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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GERALD NOBLE,

Plaintiff - Appellant,

v.

ARNE DUNCAN, U.S. Secretary of
Education,

Defendant - Appellee.

No. 09-35440

D.C. No. 3:08-cv-00749-MO

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael W. Mosman, District Judge, Presiding

Submitted June 29, 2010**

Before: ALARCÓN, LEAVY, and GRABER, Circuit Judges.

Gerald Noble appeals pro se from the district court’s judgment dismissing his action challenging the Secretary of Education’s promulgation of certain lending regulations as inconsistent with Congressional intent. We have jurisdiction under

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

28 U.S.C. § 1291. We review de novo. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1030 (9th Cir. 2008) (failure to state a claim); *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 919 (9th Cir. 2001) (summary judgment). We affirm.

We are not persuaded by Noble’s contentions regarding whether the regulations governing late disbursements of Grad PLUS loans to students, 34 C.F.R. §§ 668.164(g) and 682.207(f), are based on an impermissible construction of the Higher Education Act, 20 U.S.C. §§ 1070-1099. *See Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 842-44 (1984) (when Congress expressly delegates authority to an agency to fill in a gap, the decision of that agency should be given deference).

The district court properly dismissed Noble’s claims seeking injunctive relief because he failed to show that the Secretary acted ultra vires in this matter. *See* 20 U.S.C. § 1082.

Noble’s remaining contentions are unpersuasive.

Noble’s motion to expedite is denied as moot.

AFFIRMED.