



The Project on Predatory Student Lending

769 Centre St, Boston, MA 02130

www.ppsl.org

September 20, 2023

VIA FEDERAL EXPRESS AND EMAIL

Scott Giles, Chief Executive Officer
Missouri Higher Education Loan Authority
633 Spirit Drive
Chesterfield, MO 63005-1243
scottg@mohela.com

Re: Implementation of Settlement Agreement in *Sweet v. Cardona*,
No. 3:19-cv-03674 (N.D. Cal.)

Dear Mr. Giles,

We represent the certified class of plaintiffs in the lawsuit *Sweet v. Cardona*, No. 3:19-cv-03674 (N.D. Cal.). This class includes over 260,000 federal student loan borrowers who applied to the U.S. Department of Education (the “Department”) for borrower defense to repayment. Many of these class members’ federal student loans are serviced by the Missouri Higher Education Loan Authority (MOHELA).

The court in *Sweet v. Cardona* approved a Settlement Agreement between the plaintiff class and the Department on November 16, 2022, and the Agreement became effective on January 28, 2023. Pursuant to the Settlement Agreement, class members’ Relevant Loan Debts (that is, the loans for which they applied for borrower defense) are to remain in forbearance or stopped collection status pending the effectuation of settlement relief. Attached to this letter for your reference are copies of the Settlement Agreement and Final Judgment; please see paragraphs IV.A.3 and IV.C.7 of the Agreement for the relevant terms.¹

It is our understanding that the Department has communicated to MOHELA the names and relevant identifying information of *Sweet* class members whose applicable federal student loans should be held in forbearance while they await relief under the Settlement. Specifically, the Department has reported that, as of August 28, 2023, it has “effectuated relief” (that is, instructed servicers to complete discharges) for over 128,000 class members and has issued decisions approving settlement relief or group borrower

¹ Separately, borrower defense applicants (including those who are not part of the *Sweet v. Cardona* class) have an independent right to have the loans that are the subject of their applications placed in administrative forbearance pending the Department’s adjudication of the applications. See 34 C.F.R. §§ 685.206(e)(8), 685.222(e)(2).

defense relief for an additional 38,600 class members. There also remain over 60,000 class members awaiting adjudication of their entitlement to settlement relief.²

It has recently come to our attention, however, that MOHELA is failing to follow the Department's instructions to hold class members' Relevant Loan Debt in forbearance pending the effectuation of settlement relief. Specifically, a number of *Sweet* class members have reached out to us throughout September 2023 detailing instances in which MOHELA representatives insisted that the borrowers would have to resume repayment as of October 1, 2023, even after the borrowers explained to MOHELA that they were settlement class members. For a few illustrative examples:

- Borrower 1, a resident of California, received a notice from the Department on February 28, 2023, stating that his Relevant Loan Debt would be cancelled under the settlement in *Sweet v. Cardona*. Yet MOHELA told Borrower 1 that it had no record of a BD case for him and that he would have to start repaying his loans as of October 1, 2023. Borrower 1 has since had many phone calls with MOHELA, the Department's borrower defense hotline, Federal Student Aid (FSA), and the Department's Ombudsman. FSA told Borrower 1 that it sent a new notice to MOHELA about his entitlement to remain in forbearance, but in response MOHELA only placed him in forbearance until October 31, 2023, and it still claims to have no record of his borrower defense case or direction from the Department to process a discharge.
- Borrower 2, a resident of Tennessee, received a notice from the Department on February 28, 2023, stating that her Relevant Loan Debt would be cancelled under the settlement in *Sweet v. Cardona*. Yet MOHELA told Borrower 2 that it had "entered a note in [her] file" stating that FSA told it to remove her borrower defense forbearance. Borrower 2 contacted FSA, who stated that FSA had never made such a request. FSA told Borrower 2 it would send another request for forbearance. Borrower 2 has seen indications in her online account that FSA did send two new requests to MOHELA, one in July 2023 and one in August 2023, but MOHELA has since told her, at various points, that it never received a request, that it was told to cancel the request, and/or that she does have a forbearance but only through September 30, 2023. Borrower 2 has begun to receive harassing emails stating that she is confused and that her payments will begin to be due in October.
- Borrower 3, a resident of New York, received a notice from the Department on February 28, 2023, stating that his Relevant Loan Debt would be cancelled under the settlement in *Sweet v. Cardona*. He received another email from the Department in August 2023 confirming that no payment would be due while he waited for relief. Yet MOHELA recently placed Borrower 3's loans into repayment status, and his account shows that he owes over \$600. This is despite the fact that, as of April 2023, the MOHELA website had shown a forbearance on his account

² See U.S. Dep't of Educ., Office of Fed. Student Aid, "Second Quarterly Report Under Settlement Agreement in *Sweet v. Cardona*" (Aug. 28, 2023), available at <https://studentaid.gov/sites/default/files/sweet-quarterly-report-2.pdf>.

through 2040. Borrower 3 recently called MOHELA and a representative told him that only FSA can place him in forbearance, and as of August 1, 2023, MOHELA had received notice from FSA to take him out of forbearance status.

Forcing *Sweet* class members—or any borrower with a pending borrower defense application or otherwise identified by the Department as eligible for loan cancellation—back into repayment on their Relevant Loan Debt while they await relief violates the court-approved Settlement Agreement and applicable regulations. As you will see in the attached, pursuant to paragraph V.B.4 of the Settlement Agreement, plaintiffs are authorized to bring an enforcement action in federal district court if any involuntary collection activity occurs on class members' loans pending the effectuation of relief. If MOHELA insists on collecting payments from our clients that they are not required to make, we will not hesitate to take action to protect their rights under the Settlement,³ including by impleading MOHELA in an enforcement action. MOHELA's failure to implement loan cancellation upon request of the Department also violates state and federal prohibitions on unfair and deceptive acts and practices and requirements for fair debt collection and credit reporting, and we are prepared to pursue legal remedies on behalf of our clients.

We are requesting that MOHELA work with the Department to ensure that MOHELA has a definitive list of *Sweet* class members whose loans are serviced by MOHELA; that MOHELA ensure all of those class members' accounts containing Relevant Loan Debt are placed in forbearance status before October 1, 2023; and that MOHELA send a communication to each of those class members confirming that their Relevant Loan Debt is in forbearance and they have no obligation to make any payment on that Relevant Loan Debt pending the effectuation of settlement relief. MOHELA must not send these class members any bills or any other communications indicating that they have payments due.

Finally, we wish to call MOHELA's attention to the Department of Education's group discharge decisions for federal student loan borrowers with loans from Corinthian Colleges, ITT Technical Institute, and other for-profit colleges, which have purported to affect nearly a million borrowers.⁴

³ In a successful enforcement action, class members will be entitled a refund of any payments collected.

⁴ See Biden-Harris Administration Approves \$72 Million in Borrower Defense Discharges for Over 2,300 Borrowers Who Attended Ashford University (Aug. 30, 2023), <https://www.ed.gov/news/press-releases/biden-harris-administration-approves-72-million-borrower-defense-discharges-over-2300-borrowers-who-attended-ashford-university>; Biden-Harris Administration Approves \$130 Million Group Discharge for 7,400 Borrowers from Colorado Locations of CollegeAmerica (July 25, 2023), <https://www.ed.gov/news/press-releases/biden-harris-administration-approves-130-million-group-discharge-7400-borrowers-colorado-locations-collegeamerica-0>; Education Department Approves \$1.5 Billion in Debt Relief for 79,000 Borrowers Who Attended Westwood College (Aug. 30, 2022), <https://www.ed.gov/news/press-releases/education-department-approves-15-billion-debt-relief-79000-borrowers-who-attended-westwood-college>; Education Department Approves \$3.9 Billion Group Discharge for 208,000 Borrowers Who Attended ITT Technical Institute (Aug. 16, 2022), <https://www.ed.gov/news/press-releases/education-department-approves-39-billion-group-discharge-208000-borrowers-who-attended-itt-technical-institute>; Education Department Approves \$5.8 Billion

Many of these discharges were announced over a year ago—some up to two years ago—yet we understand that the Department has not completed the process of discharging these loans. The majority of these borrowers are not members of the *Sweet* class (although some are), but nonetheless they should not be forced back into repayment on loans that, according to the Department itself, should no longer exist. Indeed, the only reason these loans do still exist is because of the Department’s and servicers’ laggardly implementation of relief. We urge MOHELA to work with the Department to identify loans that are subject to these group discharges and prevent these loans from returning to repayment while borrowers await the administrative processing of the discharges to which they are entitled.

Thank you for your attention to this matter. We look forward to your response and would be happy to provide any information necessary for your thorough investigation of the issues addressed in this letter.

Sincerely,



Rebecca C. Ellis

Eileen M. Connor

Rebecca C. Eisenbrey

PROJECT ON PREDATORY STUDENT
LENDING

Joseph Jaramillo

HOUSING AND ECONOMIC RIGHTS
ADVOCATES

Group Discharge to Cancel All Remaining Loans for 560,000 Borrowers Who Attended Corinthian (June 1, 2022), <https://www.ed.gov/news/press-releases/education-department-approves-58-billion-group-discharge-cancel-all-remaining-loans-560000-borrowers-who-attended-corinthian-colleges>; Education Department Approves \$238 Million Group Discharge for 28,000 Marinello Schools of Beauty Borrowers Based on Borrower Defense Findings (Apr. 28, 2022), <https://www.ed.gov/news/press-releases/education-department-approves-238-million-group-discharge-28000-marinello-schools-beauty-borrowers-based-borrower-defense-findings>; Education Department Approves \$415 Million in Borrower Defense Claims Including for Former DeVry University Students (Feb. 16, 2022), <https://www.ed.gov/news/press-releases/education-department-approves-415-million-borrower-defense-claims-including-former-devry-university-students>; Department of Education Approves Borrower Defense Claims Related to Three Additional Institutions (July 9, 2021), <https://www.ed.gov/news/press-releases/department-education-approves-borrower-defense-claims-related-three-additional-institutions>; Department of Education Announces Approval of New Categories of Borrower Defense Claims Totaling \$500 Million in Loan Relief to 18,000 Borrowers (June 16, 2021), <https://www.ed.gov/news/press-releases/department-education-announces-approval-new-categories-borrower-defense-claims-totaling-500-million-loan-relief-18000-borrowers>.

Encl.

cc (by email): Stuart Robinson, U.S. Department of Justice
R. Charlie Merritt, U.S. Department of Justice
Bonnie Latreille, U.S. Department of Education Federal Student Aid Ombudsperson
Wendy Kamenshine, U.S. Consumer Financial Protection Bureau Ombudsperson
Scott Ahrens, Student Advocate & Asst. Dep. Superint. for Student Loan Servicing,
New York State Department of Financial Services
Celina Damian, Student Loan Ombudsperson, California Department of Financial
Protection & Innovation

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

THERESA SWEET, *et al.*,

Plaintiffs,

v.

MIGUEL CARDONA, in his official capacity
as Secretary of Education, and the UNITED
STATES DEPARTMENT OF EDUCATION

Defendants.

No. 3:19-cv-03674-WHA

SETTLEMENT AGREEMENT

1 **I. INTRODUCTION**

2 WHEREAS, in this class action the Plaintiffs assert that the U.S. Department of Education
3 (“Department”) has (i) unreasonably delayed and unlawfully withheld decisions on pending
4 “borrower defense” claims, *i.e.*, claims for relief from certain federal student loan obligations
5 based on institutional misconduct; (ii) issued unlawful notices denying certain borrower defense
6 claims; and (iii) adopted unlawful policies governing the process of evaluating borrower defense
7 claims;

8 WHEREAS, Defendants, the Department and its Secretary, Miguel Cardona, in his official
9 capacity, deny any wrongdoing and deny that Plaintiffs are entitled to the relief they have sought
10 in this Action;

11 WHEREAS, Defendants and Plaintiffs (referred to herein collectively, where appropriate,
12 as “the Parties”) now mutually desire to avoid the delay, uncertainty, inconvenience and expense
13 of protracted litigation, and have determined to settle this Action, including all claims that
14 Plaintiffs, the certified Class (as defined below), and the members of that Class have brought in
15 this case;

16 NOW, THEREFORE, in reliance upon the representations, mutual promises, covenants,
17 releases, and obligations set forth in this Settlement Agreement, and for good and valuable
18 consideration, the Parties hereby stipulate and agree to compromise, settle, and resolve this case
19 on the following terms and conditions.

20 **II. DEFINITIONS**

21 Unless otherwise noted, the following definitions apply in this Settlement Agreement, and
22 for purposes of this Settlement Agreement alone.

- 23 A. **Action** means the litigation styled *Sweet, et al. v. Cardona, et al.*, No. 3:19-cv-
24 3674-WHA (N.D. Cal.).
- 25 B. **Agreement** means this Settlement Agreement, including any attached exhibits.
- 26 C. **Borrower defense application** means a request by a Direct Loan or Federal Family
27 Education Loan Program borrower for relief from his or her repayment obligations
28 with respect to those loans based on the alleged misconduct of the borrower’s

1 school. A borrower's application can include multiple claims of alleged misconduct
2 on behalf of his or her school.

3 D. **Borrower defense claim** means an allegation made for relief from a borrower's
4 repayment obligations in a borrower defense application.

5 E. **Class** or **Class Members** are the members of the class that has been certified by
6 this Court and refers to individuals who meet the criteria set forth in Section II
7 below. When used in this Agreement, the terms Class and Class Members refer,
8 individually and collectively, to the Plaintiffs, the Class, and each Member of the
9 Class.

10 F. **Class Counsel** or **Plaintiffs' Counsel** refers to Plaintiffs' attorneys of record in this
11 Action.

12 G. **Class Notice** means the document attached hereto as Exhibit A, which shall be
13 distributed pursuant to subsection X.B, below.

14 H. **Court** means the U.S. District Court for the Northern District of California.

15 I. **Department** refers to the U.S. Department of Education.

16 J. **Direct Loan** means and refers to a loan made pursuant to the William D. Ford
17 Federal Direct Loan Program, 20 U.S.C. § 1087a *et seq.*

18 K. **Effective Date** means the date upon which, if this Agreement has not been voided
19 under Section XIII, the Final Judgment approving this Agreement, entered by the
20 Court in the form attached hereto as Exhibit B, becomes non-appealable, or, in the
21 event of an appeal by a Class Member based upon a timely filed objection to this
22 Agreement, upon the date of final resolution of said appeal. When this Agreement
23 refers to the date on which the Agreement became "Effective," such date is the
24 Effective Date.

25 L. **Execution Date** means the date upon which all Parties to this Agreement, and/or
26 their counsel of record, have signed the Agreement.

- 1 M. **Fairness Hearing** means a hearing held by the Court at which time the Court will
2 determine whether this Agreement should be approved under Federal Rule of Civil
3 Procedure 23(e).
- 4 N. **Final Approval Date** refers to the date on which the Court enters Final Judgment
5 approving this Agreement in the form attached hereto as Exhibit B.
- 6 O. **Final Decision** refers to a decision by the Department either approving or denying
7 settlement relief to a borrower under the terms of this Agreement.
- 8 P. **FFEL** means and refers to a loan made pursuant to the Federal Family Education
9 Loan Program, 20 U.S.C. §§ 1071-1087-4.
- 10 Q. **Form Denial Notice** refers to a notice sent by the Department to a Class Member,
11 in substantially the form of one of the documents submitted by Defendants to the
12 Court in this Action at ECF Nos. 116-1, 116-2, 116-3, and 116-4.
- 13 R. **FSA** is the Department's Federal Student Aid office.
- 14 S. **Full Settlement Relief** means (i) discharge of all of a Class Member's Relevant
15 Loan Debt, (ii) a refund of all amounts the Class Member previously paid to the
16 Department toward any Relevant Loan Debt (including, but not limited to, Relevant
17 Loan Debt that was fully paid off at the time that borrower defense relief is granted),
18 and (iii) deletion of the credit tradeline associated with the Relevant Loan Debt.
- 19 T. **Involuntary Collection Activity** means any attempt by the Department or its
20 agents to collect payments toward the Relevant Loan Debt (in whole or in part), as
21 defined below, through involuntary means from a borrower in default, including
22 but not limited to certifying the borrower's debts for collection through the
23 Treasury Offset Program and/or administrative wage garnishment. Any activity by
24 the Department or its agents that reduces the borrower's Relevant Loan Debt
25 without any action by the borrower or which eliminates a default on the loan
26 without action by the borrower is not an Involuntary Collection Activity.
- 27 U. **Plaintiffs**, for purposes of Section V, includes Post-Class Applicants as the term is
28 defined in Section IV.D.

- 1 V. **Preliminary Approval Date** refers to the date on which the Court enters a
2 preliminary approval order, as set forth in subsection X.A.
- 3 W. **Relevant Loan Debt** refers to Direct Loans or FFEL loans associated with the
4 school that is the subject of the Class Member’s borrower defense application. That
5 debt includes the original principal of the affected federal student loan plus any and
6 all interest and fees that accrued or were incurred on that loan.
- 7 X. **School Group** refers to the name of a multi-institution organization based on
8 ownership data and/or multi-campus institution as defined in FSA’s Postsecondary
9 Education Participants System (“PEPS”), to the extent that data is included in the
10 borrower defense review platform.
- 11 Y. **Written Notice** is provided when the Department sends an email to the relevant
12 individual’s email address or, where the Department does not have such an email
13 address available or becomes aware that email is undeliverable to the email address
14 on file, the Department sends a copy of the relevant communication to the
15 individual’s last known mailing address.

16 **III. CLASS**

- 17 A. Pursuant to Federal Rule of Civil Procedure 23(b)(2), the Court has certified a
18 plaintiff class consisting of all people who borrowed a Direct Loan or FFEL loan
19 to pay for a program of higher education, who have asserted a borrower defense to
20 repayment to the Department, whose borrower defense has not been granted or
21 denied on the merits, and who is not a class member in *Calvillo Manriquez v.*
22 *DeVos*, No. 3:17-cv-7210 (N.D. Cal.). See ECF No. 46 (Oct. 30, 2019). In this
23 Agreement, individuals who meet this class definition as of the date of class closure
24 are referred to as “the Class” or “Class Members.”
- 25 B. For the purposes of this Agreement, the Parties agree that the Class includes
26 individuals who are members of the Plaintiffs’ proposed “§ 555(e) Subclass,”
27 which the Parties agree includes all members of the class certified in this case on
28 October 30, 2019 (ECF No. 46) whose borrower defense applications were denied

1 between the date of class certification and the Execution Date. *See* Pls.’ Suppl.
2 Compl., ECF No. 198 ¶ 430 (May 4, 2021).

3 C. As of the Effective Date, all Class Members are bound by the terms of this
4 Agreement.

5 D. The Class is closed as of the Execution Date.

6 **IV. DEFENDANTS’ CONSIDERATION**

7 In consideration for the promises of Plaintiffs set forth in this Agreement, Defendants agree
8 as follows:

9 A. Relief for applications meeting certain school criteria.

10 1. No later than one year after the Effective Date, Defendants will effectuate
11 Full Settlement Relief for each and every Class Member whose Relevant
12 Loan Debt is associated with the schools, programs, and School Groups
13 listed in Exhibit C hereto. If any such Class Member receiving relief under
14 this Paragraph IV.A previously received a Form Denial Notice, the
15 provision of Full Settlement Relief will be deemed to rescind that Form
16 Denial Notice.

17 2. Class Members shall be eligible for this form of relief regardless of whether
18 the Class Member is a member of the § 555(e) Subclass.

19 3. Defendants shall provide Written Notice of this relief to each qualifying
20 Class Member no later than 90 calendar days after the Effective Date. The
21 notice shall specify that the Class Member will receive Full Settlement
22 Relief, as defined in this Agreement, and need not take any additional action
23 to receive this relief. The notice shall also specify that the Class Member’s
24 Relevant Loan Debt will remain in forbearance or stopped collection status
25 pending the effectuation of relief. If the notice is sent by email and it
26 bounces back, Defendants will have an additional 90 calendar days to send
27 the notice by first class mail to the last known mailing address.

1 4. The Parties acknowledge that some Class Members may be eligible for
2 discharges of their loans, outside of this Agreement, based on the
3 misconduct of schools they attended, and that nothing in this Agreement
4 shall prevent the Department from effectuating such relief outside this
5 Agreement. The Department agrees, however, that any such Class Members
6 who are deemed eligible for such relief outside this Agreement shall receive
7 Full Settlement Relief pursuant to this Agreement.

8 5. If the Department’s borrower defense or loan data includes conflicting
9 evidence which raises a substantial question as to whether a Class Member’s
10 Relevant Loan Debt is associated with a program, school, or School Group
11 listed in Exhibit C, the question will be resolved in favor of the Class
12 Member (*i.e.*, in favor of granting relief).

13 B. Rescission of Form Denial Notices.

14 1. For Class Members who do not receive relief pursuant to Paragraph IV.A,
15 above, but previously received a Form Denial Notice, Defendants, no later
16 than 120 calendar days after the Effective Date, will provide Written Notice
17 to those Class Members that their denials have been rescinded and that their
18 borrower defense applications are again under consideration.

19 2. For purposes of Paragraph IV.C.3, the Department will deem the
20 applications of Class Members who previously received a Form Denial
21 Notice to have been pending since the original date of submission.

22 C. Process and timeline for issuing decisions on remaining Class applications.

23 1. Defendants will apply the following procedures to their review of borrower
24 defense applications submitted by Class Members who did not receive relief
25 pursuant to Paragraph IV.A:

26 i. Defendants will review the borrower defense application and any
27 attachments included by the Class Member to determine whether the
28 application states a claim that, if presumed to be true, would assert

1 a valid basis for borrower defense relief under the standards in the
2 borrower defense regulations published by the Department on
3 November 1, 2016 (81 *Fed. Reg.* 75,926). If it does, Defendants
4 will provide that Class Member Full Settlement Relief.

5 ii. If a Class Member’s borrower defense application reviewed under
6 this Paragraph IV.C alleges a misrepresentation or omission that, if
7 presumed to be true, would assert a valid basis for borrower defense
8 relief, Defendants will presume that the Class Member reasonably
9 relied on that misrepresentation or omission regardless of whether
10 the Class Member alleges such reliance in his or her application.

11 iii. No borrower defense application reviewed under this Paragraph
12 IV.C will be denied on the basis of insufficient evidence.

13 iv. Defendants will not apply any statute of limitations to borrower
14 defense applications reviewed under this Paragraph IV.C.

15 2. Defendants will issue any Class Member whose borrower defense
16 application is reviewed under this Paragraph IV.C a “settlement relief
17 decision,” a “revise and resubmit notice,” or a “denial notice,” as defined
18 below.

19 i. A “settlement relief decision” notifies a Class Member that his or
20 her borrower defense application has been approved under the terms
21 of this Settlement Agreement and that the Class Member will
22 receive Full Settlement Relief.

23 ii. A “revise and resubmit notice” notifies a Class Member that his or
24 her borrower defense application is deficient, provides instructions
25 on how to revise and resubmit his or her application, and advises the
26 Class Member that he or she may do so within 6 months of the date
27 of the notice. The notice will state that if the Class Member does not
28 submit a revised application within 6 months, the notice itself will

1 serve as Defendants’ final decision of denial and that the Class
2 Member has the right to seek review of such decision in federal
3 district court.

4 iii. A “denial decision” will only be issued to Class Members whose
5 applications are denied after having resubmitted their application
6 following receipt of a “revise and resubmit notice,” as defined in the
7 preceding subparagraph. A denial decision will explain the reasons
8 the application was denied and apprise the recipient of his or her
9 right to seek review of the decision in federal district court.

10 3. Defendants will issue decisions to Class Members whose applications are
11 reviewed under this Paragraph IV.C according to the timelines set forth
12 below. For purposes of this subparagraph, a “decision” refers to either a
13 “settlement relief decision” or a “revise and resubmit notice,” as defined in
14 Paragraph IV.C.2.

15 i. For any application submitted between January 1, 2015 and
16 December 31, 2017, Defendants will issue a decision no later than 6
17 months after the Effective Date.

18 ii. For any application submitted between January 1, 2018 and
19 December 31, 2018, Defendants will issue a decision no later than
20 12 months after the Effective Date.

21 iii. For any application submitted between January 1, 2019 and
22 December 31, 2019, Defendants will issue a decision no later than
23 18 months after the Effective Date.

24 iv. For any application submitted between January 1, 2020 and
25 December 31, 2020, Defendants will issue a decision no later than
26 24 months after the Effective Date.

1 v. For any application submitted between January 1, 2021 and the
2 Execution Date, Defendants will issue a decision no later than 30
3 months after the Effective Date.

4 vi. If a Class Member has submitted more than one borrower defense
5 application, the earliest submitted application will control for
6 purposes of the timelines set forth above.

7 4. Defendants will issue a final decision to any Class Member who resubmits
8 his or her application after receiving a “revise and resubmit notice” no later
9 than 6 months after Defendants receive the Class Member’s resubmission.
10 For purposes of this subparagraph IV.C.4, a “final decision” refers to either
11 a “settlement relief decision” or a “denial decision” as defined in Paragraph
12 IV.C.2.

13 5. Class Members shall be eligible for the relief set forth in this Paragraph
14 IV.C regardless of whether the Class Member is a member of the § 555(e)
15 Subclass.

16 6. The decisions required by this Paragraph IV.C shall be sent by Written
17 Notice, as defined in this Agreement.

18 7. The Relevant Loan Debt for each Class Member eligible under this section
19 will remain in forbearance or stopped collection status either until he or she
20 receives Full Settlement Relief or until the Department’s decision denying
21 the Class Member’s claim becomes final pursuant to either Paragraph
22 IV.C.2.ii or Paragraph IV.C.2.iii, as applicable. For this period of
23 forbearance or stopped collection status, the Department will remove any
24 interest that accrues on the Relevant Loan Debt.

25 8. If a Class Member has not received a timely decision required under
26 Paragraphs IV.C.3 and IV.C.4, as applicable, that Class Member shall
27 receive Full Settlement Relief. Defendants shall provide the affected Class
28

1 Member with notice that the Class Member will receive this relief within 60
2 calendar days following the expiration of the applicable deadline.

- 3 9. Defendants will effectuate relief for any Class Member entitled to
4 settlement relief pursuant to Paragraphs IV.C.3, IV.C.4, or IV.C.8, as
5 applicable, no later than one year after the date that Defendants provide that
6 Class Member Written Notice of the settlement relief decision.

7 D. Relief for Certain Post-Class Applicants.

- 8 1. If an individual submits a borrower defense application after the Execution
9 Date (*i.e.*, the date the class closes), but before the Final Approval Date,
10 such individual is a Post-Class Applicant. Defendants will issue a final
11 decision on the merits of a Post-Class Applicant's application no later than
12 36 months after the Effective Date. In making these decisions, the
13 Department will apply the standards in the borrower defense regulations
14 published by the Department on November 1, 2016 (81 *Fed. Reg.* 75,926).
15 2. If a Post-Class Applicant has not received a timely decision as required
16 under Paragraph IV.D.1, that applicant shall receive Full Settlement Relief.
17 Defendants shall provide the affected Post-Class Applicant with notice that
18 the applicant will receive this relief within 60 calendar days following the
19 expiration of the applicable deadline.
20 3. Defendants will effectuate relief for any Post-Class Applicant entitled to
21 settlement relief pursuant to Paragraphs IV.D.1 and IV.D.2 no later than one
22 year after the date that Defendants provide that applicant Written Notice of
23 the settlement relief decision.

- 24 E. Class Member informational webpage. The Department will establish a webpage
25 on its studentaid.gov website providing general information about this Agreement
26 and links to copies of the Agreement and related Court documents. The webpage
27 will be available to the public within 30 calendar days after the Preliminary
28 Approval Date and will be updated no later than 30 calendar days after the Effective

1 Date to include information about how Class Members can contact the Department
2 if the Class Member has questions regarding their borrower defense application.

3 F. Effectuating relief.

4 1. Defendants have effectuated relief for purposes of Paragraphs IV.A, IV.C,
5 and IV.D when they and their loan servicers have taken all steps necessary
6 to discharge the Relevant Loan Debt of the Class Member (or Paragraph
7 IV.D. Post-Class Applicant), including but not limited to (1) discharging
8 any interest that accrued while the borrower defense application was
9 pending; (2) determining if the Class Member (or Paragraph IV.D Post-
10 Class Applicant) is entitled to any refund, and if so, issuing refund check(s)
11 for payment of that refund; (3) if the Class Member's (or Paragraph IV.D
12 Post-Class Applicant's) Relevant Loan Debt was previously in default,
13 removing such debt from default status; and (4) requesting the deletion of
14 the relevant tradeline.

15 2. Class Members (or Paragraph IV.D Post-Class Applicants) who receive
16 relief under Paragraphs IV.A, IV.C, or IV.D shall not be required to take
17 steps to consolidate any Relevant Loan Debt into a Direct Loan to receive
18 the relief to which they are entitled pursuant to those Paragraphs.
19 Defendants shall take all necessary steps to ensure that other loan holders
20 effectuate the required relief.

21 G. Reporting Requirement.

22 1. Within 30 calendar days after the Effective Date, Defendants will provide
23 Plaintiffs with, as of the Final Approval Date, (i) the total number of Class
24 Members, (ii) the total number of Class Members the Department has
25 determined are eligible for Full Settlement Relief pursuant to Paragraph
26 IV.A; (iii) the total number of Class Members who must receive decisions
27 pursuant to Paragraph IV.C; and (iv) the total number of Class Members
28 and Post-Class Applicants who must receive decisions by each deadline set

1 forth in Paragraph IV.C.3(i) through (v) and Paragraph IV.D, respectively,
2 and a schedule of the dates certain by which such decisions must be received
3 pursuant to these paragraphs.

4 2. Defendants will submit quarterly reports to Plaintiffs documenting their
5 progress toward fulfilling their obligations under Paragraphs IV.A, IV.C,
6 and IV.D of this Agreement. Defendants will submit these reports to
7 Plaintiffs' Counsel via electronic mail and will post those reports publicly
8 on their Federal Student Aid website.

9 3. The first quarterly report shall be submitted 120 calendar days after the
10 Effective Date, unless that day falls on a weekend or Federal holiday, in
11 which case the report shall be submitted on the next business day. The
12 quarterly reports shall be submitted every 90 calendar days thereafter,
13 subject to the same exceptions where the 90th day falls on a weekend or
14 Federal holiday.

15 4. The quarterly reports described herein shall contain the information listed
16 below. The first report will reflect progress Defendants have made since the
17 Effective Date and later reports will reflect the progress Defendants made
18 from the last date reported in the prior report to the end of each reporting
19 period. The first reporting period will start on the Effective Date. Each
20 subsequent reporting period will start on the last date for which progress
21 was reported in any previous report. Each reporting period shall exclude a
22 period not exceeding 30 calendar days immediately preceding the
23 submission of a report, during which Defendants pull, confirm, and validate
24 the data provided in each report.

25 i. The total number of Class Members with pending borrower defense
26 applications (which number shall include members of the § 555(e)
27 Subclass);

1 ii. The total number of settlement relief decisions, revise and resubmit
2 notices, and denial decisions, as defined in Paragraph IV.C.2, that
3 Defendants have issued to Class Members pursuant to Paragraph
4 IV.C;

5 iii. The number of Class Members who received settlement relief
6 decisions; the number of Class Members who received “revise and
7 resubmit notices”; and the number of Class Members who received
8 final denial decisions during the reporting period; and

9 iv. The total number of Class Members for whom Defendants have
10 effectuated relief pursuant to Paragraph IV.A, including the number
11 of Class Members for whom Defendants effectuated relief during
12 the reporting period.

13 v. For any quarterly report covering the time period during which a
14 deadline established in Paragraphs IV.C.3(i) through (v) and
15 Paragraph IV.D falls, the total number of Class Members for whom
16 the Department did not provide a decision.

17 5. All of the data required in this section is subject to privacy restrictions and
18 will be suppressed where the total number of Class Members for any data
19 point is less than 10.

20 6. Defendants shall notify Plaintiffs’ Counsel within 30 calendar days of the
21 date as of which they have resolved all Class Members’ borrower defense
22 applications, notified all Class Members of their final decisions (where
23 applicable), and effectuated all appropriate relief to Class Members, at
24 which point Defendants’ reporting obligations will cease. Until Defendants
25 provide such notice, Defendants shall continue providing quarterly reports
26 as required by this Paragraph IV.G.

27 H. Other Assurances. In accordance with applicable statutory and regulatory
28 requirements, and additional governing policies and procedures specific to

1 Defendants' consideration of borrower defense claims, Defendants represent and
2 confirm that the following policies will apply to all Class Members throughout the
3 time covered by the Agreement:

- 4 1. Defendants do not take action to collect outstanding student loan debts
5 through involuntary collection activity against individuals with pending
6 borrower defense applications, as required by the Department's borrower
7 defense regulations. However, this Agreement does not preclude a Class
8 Member from proactively and voluntarily paying his or her student loans.
- 9 2. Defendants provide an interest credit for any interest that accrues on the
10 relevant federal student loan accounts of borrowers between the time that
11 the borrower submits his or her borrower defense application and the time
12 the Department issues a final decision on the application and notifies the
13 borrower of that decision.

14 **V. ENFORCEMENT**

15 A. Notwithstanding all other provisions outside Section V of this Agreement, the
16 Court shall retain jurisdiction only to review claims set forth in this Section V, and
17 only in the manner explicitly provided in Section V. In connection with each such
18 claim, the Court shall retain jurisdiction only to order the relief explicitly specified
19 for each particular claim and only where Defendants have not provided that relief
20 pursuant to the procedures specified in this Section. The Court shall lack
21 jurisdiction to imply any claims, or authority to issue any other relief, under this
22 Agreement.

23 B. The only claims permissible to enforce this Agreement are as follows:

- 24 1. Failure to Provide Relief to Class Members Who Did Not Receive a
25 Decision by the Decision Due Date. Plaintiffs may bring a claim alleging
26 that Defendants have materially breached the Agreement if Defendants
27 have (i) failed to issue to a Class Member or Post-Class Applicant by the
28 due date established in Paragraph IV.C.3, IV.C.4, or IV.D.2, as applicable,

1 a decision, as defined by Paragraph IV.C.2; and (ii) subsequently failed,
2 within 30 calendar days following the expiration of the applicable deadline,
3 to provide that Class Member with notice that they will receive Full
4 Settlement Relief, as required by Paragraph IV.C.8 or IV.D.2, as applicable.

- 5 i. Should Plaintiffs prevail on this claim, the only relief available from
6 the Court shall be an order requiring Defendants to promptly provide
7 Full Settlement Relief to each affected Class Member on a timetable
8 set by the Court. Defendants shall also be liable for Plaintiffs'
9 reasonable attorneys' fees and costs incurred in bringing the claim.
- 10 ii. In the event of such a Court order, Defendants will report to
11 Plaintiffs' Counsel and the Court on its progress of issuing relief,
12 as provided herein, to affected Class Members.

13 2. Failure to Issue Relief by Relief Due Date. Plaintiffs may bring a claim
14 alleging that Defendants have materially breached Paragraph IV.A.1,
15 IV.C.9, IV.D.1, and/or IV.D.3 of the Agreement by failing to effectuate
16 relief within the prescribed time periods for any individual who is entitled
17 to receive relief pursuant those Paragraphs.

- 18 i. Should Plaintiffs prevail on this claim, the only relief available from
19 the Court shall be an order requiring Defendants to promptly provide
20 Full Settlement Relief to each affected individual on a schedule set
21 by the Court. Defendants shall also be liable for Plaintiffs'
22 reasonable attorneys' fees and costs incurred in bringing the claim.
- 23 ii. In the event of such a Court order, Defendants will report to
24 Plaintiffs' Counsel and the Court on its progress of issuing relief, as
25 provided herein, to affected Class Members.

26 3. Failure to Submit Timely Quarterly Reports. Plaintiffs may bring a claim
27 alleging that Defendants have materially breached Paragraph IV.G of the
28 Agreement by failing to submit a timely and complete quarterly report to

1 Plaintiffs' Counsel via electronic mail within 90 calendar days after the
2 deadline for the report according to the timelines specified therein. Should
3 Plaintiffs prevail on this claim, the only relief available from the Court shall
4 be an order requiring Defendants to submit their reports on a monthly basis
5 from the point of the order forward. Defendants shall also be liable for
6 Plaintiffs' reasonable attorneys' fees and costs incurred in bringing the
7 claim.

8 4. Involuntary Collections of Class Members' Student Loan Debt. Plaintiffs
9 may bring a claim alleging that Defendants have materially breached
10 Paragraph IV.H.1 of the Agreement by collecting on a Relevant Loan after
11 the Effective Date through involuntary collection activity against a Class
12 Member or Post-Class Applicant while his or her application was or is
13 pending or while the Class Member or Post-Class Applicant was or is
14 awaiting the effectuation of relief.

15 i. Should Plaintiffs prevail on this claim, the only relief available from
16 the Court shall be an order requiring the Department to refund the
17 payment(s) collected. If Defendants do not have a valid address for
18 the affected borrowers to send the refunds, Defendants will
19 take reasonable steps to engage in skip tracing to find a valid
20 address.

21 ii. Defendants shall be liable for a material breach under this Paragraph
22 V.B.4 if involuntary collection activity occurs because they, their
23 agents, or their contractors took action to collect a debt through an
24 involuntary collection activity. Defendants shall not be liable based
25 on events outside of Defendants' control, including but not limited
26 to a situation where a third party, such as an employer, undertakes
27 debt collection activities, such as wage garnishment, inconsistent
28 with Defendants' instructions that collection activity cease.

1 C. All claims listed above are subject to the complete defense of impracticability or
2 impossibility of performance, as set forth below in Paragraph V.D.5 and Paragraph
3 XII, as well as the defense that the breach claimed by Plaintiffs is not material.

4 D. The exclusive procedure for bringing a claim to enforce the terms and conditions
5 of this Agreement shall be as follows:

6 1. Prior to asserting any claim pursuant to Paragraph V.B, above, Plaintiffs'
7 Counsel shall submit written notice alleging a material breach of this
8 Agreement to counsel for Defendants. Such notice shall be submitted by
9 electronic mail, and shall specify what alleged breach has occurred; describe
10 the facts and circumstances supporting the claim; and state that Plaintiffs
11 intend to seek an order from the Court pursuant to Paragraph V.B. Plaintiffs
12 shall not inform the Court of their allegation(s) at that time.

13 2. Within 2 business days of receipt of the notice from Plaintiffs' Counsel,
14 Defendants will acknowledge receipt of Plaintiffs' notice.

15 3. Defendants shall have a period of 14 calendar days after receipt of such
16 notice from Plaintiffs' Counsel to inform Plaintiffs' Counsel in writing of
17 its determination on whether a material breach has occurred, including
18 relevant information that informed Defendants' determination.

19 i. If Defendants agree that a material breach has occurred, Defendants
20 will disclose any action they propose to take to resolve the alleged
21 material breach in the written notice to Plaintiffs as described by this
22 Paragraph V.D.3. The Parties will meet and confer to determine
23 whether those actions are sufficient within 5 business days of
24 Plaintiffs' receipt of Defendants' notice.

25 a. Upon Defendants' request, Plaintiffs shall provide to
26 Defendants any information and materials available to
27 Plaintiffs that support the violation alleged in the notice.

1 b. Defendants will have 21 calendar days following the Parties’
2 meet and confer to take the action(s) specified in their
3 written notice and/or any further action(s) agreed upon in
4 writing by the Parties.

5 c. If the Parties agree about the existence of a material breach,
6 but cannot reach consensus on the appropriate action to
7 resolve that breach within 21 calendar days following the
8 Parties’ meet and confer, either Party may file a motion for
9 enforcement of the Agreement.

10 ii. If Defendants do not agree that a material breach has occurred, the
11 Parties will meet and confer to determine if a consensus can be
12 reached within 5 business days after Plaintiffs’ receipt of
13 Defendants’ notice as described in this Paragraph V.D.3. If a
14 consensus cannot be reached within 21 business days following the
15 Parties’ meet and confer, Plaintiffs may file a motion for
16 enforcement of the Agreement.

17 4. Absent the prior, written agreement of the Parties, any motion for
18 enforcement of the Agreement must be brought within two (2) years after
19 the Parties notify the Court that Defendants have resolved all Class
20 Members’ borrower defense applications, notified all Class Members of
21 their final decisions (where applicable), and effectuated all appropriate
22 relief to Class Members, as specified in Paragraph XI, below. Otherwise,
23 any claim of material breach not brought within two (2) years of such date
24 shall be forever waived by Plaintiffs.

25 5. If Defendants are reasonably prevented from or delayed in fully performing
26 any of the obligations set forth in Paragraph IV, above, due to extraordinary
27 circumstances beyond Defendants’ control, Defendants will notify
28 Plaintiffs’ Counsel within 14 calendar days of Defendants’ determination

1 that they will not be able to fully perform their obligations. Within that
2 notification, Defendants will describe the facts providing their basis for
3 believing extraordinary circumstances beyond Defendants' control prevent
4 Defendants from fully performing their obligations. Within 14 calendar
5 days of that notice, the Parties will meet and confer as to whether the
6 circumstances are beyond the Defendants' control and to what extent they
7 affect Defendants' ability to issue final decisions or effectuate relief. If the
8 Parties agree an extension is warranted, the Parties will negotiate the length
9 of an appropriate extension, and the deadlines set forth for Defendants'
10 performance in Paragraph IV may be altered accordingly. If the Parties
11 cannot agree as to whether extraordinary circumstances exist or what the
12 appropriate length of an extension is, Plaintiffs may raise a claim of material
13 breach of Paragraph IV with the Court prior to the expiration of the
14 timelines provided in that Paragraph. Defendants shall be permitted to
15 oppose the filing of such a claim upon the grounds of extraordinary
16 circumstances, and the Court will at that point have jurisdiction to determine
17 whether Defendants are entitled to any extension of the deadlines set forth
18 in Paragraph IV on the basis of extraordinary circumstances. The extension
19 set forth in this Paragraph V.D.5 shall be for a minimum of seven (7)
20 calendar days beyond the deadlines for performance set forth in Paragraph
21 IV without requiring any action by any Party other than Defendants, and
22 may be longer than that period pursuant to written agreement among the
23 Parties.

24 E. The Court relinquishes jurisdiction over all claims, causes of actions, motions,
25 suits, allegations, and other requests for relief in this Action that are not expressly
26 stated in this Paragraph V.
27
28

1 F. The Court shall have no jurisdiction to supervise, monitor, or issue orders in this
2 Action, except to the extent that Plaintiffs invoke the Court's jurisdiction pursuant
3 to the procedures set forth in this Paragraph V.

4 **VI. ATTORNEYS' FEES**

5 A. To resolve Plaintiffs' claim for attorneys' fees, costs, and expenses, Plaintiffs will
6 submit a petition for fees under the Equal Access to Justice Act, 28 U.S.C. §
7 2412(d), to the Court.

8 B. Defendants agree that Plaintiffs are the prevailing party in this action for purposes
9 of a fee petition under the Equal Access to Justice Act.

10 C. Nothing in this Section shall affect the Parties' ability to attempt to reach a
11 compromise regarding Plaintiffs' claim for attorneys' fees, costs, and expenses.

12 **VII. WAIVER AND RELEASE**

13 Plaintiffs, the Class Members, and their heirs, administrators, representatives, attorneys,
14 successors, and assigns, and each of them hereby forever waive, release, and forever discharge
15 Defendants, and all of their officers, employees, and agents, from, and are hereby forever barred
16 and precluded from prosecuting, any and all claims, causes of action, motions, and requests for
17 any injunctive, declaratory, and/or monetary relief, including but not limited to damages, tax
18 payments, debt relief, costs, attorney's fees, expenses, and/or interest, whether presently known or
19 unknown, contingent or liquidated, alleged in this Action against Defendants through and
20 including the Effective Date, including but not limited to the right to appeal any and all claims
21 Plaintiffs asserted in this Action. This Agreement is not intended to release any claim based on an
22 act or omission or other conduct occurring after the Effective Date, including but not limited to
23 claims by Class Members based on the substance or content of their borrower defense decisions.
24 The Parties do not intend to waive or narrow any res judicata defense Defendants could assert
25 against a future claim brought by any Plaintiff.

26 **VIII. NO ADMISSION OF LIABILITY**

27 A. Nothing in this Settlement Agreement shall constitute or be construed to constitute
28 an admission of any wrongdoing or liability by Defendants, an admission by

1 Defendants of the truth of any allegation or the validity of any claim asserted in this
2 Action, a concession or admission by Defendants of any fault or omission of any
3 act or failure to act, or an admission by Defendants that the consideration provided
4 to Plaintiffs under Paragraph IV, above, represents relief that could be recovered
5 by Plaintiffs in this Action.

6 B. Plaintiffs may not offer, proffer, or refer to any of the terms of this Agreement as
7 evidence in any civil, criminal, or administrative proceedings other than
8 proceedings that may be necessary to enforce the Agreement as set forth in
9 Paragraph V, above, or to obtain approval from the Court as set forth in Paragraph
10 X, below.

11 **IX. PLAINTIFFS' COVENANTS NOT TO SUE**

12 A. Plaintiffs hereby covenant not to commence any action, claim, suit, or
13 administrative proceeding against Defendants related to the non-performance,
14 failed performance, or otherwise unsatisfactory performance in fulfilling their
15 duties and responsibilities under this Agreement; provided, however, that Plaintiffs
16 may initiate an action against Defendants pursuant to the continuing jurisdiction of
17 the Court to compel Defendants' performance of their obligations under this
18 Agreement, but only as expressly articulated in this Agreement in Paragraph V,
19 above.

20 B. Plaintiffs hereby covenant not to commence against Defendants any action, claim,
21 suit, or administrative proceeding on account of any claim or cause of action that
22 has been released or discharged by this Agreement.

23 **X. PROCEDURES GOVERNING APPROVAL OF THIS AGREEMENT**

24 A. Within 14 calendar days of the Execution Date, the Parties shall jointly submit this
25 Agreement and its exhibits to the Court, and shall apply for entry of an Order in
26 which the Court:

27 1. Grants preliminary approval to this Agreement as being fair, reasonable,
28 and adequate to Plaintiffs;

- 1 2. Approves the form of the Class Notice attached hereto as Exhibit A;
- 2 3. Directs the Parties to provide Class Notice as set forth in Paragraph X.B
- 3 below, and grants approval of such plan as reasonable under Federal Rule
- 4 of Civil Procedure 23(e)(1);
- 5 4. Schedules a Fairness Hearing to determine whether this Agreement should
- 6 be approved as fair, reasonable, and adequate, and whether an order
- 7 approving the settlement should be entered pursuant to Federal Rule of Civil
- 8 Procedure 23(e);
- 9 5. Provides that any person who wishes to object to the terms of this
- 10 Agreement, or to the entry of an Order approving this Agreement, must file
- 11 a written Notice of Objection with the Court specifying the objections and
- 12 the basis for such objections as provided in the Class Notice, with copies
- 13 served on all Parties' counsel;
- 14 6. Provides that between the Execution Date and the Fairness Hearing, the
- 15 Defendants shall direct all inquiries from Class Members and Post-Class
- 16 Applicants regarding the Agreement to Plaintiffs' Counsel;
- 17 7. Provides that in order to have an objection considered and heard at the
- 18 Fairness Hearing, such written Notice of Objection must be filed with the
- 19 Court and served on counsel by the date specified in the Class Notice;
- 20 8. Provides that the Parties shall each be entitled, but not required, to respond,
- 21 in writing, to any Objections up to 14 calendar days prior to the Fairness
- 22 Hearing; and
- 23 9. Provides that the Fairness Hearing may, from time to time and without
- 24 further notice to the Class, be continued or adjourned by order of the Court.
- 25 B. After the Court enters an Order containing all of the items set forth in Paragraph
- 26 X.A, above, the Parties shall promptly distribute the Class Notice as follows:
- 27 1. Defendants shall email all Class Members who provided their e-mail
- 28 addresses to the Department on their borrower defense applications, or,

1 where Defendants do not have such an e-mail address available or become
2 aware that email is undeliverable to the email address on file, Defendants
3 shall send a copy of the notice to the Class Member’s last known mailing
4 address by first class mail.

5 2. Class Counsel will update the Class Member website’s “Frequently Asked
6 Questions” page regarding the lawsuit. A link to the Class Members’
7 website will be included in the Class Notice and will be included on the
8 Department’s website.

9 3. Plaintiffs will also circulate the Class Notice to legal aid and advocacy
10 organizations across the country providing borrower defense assistance.

11 C. No later than 3 business days before the Fairness Hearing, the Parties shall each file
12 with the Court a declaration confirming compliance with the Notice procedures
13 approved by the Court.

14 D. At the Fairness Hearing, the Parties shall jointly request the Court’s final approval
15 of this Agreement, pursuant to Federal Rule of Civil Procedure 23(e). The Parties
16 agree to take all actions necessary to obtain approval of this Agreement.

17 E. If, after the Fairness Hearing, the Court approves this Agreement as fair, adequate,
18 and reasonable, the Parties consent to entry of Final Judgment in a form
19 substantively identical to the Final Judgment attached hereto as Exhibit B.

20 F. Within 120 days after the Effective Date, Defendants shall send Written Notice to
21 all Post-Class Applicants informing them of their status as Post-Class Applicants
22 and the provisions of the Agreement that apply to them.

23 **XI. DISMISSAL AND JURISDICTION OF THE COURT TO ENFORCE THIS AGREEMENT**

24 The Parties hereby stipulate and agree to entry of Final Judgment in a form substantively
25 identical to the Final Judgment attached hereto as Exhibit B. As provided in that exhibit, Plaintiffs’
26 claims in this Action are dismissed with prejudice, except that the Court shall retain limited
27 jurisdiction for the sole purpose of enforcing the terms of this Agreement as expressly set forth in
28 Paragraph V of this Agreement. Once Defendants have resolved all Class Members’ and Post-

1 Class Applicants' borrower defense applications, notified all Class Members and Post-Class
2 Applicants of their final decisions (where applicable), and effectuated all appropriate relief to Class
3 Members and Post-Class Applicants, the Parties will file a notice with the Court. Upon the date of
4 that notice, the Court's jurisdiction over this Action shall completely terminate.

5 The Parties agree that any order of the Court granting approval of this Agreement does not
6 render the terms and conditions of this Agreement subject to the contempt powers of the Court.

7 **XII. IMPOSSIBILITY OF PERFORMANCE**

8 In addition to the excuses to performance listed in Paragraph V.D.5, above, if Congress
9 renders Defendants' performance under this Agreement impossible, in whole or in part, then
10 Defendants shall forever be relieved of all obligations that would, as a result of such Congressional
11 action, be impossible to perform. Defendants shall not be required to take any action, or attempt
12 to take any action, which would circumvent or violate, or have the effect of circumventing or
13 violating, the law.

14 **XIII. CONDITIONS THAT RENDER THIS AGREEMENT VOID OR VOIDABLE**

15 A. This Agreement shall be void if it is not approved as written by a final Court order
16 not subject to any further review.

17 B. This Agreement shall be voidable by Plaintiffs and/or Defendants if the Court does
18 not enter a Final Judgment, or other Final Approval Order, that is substantively
19 identical to the one attached hereto as Exhibit B. Any Party's decision to void the
20 Agreement under this provision is effective only if that Party provides notice of its
21 decision, in writing, to the counsel of record for all other Parties within 30 calendar
22 days of the date on which the Court entered Final Judgment.

23 C. This Agreement shall be voidable by Plaintiffs if a condition of impossibility
24 occurs, as described in Paragraph XII. Plaintiffs' decision to void the Agreement
25 under this provision is effective only if Plaintiffs' Counsel provides notice of their
26 decision, in writing, to the counsel of record for Defendants.

1 **XIV. EFFECT OF AGREEMENT IF VOIDED**

- 2 A. Should this Agreement become void as set forth in Section XIII above, none of the
3 Parties will object to reinstatement of this Action in the same posture and form as
4 it was pending immediately before the Execution Date.
- 5 B. All negotiations in connection herewith, and all statements made by the Parties at
6 or submitted to the Court as part of the Fairness Hearing process, shall be without
7 prejudice to the Parties to this Agreement and shall not be deemed or construed to
8 be an admission by a Party of any fact, matter, or proposition, nor admissible for
9 any purpose in the Action other than with respect to the settlement of same.
- 10 C. The Parties shall retain all defenses, arguments, and motions as to all claims that
11 have been or might later be asserted in this Action, and nothing in this Agreement
12 shall be raised or construed by any Party to defeat or limit any claims, defenses,
13 arguments, or motions asserted by either Party.

14 **XV. MODIFICATION OF THIS AGREEMENT**

- 15 A. Before the Preliminary Approval Date, this Agreement, including the attached
16 exhibits, may be modified only upon the written agreement of the Parties.
- 17 B. After the Preliminary Approval Date—including the time after which Final
18 Judgment has been entered—this Agreement, including the attached exhibits, may
19 be modified only with the written agreement of all the Parties and with the approval
20 of the Court, upon such notice to the Class, if any, as the Court may require.

21 **XVI. RULES OF CONSTRUCTION**

- 22 A. The Parties acknowledge that this Agreement constitutes a negotiated compromise.
23 The Parties agree that any rule of construction under which any terms or latent
24 ambiguities are construed against the drafter of a legal document shall not apply to
25 this Agreement.
- 26 B. This Agreement shall be construed in a manner to ensure its consistency with
27 federal law. Nothing contained in this Agreement shall impose upon Defendants
28 any duty, obligation, or requirement, the performance of which would be

1 inconsistent with federal statutes, rules, or regulations in effect at the time of such
2 performance.

3 C. The headings in this Agreement are for the convenience of the Parties only and
4 shall not limit, expand, modify, or aid in the interpretation or construction of this
5 Agreement.

6 **XVII. INTEGRATION**

7 This Agreement and its exhibits constitute the entire agreement of the Parties, and no prior
8 statement, representation, agreement, or understanding, oral or written, that is not contained herein,
9 will have any force or effect.

10 **XVIII. EXECUTION**

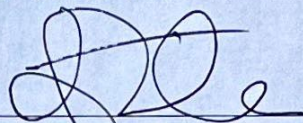
11 This Agreement may be executed in counterparts. Facsimiles and Adobe PDF versions of
12 signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

14 For the Defendants:

15
16 *R. Charlie Merritt*

17 BRIAN D. NETTER
18 Deputy Assistant Attorney General
19 STEPHANIE HINDS
20 United States Attorney
21 MARCIA BERMAN
22 Assistant Branch Director
23 R. CHARLIE MERRITT
24 Trial Attorney
25 U.S. Department of Justice
26 Civil Division, Federal Programs Branch
27 1100 L Street, N.W.
28 Washington, DC 20005
Telephone: (202) 616-8098
E-mail: robert.c.merritt@usdoj.gov

For the Plaintiffs:



EILEEN M. CONNOR (SBN 248856)
econnor@law.harvard.edu
REBECCA C. ELLIS (*pro hac vice*)
rellis@law.harvard.edu
LEGAL SERVICES CENTER OF
HARVARD LAW SCHOOL
122 Boylston Street
Jamaica Plain, MA 02130
Tel.: (617) 390-3003
Fax: (617) 522-0715

JOSEPH JARAMILLO (SBN 178566)
jjaramillo@heraca.org
HOUSING & ECONOMIC RIGHTS
ADVOCATES
3950 Broadway, Suite 200
Oakland, California 94611
Tel.: (510) 271-8443
Fax: (510) 868-4521

Exhibit A

DRAFT

Internal Name: BD Sweet v. Cardona – General Notification

Internal Number: 01

Subject if sent electronically: Notice of Proposed Class Action Settlement - Important borrower defense information for you

[DATE]

Borrower Defense Application #: [Case Number]

Dear [Primary Contact Name]:

Your rights may be affected, please read carefully.

You filed a borrower defense application asking the U.S. Department of Education (“Department”) to cancel some or all of your federal student loan debt because you allege the school you (or your child) attended engaged in unlawful conduct. We write to inform you that there is a proposed settlement in a class action lawsuit that could affect your claim and to explain how your legal rights may be affected by that lawsuit.

As a borrower defense applicant, you may have been previously informed of a class action lawsuit called *Sweet v. DeVos*, which challenged the Department’s delay in issuing final decisions on borrower defense applications, including yours. You may also have been informed in 2020 that the parties had proposed a settlement of the lawsuit, subject to the court’s approval. The court did not approve that proposed settlement, so the lawsuit continued. You can find more information about that here: <https://predatorystudentlending.org/news/press-releases/in-new-ruling-judge-denies-borrower-defense-settlement-over-department-of-educations-perfunctory-alarmingly-curt-denials-press-release/>. The lawsuit now also challenges the Department’s denial of certain borrower defense applications.

We now write to inform you that there is a new proposed settlement of the lawsuit. The settlement will not become final until it is approved by the court as fair, adequate, and reasonable. This Notice describes how your legal rights may be affected by this settlement.

What is the case about?

A lawsuit was filed in a federal court in California by seven borrower defense applicants who represent, with certain exceptions, all borrowers with pending borrower defense applications. The lawsuit challenges the way the Department has been dealing with borrower defense applications over the past few years, including the Department’s delays in issuing final decisions and the Department’s denial of certain applications starting in December 2019. The case is now called *Sweet v. Cardona*, No. 3:19-cv-3674 (N.D. Cal.).

Now, both parties are proposing to settle this lawsuit. This proposed settlement is a compromise of disputed claims, and Defendants continue to deny that they have acted unlawfully.

What are the terms of the proposed settlement for borrowers who applied for borrower defense relief on or before June 22, 2022?

In the proposed settlement, the Department agrees to resolve the borrower defense applications of people who have borrower defense applications pending as of June 22, 2022 on the following terms:

- If your borrower defense application related to federal student loans borrowed to pay for attendance at a school on the list attached to this letter, you will receive a discharge of federal loans associated with that school and a refund of any amounts paid to the Department on those federal loans, and the credit tradeline for those loans will be deleted from your credit report. Within 90 days of the date that the court's approval of the settlement agreement becomes final, the Department will notify you that you will receive this relief. You will receive the relief within one year of the final effective date of the settlement agreement. Until this relief is provided, the Department will not take action to collect your debt.
- If your loans are not associated with a school on the list attached to this letter, you will receive a decision on your application according to the following schedule:
 - o If you submitted your application between January 1, 2015 and December 31, 2017, the Department will issue a decision no later than 6 months after the court's approval of the settlement agreement becomes final.
 - o If you submitted your application between January 1, 2018 and December 31, 2018, the Department will issue a decision no later than 12 months after the court's approval of the settlement agreement becomes final.
 - o If you submitted your application between January 1, 2019 and December 31, 2019, the Department will issue a decision no later than 18 months after the court's approval of the settlement agreement becomes final.
 - o If you submitted your application between January 1, 2020 and December 31, 2020, the Department will issue a decision no later than 24 months after the court's approval of the settlement agreement becomes final.
 - o If you submitted your application between January 1, 2021 and June 22, 2022, the Department will issue a decision no later than 30 months after the court's approval of the settlement agreement becomes final.
- If you do not receive a decision within the timeline outlined above, you will receive a discharge of federal loans associated with your borrower defense applications and a refund of any amounts paid to the Department on those federal loans, and the credit tradeline for those loans will be deleted from your credit report.
- The Department will decide your application in a streamlined review process that will determine whether the application states a claim that, if presumed to be true, would assert a valid basis for

borrower defense; will not require further supporting evidence; will not require proof of reliance; and will not apply any statute of limitations to your application.

- If your application is approved under the procedures above, you will receive a discharge of federal loans associated with your borrower defense application and a refund of any amounts paid to the Department on those federal loans, and the credit tradeline for those loans will be deleted from your credit report.
- The Department will not deny your application without first providing instructions on what is required for a successful application and giving you the opportunity to resubmit your application.
 - o If you choose to resubmit your application, you must do so within 6 months after receiving those instructions. The instructions will explain that if you do not resubmit within the 6-month period, your application will be considered denied.
 - o If you choose to resubmit your application within the 6-month time period after receiving the instructions, the Department will issue you a final decision no later than 6 months after receiving your resubmitted application.
- If you received a notice from the Department in December 2019 or later informing you that your borrower defense application was denied, that denial has been voided and the Department is reviewing your application pursuant to the terms described above.

What are the terms of the proposed settlement for borrowers who applied for borrower defense relief after June 22, 2022 but before final approval of the settlement?

- If you submitted your application after June 22, 2022, but before the court approves the settlement agreement, the Department will issue a decision on your application no later than 36 months after the court's approval of the settlement agreement becomes final. If the Department does not issue a decision within that time period, you will receive a discharge of federal loans associated with your borrower defense application and a refund of any amounts paid to the Department on those federal loans, and the credit tradeline for those loans will be deleted from your credit report.

Does the Department have any reporting obligations?

- The Department will provide your lawyers with information about its progress making borrower defense decisions every three months, including how many decisions the Department has made and how many borrowers have received a loan discharge.

What if my loan is in default?

- If you are in default, the Department will not take action to collect your debt, such as by garnishing your wages (that is, taking part of your paycheck) or taking portions of your tax refund, while your application is pending or while you are waiting to receive any relief you are owed under the settlement.

What happens next?

The court will need to approve the proposed settlement before it becomes final. The court will hold a public hearing, called a fairness hearing, to decide if the proposed settlement is fair. The hearing will be held on _____, 2022, beginning at _____, at the following address:

United States District Court
Northern District of California
450 Golden Gate Avenue, Courtroom 12, 19th Floor
San Francisco, California 94102

Information about the hearing, including the process for participation and virtual attendance (if any), will be posted at <https://predatorystudentlending.org/cases/sweet-v-devos/>.

What should I do in response to this Notice?

IF YOU AGREE with the proposed settlement, you do not have to do anything. You have the right to attend the fairness hearing, at the time and place above, but **you are not required to do so**.

IF YOU DISAGREE WITH OR HAVE COMMENTS on the proposed settlement, you can write to the court or ask to speak at the hearing. You must do this by writing to the Clerk of the Court, at the following mailing address:

Clerk of the Court
United States District Court
Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102

You can also submit comments by email to the Clerk of Court at [email address]. Your written comments or request to speak at the fairness hearing must be postmarked or date-stamped by _____, 2022. The Clerk will provide copies of the written comments to the lawyers who brought the lawsuit.

Where can I get more information?

There is more information about the *Sweet* lawsuit on Class Counsel's website at <https://predatorystudentlending.org/cases/sweet-v-devos/>. Check this site periodically for updated information about the lawsuit.

A copy of the proposed settlement is available online at <https://predatorystudentlending.org/cases/sweet-v-devos/documents/>.

If you have questions about this lawsuit or about the proposed settlement, please visit this Frequently Asked Questions page, <https://predatorystudentlending.org/sweet-v-devos-class-members/>, which also has contact information for the lawyers who brought the lawsuit.

Sincerely,

U.S. Department of Education

Federal Student Aid

Exhibit B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

THERESA SWEET, *et al.*,
Plaintiffs,

v.

MIGUEL CARDONA, in his official capacity
as Secretary of Education, and the UNITED
STATES DEPARTMENT OF EDUCATION

Defendants.

No. 3:19-cv-03674-WHA

**ORDER APPROVING SETTLEMENT
AGREEMENT AND ENTERING FINAL
JUDGMENT**

Hon. William Alsup

Following this Court’s Order preliminarily approving the proposed Settlement Agreement (“Agreement”), Plaintiffs and Defendants (“the Parties”) disseminated a Notice of Proposed Settlement and Fairness Hearing to the Plaintiff Class. After consideration of the written submissions of the Parties, the Agreement between the Parties, any objections to the Agreement, all filings in support of the Agreement, and the presentations at the hearing held by the Court to consider the fairness of the Agreement, the Court hereby Orders, Finds, Adjudges, and Decrees that:

1. The Agreement between the Parties is finally approved as fair, reasonable, and adequate. The Court hereby incorporates the terms of the Agreement, executed by the Parties on June 22, 2022, into this Judgment Order.

2. Except as provided in paragraph 3 of this Order, this action is hereby dismissed with prejudice.

3. The Court shall retain jurisdiction over this action solely to enforce the terms of the Agreement, but only such jurisdiction as expressly set forth in Section V of the Agreement.

4. Once Defendants have decided all Class Members’ borrower defense claims, notified all Class Members of their final decisions (where applicable), and effectuated all

1 appropriate relief to Class Members, the Parties will file a notice with the Court. Upon the date of
2 that notice, the Court's jurisdiction over this action shall completely terminate.

3
4 **IT IS SO ORDERED.**

5
6 Dated:

7
8
9
10 _____
11 The Honorable William Alsup
12 United States District Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit C

School Owner(s)	School/Brand Name
Alta Colleges, Inc. (Westwood)	Westwood College
American Commercial Colleges, Inc.	American Commercial College
American National University	American National University
Ana Maria Piña Houde and Marc Houde	Anamarc College
Anthem Education Group; International Education Corporation	Anthem College
	Anthem Institute
Apollo Group	University of Phoenix
	Western International University
ATI Enterprises	ATI Career Training Center
	ATI College
	ATI College of Health
	ATI Technical Training Center
B&H Education, Inc.	Marinello School of Beauty
Berkeley College (NY)	Berkeley College
Bridgepoint Education	Ashford University
	University of the Rockies
Capella Education Company; Strategic Education, Inc.	Capella University
Career Education Corporation	American InterContinental University
	Briarcliffe College
	Brooks College
	Brooks Institute
	Collins College
	Colorado Technical University
	Gibbs College
	Harrington College of Design
	International Academy of Design and Technology
	Katharine Gibbs School
	Le Cordon Bleu
	Le Cordon Bleu College of Culinary Arts
	Le Cordon Bleu Institute of Culinary Arts
	Lehigh Valley College
	McIntosh College
	Missouri College of Cosmetology North
	Pittsburgh Career Institute
	Sanford-Brown College
	Sanford-Brown Institute
	Brown College
	Brown Institute
	Washington Business School
	Allentown Business School
Western School of Health and Business Careers	
Ultrasound Diagnostic Schools	
School of Computer Technology	

School Owner(s)	School/Brand Name
	Al Collins Graphic Design School Orlando Culinary Academy Southern California School of Culinary Arts California Culinary Academy California School of Culinary Arts Pennsylvania Culinary Institute Cooking and Hospitality Institute of Chicago Scottsdale Culinary Institute Texas Culinary Academy Kitchen Academy Western Culinary Institute
Center for Employment Training	Center for Employment Training
Center for Excellence in Higher Education (CEHE)	California College San Diego CollegeAmerica Independence University Stevens-Henager
Computer Systems Institute	
Court Reporting Institute, Inc.	Court Reporting Institute
Cynthia Becher	La' James College of Hairstyling La' James International College
David Pyle	American Career College American Career Institute
Delta Career Education Corporation	McCann School of Business & Technology Miami-Jacobs Career College Miller Motte Business College Miller-Motte College Miller-Motte Technical College Tucson College
DeVry	American University of the Caribbean Carrington College Chamberlain University DeVry College of Technology Devry Institute of Technology DeVry University Keller Graduate School of Management Ross University School of Veterinary Medicine Ross University School of Medicine
EDMC/Dream Center	Argosy University The Art Institute Brown Mackie College Illinois Institute of Art (The) Miami International University of Art & Design New England Institute of Art (The) South University Western State University College of Law
	All-State Career School

School Owner(s)	School/Brand Name
Education Affiliates (JLL Partners)	Fortis College
	Fortis Institute
Edudyne Systems Inc.	Career Point College
Empire Education Group	Empire Beauty School
Everglades College, Inc.	Everglades University
	Keiser University
FastTrain	FastTrain
Globe Education Network	Globe University
	Minnesota School of Business
Graham Holdings Company (Kaplan)	Bauder College
	Kaplan Career Institute
	Kaplan College
	Mount Washington College
	Purdue University Global
Grand Canyon Education, Inc.	Grand Canyon University
Infilaw Holding, LLC	Arizona Summit Law School
	Charlotte School of Law
	Florida Coastal School of Law
International Education Corporation	Florida Career College
	United Education Institute
ITT Educational Services Inc.	ITT Technical Institute
JTC Education, Inc.	Gwinnett College
	Medtech College
	Radians College
Laureate Education, Inc.	Walden University
Leeds Equity Partners V, L.P.	Florida Technical College
	National University College
	NUC University
Liberty Partners	Concorde Career College
	Concorde Career Institute
Lincoln Educational Services Corporation	International Technical Institute
	Lincoln College of Technology
	Lincoln Technical Institute
Mark A. Gabis Trust	Daymar College
Mission Group Kansas, Inc.	Wright Business School
	Wright Career College
Premier Education Group L.P.	American College for Medical Careers
	Branford Hall Career Institute
	Hallmark Institute of Photography
	Hallmark University
	Harris School of Business
	Institute for Health Education (The)
	Micropower Career Institute
	Suburban Technical School
	Salter College
Beckfield College	

School Owner(s)	School/Brand Name
Quad Partners LLC	Blue Cliff College
	Dorsey College
Remington University, Inc.; Remington College BCL, Inc.	Remington College
Southern Technical Holdings, LLC	Southern Technical College
Star Career Academy	Star Career Academy
Sullivan and Cogliano Training Center, Inc.	Sullivan and Cogliano Training Centers
TCS Education System	Chicago School of Professional Psychology
Vatterott Educational Centers, Inc.	Court Reporting Institute of St Louis
	Vatterott College
Wilfred American Education Corp.	Robert Fiance Beauty Schools
	Robert Fiance Hair Design Institute
	Robert Fiance Institute of Florida
	Wilfred Academy
	Wilfred Academy of Beauty Culture
	Wilfred Academy of Hair & Beauty Culture
Willis Stein & Partners (ECA)	Brightwood Career Institute
	Brightwood College
	New England College of Business and Finance
	Virginia College

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THERESA SWEET, et al.,

Plaintiffs,

No. C 19-03674 WHA

v.

MIGUEL CARDONA, et al.,

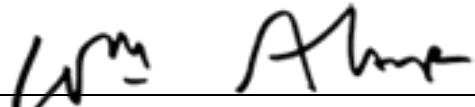
Defendants.

FINAL JUDGMENT

For the reasons stated in the accompanying order granting final approval of the class settlement, the Court directs that judgment of dismissal of the class’s claims against the Secretary of Education and the United States Department of Education shall be final and appealable in accordance with Federal Rule of Civil Procedure 54. The Court should retain jurisdiction to monitor and oversee implementation of the settlement as set forth in the settlement agreement.

IT IS SO ORDERED.

Dated: November 16, 2022.


WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE