

1 MARY McLEOD
General Counsel

2 JOHN R. COLEMAN
3 Deputy General Counsel

4 LAURA M. HUSSAIN
Assistant General Counsel

5
6 BERNARD J. BARRETT, JR. (CA Bar No. 165869)
Consumer Financial Protection Bureau
7 1700 G Street, N.W.
Washington, D.C. 20552
8 Telephone: (202) 435-9396
Facsimile: (202) 435-7024
9 Email: Bernard.barrett@cfpb.gov

10 *Counsel for Defendant*

11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION
14

15 STUDENT DEBT CRISIS,
16 Plaintiff,
17 v.
18 CONSUMER FINANCIAL
19 PROTECTION BUREAU, and
20 KATHLEEN KRANINGER, in her
official capacity as Director of the
21 Consumer Financial Protection Bureau,
22 Defendants.
23

Case No. 2:19-cv-10048-JAK-AS

**DECLARATION OF
BERNARD J. BARRETT, JR. IN
SUPPORT OF DEFENDANTS'
MOTION FOR DISMISSAL**

Date: June 29, 2020
Time: 8:30 a.m.
Dept: Courtroom 10B
Judge: Hon. John A. Kronstadt

24
25
26
27
28

1 Pursuant to 28 U.S.C. § 1746, I, Bernard J. Barrett, Jr., declare and state as
2 follows:

3
4 1. I am a Senior Litigation Counsel in the Litigation and Oversight Group of
5 the Legal Division of the Consumer Financial Protection Bureau (Bureau or CFPB). I
6 report to the Assistant General Counsel for Litigation and, ultimately, to the General
7 Counsel. My responsibilities include handling litigation on behalf of the Bureau. I have
8 held this position since I joined the Bureau in September 2012. I submit this declaration
9 in support of Defendants' motion for dismissal. The assertions I make below are based
10 upon my personal knowledge or upon information furnished to me by personnel of the
11 Bureau in connection with their official duties.

12
13
14 2. On February 6, 2020, CFPB Director Kathleen L. Kraninger testified before
15 the House Financial Services Committee. The official transcript of that hearing is not
16 yet available. The video of this House Financial Services Committee hearing may be
17 viewed on the Committee's website or accessed directly at
18 https://www.youtube.com/watch?v=MZ5Uv_iHh9E. Attached as Exhibit 1 is a true and
19 accurate copy of excerpts from the Bloomberg Government service's unofficial
20 transcription of that testimony.

21
22
23
24 3. On March 10, 2020, CFPB Director Kathleen L. Kraninger testified before
25 the Senate Committee on Banking, Housing, and Urban Affairs. The official transcript
26 of that hearing is not yet available. The video of this Senate Banking Committee hearing
27

1 may be viewed on the Committee’s website at

2 <https://www.banking.senate.gov/hearings/watch?hearingid=1B5B13EB-5056-A066->
3 [60DD-6B0408C9EE4F](https://www.banking.senate.gov/hearings/watch?hearingid=1B5B13EB-5056-A066-60DD-6B0408C9EE4F). Attached as Exhibit 2 is a true and accurate copy of an excerpt

4 from the Bloomberg Government service’s unofficial transcription of that testimony.
5

6 4. Plaintiff’s First Amended Complaint relies on a CNBC video of an
7 interview with former Acting CFPB Director Mulvaney. First Amended Complaint at ¶
8 69. I have listened carefully to the cited interview and attempted to transcribe it.
9

10 According to the video posted on the CNBC website, the interview lasted for six minutes
11 and 39 seconds.
12

13 5. In the portion of the cited interview relevant to this action (which begins at
14 approximately the 4 minute and 34 second mark), I understand acting Director Mulvaney
15 to say:
16

17 Question:

18 But just speak to this because there is a view in the public. This is Dan
19 Frontman. I don’t know if you know Dan. He was the Ombudsman at the
20 CFPB on student loan debt which is obviously a huge issue in America. He
21 wrote a letter to you. He wrote: “Unfortunately under your leadership the
22 Bureau has abandoned the very consumers it is tasked by Congress with
23 protecting. Instead you have used the Bureau to serve the wishes of the most
24 powerful financial companies in America.”
25

26 Answer:

27 Yeah, I saw that letter, I saw that letter for the first time on I think it was on
28 Declaration of Bernard J. Barrett, Jr. In Support of Defendants’ Motion for Dismissal
Case No. 2:19-cv-10048-JAK

1 U.S.A. Today. I was on an airplane. I never met the gentleman. Don't know
2 who he is. In fact you just told me his name and I don't even think that's his
3 right name. Maybe it is. But anyway, I talked to his supervisor who had met
4 with him on a regular basis during the 9 months [inaudible].

5
6 Never complained about anything that was happening at the Bureau so I think
7 he was more interested in getting his name in the paper.

8
9 Here's what we did at his part of the student loan operation which is. The
10 statute gives us responsibility for private student loans, ok, that represents
11 about 8% of the market.

12
13 Under a handshake agreement within the Obama administration the Bureau
14 was going after and regulating public student loans which is most 92% of them.
15 We said no, no, no, the statute says were going to be responsible for private
16 student loans. That's what we are going to do and he apparently didn't like
17 that.

18 ***

19 I declare under penalty of perjury that the foregoing is true and correct to the best
20 of my knowledge and belief.

21
22
23
24 Dated: May 6, 2020
25 Bethesda, MD

/s/ Bernard J. Barrett, Jr.
Bernard J. Barrett, Jr.

26
27
28 Declaration of Bernard J. Barrett, Jr. In Support of Defendants' Motion for Dismissal
Case No. 2:19-cv-10048-JAK

1 Exhibit 1 to Declaration of Bernard J. Barrett in Support of Defendants’ Motion for
2 Dismissal

3 Excerpts from Bloomberg Government service Transcript of February 6, 2020 Hearing
4 before House Financial Services Committee

5 HOUSE FINANCIAL SERVICES COMMITTEE HEARING PROTECTING
6 CONSUMERS

7 OR ALLOWING CONSUMER ABUSE? A SEMI-ANNUAL REVIEW OF THE
8 CONSUMER FINANCIAL PROTECTION BUREAU

9
10 FEBRUARY 6, 2020

11 * * * * *

12 WITNESSES:

13
14 THE HONORABLE KATHY KRANINGER, DIRECTOR, CONSUMER FINANCIAL
15 PROTECTION BUREAU

16 * * * * *

17
18 WATERS: Thank you. The gentleman from Illinois, Mr. Casten is recognized for five
19 minutes.

20 * * * * *

21 WATERS: The gentleman from Texas, Mr. Taylor, is recognized for five minutes.

22
23 TAYLOR: Thank you, Madam Chair, appreciate you being here. I noticed you don't
24 want to complete all the questions that you've gotten so far. Anything you want to add
25 for the record that you feel like you didn't quite get out?

26
27 KRANINGER: I would say on the Department of Education issue it is important to
28 distinguish the responsibilities that we have. The Department of Education has a lot of
authority under the Higher Education Act. They have the responsibility, obviously, to
manage their contractors so the CFPB has a lot of contractors as well and it's our

Declaration of Bernard J. Barrett, Jr. In Support of Defendants’ Motion for Dismissal

Case No. 2:19-cv-10048-JAK

Exhibit 1

1 responsibility to make sure that they are acting consistently with the terms of the
2 contracts.

3 When it comes to this notion of supervision and oversight we do have a larger participant
4 rule in place that gives us responsibility and the ability to examine the largest
5 participants in the student loan servicing space regardless of which types of loans they
6 are servicing, federal loans and private loans.

7 * * * * *

8 WATERS: Thank you. The gentlewoman from Iowa, Ms. Axne is recognized for five
9 minutes.

10 * * * * *

11 AXNE: ...

12 Do you agree that the CFPB has the authority to supervise student loan services?

13 KRANINGER: We issued a larger participant rule that does extend to federal student
14 loan servicers, in that -- again, that category.

15 * * * * *

16 WATERS: Thank you. The gentlewoman from Virginia, Mrs. Wexton, is recognized for
17 five minutes.

18 * * * * *

19 WEXTON: But Dodd-Frank also requires the Bureau -- requires the Bureau to -- Title 10
20 to implement and, where applicable, enforce federal consumer law. Does it not?

21 KRANINGER: Yes, but we're talking specifically about supervision and the ability to
22 examine entities, which does have a lot of -- of different requirements in the Act. So we
23 did issue a rulemaking, and we are -- actually, we have the authority to examine larger
24 participants in the federal student loan space. And that's precisely the issue around which
25 there is that conversation.

26 WEXTON: So you have the authority to examine them, do you have the authority to

1 open supervisory events?

2 KRANINGER: That is the same thing, just a yes.

3
4 WEXTON: OK, just checking.

5 KRANINGER: Yes, yeah.

6 WEXTON: So -- OK, very good. ...

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 2 to Declaration of Bernard J. Barrett in Support of Defendants’ Motion for Dismissal

Excerpt from Bloomberg Government service Transcript of March 10, 2020 Hearing before Senate Banking Committee

SENATE BANKING, HOUSING, AND URBAN AFFAIRS COMMITTEE HEARING ON

THE CONSUMER FINANCIAL PROTECTION BUREAU'S SEMI-ANNUAL REPORT

TO CONGRESS

MARCH 10, 2020

* * * * *

MENENDEZ:

[Omitted discussion of another matter]

Has the CFPB at this point in time resumed supervisory examinations and oversight of companies that service the \$1.2 trillion of loans owned by the federal government?

KRANINGER: Senator, yes. We have an agreement with the Department of Education and are moving forward with a joint exam, in fact, this month.