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11 RICHARD JOHNNEY, JR.

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

14 RICHARD JOHNNEY, JR.,) Case No.: 2:19-cv-641
15)
16 *Plaintiff,*) **COMPLAINT FOR REVIEW OF**
17 v.) **FINAL AGENCY ACTION AND FOR**
18) **DECLARATORY RELIEF**
19 BETSY DEVOS, in her official)
20 capacity as Secretary of the U.S)
21 Department of Education; U.S.)
22 DEPARTMENT OF EDUCATION;)
23 and U.S. DEPARTMENT OF)
24 JUSTICE,)
Defendants.)

25 **INTRODUCTION**

26 1. Plaintiff Richard M. Johnney, Jr. (“Plaintiff”) brings this action,
27 pursuant to 5 U.S.C. § 702, for judicial review of the denial of his Direct
28 Consolidation Loan application by the Secretary of the U.S. Department of

1 Education, the U.S. Department of Education, and the U.S. Department of Justice
2 (collectively “Defendants”). He also seeks a declaration, pursuant to 28 U.S.C. §§
3 2201-2202, that the Defendants’ denial of Direct Consolidation Loan applications
4 on the basis that the underlying federal student loan has been referred to the
5 Department of Justice for collection, even though the loan is not subject to any
6 judgment, is arbitrary, capricious, an abuse of discretion, contrary to law, and
7 otherwise not in accordance with the Higher Education Act, 20 U.S.C. §§ 1071-
8 1099d, and its implementing regulations in violation of the Administrative
9 Procedure Act, 5 U.S.C. § 706.

10 2. Sometime in February 1999, Plaintiff received a Federal Family
11 Education Loan (“FFEL”) program loan totaling around \$900 for his enrollment at
12 the now-defunct for-profit institution, Wright Business School, where he withdrew
13 after attending one month.

14 3. Plaintiff’s FFEL program loan fell into default sometime in July 2003.
15 As a result, his entire federal tax refund was offset at least twice. Plaintiff is
16 currently earning no income and seeks to continue his education so that he can take
17 better care of his fiancé, who is battling cancer, but he cannot afford to return to
18 school until his student loan is taken out of default and his federal financial aid
19 eligibility is reinstated.

20 4. Defendants now claim that Plaintiff’s defaulted student loan has an
21 outstanding balance of \$1600 and has been referred to the U.S. Department of
22 Justice (“DOJ”) for collection. No collection lawsuit has been initiated and no
23 judgment has been secured against Plaintiff for his defaulted loan.

24 5. The Higher Education Act (“HEA”) and its implementing regulations
25 state that a defaulted FFEL program loan is eligible for consolidation unless it is
26 subject to a judgment.

27 6. Since Plaintiff’s defaulted FFEL program loan meets all eligibility
28 criteria for consolidation into a Direct Consolidation Loan, including that it is not

1 subject to any judgment, Plaintiff submitted a Direct Consolidation Loan
2 application for his defaulted student loan in August 2018.

3 7. Or around September 7, 2018, Defendants denied Plaintiff's Direct
4 Consolidation Loan application on the grounds that the defaulted FFEL program
5 loan was ineligible for consolidation, which is contrary to the law.

6 8. Because of Defendants' refusal to grant Plaintiff's consolidation
7 application, he cannot get his FFEL program loan out of default except by paying
8 the entire amount due, which he cannot afford. Consequently, Plaintiff faces a
9 lifetime threat of tax refund offsets, wage garnishments and Social Security offsets
10 and he cannot obtain federal financial aid to return to school unless he pays off the
11 entire balance.

12 **JURISDICTION AND VENUE**

13 9. This court has subject matter jurisdiction over this matter pursuant to
14 28 U.S.C. § 1331, the Administrative Procedure Act, 5 U.S.C. § 702, and the
15 Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

16 10. Venue is proper in this Court because a substantial part of the events
17 giving rise to the claim occurred in this district and Plaintiff resides in this district.
18 28 U.S.C. § 1391(b)(2), 1391(e)(1).

19 **PARTIES**

20 11. Plaintiff RICHARD JOHNNEY, JR. resides in Los Angeles County,
21 California.

22 12. Defendant BETSY DEVOS is the Secretary (hereinafter, "the
23 Secretary") of the United States Department of Education. The Secretary oversees
24 all operations of the Department and the administration of the federal student loan
25 programs. She is sued in her official capacity.

26 13. Defendant UNITED STATES DEPARTMENT OF EDUCATION
27 (hereinafter, "ED") is an agency of the United States within the meaning of the
28 APA, 5 U.S.C. § 701(b)(1). It is responsible for overseeing and implementing rules

1 for the federal student aid program. Upon information and belief, ED is the holder
2 of Plaintiff's defaulted FFEL program loan.

3 14. Defendant UNITED STATES DEPARTMENT OF JUSTICE
4 ("DOJ") is an agency established in the Executive Branch of the United States
5 government. The DOJ is an agency within the meaning of 5 U.S.C. § 701(b)(1).
6 Upon information and belief, the DOJ is the holder of Plaintiff's defaulted FFEL
7 program loan.¹

8 **BACKGROUND**

9 **Federal Student Loan Programs**

10 15. Title IV of the Higher Education Act of 1965 ("HEA"), 20 U.S.C. §§
11 1070-1099d, charges the Secretary with the responsibility of administering and
12 overseeing the federal student loan programs, including the FFEL program and the
13 Direct Loan program

14 16. All FFEL program and Direct loans have been issued pursuant to a
15 Master Promissory Note ("MPN"). The MPN has been approved by the U.S.
16 Department of Education and provides that all terms of the note "will be
17 interpreted in accordance with the Higher Education Act of 1965 and...other
18 applicable federal statutes and regulations, and the guarantor's policies."

19 17. Under the FFEL program, private lenders issued student loans to
20 borrowers who met the eligibility criteria of the HEA. 20 U.S.C. §§ 1077, 1091(b).
21 These loans were insured by guaranty agencies and in turn reinsured by ED. 20
22 U.S.C. § 1078(b)-(c).

23 18. Under the Direct Loan program, federal student loans are made
24 directly by ED. As of July 1, 2010, all federal student loans are administered
25

26 ¹ Upon information and belief, the U.S. Department of Education and/or the U.S.
27 Department of Justice is the current holder of Plaintiff's defaulted FFEL program loan.
28 Since Plaintiff has not received confirmation of which agency is the holder of his
defaulted FFEL program loan, all allegations in this Complaint against Defendant
Department of Education are made equally against and the Department of Justice.

1 through the Direct Loan program.

2 19. When a borrower defaults on a FFEL program loan, the lender notifies
3 the guaranty agency of the default and the guaranty agency purchases the loan
4 from the lender. The guaranty agency can then recover its losses from ED. 20
5 U.S.C. § 1080; 34 C.F.R. 682.406. Upon payment of the loss to the guaranty
6 agency, ED subrogates all of the rights of the holder of the federal student loan and
7 is entitled to an assignment of the note.

8 20. When a borrower defaults on a FFEL program or Direct loan, the
9 entire balance of the loan (principal and interest) becomes immediately due. If the
10 loan holder places the defaulted loan with a collection agency, the borrower is
11 responsible for additional collection costs incurred.

12 21. The Secretary has promulgated regulations that dictate certain
13 procedures that guaranty agencies, collection agencies, and ED must follow in
14 administering the FFEL program and Direct Loan program. 34 C.F.R. Parts 682 *et*
15 *seq.* [FFEL] and 685 *et seq.* [Direct].

16 **Federal Student Loan Default and Litigation Referral to DOJ**

17 22. FFEL program and Direct loans are considered in default if a
18 borrower fails to make required payments for 270 days. 34 C.F.R. § 682.200
19 [FFEL]; 34 C.F.R. § 685.102(b) [Direct].

20 23. Federal student loan borrowers in default face serious debt collection
21 actions. Without a judgment, the government can garnish a borrower's wages,
22 seize the borrower's tax refund, or seize portions of federal benefits such as Social
23 Security.

24 24. In addition, federal student loan borrowers in default are barred from
25 obtaining new federal financial aid to go back to school in most circumstances.

26 25. A defaulted federal student loan can also be referred for collection to
27 the DOJ, which may initiate a collection lawsuit against a student loan borrower.
28 31 C.F.R. § 904.1.

1 26. While rehabilitation is one option to get a federal student loan out of
2 default, upon information and belief, Defendants will not enter into rehabilitation
3 agreements with borrowers once their loans have been referred to the DOJ for
4 collection.

5 27. When collecting on defaulted FFEL program and Direct loans, the
6 DOJ is subject to the HEA and federal regulations because the terms of the Master
7 Promissory Note for each type of loan require that it be interpreted in accordance
8 with the HEA and implementing regulations.

9 28. There is no statute of limitations for any collection action on federal
10 student loans. 20 U.S.C. § 1091a(a)(2); *see also* Pub. L. No. 102-26, 105 Stat. 123,
11 124 (Apr. 9, 1991).

12 29. Therefore, a borrower with a defaulted federal student loan is subject
13 to the government's forced collection efforts until the loan is taken out of default,
14 the loan is paid in full, or the borrower dies.

15 **Consolidating a Defaulted Federal Student Loan**

16 30. In order to get out of default, borrowers may consolidate eligible
17 defaulted FFEL program and Direct loans into a new Direct Consolidation Loan if
18 they have either made satisfactory repayment arrangements or they have agreed to
19 repay the Direct Consolidation Loan under an income-driven repayment plan. 34
20 C.F.R. § 682.201 (d)(1)(i)(A)(3) [FFEL]; 34 C.F.R. § 685.220 (d)(1)(i)(A)(3)
21 [Direct].

22 31. After consolidation, borrowers are once again eligible for federal
23 financial aid. They are no longer listed as currently in default on their credit
24 records and are no longer subject to tax offsets, wage garnishments, or federal
25 benefit offsets as long as they remain out of default. In addition, they are eligible
26 for income-driven repayment plans.

27 32. To be eligible for consolidation, a defaulted FFEL program or Direct
28 loan must:

1 a. “Not be subject to a judgment secured through litigation, unless
2 the judgment has been vacated.” 34 C.F.R. § 682.201(d)(1)(i)(B) [FFEL]; 34
3 C.F.R. § 685.220 (d)(1)(i)(B) [Direct]; *see also* 20 U.S.C. § 1078-3
4 (a)(3)(A)(i);

5 b. “Not be subject to an order for wage garnishment....” 34 C.F.R.
6 § 682.201(d)(1)(i)(C) [FFEL]; 34 C.F.R. §685.220(d)(1)(i)(C) [Direct]; *see*
7 *also* 20 U.S.C. § 1078-3 (a)(3)(A)(i); and

8 c. “Not be in default status resulting from a claim filed under §
9 682.412.” 34 C.F.R. § 682.201(d)(1)(i)(D) [FFEL].

10 32. Once a borrower has submitted a Direct Consolidation Loan
11 application for one or more eligible defaulted federal loans, including a defaulted
12 FFEL program loan, and made satisfactory repayment arrangements or agreed to
13 repay the consolidation loan under an income-driven repayment plan, the HEA and
14 regulations require Defendants to grant the application. The HEA and regulations
15 do not authorize Defendants to deny a Direct Consolidation Loan application on
16 the basis that one or more loans have been referred to the DOJ for collection when
17 the loan is not subject to any judgment and is otherwise eligible for consolidation.
18 Nor do the HEA and regulations grant Defendants discretion to deny Direct
19 Consolidation Loan applications for reasons other than those stated in the HEA and
20 regulations.

21 **FACTUAL ALLEGATIONS**

22 33. Plaintiff Richard Johnney, Jr. is 43 years old and resides in Long
23 Beach, County of Los Angeles.

24 34. Sometime in February 1999, Plaintiff enrolled in the Program
25 Professional Administrative Assistant program at Wright Business School
26 (“Wright”) in Overland Park, Kansas.

27 35. He had seen television advertisements for the school and was
28 interested in learning more about business accounting and computer programs in

1 order to improve his job opportunities.

2 36. In order to finance his enrollment at Wright, Plaintiff signed a FFEL
3 Master Promissory note and received two FFEL program loans totaling \$6,625.

4 37. After several weeks of attending classes, Plaintiff quickly became
5 disappointed with the quality of education at Wright. The school was located in a
6 strip mall and the classes were mismanaged due to a high turnover in the school's
7 leadership.

8 38. After around one month of attending classes, Plaintiff withdrew from
9 his program at Wright.

10 39. As a result, one of Plaintiff's FFEL program loans was cancelled. For
11 the second FFEL program loan, around \$900 was disbursed to the school and
12 remained outstanding for his attendance at Wright.

13 40. Plaintiff never returned to school or continued his education.

14 41. Plaintiff's FFEL program loan fell into default sometime in July 2003.

15 42. Since then, Plaintiff's federal tax refund has been offset at least twice
16 to collect on his defaulted student loan, which has made it difficult for Plaintiff to
17 care and pay for the basic living necessities of his fiancé, who is currently battling
18 cancer.

19 43. In July 2018, Plaintiff received a collection notice from the Law
20 Office of Jacquelyne Nguyen on behalf of the DOJ. The notice indicated that his
21 outstanding federal student debt balance has increased to \$1,596.46.

22 44. DOJ has not filed any lawsuit against Plaintiff to collect on the
23 defaulted FFEL program loan, nor has it obtained any judgment against Plaintiff.

24 45. Plaintiff wanted to continue his education and re-instate his eligibility
25 for federal financial aid so that he could improve his job opportunities and better
26 provide for his family. He also wanted to get out of default in order to avoid future
27 tax refund offsets.

28 46. In late August 2018, Plaintiff submitted a Direct Consolidation Loan

1 application to ED, seeking to consolidate his defaulted FFEL program loan. He
2 also submitted a request for an income-driven repayment plan. As part of the
3 application process, he chose Nelnet as his Direct Consolidation Loan servicer.

4 47. On or around September 7, 2018, Plaintiff received an email from
5 Nelnet denying Plaintiff's Direct Consolidation Loan application on the grounds
6 that "his servicer [had] informed" Nelnet that his defaulted FFEL program loan
7 was "not eligible for consolidation." The notice offered no specific facts or reasons
8 for the ineligibility determination.

9 48. Upon information and belief, Defendants have instructed federal loan
10 servicers who receive Direct Consolidation Loan applications to deny
11 consolidation applications from borrowers whose loans are eligible for
12 consolidation under the HEA and related regulations, but have been placed for
13 collection with DOJ, regardless of whether such loans are subject to a judgment.

14 49. Because his application was denied, Plaintiff currently remains in
15 default on his FFEL program loan and, as a result, he is ineligible for Title IV
16 financial aid and cannot afford to go back to college in order to improve his ability
17 to support his family.

18 50. Plaintiff's wages could be garnished and his future tax refunds could
19 be intercepted, which would cause him and his family severe financial hardship.

20 51. Plaintiff has no other remedy at law to obtain Defendants' compliance
21 with the HEA and federal regulations, other than through the relief sought in this
22 complaint.

23 **FIRST CAUSE OF ACTION**

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

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

27 53. Plaintiff's application for a Direct Consolidation Loan satisfied the
28 consolidation eligibility standards set forth in 20 U.S.C. § 1078-3(a) and 34 C.F.R.

1 § 682.201(d)(1) for his defaulted FFEL program loan.

2 54. The denial of Plaintiff's application for a Direct Consolidation Loan
3 on the grounds that his defaulted FFEL program loan was not eligible for
4 consolidation constitutes a final agency action, as defined by 5 U.S.C. § 704, and is
5 therefore reviewable under the Administrative Procedure Act.

6 55. Defendants' denial of Plaintiff's Direct Consolidation Loan
7 application was arbitrary, capricious, an abuse of discretion, contrary to law, and
8 otherwise not in accordance with the Higher Education Act, 20 U.S.C. §§ 1071-
9 1099d, and its implementing regulations, in violation of the Administrative
10 Procedure Act, 5 U.S.C. § 706(2)(A).

11 56. Plaintiff asks this court to declare that Defendants' denial of his Direct
12 Consolidation Loan application for his defaulted FFEL program loan was
13 unlawful, arbitrary, capricious, an abuse of discretion, contrary to law, and
14 otherwise not in accordance with the Higher Education Act, 20 U.S.C. §§ 1071-
15 1099d, and its implementing regulations, in violation of the Administrative
16 Procedure Act, 5 U.S.C. § 706(2)(A).

17 57. Plaintiff further asks this court to compel the Defendants to cease
18 involuntary collection efforts on Plaintiff's defaulted FFEL program loan.

19 58. Finally, Plaintiff asks this court to reverse Defendants' denial of his
20 Direct Consolidation Loan application and compel Defendants to grant his
21 application, pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 702 and
22 706(1) and (2)(A).

23 **SECOND CAUSE OF ACTION**

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

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

27 60. Plaintiff seeks a declaratory judgment, pursuant to 28 U.S.C. §§ 2201-
28 2202, that Defendants have violated and continue to violate the Administrative

1 Procedure Act, 5 U.S.C. § 706(2)(A), and the Higher Education Act, 20 U.S.C. §§
2 1071-1099d, and its implementing regulations by denying Direct Consolidation
3 Loan applications for defaulted FFEL program and Direct loans that have been
4 referred to the DOJ for collection, even though those defaulted loans are not
5 subject to a judgment and are otherwise eligible for consolidation.

6 **PRAYER FOR RELIEF**

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

9 1. Declaring that Defendants' denial of Plaintiff's Direct Consolidation
10 Loan application was arbitrary, capricious, an abuse of discretion, contrary to law,
11 and otherwise not in accordance with the Higher Education Act, 20 U.S.C. §§
12 1071-1099d, and its implementing regulations, in violation of 5 U.S.C. § 706(2);

13 2. Reversing the Defendants' final decision denying Plaintiff's Direct
14 Consolidation Loan application pursuant to 5 U.S.C. § 706(2);

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

16 a. Cease involuntary collection efforts on Plaintiff's defaulted
17 FFEL program loan; and

18 b. Grant Plaintiff's Direct Consolidation Loan application;

19 4. Holding unlawful and declaring pursuant to 28 U.S.C. §§ 2201-2202
20 that Defendants have violated and continue to violate the Administrative Procedure
21 Act, 5 U.S.C. § 706(2)(A), and the Higher Education Act, 20 U.S.C. §§ 1071-
22 1099d, and its implementing regulations by denying Direct Consolidation Loan
23 applications for defaulted FFEL program and Direct loans that have been referred
24 to the DOJ for collection, even though those defaulted loans are not subject to a
25 judgment and are otherwise eligible for consolidation;

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

1 7. Granting such other and further relief as the Court may deem just and
2 proper.

3
4 DATED: January 28, 2019 Respectfully submitted,

5
6
7 /s/ Josephine Lee

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