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June 26, 2013

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VIA ECF

Molly Dwyer, Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
95 7th Street
San Francisco, CA 94103-1518

Re: *Kevin Ferguson and Sandra Muñiz v. Corinthian Colleges, Inc., et. al*, Case No.
11-56965 (9th Cir.)
9th Cir. R. 28-6, Fed. R. App. P. 28(j) Notice of Supplemental Authority

Dear Clerk:

Appellants (the "School") submit *American Express v. Italian Colors*, No. 12-133, 2013 WL 3064410 (U.S. June 20, 2013) and *Kilgore v. Keybank, Nat. Ass'n*, No. 09-16703, 2013 WL 1458876 (9th Cir. Apr. 11, 2013), as supplemental authority.

AMEX redefines the effective vindication of statutory rights doctrine. At issue was whether a federal antitrust claim could override the Federal Arbitration Act's mandatory enforcement of a class action waiver where the claim was allegedly too expensive to bring individually. *AMEX* found the effective vindication rule only exists "to prevent the 'prospective waiver of a party's *right to pursue* statutory remedies.'" Whether "it is not worth the expense" to litigate the claim "does not constitute the elimination of the *right to pursue* that remedy." *AMEX*, 2013 WL 3064410 at *5 (emphasis in original).

AMEX is relevant, first, to the point that the "effective vindication" doctrine cannot extend to state laws, Opening Brief at pp. 16-20. The majority focuses exclusively on federal claims and calls it the "effective vindication of a federal right." The dissent eliminates all doubt: "We have no earthly interest (quite the contrary) in vindicating [state] law. Our effective-

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vindication rule comes into play only when the FAA is alleged to conflict with another *federal* law.” *Id.* at *14 (Kagan, J., dissenting) (emphasis in original).

AMEX also eviscerates *Broughton-Cruz*. The School maintains *Broughton-Cruz* drastically misconstrued the “effective vindication” exception, Opening Brief at pp. 28-33. *Broughton-Cruz* declared entire claims for statutory injunctive relief inarbitrable because injunctions supposedly yield no benefit to the plaintiff but instead benefit the general public, whose interests were purportedly better served by a court than an arbitrator. *AMEX* limits the effective-vindication exception to where a party has been deprived of the right “to pursue a claim,” regardless of any benefit plaintiff derives from that claim. *AMEX*, slip op. at 6-7. This undermines *Broughton-Cruz*’s core reasoning.

In *Kilgore*, this Court reversed a district court’s refusal to compel arbitration of statutory injunction claims, distinguishing *Broughton-Cruz* without deciding whether it is good law. *Kilgore*, 2013 WL 1458876 at *5. While that question remains in this appeal, *AMEX* has answered it.

Very truly yours,

/s Christopher King

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing matter has been served by electronic means on this 26th day of June 2013 to counsel of record for Appellees as follows:

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/s Christopher King
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