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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THERESA SWEET, *et al.*, Plaintiffs, v. MIGUEL CARDONIA, in his official capacity as Secretary of Education, and the UNITED STATES DEPARTMENT OF EDUCATION Defendants.	No. 3:19-cv-03674-WHA **JOINT STATUS REPORT**

On July 31, 2022, the Court entered an order requiring the parties to provide a joint statement answering three questions. ECF No. 299. The parties respond to the numbered questions as follows.

Question One: Whether the class-member relief recited in Paragraph IV.A of the proposed settlement agreement qualifies as an "approved" or "successful" borrower defense claim as contemplated by 34 C.F.R. Sections 685.206, 685.222, and 685.308.

Response: No. Settlement relief does not constitute an approved or successful borrower defense claim for purposes of 34 C.F.R. Sections 685.206, 685.222, and 685.308. Class members covered by Paragraph IV.A of the proposed settlement agreement will instead receive Full Settlement Relief, as defined in Paragraph II.S of the proposed settlement agreement, in compromise of their borrower defense claims. *See* Proposed Settlement Agreement ¶ II.S, ECF No. 246-1 ("Proposed Agreement").

Question Two: If the relief in Paragraph IV.A does *not* qualify as a successful borrower defense claim, where the proposed settlement explicitly (or implicitly) recognizes that fact.

Response: The Proposed Agreement implicitly recognizes that settlement relief is different from a successful borrower defense claim. It refers to the relief described in Paragraph IV.A as "Full Settlement Relief," as explicitly defined in the agreement. Paragraph IV.A does not reference the Department of Education's borrower defense regulations. In specifying the notice that must be provided to class members, the Proposed Agreement requires that class members be notified that they "will receive Full Settlement Relief, as defined in the Agreement." Proposed Agreement ¶ IV.A.3. The relief specified in Paragraph IV.A does not require the Department to provide a class member with a decision "approving" the class member's claim. To the extent the Proposed Agreement references "decisions," it defines such decisions as "approving or denying settlement relief to a borrower under the terms of this Agreement," *id.* ¶ II.O, not approving or denying claims through the regulatory process. This is in contrast to Post-Class Applicants, who will receive "a final decision on the merits" of their borrower defense claims according to "the standards in the borrower defense regulations." *Id.* ¶ IV.D.1.

Question Three: Whether the proposed settlement agreement explicitly (or implicitly) recognizes, as the Department declarant asserts, that "[i]n any action or proceeding that the Department might take in the future against an institution . . . the fact that an institution is included on Exhibit C to the Settlement Agreement does not itself provide any evidentiary support or basis for initiating such action[.]"

Response: The Proposed Agreement represents a comprehensive resolution of the claims at issue in this litigation, regarding the Department's processing of borrower defense applications submitted by class members. It provides a framework for the Department to resolve those applications and provide relief to class members on terms specified in the Proposed Agreement. The Proposed Agreement does not address the Department's relationship with the institutions named in the underlying borrower defense claims. That relationship is defined by statute and regulation, and any "action or proceeding that the Department might take in the future against an institution" must be in accordance with the Department's governing regulations—which include specific procedures, standards, and other requirements that define how the Department fulfills its regulatory role vis-à-vis regulated institutions. *See* 34 C.F.R. § 668.87; *see also* 34 C.F.R. part 668, subparts G & H; Proposed Agreement ¶ XVI.B (Agreement "shall be construed in a manner to ensure its consistency with Federal law"). The Department's declaration clarified what was already true as a legal matter and implicit in the structure of the Proposed Agreement: that merely appearing on Exhibit C itself imposes no legal consequences on the listed schools. For those schools, any hypothetical sanction in the future would proceed in accordance with the procedures and standards specified in the Department's governing regulations and would be based on findings supported by independent evidence relevant to applicable regulatory standards. That is, any future findings or disciplinary proceedings would not be based, in whole or in part, on the mere fact of an institution's inclusion in Exhibit C.

Dated: August 2, 2022

Respectfully submitted,

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