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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**NATHAN APODACA; and
STUDENTS FOR LIFE AT
CALIFORNIA STATE
UNIVERSITY-SAN MARCOS,**

Plaintiffs,

v.

**SILAS ABREGO, JANE W.
CARNEY, ADAM DAY,
REBECCA D. EISEN, DOUGLAS
FAIGIN, DEBRA S. FARAR, JEAN
P. FIRSTENBERG, LILLIAN
KIMBELL, THELMA
MELÉNDEZ DE SANTA ANA,
HUGO N. MORALES, JOHN
NILON, J. LAWRENCE NORTON,
JORGE REYES SALINAS,
LATEEFAH SIMON, STEVEN
STEPANEK, PETER J. TAYLOR,
and, MAGGIE WHITE, each
individually and each in his or her
official capacity as a member of the
California State University Board of
Trustees; **TIMOTHY P. WHITE,**
Chancellor of California State**

Case No. '17CV1014 L NLS
DEMAND FOR JURY TRIAL

**VERIFIED COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF,
MONETARY DAMAGES, AND
ATTORNEYS' FEES AND COSTS**

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University, in his official and individual capacities; **KAREN S. HAYNES**, President of California State University-San Marcos, in her official and individual capacities; **LORENA CHECA**, Vice President of Student Affairs of California State University-San Marcos, in her official and individual capacities; **KIM CLARK**, Associate Vice President for Student Auxiliary Services and Executive Director of Associated Students, Inc. at California State University-San Marcos, in her official and individual capacities; **LOUIS ADAMSEL, CHRIS LEE, YOMIRA ZAMORA, ANNA RAPADA, NOAH HENWOOD, MATTHEW RICHARD, MEGHAN APARRI, JENNA HERNANDEZ, SAVANA DOUDAR, LONDON MAYS-HUMPHREY, KEVIN PALOMINO, ALEX VEGA, ALEJANDRO LOPEZ, JOSHUA FORONDA**, and **KIMBERLY ANDERSON**, each individually and each in his or her official capacity as a member of the Board of Directors of Associated Students, Inc.,

Defendants.

1 Plaintiffs Nathan Apodaca and Students for Life at California State
2 University-San Marcos, by and through counsel, and for their Verified Complaint
3 against the Defendants, hereby state as follows:

4 **INTRODUCTION**

5 1. The cornerstone of higher education is the ability of students to participate
6 in the “marketplace of ideas” on campus. In the context of facilitating funding of
7 student advocacy from mandatory student activity fees the First Amendment dictates
8 that the university can collect such a mandatory student activity fee only if they
9 proactively ensure that those funds are allocated in a viewpoint-neutral manner,
10 bridling the discretion of those who allocate the funds. In violation of these
11 principles, California State University-San Marcos (“University” or “CSU-SM”)
12 unconstitutionally compels Mr. Apodaca and the other students members of Plaintiff
13 Students for Life at CSU-SM to subsidize speech that they disagree with through its
14 assessment of a mandatory Student Activity Fee through a policy which grants
15 Associated Students, Inc. (“ASI”) unbridled discretion in allocating these funds for
16 student advocacy, allowing it to favor popular views and to exclude unpopular
17 views.

18 2. ASI has exercised this unbridled discretion to allocate the Student Activity
19 Fees in a viewpoint discriminatory manner. ASI favors the viewpoints of two student
20 community centers, the Gender Equity Center and the LGBTQA Pride Center, by
21 allocating more than \$296,000 to them, which is more than 53% of the Student
22 Activity Fees allocated to fund student advocacy, and by creating special rules to
23 favor only them – including allowing the two centers to use Student Activity Fees to
24 bring in speakers to advocate for certain viewpoints. ASI also allocates Student
25 Activity Fees to sponsor the Arts & Lectures Series to bring speakers to campus to
26 advocate for certain viewpoints. However, ASI denied Students for Life at CSU-
27 SM’s request for funding because ASI limits all other student-run organizations to
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1 \$500 per semester and they are not allowed to use the fees to pay speakers to
2 advocate for their own viewpoints.

3 3. As a student at CSU-SM, Mr. Apodaca and other members of Students for
4 Life at CSU-SM are required to subsidize the speech of the Gender Equity Center
5 and the LGBTQA Pride Center through payment of the mandatory Student Activity
6 Fee. Mr. Apodaca disagrees with their viewpoints which include advocating for
7 abortion and sexually promiscuous behavior.

8 4. When Plaintiff Students for Life at CSU-SM applied for funding to host a
9 nationally recognized columnist and speaker, Professor Mike Adams, to speak about
10 the issue of abortion, ASI denied the request. Yet, ASI provides funding through
11 Student Activity Fees to the Gender Equity Center and the LGBTQA Pride Center,
12 allowing them to pay for numerous speakers to speak on campus over the last two
13 semesters, reflecting their own views on a variety of topics that conflict with those
14 of Mr. Apodaca, including abortion and human sexuality.

15 5. Defendants have violated Plaintiffs' constitutional rights and caused them
16 irreparable injury by forcing Mr. Apodaca and the members of Students for Life at
17 CSU-SM to subsidize speech with which they disagree without affording them the
18 opportunity to respond by bringing in their own speakers; by favoring the views of
19 the Gender Equity Center and the LGBTQA Pride Center by giving those centers far
20 more funding than other student-run organizations and permitting only those centers
21 to pay costs to bring in speakers; by granting the Gender Equity Center and the
22 LGBTQA Pride Center unbridled discretion to co-sponsor the advocacy of other
23 student organizations; by denying Students for Life at CSU-SM funding for its event
24 with Professor Adams; and by allocating Student Activity Fees without objective
25 criteria or standards to ensure against viewpoint discrimination.

26 6. This action is based on the denial of Plaintiffs' fundamental rights to free
27 speech and equal protection of the laws under the United States Constitution. The
28 policies and actions detailed below are challenged on their face and as applied to

1 Plaintiffs. Defendants' policies and actions have deprived and will continue to
2 deprive Plaintiffs of their paramount rights and guarantees under the United States
3 Constitution. Each and every act of Defendants alleged herein was committed by
4 Defendants, each and every one of them, under the color of state law and authority.

5 **Jurisdiction and Venue**

6 7. This civil rights action raises federal questions under the United States
7 Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights
8 Act of 1871, 42 U.S.C. § 1983.

9 8. This Court has original jurisdiction over these federal claims pursuant to
10 28 U.S.C. §§ 1331 and 1343.

11 9. This Court has authority to award the requested damages pursuant to 28
12 U.S.C. § 1343; the requested declaratory relief pursuant to 28 U.S.C. §§ 2201–02;
13 the requested injunctive relief pursuant to 28 U.S.C. § 1343 and Fed. R. Civ. P. 65;
14 and costs and attorneys' fees under 42 U.S.C. § 1988.

15 10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because all
16 of the Defendants reside in this district and/or all of the acts described in this
17 Complaint occurred in this district.

18 **Plaintiffs**

19 11. Plaintiff Nathan Apodaca is the President of Students for Life at CSU-SM
20 and a full-time student at the University.

21 12. Mr. Apodaca pays the mandatory Student Activity Fees at the University
22 and has paid this fee every semester in which he has been enrolled.

23 13. Mandatory Student Activity Fees paid by Mr. Apodaca have been and will
24 be allocated to student groups for causes to which he objects, including advocacy
25 for the right to abortion and against his own pro-life views.

26 14. Mr. Apodaca is entitled to the viewpoint-neutral distribution of the
27 mandatory Student Activity Fees he has been and will be required to pay or to the
28 repayment of fees he has paid and to be exempt from paying such fees in the future.

1 15. Plaintiff Students for Life at California State University-San Marcos is an
2 unincorporated expressive student organization comprised of CSU-SM students.

3 16. Students for Life at CSU-SM is recognized as an official student
4 organization at the University. It is a student-led, non-partisan, pro-life expressive
5 student organization.

6 17. Every student member of Students for Life at CSU-SM pays mandatory
7 Student Activity Fees at the University.

8 18. Students for Life at CSU-SM and each of its members is entitled to
9 viewpoint-neutral access to and allocation of mandatory Student Activity Fees
10 collected by the University or to the repayment of the fees they have paid and to be
11 exempt from paying such fees in the future.

12 19. Part of Students for Life at CSU-SM's mission is to be an expressive
13 student organization at the University and to protect its members' constitutional
14 rights on campus.

15 20. If Students for Life at CSU-SM succeeds in this lawsuit, it will be able to
16 obtain viewpoint-neutral access to the mandatory Student Activity Fee funding, and
17 its members will not be compelled to pay for others' expression in a system that
18 permits viewpoint discriminatory allocation of those funds to views they oppose.

19 21. Students for Life at CSU-SM brings this suit on behalf of itself as a
20 registered student organization at the University and on behalf of its individual
21 student members, all of whom are compelled to pay mandatory student fees for the
22 expression of viewpoints they oppose and are denied viewpoint-neutral access to the
23 University's organizational funding mechanism through a system that permits
24 discrimination against them because of the viewpoint of their speech activities and
25 which actually does advantage others' opposing views over their own.

26 **Defendants**

27 22. Defendants Silas Abrego, Jane W. Carney, Adam Day, Rebecca D. Eisen,
28 Douglas Faigin, Debra S. Farar, Jean P. Firstenberg, Lillian Kimbell, Thelma

1 Meléndez de Santa Ana, Hugo N. Morales, John Nilon, J. Lawrence Norton, Jorge
2 Reyes Salinas, Lateefah Simon, Steven Stepanek, Peter J. Taylor, and Maggie White
3 are, and were at all times relevant to this Complaint, voting members of the
4 California State University Board of Trustees (herein collectively, the “Board
5 Defendants”), a public university organized and existing under the laws of
6 California.

7 23. The Board Defendants are responsible for, among other things, the
8 adoption and authorization of policies that govern students at the University,
9 including the Student Activity Fee Policy and related procedures challenged herein
10 (hereinafter all of Defendants’ policies and regulations governing student activity
11 fees will be collectively referred to as the “Student Activity Fee Policy”), and their
12 application to Plaintiffs.

13 24. The Board Defendants are responsible for enactment, amendment, and
14 repeal of Board of Trustees’ policies that govern the collection and allocation of
15 mandatory Student Activity Fees at the University, including the Student Activity
16 Fee Policy.

17 25. The Board Defendants have acquiesced in, sanctioned, and supported the
18 actions of all Defendants complained of herein, including the enforcement of the
19 Student Activity Fee Policy and related procedures regarding allocation of
20 mandatory Student Activity Fees to recognized student organizations.

21 26. The Board Defendants participate in the assessment and allocation of
22 Student Activity Fees by granting the University the authority to assess and allocate
23 the amount of mandatory Student Activity Fees that the University will collect each
24 year, including for distribution to student organizations.

25 27. Each Board Defendant is sued in his or her official and individual
26 capacities.

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1 28. Defendant Timothy P. White is, and was at all times relevant to this
2 Complaint, the Chancellor of California State University, a public university
3 organized and existing under the laws of the State of California.

4 29. Defendant White is responsible for the establishment, oversight and
5 adjustment of mandatory Student Activity Fees imposed pursuant to the Student
6 Activity Fee Policy and related procedures challenged herein and their application
7 to Students for Life at CSU-SM in denying its application for funding.

8 30. As Chancellor, Defendant White is responsible for reviewing the annual
9 report prepared by the University which sets forth the allocation of the mandatory
10 Student Activity Fees assessed on the University's students, including Mr. Apodaca
11 and the other student members of CSU-SM.

12 31. Defendant White has enforced the Student Activity Fee Policy in a
13 viewpoint-discriminatory manner by establishing the policy which authorizes the
14 University to require its students, including Mr. Apodaca and the members of
15 Students for Life at CSU-SM, to pay mandatory Student Activity Fees and grants
16 unbridled discretion to discriminate in the allocation of Student Activity Fees by
17 favoring the viewpoints of the Gender Equity Center and the LGBTQA Pride Center,
18 and disfavoring the views of Students for Life at CSU-SM.

19 32. Defendant White is sued in his official and individual capacities.

20 33. Defendant Karen S. Haynes is, and was at all times relevant to this
21 Complaint, the President of California State University-San Marcos, a public
22 university organized and existing under the laws of the State of California.

23 34. Defendant Haynes is responsible for the oversight and enforcement of
24 mandatory Student Activity Fees imposed pursuant to the Student Activity Fee
25 Policy and related procedures challenged herein and their application to Students for
26 Life at CSU-SM in denying its application for funding.

27 35. As president of the University, Defendant Haynes is responsible for
28 reviewing and approving the annual budget prepared by Associated Students, Inc.

1 which sets forth ASI's proposed allocation of the mandatory Student Activity Fees
2 assessed on the University's students, including Mr. Apodaca and the other student
3 members of CSU-SM.

4 36. As president of the University, Defendant Haynes has the authority to
5 review, approve, or reject the funding decisions of the ASI Defendants.

6 37. Defendant Haynes has enforced the Student Activity Fee Policy in a
7 viewpoint-discriminatory manner because she has approved ASI's viewpoint
8 discriminatory allocation of Student Activity Fees which favors the views of, *inter*
9 *alia*, the Gender Equity Center and the LGBTQA Pride Center, and disfavors the
10 views of Students for Life at CSU-SM, and she has not instructed Defendants Checa,
11 Clark, or the ASI Defendants to change or alter these policies and related procedures
12 to restrict the discretion of University officials in the allocation of Student Activity
13 Fees.

14 38. Defendant Haynes is sued in her official and individual capacities.

15 39. Defendant Lorena Checa is, and was at all times relevant to this Complaint,
16 Vice President of Student Affairs of California State University-San Marcos, a
17 public university organized and existing under the laws of the State of California.

18 40. Defendant Checa is responsible for administration and oversight of
19 policies for the University, including the Student Activity Fee Policy and related
20 procedures challenged herein which require all students, including Mr. Apodaca and
21 all other members of Students for Life at CSU-SM, to pay Student Activity Fees as
22 a condition of enrollment.

23 41. Defendant Checa is responsible for the enforcement of University policies,
24 including the Student Activity Fee Policy and related procedures challenged herein
25 that were applied to Students for Life at CSU-SM in denying its application for
26 funding and required the members of Students for Life at CSU-SM, including Mr.
27 Apodaca, to pay mandatory Student Activity Fees pursuant to a policy that grants
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1 unbridled discretion to discriminate in the allocation of funds based on the viewpoint
2 of student speech.

3 42. Defendant Checa is responsible for employing, evaluating, and dismissing
4 the ASI Executive Director. As the Chief Administrative Officer of ASI, the ASI
5 Executive Director reports directly to Defendant Checa and is responsible for
6 overseeing the operations of and enforcing the policies of ASI.

7 43. Defendant Checa has enforced the Student Activity Fee Policy in a
8 viewpoint discriminatory manner because she has failed to stop University officials,
9 including the other defendants, from allocating Student Activity Fee funding in a
10 viewpoint-discriminatory manner, including denying funding to Students for Life at
11 CSU-SM.

12 44. Defendant Checa possesses the authority to change and enforce the Student
13 Activity Fee Policy and procedures challenged herein.

14 45. Defendant Checa possesses the authority to instruct ASI to change the
15 Student Activity Fee Policy and related procedures challenged herein.

16 46. Defendant Checa is sued in her official and individual capacities.

17 47. Defendant Kim Clark is, and was at all times relevant to this Complaint,
18 Associate Vice President for Student Auxiliary Services and Executive Director of
19 Associated Students, Inc. at California State University-San Marcos, a public
20 university organized and existing under the laws of the State of California.

21 48. Defendant Clark is responsible for administration and policymaking for
22 the University, including the Student Activity Fee Policy and related procedures
23 challenged herein which require all students, including Mr. Apodaca and all other
24 members of Students for Life at CSU-SM, to pay Student Activity Fees as a
25 condition of enrollment.

26 49. Defendant Clark is responsible for the enforcement of University policies,
27 including the Student Activity Fee Policy and related procedures challenged herein
28 that were applied to Students for Life at CSU-SM in denying its application for

1 Student Activity Fee funding and that required Mr. Apodaca to pay mandatory
2 Student Activity Fees pursuant to a policy that grants unbridled discretion to
3 discriminate in the allocation of funds based on the viewpoint of student speech.

4 50. Defendant Clark, under the direction of Defendants Haynes and Checa,
5 instructs ASI when to create, review, change, authorize, and enforce the Student
6 Activity Fee Policy and related procedures.

7 51. Defendant Clark enforced the Student Activity Fee Policy in a viewpoint
8 discriminatory manner because she has failed to stop University officials, including
9 the other defendants, from allocating funds in a viewpoint-discriminatory manner,
10 including denying funding to Students for Life at CSU-SM.

11 52. Defendant Clark applied the Student Activity Fee Policy in a viewpoint
12 discriminatory manner because she participated in the review of the application for
13 funding made by Students for Life at CSU-SM and denied the application based on
14 the Student Activity Fee Policy.

15 53. Defendant Clark possesses the authority to change and enforce the Student
16 Activity Fee Policy, and related procedures challenged herein, including those of
17 ASI.

18 54. Defendant Clark is sued in her official and individual capacities.

19 55. Defendants Louis Adamsel, Chris Lee, Yomira Zamora, Anna Rapada,
20 Noah Henwood, Matthew Richard, Meghan Aparri, Jenna Hernandez, Savana
21 Doudar, London Mays-Humphrey, Kevin Palomino, Alex Vega, Alejandro Lopez,
22 Joshua Foronda, and Kimberly Anderson are, and were at all times relevant to this
23 Complaint, the members of the ASI Board of Directors (hereinafter the “ASI
24 Defendants”).

25 56. The ASI Defendants have the authority assigned them by the other
26 Defendants herein through the Student Activity Fee Policy, to create policies relating
27 to use and allocation of mandatory Student Activity Fees, review funding
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1 applications and make funding decisions to student groups applying for Student
2 Activity Fee funding.

3 57. The ASI Defendants applied the Student Activity Fee Policy in a viewpoint
4 discriminatory manner by favoring the viewpoints of the Gender Equity Center and
5 the LGBTQA Pride Center and discriminating against the viewpoints of Students for
6 Life at CSU-SM by denying its application for funding.

7 58. The ASI Defendants are sued in both their official and individual
8 capacities.

9 **Factual Background**

10 **I. Defendants' Unconstitutional Student Activity Fee Funding System**

11 **A. California laws and regulations governing mandatory Student** 12 **Activity Fees**

13 59. California State University-San Marcos is a public university organized
14 and existing under the laws of the State of California, and it receives funding from
15 the State of California in order to operate.

16 60. The Board Defendants govern the University through regulations and
17 policies.

18 61. The Board Defendants derive their authority from Cal. Educ. Code § 66600
19 *et seq.*

20 62. The University may establish a student body organization for the purpose
21 of providing essential activities closely related to, but not normally included as part
22 of, the regular instructional program of the university. Cal. Educ. Code § 89300.

23 63. A student body organization is considered an “auxiliary organization” of
24 the University. Cal. Educ. Code § 89901(b).

25 64. An auxiliary organization is an independently governed corporation that is
26 legally separate from the University. Cal. Educ. Code § 89913(c).

27 65. The governing board of a student body organization must consist primarily
28 of students, with a representative of the University president to advise on policy and

1 to provide a liaison between the student governing board and the President of the
2 University. 5 CCR § 42602(a).

3 66. The president of the University is responsible for ensuring that the student
4 body organization operates in conformity with the policy of the Board Defendants
5 and the University. 5 CCR § 42402.

6 67. If two-thirds of the student body approves by vote, the Board Defendants
7 have the authority to establish a mandatory membership fee for the student body
8 organization that all students are required to pay as a condition of enrollment. Cal.
9 Educ. Code § 89300.

10 **B. The Unconstitutional Student Activity Fee Policy**

11 68. The principle underlying the expenditure of student body organization
12 funds collected through mandatory fees is that such expenditures shall be made in
13 programs that reflect the broadest variety of student interests and that are open to all
14 students who wish to participate. 5 CCR § 42659.

15 69. The Board Defendants have determined that mandatory Student Activity
16 Fees may only be used for the following specific purposes: (a) Programs of cultural
17 and educational enrichment and community service; (b) Recreational and social
18 activities; (c) Support of student unions; (d) Scholarships, stipends, and grants-in-
19 aid for only currently admitted students; (e) Tutorial programs; (f) Athletic
20 programs, both intramural and intercollegiate; (g) Student publications; (h)
21 Assistance to recognized student organizations; (i) Student travel insurance; (j)
22 Administration of Student Activity Fee program; (k) Student government-
23 scholarship stipends, grants-in-aid, and reimbursements to student officers for
24 service to student government; (l) Student employment to provide payment for
25 services in connection with the general administration of Student Activity Fees; (m)
26 Augmentation of counseling services, including draft information, to be performed
27 by the campus; (n) Transportation services; (o) Child day care centers for children
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1 of students and employees of the campus; and (p) Augmentation of campus health
2 services. 5 CCR § 42659.

3 70. The Board Defendants have delegated broad authority and responsibility
4 to Defendant White, as Chancellor, to take whatever actions are necessary for the
5 establishment and oversight of campus Student Activity Fees. A true and correct
6 copy of the Standing Orders of the Board of Trustees of the California State
7 University is attached as Exhibit 1 to this Complaint.

8 71. Pursuant to this authority, Defendant White issued Executive Order 1102
9 which governs the establishment and allocation of student activity fees. A true and
10 correct copy of Executive Order 1102 is attached as Exhibit 2 to this Complaint.

11 72. But the Student Activity Fee Policy violates the First and Fourteenth
12 Amendment rights of the University's students because it grants University
13 administrators unbridled discretion to discriminate in the allocation of their
14 mandatory student activity fees based on the viewpoint of student speech.

15 73. As detailed in subsequent paragraphs, Plaintiffs challenge, facially and
16 as-applied, the Defendants' Student Activity Fee Policy because:

- 17 • The policy grants Defendants unbridled discretion to allocate mandatory
18 Student Activity Fees in a viewpoint-discriminatory manner.
- 19 • The policy does not include necessary objective criteria, factors, or
20 standards required to guide the Defendants in allocating mandatory
21 Student Activity Fees to fund expressive activity in a viewpoint-neutral
22 manner.
- 23 • The policy affords unbridled discretion to favor certain viewpoints by
24 creating student-run "centers" like the Gender Equity Center and the
25 LGBTQA Pride Center, funding them through Student Activity Fees, and
26 creating different rules governing their use of student fees inapplicable to
27 other student groups.

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- 1 • The policy does not provide for an appeals process if a student
2 organization’s request for funding is denied.
- 3 • The Defendants apply the policy to favor the speech of the Gender Equity
4 Center and the LGBTQA Pride Center and disfavor alternative
5 viewpoints offered by student organizations like Students for Life at
6 CSU-SM.
- 7 • The Defendants apply the policy to allow the Gender Equity Center, the
8 LGBTQA Pride Center, and the Arts & Lectures Series to use mandatory
9 Student Activity Fees to pay for speakers to speak at their events on a
10 variety of viewpoints including abortion, human sexuality, birth control,
11 and exploitation of women, but forbid Students for Life at CSU-SM and
12 other student organizations from using mandatory Student Activity Fees
13 to pay for speakers to speak on those topics from a different viewpoint.
- 14 • The Defendants applied the policy to deny Students for Life at CSU-
15 SM’s request for reimbursement of a portion of expenses for Professor
16 Adams to speak at their event, which was open to all CSU-SM students,
17 and Defendants will apply the policy to deny student activity funding for
18 Students for Life at CSU-SM to pay for speakers to present its viewpoints
19 on topics such as abortion and human sexuality, thereby favoring the
20 viewpoints presented by the Gender Equity Center and the LGBTQA
21 Center whose speakers are reimbursed with student activity fees.
- 22 • The Defendants applied the policy to require Mr. Apodaca and other
23 members of Students for Life to pay mandatory Student Activity Fees
24 pursuant to a policy which is not viewpoint-neutral.

25 74. The Student Activity Fee Policy establishes six categories of fees. Campus
26 mandatory fees that must be paid to enroll in or attend the university are classified
27 as Category II fees (hereinafter referred to as “mandatory Student Activity Fees”).
28 Ex. 2 § II. B.

1 75. Associated Students, Inc. of California State University-San Marcos is a
2 non-profit, student-run auxiliary student body organization formed pursuant to Cal.
3 Educ. Code § 89300. A true and correct copy of the Bylaws of ASI is attached as
4 Exhibit 3 to this Complaint.

5 76. ASI is governed by the ASI Board of Directors and Executive Officers.
6 Ex. 3, Art. 10 § 2.

7 77. One of ASI's stated purposes is "to improve the quality of student life by
8 promoting student intellectual, cultural, recreational, and social welfare." Ex. 3,
9 Preamble.

10 78. Pursuant to the Student Activity Fee Policy, the University requires that
11 every student enrolled is automatically a member of ASI and is required to pay a
12 mandatory fee of \$75 for each semester that he or she is enrolled as a student.

13 79. ASI is completely funded through the payment of mandatory Student
14 Activity Fees.

15 80. The total amount of mandatory Student Activity Fees collected by the
16 University on behalf of ASI for the 2016-2017 academic year was approximately
17 \$1.31 million. A copy of ASI's Annual Budget for 2016-2017 is attached as Exhibit
18 4 to this Complaint.

19 81. Pursuant to the Student Activity Fee Policy, the ASI Defendants are
20 responsible for preparing ASI's Annual Budget and presenting it to Defendant
21 Haynes, as the President of the University. Ex. 3, Art. 14 § 2.8.

22 82. The Student Activity Fee Policy does not contain provisions requiring that
23 the mandatory Student Activity Fees must be allocated in a viewpoint-neutral
24 manner.

25 83. The Student Activity Fee Policy does not contain objective criteria
26 necessary to guide decisionmakers when allocating Student Activity Fees to fund
27 student organization speech or other expressive activities.

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1 84. Pursuant to the Student Activity Fee Policy, upon information and belief,
2 Mr. Apodaca will pay approximately \$300 in mandatory Student Activity Fees in
3 his four semesters at the University, and the other members of Students for Life at
4 CSU-SM will pay approximately \$600 during their four years at the University.

5 85. Pursuant to the Student Activity Fee Policy, ASI allocates mandatory
6 Student Activity Fees to fund expressive activities and programs through: (1) the
7 Campus Activities Board; (2) the Gender Equity Center; (3) the LGBTQA Pride
8 Center; (4) the Arts & Lectures Series; and (5) ALF Leadership Funding. A copy of
9 ASI's webpage is attached as Exhibit 5 to this Complaint.

10 86. For the 2016-2017 academic year, ASI allocated \$218,860 in mandatory
11 Student Activity Fees to the Campus Activities Board ("CAB"). Ex. 4.

12 87. The duties of the CAB include: (1) developing "programming on campus
13 based on the focus areas and needs of the student body"; (2) developing "engaging
14 and informative campus activities that are representative of diversity of the campus
15 community"; and (3) ensuring that "all events contribute to engaging the campus
16 community." Campus Activities Board Code § VIII, a copy of which is attached as
17 Exhibit 6 to this Complaint.

18 88. The CAB also is tasked with organizing a Volunteer Committee for at-
19 large students to assist with campus activities. Ex. 6 § VIII.

20 89. In 2005, ASI created the Women's Center to provide resources, advocate
21 for, and express viewpoints on issues related to women. The purpose of the
22 Women's Center was to educate students about social justice issues that affect
23 women such as domestic violence, sexual equality, and eating disorders. A copy of
24 The Cougar Chronicle article dated September 6, 2010 discussing the formation is
25 attached as Exhibit 7 to the Complaint.

26 90. In 2015, ASI decided to change the purpose of the advocacy and
27 expression of the Women's Center and renamed it the Gender Equity Center.

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1 91. The Gender Equity Center is a student-run organization that is governed
2 by the ASI Board of Directors.

3 92. The stated purpose of the Gender Equity Center is to “provide a space
4 dedicated to gender equity in which students of all genders and diverse identities feel
5 safe, valued, and respected.” Gender Equity Center Code § III, a copy of which is
6 attached as Exhibit 8 to the Complaint.

7 93. The Gender Equity Center accomplishes its purpose “through
8 programming, education, and advocacy.” Ex. 8 § III.

9 94. The duties and responsibilities of the Gender Equity Center include: (1)
10 provide a safe and welcoming space for all students, staff, and faculty; (2) conduct
11 educational programming and events focused on meeting the needs of students of all
12 genders and diverse identities; (3) increase awareness about issues that primarily
13 affect women, gender nonconforming, and transgender students on campus; and (4)
14 pursue gender equity through dialogue, support, programming, education, and
15 advocacy. Ex. 8 § VIII.

16 95. For the 2016-2017 academic year, ASI allocated \$147,919 in mandatory
17 Student Activity Fees to the Gender Equity Center. It is funded solely through
18 Student Activity Fees. Ex. 4.

19 96. The Gender Equity Center regularly engages in and promotes speech that
20 advocates a pro-abortion viewpoint, and Plaintiffs disagree with this viewpoint. For
21 example, last semester, the Gender Equity Center hosted a pro-abortion lecture by
22 CSU-SM Women’s Studies professor Cecili Chadwick entitled “A Feminist History
23 of Reproductive Rights.”

24 97. Upon information and belief, the Gender Equity Center has not held any
25 event or brought any speaker to campus that expressed or advocated for a pro-life
26 viewpoint.

27 98. The Gender Equity Center hosts several annual events. Love Your Body
28 Day is an annual “feminist celebration to raise awareness about health issues,

1 challenge harmful and offensive advertisements and media, and promote positive
2 body image.” A copy of Gender Equity Center’s Events webpage is attached as
3 Exhibit 9 to this Complaint.

4 99. Women’s Herstory Month is an annual campus-wide celebration with over
5 a dozen events that is intended to recognize the struggles and celebrate the
6 achievements of women in the U.S. Ex. 9.

7 100. The Gender Equity Center also hosts other miscellaneous events
8 throughout the year. Some of the events this year include the Safe Zone Training
9 Workshop, ABC’s of LGBTQ: Queer Women, and the Pleasure Party. Ex. 9.

10 101. For the Pleasure Party, students were invited to “[c]ome and learn more
11 about how to increase your pleasure! We will go over different ways to increase your
12 pleasure, whether it’s for yourself, for your partner, or both!” A picture of the
13 Pleasure Party advertisement is attached as Exhibit 10 to the Complaint.

14 102. The Gender Equity Center also provides various resources. One of these
15 resources is LGBTQ Safe Zone which includes educational workshops and training
16 seminars for classes, campus agencies, student organizations, and departments about
17 topics including gender, sexuality, identity, and other topics relating to multicultural
18 competence.

19 103. Another resource is a training entitled Mask of Marginalization in which
20 attendees participate in a simulation activity where they can identify their roles that
21 mirror those in society of privilege and marginalization.

22 104. The Gender Equity Center also offers “trans affirming spaces,” “gender
23 inclusive restrooms,” and a “preferred name policy.” A copy of the Gender Equity
24 Center’s Trans Resources webpage is attached as Exhibit 11 to the Complaint.

25 105. In 2007, ASI created the LGBTQA Pride Center to provide resources,
26 advocate for, and express viewpoints on issues related to LGBTQA individuals.

27 106. The LGBTQA Pride Center is a student-run organization that is governed
28 by the ASI Board of Directors.

1 107. The purpose of the LGBTQA Pride Center is to “create, sustain, and affirm
2 an open, safe, and inclusive environment for lesbian, gay, bisexual, transgender,
3 queer, questioning, intersex, and ally (LGBTQIA) individuals and communities at
4 CSU San Marcos.” LGBTQA Pride Center Code § III, a copy of which is attached
5 as Exhibit 12 to the Complaint.

6 108. The LGBTQA Pride Center “accomplishes its purpose by building
7 community, service as a voice of advocacy fostering a positive campus climate for
8 LGBTQIA individuals, sponsoring events and programs which reflect the diversity
9 within LGBTQIA communities, and providing educational resources and
10 opportunities.” Ex. 12 § III.

11 109. The duties and responsibilities of the LGBTQA Pride Center include: (1)
12 conduct educational programming and events focused on meeting the needs of
13 students of all genders, sexual orientations, and diverse identities; (2) increase
14 awareness about issues impacting LGBTQIA students on campus; and (3) pursue
15 equity for LGBTQIA individuals through dialogue, support, programming,
16 education, and advocacy. Ex. 12 § VIII.

17 110. For the 2016-2017 academic year, ASI allocated \$148,579 in mandatory
18 Student Activity Fees to the LGBTQA Pride Center. Ex. 4.

19 111. The LGBTQA Pride Center hosts several annual events. The Coming Out
20 Monologues is an annual community-based theater project “celebrating the diversity
21 of experience and identity in the coming out journey.” A copy of the LGBTQA Pride
22 Center’s Event’s webpage is attached as Exhibit 13 to the Complaint.

23 112. Gaypril is an annual month-long celebration of the “lesbian, gay, bisexual,
24 transgender, questioning and allied (LGBTQA+) community through a series of
25 events that will include lectures, discussions, art collaborations and a pride festival.”
26 Ex. 13.

27 113. The LGBTQA Pride Center also hosts miscellaneous events throughout
28 the year, some of which include outside speakers. For example, this semester the

1 LGBTQA Pride Center hosted (1) Dr. Sayaka, a professional sexologist, for a
2 presentation entitled “Kink 101” which was a discussion of BDSM and Kink which
3 included prizes and participation in an interactive workshop, and interested
4 individuals were encouraged to bring a scarf or tie if they wanted to play along; and
5 (2) Dr. Jennifer Gunsallus, a sexuality speaker, for a presentation entitled “Spice
6 Up Your Valentine’s Day” which was an interactive presentation designed to
7 explore mindfulness in your sexuality and included sex quizzes, myth busting, and
8 information on popular aphrodisiacs. The LGBTQA Pride Center used Student
9 Activity Fees to pay speakers to participate in both of these events. Pictures of the
10 advertisements for these events are attached as Exhibit 14 to this Complaint.

11 114. The LGBTQA Pride Center also offers “trans affirming spaces,” “gender
12 inclusive restrooms,” and a “preferred name policy” which are the same resources
13 provided by the GEC. Ex. 11.

14 115. The LGBTQA Pride Center regularly engages in and promotes speech that
15 advocates for and encourages sexual activities that Plaintiffs believe are immoral
16 and unhealthy.

17 116. Upon information and belief, the LGBTQA Pride Center has not held any
18 event or brought any speaker to campus that expressed or advocated for the
19 viewpoint that sex should only occur between a man and a woman in a marital
20 relationship.

21 117. The Gender Equity Center and the LGBTQA Pride Center also publish two
22 annual student-written magazines. The Queery, published by the LGBTQA Pride
23 Center, focuses on artwork and articles related to and advocating for the interests of
24 “LGBTQ, Queer, and Ally issues and identities.” The Feminist Agenda, published
25 by the Gender Equity Center, focuses on feminist and gender issues.

26 118. The CAB, Gender Equity Center, and the LGBTQA Pride Center are all
27 ASI entities. ASI employs a media and communications team that supports the
28

1 activities of the ASI entities. A copy of the Media and Communications Team Code
2 is attached as Exhibit 15 to this Complaint.

3 119. The media and communications team designs, develops, and prints
4 promotional items and all marketing materials for all events and services for all ASI
5 entities. Ex. 15 § VIII.

6 120. The media and communications team also coordinates with each ASI
7 entity to construct a marketing plan for the entity's activities and programs. Ex. 15
8 § VIII.

9 121. ASI allocates mandatory Student Activity Fees to pay for outside speakers
10 to speak on campus through its sponsorship of the Arts & Lectures Series which is
11 produced by the College of Humanities, Arts, Behavioral and Social Sciences. A
12 copy of the Arts & Lectures Series webpage and Spring 2017 brochure is attached
13 to the Complaint as Exhibit 16.

14 122. The Arts & Lectures Series is a series of events that is designed to offer
15 "eye-opening perspectives on multiple topics, issues, and disciplines by bringing in
16 exceptional guests who are experts in various fields creatively and intellectually."
17 Ex. 16.

18 123. The Arts & Lectures Series includes "lectures across various fields,
19 film/video screenings, visual art talks, dance and theatre performances, music
20 concerts, scientific discussions, book readings and more." Ex. 16.

21 124. The Spring 2017 series included: (1) Jane Elliott in a lecture entitled "The
22 Anatomy of Prejudice"; (2) storyteller and sociologist Kimberly Dark in a lecture
23 entitled "Things I Learned from Fat People on the Plane"; and (3) hip hop artist and
24 activist Nomis in a performance entitled "The Socially Just."

25 125. For the 2016-2017 academic year, ASI allocated \$38,629 in mandatory
26 Student Activity Fees to ASI Leadership Funding ("ALF"). Ex. 4.

27

28

1 126. ALF is a program that provides funding for student organizations to hold
2 on-campus events and for student attendance at professional conferences. A copy of
3 the ASI Leadership Funding Policy is attached to the Complaint as Exhibit 17.

4 127. The University has more than 100 recognized student organizations.

5 128. The maximum amount that a student organization can receive is \$250 for
6 an event that is not open to the entire campus community and \$500 for an event that
7 is open to the entire campus community. Ex. 17.

8 129. The maximum amount that a student organization may receive in ALF
9 funding is \$500 per semester. Ex. 17.

10 130. Allocation of ALF funds is determined by Defendant Lee, as the ASI
11 Executive Vice President, and professional staff members who meet five times per
12 semester to review applications. Ex. 17

13 131. The meetings to review ALF applications are not recorded.

14 132. Students are encouraged to apply early in the year because funds are
15 awarded on a first come, first served basis. Ex. 17.

16 133. To be eligible for an ALF grant, student organizations must satisfy the
17 following criteria: (1) must be officially recognized by the University; (2) must work
18 with the Student Life and Leadership Coordinator to plan the event; (3) events must
19 be held on-campus; (4) funding is available for consumable items and facility costs,
20 which support the event such as food for attendees, paper products, and advertising
21 specific for the event; (5) programs must not make a profit and the event must be
22 free to attend; (6) funding is not available for individual student organization
23 members; (7) funding is not available for door prizes, raffles, opportunity drawings,
24 honorariums, speaker fees, donations, gifts, or give-away items; (8) only original
25 forms and signatures are accepted; and (9) incomplete applications will be rejected.
26 Ex. 17.

27

28

1 134. Pursuant to the ASI Leadership Funding Policy, Defendant Lee and the
2 other members of the committee have the discretion to deny the grant application
3 even if all of the listed criteria are satisfied.

4 135. The Student Activity Funding Policy provides no objective criteria or
5 standards to limit the discretion of Defendant Lee and the other members of the
6 committee in evaluating the applications that meet the threshold criteria above.

7 136. Student organizations are required to submit a completed application for
8 ALF funding along with a program description which must be at least two
9 paragraphs and include the following information explaining why the program
10 should be funded: (1) the purpose of the event; (2) how the event benefits students;
11 (3) whether the organization has put on this event in the past; and (4) if the event has
12 been put on in the past, describe the impact and why it is important to offer this event
13 again. Ex. 17.

14 137. An itemized budget must also be included showing the allowable expenses.
15 Ex. 17.

16 138. After submitting the completed application, Defendant Lee and the
17 committee evaluates the request and informs the organization by email whether the
18 funding request was approved. Ex. 17.

19 139. Funds are provided on a reimbursement basis to individuals or for payment
20 to a vendor after the event. Ex. 17.

21 140. Student organizations may co-sponsor an event with another student
22 organization. The ALF contribution for co-sponsored events is up to \$1,000. Ex. 17.

23 141. The Student Activity Fee Policy does not contain any provision requiring
24 that the mandatory Student Activity Fees must be allocated in a viewpoint-neutral
25 manner.

26 142. The Student Activity Fee Policy does not contain objective criteria, factors,
27 or standards necessary to guide ASI in allocating Student Activity Fees to fund
28 expressive activity in a viewpoint-neutral manner.

1 143. Pursuant to the unbridled discretion granted to them in the Student Activity
2 Fee Policy, the ASI Defendants apply the policy in a viewpoint-discriminatory
3 manner by favoring the speech and expressive activities of the Gender Equity
4 Center, the LGBTQA Pride Center, and the Arts & Lectures Series and disfavoring
5 all other student speech.

6 144. For the 2016-2017 academic year, the ASI Defendants allocated \$296,498
7 to the Gender Equity Center and the LGBTQA Pride Center which is more than 53%
8 of the total mandatory Student Activity Fees allocated to student advocacy.

9 145. In contrast, the ASI Defendants allocated only \$38,629 to fund the speech
10 and expressive activities of the more than 100 other student organizations at the
11 University which is less than 7% of the total mandatory Student Activity Fees
12 allocated to student advocacy. Further, the other student organizations are limited to
13 \$500 per semester to fund their speech and expressive activities.

14 146. The ASI Defendants also favor the speech and expressive activities of the
15 Gender Equity Center, the LGBTQA Pride Center, and the Arts & Lectures Series
16 by allocating mandatory Student Activity Fees to them to pay speakers for their on-
17 campus events. But, Students for Life at CSU-SM is forbidden from using
18 mandatory Student Activity Fee funds to pay for speakers at its events.

19 147. Additionally, in creating the Gender Equity Center and the LGBTQA Pride
20 Center as ASI Entities, the ASI Defendants further favor the speech of these entities
21 by employing a media and communications team which creates a marketing plan
22 and then designs, develops, and prints promotional items and all marketing materials
23 for their events. All of this is paid for through mandatory Student Activity Fees. Yet,
24 other student organizations, specifically Students for Life at CSU-SM, are denied
25 this same benefit.

26 148. The Board Defendants and Defendants White, Haynes, Checa and Clark
27 have the authority to establish the terms of the Student Activity Fee Policy and to
28 require the ASI Defendants to abide by the policy.

1 149. Pursuant to the Student Activity Fee Policy, the ASI Defendants have
2 discretion over the specific allocation of mandatory Student Activity Fees, and thus
3 have control over the viewpoint of the speech and expressive activities funded by
4 those fees.

5 150. Pursuant to the Student Activity Fee Policy, there is no appeals process if
6 a student organization's funding application for an ALF grant is denied by ASI.

7 151. Pursuant to the Student Activity Fee Policy, there is no process to punish
8 or remove University officials that violate viewpoint neutrality when making student
9 activity fee funding decisions.

10 **II. Background on Students for Life at CSU-SM**

11 152. Students for Life at CSU-SM is a nonprofit, student-led expressive student
12 group at the University and is a recognized student organization.

13 153. Students for Life at CSU-SM is founded upon its view that all human life
14 from the point of conception until natural death is sacred and has inherent dignity.

15 154. Students for Life at CSU-SM also believes and advocates that sexual
16 activity should only occur between a man and a woman in a marital relationship.

17 155. Students for Life at CSU-SM advocates for these views peacefully on
18 campus.

19 156. Students for Life at CSU-SM engages in expression on the University's
20 campus through a variety of means including flyers, signs, peaceful demonstrations,
21 hosting tables with information, inviting speakers to campus, and talking with fellow
22 students about its pro-life views.

23 157. When engaging in these expressive activities, Students for Life at CSU-
24 SM and its members discuss political, religious, social, cultural, and moral issues,
25 events, and ideas.

26 158. For example, in this past year, Students for Life at CSU-SM hosted the
27 Genocide Awareness Project in September 2016 and February 2017 and it also
28

1 hosted a debate on the topic of abortion between Seth Gruber of the Life Training
2 Institute and Cecili Chadwick of the CSU-SM Women’s Studies department.

3 159. Students for Life at CSU-SM intends to engage in these types of expressive
4 activities during the remainder of the 2017–2018 academic year and subsequent
5 years thereafter. It wants to apply for grants from mandatory Student Activity Fees
6 to offset the cost of providing these educational opportunities for the CSU-SM
7 campus but has been and will be denied such funding because the Student Activity
8 Fee Policy grants the ASI Defendants unbridled discretion to allocate funds based
9 upon the viewpoint of the speech. And the ASI Defendants have utilized such
10 discretion to favor the speech of the Gender Equity Center, the LGBTQA Pride
11 Center, and the Arts & Lectures Series and to disfavor all other student speech
12 reflecting competing viewpoints, including the speech of Students for Life at CSU-
13 SM.

14 **III. Defendants’ Unconstitutional Denial of Students for Life at CSU-SM’s**
15 **Funding Request**

16 160. As required by the ALF Policy, Students for Life at CSU-SM submitted
17 an application for an ALF grant of \$500 to host Professor Mike Adams to deliver a
18 speech, open to all students, entitled, “Abortion and Human Equality: A Scientific
19 and Philosophical Defense of the Pro-Life View.”

20 161. The application indicated that the program was scheduled to be held on
21 March 9, 2017.

22 162. The total cost of the event would be approximately \$3,000 which includes
23 Professor Adams’ speaking fee and travel expenses.

24 163. Students for Life at CSU-SM had obtained commitments of \$2,000 from
25 other non-university sources to assist with the expenses of the event.

26 164. After submitting the application, Mr. Apodaca received an e-mail stating
27 that the application was denied. No explanation was provided. A copy of the e-mail
28 is attached as Exhibit 18 to the Complaint.

1 165. Mr. Apodaca inquired about the reason for the denial. The ASI
2 representative responded that the application was not complete because it did not
3 include an itemized list of the expenses. Ex. 18.

4 166. Mr. Apodaca responded that the funds were needed to cover the costs of a
5 speaker and asked whether he could resubmit the application with this information.
6 The ASI representative informed Nathan that ALF grants are not available for
7 speaker fees and travel expenses. Ex. 18.

8 167. Mr. Apodaca responded that he was surprised that student organizations
9 could not receive funds for speakers because the Pride Center and the GEC both
10 receive funding for speakers. The ASI representative provided the following
11 response:

12 Well, the BOD, GEC, and Pride Center (and CAB-Campus Activities
13 Board) are all departments of ASI and have their own budgets to do
14 their own programming.

15 ALF comes from the BOD's programming funds to assist student orgs
16 even though the student orgs technically have nothing to do with ASI
17 since they are run and recognized by Student Life & Leadership (SLL).
18 But, since we believe student life on campus is important, we have the
19 funding available to help events happen as a courtesy to the student
20 orgs. But, we (as BOD-ALF) don't coordinate the event or participate
21 in the event, which is why we can't fund things such as speaker fees or
22 travel expenses. The other ASI entities fully coordinate and run their
own events and programming and thus can have speakers and/or other
programming events.

23 Ex. 18.

24 168. Mr. Apodaca inquired whether the Gender Equity Center would be
25 willing to co-sponsor the Students for Life at CSU-SM's event, but they declined.

26 169. Upon information and belief, the Gender Equity Center and the
27 LGBTQA Pride Center do not have any written policies and procedures governing
28 whether they will co-sponsor an event, and neither ASI nor any of the other

1 Defendants have placed any restriction on their discretion to determine whether to
2 co-sponsor another student group's event. Thus, the Gender Equity Center and the
3 LGBTQA Pride Center, as ASI departments, have unbridled discretion to
4 discriminate in their co-sponsorship with another student group using mandatory
5 Student Activity Fees based upon the viewpoint of the proposed speech.

6 170. As a result of ASI's denial of the grant request, Students for Life at CSU-
7 SM canceled the event with Professor Adams because it had insufficient funds to
8 cover the cost of the event.

9 171. Pursuant to the Student Activity Fee Policy, Students for Life at CSU-SM
10 could not appeal the denial of funding by ASI or the Gender Equity Center.

11 172. Pursuant to the Student Activity Fee Policy, the ASI Defendants denied
12 Students for Life at CSU-SM's request for funding for Professor Adams' speech.

13 173. Pursuant to the Student Activity Fee Policy, the ASI Defendants denied
14 Students for Life at CSU-SM's request for funding, thereby discriminating against
15 the viewpoint intended to be expressed by Students for Life at CSU-SM and its
16 invited speaker.

17 174. Pursuant to the Student Activity Fee Policy, the ASI Defendants allocate
18 mandatory Student Activity Fees to the Gender Equity Center and the LGBTQA
19 Pride Center and allow those student-run entities to use such funds for speakers to
20 discuss topics chosen by those centers and reflecting the viewpoints for which the
21 centers choose to advocate, including advocating for abortion and sexually
22 promiscuous behavior.

23 175. Students for Life at CSU-SM plans to apply for Student Activity Fee
24 funding through an ALF grant immediately for its upcoming events on campus
25 which will promote a different viewpoint on abortion and sexual behavior.

26 176. Students for Life at CSU-SM is currently working on plans to bring at
27 least two speakers to campus in the fall of 2017 and wants to apply for funding
28 through an ALF grant for those events.

1 177. For example, Students for Life at CSU-SM intends to bring pro-life
2 speakers Scott Klusendorf, President of Life Training Institute, and Professor Mike
3 Adams to campus to speak in the fall of 2017, and it intends to apply for an ALF
4 grant to defray the costs of hosting these speakers.

5 178. Pursuant to the Student Activity Fee Policy, Defendants will deny Students
6 for Life at CSU-SM's request for an ALF grant to bring Scott Klusendorf and
7 Professor Adams to speak on campus because they will not pay for speaker fees or
8 their travel expenses.

9 179. Students for Life at CSU-SM also intends to host an event on campus
10 entitled "Real Sex Week" which will include activities and provide information
11 related to the myths of safe sex and abortion, education about the risk of STDs, and
12 education about the health risks of common forms of birth control. Students for Life
13 at CSU-SM's viewpoints on issues such as sex, human sexuality, birth control, and
14 abortion will differ from the viewpoints advocated by the Gender Equity Center and
15 the LGBTQA Pride Center.

16 180. Pursuant to the Student Activity Fee Policy, Defendants possess unbridled
17 discretion in allocating mandatory Student Activity Fees and in evaluating Students
18 for Life at CSU-SM's future applications for an ALF grant and Defendants possess
19 the authority to deny the applications based upon the viewpoint of Students for Life
20 at CSU-SM's speech.

21 **Allegations of Law**

22 181. All of the acts of Defendants, their officers, agents, employees, and
23 servants, were executed and are continuing to be executed by Defendants under the
24 color and pretense of the policies, statutes, ordinances, regulations, customs, and
25 usages of the State of California.

26 182. The ASI Defendants act under color of state law when carrying out their
27 duties and functions delegated to them by the other Defendants pursuant to the
28

1 Student Activity Fee Policy with respect to allocating mandatory Student Activity
2 Fees.

3 183. Defendants are not engaging in government speech or their own speech in
4 their allocation of mandatory Student Activity Fees.

5 184. Defendants knew or should have known that by forcing Mr. Apodaca and
6 the other members of Students for Life at CSU-SM to pay into a viewpoint
7 discriminatory Student Activity Fee system and by denying Students for Life at
8 CSU-SM's application for an ALF grant due to the viewpoint of its guest speaker's
9 expression, Defendants violated Plaintiffs' constitutional rights.

10 185. The Student Activity Fee Policy which Defendants applied to violate
11 Plaintiffs' constitutional rights remains in full force and effect.

12 186. Plaintiffs are suffering irreparable harm from the Student Activity Fee
13 Policy and conduct of Defendants, which cannot be fully compensated by an award
14 of money damages.

15 187. Plaintiffs have no adequate or speedy remedy at law to correct or redress
16 the deprivation of their rights by Defendants.

17 188. Defendants' actions and policies, as set forth above, do not serve any
18 legitimate or compelling state interest.

19 189. Defendants have deprived, and continue to deprive, Plaintiffs of their
20 clearly established rights under the United States Constitution, as set forth in the
21 causes of action below.

22 190. Unless the conduct of Defendants is enjoined, Plaintiffs will continue to
23 suffer irreparable injury.

24 191. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
25 appropriate relief invalidating Defendants' Student Activity Fee Policy, along with
26 the related practices and procedures.

27

28

1 **First Cause of Action**

2 **Violation of Plaintiffs' First Amendment Right to Freedom of Speech**

3 **Compelled Speech and Viewpoint Discrimination**

4 192. Plaintiffs repeat and reallege each of the allegations contained in
5 paragraphs 1–191 of this Complaint.

6 193. The First Amendment's Freedom of Speech Clause prohibits the
7 government from compelling citizens to express or support a message not of their
8 own choosing.

9 194. The First Amendment's Freedom of Speech Clause prohibits public
10 universities from collecting a mandatory Student Activity Fee that is used to fund
11 student organization speech, if that mandatory Student Activity Fee is not allocated
12 in a viewpoint-neutral manner.

13 195. The First Amendment's Freedom of Speech Clause prohibits viewpoint
14 discrimination in a public forum created for student speech.

15 196. When a public university collects mandatory Student Activity Fees and
16 allows registered student organizations to apply for Student Activity Fee funding, or
17 otherwise makes funds available to student groups to foster a diversity of viewpoints,
18 it creates a public forum for student speech and expression.

19 197. The government is not speaking when it allows registered student
20 organizations promoting a multiplicity of views to apply for funding, whether
21 through Student Activity Fees or otherwise. Instead, it creates a public forum for
22 student speech and expression.

23 198. The funds that a public university collects through a mandatory Student
24 Activity Fee and uses to fund student organizations do not constitute government
25 funds.

26 199. The government's ability to restrict speech in a public forum is limited.

27 200. A public university may not apply viewpoint-based standards in allocating
28 student organization funding, including through mandatory Student Activity Fees.

1 201. The Defendants have created a public forum for student speech through its
2 Student Activity Fee Policy.

3 202. Through the Student Activity Fee Policy, the Defendants compel Plaintiff
4 Nathan Apodaca, the other members of Plaintiff Students for Life at CSU-SM, and
5 all University students to pay a mandatory Student Activity Fee that is used in part
6 to fund student organization speech on campus pursuant to a policy which is not
7 viewpoint-neutral.

8 203. Defendants' policies governing the allocation of mandatory Student
9 Activity Fees, including the Student Activity Fee Policy, confer unbridled discretion
10 on Defendants or other government officials charged with allocating those funds to
11 suppress and/or discriminate against disfavored speech based on viewpoint.

12 204. The lack of objective criteria, factors, or standards for determining who
13 may access a student organization funding forum gives government officials
14 unbridled discretion to exclude or prohibit speech based on its viewpoint in violation
15 of the First Amendment.

16 205. The lack of a process to remove officials who violate viewpoint neutrality
17 when deciding student organization funding requests indicates that the government
18 has unbridled discretion to govern the speech forum.

19 206. The lack of advanced notice for meetings, public meetings, and recording
20 of meetings of government officials charged with allocating student organization
21 funding indicates that the government has unbridled discretion to govern the speech
22 forum.

23 207. The lack of an appeals process in a student organization funding forum
24 indicates that the government has unbridled discretion to govern the speech forum.

25 208. Defendants' policies governing the allocation of funds, including the
26 Student Activity Fee Policy, confer unbridled discretion on Defendants or other
27 government officials charged with allocating those funds to suppress and/or
28 discriminate against disfavored speech because of its viewpoint.

1 209. Defendants' policies governing the allocation of funds, including the
2 Student Activity Fee Policy, grant Defendants unbridled discretion to promote or
3 create student organizations that advocate for Defendants' favored viewpoints, such
4 as the Gender Equity Center and the LGBTQA Pride Center, and to favor those
5 viewpoints over the viewpoints of all other student organizations.

6 210. Defendants' policies governing the allocation of funds, including the
7 Student Activity Fee Policy, grant Defendants unbridled discretion to allow the
8 Gender Equity Center and the LGBTQA Pride Center to favor certain viewpoints
9 over others by co-sponsoring the events of certain student organizations but
10 declining to co-sponsor events of other disfavored student organizations.

11 211. Defendants' policies governing the allocation of funds, including the
12 Student Activity Fee Policy, do not provide a process through which Defendants or
13 other government officials may remove an ASI Defendant for violating the
14 constitutional prohibition against viewpoint discrimination.

15 212. Defendants' policies governing the allocation of funds, including the
16 Student Activity Fee Policy, do not provide that ALF grant meetings be announced
17 in advance to the public, be open to the public, or be recorded.

18 213. Defendants' policies governing the allocation of funds, including the
19 Student Activity Fee Policy, do not provide student organizations with the ability to
20 appeal student organization funding decisions by the ASI Defendants.

21 214. The ASI Defendants have exercised the unbridled discretion granted by
22 the remaining Defendants through the challenged policies to deny Plaintiff Students
23 for Life at CSU-SM the opportunity to receive mandatory Student Activity Fees for
24 speakers, but they still force students, including Plaintiff Apodaca and members of
25 Plaintiff Students for Life at CSU-SM, to support other speakers reflecting the views
26 of the Gender Equity Center, the LGBTQA Pride Center, the Arts & Lectures Series,
27 and other student organizations through the mandatory Student Activity Fee.

28

1 215. The ASI Defendants have exercised the unbridled discretion granted by
2 the remaining Defendants through the challenged policies to deny Plaintiff Students
3 for Life at CSU-SM the opportunity to receive mandatory Student Activity Fees in
4 the same manner as the Gender Equity Center and the LGBTQA Pride Center, but
5 they still force students, including Plaintiff Apodaca and members of Plaintiff
6 Students for Life at CSU-SM, to support the speech of the Gender Equity Center and
7 the LGBTQA Pride Center through the mandatory Student Activity Fee.

8 216. Defendants' Student Activity Fee Policy compels Plaintiff Apodaca and
9 the student members of Plaintiff Students for Life at CSU-SM to fund and support
10 speech and viewpoints with which they disagree and which they find offensive and
11 objectionable.

12 217. Pursuant to the Student Activity Fee Policy, Defendants engaged in
13 content- and viewpoint-based discrimination by favoring the expressive activities of
14 the Gender Equity Center and the LGBTQA Pride Center, but not providing Plaintiff
15 Students for Life at CSU-SM the same treatment.

16 218. Defendants applied the Student Activity Fee Policy, and procedures,
17 practices, and customs to Plaintiff Students for Life at CSU-SM in a discriminatory
18 manner by (1) allocating more than \$296,000 to the Gender Equity Center and the
19 LGBTQA Pride Center to fund their advocacy but limiting Plaintiff Students for Life
20 at CSU-SM to \$500 per semester; (2) granting the student-operated Gender Equity
21 Center and the LGBTQA Pride Center special benefits, such as use of the media and
22 communications team, that are not available to Students for Life at CSU-SM; and
23 (3) allowing the Gender Equity Center, the LGBTQA Pride Center, and the Arts &
24 Lectures Series to use mandatory Student Activity Fees to pay for speakers but
25 denying funding to Students for Life at CSU-SM to pay for speakers.

26 219. Defendants' Student Activity Fee Policy permits viewpoint discrimination
27 in the allocation of Student Activity Fees because it grants unbridled discretion to
28 University administrators and the ASI Defendants.

1 220. Defendants have no legitimate interest to support by favoring the speech
2 of the Gender Equity Center, the LGBTQA Pride Center, and the Arts & Lectures
3 Series and disfavoring the speech of Plaintiff Students for Life at CSU-SM.

4 221. Accordingly, Defendants' Student Activity Fee Policy and their
5 enforcement of those policies against Plaintiffs, violates Plaintiffs' right to freedom
6 of speech guaranteed by the First Amendment.

7 222. Because of Defendants' actions, Plaintiffs have suffered, and continue to
8 suffer, economic injury and irreparable harm. They are entitled to an award of
9 monetary damages and equitable relief.

10 223. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a
11 declaration that Defendants violated their First Amendment right to freedom of
12 speech and an injunction against Defendants' policy and actions. Additionally,
13 Plaintiffs are entitled to damages in an amount to be determined by the evidence and
14 this Court and the reasonable costs of this lawsuit, including their reasonable
15 attorneys' fees.

16 **Second Cause of Action**

17 **Violation of Plaintiffs' Fourteenth Amendment**

18 **Right to Equal Protection of the Law**

19 224. Plaintiffs repeat and reallege each of the allegations contained in
20 paragraphs 1–191 of this Complaint.

21 225. The Fourteenth Amendment to the United States Constitution guarantees
22 Plaintiffs the equal protection of the laws, which prohibits Defendants from treating
23 Plaintiffs differently than similarly situated students and student organizations.

24 226. The government may not treat someone disparately as compared to
25 similarly situated persons when such disparate treatment burdens a fundamental
26 right, targets a suspect class, or has no rational basis.

27 227. Plaintiff Nathan Apodaca and the other student members of Students for
28 Life at CSU-SM are similarly situated to all other students at the University because

1 they pay Student Activity Fees as a condition of enrollment at the University.

2 228. Pursuant to the Student Activity Fee Policy, Defendants treated Plaintiff
3 Nathan Apodaca and the other student members of Students for Life at CSU-SM
4 disparately than other students because Defendants have used Plaintiffs' fees to fund
5 the speech of students that agree with the viewpoints advocated for by the Gender
6 Equity Center and the LGBTQA Pride Center but have denied funding to advocate
7 for Plaintiffs' viewpoints on those same topics.

8 229. Defendants' Students Activity Fee Policy and related practices violate
9 Plaintiff Nathan Apodaca and the other student members of Students for Life at
10 CSU-SM's fundamental right to freedom of speech.

11 230. Plaintiff Students for Life at CSU-SM is similarly situated to the Gender
12 Equity Center and the LGBTQA Pride Center at the University because they are all
13 student-led organizations that engage in expressive activity on campus to advocate
14 for their own viewpoints.

15 231. Pursuant to the Student Activity Fee Policy, Defendants granted
16 mandatory Student Activity Fee funding to the Gender Equity Center and the
17 LGBTQA Pride Center, but denied the same to Plaintiff Students for Life at CSU-
18 SM.

19 232. Pursuant to the Student Activity Fee Policy, Defendants granted
20 mandatory Student Activity Fee funding to the Gender Equity Center and the
21 LGBTQA Pride Center to bring in speakers for events advocating viewpoints on
22 political, ideological, and social issues, but denied the same funding to Plaintiff
23 Students for Life at CSU-SM for its speech by Professor Adams, which also would
24 have focused on political, ideological, and social issues, but from a different
25 viewpoint.

26 233. Pursuant to the Student Activity Fee Policy, Defendants treated Plaintiff
27 Students for Life at CSU-SM disparately when compared to the Gender Equity
28

1 Center and the LGBTQA Pride Center by denying Plaintiff Student Activity Fee
2 funding.

3 234. Defendants' Student Activity Fee Policy and related practices violate
4 Plaintiff Students for Life at CSU-SM's fundamental right to freedom of speech.

5 235. When government regulations, like Defendants' mandatory Student
6 Activity Fee funding policy and practices challenged herein, infringe on
7 fundamental rights, discriminatory intent is presumed.

8 236. Defendants' mandatory Student Activity Fee funding policy and practices
9 have also been applied to discriminate intentionally against Plaintiffs' rights to
10 freedom of speech.

11 237. Defendants lack a rational or compelling state interest for such disparate
12 treatment of Plaintiffs.

13 238. Defendants' Student Activity Fee Policy and their practices are not
14 narrowly tailored as applied to Plaintiffs because Plaintiffs' speech does not
15 implicate any of the compelling or even legitimate interests Defendants might have.

16 239. Defendants have applied the Student Activity Fee Policy and their
17 procedures, practices, and customs to Plaintiff Students for Life at CSU-SM in a
18 discriminatory and unequal manner, allowing the Gender Equity Center and the
19 LGBTQA Pride Center to receive preferred treatment, including preferred funding
20 allocations, and authorization to use those funds to pay speakers to advocate for their
21 views, while providing only the opportunity for far less funding for Plaintiff and
22 subjecting it to restrictions on using those funds to bring in its own speakers in
23 violation of Plaintiff's right to equal protection of the laws under the Fourteenth
24 Amendment.

25 240. Because of Defendants' actions pursuant to the Student Activity Fee
26 Policy, Plaintiffs have suffered, and continue to suffer, economic injury and
27 irreparable harm. Plaintiffs are entitled to an award of monetary damages and
28 equitable relief.

1 241. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a
2 declaration that Defendants violated their Fourteenth Amendment right to equal
3 protection of law and an injunction against Defendants' Student Activity Fee Policy
4 and actions. Additionally, Plaintiffs are entitled to damages in an amount to be
5 determined by the evidence and this Court and the reasonable costs of this lawsuit,
6 including their reasonable attorneys' fees.

7 **Prayer For Relief**

8 Wherefore, Plaintiffs respectfully request that this Court enter judgment against
9 Defendants and provide Plaintiffs with the following relief:

- 10 (A) A declaratory judgment that Defendants' Student Activity Fee Policy,
11 facially and as-applied, violates Plaintiffs' rights under the First and
12 Fourteenth Amendments;
- 13 (B) A declaratory judgment that Defendants' denial of Student Activity
14 Fee funding to Plaintiff Students for Life at CSU-SM violated
15 Plaintiff's rights under the First and Fourteenth Amendments;
- 16 (C) A preliminary and permanent injunction prohibiting Defendants, their
17 agents, officials, servants, employees, and any other persons acting on
18 their behalf from enforcing the Student Activity Fee Policy challenged
19 in this complaint;
- 20 (D) Actual compensatory damages in the amount of \$500.00 for infringing
21 Plaintiff Students for Life at CSU-SM's exercise of its First and
22 Fourteenth Amendment rights;
- 23 (E) Actual compensatory damages in the amount of mandatory Student
24 Activity Fees paid by each of Plaintiff Students for Life at CSU-SM's
25 student members, including Plaintiff Apodaca, that was collected
26 pursuant to a viewpoint-discriminatory policy that infringed Plaintiffs'
27 First Amendment rights;
- 28

- 1 (F) Nominal damages for the violation of Plaintiffs' First and Fourteenth
- 2 Amendment rights;
- 3 (G) Plaintiffs' reasonable attorneys' fees, costs, and other costs and
- 4 disbursements in this action pursuant to 42 U.S.C. § 1988; and
- 5 (H) All other further relief to which Plaintiffs may be entitled.

6
7 Respectfully submitted this 17th day of May 2017.

8
9 By: s/ Daniel R. Watkins

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**Pro Hac Vice Applications Forthcoming*

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25 *Attorneys for Plaintiffs*
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DEMAND FOR TRIAL BY JURY

Plaintiffs demand trial by jury of all matters so triable herein.

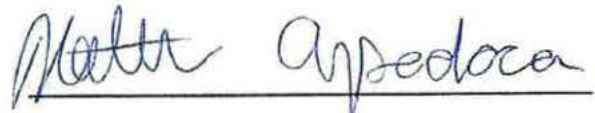
By: s/ Daniel R. Watkins
DANIEL R. WATKINS
Attorney for Plaintiffs

VERIFICATION OF COMPLAINT

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I, Nathan Apodaca, President of Students for Life at California State University-San Marcos, and a citizen of the United States and a resident of the State of California, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged are true and correct.

Executed this 11 day of May, 2017, at Escondido, California.



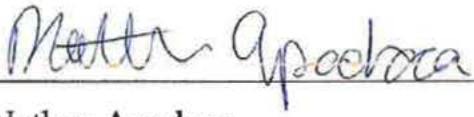
Nathan Apodaca, President
Students for Life at
California State University-San Marcos

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VERIFICATION OF COMPLAINT

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Executed this 11 day of May, 2017, at Escondido, California.



Nathan Apodaca