

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THERESA SWEET, CHENELLE
ARCHIBALD, DANIEL DEEGAN,
SAMUEL HOOD, TRESA APODACA,
ALICIA DAVIS, and JESSICA
JACOBSON, individually and on behalf of
all other similarly situated,

No. C 19-03674 WHA

Plaintiffs,

**ORDER GRANTING PRELIMINARY
SETTLEMENT APPROVAL**

v.

ELISABETH DEVOS, in her official
capacity as Secretary of the United States
Department of Education, and the UNITED
STATES DEPARTMENT OF
EDUCATION,

Defendants.

INTRODUCTION

In this class action under the Higher Education and Administrative Procedure Acts, plaintiffs seek to compel unlawfully delayed agency action. While cross motions for summary judgment remain fully briefed but undecided, the parties seek preliminary approval of a class settlement. Because the proposal offers adequate relief, preliminary approval is **GRANTED**.

STATEMENT

Prior orders summarize the facts of this case (Dkt. No. 46). The Department of Education offers federal financial aid to increase access to postsecondary education. To protect students from school misbehavior, the “borrower defense rules” let the Secretary cancel certain student

1 federal loan debt. 20 U.S.C. § 1070 *et seq.* Following a wave of these borrower defense claims
2 in 2015, the Department appointed a special master to adjudicate claims and updated the
3 decision process. 81 FED. REG. 39,335; *see* 34 C.F.R. §§ 685.206, 685.222 (2018). Despite the
4 Department’s effort, by June 2018, more than one hundred thousand claims pending. Then the
5 decisions stopped. By June 2019, more than two hundred thousand claims languished. For
6 *eighteen months*, until December 2019, as this action gained steam, the Secretary issued no
7 decisions (AR 397–404).

8 Plaintiffs Theresa Sweet, Chenelle Archibald, Daniel Deegan, Samuel Hood, Tresa
9 Apodaca, Alicia Davis, and Jessica Jacobson filed borrower defense claims. They contend the
10 Department unlawfully stonewalled them and sued in June 2019 to compel the Secretary to
11 begin deciding applications again. An October 2019 order certified a nationwide class of
12 borrower defense claimants who still awaited decision and were not already members of
13 *Calvillo Manriquez v. DeVos*, No. C 17-07210 SK, 2018 WL 5316175 (N.D. Cal. Oct. 15,
14 2018) (Magistrate Judge Sallie Kim).

15 Following cross motions for summary judgment, the parties resumed settlement
16 discussions before Magistrate Judge Donna M. Ryu. Following several sessions, the parties
17 now present their proposed settlement for preliminary approval. This order follows a hearing,
18 telephonic due to the public health concern cause by COVID-19.

19 ANALYSIS

20 A settlement purporting to bind absent class members must be fair, reasonable, and
21 adequate. FRCP 23(e). Preliminary approval is appropriate if “the proposed settlement appears
22 to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies,
23 does not improperly grant preferential treatment to class representatives or segments of the
24 class, and falls within the range of possible approval.” *In re Tableware Antitrust Litig.*, 484 F.
25 Supp. 2d 1078, 1079 (N.D. Cal. 2007) (Chief Judge Vaughn Walker). Here, the proposed
26 settlement rates as adequate.

27 *First*, it sets a timeline to resolve pending claims. The Department will decide claims and
28 notify borrowers within eighteen months of final approval and implement relief within twenty

1 one, for claims filed by April 7, 2020. In the meantime, while a class member’s claim pends,
2 the Department (and its agents and contractors) will not collect the debt and will provide a
3 credit for any interest accrued. Then, for those claims already decided, yet notice unsend by
4 April 7, the Department will notify borrowers within three months and affect relief within six.

5 *Second*, the proposal provides for effective enforcement. Directly, it sets hefty penalties
6 for the Department’s failure. Every month of delayed decision, notification, or relief will
7 discharge 30% of the relevant debt, prorated by day. Improper debt collection would result in
8 an 80% discharge. Indirectly, the proposal sets meaningful reporting requirements. Within a
9 week of final approval, the Department will report the class size and the number already found
10 eligible for relief. Every 90 days until the Department finishes, it will report: (1) how many
11 borrower defense decisions it has made; (2) how many borrowers got relief; (3) the names of
12 schools subject to borrower defense findings; and (4) the status of decisions on applications
13 regarding schools being the subject of 100 or more applications. And to give this teeth, a late
14 90-day report means the Department will have to report monthly from then on.

15 *Third*, the proposal reflects serious, non-collusive negotiation. The proposed scope of
16 waiver is adequately narrow. Plaintiffs agree to waive all money damages claims or other
17 potential claims arising from the Department’s delay, claims whose viability remains dubious
18 anyway. But the settlement does not compromise the *substance* of class members’ borrower
19 defense claims and they retain the right to sue over the Department’s final disposition. The
20 proposal also doesn’t include a fee award, which is left to the Court’s discretion.


21 Finally, notice to the class must be “reasonably calculated, under all the circumstances, to
22 apprise interested parties of the pendency of the action and afford them an opportunity to
23 present their objections.” *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, 314
24 (1950). Class notice will be distributed via 1st class mail to all borrowers and via email to those
25 borrowers whose email addresses the Department has. Notice will also be posted to
26 StudentAid.gov, class counsel’s website, and to various legal aid groups across the country.
27 This rates as adequate.
28

CONCLUSION

The proposed settlement adequate at this stage, preliminary approval is **GRANTED** subject to final approval. The parties shall distribute class notice as described above. But, given this order directs the Department to distribute notice via 1st class mail *and* email, instead of primarily via email and alternatively by 1st class mail for those borrowers whose email addresses the Department lacks, more time to distribute notice may be needed. The parties shall please jointly inform the Court by **MAY 28 AT NOON** of a deadline the Department can reasonably adhere to. An order setting the final approval fairness hearing and related deadlines will then follow.

IT IS SO ORDERED.

Dated: May 22, 2020.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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Northern District of California

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