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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

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11 BRIANNE “BRIE” GALICINAO, an
individual,

12 Plaintiff,

13 vs.

14
15 REGENTS OF THE UNIVERSITY OF
CALIFORNIA, a public entity; and
16 DOES 1-10, inclusive,

17 Defendants.

Case No.: 2:22-cv-08057

**FIRST AMENDED COMPLAINT
FOR DAMAGES**

1. **Violation of Title IX – Unequal Allocation of Athletic Financial Assistance;**
2. **Violation of Title IX – Unequal Allocation of Athletic Treatment and Benefits**
3. **Failure to Provide Equal Pay in Violation of the Equal Pay Act of 1963 (29 U.S.C. § 206(d));**
4. **Discrimination Based Upon Sex/Gender (Cal. Gov. Code §§ 12940 *et seq.*);**
5. **Retaliation in Violation of FEHA (Engagement In A Protected Activity);**
6. **Violation of Labor Code § 1102.5; and**
7. **Retaliation Under the Fair Labor Standards Act.**

DEMAND FOR JURY TRIAL

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I.

INTRODUCTION

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3 1. Plaintiff, Brianne (“Brie”) Galicinao, was the Head Coach for the
4 University of California, Santa Barbara (“UCSB”), Women’s Softball Team from
5 2007 until her employment with UCSB was terminated at the end of the 2022 season.
6 As the Head Coach for UCSB, Coach Galicinao was twice named the Big West
7 Coach of the Year and ranked ninth in the Big West history with 343 victories and
8 12th with 138 conference wins.

9 2. Throughout her career with UCSB, Coach Galiciano was distinctly
10 aware of the disproportionate funding between men’s and women’s sports at UCSB
11 and the Big West Conference. At UCSB specifically, the softball facilities were
12 inferior to the UCSB baseball facilities including, inferior batting cages, dugouts,
13 and stadium. Many visiting coaches have complained about worn out batting cage
14 nets rendering them dangerous to take batting practice.

15 3. In addition to disproportionate program funding, the Regents provided
16 the baseball program with a larger coaching staff and paid the baseball staff far in
17 excess of what was paid to softball staff. For example, in 2020, Coach Galicinao
18 was paid \$86,761 and the head baseball coach was paid \$221,197.

19 4. During the 2022 softball season, Coach Galicinao decided to compile
20 salary information and consulted with Alysia Hendricks about the inequalities
21 between the UCSB baseball and softball programs. After several conversations with
22 visiting coaches, Coach Galicinao compiled coaching salary information for UCSB
23 and other Big West programs which (including those at UCSB) revealed glaring
24 inequities between men’s and women’s programs and men’s and women’s coaching
25 compensation.

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1 (and encourage other schools around the country) to treat its female softball team as
2 equal to other sports (including men’s baseball) and provide it the necessary
3 resources it has been deprived to succeed.

4 10. Title IX prohibits all educational institutions receiving federal funds,
5 including Regents, from discriminating against women (and men) on the basis of
6 their sex.

7 11. As the United States Department of Education’s Office for Civil Rights
8 (“OCR”), responsible for interpreting and enforcing Title IX, explained in 1998,
9 “With regard to athletic financial assistance, the regulations promulgated under Title
10 IX provide that, when a college or university awards athletic scholarships, these
11 scholarship awards must be granted to ‘members of each sex in proportion to the
12 number of students of each sex participating in intercollegiate athletics.’ 34 C.F.R.
13 106.37(c).” Office for Civil Rights, U.S. Department of Education (“DOE”), *Dear*
14 *Colleague Letter* at 2 (July 23, 1998).

15 12. The Equity in Athletics Disclosure Act (EADA) requires colleges and
16 universities that receive federal financial assistance and that sponsor intercollegiate
17 athletics to report annually to the Department of Education on athletics participation,
18 staffing issues, revenues, and expenses.

19 13. Based on information and belief, the Regents have not granted athletic
20 team funding to its female and male varsity athletes in proportion to the number of
21 students of each sex participating in intercollegiate athletics for more than a decade
22 and is not doing so now.

23 14. The Regents have regularly granted and is granting its female varsity
24 student-athletes much less – and its male varsity student-athletes much more –
25 athletic funding than they would have received if Regents had granted such aid
26 funding in proportion to the number of students of each sex participating in
27 intercollegiate athletics.

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1 reimbursement for travel expenses, and benefits. If there is an inequality in wages
2 between men and women, employers may not reduce the wages of either sex to
3 equalize their pay.

4 21. On April 20, 2005, Senator Hilary Clinton, Representative Rosa
5 DeLauro and Senator Tom Daschle proposed the Paycheck Fairness Act to increase
6 the penalties for equal pay violations and to prohibit retaliation against whistle-
7 blowers.

8 22. On January 29, 2009, President Obama signed the Lilly Ledbetter Fair
9 Pay Act into law. The Act was constructed after its namesake endured
10 discrimination for years but was unaware of it until long after she retired because her
11 former employer prohibited employees from sharing or discussing information on
12 their wages.

13 23. On March 31, 2022, Plaintiff presented the Regents with a detailed chart
14 identifying the glaring deficiencies in compensation between male and female
15 coaches (“Operation Close The Gap”). As it relates to Plaintiff specifically, despite
16 Coach Galicinao’s years of experience and accomplishments, the UCSB head
17 baseball coach was paid more than double Plaintiff’s salary.

18 **IV.**

19 **VENUE AND JURISDICTION**

20 24. This action arises under among other laws, the Title IX of the Education
21 Amendments of 1972, 20 U.S.C. §§ 1681 *et seq.*, and the regulations and policies
22 promulgated pursuant to that law.

23 25. This Court has jurisdiction over Plaintiff’s federal law claims pursuant
24 to 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

25 26. Declaratory Relief is authorized pursuant to 28 U.S.C. §§ 2201 and 2202
26 to obtain the correct interpretation of the legal requirements described in this
27 Complaint, which is necessary and appropriate to determine the parties’ respective
28 rights and duties.

1 must provide equal opportunities for women and men in every program Regents
2 offers, including equal athletic financial funding to females and males in Regents'
3 intercollegiate athletics programs.

4 37. The Regents is an employer within the State of California and is
5 obligated to comply with California State law including, Labor Code section 1102.5
6 and the California Fair Employment and Housing Act ("FEHA") codified in
7 California Government Code section 12900 et seq.

8 38. The Regents have a duty to comply with the Equal Pay Act and pay its
9 employees equal pay for equal work regardless of gender.

10 39. The true names, capacities or involvement, whether individual,
11 corporate, governmental or associate, of the Defendants named herein as DOE 1
12 through 10, inclusive are unknown to Plaintiff who therefore sues said Defendants by
13 such fictitious names. Plaintiff prays for leave to amend this Demand to show the
14 true names and capacities when the same have been finally determined. Plaintiff is
15 informed and believes, and upon such information and belief alleges thereon, that
16 each of the Defendants designated herein as DOE in negligently, intentionally,
17 strictly liable or otherwise legally responsible in some manner for the events and
18 happenings herein referred to, and negligently, strictly liable intentionally or
19 otherwise caused injury and damages proximately thereby to Plaintiff, as is
20 hereinafter alleged.

21 40. Plaintiff is informed and believes that, at all relevant times herein,
22 Defendants engaged in the acts alleged herein and/or condoned, permitted,
23 authorized, and/or ratified the conduct of its employees and agents, and other
24 Defendants and are vicariously or strictly liable for the wrongful conduct of its
25 employees and agents as alleged herein.

26 41. Plaintiff is informed and believes that, and on that basis alleges that,
27 each of the Defendants acted, in all respects pertinent to this action, as the agent or
28 employee of each other, and carried out a joint scheme, business plan, or policy in all

1 respect thereto and, therefore, the acts of each of these Defendants are legally
2 attributable to the other Defendants, and that these Defendants, in all respects, acted
3 as an employer and/or joint employers of Plaintiff in that each of them exercised
4 control over his wage payments and control over his duties.

5 42. Plaintiff is informed and believes that, and on that basis alleges that, at
6 all relevant times, each and every Defendant has been the agent, employee,
7 representative, servant, master, employer, owner, agent, joint venture, and alter ego
8 of each of the other and each was acting within the course and scope of his or her
9 ownership, agency, service, joint venture, and employment.

10 43. At all times mentioned herein, each and every Defendant was the
11 successor of the other and each assumes the responsibility for the acts and omissions
12 of all other Defendants.

13 **VI.**

14 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

15 44. Plaintiff repeats and re-alleges each and every allegation by reference
16 contained in all previous paragraphs.

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

21 46. Because the Regents receive federal financial assistance, its varsity
22 athletic program is subject to Title IX and Regents must comply with Title IX’s
23 requirements. 20 U.S.C. § 1687.

24 47. When schools segregate their varsity athletic programs on the basis of
25 sex as the Regents does, their violations of Title IX in those programs constitute
26 intentional discrimination. *See Neal v. Board of Trustees of the Cal. State Univs.*,
27 198 F. 3d 763, 772 n.8 (9th Cir. 1999).

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

4 49. The regulations, codified at 34 C.F.R. Part 106 (the “Regulations”) are
5 enforced by OCR.

6 50. In 1979, OCR issued a policy interpretation of Title IX and the
7 Regulations as applied to intercollegiate athletics at 44 Fed. Reg. 71,413 (Dec. 11,
8 1979)(the “OCR Policy Interpretation”).

9 51. The OCR Policy Interpretation sets forth three areas of compliances
10 under Title IX as it relates to college sports: (1) equal accommodation of student
11 interests and abilities; (2) equal athletic financial assistance; and (3) equal treatment
12 and benefits.

13 52. Compliance regarding athletic financial assistance is assessed pursuant
14 to 34 C.F.R. § 106.37(c), which provides:

15 (1) To the extent that a recipient awards athletic scholarships or grants in aid, it
16 must provide reasonable opportunities for such awards for members of
17 each sex in proportion to the number of students of each sex participating
18 in interscholastic or intercollegiate athletics.

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

22 53. The OCR Policy Interpretation states, among other things, its
23 interpretation of the athletic financial aid provision quoted above:

24 The Policy – The Department will examine compliance with this provision of
25 the regulation primarily by means of a financial comparison to determine
26 whether proportionately equal amounts of financial assistance (scholarship
27 aid) are available to men’s and women’s athletic programs. The Department
28 will measure compliance with this standard by dividing the amounts of aid

1 available for the members of each sex by the numbers of male or female
2 participants in the athletic programs and comparing the results. Institutions
3 may be found in compliance if this comparison results in substantially equal
4 amounts or if a resulting disparity can be explained by adjustments to take into
5 account legitimate, nondiscriminatory factors . . .

6 Application of the Policy – This section does not require a proportionate
7 number of scholarships for men and women or individual scholarships of
8 equal dollar value. It does mean that the total amount of scholarship aid made
9 available to men and women must be substantially proportionate to their
10 participation rates.

11 Because Title IX, and its implementing Regulations are federal law, NCAA
12 and conference rules cannot justify violations of them. The Title IX
13 Regulations state: “The obligation to comply with this part is not obviated or
14 alleviated by any rule or regulation of any organization ... or association
15 which would render any applicant or student ineligible to participate or limit
16 the eligibility or participation of any applicant or student, on the basis of sex,
17 in any education program or activity operated by a recipient and which
18 receives Federal financial assistance.” 34 C.F.R. 106.6(c).

19 54. The Regents is a member of the NCAA, and it participates in Division I
20 athletics, the highest level of intercollegiate competition. Regents offer athletic
21 financial funding to members of its varsity athletic teams.

22 55. For the past several decades, the Regents has sponsored men’s and
23 women’s varsity Division I intercollegiate athletic teams, segregated based on sex.

24 56. The Regents fails to provide athletic financial funding to its female
25 varsity student athletes in proportion to their athletic participation rates, and
26 accordingly, intentionally discriminates against female softball players in violation
27 of Title IX.

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1 57. At all times relevant to this matter, Defendant was and is responsible for
2 ensuring that Regents complied with Title IX and provided proportional athletic
3 financial funding to its female student-athlete programs.

4 58. For more than a decade, female programs (specifically softball) at the
5 Regents (UCSB) have been deprived of athletic financial funding in proportion to
6 their participation in Regents' athletics, and the difference in the proportion has
7 always been greater than 1%.

8 59. Plaintiff was the Head Coach of the UCSB Softball Team from 2007
9 until she was terminated in 2022.

10 60. During her tenure, Plaintiff was a two-time Big West Conference Coach
11 of the Year.

12 61. Plaintiff also has the most 30-win seasons in the UCSB's program
13 history.

14 62. In addition to her on field duties, she worked with all aspects of the
15 program, including recruiting, fundraising, and monitoring players' academics.

16 63. For more than a decade, Plaintiff became more and more aware of the
17 inequality between her softball program and the UCSB baseball program. These
18 inequalities included the vast difference in resources, including, but not limited to,
19 coaching staff, support staff, field maintenance, equipment, and apparel between
20 each program.

21 64. For example, the coaches in the softball program were not only
22 expected to manage the team but also provide field and equipment upkeep duties.
23 The coaches of the baseball team were not tasked with these responsibilities since
24 they are staffed with a designated field person and interns.

25 65. Over the past couple of years, Plaintiff began to regularly hear from
26 other softball coaches that the immense difference and gap between the men's and
27 women's programs at UCSB was alarming. Specifically, coaches were fearful to
28 allow their players to take batting practice in the old and unsafe batting cages.

1 66. In early February 2022, Plaintiff took the initiative to research the
2 significant differences between the UCSB baseball and softball programs. Plaintiff
3 began preparing a presentation after speaking with another prominent softball coach
4 about how poorly the UCSB softball team was funded, especially compared to the
5 baseball team.

6 67. On March 31, 2022, Plaintiff had a meeting with Interim Athletic
7 Director Kelly Barsky and Sport Supervisor Bryan Cornet. Plaintiff created a
8 presentation called, “Close the Gap”, which focused on the pay disparity between the
9 coaches of the sports programs at not only UCSB but also the other universities
10 across the State of California. In addition to the discernible pay gap, Plaintiff further
11 illustrated that the UCSB softball program received far less funding, a smaller staff,
12 and less equipment than the baseball program.

13 68. Plaintiff’s presentation clearly brought into light UCSB’s violation of
14 the Equal Pay Act, Title IX, and Gender Discrimination under the California Fair
15 Employment and Housing Act ("FEHA").

16 69. Following the presentation, Mrs. Barsky stated that due to the large
17 amount of information provided by Plaintiff she would need additional time to
18 review.

19 70. Following the meeting, Plaintiff was not provided any updates, follow
20 up, or status of any investigation in response to the “Close the Gap” presentation.

21 71. After Coach Galicinao’s presentation, she continually requested more
22 support in field maintenance, safer equipment and facilities, and general support for
23 the softball program. These repeated complaints fell onto deaf ears.

24 72. On June 2, 2022, Plaintiff was called into a meeting with Mrs. Barsky
25 and Associate Athletic Director of Business Operations, Sandra Featherson. During
26 this meeting, Mrs. Barsky terminated Plaintiff under the pretext that the program was
27 going “in a different direction.”

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1 73. Plaintiff was shocked by her termination as it was only one day before
2 the softball team banquet, and shortly after she had presented comparison
3 information related to program funding and coaching salaries.

4 74. Plaintiff later learned that her Sports Supervisor, Mr. Cornet, was
5 completely unaware that she was terminated.

6 75. Plaintiff believes and thereon asserts that her termination was a result of
7 her complaints about UCSB’s violations of the Equal Pay Act of 1963, Title IX, and
8 Gender Discrimination and Retaliation in response to her “Close the Gap”
9 presentation.

10 **VII.**

11 **CAUSES OF ACTION**

12 **FIRST CAUSE OF ACTION**

13 **Title IX – Unequal Allocation of Athletic Financial Assistance**

14 76. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1-
15 73 as though fully set forth herein.

16 77. Defendant provides athletic financial funding to some of its male and
17 female athletic programs.

18 78. Under Title IX and 34 C.F.R. § 106.37, as interpreted by OCR,
19 Defendant must provide athletic financial funding to its female and male student-
20 athletes in proportion to the number of students of each sex participating in
21 intercollegiate athletics.

22 79. Defendant has not provided and does not provide athletic financial
23 funding to UCSB’s female and male student-athletes in proportion to the number of
24 students of each sex participating in intercollegiate athletics.

25 80. Defendant has provided and continues to provide UCSB’s female
26 programs much less – and its male programs much more – athletic financial funding
27 than they would have received if UCSB had granted such aid in proportion to the
28 number of students of each sex participating in intercollegiate athletics.

1 103. As a direct and proximate result of Defendant’s unlawful conduct,
2 Plaintiff suffered an adverse employment action (termination from employment) and
3 suffered and continues to suffer economic and non-economic damages for which
4 Defendant is liable, including but not limited to emotional distress, humiliation, loss
5 of reputation, loss of promotion, and loss of compensation, bonuses, benefits, and
6 other privileges and conditions of employment in an amount to be proven at trial.

7 104. Plaintiff had to retain counsel to vindicate her rights under FEHA, as
8 alleged in this Complaint, and is entitled to an award of attorney’s fees and costs as
9 provided in California Government Code §12965(b).

10 **FIFTH CAUSE OF ACTION**

11 **Retaliation for Opposing Sex/Gender Discrimination in Violation of FEHA**
12 **(Cal. Gov. Code §§ 12940 *et seq.*)**

13 105. Plaintiff realleges and incorporates by reference paragraphs 1-103 as
14 though fully set forth herein.

15 106. At all times relevant, California Government Code § 12940 *et seq.* was
16 in full force and effect and binding upon Defendant.

17 107. Pursuant to California Government Code § 12940(b), Plaintiff had a
18 legal right to protest discrimination in the workplace, without retaliation from
19 Defendant.

20 108. As a result of Plaintiff’s protest and opposition to the unlawful conduct
21 of Defendant, Plaintiff was retaliated against by Defendant and suffered an adverse
22 employment action (termination from employment).

23 109. As a direct and proximate result of Defendant’s unlawful conduct,
24 Plaintiff suffered and continues to suffer economic and non-economic damages for
25 which Defendant is liable, including but not limited to emotional distress,
26 humiliation, loss of reputation, loss of promotion, bonuses, benefits, and other
27 privileges and conditions of employment in an amount to be proven at trial.

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1 110. Plaintiff had to retain counsel to vindicate her rights under FEHA, as
2 alleged in this Complaint, and is entitled to an award of attorney’s fees and costs as
3 provided in California Government Code § 12965(b).

4 **SIXTH CAUSE OF ACTION**

5 **Violation of Labor Code Section 1102.5**

6 111. Plaintiff realleges and incorporates by reference paragraphs 1-109 as
7 though fully set forth herein.

8 112. At all times relevant, California Labor Code § 1102.5 was in full force
9 and effect and binding upon Defendant.

10 113. Pursuant to California Labor Code § 1102.5, Plaintiff had a legal right
11 to disclose unlawful acts to those with authority to investigate, discover, or correct
12 such violations without retaliation from Defendant.

13 114. Plaintiff reported and disclosed unlawful acts prohibited by FEHA, Title
14 IX, and the Equal Pay Act (i.e. “Operation Close The Gap”), among other laws, to
15 executives, managers, and superiors employed by Defendant.

16 115. As a result of Plaintiff’s reporting and disclosure of unlawful acts,
17 Defendant retaliated against Plaintiff.

18 116. As a direct and proximate result of Defendant’s unlawful conduct,
19 Plaintiff suffered and continues to suffer adverse employment actions (termination
20 from employment) resulting in economic and non-economic damages for which
21 Defendant is liable, including but not limited to emotional distress, humiliation, loss
22 of reputation, loss of promotion, and loss of compensation, bonuses, benefits, and
23 other privileges and conditions of employment in an amount to be proven at trial.

24 117. Plaintiff had to retain counsel to vindicate her rights under the Labor
25 Code, as alleged in this Complaint, and is entitled to an award of attorney’s fees and
26 costs as provided in Labor Code § 1102.5(j).

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12. For such other and further relief as the tribunal may deem just and proper.

LYON LEGAL, P.C.

Dated: February 9, 2023

By: /s/Devon M. Lyon
DEVON M. LYON, ESQ.
MATTHEW B. PEREZ, ESQ.

Attorneys for Plaintiff,
BRIANNE “BRIE” GALICINAO

CERTIFICATE OF SERVICE

RE: GALICINAO vs. THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (CASE NO. 2:22-cv-08057)

I am a citizen of the United States and employed in the County of Los Angeles, State of California. I am over eighteen (18) years of age and not a party to the above-entitled action. My business address is LYON LEGAL, P.C. 1154 E. Wardlow Rd., Long Beach, CA 90807.

On **February 9, 2023**, I served the foregoing document(s) described as:

• **NOTICE OF RELATED CASE**

on the interested parties by placing a true and correct copy thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED PROOF OF SERVICE LIST

VIA ECF:

by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them via email as indicated above.

VIA U.S. MAIL:

by placing the above-listed document(s) in a sealed envelope with postage prepaid in the United States mail at Signal Hill, California to the address(es) listed below.

VIA ELECTRONIC MAIL:

I personally delivered such documents via electronic mail to the email address(es) listed below.

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on **February 9, 2023**, at Long Beach, California.

/s/Devon M. Lyon
DEVON M. LYON

CERTIFICATE OF SERVICE LIST

<p>Jonathan D. Miller, Esq. jonathan@nshmlaw.com Alison M. Bernal, Esq. alison@nshmlaw.com NYE, STIRLING, HALE, MILLER & SWEET, LLP 33 West Mission Street, Suite 201 Santa Barbara, CA 93101 (805) 963-2345 – Telephone (805) 284-9590 – Facsimile</p> <p>Attorneys for Defendant, REGENTS OF THE UNIVERSITY OF CALIFORNIA</p>	
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