

CASE NAME: Jefferson Capital Systems, LLC v. [REDACTED]	CASE NUMBER: [REDACTED]
--	----------------------------

ATTACHMENT

OF 1

(DOCUMENTS SERVED)

Notice of Motion and Motion for Summary Judgment, or in the Alternative, Summary Adjudication in Favor of Defendant [REDACTED]

Defendant's Memorandum of Points and Authorities in Support of His Motion for Summary Judgment, or in the Alternative, Summary Adjudication

Defendant's Separate Statement of Undisputed Facts in Support of His Motion for Summary Judgment, or in the Alternative, Summary Adjudication

Declaration of Attorney Josephine Lee in Support of Defendant [REDACTED] Motion for Summary Judgment, or in the Alternative, Summary Adjudication

Declaration of Defendant [REDACTED] Support of His Motion for Summary Judgment, or in the Alternative, Summary Adjudication

Proof of Electronic Service

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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RECEIVED
Superior Court of California
County of Los Angeles

MAY 12 2017

Sherri R. Carter, Executive Officer/Clerk
By _____, Deputy

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES – NORWALK DIVISION**

13 JEFFERSON CAPITAL SYSTEMS, LLC,) Case No. [REDACTED]
14)
15) LIMITED CIVIL CASE
16)
17 Plaintiff,) **NOTICE OF MOTION AND MOTION**
18) **FOR SUMMARY JUDGMENT OR, IN**
19) **THE ALTERNATIVE, SUMMARY**
20) **ADJUDICATION IN FAVOR OF**
21) **DEFENDANT** [REDACTED]
22)
23)
24) Date: July 26, 2017
25) Time: 8:30 AM
26) Dept.: B
27)
28 Defendant.)

29 TO PLAINTIFF, JEFFERSON CAPITAL SYSTEMS, LLC, AND ITS ATTORNEY OF
30 RECORD:

31 NOTICE IS HEREBY GIVEN that on **July 26, 2017 at 8:30 A.M.** or as soon
32 thereafter as the matter can be heard in Department B of the above-entitled court, located

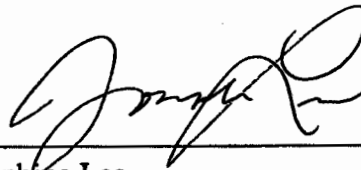
1 at 12720 Norwalk Blvd, Norwalk, CA 90650, Defendant J [REDACTED] endant”), will
2 and hereby do move this Court for Summary Judgment or, in the alternative, Summary
3 Adjudication in favor of Defendant and against Plaintiff Jefferson Capital Systems, LLC
4 (“Plaintiff”).

5 This motion will be made on the ground that there are no genuine issue as to any
6 material fact and that Defendant is entitled to Judgment as a matter of law.

7 PLEASE TAKE FURTHER NOTICE that this motion is based on this Notice, the
8 accompanying Memorandum of Points and Authorities, Separate Statement of
9 Undisputed Facts, Declaration of Josephine Lee, Declaration of [REDACTED] records
10 on file in this action, and upon such other matters, declarations, and evidence as may be
11 presented to the Court at the time of the hearing.

12
13 Dated: May 10, 2017

14 Respectfully submitted,

15
16
17 

18 Josephine Lee
19 Legal Aid Foundation of Los Angeles
20 Attorneys for Defendant
21
22
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24
25
26
27

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12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF LOS ANGELES – NORWALK DIVISION**

14 JEFFERSON CAPITAL SYSTEMS, LLC,)

Case No. [REDACTED]

) LIMITED CIVIL CASE

15)
16 Plaintiff,)

) **DEFENDANT’S MEMORANDUM**

) **OF POINTS AND AUTHORITIES IN**

) **SUPPORT OF HIS MOTION FOR**

17 v.)

) **SUMMARY JUDGMENT OR, IN THE**

) **ALTERNATIVE, SUMMARY**

) **ADJUDICATION**

))
20) Date: July 26, 2017

21) Time: 8:30 AM

22) Dept.: B

23 Defendant.)
24)
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28)

**DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
HIS MOTION FOR SUMMARY JUDGMENT**

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1 **INTRODUCTION**

2 Plaintiff Jefferson Capital Systems, LLC ("Plaintiff") filed this action against
3 Defendant [REDACTED] ("Defendant") to collect on a private student loan ("the Promissory
4 Note, Note, or Loan"). Plaintiff claims that this Loan was transferred twice, first from
5 alleged original lender Sallie Mae Bank to SLM Education Credit Finance Corp., second
6 from SLM Education Finance Corp. to itself. Plaintiff alleges that it is the sole owner of
7 Defendant's Loan and seeks damages based on three causes action: (1) breach of written
8 contract; (2) statement of account; and (3) open book account.

9 Pursuant to Code of Civil Procedure § 437c, Defendant seeks summary judgment
10 because there is no triable issue of fact as to a material foundational element for all three
11 causes of action – namely, that Plaintiff is a real party in interest. Plaintiff does not possess
12 any evidence to raise a triable issue on whether it obtained title to Defendant's Loan or to the
13 alleged accounts. While Plaintiff has provided evidence that portfolios of student loans were
14 transferred from Sallie Mae Bank to intermediary SLM Education Credit Finance Corp. and
15 then to Plaintiff, it has failed to provide a single shred of evidence that the Loan at issue was
16 included in any of the transferred loan portfolios.

17 Defendant also seeks summary judgment because Plaintiff lacks the evidence
18 necessary to establish other required elements of its three claims, including (1) the actual
19 terms of the Loan and (2) Defendant's agreement to a second contract that superseded the
20 original Loan, either in the form of an account stated or an open book account. Because
21 Plaintiff cannot establish basic elements of each of its three claims, Defendant seeks
22 summary judgment.

23 **FACTUAL BACKGROUND**

24 Plaintiff filed this action on June 14, 2016, to collect on a private student loan. The
25 Complaint states three causes of action: (1) breach of written contract, (2) account stated,
26 and (3) open book account. (See Separate Statement of Undisputed Facts (hereinafter, "UF")
27 1, 24, 33.) The Complaint is based on a promissory note to which Plaintiff is not a party.
28 (UF 2-6.)

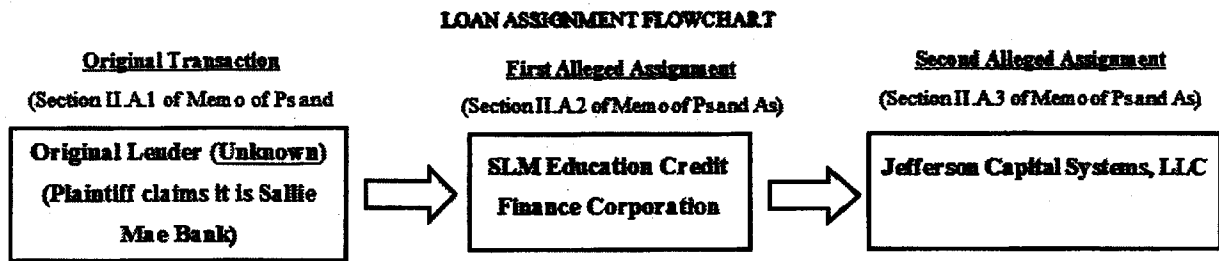
1 As a foundational element to all three causes of action, Plaintiff must establish that it
2 owns Defendant's student loan and is a real party in interest. Because Plaintiff is admittedly
3 not a party to Defendant's student loan (*id.*), it must produce evidence establishing a
4 complete chain of assignment of the individual Loan from the original lender to itself to
5 prevail. Plaintiff has failed to produce a shred of this basic evidence.

6 First, Plaintiff has failed to establish the identity of the original lender/transferor,
7 which is necessary as a pre-requisite to establishing subsequent loan transfers. In the
8 Complaint, Plaintiff alleged that Defendant entered a written loan agreement with SLM
9 Education Credit Finance Corp. (UF 2.) At the same time, Sallie Mae Bank is identified as
10 the original lender by Plaintiff in its discovery responses. (UF 3.) Sallie Mae Bank is also
11 identified as the lender on page two of the "College Advantage Loan Program Application
12 and Promissory Note" (the "Promissory Note," "Note," or "Loan") and the Federal Truth-in-
13 Lending Disclosure Statement produced by Plaintiff, neither of which are signed by
14 Defendant. (UF 4-6.) To add more confusion, page one of the Note, the only page signed by
15 and linked to Defendant, does not identify any lender and names Sallie Mae Education Trust
16 in the upper right hand corner. (UF 6.) Without a witness to testify to the link between the
17 unsigned Boilerplate Terms and Defendant or the first page of the Promissory Note, these
18 documents are insufficient to establish Sallie Mae Bank as the original lender/transferor.

19 Second, Plaintiff cannot establish that it was assigned Defendant's individual Loan.
20 Plaintiff contends there were two loan transfers. (UF 7.) Plaintiff states that the individual
21 Loan was first transferred from Sallie Mae Bank to SLM Education Credit Finance Corp. and
22 produced a Bill of Sale as evidence. (UF 8, 9.) Defendant's Loan, however, is not identified
23 in the Bill of Sale. (UF 10.) In addition, Plaintiff has not produced any other evidence that
24 would create an issue of fact as to whether the individual Loan was included in the portfolio
25 of loans transferred via the Bill of Sale.

26 Plaintiff contends that the individual Loan was then transferred from SLM Education
27 Credit Finance Corp. to itself. (UF 11.) Plaintiff produced a Bill of Sale and Assignment as
28 evidence of this transfer, but it does not reference Defendant's Loan. (UF 12-13.) Plaintiff

1 also provided a two-page "Excerpt from Sale File Assigned to Jefferson Capital Systems,
 2 LLC." (UF 14.) While this document includes an account line identifying Defendant, it does
 3 not mention Sallie Mae Education Trust, Sallie Mae Bank, or SLM Education Credit Finance
 4 Corp. (*Id.*) Moreover, without the affidavit of a witness with personal knowledge about the
 5 creation and trustworthiness of this Excerpt, it is not admissible as evidence to prove the
 6 transfer of the individual Loan to Plaintiff. (UF 15.) Thus, Plaintiff has failed to produce any
 7 evidence that would create a triable issue as to whether the individual Loan was included in
 8 the portfolio of loans transferred to Plaintiff via the Bill of Sale and Assignment. The
 9 following represents a chart summarizing the alleged assignments:



16 A full-size version of this chart, along with the summary of evidence referred to above, is
 17 attached as Exhibit A to the Declaration of Attorney Josephine Lee in Support of Defendant
 18 [REDACTED] Motion for Summary Judgment (hereinafter, "Lee Decl.").

19 Plaintiff also lacks any evidence creating a triable issue regarding the actual terms of
 20 the Loan, a necessary element for its breach of written contract claim. Plaintiff contends that
 21 the Loan terms are stated in the second through fifth pages of the alleged Promissory Note.
 22 (UF 4, 16.) These are generic boilerplate terms and conditions ("the Boilerplate Terms").
 23 (UF 4.) None of these pages were signed by Defendant, they contain no reference to
 24 Defendant, and they appear in a different font from the signed first page of the Promissory
 25 Note. (*Id.*) Defendant does not have a copy of the promissory note he originally signed and
 26 does not know if he agreed to the Boilerplate Terms produced by the Plaintiff. (UF 17.)
 27 Thus, without an affidavit from a competent witness identifying pages two through five as
 28 the terms to which Defendant agreed when he signed the Promissory Note, Plaintiff has no

1 evidence of the actual Loan terms, a required element for a breach of written contract claim.

2 Finally, with respect to the claims for a stated account and an open book account,
3 Plaintiff must establish that Defendant and itself or a prior Loan owner agreed to a second
4 contract as to the exact amount due to the Loan holder, which was intended to supersede the
5 Promissory Note. Plaintiff, however, admitted there was no oral agreement between
6 Defendant and itself or a prior loan assignee. (UF 18.) Nor has it produced any evidence
7 sufficient to establish a second written contract. (UF 19.)

8 Because Plaintiff lacks evidence to create a triable issue of fact on elements necessary
9 to establish its breach of written contract, account stated, and open book account claims,
10 Defendant requests that this court grant him summary judgment on all three causes of action
11 pursuant to Code of Civil Procedure § 437c.

12 ARGUMENT

13 **I. Summary Judgment Should Be Granted to a Defendant When the Plaintiff Does** 14 **Not Possess Any Admissible Evidence Necessary to Prove One or More Elements** 15 **of its Claim.**

16 A defendant is entitled to summary judgment if all the papers submitted show that
17 there is no triable issue as to any material fact and that the defendant is entitled to judgment
18 as a matter of law. (Code of Civ. Proc., § 437c, subd. (c); *Aguilar v. Atlantic Richfield Co.*
19 (2001) 25 Cal.4th 826, 855-56 (hereinafter, "*Aguilar*").) More specifically, a defendant is
20 entitled to judgment as a matter of law if he has shown that one or more elements of the
21 cause of action in question cannot be established. (Code of Civ. Proc., § 437c, subd. (o)(1);
22 *Aguilar, supra*, 25 Cal.4th at p. 850.) This can be accomplished by showing that the plaintiff
23 cannot establish one element of the claim. (*Wall St. Network, Ltd. v. N.Y. Times Co.* (2008)
24 164 Cal.App.4th 1171, 1176.) The defendant need not 'conclusively negate' the element; all
25 that is required is a showing 'that plaintiff does not possess, and cannot reasonably obtain,
26 needed evidence.'" (*Id.* (quoting *Aguilar, supra*, 25 Cal.4th at p. 853-54).)

27 The moving party bears the burden of making a *prima facie* showing of the
28 nonexistence of any triable issue of material fact. (*Aguilar, supra*, 25 Cal.4th at p. 845.) "An

1 issue of fact is not created by speculation, conjecture, imagination, or guesswork; it can be
2 created only by a conflict in the evidence submitted to the trial court in support of and in
3 opposition to the motion.” (*Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 116)
4 (citations omitted); Code of Civ. Proc., § 437c, subd. (c.) “There is a triable issue of material
5 fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying
6 fact in favor of the party opposing the motion in accordance with the applicable standard of
7 proof.” (*Aguilar, supra*, 25 Cal.4th at p. 850.)

8 When the defendant seeks summary judgment on an issue on which the plaintiff has
9 the burden of proof, the defendant’s evidence must be sufficient to persuade the factfinder
10 that the plaintiff has failed to show the matter is more likely than not. (Weil & Brown, Cal.
11 Practice Guide – Civil Procedure Before Trial (The Rutter Group 2009) at ¶ 10:240, p.10-
12 100.) In other words, “a moving defendant must present evidence which, if uncontradicted,
13 would constitute a preponderance of evidence that an essential element of the plaintiff’s case
14 cannot be established.” (*Kids’ Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 879.)

15 Furthermore, the court may only consider admissible evidence in evaluating a motion
16 for summary judgment. (Code Civ. Proc., § 437c, subds. (b)(1) and (d); *Garibay v. Hemmat*
17 (2008) 161 Cal.App.4th 735, 741 (reversing grant of summary judgment on motion that
18 relied solely on records that were not properly admitted into evidence under the business
19 records exception to the hearsay rule).) In addition, Plaintiff’s discovery responses are
20 binding in connection with summary judgment. (See, e.g., *Univ. of S. Cal. v. Superior Court*
21 (1990) 222 Cal.App.3d 1028, 1036 (holding that summary adjudication should have been
22 granted where Plaintiff’s deposition testimony and responses to requests for admission
23 established she could not prove an essential element of the claim); *D’Amico v. Bd. Of Med.*
24 *Exam’rs* (1974) 11 Cal.3d 1, 21 (“When discovery, properly used, makes it perfectly plain
25 that there is no substantial issue to be tried, [summary judgment] is available for prompt
26 disposition of the case.”) (internal quotation marks and citation omitted).) The court may
27 rely on “affidavits, declarations, admissions, answers to interrogatories, depositions, and
28 matters of which judicial notice may be taken.” (Code Civ. Proc., § 437c, subd. (b)(1).)

1 **II. Defendant Is Entitled to Judgment on the First Cause of Action Because Plaintiff**
2 **Lacks Evidence Necessary to Prove its Breach of Contract Claim.**

3 **A. Plaintiff Has No Admissible Evidence Establishing it is the Real Party in**
4 **Interest.**

5 Plaintiff first has the burden of proving a simple foundational element to its breach of
6 contract claim: that it is the real party in interest that holds title to and has a right to collect
7 on the Promissory Note. In California, a party must be the real party in interest and have
8 standing to sue as a prerequisite to seeking judicial relief. (Code Civ. Proc., § 367; *Cloud v.*
9 *Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 1004.) The real party in interest is the
10 person who owns or holds title to the claim or property involved. (*Gantman v. United Pac.*
11 *Ins. Co.* (1991) 232 Cal.App.3d 1560, 1566.)

12 It is undisputed that Plaintiff Jefferson Capital is not listed anywhere on the original
13 Promissory Note. (UF 6.) Indeed, as stated in its Complaint, Plaintiff Jefferson Capital is an
14 assignee of the Note. (UF 2.) Therefore, in order to meet its initial burden of proof, Plaintiff
15 must provide admissible evidence of an unbroken chain of assignment of the Defendant's
16 *individual* Note from the original lender to itself. As the California Supreme Court has
17 explained,

18 [t]he burden of proving an assignment falls upon the party asserting rights thereunder.
19 In an action by an assignee to enforce an assigned right, the evidence must not only
20 be sufficient to establish the fact of assignment when that fact is in issue, but the
21 measure of sufficiency requires that the evidence of assignment be clear and positive
22 to protect an obligor from any further claim by the primary obligee.

23 (*Cockerell v. Title Insurance & Trust Co.* (1954) 42 Cal.2d 284, 292 (citations omitted).)

24 Thus, "[t]he assignment must describe the subject matter of the assignment with sufficient
25 particularity to identify the rights assigned." (*Mission Valley East, Inc. v. County of Kern*
26 (1981) 120 Cal.App.3d 89, 96; see also *Hatchwell v. Blue Shield of California* (1988) 198
27 Cal.App.3d 1027, 1034 ("someone who is not a party to the contract has no standing to
28 enforce it or to recover extra-contractual damages for the wrongful withholding of benefits to
the contracting party").)

1 As set forth below, the Plaintiff has failed to provide any evidence raising a triable
2 issue of fact as to whether it owns the individual Promissory Note at issue in this case. The
3 evidence produced by Plaintiff and the problems with it are summarized in the Loan
4 Assignment Flowchart attached as Exhibit A to the Lee Decl..

5 1. *Plaintiff has not produced admissible evidence identifying the original lender on*
6 *Defendant's Loan.*

7 In order to defeat this motion and raise a triable issue of fact as to whether it is a real
8 party in interest, Plaintiff must provide admissible evidence showing a chain of transfers of
9 Defendant's individual Promissory Note from the original lender to itself. Plaintiff, as a
10 start, must therefore prove the identity of the original lender/transferor on Defendant's
11 Promissory Note.

12 In its original complaint, Plaintiff states that Defendant entered a written loan
13 agreement with Plaintiff's assignor, SLM Education Credit Finance Corp. (hereinafter, "SLM
14 Credit Finance Corp."). (UF 2.) Plaintiff's discovery responses contradict this allegation and
15 instead identify Sallie Mae Bank as the original lender. (UF 3.) Plaintiff has failed to provide
16 any evidence supporting either contention. (UF 4-6.) In fact, it is not possible to determine
17 the identity of the original lender on Defendant's Promissory Note based on the documents
18 produced by Plaintiff.

19 First, Plaintiff has only produced one page that, on its face, links Defendant to the
20 Promissory Note. (UF 6.) This is the first page of the purported Promissory Note, titled
21 "College Advantage Loan Program Application and Promissory Note," and includes
22 Defendant's signature. (*Id.*) Neither SLM Credit Finance Corp. nor Sallie Mae Bank is
23 identified as the lender on this document. (*Id.*) Instead, the form identifies a separate entity,
24 Sallie Mae Education Trust, in the top right hand corner. (*Id.*)

25 To support its claim that Sallie Mae Bank was the original lender, Plaintiff produced
26 four pages of boilerplate terms and conditions ("the Boilerplate Terms"). (UF 4.) These
27 Boilerplate Terms contain no signatures or initials, no reference to Defendant [REDACTED]
28 and no other identifying indicia that link them to the first page of the College Advantage

1 Loan Program Application and Promissory Note. (*Id.*) Plaintiff also produced an unsigned
2 Federal Truth-in-Lending Disclosure Statement which has Defendant's name, but it does not
3 include his signature or other indicia that this document was provided to him when the
4 original Loan was made. (UF 5.) In both documents, there is no reference to Plaintiff or
5 Plaintiff's alleged assignor, SLM Credit Finance Corp. (UF 4, 5.)

6 Since these documents bear no signature or acknowledgment of receipt from
7 Defendant, they are not admissible as evidence to prove that Sallie Mae Bank is the original
8 lender without the testimony of a witness with the personal knowledge necessary to link them
9 to Defendant. Plaintiff must meet the requirements of the business records hearsay exception,
10 which are as follows:

11 Evidence of a writing made as a record of an act, condition, or event is not made
12 inadmissible by the hearsay rule when offered to prove the act, condition, or event if:

- 13 (a) The writing was made in the regular course of business;
- 14 (b) The writing was made at or near the time of the act, condition, or event;
- 15 (c) The custodian or other qualified witness testifies to its identity and the mode
of its preparation; and
- 16 (d) The sources of information and method and time of preparation were such as
to indicate its trustworthiness.

17 (Evid. Code, §1271.)

18 Thus, to raise a triable issue of fact as to whether Sallie Mae Bank is the original
19 lender, Plaintiff must provide the declaration of a witness with the personal knowledge
20 necessary to state all of the above with respect to either the Disclosure Statement or the
21 Boilerplate Terms. Because the identity of the original lender/transferor is necessary to
22 establish that the Promissory Note was eventually transferred to Plaintiff, there is no triable
23 issue of fact if Plaintiff cannot provide admissible evidence that Sallie Mae Bank was the
24 original lender.

- 25 2. *Plaintiff's evidence in support of the first alleged transfer from Sallie Mae Bank*
26 *to SLM Education Credit Finance Corp. does not identify Defendant's Loan as*
having been included in the portfolio of transferred loans.

27 Even if Plaintiff was able to produce admissible evidence that Sallie Mae Bank was
28 the original lender, it has not met its burden of providing evidence that Defendant's loan was

1 transferred from Sallie Mae Bank to Plaintiff's alleged assignor. During discovery, we
2 requested all documents that support Plaintiff's claim that it is the assignee of the Loan. (UF
3 20.) In its responses, Plaintiff provided two separate documents as evidence that the
4 individual Promissory Note was first transferred from the alleged original lender Sallie Mae
5 Bank to SLM Credit Finance Corp. (UF 9, 21; Lee Decl., Ex. A (Flowchart of Assignment).)
6 However, neither document actually identifies the individual Note as being transferred.

7 First, Plaintiff relies on a Bill of Sale. (UF 9.) The Bill of Sale does *not* in any way
8 identify the individual Promissory Note at issue in this case. (UF 10.) Instead, it refers to a
9 "Master Loan Participation and Purchase Agreement" and a "portfolio of Loans described
10 below as being accepted for purchase by ECFC, as listed on the attached schedule." (*Id.*)
11 According to the Bill of Sale, there were 38,846 accounts included in the transferred loan
12 portfolio. (*Id.*) Plaintiff, however, has not produced either the Master Loan Participation and
13 Purchase Agreement or the "attached schedule" of loans, nor has it provided any other
14 documentation to show that Defendant's Loan was included in the loan portfolio covered by
15 the Bill of Sale. (*Id.*) If either of these documents supported Plaintiff's contention that the
16 Loan was included in the Bill of Sale, or if it had possession of either document, presumably
17 Plaintiff would have produced it.

18 Second, Plaintiff relies on a "Blanket Endorsement." (UF 21.) The Blanket
19 Endorsement also fails to identify the individual Promissory Note. (*Id.*) Although it refers to
20 an "attached Promissory Note," no promissory note was attached to this document when it
21 was produced. (*Id.*) Nor has Plaintiff produced any admissible evidence that the Promissory
22 Note was in fact attached to the Blanket Endorsement when it was allegedly delivered to
23 SLM Credit Finance Corp. (*Id.*)

24 In addition, Plaintiff has not provided any information to authenticate the documents
25 that it claims are sufficient to prove the first transfer of Defendant's Loan. For these
26 documents to be admissible, Plaintiff must provide an affidavit from a witness who has the
27 necessary personal knowledge to establish the requirements of the business record exception
28 to the hearsay rule.

1 Thus, unless Plaintiff can provide some admissible document identifying Defendant's
2 individual Note as having been transferred from Sallie Mae Bank to SLM Credit Finance
3 Corp., this motion should be granted.

4 3. *Plaintiff's evidence in support of the second alleged transfer from SLM Education*
5 *Credit Finance Corp. to Plaintiff also does not identify Defendant's Loan as*
6 *having been included in the portfolio of transferred loans.*

7 In its responses to discovery requests for documents that support Plaintiff's claim that
8 it is the valid assignee of the Loan, Plaintiff produced a "Bill of Sale and Assignment" that it
9 claims evidences a second transfer from SLM Credit Finance Corp. to itself. (UF 11- 13.)

10 But this document also does not include any particular identification of the individual
11 Promissory Note. (UF 13.) Plaintiff's reliance on the Bill of Sale and Assignment also
12 cannot raise a triable issue of material fact that Plaintiff actually owns the Loan unless
13 Plaintiff provides a witness affidavit sufficient to make it admissible under the business
14 records exception to the hearsay rule. Plaintiff stated in discovery that it could not currently
15 identify the person who provided or possesses the documentation produced as proof of each
16 loan assignment. (UF 15.)

17 The Bill of Sale and Assignment refers to two different documents. First, it refers to
18 a "certain Charged Off Educational Loan Portfolio Purchase and Sale Agreement dated as of
19 June 26, 2013" between SLM Credit Finance Corp. and Plaintiff. (UF 13.) Plaintiff has not
20 produced this June 26, 2013 Purchase and Sale Agreement. (*Id.*; Lee Decl., Ex. A
21 (Flowchart of Assignment).) We therefore do not know if it identifies individual loans
22 included in the portfolios of loans transferred by the Bill of Sale and Assignment.

23 Second, the Bill of Sale and Assignment also refers to "those certain receivables,
24 judgments or evidences of debt described in the Computer File delivered to Buyer in
25 connection with each Delivery." (UF 13.) This Computer File has also not been produced by
26 Plaintiff, as far as we know. Instead, Plaintiff provided a two-page "Excerpt from Sale File
27 Assigned to Jefferson Capital Systems, LLC." (UF 14.) While this document appears to
28 identify Defendant's individual Loan, we do not know how, when or by whom it was created.

1 (UF 15.) Indeed, in its discovery responses Plaintiff stated that it does not know “at this
2 time” who was involved in creating any computer record, such as the Excerpt. (*Id.*) Without
3 an affidavit from a witness with personal knowledge necessary to meet the business records
4 exception to the hearsay rule, Plaintiff lacks the evidence necessary to establish that this
5 document is actually an excerpt from the Computer File referred to in the Bill of Sale and
6 Assignment.

7 Once again, Plaintiff lacks the evidence necessary to raise an issue of triable fact as to
8 whether Defendant’s individual Loan was transferred from SLM Credit Finance Corp. to
9 itself. Consequently, summary judgment should be granted in Defendant’s favor.

10 4. *Summary judgment should be granted because Plaintiff has not provided a shred*
11 *of evidence that the Promissory Note was included in the portfolios of loans*
12 *transferred from the Sallie Mae Bank to Plaintiff.*

13 At best, Plaintiff may be able to show a triable issue whether Defendant owes an
14 unpaid debt to *some entity* under the Promissory Note. And Plaintiff may be able to show
15 that through these transfers, Plaintiff owns and has a right to collect payment on student loans
16 in *some loan portfolio*. But there is not a shred of evidence – nor any triable issue of fact –
17 that Defendant’s individual Promissory Note was included in *either* one of the two pools of
18 transferred loans or that the original lender/transferor was Sallie Mae Bank. Thus, Plaintiff
19 cannot establish the foundational element of its breach of contract claim – that it is a real
20 party in interest and has a right to collect from Defendant on the Promissory Note.

21 Courts in other jurisdictions have granted judgment in favor of individual student loan
22 borrowers based on loan trusts’ failures to prove that they own the loans at issue. For
23 example, in a Louisiana case, the Plaintiff loan trust sued to collect on a student debt and
24 alleged that the individual student loan had been transferred to it by the original lender.
25 (*Nat’l. Collegiate Student Loan Trust 2003-1 v Thomas* (La.App.Ct. 2013) 129 So.3d 1231,
26 1232.) To support its claim of ownership, the loan trust produced a Pooling Agreement
27 showing that it had acquired portfolios of student loans from the original lender. (*Id.*)
28 However, as in this case, the loan trust failed to provide any evidence that the individual

1 student loan had been included in the transferred loan portfolios. (*Id.* at pp. 1233, 1234.) The
2 Louisiana Court of Appeals determined this to be a material deficiency and reversed the trial
3 court's order granting summary judgment in favor of Plaintiff. (*Id.* at p. 1235.) (See also
4 *Lovett v. Nat'l Collegiate Student Loan Trust 2004-1* (Fla.Ct.App. 2014) 149 So.3d 735
5 (summary judgment in favor of plaintiff loan trust reversed for failure to produce evidence
6 showing that it acquired the individual student loan from the original lender, and thereby
7 prove that it was holder of the loan); *Student Loan Mktg. v. Holloway* (Mo.Ct.App. 2000) 25
8 S.W.3d 699 (remanding federal HEAL loan case due to student loan holder's failure to lay
9 adequate foundation connecting endorsement to individual promissory note); *Nat'l*
10 *Collegiate Student Loan Trust 2005-2 v. Hair* (Ohio.Ct.App. Mar. 3, 2015) 2015 WL
11 1019083 (reversing summary judgment in favor of plaintiff student loan trust for failure to
12 provide sufficient evidence that it owned individual student loan) (attached as Ex. Q to Lee
13 Decl.); *Nat'l Collegiate Student Loan Trust 2005-1 v. Owusu* (Ohio.Ct.App. Jan. 25, 2016)
14 2016 WL 263550 (reversing summary judgment in favor of loan holder for failure to provide
15 any evidence that individual loan was included in pool of transferred loans) (attached as Ex.
16 R to Lee Decl.).)

17 Similarly, Plaintiff Jefferson Capital has produced no evidence that it is the holder of
18 Defendant's individual Loan. Plaintiff has only provided inadmissible evidence that a
19 portfolio of loans was transferred from Sallie Mae Bank to SLM Credit Finance Corp. to
20 itself. Absent evidence that Sallie Mae Bank is the original lender/transferor on Defendant's
21 Loan and that Defendant's Loan was included in both portfolios of transferred loans,
22 Defendant is entitled to summary judgment on Plaintiff's breach of contract claim.

23 **B. Plaintiff Cannot Establish the Actual Terms of the Loan Contract.**

24 To prove a breach of contract, Plaintiff must prove (1) the contract; (2) the plaintiff's
25 performance or excuse of performance; and (3) that the Defendant breached the terms of the
26 contract. (See, e.g., *Sonic Mfg. Techs, Inc. v. AAE Sys., Inc.* (2011) 196 Cal.App.4th 456,
27 464; *Wall St. Network, Ltd., supra*, 164 Cal.App.4th at 1178; *Amelco Elec. v. Thousand*
28 *Oaks*, 27 Cal. 4th 228, 243 (2002).) Thus, in order to recover on a breach of contract claim,

1 the plaintiff must prove the actual terms of that contract. (*Sonic Mfg. Techs, Inc., supra*, 196
2 Cal.App.4th at 464; see also, *Student Loan Mktg. Ass'n. v. Holloway, supra*, 25 S.W.3d 699
3 (finding that, if terms of written contract are in dispute, lender must account for the original
4 terms or sufficiently establish unavailability of such terms).) Because a court cannot
5 determine whether or when a contract was breached or calculate damages without verifying
6 the actual terms of the contract, summary judgment should be granted to Defendant if
7 Plaintiff cannot prove the actual terms of the Loan.

8 In response to requests to provide evidence of the terms of the Note, Plaintiff
9 produced four pages of Boilerplate Terms. (UF 4, 16, 18, 19.) Plaintiff has produced no
10 evidence that the Boilerplate Terms are the terms that Defendant actually agreed to. (UF 4,
11 16, 17.) Notably, the Boilerplate Terms do not contain any identifiers or indicia that relate in
12 any way to Defendant or the individual Promissory Note. (UF 4.) The Terms are on pages
13 appended to the signed application, have a completely different font, and contain no
14 signature or initials. (*Id.*) The Boilerplate Terms refer only to a "Lender" as "Sallie Mae
15 Bank, Murray Utah," an entity whose name appears nowhere on application page signed by
16 Defendant. (*Id.*) The Boilerplate Terms only contain the identification number "3ITT0602"
17 which is not included anywhere on the page signed by Defendant. (*Id.*; UF 6.) Moreover,
18 Defendant does not have a copy of the original terms to which he agreed and does not know
19 if the Boilerplate Terms are the same as the terms to which he agree. (UF 17.)

20 Other courts have recognized that when a plaintiff produces a standard form contract
21 in a breach of contract claim, the plaintiff must prove that the standard form is the version of
22 the contract that the particular consumer agreed to. (See, e.g., *Henggeler v. Brumbaugh &*
23 *Quandahl, P.C.* (D. Neb. 2012) 894 F.Supp.2d 1180, 1188 (in recognizing the need for
24 "sufficiently documented proof of consumer indebtedness," particularly in cases involving a
25 debt buyer, court held that unsigned and generic agreement was insufficient to show
26 consumer assent to contract) (quoting Federal Trade Commission, *Collecting Consumer*
27 *Debts: The Challenges Of Change, a Workshop Report* at 22, 31 (Feb. 2009) (noting that
28 debt buyers ... "typically do not have access to the original credit application with the

1 consumer's signature, the specific contract that applied to the consumer's account, [etc.] ...
2 that could confirm or clarify a fraud claim or a legitimate consumer dispute”).) Courts in
3 other jurisdictions have dismissed cases in which plaintiff submitted a generic, undated, and
4 unsigned “customer agreement” that did not contain the consumer’s name or any indicia
5 relating the document to the consumer. (See, e.g., *Discover Bank v. Sura* (Poughkeepsie City
6 Ct. Apr. 26, 2012) 2012 WL 1450028 (holding that Plaintiff was not entitled to summary
7 judgment on breach of contract action because its evidence of an unsigned, undated contract
8 was insufficient to establish existence of agreement) (attached as Ex. S to Lee Decl.).)

9 Thus, Plaintiff has the burden of proving that the Boilerplate Terms are the terms to
10 which Defendant agreed. In other words, Plaintiff must provide an affidavit of a person with
11 sufficient personal knowledge to link the Boilerplate Terms to Defendant’s Loan, or some
12 other evidence showing the Defendant assented to the Boilerplate Terms. If Plaintiff fails to
13 do so, it is undisputed that it cannot prove an essential element of its breach of contract claim
14 – the actual terms of the contract to which Defendant agreed. In this case, Defendant should
15 be granted summary judgment on the First Cause of Action.

16 **III. Defendant Is Entitled to Judgment on the Second Cause of Action Because**
17 **Plaintiff Cannot Prove the Existence of An Account Stated.**

18 Plaintiff’s Second Cause of Action is for “Account Stated on Account.” (UF 24.)
19 Plaintiff has the burden of proving three essential elements for an account stated claim: “(1)
20 previous transactions between the parties establishing the relationship of debtor and creditor;
21 (2) an agreement between the parties, express or implied, on the amount due from the debtor
22 to the creditor; (3) a promise by the debtor, express or implied, to pay the amount due.” (*Zinn*
23 *v. Fred R. Bright Co.* (1969) 271 Cal.App.2d 597, 600; *Maggio, Inc. v. Neal* (1987) 196
24 Cal.App.3d 745, 752 (hereinafter, “*Maggio*”).) Plaintiff has not provided *any* evidence to
25 create a triable issue of fact as to any of these essential elements.

26 For the first element, Plaintiff cannot raise a question of fact regarding the existence
27 of previous transactions between Plaintiff and Defendant creating a creditor-debtor
28 relationship. As set forth above, the uncontroverted evidence shows that Plaintiff is not a

1 party to the Promissory Note, nor has it provided any evidence necessary to show that it is a
2 real party in interest. (*Supra* Section II.A.) It is also uncontested that Defendant never
3 agreed orally or in writing with anyone (including Plaintiff) to modify the terms of the
4 original promissory note, to make payments other than as provided in the promissory note, or
5 that he owed a specific sum to settle his liability under the promissory note. (UF 25.)

6 For the second and third elements, it is also uncontested that Defendant never agreed,
7 subsequent to the Promissory Note, that he was obligated to pay or would pay to anyone some
8 specific amount to settle the Loan. (*Id.*) "An account stated is an agreement . . . that the
9 items of an account are true and that the balance struck is due and owing. . . . The key
10 element in every context is agreement on the final balance due." (*Maggio, supra*, 196
11 Cal.App.3d. at pp. 752, 753.) In other words, an account stated arises between parties who
12 agree to a *new contract* in order to settle their differences arising out of prior dealings.
13 (*Gardner v. Watson* (1915) 170 Cal. 570, 574.) Notably, an account stated is not based upon
14 the original terms of a contract, but upon a balance agreed to by the parties, and *no* inquiry
15 may be made into the original terms of the contract. (*Id.*) Thus, "[t]he law is established in
16 California that a debt which is predicated upon the breach of the terms of an express contract
17 cannot be the basis of an account stated." (*Moore v. Bartholomae Corp.* (1945) 69
18 Cal.App.2d 474, 477.)

19 In its discovery responses, when asked to produce all documents supporting its
20 contention in the Second Cause of Action that an "account was stated in writing," Plaintiff
21 only provided the Application and Promissory Note. (UF 26.) Plaintiff also stated that the
22 Promissory Note "contains all the terms and conditions governing the relationship between
23 Plaintiff and Defendant regarding the Account, including, but not limited to, repayment and
24 default under the Agreement." (UF 19.) In its interrogatory responses, Plaintiff also refers to
25 (1) a "Statement of Purchased Account" from SallieMae Private Credit to Defendant with
26 zero dollars (\$0.00) under "Balance Due;" (2) internal creditor documents, including an
27 "Amortization of payment history," the Excerpt from Sale File Assigned to Jefferson Capital
28 Systems, LLC, and the Bill of Sale; and (3) the Truth in Lending Disclosure Statement. (UF

1 27.) None of these provide any evidence of a second agreement by Defendant to pay Plaintiff
2 any amount.

3 As to whether there was any modification of the Promissory Note, Plaintiff only
4 states that it is “[u]ncertain at this time as discovery is ongoing.” (UF 28.) Plaintiff is the one
5 who filed this action, asserted the Second Cause of Action and should have produced
6 evidence of a second agreement if it had any such evidence. At this time, Plaintiff’s evidence
7 only supports Defendant’s contention that there was no second agreement.

8 The only document produced by Plaintiff that might conceivably fit the requirements
9 for an account stated was Plaintiff’s letter to Defendant dated September 22, 2015,
10 demanding payment. (UF 29.) Defendant maintains that he had never received the
11 September 2015 letter so he could never have agreed to any account. (UF 30.) In fact, he had
12 never heard of Plaintiff until around November or December of 2015, when Plaintiff had
13 contacted him by phone. (UF 31.) Plaintiff also produced Litigation Review Notice dated
14 December 31, 2015. (UF 32.) This letter also cannot prove an account stated because the
15 uncontroverted evidence shows that Defendant never agreed that he owed any amount to
16 Plaintiff. (UF 25.)

17 A creditor cannot convert a breach of written contract claim “into an account stated
18 by merely mailing a summary of accounts allegedly due to the debtor and treating the
19 debtor’s silence as acceptance.” (*Maggio, supra*, 196 Cal.App.3d at 751-752.) In *Maggio*,
20 the plaintiff had advanced a former employer a loan of \$69,000 based on an oral contract.
21 (*Id.* at p. 749.) To avoid the 2-year statute of limitations for oral contracts on a portion of the
22 loan, the plaintiff contended that an account was stated when it sent the defendant a letter
23 demanding payment of the \$69,000, to which the defendant never responded. (*Id.* at pp. 748,
24 749.) The court held that the letter was not sufficient to create an account stated, as the
25 defendant’s failure to respond was not sufficient to show his agreement that he owed the
26 money demanded by the plaintiff. (*Id.* at p 753.) The court therefore limited plaintiff’s claim
27 to one for breach of oral contract with a 2-year statute of limitations. (*Id.*) (See also
28 *Truestone, Inc. v. Simi West Industrial Park II* (1984) 163 Cal.App.3d 715 (letter from

1 defendant to plaintiff expressly agreeing to pay stated amount was sufficient to create triable
2 issue for account stated cause of action); *Fogarty v. McGuire* (1959) 170 Cal.App.2d 405
3 (court judgment in favor of plaintiff for account stated claim based on defendant decedent's
4 express written acknowledgement that it owed former employee \$7,000 for services
5 rendered.)

6 There is no evidence that Defendant ever made any express agreement, orally or in
7 writing, that he owed Plaintiff any amount and Plaintiff has not produced any admissible
8 evidence of Defendant's agreement to pay Plaintiff on any account. There is also no
9 evidence that Defendant made *any* agreement with any prior loan holder that a particular
10 accounting of the payments/credits on the Loan were true and that he would pay some
11 specific amount to settle the Loan. Plaintiff therefore cannot raise a triable issue of material
12 fact that a statement of account was established and summary judgment should be granted in
13 favor of Defendant as to Plaintiff's Second Cause of Action.

14 **IV. Defendant is Entitled to Judgment on the Third Cause of Action Because**
15 **Plaintiff Cannot Prove the Existence of an Open Book Account.**

16 Plaintiff's third and final cause of action is for "Open Book Account." (UF 33.) A
17 "book account" is

18 a detailed statement which constitutes the principal record of one or more transactions
19 between a debtor and a creditor arising out of a contract or some fiduciary relation,
20 and shows the debits and credits in connection therewith, and against whom and in
21 favor of whom entries are made, is entered in the regular course of business as
22 conducted by such creditor or fiduciary, and is kept in a reasonably permanent form
23 and manner.

22 (Code Civ. Proc., § 337a; see also *Imperial Merch. Servs. Inc. v. Hunt* (2009) 47 Cal. 4th
23 381, 397 ("A book account is a detailed statement of debit/credit transactions kept by a
24 creditor in the regular course of business, and in a reasonably permanent manner.")) A book
25 account is described as "open" if there is still a balance due and unsettled, or if there are
26 continuing dealings on the account. (*Cochran v. Rubens* (1996) 42 Cal.App.4th 481, 485.) A
27 valid book account must show against whom the charges are made and in whose favor the
28

1 charges run. (*Interstate Grp. Adm'rs v. Cravens* (1985) 174 Cal.App.3d 700, 708
2 (hereinafter, "*Interstate Grp. Adm'rs*").)

3 "In deciding whether a book account exists the court must examine the agreement, or
4 lack of agreement, between the parties and their conduct in the context of their commercial
5 dealing." (*Maggio, supra*, 196 Cal.App.3d at 752.) Importantly, however, "[t]he mere
6 incidental keeping of accounts does not alone create a book account." (*Martini E Ricci*
7 *Iamino S.P.A. - Consortile Societa Agricola v. Trinity Fruit Sales Co.*, (E.D. Cal. 2014) 30
8 F.Supp.3d 954, 976 (quoting *Maggio*, 196 Cal.App.3d at p. 752).) Where there is an express
9 contract setting the time and amount of payment, in order to create an open book account the
10 creditor and debtor must expressly agree to be bound by an open book account. (*Id.*; see also
11 *In re Roberts Farms, Inc.* (9th Cir. 1992) 980 F.2d 1248, 1252 n.3 ("When such an express
12 contract exists, courts require that the parties expressly intend to be bound [under a book
13 account] because accruing debts under an express contract are not normally considered the
14 subject of an open book account.") (hereinafter, "*In re Roberts Farms, Inc.*").) For example,
15 a loan established by a written contract cannot give rise to a book account where there was
16 no agreement between the parties to carry the contract as a book account, and the conduct of
17 the parties did not express such intention. (*Maggio, supra*, 196 Cal.App.3d at 752.)

18 The only document Plaintiff produced in discovery that might conceivably fit the
19 requirements for an open book account was a document labeled "Amortization." This
20 document states Defendant's name and appears to show other information regarding a loan,
21 including the principal balance, interest rate, interest accrual, and payments. (UF 34.) For
22 the following reasons, the Amortization document cannot support an open book account
23 claim.

24 First, the Amortization document does not contain all of the information that is
25 required to establish a book account against Defendant. To sustain a cause of action on a
26 book account, the account must show against whom the charges are made and in whose favor
27 the charges run. (*Interstate Grp. Adm'rs, supra*, 174 Cal.App.3d at p. 708.) But the
28 Amortization document does not indicate anywhere that charges are to run in Plaintiff's

1 favor. (UF 34.) In fact, neither Plaintiff's name nor the name of Plaintiff's assignor appears
2 anywhere on the document. (*Id.*) Only the entity "Navient" appears at the top of the
3 document. (*Id.*) Therefore, the lack of any indication on the Amortization document as to in
4 whose favor the charges are to run is a fatal omission and bars the use of the Amortization
5 document as an open book account against Defendant.

6 Moreover, as with the other causes of action, Plaintiff cannot prevail on an open book
7 account theory because Plaintiff cannot produce admissible evidence that it has title to the
8 purported debt. (*Supra* Section II.A.) Per the statutory definition of an open book account,
9 the keeping of an account cannot constitute an actionable book account unless it details a
10 debt that is actually owed to the creditor. (See Code Civ. Proc. Code, § 337a (defining a book
11 account as "a detailed statement which constitutes the principal record of one or more
12 transactions between a debtor and a creditor arising out of a contract or some fiduciary
13 relation . . .").) Plaintiff cannot base a cause of action on an open book account on a debt
14 owed to another entity. (*Id.*)

15 Second, even if Plaintiff did have a document that properly stated charges and
16 debts between itself and Defendant, and even if Plaintiff could establish that a creditor/debtor
17 relationship existed between the parties, Plaintiff's claim still would fail because there is no
18 evidence that Defendant expressly agreed to be bound by an open book account. Where a
19 debt is reflected in an express contract, the parties to that contract must expressly intend to be
20 bound by an open book account because "accruing debts under an express contract are not
21 normally considered the subject of an open book account." (*In re Roberts Farms, Inc., supra*,
22 980 F.2d at p. 1252, n.3; *Maggio, supra*, 196 Cal.App.3d at p. 752 (holding loan did not
23 constitute an open book account absent any indication the parties agreed to be so bound).)

24 In this case, there purportedly is an express written agreement setting the time and
25 amount of repayment, the Promissory Note. (UF 6.) In its discovery responses, Plaintiff
26 stated that it has calculated damages based, in part, on the terms of this Promissory Note (UF
27 23, 27.) Plaintiff also stated that the written Loan Agreement (the Promissory Note)
28 "contains all the terms and conditions governing the relationship between Plaintiff and

1 Defendant regarding the Account, including, but not limited to, repayment and default under
2 the Agreement.” (UF 19.)

3 In addition, the uncontested evidence shows that Defendant *never* agreed to any open
4 book agreement. Defendant never agreed orally or in writing with anyone (including
5 Plaintiff) to modify the terms of the original promissory note, to make payments other than as
6 provided in the promissory note, or that he owed a specific sum to settle his liability under
7 the promissory note. (UF 25.) Defendant never received any copy of the Amortization
8 document prior to this litigation, nor any other document purporting to establish an open
9 book account, from Plaintiff or any prior assignees. (UF 25, 36.) And the Amortization
10 document is just that – an amortization schedule based upon the repayment terms of an
11 express, written Promissory Note. (UF 35.)

12 Accordingly, there is no triable issue of any material fact with respect to the Third
13 Cause of Action, as Plaintiff has not produced any evidence of the existence of an open book
14 account expressly agreed to by Defendant. Defendant should therefore be granted summary
15 judgment on this claim.

16 **CONCLUSION**

17 For the reasons stated above, Defendant respectfully requests that this Court grant
18 summary judgment, or in the alternative summary adjudication, on all of Plaintiff’s claims
19 herein.

20 Dated: May 10, 2017

Respectfully submitted,

21
22
23
24 

25 Josephine Lee
26 LEGAL AID FOUNDATION OF LOS ANGELES
27 Attorneys for Defendant
28 

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RECEIVED
Superior Court of California
County of Los Angeles

MAY 12 2017

Sherri R. Carter, Executive Officer/Clerk

By _____, Deputy

11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF LOS ANGELES – NORWALK COURT

13 JEFFERSON CAPITAL SYSTEMS, LLC,) Case No. 16N09795
14)
15) LIMITED CIVIL CASE
16)
17 Plaintiff,) **DECLARATION OF DEFENDANT**
18) **IN SUPPORT OF HIS**
19) **SUMMARY**
20) **JUDGMENT, OR ALTERNATIVELY,**
21) **FOR SUMMARY ADJUDICATION**
22)
23) Date: July 26, 2017
24) Time: 8:30 AM
25) Dept.: B
26)
27)
28)

29 [REDACTED] declare as follows:

- 30 1. I am the Defendant in the above-entitled matter.
31 2. I have personal knowledge of the facts stated herein, and, if called upon to
32 testify thereto, I could and would competently do so.

33 ///

34 ///

1 3. I do not have a copy of the original promissory note that I signed for the
2 Loan that is the subject of this lawsuit, and I also do not have a copy of the College
3 Advantage Loan Program Application and Promissory Note ("Note") dated November
4 28, 2006 and attached hereto as Exhibit A, other than the copy provided by Plaintiff.

5 4. I do not remember receiving a copy of pages two through five of the Note
6 at any time prior to this litigation. I do not know if I agreed to the terms and conditions
7 on those pages when I signed the first page of Note.

8 5. I first heard about Jefferson Capital Systems, LLC ("Jefferson Capital
9 Systems" or "Plaintiff") when I was contacted by phone by someone who claimed to be
10 from Jefferson Capital Systems, sometime around November or December of 2015. I
11 don't recall the exact date.

12 6. I had never heard of, communicated with or received anything from
13 Jefferson Capital Systems before this date.

14 7. The person from Jefferson Capital Systems who called me in November or
15 December of 2015 told me that she was seeking to collect a debt. I did not agree that I
16 owed any money to Jefferson Capital Systems or to any payment plan during this call.

17 8. I did not receive the letter from Jefferson Capital Systems dated
18 September 22, 2015 and attached hereto as Exhibit B until it was produced by Plaintiff in
19 discovery for this action.

20 9. I never entered any agreement orally or in writing, after I signed the first
21 page of the Note dated November 28, 2006 and attached hereto as Exhibit A, with anyone
22 regarding the Note or regarding the terms of the Note or payments or amounts due under
23 the Note.

24 10. I do not remember receiving the Statement of Purchased Account attached
25 as Exhibit C prior to this litigation.

26 11. I do not remember receiving the Federal Truth-in-Lending Disclosure
27 Statement attached as Exhibit D prior to this litigation.

28 12. I never received a copy of the Amortization Schedule attached as Exhibit

1 E prior to this litigation.

2 13. I have never received an document from Plaintiff or another entity
3 purporting to establish an open book account.

4 14. I declare under penalty of perjury under the laws of the state of California
5 that the foregoing is true and correct.

6 15. Executed on May 10, 2017 in Los Angeles, California.



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Exhibit A

College Advantage Loan Program Application and Promissory Note
For Loan Applications Received By May 31, 2007

Sallie Mae Education Trust
9007 167th Ave
Academic Year
2006 - 2007

16. Other Name(s) Under Which Credit References and/or Credit History May Be Verified, if Any (Last Name, First, MI)

SECTION II - TO BE COMPLETED BY THE COBIGNER

17. Social Security Number		18. Last Name, First, MI		19. Permanent Home Address (Street Address, City, State, ZIP Code)	
20. How Long at Current Address?		21. Home Telephone Number		22. Date of Birth (MM/DD/YYYY)	
23. E-mail Address		24. Citizenship (check one) <input type="checkbox"/> U.S. Citizen <input type="checkbox"/> Permanent Resident* Alien ID # _____ *Non-citizen Permanent Residents must submit a copy of the front and back of their CIS card (Form I-551).			
25. Name of Current Employer <input type="checkbox"/> Self-Employed			26. Work Address (Street Address, City, State, ZIP Code)		27. Work Telephone Number
28a. Annual Gross Income		28b. Additional Annual Income		28c. Length of Employment with Current Employer Years Months	
28d. Annual Gross Income		28e. Additional Annual Income		28f. If Less Than 3 Years, Length with Previous Employer Years Months	

30. Other Name(s) Under Which Credit References and/or Credit History May Be Verified, if Any (Last Name, First, MI)

SECTION III - COLLEGE ADVANTAGE LOAN PROGRAM PROMISSORY NOTE AND BORROWER/COBIGNER SIGNATURE

WHERE TERMS ARE DEFINED. Terms used in this Note are defined below and on the following pages.

DISCLOSURE STATEMENT. I understand that concurrent with the first disbursement of my Loan I shall receive a Truth in Lending Disclosure Statement (the "Disclosure Statement"). The terms of the Disclosure Statement are part of this Note. I understand that the Lender will also send any separate Cosigner notices that are required by applicable law.

PROMISE TO PAY. Jointly and severally with the other signer below, I promise to pay to the order of the Lender as identified in this Note, according to the terms below the sum of: the Requested Loan Amount, to the extent it is advanced to me, or on my behalf, which includes the Supplemental Fee (together, the "Loan Amount"); other interest, fees and charges accrued or capitalized on the Loan Amount as described in this Note; and, in the event of default, reasonable attorney's fees, court costs and collection agency fees to the extent permitted by law, all as described in this promissory note ("Note") and in accordance with the terms and conditions in this Note.

Since interest accrues on the outstanding principal balance, capitalizing interest increases the total cost of the loan.
The terms of this Note continue through page 5 attached.

NOTICE TO CONSUMER. (1) Do not sign this Application and Promissory Note if it contains any blank spaces in Sections I and II. (2) You are entitled to an exact copy of any agreement you sign. (3) You have the right at any time to pay in advance the unpaid balance due under this agreement and you may be entitled to a partial refund of the finance charge. (4) Do not sign the application before you read the Note.

CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT. I, THE COBIGNER, HAVE READ THE APPLICABLE COBIGNER NOTICE.

Borrower (SEAL) Date 11-17-06 Cosigner (SEAL) Date _____

SECTION IV - TO BE COMPLETED BY SCHOOL OFFICIAL If submitting electronically, do not complete. By your submission, you make the certifier certification set forth below. Check box to submit electronically and mail this Application to: Sallie Mae, P.O. Box 147023, Gainesville, FL 32614-7023.

31. School Case # <u>02074</u>	32. Branch Code (if Any) <u>80</u>	33. Grade Level <u>1</u>	34. Enrollment Status <input checked="" type="checkbox"/> Full-Time <input type="checkbox"/> Mid-Time <input type="checkbox"/> Part-Time	35. Academic Progression (MM/DD/YYYY) <u>11-27-06</u>
36. School Term/Loan Period (MM/DD/YYYY) <u>11-27-06</u> <u>9-1-07</u>			37. Certified Loan Amount (Do not include Estimated Financial Aid) <u>11067.00</u>	
38. College Advantage Loan Disbursement Amount and Date				
Amount <u>10,067</u>		Date <u>11-28-06</u>		

SCHOOL CERTIFICATION: For the purpose of this certification only, the words "I" and "my" refer to the School Official. I hereby certify that the Student named in Section I is accepted for enrollment, is in good standing, is making satisfactory progress in an education program determined to be eligible for the College Advantage Loan Program, and is eligible for a College Advantage Loan. I further certify that I have read personally with all applicable College Advantage Loan policies and provisions and that the information provided in Sections I and IV is true, complete, and correct to the best of my knowledge and belief.

School: <u>ITT-Technical Institute</u>	Title of School Official: <u>Financial Aid Administrator</u>	Date: <u>11-28-06</u>
Name of School Official: <u>Emique Mackie</u>	Signature of School Official: <u>[Signature]</u>	Telephone Number: <u>352 380-1555</u>

SECTION V - LENDER RETURN
Lender Code
300999

College Advantage Loan Program Promissory Note— Document 3ITT0602

In this Note, the words "I", "me", "my", "mine" and "we" mean the Student Borrower and Cosigner who signed above, unless the language specifically refers to only one or the other. "Lender", "you", "your" and "yours" mean the lender listed below and any subsequent holder of this Note. "School" means the school approved by ITT Educational Services, Inc. and named in Section IV of the Application.

LENDER:

Sallie Mae Bank, Murray Utah

A. INTEREST

1. **Accrual of Interest** – Interest will accrue from the Disbursement Date until payment in full at the Variable Rate described in paragraph 2. Interest that accrues and is not paid during the Interim Period, in-school deferment, forbearance or during any period in which an automatic stay in bankruptcy is in effect will be capitalized at the end of that period.

2. **Variable Rate** – The Variable Rate will change quarterly on the first day of each January, April, July and October (the "Change Date(s)") if the Index changes. The Variable Rate is the rate equal to the sum of the highest Prime Rate published in *The Wall Street Journal*'s "Credit Markets" section, "Money Rates" table on the 25th day of the last month of the quarter prior to my loan's Disbursement or Change Date (the "Index") plus a percentage from 2% to 8% as identified on my Disclosure Statement, per annum (the "Margin") and rounded to the nearest one-eighth (0.125) of one percent. (For example, the Variable Rate for a quarter beginning July 1st will be determined by the applicable Prime Rate published the preceding June 25.) The Margin is based on my credit history and my Cosigner's credit history. The actual Variable Rate during the quarter in which my loan is disbursed will be on my Disclosure Statement.

If *The Wall Street Journal* is not published or the Prime Rate is not stated, then the Index shall be determined by using the immediately preceding published Prime Rate. If the Index is no longer available, you will choose a comparable substitute. In no event will the Variable Rate exceed the maximum rate allowed by law.

B. DEFINITIONS

1. **Interim Period** – The "Interim Period" will begin on the day of my first disbursement. My Interim Period will end 6 months after I graduate or withdraw from an eligible institution.

2. **Repayment Period** – The "Repayment Period" will begin on the day after the Interim Period ends and will continue until my loan is paid in full. If my loan is disbursed after the Interim Period, the Repayment Period will begin on the date of the first disbursement.

3. **Capitalized Interest and Other Amounts** – From time to time, any interest, fees, charges, and costs due and not yet paid may be added, without notice, to the principal amount of the loan. This addition is called "capitalizing." Since interest accrues on the outstanding principal balance, capitalizing increases the total cost of the loan.

4. **Default** – You may declare my loan in default following an event described in Section H except as follows:

IDAHO, IOWA, KANSAS, MAINE and SOUTH CAROLINA RESIDENTS ONLY: I will be in default if I fail to make a payment as required by this Note (or within 10 days of the time required by this Note, for Iowa residents) or if the prospect of my payment or performance is significantly impaired. The burden of establishing the prospect of significant impairment is on you. **WISCONSIN RESIDENTS ONLY:** I will be in default (a) if I permit to be outstanding an amount exceeding 1 full payment which has remained unpaid for more than 10 days after its scheduled due date or deferred due date, or I fail to pay the first payment or the last payment within 40 days of its scheduled due date or deferred due date, or (b) if I fail to observe any

other provision of this Note, the breach of which materially impairs my ability to pay the amounts due under the Note.

5. **Disbursement Date** – means the date on which you lend money to me in consideration for this Note and will be the date shown on the first loan check or the first date the loan funds are electronically transferred to the School.

C. TERMS OF REPAYMENT

1. I will repay my loan within 120 consecutive months after the beginning of the Repayment Period of my loan. I may request, and you will determine whether I

am eligible for, a longer Repayment Period. Periods of deferment or forbearance are excluded in the maximum term.

2. The Lender may allow me to defer repayment while I am enrolled.

3. Subject to the terms of paragraph 4, you will establish a schedule whereby I will repay my loan in consecutive monthly installments of principal and interest calculated to equal the amount necessary to amortize the unpaid principal and interest at the Variable Rate then in effect over the number of months remaining in the Repayment Period with the payment amount changing in the month following the month of each Change Date.

4. I may choose a graduated repayment option, if available. If I convert to this option, I will notify you in writing.

5. Since interest accrues daily upon the unpaid principal balance of my loan, if I make payments after my payment due dates, I may owe additional principal, interest, fees and charges at the end of the Repayment Period. In such case, I shall pay the additional amounts, and you may, but are not required to, increase the Repayment Period.

6. Except as provided in paragraphs 2, 3, and 4, I agree to pay at least \$50 per month or the unpaid balance of all my College Advantage Loans combined, whichever is less.

7. Payments will be applied first to accrued interest, then to principal and then to applicable fees and other costs I owe you in the order determined by you, as permitted by applicable law. Payments in excess of the amount due will advance the next payment due date by the number of whole payments satisfied by the extra funds. If I wish to make a payment in satisfaction of a disputed amount or balance, I must send it to Sallie Mae Servicing, P.O. Box 3800, Wilkes-Barre, PA 18773-3800 with a letter of explanation. To the extent permitted by law, you may accept late payments, partial payments, and payments marked, "payment in full," or having similar language, without waiving your rights under this Note.

D. LATE CHARGE

I will pay a Late Charge if I fail to make any part of an installment payment within 15 days after it becomes due. The amount of the Late Charge will be identified on my Disclosure Statement.

E. SUPPLEMENTAL FEE

1. You may charge me and, if charged, I will pay you an amount equal to the Supplemental Fee at each disbursement of my loan. This Fee will be a percentage of the principal balance of my loan depending on my credit history and my Cosigner's credit history, will be deducted from the Loan Amount at disbursement, and will be identified on my Disclosure Statement as a Prepaid Finance Charge.

2. I understand and agree that the Supplemental Fee is earned when it is assessed and is not subject to rebate if I prepay my loan.

F. PAYMENT RETURN FEE

If I make a payment and that payment is returned or refused by my bank for any reason, I agree to pay a charge of up to \$20.00 for each payment so returned. Such Payment Return Fee may be added to my principal balance hereunder and accrue interest at the rate provided in this Note, without notice.

G. RIGHT TO PREPAY

I have the right to prepay all or any part of my loan at any time without penalty.

H. WHOLE LOAN DUE

Subject to applicable law, you have the right to give me notice that the whole outstanding principal balance, accrued interest, and all other amounts payable to you under the terms of this Note are due and payable at once and to cease to make any further disbursements to me, if:

1. I fail to make any monthly payment to you when due; or
2. I fail to provide a notice required in Section K.1 on time; or
3. I break any of my other promises in this Note; or
4. Any bankruptcy proceeding is begun by or against me and not dismissed within 60 days, or I assign any of my assets for the benefit of my creditors; or
5. I make any false written statement in applying for this loan or at any time during the Interim or Repayment Periods; or
6. I die; or any Cosigner dies; or
7. I am in default on any loans I may already have with you, or on any loans I may have with you in the future.

My failure to receive a statement does not relieve me of my obligation to make my required loan payments in accordance with the terms and

conditions of this Note. If I default, I will be required to pay interest on this loan accruing afterwards at the Variable Rate applicable to this loan prior to such event. The Variable Rate will be subject to adjustment in the same manner as before.

I. COLLECTION COSTS

If I default, I agree to pay you reasonable amounts permitted by law, including collection agency fees, outside attorney's fees and court costs, which you incur in enforcing the terms of this Note. Any such amounts include fees and costs incurred in connection with any appellate or bankruptcy proceedings.

J. CHARGES FOR OPTIONAL SERVICES

If I request and you agree to provide optional services to me in connection with my loan, you may charge me and I agree to pay the fees for such services. The fee will be disclosed to me before I accept any such service. Optional services may include, but are not limited to: (1) allowing me to make an expedited payment on my loan; and (2) sending documents to me by express delivery or facsimile transmission.

K. NOTICES

1. I will send written notice to you, within 10 days after any change in my name, address, telephone number or School enrollment status.
2. Any notice required to be given to me by you will be effective when mailed to the latest address you have for me.
3. We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.
4. I understand that the following notices are required by or are necessary under state law and that these notices may not describe all of the rights that I have under state and federal law. Unless otherwise indicated, each notice applies to borrowers and cosigners who live in the indicated state on the date that they sign this Note and to borrowers and cosigners who are residents of that state.

CALIFORNIA RESIDENTS ONLY: A married applicant may apply for a separate account.

CALIFORNIA and UTAH RESIDENTS: As required by California and Utah law, I am hereby notified that a negative credit report reflecting on my credit record may be submitted to a credit reporting agency if I fail to fulfill the terms of my credit obligations.

IOWA and KANSAS RESIDENTS: (For purposes of the following notice to Iowa and Kansas residents, "you" means the Borrower and Cosigner, not the Lender.)

NOTICE TO CONSUMER 1. Do not sign this paper before you read it. 2. You are entitled to a copy of this paper. 3. You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charges in accordance with law.

MARYLAND RESIDENTS ONLY: You elect to make this loan pursuant to Subtitle 10 (Credit Grantor Closed End Credit provisions) of Title 12 of the Maryland Commercial Law Article only to the extent that such provisions are not inconsistent with your authority under federal law (12 U.S.C. § 86, 1463(g), or 1831d, as appropriate) and related regulations and interpretations, which authority you expressly reserve.

MASSACHUSETTS RESIDENTS ONLY: Massachusetts law prohibits discrimination based upon marital status or sexual orientation.

MISSOURI RESIDENTS ONLY: ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR FORBEAR FROM ENFORCING REPAYMENT OF DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE. TO PROTECT YOU (BORROWER(S)) AND US (CREDITOR) FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT.

NEVADA RESIDENTS ONLY: This is a loan for study.

NEW JERSEY RESIDENTS ONLY: The section headings of the Note are a table of contents and not contract terms. Portions of this Note with references to actions taken to the extent of applicable law apply to acts or practices that New Jersey law permits or requires. In this Note, acts or practices (i) by you which are or may be permitted by "applicable law" are permitted by New Jersey law, and (ii) that may or will be taken by you unless prohibited by "applicable law" are permitted by New Jersey law.

NEW YORK, RHODE ISLAND and VERMONT RESIDENTS: I understand and agree that you may obtain a consumer credit report in connection with any updates, renewals or extensions of any credit as a result of this application. If I ask, I will be informed whether or not such a report was obtained and, if so, the name and address of the agency that furnished the report. I also understand and agree that you may obtain a consumer credit report in connection with the review or collection of any loan made to me as a result of this application or for other legitimate purposes related to such loans.

OHIO RESIDENTS ONLY: The Ohio laws against discrimination require that all creditors make credit equally available to all credit-worthy customers, and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights Commission administers compliance with this law.

VERMONT RESIDENTS ONLY: (For purposes of the following notice to Vermont residents, "you" means any Cosigner, not the Lender) **NOTICE TO COSIGNER: YOUR SIGNATURE ON THIS NOTE MEANS THAT YOU ARE EQUALLY LIABLE FOR REPAYMENT OF THIS LOAN. IF THE BORROWER DOES NOT PAY, THE LENDER HAS A LEGAL RIGHT TO COLLECT FROM YOU.**

WISCONSIN RESIDENTS ONLY: If I am a married Wisconsin resident my signature confirms that this loan obligation is being incurred in the interest of my marriage or family. No provision of any marital property agreement, unilateral statement under § 766.59 of the Wisconsin Statutes, or court decree under § 766.70 adversely affects your interest unless, prior to the time that the loan is approved, you are furnished with a copy of the marital property agreement, statement, or decree or have actual knowledge of the adverse provision. (3) My spouse has actual knowledge that this credit is being extended to me and has waived the requirements of Wisconsin Statute Section 766.56(3)(b) as acknowledged by his or her signature on the attached "Notice to Married Wisconsin Residents".

5. I understand that the following notice is required by federal law and that for purposes of this notice, the words "you" and "yours" mean any Cosigner, and not the Lender.

NOTICE TO COSIGNER:

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

6. I understand that the following notice is required by federal law and is only applicable to loans issued to finance educational expenses at for-profit educational institutions or institutions otherwise subject to the FTC Holder Rule under 16 C.F.R. §433.2.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

L. ADDITIONAL AGREEMENTS

1. I understand that when you accept the attached signed application, you are not agreeing to lend me money, and I am not bound to these credit terms, and that there will be no such agreement, and this Note will not become effective, until the last to occur of the following: (a) the date the Note was received, reviewed and approved by the Lender; (b) the date I received final credit approval from the Lender; (c) midnight of the third Lender business day after the date I received the Disclosure Statement; or (d) the Disbursement Date for my Loan.
2. You have the right to lend an amount less than the Requested Loan Amount or to accept or reject my application. You also have the right to cancel any undischarged amount if, after you agree to make the loan, (a) I cease to be enrolled at the School and I do not owe the School for expenses incurred before I ceased to be enrolled, or (b) my Cosigner notifies you that he or she no longer wants to repay the amount not yet disbursed, (c) an event occurs as described in Section H, or (d) the School ceases to be eligible to participate in the College Advantage Loan program.
3. If this Note is assigned, the assignee will become the owner of this Note and as my creditor will have all your rights to enforce this Note against me.
4. I understand that you are located in the State listed in the introductory paragraph of this Promissory Note and the Note will be entered into in the same State. Consequently, the provisions of this Note will be governed by federal laws and the laws of that State to the extent not preempted, without regard to conflict of law rules.
5. Upon receipt of the Disclosure Statement, I will review it and if I am not satisfied with the terms of my loan as approved, I may cancel this Note and all disbursements. To cancel this Note, I will contact you within 30 days after this Note becomes effective, and I will not cash any loan checks, or if funds are transmitted electronically, I will instruct the School, within 30 days after this Note becomes effective, to return the funds to you. I understand and agree that if the information on my Disclosure Statement conflicts with the information in this Note, the information on the Disclosure Statement applies.
6. By accepting past due payments you do not waive or affect any right to accelerate this Note. I waive any notice of dishonor, notice of protest, presentment, demand for payment, and all other notices or demands in connection with this Note and consent to the addition of a party who will be liable upon this loan or any other loans I have outstanding under the program, to any and all extensions, renewals, or releases of any party liable upon this loan or any other loans I have outstanding under the program, and to any waiver or modification that may be granted by you, all without affecting or releasing the Borrower or the Cosigner from such loans. My responsibility for repaying this loan is not affected by the liability of any other person to you or by your failure to notify me that a payment has not been made.
7. If any provision of this Note is held invalid or unenforceable, that provision shall be considered omitted from this Note without affecting the validity or enforceability of the remainder of this Note.
8. This Note may be modified only if you put the modification in writing and the modification is agreed to by any Borrower or Cosigner. Any such modification does not require the consent of any other borrower or cosigner and will not affect the validity or enforceability of the remainder of this Note.
9. I understand that this loan is an educational loan and is made under a program that includes Federal Stafford loans and other loans and which is funded in part by non-profit organizations, including governmental units, and/or is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986 (26 USC § 221(d)(1)), and, therefore, is not dischargeable in bankruptcy, except pursuant to 11 U.S. Code § 523(a)(8).
10. I acknowledge that I have received a true and exact copy of this Note.

11. I may not assign this Note or any of its benefits or obligations. You may assign this Note at any time. The obligations of this Note will be binding on my estate.

12. Your failure to exercise any right hereunder does not constitute a waiver thereof. All waivers must be in writing.

13. I hereby waive all my defenses to this Note based on suretyship.

14. I understand that you may use automated dialing equipment or an artificial pre-recorded voice message to contact me in connection with this loan or loan application. You may contact me at any telephone number I provide in the application or I provide in the future, even if that number is a cellular telephone number.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for me: When I apply for a student loan, you will ask for my name, address, date of birth, and other information that will allow you to identify me. You may also ask to see my driver's license or other identifying documents.

M. CERTIFICATION AND CONSENT TO INFORMATION SHARING

1. I certify that the information contained in Sections I and II of the application is true, complete and correct to the best of my knowledge and belief and is made in good faith, that I am eligible for this loan and that I will repay it according to the terms of this Note. I understand and agree that my Lender is listed in the introductory paragraph of this Note. I hereby authorize the School to pay to you any refund that may be due me up to the amount of this loan. I understand that I must immediately repay any funds that I receive which cannot reasonably be attributed to meeting my educational expenses related to attendance at the School and hereby authorize the school at its discretion to refund any portion of my loan that exceeds direct institutional charges. At your option, you may either electronically transmit funds to the School to be applied to my account, or if you issue checks, I authorize you to issue a check made payable to me, or jointly payable to me and the School, and send it to the School. If funds are electronically transmitted, I hereby authorize the School to transfer the funds to my account at the School. I understand that failure to complete the educational program undertaken by me/the student does not relieve me of any obligation of this Note.
2. I authorize any school that I may attend to release to you or your agents any requested information pertinent to this loan (e.g., employment, enrollment status, current address) and to advise you whether I am eligible for a future loan. I authorize you or your agents to check my credit and employment history for this loan and for future loans that may be offered to me, to answer questions about your credit experience with me, and to release the results of the credit review process to the School. I further authorize you to release any other information on this loan to the School or to other schools I have attended for which I have taken out a student loan. I consent to the sharing of any information about this loan with my parent, guardian, child, spouse or sibling who complies with your procedures unless I revoke this consent or unless prohibited by law. I understand that I may revoke this consent by contacting the servicer at 1-888-2SALLIE or P.O. Box 9500, Wilkes-Barre, PA 18773-9500.
3. I also certify that all of the loan proceeds are solely to pay for my qualified higher education expenses at the School.
4. I also certify that I have read the materials explaining the loan program that have been provided to me; I have read, understand and agree to the provisions of the program, my responsibilities and my rights under this program, the terms of this Note and this "Certification and Consent to Information Sharing" and that the program is funded in part by non-profit organizations.

N. CORRECTION OF ERRORS

All parties to this Note agree to fully cooperate and adjust all typographical, computer, calculation or clerical errors discovered in any or all of the loan (Copyright © Sallie Mae 2000-06) 31T0602 Page 4 of 5

documents including the Application, Note and Disclosure Statement. In the event this procedure is used, all parties involved will be notified and receive a corrected copy of the changed document.

O. COSIGNER/STUDENT RELEASE

I agree that, if my Cosigner applicant fails to qualify for this loan, that applicant will be released from liability hereunder, but this Note will still bind me. I also agree that my Cosigner may be released from liability hereunder upon application by a student borrower who has made 24 consecutive on-time monthly payments of principal and interest during the first 2 years of the Repayment Period of this loan (not including deferments and forbearances) and who meets applicable credit criteria at the time of application, with the student borrower remaining liable for this loan after such Cosigner release. The Cosigner will be released from liability hereunder after the student borrower has made 60 consecutive, on-time monthly payments of principal and interest (not including deferments and forbearances), with the student borrower remaining liable for the loan after such Cosigner release. As Cosigner, I agree that if the student borrower is released from liability on this loan for any reason, including infancy, I hereby consent to such release and to my continued liability for this loan after such release.

P. ARBITRATION AGREEMENT – READ CAREFULLY

You and I agree that either party may elect to arbitrate – and require the other party to arbitrate – any Claim under the following terms and conditions. This Arbitration Agreement is part of the Signature Student Loan® Program Promissory note ("Note").

1. **RIGHT TO REJECT** – I may reject this Arbitration Agreement by sending you a rejection notice by certified or registered mail or by messenger service within 60 days after the date of my first disbursement. Any Rejection Notice must include my name, address, telephone number and loan or account number, and must be sent to Sallie Mae, PO Box 59030, Panama City, FL 32412.

2. **IMPORTANT WAIVERS AND WARNING** – If you or I elect to arbitrate a Claim, you and I both waive the right to: (A) have a court or a jury decide the Claim; (B) participate in a class action in court or in arbitration, either as a class representative or a class member, or act as a private attorney general in court or in arbitration (the "Class Action Waiver"); (C) join or consolidate Claim(s) with claims involving any other person; or (D) obtain information except as provided herein. **WARNING:** Other rights are more limited or not available in arbitration.

3. **DEFINITIONS** – In this Arbitration Agreement, the following definitions will apply:

"I," "me" and "my" mean each and every Borrower and Cosigner on the Note; the Student on whose behalf the proceeds of the Note have been advanced; and the heirs, executors and assigns of all of the foregoing. "You," "your" and "yours" mean the Lender; any other subsequent holder of the note; Sallie Mae, Inc.; any Sallie Mae affiliate or subsidiary; all of their parents, wholly or majority owned subsidiaries and affiliates; any predecessors, successors and assigns of these entities; and all officers, directors and employees thereof. It also includes any party named as a co-defendant with you in a Claim asserted by me, such as investors or potential investors, credit bureaus, credit insurance companies, closing agents, escrow agents, insurance agents, loan originators, rating agencies, loan servicers, debt collectors, loan guarantors, performance bond trustees, tuition recovery funds, the School, and any of the School's financial aid offices or officers. "Administrator" means, as applicable, the American Arbitration Association, 335 Madison Avenue, New York, NY 10017, www.adr.org, (800) 778-7879, or the National Arbitration Forum, P.O. Box 50191, Minneapolis, MN 55406, www.arb-forum.com, (800) 474-2371, provided that the Administrator must not have in place a formal or informal policy that is inconsistent with and purports to override the terms of this Arbitration Agreement.

"Claim" means any claim, dispute or controversy between you and me that arises from or relates in any way to the Note, including any dispute arising before the date of this Arbitration Agreement and any dispute relating to: (1) the Note and any applications, disclosures and other documents relating in any way to the transactions evidenced by the Note; (2) any insurance or other service or product offered or made available by or through you in connection with the Note, and any associated fees or charges; and (3) any documents, instruments, advertising or promotional materials that contain information about the Note or any associated insurance or other service or product. This includes, without limitation, disputes concerning the validity, enforceability, arbitrability or scope of this Arbitration Agreement or the Note; disputes involving alleged fraud or misrepresentation,

breach of contract, negligence or violation of statute, regulation or common law, and disputes involving requests for injunctions or other equitable relief. However, "Claim" does not include any individual action brought by me in small claims court or my state's equivalent court, unless such action is transferred, removed, or appealed to a different court. "Claim" does not include any challenge to the validity and effect of the Class Action Waiver, which must be decided by a court.

4. **STARTING AN ARBITRATION** – To initiate an arbitration, you or I must give written notice of an election to arbitrate. This notice may be given after a lawsuit has been filed and may be given in papers or motions in the lawsuit. If such a notice is given, the Claim shall be resolved by arbitration under this Arbitration Agreement and applicable rules of the Administrator then in effect. I must select the Administrator when I give notice of my election to arbitrate or within 20 days of your notice; otherwise, you will select the Administrator. The arbitrator will be selected under the Administrator's rules, except that the arbitrator must be a lawyer with at least ten years of experience or a retired judge.

5. **LOCATION AND COSTS** – Any arbitration hearing that I attend will take place in a location that is reasonably convenient to me. You will consider (and generally honor) any good faith request by me for you to bear the fees charged by the Administrator and the arbitrator and will always pay the fees if required by applicable law. You will not seek reimbursement from me of fees you are required to pay or agree to pay on my behalf. Each party must pay the expense of that party's attorneys, experts and witnesses, regardless of which party prevails in the arbitration, unless applicable law otherwise provides.

6. **DISCOVERY: GETTING INFORMATION** – Either party may obtain from the other party prior to the hearing any information available under the Administrator's rules or any information the arbitrator determines should be made available.

7. **EFFECT OF ARBITRATION AWARD** – Any court with jurisdiction may enter judgment upon the arbitrator's award. The arbitrator's award will be final and binding, except for: (A) any appeal right under the Federal Arbitration Act, 9 U.S.C. §§1 et seq. (the "FAA"); and (B) Claims involving more than \$50,000. For Claims involving more than \$50,000, any party may appeal the award to a three-arbitrator panel appointed by the Administrator, which will reconsider de novo any aspect of the initial award that is appealed. The panel's decision will be final and binding, except for any appeal right under the FAA. Except as provided above under the caption "Location and Costs," the appealing party will pay the Administrator's and arbitrator's costs of the appeal.

8. **GOVERNING LAW** – This Arbitration Agreement is made pursuant to a transaction involving interstate commerce and shall be governed by the FAA, and not by any state law concerning arbitration. The arbitrator shall follow applicable substantive law to the extent consistent with the FAA, applicable statutes of limitation and applicable privilege rules, and shall be authorized to award all remedies permitted by applicable substantive law, including, without limitation, compensatory, statutory and punitive damages (subject to constitutional limits that would apply in court), declaratory, injunctive and other equitable relief, and attorneys' fees and costs. Upon the timely request of either party, the arbitrator shall write a brief explanation of the basis of his or her award.

9. **SURVIVAL, SEVERABILITY, PRIMACY** – This Arbitration Agreement shall survive my full payment of the Note; your sale or transfer of the Note; any legal proceeding to collect a debt owed by me; any bankruptcy or insolvency; any forbearance or modification granted pursuant to the Note; any cancellation, or request for cancellation, of any or all disbursements under the Note; and any change in the School enrollment status of the Student. If any portion of this Arbitration Agreement cannot be enforced, the rest of the Arbitration Agreement will continue to apply, provided that the entire Arbitration Agreement shall be null and void if the Class Action Waiver is held to be invalid with respect to any class or representative Claim, subject to any right to appeal such holding. In the event of any conflict or inconsistency between this Arbitration Agreement and the Administrator's rules or the Note, this Arbitration Agreement will govern; in the event of any conflict or inconsistency between the Administrator's rules and the Note, the Administrator's rules will govern.

Exhibit B

09/22/2015



JEFFERSON CAPITAL SYSTEMS, LLC

P.O. Box 17210
Golden, CO 80402

www.JCapLegal.com

(303) 215-0050
(877) 328-6180

09/22/2015

Your Account Summary	
Debt Description	SLM EDUCATION CREDIT FINA
Original Acct. No.:	XXXXXXXXXX0101
Current Creditor:	Jefferson Capital Systems, LLC
Our File No.:	
Amount of the Debt:	\$10,501.51

Dear [REDACTED]

Please allow this letter to introduce Jefferson Capital Systems, LLC as the new owner, current creditor, and debt collector of your above-referenced debt.

You may request records showing the following: (1) that Jefferson Capital Systems, LLC has the right to seek collection of the debt; (2) the debt balance, including an explanation of any interest charges and additional fees; (3) the date of default or the date of the last payment; (4) the name of the charge-off creditor and the account number associated with the debt; (5) the name and last known address of the debtor as it appeared in the charge-off creditor's or debt buyer's records prior to the sale of the debt, as appropriate; and (6) the names of all persons or entities that have purchased the debt. You may also request from us a copy of the contract or other document evidencing your agreement to the debt.

A request for these records or other correspondence may be addressed to P.O. Box 17210, Golden, CO 80402. Please include Our File Number on all payments or correspondence.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days after receiving this notice that you dispute the validity of this debt or any portion of it, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request of this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor if different from the current creditor.

Sincerely,

Jefferson Capital Systems, LLC

Jefferson Capital Systems, LLC

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

SEE THE FOLLOWING PAGE FOR IMPORTANT INFORMATION.

☎ phone: 877.328.6180 (Toll Free) 📠 fax: 303.215.1351 ⌚ Hours of Operation: 8:00am-5:00pm M-F MST

Notice of Important Information: Consumers have rights including, but not limited to, the rights listed below.

Complaints: If you have a complaint, please write to us at P.O. Box 17210, Golden, CO 80402 or call us toll-free at 1-877-328-6180 between 8:00 a.m. and 5:30 p.m. Mountain Standard Time, Monday through Friday.

The California State Rosenthal Fair Debt Collection Practices Act and the Federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8:00 a.m. or after 9:00 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov.

Exhibit C

Statement of Purchased Account

SALLIEMAE PRIVATE CREDIT
 PO BOX 8180
 INDIANAPOLIS IN 46208-8180

Statement Date	Page Number
11/28/13	1



Account Identification	
Account Number	Loans Requested
[REDACTED]	01

Account Activity

Transaction Date	Gross Payment	Collection Costs	Other Charges	Interest Paid	Charge to Principal
09/30/13	BORROWER	DEFAULT AMOUNT @	11.25% INTEREST		\$16,361.31

Principal Paid	Other Charges Paid	Interest Paid	Collection Costs Paid	Total Paid
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Current Balance Information

Principal Due	Other Unpaid Charges	Daily Interest Accrual	Unpaid Accrued Interest	Collection Costs	Balance Due
\$0.00	\$0.00	0.00000	\$0.00	\$0.00	\$0.00

Exhibit D

FEDERAL TRUTH-IN-LENDING DISCLOSURE STATEMENT

SALLIE MAE SERVICING
P.O. BOX 6180
INDIANAPOLIS, IN 46206-6180

Date: 12/20/2006

This Disclosure Statement relates to your education loan disbursed on 12/22/2006 ("Loan"). The promissory note ("Note") for your Loan does not become effective, and you are not bound by these credit terms, until the last to occur of the following: (a) the date the Note was received, reviewed and approved by the Lender; (b) the date you received final credit approval from the Lender; (c) midnight of the third Lender business day after the date you received this Disclosure Statement; or (d) the Disbursement Date for your Loan. You may cancel this Loan within 30 days after the Note becomes effective, as set forth in the Cancellation of Note section of your Note. You will receive a billing statement prior to your first payment due date.

Lender Name: SALLIE MAE BANK

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf	Total of Payments The amount you will have paid when you have made all scheduled payments
16.66% (*e)	\$19,232.51 (*e)	\$9,261.64	\$28,494.15 (*e)
Your payment schedule will be:			
Number of Payments	Amount of Payments	When Payments are Due	
119 (*e)	\$237.45 (*e)	Monthly beginning	06/25/2009 (*e)
1 (*e)	\$237.60 (*e)	Final Payment due	05/25/2019 (*e)
<p>Variable Rate: The Annual Percentage Rate may increase during the term of this transaction if the Index increases on the first day of each January, April, July, and October. The Index is the Prime Rate (or if more than one rate or a range of rates is published, the highest such rate), as published in the "Money Rates" section of The Wall Street Journal on the 25th of December, March, June, and September each month. If the 25th does not fall on a business day, the Index will be based on the Prime Rate published on the previous business day. Any increase in the rate will take the form of a higher payment amount. If your loan was for \$4,000 at 14.5% with a term of 10 years and the payment rate increased to 15.5% in one calendar quarter, your regular payment would increase by \$2.45.</p> <p>Late Charge: If a payment is more than 15 days late, you will be charged a late fee of \$25.00</p> <p>Prepayment: If you pay off early, you will not have to pay a penalty</p> <p>Please see your Promissory Note for information about nonpayment, default, the right to accelerate the maturity of the obligation, and prepayment rebates and penalties.</p>			

(*e) = Estimate

Itemization of Amount Financed: \$9,261.64
 Amount Paid to Others on your behalf:
 Amount Paid to ITT TECH INST - TORRANCE CA : \$9,261.64
 Pre-paid Finance Charge: \$805.36

Your Initial Interest Rate is 16.25%
 Your Initial Index Rate is 8.25%
 Your Margin is 8.00%

Disbursement Schedule:	
12/22/2006	\$10,067.00

Exhibit E

NAVIENT.

Amortization

NAME: XXXXXXXXXX **BEG BAL PRN** \$10,067.00 **Loan 1**
BEG BAL INT \$0.00
INT RATE: 16.250%

EFFECTIVE DATE	# DAYS	INT RATE	DAILY ACCRD INT	ACCRD INT	PAYMENT AMOUNT	PRINCIPAL PAID	INTEREST PAID	UNPAID INTEREST	CAPITALIZED INTEREST	DECLINING BALANCE	NOTES	Late Fee
12/22/2006								\$ -	\$ -	\$ 10,067.00		\$ -
1/1/2007	10	16.2500%	\$ 4.48	\$ 44.79	\$ -	\$ -	\$ 44.79	\$ -	\$ -	\$ 10,067.00		\$ -
1/1/2007	0	16.2500%	\$ 4.48	\$ 44.79	\$ -	\$ -	\$ 44.79	\$ -	\$ -	\$ 10,067.00		\$ -
10/1/2007	273	16.2500%	\$ 4.48	\$ 1,267.50	\$ -	\$ -	\$ 1,267.50	\$ -	\$ -	\$ 10,067.00		\$ -
10/1/2007	0	16.7500%	\$ 4.34	\$ 1,267.50	\$ -	\$ -	\$ 1,267.50	\$ -	\$ -	\$ 10,067.00		\$ -
1/1/2008	92	16.7500%	\$ 4.34	\$ 1,666.88	\$ -	\$ -	\$ 1,666.88	\$ -	\$ -	\$ 10,067.00		\$ -
1/1/2008	0	16.2500%	\$ 4.20	\$ 1,666.88	\$ -	\$ -	\$ 1,666.88	\$ -	\$ -	\$ 10,067.00		\$ -
4/1/2008	91	16.2500%	\$ 4.20	\$ 2,048.37	\$ -	\$ -	\$ 2,048.37	\$ -	\$ -	\$ 10,067.00		\$ -
4/1/2008	0	13.2500%	\$ 3.65	\$ 2,048.37	\$ -	\$ -	\$ 2,048.37	\$ -	\$ -	\$ 10,067.00		\$ -
7/1/2008	91	13.2500%	\$ 3.65	\$ 2,381.70	\$ -	\$ -	\$ 2,381.70	\$ -	\$ -	\$ 10,067.00		\$ -
7/1/2008	0	13.0000%	\$ 3.58	\$ 2,381.70	\$ -	\$ -	\$ 2,381.70	\$ -	\$ -	\$ 10,067.00		\$ -
1/1/2009	184	13.0000%	\$ 3.58	\$ 3,040.98	\$ -	\$ -	\$ 3,040.98	\$ -	\$ -	\$ 10,067.00		\$ -
1/1/2009	0	11.2500%	\$ 3.10	\$ 3,040.98	\$ -	\$ -	\$ 3,040.98	\$ -	\$ -	\$ 10,067.00		\$ -
9/30/2009	272	11.2500%	\$ 3.10	\$ 3,884.37	\$ 100.00	\$ -	\$ (100.00)	\$ 3,784.37	\$ -	\$ 10,067.00		\$ -
11/18/2009	49	11.2500%	\$ 3.10	\$ 3,936.31	\$ 20.00	\$ -	\$ (20.00)	\$ 3,916.31	\$ -	\$ 10,067.00		\$ -
12/29/2009	41	11.2500%	\$ 3.10	\$ 4,043.44	\$ 45.00	\$ -	\$ (45.00)	\$ 3,998.44	\$ -	\$ 10,067.00		\$ -
1/25/2010	27	11.2500%	\$ 3.10	\$ 4,082.16	\$ 40.00	\$ -	\$ (40.00)	\$ 4,042.16	\$ -	\$ 10,067.00		\$ -
3/2/2010	38	11.2500%	\$ 3.10	\$ 4,153.78	\$ 25.00	\$ -	\$ (25.00)	\$ 4,128.78	\$ -	\$ 10,067.00		\$ -
3/30/2010	28	11.2500%	\$ 3.10	\$ 4,215.88	\$ 15.00	\$ -	\$ (15.00)	\$ 4,200.88	\$ -	\$ 10,067.00		\$ -
6/23/2010	91	11.2500%	\$ 3.10	\$ 4,482.77	\$ 15.15	\$ -	\$ (15.15)	\$ 4,467.62	\$ -	\$ 10,067.00		\$ -
7/29/2010	29	11.2500%	\$ 3.10	\$ 4,557.54	\$ 30.00	\$ -	\$ (30.00)	\$ 4,527.54	\$ -	\$ 10,067.00		\$ -
8/31/2010	34	11.2500%	\$ 3.10	\$ 4,632.96	\$ 23.59	\$ -	\$ (23.59)	\$ 4,609.37	\$ -	\$ 10,067.00		\$ -
12/9/2010	100	11.2500%	\$ 3.10	\$ 4,919.45	\$ -	\$ -	\$ -	\$ 4,919.45	\$ 4,919.45	\$ 14,986.45	CAP	\$ -
12/9/2010	0	11.2500%	\$ 4.82	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 14,986.45	CAP	\$ -
12/16/2010	7	11.2500%	\$ 4.62	\$ 32.31	\$ 207.84	\$ (175.33)	\$ (32.31)	\$ 0.00	\$ -	\$ 14,811.12		\$ -
1/14/2011	29	11.2500%	\$ 4.58	\$ 132.30	\$ 207.84	\$ (75.34)	\$ (132.30)	\$ -	\$ -	\$ 14,735.77		\$ -
3/3/2011	48	11.2500%	\$ 4.54	\$ 217.86	\$ 415.40	\$ (197.54)	\$ (217.86)	\$ -	\$ -	\$ 14,538.23		\$ -
4/8/2011	36	11.2500%	\$ 4.48	\$ 161.20	\$ 207.70	\$ (46.50)	\$ (161.20)	\$ -	\$ -	\$ 14,481.74		\$ -
6/1/2011	54	11.2500%	\$ 4.46	\$ 241.03	\$ 207.89	\$ -	\$ (207.89)	\$ 33.94	\$ -	\$ 14,481.74		\$ -
6/29/2011	28	11.2500%	\$ 4.48	\$ 156.32	\$ 207.88	\$ (48.36)	\$ (156.32)	\$ -	\$ -	\$ 14,442.38		\$ -
7/29/2011	30	11.2500%	\$ 4.45	\$ 193.45	\$ 208.47	\$ (78.02)	\$ (193.45)	\$ -	\$ -	\$ 14,386.26		\$ -
8/19/2011	12	11.2500%	\$ 4.42	\$ 53.10	\$ 215.49	\$ (162.38)	\$ (53.10)	\$ (0.00)	\$ -	\$ 14,283.97		\$ -
9/19/2011	40	11.2500%	\$ 4.37	\$ 175.00	\$ 196.25	\$ -	\$ (196.25)	\$ 38.75	\$ -	\$ 14,283.97		\$ -
10/18/2011	29	11.2500%	\$ 4.37	\$ 165.82	\$ 194.89	\$ -	\$ (194.89)	\$ 30.73	\$ -	\$ 14,283.97		\$ -
12/8/2011	49	11.2500%	\$ 4.37	\$ 245.10	\$ 287.56	\$ (22.48)	\$ (245.10)	\$ -	\$ -	\$ 14,181.51		\$ -
2/6/2012	62	11.2500%	\$ 4.37	\$ 270.82	\$ -	\$ -	\$ -	\$ 270.82	\$ 270.82	\$ 14,482.33	CAP	\$ -
2/9/2012	3	11.2500%	\$ 4.45	\$ 13.35	\$ -	\$ -	\$ -	\$ 13.35	\$ -	\$ 14,482.33	Late Fee	\$0.00
2/27/2012	18	11.2500%	\$ 4.45	\$ 93.48	\$ -	\$ -	\$ -	\$ 93.48	\$ -	\$ 14,482.33		\$ -
3/11/2012	13	11.2500%	\$ 4.45	\$ 151.35	\$ -	\$ -	\$ -	\$ 151.35	\$ -	\$ 14,482.33	Late Fee	\$0.00
4/8/2012	29	11.2500%	\$ 4.45	\$ 280.44	\$ -	\$ -	\$ -	\$ 280.44	\$ -	\$ 14,482.33	Late Fee	\$0.00
5/10/2012	31	11.2500%	\$ 4.45	\$ 418.44	\$ -	\$ -	\$ -	\$ 418.44	\$ -	\$ 14,482.33	Late Fee	\$0.00
6/5/2012	26	11.2500%	\$ 4.45	\$ 534.17	\$ -	\$ -	\$ -	\$ 534.17	\$ 534.17	\$ 14,986.50	CAP	\$ -
7/10/2012	35	11.2500%	\$ 4.62	\$ 161.58	\$ -	\$ -	\$ -	\$ 161.58	\$ -	\$ 14,986.50	Late Fee	\$25.00
7/17/2012	7	11.2500%	\$ 4.62	\$ 193.87	\$ 278.28	\$ (85.35)	\$ (193.87)	\$ -	\$ -	\$ 14,901.12	Payment: \$304.26 Late Fee - \$25	\$0.00
8/23/2012	37	11.2500%	\$ 4.59	\$ 169.82	\$ 138.12	\$ -	\$ (138.12)	\$ 30.70	\$ -	\$ 14,901.12		\$ -
9/25/2012	33	11.2500%	\$ 4.59	\$ 182.16	\$ 198.12	\$ -	\$ (198.12)	\$ 43.04	\$ -	\$ 14,901.12		\$ -

EFFECTIVE DATE	# DAYS	INT RATE	DAILY ACCRD	ACCRD INT	PAYMENT AMOUNT	PRINCIPAL PAID	INTEREST PAID	UNPAID INTEREST	CAPITALIZED INTEREST	DECLINING PRINCIPAL	NOTES	Late Fee
10/29/2012	34	11.2500%	\$ 4.50	\$ 189.09	\$ 139.12	\$ -	\$ (139.12)	\$ 59.97	\$ -	\$ 14,901.12		\$ -
12/10/2012	42	11.2500%	\$ 4.50	\$ 252.79	\$ -	\$ -	\$ -	\$ 252.79	\$ -	\$ 14,901.12	Late Fee	\$25.00
1/2/2013	30	11.2500%	\$ 4.50	\$ 390.42	\$ -	\$ -	\$ -	\$ 390.42	\$ -	\$ 14,901.12	Late Fee	\$50.00
1/29/2013	20	11.2500%	\$ 4.50	\$ 482.21	\$ 68.08	\$ -	\$ (68.08)	\$ 414.12	\$ -	\$ 14,901.12		\$ 50.00
2/10/2013	12	11.2500%	\$ 4.50	\$ 489.20	\$ -	\$ -	\$ -	\$ 489.20	\$ -	\$ 14,901.12	Late Fee	\$75.00
2/12/2013	2	11.2500%	\$ 4.50	\$ 478.38	\$ 88.52	\$ -	\$ (88.52)	\$ 389.86	\$ -	\$ 14,901.12		\$ 75.00
3/12/2013	28	11.2500%	\$ 4.50	\$ 518.37	\$ -	\$ -	\$ -	\$ 518.37	\$ -	\$ 14,901.12	Late Fee	\$100.00
4/2/2013	28	11.2500%	\$ 4.50	\$ 646.88	\$ -	\$ -	\$ -	\$ 646.88	\$ -	\$ 14,901.12	Late Fee	\$125.00
5/10/2013	31	11.2500%	\$ 4.50	\$ 780.16	\$ -	\$ -	\$ -	\$ 780.16	\$ -	\$ 14,901.12	Late Fee	\$150.00
6/28/2013	49	11.2500%	\$ 4.50	\$ 1,014.05	\$ 140.88	\$ -	\$ (140.88)	\$ 873.97	\$ -	\$ 14,901.12		\$ 150.00
7/10/2013	20	11.2500%	\$ 4.50	\$ 965.77	\$ -	\$ -	\$ -	\$ 965.77	\$ -	\$ 14,901.12	Conversion	\$ 150.00
7/18/2013	0	11.2500%	4.500	\$965.77	\$ -	\$ 0.00	\$ 0.00	\$965.77	\$ 0.00	\$14,901.12	late fee with off \$150.00	
9/30/2013	74	11.2500%	4.500	\$1,305.40	\$ -	\$ 0.00	\$ 0.00	\$1,305.40	\$ 0.00	\$14,901.12	charged off	
10/15/2013	15	11.2500%	4.500	\$1,374.25	\$ -	\$ 0.00	\$ 0.00	\$1,374.25	\$ 0.00	\$14,901.12	sold	

Issue No. 1: Defendant is Entitled to Judgment on the First Cause of Action Because Plaintiff Lacks Evidence Necessary to Prove its Breach of Contract Claim.

<i>Defendant's Undisputed Facts and Supporting Evidence</i>	<i>Plaintiff's Responses to Defendant's Undisputed Facts and Supporting Evidence</i>
<p>1. Plaintiff's complaint asserts a cause of action for breach of contract. (Declaration of Attorney Josephine Lee in Support of Defendant [REDACTED] Motion for Summary Judgment (Lee Decl.), Ex. B, (Complaint) at ¶¶ 15-24.)</p> <p>2. Plaintiff's complaint alleges that Defendant entered a written loan agreement with SLM Education Credit Finance Corporation, on an unspecified date. (Lee Decl., Ex. B, at ¶ 6, 16-18.) Plaintiff's complaint alleges that SLM Education Credit Finance Corporation then assigned the debt to Plaintiff. (<i>Id.</i> at ¶ 7.)</p> <p>3. In discovery, Plaintiff identified Sallie Mae Bank as the original lender. (Lee Decl., Ex. C (Plaintiff's Response to Special Interrogatory), Response to Special Interrogatory No. 12.)</p> <p>4. In discovery, Plaintiff produced four generic pages of boilerplate terms and conditions ("the Boilerplate Terms") as pages two through five of the "College Advantage Loan Program Application and Promissory</p>	

1 Note" (the "Promissory Note," "Note," or
2 "Loan.") The Boilerplate Terms contain the
3 Identification Number "3ITT0602." This
4 number is not included on the first page of the
5 Promissory Note and there no indication that
6 the Boilerplate Terms have any connection to
7 the first page of the Promissory Note. The
8 Boilerplate Terms contain no signatures or
9 initials of any kind, and no references either
10 to Defendar [REDACTED] to Sallie Mae
11 Education Trust. The Boilerplate Terms do
12 not name the Borrower and refer only to a
13 "Lender" as "Sallie Mae Bank, Murray
14 Utah." The Boilerplate Terms are written in a
15 wholly different font from the text on the first
16 page of the Promissory Note, and from their
17 appearance when produced, they do not
18 appear to have been photocopied together
19 with the first page of the Promissory Note.
20 The Boilerplate Terms do not mention
21 Plaintiff or SLM Education Credit Finance
22 Corporation. (Lee Decl., Ex. F (Plaintiff's
23 Response to Request for Inspection Demand
24 (Set One), Ex. G (the College Advantage
25 Loan Program Application and Promissory
26 Note).)

27 5. In discovery, Plaintiff produced a

1 document titled "Federal Truth-In-Lending
2 Disclosure Statement," dated 12/20/2006.
3 The statement contains Defendant's name but
4 not his address. The statement identifies
5 Sallie Mae Bank as the lender. The document
6 contains no reference to Sallie Mae Education
7 Trust, SLM Education Credit Finance
8 Corporation, or Plaintiff. (Lee Decl., Ex. H
9 (the "Federal Truth-In-Lending Disclosure
10 Statement").)

11 6. The first page of the Promissory Note
12 identifies Sallie Mae Education Trust on the
13 top right corner. The first page of the
14 Promissory Note bears Defendant's signature.
15 Plaintiff's name does not appear anywhere on
16 the first page of the Promissory Note. The
17 name of SLM Education Credit Finance
18 Corporation does not appear anywhere on the
19 Promissory Note. The name Sallie Mae Bank
20 does not appear anywhere on the signed first
21 page of the Promissory Note. (Lee Decl., Ex.
22 G.)

23 7. In discovery, Plaintiff states two loan
24 transfers: 1) Sallie Mae Bank to SLM
25 Education Credit Finance Corporation, and 2)
26 SLM Education Credit Finance Corporation
27 to Plaintiff. (Lee Decl., Ex. C, Response to

1 Special Interrogatory No. 6.)

2 8. In discovery, Plaintiff states that the
3 individual Loan was first transferred from
4 Sallie Mae Bank to SLM Education Credit
5 Finance Corp. (Lee Decl., Ex. C, Plaintiff's
6 Response to Special Interrogatory No. 6.)

7 9. As evidence of the first loan transfer,
8 Plaintiff relies on a document titled "Bill of
9 Sale," dated January 23, 2007, between Sallie
10 Mae Bank and SLM Education Credit
11 Finance Corporation ("the Bill of Sale"). (Lee
12 Decl., Ex. F, Plaintiff's Responses to
13 Requests for Production Nos. 24 and 25.)

14 10. The Bill of Sale refers to a "portfolio
15 of loans described below as listed on attached
16 schedule," but contains no description of the
17 individual loans included in the portfolio.
18 The Bill of Sale states that the "portfolio
19 offered for sale by Seller" includes 38,846
20 accounts. The Bill of Sale refers to a "Master
21 Loan Participation and Purchase Agreement."
22 Plaintiff did not produce a copy of "the
23 attached schedule" or the "Master Loan
24 Participation and Purchase Agreement"
25 referred to in the Bill of Sale. The Bill of
26 Sale contains no reference to Defendant's
27 Loan, Sallie Mae Education Trust, or

1 Plaintiff. (Lee Decl., Ex. K (Bill of Sale).)

2 11. In discovery, Plaintiff states that the
3 loan was secondarily transferred from SLM
4 Education Credit Finance Corporation to
5 Jefferson Capital Systems. (Lee Decl., Ex. C,
6 Plaintiff's Responses to Special Interrogatory
7 No. 6.)

8 12. Plaintiff cites a "Bill of Sale and
9 Assignment" as evidence of the assignment
10 of the Loan from SLM Education Credit
11 Finance Corporation to Plaintiff. (Lee Decl.,
12 Ex. F, Plaintiff's Responses to Requests for
13 Production Nos. 23-28.)

14 13. Plaintiff produced a document titled
15 "Bill of Sale and Assignment," dated October
16 15, 2013 ("the Assignment") as evidence of
17 the assignment of the Loan from SLM
18 Education Credit Finance Corporation to
19 Plaintiff. The Assignment states that SLM
20 Education Credit Finance Corporation
21 transfers its rights "in and to those certain
22 receivables, judgments or evidence of debt
23 described in the Computer File delivered to
24 Buyer in connection with each Delivery." It
25 also refers to a "certain Charged Off
26 Educational Loan Portfolio Purchase and Sale
27 Agreement dated as of June 26, 2013," which

1 Plaintiff has not produced. The Assignment
2 contains no further specifications and does
3 not mention Defendant's individual Loan,
4 Sallie Mae Education Trust or Sallie Mae
5 Bank. (Lee Decl., Ex. F, Plaintiff's
6 Responses to Requests for Production Nos.
7 23-28, and Ex. M (Bill of Sale and
8 Assignment).)

9 14. In discovery, Plaintiff produced a
10 document that labeled "Excerpt from Sale
11 File Assigned to Jefferson Capital Systems,
12 LLC" (Excerpt), as evidence of the second
13 assignment of the Loan from SLM Education
14 Credit Finance Corporation to Plaintiff. This
15 Excerpt contains a reference to Defendant
16 and the last four digits of his Social Security
17 Number. There is nothing to suggest this
18 excerpt was ever sent to Defendant. The
19 document does not mention Sallie Mae
20 Education Trust, Sallie Mae Bank, or SLM
21 Education Credit Finance Corporation. (Lee
22 Decl., Ex. F, Plaintiff's Responses to
23 Requests for Production No. 34, Ex. N
24 (Excerpt).)

25 15. Plaintiff stated in discovery that it
26 could not currently identify the person who
27 provided or possesses the documentation

1 produced as proof of the loan assignments.
2 Plaintiff also stated that it does not know “at
3 this time” the identity of persons who created
4 the “Excerpt” or the date it was created (Lee
5 Decl., Ex. C, Response to Special
6 Interrogatory Nos. 4, 5, 8.)

7 16. Plaintiff produced the College
8 Advantage Loan Program Application and
9 Promissory Note, which includes four pages
10 of Boilerplate Terms, as the terms and
11 conditions of the Loan. (Lee Decl., Ex. F,
12 Plaintiff’s Response to Request for
13 Production No. 2.)

14 17. Defendant [REDACTED] s not have
15 a copy of the original promissory note to
16 which he agreed. He also does not recall
17 having ever received or agreed to the
18 Boilerplate Terms produced by Plaintiff.
19 (Declaration of Defendant [REDACTED]
20 Support of His Motion for Summary
21 Judgment, or Alternatively, for Summary
22 Adjudication (t [REDACTED]) at ¶¶ 3, 4.)

23 18. Plaintiff admits that there was no oral
24 agreement between Defendant and Plaintiff or
25 any prior loan holder. (Lee Decl., Ex. D
26 (Defendant’s Form Interrogatories-General
27 (Set One), Form Interrogatory Nos. 50.1(b),

1 (c), Ex. E, Plaintiff's Responses to General
2 Form Interrogatories Nos. 50.1(b), (c).)

3 19. In discovery, Plaintiff stated that it
4 was uncertain at this stage of discovery
5 whether there was any modification to the
6 agreement. It also stated that the written Loan
7 Agreement (the Promissory Note) "contains
8 all the terms and conditions governing the
9 relationship between Plaintiff and Defendant
10 regarding the Account, including, but not
11 limited to, repayment and default under the
12 Agreement." (Lee Decl., Ex. D, Form
13 Interrogatory Nos. 50.1(d)-(f), 502.; Ex. E,
14 Plaintiff's Responses to General Form
15 Interrogatories Nos. 50.1(d)-(f), 50.2.)

16 20. In discovery, Plaintiff responded to
17 Defendant's request for all documents that
18 support Plaintiff's claim that it is the valid
19 assignee and owner of Defendant's loan. (Lee
20 Decl., Ex. F (Plaintiff's Response to Request
21 for Production of Documents), Requests No.
22 24-28.)

23 21. In discovery, Plaintiff produced a
24 "Blanket Endorsement," which refers to an
25 "attached promissory note." (Lee Decl., Ex. L
26 (Blanket Endorsement).) No promissory note
27 was attached to the Blanket Endorsement

1 when it was produced by Plaintiff.
2 Defendant's loan is not identified in the
3 Blanket Endorsement and Plaintiff did not
4 indicate whether Defendant's Promissory
5 Note was attached to the Blanket
6 Endorsement when it was delivered to
7 Plaintiff.

8 22. In discovery, Plaintiff produced a
9 document labeled "Statement of Purchased
10 Account." The document is addressed to
11 Defendant. The document is dated
12 November 26, 2013, and purports to apply to
13 Loan Account Num [REDACTED] The
14 sender is listed as "Salliemae Private Credit."
15 The document contains no reference to Sallie
16 Mae Education Trust, Sallie Mae Bank, SLM
17 Education Credit Finance Corporation, or
18 Plaintiff. (Lee Decl., Ex. J (the "Statement
19 of Purchased Account").)

20 23. In discovery, Plaintiff relies on the
21 Application and Promissory Note, Statement
22 of Purchased Account, Amortization of
23 Payment History, Truth-in-Lending
24 Disclosure Statement, Bill of Sale and
25 Excerpt from Sale File Assigned to Jefferson
26 Capital Systems, LLC ("Excerpt") as proof of
27 its claim for damages. Except for the Bill of

1 Sale and Excerpt, Plaintiff is not identified is
2 any of the documents it produced to support
3 its claim for damages. (Lee Decl., Ex. F,
4 Plaintiff's Response to Request for
5 Production No. 1.)

6
7 **Issue No. 2: Plaintiff is Entitled to Judgment on the Second Cause of Action Because**
8 **Plaintiff Cannot Prove the Existence of an Account Stated.**

9 *Defendant's Undisputed Facts and*
10 *Supporting Evidence*

11 *Plaintiff's Responses to Defendant's*
12 *Undisputed Facts and Supporting Evidence*

13 24. Plaintiff's complaint asserts a cause of
14 action for account stated. (Lee Decl., Ex. B,
15 at ¶¶ 25-27.)

16 25. Defendant never agreed to any
17 payment or account with Plaintiff. He also
18 never agreed orally or in writing with anyone
19 (including Plaintiff) to modify the terms of
20 the original promissory note, to make
21 payments other than as provided in the
22 promissory note, to be obligated on an open
23 book account or statement of account, or that
24 he owed a specific sum to settle his liability
25 under the promissory note [REDACTED] ¶¶
26 7, 9, 13.)

27 26. In discovery, Plaintiff relied on the
28 Promissory Note dated November 28, 2006,
to support its claim that an "account was
stated in writing." (Lee Decl., Ex. F,

1 Plaintiff's Response to Request for
2 Production No. 8.)

3 27. In discovery, Plaintiff cited the
4 Statement of Purchased Account,
5 Amortization, Excerpt from Sale File, Bill of
6 Sale, and the Federal Truth-in-Lending
7 Disclosure Statement to support its claim for
8 damages. (Lee Decl., Ex. D, Form
9 Interrogatory No. 9.2; Ex. F, Plaintiff's
10 Response to Request for Production No. 1;
11 Ex. E, Response to Form Interrogatory No.
12 9.2.)

13 28. In discovery, Plaintiff stated that it
14 was uncertain if there was a modification to
15 the agreement as discovery was still pending.
16 (Lee Decl., Ex. D, Form Interrogatory No.
17 50.1(d); Ex. E, Plaintiff's Response to Form
18 Interrogatory No. 50.1(d).)

19 29. In discovery, Plaintiff produced a
20 letter from Plaintiff to Defendant, dated
21 September 22, 2015 ("the September 22
22 Letter"). The letter claims that Defendant is
23 indebted to Plaintiff, but makes no mention of
24 the Promissory Note, Sallie Mae Education
25 Trust, or Sallie Mae Bank. (Lee Decl., Ex. O
26 (the September 22, 2015 letter).)

27 30. Defendant never received or saw the

1 September 22, 2015 letter until it was
 2 produced by Plaintiff in discovery [REDACTED]
 3 Decl., at ¶ 8.)
 4 31. Defendant had never heard of Plaintiff
 5 or had any prior relationship with Plaintiff
 6 until around November or December of 2015,
 7 when Plaintiff contacted Defendant by phone.
 8 [REDACTED] ¶¶ 4-6.)

9 32. In discovery, Plaintiff produced a
 10 Litigation Review Notice sent by Plaintiff
 11 and addressed to Defendant, dated December
 12 31, 2015. (Lee Decl., Ex. P (Litigation
 13 Review Notice).)

14
 15 **Issue No. 3: Defendant is Entitled to Judgment on the Third Cause of Action**
 16 **Because Plaintiff Cannot Prove the Existence of an Open Book Account.**

17 *Defendant's Undisputed Facts and*
Supporting Evidence

Plaintiff's Responses to Defendant's
Undisputed Facts and Supporting Evidence

18 33. Plaintiff's complaint asserts a cause of
 19 action for open book account. (Lee Decl.,
 20 Ex. B, at ¶¶ 28-30.)

21 34. In discovery, Plaintiff produced a
 22 two-page chart labeled "Amortization" that
 23 states Defendant's name and social security
 24 number at the top ("the Amortization Chart").
 25 The Amortization Chart identifies Navient at
 26 the top of the document. Neither SLM
 27 Education Credit Finance Corporation nor

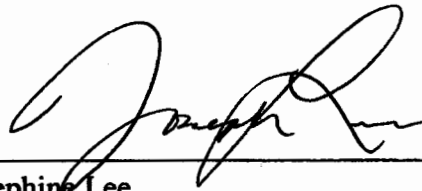
1 Plaintiff appears on the Amortization Chart.
2 (Lee Decl., Ex. J (the Amortization Chart).)

3 35. The Amortization Chart refers to a
4 principal balance of \$10,067 – precisely the
5 principal amount set forth in the Promissory
6 Note between Plaintiff and Sallie Mae
7 Education Trust. (Lee Decl., Ex. G, Ex. J.)

8 36. Defendant never received a copy of
9 the Amortization document before Plaintiff
10 produced it in discovery. Defendant never
11 received any document purporting to
12 establish an open book account for the
13 Promissory Note. [REDACTED] 12, 13.)

14
15
16 Dated: May 10, 2017

Respectfully submitted,

17
18
19 

20 Josephine Lee
21 LEGAL AID FOUNDATION OF LOS ANGELES
22 Attorneys for Defendant [REDACTED]
23
24
25
26
27
28

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: Robyn Smith (SB 165446); Josephine Lee (SB 308439) FIRM NAME: Legal Aid Foundation of Los Angeles STREET ADDRESS: 5228 Whittier Blvd. CITY: Los Angeles STATE: CA ZIP CODE: 90022 TELEPHONE NO.: (213) 640-3906;(213)640-3908 FAX NO.: (213) 640-3911 E-MAIL ADDRESS: rsmil [REDACTED] ATTORNEY FOR (name): [REDACTED]	FOR COURT USE ONLY <h2 style="margin: 0;">RECEIVED</h2> Superior Court of California County of Los Angeles <h3 style="margin: 0;">MAY 12 2017</h3> Sherri R. Carter, Executive Officer/Clerk By _____, Deputy CASE NUMBER: [REDACTED] JUDICIAL OFFICER: [REDACTED] DEPARTMENT: B
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 12720 Norwalk Blvd MAILING ADDRESS: 12720 Norwalk Blvd CITY AND ZIP CODE: Norwalk, CA 90650 BRANCH NAME: Norwalk Courthouse	
PLAINTIFF/PETITIONER: Jefferson Capital Systems, LLC DEFENDANT/RESPONDENT: [REDACTED]	
PROOF OF ELECTRONIC SERVICE	

1. I am at least 18 years old.
 - a. My residence or business address is (specify):
 Legal Aid Foundation of Los Angeles
 5228 Whittier Blvd.
 Los Angeles, CA 90022
 - b. My electronic service address is (specify):
 OFelix@lafia.org
2. I electronically served the following documents (exact titles):
 (See Attachment).

The documents served are listed in an attachment. (Form POS-050(D)/EFS-050(D) may be used for this purpose.)

3. I electronically served the documents listed in 2 as follows:
 - a. Name of person served: Angie Hong Hoar
 On behalf of (name or names of parties represented, if person served is an attorney):
 Jefferson Capital Systems, LLC
 - b. Electronic service address of person served :
 Angie.Hoar@jcap.com
 - c. On (date): May 10, 2017

The documents listed in item 2 were served electronically on the persons and in the manner described in an attachment.
 (Form POS-050(P)/EFS-050(P) may be used for this purpose.)

Date: May 10, 2017

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Oralia Felix-Gualito

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

CASE NAME: Jefferson Capital Systems, LLC v. [REDACTED]	CASE NUMBER: [REDACTED]
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ATTACHMENT TO PROOF OF ELECTRONIC SERVICE (DOCUMENTS SERVED)

(This attachment is for use with form POS-050/EFS-050.)

The documents that were served are as follows *(describe each document specifically)*:

Notice of Motion and Motion for Summary Judgment, or in the Alternative, Summary Adjudication in Favor of Defendant [REDACTED]

Defendant's Memorandum of Points and Authorities in Support of His Motion for Summer Judgment, or in the Alternative, Summary Adjudication

Defendant's Separate Statement of Undisputed Facts in Support of His Motion for Summary Judgment, or in the Alternative, Summary Adjudication

Declaration of Attorney Josephine Lee in Support of Defendant [REDACTED] Motion for Summary Judgment, or in the Alternative, Summary Adjudication

Declaration of Defendant [REDACTED] Support of His Motion for Summary Judgment, or in the Alternative, Summary Adjudication

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]