UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DIANA VARA, AMANDA WILSON, NOEMY SANTIAGO, KENNYA CABRERA, and INDRANI MANOO, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

ELISABETH P. DEVOS, in her official capacity as Secretary of the United States Department of Education,

and

THE UNITED STATES DEPARTMENT OF EDUCATION,

Defendants.

Civil Action No. 19-12175-LTS

PLAINTIFFS' MOTION FOR JUDGMENT

Plaintiffs Diana Vara, Amanda Wilson, Noemy Santiago, Kennya Cabrera, and Indrani Manoo, on behalf of themselves and all others similarly situated, respectfully request that this Court hold the Secretary of Education's denial of their group application for loan discharge to be arbitrary, capricious, and contrary to law. After the Massachusetts Attorney General's Office submitted a defense to repayment application on behalf of over 7,200 former students of Massachusetts-based Corinthian Colleges, Inc. schools in 2015—following Corinthian's undisputed fraud, misconduct, and violations of state law, which renders Plaintiffs' loans unenforceable—the Secretary has constructively denied that application, arguing that it is not a valid invocation of the borrower defense remedy in spite of this Court's clear holding otherwise.

See Williams v. DeVos, No. 16-11949-LTS, 2018 WL 5281741 (Oct. 24, 2018). For the reasons discussed in the accompanying memorandum of law, the Attorney General's group submission is a valid borrower defense application, the Department must render a reasoned decision on it, and any decision failing to grant full relief—complete loan cancellation and return of any money paid on the loans—to the putative Plaintiff class would be arbitrary, capricious, and contrary to law.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor, and declare Plaintiffs' loans unenforceable as a matter of law.

Respectfully submitted,

By: */s/ Toby R. Merrill*
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Dated: January 29, 2020

Local Rule 7.1 Certification

Plaintiffs' counsel have discussed the basis of this motion with Defendants' counsel and have been unable to resolve the issues briefed herein.

/s/ Toby R. Merrill
Toby R. Merrill

Dated: January 29, 2020

MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT

This case is about whether the Secretary of Education may deny, without rendering a reasoned decision as required by law, an application for loan discharge covering over 7,200 individuals who attended Corinthian Colleges, Inc. ("Corinthian"), in Massachusetts—an application that this Court has already determined to be valid. Plaintiffs in this case are a proposed class of former students who borrowed federal student loans to attend Massachusetts Corinthian schools between 2007 and 2014, and seek relief on those loans in light of Corinthian's undisputed fraud and misconduct. In November 2015, after the Massachusetts Attorney General's Office ("AGO") brought suit against Corinthian for its extensive violations of Massachusetts consumer protection laws, the AGO submitted a defense to repayment ("DTR") application to the Secretary on behalf of over 7,200 former students (Plaintiffs), providing their full names, contact information, programs of study, dates of enrollment, and graduation statuses. The Secretary has stated that she will not render a decision on that group submission, contending that it does not represent a valid borrower defense application on behalf of the putative class of students named within.

In Williams v. DeVos, No. 16-11949-LTS, 2018 WL 5281741 (Oct. 24, 2018), this Court held that the AGO's submission was valid, and that the Secretary was required to act on the applications of two individuals named within. Id. at *12 ("the Court finds that Attorney General Healey's DTR submission was sufficient to require the Secretary to determine the validity of the plaintiffs' borrower defense"); id. at *15 ("Attorney General Healey's letter . . . required the Secretary to render a decision on the merits"). Nonetheless, the Secretary continues to maintain that the group submission was invalid, and refuses to render a reasoned decision on the applications of the other former students named by the AGO. Moreover, given Corinthian's extraordinary and pervasive violations of consumer protection laws, as detailed by the AGO and

the Department of Education itself, the Secretary's constructive denial of relief on the AGO's submission amounts to facially implausible decisionmaking and must not be allowed to stand. Consequently, Plaintiffs respectfully request that this Court hold the Secretary's actions to be arbitrary, capricious, and contrary to law, and grant relief to Plaintiffs.

BACKGROUND

I. Procedural History

In September 2016, Darnell Williams and Yessenia Taveras, two former students of Corinthian schools in Massachusetts, filed suit in this District pursuant to the Administrative Procedure Act ("APA") and the Declaratory Judgment Act challenging the Secretary's certification of their federal student loan debts for collection through Treasury offset. See generally Williams, No. 16-11949-LTS, ECF 1. The plaintiffs in that case chiefly asserted that the Secretary could not have lawfully determined that their loans were enforceable, because at the time that the Secretary certified their debts, she had in her possession a valid defense to repayment ("DTR") application submitted by the AGO, supported by significant evidence that the loans were not enforceable due to Corinthian's violations of state law. See id.

The parties in Williams cross-moved for judgment on the merits. On October 24, 2018, this Court concluded that the plaintiffs' claims were ripe for court review because "Attorney General Healey's DTR submission to Education . . . invoked the administrative remedy of Education's review process such that Education was required to adjudicate the request." Williams, 2018 WL 5281741, at *10. The Court further held that the Secretary's argument that the AGO could not represent her citizens through a group DTR application was "plainly wrong, as established by Education's own documents and black-letter law." Id. at *11; see id. at *12 (individual requests from each borrower not required by law). Ultimately, this Court concluded that the AGO's DTR submission "was sufficient to require the Secretary to determine the

validity of the plaintiffs' borrower defense." Id. Because the Secretary had refused to render a reasoned decision on the plaintiffs' applications, this Court found that:

> The Secretary acted arbitrarily and capriciously by (1) ignoring or refusing to consider the DTR prior to certifying the plaintiffs' loans for tax refund offsets; (2) failing to determine whether Williams and Taveras, in light of the administrative record and the DTR, had established valid borrower defenses as defined in Education's regulations; and (3) failing to issue a reasoned decision on either of these points. . . .
>
> [S]uch a request was within Attorney General Healey's authority to make . . . [and] was not precluded by federal regulations, even in the absence of an attachment of a personal request emanating from each individual borrower.

Id. at *14, *15. The Court further declared that the DTR submission "required the Secretary to render a decision on the merits . . ." and remanded the matter for consideration of the DTR. Id. at *15. The Department did not appeal this final order.

After the Williams ruling, the Department refused to comply with the judgment of validity on the AGO's DTR application with respect to anyone other than the two plaintiffs, stating, "the Secretary does not interpret the Court's October 24, 2018 Order . . . as requiring the Department of Education to take any action with respect to any individuals other than the two named Plaintiffs in this matter." Ex. 10 to Stipulations of Fact, Letter from Department of Justice to AGO (ECF 33-10). Seeking to compel the Secretary to act on the DTR as to all 7,200 students listed within, the AGO moved to compel compliance with this Court's order or, in the alternative, to intervene in the Williams action. Stipulations of Fact (ECF 33) (hereinafter "Stipulations") ¶ 25; see generally Williams v. DeVos, No. 16-11949-LTS, 2019 WL 7592345 (Aug. 8, 2019). The Court denied the AGO's motion, concluding that the proper course of action was to file a new lawsuit, which "would likely present many of the same or similar claims or defenses and involve substantially the same questions of fact and law." Williams, 2019 WL

7592345, at *2 (internal quotation marks omitted). The Court suggested that such a lawsuit would "proceed expeditiously." Id.

Following the August 8, 2019 order in Williams, both the AGO and Plaintiffs in the present case filed separate lawsuits before this Court, seeking a judgment ordering the Secretary to act on the DTR as to all former students named within, and a declaration finding their federal student loans to be non-enforceable. The parties have filed a joint stipulation of undisputed facts with attached exhibits, see ECF 33, and this case is ripe for adjudication on the merits.

II. Borrower Defense to Repayment

As relevant to the putative class, the right of borrower defense conditions the legal enforceability of federal student loans on state law claims that borrowers have against their schools related to their loans. A borrower defense entitles a borrower to relief. The right to this relief arises from three sources of law. First, the Higher Education Act ("HEA") directs the Secretary to "specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment" of a federal student loan. 20 U.S.C. § 1087e(h). Second, Department regulations provide that "[i]n any proceeding to collect on a Direct Loan, the borrower may assert as a defense against repayment, any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law." 34 C.F.R. § 685.206(c) (eff. until Oct. 16, 2018); accord 34 C.F.R. § 685.206(c) (eff. Oct. 16, 2018). Third, loan contracts for federal student loans provide equivalent language. See, e.g., ECF 32-3, at 16 (Promissory Note) ("you may assert, as a defense against collection of your loan, that the school did something wrong or failed to do something that it should have done. . . . if what the school did or did not do would give rise to a legal cause of action against the school under applicable state law."); accord 81 Fed. Reg. 75,936 (Nov. 1, 2016) ("Loans made before July 1, 2017 are governed by the contractual rights

expressed in the existing Direct Loan promissory notes."). The statutory, regulatory, and contractual provisions establishing borrower defense have been in place since the 1990s. See Student Loan Reform Act of 1993, Pub. L. No. 103-66, § 455(h), 107 Stat. 312, 351 (1993); 59 Fed. Reg. 61664-01 (Dec. 1, 1994).

The Secretary assures protections from collection during the pendency of borrower defense claims. See Williams, 2018 WL 5281741, at *8 ("The Secretary acknowledges that '[w]hen Education receives a borrower defense to the collection of a loan through [the Treasury Offset Program], it chooses to remove the loan from 'active' certification [for tax refund offset] . . .'" [emphasis omitted]); see also Office of Inspector Gen., U.S. Dep't of Educ., Federal Student Aid's Borrower Defense to Repayment Loan Discharge Process, No. ED-OIG 104R0003 at 8 (Dec. 8, 2017), https://perma.cc/5QYV-B2F2 (upon receipt of borrower defense application, Department "notified loan servicers to place borrowers' loans into forbearance"); Office of Federal Student Aid, Borrower Defense to Repayment, https://perma.cc/Y9RY-GQDM (accessed January 28, 2020) ("Within the [borrower defense] application, you may select to have your federal student loans placed into forbearance or stopped collections status while your application is reviewed by ED. . . . [Y]our loans will be placed in forbearance, and collections will cease on any of your loans that are in default while your application is evaluated.").

III. Factual Background

A. Background About Corinthian Colleges, Inc.

The Secretary is in possession of significant evidence of Corinthian's misconduct from multiple sources, including her own investigation. In 2013, the Department began investigating Corinthian for falsification of the school's published job placement rates. U.S. Dep't of Educ., First Report of the Special Master for Borrower Defense to the Under Secretary 4 (Sept. 3, 2015), https://perma.cc/8RMB-5VBJ ("First Special Master Report"). In June 2014, the

Department sanctioned Corinthian for failure to cooperate with this investigation by placing the school on "heightened cash monitoring," meaning that the company would be subject to more stringent regulatory and financial oversight. Id. A month later, the company announced that it would cease operations "as soon as possible." Id. In April 2015, the Department announced a $29,665,000 fine against Corinthian for falsification of job placement rates at its California campuses. Letter from Robin Minor, U.S. Dep't of Educ., to Jack Massimino, Corinthian Colleges, Inc., (Apr. 14, 2015), https://perma.cc/J6AQ-38PY. The Department found that, for years, Corinthian made "substantial misrepresentations" to students, in "blatant disregard" of governing law, with "severe" potential harm to students. Id. at 10–11. That same month, Corinthian filed for Chapter 11 bankruptcy. Stipulations ¶ 5.

In 2015, the Department announced the appointment of a Special Master for Borrower Defense "[a]s a next step to provide students who attended Corinthian Colleges the debt relief they are entitled to." Press Release, U.S. Dep't of Educ., Education Department Appoints Special Master to Inform Debt Relief Process (June 25, 2015), https://perma.cc/RP5Q-9F9S. In his first public report in September 2015, the Special Master stated his intent to work with state attorneys general to further investigate borrower defense claims:

> Over the coming months . . . I expect to . . . [f]urther engage State Attorneys General and other enforcement agencies to discuss pending or past investigations they may have pursued against career colleges; evidence of wrongdoing emerging from those investigations that may be relevant to the Department's borrower defense process; and their own state statutes and case law as it relates to wrongdoing relevant for borrower defense claims. I will also create processes by which the State Attorneys General can submit evidence developed through their investigatory findings, so that wherever possible, like claims can be treated together and alike.

First Special Master Report at 10–11.

During the same timeframe, the AGO investigated, took legal action, and ultimately won a judgment against Corinthian for its pervasive misconduct against consumers. On April 3,

2014, the AGO sued Corinthian for years of extensive violations of Massachusetts consumer protection laws. Ex. 1 to Stipulations, Complaint, Massachusetts v. Corinthian Colls., Inc., No. 14-1093 (Mass. Super. Ct. Apr. 3, 2014) (ECF 33-1). In its Complaint, the AGO detailed the manner in which Corinthian "deceived and misled the public and prospective students in order to aggressively enroll students at its Massachusetts campuses with the goal of increasing . . . profits," including through misrepresentations of job placement, employment opportunities, graduates' earnings, career services assistance, quality of programs, transferability of credits, and availability of externships. Id. at 2. The AGO won summary judgment against the company on June 6, 2016, on a motion that included a supporting statement of undisputed facts, affidavits, and exhibits. Ex. 2 to Stipulations, Order Allowing Summary Judgment (ECF 33-2). The court entered findings and judgment on August 1, 2016, ordering restitution of $67,333,091. Ex. 3 to Stipulations, Findings and Order for Entry of Judgment (ECF 33-3). This award represented all costs paid by all graduates of Everest Institute who enrolled between July 1, 2007 and June 30, 2014—including Plaintiffs—and reflected the court's conclusion that restitution was appropriate to "restor[e] these consumers to the position they were in prior to [Corinthian's] unfair or deceptive acts or practices[.]"[1] Id. Importantly, the AGO repeatedly updated the Secretary about its litigation and provided evidence filed in the case, on November 30, 2015, January 29, 2016, and after the August 1, 2016 entry of judgment. See Williams, No. 16-11949-LTS, ECF 29 at 2 (Brief Amicus Curiae of the AGO); id., ECF 29-1 at 2–3 (Decl. of AAG Jennifer Snow).

In March 2016, the Department announced a pathway to relief for thousands of students who attended Corinthian campuses in Massachusetts and elsewhere. Press Release, U.S. Dep't

[1] Because Corinthian was insolvent, the AGO has not been able to collect on its judgment.

of Educ., U.S. Department of Education Announces Path for Debt Relief for Students at 91 Additional Corinthian Campuses (Mar. 25, 2016) ("Corinthian Debt Relief Announcement"), https://perma.cc/266L-Y7DX. The Department explained that "evidence uncovered by the Department while working with multiple state attorneys general" led it to create a "clear path to loan forgiveness" for Massachusetts Corinthian borrowers. Id. The Secretary specifically stated that Attorney General Healey "was instrumental in bringing forward evidence that Corinthian's two Everest Institute campuses in Massachusetts—Chelsea and Brighton—misrepresented their job placement rates to enrolled and prospective students." Id. The Secretary explained:

> Corinthian was more worried about profits than about students' lives[.] . . . Through these important partnerships with states' attorneys general, we are pleased to offer relief to Corinthian students who were defrauded. And we will continue to take action to protect students and taxpayers from unscrupulous companies trying to profit off of students who simply want to better their lives.

Id. The Department's Special Master also reported that month that he was pursuing "allegations of misrepresentation [at Corinthian], including false or misleading statements by school staff regarding employment prospects, the cost of attendance, amount of debt to be incurred, curriculum (including externships), career placement support, qualifications for job licensure, and transferability of course credits" reported against Corinthian. U.S. Dep't of Educ., Third Report of the Special Master for Borrower Defense to the Under Secretary 6–7 (Mar. 25, 2016), https://perma.cc/28GB-F66Z.

B. Specific Facts Concerning Plaintiffs and the AGO's DTR Application

On November 30, 2015, the AGO submitted to the Department a defense to repayment application for all putative class members in this action. See Ex. 4 to Stipulations, Letter from AGO to the Secretary of Education, "Re: Group Discharge of Federal Loans to Corinthian Students" ("AGO Letter") (ECF 33-4). Within the application, the AGO detailed the basis for loan cancellation in a 60-page memorandum, see Ex. 5 to Stipulations (ECF 33-5), which

explained "the ways Corinthian had violated Massachusetts laws and deceived Everest students." Williams, 2018 WL 5281741, at *5. For example:

> [A]ccording to the DTR, Corinthian misrepresented its in-field placement rates at Everest, which Corinthian advertised as 'often in excess of 70%' . . . when actual in-field placement rates were as low as 20 to 40 percent depending on the program . . . Corinthian promised 'programs specifically designed to provide hands-on training' but, in reality, most training at Everest was 'self-taught instruction from workbooks.' . . . [I]nstructors were 'unqualified, uninformed, and unconcerned with teaching.' . . . [S]tudents found the school environment to be 'a free-for-all,' 'unprofessional,' and 'neglectful.'

Id. The DTR application also included significant supporting evidence, in the form of 34 exhibits and 12 appendices, including a 189-page submission concerning over 30 individual Corinthian students in Massachusetts. Stipulations ¶ 12; Ex. 6 to Stipulations, Student Submissions (ECF 33-6).

The application seeks "immediate discharge of federal . . . loans taken in connection with Corinthian['s] Massachusetts Everest Institute campuses" pursuant to borrower defense to repayment, AGO Letter (ECF 33-4); summarizes evidence collected by the AGO in the course of its years-long investigation of Everest, including records from Everest, the school's accreditor, its successor, lenders, former students and employees, id. at 2; demonstrates how Everest "routinely and systemically" violated Massachusetts law, Ex. 5 to Stipulations, AGO DTR Application, at 12 (ECF 33-5); and concludes that "Corinthian engaged in a pattern of unfair and deceptive conduct in violation of Massachusetts Consumer Protection laws," such that "[f]ull discharge of the relevant federal student loans is the only way to remedy the harm the affected students have suffered." Id. at 58.

Exhibit 4 to the DTR specifically names Plaintiffs for loan discharge and specifies their full names, addresses, phone numbers, e-mail addresses, enrollment status, dates of enrollment, dates of graduation, and campus and program(s) attended of 7,241 students. Stipulations ¶ 13.

The AGO specified that group discharge was warranted because of "significant hurdles" that borrowers face in submitting individual claims, including the difficulty of "gathering . . . required documentation . . . particularly in the case of a closed school," and that "[i]t is well beyond the resources of borrowers to investigate cohort placement rates or aggregate witness statements." AGO DTR Application at 3–4 (ECF 33-5).

The Secretary acknowledged receipt of the DTR submission in a response to the AGO. Stipulations ¶ 14; Ex. 7 to Stipulations, Decl. of David Michael Page (ECF 33-7). Nonetheless, on December 15, 2017, a representative of the Department testified under oath that "Education did not consider the list of 7,200 names provided in Exhibit 4 to constitute individualized applications for Borrower Defense discharge and did not consider students listed in Exhibit 4 as having applied for borrower defense discharge." Stipulations ¶ 17. And the Secretary has stated that the Department will continue to seek collection on unpaid federal student loans from students named in the DTR application, in spite of this Court's ruling in Williams declaring that the AGO's application constituted a valid borrower defense. Id. ¶ 19.

STANDARD OF REVIEW

Pursuant to the APA, a reviewing court shall "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[.]" 5 U.S.C. § 706(2). On review pursuant to the APA's arbitrary and capricious standard, a court must "carefully review[] the record [to] satisfy[] [itself] that the agency has made a reasoned decision," Marsh v. Oregon Nat. Res. Council, 490 U.S. 360, 378 (1989), meaning one evincing a "rational connection between the facts found and the choice made." Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (citation omitted). An agency decision fails this test if the administrative record reveals that "the agency relied on improper factors, failed to consider pertinent aspects of

the problem, offered a rationale contradicting the evidence before it, or reached a conclusion so implausible that it cannot be attributed to a difference of opinion or the application of agency expertise." Assoc'd Fisheries of Me., Inc. v. Daley, 127 F.3d 104, 109 (1st Cir. 1997). An agency may not "'preclude judicial review by casting its decision in the form of inaction rather than in the form of an order denying relief,'" accompanied by a reasoned decision as required by law. Williams, 2018 WL 5281741, at *9 (quoting Envtl. Def. Fund, Inc. v. Hardin, 428 F.2d 1093, 1099 (D.C. Cir. 1970)).

ARGUMENT

I. The Secretary's constructive denial of the AGO's borrower defense application was arbitrary, capricious, and contrary to law.

A meritorious borrower defense application vitiates an individual's obligation to repay student loans. See 34 C.F.R. § 685.206(c) (eff. until Oct. 16, 2018). The evidence and analysis conducted by the Department itself, as well as the extensive findings included within the AGO's DTR submission, squarely demonstrate that Plaintiffs' loans are not enforceable because they are subject to valid borrower defenses. In other words, the AGO's submission makes clear that Corinthian's conduct "give[s] rise to a cause of action against the school" under Massachusetts law for all former students, including Plaintiffs. 34 C.F.R. § 685.206(c).

As this Court decided in Williams and as discussed below, the AGO's DTR submission represents a valid borrower defense application on behalf of all former Corinthian students named therein. The Secretary has constructively denied that application without making a reasoned decision, in violation of the APA. Furthermore, any decision that fails to grant full relief to Plaintiffs would be wholly arbitrary and capricious on this record, given Corinthian's numerous, undisputed violations of state consumer protection law.

A. Plaintiffs have valid, pending borrower defense claims with the Department.

On November 30, 2015, the AGO submitted a defense to repayment application on behalf of over 7,200 former Corinthian students in Massachusetts, specifically naming all of them (Plaintiffs) in a request for immediate discharge. Williams, 2018 WL 5281741, at *4, *5; see Stipulations ¶¶ 11, 13. The Attorney General is the Commonwealth's chief law enforcement officer, who has statutory authority to interpret and enforce the Commonwealth's consumer protection laws. See Mass. Gen. Laws ch. 93A, §§ 2, 4. In Williams, this Court acknowledged the Attorney General's authority to "represent her citizens in administrative proceedings," recognizing that she may "seek the lawful objectives of [those whom she represents] through reasonably available means permitted by law," and rejected the Secretary's argument that the AGO could not submit a DTR on behalf of Plaintiffs. 2018 WL 5281741, at *11.

Nothing about the form of the AGO's submission undermines its status as a valid borrower defense application. This Court has already "reject[ed] the Secretary's assertion that Attorney General Healey needed a signed statement (or its equivalent) from each individual borrower before the DTR could invoke borrower defense proceedings on each identified student's behalf." Id. at *12. And it remains true that "no statute or regulation…explicitly prohibits an attorney general from asserting a borrower defense request on behalf of her citizens." Id. at *11.

Moreover, the Department acknowledges that it has the authority to cancel loans under the borrower defense provision even in the absence of *any* application from the borrower. In its 2016 Final Rule regarding borrower defense, the Department specifically addressed and rejected the argument that it lacked statutory authority for group discharge:

> Some commenters argued that . . . section 455(h) of the HEA specifically limits the Department's authority to specifying the acts or omissions that an individual borrower, as opposed to a group, may assert as a defense to repayment. These

> commenters argued that the creation of a process that would award relief to a borrower who has not asserted a defense to repayment exceeds the Department's statutory authority. . . . We disagree . . . We believe that . . . discretion afforded the Secretary under the statute . . . allows it to determine borrower defense claims on a group basis and to establish such processes and procedures [for group discharge.]

2016 Final Rule, 81 Fed. Reg. 75,926, 75,964–65 (Nov. 1, 2016).

Notably, the Secretary granted a similar group application submitted by the AGO several months after the AGO's Corinthian submission, discharging thousands of loans without individual applications. See Press Release, U.S. Dep't of Educ., American Career Institute Borrowers to Receive Automatic Group Relief for Federal Student Loans (Jan. 13, 2017), https://perma.cc/Q2HY-3GFL; Press Release, Mass. Att'y Gen., AG Healey Submits Application to the U.S. Department of Education to Cancel Loans for Thousands of For-Profit Schools Students (July 26, 2016), https://perma.cc/4D2X-FVYY; see Williams, 2018 WL 5281741, at *12 (rejecting "Secretary's argument that the borrower defense regulation does not allow group applications"); Ex. 11 to Stipulations, Recommendation for Full Borrower Defense Relief for Borrowers Who Attended American Career Institute's Massachusetts Campuses, at 1 ("ACI Recommendation") (ECF 33-11) ("the Borrower Defense Unit recommends providing full borrower defense relief to all borrowers who attended ACI's Massachusetts campuses").[2]

B. The Department is obligated to render a reasoned decision on the AGO's DTR submission.

In Williams, after concluding that the AGO's DTR submission was an application on behalf of everyone named therein, this Court held that the Secretary was "required . . . to render a

[2] In Williams, the Secretary pointed to the Department's new regulations that were not yet in effect at the time of briefing in that case. 2018 WL 5281741, at *13 n.21. These regulations became effective October 16, 2018, prior to the Court's ruling in Williams. The Secretary has not indicated that regulatory change precludes consideration of the AGO's DTR.

decision on the merits of [the plaintiffs'] borrower defenses." 2018 WL 5281741, at *15. The Court concluded that it was arbitrary and capricious for the Secretary to "fail[] to determine whether [the plaintiffs], in light of the administrative record and the DTR, had established valid borrower defenses as defined in Education's regulations; and . . . failing to issue a reasoned decision[.]" The same result must follow here.

In this case, the Secretary has made clear that she will not render a decision on Plaintiffs' group application submitted by the AGO, and has thus constructively denied the application. This fact is undisputed in the record. See Stipulations ¶ 17 ("Education did not consider the list of 7,200 names provided in Exhibit 4 to constitute individualized applications for Borrower Defense discharge and did not consider students listed in Exhibit 4 as having applied for Borrower Defense discharge"); Answer to Second Amended Complaint ("Ans.") ¶¶ 16–17, 41, 166 (denying that AGO's DTR submission constituted a borrower defense application).[3]

The Secretary's constructive denial of the AGO's DTR submission is underscored by the fact that the Department continues to collect on federal student loans for former Corinthian students. See Ans. ¶ 5 ("Education continues to collect on loans of those former Everest MA students who have not personally applied for Borrower Defense or other types of student loan

[3] After Plaintiff Noemy Santiago was added as a Plaintiff in this action, see Amended Complaint (ECF 28), the Department filed a declaration on January 23, 2020, stating that "Education sent to Santiago's current address a letter acknowledging that the November 30, 2015, submission by Massachusetts Attorney General to Education will be considered to initiate a borrower defense application submitted on her behalf." Decl. of Cristin Bulman ¶ 20 (ECF 34). The letter expressly reserves the right to challenge the legal validity of the AGO's DTR, and bears no indication that the Secretary now considers the DTR as a group application on behalf of the class. See January 22, 2020 Letter from Department of Education to Noemy Santiago, attached as Exhibit 1. The Secretary's request for additional evidence from Ms. Santiago further confirms that the Department does not deem the AGO's DTR as sufficient in and of itself to entitle any putative class member to relief.

discharges."). This includes Plaintiff Vara, whose wages and tax refunds were seized through July 2019, see Decl. of Diana Vara, ECF 11-1, and Plaintiff Wilson, whose tax refund was seized in March 2019, see Decl. of Amanda Wilson, ECF 11-2, in spite of the AGO's 2015 application.[4]

The APA requires that "[p]rompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding . . . accompanied by a brief statement of the grounds for denial." 5 U.S.C. § 555(e). Yet the Secretary has refused to provide an acceptable rationale for failing to grant the AGO's group application, and, by its own admission, defying the Williams ruling on the application's validity by continuing with collections procedures. This is insufficient to show "that the agency has made a reasoned decision"—that is, a decision "based on a consideration of the relevant factors." Marsh, 490 U.S. at 378.

In sum, this Court should not permit the Secretary to deny Plaintiffs' borrower defense remedy without making a reasoned decision as required by law. "[W]hen administrative inaction has precisely the same impact on the rights of the parties as denial of relief, an agency cannot preclude judicial review by casting its decision in the form of inaction rather than in the form of an order denying relief." Envtl. Def. Fund, Inc., 428 F.2d at 1099. As in Williams, where this Court observed that "Education's failure to provide notice and an explanation of its decision is the very definition of arbitrary and capricious agency action," 2018 WL 5281741, at *14, the Court should find that the Secretary has failed to meet her obligation of rendering a reasoned decision on the AGO's application.

[4] These and other collections against members of the putative class, occurring after the receipt of the AGO's DTR, "necessarily reject[] any borrower defense the submission presented." Williams, 2018 WL 5281741, at *10.

C. The Secretary's refusal to grant Plaintiffs full relief in these circumstances is arbitrary and capricious.

State law provides the basis for borrower defense for all federal loans at issue in this case. 34 C.F.R. § 685.206(c) (eff. until Oct. 16, 2018); 34 C.F.R. § 682.209(g). The particular statute in question is the Massachusetts Consumer Protection Act, Mass. Gen. Laws ch. 93A, § 2, which prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce[.]" The AGO is expressly authorized to make rules and regulations interpreting ch. 93A. Id., § 2(c).

The Consumer Protection Act is capacious and interpreted broadly. "[A] practice is 'deceptive,' for purposes of G. L. c. 93A, if it could reasonably be found to have caused a person to act differently from the way he [or she] otherwise would have acted." Aspinall v. Philip Morris Cos., Inc., 813 N.E.2d 476, 486-487 (Mass. 2004) (internal quotation marks omitted). Deceptive advertising on its own may effect a "per se injury on consumers[.]" Id. at 492; see Williams, 2018 WL 5281741, at *13 ("detrimental reliance is not required to succeed on a claim under Chapter 93A"). Moreover, numerous regulations promulgated by the AGO prohibit certain conduct by for-profit schools operating in the Commonwealth, including deceptive advertising, false representation as to earnings, misrepresentation as to opportunities, false representation as to "limited time offers," enrollment of unqualified students, and deceptive advertising language in general. See AGO DTR Application at 11–12 (ECF 33-5).

The AGO has exhaustively and conclusively established Corinthian's violations of state law in this case, as well as the harm suffered by Plaintiffs. In its DTR application, the AGO detailed to the Secretary "a program based on predation and lies . . . [and] a pervasive violation of Massachusetts law." AGO Letter (ECF 33-4). The AGO explained that, after an extensive investigation, it found "widespread misrepresentations regarding job placement rates," "little or

no career placement assistance provided" despite guaranteed support, and "widespread deception by Corinthian on nearly every aspect of its offerings, from the earnings of graduates, to the nature and quality of the instruction, the availability of externships, and the transferability of credits." Id. The AGO established that Corinthian wildly falsified graduation job placement rates—advertising rates as high as 70% to 100%—and guaranteed jobs to applicants, even though actual placement rates were as low as 23%. AGO DTR Application at 18–22 (ECF 33-5). The AGO's findings revealed that students were promised "life-long job placement services," when in reality, Corinthian provided "little or no help" to students and graduates looking for jobs. Id. at 25. The investigation showed that Corinthian engaged in high pressure sales tactics, calling prospective students multiple times per day to inform them that space was limited and that they needed to enroll immediately. Id. at 28–31. Corinthian regularly informed prospective students that they would earn wages "as high as amounts between $16 and $25 per hour," but data obtained by the AGO proved that graduates of the dental assisting and medical assisting programs who found jobs in their field earned median wages of under $14 per hour. Id. at 43–46. Corinthian further misrepresented a promise of hands-on learning, when in fact, courses often simply consisted of memorizing a textbook. See id. at 32–36. Moreover, Corinthian lied to prospective students that credits from its programs would transfer to "any accredited school," which was false. Id. at 46–48.

The Department's own investigation into Corinthian confirmed AGO findings. In 2015, the Department announced that Corinthian had misstated job placement rates for specific programs such that students borrowing to attend those programs are presumptively entitled to full loan cancellation pursuant to borrower defense. See Press Release, U.S. Dep't of Educ., Fact Sheet: Protecting Students from Abusive Career Colleges: Administration Outlines New Debt

Relief Process for Corinthian Colleges' Students (June 8, 2015), https://perma.cc/9PJX-DVQZ. In March 2016, the Department expanded the pool of Corinthian students who it concluded were presumptively eligible for defense to repayment, including students who attended Corinthian schools in Massachusetts. See Corinthian Debt Relief Announcement, supra. In its March 2016 announcement, in accordance with the AGO's findings, the Department cited evidence of widespread fraud, including blatant falsification of job placement data, highlighting the need to "make it possible to provide relief to defrauded Corinthian students." Id. The Department's announcement covered "more than 100" Corinthian campuses nationwide. Id.

The Department was also in possession of an exhaustive investigation conducted by attorneys from the Legal Services Center of Harvard Law School, who provided the Department with a "Statement of Law and Common Facts" in connection with borrower defense submissions of former Massachusetts Corinthian students. Stipulations ¶ 20. The investigation resulted from interviews with over 80 former students and information compiled by the Consumer Financial Protection Bureau, the California and Massachusetts Attorneys General, and the Department of Education itself. Ex. 8 to Stipulations, Statement of Law and Common Facts in Support of Defense to Repayment Applications (ECF 33-8). The evidenced adduced by this investigation included an analysis by expert labor market economist Russell Williams, who determined that "attending Everest typically led to wages that were lower than the median earning for a worker with only high school education experience." Id. at 26. Williams concluded that, even for students who found employment in their field of study, "the approximately $15,000 investment in [Corinthian] programs from such students would never be economically recouped." Id. at 27.

These uncontradicted findings leave no doubt that Corinthian violated the Consumer Protection Act with respect to Plaintiffs, and that Plaintiffs' federal student loans are thus

unenforceable. See 34 C.F.R. § 685.206(c). The appropriate measure of such relief is full restitution. In its DTR submission, the AGO emphasized that its findings justified "a swift, automatic, and complete discharge of all federal loans for every Corinthian student in Massachusetts . . . [including] refunds on loan payments previously made[.]" AGO Letter (ECF 33-4); see Findings and Order for Entry of Judgment at 4 (ECF 33-3) (awarding restitution damages "restoring these consumers to the position they were in prior to the unfair or deceptive acts or practices"). And the Department recently recognized that defrauded students who attended American Career Institute campuses in Massachusetts were entitled to "full relief" under Massachusetts state law—that is, "at a minimum, the amount paid by the student to attend the school." ACI Recommendation at 9–11 (ECF 33-11). The Department noted that "relief without individual applications" was appropriate "because the MA AGO has identified all eligible borrowers and the Department has all necessary evidence to show that these borrowers were subject to ACI's substantial and pervasive misrepresentations." Id. at 7.

Full restitution includes not only cancellation of outstanding loans, but return of amounts previously paid or collected on the loans. And under the APA, all members of the putative class are entitled to this financial relief. See United States v. Hughes, 813 F.3d 1007, 1010–11 (D.C. Cir. 2016) (ordering, in APA action, return of funds seized through invalid use of TOP); see generally Bowen v. Massachusetts, 487 U.S. 879, 883–901 (1988) (concluding that APA plaintiffs may win relief that has monetary aspects).

For these reasons, it would be manifestly arbitrary and capricious for the Secretary to render any decision on the merits of the AGO's DTR submission that does not result in Plaintiffs receiving full restitution as relief. Because the Secretary has already constructively denied this relief, the Court should set aside that decision and order that relief be granted. See Assoc'd

Fisheries of Me., Inc., 127 F.3d at 109 (court must set aside agency decision "so implausible that it cannot be attributed to a difference of opinion or the application of agency expertise").

II. The Court should grant Plaintiffs relief.

In addition to specific relief under the APA, Plaintiffs are entitled to a declaration, pursuant to the Declaratory Judgment Act, stating that they have successfully established a complete defense to the repayment of all federal student loans associated with Corinthian schools in Massachusetts. The declaration should state that every certification of legal enforceability for treasury offset and every wage garnishment order issued by the Department since November 30, 2015 against any member of the putative class is unlawful.

State law provides the basis for relief in this case. Mass. Gen. Laws ch. 93A, the Consumer Protection Act, entitles victims of consumer fraud to both money damages and equitable relief. See M.G.L. ch. 93A, § 9; accord ACI Recommendation at 7–10 (applying ch. 93A to eligibility and relief determinations under 34 C.F.R. § 685.206(c)). Accordingly, Plaintiffs are entitled to full restitution of money paid, voluntarily or involuntarily, to satisfy their student loans in connection with attending Corinthian schools. The Court should direct the Secretary to return those funds.

CONCLUSION

For the foregoing reasons, the Court should enter judgment for Plaintiffs, and declare Plaintiffs' loans not enforceable.

Respectfully submitted,

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Dated: January 29, 2020

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon counsel for all parties of record through the CM/ECF system on January 29, 2020.

/s/ Toby R. Merrill
Toby R. Merrill

Dated: January 29, 2020