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SUPERIOR COURT
2023 JUN 14 AM 9:08
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12 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

13
14 **COUNTY OF SAN JOAQUIN**

15 **ERIK CLEMENSEN**, on behalf of himself and
16 all others similarly situated,

17 Plaintiff,

18 vs.

19 **UNIVERSITY OF THE PACIFIC**, a California
20 Corporation,

21 Defendant.

STK-CV-UCR-2023-6085

22 **CLASS ACTION COMPLAINT FOR:**

- 23
24
25 (1) Violation of Title IX of Education Code
Amendments of 1972; and
26 (2) Violation of California Education Code §§
66251, 66270.

27 **DEMAND FOR JURY TRIAL**

1 Plaintiff Erik Clemensen (“Plaintiff”), on behalf of himself and all others similarly situated, by
2 and through his attorneys of record, HammondLaw, P.C., complains and alleges the following:

3 **INTRODUCTION**

4 1. This is a sex discrimination class action against University of the Pacific (“UOP”) brought
5 on behalf of UOP’s male varsity student-athletes for depriving them of equal athletic financial aid in
6 violation of Title IX of the Education Amendments of 1972 (“Title IX”), and California’s Equity in Higher
7 Education Act. UOP has not paid its male varsity student-athletes equal athletic financial aid at least since
8 November 30, 2020 (“Class Period”)¹ and continues to not pay them equal athletic financial aid through
9 to the present.

10 2. Title IX prohibits all educational institutions receiving federal funds, including UOP, from
11 discriminating against men (and women) on the basis of their sex.

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

18 4. California Education Code § 66252 states that “[i]t is the intent of the Legislature that this
19 chapter [§§ 66250-66292.4] shall be interpreted as consistent with [among other statutes] Title IX of the
20 Education Amendments of 1972..., except where this chapter may grant more protections or impose
21 additional obligations,”

22 5. California Education Code § 66270 prohibits all postsecondary educational institutions
23 that receive state funding from discriminating against men (and women) on the basis of their sex.

24 6. UOP has not granted athletic financial aid to its male and female athletes in proportion to
25 the number of students of each sex participating in intercollegiate athletics at least during the Class Period,
26 and has instead regularly granted and is granting its male student-athletes much less – and its female
27 student-athletes much more – athletic financial aid than they would have received had UOP granted aid
28 in proportion to the number of students of each sex participating in intercollegiate athletics.

¹ The parties agreed to toll the applicable two-year statute of limitations on November 30, 2022, and have repeatedly extended that agreement through and including the filing date of this Complaint. Thus, the Class Period starts on November 30, 2020.

1 18. In addition to being deprived of an equal opportunity to receive equal athletic financial aid
2 and more financial aid than he did, Plaintiff was injured because he was subjected to discrimination on
3 the basis of his sex.

4 19. Defendant University of the Pacific is a private non-profit university located in Stockton,
5 California.

6 20. UOP is a recipient of federal and state financial aid. And is required to comply with Title
7 IX and all of its implementing regulations, as well as California's Equity in Higher Education Act.

8 **JURISDICTION**

9 21. This Court has jurisdiction over this action pursuant to Title IX of the Education
10 Amendments of 1972, 20 U.S.C. §§ 1681 et seq.

11 22. This Court has jurisdiction over this action pursuant to California Education Code §§
12 66251, 66270.

13 **VENUE**

14 23. Venue is proper in this Court pursuant to California Code of Civil Procedure § 395. UOP
15 is a California corporation with its principal place of business in Stockton. The unlawful acts alleged
16 herein and the events giving rise to the Complaint occurred within San Joaquin County.

17 **FACTUAL ALLEGATIONS.**

18 **Title IX's Equal Athletic Financial Aid Requirements**

19 24. The preamble to Title IX states that: "No person in the United States shall, on the basis of
20 sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under
21 any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a).

22 25. Because UOP receives federal financial assistance, its athletic program is subject to Title
23 IX, and UOP must comply with Title IX's requirements. 20 U.S.C. § 1687.

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

27 27. Applying Title IX to intercollegiate athletics, United States Department of Education's
28 Office for Civil Rights ("OCR") has adopted regulations requiring educational institutions receiving
federal funds to "provide equal athletic opportunity for members of both sexes." 34 C.F.R. § 106.41(c).

29 28. The regulations, codified at 34 C.F.R. Part 106 (the "Regulations") are enforced by OCR.

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

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

4 31. Compliance regarding equal athletic financial assistance is assessed pursuant to 34 C.F.R.
5 § 106.37 (c), which provides:

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

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

10 32. The OCR Policy Interpretation states, among other things, its interpretation of the athletic
11 financial aid provision quoted above:

12 The Policy - The Department will examine compliance with this provision of the regulation
13 primarily by means of a financial comparison to determine whether proportionately equal
14 amounts of financial assistance (scholarship aid) are available to men's and women's
15 athletic programs. The Department will measure compliance with this standard by dividing
16 the amounts of aid available for the members of each sex by the numbers of male or female
17 participants in the athletic program and comparing the results. Institutions may be found in
18 compliance if this comparison results in substantially equal amounts or if a resulting
disparity can be explained by adjustments to take into account legitimate,
nondiscriminatory factors... Application of the Policy - This section does not require a
proportionate number of scholarships for men and women or individual scholarships of
equal dollar value. It does mean that the total amount of scholarship aid made available to
men and women must be substantially proportionate to their participation rates.

19 44 Fed. Reg. 71,415.

20 33. On July 23, 1998, the OCR discussed and clarified how it interpreted and would enforce
21 Title IX's athletic financial aid requirements:

22 With regard to athletic financial assistance, the regulations promulgated under Title IX
23 provide that, when a college or university awards athletic scholarships, these scholarships
24 awards must be granted to "members of each sex in proportion to the number of students
25 of each sex participating in ...intercollegiate athletics." 34 C.F.R 106.37(c)... It is
26 important to note that it is not enough for a college or university merely to assert a
27 nondiscriminatory justification. Instead, it will be required to demonstrate that its asserted
28 rationale is in fact reasonable and does not reflect underlying discrimination... If any
unexplained disparity in the scholarship budget for athletes of either gender is 1% or less
for the entire budget for athletic scholarships, there will be a strong presumption that such
a disparity is reasonable and based on legitimate and nondiscriminatory factors.
Conversely, there will be a strong presumption that an unexplained disparity of more than
1% is in violation of the "substantially proportionate" requirement.

1 Office for Civil Rights, U.S. DOE, Dear Colleague Letter at 2-4 (July 23, 1998).

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

7 **California Equity in Higher Education Act Requirements**

8 35. Section 66251 of the Education Code states that:

9 It is the policy of the State of California to afford all persons, regardless of their sex, ethnic
10 group identification, race, national origin, religion, or mental or physical disability, equal
11 rights and opportunities in the postsecondary institutions of the state. The purpose of this
12 chapter is to prohibit acts that are contrary to that policy and to provide remedies therefor.

13 36. Section 66252 states that it is the intent of the California Legislature that the Equity in
14 Higher Education Act is to be interpreted as consistent with Title IX of the Education Amendments of
15 1972, among other enumerated statutes, except where the Act grants more protections or imposes
16 additional obligations. The code section further provides that the remedies specified in the Act may be
17 combined with remedies that may be provided by other statutes, including Title IX.

18 37. Section 66270 states that:

19 No person shall be subjected to discrimination on the basis of disability, gender, gender
20 identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or
21 any characteristic listed or defined in Section 11135 of the Government Code or any other
22 characteristic that is contained in the prohibition of hate crimes set forth in subdivision (a)
23 of Section 422.6 of the Penal Code, including immigration status, in any program or
24 activity conducted by any postsecondary educational institution that receives, or benefits
25 from, state financial assistance or enrolls students who receive state student financial aid.

26 **UOP’s Violations of Title IX’s and Cal. Education Code’s**

27 **Equal Athletics Financial Aid Requirements**

28 38. UOP is a member of the NCAA, and it participates in Division I athletics. UOP offers
athletics financial aid to members of its athletic teams.

39. Throughout the Class Period, UOP has sponsored men’s and women’s Division I
intercollegiate athletic teams, segregated based on sex.

40. UOP has for years failed and continues to fail to provide athletic financial aid to its male
student-athletes in proportion to their athletic participation rates and, accordingly, intentionally

1 discriminates against male student-athletes in violation of Title IX and sections 66251 and 66270 of the
 2 California Education Code.

3 41. At all times relevant to this case, UOP was and is responsible for ensuring that it complied
 4 with Title IX and sections 66251 and 66270 and provided proportional athletic financial aid to its male
 5 student-athletes.

6 42. Throughout the Class Period, male student-athletes at UOP have been deprived of athletic
 7 financial aid in proportion to their participation in UOP athletics, and the difference in the proportion has
 8 always been greater than 1%.

9 43. The information summarized in the chart and paragraphs below was submitted by UOP to
 10 the federal government under the Equity in Athletics Disclosure Act (EADA) and verified as accurate.

| Year | Total Student Athletes | Male Student Athletes | % of Males | Male Aid Awarded | Female Aid Awarded | % of aid awarded to males | Amount of aid UOP deprived male student athletes |
|-----------|------------------------|-----------------------|------------|------------------|--------------------|---------------------------|--|
| 2016-2017 | 316 | 152 | 48.10% | \$3,236,074 | \$5,230,081 | 38.42% | \$822,241 |
| 2017-2018 | 332 | 150 | 45.18% | \$2,850,752 | \$5,757,190 | 33.12% | \$1,038,378 |
| 2018-2019 | 327 | 156 | 47.71% | \$2,632,675 | \$4,839,410 | 35.23% | \$931,989 |
| 2019-2020 | 297 | 148 | 49.83% | \$2,574,510 | \$4,353,695 | 37.16% | \$877,929 |
| 2020-2021 | 301 | 144 | 47.84% | \$2,549,425 | \$4,028,922 | 38.75% | \$597,691 |
| 2021-2022 | 311 | 148 | 47.59% | \$2,926,237 | \$3,913,343 | 42.78% | \$328,611 |

21
 22 44. In 2021-22, UOP’s 148 male student-athletes equaled 47.59% of the total student-athletes.
 23 But male student-athletes were provided with only 42.78% of the \$6,839,580 in athletic financial aid the
 24 school awarded that year, amounting to a loss of \$328,611 in athletic financial aid for men.²

25 _____
 26 ² Lost athletic financial aid is calculated by subtracting the aid UOP actually awarded to male student-
 27 athletes in a given year from the athletic financial aid male student-athletes would have been awarded if
 28 UOP had complied with Title IX by awarding such aid proportionally (i.e., if the percentage of athletic
 financial aid awarded to male student-athletes matched the percentage of male student-athletes
 participating in UOP’s varsity athletics program). For example, in 2020-21 the lost athletic financial aid

1 45. In 2020-21, UOP's 144 male student-athletes equaled 47.84% of the total student-athletes.
2 But male student-athletes were provided with only 38.75% of the \$6,578,347 in athletic financial aid the
3 school awarded that year, amounting to a loss of \$597,691 in athletic financial aid for men.

4 46. Thus, in just the two most recently reported academic years (2020-2021 and 2021-2022),
5 UOP's male student-athletes received over \$925,000 less in athletic financial aid—and its female student-
6 athletes received over \$925,000 more—than they would have received if UOP had granted such aid in
7 proportion to the number of students of each sex participating in intercollegiate athletics.

8 47. Upon information and belief, a similar or greater unequal and disproportionate allocation
9 of athletic financial aid to male varsity student-athletes at UOP took place in the 2022-23 academic year
10 and will continue in the future if it is not stopped.

11 48. Defendant has not asserted or attempted to demonstrate any justification for UOP's failure
12 to provide male student-athletes with equal athletic financial aid that does not reflect underlying
13 discrimination—and Plaintiff is not aware of any.

14 49. Defendant's actions have caused and are causing harm to Plaintiff and those similarly
15 situated and constitute intentional, prohibited discrimination based on sex in violation of Title IX and its
16 implementing regulations at 34 C.F.R. Part 106, and California Education Code §§ 66251, 66270.

17 50. Plaintiff and those similarly situated have been and will continue to be harmed by this past
18 and ongoing sex discrimination in UOP's varsity athletics program.

19 51. Through this class action, Plaintiff seeks to end Defendant's long-standing, ongoing
20 discrimination against UOP's male student-athletes in the provision of athletic financial aid, require
21 Defendant to compensate UOP's male varsity student-athletes for depriving them of equal athletic
22 financial aid, and ensure UOP's future compliance with Title IX's equal athletic financial aid
23 requirements.

24 **CLASS ACTION ALLEGATIONS**

25 52. Plaintiff brings this class action pursuant to Cal. Civ. Pro. Code. § 382 on behalf of himself
26 and the Class and Subclass. The proposed Class (whose members are "Class Members") is defined as
27 follows:

28 "All current and former male students who participated in intercollegiate varsity athletics
at UOP from the 2020-21 academic year to the present and did not receive all of the athletic
financial aid they could have received."

would be $((0.4784 \times \$6,578,347) - \$2,549,425) = \$597,691$ based on the information disclosed by UOP
to the DOE in its annual EADA report.

1 53. Plaintiff also seeks to certify a Subclass for injunctive relief of all male students currently
2 participating in intercollegiate athletics at UOP who are not receiving all of the athletic financial aid they
3 could receive.

4 54. Plaintiff reserves the right to revise or amend the above class and subclass definitions based
5 on facts learned in discovery.

6 55. The named Plaintiff is a member of the proposed Class and has been and/or is being injured
7 by Defendant's discrimination on the basis of sex in the distribution of athletic financial aid in UOP's
8 varsity athletic program.

9 56. Numerosity. The members of the proposed Class and of the proposed Subclass are so
10 numerous that joinder of all members is impractical. There are approximately 150 male student-athletes
11 who participated in varsity athletics at UOP annually in and since the 2020-21 academic year. Joinder of
12 them all is impracticable.

13 57. Commonality. Common questions of fact and law exist as to all members of the Class and
14 of the Subclass and predominate over the questions affecting only individual members of the Class and
15 of the Subclass. These common questions include but are not limited to:

- 16 a. Whether Defendant has violated and is violating Title IX by failing to provide male varsity
17 student-athletes at UOP with proportional athletic financial aid;
- 18 b. Whether Defendant has violated and is violating California Education Code §§ 66521,
19 66270;
- 20 c. What remedies male varsity student-athletes are entitled to as a result.

21 58. Because Title IX and §§ 66521 and 66270 require comparison of the sex-segregated men's
22 and women's athletic programs, the Title IX issues and the § 66521 and § 66270 issues in this action are
23 inherently class-based.

24 59. Typicality. Plaintiff's claims are typical of those of the Class and Subclass because
25 Plaintiff and Class and Subclass Members were exposed to identical conduct in that they were denied
26 and/or are being denied proportional athletic financial aid at UOP because of Defendant's ongoing sex
27 discrimination.

28 60. In addition, Plaintiff, like all members of the proposed Class and Subclass, has been, is
being, or will be harmed by the ongoing sex discrimination in the distribution of athletic financial aid in
UOP's varsity athletics program.

1 71. Plaintiff and the members of the Class have been and are being harmed by UOP's failure
2 to provide UOP's male student-athletes with athletic financial aid in proportion to the number of male
3 student-athletes participating in intercollegiate athletics. Such harm includes, but is not limited to, lost
4 athletic financial aid and being subjected to sex discrimination.

5 72. Plaintiff, on behalf of himself and the Class, requests relief as further described below.

6 **SECOND CAUSE OF ACTION**

7 **Violation of California Education Code §§ 66252, 66270**

8 **Unequal Allocation of Athletic Financial Aid**

9 73. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the
10 preceding paragraphs.

11 74. California Education Code § 66252 states that “[i]t is the intent of the Legislature that this
12 chapter [§§ 66250-66292.4] shall be interpreted as consistent with [among other statutes] Title IX of the
13 Education Amendments of 1972..., except where this chapter may grant more protections or impose
14 additional obligations,...”

15 75. California Education Code § 66270 prohibits all postsecondary educational institutions
16 that receive state funding from discriminating against men (and women) on the basis of their sex.

17 76. As alleged above, UOP provides athletic financial aid to some of its male and female
18 varsity student-athletes, but has not provided and does not provide athletic financial aid to UOP's male
19 and female student-athletes in proportion to the number of students of each sex participating in
20 intercollegiate athletics, as it is required to do under Title IX and California Education Code § 66270.

21 77. As alleged above, Defendant has provided and continues to provide UOP's male varsity
22 student-athletes much less—and its female varsity student-athletes much more—athletic financial aid than
23 they would have received if UOP had granted such aid in proportion to the number of students of each
24 sex participating in intercollegiate athletics.

25 78. UOP's failure to provide its male student-athletes with athletic financial aid in proportion
26 to the number of male student-athletes participating in intercollegiate athletics constitutes sex
27 discrimination in violation of California Education Code § 66270.

28 79. Individuals harmed by violations of California Education Code § 66270 may seek and
recover monetary damages, injunctive relief to prevent continuing discrimination, and declaratory relief.

80. Plaintiff, on behalf of himself and the Class, seeks relief as described below.

///

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and members of the Class and the Subclass, respectfully requests that this Court enter judgment in their favor and against Defendant as follows:

1. Certifying this matter as a Class action;
2. Entering an order declaring that Defendant has engaged in a past and continuing pattern and practice of discrimination against male students on the basis of sex in the distribution of athletic financial aid in UOP’s varsity intercollegiate athletics program, in violation of Title IX and the Regulations promulgated thereunder;
3. Entering an order declaring that Defendant has engaged in a past and continuing pattern and practice of discrimination against male students on the basis of sex in the distribution of athletic financial aid in UOP’s varsity intercollegiate athletics program, in violation of California Education Code § 66270;
4. Issuing a permanent injunction barring Defendant from discriminating against male students in the distribution of athletic financial aid on the basis of sex in UOP’s varsity intercollegiate athletics program;
5. Awarding Plaintiff all recoverable compensatory damages and other monetary relief permitted by law;
6. Awarding attorneys’ fees and costs as authorized by statute and governing law;
7. Granting such other and further relief, at law and in equity, as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and members of the Class and of the Subclass, hereby demands a jury trial on all issues so triable.

DATED: June 12, 2023

Respectfully submitted,



Julian Hammond
Attorneys for Plaintiff and the Putative Class

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Male Student-Athlete Files Class Action Against University of the Pacific Over Alleged Athletic Financial Aid Discrimination](#)
