

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE**

**SAINT CATHARINE COLLEGE, INC.,**

*Plaintiff,*

v.

**JOHN B. KING, JR.,** *in His Official Capacity as  
the Acting Secretary of the United States  
Department of Education, and*  
**KATHY FEITH,** *in Her Individual Capacity as  
an employee of the United States Department of  
Education,*

*Defendants.*

<b>ATTESTED</b> VANESSA L. ARMSTRONG, CLERK U.S. DISTRICT COURT W/D OF KENTUCKY  Date: Feb 22, 2016  Name: Jessie W. Mercer Deputy Clerk
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No. 3 : 16 - cv - 113 - GNS

**VERIFIED COMPLAINT**

1. Saint Catharine College ("SCC" or "the College") seeks declaratory, injunctive, and other relief, primarily to compel Defendant, the Secretary of the United States Department of Education ("Agency", "DoE", or "Secretary") to comply with the terms of the parties' written agreements related to, and the law governing, the College's participation in certain federal student aid ("FSA") programs established under Title IV of the Higher Education Act of 1965 ("HEA"), Pub. L. No. 89-329, 79 Stat. 1219.

2. During the past year, DoE has held SCC to ever-changing, arbitrary, capricious, unconstitutional, and *ultra vires* standards, moving the target each time SCC managed to meet the Agency's next unlawful demand. Specifically, citing unmet demands that have no basis in the HEA, the Agency's own regulations, or the parties' written agreement, the Agency has refused to reimburse SCC for hundreds of thousands of dollars in FSA that SCC disbursed to its students and for which it is lawfully entitled to reimbursement.

3. As a result of the Secretary's misconduct, SCC finds itself at the brink of extinction. Without the sought-after relief, Kentucky will lose an important non-profit institution of higher learning.

### **PARTIES**

4. Saint Catharine College, located in central Kentucky, was founded in 1931. The College traces its origins directly to the Kentucky Sisters of St. Dominic's first school, established at the location in 1823, which sought to educate rural students.

5. In 2004, SCC received approval from the Southern Association of Colleges and Schools Commission on Colleges ("SACS") for Level II status to offer baccalaureate degrees. The Dominican Sisters of Peace (members of the Order of Preachers (*i.e.*, the Dominicans) and vowed Catholic Sisters) continue to guide the College's presidential appointments and its overall mission.

6. That mission is to welcome all students to the challenging pursuit of truth, preparing them to become critical thinkers, ethical leaders, and engaged citizens, by living the four pillars of Dominican life: prayer, study, ministry, and community.

7. SCC achieves its goals by offering a graduate degree (a master's in leadership), a wide variety of undergraduate baccalaureate degrees (including bachelor degrees in field-based teacher education, biology, nursing and several other medical fields (including Kentucky's only radiation therapy program), criminal justice, fine arts, English, and the Berry Farming Program's bachelor of arts and of science in farming and ecological agrarianism), and several associate degrees (nursing, business, liberal arts, diagnostic sonography, and surgical technology). SCC's "Patriots" also participate in the typical array of varsity sports.

8. About half of SCC's roughly 600 residential and commuting undergraduate and graduate students come from low-income homes. Essentially all of them receive financial aid—including more than twenty school-operated endowed and funded scholarships and FSA.

9. During the nation's most difficult economic period since the Great Depression (2005 to 2011), SCC nevertheless continued to create new jobs. SCC currently employs roughly one hundred twenty-five people fulltime and dozens part-time.

10. SCC's economic impact during that period on both the rural tri-county area immediately surrounding the College and the Louisville, Kentucky, metropolitan statistical area ("MSA") was substantial, at around \$100 million and \$200 million, respectively. And SCC's presence generated about \$5 million in taxes.

11. The total human capital impact to date of the increased earnings that SCC graduates have earned because of their degrees is nearly \$1.5 *billion*, with about half of that affecting the local area because so many SCC graduates remain close to the college.

12. At all relevant times, SCC was an institution of higher education as defined in the HEA and its implementing regulations. *See* 20 U.S.C. §§ 1001–02; 34 C.F.R. § 600.4(a).

13. At all relevant times, SCC was authorized by the Kentucky Council on Postsecondary Education, the official coordinator of Kentucky's postsecondary education system, to provide its postsecondary education programs. *See* 34 C.F.R. § 600.9.

14. At all relevant times, SCC was fully accredited by the Southern Association of Colleges and Schools, Commission on Colleges ("SACS"), a nationally recognized accrediting agency. *See* 20 U.S.C. § 1001; 34 C.F.R. § 600.2 (July 1, 2011).

15. At all relevant times, SCC was eligible to participate in all relevant FSA programs. *See* 34 C.F.R. § 600.2 (July 1, 2011).



16. At all relevant times, SCC was provisionally certified to participate in all relevant FSA programs. *See* 2012 PPA (*infra*); 34 C.F.R. § 668.13(c) (July 1, 2011).

17. DoE is an agency of the United States, 5 U.S.C. §§ 551(1) and 701(b)(1), headquartered at 400 Maryland Avenue SW, Washington, DC, 20202.

18. Kathy Feith, a resident of Peculiar, Cass County, Missouri, is an employee of the DoE and communicated with representatives of SCC while Feith acted within the scope of her authority as an employee of the DoE in 2015 and 2016.

### **JURISDICTION AND VENUE**

19. This Court has jurisdiction over the subject matter of this civil action and over Defendants, and venue is proper here because Plaintiff resides here and a substantial part of the events or omissions giving rise to the claim occurred here. *See* 5 U.S.C. §§ 702–03; 28 U.S.C. §§ 1331, 1361, and 1391(e).

### **FACTS**

20. On November 14, 2011, SCC’s Board of Trustees approved SCC’s Bachelor of Science in Radiation Therapy and Bachelor of Science in Radiologic Technology educational programs. As a result, those educational programs were included within the scope of SCC’s SACS accreditation and the Kentucky Council on Postsecondary Education’s (“CPE”) licensure.

21. In January 2012, SCC and the DoE entered into the parties’ 2012 Program Participation Agreement (“2012 PPA”) (attached as Ex. A). *See* 34 C.F.R. § 668.14.

22. Because SCC was eligible to participate in Title IV, HEA programs, the Secretary therein provisionally certified SCC to participate in Title IV, HEA programs. *Cf.* 34 C.F.R. § 600.2 (defining “Title IV, HEA program”); 34 C.F.R. § 668.1 (setting out all Title IV, HEA programs); 2012 PPA.



23. The 2012 PPA contained the following provision, entitled “Special Requirements for Substantial Changes Made During Term of Provisional Certification” (“2012 Substantial Changes Provision”):

Any institution provisionally certified must apply for and receive approval by the Secretary for expansion or of any substantial change (as hereinafter identified) before it may award, disburse or distribute Title IV, HEA funds based on the substantial change. Substantial changes generally include, but are not limited to: **(a) establishment of an additional location; (b) increase in the level of academic offering beyond those listed in the Institution’s Eligibility and Certification Approval Report (ECAR); or (c) addition of any nondegree or short-term training program.**

If the Institution applies for the Secretary’s approval of a substantial change, the Institution must demonstrate that it has the financial and administrative resources necessary to assure the Institution’s continued compliance with the standards of financial responsibility (34 CFR 668.14) and administrative capability (34 CFR 668.16).

2012 PPA at 2–3 (emphasis added); *see also id.* at 1–2 (identifying authorized HEA programs).

24. The 2012 Substantial Changes Provision was based on the relevant regulation in effect at the time:

A currently designated eligible institution that wishes to expand the scope of its eligibility and certification and disburse title IV, HEA Program funds to students enrolled in that expanded scope must apply to the Secretary and wait for approval to—

(1) Add a location at which the institution offers or will offer 50 percent or more of an educational program if one of the following conditions applies, otherwise it must report to the Secretary under § 600.21:

(i) The institution participates in the title IV, HEA programs under a provisional certification, as provided in 34 CFR 668.13.

(ii) The institution receives title IV, HEA program funds under the reimbursement or cash monitoring payment method, as provided in 34 CFR part 668, subpart K.

(iii) The institution acquires the assets of another institution that provided educational programs at that location during the preceding year and participated in the title IV, HEA programs during that year.

(iv) The institution would be subject to a loss of eligibility under 34 CFR 668.188 if it adds that location.

(v) The Secretary notifies, or has notified, the institution that it must apply for approval of an additional educational program or a location under § 600.10(c).

(2) Increase its level of program offering (e.g., adding graduate degree programs when it previously offered only baccalaureate degree programs);

(3) Add an educational program if the institution is required to apply to the Secretary for approval under § 600.10(c) [which then related only to the addition of “gainful employment” programs, not at issue here];

(4) Add a branch campus at a location that is not currently included in the institution's eligibility and certification designation;

(5) For a freestanding foreign graduate medical school, or a foreign institution that includes a foreign graduate medical school, add a location that offers all or a portion of the foreign graduate medical school's core clinical training or required clinical rotations, except for those locations that are included in the accreditation of a medical program accredited by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association (AOA); or

(6) Convert an eligible location to a branch campus.

34 C.F.R. § 600.20(c) (July 20, 2011).

25. By its terms, the 2012 PPA was to expire on September 30, 2014, with SCC to apply for recertification on June 30, 2014:

[SCC], referred to hereafter as the “Institution,” and the United States Secretary of Education, referred to hereafter as the “Secretary,” agree that the Institution may participate in those student financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA Programs) indicated under this Agreement and further agrees [*sic*]



that such participation is subject to the terms and conditions set forth in this Agreement. . . .

2012 PPA at 1. Timely application for recertification would toll the 2012 PPA's expiration. 2012 PPA at 3; 34 C.F.R. § 668.13(b)(2) (July 1, 2011); 34 C.F.R. § 600.20(f)(1)(ii) (July 20, 2011) (allowing disbursement of Title IV, HEA program funds while PPA expiration is tolled).

26. On February 25, 2013, SCC's Board of Trustees approved SCC's Bachelor of Art in Farming and Ecological Agrarianism educational program and its Bachelor of Science in Farming and Ecological Agrarianism educational program. As a result, those educational programs were included within the scope of SCC's SACS accreditation and CPE's licensure.

27. On February 24, 2014, SCC's Board of Trustees approved SCC's Bachelor of Science in Athletic Training educational program. As a result, that educational program was included within the scope of SCC's SACS accreditation and CPE's licensure.

28. When SCC added each of the five bachelor degree programs identified in ¶¶ 20, 26, and 27 ("2011 to 2014 Bachelor Programs"), neither the 2012 Substantial Changes Provision in the 2012 PPA (*i.e.*, the PPA that governed the parties' relationship at the time) nor the then-governing DoE regulations (*i.e.*, 34 C.F.R. § 600.20(c) (July 20, 2011)) required SCC to request or obtain approval from the Secretary to disburse Title IV, HEA program funds to students enrolled in the 2011 to 2014 Bachelor Programs.

29. That is, the addition of the 2011 to 2014 Bachelor Programs did not constitute "(a) establishment of an additional location; (b) increase in the level of academic offering beyond those listed in the Institution's Eligibility and Certification Approval Report (ECAR); or (c) addition of any nondegree or short-term training program" under the 2012 Substantial Changes Provision, 2012 PPA 2–3.



30. Likewise nor did it constitute (1) the addition of a location, (2) an increase in SCC's level of program offering, (3) the addition of an educational program for which SCC would be required to seek approval under the then-in-effect 34 C.F.R. § 600.10(c) (governing only unrelated "gainful employment" programs), (4) the addition of a branch campus, (5) the addition of a location by a foreign graduate medical school, or (6) the conversion of an eligible location to a branch campus, under 34 C.F.R. § 600.20(c) (July 20, 2011).

31. Accordingly, under both the terms of the 2012 PPA and then-governing law, SCC remained entitled to reimbursement for Title IV, HEA distributed to students enrolled in *all* of its undergraduate educational programs—including students enrolled in *any* of the 2011 to 2014 Bachelor Programs—without seeking or obtaining the Secretary's approval to do so. *See also* 34 C.F.R. § 600.10(b)(1) (July 1, 2011); 34 C.F.R. § 668.8(a) (July 1, 2011).

32. Pursuant to the 2012 PPA's terms and 34 C.F.R. § 600.20(b)(2)(i) (July 20, 2011), SCC timely applied for recertification in June 2014. As part of its program review related to SCC's 2014 recertification application, a School Participation Team ("KCSPT") from DoE's Kansas City school participation division ("KCSPD") conducted site visits at SCC in January and February 2015. These site visits resulted in several relevant events.

33. On the second day of the KCSPT's January/February 2015 site visit, DoE advised SCC that effective immediately, SCC would be subjected to "heightened cash monitoring" ("HCM-2"), a method of FSA payment that requires SCC to first distribute FSA to students and then apply to DoE for reimbursement for each such distribution. *See* 34 C.F.R. § 668.162.

34. Because of how important financial aid is—to all students, but especially to SCC's students—SCC took the HCM-2 sanction *very* seriously. The SCC Board of Trustees acted swiftly and exceptionally boldly to demonstrate to DoE just how serious they were. Within just months, they had replaced SCC's president with its current president, former Fulbright

Scholar Dr. Cindy Gnadinger (“President Gnadinger”). SCC replaced its entire senior leadership team. About 90% of the staff in the business and financial aid offices were replaced. And SCC added new positions, including Director of Compliance. SCC’s actions in this regard added over seventy-five years of higher education experience to the College.

35. The second relevant event arising from the KCSPT’s January/February 2015 site visit was that Defendant Kathy Feith, one of DoE’s program reviewers, orally advised SCC officials that DoE considered the 2011 to 2014 Bachelor Programs to fall within the scope of the 2012 Substantial Changes Provision. Because SCC had not sought or obtained the Secretary’s approval to disburse Title IV, HEA to students enrolled in the 2011 to 2014 Bachelor Programs, said Ms. Feith, SCC must immediately stop awarding those students beginning with the spring 2015 semester and she suggested that SCC stop enrolling new students in the 2011 to 2014 Bachelor Programs.

36. Although Feith’s decision finds no support in the 2012 PPA or then-governing law, SCC nevertheless attempted to comply with Feith’s demands in an effort to maintain its students’ access to FSA. While continuing to honor certain students’ requests to pursue enrollment in the 2011 to 2014 Bachelor Programs, SCC explained to DoE why these programs were not a substantial deviation from SCC’s educational programs. Feith thereafter demanded that SCC officials provide evidence from SACS that SACS had approved the 2011 to 2014 Bachelor Programs before Feith would approve reimbursement of FSA distributed to students in those programs.

37. SCC officials tried to explain to Feith that because the College did *not* consider the addition of the 2011 to 2014 Bachelor Programs to be a substantial change to SCC’s wide undergraduate academic program offerings at the time, SACS had not required SCC to seek “approval” for the 2011 to 2014 Bachelor Programs.



38. Feith nevertheless insisted on a letter from SACS confirming that the programs were within SCC's accreditation. So in its continuing good-faith effort to assuage DoE, SCC officials obtained an April 2, 2015 letter from SACS explaining that the 2011 to 2014 Bachelor Programs were indeed within SCC's accreditation. President Gnadinger subsequently transmitted this letter from SACS President Belle Wheelan, Ph.D., to Feith.

39. Feith, however, rejected the letter because it did not contain the specific dates when the programs were "approved". So in a second good-faith attempt to satisfy Feith's unlawful demands, President Gnadinger obtained a second letter from Dr. Wheelan at SACS explaining in detail the accreditation process and that neither SACS nor SCC considered the 2011 to 2014 Bachelor Programs to be a substantial change from SCC's educational programs, and identifying the dates that each of the 2011 to 2014 Bachelor Programs was approved. President Gnadinger then transmitted this April 27, 2015, letter from Dr. Wheelan to Feith.

40. Apparently still unsatisfied with the lack of success in forcing President Gnadinger to chase an ever-moving target and unhappy with SACS's perfectly clear and rational explanation of its accreditation decision, Kathy Feith improperly sought to exercise the authority granted exclusively to an accrediting agency by trying to undermine the decision already acknowledged by SACS that the 2011 to 2014 Bachelor Programs were not substantial changes from SCC's educational programs. A May 6, 2015, email from Kathy Feith stated in part: **"The SACS letter indicates there was not a significant departure;** does this mean that SCC offered other programs which were similar that allowed these programs to be spin-offs? If so, could you indicate which programs were similar enough that these programs would not be considered a deviation?" DoE then took the incredible step of interfering with SCC's relationship with its accreditation agency. In an act *far* outside of any conceivable duties a DoE employee might have, a DoE employee telephoned SACS staff. During that call, the DoE representative



proceeded to interrogate SACS staff about their decision to acknowledge SCC's new programs as not being a substantial change, and seemingly tried to convince SACS to change their minds and renege on their accreditation decision on the 2011 to 2014 Bachelor Programs, specifically the Bachelor of Arts and Bachelor of Science in Farming and Ecological Agrarianism.

41. After this DoE endeavor was unsuccessful in negating SCC's and SACS's correct finding that no substantial change was made by adding the 2011 to 2014 Bachelor programs, DoE used another method to justify DoE's wrongful attempt to withhold FSA to eligible SCC students. In particular, a DoE panel, of which Kathy Feith had no prior experience, was convened to review the eligibility of SCC's 2011 to 2014 Bachelor programs.

42. Kathy Feith made the disingenuous assertion to SCC that she would argue SCC's case to a panel of DoE staff in the summer in an effort to get the 2011 to 2014 Bachelor Programs "approved" for participation in Title IV, HEA program reimbursement. Understandably distrustful, SCC requested permission to be present during this determination to make a statement in its own behalf. Feith unsurprisingly denied SCC's request, so DoE proceeded to undertake its review without SCC's participation.

43. To no one's surprise, on July 27, 2015, Ralph LoBosco, KCSPD's director (*see infra*), advised President Gnadinger that he had rejected SCC's efforts to satisfy DoE's *ultra vires* demand to obtain the Secretary's approval for the 2011 to 2014 Bachelor Programs—even though they thought it was clear that SCC was not required to do so. LoBosco cited several reasons for his denial, including the hopelessly vague "[i]neligible programs" and at least one allegation ("Failure to make the required 25% match for the Campus Based programs") that DoE would later, if begrudgingly, admit was false.

44. For good measure, in a naked effort to smear SCC, LoBosco unnecessarily carbon-copied ("CCed") SACS (SCC's accreditation agency) and the Kentucky Council on

Postsecondary Education (the state agency charged with coordinating Kentucky's postsecondary education system) on his letter denying DoE's "approval" of the 2011 to 2014 Bachelor Programs.

45. SCC has good reason to fear reprisal from the DoE's Kansas City student participation division caused by, for example, having so frequently pointed out that division's errors. In 2012, the Wall Street Journal ("Journal") reported that Robert Keats, bankruptcy trustee for the then-former Decker College ("Decker"), filed suit against the Council on Occupational Education, Inc. ("Council"), Decker's accrediting agency, for falsely misstating to DoE that Decker was not accredited to offer certain programs when in fact it was.

46. The Journal reported that Trustee Keats suspected that Ralph LoBosco—then DoE's Kansas City case team director, now DoE's KCSPD chief and who has made many of DoE's decisions described herein—had improperly used his official influence to pressure the Council into making the false statements. The Journal reported that the Council's accreditor testified that LoBosco's call was (like much of DoE's conduct here)"unusual".

47. Based on the Council's statements, which the Journal reported LoBosco had pressured into happening, DoE found Decker ineligible to participate in FSA programs, and the school rapidly failed, destroying a \$400 million institution, leaving \$57 million dollars in claims, costing 500 employees their jobs, and stranding 3,700 students.

48. Trustee Keats alleged, the Journal reported, that LoBosco was settling a personal vendetta against Decker CEO William Weld, who had, while he was a United States Attorney, prosecuted LoBosco's former employer (for, ironically, misusing federal student aid funds) and thereby cost LoBosco his previous job and caused him a substantial reduction in salary and associated lifestyle (a clear conflict of interest that LoBosco had apparently never disclosed). *See also* Glen Johnson, *Mass. ex-gov: Grudge led to Ky. college bankruptcy*, ASSOCIATED PRESS,



Dec. 15, 2009 (“A federal official upset about losing his job gained revenge by triggering the 2005 bankruptcy of a Kentucky college run by former Massachusetts Gov. William F. Weld, two attorneys allege.”).

49. Beginning in April 2015, SCC had begun to send its HCM-2 reimbursement request submissions to DoE. As noted above, SCC was entitled to reimbursement for FSA distributed to students enrolled in *all* of its bachelor programs—including the 2011 to 2014 Bachelor Programs, but SCC, pursuant to the directive of Kathy Feith, did not seek reimbursement for the students enrolled in the 2011 to 2014 Bachelor Programs.

50. The staff of DoE’s Kansas City office, however, changed the reimbursement rules governing SCC so often that SCC’s FSA officials could not reasonably know how to satisfy DoE’s ever-changing demands.

51. Over the course of 2015, SCC made a total of six requests, totaling nearly \$4 million dollars. To put that figure into perspective, SCC spends a little more than \$1 million dollars a month to offer its educational programs. Undoubtedly like most small, private schools providing education to historically underserved students, SCC operates more or less hand to mouth. So DoE’s repeated rejections of reimbursement requests for hundreds of thousands of dollars has done and continues to do irreparable harm to SCC’s ability to educate its students.

52. On April 16, 2015, SCC made Submission #1. Therein, SCC requested reimbursement of \$253,288 in FSA that it had disbursed to its students.

53. SCC was entitled by law to reimbursement for the entire \$253,288.

54. On April 29, 2015, DoE rejected the entirety of Submission #1, all \$253,288. The Secretary’s rejection letter stated four reasons for DoE’s rejection, including allegations (the FSEOG issue, explained *infra*, and disbursement dates on COD and student ledger cards not



matching) that DoE would eventually admit are false. SCC officials addressed all of DoE's stated issues and, on May 1, 2015, resubmitted Submission #1.

55. Eighteen days later, on May 19, 2015, DoE paid SCC \$247,788. This represents the amount requested in the April 16, 2015 Submission #1, minus the reimbursement of \$5,500 of FSA disbursed to two students, Student #2 and Student #30 (\$2,750 each). DOE rejected SCC's request for reimbursement of the \$5,500 FSA disbursed to Students #2 and #30 because they were coded in SCC's system as having "majors" of "Pre Athletic Training" and "Pre Radiation Therapy", respectively. In other words, Students #2 and #30 had remained undecided on their major at enrollment, but had expressed an *interest* in two of the 2011 to 2014 Bachelor Programs, so for SCC's internal purposes of tracking, following up, counseling, and so forth, SCC had coded them as "Pre" one of these majors until such time as the students decided to enter that major or some other major, as both commonly happen.

56. Specifically, DoE payment analyst Christopher Thompson explained in his rejection letter that he had rejected reimbursement for Students #2 and #30 because, "[b]ased on our information, the program the student is enrolled in is ineligible to receive Title IV funds." (5/19/2015 letter from C. Thompson to W. Huston, attached as Ex. B) Thompson instructed SCC to "[w]ork with the Eligibility Analyst with our Department to clear the program." (*Id.*)

57. Because four students included in Submission #1 had been coded as "Pre Nursing" and one had been coded as "Undecided" and Thompson approved reimbursement to SCC of the FSA disbursed to those five students, the sole inference was that notwithstanding their obvious status as undecided and only interested in the indicated majors, DoE considered Students #2 and #30 to be enrolled in one of the 2011 to 2014 Bachelor Programs, which, as DoE had previously instructed, it (unlawfully) considered to be ineligible as violating the 2012 Substantial Changes Provision.

58. So notwithstanding the legal fact that SCC was entitled to reimbursement for FSA distributed to students enrolled in *all* of its bachelor programs—including the 2011 to 2014 Bachelor Programs (“Rule #1”)—DoE changed the rules applicable to SCC to be that SCC was only entitled to reimbursement for students enrolled in (or coded as “pre”) any of SCC’s undergraduate programs *excluding the 2011 to 2014 Bachelor Programs* (“Rule #2”).

59. On May 21, 2015, SCC made Submission #2. Therein, SCC requested reimbursement of \$601,384 in FSA that it had disbursed to its students.

60. SCC was entitled by law to reimbursement for the entire \$601,384.

61. Included in Submission #2 were seven SCC students who had been coded as “undecided” majors. DoE paid in full the \$66,752 requested FSA for these seven “undecided” students.

62. Also included in Submission #2 were six students who had been coded as “Pre Radiologic Technology” or “Pre Radiation Therapy” and one student who had been coded as “Pre Athletic Training”. The total FSA distributed to these seven students alone for which SCC sought reimbursement was \$38,770. So applying DoE’s (*ultra vires*) Rule #2 that DoE analyst Thompson set out in his May 19, 2015, partial denial of Submission #1, SCC was thus “entitled” to reimbursement of \$601,384 minus \$38,770, or \$562,614.

63. On June 9, 2015, SCC Vice-President of Financial Aid and Enrollment Jeremy Pittman (“Vice-President Pittman”) emailed DoE payment analyst Thompson to discuss the fact that seven of the students included in SCC’s Submission #2 were coded as “pre” one of the 2011 to 2014 Bachelor Programs. Vice-President Pittman explained that he had spoken by telephone with Kathy Feith earlier and that she had represented to him that only students coded as “pre” one of the 2011 to 2014 Bachelor Programs would have their FSA denied. Vice-President Pittman thus noted that given DoE’s Rule #2, Pittman expected DoE to refuse FSA for those



students. Thompson responded by email a few moments later stating that “I am only rejecting those students as everyone else as I could tell from my sample were fine. I should have it completed tomorrow.”

64. Thompson did indeed complete his work on Submission #2 the next day, and on June 10, 2015, DoE reimbursed SCC, but for only \$510,839 (*i.e.*, not the expected \$562,614) of the \$601,384 requested in its May 21, 2015 Submission #2.

65. The total difference—\$90,545—represented the \$38,770 in FSA distributed to the seven students listed as being formally undecided but interested in one of the 2011 to 2014 Bachelor Programs, *plus* \$51,775 in additional FSA distributed to seven other students coded as “pre” an educational program *not* one of the 2011 to 2014 Bachelor Programs. Unlike Rule #2 that it applied to Submission #1, DoE had also denied reimbursement for FSA that SCC had distributed to two students coded as “Pre Nursing”, one student coded as “Pre Surgical Technology”, two as “Pre Education”, and two as “Pre Sonography”.

66. It is undisputed that SCC was entitled and provisionally certified to distribute FSA to students enrolled in the educational programs identified at the end of ¶ 65.

67. It is undisputed that DoE had, without comment, reimbursed SCC for FSA distributed to students coded as “Pre Nursing” in Submission #1 but then denied reimbursement for FSA distributed to students coded as “Pre Nursing” in Submission #2.

68. SCC officials subsequently followed up with staff at KCSPD, in a lengthy exchange of email messages, to try to understand why DoE had denied student aid to seven students coded as “pre” an education program that was *not* one of the 2011 to 2014 Bachelor Programs, including students coded as “Pre Nursing”, for which DoE had without objection reimbursed in Submission #1.



69. On June 11, 2015, Vice-President Pittman emailed Thompson and detailed the breakdown of the seven “pre” 2011 to 2014 Bachelor Programs and the expected \$38,770 rejection compared to the actual \$90,545 rejection.

70. Thompson’s email response was confusing, saying only, “The ones you deem OK, you can resubmit on the next submission.” Thompson apparently believed that Rule #2 was still in effect and that some unknown, unidentified mix-up within DoE had caused the additional \$51,775 rejection.

71. Understandably confused, Vice-President Pittman requested by June 11, 2015, email that Thompson clarify what had happened before going to the trouble of re-submitting—and having re-rejected—reimbursement for FSA given to these seven “pre” non-2011 to 2014 Bachelor Programs students.

72. *Eight days later*, on June 19, 2015, Vice-President Pittman had still heard nothing from DoE. So he again emailed DoE payment analyst Thompson requesting a response. He did not receive one.

73. *Ten more days later*, or eighteen days after the initial request for clarification of why DoE had rejected nearly \$100,000 dollars in absolutely critical operating funds, Vice-President Pittman had still not received any response from DoE.

74. Thompson finally responded, explaining in the same dilatory and lackadaisical fashion that the Kansas City division had by then become known for, only that “[b]etween myself being out and Kathy [Feith] being out, we have not been able to get together on the below. I am hoping to have an answer for you on the below *later this week*.” Clearly the DoE staff was entirely unconcerned about the dire problems that they were causing SCC.

75. Later that week, on July 1, 2015—forty-one days after SCC had made Submission #2—Thompson finally emailed Vice-President Pittman to “explain” that “Ms. Feith . . . states the

below programs are still questionable on her findings. Until this is cleared up with her on the program review I will not be able to accept these in the submission.” In other words, Thompson admitted that his representations to Vice-President Pittman about the rule applicable to Submission #2 had all been false. Thompson did not explain what he meant by “the below programs”, “her findings”, and “these”.

76. Without just cause, DoE once again sought to reject eligible SCC students from receiving FSA, by creating new Rule #3: to wit, that DoE would now reject *any* students who had yet to formally declare a major and had listed as being interested in—*i.e.*, “pre”—*any educational program at all*, not just any of the 2011 to 2014 Bachelor Programs. DoE thus refused to accept that “pre” is simply an internal administrative designation used to identify undecided students who were interested in, but for any of a variety of reasons not enrolled in, a particular program. Left with no reasonable alternative, SCC updated all “pre” students to an “undecided” status given DoE’s arbitrary refusal to pay FSA for certain SCC students eligible for the aid.

77. On information and belief, it is standard practice for other institutions of higher education to use the “pre program” coding tool to accomplish the same purposes. DoE’s explanation is thus not only *ultra vires*, arbitrary, and capricious, it is also unequal.

78. So on July 20, 2015, attempting to do what is right by its aid-eligible students, SCC officials notified all formally-undecided-yet-interested-in-something students who had previously been coded as “pre” something that SCC would from then on code them as “undecided” due to DoE not paying FSA for any of the “pre” students. DoE employees Chris Thompson and Kathy Feith were aware of this action by SCC. This process change that DoE’s actions forced upon SCC took valuable time and resources of the College.



79. On July 7, 2015, SCC made Submission #3. Therein, SCC requested reimbursement of \$613,183 in FSA that it had disbursed to its students.

80. SCC was entitled by law to reimbursement for the entire \$613,183.

81. Included in Submission #3 were twenty-eight students now coded as formally "Undecided" due to DoE's refusal to pay FSA for any student coded as "pre."

82. On August 11, 2015, DoE paid Submission #3 in full, including all twenty-eight students coded as "Undecided".

83. SCC officials reasonably believed that they had finally decoded DoE's demands.

84. On September 3, 2015, SCC made Submission #4. Therein, SCC requested reimbursement of \$805,184 in FSA that it had disbursed to its students.

85. SCC was entitled by law to reimbursement for the entire \$805,184.

86. Included in Submission #4 were thirty-six students now coded as formally "Undecided" due to DoE's refusal to pay FSA for any student coded as "pre."

87. On September 23, 2015, DoE paid Submission #4 in full, including all thirty-six students coded as "Undecided".

88. SCC officials were then certain that they understood what DoE required, even if unlawfully.

89. On October 9, 2015, SCC made Submission #5. Therein, SCC requested reimbursement of \$741,415 in FSA that it had disbursed to its students.

90. SCC was entitled by law to reimbursement for the entire \$741,415.

91. Included in Submission #5 were thirty-four students now coded as formally "Undecided" due to DoE's refusal to pay FSA for any student coded as "pre."

92. On October 29, 2015, DoE paid \$558,777 of Submission #5. DoE refused to reimburse the \$182,638 of FSA given to all thirty-four students coded as "Undecided".

93. In his rejection letter, Thompson explained DoE's new Rule #4: "According to the open program review, there is still an issue with the students in the 'undecided' program. These records have been rejected pending review from the lead reviewer [Kathy Feith]."

94. Vice-President Pittman then had to indulge Thompson with another lengthy exchange of email communications regarding DoE Rule #4. On November 2, 2015, Vice-President Pittman requested Thompson explain the rejection, given that for the last several months, DoE seemed to have been happy with Rule #3.

95. Thompson's November 2 response was redundant and unhelpful: "I received information from Ms. Feith that students listed as 'undecided' were still an issue and we can not release any funds until it is cleared up. There were no other issues listed for the submission."

96. Later that day, Vice-President Pittman tried to explain to Thompson the threat of the situation to SCC's viability and its students' futures: "I would like to clear up this issue as soon as possible. Can you please elaborate on the issue at hand so we can correct the problem and move forward? I just want to ensure our students receive all eligible financial aid monies moving forward."

97. Thompson punted: "Since this stems from the program review, you will need to work with Ms. Feith on this issue. Once it is cleared up with her, she will give me the OK to pay the students."

98. So Vice-President Pittman forwarded the email thread to Kathy Feith on November 2 and asked for assistance: "Could you please see the email thread below and provide a more granular level explanation of what we can do to correct the issue?"

99. In her response, Ms Feith simply repeated that she would no longer approve students who were formally undecided but who had, on their enrollment forms, expressed an interest in perhaps someday pursuing one of the 2011 to 2014 Bachelor Programs, which, in turn,



she still maintained were ineligible for Title IV, HEA. Feith—both factually incorrectly and legally erroneously—mischaracterized those students as “originally *in* the other undergraduate programs which are not aid eligible” (emphasis added).

100. A few days later, on November 6, 2015, while discussing DoE’s review of SCC’s pending June 2014 recertification application, Vice-President Pittman asked Feith if she had any additional information regarding Submission #5 and advised Feith that “[t]he inability to get those monies and the fact that we have 20 current ‘undecided’ students on our next submission and another 30 that are ready to be put on[] has put us in a difficult situation. Any answers on what happened and how we need to proceed would be very helpful to us.”

101. DoE still refused to accept that a student who is formally undecided and simply expressed interest in possibly someday enrolling in a program was “in” that program, apparently forever. DoE refused to accept that the “pre” students at SCC were not actually in those programs. Unsurprisingly, an SCC student is not actually in a program until he or she is accepted into the program. Many students express interest in a program but are not ultimately accepted into the program.

102. Vice-President Pittman responded on November 6, pointing out the error in DoE’s misinterpretation of the student’s coding and questioning DoE’s decision to mischaracterize “pre something”-coded students as being enrolled “in” that major.

103. DoE payment analyst Chris Thompson then emailed Vice-President Pittman, and, without any explanation, stated that DoE’s denial of SCC’s undecided students had apparently all been a mix-up by DoE and telling Vice-President Pittman that he need simply resubmit all of their reimbursement requests in order to be repaid: “Resubmit the request for all the rejected students and provide the additional information stated by Ms. Feith for the affected students.

The others I will use the information we have on file from the previous submission. Sorry for any confusion.”

104. Still quite justifiably confused about whether DoE was returning to Rule #3, Vice-President Pittman observed to Thompson on November 6: “This still does not clear up the action that was completed on your end and none of my questions from the email thread have been addressed. I am not sure as to why. I do not have any additional information and I do not see where Ms. Feith asked for any. I would like to schedule a call today to have my questions answered.”

105. Thompson replied, blaming a DoE “miscommunication” on his office’s pushing SCC to the financial precipice: “Based on the information provided by Ms. Feith, go ahead and resubmit all the rejected students and we will have those accepted. **There was a misunderstanding based on information given to the payment analyst for the rejection of the files.** Since this has bee [*sic*] cleared up, **there should be no issue going forward.**” (emphasis added).

106. Thompson was then forced to admit that by rejecting the undecided students on Submission #5 DoE had deleted all of the information on those students, Vice-President Pittman would have to manually reenter it all, again adding, “After this, **there should not be anymore [*sic*] issues.**” (emphasis added).

107. On November 12, 2015, DoE paid the \$182,638 that it had rejected from Submission #5, but only after causing SCC even further irreparable harm.

108. On November 18, 2015, SCC made Submission #6. Therein, SCC requested reimbursement of \$869,375 in FSA that it had disbursed to its students.

109. SCC was entitled by law to reimbursement for the entire \$869,375.



110. On November 23, 2015, DoE notified SCC that DoE had assigned a new payment analyst, Kathleen Shelton, to replace Christopher Thompson, effectively removing the only KCSPD employee who appeared to make some effort to provide FSA to the eligible SCC students.

111. On December 1, 2015, Shelton notified SCC by email that she required SCC's college policies and clarification regarding campus-based funding before she would proceed with her review of the November 18, 2015, Submission #6.

112. SCC responded that it had already provided DoE with those items (without which, it is beyond dispute, DoE would not have paid in full five prior submissions amounting to \$3,014,454, nor allowed SCC to participate in any Title IV, HEA programs).

113. On December 8, 2015, DoE staff member Dvak Corwin notified SCC officials by email that rather than approving or rejecting Submission #6, he had instead authorized a team of DoE staff to conduct an on-site visit of SCC "for the purposes of reviewing [SCC's November 18, 2015] submission." According to Corwin, DoE would not conduct the visit and begin its subsequent review until more than a month later, in mid-January 2016. DoE refused to explain the basis for this visit or the delay in the processing of the November 18, 2015 submission.

114. DoE's refusal to reimburse SCC for such large amounts of money had by then jeopardized the College's ability to continue to operate.

115. So the same day, SCC officials responded to DoE requesting that the team visit SCC sooner, in order to speed up review of Submission #6.

116. President Gnadinger thereafter requested a telephone call with LoBosco.

117. On December 14, 2015, President Gnadinger again stressed to LoBosco the dire situation that DoE had caused for SCC and requested a quicker review and approval of Submission #6. Nevertheless, Mr. LoBosco refused to guarantee an earlier visit.

118. DoE staff advised SCC officials by telephone that DoE required additional documents in order to continue its review of Submission #6. After the call, Kathy Feith provided to SCC a list of required documents. The list included documents entirely unrelated to Submission #6 (*e.g.*, a “[c]omplete list of Student Athletes at [SCC], including their sport(s)”).

119. On December 17, 2015, Dvak Corwin again notified SCC by email that DoE would not proceed with its review of Submission #6 until it received these documents.

120. In another good-faith effort to address DoE’s demands as quickly as possible in order to keep from having to permanently close its doors, SCC assured DoE that SCC would provide the demanded documents. SCC responded on December 27, 2015, which required SCC officials to divert days of labor, including working through the Christmas 2015 holiday.

121. Finally, on January 11, 2016, almost two months after SCC made Submission #6, DoE began a four day long on-site visit of SCC, ostensibly related to Submission #6.

122. On January 15, 2016, SCC resubmitted Submission #6.

123. On February 11, 2016, DoE paid SCC only \$320,293 of the requested \$869,375. In other words, DoE denied SCC \$549,082.

124. DoE claims to have based its twenty-page-long rejection on several categories of reasons, many contrary to the practices previously accepted by DoE.

125. For instance, in April 2015, SCC officials had telephoned Christopher Thompson to explain that due to the time that SCC had been devoting to resolving DoE’s demands regarding the ongoing program review and reorganization of the SCC financial aid and business offices, some students direct loans were not originated within the applicable loan period. Thompson advised Vice-President Pittman that this was not a problem and that SCC should make the submissions as long as they have students’ approval and the students have earned the aid in question. Thereafter, SCC submitted the material per Thompson’s instructions, and DoE



approved the related FSA without ever raising an objection. Specifically, SCC submitted and DoE approved and paid seven such students in submission #2; twenty-six such students in submission #3; thirty-three such students in submission #4; and thirteen such students in submission #5, totaling approximately \$585,000.

126. In its February 11, 2016, rejection of many of the students included in Submission #6, DoE for the first time changed this very same practice and denied many thousands of dollars in materially identical requests. In another attempt to financially punish SCC, DoE demanded that SCC repay to DoE certain amounts of FSA distributed to SCC students that DoE had previously deemed eligible.

127. DoE also rejected FSA for some students notwithstanding the fact that Kathy Feith had earlier advised SCC that it was permissible to update the students' loan origination in the particular manner that DoE ultimately rejected.

128. DoE rejected many students' FSA in Submission #6 because, it claims, it was unable to resolve certain factual "discrepancies" between later and earlier statements of those facts (for such obviously explainable discrepancies as "Student was selected for verification and verification worksheet shows 5 in the household but the ISIR only shows 4").

129. In any event, *with a very few possible exceptions*, all of these "discrepancies" were resolved by SCC's third-party verification provider (the Kentucky Higher Education Assistance Authority, a public corporation and governmental agency and instrumentality of the Commonwealth of Kentucky) by attaching an explanation of the resolution to the end of each worksheet, which resolution DoE staff apparently simply ignored.

130. As detailed *supra*, DoE instructed SCC not to bother seeking FSA for students who *were* actually enrolled in the 2011 to 2014 Bachelor Programs.

131. Additionally, DoE has unlawfully rejected FSA to undecided students whom SCC coded as either “pre” one of the 2011 to 2014 Bachelor Programs, which DoE has wrongfully refused to recognize as eligible (*i.e.*, Rule #2), “pre” *anything* (*i.e.*, Rule #3), or simply “undecided” (*i.e.*, Rule #4).

132. Kathy Feith also advised SCC that the DoE would reject any FSA submission for any SCC student who took any class, even one class, in the curriculum of the 2011 to 2014 Bachelor Program.

133. Rather than have the crushing weight of DoE’s wrongful denial of FSA fall on the shoulders of the students in these programs—students who can especially ill afford such a loss—SCC decided to replace every dollar that one of those students accepted into the 2011 to 2014 Bachelor Programs would have received but for the Secretary’s wrongful denial thereof with a dollar drawn from the College’s access to the George L. Bagby Scholarship/Loan program.

134. DoE’s decision thereby forced SCC to expend hundreds of thousands of dollars in private funds in barely a year, student aid funds that otherwise would have and could have been given to assist other students.

135. The third relevant event arising from the KCSPT’s January/February 2015 site visit was that Kathy Feith incorrectly advised SCC regarding the status of its participation in an FSA program.

136. SCC was an authorized participant in certain “campus-based” FSA programs (*i.e.*, FSA programs that are administered directly by each school’s financial aid office), including the Federal Work Study program (“FWS”) and the Federal Supplemental Educational Opportunity Grant program (“FSEOG”). *See* 34 C.F.R. § 668.2(b) (July 1, 2011).



137. During or shortly after the KCSPT's January/February 2015 site visits to SCC, Kathy Feith alleged that SCC was not complying with the FSEOG's 25% non-federal funds matching requirement.

138. SCC had, however, already disbursed thousands of FSEOG dollars in funds to students for the fall 2014 academic semester for which SCC had not been reimbursed.

139. Rather than saddle the dozens of affected students with the harsh burden of Feith's incorrect assessment, SCC instead went back and retroactively changed all of those students' fall 2014 FSEOG awards and replaced them with more SCC-funded scholarships.

140. Likewise, in the spring of 2015, SCC also provided its own SCC-funded money to those students who would have otherwise been awarded FSEOG FSA.

141. And as detailed *supra*, DoE rejected Submission #1 (made on April 16, 2015) in part because of the incorrect allegation that SCC had failed to comply with the FSEOG non-federal funds matching requirement. Yet, SCC did not even request reimbursement for FSEOG funds on the submission in question.

142. SCC officials undertook their own investigation of the matching requirement. A just-minutes-long telephone call to the campus-based programs division of the Department of Education confirmed that SCC had indeed had a waiver of the non-federal funds matching requirement.

143. So during their January 2016 visit, SCC provided documentation to Feith that SCC had their matching requirement waiver.

144. Feith then conceded the error and blamed the entire affair on DoE's campus-based programs staff. To date, Feith has never provided SCC with proof supporting her false accusation about SCC not supplying matching funds as required.

145. As a result of Feith's inaccurate communication to SCC, the FSEOG program was ended at SCC for the 2014/15 academic year, and SCC lost around \$40,000 dollars that it had to replace with its own funds.

146. In late 2015, DoE also told SCC officials that part of the basis for the site visit in January 2016 was a group of accusations regarding the College's participation in the FWS program, which DoE identified as " 'rumors' and 'hearsay' ".

147. When pressed for details so the College might prepare to answer these allegations, DoE initially refused. Not until the last day of the year, December 31, 2015, did DoE finally expressly accuse SCC of mismanaging its FWS participation by replacing full-time staff with work-study students, by giving preferential treatment for FWS employment to student athletes over non-athletes, as well as overawarding students concerning the FWS program, and by failing to reconcile its Title IV accounts.

148. At some point during her January 2016 visit, however, Feith was forced to admit, and did admit, that she discovered absolutely no evidence to support the allegations that SCC was overawarding students in the FWS program.

149. As a result of Feith's baseless allegations, SCC has not been reimbursed for its students' participation in the FWS program in 2015/16.

150. On or about January 19, 2016, SCC and the DoE entered into the parties' 2016 Program Participation Agreement ("2016 PPA") (attached as Ex. C).

151. The 2016 PPA's terms and format were more or less identical to the 2012 PPA's, with one critical exception. Unlike the 2012 PPA's 2012 Substantial Changes Provision (which only had required the Secretary's approval for, *inter alia*, the "addition of any *nondegree or short-term training program*", 2012 PPA at 2–3 (emphasis added)), the 2016 PPA's analogous "Substantial Changes" provision ("2016 Substantial Changes Provision") now required SCC to



obtain the Secretary's approval before the "addition of *any* educational programs (*including degree, nondegree, and short-term training programs*)" made after its effective date, 2016 PPA at 2–3 (emphasis added).

152. Relatedly, in July 1, 2015, the Secretary amended his rules to require for the first time that, *inter alia*, institutions who are provisionally certified must obtain the Secretary's approval for the addition of any program. *See* 34 CFR §§ 600.10(c) and 600.20(c)(1)(i).

153. Neither the new, July 2015 regulations nor the 2016 Substantial Changes Provision, however, are relevant to the instant civil action, because it is beyond dispute that SCC added all of the 2011 to 2014 Bachelor Programs before the effective date of both the new regulations and the 2016 PPA.

154. Normally, after a program review, the Secretary first sends the involved institution a Program Review Report ("PRR"), then the institution is allowed to submit a response, then the Secretary sends a Final Program Review Determination ("FPRD").

155. To date, the Secretary still has not provided SCC with even the PRR from SCC's January 2015 program review. *A fortiori*, the Secretary has also not provided SCC with the associated FPRD. DoE staff has said only that it might issue the PRR some time in February 2016—over a year after SCC's program review.

### COUNT I DECLARATORY JUDGMENT

156. Plaintiff realleges and reincorporates by reference all of the allegations contained in every other paragraph of this Verified Complaint.

157. SCC requests the Court to **DECLARE** and **ADJUDGE** that the following acts or omissions were and are agency action unlawfully withheld or unreasonably delayed; arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority,

or limitations, or short of statutory right; without observance of procedure required by law; unsupported by substantial evidence; and unwarranted by the facts, *see* 5 U.S.C. § 706; 28 U.S.C. §§ 2201–02; U.S. Const. Am. V:

a. the Secretary’s decision to delay or deny FSA to a student enrolled in one of the 2011 to 2014 Bachelor Programs;

b. the Secretary’s decision to delay or deny FSA to a student who has not declared a major but who has expressed an interest in maybe someday enrolling in one of the 2011 to 2014 Bachelor Programs (and thus whom SCC coded in its database as “pre” one of the 2011 to 2014 Bachelor Programs);

c. the Secretary’s decision to delay or deny FSA to a student who did not declare a major and whose major SCC has thus coded in its database as “undecided”, based solely on the Secretary’s belief that perhaps that student might once have been coded as “pre” one of the 2011 to 2014 Bachelor Programs or any other program;

d. the Secretary’s decision to delay or deny FSA to a student whose major SCC has coded in its database as “pre” some major or “undecided” based on that fact or without explanation;

e. the Secretary’s interference in SCC’s participation in FSEOG based on Kathy Feith’s false allegation that SCC had failed to comply with the FSEOG program’s non-federal funds matching requirement (when in fact SCC *had* a waiver from that requirement);

f. the Secretary’s decision to delay or deny FWS FSA to any student based on DoE’s false allegations concerning SCC’s FWS program participation;

g. the Secretary’s decision to delay or deny FSA to students putatively based on reasons that are factually false or otherwise unsupported, or based on a submission made in accord with DoE’s previous directives, instructions, *etc.*; and



h. the Secretary's decision to refuse to issue SCC's PRR and FPRD.

## COUNT II INJUNCTIVE RELIEF

158. Plaintiff realleges and reincorporates by reference all of the allegations contained in every other paragraph of this Verified Complaint.

159. In addition to the losses described, *supra*, SCC has suffered a decline in enrollment since DoE began its campaign to deny SCC the FSA to which they are entitled.

160. SCC will suffer irreparable harm, including closure, if the Court does not grant injunctive relief.

161. The consequences of that closure—to SCC, to SCC's students and their families, to SCC's employees, and to SCC's many communities—will be tremendous and devastating.

162. Accordingly, and for all of the reasons stated herein, SCC requests the Court to retroactively and prospectively **ENJOIN** the Secretary from denying FSA to a student enrolled in one of the 2011 to 2014 Bachelor Programs.

163. SCC requests the Court to retroactively and prospectively **ENJOIN** the Secretary from delaying or denying FSA to a student who has not declared a major but who has expressed an interest in maybe someday enrolling in one of the 2011 to 2014 Bachelor Programs (and thus whom SCC coded in its database as “pre” one of the 2011 to 2014 Bachelor Programs).

164. SCC requests the Court to retroactively and prospectively **ENJOIN** the Secretary from delaying or denying FSA to a student who did not declare a major and whose major SCC has thus coded in its database as “undecided”, based solely on the Secretary's belief that perhaps that student might once have been coded as “pre” one of the 2011 to 2014 Bachelor Programs or any other program.

165. SCC requests the Court to retroactively and prospectively **ENJOIN** the Secretary from delaying or denying FSA to a student whose major SCC has coded in its database as “pre” some major or “undecided”.

166. SCC requests the Court to retroactively and prospectively **ENJOIN** the Secretary from interfering with FSEOG FSA to the students who would otherwise have received FSEOG FSA but for Kathy Feith’s false allegations.

167. SCC requests the Court to retroactively and prospectively **ENJOIN** the Secretary from delaying or denying FWS FSA to any student based on DoE’s false allegations concerning SCC’s FWS program participation.

168. SCC requests the Court to prospectively **ENJOIN** the KCSPD from participating in SCC’s Tile IV, HEA program or otherwise reviewing or having jurisdiction over any FSA matters related to SCC; another DoE school participation team should replace KCSPD for all SCC issues.

169. SCC requests the Court to retroactively and prospectively **ENJOIN** the Secretary from delaying or denying FSA to students putatively based on reasons that are factually false or otherwise unsupported, or based on a submission made in accord with DoE’s previous directives, instructions, *etc.*

170. SCC requests the Court to retroactively and prospectively **ENJOIN** the Secretary from refusing to timely issue SCC’s PRR and FPRD.

### **COUNT III MONETARY RELIEF**

171. Plaintiff realleges and incorporates by reference all of the allegations contained in every other paragraph of this Verified Complaint.



172. Pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 US. 388 (1971) and its progeny, SCC is entitled to monetary damages from Defendant Kathy Feith.

173. SCC has a constitutionally protected right under the Fifth Amendment to the United States Constitution.

174. The actions of Defendant Kathy Feith outlined in paragraphs 1 through 155 of this Verified Complaint were taken by Feith under color of federal law and while acting within the scope of her employment.

175. Defendant Kathy Feith violated the Fifth Amendment rights of SCC.

176. SCC suffered monetary damages through its extension of aid or grants provided to students because of the wrongful conduct of Kathy Feith in interfering with eligible SCC students from receiving FSA to which they were rightfully entitled.

177. SCC also suffered injury and damage as a result of the unlawful and unconstitutional actions of Defendant Kathy Feith.

WHEREFORE, Saint Catharine College, Inc. prays that this Court:

- A. Issue the declarations described in Count I;
- B. Enjoin the Secretary of the United States Department of Education from denying SCC's right as described in Count II;
- C. Award monetary damages arising from the violation of Saint Catharine College, Inc.'s Constitutional rights;
- D. Award attorneys' fees and costs;
- E. Empanel a jury trial on all issues so triable; and
- F. Such other relief as the Court might deem appropriate.

Dated this 22<sup>nd</sup> day of February 2016.

**SAINT CATHARINE COLLEGE, INC.,**  
**By Counsel,**

/s/Jeffrey K. Phillips

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