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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MADISON FISK, RAQUEL CASTRO,
GRETA VISS, 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.: 22-CV-173 TWR (MSB)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS’
MOTION TO DISMISS IN PART
PLAINTIFFS’ THIRD AMENDED
COMPLAINT**

(ECF No. 51)

Presently before the Court is the Motion to Dismiss in Part Plaintiffs’ Third Amended Complaint (ECF No. 51, “Mot.”) filed by Defendants the Board of Trustees of the California State University and San Diego State University (collectively, “SDSU”),

1 along with Plaintiffs’ Opposition to (ECF No. 53, “Opp’n”) and Defendants’ Reply in
2 Support of (ECF No. 54, “Reply”) the Motion. The Court held a hearing on August 17,
3 2023. (ECF Nos. 55–56.) Having carefully considered the Parties’ arguments, the Third
4 Amended Complaint (ECF No. 50, “TAC”), and the relevant law, the Court **GRANTS IN**
5 **PART AND DENIES IN PART** Defendants’ Motion, as follows.

6 **BACKGROUND**

7 The Court incorporates the factual background and procedural history of this case
8 from the Court’s April 12, 2023, Order Granting in Part and Denying in Part Defendants’
9 Motion to Dismiss Counts I and III of Plaintiffs’ Second Amended Complaint. (*See* ECF
10 No. 49 at 2–8.)¹

11 **I. Factual Background**

12 To reiterate briefly, Plaintiffs, “past and current female varsity student-athletes at
13 SDSU,” initiated this lawsuit against Defendants on February 7, 2022, alleging SDSU—a
14 recipient of federal funding—has engaged in intentional discrimination based on sex in its
15 athletics programs in violation of Title IX. (TAC ¶¶ 1, 17, 298–99, 332, 371); *see also* 20
16 U.S.C. §§ 1681, 1687. Plaintiffs specifically claim SDSU has violated, and is violating,
17 Title IX and its guiding regulations by (1) “depriving its female varsity student-athletes of
18 equal athletic financial aid”; (2) “denying them equal athletic benefits and treatment”; and
19 (3) “retaliating against them because some of them sued SDSU for violating Title IX.”
20 (TAC ¶ 1.)

21 There are seventeen named Plaintiffs in this action, and they seek to represent a class
22 of current and former SDSU female student-athletes whom they allege have been harmed
23 by SDSU’s discriminatory practices. (TAC ¶¶ 84–291, 456–59.) The named Plaintiffs,
24 along with the sport they played and the total amount of athletic financial aid they received,
25 are listed below.

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27
28 ¹ Throughout this Order, pin citations refer to the CM/ECF page numbers stamped at the top of each page.

	Plaintiff ²	Sport ³ /Current Year in School ⁴	Total Aid Received (Specific Years)	
1				
2	1	Madison Fisk* [#]	Rowing/Grad. May '22	\$28,200
3	2	Raquel Castro* [#]	Rowing/Grad. May '23	\$3,200
4	3	Greta Viss (Castrillon) ^{#+}	Rowing/Grad. May '21	\$24,000 (Fr. & Soph.)
5	4	Clare Botterill [#]	Rowing/Sr.	\$38,000 (Jr.)
6	5	Maya Brosch ⁺	T&F/Grad. May '21	\$19,640
7	6	Olivia Petrine [#]	Rowing/Jr.	\$800 (while athlete) + \$800 (after rowing team was eliminated)
8	7	Helen Bauer* [#]	Rowing/Grad. May '22	\$30,000 (Fr. & Soph.)
9	8	Carina Clark* [^]	T&F/Grad. May '22	\$800 (Sr.)
10	9	Natalie Figueroa* [#]	Rowing/Grad. May '23	\$0
11	10	Erica Grotegeer* [^]	T&F/Grad. May '23	\$37,879
12	11	Kaitlin Heri* [^]	T&F/Grad. May '22	\$64,600
13	12	Aisha Watt* [^]	T&F/Grad. May '23	\$14,200 + received \$9,600 for each semester of 2022-2023 school year

2 “*” indicates Plaintiff was a student at SDSU on the date this lawsuit was initially filed on February 7, 2022, but has since graduated. (TAC ¶¶ 84, 149, 160, 206, 247; ECF No. 51-2 at 4 (“Ex. A”).) “+” indicates Plaintiff was no longer a student at SDSU when the original Complaint was filed. (TAC ¶¶ 128, 236, 262; Ex. A.) “#” indicates Plaintiff was no longer a student-athlete at SDSU at the time the original Complaint was filed because her sports team no longer existed at the school. (TAC ¶¶ 85, 96, 107, 118, 139, 150, 176, 237, 263, 273, 283.) “^” indicates Plaintiff was present at the Zoom meeting at which SDSU allegedly retaliated. (*Id.* ¶¶ 171, 202, 217, 232, 258.)

3 SDSU eliminated its women’s varsity rowing team in Spring 2021. (TAC ¶ 85.) But “[w]hen SDSU announced the elimination of the women’s rowing team, it pledged to honor the scholarships for all members of the team *through* their graduation date if those members of the former team remained at SDSU.” (*Id.* ¶ 368.)

4 The school year listed is as of May 26, 2023—the date Defendants’ Motion was filed. (*See generally* Mot.) A declaration from Megan Taormina, Defendants’ Athlete Eligibility Coordinator/NCAA Certifying Officer, and Exhibit A, which outlines the graduation dates for each named Plaintiff, are attached to Defendants’ Motion. (*See* ECF 51-2 at 1–3 (“Taormina Decl.”); Ex. A.) Although not all the information contained in these attachments was included in Plaintiff’s Third Amended Complaint, the Court is permitted to consider it because the information is pertinent to Defendants’ factual attack on the Court’s jurisdiction. *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (“In resolving a factual attack on jurisdiction, the district court may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment.”).

13	Kamryn Whitworth ^{#+}	Rowing/Grad. May '21	\$13,200
14	Sara Absten ^{*^}	T&F/Grad. May '22	"Partial" / "Fluctuated"
15	Eleanor Davies ^{#+}	Rowing/Transferred Jan '22	\$22,500
16	Alexa Dietz ^{*#}	Rowing/Grad. May '22	\$18,400
17	Larisa Sulcs [#]	Rowing/On leave	\$22,800 (Fr. & Soph.)

(TAC ¶¶ 84–291; Ex. A.)

II. Procedural History

After the Court dismissed in part Plaintiffs' First Amended Complaint, Plaintiffs timely filed a Second Amended Complaint alleging three causes of action under Title IX: (1) unequal financial aid, (2) unequal athletic benefits and treatment, and (3) retaliation. (*See* ECF No. 41, "SAC.") The Second Amended Complaint asserted three theories of standing for the unequal financial aid claim. (*See id.* ¶¶ 34–40, 50.) Plaintiffs explained that they were harmed by SDSU's failure to provide proportional athletic financial aid to female student-athletes in the following ways: (1) they were denied the opportunity to compete for and receive equal financial aid because of their sex ("lost opportunity" theory), (2) they received smaller financial aid awards because of their sex ("smaller financial award" theory), and (3) they were forced to endure degrading and stigmatizing second-class treatment because of their sex ("stigmatic harms" theory). (*See, e.g., id.* ¶ 50.) Defendants moved to dismiss Plaintiffs' unequal financial aid claim and retaliation claim under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (*See* ECF No. 42.) The Court granted in part and denied in part that motion, as follows:

(1) Under Plaintiffs' "lost opportunity" theory, Plaintiffs previously on the rowing team, except Ms. Figueroa, sufficiently alleged an injury-in-fact redressable by Plaintiffs' request for damages;

(2) The Court lacked jurisdiction over claims for injunctive and declaratory relief by the named Plaintiffs who were no longer students at SDSU when the original Complaint was filed;

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1 (3) Plaintiffs who were previously on the rowing team and who were still students
2 at SDSU at the time the original Complaint was filed failed to allege how the injunctive
3 and declaratory relief they requested would redress any of their alleged injuries;

4 (4) Plaintiffs on the track and field team failed to allege sufficient facts to show
5 they had standing under the “lost opportunity” theory;

6 (5) No named Plaintiffs sufficiently alleged they suffered an injury-in-fact under
7 Plaintiffs’ “smaller financial award” theory;

8 (6) No named Plaintiffs sufficiently alleged an injury-in-fact under the “stigmatic
9 harms” theory that is redressable by Plaintiffs’ request for damages;

10 (7) The named Plaintiffs on SDSU’s track and field team who were still student-
11 athletes at the time the original Complaint was filed sufficiently alleged stigmatic injuries-
12 in-fact redressable by injunctive and declaratory relief;

13 (8) Plaintiffs with standing plausibly alleged a Title IX financial aid claim;

14 (9) Plaintiffs who were not present at the Zoom meeting in which SDSU allegedly
15 retaliated failed to allege standing to pursue a retaliation claim; and

16 (10) Plaintiffs who were present at the Zoom meeting in which SDSU allegedly
17 retaliated plausibly alleged a retaliation claim. (ECF No. 49 at 47–48.)

18 The Court also granted Plaintiffs leave to file a Third Amended Complaint with the
19 exception that Plaintiffs could not make any further attempts to allege that Plaintiffs not
20 present at the Zoom meeting had standing to bring a retaliation claim because any
21 amendment in that regard would be futile. (*See id.* at 48.) Plaintiffs then filed a timely
22 Third Amended Complaint alleging the same causes of action as their Second Amended
23 Complaint. (*See TAC.*) Defendants move to dismiss in part Plaintiffs’ Third Amended
24 Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of standing and
25 because certain claims are allegedly moot. (*See Mot.* at 2–3; ECF No. 51-1, “Mem.,” at
26 14–17, 18–27.)

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LEGAL STANDARD

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2 A party may challenge the Court’s subject-matter jurisdiction through a motion filed
3 pursuant to Federal Rule of Civil Procedure 12(b)(1). *See White v. Lee*, 227 F.3d 1214,
4 1242 (9th Cir. 2000). Because “[f]ederal courts are courts of limited jurisdiction,” “[i]t is
5 to be presumed that a cause lies outside this limited jurisdiction.” *Kokkonen v. Guardian*
6 *Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Consequently, “the burden of establishing
7 the contrary rests upon the party asserting jurisdiction.” *Id.*

8 “Because standing and mootness both pertain to a federal court’s subject-matter
9 jurisdiction under Article III, they are properly raised in a motion to dismiss under Federal
10 Rule of Civil Procedure 12(b)(1).” *White*, 227 F.3d at 1242 (citing *Bland v. Fessler*, 88
11 F.3d 729, 732 n.4 (9th Cir. 1996)). In fact, standing and mootness are both essential parts
12 of the case-or-controversy requirement of Article III. *See Friends of the Earth, Inc. v.*
13 *Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 180 (2000); *Lujan v. Defenders of Wildlife*,
14 504 U.S. 555, 560 (1992).

I. Standing

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16 “[T]o satisfy Article III’s standing requirements, a plaintiff must show (1) [he or she]
17 has suffered an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or
18 imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged
19 action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury
20 will be redressed by a favorable decision.” *Friends of the Earth, Inc.*, 528 U.S. at 180–81.
21 “The plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing
22 these elements.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). And where “a case is
23 at the pleading stage, the plaintiff must ‘clearly . . . allege facts demonstrating’ each
24 element.” *Id.* (quoting *Warth v. Seldin*, 422 U.S. 490, 518 (1975)). “That a suit may be a
25 class action . . . adds nothing to the question of standing, for even named plaintiffs who
26 represent a class ‘must allege and show that they personally have been injured, not that
27 injury has been suffered by other, unidentified members of the class to which they
28 belong.’” *Id.* at 338 n.6 (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 40

1 n.20 (1976)); *see also* *Warth*, 422 U.S. at 501 (“[P]laintiff still must allege a distinct and
2 palpable injury to himself, even if it is an injury shared by a large class of other possible
3 litigants.”).

4 **II. Mootness**

5 “A case, or an issue in a case, is considered moot if it has lost its character as a
6 present, live controversy of the kind that must exist if [the Court is] to avoid advisory
7 opinions on abstract propositions of law.” *Aguirre v. S.S. Sohio Intrepid*, 801 F.2d 1185,
8 1189 (9th Cir. 1986) (internal quotation marks and citation omitted); *see also* *Already, LLC*
9 *v. Nike, Inc.*, 568 U.S. 85, 90–91 (2013) (“An actual controversy must exist not only at the
10 time the complaint is filed, but through all stages of the litigation.” (internal quotation
11 marks and citation omitted)). The Court “cannot take jurisdiction over a claim as to which
12 no effective relief can be granted, because ‘federal courts are without power to decide
13 questions that cannot affect the rights of litigants in the case before them.’” *Aguirre*, 801
14 F.2d at 1189 (citations omitted). “Where the question sought to be adjudicated has been
15 mooted by developments subsequent to the filing of the complaint, no justiciable
16 controversy is presented.” *Id.*

17 **ANALYSIS**

18 Defendants move to dismiss in part Plaintiffs’ Third Amended Complaint, arguing
19 (1) Plaintiffs failed to fix various standing deficiencies the Court highlighted in its April
20 2023 Order, (2) Plaintiffs’ claims for injunctive and declaratory relief are moot, and (3) the
21 Court already dismissed with prejudice the retaliation claim brought by certain Plaintiffs.
22 (Mot. at 2–3; Mem. at 14–17, 18–27.)⁵

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25 ⁵ Defendants also argue that Plaintiffs’ unequal financial aid claim relating to the 2018–2019
26 academic year is barred by the statute of limitations. (Mem. at 17–18.) The Parties disagree about when
27 Plaintiffs knew or should have known about the basis of their injuries under this cause of action. (*Compare*
28 Mem. at 17–18, *with* Opp’n at 29–31.) In two prior Orders, the Court reserved ruling on similar statute
of limitations issues. (*See* ECF No. 38 at 11; ECF No. 49 at 5 n.7.) The Court again **RESERVES** ruling
on this factual issue and **DENIES** Defendants’ Motion to the extent it relies on a statute of limitations
argument.

1 **I. Whether Plaintiffs Failed to Remedy Certain Standing Deficiencies**

2 Based on the Court’s April 2023 Order, Defendants argue Plaintiffs’ Third Amended
3 Complaint should be dismissed in part because: (1) Plaintiff Figueroa lacks standing under
4 Plaintiffs’ “lost opportunity” theory; (2) the rowing team Plaintiffs who were SDSU
5 students when the original Complaint was filed lack standing to seek injunctive and
6 declaratory relief under Plaintiffs’ “lost opportunity” and “stigmatic harms” theories; (3)
7 the track and field team Plaintiffs lack standing to pursue damages, injunctive relief, and
8 declaratory relief under Plaintiffs’ “lost opportunity” theory; (4) all Plaintiffs lack standing
9 to proceed under a “smaller financial award” theory; and (5) Plaintiffs who were not
10 enrolled at SDSU when the original Complaint was filed lack standing to seek injunctive
11 and declaratory relief under any theory. (Mot. at 2–3.) The Court addresses each argument
12 in turn.

13 **A. Plaintiff Figueroa’s Standing Under the “Lost Opportunity” Theory**

14 In its prior Order, the Court found that Plaintiff Natalie Figueroa, who was on the
15 rowing team until it was eliminated in the Spring of 2021, failed to allege she was in a
16 position to compete for financial aid under Plaintiffs’ “lost opportunity” theory. (*See* ECF
17 No. 49 at 20.) The Second Amended Complaint provided no facts to that effect and because
18 Ms. Figueroa never received any financial aid while she was on the team, the Court could
19 not draw the reasonable inference that she was in a position to compete for that financial
20 aid. (*See id.*)

21 To remedy this deficiency, Plaintiffs added information about Ms. Figueroa to their
22 Third Amended Complaint. Plaintiffs allege that during her time on the rowing team, Ms.
23 Figueroa rowed in the second varsity eight boat and then moved up to the first varsity eight
24 boat. (TAC ¶ 178.) She was also honored as an American Athletic Conference All-
25 Academic Team member based on her academic credentials and athletic contributions and
26 named as a Collegiate Rowing Coaches Association Scholar-Athlete. (*Id.* ¶¶ 180–81.)
27 Plaintiffs further allege that “[b]oth the head coach and assistant coach of the women’s
28 rowing team told [Ms. Figueroa] that she would have received financial aid if the team had

1 not been eliminated.” (*Id.* ¶ 183.) These added allegations showing Ms. Figueora’s athletic
2 accomplishments and various awards are sufficient for the Court to draw the reasonable
3 inference that Ms. Figueroa was able, ready, and in a position to compete for a proportional
4 pool of financial aid had it existed. The Court thus **DENIES** Defendants’ Motion to the
5 extent it argues Ms. Figueroa lacks standing to bring a claim for damages under Plaintiffs’
6 unequal financial aid claim.

7 ***B. The Rowing Team Plaintiffs’ Standing to Seek Injunctive and Declaratory***
8 ***Relief Under the “Lost Opportunity” and “Stigmatic Harms” Theories***

9 In its prior Order, the Court found that Plaintiffs on the rowing team lacked standing
10 to pursue injunctive and declaratory relief because they had only alleged a past injury and
11 failed to show how the requested injunction and declaratory relief would redress their
12 injuries under either the “lost opportunity” or “stigmatic harms” theories since they were
13 no longer student-athletes at the time the original Complaint was filed. (*See* ECF No. 49
14 at 24–25, 34.) Citing those findings, Defendants argue nothing in Plaintiffs’ Third
15 Amended Complaint changes the rowing team Plaintiffs’ standing: as former student-
16 athletes at the time the original Complaint was filed, they cannot stand to benefit from
17 injunctive or declaratory relief relating to student-athletes under either the “lost
18 opportunity” or “stigmatic harms” theories. (*See* Mem. at 21–22, 25–26.)

19 Plaintiffs argue that at the time the original Complaint was filed, SDSU continued
20 to treat the former rowers as current student-athletes when it came to awarding financial
21 aid. (*See* Opp’n at 12 (citing, *e.g.*, TAC ¶ 88, which states in part, “Because SDSU
22 continued to award athletic financial aid to [the former rowers] based on the disproportional
23 pools it created for male and female student-athletes even after the women’s rowing team
24 was eliminated, [the former rowers were] denied the equal opportunity to compete for aid
25 and [were] awarded a smaller scholarship even after [their] team was eliminated”).)
26 Plaintiffs further contend that at the time the original Complaint was filed, the former
27 rowers continued to receive scholarships from the same pool of aid SDSU created for
28 current female student-athletes. (*Id.*) Plaintiffs submit that declaratory and injunctive

1 relief “requiring SDSU to create proportional pools of athletic financial aid would
2 eliminate the harms” the former rowing team Plaintiffs suffer. (*Id.*) “Such relief would
3 ensure they have the opportunity to compete on an equal basis.” (*Id.*) Plaintiffs also
4 explain that, “on a prospective basis, SDSU has discretion to level the playing field by
5 reducing the aid allocated to male student-athletes instead of allocating more aid to female
6 student-athletes.” (*Id.* (emphasis omitted).)

7 As for their alleged “stigmatic harms,” Plaintiffs contend that at the time the original
8 Complaint was filed, the former rowers “continued to experience the same harms current
9 and future recipients of SDSU’s disproportionately allocated athletic financial aid
10 experience” because the disproportionate pools of aid “send the degrading, demeaning, and
11 stigmatizing message that women are second class at SDSU.” (*Id.* at 13.) Plaintiffs assert
12 that declaratory and injunctive relief will eliminate SDSU’s discriminatory conduct and the
13 message it sends. (*Id.*)

14 Defendants counter that Plaintiffs’ argument that the former rowers were still treated
15 like student-athletes at the time the original Complaint was filed fails to comport with the
16 plain language of the 1979 Policy Interpretation issued by the United States Department of
17 Education’s Office for Civil Rights (“OCR”).⁶ (Reply at 9, 12.) The OCR’s Policy
18 Interpretation requires a student-athlete to “participat[e] in organized practice sessions and
19 other team meetings and activities on a regular basis during a sport’s season” and to be
20 “listed on the eligibility or squad lists maintained for each sport.” (*Id.* at 9 (citing the 1979
21 Policy Interpretation); *see* ECF No. 30-4 at 6.) Accordingly, at the time of the original
22 Complaint, the rowing team Plaintiffs could not have been denied the opportunity to

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⁶ The Court previously found, (*see* ECF No. 38 at 10–11; ECF No. 49 at 11 n.12), that Plaintiffs’
First and Second Amended Complaints incorporated by reference the OCR’s 1979 Policy Interpretation
(ECF No. 30-4). The Third Amended Complaint also extensively references this document. (*See* TAC
¶¶ 302–03, 307–09.) The Court once again finds this document incorporated by reference and thus
assumes the truth of its contents. *See Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002–03 (9th
Cir. 2018).

1 compete for athletic financial aid because they were no longer participating members of an
2 athletic team. (Reply at 12.)

3 Defendants are correct. Plaintiffs' argument that the former rowing team Plaintiffs
4 should be considered student-athletes based on SDSU's decision to honor their financial
5 aid awards after the rowing team was eliminated is unavailing. The Third Amended
6 Complaint lacks any non-conclusory allegations establishing that the former rowers could
7 have continued to compete for athletic financial aid once their team was eliminated. The
8 rowing team Plaintiffs were no longer student-athletes at the time the original Complaint
9 was filed, and, therefore, Plaintiffs' requested injunction "barring SDSU from
10 discriminating against its female student-athletes on the basis of their sex by . . . depriving
11 them of equal athletic financial aid," (TAC Prayer for Relief ¶ F), could not benefit them.
12 That the former rowers still received money from the same athletic financial aid pool says
13 nothing about their ability to compete for aid once they were no longer student-athletes.
14 Plaintiffs' argument asks the Court to make the unreasonable inference that non-student-
15 athletes can compete for athletic scholarships meant for student-athletes. The Court
16 declines to make such an inference.

17 For similar reasons, Plaintiffs fail to show the former rowers have standing to seek
18 injunctive or declaratory relief under their "stigmatic harms" theory. Again, an injunction
19 "barring SDSU from discriminating against its female student-athletes," (*id.*), cannot
20 redress the former rowers' injuries because they were no longer student-athletes at the time
21 the original Complaint was filed. If the Court adopted Plaintiffs' view, all female students
22 at SDSU would have standing to bring an unequal athletic financial aid claim in this case.
23 (*See* Opp'n at 13.) But under the OCR's 1979 Policy Interpretation, the proportional
24 financial aid requirements of Title IX apply to student-athletes, not all students at the
25 school. (*See* ECF No. 30-4 at 5–6.)

26 Accordingly, the Court **GRANTS** Defendants' Motion to the extent it seeks
27 dismissal of the rowing team Plaintiffs' request for injunctive and declaratory relief under
28 the unequal financial aid claim.

1 ***C. The Track and Field Team Plaintiffs’ Standing Under the “Lost***
2 ***Opportunity” Theory***

3 In its prior Order, the Court found that the rowing team Plaintiffs sufficiently alleged
4 an injury-in-fact redressable by their request for damages because they sufficiently alleged
5 (1) they were ready, able, and in a position to compete for a proportional pool of financial
6 aid and (2) that if a proportional pool of money was available, at least some of that money
7 could have been available to the rowing team. (*See* ECF No. 49 at 20; *see also id.* (noting
8 that while the total number of scholarships given to the rowing team could not increase,
9 the amount of fifteen of the scholarships could have increased from in-state scholarship
10 amounts to out-of-state scholarship amounts).) The Court, however, found that the same
11 was not true of the track and field team Plaintiffs: the Second Amended Complaint did not
12 sufficiently allege facts supporting a claim that if a proportional pool of financial aid was
13 available, at least some of the money would have been available to the track and field team
14 such that the team members could have competed for it. (*See id.* at 20–21.) The Court,
15 therefore, found the track and field team Plaintiffs failed to allege standing under their “lost
16 opportunity” theory. (*See id.* at 21, 25.)

17 To fix this deficiency, the Third Amended Complaint states that, like the financial
18 aid dollar caps that SDSU placed on the women’s rowing team, “[s]imilar dollar caps were
19 placed on all women’s teams, including women’s track and field.” (TAC ¶ 36.)
20 Specifically, Plaintiffs allege, “[u]nder NCAA rules, the women’s track and field team was
21 allowed to award the equivalent of eighteen scholarships, but SDSU imposed a cap on the
22 amount of athletic financial aid dollars the team could award.” (*Id.* ¶ 50; *see id.* ¶ 30 (“The
23 NCAA limits the number of scholarships that may be awarded for each sport, but it does
24 not limit the *dollar amount* of athletic financial aid that can be offered for any sport.”).)
25 “SDSU’s cap for the women’s track and field team was *below* the amount permitted by the
26 NCAA’s rules.” (*Id.* ¶ 51.) Plaintiffs note, however, that the precise make-up of the
27 scholarships awarded to the track and field team—that is, the number of in-state

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1 scholarships versus out-of-state scholarships—is not publicly available and is in SDSU’s
2 sole control. (*Id.* ¶ 34 n.1.)

3 Defendants argue these added allegations are too conclusory to allege an injury-in-
4 fact and Plaintiffs cannot “simply hypothesize that SDSU has done something wrong and
5 then hope discovery may provide factual support.” (Mem. at 23.) Plaintiffs counter that
6 the allegations in their Third Amended Complaint must be accepted as true and those
7 allegations show SDSU imposed a monetary cap on the track and field team that was below
8 the amount permitted by the NCAA. (Opp’n at 14.) As a result, Plaintiffs contend that the
9 Third Amended Complaint establishes that if a proportional pool of money was available,
10 at least some of the money would have been available to the track and field team. (*Id.*)

11 When a defendant asserts that the allegations contained in a complaint are
12 insufficient on their face to invoke federal jurisdiction (a “facial attack”), the Court must
13 assume the allegations in the complaint are true and draw all reasonable inferences in the
14 non-moving party’s favor. *See Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004). In
15 addition, a plaintiff may plead facts alleged upon information and belief “where the facts
16 are peculiarly within the possession and control of the defendant.” *Soo Park v. Thompson*,
17 851 F.3d 910, 928 (9th Cir. 2017) (citation omitted). But if the well-pled allegations of the
18 complaint have not “nudged [the plaintiff’s] claims across the line from conceivable to
19 plausible” dismissal is appropriate. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

20 Here, considering Plaintiffs’ additions to the Third Amended Complaint, including
21 the allegation that the breakdown in scholarship awards to the track and field team are
22 solely within Defendants’ control, and with all reasonable inferences drawn in Plaintiffs’
23 favor, the Court concludes that Plaintiffs have sufficiently alleged an injury-in-fact under
24 the lost opportunity theory. And because several track and field team Plaintiffs were still
25 student-athletes at the time the original Complaint was filed, their requests, not only for
26 damages, but also for injunctive and declaratory relief, would redress this injury. The track
27 and field Plaintiffs who were student-athletes at the time the original Complaint was filed
28 thus have standing to pursue their unequal financial aid claim under the “lost opportunity”

1 theory. Accordingly, the Court **DENIES** Defendants’ Motion to the extent it argues the
2 track and field team Plaintiffs lack such standing.

3 ***D. Standing Pursuant to “Smaller Financial Award” Theory***

4 This Court’s prior Order found no Plaintiff sufficiently alleged an injury-in-fact
5 under the “smaller financial award” theory because the harm Plaintiffs alleged was an
6 average harm and not specific to each Plaintiff. (*See* ECF No. 49 at 26–28.) Plaintiffs
7 added allegations to their Third Amended Complaint stating that SDSU’s intentional
8 discrimination deprived each Plaintiff “of at least \$1 in athletic financial aid each year.”
9 (*See, e.g.*, TAC ¶ 92.) Plaintiffs also added allegations about the proper calculation of
10 damages. (*See, e.g., id.* ¶¶ 89–91.)

11 Defendants argue that Plaintiffs’ “smaller financial award” theory is still based on
12 an average harm that insufficiently connects each Plaintiff’s individual financial award to
13 SDSU’s overall allocation of financial aid. (*See* Mem. at 25.) Plaintiffs counter that any
14 monetary loss, even one as small as a fraction of a penny, is sufficient to support standing
15 and that several facts alleged in the Third Amended Complaint bolster the plausibility of
16 Plaintiff’s assertion that each Plaintiff lost at least \$1 in athletic financial aid. (*See* Opp’n
17 at 15–16.)

18 The Court, however, need not decide this issue. Even without considering the
19 “smaller financial award” theory, Plaintiffs have standing under other theories.
20 Specifically, the rowing team Plaintiffs have standing to pursue damages under the “lost
21 opportunity” theory, (*see* ECF No. 49 at 23, 25), the track and field team Plaintiffs have
22 standing to pursue damages under the “lost opportunity” theory and declaratory and
23 injunctive relief under the “lost opportunity” and “stigmatic harms” theories, (*see id.* at 35;
24 *supra* at pp. 12–13). Moreover, even if the Court found Plaintiffs alleged an injury-in-fact
25 under this theory, the rowing team Plaintiffs still would lack standing to pursue injunctive
26 and declaratory relief for the same reasons stated above. *See supra* at pp. 9–11. The Court
27 thus declines to address whether Plaintiffs have standing under the “smaller financial
28 award” theory.

1 ***E. Standing as to Plaintiffs Who Were Not Enrolled as Students at SDSU***
2 ***When the Original Complaint Was Filed***

3 Defendants argue that per the Court’s prior Order, Plaintiffs who graduated or
4 transferred from SDSU prior to the filing of the original Complaint lack standing to seek
5 declaratory and injunctive relief as to their unequal financial aid claim. (*See* Mem. at 26–
6 27.) Plaintiffs agree. (*See* Opp’n at 9 n.1 (“Because they left school prior to the original
7 complaint’s filing, Plaintiffs agree Maya Brosch, Kamryn Whitworth, and Eleanor Davies
8 lack standing to pursue equitable relief. . . . Those three Plaintiffs’ claims will proceed only
9 as to damages.”).) The Court therefore **GRANTS** Defendants’ Motion to the extent it seeks
10 **DISMISSAL WITH PREJUDICE** of the requests for declaratory and injunctive relief
11 under the unequal financial aid claim brought by Plaintiffs who graduated or transferred
12 from SDSU prior to the filing of the original Complaint.

13 **II. Whether Plaintiffs’ Claims for Injunctive and Declaratory Relief are Moot**

14 Defendants further contend that Plaintiffs’ claims for injunctive and declaratory
15 relief under each of their three Title IX claims should be dismissed as moot because no
16 Plaintiff currently enrolled at SDSU is a student-athlete. (Mot. at 2; Mem. at 14–17.)
17 Defendants highlight that fifteen of the seventeen Plaintiffs have already graduated,
18 transferred, or left SDSU, and the two Plaintiffs still enrolled at SDSU are no longer
19 student-athletes—neither participates on any intercollegiate athletic team. (Mem. at 14–
20 15.) As such, no injunction or declaration from this Court regarding Defendants’ future
21 conduct would provide redress for harms those Plaintiffs have allegedly experienced. (*Id.*)
22 Defendants further contend this action’s status as a putative class action does not alter this
23 conclusion. (*Id.* at 16.) Instead, “[w]here the named plaintiff’s claim in a class action
24 ‘becomes moot before the district court certifies the class, the class action normally also
25 becomes moot.’” (*Id.* (quoting *Slayman v. FedEx Ground Package Sys., Inc.*, 765 F.3d
26 1033, 1048 (9th Cir. 2014).)

27 Plaintiffs counter that their claims for injunctive and declaratory relief are not moot
28 because (1) claims are only moot when the Court can award no effective relief, (2) Plaintiffs

1 are challenging SDSU’s ongoing systemic policies, and (3) their claims for injunctive and
2 declaratory relief are inherently transitory. (Opp’n at 20–27.) Plaintiffs’ first argument, in
3 essence, claims that the Court cannot dismiss claims for injunctive and declaratory relief if
4 damages are still available to remedy an injury. (*Id.* at 20–23.) Such an assertion
5 misunderstands Defendants’ argument and the law. First, Defendants are not seeking to
6 dismiss Plaintiffs’ claims in their entirety—Defendants only seek to dismiss the Title IX
7 claims to the extent they seek injunctive and declaratory relief. (*See* Mot. at 2.) Second,
8 Courts routinely dismiss claims for injunctive and declaratory relief as moot, while
9 allowing a damages claim to continue. *See, e.g., Bayer v. Neiman Marcus Grp., Inc.*, 861
10 F.3d 853, 865, 868, 874–75 (9th Cir. 2017); *C.F. ex rel. Farnan v. Capistrano Unified Sch.*
11 *Dist.*, 654 F.3d 975, 983 (9th Cir. 2011); *Cole v. Oroville Union High Sch. Dist.*, 228 F.3d
12 1092, 1099 (9th Cir. 2000); *see also Already, LLC*, 568 U.S. at 90–91 (“An actual
13 controversy must exist not only at the time the complaint is filed, but through all stages of
14 the litigation.” (internal quotation marks and citation omitted)). Plaintiffs’ first argument
15 is therefore unavailing. Accordingly, the Court turns to Plaintiffs’ other arguments.

16 “It is well-settled that once a student graduates, [s]he no longer has a live case or
17 controversy justifying declaratory and injunctive relief against a school’s action or policy.”
18 *Cole*, 228 F.3d at 1098; *see Doe v. Madison Sch. Dist. No. 321*, 177 F.3d 789, 798 (9th Cir.
19 1999) (“A student’s graduation moots claims for declaratory and injunctive relief, but it
20 does not moot claims for monetary damages.”). Therefore, unless an exception to
21 mootness applies, claims for injunctive and declaratory relief brought by Plaintiffs who
22 were enrolled at SDSU at the time the original Complaint was filed but have since
23 graduated or transferred with no indication they will return to SDSU, are moot. Plaintiffs
24 rely on two alleged exceptions to mootness: (1) challenges to ongoing, systemic policies
25 and practices and (2) the inherently transitory exception in the class action context. (Opp’n
26 at 23–27.)

27 Before addressing Plaintiffs’ arguments, the Court notes that the well-known
28 exception to mootness—the “capable of repetition, yet evading review” exception—would

1 not apply to the individual Plaintiffs here outside the class action context. *See Madison*
 2 *Sch. Dist. No. 321*, 177 F.3d at 798 (“Issues that are ‘capable of repetition, yet evading
 3 review’ present an exception to the mootness doctrine.”). That exception, “is limited to
 4 ‘extraordinary cases’ in which (1) ‘the duration of the challenged action is too short to be
 5 fully litigated before it ceases,’ and (2) ‘there is a reasonable expectation that the plaintiffs
 6 will be subjected to the same action again.’” *Id.* (citation omitted). Plaintiffs cannot meet
 7 the second requirement—there is no suggestion in the Third Amended Complaint or
 8 elsewhere that Plaintiffs who have graduated or transferred from SDSU will return as
 9 student-athletes in the future and again be subjected to SDSU’s alleged Title IX violations.
 10 Unless another exception applies here, Plaintiffs who are no longer enrolled at SDSU
 11 cannot pursue injunctive or declaratory relief, at least as it relates to Plaintiffs’ unequal
 12 financial aid and unequal athletic benefits claims.⁷

14
 15 ⁷ Plaintiffs argue that Defendants do not analyze whether Plaintiffs’ claims for injunctive and
 16 declaratory relief related to their retaliation claim are moot. (Opp’n at 28.) Plaintiffs further argue that
 17 the Plaintiffs who were present at the Zoom meeting (“Present Plaintiffs”) have suffered two kinds of
 18 injuries: (1) anxiety-related harms and (2) interference with their ability to prosecute their Title IX claims.
 19 (*Id.*) As a result, Present Plaintiffs contend they still have a live claim for injunctive and declaratory relief
 20 because “SDSU’s threatening message continues to interfere with those [who heard the threatening
 21 message and decided not to participate] in the case, which continues to affect Present Plaintiffs’ ability to
 22 litigate their claims.” (*Id.* at 29.) Present Plaintiffs also argue that they will continue to experience
 23 stigmatic harms for as long as SDSU refuses to remedy and end its ongoing interference. (*Id.*) They assert
 24 that the fact that they are no longer student-athletes is irrelevant; instead, the relevant inquiry is whether
 25 any potential plaintiffs or witnesses remain at SDSU. (*Id.*) Because the answer to that question is yes,
 26 Present Plaintiffs argue they have standing to pursue injunctive and declaratory relief. (*Id.*)

22 Defendants counter that Plaintiffs’ argument fails because Plaintiffs do not explain how injunctive
 23 or declaratory relief could redress their anxiety since they are no longer student-athletes, and any
 24 “interference-related” harms are speculative. (Reply at 9.)

24 Plaintiffs recently filed a motion asking the Court to revise its prior Order finding that Plaintiffs
 25 who had not attended the Zoom meeting at which the track and field coach allegedly retaliated against
 26 members of the track and field team for bringing this Title IX action (“Absent Plaintiffs”) lacked standing
 27 to pursue a retaliation claim. (*See* ECF No. 57.) Because the Court cannot analyze the “interference-
 28 related” harms theory as it relates to the Present Plaintiffs without also addressing how it impacts the
 Absent Plaintiffs, the Court **RESERVES** ruling on whether Plaintiffs have standing to pursue injunctive
 and declaratory relief under their retaliation claim until Plaintiffs’ pending Motion is fully briefed and
 submitted.

1 **A. *Ongoing and Systemic Policies and Practices***

2 Citing *Oregon Advocacy Center v. Mink*, 322 F.3d 1101 (9th Cir. 2003) and *Olagues*
3 *v. Russoniello*, 770 F.2d 791 (9th Cir. 1985), Plaintiffs argue that the mootness doctrine is
4 flexible and if a plaintiff challenges an ongoing, systemic policy and practice, then the
5 plaintiff’s claim is not moot. (Opp’n at 23–24.) That “the doctrine of mootness is more
6 flexible than other strands of justiciability doctrine,” *Karuk Tribe of Cal. v. U.S. Forest*
7 *Serv.*, 681 F.3d 1006, 1017 (9th Cir. 2012) (citation omitted), does not, however, excuse
8 the need for an established exception to mootness. As for Plaintiffs’ argument that an
9 independent exception to mootness exists when a complaint alleges an ongoing, systemic
10 policy and practice, the two cases Plaintiffs cite involved non-profit organization plaintiffs
11 along with individual plaintiffs and analogized to, or involved, other mootness exceptions.
12 *See Or. Advoc. Ctr.*, 322 F.3d at 1105, 1117 (analogizing to the inherently transitory
13 exception in class action cases); *Olagues*, 770 F.2d at 793, 795 (involving the voluntary
14 cessation and capable of repetition yet evading review exceptions to mootness); *see also*
15 *United States v. W. T. Grant Co.*, 345 U.S. 629, 632 (1953) (“[The voluntary cessation
16 exception], together with a public interest in having the legality of the practices settled,
17 militates against a mootness conclusion.”). Plaintiffs do not explain how *Oregon Advocacy*
18 *Center* and *Olagues* are analogous here.

19 In fact, “[t]he mere existence of an ongoing policy is insufficient to establish that a
20 plaintiff challenging that policy has standing to attack all its future applications.” *Bayer*,
21 861 F.3d at 868; *see id.* (“[T]o avoid mootness with respect to a claim for declaratory relief
22 on the ground that the relief sought will address an ongoing policy, the plaintiff must show
23 that the policy ‘has adversely affected and continues to affect a *present* interest.’”
24 (emphasis added) (citation omitted)); *see also Walsh v. Nev. Dep’t of Hum. Res.*, 471 F.3d
25 1033, 1036–37 (9th Cir. 2006) (concluding a plaintiff requesting an injunction requiring
26 her former employer to adopt and enforce lawful policies “lacked standing to sue for
27 injunctive relief from which she would not likely benefit”).

28 ///

1 Accordingly, the only relevant, established mootness exception Plaintiffs rely on is
2 the “inherently transitory” exception in the class action context.

3 ***B. Inherently Transitory Exception***

4 Where a “plaintiff’s claim becomes moot before the district court certifies the class,
5 the class action normally also becomes moot.” *Slayman*, 765 F.3d at 1048. But an
6 “exception to this rule exists for claims that ‘are so inherently transitory that the trial court
7 will not have even enough time to rule on a motion for class certification before the
8 proposed representative’s individual interest expires.’” *Id.* (quoting *Pitts v. Terrible*
9 *Herbst, Inc.*, 653 F.3d 1081, 1090 (9th Cir. 2011)); see *County of Riverside v. McLaughlin*,
10 500 U.S. 44, 52 (1991) (“That the class was not certified until after the named plaintiffs’
11 claims had become moot does not deprive us of jurisdiction.”). A claim qualifies for this
12 “limited” exception if “the pace of litigation and the inherently transitory nature of the
13 claims at issue conspire to make [the] requirement [that there must exist a named plaintiff
14 with a live claim at the time of class certification] difficult to fulfill.” *United States v.*
15 *Sanchez-Gomez*, 138 S. Ct. 1532, 1539 (2018).

16 “An inherently transitory claim will certainly repeat as to the class, either because
17 ‘[t]he individual could nonetheless suffer repeated [harm]’ or because ‘it is certain that
18 other persons similarly situated’ will have the same complaint.” *Pitts*, 653 F.3d at 1090
19 (emphasis added) (citing *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975)). “In such cases,
20 the named plaintiff’s claim is capable of repetition, yet evading review, and the relation
21 back doctrine is properly invoked to preserve the merits of the case for judicial resolution.”
22 *Id.* (internal quotation marks and citations omitted). “Application of the relation back
23 doctrine in this context thus avoids the spectre of plaintiffs filing lawsuit after lawsuit, only
24 to see their claims mooted before they can be resolved.” *Id.*; see *Genesis Healthcare Corp.*
25 *v. Symczyk*, 569 U.S. 66, 76 (2013) (“[I]n cases where the transitory nature of the conduct
26 giving rise to the suit would effectively insulate defendants’ conduct from review,
27 certification could potentially ‘relate back’ to the filing of the complaint.”); see also
28 *Swisher v. Brady*, 438 U.S. 204, 213 n.11 (1978) (“There may be cases in which the

1 controversy involving the named plaintiffs is such that it becomes moot as to them before
2 the district court can reasonably be expected to rule on a certification motion. In such
3 instances, whether the certification can be said to ‘relate back’ to the filing of the complaint
4 may depend upon the circumstances of the particular case and especially the reality of the
5 claim that otherwise the issue would evade review.” (citation omitted)).

6 “In sum, the ‘inherently transitory’ exception to mootness requires [a court] to
7 determine (i) whether the individual claim might end before the district court has a
8 reasonable amount of time to decide class certification, and (ii) whether some class
9 members will retain a live claim at every stage of litigation.” *J.D. v. Azar*, 925 F.3d 1291,
10 1311 (D.C. Cir. 2019); *see Gerstein*, 420 U.S. at 110 n.11 (noting district court must
11 determine whether “[i]t is by no means certain that any given individual, named as
12 plaintiff” will have an individual claim that will last long enough for a district court to
13 certify the class); *Slayman*, 765 F.3d at 1048 (explaining inherently transitory exception
14 applies where trial court will not have enough time to rule on a motion for class certification
15 before the proposed representative’s individual interest expires); *Haro v. Sebelius*, 747
16 F.3d 1099, 1110 (9th Cir. 2014) (applying inherently transitory exception when “district
17 court could not have been expected to rule on a motion for class certification” where the
18 plaintiff’s claim expired one month after she filed suit).

19 For example, in *In re NCAA Athletic Grant-In-Aid Antitrust Litigation*, 311 F.R.D.
20 532, 536, 538–39 (N.D. Cal. 2015)—a class action involving a sub-class of former NCAA
21 student-athletes with class representatives whose claims were moot—the court found that
22 the “complexity, pace, and cutting edge nature” of the multidistrict litigation affected the
23 timing of the court’s class certification hearing and decision, such that the inherently
24 transitory exception to mootness applied. The court highlighted that “[t]here is nothing to
25 be gained by denying class certification only for class members to file a new lawsuit to be
26 included in this litigation.” *Id.* at 539. Likewise, in *A.B. by C.B. v. Hawaii State*
27 *Department of Education*, 334 F.R.D. 600, 605 (D. Haw. Dec. 31, 2019), *rev. on other*
28 *grounds by A.B. v. Hawaii State Department of Education*, 30 F.4th 828 (9th Cir. 2022)—

1 a Title IX class action involving high school athletics—the court concluded, “[g]iven the
2 necessarily finite duration of a high school student’s time as a student-athlete, and the
3 potential for repetition of the claims from similarly situated students, under the particular
4 circumstances of this case, these claims are inherently transitory.”

5 Here, given the finite duration of a college student’s time as a student-athlete, the
6 complex standing issues the Court has had to resolve in this case, and the pace of this
7 litigation thus far, the Court finds that the inherently transitory exception to mootness
8 applies to this putative class action. While this case is not as complex as *In re NCAA*
9 *Athletic Grant-In-Aid Antitrust Litigation* and while there is not a motion for class
10 certification pending as there was in both *In re NCAA Athletic Grant-In-Aid Antitrust*
11 *Litigation* and *A.B. by C.B.*, here, Defendants’ repeated motions to dismiss and Plaintiffs’
12 various amended complaints have affected the timing of the Court’s ability to entertain a
13 class certification motion.

14 While the Court would have discretion to consider a class certification motion prior
15 to resolving Defendants’ jurisdictional challenges, it would be an inefficient use of judicial
16 resources to do so. *See Situ v. Leavitt*, No. C06-2841 TEH, 2006 WL 8460080, at *2 (N.D.
17 Cal. June 27, 2006). Typically, courts correctly address the issue of standing before
18 addressing the issue of class certification. *See Easter v. Am. W. Fin.*, 381 F.3d 948, 962
19 (9th Cir. 2004). The Court is by no means required to consider class certification before
20 standing. *See id.* Indeed, had Plaintiffs filed a motion for class certification before the
21 standing disputes were resolved, the Court likely would have deferred ruling on that
22 motion. In sum, given the protracted nature of this litigation, the complexity and novelty
23 of the standing issues, and the finite duration of a student’s college athletic career, the Court
24 finds that Plaintiffs’ claims are inherently transitory such that the Court has had insufficient
25 time to rule on a motion for class certification before Plaintiffs’ interest in

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1 injunctive relief expired.⁸ *See Beasley v. Ala. State Univ.*, 966 F. Supp. 1117, 1127 (M.D.
 2 Ala. 1997) (“The mere protractedness of this lawsuit should not vitiate the named
 3 plaintiff’s capacity to vindicate the broad remedial purpose of Title IX.”). The Court’s
 4 determination is limited to the specific circumstances of this case. Any timely filed motion
 5 for class certification will relate back to the filing of the original Complaint.

6 **III. Plaintiffs’ Request for Reconsideration**

7 The Court’s prior Order found that the Absent Plaintiffs lacked standing to bring a
 8 retaliation claim. (*See* ECF No. 49 at 43.) In granting Plaintiffs leave to file a Third
 9 Amended Complaint, the Court noted that Plaintiffs were not permitted to make further
 10 attempts to allege that Absent Plaintiffs had standing to bring a retaliation claim because
 11 any amendment in that regard would be futile. (*Id.* at 48.) Nonetheless, Plaintiffs included
 12 allegations regarding Absent Plaintiffs’ standing in their Third Amended Complaint. (*See*,
 13 *e.g.*, TAC ¶¶ 94, 105, 441.) As a result, Defendants move to dismiss the retaliation claims
 14 brought by the twelve Absent Plaintiffs in accordance with the Court’s prior Order. (*See*
 15 *Mem.* at 27.)

16 In their Opposition, Plaintiffs ask the Court to revisit whether the Absent Plaintiffs
 17 have standing to pursue a retaliation claim because the Court’s prior Order hinged on a
 18 mistaken understanding of the Second Amended Complaint and Plaintiffs’ previous
 19 briefing. (Opp’n at 16–20 (citing Fed. R. Civ. P. 60).) But an opposition is not the proper
 20 vehicle for requesting relief from the Court. *See Smith v. Premiere Valet Servs., Inc.*, No.

21
 22
 23 ⁸ In their Opposition, (Opp’n at 25), Plaintiffs cite *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020),
 24 where a panel of the Ninth Circuit stated, “an inherently transitory, pre-certification class-action claim
 25 falls within the ‘capable of repetition yet evading review’ mootness exception if (1) ‘the duration of the
 26 challenged action is “too short” to allow full litigation before it ceases,’ and (2) there is a reasonable
 27 expectation that the named plaintiffs could themselves ‘suffer repeated harm’ or “it is certain that other
 28 persons similarly situated” will have the same complaint.” *Belgau*, 975 F.3d at 949 (first quoting *Johnson*
v. Rancho Santiago Cmty. Coll. Dist., 623 F.3d 1011, 1019 (9th Cir. 2010); and then quoting *Pitts*, 653
 F.3d at 1089–90). Because the Court finds that it has had insufficient time to rule on a motion for class
 certification before Plaintiffs’ interest in injunctive relief expired and because other persons similarly
 situated will have the same complaint, Plaintiffs’ claims fall under *Belgau*’s slightly more lenient
 “inherently transitory” standard as well.

1 2:19-cv-09888-CJC-MAA, 2020 WL 7034346, at *14 (C.D. Cal. Aug. 4, 2020)
2 (highlighting that various district courts in California “have concluded that a request for
3 affirmative relief is not proper when raised for the first time in an opposition”).

4 Plaintiffs recently filed a motion requesting that this Court revise its prior Order.
5 (See ECF No. 57.) Consequently, the Court **RESERVES** ruling on Plaintiff’s request for
6 reconsideration. The Court’s prior Order, (see ECF No. 49), remains in effect until the
7 Court rules on Plaintiffs’ recently filed motion.

8 **CONCLUSION**

9 For the foregoing reasons, the Court **GRANTS IN PART AND DENIES IN PART**
10 Defendants’ Motion. Specifically, the Court **GRANTS** Defendants’ Motion and
11 **DISMISSES WITH PREJUDICE** (1) the rowing team Plaintiffs’ claims for injunctive
12 and declaratory relief relating to their unequal financial aid claim and (2) the claims by
13 Plaintiffs who were no longer students at SDSU when the original Complaint was filed for
14 injunctive and declaratory relief relating to their unequal financial aid claim.⁹ The Court
15 **RESERVES** ruling on whether the Present Plaintiffs have standing to pursue injunctive
16 and declaratory relief as it relates to their retaliation claim until after Plaintiffs’ recently
17 filed Motion for the Court to revise its prior Order (see ECF No. 57) has been fully briefed
18 and submitted. The Court’s prior Order regarding the Absent Plaintiffs’ standing remains
19 in effect. The Court otherwise **DENIES** Defendants’ Motion.

20 **IT IS SO ORDERED.**

21 Dated: September 15, 2023

22 

23 Honorable Todd W. Robinson
24 United States District Judge

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26
27
28 ⁹ The Court **DECLINES** to decide whether Plaintiffs have standing under the “smaller financial award” theory because Plaintiffs have standing under other theories.