

THE CALIFORNIA STATE UNIVERSITY
OFFICE OF THE CHANCELLOR

July 13, 2007

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The Honorable Dean Florez
Senator, 16th District
Capitol Office
State Capitol, Room 5061
Sacramento, California 95814

Re: Vivas v. California State University, et al.

Dear Senator Florez:

We have your letter of July 11, in which you express concern about a perceived “epidemic” of discrimination claims that you worry may be “rampant” throughout the California State University system. Nothing could be further from the truth.

The California State University has 23 campuses throughout the state, with over 45,000 employees, 435,000 students and an operating budget in excess of \$4.2 billion. Over the last five years, there have been fewer than 100 employment discrimination cases filed throughout the system. Just over half have been settled before trial. And because we take very seriously our obligation to be accountable to the public, not one of those settlement agreements was made confidential or subject to any language that calls for non-disclosure. Many were included in the regular litigation reports presented to the Board in open session. In the cases that were decided by the courts, California State University prevailed in all, but two. One was a reverse discrimination claim brought by a white male coach who was nonretained at the Stanislaus campus, and in 2005 recovered a verdict of \$570,000. The second was a gender discrimination claim brought by a nonretained female coach at the Sonoma campus, who very recently received a verdict of \$229,000. This is an overall record which is quite reasonable.

It is an inherent aspect of doing business in California that every employer will at some time experience employment claims, including employment discrimination claims. As a part of prudent business management, more than ten years ago California State University developed a liability program to ensure that no California State University campus is ever disenabled, and no student is deprived, as a result of our very unpredictable judicial system. Each campus contributes to this self-insurance fund based on an independent actuarial study that factors in claims experience, so that there are monies available in the system if there is a catastrophic loss.

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The recent Fresno verdict is very disturbing, and we take it quite seriously. There is always room for improvement in our institutions, and we will continue to look for ways that we can make the Fresno program better. The claim was brought by a women's volleyball coach whose contract was not renewed at the end of a specified term, because the program was stagnating. Coach Vivas failed to meet performance standards, including: (1) scheduling home games with Top 25 teams; (2) qualifying for post-season play in the NCAA championships; and (3) increasing ticket sales and game attendance. All efforts to settle this claim before trial were rebuffed by plaintiff's counsel. While the jury ultimately disagreed with the university, their stunning result will now be subject to judicial review in various post-trial motions and appeal. It is premature to decide what this verdict means, except that the California judicial system is entirely unpredictable, a reason why many employers have already chosen to leave this state.

One thing is certain. California State University has had, and continues to have, an unwavering commitment to Title IX. In 1993, California State University committed in a Consent Decree to increase the participation of female athletes, expenditures in women's athletic programs, and scholarships for female athletes. Current data for the system indicates that female participation has increased from 34.7 percent to 55.9 percent, expenditures have gone from \$11.2 million to \$76.3 million, and scholarships have gone from \$2.5 million to \$12.2 million. In 2000, all parties agreed that the terms of the Consent Decree had been satisfied. Nevertheless, California State University has continued a voluntary self-monitoring of its progress in all three areas, even though such is not legally required. President Welty has served as Chair of the systemwide self-monitoring process since its inception. More Title IX progress has been made at California State University than any comparable institution in the country.

At Fresno State, a Gender Equity Monitoring Committee was formed in 1994, in part, in response to an Office of Civil Rights Title IX compliance review during 1992-94. A program-wide Corrective Action Plan was established that the campus worked very hard to implement. Among other things, women's equestrian, soccer and golf teams were added to the sports roster, a new softball stadium, locker rooms, a tennis facility, and women's soccer field were constructed. In 2001 (four years before Vivas' contract was non-renewed), the OCR determined that Fresno State had succeeded in satisfying the Corrective Action Plan and was in full compliance with Title IX in all areas addressed. Recently, the 2007 Women's Sports Foundation report gave Fresno State an "A" grade for the proportion of female athletes to student population.

(See: www.womenssportsfoundation.org/binary-data/reportcard/reportcard.pdf.)

It is correct that two other cases have been filed by females in the athletic department at Fresno that are still pending. One was brought by the former female basketball coach, who was terminated for cause when, among other things, it was uncovered that she had been illegally borrowing prescription pain medications from the student athletes on her team. The other was brought by the former Associate Athletic Director, who was non-retained four years after having

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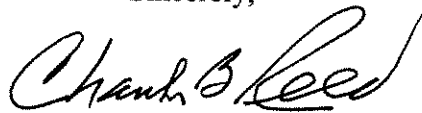
been transferred to a new position as Director of the Student Union following a departmental reorganization caused by a budget crisis in the department.

Our General Counsel regularly reports to the CSU Board of Trustees on the overall status of litigation throughout the California State University, including employment discrimination claims. The Vivas case is included in that report. I placed the Vivas case on the Trustee agenda for the July 10, 2007 meeting, so that the verdict would come to the attention of the Board, and there would be opportunity for full discussion in closed session. The Board did not choose to take any action in response to that discussion.

I hope that this responds to your concerns and places the recent Fresno verdict within a larger context.

With kind regards,

Sincerely,

A handwritten signature in cursive script that reads "Charles B. Reed".

Charles B. Reed
Chancellor

CBR/tm

c: CSU Board of Trustees
President John Welty
Assistant Vice Chancellor Karen Zamarripa
General Counsel Christine Helwick