

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re:

Case No. 8:12-bk-04689-CPM  
Chapter 7

Michael Lee Jones, Jr.,

Debtor.

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Michael Lee Jones, Jr.,

Adv. No. 8:13-ap-00614

Plaintiff,

v.

U.S. Department of Education,  
FedLoans Servicing, Campus Partners,  
and Florida Southern College,

Defendants.

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**INTERIM ORDER DIRECTING UNITED STATES TO  
SUPPLEMENT MOTION TO VACATE AND SET ASIDE DEFAULT**

Upon consideration of the United States' Motion to Vacate and Set Aside Default (Doc. No. 25), Renewed Motion to Vacate and Set Aside Default (Doc. No. 39), Supplement to Motion to Vacate and Set Aside Default (Doc. No. 41), collectively "**the Motion**", and the Debtor's response to the Motion (Doc. No. 31), the Court directs the United States of America ("the United States"), by and through the United States Attorney for this district, to supplement the Motion with

additional facts.<sup>1</sup> To date, the United States has failed to provide a complete set of facts upon which it may base its prayer for relief.

The Motion asks this Court to find “good cause” to vacate the entry of default against the United States in this proceeding,<sup>2</sup> and “excusable neglect” to justify extending the time for the United States to answer.<sup>3</sup> However, the facts supplied in the Motion and supporting affidavits concern only the actions taken, or not taken, by the Department of Education. As a matter of law, the Department of Education was powerless to prevent the default. Therefore, its actions may not be a sufficient basis for a finding of “good cause” to vacate the default, or “excusable neglect” to justify an extension of time to answer.

It has long been established that “except as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or officer thereof is a party...is reserved to the Department of Justice, under the direction of the Attorney General.” 28 U.S.C. § 516.<sup>4</sup> And the failure to file a timely answer or motion to dismiss (or seek an enlargement of time to do one or the other) must be considered “the conduct of litigation.” Therefore, incurring or preventing a default in this proceeding might fall within the exclusive control and purview of the Department of Justice, here represented by the United States Attorney’s Office. That agency’s

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<sup>1</sup> While the “U.S. Department of Education” is the nominal defendant, the United States Attorney’s Office has appeared and submitted the Motion as “[t]he United States, on behalf of the U.S. Department of Education,” and thus far has not disputed that service was proper on the United States pursuant to Fed. R. Bankr. P. 7004(b)(4).

<sup>2</sup> Fed. R. Civ. P. 55(c), made applicable to adversary proceedings by Fed. R. Bankr. P. 7055(c).

<sup>3</sup> Fed. R. Civ. P. 6(b), made applicable in bankruptcy by Fed. R. Bankr. P. 9006(b).

<sup>4</sup> This Court is not aware of any exceptions to this rule “otherwise authorized by law” that apply to this proceeding.

actions—and that agency’s explanations of its actions—will be the subject of this Court’s review. Accordingly, it is

**ORDERED** that the United States is directed to supplement the Motion consistent with this order on or before Friday, June 13, 2014.

**DATED:** May 30, 2014

**BY THE COURT**



Catherine Peek McEwen  
Catherine Peek McEwen  
United States Bankruptcy Judge

Service of this order will be by CM/ECF to CM/ECF users and by the Clerk’s Office to the Debtor.