UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DARNELL E. WILLIAMS and YESSENIA M. TAVERAS, Plaintiffs, v. ELISABETH DEVOS, in her official capacity as Secretary of the United States Department of Education, Defendant.	)	C.A. No. 16-11949-LTS

OPPOSITION TO MOTION TO SUPPLEMENT
THE ADMINISTRATIVE RECORD AND PERMIT LIMITED DISCOVERY

The Court should deny Plaintiffs' Motion to Supplement the Administrative Record and Permit Limited Discovery (Document Nos. 46 and 47) ("Motion"), which runs contrary to the fundamental record review principles governing civil actions brought pursuant to the Administrative Procedures Act. The certified administrative record (Document No. 43) ("Record") filed by the Secretary of Education ("Defendant") enjoys the presumption of regularity and Plaintiffs have not established any of the exceptions to that presumption. Rather, Plaintiffs complain about the lack of any document in the Record containing Defendant's findings or reasoning, when they themselves have not yet completed any of the available administrative processes that would result in a reviewable decision on their debts. Nor is this the unusual case that might warrant merits-based discovery, particularly where, as here, the Court has not yet decided the threshold issue of exhaustion. In short, the information Plaintiffs seek to add by virtue of supplementation and discovery is not necessary for the Court to resolve this case. For the following reasons, Plaintiffs' Motion should be denied in its entirety.

BACKGROUND

A brief summary of the factual and procedural history of this case is necessary to provide context for Plaintiffs' current Motion. Both Plaintiffs attended Everest College in Massachusetts, part of the now-defunct Corinthian Colleges, Inc. – Plaintiff Williams during 2011, and Plaintiff Taveras during 2010 and 2011. (See Document Nos. 22-2, ¶ 3 and 22-3, ¶ 3). After Plaintiffs defaulted on their federal student loans and failed to respond to a myriad of notices by the Department of Education and the Department of Treasury (see generally Document Nos. 19-1, 19-2, 19-3 and 19-4), their 2016 tax refunds were applied to offset their delinquent debts through the federal government's Treasury Offset Program ("TOP"). (See generally Document No. 19).

Instead of taking any steps at the administrative level to challenge the certification of their debt or the subsequent offset, Plaintiffs filed this action on September 28, 2016, and filed an Amended Complaint on October 14, 2016 ("Complaint"). (See Documents No. 1 and 5). They have since voluntarily dismissed the claims against the Secretary of the Treasury (see Document No. 23) and, on Defendant's motion, the Court dismissed Plaintiffs' claims for injunctive relief and any claims on behalf of other unnamed plaintiffs. (See Document No. 35). All that remains before the Court now are Plaintiffs' claims pursuant to the Administrative Procedure Act ("APA") against the Defendant Secretary of Education.[1]

With respect to the remaining claims, Defendant has argued, *inter alia*, that: (1) Plaintiffs failed to exhaust their administrative remedies where, as here, Plaintiff Williams has not commenced the administrative process to challenge his tax refund offset and Plaintiff Taveras

[1] Plaintiff also has a claim under the Declaratory Judgement Act ("DJA") which enlarges the range of r*emedies* available to plaintiffs in federal court, but does not extend the scope of the Court's review. 28 U.S.C. § 2201; Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 671 (1950).

has a pending borrower defense claim that has not yet been finally determined; and (2) Plaintiff Taveras's claims are not ripe for judicial review and/or are moot, where she has a pending claim and, in any event, she has already received the relief she requested in her Complaint. (See Document No. 19-2, ¶ 21 and attachment 19 thereto, and Document No. 26 at 16-17, n.19).

In response to Defendant's Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(1), the Court entered an order, which stated:

> Thus, one issue remains: the Secretary of Education's Motion to Dismiss, Doc. No. 18, which Defendant has confined solely to an argument that the Court lacks subject matter jurisdiction under Rule 12(b)(1). In reviewing the operative complaint and the parties' submissions, Plaintiffs appear to claim first that the Secretary, before rendering a final certification decision, must consider information known to her even when the borrower fails to respond to the notice of possible certification. This claim might not be capable of proper resolution on a Rule 12(b)(1) motion. For example, if Plaintiffs were correct (something the Court offers no opinion on currently) then, perhaps, the claim is exhausted; that is the Plaintiffs are merely saying the Secretary improperly disregarded certain general information she knew but failed to consider or failed to weigh properly when she made the certification decision. This "exhaustion" question then may itself be intertwined with the merits. Second, Plaintiffs appear to claim that in response to the letter or filing from the Attorney General for the Commonwealth of Massachusetts, the Secretary had to consider the letter both as an objection to certification made by each of these two individual Plaintiffs supported by the information provided by the Commonwealth's Attorney General and as a request for an individualized determination as to each of the two named Plaintiffs. Thus, Plaintiffs appear to claim, at least as of the date of the letter, that the two Plaintiffs did exhaust. Whether the letter is sufficient might raise a question intertwined with the merits not properly capable of resolution on a Rule 12(b)(1) motion.

See Court Order dated July 27, 2017 (Document No. 32). As such, the Court invited the parties to confer and submit proposals for a path toward judicial resolution of the issues raised by Defendant's Rule 12(b)(1) motion. (Id.) The parties conferred and agreed that Defendant would first file the administrative record and then the parties would provide supplemental briefing,

following judicial resolution of any disputes regarding the scope of the record.[2] (Document No. 34). Presently before the Court is such a dispute. (See Document Nos. 46 and 47).

Defendant filed the Record on November 17, 2017. (See Document No. 43). Prior to that date, counsel conferred extensively regarding the contents of the Record, with Defendant informally providing documents to the Plaintiffs in good faith to facilitate discussions. Moreover, after multiple prolonged conversations between and among the parties and representatives from the Massachusetts Attorney General's Office ("Mass. AGO") about the confidential non-public Massachusetts Attorney General's Memorandum ("AG Memorandum," filed under seal by the Plaintiff pursuant to Document No. 49), the parties successfully negotiated a solution to the confidentiality concerns of the interested parties, as set forth in the unopposed motion for limited disclosure filed by the Plaintiff. (Document No. 36). Now, Plaintiffs seek to undermine the carefully and extensively negotiated resolution by demanding that the Court order the public disclosure of the AG Memorandum. (See Document No. 46, ¶ 4). Moreover, as set forth below, there is no factual or legal basis for inclusion of the AG Memorandum in the administrative Record pertaining to these two Plaintiffs, in any event.

Finally, Plaintiffs ask this Court to endorse wide-ranging discovery into matters that are not germane to the resolution of threshold exhaustion arguments. This Court should not endorse Plaintiffs' unfounded and unnecessary requests where, as here, the Court need not reach the full merits to decide the case before it. The Court can and should resolve the exhaustion arguments – in Defendant's favor – based on the Record before it such that no supplementation or additional discovery is necessary.[3]

[2] Thereafter, the Court denied the jurisdictional motion without prejudice with leave to re-file (Document No. 35), which Defendant fully intends to do.

[3] If the Court were to deny Defendant's impending motion for judgment based on exhaustion, it could thereafter consider whether it was appropriate to allow merits-based discovery at such

ARGUMENT

A court's review of an agency decision pursuant to the APA, "involves neither discovery nor trial," see Atieh v. Riordan, 727 F.3d 73, 76 (1st Cir. 2013), and accordingly, is generally limited to the administrative record. See, e.g., Boston Redevelopment Auth. v. Nat'l Park Serv., No. 14 Civ. 12990, 2015 WL 5074342 at *3 (D. Mass. Aug. 26, 2015) (citing cases); see also Olsen v. United States, 414 F.3d 144, 155 (1st Cir. 2005) ("The Supreme Court has consistently stated that review of administrative decisions is 'ordinarily limited to consideration of the decision of the agency ... and of the evidence on which it was based,' and that 'no de novo proceeding may be held.' ")

In Olsen, the First Circuit clearly set forth the record review principles under the APA as follows:

> The Supreme Court has consistently stated that review of administrative decisions is "ordinarily limited to consideration of the decision of the agency . . . and of the evidence on which it was based," and that "no *de novo* proceeding may be held." United States v. Carlo Bianchi & Co., 373 U.S. 709, 714-15 (1963). "The focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court." Camp v. Pitts, 411 U.S. 138, 142, 36 L. Ed. 2d 106 (1973). See also Florida Power & Light Co. v. Lorion, 470 U.S. 729, 743-44 (1985) ("The task of the reviewing court is to apply the appropriate APA standard of review, 5 U.S.C. § 706, to the agency decision based on the record the agency presents to the reviewing court.").

414 F.3d at 155. Here, Plaintiffs have not offered any meritorious legal or factual basis for supplementation of the Record or the need for discovery, and their Motion should be denied in its entirety for the reasons set forth below.

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time. This bifurcated process would conserve judicial and litigant resources in the event the case is resolved on the exhaustion issue.

A. The Administrative Record Filed by the Secretary is Complete, Entitled to the Presumption of Regularity, and Not Subject to Any Exception That Might Call For Supplementation.

An agency's designation of the administrative record is entitled to a presumption of administrative regularity. See, e.g., Friends of the Boundary Mountains v. U.S. Army Corps of Eng'rs, 2013 WL 4589466 at *1 (D. Me. Aug. 28, 2013) (citation omitted). Indeed, "[s]upplementing the administrative record on judicial review is the exception, not the rule. . . . " Town of Winthrop v. F.A.A., 535 F.3d 1, 14 (1st Cir. 2008) (citing Valley Citizens for a Safe Env't v. Aldridge, 886 F.2d 458, 460 (1st Cir. 1989)).

The First Circuit has identified two limited exceptions to the general rule against supplementation: where there is (1) "'a strong showing of bad faith or improper behavior' by agency decision makers;" and (2) "a 'failure to explain administrative action as to frustrate effective judicial review.'" Olsen, 414 F.3d at 155-56 (quoting Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 (1971), *overruled on other grounds by* Califano v. Sanders, 430 U.S. 99 (1977). See also Camp v. Pitts, 411 U.S. 138, 142-43 (1973); Int'l Junior College of Business and Technology, Inc. v. Duncan, 802 F.3d 99, 114 (1st Cir. 2015) ("When reviewing agency decisions, we do not allow supplementation of the administrative record without specific evidence (i.e., a "strong showing") of the agency's "bad faith or improper behavior.") (citing Town of Norfolk v. U.S. Army Corps of Eng'rs, 968 F.2d 1438, 1458-59 (1st Cir. 1992)); Accord United States v. JG–24, Inc., 478 F.3d 28, 34 (1st Cir. 2007) ("Normally, we do not allow supplementation of the administrative record unless the proponent points to specific evidence that the agency acted in bad faith.") Even where one of the narrowly construed exceptions applies, *whether* to allow supplementation is entirely discretionary. See Roman v. Riordan, No. 15-40061-TSH, 2016 WL 234803 at *5-6 (D. Mass. Jan. 20, 2016) (citing, *e.g.*,

Town of Winthrop, 535 F.3d at 14, and Harvard Pilgrim Health Care of New England v. Thompson, 318 F. Supp. 2d 1, 9 (D.R.I. 2004)). In any event, neither of the two exceptions applies here.

Plaintiffs do not assert – nor could they – that there has been bad faith or improper behavior by agency decision makers. Rather, Plaintiffs argue that supplementation of the Record (and discovery, for that matter) is necessary for effective judicial review. As set forth below, the Record is sufficient for the Court to effectively resolve the issues before it, and Plaintiffs have not demonstrated otherwise.

1. ***Plaintiffs' Claim that the Record Lacks Findings of Fact or Other Information Indicating Whether, How, or When the Secretary Made a Determination Reveals Their Failure to Exhaust.***

First, Plaintiffs argue that, "[t]he record includes no administrative findings of fact or other information indicating whether, how, or when the Secretary made a determination that Plaintiffs' loans are legally enforceable." (Document No. 47 at 4-5). This assertion merely highlights the fundamental flaw with Plaintiffs' Complaint: because Plaintiffs have failed to exhaust their administrative remedies, there *are* no fulsome or final decisions or findings on the merits of their fraud-based borrower defenses in the Record, because the Secretary has not yet had the opportunity to adjudicate their claims.[4] As stated, Plaintiff Williams has not filed any borrower defense claim and Plaintiff Taveras's borrower defense claim is pending.[5] (See

[4] Indeed, the only agency action reviewable under the APA at all is, "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Here, Plaintiffs *have* a remedy of which they have not fully availed themselves. Where, as here, Plaintiffs have yet to exhaust and there is no final decision for the Court to review, the case should be dismissed. See, e.g., Diaz v. Matal, No. CV 16-12153-MPK, 2017 WL 3269383 at *6 (D. Mass. Aug. 1, 2017) (finding that the plaintiff had not exhausted his available administrative remedies where he had not completed a request for reissue, and, as such, there was no final USPTO decision for the court to review).

[5] Nor did either Plaintiff file a pre-certification or pre-offset challenge in response to notices received from the Department of Education. See, e.g., Document No. 19-2, Attachments 5 and

generally Document No. 19-2, 19-3 and 19-4). If either of the Plaintiffs' claims were fully and finally adjudicated at the agency level, there would be a decision approving or denying the claim and setting out the reasons therefor. See Second Declaration of Chad Keller ("2d Keller Decl.") (attached hereto at Exhibit 1) ¶¶ 6, 17 and Attachments A and C thereto (attaching an example of a pre-certification TOPs decision and a decision on a borrower defense claim).

2. *The AG Memorandum (so-called "DTR Application") Is Not and Should Not Be Part of The Record In This Case and, In Any Event, Must Not Be Publicly Disclosed.*

Although Plaintiffs have in their possession the AG Memorandum, they rely on descriptions of the document rather than the document itself. (See, e.g., Motion at 3) (citing *Amicus* Brief of the Commonwealth of Massachusetts) (Document No. 29). A review of the AG Memorandum reveals that it does not support their argument.

By submitting her letter and attached AG Memorandum, the Massachusetts Attorney General implored the Department of Education to change the existing structure and provide an automatic group discharge to all Corinthian students. See 2d Keller Decl., Attachment B. In so doing, she recognized that the process as it existed at the time of her submission did not provide for a group discharge. What Plaintiffs fail to recognize is that the AG Memorandum includes a fundamental distinction between students on whose behalf the Massachusetts Attorney General was submitting individualized defenses to repayment, on the one hand, and the full list of Everest students, on whose behalf the Mass. AGO asked the Department of Education to change its

8; and Document No. 19-4, Attachments 16 and 18, also included in the Record at *AR 0488-0489; AR 0490-0495; AR 0791-0792;* and *AR 0793-0798.* Had either party objected to Treasury Offset by filing a Request for a Hearing form supplied to them along with a pre-offset notice, there would have been a reviewable final agency decision concerning the enforceability of the student loan debts at issue here. See 34 C.F.R. § 30.26 (4) (if a debtor requests a hearing the Secretary will, "after considering the evidence, notify the debtor in writing of the official's decision regarding the issues identified in the notice under § 30.22(b)(3)(ii) or § 30.33(b)(3)(ii) and, if appropriate, the question of waiver of the debt.)

process to an automatic group discharge process. See 2d Keller Decl. ¶¶ 9-17. In her *amicus* brief, the Massachusetts Attorney General revealed that Plaintiffs' names appear on Exhibit 4, the full directory of all Everest students. (Document 29-1, Snow. Decl. Attachment 2). To be perfectly clear, however, Plaintiffs were not among the students who submitted individualized borrower defense claims in connection with the AG Memorandum.[6] See 2d Keller Decl. ¶ 15. As such, Defendant did not construe – nor should it have – the AG Memorandum as an individualized borrower defense application on behalf of the Plaintiffs. See 2d Keller Decl. ¶ 15. For this reason, the AG Memorandum is not and should not be part of the administrative Record for these two Plaintiffs.[7]

Critically, even if the Court were to order Defendant to supplement the administrative Record with the AG Memorandum, it must not be disclosed on the public record. As set forth above, the Court ordered the limited disclosure of the AG Memorandum pursuant to a Protective Order. (Document No. 40). The Unopposed Motion for Limited Disclosure and Joint Motion for Protective Order (see Document Nos. 36 and 37) were the result of extensive negotiations by and among the parties to this case and representatives of the Mass. AGO. The AG Memorandum

[6] For reasons outside the scope of Defendant's knowledge, Plaintiffs did not provide individualized applications for submission with the AG Memorandum and, as such, cannot claim the benefit of the Attorney General's submission, now. At least some of the claimants who submitted applications with the AG Memorandum have received decisions on their borrower defense applications. See 2d Keller Decl.¶ 17 and Attachment C thereto.

[7] Even if the Court were to find that the Secretary should have considered the AG Memorandum as an individualized borrower defense claim on behalf of the Plaintiffs, the appropriate remedy would not be to supplement the Record, but rather, to remand to the agency for further consideration. Conservation Law Found. of New England, Inc. v. Clark, 590 F. Supp. 1467, 1475 (D. Mass. 1984) ("If the court determines that the agency's course of inquiry was insufficient or inadequate, it should remand the matter to the agency for further consideration and not compensate for the agency's dereliction by undertaking its own inquiry into the merits.") (quoting Asarco, Inc. v. EPA, 616 F.2d 1153, 1160 (9th Cir.1980)).

relies on, contains, incorporates and attaches information obtained by the Massachusetts Attorney General pursuant to a Civil Investigative Demand ("CID"). (Document No. 36). Pursuant to Massachusetts law, materials and information produced pursuant to a CID from the Massachusetts Attorney General ***shall not be disclosed*** except with the consent of the producing party or pursuant to a court order upon a showing of good cause in accordance with M.G.L. ch. 93A, § 6(6). (Id.) In addition, the AG Memorandum was provided by the Massachusetts Attorney General to the Department of Education pursuant to a "Common Interest Agreement," which precludes its disclosure unless otherwise required by law, administrative order or court order. (Id.) Finally, the applicable Protective Order in this case explicitly prohibits the public disclosure of the document. (See Document No. 40). In short, Plaintiffs have offered no reason for the public disclosure of the document, which would violate the agreement by and among the parties as memorialized in the prior filings and Court Orders in this case. Indeed, although they ask for public disclosure in their Motion (Document No. 46) they do not provide any supporting argument in their corresponding brief (Document No. 47). Even if the Court were inclined to consider the AG Memorandum part of the administrative Record, it should remain sealed. There is simply no reason to unseal it.

3. Plaintiffs Are Not Governed By Defendants' Findings Regarding Corinthian Students Because Their First Dates of Enrollment Do Not Fall Within the Presumptively Eligible Category.

Additionally, Plaintiffs insist that the Department of Education's own investigative findings relating to Corinthian are germane to their claims and should be included in the administrative Record. (Document No. 47 at 5) ("Also lacking from the record is evidence . . . the Secretary had in her possession about Everest's misconduct . . . [including] the Secretary's own investigation of Everest"). Plaintiffs apparently misunderstand Education's findings. Plaintiff Williams alleges that he attended Everest Chelsea's massage therapy program from

March 29, 2011 through December 28, 2011, but Education's published findings for that program cover students whose *first date of enrollment* fell between July 1, 2011 and September 30, 2014. See List of Everest Programs and Enrollment Dates[8] at 22. Thus, Plaintiff Williams's first date of enrollment – March 29, 2011 – does not fall within the presumptively eligible dates of enrollment. Likewise, Plaintiff Taveras alleges that she attended Everest Chelsea's medical assistant program from October 28, 2010 through July 14, 2011, but Education's findings cover students whose first date of enrollment falls between July 1, 2011 and September 30, 2014. See List of Everest Programs and Enrollment Dates[9] at 22. Plaintiff Taveras's first date of enrollment – October 28, 2010 – also does not fall within the dates of presumptive eligibility. In short, neither of the Plaintiffs is covered by Education's findings as to borrowers that are presumptively qualified for discharge. As such, the inclusion of the findings in the administrative Record is a non-sequitur.

B. Plaintiffs Are Not Entitled to Discovery in This APA Action and, Even If They Were, Their Requested Discovery is Overbroad and Premature.

Because the standard of review in an APA action is an inquiry into whether the agency's decision is supported by the Record before it, there is no right to discovery in an APA action. Indeed, discovery in an APA case is rarely, if ever, allowed. See also Int'l Junior College of Business and Technology, Inc. v. Duncan, 802 F.3d 99, 114 (1st Cir. 2015) (denying Plaintiff's request for discovery in APA action against the Department of Education where plaintiff "has not even suggested that the agency acted in bad faith, let alone provided evidence of it"); cf. Boston Redevel. Auth. v. National Park Service, 838 F.3d 42, 48 (1st Cir. 2016) (noting that in traditional APA cases, the "focal point for judicial review should be the administrative record

[8] *Available at* https://studentaid.ed.gov/sa/sites/default/files/ev-wy-findings.pdf (last visited March 27, 2017).

[9] See, *supra*, note 8.

already in existence not some new record made initially in the reviewing court," but that, in this case, the parties conducted discovery "by mutual consent"). See also Roman v. Riordan, Civil Action No. 15-40061-TSH, 2016 WL 234803 at *5-6 (D. Mass. Jan. 20, 2016) (denying motion to depose USCIS employees regarding, *inter alia*, the basis of the agency's determination in an action under the APA). Here, Plaintiffs have not demonstrated the extraordinary circumstances that might merit discovery. Id.

Moreover, Plaintiffs concede as an alternative argument that the information about which they seek to depose representatives of the Department of Education is not "strictly" necessary to the resolution of this case.[10] Defendant agrees insofar as the Court can decide the case on the Record before it based on the threshold issue of exhaustion.[11] To that end, the Court should not endorse the requested fishing expedition particularly where, as here, it has already dismissed Plaintiffs' claims based on "other unnamed individuals" and has not yet resolved the threshold issue of exhaustion. (See Document No. 35).[12]

[10] See, e.g., Plaintiff's Memorandum in Support of Motion at 10, n.2 ("further factual development… is not strictly necessary to facilitate judicial review").

[11] See, e.g., Long v. Rosenfelt, et al, Civil Action No. 17-3511-PSG (KSx) (C.D. Cal. Nov. 7, 2017) (attached hereto at Exhibit 2) (dismissing borrower's claim on ripeness grounds where his administrative claim for discharge of his debt, like Plaintiff Taveras's, was still pending).

[12] It bears noting that Plaintiffs' attorneys, of the Harvard Legal Service's Project on Predatory Student Lending (see http://www.legalservicescenter.org/category/predatory-lending-clinic /project-on-predatory-student-lending/), represent borrowers nationwide in student loan-related lawsuits against the Department of Education. See, e.g., Colon v. DeVos, Civil Action No. 17-8790 (S.D.N.Y. filed Nov. 12, 2017) (suit alleging that the Department of Education failed to act on thousands of borrower defense applications by former students whose debts it had a legal obligation to cancel following deceitful representations by Sanford-Brown, an unaccredited institution, that enrollment in its vocational program would lead to job placement within the medical field); Bauer v. DeVos, Civil Action No. 17-1330 (filed July 6, 2017) (suit alleging that the Department of Education unlawfully delayed the Borrower Defense Rule, which would, *inter alia*, allow a class of borrowers to sue to discharge debts acquired as a result of attendance at New England Institute of Art, which allegedly engaged in unfair and deceptive practices that left the borrowers with a useless education, dismal job prospects, and debt); Dieffenbacher v. DeVos, Civil Action No. 17-342 (C.D. Cal. filed Feb. 23, 2017) (suit alleging that the Department of

Finally, *all* of the discovery Plaintiffs seek is geared toward the merits of the case. Plaintiffs already possess the AG Memorandum, which is the only document that is not in the Record that is arguably germane to the Court's resolution of Defendant's exhaustion arguments (at least from Plaintiffs' perspective, although, as set forth above, Defendant disagrees). See Court Order dated July 27, 2017 (Document No. 32). Moreover, much of the additional background information about process that the Plaintiffs seek is contained in the declarations previously filed in this action with Defendant's initial motion to dismiss. (See Document Nos. 19-1, 19-2, 19-3 and 19-4). As set forth above, Defendant intends to fully enforce its jurisdictional defenses based on exhaustion/ripeness and/or mootness, which the Court can and should resolve based on the Record before it. Respectfully, the Court should promote the conservation of resources and revisit the request for merit-based discovery only if it cannot resolve the case on the threshold issues. And even then, discovery may be allowed only if Plaintiffs can demonstrate need based on one of the narrowly construed exceptions, which they cannot not, for the reasons set forth herein. See Roman, 2016 WL 234803 at *5-6.

Education unfairly garnished wages after borrower defaulted on federal student loans acquired while attending Everest College-Ontario Metro, of the now-defunct Corinthian College, Inc.).

CONCLUSION

For the reasons set forth above, Defendant respectfully requests that the Court deny Plaintiffs' Motion in its entirety and enter a briefing schedule on the issue of exhaustion based on the certified administrative Record before the Court.

Respectfully submitted,

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Dated: December 15, 2017

CERTIFICATE OF SERVICE

I, Jessica P. Driscoll, Assistant United States Attorney, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants by First Class Mail.

/s/ Jessica P. Driscoll
Jessica P. Driscoll
Assistant United States Attorney

Dated: December 15, 2017