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 10 **UNITED STATES DISTRICT COURT**  
 11 **CENTRAL DISTRICT OF CALIFORNIA**

12 SARAH DIEFFENBACHER,

13 *Plaintiff,*

14 v.

15 BETSY DEVOS, in her official  
 16 capacity as Secretary of the United  
 States Department of Education,  
 17

18 *Defendant.*

Case No.: 5:17-cv-342-VAP (KKKx)

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 21 **FEDERAL DEFENDANT’S**  
**RESPONSE TO ORDER TO SHOW**  
**CAUSE RE: DISMISSAL FOR LACK**  
**OF SUBJECT MATTER**  
**JURISDICTION**

Honorable Virginia A. Phillips

22 **I. INTRODUCTION**

23 Federal Defendant, Betsy DeVos, in her official capacity as Secretary of the  
 24 United States Department of Education (“DOE”), hereby responds to the Court’s  
 25 September 22, 2017 Order to Show Cause as to why this Administrative  
 26 Procedures Act, 5 U.S.C. § 702 (“APA”) action should not be dismissed for lack of  
 27 subject matter jurisdiction. Federal Defendant’s position is that because no final  
 28 agency decision currently exists for Plaintiff to challenge under the APA, this case  
 should be dismissed for lack of subject matter jurisdiction.

1           **II. RELEVANT BACKGROUND**

2           In this APA action, Plaintiff, Sarah Dieffenbacher, challenges DOE’S  
3 January 30, 2017 final agency decision to garnish her wages in order to collect on  
4 an outstanding student loan debt because her application to discharge that debt  
5 remains pending with DOE.

6           On June 15, 2017, DOE withdrew the challenged January 30, 2017  
7 administrative wage garnishment decision on the grounds that it failed to consider  
8 Plaintiff’s pending application for discharge of the student loan debt. (Dkt. No. 36-  
9 1, p. 2.) DOE’s June 15, 2017 interim decision was that (1) Plaintiff’s outstanding  
10 student loan debt will not be subject to collection while Plaintiff’s discharge  
11 application (or “borrower defense” application) remains pending, and (2) a “final  
12 agency decision” regarding wage garnishment will be rendered once DOE issues a  
13 decision on the pending discharge application. (*Id.*)

14           As set forth in Federal Defendant’s September 7, 2017 Status Report, a  
15 decision on the pending discharge application will be made on or before March 1,  
16 2018, and any interest accrued on the student loan debt since March 28, 2016 will  
17 be forgiven. (Dkt. No. 32, ¶ 6.)

18           **III. THIS APA ACTION SHOULD BE DISMISSED.**

19           The Complaint alleges that the Court’s jurisdiction over this matter is  
20 grounded in the APA. (Dkt. No.1, ¶ 6.) However, “[o]nly final agency decisions  
21 are subject to review under the APA.” Pacific Coast Fed. of Fishermen’s Ass’n,  
22 Inc. v. Nat’l Marine Fisheries Serv., 265 F.3d 1028, 1033 (9th Cir. 2001). In  
23 Pacific Coast, the Ninth Circuit reiterated that for an agency decision to be  
24 considered final, it should (1) “mark the consummation of the agency’s decision  
25 making process” and (2) “be one by which rights or obligations have been  
26 determined or from which legal consequences flow.” *Id.* (citing Ecology Center,  
27 Inc. v. United States Forest Service, 192 F.3d 922, 925-26 (9th Cir. 1999). Here  
28 there is no decision to meet the first prong of this test, and consequently there is no

1 final agency decision over which this Court has jurisdiction.

2 At this time, there is no DOE decision before the Court that consummates  
3 the agency's decision-making process for either Plaintiff's administrative wage  
4 garnishment, or her debt discharge application. The January 30, 2017 DOE  
5 administrative wage garnishment decision has been withdrawn. The June 15, 2017  
6 administrative wage garnishment decision is only a provisional one that it will be  
7 altered once a decision is rendered on Plaintiff's pending discharge application  
8 (which will occur on or before March 1, 2018). The tentative and/or interlocutory  
9 nature of the June 15, 2017 interim decision renders it non-final. See Bennett v.  
10 Spear, 117 S.Ct. 1154, 178 (1997). Accordingly, this APA action should be  
11 dismissed for lack of jurisdiction.

12 **IV. CONCLUSION**

13 For the foregoing reasons, it is Federal Defendant's position that the instant  
14 APA action should be dismissed for lack of jurisdiction.

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