UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

Diana Vara and Amanda Wilson, *on behalf of themselves and all others similarly situated*, Plaintiffs, v. ELISABETH DEVOS, *in her official capacity as Secretary of the United States Department of Education*, AND THE UNITED STATES DEPARTMENT OF EDUCATION, Defendants.	Civil Action No. 19-12175-LTS **NOTICE OF MOTION AND MOTION FOR CLASS CERTIFICATION OR, IN THE ALTERNATIVE, LIMITED CLASS DISCOVERY**

NOTICE OF MOTION

PLEASE TAKE NOTICE THAT before the Honorable Leo T. Sorokin, Plaintiffs will, and hereby do respectfully move this Court pursuant to Rule 23 of the Federal Rules of Civil Procedure for an order certifying a class. Plaintiffs' motion is based on this submission, the accompanying declarations and exhibits, and the other pleadings and documents on file in this case.

Plaintiffs request that this Court issue an order certifying a class of: all individuals who borrowed a federal student loan to pay the cost of attendance for the 7,241 students identified in Exhibit 4 to the Massachusetts Attorney General's Office borrower defense submission who have not yet had their federal student loans completely cancelled and/or have not yet received a refund of sums already collected. The proposed class therefore includes both students who borrowed a

federal student loan to fund their own education, as well as parents who borrowed a federal Parent PLUS loan to fund their child's education.

Plaintiffs further request that the Court appoint Diana Vara and Amanda Wilson as class representatives, and that it appoint the undersigned as class counsel. The grounds for this motion are that this case meets all of the requirements for class treatment as required under Rule 23 of the Federal Rules of Civil Procedures.

In the alternative, Plaintiffs ask the Court to hold this motion in abeyance and permit limited discovery in support of the motion for class certification.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Plaintiffs request oral argument on this Motion as they believe oral argument may assist the Court in its consideration.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The proposed class includes more than 7,000 students (Students) who borrowed federal student loans to attend an abusive for-profit school in Massachusetts, Everest Institute, as well as those who took out these loans on their behalf. The school was operated by Corinthian Colleges, Inc. (Corinthian)—an ignominious, now-defunct nationwide chain—and had locations in Chelsea and Brighton, Massachusetts (together, Everest Massachusetts). After years of extensive investigations regarding fraudulent activity in multiple jurisdictions, Corinthian filed for bankruptcy in 2015, resulting in Everest's closure.

Later that year, the Massachusetts Attorney General's Office (AGO) requested that the United States Department of Education (Department) cancel the federal student loans of all

students who had attended Everest Massachusetts in light of the rampant consumer fraud the AGO had uncovered at the institution over the course of its own years-long investigation. Despite the overwhelming evidence that the AGO provided to support the claim that Students were eligible to receive loan discharges under the Department's own regulations, the Department has failed to issue a reasoned decision in response to this request. In a prior case brought by two former Everest students, this Court ruled that the AGO's submission validly invoked a borrower defense on behalf of all students—now members of the proposed class—and that the Department was obligated to reach the merits of the AGO's borrower defense application. After the Court remanded the case to the Department for that determination, the Department invoked its discretionary authority to cancel the loans of the two former students who were plaintiffs in the case and return amounts previously collected, failing to respond to the merits of the borrower defense application that the AGO submitted on behalf of each and every Everest Massachusetts student. The Department has continued to collect on these loans, including by seizing tax refunds and garnishing wages. The Department has defended its actions by repeatedly asserting—in direct contravention of the aforementioned judicial ruling—that the AGO's submission does not require the Department to take any action with respect to former Everest students beyond the two plaintiffs in the prior suit.

All class members in this suit seek the same two things: an order setting aside the Department's determination that the AGO's submission, in combination with all other information available to the Department, is insufficient to establish a borrower defense, and a declaration that every former Everest student identified in the AGO submission, as well as those who assumed federal student loan debt on their behalf, has established a complete defense to the

repayment of their federal student loans. The Court should allow Students to pursue this relief collectively.

The central question in this case—whether the Department has an obligation to issue a reasoned and non-arbitrary decision on the substantive evidence before it that the members of the proposed class have a complete defense to the repayment of their federal student loans—should be resolved on a class-wide basis. The proposed class satisfies Rule 23(a): (1) Based on the AGO's findings, over 7,000 Students have pending borrower defense assertions; (2) Students share common questions of law and fact; (3) Named Plaintiffs, like the other Students, remain saddled with federal student loan debt they assumed to attend Everest Massachusetts despite detailed findings regarding the school's extensive consumer fraud; and, (4) Named Plaintiffs and class counsel will vigorously challenge the Department's abdication of its responsibility to protect student loan borrowers from illegal activity.

Students also satisfy Rule 23(b). Fed. R. Civ. P. 23(b)(2) ("[T]he party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole[.]"). The Department has uniformly failed to provide class members with the relief to which this Court has already determined they are entitled; the Department continues to enforce and collect the loans despite failing to issue a reasoned and non-arbitrary decision on the merits of the AGO's submission. In response, Students all seek the same remedy: injunctive and corresponding declaratory relief to put them back in the position they were in before they attended Everest Massachusetts. Everest Massachusetts defrauded Students who have a legal right to be made whole under governing borrower defense regulations. The Department has unjustly refused to recognize this right.

Because each Student challenges the same Department actions, this litigation is well suited for class resolution. The Court should certify the proposed class or, in the alternative, stay a decision and allow class discovery.

II. BACKGROUND

A. Statutory and Regulatory Framework

Under Title IV of the Higher Education Act (HEA), 20 U.S.C. § 1070, *et seq.*, the Department is responsible for overseeing the federal student loan program, including the William D. Ford Direct Loan Program, 20 U.S.C. § 1087a, *et seq.*, and the Federal Family Education Loan (FFEL) Program, 20 U.S.C. § 1071, *et seq*. Both of these programs provide student borrowers, as well as those borrowing from the federal government on their behalf, the right to assert a defense to repayment (DTR) against the loan holder. Specifically, between 1995 and at least July 1, 2017, Department regulation provided that a Direct Loan borrower could assert, as a DTR, "any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law." 34 C.F.R. § 685.206(c)(1). Similarly, for FFEL loans, a holder is "subject to all claims and defenses that the borrower could assert against the school with respect to that loan" if a sufficiently close relationship existed between the school and the lender. 34 C.F.R. § 682.209(g). The master promissory notes governing both programs, Direct Loan Master Promissory Note (Ex. 1);[1] Federal Stafford Loan Master Promissory Note (Ex. 2)—as well as the terms, conditions, and benefits of both loan programs under the HEA, 20 U.S.C. § 1087e(a)(1)—support these rights. All loans at issue in this case are governed by these terms.

[1] All numerical exhibits cited are attached to the Merrill Declaration.

Not only do students maintain a right to assert such a defense, the Department has an obligation to consider it. The Department is legally required to consider objections to the enforceability of a borrower's debt. 31 U.S.C. § 3711(e)(2); *accord* 34 C.F.R. § 30.33(b)(3)(ii). Prior to certifying such debt for offset by the Department of the Treasury, the Department is similarly obligated to assert that it "has considered any and all evidence presented by the Debtor disputing the Creditor Agency's determination that would preclude collection of the Debt," U.S. Dep't of the Treasury, Bureau of the Fiscal Service, Agreement to Certify Federal Nontax Debts (revised September 2014). If a student successfully establishes a borrower defense, the Department must not only relieve the borrower "of the obligation to repay all or part of the loan and associated costs and fees[,]" 34 C.F.R. § 685.206; *see also* 34 C.F.R. § 685.222(i), but also notify the borrower, provide this update to the consumer reporting agencies, and re-instate the borrower's eligibility under Title IV. *See* 34 C.F.R. § 685.222(i); 15 U.S.C. § 1681s-2(a)(1)(A).

Massachusetts state law provides the standard for borrower defense for all federal student loans at issue in this lawsuit. 34 C.F.R. § 685.206(c) (eff. until Oct. 16, 2018); 34 C.F.R. § 682.209(g). The Massachusetts Consumer Protection Act prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce[.]" M.G.L. c.93A § 2(a). The AGO is expressly authorized to make rules and regulations interpreting the Act, M.G.L. c.93A § 2(c), and, since 1978, the state has had in place regulations specifically addressing "[c]ertain widespread acts and practices in the for-profit and occupational school industry [that] continue to unfairly harm consumers, frequently leaving students with few career opportunities and significant student debt." 940 C.M.R. 31.01. Detrimental reliance is not required to succeed on a claim under the Consumer Protection Act. *See, e.g., Aspinall v. Philip Morris Cos.*, 813 N.E.2d 476, 492 (2004).

B. Factual Background

The AGO began investigating Everest Massachusetts for consumer fraud in 2011, quickly uncovering evidence of widespread illegality. As a result of the investigation, the AGO filed a lawsuit in Massachusetts Superior Court against the company, charging that Corinthian violated Massachusetts' Consumer Protection Act. Complaint, *Commonwealth of Mass. v. Corinthian Colleges, Inc.*, No. 14-1093L (Mass. Super. Ct. Aug. 2, 2016) (Ex. 3). The allegations included that Everest Massachusetts misrepresented to prospective students: the urgency of enrollment in the schools, the employment opportunities available to graduates, the assistance the school provided graduates in obtaining employment in their fields of study, and the nature and availability of financial aid. *Id.* In 2016, the Commonwealth obtained a final judgment against Corinthian. Findings and Order for Entry of Judgment, *Corinthian Colleges, Inc.* (Mass. Super. Ct. Aug. 2, 2016) (Ex. 4). The Court ordered relief of $67,333,019—an amount equal to all funds Corinthian acquired from Massachusetts students who enrolled between July 1, 2006 and June 30, 2014, *id.*—which subsequently proved uncollectible due to Corinthian's bankruptcy.

The AGO also sought financial relief for the student borrowers who had assumed federal loans to attend Everest Massachusetts. On November 30, 2015, the Massachusetts Attorney General submitted a borrower defense application to the Department on behalf of all Students who attended Everest Massachusetts, requesting that the Department find all such federal loans unenforceable and immediately discharge them. The Attorney General supported her application with 2,700 pages of investigatory findings, supporting evidence, and attestations from former Corinthian students. These findings included a list containing the name, date of enrollment, contact information, and academic program of each of the 7,241 Students whose loans the AGO sought to have discharged. Submission Report from Maura Healey, Mass. Atty. Gen., to Arne

Duncan, Sec., U.S. Dep't of Educ. and Joseph A. Smith, Jr., Special Master, U.S. Dep't of Educ. 4 (Nov. 30, 2015) (Ex. 5). In the view of the Commonwealth's chief law enforcement officer, each of these Students is "legally entitled to relief" because an "extensive investigation" of Corinthian's Massachusetts operations "uncovered a program built on predation and lies," amounting to "an unrelenting scheme to secure unaffordable federal loans from vulnerable students, without providing the education, services, or opportunities promised." AGO Submission Cover Letter from Maura Healey, Mass. Atty. Gen., to Arne Duncan, Sec., U.S. Dep't of Educ. and Joseph A. Smith, Jr., Special Master, U.S. Dep't of Educ. 1 (Nov. 30, 2015) (Ex. 6) (together with Ex. 5, appendices, and exhibits, referred to as the "AGO submission"). According to the Attorney General, "Corinthian amounted to a pervasive violation of Massachusetts law." *Id.*

On January 8, 2016, the Department responded to the AGO with a two-page letter, acknowledging receipt and careful review of the DTR application and its attachments. Dep't. Response Letter to Submission from Joseph A. Smith, Jr., Special Master, U.S. Dep't of Educ., to Maura Healey, Mass. Atty. Gen. 1 (Jan. 8, 2016) (Ex. 7). The Department anticipated "providing a fair, transparent, and efficient process for debt relief for all students" and "working with [the Attorney General] for the benefit of Massachusetts students." *Id.* at 2. The Department has, however, failed to issue a reasoned decision on the merits in response to the AGO's submission; instead, the Department has continued to collect upon the invalid loans for the past three years.

As a result, two indebted former Everest Massachusetts students—both of whom were listed in the AGO's submission—filed a lawsuit against the Secretary of Education on September 28, 2016 challenging the certification of their debts for tax offset despite the pending AGO DTR.

Complaint, *Williams v. DeVos*, No. 16-cv-11949, ECF No. 1 (D. Mass. dismissed May 9, 2019) ("*Williams*"). Ruling on cross-motions for judgment, this Court found that "[the Secretary's] decision to certify the plaintiffs' debts for tax offset necessarily rejected any borrower defense the submission presented" and that the Department's "failure to provide notice and an explanation of its decision [was] the very definition of arbitrary and capricious agency action" prohibited by the Administrative Procedure Act (APA). Order on Motions for Judgment at 28, *Williams*, ECF No. 99. This Court determined that the Attorney General's DTR submission required the Secretary to substantively examine the validity of the *Williams* plaintiffs' borrower defense, rejecting the Secretary's contention that the AGO needed a signed statement (or its equivalent) from each individual borrower. *Id.* at 24. In accordance with these findings, this Court remanded the matter to the Secretary for a redetermination of her certification decision and retained jurisdiction in the event of an appeal from or challenge to the subsequent decision. *Id.* at 29–30.

The Department of Education did not, however, issue a decision on the merits of the borrower defenses, and instead settled the claims of the two *Williams* plaintiffs. In direct contravention of this Court's aforementioned determination, counsel for the Department informed the AGO that it did not interpret the *Williams* Order "as requiring the Department of Education to take any action with respect to any individuals other than the two named Plaintiffs" in that lawsuit. Letter from Jessica Driscoll, Asst. U.S. Att'y, to Tim Hoitink, Asst. Atty. Gen., Mass. Office of the Atty. Gen. (Feb. 20, 2019) (Ex. 8).[2] In response, the AGO filed a motion to

[2] This interpretation is consistent with the Department's publicly available data regarding borrower defense applications. According to the Department, there have been a total of 6,650 borrower defense applications received from Massachusetts residents; this figure includes 2,593 pending and 3,857 approved applications. *See* U.S. Dep't of Educ., Borrower Defense to Repayment Loan Forgiveness Data (March 2019), https://studentaid.ed.gov/sa/about/data-center/student/loan-forgiveness/borrower-defense-data. Thus, the Department clearly does not consider the AGO submission on behalf of the 7,241 former Everest Students "received" borrower defense applications.

compel compliance with the Court's Order pursuant to Federal Rule of Civil Procedure 71 or, in the alternative, to intervene pursuant to Rule 24. Motion by the Commonwealth of Massachusetts to Compel Compliance with this Court's Order or, in the Alternative, to Intervene, *Williams*, ECF No. 115. On August 8, 2019, that motion was denied. Order on Motion to Compel Compliance with the Court's Order or, in the Alternative, to Intervene, *Williams*, ECF No. 144. The Court denied the motion in part because the Commonwealth, as well as other interested parties, could file a new lawsuit to pursue such action. The Court expected "that any such lawsuit would then proceed expeditiously." *Id.* at 4.

C. Procedural History

On October 22, 2019, Named Plaintiffs Vara and Wilson filed this case against the Department, four years after the AGO asserted borrower defenses on their behalf. The entire Student class asserts a claim under the APA, 5 U.S.C. § 706(2), alleging that the Department's rejection of the AGO's submission as establishing a borrower defense for each and every federal student loan associated with a former Everest Massachusetts student identified by the AGO, without ever issuing a reasoned determination on the merits of the application, is "arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law" and "without observance of procedure required by law." 5 U.S.C. § 706(2)(A), (D). Students seek an order finding these actions unlawful. Students also seek a declaration, pursuant to the Declaratory Judgment Act, that they have successfully established a DTR of all federal student loans associated with Everest Massachusetts.

III. THE COURT SHOULD CERTIFY THE STUDENT CLASS

Students satisfy all of the requirements for class certification: more than 7,000 Students—as well as those who took out federal student loans on their behalf—are challenging a common policy, under the same theory, seeking the same remedy. The Court should permit the case to move forward as a class action.

A. Students satisfy Rule 23(a)

Students meet the four elements of Rule 23(a): (1) the proposed class of more than 7,000 federal student loan borrowers is sufficiently numerous, (2) all Students allege common legal theories and claims in seeking to invalidate the Department's rejection of the AGO's invocation of a borrower defense on behalf of each Student; (3) Named Plaintiffs, who themselves borrowed federal student loans to attend Everest Massachusetts and remain burdened by these federal student loans, are typical of the class, and (4) Named Plaintiffs and Class Counsel have no conflicts of interests and will vigorously prosecute the action on behalf of the class.

1. The proposed class is numerous.

This proposed class is "so numerous that joinder of all members is impracticable[.]" Fed. R. Civ. P. 23(a)(1). The class consists of all individuals who borrowed a federal student loan to pay the cost of attendance at Everest Massachusetts for the 7,241 Students identified in Exhibit 4 to the AGO's 2015 submission to the Department. Second Decl. of Chad Keller at ¶¶ 10–15, *Williams*, ECF No. 55. Though "[t]here is no threshold number of class members that automatically satisfies this requirement," *Shanley v. Cadle*, 277 F.R.D. 63, 68 (D. Mass. 2011) (internal citation omitted), "courts have generally found that a class size of forty or more individuals will satisfy the numerosity requirement," *George v. Nat'l Water Main Cleaning Co.*, 286 F.R.D. 168, 173 (D. Mass. 2012). Here, Students easily satisfy the numerosity requirement.

Of the proposed class, only a fraction—the exact number is known to the Defendants—have received cancellation of their federal student loans or have had returned to them all money collected on their federal students loans. All of the remaining Students identified therein, as well as those who borrowed federal student loans on their behalf, are class members.

2. All Plaintiffs' claims turn on whether the Department must grant or, in the alternative, substantively consider class members' borrower defense claims in response to the AGO's submission.

Commonality necessitates "questions of law or fact common to the class[.]" Fed. R. Civ. P. 23(a)(2). "In other words, the commonality requirement is met where the questions that go to the heart of the elements of the cause of action will each be answered either 'yes' or 'no' for the entire class and the answers will not vary by individual class member." *Raposo v. Garelick Farms, LLC*, 293 F.R.D. 52, 55 (D. Mass. 2013) (internal quotations and citation omitted).

Here, every Student's claims implicate the same questions including, without limitation: whether the Department has constructively denied the AGO's application on behalf of class members; whether doing so without rendering a reasoned decision on the merits of the application is arbitrary and capricious in violation of the APA, 5 U.S.C. § 706(2); and whether the evidence supports a finding that all members of the class have established a complete defense to the repayment of their federal student loans. These questions arise as a result of the Department's continued insistence—despite this Court's clear determination to the contrary—that the AGO's submission insufficiently establishes either a borrower defense application or a meritorious borrower defense in itself on behalf of each of the thousands of former Everest Massachusetts Students. Each class member suffers from the Secretary's refusal to adequately consider the AGO's submission; Students establish commonality under the circumstances.

3. The claims and defenses of the named representatives are identical to those of other Students.

Plaintiffs' claims are also typical of the other Students, Rule 23(a)(3); "[the representative plaintiff's] injuries arise from the same events or course of conduct as do the injuries of the class and . . . plaintiff[s'] claims and those of the class are based on the same legal theory." *In re Credit Suisse–AOL Sec. Litig*., 253 F.R.D. 17, 23 (D. Mass. 2008) (internal citation omitted). Thus, "the putative class representatives can fairly and adequately pursue the interests of the [proposed] class members without being sidetracked by their own particular concerns." *Id.* (internal quotation and citation omitted); *see also Vargas v. Spirit Delivery & Distribution Servs., Inc.*, 245 F. Supp. 3d 268, 287 (D. Mass. 2017).

More specifically, each Named Plaintiff, like every other Student, borrowed federal student loans to attend Everest Massachusetts. Vara Decl. at ¶ 11; Wilson Decl. at ¶¶ 9, 21. Each Named Plaintiff, like every other Student, was identified by name in the AGO submission as a result of the violations of Massachusetts law to which they were subject. Second Decl. of Chad Keller at ¶¶ 10–15, *Williams*, ECF No. 55. Each Named Plaintiff, like every other Student, continues to be burdened by student loans despite the AGO's submission. Vara Decl. at ¶¶ 15–16; Wilson Decl. at ¶¶ 22–23. And each Named Plaintiff, like every other Student, seeks relief sufficient to put them back into the position they were in before they attended Everest Massachusetts.

4. Class representatives and class counsel have no conflicts of interests and will vigorously prosecute the action on behalf of the class.

Rule 23(a) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4); *see also* Fed. R. Civ. P. 23(g). This penultimate requirement "demands an inquiry similar to that of typicality, focusing upon whether the putative representative plaintiff's interests are aligned with other class members and whether the plaintiff

is in a position to vigorously protect the class interests." *In re Credit Suisse*, 253 F.R.D. at 23; *see also Torrezani v. VIP Auto Detailing, Inc.*, 318 F.R.D. 548, 555 (D. Mass. 2017). Named Plaintiffs Vara and Wilson are adequate representatives of the class.

Named Plaintiffs have interests and claims identical to the rest of the class and all seek the exact same remedy. They are not aware of any conflicts of interest. Vara Decl. at ¶ 21; Wilson Decl. at ¶ 24. They have retained competent and experienced counsel to litigate the case for them, indicating that they are ready, able, and willing to prosecute the case vigorously on behalf of the class. Vara Decl. at ¶ 22; Wilson Decl. at ¶ 25. And, they strongly desire to prosecute this case vigorously on behalf of the class of student loan borrowers defrauded by Everest Massachusetts. Vara Decl. at ¶ 23; Wilson Decl. at ¶ 26.

Proposed class counsel also satisfy Rule 23(a) and Rule 23(g). *See* Fed. R. Civ. P 23(g) (setting forth the standards for appointing class counsel). Undersigned counsel are attorneys at the Harvard Legal Services Center's Project on Predatory Student Lending. Plaintiff's attorneys have represented and/or advised hundreds of former students regarding the borrower defense process. Merrill Decl. at ¶¶ 2–3. Counsel have knowledge of, and familiarity with, the relevant laws and regulations concerning federal student loans and borrower defense, and represented plaintiffs in the *Williams* litigation. *Id.* Counsel also has experience representing Rule 23 classes of student loan borrowers. *See, e.g.*, *Sweet v. DeVos*, No. 3:19- cv-03674 (N.D. Cal filed June 25, 2019); *Villalba v. ITT*, No. 17-50003 (Bankr. S.D. Ind. dismissed Mar. 15, 2019). Counsel is not aware of any conflicts with members of the proposed class.

Thus, Students satisfy Rule 23(a) and class certification is appropriate.

B. Students satisfy Rule 23(b)

The class also satisfies Rule 23(b)(2) because the Department "has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). "These requirements demand cohesiveness among class members with respect to their injuries," *Connor B. ex rel. Vigurs v. Patrick*, 272 F.R.D. 288, 297 (D. Mass. 2011) (internal quotation and citation omitted), though this "does not require that the relief to each member of the class be identical, only that it be beneficial" to each. *Sykes v. Mel S. Harris & Assocs. LLC*, 780 F.3d 70, 97 (2d Cir. 2015); *see also* 7AA Charles Alan Wright et al., Federal Practice and Procedure § 1775 (3d ed. 2019). Here, Plaintiffs exclusively seek injunctive and corresponding declaratory relief in response to the Department's continued efforts to collect upon the student loans they assumed to attend Everest Massachusetts. The Department maintains—through both the statements and actions described above—that the AGO submission fails to invoke borrower defenses on behalf of each member of the class. Consequently, Plaintiffs seek judicial relief requiring the Department to grant the borrower defense claims submitted on their behalf by the Massachusetts Attorney General. Although the relative impact of this relief will vary depending upon each class member's individual circumstances, such variation is irrelevant. The relief sought will respond to the entirety of class claims because the Department has refused to act on the borrower defense claims that apply to the entire class.

IV. ALTERNATIVELY, THE COURT SHOULD STAY A DECISION ON THIS MOTION PENDING CLASS DISCOVERY

The evidence subject to judicial notice—accompanying this filing and otherwise—warrants class treatment in this case. Plaintiffs are moving at this time to protect their ability to

resolve the merits of this dispute on behalf of the entire proposed class. But, if the Court finds class certification not yet appropriate, Plaintiffs request that the Court delay ruling on class certification and permit limited class discovery. Federal trial courts enjoy broad discretion in managing pretrial proceedings, including the timing and use of discovery. *See Vineberg v. Bissonnette*, 548 F.3d 50, 54 (1st Cir. 2008); *see also* Ann. Manual Complex Lit. § 21.14 (4th ed. 2019). Precertification discovery is appropriate where it is necessary to provide the court with "sufficient material . . . to determine the nature of the allegations, and rule on compliance with the Rule's requirements[.]" *Rodriguez v. Banco Cent.*, 102 F.R.D. 897, 903 (D.P.R. 1984) (internal citation omitted); *see also* 3 Newberg on Class Actions § 7:17 (5th ed. 2019).

Here, Students have alleged that the Department has uniformly refused to grant borrower defenses to former students at Everest Massachusetts, as well as those who took out federal student loans on their behalf. Discovery would provide further evidence regarding the extent to which the Department has formalized the uniform treatment of all class members, thus speaking to the commonality and typicality requirements of Rule 23(a).

V. CONCLUSION

In failing to recognize its duty to grant borrower defenses in light of the valid invocation of these protections by the AGO on behalf of former Everest Massachusetts students, the Department has violated the HEA, as well as the agency's own regulations and contracts. Over 7,000 federal student loan borrowers remain burdened with debt despite overwhelming evidence that the Department is legally required to cancel these loans as a result of Everest's blatant and well-documented violations of Massachusetts state law. Because all Students seek the same

thing—to compel the Department to grant the borrower defenses asserted on their behalf—the Court should certify the class and allow them to seek this remedy collectively.

Respectfully submitted,

/s/ Toby Merrill

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(a)(2)

I, Toby R. Merrill, hereby certify that on November 6, 2019, I made a good faith effort to meet and confer with counsel for Defendants but they were unable to discuss the case because they were just assigned to it.

/s/ Toby Merrill

Toby R. Merrill

CERTIFICATE OF SERVICE

I, Toby R. Merrill, hereby certify that on November 13, 2019, a true and correct copy of the foregoing motion and declaration were served upon all parties of record through the ECF system.

/s/ Toby Merrill

Toby R. Merrill