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10  
11 **UNITED STATES DISTRICT COURT**  
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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

15 *Plaintiffs,*

16 v.

17 MIGUEL CARDONA, in his official capacity  
18 as Secretary of the United States Department of  
Education, and

19 THE UNITED STATES DEPARTMENT OF  
20 EDUCATION,

21 *Defendants.*

**Case No. 19-cv-03674-WHA**

**NOTICE OF FILING OF  
SUPPLEMENTAL DECLARATION OF  
MICHAEL GARRY**

22  
23 Defendants hereby submit the supplemental declaration of Michael Garry, Supervisory  
24 Program Manager for Borrower Defense. The supplemental declaration is attached hereto as  
25 Exhibit A.

26  
27 Dated: February 14, 2023

Respectfully submitted,

28 BRIAN D. NETTER  
Deputy Assistant Attorney General

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*Counsel for Defendants*

# Exhibit A

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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THERESA SWEET, *et al.*,  
Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
EDUCATION and MIGUEL CARDONA, in  
his official capacity as Secretary of Education,

Defendants.

No. 19-cv-03674-WHA

SUPPLEMENTAL DECLARATION OF  
MICHAEL GARRY

1 I, Michael Garry, hereby declare under the penalty of perjury as follows:

2 1. I am over the age of 18 and competent to testify to the matters herein.

3 2. I am employed by the United States Department of Education (“Department”) as  
4 the Supervisory Program Manager for Borrower Defense in the Office of Student Experience and  
5 Aid Delivery (“SEAD”) within Federal Student Aid (“FSA”). I have been employed in this  
6 position since March 2022. Prior to that, I served as an attorney and supervisory attorney in the  
7 Borrower Defense Group for FSA since September 2016.  
8

9 3. As SEAD’s Supervisory Program Manager for Borrower Defense, I coordinate  
10 Borrower Defense related mailings and discharge processing requests.  
11

12 4. Through the execution of my duties and my discussions with FSA staff, my  
13 communications with Federal Loan Servicers and vendors, my coordination with FSA staff who  
14 engage directly with the guaranty agencies, my knowledge of the operational logistics involved  
15 in readying the Department to implement the Settlement Agreement (“Agreement”) (ECF No.  
16 246-1) that was approved by the Court on November 16, 2022 (ECF No. 345), and my general  
17 knowledge of this litigation, I certify that I am duly authorized and qualified to make the  
18 statements contained in this Supplemental Declaration. The statements contained herein are  
19 based on my personal knowledge as an employee of the Department, my review of the pertinent  
20 records, and information provided to me in the performance of my official duties.  
21

22 5. As explained in my Declaration filed on January 30, 2023 (“First Declaration”) (ECF  
23 No. 363 at Exhibit A), FSA, over the last several months, has been putting the necessary  
24 processes into place to begin implementing the Agreement on its effective date. Those processes  
25 included creating files and loan discharge instructions for each of FSA’s approximately 20  
26 vendors who will be tasked with effectuating full settlement relief for each of the approximately  
27  
28

1 200,000 class members whose loans are associated with the schools, programs, and School  
2 Groups listed in Exhibit C (as amended) to the Agreement (the “Exhibit C Discharge Group”).  
3 First Declaration ¶¶ 5-7. As a result of those efforts, FSA was ready to send approximately 99%  
4 of the Exhibit C discharge requests to the Federal Loan Servicers by January 30, 2023 (“January  
5 30, 2023 Discharge Requests”), and the discharge requests to the guaranty agencies in the days  
6 thereafter. First Declaration at ¶ 7.

8 6. During the January 26, 2023 status hearing (“Status Hearing”), the issue arose as to  
9 whether FSA could, by January 30, 2023, exclude the borrowers who attended the Intervenor  
10 schools from the January 30, 2023 Discharge Requests to be sent to the approximately 20  
11 vendors. *See* Transcript of Status Hearing at 17-18.

13 7. Following the Status Hearing, the Court ordered the Department, by January 30, 2023, to  
14 provide a declaration explaining in detail the reasons the Department could not separate out the  
15 loans associated with the Intervenor schools from the January 30, 2023 Discharge Requests and  
16 discharge the loans associated just with the remaining schools. ECF No. 357. My First  
17 Declaration addressed the issue raised at the hearing and provided the explanation requested by  
18 the Court.

20 8. As explained in my First Declaration, FSA convened an emergency meeting the morning  
21 of January 27, 2023 in response to the discussion at the January 26, 2023 status hearing, the  
22 Court’s Order, and concerns expressed by Plaintiffs. As a result of that emergency meeting, FSA  
23 developed a path forward to separating the Intervenor school discharge cases from the remaining  
24 cases in the January 30, 2023 Discharge Requests.<sup>1</sup>

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28 <sup>1</sup> FSA was aware that only three Intervenor had filed notices of appeal, but given that the fourth Intervenor still had time to file a notice of appeal as of the morning of January 27, we included the fourth Intervenor in an abundance of caution.


1 9. In the period since I submitted my First Declaration on January 30, 2023, FSA has  
2 successfully removed all the borrower cases and loans associated with the four Intervenor  
3 schools and has completed preparing (but has not sent) the revised discharge requests for the  
4 remaining schools from the January 30, 2023 Discharge Requests (“Remaining Discharge  
5 Requests”). If the Court were to permit the Department to issue these Remaining Discharge  
6 Requests to FSA’s vendors for processing, *i.e.*, for the non-Intervenor schools, FSA is now in a  
7 position where it could do so promptly.  
8

9 10. For the Exhibit C borrowers included in the Remaining Discharge Requests (*i.e.*,  
10 excluding Intervenor school Class Members), FSA has also updated the corresponding Exhibit C  
11 email campaign to exclude the Intervenor schools and, should the Court permit FSA to send  
12 Exhibit C notifications associated with non-Intervenor schools, FSA is in a position where it  
13 could promptly send the emails.  
14

15 11. FSA is in the process of finalizing updated discharge requests for the one intervening  
16 school that did not appeal and assesses that it would take approximately two weeks to finalize  
17 and send the discharge requests and corresponding Exhibit C emails to those borrowers.  
18 Similarly, if the Court were to permit FSA to send discharge requests and corresponding Exhibit  
19 C emails to intervening schools who did appeal, FSA could finalize and send the discharge  
20 requests and corresponding Exhibit C emails within approximately two weeks.  
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1 I declare under penalty of perjury, pursuant to the provisions of 28 U.S.C. § 1746, that  
2 the foregoing is true and correct.

3 Executed on this 14th day of February, 2023.

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6 \_\_\_\_\_  
7 Michael Garry  
8 Supervisory Program Manager  
9 Office of Student Experience and Aid Delivery  
10 Federal Student Aid  
11 U.S. Department of Education  
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