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

MADISON FISK, RAQUEL CASTRO,
 GRETA CASTRILLON, CLARE
 BOTTERILL, MAYA BROSCHE,
 HELEN BAUER, CARINA CLARK,
 NATALIE FIGUEROA, ERICA
 GROTEGEER, KAITLIN HERI,
 OLIVIA PETRINE, AISHA WATT,
 KAMRYN WHITWORTH, SARA
 ABSTEN, ELEANOR DAVIES,
 ALEXA DIETZ, and LARISA SULCS,
 individually and on behalf of all those
 similarly situated,

Plaintiffs,

v.

BOARD OF TRUSTEES OF THE
 CALIFORNIA STATE UNIVERSITY,
 and SAN DIEGO STATE
 UNIVERSITY

Defendants.

Case No. 3:22-cv-00173-TWR-MSB

**DEFENDANTS’ NOTICE OF
 MOTION AND MOTION TO
 DISMISS IN PART PLAINTIFFS’
 THIRD AMENDED COMPLAINT**

[Fed. R. Civ. P. 12(b)(1), 12(b)(6)]

Date: Thursday, August 17, 2023

Time: 3:00 p.m.

Courtroom: 3A

Judge: Hon. Todd W. Robinson

Magistrate: Hon. Michael S. Berg

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** Defendants Board of Trustees of the California
3 State University, which is the State of California acting in its higher education
4 capacity (erroneously also sued as “San Diego State University”), have set a motion
5 to dismiss for hearing on Thursday, August 17, 2023, at 3:00 p.m., or as soon
6 thereafter as the matter may be heard, before the Honorable Todd W. Robinson of
7 the United States District Court for the Southern District of California, located at
8 221 West Broadway, Courtroom 3A, San Diego, CA 92101.

9 The motion to dismiss seeks to dismiss in part Plaintiffs’ Third Amended
10 Complaint with prejudice, in lieu of an answer, and is brought on the following
11 grounds:

12 1. Insofar as Plaintiffs seek injunctive and declaratory relief, Plaintiffs’
13 claims for unequal allocation of athletic financial assistance under Title IX (Count
14 I), unequal athletic treatment and benefits under Title IX (Count II), and retaliation
15 (Count III) should be dismissed with prejudice as moot pursuant to Fed. R. Civ. P.
16 12(b)(1) because no enrolled Plaintiff is a current student-athlete.

17 2. Plaintiffs’ Title IX claim for unequal allocation of athletic financial
18 assistance (Count I) for the 2018-2019 academic year is facially barred by the statute
19 of limitations and must be dismissed under Fed. R. Civ. P. 12(b)(6).

20 3. Additionally, Count I of Plaintiffs’ Third Amended Complaint should
21 be dismissed with prejudice for lack of standing pursuant to Fed. R. Civ. P. 12(b)(1),
22 as follows:

- 23 a. Plaintiff Figueroa lacks standing under Plaintiffs’ “lost opportunity”
24 theory;
- 25 b. Rowing Plaintiffs enrolled when the original Complaint was filed (Fisk,
26 Castro, Castrillon, Botterill, Petrine, Bauer, Figueroa, Dietz, and Sulcs)
27 lack standing to seek injunctive and declaratory relief under Plaintiffs’
28 “lost opportunity” theory;

- 1 c. Track and field Plaintiffs (Brosch, Clark, Grotegeer, Heri, Watt, and
- 2 Absten) lack standing to pursue either damages or injunctive relief
- 3 under Plaintiffs’ “lost opportunity” theory;
- 4 d. All Plaintiffs lack standing to proceed under a “smaller aid award”
- 5 theory;
- 6 e. Rowing Plaintiffs enrolled when the Complaint was filed (Fisk, Castro,
- 7 Castrillon, Botterill, Petrine, Bauer, Figueroa, Dietz, and Sulcs) lack
- 8 standing to seek injunctive and declaratory relief under Plaintiffs’
- 9 “psychological and stigmatic harms” theory; and
- 10 f. Plaintiffs who were not enrolled when the original Complaint was filed
- 11 (Brosch, Whitworth, and Davies) lack standing to seek injunctive and
- 12 declaratory relief under any theory.

13 4. Additionally, applying this Court’s prior ruling, Plaintiffs’ retaliation
14 claim (Count III) must be dismissed with prejudice as to Plaintiffs Fisk, Castro,
15 Castrillon, Botterill, Brosch, Petrine, Bauer, Figueroa, Whitworth, Davies, Dietz,
16 and Sulcs for lack of standing pursuant to Fed. R. Civ. P. 12(b)(1) because they were
17 not present at the February 16, 2022 track and field Zoom meeting.

18 Prior to filing this motion, on May 24, 2023, Defendants’ counsel, Brian
19 Schwartz, met and conferred with Plaintiffs’ counsel, Arthur Bryant, in a good faith
20 attempt to resolve, or narrow, the issues raised in this motion. Plaintiffs’ counsel
21 declined to dismiss any portion of the Third Amended Complaint, necessitating the
22 filing of this Motion.

23 WHEREFORE, for the reasons set forth above and in Defendants’ supporting
24 brief, Defendants request that the Court dismiss in part Plaintiffs’ Third Amended
25 Complaint with prejudice.

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Respectfully submitted,

MILLER, CANFIELD, PADDOCK
AND STONE, P.L.C.

By: /s/ Scott R. Eldridge

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Dated: May 26, 2023

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2023, I electronically filed the foregoing document with the Clerk of the Court using the ECF system that will send notification of such filing upon all ECF filing participants.

/s/ Scott R. Eldridge
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