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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

LAUREN WORKING; BRIONNA GEREB, by her next friend DREW GEREB; LILLIAN HARWOOD, by her next friends TYE HARWOOD and JAMIE HARWOOD; KELSEY DEOS, by her next friends KELLY DEOS and LAURA DEOS; MORGAN JONES, by her next friends DAVID JONES and SHELLY JONES; ANNA TOMITA, by her next friends TODD TOMITA and MARNA TOMITA; MARIN PENNEY, by her next friends DARIN PENNEY and MARIE PENNEY; LAYNEY LOMBARDO by her next friend HEIDI JONES; VIVIAN RITTENOUR, by her next friends PETER RITTENOUR and DAMARI RITTENOUR; KIANA WILLIAMS, by her next friends ANDREW CHOO and LINDA LATTO,

Plaintiffs,

v.

LAKE OSWEGO SCHOOL DISTRICT, an Oregon public school district,

Defendant.

Case No.: 3:16-cv-00581-SB

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

(Civil Rights)

1. The above-captioned plaintiffs on behalf of themselves and all others similarly situated (“Plaintiffs”) respectfully file this Amended Class Action Complaint against Defendant Lake Oswego School District (“District” or “Defendant”); and allege as follows.

PRELIMINARY STATEMENT

2. This action seeks to remedy Defendant’s ongoing Title IX violations. Title IX of the Education Amendments of 1972 (“Title IX”) was passed to provide girls and women with a civil rights tool to combat gender inequities rife throughout the public education system. Despite Title IX being in effect for more than 40 years, enforcement actions like this unfortunately are still necessary. Plaintiffs, along with many more girls like them who attend Lake Oswego High School (or “LOHS”), are forced to bring this Title IX action to gain equal access to sports opportunities, treatment, and benefits on par with their LOHS male student counterparts. Defendant administers an athletics program at LOHS affording more participation opportunities to LOHS male students while treating and benefitting LOHS male athletes better than LOHS female athletes. LOHS’ female students are being denied a level “playing field” due to the discriminatory actions and inactions of Defendant.

STATEMENT OF THE CASE

3. This action seeks declaratory and injunctive relief. Defendant has violated Title IX of the Education Amendment of 1972 and the regulations adopted thereto by illegally denying Plaintiffs equal opportunities, treatment, and benefits that must necessarily accompany participation in federally-funded educational athletic programming.

4. Defendant’s denial of equal opportunity, treatment and benefits constitutes sex discrimination against the Plaintiffs. Specifically, Defendant has discriminated against Plaintiffs in the following areas: the provision of athletic opportunities; provision of equipment and

supplies; scheduling of games and practice times; provision of locker rooms, practice and competition facilities; coaching; provision of medical and training services and facilities; funding and fundraising opportunities; travel; and publicity and support.

5. This action seeks to redress the deprivation of Plaintiffs' rights to receive the equal opportunity, treatment, and benefits which must necessarily accompany interscholastic and other school-sponsored athletics. This action seeks a declaratory judgment that Defendant has violated Plaintiffs' rights under federal law. This action further seeks injunctive relief requiring Defendant to immediately cease its discriminatory conduct and remedy the effects of its discriminatory conduct. Plaintiffs specifically seek injunctive relief which, among other things, requires that Defendant provide Plaintiffs with opportunities, treatment, and benefits in accordance with Title IX.

JURISDICTION AND VENUE

6. Plaintiffs' claims arise under Title IX of the Education Amendments of 1972, 20 U.S.C. §1681, *et seq.*, and its interpreting regulations. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

7. Jurisdiction for declaratory and other relief is invoked pursuant to 28 U.S.C. §§ 2201(a) and 2202. A declaration of the correct interpretation of the legal requirements described in this Complaint is necessary and appropriate to determine the respective rights and duties of the parties to this action.

8. Venue is proper pursuant to 28 U.S.C. § 1391(b). Lake Oswego School District serves the area in which the majority of Plaintiffs live in Lake Oswego, Oregon, and Plaintiffs' claim arises from activities conducted at Lake Oswego High School, which is located within the jurisdiction of this Court.

THE PARTIES

9. Plaintiff Lauren Working (“Ms. Working”) is a 19-year-old student athlete who attended Lake Oswego High School. Ms. Working played softball at Lake Oswego High School and has played softball within the Lake Oswego School District for approximately 10 years. Ms. Working also played club softball throughout high school. Defendant discriminated against Ms. Working on the basis of her sex by denying her equal athletic opportunity, treatment and benefits. Ms. Working is a resident of Lake Oswego, Oregon and currently attends college at Texas Christian University (“TCU”).

10. Plaintiff Brionna Gereb (“Ms. Gereb”) is a 17-year-old student athlete who attended Lake Oswego High School. Ms. Gereb played softball at Lake Oswego High School for three years and has played softball within the Lake Oswego School District for approximately 11 years. Ms. Gereb currently attends high school in Arizona and plays for her high school team as well as a club team. Defendant has discriminated against Ms. Gereb on the basis of her sex by denying her equal athletic opportunity, treatment and benefits. Ms. Gereb intends to play sports in college and hopes to receive an athletic college scholarship. Ms. Gereb, a minor, is proceeding in this action by her next friend, her father Drew Gereb. Both Ms. Gereb and her father were residents of Lake Oswego, Oregon. They currently reside in Scottsdale, Arizona.

11. Plaintiff Lillian Harwood (“Ms. Harwood”) is a 17-year-old student athlete who attends Lake Oswego High School. Ms. Harwood plays softball at Lake Oswego High School and has played softball within the Lake Oswego School District for approximately 11 years. Defendant has discriminated against Ms. Harwood on the basis of her sex by denying her equal athletic opportunity, treatment and benefits. Ms. Harwood intends to play sports in college and hopes to receive an athletic college scholarship. Ms. Harwood, a minor, is proceeding in this

action by her next friends, her mother Jamie Harwood and her father Tye Harwood. Both Ms. Harwood and her parents are residents of Lake Oswego, Oregon.

12. Plaintiff Kelsey Deos (“Ms. Deos”) is a 16-year-old student athlete who attends Lake Oswego High School. Ms. Deos plays softball at Lake Oswego High School and has played softball within the Lake Oswego School District for approximately 10 years. Ms. Deos also plays club softball outside of LOHS and previously played two years of junior varsity soccer at LOHS. Defendant has discriminated against Ms. Deos on the basis of her sex by denying her equal athletic opportunity, treatment and benefits. Ms. Deos intends to play sports in college and hopes to receive an athletic college scholarship. Ms. Deos, a minor, is proceeding in this action by her next friends, her mother Laura Deos and her father Kelly Deos. Both Ms. Deos and her parents are residents of Lake Oswego, Oregon.

13. Plaintiff Morgan Jones (“Ms. Jones”) is a 16-year-old student athlete who attends Lake Oswego High School. Ms. Jones plays softball at Lake Oswego High School and has played softball within the Lake Oswego School District for approximately 7 years. Ms. Jones also plays softball outside of LOHS and previously played one year of junior varsity soccer at LOHS. Defendant has discriminated against Ms. Jones on the basis of her sex by denying her equal athletic opportunity, treatment and benefits. Ms. Jones intends to play sports in college and hopes to receive an athletic college scholarship. Ms. Jones, a minor, is proceeding in this action by her next friends, her mother Shelly Jones and her father David Jones. Both Ms. Jones and her parents are residents of Lake Oswego, Oregon.

14. Plaintiff Anna Tomita (“Ms. Tomita”) is a 17-year-old student athlete who attends Lake Oswego High School. Ms. Tomita plays softball at Lake Oswego High School and has played softball within the Lake Oswego School District for approximately 10 years. Ms. Tomita

also plays club softball outside of LOHS and played two years of JV soccer at LOHS. Defendant has discriminated against Ms. Tomita on the basis of her sex by denying her equal athletic opportunity, treatment and benefits. Ms. Tomita, a minor, is proceeding in this action by her next friends, her mother Marna Tomita and her father Todd Tomita. Both Ms. Tomita and her parents are residents of Lake Oswego, Oregon.

15. Plaintiff Marin Penney (“Ms. Penney”) is a 15-year-old student athlete who attends Lake Oswego High School. Ms. Penney plays softball at Lake Oswego High School and has played softball within the Lake Oswego School District for approximately 3 years. Ms. Penney also plays club softball outside of LOHS and also plays varsity volleyball at LOHS. Defendant has discriminated against Ms. Penney on the basis of her sex by denying her equal athletic opportunity, treatment and benefits. Ms. Penney intends to play sports in college and hopes to receive an athletic college scholarship. Ms. Penney, a minor, is proceeding in this action by her next friends, her mother Marie Penney and her father Darin Penney. Both Ms. Penney and her parents are residents of Portland, Oregon.

16. Plaintiff Layney Lombardo (“Ms. Lombardo”) is a 15-year-old student athlete who attends Lake Oswego High School. Ms. Lombardo plays softball at Lake Oswego High School and has played softball within the Lake Oswego School District for approximately 2 years. Ms. Lombardo also plays club softball. Defendant has discriminated against Ms. Lombardo on the basis of her sex by denying her equal athletic opportunity, treatment and benefits. Ms. Lombardo intends to play sports in college and hopes to receive an athletic college scholarship. Ms. Lombardo, a minor, is proceeding in this action by her next friend, her mother Heidi Jones. Both Ms. Lombardo and her mother are residents of Lake Oswego, Oregon.

17. Plaintiff Vivian Rittenour (“Ms. Rittenour”) is a 16-year-old student athlete who attends Lake Oswego High School. Ms. Rittenour plays softball at Lake Oswego High School and has played softball within the Lake Oswego School District for approximately 4 years. Defendant has discriminated against Ms. Rittenour on the basis of her sex by denying her equal athletic opportunity, treatment and benefits. Ms. Rittenour intends to play sports in college and hopes to receive an athletic college scholarship. Ms. Rittenour, a minor, is proceeding in this action by her next friends, her mother Damari Rittenour and her father Peter Rittenour. Ms. Rittenour resides with her parents in Lake Oswego and Portland, Oregon.

18. Plaintiff Kiana Williams (“Ms. Williams”) is a 15-year-old student athlete who attends Lake Oswego High School. Ms. Williams plays softball at Lake Oswego High School and has played softball within the Lake Oswego School District for approximately 2 years. Ms. Williams also plays with the junior varsity 2 soccer team at LOHS. Ms. Williams intends to play sports in college and hopes to receive an athletic college scholarship. Defendant has discriminated against Ms. Williams on the basis of her sex by denying her equal athletic opportunity, treatment and benefits. Ms. Williams, a minor, is proceeding in this action by her next friends, her mother Linda Latto and her stepfather Andrew Choo. Both Ms. Williams and her parents are residents of Lake Oswego, Oregon.

19. Defendant Lake Oswego School District is a public school district. The District receives federal funding and, therefore, all of its programs and activities are governed by the requirements of Title IX pursuant to 20 U.S.C. § 1687. The District is authorized to operate, and does operate, Lake Oswego High School, and is responsible for Lake Oswego High School’s conduct. The District is located in Lake Oswego, Oregon.

CLASS ACTION ALLEGATIONS

20. Plaintiffs restate and incorporate by reference, as though fully set forth herein, the allegations contained in the preceding paragraphs.

21. Plaintiffs bring this action on behalf of themselves and on behalf of a class of all those similarly situated pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

Definition

22. Plaintiffs seek to represent a class of all present and future Lake Oswego High School female students and potential students who participate, seek to participate, and/or are or were deterred from participating in athletics at Lake Oswego High School (the “Class”).

Numerosity

23. The Class is so numerous that joinder of all members is impractical.

24. Plaintiffs are informed and believe and based thereon allege that there are approximately 599 female students at LOHS, or 47.5% of the student body, and that roughly 36.9% of those female students participate in interscholastic athletics.

25. Members of the Class who may suffer future injury are not capable of being identified at this time, as the Class includes future LOHS female athletes.

26. It is unknown how many of LOHS’s current or future female students would seek to participate in interscholastic sports if additional opportunities were available, however there appears to be a great amount of interest in sports amongst female students at LOHS and throughout schools and local programs surrounding LOHS.

Common Questions of Law and Fact

27. Common questions of law and fact predominate, and include whether in violation of Title IX: (a) Defendant’s policies and practices deprive female athletes at LOHS equal

treatment and benefits in comparison to male athletes and (b) Defendant's policies and practices deprive female students at LOHS equal opportunities to participate in interscholastic sports.

Typicality

28. Plaintiffs' claims are typical of the claims of the Class.

29. The sex discrimination which Plaintiffs have suffered, including: (a) unequal treatment and benefits in LOHS's athletics program and (b) exclusion from opportunities to participate in LOHS's athletics program, are typical of the sex discrimination which members of the Class have suffered, are suffering, and, unless this Court grants relief, will continue to suffer.

30. LAUREN WORKING is a member of the proposed Class in that she was at times relevant to the allegations herein a female student at LOHS and was subjected to discriminatory and unequal opportunities, treatment, and benefits that Defendant provides and/or fails to provide to female students.

31. BRIONNA GEREBA is a member of the proposed Class in that she was at times relevant to the allegations herein a female student at LOHS and was subjected to discriminatory and unequal opportunities, treatment, and benefits that Defendant provides and/or fails to provide to female students.

32. LILLIAN HARWOOD is a member of the proposed Class in that she is a current female student at LOHS and is subjected to discriminatory and unequal opportunities, treatment, and benefits that Defendant provides and/or fails to provide to female students.

33. KELSEY DEOS is a member of the proposed Class in that she is a current female student at LOHS and is subjected to discriminatory and unequal opportunities, treatment, and benefits that Defendant provides and/or fails to provide to female students.

34. MORGAN JONES is a member of the proposed Class in that she is a current female student at LOHS and is subjected to discriminatory and unequal opportunities, treatment, and benefits that Defendant provides and/or fails to provide to female students.

35. ANNA TOMITA is a member of the proposed Class in that she is a current female student at LOHS and is subjected to discriminatory and unequal opportunities, treatment, and benefits that Defendant provides and/or fails to provide to female students.

36. MARIN PENNEY is a member of the proposed Class in that she is a current female student at LOHS and is subjected to discriminatory and unequal opportunities, treatment, and benefits that Defendant provides and/or fails to provide to female students.

37. LAYNEY LOMBARDO is a member of the proposed Class in that she is a current female student at LOHS and is subjected to discriminatory and unequal opportunities, treatment, and benefits that Defendant provides and/or fails to provide to female students.

38. VIVIAN RITTENOUR is a member of the proposed Class in that she is a current female student at LOHS and is subjected to discriminatory and unequal opportunities, treatment, and benefits that Defendant provides and/or fails to provide to female students.

39. KIANA WILLIAMS is a member of the proposed Class in that she is a current female student at LOHS and is subjected to discriminatory and unequal opportunities, treatment, and benefits that Defendant provides and/or fails to provide to female students.

Adequacy of Representation

40. Plaintiffs are members of the proposed Class and will fairly and adequately represent and protect the interests of the Class. Plaintiffs intend to prosecute this action rigorously in order to secure remedies for the entire Class.

41. Counsel of record for Plaintiffs are experienced in state and federal civil rights litigation and class actions, including Title IX litigation.

Injunctive and Declaratory Relief

42. Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final declaratory and injunctive relief with respect to the Class as a whole under Federal Rule of Civil Procedure 23(b)(2).

STATEMENT OF FACTS

43. Defendant has, by its conduct, violated Title IX by discriminating against female student athletes at Lake Oswego High School, including Plaintiffs, by failing to provide opportunities, treatment, and benefits in accordance with the law.

44. In February 2016, in response to parent and student complaints, representatives from Lake Oswego High School indicated that certain inequities would be addressed once the Lake Oswego High School softball team “wins a state championship”—a difficult goal in light of the current inequitable opportunities, treatment and benefits provided to Plaintiffs.

45. Defendant was again put on notice of its discriminatory conduct and actions when Plaintiffs’ counsel sent a letter to the Superintendent, Title IX Coordinator, School Board, Principal, two Assistant Principals and Athletic Director on or about March 11, 2016. No one from the District responded to the letter and the discrimination against female athletes has continued.

46. Plaintiffs are informed and believe and based thereon allege, Lake Oswego High School is a four-year public high school with approximately 1,261 students. Approximately 47.5% of the student body is female and approximately 52.5% of the student body is male.

Sex-Based Discrimination in Athletic Treatment and Benefits

47. Defendant has unlawfully discriminated against female student athletes in violation of Title IX with respect to athletic treatment and benefits in areas including, but not limited to: (1) provision of equipment and supplies; (2) scheduling of games and practice times; (3) provision of locker rooms, practice and competition facilities; (4) coaching; (5) provision of medical and training services and facilities; (6) funding and fundraising opportunities; (7) travel; and (8) publicity and support.

(1) Provision of Equipment and Supplies

48. Defendant inequitably provides equipment and supplies to female student athletes as compared to male student athletes.

49. Defendant provides male student athletes participating on the Lake Oswego baseball program with a complex that consists of pitching areas, bullpens, a rollaway backstop, and on-field facilities that allow multiple practice stations, protective screens and a separate batting cage for batting from multiple areas rather than just on home plate, among additional equipment and supplies afforded to male baseball athletes and other male athletes.

50. In contrast, female student athletes participating on the Lake Oswego softball team have a couple of small, old screens (one of which is just a frame because the netting has rotted away). There is no bullpen or any type of pitching area, warm-up area, batting cages or any way to separate the field to allow multiple practice stations. Regarding the batting cages issue, since filing the original complaint, Defendants constructed a batting cage at the softball

field, yet it was constructed using turf from the LOHS football field that was removed due to defects, it is poorly constructed, is not enclosed, is not usable during inclement weather, and is not adequate for practice due to its limited capacity, with just a single pitching machine.

(2) Scheduling of Games and Practice Times

51. Girls' teams have fewer opportunities to play games and experience the benefits of competition, in comparison to their male counterparts. For example, in 2016, girls' varsity softball at LOHS had 23 competitions whereas boys' varsity baseball had 29 competitions.

(3) Provision of Locker Rooms, Practice and Competition Facilities

52. Defendant provides inequitable locker rooms, practice and competitive facilities to female student athletes. In addition, the District discriminates against female student athletes in that it fails to properly maintain the facilities provided to LOHS female athletes.

Hitting Facilities

53. Defendant provides male student athletes participating with the LOHS baseball program with an on-campus, enclosed hitting facility with state-of-the-art pitching machines.

54. Defendant does not provide a comparable hitting facility for female student athletes participating on the softball team—they have no hitting facility nor are they allowed to use the hitting facility provided for the LOHS baseball program.

55. For over two years, Defendant promised Plaintiffs that a similar facility would be constructed. Supporters of LOHS softball went to great lengths to engineer the building and develop plans.

56. On information and belief, Defendant secured a substantial donation to help with the construction costs for the softball hitting facility.

57. On or about February 5, 2016, Defendant informed Plaintiffs that despite more than two years of planning and multiple promises, the hitting facility would not be constructed unless or until the Lake Oswego High School softball team “wins a state championship.” The donated funds are to be used for another sport rather than bring the school into Title IX compliance.

Baseball and Softball Playing Fields

58. Defendant provides male student athletes participating with the Lake Oswego baseball program with an on-campus, artificial turf playing field. The artificial turf playing field allows the baseball program to practice year-round, even in poor weather. There are no drainage issues on the baseball field.

59. In contrast, Defendant requires female student athletes participating on the Lake Oswego softball team to play and practice on a field predominantly consisting of dirt, with an outfield of poorly-maintained, patchy and pothole-filled grass. This off-campus predominantly-dirt field is subject to significant drainage problems, which requires the softball team to regularly cancel practice and games due to poor field conditions.

60. The boys’ baseball program field complex is located on campus and easily accessible to both students and spectators. The softball field is located off campus behind Lake Oswego Junior High and is not as accessible to students and spectators.

61. As with the baseball hitting facility, Defendant does not allow female student athletes participating on the Lake Oswego softball team to play or practice on the artificial turf baseball playing field when the dirt softball field is unplayable. Defendant has also denied the softball team access to the artificial turf football field.

62. Defendant does not adequately maintain the softball fields. The softball team and its supporters perform the field maintenance without Defendant providing the proper equipment to do so.

63. When the LOHS softball field is utilized for games, it is generally regarded as the worst field in the Three Rivers League, the league within which LOHS participates, and coaches throughout the league have commented that field game conditions are like “playing in kitty litter” due to poor field quality and maintenance.

64. The LOHS softball facility grass outfield is uneven and a broken sprinkler pipe in center field rendered the outfield wet throughout the last season. While the City of Lake Oswego has the obligation to mow the grass, it is not done regularly and the grass remains long and in inferior condition for play and practice.

Significantly Different Game Day Experience

65. In addition to the superior quality of the field, during baseball games, male student athletes are provided superior dugouts that have drinking fountains. The artificial turf playing field also includes stadium seating to accommodate fans, as well as a press box and sound system. The stadium also has clean, sanitary, and usable bathrooms for both the players and fans.

66. In contrast, the girls’ softball team is relegated to playing on a predominantly dirt field located at the junior high across the street from the high school. There are no water fountains in the dugout and no press box or sound system is available. The fans sit on metal bleachers. Even the scoreboard in the boys’ baseball stadium is noticeably superior to that provided for the girls’ softball team. The softball field does not have a United States flag for the

pre-game national anthem, although based upon information and belief a flagpole was recently installed.

67. The bathrooms at the softball field are not maintained by the District and are often broken and unclean without working locks.

68. Simply put, the boys' baseball program plays in a stadium that is equivalent to or better than many college and minor league facilities while the girls' softball team plays on a below-average junior high field.

No Locker Rooms

69. Defendant provides male student athletes participating on the Lake Oswego High School baseball program with exclusive access to a locker room designated only for use by the baseball program.

70. In contrast, Defendant does not provide a designated locker room to the female student athletes participating on the Lake Oswego softball team. Instead, the softball team is required to share a "team room" with other female athletes on campus.

71. After the filing of the initial complaint in April 2016, Defendant provided LOHS softball a mobile set of six small lockers, far too few for a team of ten girls, awkwardly positioned atop a dolly and located behind the gymnasium bleachers, nowhere near the off-campus LOHS softball field for practice and games.

(4) Coaching

72. Female athletes experience a higher ratio of coaches to players in comparison to their male counterparts, and coaches for female students have fewer resources and less experience in comparison to the coaches of male students.

73. For example, the LOHS boys' 2016 soccer program lists six coaches for four team levels (<http://lohsmarketing.wixsite.com/boysoccer/coaches>) whereas the girls' soccer program lists just four coaches for three team levels (<http://lohsmarketing.wixsite.com/girlssoccer/coaching-staff>). The 2016 LOHS football program lists 23 coaches for two team levels. (<http://lohsmarketing.wixsite.com/football/coaches>). The LOHS boys' baseball program lists eight coaches for three levels, 2.67 coaches for each level (<http://lohsmarketing.wixsite.com/baseball/coaches>). No listing or any web information exists for the softball team within the LOHS athletics web page. Based on available information and belief, the 2016 softball program has just two coaches for the entire program.

(5) Provision of Medical and Training Services and Facilities

74. Female student-athletes experience the inequitable provision of medical and training services and inequitable access to such facilities in comparison to their male counterparts.

75. Defendant fails to provide the softball team with an athletic trainer during games or supplies to treat injuries. In fact, the District fails to provide the softball team with a basic first aid kit. The baseball program also has access to an athletic trainer during games with appropriate supplies to treat injured players.

76. During an LOHS softball game at their home field last season, a player on the opposing team injured her shoulder during game play, separating it, yet LOHS lacked access to any type of trainer, medical services, or supplies. The parents of players on both sides were forced to improvise, using an empty potato chip bag and some ice to create a makeshift ice pack, used until the injured student could be taken to the hospital. The opposing team's parents

requested a trainer, who was eventually located, assisting at the LOHS freshman boys' baseball game on campus.

77. The LOHS weight room has weights, supplies, and equipment more oriented toward male student athletes as opposed to female student athletes.

(6) Funding and Fundraising Opportunities

78. Defendant fails to provide girls with equitable funding and fundraising opportunities as compared to male athletes.

79. The on-campus, artificial turf playing field that Defendant has made exclusively available to male student athletes participating on the Lake Oswego baseball program has a concession stand which allows the program to raise revenue during baseball games.

80. In contrast, the predominantly dirt field on which the softball team plays does not have a concession stand. The lack of a concession stand has a significant detrimental impact on the ability of female student athletes on the softball team to raise revenue during games.

81. Similarly, the baseball program uses its state-of-the-art enclosed hitting facility to put on clinics to raise funds for the baseball program throughout the year. As alleged above, the softball team has no hitting facility, is not allowed to use the baseball hitting facility, and thus, is unable to put on hitting clinics and raise funds like the baseball program.

82. Fundraising events hosted by LOHS boys' baseball and football programs, through advertising, claim that "[a]ll funds raised go directly to operational expenses to maintain our high caliber baseball and football programs – uniforms, equipment, scholarships, and tournament fees" with no mention as to LOHS and Defendant's responsibility to oversee fundraising and ensure Title IX compliance in the apportionment of funds amongst all LOHS teams.

(7) Travel

83. Defendant does not provide female students with equitable travel benefits in comparison to their male counterparts.

84. For example, female LOHS softball players must drive themselves, walk, or find rides to their practice and game space off campus, whereas boys' LOHS baseball players are centrally located on campus.

(8) Publicity and Support

85. Plaintiffs are informed and believe, and based thereon allege, that Defendant fails to provide girls with equitable publicity as compared to male athletes.

86. Due to the location of the LOHS softball field, off campus, many fewer spectators from the LOHS student body and leadership can attend and support the LOHS girls' softball team during games.

87. Yearbook coverage is greater for male athletes and teams in comparison to female athletes and teams.

88. Girls' teams are not being promoted by Defendant at the same level as boys' teams. The Lake Oswego High School web page (http://www.edline.net/pages/Lake_Oswego_Senior_High_School) has an "Athletics" tab which immediately directs the user to <http://lolakers.com> with the majority of images presented pertaining to the male LOHS football program. On the lolakers.com web page, the "16-17 Master Athletic Schedule" shares information only about the male LOHS football program and male soccer program (<https://docs.google.com/spreadsheets/d/18duTiwXNyk61S5oGDrDfX3Us4Pgv18KftsB4mES7Z1E/edit#gid=217665645>) with no female team schedules, information, or accolades noted.

Lack of Girls' Sports Opportunities

89. Defendant has discriminated, and continues to discriminate, against female students at LOHS by failing to provide them with equal athletic participation opportunities, despite female students' demonstrated athletic interests and abilities to participate in sports.

90. Plaintiffs are informed and believe and based thereon allege that during the 2015-2016 school year, girls constituted approximately 47.5% of the student population at Lake Oswego High School and boys comprise approximately 52.5% of the student population.

91. However, Plaintiffs are informed and believe, and based thereon allege, that female students account for approximately 36.9% of student athletes at LOHS, despite having the interests and abilities to participate in greater numbers, comprising a 10.6% participation gap.

92. In order to achieve athletic participation opportunities for female students that are substantially proportionate to their representation in LOHS's student body, LOHS would need to add approximately 181 additional female athletes, constituting several additional female teams. This failure to provide girls with substantially proportionate participation opportunities, despite their interests and abilities to participate, has occurred without justification or defense by Defendant.

93. Defendant has no history or continuing practice of expanding the LOHS athletics program in response to the developing interests and abilities of female students.

94. LOHS female students have the abilities to participate in interscholastic athletics and are interested in participating in interscholastic athletics in greater numbers.

95. Defendant has failed to fully and effectively accommodate female students' interests and abilities to participate in interscholastic sports in greater numbers.

96. Defendant's failure to provide adequate participation opportunities and the full range of teams for girls' sports severely limits female students' participation in the LOHS athletics program and discourages interested girls from participating in sports.

97. Defendant not only fails to offer enough opportunities for girls to participate, Defendant further fails to offer enough levels of teams to fully accommodate female interest in athletics. For example, five levels of basketball are offered for boys, but just two levels for girls, four levels of soccer are offered for boys, but just three levels of soccer for girls, three levels of baseball are offered for boys, while just one level of softball is offered for girls.

FIRST CLAIM FOR RELIEF

(Defendant's Violation of Title IX Regarding Unequal Treatment and Benefits)

98. Plaintiffs restate and incorporate by reference, as though fully set forth herein, the allegations contained in the preceding paragraphs.

99. Title IX provides, "No person in the United States shall, on the basis of sex, be excluded from participating 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). Therefore, all programs in the District, including the athletic programs, are subject to the requirements of Title IX. 20 U.S.C. § 1687.

100. Since the passage of Title IX, Defendant has received and continues to receive federal financial assistance and the benefits therefrom. Therefore, all programs in the Lake Oswego School District, including the Lake Oswego High School athletic program, are subject to the requirements of Title IX. 20 U.S.C. § 1687.

101. Title IX's implementing regulations provide that "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 the recipient shall provide any such athletics separately on such basis.” 34 C.F.R. § 106.41(a).

102. Under Title IX, schools must provide “equal treatment and benefits” to members of both sexes in their athletic programs. A Policy Interpretation: Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71,413 (Dec 11, 1979) (codified at 45 C.F.R. 26) (hereinafter “1979 Policy Interpretation”).

103. Equal treatment and benefits are assessed based on an overall comparison of the male and female student athletic programs, including an analysis of the following factors, among other considerations: “The provision of equipment and supplies; Scheduling of games and practice time; Travel . . . ; Opportunity to receive coaching . . . ; Assignment and compensation of coaches . . . ; Provision of locker rooms, practice and competitive facilities; Provision of medical and training facilities and services; . . . Publicity” and a school’s “failure to provide necessary funds for teams for one sex.” 34 C.F.R. § 106.41(c)(2)-(10).

104. The regulations required that sponsors of interscholastic athletics comply with the regulations within three years of their effective date, or no later than July 21, 1978. The regulations further require that sponsors of interscholastic athletics take such remedial actions as are necessary to overcome the effects of sex discrimination in violation of Title IX. 34 C.F.R. §106.3(a).

105. Plaintiffs are informed and believe, and based thereon allege, that Defendant has not taken remedial actions and that any remedial actions which Defendant has taken in the past years have been insufficient to satisfy Defendant’s obligations under Title IX.

106. Plaintiffs and the Class have informed Defendant that its actions constitute violations of Plaintiffs' and the Class' Title IX rights. Defendant has failed to remedy or address the violations.

107. As a proximate result of these unlawful acts, Plaintiffs and the Class have suffered and continue to suffer irreparable injury.

108. Plaintiffs and the Class are entitled to relief, including declaratory relief and injunctive relief, attorneys' fees, and costs.

SECOND CLAIM FOR RELIEF

(Defendant's Violation of Title IX Regarding Participation Opportunities)

109. Plaintiffs restate and incorporate by reference, as though fully set forth herein, the allegations contained in the preceding paragraphs.

110. Under Title IX, schools must provide both sexes equivalent athletic participation opportunities. *See* 1979 Policy Interpretation.

111. Compliance in the area of equivalent participation opportunities is determined by a three-part test:

112. Whether interscholastic level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or

113. Where the members of one sex have been and are underrepresented among interscholastic athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or

114. Where the members of one sex are underrepresented among interscholastic athletes, and the institution cannot show a continuing practice of program expansion such as that

cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program. 1979 Policy Interpretation at 71,418 (Section VII(C)(5)(a)).

115. Although the 1979 Policy Interpretation refers to “intercollegiate” sports, Title IX is applicable to all recipients of federal education funds, including high schools, and thus is applicable to interscholastic high school sports as well as intercollegiate sports. 34 C.F.R. § 106.11; *Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 855 (9th Cir. 2014).

116. With respect to the first part of the three-part test, Plaintiffs are informed and believe, and based thereon allege, that the ratio of female to male athletes at Lake Oswego High School is not substantially proportionate to the overall ratio of enrolled female to male students at LOHS and that the interests and abilities of the female students at LOHS in participating in interscholastic sports have not been fully and effectively accommodated by Defendant.

117. Further, with respect to the test’s second part, Defendant cannot show “a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities” of LOHS’s female students. *Mansourian v. Regents of the Univ. of Cal.*, 602 F.3d 957, 964-65 (9th Cir. 2010) (*citing* Department of Education, Office for Civil Rights, Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (1996)). Rather, female students have historically been and continue to be underrepresented in the LOHS athletics program.

118. Finally, with respect to part three, despite this underrepresentation and despite the interests and abilities of female students at LOHS to participate on additional teams, Defendant has not adequately expanded the athletics program in a responsive manner to female students’

interests. The burden is on Defendant to assess and respond to interest. *See Ollier*, 768 F.3d at 858.

119. As a proximate result of these unlawful acts, Plaintiffs and the Class have suffered and continue to suffer irreparable injury.

120. Such injunctive relief may include, but is not limited to, the provision of the full range of teams and participation slots in existing sports, with teams for all grade levels, including novice, junior varsity, and varsity-level opportunities for female student athletes.

121. Plaintiffs and the Class are entitled to relief, including declaratory relief and injunctive relief, attorneys' fees, and costs.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs respectfully pray that this Court:

- (1) Certify the proposed Class;
- (2) Enter an order declaring that Defendant has discriminated on the basis of sex against female students in violation of Title IX. Such order would declare that Defendant has engaged in discrimination against female students, including Plaintiffs, on the basis of gender in violation of Title IX and the regulations promulgated thereunder (including with respect to unequal treatment and benefits and opportunities).
- (3) Issue a permanent injunction requiring Defendant to remediate their violations of federal law prohibiting sex discrimination by, among other required actions, providing female student athletes with treatment and benefits equal to those provided to male student athletes and affording female students the equal opportunity to participate in school-sponsored sports. Such injunction would restrain Defendant and its officers, agents, employees, successors, and any other persons acting in concert

with them from discriminating and/or retaliating on the basis of sex against female students. Plaintiffs are entitled to injunctive relief to end Defendant's unequal, discriminatory, and unlawful treatment of female student athletes with respect to athletic treatment, benefits and opportunities. Because of Defendant's acts and omissions, Plaintiffs continue to be deprived of the rights guaranteed by the law. Failure to grant the injunctive relief requested will result in irreparable harm to Plaintiffs in that Plaintiffs' rights will be violated and that Plaintiffs will not be able to participate in interscholastic and/or other school-sponsored athletics on an equal basis with their male classmates. Accordingly, Plaintiffs do not have an adequate remedy at law for this harm. This threatened harm far outweighs any possible harm that granting injunctive relief might cause Defendant. The injunctive relief sought would in no way disserve the public interest but, on the contrary, would prevent discrimination based on gender and would promote the goal of full equality under the law. The permanent injunction would specifically serve in: (a) restraining Defendant and its officers, agents, employees, successors and any other persons acting in concert with them, from continuing to maintain practices and policies of discrimination against Plaintiffs and other female athletes on the basis of gender, and (b) requiring Defendant, immediately upon issuance of the injunctive order, to adopt and implement a budget and plan which corrects and remediates Defendant's violation of Title IX. Such a plan should include, among other things, providing Plaintiffs and other female athletes with equitable opportunities, treatment, and benefits in comparison to those provided to male athletes.

- (4) Award reasonable attorneys' fees and costs, pursuant to 28 U.S.C. § 1988 and any other applicable provisions of federal law as Plaintiffs have been required to retain the undersigned attorneys to prosecute this action; and
- (5) Order such other and further relief as the Court deems appropriate.

Dated this ____ day of November, 2016.

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