

1 XAVIER BECERRA
 Attorney General of California
 2 NICKLAS A. AKERS
 Senior Assistant Attorney General
 3 MICHAEL E. ELISOFON
 Supervising Deputy Attorney General
 4 STEVEN D. DE SALVO (SBN 199904)
 BERNARD A. ESKANDARI (SBN 244395)
 5 Deputy Attorneys General
 300 South Spring Street, Suite 1702
 6 Los Angeles, CA 90013
 Tel: (213) 269-6348
 7 Fax: (213) 897-4951
 Email: bernard.eskandari@doj.ca.gov

8 *Attorneys for the People of the State of California*

9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12

13
 14 **PEOPLE OF THE STATE OF**
CALIFORNIA ex rel. Xavier Becerra,
 15 Attorney General of California,
 16 Plaintiff,
 17 v.
 18 **UNITED STATES DEPARTMENT**
OF EDUCATION and **BETSY**
 19 **DEVOS**, in her official capacity as
 Secretary of Education,
 20 Defendants.
 21

Case No.: 17-7106

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

**ADMINISTRATIVE PROCEDURE
ACT CASE**

22
23 **INTRODUCTION**

24 1. The United States Department of Education (“Department”) is
 25 unlawfully renegeing on its legal commitment to provide critical, expedited student-
 26 loan debt relief to tens of thousands of students defrauded by Corinthian Colleges,
 27 Inc. (“Corinthian”). The Department’s unjustified failure to expeditiously grant this
 28 promised relief is outrageous and immoral—and it violates the Administrative

1 Procedure Act (“APA”).

2 2. In consultation with the California Attorney General’s Office, the
3 Department found in 2015 and 2016 that some 80,000 student borrowers
4 nationwide—including more than 38,000 in California—were fraudulently induced
5 to enroll in educational programs offered by Corinthian, a now-defunct operator of
6 predatory for-profit schools. The Department determined that these students
7 qualified under its “borrower defense” regulations for expedited discharge of their
8 federal student loans and reimbursement of amounts previously paid.

9 3. To process the ensuing flood of borrower-defense claims, the
10 Department implemented specific, streamlined review procedures to quickly grant
11 full relief to these already-qualified Corinthian students. The Department, the
12 California Attorney General’s Office, and others also undertook massive outreach
13 efforts to inform these students of their eligibility for relief. Between 2015 and
14 January 20, 2017, the Department granted 28,000 of these borrower-defense claims,
15 totaling more than half a billion dollars in critical debt relief.

16 4. However, since January 20, 2017, and under Secretary DeVos, the
17 Department has unjustifiably and indefinitely delayed approving even a single
18 borrower-defense claim. This, despite a ballooning backlog of more than 50,000
19 Corinthian claims.

20 5. The Department’s ongoing delay in approving the pending claims of
21 defrauded Corinthian students is unlawful under the APA. This delay—11 months
22 and counting—is unreasonable and illegal because the Department has already
23 determined that these students qualify for specific, expedited relief. The
24 Department has no justification for its delay—a delay that unquestionably harms
25 students. Moreover, the APA bars the Department from reversing course by
26 denying pending borrower-defense claims or treating them differently than the
27 thousands of claims that it approved prior to January 20, 2017. The Department has
28 already determined that these Corinthian students qualify for full debt relief; the

1 Department cannot now change its mind without violating the APA’s bar on
2 applying rules retroactively.

3 6. Further compounding the plight of defrauded Corinthian students, the
4 Department continues to deploy draconian debt-collection tactics against many
5 students with pending borrower-defense claims and against many students that the
6 Department knows are qualified for debt relief. The Department has seized these
7 students’ tax refunds and garnished their wages in violation of the APA.

8 **JURISDICTION AND VENUE**

9 7. This action arises under the APA, 5 U.S.C. §§ 701-706, and the Higher
10 Education Act, 20 U.S.C. § 1082. This Court has subject-matter jurisdiction over
11 this action because it is a case arising under federal law. 28 U.S.C. § 1331.

12 8. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1) because a
13 substantial part of the events or omissions giving rise to the claims occurred in this
14 district and because the People reside in this district.

15 9. This Court is authorized to grant the requested relief under the
16 Declaratory Relief Act, 28 U.S.C. §§ 2201-2202; the APA, 5 U.S.C. § 706; the
17 Mandamus Act, 28 U.S.C. § 1361; and the Higher Education Act, 20 U.S.C. § 1082

18 **INTRADISTRICT ASSIGNMENT**

19 10. Assignment to the San Francisco Division is appropriate because a
20 substantial part of the events or omissions giving rise to the claims in this complaint
21 occurred in this division. *See* Local Rule 3-2(c). Among other events, the
22 Department instructed all affected Corinthian students to submit their written
23 borrower-defense claims to a Department address in San Francisco.¹ Moreover,
24 multiple Corinthian campuses were once located in San Francisco County.

25 **PARTIES**

26 11. The People of the State of California (“People”) bring this action by

27 ¹ [https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/borrower-](https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/borrower-defense)
28 [defense.](https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/borrower-defense)

1 and through its Attorney General, Xavier Becerra, California's chief law officer.
2 Cal. Const. art. V, § 13. The People have initiated numerous costly and resource-
3 intensive investigations and enforcement actions against for-profit schools,
4 including Corinthian, for violations of California's consumer-protection statutes.

5 12. Defendant United States Department of Education is an executive
6 agency of the United States government. The Department's principal address is 400
7 Maryland Avenue, SW, Washington, D.C. 20202.

8 13. Defendant Betsy DeVos is the Secretary of Education and is being
9 sued in her official capacity. Her official address is 400 Maryland Avenue, SW,
10 Washington, D.C. 20202.

11 **FACTUAL ALLEGATIONS**

12 **I. FEDERAL STUDENT LOANS AND FOR-PROFIT SCHOOLS**

13 14. Students pursuing higher education can receive federal financial
14 assistance in the form of grants and loans under Title IV of the Higher Education
15 Act of 1965, as amended ("HEA"), 20 U.S.C. § 1071 et seq. These programs
16 provide critical assistance to prospective students and expand access to higher
17 education to those who could not otherwise afford it.

18 15. Title IV student grants and loans are a significant source of revenue for
19 many postsecondary institutions, and especially for for-profit schools. For-profit
20 schools receive the vast majority of their revenue from Title IV funds. In 2009, the
21 15 publicly traded for-profit education companies received 86% of their revenues
22 from Title IV funds.² Federal student aid to for-profit schools totaled \$32 billion in
23 the 2009-2010 academic year.³

24 16. For-profit schools typically advertise to students with modest financial
25

26 ² *For Profit Higher Education: The Failure to Safeguard the Federal*
27 *Investment and Ensure Student Success*, United States Senate, Health, Education,
28 Labor and Pensions Committee, at 3 (July 30, 2012), http://www.help.senate.gov/imo/media/for_profit_report/Contents.pdf.

³ *Id.* at 15.

1 resources who are eligible for federal funds in the form of grants and loans. Many
2 of these students are the first in their families to seek higher education. For-profit
3 schools have directed their marketing toward low-income and minority students,
4 particularly low-income women of color.

5 **II. DEFENSE TO REPAYMENT**

6 17. Recognizing the damaging impact that school misconduct can have on
7 student borrowers, the HEA provides students with a defense to repayment of their
8 federal student loans when they have been victimized by their school. 20 U.S.C.
9 § 1087e(h). The HEA requires that the Department define, by regulation, the acts
10 and omissions of a school that provide a basis for defense to repayment of a federal
11 student loan. *Id.*

12 18. In 1994, the Department promulgated regulations stating that a student
13 may “assert as a defense against repayment, any act or omission of the school
14 attended by the student that would give rise to a cause of action against the school
15 under applicable State law.” 34 C.F.R. § 685.206(c)(1).

16 19. Defense to repayment is also a contractual right written into every
17 borrower’s Master Promissory Note since 1994: “In some cases, you may assert,
18 under applicable law and regulations, a defense against repayment of your loan on
19 the basis that the school did something wrong or failed to do something that it
20 should have done.”⁴

21 20. If the borrower’s defense to repayment is successful, “the borrower is
22 relieved of the obligation to repay all or part of the loan and associated costs and
23 fees that the borrower would otherwise be obligated to pay.” 34 C.F.R.
24 § 685.206(c)(2). The Secretary may provide the borrower further relief as the
25 Secretary deems appropriate, including “[r]eimbursement of the borrower for amounts
26 paid toward the loan,” “[d]etermining that the borrower is not in default on the

27 ⁴ Department of Education Master Promissory Note, [http://studentloans.gov/
28 myDirectLoan/subUnsubHTMLPreview.action](http://studentloans.gov/myDirectLoan/subUnsubHTMLPreview.action).

1 loan” and is therefore eligible for Title IV assistance, and “[u]pdating reports to
2 consumer reporting agencies to which the Secretary previously made adverse credit
3 reports.” *Id.* § 685.206(c)(2)(i)-(iii).

4 21. In the event of a successful defense to repayment, the Secretary is
5 authorized to initiate “an appropriate proceeding” against the school whose conduct
6 gave rise to the defense “to pay to the Secretary the amount of the loan to which the
7 defense applies.” *Id.* § 685.206(c)(3).

8 22. The People have an interest in the enforcement of 20 U.S.C. § 1087e(h)
9 and the borrower-defense regulations implementing it, 34 C.F.R. § 685.206(c).
10 Enforcement of borrower-defense protections enhances the wellbeing of California
11 residents by discharging the federal loans of California students who have been
12 defrauded or otherwise harmed by their school. Here, the People’s interest is
13 particularly acute because tens of thousands of defrauded Californians have already
14 been qualified by the Department for expedited relief as a direct result of a joint
15 investigation between the Department and the California Attorney General’s Office.
16 In addition, these borrower-defense protections enhance state law-enforcement
17 actions against predatory schools by providing additional remedies for violations of
18 state law. They also deter school misconduct in the State because schools may be
19 liable for reimbursement to the Department for each successful borrower-defense
20 claim. Finally, the Department’s timely approval of borrower-defense claims
21 permits students with meritorious claims to access additional federal aid, thereby
22 allowing them to continue their studies at California’s public colleges and
23 universities.

24 **III. THE CORINTHIAN INVESTIGATION AND COLLAPSE**

25 23. Corinthian was once one of the largest for-profit education companies
26 in the world. At its height, Corinthian operated more than 100 campuses under its
27 Everest, Heald, and Wyotech brands, including more than 30 campuses in
28 California. Over the course of its existence, Corinthian enrolled hundreds of

1 thousands of students in career-oriented programs. Corinthian marketed these
2 programs as a way for prospective students to obtain jobs in various fields,
3 including health care, business, criminal justice, and information technology.

4 24. Like most predatory, for-profit schools, Corinthian kept enrollment—
5 and profits—up by systemically targeting low-income, financially unsophisticated,
6 and vulnerable groups with false promises of a good education, high-paying jobs,
7 and lifelong career services. In reality, Corinthian’s programs often left its students
8 with a mountain of debt and no better career prospects.

9 25. In October 2013, the California Attorney General led the charge
10 against Corinthian by filing an enforcement action to put an end to Corinthian’s
11 misconduct. *People v. Corinthian Colleges, Inc.*, No. CGC-13-534793 (Cal. Super.
12 Ct., filed Oct. 11, 2013). Other states and federal agencies followed suit, including
13 the Consumer Financial Protection Bureau.⁵

14 26. In November 2014, amid mounting government investigations, law-
15 enforcement actions, and financial difficulties, Corinthian sold 53 of its campuses
16 outside of California and took steps to liquidate its private student-loan portfolio,
17 which had a face value of over \$500 million.

18 27. In April 2015, based on a joint investigation with the California
19 Attorney General’s Office, the Department confirmed that Corinthian engaged in
20 systematic and widespread misrepresentations of job-placement rates to current and
21 prospective students at its Heald campuses and fined Corinthian approximately \$30
22 million.⁶

23 28. Through this joint investigation, the Department found that (a) Heald
24 overstated the employment prospects of its graduates, (b) Heald’s inaccurate and
25 incomplete disclosures were misleading to students, and (c) current and prospective

26 ⁵ See, e.g., *Consumer Fin’l Prot. Bureau v. Corinthian*, No. 14-7194 (N.D.
27 Ill., filed Sept. 16, 2014).

28 ⁶ <http://www.ed.gov/news/press-releases/us-department-education-fines-corinthian-colleges-30-million-misrepresentation>.

1 students could have relied upon that misleading information when they were
2 deciding whether to attend Heald.

3 29. On April 27, 2015, after the Department notified Corinthian of its
4 intention to impose a \$30 million fine based on Heald's falsified job-placement
5 rates, Corinthian announced the closure of its remaining 28 campuses.

6 30. On May 4, 2015, Corinthian filed bankruptcy.

7 31. On March 23, 2016, the People obtained a default judgment in
8 California state court against Corinthian. The judgment ordered Corinthian to pay
9 more than \$1.1 billion in monetary relief and included judicial findings based on
10 substantial evidence that Corinthian (a) published placement rates that were
11 systematically false, misleading, and erroneous; (b) ran millions of advertisements
12 for programs that it did not offer; (c) unlawfully used official military seals in its
13 materials; (d) engaged in unlawful debt collection; (e) misrepresented the
14 transferability of credits; (f) failed to disclose an affiliation with a private-loan
15 company to which it funneled students; and (g) misrepresented its financial stability
16 to students.

17 **IV. THE DEPARTMENT QUALIFIES DEFRAUDED CORINTHIAN STUDENTS**
18 **FOR EXPEDITED BORROWER-DEFENSE RELIEF AND IMPLEMENTS A**
19 **STREAMLINED PROCESS TO GRANT THAT RELIEF**

20 32. Corinthian's rampant fraud and sudden collapse left tens of thousands
21 of students entitled to discharge of their federal student loans. On June 8, 2015, in
22 consultation with the California Attorney General's Office, the Department
23 announced that it would "create a streamlined process" to provide defrauded
24 students who attended Corinthian's Heald campuses with expedited relief under the
25 borrower-defense rule:

26 [A]fter analyzing the Department's findings in its investigation of
27 Heald College and relevant California law, the Department has
28 determined that evidence of misrepresentation exists for students
enrolled in a large majority of programs offered at Heald College
campuses between 2010 and 2015. **Specifically, the Department has
determined that students who relied on misrepresentations found
in published job placement rates for many Heald programs**

1 **qualify to have their federal direct student loans discharged.**
 2 **Students can have their loans forgiven and receive refunds for**
 3 **amounts paid based on a simple attestation.**⁷

4 The Department's findings, which served to qualify affected students for expedited,
 5 full borrower-defense relief, applied to approximately 800 educational programs
 6 offered by Heald, almost all of which were in California ("Heald Findings").⁸

7 33. The Department committed to continuing to work with various
 8 authorities, including state attorneys general, and to using existing evidence to ease
 9 students' burden of establishing their eligibility for borrower-defense relief:

10 Wherever possible, the Department will rely on evidence established
 11 by appropriate authorities in considering whether whole groups of
 12 students (for example, an entire academic program at a specific
 13 campus during a certain time frame) are eligible for borrower defense
 14 relief. This will simplify and expedite the relief process, reducing the
 15 burden on borrowers.⁹

16 34. Because, at the time, the Department did not have an established
 17 infrastructure for accepting, processing, and reviewing large numbers of borrower-
 18 defense claims, the Department further announced that it would appoint a Special
 19 Master to develop and implement this infrastructure. While the Special Master's
 20 initial focus would be on defrauded students covered by the Heald Findings, the
 21 Special Master would also "develop a broader system that will support students at
 22 other institutions who believe they have a defense to repayment."¹⁰

23 35. Finally, also on June 8, 2015, the Department announced that all
 24 former Corinthian students who submitted a borrower-defense claim would have
 25 the option of placing their federal loans immediately into forbearance. For students
 26 who were already in default, the Department agreed to stop collection activity.

27 ⁷ Fact Sheet: Protecting Students from Abusive Career Colleges ("Fact
 28 Sheet"), <http://www.ed.gov/news/press-releases/fact-sheet-protecting-students-abusive-career-colleges> (emphasis added).

⁸ List of Heald College Programs and Enrollment Dates Covered by
 Department of Education Findings, <http://studentaid.ed.gov/sa/sites/default/files/heald-findings.pdf>.

⁹ Fact Sheet, *supra* note 7.

¹⁰ *Id.*

1 36. The Department determined that defrauded Corinthian students
2 qualified for relief by looking to California law to analyze the applicability of its
3 Heald Findings to potential borrower-defense claims.¹¹ California law was
4 appropriate, according to the Department, because Heald was headquartered in and
5 managed from California. The Department determined that Corinthian's
6 misrepresentations of job-placement rates constituted prohibited business acts or
7 practices that violated California's Unfair Competition Law, Cal. Bus. & Prof.
8 Code § 17200 et seq. Accordingly, students that relied on the misleading rates when
9 they enrolled would have a cause of action against Corinthian under California law.
10 The Department's analysis was based on legal theories developed by the California
11 Attorney General's Office.

12 37. Based on this analysis, the Department created a simple attestation
13 form for students to complete if Corinthian had misled them about job-placement
14 rates. This simple form allowed students to document the impact of Corinthian's
15 inflated job-placement rates on them in a manner that supported a cause of action
16 under California's Unfair Competition Law. It "incorporated each of these elements
17 of a claim [under the Unfair Competition Law] as to which relief could be granted"
18 and included all the necessary information for the Department to grant a claimant
19 relief.¹² Students could also use this form to request that the Department place their
20 federal student loans in forbearance and stop collections while the Department
21 reviewed their claims.

22 38. The Department determined that the scope of relief for successful
23 claimants would be based on California law too: "[S]tudents who relied upon false
24 or misleading placement rate disclosures in enrolling in Heald College programs

25 ¹¹ First Report of the Special Master for Borrower Defense to the Under
26 Secretary, at 5 (Sept. 3, 2015) ("First Special Master Report"), [http://www2.ed.gov/
documents/press-releases/report-special-master-borrower-defense-1.pdf](http://www2.ed.gov/documents/press-releases/report-special-master-borrower-defense-1.pdf).

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

1 would have established a [borrower-defense] claim as to which relief would be
 2 granted under California law.”¹³ California’s Unfair Competition Law entitled
 3 Corinthian’s victims to statutory restitution in the form of a complete refund of all
 4 payments made to attend Corinthian, *see* Cal. Bus. & Prof. Code § 17203, without
 5 regard to any supposed “benefit” they may have received from Corinthian.¹⁴ Thus,
 6 the Department determined that the appropriate legal remedy for defrauded
 7 Corinthian students would be complete discharge of their federal student loans and
 8 refunds of any amounts paid on them.

9 39. On June 25, 2015, the Department appointed Joseph A. Smith as
 10 Special Master to implement the Department’s borrower-defense process, which
 11 included, among other things, developing “a set of rules for deciding cases in a
 12 consistent way.”¹⁵

13 40. On November 17, 2015, the Department announced additional findings
 14 from the joint investigation with the California Attorney General’s Office. The
 15 Department found that Corinthian systematically misrepresented job-placement
 16 rates to enrolled and prospective students at an additional 124 Corinthian programs
 17 offered at 20 of its Everest and Wyotech campuses in California and Florida.¹⁶ The
 18 Department determined that student borrowers who attended any of these programs
 19 would also qualify for expedited relief under the Department’s streamlined
 20 borrower-defense process.

21 41. On March 25, 2016, the Department announced additional findings

22 ¹³ *Id.*

23 ¹⁴ *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
 24 to the plaintiff funds in which he or she has an ownership interest”); *People v.*
 25 *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.”).

26 ¹⁵ First Special Master Report, *supra* note 11, at 9.

27 ¹⁶ Department of Education and Attorney General Kamala Harris Announce
 Findings from Investigation of Wyotech and Everest Programs, [http://www.ed.gov/
 28 news/press-releases/department-education-and-attorney-general-kamala-harris-
 announce-findings-investigation-wyotech-and-everest-programs](http://www.ed.gov/news/press-releases/department-education-and-attorney-general-kamala-harris-announce-findings-investigation-wyotech-and-everest-programs).

1 that Corinthian systematically misrepresented job-placement rates to enrolled and
2 prospective students: “[S]tudents who were defrauded at 91 former [Corinthian]
3 campuses nationwide have a clear path to loan forgiveness under evidence
4 uncovered by the Department while working with multiple state attorneys
5 general.”¹⁷ These additional findings applied to borrowers who attended
6 Corinthian’s Everest and WyoTech campuses at approximately 800 programs in
7 more than 20 states (“Everest and WyoTech Findings”). They “represent[ed] the
8 largest group of borrowers eligible for loan relief so far from the ongoing
9 investigation into Corinthian.”¹⁸ As with prior findings, affected students were
10 immediately qualified for expedited relief under the Department’s streamlined
11 borrower-defense process.

12 42. Altogether, the Department’s findings (collectively, “Corinthian Fraud
13 Findings”) qualified approximately 80,000 defrauded students who attended
14 Corinthian schools in 24 states for expedited borrower-defense relief through the
15 same streamlined process.¹⁹ These findings applied to over 38,000 Californians.

16 43. Starting in June 2015, following the announcement of the Heald
17 Findings, the Department, the California Attorney General’s Office, student
18 advocates, and others have engaged in timely and costly outreach efforts to notify
19 eligible students that they qualify for expedited debt relief. Outreach efforts have
20 been aided by the fact that the Department possesses individualized program-level
21 enrollment data for the vast majority of the defrauded Corinthian students. This
22 information includes, among other things, borrower name, address, program of

23 ¹⁷ <http://www.ed.gov/news/press-releases/us-department-education-announces-path-debt-relief-students-91-additional-corinthian-campuses>.

24 ¹⁸ List of Everest/WyoTech Programs and Enrollment Dates Covered by
25 Department of Education Findings, <http://studentaid.ed.gov/sa/sites/default/files/ev-wy-findings.pdf>.

26 ¹⁹ These findings applied to Corinthian campuses in the following states:
27 California; Colorado; Florida; Georgia; Illinois; Indiana; Maryland; Massachusetts;
28 Michigan; Minnesota; Missouri; Nevada; New Jersey; New York; Ohio; Oregon;
Pennsylvania; Texas; Utah; Virginia; Washington; West Virginia; Wisconsin; and
Wyoming.

1 study, and program start date.

2 44. However, outreach efforts have not reached every eligible student.
3 Thousands of borrowers already qualified for relief by the Department have not yet
4 submitted claims. As recently as January 2017, the Department announced that it
5 would pursue new methods to reach these victims, including expanded postal-mail
6 outreach, Facebook advertisement, outreach through servicers, and partnerships
7 with state attorneys general.

8 **V. THE DEPARTMENT GRANTS 28,000 BORROWER-DEFENSE CLAIMS**

9 45. Starting in late 2015, the Department began approving borrower-
10 defense claims, as it had promised in its June 8, 2015 announcement. As of
11 December 3, 2015, the Special Master had recommended approval of 1,312
12 borrower-defense claims and recommended “full relief (restitution of all amounts
13 paid)” for these students’ loans.²⁰ The Under Secretary authorized this relief. The
14 vast majority of approved claims (1,062) were from defrauded Californians. The
15 Special Master continued to recommend approval of Corinthian borrower-defense
16 claims throughout his one-year tenure, which ended June 29, 2016. In total, the
17 Special Master recommended approval of 3,787 Corinthian claims,²¹ for which the
18 Under Secretary agreed and authorized “full relief”—meaning complete discharge
19 of the claimant’s relevant federal loans and reimbursement of all amounts
20 previously paid.

21 46. On February 8, 2016, the Department announced the creation of the
22 Federal Student Aid (“FSA”) Enforcement Office to respond more quickly and
23 efficiently to allegations of school misconduct. This was part of the Department’s
24 larger efforts to strengthen FSA’s enforcement and oversight activities. The
25 Enforcement Office would include a dedicated Borrower Defense Unit to process

26 ²⁰ Second Special Master Report, *supra* note 12, at 3.

27 ²¹ Fourth Report of the Special Master for Borrower Defense to the Under
28 Secretary, at 1 (June 29, 2016), [http://www2.ed.gov/documents/press-releases/
report-special-master-borrower-defense-4.pdf](http://www2.ed.gov/documents/press-releases/report-special-master-borrower-defense-4.pdf).

1 and analyze borrower-defense claims, investigate institutions in connection with
2 those claims, and coordinate its efforts with federal and state agencies. The
3 Borrower Defense Unit would be led by a Director who would oversee “a team
4 dedicated to investigating and adjudicating borrower defense claims.”²² The
5 Borrower Defense Unit would take over from the Special Master at the conclusion
6 of his tenure.

7 47. In late June 2016, the Department completed the transition of the
8 Special Master’s responsibilities to the Borrower Defense Unit.

9 48. On October 28, 2016, the FSA Enforcement Office issued a “Report
10 on Borrower Defense.” As of that date, the Department had approved 15,694
11 borrower-defense claims based on the Corinthian Fraud Findings and granted full
12 relief to all those claims. At the time, “the Department expect[ed] to resolve all
13 pending eligible [Corinthian Fraud] [F]indings claims by spring 2017.”²³ The FSA
14 Enforcement Office also stated that, following a “thorough” investigation into
15 Corinthian’s practices, it had identified additional categories of wrongdoing that
16 would qualify Corinthian students for borrower-defense relief, including
17 misrepresentations Corinthian made about the transferability of credits.²⁴

18 49. On January 13, 2017, the Department announced that it had approved
19 12,000 additional borrower-defense claims from students qualified by the
20 Corinthian Fraud Findings. This brought the total number of approved claims to
21 more than 28,000, representing roughly \$558 million in loan relief. The Department
22 granted all approved claimants full relief. The Department also announced that it
23 had approved two additional categories of Corinthian borrower-defense claims: (a)
24 those involving misrepresentations about the transferability of credits as the basis

25 _____
26 ²² Federal Student Aid Enforcement Office Report on Borrower Defense, at 1
(Oct. 28, 2016), <http://www2.ed.gov/documents/press-releases/borrower-defense-report.pdf>.

27 ²³ *Id.*

28 ²⁴ *Id.* at 3.

1 for debt relief; and (b) those involving Corinthian’s false guarantees of employment
2 for graduates.²⁵

3 50. Although the Department had granted 28,000 claims, as of January 20,
4 2017, approximately 39,000 additional claims from Corinthian students—with
5 more than 11,000 from Californians—still awaited processing by the Department.

6 **VI. THE DEPARTMENT STOPS APPROVING BORROWER-DEFENSE CLAIMS**

7 51. On January 20, 2017, the Department abruptly halted approval of all
8 borrower-defense claims.

9 52. Since January 20, 2017, the Department has not approved a single
10 borrower-defense claim. It has adjudicated only two; it denied both.²⁶

11 53. Since January 20, 2017, the FSA Enforcement Office has stopped
12 issuing reports to senior officials or others on the status of borrower-defense claims.

13 54. Meanwhile, defrauded students have continued to submit claims for
14 relief under the borrower-defense rule. As of July 7, 2017, 65,169 borrower-defense
15 claims were pending review, decision, or adjudication by the Department. Of these,
16 45,092 were from Corinthian students—with more than 13,000 from Californians.

17 55. As of December 14, 2017, the Department’s publicly available “active
18 contracts” list showed “a growing backlog of over 85,000 borrower claims
19 submitter [sic] by applicants to request relief from student debt due [to] education
20 institution abuses or other types of problems.”²⁷

21 56. The vast majority of these pending claims are from Corinthian students.
22 On information and belief, the number of pending Corinthian borrower-defense
23 claims currently pending before the Department exceeds 50,000.

24 ²⁵ [http://www.ed.gov/news/press-releases/american-career-institute-
25 borrowers-receive-automatic-group-relief-federal-student-loans](http://www.ed.gov/news/press-releases/american-career-institute-borrowers-receive-automatic-group-relief-federal-student-loans).

26 ²⁶ Office of Inspector General, Report: Federal Student Aid’s Borrower
Defense to Repayment Loan Discharge Process, at 3 (Dec. 8, 2017), [http://www2.
26 ed.gov/about/offices/list/oig/auditreports/fy2018/i04r0003.pdf](http://www2.ed.gov/about/offices/list/oig/auditreports/fy2018/i04r0003.pdf).

27 ²⁷ An Excel file that details the Department’s active contracts is available
28 here: http://www2.ed.gov/about/offices/list/ocfo/contracts/active_contracts_list.xls
(last visited Dec. 14, 2017).

1 57. The Department has provided no reasonable or adequate justification
2 for delaying approval of tens of thousands of pending borrower-defense claims that
3 the Department has already determined qualify for expedited, full relief under the
4 Corinthian Fraud Findings. These pending claims are indistinguishable from the
5 28,000 claims for which the Department already approved and granted expedited,
6 full relief prior to January 20, 2017.

7 58. Public officials have decried the Department's delay. On May 17,
8 2017, five Senators wrote to the Department requesting an update on the processing
9 of claims. On June 5, 2017, the California Attorney General, with 19 other
10 attorneys general, wrote to the Department inquiring about the delay and urging the
11 Department to expeditiously grant pending Corinthian claims.

12 59. The Department's responses provided no commitment or timetable to
13 process claims. In response to the letter from the attorneys general, the Department
14 stated that the pending claims "will be processed under the current regulatory
15 requirements."

16 60. On September 7, 2017, the Senate Committee on Appropriations
17 expressed concern over the growing backlog of borrower-defense claims:

18 Former students who enrolled in many programs of study at more than
19 100 [Corinthian] campuses were provided with highly misleading job
20 placement rate information. At least 45,000 former [Corinthian]
21 students have pending applications with the Department for a
22 discharge and refund of their fraudulently issued federal loan debt,
23 and the Committee believes that many more students have not
24 applied.²⁸

25 The Committee directed "the Secretary to process applications as expeditiously as
26 possible, and ensure students are aware of their potential eligibility for relief by
27 identifying and contacting borrowers who may qualify to assert a defense to
28 repayment utilizing the program-level enrollment information provided to the
Department by states in 2016."²⁹

²⁸ S. Rep. No. 115-150, at 184 (2017).

²⁹ *Id.*

1 61. Since her appointment, Secretary DeVos has broadly evinced hostility
2 toward borrower defense. On June 14, 2017, Secretary DeVos announced a
3 “regulatory reset” of the Department’s legislative rules affecting for-profit
4 schools.³⁰ This “reset” included unlawfully delaying new borrower-defense
5 regulations that were set to go into effect on July 1, 2017.³¹ Among other borrower
6 protections, these new regulations would have provided more-efficient procedures
7 for the Department to provide automatic borrower-defense relief to groups of
8 defrauded students without the necessity of students submitting individual claims.
9 Despite broad support from law-enforcement agencies, student advocates, and
10 others, the Secretary stated these regulations created “a muddled process that’s
11 unfair to students and schools, and puts taxpayers on the hook for significant costs.”

12 62. On June 16, 2017, the Department announced that the “regulatory
13 reset” announced by Secretary DeVos “will not prevent student borrowers from
14 obtaining relief because the Department will continue to process borrower defense
15 claims under existing regulations that will remain in effect during the
16 postponement.”³²

17 63. However, Department statements in an August 2017 procurement
18 notice (for borrower-defense claim-processing support services) appear to
19 contradict this. In that notice, the Department stated that “claim processing policies
20 are evolving” and that “policy changes may necessitate certain claims already
21 processed be revisited to assess other attributes.”

22 64. On September 22, 2017, speaking at the Mackinac Republican
23

24 ³⁰ <http://www.ed.gov/news/press-releases/secretary-devos-announces-regulatory-reset-protect-students-taxpayers-higher-ed-institutions>.

25 ³¹ The Department promulgated revised borrower-defense regulations on
26 November 1, 2016, with an effective date of July 1, 2017. However, the
27 Department has now unlawfully delayed that date while it engages in rulemaking to
28 revise them. *See* 82 Fed. Reg. 27,621; 82 Fed. Reg. 49,114; 82 Fed. Reg. 49155.
This delay is the subject of a separate APA challenge, to which the People are a
party. *Mass. v. U.S. Dept. of Educ.*, No. 17-1331 (D.D.C., filed July 6, 2017).

³² 82 Fed.Reg. 27621-01.

1 Leadership Conference, Secretary DeVos criticized the borrower-defense process
 2 responsible for 28,000 students obtaining full relief: “Under the previous rules, all
 3 [students] had to do was raise his or her hands to be entitled to so-called free
 4 money.” Secretary DeVos stated, “while students should have protections from
 5 predatory practices, schools and taxpayers should also be treated fairly as well.”

6 65. On October 24, 2017, in announcing additional delays tied to Secretary
 7 DeVos’s “regulatory reset,” the Department stated that it “would continue to
 8 process borrower defense claims under the existing regulations that will remain in
 9 effect during the delay so that borrowers may continue to apply for the discharge of
 10 all or a part of their loans.”³³ And, “the Department is continuing to process
 11 borrower defense claims under the existing regulations that will remain in effect
 12 during the postponement.”³⁴

13 66. As of December 14, 2017, the Department’s website still states that the
 14 Corinthian Fraud Findings qualify defrauded borrowers for expedited relief:

15 The Department has found that between 2010 and 2014, Heald
 16 College misrepresented job placement rates for many of its programs
 17 of study. While borrower defense claims typically require the
 18 borrower to specifically show that his or her school violated state law,
 19 the Department’s Heald College findings qualify students enrolled in
 20 the covered programs and time periods to apply for a discharge of
 21 their federal Direct Loans through an expedited process using a simple
 22 attestation form.³⁵

23 67. Nonetheless, the Department is unreasonably delaying approval of any
 24 borrower-defense claims.

25 **VII. CALIFORNIA BORROWERS ARE HARMED BY THE DEPARTMENT’S**
 26 **DELAY IN APPROVING BORROWER-DEFENSE CLAIMS**

27 68. As the Senate Committee on Appropriations recognized, “there is
 28 ongoing disruption to and burden on the lives of students from the closure of and

³³ 82 Fed. Reg. at 49,156.

³⁴ 82 Fed. Reg. at 49,115.

³⁵ <http://studentaid.ed.gov/sa/about/announcements/corinthian>. An identical statement also appears on the same Department webpage for the Everest and WyoTech Findings.

1 misconduct by Corinthian Colleges, Inc.”³⁶

2 69. The Department’s assurances of forbearance and collections stoppages
3 have not eliminated the harm to students waiting for the Department to process their
4 pending claims. While students wait, interest continues to accrue on their federal
5 student loans. For students in default on their loans prior to submitting a borrower-
6 defense claim, the Department continues to negatively report their loans to
7 consumer reporting agencies.

8 70. The Department’s indefinite delay in processing borrower-defense
9 claims also creates unnecessary disruption in the lives of students waiting for the
10 Department to act. Students who have already taken out the maximum federal
11 student-aid award or defaulted on their loans cannot access new federal loans while
12 their borrower-defense claims are unresolved. For students who are eligible to take
13 out new federal loans, delay prevents them from making informed financial
14 decisions about whether to take on additional debt to enroll in new educational
15 programs.

16 71. In numerous instances, the Department has further increased the harm
17 to Corinthian students by failing to properly implement promised forbearances and
18 collection stoppages. The Department continues to unlawfully seize these students’
19 government payments, including tax refunds, through “administrative offset.” 31
20 U.S.C. §§ 3701, 3716, 3720A. The Department also continues to unlawfully
21 garnish their wages, through “administrative wage garnishment.” 31 U.S.C.
22 § 3720D. As recently as September 2016, more than 30,000 Corinthian students
23 were subject to administrative offset and more than 4,000 to administrative wage
24 garnishment.

25 72. Finally, the Department’s delay also harms defrauded Corinthian
26 students who qualify but have not yet submitted a claim for relief. The Department

27 _____
28 ³⁶ S. Rep. No. 115-150, at 184 (2017).

1 knows (because it possesses program-level enrollment information of defrauded
2 Corinthian students) that thousands of eligible Corinthian students have not yet
3 applied for borrower-defense relief to which they are entitled.³⁷ For these students,
4 the Department’s delay—and any intervening change by the Department in how it
5 processes claims—deprives them of the opportunity for expedited, full relief that
6 28,000 identically situated students have already obtained.

7 CLAIM I

8 **UNREASONABLY DELAYED AGENCY ACTION**

9 73. The People incorporate by reference paragraphs 1 through 72.

10 74. Under the APA, a reviewing court shall “compel agency action
11 unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

12 75. The Department has determined that student borrowers covered by the
13 Corinthian Fraud Findings have a valid borrower-defense claim and qualify for
14 expedited, full relief from their federal student loans. This is a “rule,” as defined by
15 5 U.S.C. § 551(4).

16 76. To implement this rule, the Department established streamlined
17 procedures to review and process borrower-defense claims submitted by affected
18 borrowers using the Department’s simple attestation form.

19 77. Before January 20, 2017, the Department approved and granted full
20 relief to 28,000 borrower-defense claimants using these procedures.

21 78. Since January 20, 2017, the Department has delayed approval of all
22 pending borrower-defense claims. It has been more than 11 months since the
23 Department last approved a claim.

24 79. More than 50,000 borrower-defense claims from Corinthian students

25 ³⁷ There are a host of reasons why eligible students may not have applied yet:
26 (a) outreach efforts miss students who move; (b) some students do not understand
27 outreach notices or suspect fraud; (c) some students fully intend to apply, relying on
28 the Department’s promises of expedited, full relief (and its granting of such relief to
other, identically situated, students), but just have not done so yet; and (d) the
Department’s delay has discouraged some students from applying at all.

1 are currently pending before the Department. The Department has already
2 determined that tens of thousands of these claims qualify for expedited, full relief
3 under the Corinthian Fraud Findings. New claims continue to mount.

4 80. The Department is unreasonably delaying agency action by failing to
5 timely approve pending borrower-defense claims in contravention of agency
6 determinations, established procedures, and prior practice.

7 81. The Department has provided no adequate justification for this delay.

8 82. This delay harms affected borrowers.

9 83. The Department has unreasonably delayed agency action on borrower-
10 defense claims covered by the Corinthian Fraud Findings and should be compelled
11 under 5 U.S.C. § 706(1) to approve them in accordance with agency determinations,
12 established procedures, and prior practice.

13 CLAIM II

14 **UNLAWFUL RETROACTIVE AGENCY ACTION**

15 84. The People incorporate by reference paragraphs 1 through 72 and 75
16 through 80.

17 85. Under the APA, a reviewing court shall “hold unlawful and set aside
18 agency action, findings, and conclusions found to be arbitrary, capricious, an abuse
19 of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

20 86. The Department’s failure to follow agency determinations, established
21 procedures, and prior practice for pending borrower-defense claims covered by the
22 Corinthian Fraud Findings constitutes an unacknowledged or constructive repeal of
23 its rule applicable to those claims.

24 87. The Department is operating under a revised rule to no longer grant
25 expedited, full relief to borrower-defense claims covered by the Corinthian Fraud
26 Findings.

27 88. This revised rule is an abandonment of agency determinations,
28 established procedures, and prior practice.

1 law. They should therefore be vacated and set aside under 5 U.S.C. § 706(2)(A).

2 **CLAIM IV**

3 **UNLAWFUL DEBT COLLECTION AGAINST STUDENTS WITH**
4 **PENDING BORROWER-DEFENSE CLAIMS**

5 97. The People incorporate by reference paragraphs 1 through 72.

6 98. Under the APA, a reviewing court shall “hold unlawful and set aside
7 agency action, findings, and conclusions found to be arbitrary, capricious, an abuse
8 of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

9 99. For many borrowers with pending borrower-defense claims (whether
10 or not covered by the Corinthian Fraud Findings), the Department has submitted
11 their loans to the U.S. Department of the Treasury for collection through
12 administrative offset (31 U.S.C. § 3716) or tax refund offset (31 U.S.C. § 3720A).

13 100. In doing so, the Department has certified that these loans are “legally
14 enforceable.” 31 C.F.R. § 285.2(d)(1); 31 C.F.R. § 285.5(d)(6). These loans are not
15 “legally enforceable” because they are “the subject of a pending administrative
16 review process” and “collection action during the review process is prohibited.” 31
17 C.F.R. § 285.5(b).

18 101. The Department’s conduct is also inconsistent with agency statements
19 that it will stop collections on the loans of borrower-defense claimants that opt for
20 forbearance.

21 102. These certifications are arbitrary, capricious, an abuse of discretion, or
22 otherwise not in accordance with law. They should therefore be held unlawful and
23 set aside under 5 U.S.C. § 706(2)(A).

24 **CLAIM V**

25 **UNLAWFUL DEBT COLLECTION AGAINST STUDENTS COVERED BY**
26 **THE CORINTHIAN FRAUD FINDINGS**

27 103. The People incorporate by reference paragraphs 1 through 72.

28 104. For many borrowers covered by the Corinthian Fraud Findings
(whether or not they submitted a borrower-defense claim), the Department has

1 engaged and is engaging in the following acts or omissions:

2 A. The Department has submitted their loans to the U.S.
3 Department of the Treasury for collection through administrative offset (31 U.S.C.
4 § 3716) or tax refund offset (31 U.S.C. § 3720A). In doing so, the Department has
5 certified that these loans are “legally enforceable.” 31 C.F.R. § 285.2(d)(1); 31
6 C.F.R. § 285.5(d)(6). For a loan to be “legally enforceable,” the Department must
7 make “a final agency determination that the debt, in the amount stated, is due, and
8 there are no legal bars to collection by offset.” 31 C.F.R. § 285.5(b).

9 B. The Department uses administrative wage garnishment (34
10 C.F.R. § 34.1, et seq.) to collect their loans. In doing so, the Department has
11 determined that these borrowers’ loans are owed and “current[ly] enforceab[le].” 34
12 C.F.R. §§ 34.3, 34.4, 34.6, 34.8.

13 105. In light of the Corinthian Fraud Findings, the Department is aware that
14 the loans of borrowers covered by these agency findings are not enforceable
15 because there are legal bars to collection. Specifically, the Department is aware that
16 borrowers covered by the Corinthian Fraud Findings have valid defenses to
17 repayment, including (a) a borrower defense under 34 C.F.R. § 685.206(c)(1), and
18 (b) a contractual defense arising under the Department’s Master Promissory Note.

19 106. The Department’s use of administrative offset, tax refund offset, and
20 administrative wage garnishment against these borrowers is arbitrary, capricious, an
21 abuse of discretion, or otherwise not in accordance with law, and should therefore
22 be held unlawful and set aside under 5 U.S.C. § 706(2)(A).

23 **DEMAND FOR RELIEF**

24 WHEREFORE, the People respectfully request that this Court enter a
25 judgment in their favor and grant the following relief:

26 A. Vacate all denials of borrower-defense claims covered by the
27 Corinthian Fraud Findings;

28 B. Compel the Department to approve and grant full relief to all

1 pending and future borrower-defense claimants covered by the Corinthian Fraud
2 Findings;

3 C. Declare unlawful and set aside Department action to collect on
4 loans subject to pending borrower-defense claims (whether or not covered by the
5 Corinthian Fraud Findings) in which the borrower has requested a forbearance or
6 collection stoppage;

7 D. Declare unlawful and set aside Department determinations and
8 certifications that the loans of borrowers with pending borrower-defense claims
9 (whether or not covered by the Corinthian Fraud Findings) are eligible for
10 administrative offset or tax refund offset;

11 E. Declare unlawful and set aside Department determinations and
12 certifications that the loans of borrowers covered by the Corinthian Fraud Findings
13 (whether or not they have submitted a borrower-defense claim) are eligible for
14 administrative offset, tax refund offset, or administrative wage garnishment.

15 F. Award the People reasonable costs and attorneys' fees; and

16 G. Grant other relief as the Court deems just and proper.
17

18 Dated: December 14, 2017

Respectfully submitted,

19 XAVIER BECERRA
20 Attorney General of California

21
22 /s/ Bernard A. Eskandari
23 BERNARD A. ESKANDARI
24 Deputy Attorney General

25 *Attorneys for the People of the*
26 *State of California*
27
28