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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF YOLO**

16 CV2021-0939

17 MADISON BUTLER, BAILEY JOHNSON,)
CORRIE O'BRIEN, and URVASHI MAHTO,)
18 individually and on behalf of all others similarly)
19 situated)

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

20 Plaintiffs,

21 vs.

22)
23 REGENTS OF THE UNIVERSITY OF)
CALIFORNIA)
24)

25 Defendant.
26)
27)
28)

1 Plaintiffs Madison Butler, Bailey Johnson, Corrie O'Brien, and Urvashi Mahto, by and
2 through their attorneys, brings this class action complaint against the Regents of the University of
3 California (the "Regents" or "Defendant"), with respect to the campus known as University of
4 California, Davis ("UC Davis"), on behalf of themselves and all others similarly situated, and
5 allege, upon their personal knowledge as to their own actions and upon information and belief as to
6 all other matters, as follows:

7 8 INTRODUCTION

9 1. UC Davis has long marketed itself as a unique campus or school within a school that
10 does things the "Davis Way" with a "student-first" philosophy.¹ Integral to the Davis Way and the
11 school's "total educational process"² was its Teacher-Coach model enshrined in its academic
12 courses and intercollegiate athletics department.

13 2. Under the Teacher-Coach model, all UC Davis students—not just student-athletes—
14 were offered the opportunity to enroll in physical education ("PE") courses for academic credit (the
15 "PE Program").³ These courses were taught by UC Davis' highly qualified collegiate coaches.

16 3. The PE Program offered students of all skill-levels the opportunity to enroll in a
17 variety of PE courses, including archery, cardio/core, flag football, self-defense for women, and
18 weight training.

19 4. In 1994, UC Davis, and the athletic department in particular, was experiencing
20 budget cuts and the future of the PE Program was in jeopardy.

21 5. Unwilling to lose the PE Program which meant so much to students, UC Davis
22 proposed implementing a permanent student fee to raise funds for the school which could also be

23
24 ¹ <https://www.ucdavis.edu/news/uc-davis-launches-search-new-head-football-coach> (last
25 accessed May 21, 2021).

26 ² UC Davis Certification Self-Study Report NCAA Division 1 Athletics (April 2006),
27 *available at* [https://academicsenate.ucdavis.edu/sites/g/files/dgvnsk3876/files/local_resources/docs/archive/06_s
elf_study_draft.pdf](https://academicsenate.ucdavis.edu/sites/g/files/dgvnsk3876/files/local_resources/docs/archive/06_self_study_draft.pdf) (last accessed May 11, 2021).

28 ³ [https://theaggie.org/2020/11/02/uc-davis-will-no-longer-offer-for-credit-pe-classes-
starting-winter-quarter-2021/](https://theaggie.org/2020/11/02/uc-davis-will-no-longer-offer-for-credit-pe-classes-starting-winter-quarter-2021/) (last accessed May 21, 2021).

1 used to offset costs associated with the PE Program. UC Davis offered to, among other things,
2 continue its “[d]iverse PE activity class[es]” as part of the PE Program in exchange for the
3 indefinite imposition of a Student Activities and Services Initiative fee (“Student Activities Fee”)
4 and continuation of the Student Services Maintenance Fee (“Services Maintenance Fee”).⁴

5 6 To determine whether the students agreed with the proposal, the Associated Students
6 of University of California, Davis (“ASUCD”) held a special vote. Based on the promises made by
7 UC Davis, on May 18, 1994, the majority of student voters approved the plan, comprised of annual
8 payments by the students of the Student Activities Fee and Services Maintenance Fee in exchange
9 for the permanent offering of the PE Program (the “1994 Agreement”).

10 7. For over twenty-five years, all parties to the 1994 Agreement performed their
11 obligations under the agreement: students paid the Student Activities Fee and Services Maintenance
12 Fee and UC Davis maintained the PE Program.

13 8 Currently, Plaintiffs and other UC Davis students pay \$380.90 per year for the
14 Student Activities and Services Maintenance Fees. The revenue generated through the Student
15 Activities and Services Maintenance Fees is not insignificant. Through the Student Activities and
16 Services Maintenance Fees, UC Davis students are the single largest group of contributors to the
17 University’s intercollegiate athletics program, contributing over \$10 million during the 2019-2020
18 school year.

19 9. Despite the students continued performance under the 1994 Agreement, on
20 September 25, 2020, UC Davis administrators unilaterally decided to terminate the PE program,
21 effective Winter Quarter 2021 (January 4, 2021-March 19, 2021).

22 10. Defendant’s termination of the PE Program constituted a clear breach of the 1994
23 Agreement.

24 11. Despite cancelling the PE Program, Defendant continues to charge and retain the
25 Student Activities and Services Maintenance Fees imposed by the 1994 Agreement.

26 12. Accordingly, Plaintiffs seek injunctive, declaratory, and monetary relief, requiring
27

28 ⁴ Exhibit A.

1 Defendant to reinstate the PE Program and reimburse UC Davis students for all academic quarters
2 in which they paid the Student Activities and Services Maintenance Fees and the PE Program was
3 not offered for academic credit, a declaratory judgment holding that UC Davis breached the 1994
4 Agreement, and compensatory damages, including reimbursement of improperly collected fees
5 together with pre-judgment interest, to all members of the Class who paid the fees.

6 **JURISDICTION AND VENUE**

7
8 13. This Court has jurisdiction over this action pursuant to the California Constitution,
9 Article VI, §, 10, because this case is a cause not given by statute to other trial courts.

10 14. Venue is proper in this court because Plaintiffs reside and/or attend school in Yolo
11 County, California, where UC Davis is located, and the injury therefore occurred in Yolo County,
12 California.

13 **PARTIES**

14 **A. Plaintiffs**

15 15. Plaintiff Madison Butler is a student at UC Davis and a citizen of the State of
16 California. Ms. Butler has been enrolled at UC Davis since 2018 and her anticipated graduation date
17 is June 2022. Ms. Butler is a human development studies major.

18 16. Prior to Defendant's breach of the 1994 Agreement, Ms. Butler enrolled in PE
19 courses for academic credit during the spring and fall quarters 2019, and the spring and fall quarters
20 2020. Ms. Butler intended to enroll in PE courses for academic credit during the winter and spring
21 2021 quarters but was unable to due to the cancellation the program. Ms. Butler has paid the
22 Student Activities and Services Maintenance Fees each quarter she was matriculated at UC Davis.

23 17. Plaintiff Bailey Johnson is a student at UC Davis and a citizen of the State of
24 California. Ms. Johnson has been enrolled at UC Davis since 2018 and her anticipated graduation
25 date is June 2021. Ms. Johnson is a wildlife, fish, conservation biology studies major.

26 18. Prior to Defendant's breach of the 1994 Agreement, Ms. Johnson enrolled in PE
27 courses for academic credit during the winter, spring and fall quarters of 2019, and the winter and
28 fall quarters 2020. Ms. Johnson intended to enroll in PE courses for academic credit during the

1 winter and spring 2021 quarters but was unable to due to the cancellation the program. Ms. Johnson
2 has paid the Student Activities and Services Maintenance Fees each quarter she was matriculated at
3 UC Davis.

4 19. Plaintiff Corrie O'Brien is a student at UC Davis and a citizen of the State of
5 California. Ms. O'Brien has been enrolled at UC Davis since 2017 and her anticipated graduation
6 date is June 2021. Ms. O'Brien is a design major.

7 20. Prior to Defendant's breach of the 1994 Agreement, Ms. O'Brien enrolled in PE
8 courses for academic credit during the 2018, 2019, and fall 2020 quarters. Ms. O'Brien intended to
9 enroll in PE courses for academic credit during the winter and spring 2021 quarters but was unable
10 to due to the cancellation the program. Ms. O'Brien has paid the Student Activities and Services
11 Maintenance Fees each quarter she was matriculated at UC Davis.

12 21. Plaintiff Urvashi Mahto is a student at UC Davis and a citizen of the State of
13 California. Ms. Mahto has been enrolled at UC Davis since 2018 and her anticipated graduation
14 date is December 2021. Ms. Mahto is a computer science major.

15 22. Prior to Defendant's breach of the 1994 Agreement, Ms. Mahto enrolled in PE
16 courses for academic credit during the spring and fall quarters 2019, and the winter and fall quarters
17 2020. Ms. Mahto intended to enroll in PE courses for academic credit during the winter and spring
18 2021 quarters but was unable to due to the cancellation the program. Ms. Mahto has paid the
19 Student Activities and Services Maintenance Fees each quarter she was matriculated at UC Davis.

20 **B. Defendant**

21 23. The Regents is a California public corporation responsible for administering the
22 University of California, a public trust. The Regents, under the California State Constitution, is the
23 governing body of and is responsible for the policies and operations of the University of California.
24 Among other responsibilities, the Regents establishes fees to be charged at its constituent
25 institutions and receives the fees paid by the students.

26 24. Located at One Shields Avenue, Davis, California, 95616, UC Davis is the third
27 largest campus by student enrollment in the University of California system, with over 39,000
28

1 enrolled students in 2018-2019.⁵ UC Davis offers 103 academic majors and six (6) professional
2 school programs.⁶

3 25. The current cost of attending UC Davis is significant with total costs for California
4 residents totaling \$37,126 per year and \$66,880 for non-residents.⁷ In addition to tuition and
5 classroom related surcharges, UC Davis charges annual fees, including a Campus Expansion
6 Initiative Fee of \$595.04; Facilities and Campus Enhancements Fee of \$450.21; Student Health
7 Services Fee of \$163.29; Memorial Union Fee of \$85.50; and Student Services Maintenance
8 Fee/Student Activities and Services Initiative Fee of \$380.90.⁸

9 26. Gary S. May currently serves as the Chancellor of UC Davis. May became UC
10 Davis' seventh Chancellor on August 1, 2017. As Chancellor, Mr. May oversees UC Davis'
11 intercollegiate athletics program. Section 100.6 of the Standing Orders of the Regents delegates
12 authority to each University's Chancellor for hiring personnel, developing a budget and setting
13 policy and standards of conduct. The delegation includes responsibility for the conduct of the PE
14 Program.

15 SUBSTANTIVE ALLEGATIONS

16 A. UC Davis has a storied history of offering all students the opportunity to 17 earn academic credit through PE courses and to learn from highly 18 skilled coaches.

19 27. The UC Davis Department of Physical Education was founded in 1947 by Irving
20 "Crip" Toomey, who had served as Athletic Director, Head Football Coach, and Head Basketball
21 Coach.⁹ Since then PE has had an integral and intertwined relationship with the academic mission
22 of UC Davis.

23 28. UC Davis currently states on its website that "[t]he heart of the [PE] program is its
24

25 ⁵ <https://finreports.universityofcalifornia.edu/index.php?file=18-19/pdf/fullreport-1819.pdf>
(last accessed May 21, 2021).

26 ⁶ <https://www.ucdavis.edu/about> (last accessed May 21, 2021).

27 ⁷ <https://www.ucdavis.edu/admissions/cost> (last accessed May 21, 2021).

28 ⁸ *Id.*

⁹ <https://pe.ucdavis.edu/about> (last accessed May 11, 2021).

1 curriculum of activities classes” and that PE “courses continue to be very popular offerings
2 enrolling over 8000 students annually.”¹⁰ The PE program is an academic unit in the Division of
3 Social Sciences of the College of Letters and Science.

4 29. What makes the PE Program so unique and enticing to students is twofold. First, PE
5 courses at UC Davis were offered to all students at the University, not just collegiate athletes
6 involved in NCAA athletics. The core concept of the PE Program was to impart on students the
7 knowledge and understanding of the health benefits of regular exercise as an important basis for
8 lifetime fitness.¹¹ Second, PE courses were taught by expert faculty members, including varsity
9 collegiate coaches. “The fact that Aggie coaches [taught] regular, credit-bearing classes in the
10 undergraduate curriculum as members of the faculty is widely supported by the campus and is the
11 cornerstone of the Teacher – Coach Philosophy at UC Davis.”¹²

12 30. PE courses were designed in a sequential manner so that students “develop and
13 improve performance skills utilizing modern concepts taken from exercise biology and sport
14 science, and to impart knowledge of these concepts in order to promote an understanding of the
15 health benefits of regular exercise as an important basis for lifetime fitness.”¹³

16 31. Because PE courses were academic classes, they were instructional by design, rather
17 than recreational, and included formal examinations, syllabi, and weekly class assignments.¹⁴
18 Throughout the semester “[s]tudents [were] assessed and evaluated in order to measure fitness and
19 skill improvement.”¹⁵

20 32. UC Davis also promoted PE courses as an excellent opportunity “for multi-cultural
21 learning and socialization.”¹⁶

24 ¹⁰ *Id.*

25 ¹¹ *Id.*

26 ¹² *Id.*

27 ¹³ *Id.*

28 ¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

1 33. A broad spectrum of courses were offered as part of the PE Program and they were
2 designed so that all students could participate.

3 34. For example, in the Fall 2018 semester, the university offered beginner to advance
4 level courses in a variety of sports, including: Basic Abs/Back Condition; Aerobics/Boot Camp;
5 Basic Kickboxing; Basic Interval Weightlift; Aerobic Running; Aerobic Swimming; Archery;
6 Badminton; Cardio/Core; Exercise Walking; Flag Football; Golf; Learn to Swim; Lifetime Fitness;
7 Racquetball; Rock Climbing; Self Defense for Women; Soccer; Stretch; Taekwondo; Tai Chi; Table
8 Tennis; Tennis; Ultimate Frisbee; Volleyball; and Weight Training.¹⁷

9 35. For many years, the Teacher – Coach approach adopted by UC Davis provided that
10 NCAA head coaches were expected to teach the PE courses at least 50% of the time and to coach
11 the other 50%. Each NCAA head coach and assistant coach was expected to teach five (5) PE
12 activity courses per year.¹⁸ The coaches reported to senior staff within the athletic department for
13 their coaching responsibilities and to the Director of Physical Education for their teaching
14 responsibilities.¹⁹

15 36. Over the course of their undergraduate and graduate student careers at UC Davis,
16 students were allowed to take up to six (6) units of PE classes that counted towards graduation
17 requirements.

18 37. UC Davis has recognized the importance of coach-led PE courses in one of its eight
19 core campus principles guiding the athletics department. This principle provides that “[t]he athletics
20 department at UC Davis must maintain a formal connection to the mission of the University,
21 including preserving the current teacher/coach role.”²⁰

22
23 ¹⁷ http://local-resources.ucdavis.edu/local_resources/schedule/class-schedule-2018-fall.pdf
24 (last accessed May 21, 2021).

25 ¹⁸ https://academicsenate.ucdavis.edu/sites/g/files/dgvnsk3876/files/local_resources/docs/pdf/athletics-report-final.pdf (last accessed May 21, 2021).

26 ¹⁹ *Id.*

27 ²⁰ UC Davis Certification Self-Study Report NCAA Division 1 Athletics (April 2006),
28 *available at* https://academicsenate.ucdavis.edu/sites/g/files/dgvnsk3876/files/local_resources/docs/archive/06_self_study_draft.pdf (last accessed May 21, 2021).

1 38. UC Davis has touted its “vigorous philosophy of academic athletics,” including that
2 the school “has in place several policies that tie athletics to the academic community of the
3 institution.”²¹

4 39. Former Director of Athletics Terry Tumey iterated UC Davis’ commitment to the PE
5 program in 2012, stating: “Looking ahead...our commitment to academic excellence and integrity is
6 what will truly define Intercollegiate Athletics overall, and will serve as a model for other college
7 athletic programs throughout the country.”²²

8 **B. In 1994, UC Davis entered into a binding agreement with its students that it**
9 **would provide PE courses for academic credit in exchange for the students’**
10 **payment of the Student Activities Fee and Services Maintenance Fee.**

11 40. In the spring quarter of 1994, after budget cuts had reduced funding for UC Davis
12 athletics, the University and ASUCD held a special vote for the student body concerning the
13 levying of student fees. Specifically, the special election concerned a proposed continuation of an
14 existing, temporary student fee (the Services Maintenance Fee) and approval of an additional fee to
15 maintain certain student services including intercollegiate athletics (the Student Activities Fee).²³

16 41. Students were asked to vote for one of three choices: (1) the indefinite continuation
17 of the Services Maintenance Fee, and for a Student Activities Fee of \$34 per student per quarter
18 which would support a 23-sport intercollegiate athletics program; (2) the indefinite continuation of
19 the Services Maintenance Fee approved in 1993 and a Student Activities Fee of \$23.50 per student
20 per quarter to support a 17-sport athletics program; or (3) no fee.²⁴ The first two options of the
21 referendum included a cost-of-living increase provision, tied to the Consumer Price Index (“CPI”)
22 of the State of California.²⁵

23 42. In exchange for the students’ approval and payment of the Student Activities Fee and

24 ²¹ *Id.*

25 ²² <https://www.ucdavis.edu/news/uc-davis-launches-search-new-head-football-coach> (last
26 accessed May 21, 2021).

27 ²³ https://cosaf.ucdavis.edu/sites/g/files/dgvnsk1561/files/inline-files/SASI_1994.pdf (last
28 accessed May 21, 2021).

²⁴ *Id.*

²⁵ *Id.*

1 Services Maintenance Fee, UC Davis promised to continue offering its students the unique
2 opportunity to earn academic credit through the PE Program.

3 43. As part of the special vote campaign, UC Davis students were given an informational
4 handbill to aid in their voting decisions.²⁶ The handbill explained that a “YES” vote for option 1
5 (Student Activities Fee of \$34) included the promise that the PE Program would be maintained for
6 all UC Davis Students and that a “NO” vote would lead to the “immediate reduction and eventual
7 elimination of PE activity classes for academic credit”:²⁷

OPPORTUNITIES	CONSEQUENCES
<p data-bbox="245 716 878 764">Campus "A" - a YES vote for Option #1 (23 sports)</p> <ul data-bbox="245 779 878 1241" style="list-style-type: none"><li data-bbox="245 779 878 842">• Achieves gender equity in sports without penalizing men participants and provides more opportunity for women.<li data-bbox="245 842 878 905">• 23 intercollegiate sports - diverse opportunities including football, volleyball, tennis, etc.<li data-bbox="245 905 878 968">• Free admission for undergraduate students to regular season athletic events such as football, basketball, baseball, etc.<li data-bbox="245 968 878 1010">• Superior intramural program - more IM activities, with no additional fees.<li data-bbox="245 1010 878 1052">• Diverse PE activity class program that served 9,000 students in 1993 (e.g. aerobics, weight training, golf, tennis, volleyball, dance).<li data-bbox="245 1052 878 1115">• 7,800-seat Recreation Hall - maintaining current service hours for recreation, intramurals, sports clubs, ICA, special events.<li data-bbox="245 1115 878 1178">• Diverse campus recreation program - Rec Pool, Craft Center, Outdoor Adventures, Equestrian Center, and facilities (e.g. tennis courts)<li data-bbox="245 1178 878 1241">• One of the top-ranked Division II programs in the nation - even without athletic scholarships.	<p data-bbox="878 716 1516 764">Campus "B" - a NO vote</p> <ul data-bbox="878 779 1516 1241" style="list-style-type: none"><li data-bbox="878 779 1516 842">• Achieves gender equity in sports by eliminating opportunities for women and men participants.<li data-bbox="878 842 1516 905">• 5-8 intercollegiate sports, no football, probably limited to basketball, volleyball, baseball and softball.<li data-bbox="878 905 1516 968">• Admission fee charged to students for events such as basketball, baseball, volleyball, etc.<li data-bbox="878 968 1516 1031">• Marginal intramural program - fewer IM activities, with additional fees charged for team competition.<li data-bbox="878 1031 1516 1094">• Immediate reduction and eventual elimination of PE 1 activity classes for credit - if classes exist, fees will be charged.<li data-bbox="878 1094 1516 1157">• 7,800-seat Recreation Hall - significant cuts in student recreational use time, intramurals, club sports... NEW FEES FOR STUDENT USE<li data-bbox="878 1157 1516 1220">• Campus recreation programs reduced - some eliminated, others cut back, with a general reduction in services and increased participation fees.<li data-bbox="878 1220 1516 1241">• Cannot support 8 sports at current levels - no longer a member of NCAA.

18
19 53. The handbill made clear that the proposed agreement would be for as long as the fees
20 were charged and apply to future generations of UC Davis students.

21 54. For example, the handbill stated: “Fact: The administration cannot take these
22 initiative funds away - they will not be collected if they do not go to the programs indicated. ***This***
23 ***vote is a long term solution*** to an otherwise unsolvable budget problem.”²⁸ The handbill further
24 stated that “[i]n 1992-93, approximately, ... 9,000 students took PE activity classes” and “th[is]”
25

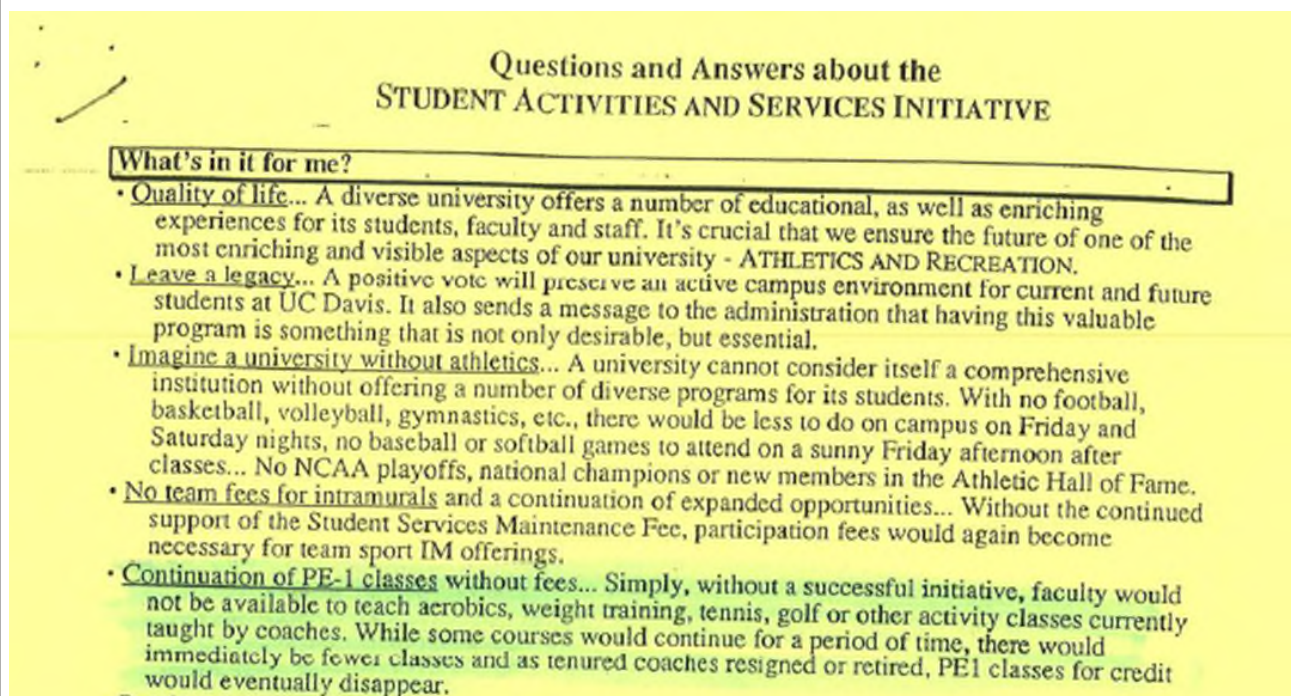
26
27 ²⁶ Attached hereto as Exhibit A.

28 ²⁷ *Id.*

²⁸ *Id.* (emphasis added).

1 opportunity[y] will be greatly affected if this initiative fails.”²⁹

2 55. In addition to the informational handbill, a Student Activities Fee “Questions and
3 Answers” document was circulated. Therein, it was explained that the vote was tied to “PE-1
4 classes” and absent a yes vote, “there would immediately be fewer classes and as tenured coaches
5 resigned or retired, *PE classes for credit would eventually disappear*.”³⁰



17 56. On May 18, 1994, with a passing vote of 52%, UC Davis students approved option 1
18 of the referendum thereby allowing the continuance of the Services Maintenance Fee and a Student
19 Activities Fee of \$34 per student per quarter, with the following provisions: (1) implementation of
20 the Student Activities Fee will be phased as follows; \$14 per student per quarter effective Fall
21 Quarter 1994, increasing to \$17 per student per quarter effective Fall Quarter 1995, and increasing
22 to \$34 per student per quarter effective Fall Quarter 1996 and thereafter; and (2) after 1996-1997,
23 the Services Maintenance Fee and Student Activities Fee will be adjusted annually to reflect
24 fluctuations in the CPI of the State of California.³¹

25
26 ²⁹ *Id.*

27 ³⁰ Exhibit B (emphasis added).

28 ³¹ See https://cosaf.ucdavis.edu/sites/g/files/dgvnsk1561/files/inline-files/SASI_1994.pdf
(last accessed May 21, 2021).

1 57. As of the Spring Quarter 2021, UC Davis students pay \$380.90 per year in Student
2 Activities Fee and Services Maintenance Fee. Through the Student Activities Fee and Services
3 Maintenance Fee, UC Davis students paid approximately \$10,500,000 to fund ICA during the 2019-
4 2020 school year. In fact, UC Davis Chancellor Gary S. May has acknowledged that the most
5 important donors for UC Davis athletics are UC Davis students.³²

6 58. The PE Program has been a tremendous success at UC Davis, with over 7,000
7 undergraduate students, or over 23% of the student body, participating in PE classes for credit each
8 year.³³

9 59. UC Davis also promoted the PE program to prospective students, stating that the “PE
10 [Program] provides many outreach, leadership, and field experience opportunities for students
11 through internships and teaching opportunities in the local community.”³⁴

12 **C. UC Davis announced its decision to breach the 1994 Agreement and terminated
13 the PE Program.**

14 60. Without any prior notice, on September 25, 2020, UC Davis shocked its student
15 body, alumni, and faculty when it announced its unilateral decision to eliminate the entire PE
16 program, effective Winter Quarter 2021.

17 61. UC Davis administrators justified the elimination of PE courses based on the
18 program’s declining enrollment. However, in recent years, between 7,000-8,000 UC Davis students
19 (nearly 20 percent of the undergraduate population) have enrolled in about 200 PE classes offered
20 annually.³⁵

21 62. Although UC Davis claimed that it cancelled the PE Program after an extensive
22 review process, the Davis Faculty Association and the Director of the PE Program contradicted the

23
24 ³² See <https://www.davisenterprise.com/sports/may-part-ii-blues-arrival-was-a-game-changer/> (last accessed May 11, 2021).

25 ³³ https://www.change.org/p/uc-davis-administration-save-the-uc-davis-physical-education-program?utm_content=cl_sharecopy_25219443_en-US%3A1&recruiter=1013024176&utm_source=share_petition&utm_medium=copylink&utm_campaign=share_petition (last accessed May 21, 2021).

27 ³⁴ <https://pe.ucdavis.edu/> (last accessed May 21, 2021).

28 ³⁵ <https://www.davisenterprise.com/news/local/uc-davis-to-discontinue-100-plus-year-old-physical-education-program/> (last accessed May 21, 2021).

1 administration's assertion.

2 63. Following the administration's September 25 announcement, Barbara Jahn, Director
3 of the PE Program, told the student newspaper that "the final decision was made without our
4 input."³⁶

5 64. Similarly, in a letter sent to Chancellor May and Provost Mary Croughan on October
6 10, 2020, the Davis Faculty Association stated that it was not previously consulted regarding the
7 possibility of ending the 100-year old PE Program and that it first heard about the decision in an
8 article published in the Davis Enterprise.³⁷

9 65. The Davis Faculty Association Co-Chair, Jesse Drew, added that UC Davis had not
10 followed the proper protocols for terminating the PE Program. Mr. Drew stated that "[t]his cannot
11 happen unilaterally... There's a set of procedures for wrapping up and (closing) down programs. For
12 (UCD) to just announce they are shutting [the PE Program] down immediately, with no consultation
13 – I think it is a violation of our rights as a faculty."³⁸

14 66. The decision to breach the 1994 Agreement by eliminating the PE Program caused
15 an uproar amongst students on the UC Davis campus. Following the announcement, the ASUCD
16 Senate passed a resolution opposing the administration's decision to eliminate the physical
17 education program. The resolution passed unanimously without a single abstention. The resolution
18 reflected that the UC Davis students and faculty members opposed the "campus administration's
19 decision to eliminate the Physical Education (PHE) program, urge that the program, including all
20 current PE lecturers, be reinstated by winter quarter 2021, and urge that administration solicits
21 faculty and student input."³⁹ The ACUSD resolution was signed by over 4,000 UC Davis students
22
23

24
25 ³⁶ <https://www.davisenterprise.com/news/local/uc-davis-moves-ahead-with-decision-to-scrap-pe-program/> (last accessed May 21, 2021).

26 ³⁷ <https://ucdfa.org/2020/10/letter-opposing-elimination-of-pe/> (last accessed May 21, 2021).

27 ³⁸ <https://www.davisenterprise.com/news/local/faculty-association-pushes-back-against-ucds-plan-to-cut-pe-programs/> (last accessed May 21, 2021).

28 ³⁹ <https://www.davisvanguard.org/2020/12/asucd-passes-resolution-opposing-the-elimination-of-pe/> (last accessed May 21, 2021).

1 and alumni.⁴⁰ Another student petition seeking to “Save the UC Davis Physical Education Program”
2 has been signed by over 5,400 individuals.⁴¹

3 67. The ACUSD noted that UC Davis’ decision to cancel the PE Program would result
4 in “further consequences as well.”⁴² ASUCD noted that “UC Davis ranks the 5th nationwide in
5 sexual-assault crimes and the elimination of the PE program would result in the elimination of vital
6 self-defense classes.”⁴³

7 68. Amongst the chorus of complaints was California State Senator Connie Leyva, who
8 chairs the Senate Education Committee. Upon learning of UC Davis’ decision, Senator Leyva wrote
9 to Chancellor May and Provost Croughan urging them to reinstate the PE Program and “to order to
10 conduct a full and appropriate review.”⁴⁴

11 69. Several individuals involved in the negotiation of the terms of the 1994 Agreement
12 confirmed that the permanent offering of the PE Program, in exchange for student fees, was an
13 integral term of the Agreement.

14 70. At the time of the 1994 special election, Bob Franks served as Associate Vice
15 Chancellor of Student Affairs at UC Davis and was involved in the negotiation of the imposition of
16 the Student Activities Fee. Mr. Franks noted how the PE Program and the Student Activities Fee
17 were directly tied to one another and explained why the student body and the administration omitted
18 direct reference to this exchange in the Student Activities Fee: “It would have been as unnecessary
19 as speaking of sunrise and sunset. These simply were the reality, and *all involved parties*
20
21

22 ⁴⁰ <https://www.davisvanguard.org/wp-content/uploads/2020/12/ASUCD-PE-Resolution.pdf> (last accessed May 21, 2021).

23 ⁴¹ https://www.change.org/p/uc-davis-administration-save-the-uc-davis-physical-education-program?utm_content=cl_sharecopy_25219443_en-US%3A1&recruiter=1013024176&utm_source=share_petition&utm_medium=copylink&utm_campaign=share_petition (last accessed May 21, 2021).

24 ⁴² <https://www.davisvanguard.org/2020/12/asucd-passes-resolution-opposing-the-elimination-of-pe/> (last accessed May 21, 2021).

25 ⁴³ *Id.*

26 ⁴⁴ <https://www.davisenterprise.com/news/local/uc-davis-moves-ahead-with-decision-to-scrap-pe-program/> (last accessed May 21, 2021).

1 *understood the reality.*”⁴⁵

2 71. Greg Warzecka, UC Davis Athletic Director from 1995 to 2011, similarly stated that
3 “[t]he university has a responsibility to continue that program... To pull from that program or not
4 offer courses... would violate the [Student Activities Fee] referendum.”⁴⁶ Likewise, Barbara Jahn,
5 who served as Head Women’s Swimming coach since 1974 and Director of the PE Program prior to
6 her retirement in 2021, acknowledged that “[p]art of the campaign to pass the [Student Activities
7 Fee] referendum was the obligation of the university to maintain the PE Program for undergraduate
8 students.”⁴⁷

9 72. In addition to faculty members, Phillip Kilbridge, a student-athlete who was at the
10 negotiating table with the administration in 1994, stated, “*At the time of the vote, the PE Program*
11 *had been, and without question was expected to continue to be, inextricably linked to our*
12 *intercollegiate athletic program.*”⁴⁸

13 73. Prior to the University’s decision to eliminate the program, Plaintiffs were enrolled
14 in PE classes for the Winter Quarter 2021. Notably, the program was cancelled in the midst of the
15 COVID-19 pandemic where it was more important than ever that students have an opportunity to
16 participate in various stress reducing activities. Indeed, during the prior academic quarter, students
17 cherished the opportunity to enroll in PE classes while all other in-person classes remained
18 cancelled.

19 CLASS ALLEGATIONS

20 74. Plaintiffs bring this action on their own behalf and on behalf of a Class of similarly
21 situated individuals, pursuant to Cal. Civ. Proc. §382, defined as follows:
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23

24 ⁴⁵ <https://theaggie.org/2021/02/12/uc-davis-students-and-faculty-excluded-from-decision-to-terminate-physical-education-program/> (last accessed May 21, 2021) (emphasis added).

25 ⁴⁶ <https://www.davisenterprise.com/sports/sports-physical-education-at-uc-davis-keeping-davis-uncommon-part-2/> (last accessed May 21, 2021).

26 ⁴⁷ <https://www.davisenterprise.com/sports/sports-physical-education-at-uc-davis-keeping-davis-uncommon-part-2/> (last accessed May 21, 2021).

27 ⁴⁸ <https://www.davisenterprise.com/news/local/uc-davis-moves-ahead-with-decision-to-scrap-pe-program/> (last accessed May 21, 2021) (emphasis added)..
28

1 All individuals enrolled as students at University of California, Davis and who paid
2 the Student Activities Fee and Services Maintenance Fee for the 2020-21 school year
and any subsequent period in which the PE Program is not offered.

3 75. Excluded from the Class are Defendant, its affiliates, employees, officers, directors,
4 or regents, and the Judge(s) assigned to this case. Plaintiffs reserve the right to modify, change, or
5 expand the Class definition based on discovery and further investigation.

6 76. A class action is proper because this action involves questions of common or general
7 interest and involves numerous parties, the joinder of which would be impracticable. While the
8 exact number and identities of individual members of the Class are unknown at this time, such
9 information being in the sole possession of Defendant and obtainable by Plaintiffs only through the
10 discovery process, as of 2021, 38,634 students were enrolled in UC Davis and, on information and
11 belief, paid Student Activities Fee and Services Maintenance Fee.

12 77. The questions of law and fact are common to the Class and predominate over any
13 questions affecting only individual Class members. These common legal and factual questions
14 include, but are not limited to:

- 15 a) Whether UC Davis engaged in the conduct alleged herein;
- 16 b) Whether the 1994 Agreement created an enforceable contract between UC
17 Davis and its student body;
- 18 c) Whether Plaintiffs and the Class were intended third-party beneficiaries of
19 the 1994 Agreement;
- 20 d) Whether UC Davis breached its agreement with UC Davis' student body by
21 failing to offer students PE classes for academic credit beginning in the
22 Winter Quarter 2021 and continuing through the present; and
- 23 e) Whether Plaintiffs and the Class are entitled to damages and injunctive relief.

24 78. Plaintiffs' claims are typical of the claims of the Class in that Plaintiffs paid the
25 Student Activities Fee and Services Maintenance Fee in exchange for the opportunity to enroll in
26 the PE program, but were denied. Plaintiffs and all Members of the Class sustained monetary and
27 economic injuries including, but not limited to, ascertainable losses arising out of Defendant's
28

1 wrongful conduct. Plaintiffs are advancing the same claims and legal theories on behalf of
2 themselves and all absent Class Members.

3 79. Plaintiffs are adequate representatives because their interests do not conflict with the
4 interests of the Class that they seek to represent, they have retained counsel competent and highly
5 experienced in complex class action litigation, and they intend to prosecute this action vigorously.
6 The interests of the Class will be fairly and adequately protected by Plaintiffs and their counsel.

7 80. Defendant has acted on grounds generally applicable to the Class, thereby making
8 final injunctive relief appropriate with respect to the Class as a whole.

9 81. This class action is superior to the alternatives, if any, for the fair and efficient
10 adjudication of this controversy. Prosecution as a class action will eliminate the possibility of
11 repetitive litigation. There will be no material difficulty in the management of this action as a class
12 action.

13 82. The prosecution of separate actions by individual Class members would create the
14 risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for
15 Defendant.

16 **CAUSES OF ACTION**

17 **FIRST CLAIM FOR RELIEF**
18 **BREACH OF CONTRACT**

19 83. Plaintiffs repeat and allege the allegations in paragraphs above, as if fully alleged
20 herein.

21 84. Plaintiffs bring this claim individually and on behalf of the Class.

22 85. Plaintiffs enrolled in UC Davis for the Winter and Spring Quarters of 2021.

23 86. Plaintiffs paid \$380.90 for the Student Activities Fee and Services Maintenance Fee
24 for the 2020-21 school year, including the 2021 Winter and Spring Quarters.

25 87. The 1994 Agreement created a binding and enforceable contract between Defendant
26 and the UC Davis students.

27 88. The 1994 Agreement requires UC Davis to offer PE courses for student credit in
28 exchange for students' payment of the Student Activities Fee and Services Maintenance Fee in

1 support of the UC Davis Intercollegiate Athletics Programs.

2 89. Each school year since the 1994 Agreement was entered into, Defendant charged and
3 UC Davis students paid the Student Activities Fee and Services Maintenance Fee.

4 90. Plaintiffs and the Class members paid the Student Activities Fee and Services
5 Maintenance Fee for the 2020-21 school year.

6 91. Defendant breached the contract by unilaterally cancelling the PE Program
7 beginning with the Winter Quarter of 2021.

8 92. Despite cancelling the PE Program, Defendant has not returned the Student
9 Activities Fee or Services Maintenance Fee paid by Plaintiffs and the Class for the 2020-21 school
10 year.

11 93. Defendant has retained monies paid by and which belong to Plaintiffs and the other
12 Class members, without providing them the benefit of their bargain.

13 94. As a direct and proximate result of Defendant's elimination of the PE Program,
14 Plaintiffs and the Class suffered damages.

15 95. Plaintiff and the other Class members are entitled to equitable remedies, including
16 specific performance for future academic quarters.

17 **SECOND CLAIM FOR RELIEF**
18 **ALTERNATIVE COUNT FOR BREACH OF CONTRACT**
19 **(CAL. CIVIL CODE § 1559)**

20 96. Plaintiffs repeat and allege the allegations in paragraphs above, as if fully alleged
21 herein.

22 97. Plaintiffs bring this claim individually and on behalf of the other Class members.

23 98. Pursuant to California Civil Code §1559, "A contract, made expressly for the benefit
24 of a third person, may be enforced by him at any time before the parties thereto rescind it."

25 99. The 1994 Agreement between Defendant and the UC Davis student body constituted
26 a valid contract with an agreement that UC Davis students would pay the Student Activities Fee and
27 Services Maintenance Fee in the future in exchange for the indefinite continuation of the PE
28 Program.

1 any period during which the fees are collected;

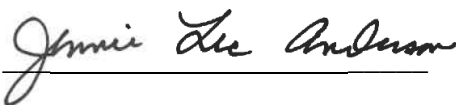
2 E. Award Plaintiffs and the Class their costs of this suit, including reasonable attorneys'
3 fees as provided by law; and

4 F. Grant such other and further relief as may be just and proper.

5 **JURY TRIAL DEMANDED**

6 Plaintiffs demand a trial by jury on all causes of action so triable.

7
8 DATED: May 25, 2021

9 By: 

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