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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

THERESA SWEET, CHENELLE
ARCHIBALD, DANIEL DEEGAN, SAMUEL
HOOD, TRESA APODACA, ALCIA DAVIS,
and JESSICA JACOBSON on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

ELISABETH DEVOS, in her official
capacity as Secretary of the United States
Department of Education,

And

THE UNITED STATES DEPARTMENT OF
EDUCATION,

Defendants.

Case No.: 19-cv-03674

**CLASS ACTION COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

(Class Action)
(Administrative Procedure Act Case)

PRELIMINARY STATEMENT

“For there is another kind of violence, slower but just as deadly, destructive as the shot or the bomb in the night. This is the violence of institutions; indifference and inaction and slow decay.”

Robert F. Kennedy
Cleveland City Club
April 5, 1968

1. The Higher Education Act (HEA), Department of Education (Department) regulations, and students’ loan contracts allow students to cancel their federal student loans on the basis of their school’s misconduct (borrower defense). More than 160,000 former for-profit college students have done so and are awaiting a decision. But, the Department has not granted or denied a single application since June 2018, and it has no timetable for doing so. The question in this case is whether the Department’s refusal to decide borrower defenses is lawful. It is not.

2. Over the past several decades, hundreds of thousands of students borrowed federal student loans to attend various for-profit colleges, including ITT Technical Institute (ITT), Corinthian Colleges (Corinthian), DeVry University, the Art Institutes, Salter College, Brooks Institute of Photography, and more. The schools promised high-paying jobs, state-of-the-art vocational training, and long and fulfilling careers. These were lies. The schools actually delivered worthless products that left students with thousands of dollars in debt, damaged credit, and depleted access to further student aid.

3. A number of these for-profit colleges have recently closed, including Corinthian, ITT, Brooks Institute of Photography, Vatterott College, Art Institutes, Argosy University, South University, Charlotte School of Law, Arizona Summit Law School, Globe University & Minnesota School of Business, FastTrain College, Marinello School of Beauty, Virginia College, and Brightwood College.

4. The Department was responsible for authorizing and overseeing the participation of each of these for-profit colleges in the federal student aid program.

1 5. Since 2015, former for-profit college students have increasingly asserted borrower defenses.
2 As the Department explained, “borrowers have a right to assert” such a claim, and so it started to
3 “set up a process to review and adjudicate them.” It developed a universal borrower defense form
4 and created a full-time borrower defense unit. In the six months before January 20, 2017, the
5 Department approved approximately 28,000 borrower defenses.
6

7 6. But then the Department hit the brakes. Since January 20, 2017, the Department has claimed
8 to be taking a short “pause” to “re-evaluate” the prior administration’s actions; behind closed
9 doors, the Department’s “pause” has been a full stop. The Department has ignored the growing
10 pile of borrower defenses, reduced its capacity to decide borrower defenses, and diverted its
11 increasingly limited resources to un-do all of the prior administration’s work.
12

13 7. In short, the Department has intentionally adopted a policy of inaction and obfuscation.
14

15 8. The Department’s abdication of its responsibility is not a neutral choice. Its decision to keep
16 over 160,000 students in limbo—some for over four years—has damaged students’ credit and
17 limited their access to federal student aid. It has caused significant emotional distress, associated
18 physical harm, and a loss of wealth and opportunity that students will never recover. For students
19 who have defaulted on their loans, the Department has invoked its extraordinary extrajudicial
20 powers to garnish their wages or seize their tax credits (for many, their Earned Income Tax Credit).
21

22 9. The Department’s failure to properly oversee the for-profit college industry on the front end,
23 and its refusal to remediate the fraud that occurred on its watch, has eliminated any pretense that
24 the government will protect these students.
25

26 10. Named Plaintiffs bring this lawsuit under the Administrative Procedure Act on behalf of
27 themselves and all other similarly situated individuals. They do not ask this Court to adjudicate
28 their borrower defenses. Nor do they ask this Court to dictate how the Department should prioritize
their pending borrower defenses. Their request is simple: they seek an order compelling the

1 Department to start granting or denying their borrower defenses and vacating the Department's
2 policy of withholding resolution.

3
4 **JURISDICTION AND VENUE**

5 11. This action arises under the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706,
6 and the HEA and its amendments, 20 U.S.C. § 1001, *et seq.* This Court has jurisdiction over this
7 case as it arises under federal law. 28 U.S.C. § 1331.

8 12. This Court is authorized to grant the relief requested in this case pursuant to the APA, 5
9 U.S.C. § 706, the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, the HEA, 20 U.S.C. § 1082,
10 and Federal Rule of Civil Procedure 23.

11 13. Venue is proper in this judicial district because Named Plaintiff Sweet resides in this
12 district and no real property is involved in the action. 28 U.S.C. § 1391(e)(1).

13
14 **INTRADISTRICT ASSIGNMENT**

15 14. Assignment to the San Jose Division is appropriate pursuant to Local Rule 3-2 because
16 Named Plaintiff Sweet resides in Santa Clara County, California, and no exclusion to the rule
17 applies.

18 **PARTIES**

19
20 15. Plaintiff Theresa Sweet is a resident of Los Gatos, located in Santa Clara County,
21 California. Ms. Sweet attended Brooks Institute of Photography and asserted her borrower defense
22 in Fall 2016.

23 16. Plaintiff Tresa Apodaca is a resident of Coeur d'Alene, located in Kootenai County, Idaho.
24 Ms. Apodaca attended Heald College and asserted her borrower defense in May 2015.
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1 17. Plaintiff Chenelle Archibald is a resident of Worcester, located in Worcester County,
2 Massachusetts. Ms. Archibald attended Salter College and asserted her borrower defense in
3 February 2016.

4 18. Plaintiff Daniel Deegan is a resident of Mt. Laurel, located in Burlington County, New
5 Jersey. Mr. Deegan attended DeVry University and asserted his borrower defense in November
6 2016.

7 19. Plaintiff Samuel Hood is a resident of Orlando, located in Orange County, Florida. Mr.
8 Hood attended ITT and asserted his borrower defense in January 2018 and again in February 2019.

9 20. Plaintiff Alicia Davis is a resident of Orlando, located in Orange County, Florida. Ms.
10 Davis attended Florida Metropolitan University and asserted her borrower defense in April 2015
11 and again in June 2016.

12 21. Plaintiff Jessica Jacobson is a resident of Lunenburg, located in Worcester County,
13 Massachusetts. Ms. Jacobson attended the New England Institute of Art and asserted her borrower
14 defense in March 2015.

15 22. Defendant Elisabeth DeVos is the Secretary of Education (the Secretary) and charged by
16 statute with the supervision and management of all decisions and actions of the United States
17 Department of Education. Plaintiffs sue Secretary DeVos in her official capacity.

18 23. Defendant United States Department of Education is an “agency” of the United States,
19 within the meaning of the APA, 5 U.S.C. § 701(b)(1). It is responsible for overseeing and
20 implementing rules for the federal student aid program.

21 **ALLEGATIONS COMMON TO THE CLASS**

22 **Administrative Procedure Act**

23 24. The APA requires a federal agency to render responsive decisions on matters within its
24 purview in a prompt and definite fashion.

25. For example, the APA requires that, “[w]ith due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it.” 5 U.S.C. § 555(b).

26. The APA similarly requires that “prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding.” 5 U.S.C. § 555(e).

27. And, the APA requires that “[e]ach agency . . . [g]ive an interested person the right to petition for the issuance, amendment, or repeal of a rule.” 5 U.S.C. § 553(e).

28. “A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.” 5 U.S.C. § 702. “Agency action” includes the “failure to act.” 5 U.S.C. § 553(e).

29. A Court “shall – compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

30. A Court shall also “hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

The Secretary’s Authority over FFEL and Direct Loan Programs

31. Title IV of the HEA, 20 U.S.C. §§ 1070-1099, provides the statutory authorization for federal student loans, including the Federal Family Education Loan (FFEL) and Direct Loan programs.

32. The Secretary oversees and is responsible for these programs. *See* 20 U.S.C. § 1070.

33. Under the FFEL program, private lenders issued student loans, which were then insured by guaranty agencies and in turn reinsured by the Department. *Id.* § 1078(b)-(c).

1 34. A guaranty agency is “[a] state or private nonprofit organization that has an agreement with
2 the Secretary under which it will administer a loan guarantee program under the Act.” 34 C.F.R.
3 § 682.200.

4 35. No new loans can be made under the FFEL program, effective July 1, 2010.

5 36. Under the Direct Loan program, the federal government directly issues student loans to
6 eligible student borrowers for use at “participating institutions of higher education” as approved
7 by the Department. *See* 20 U.S.C. § 1087a.

8 37. Direct loans and FFEL loans have the same terms, conditions, and benefits, under the HEA.
9 20 U.S.C. § 1087e(a)(1).

10 38. All institutions approved by the Department to participate in Title IV programs must enter
11 into a Program Participation Agreement with the Department. *See* 20 U.S.C. § 1094; 34 C.F.R. §
12 668.14(a).

13 39. By entering into a program participation agreement, a school agrees to, among other things,
14 “comply with all statutory provisions of or applicable to Title IV of the HEA, all applicable
15 regulatory provisions prescribed under the statutory authority,” and applicable state laws in its
16 administration of its program and in its dealings with students. *See* 34 C.F.R. § 668.14(b).

17 40. If a school fails to comply with its contractual obligations, the Secretary may take
18 corrective action. For instance, the Secretary may fine the school, suspend the program
19 participation agreement, or terminate the school’s participation in Title IV.

20 41. These programs have been, and the Direct Loan program continues to be, an important
21 source of financing for individuals who otherwise would not be able to afford higher education
22 and could not meet underwriting standards of private lenders.

23 42. Indeed, the purpose of the Direct Loan program is “to assist in making available the
24 benefits of postsecondary education to eligible students[.]” 20 U.S.C. § 1070(a).

1 43. The Department has significant collection powers when a FFEL or Direct Loan borrower
2 defaults on her student loans.

3 44. Most notably, the Department can extra-judicially seize federal tax refunds and garnish
4 federal student loan borrowers' wages and benefits. *See* 31 U.S.C. § 3716; 31 U.S.C. § 3720A; 31
5 U.S.C. § 3720D.

6 45. When the Department invokes one of these powers, it must provide the student borrower
7 with notice and the opportunity to request a hearing to contest the debt. *See* 20 U.S.C. §
8 1095a(a)(5); 34 C.F.R. §§ 30.22(d); *see also* U.S. Const. Amend. V.

9 46. The Department requires any such objection to the enforceability of the debt to be
10 adjudicated quickly.

11 47. For example, the Department requires that a timely objection to the validity of a debt raised
12 in response to a notice of proposed wage garnishment be decided "not later than 60 days after the
13 date on which [the Department] received the request for hearing." 34 C.F.R. § 34.16(a).

14 48. The Department similarly requires that guaranty agencies adjudicate discharge applications
15 in short order. *See* 34 C.F.R. § 682.402(d)(6)(ii)(G) (guaranty agency must review and provide a
16 decision for closed school applications within 90 days); 34 C.F.R. § 682.402(e)(6)(iv) (guaranty
17 agency must review and provide a decision for false certification applications within 90 days); 34
18 C.F.R. § 682.402(h)(1)(i)(A) (guaranty agency must review death, disability, and bankruptcy claim
19 and make payment within 45 days after a claim is filed by the lender); 34 C.F.R. § 682.402(n)(1)
20 (guaranty agency must review unpaid refund claim no later than 45 days after a properly filed
21 request).

22 49. Finally, the Department must follow certain requirements before reporting the borrowers'
23 debt to a consumer reporting agency.

1 50. For Direct Loan borrowers, the Master Promissory Note provides that the Department “will
2 report information about [the student’s] loan to nationwide consumer reporting agencies
3 (commonly known as credit bureaus) on a regular basis.” It further informs that if a borrower
4 defaults on the loan, she “will be given a chance to ask for review of the debt before [the
5 Department] report[s] it.”
6

7 51. Under the Fair Credit Reporting Act, if a borrower disputes her debt, a furnisher has 30
8 days to complete an investigation into the validity of the claim. *See* 15 U.S.C. § 1681s-2(E)(iii).
9

10 **Borrower Defense**

11 52. Borrowers of FFEL and Direct Loans can assert a right to a complete discharge of their
12 federal student loans on the basis of their school’s misconduct—*i.e.*, a borrower defense.

13 53. Borrower defense arises in the backdrop of the Federal Trade Commission’s Trade
14 Regulation Rule Concerning Preservation of Consumer’s Claims and Defenses (Holder Rule), 16
15 C.F.R. Pt. 433, which was promulgated in 1975. 40 Fed. Reg. 53506 (Nov. 18, 1975). The Holder
16 Rule ensures that consumers are not forced to repay loans to a financier when a seller fails to
17 provide the goods or services purchased.

18 54. The logic underlying the Holder Rule is that, as between “an innocent consumer, whose
19 dealings with an unreliable seller are, at most, episodic, and a finance institution . . . the financier
20 is in a better position both to protect itself and to assume the risk of a seller’s reliability.” *Id.* at
21 53509. By making financiers liable for a seller’s misconduct, the Holder Rule encourages lenders
22 to avoid commercial dealings with disreputable sellers that defraud consumers.
23

24 55. Drawing upon the Holder Rule, a holder of a FFEL loan is, by regulation, “subject to all
25 claims and defenses that the borrower could assert against the school with respect to that loan” if
26 a sufficiently close relationship existed between the school and the lender. 34 C.F.R. § 682.209(g).
27
28

1 56. Since approximately 1994, every FFEL loan has been governed by a Master Promissory
2 Note (“MPN”) that contains similar language, providing that the borrower is entitled to assert, as
3 a defense to repayment of the loan, “all claims and defenses that the borrower could assert against
4 the school.”

5 57. Similarly, in 1993, Congress altered the terms and conditions of Direct Loans to allow for
6 student loan borrowers to seek cancellation of their loans on the basis of school misconduct. 103
7 P.L. 66, 107 Stat. 312.

8 58. The statute directs that “the Secretary shall specify in regulations which acts or omissions
9 of an institution of higher education a borrower may assert as a defense to repayment of a loan
10 made under this part[.]” 20 U.S.C. § 1087e(h).

11 59. Implicit in this statutory directive is that the Department must recognize at least some acts
12 or omissions as establishing a borrower defense.

13 60. Pursuant to this directive, the Secretary promulgated a regulation that permits a Direct Loan
14 borrower to assert, as a defense to repayment, “any act or omission of the school attended by the
15 student that would give rise to a cause of action against the school under applicable state law.” 34
16 C.F.R. § 685.206(c)(1).

17 61. This regulation became effective July 1, 1995, and governs the claims of all Direct Loans
18 issued from that time until at least July 1, 2017. *Id.* at § 685.222.

19 62. Starting in 1995 and at least until October 16, 2018, all Direct Loans have been issued
20 pursuant to a MPN that informs borrowers that he or she “may assert, as a defense against
21 collection of [his or her] loan, that the school did something wrong or failed to do something that
22 it should have done,” provided that “the school’s act or omissions directly relates to [his or her]
23 loan or to the educational services that the loan was intended to pay for, and if what the school did
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1 or did not do would give rise to a legal cause of action against the school under applicable state
2 law.”

3 63. Upon a successful borrower defense assertion, the Secretary “may initiate a proceeding to
4 collect from the school the amount of relief resulting from a borrower defense.” *Id.* at
5 §685.222(a)(6)
6

7 64. The Higher Education Act, the Department’s regulations, and students’ MPN requires the
8 Department to adjudicate borrower defense assertions, and to grant at least some borrower
9 defenses.

10 65. When a borrower establishes a borrower defense, the Department has a mandatory duty to
11 notify the borrower and to provide her with some relief. *Calvillo Manriquez v. DeVos*, 345 F. Supp.
12 3d 1077, 1100 (N.D. Cal. 2018).
13

14 66. Before it can certify a defaulted borrower for a tax offset, the Department has an obligation
15 to entertain the merits of a borrower defense. *See Williams v. DeVos*, No. 16-11949-LTS, 2018
16 WL 5281741 (D. Mass. Oct. 24, 2018).

17 67. The Department itself has repeatedly acknowledged its own obligation to decide borrower
18 defenses.

19 68. In a letter to Senator Elizabeth Warren in 2014, the Department stated that a
20

21 borrower is not required to sue or obtain a judgment against the school in order to
22 assert the claim against the school as a defense to repayment of a Direct Loan.
23 Department regulations explicitly provide that a defaulted borrower may assert that
24 the defaulted loan is not legally enforceable, but a borrower who is not in default
25 can also assert a claim that the loan is not legally enforceable on the basis of a claim
26 against the school.

27 69. In 2015, the Department for the first time established an official form to “aid in preserving
28 borrowers’ rights” and to “allow the Department of Education to inform borrowers and loan

1 servicers of the information needed to review and adjudicate requests for relief under borrower
2 defense regulations,” 80 Fed. Reg. 32944, 329445 (June 10, 2015).

3 70. And, in a letter to the Office of Management and Budget about this collection effort, the
4 Department stated that “borrowers have a right to assert a defense to repayment claim.” It added
5 that: “Because borrowers have a right to submit defense to repayment claims, the Department must
6 set up a process to review and adjudicate them.”

7
8 71. In addition to the statutory and regulatory directives and the terms of borrowers’ loans, the
9 Department is bound to recognize borrower defenses by the law governing the collection of debts
10 owed to the federal government.

11 72. Under the Federal Claims Collection Act of 1966, “[b]efore disclosing information to a
12 consumer reporting agency,” the Department is required “on a request of a person alleged by the
13 agency to be responsible for the claim, for a review of the obligation of the person, including an
14 opportunity for reconsideration of the initial decision on the claim.” 31 U.S.C. § 3711(e)(2);
15 *accord* 34 C.F.R. § 30.33(b)(3)(ii) (prior to reporting of debt to consumer reporting agency,
16 Department must provide borrower with notice and opportunity to “obtain a review within the
17 Department of the existence, amount, enforceability, or past due status of the debt”).

18
19 73. Furthermore, because agencies are statutorily required to refer delinquent non-tax debts to
20 the Department of Treasury for centralized collection through offset, the Secretary enters into an
21 annual certification agreement with Treasury’s Bureau of the Fiscal Service.

22
23 74. Under that agreement, whenever the Secretary refers a debt to Treasury, the Secretary must
24 certify, under penalty of perjury, that certain facts concerning the debt are true.

25 75. For example, the Secretary must certify that she “has considered any and all evidence
26 presented by the Debtor disputing the Creditor Agency’s determination that would preclude
27

1 collection of the Debt.” See U.S. Dep’t of the Treasury, Bureau of the Fiscal Service, Agreement
2 to Certify Federal Nontax Debts (revised September 2014).

3 76. The Secretary must also certify that she notified the debtor of “the Debtor’s rights to an
4 explanation of the claim, and an administrative repeal or review of the claim,” and, upon request
5 of a Debtor, “provided for a review of the Debtor’s claim(s), including an opportunity for
6 reconsideration of the initial decision on the Debt.” *Id.*

8 **A Predatory Industry**

9 77. As the name implies, for-profit colleges are operated as businesses that seek to maximize
10 revenue and minimize costs in order to profit or increase share prices for owners and investors. In
11 contrast, non-profits are required to reinvest all net earnings in service of their educational mission.

12 78. As documented in an extensive 2012 report by the Senate Committee on Health, Education,
13 Labor, and Pensions (HELP), for-profit colleges have increased their revenue by relying on
14 taxpayer dollars, namely in the form of federal student aid.

15 79. For instance, in 2009-2010, the sector received \$32 billion from the Department’s student
16 aid program funds; this constituted 25 percent of all such funds. This was approximately five times
17 the amount of federal student aid that the sector collected a decade earlier.

18 80. Similarly, Pell grants to for-profit schools increased from \$1.1 billion in the 2000-2001
19 school year, to \$7.5 billion in the 2009-2010 school year.

20 81. To maximize this federal aid, for-profit schools specifically target low-income students,
21 students of color, single parents, and veterans. Many for-profit college students are the first in their
22 family to attend college.

23 82. The Senate HELP committee concluded that these schools “seek to enroll a population of
24 non-traditional prospective students who are often not familiar with traditional higher education
25 and may be facing difficult circumstances in their life.”

1 83. The committee added that, “[s]ervice members, veterans, spouses, and family members
2 have become highly attractive prospects to for-profit colleges, and many schools have put
3 significant resources into recruiting and enrolling [these] students.”

4 84. As a result of this targeting, African Americans and other people of color are
5 disproportionately enrolled in for-profit colleges. Students of color make up one-third of all college
6 students, but represent nearly half of those attending for-profit institutions.

7 85. Furthermore, according to the HELP committee, in order to achieve company enrollment
8 goals, “recruiting managers at some companies created a boiler-room atmosphere, in which hitting
9 an enrollment quota was the recruiters’ highest priority.” Indeed, “documents indicate that the
10 recruiting process at for-profit education companies is essentially a sales process.”

11 86. As part of this process, the schools recruit students with lies and false promises of well-
12 paying jobs and meaningful careers.

13 87. As the HELP committee found, “many companies used tactics that misled prospective
14 students with regard to the cost of the program, the availability and obligations of Federal aid, the
15 time to complete the program, the completion rates of other students, the job placement rate of
16 other students, the transferability of the credit, or the reputation and accreditation of the school.”

17 88. For instance, one school told students that it placed 70% to 90% of students in jobs, when
18 only 20% to 30% of students actually obtained employment.

19 89. The Senate HELP committee found that these for-profit schools trained their recruiters to
20 “locate and push on the pain in students’ lives.” They also trained the recruiters to “overcome
21 objections of prospective students in order to secure enrollments.” Moreover, “companies trained
22 recruiters to create a false sense of urgency to enroll and inflate the prestige of the college.”

23 90. Some for-profit schools have also falsified student high school diplomas in order to boost
24 enrollment. And they have falsified financial aid records to provide the school with more federal
25

1 financial aid than students were actually eligible for, or to divert funds from the student to the
2 school.

3 91. Enrollment across the industry increased from approximately 766,000 students in 2001 to
4 2.4 million students in 2010.

5 92. For-profit schools fail to provide the quality programs promised by the recruiters, in part
6 because the schools fail to invest sufficient resources in their educational programs.

7 93. According to the HELP committee, in fiscal year 2009, the companies the committee
8 examined spent 22.7% of all of their revenue on marketing, advertising, recruiting, and admissions.
9 They also took 19.4% of all revenue as pre-tax profit. In contrast, they spent 17.2% of all revenue
10 on instruction. In other words, “the companies together devoted less to actual instruction costs
11 (faculty and curriculum) than to either marketing and recruiting or profit.”
12

13 94. The Century Foundation think tank found similar spending trends between August 2016
14 and January 2017. It concluded that several of the largest for-profit schools in the country were
15 spending less than 30% of tuition on instruction.
16

17 95. For instance, during that time period, the University of Phoenix spent 21% of tuition on
18 instruction.

19 96. During that time period, DeVry spent 24% of tuition on instruction.

20 97. During that time period, Capella University spent 10% of tuition on instruction.

21 98. Yet, these schools charge substantially higher tuition than comparable programs at
22 community colleges and flagship State public universities.
23

24 99. Indeed, for a low-income student, some for-profit schools can cost more than private non-
25 profit schools like Harvard or Stanford.

26 100. Bachelor’s degree programs averaged 20 percent more at for-profits than the cost of
27 analogous programs at flagship public universities.
28

1 101. Associate programs averaged four times the cost of programs at comparable community
2 colleges.

3 102. And, certificate programs averaged four and a half times the cost of such programs at
4 comparable community colleges.

5 103. Students who attend for-profit schools are ultimately left with substantial debt but without
6 means to pay for it.

7 104. The Department of Education reported in 2014 that 72 percent of the for-profit college
8 programs it analyzed produced graduates who, on average, earned less than high school dropouts.

9 105. A 2016 study found that for-profit college students earned less after leaving school than
10 they did before they enrolled.

11 106. As a result, students who attend for-profit schools account for 13% of the student
12 population, but 47% of all federal student loan defaults. And, 70% of African Americans who
13 borrow to attend a for-profit college default on their loans within ten years.

14 107. The Department has allowed this to occur on its watch and many of these problems are
15 the direct result of its lax oversight.

16 108. For example, in October 2002, the Deputy Secretary of Education ordered enforcement
17 staff to treat violations of the statutory ban on commission-paid recruiting as a minor infraction.
18 This allowed companies like the University of Phoenix to violate the ban (and therefore pay
19 admissions staff based on the number of students enrolled) and pay a relatively small fine (rather
20 than returning all of their Title IV aid from the time the violation occurred).

21 109. Similarly, in Department audits of companies like Corinthian—the corporate parent to
22 Heald College, WyoTech, and Everest—it focused predominantly on issues related to compliance
23 with financial aid rules, rather than broader problems infecting the school. As a result, despite
24 conducting dozens of audits of Corinthian, the Department overlooked evidence of endemic
25

1 problems, such as Corinthian's improper recruitment tactics (*i.e.*, providing inadequate or
2 misleading information to students), the school's rapid growth, staff turnover, and student
3 withdrawals.

4 110. And, the Department has permitted several institutions, such as Grand Canyon University,
5 Remington Colleges, Keiser/Everglades Colleges, and Kaplan to transition from for-profit status
6 to non-profit status, even as these schools continue to outsource much of their operations to
7 companion for-profit entities. The schools escape specific regulatory requirements and the stigma
8 their industry's bad behavior created, even while they continue to operate like for-profit
9 institutions.
10

11 111. Given the predatory nature of this industry, and the Department's failure to regulate it, it
12 is no surprise that students of for-profit colleges accounted for approximately 98% of all loan
13 cancellation applications sent to the government between 2016 and 2018.
14

15 **The Department starts to grant and deny borrower defenses and decides nearly 31,000**
16 **borrower defenses by January 20, 2017**

17 112. The Department promulgated its borrower defense regulation in 1994 and received its
18 first claims in 1998.

19 113. Between October 1998 and February 2003, the Department's Office of General Counsel
20 recommended that the loans of at least 85 Direct Loan borrowers be discharged.

21 114. However, until 2015, the Department did little to build a borrower defense infrastructure,
22 to inform students about their rights under borrower defense, or to make it clear how students could
23 assert their rights.

24 115. Students were also blocked from seeking recourse in court against their schools.
25 Approximately 98 percent of students who attended for-profit schools were coerced into signing
26 an arbitration provision and class action waiver in their enrollment agreement.
27
28

1 116. This void was compounded by students' inability to discharge their debts in bankruptcy;
2 federal and private student loans are presumptively non-dischargeable in bankruptcy.

3 117. This situation became untenable in Spring 2015.

4 118. At that time, the Department fined Corinthian \$30 million for substantial job placement
5 rate misrepresentations. The company subsequently collapsed, leaving tens of thousands of
6 students with no recourse for the substantial student loan debt they incurred in exchange for less
7 than nothing of value.
8

9 119. A number of other for-profit schools have subsequently shut down over the last few years,
10 including: Allied American University, Altierus Career Colleges, American College of Commerce
11 and Technology, American School of Technology, Antonelli Medical and Professional Institute,
12 Argosy University, the Art Institutes, Bradford School, Briarcliffe College, Brightwood Career
13 Institute, Brightwood College, Brooks Institute, Brown Mackie College, Cambria-Row Business
14 College, Cameron College, Career Point College, Carousel Beauty College & Spa Institute,
15 Charlotte School of Law, Corinthian Colleges, Daniel Webster College, DuBois Business College,
16 Duluth Business University, Ferrara's Beauty Institute, Fountainhead College of Technology,
17 Freemont College-Los Angeles, Gallipolis Career College, Globe Institute of Technology, Globe
18 University/Minnesota School of Business, Golden State College of Court Reporting and
19 Captioning, Graham Webb International Academy of Hair, Harrison College, Heritage College,
20 Hickey College, International Career Development Center College, ITT, John Marshall Law
21 School (Atlanta), Keystone Technical Institute, Le Cordon Bleu Colleges of Culinary Art,
22 Marinello Schools of Beauty, Mattia College, McCann School of Business & Technology,
23 McNally Smith College of Music, Medtech Colleges/Institutes, New England Institute of Art,
24 Parker West Barber School, Radians College, Regency Beauty Institute, Ridley-Lowell Business
25 and Technical Institute, Sage College, Santa Fe University of Art and Design, South University,
26
27
28

1 Star Career Academy, Trumbull Business College, Tucson College, Utica School of Commerce,
2 Vantage College, Vatterott College, Virginia College, West Virginia Business College, Westech
3 College, Westwood College, Wood Tobe-Coburn School, and YTI Career Institutes

4 120. Through the tireless efforts of borrowers, organized in groups such as the Debt Collective,
5 thousands of former Corinthian students began to assert to the Department their right to a complete
6 loan cancellation under borrower defense.

7
8 121. Around the same time, hundreds of former students who were defrauded by other for-
9 profit institutions, began to assert their right to borrower defense.

10 122. In June 2015, the Department appointed a Special Master to “help develop a broader
11 system to aid students at” Corinthian “and other institutions who are seeking debt relief” under the
12 borrower defense regulations.

13 123. The Special Master served from June 24, 2015 through June 23, 2016.

14 124. During his appointment, the Special Master issued four reports on borrower defense,
15 which primarily addressed and resolved claims from Corinthian students.

16 125. As he detailed in his first report, the Special Master also focused on “creating a fair,
17 transparent, and efficient process for handling borrower defense claims” in a way that was “flexible
18 and scalable.” He detailed the infrastructure that would be needed on a “human and physical” level
19 “as well as a decision-making framework that will accommodate efficient and fair resolution of
20 borrower defense matters.”

21 126. The Special Master “share[d] the urgency felt by borrowers who were defrauded, and
22 believe[d] it [was] important to reach decisions in this project in a deliberate way that [would]
23 support the relief that students deserve, protect taxpayers, and justify public trust and confidence
24 in the process.”

1 127. The Special Master and the Department emphasized that they were going to “rely on
2 evidence established by appropriate authorities in considering whether whole groups of students
3 (for example, an entire academic program at a specific campus during a certain time frame) are
4 eligible for borrower defense relief. This will simplify and expedite the relief process, reducing
5 the burden on borrowers.”

6
7 128. During his one-year tenure, the Special Master recommended the discharge of the federal
8 student loans of approximately 3,787 borrowers.

9 129. On February 8, 2016, the Department announced the creation of a “Student Aid
10 Enforcement Unit” with a dedicated “Borrower Defense Group” (BDU).

11 130. The Department tasked the BDU with providing “legal analysis, support, and advice
12 concerning claims of borrowers of Direct Loans. The unit [will] analyze claims to make
13 determinations of injury, investigate institutions in connection with borrower defense claims and
14 coordinate with federal and state agencies regarding those claims.”

15
16 131. In June 2016, the Special Master formally transferred authority of borrower defense over
17 to the BDU. There were approximately 22,800 pending borrower defenses.

18 132. At the time authority was transferred to the BDU in June 2016, it had seven full-time
19 attorneys and no contractors.

20 133. By November 2016, the BDU had “hir[ed] additional attorneys and support staff to work
21 on borrower defense.” Specifically, it was staffed with a director, 10 attorneys, and 19 contracted
22 staff.

23
24 134. Around this same time, the Department published a final new borrower defense regulation
25 that was to become effective July 1, 2017. 81 Fed. Reg. 75926 (Nov. 1, 2016).

26 135. Between July 2016 and January 20, 2017, the BDU granted approximately 27,996
27 borrower defenses.

1 136. Specifically, the Department granted claims of former students of a handful of schools on
2 the basis of different theories of liability.

3 137. The Department granted 24,504 “Job Placement Rate” claims for former Corinthian
4 students.

5 138. The Department determined that students who attended specific Corinthian programs, at
6 certain times, as enumerated and published by the Department, established a borrower defense
7 under this job placement rate theory. *See* [https://studentaid.ed.gov/sa/sites/](https://studentaid.ed.gov/sa/sites/default/files/heald-findings.pdf)
8 [default/files/heald-findings.pdf](https://studentaid.ed.gov/sa/sites/default/files/ev-wy-findings.pdf); [https://studentaid.ed.gov/sa/ sites/default/files/ev-wy-](https://studentaid.ed.gov/sa/sites/default/files/ev-wy-findings.pdf)
9 [findings.pdf](https://studentaid.ed.gov/sa/sites/default/files/ev-wy-findings.pdf).
10

11 139. The Department also granted 426 “transferability of credit” claims for former Corinthian
12 students. The basis and rationale for the granting of these claims is recorded in a memo or memos
13 and, upon information and belief, the memo(s) on their face set forth criteria that apply to more
14 than 426 borrowers.
15

16 140. The Department granted 169 “Guaranteed Employment” claims for former Corinthian
17 students. The basis and rationale for the granting of these claims is recorded in a memo or memos
18 and, upon information and belief, the memo(s) on their face set forth criteria that apply to more
19 than 169 borrowers.
20

21 141. Specifically, and upon information and belief, any former Corinthian student who asserts
22 that they were guaranteed employment (i.e., promised employment, a specific salary, or a job with
23 a specific employer) establishes a borrower defense.

24 142. The Department also granted 33 “Guaranteed Employment” claims for former ITT
25 students. The basis and rationale for the granting of these claims is recorded in a memo or memos
26 and, upon information and belief, the memo(s) on their face set forth criteria that apply to more
27 than 33 borrowers.
28

1 143. The Department, in the form of a group discharge (that is, without individual
2 applications), granted borrower defenses to 2,863 former American Career Institute students.

3 144. By the end of the prior administration, the Department “expect[ed] to resolve all pending
4 eligible [Corinthian job placement rate] findings claims by Spring 2017.”

5 145. And, in or around the beginning of 2017, the Department informed a Director, Claim
6 Management at USA Funds, Inc. (a guarantor of FFEL loans), that it would take 12-14 months for
7 it to make a determination of eligibility on a borrower defense application.

8 146. Yet, as of January 2017, there were approximately 54,000 borrower defenses pending.

9 147. To tackle these pending applications, the BDU had a proposed protocol to “[d]evelop and
10 implement an administrative process capable of ensuring supportable and timely decisions” on
11 borrower defense claims, including “claims that are unique or unsupported by existing legal
12 memos[.]”

13 148. When assessing new claims, this “Borrower Defense Unit Claims Review Protocol”
14 required the BDU to “evaluate all available relevant evidence to determine whether” a claim was
15 established, including the “BD claim,” “[e]vidence from ED investigations,” [e]vidence from other
16 law enforcement investigations,” “[e]vidence obtained from whistleblower suits,” and
17 “[c]orroborating evidence from other similar BD claims.”

18 **The Department stops deciding borrower defenses and adopts a policy of refusing to grant**
19 **any borrower defenses**

20 149. Since January 20, 2017, the Department has sharply curtailed its borrower defense
21 infrastructure.

22 150. At the outset of her tenure, Secretary DeVos staffed the high ranks of her Department
23 with employees who had worked for, or were connected with, the for-profit college industry. For
24 example:

- a. The Secretary appointed James Manning to be a Senior Advisor to the Under Secretary and then Acting Under Secretary. Mr. Manning was a former consultant to USA Funds (later Strada Education Network), which heavily invested in for-profit schools.
- b. The Secretary appointed Julian Schmoke to head the enforcement unit, which includes the BDU. Mr. Schmoke is the former dean of for-profit school, DeVry University. In FY 2018, the Department paid Mr. Schmoke a \$15,000 bonus.
- c. The Secretary appointed Diane Auer Jones as Principal Deputy Under Secretary. Ms. Jones is the former Senior Vice President and Chief External Affairs Officer of Career Education Corporation, a company that owns now-shuttered for-profit schools Brooks Institute of Photography, Sanford-Brown Colleges and Institutes, Le Cordon Bleu, Collins College of Art and Technical Colleges and Briarcliffe College.
- d. The Secretary appointed Robert Eitel as a senior advisor. Mr. Eitel worked for Bridgepoint Education, owner of Ashford University.
- e. The Secretary appointed attorney Linda Rawles as a senior advisor. Ms. Rawles also worked at Bridgepoint Education.
- f. And, the Secretary hired General Counsel Carlos G. Muniz. Mr. Muniz also has prior ties to Career Education Corporation.

151. As the Department explained in a response to Questions for the Record from the Senate HELP Committee, “Senior Department officials may be consulted regarding relief approaches and decisions for approved applications.”

152. As of September 2017, the entire Enforcement Unit had no director and only six contracted staff.

1 153. The Department recognized in a procurement notice that “the FSA [Federal Student Aid]
2 borrower defense unit currently lacks sufficient staff.”

3 154. In June 2018, the Department reported that the BDU had six full-time employees and one
4 part-time employee. At that time, there were 99,335 borrower defenses pending review.

5 155. In March 28, 2019 answers to Questions for the Record from the Senate HELP
6 Committee, the Department explained that it had “recently completed a preliminary estimate of
7 the full-time and contractor resources needed to eliminate or substantially reduce the number of
8 pending borrower defense applications.” It concluded that “existing staff and contractors are
9 insufficient to address the existing applications.”
10

11 156. The Department further noted that it was “in the process of adding full-time and contractor
12 resources,” but had not, at that point, hired any additional employees since January 20, 2017.

13 157. Also around the same time, Secretary DeVos testified to the Subcommittee on Labor,
14 Health and Human Services, Education, and Related Agencies of the Senate Committee on
15 Appropriations that “the enforcement unit, part of Federal Student Aid, is very robust and
16 functioning very well.”
17

18 158. This sharp reduction in staffing and resources began immediately with the change in
19 administration, even as the administration inherited a significant backlog of borrower defense
20 claims.
21

22 159. As of February 21, 2017, there were ten schools other than Corinthian—the school that
23 accounted for the vast majority of borrower defense applications granted to date— that had over
24 100 pending borrower defense applications: Education Management Corporation (EDMC), ITT,
25 DeVry, CEC, Apollo/University of Phoenix, Westwood, ACI, Charlotte School of Law, Globe
26 University/MN School of Business, and Graham Holdings/Kaplan University.
27
28

1 160. As of February 21, 2017, there were six schools with 31-100 pending borrower defense
2 applicants. They included: Marinello School of Beauty, Bridgepoint/Ashford University, ATI
3 Career Training, Anthem, Willis Stein/Kaplan College, and Palm Holdings/United Education
4 Institute (UEI).

5 161. As of February 21, 2017, there were 28 schools with 11-30 pending borrower defense
6 applicants. They included: Full Sail University, Strayer University, Walden University, Virginia
7 College, Academy of Art University, Grand Canyon University, Medtech, Capella, Fasttrain, Dade
8 Medical College, Fortis College, Star Career Academy, Career Point College, Lincoln Technical
9 Institute, Brown College, Daymar College, Universal Technical Institute, Court Reporting
10 Institute, Mountain State University, Florida Career College, Regency Beauty Institute, Keiser
11 University, Remington College, Wright Career College, Concorde Career College, Jones
12 International University, Masters of Cosmetology College, and Salter College.

13 162. As of February 21, 2017, there were 797 schools with 10 or fewer borrower defense
14 applicants.

15 163. In March 2017, senior Department staff instructed BDU to “pause . . . submitting claims
16 for approval and . . . developing additional memoranda for new categories of claims that qualify
17 for discharge.”

18 164. That same month, the Department created a Borrower Defense Review Panel. As
19 explained by Under Secretary Manning, this “short-term evaluation” was performed during “the
20 winter and early spring [by] a team consisting of both career and on-career Department leadership”
21 in order to “ensure the administration of the program was built on solid foundation that would in
22 the long term operate efficiently[.]”

23 165. In May 2017, the Review Panel decided to honor approximately 16,000 borrower defense
24 claim approvals made, but not effectuated, prior to January 20, 2017.

1 166. The Review Panel informed the Secretary that Department leadership were developing
2 interim procedures “with respect to the seven established categories so that the review, approval,
3 and discharge processes for these categories of claims may resume as soon as possible.”

4 167. Secretary DeVos requested the Department’s Office of Inspector General (OIG) review
5 the borrower defense program because she believed it reflected a “haphazard approach taken by
6 the previous administration, actively encouraging borrowers to flood the Department with claims
7 without a prior infrastructure in place to intake and manage them.”

8 168. Secretary DeVos also stated publicly that she believed borrower defense allows students
9 to “raise his or her hand” to get “free money.”

10 169. In late 2017, the OIG released the requested audit report (ED-OIG/I04R0003) entitled
11 “Federal Student Aid’s Borrower Defense to Repayment Loan Discharge Process.”

12 170. The report states that “[a]ccording to the Director of BDU, FSA’s former Deputy Chief
13 Enforcement Officer communicated to the BDU not to submit additional claims for approval or to
14 continue developing memoranda on additional categories of claims that qualify for discharge
15 because the borrower defense policies are being reviewed with the change in administrations.” It
16 added, “[w]hile awaiting specific instructions, BDU’s contractors summarized allegations in
17 unique claims.”

18 171. In response to the OIG report, the FSA confirmed “the pause in submitting claims for
19 approval and in developing additional memoranda for new categories of claims that qualify for
20 discharge,” but clarified “that the Deputy Chief Enforcement Officer actually just communicated
21 to the Director of BDU the guidance and direction provided by OUS and the Review Panel.”

22 172. Thus, “[f]rom January 20, 2017, through July 31, 2017, BDU did not complete or begin
23 preparing any legal memoranda establishing whether additional categories of borrower claims
24 qualified for discharge.”

1 173. According to the OIG,

2 BDU did not implement policies and procedures for reviewing and making
3 determinations on unique claims that do not fit into one of the seven established
4 categories; claims with no common factual bases; or claims for which there was no
5 associated legal memorandum. When borrowers filed a claim that did not fit into
6 the established categories, their loans were placed in forbearance and all collections
actions were halted. While in this status, borrowers do not have to make payments,
but their debts remain on record and interest continues to accumulate on the loan
balances.

7 174. In addition to the seven established categories, according to OIG, “[a]s of January 20,
8 2017, BDU had identified additional categories of claims warranting further research. However,
9 this research was placed on hold. Starting January 20, 2017, BDU tasked contractors with
10 summarizing the allegations made in unique claims. BDU has not established any additional
11 categories of valid borrower defense claims since January 20, 2017.”

12 175. The OIG recommended (among other things) that the Chief Operating Officer (COO) for
13 FSA:
14

15 Request approval from the Acting Under Secretary to resume consideration and
16 determination of whether additional categories of claims with common facts qualify
17 for discharge; establish and document policies and procedures for reviewing and
18 making determinations on unique or other claims for which FSA had no associated
19 legal memorandum; and establish timeframes for the claims intake, claims review,
loan discharge, and claims denial processes and develop controls to ensure
timeframes are met.

20 176. In a November 29, 2017 response to the OIG’s submission, FSA agreed to work with its
21 Chief Financial Officer to strengthen BDU’s processes and protocols so that the work on additional
22 categories of claims could proceed, and to work with Department leadership to develop mutually
23 agreeable timelines.

24 177. The U.S. Government Accountability Office standards for internal control in the federal
25 government directed that agencies should establish performance measures and indicators, such as
26 timeframes for processing claims.
27

1 178. Department policy required FSA to develop a final corrective action plan within 30 days
2 of the issuance of the OIG report, tracked through the Department's Audit Accountability and
3 Resolution Tracking System.

4 179. Notwithstanding the Department's obligation to develop a final corrective plan, on
5 February 11, 2019, the OIG responded to a FOIA request for the plan by saying: "The OIG
6 conducted a search and located no records responsive to your request."

7
8 180. Between December 2017 and May 2018, the Department only granted or denied claims
9 from certain Corinthian students.

10 181. The Department last approved a borrower defense application on June 12, 2018.

11 182. The Department last denied a borrower defense application on May 24, 2018.

12 183. The only applications the Department has resolved in the past year have been duplicate
13 applications or for students who were eligible for other types of loan discharges. The Department
14 has "closed" these borrower defense applications without any review of the merits.

15
16 184. As of spring 2019, the Department confirmed that it "has identified no facts relevant to
17 the review of Corinthian College claims," and "has similarly made no findings of fraud regarding
18 ITT Tech."

19 185. On May 22, 2019, Principal Deputy Under Secretary Diane Auer Jones testified to the
20 Economic and Consumer Subcommittee of the House Committee on Oversight and Reform that
21 the Department could not commit to any timeline to grant or deny pending borrower defenses.
22
23
24
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28

186. According to the Department's Borrower Defense Quarterly Report issued for the quarter ending December 31, 2018,¹ there were 158,110 pending borrower defense assertions.

187. Since January 1, 2019, borrowers have continued to assert their right to borrower defense and the Department refuses to grant or deny any of the pending borrower defenses.

188. Today, more than 20 schools have more than 500 applications from former students pending, in addition to Corinthian and ITT: DeVry, University of Phoenix, Alterius Career College, Purdue University Global, Ashford University, Charlotte School of Law, The Art Institute (Pittsburgh), Minnesota School of Business, Westwood College, Keller Graduate School of Management, Brooks Institute, American InterContinental University, Globe University, Education Corporation of America-owned schools, Dream Center Educational Holdings-owned schools, Bridgepoint Education, Marinello School of Beauty, ATI Career Training, United Education Institutes, and Lincoln Technical Institutes.

189. To date, the Department has granted borrower defense applications to former students of Corinthian (44,987), ACI (2,897), ITT (33), and unnamed "other" schools (25).

190. In the face of this clear evidence to the contrary, the Department has misrepresented to the public and borrowers that it is prioritizing borrower defense and that it is actively granting or denying claims.

191. On July 11, 2017, the Department's Office of Postsecondary Education responded to an inquiry from a former ITT student by saying,

We appreciate the concerns you raise regarding protections for borrowers who have

¹ Senate Report 115-150 directed the Department to issue quarterly reports on borrower defense claims that include the total and median dollar amount of outstanding debt from borrowers prior to discharge, the percentage of the total approved claims receiving partial relief, the median student loan debt remaining as part of claims receiving partial relief, the total number of pending borrower defense claims, and total number of denied claims, all disaggregated by state.

1 been defrauded by their institutions. Our top priority is to protect students from
2 fraudulent practices. Borrowers continue to have the right to file a BD claim with
3 the Department, and we will continue to evaluate whether a borrower's claim gives
4 rise to a cause of action consistent with the current state-law based standard.

5 192. In a letter to Senator Elizabeth Warren, dated August 17, 2017, the Department wrote,
6 "Even though the Department has delayed the regulations, borrowers continue to have the right to
7 submit a BD claim with the Department under our long-standing, current regulations, and we will
8 continue to evaluate whether a borrower's claim gives rise to a cause of action consistent with the
9 current, State law-based standard."

10 193. In an August 18, 2017 letter to a borrower, the Department assured that it "will continue
11 to evaluate whether a borrower's claim gives rise to a cause of action consistent with the current,
12 State-law based standard."

13 194. In October 2017, the Department justified a delay of the prior administration's borrower
14 defense regulations by claiming that the delay would not harm borrowers because it "would
15 continue to process borrower defense claims under the existing regulations that will remain in
16 effect during the delay so that borrowers may continue to apply for the discharge of all or part of
17 their loans." 82 Fed. Reg. 49,155 (Oct. 24, 2017).

18 195. On November 9, 2017, Under Secretary Manning wrote to members of Congress that
19 Borrowers still have the right to submit borrower defenses and that the Department would
20 "continue to evaluate whether a borrower's claim gives rise to a cause of action consistent with
21 the current, State-law based standard."

22 196. On November 14, 2017, during the first session of a negotiated rulemaking that the
23 Department undertook to replace the 2016 Borrower Defense regulation, Under Secretary
24 Manning stated:
25

26 As you know, the borrower defense regulations enacted in 2016 have been delayed
27 and so the Department has and will continue to consider claims under the regulatory
28

1 status quo[.] . . . [The Department] is also working to adjudicate pending claims
2 related to other schools and we are making progress on that front . . . I can promise
3 you we are working night and day to get these claims and I expect a consistent
4 downward trend in the number of pending claims starting soon, very soon.

5 197. He further commented that:

6 assuming my responsibilities on January 20 I began an evaluation of the Borrower
7 Defense Program. This review is complicated by a lack of defined policies,
8 protocols and procedures established to handle the process and additionally the lack
9 of a proper SORN or a database system that instead was 1,000 spreadsheets that
10 had to be searched manually. These claims were approved in haste just before the
11 inauguration and there was no infrastructure in place to adjust them, as I just said.
12 Given the budgetary implications to the taxpayer and the impact on thousands of
13 borrowers and institutions it was necessary to conduct a high level assessment of
14 the program including all these already approved claims.

15 198. Under Secretary Manning summarized the Department's stated position when he said that
16 "Secretary DeVos views borrower defense as one of the most important issues facing the
17 Department."

18 199. He added in late 2017 and early 2018 that "our hope for claims moving forward is that
19 borrowers' . . . claim[s] should be dispensed within a year's time."

20 200. As of January 2018, Manning reported to a negotiated rulemaking committee that the
21 Department "is also working to assess claims from schools other than Corinthian. We have roughly
22 46,000 pending claims from non-Corinthian schools and, while we are working diligently to
23 adjudicate those claims, I do not have any more specific information to share with you today."

24 201. On February 14, 2018, the Department stated in a Federal Register publication that
25 "borrowers can continue to apply for relief from payment of loans under this existing process, and
26 the Department is committed to processing those applications in a timely manner." 83 Fed. Reg.
27 at 6,641. Thus, according to the Department, the delay of the 2016 Borrower Defense regulation
28 would have no negative impact on borrowers.

202. On May 22, 2018, Secretary DeVos testified to the House Education and Workforce

1 Committee that “[w]e are continuing to move forward on students’ claims that these schools did
2 defraud them,” and “I know that there were students that were defrauded as I said earlier, fraud is
3 not to be tolerated.”

4 203. In June 2018, a Department representative told the Senate Committee on Appropriations
5 that it was “working tirelessly to reduce the number of pending claims.”
6

7 204. The Department advises applicants for borrower defense that it “processes applicants in
8 the order in which they are received.”

9 **The Department’s inaction causes class members ongoing harm**

10 205. The Department’s refusal to grant or deny borrower defenses exacerbates the harm to a
11 borrower’s credit that is caused by the very existence of the invalid student debt.

12 206. Class members’ loans are accruing interest and, for many borrowers, creating an
13 untenable debt-to-income ratio. During the Department’s inaction, members of the proposed class
14 who need loans to secure basic housing and transportation are unable to qualify for loans, or qualify
15 only for the most predatory ones.
16

17 207. Class members’ impaired credit also restricts their employment options. Some students
18 have been outright denied jobs on account of their credit, and others are unable to obtain the
19 security clearances necessary to obtain certain jobs.

20 208. This credit harm perversely prevents some students from attaining even entry-level
21 employment, locking them into a negative cycle of financial insecurity.
22

23 209. A successful borrower defense removes negative credit reporting associated with the
24 discharged loan or loans, and refunds any amount paid on the loan.

25 210. Upon the submission of a borrower defense, the Department is required to place a
26 student’s loans in administrative forbearance unless the borrower requests otherwise. *See* 34
27 C.F.R. § 682.211.
28

1 211. Indeed, the Department’s universal borrower defense application asks borrowers if they
2 are “requesting forbearance/stopped collections.” A borrower can select: “Yes, I want all of my
3 federal loans currently in repayment to be placed in forbearance and for collections to stop on any
4 loans in default while my borrower defense application is reviewed. During this time period, I
5 understand that interest will continue to accrue.”
6

7 212. The form also states that: “If you do not select one of the options immediately above, your
8 federal loans currently in repayment will automatically be placed into forbearance and collections
9 will stop for any defaulted loans, and the Department will request forbearance for any
10 commercially held Federal Family Education Loan (FFEL) program loans currently in repayment
11 and for debt collection to stop for any defaulted, commercially held FFEL program loans that you
12 have currently (as applicable).”
13

14 213. And, in testimony to the Subcommittee on Economic and Consumer Policy of the House
15 Committee on Oversight and Reform, Principal Deputy Under Secretary Jones acknowledged that
16 “when someone has a pending borrower defense claim, they are entitled to a forbearance.”
17

18 214. In practice, the Department, through its loan servicers, are only placing students’ loans
19 into administrative forbearance for a limited period of time. They are then moving the students’
20 loans back into repayment.
21

22 215. At that point, loan servicers are refusing to place a class members’ loans back into
23 administrative forbearance unless the class member affirmatively calls the Department and
24 requests it.
25

26 216. Many members of the proposed class have also defaulted on their federal student loans
27 while their borrower defenses remain pending. For them, the Department has taken extraordinary,
28 extrajudicial action to collect on their loans, including by seizing their wages and garnishing
Earned Income Tax Credits and Social Security benefits.

1 217. The Department has consistently taken these actions with knowledge of a borrower's
2 pending borrower defense and without first adjudicating that assertion. Put another way, the
3 Department is seizing students' wages and tax credits notwithstanding the student's bona fide
4 objection to the enforceability of the debt.

5 218. For example, on February 26, 2019, the Department denied a student's objection to a tax
6 offset notwithstanding her assertion of a borrower defense. It said "[w]e have received your
7 application for borrower defense to repayment discharge. Your discharge request has been
8 forwarded to the Department's Borrower Defense Unit for review."

9 219. It then did not render a decision on the borrower defense but concluded that the "student
10 aid obligation [was] past due and legally enforceable" and so "the Department has referred this
11 debt to the U.S. Department of the Treasury for offset."

12 220. During the Department's delay, members of the proposed class have forgone or deferred
13 education. Many members have exhausted their financial aid eligibility on their for-profit
14 programs. Others are wary of taking out further debt until the Department renders a decision on
15 their borrower defense.

16 221. Borrower defense discharge not only removes the obligation to repay the loan, but it
17 restores a borrower's eligibility for federal financial aid.

18 222. The Department's failure to grant or deny borrower defenses also limits students'
19 professional and personal choices.

20 223. For instance, the lingering debt and the uncertainty regarding the debt causes students to
21 delay making significant purchases, borrowing money (if they can) to seek additional education,
22 or accepting positions with lower earnings.

1 224. Individuals are likewise missing substantial opportunities to develop their wealth, notably
2 in the form of home equity and retirement savings, because of their student loan debt and the
3 Department's refusal to adjudicate the status of the debt.

4 225. Indeed, during the life of a student loan, an individual with higher student debt is more
5 likely to forgo home ownership than a comparable individual without student loan debt. One study
6 has found that households with an average student debt burden experienced a lifetime wealth loss
7 of nearly \$208,000 compared to households without student debt. This largely occurs because
8 borrowers cannot put money into retirement savings or invest in a home during the life of the loan.
9

10 226. The uncertainty of the loan obligation is causing class members to divert their income to
11 pay for the loans rather than to invest in their financial future. Class members are therefore
12 suffering long-term lost wealth, including lost home equity.

13 227. Even if borrowers eventually get a full loan discharge, their inability to make financial
14 decisions or investments during the Department's inaction leads to a delayed accumulation of
15 wealth.
16

17 228. The uncertainty and confusion engendered by the Department's inaction causes students
18 significant psychological distress.

19 229. One body of peer-reviewed literature documents a strong and persistent link between
20 financial strain, the psychological stress related to financial strain, and mental health. Indeed,
21 financial strain and general consumer debt are associated with higher levels of depressive
22 symptoms, psychological functioning, anxiety, and psychological distress.
23

24 230. The emerging research on student debt is consistent with these findings. Students may
25 experience poor mental health as they accumulate the loans during school and as they enter
26 repayment after graduation.
27

1 231. The negative psychological functioning can manifest in several ways. These include
2 stress, depressive symptoms, anxiety, feelings of sadness, long-term behavioral health
3 developments, and other forms of psychological distress.

4 232. The literature also documents the adverse physical health outcomes that are associated
5 with significant consumer debt. Most notably, increased consumer debt is correlated with
6 decreased duration and quality of sleep. Inadequate and poor sleep, in turn, is associated with many
7 physical health problems, including obesity, cardiovascular disease, and premature mortality.

8 233. The Department's refusal to adjudicate borrower defenses leaves borrowers with a lack
9 of faith that their government works for them.

10 234. For many students, their borrower defense assertion is the most significant interaction that
11 they have had, or will have, with their government.

12 235. The Department's refusal to grant or deny borrower defenses, particularly as to students
13 who attended schools that the Department knows engaged in misconduct, has a tangible and
14 negative impact on class members' belief that their government is acting in their interest.

15 **FACTS CONCERNING NAMED PLAINTIFFS**

16 ***Theresa Sweet***

17 236. Theresa Sweet is 43 years old and resides in Los Gatos, California.

18 237. Ms. Sweet enrolled in a BA program in professional photography at the Brooks Institute
19 of Photography (Brooks) in 2003. She graduated from that program in 2006.

20 238. Brooks was a for-profit school owned and operated by Career Education Corporation
21 (CEC). The school offered programs in the visual arts and was located in Ventura, California.

22 239. Brooks was the subject of numerous investigations and lawsuits, including one in 2005
23 by the California Bureau for Private Postsecondary and Vocational Education (BPPVE). That

1 investigation determined that Brooks violated state law in various ways, including by
2 misrepresenting students' post-graduation income. Brooks ultimately shut down in August 2016.

3 240. According to the Department, as of December 31, 2018, 588 former Brooks students had
4 asserted a borrower defense to the Department. All of the claims remain pending.

5 241. CEC also operated, among other schools, Sanford Brown College and American
6 InterContinental University. CEC has been investigated by more than a dozen attorneys general
7 and been subject to increased financial oversight from the Department. Over the past few years,
8 several of CEC's other schools, including Sanford Brown College, have shut down following
9 allegations of wrongdoing.
10

11 242. According to the Department, as of December 31, 2018, 5,667 students from CEC
12 colleges have asserted a borrower defense. The Department has not decided a single one.

13 243. When Ms. Sweet enrolled at Brooks, the school made a number of misrepresentations to
14 her. As she explained in her borrower defense assertion to the Department, representatives of
15 Brooks:
16

- 17 a. Stated that because Brooks had such a great reputation in the industry, 80-90% of
18 graduates were employed "right out of school." These numbers were false and
19 many, if not most of Ms. Sweet's classmates do not work in the media/photography
20 industry;
21
22 b. Falsely promised her that there would be no tuition increases during the program,
23 even though the cost of the program increased while she attended;
24
25 c. Guaranteed that they would assist her in getting a job either through "faculty
26 networking" or from the job placement assistance office. In reality, when she was
27 approaching graduation, instructors told her that most students spend years as
28 unpaid interns or as unpaid "assistants." The placement office only told her about

“opportunities” to work for free. They also provided her Craigslist postings that Ms. Sweet had already found on her own;

- d. Described the program as “rigorous” with “very tough standards” for admissions, when in reality, an applicant only needed a GED to gain admission;
- e. Falsely promised Ms. Sweet that her Brooks credits were “certain” to transfer to other schools. In fact, Ms. Sweet was told by a number of community colleges and public schools that her credits would not transfer; and,
- f. Told her not to worry about financial aid and that she would have no issue paying back her loans.

244. To attend Brooks, Ms. Sweet borrowed approximately \$46,107 in FFEL loans. She also borrowed over \$140,000 in private loans, because federal loans would not cover the full cost of her program. Indeed, as of April 2012, Brooks charged approximately \$78,480 per year in tuition.

245. Since attending Brooks, Ms. Sweet has worked a number of different jobs, including as a nanny and bartender. She has never had a job where she utilized the education she received at Brooks.

246. Ms. Sweet now works as a Certified Nurse’s Assistant in a hospital. This position is unrelated to her studies at Brooks.

247. In or around Fall 2016, Ms. Sweet asserted her borrower defense to the Department.

248. To date, the Department has neither granted nor denied her borrower defense.

249. Since she submitted her borrower defense, the interest on Ms. Sweet’s loans continues to grow. Her federal loans have ballooned to \$65,000.

250. This experience has harmed Ms. Sweet’s credit. She lacks adequate credit to obtain a vehicle at a reasonable rate.

251. She currently has a car because of help from a friend.

1 252. Ms. Sweet lives in a room at a friend's house.

2 253. At work, doctors and nurses tell Ms. Sweet that she should return to school and seek a
3 nursing degree to advance her career. Although Ms. Sweet is interested in returning to school, she
4 cannot afford to borrow more money while her Brooks loans are outstanding. She has put any
5 further education on hold pending the Department's decision on her borrower defense and until
6 she can save money to defray the costs of school.
7

8 254. The Department's inaction harms Ms. Sweet's private life. Ms. Sweet has had to end a
9 number of promising relationships because of her partners' fear about the debt. She is now
10 reluctant to date because of the size and uncertainty of her debt.

11 255. Despite the Department's promise that her loans would remain in forbearance while her
12 borrower defense claim was pending, Ms. Sweet recently received notice that her loans were going
13 back into repayment. Following this notice, Ms. Sweet called the borrower defense hotline to ask
14 the Department put her loans back into forbearance. If her loans were placed back into repayment,
15 she would be unable to save money for schooling that could actually, unlike Brooks, further her
16 career.
17

18 256. Attending Brooks was the worst mistake of Ms. Sweet's life. And now, as the Department
19 sits on her borrower defense, Ms. Sweet is losing faith that the government will protect students
20 like her.
21

22 ***Tresa Apodaca***

23 257. Tresa Apodaca is 34 years old and resides in Coeur d'Alene, Idaho.

24 258. She lives with her husband and two children, ages eight and 11. Her youngest son has
25 significant medical needs and has been diagnosed with cystic fibrosis.

26 259. Ms. Apodaca attended the AAS/AA program in Medical Assisting at the Roseville,
27 California campus of Heald college. She enrolled in 2008 and graduated in 2010.
28

1 260. Heald, like the other Corinthian-owned schools, was the subject of significant
2 investigations by the Department, the CFPB, and various Attorneys General. In 2015, after the
3 Department fined Corinthian \$30 million for substantial misrepresentations, the school shut down.

4 261. According to the Department, as of December 31, 2018, there were 56,533 pending
5 borrower defenses from former Corinthian students.

6 262. Ms. Apodaca was excited about the prospect of going to college because most of her
7 family had barely completed high school.

8 263. During enrollment, Heald made a number of misrepresentations to Ms. Apodaca. As she
9 detailed in her borrower defense, representatives of Heald:
10

- 11 a. Told her that Heald graduates were “in very high demand” and that with good
12 grades and attendance she was guaranteed to get a job anywhere she wanted. The
13 representative specifically mentioned the employers Kaiser, UC Davis, and Sutter,
14 and also stated that she would be able to work in a private practice if she so chose;
- 15 b. Stated that Heald had a 98% job placement rate, which “really stuck with” Ms.
16 Apodaca and convinced her that Heald would be a good investment for her family’s
17 future;
- 18 c. Promised that her starting wage would be \$16.00 to \$18.00 an hour. In reality, she
19 was only called for one interview for a job that paid \$12.00 an hour. She has not
20 been able to find any job after graduating Heald that paid what Heald promised;
- 21 d. Guaranteed job placement assistance. In reality, Heald did not provide job
22 placement assistance beyond a cursory resume review; and,
- 23 e. Promised that she would get an externship at places like Kaiser, UC Davis, Sutter,
24 a big hospital, or with a private practice. In truth, none of those were options for
25 her externship.
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28

1 264. To attend Heald, Ms. Apodaca borrowed over \$30,000 in FFEL federal loans. In 2014,
2 she consolidated these into federal Direct Loans.

3 265. In May 2015, Ms. Apodaca asserted her borrower defense to the Department.

4 266. Upon information and belief, the Department's memorandum stating that former students
5 of Corinthian who were guaranteed employment by Corinthian had established a borrower defense
6 applies to Ms. Apodaca, and she has therefore established her borrower defense.
7

8 267. Nonetheless, the Department has not granted her borrower defense application, provided
9 her notice of a decision, or discharged her debt.

10 268. Ms. Apodaca has contacted the Department at least once a year to ask about the status of
11 her application. The Department has not provided her with any timeline for a decision.

12 269. During the Department's inaction, the interest on Ms. Apodaca's loans continues to grow.

13 270. The Department's inaction harms Ms. Apodaca's credit. For example, when Ms. Apodaca
14 and her partner were looking for a home, the amount they could borrow decreased when they
15 included her name on the application, because of her student loan debt.
16

17 271. The Department's inaction also makes it impossible for Ms. Apodaca and her family to
18 financially plan for the future. For example, they cannot spend money to buy a winter vehicle or
19 travel to visit family because of the uncertainty of the debt. Instead, Ms. Apodaca and her family
20 put any extra income into savings in case they need to pay back the Heald loans. This is particularly
21 stressful given their son's medical needs and the significant financial cost of caring for him.
22

23 272. The debt and the Department's refusal to take action is a significant stressor on Ms.
24 Apodaca's marriage. Ms. Apodaca and her husband have worked hard on their finances and credit;
25 although Ms. Apodaca intended to benefit her family by attending Heald, the student loans are
26 now their only significant source of debt. The debt and its uncertainty sparks stress and tension
27 between Ms. Apodaca and her husband.
28

1 273. The debt and the Department's inaction also causes Ms. Apodaca extreme stress and
2 anxiety. This has been exacerbated by the uncertainty of what the Department will do with her
3 application.

4 274. Ms. Apodaca asked that the Department place her loans in forbearance until it decides her
5 borrower defense. Nonetheless, she has to call and renew her forbearance every year.

6 275. Ms. Apodaca is interested in going back to school, but she does not believe that the
7 Department is protecting students from other fraudulent institutions. Indeed, the Department
8 knows that Heald cheated its students, but is doing nothing to help. She is thus reluctant to borrow
9 more money to attend another school.

10 276. Ms. Apodaca's faith in government has been eroded by her experience at Heald and the
11 Department's refusal to act on her borrower defense.

12
13
14 ***Chenelle Archibald***

15 277. Chenelle Archibald is 37 years old and resides in Worcester, Massachusetts.

16 278. Ms. Archibald has five children, aged five to 20.

17 279. Ms. Archibald enrolled in a certificate program in Business Office, Administration at the
18 West Boylston, Massachusetts campus of Salter College. She enrolled in 2009 and graduated in
19 2010.

20 280. Salter is a for-profit school with campuses in Massachusetts and is owned by Premier
21 Education Group.

22 281. Salter has been the subject of a number of investigations. For example, the Attorney
23 General of Massachusetts filed a complaint against Salter because the school made significant
24 misrepresentations to students during the enrollment process. The school settled the charges in
25 2014 for \$3.75 million.

1 282. Ms. Archibald first learned about Salter from a television advertisement touting Salter's
2 teachers and promising a fulfilling career.

3 283. At the time of enrollment, Salter made a number of misrepresentations to Ms. Archibald.
4 As she detailed in her borrower defense, representatives of Salter:

- 5 a. Said the school had connections with the University of Massachusetts and other
6 medical facilities and that students "immediately" got internships and employment
7 after completion. Similarly, representatives said that the school had a connection
8 with the courthouse and that they could "guarantee" Ms. Archibald a job and
9 internship or externship there. In reality, Salter lacked any such connections. When
10 Ms. Archibald called the courthouse, she learned that there was no connection or
11 internship or externship program with Salter;
- 12 b. Promised Ms. Archibald that students immediately got internships and employment
13 after graduation, and told her that she "just had to keep good grades" to get a job.
14 However, even though Ms. Archibald was on the Dean's list the entire time she was
15 at the school and graduated with honors, she never found employment in the field;
- 16 c. Showed Ms. Archibald false job placement statistics;
- 17 d. Guaranteed career placement assistance, even though the school only sent her job
18 advertisements from monster.com and other commercial sites. And, when Ms.
19 Archibald went to a job fair at Salter, the employers were places like Burger King
20 and Pizza Hut; and,
- 21 e. Told Ms. Archibald that because of her financial situation—she was receiving
22 public assistance—the majority of her schooling would be covered by financial aid
23 and grants and, if she was to take out a loan, it would be at most \$300. The school
24
25
26
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28

1 then took out a loan for Ms. Archibald without her signature, knowledge, or
2 permission.

3 284. To attend the program, Ms. Archibald borrowed over \$20,000 in federal Direct Loans.
4 She also received over \$7,000 in Pell grants.

5 285. Although Ms. Archibald graduated from Salter with honors and was on the Dean's list,
6 she has never found employment in her field of study.

7 286. Ms. Archibald now works as a Principal Clerk for the Worcester Housing Authority and
8 attends school at Worcester State. She wants to go to law school.

9 287. In 2015, Ms. Archibald defaulted on her federal student loans. She rehabilitated them in
10 2016.

11 288. After Ms. Archibald had already started making rehabilitation payments, the Department
12 seized her tax refund in 2016 in the amount of \$2,416; this was money Ms. Archibald needed to
13 support her five children.

14 289. In February 2016, Ms. Archibald asserted her borrower defense to the Department.

15 290. To date, the Department has neither granted nor denied Ms. Archibald's borrower
16 defense.

17 291. Ms. Archibald cannot financially plan for her future because of the uncertainty of her
18 debt.

19 292. For example, she cannot spend extra money on her family or plan for retirement because
20 she does not know if she will need the money for the loans.

21 293. Similarly, the Department's inaction harms her credit. Ms. Archibald applied to
22 approximately 10 different banks for a car loan, but was denied every time because of her debt-to-
23 income ratio. When she eventually secured a loan, the price was significantly higher than it would
24 have otherwise been without the Salter-related debt.

1 294. Although Ms. Archibald is back in school, she is paying out of pocket and stretching her
2 family's finances. She does not want to borrow student loans while her Salter loans remain in
3 limbo.

4 295. And, although Ms. Archibald dreams of going to law school, she will not do so until she
5 can pay out of pocket because of the uncertainty of her Salter debt and her general mistrust of the
6 Department.
7

8 296. Ms. Archibald has also suffered significant anxiety while waiting for resolution of her
9 borrower defense application. In the first year after her submission, she was highly anxious and
10 particularly worried that she would never be able to fix her credit. Now, the Department's inaction
11 has left her feeling numb.

12 297. Because the Department refuses to decide her borrower defense, Ms. Archibald believes
13 that the government considers her, and students like her, insignificant.
14

15 ***Daniel Deegan***

16 298. Daniel Deegan is 42 years old and resides in Mt. Laurel, New Jersey.

17 299. Mr. Deegan obtained an undergraduate degree in communications at Widener.

18 300. Mr. Deegan attended the online MBA program at the Keller School of Graduate
19 Management at DeVry University. He enrolled in 2006 and graduated in 2008.
20

21 301. At the time of his enrollment in DeVry, Mr. Deegan believed that his MBA would allow
22 him to seek a new job in business or as a manager.

23 302. DeVry has been the subject of numerous investigations and lawsuits. For example, in
24 2016, the Federal Trade Commission filed suit against DeVry for misleading students about their
25 employment and income prospects. The school settled with the FTC for \$100 million.
26
27
28

1 303. According to the Department, as of December 31, 2018, 13,543 former DeVry students
2 have asserted a borrower defense (with 629 assertions specifically regarding the Keller school).
3 The Department has not decided a single one.

4 304. During enrollment, DeVry made a number of misrepresentations to Mr. Deegan. As he
5 explained in his borrower defense, representatives of DeVry:

- 6 a. Showed Mr. Deegan inflated employment statistics that influenced his choice to
7 enroll;
- 8 b. Promised Mr. Deegan a new job with higher salary after his program, even though
9 he remained in the same job, with the same salary, then was laid off not too long
10 after he received his MBA. He then spent several years without gainful
11 employment, receiving unemployment benefits and COBRA; and
- 12 c. Claimed he would be assisted by DeVry's career service department upon
13 graduation. This never happened. On numerous occasions, Mr. Deegan called the
14 career services department for help, left a voicemail message, and never heard back.
15 In fact, Mr. Deegan never once received a return phone call or any assistance in
16 finding a job.

17 305. To attend DeVry, Mr. Deegan borrowed approximately \$45,475 in FFEL loans. In or
18 around August 2012, he consolidated his loans into federal Direct Loans.

19 306. After graduating from DeVry, Mr. Deegan remained in the same job that he had before
20 he started. This was true even though he applied, and was denied, for a substantial number of other
21 positions, at a number of different companies.

22 307. Shortly after graduating, Mr. Deegan was laid off from this position. Notwithstanding his
23 attempts to find a position in management or business, Mr. Deegan has not found a job related to
24 his MBA.

1 308. Mr. Deegan now works in IT. His job is unrelated to his field of study at DeVry.

2 309. In November 2016, Mr. Deegan asserted his borrower defense to the Department.

3 310. To date, the Department has neither granted nor denied his borrower defense.

4 311. During the delay, Mr. Deegan's loans have continued to grow. Since his submission, they
5 have accrued approximately \$9,000 in interest.

6
7 312. The Department's inaction leaves Mr. Deegan unable to financially plan for his future.
8 He does not know what he should be doing with his money (i.e., saving or spending). Mr. Deegan
9 cannot make informed choices about how to save for retirement since he does not know whether
10 he should be investing the money or putting it towards his loans.

11 313. Mr. Deegan and his partner are also delaying having children given the uncertainty of the
12 debt. They are concerned about their ability to pay for both the loans and childcare.

13 314. The Department's inaction harms Mr. Deegan's credit. For instance, Mr. Deegan recently
14 applied for a mortgage but was only approved for a loan in amount less than he needed because of
15 his debt-to-income ratio.

16
17 315. Mr. Deegan is under acute stress because of the Department's inaction. The debt is always
18 on his mind. He cannot ignore it when everything in his life is on hold pending the Department's
19 borrower defense decision.

20 316. Because of the Department's inaction, Mr. Deegan has lost confidence that the
21 government has any interest in representing and responding to everyday citizens like himself.

22
23 ***Samuel Hood***

24 317. Samuel Hood is 33 years old, and resides in Orlando, Florida with his wife and two-year
25 old child.

1 318. Mr. Hood enrolled in a BA program for Computer Networking Systems, Information
2 Security Systems, at the Cordova, Tennessee campus of ITT Tech. He enrolled in 2007 and
3 graduated in 2011.

4 319. ITT was the subject of wide-ranging and significant investigations and oversight by the
5 Department, the Consumer Financial Protection Bureau (“CFPB”), the Securities and Exchange
6 Commission (“SEC”), and multiple attorneys general.

7 320. In September 2016, the school filed for bankruptcy. The Department filed a Proof of
8 Claim against ITT’s bankruptcy estate for \$230,518,488.49 plus unliquidated amounts. The
9 Department based this claim, in part, on its estimated liabilities arising from the anticipated grant
10 of borrower-defense discharges for former ITT students.

11 321. According to the Department, as of December 31, 2018, the Department had received
12 19,213 borrower defenses from former ITT students. It has decided just 33.

13 322. Mr. Hood was particularly interested in ITT because it offered night classes. This allowed
14 him to work at FedEx during the day and attend ITT at night.

15 323. During enrollment, representatives of ITT made a number of misrepresentations.
16 Representatives:

- 17
- 18 a. Falsely told him that he would find a job in his field of study, even though the
19 school only provided opportunities for positions outside of his area of study;
 - 20 b. Promised that he would make a sufficient income to cover any loans that he
21 borrowed, even though this was not true;
 - 22 c. Promised job placement assistance that never materialized; and,
 - 23 d. Promised that his credits would transfer. In truth, when he tried to transfer his
24 credits to the University of Memphis, he was told that they did not accept credits
25 from ITT.
- 26
27
28

1 324. To attend ITT, Mr. Hood borrowed over \$40,000 in FFEL federal loans and received
2 \$8,896 in Pell grants. In or around January 2013, he consolidated his loans into Direct Loans.

3 325. Since finishing the program, Mr. Hood has found only one job in his field of study. But,
4 the employer cut Mr. Hood's hours almost immediately after he started. This made it impossible
5 for Mr. Hood to keep the job and support himself.

6 326. Since then, Mr. Hood has taken ITT off of his resume because it has limited his
7 employment prospects. At least one potential employer called ITT "trash" during an interview.

8 327. Mr. Hood now works as a field engineer in a job unrelated to his field of study.

9 328. In January 2018, Mr. Hood asserted his borrower defense to the Department. Because he
10 did not receive confirmation or correspondence from the Department, Mr. Hood resubmitted his
11 borrower defense in or around February 2019.

12 329. The Department has neither granted nor denied Mr. Hood's borrower defense.

13 330. Since submitting his borrower defense, Mr. Hood's loans continue to grow.

14 331. Mr. Hood's credit is harmed by the debt and the delay. For example, although Mr. Hood
15 was able to obtain a mortgage for a home (after several rejections), the bank charged him a
16 significantly higher interest rate than it would have if he did not have student loan debt.

17 332. Mr. Hood has been unable to purchase a car with traditional financing because of his
18 student loan debt. Instead, he relied on a family friend for assistance.

19 333. Mr. Hood is interested in returning to school, to a program that will actually allow him to
20 learn valuable skills, but cannot do so during this limbo. Instead, he has put a hold on all major
21 professional decisions while the debt hangs over him.

22 334. Mr. Hood thinks about his debt every day. The Department's inaction exacerbates the
23 stress that the debt already causes.

1 335. Because of the Department's inaction, Mr. Hood doubts that the Department will protect
2 students like him.

3 ***Alicia Davis***

4 336. Alicia Davis is 36 years old and resides in Orlando, Florida.

5
6 337. Ms. Davis attended the BA Criminal Justice Program online at Florida Metropolitan
7 University (FMU). While Ms. Davis was attending FMU, Corinthian purchased it and re-named it
8 Everest. Ms. Davis was enrolled in the program from 2006 until 2008.

9 338. After leaving the program, Ms. Davis earned her BA from Valencia Community College
10 and a masters degree from the University of Central Florida. Her credits from Corinthian did not
11 transfer to either school.

12 339. During her enrollment, Corinthian made a number of misrepresentations to Ms. Davis.
13 As she explained in her borrower defense assertion to the Department, representatives of
14 FMU/Corinthian:
15

- 16 a. Promised her that she would be able to get a job "anywhere" with the degree, and
17 specifically told her that she could get a job as a crime scene investigator,
18 hearkening to the television series "CSI," on the basis of a degree from the Criminal
19 Justice program alone, which was false;
20
21 b. Told Ms. Davis that she would earn \$35,000 annually, which proved to be false;
22
23 c. Assured Ms. Davis that she would have "no problem" transferring credits. In truth,
24 she was unable to transfer a single credit to Valencia Community College or
25 University of Central Florida, and she had to start from scratch;
26
27 d. Pressured her to enroll; and
28
e. Lied about the cost of the program, stating that the program would be covered by
Pell Grants, and the remaining amount would be covered by scholarships the school

1 offered. Ms. Davis was unaware that she was agreeing to borrow and repay federal
2 loans when she filled out the paperwork provided by the financial aid office.

3 340. To attend FMU/Corinthian, Ms. Davis borrowed approximately \$22,350 in FFEL loans.
4 She also received approximately \$5,357 in Pell grants for her time at Corinthian.

5 341. Ms. Davis had to borrow additional student loans to complete her education after she left
6 Corinthian and started from scratch.

7 342. Ms. Davis currently works in law enforcement as a Crime Analyst. She was able to get
8 this job because of her masters degree; she got this job in spite of her Corinthian experience. She
9 did not include FMU/Corinthian on her resume and did not discuss it during her interview.

10 343. Ms. Davis asserted her borrower defense in April 2015. Because the Department did not
11 say anything in response, she re-filed it in June 2016.

12 344. Upon information and belief, the Department's memorandum stating that former students
13 of Corinthian who were guaranteed employment by Corinthian had established a borrower defense
14 applies to Ms. Davis, and therefore she has established her borrower defense.

15 345. Upon information and belief, the Department's memorandum stating that former students
16 of Corinthian who were promised that their credits would transfer to a different school had
17 established a borrower defense applies to Ms. Davis, and therefore she has established her
18 borrower defense.

19 346. The Department has not granted her borrower defense, provided her notice of a decision,
20 or discharged her debt.

21 347. Since she filed her borrower defense, Ms. Davis' loans continue to grow. She now owes
22 approximately \$25,775 in principal on her FMU/Corinthian loans.

1 348. Ms. Davis defaulted on her FMU/Corinthian loans in or around February 2016. The
2 Department sent her many notices of threatened wage garnishment and tax offset, even after she
3 asserted her borrower defense.

4 349. The Department's refusal to decide Ms. Davis' claim has compounded the harm to her
5 credit. For instance, Ms. Davis has tried to refinance her credit card debt, but has been unable to
6 do so because of her debt-to-income ratio and because of the outstanding defaulted loans.
7

8 350. It has also limited her ability to get certain jobs. Ms. Davis is interested in applying for a
9 job with the Federal Bureau of Investigation. However, the FBI's website warns that an applicant's
10 credit will be considered in the application process. Ms. Davis is therefore delaying her application
11 until she has more clarity on the status of her Corinthian loans.

12 351. Even for her current position, she had to explain her credit issues to her employer before
13 she was formally offered the job.
14

15 352. Because of the Department's inaction, Ms. Davis has suffered significant anxiety and has
16 sought treatment. She constantly worries about her finances and about possible wage garnishment.
17 She and her husband feel trapped under the debt and its uncertain status.

18 353. As she explained in her borrower defense: "This experience has ruined me. I cannot
19 fathom how this can happen and that students and taxpayers are the ones who are defrauded. I am
20 a slave to this for the rest of my life with no hopes of having a life with no harassment, threats,
21 court dates, or collections. It depresses me that I am a victim of this school"
22

23 354. Until the Department decides her claim, she cannot close this chapter of her life.

24 ***Jessica Jacobson***

25 355. Jessica Jacobson is 35 years old and resides in Lunenburg, Massachusetts.

26 356. Ms. Jacobson enrolled in the Media Arts and Animation Program at the New England
27 Institute of Art (NEIA) in 2005. She finished the program in 2008.
28

1 357. Ms. Jacobson obtained her Associates Degree from Mount Wachusett Community
2 College before she enrolled at NEIA.

3 358. NEIA, and the other Art Institutes, were the subject of numerous investigations. For
4 instance, the Attorney General of Massachusetts investigated and eventually sued NEIA because
5 the school employed aggressive sales tactics. NEIA also misrepresented the school's selectivity,
6 its job placement rates, its job placement services, and its costs and financial aid. In 2015, NEIA
7 stopped enrolling new students.
8

9 359. According to the Department, as of December 31, 2018, approximately 6,284 former
10 students of EDMC (the owner of NEIA) had asserted a borrower defense. The Department has not
11 decided any of them.

12 360. During her enrollment, the school made a number of misrepresentations to Ms. Jacobson.
13 As she explained in her borrower defense, representatives of NEIA:
14

- 15 a. Assured her that NEIA's Media Arts and Animation program would prepare her for
16 a career in visual effects, even though the program focused solely on gaming and
17 animation;
- 18 b. Told her that NEIA's program was difficult to get into, creating "pressure" and a
19 sense of urgency to apply to NEIA right away even though this was not true;
- 20 c. Claimed that the school's name had weight in the visual effects industry, and the
21 school and its career services office had exclusive connections, job leads, and
22 networking opportunities in visual effects. The representative said that NEIA would
23 help her through all stages of her job search and most of its graduates got great jobs.
24 In reality, Ms. Jacobson repeatedly reached out to the Career Services Office about
25 getting an internship in visual effects, but was never put in touch with a single
26
27
28

1 employer in visual effects. At most, the school directed Ms. Jacobson to Craigslist
2 with a document entitled “Tips for Applying to a Job from Craigslist;”

3 d. Guaranteed that the average salary of graduates exceeded their debt, even though
4 this was false; and,

5 e. Showed Ms. Jacobson state-of-the-art technology that was purportedly used in
6 classes. In reality, all of Ms. Jacobson’s classes used different, obsolete equipment.
7

8 361. To attend NEIA, Mr. Jacobson borrowed \$67,053 in private loans and approximately
9 \$25,000 in federal FFEL student loans.

10 362. Since attending the program, Ms. Jacobson has never found a job in the field.

11 363. In spite of her experience at NEIA, Ms. Jacobson is currently working on her own small
12 business.

13 364. In March 2015, Ms. Jacobson asserted her borrower defense to the Department.

14 365. The Department has neither granted nor denied Ms. Jacobson’s borrower defense.

15 366. During the Department’s inaction, Ms. Jacobson’s loans continue to accrue interest. Her
16 federal loans have grown to approximately \$38,035.12.

17 367. The debt and Department’s inaction have destroyed Ms. Jacobson’s credit and have left
18 her unable to access necessities like a car. For instance, Ms. Jacobson has only secured housing
19 because of her family’s assistance.
20

21 368. The Department’s inaction and her debt impacts Ms. Jacobson’s day-to-day life. Because
22 of the uncertainty of her debt, Ms. Jacobson refuses to get married to her long-term partner. He
23 has proposed several times, but she refuses to say yes because of the uncertainty of the debt. She
24 does not want to saddle him with her student loan debt.
25
26
27
28

369. The debt and the Department's inaction has harmed Ms. Jacobson's mental health. Over the past few years, Ms. Jacobson has experienced significant depressive episodes attributable to this experience.

370. Given the delay, Ms. Jacobson has lost faith that the Department is going to do the right thing or that it is working to protect students like her.

CLASS ACTION ALLEGATIONS

371. Named Plaintiffs file this action on behalf of themselves and all other individuals similarly situated. They seek to represent a class (the § 706(1) Class) consisting of:

All people who borrowed a Direct Loan or FFEL loan to pay for a program of higher education, who have asserted a borrower defense to the Department, whose borrower defense has not been granted or denied on the merits, and who is not a class member in *Calvillo Manriquez v. DeVos*, No. 17-7106 (N.D. Cal.).

372. Named Plaintiffs Apodaca and Davis also seek to represent a sub-class (the § 706(2) Sub-Class) consisting of:

All people who borrowed a Direct Loan or FFEL loan to pay for a program of higher education, who have asserted a borrower defense to the Department, whose applications are addressed by existing Department memoranda establishing borrower defenses, and who have not received notice of their borrower defense decision.

373. The proposed class satisfies the requirements of Rule 23(a) of the Federal Rule of Civil Procedure.

- a. The class is so numerous that joinder of all members is impracticable because, as of December 2018, there are at least 158,110 individuals who are members of the proposed class.
- b. There are questions of law and fact common to the class, including without limitation, whether the Department has a mandatory duty to decide borrower

1 defense claims and whether the Department's policy of inaction constitutes an
2 unlawful withholding.

3 c. The claims of Named Plaintiffs are typical of (indeed, they are identical to) the
4 claims of the proposed class. Each plaintiff is experiencing the same deprivation:
5 the absence of any decision on their borrower defense assertion.

6
7 d. The Named Plaintiffs are adequate representatives of the class because their
8 interests do not conflict with the interests of the Class they seek to represent, they
9 have retained counsel who are competent and experienced in APA and class action
10 litigation, and because they intend to prosecute this action vigorously.

11 e. Named Plaintiffs are represented by attorneys from the Project on Predatory
12 Student Lending of the Legal Services Center of Harvard Law School (the Project)
13 and the Housing and Economic Rights Advocates (HERA). The Project and HERA
14 have, respectively, represented and/or advised numerous former for-profit college
15 students regarding the borrower defense process, and have represented classes of
16 students against the Department of Education. They have knowledge of and
17 familiarity with the relevant law and regulations concerning federal student loans
18 and borrower defense.
19

20
21 374. A class action is superior to other available means for the fair and efficient adjudication
22 of the claims of Named Plaintiffs and the class. Each member has been damaged by reason of the
23 Department's refusal to adjudicate any borrower defense claims.

24 375. A class is appropriate under Federal Rule of Civil Procedure 23(b)(2) because the
25 Defendants' action in refusing to adjudicate borrower defense claims applies generally to the class,
26 such that final injunctive relief or corresponding declaratory relief is appropriate with respect to
27

the class as a whole. Indeed, a court order requiring the Department to start adjudicating claims, irrespective of how the Department prioritizes them, would resolve each class member's claim.

376. A class is also appropriate under Federal Rule of Civil Procedure 23(b)(1) because prosecuting separate actions could create inconsistent or varying adjudications that could establish incompatible standards of conduct for the Department. Similarly, the adjudication of one class member's claims would, as a practical matter, be dispositive of the interests of the other members not party to the adjudication.

CAUSES OF ACTION

COUNT 1

Unlawfully Withheld and Unreasonably Delayed Agency Action – APA § 706(1) **(§ 706(1) Class)**

377. Plaintiffs repeat and re-allege the foregoing paragraphs as if full set forth herein.

378. Defendants have violated the APA, 5 U.S.C. § 706(1) because they have refused to grant applications from members of the proposed class.

379. Defendants have violated the APA, 5 U.S.C. § 706(1) because they have refused to deny applications from members of the proposed class.

380. Pursuant to the APA, a court "shall [] compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1).

381. Since at least June 2018, the Department has not granted any borrower defense applications from any class member.

382. Since at least May 2018, the Department has not denied any borrower defense application.

383. Over 158,110 claims remain pending.

384. The Department has not brought to conclusion the applications presented to it within a reasonable time, as required by the APA.

1 385. Defendants' inaction has harmed and prejudiced Named Plaintiffs and members of the
2 proposed class, including by threatening their health and welfare.

3 386. The Department has repeatedly invoked the importance of efficiently granting or denying
4 borrower defense claims and has repeatedly declared that it is a top agency priority. Nonetheless,
5 the Department refuses to grant or deny borrower defenses.
6

7 387. The Department has acted in repeated bad faith in refusing to grant or deny individual
8 borrower defenses.

9 388. The Court should declare that the Department has violated the APA and compel the
10 Department to start granting Class Members' individual borrower defense assertions if they are
11 eligible for a borrower defense.

12 389. The Court should declare that the Department has violated the APA and compel the
13 Department to start denying Class Members' individual borrower defense assertions if they are not
14 eligible for a borrower defense.
15

16 **COUNT 2**

17 ***Arbitrary and Capricious Final Agency Action -- APA § 706(2)***

18 **(§ 706(2) Sub-Class)**

19 390. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set forth herein.

20 391. Defendants have adopted a policy under which it will not grant any borrower defenses
21 pending the outcome of *Calvillo Manriquez v. DeVos*, No. 17-7016 (N.D. Cal.), a case that
22 involves a subset of former Corinthian students who attended specific programs at specific times.
23

24 392. Upon information and belief, FSA was recently ordered to cease granting borrower
25 defense applications because of the litigation.

26 393. Department officials have also publicly stated, at least four times since June 2018, that
27 the Department cannot and will not grant borrower defenses pending the litigation.
28

1 394. This policy of refusing to grant any claims constitutes a final agency action within the
2 meaning of the APA.

3 395. In *Calvillo Manriquez*, the District Court entered a preliminary injunction preventing the
4 Department from using a partial relief methodology that it created for a subset of Corinthian
5 students “to the extent the Secretary relies upon information provided by the Social Security
6 Administration in violation of the Privacy Act.” *Calvillo Manriquez v. DeVos*, 345 F. Supp. 3d
7 1077 (N.D. Cal. 2018). The Court further ordered the Department to “cease all efforts to collect
8 debts from Plaintiffs” and other members of the class (which, as noted, comprised a subset of
9 Corinthian students). The Department has appealed this order to the Ninth Circuit.

10 396. The Department claims that it cannot grant any borrower defense relief on account of the
11 preliminary injunction. This is a misreading and arbitrary application of the preliminary injunction
12 in *Calvillo Manriquez v. DeVos*.

13 397. The Court’s order does not prevent the Department from fully discharging any borrower’s
14 debt. It expressly states that: “Nothing in this Order prohibits the Secretary from fully discharging
15 the loans of any borrower who has successfully completed or who successfully completes an
16 attestation form.”

17 398. Similarly, the injunction, on its face, does not prevent the Department from granting
18 applications from students who attended any school other than Corinthian, or Corinthian students
19 outside of the *Calvillo Manriquez* class.

20 399. The Department itself has also acknowledged that the methodology enjoined was to be
21 used solely for Corinthian students.

22 400. In its brief to the Ninth Circuit in *Calvillo Manriquez v. DeVos*, the Department stated
23 that “[t]here are no plans for further disclosures to implement the Rule, and there is no ongoing
24 violation of the Privacy Act to enjoin.” It added, “[t]he data at issue was obtained through a single
25

1 exchange of information between the Department and the SSA [Social Security Administration].
2 There is no allegation that in implementing the Rule prospectively, the Department intends to
3 provide additional aggregated earnings information to the Department.”

4 401. This policy is also arbitrary and capricious and not otherwise in accordance with the law
5 because Defendants have a legal obligation to both grant and deny individual borrower defenses.
6 Its refusal to grant borrower defenses is inconsistent with that legal duty.
7

8 402. Defendants have further adopted this policy without articulating a satisfactory
9 explanation as to its adoption and without considering the harms its inaction causes to class
10 members, including the approximately 23,900 borrowers whose applications have “been
11 designated approved,” but whose applications have not been formally granted.
12

13 403. Defendants’ policy runs counter to all evidence before it, including that at least some
14 members of the class are entitled to a full discharge of their student loans.
15

16 404. The Court should declare that the Department’s final agency action is unlawful and vacate
17 its refusal to grant borrower defenses.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment in their favor
20 and grant the following relief:

- 21 A. Certify the class and sub-class as defined in paragraphs 371-372, pursuant to Rule 23 of
22 the Federal Rules of Civil Procedure;
- 23 B. Declare that the Department’s refusal to grant individual borrower defense claims
24 submitted by members of the class is unlawful;
- 25 C. Declare that the Department’s refusal to deny individual borrower defense claims
26 submitted by members of the class is unlawful;
- 27
- 28

- 1 D. Declare that named Plaintiffs and members of the class are entitled to a decision on their
2 pending individual borrower defense assertions;
- 3 E. Vacate the Department's policy of refusing to grant borrower defenses;
- 4 F. Compel the Department to grant class members' individual borrower defense assertions if
5 they are eligible for a borrower defense;
- 6 G. Compel the Department to deny class members' individual borrower defense assertions if
7 they are not eligible for a borrower defense;
- 8 H. Compel the Department to notify class members of their borrower defense decisions;
- 9 I. Order the Department to place class members' loans in stopped collection status until their
10 borrower defense is granted or denied;
- 11 J. Retain jurisdiction as appropriate;
- 12 K. Award reasonable costs and attorneys' fees as authorized by law; and
- 13 L. Grant such further relief as may be just and proper.
- 14
- 15

16 Respectfully submitted,

17 /s/ Eileen M. Connor

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