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

16 MARY ELIZABETH BURNS, *an individual*;

17 Plaintiff,

18 vs.

19 SAN DIEGO STATE UNIVERSITY;  
20 BOARD OF TRUSTEES OF THE  
21 CALIFORNIA STATE UNIVERSITY; and  
22 DOES 1 through 50, inclusive,

23 Defendants.

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

COMPLAINT FOR:

- (1) Breach of Contract;
- (2) Breach of the Covenant of Good Faith and Fair Dealing; and
- (3) Retaliation

Jury Trial Demanded

1 **INTRODUCTION**

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

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

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

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

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

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

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

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

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

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

### 18 **THE PARTIES**

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

21 11. Defendant San Diego State University is and at all times mentioned herein was a  
22 governmental entity organized and existing under the laws of the State of California.

23 12. Defendant Board of Trustees of California State University is and at all times  
24 mentioned herein was a governmental entity organized and existing under the laws of the State  
25 of California. Defendants Board of Trustees of California State University and San Diego State  
26 University are collectively referred to as “SDSU” herein.

27 13. Defendants DOES 1 through 50, inclusive, are sued herein under fictitious  
28 names. Their true names and capacities are unknown to Plaintiff. When their true names and

1 capacities are ascertained, Plaintiff will amend this complaint by inserting their true names and  
2 capacities herein. Plaintiff is informed and believes, and thereon alleges, that each of the  
3 fictitiously named defendants is responsible in some manner for the occurrences herein alleged,  
4 and that the damages sustained by Plaintiff were proximately caused by such defendants.

5 14. Upon information and belief, Plaintiff alleges that each of the defendants herein  
6 was, at all times relevant to this action, the agent, employee, representing partner, and/or joint  
7 venturer of the remaining defendants and was acting within the course and scope of the  
8 relationship. Plaintiff is further informed, believes, and thereon alleges, that each of the  
9 defendants herein gave consent to, ratified, and authorized the acts alleged herein to the  
10 remaining defendants.

#### 11 **JURISDICTION AND VENUE**

12 15. This Court has jurisdiction over Coach Burns' claims, and is the proper venue,  
13 because these claims are brought under California law, and a substantial amount of the events  
14 and conduct alleged herein took place in the County of San Diego, California.

#### 15 **GENERAL ALLEGATIONS**

16 16. Coach Burns was head coach of the SDSU women's basketball team from  
17 1989 to 1997. She left SDSU to serve as head coach of the Ohio State University women's  
18 basketball team, and as strength and conditioning coach at Stanford University. In 2005, Coach  
19 Burns returned to SDSU as head coach of the women's basketball team.

#### 20 **Coach Burns' Employment Agreement**

21 17. Coach Burns and SDSU renegotiated her Employment Agreement on  
22 September 11, 2007 (the "Agreement"). The Agreement was for an initial five year term, but  
23 the parties agreed to extend it in September 2010, and on July 17, 2012. The July 17, 2012  
24 extension was valid through June 30, 2017.

25 18. A true and correct copy of the Agreement is attached hereto as Exhibit A and is  
26 incorporated herein by reference. According to Section V.B of the Agreement, SDSU was only  
27 entitled to terminate Coach Burns for "cause."  
28

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

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

8           20.     During the course of her employment at SDSU, Coach Burns repeatedly  
9 challenged SDSU's disparate treatment of its women's basketball program compared to men's  
10 sports such as football and basketball.

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

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

21           23.     As another example, SDSU required Coach Burns to count male practice players  
22 as female participants in SDSU's annual mandatory gender equity report to the U.S.  
23 Department of Education and in "Voluntary Self-Monitoring of Equal Opportunity in Athletics  
24 for Women Students (former CSU/CA NOW Consent Decree)" reports. Coach Burns  
25 reasonably believed that this disclosure violated the Equity in Athletics Disclosure Act  
26 ("EADA"), or that it could result in an EADA violation.

27           24.     Coach Burns expended her own funds to make up for SDSU's lack of support  
28 for the women's basketball program. Coach Burns spent thousands of dollars of her own

1 money to purchase food, gear, and practice equipment, take staff members to working lunches,  
2 purchase parking passes for staff members, and pay for moving expenses for staff members.

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

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

17 27. During production meetings to discuss promotions and plans for men's and  
18 women's basketball games in the upcoming season, the athletic administration typically came  
19 to the meeting with a well-thought plan for the men's basketball season that included fan  
20 giveaways (like free t-shirts or red/black wigs), advance ticket sales, and parking for boosters.  
21 In contrast, the women's basketball staff at the production meetings was often left to demand a  
22 similar plan for women's basketball. Because of these demands, women's basketball got some  
23 fan giveaways, but not as many as men's basketball. Many of the women's basketball fan  
24 giveaways were simply leftovers from the men's basketball games. Coach Burns complained  
25 about this to athletic department officials.

26 28. Although SDSU had set up online ticket ordering for men's basketball and  
27 football games, the women's basketball tickets were only available at the door for single game  
28

1 purchase. SDSU eventually created a season ticket package for women's basketball that could  
2 be ordered online, but only after Coach Burns and her staff complained.

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

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

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

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

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

20 33. Sterk and Thaler told Coach Burns several times during this meeting that the  
21 "sole cause" for her termination was a video showing her striking a subordinate. Coach Burns  
22 had absolutely no idea what they were talking about. She asked for more information and an  
23 opportunity to discuss this accusation, but Sterk and Thaler told her that her termination was  
24 "automatic," "non-negotiable," and approved by SDSU President Elliot Hirshman.

25 34. Coach Burns' shock and confusion was compounded by the fact that, over the  
26 years of her tenure, the previous and current presidents of San Diego State University attended  
27 multiple home and away games for the women's basketball team. Each of them sat in close  
28 proximity to the women's basketball team bench where they could easily and fully view all of

1 Coach Burns' conduct during the game. Neither of them ever levied any criticism of Coach  
2 Burns' bench decorum. To the contrary, she received letters of commendation for the  
3 performance of the women's basketball team season to season. In fact, President Hirshman  
4 sent the most recent recommendation letters to her less than one month before she was forced  
5 to retire.

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

9 36. Under immense pressure to make a decision on the spot, and with the specter of  
10 losing pension benefits hanging over her head, Coach Burns reluctantly agreed to "retire."

11 **The Video That Was The "Sole Cause" For SDSU's Decision**  
12 **Does Not Support A Termination**

13 37. Days after her termination, SDSU reluctantly provided Coach Burns with a copy  
14 of the video that it stated was the "sole cause" for its decision to terminate her. The video was  
15 taken during a game in February 2013, two months before her termination.

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

21 **SDSU Treated Coach Burns Differently Than Her Male Colleagues**

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

25 40. In 2002, SDSU became aware that its then-football coach, Tom Craft, had  
26 slapped a freshman football player across the face in front of his teammates. Coach Burns is  
27 informed and believes that SDSU was aware that several people had witnessed this direct and  
28



1 intentional abuse of a player, but SDSU refused to fully investigate it or take action against  
2 Coach Craft.

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

6 42. Coach Burns is informed and believes that SDSU never disciplined Coach Craft  
7 for his abusive contact. Coach Craft remained SDSU's football coach until he was fired in  
8 2005 – not for the abuse, but for his poor performance as a coach.

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

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

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

18 45. Coach Burns has been substantially harmed by SDSU's conduct. She was  
19 entitled to be paid a minimum of \$880,000.00 in additional base salary under the July 17, 2012  
20 extension. She has lost pension benefits. Because of SDSU's pretextual excuse for her  
21 termination, Coach Burns has been unable to find alternative employment, and will likely not  
22 be able to find another job coaching women's basketball at a Division I school.

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

24 46. Coach Burns filed a request for a right to sue letter with the California  
25 Department of Fair Employment and Housing ("DFEH") on October 1, 2013. The DFEH  
26 issued a right to sue letter, attached as Exhibit C, on October 7, 2013.

27 47. Coach Burns filed a government tort claim following the procedures set forth by  
28 the California State University on October 1, 2013. CSU issued a notice rejecting Coach

1 Burns' claim on November 5, 2013, a true and correct copy of which is attached hereto as  
2 Exhibit D.

3 **FIRST CAUSE OF ACTION**  
4 **(Breach of Employment Contract Against Board of Trustees and SDSU)**

5 48. Coach Burns incorporates and realleges all of the above paragraphs as if fully  
6 set forth herein.

7 49. Coach Burns had a valid, written employment contract (the "Agreement") with  
8 SDSU. *See* Exhibit A.

9 50. Coach Burns and SDSU agreed to extend this contract through June 30, 2017.  
10 *See* Exhibit B.

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

13 52. The Agreement provided that SDSU could only terminate Coach Burns for  
14 "cause," and provides specific definitions for "cause."

15 53. SDSU breached the Agreement by terminating Coach Burns without cause.  
16 Coach Burns did not engage in any conduct that falls within the definitions of "cause" in the  
17 Agreement.

18 54. SDSU's termination of Coach Burns was arbitrary, capricious, and pretextual.

19 55. SDSU failed to conduct an adequate investigation before terminating Coach  
20 Burns. SDSU also failed to provide notice to Coach Burns of the claimed misconduct, or give  
21 her an opportunity to respond to its charges.

22 56. Coach Burns was harmed by SDSU's breach in an amount to be determined at  
23 trial, with interest thereon.

24 **SECOND CAUSE OF ACTION**  
25 **(Breach of the Implied Covenant of Good Faith and Fair Dealing Against SDSU)**

26 57. Coach Burns incorporates and realleges all of the above paragraphs as if fully  
set forth herein.

27 58. Coach Burns had a valid, written employment contract (the "Agreement") with  
28 SDSU. *See* Exhibit A.



1 athletics compared to men's athletics, including its discriminatory effect on the working  
2 environment in the women's basketball program.

3 68. As a proximate cause of this retaliation, Coach Burns has sustained and  
4 continues to sustain substantial losses of earnings and other employment benefits in an amount  
5 to be determined at trial.

6 69. Defendants' actions were despicable and done with oppression, malice, and a  
7 conscious disregard of Coach Burns' rights. For example, by using the pretext of a workplace  
8 violence incident, Defendants have irreparably harmed Coach Burns' reputation and made it  
9 unlikely, if not impossible, that she will ever be able to coach women's basketball at the  
10 Division I level again. As a result, Coach Burns is entitled to punitive or exemplary damages  
11 in an amount to be determined at trial.

12 70. As a further direct and legal cause of Defendants' conduct, Coach Burns has  
13 been compelled to retain the services of counsel to protect and enforce her rights, and therefore  
14 has incurred, and continues to incur, attorneys' fees and litigation costs for which Coach Burns  
15 is entitled to reimbursement in an amount to be determined at trial.

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Coach Burns prays for judgment against Defendants as follows:

18 71. For general, compensatory, and special damages according to proof;

19 72. For punitive or exemplary damages;

20 73. For an award of attorneys' fees;

21 74. For an award of interest, including pre-judgment interest, at the highest legal  
22 rate;

23 75. For reimbursement of all costs of suit incurred, including expert witness fees;  
24 and

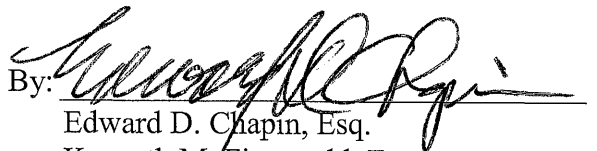
25 76. For such other and further relief as the Court deems just and proper.

26 **JURY DEMAND**

27 77. Plaintiff demands a jury trial of all triable issues.  
28

1 Dated: February 18, 2014

CHAPIN FITZGERALD LLP

2  
3 By: 

4 Edward D. Chapin, Esq.  
5 Kenneth M. Fitzgerald, Esq.  
6 Jennifer Arnold, Esq.  
7 Attorneys for Elizabeth Burns  
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# EXHIBIT A

## Employment Agreement

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

### **I. PURPOSE**

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

### **II. POSITION**

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

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

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

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

### **IV. COMPENSATION**

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

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

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



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

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

C. Bonus Plans

1. Achievement Bonuses:  
Coach shall receive a bonus for each of the following achievements:
  - \* MWC Regular Season Championship: 1 month's base salary
  - \* NCAA Tournament Appearance: 1 1/2 month's base salary
  - \* NCAA Final Four Appearance: \$35,000
  - \* NCAA Championship \$50,000
  - \* NIT post-season Appearance: 1 month's base salary

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

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

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

Revenue Bonus: \$10,000

- \* Season Ticket and Single Game Revenue; \$70,001 and above

Revenue Bonus: \$20,000

(These metrics will be adjusted proportionately as ticket prices increase)

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

#### D. Outside Income

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

#### E. Other Compensation Related Terms:

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

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

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

## **V. TERMINATION**

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

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

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

1. Before completion of years one and two:	\$200,000
2. Before completion of year three:	\$100,000
3. Before completion of year four:	\$50,000
4. Before completion of year five:	0

**VI. MISCELLANEOUS**

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

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

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

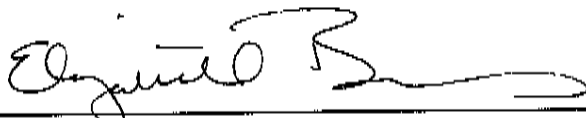
If to University: San Diego State University  
Athletics Department  
5500 Campanile Drive  
San Diego, CA 92182-4313  
Attn: Director of Athletics

**VII. ACKNOWLEDGMENT**

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

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

COACH:


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

Date: 9/11/07

UNIVERSITY:

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

Date: 9/12/07

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

Date: 9/13/07

# EXHIBIT B



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

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

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

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

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

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


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

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


DATED: July 17, 2012

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

DATED: July 17, 2012

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

DATED: July 17, 2012

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

# EXHIBIT C



**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

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

Oct 07, 2013

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

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

DFEH Matter Number: 175537-73880

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

Dear Mary Burns:

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

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

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

Sincerely,

Department of Fair Employment and Housing

Enclosures

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

# EXHIBIT D

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

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

**November 05, 2013**

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

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

Dear Mr. Chapin:

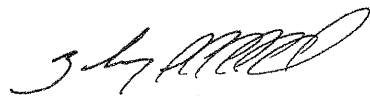
Notice is hereby given that the claim which you presented on behalf of Mary Elizabeth Burns to the California State University, Office of the Chancellor, Systemwide Risk Management on October 01, 2013 was rejected on November 05, 2013.

**WARNING**

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

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

Sincerely,



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

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

Fresno  
Fullerton  
Humboldt  
Long Beach  
Los Angeles  
Maritime Academy

Monterey Bay  
Northridge  
Pomona  
Sacramento  
San Bernardino  
San Diego

San Francisco  
San José  
San Luis Obispo  
San Marcos  
Sonoma  
Stanislaus

**PROOF OF SERVICE**  
**(C.C.P. SECTION 1013(a), 2015.5)**

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

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

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

Rejection of Mary Elizabeth Burns' Claim Against the CSU

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

Edward D. Chapin

Chapin Fitzgerald LLP

550 West C St. Ste. 2000

San Diego, CA 92101

I personally served such envelope by hand to the addressee.

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

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

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

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



Martha Guiditta  
Systemwide Risk Management  
The California State University