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14 **SUPERIOR COURT OF CALIFORNIA**  
15 **COUNTY OF SAN DIEGO**

16 MARY ELIZABETH BURNS, *an individual*;

Case No.: 37-2014-00003408-CU-CO-CTL

17 Plaintiff,

**FIRST AMENDED COMPLAINT FOR:**

18 vs.

**(1) Breach of Terms of Appointment (5  
C.C.R. § 42723(b));**

19 BOARD OF TRUSTEES OF THE  
20 CALIFORNIA STATE UNIVERSITY; SAN  
21 DIEGO STATE UNIVERSITY; JAMES  
22 STERK; and Does 2 through 50, inclusive,

**(2) Retaliation;**

**(3) Discrimination; and**

**(4) Fraudulent Inducement**

23 Defendants.

Jury Trial Demanded

1 **INTRODUCTION**

2 1. This case arises from San Diego State University's unlawful decision to fire one  
3 of its leaders in women's athletics without any legitimate cause. Plaintiff Mary Elizabeth  
4 Burns ("Coach Burns") was committed to excellence in every facet of SDSU's athletics  
5 programs. SDSU fired her in retaliation for her unwavering demands that SDSU put women's  
6 basketball and men's athletics on an equal footing. In a feeble attempt to cover up the real  
7 reason for firing her, SDSU fabricated a pretextual explanation for her termination that was  
8 intentionally and devastatingly harmful to her. As a result, Coach Burns has not been able to  
9 secure another coaching position, despite her incredible record of success.

10 2. Coach Burns led SDSU's women's basketball program for 16 years. The  
11 program enjoyed unprecedented success during her tenure as head coach. Coach Burns is the  
12 winningest coach in SDSU women's basketball history, with an overall 295-186 record. Coach  
13 Burns led her team to six regular-season conference championships, four league tournament  
14 titles, and seven NCAA tournaments, including one Sweet 16 appearance.

15 3. Coach Burns' commitment to success went beyond the basketball court. She  
16 was dedicated to ensuring that her student players also succeeded academically. Under her  
17 leadership, SDSU had an unprecedented 100% graduation rate for all students who played for  
18 four years on the women's basketball team.

19 4. At the same time that Coach Burns was achieving this success, she had to fight a  
20 dysfunctional athletics administration that prioritized men's sports over women's basketball. In  
21 her last eight years at SDSU, the athletics department had five different athletic directors. This  
22 frequent turnover resulted in significant deficits for the women's basketball program in terms  
23 of support infrastructure for academics, housing, facilities, equipment, promotion, and staffing.  
24 The athletic directors focused their time, efforts, and priorities on football and men's  
25 basketball, to the detriment of women's athletics.

26 5. Coach Burns refused to remain silent in the face of the inequities she witnessed.  
27 She regularly complained regarding the department's disparate treatment of the women's  
28 basketball program. In response, department leaders and SDSU personnel criticized Coach

1 Burns for being “rough around the edges.” Coach Burns endured this mistreatment by focusing  
2 her energy on the women’s basketball program and its success.

3 6. On April 16, 2013, however, SDSU went much further to harm Coach Burns.  
4 SDSU’s athletic director, Jim Sterk, summoned Coach Burns to his office under the guise of an  
5 annual review. When Coach Burns arrived, she was blindsided by Sterk’s demand that she  
6 agree to resign, retire, or be fired.

7 7. During this meeting, Richel Thaler, SDSU’s associate vice president, told Coach  
8 Burns that the sole reason for SDSU’s decision to terminate her was because Coach Burns had  
9 allegedly struck a subordinate. Sterk told her there was video evidence. Coach Burns had no  
10 idea what they were talking about, because she has never intentionally struck a subordinate,  
11 athlete, or any other SDSU personnel.

12 8. Given this Hobson’s Choice, and considering Sterk’s warning that Coach Burns  
13 would lose retirement benefits if she forced SDSU to fire her, Coach Burns “opted” to retire.

14 9. Coach Burns has suffered substantial damage as a result of SDSU’s retaliation,  
15 discrimination, and bad faith termination. She has watched her stellar career and reputation be  
16 destroyed by SDSU. She brings this lawsuit to make SDSU accountable for its misconduct and  
17 the harm it has caused.

18 **THE PARTIES**

19 10. Plaintiff Mary Elizabeth Burns is and at all times mentioned herein was a natural  
20 person residing in the City and County of San Diego, California.

21 11. Defendant Board of Trustees of California State University is and at all times  
22 mentioned herein was a governmental entity organized and existing under the laws of the State  
23 of California. Defendants Board of Trustees of California State University is referred to as  
24 “Defendant,” or “Board of Trustees,” or “SDSU” herein.

25 12. James Sterk is substituted for DOE 1 in this amended complaint. Sterk is and at  
26 all times mentioned herein was a natural person residing in the City and County of San Diego,  
27 California, and serves as the Athletic Director of SDSU.

28



1 reassign Coach Burns during the term of the Agreement. Section V.B of the Agreement states  
2 that SDSU may only terminate Coach Burns for "cause." Section V.D of the Agreement  
3 provides that SDSU must pay Coach Burns her salary in the event it terminates her  
4 employment without cause. Section V.E prohibits Coach Burns from talking to any other  
5 potential employees during the term of the Agreement without prior written permission of the  
6 Athletics Director. Section V.E of the Agreement requires Coach Burns to pay certain  
7 "buyout" amounts if she voluntarily terminates her employment.

8 19. A true and correct copy of the July 17, 2012 extension is attached hereto as  
9 Exhibit B and is incorporated herein by reference. In this extension, SDSU agreed to pay  
10 Coach Burns an annual salary of \$220,000, with the opportunity for future merit increases. The  
11 July 17, 2012 extension expressly states that all other terms of the Agreement will remain in  
12 force and effect.

#### 13 **Fraudulent Inducement by Sterk**

14 20. In May 2012, Coach Burns approached Sterk and asked to negotiate an  
15 extension of the September 2010 amendment. Coach Burns told Sterk that she would like to  
16 retire at SDSU. Sterk told Coach Burns that she should retire at SDSU, and that she had earned  
17 that.

18 21. Coach Burns believed that Sterk negotiated the July 17, 2012 amendment in  
19 good faith and with the understanding that SDSU intended to live up to its promise that Coach  
20 Burns would be allowed to continue as the Head Coach of women's basketball for at least the  
21 next five years.

22 22. Unbeknownst to Burns, while she believed Sterk was negotiating in good faith,  
23 he was in fact not willing to execute the Amendment unless SDSU "would have ways to  
24 separate" from Coach Burns if she continued "driving us crazy w complaining."

25 23. Sterk never expressed any concern to Coach Burns about her "complaining"  
26 during the negotiation of the Amendment. Sterk never told Coach Burns he would only agree  
27 to the Amendment if SDSU had a "way to separate" from her. Coach Burns trusted Sterk and  
28 believed him when he promised to extend her contract by five years.



1           30. Coach Burns' termination was based solely on the findings of this Kangaroo  
2 Court – findings that are not supported by facts and are tainted by Sterk and Mr. Wicker's  
3 improper motives. Sterk was tired of having to deal with Coach Burns' complaints and  
4 demands for fair treatment of the women's basketball team, so he executed the plan he formed  
5 secretly before agreeing to the 2012 Amendment. Sterk found a "way to separate" from  
6 Coach Burns because of her complaints. That "way to separate" is not supported by facts,  
7 violates the terms of Coach Burns' MPP appointment, constitutes retaliation against Coach  
8 Burns for her complaints, and discriminates against Coach Burns because of her gender.

9                           **Coach Burns Repeatedly Challenged SDSU's Disparate Treatment**  
10                           **Of Its Women's Sports Programs During Her Employment**

11           31. During the course of her employment at SDSU, Coach Burns repeatedly  
12 challenged SDSU's disparate treatment of its women's basketball program compared to men's  
13 sports such as football and basketball.

14           32. Coach Burns worked under five athletic directors in her second stint at SDSU.  
15 During this time, she regularly confronted the athletic directors about the fact that the women's  
16 basketball team did not receive the same benefits provided to men's athletics programs at  
17 SDSU. This disparate treatment existed at all levels of the athletic department, including the  
18 provision of equipment and supplies, scheduling of practice time, travel budgets, number of  
19 coaches and tutors, compensation of coaches and tutors, locker room and practice facilities,  
20 housing support, and publicity.

21           33. For example, Coach Burns had to fight for the women's basketball team to have  
22 clean gear and equipment, a strength coach, and facility time during the off-season, even  
23 though the men's basketball team regularly trained with these benefits during the off-season.

24           34. As another example, SDSU required Coach Burns to count male practice players  
25 as female participants in SDSU's annual mandatory gender equity report to the U.S.  
26 Department of Education and in "Voluntary Self-Monitoring of Equal Opportunity in Athletics  
27 for Women Students (former CSU/CA NOW Consent Decree)" reports. Coach Burns  
28

1 reasonably believed that this disclosure violated the Equity in Athletics Disclosure Act  
2 (“EADA”), or that it could result in an EADA violation.

3         35. Coach Burns expended her own funds to make up for SDSU’s lack of support  
4 for the women’s basketball program. Coach Burns spent thousands of dollars of her own  
5 money to purchase food, gear, and practice equipment, take staff members to working lunches,  
6 purchase parking passes for staff members, and pay for moving expenses for staff members.

7         36. Coach Burns complained to Jim Sterk and John David Wicker in late 2012 about  
8 the fact that they were planning to hire a man as the assistant director of media relations when  
9 there were no women in similar positions working in the SDSU Sports Information  
10 Department.

11         37. Coach Burns frequently had to scramble to find practice space for the women’s  
12 basketball team because the courts they were supposed to practice on were unavailable. This  
13 caused delays and interruptions of practices. For example, when the women’s team arrived to  
14 practice in Peterson Gym one weekend morning (Men’s Basketball had a scheduled game  
15 against Arizona in Viejas Arena later that same day) they found the entire practice floor was  
16 covered with event flooring for an Arizona Pre/Post Game booster party to be held later in the  
17 day in conjunction with the men’s game. Coach Burns, her staff, and her players had to move  
18 the event flooring themselves just to practice. And when practice was over, they had to help  
19 put it all back down. On another occasion, the women’s basketball team had to practice in part  
20 of the gym amidst a volleyball tournament.

21         38. During production meetings to discuss promotions and plans for men’s and  
22 women’s basketball games in the upcoming season, the athletic administration typically came  
23 to the meeting with a well-thought plan for the men’s basketball season that included fan  
24 giveaways (like free t-shirts or red/black wigs), advance ticket sales, and parking for boosters.  
25 In contrast, the women’s basketball staff at the production meetings was often left to demand a  
26 similar plan for women’s basketball. Because of these demands, women’s basketball got some  
27 fan giveaways, but not as many as men’s basketball. Many of the women’s basketball fan  
28

1 giveaways were simply leftovers from the men's basketball games. Coach Burns complained  
2 about this to athletic department officials.

3 39. Although SDSU had set up online ticket ordering for men's basketball and  
4 football games, the women's basketball tickets were only available at the door for single game  
5 purchase. SDSU eventually created a season ticket package for women's basketball that could  
6 be ordered online, but only after Coach Burns and her staff complained.

7 40. Coach Burns is informed and believes that she was criticized internally for  
8 speaking out on behalf of women's basketball. In 2010, Richel Thaler tried to limit Coach  
9 Burns' contract extension to one year, telling others that Coach Burns is "rough around the  
10 edges."

#### 11 **SDSU Terminated Coach Burns Without Legitimate Cause**

12 41. SDSU retaliated against Coach Burns for raising all of these issues regarding the  
13 disparate treatment of women and women's sports when SDSU terminated her employment  
14 without legitimate cause. Jim Sterk called Coach Burns into his office on April 16, 2013,  
15 purportedly for her annual season review.

16 42. When Coach Burns arrived at Sterk's office, she quickly realized that this was  
17 not a performance review. John David Wicker and Richel Thaler were also present. Almost  
18 immediately after she arrived, Sterk told Coach Burns that SDSU was terminating her and that  
19 she had to decide whether to resign, retire, or be fired on the spot.

20 43. Needless to say, Coach Burns was shocked. The women's basketball team had  
21 just completed a record-setting season. Coach Burns had just been named Mountain West  
22 Conference Coach of the Year, WBCA NCAA Division I Region 7 Coach of the Year, and a  
23 finalist for NCAA Division I National Coach of the Year.

24 44. Sterk and Thaler told Coach Burns several times during this meeting that the  
25 "sole cause" for her termination was a video showing her striking a subordinate. Coach Burns  
26 had absolutely no idea what they were talking about. She asked for more information and an  
27 opportunity to discuss this accusation, but Sterk and Thaler told her that her termination was  
28

1 “automatic,” “non-negotiable,” and has been reviewed and approved by SDSU President Elliot  
2 Hirshman.

3 45. Coach Burns’ shock and confusion was compounded by the fact that, over the  
4 years of her tenure, the previous and current presidents of San Diego State University attended  
5 multiple home and away games for the women’s basketball team. Each of them sat in close  
6 proximity to the women’s basketball team bench where they could easily and fully view all of  
7 Coach Burns’ conduct during the game. Neither of them ever levied any criticism of Coach  
8 Burns’ bench decorum. To the contrary, she received letters of commendation for the  
9 performance of the women’s basketball team season to season. In fact, President Hirshman  
10 sent the most recent commendation letter to her less than one month before she was forced to  
11 retire.

12 46. Sterk and Thaler told Coach Burns that if she did not agree to retire, she would  
13 lose pension benefits. They showed her a press release that had already been drafted  
14 announcing her retirement.

15 47. Under immense pressure to make a decision on the spot, and with the specter of  
16 losing pension benefits hanging over her head, Coach Burns reluctantly agreed to “retire.”

17 **The Video That Was The “Sole Cause” For SDSU’s Decision**  
18 **Does Not Support Termination**

19 48. Days after her termination, SDSU reluctantly provided Coach Burns with a copy  
20 of the video that it stated was the “sole cause” for its decision to terminate her. The video was  
21 taken during a game in February 2013, two months before her termination.

22 49. The video does not show Coach Burns striking any other person. During the  
23 video, Coach Burns makes incidental physical contact with Adam Barrett, a member of her  
24 staff. This insignificant contact was made in the heat of watching the game and coaching the  
25 team. The video makes it clear that this contact was not intentional or malicious. It was a  
26 spontaneous, harmless response from a coach in the middle of a basketball game.

27 **SDSU Treated Coach Burns Differently Than Her Male Colleagues**  
28

1           50.     SDSU's gross overreaction to the video, and its termination of Coach Burns,  
2 stands in stark contrast to how SDSU handled allegations against a male football coach just a  
3 few years ago.

4           51.     In 2002, SDSU became aware that its then-football coach, Tom Craft, had  
5 slapped a freshman football player across the face in front of his teammates. Coach Burns is  
6 informed and believes that SDSU was aware that several people had witnessed this direct and  
7 intentional abuse of a player, but SDSU refused to fully investigate it or take action against  
8 Coach Craft.

9           52.     Rather than taking action against Coach Craft and addressing the abuse, Coach  
10 Burns is informed and believes that SDSU spent millions of dollars fighting a whistleblower  
11 complaint brought by SDSU's strength coach based on the incident.

12          53.     Coach Burns is informed and believes that SDSU never disciplined Coach Craft  
13 for his abusive contact. Coach Craft remained SDSU's football coach until he was fired in  
14 2005 – not for the abuse, but for his poor performance as a coach.

15          54.     SDSU also discriminated against Coach Burns by treating her differently than  
16 male coaches whom SDSU wanted to terminate. For example, in 2008, when SDSU wanted to  
17 fire football coach Chuck Long but did not have cause to do so, SDSU reassigned him and  
18 continued to pay him his coaching salary for nearly a year. Coach Burns is informed and  
19 believes that SDSU hired a consultant to work out a settlement with Coach Long, and  
20 ultimately paid Coach Long more than \$1 million to terminate his contract.

21          55.     In contrast, SDSU has denied that Coach Burns has any enforceable contract  
22 rights at all. Relying solely on the findings of the Kangaroo Court, SDSU terminated Coach  
23 Burns without cause, yet refused to live up to its promises in the Agreement to reassign her or  
24 payout her salary in the event SDSU chose to terminate her without cause.

25           **SDSU's Conduct Has Prevented Coach Burns From Obtaining Other Coaching Jobs**

26          56.     SDSU's decision to terminate Coach Burns based on the false pretext that she  
27 struck a subordinate has had a devastating effect on her reputation and career.

28

1           57.     SDSU waited two months to discuss the video with Coach Burns. These two  
2 months would have been the best time for Coach Burns to pursue a new coaching opportunity,  
3 because it is the typical time of year for staff changes in women's basketball. By waiting two  
4 months, SDSU materially limited Coach Burns' job opportunities. For example, Coach Burns  
5 chose not to pursue a Division I head coaching opportunity in February 2013, because she was  
6 under contract with SDSU.

7           58.     Coach Burns has been substantially harmed by SDSU's conduct. She was  
8 entitled to be paid a minimum of \$880,000.00 in additional base salary under the July 17, 2012  
9 extension. She has lost pension benefits. Because of SDSU's pretextual excuse for her  
10 termination, Coach Burns will likely not be able to find another job as head coach of women's  
11 basketball at a Division I school.

12                           **Coach Burns Has Exhausted Her Administrative Remedies**

13           59.     Coach Burns filed a request for a right to sue letter with the California  
14 Department of Fair Employment and Housing ("DFEH") on October 1, 2013. The DFEH  
15 issued a right to sue letter, attached as Exhibit C, on October 7, 2013. Coach Burns amended  
16 this claim on August 18, 2014.

17           60.     Coach Burns filed a government tort claim following the procedures set forth by  
18 the California State University on October 1, 2013. CSU issued a notice rejecting Coach  
19 Burns' claim on November 5, 2013. A true and correct copy of the rejection notice is attached  
20 as Exhibit D.

21           61.     SDSU's "Reconsideration Procedures for Management, Supervisory and  
22 Confidential Employees" are only required when an employee is seeking reconsideration, not  
23 when an employee seeks damages. These procedures do not provide for any modicum of due  
24 process for an employee. They do not include any rights to obtain any documentation or  
25 provide additional information contrary to the decision, do not require a hearing, and do not  
26 allow for an independent or neutral review of the personnel decision at issue.

27           62.     Coach Burns did not seek reconsideration under these policies because she is not  
28 seeking reinstatement at SDSU; SDSU told Coach Burns' attorney that seeking reconsideration

1 would be futile; and the review steps in the policy made it clear to Coach Burns that any  
2 reconsideration request would be futile because the people who would review her request were  
3 the same people who made the initial decision to terminate.

4 63. In a conversation with Coach Burns' attorney shortly after her termination,  
5 Richel Thaler stated that any request for reconsideration under this policy would be futile  
6 because the decision to terminate Coach Burns had been reviewed and approved "at the highest  
7 levels," including SDSU President Elliot Hirshman.

8 64. SDSU's reconsideration process involves two reviews. The first review is  
9 conducted by the employee's immediate supervisor. The second review is conducted by the  
10 President or his designee. It would be futile for Coach Burns to request reconsideration under  
11 the policy because Sterk, as her supervisor, would conduct the first level of review.  
12 President Hirshman would conduct the second level of review. Both Sterk and President  
13 Hirshman had already approved Coach Burns' termination.

14 **FIRST CAUSE OF ACTION**  
15 **(Breach of Terms of Appointment - Against Board of Trustees)**

16 65. Coach Burns incorporates and realleges all of the above paragraphs as if fully  
17 set forth herein.

18 66. The Employment Agreement and amendments constitute a Management  
19 Personnel Plan Appointment for a specified term pursuant to 5 C.C.R. § 42723(b).

20 67. Coach Burns did all, or substantially all, of the significant things that the  
21 Agreement required her to do, or she was excused from doing those things.

22 68. The Agreement provides that SDSU could only terminate Coach Burns for  
23 "cause," and provides specific definitions for "cause."

24 69. The Agreement provides that SDSU must pay Coach Burns the remaining salary  
25 due for the term of the Agreement if it terminates her without cause.

26 70. SDSU breached the Agreement and the terms of her appointment under  
27 Section 42723(b) by terminating Coach Burns without cause, but refusing to pay out the  
28

1 remaining salary due under the Agreement. Coach Burns did not engage in any conduct that  
2 falls within the definitions of "cause" in the Agreement.

3 71. SDSU's termination of Coach Burns was arbitrary, capricious, and pretextual.

4 72. SDSU failed to conduct an adequate investigation before terminating Coach  
5 Burns. SDSU also failed to provide notice to Coach Burns of the claimed misconduct, or give  
6 her an opportunity to respond to its charges.

7 73. Coach Burns was harmed by SDSU's breach in an amount to be determined at  
8 trial, with interest thereon.

9 **SECOND CAUSE OF ACTION**  
10 **(Retaliation in Violation of the**  
11 **California Fair Employment and Housing Act - Against Board of Trustees)**

12 74. Coach Burns incorporates and realleges all of the above paragraphs as if fully  
13 set forth herein.

14 75. At all times mentioned herein, California Government Code Section 12940(h)  
15 was in full force and effect, and binding upon SDSU. This section prohibits Defendants from  
16 discharging, expelling, or otherwise discriminating against any person because the person has  
17 opposed any practices forbidden by Government Code Section 12940 or because a person has  
18 filed a complaint, testified, or assisted in a proceeding against that provision.

19 76. SDSU, its agents, administrators, supervisors, and members of the athletic  
20 department, violated Section 12940 as described in the paragraphs above.

21 77. Coach Burns is informed and believes that SDSU terminated her employment  
22 because she complained about the disparate treatment of women's athletics compared to men's  
23 athletics, including its discriminatory effect on the working environment in the women's  
24 basketball program.

25 78. As a proximate cause of this retaliation, Coach Burns has sustained and  
26 continues to sustain substantial losses of earnings and other employment benefits in an amount  
27 to be determined at trial.

28







# EXHIBIT A

## Employment Agreement

This Agreement is entered into this 11<sup>th</sup> day of September 2007, by and between San Diego State University ("University") and **Elizabeth (Beth) Burns** ("Coach").

### I. PURPOSE

Coach is employed by University as the Head Coach of University's Division I-A Women's Basketball Program. The parties to this Agreement believe that it is in their mutual best interests to provide further inducements for Coach to enter into an employment commitment. A commitment by Coach is critical to University's desire to support a stable, successful Division I-A Women's Basketball Program. Coach shall devote her best efforts to performing the duties of her position, as determined by the Director of Athletics and/or President. Compensation for Coach is detailed in Section IV of this Agreement.

### II. POSITION

- A. Services as Women's Basketball Coach shall include Coach conducting herself at all times in a professional manner in all media and public relations activities attendant to her University employment as Head Women's Basketball Coach and in all fund-raising activities on behalf of the Department of Athletics' fund-raising programs and events. All services of Coach shall be subservient to those owed to University and any conflicts shall be resolved by University's Director of Athletics or Designee, to whom Coach shall ultimately report.
- B. Specific services as Head Women's Basketball Coach:
  - 1. Making herself reasonably available for consultation with University's staff to insure that the exposure of University's Women's Basketball Program will be maximized with regard to University's involvement in the Athletic Department's fund-raising events, including Women's Basketball activities, as well as certain promotional and advertising functions connected therewith;
  - 2. appearing on radio and television broadcasts as required by University; and
  - 3. using her energies and abilities to conduct youth-oriented activities, fund-raising, public and community relations,

speaking engagements, and youth basketball clinics emphasizing inner-city high school programs.

### **III. TERM OF AGREEMENT**

This Employment Agreement shall commence on July 1, 2007 and continue until **June 30, 2012**; subject, however, to the terms and conditions in this Agreement concerning earlier termination.

### **IV. COMPENSATION**

In consideration of the promises made in entering this Agreement, Coach shall be entitled to the compensation as described below. All payments regardless of source are subject to applicable and legally-required deductions and withholdings for state, local and federal taxes and for any retirement or other benefits to which Coach is entitled or in which she participates, and to the terms and conditions of this Agreement and the MPP concerning termination and restrictions on other coaching employment.

#### **A. University Compensation and Benefits (State Funded)**

1. For her duties as Head Coach of the Women's Basketball Program, Coach shall serve as an Administrator IV in the MPP at an annual salary of \$175,000, effective July 1, 2007. In future years, Coach shall receive a merit increase of base pay the same as other MPP employees, as deemed appropriate by the Athletics Director.
2. As an Administrator IV, the term of Coach's appointment and service are governed by this employment Agreement and the MPP, which is found in Section 42720 et. Seq. of Title 5 of the California Code of Regulations. Any commitment to Coach regarding service or appointment not expressly contained in this Employment Agreement, or in the MPP, is void. A copy of the MPP accompanies this Agreement and is incorporated herein by this reference. If there is any conflict between this Agreement and the MPP, this Agreement shall control.
3. In accord with Section 42723 of the MPP, no tenure or permanent status is granted with this appointment, and no tenure or permanent status can be achieved.
4. During the term of this Agreement, Coach shall be entitled to receive the same health (medical, dental and vision), disability,

life insurance, vacation, sick leaves, pension plan and other welfare benefits as University shall presently maintain or subsequently establish during the term of this Agreement (including extensions thereof) with respect to administrators at the MPP program at University.

5. Future changes in salary and benefits will be in accord with Section 42721 of the MPP and funding appropriated by the CSU for MPP merit increases.
6. It is the intention of the parties that the payments to be made from the MPP salary base will be guaranteed through the term of this Agreement subject to the termination provisions found in Section V(A) and V(B) infra.

C. Bonus Plans

1. Achievement Bonuses:

Coach shall receive a bonus for each of the following achievements:

- \* MWC Regular Season Championship: 1 month's base salary
- \* NCAA Tournament Appearance: 1 ½ month's base salary
- \* NCAA Final Four Appearance: \$35,000
- \* NCAA Championship \$50,000
- \* NIT post-season Appearance: 1 month's base salary

NCAA tournament bonuses are not cumulative. Only the highest bonus in the category will be paid if achieved.

All Bonuses shall be tied to academic achievement. The bonuses will be paid only if either of the following conditions are met: (1) APR is at 925 or above, or any future number determined by the NCAA as the cutoff; or (2) the team cumulative GPA for tendered student-athletes is at or above 2.25, and the cumulative grade point is no less than 2.0 by 75% of the tendered student-athletes. Coach can be relieved of these requirements under exceptional circumstance as agreed to by the Coach and the Athletic Director.

2. Revenue Bonuses: Coach may earn up to an additional \$20,000 per year in Revenue Bonuses based on season and single game ticket sales, as follows:
  - \* Season Ticket and Single Game Revenue; \$50,000 to \$70,000

- Revenue Bonus: \$10,000
- \* Season Ticket and Single Game Revenue; \$70,001 and above
- Revenue Bonus: \$20,000
- (These metrics will be adjusted proportionately as ticket prices increase)

In order to maintain credible net results, all home game guarantees must be approved by the Athletic Director in advance.

D. Outside Income

1. Consistent with University and NCAA rules, any additional outside income beyond the terms set forth in this Agreement is subject to the approval of University and annual NCAA reporting requirements (described in IV.D.2 below). Approval of a request shall not to be unreasonably withheld, and could be dependent on competing sponsorship agreements the University may have in place.
2. NCAA requires COACH to provide a written, detailed account to the University for all athletically related income and benefits from sources outside the University. Outside income not otherwise specified in this agreement must be approved in advance on the University's "Report of Outside Income" form. The following list includes but is not limited to sources of income that must be reported:
  - (a) Annuities;
  - (b) Sports camps;
  - (c) Housing benefits including preferential housing arrangements;
  - (d) Country club memberships;
  - (e) Complimentary ticket sales;
  - (f) Television and radio programs; and
  - (g) Endorsement or consultation contracts with athletics shoes, apparel, or equipment manufacturers.

E. Other Compensation Related Terms:

1. University shall provide Coach a courtesy automobile or automobile stipend in accordance with the Department of Athletics' established policies. Coach shall be solely responsible

for all associated University reports, requirements, and income tax associated with the personal use of the automobile. Failure to provide such reports will result in the entire amount of the fair market value of the car usage being reported as compensation. Gasoline costs for business mileage are reimbursed subject to the Department of Athletics' established policies. Repairs within the insurance deductible amount are Coach's responsibility unless the accident occurred while on University business and University accident reports have been filed.

2. Coach is entitled to a ticket allowance based on the Department of Athletics complimentary ticket policy. Complimentary tickets may be subject to IRS withholding.
3. In order to advance the public relations interest of University and enhance recruiting, University shall make available to Coach for basketball camps the use of University gyms and related facilities. Camps are considered institutional camps, run by the Department of Athletics and subject to departmental and University policies, including preparation of budgets and arrangements in advance of the camps as determined necessary by the University and/or the department. Commitments regarding dates and costs will be granted no later than October 1 of each year. Failure to timely execute advance requirements may result in the cancellation of camps by the University. Camps may not be conducted at non-University facilities without the written approval of the Athletic Director.

## **V. TERMINATION**

- A. It is understood that University retains the right to assign or reassign Coach to other positions during the term of this appointment. In no event, however, will Coach be assigned to any position which is not consistent with Coach's education and experience, as determined by University. If Coach is reassigned to any position other than Head Women's Basketball Coach, Coach shall be paid by University as set forth in Section IV (A) (1).
- B. Notwithstanding any other provision of this agreement, Coach's appointment may be terminated by University, without further obligation of University, if University determines the following:

1. Coach is incapacitated due to illness or a documented medical condition resulting in her inability to perform the duties of Head Women's Basketball Coach.
2. There is "cause" for termination from employment. The term "cause" shall include any of the following:
  - (a) any material violation of the duties and responsibilities outlined in this agreement or refusal or unwillingness to perform such duties or responsibilities in good faith and to the best of Coach's abilities;
  - (b) conviction of a felony or conviction of a misdemeanor involving moral turpitude;
  - (c) for the betting of money or anything of value on the outcome or score of any athletic contest involving a team or athlete;
  - (d) a violation of any major rule, regulation, constitutional provision, or bylaw of University, Conference, or the NCAA, or an accumulation of secondary violations by Coach which reflects adversely upon University or its athletic program and which is likely to result in University being placed on probation by the NCAA or the Conference.
  - (e) a major violation of any major rule, regulation, constitutional provision, or bylaw of University, the Conference, or the NCAA or an accumulation of secondary violations by any member of the Women's Basketball coaching staff, or any other person under Coach's supervision, including student-athletes, if Coach knew or should have known of such violation, and such violation reflects adversely upon University or its athletic program, and which is likely to result in University being placed on probation by the NCAA or the Conference;
  - (f) conduct of Coach which is seriously prejudicial to the best interests of University or its athletic program or which is a material violation of University's policies; and/or
  - (g) prolonged absence from duty without consent of the Director of Athletics.

3. Or by mutual agreement of the parties.
- C. Upon separation from University for "cause," all salary (base compensation and bonus compensation) and benefits will cease as of the date of such separation.
  - D. In the event Coach's termination by University for reasons other than as previously set forth in this Agreement, Coach shall be entitled to receive the MPP salary without any obligation to mitigate damages, less compensation from subsequent employment of any kind.
  - E. Coach agrees not to talk with other employers or agents about other employment without written permission from the University Director of Athletics prior to ANY employment-related discussions.
  - F. This contract will be terminated if Coach voluntarily terminates her employment with the University and Coach will have the following buyout obligations payable to the University upon separation:
    1. Before completion of years one and two: \$200,000
    2. Before completion of year three: \$100,000
    3. Before completion of year four: \$50,000
    4. Before completion of year five: 0

**VI. MISCELLANEOUS**

- A. Coach shall be responsible for the scheduling of basketball games subject to the approval of University's Director of Athletics, such approval not to be unreasonably withheld.
- B. It is the intent of the parties hereto that this Agreement shall be governed by and construed in accordance with the laws of the State of California, and the laws of the State of California shall govern the validity, performance, and enforcement of this Agreement. The site of any lawsuit brought pursuant to this Agreement shall be in the County of San Diego, State of California.
- C. The notification date for any changes in employment responsibilities will be **March 31** of each contract year. Notification shall be by written instrument in accordance with Section VI(I) below.

- D. A Waiver by either party of a breach of provision or provisions of this Agreement shall not constitute a general waiver, or prejudice the other party's right otherwise to demand strict compliance with that provision or any other provision in this Agreement.
- E. If any provision or provisions hereof shall be deemed invalid or unenforceable, either in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the offending provision or provisions, or to alter the bounds thereof in order to render it valid and enforceable.
- F. Coach acknowledges that she has read and understands the provisions of this Agreement and that such provisions are reasonable and enforceable, and she agrees to abide by this Agreement and the terms and conditions set forth herein.
- G. This Agreement may not be modified, canceled, or superseded except by a written instrument signed by both parties.
- H. This Agreement embodies the entire understanding between the parties with respect to the subject matter hereof, and there are not other understandings, arrangements or agreements between the parties, either verbal or written, except as contained herein.
- I. Any notice or other communication which may or is required to be given under this Agreement shall be in writing and shall be deemed to have been given on the earlier of either the day actually received or on the close of business on the fifth business day next following the day when deposited in the United States mail, postage prepaid, registered or certified, addressed to the party at the address set forth after its name below, or such other address as may be given by such party in writing to the other:

If to Coach: San Diego State University  
Athletics Department  
5500 Campanile Drive  
San Diego, CA 92182-4313  
Attn: Elizabeth Burns


If to University: San Diego State University  
Athletics Department  
5500 Campanile Drive  
San Diego, CA 92182-4313  
Attn: Director of Athletics

**VII. ACKNOWLEDGMENT**

The parties acknowledge that they have consulted with legal counsel, to the extent that they have desired to do so, concerning this Agreement. The parties acknowledge that they have read and understand this Agreement and are fully aware of its legal effect, and have entered into it freely, based upon their own judgment.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed on the day and year written below, intending to be legally bound by its provisions.

COACH:

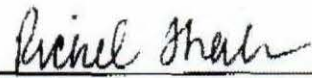
  
\_\_\_\_\_  
Elizabeth Burns

Date: 9/11/07

UNIVERSITY:

By:   
\_\_\_\_\_  
Jeff Schermmel, Director of Athletics

Date: 9/11/07

By:   
\_\_\_\_\_  
Richel Thaler, Associate Vice President  
for Administration

Date: 9/13/07

# EXHIBIT B

**ADDENDUM TO EMPLOYMENT AGREEMENT BETWEEN SAN DIEGO STATE  
UNIVERSITY (UNIVERSITY) AND M. ELIZABETH BURNS (COACH)**

This Addendum To Employment Agreement ("Addendum") is made this 17<sup>th</sup> day of July 2012, between San Diego State University ("University") and M. Elizabeth Burns ("Coach").

WHEREAS, the University and Coach previously entered into an Employment Agreement on September 11, 2007 and amended on September 15, 2010 (herein referred to as "Employment Agreement");

WHEREAS, the parties wish to make amendments to the terms of the Employment Agreement;

WHEREAS, the University wishes to memorialize the amendment to the Employment Agreement;

NOW THEREFORE, in consideration of the promises and mutual covenants set forth, the parties do agree to amend the Employment Agreement as follows:

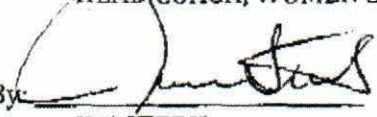
1. Provision III of the Employment Agreement is amended to indicate that the Employment Agreement shall continue until June 30, 2017, subject, however, to the original terms and conditions concerning earlier termination delineated in the Agreement dated and executed September 11, 2007. Parties agree to the potential review of the terms and conditions after the 2014 season. Requesting party shall make the request in writing to the other party within 30 days of the last game of the 2014 season. This constitutes a five-year extension to the original contract.
2. Provision IV(A)(1) of the Employment Agreement is amended to indicate that, for her duties as Head Coach of the Women's Basketball Program, Coach shall serve as an Administrator IV in the MPP at an annual salary of \$220,000, effective July 1, 2012. In future years, Coach shall receive a merit increase of base pay the same as other MPP employees, as deemed appropriate by the Athletics Director.
3. There are no additional changes to the Employment Agreement. The remainder of the original Employment Agreement is in full force and effect.

IN WITNESS WHEREOF, this Addendum to Employment Agreement is executed by the Parties hereto as of the date indicated by the signature.

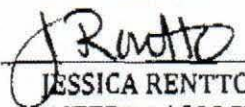
DATED: July 17, 2012

By: \_\_\_\_\_  
M. ELIZABETH BURNS  
HEAD COACH, WOMEN'S BASKETBALL

DATED: July 17, 2012

By:  \_\_\_\_\_  
JIM STERK  
DIRECTOR OF ATHLETICS  
SAN DIEGO STATE UNIVERSITY

DATED: July 17, 2012

By:  \_\_\_\_\_  
JESSICA RENTTO  
INTERIM ASSOCIATE VICE PRESIDENT,  
ADMINISTRATION  
SAN DIEGO STATE UNIVERSITY

# EXHIBIT C



**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
800-884-1684 | Videophone 916-226-5285 | TTY: 800-700-2320  
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

Oct 07, 2013

Mary Burns  
P.O. Box 9693  
San Diego, CA 92169

**RE: Notice of Case Closure and Right to Sue**

DFEH Matter Number: 175537-73880

Right to Sue: Burns / Trustees of the California State University-San Diego State University,

Dear Mary Burns:

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective Oct 07, 2013 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

**This letter is also your Right to Sue notice.** According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

Enclosures

cc: Trustees of the California State University-San Diego State University John David Wicker SDSU Dept. of Athletics  
John David Wicker SDSU Dept. of Athletics  
Richel Thaler Office of the President  
Jim Sterk SDSU Dept. of Athletics

# EXHIBIT D

**Systemwide Risk Management**  
401 Golden Shore, 5th Floor  
Long Beach, CA 90802-4210

[www.calstate.edu](http://www.calstate.edu)

**November 05, 2013**

Edward D. Chapin  
Chapin Fitzgerald LLP  
550 West C St. Ste. 2000  
San Diego, CA 92101

**RE: Mary Elizabeth Burns' Claim Against the California State University**  
**Claim No.: 2012-002498**

Dear Mr. Chapin:

Notice is hereby given that the claim which you presented on behalf of Mary Elizabeth Burns to the California State University, Office of the Chancellor, Systemwide Risk Management on October 01, 2013 was rejected on November 05, 2013.

**WARNING**

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See **Government Code** Section 945.6.

Should you have any questions, please call our office at (562) 951-4580 and you will be directed to someone who can assist.

Sincerely,



Zachary Gifford  
Systemwide Risk Management  
The California State University—Office of the Chancellor

**CSU Campuses**  
Bakersfield  
Channel Islands  
Chico  
Dominguez Hills  
East Bay

Fresno  
Fullerton  
Humboldt  
Long Beach  
Los Angeles  
Maritime Academy

Monterey Bay  
Northridge  
Pomona  
Sacramento  
San Bernardino  
San Diego

San Francisco  
San José  
San Luis Obispo  
San Marcos  
Sonoma  
Stanislaus

1  
2  
3 **PROOF OF SERVICE**  
4 **(C.C.P. SECTION 1013(a), 2015.5)**

5  
6 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

7 I am employed in the aforesaid county; I am over the age of eighteen and not a party to  
8 the within action; my business address is 401 Golden Shore, Long Beach, California 90802.

9 On November 05, 2013, I served the foregoing document described as:

10 Rejection of Mary Elizabeth Burns' Claim Against the CSU

11 in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

12 Edward D. Chapin

13 Chapin Fitzgerald LLP

14 550 West C St. Ste. 2000

15 San Diego, CA 92101


16  I personally served such envelope by hand to the addressee.

17  I am readily familiar with my employer's practice of collection and processing  
18 correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service  
19 on that same day with postage thereon fully prepaid at Long Beach, California in the ordinary  
20 course of business. I am aware that on motion of the party served, service is presumed invalid if  
21 postal cancellation date or postage meter date is more than one day after date of deposit for  
22 mailing in affidavit.

23  The document was transmitted by facsimile transmission and was reported as complete and  
24 without error.

25 I declare under penalty of perjury under the laws of the State of California that the  
26 foregoing is true and correct.

27 Executed on November 05, 2013, at Long Beach, California.

28 

Martha Guiditta  
Systemwide Risk Management  
The California State University