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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LIZETTE MENENDEZ, LYDIA LUNA, and LEONARD VALDEZ, *Plaintiffs*, v. BETSY DEVOS, in her official capacity as Secretary of the U.S. Department of Education, and U.S. DEPARTMENT OF EDUCATION, *Defendants*.	Case No.: **COMPLAINT FOR REVIEW OF FINAL AGENCY ACTION AND FOR DECLARATORY AND INJUNCTIVE RELIEF**

*Application for admission *pro hac vice* forthcoming.

INTRODUCTION

1. Pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, Plaintiffs Lizette Menendez, Lydia Luna, and Leonard Valdez ("Plaintiffs") bring this lawsuit to challenge the unlawful denial of their applications for federal student loan discharges by the U.S. Department of Education and Secretary Betsy DeVos ("Defendants").

2. Plaintiffs also challenge, pursuant to the APA, Defendants' unlawful delays of the effective date of an updated false certification discharge regulation which was intended to clarify loan discharge eligibility for student loan borrowers, including Plaintiffs, whose schools used fake high school diplomas to fraudulently certify their federal financial aid eligibility.

3. Plaintiffs, all residents of Southern California, wanted to pursue higher education to improve their job prospects and earning potential. Their career options had previously been limited, in part, because they had not completed high school.

4. In 2013, upon visiting the for-profit Marinello Schools of Beauty ("Marinello") to inquire about its programs, Marinello promised Plaintiffs they could earn a high school diploma from Parkridge Private School ("Parkridge") and receive the career training necessary to work as cosmetologists.

5. After a test was administered by Marinello, each Plaintiff received a high school diploma from Parkridge, then enrolled at a Marinello campus. After Plaintiffs graduated, they discovered that the Marinello education was worthless because it did not teach basic skills that they needed for employment as cosmetologists. Nonetheless, Marinello took their money and left them with unaffordable student loan debt.

6. Later, Plaintiffs learned that their high school diplomas were not

legitimate when, in February 2016, the U.S. Department of Education (the "Department") determined that Marinello had partnered with Parkridge in an illegal scheme to heavily advertise high school diplomas that were in fact phony.

7. Marinello targeted students who lacked high school diplomas and GEDs, pressured them into enrolling, then illegally certified their eligibility for federal student loans. Marinello created this program to fraudulently game federal law, under which students who lack high school diplomas or GEDs are ineligible for federal financial aid.

8. Based on these facts, the Department determined that Marinello had falsely certified the eligibility of students, like Plaintiffs, who had obtained Parkridge diplomas, but lacked high school diplomas or GEDs. The Department also barred five Marinello campuses from continued participation in federal financial aid programs. Marinello subsequently closed all of its campuses.

9. Plaintiffs all applied for false certification discharge of their federal student loans based on a broad provision of the Higher Education Act (the "HEA") which *requires* Defendants to discharge the loans of students whose schools falsely certify their eligibility for federal financial aid. 20 U.S.C. § 1087(c). Defendants ignored this provision and denied Plaintiffs' applications, impermissibly relying on a narrow, outdated regulation, 34 C.F.R. § 684.215(a)(1), that directly conflicts with the broad statutory mandate of the HEA.

10. As of November 1, 2016, Defendants had finally updated the false certification regulation after many years of schools' increasing use of fake high school diplomas. The updated regulation provided a clear pathway to relief for students harmed by fraudulent diploma practices, including Plaintiffs. Plaintiffs had planned on seeking the Department's review of the initial denials of their applications after this updated regulation's effective date of July 1, 2017.

11. Unfortunately, the updated regulation has not taken effect.

Defendants delayed implementation twice, most recently until July 1, 2018. Defendants did so in order to allow themselves sufficient time to reconsider and amend or repeal the new regulations, including the updated false certification discharge regulation.

12. Defendants enacted these delays without engaging in the public rulemaking procedures required by the APA and the HEA. Defendants' failure to engage in these procedures violated the APA, as Defendants did not provide facts or a sufficient legal basis to justify their disregard of the public rulemaking procedures.

13. Each Plaintiff is now unable to pay down his or her student loans. If these delays are not invalidated by the court, Plaintiffs may never be eligible for a discharge of their student loans. In addition, if Defendants enact a new regulation clarifying Plaintiffs' eligibility for false certification discharges, the earliest the new regulation could go into effect is July 1, 2019.

JURISDICTION AND VENUE

14. This court has subject matter jurisdiction over this matter pursuant to the Administrative Procedure Act (the "APA"), 5 U.S.C. §§ 701-706, the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and 28 U.S.C. § 1331.

15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1) because a substantial part of the events giving rise to the claim occurred in this district and all Plaintiffs reside in this district.

PARTIES

16. Plaintiff LIZETTE MENENDEZ (hereinafter "Ms. Menendez") resides, and at all relevant times has resided, in Los Angeles County, California. She attended a campus of Marinello Schools of Beauty located in Los Angeles County, California.

17. Plaintiff LYDIA LUNA (hereinafter "Ms. Luna") resides, and at all

relevant times has resided, in San Bernardino County, California. She attended a campus of Marinello Schools of Beauty located in Los Angeles County, California.

18. Plaintiff LEONARD VALDEZ (hereinafter, "Mr. Valdez") resides, and at all relevant times has resided, in Orange County, California. He attended a campus of Marinello Schools of Beauty located in Orange County, California. Collectively, all plaintiffs are referred to herein as "Plaintiffs."

19. Defendant BETSY DEVOS is the Secretary (hereinafter, the "Secretary") of the United States Department of Education. Title IV of the Higher Education Act of 1965 ("HEA"), 20 U.S.C. §§ 1070-1099d, charges the Secretary with the responsibility of administering and overseeing the federal student loan programs, including the Direct Loan program. She is named as a defendant in her official capacity.

20. Defendant U.S. DEPARTMENT OF EDUCATION (hereinafter, the "Department") is an agency of the United States within the meaning of the APA. It is responsible for administering and adopting regulations that implement Title IV of the HEA. Collectively, both defendants are referred to herein as "Defendants."

BACKGROUND

21. In general, students must have a high school diploma or a General Equivalency Diploma (GED) to be eligible for federal financial aid, including Direct Loans, under Title IV of the HEA. 20 U.S.C. § 1091(d).

22. Schools are responsible for screening students to ensure that they meet the financial aid eligibility requirements. Before a student can qualify for financial aid, the school must certify the student's eligibility to the Department.

23. In limited circumstances, students who do not have the requisite high school diploma or GED can qualify for financial aid. Between January 1, 1986 and July 1, 2012, the HEA allowed a student who did not have a high school diploma or GED to receive financial aid if the student's school determined that he or she

demonstrated an "ability to benefit" ("ATB") from the program the student sought to attend. *See* Pub. L. No. 99-498, sec. 407(a), § 484(d), 100 Stat. 1268, 1481 (1986) (codified at 20 U.S.C. § 1091(d)) and Pub. L. No. 112-74, Div. F, Title III, sec. 309(c)(1), § 484(d), 125 Stat. 1100 (Dec. 23, 2011) (codified at 20 U.S.C. § 1091(d)).

24. A school could demonstrate that a student met the ATB eligibility alternative in a number of ways that varied over the years. *See* 20 U.S.C. §§ 1091(d) (1986) and 1091(d) (2010); 34 C.F.R. § 682.402(e)(13)(ii). These included (1) administering an approved "ability-to-benefit" test that the student passed; or (2) having the student satisfactorily complete six credits of coursework applicable toward a credential. 34 C.F.R. § 682.402(e)(13)(ii).

25. Schools found ways to exploit students and this narrow eligibility alternative. Between 1989 and 1991, the U.S. Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs conducted an investigation that revealed a "national epidemic" of fraud by for-profit trade schools, including a "widespread" practice of fraudulently certifying students' eligibility for federal financial aid. S. Rep. No. 102-58, 1st Sess. 37, 12 (1991).

26. In response to this fraud, Congress amended the HEA in 1992 to provide that "the Secretary shall discharge [a] borrower's liability on [his or her] loan" when the borrower's "eligibility to borrow . . . was falsely certified by an eligible institution." Higher Education Amendments of 1992, Pub. L. No. 102-325, sec. 428, § 437(c), 106 Stat. 448, 551 (1992) (codified as amended at 20 U.S.C. § 1087(c)) (emph. added).

27. This mandate applies to Direct Loans. 20 U.S.C. § 1087e(a)(1).

28. Direct Loan regulations narrow false certification discharge eligibility to borrowers whose schools did one of the following: (a) falsified a non-high school graduate's ability to benefit; (b) forged the borrower's signature on loan documents;

(c) certified eligibility even though the borrower's physical or mental condition, age, or criminal record disqualified the borrower from employment; or (d) certified eligibility as a result of identity theft. 34 C.F.R. § 685.215(a)(1).

29. Federal regulations require a Direct Loan borrower seeking discharge on the basis of false certification to submit a written request to the Department, including a sworn factual statement. 34 C.F.R. § 685.215(c).

30. If the Department determines that a Direct Loan borrower satisfies the requirements for a false certification discharge, it is required to (a) discharge the borrower's obligation to pay existing or past loans falsely certified by the school, as well as any accrued charges and collection costs; (b) refund payments made by the borrower on the loans; and (c) report the discharge to all consumer reporting agencies so as to delete all adverse credit history regarding the loans. 20 U.S.C. § 1087(c)(1); 34 C.F.R. § 685.215(b).

31. There is no time limit on a Direct Loan borrower's eligibility for discharge. A borrower may submit an application at any time, including after a loan has been paid off. 34 C.F.R. § 215(b)(1).

32. Congress removed the ATB alternative for financial aid eligibility from the HEA in 2011, effective starting July 1, 2012. *See* Pub. L. No. 112-74, Div. F, Title III, sec. 309(c)(1), § 484(d), 125 Stat. 1100 (Dec. 23, 2011) (codified at 20 U.S.C. § 1091(d)).

33. Thus, beginning on July 1, 2012, students who did not have a high school diploma or GED could no longer qualify for federal financial aid through the ATB alternative. 20 U.S.C. § 1091(d) (2012).

34. As of December 17, 2015, Congress reenacted the ATB alternative to the high school diploma eligibility requirement, but only for students enrolled in an "eligible career pathway" program. *See* Pub. L. No. 113-235, Div. G, Title III, sec. 309(a)(1), § 484(d), 128 Stat. 2504 (Dec. 16, 2014) (codified at 20 U.S.C. § 1091(d)

(2015)).

FACTUAL ALLEGATIONS

Marinello Schools of Beauty's Use of Fake High School Diplomas

35. Marinello Schools of Beauty ("Marinello") was a private, for-profit cosmetology school that operated 56 schools throughout several states, including 39 locations in California.

36. On February 1, 2016, the Department denied applications from five Marinello campuses in California that sought approval for continued participation in the federal financial aid programs.

37. The Department did so based on findings that Marinello fabricated high school diplomas so it could fraudulently receive Title IV funds on behalf of ineligible students who lacked high school diplomas or GEDs. *See*, *e.g.*, Letter from Susan D. Crim, Director, Administrative Actions and Appeals Service Group, U.S. Dep't of Educ., to Dr. Rashed Elyas, CEO, Marinello Schools of Beauty (Feb. 1, 2016).

38. According to the Department, Marinello partnered with Parkridge Private School ("Parkridge"), located in Long Beach, California, in a "fraudulent scheme" to "fill the void in student enrollment left when the ATB alternative [for financial aid eligibility] was eliminated." *Id.* at 3, 5.

39. Beginning at least on July 1, 2012, Marinello "heavily advertised" the high school completion program offered by Parkridge to students who lacked a high school diploma or GED. *Id*.

40. Marinello "pressured" and "pushed [these] students . . . to sign up for the Parkridge program" and represented that a Parkridge diploma was a valid high school diploma. *Id*.

41. After an extensive investigation, the Department determined that the Parkridge program did not provide Marinello students with a valid high school

diploma. *Id*. at 6. The Department determined that Marinello's scheme had "caused undue harm to its students" who had "trusted" Marinello and ended up with "worthless" high school diplomas. *Id*. at 6-7. Indeed, the Department acknowledged that these students are unable to continue their postsecondary education elsewhere because they still lack a legitimate high school diploma or GED. *Id*. at 7.

42. The Department therefore concluded that Marinello had falsely certified the federal financial aid eligibility of the students who had been provided with a Parkridge diploma and who otherwise lacked a high school diploma or GED before they enrolled. *Id*. at 5.

43. While the Department denied applications for recertification of federal financial aid eligibility for five of Marinello's campuses, its findings regarding the invalidity of Parkridge high school diplomas at each campus should apply to all Marinello students whose eligibility was certified based on those diplomas. There is no factual basis upon which to conclude that the Parkridge program provided valid high school diplomas to Marinello students from other campuses.

44. The school closed all 56 of its campuses on or about February 5, 2016.

45. Several months later, in August 2016, Marinello settled a False Claims Act lawsuit brought by six former employees of Marinello for $11 million in damages and attorneys' fees. The suit was based on similar allegations that Marinello engaged in a broad scheme to procure fake high school diplomas from Parkridge to defraud the federal government of financial aid funds.

Facts About Named Plaintiffs

Plaintiff Lizette Menendez

46. Lizette Menendez is currently 37 years old and is a lifetime resident of Los Angeles County.

47. In February 2013, Ms. Menendez visited the Marinello campus in

Bell, California. There, she met with a Marinello employee, Christina, who guided her through the campus.

48. Christina informed Ms. Menendez that she would need a high school diploma or its equivalent in order to enroll at Marinello.

49. Ms. Menendez told her that she had not graduated from high school or earned a GED.

50. Ms. Menendez had dropped out of Bell High School after completing 10th grade. She stopped attending school after she became pregnant with her first child.

51. Christina assured Ms. Menendez that she could still enroll because Marinello had a program, known as the Parkridge program, which would help Ms. Menendez obtain a high school diploma.

52. Ms. Menendez paid $150 in cash to Marinello and paid $150 to Parkridge to participate in the Parkridge program.

53. Ms. Menendez took the Parkridge test about one week later. A few days after taking the Parkridge test, she received her Parkridge high school diploma in person at Marinello.

54. Ms. Menendez trusted Marinello's representations that her Parkridge diploma was legitimate and that Marinello had administered the Parkridge program and test correctly. She was proud of her achievement and shared her diploma with her family.

55. Soon after, in February 2013, Ms. Menendez enrolled in the cosmetology program at Marinello's Bell campus.

56. Marinello falsely certified Ms. Menendez's federal financial aid eligibility based on the Parkridge program diploma. Three Direct Loans totaling $9,931.00 were subsequently disbursed to Marinello on Ms. Menendez's behalf.

57. During her program, a Marinello instructor demonstrated how to cut

hair on a female mannequin one time. Marinello did not provide Ms. Menendez and her class any other instruction on how to cut hair. Instead, it advised them to practice cutting hair on their own without any further instruction or guidance.

58. Marinello also failed to provide hair-related instruction in other areas commonly required of cosmetologists. For example, Marinello never taught Ms. Menendez how to mix coloring for hair or the complete process for how to perm hair.

59. During the manicure portion of the cosmetology program, Marinello asked Ms. Menendez to instruct the class because she had some prior experience in nails. Ms. Menendez was shocked that, as a student, she was asked to instruct the other students in her class.

60. Ms. Menendez completed her program on or around July 12, 2014.

61. Ms. Menendez has never worked as a cosmetologist and is currently unemployed.

62. The Department continues to collect on Ms. Menendez's Direct Loans.

Plaintiff Lydia Luna

63. Lydia Luna is currently 55 years old and is a lifetime resident of Southern California.

64. By 2013, Ms. Luna had worked as a manicurist for over 16 years. She had to stop working as a manicurist because she got sick from the chemicals in the nail salon.

65. In November 2013, hoping to go back to school to learn additional cosmetology skills that would qualify her to work in hair salons, Ms. Luna visited the Marinello campus in City of Industry, California. She met with a Marinello employee named Lisa.

66. During Ms. Luna's campus visit, Lisa asked whether Ms. Luna had a

high school diploma or GED.

67. Ms. Luna gave Lisa a copy of her high school transcript from Lowell High School, which showed that Lydia had dropped out of high school after completing the 10th grade.

68. Lisa assured Ms. Luna that she could still enroll in Marinello and earn a high school diploma through the Parkridge program.

69. Ms. Luna paid $250 to Marinello for the Parkridge program.

70. Marinello gave Ms. Luna three Parkridge workbooks and gave her a week to complete them on her own. Shortly thereafter, Marinello provided her with a high school diploma.

71. Ms. Luna believed Marinello's assurances that the Parkridge high school diploma was valid.

72. On or around November 27, 2013, Ms. Luna enrolled in the cosmetology program at Marinello's City of Industry campus.

73. Marinello falsely certified Ms. Luna's federal financial aid eligibility based on the Parkridge program diploma. Four Direct Loans totaling $15,802.00 were subsequently disbursed to Marinello on Ms. Luna's behalf.

74. Marinello informed her class that it lacked enough teachers to instruct the freshman class. As a result, Marinello instructed them to join the senior class, which had already progressed to cutting clients' hair in Marinello's clinical space.

75. Ms. Luna and her freshman class were then told to remain in a corner of the room and do the best that they could to watch the seniors cutting hair and learn on their own.

76. In addition, Ms. Luna had informed the school that she is left-handed and therefore needed to learn how to use left-handed hair-cutting instruments.

77. Although Marinello had agreed to provide students with their own hair-cutting instruments, Marinello did not provide Ms. Luna with left-handed

instruments until seven months into her ten-month program. Since none of the instructors at Marinello knew how to use left-handed scissors, Marinello told Ms. Luna that she had to learn how to cut with them on her own.

78. On or around September 27, 2014, Ms. Luna completed the cosmetology program at Marinello.

79. Ms. Luna lost her first job at a hair salon because she had not been properly trained at Marinello.

80. Ms. Luna returned to working as a manicurist, the same job she had prior to attending Marinello, because she lacks the skills necessary to work in a hair salon.

81. The Department continues to collect on Ms. Luna's Direct Loans.

Leonard Valdez

82. Leonard Valdez is currently 47 years old. He is a lifetime resident of Orange County, California.

83. In 2013, Mr. Valdez was working in the backroom at Target. He had worked up to this position, but knew that he could not progress to a higher level due to his limited education.

84. Mr. Valdez had dropped out of Polaris High School in Anaheim, California, without earning his diploma in order to work and support his mother after his parents divorced.

85. Mr. Valdez wanted a career change and decided to pursue barbering.

86. In January 2014, he visited a Marinello campus in Anaheim, California. He met with a Marinello employee named Priscilla.

87. Mr. Valdez informed Priscilla that he had not completed high school and had not earned a GED.

88. Priscilla assured Mr. Valdez that Marinello could help him earn his high school diploma through the Parkridge program. She emphasized that he

would be obtaining a valid high school diploma.

89. Mr. Valdez paid $300 for the Parkridge program.

90. Marinello gave Mr. Valdez a Parkridge workbook.

91. After a week, Marinello had Mr. Valdez take the Parkridge high school diploma test.

92. Marinello eventually gave him a Parkridge diploma.

93. On or around January 6, 2014, Mr. Valdez enrolled in the barbering program at Marinello's Anaheim campus.

94. Marinello falsely certified Mr. Valdez's federal financial aid eligibility based on the Parkridge program diploma. Four Direct Loans totaling $16,474.00 were subsequently disbursed to Marinello on Mr. Valdez's behalf.

95. During his program, Mr. Valdez did not feel properly trained because there were not enough instructors to teach the class.

96. When he first started his program, there were two instructors: one to teach the workbook and prepare students for the state board exam and the other to teach practice skills of cosmetology.

97. Soon after he started, Mr. Valdez's class only had one instructor. Since the instructor was also busy assisting paying clients who came to Marinello for haircuts, the instructor had limited time to instruct students on how to perform basic skills like cutting.

98. Most of the time, the instructor would do the cuts himself and would not take the time to teach students haircutting skills.

99. Mr. Valdez graduated from Marinello's barbering program on or around March 17, 2015.

100. After graduating, Mr. Valdez found a job at a barber shop, but he was quickly fired due to his lack of training.

101. Mr. Valdez had to learn barbering skills from barbers on the job

because he was not properly trained at Marinello.

102. The Department continues to collect on Mr. Valdez's Direct Loans.

Department's Denial of Plaintiffs' False Certification Discharge Applications

103. Based on these facts and the Department's findings that Marinello used the fraudulent Parkridge program to falsely certify the financial aid eligibility of students who lacked a high school diploma or GED, Plaintiffs are eligible for false certification discharge under the statutory mandate of the HEA, 20 U.S.C. § 1087(c).

104. Plaintiffs therefore jointly submitted false certification discharge applications on December 22, 2016.

105. The applications were submitted with over 140 pages of supporting evidence, including Plaintiffs' sworn declarations and the Department's February 2016 letter determining that Marinello falsely certified borrowers based on Parkridge high school diplomas. The Department denied all three Plaintiffs' discharge applications in January 2017.

106. In the denial letters, the Department stated Plaintiffs were not eligible for false certification loan discharges because they were not enrolled at a postsecondary school prior to July 1, 2012, the effective date of Congress's repeal of the ability-to-benefit eligibility alternative for non-high school graduates.

107. On information and belief, in denying Plaintiffs' discharge applications, the Department improperly disregarded the statutory false certification discharge mandate of the HEA, 20 U.S.C. § 1087(c). Instead, the Department relied on the out-of-date false certification regulation, 34 C.F.R. § 685.215(a)(1), which conflicts with the statute's broad mandate by narrowing false certification discharge eligibility for students who lack a high school diploma or GED. The current regulation, unlike the statute, states that these students are eligible for a false certification discharge *only* when a school failed to properly

administer an ATB test. Thus, because Congress repealed the ATB eligibility alternative for non-high school graduates as of July 1, 2012, students who enroll after that date cannot qualify for a false certification discharge under the current regulation even when a school falsely certifies that they have a high school diploma.

Delay and Reconsideration of Updated False Certification Discharge Regulation

108. After an extensive rulemaking process, on November 1, 2016, the Department published an updated Direct Loan false certification discharge regulation designed to "address the problem of schools encouraging non-high school graduates to obtain false high school diplomas." 81 Fed. Reg. 75,926, 76,082 (Nov. 1, 2016); 81 Fed. Reg. 39,330, 39,377 (June 16, 2016). The updated regulation is hereinafter referred to as the "Updated False Certification Discharge Rule."

109. The rulemaking process lasted over one year. During that time, the Department held two public hearings and considered over 10,000 comments regarding possible topics for the rulemaking (80 Fed. Reg. 63,478, 63,479 (Oct. 20, 2015)). It then convened a negotiated rulemaking committee comprised of sixteen negotiators representing a wide range of stakeholders who met for three multi-day rulemaking sessions in 2016 (81 Fed. Reg. 39,330, 39,333-34). Following the rulemaking sessions, the Department proposed regulations (81 Fed. Reg. 39,330 and considered comments submitted by over 50,000 parties (81 Fed. Reg. 75,926, 75,928).

110. The November 1, 2016 notice publishing the final Updated False Certification Discharge Rule included extensive new regulations regarding other matters, including the use of arbitration provisions in enrollment agreements and procedures that would allow borrowers to seek cancellation of their federal loans based on unlawful conduct by their schools (collectively, the "2016 Final Regulations").

111. Under the Updated False Certification Discharge Rule, Direct Loan borrowers who were not high school graduates and did not meet an alternative eligibility provision when they enrolled would be eligible for a false certification discharge if (a) the borrower reported not having a high school diploma to the school and (b) the school certified his or her eligibility based on a "high school diploma falsified by the school or a third party to which the school referred the borrower." 81 Fed. Reg. 75,926, 76,082 (amending 34 C.F.R. § 685.215(a)(1)).

112. This updated regulation clarifies the categories of borrowers that are eligible for false certification discharges, including borrowers like plaintiffs. Plaintiffs would have qualified for discharges under this updated regulation because (a) Plaintiffs did not have high school diplomas and did not meet an alternative to the high school graduation eligibility requirement; (b) Plaintiffs reported not having high school diplomas to Marinello; and (c) Marinello certified Plaintiffs' financial aid eligibility based on high school diplomas falsified by Marinello and a third party (Parkridge) to which Marinello had referred them.

113. This Updated False Certification Discharge Rule was to take effect on July 1, 2017.

114. The updated regulation would have applied to all Direct Loans, including those made prior to July 1, 2017.

115. The existing regulation does not prohibit borrowers from resubmitting or seeking Department review of previously denied false certification discharge applications.

116. Plaintiffs had therefore planned on resubmitting their false certification discharge applications or seeking review of the Department's denial after July 1, 2017.

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First Delay Rule

117. Plaintiffs never reapplied for a discharge. Doing so would have been futile because the Department effectively repealed the Updated False Certification Discharge Rule by delaying its effective date to at least July 1, 2018.

118. On June 16, 2017, the Department published a final rule delaying "until further notice" the 2016 Final Regulations, including the Updated False Certification Discharge Rule. 82 Fed. Reg. 27,621, 27,622 (June 16, 2017) (hereinafter, the "First Delay Rule").

119. The Department did not convene a negotiated rulemaking committee or provide an opportunity for public notice and comment, as required by the APA, 5 U.S.C. § 533, and the HEA, 20 U.S.C. § 1098a, before publishing the First Delay Rule with an immediate effective date.

120. Instead, in the First Delay Rule notice, the Department claimed that it had the authority to dispense with these rulemaking requirements by invoking 5 U.S.C. § 705. 82 Fed. Reg. 27,621, 27,622. Section 705 provides that "[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review."

121. The Department "concluded that justice require[d] it to postpone" most provisions of the 2016 Final Regulations until resolution of a lawsuit filed by the California Association of Private Postsecondary Schools ("CAPPS") on May 24, 2017. 82 Fed. Reg. 27,621, 27,622.

122. The Department reached this conclusion by finding that the CAPPS lawsuit "raised serious questions concerning the validity of *certain* provisions of the final regulations." 82 Fed. Reg. 27,621 (emph. added).

123. However, while the CAPPS lawsuit challenged the validity of the 2016 Final Regulations, neither CAPPS's complaint nor its subsequent motion seeking a preliminary injunction refer to the Updated False Certification Discharge Rule.

124. CAPPS's complaint specifically challenged only four aspects of the 2016 Final Regulations: (a) provisions regarding the use of forced arbitration clauses and class action waivers in school enrollment contracts; (b) standards and procedures for the evaluation of "borrower defenses" to repayment of Title IV loans (not including false certification discharges which involve separate procedures); (c) new financial responsibility requirements for schools and related student disclosures; and (d) new disclosure requirements for schools whose former students do not meet specific requirements about paying down their federal loans after leaving school.

125. Of these four aspects of the 2016 Final Regulations, CAPPS's subsequent motion for preliminary injunction only sought an order enjoining the Department from implementing the regulations regarding arbitration clauses and class action waivers.

126. The Department also found that CAPPS had "identified substantial injuries that could result if the final regulations go into effect before those questions [regarding the validity of certain provisions] are resolved." 82 Fed. Reg. 27,621.

127. The only potential injuries cited by the Department were (1) the cost to schools of modifying enrollment agreements to comply with the new arbitration clause and class action waiver provisions and (2) the new financial responsibility requirements that could trigger a school's obligation to provide a letter of credit or other financial protection. *Id*. Again, neither the Department nor the CAPPS lawsuit identified any injuries that could result from the implementation of the Updated False Certification Discharge Rule.

128. The Department found that the United States would suffer no significant harm from delaying the 2016 Final Regulations and would avoid significant costs to schools, the government, and the taxpayer. *Id*. However, the only costs identified by the Department were (1) the costs identified in the Net Budget Impacts Section of the Regulatory Impact Analysis of the 2016 Final

Regulations; (2) the costs of the new borrower defense procedures, and (3) the costs of the new three-year automatic closed school discharges. *Id*.

129. Notably, the Net Budget Impacts Section of the Regulatory Impact Analysis for the 2016 Final Regulations states, "[w]e do not expect an increase in false certification discharge claims to result in a significant budget impact from" the Updated False Certification Discharge Rule. 81 Fed. Reg. 75,927, 76,060.

130. The Department did not provide any other explanation or justification for delaying the Updated False Certification Discharge Rule in the First Delay Rule notice.

131. The Department did not address the benefits of the Updated False Certification Discharge Rule, including the financial benefits to harmed student loan borrowers and the benefits to the government and prospective student loan borrowers from discouraging the type of false certification fraud engaged in by Marinello.

132. In addition, the Department did not address or provide a reasoned explanation for disregarding prior factual findings underlying the Updated False Certification Discharge Rule.

Reconsideration of 2016 Final Regulations

133. In the June 16, 2017 First Delay Rule notice, the Department also announced its plans to conduct a new rulemaking process to "review and revise" the 2016 Final Regulations. The announced process included a plan to convene a new negotiated rulemaking committee. 82 Fed. Reg. 27,621, 27,622.

134. On the same day, the Department published a separate notice regarding its intent to undertake a "regulatory reset" beginning through negotiated rulemaking committee meetings starting in November or December 2017. Press Release, Dep't of Educ., *Secretary DeVos Announces Regulatory Reset to Protect Students, Taxpayers Higher Ed Institutions* (June 14, 2017); 82 Fed. Reg. 27,640 (June 16,

2017).

135. On June 22, 2017, the Department published a notice seeking public input on which of its regulations it should consider repealing, modifying or replacing. 82 Fed. Reg. 28,431 (June 22, 2017).

136. On August 30, 2017, the Department published a notice soliciting nominations for seats on two negotiated rulemaking committees, including one that would consider a number of topics including false certification discharges. 82 Fed. Reg. 41,194 (Aug. 30, 2017).

137. The Department convened the first meeting of the committee considering false certification discharge regulations on November 13, 2017.

Interim Final Rule

138. On October 24, 2017, the Department published an interim final rule ("Interim Final Rule" or "IFR"), effective immediately, delaying implementation of the 2016 Final Regulations, including the Updated False Certification Discharge Rule, until July 1, 2018. 82 Fed. Reg. 49,114 (Oct. 24, 2017).

139. The Department did not engage in negotiated rulemaking or provide any opportunity for public comment, as required by the HEA, 20 U.S.C. § 1098a, and the APA, 5 U.S.C. § 533, before publishing the IFR.

140. Instead, the Department found it had good cause to bypass these rulemaking requirements under the 5 U.S.C. § 553(b) (APA) and 20 U.S.C. § 1098a(b)(2) (HEA). These sections state that the Department may bypass rulemaking procedures only when there is good cause to do so because such procedures are "impracticable, unnecessary, or contrary to the public interest."

141. The Department found that compliance with public rulemaking procedures was impracticable and unnecessary based on the HEA "master calendar" requirement. 82 Fed. Reg. 49,114, 49,117.

142. Under the master calendar requirement, "any regulatory changes . . .

affecting the programs" under Title IV "that have not been published in final form by November 1 prior to the start of the award year" beginning on July 1 "shall not become effective until the beginning of the second award year after such November 1 date." 20 U.S.C. § 1089(c).

143. The Department reasoned that because the First Delay Rule delayed the effective date of the 2016 Final Regulations past July 1, 2017, under the master calendar requirement the earliest new effective date for these regulations is July 1, 2018, in the event that the CAPPS litigation is resolved prior to that date. 82 Fed. Reg. 49,114, 49,116.

144. However, the IFR is not necessary to enact an effective date for the 2016 Final Regulations. If the Department had not enacted the IFR, the effective date of July 1, 2017 for the 2016 Final Regulations, including the Updated False Certification Discharge Rule, would be restored in the event that the CAPPS litigation (which was the basis for the First Delay Rule) was resolved and any of the 2016 Final Regulations withstood challenge. In this case, the original effective date would comply with the HEA's master calendar requirement.

145. In the notice, the Department also concluded that the IFR would avoid costs of compliance for schools and the costs to the government and taxpayers resulting from the implementation of the new borrower defense and closed school discharge regulations. *Id*.

146. The Department's cost analysis omitted any mention of the Updated False Certification Discharge Rule. Nor did it provide any other justification or explanation for the delay of the Updated False Certification Discharge Rule.

147. The IFR notice did not include any analysis of the actual or potential harm or negative impact the delay would cause for borrowers like the Plaintiffs, or the benefits of the Updated False Certification Discharge Rule.

148. In contrast to the Department's assurance that its delay of the new

borrower defense regulation will not negatively impact borrowers because it is processing those claims, the Department is *denying* false certification discharge applications from borrowers, including Plaintiffs, who enrolled after July 1, 2012 and whose schools falsely certified their financial aid eligibility based on fraudulent high school diplomas provided by the school.

149. On October 24, 2017, the Department separately proposed a further delay of implementation of the 2016 Final Regulations until July 1, 2019. 82 Fed. Reg. 49,155 (Oct. 24, 2017).

150. In publishing the First Delay Rule and the Interim Final Rule without following the required HEA and APA rulemaking procedures, Defendants have deprived Plaintiffs of a benefit to which they are entitled under both the HEA and the 2016 Final Regulations.

151. Moreover, in the context of both the Department's proposed further delay of those regulations until July 1, 2019, and the current negotiated rulemaking proceeding re-evaluating the 2016 Final Regulations, the Department could promulgate a regulation that does less to clarify Plaintiffs' eligibility for false certification discharges. Worse yet, a new regulation could go so far as to preclude them from qualifying for false certification discharges.

152. Thus, the First Delay Rule and the Interim Final Rule affect the rights and obligations of and have a direct impact on Plaintiffs. The First Delay Rule and IFR have caused substantial injury to the Plaintiffs. As long as Plaintiffs are precluded from obtaining false certification discharges, they must repay their loans, respond to the Department's debt collection efforts, and face the consequences of default if they do not. In addition, to the extent they wish to attend a legitimate postsecondary school, until the Marinello Direct Loans are cancelled or paid down, they will count towards the maximum amounts Plaintiffs are allowed to borrow under the Direct Loan program. This will limit their ability to pay for a legitimate

undergraduate higher education. Moreover, the Direct Loans will continue to appear on their credit reports and impact their ability to obtain other forms of credit.

FIRST CAUSE OF ACTION

(Denial of Discharge Applications - Pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 701-706)

153. Plaintiffs repeat and reallege each of the foregoing paragraphs as if fully set forth herein.

154. Plaintiffs' applications for false certification discharge, along with the evidence submitted with those applications, satisfied the eligibility standards set forth in 20 U.S.C. § 1087(c) for discharge of the Direct Loans they obtained to attend Marinello.

155. The denials of Plaintiffs' individual applications for false certification student loan discharge constitute final agency actions, as defined by 5 U.S.C. § 704, and are therefore reviewable under the APA.

156. Defendants' denials of Plaintiffs' false certification discharge applications were arbitrary, capricious, an abuse of discretion, contrary to law, and otherwise not in accordance with the HEA, 20 U.S.C. § 1087(c), in violation of the APA, 5 U.S.C. § 706(2)(A).

157. Plaintiffs ask this court to declare that Defendants' denials of their applications for false certification discharge were unlawful, arbitrary, capricious, an abuse of discretion, contrary to law, and otherwise not in accordance with the HEA, 20 U.S.C. § 1087(c), in violation of the APA, 5 U.S.C. § 706(2)(A).

158. Pursuant to the APA, 5 U.S.C. §§ 702 and 706(1) and (2)(A), Plaintiffs further ask this court to reverse Defendants' denials of their applications for false

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certification discharge and compel Defendants to grant Plaintiffs' applications and

a. Cease collection efforts on Plaintiffs' Direct Loans;

b. Discharge the liability on Plaintiffs' Direct Loans; and

c. Grant Plaintiffs all relief authorized by 20 U.S.C. § 1087(c)(1) and 34 C.F.R. § 685.215.

SECOND CAUSE OF ACTION

(Pursuant to the Declaratory Judgment Act, 28 U.S. C. §§ 2201-2202)

159. Plaintiffs repeat and reallege each of the foregoing paragraphs as if fully set forth herein.

160. For the reasons set forth in the First Cause of Action, Plaintiffs seek a declaratory judgment, pursuant to 28 U.S.C. §§ 2201-2202, that under the HEA, 20 U.S.C. § 1087(c), the Department is obligated to discharge the Direct Loan(s) of a borrower and provide the relief authorized by 20 U.S.C. § 1087(c) and 34 C.F.R. § 685.215 whenever the borrower submits an application attesting to the following:

a. The borrower (or the student on whose behalf a parent borrowed) did not have a high school diploma or its equivalent and did not meet alternative financial aid eligibility requirements provided in the HEA; and

b. The postsecondary institution certified the eligibility of the borrower (or the student on whose behalf the parent borrowed) to receive Direct Loans based on a high school graduation status falsified by the school or a high school diploma falsified by the school or a third party to which the school referred the borrower.

THIRD CAUSE OF ACTION

(First Delay Rule – Violation of APA, 5 U.S.C. § 706(2)(D) – Failure to Observe Procedure Required by Law)

161. Plaintiffs repeat and reallege each of the foregoing paragraphs as if

fully set forth herein.

162. Defendants are subject to the rulemaking procedures of the APA and the HEA.

163. The First Delay Rule is a final agency action, as defined by the APA, 5 U.S.C. § 704.

164. The First Delay Rule is a final agency action because:

a. it delays the Updated False Certification Discharge Rule, which was published after an extensive notice-and-comment and rulemaking process;

b. it marks the consummation of Defendants' decision-making process to enact an indefinite delay in order to reconsider, amend, or repeal the Updated False Certification Discharge Rule; and

c. directly and negatively modifies Plaintiffs' legal rights and obligations with respect to the Direct Loans they obtained to attend Marinello.

165. The First Delay Rule is therefore subject to judicial review under the APA.

166. The First Delay Rule is a substantive rescission of the effective date of the Updated False Certification Discharge Rule, as demonstrated by the facts alleged in this Complaint, including in paragraphs 108 through 137 and paragraphs 161 through 163.

167. Because the First Delay Rule is a substantive final rule, Defendants were required to comply with the rulemaking procedures of the APA, 5 U.S.C. § 553, and the HEA, 20 U.S.C. § 1098a.

168. Defendants did not publish a notice of proposed rulemaking in the Federal Register or provide interested persons with an opportunity to comment before the effective date of the First Delay Rule, in violation of 5 U.S.C. §§ 553(b), (c) and (d).

169. Defendants did not seek or obtain public involvement in the development of the First Delay Rule, submit the First Delay Rule to a negotiated rulemaking process, or publish a notice of proposed rulemaking in the Federal Register and provide interested persons with an opportunity to comment before the effective date of the final First Delay Rule, in violation of 20 U.S.C. §§ 1098a(a) and (b).

170. Under 5 U.S.C. § 705, to justify their failure to comply with the required rulemaking processes with respect to the Updated False Certification Discharge Rule, Defendants must show each of the following, specifically, as applied to the Updated False Certification Discharge Rule: (a) CAPPS is likely to prevail on the merits of its complaint; (b) the absence of the delay will cause irreparable harm; (c) the public will not be harmed by the delay; and (d) the public interest requires the delay.

171. Defendants' notice of the First Delay Rule failed to acknowledge or comply with this four-part test applicable to Section 705 stays.

172. Defendants' notice of the First Delay Rule did not provide any justification for the delay of the Updated False Certification Discharge Rule.

173. Moreover, Defendants did not and could not have cited facts demonstrating that the First Delay Rule met the four-part test because:

a. CAPPS did not state any facts that would serve as a basis for challenging the Updated False Certification Discharge Rule in its complaint or its motion for preliminary injunction.

b. Defendants therefore did not have any basis in fact or law on which to conclude that CAPPS is likely to prevail on a challenge to the Updated False Certification Discharge Rule.

c. CAPPS did not allege in its complaint or its motion for preliminary injunction that its members would be harmed if the Updated False

Certification Discharge Rule went into effect.

d. Defendants provided no analysis or facts to demonstrate that the public will not be harmed by the delay of the Updated False Certification Discharge Rule.

e. Defendants failed to acknowledge or evaluate significant injuries that Plaintiffs and other students are likely to suffer from the indefinite delay and possible rescission of the Updated False Certification Discharge Rule.

f. Defendants provided no analysis or facts to demonstrate that the public interest requires the delay of the Updated False Certification Discharge Rule.

g. On the contrary, to the extent the public interest is equivalent to the Department's or a taxpayer's interest in avoiding costs, the Net Budget Impacts Section of the Regulatory Impact Analysis for the 2016 Final Regulations states, "[w]e do not expect an increase in false certification discharge claims to result in a significant budget impact from" the Updated False Certification Discharge Rule. 81 Fed. Reg. 75,926, 76,060.

h. Defendants did not provide any facts to discredit this earlier conclusion.

174. Defendants failed to articulate any rational connection between the First Delay Rule, with respect to the Updated False Certification Discharge Rule, and the CAPPS lawsuit.

175. In addition, the HEA does not contain any provision that permits the Department to bypass the HEA public rulemaking procedures based on 5 U.S.C. § 705.

176. Based on the facts alleged in this Complaint, including in paragraphs 108 through 137 and paragraphs 161 through 175 herein, Defendants' failure to observe the rulemaking procedures of the HEA and APA in enacting the First Delay

Rule is a violation of the APA, § 706(2)(D).

177. Plaintiffs have been adversely affected and aggrieved by the First Delay Rule for which there is no other adequate remedy in law and therefore seek review of the First Delay Rule under 5 U.S.C. § 702.

178. Plaintiffs therefore request that the First Delay Rule be held unlawful, vacated and set aside with respect to the Updated False Certification Discharge Rule.

FOURTH CAUSE OF ACTION

(First Delay Rule – Violation of APA, 5 U.S.C. §§ 706(2)(A) – Arbitrary, Capricious and Otherwise Contrary to Law)

179. Plaintiffs repeat and reallege each of the foregoing paragraphs as if fully set forth herein.

180. Prior to enactment of the First Delay Rule, Defendants failed to:

a. Address prior factual findings underlying the November 1, 2016 publication of the Updated False Certification Discharge Rule;

b. Articulate any connection between its findings in the First Delay Rule notice and the delay of the Updated False Certification Discharge Rule;

c. Consider the benefits of the Updated False Certification Discharge Rule.

181. Based on the facts alleged in this Complaint, including paragraphs 108 through 137 and paragraphs 161 through 180, Defendants' justification for enacting the First Delay Rule without complying with the required APA and HEA public rulemaking procedures is arbitrary, capricious, and contrary to law in violation of 5 U.S.C. § 706(2)(A).

182. Plaintiffs request that the First Delay Rule be held unlawful, vacated and set aside with respect to the Updated False Certification Discharge Rule.

FIFTH CAUSE OF ACTION

(First Delay Rule – Violation of APA, 5 U.S.C. §§ 706(2)(C) – Agency Action in Excess of Statutory Authority)

183. Plaintiffs repeat and reallege each of the foregoing paragraphs as if fully set forth herein.

184. Defendants' findings under 5 U.S.C. § 705 that justice required it to enact the First Delay Rule with respect to the Updated False Certification Discharge Rule were in excess of statutory authority, in violation of 5 U.S.C. § 706(2)(C).

185. The HEA does not contain any provision that permits Defendants to bypass the HEA public rulemaking procedures based on 5 U.S.C. § 705.

186. The HEA permits Defendants to bypass the HEA public rulemaking procedures only when they determine there is good cause to do so under 5 U.S.C. § 553(b) of the APA.

187. In the First Delay Rule notice, Defendants made no findings under 5 U.S.C. § 553(b).

188. Defendants' publication of the First Delay Rule with respect to the Updated False Certification Discharge Rule without complying with the rulemaking procedures required by APA, 5 U.S.C. § 553, and the HEA, 20 U.S.C. § 1098a, was therefore in excess of Defendants' statutory authority in violation of 5 U.S.C. § 706(2)(C).

189. Plaintiffs request that the First Delay Rule be held unlawful, vacated and set aside with respect to the Updated False Certification Discharge Rule.

SIXTH CAUSE OF ACTION

(Interim Final Rule – Violation of the APA – 5 U.S.C. § 706(2)(D) – Failure to Observe Procedure Required by Law)

190. Plaintiffs repeat and reallege each of the foregoing paragraphs as if fully set forth herein.

191. The Interim Final Rule is a final agency action, as defined by the APA, 5 U.S.C. § 704.

192. The IFR is a final agency action because:

a. it delays the Updated False Certification Discharge Rule, which was published after an extensive notice-and-comment and rulemaking process;

b. it marks the consummation of Defendants' decision-making process to enact a delay and reconsider, amend, or repeal the 2016 Final Regulations, including the Updated False Certification Discharge Rule, and prevent them from going into effect before July 1, 2018, even if any of the 2016 Final Regulations are upheld and the CAPPS litigation is resolved prior to that date; and

c. it directly and negatively modifies Plaintiffs' legal rights and obligations with respect to the Direct Loans they obtained to attend Marinello.

193. The IFR is therefore subject to judicial review under the APA.

194. The IFR is a substantive rescission of the effective date because it prevents the reinstatement of the original July 1, 2017 effective date of the 2016 Final Regulations, including the Updated False Certification Discharge Rule, even if any of the 2016 Final Regulations are upheld and the CAPPS litigation resolved prior to July 1, 2018.

195. Because the IFR is a substantive rule, Defendants were required to comply with the rulemaking procedures of the APA, 5 U.S.C. § 553, and the HEA, 20 U.S.C. § 1098a.

196. Defendants did not publish a notice of proposed rulemaking in the Federal Register or provide interested persons with an opportunity to comment before the effective date of the IFR, in violation of the APA, 5 U.S.C. §§ 553(b), (c)

and (d).

197. Defendants also did not obtain public involvement in the development of the IFR, submit the IFR to a negotiated rulemaking process, or publish a notice of proposed rulemaking in the Federal Register and provide interested persons with an opportunity to comment before the effective date of the final IFR, in violation of the HEA, 20 U.S.C. §§ 1098a(a) and (b).

198. Defendants invoked good cause under 5 U.S.C. § 553(b) and 20 U.S.C. § 1098a(b)(2) as grounds to enact the IFR without complying with the rulemaking procedures required by the APA and the HEA.

199. Defendants determined that they had good cause to dispense with the APA and HEA rulemaking procedures and that these procedures were impracticable and unnecessary due to the HEA master calendar requirements.

200. Defendants' findings, however, are based on an incorrect analysis of the law:

a. If any of the 2016 Final Regulations withstood challenge in the CAPPS litigation, including the Updated False Certification Discharge Rule, the HEA's master calendar requirement would allow them to be effective as of July 1, 2017, since they were published on November 1, 2016.

b. Thus, if any of the 2016 Final Regulations withstood challenge in any pending litigation at any time, it would be unnecessary for the Department to publish a new effective date.

201. Moreover, none of the costs or harms cited in the IFR notice had any relation to the Updated False Certification Discharge Rule. Instead, they only related to the regulations regarding closed school discharges, borrower defenses to repayment, arbitration clauses, class action waivers, and financial responsibility.

202. Defendants did not articulate any other facts supporting its determination that the compliance with the public rulemaking procedures was

impracticable or unnecessary.

203. Defendants did not and could not show that compliance with the rulemaking requirements in enacting the IFR would have been contrary to public interest. Defendants ignored significant injuries that Plaintiffs and other students are likely to suffer from the delay and possible rescission of the Updated False Certification Discharge Rule.

204. Defendant lacked good cause to enact the IFR with respect to the Updated False Certification Discharge Rule without complying with the procedures required by the APA, 5 U.S.C. § 553, and the HEA, 20 U.S.C. § 1098a.

205. Defendants' failure to observe the rulemaking procedures of the APA and HEA in enacting the IFR is a violation of the APA, 5 U.S.C. § 706(2)(D).

206. Plaintiffs have been adversely affected and aggrieved by the enactment of the IFR, for which there is no other adequate remedy in court, and may therefore seek review of the IFR under 5 U.S.C. § 702.

207. Plaintiffs request that the IFR be held unlawful, vacated, and set aside with respect to the Updated False Certification Discharge Rule.

SEVENTH CAUSE OF ACTION

(Interim Final Rule – Violation of APA, 5 U.S.C. §§ 706(2)(A) – Arbitrary, Capricious and Otherwise Contrary to Law)

208. Plaintiffs repeat and reallege each of the foregoing paragraphs as if fully set forth herein.

209. The Department failed to do the following in the IFR notice:

a. Address prior factual findings underlying the November 1, 2016 publication of the Updated False Certification Discharge Rule;

b. Articulate any connection between its findings regarding costs in the IFR notice and the delay of the Updated False Certification Discharge

Rule; and

c. Consider the benefits of the Updated False Certification Discharge Rule.

210. Based on the facts alleged in this Complaint, including paragraphs 108 through 152 and paragraphs 191 through 209, Defendants' findings in the IFR notice that it had good cause under 5 U.S.C. § 553(b) and 20 U.S.C. § 1098a(b)(2) to dispense with the public rulemaking procedures with respect to the Updated False Certification Discharge Rule was arbitrary, capricious, and contrary to law in violation of 5 U.S.C. §§ 706(2)(A).

211. Plaintiffs request that the IFR be held unlawful, vacated, and set aside with respect to the Updated False Certification Discharge Rule.

EIGHTH CAUSE OF ACTION

(Interim Final Rule – Violation of APA, 5 U.S.C. §§ 706(2)(C) – Agency Action in Excess of Statutory Authority)

212. Plaintiffs repeat and reallege each of the foregoing paragraphs as if fully set forth herein.

213. Defendants' determination that they had good cause to dispense with the rulemaking procedures of the HEA and APA in enacting the IFR with respect to the Updated False Certification Discharge Rule was in excess of Defendants' statutory authority in violation of 5 U.S.C. § 706(2)(C).

214. Defendants' publication of the IFR with respect to the Updated False Certification Discharge Rule without complying with the rulemaking procedures required by APA, 5 U.S.C. § 553, and the HEA, 20 U.S.C. § 1098a, was in excess of Defendants' statutory authority in violation of 5 U.S.C. § 706(2)(C).

215. Plaintiffs request that the IFR be held unlawful, vacated, and set aside with respect to the Updated False Certification Discharge Rule.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment and order for relief as follows:

1. Declaring that Defendants' denials of Plaintiffs' false certification discharge applications were arbitrary, capricious, an abuse of discretion, contrary to law, and otherwise not in accordance with the HEA, 20 U.S.C. § 1087(c), in violation of 5 U.S.C. § 706(2);

2. Reversing the Department's final decisions denying Plaintiffs' false certification discharge applications pursuant to 5 U.S.C. § 706(2);

3. Compelling the Secretary, pursuant to 5 U.S.C. § 706(1), to:

   a. Cease collection efforts on Plaintiffs' Direct Loans;

   b. Discharge the liability on Plaintiffs' Direct Loans; and

   c. Grant Plaintiffs all relief authorized by 20 U.S.C. § 1087(c)(1) and 34 C.F.R. § 685.215;

4. Declaring that under the HEA, 20 U.S.C. § 1087(c), the Department is obligated to discharge the Direct Loan(s) of a borrower and provide the relief authorized by 20 U.S.C. § 1087(c) and 34 C.F.R. § 685.215 whenever the borrower submits an application attesting to the following:

   a. The borrower (or the student on whose behalf a parent borrowed) did not have a high school diploma or its equivalent and did not meet alternative financial aid eligibility requirements provided in the HEA; and

   b. The postsecondary institution certified the eligibility of the borrower (or the student on whose behalf the parent borrowed) to receive Direct Loans based on a high school graduation status falsified by the school or a high school diploma falsified by the school or a third party to which the school referred the borrower;

5. Declaring unlawful, vacating, and setting aside the First Delay Rule notice and First Delay Rule with respect to the Updated False Certification Discharge Regulation;

6. Declaring unlawful, vacating, and setting aside the Interim Final Rule notice and Interim Final Rule with respect to the Updated False Certification Discharge Regulation;

7. Ordering Defendants to implement the Updated False Certification Discharge Regulation immediately;

8. Ordering Defendants to pay the costs of this action, together with reasonable attorneys' fees, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A), as determined by the Court; and

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9. Granting such other and further relief as the Court may deem just and proper.

DATED: February 7, 2018

Respectfully submitted,

/s/ Robyn Smith
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