K. JOHN SHAFFER (Cal. Bar No. 153729)
RAZMIG IZAKELIAN (Cal. Bar. No. 292137)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017
Telephone: (213) 443-3000
Facsimile: (213) 443-3100
Email: johnshaffer@quinnemanuel.com
razmigizakelian@quinnemanuel.com

Attorneys for the National Consumer Bankruptcy Rights Center

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

In re: JOHN M. MATA Debtor. JOHN MATA Plaintiff v. NATIONAL COLLEGIATE STUDENT LOAN TRUST 2006-1, NATIONAL COLLEGIATE STUDENT LOAN TRUST 2006-4, NATIONAL COLLEGIATE STUDENT LOAN TRUST 2007-4 Defendants	Case No. 16-BK-30625-MH Chapter 7 Adv. Pro. No. 6:18-ap-01089-MH **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO UNSEAL COURT RECORDS** Date: December 18, 2019 Time: 2:00 p.m. Place: 3420 Twelfth Street Courtroom 303 Riverside, CA 92501 Judge: Hon. Mark Houle

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The National Consumer Bankruptcy Rights Center ("NCBRC") moves to unseal (1) two student loan guaranty agreements (the "Guaranty Agreements") between National Collegiate Student Loan Trust 2006-1, National Collegiate Student Loan Trust 2006-4, and National Collegiate Student Loan Trust 2007-4 ("Defendants"), on the one hand, and the now-defunct The Education Resources Institute, Inc. ("TERI"), filed as Dkt No. 41, and (2) two unredacted pleadings that rely on the Guaranty Agreements, filed as Dkt Nos. 48 and 64 (together with the Guaranty Agreements, the "Sealed Documents"). NCBRC also separately has moved to intervene in this adversary proceeding for the limited purpose of bringing this motion, in accordance with Bankruptcy Rule 7024 and Federal Rule of Civil Procedure 24(b).

INTRODUCTION

Bankruptcy Code section 107(a) provides that, with limited exceptions, "a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge." "Section 107(a) is rooted in the right of public access to judicial proceedings, a principle long-recognized in the common law and buttressed by the First Amendment." *In re Crawford*, 194 F.3d 954, 960 (9th Cir. 1999) (citing, *inter alia*, *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 597-98 (1978)). Section 107 thus requires that bankruptcy filings be public unless they are scandalous, defamatory, or contain trade secrets or other confidential information that is "so critical to the operations of the entity seeking the protective order that its disclosure will unfairly benefit the entity's competitors." *In re Gibbs*, 2017 WL 6506324 at * 1 (Bankr. D. Haw. 2017) (quotations omitted); *see also In re Kahn*, 2013 WL 6645436 at *3 (B.A.P. 9th Cir. 2013) ("We construe these exceptions narrowly."). Moreover, any exceptions to the public's right to access judicial records must be consistent with the public's First Amendment right to access court records, which cannot be denied absent compelling reasons. *See Courthouse News Service v. Planet*, 750 F.3d 776, 785-88 (9th Cir. 2014).

There is no justification under section 107 or otherwise for sealing the Guaranty Agreements and other Sealed Documents. The Guaranty Agreements are fifteen years old, and are with a defunct guarantor that was liquidated a decade ago. Defendants thus have no legitimate business reason for

sealing them. Rather, Defendants want the Guaranty Agreements sealed to enhance their position in discharge litigation with other debtors throughout the country—litigation in which debtors and courts are increasingly questioning Defendants' arguments. *See, e.g., In re Page*, 592 B.R. 334, 339 (B.A.P. 8th Cir. 2018) (reversing bankruptcy court's summary judgment that TERI's guarantee of loan constituted "funding" of that loan for nondischargeability purposes); *In re Golden*, 596 B.R. 239, 266-67 (Bankr. E.D.N.Y. 2019) (holding that mere recitations in loan documents as to TERI's role were not sufficient to establishing the nondischargeability of student loans).

Defendants' desire to oppose the discharge of student loans is not a valid reason for sealing bankruptcy court records. The public has a right to see these records, as do debtors and other interested parties, so that they may understand Defendants' position and evaluate the effect the agreements may have on debtors' rights in bankruptcy. Whether a current or prospective debtor may discharge his or her student loans is clearly is an important issue to debtors and society generally. *See, e.g., Americans Are Drowning In $1.5 Trillion Of Student Loan Debt …*, Time, Aug. 27, 2019;[1] *Families, Not Just Students, Feel The Weight Of The Student Loan Crisis*, National Public Radio, Sept. 4, 2019.[2]

NCBRC is a 501(c)(3) organization dedicated to protecting the integrity of the bankruptcy system and preserving the rights of consumer bankruptcy debtors. Created in 2010, NCBRC was founded by the Board of the National Association of Consumer Bankruptcy Attorneys to provide assistance to consumer debtors and their counsel in cases likely to impact consumer bankruptcy law. NCBRC has standing to bring its motion based upon the public's right to access court records and the interests of NCBRC in ensuring that the bankruptcy process is fair, transparent, and in accordance with law. *See Bond v. Utreras*, 585 F.3d 1061, 1074 (7th Cir. 2009) ("the general right of public access to judicial records is enough to give members of the public standing to attack a protective order that seals this information from public inspection"); *Brown v. Advantage Engineering, Inc.*, 960 F.2d 1013, 1016 (11th Cir. 1992) ("because it is the rights of the public, an

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[1] Available at *https://time.com/5662626/student-loans-repayment/*

[2] Available at *https://www.npr.org/2019/09/04/755221033/families-not-just-students-feel-the-weight-of-the-student-loan-crisis*

absent third party, that are at stake, any member of the public has standing to view documents in the court file that have not been sealed in strict accordance with [applicable law], and to move the court to unseal the court file in the event the record has been improperly sealed").

BACKGROUND

The underlying adversary proceeding was brought by the debtor, John Mata ("Debtor"), to obtain an order that his student loans were discharged in his chapter 7 case. Defendants are three student loan securitization trusts, which moved for summary judgment on January 9, 2019 ("SJ Motion"). Dkt. No. 33. Defendants' argument was based on their contention that the Debtor's student loans were nondischargeable under Bankruptcy Code section 523(a)(8)(A)(i) "because they were made under a program funded, in whole or in part, by a non-profit institution." Memorandum Of Points And Authorities In Support Of Motion For Summary Judgment [Dkt. No. 33-1] ("SJ P&As") at 5, 8. Although Defendants do not purport to be nonprofit entities themselves, they asserted that the Debtor's loans were nondischargeable because of TERI's guarantees, and thus Defendants contend that the "loans were made under a program funded or guaranteed by a nonprofit—TERI." *Id.* at 10.

Defendants relied extensively upon the Guaranty Agreements in their SJ Motion, and filed copies of them with this Court. Defendants refused, however, to allow the public to see the Guaranty Agreements. Rather, Defendants requested that the Guaranty Agreements be sealed. *See* Dkt. No. 36 ("Seal Motion"). The Seal Motion apparently was not served on anyone other than the parties to the adversary proceeding, and it was unopposed. The Court granted the Seal Motion on January 16, 2019. Dkt. No. 39 ("Seal Order").

Defendants did not rely upon (or even cite) Bankruptcy Code section 107 in their Seal Motion. Rather, the sole basis for sealing was set forth in a two-page declaration of Defendants' counsel, Damian Richard, which was attached to the Seal Motion. Mr. Richard asserted without foundation that the "[t]he Guaranty Agreements are confidential and proprietary documents," "which if made public, could negatively impact Defendants' competitive standing in the student loan industry." Seal Motion at 3-4.

Mr. Richard did not explain how fifteen-year old agreements could have any material relevance to current "confidential and proprietary" business and underwriting practices, which obviously have changed significantly since 2006 and the subsequent financial crisis. Nor did Mr. Richard explain that the purported guarantor – TERI – has not guaranteed any loans for more than a decade, and it will never pay another dime on its guarantees. TERI went into bankruptcy in 2008 and had long since been liquidated. *See In re The Education Resources Institute, Inc.*, Case No. 08-12540 (Bankr. D. Mass.) ("TERI Bankruptcy"). TERI's liquidating plan was confirmed in 2010, a liquidating trustee was appointed, and a final decree was entered in 2015. Izakelian Decl., Exs. 2-3 (TERI Bankruptcy, Dkt. Nos. 1170 and 1297).

The reality thus is that Defendants have no remaining financial stake in the Guaranty Agreements, which ceased to have any economic relevance years ago. Rather, Defendants' only remaining interest in the Guaranty Agreements is to attempt to establish the nondischargeability of the Debtor's student loans. SJ P&As at 10-15. Defendants cited various cases in which loans guaranteed by TERI were found not to be dischargeable under section 523(a)(8)(A)(i). Dkt. No. 33 at 10-11 (citing, among others, *In re O'Brien*, 419 F.3d 104 (2d Cir. 2005)). NCBRC respectfully disagrees with these decisions, and notes that other courts are seriously considering challenges to TERI's status as a bona fide nonprofit educational lender and whether its "guarantees" actually constitute the funding of student loans by a "non-profit." *See, e.g., In re Golden*, 596 B.R. at 266-67 (noting that none of the parties in *O'Brien* disputed TERI's nonprofit status or role in funding the loan); *In re Page*, 592 B.R. at 339 (reversing summary judgment that TERI's guarantee of loan constituted "funding" of that loan for nondischargeability purposes, holding that "we conclude that the bankruptcy court's inference in [Defendants'] favor that TERI 'funded' the loan program was not reasonable as it was not supported by the evidence"). But regardless of which position ultimately prevails in the courts, the issue clearly is one of great importance to many debtors and society generally.

The importance of TERI's status and role in "funding" student loans far transcends the present case. Before TERI itself filed for chapter 11 in 2008 and ultimately liquidated, it had

guaranteed over 2 million student loans with a principal balance in excess of $20 billion. *See* Izakelian Decl., Ex. 1 (Disclosure Statement For Fourth Amended Joint Plan Of Reorganization, *In re The Education Resources Institute, Inc.*, Case No. 08-12540 (Bankr. D. Mass.), Dkt. No. 1013 at 27 ("TERI Disclosure Statement")). Many of those loans were originated after TERI had entered into a close "strategic relationship" with a private, for-profit corporation, First Marblehead Corporation ("FMC").[3] FMC touted the benefits of its "strategic relationship" with TERI in ostensibly making billions of dollars in student loans nondischargeable. 2005 10-K at 12. FMC told its investors in SEC filings that "[b]ecause TERI is a not-for-profit organization, defaults on TERI-guaranteed student loans have been held to be non-dischargeable in bankruptcy proceedings." *Id.*

Fifteen years later, Defendants continue to rely on the Guaranty Agreements in claiming their student loans to be nondischargeable, not just in the Debtor's case, but in bankruptcy cases throughout the country. There are already nearly a dozen decisions reported on Westlaw referencing disputes regarding the effect of TERI's guarantees of Defendants' loans on the dischargeability of those loans. Although Defendants have prevailed in some of those cases, the issue is by no means settled, and will likely continue to be disputed for years to come.

Defendants and their affiliated trusts routinely seek to have the Guaranty Agreements filed under seal. At least one of these motions filed recently in another case parrots Mr. Richard's

[3] "First Marblehead purchased TERI's operating assets in 2001, and TERI used First Marblehead's office space" until TERI went into bankruptcy. *In re The First Marblehead Corp. Securities Lit.*, 639 F.Supp.2d 145, 149 (D. Mass. 2009). In addition, 161 members of TERI's staff became FMC employees. "FMC acted as TERI's exclusive agent in designing loan programs and processing private education loans for various bank lenders throughout the United States." TERI Disclosure Statement at 43. Accordingly, TERI's "operations had been largely outsourced to FMC and its affiliates." *Id.* at 51. The strategic relationship between FMC and TERI was "[a]n important component of First Marblehead's profitability." *In re The First Marblehead Corp. Securities Lit.*, 639 F.Supp.2d at 148-49; *see also* Izakelian Decl., Ex. 4 (FMC 10-K for fiscal year ended June 30, 2005 ("2005 10-K") at 12-13 *available at*https://www.sec.gov/Archives/edgar/data/1262279/000110465905043131/a05-15507_110k.htm). Thus, although TERI purportedly remained "an independent, private not-for-profit organization with its own management and board of directors," 2005 10-K at 13, its finances and operations were tied directly to for-profit FMC, which provided personnel and office space, financed TERI's operations, and agreed to provide TERI with a share of FMC's future revenue, in exchange for FMC's purported ability to argue that its loans were nondischargeable.

declaration nearly word-for-word, even though it was filed by another attorney. *See, e.g.*, Izakelian Decl., Ex. 5 (*Holguin v. National Collegiate Student Loan Trust 2006-2*, Adv. No. 18-01042-J7, Dkt. No. 26 (Bankr. D. N.M.)). The motions generally are unopposed, because they are filed in individual debtor cases and served on few, if any, other parties. And when at least one court *sua sponte* denied a request to seal the Guaranty Agreements for lack of a sufficient showing, one of the Defendants promptly settled for pennies on the dollar. *See* Izakelian Decl., Exs 6-7 (*Page v. National Collegiate Student Loan Trust 2006-1*, Adv. Pro. 17-04062, Dkt. Nos. 63 and 69 (Bankr. E.D. Mo.)).

ARGUMENT

A. Bankruptcy Court Records May Not Be Sealed Unless Permitted By Bankruptcy Code Section 107 And The Public's First Amendment Right To Access Judicial Records.

Both the common law and the First Amendment strongly protect the public's right "to inspect and copy public records and documents, including judicial records and documents." *See Nixon*, 435 U.S. at 597 & n.7; *Courthouse News Serv.*, 750 F.3d at 785-88.[4] Court dockets and the pleadings and exhibits they contain thus are presumptively public. *See United States v. Bus. of Custer Battlefield Museum & Store*, 658 F.3d 1188, 1194-95 (9th Cir. 2011) (recognizing "strong presumption" in favor of public access); *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006); *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). They only may be sealed only where there is a "compelling reason" for doing so. *Kamakana*, 447 F.3d at 1178;[5] *Foltz*, 331 F.3d at 1135.

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[4] That no party in this adversary proceeding opposed Defendants' Seal Motion does not matter. "The right of access to court documents belongs to the public;" the parties may not "bargain [it] away." *San Jose Mercury News, Inc. v. U.S. Dist. Court*, 187 F.3d 1096, 1101 (9th Cir. 1999).

[5] In deciding whether to sealing is appropriate, a court generally must "consider whether (1) closure serves a compelling interest; (2) there is a substantial probability that, in the absence of closure, this compelling interest would be harmed; and (3) there are no alternatives to closure that would adequately protect the compelling interest." *Perry v. Brown*, 667 F.3d 1078, 1088 (9th Cir. 2012). This test comports with the "strong presumption in favor of access" to court records. *Kamakana*, 447 F.3d at 1178 (internal quotation marks omitted).

"Bankruptcy Code section 107(a) codifies the public's general right under common law to inspect and copy public documents, including judicial records." 2 *Collier on Bankruptcy* ¶ 107.02[1] (2019). Section 107(a) provides

> Except as provided in subsections (b) and (c) and subject to section 112, a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge.

As the Ninth Circuit has recognized:

> **Section 107(a) is rooted in the right of public access to judicial proceedings, a principle long-recognized in the common law and buttressed by the First Amendment. … This governmental interest is of special importance in the bankruptcy arena, as unrestricted access to judicial records fosters confidence among creditors regarding the fairness of the bankruptcy system**.

Crawford, 194 F.3d at 960 (emphasis added, internal citations omitted).

Although section 107 is "rooted" in the common law right to access, it differs in certain respects. *See In re Roman Catholic Archbishop of Portland*, 661 F.3d 417, 430-31 (9th Cir. 2011). *First*, section 107 has only two narrow statutory exceptions to the right to public access. These are the exclusive exceptions, and they preempt any other common law exceptions. *Id. Second*, if – and only if – one of those exceptions exists, the court "shall" seal the records; the court does not have the same discretion that exists under common law. *Id.* But that does not mean that the common law principles of public access to judicial records are irrelevant to interpreting the scope of section 107. To the contrary, as *Crawford* makes clear, section 107 is rooted in the well-established right to public access, and that right is of "special importance" in bankruptcy cases. 194 F.3d at 960.

Moreover, the power to seal under Bankruptcy Code section 107 must also comport with the public's First Amendment rights, which cannot be denied absent "compelling reasons." *Foltz*, 331 F.3d at 1135; *Kamakana*, 447 F.3d at 1178. "The Supreme Court has repeatedly held that access to public proceedings and records is an indispensable predicate to free expression about the workings of government." *Courthouse News Service*, 750 F.3d at 785. "[T]he First Amendment protects the right of public access, even though it is not explicitly enumerated therein, because a major purpose of that Amendment was to protect the free discussion of governmental affairs." *Id.* (quotations omitted). Thus, the exceptions to public access in section 107(b) must be construed narrowly so as

to avoid conflict with the public's First Amendment rights. *See Rust v. Sullivan*, 500 U.S. 173, 190 (1991) (holding that "an Act of Congress ought not be construed to violate the Constitution if any other possible construction remains available," and that "[u]nder this canon of statutory construction, the elementary rule is that every reasonable construction must be resorted to, in order to save a statute from unconstitutionality" (internal quotations and punctuation omitted).

B. No Exception To The Right Of Public Access To Judicial Records Applies To The Guaranty Agreements And Related Pleadings.

Defendants did not purport to rely upon ***any*** exception to section 107, and indeed failed to cite section 107 in their Seal Motion. But even if Defendants had relied on section 107, they could not have justified sealing the Guaranty Agreements and other Sealed Documents.

The only exception to section 107 that could have possibly applied here is section 107(b)(1), which provides:

> (b) On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—
>
> > (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information ….

Section 107(b)(1), however, does not authorize denial of public access to the Sealed Documents.

First, section 107(b)(1) is to be "construed narrowly." *Kahn*, 2013 WL 6645436 at *3. As the Ninth Circuit recognized in *Crawford*, section 107 is based on principles of public access that are "long-recognized in the common law and buttressed by the First Amendment." *Crawford*, 194 F.3d at 960. Thus, section 107(b)(1) is limited to information that is "so critical to the operations of the entity seeking the protective order that its disclosure will unfairly benefit the entity's competitors." *In re Gibbs*, 2017 WL 6506324 at * 1 (quotations omitted).

Second, Defendants have the burden of overcoming the strong presumption in favor of public access.

> The moving party bears the burden of showing that the information is confidential. … ***The burden of proof is heavy, requiring an extraordinary circumstance or compelling need.***

In re Motors Liquidation Co., 561 B.R. 36, 42 (Bankr. S.D.N.Y. 2016) (emphasis added). Court records may not be sealed on the basis of "hypothesis or conjecture." *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016). Conclusory assertions of harm are not enough. *Kamakana*, 447 F.3d at 1182. To seal court records, a party must—for each document it seeks to seal—provide "*specific* fact[s]" demonstrating the "*specific*" harm that will result if the document is not kept secret. *Id.* at 1178, 1184 (emphasis added); *see Allstate Ins. Co. v. Balle*, 2014 WL 1300924, at *2 (D. Nev. Mar. 27, 2014) (requiring "a specific factual showing that compelling reasons exist to seal each" document).

Defendants have not come close to meeting this high standard. The only "evidence" Defendants submitted in support of their Seal Motion was a declaration of their own counsel, Mr. Richard – a declaration that is nearly word-for-word identical with a motion filed by another lawyer for Defendants in another case. Mr. Richard states in conclusory fashion that "[t]he Guaranty Agreements are confidential and proprietary documents," "which if made public, could negatively impact Defendants' competitive standing in the student loan industry." Seal Motion at 3-4. He also claims that the Guaranty Agreements contain "descriptions of pricing systems, underwriting guidelines, and business plans which are confidential and proprietary in nature, and not generally now in the student loan industry." *Id.* at 4.

Mr. Richard is not a businessperson, nor even the lawyer who negotiated or drafted the Guaranty Agreements. He thus has no basis to opine as to what ***commercial*** effect disclosure of the Guaranty Agreements may have.

Nor do Mr. Richard's assertions make any sense. As noted, the Guaranty Agreements were executed fifteen years ago, long before the financial crisis. Whatever "underwriting standards," "pricing systems," or "business plans" that existed then cannot possibly be relevant now, and certainly cannot rise to the level of justifying protection under section 107(b)(1). Nor does Mr. Richard mention that the guarantor, TERI, went into chapter 11 and liquidated more than ten years ago, and thus will never pay anything more on its guarantees, nor guarantee another loan. Thus, from a business perspective, the agreements are stale. TERI no longer exists, and the entire U.S.

economy was fundamentally changed by the financial crisis. *See Koch v. Greenberg,* 2012 WL 1449186, at *4 (S.D.N.Y. 2012) ("The Sotheby's materials submitted to the Court by Greenberg, however, are all approximately 10 years old, and where commercially sensitive information is stale, this can undermine the party's (or non-party's) claim that disclosure will create a competitive disadvantage."). Simply put, if the information in these documents was ever commercially sensitive, it could not possibly be so any more. *See Zenith Radio Corp. v. Matsushita Elec. Indus. Co., Ltd*., 529 F. Supp. 866, 906 (E.D. Pa. 1981) ("Much of the economic data is stale, moreover, and it would take a Herculean effort for a competitor to put it to use.").

Defendants' real interest in the Guaranty Agreements now is not commercial. Rather, it is legal—to bolster Defendants' contention that loans subject to the Guaranty Agreements are nondischargeable. Such a legal interest, however, is not protected by section 107(b)(1). Indeed, courts routinely deny the sealing of settlement agreements and other documents notwithstanding claims that public access may affect future litigation. *See, e.g., In re Thomas*, 583 B.R. 385, 392-93 (Bankr. E.D. Ky. 2018) ("In the bankruptcy context, courts across the country have held that settlement terms (including settlement amount) are not confidential 'commercial information' that is subject to seal under § 107(b)(1)." (citing numerous authorities)); *Gibbs*, 2017 WL 6506324 at *2-3. Applying Ninth Circuit law, the Hawaii bankruptcy court denied a settling defendant's request to seal, holding:

> The filings make clear that [the settling party] is not really concerned about its competitors. Rather, it worries that, if the settlement amount in this case is disclosed, other parties claiming that [the settling party] engaged in wrongful foreclosure conduct will demand similar amounts. This does not amount to 'confidential commercial information' within the meaning of section 107.

Gibbs, 2017 WL 6506324 at *2.

Here, it is clear that Defendants' real motivation for sealing is to avoid public scrutiny of their nondischargeability arguments, and to make it more difficult for debtors to assess, and if appropriate challenge, the dischargeability of Defendants' loans in future cases. The student loan crisis has become a significant national issue. Defendants plainly do not want their positions to become part of that debate. But Defendants cannot simultaneously ask court after court to hold the

loans to be nondischargeable, while at the same time conceal the key documents from public scrutiny.

As long as Defendants are permitted to file the Guaranty Agreements under seal, they will effectively be able to prevent most debtors from challenging Defendants' assertions of nondischargeability. This is because at present the only way for a debtor to know what the Guaranty Agreements actually say is for that debtor to demand copies of them through discovery in his or her own case. Yet, as this Court is aware, the vast majority of debtors have few (if any) resources to engage in discharge litigation. Thus, the vast majority of debtors with student loan debt owed to Defendants never have seen (nor ever will see) the Guaranty Agreements. Because of this lack of access to the key documents, most debtors (and courts) are in no position question Defendants' insistence that these documents show that TERI was "devoting its financial resources" to the loan programs. *See, e.g., In re O'Brien*, 419 F.3d at 106 ("TERI's ***uncontested*** description of its relationship with the Law Access Loan Program strongly suggests that TERI funded the program. TERI was clearly devoting some of its financial resources to supporting the program." (emphasis added)); *In re Sears*, 393 B.R. 678, 680–81 (Bankr. W.D. Mo. 2008) ("Other courts have placed more emphasis (correctly so, in this Court's opinion) on the nonprofit institution's degree of involvement in the administrative functions of the program under which a loan is funded."). Unsealing the Guaranty Agreements would permit NCBRC and others to inform debtors and their counsel as to the Guaranty Agreements and to help them assess whether the subject loans may be discharged. The public has a right to examine these documents in the context of what will likely be continuing litigation on the dischargeability of Defendants' loans for many years to come.

Finally, even if sealing was appropriate in the first instance, Defendants have now quoted from the sealed material on the public docket. *See, e.g.,* Supplemental Memorandum In Support of Defendants' Motion for Summary Judgment, at 10-11 (Dkt. No. 67) ("The NextStudent guidelines state, '[I]f the student wishes to borrow amounts in excess of a Participating School's published cost of attendance, a letter is required from the School stating that these additional funds are needed as an education expense. Costs verified in this manner are consider[ed] part of the 'Cost of Education'

for purposes of the program maximums set forth in the attached Schedules. ECF No. 33-4, Luke Decl., Exs. J, Luke Decl. Ex. J at § I, ¶B.7, p. 24 (CONFIDENTIAL NCSLT0320).”). Defendants cannot insist that the Sealed Documents must be kept from the public, while at the same time be free to quote from them at will.

CONCLUSION

NCBRC respectfully requests that this Court unseal the Guaranty Agreement and other Sealed Documents (Dkt. Nos. 41, 48, and 64).

Dated: November 15, 2019

K. John Shaffer (Cal. Bar No. 153729)
Razmig Izakelian (Cal. Bar. No. 292137)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017
Telephone: (213) 443-3000
Facsimile: (213) 443-3100
Email: johnshaffer@quinnemanuel.com
razmigizakelian@quinnemanuel.com

Attorneys for the National Consumer Bankruptcy Rights Center