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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MARTIN CALVILLO MANRIQUEZ ET AL., Plaintiffs,	Case No. 3:17-cv-07210-SK
	***AMICUS* BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**
v,	Date: April 30, 2018
	Time: 9:30 a.m.
ELISABETH DEVOS, et al., Defendants,	Crtrm: Courtroom A, 15th Floor 450 Golden Gate Ave San Francisco, CA 94102

<u>*Amicus* Brief in Support of Plaintiffs' Motion for Preliminary Injunction</u>

I. STATEMENT OF INTERESTED PARTIES

This brief is submitted by Public Law Center, Public Counsel and National Consumer Law Center, non-profit legal aid and advocacy organizations as *Amici Curiae*. A*mici* work with student loan borrowers who have been harmed by predatory schools, including Corinthian, and have assisted former Corinthian students in filing borrower defense applications. Through this work, *amici* have seen the devastating harm experienced by low-income students who were cheated by Corinthian and left with mounds of unaffordable debt. *Amici* thus understand how the harm will be compounded if the Department is permitted to simply abandon its promise of loan cancellation to cheated

Corinthian students and to deny relief on a newly created basis.

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

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

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

II. ARGUMENT

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

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

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

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

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

[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).

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

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

As outlined above, the students eligible for relief under the Corinthian Job Placement Rate Rule have been harmed by a series of misrepresentations and broken promises. They were lied to by the Corinthian schools, including false assurances about their job prospects to get them to enroll in the program. And now these students are finding that the Department of Education's promises to them about making them whole and providing full relief are similarly hollow. The partial discharges currently being offered by the Department do not begin to make these borrowers whole, and further compound problems faced by borrowers. A partial discharge still subjects borrowers to administrative, involuntary collections and still requires borrowers to pay for an education that caused more harm than benefit. This is an unjust result that compounds the harm already suffered by these borrowers.

Amici have worked extensively with borrowers throughout the country who attended predatory for-profit schools, particularly the Corinthian schools of Everest, Heald and Wyotech. When these borrowers seek *amici*'s assistance, they are worried, unaware of their rights and options, and usually fighting to keep their heads above water. Some have lost hope and have just accepted that they will be stuck with unaffordable debt incurred to pay a school that failed to provide the education and career and earnings opportunities promised.

In 2015, *amici* began submitting Borrower Defense applications to the Department of Education ("Department") on behalf of our clients. For students who were within the cohort defined by the "Corinthian Job Placement Rate Rule," applications under the streamlined process were submitted. Initially, applications were being reviewed, and relief was being granted. Borrowers (and their families) were finally able to see that the Department recognized the misrepresentations that Corinthian made harmed them, and that the Department was attempting to make them whole.

Abandoning the rule, as the Department has, and adopting the utterly inadequate Average Earnings Rule eviscerates the purpose of granting relief in the first place. The Average Earnings Rule in no way relates to the evidence of harm shown to the students who attended the Corinthian schools and does not make those students whole.

Most of the borrowers *amici* have worked with who attended Corinthian schools are young, low-income women in their 20s or 30s and often the first in their family to pursue education after high school. These borrowers are generally unsophisticated, but they are goal oriented. They will work hard to get where they need to go, no matter how little help they get along the way. The client profiled on p. 4, who took additional non-Everest courses and who was able to get a job in her field despite her Everest education rather than because of it, is a good example of the facts the Average Earnings Rule fails to take into account.

Besides the clear legal problems with the Department adopting the Average Earnings Rule, there are actual real-life ramifications to the borrowers who were led to believe that relief from what many of them consider a nightmare-ish situation was available. The Department is now taking away that promise of relief based on what appears to be at best a superficial understanding of the problems associated with predatory for-profit schools, and, without providing notice to these borrowers of how to appeal, is violating the borrowers' due process rights. The harms set out above are mere examples; there are hundreds more stories that could be told to emphasize the distress, both financial and emotional, that these borrowers are dealing with as a result of the Department's unlawful actions.

Because of the tactics used by the Corinthian schools in overcharging tuition, many borrowers have significant federal student loan debt. If a borrower is granted a partial discharge, say 40% of the total debt, she may still owe well over $20,000 to the Department. Based on the income of most of these borrowers, a reduction in the principal balance is not affordable. The partial discharge will not remove a borrower from default and will not take them out of collections. In fact, because many of these borrowers are eligible for forbearance during the period of time that their loans are being reviewed for eligibility for borrower defense, granting a partial discharge further compounds the harm as the borrower will likely be placed back in collections and be subject to administrative wage garnishment and/or tax refund seizure.

C. Delaying Restoration of the Job Placement Rate Rule Causes Real World Harm to Low-Income Borrowers

Even if the Corinthian Job Placement Rate Rule is only temporarily delayed and borrowers who should receive full discharges under the Rule obtain them following the delay, in the meantime low-income borrowers will be subject to the serious stress of responsibility for debt that the Department previously declared they are not and should not be legally responsible for. As long as the delay lasts, these borrowers will be subject to stressful uncertainty about whether they will have to find a way to pay for expensive loans that were the product of illegal school conduct. This prospect is especially stressful to the many of our clients living below the federal poverty line. Additionally, they will be subject to mounting interest, monthly bills or forced collections like wage garnishment (for borrowers not in forbearance or stopped collections), and the risk that an abrupt or mistaken removal from forbearance or stopped collections status that could lead unsuspecting borrowers to miss payments and default or to face a surprise seizure of their tax credit or wages.

Abrupt and mistaken removals from forbearance and stopped collection status is a very real threat, as unfortunately, our experience has been that mistakes are too often made in complying with borrowers' requests for these statuses. For example, PLC has worked with a borrower who submitted her Borrower Defense application in mid-2017. She attended the medical assistant program at Everest College. When the application was submitted, we requested that her loans be placed in forbearance while the review was pending. The loans were not initially placed in forbearance, and the borrower began receiving collection letters and a notice of administrative wage garnishment. The borrower is a single mother of a young child, and if she is subject to a wage garnishment she will likely no longer be able to afford her rent. This borrower was lucky, in that she was working with a legal services organization, and we were able to ensure that her loans were placed back in forbearance and no administrative wage garnishment occurred. However, on the borrower's behalf, PLC did submit a request for hearing to contest the wage garnishment, but the Department never responded, or even acknowledged receipt. Now that it is time to file her taxes, the borrower is once again suffering anxiety and fear that her tax refund will be seized, particularly because we just learned that her loans have been placed with a collection agency that contracts with the Department. Her tax refund is used to pay her necessary expenses and to support her young daughter, and without it she will be forced to make some difficult choices about which bills to pay.

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

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

III. CONCLUSION

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

Dated: _April 16, 2018___ PUBLIC LAW CENTER

__/s/ Leigh E. Ferrin___________
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[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.")