

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS Eric Dwayne Bryant, on behalf of himself and all others similarly-situated,	DEFENDANTS Navient Corporation, Navient Solutions, LLC, Conduent Education Services, LLC, f/k/a ACS Education Services, a/k/a Direct Loan Servicing Center (ACS), and the United States Department of Education
ATTORNEYS (Firm Name, Address, and Telephone No.) Karen L. Kellett, Kellett & Bartholow PLLC 11300 N. Central Expy., Suite 301, Dallas, Texas 75243 214-696-9000 kkellett@kblawtx.com	ATTORNEYS (If Known)
PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) 1) Abuse of Process and Request that Court Use its 11 U.S.C. § 105(A) and Inherent Authority; 2) Violation of the 11 U.S.C. § 524(i) Discharge Injunction; 3) Breach of Contract; 4) Negligence; 5) Negligence and other liability in Conducting Activity through Agent; 6) Tortious Interference.	
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)	
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input checked="" type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)	FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input checked="" type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input checked="" type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et. seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
<input type="checkbox"/> Check if this case involves a substantive issue of state law <input type="checkbox"/> Check if a jury trial is demanded in complaint	<input checked="" type="checkbox"/> Check if this is asserted to be a class action under FRCP 23 Demand \$
Other Relief Sought	

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Eric Dwayne Bryant and Rosa Linda Navarro Bryant		BANKRUPTCY CASE NO. 12-36689
DISTRICT IN WHICH CASE IS PENDING Northern District of Texas	DIVISION OFFICE Dallas	NAME OF JUDGE Houser
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
DATE <i>11/27/2019</i>	PRINT NAME OF ATTORNEY (OR PLAINTIFF) <i>Karen L. Kellitt</i>	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
ERIC DWAYNE BRYANT AND	§	CASE NO: 12-36689-BJH13
ROSA LINDA NAVARRO BRYANT	§	
	§	CHAPTER 13
DEBTORS	§	

ERIC DWAYNE BRYANT	§	ADVERSARY NO. _____
on behalf of himself and all	§	
others similarly-situated,	§	
	§	
PLAINTIFF,	§	
	§	
v.	§	
	§	
NAVIENT CORPORATION, NAVIENT	§	
SOLUTIONS, LLC, CONDUENT	§	
EDUCATION SERVICES,	§	
LLC, F/K/A ACS EDUCATION SERVICES,	§	
A/K/A DIRECT LOAN SERVICING	§	
CENTER (ACS), AND THE UNITED	§	
STATES DEPARTMENT OF EDUCATION,	§	
	§	
DEFENDANTS.	§	

PLAINTIFF’S ORIGINAL CLASS COMPLAINT

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Plaintiff Eric Dwayne Bryant (“Plaintiff” or “Mr. Bryant”), on behalf of himself and all others similarly-situated, files this adversary proceeding against Navient Corporation (“Navient Corp.”), Navient Solutions, LLC (“Navient Solutions”), (collectively “Navient”), Conduent Education Services, LLC, f/k/a ACS Education Services, a/k/a Direct Loan Servicing Center (“Direct Loan Servicing Center”), (Navient, together with Direct Loan Servicing Center sometimes referred to collectively as “Servicers” or “Servicer Defendants”), and the U.S.

Department of Education (the “Department of Education”), seeking relief for himself and all other consumer bankruptcy debtors who have filed Chapter 13 bankruptcy cases in the Northern District of Texas and elsewhere nationwide, and who have been subjected to Defendants’ unlawful practice of failing to credit plan payments made by Chapter 13 debtors, through their Chapter 13 Trustees, on their student loan-debt serviced by the Servicer Defendants and owned by the Department of Education.

I.
Introduction

1. Plaintiff files this case on behalf of himself and all other similarly-situated consumer debtors who have filed for bankruptcy protection under the provisions of Chapter 13 of Title 11 of the United States Code, in order to redress Defendants’ failure to credit their student loan accounts with payments sent to them by Chapter 13 Trustees pursuant to the terms of their confirmed Chapter 13 plans.

2. The federal student loan program “serves valuable purposes. It affords individuals in all walks of life the opportunity to obtain an education, and with it the mobility and financial stability that an education can provide.” *Educ. Credit Mgmt. Corp. v. Frushour (In re Frushour)*, 433 F. 3d 393, 399-400 (4th Cir. 2005), citing *Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 46 B.R. 752, 756 (S.D.N.Y. 1985), *aff’d*, 831 F.2d 395 (2d Cir. 1987).

3. Because debtors receive valuable benefits from congressionally authorized loans, Congress has required the recipients to repay them in all but the most dire circumstances. The heightened standard “protects the student loan program and saves it from fiscal doom.” *Pa. Higher Educ. Assistance Agency v. Faish (In re Faish)*, 72 F. 3d 298, 302 (3rd Cir. 1995)(internal citations omitted). This treatment “reflect[s] a conclusion on the part of Congress that the

creditors' interest in recovering full payment of debts...outweigh[s] the debtors' interest in a complete fresh start." *Gnahoua v. Dep't of Educ. (In re Gnahoua)*, 2016 Bankr. Lexis 974 (Bankr. N.D. Tex. 2016)(citing *Cohen v. De la Cruz* 523 U.S. 213, 222 (1998)).

4. The Plaintiff in this case did not seek to discharge his student loan obligations; nor does he seek a discharge now. The Plaintiff made payments to be applied to his student loans. Despite the Congressional mandate to repay student loans, the Defendants failed to accept or apply student loan payments made by debtors in their Chapter 13 cases.

5. The problems began when the Department of Education changed servicers of Plaintiff's student loan account during the pendency of Plaintiff's Chapter 13 plan. After making the switch, however, neither the Department of Education nor the Servicer Defendants filed an amended proof of claim or a notice of address change listing a different or new address for payment, steps typically taken by creditors in Chapter 13 cases when there has been a servicing transfer. As a result, Plaintiff's plan payments, which were made through his Chapter 13 Trustee, were not cashed or otherwise accepted by Defendants, and the Chapter 13 Trustee thereafter followed standard procedure and deposited the funds in the Bankruptcy Court's unclaimed fund registry. Now, the money paid by the Plaintiff languishes in the Unclaimed Funds Registry, along with hundreds of thousands of dollars in similar accounts throughout the country.

6. By failing to accept these Chapter 13 payments, Defendants did not properly credit Plaintiff's student loan account, and Defendants have and are now charging Plaintiff with additional interest charges.

7. It is believed that Defendants have failed to credit the student loan accounts of numerous Chapter 13 debtors, not just Plaintiff. Such conduct constitutes a gross abuse of Chapter

13 bankruptcy processes and laws, which are intended to allow debtors in Chapter 13 bankruptcies to pay their non-dischargeable student loan debt along with other debts.

8. In addition, Defendants abused the bankruptcy process when they willfully failed to credit payments received under a confirmed plan. This failure violated the plan, order confirming plan and discharge injunction entered in class members' cases and breached Defendants' contractual obligations to properly apply payments received on class members' accounts. The Department of Education acted negligently in selecting, training, retaining, supervising and otherwise controlling its agents, the Servicer Defendants. The Servicer Defendants have also acted negligently in failing to credit such payments and have tortiously interfered with class members' contractual relationship with the Department of Education.

II. **Jurisdiction and Venue**

9. Jurisdiction of this action arises under 28 U.S.C. § 1334 and §§157(b) and (c). Plaintiffs assert claims against Defendants for violation of the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a substantial portion of the events giving rise to Plaintiff's claims occurred in this district. Plaintiff and his wife filed for bankruptcy protection in this district, Defendants participated in Plaintiff's bankruptcy in this district, and Defendants transact business in this district.

11. Pursuant to Fed. R. Bankr. P. 7008(a), Plaintiff states that to the extent the Court determines that any portion of this complaint is non-core, Plaintiff consents to the entry of final orders or judgment in this adversary proceeding by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgment

consistent with Article III of the United States Constitution. Further, to the extent that any court determines that the Bankruptcy Court does not have the authority to enter a final judgment on any cause of action set forth herein, Plaintiff requests that the Bankruptcy Court issue a report and recommendation for a judgment to the United States District Court for the Northern District of Texas on any such cause of action.

III.
**Bankruptcy Court Authority to Adjudicate
this Matter as a Nationwide Class Action**

12. 28 U.S.C. § 1334(a) confers upon district courts the original and exclusive jurisdiction of all cases under Title 11.

13. 28 U.S.C. § 1334(b) provides that “district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under Title 11.”

14. 28 U.S.C. § 157(a) authorizes district courts to refer cases falling within the ambit of § 1334 to bankruptcy judges for that district.

15. The Order of Reference applicable in the Northern District of Texas provides that “all cases under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11 are hereby referred to the Bankruptcy Judges for this district.” Order of Reference – Miscellaneous Rule No. 33 entered August 3, 1984.

16. Most of Plaintiff’s claims invoke substantive rights created by the Bankruptcy Code and Rules or would not exist but for bankruptcy law and therefore fall within the Court’s “arising in” and “arising under” jurisdiction. Other claims arise under the Court’s related to jurisdiction.

17. Because the District Court for the Northern District of Texas has jurisdiction over

a nationwide class of debtors, this Court, operating as a unit of the District Court for the Northern District of Texas, has the authority to adjudicate all matters that fall within the District Court's bankruptcy jurisdiction. 28 U.S.C. § 1334. Thus, based on the language set forth in 28 U.S.C. §§ 1334 and 157, and the General Order of Reference applicable to the Northern District of Texas, this Court may exercise jurisdiction over a nationwide class of debtors, including the class for whom Plaintiff has filed this complaint, provided Plaintiff satisfies all other requirements of Fed. R. Bankr. P 7023 for certification of a class action.

IV. Parties

18. Plaintiff Eric Dwayne Bryant is a resident of the Northern District of Texas. Mr. Bryant was also a debtor in the proceeding titled *In re Eric Dwayne Bryant and Rosa Linda Navarro Bryant*, Chapter 13 Bankruptcy Case No. 12-36689-BJH13, filed in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division.

19. Defendant Conduent Education Services, LLC, f/k/a ACS Education Services, a/k/a Direct Loan Servicing Center (referred to herein as "Direct Loan Servicing Center") is a Delaware limited liability company. Defendant Direct Loan Servicing Center was operated by ACS, which was bought by Xerox in 2010 and spun off into Conduent Education Services in 2017. Direct Loan Servicing Center may be served with process through its registered agent, Corporation Service Company, d/b/a CSC—Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218. At all times relevant herein, Defendant Direct Loan Servicing Center acted as agent for the Department of Education. Defendant Navient Corporation is a Delaware Corporation, and is the parent company of Defendant Navient Solutions, LLC. On information and belief, Navient Corp. exercises significant control over the policies and practices

of Navient Solutions, LLC. Navient Corp. may be served with process through its registered agent, Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808. Navient Solutions LLC is a Delaware corporation. Navient Solutions LLC may be served with process through its registered agent, CSD-Lawyers Incorporated, 211 E. 7th Street, Suite 620, Austin, TX 78701-4234. At all times relevant herein, Navient acted as agent for the Department of Education.

20. Defendant U.S. Department of Education is a Department of the Executive Branch of the United States government and an agency within the meaning of 5 U.S.C. § 552(f)(1). The Department of Education is headquartered in Washington, D.C. The Department of Education shall be served pursuant to Fed. R. Bankr. P. 7004(b)(4)-(5).

V.
Factual Allegations

21. On or around October 22, 2012 Plaintiff Eric Bryant and his wife filed for Chapter 13 bankruptcy relief (Docket No. 1).¹ On October 22, 2012, Mr. Bryant filed his Chapter 13 plan (Docket No. 2). The Department of Education was served with the plan at the following address: US Dept of Education, Attn: Borrowers Service Dept, PO Box 5609, Greenville, TX 75403. *See id.*

22. Mr. Bryant's schedules list the Department of Education as an unsecured creditor. The Chapter 13 plan sets out how unsecured creditors will be paid under the plan. The plan provided that creditors with allowed nonpriority unsecured claims, such as the Department of Education, would be paid a pro rata share of the unsecured claim pool in order to reduce the

¹ References to docket numbers are to docket entries in Bankruptcy Case No. 12-36689 – BJH13, previously pending in the Northern District of Texas, Dallas Division.

amount owed on such claims.² *See id.*

23. Mr. Bryant's Chapter 13 plan was confirmed on January 21, 2013 (Docket No. 20).

24. Mr. Bryant properly disclosed in his bankruptcy schedules two student loan debts owed to the Department of Education, and provided for payment of these debts in his Chapter 13 plan. *See* Schedule F at Docket No. 1. The address Mr. Bryant listed in his schedules for the student loan debts was for a post office box maintained by Direct Loan Servicing Center (P.O. Box 5609 Greenville, TX 75403-5609).

25. Upon notice of the bankruptcy, the Department of Education, through its servicer Direct Loan Servicing Center, filed a timely proof of claim for the two loans in the total amount of \$4,625.06 (POC #3, filed November 21, 2012).

26. As no objection to the Department's proof of claim was filed, the claim was allowed in the amount listed as a nonpriority unsecured claim.

27. The proof of claim listed an address for a payment center where payments should be sent (P.O. Box 530260, Atlanta, GA 30353-0260) and a separate address where notices should be sent (P.O. Box 5609, Greenville, TX 75403-5609). The listed addresses were for post office boxes maintained by Direct Loan Servicing Center. *See* POC # 3.

² Typically, when a debtor with student loans files a petition for relief under Chapter 13, the Department of Education and the servicer will place the student loans into administrative forbearance status. 34 C.F.R. § 682.402(f). The account remains in forbearance status until the bankruptcy case is dismissed or discharged. However, these loans continue to accrue interest post-petition. Although the debtor or a Chapter 13 Trustee may make payments on the student loans during the bankruptcy case, the Department of Education and/or the servicer typically do not send out billing statements or other communications because of the forbearance status. Therefore, an account can fall into default status if payments received during the bankruptcy case are not sufficient to pay the monthly obligations under the loans, but the debtor may not receive a default notice. Any outstanding accrued interest is capitalized (or added to the principal balance) when the loan comes out of forbearance, which has the effect of significantly increasing the borrower's balance and results in higher monthly payments after the bankruptcy ends. Furthermore, the Department of Education may initiate collection activities after the bankruptcy case is concluded if the borrower defaulted during the bankruptcy case. *See* United States Attorneys' Bulletin, *Bankruptcy and Bankruptcy Fraud*, Volume 66, Number 2, page 72, March 2018.

28. Upon information and belief, in 2013 the Department of Education terminated its servicing contract with Direct Loan Servicing Center, and the Department of Education transferred the servicing of Mr. Bryant's student loans to Defendant Navient. The Department of Education's Federal Student Aid website indicates that the servicing of all student loans nationwide that were being serviced by Direct Loan Servicing Center was transferred to Navient and other servicers during the period from January to August of 2013.

29. At no time during the Plaintiff's Chapter 13 case did any of the Defendants file an amended proof of claim or a notice of address change listing a different or new address for receipt of payments or location for receipt of notices. Defendants did not otherwise provide any notice of any address change to the Chapter 13 Trustee or the Bankruptcy Court.

30. On May 31, 2017, the Chapter 13 Trustee disbursed \$83.23 to Defendant Department of Education at the payment address listed on Defendants' proof of claim, which was the address of Direct Loan Servicing Center. Attached hereto as Exhibit A is a true and correct copy of the Chapter 13 Trustee's payee detail with regard to the Department of Education's claim, indicating the amount and date of this disbursement. The disbursement was returned. *See id.* On information and belief, the Chapter 13 Trustee cancelled the check. *See id.* The Chapter 13 Trustee's notes show that his office followed up several times. *See id.* On November 30, 2017, the Chapter 13 Trustee disbursed \$911.14 to Defendant Department of Education at the payment address listed on Defendants' proof of claim, which was the address of Direct Loan Servicing Center. *See id.* This disbursement also was returned. *Id.*

31. The Department of Education, through its servicers and agents Direct Loan Servicing Center and Navient, failed to accept these payments at the payment address listed in the

proof of claim, and the checks were not cashed. A true and correct copy of the Chapter 13 Trustee's administrative notes are included on page 2 of Exhibit A.

32. Because Defendants refused to accept the student loan payments by failing and refusing to cash the checks sent to them by the Chapter 13 Trustee, on February 5, 2018 the Chapter 13 Trustee filed in the Bankruptcy Court a Notice to Deposit Unclaimed Funds, and soon thereafter deposited the amount of \$911.14 in the Bankruptcy Court's unclaimed funds registry (Docket No. 61).

33. Under 11 U.S.C. § 347(a), a Chapter 13 Trustee is required to stop payment of checks remaining unpaid ninety (90) days after distribution. Any remaining property of the estate shall be paid into the court and treated pursuant to chapter 129 of title 28.³

34. Fed. R. Bank. P. 3011 requires a Chapter 13 Trustee to file a list of all known names and addresses of the entities and the amounts to which they are entitled to be paid from the remaining property of the estate that is paid into court pursuant to section 347(a) of the Bankruptcy Code.

35. The Chapter 13 Trustee followed these procedures when he deposited the unclaimed funds tendered to Defendants with the Bankruptcy Court and filed the Notice to Deposit Unclaimed Funds.

36. Once deposited in the court registry, only the Department of Education or its agent

³ Per 28 U.S.C. §§ 2041 – 2045, all moneys paid into any court of the United States shall be deposited with the Treasurer of the United States in the name and to the credit of the court for a period of five years, during which a party making claim to the funds may recover same per court order. 28 U.S.C. § 2401. If the funds remain on deposit for more than five years, the court shall cause the funds to be deposited in the United States Treasury in the name of and to the credit of the United States. A party seeking recovery of the funds must thereafter petition the court, and upon notice to the United States Attorney and full proof thereof, obtain full payment. 28 U.S.C. § 2402.

may seek recovery of the funds.⁴

37. As a result, Mr. Bryant paid \$911.14 towards his nondischargeable student loan debt, but Defendants never credited those payments to Plaintiff's student loan account.

38. The Master Promissory Note signed by Mr. Bryant for his student loans afforded Mr. Bryant the opportunity to pay any interest that would accrue on his loans during the period of any forbearance resulting from his bankruptcy. "I will be given the opportunity to pay the interest that accrues during grace, in-school, deferment, forbearance, and other periods as provided under the Act, ..." If Defendants had accepted Mr. Bryant's Chapter 13 payments, they should have been applied to reduce the interest that accrued during his bankruptcy case under the terms of the Master Promissory Note.

39. The Master Promissory Note also provides that if Mr. Bryant did not pay the interest that accrues during the bankruptcy/forbearance period, the Department of Education would add any unpaid interest that accrues on each loan to the principal balance of that loan (this is referred to as "capitalization") at the end of the bankruptcy/forbearance period. As specifically noted in the Master Promissory Note, capitalization increases the principal balance on the loans and the total amount of interest the borrower must pay.

40. After successfully completing his plan, Mr. Bryant received a discharge on December 14, 2017 (Docket No. 58). The Bankruptcy Noticing Center for the Northern District of Texas served the discharge order on Defendants at the notice address listed on Defendants' proof of claim (Docket No. 59).

41. Navient's account records show that the amount of \$6,281 is owed on Mr. Bryant's

⁴ See 28 U.S.C. §§ 2041 and 2042, allowing "rightful owners" to seek recovery of funds.

student loans that were provided for in his Chapter 13 case. Navient's records confirm that Mr. Bryant's plan payments were not applied to the account and that the loans remain in bankruptcy/forbearance status. Defendants' failure to reduce the balance owed on his student loans has caused Mr. Bryant to incur additional and unnecessary interest charges, which will be assessed to his account when it is removed from bankruptcy/forbearance status.

42. All Defendants have failed to properly apply the payments made through the Chapter 13 plan, resulting in an overstated balance because it does not reflect such payments and because of improper capitalization of interest and other charges.

VI **Class Allegations**

1) Class Definition

43. Pursuant to Fed. R. Bankr. P. 7023(a), (b)(2) and (b)(3), Plaintiff brings this class action on behalf of himself and all others similarly situated.

44. Plaintiff proposes the following class definition for this case:

All persons who filed for Chapter 13 bankruptcy relief where:

(a) the Chapter 13 plan provided for payment of student loan debt owed to the Department of Education;

(b) the plan was confirmed;

(c) a proof of claim for said debt was filed in the Chapter 13 case;

(d) the claim was allowed;

(e) a payment was sent by the person's Chapter 13 Trustee to the address listed on the proof of claim, subsequent Notice of Transfer of Claim, Notice of Change of Address, or other filing by the Defendants, their successors in interest, or their agents, which provided a payment address;

(f) the payment was not deposited and applied to the borrower's account by any Defendant; and

(g) the payment was thereafter deposited by the Chapter 13 Trustee in the Court's unclaimed funds registry.

45. In addition to the foregoing, Plaintiff proposes that this Court certify a subclass (the "Discharge Injunction Subclass"), which includes all persons who filed for Chapter 13 bankruptcy relief who:

(a) satisfy the definition listed in the immediately preceding paragraph, including items (a) through (g) above; and

(b) an order of discharge was entered in that person's bankruptcy case.⁵

46. Members of the class and subclass can easily be identified through Defendants' records and can also be identified through Bankruptcy Court records.⁶

47. The proposed class is so numerous that individual joinder of all members would be impracticable.

48. The subject of this case involves hundreds or thousands of class members. While the identities of the class members are unknown to Plaintiff at this time, such information can be

⁵ Plaintiff realizes that, with respect to the subclass, the Fifth Circuit recently held that a bankruptcy court cannot enforce the statutory discharge injunction of 11 U.S.C. § 524 of a debtor who obtained his discharge order in another bankruptcy district. *Crocker et al. v. Navient Solutions, L.L.C. et al.*, 941 F.3d 206, 208-217 (5th Cir. 2019). The subclass here can be distinguished for several reasons, including that it is based on 11 U.S.C. § 524(i), which was not addressed in *Crocker*.

Moreover, in the *Crocker* proceeding, Michael Shahbazi and Raegena Seitz-Moulds have filed a petition for rehearing *en banc* supported by strong arguments, including that the panel decision conflicts with earlier Fifth Circuit precedent in *In re National Gypsum Co.*, 118 F.3d 1056, 1063 (5th Cir. 1997), *In re Wilborn*, 609 F.3d 748, 753-54 (5th Cir. 2010), and the jurisdictional finding implicit in *Bolin v. Sears, Roebuck & Co.*, 231 F.3d 970 (5th Cir. 2000). The panel decision also contravenes the teaching of *Central Virginia Community College v. Katz*, 546 U.S. 356, 363-378 (2006) (one of the primary purposes of the Bankruptcy Clause of the Constitution was to allow federal enforcement of the bankruptcy discharge in a jurisdictional location different from where the discharge was granted.)

⁶ For purposes of this Complaint, any reference to the "class" or "class members" includes the subclass defined herein as the Discharge Injunction Subclass, unless specified otherwise.

readily ascertained through appropriate investigation and discovery. The disposition of the claims of the class members in a single action will provide substantial benefit to all parties and to the Court.

49. Common questions of law and fact exist as to all members of the class and predominate over any questions affecting only individual class members. The common legal and factual questions include, but are not limited to, the following:

- a) Whether, with respect to the Discharge Injunction Subclass, all Defendants violated 524(i) by failing to apply Plaintiff's/class members' payments pursuant to a Chapter 13 plan in reduction of amounts owed under Plaintiff's/class members' student loans;
- b) Whether Defendants' conduct was contrary to the provisions in Plaintiff's and the class members' Chapter 13 plans, and constituted abuse of the Bankruptcy processes, violations of the plans, the orders confirming the plans, other orders of the Bankruptcy Courts, the provisions of Chapter 13 of the Bankruptcy Code, and the Bankruptcy Rules.
- c) Whether Defendant Servicers breached their obligations, as servicers and agents of the Department of Education, under the student loans and Chapter 13 plans by failing to credit payments made by Plaintiff/class members under their respective Chapter 13 plans;
- d) Whether Defendant Department of Education breached its obligation under the student loans and Chapter 13 plans by failing to credit payments made by Plaintiff/class members under their respective Chapter 13 plans;
- e) Whether Defendants had a duty to update in bankruptcy court the location to which payments pursuant to a Chapter 13 plan should be sent;
- f) Whether Defendant Loan Servicers were negligent in failing to credit payments made by Plaintiff/class members under their respective Chapter 13 plans;
- g) Whether Defendant Loan Servicers tortiously interfered with Plaintiff's/class members' respective agreements with the Department of Education;
- h) Whether legal and/or equitable remedies should be allowed by the Court for these violations, and if so, the amounts and nature of the relief needed to address these issues.

50. Defendants have acted or refused to act on grounds generally applicable to the class,

thereby making final injunctive or corresponding declaratory relief pursuant to Fed. R. Civ. P. 23(b)(2), as made applicable to this proceeding by Fed. R. Bankr. P. 7023, appropriate with respect to the class as a whole.

51. Pursuant to Fed. R. Civ. P. 23(b)(3), the questions of law and fact common to class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Each of the enumerated factors set forth in Fed. R. Civ. P. 23(b)(3) are present here: (a) the class members' interests in individually controlling the prosecution of separate actions is limited; (b) there is no significant existing litigation concerning the controversy already begun by or against class members; (c) it is desirable, on the part of Plaintiff, putative class members, and the Defendants to concentrate litigation in one particular forum; (d) the class action will not be difficult to manage as the facts are extremely simple, the class definition is limited in scope, and the damages can be calculated for each individual class member through simple math.

52. There are no facts or circumstances unique to any individual putative class member that would cause that individual to want to control this litigation. The facts of each case are simple and do not vary greatly from one putative class member to another.

53. Neither Plaintiff nor his counsel is aware of any other litigation concerning the controversy at issue in this case that is already begun by or against class members.

54. It is desirable for all parties to concentrate litigation in one particular forum. Because Defendants each operate on a national level, and because putative class members are scattered across the United States, concentrating national litigation in a single forum will eliminate the added expense and wasted resources resulting from duplicative litigation throughout multiple

forums across the United States.

55. Plaintiff's claims are typical of the claims of the members of the class. Plaintiff shares the aforementioned facts and legal claims or questions with class members, and Plaintiff and all class members have been similarly affected by Defendants' common course of conduct.

56. Plaintiff will fairly and adequately represent and protect the interests of the class. Plaintiff has retained counsel with substantial experience in handling bankruptcy matters as well as complex class action litigation, including complex questions that arise in this type of financial and consumer protection litigation.

57. Plaintiff and Plaintiff's counsel are committed to the vigorous protection of this class action.

58. Plaintiff and his counsel will fairly and adequately protect the interests of the members of the class. Neither Plaintiff nor his counsel have any interests which might cause them not to vigorously pursue this action.

59. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy for at least the following reasons:

- a) The claims presented in this case predominate over questions of law or fact affecting individual class members;
- b) Individual joinder of all class members is impracticable;
- c) Absent a class, Plaintiff and class members will continue to suffer harm as a result of Defendants' unlawful conduct;
- d) The class necessarily consists of persons in unfavorable economic circumstances who are not able to pay to maintain individual actions against the Defendants;
- e) Many class members lack the sophistication to recognize that Defendants' actions are unlawful and to retain litigation counsel;

- f) Class members cannot petition the courts under 28 U.S.C. §§ 2041 and 2042 for recovery of the unclaimed funds, so litigation against the Defendants is necessary to obtain the application of their plan payments.
- g) Even if the individual class members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed;
- h) Adjudication of individual class members' claims against Defendants would, as a practical matter, be dispositive of the interests of other class members who are not parties to the adjudication and may substantially impair or impede the ability of other class members to protect their interests;
- i) This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means to Plaintiff and the class members to seek redress for the harm caused by Defendants;
- j) Many class members have acceded or will accede to Defendants' unlawful conduct; and
- k) There is no reason that the courts should be burdened with multiple lawsuits challenging Defendants' practices.

60. Defendants' actions and/or inactions are systemically harmful to the purposes and administration of consumer Chapter 13 bankruptcy cases in this country. As a result of Defendants' actions/inactions, debtors have been denied credit for their payments and have been systematically overcharged on their student loans, and some debtors may have improperly been deemed by Defendants to be contractually delinquent under the terms of their student loans.

61. Because Defendants' wrongful conduct is widespread and uniform, this case should be certified for class action treatment pursuant to Fed. R. Bankr. P. 7023(a) and 7023(b)(2) and (b)(3).

VII.
Causes of Action

FIRST CLAIM FOR RELIEF
(ABUSE OF PROCESS AND REQUEST THAT COURT USE
ITS 11 U.S.C. § 105 (a) AND INHERENT AUTHORITY)
(CLASS CLAIM AGAINST ALL DEFENDANTS)

62. The allegations contained in the foregoing paragraphs are realleged and incorporated herein by this reference.

63. Defendants violated Plaintiff's and other class members' plans and the orders confirming the plans by failing to apply payments pursuant to the terms of their Chapter 13 plans and by their continued failure to correct the accounting on Plaintiff's and other class members' loan accounts to be consistent with the terms of their plans. Defendants thus thwarted Plaintiff's and the class members' right to have their plan payments credited to their non-dischargeable student loan accounts.

64. Defendants' conduct in not applying payments received from the Chapter 13 Trustee were contrary to the provisions in Plaintiff's and other class members' Chapter 13 plans, were willful violations of the plans, the orders confirming the plans, other orders of the Bankruptcy Courts, the provisions of Chapter 13 of the Bankruptcy Code, and the Bankruptcy Rules. Defendants knew of the existence of these provisions, their conduct was intentional, and the conduct alleged herein violated the provisions and purposes of the Code and Rules set forth herein.

65. As set forth in detail herein, Defendants' failure to apply plan payments constitutes an extreme and gross abuse of the Bankruptcy Code, Bankruptcy Rules, and of Chapter 13 bankruptcy processes.

66. Plaintiff and the class have been materially damaged by Defendants' violation of Plaintiff's and the class members' plans and orders confirming the plans, by Defendants' abuse of the Bankruptcy Code, Rules and processes, and Defendants' conduct has caused them to incur attorneys' fees.

67. Accordingly, Plaintiff and the class ask this Court to find that Defendants' actions constitute an abuse of process.

68. Title 11 U.S.C. § 105(a) of the Code grants power to the Court to remedy Defendants' violations of the Bankruptcy Code and Rules and their abuse of process. Section 105(a) allows the Court to exercise its equitable powers where necessary or appropriate to facilitate implementation of Code and Rule provisions, including the granting of sanctions for contempt, the granting of monetary relief for actual damages, punitive damages, attorneys' fees and costs, and the imposition of temporary and permanent injunctions. Based upon such findings, and under its inherent powers and 11 U.S.C. § 105(a), Plaintiff and the class seek an award of sanctions and/or punitive damages, declaratory and injunctive relief, actual damages, and attorneys' fees and costs.

69. Accordingly, under § 105(a) and/or the Court's inherent authority, Defendants should be sanctioned in an appropriate amount and made to pay the reasonable attorneys' fees of Plaintiff and the class for bringing this action.

70. Plaintiff and other class members therefore seek injunctive relief, on a permanent basis, as set forth below, to prevent Defendants from collecting amounts that would not be owed if disbursed payments had been properly credited in accordance with the Chapter 13 plans and confirmation orders of the Plaintiff and other class members.

SECOND CLAIM FOR RELIEF
(VIOLATION OF THE 11 U.S.C. § 524(i) DISCHARGE INJUNCTION)
(CLASS CLAIM AS TO DISCHARGE INJUNCTION CLASS)

71. The allegations contained in the foregoing paragraphs are realleged and incorporated herein by this reference.

72. Section 1322(b)(5) of Title 11 of the United States Code allows a Chapter 13 debtor to cure deficiencies and maintain regular monthly payments on a secured or unsecured debt.

73. Section 1327 of Title 11 of the United States Code provides: “The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.”

74. Plaintiff’s and the class members’ confirmed Chapter 13 plans contained provisions regarding the funds received from the Chapter 13 Trustees during their Chapter 13 cases. These Chapter 13 plans provide that funds disbursed by the Chapter 13 Trustees on claims filed by general unsecured creditors such as the Department of Education shall be applied to the debts owed to such creditors.

75. Plaintiff and the other class members made payments on their student loans pursuant to their Chapter 13 plans.

76. After completion of the Chapter 13 Plan, Plaintiff and other members of the Discharge Injunction Subclass received a discharge under Section 1328(a) of Title 11.

77. Section 524(i) of Title 11 provides as follows:

The willful failure of a creditor to credit payments received under a plan confirmed under this title, unless the order confirming the plan is revoked, the plan is in default, or the creditor has not received payments required to be made under the plan in the manner required by the plan (including crediting the amounts required

under the plan), shall constitute a violation of an injunction under subsection (a)(2) if the act of the creditor to collect and failure to credit payments in the manner required by the plan caused material injury to the debtor.

78. With respect to Plaintiff and class members who completed their Chapter 13 plans and obtained a discharge, Defendants willfully violated 11 U.S. C. § 524(i) by failing to properly apply funds received from the Chapter 13 Trustee in accordance with the provisions of Plaintiff's confirmed Chapter 13 plan.

79. Defendants' acts in willfully failing to credit payments pursuant to the Plaintiff's and class members' plans have caused material injury to Plaintiff and the class. Plaintiff would owe \$911.14 less on his student loans if Defendants had properly credited the Chapter 13 Trustee's payments as they were required to do. Defendants' conduct also caused interest to accrue on Plaintiff's loan that Plaintiff should not have to pay. Defendants' violations have caused similar harm to the class members.

80. Plaintiff and the members of the Discharge Injunction Subclass have been damaged by Defendants' conduct and therefore seek an award of sanctions, a declaration that the Defendants have violated 11 U.S.C. § 524(i), injunctive relief, and all appropriate damages and other recovery, including but not limited to actual damages, punitive damages, and attorneys' fees and costs pursuant to the Court's inherent powers and its statutory 11 U.S.C. § 105(a) powers for Defendants' gross violations of the discharge injunction and orders of the Bankruptcy Courts.

THIRD CLAIM FOR RELIEF
(BREACH OF CONTRACT)
(CLASS CLAIM AS TO ALL DEFENDANTS)

81. The allegations contained in the foregoing paragraphs are realleged and incorporated herein by this reference.

82. Plaintiff's two student loans constitute valid contracts between Plaintiff and the Defendant Department of Education. Defendants Direct Loan Servicing Center and Navient, acting as servicers for the loans, were agents of the Department of Education.

83. Plaintiff fully performed under the contracts by making his monthly payments due under the contracts. Plaintiff has also fully performed under his Chapter 13 plan by making all plan payments.

84. The loans do not permit Defendants to refuse payment on the loans and to then charge Plaintiff additional interest and other charges on the basis of non-payment. The loans also require that payments made during periods of forbearance be applied to reduce the amount any unpaid, accrued interest before any interest is capitalized. Specifically, the contracts require the Department of Education to give Plaintiff and the class members "the opportunity to pay the interest that accrues during ... forbearance..."

85. By refusing payment and failing to credit Plaintiff's account, and by charging extra interest on the account, Defendants have breached the terms of the loans.

86. Defendants have breached the student loan agreements with Plaintiff and each of the class members, as a result of which Plaintiff and class members have been damaged by not receiving credit for amounts not accepted by Defendants, and by being charged interest when the payments were not applied to the borrowers' accounts and additional interest when such interest was capitalized.

87. As such, Plaintiff and the other class members are entitled to damages for such breach, as well as attorneys' fees under Tex. Civ. Prac. & Rem. Code § 38.001 and similar state statutes providing for such fees.

88. Plaintiff and the class therefore hereby demand that they be awarded their attorneys' fees for bringing this action pursuant to Tex. Civ. Prac. & Rem. Code § 38.001 and similar state statutes authorizing the imposition of attorney fees in breach of contract cases.

FOURTH CLAIM FOR RELIEF
(NEGLIGENCE)
(CLASS CLAIM AS TO ALL DEFENDANTS)

89. The allegations contained in the foregoing paragraphs are realleged and incorporated herein by this reference.

90. Defendant Department of Education and Defendants Direct Loan Servicing Center and later, Navient, by virtue of their role as servicers of Plaintiff's student loan, assumed and had a duty to Plaintiff to update with the Bankruptcy Court the address to which payments should be sent and to credit payments received on the loan in a timely manner.

91. Defendants breached their legal duty to the Plaintiff when they failed to cash payments from the Chapter 13 Trustee that were sent on Plaintiff's behalf to the address which they had provided.

92. Defendants knew or should have known that to be timely, the payments must be credited to the loan account.

93. Based on its relationship with and control it exercised over Navient Servicing LLC, Defendant Navient Corp. is jointly and severally liable with Navient Servicing LLC for the failures alleged herein.

94. As a direct and proximate result of Defendants' failure to timely credit Plaintiff's payments to his student loan balance, Plaintiff sustained damages, including but not limited to the amount that was not accepted by Defendants and was then later transmitted to the registry of the

Court by the Chapter 13 Trustee, interest imposed by Defendants and/or the Department of Education when the payments were not applied to the borrower's account, and interest on such interest that was capitalized.

FIFTH CLAIM FOR RELIEF
(NEGLIGENCE AND OTHER LIABILITY IN
CONDUCTING ACTIVITY THROUGH AGENT)
(CLASS CLAIM AGAINST THE DEPARTMENT OF EDUCATION)

95. The allegations contained in the foregoing paragraphs are realleged and incorporated herein by this reference.

96. At all times pertinent to this suit, the Servicer Defendants were agents of the Department of Education. The Department of Education manifested assent to the Servicer Defendants to act on the Department of Education's behalf and subject to the Department of Education's control, and the Servicer Defendants manifested assent or otherwise consented to act on behalf of the Department of Education.

97. The Department of Education ratified the Servicer Defendants' conduct because it exercised choice and tacitly consented to the actions of the Servicer Defendants. The Department of Education had actual knowledge that it hired the Servicer Defendants to collect on the Plaintiff's and class members' loans, including in Chapter 13 bankruptcies, and to file proofs of claims on the Department of Education's behalf. The Department accepted the benefits of the Defendant Servicers' actions (accepting payments, filing proofs of claim on its behalf, causing interest to accrue by not cashing the Chapter 13 Trustee's checks), yet knew or should have known that the Servicer Defendants' failure to credit student loan payments to the accounts was unlawful.

98. Alternatively, the Department was willfully ignorant of the Servicer Defendants' failure to credit the checks sent by the Chapter 13 Trustees to the Servicer Defendants to pay on

the Plaintiff's and class members' student loan accounts. The Department of Education ratified the Servicer Defendants' conduct by remaining silent and accepted the benefits of the Servicer Defendants' tortious conduct despite knowing that the Servicer Defendants were not crediting the debtors' loan accounts with the funds being sent by the Chapter 13 Trustees for payment on the class members' student loan accounts.

99. The Department of Education also knew and knows it is bound by the Bankruptcy Code and Rules, and by its contracts with the Plaintiff and the class members, which require the Department of Education to give Plaintiff and the class members "the opportunity to pay the interest that accrues during ... forbearance..." Despite knowing these facts and the law, the Department of Education did not instruct its agents, the Servicer Defendants, to cash the checks of the Chapter 13 Trustees, instruct them to amend their proofs of claim or instruct them to adjust the Plaintiff's and class members' student loan accounts to reflect the payments the Department and the Servicer Defendants should have accepted.

100. The Servicer Defendants held themselves out as agents of the Department of Education and Plaintiff and class members reasonably relied on the appearance that the Servicer Defendants were agents of the Department of Education. By virtue of its role as servicer/agent of Plaintiff's student loan, Defendants Direct Loan Servicing Center and Navient assumed a duty to Plaintiff to credit to Plaintiff's account payments received on the loans, and to do so in a timely manner.

101. Plaintiff and the class members were harmed and damaged by the Servicer Defendants' actions as agents of the Department of Education, because, as noted, in failing to accept and cash the checks of the Chapter 13 Trustees, the Servicer Defendants caused the total

amount of interest and/or the principal balances of the loans Plaintiff and the class members must pay or have paid to increase. Through their conduct, the Servicer Defendants proximately caused Plaintiff and the class members' harm and damages.

102. The Department of Education is thus liable for the harm caused to the Plaintiff and the class members by its agents', the Servicer Defendants, negligence.

103. In addition, the Department of Education is liable for the harm caused to the Plaintiff and the class members because it was negligent in selecting, training, retaining, supervising and controlling the Servicer Defendants.

**SIXTH CLAIM FOR RELIEF
(TORTIOUS INTERFERENCE)
(CLASS CLAIM AGAINST DIRECT LOAN SERVICING CENTER AND NAVIENT)**

104. The allegations contained in the foregoing paragraphs are realleged and incorporated herein by this reference.

105. Plaintiff's two student loans constitute valid contracts between Plaintiff and the Defendant Department of Education.

106. The Department of Education had knowledge of the Plaintiff's contracts with it.

107. Defendant Direct Loan Servicing Center willfully and intentionally interfered with the performance by Plaintiff of his contracts with the Department of Education, pursuant to which Plaintiff agreed to repay his student loan, when it failed to accept or forward to one of the other Defendants payments that were sent by the Chapter 13 trustee on Plaintiff's behalf. Defendant Direct Loan Servicing Center made it impossible for the Department of Education to credit these payments to Plaintiff's account.

108. Defendant Navient willfully and intentionally tortiously interfered with the performance by Plaintiff of his contract with the Department of Education by failing to provide a new address to the Bankruptcy Court and the Chapter 13 Trustee and to accept the Chapter 13 Trustee's payments on Plaintiff's student loans.

109. The Defendant Servicers willfully and intentionally tortiously interfered with the contracts to serve their own personal interests at the Department of Education's expense.

110. As a direct and proximate result of Defendants Navient's and Direct Loan Servicing Center's interference, Plaintiff sustained actual damages, including but not limited to the amount that was not accepted from the Chapter 13 Trustee and then transmitted to the registry of the Court, interest imposed by the Department of Education when the payments were not applied to Plaintiff's account, and interest on such interest that was capitalized.

111. Plaintiff is entitled to an award of actual damages, exemplary damages, pre- and post-judgment interest, and costs.

SEVENTH CLAIM FOR RELIEF
(DECLARATORY JUDGMENT)

112. The allegations contained in the foregoing paragraphs are realleged and incorporated herein by this reference.

113. As outlined in the preceding counts and the preceding factual allegations, Defendants have violated section 524(i) of the Bankruptcy Code, have breached the contracts with Plaintiff and class members, and have committed a gross abuse of bankruptcy processes. Defendant Direct Loan Servicing Center and Navient also committed tortious interference and have been negligent in their treatment of Plaintiff's and class members' payments of their loans. Plaintiff and class members seek a declaration that Defendants' conduct as described herein

violates section 524(i) of the Bankruptcy Code and constitutes a gross abuse of process; that Direct Loan Servicing Center's and Navient's failures likewise constitute negligence and tortious interference with class members' contracts; that the Department of Education is liable for the negligence of the Servicer Defendants, and negligently hired, supervised, retained, trained and controlled the Servicer Defendants.

EIGHTH CLAIM FOR RELIEF
(ATTORNEYS' FEES)
(CLASS CLAIM AS TO ALL DEFENDANTS)

114. The allegations contained in the foregoing paragraphs are realleged and incorporated herein by this reference.

115. Through the conduct described herein, Defendants have inflicted actual damages upon Plaintiff and the other class members.

116. Moreover, Plaintiff and the other class members have been forced to retain legal counsel, who have incurred reasonable and necessary attorneys' fees on their behalf.

117. Such fees are properly taxed against Defendants by virtue of the Court's inherent powers, 11 U.S.C. § 105(a) and Tex. Civ. Prac. & Rem. Code 38.001 for breach of contract.

NINTH CLAIM FOR RELIEF
(REQUEST FOR INJUNCTIVE RELIEF)

118. The allegations in this Complaint are re-alleged and incorporated herein by this reference.

119. The actions of Defendants show that it is their policy and procedure to ignore the directives and orders of the bankruptcy court and the Bankruptcy Code and Rules.

120. Plaintiff and other class members are entitled to injunctive relief, on a permanent basis, to prevent Defendants from collecting amounts that were tendered to them by Chapter 13

Trustees. Class members are generally unaware that their rights have been violated and that funds intended as payments on their student loans are sitting in a court registry outside their reach. Plaintiff and other class members also are entitled to injunctive relief, on a permanent basis, that requires Defendants to take actions that will allow class members and other debtors in the future to have payments made pursuant to their Chapter 13 plans and confirmation orders properly credited, including filing updated addresses for payment with the Bankruptcy Courts of this country, and accepting plan payments of debtors' student loans by debtors' Chapter 13 Trustees.

121. Title 11 U.S.C. § 105 of the Code grants power to the Court to remedy the harms caused by Defendants' violations of the Code and Rules, and orders of the bankruptcy courts. Section 105(a) allows the Court to exercise its equitable powers where necessary or appropriate to facilitate implementation of Code, including the granting of sanctions for contempt, injunctive relief, monetary relief for actual damages, including attorneys' fees and costs.

122. Therefore, Plaintiff seeks injunctive relief as set forth herein that includes appropriate monetary sanctions, including payment of attorneys' fees and costs, for Defendants' violations as described herein.

123. Plaintiff and other class members are also entitled to injunctive relief, on a permanent basis, requiring Defendants to correct any negative reporting as to any and all class members' credit reports.

124. As an alternative to an award for actual damages only (but not as to sanctions or other relief), Plaintiff and other class members are also entitled to injunctive relief, on a permanent basis, requiring Defendants to correct the student loan account of each class member by providing credit for payments made during their bankruptcy cases as of the date of disbursement by their

respective Chapter 13 Trustees, and at all times thereafter, and further requiring Defendants to re-amortize each account so to exclude any capitalized interest or other unlawful charges.

WHEREFORE, having set forth his claims for relief against the Defendants, Plaintiff respectfully requests that this Court:

- a. Certify the class of Chapter 13 debtors and former debtors who have been damaged by Defendants' failure to apply plan payments in reduction of their student loans during the pendency of their bankruptcy cases;
- b. Award the Plaintiff and class members against the Defendants a sum to be determined by the Court in the form of actual damages, including attorneys' fees and costs (at trial and on appeal), as well as exemplary damages, and/or punitive damages and sanctions for Defendants' actions as described herein, and a finding of contempt;
- c. Declare that Defendant's actions violate section 524(i) of the Bankruptcy Code, have breached the contracts with Plaintiff and class members, and constitute a gross abuse of the bankruptcy process, negligence, and tortious interference, along with the other declaratory relief sought herein;
- d. Issue permanent injunctions as set forth herein; and
- e. Grant Plaintiff and class members such other and further relief as the Court may deem just and proper.

This 27th day of November, 2019.

Respectfully submitted,

/s/ Karen L. Kellett

Karen L. Kellett

Texas State Bar No. 11199520

Theodore O. Bartholow III ("Thad")

Texas State Bar No. 24062602

KELLETT & BARTHLOW PLLC

11300 N. Central Expressway, Suite 301

Dallas, TX 75243

Tel.: (214) 696-9000

Fax: (214) 696-9001
kkellett@kblawtx.com
kkellett@kblawtx.com

Charles M. Delbaum (BBO# 543225) *To be admitted pro hac vice.*
John Rao (Bar # 2777) *To be admitted pro hac vice.*
NATIONAL CONSUMER LAW CENTER
7 Winthrop Square, 4th Floor
Boston, MA 02110
(617) 542-8010
cdelbaum@nclc.org
jrao@nclc.org

Amy E. Gullifer 0074218 *To be admitted pro hac vice.*
BRIDGES, JILLISKY, STRENG,
WELLER & GULLIFER, LLC
302 South Main Street
Marysville, Ohio 43040
937-644-9125 (telephone no.)
937-644-0754 (fax no.)
agullifer@cfbjs.com

Attorneys for the Plaintiffs