

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ANA SALAZAR, MARILYN MERCADO, ANA  
BERNARDEZ, JEANNETTE POOLE, EDNA  
VILLATORO, LISA BRYANT and CHERRYLINE  
STEVENS, on behalf of themselves and all others  
similarly situated,

Plaintiffs,

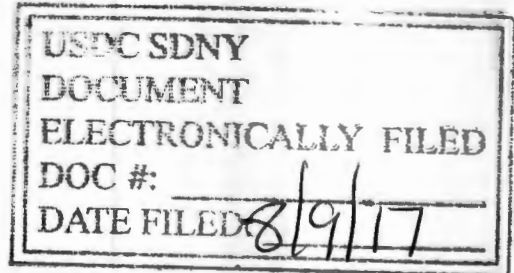
-against-

BETSY DEVOS, in her official capacity as  
Secretary of the United States Department of  
Education,

Defendant.  
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14 CIV 1230 (RWS)

**DECLARATION OF JANE  
GREENGOLD STEVENS IN  
SUPPORT OF PLAINTIFFS'  
MOTION FOR APPROVAL  
OF SETTLEMENT**



I, Jane Greengold Stevens, an attorney duly admitted to practice in the Southern District of New York, declare under penalty of perjury as follows:

1. I am the Director of the Special Litigation Unit and the Director of Litigation at the New York Legal Assistance Group ("NYLAG"), which represents Plaintiffs in the above-captioned matter. I am fully familiar with the facts of this case.
2. I submit this declaration in support of Plaintiffs' Motion for Approval of the Stipulation of Settlement.
3. I have been assured by Defendant's counsel that Defendant consents to this Motion.
4. All terms herein have the same meaning ascribed to them in the parties' Stipulation of Settlement ("Settlement").

**Background**

5. Wilfred American Educational Corporation ("Wilfred") was the parent corporation of a now-defunct nationwide chain of for-profit "beauty" and secretarial schools. By

the late 1980s, Wilfred maintained 58 campuses, with over 11,000 students enrolled annually. First Am. Compl., Dkt. No. 22, ¶¶ 56-58 (“Am. Compl.”). Wilfred ceased operations in 1994. *Id.* ¶ 106.

6. Between 1980 and 1989, federal student aid accounted for between 80 and 90 percent of Wilfred’s revenue, and Wilfred received at least \$405 million in federal student aid. *Id.* ¶¶ 60-61.

7. Wilfred’s success depended on its routinely defrauding its students and the United States Department of Education (“USED”) to obtain the federal financial aid that sustained its operations. *Id.* ¶¶ 66–70.

8. The federal financial aid eligibility requirements—designed to protect individuals from incurring postsecondary educational debt if they lacked the fundamentals to make use of that education—demanded that borrowers have a high school diploma or equivalent, unless the school tested the students’ abilities and certified the borrower as having the “ability to benefit” (“ATB”) from the program. *Id.* ¶¶ 26–28 (citing 20 U.S.C. §§ 1088, 1091(d)).

9. Wilfred schools fraudulently made these certifications, regularly attesting that students had passed a school-administered, USED-approved ATB examination, when they had not even been given a test, or had not passed it. *Id.* ¶¶ 28, 66, 68-69. Wilfred also routinely certified that students had high school diplomas or the equivalent, when they did not. *Id.* ¶ 67.

10. By the early 1990s, it became apparent that many for-profit vocational schools had been abusing the so-called “ATB exception,” and were sustaining themselves by falsely certifying as eligible for federal financial aid individuals with insufficient education who had not taken or passed a valid ATB examination. *Id.* ¶ 107; *see* Abuses in Federal Student Aid Programs, S. Rep. No. 102-58 (1991).

11. In 1992, to provide relief to student borrowers victimized by for-profit schools' predatory practices, Congress commanded the Secretary to discharge all falsely-certified loans disbursed in whole or in part after January 1, 1986. *See* Pub. L. No. 102-325 § 437 (July 23, 1992), *codified at* 20 U.S.C. § 1087(c). Congress enumerated criteria pursuant to which borrowers qualified for the false certification discharge. *See id.*

12. USED's Office of the Inspector General (OIG) had begun to investigate Wilfred as early as 1983, when it investigated the financial aid practices of Wilfred schools in Massachusetts. Am. Compl. ¶ 81. Based on reports produced by the OIG through June 1987, covering approximately 50 Wilfred schools, USED in 1996 issued findings and a recommendation regarding ATB discharge applications submitted by individuals who took out loans to attend a Wilfred school. *See* USED Report, "Documentation of ATB Violations" (1996), Ex. K to Decl. of Jane Greengold Stevens in Support of Mot. for Class Certification ("Stevens Class Cert. Decl."), Dkt. No. 27-14. USED concluded that Wilfred had engaged in a "[c]onsistent pattern of gross violations of [USED] regulations," "indicat[ing] a strong resistance to following [USED] regulations for administering funds and ATB student testing," and it recommended that "all ATB applications be discharged." *Id.* Nonetheless, USED has continued to actively collect on these loans.

13. On April 16, 2013, Plaintiffs' counsel wrote a letter to USED asserting that USED was acting unlawfully by continuing to collect on loans to former Wilfred students despite the evidence of Wilfred's widespread fraudulent activity. Letter from Jane Stevens to USED (April 16, 2013), Ex. B to Stevens Class Cert. Decl., Dkt. No. 27-2. Plaintiffs' counsel requested that USED suspend collection efforts on all Wilfred loans, notify all students who attended any Wilfred school about the availability of discharge, and grant all discharge applications of eligible borrowers. *See id.* After receiving no response, Plaintiffs' counsel wrote letters to the USED on

July 16 and September 24, 2013, reiterating this request. Letter from Jane Stevens to USED (July 16, 2016), Ex. C to Stevens Class Cert. Decl., Dkt. No. 27-3; Letter from Jane Stevens to USED (Sept. 23, 2013), Ex. B to Decl. of Christine Poscablo in Support re: Mot. to Dismiss Am. Compl. (“Poscablo Decl.”), Dkt. No. 42-2. In a letter to NYLAG dated February 18, 2014, USED denied NYLAG’s request in substantial part, agreeing only to mail discharge applications to students who attended one Wilfred school – the Philadelphia campus – between July 1, 1987 and 1989. *See* Letter to NYLAG on February 18, 2014, Ex. C to Poscablo Decl., Dkt. 42-3.

14. Plaintiffs filed the instant action on behalf of themselves and similarly situated Wilfred borrowers on February 25, 2014. *See* Compl., Dkt. 2.

15. On May 29, 2014, Plaintiffs filed an amended complaint on behalf of themselves and similarly situated Wilfred borrowers, and a motion for class certification. *See* Am. Compl.

16. On June 27, 2014, USED opposed Plaintiffs’ motion for class certification and moved to dismiss Plaintiffs’ claims, primarily on the grounds that the Secretary’s actions were unreviewable because they were “committed to agency discretion by law,” 5 U.S.C. § 701(a)(2), and were not “final,” *id.* § 704. Mem. of Law in Opp. re: First Mot. to Certify Class, Dkt. 31.

17. The District Court granted Defendant’s motion to dismiss, and denied Plaintiffs’ motion for class certification as moot, on January 16, 2015. *See* Op., Dkt. 46.

18. On May 18, 2015, Plaintiffs appealed the dismissal of one of their claims—that USED violated the Administrative Procedure Act (“APA”) by arbitrarily and capriciously refusing to suspend collection on the Wilfred loans and to notify Wilfred borrowers of their discharge application rights. *See Salazar v. Duncan*, No. 15-832-cv (2d Cir.). Plaintiffs did not appeal dismissal of their other claims, which included that DOE is required to grant a blanket discharge of all Wilfred borrowers’ loans without requiring individualized application. *See id.*

19. By mandate issued on July 7, 2016, the Second Circuit Court of Appeals vacated the judgment of the District Court dismissing plaintiffs' claim, and remanded this case for further proceedings, including consideration of plaintiffs' class certification motion, consistent with the opinion it issued on May 12, 2016. *See* Mandate to USCA, Dkt. 55; Order of USCA, Dkt. 52.

20. After the case was remanded, the parties began to discuss settlement, and now seek the Court's approval of their agreed-upon settlement terms.

**The Class**

21. In the Settlement, the parties have stipulated to certification of the following class for purposes of settlement: all individuals who took out federally guaranteed student loans disbursed in whole or in part after January 1, 1986 for attendance at a school owned or operated by Wilfred ("Class Members" or, collectively, the "Class").

22. Defendant has attested to the Court that over 61,300 federally guaranteed student loans were issued to Wilfred students. *See* Decl. of Chad Keller in Opp. re: First Mot. to Certify Class ("Keller Decl.") ¶ 23, Dkt. 33.

23. USED also estimated, in oral argument before the Second Circuit, that approximately 60% of all Wilfred borrowers were falsely certified.

24. Between January 1, 2013 and July, 2017 lawyers and paralegals from NYLAG met or spoke with over eighty individuals whose eligibility for federally guaranteed student loans had been falsely certified by Wilfred Schools.

25. I personally have spoken to many dozens of Wilfred students over the course of more than three decades.

26. For each of the clients assisted by NYLAG, we were able to determine, based on statements and documents from these individuals, that their eligibility for federally-guaranteed student loans had been falsely certified by the Wilfred schools.

27. NYLAG has submitted applications for loan discharges on behalf of approximately eighty individuals who attended Wilfred schools.

28. None of these individuals had been aware of the possibility of seeking discharge of their federally guaranteed student loans, or of the existence of the false certification discharge, or that they were very likely qualified for a false certification discharge of loans, until they were referred to us, or until we advised them of it.

29. We have assisted individuals who attended at least a dozen different Wilfred campuses.

30. Of these applications, one (1) is still pending, seventy-four (74) have been granted, two (2) have been denied because they did not have the kind of loans eligible for discharge, and the status of seven (7) is currently unknown.

31. These students have all suffered from the continued existence of their Wilfred loans since before 1994, when the last Wilfred school closed.

32. The loans of most of these students are in default.

33. Almost none of these Wilfred students have been able to use their Wilfred "education" to obtain jobs. They have uniformly told NYLAG that despite attending Wilfred Beauty schools, they were never able to get anything but the basic entry level jobs in beauty salons, washing hair, and sweeping newly cut hair from the floor. Most told us they could not get any jobs in salons. Many told us they were not even able to sit for state licensing tests.

34. Those who attended other types of Wilfred Schools, including American Business Institute ("ABI"), have been similarly unable to find employment based on their attendance at the schools.

35. As a result of these Wilfred loans, the students' credit records have been damaged, and they have been subject to repeated offset of their income tax refunds and

garnishment of their wages. Many have tried but have not been able to continue their education because their outstanding debt from going to Wilfred made them ineligible for additional student loans.

36. The amount of their debts has risen astronomically as interest and penalties added up.

**The Named Plaintiffs**

37. The parties have stipulated to appoint the Named Plaintiffs as class representatives.

38. The experiences of the Named Plaintiffs in this case are typical of the experiences of the Class Members.

39. The following accounts are based on conversations that I and others at NYLAG have had with these individuals, as well as review of these individuals' documents.

40. Plaintiffs have previously submitted to the Court true and correct copies of the false certification discharge applications of Named Plaintiffs Ana Salazar, Marilyn Mercado, Ana Bernardez, Jeannette Poole, Edna Villatoro, Lisa Bryant and Cherryline Stevens. *See Ex. A to Stevens Class Cert. Decl.*

***Ana Salazar***

41. Ana Salazar attended the Wilfred Academy located on 50<sup>th</sup> Street and Broadway in Manhattan for approximately six months beginning in 1988. Ms. Salazar did not have a high school diploma or GED when she attended Wilfred, and was certified as eligible for federally guaranteed student loans without being given any test. Two guaranteed loans in the amounts of \$4,000 and \$2,625 were disbursed to Wilfred Academy for Ms. Salazar on November 2, 1988.

42. Ms. Salazar made substantial payments toward her loans over many years, causing her to struggle to cover basic expenses for herself and her children. Nonetheless, at the

time this action was filed, Ms. Salazar allegedly still had an outstanding balance of \$16,372 in principal and interest. Ms. Salazar only learned about the possibility of obtaining a false certification discharge of her loans when she was put in touch with Plaintiffs' attorneys.

43. Plaintiffs' counsel submitted a false certification discharge application on behalf of Ms. Salazar to USED on April 9, 2014. Ms. Salazar's application was granted.

***Marilyn Mercado***

44. Marilyn Mercado attended the Wilfred Academy located on 50<sup>th</sup> and Broadway in Manhattan beginning in 1987. In 1989, Ms. Mercado enrolled at the ABI located on Grand Concourse in the Bronx, also a Wilfred School. Ms. Mercado did not have a high school diploma or GED when she attended either Wilfred or ABI, and representatives from each school certified Ms. Mercado as eligible for federally guaranteed student loans without giving Ms. Mercado any test. A federally guaranteed student loan was disbursed to Wilfred Academy for Ms. Mercado in April 1987, and two loans in the amounts of \$2,800 and \$2,625 were disbursed to ABI in May 1989.

45. Over the years, Ms. Mercado made some payments on her loans as she was able, but ultimately defaulted. At the time this action was brought, Ms. Mercado allegedly still owed an outstanding balance of \$14,910 in principal and interest on the loans. Ms. Mercado only learned about the possibility of obtaining a false certification discharge of her loans when she was put in touch with Plaintiffs' counsel.

46. Plaintiffs' counsel submitted two discharge applications on behalf of Ms. Mercado, one for her loans for each school. USED granted Ms. Mercado's discharge of her ABI loans, but denied her discharge of her Wilfred Academy loan because it was a Perkins loan, which is not eligible for discharge.



***Ana Bernardez***

47. Ana Bernardez attended the Wilfred Academy on Fordham Road in Bronx, New York for less than two weeks in 1988. Ms. Bernardez did not have a high school diploma or GED. The Wilfred representative certified Ms. Bernardez as eligible for federally guaranteed student loans without giving Ms. Bernardez any test. Two federal student loans in the amounts of \$4,000 and \$2,625 were disbursed to Wilfred Academy for Ms. Bernardez on August 9, 1988.

48. Ms. Bernardez has had her federal income tax refunds seized approximately five times to satisfy her Wilfred loans. At the time this action was filed, Ms. Bernardez still allegedly owed a balance of \$22,785 in principal and interest. She only learned about the possibility of obtaining a discharge of her student loans when she was put in contact with Plaintiffs' counsel.

49. Plaintiffs' counsel submitted a false certification discharge application on behalf of Ms. Bernardez. Her discharge was granted.

***Jeanette Poole***

50. In 1987, Jeanette Poole met with a representative of the Wilfred Academy. Although she did not enroll, on July 9, 1987 two loans in the amounts of \$2,925 and \$2,625 were disbursed to Wilfred Academy for Ms. Poole, without her knowledge or permission.

51. Ms. Poole's Wilfred loans have prevented her from accessing other federally guaranteed student loans and other credit, and her federal income tax refund has been seized at least once. At the time this action was filed, Ms. Poole allegedly owed \$8,061 in principal and interest on these loans. Ms. Poole only learned about the possibility of obtaining a false certification discharge of her loans when she was put in touch with Plaintiffs' counsel.

52. Plaintiffs' counsel submitted a false certification discharge application on behalf of Ms. Poole in late 2013. Her discharge was granted.

***Edna Villatoro***

53. Edna Villatoro attended the Wilfred Academy located on Raymond Boulevard in Newark, New Jersey, in the late 1980s. At the time she enrolled, Ms. Villatoro did not have a high school diploma or GED, and was certified as eligible for federally guaranteed student loans without being given any test. Three federal student loans were disbursed to Wilfred Academy for Ms. Villatoro: two in September of 1987 in the amounts of \$4,000 and \$2,625, and a third on October 2, 1988 in the amount of \$2,625.

54. Ms. Villatoro made some payments on these loans over the years, but defaulted in 1993. Ms. Villatoro's federal tax refunds were later seized approximately two times. At the time this action was filed, Ms. Villatoro still allegedly owed a balance of \$24,944 in principal and interest. Ms. Villatoro only learned that these loans could potentially be discharged when she was put in touch with Plaintiffs' counsel.

55. Plaintiffs' counsel submitted a false certification discharge application on behalf of Ms. Villatoro in early 2014. Her discharge was granted.

***Lisa Bryant***

56. Lisa Bryant attended the Wilfred Academy located on Fannin Street in Houston, Texas for approximately three months beginning in 1987. At the time, Ms. Bryant did not have a high school diploma or GED, and was certified as eligible for a guaranteed student loan without being given a test. Three federal student loans were disbursed to Wilfred Academy on behalf of Ms. Bryant between 1987 and 1988, for a total amount of \$7,125.

57. Ms. Bryant struggled to pay off her Wilfred loans and defaulted in 1993. Ms. Bryant's federal income tax refund was seized at least four times. At the time this action was filed, Ms. Bryant still allegedly owed \$8,623 in principal and interest. Ms. Bryant only learned

about the possibility of obtaining a false certification discharge of her loans when she was put in touch with Plaintiffs' counsel.

58. Plaintiffs' counsel submitted a false certification discharge application on behalf of Ms. Bryant on May 21, 2014. Her discharge was granted.

*Cherryline Stevens*

59. Cherryline Stevens attended the Wilfred Academy located in Jamaica, New York, beginning in 1988. Ms. Stevens did not have a high school diploma or GED, and was certified as eligible to receive a federally guaranteed student loan without being given any test. A guaranteed student loan was disbursed to Wilfred Academy for Ms. Stevens in 1988.

60. Ms. Stevens's wages were garnished to satisfy her Wilfred loan. Ms. Stevens also had her federal tax refund intercepted at least three times in service of her Wilfred debt. At the time this action was filed, Ms. Stevens still allegedly owed \$12,919 in principal and interest. Ms. Stevens only learned about the possibility of obtaining a false certification discharge of her loans when she was put in touch with Plaintiffs' counsel.

61. Plaintiffs' counsel submitted a false certification discharge application on behalf of Ms. Stevens on February 7, 2014. Her discharge was granted.

**Class Counsel**

62. The parties have stipulated to the appointment of NYLAG and the Legal Services Center of Harvard Law School ("LSC") as class counsel.

63. NYLAG is a non-profit legal services organization that provides high quality, free civil legal services to low-income New Yorkers who cannot afford attorneys. NYLAG's Special Litigation Unit brings class actions on behalf of NYLAG's low-income clients, including in the areas of consumer protection and administrative law. NYLAG's Special Litigation Unit focuses specifically on litigation and advocacy to protect victims of for-profit schools like Wilfred.

NYLAG's attorneys have considerable experience in class actions on behalf of student loan borrowers, including *Gibbons v. Riley*, No. 94 Civ. 5212 (E.D.N.Y.); *Gill v. Spellings*, No. 00 Civ. 5453 (E.D.N.Y), both against the U.S. Department of Education; and *Frica-Sanchez v. ASA*, No. 14 Civ. 5006 (S.D.N.Y.), against a for profit school. NYLAG also has experience with class actions on behalf of consumers subject to unfair debt collection, including *Mayfield v. Asta*, No. 14 Civ. 2591 (S.D.N.Y.) and in class actions under the Administrative Procedure Act, including *Milanes v. Napolitano*, 08 Civ. 2354 (S.D.N.Y.), and *Tsamcho v. Napolitano*, No. 10 Civ. 2019 (E.D.N.Y.). In addition, NYLAG, including its Consumer Protection Unit and Financial Counseling Services, has extensive experience assisting individual student borrowers in obtaining relief.

64. Through its Project on Predatory Student Lending, Harvard LSC represents low-income student loan borrowers who have experienced unfair, deceptive, and illegal conduct at the hands of for-profit colleges. Its attorneys are experienced in class action litigation, including litigation to enforce the rights of individuals with guaranteed student loan debts.

#### **Settlement Negotiations**

65. The parties began settlement negotiations in approximately July 2016, following the Second Circuit's remand to this Court. Since that time, the parties have exchanged nearly a dozen drafts of a Stipulation of Settlement, as well as multiple drafts of supporting documents. The parties have also conferred many times by phone and in person.

66. As part of the settlement process, Defendant has provided answers to extensive questions by Plaintiffs' counsel about administration of the student loan program; the discharge process; the role of USED, Guaranty Agencies, Servicers, and Collectors; collection practices and procedures; and other topics relevant to the Settlement.

67. Both Plaintiffs' counsel and Defendant's counsel have advocated zealously for their clients, and have reached this Settlement only after extensive arms' length negotiations.

**Settlement Terms**

68. The proposed Settlement provides virtually all relief that the case presently seeks on behalf of Class Members.

69. The Settlement provides that USED will notify, or direct Guaranty Agencies to notify, all Class Members of their right to submit an ATB discharge application, and provide them the application, *see* Settlement ¶ 3(a)-(b); USED will suspend, or direct Guaranty Agencies to suspend, collections on certain loans pending the adjudication of such applications submitted by Class Members, *see id.* ¶ 4; and USED and Guaranty Agencies will provide relief consistent with law to borrowers whose applications are granted, *see id.* ¶ 7. The details of this relief are set forth below.

***Notice***

70. USED itself holds some of the Wilfred Loans of Class Members. Within four (4) months of the Court's approval of the Settlement ("Mailing Deadline"), USED will send to all Class Members whose Wilfred Loans it then holds: (i) a letter providing notice of the borrower's right to submit an ATB discharge application, direction on where to submit the application, and information about suspension, adjudication, and relief; (ii) an ATB discharge application, and (iii) a letter from Plaintiffs' counsel to the borrower in English and Spanish. *See id.* ¶ 3(a). USED will also send this packet to Class Members whose Wilfred Loans it held at the time those loans were repaid in full, or were otherwise resolved. *See id.*

71. The remainder of Class Members' loans are held by Guaranty Agencies. Within fifteen (15) days of the Court's approval of the Settlement, USED shall provide the same materials described in paragraph 70 above to all Guaranty Agencies; and will direct that each

Guaranty Agency, before the Mailing Deadline, send these materials to all class members whose Wilfred Loans it then holds or guarantees, and all class members whose Wilfred Loans it held or guaranteed at the time those Loans were repaid in full, or otherwise resolved. *See id.* ¶ 3(b).

72. The parties agree that, to the extent USED and the Guaranty Agencies do not have any records of a particular Wilfred borrower, or their records do not link a particular borrower to Wilfred, or their records do not contain an address for a particular borrower, or contain an address that has been determined to be invalid, that borrower will not be included in the Class. *See id.* ¶ 2(b).

#### ***Suspension***

73. USED and the Guaranty Agencies (at USED's direction) will also suspend collection on certain loans during the notice and application period, as follows.

74. For *non-defaulted* loans, USED will suspend, and direct Guaranty Agencies to suspend, all collection efforts as of the date of the mailing of the notice referred to in paragraphs 70-71 above. *See id.* ¶ 4(a)(i), (b). USED and the Guaranty Agencies will take all necessary steps to have any and all relevant third parties suspend all collection efforts. *See id.* ¶ 4(a)(i), (b). At the same time, USED will place these loans into non-capitalized forbearance, meaning that interest accrued on the loans during forbearance will not be added to the principal of the loans when such forbearance ends. *See id.* ¶ 4(a)(i), (b).

75. If a Class Member for whom collection efforts are suspended returns a completed ATB discharge application that is received within sixty (60) days of the Mailing Deadline, the suspension of collection will continue until the application is adjudicated. *See id.* ¶ 4(a)(i), (a)(iii), (b). If a Class Member does not return a completed application within that time period, USED and the Guaranty Agencies may resume collection and end the period of forbearance at the end of the sixty-day period. *See id.* ¶ 4(a)(i), (b).

76. For *defaulted* loans, suspension will only occur if a Class Member actually mails an application within the sixty-day period. USED informed Plaintiffs' counsel that it was not feasible to suspend collections for *all* defaulted loans, as is being done for non-defaulted loans, because collection activities on defaulted loans (including wage garnishment, tax offset, and other Collectors' efforts) are more complex and time-consuming to stop and start.

77. For most defaulted loans (with an exception described below), USED and the Guaranty Agencies will begin suspending collection only when the Class Member mails a completed discharge application within sixty (60) days after the Mailing Deadline. *See id.* ¶ 4(a)(ii), (b). For those Class Members with defaulted loans who do submit a discharge application within that period, USED and the Guaranty Agencies will suspend all collection efforts until the application is adjudicated. *See id.* ¶ 4(a)(ii)-(iii), (b). To the extent that suspension turns on the actions of third parties (for example, a Class Member's employer who must comply with a direction to cease garnishment), USED will make its best efforts to ensure that all such suspension occurs. *See id.* ¶ 4(a)(ii), (b). USED will grant forbearance of principal and interest on any Wilfred Loan for any period in which collection activity is suspended. *See id.* ¶ 4(a)(v).

78. There are two groups of loans on which collection will not be suspended: Class Members whose Wilfred Loans are under a rehabilitation agreement, because suspension might jeopardize the rehabilitation process; and Class Members whose Wilfred Loans are consolidated with non-Wilfred Loans, because suspension of just one portion of a consolidated loan does not appear possible.

***Adjudication***

79. USED or the Guaranty Agency will complete adjudication of all applications returned within sixty (60) days of the Mailing Deadline, within no more than one year from the Mailing Deadline. *See id.* ¶ 6(b).

80. USED agrees to abide by, and direct Guaranty Agencies to abide by, certain directions in the adjudication of each Class Member's application. USED and the Guaranty Agencies will accept as true an un rebutted but otherwise unsupported sworn statement by any Class Member that constitutes a facially valid claim for a false certification discharge. *See id.* ¶ 6(a). In other words, so long as an application demonstrates an applicant's facial eligibility for discharge (because, *e.g.*, the applicant's loan was disbursed during the correct time period, the applicant did not have a high school diploma or G.E.D. at the time he or she was certified for the loan, and the applicant was not given a compliant ATB test), USED and the Guaranty Agencies will grant the application even without outside corroboration of the Wilfred's school's false ATB practices. This is consistent with USED's current practices. *See Keller Decl.* ¶ 16.

***Relief***

81. The Settlement provides that no later than six months after the Adjudication Deadline ("Relief Deadline"), USED and the Guaranty Agencies will complete providing all relief warranted by the adjudication decisions, including the return of all payments made voluntarily or involuntarily and cancellation of any remaining indebtedness. *See Settlement* ¶ 7; *see also* 34 C.F.R. §§ 682.402(e)(2), 685.215(b) (relief to be provided upon false certification discharge).

***No Prejudice***

82. Nothing in the parties' proposed Settlement imposes *any* time limit by which a Class Member must submit an ATB discharge application, and does not prejudice the rights of



any Class Member to obtain any ATB discharge relief to which he or she is entitled by law. *See* Settlement ¶ 9. In other words, any Class Member (or any other individual) may *always* submit an ATB Discharge application *at any time*, and is entitled to receive a complete discharge, and full relief, as provided by law. *See id.* ¶ 9.

83. The only effect of the sixty (60) day period that the Stipulation provides for mailing applications is to provide *additional* relief and protections to Class Members who timely submit their applications, namely, entitlement to suspension under the terms described above, entitlement to adjudication within one year, and entitlement to relief within six months thereafter.

84. In addition, nothing in the parties' proposed Settlement impairs in any way any Class Member's ability to challenge the denial of his or her own application, or the adequacy of relief provided after a discharge is granted. *See id.* ¶ 14.

#### ***Certifications of Completion***

85. Within three (3) months after the Mailing Deadline, USED will certify that all mailings to, and suspensions for, Class Members have been completed, and will report the total number of Class Members, and the number to whom mailings were sent by USED and by Guaranty Agencies. *See id.* ¶ 5.

86. Within ninety (90) days after the Relief Deadline, USED will certify that all adjudications required by the Settlement have been completed, and all relief that is warranted has been provided within the timeline provided by the Settlement. *See id.* ¶ 8. USED will also report the total number of Applications received for adjudication under the Settlement and, of that total, the number of discharges granted in part or in full. *See id.*

**Benefits of Settlement**

87. The proposed Settlement in this case will finally provide to former Wilfred students the information they have needed for decades, in order to seek relief from loans they obtained, based on Wilfred's fraud, to attend a school that provided them with no meaningful education or job training.

88. Because Plaintiffs' only remaining claim in this action is that USED violated the APA by arbitrarily and capriciously refusing to suspend collection on the Wilfred loans and to notify Wilfred borrowers of their discharge application rights, the proposed Settlement provides virtually complete relief to the Class.

89. Settlement is also beneficial here because continued litigation of this case would have caused substantial delay. Litigation would have entailed review of USED's administrative record, including the adjudication of any challenges to the completeness of that record. Summary judgment practice would likely have been complex.

90. Litigation would also have entailed substantial risk for the Class. USED has indicated that it believes the decision was not arbitrary and capricious, and that it possessed evidence supporting a finding of systemic violations only at a single Wilfred campus. Although Plaintiffs believe USED would not have been able to support this representation, the APA standard is an exacting one for Plaintiffs. Were Plaintiffs to lose on the merits, USED might never notify any Class Members of their eligibility to submit ATB discharge applications and potentially have their Wilfred Loans discharged.

91. The parties agree that it is not necessary, or desirable, to provide a separate "Fairness Notice," that is, advance notice of the settlement to the class prior to a fairness hearing and final approval. The relief to the Class in this case *is, itself, the provision of notice*. It is

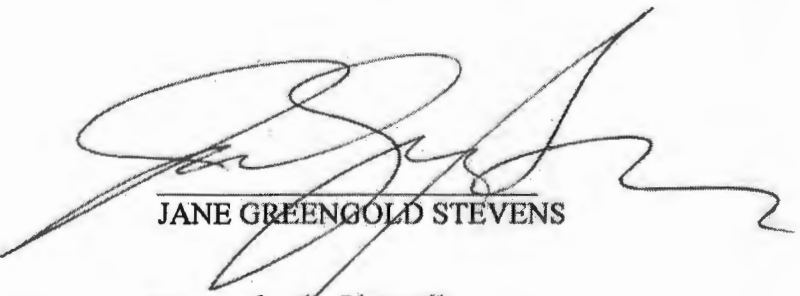
therefore unnecessarily duplicative to send a notice apprising the Class that it will receive relief in the form of further notice.

92. In addition, the time that would be consumed by the Fairness Notice and fairness hearing process would cause significant delay—nearly a year, according to USED’s estimates—in providing this critically necessary relief, resulting in immense prejudice to the Class. During the period of delay, these vulnerable class members would be subjected to additional collection efforts, including involuntary efforts such as wage garnishment and tax refund offset, posing great financial hardship.

93. A Fairness Notice is not necessary in this case for other reasons. As noted, the terms of the Settlement provide near complete relief to the Plaintiffs. The Settlement provides only for injunctive relief, leaving no potential for the Named Plaintiffs to benefit at the expense of the rest of the class. Negotiations between the parties were conducted at arm’s length, and there is no evidence of any collusion. Finally, USED has represented that sending a Fairness notice would impose additional and unnecessary costs on USED.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing statements are true and correct.

Dated: August 7, 2017  
New York, NY



JANE GREENGOLD STEVENS  
*Attorney for the Plaintiffs*