

1 JOSEPH H. HUNT  
Assistant Attorney General

2 DAVID L. ANDERSON  
3 United States Attorney

4 MARCIA BERMAN  
5 Assistant Branch Director

6 R. CHARLIE MERRITT  
7 KEVIN P. HANCOCK  
Trial Attorneys  
8 Civil Division, Federal Programs Branch  
9 U.S. Department of Justice  
10 919 East Main Street, Suite 1900  
11 Richmond, VA 23219  
12 Telephone: (202) 616-8098  
13 Fax: (804) 819-7417  
14 E-mail: robert.c.merritt@usdoj.gov

*Attorneys for Defendants*

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

15 MARTIN CALVILLO MANRIQUEZ, *et al.*,

16 Plaintiffs,

17 v.

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

21 Defendants.  
22

No. 3:17-cv-7210-SK

**NOTICE OF WITHDRAWAL OF  
MOTION FOR LEAVE TO FILE  
MOTION FOR PARTIAL  
RECONSIDERATION**

1 On November 1, 2019, Defendants filed a motion for leave to file a motion for partial  
2 reconsideration, in which they represented that the Court should reconsider its imposition of a  
3 \$100,000 monetary sanction, *see* Order Regarding Sanctions, ECF No. 130 (“Sanctions Order”)  
4 because Defendants were at that time, and at “the time of the Sanctions Order, in full compliance  
5 with the preliminary injunction and have remediated the harm to affected borrowers.” Motion for  
6 Leave to File Motion for Partial Reconsideration at 2, ECF No. 133 (“Motion”). Defendants  
7 hereby withdraw the Motion.

8 Later in the day on November 1, 2019, the U.S. Department of Education’s (“Department”)  
9 office of Federal Student Aid (“FSA”), filed a monthly compliance report, *see* ECF No. 136-1  
10 (“November Compliance Report”), as required by the Sanctions Order. In that report, FSA  
11 explained that it had increased its estimate of potential class members by approximately 14,000.  
12 November Compliance Report at 4. Specifically, FSA stated:

13 First, the potential certified class continues to grow as Corinthian borrowers file  
14 new, potentially qualifying borrower defense to repayment applications. Second, as  
15 part of its efforts to ensure that it has identified all potential class members, the  
16 Department is, out of an abundance of caution, examining the records of certain  
17 borrowers whose applications most likely do not qualify them for class  
18 membership. This set includes Corinthian borrower defense applicants who are  
19 tagged in the Department’s systems as either (1) having no Direct Loans after May  
20 2010, (2) having filed an incomplete borrower-defense application, or (3) for whom  
21 100% discharges, as a result of another federal loan discharge process, are in  
22 process for some of the borrowers’ federal student loans, but are not yet complete.  
23 Although [FSA] is confirming its data, which indicates that these three groups of  
24 borrowers are likely excludable from the potential class, FSA has no knowledge  
25 that any of these additional, estimated 14,000 borrowers were impacted by the  
26 Department’s non-compliance.

27 *Id.*

28 While the Department continues the process of reviewing and confirming its data,  
Defendants cannot fairly represent that they are in “full compliance” with the Court’s preliminary  
injunction and have remediated the harm to all affected borrowers. Motion at 2. Defendants clarify  
for the record that the description in the Motion and in the attached Declaration of General Mark  
A. Brown, Chief Operating Officer of FSA, of remediation efforts with respect to known harm is  
accurate, namely that by October 24, 2019:

1 [T]he Department working with the Department of the Treasury (“Treasury”), had  
 2 ensured that refunds had been issued to all Corinthian borrowers who had been  
 3 identified as having been subject to involuntary collection efforts, and that the  
 4 refunds would be exempt from offset against other federal debts. Brown Decl. ¶ 7.  
 5 The Department had also ensured that refunds had been issued to each Corinthian  
 6 borrower that the Department could confirm made an erroneous payment. *Id.* ¶¶ 8-  
 7 10. As explained in the declaration, this did not include a small set of borrowers  
 8 that either do not appear to have actually make a payment or are believed to have  
 9 deliberately chosen to make a payment notwithstanding the fact that they were not  
 10 required to. *Id.* ¶¶ 9-10. The Department is following up with this latter set of  
 11 borrowers and will process refunds for any such borrower who requests one after  
 12 being informed of the potential harm that could result from such refund. *Id.* ¶ 10.  
 13 Finally, the Department and its servicers had corrected the credit reports of all 847  
 14 Corinthian borrowers who had been identified as having been subject to adverse  
 15 credit reporting. *Id.* ¶ 11.

16 Motion at 4.

17 Defendants anticipate that they may be able to renew their Motion once FSA completes its  
 18 review and confirmation process for the approximately 14,000 additional borrowers described in  
 19 the November Compliance Report. At this time, however, Defendants withdraw their motion for  
 20 leave to file a motion for partial reconsideration.

21 Dated: November 5, 2019

22 Respectfully submitted,

23 JOSEPH H. HUNT  
 24 Assistant Attorney General

25 MARCIA BERMAN  
 26 Assistant Branch Director

27 */s/ R. Charlie Merritt*  
 28 R. CHARLIE MERRITT (VA Bar No. 89400)  
 KEVIN P. HANCOCK  
 Trial Attorneys  
 U.S. Department of Justice  
 Civil Division, Federal Programs Branch  
 919 East Main Street, Suite 1900  
 Richmond, VA 23219  
 Telephone: (202) 616-8098  
 Fax: (804) 819-7417  
 robert.c.merritt@usdoj.gov

*Counsel for Defendants*