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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
9 **OAKLAND DIVISION**

10 ISAI BALTEZAR & JULIE CHO,
11
12 Plaintiffs,
v.
13 MIGUEL CARDONA, in his official
14 capacity as Secretary of Education, *et al.*,
15
16 Defendants.

Case No. 5:20-cv-455-EJD

**RESPONSE TO PLAINTIFFS’
REQUEST FOR JUDICIAL NOTICE**

Date: March 24, 2022
Time: 9:00 a.m.
Place: Courtroom 4, 5th Floor
Judge: Hon. Edward J. Davila

17
18 On February 14, 2022, Plaintiffs filed a Request for Judicial Notice [ECF No. 62],
19 requesting that the Court take judicial notice of two documents issued by defendant the U.S.
20 Department of Education (“Department”) during its negotiated rulemaking proceedings, which
21 remain ongoing. Defendants agree that the Court may take judicial notice of the Department’s
22 issued documents. However, Plaintiffs have misstated the significance of these documents to this
23 case.
24

25 The Department’s issuance of issue papers describing its interest in, and soliciting
26 information regarding, new criteria to define how an applicable program can demonstrate it
27 prepares students for “gainful employment in a recognized occupation,” demonstrates that the
28

1 Department is proceeding to address gainful employment issues at the administrative level and
2 thus supports Defendants’ Motion for Voluntary Remand [ECF No. 48]. However, the issue
3 papers do not support vacatur of the 2019 Rule that rescinded the previous 2014 GE Rule.
4 Although the issue papers represent the Department’s current policy position with respect to GE,
5 they do not—contrary to Plaintiffs’ suggestion—amount to a concession that the 2019 Rule was
6 in violation of governing statutory requirements.
7

8 In fact, the issue papers support remand without vacatur because they indicate that the
9 Department does not plan to simply reinstate the prior 2014 GE Rule but is instead considering
10 the issue anew. To require the Department to attempt to resurrect the 2014 GE Rule at the same
11 time it is engaged in rulemaking processes to promulgate a new rule would be disruptive both to
12 the Department and to those impacted by the Department’s regulations, as the Department has
13 previously explained. *See* Declaration of James Richard Kvaal [ECF No. 48-1] ¶¶ 8-10; Def.
14 Reply [ECF No. 56] at 2-15.
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16
17 DATED: February 18, 2022

Respectfully submitted,

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22 /s/ Kathryn L. Wyer
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