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15 **IN THE UNITED STATES DISTRICT COURT**  
 16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
 17 **OAKLAND DIVISION**

18 IN RE NATIONAL COLLEGIATE  
 19 ATHLETIC ASSOCIATION ATHLETIC  
 20 GRANT-IN-AID CAP ANTITRUST  
 LITIGATION

MDL Docket No. 4:14-md-02541-CW  
 Case No. 14-cv-02758-CW

**DEFENDANTS' STATEMENT REGARD-  
 ING THE DISPOSITION OF *JENKINS* v.  
 NATIONAL COLLEGIATE ATHLETIC AS-  
 SOCIATION, ET AL., Case No. 4:14-cv-  
 02758**

22 THIS DOCUMENT RELATES TO: ALL  
 23 ACTIONS

Judge: Hon. Claudia Wilken

1 Pursuant to this Court’s May 31, 2019 Order (ECF 439),<sup>1</sup> defendants respectfully submit  
2 this statement regarding the disposition of *Jenkins v. National Collegiate Athletic Association*, 14-  
3 cv-02758-CW, following the issuance of the mandate from the United States Court of Appeals for  
4 the Ninth Circuit on August 12, 2020. Plaintiffs’ counsel has informed defendants that plaintiffs  
5 intend to seek dismissal of the *Jenkins* action without prejudice under Rule 41(a)(2) of the Federal  
6 Rules of Civil Procedure. For the reasons set forth below, and those set forth in defendants’ mo-  
7 tion to dismiss briefing (ECF 431, 436), defendants submit that this Court should dismiss *Jenkins*  
8 with prejudice.

9 Rule 41(a)(2) gives a district court discretion to dismiss an action with or without preju-  
10 dice. *See Hargis v. Foster*, 312 F.3d 404, 412 (9th Cir. 2002) (“Rule 41 vests the district court  
11 with discretion to dismiss an action at the plaintiff’s instance ‘upon such terms and conditions as  
12 the court deems proper.’ That broad grant of discretion does not contain a preference for one kind  
13 of dismissal or another.” (citation omitted)). “When ruling on a motion to dismiss without preju-  
14 dice, the district court must determine whether the defendant will suffer some plain legal prejudice  
15 as a result of the dismissal.” *Maxum Indem. Ins. Co. v. A-1 All Am. Roofing Co.*, 299 F. App’x  
16 664, 665-66 (9th Cir. 2008) (quoting *Westlands Water Dist. v. United States*, 100 F.3d 94, 96 (9th  
17 Cir. 1996)). In evaluating whether a defendant will suffer legal prejudice, a district court “may  
18 consider whether the plaintiff is requesting a voluntary dismissal only to avoid a near-certain ad-  
19 verse ruling.” *Maxum Indem. Ins. Co.*, 299 F. App’x at 666; *see also Gordon v. Johnson*, No. CV  
20 13-04606-SJO (DFM), 2015 WL 4916766, at \*1 (C.D. Cal. Aug. 17, 2015) (dismissing action with  
21 prejudice where petitioner’s failure to sufficiently justify her request to withdraw her petition with-  
22 out prejudice “raise[d] the strong suspicion that Petitioner’s Request [wa]s an effort to forestall an  
23 adverse ruling”).

24 Plaintiffs seek dismissal of *Jenkins* without prejudice to avoid a decision that the claims in  
25 that case are barred by the doctrine of res judicata. As this Court explicitly recognized in certify-  
26 ing *Jenkins* classes that were identical to classes certified in the consolidated action, “[d]uplication

27 \_\_\_\_\_  
28 <sup>1</sup> ECF citations in this statement reference the entry numbers on the *Jenkins* docket, 4:14-cv-02758.

1 at trial can be mitigated by staying one action while the other proceeds to trial. The first ruling  
2 may create a collateral estoppel or *res judicata* effect.” (ECF 154 at 30 (emphasis added).) As set  
3 forth in detail in defendants’ motion to dismiss briefing (ECF 431, 436), *Jenkins*’ claims are un-  
4 questionably barred by the ruling in the consolidated action.<sup>2</sup> Indeed, now that the Ninth Circuit  
5 has affirmed this Court’s ruling in the consolidated action and the mandate has issued, dismissal of  
6 *Jenkins*’ claims on the basis of *res judicata* is plainly appropriate at this time. It would be wasteful  
7 for the Court to dismiss *Jenkins* without prejudice, leaving defendants to re-brief the issues, and  
8 forcing another court to undertake the analysis and determine that the consolidated action bars *Jen-*  
9 *kins*. Accordingly, the Court should dismiss *Jenkins* with prejudice.

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26 <sup>2</sup> In their opposition to defendants’ motion to dismiss, plaintiffs did not dispute that the claims as-  
27 serted in *Jenkins* are identical to the claims tried in the consolidated action. To the contrary, coun-  
28 sel for *Jenkins* relied on the identity of the two actions to recover the lion’s share of the nearly \$45  
million in attorneys’ fees sought in the consolidated action, and are now seeking nearly \$1 million  
more for their work on the appeal.

1 DATED: August 25, 2020

Respectfully submitted,

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11 **FILER'S ATTESTATION**

12 I, Karen Hoffman Lent, am the ECF user whose identification and password are being used  
13 to file Defendants' Statement Regarding the Disposition of *Jenkins v. National Collegiate Athletic*  
14 *Association, et al.*, Case No. 4:14-cv-02756. In compliance with Local Rule 5-1(i)(3), I hereby attest  
15 that all signatories hereto concur in this filing.

16 /s/ Karen Hoffman Lent