

1 EILEEN M. CONNOR (SBN 248856)
econnor@ppsl.org
2 REBECCA C. ELLIS (*pro hac vice*)
rellis@ppsl.org
3 REBECCA C. EISENBREY (*pro hac vice*)
reisenbrey@ppsl.org
4 NOAH ZINNER (SBN 247581)
nzinner@ppsl.org
5 PROJECT ON PREDATORY STUDENT
LENDING
6 769 Centre Street
7 Jamaica Plain, MA 02130
Tel.: (617) 390-2669

8 *Attorneys for Plaintiffs*

10
11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 THERESA SWEET, ALICIA DAVIS, TRESA
14 APODACA, CHENELLE ARCHIBALD,
15 DANIEL DEEGAN, SAMUEL HOOD, and
16 JESSICA JACOBSON on behalf of themselves
and all others similarly situated,

17 *Plaintiffs,*

18 v.

19 LINDA MCMAHON, in her official capacity as
20 Secretary of the United States Department of
Education, and

21 THE UNITED STATES DEPARTMENT OF
22 EDUCATION,

23 *Defendants.*

Case No. 19-cv-03674-HSG

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR RELIEF
FROM JUDGMENT**

HEARING DATE: March 26, 2026

(Class Action)
(Administrative Procedure Act Case)

TABLE OF CONTENTS

1

2

3 I. INTRODUCTION 1

4 II. BACKGROUND 1

5 III. ARGUMENT 9

6 A. THE MOTION SHOULD BE DENIED AS PROCEDURALLY IMPROPER 9

7 i. The Motion Is Not Authorized by Any Federal or Local Rule..... 9

8 ii. The Relief Sought by the Department Is Not Available 11

9 B. THE MOTION FAILS ON ITS MERITS 15

10 i. The Motion Is Untimely..... 16

11 ii. There Has Been No Significant Change in Fact or Law..... 17

12 iii. The Equities Favor Plaintiffs..... 18

13 iv. The Department’s Claims of Error Are Unfounded 20

14 v. Relief Is Not Available Under Rule 60(b)(6) 22

15

16

17

18

19

20

21

22

23

24

25

26

27

28

TABLE OF AUTHORITIES

Cases

Alden v. AECOM Tech. Corp., No. 18-cv-03258, 2021 WL 2258505 (N.D. Cal. June 3, 2021) 10

Already, LLC v. Nike, Inc., 568 U.S. 85 (2013)..... 11

Ashford v. Steuart, 657 F.2d 1053 (9th Cir. 1981) (per curiam)..... 16

Bateman v. U.S. Postal Serv., 231 F.3d 1220 (9th Cir. 2000) 11

Byrne v. Oregon One, Inc., No. 16-cv-01910, 2023 WL 2755301 (D. Or. Apr. 3, 2023)..... 14

Cassidy v. Tenorio, 856 F.2d 1412 (9th Cir. 1988) 15

Chafin v. Chafin, 568 U.S. 165 (2013) 11

Coleman v. Brown, 922 F. Supp. 2d 1004 (E.D. Cal. 2013)..... 15, 17, 18

Conservation Nw. v. Sherman, 715 F.3d 1181 (9th Cir. 2013)..... 15

Daria v. Sapient Inc., No. 17-cv-05453, 2018 WL 3109590 (N.D. Cal. June 25, 2018) 10

DeWeerth v. Baldinger, 38 F.3d 1266 (2d Cir. 1994)..... 14

Evolutionary Intelligence, LLC v. Sprint Nextel Corp., No. 13-cv-04513, 2019 WL 2059661 (N.D. Cal. May 9, 2019) 9, 10

Fed. Trade Comm’n v. AH Media Grp., LLC, 339 F.R.D. 612 (N.D. Cal. 2021) 14, 16

Fed. Trade Comm’n v. Apex Capital Grp., No. 18-cv-9573, 2021 WL 7707269 (C.D. Cal. Sept. 3, 2021) 22

Fed. Trade Comm’n v. Hewitt, 68 F.4th 461 (9th Cir. 2023) 13, 14

Flores v. Rosen, 984 F.3d 720 (9th Cir. 2020) 15, 17

In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig., MDL No. 2672, 2017 WL 2438645 (N.D. Cal. June 6, 2017) 10, 11

Local No. 93, Int’l Ass’n of Firefighters v. City of Cleveland, 478 U.S. 501 (1986) 15

Maraziti v. Thorpe, 52 F.3d 252 (9th Cir. 1995) 14

Morse-Starrett Prods. Co. v. Steccone, 205 F.2d 244 (9th Cir. 1953) 1, 22

Pioneer Inv. Services Co. v. Brunswick Assocs. Ltd. P’ship, 507 U.S. 380 (1993) 22

Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992) 15

1 *S.E.C. v. Coldicutt*, 258 F.3d 939 (9th Cir. 2001)..... 15
 2 *San Luis & Delta-Mendota Water Auth. v. U.S. Dep’t of Interior*, 624 F. Supp. 2d 1197 (E.D.
 3 Cal. 2009)..... 9, 10
 4 *United States v. Asarco Inc.*, 430 F.3d 972 (9th Cir. 2005)..... 15
 5 *Warren v. City of Chico*, No. 21-cv-00640, 2025 WL 974068 (E.D. Cal. Mar. 31, 2025) 16

6 **Other Authorities**

7 Jessica Blake, “McMahon Breaks Up More of the Education Department” (Nov. 18, 2025),
 8 *Inside Higher Ed*, [https://www.insidehighered.com/news/government/student-aid-](https://www.insidehighered.com/news/government/student-aid-policy/2025/11/18/mcmahon-breaks-more-education-department)
 9 [policy/2025/11/18/mcmahon-breaks-more-education-department](https://www.insidehighered.com/news/government/student-aid-policy/2025/11/18/mcmahon-breaks-more-education-department)..... 6

10 **Rules**

11 Civ. L. R. 7-9 9, 10, 20
 12 Fed. R. Civ. P. 60(b)(5)..... 13
 13 Fed. R. Civ. P. 60(c)(1)..... 16
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

1 **I. INTRODUCTION**

2 With its most recent motion, the Department of Education (“Department”) moves, for a
3 second time in three months, for “temporary relief from judgment” under Federal Rule of Civil
4 Procedure 60(b). *See* ECF No. 493 (“First 60(b) Motion”); ECF No. 514 (“Second 60(b) Motion”).
5 The Department sends mixed messages about whether it intends the present motion as a request
6 that the Court “reconsider” Judge Alsup’s December 11, 2025, partial denial of its First 60(b)
7 Motion, or whether it is filing a new motion for identical Rule 60(b) relief based on some allegedly
8 changed circumstance since the denial of the first motion. *See, e.g.*, Second 60(b) Motion at 1. In
9 either case, the Department’s motion should be summarily denied.

10 Although the instant motion plainly seeks a second look at arguments previously raised
11 and rejected, it conforms to neither the procedural requirements nor limited substantive scope of a
12 motion for reconsideration. As a successive request for relief from judgment, deliberately ignorant
13 of the Court’s prior order, the Second 60(b) Motion lacks any basis in logic or fact. As with the
14 practically identical prior motion, the Department cannot now demonstrate that there are any
15 significant and unanticipated changes in the facts that would justify the extraordinary step of
16 granting it relief from a court order entered mere weeks ago, holding it to the agreed-upon terms
17 of a contract that it willingly entered into. The Department’s tortured attempts to manufacture such
18 a “change” are based on misrepresentations of the record. To the extent the Department takes issue
19 with the Court’s December 11 order, it can seek an appeal. *See Morse-Starrett Prods. Co. v.*
20 *Steccone*, 205 F.2d 244, 249 (9th Cir. 1953) (“The procedure provided by rule 60(b) is not a
21 substitute for an appeal.”). It has yet to do so. Nor should the Department be allowed to preserve
22 in perpetuity its ability to seek appellate review of this Court’s earlier ruling by filing substantively
23 identical, successive motions for relief. The motion should be denied.

24 **II. BACKGROUND**

25 This case has been extensively litigated over the course of more than six years. The last
26 two of these years have involved Court oversight of the implementation of the Settlement. This
27 involvement was triggered by the Department’s established failure to meet the Settlement’s
28 deadlines for providing relief to the class.

1 In brief: Plaintiffs are a certified class of federal student loan borrowers who exercised their
 2 right under the Higher Education Act to apply for borrower defense to repayment. Their
 3 applications described how their schools misled them into enrolling and taking out loans, using
 4 deceptive tactics such as inflated graduation and job placement rates, misleading estimates of the
 5 cost of a degree, and false promises about what kinds of jobs and salaries they could expect after
 6 graduating. *See, e.g.*, Complaint, ECF No. 1, ¶¶ 243, 263, 283, 304, 323, 339, 360. In May 2019,
 7 Plaintiffs filed this lawsuit, alleging that the Department had failed to adjudicate their BD
 8 applications in violation of the Administrative Procedure Act (APA). *See generally id.* By the time
 9 of filing, many class members had already been waiting years for a resolution to their claims. *Id.*
 10 ¶ 8. The Court certified the class in October 2019.¹ *See* Order Granting Motion for Class
 11 Certification, ECF No. 46.

12 In spring 2020, the parties appeared to have reached a settlement, under which the
 13 Department agreed to clear the BD application backlog within the next 18 months. *See* Order
 14 Denying Class Settlement, to Resume Discovery, and to Show Cause at 5, ECF No. 146. But soon
 15 after preliminary approval, Plaintiffs and the Court learned the Department was sending out tens
 16 of thousands of *pro forma* denial notices, rejecting BD applications without explanation. *Id.* at 5-
 17 6. The Court denied approval of the settlement, finding that the parties’ disagreement over the
 18 legitimacy of these denial notices showed that there had been no “meeting of the minds” to begin
 19 with. *Id.* at 10. It also found that evidence of bad faith and agency pretext justified discovery
 20 beyond the administrative record. *See id.* at 11-15. In ordering this discovery, the Court observed:

21 Here, time is of the essence. We don’t enjoy the luxury of seeking simply to
 22 forestall harm — it descended upon the class long ago. Our borrowers live under
 23 the severe financial burden of their loans. They have waited for relief, or at least
 24 decision, for eighteen months. Many have waited much longer; and many are still
 25 waiting.

26 ¹ The class definition, which applies for all purposes, “including settlement,” is: “All people who
 27 borrowed a Direct Loan or FFEL loan to pay for a program of higher education, who have asserted
 28 a borrower defense to repayment to the U.S. Department of Education, whose borrower defense
 has not been granted or denied on the merits, and who is not a class member in *Calvillo Manriquez*
v. DeVos, No. 17-7106 (N.D. Cal.)” ECF No. 46 at 14. The federal government—not any private
 entity—is the ultimate counterparty to all loan obligations at issue in the case.

1 *Id.* at 15. Based on materials adduced in discovery, Plaintiffs filed a supplemental complaint in the
2 spring of 2021, detailing how the Department had developed a “presumption of denial” policy that
3 led to an overwhelming number of meritorious applications being summarily rejected, in violation
4 of the APA and the Due Process Clause. *See generally* Supplemental Complaint, ECF No. 198.
5 They sought further relief, including an order to show cause why all pending borrower defense
6 applications ought not be granted immediately. *See* Plaintiffs’ Motion for Summary Judgment at
7 33, ECF No. 245.

8 On June 22, 2022, while summary judgment motions were pending, the parties reached a
9 negotiated settlement of Plaintiffs’ claims. *See* Motion for Preliminary Approval, ECF No. 246;
10 Settlement, ECF No. 246-1. The Court approved the Settlement on November 16, 2022, after a
11 fairness hearing. *See* Final Approval Order, ECF No. 345; Final Judgment, ECF No. 346.

12 Under the Settlement, class members were divided into three groups. The first, commonly
13 referred to in the litigation as the “Automatic Relief Group” or the “Exhibit C Group,” consisted
14 of borrowers who had submitted BD applications on or before June 22, 2022, in relation to one or
15 more of the 151 schools listed on Exhibit C to the Settlement. *See* Settlement ¶¶ III, IV.A.1. As
16 the parties explained in their motion for final approval, “indicia of misconduct” at these schools,
17 along with a high volume of borrower defense applications from their former students, “led the
18 Department to conclude that these Class Members were entitled to summary settlement relief
19 without any further time-consuming individualized review process.” Joint Motion for Final
20 Approval of Settlement at 11, ECF No. 323.

21 The second group consisted of class members who had applied for BD on or before June
22 22, 2022, but in relation to a school *not* listed on Exhibit C. Settlement ¶ IV.C.1. These class
23 members, known as the “Decision Group,” were divided into tranches according to their
24 application date, and the Settlement set staggered six-month deadlines for the Department to
25 decide their applications (*i.e.*, the first tranche would receive decisions within six months of the
26 Settlement’s Effective Date, the second set within 12 months of the Effective Date, etc.). *Id.*
27 ¶¶ IV.C.1, IV.C.3.

1 The third settlement group, and the only one at issue in the present motion, was labeled the
 2 “Post-Class Applicants.” *Id.* ¶ IV.D.1. As the Court held in the Final Approval Order, Post-Class
 3 Applicants are class members, because they meet the court-ordered class definition. *See* Final
 4 Approval Order at 22. Post-Class Applicants are borrowers who applied for BD between June 23,
 5 2022 (the day after the Settlement was executed) and November 16, 2022 (the date of final
 6 approval). Settlement ¶ IV.D.1. The Settlement requires that Post-Class Applicants receive
 7 decisions on their BD applications within three years of the Effective Date of the Settlement—
 8 namely, by January 28, 2026, eight days ago as of this filing. *See* Order re Motion to Stay Judgment
 9 Pending Appeal at 10, ECF No. 382 (Effective Date of the Settlement was January 28, 2023);
 10 Settlement ¶ IV.D.1 (“Defendants will issue a final decision on the merits of a Post-Class
 11 Applicant’s application no later than 36 months after the Effective Date.”). If the Department does
 12 not issue a decision to a Post-Class Applicant by that date, the class member “shall receive” Full
 13 Settlement Relief.² Settlement ¶ IV.D.2.

14 The parties have engaged in significant post-judgment motion practice in this case. In
 15 March 2024, Plaintiffs filed a Motion to Enforce the Settlement, alleging that the Department had
 16 failed to provide the required relief to over 50,000 members of the Automatic Relief Group by the
 17 deadline for that group. *See generally* Motion to Enforce Settlement, ECF No. 397. The
 18 Department acknowledged that it was in material breach. *See* Defendants’ Response to Plaintiffs’
 19 Motion to Enforce at 1–2, ECF No. 403. A series of supervisory status conferences with Judge
 20 Alsup followed over the next year and a half, in which the Court set certain revised deadlines for
 21 delivering relief and oversaw whether the Department met its deadlines. *See* Minute Orders, ECF
 22 Nos. 407, 414, 416, 434, 439, 451, 456, 463, 470, 477, 485.

23
 24 ² “Full Settlement Relief” is defined in the Settlement Agreement as “(i) discharge of all of a Class
 25 Member’s Relevant Loan Debt, (ii) a refund of all amounts the Class Member previously paid to
 26 the Department toward any Relevant Loan Debt (including, but not limited to, Relevant Loan Debt
 27 that was fully paid off at the time that borrower defense relief is granted), and (iii) deletion of the
 28 credit tradeline associated with the Relevant Loan Debt.” *Id.* ¶ II.S. “Relevant Loan Debt,” in turn,
 is defined as “Direct Loans or FFEL loans associated with the school that is the subject of the Class
 Member’s borrower defense application,” including principal, interest, and fees. *Id.* ¶ II.W.

1 In addition to these regular hearings, Judge Alsup also ordered the parties to meet biweekly
2 in person in Washington, D.C., for meet-and-confer sessions to resolve issues with the distribution
3 of settlement relief. *See* Minute Order, ECF No. 407; *see also* Minute Order, ECF No. 456
4 (changing cadence to monthly in early 2025). In order to effectuate the Court’s orders that
5 Plaintiffs’ counsel should “look over the shoulder” of the Federal Student Aid Ombudsman’s
6 office and help resolve class member complaints, *see* Minute Orders, ECF Nos. 414, 444, the
7 parties also instituted weekly virtual meetings between Plaintiffs’ counsel and a group of staff from
8 the Ombudsman’s office, with a longer in-person meeting once a month to coincide with the in-
9 person meeting between Plaintiffs’ counsel, the Department, and the servicers.

10 In September 2024, the Department acknowledged that it had breached the relief deadline
11 for the first tranche of the Decision Group as well. *See* Minute Order, ECF No. 434. The
12 Department substantially met the deadlines for the next three tranches only after the Court ordered
13 the Department to follow the streamlined “terminal consolidation loan process” for loan discharge
14 and refunds for the remainder of the Decision Group and the Post-Class, *see id.*; Minute Order,
15 ECF No. 451; Transcript of Dec. 12, 2024 Hearing at 19:19-25, 23:20–24:21.³

16 Over the course of several Court-ordered meet-and-confer sessions and status conferences
17 throughout 2025, Plaintiffs repeatedly raised the question of whether the Department was on track
18 to meet its decision deadline for the Post-Class. The Department responded each time that it was
19 diligently working on Post-Class applications and that it understood that any Post-Class members
20 who didn’t receive a decision by January 28, 2026, would automatically be entitled to Full
21 Settlement Relief. *See* Plaintiffs’ Opposition to Defendants’ Motion for Relief from Judgment at
22 6-8, ECF No. 502 (“Plaintiffs’ First Opposition”) (providing examples from February, March,
23 April, June, and August 2025).

24 After months of such representations to Plaintiffs and the Court, the Department abruptly
25 moved, on November 8, 2025, for relief from the Post-Class deadline under Federal Rule of Civil
26

27 ³ Counsel for the Department stated at the hearing on the First 60(b) Motion that the Department
28 was “not seeking to modify the Court’s prior orders on, for example, terminal loan methodology.”
Transcript of Dec. 11, 2025 Hearing at 56:10-11.

1 Procedure 60(b)(5). *See* First 60(b) Motion at 1. In that motion, the Department sought the same
2 outcome it seeks now: a delay of the Post-Class decision deadline to July 28, 2027, *id.* at 1—a year
3 and half from now, and *five years* after most of the Post-Class Applicants filed their BD
4 applications. The Department set out an identical set of factual circumstances to what it now
5 describes in its instant Motion, and made nearly identical arguments about why relief would be
6 justified. For example, both motions rely on the Department’s assertion that it is in the process of
7 hiring contract attorneys to begin adjudicating Post-Class applications—attorneys who, the
8 Department said in both motions, would not begin work until “late March or early April” at the
9 soonest. *See* First 60(b) Motion at 20; Second 60(b) Motion at 22; Declaration of Richard Lucas
10 (“Lucas Decl.”) ¶ 10, ECF No. 514-1.⁴ (The funds that are allegedly being used to hire them were
11 appropriated on July 4, 2025. *See* First Rule 60(b) Motion at 20.)

12 Plaintiffs opposed. *See generally* ECF No. 502. In their opposition, Plaintiffs highlighted
13 the numerous procedural defects in the First Rule 60(b) Motion: It violated the Settlement, which
14 contains a procedure for altering deadlines in the case of “extraordinary circumstances,” *id.* at 3
15 (quoting Settlement ¶ V.D.5), and was untimely, because the size of the Post-Class and the scale
16 of the adjudication process was apparent to the Department no later than the date of final approval,
17 *id.* at 6. Plaintiffs also argued that the motion failed on the merits because the equities favored the
18 Plaintiffs, *id.* at 9–13; the Department’s failure to meet the Post-Class decision deadline was the
19 result of its own choices, *id.* at 13–15; the purported financial consequences of complying with the
20

21 ⁴ None of these contract attorneys have actually been hired. Rather, the Lucas Declaration states
22 that the Department has issued a “Blanket Purchase Agreement” (a term it does not define) that
23 will reportedly “allow the Department to issue task orders” that will, eventually, result in people
24 being hired at some future point. Additionally, a Department representative averred in a declaration
25 on November 14, 2025, that the Department “intends to post job openings in the next few weeks
26 for eleven new [Borrower Defense Branch] attorneys whose duties will include, after adequate
27 training, overseeing the contractors.” Supplemental Declaration of James Bergeron ¶ 4, ECF No.
28 498-1. The Lucas Declaration does not contain any information about whether this has occurred—
nor how this alleged hiring plan comports with the Secretary of Education’s stated intention to
dismantle the Department, which so far has included multiple rounds of mass firings. *See, e.g.,*
Jessica Blake, “McMahon Breaks Up More of the Education Department” (Nov. 18, 2025), *Inside
Higher Ed*, <https://www.insidehighered.com/news/government/student-aid-policy/2025/11/18/mcmahon-breaks-more-education-department>.

1 Settlement were overstated, *id.* at 15–20; and extraordinary circumstances did not exist to justify
2 relief under Rule 60(b)(6), *id.* at 20. In support of their opposition, Plaintiffs submitted the results
3 of a survey that counsel conducted in the preceding two weeks, in which over 20,000 Post-Class
4 Applicants described the harm that a further delay in the decision deadline would cause them. *Id.*
5 at 10–13; Declaration of Rebecca Ellis ¶¶ 23–31, ECF No. 502-1 (“Ellis Decl.”). Plaintiffs also
6 submitted declarations from 34 Post-Class Applicants who were still awaiting decisions. Ellis
7 Decl. ¶ 32 & ECF Nos. 502-2–3 (Exhibits 2–35 to Plaintiffs’ First Opposition).

8 The Court held a hearing on the First 60(b) Motion on December 11, 2025. After argument
9 from both sides, Judge Alsup ruled from the bench. The Court observed that “[e]verybody knew
10 how many” people there were in the Post-Class Applicant group “three years ago. That’s not a
11 surprise to anybody.” Transcript of Dec. 11, 2025 Hearing (“Dec. 11 Tr.”) at 74:25–75:1. The
12 Court explained that this knowledge “then made it incumbent upon the Department of Education,
13 who gave their word, to figure out a way to get [the Post-Class decisions] done.” *Id.* at 75:7-9. Yet
14 it turned out the Department had not been transparent: “Now, now we have learned . . . for the first
15 time that the Department thinks it cannot get it done. Can’t even come close, although . . . earlier
16 this year, when we happened to ask ‘How’s it coming with the post-class group?’ ‘Hunky-dory,
17 Judge. Hunky-dory.’” *Id.* at 75:10-15.

18 The Court explained that the Department could have moved through the Post-Class
19 applications more efficiently if it had prioritized cases from schools that already had significant
20 evidence of misconduct and large numbers of applications making similar allegations—but
21 instead, it had chosen to begin with schools that had *less* evidence and *fewer* applications. *Id.* at
22 76:1-16; *see id.* at 49:1–52:8. The Court also pointed out that the Department had chronically
23 understaffed the group charged with adjudicating BD applications, including failing to replace
24 employees who were forced out or fired in early 2025. *Id.* at 76:17–78:2, 78:10-14. The evidence,
25 the Court concluded, did not support the Department’s claim that it had lacked adequate resources
26 to do the job—and even if that had been true, “the Department of Education should have come to
27 me a long time ago and raised this problem instead of telling me it’s all hunky-dory.” *Id.* at 77:22–
28 78:5. Meanwhile, Post-Class members were suffering ongoing harm:

1 They have a great interest in this because the student loan has been hanging over
2 their head for how many years? How many decades? Wrecking their credit. Yes,
3 forbearance exists, but credit wrecked. It's just not right. Congress didn't want that.
4 Congress wanted these things adjudicated. So there is that huge equity working in
5 favor of the class.

6 *Id.* at 79:2–8.

7 Under these circumstances, the Court found, the Department's proposed 18-month delay
8 was "just totally unacceptable." *Id.* at 78:19. Accordingly, the Court denied the Department's
9 motion in part and granted it in part. As to Post-Class members whose BD applications related to
10 Exhibit C schools, the Court ruled that the original January 28, 2026, decision deadline would
11 continue in force. *Id.* at 79:19-22. For these applications, the schools listed were "already highly
12 suspect": "[t]hese are the schools that the attorney generals in various states have already singled
13 out as fraudulent." *Id.* at 80:5-7. This would allow the Department to make faster work of the
14 applications. *See id.* at 51:7–52:8, 80:4–5.

15 For Post-Class members whose applications did not relate to Exhibit C schools, the Court
16 granted the motion, albeit with a shorter extension than the Department had requested: to April 15,
17 2026, with the option to request a further extension upon a showing of effective and good-faith
18 efforts to finish that set of decisions. *Id.* at 80:13-25. The Court explained that its ruling was
19 designed "to put some incentive on the Government to act in good faith, prioritize where it will do
20 the most good." *Id.* at 81:4–6. Finally, the Court ordered the Department to preserve evidence
21 relating to the issue of Post-Class adjudications, *id.* at 81:11–20, and granted Plaintiffs' motion to
22 enforce the Settlement as to the Post-Class decision deadline, subject to the rest of the ruling as
23 described above, *id.* at 82:11–13.

24 At the close of the December 11 hearing, Judge Alsup stated that he would not be issuing
25 a written order, and advised the Department, "[I]f you want to appeal, I think you should appeal
26 pronto." *Id.* at 82:25–83:1. The Department did not file a notice of appeal, nor seek a stay of the
27 December 11 order from either the District Court or the Court of Appeals. Instead, the Department
28 filed the instant motion six days before the January 28 deadline, asking this Court to overturn
Judge Alsup's order.

1 **III. ARGUMENT**

2 **A. The Motion Should Be Denied as Procedurally Improper**

3 **i. The Motion Is Not Authorized by Any Federal or Local Rule**

4 Although the Department styles its motion as one for “relief under Rule 60(b),” Second
5 60(b) Motion at 1, it is self-evidently a motion for reconsideration of Judge Alsup’s order of
6 December 11, 2025. *See, e.g., id.* at 5 (describing the “Issue[] to Be Decided” as “[w]hether the
7 Court should reconsider its decision” of December 11); *id.* at 13 (“Defendants respectfully ask the
8 Court to reconsider its decision on Defendants’ first motion for Rule 60(b) temporary relief from
9 judgment.”); *id.* at 14 (“The Court Should Reconsider the Decision Because it is Premised on
10 Manifest Legal Error”); *id.* at 17 (“The Court Should Reconsider the Decision Because it is
11 Premised on Manifest Errors of Fact”); *id.* at 22 (“The Court Should Reconsider the Decision
12 Because the Department is Continuing in Good Faith . . .”); *id.* at 24 (“For the foregoing reasons,
13 the Court should grant Defendants’ motion for reconsideration . . .”).

14 Motions for reconsideration are not expressly authorized by the Federal Rules. *See*
15 *Evolutionary Intelligence, LLC v. Sprint Nextel Corp.*, No. 13-cv-04513, 2019 WL 2059661, at *1
16 (N.D. Cal. May 9, 2019); *San Luis & Delta-Mendota Water Auth. v. U.S. Dep’t of Interior*, 624 F.
17 Supp. 2d 1197, 1207 (E.D. Cal. 2009), *aff’d sub nom. San Luis & Delta-Mendota Water Auth. v.*
18 *United States*, 672 F.3d 676 (9th Cir. 2012). In this District, a local rule provides a path for seeking
19 reconsideration, but *only* for pre-judgment interlocutory orders. *See* Local Rule 7-9(a) (“Before
20 the entry of a judgment adjudicating all of the claims . . . in a case, any party may make a motion
21 . . . requesting that the Judge grant the party leave to file a motion for reconsideration of any
22 interlocutory order.”). The Department admits that it did not seek leave, as required by this Local
23 Rule, but argues that the Rule does not apply here. *See* Second 60(b) Motion at 24. The Department
24 is correct, but for the wrong reasons.⁵

25 _____
26 ⁵ If Local Rule 7-9 did apply, the Department would fail to satisfy it, on multiple counts. First, as
27 noted, the Department did not seek leave of Court to file its motion, as required by L.R. 7-9(a).
28 Second, the Department “repeat[s] . . . oral or written argument[s]” that it previously made “in
support of or in opposition to” the order “which [it] now seeks to have reconsidered,” in violation

1 “Here, no party disputes that final judgment has already been entered.” *Evolutionary*
 2 *Intelligence*, 2019 WL 2059661, at *1. “Indeed, the order [the Department] seeks this court to
 3 reconsider denied [its] request to [amend] that very judgment.” *Id.* Accordingly, Local Rule 7-9
 4 “does not provide [the Department] an avenue to file its present motion.” *Id.*; *see also, e.g., In re*
 5 *Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig.*, MDL No. 2672, 2017 WL
 6 2438645, at *2 (N.D. Cal. June 6, 2017) (rejecting request to file motion for reconsideration under
 7 L.R. 7-9 because the order sought to be reconsidered “followed, and related to, the final judgment
 8 of the . . . class claims,” which meant “the order is not an interlocutory order and is immediately
 9 appealable under § 1291”). And absent the circumstances that would trigger Local Rule 7-9, the
 10 Department cannot file a motion for reconsideration, because no other rule authorizes one.

11 Courts have sometimes stated that they will “construe[]” post-judgment motions for
 12 reconsideration as motions for relief from judgment under Rule 60(b) or motions to alter or amend
 13 the judgment under Rule 59(e). *San Luis & Delta-Mendota Water Auth.*, 624 F. Supp. 2d at 1207.
 14 But that construction applies in situations where a party is seeking reconsideration *of the judgment*
 15 at issue—not reconsideration of an order that already denied their first motion for relief from
 16 judgment. *See, e.g., id.* at 1200, 1207–08 (construing “motion for reconsideration” of summary
 17 judgment ruling as a Rule 60(b) motion); *Alden v. AECOM Tech. Corp.*, No. 18-cv-03258, 2021
 18 WL 2258505, at *1 (N.D. Cal. June 3, 2021), *aff’d*, No. 21-16002, 2023 WL 2552619 (9th Cir.
 19 Mar. 17, 2023) (same, construing as Rule 59(e) motion); *Daria v. Sapient Inc.*, No. 17-cv-05453,
 20 2018 WL 3109590, at *1 (N.D. Cal. June 25, 2018) (construing “motion for reconsideration” of
 21 dismissal for lack of jurisdiction as Rule 60(b) motion). Plaintiffs have found no case law holding
 22 that a party can file successive motions for Rule 60(b) relief, each requesting relief from the
 23 previous Rule 60(b) ruling. Indeed, such an outcome would be absurd, as it would lead to endless
 24 relitigation of disputes that the same court has already resolved.

25
 26
 27 of L.R. 7-9(c)—conduct that a District Court “shall” sanction. *Id.* Third, the Department could not
 28 satisfy any of the conditions of L.R. 7-9(b), for the same reasons that its plea for relief fails, as
 explained *infra*.

1 If the Department wanted to challenge Judge Alsup’s December 11 order, its remedy would
2 be through appeal. *See In re Volkswagen “Clean Diesel”*, 2017 WL 2438645, at *1; *Bateman v.*
3 *U.S. Postal Serv.*, 231 F.3d 1220, 1223 (9th Cir. 2000) (“We review for an abuse of discretion the
4 district court’s denial of a Rule 60b motion.”). Indeed, the Department’s arguments for why this
5 Court should reconsider Judge Alsup’s order generally track the appellate standard for abuse of
6 discretion. *See Bateman*, 231 F.3d at 1223 (“A district court abuses its discretion by denying relief
7 under Rule 60(b) when it makes an error of law or relies on a clearly erroneous factual
8 determination.”); *compare* Second 60(b) Motion at 14 (asserting error of law); *id.* at 17 (asserting
9 error of fact). Yet instead of pursuing an appeal, the Department waited until Judge Alsup retired
10 and a new judge was assigned to this case to file an improper motion for reconsideration,
11 misleadingly styled as a Rule 60(b) motion, in a blatant play for a second bite at the apple. At the
12 same time, it has moved for an extension of its deadline to appeal the December 11 order, *see* ECF
13 No. 518, in an apparent bid to preserve its ability to appeal should its second bite come up mealy.
14 And these maneuvers are all in service of seeking relief that is not available to the Department (*see*
15 *infra* Part III.B). The Court should reject the Department’s effort to manipulate the judicial process.

16 **ii. The Relief Sought by the Department Is Not Available**

17 **1. The Motion Should Be Denied as Moot**

18 An issue becomes moot “when it is impossible for a court to grant any effectual relief
19 whatever to the prevailing party.” *Chafin v. Chafin*, 568 U.S. 165, 172 (2013); *see also Already,*
20 *LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (issue is moot when it is “no longer ‘live’”). The Post-
21 Class decision deadline for applications relating to Exhibit C schools was January 28, 2026. That
22 date has passed. With that passage, all Exhibit C Post-Class Applicants who didn’t receive a
23 decision have a vested right to relief under the Settlement. The Department thus cannot now seek
24 a delay of the deadline, nor shirk its obligation to provide that relief.

1 The Department tries to avoid this obvious conclusion by ignoring the decision deadline⁶
2 and instead attaching importance to a separate deadline for providing Post-Class Applicants with
3 notice of their entitlement to Full Settlement Relief. *See* Second 60(b) Motion at 23–24. But the
4 plain language of the Settlement makes clear that the time for sending notice is a red herring.

5 Paragraph IV.D.1 of the Settlement states: “Defendants *will* issue a final decision on the
6 merits of a Post-Class Applicant’s application *no later than* 36 months after the Effective Date”
7 (emphasis added). The Effective Date of the Settlement was January 28, 2023. *See* Order re Motion
8 to Stay Judgment Pending Appeal at 10, ECF No. 382. Thirty-six months after that date was
9 January 28, 2026. The deadline is straightforward.

10 The next paragraph lays out what happens if the Department misses the deadline: “If a
11 Post-Class Applicant has not received a timely decision as required under Paragraph IV.D.1, that
12 applicant *shall* receive Full Settlement Relief.” Settlement ¶ IV.D.2 (emphasis added). The plain
13 language of the Settlement is mandatory: a Post-Class Applicant’s entitlement to Full Settlement
14 Relief vests as soon as January 28, 2026, passes without their receiving a decision. That event has
15 now occurred for, by the Department’s count, approximately 170,000 Post-Class Applicants. *See*
16 Second 60(b) Motion at 4.

17 Paragraph IV.D.2 then continues: “Defendants shall provide the affected Post-Class
18 Applicant with notice that the applicant will receive this relief within 60 calendar days following
19 the expiration of the applicable deadline.” This provision is intended to keep Post-Class Applicants
20 apprised of their rights under the Settlement. It mirrors similar notice provisions elsewhere in the
21 Settlement. *See, e.g.*, Settlement ¶ IV.A.3 (requiring Defendants to “provide Written Notice of
22 [Automatic Relief Group relief] to each qualifying Class Member no later than 90 calendar days
23 after the Effective Date”); *id.* ¶ IV.B.1 (requiring Defendants to “provide Written Notice to
24

25
26
27
28

⁶ Plaintiffs refer to January 28, 2026 as “the decision deadline” herein for brevity’s sake, understanding that these arguments specifically relate to Post-Class Exhibit C borrowers, and there is a second decision deadline upcoming for Post-Class applications relating to non-Exhibit C schools.

1 [certain] Class Members that their [earlier *pro forma*] denials have been rescinded and that their
2 borrower defense applications are again under consideration”).

3 The following paragraph establishes the deadline for delivering settlement relief:
4 “Defendants will effectuate relief for any Post-Class Applicant entitled to settlement relief
5 pursuant to Paragraphs IV.D.1 and IV.D.2 no later than one year after the date that Defendants
6 provide that applicant Written Notice of the settlement relief decision.” *Id.* ¶ IV.D.3. The effect of
7 the Paragraph IV.D.2 written notice, therefore, is to set the date by which the Department must
8 complete *effectuating* relief—that is, the date by which all Relevant Loan Debt must be
9 discharged, applicable refunds issued, and related tradelines deleted from the borrower’s credit
10 report. *See id.* ¶ IV.F.1 (defining effectuation of relief). The written notice deadline does not have
11 any effect on a Post-Class Applicant’s *entitlement* to Full Settlement Relief.

12 In short, the Department cannot continue making substantive decisions on Exhibit C Post-
13 Class Applicants’ BD applications after the decision deadline of January 28, 2026. The Settlement
14 explicitly forecloses that possibility.⁷ The passing of the deadline thus fully obviated the
15 Department’s ability to seek the relief it asks for now. The motion is moot.

16 **2. The Settlement No Longer Has Prospective Effect for Post-Class** 17 **Exhibit C Borrowers**

18 Rule 60(b)(5) authorizes relief from a judgment where “applying it prospectively is no
19 longer equitable.” Fed. R. Civ. P. 60(b)(5). “Because virtually every court order causes at least
20 some reverberations into the future, the fact that a court’s action has continuing consequences does
21 not necessarily mean that it has ‘prospective application’ for the purposes of Rule 60(b)(5).” *Fed.*
22 *Trade Comm’n v. Hewitt*, 68 F.4th 461, 466–67 (9th Cir. 2023) (cleaned up). Instead, the “standard

23 ⁷ To the extent the Department appears to request a delay of the 60-day notice period (*see* Second
24 60(b) Motion at 23–24), the only effect of doing so would be to delay the delivery of Settlement
25 relief that is unquestionably owed. The Department does not offer any explanation or argument
26 for why such a delay would be justified. Perhaps, under its blinkered reasoning, Plaintiffs would
27 be unable to obtain the relief already owed to Post-Class Applicants so long as the Department
28 never sends notices and thus never fixes a date certain by which it must complete the relief. But in
any event, Plaintiffs oppose any delay of the notice deadline as well. Absent further Court order,
if the Department fails to deliver the required notice by March 29, 2026, Plaintiffs will move for
enforcement of the Settlement pursuant to Paragraph V.B.1.

1 used in determining whether a judgment has prospective application is whether it is [1] executory
2 or [2] involves the supervision of changing conduct or conditions.” *Id.* at 467 (quoting *Maraziti v.*
3 *Thorpe*, 52 F.3d 252, 254 (9th Cir. 1995)). Courts have found that there is no prospective effect
4 for judgments that are already final (regardless of whether the effects of those judgments continue
5 to be felt) or for money judgments (even where they have yet to be paid). *See, e.g., Fed. Trade*
6 *Comm’n v. AH Media Grp., LLC*, 339 F.R.D. 612, 618–19 (N.D. Cal. 2021) (order requiring
7 continued payment of money is not “prospective,” but merely offers a “present remedy for a past
8 wrong”); *Hewitt*, 68 F.4th at 467 (equitable money judgment that “merely involves the court in
9 ‘enforcing an ordered transfer’” of funds does not constitute supervision of changing conduct or
10 conditions (quoting *DeWeerth v. Baldinger*, 38 F.3d 1266, 1275–76 (2d Cir. 1994))).

11 It is true that, as a general matter, the Settlement in this case has had prospective effects,
12 as a class action settlement where the Court explicitly retained continuing jurisdiction. *See, e.g.,*
13 *Byrne v. Oregon One, Inc.*, No. 16-cv-01910, 2023 WL 2755301, at *3 (D. Or. Apr. 3, 2023).
14 However, when it comes to the specific question of whether Rule 60(b)(5) authorizes the relief the
15 Department now seeks, its obligation to deliver decisions to Post-Class Applicants by January 28,
16 2026, was a fixed, certain, non-contingent obligation from the moment of final approval. The
17 Settlement outlines the limited and exclusive circumstances that the parties contemplated as
18 excusing performance of the obligation. *See* Settlement ¶ V.D.5 (describing process for Defendants
19 to assert that they were “reasonably prevented from or delayed in fully performing any of the
20 obligations set forth in Paragraph IV, above, due to extraordinary circumstances beyond
21 Defendants’ control”); First 60(b) Motion at 10–11 (admitting that Defendants did not invoke or
22 follow the Paragraph V.D.5 process); Settlement ¶ XIII.C (providing that “[t]his Agreement shall
23 be voidable by Plaintiffs”—but *not* by Defendants—“if a condition of impossibility occurs, as
24 described in Paragraph XII”). And if there were any doubt, the fact that the January 28 deadline
25 has passed certainly eliminates any prospective effect with respect to decisions on Post-Class
26 applications relating to Exhibit C schools. As of midnight on January 29, 2026, every Post-Class
27 Exhibit C borrower who had not received a decision became vested with the right to receive Full
28

1 Settlement Relief. *See supra*. The Department’s obligation to those borrowers is now legal, not
2 equitable, and the Department cannot seek relief in equity to avoid this vested obligation.

3 **B. The Motion Fails on Its Merits**

4 Even if the Second 60(b) Motion were a proper motion for Rule 60(b) relief—which it is
5 not, as explained above—it would fail. The moving party bears the burden of establishing that
6 Rule 60(b) relief is justified. *Cassidy v. Tenorio*, 856 F.2d 1412, 1415 (9th Cir. 1988). This is a
7 heavy burden. “Relief from a court order should not be granted . . . simply because a party finds
8 ‘it is no longer convenient to live with the terms’ of the order.” *S.E.C. v. Coldicutt*, 258 F.3d 939,
9 942 (9th Cir. 2001) (quoting *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 383 (1992)).

10 In cases involved government consent decrees, on which the Department primarily relies,
11 courts have held that “[o]rdinarily, the party may not rely on ‘events that actually were anticipated
12 at the time it entered into a decree’” to argue for Rule 60(b)(5) relief. *Coleman v. Brown*, 922 F.
13 Supp. 2d 1004, 1027 (E.D. Cal. 2013) (three-judge panel) (quoting *Rufo*, 502 U.S. at 385). Rather,
14 under Rule 60(b)(5), the movant must “establish that a significant change in facts or law warrants
15 revision of the decree and that the proposed modification is suitably tailored to the changed
16 circumstance.” *Flores v. Rosen*, 984 F.3d 720, 740–41 (9th Cir. 2020) (quoting *Rufo*, 502 U.S. at
17 393); *see also United States v. Asarco Inc.*, 430 F.3d 972, 979 (9th Cir. 2005) (burden falls on the
18 moving party to demonstrate a “significant and unanticipated change in factual conditions
19 warranting modification” of an order).

20 But a consent decree “is a hybrid; it is both a settlement and an injunction,” and this “dual
21 character . . . has resulted in different treatment for different purposes.” *Conservation Nw. v.*
22 *Sherman*, 715 F.3d 1181, 1185 (9th Cir. 2013) (quoting *Local No. 93, Int’l Ass’n of Firefighters*
23 *v. City of Cleveland*, 478 U.S. 501, 519 (1986)). In its Final Approval Order, the Court in this case
24 specifically recognized that the Settlement here was different in kind from a consent decree that
25 “permanently and substantially amends an agency rule.” Final Approval Order at 13 (quoting
26 *Conservation Nw.*, 715 F.3d at 1187 (emphasis omitted)). Instead, the Settlement is a contract that
27 sets out the parties’ agreement on “a process for resolving the enormous backlog of [borrower
28 defense] claims.” *Id.* Because the Settlement is “a contract agreed to by the parties[,] . . . it is

1 certainly arguable that a more stringent standard should apply.” *Warren v. City of Chico*, No. 21-
2 cv-00640, 2025 WL 974068, at *5 (E.D. Cal. Mar. 31, 2025); *see also AH Media Grp.*, 339 F.R.D.
3 at 618 (fact that a party voluntarily stipulated to an order may weigh against Rule 60(b)(5) relief).

4 Nonetheless, the Department’s motion fails under any standard.

5 **i. The Motion Is Untimely**

6 Rule 60(c)(1) provides that “[a] motion under Rule 60(b) must be made within a reasonable
7 time.” Fed. R. Civ. P. 60(c)(1). “What constitutes ‘reasonable time’ depends upon the facts of each
8 case, taking into consideration the interest in finality, the reason for delay, the practical ability of
9 the litigant to learn earlier of the grounds relied upon, and prejudice to other parties.” *Ashford v.*
10 *Steuart*, 657 F.2d 1053, 1055 (9th Cir. 1981) (per curiam).

11 Here, the Department cannot meet the timeliness standard. Judge Alsup’s December 11
12 order left the status quo in place for the majority of the Post-Class. That status quo was established
13 by a three-year-old final judgment incorporating a contract that the Department signed in June
14 2022. As Plaintiffs explained in response to the Department’s nearly identical motion two months
15 ago, the Department has known at least the rough size of the Post-Class since the fall of 2022—
16 before Judge Alsup signed the final approval order. *See* Plaintiffs’ First Opposition at 5–6
17 (approximate size of the Post-Class was 179,000 borrowers as of September 20, 2022) (quoting
18 Joint Motion for Final Settlement Approval, ECF No. 323, at 14). Since at least February 2023,
19 the Department has known the exact size of the Post-Class. *Id.* at 6. From April 2024 through
20 August 2025, the Department attended regular status conferences to report on its progress
21 implementing the Settlement, and at no point in all that time did the Department ever indicate that
22 it would request an extension of the Post-Class decision deadline. *See* Ellis Decl. ¶¶ 35–38
23 (describing Plaintiffs’ counsel’s requests for updates on Post-Class adjudications). To the contrary,
24 the Department assured Plaintiffs and the Court that it was making progress and understood its
25 obligations under the Settlement. *See, e.g.*, Transcript of June 26, 2025 Hearing, at 13:6–7, 13:10–
26 13 (The Court: “[A]re you going to make the [January 28, 2026] deadline?” DOJ: “We have every
27 incentive to make the deadline. I think, as both plaintiffs’ counsel and you have said, if we don’t,
28 everyone who has not received a decision will be entitled to full settlement relief.”). The Court

1 denied as unnecessary Plaintiffs’ request for an order requiring the Department to comply with the
 2 Post-Class deadline and prohibiting any requests for extension: “I’m not going to issue an order.
 3 It’s already an order; right? It’s already an order. That’s in your settlement agreement that I reduced
 4 to an order.” *Id.* at 13:15–17.

5 Given this background, the Department’s First Rule 60(b) Motion was plainly untimely,
 6 and its second attempt to achieve the same desired result fares no better. The Department was on
 7 notice of the facts relevant to the current situation for years, the Post-Class has a strong interest in
 8 finality, and the Post-Class would be deeply prejudiced by any alteration of the judgment.⁸

9 **ii. There Has Been No Significant Change in Fact or Law**

10 Rule 60(b)(5) requires the movant to establish that there has been “a significant change in
 11 facts or law.” *Flores*, 984 F.3d at 740–41. As Plaintiffs explained last time, the Department’s
 12 failure to adjudicate a significant percentage of Post-Class applications was an entirely foreseeable
 13 consequence of the Department’s own decisions, as it voluntarily entered into the Settlement and
 14 then spent the better part of three years kicking the can down the road. Plaintiffs’ First Opp. at 13–
 15 15; *see Coleman*, 922 F. Supp. 2d at 1044 (Rule 60(b) relief not justified where “defendants are
 16 fully responsible for” failure to achieve settlement goals, as defendants “prevent[ed] themselves
 17 from achieving a long-term solution . . . without taking a number of steps that they could but [were]
 18 unwilling to take”). Judge Alsup agreed, noting that “[e]verybody knew how many [Post-Class
 19 Applicants] there were three years ago. That’s not a surprise to anybody. . . . Now, that then made
 20 it incumbent upon the Department of Education, who gave their word, to figure out a way to get it
 21 done.” Dec. 11 Tr. at 74:25–75:9.

22 Today, the Department’s argument is even weaker than it was two months ago. There has
 23 clearly been no significant change in fact or law since the December 11 ruling. Indeed, there has
 24

25 ⁸ The Second 60(b) Motion is also untimely in another, new respect: The Department had ample
 26 time to submit this motion to Judge Alsup in December 2025. The alleged “errors” the Department
 27 describes would have been evident to it from the moment Judge Alsup issued the December 11
 28 order. Its failure to do so only strengthens the inference that the Department delayed its motion
 practice—indeed, delayed it all the way past the relevant January 28 deadline—in an attempt to
 manipulate the judicial process.

1 been no change at all—the Department’s own declarant establishes that the Department changed
 2 nothing about its approach to Post-Class applications in response to that Court order. *See Lucas*
 3 Decl. ¶¶ 8–10. The Department’s own evidence thus gives away the game: The Department had
 4 no plans to even attempt to resolve a significant number of Post-Class applications before the
 5 January 28 deadline. Instead, it spent its time and resources trying to lay the groundwork for this
 6 Court to grant it the relief that Judge Alsup denied on the same facts and law. This Court should
 7 not countenance such dereliction of the Department’s legal obligations. *Cf. Coleman*, 922 F. Supp.
 8 2d at 1049 (Rule 60 relief not justified where agency’s proffered alternative procedure “is not a
 9 plan for compliance; it is a plan for non-compliance”).

10 **iii. The Equities Favor Plaintiffs**

11 If the equities were at issue (which they are not), they would strongly favor Plaintiffs. The
 12 Department makes the same fundamental mistake here as it did in its First 60(b) Motion: It relies
 13 on a provision that asks what is “equitable,” while never once considering the effect that its
 14 proposed delay would have on the people most affected by it, the Post-Class Applicants
 15 themselves. Indeed, quite to the contrary, the Department’s argument relies on a pernicious
 16 underlying assumption that at least half of all Post-Class Applicants should be presumed to have
 17 filed insufficient or even false BD applications. *See Second 60(b) Motion* at 3 (claiming that
 18 Department could save \$6 billion by shirking the deadline—more than half of the Post-Class’s
 19 total outstanding loan balances of \$11.9 billion).⁹

20 In the briefing and hearing on the Department’s First 60(b) Motion, Plaintiffs provided
 21 voluminous evidence of the negative effects that a further delay would have on Post-Class
 22 Applicants. A survey of more than 20,000 Post-Class Applicants showed that over 80% of
 23 respondents reported that they were concerned about being placed back into repayment; over 81%
 24 reported that a further delay would negatively affect their credit report, credit score, and/or debt-
 25 to-income ratio; and nearly 90% (18,443 people) reported that a further delay would cause them

26
 27 ⁹ Plaintiffs explained at length in their previous opposition and at the December 11 hearing why
 28 the Department’s estimates of the cost of Post-Class relief are grossly over-inflated. *See Plaintiffs’*
First Opposition at 15–20; Dec. 11 Tr. at 36–40.

1 stress, anxiety, and/or other negative impacts to their mental and emotional health. Ellis Decl. ¶ 31.
 2 Respondents were also highly concerned about negative effects on their family's well-being
 3 (66.5%), being unable to afford an important purchase or cover an important expense (58.6%),
 4 suffering negative effects on their physical health (48.3%), and having their tax refunds or wages
 5 garnished because their loans had previously been in default (46.8%). *Id.* Over a quarter of
 6 respondents reported that having these loans outstanding was preventing them from going back to
 7 school or finishing their degree. *Id.* Just one percent (218 people) said a delay would have no effect
 8 on them. *Id.*

9 Plaintiffs also filed 34 declarations from Post-Class Applicants explaining the extent of the
 10 harm that would be caused by keeping these unresolved borrower defense applications hanging
 11 over their heads. Among other things, these Post-Class Applicants attested that:

- 12 • Credit reporting on their BD-related loans blocked them from access to reasonable
 13 options for housing, transportation, and other forms of credit, even to the point of
 14 experiencing homelessness, *e.g.*, ECF No. 502-2 at 7 (Ex. 3, Decl. of Sherri
 15 Mainhart ¶ 10), 11 (Ex. 4, Decl. of Beth Huegel ¶ 10), 15 (Ex. 5, Decl. of Erin
 16 Williams ¶ 9), 19 (Ex. 6, Decl. of Kimberly Oneill ¶ 8), 23–24 (Ex. 7, Decl. of
 17 Lauren Bartholomew ¶¶ 12–13), 29 (Ex. 8, Decl. of Meloney Garrett ¶ 8), 33 (Ex.
 18 9, Decl. of Nina Mecham ¶ 11), 35–36 (Ex. 10, Decl. of Stacey Barton ¶ 8), 39 (Ex.
 19 11, Decl. of Stephanie DiMaso ¶ 9), 42 (Ex. 12, Decl. of Mark Gomez ¶ 10);
- 20 • They were blocked from advancing in their careers because they did not know if
 21 they would be able to go back to school or pass a security clearance screening, *e.g.*,
 22 *id.* at 24–25 (Ex. 7, Bartholomew Decl. ¶¶ 15–18), 33 (Ex. 9, Mecham Decl. ¶ 11),
 23 46 (Ex. 13, Decl. of Contessa Tracy ¶ 11), 51 (Ex. 14, Decl. of Sean Sanders ¶ 16),
 24 54 (Ex. 15, Decl. of Akram Jaber ¶ 11), 58 (Ex. 16, Decl. of Alexandra Strong ¶ 9);
- 25 • They put off major needs such as home repairs, health insurance, and saving for
 26 retirement because they didn't know whether they would have to go back into
 27 repayment on their BD-related loans, *e.g.*, *id.* at 61 (Ex. 17, Decl. of Chandy Niles
 28 ¶ 9), 65 (Ex. 18, Decl. of Jennifer McMillian ¶ 8); ECF No. 502-3 at 2–3 (Ex. 19,
 Decl. of Lyndsay Pelchat ¶ 7), 7 (Ex. 20, Decl. of Margo Rutland ¶ 11), 11 (Ex. 21,
 Decl. of Richard Hancock ¶ 9); and
- The stress and uncertainty over these loans caused them physical and mental health
 symptoms such as loss of sleep, headaches, high blood pressure, flare-ups of
 chronic health conditions, anxiety, and depression, *e.g.*, 502-2 at 7 (Ex. 3, Mainhart
 Decl. ¶ 14), 19 (Ex. 6, Oneill Decl. ¶ 11), 54 (Ex. 15, Jaber Decl. ¶ 9); 502-3 at 3
 (Ex. 19, Pelchat Decl. ¶¶ 10–11), 13–14 (Ex. 22, Decl. of Elizabeth Lahren ¶ 7), 17
 (Ex. 23, Decl. of Federico Garza ¶ 9).

1 The harm has only grown more acute in the time since Plaintiffs filed their original
2 opposition brief. Now, many of these Post-Class Applicants have obtained a vested right in Full
3 Settlement Relief, due to the Department’s failure to deliver decisions by the deadline—yet the
4 Department is trying to throw that relief into uncertainty. Many borrowers have already lost faith
5 in their government. *See, e.g.*, ECF No. 502-3 at 56 (Ex. 34, Decl. of Brittney Hardy ¶ 10) (“While
6 I was in school, I was battling cancer. ... It disgusts me to think of how I was deceived by a school
7 that received government funding while I was fighting for my life. Meanwhile, the government
8 doesn’t seem to care about me.”). The Department’s attempts to avoid the agreement that it signed
9 years ago add insult to injury and increase the distress borrowers face as they still wait for their
10 long-awaited relief.

11 **iv. The Department’s Claims of Error Are Unfounded**

12 The Department does not, and cannot, provide any authority for its implicit argument that
13 this Court should review a previously assigned judge’s order under, essentially, an abuse of
14 discretion standard. As explained above, that is the role of the Ninth Circuit on appeal. But even
15 if the Court were to review the Department’s motion within the limited substantive scope of a
16 proper motion for reconsideration, *see* L.R. 7-9(b), the Department’s assertions of error are
17 baseless. Its arguments are merely a weak excuse to air its disagreement with Judge Alsup’s
18 decision.

19 The December 11 order was not premised on any mistake, and in an attempt to create one,
20 the Department has egregiously misrepresented Judge Alsup’s reasoning and ignored all the
21 context that surrounded it. First, the Department suggests that that Judge Alsup committed legal
22 error by treating Post-Class Applicants as class members. Second 60(b) Motion at 14–17. But Post-
23 Class Applicants *are* members of the class, a point that Judge Alsup made clear when approving
24 the Settlement. *See* Final Approval Order at 22 (“[T]he class certification order set no cut-off date
25 for membership, so the class definition as recited in that order clearly encompasses all of these
26 borrowers [in the Post-Class group].”). If the Department disagreed with Judge Alsup’s holding as
27
28

1 to the scope of the class, it could have filed a timely Rule 60(b) motion or a limited appeal back in
2 2022. As it did not do so, that holding is now the law of the case, and reliance on it is not error.

3 Next, the Department claims that Judge Alsup committed factual error by “finding” that it
4 was possible for the Department to adjudicate all Exhibit C Post-Class applications by the January
5 28, 2026 deadline. Second 60(b) Motion at 17–19. Judge Alsup made no such finding. He
6 admonished the Department to keep working until the deadline, and stated his belief that it was
7 “possible” for the Department to meet that deadline. Dec. 11 Tr. at 79:20–80:8. But Judge Alsup
8 also explained that any failure to meet the deadline would be the result of the Department’s own
9 choices, including its lack of candor about the lack of progress that had been made in the prior
10 months and years. *Id.* at 78:3–14. And he was aware that if the Department failed to meet the
11 deadline, any undecided Post-Class applications would be approved. *See id.* at 79:11–15 (“I do
12 recognize that another equity going the other way is there is a chance that some applications would
13 be automatically [approved] come January 28th and they shouldn’t have been. If they were
14 adjudicated on the merits, the student would not have won.”). It is thus disingenuous at best to
15 argue that the December 11 order was premised on a mistaken belief that the Department did not
16 need an extension and would be able to meet the January 28, 2026, deadline. Rather, it is clear that
17 the order was premised on a justified belief that an extension was not warranted. *See id.* at 78:3–7
18 (“[T]he student loan has been hanging over their head for how many years? How many decades?
19 . . . It’s just not right. Congress didn’t want that. Congress wanted these things adjudicated.”).

20 Finally, the Department complains that Judge Alsup committed factual error by “failing to
21 consider” that Post-Class applications cannot be premised on a borrower’s attendance at an Exhibit
22 C school. Second 60(b) Motion at 20–21. But Judge Alsup did not suggest that the Department
23 could, or should, approve all Exhibit C Post-Class applications on that basis. To the contrary, he
24 acknowledged that not all such applications would be approved if or when adjudicated. *See* Dec.
25 11 Tr. at 76:8–10. But he observed, correctly, that all Exhibit C Post-Class applications would be
26
27
28

1 supported by common evidence of school misconduct, *id.* at 80:5–7—evidence that could aid the
2 Department in its adjudication of these applications.¹⁰

3 **v. Relief Is Not Available Under Rule 60(b)(6)**

4 As a last-ditch effort, the Department briefly suggests that if the Court rejects its Rule
5 60(b)(5) argument, it should nevertheless provide relief under Rule 60(b)(6). Second 60(b) Motion
6 at 13. To begin, the Department’s mere passing reference to this provision is insufficient to carry
7 its burden. But even if properly raised, the argument would fail.

8 “To justify relief under subsection (6), a party must show ‘extraordinary circumstances’
9 suggesting that the party is faultless in the delay.” *Pioneer Inv. Services Co. v. Brunswick Assocs.*
10 *Ltd. P’ship*, 507 U.S. 380, 393 (1993). It is long established that this provision was “not intended
11 to benefit the unsuccessful litigant who long after the time during which an appeal from a final
12 judgment could have been perfected first seeks to express his dissatisfaction. The procedure
13 provided by rule 60(b) is not a substitute for an appeal.” *Morse-Starrett*, 205 F.2d at 249.

14 For all of the reasons detailed above, the Department cannot satisfy this standard. “When
15 a party makes a conscious and informed choice of litigation strategy, [that party] cannot seek
16 extraordinary relief [under Rule 60(b)(6)] merely because his assessment of the consequences was
17 incorrect.” *Warren*, 2025 WL 974068, at *15 (alterations in original) (quoting *Fed. Trade Comm’n*
18 *v. Apex Capital Grp.*, No. 18-cv-9573, 2021 WL 7707269, at *4 (C.D. Cal. Sept. 3, 2021)).

19 **CONCLUSION**

20 For the reasons set forth above, Plaintiffs respectfully request that the Court deny
21 Defendants’ Motion for Relief Under Federal Rule of Civil Procedure 60(b).
22
23
24

25 ¹⁰ The Court’s observation in the Final Approval Order that the Department “does not consider
26 inclusion on Exhibit C a finding of misconduct and that inclusion does not constitute evidence that
27 could or would be considered in any action by the Department against a school,” Final Approval
28 Order at 16, plainly does not preclude the Department from relying on the common evidence that
led to a school’s inclusion on Exhibit C when adjudicating any borrower defense applications,
including those of Post-Class Applicants, *contra* Second 60(b) Motion at 20–21.

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

Dated: February 5, 2026

Respectfully submitted,

Rebecca C. Ellis

Eileen M. Connor (SBN 248856)
econnor@ppsl.org
Rebecca C. Ellis (*pro hac vice*)
rellis@ppsl.org
Rebecca C. Eisenbrey (*pro hac vice*)
reisenbrey@ppsl.org
Noah Zinner (SBN 247581)
nzinner@ppsl.org
PROJECT ON PREDATORY
STUDENT LENDING
769 Centre Street
Jamaica Plain, MA 02130
Tel.: (617) 390-2669

Attorneys for Plaintiffs