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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THERESA SWEET, et al.,

Plaintiffs,

No. C 19-03674 WHA

v.

MIGUEL CARDONA, et al.,

Defendants.

**ORDER GRANTING FINAL
SETTLEMENT APPROVAL**

INTRODUCTION

The United States Secretary of Education has reached a settlement with a class of student-loan borrowers whose complaint alleges that, for years, the Department of Education unlawfully delayed processing, or perfunctorily denied, hundreds of thousands of “borrower-defense” applications — requests by students to discharge their loans in light of alleged wrongful acts and omissions of the schools they attended. The settlement leaps over the borrowers’ request to require administrative proceedings and provides for the automatic discharge of billions of dollars of student loans and streamlined claim processing. This settlement is separate and apart from President Biden’s broader program to forgive \$430 billion in student debt. The key question now at final approval concerns whether the Secretary has the authority to enter into such a settlement.

STATEMENT

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2 Title IV of the Higher Education Act directs the Secretary of Education “to assist in
3 making available the benefits of postsecondary education to eligible students” through
4 financial-assistance programs. The Student Loan Reform Act of 1993 directed the Secretary to
5 promulgate legislative regulations for agency consideration of discharges of loans due to the
6 wrongful acts or omissions of the schools attended by the borrowers. 20 U.S.C. §§ 1070,
7 1087e(h); Pub. L. No. 103-66 (1993).

8 The Secretary established the first “borrower defense” program for certain federal loans
9 in 1994, which allowed a borrower to “assert as a defense against repayment of his or her loan
10 any act or omission of the school attended by the student that would give rise to a cause of
11 action against the school under applicable State law.” 59 Fed. Reg. 61,664, 61,696 (Dec. 1,
12 1994); *see also* 60 Fed. Reg. 37,768 (July 21, 1995). These rules went largely unused for the
13 next twenty years (AR 590).

14 That all changed in May 2015 with the collapse of Corinthian Colleges, Inc., a for-profit
15 college with more than 100 campuses and over 70,000 students. The Department faced a
16 “flood of borrower defense claims submitted by Corinthian students.” Secretary John B. King,
17 Jr. quickly moved to update the regulations for handling these applications to expedite
18 processing. 81 Fed. Reg. 39,330, 39,330, 39,335 (June 16, 2016); 81 Fed. Reg. 75,926 (Nov.
19 1, 2016) (final regulation).¹

20 The Secretary recruited an interim “Special Master” Joseph Smith to assess the influx of
21 claims, and eventually created a “Borrower Defense Unit” (“BDU”) to address the backlog. In
22 total, by the end of the Obama Administration, the Secretary had approved 31,773 applications
23 for discharge and found 245 ineligible, for a 99.2% grant rate (a rate that includes both
24 Corinthian students and claimants who attended other schools). Borrowers, however, had
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28 ¹ Our action does not directly address issues related to Corinthian, which proceeded in a separate
action filed in our district, *Calvillo Manriquez v. DeVos*, No. C 17-07210 (N.D. Cal. filed Dec. 20,
2017) (Judge Sallie Kim).

1 submitted many thousands more which remained unexamined (AR 339–40, 347, 369, 384–85,
2 392–94, 502–03).

3 After the 2016 election and a change in administrations, new Secretary Elisabeth DeVos
4 paused claim adjudications in order to review the overall procedure. She did, however, honor
5 16,164 borrower-defense applications approved but not yet finalized before the change in
6 administrations, albeit with “extreme displeasure” (Dkt. No. 66-3, Ex. 7). Including all prior
7 decisions, by June 2018 the Department had granted in total 47,942 applications and denied or
8 closed 11,940, for an 80% grant rate for borrower defense-claims. (The grant rate under
9 Secretary DeVos alone was 58%.) By that point, borrowers had submitted, in total, 165,880
10 applications, leaving 105,998 still to be decided (AR 401). The flood of applications
11 continued.

12 Then, all adjudication stopped. For *eighteen* months, well into this suit, the Secretary
13 issued zero decisions. As of June 2019, borrowers had filed (from day one) 272,721
14 applications and 210,168 of them remained pending (AR 350, 397–404, 587–88).

15 Named plaintiffs accordingly brought this suit to require the Secretary to adjudicate these
16 applications. They argued the Secretary’s delay constituted unlawful stonewalling. The
17 complaint spelled out the relief sought: “[Named plaintiffs] do not ask this Court to adjudicate
18 their borrower defenses. Nor do they ask this Court to dictate how the Department should
19 prioritize their pending borrower defenses. Their request is simple: they seek an order
20 compelling the Department to start granting or denying their borrower defenses and vacating
21 the Department’s policy of withholding resolution” (Compl. ¶¶ 1, 10).

22 A Rule 23(b)(2) class was eventually certified as follows:

23 All people who borrowed a Direct Loan or FFEL loan to pay for a
24 program of higher education, who have asserted a borrower
25 defense to repayment to the U.S. Department of Education, whose
26 borrower defense has not been granted or denied on the merits, and
27 who is not a class member in *Calvillo Manriquez v. DeVos*, No.
28 17-7106 (N.D. Cal.) [the latter action concerning Corinthian
Colleges specifically]

1 (Dkt. No. 46 at 14). Afterwards, an administrative record was lodged and cross-motions for
2 summary judgment were filed. At that point, the number of pending applications was around
3 225,000 (AR 591).

4 Before an order issued on summary judgment, the parties ostensibly reached a settlement
5 (an earlier one than the settlement now under consideration). A May 2020 order preliminarily
6 approved that proposal as it appeared to impose an eighteen-month deadline for the Secretary
7 to decide claims and a twenty-one-month deadline to effect relief for claims filed by April 7,
8 2020. That settlement also set reporting requirements and established hefty penalties should
9 the Secretary fail to uphold her end of the bargain (Dkt. No. 103). The parties notified the
10 class and solicited comments for a fairness hearing scheduled for October 2020.

11 However, unbeknownst to class counsel or the Court, the Secretary had already adopted a
12 practice of sending alarmingly curt form-denial notices, in violation (as class counsel put it) of
13 both the spirit of the proposed settlement and the Administrative Procedure Act. Upon inquiry
14 from the Court, the Secretary acknowledged that, since December 2019 (when decisions on
15 borrower-defense applications had resumed), the Department used four templates to deny
16 118,300 of 131,800 applications reviewed (for an 89.8% denial rate). This was so out of
17 keeping with the supposed settlement that the Court found there had been no meeting of the
18 minds. An October 2020 order denied the class settlement and restarted discovery. The
19 Secretary thereafter agreed to abstain from those types of form denials until further order (Dkt.
20 Nos. 116, 146, 150).

21 Plaintiffs filed a supplemental complaint that alleged the Secretary had not actually
22 restarted adjudication of borrower-defense claims. Rather, plaintiffs argued she had violated
23 the law and the settlement by sending boilerplate denials without review. Plaintiffs asserted
24 the Secretary's "presumption of denial" policy constituted further violations of the
25 Administrative Procedure Act and the Due Process Clause of the Fifth Amendment.

26 After a trip to our court of appeals regarding the extent of permissible discovery (*In re*
27 *Dep't of Education*, 25 F.4th 692 (9th Cir. 2022)), an order herein set a new summary
28 judgment schedule with a hearing planned for July 28, 2022. During the pendency of the

1 summary judgment briefing schedule, and after another change in administrations, the parties
2 reached the instant settlement and filed their second motion for preliminary approval.

3 Separate from our litigation, President Biden announced a different plan to cancel up to
4 \$10,000 of student debt for low- to middle-income borrowers. The reader should keep in mind
5 that this order does not consider President Biden’s initiative but considers only a discrete
6 settlement for a specific group of borrowers who have filed borrower-defense applications.

7 In brief, the settlement under consideration here sorts class members into three groups.

8 For group one, approximately 200,000 borrowers or 75% of the class as defined by the
9 settlement, the agreement provides for “full,” “automatic” relief, *i.e.*, discharge of the
10 borrower’s federal loans, cash refunds of amounts paid to the Department, and credit repair.
11 This “up-front” relief would go to class members who attended one of the 151 schools listed in
12 Exhibit C to the settlement (151 of the 6,000 colleges operating in the United States). The
13 relief provided for this group will result in the discharge of approximately six billion dollars of
14 debt in the aggregate.

15 For group two, the remaining 25% of the class as defined by the settlement
16 (approximately 64,000 borrowers), the agreement provides for final written decisions on their
17 borrower-defense applications within specified periods of time, correlated to how long they
18 have been waiting for a decision. The Department will make those decisions according to a
19 streamlined process that provides certain presumptions in favor of the borrower. Should the
20 Department not issue a decision within a specified time, the borrower will receive full,
21 automatic relief like the borrowers in group one. The Secretary estimates the relief provided
22 for this group will result in the discharge of a further \$1.5 billion in cumulative student debt.

23 For group three, those who submitted a borrower-defense application after execution of
24 the settlement on June 22, 2022, and before final approval (approximately 179,000 borrowers),
25 *i.e.*, “post-class applicants” as defined by the settlement, the agreement provides a streamlined
26 process for their borrower-defense applications. If the Secretary does not render a decision
27 within three years of final approval, then the borrower would receive full, automatic relief like
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1 the borrowers in group one. The settlement also has reporting requirements and some appeal
2 procedures (Dkt. No. 246-1).

3 Four schools filed motions to intervene to oppose the settlement: American National
4 University (ANU), The Chicago School of Professional Psychology, Everglades College, Inc.,
5 and Lincoln Educational Services Corporation. The schools take issue with their inclusion on
6 Exhibit C, which they label a scarlet letter. Argument on their motions to intervene were heard
7 during the hearing on preliminary approval.

8 Preliminary approval was granted. After no further interested parties moved to intervene,
9 an order found that the schools could not intervene as of right but could permissively intervene
10 to object to the settlement (Dkt. Nos. 307, 322). This order follows full briefing and oral
11 argument.

12 ANALYSIS

13 1. THE SECRETARY HAS AUTHORITY TO ENTER INTO THE 14 SETTLEMENT.

15 Let's consider the central issue. The settlement provides extensive relief for the class:
16 complete and automatic discharge of all loans for 75% of the settlement class — about six
17 billion dollars in loan forgiveness; streamlined adjudication with a presumption towards
18 discharge for the rest of the settlement class; and a presumption of discharge and borrower-
19 friendly procedures for “post-class applicants,” as defined by the settlement. This bonanza
20 raises the question whether the Secretary has authority to provide such relief.

21 It is important to observe (again) that this settlement is separate and apart from the
22 significantly more expansive loan-forgiveness plan recently announced by President Biden.
23 That plan will (potentially) affect 40 million borrowers and cancel approximately \$430 billion
24 in student debt. *See* The Congressional Budget Office, Re: Costs of Suspending Student Loan
25 Payments and Cancelling Debt (Sept. 26, 2022); The White House, Assessing Debt Relief's
26 Fiscal and Cash-Flow Effects (Aug. 26, 2022). The instant settlement is anchored in separate
27 authority. Even if the broader loan-forgiveness plan recently announced by President Biden
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1 lacks authority (and this order does not so hold), this lesser litigation settlement lies within the
2 authority of the government.

3 “[T]he Attorney General has plenary discretion under 28 U.S.C. §§ 516 and 519 to settle
4 litigation to which the federal government is a party.” *United States v. Carpenter*, 526 F.3d
5 1237, 1241 (9th Cir. 2008). The compromise and settlement authority has long been
6 considered an inherent facet of the Attorney General’s charge to supervise litigation for the
7 United States. *See Confiscation Cases*, 7 Wall. 454, 19 L. Ed. 196 (1869); *Power of the*
8 *Attorney General in Matters of Compromise*, 38 U.S. Op. Atty. Gen. 124 (1934). And, Section
9 5 of Executive Order No. 6166 (June 10, 1933), transferred to the Department of Justice the
10 powers “to prosecute, or to defend, or to compromise, or to appeal, or to abandon prosecution
11 or defense” of actions involving the United States. *See also* 28 U.S.C. § 510; *see generally*
12 *Authority of the United States to Enter Settlements Limiting the Future Exercise of Executive*
13 *Branch Discretion*, 23 U.S. Op. Off. Legal Counsel 126, 135 (1999).

14 Of course, the Department of Justice, though it has plenary settlement authority, cannot
15 agree to something that the Secretary of Education cannot do in the first place. For example,
16 the Department of Justice could not settle a lawsuit against the Federal Communications
17 Commission by giving a plaintiff the privilege of putting a new pharmaceutical drug on the
18 market. The FCC lacks that authority (which is possessed by the Food and Drug
19 Administration). “The Attorney General’s authority to settle litigation for its government
20 clients stops at the walls of illegality.” *Carpenter*, 526 F.3d at 1242 (quoting *Exec. Bus.*
21 *Media, Inc. v. Dep’t of Defense*, 3 F.3d 759, 762 (4th Cir. 1993)); *see also Heckler v. Chaney*,
22 470 U.S. 821, 834 (1985).

23 The Secretary primarily relies upon two provisions of the Higher Education Act to
24 effectuate the instant settlement, 20 U.S.C. Sections 1082(a)(6) and 1087e(a)(1). *See also* 20
25 U.S.C. §§ 3441, 3471. Section 1082(a)(6) of Title 20 of the United States Code recites, in
26 relevant part, “In the performance of, and with respect to, the functions, powers, and duties,
27 vested in him by this part, the Secretary may . . . enforce, pay, compromise, waive, or release
28 any right, title, claim, lien, or demand, however acquired, including any equity or any right of

1 redemption.” This provision has been in effect since 1965 and passage of the original iteration
2 of the Higher Education Act. Upon a plain reading, it bestows the Secretary with broad
3 discretion over handling — and discharging — student loans. *See Nat’l Ass’n of Mfrs. v. Dep’t*
4 *of Defense*, 138 S. Ct. 617, 631 (2018); *United States v. Lillard*, 935 F.3d 827, 833–34 (9th
5 Cir. 2019). The legislative history supports this reading. *See* H.R. Rep. No. 89-621, at 49
6 (1965); *see also* Robert A. Katzmann, *Judging Statutes* 29, 51–52 (2014).

7 The reader will note that the provision specifies “this part.” Section 1082 is housed
8 under Part B of the Student Assistance subchapter, which outlines the Federal Family
9 Education Loan (FFEL) Program. The Federal Direct Loan Program is under a different part,
10 Part D. Section 1087e(a)(1) of Part D, says in relevant part: “Unless otherwise specified in
11 this part, loans made to borrowers under this part shall have the same terms, conditions, and
12 benefits, and be available in the same amounts, as loans made to borrowers, and first disbursed
13 on June 30, 2010, under sections 1078, 1078-2, 1078-3, and 1078-8 of this title.” Since the
14 Department first proposed borrower-defense regulations in 1994, it has construed Section
15 1087e to confirm that the Secretary’s general discretion to discharge loans made pursuant to
16 the FFEL Program applied with equal force to the Direct Loan program, ensuring parity. *See*
17 59 Fed. Reg. 42,646, 42,649 (Aug. 18, 1994); 81 Fed. Reg. 39,330, 39,368, 39,379 (June 16,
18 2016).

19 “[C]ourts generally will defer to an agency’s construction of the statute it is charged with
20 implementing.” *Chaney*, 470 U.S. at 832. The legislative history supports this conclusion, in
21 part due to the fact that the Direct Loan Program was intended to eventually replace the FFEL
22 Program. H.R. Rep. 102-447, at 156 (1992); H.R. Doc. No. 103-82 at 3, 357 (1993); H.R.
23 Doc. No. 103-49, at 92 (1993). Another district court has also recently found that Section
24 1082(a)(6) covers both FFEL loans and Direct Loans. This order finds unpersuasive the dicta
25 from a different district court that reached the opposite conclusion as it considered different
26 issues and because Section 1082 is the only congressional authorization in the Higher
27 Education Act for the Secretary to sue and be sued regarding student aid, *e.g.*, Direct Loans,
28 FFEL loans, or otherwise. *Compare Weingarten v. DeVos*, 468 F. Supp. 3d 322, 328 (D.D.C.

1 2020) (Judge Dabney L. Friedrich), with *Pa. Higher Educ. Assistance Agency v. Perez*, 416 F.
2 Supp. 3d 75, 96–97 (D. Conn. 2019) (Judge Michael P. Shea). This order finds the Secretary’s
3 interpretation of Section 1087e(a)(1) the most reasonable interpretation of the provision and
4 concludes that Section 1082(a)(6) applies to both FFEL loans and Direct Loans.

5 The school-intervenors argue, however, that the Secretary’s interpretation of the Higher
6 Education Act hides “elephants in mouseholes,” which sets this action apart as a “major
7 questions case.” See *West Virginia v. EPA*, 142 S. Ct. 2587 (2022). As the Supreme Court
8 recently explained,

9 Extraordinary grants of regulatory authority are rarely
10 accomplished through modest words, vague terms, or subtle
11 devices. Nor does Congress typically use oblique or elliptical
12 language to empower an agency to make a radical or fundamental
13 change to a statutory scheme. Agencies have only those powers
14 given to them by Congress, and enabling legislation is generally
15 not an open book to which the agency may add pages and change
16 the plot line. We presume that Congress intends to make major
17 policy decisions itself, not leave those decisions to agencies.

18 *Id.* at 2609 (cleaned up).

19 In *West Virginia*, EPA had “issued a new rule concluding that the ‘best system of
20 emission reduction’ for existing coal-fired power plants included a requirement that such
21 facilities reduce their own production of electricity, or subsidize increased generation by
22 natural gas, wind, or solar sources.” “The White House stated that the Clean Power Plan
23 would ‘drive a[n] . . . aggressive transformation in the domestic energy industry.’” In other
24 words, the rule “restructure[ed] the Nation’s overall mix of electricity generation.” *Id.* at 2599,
25 2604, 2607.

26 Our settlement, in contrast, will not fundamentally transform a domestic industry, nor
27 will it have any national ripple effect. The relief will remain limited to class members in a
28 litigated case. Yes, this settlement will discharge over six billion dollars in loans, but *West
Virginia* made clear that determining whether a case contains a major question is not merely an
exercise in checking the bottom line. The representative decisions cited in *West Virginia*
considered “unusual” and “unheralded” applications of agency authority. *Id.* at 2608–09.
There is nothing unusual about the Secretary exercising his discretion to discharge student-loan

1 debt, and the *scale* of relief here is inherently limited to the metes and bounds of this federal
2 class-action litigation. *Cf. Chaney*, 470 U.S. at 833 n.4.²

3 Justice Frankfurter, as quoted with approval in *West Virginia*, reasoned that “just as
4 established practice may shed light on the extent of power conveyed by general statutory
5 language, so the want of assertion of power by those who presumably would be alert to
6 exercise it, is equally significant in determining whether such power was actually conferred.”
7 142 S. Ct. at 2610. The Secretary has exercised the authority utilized in our settlement many
8 times, even in the past few years, even across administrations:

| School | Date Announced | Est. Number of Borrowers | Est. Amount Discharged |
|---|----------------|--------------------------|------------------------|
| Dream Center Education Holdings (Art Inst. of Colo.; Ill Inst. of Art) | 2019 | 7,400 | \$175 M |
| <i>Weingarten v. Cardona</i> , No. C 19-02056 DLF, Dkt. No. 49 (D.D.C.) | 2021 | 7 | \$0.283 M |
| Minnesota School of Business / Globe University | 2021–22 | 1,191 | \$26 M |
| Marinello Schools of Beauty | 2022 | 28,000 | \$238 M |
| Corinthian Colleges, Inc. (Everest; Heald College; WyoTech) | 2022 | 560,000 | \$5.8 B |
| ITT Technical Institute | 2022 | 208,000 | \$3.9 B |
| Westwood College | 2022 | 79,000 | \$1.5 B |

18 These discharges addressed both Direct Loans and loans pursuant to the FFEL program. The
19 Secretary also stressed that the Department has discharged many student loans pursuant to
20 Section 1082(a)(6) on an individual basis (Dkt. No. 337).

21 Our settlement will discharge less than three percent of the outstanding federal student
22 loan portfolio (*see* Dkt. Nos. 325-2; 331 at 16). Intervenors assert the Department’s press
23 releases regarding the above discharges did not specifically cite Section 1082(a)(6). This is
24

25 _____
26 ² Everglades tears down a strawman when it argues that interpreting Section 1082(a)(6) to support
27 the settlement leaves the Secretary with exclusive authority to eliminate a \$1.6 trillion industry
28 and discharge every student loan in America (Everglades Opp. 23). The Secretary has asserted no
such broad authority. His actions remain rooted in, and limited to, this litigation. Recall, *West Virginia* based its analysis on EPA’s own projections of the effects of the “Clean Power Plan” it had promulgated. 142 S. Ct. at 2603–04. Common sense dictates we consider the actual agency action — the settlement — not a hypothetical.

1 specious. Statements to the general public regarding an agency action need not provide the
2 legal minutiae regarding the authority underlying the action. The Secretary has provided those
3 details in a filing herein (Dkt. No. 337).

4 Here's the practical litigation problem the Secretary faces and seeks to settle. The
5 borrower-defense program set up by Congress has devolved into an impossible quagmire. This
6 has been true across all administrations, as detailed above. As of now, approximately 443,000
7 borrowers have pending borrower-defense applications. That is a staggering number. If,
8 hypothetically, the Department's Borrower Defense Unit had all 33 of its claim adjudicators
9 working 40 hours a week, 52 weeks a year (no holidays or vacation), with each claim
10 adjudicator processing two claims per day, it would take the Department *more than twenty-five*
11 *years* to get through the backlog.

12 Had each and every class member sued the Department individually, the Department
13 could have settled those individual actions one by one, and it could have done so using
14 precisely the same criteria set forth for Exhibit C — namely, indicia of misconduct and the
15 volume of claims associated with a given school. Indeed, it could have done so without even
16 revealing its internal criteria used to settle claims. If it can do that, then this order holds that it
17 can resolve them all in a class settlement using the same criteria and that such a settlement falls
18 within the plenary authority of the Secretary and the Attorney General. “For convenience,
19 therefore, and to prevent a failure of justice, a court of equity permits a portion of the parties in
20 interest to represent the entire body, and the decree binds all of them the same as if all were
21 before the court.” *Smith v. Swormstedt*, 57 U.S. 288, 303 (1853). This order holds that this
22 group approach is the only feasible way for the agency to give practical relief to class
23 members. Conducting individualized reviews is no longer practicable.

24 Yes, the agency has explained its criteria and placed 151 schools on a list (151 of the
25 6,000 colleges operating in the United States). This was done to explain why some class
26 members will get full relief whereas others will get less relief. This does not change the fact
27 that the Department could have used the very same criteria to settle each application one at a
28

1 time and therefore can now do the same thing on a class basis. The approach taken here is
2 group-wise and within the plenary settlement authority of the Secretary and Attorney General.

3 This order rejects intervenors remaining arguments.

4 *First*, intervenors dispute the Secretary’s authority under Section 1082(a)(6) based upon a
5 rescinded, January 2021 memorandum composed by the Department’s Office of General
6 Counsel, which the Department later substantively and procedurally disavowed. *See* Dep’t of
7 Educ., Office of the General Counsel, Memorandum re: Student Loan Principal Balance
8 Cancellation, Compromise, Discharge, and Forgiveness Authority (Jan. 12, 2021); 87 Fed.
9 Reg. 52,943 (Aug. 30, 2022). The memo stated: “[W]e believe 20 U.S.C. § 1082(a)(6) is best
10 construed as a limited authorization for the Secretary to provide cancellation, compromise,
11 discharge, or forgiveness only on a case-by-case basis and then only under those circumstances
12 specified by Congress.” The memo has been rescinded and this order disagrees with it for the
13 reasons stated above.

14 *Second*, at the hearing intervenors highlighted two other provisions they deemed statutory
15 bars to relief. The anti-injunction provision in 20 U.S.C. Section 1082(a)(2) is inapplicable
16 because the government is requesting and consenting to this settlement. Plaintiffs have also
17 maintained a viable theory throughout this litigation that the Secretary acted *ultra vires*, and
18 that consequently the anti-injunction provision does not apply. And, Section 1082(b) only
19 places a cap on the size of settlements where the Attorney General is not involved. The
20 government confirmed at the hearing the settlement is properly authorized.

21 *Third*, intervenors say that the settlement must incorporate the Department’s standard
22 borrower-defense regulations, citing the *Accardi* doctrine (*e.g.*, *Everglades Opp.* 20). This
23 order disagrees. Those regulations constitute a procedure promulgated by the Department to
24 perform ordinary reviews of borrower-defense applications, as enabled by 20 U.S.C. Section
25 1087e(h). Within the specific context of settling this class-action litigation, in contrast, the
26 Secretary relies upon different, independent sources of statutory authorization — Sections
27 1082(a)(6) and 1087e(a)(1). The Secretary has plenary discretion to settle litigation within the
28 confines of the law; this order cannot dictate the basis by which the Secretary effectuates the

1 settlement, particularly in light of the fact that the Secretary has multiple sources of statutory
2 authority on which to premise action on student loans. *See Carpenter*, 526 F.3d at 1241;
3 *United States v. Hercules, Inc.*, 961 F.2d 796, 798 (8th Cir. 1992). Imposing such a mandate
4 would limit the Secretary’s broad discretion in settlement — “the court’s role should be more
5 restrained.” *Citizens for a Better Env’t v. Gorsuch*, 718 F.2d 1117, 1126–27 (D.C. Cir. 1983).

6 *Fourth*, intervenors similarly argue that the Secretary cannot “circumvent” notice-and-
7 comment rulemaking under the guise of settlement, citing *Conservation Northwest v. Sherman*,
8 715 F.3d 1181 (9th Cir. 2013). But in that opinion our court of appeals held “that a district
9 court abuses its discretion when it enters a consent decree that *permanently and substantially*
10 amends an agency rule that would have otherwise been subject to statutory rulemaking
11 procedures.” *Id.* at 1187 (emphasis added). The Secretary has not altered the borrower-
12 defense procedures at all. Those regulations remain in place. In fact, the Department recently
13 amended them. *See* 87 Fed. Reg. 65,904 (Nov. 1, 2022). Rather, for the specific group of
14 borrowers contemplated by the class certification order and this settlement, the Secretary has
15 crafted a process for resolving the enormous backlog of claims, and he has done so pursuant to
16 specific congressional authorization. *See Turtle Island Restoration Network v. Dep’t of*
17 *Commerce*, 672 F.3d 1160, 1167 (9th Cir. 2012).

18 *Fifth*, intervenors assert “the parties cannot achieve by settlement what the [p]laintiffs
19 could not have achieved by litigating the case to judgment” as a further reason that the
20 borrower-defense regulations must be followed (*see* Lincoln Opp. 17). The Supreme Court has
21 made clear, however, that “a federal court is not necessarily barred from entering a consent
22 decree merely because the decree provides broader relief than the court could have awarded
23 after a trial.” *Local No. 93, Int’l Ass’n of Firefighters v. City of Cleveland*, 478 U.S. 501, 525
24 (1986). This statement applies with equal force to settlements. *See id.* at 519; *Conservation*
25 *Nw.*, 715 F.3d at 1185–86.

26 In sum, the Secretary has not exceeded his statutory authority or failed to follow the
27 agency’s regulations by entering into the settlement. Intervenors’ constitutional arguments
28

1 concern their inclusion on Exhibit C, which this order considers next in conjunction with their
2 broader reputational harm contentions.

3 **2. EXHIBIT C DOES NOT INVALIDATE THE SETTLEMENT.**

4 The settlement grants full and automatic relief to all class members that attended the
5 schools listed on Exhibit C. Intervenors argue Exhibit C constitutes an impermissible scarlet
6 letter. This order finds the list does not carry the necessary legal significance to justify
7 denying final approval of the settlement.

8 The settlement agreement recites that the Secretary “will effectuate Full Settlement
9 Relief for each and every Class Member whose Relevant Loan Debt is associated with the
10 schools, programs, and School Groups listed in Exhibit C.” Intervenors point to a statement
11 made in the class and Secretary’s joint motion for preliminary approval:

12 The Department has determined that attendance at one of these
13 schools justifies presumptive relief, for purposes of this settlement,
14 based on strong indicia regarding substantial misconduct by listed
15 schools, whether credibly alleged or in some instances proven, and
the high rate of class members with applications related to the
listed schools

16 (Dkt. No. 246 at 3). The joint motion for final approval further discussed automatic loan
17 discharge for students who attended a school on Exhibit C:

18 Such automatic relief is warranted in the context of the overarching
19 settlement structure, as certain indicia of misconduct by the listed
20 schools, including the high volume of Class Members with
21 applications related to the listed schools, led the Department to
conclude that these Class Members were entitled to summary
settlement relief without any further time-consuming
individualized review process

22 (Br. 11). Intervenors concentrate their fire on these statements and their inclusion on
23 Exhibit C.

24 These explanations do not impose any liability whatsoever on intervenors, for the schools
25 cannot be held liable for any remedial measures absent proceedings initiated specifically
26 against them. To understand why this is so, it is necessary to summarize the relevant
27 regulations. When a borrower-defense application criticizes a school, the Department gives the
28 school notice and the opportunity to file a responsive statement, although the school is not

1 required to do so. *Regardless of whether the school files such a statement (or not), the grant of*
 2 *a borrower-defense application has no binding effect on the school.* If the Department
 3 approves a borrower-defense application, then that can be the predicate for the department
 4 *initiating* a proceeding against the school for recoupment. But even in such an instance, the
 5 school still retains all due process rights, is not bound by the success of the student’s
 6 application, and is free to litigate *ab initio* the merits of its performance. The Department may
 7 also pursue other remedial actions against a school unrelated to a successful borrower-defense
 8 application but, again, in those instances the school still has all of its due process protections.
 9 *See* 34 C.F.R. § 685.308; 34 C.F.R. Pt. 668, Subpt. G.³ Nothing in this settlement will cause
 10 any school to lose a dime.

11 Moreover, the settlement does not constitute a successful or approved borrower-defense
 12 claim, a position maintained by both the class and Secretary (*see* Dkt. No. 300). Therefore, no
 13 recoupment action could be initiated in any event as a result of the settlement.

14 In *Paul v. Davis*, 424 U.S. 693, 701 (1976), the Supreme Court, in consideration of an
 15 “active shoplifters” flyer distributed by police that listed the plaintiff therein, held that “[w]hile
 16 we have in a number of our prior cases pointed out the frequently drastic effect of the ‘stigma’
 17 which may result from defamation by the government in a variety of contexts, this line of cases
 18 does not establish the proposition that reputation alone, apart from some more tangible
 19 interests such as employment, is either ‘liberty’ or ‘property’ by itself sufficient to invoke the
 20 procedural protection of the Due Process Clause.” *See also Fikre v. FBI*, 35 F.4th 762, 776
 21 (9th Cir. 2022).

22
 23
 24 ³ For clarity, this order lays out the order of operations regarding a school’s participation in
 25 borrower-defense claims. For loans issued prior to July 1, 2017, a Department official notifies the
 26 school and considers any response or submission from the school. *See* 34 C.F.R. § 685.222(a)(1);
 27 *id.* § 685.206(c)(2); *id.* § 685.222(e)(3)(i). For loans issued on or after July 1, 2017 but before
 28 July 1, 2020, a Department official will follow that same procedure of notifying the school and
 considering any response or submission from the school. *Id.* § 685.222(a)(2), (e)(3)(i). For loans
 issued on or after July 1, 2020, the Department provides the school a copy of the borrower’s claim
 and other evidence, after which the school may respond and the borrower may reply (copies of
 which will also be provided to the school). *Id.* § 685.206(e)(8)–(12). A new set of regulations
 will go into effect July 1, 2023. *See* 87 Fed. Reg. 65,904 (Nov. 1, 2022).

1 As explained, the schools have lost no procedural rights, nor has their status been altered.
2 No liberty or property interest has been disturbed. Any hypothetical, future remedial action
3 would proceed according to established regulations, which would provide the schools with full
4 due process. *Cf. Endy v. Cnty. of Los Angeles*, 975 F.3d 757, 764–65 (9th Cir. 2020). The
5 Department has also represented in the sworn declaration of Benjamin Miller that it does not
6 consider inclusion on Exhibit C a finding of misconduct and that inclusion does not constitute
7 evidence that could or would be considered in an action by the Department against a school.
8 The Court relied upon, and the Court expects the government to stand behind, the statements
9 made in the Miller Declaration (Dkt. No. 288-1).

10 Furthermore, because the class and Secretary’s briefing advocating for approval of the
11 settlement had no legally binding effect on the intervenors, no actionable reputational harm
12 exists on that basis either. *See Joshi v. Nat’l Transp. Safety Bd.*, 791 F.3d 8, 11–12 (D.C. Cir.
13 2015); *see also Przywieczerski v. Blinken*, 2021 WL 2385822, at *4 (D.N.J. June 10, 2021)
14 (Judge Kevin McNulty) (citing cases). The issues herein differ from those in *Foretich v.*
15 *United States*, 351 F.3d 1198, 1212–13 (D.C. Cir. 2003), which considered a fully enacted law
16 that embodied a congressional determination of misconduct. Here, there is no binding or
17 official determination of misconduct against the schools. To repeat, since the settlement does
18 not utilize the borrower-defense procedure, the Secretary cannot initiate a recoupment action
19 against any of the schools listed on Exhibit C premised upon a successful borrower-defense
20 application.

21 Finally, intervenors contend their inclusion on Exhibit C means the settlement is not fair
22 to them. They argue the “court must ‘reach a reasoned judgment that . . . the settlement, taken
23 as a whole, is fair, reasonable and adequate *to all concerned*’” (Lincoln Opp. 9, quoting
24 *Officers for Just. v. Civ. Serv. Comm’n of City & Cnty. of S.F.*, 688 F.2d 615, 625 (9th Cir.
25 1982), emphasis in brief). In light of the foregoing, and taking stock of the settlement as a
26 whole, this order finds that intervenors’ speculative assertions of harm fail to render the
27 settlement unfair, especially in light of the significant benefits to both the class and Department
28 in settling this litigation.

1 To repeat, had borrowers brought individual actions, each could have been compromised
2 using whatever criteria the Attorney General and Secretary felt wise in the circumstances,
3 including the criteria behind Exhibit C. That the claims are aggregated and now settled on a
4 class basis using the same criteria does not matter.

5 **3. THE CASE IS NOT MOOT AND PLAINTIFFS STILL HAVE**
6 **STANDING.**

7 The school-intervenors further argue the district court does not have jurisdiction to
8 entertain the settlement because plaintiffs lack standing and the action is now moot. Both
9 arguments fail.

10 *First*, to establish Article III standing, plaintiffs must show they have suffered an injury
11 in fact that is concrete, particularized, and actual or imminent, that the injury was likely caused
12 by the defendants, and that the injury would likely be redressed by judicial relief. Plaintiffs
13 must demonstrate standing to the degree required by each stage of the litigation, including at
14 the class-action settlement stage. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203, 2208
15 (2021); *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1116 (9th Cir. 2020).

16 This order finds all class members, including our named plaintiffs, have properly asserted
17 a real and concrete injury arising from the Secretary's alleged unlawful handling of their
18 borrower-defense claims. The injury is two-fold. The Secretary's improper delay and
19 suspension of processing claims for debt relief has directly led to a specific economic injury to
20 each class member. Unlawful delay of debt relief results in clear monetary harm. Moreover,
21 as detailed in the supplemental complaint, the Secretary's "presumption of denial" policy and
22 form denials have resulted in another layer of injury to class members. These issues would
23 likely be redressed by judicial action. To this, the intervenors make the following arguments.

24 Everglades and ANU argue plaintiffs cannot demonstrate standing for the remedies
25 provided by the settlement (Everglades Opp. 8; ANU Opp. 24). The standing analysis,
26 however, considers plaintiffs' stake in the case and whether they can demonstrate standing "for
27 each claim that they press and for each form of relief that they seek (for example, injunctive
28 relief and damages)." *See TransUnion*, 141 S. Ct. at 2203, 2208. Plaintiffs have properly

1 demonstrated such a stake in this action and for the judicial relief they seek. And again, a
2 settlement agreement can provide broader relief than a court could have awarded after a trial.
3 *See Firefighters*, 478 U.S. at 519, 525; *Conservation Nw.*, 715 F.3d at 1185–86. ANU’s
4 assertion that the settlement’s rescinding of form denials impermissibly puts borrowers that
5 lack standing back into the class misses the mark for an additional reason: it wholly ignores
6 the supplemental complaint and the allegations that the Secretary never lawfully adjudicated
7 those claims in the first place. ANU’s contention that this constitutes a “second bite at the
8 apple” ignores the problem they never got a bite in the first place.

9 The Chicago School and ANU further argue the class as defined is overbroad and
10 inherently includes individuals who lack standing. Their theory is incorrect. Per the class
11 definition, any class member that has their claims properly adjudicated will drop out of the
12 class. All current class members, therefore, have a concrete injury stemming from the
13 Secretary’s alleged improper delay and presumption of denial policy. The intervenors’
14 reference to other settlements and discharges apart from this litigation is similarly inapposite.
15 This settlement provides no opportunity for any “unjust enrichment” as it simply discharges a
16 borrower’s affirmative obligation to repay their student loans. The agreement provides that a
17 borrower’s relief cannot exceed the student loan debt associated with their borrower-defense
18 application (Settlement Agreement II.W, Dkt. No. 246-1). On our record, there is no proof of
19 any double recovery and specifically no proof of any litigation against a school that resulted in
20 money going to a student specifically for loans. So, it is speculation by intervenors, and
21 speculation only, that some will get duplicative recovery.

22 *Second*, litigation that becomes moot during the proceedings “is no longer a ‘Case’ or
23 ‘Controversy’ for purposes of Article III, and is outside the jurisdiction of the federal courts.”
24 *United States v. Sanchez-Gomez*, 138 S. Ct. 1532, 1537 (2018) (quotations removed).
25 Dismissal based on mootness, however, “is justified only if it is absolutely clear that the
26 litigant no longer has any need of the judicial protection that it sought.” *Pizzuto v. Tewalt*, 997
27 F.3d 893, 903 (9th Cir. 2021) (cleaned up).
28

1 That is not the case here. Intervenors argue the Secretary has already “approved tens of
2 thousands of borrower defense applications” (Everglades Opp. 7, quoting Dkt. No. 249 at 1).
3 But what of the hundreds of thousands of applications that remain? It is not enough for merely
4 some absent class members to have dropped out of the class because they have had their claims
5 adjudicated. Unquestionably, five of our seven named plaintiffs’ borrower-defense
6 applications remain pending and their loans outstanding. The Chicago School says that two
7 class representatives who attended Corinthian (but are not part of the *Calvillo Manriquez* class
8 action) will have their loans discharged by the Secretary in a separate agency action (Chicago
9 Opp. 13). This does not render our action moot, nor otherwise impact the validity of the class.
10 *See also Rosebrock v. Mathis*, 745 F.3d 963, 971 (9th Cir. 2014).

11 True, the Secretary argued that this action was moot in his most recent cross-motion for
12 summary judgment, briefing of which was interrupted by the joint filing of the motion for
13 preliminary approval (Dkt. No. 249). Like all litigants, however, the Secretary can
14 aggressively advocate for his position while simultaneously negotiating a settlement that will
15 end the litigation without the risk of trial. “Settlement is to be encouraged.” *Turtle Island*, 672
16 F.3d at 1167. Because the Secretary has not resolved all of the pending borrower-defense
17 applications, nor addressed the issues stemming from the presumption of denial policy used
18 during the pendency of this action, this litigation is not moot.

19 Finally, Everglades, ANU, and Lincoln all argue that class members lack standing or that
20 this action is moot in light of President Biden’s recently announced initiative for student loan
21 relief, which *could* provide up to \$10,000 of debt relief for low and middle-income federal
22 student-loan borrowers. *See* The White House, Fact Sheet: President Biden Announces
23 Student Loan Relief for Borrowers Who Need It Most (Aug. 24, 2022). The instant settlement,
24 however, is anchored in separate authority and is completely independent from the Biden plan,
25 which has already been declared unlawful by one district court, so relief thereunder is in some
26 doubt. *See Brown v. Dep’t of Education*, 2022 WL 16858525, No. C 22-0908, Dkt. No. 37
27 (N.D. Tex. Nov. 10, 2022) (Judge Mark T. Pittman); *see also, e.g., Nebraska v. Biden*, No. 22-
28 3179 (8th Cir. Nov. 14, 2022). This order need not and does not opine on the authority of the

1 President to cancel student loans (one way or the other), but this order does hold that the
2 instant settlement, involving a narrower class and narrower relief, falls within the
3 government's authority.

4 In sum, this order finds that plaintiffs have adequately demonstrated standing at this stage
5 of the proceedings and that this action is not moot.

6 **4. THE SETTLEMENT IS STILL VIABLE AND FAIR, REASONABLE,**
7 **AND ADEQUATE.**

8 A settlement purporting to bind absent class members must be fair, reasonable, and
9 adequate. *See* FRCP 23(e). This settlement is not only fair, reasonable, and adequate but a
10 grand slam home run for class members. They originally sued just to get a decision one way or
11 another on their applications. Now, they are getting total forgiveness in most cases. For the
12 remainder of the class, it is at least a home run. This is a very good deal for the class.

13 Intervenors initially question whether a viable Rule 23(b)(2) class still exists for which
14 settlement relief can be approved, challenging commonality, typicality, adequacy, the relief
15 provided by the settlement, and the validity of the "post-class applicant" group.

16 Considering commonality, "Rule 23(b)(2) applies only when a single injunction or
17 declaratory judgment would provide relief to each member of the class." *Wal-Mart Stores,*
18 *Inc. v. Dukes*, 564 U.S. 338, 360 (2011). The class certification order, to this end, found "the
19 Department's alleged policy of inaction applies to the proposed class as a whole." The order
20 made clear that "whether a borrower defense claim has been pending for three years or three
21 months, all claims were subject to the same alleged policy of inaction" (Dkt. No. 46 at 12, 13).
22 As the litigation progressed, and the Secretary's practice of issuing form denials came to light,
23 plaintiffs sought additional relief consistent with Rule 23(b)(2) to hold the Secretary
24 accountable for further alleged *ultra vires* actions (*e.g.*, Dkt. No. 245 at 33). All class members
25 remain subject to the same delay and allegedly unlawful policies. A single judicial remedy
26 directed at the Secretary's activities could provide class-wide relief in a single stroke.

27 Commonality remains.
28

1 Everglades argues that differences in class member’s individual circumstances defeat
2 typicality, but it provides no support for that argument. Typicality — like all the Rule 23
3 requirements — “limit[s] the class claims to those fairly encompassed by the named plaintiff’s
4 claims.” *Dukes*, 564 U.S. at 349 (quotation omitted). Plaintiffs’ claims focus on the
5 Department’s policy of inaction, form denials, and presumption of denial. Typicality is still
6 satisfied.

7 Next, Lincoln says that the settlement “effectively” provides damages, which therefore
8 destroys the viability of the class (Lincoln Opp. 15). *Dukes* explained that Rule 23(b)(2) “does
9 not authorize class certification when each class member would be entitled to an individualized
10 award of monetary damages.” 564 U.S. at 360–61. The settlement relief here fits squarely
11 within Rule 23(b)(2) as it in effect provides injunctive relief voiding the borrower’s obligation
12 to repay their student loans. In some cases a class member will receive refunds, but refunds
13 are restitution and fall within the relief available in an injunction/declaratory relief action.
14 Discharge of an obligation to repay a debt does not constitute monetary damages.

15 Intervenors similarly argue that the settlement is inadequate and unfair because some
16 class members will receive automatic debt relief while others will have their borrower-defense
17 applications reviewed. This mirrors the fairness inquiry recited by Rule 23(e)(2)(D), which
18 requires the settlement to treat class members equitably relative to one another, not for each
19 class member to receive identical relief. The class and Secretary have provided a logical and
20 reasoned explanation regarding how the volume of applications and certain indicia of
21 misconduct asserted against each school warrant tailoring settlement relief to certain
22 subgroups. This order finds such differentiation equitable. Rule 23(b)(2) does not affect this
23 conclusion because it remains true that a single injunction or declaratory judgment after a trial
24 could provide relief and, as explained, a settlement can provide broader relief than a court
25 could have awarded after a trial. *See Firefighters*, 478 U.S. at 519, 525; *Conservation Nw.*,
26 715 F.3d at 1185–86.

27 The last issue intervenors raise regarding the general viability of the settlement concerns
28 the “post-class applicant” group, which is composed of individuals that filed a borrower-

1 defense application in between execution of the settlement on June 22, 2022, and final
2 approval. The named plaintiffs and Department state that this group does not fall “within the
3 class definition and thus [is] not formally part of the Rule 23 analysis” (Mot. Final Approval
4 12 n.3). Contrary to these points, the class certification order set no cut-off date for
5 membership, so the class definition as recited in that order clearly encompasses all of these
6 borrowers. Nevertheless, to ensure the overall fairness of the settlement, this group will
7 receive relief under the agreement, namely their applications will be decided with streamlined
8 procedures within three years on pain of automatic discharge of the loans. This lesser relief is
9 justified on the ground that this group has not been waiting as long for a decision as groups one
10 and two.

11 With no issues regarding the viability of the class, this order turns to the eight *Churchill*
12 factors our court of appeals has enumerated for review in the final fairness assessment to
13 determine whether the settlement is fair, reasonable, and adequate: (1) the strength of the
14 plaintiff’s case; (2) the suit’s risk, expense, complexity, and the likely duration of further
15 litigation; (3) the risk of maintaining class-action status throughout the trial; (4) the amount
16 offered in settlement; (5) the extent of discovery and the stage of the proceedings; (6) the
17 experience and views of counsel; (7) the presence of a governmental participant; and (8) the
18 reaction of class members of the proposed settlement. Rule 23(e)(2) also requires the district
19 court to consider an overlapping set of factors. *See Kim v. Allison*, 8 F.4th 1170, 1178–79 (9th
20 Cir. 2021) (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir.
21 2011)); *Churchill Vill., LLC. v. Gen. Elec.*, 361 F.3d 566 (9th Cir. 2004).

22 Many of these factors have been addressed in the foregoing analysis. This order finds the
23 second, fifth, sixth, and seventh *Churchill* factors all clearly and strongly favor settlement. A
24 brief review of the docket (and this order) will reveal to the reader the complexity of the issues
25 this action considers. Continuing on with this litigation through summary judgment and
26 (possibly) trial would require still more expense and delay in an action directly addressing
27 undue delay and agency inaction. *Indeed, we have already attempted a settlement once and*
28 *the proposed timeline for that entire process has come and gone.* Discovery has already taken

1 place, so the parties have had an adequate opportunity to evaluate the strengths and weaknesses
2 of their respective positions. Counsel for both sides, which includes the government, have
3 advocated for the advantages of this settlement.

4 Next, the first and third factors also favor settlement. Plaintiffs have strong arguments
5 that the Secretary's actions were unlawful, but as the opening salvos in the latest round of
6 summary judgment reveal, the ordinary risks of litigating on a class-wide basis persist.
7 Moreover, as plaintiffs acknowledge, questions remain about the remedies they could seek and
8 be granted after a trial.

9 The relief offered (the fourth factor) clearly favors settlement. This order pauses to again
10 emphasize that automatic loan discharges and a streamlined process for adjudicating the
11 remaining borrower-defense applications as provided for in the settlement will likely prove a
12 transformative opportunity for many class members. These class members decided to take on
13 considerable debt to attend schools that they now allege misled them on the value of such a
14 significant financial decision. The relief also furthers the Secretary's interest in resolving the
15 backlog of claims. Notice was sufficient, the discharge process ranks as adequate, attorney's
16 fees have been left to the Court's discretion, and the method for processing relief is also fair.

17 The reaction of the class (the eighth and final *Churchill* factor) also supports the
18 settlement. The class has actively participated in the settlement approval process, sending both
19 class counsel and the Court over 1,500 letters and emails.

20 Most of these letters express complete support for the agreement. One class member
21 wrote that, "Like so many thousands of college students I was misled by my graduate school
22 and given a financial death sentence in student loan debt. I have spent my adult life following
23 the path of my heart and helping hundreds of patients, yet I can barely help myself." Another
24 voiced support but "ask[ed] the Court to ensure that [the] final terms of the settlement protect
25 individual applicants from arbitrary treatment by the Department." As this order demonstrates,
26 the settlement includes appropriate protections.

27 Fewer than 175 borrowers objected or requested changes to the settlement. Primarily,
28 these borrowers requested: additional schools be added to Exhibit C; delay of the cut-off date

1 for class membership (as defined by the settlement); automatic debt relief for “post-class
2 applicants”; faster timelines for debt relief; and relief for those borrowers who refinanced their
3 loans into private loans. None of these concerns constitute meaningful objections to the
4 settlement as a whole. Rather, these borrowers request further relief and do not call into
5 question the overall fairness of the settlement. One “objector” expressed concern about never
6 receiving notice of this class action (she did not file her borrower-defense application until
7 after the announcement of the instant settlement). She hence objected to being considered a
8 “post-class applicant.” As discussed, this objector’s issues speak to the importance of the
9 streamlined procedures for the “post-class applicant” designation in ensuring the overall
10 fairness of the settlement. Finally, private borrowers are not part of our class.⁴

11 In sum, the *Churchill* factors favor settlement. We turn to the remaining two factors
12 listed in Rule 23(e)(2).

13 *First*, named plaintiffs and class counsel have adequately represented the class.
14 Everglades, the Chicago School, and one objector argued that, because class counsel was (until
15 recently) affiliated with Harvard Law School, a conflict of interest existed. The objector noted,
16 and intervenors echoed, that his program, the American Repertory Theater/Moscow Art
17 Theater Institute for Advanced Theater Training at Harvard (“ART”) was not on Exhibit C.
18 This order is not persuaded. Any speculative conflict of interest is now resolved (class counsel
19 have separated from Harvard) and neither the objecting class member nor the intervenors
20 provide any meaningful basis to call into question counsel’s representation or ART’s exclusion
21 from Exhibit C. The settlement provides substantial relief to class members, which supports
22 the conclusion named plaintiffs and class counsel have adequately represented the class.

23 *Second*, the proposal was negotiated at arm’s length. Everglades and the Chicago School
24 object that the settlement is collusive. Taking a step back, the purpose of any such objection is
25 to protect absent class members from settlements that disproportionately reward named
26

27 ⁴ ANU makes a brief argument that the settlement is unfair to the class because it imposes tax
28 risks that the Secretary and named plaintiffs failed to address. But every class member has
voluntarily filed a borrower-defense application to have their loan discharged. Any ensuing tax
consequences accordingly do not rank as unfair.

1 plaintiffs and their counsel at the expense of the class as a whole. Intervenors do not raise this
2 problem at all. They argue instead that the settlement provides so much to the class it could
3 not have been negotiated at arm's length. This just underscores all the more that the settlement
4 is and will be in the best interest of the class. That the settlement was conducted in "secret"
5 goes nowhere. It's a common practice.

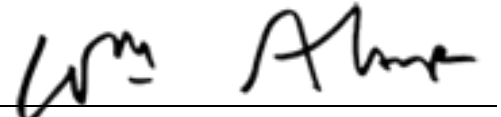
6 In short, the *Churchill* and Rule 23 factors favor final approval of the settlement.

7 **CONCLUSION**

8 For the foregoing reasons, all objections are **OVERRULED**. Final approval of the
9 settlement is **GRANTED**. This action is hereby **DISMISSED WITH PREJUDICE**, except in that the
10 Court shall retain jurisdiction over this action as set forth in the settlement agreement. Once
11 the defendants have effectuated all appropriate relief, plaintiffs and defendants shall file a
12 notice with the Court. A joint status report regarding the class and Department's progress in
13 carrying out the settlement is due **JANUARY 26, 2023**.

14 **IT IS SO ORDERED.**

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16 Dated: November 16, 2022.

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19 WILLIAM ALSUP
20 UNITED STATES DISTRICT JUDGE
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