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6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA

9 MARTIN CALVILLO MANRIQUEZ)
ET AL.,)
10)
Plaintiffs,)
11 _____)
12 v,)
13 ELISABETH DEVOS, et al.,)
Defendants,)
14)
15)

Case No. 3:17-cv-07210-SK

ADMINISTRATIVE MOTION FOR LEAVE
TO FILE *AMICUS* BRIEF; *AMICUS*
CURIAE BRIEF

16 **Application for Leave to File *Amicus Curiae* Brief in Support of Plaintiffs**

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18 TO THE HONORABLE JUDGE SALLIE KIM OF THE UNITED STATES DISTRICT
19 COURT, NORTHERN DISTRICT OF CALIFORNIA:

20 This application is timely made, per this Court’s Order Regarding *Amicus* Briefing,
21 Docket No. 37, which requires all Applications for and Amicus Briefs to be filed on or
22 before April 16, 2018. No party or counsel for any party in the pending motion authored
23 the proposed *amicus* brief in whole or in part, or made a monetary contribution intended to
24 fund the preparation or submission of the brief, and no person or entity made a monetary
25 contribution intended to fund the preparation or submission of the brief other than the
26 *amici curiae*, their members, or their counsel in the pending motion.
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1 **I. IDENTITY AND INTEREST OF *AMICI CURIAE***

2 The proposed *amici curiae*, Public Law Center, Public Counsel and National
3 Consumer Law Center, are public interest legal organizations that represent low-income
4 individuals in consumer matters. *Amici* represent borrowers, usually students but
5 sometimes the parents of students, who received educational loans from the Department of
6 Education to attend predatory for-profit schools, such as the Corinthian schools of Everest,
7 Heald and Wyotech. Over the last three years, *amici* have collectively seen hundreds, if not
8 thousands, of these borrowers who are eligible for relief under the Borrower Defense to
9 Repayment rule, and specifically the cohort of borrowers eligible for relieve through the
10 streamlined Borrower Defense application. *Amici* have worked tirelessly with these
11 Borrowers, and with the Department of Education (“Department”) to ensure that their
12 interests are being represented, and that the processes implemented by the Department of
13 Education take into consideration the repercussions to the students of the bad acts of the
14 Corinthian schools. *Amici* feel strongly that the Department should not be allowed to
15 unilaterally change the process, negatively impacting thousands of borrowers who were
16 eligible for relief under the Department’s Corinthian Job Placement Rate Rule.

17 **II. NEED FOR FURTHER BRIEFING**

18 The proposed *Amici* believe that further briefing is necessary to explore matters not
19 fully addressed by the parties’ briefs—specifically, that borrowers across the country are
20 impacted by the Department’s unilateral, and illegal, rulemaking, negating a process *amici*
21 spent extensive hours participating in.

22 Furthermore, *amici* wish to convey the challenges that borrowers have faced and will
23 continue to face if the Department’s switch from the Corinthian Job Placement Rate Rule
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1 to the Average Earnings Rule is allowed to stand. *Amici* have spent significant hours
2 working with the Department and with borrowers to ensure appropriate applications are
3 being submitted. *Amici* have counseled borrowers on how they might be able to manage
4 their federal student loans resulting from attending predatory for-profit schools and have
5 taken steps to protect these borrowers' rights in that process. Now that the Department has
6 decided that an extensively researched, investigated and negotiated process is no longer
7 appropriate, *amici* and their borrower clients are left in the unenviable position of starting
8 from scratch, or lengthening the process, once an avenue for appeal is identified. This is
9 particularly true when the proposed alternative, the Average Earnings Rule, in no way
10 relates to the harms suffered by borrowers and does not come close to making them whole.
11 *Amici* wish to convey the extensive challenges they and their clients have seen, and will
12 continue to see, if Plaintiffs' Motion for Preliminary Injunction is not granted.

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16 **III. CONCLUSION**

17 For the foregoing reasons, the proposed *amici curiae* respectfully request that the
18 Court accept the accompanying brief for filing in this case.

19
20 Dated: April 16, 2018

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21 By: /s/ Leigh E. Ferrin
22 Leigh E. Ferrin
23 Attorneys for *Amici*
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1 Corinthian students and to deny relief on a newly created basis.

2 The Public Law Center (“PLC”) is a non-profit legal services organization in Santa
3 Ana, California that provides free civil legal services to low-income residents of Orange
4 County, California. The substantive work performed by PLC staff and volunteers is varied,
5 including family law, immigration, health, housing, veterans, microbusiness and consumer.
6 In the PLC’s Consumer Law Unit, attorneys and staff regularly assist low-income clients
7 who have attended predatory for-profit schools and who now need assistance dealing with
8 the resulting student loans. PLC has defended student loan collection lawsuits, has
9 submitted administrative applications for discharge, has litigated student loan discharge
10 cases in bankruptcy court and provided countless borrowers with information and advice in
11 handling their student loan debt.

12 Public Counsel (“PC”) is non-profit legal services organization and the nation’s
13 largest *pro bono* law firm. It is the public interest law firm of the Los Angeles County and
14 Beverly Hills Bar Associations and the Southern California affiliate of the Lawyers’
15 Committee for Civil Rights Under Law. Its staff of 71 attorneys and 50 support staff,
16 along with over 5,000 volunteer lawyers, law students and legal professionals, provide free
17 legal services to over 30,000 children, youth, families, and community organizations every
18 year. PC’s activities are far-ranging and impact a wide spectrum of people who live at or
19 below the poverty level. PC’s Consumer Right’s Project regularly assists low-income
20 student loan borrowers who have been preyed upon by for-profit schools and are left with
21 staggering student loans they cannot afford to repay. PC has defended student loan debt
22 collection cases, has assisted victims of predatory for-profit colleges apply for
23 administrative discharges, has litigated student loan discharge cases in bankruptcy, and has
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1 provided counsel and advice to numerous student loan borrowers.

2 The National Consumer Law Center (“NCLC”) is a nonprofit organization
3 specializing in consumer issues on behalf of low-income people. NCLC has nationally
4 recognized expertise in student loan law and publishes a widely-used treatise on student
5 loan law, *Student Loan Law* (5th ed. 2015), updated at www.nclc.org/library. NCLC’s
6 Student Loan Borrower Assistance Project provides information about student borrowers’
7 rights and seeks to increase public understanding of student lending issues and to identify
8 policy solutions to promote access to education and lessen student debt burdens. The
9 Project’s attorneys provide direct representation to low-income student loan borrowers,
10 many of whom enrolled in predatory schools that made false promises of guaranteed
11 employment or used other unfair recruiting tactics to secure their enrollment.

12 **II. ARGUMENT**

13 *Amici* urge the Court to grant the relief requested in Plaintiff’s Motion for
14 Preliminary Injunction, ordering the Department to process Plaintiffs’ claims under the
15 Corinthian Job Placement Rate Rule so that the relief Plaintiffs are qualified for, and the
16 relief other similarly situated borrowers have received prior to January 20, 2017, can be
17 obtained. *Amici* submit this brief to address the real-world harm to borrowers caused by
18 the Department’s abandonment of the Corinthian Job Placement Rate Rule, and the
19 additional harm borrowers will suffer so long as restoration of the Rule is delayed.

20 **A. Corinthian’s Predatory Conduct Robbed Low-Income Students of their** 21 **Dreams and Loaded Them Down with Debt**

22 Through work representing low-income Americans, *amici* have seen how
23 Corinthian’s predatory practices cheated low-income students who enrolled and took out
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1 federal loans based on false information about the value of the school’s certificates and
2 diplomas. As Plaintiff recounts in its Motion for Preliminary Injunction, “After placing
3 Corinthian on “Heightened Cash Monitoring” in June 2014, and ordering Corinthian to
4 post a letter of credit as a condition of continued participation in federal student aid
5 programs in March 2015, the Department fined Corinthian approximately \$30 million in
6 April 2015 for violating the Department’s prohibition on “substantial misrepresentation.”¹

8 As the students have discovered that Corinthian failed to offer the education or
9 career opportunities advertised, these students’ dreams have been dashed. The students
10 come to us struggling with unaffordable student loan debt that too often causes them
11 devastating financial consequences. For example, one PLC client attended an Everest
12 campus to become a medical assistant. The same misrepresentations were made to her, that
13 a high percentage of graduates were employed, that she would make above a certain
14 amount of money (that was significantly more than what she was making prior to attending
15 Everest) and that she would not need to worry about her loans because of the salary she
16 would earn after graduating. For someone looking to find employment to support her
17 extended family, this sounded too good to be true.

18 Unfortunately, it was: when this borrower attended classes at Everest, she was
19 taught by fellow students at times, she had no help in finding an externship, and career
20 services was markedly absent when she graduated. Employers told her that with Everest
21 on her resume, she would not be hired. Ultimately, due to her own hard work and
22 perseverance, and taking additional classes elsewhere, she has been able to find a job in the

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28 ¹ 34 C.F.R. Part 668, subpart F; Dep’t of Educ., *U.S. Department of Education Fines Corinthian Colleges \$30 million for Misrepresentation* (April 14, 2015).

1 medical field. Even so, she does not make close to the salary she was promised; to the
2 contrary, she earns approximately the same amount as she did prior to attending Everest.
3 In other words, her huge investment of time and money into Everest failed to provide her
4 any value.
5

6 **B. Abandoning the Promise of Loan Cancellation and Providing Only Partial**
7 **Discharges Compounds the Harm to Cheated Corinthian Students**

8 As outlined above, the students eligible for relief under the Corinthian Job
9 Placement Rate Rule have been harmed by a series of misrepresentations and broken
10 promises. They were lied to by the Corinthian schools, including false assurances about
11 their job prospects to get them to enroll in the program. And now these students are finding
12 that the Department of Education's promises to them about making them whole and
13 providing full relief are similarly hollow. The partial discharges currently being offered by
14 the Department do not begin to make these borrowers whole, and further compound
15 problems faced by borrowers. A partial discharge still subjects borrowers to
16 administrative, involuntary collections and still requires borrowers to pay for an education
17 that caused more harm than benefit. This is an unjust result that compounds the harm
18 already suffered by these borrowers.
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20 *Amici* have worked extensively with borrowers throughout the country who
21 attended predatory for-profit schools, particularly the Corinthian schools of Everest, Heald
22 and Wyotech. When these borrowers seek *amici*'s assistance, they are worried, unaware of
23 their rights and options, and usually fighting to keep their heads above water. Some have
24 lost hope and have just accepted that they will be stuck with unaffordable debt incurred to
25 pay a school that failed to provide the education and career and earnings opportunities
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1 promised.

2 In 2015, *amici* began submitting Borrower Defense applications to the Department
3 of Education (“Department”) on behalf of our clients. For students who were within the
4 cohort defined by the “Corinthian Job Placement Rate Rule,” applications under the
5 streamlined process were submitted. Initially, applications were being reviewed, and relief
6 was being granted. Borrowers (and their families) were finally able to see that the
7 Department recognized the misrepresentations that Corinthian made harmed them, and that
8 the Department was attempting to make them whole.
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11 Abandoning the rule, as the Department has, and adopting the utterly inadequate
12 Average Earnings Rule eviscerates the purpose of granting relief in the first place. The
13 Average Earnings Rule in no way relates to the evidence of harm shown to the students
14 who attended the Corinthian schools and does not make those students whole.
15

16 Most of the borrowers *amici* have worked with who attended Corinthian schools are
17 young, low-income women in their 20s or 30s and often the first in their family to pursue
18 education after high school. These borrowers are generally unsophisticated, but they are
19 goal oriented. They will work hard to get where they need to go, no matter how little help
20 they get along the way. The client profiled on p. 4, who took additional non-Everest
21 courses and who was able to get a job in her field despite her Everest education rather than
22 because of it, is a good example of the facts the Average Earnings Rule fails to take into
23 account.
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26 Besides the clear legal problems with the Department adopting the Average
27 Earnings Rule, there are actual real-life ramifications to the borrowers who were led to
28 believe that relief from what many of them consider a nightmare-ish situation was

1 available. The Department is now taking away that promise of relief based on what
2 appears to be at best a superficial understanding of the problems associated with predatory
3 for-profit schools, and, without providing notice to these borrowers of how to appeal, is
4 violating the borrowers' due process rights. The harms set out above are mere examples;
5 there are hundreds more stories that could be told to emphasize the distress, both financial
6 and emotional, that these borrowers are dealing with as a result of the Department's
7 unlawful actions.
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10 Because of the tactics used by the Corinthian schools in overcharging tuition, many
11 borrowers have significant federal student loan debt. If a borrower is granted a partial
12 discharge, say 40% of the total debt, she may still owe well over \$20,000 to the
13 Department. Based on the income of most of these borrowers, a reduction in the principal
14 balance is not affordable. The partial discharge will not remove a borrower from default
15 and will not take them out of collections. In fact, because many of these borrowers are
16 eligible for forbearance during the period of time that their loans are being reviewed for
17 eligibility for borrower defense, granting a partial discharge further compounds the harm
18 as the borrower will likely be placed back in collections and be subject to administrative
19 wage garnishment and/or tax refund seizure.
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22 **C. Delaying Restoration of the Job Placement Rate Rule Causes Real World**
23 **Harm to Low-Income Borrowers**
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25 Even if the Corinthian Job Placement Rate Rule is only temporarily delayed and
26 borrowers who should receive full discharges under the Rule obtain them following the
27 delay, in the meantime low-income borrowers will be subject to the serious stress of
28 responsibility for debt that the Department previously declared they are not and should not

1 be legally responsible for. As long as the delay lasts, these borrowers will be subject to
2 stressful uncertainty about whether they will have to find a way to pay for expensive loans
3 that were the product of illegal school conduct. This prospect is especially stressful to the
4 many of our clients living below the federal poverty line. Additionally, they will be
5 subject to mounting interest, monthly bills or forced collections like wage garnishment (for
6 borrowers not in forbearance or stopped collections), and the risk that an abrupt or
7 mistaken removal from forbearance or stopped collections status that could lead
8 unsuspecting borrowers to miss payments and default or to face a surprise seizure of their
9 tax credit or wages.

12 Abrupt and mistaken removals from forbearance and stopped collection status is a
13 very real threat, as unfortunately, our experience has been that mistakes are too often made
14 in complying with borrowers' requests for these statuses. For example, PLC has worked
15 with a borrower who submitted her Borrower Defense application in mid-2017. She
16 attended the medical assistant program at Everest College. When the application was
17 submitted, we requested that her loans be placed in forbearance while the review was
18 pending. The loans were not initially placed in forbearance, and the borrower began
19 receiving collection letters and a notice of administrative wage garnishment. The borrower
20 is a single mother of a young child, and if she is subject to a wage garnishment she will
21 likely no longer be able to afford her rent. This borrower was lucky, in that she was
22 working with a legal services organization, and we were able to ensure that her loans were
23 placed back in forbearance and no administrative wage garnishment occurred. However,
24 on the borrower's behalf, PLC did submit a request for hearing to contest the wage
25 garnishment, but the Department never responded, or even acknowledged receipt. Now

1 that it is time to file her taxes, the borrower is once again suffering anxiety and fear that
2 her tax refund will be seized, particularly because we just learned that her loans have been
3 placed with a collection agency that contracts with the Department. Her tax refund is used
4 to pay her necessary expenses and to support her young daughter, and without it she will
5 be forced to make some difficult choices about which bills to pay.

7 For many low-income borrowers struggling to pay for basic necessities, including
8 heating and housing bills, such continued student loan costs and threats will cause
9 cascading financial consequences. And in particular, the many harmed borrowers who
10 cannot afford the debt and are already in or at risk of default face potentially devastating
11 consequences. Defaulted borrowers are subject snowballing collection fees and aggressive
12 debt collection practices that can trap them in poverty, including garnishment of their
13 wages and seizure of Social Security and Earned Income Tax Credit payments. Defaults
14 also tarnish borrowers' credit histories—which often drives up insurance and borrowing
15 costs and creates barriers to employment and housing. Borrowers who default are also
16 ineligible for further federal student aid, preventing them from getting a second chance at
17 an education. Thus, even if borrowers are later approved for full discharges under the
18 Corinthian Job Placement Rate Rule, irreparable damage may be done by the delay.

22 Additionally, the uncertainty regarding which Rule the Department will apply and
23 what information it will consider in determining relief means borrowers who may wish to
24 apply for relief are once again left in the dark about how best to do so. Borrowers who
25 have not yet applied for relief could wait it out—awaiting final resolution of this lawsuit.
26 But waiting would itself cause many borrowers injury. Because the Department has stated
27 that it will apply statutes of limitation to limit refunds of amounts already paid or collected
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1 on loans later found to be unenforceable,² waiting would keep many defrauded borrowers
2 with valid defenses from recovering amounts paid or collected from them on their loans
3 during the delay. More generally, if defrauded borrowers delay relief applications pending
4 final resolution of this lawsuit, they will in the meantime be left on the hook for debt that is
5 legally unenforceable. These borrowers will suffer negative financial consequences
6 because of continued liability for a debt that would be dischargeable under the Corinthian
7 Job Placement Rate Rule.
8

9 10 **III. CONCLUSION**

11 *Amici* urge this Court to grant the Motion for Preliminary Injunction to ensure that
12 the Department of Education does not continue to harm these students who have already
13 been dealing with this unnecessary debt for many years. *Amici* particularly urge this Court
14 to order the Department of Education to continue reviewing the borrowers eligible for
15 relief through the streamlined process (part of the “cohorts” identified by the Department
16 of Education based on thorough research and investigation) and to utilize the Corinthian
17 Job Placement Rate Rule to do so in order to prevent the harm already suffered by these
18 students from being compounded by the Department.
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22 Dated: April 16, 2018

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23
24 /s/ Leigh E. Ferrin
25 Leigh E. Ferrin
26 Attorneys for *Amici*
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28 ² 81 Fed. Reg. at 75,956 (“[T]he Department will continue to apply the applicable State statute of limitations to claims relating to loans disbursed prior to July 1, 2017.”)

