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11 Attorneys for Plaintiff
12 United States of America

13 IN THE UNITED STATES DISTRICT COURT

14 EASTERN DISTRICT OF CALIFORNIA

15
16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 PATRICIA A. SIMMONS, ESQ.,

20 Defendant.

21 CASE NO. 2:17-CV-01374-TLN-DB

22 **SETTLEMENT AGREEMENT; AND
23 ORDER APPROVING SETTLEMENT**

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25 **I. PARTIES**

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27 1. The parties, by their authorized representatives, hereby agree to resolve the
28 allegations contained in the United States' complaint for student loan default (ECF No. 1)
against defendant Patricia A. Simmons, Esq., as set forth below. The Parties submit this
settlement agreement for the Court's review and approval.

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30 **II. BACKGROUND/ALLEGATIONS**

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32 2. Defendant resides in and maintains a law practice within this district.

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34 3. On August 6, 2003, Defendant executed a Promissory Note to secure a Federal
35 Direct Consolidation loan from the U.S. Department of Education (the ED). Defendant's total
36 loan amount was \$106,423.65 at 8.25% interest per annum. The ED disbursed the loan proceeds

for Defendant's benefit on August 29, 2003.

4. Defendant defaulted on the loan on November 25, 2010. Pursuant to 34 C.F.R. § 685.202(b), a total of \$56,389.84 in unpaid interest was capitalized and added to the principal balance.

5. Although the United States demanded payment for the unpaid loan, Defendant failed to repay the defaulted loan amount when and as due. The ED has credited Defendant a total of \$7,302.92 in payments from all sources, including Treasury Department offsets, towards her loan balance. As of June 15, 2017, Defendant owes the United States \$256,850.10, representing \$162,164.23 in unpaid principal and \$94,685.87 in interest. Interest continues to accrue on the principal sum at a daily rate of \$36.63.

6. Pursuant to the Promissory Note, the United States is entitled to recover attorney fees and costs to compensate it for its litigation fees and expenses.

7. Defendant admits the complaint's allegations.

III. TERMS AND CONDITIONS

8. In consideration of their mutual promises and covenants, and the Defendant's admission as stated in paragraph 7, above, the Parties agree to resolve the complaint upon the following terms (the Agreement):

A. Entry of Judgment. Defendant consents to entry of judgment in favor of the United States in the amount of \$256,850.10 plus 2% interest per annum, compounded annually (the Judgment Amount). Defendant has reviewed and “approved as to form and content” the judgment lodged with the Court and shall satisfy the Judgment Amount via the payment plan set forth below.

B. Judgment Enforcement and Satisfaction. The United States will record abstracts of judgment in the counties where Defendant has, or may have interests in real property. Other than recording abstracts of judgment, the United States agrees that it will not seek to enforce its judgment except as stated herein provided Defendant complies with this

1 Agreement's terms. Upon Defendant's fulfillment of the Agreement, the United States will file a
2 satisfaction of judgment with the Court.

3 C. Payment schedule. Defendants shall pay the Judgment Amount to the
4 United States on the dates, in the amounts, and in the manner as follows:

- 5 i. July 15, 2017, \$500.
- 6 ii. August 15, 2017, and continuing on the fifteenth day of each
7 consecutive month thereafter, until the judgment is satisfied, \$250.
- 8 iii. By July 1, 2017, the Defendant shall list and market for sale her
9 real property located at 308 McNabe Court, Suisun City, CA
10 94585 (the Suisun City Property), and pay the net sales proceeds
11 through escrow.

12 D. Payment procedure. Defendant shall make her payments to the United
13 States using one of the secure methods the United States Treasury Department provides at its
14 URL: <https://www.pay.gov>. There is no prepayment penalty and Defendant is encouraged to
15 accelerate her payments as her financial situation allows. She will receive dollar-for-dollar credit
16 for all accelerated payments she makes.

17 E. Treasury Offset Program (TOP). The United States will enter Defendant
18 into the TOP until the Judgment Amount is paid in full or Defendant complies with paragraph
19 8F, below, whichever occurs first. She will receive dollar-for-dollar credit for the monies the
20 United States withholds pursuant to the TOP.

21 F. Sale of real property. Defendant shall list the Suisun City Property for
22 sale by July 1, 2017. All occupants must have vacated the property by August 21, 2017. By July
23 1, 2017, Defendant shall deliver to the United States—in accordance with paragraph 8H of this
24 Agreement—copies of the documents associated with the sale including, but not limited to: the
25 listing agreement with a California licensed broker; all pertinent information about the home;
26 comparable sales; and a fair market value list price. The sales commission may not exceed six
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1 percent (6%) of the sales price and the listing agent must list the home for sale on the Multiple
2 Listings Service and exercise reasonable diligence in marketing and showing the property for
3 sale. Defendant shall deliver to the United States all purchase offers and all amendments and
4 counter-offers related thereto. She may not reject reasonable purchase offers. Once the Property
5 is in escrow, the United States shall be entitled to a copy of the: buyer's pre-approval letter; an
6 appraisal report; preliminary title report; settlement statement; and any other documents
7 deposited into escrow. All sales proceeds remaining after payment of (if applicable) bona fide
8 transaction costs and commissions, the lender's deed of trust, and liens senior to the United
9 States' abstract of judgment from this case, shall be paid as stated in paragraph 8D, above, or as
10 the United States otherwise directs.

12 G. Satisfaction of Judgment. The United States will file a satisfaction of
13 judgment in this case once the Defendant pays the Judgment Amount in full or complies with
14 paragraph 8F, above, whichever occurs first.

16 H. Default. Defendant shall be in default if she fails to make a timely
17 payment or comply with the Sale of Real Property related paragraphs above, and thereafter fails
18 to cure the default within twenty (20) days from the date the United States mails written notice of
19 the deficiency to Defendant at the address stated in paragraph 8I, below. If Defendant fails to
20 cure her default, the United States may declare any unpaid balance immediately due and owing
21 and proceed with collections efforts against her. No further notice is required. If the United
22 States is required to enforce the judgment, Defendant agrees to a litigation surcharge of ten (10)
23 percent of the balance owing to compensate the United States for its collections costs as
24 authorized by 28 U.S.C. § 3011(a) of the Federal Debt Collection Procedures Act.

26 I. Written Notice. Except as provided elsewhere in this Agreement,

1 whenever written notice is required, the notice shall be addressed and mailed, via certified mail,
2 to the individuals identified below, unless those individuals or their successors give notice of a
3 change of address to the other party in writing.

4 As to the United States:

5 Kurt A. Didier
6 Assistant United States Attorney
7 United States Attorney's Office
8 501 I Street, Suite 10-100
9 Sacramento, CA 95814
Phone: 916-554-2700
Facsimile: 916-554-2900

10 As to Defendant:

11 William J. Campbell, Jr., Esq.
12 Fitzgerald & Campbell
13 400 N Tustin Ave., Ste., 375
Santa Ana, CA 92705-3830
Phone: 855-709-5788
Facsimile: 855-672-5058

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15 The 20 day cure period provided by the default notices referenced in paragraph 8H, above,
16 commences from the date the United States mails a default notice to Defendant. All other
17 notices shall be considered effective upon receipt.

18 9. In consideration of Defendant's undertakings, and subject to the exceptions stated
19 below, the United States fully and finally releases Defendant and agrees to settle and relinquish
20 all claims it may have against her arising from the subject matter of this action.

21 10. Defendant fully and finally releases the United States, its agencies, employees,
22 servants, and agents from any claims (including attorney's fees, costs, and expenses of every
23 kind and however denominated) which Defendant asserted, could have asserted, or may assert in
24 the future against the United States, its agencies, employees, servants, and agents, related to the
25 prosecution and settlement of this case.

1 11. Defendant warrants that she: has reviewed her financial situation; currently is
2 solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I); and shall remain
3 solvent following her payments to the United States as set forth in paragraph 8C (Payment
4 schedule), above. Defendant warrants further that this Agreement does not presently impose an
5 undue hardship upon her or her dependents within the meaning of 11 U.S.C. § 523(a)(8) and
6 applicable case law. More specifically, that: Defendant can make the Payment schedule
7 payments and maintain, based on her current income and expenses, a minimal standard of living
8 for herself and her dependents; no additional circumstances exist indicating that she cannot make
9 the settlement payments while maintaining a minimal standard for herself; and without a change
10 in circumstances, a default on the settlement payments would demonstrate a lack of a good faith
11 effort to repay this student loan debt.

12 12. This Agreement is for the Parties' benefit only.

13 13. The Parties agree to execute and deliver such other and further documents as may
14 be required to carry out this Agreement's terms.

15 14. Each Party and signatory to this Agreement represents that he or she has
16 completely read, fully understands, and voluntarily accepts the Agreement's terms following an
17 opportunity for review by legal counsel of his or her choice.

18 15. Each party further warrants and represents that no party or its representative has
19 made any promise, representation or warranty, express or implied, except as set forth in this
20 Agreement and that each party has not relied on any inducements, promises or representations
21 made by any party to this Agreement, or its representatives, or to any other person, except as
22 expressly set forth herein.

23 16. The Parties negotiated this Agreement, each of whom had the opportunity to
24 participate in its drafting. It is therefore the Parties' intent that the words of this Agreement shall
25 be construed as a whole so as to effect their fair meaning and not for, or against any party in any
26 subsequent dispute, the Parties having waived the benefit of California Civil Code § 1654 and
27 similar laws.

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17. Each party to this Agreement represents and warrants that each person whose signature appears in this Agreement has the full authority to execute this Agreement on behalf of the person, persons or entity who is a party to this Agreement.

18. This Agreement is governed by the laws of the United States; and, to the extent state law applies, by California law.

19. This Agreement constitutes the complete agreement between the Parties. It may not be amended except by the Parties' written consent.

20. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect.

21. Except as stated otherwise in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this action, including the preparation and performance of this Agreement.

22. This Agreement may be executed in counterparts and circulated for signature by facsimile or electronic transmission. All such counterparts, together, shall be deemed one document. The Agreement is effective as of the date it is signed.

23. The Parties understand that as of the effective date, this Agreement will be a matter of public record.

FOR THE UNITED STATES OF AMERICA:

PHILLIP A. TALBERT
United States Attorney

Dated: July 6, 2017

By: /s/
KURT A. DIDIER
Assistant United States Attorney
Attorneys for the United States of America

1 **FOR DEFENDANT PATRICIA A. SIMMONS:**

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3 Dated: June 26, 2017

4 By: /s/
5 **PATRICIA A. SIMMONS**
6 An individual

7 **APPROVED AS TO FORM AND CONTENT:**

8 Dated: June 27, 2017

9 By: /s/
10 **WILLIAM J. CAMPBELL, JR., ESQ.**
11 Attorney for Defendant

ORDER

The Court, having reviewed the court files and parties' settlement agreement (the Agreement), and finding good cause therefrom, hereby APPROVES the terms of the Agreement. The stipulated entry of judgment as provided in the Agreement shall be entered as a separate judgment.

IT IS SO ORDERED.

Dated: July 12, 2017


Troy L. Nunley
United States District Judge