

1 BRETT A. SHUMATE
2 Assistant Attorney General

3 MICHELLE R. BENNETT
4 Assistant Branch Director

5 LIAM C. HOLLAND
6 Trial Attorney
7 U.S. Department of Justice
8 Civil Division, Federal Programs Branch
9 1100 L Street, NW
10 Washington, DC 20005
11 Phone: (202) 514-4964
12 E-mail: liam.c.holland@usdoj.gov

13 *Attorneys for Defendants*

14
15 **UNITED STATES DISTRICT COURT FOR THE
16 NORTHERN DISTRICT OF CALIFORNIA
17 OAKLAND DIVISION**

18 THERESA SWEET, et al.,

19 Plaintiffs,

20 v.

21 LINDA MCMAHON, *in her official*
22 *capacity as Secretary of the United States*
23 *Department of Education, and*

24 THE UNITED STATES DEPARTMENT
25 OF EDUCATION,

26 Defendants.

27 Case No. 4:19-cv-03674-HSG

28 **DEFENDANTS' NOTICE OF MOTION
AND MOTION FOR RELIEF UNDER
FEDERAL RULE OF CIVIL
PROCEDURE 60(B)**

Date: March 26, 2026

Time: 2:00 p.m.

Place: Courtroom 2, 4th Floor

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**NOTICE OF MOTION AND MOTION FOR
RELIEF UNDER FEDERAL RULE OF CIVIL PROCEDURE 60(B)**

Notice is hereby given that Defendants move the Court for temporary relief from judgment under Federal Rule of Civil Procedure 60(b). Because this motion is time sensitive, *see infra* at p. 23, Defendants anticipate submitting an administrative motion for determination without hearing, or in the alternative, for a specially set hearing date, such that the motion is resolved on or before March 2, 2026. Should the Court desire a hearing on this motion, Defendants provide notice that, consistent with the Local Rules, they will move pursuant to Rule 60(b) of the Federal Rules of Civil Procedure for the aforementioned relief on March 26, 2026, at 2:00 p.m., before the Honorable Haywood S. Gilliam, Jr., in Courtroom 2 of the 4th Floor of the Oakland Courthouse (the earliest date currently available on the Court's motions calendar), or such earlier time as the Court may set. But as described *infra* at p. 23, this motion is time sensitive, and Defendants respectfully request a decision on or before March 2, 2026.

Defendants move for Rule 60(b) relief from the parties' settlement agreement, as incorporated in the Court's final judgment order, ECF No. 346, and as further modified by the Court on December 11, 2025. Defendants are currently required to provide full settlement relief to certain non-class members if Defendants fail to issue timely final decisions on such non-class members' borrower defense applications by January 28, 2026. Defendants respectfully request that the Court reconsider Defendants' request that the deadline for providing final decisions to these non-class members be extended by eighteen months, until July 28, 2027, at which point Defendants' obligation to provide full settlement relief to any non-class members whose applications are undecided by that date would be reinstated. The basis for the motion is set forth in the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

In June 2022, the Department of Education and Plaintiffs reached a settlement agreement that provided a comprehensive framework for resolving hundreds of thousands of pending borrower defense applications, some of which had been pending for more than seven years. In the three years since, the Department has substantially complied with all its obligations to class members. However, obligations to one group of individuals addressed in the settlement—the “post-class,” consisting of certain individuals

1 who submitted borrower defense applications over a five-month period after the parties executed the
 2 agreement—remain outstanding. But these individuals are not members of the class or parties in this case.
 3 By agreement, incorporated in the Court’s Final Judgment, the Department must adjudicate all claims
 4 submitted by this set of non-parties by January 28, 2026, or else provide them full settlement relief
 5 (including discharging relevant student loan debt, refunding amounts paid to the Department toward those
 6 loans, and facilitating corresponding credit reporting relief).

7 The post-class applicant pool turned out to be enormous. It exceeds by more than 200,000 the
 8 number of applications that were submitted in any comparable five-month period before or after the
 9 Settlement Agreement, ECF No. 246-1 (“Agreement”), was executed—an at least 523% increase. For
 10 context, there were 271,802 civil cases filed in federal district courts in 2025 in total. U.S. Court, Federal
 11 Judicial Caseload Statistics 2025, <https://www.uscourts.gov/data-news/reports/statistical-reports/federal-judicial-caseload-statistics/federal-judicial-caseload-statistics-2025>. While lawsuits differ materially than
 12 borrower defense claims, the comparison shows how extraordinary this five-month application period
 13 was. The Department had no basis to know it was agreeing to adjudicate such an enormous number of
 14 applications by January 2026 when it executed the Agreement.

16 In response to the size of the post-class, the Department repeatedly sought implementation funding
 17 from Congress to gain sufficient staffing resources to adjudicate all post-class applications by January 28,
 18 2026. But Congress repeatedly rejected the Department’s funding requests. It was not until July 2025
 19 that Congress changed course and provided the Department’s Federal Student Aid (“FSA”) office
 20 adequate funding as part of the One Big Beautiful Bill Act. Shortly after Congress appropriated \$1 billion
 21 to FSA in July 2025, the Department worked to develop and finalize budget plans and conducted market
 22 research to hire contract attorneys. Then the Government expeditiously moved for modification of the
 23 Court’s final judgment to account for achievability given Congress’s post-judgment funding decisions.
 24 *See Phila. Welfare Rts. Org. v. Shapp*, 602 F.2d 1114, 1120 (3d Cir. 1979). By putting this new funding
 25 to work, the Department developed a plan to hire 450 contract attorneys and adjudicate the remaining
 26 post-class applications by July 2027.

27 That plan required this Court’s modification of the January 2026 deadline. In late 2025, the
 28

1 Department anticipated that it would not meet the January 2026 deadline for approximately 193,000
 2 applications whose outstanding loan balances total \$11.8 billion. *See* Decl. of James Bergeron ¶ 5
 3 (“Bergeron Decl.”), ECF No. 492-1. The Department explained that, to date, approximately half of the
 4 post-class applications have been denied. *Id.* ¶ 33. The Department cannot predict whether that rate will
 5 continue for all post-class applications or whether the actual denial rate will be higher or lower than fifty
 6 percent. But the Department estimated that the result would be an approximately \$6 billion windfall for
 7 borrowers who might not have been eligible for relief had their applications been adjudicated absent
 8 modification of the January 2026 deadline. *Id.* This is an extraordinary sum of taxpayer resources that
 9 would flow to borrowers who, based upon the prior denial/approval rate of post-class applications, would
 10 otherwise be ineligible for relief. For context, the appropriation for fiscal year 2025 to fund the Legislative
 11 Branch was approximately \$6.7 billion; to fund the federal Judicial Branch was approximately \$8.6
 12 billion; and to fund the exploration budget for the National Aeronautics and Space Administration
 13 (“NASA”) was approximately \$7.6 billion.¹

14 On December 11, 2025, the Court granted in part and denied in part Defendants’ motion. In
 15 particular, the Court denied the motion as to approximately 170,000 applications—those that involve what
 16 is known as an “Exhibit C” school.² In doing so, however, the Court made several manifest errors of law
 17 and fact that warrant reconsideration. First, the Court mistook post-class members to be members of the
 18 class. In fact, however, they are not members of the class, not represented by the Class Representatives,
 19 and not parties to this action at all. Because traditional equitable principles required the Court to consider
 20 party-specific equities in determining whether applying the judgment prospectively is no longer equitable
 21

22 ¹ *See* Ida A. Brudnick, Cong. Rsch. Serv., R43397, Legislative Branch Appropriations: Frequently
 23 Asked Questions (2025), <https://www.congress.gov/crs-product/R43397>; Admin. Off. of the U.S. Courts,
 24 The Judiciary Fiscal Year 2026 Congressional Budget Summary, at *i* (April 2025),
<https://www.uscourts.gov/sites/default/files/document/fy-2026-congressional-budget-summary.pdf>;
 25 Rachel Lindbergh, Cong. Rsch. Serv., R43419, NASA Appropriations and Authorizations: At a Glance
 (2025), <https://www.congress.gov/crs-product/R43419>.

26 ² Exhibit C to the Settlement Agreement was a list of schools, created for settlement purposes only,
 27 addressing components of the class that are not directly at issue in this motion. The “settlement grant[ed]
 28 full and automatic relief to all class members that attended the schools listed on Exhibit C.” *Sweet v. Cardona*, 641 F. Supp. 3d 814, 827 (N.D. Cal. 2022), *aff’d*, 121 F.4th 32 (9th Cir. 2024), *petition for cert. docketed sub nom. Everglades Coll., Inc. v. McMahon*, No. 25-492 (U.S. Oct. 21, 2025). But “inclusion on Exhibit C” is not itself considered “a finding of misconduct[.]” *Id.* at 829.

1 under Rule 60(b), the Court’s outsized focus on non-parties was a manifest error of law requiring
 2 reconsideration.

3 The Court’s decision is also premised on manifest errors of fact. The Court concluded that the
 4 thirty-seven attorneys in the Department’s Borrower Defense Branch could adjudicate the 170,000 post-
 5 class applications related to Exhibit C schools by January 28, 2026 (the “January Tranche”), by working
 6 overtime during the holiday season, including on Christmas Day and New Year’s Day. That finding is
 7 irreconcilable with the evidence in the record regarding the Department’s capacity to adjudicate claims,
 8 as the Department has on average completed about 1,500 adjudications per month. Bergeron Decl. ¶¶ 21,
 9 29, 31. It is also contradicted by the Court’s own findings at the settlement approval stage. Based on a
 10 similar number of adjudicators, the Court had found that it would take the Borrower Defense Branch
 11 “*more than twenty-five years*” to adjudicate 443,000 applications. *Sweet v. Cardona*, 641 F. Supp. 3d 814,
 12 825-28 (N.D. Cal. 2022), *aff’d*, 121 F.4th 32 (9th Cir. 2024), *petition for cert. docketed sub nom.*
 13 *Everglades Coll., Inc. v. McMahon*, No. 25-492 (U.S. Oct. 21, 2025). The Court did not explain on what
 14 basis it believed Department attorneys could suddenly increase their capacity to adjudicate 170,000
 15 applications in six weeks.

16 Unsurprisingly, the Court’s projection turned out to be wildly inaccurate. Using best efforts, the
 17 Department was able to adjudicate approximately 2,030 post-class applications since the December
 18 hearing. Declaration of Richard Lucas ¶¶ 8-9 (“Lucas Decl.”). But approximately 169,900 cases from
 19 the January Tranche remain unadjudicated. *Id.* The notion that processing this number of applications by
 20 January 28, 2026, with existing staffing was “realistically achievable,” *Phila. Welfare Rights Org.*, 602
 21 F.2d at 1120, was clearly erroneous. The Court manifestly erred in making this determination.

22 What is more, the Court manifestly erred in failing to consider that applicable regulations (and the
 23 Agreement itself) require the Department to adjudicate post-class borrower defense applications in a
 24 specific manner. The Court’s decision denying Defendants’ motion in part was premised on its view that
 25 the Department could rely on Exhibit C’s existence to somehow expedite processing of post-class
 26 applications related to Exhibit C schools. But the Department’s regulations (and the Agreement itself)
 27 require a fact-finding process—a determination regarding school misconduct based on substantial
 28

1 evidence in the administrative record for the application. Indeed, the Court previously acknowledged that
 2 Exhibit C provides no basis for the Department to make an “official determination of misconduct against
 3 the schools.” *Sweet*, 641 F. Supp. 3d at 829. The applicable regulations also require an individualized
 4 analysis and concrete evidence that the borrower relied on a misrepresentation to the borrower’s detriment
 5 when the borrower decided to attend, or continue attending, the school or decided to take out the relevant
 6 loan. Exhibit C provides no basis for expediting 170,000 determinations on those issues either.

7 Since the Court’s December order, the Department has continued to make progress on its plan to
 8 hire contract attorneys and meet the hiring, onboarding, and training timelines it has previously laid out
 9 to enable it to complete post-class application processing by July 2027, consistent with the funding
 10 resources Congress recently provided. The Department’s continued progress shows its commitment to
 11 the plan it laid out in its Rule 60 motion and provides yet another reason for the Court to reconsider its
 12 order.

13 ISSUE TO BE DECIDED

14 1. Whether the Court should reconsider its decision that it remains equitable to require the
 15 Department of Education to provide full settlement relief to non-class members whose
 16 applications it is unable to adjudicate, regardless of the merits of their claims or if their
 17 loans are eligible for discharge under the terms of the settlement, by the January 28, 2026
 18 deadline that was established by the settlement agreement before the enormous volume of
 19 such post-class applications became known.

20 BACKGROUND

21 I. This Case and The Parties’ Settlement Agreement

22 Plaintiffs filed this case in 2019 to challenge the Department’s delay in adjudicating borrower
 23 defense claims. They sought and obtained certification of a class consisting of all individuals with a
 24 pending borrower defense application, which at the time consisted of more than 200,000 applications
 25 dating as far back as 2015. *See, e.g.*, Defs.’ Mot. for Summ. J. at 11, ECF No. 63.³ After three years of

26
 27 ³ Defendants respectfully refer the Court to their previously filed summary judgment briefs for a
 28 complete statement of the facts and background predating the filing of the parties’ joint motion for
 preliminary settlement approval. *See* ECF No. 63, ECF No. 249.

1 litigation, the parties executed a settlement agreement on June 22, 2022, and submitted it for the Court’s
 2 preliminary approval that same day. *See generally* Joint Mot. for Prelim. Approval, ECF No. 246. The
 3 parties’ settlement agreement provides a framework to comprehensively address the then-pending
 4 hundreds of thousands of class member borrower defense applications. *See generally* ECF No. 246-1
 5 (“Agreement”).

6 The Agreement generally divides class members into two groups. *See* Agreement ¶ IV. The first
 7 group consisted of approximately 196,000 class members, *see* Bergeron Decl. ¶ 5, who received federal
 8 student loans to attend one of the 151 schools identified in the settlement’s Exhibit C (“Exhibit C Group”
 9 borrowers). *See* Agreement ¶ IV.A. The second group consisted of all remaining class members who
 10 submitted claims on or before the date the Agreement was executed. These class members (“Decision
 11 Group” borrowers) received a streamlined adjudication and final decision within set timeframes under the
 12 Agreement and benefitted from certain presumptions designed to speed up the adjudication of claims,
 13 including a presumption of the truth of the claims asserted. *Id.* ¶ IV.C. These presumptions reduce the
 14 time it takes to adjudicate a claim, but they also likely provide overbroad relief to the extent that certain
 15 borrowers’ claims would not have survived scrutiny had the Department engaged in the type of fact-
 16 finding that would be required under otherwise applicable regulations. The Agreement divides this set of
 17 borrowers into five decision groups, based on the date they submitted their application, and provides for
 18 decisions to be issued to each group every six months, with the oldest applications receiving the earliest
 19 decisions. *Id.*

20 Decision Group 1 consisted of approximately 33,000 class members who filed more than 34,000
 21 applications between January 1, 2015 and December 31, 2017. *See* Bergeron Decl. ¶ 5, Table 1. Decision
 22 Group 2 consisted of more than 11,000 class members who filed 12,000 claims between January 1, 2018
 23 and December 31, 2018. *Id.* Decision Group 3 consisted of nearly 14,000 borrowers who filed more than
 24 14,000 claims between January 1, 2019 and December 31, 2019. *Id.* Decision Group 4 consisted of more
 25 than 9,000 borrowers who filed 10,000 claims between January 1, 2020 and December 31, 2020. *Id.* And
 26 Decision Group 5 consists of approximately 33,000 class members who filed 36,000 claims between
 27 January 1, 2021 and June 22, 2022. *Id.* To the extent the Department fails to issue a final decision to a
 28

1 class member according to the negotiated timeline applicable to any Decision Group borrower's claim,
 2 the Agreement requires that the class member receive full settlement relief. *See* Agreement ¶ IV.C.8.

3 The Agreement provides that the "Class is closed as of the Execution Date," *i.e.*, June 22, 2022,
 4 and that only "Class Members are bound by the terms of this Agreement." *Id.* ¶ III. Nonetheless, it
 5 contains a provision whereby the Department agreed to provide additional relief to a set of non-class
 6 member (and, thus, non-party) "post-class applicants." *See id.* ¶ IV.D. In particular, the Agreement
 7 provides that borrower defense applications submitted after the Agreement's Execution Date and before
 8 the date of the Agreement's final approval will be adjudicated within three years of the Agreement's
 9 Effective Date (*i.e.*, the date on which the Court's final approval order becomes a final judgment). *See*
 10 *id.*; *see also id.* ¶ I.K (defining "Effective Date"). As with the Decision Group deadlines, the Agreement
 11 specifies that if a post-class application is not adjudicated within the prescribed period, the applicant will
 12 receive full settlement relief. *Id.* ¶ IV.D.2. The time period during which a borrower could submit a
 13 "post-class application" and receive the benefit of this provision of the Agreement ultimately spanned less
 14 than five months, from June 23, 2022 (the day after the Execution Date) to November 15, 2022 (the day
 15 before the Final Approval date). In that short time period, however, 207,000 borrowers submitted more
 16 than 251,000 claims, *see* Bergeron Decl. ¶ 5, Table 1, a number of borrowers that more than doubled all
 17 five Decision Groups combined and amounted to more than two-thirds of the entire set of class members
 18 covered by the Agreement, which swept in all 291,000 borrowers who had asserted borrower defense
 19 claims and not received a decision before June 22, 2022, *see id.* ¶¶ 5-6. This represents a 523 percent
 20 increase in applications over the average number of applications the Department received during even the
 21 most voluminous comparable timeframe. *See id.* ¶ 5, Table 2 (setting forth the number of applications
 22 received in comparable 5-month periods before and after the post-class period, which never exceeded
 23 48,000).

24 The Court preliminarily approved the settlement on August 4, 2022. Order, ECF No. 307. After
 25 following the class action settlement procedures specified in Federal Rule of Civil Procedure 23(e), and
 26 hearing the objections of a group of permissive intervenors, *see* Order, ECF No. 322, the Court finally
 27 approved the Agreement and entered final judgment on November 16, 2022. Order Granting Final

1 Settlement Approval, ECF No. 345; Final J., ECF No. 346. The Effective Date of the Agreement was
 2 January 28, 2023, which established January 28, 2026 as the deadline for issuing timely decisions to post-
 3 class applicants. Agreement ¶ IV.D.1 (“Defendants will issue a final decision on the merits of a Post-
 4 Class Applicant’s application no later than 36 months after the Effective Date.”); Order Re Motion to Stay
 5 Judgment Pending Appeal (ECF No. 382) at 6-8 (establishing January 28, 2023 as the Effective Date of
 6 the settlement agreement).

7 **II. The Department’s Implementation of the Agreement**

8 In general, the Agreement contemplated processes and procedures for reviewing the claims of and
 9 providing relief to class members—both Exhibit C class members and Decision Group class members—
 10 that had not previously existed. Before it could begin the actual work of effectuating settlement relief (for
 11 each group of borrowers covered by the Agreement), the Department needed to establish a new framework
 12 for doing that work, including new processes, rules, and procedures. *See Bergeron Decl.* ¶¶ 19-28. As a
 13 general matter, due to the timelines involved, the Department first prioritized the class members in the
 14 Exhibit C and Decision Groups. *Id.* ¶ 20. But it also began laying the foundation for the adjudication of
 15 post-class claims—standing up new policies and procedures that differed from those used for class
 16 members, including those related to fact-finding and decision-making, training staff, and making
 17 technological updates. *See id.* ¶¶ 21, 25-26.

18 FSA’s Borrower Defense Branch (“BDB”) began issuing decisions on post-class applications in
 19 approximately August 2023 and worked up to a steady pace of approximately 1,500 adjudications per
 20 month by January 2025. *Id.* ¶ 21. BDB also worked on “all aspects of implementing the Settlement
 21 Agreement, other than effectuating relief by discharging loans,” *id.* ¶ 22, meaning the same staff
 22 responsible for adjudicating Decision Group class member applications pursuant to the Agreement’s
 23 staggered deadlines have also been responsible for adjudicating post-class applications, as well as
 24 engaging in relevant administrative work and helping to research and respond to class member questions
 25 and concerns. *Id.* Over time, the staffing in the BDB has fluctuated, with staffing generally in the range
 26 of 30-50 attorneys, other than a brief period throughout 2024 when BDB was able to bring in attorneys
 27 from the Department of Health and Human Services (“HHS”) to perform borrower defense work on a
 28

1 temporary basis through a detail. *See id.* ¶ 9.

2 While the Department has substantially met all of the decision deadlines to date, the Department
 3 was not able to meet some of the settlement deadlines related to effectuating relief due to a host of
 4 complications relating to the mechanics of how loan servicers address discharges. *See, e.g.*, Defs.’ Resp.
 5 to Pls.’ Mot. to Enforce, ECF No. 403 (explaining some of these issues). Defendants have worked
 6 collaboratively with Plaintiffs and the Court to address those issues and will not extensively reproduce
 7 that history. But relevant here, many of the delays in processing were the result of complex “mixed
 8 consolidation” loans that consist of both loans eligible for relief under the Agreement and loans ineligible
 9 for such relief. When it was unable to meet either the original or a revised schedule for providing relief
 10 to Exhibit C class members, a streamlined approach to accelerate relief was developed for those specific
 11 class members with mixed consolidations loans—which has come to be known as the Exhibit C terminal
 12 loan methodology. *See, e.g.*, Defs.’ Notice, ECF No. 421 (July 11, 2024) (“Defs.’ Notice”); Defs.’ Mot.
 13 to Approve Settlement Relief Process, ECF No. 443. This approach was easier to implement because it
 14 included discharging the terminal consolidation loan in full. While quicker, the relief provided has been
 15 overbroad and provides a windfall benefit to certain borrowers because it requires discharging ineligible
 16 debt that is not the subject of an eligible borrower defense application. ECF No. 443 at 5-6. The Court
 17 first approved and ordered this methodology to be applied to Exhibit C borrowers but later ordered the
 18 Department to apply it to borrowers in Decision Groups 1 and 2. *See* Defs.’ Notice; Minute Entry, ECF
 19 No. 416 (June 13, 2024), Minute Entry, ECF No. 434 (Sep. 26, 2024). Eventually, despite concerns raised
 20 by Defendants about the fiscal responsibility of continuing to apply the Exhibit C terminal loan
 21 methodology outside of the limited context in which it was developed, the Court ordered that the
 22 methodology “be used for Decision Group Three, Decision Group Four, Decision Group Five, and the
 23 Post-Class Applicants.” Minute Entry, ECF No. 451 (Dec. 12, 2024).

24 The Department has come into substantial compliance with its obligation to provide relief to the
 25 Exhibit C Group; has substantially met the decision deadlines for all five Decision Groups; and anticipates
 26 meeting the January 28, 2026 deadline for adjudicating any Group 5 applications that are resubmitted
 27 under the revise and resubmit process. *See* Bergeron Decl. ¶ 30.

1 As relevant here, with respect to the post-class, the Department has been adjudicating
 2 approximately 1,500 applications per month, *id.* ¶ 29; *see also id.* ¶¶ 10-18 (describing the complexities
 3 associated with adjudicating such applications); Lucas Decl. ¶ 8. Although more than 54,000 post-class
 4 applications have been adjudicated, *see Bergeron Decl.* ¶ 31; Lucas Decl. ¶ 8, approximately 187,980 have
 5 not. Lucas Decl. ¶ 8. The liability associated with those unadjudicated applications is over \$11 billion.
 6 Bergeron Decl. ¶¶ 31-32.

7 As of November 2025, approximately half of the post-class applications had been denied. *Id.* ¶ 33.
 8 The Department cannot predict with certainty whether that rate would continue for all post-class
 9 applications or whether the actual denial rate would be higher or lower than fifty percent. But if that rate
 10 were to continue and the relief requested in this motion is not granted, the Department estimates that the
 11 result will be an approximately \$6 billion windfall for borrowers who might not have been eligible for
 12 relief had their applications been adjudicated. *Id.* ¶ 33. This is an extraordinary sum of taxpayer resources
 13 that would flow to borrowers who, based upon the denial/approval rate of post-class applications to date,
 14 would otherwise be ineligible for relief. For context, the appropriation for fiscal year 2025 to fund the
 15 Legislative Branch was approximately \$6.7 billion; to fund the federal Judicial Branch was approximately
 16 \$8.6 billion; and to fund the exploration budget for the National Aeronautics and Space Administration
 17 (“NASA”) was approximately \$7.6 billion.⁴

25 ⁴ See Ida A. Brudnick, Cong. Rsch. Serv., R43397, Legislative Branch Appropriations: Frequently
 26 Asked Questions (2025), <https://www.congress.gov/crs-product/R43397>; Admin. Off. of the U.S. Courts,
 27 The Judiciary Fiscal Year 2026 Congressional Budget Summary, at *i* (April 2025),
<https://www.uscourts.gov/sites/default/files/document/fy-2026-congressional-budget-summary.pdf>;
 28 Rachel Lindbergh, Cong. Rsch. Serv., R43419, NASA Appropriations and Authorizations: At a Glance
 (2025), <https://www.congress.gov/crs-product/R43419>.

1

2 **III. The Court’s December 2025 Decision on Defendants’ Motion for Temporary Relief from**

3 **Judgment.**

4 On December 11, 2025, the Court held a motion hearing on Defendants’ motion for Rule 60(b)

5 temporary relief from judgment. In their motion, Defendants presented the issue of whether it remains

6 equitable to require the Department of Education to provide full settlement relief to non-class members

7 whose applications it is unable to adjudicate, regardless of the merits of their claims or if their loans are

8 eligible for discharge under the terms of the settlement, by the January 28, 2026 deadline established by

9 the settlement agreement and the Court’s judgment incorporating it. Defs.’ Mot. for Temp. Relief from J.

10 at 3, ECF No. 492. The Department sought an order modifying the judgment to permit it until July 28,

11 2027, to adjudicate post-class applications before requiring that post-class applicants receive full

12 settlement relief regardless of the merits of their applications. *Id.* at 22.

13 The Court ruled from the bench at the conclusion of the motion hearing, granting in part and

14 denying in part Defendants’ motion. Tr. of Proceedings at 82:3-8 (Dec. 11, 2025) (“Tr.”). Specifically,

15 the Court denied the motion insofar as it relates to the January Tranche, the post-class members whose

16 borrower defense applications address loans for attendance at Exhibit C-listed schools. As for other

17 applications (the “April Tranche”), the Court extended the adjudication deadline for post-class applicants

18 until April 15, 2026, “with the caveat that the subsequent judge is invited to give more time if the

19 Government shows progress, satisfactory progress” on its plan to hire and train the additional One Big

20 Beautiful Bill Act-funded contract attorneys needed to address the post-class applicant pool. *Id.* at 82:5-

21 8.⁵

22 As required by Rule 60(b), the Court balanced equities in ruling on the motion. First, the Court

23 considered the equities of post-class members, who are not parties to this case. The Court explained that

24 they “have a great interest in this because the student loan has been hanging over their head for how many

25 years? How many decades?” *Id.* at 79:2-4. The Court considered the credit implications of those loans.

26

27

28 ⁵ The Department anticipates filing a separate renewed motion for Rule 60(b) relief from the April 2026 application processing deadline consistent with the Court’s invitation.

1 *Id.* at 79:5. It explained that “Congress wanted these things adjudicated. So there is a huge equity working
 2 in favor of the class.” *Id.* at 79:6-89.

3 On the other hand, the Court:

4 recognize[d] that another equity going the other way is there is a chance that some
 5 applications would be automatically [granted] come January 28th and they shouldn’t have
 6 been. If they were adjudicated on the merits, the student would not have won. There is
 7 that risk. And the taxpayers will pick up that, I recognize that.

8 *Id.* at 79:11-16.

9 The Court also considered whether, for Exhibit C schools, the Department could achieve
 10 compliance with the January 28, 2026 deadline. *Id.* at 79:22-80:8. The Court explained that it thought “it
 11 can be done.” *Id.* at 79:22. The Court provided two reasons. First, the Court explained that employees
 12 may be able to work over the holidays. *See id.* at 80:2-3 (“When I worked for the Government, I worked
 13 on Christmas Day and New Year’s Day.”); *see also id.* at 81:21-82:1 (“[M]y advice to you is to go ahead
 14 and hire these people, train these people. Do it as expeditiously as you can and get them working on it.
 15 But meanwhile, you’ve already got 37 people who can work over the holidays and, in my judgment, get
 16 the Exhibit C schools completed”). Second, the Court explained that “it’s possible to get this job done
 17 because the people on Exhibit C, they’re already highly suspect. These are the schools that the attorney
 18 generals in various states have already singled out as fraudulent.” *Id.* at 80:4-8.

18 **LEGAL STANDARD**

19 Federal Rule of Civil Procedure 60(b) allows a Court to “relieve a party or its legal representatives
 20 from a final judgment, order, or proceeding for” specified reasons. One of these reasons is that applying
 21 the final judgment or order “prospectively is no longer equitable.” Fed. R. Civ. P. 60(b)(5). Under this
 22 Rule, “[w]here an affirmative obligation is imposed by court order on the assumption that it is realistically
 23 achievable, the court finds that defendants have made a good faith effort to achieve the object by
 24 contemplated means, and the object nevertheless has not been fully achieved, clearly a court of equity has
 25 the power to modify” the order. *Phila. Welfare Rights Org.*, 602 F.2d at 1120 (cited with approval in *Rufo*
 26 v. *Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 380 (1992) and *Frew ex rel. Frew v. Hawkins*, 540 U.S.
 27 431, 441 (2004)). Ultimately, Rule 60(b)(5) establishes a “pliable standard” that “codifies the courts’

1 traditional authority, inherent in the jurisdiction of the chancery, to modify or vacate the prospective effect
 2 of their decrees.” *California v. EPA*, 978 F.3d 708, 713 (9th Cir. 2020) (citation omitted).

3 Rule 60(b)(6) also allows a court to provide relief from a final judgment, order, or proceeding for
 4 “any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(6). This “catchall” provision provides
 5 “grounds for relief not already covered by the preceding five paragraphs.” *BLOM Bank SAL v.*
 6 *Honickman*, 605 U.S. 204, 211-12 (2025). A movant “seeking relief under Rule 60(b)(6) must show
 7 extraordinary circumstances justifying the reopening of a final judgment.” *Henson v. Fidelity Nat'l Fin., Inc.*, 943 F.3d 434, 443-44 (9th Cir. 2019) (cleaned up).

9 Civil Local Rule 7-9 applies “[b]efore the entry of a [final] judgment[.]” Civil L.R. 7-9(a). It
 10 requires a “motion for leave to file a motion for reconsideration[.]” *Id.* 7-9(b). The moving party must
 11 show

12 reasonable diligence in bringing the motion and one of the following:

- 13 (1) That at the time of the motion for leave, a material difference in fact or law exists from
 14 that which was presented to the Court before entry of the interlocutory order for which
 15 reconsideration is sought. The party also must show that in the exercise of reasonable
 16 diligence the party applying for reconsideration did not know such fact or law at the
 17 time of the interlocutory order; or
- 18 (2) The emergence of new material facts or a change of law occurring after the time of
 19 such order; or
- 20 (3) A manifest failure by the Court to consider material facts or dispositive legal arguments
 21 which were presented to the Court before such interlocutory order.

22 *Id.*

23 ARGUMENT

24 Defendants respectfully ask the Court to reconsider its decision on Defendants’ first motion for
 25 Rule 60(b) temporary relief from judgment and allow them until July 28, 2027 to adjudicate post-class
 26 applications before requiring that post-class applicants receive full settlement relief regardless of the
 27 merits of their applications. The Court should grant this motion for several reasons. First, the Court’s
 28 prior decision was premised on manifest legal error insofar as it treated post-class members as parties to
 this case for purposes of balancing the equities. Second, the Court’s prior decision rested on clearly

1 erroneous findings to conclude that compliance was achievable. In particular, the record does not support
 2 the Court’s findings that thirty-seven attorneys could process 170,000 applications by working over the
 3 holidays and that the Department could resolve post-class borrower defense applications based solely on
 4 whether the applicant attended an Exhibit C school. Not surprisingly, despite the Department’s good-faith
 5 efforts, actual progress was nowhere close to what the Court projected. Finally, the Department’s
 6 continued progress since December 2025 on its plan to hire new contract attorneys to tackle the post-class
 7 applicant pool constitutes new facts that further support reconsideration.

8 **I. The Court Should Reconsider the Decision Because it is Premised on Manifest Legal Error
 9 in Treating Post-Class Members as Parties.**

10 In its ruling, the Court weighed two equities. First, it considered that many post-class members
 11 “have a great interest in this because the[ir] student loan has been hanging over their head for” many years
 12 and that “Congress wanted these things adjudicated.” Tr. at 79:2-8. The Court balanced that equity against
 13 “another equity going the other way”—“there is a chance that some applications would be automatically
 14 [granted] come January 28th and they shouldn’t have been. If they were adjudicated on the merits, the
 15 student would not have won. There is that risk, and the taxpayers will pick up that.” *Id.* at 79:11-16.

16 In weighing those equities, the Court was explicit in its belief that post-class members are class
 17 members, and thus, parties to the case. The Court explained that the equities in favor of adjudication
 18 present a “huge equity working in favor of the class.” Tr. at 79:7-8. And when considering the
 19 Departments’ equities, the Court explained that those interests have to be balanced “against what the class
 20 members have been suffering through all these years.” *Id.* at 79:16-18.⁶

21 That belief was erroneous: post-class applicants are not members of the class or parties to this case
 22 at all. As Defendants articulated in earlier briefing, *see* Defs.’ Reply in Supp. Mot. for Temp. Relief at 11
 23 n.14, ECF No. 503, post-class applicants are not class members. The Court’s November 2022 Final
 24 Judgment explicitly “grant[ed] final approval of the class settlement” agreement. ECF No. 346. And that
 25 Agreement, in turn, is explicit: the “Class is closed as of the Execution Date,” *i.e.*, June 22, 2022.

26
 27

 28 ⁶ Earlier in its ruling, the Court reiterated the misstatement that the “class would include these”
 post-class members. Tr. at 74:17-18.

1 Agreement ¶ III.D, ECF No. 246-1 at 6. The post-class includes only individuals who submitted a
 2 “borrower defense application *after* the Execution Date (*i.e.*, the date the class closes), but before the”
 3 date that the Agreement was approved and Final Judgment was entered. *Id.* ¶IV.D.1., ECF No. 246-1 at
 4 11 (emphasis added). The Court’s approval of the parties’ Agreement superseded any definition of the
 5 class provided in any earlier pre-judgment class certification order. ECF Nos. 345-46.

6 Properly analyzed, therefore, the Court should not have weighed the equities of the post-class (non-
 7 parties) against the equities of Defendants (parties). The relevant balance should have been struck between
 8 the equities of the class and Defendants. And, as Plaintiffs never disputed, the Department has already
 9 substantially complied with its settlement obligations to the class. *See* Bergeron Decl. ¶ 30. Indeed, in
 10 issuing its ruling from the bench, the Court explained that the Government has already completed or
 11 substantially completed addressing relief for class members. Tr. at 74:3-13 (discussing the several
 12 “groups” that class members were broken down into and explaining that it is “a credit to both sides here,
 13 that they worked through this, and the servicers too, to get [class members]—I’m going to say 400,000,
 14 350,000—relief” and “a lot of good has been done in this case”).

15 Because the Court did not balance the (essentially nonexistent) equities of the Class
 16 Representatives and the Class against the interests of Defendants when determining if applying the
 17 judgment prospectively is no longer equitable, the Court committed clear legal error and the decision
 18 should be reconsidered. “Though flexible,” a Court’s “equitable authority is not freewheeling.” *Trump*
 19 *v. CASA, Inc.*, 606 U.S. 831, 841 (2025). In applying traditional equitable balancing, the Court “must
 20 consider the effect *on each party* of the granting or withholding of the requested relief.” *Amoco Prod. Co.*
 21 *v. Village of Gambell*, 480 U.S. 531, 542 (1987) (emphasis added). To determine if applying the judgment
 22 prospectively is no longer equitable, the Court is constrained to consider whether the judgment is “no
 23 more burdensome to the defendant[s] than necessary to provide complete relief *to the plaintiff[s].*” *See*
 24 *CASA*, 606 U.S. at 852 (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)) (emphasis in original).
 25 Considering the interests of post-class members in weighing the equities, as the Court did, contravenes
 26 the rule that non-parties are “not the proper object of [a court’s] remediation.” *Lewis v. Casey*, 518 U.S.
 27 343, 358 (1996).

1 Rule 23 principles confirm the Court’s clear error in balancing the equities. “[C]laim preclusion
 2 is the core idea of the class action: the procedural form exists precisely to liquidate the claims of many
 3 common stakeholders through litigation by a representative few of them.” William B. Rubenstein,
 4 *Newberg and Rubenstein on Class Actions* § 18:14 (6th ed. Dec. 2025 update). “The purpose of the class
 5 action device is to enable litigation by representatives, but that purpose is only achieved if the
 6 representative’s adjudication of common questions . . . has a binding effect on absent class members.” *Id.*
 7 § 1:6.

8 The Supreme Court recently reaffirmed these principles in *Trump v. CASA*, 606 U.S. 831 (2025).
 9 The Court explained that the “modern class action, which is governed in federal court by Rule 23” is the
 10 “modern form” of the “bill of peace[.]” *Id.* at 849. And under traditional equity practice, as under Rule
 11 23, “decrees obtained on a bill of peace ‘would bind all members of the group, whether they were present
 12 in the action or not.’” *Id.* at 848 (citation omitted). But as the parties contemplated in the Agreement,
 13 only class members—not post-class members—are claim precluded by the Court’s Final Judgment in this
 14 action. Agreement ¶ VII, ECF No. 246-1 at 21 (providing that only “Plaintiffs” and “Class Members”
 15 “waive, release, and forever discharge Defendants” from “any and all claims . . . alleged in this Action
 16 against Defendants . . .”).

17 The fact that post-class applicants are not claim precluded by the judgment in this action is critical
 18 to any equitable balancing under Rule 60(b). Post-class applicants have an adequate remedy to redress
 19 their interests in the Department’s processing of their borrower defense applications, *see* Tr. at 79:2-8:
 20 bringing their own lawsuit. *See Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (“[T]he basis
 21 for injunctive relief in the federal courts has always been irreparable injury and the inadequacy of legal
 22 remedies”).

23 Indeed, the Court’s erroneous treatment of post-class applicants as parties to this case runs deeper
 24 than its decision denying the motion for reconsideration. In general, settlement agreements are contracts
 25 and any breach of those agreements is subject to ordinary contractual remedies—which, in the case of
 26 contracts with the government, generally does not include an action for specific performance in district
 27 court. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381 (1994); *N. Side Lumber Co. v. Block*,

1 753 F.2d 1482, 1484-86 (9th Cir. 1985). But here, the Court purported to incorporate the entire settlement
 2 agreement into its final judgment, giving rise to the possibility of enforcing that agreement by seeking
 3 effectively a specific-performance injunction in this Court. Whatever the permissibility of that mechanism
 4 as it regards Plaintiffs who may assert an entitlement to an injunction on their underlying claims, it cannot
 5 be permissible with respect to non-parties who would have been beyond the reach of the court's equitable
 6 powers in the underlying case. *CASA* makes clear that a district court may not properly exercise its
 7 equitable authority to provide them relief, 606 U.S at 841-54, and any right that the non-class parties may
 8 have to adjudications by January 2026 necessary flows from the Agreement. It is thus a contractual right
 9 that is not properly subject to enforcement in this Court. *Block*, 753 F.2d at 1484-86 (A claim “concerned
 10 solely with rights created within the contractual relationship” and having “nothing to do with duties arising
 11 independently of the contract” is “within the Tucker Act and subject to its restrictions on relief.”); *see also*
 12 *United Aeronautical Corp. v. U.S. Air Force*, 80 F.4th 1017, 1026 (9th Cir. 2023) (“if rights and remedies
 13 are *contractually* based then only the Court of Federal Claims” has jurisdiction).

14 **II. The Court Should Reconsider the Decision Because it is Premised on Manifest Errors of
 15 Fact.**

16 **A. The Court's Finding that the Department's Existing Staff of 37 Attorneys Could
 17 Adjudicate 170,000 Applications by Working Overtime Over the Holidays is Clearly
 18 Erroneous.**

19 The Court denied Defendants' request for temporary relief from judgment insofar as it applies to
 20 post-class applications for borrowers with loans reflecting attendance at “Exhibit C” schools. Tr. 82:3-8.
 21 The Court explained that “Exhibit C” applications “must be adjudicated by the original deadline of the
 22 28th of January, six weeks from now.” Tr. 79:21-22. Recognizing that courts should not “over-
 23 emphasize[] the interest of finality at the expense of achievability” in this context, *see Phila. Welfare*
 24 *Rights Org.*, 602 F.2d at 1120, the Court premised its decision on its belief that it would be possible for
 25 the Department to adjudicate Exhibit C school-related applications in that period. The Court was explicit:
 26 “I think it can be done. Don't tell me holidays. You can take Christmas off, maybe New Year's Day off.
 27 But Government employees should work. When I worked for the Government, I worked on Christmas
 28 Day and New Year's Day. So it's possible to get this job done . . .” Tr. at 79:22-23-80:1-4.

1 The Court’s finding was not supported by any evidence; indeed, it is instead contrary to the
 2 evidence in the record regarding the Department’s adjudication capacities. The Deputy Under Secretary’s
 3 declaration demonstrates unequivocally that the Department cannot adjudicate 170,000 applications in a
 4 six-week period and that, instead, the Department needs eighteen months to hire, onboard, and train 450
 5 contract attorneys to adjudicate the remaining applications. Suppl. Bergeron Decl. ¶¶ 2-4, ECF No. 498-
 6 1. The Government’s declaration established that BDB’s current thirty-seven attorneys are adjudicating
 7 1,500 post-class applications per month. *Id.* ¶ 3. Even if the Department required its attorneys to work
 8 on Christmas Day and New Year’s Day, the notion that those additional hours would permit for the
 9 adjudication of an additional 169,000 applications was without any basis in fact. Indeed, working over
 10 two government holidays is not a “realistic[]” plan to somehow exponentially accelerate adjudications.

11 *See Phila. Welfare Rights Org.*, 602 F.2d at 1120.

12 Events since December 11, 2025, confirm that the Court’s projection was nowhere close to
 13 “realistically achievable[.]” *Id.* In the approximately five-week period that has elapsed since the
 14 December Hearing, the Department has worked diligently to review and adjudicate as many post-class
 15 applications as possible. Lucas Decl. ¶ 8. Although Department staff were able to make some
 16 improvement in the rate of adjudications, which was 1,500 applications per month in the months leading
 17 up to the December Hearing, the increased rate did not have a material impact on the progress of
 18 adjudications. *Id.* Since the December Hearing through January 20, 2026 (inclusive), adjudication
 19 decisions have been issued regarding approximately 1,390 post-class applications from the January
 20 Tranche and approximately 640 post-class applications from the April Tranche. *Id.* ¶¶ 8-9.
 21 Approximately 169,900 cases from the January Tranche remain unadjudicated. *Id.* ¶ 8.

22 The Court’s determination that processing 170,000 applications over six weeks was feasible is
 23 particularly capricious considering the Court’s analysis in prior decisions in this case. For example, when
 24 approving the Agreement, the Court recognized that, “[i]f, hypothetically, the Department’s Borrower
 25 Defense [Branch] had all 33 of its claim adjudicators working 40 hours a week, 52 weeks a year (no
 26 holidays or vacations), with each claim adjudicator processing two claims per day, it would take the
 27 Department *more than twenty-five years to*” process the then-pending 443,000 borrower-defense

1 applications. Order Granting Final Settlement Approval at 11, ECF No. 345. The Agreement permitted
 2 Defendants to address that figure by providing automatic relief to approximately 196,000 class members,
 3 *see* Bergeron Decl. ¶ 5, and providing for streamlined standards to govern application processing by other
 4 class members, *infra* at pp. 20 n.7, 21 n.8. But the Court entirely failed to consider how processing post-
 5 class applications under the provisions of the Agreement that govern them was “realistically achievable”
 6 despite Defendants’ “good faith effort to achieve” with available resources. *Phila. Welfare Rights Org.*,
 7 602 F.2d at 1120. *See infra* at pp. 20-21 (explaining the Agreement’s requirements for processing post-
 8 class applications).

9 The Court also erred in failing to apply the presumption of regularity that attaches to actions of
 10 Executive Branch officers in the course of their official duties. It was improper for the Court to refuse to
 11 accord a presumption of regularity to Mr. Bergeron’s declaration. *FDA v. Wages & White Lion Invs.*,
 12 *LLC*, 604 U.S. 542, 577-78 (2025); *Latif v. Obama*, 677 F.3d 1175, 1178-85 (D.C. Cir. 2011). There is
 13 no reasonable basis whatsoever to call into question Mr. Bergeron’s testimony that 170,000 applications
 14 could not be adjudicated between December 11, 2025, and January 28, 2026.

15 The Court also ignored the evidence in the record when it refused to “accept the idea that there
 16 was not enough money” to process post-class applications before passage of the One Big Beautiful Bill
 17 Act. Tr at 77:22. *See also id.* at 79:24-80:2 (“There was enough money. . . . So I don’t accept that rationale
 18 that only after the passage of the Big Beautiful Bill was there enough money to get this job done.”). The
 19 Court second-guessed not only Department testimony, *see* Bergeron Decl. ¶¶ 7-8, but the Department’s
 20 explicit good-faith statements to Congress in 2023 and 2024 (under the prior Administration’s leadership)
 21 requesting additional funding, *see* ECF No. 503 at 5 (explaining that the “Department’s request was
 22 explicit that the funds were ‘need[ed] to meet the terms of the *Sweet* settlement’”) (alteration in original)
 23 (quoting U.S. Dep’t of Educ., Department of Education Fiscal. Fiscal Year 2024 Budget Request at 42,
 24 <https://www.ed.gov/sites/ed/files/about/overview/budget/budget24/justifications/q-saa.pdf>). For the
 25 Court to have “peel[ed] back the curtain” on all those representations—consistent across several
 26 administrations—“would have required [Plaintiffs] to make a ‘strong showing of bad faith or improper
 27 behavior[.]’” *Wages & White Lion Investments*, 604 U.S. at 577 (citation omitted).

B. The Court Failed to Consider that the Department Cannot Premise Post-Class Application Decisions on the Applicant's Attendance at an Exhibit C School.

The Court premised its belief that the Department could adjudicate the 170,000 outstanding post-class applications related to attendance at an “Exhibit C” school on its view that Exhibit C schools are “already highly suspect.” Tr. at 80:5. The Court explained that “[t]hese are the schools that the attorney generals in various states have already singled out as fraudulent.” *Id.* at 80:5-6.

This finding was clearly erroneous because the Court failed to consider the standards the Department is required to use in adjudicating post-class borrower defense applications. Under the Agreement, as incorporated into the Court’s Final Judgment, the Department is compelled to “apply the standards in the borrower defense regulations published by the Department on November 1, 2016 (81 Fed. Reg. 75,926)” when making decisions on post-class applications. Agreement ¶ IV.D.1., ECF No. 246-1 at 11. Those regulations, in turn, require the proponent of a borrower defense claim to show by “a preponderance of the evidence” that “the borrower has a borrower defense that meets the requirements of [34 C.F.R. § 685.222].” 34 C.F.R. § 685.222(a)(2) (2017). The applicant is required to, among other things, provide “evidence that supports the borrower defense[.]” *Id.* § 685.222(e)(1)(i)(B) (2017). The Department, in turn, is required to “determine whether the application states a basis for a borrower defense, and resolve[] the claim through a fact-finding process conducted by [a] Department official.” *Id.* § 685.222(e)(3) (2017). “As part of the fact-finding process, the Department official [must] notif[y] the school of the borrower defense application and consider[] any evidence or argument presented by the borrower and also any additional information, including . . . Department records” and “submissions from the school[.]” *Id.* § 685.222(e)(3)(i) (2017).⁷

Creation of the “Exhibit C” list of schools, in contrast, was not premised on any such full administrative record including submissions from the relevant school. Rather, as the Court had already

⁷ In contrast, when adjudicating the applications of the class members in the five decision groups, the Department only determined “whether the application states a claim that, *if presumed to be true*, would assert a valid basis for borrower defense relief under the standards in the borrower defense regulations published by the Department on November 1, 2016 (81 *Fed. Reg.* 75,926).” Agreement ¶ IV.C.1., ECF No. 246-1 at 7-8 (emphasis added).

1 explained in its opinion approving the Settlement Agreement, the Department “does not consider
 2 inclusion on Exhibit C a finding of misconduct and that inclusion does not constitute evidence that could
 3 or would be considered in any action by the Department against a school.” Order Granting Final
 4 Settlement Approval at 16, ECF No. 345. Indeed, the Court represented that it “relied upon, and the
 5 Court expects the government to stand behind, th[at] statement[.]” *Id.* at 16. It would be entirely
 6 inconsistent with that statement for the Department to now rely on inclusion on the “Exhibit C” list as
 7 the sole basis to grant a borrower-defense application as part of the fact-finding process required under
 8 34 C.F.R. § 685.222 (2017).

9 Moreover, the Court’s analysis ignored other aspects of the applicable regulations that require an
 10 individualized assessment of each borrower defense application. For example, many borrowers rely on
 11 an allegation of substantial misrepresentation by a school. *See* 34 C.F.R. § 685.222(d). To make out
 12 such a borrower defense, a post-class applicant must not only show a substantial misrepresentation, but
 13 also provide evidence showing that “the borrower reasonably relied on” that misrepresentation “to the
 14 borrower’s detriment when the borrower decided to attend, or to continue attending, the school or decided
 15 to take out a Direct Loan.” *Id.*⁸ The Court entirely failed to explain how the Department can adjudicate
 16 the issue of reliance for each individual applicant solely by reference to the Exhibit C list of schools. It
 17 cannot.

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 26 ⁸ In contrast, when adjudicating class member applications, alleged “misrepresentations or
 27 omissions that, if presumed to be true, would assert a valid basis for borrower defense relief” were
 28 “presume[d]” to have been “reasonably relied on” by the applicant “regardless of whether the Class
 Member alleges such reliance in his or her application.” Agreement ¶ IV.C.1., ECF No. 246-1 at 8.

1 **III. The Court Should Reconsider the Decision Because the Department is Continuing in Good**
 2 **Faith to Implement Its Plan to Use One Big Beautiful Bill Act Funds to Hire Staff Needed to**
 3 **Adjudicate Outstanding Post-Class Applications and the Department has Continued to**
 4 **Review and Adjudicate as Many Post-Class Applications as Possible with Existing**
 5 **Resources.**

6 Since the Court's December hearing on Defendants' motion for temporary relief from judgment,
 7 the Department has made progress with respect to the mass-hiring plan. Lucas Decl. ¶ 10. As reported at
 8 the December hearing, the Department had by then already posted requests for quotes ("RFQ") and had
 9 received responses from four contractors. *Id.* (citing December hearing Transcript at 8). In the weeks
 10 since the hearing, the Blanket Purchase Agreement ("BPA") has been awarded which will allow the
 11 Department to issue task orders to the four firms that provided quotes in response to the RFQ. Lucas Decl.
 12 at ¶ 10. Now that the BPA has been awarded, the Department is in the process of finalizing and issuing
 13 task orders with hiring and onboarding to follow thereafter. *Id.* The Department still projects that it is on
 14 track to meet earlier projections that the first group of contract attorneys could be onboarded by March 1,
 15 2026, and sufficiently trained to begin adjudicating cases by late March or early April. *Id.*

16 The Department needs further guidance from the Court as soon as possible to continue
 17 implementing the hiring plan. *Id.* ¶ 11. If this motion is denied and no relief is secured on appeal, the
 18 Department anticipates revising its mass hiring plan with respect to the number of attorneys to be hired
 19 and onboarded in the first group. *Id.* The Department had previously anticipated hiring an initial group of
 20 225 attorneys, with weekly hiring of additional attorneys thereafter. *Id.* If the Court's December 2025
 21 Order granting only a brief extension of the January 28, 2026, deadline and for only the smaller April
 22 Tranche is not further modified, the Department instead anticipates hiring approximately 125 attorneys in
 23 the first group, with additional weekly hiring to follow. *Id.*

24 These new facts warrant reconsideration because they show that the Department's proposal was
 25 no gimmick. During the hearing on Defendants' motion for Rule 60(b) temporary relief from judgment,
 26 the Court questioned whether the Department's good-faith plan to use One Big Beautiful Bill Act funds
 27 to hire and train 450 contract attorneys to adjudicate outstanding post-class applications over eighteen
 28 months "is a gimmick[.]" Tr. at 18:12-13. On the contrary, updated facts show that the plan is already in
 29 motion.

1 Moreover, even though the Department was able to make only a modest improvement in the rate
 2 of adjudications, it has worked diligently to review and adjudicate as many post-class application as
 3 possible. Lucas Decl. ¶¶ 8-9. The evidence showing the Department's continued progress in achieving
 4 its plan since December 11, 2025, constitutes new facts occurring after issuance of the Court's prior order
 5 and provides additional justification for the Court to reconsider its decision denying Defendants' motion
 6 for Rule 60(b) temporary relief from judgment.

7 **IV. Defendants Respectfully Request Prompt Action Granting this Motion or a Temporary Stay
 8 of the Agreement's Notice Deadline.**

9 This motion is time sensitive, and Defendants respectfully request a decision on it as soon as
 10 practicable, but no later than March 2, 2026. Although the Court's order left the January 28, 2026 deadline
 11 in place as to Exhibit C school-related applications, the Court may still provide meaningful relief after
 12 that date. The Agreement provides that the Department must provide any post-class applicant who is not
 13 sent an adjudication decision by January 28, 2026 with a "notice that the applicant will receive [settlement
 14 relief] within 60 calendar days following" January 28, 2026, *i.e.*, by March 29, 2026. Agreement ¶ IV.D.2.
 15 Because March 29, 2026, is a Sunday, that notice deadline is March 30, 2026, for Exhibit C-school related
 16 unadjudicated post-class applications. Defendants are then obligated to effectuate relief for any Post-
 17 Class Applicant entitled to settlement relief no later than one year after they provide the applicant with
 18 the required notice. *Id.* ¶ IV.D.3.

19 If the Court needs additional time to address the motion, Defendants respectfully request that the
 20 Court administratively stay Defendants' deadline for issuing notice to post-class members.
 21 "Administrative stays do not . . . reflect the court's consideration of the merits of the" underlying motion.
 22 *United States v. Texas*, 144 S. Ct. 797, 798 (2024) (Barrett, J., concurring in denial of applications to
 23 vacate stay). "Rather, they 'freeze legal proceedings until the court can rule on a party's request for
 24 expedited relief.'" *Id.* (citation omitted). An administrative stay would permit the Court to issue an

1 opinion on this motion before Defendants are required to send notices of settlement relief to post-class
 2 members.

3 Moreover, should the Court deny this motion, Defendants respectfully request that the deadline
 4 for issuing notices to post-class members be stayed pending the disposition of any appeal that is
 5 authorized, or at a minimum that the deadline be administratively stayed for a period of seven days to
 6 allow an opportunity to seek expedited relief.

7 **V. If Civil Local Rule 7-9 Governs This Motion, Defendants, in the Alternative, Seek Leave to
 8 File a Motion for Reconsideration.**

9 Civil Local Rule 7-9 does not govern this motion. That rule applies “[b]efore the entry of a
 10 judgment[.]” Civil L.R. 7-9(a). *See also* Cross Reference to Civil L.R. 7-9(a) (referencing “Fed. R. Civ.
 11 P. 54(b) regarding discretion of the Court to reconsider its orders prior to entry of final judgment”). It
 12 does not apply to a motion seeking reconsideration after final judgment, such as a Rule 60(b) motion.
 13 Civil L.R. 7-9(a).

14 If, however, the Court disagrees and concludes that Civil Local Rule 7-9 applies to this motion,
 15 then Defendants hereby respectfully request leave to file a motion for reconsideration. Defendants have
 16 been reasonably diligent in bringing the motion—filing it only forty-two days after the Court’s decision
 17 on December 11, 2025. *See* Civil L.R. 7-9(b). Moreover, as described *supra*, the motion shows a manifest
 18 failure by the Court to consider material facts and dispositive legal arguments that were presented to the
 19 Court. *See id.* 7-9(b)(3). And Defendants’ continued progress, since the Court’s December 11 order,
 20 effectuating its plan to use One Big Beautiful Bill Act funding to resolve post-class applications,
 21 constitutes new material facts that support reconsideration. *See id.* 7-9(b)(2).

22 **CONCLUSION**

23 For the foregoing reasons, the Court should grant Defendants’ motion for reconsideration and
 24 modify the judgment to allow them until July 28, 2027 to adjudicate all remaining post-class applications
 25 before requiring that post-class applicants receive full settlement relief regardless of the merits of their
 26 applications. Defendants respectfully request a decision on this motion no later than March 2, 2026.

1 Dated: January 22, 2026

Respectfully Submitted,

2 BRETT A. SHUMATE
3 Assistant Attorney General

4 MICHELLE R. BENNETT
5 Assistant Branch Director

6 /s/ Liam C. Holland
7 LIAM C. HOLLAND
8 Trial Attorney
9 U.S. Department of Justice
10 Civil Division, Federal Programs Branch
11 1100 L St. NW
12 Washington, DC 20005
13 Phone: (202) 514-4964
14 E-mail: liam.c.holland@usdoj.gov

15 *Attorneys for Defendants*