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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LAUREN M. CRUZ, by her next friend  
Jean Cruz; VALERIE HERRERA, by her  
next friend Carolina Herrera; JENNIFER  
N. CERROS; CATHERINE GREMPER,  
by her next friend Tina Gremper,  
individually and on behalf of all those  
similarly situated,

Plaintiffs,

vs.

ALHAMBRA SCHOOL DISTRICT;  
THE CITY OF ALHAMBRA; RUSSELL  
LEE-SUNG, VICTOR SANDOVAL,  
LOU TORRES, WILLIAM A.  
VALLEJOS, JOHN H. NUNEZ,  
ROBERT L. GIN, RUTH E. CASTRO,  
and BARBARA A. MESSINA, in their  
official capacities,

Defendants.

CASE NO. CV 04-1460 DT (Mcx)

ORDER GRANTING PLAINTIFFS'  
MOTION FOR CLASS  
CERTIFICATION FOR  
INJUNCTIVE RELIEF

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# I. BACKGROUND

## A. Factual Summary

Plaintiffs Lauren M. Cruz ("Cruz"), Valerie Herrera ("Herrera"), Jennifer N. Cerros ("Cerros"), Catherine Grempel ("Grempel"), and all others similarly situated (collectively "Plaintiffs")<sup>1</sup> bring this class action pursuant to Federal Rule of Civil Procedure ("Rule") 23(a) and (b)(2) for injunctive relief against Defendants Alhambra School District (the "District"), the City of Alhambra (the "City"), and District employees Russell Lee-Sung ("Lee-Sung"), Victor Sandoval ("Sandoval"), Lou Torres ("Torres"), William A. Vallejos ("Vallejos"), John H. Nuñez ("Nuñez"), Robert L. Gin ("Gin"), Ruth E. Castro ("Castro"), and Barbara A. Messina ("Messina") (collectively, "Individual District Defendants") (all defendants collectively known as "Defendants") for unlawful sex discrimination against female student athletes at Alhambra High School ("AHS") pursuant to Title IX of the Education Amendments of 1972, the United States Constitution, and California state law.<sup>2</sup>

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<sup>1</sup> As of the date the Complaint was filed on March 4, 2004: Plaintiff Cruz was a 15-year-old female who played softball as an Alhambra High School ("AHS") student, and proceeds in this action by her next friend, her mother, Jean Cruz; Plaintiff Herrera was a 17-year-old female who played softball as an AHS student, and proceeds in this action by her next friend, her mother, Carolina Herrera; Plaintiff Cerros was an 18-year-old female who played basketball as an AHS student; and Plaintiff Grempel was a 14-year-old female who proceeds in this action by her next friend, her mother, Tina Grempel. Complaint, ¶¶ 11-14. At the time the Complaint was filed, Grempel attended Emory Park School in Alhambra, California; however, she was to attend AHS starting Fall 2004, and intended to play softball and track and field as an AHS student. Id. at ¶ 14. According to Plaintiffs, Grempel now attends AHS.

<sup>2</sup> Plaintiffs rely on the following statutes: Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681, et seq. and its interpreting regulations; the Equal Protection Clause of the Fourteenth Amendment to the United States

1 The following facts are alleged in the Complaint:

2 Defendants unlawfully fail to provide female student athletes equal  
3 treatment and benefits as compared to male athletes in a myriad of ways, including  
4 but not limited to:

- 5 (a) Assigning female student athletes to inferior, substandard,  
6 poorly maintained and dangerous playing facilities while  
7 assigning male student athletes to the best facilities which are  
8 superior, well maintained and safe;
- 9 (b) Hiring less experienced and walk-on coaches for female  
10 student athletes;
- 11 (c) Assigning female student athletes to an inferior and dilapidated  
12 locker room with broken showers and restrooms while  
13 providing male student athletes three locker rooms, thus giving  
14 male student athletes access to additional locker space, working  
15 showers and restrooms;
- 16 (d) Securing the most popular "prime time" slots for male student  
17 athletes' practice and competition times while relegating the  
18 female student athletes to the earlier, less desirable time slots;
- 19 (e) Excluding female student athletes entirely from two of AHS's  
20 weight rooms, and effectively excluding female student athletes  
21 from the use of a third weight room;
- 22 (f) Consistently providing less publicity and support for female  
23 athletic teams than for male athletic teams, including not

24  
25 Constitution as enforced through 42 U.S.C. § 1983; the California Constitution,  
26 Article 1, § 7; California Education Code §§ 230 et seq.; and California  
27 Government Code § 11135. Plaintiffs request Declaratory and all other relief  
28 authorized pursuant to 28 U.S.C. § 2201 and § 2202.

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1 providing cheerleaders, pep band, public address system,  
2 scoreboards and videotaping; and

3 (g) Failing to ensure appropriate funding to support female student  
4 athletes.

5 Complaint, ¶ 5.

6 Defendants have intentionally discriminated against female student  
7 athletes by funding, authorizing, constructing, renovating and maintaining Moor  
8 Field, which is a state-of-the-art facility designed and intended primarily for male  
9 student athletes. Id. at ¶ 6. The District and Individual District Defendants have  
10 discriminated against female students at AHS by failing to provide the female  
11 students with equal opportunity to participate in athletic programs. Id. at ¶ 7. As a  
12 result, female students have been unable to participate in AHS team sports, have  
13 been deterred from participating, or have been excluded from AHS's athletic  
14 programs altogether. Id.

15 Defendant Lee-Sung is the principal of AHS. Id. at ¶ 17. Lee-Sung  
16 has authority and control over the day-to-day operations of AHS, including its  
17 policies, practices, procedures, facilities, maintenance, programs, activities,  
18 services and employees in AHS's athletic department. Id.

19 Defendant Torres is the athletic director at AHS. Id. at ¶ 18.  
20 Defendant Sandoval is the vice principal of business and activities at AHS. Id. at  
21 ¶ 19. Both Torres and Sandoval have authority and control over the day-to-day  
22 operations of AHS, including its policies, practices, procedures, programs,  
23 activities, services, coaches and teams. Id. at ¶¶ 18, 19.

24 Defendant Vallejos is the President of the Alhambra School District  
25 Board of Education (the "Board"). Id. at ¶ 20. Defendant Nuñez is the Board  
26 Vice-President. Id. at ¶ 21. Defendant Gin is the Clerk of the Board. Id. at ¶ 22.  
27 Defendants Castro and Messina are Board Members. Id. at ¶¶ 23, 24. In their  
28

1 official capacities as members on the Board, Vellejos, Nuñez, Gin, Castro and  
2 Messina are responsible for the actions of the District and for ensuring that the  
3 District complies with all state and federal laws prohibiting sex discrimination. *Id.*  
4 at ¶¶ 20-24.

### 5 **The Proposed Class**

6 Plaintiffs seek to represent a class of all present and future AHS  
7 female students and potential students who participate, seek to participate, and/or  
8 are deterred from participating in athletics at AHS. *Id.* at ¶ 26.

### 9 **Sex-Based Discrimination In Athletic Treatment And Benefits**

10 The District and Individual Defendants have unlawfully discriminated  
11 against female athletes with respect to athletic treatment and benefits in areas  
12 including, but not limited to: practice and competitive facilities; training facilities;  
13 locker rooms; coaches and coaching facilities; scheduling of games and practice  
14 times; publicity; and funding. *Id.* at ¶ 37. All Defendants have discriminated  
15 against AHS female student athletes by failing to provide equal access to the  
16 facilities at Moor Field. *Id.* at ¶ 37.

#### 17 *Moor Field Renovation*

18 Around June 2002, the District and the City began upgrading Moor  
19 Field, a piece of land located about two miles from AHS and owned by the  
20 District. *Id.* at ¶ 39. The upgrade was a joint project, with the City providing  
21 \$900,000.00 to upgrade the school-owned field and the District contributing to its  
22 upgrade and maintenance. *Id.* The City and the District jointly decided to  
23 renovate the three fields at Moor Field by building two baseball diamonds  
24 exclusively for male student athletes and one multi-use field, which does not meet  
25 softball specifications. *Id.*

26 The City's decision to not build a softball field at Moor Field is  
27 consistent with its discriminatory conduct. *Id.* at ¶ 40. No field within the City of  
28

1 Alhambra has an appropriate softball field, while the City maintains five baseball  
2 fields for boys. Id. The City recently upgraded the baseball fields in one park,  
3 again failing to build a place to play softball. Id.

4 Although the City and the District closely consulted AHS's head  
5 baseball coach about the Moor Field renovation, they did not approach or inform  
6 AHS head softball coach of the proposed upgrade. Id. at ¶ 42. During planning  
7 meetings for the Moor Field renovation, which included District and City officials,  
8 attendees discussed but intentionally disregarded discrimination issues. Id. at ¶  
9 44.

### 10 The Third Street Field

11 While AHS boys' baseball teams play at the state-of-the-art facility at  
12 Moor Field, the girls play softball on a substantially inferior and dangerous field  
13 located at AHS (hereinafter, the "Third Street Field"). Id. at ¶ 45. The Third  
14 Street Field is an unlevel, small dirt field with deep holes. Id. The ground is so  
15 dry that falling on the field is like "sliding on concrete." Id. Because the field is  
16 not level, many students trip as they attempt to run. Id. Also due to the  
17 unevenness of the Third Street Field, the junior varsity home plate is flooded  
18 during the rainy season. Id. The District's maintenance department refuses to lay  
19 dirt on the softball field on a regular basis. Id. The condition of the field causes  
20 injuries to female softball players. Id. at ¶ 47.

21 Unlike the Moor Field, the Third Street Field does not have batting  
22 cages, electronic scoreboards, pitching bullpens or cement dugouts. Id. at ¶ 48.  
23 Moreover, unlike the Moor Field diamonds, the Third Street Field has no pitching  
24 rubber, home plate or protective fence where the pitcher warms up. Id. The  
25 District and Sandoval have denied money to the softball program to build  
26 appropriate safety fencing. Id. The Third Street Field also has no electrical outlets  
27 on the field, making it difficult to use a pitching machine to train players, it also

1 has no concession stand facilities, thus denying softball players the ability to raise  
2 much needed funds, and there is no cemented area for bleachers.<sup>3</sup> Id.

3 The Third Street Field is too small to accommodate girls' softball. Id.  
4 at ¶ 49. The two girls' softball teams often play on the field at the same time and,  
5 during games, the girls are forced to interrupt the regulation play when a fielder  
6 from the other team misses a ball because the outfields overlap. Id.

### 7 The Small Gym

8 The girls' basketball team is assigned the "small gym" for practice  
9 while the boys' basketball team is allowed to practice in the "big gym." Id. at 50.  
10 The girls basketball gym is not regulation size. Id. Therefore, the girls' basketball  
11 team actually plays games in the "big gym." Id. The female basketball players  
12 can use the big gym only if they practice before the boys, practice late in the  
13 evening when the boys are done, or when the boys do not have practice. Id.

### 14 Training Facilities

15 Male student athletes have far greater access to weight training  
16 facilities and weight training coaches than the female student athletes. Id. at ¶ 51.  
17 AHS has three weight rooms, including one at Moor Field and two at the school  
18 facility. Id. The weight room at Moor Field is available to the football and boys'  
19 baseball teams; girls are not permitted to use it. Id. One of the two weight rooms  
20 at the school is assigned exclusively to the football team, and girls are prohibited  
21 from accessing it. Id. The last weight room is open to girls; however, girls are  
22 denied access while boys' wrestling, basketball and track teams use the room.  
23 Moreover, on a few occasions when female athletes have been able to access the  
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25  
26 <sup>3</sup> It is unclear from the allegations in the Complaint whether the Moor Field  
27 has electrical outlets on the field, concession stand facilities or cemented areas for  
28 bleachers.

1 third weight room, they have been directed to leave when male athletes chose to  
2 use it, as male athletes are given priority. Id.

### 3 Locker Rooms

4 The girls' locker facilities are dramatically inferior to the boys' locker  
5 facilities. Id. at ¶ 52. While male student athletes are provided three separate  
6 locker rooms, female student athletes are provided only one—the physical  
7 education ("PE") locker room. Id. The boys' locker room is larger than the girls,  
8 providing boys with bigger and more lockers to store their athletic equipment. Id.

9 The condition of the girls' locker facilities are abysmal. Id. at ¶ 53.  
10 The showers in the girls' locker room have not worked for several years and the  
11 toilets are frequently non-functioning and/or overflowing. Id. Because the toilets  
12 frequently leak, the locker room often resembles a sewer and the girls cannot place  
13 their equipment and clothes on the floor. Id. While male student athletes have  
14 access to functioning showers and amenities in the additional male locker rooms,  
15 female student athletes do not. Id. Moreover, the majority of lockers provided to  
16 female student athletes in the girls' PE locker room are not large enough to store  
17 uniforms or equipment, and the girls are not allowed to use and lock the lockers  
18 overnight.<sup>4</sup> Id. at ¶ 54. Also, during home games, visiting male basketball teams  
19 are allowed to use the boys' locker room located off the big gym while the AHS's  
20 own girls' basketball players have been denied access. Id. at ¶ 55.

### 21 Coaches and Coaching Facilities

22 The District and Individual District Defendants discriminate against  
23 female student athletes by hiring walk-on coaches to head female teams while  
24 providing male teams with coaches who are full-time teachers at AHS. Id. at ¶ 56.

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25  
26 <sup>4</sup> It is unclear whether male student athletes at AHS are provided lockers  
27 that are large enough to store their uniforms and equipment, and whether only  
28 male student athletes may use the lockers overnight.

1 As a result, male athletes have greater access to their coaches who are located on  
2 campus, whereas the coaches of female teams are frequently inaccessible to the  
3 female student athletes during non-scheduled practice and game times. Id. at ¶ 56.

4 In addition, student athletes at AHS can sign up for 6th period classes  
5 to play their particular sport during the Fall. Id. at ¶ 57. Although the District has  
6 a full-time teacher assigned to supervise the male baseball players during this  
7 period, unless a softball coach works without pay, there is no girls' softball coach  
8 available. Id.

9 The girls' basketball team also receives less coaching time. Id. at 58.  
10 This is because neither the head coach nor the three assistant coaches are full-time  
11 teachers. Id. at ¶ 58. The District has not paid basketball coaches to supervise 6th  
12 period. Id. At times, the girls' basketball team must practice late at night because  
13 the walk-on coach was not available during the day. Id. The current girls' head  
14 basketball coach is an AHS security guard who is unavailable to supervise the  
15 girls during 6th period. Id. In contrast, the boys' basketball coach is a full-time  
16 faculty member who is available during 6th period. Id. Moreover, three of the  
17 four assistant coaches for the boys' basketball team are full-time employees at  
18 AHS. Id.

19 The coaches for the female student athletic teams at AHS have less  
20 experience than the coaches of the male athletic teams. Id. at ¶ 59. Moreover, the  
21 District does not provide its walk-on coaches of female sports teams with proper  
22 office facilities. Id. at ¶ 61. The tiny room given to the girls' basketball coach has  
23 no electrical outlets and is too small to accommodate the team during half-time  
24 and team meetings. Id. In contrast, the boys' basketball coach has an office large  
25 enough to accommodate the boys' team, has electrical outlets, couches, storage  
26 closets, a television and video recorder.

27 *Scheduling Games and Practice Times*

1 The District and Individual District Defendants discriminate against  
2 female student athletes in the scheduling of games by assigning the most popular  
3 "prime time" slots (i.e., non-school nights or any day after 7:00 p.m.), girls are  
4 assigned to the earlier, less desirable afternoon time slots. Id. at ¶ 62. As a result  
5 of the unequal scheduling, less people attend the girls' games and the girls are  
6 deprived of the opportunity to raise much needed funds through the sale of  
7 programs and concessions. Id.

#### 8 Publicity

9 The District and Individual District Defendants provide less publicity  
10 and support for their female student athletic teams than for their male student  
11 athletic teams, including cheerleaders, pep band, public address system,  
12 scoreboards, and videotaping. Id. at ¶ 63.

#### 13 Funding

14 The District and Individual District Defendants provide less money to  
15 support female athletes than male athletes. Id. at ¶ 64. The District and Individual  
16 District Defendants also interfere with and fail to properly support fund raising for  
17 female athletes and their teams. Id.

#### 18 **Failure To Effectively Accommodate Female Students' Interest And Abilities** 19 **In Athletics**

20 The District and Individual District Defendants unlawfully  
21 discriminate by failing to provide equal athletic participation opportunities in all  
22 girls' sports. Id. at ¶ 66.

#### 23 Girls' Softball

24 The District sponsors only two softball teams for female students at  
25 AHS (junior varsity and varsity), while it sponsors three baseball teams for boys  
26 (freshman, junior varsity and varsity). Id. at ¶ 70. As a result, the District offers  
27 significantly more participation opportunities to boys than to girls. Id.

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1 Without a freshman team, 13 and 14-year-old freshman and  
2 sophomore girls must compete for spots on the junior varsity and varsity teams  
3 against upper-class girls. Id. at ¶ 71. For the 2002-03 season, approximately 50  
4 girls tried out for only 12 vacant slots on the softball team. Id.

5 Girls Basketball

6 The District sponsors four boys' basketball teams (freshman,  
7 sophomore, junior varsity and varsity). Id. at ¶ 71. In contrast, despite strong  
8 interest from AHS girls who want to play basketball, the District only sponsors  
9 three basketball teams for female students at AHS (freshman, junior varsity and  
10 varsity). Id.

11 **B. Procedural Summary**

12 On March 4, 2004, Plaintiffs filed a Class Action Complaint for  
13 injunctive relief.

14 On March 31, 2004, the District and Individual District Defendants  
15 filed their Answer.

16 On April 21, 2004, the City filed its Answer.

17 On June 1, 2004, the Court set the following deadline dates at the  
18 Scheduling Conference: Motion for Class Certification - August 30, 2004;  
19 Discovery Cutoff - January 28, 2005; Pretrial Conference and Trial - May 2, 2005.

20 On July 19, 2004, the Court approved the parties' Stipulation to  
21 reschedule Plaintiffs' Motion for Class Certification to be filed no later than  
22 September 13, 2004.

23 On September 13, 2004, Plaintiffs filed a Motion for Class  
24 Certification, which is currently before the Court.

## 1 II. DISCUSSION<sup>5</sup>

### 2 A. Standard for Class Certification

3 “Class actions have two primary purposes: (1) to accomplish judicial  
4 economy by avoiding multiple suits, and (2) to protect rights of persons who might  
5 not be able to present claims on an individual basis.” Haley v. Medtronic, Inc.,  
6 169 F.R.D. 643 (C.D. Cal. 1996) (citing Crown, Cork & Seal Co. v. Parking, 462  
7 U.S. 345 (1983)). Rule 23 governs class actions. A class action “may be certified  
8 if the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule  
9 23(a) have been satisfied.” Gen. Tel. Co. of the Southwest v. Falcon, 457 U.S.  
10 147, 161 (1982).

11 “To certify a class action, Plaintiff must set forth prima facie facts  
12 that support the four requirements of Rule 23(a): (1) numerosity (a class [so large]  
13 that joinder of all members is impracticable); (2) commonality (questions of law or  
14 fact common to class); (3) typicality (named parties’ claims or defenses are typical  
15 . . . of the class); and (4) adequacy of representation (representatives will fairly  
16 and adequately protect the interests of the class).” Mego Fin. Corp. Sec. Litig. v  
17 Nadler, 213 F.3d 454, 462 (9th Cir. 2000) (internal quotations omitted). These  
18 requirements effectively “limit the class claims to those fairly encompassed by the  
19 named plaintiff’s claims.” Falcon, 457 U.S. at 155 (quoting Gen. Tel. Co. of  
20 Northwest v EEOC, 446 U.S. 318, 330. Because of the early and thus necessarily  
21 speculative stage at which the certification hearing is held, an extensive  
22 evidentiary showing is not required; rather, all that is required is enough for the  
23

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24  
25 <sup>5</sup> The Court notes the parties’ noncompliance with Local Rules with respect  
26 to typeface size and spacing requirements. The parties are reminded to strictly  
27 follow Court rules. Future failure to comply with Court rules may result in  
28 sanctions.

1 court to form a "reasonable judgment" on each requirement. See Blackie v.  
 2 Barrack, 524 F.2d 891, 901 (9th Cir. 1975).

3 **B. Plaintiffs' Have Met The Prima Facie Showing To Satisfy**  
 4 **Rule 23(a)**<sup>6</sup>

5 As stated above, Plaintiffs carry the burden to establish a prima facie  
 6 showing of Rule 23(a) prerequisites for certification by demonstrating that a  
 7 sufficient basis exists for forming a reasonable judgment on each requirement.  
 8 Plaintiffs maintain that each of the Rule 23(a)'s four criteria—numerosity,  
 9 commonality, typicality and adequate representation—is satisfied in the instant  
 10 case. For the reasons set forth below, this Court agrees.

11 1. Numerosity

12 To establish numerosity, a plaintiff must show that the class he seeks  
 13 to represent is so numerous that joinder of all class members is impracticable.  
 14 Fed. R. Civ. P. 23(a)(1). "Plaintiffs do not need to state the exact number of  
 15 potential class members, nor is a specific number of class members required for  
 16 numerosity. Rather, whether joinder is impracticable depends on the facts and  
 17 circumstances of each case." Bates v. United Parcel Servs, 204 F.R.D. 440, 444  
 18 (N.D. Cal. 2001). The numerosity requirement imposes no numerical floor on  
 19 class size, but instead requires the court to examine each proposed class on its own  
 20 facts. Cox v. Am. Cast Iron Pipe Co., 784 F.2d 1546, 1553 (11th Cir. 1986).  
 21 When the class numbers at least forty, joinder is usually considered impracticable.  
 22 Consol. Rail Corp. v. Town of Hyde Park, 47 F.3d 473, 483 (2nd Cir. 1995).

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23  
 24 <sup>6</sup> The Court is in receipt of two Oppositions filed on September 20, 2004.  
 25 One was filed by the City, and the other Opposition was filed by the District and  
 26 Individual District Defendants. Both Oppositions present similar if not identical  
 27 arguments for denying class certification. As such, the Court does differentiate as  
 28 to which defendant(s) advance a particular argument.

1 In the instant matter, Plaintiffs seek an order certifying a proposed  
 2 class consisting of all present and future AHS female students and potential  
 3 students who participate, seek to participate, and/or are deterred from participating  
 4 in athletics at AHS. Plaintiffs maintain, and Defendants do not dispute, that the  
 5 number of girls who participated in the athletic program at AHS totaled more and  
 6 254 during the 2003-2004 school year, more than 264 during the 2002-2003  
 7 school year, more than 207 during the 2001-2002 school year, and more than 292  
 8 during the 2000-2001 school year. (Declaration of Claudia Center ("Center  
 9 Decl."), Exh C). Furthermore, submissions made by the AHS to the California  
 10 Interscholastic Foundation list 345 female participants in athletic programs for the  
 11 2002-2003 school year. (Center Decl., Exh. G). Although the exact number of  
 12 members in Plaintiffs' proposed class is not specifically plead, Plaintiffs' motion  
 13 and Complaint make reasonably clear that they believe over two hundred female  
 14 athletes attending AHS annually are subjected to the alleged constitutional  
 15 violations. As such, the number of proposed class members appears sufficiently  
 16 numerous to make joinder of all class members impracticable.

17 In opposition, Defendants argue that the existence of hundreds of  
 18 potential class members is based purely on speculation. However, in full view of  
 19 the aforementioned statistics with respect to the number of females participating in  
 20 athletes per school year at AHS, Defendants argument is unavailing. Moreover,  
 21 the case law Defendants offer to support its position is inapplicable to the case at  
 22 bar. Specifically, Defendants offer Schwartz v. Upper Deck, 183 F.R.D. 672 (S.D.  
 23 Cal. 1999) and Siles v. ILGWU Nat'l Ret. Fund, 783 F.2d 923 (9th Cir. 1986) for  
 24 support.

25 In Schwartz, the trial court denied class certification because, among  
 26 other things, the plaintiff could not establish numerosity. See generally, Schwartz  
 27 v. Upper Deck, 183 F.R.D. 672 (S.D. Cal. 1999). The plaintiff in Schwartz

attempted to fashion a proposed class consisting of members who purchased certain baseball cards. Id. at 681. To approximate the number of potential class members, the plaintiff relied exclusively on the annual sales of certain baseball cards. Id. The trial court found the plaintiff's methodology wholly insufficient because the class size "could range from as few as the class representatives, and possibly some family and friends, to millions." Id. The trial court held that such speculation defeats a finding of numerosity. Id. However, such speculation is not present here, where the number of female AHS athletes can be reasonably calculated by observing number of girls who have participated in AHS sports in recent years.

Moreover, Siles is equally inapplicable. In Siles, like Schwartz, the trial court denied class certification because, among other things, the plaintiff could not establish numerosity. Siles v. ILGWU Nat'l Ret. Fund, 783 F.2d 923, 926, 930 (9th Cir. 1986). For reasons not relevant in the present matter, the trial court determined that the plaintiff could not reasonably approximate or calculate the number of putative class members. Id. at 930. The present case is vastly different in that the number of class members is reasonably certain for reasons stated above such that joinder would be impracticable.

Furthermore, the Court notes that the present case involves a special matter where the Court may consider the number of future and unknown students in the class. Jordan v. County of Los Angeles, 669 F.2d 1311, 1320 (finding that where the proposed class included "unnamed and unknown future black applicants who may be discriminated against by the County's employment practices," joinder was "inherently impracticable"); Pederson v. Louisiana State Univ., 213 F.3d 858, 868 n.11 (5th Cir. 2000) (inclusion of future students in class makes joinder impracticable); Boucher v. Syracuse Univ., 164 F.3d 113, 119 n.11 (2d Cir. 1999) ("Joinder of all relevant parties – when the class

1 includes current female high school students weighing the decision to attend  
 2 Syracuse [University] based on its athletic offerings – is clearly impracticable.”)  
 3 Therefore, under applicable case law the Court finds the numerosity requirement  
 4 of 23(a)(1) satisfied.

## 5 2. Commonality

6 Rule 23(a)(2) requires there be questions of law and fact common to  
 7 the class. “The commonality preconditions of Rule 23(a)(2) are less rigorous than  
 8 the companion requirements of Rule 23(b)(3). Indeed, Rule 23(a)(2) has been  
 9 construed permissively.” Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir.  
 10 1998). The standard is particularly liberal where the plaintiffs “seek final  
 11 injunctive relief . . . with respect to the class as a whole” under Rule 23(b)(2).  
 12 Walters v. Reno, 145 F.3d 1032, 1045-46 (9th Cir. 1998).

13 To establish commonality, it is not necessary that every issue of law  
 14 or fact be identical for all class members or that all injuries be the same. “All  
 15 questions of fact and law need not be common to satisfy the rule. The existence of  
 16 shared legal issues with divergent factual predicates is sufficient, as a common  
 17 core of salient facts coupled with disparate legal remedies within the class.”  
 18 Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998); Walters v. Reno,  
 19 145 F.3d 1032, 1044 (9th Cir. 1998) (“Differences among the class members with  
 20 respect to the merits of their actual . . . cases . . . are simply insufficient to defeat  
 21 the propriety of class certification.”); Rosario v. Livaditis, 963 F.2d 1013, 1017  
 22 (7th Cir. 1992) (“The fact that there is some factual variation among the class  
 23 grievances will not defeat a class action . . . . A common nucleus of operative facts  
 24 is usually enough to satisfy the commonality requirement of Rule 23(a)(2).”); Doe  
 25 v. Los Angeles Unified School Dist., 48 F. Supp. 2d 1233, 1241-42 (C.D. Cal.  
 26 1999) (“[U]nder Rule 23(b)(2), commonality exists if plaintiffs share a common  
 27 harm or violation of their rights, even if individualized facts supporting the alleged

1 harm or violation diverge. . . . In short, when addressing commonality of class  
2 members proposed under Rule 23(b)(2), a court may employ a liberal definition of  
3 commonality.”). Despite the presence of individual factual questions, the  
4 commonality criterion of rule 23(a) is satisfied by the common questions of law.  
5 Id.

6 Plaintiffs argue, and Defendants do not dispute, that the proposed  
7 class members share common questions of law and fact. According to Plaintiffs,  
8 these include, but are not limited to, whether Defendants have unlawfully  
9 discriminated and continue to discriminate against the class members by:

- 10 1) Providing female AHS athletes with fewer and poorer quality  
11 practice and competing facilities;
- 12 2) Renovating Moor Field for the primary benefit of male athletes,  
13 thereby effectively excluding girl athletes from the state-of-the-  
14 art facility;
- 15 3) Allocating hundreds of thousands of dollars to the Moor Field  
16 renovation, and making no comparable allocation to facilities  
17 used by girl athletes;
- 18 4) Failing to provide equal funding to girls’ athletics as opposed  
19 to boys’ athletics;
- 20 5) Providing no or poorer quality lockers and locker rooms;
- 21 6) Providing no or poorer quality shower facilities;
- 22 7) Providing no or little access to weight rooms, while providing  
23 boy athletes with access to three weight rooms;
- 24 8) Providing less access to consistent and quality coaching;
- 25 9) Denying the class members benefits of the sixth period practice  
26 program;

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- 10) Scheduling the class members' games at less desirable times for spectators;
- 11) Providing less publicity and less cheerleading for female competitions;
- 12) Providing class members' coaches with less compensation and no or poor office space; and
- 13) Failing to provide the class members with equal athletic participation opportunities.

Defendants do not dispute that these common issues satisfy the liberal requirement of Rule 23(a)(2). Although individual class members will have distinct experiences with particular sports and/or coaches, such differences do not extinguish the existence of common questions of law or fact. Indeed, the Ninth Circuit has held that the existence of such divergent facts is not alone sufficient to defeat a finding of commonality where shared legal issues are present. Jordan v. Los Angeles County, 669 F.2d 1311, 1320 (9th Cir. 1998) ("The commonality requirement is satisfied 'where the question of law linking the class members is substantially related to the resolution of the litigation even though the individuals are not identically situated.'"). Therefore, this Court finds sufficient common questions of law and/or fact among the class members to meet the commonality requirement of Rule 23(a)(2).

### 3. Typicality

As an initial matter, the Court notes that Defendants also do not dispute the existence of typicality among class members. Typicality requires that the claims or defenses of the proposed class representatives be typical of the claims or defenses of the class as a whole. Fed. R. Civ. P. 23(a)(3). Where commonality looks to the relationship between the class members, typicality seeks to ensure that the class representatives' claims are sufficiently similar to the

1 interests of the absent class members. Falcon, 457 U.S. at 159. While the named  
 2 representatives' injuries must be similar to the class' injuries and must result from  
 3 the same injurious contact, the injuries need not be the same. Armstrong v. Davis,  
 4 275 F.3d 849, 68-69 (9th Cir. 2001). Where injuries are factually dissimilar, a  
 5 similarity in the supporting legal theory may control. In re United Energy Corp.  
 6 Solar Power Modules Tax Shelter Inv.'s Secs. Litig., 122 F.R.D. 251, 256-57  
 7 (C.D. Cal. 1983). In the Ninth Circuit, "under . . . Rule[ 23(a)'s] permissible  
 8 standards, representative claims are 'typical' if they are reasonably co-extensive  
 9 with those of absent class members; they need not be substantially identical."  
 10 Hanlon, 150 F.3d at 1120. Hanlon v. Chrysler Corp., 150 F.3d 1011, 1020 (9th  
 11 Cir. 1998); California Rural Legal Assistance v. Legal Servs. Co., 917 F.2d 1171,  
 12 1175 (9th Cir. 1990) (holding that Rule 23 does not require the named plaintiffs to  
 13 be identically situated with all other class members).

14 In this instance, the named Plaintiffs have alleged specific violations  
 15 under Title IX of the Education Amendments of 1972, the United States  
 16 Constitution, and California state law. No characteristics of the named  
 17 representatives appear to set them apart from the unnamed class members such as  
 18 to render their claims adverse to those they will represent. Here, Plaintiff Cerros  
 19 played basketball at AHS from 2000-2004. (Declaration of Jennifer Cerros, ¶¶  
 20 2,4). Plaintiff Cruz has played on the AHS softball team since 2003. (Declaration  
 21 of Lauren Cruz, ¶ 2). Plaintiff Herrera played softball at AHS from 2000-2004.  
 22 (Declaration of Valerie Herrera, ¶ 2). Plaintiff Grempele started at AHS in Fall of  
 23 2004 and intends to play softball. (Declaration of Catherine Grempele). Presently  
 24 two of the plaintiffs, namely Cruz and Grempele, are current female athletes at  
 25 AHS.

26 Plaintiffs, like the members of the proposed class, are alleged to have  
 27 been subjected to, or will be subjected to, an athletic program and school  
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1 administration that does not ensure Title IX compliance, and does not ensure equal  
2 participation opportunities for girl athletes. Specifically, Plaintiffs maintain that  
3 discrimination against class members occurs through, for example: (1) the  
4 assignment to less desirable practice times and inferior competition facilities; (2)  
5 the assignment to inferior locker and shower facilities; (3) the unavailability of  
6 particular coaches; and (4) the unequal allocation of funds. Because Plaintiffs'  
7 claims rely on the same legal theory as the other class members' claims, Rule  
8 23(a)(3)'s typicality requirement is satisfied.

9 4. Adequate Representation

10 The final prerequisite posed by Rule 23(a) is that the representative  
11 parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P.  
12 23(a)(4). "A named plaintiff will adequately represent the absent class members  
13 if: (1) the attorney representing the class is qualified and competent; and (2) the  
14 class representative does not have interests antagonistic to the remainder of the  
15 class." Rodriguez v. Gates, 2002 WL 1162675, at \*1, \*8 (C.D. Cal. May 30,  
16 2002) (citing Lerwill v. Inflight Motion Pictures, Inc., 582 F.2d 507, 512 (9th Cir.  
17 1978); See Hanlon, 150 F.3d at 1120. "To determine if the attorney representing  
18 the class is qualified, the court must consider his or her professional qualifications,  
19 skills, experience, and resources." Rodriguez, 2002 WL 1162676, at \*8.<sup>7</sup> In the  
20 present matter, Counsel makes a prima facie demonstration of its competence and  
21 qualifications by showing prior experience litigating complex class actions.

22 To the extent that only a prima facie showing is required that the  
23 named Plaintiffs adequately represent the interest of the putative class, Rule  
24 23(a)(4) will not be grounds for denial of certification. In the present case, there is

25  
26 <sup>7</sup> Because Plaintiffs must only make a prima facie showing of adequacy of  
27 counsel at this stage, the Court accepts counsel's declaration of competency and  
28 experience at face value.

1 no indication that the named Plaintiffs have collusive interests antagonistic to  
2 those of the remainder of the putative class. Rather, the Court finds the class  
3 representatives' interests are comparable to the interests of absent class members.  
4 Specifically, the class representatives are similarly situated with the proposed class  
5 in that each AHS female athlete has recently been, is currently, or will be,  
6 subjected to gender discrimination as described in the Complaint, and each is  
7 similarly interested in obtaining a court order forcing Defendants to stop the  
8 alleged discriminatory treatment.

9 The Court also finds that Plaintiffs are represented by competent and  
10 qualified counsel. Plaintiffs are represented by the California Woman's Law  
11 Center, which Plaintiffs assert has experience in enforcing Title IX and other laws  
12 barring sex discrimination in public schools and universities. Plaintiffs are also  
13 represented by the Legal Aid Society – Employment Law Center, which Plaintiffs  
14 maintain has extensive experience in litigating complex class action lawsuits on  
15 behalf of women, minority groups, and persons with disabilities. Defendants do  
16 not dispute the competence or adequacy of plaintiffs' counsel in representing the  
17 proposed class. Rather, Defendants argue that "it is unreasonable to expect a  
18 public entity, such as a school district, to pay attorneys fees for five separate  
19 attorneys where one competent attorney would suffice. Plaintiffs' position can  
20 only be perceived as a means of accruing unreasonable attorneys' fees."  
21 (Alhambra School District's Opposition 10:20-22). Defendants' contention is  
22 nonresponsive to the issue of adequate representation and therefore rejected.

23 For the reasons stated above, this Court finds that the "adequate  
24 representation" requirement of Rule 23(a)(4) is satisfied.

25 **B. The Requirements for Final Injunctive Relief**

26 In addition to satisfying the prerequisites of Rule 23(a), an action may  
27 be maintained as a class action only if one of Rule 23(b)'s subdivisions are  
28

1 satisfied. Here, Plaintiffs seek injunctive relief only, and therefore properly move  
2 to certify the class under Rule 23(b)(2). Rule 23(b)(2) permits an action to  
3 proceed as a class action if "the party opposing the class has acted or refused to act  
4 on grounds generally applicable to the class, thereby making appropriate final  
5 injunctive relief or corresponding declaratory relief with respect to the class as a  
6 whole."

7 1. Defendants Acted on Grounds Generally Applicable to All  
8 Members of the Proposed Class Making Final Injunctive Relief  
9 Proper Pursuant to Rule 23(b)(2)

10 As discussed above, Defendants allegedly have engaged, and  
11 continue to participate, in gender discrimination in violation of Title IX, the  
12 United States Constitution, and California state law by failing and/or refusing to  
13 provide girl athletes at AHS with equal or substantially similar opportunities and  
14 amenities as afforded to male athletes. Therefore, it appears that Defendants, as  
15 the party opposing class certification, have "acted or refused to act on grounds  
16 generally applicable to the class." Fed. R. Civ. P. 23(b)(2). As such, this Court  
17 finds that Plaintiffs have satisfied their requirements for final injunctive relief  
18 pursuant to Rule 23(b)(2).

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1 **III. CONCLUSION**

2 In light of the foregoing, this Court hereby **grants** Plaintiffs' Motion for  
3 Class Certification for prospective injunctive relief. The Court certifies the  
4 plaintiff class as all present and future Alhambra High School female students and  
5 potential students who participate, seek to participate, and/or are deterred from  
6 participating in athletics at AHS.

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8 IT IS SO ORDERED.

9  
10 DATED: 10/4/04

11 **DICKRAN TEVRIZIAN**  
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Dickran Tevrizian, Judge  
13 United States District Court  
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