

No. 18-16375

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARTIN CALVILLO MANRIQUEZ; JAMAL
CORNELIUS; RTHWAN DOBASHI; JENNIFER
CRAIG, on behalf of themselves and all others
similarly situated,

Plaintiffs-Appellees,

v.

ELISABETH DEVOS, in her official capacity as
secretary of the United States Department of
Education; UNITED STATES DEPARTMENT
OF EDUCATION,

Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California, Case No. 17-07210
The Honorable Sallie Kim, Magistrate Judge

**BRIEF OF CALIFORNIA, ILLINOIS, MARYLAND, MASSACHUSETTS,
NEW JERSEY, NORTH CAROLINA, NEW YORK, AND WASHINGTON
AS AMICI CURIAE IN SUPPORT OF APPELLEES AND IN SUPPORT OF
AFFIRMANCE OF THE DISTRICT COURT'S ORDER**

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INTRODUCTION AND STATEMENT OF INTEREST

The State of California, through the California Attorney General; the State of Illinois; the State of Maryland; the Commonwealth of Massachusetts; the State of New Jersey; the State of New York; the State of North Carolina; and the State of Washington (“Amici States”) submit this brief under Federal Rule of Appellate Procedure 29(a) to assist the Court in understanding (1) the implementation of the U.S. Department of Education’s (“Department”) borrower-defense rule in the context of Corinthian Colleges, Inc. (“Corinthian”); (2) the state-law basis supporting full relief for defrauded Corinthian borrowers; and (3) the irreparably harmful consequences of the Department’s decision to abandon its state-law-based standard and illegally deprive defrauded Corinthian borrowers of full relief.

Corinthian was once one of the largest for-profit education companies in the world. At its height, Corinthian operated more than 100 campuses under its Everest, Heald, and WyoTech brands. Over the course of its existence, Corinthian enrolled hundreds of thousands of students in career-oriented programs, including health care, criminal justice, and information technology. Like most predatory, for-profit schools, Corinthian kept enrollment—and profits—up by systemically targeting low-income, financially unsophisticated, and vulnerable groups with false promises of a

good education, high-paying jobs, and lifelong career services. In reality, Corinthian's programs often left students with a mountain of debt and no better career prospects.

Amid mounting financial difficulties, government investigations, and law-enforcement actions, including those brought by California, Massachusetts, and the Consumer Financial Protection Bureau, Corinthian permanently shut down in April 2015. Corinthian's collapse left tens of thousands of its former students immediately eligible for complete relief from their federal student loans under the Department's existing "borrower defense" regulation, which requires the Department to discharge the loans of defrauded federal student-loan borrowers who have a state-law cause of action against their school.

To implement and administer this widespread relief, the Department consulted with Amici States in adopting a Corinthian rule to process the claims of defrauded Corinthian borrowers in a manner that simplified and expedited relief, and reduced the burdens on borrowers. Amici States (and others) also assisted the Department with outreach to Corinthian borrowers eligible for relief.

Between June 2015 and January 20, 2017, with critical support from Amici States, the Department granted relief to approximately 28,000

borrowers defrauded by Corinthian. In every instance, the Department discharged the entire outstanding balance of the borrower's applicable federal student loans and returned to the borrower all amounts paid.

On January 20, 2017, the Department abruptly halted granting any new borrower-defense claims—even as the backlog of Corinthian claims grew to over 50,000.

Only after California, Illinois, Massachusetts, and New York sued the Department and its Secretary over actions surrounding its failure to process pending Corinthian borrower-defense claims did the Department finally act.¹

On December 20, 2017, after 11 months of inactivity, the Department announced that it would resume processing Corinthian borrower-defense claims. However, under its newly announced Corinthian rule, the Department would grant defrauded borrowers only partial relief—in many instances discharging only 10% of a borrower's loan—despite having already determined that defrauded Corinthian borrowers qualified for full

¹ California's action is pending in the same district court against the Department and its Secretary and is "related" to the instant case. *California v. U.S. Dep't of Educ.*, Case No. 17-07106 (N.D. Cal., filed Dec. 14, 2017). Illinois, Massachusetts, and New York are plaintiffs in a pending action against the Department and its Secretary in the U.S. District Court for the District of Columbia that challenges the Department's continued debt-collection efforts against Corinthian borrowers. *Massachusetts, et al. v. U.S. Dep't of Educ.*, Case No. 17-02679 (D.D.C., filed Dec. 14, 2017).

loan relief. The Department’s new Corinthian partial-relief rule—which constitutes illegal retroactive rulemaking, among other problems—is at the heart of this appeal.

Amici States were instrumental in securing the widespread borrower-defense relief at issue in this case. Amici States have a strong interest in safeguarding the economic well-being of their residents who the Department has already determined are qualified for complete cancellation of their federal student loans because they were defrauded into attending various educational programs offered by Corinthian. The Department’s unlawful abandonment of its controlling standards—in favor of a recently adopted, unlawful, and illogical rule to provide only partial relief to defrauded borrowers and resume collection of their invalid loans—immediately threatens the economic well-being of Amici States’ residents.

ARGUMENT

I. AMICI STATES WERE INSTRUMENTAL IN IMPLEMENTING THE PROCESS BY WHICH THE DEPARTMENT ADDRESSED CORINTHIAN BORROWER-DEFENSE CLAIMS

Amici States were essential partners with the Department in implementing a streamlined process to provide defrauded Corinthian students with critical relief from their federal student loans—relief known as “borrower defense.” *See* 20 U.S.C. § 1087e(h). For nearly two years, under

this streamlined process, the Department granted—without exception—full loan relief to 28,000 Corinthian borrowers that applied to the Department for borrower-defense relief.

The operative borrower-defense regulation establishes a state-law standard for determining when borrowers may assert a school’s misconduct as a defense against repayment of their federal student loans. 34 C.F.R. § 685.206(c)(1) (“[T]he borrower may assert as a defense against repayment, any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law.”) (authorized by 20 U.S.C. § 1087e(h)).

The process by which the Department addressed borrower-defense claims from Corinthian’s victims adhered to this state-law standard and was the result of a joint investigation between the Department and the California Attorney General’s Office.² Based on this joint investigation, in April 2015, the Department confirmed that Corinthian engaged in systematic and widespread misrepresentations of job-placement rates to current and

² <http://www.ed.gov/news/press-releases/us-department-education-fines-corinthian-colleges-30-million-misrepresentation> (last visited Oct. 10, 2018).

prospective students and fined Corinthian \$30 million.³ A few days later, Corinthian shut down, permanently closed all its remaining campuses,⁴ and initiated bankruptcy liquidation proceedings.⁵ California ultimately obtained a \$1.17 billion default judgment against Corinthian, with findings that Corinthian engaged in systematic and widespread misrepresentation to lure vulnerable students in to its educational programs.⁶ Massachusetts and the Consumer Financial Protection Bureau each obtained separate judgments against Corinthian for similar misconduct.⁷

³ *Id.*

⁴ Buckling under the weight of multiple law-enforcement actions, government investigations, and financial difficulties, in November 2014, Corinthian sold 53 of its campuses outside of California and took steps to liquidate its private student-loan portfolio, face-valued at over \$500 million. *See* First Special Master Report, *infra* note 9, at 4. None of Corinthian's California campuses were sold; all permanently closed.

⁵ *In re Corinthian Colleges* (Bankr. D. Del. Case No. 15-10952, filed May 4, 2015) (Chapter 11 liquidation).

⁶ *See generally* Final Judgment, *People v. Heald Coll.*, Case No. CGC-13-534793, 2016 WL 1130744 (Cal. Sup. Ct., filed Mar. 23, 2016) (Karnow, J.) (“California *Corinthian* Judgment”); *see also* <http://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-obtains-11-billion-judgment-against-predatory> (last visited Oct. 10, 2018).

⁷ Findings and Order For Entry of Judgment, *Massachusetts v. Corinthian* (Mass. Sup. Ct., Case No. 2014-1093-E, dated Aug. 1, 2016), available at <http://www.legalservicescenter.org/wp-content/uploads/2012/10/2016.08.01-MA-v.-CoCo-Judgment.pdf>; Default Judgment and Order, *CFPB v. Corinthian* (N.D. Ill., Case No. 14-07194, filed Oct. 27, 2015), available at http://files.consumerfinance.gov/f/201510_cfpb_default-judgment-and-order-corinthian.pdf.

Corinthian's rampant fraud left tens of thousands of students nationwide entitled to cancellation of their federal student loans.⁸ Corinthian's deceptive practices were directed from its headquarters in Orange County, California, and therefore the Department determined that California law provided the basis for relief to Corinthian's victims nationwide.⁹ Specifically, in consultation with the California Attorney General's Office, the Department determined that defrauded Corinthian students qualified for borrower-defense relief because Corinthian's misrepresentations violated California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq.¹⁰ Accordingly, the Department determined that students who relied on these misrepresentations when they enrolled had a state-law cause of action against Corinthian that would support a claim for borrower defense. The Department further determined that the appropriate

⁸ <http://studentaid.ed.gov/sa/about/announcements/corinthian#fraud-violations-state-law> (last visited Oct. 10, 2018).

⁹ *See, e.g.*, First Report of the Special Master for Borrower Defense to the Under Secretary, at 5 (Sept. 3, 2015) ("Because Heald was headquartered in and managed from California, the Department looked to California law and determined that Heald's misrepresentation of placement rates constituted prohibited unfair competition under California's Unfair Competition Law (UCL)."), available at <http://www2.ed.gov/documents/press-releases/report-special-master-borrower-defense-1.pdf>.

¹⁰ *Id.*

scope of relief due a successful borrower-defense claimant would also be determined by California law.¹¹

To implement this relief, the Department created a simple claim form for students nationwide to document the impact of Corinthian's fraud in a manner that supported a cause of action under California's Unfair Competition Law.¹² The submission of a completed claim form was the only step a qualified Corinthian borrower needed to take to obtain a complete loan cancellation and refund of all amounts paid.¹³

In addition to information from the California Attorney General, the Department obtained evidence from other States, including Massachusetts and Illinois. In November 2015, following a three-year investigation of Corinthian, the Massachusetts Attorney General submitted to the Department 2,700 pages of investigative findings and supporting evidence concerning Corinthian's violations of state law at its two Massachusetts locations. Beginning in June 2015, the Illinois Attorney General began

¹¹ *Id.* at 4 (“[I]t is the cause of action under state law against the school that established an equivalent right to relief from the obligation to repay a Direct Loan.”).

¹² Second Report of the Special Master for Borrower Defense to the Under Secretary, at 3 (Dec. 3, 2015), available at <http://www2.ed.gov/documents/press-releases/report-special-master-borrower-defense-2.pdf>.

¹³ *Id.*

submitting evidence obtained in its investigation of Corinthian in an ongoing collaboration with the Department.

Based on evidence developed by the Offices of the Attorneys General of California, Illinois, Massachusetts, and others, the Department ultimately found that Corinthian systematically misrepresented job-placement rates to students who enrolled in more than 1,600 of Corinthian's educational programs in 24 States.¹⁴ Students in all 50 States were affected because Corinthian enrolled students nationwide in its online programs. Altogether, the Department's findings qualified around 80,000 former Corinthian students for expedited borrower-defense relief.¹⁵

To implement this relief, in April 2016, the Department specifically requested that States assist with outreach. Beginning in July 2016, the Department sent information to 47 state attorneys general regarding all residents in their respective States who enrolled in a Corinthian school from 2010 to 2014.¹⁶ This information included each enrollee's program, campus,

¹⁴ Complete list of applicable Corinthian programs available here: <http://studentaid.ed.gov/sa/sites/default/files/heald-findings.pdf>; <http://studentaid.ed.gov/sa/sites/default/files/ev-wy-findings.pdf>.

¹⁵ This figure was derived from student data provided to the States by the Department. *See infra* note 16.

¹⁶ The Department's provision of this information was subject to a records-sharing agreement with the States that strictly limited the use of the information to contacting Corinthian borrowers who qualified for loan relief.

credential level, and date of first enrollment—the four factors necessary to determine if a Corinthian borrower qualified for relief. Using a grant provided by the National Association of Attorneys General, the attorneys general retained Epiq, a settlement administrator, to coordinate contacting qualified borrowers. In conjunction with the state attorneys general, Epiq sorted the data to identify the students who were most likely to be entitled to relief under the Department’s Corinthian relief rule and contacted those borrowers. To date, Epiq has sent out more than 150,000 letters and 130,000 emails encouraging qualified borrowers to send in the required form. This outreach effort has consumed considerable state resources and time; retention of Epiq alone has cost the States approximately \$290,000.

Beyond outreach coordinated through Epiq, various States have conducted their own outreach at considerable time and expense. For instance, beginning in April 2016, the Massachusetts Attorney General’s Office undertook extensive efforts to reach the approximately 2,400 eligible borrowers in the State. The Massachusetts Attorney General’s Office called, emailed, and sent letters to each borrower. The Office also held 19 workshops in locations throughout the State to assist eligible students with the Department’s claim form, and worked with students who reached out to its Student Loan Assistance Unit directly. In total, the Massachusetts

Attorney General's Office has helped over 1,350 of Corinthian's victims submit claim forms to the Department.

In October 2016, the North Carolina Attorney General's Office reached out via email to 10,684 North Carolina-based Corinthian students—over 8,000 of which were likely eligible for streamlined relief. In that email, the Office urged students to apply for relief and directed them to a dedicated page on the Office's website with information for Corinthian borrowers seeking loan discharge. The Office also referred students needing individualized help with their applications to a network of local non-profits.

The Illinois Attorney General's Office has also called and emailed thousands of eligible students encouraging them to send in claim forms, providing information on the Department's process, and answering student questions. And the California Attorney General has worked with sister agencies and legal-aid groups to develop an online portal to provide former Corinthian students with information regarding their right to closed-school discharge and borrower-defense relief, as well as information on legal-aid, community-college, and job-training resources in their communities.¹⁷

Prior to January 20, 2017, with critical assistance from state attorneys

¹⁷ Interactive Tool for Corinthian Students, <http://oag.ca.gov/corinthiantool> (last visited Oct. 10. 2018).

general, the Department granted approximately 28,000 borrower-defense claims from former Corinthian students. As discussed more below, consistent with California law, the Department properly cancelled the entirety of these borrowers' loans and refunded all amounts paid to attend Corinthian.¹⁸ As of January 20, 2017, approximately 39,000 additional claims from Corinthian students awaited processing. For more than 11 months, the Department refused to approve a single borrower-defense claim despite the backlog of Corinthian claims growing to more than 50,000.

On December 14, 2017, California filed suit against the Department and its Secretary in the district court challenging the Department's failure to approve borrower-defense claims as required by its existing standards, among other allegations.¹⁹ On that same day, Illinois, Massachusetts, and New York filed suit in the U.S. District Court for the District of Columbia raising similar challenges against the Department and its Secretary.²⁰

¹⁸ See also Defs' Br. at 10-11 (“[U]ntil early 2017 . . . , the Department awarded full loan discharges to all Corinthian borrowers who successfully asserted a borrower defense.”).

¹⁹ *California v. U.S. Dep't of Educ.*, Case No. 17- 07106 (N.D. Cal., filed Dec. 14, 2017). On January 3, 2018, the district court ordered private plaintiffs' case and California's case related.

²⁰ *Massachusetts, et al. v. U.S. Dep't of Educ.*, Case No. 17-02679 (D.D.C., filed Dec. 14, 2017).

Six days later, on December 20, 2017, the Department announced its unlawful and illogical rule to provide only partial relief to defrauded Corinthian borrowers, confirming abandonment of its existing standards.²¹ This new rule, described further below, would provide only partial loan cancellation to tens of thousands of Corinthian’s victims—leaving the remaining balance subject to debt collection—despite the Department having already qualified their loans for full cancellation.

II. THE DEPARTMENT’S ATTEMPT TO GRANT ONLY PARTIAL RELIEF TO DEFRAUDED CORINTHIAN BORROWERS IS INCONSISTENT WITH CALIFORNIA LAW

Federal law recognizes the States’ crucial consumer-protection role by incorporating a state-law standard into the borrower-defense regulation. 34 C.F.R. § 685.206(c)(2). For decades, the Department interpreted its borrower-defense regulation as completely dependent on state law for determining not only the underlying violation supporting a borrower-defense claim, but also the scope of appropriate relief. During the formulation and administration of the Department’s Corinthian relief, the Department

²¹ <http://www.ed.gov/news/press-releases/improved-borrower-defense-discharge-process-will-aid-defrauded-borrowers-protect-taxpayers> (last visited Oct. 10, 2018).

consistently held to this state-law standard.²² The Department expressly recognized that its borrower-defense regulation is “wholly dependent” on state law.²³ Until its announcement on December 20, 2017, the Department had not wavered from its decades-long interpretation that the borrower-defense regulation, including the determination of the appropriate relief under 34 C.F.R. § 685.206(c)(2) is determined exclusively by state law.

The Department’s attempt to now grant only partial relief to defrauded Corinthian borrowers is inconsistent with California law. By comparing the average income of a set of borrowers with the average income of some other set of borrowers (neither of which necessarily includes the claimant) to determine the appropriate scope of relief, the Department focuses on considerations that would be irrelevant to victim restitution under California’s Unfair Competition Law—the law the Department expressly relied upon in formulating and implementing the Corinthian borrower-

²² See, e.g., Second Special Master Report, *supra* note 12, at 3 (“[A]fter consultation with the Office of the California Attorney General, . . . students who relied upon false or misleading placement rate disclosures in enrolling in Heald College programs would have established a [borrower-defense] claim as *to which relief would be granted under California law.*”) (emphasis added).

²³ Student Assistance General Provisions, 81 Fed. Reg. 39330, 39339 (June 16, 2016).

defense process.

California law entitles Corinthian's victims to cancellation of the entirety of their student loans and a refund of all amounts paid, *see* Cal. Bus. & Prof. Code § 17203, without regard to any contrived, post hoc calculation of supposed "benefit" or "value" they may have received from attending Corinthian.²⁴ UCL "restitution is based on what a purchaser would have paid *at the time of purchase* had the purchaser received all the information."²⁵ In other words, the Department rightly determined that Corinthian's deception induced students to enroll in programs in which they otherwise would not have enrolled, thus entitling them to full restitution.²⁶ Having once

²⁴ *See, e.g., Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1149 (2003) ("Object of [UCL] restitution is to restore the status quo by returning to the plaintiff funds in which he or she has an ownership interest"); *People v. Beaumont Inv.*, 111 Cal. App. 4th 102, 134 (2003) ("[C]ourts are not concerned with restoring the violator to the status quo ante. The focus instead is on the victim."); *accord Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 989 (9th Cir. 2015) (UCL restitution "restore[s] the defrauded party to the position he would have had absent the fraud").

²⁵ *Pulaski*, 802 F.3d at 989 (emphasis added); *see also, e.g., F.T.C. v. Figgie Int'l, Inc.*, 994 F.2d 595, 606 (9th Cir. 1993) (full refunds appropriate where plaintiffs sought redress for "the amount consumers spent on the heat detectors that would not have been spent absent Figgie's dishonest practices").

²⁶ This conclusion was supported by a number of internal Department memoranda referenced in a report authored by the Office of Inspector General. *Federal Student Aid's Borrower Defense to Repayment Loan*

appropriately applied California law, the Department now embraces a Corinthian partial-relief rule that has no basis in it.²⁷

Appropriate relief under California law is not speculative or hypothetical: a California court has already determined that defrauded Corinthian borrowers who relied on Corinthian's misrepresentations are entitled to full restitution. On March 23, 2016, the California Attorney General obtained a default judgment against Corinthian in California Superior Court, County of San Francisco (Karnow, J.).²⁸ The state court expressly found, based on substantial evidence presented by the California Attorney General, that Corinthian engaged in systematic and pervasive misconduct to fraudulently induce students to enroll in its programs.²⁹ Based exclusively on California law, the California Attorney General sought full restitution for California's victims of Corinthian's misconduct, which included a return of all tuition payments made to attend Corinthian

Discharge Process, at 10 (Dec. 8, 2017), <http://www2.ed.gov/about/offices/list/oig/auditreports/fy2018/i04r0003.pdf> (last visited Oct. 10, 2018).

²⁷ Indeed, the Department's calculation of partial relief appears to be completely untethered from *any* state law. Amici States are aware of no state "UDAAP" (i.e., state consumer-protection law prohibiting unfair, deceptive, or abusive acts or practices) that would permit an illogical, unfair partial-relief determination in a manner proposed by the Department.

²⁸ See generally *California Corinthian Judgment*, *supra* note 6.

²⁹ *Id.* ¶¶ 15-18.

regardless of source. The state court agreed, finding that full relief was the appropriate remedy under California’s Unfair Competition Law.³⁰ The judgment ordered Corinthian to pay \$820 million in restitution to Californians who attended Corinthian.³¹ This restitution amount was derived from an analysis of the full, aggregate total tuition and fees paid to Corinthian by California students who attended programs with false and overstated job-placement rates. Accordingly, there has already been a judicial determination that defrauded Corinthian borrowers are entitled to full relief under California law without a deduction for any corresponding “benefit” or “value” received from attending Corinthian.

Under the Department’s operative borrower-defense regulation, 34 C.F.R. § 685.206(c)(1); its decades-old interpretation of that regulation; and as applied to defrauded Corinthian victims, the Department is bound to apply state law—in particular California law—to determine the appropriate scope of relief due a defrauded Corinthian borrower. The Department’s midstream rejection of California law to now grant only partial relief to Corinthian borrowers already found eligible for full relief, amounts to

³⁰ *Id.* ¶¶ 75-76.

³¹ *Id.*

unlawful retroactive rulemaking, among other problems.³² If the Department is allowed to proceed, tens of thousands of defrauded borrowers will be irreparably harmed.

III. THE DEPARTMENT’S PARTIAL-RELIEF PROCESS WILL IRREPARABLY HARM BORROWERS

The Department’s abandonment of its controlling state-law standard to provide only partial relief to Corinthian’s victims poses an immediate, irreparable threat to the economic well-being of borrowers whom the Department already determined eligible for complete cancellation of their federal student loans. Those borrowers whose relief is decreased will have their loans removed from forbearance, deferment, or stopped-collection status and will immediately be liable for the debt—in some cases enormous debt—that should have been entirely forgiven. Many of these borrowers will be unable to pay even the minimum required amount without facing significant financial hardship and will immediately default on their newly

³² See, e.g., *Bowen v. Hood*, 202 F.3d 1211, 1220-22 (9th Cir. 2000) (“An agency cannot provide participants with a determination of eligibility based on the purported examination of objective criteria, then subsequently deny them eligibility by exercise of whim.”) (relying on *Landgraf v. USI Film Products*, 511 U.S. 244, 265 (1994), among others); *Cort v. Crabtree*, 113 F.3d 1081, 1086 (9th Cir. 1997) (unlawful retroactive agency action to apply new, reduced-relief rule to claimants “who have already been found eligible” under prior rule).

active loans.

The substantial likelihood of immediate and significant hardship and default is compounded by the fact that Corinthian's educational programs were deliberately overpriced and marketed to those already in dire financial straits. Among other reasons, Corinthian intentionally priced its programs above the maximum federal student-loan limit so that it could funnel students into its private loan program, which itself was a scam.³³ Thus, Corinthian's fraudulent business model ensured that students would end up with massive amounts of debt.³⁴ Moreover, Corinthian marketed these overpriced programs to some of the most vulnerable groups. Internal company documents reveal that Corinthian intentionally targeted people of limited financial means, many of whom were the heads of single-parent families and had annual incomes near the federal poverty line.³⁵ All too

³³ See *California Corinthian Judgment*, *supra* note 6, ¶¶ 32-36.

³⁴ For example, an Associate of Applied Science degree in Medical Assisting at a Corinthian campus in San Francisco cost \$43,000; an Associate's degree in Automotive Technology with Applied Service Management at a Long Beach campus charged \$37,000; and a Bachelor's degree in "Paralegal" offered online charged \$68,000. See First Amended Complaint for Civil Penalties, Permanent Injunction, and Other Equitable Relief, *California v. Heald Coll.*, ¶ 2 (Cal. Sup. Ct., Case No. CGC-13-534793, filed Feb. 19, 2014), available at <http://oag.ca.gov/sites/all/files/agweb/pdfs/consumers/first-amended-complaint.pdf>.

³⁵ *Id.* ¶ 3.

often, Corinthian's worthless programs left vulnerable students buried under a mountain of debt, without the falsely promised jobs necessary to repay it.

Amici States have witnessed firsthand the suffering of Corinthian's victims, which the Department has only compounded through months of inaction by refusing to process pending borrower-defense claims. Many of Corinthian's victims who the Department already qualified for expedited loan relief have now been waiting years. Even for borrowers whose loans the Department properly placed in forbearance during this wait, having these loans on their credit reports has prevented them from securing financing for cars, homes, and other life necessities. While these loans sit in limbo, interest continues to accrue on them. Adding further insult, federal law bars many of these borrowers from obtaining additional loans to restart their educations at legitimate schools, like Amici States' public colleges and universities. *See* 34 C.F.R. § 668.32(g).

The heartbreaking financial devastation to Corinthian's victims cannot be overstated. For example, a Corinthian recruiter in California promised strong job prospects to an unemployed, homeless couple, encouraging them to take out thousands of dollars in federal student loans that would be near-

impossible to pay back.³⁶ The couple even moved their tent to the school's grounds, with the campus president's knowledge, after they were kicked off an empty lot across the street from the school.³⁷ The wife told the California Attorney General's Office, "I do not know how I will ever be able repay this student loan. I now believe that I was taken advantage of and given false hope by [Corinthian] just so that I would enroll in their school."³⁸ Another Corinthian victim was a 20-year-old single mother with diagnosed learning disabilities who was living in transitional housing.³⁹ She enrolled at a Corinthian school after a recruiter assured her that Corinthian would provide her with a tutor.⁴⁰ It took seven attempts before she passed the entrance exam.⁴¹ She enrolled, taking on thousands in loans, only to drop out several days after classes started because she could not grasp the material.⁴² She left Corinthian with \$6,000 in student loans and was subsequently denied rental

³⁶ Declaration of Hollie Harsh ¶¶ 2-3 (Cal. Sup. Ct., Case No. CGC-13-534793, filed Mar. 15, 2016), available at <http://www.documentcloud.org/documents/2765268-Harsh.html>.

³⁷ *Id.* ¶ 5.

³⁸ *Id.* ¶ 10.

³⁹ Declaration of Connie Reeder ¶¶ 2-3 (Cal. Sup. Ct., Case No. CGC-13-534793, filed Mar. 15, 2016), available at, <http://www.documentcloud.org/documents/2765270-Connie-Reeder.html>.

⁴⁰ *Id.* ¶ 5.

⁴¹ *Id.* ¶ 6.

⁴² *Id.* ¶ 8.

housing for herself and child because of the damage done to her credit by these loans.⁴³ Accounts like these of Corinthian's systematic victimization of vulnerable students are, tragically, not unusual.

The Department has now intentionally decided to further compound the damage by adopting a senseless, cruel, and unlawful rule to provide tens of thousands of Corinthian's victims with only partial relief. This new rule, in many instances, will provide as little as 10% loan forgiveness to Corinthian victims, subjecting them to renewed debt collection on the remaining balance.⁴⁴ These are victims that the Department already found were qualified for complete loan relief. Given the dire financial situation in which many of Corinthian's victims already find themselves, the added monthly expense of paying back invalid federal student loans will simply be too much to bear, leading to financial devastation.

Refusing to pay back a student loan is not an option. Beyond the fact that defaulting ruins a borrower's credit, the Department itself has potent tools at its disposal to seek repayment, including tax-refund seizure and administrative wage garnishments. 20 U.S.C. § 1095a; 31 U.S.C. § 3270A;

⁴³ *Id.* ¶ 9.

⁴⁴ *See, e.g.*, <http://www.ed.gov/news/press-releases/improved-borrower-defense-discharge-process-will-aid-defrauded-borrowers-protect-taxpayers> (last visited Oct. 10 2018).

34 C.F.R. § 30.33. Bankruptcy may not even provide an escape. *See* 11 U.S.C. § 523(a)(8) (student loans are presumptively nondischargeable).

The Department has already sent thousands of notices to Corinthian’s victims with pending borrower-defense claims to inform them that they no longer qualify for full cancellation of their federal student loans—relief that tens of thousands of similarly situated borrowers already received. If the Department is allowed to proceed as planned, the ensuing financial devastation to countless borrowers is both entirely predictable and avoidable.

CONCLUSION

For these reasons, Amici States respectfully request that the Court affirm the district court’s preliminary injunction.

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I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on October 10, 2018. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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