

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Brenda Kay Pfeiffer,)	
)	
On behalf of herself and all others similarly)	Civil No. 1:07-cv-00522 (EGS)
situated,)	
)	
<i>Plaintiff,</i>)	CLASS ACTION
v.)	
)	
Arne Duncan, in his official capacity as)	
United States Secretary of Education, the)	
United States Department of Education, and)	
the United States of America,)	
)	
<i>Defendants.</i>)	

PLAINTIFF’S RENEWED MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff Brenda Pfeiffer (“Dr. Pfeiffer”), on behalf of herself and all others similarly situated, and pursuant to Fed. R. Civ. P. 56, hereby moves the Court for partial summary judgment with respect the claim for breach of contract against defendants Arne Duncan, in his official capacity as United States Secretary of Education, the United States Department of Education, and the United States of America (collectively, “DOE”). In support of her renewed motion, Dr. Pfeiffer states as follows:

1. The construction of a contract such as a form promissory note is a question of law which is appropriately decided by this Court on a motion for summary judgment.
2. The form promissory notes executed by Dr. Pfeiffer and the proposed class state that DOE may capitalize interest if the borrower does not pay the interest when it is due:

Interest. Except for interest [DOE] does not charge me during an in-school, grace or deferment period, I agree to pay interest on the principal amount of my Direct Consolidation Loan from the date of disbursement until the loan is paid in full or discharged. [DOE] may add interest that accrues but is not paid when due to the

unpaid principal balance of this loan, as provided under the [Higher Education Act of 1965, as amended, 20 U.S.C. 1070 *et seq.*, and applicable Department of Education regulations]. This is called capitalization.

(emphasis added). The above-quoted provision is the only language in the form promissory note which addresses interest capitalization.

3. Notwithstanding the above language, DOE routinely capitalized interest before it was due. It did so for borrowers it considered negatively amortized who were repaying their loans under the Income Contingent Repayment Plan. For these borrowers, DOE capitalized accrued interest on June 30 each year, including interest accruing after the borrowers' June payment due date. The interest accruing after the borrowers' June payment due date, however, was not due until the borrowers' July payment due date. The capitalization of interest accruing after the borrowers' June payment date on June 30 each year constitutes a breach of the plain terms of the form promissory note.

4. In further support of her motion, Dr. Pfeiffer respectfully refers the Court to her accompanying statement of undisputed material facts, including exhibits attached thereto, and her memorandum in support of motion for partial summary judgment.

WHEREFORE, plaintiff Brenda Pfeiffer prays that the Court enter the following orders:

- (1) An order declaring that defendants' practice of capitalizing interest that accrues after each class member's June payment due date on June 30 each year constitutes a breach of the form promissory note;
- (2) An order enjoining defendants from continuing to capitalize interest before it is due;
- (3) An order directing the parties to meet to determine if the proper measure of damages may be agreed to by stipulation.

Dated: May 1, 2009

Respectfully submitted,

/s/ Steven M. Sprenger

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