

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

KRISTEN BLANCHARD, CAMRYN  
LYMAN, SAMANTHA GARCIA,  
LINDSEY COWANS, NYAE' DICK,  
DEVON MEDINA, KIRA BUCKNER,  
EMILY MONEY, and PRISCILLA GILLIES,  
*Plaintiffs,*

Civil Case No. 1:23-cv-03710-(\_\_\_\_\_)

v.

LONG ISLAND UNIVERSITY,  
*Defendant.*

May 18, 2023

**COMPLAINT**

1. Plaintiffs, Kristen Blanchard, Camryn Lyman, Samantha Garcia, Lindsey Cowans, Nyae' Dick, Devon Medina, Kira Buckner, Emily Money, and Priscilla Gillies, are members of the Long Island University ("LIU") varsity Division I softball program and contend that LIU is moving the softball program to a less desirous and inferior location in retaliation for Plaintiffs reporting their concerns about years of inequitable treatment when compared to LIU male student-athletes, LIU is engaged in gender discrimination by providing inequitable benefits and treatment, participation opportunities and athletic scholarships to female athletes, in violation of Title IX of the Education Amendments of 1972, and has made fraudulent misrepresentations to Plaintiffs about the permanent location of the softball program.

2. If LIU's recent decision to move the softball program from the Brooklyn campus to the Post campus is permitted to stand, the Plaintiffs will be irreparably harmed in both similar and distinct ways. Moving the program would decimate the program, because as the players themselves recognized, they are being confronted with choosing between their academic and their athletic careers. Players who chose to attend LIU Brooklyn over the many other schools they received offers from did so because of the promise that they would be playing softball in the middle of a major

metropolitan area—a reality they will lose should this decision stand. The coaches, all of whom the players respect tremendously and who are a large reason why each player committed to the program, will likely be unable to follow the team to the Post campus as a result of the commute, and the players know—and are devastated by—this fact. They are potentially losing the heart of reason they attended LIU Brooklyn in the first place. If the Plaintiffs choose to remain taking classes and living at the Brooklyn campus, they will be confronted with at least a two- to three-hour daily commute for practices and games. Conservatively, this commute is difficult, if not impossible for the student-athletes that live and take classes at LIU Brooklyn. Plaintiffs will have to deal with prolonged graduation dates if their credits do not transfer over to the Post campus as a result of the classes they must retake in order to fulfill their major requirements. It will be nearly impossible for the Plaintiffs who wish to transfer now to do so for the upcoming season, as the LIU administration did not leave them nearly enough time to do the proper research or preparation to effectively transfer to a suitable program. The foregoing reasons, and many more, demonstrate why the Plaintiffs chose to attend LIU Brooklyn, and why the Plaintiffs will be irreparably harmed if LIU’s decision to move the program to the Post campus is permitted to stand.

### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(3), and 1343(4) because Plaintiffs’ legal claims arises under 20 U.S.C. §1681 et seq. and its interpreting regulations.

4. This Court has supplemental jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367(a) because the state law claims are so closely related to the federal law claims as to form the same case or controversy under Article III of the U.S. Constitution.

5. Jurisdiction for declaratory and other relief is invoked pursuant to 28 U.S.C. §§ 2201 and 2202.

6. Venue is proper pursuant to 28 U.S.C. § 1391(b). These claims arose in Brooklyn, New York, which is within the jurisdiction of this Court.

### **THE PARTIES**

7. Plaintiff Kristen Blanchard is a fifth-year female graduate student at Defendant LIU. She is a Speech-Language Pathology major and is a member of the LIU women's varsity softball team. Ms. Blanchard received both an academic and athletic scholarship for her first three years at LIU, and she received a partial athletic scholarship for her final two years. She was recruited to the Brooklyn campus, specifically, as it was communicated to her that this was where the softball program was staying. As a high school senior, Ms. Blanchard made the decision to attend LIU because it was close to Staten Island, where she grew up. Ms. Blanchard's mother passed away in 2017, and she knew that she wanted to choose a school that was close to home, despite having offers for athletic scholarships elsewhere. The team played all of its home games after Ms. Blanchard's freshman year at the Post campus field, which made it far more difficult for Ms. Blanchard's father, a single parent, to attend the games, as the Post campus is much farther from Staten Island than the Brooklyn campus. In addition to being attracted to the campus because of its proximity to her hometown, Ms. Blanchard also liked the campus' proximity to Manhattan. LIU's decision to move the softball program from the Brooklyn to Post campus, which is blatant and intentional gender discrimination, will irreparably harm Ms. Blanchard because as an alumnae, she will no longer have access to the same program for which she spent her five years of collegiate eligibility playing, which will limit her ability to participate in the alumna activities for the Brooklyn softball team, which will no longer exist, and employment opportunities and future connections as the softball program will lose its national reputation and presences as a powerhouse for softball in the Northeast Conference ("NEC"). The move from Brooklyn to Post will decimate the program, as Ms. Blanchard understands that many of her teammates will either transfer out of the institution or be forced to stop

playing softball, as a result of their inability to balance an academic and athletic schedule between two separate campuses. During the school year, Ms. Blanchard resides in Brooklyn, New York, which is within the jurisdiction of this Court.

8. Plaintiff Camryn Lyman is a fifth-year senior female student at Defendant LIU. She is a Psychology major, and she has been a member of the LIU varsity softball team since her freshman year in 2019. Ms. Lyman received a full athletic scholarship for each of her years at LIU. As a Psychology major, Ms. Lyman is unsure of the direct impact the change in campuses will have on her academic career—especially considering that the academic requirements for Psychology majors appear to be different between the two campuses. This is especially worrisome to Ms. Lyman, as she was currently intending to graduate at the end of the Fall 2023 semester. Ms. Lyman will be irreparably harmed by LIU's decision to move the softball program to Post not only because the action is gender-based discrimination, but because Ms. Lyman will no longer have standing as an honored and valued alumna of the LIU Brooklyn softball program. Indicative of her leadership qualities, Ms. Lyman's decision to join the effort to stand up against this decision is not only for herself, but more so for her teammates that will be forced to make difficult decisions as to whether they can or will remain on the LIU varsity softball team. Ms. Lyman was one of the three plaintiffs that was at LIU through the merger, and she experienced firsthand the impact this change in location had on her friends who were forced to move to the Post campus. Although she will be receiving her degree in Fall 2023 (if that date remains feasible for her academically as a result of the potential transition to the Post campus) and therefore will not be transferring if LIU moves the softball program out to the Post campus, she is very worried about the impact it will have on her teammates that still have years left of coursework and athletic eligibility. Ms. Lyman was a member of the group who first spoke out against the gender inequities that the softball student-athletes faced at LIU, and she believes that the decision to move her team to the Post campus is a direct result of that

advocacy. During the school year, Ms. Lyman resides in Brooklyn, New York, which is within the jurisdiction of this Court.

9. Plaintiff Samantha Garcia is a fifth-year female student at Defendant LIU. She is a Secondary Education major and is a member of the LIU women's varsity softball team. Ms. Garcia received a partial athletic scholarship for each of the five years that she has attended LIU, and she will be graduating this May 2023. If LIU's recent and unexpected decision to move the program to the Post campus is allowed to stand, it will irreparably harm Ms. Garcia, both by making her a target of intentional discrimination and by diluting the strength and power of her standing as an alumna of the successful LIU Brooklyn softball program. Ms. Garcia was devastated when she learned about LIU's decision to move the program, not only for herself and her role as a soon-to-be alumna, but for her teammates who will be forced to deal with the repercussions of the move. Ms. Garcia has seen firsthand how traveling to and from the Post campus for games negatively impacts the student-athletes' ability to balance their academic and athletic schedules, and she understands that it will only become more difficult for the current players who have already scheduled their courses for the Fall 2023 semester in Brooklyn. During the school year, Ms. Garcia resides in Brooklyn, New York, which is within the jurisdiction of this Court.

10. Plaintiff Lindsey Cowans is a sophomore female student at Defendant LIU and is a member of the LIU women's varsity softball team. She receives a partial athletic scholarship to attend LIU. Ms. Cowans is an Exercise Science major, and she attended two other universities prior to arriving at LIU Brooklyn. Ms. Cowans will be irreparably harmed by LIU's recent decision that it will be moving the softball program out to the Post campus because she may be forced to consider transferring to yet another institution, but she does not want to move away from her teammates, coaches, and the city of Brooklyn. As mentioned, Ms. Cowans is an Exercise Science major, and LIU Post does not offer an Exercise Science major at their campus. She would be confronted with

the decision of whether to continue pursuing her same major at LIU Brooklyn and potentially forego her position on the softball team or to transfer, yet again, to a different institution—one where she may not be able to play on the softball team or where she is not playing at the same level at which LIU Brooklyn plays. Moreover, in transferring, Ms. Cowans will likely be required to pay more money for tuition, especially if she cannot secure a position on another Division I team and thereby receive athletic aid or if she is required to take additional courses as a result of her credits from LIU not successfully transferring to the new institution. After going through the struggle of transferring her credits from her previous two institutions, she does not want to be subjected to that same struggle once again. During the school year, Ms. Cowans resides in Brooklyn, New York, which is within the jurisdiction of this Court.

11. Plaintiff Nyae' Dick is an academic junior and an athletic freshman female student-athlete at Defendant LIU. Ms. Dick began her time at LIU having already earned an associate degree through a program in high school, She is a biology major, and she plans to attend chiropractic school after her undergraduate years. Ms. Dick entered LIU Brooklyn with the intention to earn a bachelor's degree in biology and a master's degree in exercise science in four years at LIU Brooklyn prior to entering chiropractic school. She planned on receiving her master's degree in Exercise Science at LIU Brooklyn while she played softball in Brooklyn. LIU recently announced its decision to move the softball program from the Brooklyn campus to the Post campus, an action involving intentional gender discrimination, and this decision will irreparably harm Ms. Dick in eliminating all the reasons she decided to attend LIU Brooklyn. Specifically, if the decision is not reversed, Ms. Dick will heavily consider transferring, because, based on the rigor of Ms. Dick's academic schedule (she is registered for 19 credits for Fall 2023 and 18 for Spring 2024), she will not be able to fit the travel to and from the Post campus field every day into her already full schedule. If she is forced to transfer to Post, she will forego pursuing her master's degree because Post has no exercise science

program During the school year, Ms. Dick resides in Brooklyn, New York, which is within the jurisdiction of this Court.

12. Plaintiff Devon Medina is a freshman female student at Defendant LIU. She is an exercise science major, and she receives a partial athletic scholarship to play on the LIU Brooklyn softball team. Ms. Medina originally chose to attend another university where she was not on the softball team because she missed the recruiting period due to an athletic injury. She, however, decided to withdraw from that school largely due to the fact that she missed softball and wanted to try one last time to be recruited to play the sport she loved. Just as she thought her dream of playing collegiate softball was over, Coach Andy Russo recruited her and offered her a scholarship to attend LIU Brooklyn and play softball in Brooklyn. Ms. Medina made the switch from playing baseball to softball just six years ago, but she is committed to using the remainder of her collegiate athletic eligibility to play the sport she has come to love. Ms. Medina made the switch from playing baseball to softball just six years ago, but she is committed to using the remainder of her collegiate athletic eligibility to play the sport she has come to love. If LIU carries through with its recently announced decision to move the softball program to Post, Ms. Medina will be irreparably harmed by the gender discrimination by eliminating all the reasons she decided to attend LIU Brooklyn. Specifically, moving the team to Post will cause her to lose the opportunity to compete for the LIU Brooklyn softball team during the remainder of her college years. Ms. Medina will heavily consider transferring if the program is moved to Post, and she will consider this even more so if her coaches are unable to follow the team there. Ms. Medina understands that it would be difficult—if not impossible—to do the necessary research, speak to the coaches, and secure a scholarship at a new institution at all and certainly by Fall 2023, and she understands that these are only *some* of the steps she would need to take prior to committing to another institution. Furthermore, Ms. Medina has already transferred institutions, so she understands firsthand the difficulty of transferring academic

credits. This difficulty is only exacerbated by the fact that Ms. Medina is an Exercise Science major, and Post campus does not offer this major. Ms. Medina does not want to transfer and wants to continue playing softball at a highly competitive Division I institution, but moving the program from Brooklyn to Post will force her to decide where she wants to remain for her fleeting college years and if she stays at LIU to likely give up her major in exercise science. During the school year, Ms. Medina resides in Brooklyn, New York, which is within the jurisdiction of this Court.

13. Plaintiff Kira Buckner is a junior female student at Defendant LIU who is majoring in Health Sciences, and she is a member of the LIU women's varsity softball team. Ms. Buckner receives a partial athletic scholarship to attend LIU and has been an active and very successful member of the team. LIU's announcement that they will be moving the softball program to the Post campus will irreparably harm Ms. Buckner, not only by eliminating all the reasons she decided to attend LIU Brooklyn and intentionally discriminating against her and her teammates based on their gender, but by harming Ms. Buckner's ability to compete in collegiate softball during the short time she has remaining in college. Ms. Buckner is a Health Science major and intends to pursue becoming a physician's assistant following her undergraduate graduation. Because she is already a junior and because she understands that both her projected graduation date and credits will be affected should she move to taking courses at the Post campus instead of at the Brooklyn campus, she will not be able to make the move and will be forced to quit the softball team. The Health Science programs are separate and distinct between Brooklyn and Post and the major requirements for Health Science(s) majors are different between the Brooklyn and Post campuses. Ms. Buckner will be unable to play softball at Post and live and take classes at Brooklyn based on scheduling and the time requirements to travel to Post and will be unable to move to Post without either retaking some courses or delaying her graduation date because she will be required to take additional courses required by the Post major. Some differences in majors between the campuses include, but are not limited to, that Post



campus requires Health Science majors to select a statistics course, a mathematics course (specifically an algebra/trigonometry or calculus/geometry course), and a computer science course, all of which the Brooklyn major does not require and Ms. Buckner has not taken. Ms. Buckner will be left with the terrible choice of delaying her graduation or leaving the softball program, the primary reason she enrolled at LIU Brooklyn in the first place. During the school year, Ms. Buckner resides in Brooklyn, New York, which is within the jurisdiction of this Court.

14. Plaintiff Emily Money is a junior female student at Defendant LIU. She is majoring in nursing while also participating on LIU's varsity softball team, and she receives a partial athletic scholarship from the University. LIU's recent announcement of its plan to transition the softball program from Brooklyn to Post will irreparably harm Ms. Buckner by eliminating all the reasons she decided to attend LIU Brooklyn. Specifically, moving the softball program to Post has placed Ms. Money in an extraordinarily difficult position. On the one hand, she does not want to transfer and leave behind her coaches, teammates, and the sport she loves, but on the other hand, her academic schedule as a nursing major will prohibit her from participating in the program at Post should the decision not be reversed. She cannot transfer schools anywhere and specifically to the Post campus, as nursing programs require that students complete their entire program at a single institution. Therefore, her credits for the nursing program offered at Brooklyn's campus will not transfer over to the Post campus and she would need to begin anew. The nursing program at Post campus is a five-year program, while the program offered at Brooklyn is a four-year program, and the Brooklyn program is known as a prestigious program and choosing to attend LIU Brooklyn learned that LIU Brooklyn nursing program is considered to be more prestigious than the LIU Post program, which is another reason she chose to attend the school initially. For all of these reasons, Ms. Money will have no option other than to remain at Brooklyn to finish her academic career and, as a student working through a clinical rotation, she will be unable to spend the extra two to three hours it would take her

to travel to the Post field for practice and other softball activities during the week. The move to Post will cause Ms. Money to sacrifice her position as a member of the softball team to finish her academics, which will devastate her to lose her college softball athletic experience in general and specifically with the LIU Brooklyn coaches and team. During the school year, Ms. Money resides in Brooklyn, New York, which is within the jurisdiction of this Court.

15. Plaintiff Priscilla Gillies is a sophomore female student at Defendant LIU. She is a business major, receives a partial athletic scholarship to attend LIU, and is a proud member of their varsity softball team. LIU's announcement that they will be moving the softball program to the Post campus will irreparably harm Ms. Gillies by eliminating all the reasons she decided to attend LIU Brooklyn and discriminating against because she is a female athlete. Specifically, as a business major, Ms. Gillies will lose the opportunity to pursue the many highly sought-after academic and career opportunities that result from Brooklyn's proximity to New York City. Ms. Gillies was told during her recruiting process that the brand-new turf complex would be completed for the team to play on in time for her first season, which was Spring 2022, which is why she chose to attend LIU Brooklyn and compete at a high level with great facilities and a great coaching staff. Ms. Gillies will be transferring out of LIU should the administration move forward with their decision to move the program to the Post campus, as she made the decision to turn down multiple other athletic offers in order to attend LIU for the unique experience it provided as a softball program that exists within the middle of a city. She is not certain if she will be able to receive and offer or a spot on a Division I team as good as the LIU Brooklyn softball team in the short time frame she is facing to attempt to transfer for Fall 2023 or Spring 2024 and what impact that decision will have on her receipt of a scholarship and the number of credits that will transfer. Ms. Gillies wants nothing more than to remain in Brooklyn with her teammates and coaches, but this decision to move the program out of Brooklyn will force her to enter the transfer portal. This irreparable harm will flow from LIU's

intentional gender-based discrimination if the school is not required to reverse its decision to move the softball program to the Post campus. During the school year, Ms. Gillies resides in Brooklyn, New York, which is within the jurisdiction of this Court.

16. Defendant Long Island University (“LIU”) is a private university of higher education located in Brooklyn, New York, which is within the jurisdiction of this Court.

17. LIU receives federal financial assistance and the benefits therefrom. Therefore, all programs at LIU, including intercollegiate athletics, are subject to the requirements of Title IX.

### **FACTUAL ALLEGATIONS**

Plaintiffs allege the following upon personal knowledge as to their own acts and upon information and belief as to all other matters as follows:

18. LIU currently sponsors a broad varsity intercollegiate athletic program with 16 sports for men and 20 sports for women. Additionally, LIU sponsors a co-ed eSports team. In choosing which sports to offer to which sex of students, LIU chooses how many varsity athletic participation opportunities to provide to male students and how many athletic participation opportunities to provide to female students and how to allocate resources to each sport, including athletic scholarships.

19. LIU has eight total locations, including a Brooklyn campus, located in Brooklyn, New York, and a Post campus, located in Brookville, New York, which is on Long Island. Locations also include LIU Pharmacy, LIU Global College, LIU Brentwood, LIU Riverhead, LIU Hudson, and the University Center, none of which have athletic programs.

20. LIU Brooklyn academic programs are separate and distinct from the LIU Post academic programs. For example, each has its own application and process, and separate academic programs, with separate and distinct majors and class and credit requirements for its own academic majors. Brooklyn has separate housing for its students who had been accepted to the Brooklyn

campus as students.

21. Prior to Fall 2019, LIU Brooklyn was a member of the NCAA, and all sports participated in Division I, the highest level of intercollegiate competition. As such, LIU offered athletic scholarships to members of its varsity athletic teams.

22. Prior to 2019, the Brooklyn campus sponsored NCAA Division I sports, including baseball, basketball, golf, soccer, and indoor and outdoor track & field for men and basketball, bowling, cross country, field hockey, golf, lacrosse, soccer, softball, swimming & diving, tennis, indoor and outdoor track & field, and volleyball for women. The Post campus sponsored NCAA Division II sports, including baseball, basketball, cross country, football, lacrosse soccer, indoor and outdoor track & field, and wrestling for men and basketball, bowling, cross country, equestrian, fencing, field hockey, golf, ice hockey, lacrosse, rugby, soccer, softball, swimming, tennis, indoor and outdoor track & field, and volleyball for women.

23. In Fall 2018, LIU announced its planned merger of its Brooklyn and Post athletic programs, combining LIU Post's Division II athletic program with LIU Brooklyn's Division I athletic program to create a single Division I program. The merger was to take effect in Fall 2019.

24. President Kimberly Cline was quoted in the paper regarding the merger to form one LIU Division I athletic program: "We at Long Island University are dedicated to competing at the highest level of collegiate athletics. When evaluating our unified rosters, we will aim to maximize the number of athletic opportunities available while carrying on our tradition of excellence." <https://swimswam.com/liu-post-athletic-department-to-merge-with-liu-brooklyn/>

25. After the 2019 merger, LIU designated the following sports for the Post campus: baseball, men's and women's cross country, equestrian, football, women's ice hockey, men's and women's lacrosse, women's rugby, men's and women's soccer, and women's tennis. The following sports remained in Brooklyn at this time: men's and women's basketball, women's bowling,

women's fencing, men's and women's golf, men's and women's swimming and diving, men's and women's indoor and outdoor track and field, softball, and women's volleyball.

26. After the merger, LIU Brooklyn continued to have separate and distinct academic programs from the LIU Post academic programs.

27. Since Fall 2019, LIU has continued to be a member of the NCAA, and all sports participate in Division I, the highest level of intercollegiate competition. As such, LIU offers athletic scholarships to members of its varsity athletic teams.

28. Like other Division I schools, LIU recruits high school students to apply to and to enroll at LIU for the purpose of participating in LIU's varsity athletic teams.

29. On information and belief, currently and for at least the last ten years, LIU has provided its male students with proportionally more opportunities to participate in its varsity intercollegiate athletic programs than it has offered to its female students, thus denying female students an equal opportunity to participate in this educational program.

30. On information and belief, LIU has always offered its male students better treatment and more benefits in its varsity intercollegiate athletic programs than it has offered to its female students, thus denying female students comparable athletic opportunities and equal treatment and benefits in this educational program.

31. On information and belief, for all of its athletic department's history, LIU has provided its male students more athletic financial assistance in its varsity intercollegiate athletic programs than it has offered to its female students, thus denying female students equal athletic financial assistance in this educational program.

#### **History of LIU Softball**

32. LIU has sponsored Division I softball at Brooklyn since 1982 and Division II softball at Post since 1976.

33. Roy Kortmann is the current Head Coach of the LIU Brooklyn Division I softball program. He began coaching softball at LIU in 1995, and he was elevated to the full-time head coaching position in 1998.

34. This year is Coach Kortmann's 29<sup>th</sup> season with the team, and he is only the third coach the program has had since its inception in 1982. Under Coach Kortmann's lead, the program has won ten Northeast Conference Championships, and his staff is tied with LSU for the ranking of the fourth longest-tenured staffs throughout Division I softball. LSU, along with the three programs with coaching staffs have as long or longer tenure than LIU—Kentucky, Hawaii, and Nebraska—are all high-level, highly competitive softball programs.

35. At all times relevant herein, Roy Kortmann acted within the scope of his employment with defendant LIU.

36. Andrew Russo is the Associate Head Coach of the program. He began coaching full-time at LIU in 2012 after having previously been a volunteer coach at LIU with Coach Kortmann. Coach Russo is the main contact person for recruits looking to enter the program, and he, like Coaches Kortmann and Gehrke, was present throughout the merger between the LIU Post and Brooklyn campuses in 2019.

37. At all times relevant herein, Andrew Russo acted within the scope of his employment with defendant LIU.

38. Bill Gehrke is the Assistant Coach of the program, and he began his time on the staff in the same year as Roy Kortmann—1995. During the tenure that he and Coach Kortmann have shared over the past 29 years, the softball team has notched over 780 wins, largely in part due to his extensive experience coaching girls' and women's softball teams. Prior to coming to LIU, Coach Gehrke had spent nearly two decades working with female softball athletes.

39. At all times relevant herein, Bill Gehrke acted within the scope of his employment with defendant LIU.

40. In 2019, as part of the merger, LIU retained the Division I softball coaching staff and decided to sponsor varsity Division I softball at Brooklyn rather than at Post.

41. As part of the merger and the plan moving forward, LIU decided to build a state-of-the-art turf softball complex in Brooklyn where the softball team could practice and play games (hereinafter the “new complex”).

42. There had been talk that LIU planned to build such a complex as early as when Ms. Blanchard, Ms. Lyman, and Ms. Garcia were in their freshman year, which was Fall 2018. These conversations began after the merger.

43. The decision to build the new complex became official once LIU merged the two athletic programs and decided to keep softball on its Brooklyn campus and construction of the new turf softball complex began in spring 2019 after the softball season ended.

44. Coach Kortmann, Coach Russo, and Coach Gehrke were excited to be able to continue LIU’s success with the softball program in Brooklyn, particularly with the promise of a new softball complex.

45. The Brooklyn campus offered a unique college experience, including proximity to Manhattan, which provided many more academic, employment, and social opportunities to the softball team members and easier access for visiting teams that were traveling to the campus.

46. The proximity to Manhattan was one of the coaches’ prime recruiting tools to attract experienced Division I players, not only for their academic experience at the Brooklyn campus, but also because this resulted in the ability to schedule a much stronger competition schedule, which had greatly contributed to the LIU softball program’s past success. With the addition of a new turf

softball complex, the coaches expected to have increased success and recruit stronger softball athletes.

47. The coaches were thankful that LIU decided to keep the softball program at the Brooklyn campus, because each live in New Jersey, and the additional commute to the Post campus (25 miles with known Long Island traffic issues) would have added hours and unpredictably to their travel time and most likely would have resulted in their being unable to continue to coach the LIU softball team.

**LIU Softball Teams' Existence During the Building of the New Complex**

**Academic Year 2018-2019**

48. Three of the plaintiffs, Ms. Blanchard, Ms. Lyman, and Ms. Garcia, began their collegiate athletic careers as LIU Blackbirds in Fall 2018 before the merger. They learned of the merger for the first time in the fall of their freshman year. Each player had been recruited by Coach Kortmann, Coach Russo, and Coach Gehrke to attend LIU and participate as members of the varsity softball program at the Brooklyn campus as freshmen beginning in Fall 2018. The location of the softball program on the Brooklyn campus was an important fact upon which they relied to make their decision to attend LIU and participate in their academic studies and the softball program.

49. When Ms. Blanchard, Ms. Lyman, and Ms. Garcia learned of the merger in Fall 2018, they decided to stay and matriculate at LIU based upon promises from their coaches and the athletic department that the softball program would remain at Brooklyn and that they would have a new turf softball complex to practice and play on.

50. During the fall of 2018, while waiting for the new complex to be built, the softball program practiced and played its games at a multi-purpose, on-campus turf field at Brooklyn that multiple other teams used as well. Immediately following the close of their season in Spring 2019, LIU began demolishing that field and constructing a new building (one wholly unrelated to athletics



or the athletics department) in its place. Construction on the new complex on the Brooklyn campus began in 2019 immediately after the softball season ended in spring 2019.

Academic Year 2019-2020

51. When Ms. Blanchard, Ms. Lyman, and Ms. Garcia returned in the fall of 2019 while waiting for the new complex to be completed, the softball team practiced in the Paramount, which was an on-campus, abandoned gym in which the basketball teams had previously played. The facility was old, unsafe, and not equipped to host a softball team. Players frequently slipped and fell, and they were not allowed to use cleats on the surface.

52. The track and field teams occasionally practiced at the Paramount, and volleyball would practice there if they could not get time in their main gym, which was called the “WRAC.”

53. The softball team would also practice at the WRAC when there was space.

54. Occasionally, the softball team would also practice at an off-campus field that was on the other side of Brooklyn, which was the only outdoor surface available for its use and was a public grass softball field that required even more time to travel back and forth.

55. Beginning in Fall 2019, the softball team began playing its games at the Post campus on the grass softball field because the new complex was not yet completed and there was nowhere else to play. The drive to and from Post took as long as three hours roundtrip—a trip the team was forced to make for all of their “home” games. This travel negatively impacted their experience at LIU both in terms of athletics and academics, as it impacted their scheduling choices for classes and their ability to manage their time and participate fully in LIU’s educational programs.

56. Plaintiffs understood that this was temporary and were willing to make the sacrifice while waiting for the new complex to be completed.

57. Meanwhile, the softball team was continuing to develop, and athletes were recruited with the promise of a new complex being built.

58. The Spring 2020 softball season was cancelled due to COVID-19. Due to Covid-19 and corresponding rule changes, Plaintiffs gained an extra year of NCAA eligibility. For example, Ms. Blanchard, Ms. Lyman, and Ms. Garcia have all remained at LIU for their fifth years as graduate students and used their extra year of eligibility at LIU.

59. Each softball recruit received a specific promise for the time by which the turf complex would be completed, beginning with the three plaintiffs currently taking their fifth years.

60. In 2019, the athletic administration communicated to the coaches that the new complex project completion would take approximately a year and a half. Considering that the construction began in Spring 2019, the coaches understood—based on the administration’s promises—that the new complex would be completed around Fall 2020 or Spring 2021.

61. The coaches communicated the timing of the completion of the new complex Fall 2020 or Spring 2021 to their recruits, including the three plaintiffs who were present for the merger—Ms. Blanchard, Ms. Lyman, and Ms. Garcia.

#### Academic Year 2020-2021

62. The six remaining six plaintiffs, Lindsey Cowans, Nyae’ Dick, Devon Medina, Kira Buckner, Emily Money, and Priscilla Gillies, all began their academic and softball careers at LIU between the academic years beginning in Fall 2020 and Fall 2022. These six plaintiffs were recruited by the coaching staff who promised them that the softball program would be at the Brooklyn campus and that there would be a new turf softball complex completed on which to practice and play, as they did for all the recruits.

63. Before committing to the LIU softball program as recruits, the six plaintiffs relied on promises from their coaches and the athletic department that, among other things, the softball team would have a state-of-the-art softball complex built for them for competitions and outdoor practices

with a turf field and an adjacent indoor facility that housed batting cages on the Brooklyn campus (hereinafter the “new complex”). They were also told that they would have a nearby strength and conditioning facility available to them that was specifically for athletes. The softball players and Plaintiffs were excited to be part of this commitment to develop an outstanding Division I program. These six plaintiffs applied to the Brooklyn campus and chose residences on the Brooklyn campus and academic programs that were specific to the Brooklyn campus.

64. As members of the LIU softball team, every year, Plaintiffs selected their class schedules and majors to align with their softball schedule and ensure they could effectively manage their time to be successful in both their athletic and academic careers. Accordingly, softball players selected classes on the Brooklyn campus and majors that included required classes on the Brooklyn campus.

65. When the softball players returned to LIU Brooklyn in the fall of 2020, the stadium lights had been installed at LIU’s new complex. While waiting for its completion, the softball team continued to practice in the Paramount. Due to the distance and limited availability of the public park they had used before and to the terrible conditions of the Paramount, the softball team also began practicing on the roof of the WRAC, which use was dependent on weather conditions.

66. The WRAC’s surface was uneven, unkept, had chunks missing from it and weeds growing on it, and was tormented by the impacts of frequent rain. Players were only permitted to wear tennis shoes on this surface.

67. In Fall 2020, the coaches saw that there were no dugouts and little progress being made to the construction of the field and became concerned that the Spring 2021 deadline to play and practice on the new complex originally provided would no longer be achieved.

68. The coaching staff attempted to get answers from the LIU administration, especially because they communicated this timeline to recruits and current players, and they received word

from Bill Martinov that the field would be finished and playable for the Spring 2021 season.

69. In December 2020, the turf was fully laid on the field, which allowed the softball to practice there in Spring 2021.

70. The softball team was able to use a private indoor facility upstate (due to the personal connections of their coaches) on approximately four occasions in the spring, which it did because it was critical to practice on a decent surface to be able to improve and be ready for games. It was a two-hour drive to this facility, but it was a drive the team was forced to make considering that there was no indoor field at Brooklyn or Post. This was the fifth practice facility that the softball team had to use while waiting for the new complex to be built.

71. By the time the three of the plaintiffs, Ms. Blanchard, Ms. Lyman, and Ms. Garcia had entered their third season in the spring of 2021, the softball team had not practiced on their own field since their freshman year. Their games continued to be played at the Post campus, which again negatively affected their ability to fully participate in LIU's educational activities due to the time spent traveling back and forth to the Post campus.

72. After the Spring 2021 season, a large group of students participated in a protest against the use of the Paramount due to health and safety concerns, and the school was forced to complete a dangerous asbestos removal and close down the Paramount.

#### Academic Year 2021-2022

73. In the fall of 2021, the new complex had been almost completed. The team had begun practicing on the field in Spring 2021, and they understood that all that was needed to finish the complex were dugouts and fencing. While the team was able to practice at the new complex, because there were no fences or dugouts yet, it was not permissible per NCAA rules for the softball team to play games at the new complex.

74. The athletic department, including Chief Operating Officer Joe Schaefer and Athletic

Director Bill Martinov, never said that the new field would not be finished, and the coaching staff still believed that the new complex would be completed by the softball teams' Spring 2022 season.

75. In late Fall 2021, approximately in November, Bill Martinov attended a softball practice and promised the players at that practice the new complex would be completed and ready to play games on by Spring 2022.

76. Despite the athletic department's repeated promises that the new complex would be finished the following season, the softball team was not able to play games on the field in the Spring 2022 season.

77. In Spring 2022, Bill Martinov advised the softball coaches that the new complex was not to be completed that spring, but that the 2022-2023 academic year budget would include additional money to complete the new complex. Bill Martinov informed the coaches of this immediately before the team returned home from their spring training trip in Florida.

78. The softball team was unable to play their games at the new complex and adjusted with this late news to continue to make the long trek to the Post campus for games throughout the Spring 2022 softball season.

79. The new complex was then rented out to VoloSports/NYC Social, an adult intramural sports organization, and Brooklyn United, a local soccer team, every weekday after around 4:00 p.m. As a result of this, the softball players frequently found trash, empty alcohol bottles, glass, and more leftover on the field, and their practice time was limited to less-than-ideal times because the field was only available for their practice before 6:00 p.m.

80. During weather that was too cold for the softball players to practice outside on the new complex's turf field, the only indoor space available for the softball team to practice was the WRAC gym. Securing indoor practice time at the WRAC remained very difficult, as the softball program was required to share it with all other teams at Brooklyn's campus.

81. Indoor teams were and are consistently given priority in the WRAC, whether they are in or out of season. Men's basketball and women's basketball consistently received the highest priority for all practice times in this space, and softball and the remaining outdoor team had to coordinate for the limited remaining time after all the indoor sports.

82. In Spring 2022, men's and women's basketball, women's bowling, men's and women's fencing, men's and women's swimming and diving, men's and women's track and field, men's and women's volleyball, and men's and women's water polo were at Brooklyn.

83. In fact, although the softball program was originally promised a practice time slot at the WRAC from 6:00 p.m. to 8:00 p.m., that time slot was moved to accommodate outside renters.

84. Softball was ultimately offered the 8:00 p.m. to 10:00 p.m. time slot. Because of the difficulty for the players to practice during this time, they were often required to practice outside during inclement weather, and when it was too cold, the team was left with no practice option.

85. Fortunately, because the new complex has a turf—rather than grass—field, the softball team was able to practice outside on the turf with no worry about damaging the field or affecting the field condition needed for their games.

#### Academic Year 2022-2023

86. In the fall of 2022, when Plaintiffs returned to LIU, the softball program continued to be able to use LIU's turf field at Brooklyn for practice at the new complex.

87. Plaintiffs were hopeful they would soon be playing their games at the new complex there since there had been some progress on the new complex.

88. For example, significant construction and renovation work was done in a large, previously unfinished room in the WRAC that was adjacent to the parking garage. The athletics administration, specifically Bill Martinov, had promised the coaches that the room would be converted into a space for the team to use with batting cages. The only remaining renovation needed

to complete the new complex was to add the portable fences and the dugouts.

89. Brooklyn LIU softball had owned and used LIU portable fences before the merger.

90. To make the new complex usable by the softball team for both games and practices per NCAA regulations, LIU needed only to find the portable fences and build the dugouts—which is estimated to be about \$30,000 per dugout (some are less, some are more)—a *de minimis* amount when compared to the overall cost of the new complex and the work that had already been done.

91. The coaches continued to follow up on the completion date of the new complex as they had over the last few years as this information was critical to the success of the softball program and the coaches' ability to plan and prepare for the upcoming seasons, including scheduling and recruiting.

92. On or about November 17, 2022, out of concern for the continued delay and impact on the upcoming Spring 2023 season, Coach Kortmann sent Bill Martinov an email requesting an update on the indoor batting cage room and the dugouts at the field and explaining again that “[b]oth items have a direct influence on recruiting, retention and competitiveness.”

93. On or about November 20, 2022, Bill Martinov replied to Coach Kortmann's email that, “[w]e are working with facilities to determine a timeline to complete both projects below.”

94. With no more information and no visible progress, on or about December 21, 2022, Plaintiff Kristen Blanchard emailed President Cline on behalf of the softball players to report to President Cline the team's longstanding concerns that were well-known to the athletic administration about the inequitable treatment the softball team had been experiencing, including the lack of a playing field for games and indoor practice facilities at the Brooklyn campus. The email expressly mentioned Title IX problems and requested President Cline's help.

95. On or about December 29, 2022, President Cline replied to Plaintiff Kristen Blanchard's email, but she removed the other softball players, all of which Plaintiff Kristen

Blanchard had cc'd on her original email, from her response.

96. President Cline advised that this was the first time she had heard of the softball players' concerns and asked whether the players had previously told any LIU athletic administrators about these issues.

97. President Cline also advised that the "field at Brooklyn was delayed due up [sic] to various issues beyond the LIU's control, including COVID and supply chain issues."

98. President Cline promised in that email that the team that "the Director of Athletics, the COO, the VP for Student Affairs, and Dean of Students" would meet with the softball team.

99. President Cline also cc'd on that email the top-level administration at LIU, including Nancy Gesner (Executive Assistant to the President), Joe Schaefer (Chief Operating Officer), Bill Martinov (Athletic Director), Elizabeth Gaffney (University Counsel), and Ashley John (Dean of Students and Chief Diversity Officer).

100. On or about January 2, 2023, Plaintiff Kristen Blanchard replied via email to President Cline.

101. In that email, Plaintiff Kristen Blanchard informed President Cline that the team had "gone through the chain of command many times" and listed many of the administrators that they had gone to over the years for help and/or answers, including Bill Martinov.

102. The email included that their field only needed "two dugouts and a fence" and emphasized their need for answers before softball's first home game on March 17, 2023.

103. The email also included that while the team appreciated the offer to meet with the athletic department leadership, they had already exhausted that avenue and hoped that President Cline would intervene.

104. On or about January 20, 2023, because the softball team had not heard anything in reply to their latest email, Plaintiff Kristen Blanchard sent another email to President Cline,



reiterating the teams' concerns from their January 2, 2023 email.

105. President Cline responded that same day and advised that Bill Martinov and his team will develop an immediate plan that meets the needs of our softball team both short and long term.

106. On or about January 23, 2023, Coach Kortmann and Coach Russo met with Joe Schaefer, Bill Martinov, and Craig Angelos, Senior Deputy Athletic Director.

107. At the start of that meeting, Joe Schaefer informed the coaches that their softball players had been writing to President Cline about Title IX violations, and then said in sum and substance, 'At this point, we are permanently moving the program to Post.'

108. The coaches were shocked as moving the softball program to the Post campus had never been discussed with them before and was in direct contradiction to everything they had heard and relied on from the LIU administration and upon which they had based all their plans for the softball team-- which was that the location of the softball program remaining in Brooklyn with a new turf complex.

109. The coaches questioned the timing of the decision to move the program to Post—only after the players had complained—in light of the fact that it had never been mentioned before and it made little sense.

110. Joe Schaefer advised that this plan had been in the works for some time and that this was best for the long-term viability of the softball program.

111. Joe Schafer also advised the coaches that LIU never had any plans to install dugouts at the new complex.

112. The coaches asked if they could raise the money to purchase the dugouts and Joe Schaefer said no, with no discussion.

113. The coaches requested that LIU hold off moving the program to the Post campus until Fall 2024 as way to phase in new recruits and to let them know the program would be at Post in the

future and to permit the 15 or 20 softball players, who had lived on the Brooklyn campus, taken classes on the Brooklyn campus, were scheduled to graduate based on the Brooklyn campus requirements for their specific major, and had committed to LIU based on the promise that the softball program would be located on the Brooklyn campus, to graduate.

114. Joe Schaefer instructed the coaches to provide a proposal in favor of this gradual phase in for Fall 2024 for LIU's review, which the coaches completed and provided.

115. After that meeting, Coach Kortmann told Ms. Blanchard, Ms. Lyman, and Ms. Garcia, the leaders of the team, that athletics administration had told the coaching staff that it was moving the softball program to the Post campus but that the timing of that move was not clear.

116. The coaches communicated to Ms. Blanchard, Ms. Lyman, and Ms. Garcia that they were doing their best to postpone the move and requested they not tell the rest of the team so as not to cause any concerns until they knew more.

117. Ms. Blanchard, Ms. Lyman, and Ms. Garcia did not tell their teammates the news, not only because they were incredibly disappointed themselves, but because they wanted to protect their teammates from feeling that same disappointment before any decision was finalized.

118. On or about February 2, 2023, Bill Martinov called the softball coaches to his office and told them that he received the information that they put together regarding the proposal for a Fall 2024 move and that the administration approved this request. The coaches felt some relief knowing that the current players would not be directly affected in the short term with their classes and their desire to play softball at Brooklyn and would have time to adjust to any decision.

119. Joe Schaefer scheduled a meeting with the LIU softball team on or about Sunday, February 5, 2023.

120. Bill Martinov advised Coach Kortmann that they needed to reschedule that meeting and rescheduled the meeting for February 7, 2023.

121. Coach Kortmann requested to schedule the meeting a different Tuesday since the team's first opening game was that following weekend and he thought this news would devastate the players and have a negative impact on their game performance but did not hear back.

122. On or about February 22, 2023, President Cline met with the leaders of the both the men's and women's programs at Brooklyn.

123. During that meeting, in her speech, President Cline reported that LIU was currently in the strongest financial position in university history with an impressive endowment.

124. President Cline also expressed LIU's support of the student-athletes and promised that LIU would honor all of its promises to them.

125. After this meeting, on or about February 22, 2023, Plaintiffs' attorney sent a letter to President Cline (cc'ing Elizabeth Gaffney) on behalf of her clients, Plaintiffs Kristen Blanchard, Camryn Lyman, and Samantha Garcia.

126. That February 22, 2023 letter included that LIU was and had been in violation of all three of the Title IX tests for athletic compliance. Further that letter included that rumors had been circulating that LIU may move the softball team to the Post campus, and that moving the softball team to the Post campus under the circumstances only after the softball players had reported their Title IX concerns to the President was retaliation and prohibited by LIU's own Title IX Policy and by Title IX.

127. The February 22, 2023 letter also included the irreparable harm that would befall the softball players should the program be moved, and included the fact that the softball players made the decision to attend LIU Brooklyn over any of the other schools they could have chosen to play for because, in large part, of the coaches that they were committing to play for and that it was precisely for this reason that the players were so concerned about their coaches' inability to commute to the Post campus should this move be permitted to happen.

128. On or about March 14, 2023, Plaintiffs' counsel emailed Elizabeth Gaffney and President Cline to request an update on the status of LIU's internal review of the attorney letter.

129. That same day, Elizabeth Gaffney responded that LIU's review would be completed shortly.

130. Joe Schaefer and Bill Martinov then scheduled a meeting on or about March 16, 2023 with the players and invited the coaches to attend.

131. Ten minutes before the meeting, Coach Kortmann, Coach Russo, and Coach Gehrke were called to Craig Angelos' office. Joe Schaefer and Craig Angelos were in person and Bill Martinov was on the phone.

132. At that meeting, Joe Schaefer told the coaches that LIU, in complete contradiction to what Bill Martinov had previously said, was going to move the softball program to the Post campus effective for Fall 2023.

133. The coaches were once again shocked that the program was being moved so soon as he had expressly told the administration about the harm it would cause the players and because Bill Martinov had told the coaches that the administration had approved the plan to move the program for fall 2024.

134. Ten minutes later, at the meeting with the softball players, Joe Schaefer, accompanied by Craig Angelos in person and Bill Martinov over the phone, informed the team that LIU was moving the program to the Post campus for the fall 2023.

135. The softball players were shocked, as most of them were just hearing this for the first time.

136. The players were devastated by this news and tried to get additional information, but no other details were offered.

137. Joe Schaefer opened the meeting up to questions but provided only vague answers

and rough generalizations and told the players that that LIU had made the decision to move the softball program to Post well before the players had voiced their concerns to the President about the Title IX issues.

138. The softball players mentioned how they had all signed their National Letters of Intent to live, attend classes, and play at the Brooklyn campus, and they mentioned how the timing of this announcement would make it very difficult if not impossible for the players who do not wish to move to Post to transfer to a different institution.

139. The players explicitly mentioned their concerns that the timing of the decision suspiciously occurred only after the team had sent emails to President Cline highlighting their concerns about potential Title IX violations within the program.

140. The players mentioned how Bill Martinov had been at one of their practices in Fall 2021 and told them *directly* that by next spring, that is, Spring 2022, the team would be playing on the turf field.

141. The players also mentioned how difficult it will be for the coaches—ones who have committed and continue to commit so much to the softball program at large—to continue coaching and that they do not want to play for any coaching staff besides that of Coach Kortmann, Coach Russo, and Coach Gehrke.

142. In response to Joe Schaefer's' comments that the move to the Post campus is the best move for the softball program long-term, Ms. Buckner stated how this decision is putting the team in a position where they may lose three of the most successful coaches in the NEC, maybe in the nation, where the Post location would be prohibitive to the coaches continuing with the program.

143. This meeting was held the day before the team was scheduled to begin conference play for the 2023 season, with the team's first home game being held in two days on March 17, 2023.

144. Later that day, on or about March 16, 2023, Elizabeth Gaffney emailed Plaintiffs' lawyer LIU's response (which was dated March 9, 2023) refuting Plaintiff's Title IX concerns.

145. On this same day, the softball players including Plaintiffs sent a follow-up email to Joe Schaefer requesting a meeting with President Cline and other administrators involved in the decision to obtain answers to the numerous questions that they asked during the meeting and did not receive answers to.

146. On March 17, 2023, the softball team made the long trek to the Post campus and played their first home game at the Post campus. Unfortunately, the team had many more home games scheduled this season, as they had anticipated playing at the new complex and was facing a tremendous amount of time and revised planning to be able to meet their academic requirements.

147. On or about March 20, 2023, Joe Schaefer responded to the players' earlier email that they would get together with the players only after "each of the team members meetings take place which are being scheduled for this week."

148. Plaintiffs felt intimidated by the prospect of having to meet individually with LIU administration and that same day advised Joe Schaefer that the players wanted to have a conversation with President Cline and "any other leadership personnel involved in this decision" before any individual meetings took place.

149. On or about March 25, 2023, Bill Martinov scheduled a meeting via email to the players and cc'd the coaches and President Cline advising the players that President Cline will meet with them to "listen to their concerns" about moving the program to Post during the upcoming meeting on March 28, 2023.

150. On March 27, 2023, Plaintiffs' counsel sent a letter to Elizabeth Gaffney advising her that Plaintiffs were very disappointed in LIU's response March 16, 2023 letter that it was not violating Title IX, and that it left Plaintiffs no choice but to pursue legal options. The letter also

included a request that she advise LIU not to interfere with Plaintiffs protected rights, such as opposing and participating in proceedings to oppose discriminatory practices.

151. On March 28, 2023, the coaches were told by Bill Martinov that LIU leadership had instructed that they were not to attend the meeting with the softball players.

152. On or about March 28, 2023, the softball players attended the meeting and saw that, along with President Cline, there were seven other members of LIU administration, including Joe Schaefer, Bill Martinov, Elizabeth Gaffney, Craig Angelos, Michael Berthel (Vice President for Student Affairs), Jeannie Smith (Associate Dean of Students and Deputy Title IX Coordinator), and Ashley John.

153. Six of the upper-level administrators were at the front of the room and two stood in the back. The two in the back did not introduce themselves. The players later learned that one of those two in the back was LIU's general counsel, Elizabeth Gaffney.

154. Plaintiffs felt ambushed and intimidated by the absence of their coaches and by being surrounded by eight LIU administrators with no notice they would be there.

155. At that meeting, Ms. Lyman specifically asked Bill Martinov whether the decision to move softball to the Post campus was made before or after December 2022 when the players had reached out to President Cline via email and voiced their concerns regarding potential Title IX violations within their program.

156. Bill Martinov ultimately said that the decision was finalized after December 2022.

157. Ms. Lyman reiterated that Joe Schaefer had told the team in their previous meeting that the decision had been made before December.

158. Ms. Lyman further asked Bill Martinov about how, when the team specifically asked him whether they would play on the turf field at their new complex when he attended one of their practices in November 2021, he affirmed that they would be playing there in Spring 2022. Bill

Martinov responded by answering that that was the plan at the time.

159. Ms. Lyman explained that the timing felt like retaliation against the players for making complaints to the President about the facility and other Title IX concerns.

160. Elizabeth Gaffney interjected and cautioned Ms. Lyman to be careful when she threw words around like retaliation.

161. Plaintiffs felt intimidated by this statement and perceived this statement coming from legal counsel for LIU to be a warning that they should stop saying moving the softball program to the Post campus was retaliation.

162. Ms. Blanchard quoted President Cline from the earlier meeting that she had held with the leaders of the various LIU Brooklyn sports teams and repeated, “If you’re promised something, it should not be taken away from you.”

163. Ms. Blanchard explained how the softball team was promised something—that is, that they would have a new, playable turf field that was located in Brooklyn—that was being taken away from them.

164. Ms. Blanchard then said that it seemed to the softball players that when LIU female student-athletes stuck up for themselves, advocated for themselves, and spoke out against Title IX issues in their programs, they were retaliated against, specifically in the way that the softball team was notified of the program moving to Post campus less than three months later.

165. Joe Schaefer attempted to fall back upon the notion that discussions (amongst the LIU administration) had been taking place “since the unification” and said that the decision to move the team to the Post campus was not officially made on March 16, 2023 when he, Bill Martinov, and Craig Angelos informed the team of the decision but earlier, to which Ms. Lyman noted “a discussion is not a decision.”

166. President Cline stated during the meeting, “We want to make sure that you all have



what you need . . . not really so much a money issue, it's really the kind of experience we want you to have.”

167. The players responded that there was something special about something about *this* school, *this* field, and *this* culture in Brooklyn that gets recruits to commit LIU.

168. Many players expressed that if they had known the program was going to be based at the Post campus, they would not have attended this school.

169. The players asked President Cline to consider, among other things, permitting the softball players to continue to practice at Brooklyn and play their games at Post to give players at least a year to adjust to the very recent and unexpected decision to move softball to Post in order to have the necessary time to act in their own best interest, such as transferring.

170. Ms. Buckner explained that this arrangement—continuing to practice at Brooklyn—would be helpful to the coaches, as they had explained to Joe Schaefer at the last meeting, because that would allow the team to “keep our coaches because that’s huge for the team and huge for the organization.”

171. President Cline said she would take the players’ suggestions under consideration.

172. The players continued to play their softball games and hoped that President Cline would listen to their concerns.

173. On about April 5, 2023, Players’ parents then began writing letters to President Cline and the Board of Trustees with the purpose of, among other things, expressing their concerns about the decision to move to the Post campus with no notice, particularly considering the negative impact on the players’ academic careers, and requested a meeting to discuss this move on behalf of their daughters.

174. President Cline did not personally respond to any parents and no one from LIU administration has met with any parents to address their concerns.

175. LIU softball alumnae have offered to raise money to pay for the needed renovations to the new complex at Brooklyn to finish the project to achieve an NCAA playable game field.

176. In about mid-April, certain Plaintiffs learned that LIU was intending to send an email to the current and incoming softball players and advise them that they were being required to unenroll from their classes at Brooklyn they had already selected for Fall 2023, relinquish their fall residential assignments at Brooklyn for Fall 2023, and register for classes and obtain residential housing on the Post campus for Fall 2023 due to LIU's recent decision to move the softball program to the Post campus for the Fall 2023 season and semester.

177. On April 23, 2023, Plaintiffs' counsel notified LIU by letter to LIU general counsel Elizabeth Gaffney that forcing the softball players to move their classes and Brooklyn housing to the Post campus for the upcoming Fall 2023 semester and to take other steps to proceed with moving the softball program to Post was retaliation and prohibited by federal law.

178. The April 23, 2023 letter also included that should LIU proceed with moving the softball program to the Post campus, Plaintiffs would file a temporary restraining order seeking to prevent LIU from moving the softball program to the Post campus and away from the Brooklyn campus in order to prevent irreparable harm to the softball players and decimating a very successful program before a decision is rendered on LIU's noncompliance with Title IX, including retaliation.

179. Four hours later, Bill Martinov emailed the team, including incoming recruits, that the LIU softball team will be moved full-time to the Post campus for Fall 2023. His email included that, "As of Fall 2023, since all Softball operations will take place at the Post campus incoming players are strongly encouraged to begin their studies and reside at the Post campus."

180. As an added enticement, for the first time since making the decision to move the softball program to the Post campus in January 2023, Bill Martinov told the softball players in his email that that LIU would be "offering free room for the remainder of their undergraduate program."

181. That offer was extended without discussion with the coaches and violates NCAA requirements.

LIU's Purported Reason for Moving the Softball Program  
to the Post Campus is Pretextual

182. Prior to January 23, 2023, the LIU administration has never communicated or indicated in any way to the softball coaches or players that it was going to move the program to the Post campus, let alone that it was even considering such a move.

183. To the contrary, LIU and its employees have always said and acted in such a way as to demonstrate its intent to keep the softball program permanently at the Brooklyn campus.

184. Those actions included the building of an almost complete, cutting-edge turf softball complex at the Brooklyn campus that LIU has spent a tremendous amount of time and money building. With minimal output of expenses, the new complex can be completed to satisfy NCAA competition rules. This is a softball complex that, once completed, would solve all of the softball practice and game facility problems, as well as provide access to batting cages while attracting top recruits and competitors who would be willing to travel to play at this location.

185. It is fiscally irrational to build a complex that provides all the resources that the softball program needs to remain competitive—all of which were relied upon by players in their decision whether or not to attend or continue to attend LIU—and then move the team to another campus, especially one which has inferior practice and game facilities and will continue to present the softball team with problems with adequate access to indoor spaces and resources due to the current existing overcrowding of facilities at Post.

186. For example, the Post campus softball field is a natural grass surface in disrepair and pales in comparison to the new turf field complex in Brooklyn.

187. Moreover, the Post campus locker rooms and facilities are more crowded due to the

many more sports teams at Post.

188. In addition, the Post campus strength and conditioning equipment and training facilities are also more crowded, and highest priority is given to the football program.

189. Moving the softball team to the Post campus will immediately take the players farther away from their homes, classes, and majors and away from the very reason many chose to attend LIU—the proximity to Manhattan. Plaintiffs and all of the softball players currently live at the Brooklyn campus, which is where all of the classes for their majors are conducted.

190. Moving to Post would be disruptive to the academic responsibilities and advancement to the student-athletes' degrees, as it would mean that the softball players would be forced to travel back and forth even more frequently than they currently have to in order to attend classes.

191. In the future, this would change the course of the classes the softball players could select and their majors.

192. Some nursing majors, for example, may need to switch to the nursing major at Post, which has different requirements for the nursing program provided at Brooklyn, which could cause them to spend more time and money than anticipated and ultimately delay their graduation.

193. Potential recruits will be less inclined to attend LIU and play for the softball program if they see that the athletics department is making the decision to send them to a campus that has even *less* resources than the current Brooklyn facilities provide, especially one in a much less desirable location.

194. This inability to get new, talented recruits will result in an overall decrease in the level of competition that the softball program is able to play and win games at and will affect the ability of the team to successfully compete at the Division I level.

195. The coaches have recruited incoming players on the promise that the program would stay in Brooklyn with a completed state-of-the-art softball complex on which to practice and play

games.

196. LIU's softball packet that accompanied the National Letter of Intent that was sent to softball players that were offered athletic scholarships to sign in November 2022 contained an application only to the Brooklyn campus, confirming LIU's intent to keep the softball program at Brooklyn in November 2022, all of which recruits relied on and have since signed.

197. Similarly, all Plaintiffs have already enrolled in classes for Fall 2023 at the Brooklyn campus and have received residential housing assignments for the Brooklyn campus, which only recently has LIU attempted to address.

198. If the team is to move to Post, Plaintiffs are concerned about the coaching staff's ability to continue to coach the softball team. They understand that it is an even farther distance for them to travel from their homes, and many are concerned that this added distance will negatively affect their coaches' ability to stay.

199. Plaintiffs were recruited by and played each of their years for these coaches, and they do not want to see them leave.

200. In addition, LIU is aware that this move will make it extremely difficult if not impossible for the coaches to remain as the LIU softball coaches.

201. The coaches requested after Bill Martinov's April 23, 2023 email that strongly encouraged but did not require the players to move to the Post campus for Fall 2023 that they be permitted to have a second office at the Brooklyn campus to be closer to the Brooklyn players for individual meetings. This reasonable request was denied. This is another example of continued retaliation against the Plaintiffs for reporting their Title IX concerns.

202. Moreover, this move to the Post campus will make it more difficult to retain and attract coaches and recruits due to the much longer distance from New York City to the Post campus—one of the major reasons LIU is able to have a strong and successful program and attract

softball players over other Division I schools.

203. LIU softball alumni have offered to provide the funding for the dugouts and the fences, which eliminates any claim that LIU lacks funds to complete the new complex.

204. LIU's statement that moving the team to Post had been decided before the Plaintiffs' reporting of their Title IX concerns and that this move it will make the softball program more viable is at odds with the facts and is simply a pretext for LIU moving the softball program to the Post campus in retaliation for Plaintiffs reporting and pursuing Title IX concerns concerning their softball program.

205. Moreover, Bill Martinov admitted in March 2023 that the decision to move the softball team to the Post campus did not occur before the Plaintiff's reported their Title IX concerns to President Cline in December 2022.

206. In addition, LU has made conflicting statements that undermine a legitimate reason to move the softball program as follows for example:

a. On November 20, 2022, Bill Martinov replied to Coach Kortmann's email asking about progress on the both the batting cage and dugouts for the new complex that, "[w]e are working with facilities to determine a timeline to complete both projects below."

b. That email directly contradicts President Cline's email dated January 20, 2023, which set forth that dugouts were "not included in the project plans from the beginning and that all athletic personnel, including coaches were aware of this information."

c. Moreover, at the March meeting, Plaintiff Camryn Lyman asked Bill Martinov about when the team specifically asked him whether they would play on the turf field at their new complex when he attended one of their practices in the Fall 2021, he affirmed that they *would* be playing there in Spring 2022. Bill Martinov confirmed at the March 2023 meeting that that was the plan at the time. The new complex field could not be played at for games per NCAA

regulations without dugouts, showing that Bill Martinov—the “athletics personnel” with the most authority—understood in Fall 2022 that dugouts would be built before the Spring 2023 season began.

**FIRST CLAIM FOR RELIEF:**  
**Retaliation in Violation of Title IX**

207. Plaintiffs reallege and incorporate herein by this reference as though fully set forth herein the allegations contained in the preceding paragraphs.

208. Title IX prohibits schools from retaliating against anyone for making good faith complaints or reports regarding concerns about or violations of Title IX. *Jackson v. Birmingham Board of Education*, 544 U.S. 167 (2005).

209. Plaintiffs engaged in protected activity when they reported inequitable treatment of the LIU softball team in violation of Title IX in the past to LIU athletic administrators and specifically to President Cline on December 21, 2022, January 2, 2023, and January 20, 2023 as well pursuing their Title IX concerns with LIU, including engaging an attorney to pursue their claims with LIU, and in filing and prosecuting this lawsuit.

210. Because of Plaintiffs’ protected activities, LIU made the decision to move the LIU softball program to its Post campus, despite its stated intention to keep, and its actions supporting keeping the softball program permanently on the Brooklyn campus.

211. No other sports programs that had been permanently located at the Brooklyn campus since the merger have been or are being moved to the Post campus.

212. There is a causal relationship between Plaintiffs’ protected activities and Defendant’s retaliatory actions against them in violation of Title IX, 20 U.S.C. §1681 et seq. and its interpreting regulations.

213. As a direct and proximate cause of Defendant's decision to move the softball program to the Post campus, they have suffered irreparable harm that cannot be adequately compensated by money, emotional injuries, non-economic and economic losses, including humiliation, embarrassment, and emotional distress.

**SECOND CLAIM FOR RELIEF:**  
**Discrimination in Benefits and Treatment in Violation of Title IX**

214. Plaintiffs reallege and incorporate herein by this reference as though fully set forth herein the allegations contained in the preceding paragraphs.

215. As set forth above, a school's provision of equal treatment and benefits to those with participation opportunities is assessed based on an overall comparison of the male and female student athletic programs.

216. Upon information and belief, LIU has unlawfully discriminated against female student athletes in violation of Title IX with respect to athletic treatment and benefits in many areas including, but not limited to: (1) provision of equipment and supplies; (2) scheduling of games and practice times; (3) travel and per diem allowance; (4) opportunity to receive coaching and academic tutoring (5) assignment and compensation of coaches; (6) provision of locker rooms, practice and competition facilities; (7) Provision of medical and training facilities and services; (8) Provision of housing and dining facilities and services; (9) funding and fundraising opportunities; (10) publicity; (11) recruiting; and (12) support services. 34 C.F.R. § 106.41(c).

217. Equal treatment and benefits are assessed based on an overall comparison of the male and female student athletic programs in all of the above areas, and the following are some examples of the unequal treatment:

*Facilities*

218. Softball has been treated less favorably than male athletes in many ways, including



the provision of a comparable practice and playing facilities.

219. LIU is intentionally discriminating against the softball team in its provision of practice and competition facilities by its decision to move the softball team to the Post campus, which has inferior practice and competition facilities for the softball players when compared to the new complex at the Brooklyn campus, as well as creating much more difficult access to the practice and competition facility than the team currently enjoys at the new complex at Brooklyn.

#### *Locker rooms*

220. Throughout the years that Plaintiffs have been student-athletes at LIU, the only locker room that they had access to is the public locker room that is used by outside parties who come in to use the pool or other amenities at the university at the Brooklyn campus. Softball players must remove their belongings each day and are never able to use the space alone.

221. Baseball has a newly built locker room for its sole use that is located directly outside of their game and practice field.

222. Football, men's soccer, and men's and women's lacrosse have also received new locker rooms at Post's campus for their own use.

223. Providing three men's teams and one women's team their own locker room, especially considering the large numbers for football, creates an imbalance in the aggregate analysis of equal benefits for men and women that decidedly tips in favor of male sports in violation of this Title IX test.

#### *Uniforms*

224. When the softball players need their uniforms and practice gear cleaned, the players are required to bring them home and wash them themselves. When the softball team is on the road, they are forced to wash their uniforms themselves in between games in the hotel laundry machines. On numerous occasions, as a result of having to play in pants that were still wet from being washed

the night prior, a number of players suffered yeast infections.

225. Baseball players do not handle their own laundry and always have someone—be it a manager or a member of the equipment services staff—wash their practice gear, loops, and game uniforms.

226. The person who used to complete laundry for the softball team was cut in the wake of the COVID-19 pandemic and has never been replaced. When the softball program requested to hire a graduate assistant who would help with these types of tasks, the request was denied.

#### *Administrative Support*

227. Football and men's basketball both report directly to Joe Schaefer, the Chief Operating Officer at LIU, while the remaining sports report to Bill Martinov (or someone below him who ultimately reports to him).

228. This direct line of communication to Joe Schaefer allows both the football and men's basketball teams greater access to the senior leadership team at the university, and, subsequently, to the source of the university's financial and decision-making power. These two sports, both male, are given priority over all of the other women's sports and particularly given the very large numbers for football again creates an imbalance in the aggregate analysis of equal benefits for men and women that decidedly tips in favor of male sports in violation of Title IX.

#### *Strength and Conditioning*

229. Prior to the 2021-2022 academic year, there was a strength and conditioning area at the Brooklyn campus reserved for athletes that was incredibly small and in incredibly poor condition. There were holes in the walls, electrical wires hanging out, and the space itself is very cramped. There was only one squat rack, little room to deadlift, and only two benches. The softball team used this gym throughout 2018 and into 2021, when softball transferred to a better gym that they currently use—which is a shared space with the general study body—in the 2021-2022

academic year.

230. The present gym is reserved exclusively for student-athlete use until 4:00 p.m., at which time the gym opens up as a fitness center to the general student body. Similar to the restrictions in place on the practice times at the new complex, the 4:00 p.m. cutoff time limits the time slots that the softball team can access the gym without sharing it with the general student body. In addition, the men's basketball team has priority use of this space and softball must accommodate that team's schedule.

231. Additionally, there was new equipment added to this gym that softball currently uses, but the equipment was funded by the men's basketball program. Because of this, the softball players are required to reset each rack to accommodate the heights of the basketball team when they are finished using the space.

232. At the Post campus, the back of the gym on campus is reserved for student-athlete use, while the front is available to the general student body. All teams at Post's campus use this space, but football has priority use of this space and with their large numbers takes up a lot of time. Accordingly, female teams are only able to access this space after football is done, which again creates an imbalance in favor of males in the equal benefit and treatment analysis.

#### *Athletic Training*

233. According to LIU Athletics' website, there are fourteen athletic trainers for the Brooklyn campus. Football is the only sport to have two athletic trainers specifically assigned to their team, with one of those being the Director of Athletic Training Services and one whose sole title is "Head Football Athletic Trainer."

234. Conversely, there is no women's sport that is assigned an athletic trainer who works solely with that team. Each athletic trainer is "assigned" to a team that is meant to be their priority, but because there are only approximately three athletic trainers in the training room at a time, they

are often forced to fill in and help out with other teams.

235. The softball players frequently go into the training room only to see that there are not any available beds and that the space is packed with other student-athletes. This discrepancy in staff devoted to male versus female teams creates an imbalance and therefore causes LIU to once again fail in the aggregate analysis for the equal benefits and treatment test.

236. LIU will exacerbate its existing pattern and practice of sex discrimination in its allocation of benefits and treatment if it is not restrained from moving the softball program from the Brooklyn campus to the Post campus.

**THIRD CLAIM FOR RELIEF:**  
**Fraudulent Misrepresentation**

237. Plaintiffs reallege and incorporate herein by this reference as though fully set forth herein the allegations contained in the preceding paragraphs.

238. Kimberly Cline is President of LIU and has been at all relevant times. At all times relevant herein, she acted within the scope of her employment with defendant LIU.

239. Joseph Schafer is LIU Chief Operating Officer and has been at all relevant times. At all times relevant herein, he acted within the scope of his employment with defendant LIU.

240. Bill Martinov is LIU Athletic Director and has been at all relevant times. At all times relevant herein, he acted within the scope of his employment with defendant LIU.

241. Craig Angelos is LIU's current Deputy Assistant Athletic Director and has been since 2022. At all times relevant herein, he acted within the scope of his employment with defendant LIU.

242. Paul McCarthy was LIU's Deputy athletic director from March 2022 and at all relevant times through September 2022. At all times relevant herein, he acted within the scope of his employment with defendant LIU.

243. Lloyd Ribner was LIU's associate athletic director and at all relevant times through January 2022. At all times relevant herein, he acted within the scope of his employment with defendant LIU.

244. As the employer of the individuals above and for all employees acting within the scope of their employment, LIU is liable for their actions under the doctrine of *respondeat superior*.

245. LIU through its employees Coaches Kortmann, Russo and Gehrke, Bill Martinov, Kimberly Cline, Craig Angelos, Paul McCarthy, and Lloyd Ribner and others acting within the scope of their employment represented to Plaintiffs, the softball team and the softball team coaches through words and actions that the LIU softball team would be permanently located at the Brooklyn campus after the 2019 merger and up until January 23, 2023 and that they would be playing games on a newly constructed turf softball complex located at the Brooklyn campus during Plaintiffs' playing years as set forth in the above paragraphs, including but not limited to the following:

a. In 2019, the softball coaches were told by LIU athletic administrators that the softball program was one of the teams that LIU had chosen to remain at the LIU Brooklyn campus. In the spring of 2019 at the end of the softball season, the LIU athletics administration began construction on the new turf softball complex at Brooklyn confirming its intent to keep softball at Brooklyn and build the complex.

b. On September 25, 2019, Coach Kortmann specifically asked Joe Schaefer with Bill Martinov and Lloyd Ribner present if softball was going to be getting a softball field or if the team was being moved to Post, and Joe Schaefer told Coach Kortmann that LIU was building the team a field in Brooklyn, said that "nothing had changed," and said that the softball team was staying and playing in Brooklyn. Joe Schaefer also added that LIU wanted to and would have Coach Kortmann involved with design thoughts for the new turf field.

c. On March 23 and 24, 2020, Coach Kortmann emailed and spoke to Lloyd Ribner regarding information that the coaching staff had put together for the new turf field.

d. On June 3, 2020, Coach Kortmann emailed Lloyd Ribner about construction plans of the dugout including a not-to-scale image of these construction plans that clearly demonstrated what the coaching staff hoped the dugouts would look like.

e. Before Fall 2020, LIU administrators communicated to the softball coaching staff that the project would take one and a half years to complete, with a completion date of either Fall 2020 or Spring 2021.

f. Before Fall 2020, the softball coaches began telling the softball players and incoming recruits that either Fall 2020 or Spring 2021 was the timeline for the field.

g. On December 11, 2020, Coach Russo posted a video on the softball team Instagram account of the turf being laid down, which would permit the team to begin to practice on the new turf complex and representing that softball would stay at Brooklyn and the new turf would be ready for softball competition soon.

h. Lloyd Ribner told Coach Kortmann right before the Spring 2021 season began that the field would be completed and playable by the Spring 2022 season.

i. The softball coaching staff then communicated to the current players and the players that they were recruiting for the Fall 2021 season that the field would be completed and playable by Spring 2022.

j. On October 21, 2021, Coach Kortmann emailed Joe Schaefer and cc'd Bill Martinov with an attachment that included an updated potential layout area for the dugouts.

k. In October of 2021, the softball coaching staff discussed with Joe Schaefer and Bill Martinov whether the coaches wanted locker rooms or an area with an indoor batting cage in the space adjacent to the turf field. The coaches advised that the team would rather have indoor batting

cages and a place where the team could pitch, hit and practice when it was freezing or raining out. Joe Schaefer and Bill Martinov said that they could do that, and that process began in the summer of 2022.

l. In November or December 2021, Bill Martinov attended one of the softball practices and told the softball players that they would be playing games on the turf field for the Spring 2022 season.

m. On November 8, 2021, Coach Kortmann emailed Bill Martinov after their walkthrough the week prior and included a drawing of the positioning of the dugouts to help assist with construction plans. Bill Martinov replied on November 9, 2021 and said, “Working with Roy Fergus/Joe [Schaefer] to move this along.” In his response, Bill Martinov asked if Coach Kortmann had any dugout information “regarding the look,” once again involving Coach Kortmann in the process of the construction of and planning for the dugout.

n. On November 9, 2021, Coach Kortmann emailed Bill Martinov and cc’d Coaches Russo and Gehrke to provide information and correspondence on the dugouts. Coach Kortmann clarified that the items needed for inside the dugout would take a minimum of six to eight weeks for delivery. In this same email, Coach Kortmann also clarified that they could use the steel fences that LIU already had for the first and third base sides, as those would rarely need to be moved, and that they could use the lighter portable fence in the outfield. All they would need, as Coach Kortmann said in his email, would be weights to weigh down the outfield fences. Coach Kortmann estimated that the “lead time” for the fences was approximately February (of 2022). Bill Martinov replied that same day and said that he had shared the information with Roy Fergus.

o. On November 11, 2021, Coach Kortmann emailed Bill Martinov and cc’d Roy Fergus with an attachment titled, “spreadsheet dugout and field needs.” Coach Kortmann explained that this document included the costs necessary for the field. As indicated in the spreadsheet, the

total projected cost at that time, which did not include items such as the construction of the dugouts or putting up netting, was \$34,422.88.

p. On March 3, 2022, Coach Kortmann emailed Bill Martinov to follow up on the field progress. Coach Kortmann wrote that he hoped fences had been “cleared from garage” and that the dugouts were being built while the team was away, as he understood that these were the only two elements of the field that needed to be added to make the new turf field compliant with NCAA regulations. Coach Kortmann told Bill Martinov in the email that, “Teams and umpires have been booking in Brooklyn,” because, based on the information that the coaching staff provided them—which came from the information provided by administrators such as Bill Martinov to the coaching staff—that the softball team would be playing at the Brooklyn turf complex for the Spring 2022 season.

q. Bill Martinov replied on March 8, 2022 and said, “I’m talking to Joe [Schaefer] tomorrow to get a better handle on the progress. We have the fences stored across the way from your softball storage shed near the courtyard,” therefore confirming that there were portable fences available for the softball team’s use at the new turf field. Bill Martinov wrote in his email that he would reconnect with Coach Kortmann the following day after he met with Joe Schaefer.

r. Just before the softball team returned home from its spring training trip in March of 2022, Bill Martinov rescinded the promise he made to the players that the field would be ready to play on for the Spring 2022 season. Bill Martinov told Coach Kortmann over a telephone call that softball would not be playing the games in Spring 2022 on the turf because LIU had run out of money for the project but that LIU was adding the funds to the budget for the 2022-2023 budget and that the turf would be completed for playing for the Spring 2023 season.

s. Around May of 2022, the softball coaches participated in a conference call with Paul McCarthy, Ivan Lee (the fencing coach), and the complex project manager, Juan, regarding the



softball team's needs regarding the indoor batting cage area they were constructing. The softball coaches viewed a schematic and offered suggestions to the layout.

t. From May 2022 to August 2022 construction on the indoor area with batting cages was continuing.

u. From May 2022 to August 2022, the coaching staff continued to tell recruits and current players that the turf would be ready for competition in Spring 2023 based on their understanding from LIU administrators' words and actions.

v. In August 2022, construction was underway and still being completed on the indoor batting cages that were adjacent to the turf field, and the softball coaching staff understood that these were to be completed based on their ongoing conversations with Paul McCarthy.

w. On August 26, 2022, Coach Kortmann emailed Bill Martinov and cc'd Paul McCarthy and emphasized his excitement that Bill had mentioned "a lot going on with facility upgrades" on a recent staff call and requested an update on the status of the softball dugouts.

x. Bill Martinov replied on August 30, 2022 that he had not heard specific information about the dugouts, but that he was "submitting a capital funds request 2022-23 for the department and were planning to include the dugout project." In his response, Bill Martinov requested that Coach Kortmann resend him the information regarding the cost to complete the dugout project. Coach Kortmann replied that same day that the coaching staff was "updating costs from vendors" and would send them to Bill Martinov shortly. Bill Martinov replied, "Thanks Coach, the sooner the better for updated costs. We're trying to submit the capital requests by next week."

y. On this same email chain, on August 30, 2022, Paul McCarthy responded that he had discussed getting a quote for two collapsible batting cages for the multi-purpose room which, at this

point in time, the coaching staff still understood construction was being completed on for the softball team to use as a practice area to pitch and hit during inclement weather.

z. On August 30, 2022, Bill Gehrke emailed Bill Martinov, Paul McCarthy, and Coach Kortmann with an updated list of the current needs to complete the softball field. This price figure included pricing for two collapsible batting cages for the indoor area.

- The total cost of the remaining needs, per the spreadsheet attached to Bill Gehrke's email, was \$51,253.67. Bill Gehrke specified in the email that the pricing figure did not include construction of the "2-35' dugouts and all the wiring."
- Bill Martinov replied to this email on August 31, 2022. In his email, Bill Martinov asked, "Didn't we have some information regarding the dugouts, specifically the design and possible construction costs?"
- Bill Gehrke replied to Bill Martinov's email that same day and said, "Last October you asked Roy Fergus to handle the field completion but we never heard back from him I know you had told me in November you had sent him a few more emails to find out about it but I do not believe that they have a price our anything."

aa. On October 4, 2022, Coach Kortmann emailed Bill Martinov to follow up on the status of the dugouts and the completion of the field, specifically so that "we can play here in the spring." Coach Kortmann clarified that the latest update to his knowledge was that monies were to be included in the capital projects budget for approval in September 2022.

bb. Bill Martinov replied on October 7, 2022 and said, "The request has been submitted for everything that Bill [Gehrke] has provided me to date."

cc. Coach Kortmann replied on October 10, 2022 and clarified that the softball team had been playing “all away games for three years,” and that the team was quickly approaching their fourth year of this. Coach Kortmann emphasized the importance of moving forward as soon as possible so that the field could be completed and ready to play games on by the Spring 2023 season and included that, “The project was originally to be completed by builders of the building on the field and monies were in the budget to finish the dugouts. Now we are trying to get monies approved. We have gone from hearing the field will be completed to hearing crickets on any possible finish and now are in [sic] moving in circles with money issues.” Finally, Coach Kortmann added that the rental for the turf field that he coordinated, organized, and brought into the University—a rental which supplements the softball operating budget—brought in nearly \$150,000 the past year, and that this year, due to the softball team giving up more time on the new turf field, the rental has brought in nearly \$200,000.

dd. On November 20, 2022, Coach Kortmann followed up with Bill Martinov once again via email to request an update on the status of the indoor batting cage and the dugouts at the turf complex and specifically wrote in that email that both the indoor batting cages and the completion of the dugouts had a “direct influence on recruiting, retention and competitiveness,” and asked when these two projects were to be completed, to which Bill Martinov replied that he was working with facilities to determine a timeline for completion of the projects.

ee. The softball coaches believed and continued to rely on this information for scheduling and other planning and told players and recruits that the softball would remain in Brooklyn and the turf field would be ready in Spring 2023 until January 23, 2023.

246. Joe Shaefer and President Cline made and/or knew that these representations were being made and knew that these representations were false.

a. On January 23, 2023, Bill Martinov called Coach Kortmann, Coach Russo,

Coach Gehrke into a meeting with himself, Joe Schaefer, and Craig Angelos. Joe Schaefer told the coaches that LIU was permanently moving the program to Post. 37 and that the decision to move the program had been in the works for a long time.

b. On March 13, 2023, Bill Martinov scheduled a meeting on March 16, 2023 with the softball team and the coaching staff, and that this decision to move the team to the Post campus was made well before the players voiced their concerns regarding Title IX to President Cline.

c. On March 16, 2023, in a meeting between Joe Schaefer, Craig Angelos, Bill Martinov (who was on the phone), and the softball team, Joe Schaefer told the team that the team was being moved to the Post campus for the Fall of 2023 and that the decision to move the softball team to Post had been made long before December 21, 2022 when the softball players sent their Title IX concerns to President Cline.

247. Coaches Kortmann, Russo and Gehrke, Bill Martinov, Kimberly Cline, Craig Angelos, Paul McCarthy, and Lloyd Ribner made these representations to induce the softball players and recruits to attend and matriculate at LIU and play softball.

248. Plaintiffs reasonably and justifiably relied on these representations to stay enrolled, enroll and matriculate at LIU and play softball at the Brooklyn campus.

249. Plaintiffs believed the representations and did not know or even consider that these representations were false.

250. Plaintiffs would not have attended or stayed at LIU if they knew that the softball program was being moved to the Post campus.

251. Plaintiffs would not have attended or stayed at LIU if they knew that the softball program was not going to have the new turf softball complex to play on at Brooklyn and that they would need to play home games at the Post campus.

252. Plaintiffs have sustained damages as a result of these material misrepresentations and omissions.

**INJUNCTIVE RELIEF FOR ABOVE THREE CLAIMS**

253. Plaintiffs restate and by this reference as though fully set forth herein the allegations contained in the preceding paragraphs.

254. No plain, adequate, or complete remedy at law is available to the Plaintiffs to redress the wrongs addressed herein.

255. Plaintiffs are entitled to injunctive relief that restrains LIU from retaliating against them for reporting their Title IX concerns and discriminating against them in by moving them to Post in violation of Title IX, and from moving the softball to Post based on fraudulent misrepresentations.

256. Failure to grant the requested injunctive relief will cause irreparable harm to the Plaintiffs. The decision to move the softball team to Post will have an immediate and detrimental educational impact on the current and incoming LIU softball student athletes and coaches.

257. There is no adequate remedy at law for this harm.

258. The continuing, irreparable harm caused by LIU's retaliatory and discriminatory actions far outweighs any possible harm that granting the injunctive relief might cause LIU. Preliminarily enjoining LIU from moving the LIU softball program to its Post campus in particular merely ensures retention of the status quo during the course of this litigation, because these athletes have limited (if any) opportunities to pursue their interests and abilities elsewhere—especially at this late date. LIU will suffer no harm by allowing the women's varsity softball program to remain at the Brooklyn campus, other than the monetary cost of the program that it has already borne for more than 41 years at Brooklyn.

259. The injunctive relief that Plaintiffs request will promote the public interest in that it will maintain educational opportunities for female students, will end retaliatory action by LIU, and will promote compliance with federal law.

**FOURTH CLAIM FOR RELIEF:**  
**Discrimination in Financial Assistance in Violation of Title IX**

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

261. Title IX requires that male and female athletes receive total scholarship dollars equal to their athletic participation.

262. According to the numbers reported by LIU pursuant to the Equity in Athletics Disclosure Act (“EADA”), LIU has historically failed to provide female student-athletes with athletic scholarships equal to the male athletes’ scholarship allotment.

263. LIU’s scholarship gap between the amount of athletic scholarships that female athletes receive when compared to the amount male athletes receive was \$3,538,738.54 in 2019, which has increased to a \$6,557,881.32 gap in athletic aid in 2020.

264. Since at least 2011, there has not been a single year that there was a female athletic scholarship gap lower than \$2,093,810.17.

265. Were LIU to remedy the female participation gap, the gap for female athletic aid would rise considerably, making LIU even further out of compliance on this Title IX test.

266. The softball program does not have the NCAA maximum scholarship allotment. Further, its scholarships were reduced in Fall 2021—around the same time that the scholarships for women’s ice hockey were reduced. The softball program lost money for six rooms and six boards for their student-athletes.

267. By failing to provide equitable scholarship allotments to women’s teams such as softball, the softball program is unable to attract and keep top talent at the Division I level. Additional scholarships are needed now to continue to build the program that was promised to these athletes and to come into compliance with Title IX. Not only does this failure to provide the maximum NCAA scholarships impact the players on the team who are not receiving scholarship money, but it also impacts the players on the team who are receiving scholarship money, as this affects their ability to play with more talented players and provides a lesser educational experience.

268. The financial assistance that a program is able to provide its prospective athletes is a leading reason for these athletes to either choose—or choose not to—to attend an institution, and if the coaches are consistently unable to provide upcoming talent with these scholarships, they will progressively lose more and more talented prospects.

269. LIU’s failure to provide female athletes with equal athletic financial assistance violates Title IX.

**FIFTH CLAIM FOR RELIEF:**

**Discrimination in Participation Opportunities in Violation of Title IX**

270. Title IX, enacted in 1972, provides in relevant part:

No person in the United States shall, on the basis of sex, be excluded from participation 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).

271. In 1979, OCR issued a policy interpretation of Title IX and the Regulations as applied to intercollegiate athletics. This policy interpretation is found at 44 Federal Register 71,413 (1979) (the “Policy Interpretation”).

272. The Policy Interpretation provides that, in order to comply with Title IX and 34 C.F.R. § 106.41(c) and the three-part test, schools must provide equal athletic opportunities in three general areas: (1) equal athletic participation opportunities (34 C.F.R. §106.41 (c)(1)) (“The

Participation Test”); (2) equal treatment and benefits to those with participation opportunities (34 C.F.R. §106.41(c)(2)-(9)) (The Equal Benefits and Treatment Test”); and (3) equal athletic financial assistance (34 C.F.R. §106.37)(“The Athletic Scholarship Test”).

273. Under this test, Under Title IX, schools must provide both sexes "equivalent participation opportunities (including both the number of opportunities and whether the selection of sports and the level of competition effectively accommodate the interests and abilities of members of both sexes)." 44 Federal Register 71,413 (1979).

274. Compliance in the area of the first prong of equal athletic participation opportunities is determined under the following three-part test. In particular:

- 1) whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments;
- 2) where the members of one sex have been and are under-represented among intercollegiate 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
- 3) where the members of one sex are under-represented among intercollegiate 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.

*See* 44 Fed. Reg. 71,418.

275. LIU fails to comply with each prong of the three-part test described above.

276. The ratio of female to male athletes is not substantially proportionate to the overall ratio of enrolled male and female undergraduate students at LIU.

277. A female participation gap is the number of athletic spots for females that a school would need to add to bring the athletic program into compliance with the Title IX participation test.

278. According to the numbers reported by LIU pursuant to the Equity in Athletics



Disclosure Act (“EADA”), LIU has historically failed to provide female student-athletes with varsity athletic participation opportunities in numbers substantially proportionate to female undergraduate enrollment, with a female participation gap of 268 female participation slots in 2019. That number increased to a female participation gap of 358 slots in 2020. These gaps are well above the viable gap under Title IX, thereby demonstrating that LIU is noncompliant and in violation of Title IX with respect to the participation test.

279. LIU has had a female participation gap for years, and since at least 2011, there has not been a female participation gap lower than 181 student-athletes.

280. LIU requires the softball team to carry significantly more student-athletes on their roster than the average size for an NCAA Division I softball team, which is 21.9 student-athletes.

281. Plaintiffs allege that that the softball team needs at most 20 players on their roster to participate at this level most effectively. The athletics department administration has told the coaching staff to maintain rosters of approximately 26 student-athletes.

282. Each participation opportunity that exceeds this national average represents a non-genuine athletic opportunity, akin to a junior varsity program, and should not be counted for the purposes of Title IX. Moreover, the increased roster size dilutes the resources of an already under-resourced team. The additional student-athletes that the softball coaches are required to keep on their roster deprive the rest of the team from receiving the necessary repetitions during drills in practice, benefitting from a smaller one-on-one coaching ratio, and capitalizing on opportunities to play in competitive games. If the coaches’ attention is required to be spread amongst player slots that should not under Title IX constitute genuine athletic opportunities, the overall ability of the team to grow into a successful program will be undermined.

283. Even though LIU requires its men's teams to keep higher numbers than needed for its sports programs, because LIU already has a very large participation gap for women, it cannot require women's teams such as softball to keep numbers higher than the national average team size.

284. LIU has failed to provide a history and continuing practice of program expansion that is demonstrably responsive to the developing interest and abilities of the female undergraduate students at LIU and has failed to adequately expand the athletics program in a manner responsive to female students' interests and abilities. This is shown by the historical underrepresentation of female students in LIU's athletics program and LIU's failure to provide additional sports to close its massive female participation gap.

285. LIU failed to meet the 1978 regulatory deadline for compliance with Title IX's requirement for equity in athletic participation opportunities. LIU has never met its compliance obligations, and while it has added women's sports, it also continues to add men's sports, maintaining an unequal imbalance in the proportion of male to female student-athletes.

286. LIU has not fully and effectively accommodated the athletic interests and abilities of its female students.

287. Upon information and belief, LIU has failed to assess the athletic interests and abilities of its student-athletes at all—let alone in a nondiscriminatory manner—and has instead added new female sports. Instead of adding sports when females demonstrated interest in them, LIU added the sports *it* chose to add, not that its female students chose, all of which led to discrimination against women.

288. When reviewing a school's compliance on this issue, a court will evaluate to what extent the institution's previous assessments captured the interests and abilities of its students and admitted students, and this assessment must be done frequently enough to allow institutions to "identify in a timely and responsive manner any developing interests and abilities of the

underrepresented sex.” Russlynn Ali, Assistant Secretary for Civil Rights, *Dear Colleague Letter: Guidance on Accommodating Students’ Athletic Interests and Abilities: Standards for Part Three of the “Three-Part Test,”* OFFICE FOR CIV. RIGHTS, U.S. DEP’T OF EDUC. (Apr. 20, 2010), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100420.pdf>.

289. The LIU softball student-athletes confirm that the substance and frequency of any past survey—and the very recently-released surveys—fall well short of the standard of compliance for this part or Prong Three of the test set forth above.

290. LIU cannot show that it has effectively accommodated the needs of its female students.

### **ATTORNEYS’ FEES**

288. Plaintiffs have been required to retain attorneys to prosecute this action. Plaintiffs are entitled to recover reasonable attorneys’ fees and expenses pursuant to 42 U.S.C. § 1988.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that this Court:

A. Enter an order declaring that LIU has retaliated against female students for engaging in protected activities, in violation of Title IX and the regulations promulgated thereunder;

B. Enter an order declaring that LIU has discriminated against female student-athletes by providing unequal benefits and treatment, participation opportunities and financial assistance in violation of Title IX and the regulations promulgated thereunder;

C. Enter an order declaring that LIU has made fraudulent misrepresentation to female student-athletes about the location of the LIU softball program;

D. Issue a temporary restraining order to prevent LIU from moving the softball program to the Post campus until a hearing for a preliminary injunction can be held;

E. Issue a preliminary and permanent injunction restraining LIU from moving the LIU softball program to the Post campus and to follow through on its promise to complete the new complex;

F. Maintain jurisdiction over this action to monitor LIU's compliance with the Court's orders;

G. Award the Plaintiffs compensatory damages and other monetary relief as permitted by law, including punitive damages;

H. Award Plaintiffs their reasonable attorneys' fees and expenses; and

I. Order such other and further relief as the Court deems appropriate.

**PLAINTIFFS DEMAND A TRIAL BY JURY AS TO ALL ISSUES TRIABLE BY A JURY.**

Dated: May 18, 2023

Respectfully submitted:

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