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12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 SONIA RAMOS ESCOBEDO,

) Case No.: 2:17-cv-7586

)

17 *Plaintiff,*

) **COMPLAINT FOR REVIEW OF**

) **FINAL AGENCY ACTION AND FOR**

18 v.

) **DECLARATORY RELIEF**

)

20 BETSY DEVOS, in her official
21 capacity as Secretary of the United
22 States Department of Education,

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23 *Defendant.*

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25 **INTRODUCTION**

26 1. Plaintiff Sonia Ramos Escobedo (“Plaintiff”) brings this action,
27 pursuant to 5 U.S.C. § 702, for judicial review of the Secretary of the U.S.
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1 Department of Education’s (the “Secretary” or the “Department”) denial of her
2 application for discharge of her federal student loans. She also seeks a declaration,
3 pursuant to 28 U.S.C. §§ 2201-2202, that the Department’s informal evidentiary
4 policy for the evaluation of false certification discharge applications based on
5 ability-to-benefit fraud is arbitrary, capricious, an abuse of discretion, contrary to
6 law, and otherwise not in accordance with the Higher Education Act, 20 U.S.C. §§
7 1071-1099d, and its implementing regulations in violation of the Administrative
8 Procedure Act, 5 U.S.C. § 706.

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10 2. In 1988, after Plaintiff had dropped out of high school and was only
11 17 years of age, the Career Institute fraudulently obtained over \$5,000 of federal
12 student loans in Plaintiff’s name even though she did not enroll or attend a single
13 day of class. In doing so, the Career Institute falsely certified her eligibility for
14 federal financial aid because it failed to test her “ability to benefit” from the Career
15 Institute’s program, as required by federal law. This federal law was enacted to
16 ensure that vulnerable students like Plaintiff, who lacked a high school diploma or
17 GED, took on federal student debt only if they had the basic skills necessary to
18 succeed in their postsecondary education programs.

19 3. In 1991, after a 2-year investigation, a U.S. Senate Subcommittee
20 determined that, between 1986 and 1991, the Department’s “gross
21 mismanagement, ineptitude, and/or neglect in carrying out its oversight”
22 responsibilities led to a “national epidemic” of for-profit school fraud, including
23 the widespread “falsification of information used to satisfy . . . ability-to-benefit
24 requirements.” It was based on these findings that Congress enacted 20 U.S.C. §
25 1087(c), which requires the Secretary to discharge student loans for borrowers
26 whose schools falsely certify that they are eligible for federal financial aid.

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1 *False Certification Student Loan Discharges*

2 16. In 1986, Congress amended the HEA to allow a student who did not
3 have a high school diploma or General Education Diploma (“GED”) to receive
4 financial aid if their school determined that he or she demonstrated an “ability to
5 benefit” (“ATB”) from the program the student sought to attend. *See* Pub. L. No.
6 99-498, sec. 407(a), § 484(d), 100 Stat. 1268, 1481 (1986) (codified at 20 U.S.C. §
7 1091(d)).

8 17. In 1988, the relevant year in this case, a school could demonstrate
9 that a student met the ATB exception by certifying that it administered an
10 accreditor-approved “ability-to-benefit” test to the student and that the student had
11 received a passing score before it disbursed the federal financial aid. *See* 20 U.S.C.
12 §§ 1091(d), (e) (1986); 34 C.F.R. § 682.402(e)(13).

13 18. Between 1989 and 1991, the U.S. Senate Permanent Subcommittee on
14 Investigations of the Committee on Governmental Affairs conducted an
15 investigation into the causes of skyrocketing student loan defaults. S. Rep. No.
16 102-58, 1st Sess. 37 (1991) (the “Nunn Report”).

17 19. The study revealed a “national epidemic” of fraud by for-profit trade
18 schools, including a “widespread” practice of fraudulently certifying students’
19 ability to benefit from the schools’ programs. *Id.* at 12.

20 20. The Subcommittee determined that these widespread abuses were
21 allowed to proliferate and continue due to a “complete breakdown in effective
22 regulation and oversight.” *Id.* at 11. The report stated that through “gross
23 mismanagement, ineptitude, and/or neglect in carrying out its oversight and
24 regulatory functions, the Department had all but abdicated its responsibility to the
25 students it is supposed to service” *Id.* at 37.

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1 21. The Subcommittee also determined that the other entities responsible
2 for proprietary school oversight—state licensing agencies, guaranty agencies and
3 accrediting agencies—were equally lax in monitoring schools’ compliance with
4 federal regulations because they “have neither the motivation nor the capabilities to
5 effectively police the [financial aid] program.” *Id.* at 32.

6 22. In response to this widespread failure of the federal oversight system
7 to prevent ATB fraud, Congress amended the HEA in 1992 to provide that “the
8 Secretary shall discharge [a] borrower’s liability on [his or her] loan” when the
9 borrower’s “eligibility to borrow . . . was falsely certified by an eligible
10 institution.” Higher Education Amendments of 1992, Pub. L. No. 102-325, sec.
11 428, § 437(c), 106 Stat. 448, 551 (1992) (codified as amended at 20 U.S.C. §
12 1087(c)) (emph. added).

13 23. Federal regulations require a student seeking discharge on the basis of
14 ATB false certification to submit a written request to the loan holder (the guaranty
15 agency or Department), including a sworn factual statement. 34 C.F.R. §§
16 682.402(e)(3)(ii) (FFEL program loans) and 685.215(c) (Direct Loans).

17 24. The guaranty agencies and the Department must review discharge
18 requests and other evidence submitted by the borrower “in light of the information
19 available from the records of” the guaranty agency or the Secretary, whichever is
20 applicable, “and from other sources, including other guaranty agencies, state
21 authorities, and cognizant accrediting associations.” 34 C.F.R. §§ 682.402(e)(6)(iv)
22 (FFEL program loans) and 685.215(d)(3) (Direct Loans).

23 25. The guaranty agencies and Department may also request that the
24 borrower “provide . . . other documentation reasonably available to [him or her] . . .
25 that demonstrates” the borrower's eligibility for loan discharge. 34 C.F.R. §§
26 682.402(e)(3)(vi) (FFEL program loans) and 685.215(c)(6)(i) (Direct Loans)
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1 (emph. added).

2 26. If a guaranty agency or the Department determines that a borrower
3 satisfies the requirements for an ATB false certification discharge, it is required to
4 (a) discharge the borrower's obligation to pay existing or past loans falsely
5 certified by the school, as well as any accrued charges and collection costs, (b)
6 refund payments made by the borrower on the loans, and (c) report the discharge to
7 all consumer reporting agencies so as to delete all adverse credit history regarding
8 the loans. 20 U.S.C. § 1087(c)(1); 34 C.F.R. §§ 682.402(e)(2) (FFEL program
9 loans) and 685.215(b) (Direct Loans).

10 27. The guaranty agency or Department must do the same for the portion
11 of any Direct Consolidation Loan or FFEL program consolidation loan equal to the
12 amount of the loans falsely certified by the school and included in the
13 consolidation loan. 34 C.F.R. § 685.212(e) (Direct Loans); U.S. Dep't of Educ.,
14 Dear Colleague Letter 94-G-256 at 6 (Sept. 1994).

15 28. There is no time limit on a borrower's eligibility for discharge. A
16 borrower may submit an application at any time, including after a loan has been
17 paid off. 34 C.F.R. §§ 682.402(e)(1)(i), (e)(6)(v) (FFEL program loans) and
18 685.215(b)(1) (Direct Loans).

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20 **The Corroborating Evidence Standard**

21 29. Despite the false certification abuses and oversight failures
22 documented in the Nunn Report, the Department unilaterally imposed a
23 "corroborating evidence" policy that requires the Department or guaranty agency
24 to disregard a borrower's sworn statements, even if they are uncontroverted, unless
25 the guaranty agency or Department obtains "finding[s] [of ATB fraud] by an entity
26 or organization that had oversight responsibility over the school's [Student
27 Financial Aid] administration or educational programs." U.S. Dep't of Educ., Dear
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1 Colleague Letter, GEN 95-42 at 4 (Sept. 1, 1995).

2 30. Under the Department’s corroborating evidence policy, the “absence”
3 of such evidence “raises an inference that no improper [ATB] practices were
4 reported because none were taking place.” *Id.* In this case, the burden shifts to
5 the borrower to provide “persuasive evidence that would corroborate his or her
6 allegation of improper ATB determination.” *Id.*

7 31. In addition, in the absence of any ATB oversight findings, the
8 Department allows a discharge to be granted based only on the following
9 additional evidence:

- 10 a. Statements of school employees or other students;
- 11 b. “[A] high incidence” of other discharge applications and “no
12 evidence of collusion” among the borrowers;
- 13 c. Withdrawal rates exceeding 33% at the relevant time; or
- 14 d. Annual loan default rates which are higher than a specified rate
15 for the time period when the borrower entered repayment. For borrowers
16 who entered repayment during or before federal fiscal year 1989, the annual
17 loan default rate must exceed 60%.

18 *Id.*; U.S. Dep’t of Educ., Dear Colleague Letter, DCL ID FP-07-09 at 2, 3 (Sept. 24,
19 2007).

20 32. Borrowers do not typically have access to findings of accrediting
21 agencies, state agencies, and the federal government, statements by prior
22 employees, or statements of other students. While borrowers may submit FOIA
23 requests to obtain such evidence to the extent it is held by the Department, the
24 Department does not always have such evidence, in part because it destroys old
25 records of school program reviews, audits, and investigations.

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1 plaintiff that her mother would be required to co-sign any loan documents for that
2 reason.

3 39. The Career Institute, however, never asked plaintiff whether she had a
4 high school diploma or GED, nor did it have her take any type of test prior to
5 enrollment to certify her ability to benefit from the educational program being
6 offered.

7 40. Plaintiff decided not to enroll at the Career Institute. She does not
8 recall signing any loan documents, enrollment agreement, or any other documents.

9 41. Plaintiff did not attend a single class and therefore never completed
10 any program of remedial or developmental education at the Career Institute. She
11 also never earned a GED.

12 42. Although Plaintiff never attended any classes nor recalls signing any
13 loan documents, the Career Institute obtained a total of \$5,312.00 in FFEL loan
14 program loans in her name.

15 43. By failing to administer an ATB test to plaintiff, the Career Institute
16 falsely certified her eligibility for these federal student loans.

17 44. The Career Institute was only in existence for about four years. It was
18 opened on or about June 3, 1987 and closed on or about September 27, 1991.

19 45. Because Plaintiff did not know about the existence of her FFEL
20 program loans, Plaintiff defaulted on those loans in or around 1989 and 1991. Her
21 FFEL program loans were consolidated out of default in or about October 1999.

22 46. Plaintiff could not afford her monthly payments on her Direct
23 Consolidation Loan. As a result, she defaulted on this loan in or around 2010.
24 Plaintiff then rehabilitated it out of default in 2011.

25 47. Plaintiff subsequently re-defaulted on the Direct Consolidation Loan
26 on or about September 27, 2013. According to Department records, Plaintiff owes
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1 approximately \$24,410 on this Direct Consolidation Loan.

2 48. Plaintiff submitted a false certification discharge application on or
3 about March 19, 2015. In her application, she attested to facts under penalty of
4 perjury that established her eligibility for a discharge under 34 C.F.R. § 685.215.

5 49. The Department issued a denial letter to Plaintiff on or about April 16,
6 2015. The sole basis for the denial was that the Defendant did not possess any
7 findings from a public or private oversight agency indicating any federal regulatory
8 violations by the Career Institute. The Department did not provide any reason for
9 its disregard of her sworn statements, nor did it request that Plaintiff provide any
10 additional evidence.

11 50. On or about September 18, 2015, the Legal Aid Foundation of Los
12 Angeles (“LAFLA”) submitted a Freedom of Information Act (FOIA) request to
13 Defendant, pursuant to 5 U.S.C. § 552, on Plaintiff’s behalf. LAFLA requested
14 records pertaining to the Career Institute, including records regarding ATB
15 violations, loan default rates, withdrawal rates, and ATB applications submitted by
16 other borrowers. On the same day, LAFLA also submitted a FOIA request for
17 records pertaining to investigations and audits of the Career Institute to the
18 Inspector General of the Department.

19 51. In response, on October 20, 2015, the Inspector General provided a
20 partially redacted single page printout and a letter stating that all other documents
21 pertaining to the Career Institute in its possession had been destroyed.

22 52. The single page provided by the Inspector General indicated that an
23 investigative case had in fact been opened regarding the Career Institute on April
24 22, 1991. This document indicates that the Career Institute was investigated for
25 embezzlement of public money, fraud and bribery by recipients of federal funds,
26 fraud and false statements, and student financial aid fraud. It further indicates that
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1 although the case was submitted for prosecution, it was later declined after the
2 school closed.

3 53. Subsequently, in a letter dated May 23, 2016, Defendant provided
4 four pages of records pertaining to student loan default rates for the Career
5 Institute. According to these records, 45.7% of Career Institute students who
6 entered repayment in 1989 defaulted on their federal loans. The Department
7 claimed that it does not have any other responsive documents, including
8 withdrawal rates for the Career Institute.

9 54. On or about June 27, 2016, through counsel, Plaintiff submitted a
10 second application for false certification student loan discharge.

11 55. On October 20, 2016, Defendant upheld its initial denial of Plaintiff's
12 false certification discharge application. It reiterated that the primary basis for the
13 denial was the lack of "corroborating evidence of ATB violations at the school
14 during Plaintiff's time of enrollment, such as program deficiencies, which would
15 have become known during reviews and audits of the school."
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17 56. Defendant offered neither evidence nor analysis contradicting or
18 disputing the statements provided under oath by Plaintiff in support of her
19 discharge application.

20 57. Plaintiff currently remains in default on her Direct Consolidation
21 Loan. Federal law bars her from getting out of default, except through a lump sum
22 payment of her entire loan balance, because she has previously rehabilitated and
23 consolidated defaulted loans.

24 58. Plaintiff's wages could be garnished and future tax refunds could be
25 offset, which would cause Plaintiff and her two grandchildren financial hardship.
26 Plaintiff received a Debt Statement and Notice of Proposed Treasury Offset, dated
27 August 17, 2017, which states the Department's intent to do both. In response, on
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1 October 13, 2017, Plaintiff submitted a Request for Review.

2 59. Plaintiff has exhausted all of the administrative remedies available to
3 her and has no other remedy at law to obtain Defendant's compliance with the
4 HEA and the Department's student loan discharge regulations, other than through
5 the relief sought in this complaint.

6 **FIRST CAUSE OF ACTION**

7 **(Pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 701-706)**

8 60. Plaintiff repeats and realleges each of the foregoing paragraphs as if
9 fully set forth herein.

10 61. Plaintiff's application for false certification student loan discharge,
11 along with the evidence submitted with that application, satisfied the eligibility
12 standards set forth in 20 U.S.C. § 1087(c) and 34 C.F.R. § 685.215 for discharge of
13 her outstanding federal student loan.

14 62. The denial of Plaintiff's application for false certification student loan
15 discharge constitutes a final agency action, as defined by 5 U.S.C. § 704, and is
16 therefore reviewable under the Administrative Procedure Act.

17 63. Defendant's denial of Plaintiff's false certification discharge
18 application was arbitrary, capricious, an abuse of discretion, contrary to law, and
19 otherwise not in accordance with the Higher Education Act, 20 U.S.C. §§ 1071-
20 1099d, and its implementing regulations, in violation of the Administrative
21 Procedure Act, 5 U.S.C. § 706(2)(A).

22 64. Plaintiff asks this court to declare that Defendant's denial of her
23 application for false certification discharge was unlawful, arbitrary, capricious, an
24 abuse of discretion, contrary to law, and otherwise not in accordance with the
25 Higher Education Act, 20 U.S.C. §§ 1071-1099d, and its implementing
26 regulations, in violation of the Administrative Procedure Act, 5 U.S.C. §
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1 706(2)(A).

2 65. Plaintiff further asks this court to reverse Defendant’s denial of her
3 application for false certification discharge and compel Defendant to grant her
4 application, pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 702 and
5 706(1) and (2)(A).

6 **SECOND CAUSE OF ACTION**

7 **(Pursuant to Administrative Procedure Act, 5 U.S.C. §§ 701-706)**

8 66. Plaintiff repeats and realleges each of the foregoing paragraphs as if
9 fully set forth herein.

10 67. Defendant’s reliance on its informal “corroborating evidence” policy,
11 stated in the 1995 and 2007 Dear Colleague letters, in denying Plaintiff’s
12 application for false certification discharge was arbitrary, capricious, an abuse of
13 discretion, contrary to law, and otherwise not in accordance with the Higher
14 Education Act, 20 U.S.C. §§ 1071, *et seq.* and its implementing regulations, in
15 violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

16 68. Defendant asks this court to hold unlawful and declare that
17 Defendant’s reliance on its informal “corroborating evidence” standard stated in
18 the 1995 and 2007 Dear Colleague letters, including the following, in denying
19 Plaintiff’s application for false certification discharge was arbitrary, capricious, an
20 abuse of discretion, contrary to law, and otherwise not in accordance with the
21 Higher Education Act, 20 U.S.C. §§ 1071-1099d, and its implementing
22 regulations, in violation of the Administrative Procedure Act, 5 U.S.C. §
23 706(2)(A):

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25 a. Defendant’s policy that the absence of oversight agency
26 findings of improper ATB practices at a school “raises an inference that no
27 improper ATB practices were reported because none were taking place” at
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the school;

b. Defendant’s policy that this inference may only be overcome with evidence of corroborating statements of employees or other students, a high incidence of ATB false certification discharge applications from other borrowers who attended the same school as long as there is no evidence of collusion among them, the school’s withdrawal rates exceeding 33% at the relevant time, or the annual loan default rate for the school exceeding a specified percentage when the borrower entered repayment, which is 60% for borrowers who entered repayment during or before federal fiscal year 1989; and

c. Defendant’s policy of disregarding uncontroverted sworn statements of borrowers which establish their eligibility for false certification discharges despite the complete absence of evidence to question borrower credibility.

THIRD CAUSE OF ACTION

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

69. Plaintiff repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

70. Plaintiff seeks a declaratory judgment, pursuant to 28 U.S.C. §§ 2201-2202, that the Department’s denial of ability-to-benefit false certification discharge applications, including Plaintiff’s application, based on its “corroborating evidence” policy stated in the 1995 and 2007 Dear Colleague letters, including the following, was and is arbitrary, capricious, an abuse of discretion, contrary to law, and otherwise not in accordance with the Higher Education Act, 20 U.S.C. §§ 1071-1099d, and its implementing regulations, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A):

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a. Defendant’s policy that the absence of oversight agency findings of improper ATB practices at a school “raises an inference that no improper ATB practices were reported because none were taking place” at the school;

b. Defendant’s policy that this inference may only be overcome with evidence of corroborating statements of employees or other students, a high incidence of ATB false certification discharge applications from other borrowers who attended the same school as long as there is no evidence of collusion among them, the school’s withdrawal rates exceeding 33% at the relevant time, or the annual loan default rate for the school exceeding a specified percentage when the borrower entered repayment; and

c. Defendant’s policy of disregarding uncontroverted sworn statements of borrowers which establish their eligibility for false certification discharges despite the complete absence of evidence to question borrower credibility.

71. For the reasons set forth in Paragraph 70, Plaintiff also seeks a declaratory judgment, pursuant to 28 U.S.C. §§ 2201-2202, that the Department is obligated to cease evaluating and/or denying ability-to-benefit false certification discharge applications based on its informal “corroborating evidence” policy as stated in the 1995 and 2007 Dear Colleague letters.

PRAYER FOR RELIEF

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

1. Declaring that Defendant’s denial of Plaintiff’s false certification discharge application was arbitrary, capricious, an abuse of discretion, contrary to law, and otherwise not in accordance with the Higher Education Act, 20 U.S.C. §§

1 1071-1099d, and its implementing regulations, in violation of 5 U.S.C. § 706(2);

2 2. Reversing the Department’s final decision denying Plaintiff’s false
3 certification discharge application pursuant to 5 U.S.C. § 706(2);

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

5 a. Cease collection efforts on Plaintiff’s Direct Consolidation
6 Loan;

7 b. Discharge the liability on Plaintiff’s Direct Consolidation
8 Loan; and

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

11 4. Holding unlawful and declaring the Defendant’s reliance on its
12 informal “corroborating evidence” standard stated in the 1995 and 2007 Dear
13 Colleague letters, including the following, in denying Plaintiff’s application for
14 false certification discharge was arbitrary, capricious, an abuse of discretion,
15 contrary to law, and otherwise not in accordance with the Higher Education Act,
16 20 U.S.C. §§ 1071-1099d, and its implementing regulations, in violation of the
17 Administrative Procedure Act, 5 U.S.C. § 706(2)(A):

18 a. Defendant’s policy that the absence of oversight agency
19 findings of improper ATB practices at a school “raises an inference that no
20 improper ATB practices were reported because none were taking place” at
21 the school;

22 b. Defendant’s policy that this inference may only be overcome
23 with evidence of corroborating statements of employees or other students, a
24 high incidence of ATB false certification discharge applications from other
25 borrowers who attended the same school as long as there is no evidence of
26 collusion among them, the school’s withdrawal rates exceeding 33% at the
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relevant time, or the annual loan default rate for the school exceeding a specified percentage when the borrower entered repayment, which is 60% for borrowers who entered repayment during or before federal fiscal year 1990; and

c. Defendant’s policy of disregarding uncontroverted sworn statements of borrowers which establish their eligibility for false certification discharges despite the complete absence of evidence to question borrower credibility;

5. Declaring the Department’s denial of ability-to-benefit false certification discharge applications based on its “corroborating evidence” standard stated in the 1995 and 2007 Dear Colleague letters, including the following, is and was arbitrary, capricious, an abuse of discretion, contrary to law, and otherwise not in accordance with the Higher Education Act, 20 U.S.C. §§ 1071-1099d, and its implementing regulations, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A):

a. Defendant’s standard that the absence of oversight agency findings of improper ATB practices at a school “raises an inference that no improper ATB practices were reported because none were taking place” at the school;

b. Defendant’s standard that this inference may only be overcome with evidence of corroborating statements of employees or other students, a high incidence of ATB false certification discharge applications from other borrowers who attended the same school as long as there is no evidence of collusion among them, the school’s withdrawal rates exceeding 33% at the relevant time, or the annual loan default rate for the school exceeding a specified percentage when the borrower entered repayment; and

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c. Defendant’s policy of disregarding uncontroverted sworn statements of borrowers which establish their eligibility for false certification discharges despite the complete absence of evidence to question borrower credibility;

6. Declaring that the Department is obligated to cease evaluating and/or denying ability-to-benefit false certification discharge applications based on its informal “corroborating evidence” policy as stated in the 1995 and 2007 Dear Colleague letters;

7. Ordering the Secretary to pay the cost 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

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

DATED: October 17, 2017 Respectfully submitted,

/s/ Andrew Kazakes
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