, 2024 email from Defendant's Title IX
4 coordinator observed that "[t]he team has rallied around [Slusser] and [Plaintiff]," while Kress
5 was "borderline ignored or not even acknowledged"—reflecting that Defendant's decision to
6 shield Kress from suspension was not motivated by any legitimate concern for team cohesion,
7 but by his sex and by the sex of Fleming, whose full participation on the team Kress had long
8 protected.

9 183. The disparate treatment described above was not based on any legitimate,
10 nondiscriminatory reason. Defendant afforded more favorable treatment to Kress, a similarly
11 situated male employee accused of substantially identical alleged misconduct, than it afforded
12 to Plaintiff, because of Plaintiff's sex. But for Plaintiff's sex, Defendant would not have
13 suspended and subsequently declined to renew Plaintiff's employment on the stated basis alleged
14 herein.

15 184. On January 28, 2026, OCR issued a Letter of Findings concluding, among other
16 things, that Defendant's disparate treatment of Plaintiff and Kress raised a compliance concern
17 regarding sex discrimination in employment under Title IX, stating that "the evidence indicates
18 that [Plaintiff], a woman, was immediately suspended in conjunction with allegations of a
19 FERPA violation, whereas [Kress], a man, was not suspended despite facing similar FERPA
20 allegations." Exhibit C at 32.

21 185. As a direct and proximate result of Defendant's discriminatory conduct, Plaintiff
22 has suffered and continues to suffer lost wages, salary, employment benefits, and other pecuniary
23 losses.

24 186. Defendant's discriminatory actions were willful, intentional, and/or taken with
25 reckless disregard for Plaintiff's federally protected rights.

1 **VI. U.S. CONSTITUTIONAL CLAIMS (42 U.S.C. § 1983)**

2 **COUNT IV: Violation of the Free Exercise Clause (42 U.S.C. § 1983)**

3 **(Against Defendant Kress in his individual capacity, and against Defendant Teniente-**
 4 **Matson in her official capacity for prospective declaratory and injunctive relief)**

5 187. Plaintiff realleges and incorporates by reference the factual allegations of all
 6 preceding paragraphs as though fully set forth herein.

7 188. The Free Exercise Clause of the First Amendment, applicable to the States
 8 through the Fourteenth Amendment, protects an individual's right to hold and express sincere
 9 religious beliefs, and prohibits government officials from retaliating against an individual
 10 because of the religious character of that individual's beliefs or expression.

11 189. A public employer's adverse action against an employee for religious expression
 12 made in the employee's individual, rather than official, capacity is subject to First Amendment
 13 scrutiny. *See Kennedy v. Bremerton School District*, 597 U.S. 507 (2022). Government action is
 14 not neutral, and violates the Free Exercise Clause, where it is "specifically directed at" religious
 15 beliefs and where the government official acts with hostility toward the religious beliefs of the
 16 person affected. *Kennedy*, at 526 and *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rts. Comm'n*,
 17 582 U.S. 617, 638–39 (2018). Government action that is not neutral in the treatment of religious
 18 and comparable secular conduct is subject to strict scrutiny. *See Tandon v. Newsom*, 593 U.S.
 19 61 (2021).

20 190. Plaintiff is a practicing Christian who holds a sincere religious belief that God
 21 created human beings male and female. Plaintiff, in her individual capacity, repeatedly expressed
 22 this belief to Kress, in the course of her opposition to Fleming's participation on the women's
 23 team. In those conversations, Kress was acting as Plaintiff's supervisor.

24 191. Defendant Kress knew from Plaintiff's repeated statements to him and from their
 25 approximately two-decade professional relationship that Plaintiff's opposition to Fleming's
 26 participation on the women's team was grounded in her sincere religious beliefs regarding sex
 27 and creation. Consistent with her sincerely held religious beliefs, Plaintiff could not personally
 28

1 affirm a proposition about sex that she believed to be false. Kress’s punitive response burdened
2 that identified religious belief.

3 192. Plaintiff’s religiously motivated statements to Kress, including that “God made
4 man and woman” and that she could not in good conscience treat a male athlete as a female,
5 expressed her personal religious convictions. Defendant CSU’s own October 16, 2025 Final
6 Investigation Report and Notice of Investigation Outcome, described above, identify Plaintiff as
7 having “expressly stated her stance against transgender women playing in women’s collegiate
8 sports” among the allegations resolved in a formal finding that Plaintiff violated the
9 Nondiscrimination Policy during the 2024 season. Plaintiff alleges this is direct, documentary
10 evidence that Defendant Kress penalized Plaintiff, at least in part, for the expression of her
11 religious viewpoint, rather than solely for conduct independent of that expression.

12 193. Plaintiff’s religiously motivated speech on this topic—including sharing her
13 personal views with Individual Defendants and the players, and speaking with parents, the
14 media, and outside organizations—“was private speech, not government speech,” *Kennedy*, 597
15 U.S. at 529. As was true of the prayer of Coach Kennedy on the football field after a game,
16 Plaintiff’s religious expression was private speech which could not be restricted under the Free
17 Exercise Clause, *see id.* at 524–27, 544. And, as was true of Fire Chief Cochran’s allegations of
18 being fired for arguing that sex outside of man-woman marriage was sin in his book, Plaintiff’s
19 allegations of being harassed, threatened, suspended and “terminated because [s]he expressed
20 h[er] sincerely held religious beliefs regarding [sex]” gives rise to a free exercise claim, *Cochran*
21 *v. City of Atlanta*, 150 F. Supp. 3d 1305, 1308–09 (N.D. Ga. 2015).

22 194. Defendant Kress subjected Plaintiff to threats of termination, suspension, and
23 nonrenewal, reduced her coaching responsibilities, excluded her from meetings, prepared
24 adverse performance documentation, and influenced her suspension and termination, because of,
25 or motivated in part by, the religious character of Plaintiff’s religious beliefs and expression, not
26 solely because of a secular policy disagreement.

27 195. Kress’s hostility to the religious character of Plaintiff’s beliefs and expression
28 was a but-for cause and, indeed, a proximate cause of Plaintiff’s suspension and termination.

1 Wright, who formally executed the November 1, 2024 suspension, and Konya, who issued the
2 nonrenewal notice, relied on information, characterizations, evaluations and recommendations
3 originally from Kress. A supervisor whose unlawful animus sets into motion an adverse
4 employment action carried out by others is individually liable under § 1983 for the resulting
5 deprivation. *Gilbrook v. City of Westminster*, 177 F.3d 839, 854–55 (9th Cir. 1999); *see also*
6 *Staub v. Proctor Hospital*, 562 U.S. 411, 419-22 (2011) (which holds that an employer may be
7 liable where a supervisor’s discriminatory or retaliatory animus is a motivating factor in an
8 adverse action ultimately effectuated by a formally independent decisionmaker who relies on
9 that supervisor’s input, evaluation, or recommendation). Kress’s religious and viewpoint-based
10 animus toward Plaintiff was a proximate cause of the suspension and nonrenewal decisions.
11 Therefore, Kress is individually liable for the suspension and nonrenewal notwithstanding that
12 he did not sign either the Suspension Letter or Termination Letter.

13 196. Kress’s input and his discriminatory animus toward Plaintiff’s religious
14 viewpoint was a motivating factor in suspending and terminating Plaintiff.

15 197. Defendant Teniente-Matson is sued on this Count in her official capacity only,
16 for prospective declaratory and injunctive relief, and not for damages. As President of SJSU,
17 Teniente-Matson is, and at all relevant times was, the chief executive officer of the campus, with
18 ultimate authority over the appointment, reappointment, reinstatement, and discipline of SJSU
19 athletics coaching personnel, and over the content and maintenance of SJSU’s personnel records
20 concerning those employees. Teniente-Matson’s exercise of that authority over coaching
21 personnel decisions is reflected in Defendant’s own contemporaneous internal records, which
22 show that she personally approved the decision not to suspend Kress during the pendency of his
23 personnel investigation. Exhibit C at 32.

24 198. The violation of Plaintiff’s Free Exercise rights is ongoing. Plaintiff remains
25 excluded from her position as Associate Head Coach as a result of a nonrenewal decision
26 proximately caused by Kress’s hostility to the religious character of Plaintiff’s beliefs and
27 expression. Kress’s 2024–2025 performance evaluation rating Plaintiff’s performance as “Needs
28 Improvement” (Exhibit G), which Kress prepared after Plaintiff’s suspension and which

1 Defendant relied upon in deciding not to renew Plaintiff's appointment, remains in Plaintiff's
2 personnel file maintained by SJSU. That record continues to stigmatize Plaintiff and to impair
3 her eligibility for reappointment at SJSU and her prospects for employment elsewhere in
4 collegiate athletics.

5 199. Defendant Teniente-Matson has the authority to remedy these continuing
6 violations, including by (a) reinstating Plaintiff to her former position as Associate Head Coach
7 or a comparable position, and (b) directing the removal or correction of Kress's 2024–2025
8 evaluation and any other adverse personnel record originating with or based upon Kress's
9 evaluations, characterizations, or recommendations. Plaintiff seeks prospective relief against
10 Teniente-Matson in her official capacity.

11 200. Defendant Kress's conduct toward Plaintiff was specifically directed at, and
12 motivated by hostility toward, the religious character of Plaintiff's beliefs and expression. That
13 conduct was therefore not neutral, and it was not narrowly tailored to serve any compelling
14 governmental interest. The suspension and termination that Kress's hostility proximately caused,
15 together with Plaintiff's continuing exclusion from her position as well as the adverse statements
16 in her personnel records, is likewise unjustified by any compelling governmental interest.

17 201. As a direct and proximate result of Kress's violation of Plaintiff's Free Exercise
18 rights, Plaintiff has suffered and continues to suffer lost wages, loss of professional reputation
19 and opportunities, emotional distress, and other damages, for which Plaintiff seeks damages
20 against Kress in his individual capacity.

21 202. Kress's conduct was willful, intentional, and/or taken with reckless disregard for
22 Plaintiff's federally protected rights, entitling Plaintiff to punitive damages against Kress.
23 Because the violation of Plaintiff's Free Exercise rights is ongoing, Plaintiff is also entitled to
24 prospective relief against Teniente-Matson in her official capacity.

COUNT V: Violation of the Free Speech Clause (42 U.S.C. § 1983)

(Against Defendants Kress, Alexander, Smith McDonald, Wright, Teniente-Matson, Faas, Konya, Paisant, Quintanar, Miyashiro, and Miller, in their individual capacities, and against Defendant Teniente-Matson in her official capacity for prospective declaratory and injunctive relief)

203. Plaintiff realleges and incorporates by reference the factual allegations of all preceding paragraphs as though fully set forth herein.

204. For purposes of this Count, “Individual Defendants” refers only to Defendants Kress, Alexander, Smith McDonald, Wright, Teniente-Matson, Konya, Quintanar, Faas, Paisant, Miyashiro, and Miller and not to Defendant CSU, which is not a defendant as to this Count.

205. The Free Speech Clause of the First Amendment prohibits government employers from imposing prior restraints on employee speech, meaning categorical, prospective restrictions imposed in advance of the speech occurring, unless the government satisfies a heightened burden beyond that applicable to ordinary case-by-case discipline. The government must show that the interests of potential audiences and of present and future employees in a broad range of expression are outweighed by that expression’s necessary impact on the actual operation of the government. A blanket, ex ante restriction on an entire category of public employee speech is subject to a heightened burden beyond ordinary case-by-case discipline. *United States v. Nat’l Treasury Emps. Union*, 513 U.S. 454 (1995). The Ninth Circuit applies that heightened standard to supervisory directives restricting what public employees may say to outsiders about their workplace. *Moonin v. Tice*, 868 F.3d 853, 861–66 (9th Cir. 2017).

206. As a public employee, Plaintiff’s speech on matters of public concern, made in her capacity as a private citizen rather than pursuant to her official duties, is protected by the First Amendment, subject to the balancing test set forth in *Pickering v. Board of Education*, 391 U.S. 563 (1968), and *Garcetti v. Ceballos*, 547 U.S. 410 (2006), assuming that relaxed test applies to coaches while coaching.³ “It is well settled that the state may not abuse its position as

³ The Ninth Circuit has rejected applying *Garcetti* in certain university contexts because “if applied to teaching and academic writing, *Garcetti* would directly conflict with the important

1 employer to stifle ‘the First Amendment rights [its employees] would otherwise enjoy as citizens
 2 to comment on matters of public interest.’” *Eng v. Cooley*, 552 F.3d 1062, 1070 (9th Cir.2009)
 3 (quoting *Pickering*, 391 U.S. at 568). And the Ninth Circuit “employ[s] a sequential five-step
 4 inquiry to determine whether a public employee has alleged a violation of his First Amendment
 5 rights as a result of government retaliation for his speech.” *Clairmont v. Sound Mental Health*,
 6 632 F.3d 1091, 1102–03 (9th Cir. 2011).

7 207. The first step is “whether the plaintiff spoke on a matter of public concern.” *Id.*
 8 at 1103. And the Ninth Circuit has “held that unlawful discrimination is such a matter,
 9 recognizing that the public has an interest in unlawful discrimination in . . . government, and that
 10 employee speech about such discrimination therefore involves matters of public concern even if
 11 it arises out of a personal dispute.” *Ballou v. McElvain*, 29 F.4th 413, 429 (9th Cir. 2022). So
 12 “when government employees speak about . . . wrongdoing [or] misconduct . . . by other
 13 government employees, . . . their speech is inherently a matter of public concern.” *Alpha Energy*
 14 *Savers, Inc. v. Hansen*, 381 F.3d 917, 926 (9th Cir. 2004). Plaintiff spoke about a matter of public
 15 concerns, *i.e.*, sex discrimination against female student-athletes by other government
 16 employees, including the Individual Defendants, and fairness toward and physical safety of
 17 women.

18 208. The second step of the analysis is “whether the plaintiff spoke as a private citizen
 19 or public employee.” *Clairmont*, 632 F.3d at 1103. To determine this courts must undertake a
 20 “fact-intensive nature of the inquiry [as] no single formulation of factors” is dispositive, but
 21 “existing case law and common sense dictate a few guiding principles”: (1) whether the
 22 employee confined communications to the chain of command—a relevant but not necessarily
 23 dispositive consideration; (2) the subject matter of the communication; and (3) whether the
 24

25
 26
 27 First Amendment values previously articulated by the Supreme Court.” *Demers v. Austin*, 746
 28 F.3d 402, 411 (9th Cir. 2014). Hence, “*Garcetti* does not—indeed, consistent with the First
 Amendment, cannot—apply to teaching and academic writing that are performed ‘pursuant to
 the official duties’ of a teacher and professor.” *Id.* at 412.

1 employee spoke in direct contravention of a supervisor’s orders. *Dahlia v. Rodriguez*, 735 F.3d
2 1060, 1074–76 (9th Cir. 2013).

3 209. As to the first, “[w]hen a public employee communicates with individuals or
4 entities outside of his chain of command, it is unlikely that he is speaking pursuant to his duties.”
5 *Dahlia*, 735 F.3d at 1074. And “although it is not dispositive that a public employee’s statements
6 are made internally, . . . [i]f however a public employee takes his job concerns to persons outside
7 the workplace in addition to raising them up the chain of command at his workplace, then those
8 external communications are ordinarily not made as an employee, but as a citizen.” *Id.* (cleaned
9 up). Here, Plaintiff spoke on matters of public concern internally to Individual Defendants and
10 externally, including by submitting her sworn October 29, 2024 complaint to the Mountain West
11 Conference, the Conference’s General Counsel, and the NCAA, none of which is within the
12 SJSU’s chain of command, and by speaking with members of the press about SJSU’s treatment
13 of its female athletes and Flemings’ participation on the women’s team. Speaking to these
14 external actors about a matter of significant public concern, *i.e.*, the participation of a male
15 athlete in women’s collegiate athletics and SJSU’s handling of that issue, was not part of
16 Plaintiff’s official job duties as a coach.

17 210. Second, “if a public employee raises within the department broad concerns about
18 corruption or systemic abuse, it is unlikely that such complaints can reasonably be classified as
19 being within the job duties of an average public employee, except when the employee’s regular
20 job duties involve investigating such conduct, e.g., when the employee works for Internal Affairs
21 or another such watchdog unit.” *Id.* at 1075. Here Plaintiff did exactly that—raised broad
22 concerns about discrimination which were not part of her job duties to investigate.

23 211. Plaintiff’s status as a mandatory reporter under SJSU policy does not convert her
24 speech into employee speech. At most, that policy required her to report discrimination to
25 SJSU’s Title IX Office. No SJSU policy or job duty required Plaintiff to submit her complaint
26 to the Mountain West Conference or the NCAA, or to speak to the press about the sex
27 discrimination; those communications fell outside of her chain of command and employment
28 obligations. Plaintiff’s statements to the press were thus made as a citizen, not an employee.

1 212. Third, “when a public employee speaks in direct contravention to his supervisor's
2 orders, that speech may often fall outside of the speaker’s professional duties.” *Id.* That is what
3 Plaintiff did here after repeatedly being told to stop voicing her concerns. “Indeed, the fact that
4 an employee is threatened or harassed by his superiors for engaging in a particular type of speech
5 provides strong evidence that the act of speech was not, as a ‘practical’ matter, within the
6 employee’s job duties notwithstanding any suggestions to the contrary in the employee’s formal
7 job description.” *Id.* That is exactly what happened here, *i.e.*, Plaintiff was threatened or harassed
8 by multiple Individual Defendants who were superiors for her speech on sex discrimination in
9 the SJSU women’s volleyball program. In sum, Plaintiff was speaking as a private citizen rather
10 than a public employee.

11 213. The final three factors in a First Amendment government retaliation speech claim
12 are “(3) whether the plaintiff’s protected speech was a substantial or motivating factor in the
13 adverse employment action; (4) whether the state had an adequate justification for treating the
14 employee differently from other members of the general public; and (5) whether the state would
15 have taken the adverse employment action even absent the protected speech.” *Clairmont*, 632
16 F.3d at 1103 (cleaned up). All three are satisfied here.

17 214. As to the third factor: Plaintiff’s protected speech was a substantial or one of the
18 motivating factors in her suspension. The Suspension Letter expressly identified as a basis for
19 the suspension that Plaintiff has “publicly shared” information about student-athletes. *See*
20 Exhibit A. Defendant’s own internal records reflect that “the decision to suspend [Plaintiff] was
21 primarily based on allegations that [Plaintiff] committed a ‘FERPA violation’ when she ‘openly
22 went to the press and trashed a student.’” Exhibit C at 32. The information Plaintiff shared
23 concerned Fleming’s sex, which was first learned by Plaintiff’s own observations and not
24 educational records and was already public, and SJSU’s mistreatment of its female athletes,
25 which was also public, and observed by Plaintiff. The Individual Defendants who participated
26 in the suspension cannot show that they would have suspended Plaintiff absent that protected
27 speech.
28

1 215. Kress retaliated against Plaintiff for her speech by threatening her employment,
2 reducing her responsibilities, excluding her from meetings, and preparing pretextual adverse
3 evaluations. Kress's animus toward Plaintiff's speech was a proximate cause of the November
4 1, 2024 suspension and her January 31, 2025 nonrenewal, notwithstanding that the Suspension
5 Letter was signed by Wright and the Termination Letter was issued by Konya. Those decisions
6 relied on information, characterizations, evaluations, and recommendations originating from
7 Kress. Under the subordinate-bias doctrine of *Gilbrook v. City of Westminster*, 177 F. 3d. 839,
8 and *Staub v. Proctor Hospital*, 562 U.S. 411 (2011), Kress is individually liable for the
9 suspension and nonrenewal.

10 216. Additionally, Defendants' reasons for taking both adverse employment actions
11 (suspension and termination), as shown throughout this complaint, were mere pretext as seen by
12 the fact that no investigation occurred until after the suspension and no adverse action was taken
13 against Kress for identical behavior, such as speaking to the media about Fleming's sex and
14 Slusser's Title IX lawsuit. Thus, it was Plaintiff's protected speech that resulted in Defendants'
15 taking adverse action against her, satisfying the requirements for a Free Speech retaliation claim.

16 217. Kress, Alexander, and Smith McDonald also imposed a categorical, prospective
17 prohibition on an entire category of speech, namely—any discussion of Fleming's sex or
18 transgender identification, with any person, on or off the team, at any time—enforced through
19 the threat of termination, rather than through case-by-case discipline following particular
20 statements, as alleged above. That prohibition was not limited to confidential education records.
21 It barred Plaintiff from discussing facts that she observed firsthand and facts that were already
22 public.

23 218. Alexander personally participated in imposing the categorical speech restriction
24 alleged herein, and in threatening Plaintiff for her speech, independent of any liability premised
25 on Kress's animus. When Plaintiff raised Title IX and the unequal treatment of female athletes
26 with Alexander in April 2024, Alexander told Plaintiff that Fleming would not be leaving the
27 team and that if Plaintiff had a problem with it, she needed to seek counseling or needed to "leave
28 the team." Alexander also joined in instructing Plaintiff and other coaching staff not to speak

1 about Fleming's sex or transgender status to anyone on or off the team, under threat of
2 employment consequences, as alleged above, and she knew in the early fall of 2024, that Plaintiff
3 was supporting a student-athlete who was raising Title IX concerns. Alexander's threats would
4 chill an ordinary person from continuing to speak. As the Senior Associate Athletic Director for
5 Student-Athlete Wellness and Leadership Development, Alexander had authority to enforce this
6 speech prohibition. Alexander's own conduct was therefore a direct and independent cause of
7 the deprivation of Plaintiff's Free Speech rights.

8 219. Smith McDonald also personally participated in imposing and enforcing the
9 categorical speech restriction alleged herein, independent of any liability premised on Kress's
10 animus. Smith McDonald personally instructed the coaching staff and team members that
11 Fleming's participation was "not their story to tell." Smith McDonald personally reiterated that
12 instruction after a player stated she felt "silenced," and personally articulated a political and
13 public-relations rationale—"keeping a low temperature six weeks from the election"—for
14 suppressing speech on a matter of substantial public concern, rather than invoking any legitimate,
15 narrowly tailored institutional interest. Smith McDonald's own conduct was therefore a direct
16 and independent cause of the deprivation of Plaintiff's Free Speech rights.

17 220. Wright personally imposed both a speech-based adverse action and a further
18 restriction on Plaintiff's speech. Wright authored and signed the Suspension Letter, which
19 identifies as a basis for the suspension that Plaintiff had "publicly shared" information about
20 student-athletes. *See* Exhibit A. When she did so, Wright knew that Plaintiff had submitted a
21 formal written Title IX complaint and that the Plaintiff was accused of providing the complaint
22 to the media. The Suspension Letter ordered Plaintiff not to reach out to or respond to any
23 student-athlete, and not to discuss the investigation or its subject matter with other SJSU
24 employees or other potential witnesses. This broad prohibition restricted Plaintiff's speech.
25 Wright's own conduct was therefore a direct cause depriving Plaintiff of Free Speech rights.

26 221. Konya independently retaliated against Plaintiff's protected speech by issuing the
27 January 31, 2025 nonrenewal notice that Plaintiff would not be reappointed. *See* Exhibit B.
28 Konya knew of Plaintiff's protected speech, including her Title IX complaint and the allegations

1 that she had publicly shared information about student-athletes, because he was copied on the
2 Suspension Letter. He was also present at meetings in which Alexander or Smith McDonald
3 warned Plaintiff about speaking about Fleming's "transgender" status. The Termination Letter
4 was "based on the contents of [Plaintiff's] Personnel Action File," which contained the
5 Suspension Letter, Plaintiff's Title IX complaint and, upon information and belief Kress's
6 evaluation of Plaintiff. Exhibit B. Konya's termination of Plaintiff was based in substantial part
7 on, or was motivated by, Plaintiff's protected speech. Konya's own conduct was therefore a
8 direct and independent cause of the continuing deprivation of Plaintiff's Free Speech rights.

9 222. Paisant is sued in her individual capacity on this Count for Plaintiff's suspension
10 and nonrenewal. Paisant was SJSU's Senior Director, Employee and Labor Relations and
11 Compliance. Paisant was copied on the Suspension Letter, which identified Plaintiff's public
12 statements as a basis for the suspension, and therefore knew of Plaintiff's protected speech and
13 of the speech-based basis for the suspension. Exhibit A. The suspension was imposed under
14 Article 17 of the Collective Bargaining Agreement between CSU and the California Faculty
15 Association and was therefore a labor relations action within the responsibility of Paisant's
16 office. Both the Suspension Letter and the Termination Letter identify the Collective Bargaining
17 Agreement as the authority for the actions taken, Exhibits A & B, and the Termination Letter
18 identifies Plaintiff's coaching role as "a coaching faculty position." Exhibit B. Upon information
19 and belief, and based on her inclusion in the Suspension Letter as well as her responsibilities for
20 administering the Collective Bargaining Agreement, Paisant participated in the decision to
21 suspend Plaintiff, including by reviewing, advising on, or approving the Suspension Letter
22 before it issued, and participated in the decision not to renew Plaintiff's appointment, knowing
23 that Plaintiff's protected speech was a basis for the adverse actions taken against her.

24 223. Quintanar also personally participated in enforcing the retaliatory speech
25 restriction against Plaintiff. Quintanar was the Senior Associate Athletic Director for Human
26 Resources, Employee and Labor Relations and Compliance, the senior human resources official
27 within the Athletics Department. Quintanar was copied on the Suspension Letter, which
28 identified Plaintiff's public statements as a basis for the suspension, and therefore knew of

1 Plaintiff's protected speech and of the speech-based basis for the suspension. *See* Exhibit A. The
2 Suspension Letter designated Quintanar as the official to whom any student-athlete who
3 contacted Plaintiff was to be directed and to whom Plaintiff was to surrender her University keys
4 and access card. Exhibit A; *see* ¶ 108, *supra*. Quintanar thereby served as the Athletics
5 Department's point of enforcement for the Suspension Letter's prohibition on Plaintiff's
6 communications with student-athletes. Upon information and belief, with knowledge of
7 Plaintiff's protected speech, Quintanar, in her role as the Athletics Department's human
8 resources official, also participated in preparing, processing, or recommending the January 31,
9 2025 nonrenewal notice issued by Konya.

10 224. Miyashiro is sued in her individual capacity on this Count for Plaintiff's
11 suspension and nonrenewal. Miyashiro was SJSU's Director of Academic Employee Relations.
12 *See* ¶ 14, *supra*. Upon information and belief, Miyashiro's office is responsible for employee
13 relations matters involving SJSU employees who, like Plaintiff, are covered by the Collective
14 Bargaining Agreement between CSU and the California Faculty Association, the agreement
15 under which Plaintiff was suspended. *See* ¶ 100, *supra*. Both the Suspension Letter and the
16 Termination Letter identify the Collective Bargaining Agreement as the authority for the actions
17 taken, Exhibits A & B, and the Termination Letter identifies Plaintiff's coaching role as "a
18 coaching faculty position." Exhibit B. Miyashiro was copied on the Suspension Letter, which
19 identified Plaintiff's public statements as a basis for the suspension, and therefore knew of
20 Plaintiff's protected speech and of the speech-based basis for the suspension. Exhibit A; *see* ¶ 99,
21 *supra*. Upon information and belief, and based on her responsibilities and her inclusion on the
22 Suspension Letter, Miyashiro participated in the decision to suspend Plaintiff, including by
23 reviewing, advising on, or approving the Suspension Letter before it issued, and participated in
24 the decision not to renew Plaintiff's appointment, knowing that Plaintiff's protected speech was
25 a basis for the adverse actions taken against her. Plaintiff identifies the allegations in this
26 paragraph concerning Miyashiro's participation in the suspension and nonrenewal as factual
27 contentions that are likely to have evidentiary support after a reasonable opportunity for further
28 investigation or discovery. Fed. R. Civ. P. 11(b)(3).

1 225. Miller also personally participated in enforcing the speech restriction alleged
2 herein. Miller was SJSU's Assistant Athletic Director of Diversity, Equity & Inclusion. Although
3 Miller had no coaching or team-operations responsibilities for the women's volleyball program,
4 she began attending Plaintiff's volleyball practices and was assigned to travel in Plaintiff's van,
5 after Plaintiff's increasing complaints to Kress and Alexander about the treatment of the female
6 athletes. This monitoring was not imposed on any other coach. Upon information and belief,
7 Miller's responsibility was to ensure that Plaintiff did not speak of Fleming's male sex or, if she
8 did, to report such comments to more senior SJSU officials, including the individual Defendants.
9 Miller's personal monitoring of Plaintiff was also designed to intimidate her and to force her to
10 treat Fleming as a female. Miller's targeted monitoring would chill an ordinary person from
11 continuing to speak, and therefore Miller's own conduct was a direct means of enforcing the
12 categorical speech restriction alleged herein.

13 226. Teniente-Matson is sued in her individual capacity for the nonrenewal of
14 Plaintiff's appointment. As President of SJSU, she had ultimate authority over, and was
15 ultimately responsible for, personnel decisions made by her subordinates, including the decision
16 to decline to renew Plaintiff's appointment. The Termination Letter states that it was issued "[o]n
17 behalf of President Teniente-Matson and based on the contents of [Plaintiff's] Personnel Action
18 File." Exhibit B. Teniente-Matson therefore made or authorized the nonrenewal decision. When
19 she did so, she knew of the speech-based allegations against Plaintiff. Defendant CSU's records
20 reflect that Teniente-Matson personally approved the decision not to suspend Kress in a
21 personnel investigation opened the same day as the investigation into Plaintiff and involving
22 "similar conduct relating to the alleged unauthorized release of Student information to the
23 public." Exhibit C at 32. The Personnel Action File on which the nonrenewal expressly rested
24 contained the Suspension Letter, which identified Plaintiff's public statements as a basis for her
25 suspension, together with Plaintiff's Title IX complaint. Exhibit A. Teniente-Matson thus
26 authorized an adverse action against Plaintiff, who had spoken publicly against Fleming's
27 participation, while approving more favorable treatment of Kress, whose public statements about
28 Fleming and Slusser were the subject of similar allegations.

1 227. Teniente-Matson is also sued on this Count in her official capacity for prospective
2 declaratory and injunctive relief. As the official on whose behalf Plaintiff's nonrenewal was
3 issued, Teniente-Matson has authority over Plaintiff's reappointment and reinstatement and over
4 the content of Plaintiff's Personnel Action File. Exhibit B. The violation is ongoing. Plaintiff
5 remains excluded from her position; her Personnel Action File continues to contain the
6 Suspension Letter and, upon information and belief, Kress's 2024–2025 evaluation; and
7 Defendant continues to maintain the October 16, 2025 finding that Plaintiff violated the
8 Nondiscrimination Policy based in part on her having "expressly stated her stance against
9 transgender women playing in women's collegiate sports." Plaintiff seeks reinstatement to her
10 former position or a comparable position, and removal or correction of those records, against
11 Teniente-Matson in her official capacity.

12 228. Plaintiff seeks damages against each Defendant on this Count only in his or her
13 individual capacity and seeks prospective declaratory and injunctive relief only against Teniente-
14 Matson in her official capacity.

15 229. Faas is sued in his individual capacity for Plaintiff's suspension and nonrenewal.
16 At the time of the suspension, Faas was SJSU's Vice President for Administration and Finance
17 and oversaw University Personnel, the office headed by Wright who issued the Suspension
18 Letter. University Personnel had primary responsibility for administering the Collective
19 Bargaining Agreement identified in the Suspension Letter and the Termination Letter as
20 authority for the suspension and nonrenewal. Upon information and belief, Faas reviewed and
21 approved Wright's decision to suspend Plaintiff, including the stated basis that Plaintiff had
22 publicly shared information about student-athletes, knowing that the information at issued
23 concerned Plaintiff's Title IX complaint and her public statements regarding Fleming's
24 participation on a female team. Faas had decision-making authority regarding whether to
25 suspend or terminate Plaintiff's employment, consistent with his employment at SJSU. As the
26 executive overseeing University Personnel, Faas was the most senior official beneath Teniente-
27 Matson with responsibility for administering the Collective Bargaining Agreement. Upon
28

1 information and belief, Faas reviewed and approved the decision not to renew Plaintiff's
2 contract.

3 230. Additionally, “forbidding [Plaintiff] from describing h[er] views on gender
4 identity . . . silenced a viewpoint.” *Meriwether v. Hartop*, 992 F.3d 492, 506 (6th Cir. 2021).
5 “That is especially so here because [Plaintiff’s speech] touch[es] on gender identity—a hotly
6 contested matter of public concern.” *Id.* And “[i]f [coaches] lacked free-speech protections when
7 [coaching], a university would wield alarming power to compel ideological conformity.” *Id.*

8 231. By punishing Plaintiff for her speech against allowing males to play in women’s
9 sports but not punishing Kress for his speech supporting allowing males to play in women’s
10 sports, Defendants also engaged in viewpoint discrimination in violation of the First
11 Amendment. *See Matal v. Tam*, 582 U.S. 218, 243 (2017) (observing that under the First
12 Amendment, “viewpoint discrimination is forbidden” (cleaned up)).

13 232. Further, and independent of Kress’s role, Defendant CSU’s own October 16,
14 2025 Final Investigation Report and Notice of Investigation Outcome identify Plaintiff’s having
15 “expressly stated her stance against transgender women playing in women’s collegiate sports”
16 among the allegations resolved in a formal violation finding against her. That finding
17 corroborates that CSU treated the content and viewpoint of Plaintiff’s speech, rather than
18 conduct independent of that speech as a basis for discipline, and it remains part of the ongoing
19 violation for which Plaintiff seeks prospective relief against Teniente-Matson in her official
20 capacity.

21 233. This retaliation for and categorical, ex ante restriction on Plaintiff’s speech
22 regarding a matter of substantial public concern, as well as Defendants’ viewpoint
23 discrimination, were not narrowly tailored, did not serve any interest sufficient to overcome the
24 heightened scrutiny applicable to prior restraints and blanket speech prohibitions on public
25 employees, and were not justified by any legitimate, non-retaliatory administrative interest.

26 234. As a direct and proximate result of Individual Defendants’ violation of Plaintiff’s
27 Free Speech rights, Plaintiff has suffered and continues to suffer lost wages, loss of professional
28 reputation and opportunities, emotional distress, and other damages.

235. The Individual Defendants' conduct was willful, intentional, and/or taken with reckless disregard for Plaintiff's federally protected rights, entitling Plaintiff to punitive damages against the Individual Defendants, and to prospective declaratory and injunctive relief against Defendant Teniente-Matson in her official capacity.

COUNT VI: Violation of the Equal Protection Clause (42 U.S.C. § 1983)
(Against Defendants Kress, Wright, Teniente-Matson, and Konya, in their individual capacities, and against Defendant Teniente-Matson in her official capacity for prospective declaratory and injunctive relief)

236. Plaintiff realleges and incorporates by reference the factual allegations of all preceding paragraphs as though fully set forth herein.

237. As used in this Count, "Defendants" refers only to Defendants Kress, Wright, Teniente-Matson, and Konya, in their individual capacities, and to Defendant Teniente-Matson in her official capacity. Defendant CSU is not a defendant as to this Count.

238. The Equal Protection Clause of the Fourteenth Amendment prohibits state actors from intentionally treating similarly situated individuals differently on the basis of sex. Sex-based classifications and sex-based disparate treatment by government actors are subject to heightened scrutiny and must be supported by an "exceedingly persuasive justification." *United States v. Virginia*, 518 U.S. 515, 531 (1996); *Craig v. Boren*, 429 U.S. 190, 197 (1976); *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982).

239. To state a claim for selective or disparate treatment under the Equal Protection Clause, a plaintiff must show that she was treated differently from other similarly situated individuals and that the disparate treatment was motivated by discriminatory intent. *See Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). To state an Equal Protection claim for sex discrimination in public employment, a plaintiff must show that a defendant, through his or her own conduct, intentionally treated her differently from similarly situated employees of the opposite sex because of her sex.

240. Plaintiff, a female coach, was similarly situated to Kress, a male head coach, in all respects material to the disparate treatment alleged herein: both were accused of materially

1 identical FERPA-related disclosures of student information to the media, both were subject to
2 the same personnel investigation process opened on the same date, both had Title IX claims and
3 complaints made against them, both were subordinate to Defendant CSU's disciplinary authority
4 under the same collective bargaining agreement and personnel policies, including being required
5 to comply with Title IX and applicable nondiscrimination policies. Despite that similarity, as
6 alleged above: (a) Plaintiff was immediately suspended before investigation, while Kress was
7 not suspended at all; (b) officials of Defendant, including Teniente-Matson, personally approved
8 the decision not to suspend Kress based on the impermissible considerations that his suspension
9 might "spark more media attention" and would "unduly disrupt the team," considerations never
10 extended to Plaintiff; (c) Plaintiff was terminated, and Kress was not; (d) Plaintiff's behavior
11 and speech were monitored and Kress's was not; (e) Plaintiff's speech was chilled, and Kress's
12 was not; (f) Plaintiff's viewpoint about a male playing on the female team was considered not
13 acceptable and was punished, while Kress's viewpoint was considered acceptable and not
14 punished; and (g) Defendant's own personnel arranged for Alexander—described in Defendant's
15 records as Kress's "closest friend at SJSU"—to give Kress emotional support because he "may
16 need a shoulder to lean on," while Defendants made no comparable outreach to Plaintiff.

17 241. OCR independently reviewed this same disparate treatment and found that "the
18 evidence indicates that [Plaintiff], a woman, was immediately suspended in conjunction with
19 allegations of a FERPA violation, whereas [Kress], a man, was not suspended despite facing
20 similar FERPA allegations," Exhibit C, at 43, and separately found a compliance concern that
21 CSU treated Plaintiff and women on the team differently than it treated men, including Kress, in
22 violation of Title IX, including discipline for rule violations, and responsiveness to complaints
23 of sex discrimination, as alleged above.

24 242. As further alleged above, CSU received sworn allegations from at least three
25 other student-athletes, Slusser, Patterson, and Sugai, implicating Kress or the coaching staff he
26 led in conduct ranging from retaliation to broken scholarship promises to non-disclosure of
27 Fleming's sex, and took no disciplinary action against Kress in response to any of them, in
28 contrast to the immediate suspension of Plaintiff based on disputed, unsubstantiated allegations.

1 Plaintiff alleges that CSU's markedly disparate treatment of the numerous claims made against
2 Kress, as compared to the single claim made against Plaintiff, further shows that Plaintiff was
3 treated disparately based on her sex rather than for any legitimate, nondiscriminatory reason.

4 243. Defendants' disparate treatment of Plaintiff was not substantially related to, and
5 was not necessary to achieve, any important governmental interest, and does not survive
6 heightened scrutiny. The stated justifications for declining to suspend Kress—avoiding media
7 attention and preserving team cohesion—are not legitimate governmental interests and, in any
8 event, were contradicted by CSU's own contemporaneous records showing that the team had, in
9 fact, rallied around Plaintiff and Slusser rather than Kress, as alleged above.

10 244. As head coach, Kress presided over a program in which, as OCR found, a male
11 player was permitted to retain his scholarship and to violate team rules without discipline while
12 similarly situated female players lost scholarships or were disciplined. Consistent with that
13 pattern of favoring males over females, Kress also reduced Plaintiff's responsibilities, excluded
14 her from meetings, prepared a pretextual adverse evaluation, and supplied the information,
15 characterizations, and recommendations on which Plaintiff's suspension and nonrenewal relied,
16 motivated at least in part by Plaintiff's sex. In addition, Kress directed Plaintiff to do the meal
17 planning and find lodging for the team's travel. Kress is therefore individually liable for the
18 resulting suspension and nonrenewal. *See Gilbrook v. City of Westminster*, 177 F.3d 839, 854–
19 55 (9th Cir. 1999).

20 245. Wright, as SJSU's Senior Associate Vice President for University Personnel,
21 signed the Suspension Letter imposing Plaintiff's immediate suspension under Article 17 of the
22 Collective Bargaining Agreement. Exhibit A. Yet Kress was subject to the same agreement and
23 the same personnel policies, and the personnel investigation into Kress was opened on the same
24 date as, and involved alleged conduct similar to, the investigation into Plaintiff. Upon
25 information and belief, Wright, as the official who exercised Article 17 suspension authority
26 over employees covered by that agreement, also participated in the decision not to suspend
27 Kress, and thereby personally imposed a suspension on Plaintiff, a woman, while declining to
28 impose the same measure on Kress, a man, for similar alleged conduct.

1 246. Konya as Director of Athletics, issued the January 31, 2025 notice that Plaintiff's
2 appointment would not be renewed. Exhibit B. Konya also supervised Kress as head coach, yet
3 Kress was neither suspended nor otherwise disciplined, despite multiple complaints against him
4 and the investigator's finding that Kress "crossed the FERPA line" in his interview with ESPN.
5 Konya also signed the Termination Letter, ending the only female volleyball coach's tenure at
6 SJSU. Kress on the other hand, continued as head coach despite multiple claims about his
7 treatment of current female athletes, complaints that reached Alexander, and a former player
8 who raised sexual misconduct claims against him. These allegations included that Kress
9 permitted Fleming, a male, to share sleeping quarters with, and use locker rooms occupied by,
10 female student-athletes without disclosing Fleming's sex to them. Despite knowledge of these
11 allegations, which concerned conduct at least as serious as the allegations against Plaintiff, none
12 of the officials responsible for employee discipline investigated or disciplined Kress.

13 247. Teniente-Matson is sued on this Count in her individual capacity on the basis that
14 she personally approved the decision not to suspend Kress based on considerations, avoiding
15 media attention and team disruption, that were never extended to Plaintiff. Exhibit C at 32.
16 Plaintiff's nonrenewal was then issued "[o]n behalf of President Teniente-Matson." Exhibit B.
17 Teniente-Matson thus personally participated in both sides of the disparate treatment alleged
18 here. She approved favorable treatment of Kress, a man, and authorized the nonrenewal of
19 Plaintiff, a woman, who faced similar (but less serious) allegations. Defendant's own
20 contemporaneous records showing that the team had rallied around Plaintiff while Kress was
21 "borderline ignored" contradict the team-disruption rationale that Teniente-Matson approved,
22 supporting the inference that the difference in treatment was based on sex.

23 248. Teniente-Matson is also sued on this Count in her official capacity for prospective
24 declaratory and injunctive relief. As the official on whose behalf Plaintiff's nonrenewal was
25 issued, Teniente-Matson has authority over Plaintiff's reappointment and reinstatement and over
26 the content of Plaintiff's Personnel Action File. Exhibit B. The violation is ongoing because
27 Plaintiff remains excluded from her position as a result of the nonrenewal. Plaintiff seeks
28

1 reinstatement to her former position or a comparable position, and removal or correction of the
2 adverse records in her Personnel Action File, against Teniente-Matson in her official capacity.

3 249. As a direct and proximate result of Defendants' violation of Plaintiff's Equal
4 Protection rights, Plaintiff has suffered and continues to suffer lost wages, salary, employment
5 benefits, loss of professional reputation and opportunities, emotional distress, and other
6 damages, for which Plaintiff seeks damages against Defendants in their individual capacities.

7 250. Defendants' conduct was willful, intentional, and/or taken with reckless disregard
8 for Plaintiff's federally protected rights, entitling Plaintiff to punitive damages against
9 Defendants in their individual capacities, and to prospective declaratory and injunctive relief
10 against Teniente-Matson in her official capacity.

11 **COUNT VII: Violation of the First Amendment's Freedom of Association**
12 **(42 U.S.C. § 1983) (Against Defendant Kress in his individual capacity,**
13 **and against Defendant Teniente-Matson in her official capacity for**
14 **prospective declaratory and injunctive relief)**

15 251. Plaintiff realleges and incorporates by reference the factual allegations of all
16 preceding paragraphs as though fully set forth herein.

17 252. The freedom to associate protected under the First Amendment includes
18 protection for political association, political belief, and voting choices. *See Elrod v. Burns*, 427
19 U.S. 347 (1976); *Branti v. Finkel*, 445 U.S. 507 (1980). Additionally, this protection applies not
20 just to being fired, but also to any adverse employment action, including harassment. *See Rutan*
21 *v. Republican Party of Illinois*, 497 U.S. 62 (1990). A public employee need not prove he or she
22 was coerced into changing political allegiance or voting differently to show a constitutional
23 violation—the constitutional harm occurs in discouraging employees from engaging in protected
24 activities. *See Heffernan v. City of Paterson*, 578 U.S. 266 (2016). And when a case presents a
25 scenario “where political affiliation alone is concerned” without “the employee’s speech or
26 expression . . . intermixed with a political affiliation requirement,” *Pickering* balancing does not
27 apply, as “one’s beliefs and allegiances ought not to be subject to probing or testing by the
28 government.” *O’Hare Truck Serv., Inc. v. City of Northlake*, 518 U.S. 712, 719 (1996).

1 253. To be sure, “[t]he Supreme Court carved out an exception to this general
2 prohibition in *Elrod*, permitting [adverse employment action] on the basis of political beliefs of
3 those employees in ‘policymaking positions’ so that ‘representative government not be undercut
4 by tactics obstructing the implementation of policies of the new administration, policies
5 presumably sanctioned by the electorate.’” *Hunt v. County of Orange*, 672 F.3d 606, 611 (9th
6 Cir. 2012) (quoting *Elrod*, 427 U.S. at 367). But the Ninth Circuit, consistent with Supreme
7 Court precedent, has held that “the exception is ‘narrow’ and should be applied with caution.”
8 *Id.* And “[t]he essential inquiry in determining whether the *Elrod* ‘policymaker’ exception
9 applies is . . . whether the hiring authority can demonstrate that party affiliation is an appropriate
10 requirement for the effective performance of the public office involved.” *Id.* at 611–12, quoting
11 *Branti*, 445 U.S. at 518).

12 254. That narrow exception does not apply here. Who the associate head coach of a
13 university volleyball team votes for and which political party she affiliates with has nothing to
14 do with being an effective coach.

15 255. With that exception unavailable, the facts here show that Kress violated
16 Plaintiff’s political freedom of association rights. At all relevant times, Kress knew that Plaintiff
17 supported and had voted for President Trump and was a Republican, and Kress routinely
18 castigated her as a “Trump lover” in front of the team’s players to harm her reputation and her
19 relationship with them. SJSU’s student body tends to be left-leaning. Plaintiff also believes Kress
20 weaponized her political affiliation against her, sowing divisiveness between the players and her.
21 Upon information and belief, Plaintiff alleges that Kress’s additional adverse employment
22 actions, such as taking away coaching responsibilities and excluding her from team meetings,
23 were driven at least in part by his animus towards her political association and activity, as shown
24 by the contemptuous remarks that accompanied them.

25 256. This punishment short of outright dismissal violated Plaintiff’s First Amendment
26 rights, just as the Ninth Circuit found that denying a pay raise, directing an annual evaluation to
27 be “reduced from ‘exceeds expectations’ to ‘meets expectations,’” denying an opportunity to
28 interview for a promotion, and “initiat[ing] two internal investigations against [a public

employee],” were retaliatory actions for the political activity of a public employee that did foreclose that employee’s boss from claiming qualified immunity. *Bardzik v. County of Orange*, 635 F.3d 1138, 1143 (9th Cir. 2011). *See also Rutan*, 497 U.S. at 76 n.8 (observing that “even an act of retaliation as trivial as failing to hold a birthday party for a public employee . . . when intended to punish her” can violate the freedom of political association under the First Amendment).

257. So too the First Circuit, in *Bisbal-Ramos v. City of Mayaguez*, 467 F.3d 16 (1st Cir. 2006), affirmed a jury verdict in favor of a public employee who had been deprived of his work duties because he supported a different candidate in a party primary than the candidate supported by everyone else in the office. *See also id.* at 25 (“[S]ubjecting an employee to unreasonably inferior working conditions on grounds of political affiliation could also violate the First Amendment.”). And the Seventh Circuit upheld a jury verdict finding two supervisors liable for political harassment of a public employee associated with a particular political group as violating the First Amendment, even though the employee retained her job, salary, and benefits throughout the campaign of harassment. *See Pieczynski v. Duffy*, 875 F.2d 1331 (7th Cir. 1989).

258. Here there was more than sufficient harassment to establish political discrimination here--from the routine castigation and the reduction in work responsibilities and authority. And while that is enough to establish a First Amendment violation, Plaintiff was also suspended and terminated. The Ninth Circuit likewise recognizes that a campaign of harassment, including disparaging statements made together with other adverse actions, can support a First Amendment retaliation claim. *Greisen v. Hanken*, 925 F.3d 1097, 1113–14 (9th Cir. 2019).

259. Teniente-Matson is sued on this Count in her official capacity only, for prospective declaratory and injunctive relief. As the official on whose behalf Plaintiff’s nonrenewal was issued, Teniente-Matson has authority over Plaintiff’s reappointment and reinstatement and over the content of Plaintiff’s Personnel Action File. Exhibit B. The violation is ongoing because Plaintiff remains excluded from her position as a result of a nonrenewal proximately caused by Kress’s animus toward her political association, and because, upon

information and belief, Kress's 2024–2025 evaluation remains in her Personnel Action File. Plaintiff seeks reinstatement to her former position or a comparable position, and removal or correction of those records, against Teniente-Matson in her official capacity.

260. As a direct and proximate result of Kress's' violation of Plaintiff's First Amendment freedom of association rights, Plaintiff has suffered and continues to suffer lost wages, loss of professional reputation and opportunities, emotional distress, and other damages for which Plaintiff seeks damages against Kress in his individual capacity.

261. Kress's conduct was willful, intentional, and/or taken with reckless disregard for Plaintiff's federally protected rights, entitling Plaintiff to punitive damages against Kress.

262. Plaintiff is also entitled to the prospective declaratory and injunctive relief described above against Teniente-Matson in her official capacity.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Melissa Batie-Smoose respectfully requests that the Court enter judgment in her favor and against Defendant CSU and the Individual Defendants, as set forth below, and award the following relief:

(a) Declaration that Defendant CSU discriminated and retaliated against Plaintiff in violation of Title IX;

(b) Declaration that Defendant Kress, in his individual capacity, violated Plaintiff's rights under the Free Exercise, Free Speech, Freedom of Association, and Equal Protection guarantees; that Defendants Wright, Konya, and Teniente-Matson, in their individual capacities, violated Plaintiff's rights under the Free Speech and Equal Protection Clauses; and that Defendants Alexander, Smith McDonald, Faas, Paisant, Quintanar, Miyashiro, and Miller, in their individual capacities, violated Plaintiff's rights under the Free Speech Clause, all of the First and Fourteenth Amendments to the United States Constitution; and a declaration, against Defendant Teniente-Matson, in her official capacity, that Plaintiff's continuing exclusion from her position or the continuing retention and prospective use of adverse personnel records described herein violate each of those federal constitutional rights;

1 (c) Reinstatement to Plaintiff's former position as Associate Head Coach of the
2 Women's Volleyball team at San Jose State University, or to a comparable position, with all
3 attendant prospective rights, benefits, and seniority, against Defendant CSU on Counts I through
4 III and against Defendant Teniente-Matson in her official capacity on Counts IV through VII;

5 (d) Back pay for lost wages, salary, employment benefits, and other compensation
6 denied or lost to Plaintiff as a result of the violations and conduct alleged herein, against
7 Defendant CSU on Counts I through III to the extent available under the applicable statute, and
8 as compensatory damages against each Individual Defendant, in his or her individual capacity,
9 on Counts IV through VII asserted against that Individual Defendants, in an amount to be
10 determined at trial;

11 (e) Compensatory damages for pecuniary losses against Defendant CSU on Counts
12 I through III to the extent available under the applicable statute and against each liable Individual
13 Defendant, in his or her individual capacity on Counts IV through VII asserted against that
14 Individual Defendant, and compensatory damages for pecuniary losses, including emotional
15 distress, against each liable Individual Defendant on Counts IV through VII, in an amount to be
16 determined at trial;

17 (f) Nominal damages on Counts IV through VII against any Individual Defendant
18 found to have violated Plaintiff's constitutional rights without causing compensable injury;

19 (g) Punitive damages against each Individual Defendant, in his or her individual
20 capacity, on Counts IV through VII asserted against that Individual Defendant, in an amount to
21 be determined at trial;

22 (h) Prospective declaratory and injunctive relief against Defendant Teniente-Matson
23 in her official capacity on Counts IV through VII, requiring the removal or correction of the
24 adverse records in Plaintiff's Personnel Action File described herein that cause continuing harm,
25 including the Suspension Letter, Kress's 2024–2025 performance evaluation, and the October
26 16, 2025 finding that Plaintiff violated the Nondiscrimination Policy, and prohibiting future
27 reliance on those records found to embody a constitutional violation, including in any future
28 employment decision concerning Plaintiff;

(i) Attorneys' fees and costs incurred in connection with this action, including pursuant to 42 U.S.C. § 1988, together with any interest authorized by law; and

(j) Such other and further relief as the Court deems just and proper.

VIII. JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims and issues so triable.

DATED: October 13, 2026

Respectfully Submitted,

/s/ Donald M. Falk

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EXHIBIT A



Joanne Wright
Sr. Associate Vice President
University Personnel

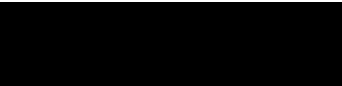
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November 1, 2024

PERSONAL & CONFIDENTIAL
VIA HAND EMAIL
(melissa.batie-smoose@sjsu.edu)

Melissa Batie-Smoose



Dear Ms. Batie-Smoose:

The purpose of this letter is to inform you that, effective immediately, you are temporarily suspended with pay (i.e., placed on administrative leave) from all duties pursuant to Article 17¹ of the Collective Bargaining Agreement between the California State University and the California Faculty Association. Per Article 17, you are suspended for reasons related to the safety of persons or property, the disruption of programs and/or operations, and investigation for formal notice of disciplinary action.

There are several bases for this decision. On October 24, 2024, the University received a complaint that you have treated one or more student-athletes differently due to a protected status – allegations that the University will be investigating under applicable University policy. The University's Title IX Office will be providing you more information on that investigation. Additionally, you have publicly shared protected and private personal information about one or more student athletes you were entrusted to coach, in violation of CSU policy and federal and state privacy laws, including FERPA. Those disclosures include, but are not limited to, confidential medical/personal information of one or more student-athletes, information regarding scholarships and financial circumstances of specific student-athletes, and alleged misconduct by specific student-athletes. Finally, the University has received multiple reports of inappropriate and unprofessional conduct over the last month or more, including, but not limited to, reports of your drinking alcohol with student-athletes on duty while traveling for an away game, unprofessional and insubordinate behavior towards your direct supervisor including use of inappropriate and derogatory language directed at one or more student athletes, and failure and/or refusal to perform the normal and reasonable duties of your position including expressly refusing to coach one or more student athletes. Pursuant to Article 17.6, further release of documents or information at this time would compromise the integrity and successful completion of an investigation and/or endanger individuals who may be involved in an investigation. Retaliatory conduct by any means towards anyone you may perceive to be involved in this matter will not be tolerated and may be the basis for disciplinary action.

During this temporary suspension, you are not to perform any duties associated with your employment with San José State University unless authorized in writing to do so by me. The only exception would be to provide responses and assistance, upon the request of SJSU administration, specifically the Director

¹ Article 17 is available at: <https://www2.calstate.edu/csu-system/faculty-staff/labor-and-employee-relations/Documents/unit3-cfa/article17.pdf>

of Athletics or designee and/or me, as necessary related to any work you have performed as an employee of SJSU. You are not to reach out to or respond to any student-athletes, and you are not to share or disclose any personal information about any student athletes. Doing so would further violate university policy, and state and federal laws, including FERPA. Should any student-athlete reach out to you by whatever medium (i.e., chat, email, phone, etc.), you are to direct them to Mary Quintanar, Senior Associate Athletics Director for Human Resources (mary.quintanar@sjsu.edu or 408-924-1233).

Moreover, in order to preserve the integrity of the investigation, during the pendency of the investigation into these matters, you are ordered not to discuss this investigation or its subject matter with other employees of San Jose State or anyone who could potentially be a witness in this matter, except for University Personnel, your union representative(s) (so long as he or she has not been identified as a subject or witness in this investigation), and/or legal counsel. This directive shall automatically be lifted at the conclusion of the investigation, when the need for accurate collection of information from individuals involved in or who witnessed events will have ended. This directive is not intended to prevent you from engaging in protected concerted activity under the Higher Education Employer-Employee Relations Act (HEERA) ("Act"). You may continue to engage in protected concerted activity under the Act, including but not limited to discussing any other aspects of your employment and working conditions with others, including co-workers. If you are unsure whether discussing certain issues with others would violate this order, you are encouraged to consult with your union representative(s) and/or legal counsel, who may advise you, or you may contact me with any questions. You are required to cooperate in any investigation conducted concerning this matter.

You are directed not to be on any SJSU campus location unless authorized by me in writing. Should the need arise for you to come to any SJSU campus location, you may reach me at joanne.wright@sjsu.edu and/or 408-924-2458. You must immediately make arrangements to submit your SJSU keys and access card to Ms. Quintanar.

Notwithstanding your temporary suspension, you remain a University employee, and as such you are obligated to maintain, preserve and protect the confidentiality of SJSU student athletes' personal information as required by CSU policy and federal and state privacy laws. This requirement also applies to other employee's personal and private information.

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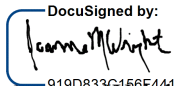
Joanne Wright
Sr. Associate Vice President
University Personnel

San Jose State University
One Washington Square
San Jose, CA 95192-0021

Tel: 408-924-2458
Fax: 408-924-2425
Joanne.Wright@sjsu.edu

Unless you receive earlier notice from me that this suspension is terminated, or has been extended in writing, it shall automatically terminate upon formal notice of disciplinary action, if issued, or sixty (60) days after its commencement, whichever occurs first. A copy of this letter will be placed in your Personnel Action File pursuant to Article 11² of the CBA.

Sincerely,

DocuSigned by:

919D833C166F441

Joanne Wright

Senior Associate Vice President, University Personnel

cc: Jeff Konya, Director of Athletics
Julie Paisant, Senior Director, Employee Relations
Mary Quintanar, Senior Associate Athletics Director for Human Resources
Julianne Miyashiro, Director, Academic Employee Relations
Personnel Action File (PAF) on November 8, 2024

² Article 11 is available at: <https://www2.calstate.edu/csu-system/faculty-staff/labor-and-employee-relations/Documents/unit3-cfa/article11.pdf>

EXHIBIT B



Division of Intercollegiate Athletics
San José State University

One Washington Square
San Jose, CA 95112-0062
408.924.1200
sjsuspartans.com

January 31, 2025

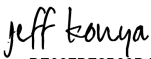
Dear Ms. Batie-Smoose,

On behalf of President Teniente-Matson and based on the contents of your Personnel Action File, I am notifying you that you are not being re-appointed to a coaching faculty position at this time.

You have been evaluated in accordance with the Collective Bargaining Agreement between the California State University and the California Faculty Association, specifically articles 15.23-15.27 as well as standard applicable campus procedures for the evaluation of Coaching faculty unit employees.

The position will be posted and, as is the case for all incumbents, you may apply for the posted position. Pursuant to Provision 12.7 of the Collective Bargaining Agreement, your application materials and personnel file will be afforded careful consideration for a subsequent appointment.

Sincerely,

DocuSigned by:

DE06FBE2B30D424...

Jeff Konya
Director of Athletics

cc: Todd Kress, Head Coach
Personnel Action File on February 7, 2025

EXHIBIT C



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

January 28, 2026

Dr. Cynthia Teniente-Matson, President
San José State University
Office of the President
c/o Sophia Khan, University Counsel – Civil Rights
Office of the General Counsel
Clark Hall 555
One Washington Square
San Jose, CA 95192-0002
Sent via email to: skhan@calstate.edu

Re: OCR Case Number 09256902 – Letter of Findings (violation)

Dear President Teniente-Matson:

This letter is to inform you of the outcome of the investigation conducted by the U.S. Department of Education (Department), Office for Civil Rights (OCR), of San José State University, referenced above.

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106,¹ prohibit discrimination on the basis of sex in any education program or activity receiving federal financial assistance. Recipients of federal financial assistance from the Department are subject to these laws and regulations and to OCR's enforcement jurisdiction. Additional information about the laws OCR enforces is available on OCR's [website](#).

OCR investigated whether San José State University (the University) denies equal education benefits or opportunities to female student athletes through general or athletics-specific participation policies that permit males to participate in intercollegiate athletic programs designated for women, depriving women of equal athletic opportunities. OCR also examined whether San José State University denies female students the equal benefits of any education program or activity by denying females access to female-only intimate facilities, such as sex-separated locker rooms and bathrooms.²

In accordance with OCR's [Case Processing Manual \(February 19, 2025\)](#), OCR has reached its determination by using a preponderance-of-the-evidence standard, and finds that the evidence supports a conclusion of noncompliance with Title IX. As further explained below, Title IX's prohibition of discrimination on the basis of sex does not include "gender identity" or "gender-identity discrimination." "Sex," as used by Title IX, does not mean, and has never meant, "gender identity." Title IX and its implementing regulations have never used or defined the term "gender

¹ This matter cites to the Title IX regulations that are currently in force and that took effect August 14, 2020 (85 Fed. Reg. 30,026-30,579 (May 19, 2020)). *See Tennessee v. Cardona*, 762 F. Supp. 3d 615, 626-28 (E.D. Ky. 2025).

² The terms "bathrooms" and "restrooms" are used interchangeably throughout this letter.

identity.” When recipients of federal funding treat males who identify as females as if they are biological females, they defeat the very purpose of Title IX: to ensure equal opportunities for women and girls. Allowing males to compete in women’s sports is demeaning, unfair, dangerous to women, and denies women the same equal opportunity to participate and excel in competitive sports afforded to men. And allowing males to invade intimate female-only facilities like locker rooms or bathrooms endangers women’s safety, privacy, and dignity, while denying them equal access to educational activities or programs. San José State University allows males to participate in women’s sports and to use women’s locker rooms and bathrooms. The University has done so despite seeing women harmed during sporting events, displaced from podiums in athletic competitions, lose opportunities for advancement in competitions, miss out on critical visibility and recognition, and denied access to previously available athletic competition in programs designed for and dedicated to female-only student athletes. And it has done so despite seeing women suffer privacy and safety harms from their locker-room and bathroom policies—harms that are the obvious result of such policies. Thus, the University is in clear violation of Title IX.

I. Legal Standards

A. Statutory and Regulatory Background

Title IX states a general prohibition on “sex” discrimination in education programs or activities receiving federal funding: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.” 20 U.S.C. § 1681(a).³

After that general ban on sex discrimination, Title IX lists various sex-based practices that the statute does not forbid. Recipients of federal funding, for example, may have traditionally sex-separated schools (*id.* § 1681(a)(5)), fraternities and sororities (*id.* § 1681(a)(6)), Boys and Girls State conferences (*id.* § 1681(a)(7)), and scholarships for “beauty” pageants (*id.* § 1681(a)(9)). Schools may also have father-daughter dances if they provide “reasonably comparable activities” for “the other sex.” *Id.* § 1681(a)(8). And Title IX’s ban on sex discrimination cannot be “construed” to prohibit “separate living facilities for the different sexes.” *Id.* § 1686.

Title IX empowers and directs Federal departments and agencies to issue and enforce regulations to effectuate the provisions of Title IX. *See id.* § 1682. The Department has exercised this authority from the beginning, issuing regulations making clear that schools may have sex-separate bathrooms, athletic programs, among other things. *See* 40 Fed. Reg. 24,128, 24,141-43

³ Title IX defines “educational institution” to include “any public or private . . . institution of . . . higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.” 20 U.S.C. § 1681(c). Similarly, 34 C.F.R. § 106.2(k) defines “educational institution” to include institutions of undergraduate higher education and institutions of graduate higher education. And Title IX defines “program or activity” to include: “a college, university, or other postsecondary institution . . . ; an entire corporation, partnership, or other private organization . . . if assistance is extended to such corporation, partnership, private organization; or which is principally engaged in the business of providing education, . . . ; or any other entity which is established by two or more of the entities described [herein]; any part of which is extended Federal financial assistance” 20 U.S.C. § 1687; *see also* 34 C.F.R. § 106.2(h).

(June 4, 1975). The general prohibition against sex discrimination appears at 34 C.F.R. § 106.31(a). Some specific applications appear at 34 C.F.R. § 106.31(b).

Regarding intimate facilities, the regulations require parity: “A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.” 34 C.F.R. § 106.33.

And with regard to athletics, the regulations first state a general prohibition against sex-segregation:

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

34 C.F.R. § 106.41(a). The regulations then state two exceptions:

(b) Separate teams. Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is [1] based upon *competitive skill* or [2] the activity involved is a *contact sport*. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

34 C.F.R. § 106.41(b) (emphasis added). Further, notwithstanding the general prohibition against sex segregation or the two exceptions in which sex-segregation is permitted, the regulations require that members of both sexes be afforded equal athletic opportunity:

(c) Equal Opportunity. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

- (1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
- (2) The provision of equipment and supplies;
- (3) Scheduling of games and practice time;
- (4) Travel and per diem allowance;
- (5) Opportunity to receive coaching and academic tutoring;

- (6) Assignment and compensation of coaches and tutors;
- (7) Provision of locker rooms, practice and competitive facilities;
- (8) Provision of medical and training facilities and services;
- (9) Provision of housing and dining facilities and services;
- (10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

34 C.F.R. § 106.41(c).

The regulations also expressly prohibit discrimination based on sex in employment in an education program or activity:

No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives Federal financial assistance.

34 C.F.R. § 106.51(a)(1).

B. Title IX Prohibits Discrimination Based on “Sex,” Not “Gender Identity”

Title IX states a general prohibition on “sex” discrimination in education programs or activities receiving federal funding: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.” 20 U.S.C. § 1681(a). The term “sex” is both objective and binary. As used in Title IX, it does not mean, and has never meant, “gender identity.”

When Congress passed Title IX in 1972, contemporaneous dictionaries defined “sex” as biological sex. *See Adams v. Sch. Bd. of St. Johns Cnty.*, 57 F. 4th 791, 812-13 (11th Cir. 2022) (en banc) (consulting nine contemporary dictionaries for definitions); *see id.* at 812-15 (finding Title IX refers to biological sex). What dictionaries establish, Title IX’s context confirms. “Title IX and its implementing regulations include provisions that presuppose sex as a binary classification, and provisions in the Department’s current [and longstanding] regulations . . . reflect this presupposition.” *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. 30,026, 30,178 (May 19, 2020). Section 1681(a)(2), for example, distinguishes between “institution[s] which admi[t] only students of one sex” and “institution[s] which admi[t] students of *both sexes*.” 20 U.S.C. § 1681(a)(2) (emphasis added). Section 1681(a)(8) similarly refers to sex in binary terms: If father-son or mother-daughter activities are provided for “one sex,” then “reasonably comparable activities” must be provided for “the other sex.” *Id.* § 1681(a)(8). And Title IX’s implementing regulation on bathrooms, like other regulations, use the term “sex” in binary and biological terms. *See, e.g.*, 34 C.F.R. § 106.33

(authorizing “separate toilet, locker room, and shower facilities on the basis of sex” and making clear that “such facilities provided for students of *one sex* shall be comparable to such facilities provided to students of *the other sex*”) (emphasis added); 85 Fed. Reg. at 30,178 (“In promulgating regulations to implement Title IX, the Department expressly acknowledged physiological differences between the male and female sexes.”). Thus, all indicators of ordinary meaning show that “sex” in Title IX means biological sex and not influenced by subjective perceptions of one’s own “gender.” See *Alabama v. U.S. Sec’y of Educ.*, No. 24-12444, 2024 WL 3981994, at *4 (11th Cir. Aug. 22, 2024) (“the term ‘sex’ in Title IX ‘unambiguously’ referred to ‘biological sex’ and not ‘gender identity’”).

Consistent with “sex” meaning biological sex in Title IX, on January 20, 2025, and February 5, 2025, the President of the United States issued two Executive Orders that reaffirm the meaning of the term “sex” in Title IX:

(a) “Sex” shall refer to an individual’s immutable biological classification as either male or female. “Sex” is not a synonym for and does not include the concept of “gender identity.”

(b) “Women” or “woman” and “girls” or “girl” shall mean adult and juvenile human females, respectively.

(c) “Men” or “man” and “boys” or “boy” shall mean adult and juvenile human males, respectively.

(d) “Female” means a person belonging, at conception, to the sex that produces the large reproductive cell.

(e) “Male” means a person belonging, at conception, to the sex that produces the small reproductive cell.

Executive Order 14168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, 90 Fed. Reg. 8,615-16 (Jan. 30, 2025); see also Executive Order 14201, *Keeping Men Out of Women’s Sports*, 90 Fed. Reg. 9,279 (Feb. 11, 2025) (incorporating Executive Order 14168’s definitions). And following the Executive Order 14168, the U.S. Department of Health and Human Services published definitions of “sex” and related words (such as “female,” “male,” “girl,” “woman,” “boy,” and “man”), stating that “sex” means “a person’s immutable biological classification as either male or female.”⁴

Title IX and its implementing regulations never use the term “gender identity,” let alone define the term, reinforcing that Title IX prohibits sex discrimination, not “gender identity” discrimination. And that makes sense: “gender identity” is subjective. As the President has explained, “gender identity” “reflects a fully internal and subjective sense of self, disconnected from biological reality and sex and existing on an infinite continuum, that does not provide a meaningful basis for identification and cannot be recognized as a replacement for sex.” Executive Order 14168, 90 Fed. Reg. at 8,616. Indeed, as some courts have explained, “gender identity” is not a “discrete” category but “can describe ‘a huge variety of gender identities and expressions.’”

⁴ U.S. Dep’t of Health and Human Services, Office on Women’s Health, Sex-Based Definitions, <https://womenshealth.gov/article/sex-based-definitions> (Nov. 14, 2025).

L.W. ex rel. Williams v. Skrametti, 83 F.4th 460, 487 (6th Cir.), *aff'd sub nom.*, 605 U.S. 495 (2025).⁵ And according to a once blindly followed but now discredited organization, World Professional Association for Transgender Health (WPATH), someone can be “more than one gender identity simultaneously or at different times (e.g., bigender),” “not have a gender identity or have a neutral gender identity (e.g., agender or neutrois),” “have gender identities that encompass or blend elements of other genders (e.g., polygender, demiboy, demigirl),” or “have a gender that changes over time (e.g., genderfluid).” *Standards of Care for the Health of Transgender and Gender Diverse People*, World Prof. Ass’n Transgender Health, S80 (8th ed. 2022); *United States v. Skrametti*, 605 U.S. 495, 544 (2025) (Thomas, J., concurring) (“WPATH appears to rest [its conclusions] on self-referencing consensus rather than evidence-based research.”); *id.* at 547 (WPATH and other “prominent medical professionals . . . have built their medical determinations on concededly weak evidence” and “have surreptitiously compromised their medical recommendations to achieve political ends.”). Even the ACLU contends that “transgender” means “a broad range of identities and experiences that fall outside of the traditional understanding of gender.” See ACLU, *Transgender People and the Law*, at 19-20.⁶

Simply put, “gender identity” is not “ascertainable at the moment of birth.” *L.W.*, 83 F.4th at 487; *Skrametti*, 605 U.S. at 550-51 (Barrett, J., concurring) (explaining that someone’s status as “transgender” is not “definitively ascertainable at the moment of birth,” that “transgender status does not turn on an immutable characteristic,” that “the transgender population [is not] a discrete group,” and that the group’s “boundaries . . . are not defined by an easily ascertainable characteristic that is fixed and consistent across the group” (cleaned up)); *id.* at 566 (Alito, J., concurring in part and in the judgment) (“Transgender status is not ‘immutable,’ and as a result, persons can and do move into and out of the class. Members of the class differ widely among themselves, and it is often difficult for others to determine whether a person is a member of the class.”); *id.* at 576-77(similar). Or, as the Department of Health and Human Services has explained, “[i]t may be true that a person’s gender identity is subjective[,] . . . but the more critical point is that no tolerably clear definition of ‘gender identity’ has been offered in the first place.”⁷ Quite sensibly, therefore, neither Title IX nor its implementing regulation address “gender identity.”

In short, Title IX’s bar on sex discrimination does not include discrimination on the basis of the subjective perception of one’s own “gender.” As many courts have rightly concluded, “the term ‘sex’ in Title IX ‘unambiguously’ refer[s] to ‘biological sex’ and not ‘gender identity.’” *Alabama*, 2024 WL 3981994, at *4; *accord*, e.g., *Tennessee v. Cardona*, No. 24-5588, 2024 WL 3453880, at *2 (6th Cir. July 17, 2024); *Adams v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 814-15 (11th Cir. 2022) (en banc); *Kansas v. United States Dep’t of Educ.*, 739 F. Supp. 3d 902, 920

⁵ In a recent seminal decision, the Supreme Court rejected an equal-protection challenge to a State’s child-protection law that prohibited providing controversial medical interventions to minors to address gender dysphoria. *United States v. Skrametti*, 605 U.S. 495 (2025). The Court concluded that the challenged law was subject to rational-basis review because it did not classify based on sex or “transgender status.” *Id.* at 510-15, 517-19. The law, the Court explained, easily passed the rational-basis standard because of the “medical and scientific uncertainty” surrounding interventions for “gender dysphoria.” *Id.* at 522-25.

⁶ https://www.aclu.org/sites/default/files/field_pdf_file/lgbttransbrochurelaw2015electronic.pdf.

⁷ *Treatment for Pediatric Gender Dysphoria: Review of Evidence and Best Practices*, U.S. Department of Health and Human Services, 34 (May 1, 2025), [https:// opa.hhs.gov/gender-dysphoria-report](https://opa.hhs.gov/gender-dysphoria-report).

(D. Kan. 2024); *Tennessee v. Cardona*, 737 F. Supp. 3d 510, 530-36 (E.D. Ky. 2024); *Louisiana v. U.S. Dep’t of Educ.*, 737 F. Supp. 3d 377, 399-400 & nn.48-49 (W.D. La. 2024); *Carroll Indep. Sch. Dist. v. U.S. Dep’t of Educ.*, 741 F. Supp. 3d 515, 520-25 (N.D. Tex. 2024).

Contemporaneous post-enactment history confirms Title IX does not include discrimination based on “gender identity.” Shortly after Title IX was enacted in 1972, Congress passed the Javits Amendment, which directed the Department of Education’s predecessor to create regulations “implementing . . . [T]itle IX,” which “shall include” regulations on “intercollegiate athletic activities.” 88 Stat. 484, 612 (1974). The agency then issued regulations that allow sex separation in many contexts—including sports. 40 Fed. Reg. 24,128, 24,141-43 (June 4, 1975).⁸ Those contemporaneous regulations, nearly all of which still exist today, are strong evidence of Title IX’s original public meaning. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024) (“[I]nterpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute’s meaning.”); *id.* at 370 (“Such respect was thought especially warranted when an Executive Branch interpretation was issued roughly contemporaneously with enactment of the statute and remained consistent over time.”).⁹ In fact, that evidence is even stronger here because Congress had the chance to disapprove of these regulations before they went into effect and chose not to. *See Grove City Coll. v. Bell*, 465 U.S. 555, 568 (1984); *N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 530-35 (1982). Reading Title IX’s bar on sex discrimination to wholesale include “gender-identity discrimination,” as some wrongly claim, would eviscerate these contemporaneous regulatory interpretations of Title IX, including the regulation on athletics. That “highly counterintuitive result” cannot be right. *See Yellen v. Confederated Tribes of Chehalis Rsr.*, 594 U.S. 338, 360 (2021).

Congress’s actions for more than 50 years following Title IX’s enactment further confirm that Title IX’s bar on sex discrimination does not include “gender-identity discrimination.” In other statutory contexts, Congress has acted affirmatively to address gender-identity discrimination as a distinct category separate from sex discrimination. For example, when Congress enacted the

⁸ *E.g.*, 40 Fed. Reg. 24,137, 24,142-43 (July 4, 1975) (presently at 34 C.F.R. §106.41(b) (“a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport”)); 40 Fed. Reg. at 24,141 (presently at 34 C.F.R. § 106.43 (“If use of a single standard of measuring skill or progress in physical education classes has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have that effect.”)); 40 Fed. Reg. at 24,141 (presently at 34 C.F.R. § 106.32(b) (A recipient “may provide separate housing on the basis of sex” provided the housing provided “to students of one sex, when compared to that provided to students of the other sex, shall be” proportionate and comparable)); 40 Fed. Reg. at 24,141 (presently at 34 C.F.R. § 106.33 (“A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.”))).

⁹ *See also* Revised Letter of Impending Enforcement Action, Connecticut Interscholastic Athletic Conference, *et al.*, Case Nos. 01-19-4025, 01-19-1252, 01-20-1003, 01-20-1004, 01-20-1005, 01-20-1006, and 01-20-1007, at 34 (Aug. 31, 2020) (looking to contemporaneous actions to demonstrate that “Title IX was passed . . . to protect equal athletic opportunity for students who are biological females, including [in] sex-segregated athletics”).

Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, Pub. L. No. 111-84, Div. E., 123 Stat. 2190 (2009), Congress found that the “incidence of violence motivated by the actual or perceived race, color, religion, national origin, *gender*, sexual orientation, *gender identity*, or disability of the victim poses a serious national problem.” 34 U.S.C. § 30501(1) (emphases added). Similarly in 2013, Congress amended the Violence Against Women Act to create a federal government enforcement action that protected the separate bases of sex and gender identity. *See* 34 U.S.C. § 12291(b)(13)(A) (2013), as amended by Pub. L. No. 113-4, § 3, 127 Stat. 56 (2013) (prohibiting discrimination in certain federally funded programs “on the basis of actual or perceived race, color, religion, national origin, *sex*, *gender identity* (as defined in [18 U.S.C. § 249(c)(4)]), sexual orientation, or disability” (emphasis added)). These post-Title IX enactments show that Congress recognizes the difference between “sex” and “gender identity” and prohibits discrimination based on “gender identity” when it so intends; it did not do so in Title IX. *DHS v. MacLean*, 574 U.S. 383, 394 (2015).¹⁰

C. Title IX’s Exceptions for Sex-Segregated Intimate Facilities and in Athletics Are Rooted in Bona Fide Biological Distinctions Between the Two Sexes

As noted above, Title IX permits recipients to segregate students based on sex in intimate facilities, as long as the facilities “provided for students of one sex shall be comparable to such facilities provided for students of the other sex.” 34 C.F.R. § 106.33. And regarding athletics, such sex-based segregation is permitted “where selection for such teams is [1] based upon *competitive skill* or [2] the activity involved is a *contact sport*.” 34 C.F.R. § 106.41(b) (emphasis added). Both exceptions are based on actual and relevant biological distinctions between males and females.

1. Intimate Facilities

Making distinctions based on relevant biological differences between the sexes is not prohibited sex discrimination under Title IX. Title IX states a general prohibition on “sex” discrimination in education programs or activities receiving federal funding. 20 U.S.C. § 1681(a). Discrimination in Title IX, just as elsewhere, means treating individuals or groups that “are similarly situated differently without sufficient justification for the difference in treatment.” *Alabama Dep’t of Revenue v. CSX Transp., Inc.*, 575 U.S. 21, 26 (2015); *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 174 (2005). Thus, because the two sexes are usually similarly situated when it comes to educational programs, Title IX usually prohibits sex separation in academic programs. *See, e.g.*, 34 C.F.R. § 106.31(b), 106.34(a); *but see* 34 C.F.R. 106.34(b).

Critically, not *all* sex-based classifications are prohibited discrimination under Title IX. Acknowledging material biological differences between the sexes, Congress explicitly clarified

¹⁰ *Bostock v. Clayton County*, 590 U.S. 644 (2020), is not to the contrary. *Bostock*, a Title VI case, does not extend to Title IX, and certainly not to sex-segregated athletics and intimate facilities, which are both expressly authorized under Title IX. Further, even on its own reasoning, *Bostock* would not yield a result different than the one articulated here. Unlike in *Bostock*, males and females are not similarly situated when it comes to athletics and intimate facilities, given their pertinent and real biological differences. Thus, treating all males as males (and all females as females) for the purposes of sex-segregated athletics and intimate facilities, notwithstanding each student’s subjective perceptions of their “gender,” is not, and logically cannot be, prohibited by Title IX.

that Title IX's general bar on sex discrimination must not "be *construed* to prohibit any" federal-funding recipient "from maintaining separate living facilities for the different sexes." 20 U.S.C. § 1686 (emphasis added).

In particular, when students are in a state of undress, the biological differences between the sexes are pronounced and paramount. It is for that reason that Title IX's implementing regulations have, since Title IX's enactment, permitted separation based on sex in intimate facilities, authorizing "separate toilet, locker room, and shower facilities on the basis of sex." 34 C.F.R. § 106.33. That regulation, which was reviewed by Congress before becoming effective, "accurately reflect[s] congressional intent" and reflects the statute's original public meaning. *Grove City*, 465 U.S. at 568; *Loper Bright*, 603 U.S. at 394.

"In light of the privacy interests that arise from the physical differences between the sexes, it has been commonplace and universally accepted—across societies and throughout history—to separate on the basis of sex those public restrooms, locker rooms, and shower facilities that are designed to be used by multiple people at a time." *Grimm*, 972 F.3d at 634 (Niemeyer, J., dissenting). "[T]he privacy afforded by sex-separated bathrooms has been widely recognized throughout American history and jurisprudence. In fact, 'sex-separation in bathrooms dates back to ancient times, and, in the United States, preceded the nation's founding.'" *Adams*, 57 F.4th at 805.

Unsurprisingly, "courts have long found a privacy interest in shielding one's body from the opposite sex in a variety of legal contexts," which is why "[t]he protection of students' privacy interests in using the bathroom away from the opposite sex and in shielding their bodies from the opposite sex is obviously an important governmental objective." *Id.* at 804-05. Including the Supreme Court: The Court acknowledged that admitting women to the Virginia Military Institute for the first time "would undoubtedly require alterations necessary to afford members of each sex privacy from the other sex in living arrangements." *United States v. Virginia*, 518 U.S. 515, 550 n.19 (1996). Indeed, "as then-Professor Ruth Bader Ginsburg noted, 'separate places to disrobe, sleep, and perform personal bodily functions are permitted, *in some situations required*, by regard for individual privacy.'" *Adams*, 57 F.4th at 804 (emphasis in original) (alterations omitted) (quoting Ruth Bader Ginsburg, *The Fear of the Equal Rights Amendment*, *Wash. Post*, Apr. 7, 1975, at A21).

Title IX recognizes as much. It thus allows recipients to assign sex-segregated living facilities, bathrooms, locker rooms, and shower facilities. 20 U.S.C. § 1686; 34 C.F.R. §§ 106.32(b), 106.33. Those rules are grounded in students' privacy, safety, and dignitary interest in using intimate facilities away from students of the opposite sex and in shielding their bodies from students of the opposite sex while in intimate facilities. Conversely, permitting people of the opposite sex into such sex-segregated spaces undermines those privacy, safety, and dignitary interests. *See, e.g.,* Reem Alsalem, *Special Rapporteur on Violence Against Women and Girls, Its Causes and Consequences*, U.N. Doc. A/79/325 at 5/24 (August 27, 2024), <https://docs.un.org/en/A/79/325> (indicating that policies denying female students sex-separated intimate facilities increases the risk of sexual harassment, assault, voyeurism, and physical and sexual attacks in unisex locker rooms and toilets).

Thus, segregating intimate facilities on the basis of each person's subjective perceptions of their own "gender" does not merely read words into the regulation that are not there. It affirmatively violates Title IX by imposing on women and girls the very harms that Title IX and its implementing regulation 34 C.F.R. § 106.33 was intended to prevent. Title IX permits recipients

to segregate intimate facilities based on sex. It *prohibits* them from segregating intimate facilities based on subjective “gender identity.”

2. Contact Sports

Title IX similarly permits recipients to operate sex-segregated athletics programs in sports “the purpose or major activity of which involves bodily contact.” 34 C.F.R. § 106.41(b). There are two rationales for this exception. The first relates to student safety: Women tend to be lighter and smaller than men, thus putting women who are compelled to compete with men in contact sports in a significantly greater risk of danger. (As we discuss further below, the pertinent differences between men and women turn on biology, not subjective perception of one’s “gender.”)

The second rationale for the contact sports exception is similar to the rationale for segregating intimate spaces. Contact sports, such as wrestling and rugby, compel competitors to be in regular close—sometimes intimate—physical contact. The regulations rightly recognize that compelling men and women to wrestle against each other, for example, would often involve unwanted physical contact that is exceptionally intrusive and may even be perceived to be sexual in nature. For younger students, natural curiosity about the differences between the sexes might cause students in exceptionally close physical contact with members of the opposite sex to explore the ways in which their competitor’s body differs from their own. For older students, sexual attraction might motivate a student to engage a competitor in ways that he or she would not have but for that sexual attraction. And for the student being touched, the mere *perception* (even if it is not true) that he or she is being touched due to sexual curiosity or sexual attraction can be exceptionally uncomfortable, distracting, and possibly even traumatic. The need to protect personal privacy could not be greater than where it involves potential unwanted or inappropriate direct physical contact that is or is perceived to be sexual in nature.

The regulations therefore permit recipients to draw a bright line, segregating participation in contact sports on the basis of sex, even if that means that members of one sex are denied the opportunity to play that particular contact sport. *See* 34 C.F.R. § 106.41(b) (distinguishing the competitive skill and contact sport rationales on this point); *but see* 34 C.F.R. § 106.41(c) (demanding “equal athletic opportunity for members of both sexes”).

To be sure, unwanted or inappropriate physical contact, including sexual contact, can and does occur between members of the same sex. But eliminating that from student athletics entirely would require a ban on all contact sports. The regulations, quite rightly, impose no such categorical prohibition. Instead, recognizing that the likelihood of unwanted or inappropriate touching is far greater when members of *different* sexes compete against each other in contact sports, the regulations permit recipients to keep contact sports limited to members of a single sex, who all share the same biological features.

3. Competitive Skill

The regulations further permit recipients to segregate components of their athletics program on the basis of sex when “selection for such teams is based upon competitive skill.” 34 C.F.R. § 106.41(b). The regulations thus acknowledge an obvious truth: men and women are different, not just in appearance but also in their physical abilities.

“It is beyond dispute that, barring rare genetic mutations not at issue here, a person either has male sex chromosomes or female sex chromosomes,” and this biological trait “determines many of the physical characteristics relevant to athletic performance.” *B.P.J. v. W. Virginia State*

Bd. of Educ., 98 F.4th 542, 567 (4th Cir. 2024) (Agee, J., dissenting in relevant part), *cert. granted*, No. 24-43, 2025 WL 1829164 (U.S. July 3, 2025). On average, males and females differ with respect to attributes like height, weight, bone structure, muscle mass, and heart and lung capacity. *See, e.g., id.* at 567-68; *Adams*, 57 F.4th at 819-20 (Lagoa, J., concurring) (discussing scientific literature regarding biological advantages of males over females in many sports). This results in males being stronger and faster than females, all else being equal—*i.e.*, if they have had similar environmental experiences and possess similar genetic traits other than the different sex chromosome.

This biological fact has legal implications. For example, in *United States v. Virginia*, the Supreme Court found that admitting women to a previously all-male military academy “would undoubtedly require” that institution “to adjust aspects of the physical training programs.” 518 U.S. 515, 550 n.19 (1996). Similarly, in *Bauer*, the Fourth Circuit recognized that “[m]en and women simply are not physiologically the same for the purposes of physical fitness programs.” 812 F.3d at 350. “[T]o account for the[se] innate physiological differences,” the FBI has adopted sex-normed physical-fitness standards for special agents: *e.g.*, men must do 30 push-ups and run 1.5 miles in 12 minutes and 24 seconds, whereas women need only do 14 push-ups and run 1.5 miles in 13 minutes and 59 seconds. *See id.* at 343-44; U.S. Fed. Bureau of Investigation, U.S. Dep’t of Justice, Special Agent Physical Requirements, <https://fbijobs.gov/special-agents/physical-requirements>. The Fourth Circuit held that the adoption or implementation of such sex-based standards do not constitute discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a). *Bauer*, 812 F.3d at 351. Congress has likewise recognized that “physiological differences between male and female individuals” warrant sex-based differences in physical-fitness admissions standards at military academies. Pub. L. No. 94-106, Tit. VIII, § 803(a), Oct. 7, 1975, 89 Stat. 537-538 (10 U.S.C. § 7442 note).

So too with regard to Title IX: the regulations permit recipients to separate males and females in their athletics programs to the extent that doing so reflects a difference in the competitive skill of the sexes. 34 C.F.R. § 106.41(b).¹¹

D. Equal Athletic Opportunity is Denied When Men Are Permitted to Play in Women’s Sports

The regulations further require “[a] recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members

¹¹ Though the sexes’ divergence in athletic performance grows in adulthood, it rests on innate biological differences that exist at birth and manifest during childhood. Sex chromosomes give rise to “pre-puberty physical differences that affect athletic performance.” *Adams*, 57 F.4th at 819 (Lagoa, J., specially concurring); *see B.P.J.*, 98 F.4th at 568 (Agee, J., dissenting in relevant part) (“there is evidence that biological boys have a competitive advantage over biological girls even before puberty”). The undeniable physiological differences between males and females provide boys and men with inherent advantages in strength, speed, and physicality that pre-determine the outcome of athletic contests. “Males and females are materially different with respect to the main physical attributes that contribute to athletic performance.” Doriane Lambelet Coleman et. al., *Re-Affirming the Value of the Sports Exception to Title IX’s General Non-Discrimination Rule*, 27 Duke J. Gender L. & Pol’y 69, 92 (2020) (citing *The Role of Testosterone in Athletic Performance*, Duke Ctr. for Sports Law & Policy (Jan. 2019)). https://law.duke.edu/sites/default/files/centers/sportslaw/Experts_T_Statement_2019.pdf.

of both sexes.” 34 C.F.R. § 106.41(c). The regulations provide a list of factors that OCR considers when assessing the equality of opportunity, and direct OCR not to rest any decision on “[u]nequal aggregate expenditures for members of each sex.” *Id.* This often yields a complex multi-factor analysis. Not so here.

As explained above, 34 C.F.R. § 106.41(a) prohibits discrimination on the basis of sex in athletics programs. 34 C.F.R. § 106.41(b) permits recipients to offer sex-segregated athletics in certain specific contexts. Within those contexts, men are able to participate on male-only teams. Sections 106.41(b) (for non-contact sports) and 106.41(c) both generally require that women be afforded the opportunity to participate on corresponding female-only teams.

Recipients that permit men to compete on women’s teams on the basis of their subjective perception of their “gender” thus presumptively violate § 106.41(c) and § 106.41(b) (for non-contact sports). Such recipients allow men to engage in fair and safe competition against other men while subjecting women to unfair and unsafe conditions, subjecting them to risk of injury, displacing them from podiums in athletic competitions, causing them to lose opportunities for advancement to regional and national competitions, and to miss out on critical visibility for future opportunities and recognition. That unequal treatment denies them “equal athletic opportunity” in violation of Title IX. 34 C.F.R. § 106.41(c); *see* Executive Order 14,201, 90 Fed. Reg. at 9279 (“In recent years, many educational institutions and athletic associations have allowed men to compete in women’s sports. This is demeaning, unfair, and dangerous to women and girls, and denies women and girls the equal opportunity to participate and excel in competitive sports.”); *McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 294-95 (2d Cir. 2004) (“Treating girls differently regarding a matter so fundamental to the experience of sports—the chance to be champions—is inconsistent with Title IX’s mandate of equal opportunity for both sexes.”).

Title IX’s purpose confirms as much. *See Abramski v. United States*, 573 U.S. 169, 179 (2014) (“[The Court] must (as usual) interpret the relevant words not in a vacuum, but with reference to the statutory context, structure, history, and purpose.” (quotation marks omitted)). Title IX was manifestly passed to promote “girls’ and women’s rights.” *Adams*, 57 F.4th at 817 (Lagoa, J., concurring); *see McCormick*, 370 F.3d at 286 (“Title IX was enacted in response to evidence of pervasive discrimination against women with respect to educational opportunities.”). And Title IX has achieved substantial success in that regard, especially in the realm of sports. “[O]ne need not look further than the neighborhood park or local college campus to see the remarkable impact Title IX has had on girls and women in sports.” *Adams*, 57 F.4th at 818 (Lagoa, J., concurring). “In 1971, before Congress enacted the statute, approximately 300,000 girls and 3.67 million boys played competitive high school sports nationwide.” *McCormick*, 370 F.3d at 286. Today, Title IX “has had stellar results.” *Louisiana*, 737 F. Supp. 3d at 390. By 1999, 2.6 million girls participated in interscholastic athletics. By 2011, that number was 3.25 million. *Id.*

Policies or practices that “com[ingl]e both biological sexes in the realm of female athletics” have “vast societal consequences” and “threaten to undermine one of Title IX’s major achievements, giving young women an equal opportunity to participate in sports.” *Adams*, 57 F.4th at 818, 821 (Lagoa, J., concurring) (brackets omitted); *see Clark v. Arizona Interscholastic Ass’n (Clark II)*, 886 F.2d 1191, 1193 (9th Cir. 1989) (“If males are permitted to displace females on the school volleyball team even to the extent of one player . . . , the goal of equal participation by females in interscholastic athletics is set back, not advanced.”). This confirms that creating new

extra-statutory privileges based on “gender identity” for otherwise sex-separate sports violates Title IX.¹²

E. Recipients Must Provide a Prompt and Equitable Resolution to Student and Employee Complaints of Sex Discrimination.

Title IX’s regulations provide that “[a]ny person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment)” and require the recipient to “adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part. . . .” 34 C.F.R. § 106.8. If OCR determines that a student or employee was discriminated against on the basis of sex, the recipient is responsible to determine what occurred and to respond appropriately. OCR evaluates the appropriateness of the responsive action by assessing, among other matters, whether the response was prompt and equitable. *See* 34 C.F.R. §§ 106.8(b)(2); 106.44; 106.45; 106.46. What constitutes a reasonable response to discrimination will depend on the circumstances. But in all cases, the recipient must conduct a prompt, adequate, and impartial inquiry designed to reliably determine what occurred, and, if discrimination is found, the recipient must take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. *See id.*

F. The Office for Civil Rights Has Authority to Enforce Title IX and Its Implementing Regulations Against Noncompliant Recipients of Federal Funding.

If OCR “finds that a recipient has discriminated against persons on the basis of sex in an education program or activity under this part, or otherwise violated this part,” then the noncompliant “recipient must take such remedial action” as OCR “deems necessary to remedy the violation, consistent with 20 U.S.C. § 1682.” 34 C.F.R. § 106.3.

As a condition of receiving federal financial assistance from the Department of Education, a recipient must make an assurance that the education program or activity will be operated in compliance with Title IX. 34 C.F.R. § 106.4(a). The obligation to comply with Title IX is “not obviated or alleviated by any State or local law” or “by any rule or regulation of any organization, club, athletic or other league, or association,” except to the extent required by the U.S. Constitution. 34 C.F.R. § 106.6(b)-(d).

34 C.F.R. § 106.81 incorporates “[t]he procedural provisions applicable to Title VI of the Civil Rights Act of 1964,” which are codified at “34 CFR 100.6 through 100.11 and 34 CFR part 101.” 34 C.F.R. § 100.7 authorizes OCR to investigate possible deprivations of the rights protected

¹² To explain the meaning of “equal athletic opportunity” and “effective accommodation” under 34 C.F.R. § 106.41(c), OCR issued a Policy Interpretation, entitled Title IX of the Education Amendments of 1972—A Policy Interpretation: Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71,413 (1979) (“Policy Interpretation”). The Policy Interpretation provides a “three-part test” to assess compliance. *See Berndsen v. N. Dakota Univ. Sys.*, 7 F.4th 782, 786 (8th Cir. 2021). The “three-part test” can be, and has been, used by OCR and courts to apply § 106.41(c). *It is not applicable here.* The three-part test is a helpful tool to determine when efforts to provide women with an equal athletic opportunity have been effective. It has nothing to say when, as here, women have been *denied* access to sex-segregated athletics opportunities.

by the statutes within its jurisdiction. And 34 C.F.R. § 100.8(c)-(d) authorizes, *inter alia*, “the suspension or termination of or refusal to grant or to continue federal financial assistance” or referral “to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States.”

Moreover, all federal grant recipients from the Department are required to comply with all applicable federal laws, including Title IX, and all related Executive Orders. 34 C.F.R. § 75.500.

G. Recipients of Federal Funding Must Provide OCR Access to Sources of Information Pertinent to Ascertain Compliance with Title IX

The regulations further provide:

Access to sources of information. Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance with this part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforcement proceedings or where otherwise required by law.

34 C.F.R. § 100.6(c). In accordance the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and FERPA’s implementing regulation at 34 C.F.R. § 99.31(a)(3)(iii), OCR is authorized to review personally identifiable information in a recipient’s records without redaction of private or confidential student information.

II. Findings of Fact

A. San José State University is a Recipient of Federal Funding and Subject to Title IX and to OCR’s Enforcement Authority.

San José State University is a member of the California State University system and is currently, and has been for many years, a recipient of federal financial assistance from the Department.

The University first entered into an agreement to comply with federal law as a condition of eligibility in 1965. To continue eligibility for federal funding, San José State University signed a U.S. Department of Education Federal Student Aid School Eligibility and Oversight Service Group – Program Participation Agreement (PPA) on August 30, 2024, which states in part: “The execution of this Agreement by the Institution and the Secretary is a prerequisite to the Institution’s initial or continued participation in any Title IV [of the Higher Education Act] HEA Program . . . and further agrees that such participation is subject to the Institution’s compliance with the terms and conditions set forth in this Agreement.” The Agreement covers San José State University’s eligibility to participate in programs such as the Federal Pell Grant Program, Federal Family

Education Loan Program, Federal Direct Student Loan Program, Federal Perkins Loan Program, and the Federal Work-Study Program, just to name a few. As a condition of the Agreement, San José State University “agrees to comply with: Title IX of the Education Amendments of 1972 and the implementing regulation, 34 C.F.R. Part 106 (nondiscrimination on the basis of sex).” The current PPA expires September 30, 2028.

Further, as explained above, all federal grant recipients from the Department, including San José State University, are required to comply with all applicable federal laws, including Title IX, and all related Executive Orders. 34 C.F.R. § 75.500. As a recipient of federal financial assistance from the U.S. Department of Education, San José State University is subject to Title IX, its implementing regulations, Executive Order 14168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, 90 Fed. Reg. 8,615-16 (Jan. 30, 2025), Executive Order 14201, *Keeping Men Out of Women’s Sports*, 90 Fed. Reg. 9,279 (Feb. 11, 2025) (incorporating Executive Order 14168’s definitions), and to OCR’s enforcement jurisdiction.

B. San José State University Men’s and Women’s Athletic Programs

1. Sex-Separated Men’s and Women’s Athletic Programs at San José State University

Historically, intercollegiate athletic opportunities for women in the United States have been limited, but the same cannot be said for men. For example:

Participation in intercollegiate sports has historically been emphasized for men but not women. Partially as a consequence of this, participation rates of women are far below those of men. During the 1977-78 academic year women students accounted for 48 percent of the national undergraduate enrollment (5,496,000 of 11,267,000 students). Yet only 30 percent of the intercollegiate athletes are women. The historic emphasis on men’s intercollegiate athletic programs has also contributed to existing differences in the number of sports and scope of competition offered men and women.

Policy Interpretation, 44 Fed. Reg. at 71,419; *see also* Women’s Sports Foundation, 50 Years of Title IX infographic (2022).¹³

Because there is sufficient interest and ability among San José State University students to sustain viable women-only intercollegiate athletic teams, and there is a reasonable expectation of intercollegiate competition for women’s teams, San José State University has provided a variety of sex-separated athletic programs for men and women. A variety of sex-separated athletic programs is a proven way to provide equal athletic opportunities for girls and women. *See, e.g., Clark I*, 695 F.2d at 1131 (“[T]he governmental interest claimed is redressing past discrimination against women in athletics and promoting equality of athletic opportunity between the sexes. There is no question that this is a legitimate and important governmental interest.”). Following is an example of some of the sex-separated intercollegiate athletic programs provided by San José State University for men and women:

Men’s Programs

¹³ https://www.womenssportsfoundation.org/wp-content/uploads/2022/04/FINAL6_WSF-Title-IX-Infographic-2022.pdf.

- Baseball
- Basketball
- Cross Country
- Football
- Golf
- Soccer
- Track & Field
- Water Polo

Women's Programs

- Basketball
- Beach Volleyball
- Cross Country
- Golf
- Gymnastics
- Soccer
- Softball
- Swimming & Diving
- Tennis
- Track & Field
- Volleyball
- Water Polo

The evidence obtained by OCR indicates that prior to April 2022, San José State University had not recruited or permitted men to participate in intercollegiate athletic programs designated for women. Although OCR was unable to locate a specific San José State University policy that explicitly permits or prohibits men from participating in intercollegiate athletic programs designated for women, historically, San José State University has provided many intercollegiate athletic programs separated by sex, and only by sex. It was not until April 2022, that the University began knowingly and actively recruiting a male player to join the women's indoor volleyball team.

The University's own actions of historically providing sex-separated intercollegiate athletic programs implicitly recognize biological differences between men and women that are so significant such that the differences between the sexes justify sex-separated intercollegiate athletic programs in many sports. The need for intercollegiate athletic teams separated by sex is further evidenced by the different equipment authorized for use in men's and women's intercollegiate athletic competitions for several sports. Some examples of differences in NCAA sanctioned intercollegiate athletic competitions that would constitute impermissible sex discrimination unless supported by the fact men have pertinent biological advantages over women include:

- Volleyball: Men play with a higher net. The net height for women's volleyball is 7 feet 4 1/8 inches, and the Men's net is 7 feet 11 5/8 inches.
- Hurdles: Men's hurdles are considerably higher. Men's High Hurdles (110m, 60m indoor): 42 inches; Women's High Hurdles (100m, 60m indoor): 33 inches; Men's Intermediate Hurdles (400m): 36 inches; Women's Intermediate Hurdles (400m): 30 inches; Men's Steeplechase: 36 inches; Women's Steeplechase: 30 inches.

- Shot Put: The minimum men's shot put weighs 7.26 kg (16 lbs.) and the minimum women's shot put weighs 4 kg (9 lbs.); The men's shot put measures 110–130 mm (4.3–5.1 inches) in diameter; The women's shot put measures 95–110 mm (3.7–4.3 inches) in diameter.
- Discus: Men's Discus weighs 2.0 kilograms (4.4 pounds) and has a diameter of 22 centimeters (8.66 inches); Women's Discus: weighs 1.0 kilogram (2.2 pounds) and has a diameter of 18 centimeters (7.09 inches).
- Basketball: Men play with a larger and heavier ball and for longer stretches of time between official stoppage of play. The basketball used in women's games is smaller (28.5 inches in circumference) and lighter than the ball used in men's games (29.5 inches); Women play four 10-minute quarters, whereas men play two 20-minute halves.

Because of the obvious biological advantages men have over women in athletics, the University has, for many years, offered sex-separated athletics programs in order to fulfill its antidiscrimination and equal opportunity obligations under Title IX. 34 C.F.R. § 106.41. Then, in April 2022, without any corresponding change to the Title IX athletics regulations, the University recruited and began allowing a male athlete to compete in intercollegiate athletic programs designated for women, specifically women's indoor volleyball and women's beach volleyball. OCR finds that the change in the University's policy and practice eliminated the availability of all-female intercollegiate volleyball programs at San José State University, and the change in policy threatens the future availability of all-female athletic programs (across all sports) at San José State University, resulting in disparities of a substantial and unjustified nature in the benefits, treatment, services, and educational opportunities afforded to female athletes with no meaningful impact on the benefits, treatment, services, and educational opportunities afforded to male student athletes.

As detailed herein, the University's change in policy and practice to allow a male student to participate in intercollegiate athletic programs designated for women, including the San José State University women's indoor volleyball team and women's beach volleyball team, resulted in a denial of educational opportunities to female student athletes at San José State University, including scholarship opportunities, playing time, publicity, and recognition, and denied women the opportunity and benefit of playing in an all-women intercollegiate athletic program. The male student's participation on the San José State University women's indoor volleyball team placed women in increased danger of injury and provided San José State University an unfair advantage over the all-female teams from opposing colleges and universities. At the same time, no male athletic programs at San José State University were similarly impacted.

2. San José State University Women's Indoor Volleyball Program

a. Examples of Student 1's Influence Over the 2022 Women's Indoor Volleyball Season

In April 2022, the University's women's indoor volleyball head coach (Coach 1) began actively recruiting a male volleyball athlete from another university to join the San José State University women's indoor volleyball team. Coach 1 is male. Internal email communications provided by the University indicate the head women's volleyball coach contacted the Director of the San José State University PRIDE Center & Gender Equity Center to discuss recruiting a male volleyball player (Student 1) for the San José State University women's indoor volleyball team. Additional communications indicate Coach 1 stated that Student 1 texted him wanting to commit

to transferring to San José State University. Coach 1 stated his belief that Student 1 “is good enough to make us better.” A letter of support sent to the University from a former club volleyball coach for Student 1 states: “We had a team full of ‘closers,’ hitters who could finish the rally easily. In a team that talented, [Student 1] still stood out.” The internal communications also indicated a concern regarding whether or not Coach 1 should inform the women on the San José State University women’s indoor volleyball team that a male player would be joining the team. Coach 1 stated he wanted to ask the women on the team their thoughts after they found out Student 1 was joining the team, but he did not want to relinquish decision making power to the women on the team regarding whether a male player would be allowed to join the team. Student 1 joined the San José State University women’s indoor volleyball team in 2022 and played on the team during the 2022 season. Records obtained from the University clearly establish Student 1 is male and the University knew Student 1 is male.

Student 1 played in 27 matches and 106 sets that season. Student 1 averaged 2.93 kills and .58 blocks per set. The San José State University Official Athletics Website boasts that Student 1 had a season-best 20 kills versus UNLV; led the team with 18 kills and hit .467 (18-4-30) in Student 1’s debut versus Weber State; recorded 15 kills in three matches; recorded 10 or more kills in 20 matches; recorded five blocks versus San Diego State; recorded four block assists against Fresno State and New Mexico; scored a total of 343.5 points for the season, was awarded Mountain West Offensive Player of the Week on September 19; and made the Trojan Challenge All-Tournament team--all during the 2022 women’s indoor volleyball season. Coach 1, who recruited Student 1 to San José State University, left the University after completing the 2022 season to coach women’s volleyball at another institution.

b. Examples of Student 1’s Influence Over the 2023 Women’s Indoor Volleyball Season

A new head coach (Coach 2) and associate head coach (Coach 3) joined the San José State University women’s indoor volleyball team between the end of the 2022 season and the beginning of the 2023 season, following the departure of Coach 1. Coach 2 and Coach 3 had been working together coaching a women’s volleyball team at another university prior to taking the job at San José State University. Coach 2 is male and Coach 3 is female. Coach 3 has stated she did not find out that the San José State University women’s indoor volleyball team had a male player until after joining the team. Coach 3 has indicated that Student 1 and Coach 2 informed her that Student 1 is male but identifies as “transgender.” Coach 3 states she was specifically instructed by Coach 2 and the Senior Associate Athletics Director for Student Wellness and Leadership Development to not tell anyone either on the team or off the team that Student 1 is male. Coach 3 states she was also told “anyone who disagrees with [Student 1] being on the women’s volleyball team needs to get therapy and needs to leave SJSU.”

During the 2023 women’s indoor volleyball season, Student 1 played in 17 matches and approximately 62 sets that season. Student 1 sustained an injury at the beginning of the season and missed a significant part of the season, however Student 1 averaged 3.57 kills and 0.46 blocks per set during the 17 matches played. Student 1’s season highlights included 22 kills against Saint Mary’s (CA), 22.5 points against University of Texas Rio Grande Valley, 11 digs against San Diego State, 7 blocks against Portland, and scored a total of 235.5 points. At the end of the 2023 women’s indoor volleyball season, approximately eight of the 19 women on the San José State University women’s indoor volleyball team entered the transfer portal, which, according to Coach 3, was an unusually high number of transfers out of the program.

c. Examples of Student 1's Influence Over the 2024 Women's Indoor Volleyball Season

During the 2024 women's indoor volleyball season, Student 1 played in 21 matches and 81 sets.¹⁴ Student 1 averaged 3.88 kills and 0.56 blocks per set. Student 1's season highlights included 25 kills against California State Fullerton, 29 points against California State Fullerton, 15 digs against UNLV, 4 blocks against Portland, and scoring a total of 361.5 points. During this same season, several all-women's indoor volleyball teams from other universities who were scheduled to compete against the San José State University women's indoor volleyball team informed the University they elected to forfeit their contests and accept a loss rather than compete against San José State University because a male (Student 1) was competing as a member of the San José State University women's team. These teams include: Southern Utah University, Boise State University, the University of Wyoming, Utah State University, and the University of Nevada Reno. Boise State University and the University of Wyoming chose to accept two forfeits each because of the unfair advantage and dangers caused by the male player, Student 1. At the end of the 2024 women's indoor volleyball season, approximately eight of the 19 women on the San José State University women's indoor volleyball team entered the transfer portal, which was again, an unusually high number of transfers out of the program according to Coach 3 and various sports media writers.

3. Concerns About Student 1's Participation Expressed by Players, Coaches, and Parents

As a preliminary matter, it is important to note that during the course of this investigation, OCR made multiple requests for the University to provide access to sources of information relating to these allegations and related investigations, including documents and witnesses, but the University has failed to provide sufficient information or approve requested interviews for OCR to make additional conclusions regarding compliance. The University's failure to provide sufficient records was intentional, despite having received notice of its obligations under 34 C.F.R. §§ 100.6, 106.6. Instead, the University has provided only partial records to OCR, while redacting significant portions of the records that were provided, withholding other records entirely, and stating they are working to make arrangements for interviews.

Due to the University's refusal to provide complete and unredacted records to OCR, it was difficult to ascertain precisely what occurred over the three-year span that Student 1 participated in women's intercollegiate athletics at San José State University. The uncontroverted evidence, however, is that Student 1 is a male, Student 1's presence on the women's volleyball team resulted in a significant and unjustified negative impact on the educational opportunities for women on the team on the basis of sex, and Student 1's presence on the women's volleyball team negatively impacted women at San José State University and women on teams who competed against San José State University. The negative impact caused by Student 1's presence on the women's indoor volleyball team and beach volleyball team resulted in a denial of the benefits of the intercollegiate athletic program provided by the University to women student athletes, and limited women's enjoyment of their rights, privileges, benefits, advantages and opportunities that are associated with intercollegiate athletics. The University was on notice of these concerns, and not only failed

¹⁴ The University has reported to OCR that Student 1 has exhausted his NCAA eligibility and is no longer a participant in any intercollegiate athletic programs at San José State University.

to take action to end the discrimination resulting from Student 1's participation on the women's program, but instead took action that, in effect, discouraged women from speaking out about their concerns and failed to adequately respond to the concerns that were raised.

The information that has been provided to OCR forms the basis of these findings and conclusions. University records show that Student 1's participation in the women's volleyball program created significant division among team members, coaches, and parents. The University had actual notice of those concerns, but instead of responding to those concerns in a manner consistent with the University's obligations under Title IX, the University took action that perpetuated unlawful discrimination. The University intentionally decided to continue supporting Student 1's participation in the women's volleyball program, while at the same time took action that discouraged women from filing complaints and voicing dissent and was indifferent to the concerns expressed about different treatment, denial of opportunities, and increased risk of injury. The evidence indicates that rather than addressing those problems by removing Student 1 from the women's program to conform with the University's obligations under Title IX, the University instead attempted to silence Coach 3 and team members through intimidation and different treatment.

a. Title IX Complaints Received by the University

The University indicated in their March 6, 2025, data response to OCR, that: "To date, the University has received numerous reports and one formal complaint of potential discrimination due to [Student 1's] participation on the team." However, the evidence indicates the University received multiple Title IX complaints related to Student 1's participation in the women's volleyball program, but it appears the University failed to open an investigation into most of those complaints. Examples of Title IX complaints received by the University include the following:

On September 23, 2024, the University received a letter from attorneys representing Student 3 notifying the University that Student 3 was joining a lawsuit against the NCAA based on their policy of allowing men to compete against women in athletic programs designated for women, in violation of Title IX. In that same notice, Student 3 informed the University that Student 3 was also alleging the University was violating Title IX by allowing Student 1 to compete on the women's indoor volleyball team, and the attorneys for Student 3 reminded the University of their obligation to not retaliate against Student 3, and to not permit retaliation against Student 3, for exercising her rights under Title IX.

On September 24, 2024, the University received a Title IX and Equal Protection complaint from the Independent Council on Women's Sports (ICONS) alleging the University's policy and practice of allowing a male student to participate in the women's volleyball program violated Title IX by denying women equal athletic opportunities and by allowing a man in women's locker rooms. The ICONS complaint states in part: "Over the last few weeks, we have spoken with distraught student-athletes and their parents, coaches, and administrators throughout the Mountain West Conference regarding a crisis in women's volleyball . . . [because of] San José State University . . . permitting a transgender-identifying male, [Student 1], to compete on the SJSU women's volleyball team." The ICONS letter further stated [Student 3] a senior co-captain on the SJSU women's volleyball team [alleges] unlawfully allowing [Student 1] to compete on the SJSU women's volleyball team put[s] women at risk of physical injury in practices and games. [Student 3] describes terrorizing practices and games in which a man is smashing volleyballs into the faces and bodies of young women at speeds of over 80 mph and making a mockery of fair competition."

On October 5, 2024, Coach 2 sent an email to the Title IX coordinator stating in relevant part: “I received a report from one of my student-athletes yesterday of some behavior initiated by [Student 1] that could be deemed as retaliation toward [Student 3]. This behavior occurred in Colorado on Wednesday October 2 while we were there for our match vs Colorado State.”

On October 29, 2024, Coach 3 filed a “Complaint about the Title IX violation,” requesting “an immediate and comprehensive Title IX investigation” alleging in part: (1) San José State University was engaged in illegal discrimination on the basis of subjective identity; (2) Student 2 was wrongfully refused a women’s volleyball scholarship while Student 1 was permitted to maintain a women’s volleyball scholarship; (3) the University’s Senior Associate Athletics Director for Student-Athlete Wellness and Leadership Development stated “anyone who disagrees with [Student 1] being on the women’s volleyball team needs to get therapy and needs to leave SJSU.”; (4) Student 1’s physical abilities and strength placed women on the team and opponents’ teams at increased risk of injury; (5) Coach 2 was giving Student 1 preferential treatment over the women on the team; (6) Women in the San José State University women’s volleyball team were being denied opportunities and benefits on the basis of sex; (7) University officials took action to dissuade women on the team from filing a complaint or speaking out in opposition to Student 1 being able to participate on the women’s volleyball team; (8) Coach 2 retaliated against Student 3 after she joined a Title IX lawsuit challenging Student 1’s participation in the women’s volleyball program; and (9) University officials were not responding properly to student, parent, and Coach 3’s concerns regarding Student 1’s participation in the women’s volleyball program. On November 1, 2024, University records indicate the University decided to suspend Coach 3 pending an investigation regarding alleged violations of University policy.

On November 3, 2024, the parents of Student 10 sent a letter to the University, which was forwarded to the Title IX coordinator, stating in part: “Our daughter has expressed a severe level of discomfort with the polarization of the staff and the athletic department. We are hearing those same echoes from most of the team as well . . . [Coach 2] and [the Senior Associate Athletics Director for Student-Athlete Wellness and Leadership Development] have camped out on one side of the issue that supported transgender participation on the team while [Coach 3] has balanced those voices on the other side.” The parents stated their concern that the suspension of Coach 3 appears to be an attempt to silence opposition to the University’s policy and practice and shared their concern with University administrators telling those who disagree with Student 1 participating on the women’s volleyball team to “seek therapy”, “stay silent” and other “...phobic” language. The parents stated the women on the team felt Coach 3 was the only person with whom they felt they could express disagreement with Student 1 playing on the team without fear of retaliation. The parents also expressed concern that their daughter, and others on the team, perceived an overall lack of support for the women on the team, especially by Coach 2, the Senior Associate Athletics Director for Student-Athlete Wellness and Leadership Development, and the Assistant Athletic Director for Diversity, Equity & Inclusion. The parents stated those three University officials had expressed to the women on the team “clear support” of Student 1 while at the same time telling the women on the team who had concerns about Student 1 being a member of the team to “seek therapy,” to stay silent because this was not their story to tell, and made “veiled threats” that anyone expressing disagreement with Student 1 being on the team could place their National Letter of Intent (their scholarship agreement with the University) in jeopardy. The parents indicated the reaction of Coach 2 to any disagreement expressed by the women on the team to Student 1’s continued participation was met with hostility, and the removal of Coach 3 acted to effectively silence dissent. The parents also expressed concern that many women on the volleyball

team felt Coach 2 was giving preferential treatment to Student 1 and would not discipline Student 1 for violating team rules, whereas the women on the team were disciplined for violating team rules.

After meeting with the University's Title IX coordinator to discuss their letter, the Title IX coordinator sent an email stating: "I [take] it to mean you [do] not want to commence an investigation into these experiences. Please let me know if my interpretation is incorrect." To which the parents responded: "Candidly, with what we shared and information you have collected from other parties, we would assume it is sufficient for the university to commence an investigation. If you are saying that such an investigation has to be requested by another party and the university cannot conduct one on its own, please let us know if we misunderstood." The University provided OCR with no follow-up information to that statement.

Records provided by the University indicate most of those aforementioned Title IX issues were not opened for investigation by the University under Title IX. Instead, the University only investigated allegations that Coach 3 did not prepare, train, coach, or provide emotional support and encouragement to Student 1 in the same way she prepared, trained, coached, and or provided emotional support and encouragement to the women on the indoor volleyball team because Student 1 is male. Those allegations were opened for investigation on November 12, 2024, and a Final Investigation Report was not issued until October 16, 2025, almost a full year later. The University also investigated whether Coach 2 retaliated against Student 3 for her participation in a lawsuit against the NCAA. That allegation was opened for investigation on November 12, 2024, and, like the other allegation, a Final Investigation Report was not issued until October 16, 2025. Both Final Investigation Reports expressly state: "The findings in this Report do not reach questions of law as to whether the alleged misconduct supports a violation of applicable laws, but instead are factual findings and determinations under CSU policy. The policy determinations, however, are not intended to equate to a finding that applicable laws were violated."

b. Observations from Coach 3

Throughout the 2023 season and part of the 2024 season, Coach 3 stated she frequently observed Coach 2 giving Student 1 preferential treatment over the women on the indoor volleyball team. Coach 3 stated Coach 2 told her that he feels a special connection to Student 1 because Student 1 is "transgender." Coach 3 stated Coach 2 did not require Student 1 to follow several team rules that the women on the team were required to follow. For example, Student 1 was not required to regularly attend practice, while the women on the team were required to attend practice; Student 1 was allowed to wear personal clothing during practice instead of a practice jersey, which the women on the team were required to wear; and Student 1 was not disciplined for attempting to harm teammates during practice and harm opponents during matches.

Coach 3 provided another example involving Student 1 related to women's volleyball scholarship opportunities. Student 1 and a female teammate, Student 2, who both played the position of outside hitter, were recipients of a 2023 women's indoor volleyball scholarship from the University. Both players became injured during the 2023 indoor volleyball season and were unable to play for a significant part of the 2023 season. The evidence indicates Coach 2 informed Student 2 that because of her injury, she would not receive a scholarship for the remainder of the 2023 season, but she would be permitted to remain on the team if she chose to stay. Student 2 elected to stay on with the team and paid full tuition, room and board during the 2023-2024 academic year while she was rehabilitating, and Student 2 was able to play a significant part of the 2023 season. Student 1 was injured right before the beginning of the 2023 season and missed

several games as well. However, unlike Student 2, Coach 2 allowed Student 1 to retain his women's indoor volleyball scholarship, even though Student 1 missed more of the 2023 season than Student 2 did.

OCR acknowledges that Coach 3 has an incentive to place the University in a poor light due to a pending personnel action the University is taking against her, but OCR finds her statements included in these findings credible because they are corroborated by statements made by several team members, an assistant coach, and parents.

c. Discord, Division, and an Effort to Silence Dissent

The evidence is clear that team morale was terribly impacted by the situation involving Student 1's participation on the women's volleyball team and the administration's reaction to any form of dissent once Student 1 informed the team he is male but identifies as a woman.

Student 3 stated that she did not learn Student 1 was male until near the end of the 2023 season. Student 1 told Student 3 he was born male and considers himself to be a "transgender woman." Student 1 told Student 3 that he had not mentioned to her that he was male because they were living together in the dorm room and he was afraid that Student 3 would not be his friend if she knew the truth. Media reports in April 2024 amplified the division with increased pressure from the public and players on opposing teams.

The Assistant Athletics Director for Diversity, Equity, and Inclusion spoke with investigators retained by the University and stated she reports to the Senior Associate Athletics Director for Student-Athlete Wellness and Leadership Development. She stated that prior to April 2024, she had no experience with the women's volleyball team. She was brought in to "help deal with the team." She began attending practices and traveled with the team. She stated her "job is to make sure DEI is part of athletic programming at the University."

Following the media reports regarding Student 1 being allowed to participate in the women's volleyball program, Coach 2 asked the Senior Director of Media Relations to address the team because members of the team were wanting to speak out about their opinions regarding Student 1's participation on the team. The Senior Director of Media Relations stated she had no prior contact with the women's volleyball team. The Senior Director of Media Relations told the team that if asked about Student 1's participation on the team, they should respond stating this was "not their story to tell." She also told the team that Student 1 was entitled to privacy and warned them to be cautious when speaking about Student 1's participation on the team. The Senior Director of Media Relations stated that in September 2024, Coach 2 requested a meeting to discuss the campus' approach to the concerns being raised regarding Student 1's participation in the women's volleyball program. Administrators, coaches and team members were all present at the meeting. During the meeting, a player (Student 4) said "I feel like we were lied to (regarding Student 1 being male) and nobody wants to be in this. . . Why isn't anyone sticking up for us?" The Senior Director of Media Relations stated she "tried to explain keeping a low temperature six weeks from the election people would love to blow this up." Student 4 responded "I feel like we're being silenced." The Senior Director of Media Relations noted Student 3 was "nodding furiously at Student 4's silencing comment." She also noted other women on the team made comments including: "I didn't sign up for this" and kept asking why they couldn't talk about it since it was already out there. The Senior Director of Media Relations stated she then reiterated "again, I would ask yourself if this is your story to tell?" She noted she "could see how much they were struggling."

On September 12, 2024, the parents of Student 5 contacted Coach 2 and the Senior Associate Athletics Director for Student-Athlete Wellness and Leadership Development wanting to discuss concerns they had regarding the situation involving Student 1. Coach 2 and the Senior Associate Athletics Director for Student-Athlete Wellness and Leadership Development offered a meeting to discuss the parents' concerns regarding the overall wellbeing, safety and protection of the team due to the attention Student 1 was getting.

Opponents were becoming aware that San José State University had a male player on their women's volleyball team. On September 14, 2024, Southern Utah University women's volleyball team elected to forfeit their scheduled match with San José State University and accept a loss rather than compete against San José State University.

On September 20, 2024, because of the increased concerns expressed by players and parents, the University sent an email to the players' parents and guardians to address recent outreach and concerns. The Senior Associate Athletics Director for Student-Athlete Wellness and Leadership Development informed the families that the University was working on adding security measures to protect the players, including an increased police presence and administrative presence.

The University maintains it took the concerns voiced by players, coaches and parents seriously and sought information from the women impacted but took no formal action to investigate most of the issues raised because the women on the team did not cooperate with the requests for interviews. The University asserts that women on the team were free to voice their disagreement with Student 1's participation on the women's volleyball team. However, evidence in the records provided by the University undermines the University's claim that women on the team felt free to voice their disagreement with Student 1's participation on the women's volleyball team. In fact, the evidence demonstrates that numerous members of the administration effectively silenced dissent.

The University has provided evidence that due to the significant negative impact being experienced by the members of the women's indoor volleyball team as a result of Student 1's participation on the team, the University reached out to all women on the team and offered assistance to the women and to Student 1. The University provided evidence that they encouraged all of the women to speak out about their concerns. The University also contends that they assured the women on the team they would not be retaliated against if they filed a complaint. The University indicates that despite reaching out to all of the women on the team, most of the women did not respond to the outreach, so many of the concerns raised were not investigated by the University.

The evidence obtained by OCR, however, indicates that although the University made written assurances to the women that they would not be retaliated against if they complained about Student 1 being on the team, the University accompanied those "assurances" with comments that the women could file a complaint about what they were experiencing, but that these complaints were subject to the University's policy regarding gender identity harassment. The women on the team were also "reminded" that gender identity is a protected status at the University, that the scholarships of players who speak out might be at risk, and that those who disagree with Student 1 being on the team are "transphobic" and need counseling. The records obtained by OCR also indicate the notices sent to the women on the team were not responsive to the concerns expressed by the women about a male athlete being allowed to participate in their women's intercollegiate athletic program. Instead, the notices obtained by OCR were primarily focused on services related

to sexual assault survivor resources (for example: “You have the right to decide whether to make a report to law enforcement”). The notices also included statements such as: “I do not want you to feel pressured to respond” and “You are not required to respond to our outreach.” Those particular statements alone are not problematic, but when combined with the other information directed at the women on the team, including comments that “this is [Student 1’s] story to tell, not yours,” the message was clear to many of the women to stay silent, as evidenced by the fact most of the women did not respond to the outreach.

Student interviews also indicate a lack of trust between many of the women on the team and Coach 2 and the administration. Student 7 stated “[Coach 2] cared more about [Student 1’s] wellbeing than the rest of the team.” Student 7 felt Coach 2 was unfair with the way he favored Student 1, allowing Student 1 to miss practices without consequences, which was not the case for the women on the team. For example, Student 1 missed practice but was still allowed to start in the next game. Student 7 also stated that once Student 3 joined the Title IX lawsuit, Student 7 could tell Coach 2 stopped talking to her. Student 7 also felt her relationship with Coach 2 was negatively impacted after she spoke out about Student 1 playing on the team. She said it seemed like Coach 2 no longer cared about her. Student 7 also stated it felt like “they were trying to silence us.”

Student 10 stated after it was revealed to the team that Student 1 is male, Coach 2 expressed his belief that anyone who spoke up was attacking Student 1. Coach 2 told the team that the “hate” affects him too as part of the LGBT community. Student 10 felt Coach 2 treated Student 1 with favoritism. After a match in late August, Coach 2 was upset with how the team played and called the team in for practice on their day off. Student 1 refused to practice that day. Coach 2 said to Student 1, if you don’t want to be here, then leave. Student 10 said Student 1 left the practice and was never disciplined for it. To silence dissent, “scare tactics” were used. The women on the team were told they needed to be careful of what they said because they all signed a contract and could lose their scholarships. That threat made several members of the team afraid to speak out. Student 10 said that at one point, Coach 2 told the team to be careful regarding how they act with regard to Student 1. Following that conversation, Student 10 was hanging out with Student 8 talking about being opposed to Student 1 playing on the women’s volleyball team because he’s a man. They joked it would be frustrating if they were hit in the face by Student 1. The next day during practice, Student 8 was struck in the head by a ball hit by Student 1. Then, a week later, Student 10 saw Student 8 acting close with Student 1, so Student 10 asked Student 8 why she had changed her opinion. Student 8 told Student 10 she spoke with Coach 2 about what he meant by “be careful” and he said: “you should be friends with Student 1.” Student 10 stated a large part of the frustration with Student 1 centered on Student 1’s failure to keep a promise he made during a players-only team meeting in late September 2024. During that meeting, Student 1 said if everyone felt uncomfortable with him playing on the team, he would step down. Student 1 then called for a vote. Only *three* of the 18 members of the team voted for Student 1 to remain on the team. Once opposing teams started forfeiting their matches against the San José State University women’s indoor volleyball team, the team members said to Student 1 that he owed it to them to say if he was staying or leaving the team as promised. Student 1 “very snarkily” responded “yeah, I’m stayin.” This drove the division on the team even deeper.

Student 11 stated Coach 2 failed to discipline Student 1 at times when Student 1 should have been disciplined. One example was when Student 1 did not wear a matching practice shirt, which should have resulted in Student 1 being disciplined, but Coach 2 did not discipline Student

1. Student 11 also stated Coach 2 criticized Student 3 for joining the Title IX litigation, and at one point, Coach 2 asked Student 11 to tell Student 3 something so he didn't have to speak with her.

Further evidence eroding the University's assurance that women on the team were free to voice their disagreement with Student 1 being a member of the women's volleyball team included complaints against members of the team for speaking publicly about Student 1. On October 14, 2024, Coach 2 contacted the University's Title IX investigator to report that he saw an interview of Student 3 on national television in which Student 3 referred to Student 1 as "he" throughout the interview, and "call[ed] into question [his] integrity as a head coach."

On October 23, 2024, Student 3 posted a video on social media referring to Student 1 as a man and stating her relief that Student 1 had moved out of her dorm room. The video included Student 3 and other women on the volleyball team, eating pizza, listening to music and cheering. The video was entitled "THE MAN HAS MOVED OUTTTTTT."

University records indicate Coach 2 received a copy of that video and forwarded it to the Senior Associate Athletics Director for Student-Athlete Wellness and Leadership Development, who filed a Title IX complaint against Student 3 and two other teammates in the video (Students 6 and 7). During an October 24, 2024, meeting with Coach 2, Coach 3, Students 3, 6, and 7, and the Title IX investigator, Coach 2 stated the Title IX complaint was made because Student 3 "misgendered" Student 1 in the video. This was just another example of University Title IX officials and administrators effectively sending a message to the women on the team that dissent will result in discipline. Records obtained by OCR also established that on the same day, Coach 2 isolated Student 3 from her teammates after the group meeting and arranged a separate meeting with Coach 2, Students 1, 6, and 7, and the Senior Associate Athletics Director for Student-Athlete Wellness and Leadership Development. University records indicate during that meeting, Students 6 and 7 apologized to Student 1 for their part in the video, agreed they would distance themselves from Student 3, and stated they would not join Student 3's lawsuit involving Student 1, the University, and the Mountain West Conference.

Coach 2 and Student 1 also filed Title IX complaints against Student 3 relating to the video and public interviews "misgendering" Student 1. The Title IX investigator made an initial decision to close the complaint relating to the video and public interviews, but Student 1 appealed that decision to the Chancellor's Office, who on January 10, 2025, remanded the matter and reopened the investigation in part because Student 3 "referre[d] to [Student 1] as a man even though [Student 3] is aware [Student 1] is a transgender woman." Student 1 subsequently withdrew the complaint.

Additional compelling evidence regarding efforts to silence dissent came on November 1, 2024, when the University decided to suspend Coach 3 just days after she filed her Title IX complaint, requesting "an immediate and comprehensive Title IX investigation" into the University and Coach 2.

d. Alleged Conspiracy to Injure Student 3

On September 23, 2024, Student 3 notified the University that she was joining a lawsuit against the NCAA based on its policy allowing men to compete against women in athletic programs designated for women in violation of Title IX. In that same notice, Student 3 also informed the University that she was alleging the University was violating Title IX by allowing Student 1 to compete on the women's indoor volleyball team, and Student 3 reminded the University of their obligation to not retaliate against Student 3, and to not permit retaliation against

Student 3, for exercising her rights under Title IX. Shortly after notifying the University of her decision to join the Title IX lawsuit, Student 3 also notified Student 1 of her decision.

Evidence obtained by OCR from the University indicates on the morning of October 2, 2024, Student 3 met with Student 1 in person and informed Student 1 that Student 3 was moving forward with her Title IX lawsuit involving Student 1's participation on the women's volleyball team.

On the evening of October 2, 2024, the San José State University women's indoor volleyball team was staying overnight in Fort Collins, Colorado, for a match with Colorado State University the following day. That evening, a member of the women's volleyball team (Student 6) received a message on social media (Instagram) stating "please distance yourself from [Student 3] tomorrow at the game, it will not be good for her." Student 6 was concerned, so she notified the San José State University police officer traveling with the team to report the message. Law enforcement officers from San José State University and Colorado State University immediately took action and began an investigation and created a safety plan. San José State University administrators also took action. Email communications obtained by OCR indicate administrators informed Student 3 and Student 1 of the social media warning regarding Student 3 and that there would be an increased law enforcement presence during the match. Other members of the team were also notified of the situation.

Records obtained by OCR from the University, described below, establish that the social media warning regarding Student 3 coincided with actions taken by Student 1 on October 2, 2024, and should have been investigated by the University to confirm who was involved with sending the warning and whether that individual had any affiliation with the San José State University women's indoor volleyball program or with Colorado State University. A police officer from the Colorado State University Police Department stated in his report obtained by OCR: "the San Jose officer said his department was working on a production of record to obtain a search warrant on the [Instagram] account." However, when OCR requested a copy of the search warrant and related investigative report, the SJSU informed OCR that the San José State University Police Department decided not to seek a search warrant to determine who posted the warning on Instagram.

San José State University records indicate on the same day that Student 3 met with Student 1 in person and informed Student 1 that Student 3 was moving forward with her Title IX lawsuit involving Student 1's participation on the women's volleyball team. Student 1 and two other teammates (Students 7 and 8) snuck out of the team's hotel that evening and met with a Colorado State University player (Student 9) who was friends with Student 1. All three San José State University players who snuck out of the hotel later admitted to San José State University administrators what occurred that evening. It is uncontroverted that Student 1 spoke with the Colorado State player about Student 1 planning to manipulate blocks so the Colorado State player would have open shots at the position played by Student 3. Student 7 told University staff, that Student 1 stated "I'm going to leave center court open" so the Colorado State player could "blow up [Student 3]." Student 7 stated the intent was to have Student 3 hit in the face with a hard-hit ball. An administrator associated with the team reported to the University that one of the players stated Student 1 also shared a scouting report with the Colorado State player during the meeting. The teammates involved, except for Student 1, expressed regret and were emotional when recounting the events to San José State University staff. Student 1, on the other hand, was asked by staff to apologize to Student 3, but refused. Student 1 admitted to the head coach that the meeting with Student 9 did occur, but indicated they were just joking.

It is disputed whether Students 1 and 9 actually followed through with the plan to injure Student 3, or whether the discussion was meant as a joke. What is undisputed, however, is that there was a plan discussed to injure Student 3, and that plan to injure Student 3 was discussed by Student 1 and Student 9 in the presence of two other San José State University teammates (Students 7 and 8), all just hours after Student 3 informed Student 1 she was moving forward with her Title IX lawsuit involving Student 1. It is concerning that the University did not conduct a formal investigation of the matter and that there was an intentional decision not to move forward with discovering who sent the Instagram warning.

Coach 3, who was present on the court and involved in play-calling, provided her opinion that Student 1 did appear to take action during the game that could have resulted in Student 3 being harmed, but fortunately Student 3 was not harmed during the match. Another student, Student 10, was later interviewed by University investigators. Student 10 told the investigators she spoke with Student 7 about the evening Students 1, 7, and 8 snuck out and met with Student 9 shortly after the game. Student 10 stated that during the match, Student 1 was making more errors than normal, and she didn't know why Coach 2 wasn't pulling Student 1 out of the game. Student 1 was making mistakes that were not typical mistakes. Also, Student 1 was laughing with Student 9 during the match, but Student 10 knows Students 1 and 9 were friends. Student 10 said the team felt like Student 1 was throwing the game, and they ended up losing. That night, the team flew back to campus and Student 7 walked in the room and told her story. Student 7 was nervous and frustrated. She said the night before the game, she, along with Student 1 and Student 8, snuck out of the hotel and went to Student 9's house. Student 7 said she heard Student 1 and 9 saying they planned to leave the net open, actively plotting ways to hurt their own teammates. Student 7 told Student 10 she went to tell Coach 2 what happened, and he dismissed her concerns, saying he checked into it and it was just a joke. Student 7 told Student 10 that she heard the conversation and "it was not a joke."

On the other hand, Coach 2 has stated he did not see anything to indicate the plan was being carried out during the game. A law firm was retained by the Mountain West Conference to review the allegations. The law firm states that it conducted an investigation of the alleged conspiracy to injure Student 3 but found there was "insufficient evidence to corroborate the allegations of misconduct." The San José State University Title IX office acknowledged they conducted a preliminary inquiry into the allegations, but determined there was no basis for a formal investigation because of the head coach's opinion of the game footage, Student 1's assertion that it was a joke, and the findings of the Mountain West Conference investigation, which the University acknowledges it never received a copy of. OCR asked the University to request a copy of the Mountain West Conference investigation file for OCR to review. The University requested the Mountain West Conference provide a copy of the investigative file to the University to share with OCR, and the Mountain West Conference refused, citing to attorney-client privilege.

OCR finds that the University erred in deciding not to investigate the alleged conspiracy by Students 1 and 9 to harm Student 3. The University was not free to simply rely on conclusions of the Mountain West Conference in lieu of conducting its own prompt investigation because: (1) the Mountain West Conference has refused to provide the University and OCR a copy of its full investigation file and report, citing "attorney-client privilege," and instead only provided a one-page letter indicating that it found insufficient evidence of misconduct; (2) all of the players involved in the admitted preparatory meeting were pre-warned that police and coaches would be watching for problems at the game because of the social media warning received by Student 6, thus rendering irrelevant the fact that there was no obvious specific attempt to carry out the alleged

conspiracy; (3) there is no evidence the Mountain West investigation considered the late night meeting itself as misconduct; and (4) all of the Students involved admitted the conversation occurred and Coach 3 and Student 10 presented evidence indicating that the conspiracy was meant to be carried out. Additionally, the Mountain West investigation appears to have only focused on whether play itself during the match was altered. Moreover, recent reporting indicates that the law firm that conducted the Mountain West Conference investigation was also retained by the Mountain West Conference to defend the Conference in litigation regarding its decision to allow Student 1 to play in women's athletic programs, indicating a possible conflict of interest or the appearance of one (the law firm had an obvious financial incentive to clear the Conference and Student 1 in the initial investigation to improve the Conference's position in litigation). While we don't know for certain that this reporting is accurate, we certainly must consider the reporting when deciding how much, if any, weight to give to the Mountain West Conference investigative findings, especially considering that we are unable to review its investigative file. In any event, and notwithstanding all of the above and the candid admissions of the three members of the San José State University women's volleyball team about the late-night meeting with the Colorado State University player in which the players discussed conduct that sure "may reasonably constitute" retaliation under Title IX (*see* 34 C.F.R. § 106.44(a)), the University chose to close the inquiry and took no action whatsoever against Student 1. Title IX required it to do a whole lot more.

e. Increased Risk of Injury

The physical advantage Student 1 had over women on the San José State University women's volleyball team and opposing teams was apparent. Coach 3, a decorated college women's volleyball athlete and veteran coach, stated: "Where [Student 1] stood out was spiking the volleyball and blocking on the front row due to [Student 1's] leaping ability and hitting power, which far exceeded that of any player in the conference." Coach 3 also stated: "I witnessed [Student 1] hit the ball so much harder than women, that [Student 1's] hits induced fear in teammates in practice," and she saw "women on the SJSU team seeking to dodge [Student 1's] hits rather than try to return them, [which] is virtually unheard of in women's volleyball." Students 3 and 4 spoke with Coach 2 and Coach 3 on behalf of the team and told them they had concerns about Student 1's participation on the team and that it was putting women at an increased risk of injury. The two women informed Coach 2 and Coach 3 that women from other teams were going to refuse to play against them if Student 1 was playing because they did not want to be injured. Coach 3 stated Coach 2 reacted with anger and told Students 3 and 4 that their protest would go nowhere.

Coach 3 stated that during a tournament in Iowa in September 2024, Student 1 hit a cross-court spike striking the face of a woman on the opposing team who was in a position on the back line, knocking her to the floor. Coach 3 stated the teammate who set the ball to Student 1 expressed remorse and appeared distraught about the play. Coach 3 stated similar spikes from Student 1 hit other women in the head throughout the season.

Student 3 has stated Student 1 hit the ball with more force and "far harder than any women she had ever played against." Student 3 has stated many women on the team spoke with Student 3 about their fears of being hit by balls spiked by Student 1. Student 3 stated the women on the team were doing everything they could to dodge Student 1's spikes during practice but they still could not fully protect themselves. Student 3 stated she was hit in the head and about her body by volleyballs hit by Student 1, which caused greater bruising, pain, and discomfort than balls hit by

women. Student 3 stated, as team captain, she personally spoke with Coach 2 about the risk of injury posed by Student 1, but Coach 2 dismissed her concerns and told Student 3 that Student 1's continued participation on the women's volleyball team was "non-negotiable." Student 3 corroborated Coach 3's recitation of the events involving Student 1 knocking over an opposing player in the back row with a spike to the head and her teammate's tearful reaction after setting the ball to Student 1 and seeing what happened.

On September 28, 2024, Boise State University women's volleyball team elected to forfeit their scheduled match with San José State University and accept a loss rather than compete against San José State University because the University allowed a male student athlete, Student 1, to compete in the women's athletic program. Later that day, the Director of Athletics sent an email to the members of the volleyball team in part, to inform the team that they had a right to speak openly about their own experiences without fearing retaliation from the University, "subject to the University's policy against harassment."

Other teams saw what was happening with Student 1's ability to jump and hit with excessive power, and many chose to forfeit their games against San José State University rather than risk injury. Several all-women's teams from other universities who were scheduled to compete against the San José State University women's indoor volleyball team informed the University they elected to forfeit their contests and accept a loss rather than compete against San José State University because a male (Student 1) was competing as a member of the San José State University women's team. These teams include Southern Utah University, Boise State University, the University of Wyoming, Utah State University, and the University of Nevada Reno. Boise State University and the University of Wyoming chose to accept two forfeits each because of the unfair advantage and dangers caused by the male player, Student 1. The seven forfeitures negatively impacted women on all teams. The number of forfeits was so significant that the University sent a letter to the NCAA on November 12, 2024, making a "Season of Competition Waiver Request" seeking "a blanket waiver of eligibility from the Seasons of Competition: Five Year Rule for all eligible players on the team for the 2024-2025 season" acknowledging the large number of teams forfeiting their matches against the University "negatively impact[ed] the participation and competitive opportunities of eligible players" on the San José State University women's indoor volleyball team.

4. San José State University Women's Beach Volleyball Program

Student 1 also played on the San José State women's beach volleyball team for the 2023 season. The team finished the 2022 season without Student 1 with a 12-12 record. The team finished the 2023 season with Student 1 earning an 11-9 record, and a first-time appearance in the Southland Conference Championship.¹⁵

Student 1 made a significant impact on the San José State women's beach volleyball team's success. Some examples include:

- On February 25, 2023, Student 1 and a female teammate won twice in straight sets with a 4-1 win against an all-female team from the University of the Pacific and a 3-2 win against an all-female team from Santa Clara University.¹⁶

¹⁵ <https://sjsuspartans.com/documents/510ecfda-3d5d-4bdf-ba21-7ba3528b94b3.pdf>

¹⁶ <https://sjsuspartans.com/news/2023/02/25/spartans-kick-off-season-with-two-wins>

- On March 3, 2023, Student 1 and a female teammate defeated an all-female pair from the University of Portland.¹⁷
- On March 11, 2023, Student 1 and a female teammate defeated an all-female pair from the University of New Orleans during the Southland Midseason Tournament.¹⁸
- On March 17, 2023, Student 1 and a female teammate defeated an all-female pair from University of San Francisco during the San José State Tournament.¹⁹ The following day, on March 18, 2023, Student 1 and a female teammate defeated an all-female pair from the University of Oregon in straight sets during the final day of the San José State Tournament.²⁰
- On April 13, 2023, Student 1 and a female teammate defeated two all-female pairs from St. Mary's College and Sacramento State University, in a final regular season doubleheader.²¹
- During the Southland All-Conference Championship tournament, Student 1 and a female teammate "went 2-0 on the day to lead No. 6 seed San José State to a second round upset victory over No. 5 seed Southeastern Louisiana 3-1 before falling 1-3 to No. 2 seed Houston Christian."²²
- On April 20, 2023, Student 1 and a female teammate were named to the Southland All-Conference Second Team for women's beach volleyball.²³ Student 1's position on the All-Conference team displaced a female beach volleyball player for that honor.

Student 1's participation on the San José State University women's beach volleyball team denied educational opportunities to female student athletes at San José State University, including scholarship opportunities, playing time, and publicity, and likewise denied women on the team the opportunity and benefit of playing in an all-women intercollegiate athletic program. Student 1's participation on the San José State University women's beach volleyball team also provided the San José State University women's beach volleyball team an unfair advantage over the all-female teams from opposing colleges and universities. At the same time, male student athletic programs at San José State University were not similarly impacted in such a negative manner.

¹⁷ <https://sjsuspartans.com/news/2023/03/3/spartans-sweep-doubleheader-against-portland>

¹⁸ <https://sjsuspartans.com/news/2023/03/11/spartans-finish-day-one-at-southland-midseason-tournament>

¹⁹ <https://sjsuspartans.com/news/2023/03/17/spartans-finish-day-one-of-sjsu-tournament>

²⁰ <https://sjsuspartans.com/news/2023/03/18/spartans-prevail-in-final-day-of-san-jose-state-tournament>

²¹ <https://sjsuspartans.com/news/2023/04/13/spartans-split-doubleheader-against-sac-st-and-saint-marys>

²² <https://sjsuspartans.com/news/2023/04/22/spartans-split-day-two-of-slc-championship>

²³ <https://sjsuspartans.com/news/2023/04/20/spartans-blaire-fleming-and-nayeli-tia-named-to-slc-all-conference-second-team>

5. Invasion of Privacy

OCR received evidence that Student 1 shared living quarters with Student 3 on campus and often during overnight road trips, and Student 1 shared the women's locker room with the women on the team, both on campus and during road trips. The evidence is that at various times, most, if not all, of the women on the team at the time of sharing a dorm room, hotel room, and/or locker room with Student 1 were unaware that Student 1 was a male. At least one female team member openly expressed her concern to the University that her privacy was violated by her not knowing Student 1 was a male while rooming with and sharing a locker room with Student 1. Evidence obtained from the University shows Student 3 told Coaches 2 and 3 that she locked her bedroom door at night for safety after learning her roommate, Student 1, was a male. Student 3 has stated the athletic department would frequently assign her to room with Student 1 on road trips, and she later learned that Student 1 specifically requested Student 3 as a roommate, so University officials frequently assigned Student 1 to room with Student 3. Student 3 stated that she did not learn Student 1 was male until near the end of the 2023 season. Student 1 told Student 3 he was born male and considers himself to be a "transgender woman." Student 1 told Student 3 that he had not mentioned to her that he was male because they were living together in the dorm room and he was afraid that Student 3 would not be his friend if she knew the truth.

6. Different Treatment in Employment

OCR also found evidence raising a concern about possible different treatment on the basis of sex in employment practices by the University. Both Coach 2 and Coach 3 had complaints filed against them during the 2024 indoor volleyball season relating to allegations of Title IX violations and employee conduct violations. During the pendency of the employee conduct investigations, the University suspended Coach 3 (a woman) but chose to not suspend Coach 2 (a man), for similar alleged conduct at the beginning of both investigations. Notes made by the University's investigator relating to the parallel personnel investigations, both of which were opened November 12, 2024, indicate preferential treatment of Coach 2 over Coach 3 on the basis of sex. The allegations involved similar conduct relating to the alleged unauthorized release of Student information to the public.

University records indicate the decision to suspend Coach 3 was primarily based on allegations that Coach 3 committed a "FERPA violation" when she "openly went to the press and trashed a student." Similarly, the investigator's notes specifically state Coach 2 "crossed the FERPA line in his interview with ESPN." Additional notes indicate the decision to not suspend Coach 2 also included the improper consideration: "If we relieve him . . . [w]e could also spark more media attention. . . ." University records indicate University officials, including the President of the University, agreed to not suspend Coach 2 because they felt his suspension would unduly disrupt the team, yet an email from the Title IX coordinator dated October 17, 2024, includes the observation that: "The team has rallied around [Student 3] and [Coach 3], [Coach 2] isn't organically being communicated with, borderline *ignored or not even acknowledged*." (emphasis added).

Adding to OCR's concern about possible different treatment in the handling of the personnel matter is an indication of favoritism in the process. The investigator's notes state: "Call to [the Senior Associate Athletics Director for Student-Athlete Wellness and Leadership Development] – [Coach 2's] closest friend at SJSU – informing her that [Coach 2] received a notice today and may need a shoulder to lean on." The University provided no similar notes regarding a shoulder for Coach 3 to lean on when she received her notice.

These findings are based on the information provided by the University in response to OCR's multiple requests for information. OCR has made multiple requests for the University to provide access to all sources of information relating to these allegations and related investigations, but the University has failed to provide sufficient information for OCR to make additional conclusions regarding compliance. The University's failure to provide sufficient records was intentional, despite OCR's notice of obligation pursuant to 34 C.F.R. §§ 100.6, 106.6. Instead, the University has provided only partial records to OCR, which are partially responsive to OCR's requests, while redacting portions of the records that were provided and withholding other records entirely. OCR finds that the limited information to which we had access is credible, sufficiently corroborated, and sufficient to support a compliance concern regarding different treatment, as described above.

III. The Department Finds that San José State University is Noncompliant with Title IX and its Implementing Regulations

Despite Title IX's express provisions regarding sex-separated teams in intercollegiate sports and Title IX's equal-opportunity mandate, San José State University adopted and implemented a practice that forces women to compete against men in intercollegiate athletic programs designated for women, whenever a male student athlete asserts he is a woman, notwithstanding real and relevant biological differences between the sexes and historically limited athletic opportunities for women in intercollegiate athletics. San José State University also allows males to invade female's intimate facilities, endangering women's safety, privacy, and dignity. The evidence establishes that the San José State University's actions violate Title IX, 20 U.S.C. § 1681(a), and several of its implementing regulations: (1) 34 C.F.R. § 106.41(a) (prohibition against discrimination on the basis of sex); (2) 34 C.F.R. § 106.41(c) (equal opportunity mandate); (3) 34 C.F.R. § 106.33 (permitting segregation of intimate facilities by sex, not identity); and (4) 34 C.F.R. §§ 106.8(b)(2), 106.44 (prompt and equitable resolution of complaints alleging sex discrimination under Title IX). In addition, OCR has compliance concerns related to the University's compliance with 34 C.F.R. § 106.37(a), (c) (prohibiting sex-based discrimination in the award of athletics scholarships) and 34 C.F.R. § 106.51(a) (prohibiting sex-based discrimination in employment).

San José State University's discriminatory practices, intentional actions, and deliberate inaction, in the face of clear Title IX violations, constitutes discrimination on the basis of sex, in violation of Title IX and its implementing regulations.

A. San José State University's Policies and Practices Involving Athletics and Intimate Facilities Violate Title IX

1. San José State University's Policies and Practices Allowing Male Students Who Identify as Women to Participate in Women's Sports Violate Title IX

San José State University's actions related to athletics violates Title IX by unlawfully discriminating against women in violation of 20 U.S.C. § 1681(a); 34 C.F.R. § 106.41(a) (and outside the exception created by 34 C.F.R. § 106.41(b)), and by denying women the equal opportunity in athletics guaranteed by 34 C.F.R. § 106.41(c).

a. When a recipient of federal funding separates sports based on sex, the recipient is not "discriminat[ing]" based on sex because the recipient is treating the sexes differently with a sufficient justification: the real biological differences between men and women. But when the

recipient separates sports based on sex and also allows males with a certain “gender identity” to participate in women’s sports, that undermines the recipient’s justification for different treatment based on sex. Because these recipients are segregating based on sex without any biological justification for doing so, they are illegally discriminating based on sex, without a valid basis under Title IX.

Here, San José State University has abandoned the biological justification for sex separation in athletics by allowing males who identify as women participate in women’s sports, so the University is discriminating based on sex by separating the sexes without a valid basis under Title IX and thus is in violation of Title IX. 20 U.S.C. § 1681(a).

Title IX’s athletics regulation—which is a contemporaneous and accurate interpretation of Title IX that has been endorsed by Congress, *see Loper Bright*, 603 U.S. at 394; *Grove City*, 465 U.S. at 568—also shows that San José State University’s actions violate Title IX. That regulation first sets out a “[g]eneral” rule prohibiting sex-separated teams: “No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.” 34 C.F.R. § 106.41(a). It then lays out the only circumstance where recipients may have “[s]eparate teams”: “Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.” *Id.* § 106.41(b). Still, “where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport.” *Id.*

San José State University’s actions violate the athletics regulations. As explained above, the Title IX regulations explicitly prohibit such discrimination, barring recipients from excluding or otherwise discriminating against members of one sex in their participation in the recipient’s athletic program. 34 C.F.R. § 106.41(a). The regulations exempt from that prohibition athletics teams “where selection for such teams is based upon competitive skill” but only to the extent that that such segregation is truly on the basis of sex. 34 C.F.R. § 106.41(b). But the University is not segregating exclusively based on sex: Though the University purports to have male and female teams, the teams are not “for members of each sex,” as the University allows males with a certain “gender identity” to participate on the women’s team. 34 C.F.R. § 106.41(b). The regulations, on their face, do not permit segregation based on “gender identity.” And, as explained above, segregation based on “gender identity” does *not* help create fair competition for the members of each sex. To the contrary: allowing a man to participate on a women’s volleyball team, for example, *undermines* fair competition for women.

The facts of this case demonstrate the harm that the inclusion of a man on the woman’s volleyball team does to fair competition for women. As detailed above, Student 1, a man, is stronger, jumps higher, and hits the ball with more force and far harder than the women he competed against. As one of Student 1’s coaches reported: “I witnessed [Student 1] hit the ball so much harder than women, that [Student 1’s] hits induced fear in teammates in practice,” and she saw “women on the SJSU team seeking to dodge [Student 1’s] hits rather than try to return them, [which] is virtually unheard of in women’s volleyball.” Student 3, the team captain, stated the

women on the team were doing everything they could to dodge Student 1's spikes during practice but they still could not fully protect themselves. Student 3 stated she was hit in the head and about her body by volleyballs hit by Student 1, which caused greater bruising, pain, and discomfort than balls hit by women. She complained that Student 1 regularly "smash[ed] volleyballs into the faces and bodies of young women at speeds of over 80 mph and ma[de] a mockery of fair competition." Indeed, in at least one instance, Student 1 injured a competitor who was positioned on the back line (*i.e.*, far from the net) by spiking the ball into her head, knocking her to the floor. It is not surprising that many opponents opted to forfeit their matches against San José State University's women's volleyball team rather than face Student 1 and risk injury.

It is uncontroverted that: (1) San José State University is a recipient of federal funding from the Department; (2) San José State University knowingly recruited a male student athlete (Student 1) to join the San José State University women's indoor volleyball team with the intent of gaining a competitive advantage over other teams; (3) San José State University knowingly permitted a male student athlete (Student 1) to compete in two intercollegiate athletics programs designated for women, the women's indoor volleyball team and the women's beach volleyball team; (4) historically, intercollegiate athletic opportunities for women have been limited, but the same cannot be said for men; (5) San José State University has a history of offering sex-separated athletic programs for both men and women, in order to comply with Title IX; (6) San José State University provided a men's volleyball team; (7) San José State University provided a volleyball team designated for women but that was open to men; and (8) San José State University did not provide a volleyball team that was open exclusively to women. Accordingly, San José State University's actions involving Student 1 participating on the indoor women's volleyball team and the women's beach volleyball team violate Title IX and its implementing regulation, 34 C.F.R. § 106.41(a)-(b).

b. San José State University has also violated the equal opportunity in athletics guaranteed by the Title IX regulations: "A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes." 34 C.F.R. § 106.41(c). Recipients that provide men's athletic teams are therefore required to provide corresponding athletic teams that are, in fact, open only to biological women. But San José State University has opened up its women's athletics to biological men, subjecting its female athletes to increased risk of injury, displacing them from podiums in athletic competitions, denying them opportunities for advancement to regional and national competitions, and causing them to miss out on critical visibility for future opportunities and recognition.

The following pertinent evidence is uncontroverted: (1) San José State University is a recipient of federal funding from the Department; (2) San José State University knowingly recruited a male student athlete (Student 1) to join the San José State University women's indoor volleyball team with the intent of gaining a competitive advantage over other teams; (3) San José State University knowingly permitted a male student athlete (Student 1) to compete in two intercollegiate athletics programs designated for women, the women's indoor volleyball team and the women's beach volleyball team; (4) San José State University knowingly provided a women's volleyball scholarship to the male student (Student 1); (5) San José State University was aware that the presence of the male (Student 1) on the women's indoor volleyball team resulted in women being injured, women losing out on playing time and recognition, women being treated differently, and women-only teams being defeated during intercollegiate competitions; (6) San José State University knowingly allowed a male student to utilize locker rooms, student housing, and overnight accommodations designated for women; (7) historically, intercollegiate athletic opportunities for women have been limited, but the same cannot be said for men; (8) there is

sufficient interest and ability among San José State University students to sustain viable women-only intercollegiate athletic teams, and there is a reasonable expectation of intercollegiate competition for women's teams; (9) San José State University has a history of offering sex-separated athletic programs for both men and women, in order to comply with Title IX; (10) San José State University provided a men's volleyball team; (11) San José State University provided a volleyball team designated for women but that was open to men; and (12) San José State University did not provide a volleyball team that was open exclusively to women.

One of the factors that OCR considers in deciding whether members of a particular sex have been deprived equal athletic opportunity is “[w]hether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes.” 34 C.F.R. § 106.41(c)(1). OCR “considers the effective accommodation of interests and abilities in conjunction with equivalence in the availability, quality and kinds of other athletic benefits and opportunities provided male and female athletes to determine whether an institution provides equal athletic opportunity as required by Title IX.” *Berndsen v. N. Dakota Univ. Sys.*, 7 F.4th 782, 788 (8th Cir. 2021) (citing Office for Civil Rights, Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (Jan. 16, 1996)).

At San José State University, men get sex-segregated teams in which competitors compete only against other men; women in sex-segregated teams, however, are compelled to compete against men. Men competing in men's sports get fair and safe competition while women get unfair and unsafe competition, are subjected to increased risk of injury, are displaced from podiums and other opportunities and recognition. San José State University's actions thus deprive women of equal athletic opportunities in violation of Title IX. 34 C.F.R. § 106.41(c); *see also* Executive Order 14,201, 90 Fed. Reg. at 9279 (“In recent years, many educational institutions and athletic associations have allowed men to compete in women's sports. This is demeaning, unfair, and dangerous to women and girls, and denies women and girls the equal opportunity to participate and excel in competitive sports.”); *McCormick*, 370 F.3d at 294-95 (“Treating girls differently regarding a matter so fundamental to the experience of sports—the chance to be champions—is inconsistent with Title IX's mandate of equal opportunity for both sexes.”).

San José State University has permitted these violations of Title IX to occur, in full knowledge that its female student athletes want and demand better. Women, their families, and coaches have expressed to San José State University their interests in female-only athletic programs, teams, and competitions that effectively accommodate their interests and abilities and in San José State University ending its practice of allowing men to compete against women in athletic programs designated for women. Yet San José State University refuses to change its practices and has even asserted it will continue allowing men into athletic programs designated for women. San José State University's intentional action in the face of clear Title IX violations constitutes discrimination against female athletes on the basis of sex in violation of Title IX and its implementing regulations.

2. San José State University's Locker Room, Student Housing, and Overnight Stay Practices Violate Title IX

San José State University's locker room, student housing, and overnight stay practices, particularly as to Student I, violate Title IX.

When a recipient of federal funding separates locker rooms, student housing, and overnight stays arrangements based on sex, the recipient is not “discriminat[ing]” based on sex

because the recipient is treating the sexes differently with a sufficient justification: the real biological and privacy-based differences between men and women. But when the recipient separates such intimate facilities based on sex and also allows males with a certain “gender identity” to use the women’s facilities, that undermines the recipient’s justification for different treatment based on sex. Because these recipients are segregating based on sex without any biological justification for doing so, they are illegally discriminating based on sex, without a valid basis under Title IX.

Here, San José State University has purported to create sex-separate intimate facilities but it has abandoned the biological justification for sex separation in intimate facilities by allowing males who identify as women to use the women’s locker room, housing, or overnight stay arrangements. So the University is discriminating based on sex by separating the sexes without a valid basis under Title IX and thus is in violation of Title IX. 20 U.S.C. § 1681(a).

Further, as explained above, 34 C.F.R. § 106.33 authorizes recipients to segregate intimate facilities based on sex, not “gender identity.” A recipient that designates separate intimate facilities for men and women and then permits men to access the women’s facilities thus violates Title IX. In so doing, the recipient also facilitates the repeated violation of the privacy and dignity of its female students. *See Adams*, 57 F.4th at 804-05; *Grimm*, 972 F.3d at 634-36 (4th Cir. 2020) (Niemeyer, J., dissenting). Indeed, such a recipient imposes on women the very harms that § 106.33 was intended to prevent.

Recipients have an obligation under Title IX to all students in the provision of restrooms, locker rooms, and student housing. Students in school have enough to worry about; worrying about whether it is safe to use the bathroom, change in a locker room, or sleep in campus housing, cannot be among them. *See, e.g., Women’s Sports Pol’y Working Grp., Access to Female Athletes’ Locker Rooms Should Be Restricted to Female Athletes*, <https://womenssportspolicy.org/access-to-female-athletes-locker-rooms-should-be-restricted-to-female-athletes-january-28-2023/> (“Women’s locker rooms are designed to provide female athletes with a separate, safe, private place to shower, change clothes, and use the toilet.”).

Indeed, women have a privacy interest in using intimate facilities away from men, and in shielding their bodies from men while changing in the locker room, living in on-campus housing, and on overnight stays for school activities. “[T]he privacy afforded by sex-separated bathrooms has been widely recognized throughout American history and jurisprudence. In fact, ‘sex-separation in bathrooms dates back to ancient times, and, in the United States, preceded the nation’s founding.’” *Adams*, 57 F.4th at 805. Unsurprisingly, “courts have long found a privacy interest in shielding one’s body from the opposite sex in a variety of legal contexts,” which is why “[t]he protection of students’ privacy interests in using the bathroom away from the opposite sex and in shielding their bodies from the opposite sex is obviously an important governmental objective.” *Id.* at 804-05.

These concerns all became very real for Student 3. Once Student 3 learned that Student 1 is male, she had to lock her bedroom door at night out of fear because she was unwillingly sharing her living space with a man. Student 3 informed the University of her concerns but did not receive an adequate response. The other female members of the team suffered similarly: Student 1 shared the locker room with the women on the team and hotel rooms during overnight stays.

When recipients, such as San José State University, allow men to use locker rooms, restrooms, and student housing facilities designated for women based on “gender identity,” they are facilitating the significant deleterious effects—including discomfort, embarrassment,

psychological harm, and potential physical injury—that Title IX seeks to prevent, and heighten the risk and likelihood of sexual harassment which results in a denial of the overall benefits of an education program or activity based on sex, in violation of Title IX, including 20 U.S.C. § 1681(a), and 34 C.F.R. §§ 106.31, 106.33.

B. San José State University Failed to Provide a Prompt and Equitable Resolution of Student and Employee Complaints of Sex Discrimination

The question whether the University provided a prompt and equitable response to complaints of sex discrimination under Title IX was not an issue identified in the Notification Letter sent to the University initiating this investigation. However, during the course of this investigation, OCR received information indicating a possible failure to comply with the University's Title IX obligations regarding complaints of sex discrimination. Accordingly, this issue is being addressed in this letter pursuant to 34 C.F.R. § 100.7(c): "The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part."

Under Title IX and its implementing regulations, if a student or employee alleges that he or she has been discriminated against on the basis of sex, the recipient is required to provide a prompt and equitable resolution of the complaint. 34 C.F.R. §§ 106.8, 106.44. What constitutes a reasonable response to discrimination will differ depending upon the circumstances. But in all cases, the recipient must conduct a prompt, adequate and impartial inquiry designed to reliably determine what occurred, and if discrimination is found, the recipient must take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. *Id.*

As a preliminary matter, it is important to note that during the course of this investigation, OCR made multiple requests for the University to provide access to sources of information relating to these allegations and related investigations, including documents and witnesses, but the University has failed to provide sufficient information or approve requested interviews, for OCR to make additional conclusions regarding compliance. The University's failure to provide sufficient records was intentional, despite OCR's notice of obligation pursuant to 34 C.F.R. §§ 100.6, 106.6. Instead, the University has provided only partial records to OCR that are partially responsive to OCR's requests, while redacting significant portions of the records that were provided and withholding other records entirely and stating they are working to make arrangements for interviews. Due to the University's refusal to provide complete and unredacted records to OCR, it was difficult to ascertain precisely what Title IX issues were investigated by the University. What has been provided to OCR forms the basis of these findings and conclusions. As we explain below, OCR believes that the limited information provided to date is sufficient to enable us to make the findings described below.

1. Title IX Complaints Acknowledged by the University

The University indicated in its March 6, 2025, data response to OCR that: "To date, the University has received numerous reports and one formal complaint of potential discrimination due to [Student 1's] participation on the team." However, the evidence obtained by OCR indicates the University, in fact, received multiple Title IX sex discrimination complaints related to Student 1's participation in the women's volleyball program, but it appears the University failed to respond to those complaints in a prompt and equitable manner, as required by Title IX. Records provided

by the University indicate the issues of alleged sex discrimination raised in those complaints were not opened for investigation by the University under Title IX. Instead, the University only investigated allegations that Coach 3 did not prepare, train, coach, or provide emotional support and encouragement to Student 1 in the same way she prepared, trained, coached, and or provided emotional support and encouragement to the women on the indoor volleyball team because Student 1 is male. Those allegations were opened for investigation on November 12, 2024, and a Final Investigation Report was not issued until October 16, 2025, almost a full year later.²⁴ The University also investigated whether Coach 2 retaliated against Student 3 for her participation in a lawsuit against the NCAA. That allegation was opened for investigation on November 12, 2024, and, like the other allegation, a Final Investigation Report was not issued until October 16, 2025. Both Final Investigation Reports expressly state: “The findings in this Report do not reach questions of law as to whether the alleged misconduct supports a violation of applicable laws, but instead are factual findings and determinations under CSU policy. The policy determinations, however, are not intended to equate to a finding that applicable laws were violated.”

2. Title IX Complaints Actually Received by the University

On September 23, 2024, the University received a letter from attorneys representing Student 3 notifying the University that Student 3 was joining a lawsuit against the NCAA based on their policy of allowing men to compete against women in athletic programs designated for women in violation of Title IX. In that same notice, Student 3 also informed the University that Student 3 was also alleging the University was violating Title IX by allowing Student 1 to compete on the women’s indoor volleyball team, and the attorneys for Student 3 reminded the University of their obligation to not retaliate against Student 3, and to not permit retaliation against Student 3, for exercising her rights under Title IX.

On September 24, 2024, the University received a Title IX and Equal Protection complaint from the Independent Council on Women’s Sports (ICONS) alleging the University’s policy and practice of allowing a male student to participate in the women’s volleyball program violated Title IX by denying women equal athletic opportunities and by allowing a man in women’s locker rooms likewise violates Title IX. The ICONS complaint states in part: “Over the last few weeks, we have spoken with distraught student-athletes and their parents, coaches, and administrators throughout the Mountain West Conference regarding a crisis in women’s volleyball. . . [because of] San José State University . . . permitting a transgender-identifying male, [Student 1], to compete on the SJSU women’s volleyball team.” The ICONS letter further stated “[Student 3] a senior co-captain on the SJSU women’s volleyball team [alleges] unlawfully allowing [Student 1] to compete on the SJSU women’s volleyball team put[s] women at risk of physical injury in practices and games. [Student 3] describes terrorizing practices and games in which a man is smashing volleyballs into the faces and bodies of young women at speeds of over 80 mph and making a mockery of fair competition.”

On October 5, 2024, Coach 2 sent an email to the Title IX coordinator stating, in relevant part: “I received a report from one of my student-athletes yesterday of some behavior initiated by

²⁴ The University’s Title IX policy states a Final Investigation Report should be provided to the parties within 100 working days from the date the Notice of Investigation is issued. Article VII(A)(vii).

[Student 1] that could be deemed as retaliation toward [Student 3]. This behavior occurred in Colorado on Wednesday, October 2, while we were there for our match vs Colorado State.”

On October 29, 2024, Coach 3 filed a “Complaint about the Title IX violation,” requesting “an immediate and comprehensive Title IX investigation” alleging in part: (1) San José State University was engaged in illegal discrimination on the basis of subjective identity; (2) Student 2 was wrongfully refused a women’s volleyball scholarship while Student 1 was permitted to maintain a women’s volleyball scholarship; (3) the University’s Senior Associate Athletics Director for Student-Athlete Wellness and Leadership Development stated “anyone who disagrees with [Student 1] being on the women’s volleyball team needs to get therapy and needs to leave SJSU”; (4) Student 1’s physical abilities and strength placed women on the team and opponents’ teams at increased risk of injury; (5) Coach 2 was giving Student 1 preferential treatment over the women on the team; (6) Women in the San José State University women’s volleyball team were being denied opportunities and benefits on the basis of sex; (7) University officials took action to dissuade women on the team from filing a complaint or speaking out in opposition to Student 1 being able to participate on the women’s volleyball team; (8) Coach 2 retaliated against Student 3 after she joined a Title IX lawsuit challenging Student 1’s participation in the women’s volleyball program; and (9) University officials were not responding properly to student, parent, and Coach 3’s concerns regarding Student 1’s participation in the women’s volleyball program.

On November 3, 2024, the parents of Student 10 sent a letter to the University, which was forwarded to the Title IX coordinator, stating in part: “Our daughter has expressed a severe level of discomfort with the polarization of the staff and the athletic department. We are hearing those same echoes from most of the team as well. . . . [Coach 2] and [the Senior Associate Athletics Director for Student-Athlete Wellness and Leadership Development] have camped out on one side of the issue that supported transgender participation on the team while [Coach 3] has balanced those voices on the other side.” The parents stated their concern that the suspension of Coach 3 appears to be an attempt to silence opposition to the University’s policy and practice and shared their concern with University administrators telling those who disagree with Student 1 participating on the women’s volleyball team to “seek therapy”, “stay silent” and other “...phobic” language. The parents stated the women on the team felt Coach 3 was the only person with whom they felt they could express disagreement with Student 1 playing on the team, without fear of retaliation. The parents also expressed concern that their daughter and others on the team perceived an overall lack of support for the women on the team, especially by Coach 2, the Senior Associate Athletics Director for Student-Athlete Wellness and Leadership Development, and the Assistant Athletic Director for Diversity, Equity & Inclusion. The parents stated those three University officials had expressed to the women on the team, “clear support” of Student 1 while at the same time telling the women on the team who had concerns about Student 1 being a member of the team to “seek therapy,” to stay silent because this was not their story to tell, and made “veiled threats” that anyone expressing disagreement with Student 1 being on the team could place their National Letter of Intent (their scholarship agreement with the University) in jeopardy. The parents indicated the reaction of Coach 2 to any disagreement expressed by the women on the team to Student 1’s continued participation were met with hostility and the removal of Coach 3 acted to effectively silence dissent. The parents also expressed concern that many women on the volleyball team felt Coach 2 was giving preferential treatment to Student 1 and would not discipline Student 1 for violating team rules whereas the women on the team were disciplined for violating team rules.

After meeting with the University's Title IX coordinator to discuss their letter, the Title IX coordinator sent an email stating: "I [take] it to mean you [do] not want to commence an investigation into these experiences. Please let me know if my interpretation is incorrect." To which the parents responded: "Candidly, with what we shared and information you have collected from other parties, we would assume it is sufficient for the university to commence an investigation. If you are saying that such an investigation has to be requested by another party and the university cannot conduct one on its own, please let us know if we misunderstood." The University provided OCR with no follow-up information to that statement.

3. Analysis

The University has acknowledged only two of the many Title IX complaints it received related to Student 1's participation on the women's volleyball team. The University's investigation into both of those complaints took nearly a year. OCR acknowledges there is no set date associated with a "prompt" resolution, but given the information that has been made available to OCR, accompanied with the University's Title IX policy's timeline of 100 days for resolution of complaints, OCR finds the investigations the University undertook were not adequately and promptly resolved, as required by 34 C.F.R. §§ 106.8, 106.44-106.46. OCR also finds the University's failure to investigate the many other Title IX allegations that were properly raised constitute a violation of 34 C.F.R. §§ 106.8, 106.44-106.46. (If, in fact, the University opened investigations in response to any of those complaints, the University has failed to provide the investigative files to OCR, despite multiple requests.)

The University stated the Title IX office decided not to investigate most of the allegations raised in the aforementioned Title IX complaints after conducting preliminary inquiries because the students impacted by those allegations chose not to meet with University officials to discuss the allegations during the preliminary inquiry stage. But, based on the information the University provided to OCR, the University had sufficient information to open investigations into those complaints even without involvement by a complainant. The evidence available to OCR demonstrates that, despite having received significant credible allegations of sex-based discrimination, including different treatment, retaliation and denial of equal educational opportunities on the basis of sex, the University's Title IX office failed to take appropriate action to address those concerns and even appears to have taken action that could reasonably discourage women from participating in the Title IX complaint process.

Although the University "assured" the women impacted by the allegations they would not be retaliated against if they responded to the Title IX office's preliminary inquiry, the evidence indicates that the impacted student athletes and Coach 3 were also, at the same time, provided information by the University that could reasonably dissuade them from participating in the Title IX investigative process. For example, the women on the volleyball team were sent written communications from the Title IX office which included statements such as: "You are not required to respond to our outreach" and "I do not want you to feel pressured to respond." The coaching staff and women on the team were also told by the Title IX office that "Gender identity is a protected status under [the University's] Nondiscrimination Policy. . . Discrimination can occur when we treat someone less favorably . . . because of their protected status such as their Gender Identity." Another example is the September 28, 2024, email sent to the women's indoor volleyball team by the Director of Athletics after a team meeting with the Senior Associate Athletics Director for Student-Athlete Wellness and Leadership Development to discuss "confusion around [their]

rights that may stem from a recent meeting with a university administrator.” The Director of Athletics stated he wanted to “specifically reinforce that each of you has a right to speak openly about your own experiences without fearing retaliation, *subject to the University’s policy against harassment*.” (emphasis added). Additionally, the information sent to the women was not responsive to the complaints that were being made. The information sent to the women was largely focused on services related to “survivor” resources and noted: “You have the right to decide whether to make a report to law enforcement,” which was not responsive to the concerns expressed by the women on the team about a male athlete being allowed to play in their women’s intercollegiate athletic program. Moreover, not long after all of this, University administrators told those who disagreed with Student 1’s participation on the women’s volleyball team to “seek therapy” and “stay silent,” and it made “veiled threats” that anyone expressing disagreement with Student 1 being on the team could place their National Letter of Intent (their scholarship agreement with the University) in jeopardy.

After reviewing the evidence, we find that it is no mystery why the complainants chose to remain silent. Only one student agreed to meet with the University’s Title IX investigator despite all of the problems facing the women on the team because the women, in fact, did not feel free to voice their concerns with the University about Student 1 participating in the women’s volleyball program without facing retaliation. The evidence suggests a concerted effort was made to silence the women on the team, and it succeeded for the most part. The University cannot then reap the benefit of such intimidation by being permitted to close valid Title IX complaints for lack of participation by impacted individuals.

C. Different treatment in employment and athletic scholarships

Title IX states a general prohibition on sex discrimination in education programs or activities receiving federal funding: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.” 20 U.S.C. § 1681(a).

The Title IX implementing regulation prohibits different treatment based on sex. 34 C.F.R. § 106.31. It specifically prohibits discrimination in the award of athletic scholarships, requiring recipients to afford members of both sexes “reasonable opportunities” for such awards and forbidding them from applying different criteria or to otherwise discriminate on the basis of sex. 34 C.F.R. § 106.37(a), (c). It also specifically prohibits discrimination based on sex in employment:

No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives Federal financial assistance.

34 C.F.R. § 106.51(a); *see also* 34 C.F.R. § 106.51(b)(2)-(3) (indicating that the regulation covers decisions to layoff, terminate, or alter the compensation of employees).

In determining whether a recipient has subjected an individual to prohibited discrimination, OCR examines whether there were any apparent differences in the treatment of similarly situated individuals. If different treatment is established, OCR then considers whether the recipient had a legitimate, non-discriminatory or non-retaliatory reason for the apparent different treatment or whether the reason provided was a pretext for discrimination or retaliation. Based on the limited

information the University provided to OCR, OCR has a compliance concern to the effect that the University may have treated Coach 3 and women on the indoor volleyball team differently than the University treated men, including Coach 2 and Student 1, in violation of Title IX. The evidence obtained indicates that the University treated Coach 2 and Student 1, both men, more favorably than Coach 3 and women on the indoor volleyball team, both in responding to complaints of sex discrimination, and in situations involving scholarships, practice and playing time, and the overall benefits of its intercollegiate athletics program.

As described above, the evidence indicates that Coach 3, a woman, was immediately suspended in conjunction with allegations of a FERPA violation, whereas Coach 2, a man, was not suspended despite facing similar FERPA allegations. OCR has requested additional information regarding these matters from the University in order to make an informed determination, but, despite having ample opportunity to provide it, the University refused to provide all of the requested information.

Also as described above, the evidence indicates Student 2, a woman on the volleyball team, lost her scholarship when she was injured during the 2023 season, yet Student 1, a man on the women's volleyball team, was permitted to retain his scholarship when he was also injured during the 2023 season, despite Student 1 missing more games than Student 2. OCR has requested additional information regarding these matters from the University in order to make an informed determination, but, despite having ample opportunity to provide it, the University refused to provide all of the requested information.

Additionally, as described above, the evidence indicates Student 1, a man, was permitted to violate team rules without facing discipline, but the women on the same team did face discipline for similar violations of team rules. OCR has requested additional information regarding these matters from the University, but, despite having ample opportunity to provide it, the University has not provided all of the requested information.

These compliance concerns are based on the information provided by the University in response to OCR's multiple requests for information. OCR has made multiple requests for the University to provide access to sources of information relating to these allegations and related investigations, but the University has failed to provide sufficient information for OCR to make additional conclusions regarding compliance. The University's failure to provide sufficient records was intentional, despite OCR's notice of obligation pursuant to 34 C.F.R. §§ 100.6, 106.6. Instead, the University has provided only partial records to OCR, while redacting significant portions of the records that were provided and withholding other records entirely. Additionally, the University has not approved OCR's request to interview the University's investigators. OCR finds that the limited information to which we had access is credible, sufficiently corroborated, and sufficient to support these stated compliance concerns.

D. Effect of Conflicting State Law and NCAA Policy

San José State University has acknowledged it permitted a male student to compete in two intercollegiate athletic programs designated for women but indicates it did so because of a past NCAA policy and existing California state law. The University's reliance on an NCAA policy and/or California state law fails to account for the University's obligations to follow Title IX and all related regulations and Executive Orders as a recipient of federal funding, notwithstanding any conflicting state laws or rules of private organizations.

The Title IX implementing regulations clearly state, in relevant part:

(b) Effect of State or local law or other requirements. The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) Effect of rules or regulations of private organizations. The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives federal financial assistance.

34 C.F.R. § 106.6(b)-(c). Additionally, all federal grant recipients from the Department are required to comply with all applicable federal laws, including Title IX, and all related Executive Orders. 34 C.F.R. § 75.500.

The evidence has established that the University failed to comply with Title IX and its implementing regulations, as described above. And after the University was informed by Executive Orders 14168 and 14201, and OCR's specific guidance that under Title IX, that biological men cannot be permitted to participate in athletic programs designated for women, the University has doubled down on its defiance and stated that the University intends to continue allowing men to participate in women's athletic programs despite OCR's guidance that such actions violate Title IX. The University stated in a March 6, 2025, written response to OCR:

On February 6, 2025, the NCAA updated its Participation Policy for Transgender Student-Athletes. The revised Policy significantly departs from prior years and prohibits a student-athlete assigned male at birth from competing on a women's team. However, the Policy plainly states that "schools are subject to local, state and federal legislation and such legislation *supersedes* the rules of the NCAA." Given that state law squarely contradicts the current NCAA's Participation Policy for Transgender Student-Athletes, SJSU and other similarly situated universities, are obligated to follow state law.

March 6, 2025, letter from Mary Keating, Associate Vice President for Title IX and Equal Opportunity, p. 7 (emphasis in original).

The University's statement to OCR that it plans to continue ignoring the Executive Orders and OCR's warnings because of California state law is contrary to the assurances that San José State University has submitted to the Department as a condition of federal funding, and conflicts with the plain language of 34 C.F.R. §§ 75.500, 75.700, 106.4, 106.6.

E. Duty to Remedy Past Discrimination

Title IX and its implementing regulations require recipients to commit to taking whatever remedial action is necessary to eliminate existing discrimination on the basis of sex and to eliminate the effects of past discrimination, whether occurring before or after the recipient's request for federal financial assistance. *See* 34 C.F.R. § 106.4(a). This investigation has shown San José State University discriminated against women on the San José State University women's indoor volleyball team and beach volleyball team, and against women on teams San José State

University competed against, including women on teams who were defeated by San José State University while Student 1 was playing, women who were injured during games, and women on teams that forfeited matches in lieu of playing against a male player in a women's intercollegiate athletic program. San José State University is obligated to remedy the effects of that past discrimination and to take action to prevent additional discrimination. The University's failure to commit to taking whatever remedial action is necessary to eliminate existing discrimination on the basis of sex and to eliminate the effects of past discrimination whether occurring before or after the recipient's request for federal financial assistance is a violation of 34 C.F.R. § 106.4.

IV. Conclusion

This concludes OCR's investigation. This letter of finding of noncompliance should not be interpreted to address San José State University's compliance with any other statutory or regulatory provision, or to address any issues other than those addressed in this letter. This letter of findings does not constitute final agency action.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied on, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

The University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law or regulation enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law or regulation enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

This letter is accompanied by a proposed resolution agreement that specifies actions that will remedy current and past discrimination, and to prevent any similar instances where future violative conduct may recur. If OCR determines an agreement will not be reached, the Department may begin enforcement action including referral to the U.S. Department of Justice or other means authorized by law, including the initiation of an action to suspend, terminate, or refusal to grant or continue federal financial assistance.

Respectfully,

BRADLEY BURKE

Bradley R. Burke
Regional Director

Digitally signed by BRADLEY
BURKE
Date: 2026.01.28 08:58:49 -06'00'

Enclosure

EXHIBIT D



Division of Intercollegiate Athletics
San José State University

One Washington Square - San José, CA 95192-0062

Phone: 408.924.1200
www.sjsuspartans.com

January 30, 2023

Melissa Batie-Smoose
 Associate Head Coach Women's Volleyball
 SAN JOSE STATE UNIVERSITY

Dear Melissa:

On behalf of President, Cynthia Teniente-Matson, I am pleased to offer you the appointment to the position of Associate Head Coach Women's Volleyball, at San Jose State University. In addition to the applicable provisions of the policies of the California State University ("CSU") and San Jose State University ("SJSU"), your appointment includes the following:

1. Your appointment is at the classification of Coaching Specialist 12 Mo (1.0 FTEF), Classification Code 2379, Exempt, and carries an annual salary of \$67,872 payable over 12 months at \$5,656 per month. This classification is subject to the terms and working conditions stated in the Collective Bargaining Agreement ("CBA") between CSU and the California Faculty Association ("CFA"), Unit 3 - Faculty.
2. You are represented by the California Faculty Association, a union of 29,000 professors, lecturers, librarians, counselors and coaches who teach in the California State University system. In classrooms on the 23 CSU campuses, CFA members work hard to teach our students. To join, as an active member with rights to vote and engage fully on behalf of yourself and others, go to: <https://www.calfac.org/join-cfa>
3. This appointment is subject to the statutes, collective bargaining agreements, policies and procedures of SJSU including, but not limited to, the right of SJSU to transfer, assign, reassign, layoff and discipline. It is specifically understood by the parties that San Jose State University retains the right to assign or reassign you to other positions with other duties during the term of this appointment.
4. You will receive pay raises that the state budget process and collective bargaining agreements provide for your rank during the term of your appointment.
5. Athletic coach appointments are temporary by nature, expire at the end of the term stated and do not establish any future appointment rights. The position of Associate Head Coach Women's Volleyball is the case with all coaching positions, does not qualify for or lead to tenure but may be extended on an annual basis. The effective dates of this appointment shall be from February 1, 2023, to January 31, 2024.
6. As Associate Head Coach Women's Volleyball, you will report to the Volleyball Head Coach. Your performance will be evaluated annually by the Volleyball Head Coach. Please note that

the university policy relating to appointment and evaluation for temporary faculty can be found at Article 15 of the CBA¹ and at University Policy S10-7.² The attached evaluation form lists the criteria on which you will be evaluated.

7. In addition to other administrative or teaching duties which the Volleyball Head Coach may assign, the duties and responsibilities of the Associate Head Coach Women's Volleyball are as follows:

Evaluate, recruit, train and coach student athletes to compete successfully against major college competition in a quality women's volleyball program.

Determine scouting schedules for high school and college games.

Interview prospective players, their parents and coaches.

Contact media, alumni and civic groups.

Work to integrate sports into the whole spectrum of academic life to complement SJSU's educational mission.

Work within the rules, regulations, guidelines and policies of SJSU's athletic department.

Keep public statements complimentary to the athletics program and to SJSU.

Make every effort to ensure that all student athletes' academic requirements are met, including the development and implementation of a Coach's Academic Plan (CAP) for women's indoor/beach volleyball teams.

Prepare players for each competition and each season with dedication.

Establish and maintain a frequent and systematic program of personal communication with SJSU's student body, alumni and community supporters.

Maintain reasonable discipline and be fair, empathetic and develop a positive relationship with the student-athletes, while motivating them to excellence in all aspects of life, including athletic and non-athletic endeavors.

Work to integrate intercollegiate athletics into the whole spectrum of academic life to complement the University and its mission in the community.

Work within the confines of all rules, regulations, guidelines, policies and procedures of the Athletics Department and to ensure that those staff members within his charge do so as well.

Advance the efforts of the Athletics Department and the University toward diversity and gender equity. Provide full support and abide by the CSU and SJSU commitment to gender equity in education, including athletics, and its full compliance with Title IX of the Education

¹ Article 15 is available at: <https://www2.calstate.edu/csu-system/faculty-staff/labor-and-employee-relations/Documents/unit3-cfa/article15.pdf>

² University Policy S10-7 is available at: <http://www.sjsu.edu/senate/S10-7.htm>

Amendments to the Civil Rights Act of 1964. You will fully support and abide by the CSU and San Jose State University commitment to maintain a working and learning environment where every student, employee and community member is treated with dignity and respect. You will support and comply with SJSU commitment to maintain a safe and healthy living and learning environment for everyone.

8. It is the policy of SJSU that all of its programs in intercollegiate athletics be operated in accordance with NCAA, Mountain West Conference and SJSU policies and procedures. A violation of any law, rule, regulation, constitutional provision, bylaw or interpretation of SJSU, the Mountain West Conference or the NCAA by you or student athletes in the women's indoor/beach volleyball programs, which violation may, in the reasonable and good faith judgment of SJSU, reflect adversely upon SJSU or its athletics program, including any violation which may result in SJSU being placed on probation by the Mountain West Conference or the NCAA and including any violation which may have occurred during your prior employment at another NCAA member institution may lead to formal disciplinary action up to and including dismissal.
9. While employed by SJSU as Associate Head Coach Women's Volleyball, you may engage in outside employment, but only upon the following terms and conditions:
 - a. You may own, work for, or otherwise be associated with a private sports camp or clinic. You may request to use University facilities administered by University personnel for such sports camps. Use of University facilities by you will require that the sports camp pay the University an appropriate fee for the use of the facility. Camps and clinics must be operated in accordance with NCAA rules and regulations. In addition, you understand that you are responsible for ensuring that camps and clinics activities comply with California State Ethics law.
 - b. Any outside employment shall not interfere with the full and complete performance by you of your duties and obligations as a SJSU employee, recognizing always that your primary obligations lie with SJSU and its students.
 - c. Prior to engaging in any outside employment, you shall obtain written approval from the Compliance Office and the Director of Athletics, which approval shall not be unreasonably withheld.
 - d. In no event shall you accept or receive directly or indirectly any monies, benefit, or any other gratuity whatsoever from any person, corporation, SJSU affiliated or non-affiliated booster club or alumni association if such action would violate state, NCAA legislation or the constitution, bylaws, rules and regulations or interpretations of the NCAA and/or the Mountain West Conference, or SJSU policies.
 - e. Any outside employment is independent of your employment with SJSU and SJSU shall have no responsibility or liability for any claims arising there from. In no case shall SJSU be liable to you for the loss of any collateral business opportunities or any other benefits, perquisite or income resulting from activities such as, but not limited to, camps, clinics, media appearances, apparel or shoe contracts, automobile, tickets, consulting relationships or from any other source due to SJSU's reassignment or termination of your employment. You agree to hold harmless and indemnify SJSU from

all suits, claims, demands, damages, liability, penalties, costs and expenses, including reasonable attorney fees, arising in any manner from your earning or attempting to earn outside income.

- f. You shall report annually to the Compliance Office through the Director of Athletics all athletically-related income from sources outside SJSU and SJSU, upon request, shall have reasonable access to all records necessary to verify such reports.
10. If another coaching opportunity is presented to you or should you be interested in another coaching position during your employment with SJSU, you must notify the Director of Athletics of such opportunity or interest and permission must be given to you by the Director of Athletics before any discussion can be held by you and the anticipated coaching position principals, which permission shall not be unreasonably withheld.
11. This letter of appointment completes and exhausts present SJSU commitments and voids any previous agreements between us. No commitment exists beyond those in this letter of appointment.

Proof of eligibility for employment, required by the U.S. Department of Homeland Security, Bureau of Citizenship and Immigration Services, must be furnished to University Personnel before work is performed.

Appointments are contingent upon completion of all appointment documents. These documents include transcripts, appropriate recommendations and references, completed SC-1 and I-9 forms, written acknowledgment as a mandated reporter under the California Child Abuse and Neglect Reporting Act and the oath of allegiance required of all persons employed by the State of California.

If you decide to accept this offer, please indicate in the space below and return the original of this letter to me. By accepting you certify that you have legal authority to be employed for the term of this appointment. A copy is provided for your records.

Sincerely,

DocuSigned by:

 DE06FBE2B30D424...

Jeff Konya
 Director of Athletics

1/30/2023

Date _____

My signature below manifests my acceptance of the position as offered in this letter.

DocuSigned by:

 Signed 477E5D9BED47418...

Melissa Batie-Smoose

1/30/2023

Date _____

EXHIBIT E



Division of Intercollegiate Athletics
San José State University

One Washington Square - San José, CA 95192-0062

Phone: 408.924.1200
www.sjsuspartans.com

Revised to include incentive verbiage

February 28, 2024

Melissa Batie-Smoose
Associate Head Coach Women's Volleyball
SAN JOSE STATE UNIVERSITY

Dear Melissa:

On behalf of President Cynthia Teniente-Matson, I am pleased to offer you a reappointment to the position of Associate Head Coach for Women's Volleyball at San Jose State University. In addition to the applicable provisions of the policies of the California State University ("CSU") and San Jose State University ("SJSU"), your appointment includes the following:

1. Your appointment is at the classification of Coaching Specialist (1.0 FTEF), Classification Code 2379, Exempt, and carries an annual salary of \$67,872, payable over 12 months at \$5,656 per month. This classification is subject to the terms and working conditions stated in the Collective Bargaining Agreement ("CBA") between CSU and the California Faculty Association ("CFA"), Unit 3 - Faculty.
2. In addition to the salary stated above, the Tower Foundation shall pay you supplemental compensation from the Spartan Athletics Donor Fund # 034-6200-1082 as follows \$1,428 per month or \$17,136 on an annual basis.

The Tower Foundation shall pay the Employee incentive compensation from the Women's Volleyball Fund #034-6200-0258 as indicated below if the following criteria are met.

Incentive Compensation Criterion:

- a) Employee will receive \$5,000 if the Women's Indoor Volleyball team's final ranking is in the top six of the MWC and qualifies for the MWC Tournament.
 - b) Employee will receive \$5,000 if the Women's Indoor Volleyball team's overall middle attack percentage improves from .216%.
 - c) Employee will receive \$5,000 if the Women's Indoor Volleyball team's final ranking in team block sets is in the top six of the MWC.
3. You will be represented by the California Faculty Association, a union of more than 29,000 professors, lecturers, librarians, counselors and coaches who teach in the California State University system. As stated by CFA, "In classrooms on the 23 CSU campuses, CFA members

work hard to teach our students. To join as an active member with rights to vote and engage fully on behalf of yourself and others, go to: <https://www.calfac.org/join-cfa>.”

4. This appointment is subject to the statutes, collective bargaining agreements, policies, and procedures of SJSU, including, but not limited to, the right of SJSU to transfer, assign, reassign, layoff, and discipline. It is specifically understood by the parties that San Jose State University retains the right to assign or reassign you to other positions with other duties during the term of this appointment.
5. You will receive pay raises that the state budget process and collective bargaining agreements provide for your rank during the term of your appointment.
6. Athletic coach appointments are temporary by nature, expire at the end of the term stated, and do not establish any future appointment rights. The position of Associate Head Coach for Women's Volleyball, as is the case with all coaching positions, does not qualify for or lead to tenure but may be extended on an annual basis. The effective dates of this appointment shall be from February 1, 2024, to January 31, 2025.
7. As Associate Head Coach for Women's Volleyball, you will report to the Volleyball Head Coach. Your performance will be evaluated annually by the Volleyball Head Coach. Please note that the university policy relating to appointment and evaluation for temporary faculty can be found at Article 15 of the CBA¹ and at University Policy S10-7.² The attached evaluation form lists the criteria on which you will be evaluated.
8. In addition to other administrative or teaching duties that the Volleyball Head Coach may assign, the duties and responsibilities of the Associate Head Coach for Women's Volleyball are as follows:

Evaluate, recruit, train, and coach student-athletes to compete successfully against major college competition in a quality volleyball program.

Determine scouting schedules for high school and college games.

Interview prospective players, their parents, and coaches.

Contact media, alumni, and civic groups.

Work to integrate sports into the whole spectrum of academic life to complement SJSU's educational mission.

Work within the rules, regulations, guidelines, and policies of SJSU's athletic department.

Keep public statements complimentary to the athletics program and to SJSU.

¹ Article 15 is available at: <https://www2.calstate.edu/csu-system/faculty-staff/labor-and-employee-relations/Documents/unit3-cfa/article15.pdf>

² University Policy S10-7 is available at: <http://www.sjsu.edu/senate/S10-7.htm>

Make every effort to ensure that all student athletes' academic requirements are met, including the development and implementation of a Coach's Academic Plan (CAP) for the volleyball team.

Prepare players for each competition and each season with dedication.

Establish and maintain a frequent and systematic program of personal communication with SJSU's student body, alumni and community supporters.

Maintain reasonable discipline and be fair and empathetic and develop a positive relationship with the student-athletes while motivating them to excellence in all aspects of life, including athletic and non-athletic endeavors.

Maintain a professional, collegial, mature, and rational demeanor and attitude at all times.

Work to integrate intercollegiate athletics into the whole spectrum of academic life to complement the University and its mission in the community.

Work within the confines of all rules, regulations, guidelines, policies, and procedures of the Athletics Department and to ensure that those staff members within his/her charge do so as well.

Advance the efforts of the Athletics Department and the University toward diversity and gender equity. Provide full support and abide by the CSU and SJSU commitment to gender equity in education, including athletics, and its full compliance with Title IX of the Education Amendments to the Civil Rights Act of 1964. You will fully support and abide by the CSU and San Jose State University commitment to maintain a working and learning environment where every student, employee and community member is treated with dignity and respect. You will support and comply with SJSU commitment to maintain a safe and healthy living and learning environment for everyone.

9. It is the policy of SJSU that all of its programs in intercollegiate athletics be operated in accordance with NCAA, Mountain West Conference and SJSU policies and procedures. A violation of any law, rule, regulation, constitutional provision, bylaw, or interpretation of SJSU, the Mountain West Conference, or the NCAA by you or student-athletes in the volleyball program, which violation may, in the reasonable and good faith judgment of SJSU, reflect adversely upon SJSU or its athletics program, including any violation which may result in SJSU being placed on probation by the Mountain West Conference or the NCAA and including any violation which may have occurred during your prior employment at another NCAA member institution may lead to formal disciplinary action up to and including dismissal.
10. While employed by SJSU as Associate Head Coach for Women's Volleyball, you may engage in outside employment, but only upon the following terms and conditions:
 - a. You may own, work for, or otherwise be associated with a private sports camp or clinic. You may request to use University facilities administered by University personnel for such sports camps. Use of University facilities by you will require that the sports camp pay the University an appropriate fee for the use of the facility. Camps and clinics must be operated in accordance with NCAA rules and regulations. In addition, you

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understand that you are responsible for ensuring that camps and clinic activities comply with California State Ethics law.

- b. Any outside employment shall not interfere with the full and complete performance by you of your duties and obligations as a SJSU employee, recognizing always that your primary obligations lie with SJSU and its students.
 - c. Prior to engaging in any outside employment, you shall obtain written approval from the Compliance Office and the Director of Athletics, which approval shall not be unreasonably withheld.
 - d. In no event shall you accept or receive directly or indirectly any monies, benefit, or any other gratuity whatsoever from any person, corporation, SJSU affiliated or non-affiliated booster club or alumni association if such action would violate state, NCAA legislation or the constitution, bylaws, rules and regulations or interpretations of the NCAA and/or the Mountain West Conference, or SJSU policies.
 - e. Any outside employment is independent of your employment with SJSU and SJSU shall have no responsibility or liability for any claims arising there from. In no case shall SJSU be liable to you for the loss of any collateral business opportunities or any other benefits, perquisite or income resulting from activities such as, but not limited to, camps, clinics, media appearances, apparel or shoe contracts, automobile, tickets, consulting relationships or from any other source due to SJSU's reassignment or termination of your employment. You agree to hold harmless and indemnify SJSU from all suits, claims, demands, damages, liability, penalties, costs and expenses, including reasonable attorney fees, arising in any manner from your earning or attempting to earn outside income.
 - f. You shall report annually to the Compliance Office through the Director of Athletics all athletically-related income from sources outside SJSU and SJSU, upon request, shall have reasonable access to all records necessary to verify such reports.
11. If another coaching opportunity is presented to you or should you be interested in another coaching position during your employment with SJSU, you must notify the Director of Athletics of such opportunity or interest and permission must be given to you by the Director of Athletics before any discussion can be held by you and the anticipated coaching position principals, which permission shall not be unreasonably withheld.
12. This letter of appointment completes and exhausts present SJSU commitments and voids any previous agreements between us. No commitment exists beyond those in this letter of appointment.

Proof of eligibility for employment, required by the U.S. Department of Homeland Security, Bureau of Citizenship and Immigration Services, must be furnished to University Personnel before work is performed.

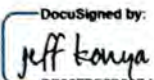
Appointments are contingent upon completion of all appointment documents. These documents include transcripts, appropriate recommendations and references, completed SC-1 and I-9 forms, written

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acknowledgment as a mandated reporter under the California Child Abuse and Neglect Reporting Act and the oath of allegiance required of all persons employed by the State of California.

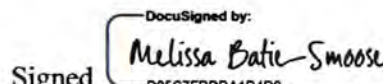
If you decide to accept this offer, please indicate in the space below and return the original of this letter to me. By accepting you certify that you have legal authority to be employed for the term of this appointment. A copy is provided for your records.

Sincerely,

DocuSigned by:

DE06FBE2B30D424...
Jeff Konya
Director of Athletics

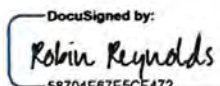
2/28/2024
Date _____

My signature below manifests my acceptance of the position as offered in this letter.

DocuSigned by:

D95C7EDDDA1D4D8
Signed _____
Melissa Batie-Smoose

3/1/2024
Date _____

For the Tower Foundation

DocuSigned by:

58704E67E5CE472
Robin Reynolds
COO - SJSU Tower Foundation

3/1/2024
Date _____

EXHIBIT F

Head Coach and Assistant Coach Performance Evaluation Form**San Jose State University • Department of Athletics**

Employee Name and SJSU ID #:	Melissa Batie-Smoose /	Sport: Women's Volleyball
012783667		
Head Coach or Assistant Coach: Assistant Coach		Evaluation Period: Jan,2023-Jan, 2024
Overall Record: 13-18		Conference Record: 4-14

PURPOSE STATEMENT

The San Jose State University Department of Athletics believes that each employee is entitled to feedback concerning his or her job performance. The evaluation process is designed to promote the goals, objectives, and professional development of the employee, and their accomplishments relative to the specific performance indicators listed below.

RATINGS' SCALE

O (Outstanding) – Performance is exemplary, always exceeds standards, and consistently produces exceptional results.

E (Exceeds Standards) – Performance consistently meets standards and frequently exceeds expectations.

M (Meets Standards) – Performance consistently meets the position requirements; adequately performing job responsibilities.

N (Needs Improvement) – Performance does not meet standards and expectations. Improvement in the area is needed.

U (Unsatisfactory) – Performance falls far below standards and expectations; immediate considerable improvement needed.

NA (Not Applicable) – Unable to evaluate performance of the individual in this area.

PERFORMANCE INDICATORS**COACHING** (please check the appropriate box on each line below)

O	E	M	N	U	NA	
						Leadership
☐	☒	☐	☐	☐	☐	Displays appropriate level of knowledge, technical skills; exhibits good and efficient practice management. Implements safe and appropriate conditioning programs for all team members.
☐	☒	☐	☐	☐	☐	Works collaboratively and productively with colleagues at all levels.
☐	☐	☒	☐	☐	☐	Acts in a professional manner at all events, including practices.
☐	☐	☒	☐	☐	☐	Contributes to overall department collegiality by attending Spartan competitions outside their sport, partnering with other teams on community involvement initiatives, and modeling respectful relationships with student-athletes, staff, coaches and administrators.
☐	☐	☒	☐	☐	☐	Communicates professionally and effectively with constituents.

O	E	M	N	U	NA	
						Performance
☐	☐	☐	☒	☐	☐	Competitive success of team in conference and post season performance (standing in conference).
☐	☐	☒	☐	☐	☐	Designs a competitive schedule to maximize both team and individual student-athlete development and performance.
☐	☐	☐	☐	☐	☒	Key accomplishments against highly ranked opponents (e.g. win over a Power Five, notable and demonstrated steps towards athletic success, etc.).

SPORT ADMINISTRATION (please check the appropriate box on each line below)

O	E	M	N	U	NA	
						Fiscal Responsibility
☐	☐	☒	☐	☐	☐	Adherence to sport budget.
☐	☐	☒	☐	☐	☐	Accurately completes and returns Business Office related documents in a timely manner.
☐	☒	☐	☐	☐	☐	Abides by University and Department guidelines for management of resources.
						Public/External Relations

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☐	☒	☐	☐	☐	☐	Projects a positive and professional image for the department, University and community.
☐	☐	☒	☐	☐	☐	Cultivates positive relationships with parents, alumni, former athletes, media, and the community.
☐	☐	☐	☐	☐	☒	Works collaboratively with the department's External Relations personnel.
☐	☐	☒	☐	☐	☐	Participates in community outreach, fundraising, and promotional events.

O	E	M	N	U	NA	Fundraising
☐	☐	☒	☐	☐	☐	Supports Athletics Department efforts to raise money for One Spartan Nation.
☐	☐	☒	☐	☐	☐	Follows Athletics Department policies regarding sport specific fundraising activities.
☐	☒	☐	☐	☐	☐	Works cooperatively with Athletics Advancement.
☐	☐	☒	☐	☐	☐	Effectively cultivates relationships with donors and prospective donors.

ACADEMICS AND STUDENT WELFARE (please check the appropriate box on each line below)

O	E	M	N	U	NA	Academics
☐	☒	☐	☐	☐	☐	Appropriate scheduling of practice and team events; minimizes conflict with academic schedules.
☐	☒	☐	☐	☐	☐	Represents the mission of SJSU in promoting academic achievement by displaying a genuine interest in the academic well-being of student-athletes.
☐	☐	☐	☐	☐	☒	Fairly and consistently enforces adherence to academic rules and regulations, utilizing appropriate disciplinary measures as required.
☐	☒	☐	☐	☐	☐	Overall minimum APR standards are attained (930 multi-year).
☐	☒	☐	☐	☐	☐	Overall team GPA and graduation rates at or above the general student population.
O	E	M	N	U	NA	Relationships with Student-Athletes
☐	☒	☐	☐	☐	☐	Team rules are written and clearly communicated; appropriate disciplinary measures for non-conformance of rules are implemented on a consistent and timely basis.
☐	☐	☒	☐	☐	☐	Defines and communicates the program's specific goals, objectives, overall purpose, and philosophy.
☐	☒	☐	☐	☐	☐	Facilitates open communication between student-athletes and the coaching staff; works to achieve overall student-athlete goals and development.
☐	☒	☐	☐	☐	☐	Maintains appropriate coach-student relationship recognizing authority, influence and power differentials.

COMPLIANCE (please check the appropriate box on each line below)

O	E	M	N	U	NA	NCAA, Conference, and University Standards
☐	☐	☒	☐	☐	☐	Evidences the highest professional standards and ethical behavior with regards to the NCAA, MWC, University rules, regulations, and policies.
☐	☐	☒	☐	☐	☐	Completes all required documents in a timely manner.
☐	☐	☒	☐	☐	☐	Asks questions and demonstrates knowledge of reporting procedures for violations; cooperates with compliance staff.
☐	☐	☒	☐	☐	☐	Attends compliance related meetings with a commitment to strong adherence to NCAA and department rules and regulations.

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☐	☐	☒	☐	☐	☐	Proactive in preventing potential problems or NCAA violations.
☐	☐	☐	☐	☐	☐	
RECRUITING (please check the appropriate box on each line below)						
O	E	M	N	U	NA	Standards for Attracting and Developing New Student-Athletes
☐	☒	☐	☐	☐	☐	Recruits student-athletes who are capable of academic success at SJSU.
☐	☐	☒	☐	☐	☐	Recruiting process is consistent with the department's philosophy and resources.
☐	☐	☐	☐	☐	☒	Effectively defines the roles of assistant coaches in recruiting efforts.
☐	☐	☒	☐	☐	☐	Recruits student-athletes who are capable of athletic success within their conference.
☐	☒	☐	☐	☐	☐	Recruits student-athletes with good character.
☐	☐	☐	☐	☐	☐	
PROFESSIONALISM / INDIVIDUAL DEVELOPMENT (please check the appropriate box on each line below)						
O	E	M	N	U	NA	Administrative Practices
☐	☒	☐	☐	☐	☐	Consistently treats constituents with dignity and respect, regardless of race, ethnicity, national origin, age, gender, religion, sexual orientation or physical ability.
☐	☒	☐	☐	☐	☐	Supports and appropriately responds to department and University administrative requests and decisions in a professional manner.
☐	☒	☐	☐	☐	☐	Supports and appropriately responds to student-athlete leadership committees (i.e.: SAAC, Beyond Sparta, etc.).
☐	☐	☒	☐	☐	☐	Provides appropriate supervision and leadership to staff.
☐	☐	☐	☒	☐	☐	Displays a positive and professional approach with colleagues and constituents.

Previous Year's Goals and Outcomes

Were not established

Future Goals

1. Top 6 ranking in Mountain West Conference (qualify for tournament)
2. Overall Middle attack improvement from .216%
3. Top 6 ranking in MWC in team blocks per sets

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PERFORMANCE INDICATOR SUMMARY REPORTOverall Performance Rating (assign one overall rating based on the ratings assigned in the other sections)

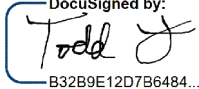
Outstanding	Exceeds Standards	Meets standards x	Needs Improvement	Unsatisfactory
-------------	-------------------	----------------------	-------------------	----------------

Supervisor Comments (Please include your description of the coach's major strengths, areas for improvement, and suggested actions that may improve performance during the next performance period.)

Melissa is an integral part of the future success of this program and her relationships with the SA's go a long way in proving this. In the coming year, Melissa has to take a much more aggressive approach in her recruiting coordinator duties. This has been discussed previously and immediate impact has been noticed in the last two months.

Employee Comment Section (Optional) (Please include activities you participated in during the previous year that helped you to grow as a coach, the areas where you feel you have made the most improvement, and areas where you feel you need the most improvement. Also, please indicate what resources the department could provide to help you progress in your job performance and the steps you plan on taking to improve your career and job performance for next year.)

I was promised a bonus structure when I took the job and was never put in place even though I asked for that bonus structure on several occasions before season. I was told we would do it at the end of season but again that never happened. Now I'm out \$15,000 that I was promised when I took the job. I understand that the bonus structure will not be in place, so I will be able to get this \$15,000 this year and beyond.

DocuSigned by:

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Head Coach/Sport Oversight Administrator's Signature

2/15/2024

Date

DocuSigned by:

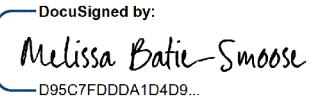
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Director of Athletics' Signature

2/28/2024

Date

Note: Your signature does not necessarily indicate a full agreement with the performance evaluation results. Your signature does, however, indicate that the evaluation was reviewed and discussed with your supervisor. If you wish to record a disagreement with the contents of this evaluation, you may submit a written statement which will be placed in your personnel folder.

DocuSigned by:

 D95C7FDDDA1D4D9...

Coach's Signature

2/25/2024

Date

EXHIBIT G

DocuSign Envelope ID: D6600237-8660-4150-A669-199CD40A1A75

Head Coach and Assistant Coach Performance Evaluation Form
San Jose State University • Department of Athletics

Employee Name and SJSU ID #: Melissa Batie-Smoose/012783667 **Sport:** Indoor Volleyball

Head Coach or Assistant Coach: Assistant Coach	Evaluation Period: Jan 2024 - Jan 2025
Overall Record: 14-7	Conference Record: 12-6

PURPOSE STATEMENT

The San Jose State University Department of Athletics believes that each employee is entitled to feedback concerning his or her job performance. The evaluation process is designed to promote the goals, objectives, and professional development of the employee, and their accomplishments relative to the specific performance indicators listed below.

RATINGS' SCALE

O (Outstanding) – Performance is exemplary, always exceeds standards, and consistently produces exceptional results.

E (Exceeds Standards) – Performance consistently meets standards and frequently exceeds expectations.

M (Meets Standards) – Performance consistently meets the position requirements; adequately performing job responsibilities.

N (Needs Improvement) – Performance does not meet standards and expectations. Improvement in the area is needed.

U (Unsatisfactory) – Performance falls far below standards and expectations; immediate considerable improvement needed.

NA (Not Applicable) – Unable to evaluate performance of the individual in this area.

PERFORMANCE INDICATORS**COACHING** (please check the appropriate box on each line below)

O	E	M	N	U	NA	Leadership
☐	☐	☐	☒	☐	☐	Displays appropriate level of knowledge, technical skills; exhibits good and efficient practice management. Implements safe and appropriate conditioning programs for all team members.
☐	☐	☐	☐	☒	☐	Works collaboratively and productively with colleagues at all levels.
☐	☐	☐	☐	☒	☐	Acts in a professional manner at all events, including practices.
☐	☐	☐	☒	☐	☐	Contributes to overall department collegiality by attending Spartan competitions outside their sport, partnering with other teams on community involvement initiatives, and modeling respectful relationships with student-athletes, staff, coaches and administrators.
☐	☐	☐	☐	☒	☐	Communicates professionally and effectively with constituents.
O	E	M	N	U	NA	Performance
☒	☐	☐	☐	☐	☐	Competitive success of team in conference and post season performance (standing in conference).
☐	☐	☐	☐	☐	☒	Designs a competitive schedule to maximize both team and individual student-athlete development and performance.
☒	☐	☐	☐	☐	☐	Key accomplishments against highly ranked opponents (e.g. win over a Power Five, notable and demonstrated steps towards athletic success, etc.).

SPORT ADMINISTRATION (please check the appropriate box on each line below)

O	E	M	N	U	NA	Fiscal Responsibility
☐	☐	☐	☒	☐	☐	Adherence to sport budget.
☐	☐	☐	☒	☐	☐	Accurately completes and returns Business Office related documents in a timely manner.

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☐	☐	☒	☐	☐	☐	Abides by University and Department guidelines for management of resources.
O	E	M	N	U	NA	Public/External Relations
☐	☐	☐	☒	☐	☐	Projects a positive and professional image for the department, University and community.
☐	☐	☐	☒	☐	☐	Cultivates positive relationships with parents, alumni, former athletes, media, and the community.
☐	☐	☐	☒	☐	☐	Works collaboratively with the department's External Relations personnel.
☐	☐	☐	☒	☐	☐	Participates in community outreach, fundraising, and promotional events.
O	E	M	N	U	NA	Fundraising
☐	☐	☐	☐	☐	☒	Supports Athletics Department efforts to raise money for One Spartan Nation.
☐	☐	☒	☐	☐	☐	Follows Athletics Department policies regarding sport specific fundraising activities.
☐	☐	☐	☐	☐	☒	Works cooperatively with Athletics Advancement.
☐	☐	☐	☐	☐	☒	Effectively cultivates relationships with donors and prospective donors.
ACADEMICS AND STUDENT WELFARE (please check the appropriate box on each line below)						
O	E	M	N	U	NA	Academics
☐	☐	☐	☐	☐	☒	Appropriate scheduling of practice and team events; minimizes conflict with academic schedules.
☐	☒	☐	☐	☐	☐	Represents the mission of SJSU in promoting academic achievement by displaying a genuine interest in the academic well-being of student-athletes.
☐	☐	☐	☐	☐	☒	Fairly and consistently enforces adherence to academic rules and regulations, utilizing appropriate disciplinary measures as required.
☐	☐	☐	☐	☐	☒	Overall minimum APR standards are attained (930 multi-year).
☐	☐	☐	☐	☐	☒	Overall team GPA and graduation rates at or above the general student population.
O	E	M	N	U	NA	Relationships with Student-Athletes
☐	☐	☐	☐	☐	☒	Team rules are written and clearly communicated; appropriate disciplinary measures for non-conformance of rules are implemented on a consistent and timely basis.
☐	☐	☐	☒	☐	☐	Defines and communicates the program's specific goals, objectives, overall purpose, and philosophy.
☐	☐	☐	☐	☒	☐	Facilitates open communication between student-athletes and the coaching staff; works to achieve overall student-athlete goals and development.
☐	☐	☐	☐	☒	☐	Maintains appropriate coach-student relationship recognizing authority, influence and power differentials.
COMPLIANCE (please check the appropriate box on each line below)						
O	E	M	N	U	NA	NCAA, Conference, and University Standards

DocuSign Envelope ID: D6600237-8660-4150-A669-199CD40A1A75

☐	☐	☒	☐	☐	☐	Evidences the highest professional standards and ethical behavior with regards to the NCAA, MWC, University rules, regulations, and policies.
☐	☐	☐	☒	☐	☐	Completes all required documents in a timely manner. (Reimbursements)
☐	☐	☒	☐	☐	☐	Asks questions and demonstrates knowledge of reporting procedures for violations; cooperates with compliance staff.
☐	☐	☐	☒	☐	☐	Attends compliance related meetings with a commitment to strong adherence to NCAA and department rules and regulations.
☐	☐	☒	☐	☐	☐	Proactive in preventing potential problems or NCAA violations.
☐	☐	☐	☐	☐	☐	

RECRUITING (please check the appropriate box on each line below)

O	E	M	N	U	NA	Standards for Attracting and Developing New Student-Athletes
☐	☐	☒	☐	☐	☐	Recruits student-athletes who are capable of academic success at SJSU.
☐	☐	☒	☐	☐	☐	Recruiting process is consistent with the department's philosophy and resources.
☐	☐	☐	☐	☐	☒	Effectively defines the roles of assistant coaches in recruiting efforts.
☐	☐	☐	☒	☐	☐	Recruits student-athletes who are capable of athletic success within their conference.
☐	☐	☒	☐	☐	☐	Recruits student-athletes with good character.
☐	☐	☐	☐	☐	☐	

PROFESSIONALISM / INDIVIDUAL DEVELOPMENT (please check the appropriate box on each line below)

O	E	M	N	U	NA	Administrative Practices
☐	☐	☐	☒	☐	☐	Consistently treats constituents with dignity and respect, regardless of race, ethnicity, national origin, age, gender, religion, sexual orientation or physical ability.
☐	☐	☐	☐	☐	☒	Supports and appropriately responds to department and University administrative requests and decisions in a professional manner.
☐	☐	☐	☐	☐	☒	Supports and appropriately responds to student-athlete leadership committees (i.e.: SAAC, Beyond Sparta, etc.).
☐	☐	☐	☐	☐	☒	Provides appropriate supervision and leadership to staff.
☐	☐	☐	☒	☐	☐	Displays a positive and professional approach with colleagues and constituents.

Previous Year's Goals and Outcomes

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1. Top 6 ranking in Mountain West Conference (qualify for tournament) - **MET**
2. Overall Middle attack improvement from .216% - **MET**
3. Top 6 ranking in MWC in team blocks per sets - **MET**

Future Goals

To be determined

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PERFORMANCE INDICATOR SUMMARY REPORTOverall Performance Rating (assign one overall rating based on the ratings assigned in the other sections)

Outstanding	Exceeds Standards	Meets Standards	Needs Improvement	Unsatisfactory
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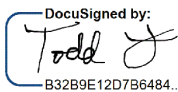
Supervisor Comments (Please include your description of the coach's major strengths, areas for improvement, and suggested actions that may improve performance during the next performance period.)

I would have liked Melissa to be more aligned with my expectations related to recruiting and practice goals. In addition, the expectation is that all student-athletes are treated equally related to providing constructive criticism and coaching, which did not happen. As mentioned in previous evaluations, Melissa should be more aggressive with the recruiting process and timely with bringing recruits to campus, etc. I would also like to see an improvement with the Associate Head Coach being more compliant and in alignment with program expectations, including but not limited to fundraising initiatives and managing the program should the Head Coach not be present. For example, Chandler and Melissa's conversations related to playing time at the Air Force game and practice. Melissa should refrain from unprofessional behavior, including drinking with student-athletes, choosing not to assist with coaching objectives during practice, not sharing personal information about students, and, as mentioned previously, treating each student-athlete equally both in practice and at competitions.

Employee Comment Section (Optional) (Please include activities you participated in during the previous year that helped you to grow as a coach, the areas where you feel you have made the most improvement, and areas where you feel you need the most improvement. Also, please indicate what resources the department could provide to help you progress in your job performance and the steps you plan on taking to improve your career and job performance for next year.)

SIGNATURES:

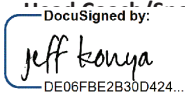
Todd Kress

DocuSigned by:

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2/14/2025

Jan 24, 2025

DocuSigned by: Sport Oversight Administrator's Signature


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Date

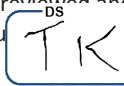
2/19/2025

Director of Athletics' Signature

Date

Note: Your signature does not necessarily indicate a full agreement with the performance evaluation results. Your signature does, however, indicate that the evaluation was reviewed and discussed with your supervisor. If you wish to record a disagreement with the contents of this evaluation, you may submit a statement which will be placed in your personnel folder.

No Show to scheduled meeting.

DS


Coach's Signature

Date

See Civil Local Rule 3-2 (amended April 28, 2025), which requires the filing of a civil cover sheet only by those unrepresented by counsel.

I. PLAINTIFF(S) BATIE-SMOOSE, MELISSA County of Residence of First Listed Plaintiff: Santa Cruz <i>Leave blank in cases where United States is plaintiff.</i> Attorney or Pro Se Litigant Information (Firm Name, Address, and Telephone Number) Donald M. Falk, Schaerr Jaffe LLP, One Embarcadero Center, Suite 1200, San Francisco, CA 94111; (415) 562-4942, dfalk@schaerr-jaffe.com [additional counsel listed on attachment]		DEFENDANT(S) THE BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY (ON BEHALF OF SAN JOSE STATE UNIVERSITY), ET AL. [additional defendants listed on attachment] County of Residence of First Listed Defendant: <i>Use ONLY in cases where United States is plaintiff.</i> Defendant's Attorney's Name and Contact Information (if known)													
II. BASIS OF JURISDICTION (Place an "X" in One Box Only) ☐ U.S. Government Plaintiff ☒ Federal Question (U.S. Government Not a Party) ☐ U.S. Government Defendant ☐ Diversity		III. CAUSE OF ACTION Cite the U.S. Statute under which you are filing: (Use jurisdictional statutes only for diversity) 20 U.S.C. § 1681; 42 U.S.C. § 1983 Brief description of case: Sex discrimination and violation of constitutional rights of fired university coach													
IV. NATURE OF SUIT (Place an "X" in One Box Only)															
<table><tr><td colspan="2">CONTRACT ☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise</td><td colspan="2">TORTS <table><tr><td>PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury -Medical Malpractice</td><td>PERSONAL INJURY ☐ 365 Personal Injury – Product Liability ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability PRISONER PETITIONS HABEAS CORPUS ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty OTHER ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee– Conditions of Confinement</td></tr><tr><td>CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/ Accommodations ☐ 445 Amer. w/Disabilities– Employment ☐ 446 Amer. w/Disabilities–Other ☒ 448 Education</td><td></td></tr></table></td></tr><tr><td colspan="2">REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property</td><td colspan="2"></td></tr></table>				CONTRACT ☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise		TORTS <table><tr><td>PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury -Medical Malpractice</td><td>PERSONAL INJURY ☐ 365 Personal Injury – Product Liability ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability PRISONER PETITIONS HABEAS CORPUS ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty OTHER ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee– Conditions of Confinement</td></tr><tr><td>CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/ Accommodations ☐ 445 Amer. w/Disabilities– Employment ☐ 446 Amer. w/Disabilities–Other ☒ 448 Education</td><td></td></tr></table>		PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury -Medical Malpractice	PERSONAL INJURY ☐ 365 Personal Injury – Product Liability ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability PRISONER PETITIONS HABEAS CORPUS ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty OTHER ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee– Conditions of Confinement	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/ Accommodations ☐ 445 Amer. w/Disabilities– Employment ☐ 446 Amer. w/Disabilities–Other ☒ 448 Education		REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property			
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V. ORIGIN (Place an "X" in One Box Only) ☒ Original Proceeding ☐ Removed from State Court ☐ Remanded from Appellate Court ☐ Reinstated or Reopened ☐ Transferred from Another District ☐ Multidistrict Litigation–Transfer ☐ Multidistrict Litigation–Direct File															
VI. FOR DIVERSITY CASES ONLY: CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) Plaintiff Defendant ☐ ☐ Citizen of California ☐ ☐ Citizen of Another State ☐ ☐ Citizen or Subject of a Foreign Country ☐ ☐ Incorporated or Principal Place of Business In California ☐ ☐ Incorporated and Principal Place of Business In Another State ☐ ☐ Foreign Nation		VII. REQUESTED IN COMPLAINT ☒ Check if the complaint contains a jury demand . ☐ Check if the complaint contains a monetary demand . Amount: ☐ Check if the complaint seeks class action status under Fed. R. Civ. P. 23. ☐ Check if the complaint seeks a nationwide injunction or Administrative Procedure Act vacatur.													
VIII. RELATED CASE(S) OR MDL CASE <i>Provide case name(s), number(s), and presiding judge(s).</i> Batie-Smoose v. The Board of Trustees of the California State University, No. 5:26-CV-01876-NW; Judge Noel Wise *Notice of Voluntary Dismissal filed 10/13/26															
IX. DIVISIONAL ASSIGNMENT pursuant to Civil Local Rule 3-2 (Place an "X" in One Box Only) ☐ SAN FRANCISCO/OAKLAND ☒ SAN JOSE ☐ EUREKA-MCKINLEYVILLE															

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List of Defendants:

THE BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY
(ON BEHALF OF SAN JOSE STATE UNIVERSITY);

TODD KRESS, in his individual capacity;

LAURA ALEXANDER, in her individual capacity;

MICHELLE SMITH MCDONALD, in her individual capacity;

JOANNE WRIGHT, in her individual capacity;

CHARLIE FAAS, in his individual capacity;

JEFF KONYA, in his individual capacity;

JULIE PAISANT, in her individual capacity;

MARY QUINTANAR, in her individual capacity;

JULIANNE MIYASHIRO, in her individual capacity;

LAURYN MILLER, in her individual capacity;

DR. CYNTHIA TENIENTE-MATSON, in her individual and in her official
capacity, as employee of San Jose State University