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13
14 **UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA

15
16 MARTIN CALVILLO MANRIQUEZ, *et al.*,

17
18 Plaintiffs,

19 v.

20 UNITED STATES DEPARTMENT OF
21 EDUCATION and BETSY DEVOS, in her
22 official capacity as Secretary of Education,

23 Defendants.
24

No. 3:17-cv-7210-SK

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

25
26 Defendants, the United States Department of Education (“Department”) and Secretary of
27 Education Betsy DeVos (“Secretary”), in her official capacity, hereby provide notice that they will
28 not oppose Plaintiffs’ Motion for Class Certification, ECF No. 47, provided the class definition

1 offered by Plaintiffs is modified as set forth below. In general, Defendants believe that this case
2 is appropriately adjudicated on a class basis and do not oppose certification of a class of individuals
3 who demonstrate that they are covered by the Department’s job placement rate findings. *See, e.g.,*
4 Defs.’ Opp. to Pls.’ Mot. for Prelim. Inj. (“Defs. PI Opp.”) at 5-7, ECF No. 42.

5 Plaintiffs’ class certification motion proposes a class consisting of “all individuals who
6 borrowed a Direct Loan to finance the cost of a program who are covered by the Department’s
7 Corinthian Job Placement Rate Rule, who have applied, or will apply for a borrower defense, and
8 who have not been granted the relief provided for by the Rule.” *See* Pls.’ Mot. for Class
9 Certification (“Pls.’ Mot.”) at 1, ECF No. 47. Because Defendants dispute the existence of this
10 “Rule,” *see* Defs.’ PI Opp. at 18-22, Defendants believe that the class is appropriately defined
11 without reference to the disputed “Rule” itself. *See Amgen Inc. v. Conn. Ret. Plans & Trust Funds,*
12 568 U.S. 455, 466 (2013) (“Rule 23 grants courts no license to engage in free-ranging merits
13 inquiries at the certification stage.”). Plaintiffs contend that the “heart” of the putative “Rule” on
14 which they premise their claims is that “all Corinthian borrowers who were in a ‘findings cohort,’”
15 and “were exposed to the false job placement rates” found by the Department, could obtain a “full
16 discharge of their student loans” and “the return of any money the Department collected” by
17 submitting a “simple attestation form” created by the Department. Pls.’ Mot. at 5. Defendants
18 believe that the class is, therefore, appropriately defined according to these terms.

19 Accordingly, Defendants hereby request that the class be defined to consist of all persons
20 who:

21 borrowed a Direct Loan to finance the cost of enrollment at a program covered by
22 the Department’s job placement rate findings (*i.e.*, attended a program on the Lists
23 and first enrolled in that program during a time period covered by the Lists, *see*
24 ECF No. 35-6, Exs. 6 & 7), and who have not received a full discharge of associated
student loan debt and a return of any money the Department collected on the loan,
once they submit an attestation form or analogous application¹ verifying (1) that

25 ¹ Defendants believe that, should the Court ultimately rule in Plaintiffs’ favor, the class of
26 individuals entitled to relief based upon the later submission of a borrower defense application
27 should be temporally limited in some fashion, *i.e.*, all individuals who have submitted an
28 application or will submit an application by a future date certain. However, Defendants believe
this issue can appropriately be addressed in future proceedings, *see, e.g., Kirola v. City of San*

1 they are covered by the Department's job placement rate findings (*i.e.*, attended a
2 program on the Lists and first enrolled in that program during a time period covered
3 by the Lists, *see* ECF No. 35-6, Exs. 6 & 7), and (2) that they relied, in substantial
4 part, on Corinthian's misleading job placement rates in deciding to enroll.

5 This language reflects the parties' agreement that, however the class is defined, only those
6 borrowers who actually apply for borrower defense relief can be entitled to relief in the event the
7 Court rules in Plaintiffs' favor. For purposes of this class definition, the "Lists" are the lists that
8 the Department published on its website of Corinthian campuses and academic programs that the
9 Department determined misrepresented their job placement rates. They are attached as Exhibits 6
10 and 7 to Plaintiffs' Motion for Preliminary Injunction, *see* ECF No. 35-6. Because Defendants
11 believe that the class can be certified if defined in this manner, they do not believe that class
12 discovery is necessary or appropriate in this instance. Should the Court determine that it is not
13 currently prepared to certify a class, Defendants respectfully request the opportunity to address
14 further, at that time, any request for discovery prior to class certification.

15 Defendants have conferred with Plaintiffs regarding this proposed definition of the class.
16 While the parties are close to agreement, and are willing to continue negotiations, Plaintiffs
17 represent that they oppose certain aspects of the proposed definition.

18 Defendants also respectfully request that the Court stay the hearing currently scheduled for
19 October 15, 2018. When it stayed all other proceedings in this case, the Court declined to stay
20 proceedings relating to Plaintiffs' pending class certification motion because it determined that the
21 lack of a determination regarding class certification "may affect the Ninth Circuit's decision on
22 appeal," crediting Plaintiffs' argument that the Department was likely to challenge, on appeal, the
23 scope of the Court's preliminary injunction in the absence of any certified class. ECF No. 88 at 5.
24 Defendants have since filed their opening appellate brief, which does not challenge the Court's
25 preliminary injunction on this basis. *See* Exhibit A. Accordingly, Defendants respectfully submit
26 that the Court should stay – as it has all other proceedings in this case – its determination of

27 *Francisco*, No. C 07-03685 SBA, 2011 WL 1330853, at *4 (N.D. Cal. Apr. 4, 2011) (noting that
28 a court "retains broad authority to modify or withdraw certification at any time where it appears
the class definition is inappropriate or inadequate" (citation omitted)) – especially given that, as
discussed below, the Court need not rule on Plaintiffs' class certification motion while the Ninth
Circuit appeal of the Court's preliminary injunction order is pending.

1 Plaintiffs' class certification motion, including a hearing on that motion, until after the Ninth
2 Circuit has issued its decision on appeal.

3
4 Dated: September 17, 2018

Respectfully submitted,

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