

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE THRID CIRCUIT**

Case No. 15-3019

SUEDA WHATLEY, *Ex. Relator*, et al.

Appellant,

v.

EASTWICK EDUCATION, INC., EASTWICK COLLEGE, HOHOKUS  
SCHOOLS, THOMAS EASTWICK AND ABC ENTITIES,

Respondents.

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Appeal from the United States District Court  
For the District of New Jersey  
D. Ct. Civil No. 2:13-cv-012226  
(The Honorable William J. Martini)

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**BRIEF OF AMICI CURIAE NEW JERSEY APPLESEED PUBLIC  
INTEREST LAW CENTER, INC. AND NEW JERSEY CITIZEN ACTION  
IN SUPPORT OF PLAINTIFF-APPELLANT RELATOR SUEDA  
WHATLEY URGING REVERSAL OF TRIAL COURT'S DECISION**

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March 7, 2016

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(c)(1), amici curiae New Jersey Appleseed Public Interest Law Center Inc., and New Jersey Citizen Action state that neither Amici Curiae has any parent corporation and there are no publicly held corporations that own 10% or more of their respective stock. Amici Curiae are not-for-profit organizations focused on corporate and government accountability on behalf of consumers, taxpayers and community organizations mobilized around particular issues including, but not limited to, health care, education, elections, predatory bank lending, and environmental health.

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## INTEREST OF AMICI CURIAE

New Jersey Appleseed is a non-profit corporation established to provide legal advocacy before the State Legislature, administrative bodies and the courts on behalf of New Jersey residents in matters raising significant public policy issues. Its efforts seek to achieve corporate and government accountability primarily in the area of healthcare, election reform and community and environmental health, and it works for the enactment and enforcement of laws protecting consumers, low-income workers and the public. Since its founding approximately twenty years ago, New Jersey Appleseed has represented the interests of community-based organizations with whom it shares its agenda in litigation and as amicus curiae. Court actions where New Jersey Appleseed has represented the interests of consumers or taxpayers include the following reported decisions: Redd v. Brown, 223 N.J. 87 (2015)(Amicus on behalf of voter interests seeking to hold local government accountable through initiative and referendum petitions); Tumpson v. Farina, 218 N.J. 450 (2014)(Represented rent control tenants vindicating their right to referendum under the New Jersey Civil Rights Act); Grillo, et al. v. Christie, 214 N.J. 113 (2013)(Amicus on behalf of voter interests in safe and secure election machinery with respect to Special Senate Election); POG v. Roberts, 397 N.J. Super. 502 (App. Div. 2008)(Represented People for Open Government in its efforts to enforce anti pay-to-play ordinance);

In re lead Paint Litigation, 191 N.J. 405 (2007)(Represented, in appellate division, Amici NJCA, Alliance for Healthy Homes, Association for Children of NJ, and American Public Health Association in action brought by several municipalities against paint manufacturers); Council of Alternative Political Parties vs. State of New Jersey, 344 N.J. Super. 225 (App. Div. 2001)(Represented voters seeking to affiliate with common law political parties not recognized by statute); and HIP of New Jersey, Inc. vs. New Jersey Department of Banking and Insurance, 309 N.J. Super. 538 (1998)(Intervener on behalf of consumers with respect to conversion of HIP to a for-profit health insurance company).

New Jersey Citizen Action ("NJCA") is a progressive, statewide advocacy organization working for social and economic justice, with over 60,000 individual members and 100 affiliate organizations, including a range of senior, labor, religious, civil rights, civic and neighborhood groups. A nonprofit, 501(c)(4) organization founded in 1982, NJCA's works to protect and expand the rights of individuals and families, and to ensure that government officials respond to the needs of people rather than the interests of those with money and power. Current campaigns focus on worker's rights, community reinvestment and financial reform (including promoting fair and equal access to credit), lower utility rates on behalf of consumers, quality public education, and clean energy for all residents. In addition to the aforementioned issue campaigns, NJCA also provides free HUD-



certified housing and foreclosure counseling, tax preparation services, benefits and financial education, and most recently, individual financial coaching. It is through its financial education and coaching work that NJCA has become aware of the fact that high student debt is becoming a growing problem for many young New Jerseyans; especially those who attend for-profit career colleges that do not deliver the degrees, certificates or job placements promised. On October 16, 2015, NJCA hosted a Financial Reform Summit for more than 150 students, community leaders, policymakers, consumers, advocates, financial institutions and other stakeholders that featured numerous experts who addressed the dangers associated with abusive and high cost financial services, including payday loans and other consumer loans, including student loans received through the admission process to for-profit colleges. This summit was one initiative in NJCA's policy goal of strengthening consumer protection laws to curb these high cost and/or predatory practices. Participating as an amicus in this lawsuit is another.

As described above, each amici has a special interest in this litigation insofar as each seeks to protect and remedy wrongs done to primarily low-income, vulnerable student consumers who are trying to improve their lives by seeking the education and skills necessary to ensure employment. We have not sought the consent of any of the parties to this litigation. No counsel for any party has authored this brief in whole or in part. Apart from New Jersey Appleseed, no

person, including parties or parties' counsel contributed money intended to fund the preparation and submission of this brief.

### SUMMARY OF ARGUMENT

By 2015, for-profit schools have proliferated to now enroll about 12% of college students, yet they still account for nearly half of all student loan defaults.<sup>1</sup> Such schools do not compete with private, nonprofit or major public colleges or universities, but rather look to the many students, who are seeking to further their economic status, but whom community colleges do not have the funds to cover. By employing highly aggressive advertising and recruiting practices, some of which border on outright deception and fraud, these for-profit schools target nontraditional students --- working class, low-income, veterans and minority students --- who are typically eligible for subsidized or non-subsidized government loans. With a disproportionate amount of revenue going to marketing, recruitment and profits at the expense of instruction, these for-profit schools are wreaking havoc on young people's lives. High debt levels, low completion rates, inability to transfer credits, and certifications that are not accepted by employers plague the industry; and, as a result, thousands of student consumers are left with broken dreams and very, high default rates, at significant cost to the taxpayer.

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<sup>1</sup> Patricia Cohen, *For-Profit Colleges Accused of Fraud Still Receive U.S. Funds*, NEW YORK TIMES (Oct. 12, 2015).

In the past six months, the federal government has been deluged by more than 7,500 borrowers owing approximately \$164 million seeking to expunge their student debt, on the basis that the for-profit schools they attended defrauded them under state law.<sup>2</sup> The Department of Education has worked with students from the bankrupt Corinthian Colleges, Inc. and other for-profit chains that have been investigated to permit groups of students attending such entities to receive loan forgiveness under a ‘defense to repayment’ provision. Similarly, it is in the process of developing new regulations to clarify loan forgiveness under that defense at the same time that it seeks to enhance current consumer protection standards and strengthen its own hand when seeking to hold colleges accountable for the very fraudulent activities that result in default. But such regulations are in the development stage; and right now, the Department is aware that judgments finding that consumer students have been harmed by the acts or omissions of a for-profit career college and that such acts or omissions violate state law are critical to its efforts to be both fair to individual students and taxpayers as a whole.

And it is for this reason, that Amici Curiae urge this Court to let this Complaint proceed. The allegations are serious, significant and consistent with the “bad” and “abusive” practices plaguing the for-profit, career college industry. Plaintiffs must be given the opportunity to prove their assertions, and seek relief

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<sup>2</sup> Josh Mitchell, *Thousands Apply to U.S. to Forgive Their Student Loans, Saying Schools Defrauded Them*, THE WALL STREET JOURNAL (Jan.20, 2016).

for the individuals involved and federal taxpayers, who are also adversely impacted. Without such private actions, New Jersey consumer students will remain vulnerable and unprotected, often holding worthless degrees and only a dream deferred.

### ARGUMENT

What happens to a dream deferred?  
Does it dry up  
Like a raisin in the sun?  
Or fester like a sore—  
And then run?  
Does it stink like rotten meat?  
Or crust and sugar over—  
Like a syrupy sweet?  
Maybe it just sags  
Like a heavy load.  
Or does it explode?

*Harlem* by Langston Hughes, 1951

#### I. The Significant Increase in For-Profit Career Colleges Has Left Low- Income Student-Consumers With Huge Debt, Worthless Degrees And Few Meaningful Job Prospects.

Speaking more in prose than poetry, former U.S. Secretary of Education, Arne Duncan, expressed the same sentiment as Langston Hughes (in the poem set forth above) in the context of the growing student loan crisis accompanying the significant expansion of for-profit career colleges. He stated,

Students everywhere deserve and need the opportunity to make their lives better through education – to climb the economic ladder. That’s exactly what these students tried to do. But a lot of them ended up with huge debts and a degree that meant little to employers, if they got

a degree at all. The whole idea of a career college was a farce for them.

Now more than ever, a college degree is the best path to the middle class. But that path has to be safe. And that's why we're all so determined to crack down on colleges that leave students with huge debt, worthless degrees and few meaningful job prospects.

Some of these schools have brought the ethics of payday lending into higher education. They prey on the most vulnerable students, and leave them with debt that they too often can't repay. We must have accountability to protect both students and taxpayers.

(TRANSCRIPT, Press Call on Student Borrower Protections, Assistance, 06-08-15/2 pm ET, page 2)

So, how and why has this student debt crisis arisen, disproportionately impacting students attending for-profit institutions? More colloquially, why can a magazine of national repute, *The Atlantic*, in 2015 conclude that "[t]he general consensus in the country now seems to be that the words 'for-profit' and 'college' make for a pretty nasty combination."<sup>3</sup> At least since 2010, several federal agencies, social scientists, investigative reporters, most notably Pro Publica,<sup>4</sup> and some legal scholars have been trying to understand the phenomena, answer the question above and propose remedies.

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<sup>3</sup> Alice Wong, 'Dollar Signs in Uniform': Why For-Profit Colleges Target Veterans, THE ATLANTIC (June 24, 2015).

<sup>4</sup> ProPublica, founded by the former managing editor of *The Wall Street Journal*, and now led by a former investigative editor of *The New York Times*, states that its work focuses exclusively on truly important stories, stories with 'moral force.' We do this by producing journalism that shines a light on exploitation of the weak by the strong and on the failures of those with power to vindicate the trust placed in them." <https://www.propublica.org/about/>.

In a recent law review article, a recent law graduate describes the history of for-profit higher education as a history of abuses, often targeting minority students through deceptive marketing and advertising schemes, and arising within the context of an increasing demand for college education while decreasing public funds are available for community colleges.<sup>5</sup> He notes that by 1990, the loan default rate for for-profit colleges was twice that of the higher education sector overall, a ratio that remains “roughly” accurate today. *Id.* at 221. He further states that these entities in their recent incarnation are more expensive than other public institutions, are “supported almost entirely by government aid through loans, and disproportionately target minority and low-income students, leaving them with poor employment prospects and high levels of loans on which they are more likely to default.” *Id.* at 222. Competing for the market of students that community colleges do not have the funds to cover, these for-profit colleges no doubt expand opportunities for nontraditional students, but seemingly do so through “predatory, deceptive marketing” practices without regard to their likelihood of success or well-being. *Id.* 225-227. He concludes, ironically in his introduction, that for-profit colleges nevertheless “remain popular, in part through ubiquitous commercials and internet advertisements. For example, the University of Phoenix

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<sup>5</sup> Jacob Alderice, *The Informed Student Consumer: Regulating For-Profit Colleges By Disclosure*, 50 HARV. C.R.-C.L. L. REV. 215 (2015).

claims it can help viewers achieve their dreams, even of becoming an astronaut.”  
Id. at 216.

Ubiquitous commercials, assertions of predatory marketing practices, and high student loan default rates all led the U.S. Government Accountability Office (“GAO”) to investigate for-profit higher education institutions; and, in 2010, it issued its report, GAO-10-948T, entitled, *For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices*. In this investigation, the schools GAO targeted were selected because they had received more than 89% of their funding from the federal government under Title IV of the Higher Education Act of 1965 or were in a state that was among the top 10 recipients of such funding. U.S. Gov’t Accountability Office, GAO-10-948T, *For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices* (2010) at 2. As the GAO explained the background of the study:

Enrollment in for-profit colleges has grown from about 365,000 students to almost 1.8 million in several years. These colleges offer degrees and certifications in programs ranging from business administration to cosmetology. In 2009, students at for-profit colleges received more than \$20 billion in federal loans provided by the Department of Education. GAO was asked to 1) conduct undercover testing to determine if for-profit colleges’ representatives engaged in fraudulent, deceptive or otherwise questionable marketing practices, and 2) compare the tuitions of the for-profit colleges tested with those of other colleges in the same geographic area.  
(Id. at Highlights)

Based on the experience of GAO's undercover student testers at 15 colleges, GAO concluded that 4 colleges encouraged fraudulent practices and all 15 made deceptive or otherwise questionable statements to the fictitious applicants. Specifically, GAO summarized its findings as follows:

Four undercover applicants were encouraged by college personnel to falsify their financial aid forms to qualify for federal aid—for example, one admissions representative told an applicant to fraudulently remove \$250,000 in savings. Other college representatives exaggerated undercover applicants' potential salary after graduation and failed to provide clear information about the college's program duration, costs or graduation rate despite federal regulations requiring them to do so. For example, staff commonly told GAO's applicants they would attend classes for 12 months a year, but stated the annual cost of attendance for 9 months of classes, misleading applicants about the total cost of tuition. Admissions staff used other deceptive practices, such as pressuring applicants to sign a contract for enrollment before allowing them to speak to a financial advisor about program cost and financing options. . . . In addition, GAO's four fictitious prospective students received numerous, repetitive calls from for-profit colleges attempting to recruit the students when they registered with Web sites designed to link for-profit colleges with prospective students. Once registered, GAO's prospective students began receiving calls within 5 minutes. One fictitious prospective student received more than 180 phone calls in a month. Calls were received at all hours of the day, as late as 11 p.m. (Id.)

With respect to the comparative cost of education at for-profit colleges, GAO found that the programs at the for-profit schools it tested were "substantially more for associate's degrees and certificates than comparable degrees and certificates at public colleges nearby." Id. For example, a student interested in a



massage therapy certificate was facing costs of \$14,000, when the same certificate from a local community college cost only \$520. Id.

Two years later, a Congressional report, spearheaded by Sen. Tom Harkins detailed high rates of loan default, aggressive recruiting, higher than average tuition, lower retention rates, and little job placement assistance at the for-profit colleges.<sup>6</sup> Indeed, the colleges studied in the Harkin Report had a total of 32,496 recruiters compared to 3,512 career-services staff members, (id. at 2), and among the 30 companies involved, an average of 22.7% of revenue was allocated toward marketing and recruiting, 19.4% to profits, and only 17.2% to instruction. Id. at 7. Furthermore, while 80% of the faculty employed at the schools examined was part-time, the CEOs of the publicly traded, for-profit education companies took home, on average, \$7.3 million in 2009. Id. All in all, the Harkin Report concluded that “[m]any for-profit colleges fail to make the necessary investments in student support services that have been shown to help students succeed in school and afterwards, a deficiency that undoubtedly contributes to high withdrawal rates.” Id. at 2.<sup>7</sup>

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<sup>6</sup> Staff of S. Comm. on Health, Educ., Labor and Pensions, 112<sup>TH</sup> Cong., For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success 63 (Comm. Print 2012) [hereinafter “Harkin Report”].

<sup>7</sup> Specifically, the Harkin Report found that although the sector received \$32 billion from taxpayers more than half of the students left without a degree or diploma within a median of 4 months. Id. at 1, 6. Among 2-year Associates degree-seekers, 63% of students departed without a degree. Id. at 2, 6.

The Harkin Report, like the earlier GAO Report, also documented higher tuition costs at for-profit colleges relative to comparable programs at community colleges and public universities, and identified aggressive and misleading and deceptive recruiting practices. Id. at 4. With respect to tuition, the report noted that “[i]nternal company documents provide examples of tuition increases being implemented to satisfy company profit goals, that have little connection to increases in academic and instruction expenses, and demonstrate that for-profit education companies sometimes train employees to evade directly answering student questions about the cost of tuition and fees.” Id. This same “hide the true costs of your education” mentality also pervaded recruitment practices, where “[d]ocuments indicate that the recruiting process at for-profit education companies is essentially a sales process. Investors’ demand for revenue growth is satisfied by enrolling a steady stream of new student enrollees,” not by retaining such students and providing them with a quality education. Id. As a result of high tuition costs, significant loan debt and low investment in educational resources available to students, the Report concluded that “[w]hen students withdraw, as hundreds of thousands do each year, they are left with high monthly payments but without a commensurate increase in earning power from new training and skills.” Id. at 2.

The findings and conclusions of the Harkin Report are also reflected in the social science literature. In an article published by in the National Tax Journal,

Stephanie Reigg Cellini of the Trachtenberg School of Public Policy and Public Administration at George Washington University analyzed the economics of the two-year for-profit higher education sector and compared its costs to taxpayers and students with similar estimates for public community colleges (including the direct subsidization of that sector by state and local taxpayers).<sup>8</sup> She concluded that [a]lthough taxpayer costs are almost \$4,000 higher in the public sector, the combined costs for students and taxpayers suggest that community colleges are roughly \$16,000 per student per year lower than their for-profit counterparts.” *Id.* at 176. Moreover, due to higher tuition costs and debt loads, for-profit students need to generate earnings gains of at least 3.2% greater than those required of community college students to cover their personal costs and obtain net benefits from their education. *Id.* An earnings gain that at this time is elusive, especially since she observed that for-profit students are more likely to default on their loans, are more likely to be unemployed, and are more likely to leave school because of “dissatisfaction.” *Id.* at 160 (cites omitted).

Data examined by a group of Harvard economists also indicates that for-profit students are more likely to default on student loans than those attending public community colleges. In their study, entitled *For-Profit Colleges*, the authors noted that for-profits seemingly satisfy a demand for programs of short

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<sup>8</sup> Stephanie Riegg Cellini, *For-Profit Higher Education: An Assessment of Costs and Benefits*, 65 Nat’l Tax J. 153, 180 (2012).

duration that prepare students for a specific occupation, such as in the business or health-related sector, but “completion rates, default rates, and labor market outcomes for students seeking associate’s or higher degrees [at such entities] compare unfavorably with those for public postsecondary institutions.”<sup>9</sup> These researchers found that the student population of the for-profits is disproportionately from disadvantaged backgrounds. And, “[d]espite the low income status of most of their clientele, for-profit colleges are far more expensive than their counterparts in the public sector.” *Id.* at 139. They ended their analysis by concluding that a “key challenge in regulating for-profit colleges is to restrain overly aggressive and potentially misleading recruitment practices” while not inhibiting improved postsecondary educational opportunities for the very disadvantaged students, who are now often the victims of such deceptive practices. *Id.* at 156. See also Annie Waldman, *Who Keeps Billions of Taxpayer Dollars Flowing to For-Profit Colleges? These Guys*, PROPUBLICA (Nov. 3, 2015) (noting that regulators are “concerned” with “targeting poor students”); Alec MacGillis, *Higher Ed Lobby Quietly Joins For-Profit Schools to Roll Back Tighter Rules*, PROPUBLICA (May 5, 2015) (stating that for most of “Obama’s tenure, the department’s top regulatory priority has been reining in abuse by the for-profit sector”); Suevon Lee, *The For-Profit Higher Education Industry, By the Numbers*, PROPUBLICA (Aug. 9,

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<sup>9</sup>David Demming, Claudia Goldin, and Lawrence Katz, *For-Profit Colleges*, 23(1) *Future of Children* 137 (2013).

2012)(detailing the Harkin Report's numbers on rates of loan default, aggressive recruiting, average tuition, retention rates and job placement assistance for for-profit college attendees).

So what are these deceptive or predatory practices that target disadvantaged students, veterans and other non-traditional students and that are calculated to extract maximum student loan and grant funds without providing commensurate educational value in return? On May 4, 2015, the for-profit Corinthian Colleges, Inc. and twenty-four of its subsidiaries filed for bankruptcy following the U.S. Department of Education's imposition of heightened oversight due to allegations of impropriety involving falsification of grades and job placement data. Danielle Douglas-Gabriel, *For-Profit Corinthian Colleges Files for Bankruptcy*, WASH. POST (May 4, 2015).

The Corinthian monolith is not alone in deserving notoriety; numerous other for-profit educational providers have faced or are facing similar scrutiny. See Nat'l Consumer Law Ctr., *Ensuring Educational Integrity: Government Investigations And Lawsuits Involving For-Profit Schools (2004-May 2014)* (2014). The nature of the conduct under investigation includes, but is not limited to: false and inflated job placement and employment statistics; false exam pass rates; unscrupulous lending practices, false advertising; non-existence of advertised programs; overstatement of salaries of graduates; unlawful practices regarding

private student loans; misleading representations regarding accreditation, transferability of credits, and costs; high pressure sales techniques; aggressive tactics to coerce students to take private loans; sale of educational products at inflated rates; unfair and deceptive practices regarding recruitment, enrollment, placement and graduation rates; and a sundry of other practices, which, alone or in combination, churn unwitting and often under-qualified students through the admissions and financial aid application process into educational programs with no reasonable prospect of completion or economic benefit. And, it is some of these same or similar fraudulent practices, evident in Plaintiff's financially harmful and demoralizing experience with Defendants, which she seeks to challenge on behalf of herself and a class comprised of similarly situated students.

## II. Judgments Under State Law Play a Critical Role in Protecting Low-Income Students and Taxpayers From Misleading Promises and Other Fraudulent Practices.

In the past several months, the federal government has been deluged by more than 7,500 borrowers owing approximately \$164 million seeking to expunge their student debt, on the basis that the for-profit schools they attended defrauded them under state law.<sup>10</sup> These requests have occurred as a result of actions the Department of Education has taken since the collapse of Corinthian Colleges, Inc. Specifically, the Department has been working with students from the bankrupt

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<sup>10</sup> Josh Mitchell, *supra* note 2.

Corinthian and other for-profit chains that have been investigated by the government and state attorney generals to permit groups of students attending such entities to receive loan forgiveness under a ‘defense to repayment’ provision. Similarly, it is in the process of developing new regulations to clarify loan forgiveness under that defense at the same time that it seeks to enhance current consumer protection standards and strengthen its own hand when seeking to hold colleges accountable for the very fraudulent activities that result in default.<sup>11</sup> Previous efforts to curb excessive and misleading marketing and recruiting practices, including eliminating the incentive compensation ban safe harbors for recruiters in 2002 (which were strengthened in 2010) and implementing gainful employment regulations in 2011 (which were revised effective July 1, 2015, after legal challenge)<sup>12</sup> have not been as effective as hoped.

Despite these regulatory efforts, money continues to flow to for-profit colleges, and students continue to be defrauded. As noted in the New York Times last fall:

When the Obama administration agreed this summer to erase the federal loan debt of some former students at Corinthian Colleges, a for-profit school that filed for bankruptcy in the face of charges of widespread fraud, education officials promised to “protect students from abusive colleges and safeguard the interests of taxpayers.”

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<sup>11</sup> U.S. Department of Education, *Fact Sheet: Protecting Students From Abusive Career Colleges*, 2-3 (June 8, 2015).

<sup>12</sup> *Id.* at 5.

But the Education Department, despite a crackdown against what it calls “bad actors,” continues to hand over tens of millions of dollars every month to other for-profit schools that have been accused of predatory behavior, substandard practices or illegal activity by its own officials or state attorneys general across the country.<sup>13</sup>

Furthermore, it is clear that some states and their attorney generals are more active in pursuing the issue of fraud in for-profit higher education than others, See e.g., Marian Wang, *Ex-Admissions Officer at For-Profit College testifies About School's Tactics*, PROPUBLICA (Nov. 29, 2010) (recognizing that Florida's attorney general's office was investigating a total of 8 for-profit colleges); Jacob Alderice, *supra* note 5 at 230 (discussing Massachusetts regulations restricting misleading advertising and disclosure of information in the for-profit college context); *Maryland Senate Passes Bill to Regulate For-Profit Colleges*, BAL. BUS. J. (Mar. 22, 2011) (requiring reimbursement of tuition if school goes bankrupt or closes). And, as it pertains to the Plaintiff student class herein, there is no indication at this time, that New Jersey officials are taking any action in this regard.<sup>14</sup>

Furthermore regulations to clarify and streamline loan forgiveness under the defense to repayment provision have yet to be issued, and New Jersey students

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<sup>13</sup> Patricia Cohen, *supra* note 1.

<sup>14</sup> See Sharona Coutts, *For-Profit Schools Donate to Lawmakers Opposing New Financial Aid Rules*, PROPUBLICA (Sep.17, 2010) (reporting campaign contributions to Rep. Donald Payne (N.J.) from sources related to for-profit colleges and his opposition to proposed gainful employment rule).



need protection from abusive practices now. Fraudulent conduct must be stopped and for-profit colleges must be held accountable, especially for actions that will result in loan discharges. Toward this end, the Department of Education has noted that judgments finding that consumer students have been harmed by the acts or omissions of a for-profit career college and that such acts or omissions violate state law are critical to its efforts to be both fair to individual students and taxpayers as a whole.<sup>15</sup>

It is therefore imperative that this Court let this Complaint proceed. The allegations in the First Amended Complaint and the proposed Supplementary Amended Complaint are serious, significant and consistent with the “bad” and “abusive” practices plaguing the for-profit, career college industry as a whole. Plaintiffs must be given the opportunity to prove their assertions, and seek relief for the individuals involved and the federal taxpayers, who are also adversely affected. Without such private action, New Jersey consumer students will remain vulnerable and unprotected, often holding worthless degrees or not completing their education, all while they face exorbitant student debt.

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<sup>15</sup> TRANSCRIPT *supra* pg. 8 at pg. 10 (Ted Mitchell: “And certainly judgments in state court would be pretty critical to us”).

### CONCLUSION

For the foregoing reasons, Amici Curiae urge reversal of the trial court's decision and an order permitting Plaintiff to file her Supplementary Amended Complaint as a class action, and proceed with litigation.

Respectfully submitted,

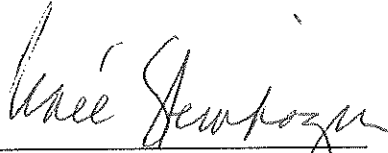
NEW JERSEY APPLESEED  
PUBLIC INTEREST LAW CENTER

A handwritten signature in cursive script, reading "Renée Steinhagen".

Renée Steinhagen, Esq.  
Counsel for Amici

### **CERTIFICATION OF BAR MEMBERSHIP**

I certify that Renée Steinhagen, Esq. , counsel for amici curiae, is a member of the Bar of this Court.

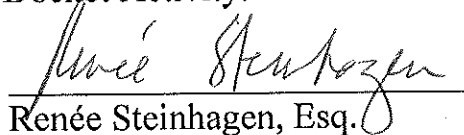


Renée Steinhagen, Esq.  
Attorney for Movants  
NJ Appleseed and NJCA

March 7, 2016

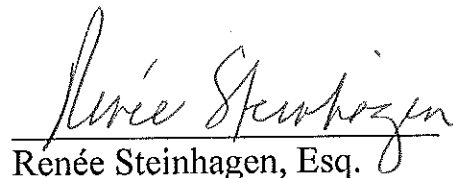
### **CERTIFICATION OF SERVICE**

I certify that on March 7, 2016, a true and correct copy of the foregoing motion was served on all parties to this appeal, via CM/ECF, pursuant to Third Circuit Rule 25.1 (b), because counsel for all parties are Filing Users who will be served electronically by the Notice of Docket Activity.

  
Renée Steinhagen, Esq.

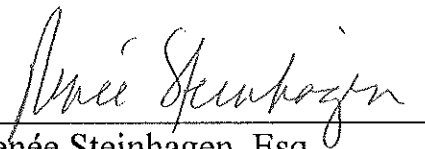
### **LOCAL RULE 31.1(C) CERTIFICATIONS**

I certify that the text of the electronic brief is identical to the text of the ten paper copies mailed to the Court pursuant to Local Rule 31.1(b)(3). I further certify that the electronic file of this brief was scanned with VIPRE anti-virus software and that no virus was detected.

  
Renée Steinhagen, Esq.

**CERTIFICATION OF COMPLIANCE WITH RULE 32(a)(7)(C)**

I certify that in accordance with the type volume regulations governing briefs filed with this Court that the word count of this Amici Curiae Brief, excluding Table of Contents, Authorities and Certifications is 4,551, which is less than the allotted 7,000 words.

  
Renée Steinhagen, Esq.