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23 *Attorneys for Plaintiff*
 24 SARAH DIEFFENBACHER

25 UNITED STATES DISTRICT COURT
 26 CENTRAL DISTRICT OF CALIFORNIA

27 SARAH DIEFFENBACHER,
 28 *Plaintiff,*
 v.
 BETSY DEVOS, in her official
 capacity as Secretary of the United
 States Department of Education,
Defendant.

Case No.: 5:17-cv-00342-VAP-KK

**PLAINTIFF’S NOTICE OF
 MOTION AND MOTION TO
 DEEM FACTS IN PLAINTIFF’S
 FIRST AMENDED COMPLAINT
 ADMITTED**

Hearing Date: September 10, 2018
 Hearing Time: 2:00 p.m.
 Ctrm: 8A
 Hon.: Virginia A. Phillips

1 **TO THE HONORABLE COURT AND TO ALL PARTIES:**

2 PLEASE TAKE NOTICE that on September 10, 2018, at 2:00 p.m. or as
3 soon thereafter as this matter may be heard in the above-titled Court located at 350
4 West 1st Street, Los Angeles, California, 90012, Plaintiff Sarah Dieffenbacher will
5 move this Court, pursuant to Fed. R. Civ. P. 8(b)(6) and Fed. R. Civ. P. 15(a)(3) to
6 deem all facts in Plaintiffs' unopposed First Amended Complaint admitted, ECF
7 No. 73, and to set an expedited deadline for Defendant to file the administrative
8 record.

9 This motion is made upon this Notice, the attached Memorandum of Points
10 and Authorities, documents already on record with the Court in this action, and
11 upon such oral argument as may be presented at the hearing of this motion.

12 This motion is made following the conference of counsel.

13
14 Dated: August 7, 2018

15
16 Respectfully submitted,

17
18 /s/ Joshua D. Rovenger

19 Eileen M. Connor
20 Deanne B. Loonin
21 Toby R. Merrill
22 Joshua D. Rovenger

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*Attorneys for Plaintiff Sarah
Dieffenbacher*

1 For over three years, Plaintiff Sarah Dieffenbacher has challenged the
2 enforceability of federal student loans that she used to attend a Corinthian College
3 program from which she received negative value. On July 16, 2018, she filed a First
4 Amended Complaint reasserting that challenge and seeking a declaration that her
5 loans are unenforceable. Dkt. No. 73. Despite refusing to fully discharge this
6 unlawful debt, and despite her consistent attempts to escape judicial review,
7 Defendant Betsy DeVos is now choosing to simply ignore Plaintiff's pleas. Indeed,
8 Defendant's response to Plaintiff's amended complaint was due on July 30, 2018,
9 Fed. R. Civ. P. 15(a)(3), but Defendant has failed to file anything.

10 The Court should not countenance Defendant's failure to comply with the
11 rules and should instead issue an order deeming all facts in Plaintiff's First Amended
12 Complaint admitted. *First*, the facts are considered admitted under the Federal Rules
13 of Civil Procedure which state that "an allegation – other than one relating to the
14 amount of damages – is admitted if a responsive pleading is required and the
15 allegation is not denied." Fed. R. Civ. P. 8(b)(6). *Second*, Defendant has routinely
16 ignored procedural rules in this litigation. *Finally*, a substantial number of facts in
17 the amended complaint were undisputed at summary judgment, and thus an order
18 deeming the remaining facts admitted would constitute a mild rebuke of Defendant.

19 **BACKGROUND**

20 As this Court is familiar with the background of this dispute, Ms.
21 Dieffenbacher will address only the most pertinent facts and procedural history here.

22 On February 23, 2017, Plaintiff filed this suit against Betsy DeVos, in her
23 official capacity as Secretary of the Department, ("Defendant") pursuant to the
24 Administrative Procedure Act ("APA"), 5 U.S.C. § 702, and the Declaratory
25 Judgment Act, 28 U.S.C. § 2201, to challenge a January 30, 2017 final
26 administrative wage garnishment decision ("January 2017 decision") denying
27 Plaintiff's objections to the legal enforceability of her student loans and authorizing
28 wage garnishment. *Id.* at 12.

1 On April 2, 2018, Plaintiff filed a motion for summary judgment. *See* Doc.
2 Nos. 49, 52. The same day, Defendant filed a motion to dismiss under Fed. R. Civ.
3 P. 12(h)(3). Doc. No. 53. On May 4, 2018, the Court granted Defendants’ Motion
4 to Dismiss with prejudice. Doc No. 63.

5 Plaintiff asked the Court to reconsider its decision on May 21, 2018. Doc.
6 No. 65. On June 27, 2018, the Court granted that motion because “Plaintiff has
7 demonstrated that the Court erred in dismissing the case with prejudice rather than
8 leave to amend.” Doc. No. 72 at 7. The Court accordingly ordered Plaintiff to “file
9 her amended complaint no later than July 16, 2018,” *id.* at 8, and she did so, Doc.
10 No. 73. Defendant’s deadline to file a responsive pleading was July 30, 2018. Fed.
11 R. Civ. P. 15(a)(3). Defendant neither requested an extension for her responsive
12 pleading nor filed anything with the Court. When Plaintiff notified Defendant of her
13 intent to file this motion, Defendant represented to counsel that she did not plan to
14 file an answer until at least next week, and she did not seek consent on a motion
15 *nunc pro tunc* for an extension of time to file an answer.

16 **THE COURT SHOULD DEEM ALL FACTS IN PLAINTIFF’S FIRST**
17 **AMENDED COMPLAINT ADMITTED**

18 The Federal Rules of Civil Procedure are clear: “Unless the court orders
19 otherwise, any required response to an amended pleading *must* be made within the
20 time remaining to respond to the original pleading or within 14 days after service of
21 the amended pleading, whichever is later.” Fed. R. Civ. P. 15(a)(3) (emphasis
22 added). The Rules also state that “[a]n allegation – other than one relating to the
23 amount of damages – is admitted if a responsive pleading is required and the
24 allegation is not denied.” Fed. R. Civ. P. 8(b)(6). Here, the Defendant has failed to
25 deny the factual allegations in the following paragraphs: 1-11, 15-16, 42, 45-46, 48,
26 53-55, 57-58, 69-231. The Court should accordingly deem these facts admitted.

27 *First*, by operation of the federal rules, these facts are now admitted. *See, e.g.,*
28 *Henricks v. Pickaway Correctional Instit.*, No. 2:08-CV-580, 2016 WL 4705647 at

1 *4 (S.D. Ohio Sept. 8, 2016) (granting a motion in limine to preclude defendants
2 from offering evidence denying facts that had been deemed admitted under Rule
3 8(b)(6) by failing to answer the complaint); *Gomez v. United States*, No. 09-22148-
4 civ, 2010 WL 3834211 (S.D Fla. Sept. 28, 2010) (granting, in part, a motion to deem
5 certain allegations admitted because they were not expressly denied in the
6 complaint); *see also Burlington N. R. Co. v. Huddleston*, 94 F.3d 1413, 1415 (10th
7 Cir. 1996) (“By failing to submit an answer or other pleading denying the factual
8 allegations of Plaintiff’s complaint, Defendant admitted those allegations, thus
9 placing no further burden on Plaintiff to provide its case factually”). As this Court
10 has stated, “Rule violations aren’t taken lightly,” as the Rules were “designed to
11 further the due process of law that the Constitution guarantees,” and “neither the
12 federal courts nor the parties have any more discretion to disregard their mandates
13 than they do to disregard constitutional or statutory provisions.” *State Comp. Ins.*
14 *Fund v. Capen*, No. SACV1501279AGJCGX, 2016 WL 9083270, at *1–2 (C.D.
15 Cal. Dec. 16, 2016) (internal quotation marks and citations omitted). This is
16 particularly true when dealing with a rule that uses mandatory language, such as
17 Rule 15(a)(3).

18 *Second*, this order is appropriate in light of Defendant’s past litigation
19 conduct. For example, the Defendant disregarded her deadline to file her reply to
20 her motion to dismiss and she did not request additional time to file that reply.
21 Instead, she filed the brief late with “apologizes for the late filing of this reply brief.”
22 Dkt. No. 57 at 2. And, Defendant has engaged in “both frivolous” and “bad faith”
23 litigation tactics to “evade judicial review.” Dkt. No. 31 at 6-7. These violations
24 are not without cost; Plaintiff’s invalid loans are back in repayment and she is
25 prejudiced by the continued delay in resolving the underlying merits of her claim.
26 Absent any consequences for her actions, the Defendant is likely to persist in her
27 misconduct at Plaintiff’s expense.

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