

1 Andrew A. August (SBN 112851)  
aAugust@pinnaclelawgroup.com  
2 Kevin F. Rooney (SBN 184096)  
krooney@pinnaclelawgroup.com  
3 PINNACLE LAW GROUP, LLP  
425 California Street, Suite 1800  
4 San Francisco, California 94104  
Telephone: (415) 394-5700  
5 Facsimile: (415) 394-5003

6 (Additional counsel on signature page)

7 Attorneys for Plaintiffs Matthew C. Kilgore  
and William Bruce Fuller

8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11 MATTHEW C. KILGORE, individually  
and on behalf of all others similarly  
12 situated; WILLIAM BRUCE FULLER,  
individually and on behalf of all others  
13 similarly situated;

14 Plaintiffs,

15 vs.

16 KEYBANK, NATIONAL  
ASSOCIATION, a national banking  
17 association organized under the laws of the  
United States of America and successor in  
18 interest to KeyBank USA, N.A.; KEY  
EDUCATION RESOURCES, a division of  
19 KEYBANK, NATIONAL  
ASSOCIATION; GREAT LAKES  
20 EDUCATIONAL LOAN SERVICES,  
INC., a Wisconsin corporation; and Does  
21 1-25,

22 Defendants.

CASE NO. 08-cv-02958 TEH

**CLASS ACTION**

**THIRD AMENDED COMPLAINT<sup>1</sup> FOR  
INJUNCTIVE RELIEF**

1. **UNFAIR COMPETITION (Bus. & Prof. Code § 17200 et seq. – “Unlawful Prong” – Direct Violation of 16 C.F.R. 433.2(a))**
2. **UNFAIR COMPETITION (Bus. & Prof. Code § 17200 et seq. – “Fraudulent Prong” – Direct Violation of 16 C.F.R. 433.2(b))**
3. **UNFAIR COMPETITION (Bus. & Prof. Code § 17200 et seq. – Aiding and Abetting SSH’s Unlawful Violation of 16 C.F.R. 433.2(a))**
4. **UNFAIR COMPETITION (Bus. & Prof. Code § 17200 et seq. – Aiding and Abetting SSH’s Unlawful Violation of 16 C.F.R. 433.2(b))**
5. **UNFAIR COMPETITION (Bus. & Prof. Code § 17200 et seq. – “Unfair Prong”)**
6. **UNFAIR COMPETITION (Bus. & Prof. Code § 17200 et seq. – “Fraud Prong”)**

27 <sup>1</sup> Although this technically is the Third Amended Complaint, Plaintiffs voluntarily amended the  
Original Complaint twice before former defendant Student Loan Xpress, Inc. removed the case to  
28 this Court from Alameda County Superior Court. Plaintiffs are voluntarily filing this Third  
Amended Complaint in response to Defendant KeyBank’s pending Motion to Dismiss.

1 **I. INTRODUCTION**

2 1. This class action is brought on behalf of approximately 120 California residents  
3 who were enrolled students at Silver State Helicopters (“SSH”), a helicopter pilot vocational  
4 school that filed Chapter 7 bankruptcy on February 4, 2008. Each member of the proposed class  
5 borrowed some or all of his or her tuition (the “Loans”) from Defendant KeyBank, National  
6 Association (and/or its education lending division, Key Education Resources) which Loans are  
7 serviced by defendant Great Lakes Educational Loan Services, Inc. (collectively “KeyBank”). By  
8 this action, Plaintiffs seek to permanently enjoin KeyBank from collecting on the Loans and from  
9 contacting credit reporting agencies regarding the Loans (the Loans for California students  
10 average approximately \$51,000 per student and total in excess of \$6 million, exclusive of  
11 interest). Plaintiffs further seek to permanently enjoin KeyBank’s unfair and deceptive acts and  
12 practices committed against the residents of the State of California by its systemic violation of  
13 California’s Unfair Competition Law (California Business and Professions Code Sections 17200  
14 *et seq.* “UCL”) in consumer transactions. No monetary damages are sought. The action is based  
15 on the grounds that at the time KeyBank made the loans it violated the unlawful, unfair and fraud  
16 prongs of the UCL and aided and abetted SSH in violating the UCL.

17 **II. JURISDICTION AND VENUE**

18 2. This Court has jurisdiction over this action pursuant to the Class Action Fairness  
19 Act of 2005, 28 U.S.C. § 1332(d)(2) because this is a class action where “any member of a class  
20 of plaintiff is a citizen of a state different from any defendant and the aggregated amount in  
21 controversy exceeds \$5,000,000, exclusive of interest and costs.” This Court additionally has  
22 jurisdiction pursuant to the removal of this action from state court on June 13, 2008.

23 3. Venue is proper in this District under the provisions of 15 U.S.C. §§ 15, 22, and  
24 26, and 28 U.S.C. § 1391 because: (i) KeyBank transacts business, committed an act alleged to be  
25 unlawful, illegal or tortious, and/or is found within this district; and (ii) a substantial portion of  
26 the affected interstate trade and commerce described below has been carried out in this district.

27 ///

28 ///

1                   **III. THE PARTIES AND SILVER STATE HELICOPTERS, LLC**

2                   **A. Class Representatives**

3                   4. Plaintiff Matthew C. Kilgore (“Kilgore”) is an individual over the age of 18 and  
4 is, and at all relevant times was, a resident of the State of California. Kilgore brings this action  
5 on behalf of himself and all members of the proposed class as defined in paragraph 13 below.

6                   5. Plaintiff William Bruce Fuller (“Fuller”) is an individual over the age of 18 and is  
7 and was, at all relevant times, a resident of the State of California. Fuller brings this action on  
8 behalf of himself and all members of the proposed class as defined in paragraph 13 below.

9 Hereinafter Kilgore and Fuller are sometimes collectively referred to as Plaintiffs.

10                   **B. Defendants KeyBank, Key Education Resources and Great Lakes**

11                   6. Plaintiffs are informed and believe and thereon allege that at all relevant times,  
12 Defendant KeyBank, National Association, successor in interest to KeyBank USA, N.A. (“Key”),  
13 was and is a national banking association organized under the laws of the United States of  
14 America engaged in commerce throughout the United States, including the State of California.  
15 Plaintiffs are further informed and believe and thereon allege that although Key has no retail  
16 presence in California, it was and is in the business of soliciting, processing and/or making  
17 education loans to students in the State of California.

18                   7. Plaintiffs are informed and believe and thereon allege that at all relevant times,  
19 defendant Key Education Resources (sometimes referred to as “KER”), was and is a division of  
20 Key and engaged in commerce throughout the United States, including the State of California.  
21 Plaintiffs are informed and believe and thereon allege that KER was and is the student lending  
22 division of Key.

23                   8. Plaintiffs are informed and believe and thereon allege that defendant Great Lakes  
24 Educational Services, Inc. (“Great Lakes”) is, and at all material times was, a Wisconsin  
25 corporation authorized to do business, and in fact doing business in the State of California.  
26 Plaintiffs are informed and believe and thereon allege that Great Lakes was and is a loan  
27 servicing agent for Key and/or KER and is responsible for servicing the Loans. Plaintiffs are  
28 further informed and believe and thereon allege that in servicing the Loans, Great Lakes collects,

1 monitors and reports to credit reporting agencies the status of the Loans. The relief sought in this  
2 action against Key and KER cannot be had without the participation of Great Lakes and thus  
3 Great Lakes is an indispensable party defendant. Hereinafter, Key, KER and Great Lakes shall be  
4 collectively referred to as “KeyBank.”

5 **C. Silver State Helicopters, LLC**

6 9. Plaintiffs are informed and believe and thereon allege that Silver State  
7 Helicopters, LLC (“SSH”) was a limited liability company organized under the laws of the state  
8 of Nevada with its principal place of business in Las Vegas, Nevada. SSH operated helicopter  
9 pilot “flight academies” throughout California, including one in Oakland, California which  
10 Plaintiffs attended. Each member of the proposed class executed an SSH “Service Contract” (or  
11 similarly titled agreement) pursuant to which SSH agreed to provide specific education and  
12 training for each student to become a commercial helicopter pilot within a specified period of  
13 time. On or about February 4, 2008, SSH filed bankruptcy in United States Bankruptcy Court,  
14 District of Nevada (Las Vegas – Bankruptcy Petition No. 08-10936). Because of the effect of  
15 the automatic stay under 11 U.S.C. §362, SSH cannot properly be made – and is not – a party to  
16 this case. However, as alleged below, SSH violated the unlawful prong of the UCL by violating  
17 a federal regulation known as the Federal Trade Commission Holder Rule and KeyBank violated  
18 the unlawful, unfair and fraudulent prongs of the UCL by, among other things, knowingly  
19 facilitating and enabling SSH’s violations.

20 **IV. THE FEDERAL TRADE COMMISSION HOLDER RULE**

21 10. One of the gravamen of this action concerns the illegal conduct by KeyBank in  
22 violating the Federal Trade Commission Holder Rule (“Holder Rule”), both directly and as an  
23 aider and abettor of SSH’s violation of the Rule. In 1976, the Federal Trade Commission  
24 promulgated 16 C.F.R. part 433, intended to address the problem of consumer liability to financial  
25 institutions that finance the purchase of defective goods and services in consumer credit  
26 transactions. The declared purpose of the regulation (which was promulgated to help implement  
27 Section 5 of the FTC Act) was to make it impossible “for a seller to arrange credit terms for buyers  
28 which separate the consumer’s legal duty to pay from the seller’s legal duty to keep his promises.”

1 The FTC Guidelines, which expressly apply the Holder Rule to student loans, emphasize that the  
2 Holder Rule was enacted because lender creditors are in a better position to evaluate the sellers  
3 they partner with and that it makes more sense to shift the risk of loss to them as opposed to the  
4 consumer who has little means to investigate. The Guidelines explain this policy as follows:

5 The Commission also concluded that when a creditor and a seller are working together to  
6 finance sales by means of consumer loans, *the creditor has, or should have, access to*  
7 *information, resources, and business procedures which place him in a position to assess*  
8 *the likelihood of seller misconduct and make appropriate provisions for dealing with it.*  
9 The creditor has access to sources of commercial information not easily available to the  
10 average consumer buyer, and if he transacts business with the seller repeatedly over a period  
11 of time he knows from his own experience whether the seller is basically fair or not. A  
12 creditor who deals regularly with a seller is in a position to establish economic ways of  
13 shifting the risk back to the seller, through recourse or reserve arrangements.

14 (Emphasis Added)

15 11. The Holder Rule provides that certain contracts for consumer credit and purchase  
16 money loans must contain a particular notice (the “Holder Rule Notice”):

17 In connection with any sale or lease of goods or services to consumers, in or  
18 affecting commerce as “commerce” is defined in the Federal Trade Commission  
19 Act, **it is an unfair or deceptive act or practice** within the meaning of section 5  
20 of that Act for a seller, **directly or indirectly**, to:

21 (a) Take or receive a consumer credit contract which fails to contain the following  
22 provision in at least ten point, bold face, type:

23 NOTICE

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

(b) Accept, as full or partial payment for such sale or lease, the proceeds of any  
purchase money loan (as purchase money loan is defined herein), unless any  
consumer credit contract made in connection with such purchase money loan  
contains the following provision in at least ten point, bold face, type:

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.

16 CFR 433.2(b)



- 1 b. Whether SSH, by virtue of the Loan application process, “referred” Plaintiffs and  
2 the Class to KeyBank as that term is defined in the Holder Rule;
- 3 c. Whether KeyBank and SSH were “affiliated” with each other by a “business  
4 arrangement” (as those terms are defined in the Holder Rule) in connection with  
5 SSH’s solicitation of prospective students and offering of tuition financing from  
6 KeyBank in the Loan application process;
- 7 d. Whether the Notes were “consumer credit contracts” under the Holder Rule;
- 8 e. Whether the Service Contracts were “consumer credit contracts” under the Holder  
9 Rule;
- 10 f. Whether the Loans were “purchase money loans” under the Holder Rule;
- 11 g. Whether a violation of the Holder Rule provides the predicate for an unlawful act  
12 under the UCL;
- 13 h. Whether SSH violated the Holder Rule by omitting the Holder Rule Notice from  
14 its Service Contract;
- 15 i. Whether KeyBank acted unlawfully under the UCL by omitting the Holder Rule  
16 Notice from the Notes;
- 17 j. Whether KeyBank acted unlawfully under the UCL by aiding and abetting SSH’s  
18 taking or receiving the Service Contract (i.e., a consumer credit contract) which  
19 KeyBank knew failed to contain the Holder Rule Notice;
- 20 k. Whether KeyBank acted unlawfully under the UCL by providing to SSH – and  
21 thus facilitating SSH’s unlawful acceptance of - the proceeds of a “purchase  
22 money loan” (i.e., full or partial payment of the Class’ tuition) in violation of the  
23 Holder Rule;
- 24 l. Whether KeyBank acted unlawfully under the UCL by aiding and abetting SSH’s  
25 acceptance of the proceeds of a “purchase money loan” (i.e., full or partial  
26 payment of the Class’ tuition) with the knowledge that the Service Contract did  
27 not contain the Holder Rule Notice;
- 28 m. Whether KeyBank’s acts and omissions alleged herein violate the fraud prong of

1 the UCL;

2 n. Whether KeyBank's acts and omissions alleged herein violate the unfair prong of  
3 the UCL.

4 17. **Typicality Under Rule 23(a)(3):** Plaintiffs claims are typical of the claims of the  
5 members of the Class because 1) Plaintiffs satisfy each of the criteria of the Class; 2) all other  
6 members of the Class have suffered or will suffer the identical harm as the plaintiff  
7 representatives – i.e., the loss of their ability to assert defenses and claims against KeyBank that  
8 they could have asserted against SSH had KeyBank and SSH not violated the Holder Rule  
9 regardless of any associated deception; 3) the sole remedy sought by Plaintiffs, injunctive relief,  
10 is also the sole remedy sought by each of the other members of the Class and is directed towards  
11 KeyBank's conduct perpetrated on the Class as a whole.

12 18. **Adequacy of Representation Under Rule 23(a)(4):** Plaintiffs are adequate  
13 representatives of the Class because their interests do not conflict with the interests of the  
14 members of the Class they seek to represent. Plaintiffs have retained competent counsel for this  
15 class action and Plaintiffs have prosecuted and will continue to prosecute this action vigorously.  
16 Plaintiffs and their counsel can and will fairly and adequately protect the interests of the  
17 members of the Class.

18 19. **Superiority Under Rule 23(b)(3):** This suit may also be maintained as a class  
19 action under FRCP 23(b)(3) because questions of fact and law common to the Class predominate  
20 over the questions affecting only individual members of the classes and a class action is superior  
21 to other available means for the fair and efficient adjudication of this dispute. The injury  
22 suffered by each individual class member may be disproportionate to the burden and expense of  
23 individual prosecution of complex and extensive litigation to proscribe KeyBank's conduct and  
24 practices. Additionally, effective redress for each and every class member against KeyBank may  
25 be limited or even impossible where serial, duplicate, or concurrent litigation occurs on these  
26 disputes. Even if individual class members could afford or justify the prosecution of their  
27 separate claims, the court system may not be up to the task. Individualized litigation may lead to  
28 incongruous and conflicting judgments against KeyBank. To the contrary, a class action

1 procedure involving all class members, KeyBank and the court presents fewer management  
2 difficulties, and provides the benefit of a single adjudication, economy of scale, and judicial  
3 efficiency and fairness.

4 20. **Risk of Inconsistent Adjudication Under Rule 23(b)(1)(A)**. The prosecution of  
5 separate actions by the individual members of the Class would create a risk of inconsistent or  
6 varying adjudication with respect to individual Class members, which would establish  
7 incompatible standards of conduct for KeyBank.

8 21. **Incompatible Standards of Conduct Under Rule 23(b)(1)(B)**. The prosecution  
9 of separate actions by individual Class members would create a risk of adjudications that would,  
10 as a practical matter, be dispositive of the interests of other Class members not parties to the  
11 adjudications, or would substantially impair or impede their ability to protect their interests.

12 22. **Issue Certification Under Rule 23(c)(4)**. The claims of Class members are  
13 comprised of common issues that are appropriate for certification under Rule 23(c)(4).

14 23. KeyBank has engaged in unfair and deceptive acts and practices in violation of  
15 both federal and California State consumer protection law as set forth further herein. This action  
16 is therefore appropriate and necessary under California Code of Civil Procedure section 1021.5  
17 to enforce an important public interest and to deter and enjoin future illegal activity by KeyBank.

## 18 VI. GENERAL ALLEGATIONS

### 19 A. KeyBank's Long History of Funding Sham Vocational Schools and 20 Predatory Student Loan Practices.

21 24. Since the early 1990s KeyBank has been one of the largest and most prolific  
22 players in the private student loan industry.<sup>2</sup> Numerous articles have chronicled KeyBank's  
23 involvement throughout this period in the failure of numerous vocational schools (*see* collective  
24 Exhibit A). From the early 1990s until 2005 (when it exited the private school loan market)  
25 KeyBank provided billions of dollars in private student loans to unsuspecting students of sham  
26 vocational schools that failed, leaving the students without the paid-for education and on the

27 <sup>2</sup> Generally, private student loans are those not guaranteed by the government and are typically  
28 made to high-risk borrowers; i.e., those with the worst credit and least able to afford them.  
Consequently, they carry much higher interest rates and lack many of the protections afforded by  
government-backed student loans. Hereinafter they will be interchangeably referred to as  
"private student loans", "non-FFELP" or "non-title IV loans".)

1 hook to KeyBank for the loan amount. Among the more prominent school failures that KeyBank  
2 has been involved with are:

- 3 • The Makarion Institute of Aeronautics in Chino, California;
- 4 • TAB Express Flight School based in Florida;
- 5 • Sierra Academy of Aeronautics in Oakland, California;
- 6 • Airman Flight School based in Norman, Oklahoma (which trained terrorists  
7 involved with 9/11);
- 8 • Excelsior Student Nurses based in Utah;
- 9 • TechTrain USA computer training school located in North Carolina and Florida;
- 10 • Solid Computer Decisions located in Alabama and Virginia;
- 11 • Airline Training Academy located in Florida;
- 12 • AmeriTrain located in Georgia, Maryland, Michigan, Pennsylvania and Virginia;
- 13 • Greater Lowell Computer Center located in Massachusetts; and,
- 14 • The Academy of Nursing located in Utah.

15 25. Perversely, because of its vast experience partnering with sham schools for nearly  
16 15 years, KeyBank became quite knowledgeable and adept at litigating against students  
17 victimized by KeyBank's vocational school partners. Over the years leading up to its partnership  
18 with SSH, KeyBank learned and perfected every trick in the book that enhanced its ability to  
19 aggressively pursue collection of loans made to students scammed by vocational schools which  
20 never provided the bargained-for education. These efforts included: 1) omitting the Holder Rule  
21 Notice from its promissory notes; 2) ensuring that the contracts between the vocational school  
22 partner and its students omitted the Holder Rule Notice; 3) facilitating the partner school's  
23 violation of the Holder Rule by giving the loan proceeds to the school despite the Rule's  
24 prohibition against the school accepting purchase money loan proceeds in the absence of the  
25 Holder Rule Notice; 4) disbursing the student's entire tuition funds directly to the school before  
26 the school could possibly provide the educational services to the student knowing that the school  
27 could go out of business; 5) including oppressive and one-sided mandatory arbitration clauses that  
28 purport to bar class actions, limit discovery and require students to pay exorbitant fees to initiate

1 arbitration proceedings; 6) requiring students to bring suit in Ohio (its domicile state and one  
2 notoriously hostile to borrowers) under Ohio law despite the student's lack of any connection to  
3 that forum.

4 26. Plaintiffs are informed and believe and thereon allege that KeyBank deliberately  
5 and methodically engaged in the actions alleged in the preceding paragraph for the sole purpose  
6 of being able to hold students liable for their loans even if their school went out of business  
7 before providing the paid-for education. For example, the former President of Key Education  
8 Resources, Beth Rosenberg, testified in a deposition in one case that KeyBank's legal  
9 department was "quite good at figuring out" ways around the Holder Rule Notice requirement.

10 27. Part and parcel of KeyBank's scheme of violating the Holder Rule was  
11 KeyBank's practice of disbursing the students' entire tuition before the schools could possibly  
12 provide the educational services to the student borrower and knowing that the school could go  
13 out of business. KeyBank did this because once the student was obligated on the loan, KeyBank  
14 could package the loan and sell it into the secondary market. Plaintiffs are informed and believe  
15 and thereon allege that under the direction of former Executive Vice President and Director of  
16 Key Education Resources, Randall Behm, KeyBank created the first ever publicly offered  
17 securities backed by education loans. Thus, KeyBank was keenly aware that if it contractually  
18 agreed to disburse the funds in relation to the timing of the schools' providing educational  
19 services, or if it permitted the Holder Rule Notice to be included in the consumer credit  
20 transaction documentation, KeyBank would be unable to sell the loans into the secondary market  
21 and would necessarily be obligated to return those unused funds to the students if the school  
22 closed prior to the students obtaining all of the promised education. Plaintiffs are informed and  
23 believe and thereon allege that KeyBank's ability to securitize its loan portfolio was so critical to  
24 its business that on September 28<sup>th</sup>, 2008 KeyBank issued a press release announcing that its  
25 need to protect shareholders as a result of the lack of availability of investor funds from the  
26 secondary market was causing it to withdraw from the private student loan business altogether.

27 **B. The Rise and Fall of SSH**

28 28. From 2002 to 2005, SSH grew at an astounding **2,786 percent**. This meteoric rise

1 was fueled by two things: First, SSH’s elaborate marketing and sales effort that promised all  
2 students would be able to complete their commercial helicopter training within 18 months and be  
3 hired by the school as instructors, and second, that tuition for the school would be funded 100%  
4 by SSH’s “preferred lender”, KeyBank. KeyBank was, therefore, the fundamental catalyst for  
5 SSH’s exponential growth.

6 29. As with so many sham aviation schools before it, SSH aggressively targeted  
7 second-career, limited-income individuals who, but for KeyBank’s willingness to loan money  
8 almost without qualification, lacked the financial wherewithal to pay the tuition. Prior to  
9 forming its partnership with SSH, KeyBank knew based on its own experiences that aviation  
10 schools were particularly vulnerable to failure. KeyBank also knew aviation schools attracted  
11 particularly risky borrowers which KeyBank euphemistically referred to in its written aviation  
12 school policy exception for its Key Alternative Loan product (i.e., the Loans at issue here) as a  
13 “non-traditional population.”

14 30. SSH lured its prospective students through the use of carefully orchestrated mass  
15 media advertising, CDs, and “Career Opportunity Seminars” (the “Seminars”) conducted  
16 throughout California. The Seminars were advertised on radio and in print media and were  
17 designed to draw hundreds of prospective students to each Seminar. At the Seminars, SSH  
18 executives and employees emphasized the “Silver State Promise”: A lucrative and exciting new  
19 *career* piloting commercial helicopters within 18 months, fully financed by KeyBank. SSH  
20 conducted the Seminars at their flight school locations (in Plaintiffs’ cases, in Oakland) flanked  
21 by helicopters and flight simulators which prospective students were invited to “touch and feel”  
22 so they could experience the excitement of being a commercial helicopter pilot. The Seminars  
23 were specifically choreographed to seize on the allure of piloting helicopters for a living.

24 31. During the Seminars, SSH executives and employees used scripted sales pitches  
25 which included prepared videos and standardized marketing materials that were designed to  
26 entice prospective students with promises of glorious careers as helicopter pilots while also  
27 empathizing with their unhappiness with their current careers. SSH went to great lengths to  
28 convince prospective students that there was a shortage of helicopter pilots in the United States

1 and the future demand would be great. SSH provided purported job statistics for the helicopter  
2 pilot market showing that the number of pilots had shrunk dramatically and that the “helicopter  
3 pilot shortage” was only going to worsen in the coming years. SSH also preached how attainable  
4 a career was for each Plaintiff, giving examples such as how even a 63 year old female SSH  
5 student was hired as a pilot. *In short, the raison d’etre for enrolling in SSH was to pursue a*  
6 *career piloting helicopters.*

7 32. Because SSH knew that most of the prospective students had limited income and  
8 financial resources, SSH also knew that most of the attendees were unable to afford the then  
9 nearly \$60,000 per student tuition. But in each of the Seminars, SSH specifically and expressly  
10 addressed this concern by explaining that those chosen to be students would be provided loans  
11 through an arrangement SSH had established with its “preferred lender,” KeyBank. Based on the  
12 “partnership” that was formed between SSH and KeyBank as described in detail below, coupled  
13 with information provided to Plaintiffs by SSH’s former head of financial aid, Plaintiffs are  
14 informed and believe and thereon allege that KeyBank’s marketing and sales personnel helped  
15 create, review, approve and ratify SSH’s marketing and sales presentation, at least as it related to  
16 KeyBank’s Key Alternative Loan program.

17 33. Plaintiffs are informed and believe and thereon allege that during the “interview”  
18 process, SSH made the members of the Class believe they were among a select few “Top Guns”  
19 chosen for admission to SSH. Plaintiffs are further informed and believe and thereon allege,  
20 however, that in reality SSH accepted practically anyone who was willing to pay the tuition fee,  
21 either on their own or with a loan from KeyBank (and who could qualify for a Loan based upon  
22 a cursory credit check). During the Seminars, SSH disseminated uniform enrollment materials,  
23 including application forms, exemplar Service Contracts and loan information materials provided  
24 to it by KeyBank.

25 34. SSH represented during the Seminars and in the Service Contract that the tuition  
26 would cover the cost of education to enable the student to complete all training necessary to  
27 achieve a career as a helicopter pilot. The Service Contract provided that the cost of education  
28 was for a Private Rating, Commercial Rating, Certified Flight Instructor Rating, External Load,

1 Instrument Rating, and Turbine Transition. The Service Contract expressly required that all  
2 training be completed within 18 months of the start of class. Therefore, SSH expressly and  
3 impliedly represented to prospective students that there would be adequate training, equipment,  
4 sufficient instructors and maintenance personnel to enable a student to obtain the ratings within  
5 the contractual timeframe.

6 35. Plaintiffs are informed and believe and thereon allege that after receiving in  
7 excess of \$8 million<sup>3</sup> in Loan proceeds, in an October 22, 2004 letter to all SSH students, SSH  
8 apologized to the students for failing to provide the promised services and further admitted (1) to  
9 providing helicopters to each of its facilities “six months” later than promised; (2) that its  
10 maintenance personnel were unable to “keep up” with SSH’s “enormous growth”; and (3) that  
11 “the price of all these factors combined is ultimately paid by the students who mold their  
12 schedules around opportunities for flight time, only to be let down.” Plaintiffs are informed and  
13 believe and thereon allege that a copy of this letter was sent to KeyBank.

14 36. Plaintiffs are informed and believe and thereon allege that because SSH’s  
15 executives were misappropriating company funds – principally the Class’ Loan proceeds it  
16 received from KeyBank – for their own personal benefit and enjoyment, SSH knew it did not  
17 have and never would have sufficient equipment, trainers or maintenance personnel to meet its  
18 obligations under the Service Contract Agreements. Thus, although the Service Contract  
19 Agreements provided that students were to complete their training within 18 months, when that  
20 time period expired for each student, the student was told to request an extension from KeyBank,  
21 give KeyBank another estimated date of completion and SSH would provide the signature of  
22 someone from SSH verifying that Plaintiffs were still currently enrolled. KeyBank would then  
23 extend the student’s in-school deferment status. This further reinforced the appearance of an  
24 ostensible agency and collaborative relationship between SSH and KeyBank. As alleged below,

25 <sup>3</sup> Plaintiffs have obtained from SSH a list of SSH students that borrowed money from KeyBank  
26 *and were still enrolled at SSH at the time it filed for bankruptcy*, February 4, 2008. This list  
27 itemizes the loans to these particular students. Plaintiffs are informed and believe and thereon  
28 allege that hundreds of SSH students that financed their tuition with KeyBank that are not  
accounted for on this list because they were not enrolled at the time of the bankruptcy petition  
date. Discovery will accordingly yield the total amount of loans KeyBank made to *all* SSH  
students whether or not they were still enrolled in February 2008. Accordingly, this \$8 million  
figure will in fact be much greater.

1 KeyBank’s documents and the deposition testimony of its senior risk management personnel  
2 (including that of Paul McDermott, a KeyBank vice president for risk management,  
3 (“McDermott”) and Richard Vonk) in another similar lawsuit brought against KeyBank reflect  
4 that KeyBank had actual knowledge that SSH had the potential to fail but nevertheless continued  
5 to make Loans to SSH students.

6 37. Plaintiffs are informed and believe and thereon allege SSH graduated a small  
7 percentage of students from its California schools, none of which are members of the Class. In  
8 or about April 2005, KeyBank ceased accepting new loan applications from SSH students  
9 because it had determined SSH was at too great a risk for failure and had, in any event, decided  
10 to exit the non-FFELP student loan market altogether. Despite this, KeyBank continued to  
11 release previously committed Loan proceeds to SSH students.

12 38. After two subsequent lenders ceased making loans to SSH students, on or about  
13 February 4, 2008, after receiving the entirety of Plaintiffs’ and members of the Class’ tuition,  
14 directly or indirectly, from KeyBank<sup>4</sup>, SSH ceased doing business and filed for bankruptcy.  
15 Plaintiffs and the Class have valid defenses against SSH and against KeyBank, but KeyBank  
16 failed and refused and continues to fail and refuse to discharge Plaintiffs and the Class’  
17 obligations on the Loans or any portion thereof.

18 **C. KeyBank’s “Due Diligence” of its Partner Schools**

19 39. Based on information provided by both KeyBank and SSH’s former head of  
20 financial aid, Plaintiffs are informed and believe and thereon allege that KeyBank was SSH’s sole  
21 partner lender from approximately mid 2003 to mid 2005. Approximately 95% of the students’  
22 tuition during this period came from KeyBank and nearly 100% of students that financed their  
23 tuition did so through KeyBank. According to McDermott, as of March 2005, SSH was  
24 exclusively using KER for student loans and was completely reliant upon KeyBank for its  
25 operations. As of July 2005, KeyBank’s Corporate Workout team reported that KeyBank’s total  
26 then-existing exposure to Loan losses was nearly \$54 million and KeyBank had a historical loss  
27 rate for SSH Loans in excess of 57%. Plaintiffs are informed and believe and thereon allege that

28 \_\_\_\_\_  
<sup>4</sup> And the two subsequent lenders, SLX and Citibank.

1 KeyBank nevertheless continued to make Loan disbursements even after receiving this  
2 information.

3 40. Plaintiffs are informed and believe and thereon allege that in 1998 KeyBank  
4 developed a School Diligence Policy for all new schools. Plaintiffs are further informed and  
5 believe and thereon allege that in July 2002, in response to alarmingly high loss rates on student  
6 loans, KeyBank added new due diligence polices including imposing licensing requirements,  
7 registering for Dunn & Bradstreet (“D&B”) early warning alerts and adding advisory language  
8 on its website that the school choice is that of the borrower.

9 41. Plaintiffs are informed and believe and thereon allege that in April 2003,  
10 KeyBank adopted Ohio’s state law requirement that there be multiple disbursements of loan  
11 proceeds to schools and adopted a 14 day window between disbursements. Plaintiffs are further  
12 informed that in March 2003, before any Loan proceeds were funded, KeyBank’s senior student  
13 loan management team agreed to further bolster its due diligence of new schools by, among other  
14 things, screening schools thoroughly before setup, reviewing significant sized relationships  
15 annually, compiling lists of state licensing authorities and criteria used in the licensing process,  
16 registering vocational schools with the D&B Alert Service and providing appropriate handling of  
17 borrowers upon school closures.

18 42. Plaintiffs are informed and believe and thereon allege that because of KeyBank’s  
19 bad experience with private vocational schools, in March 2003 KeyBank’s senior risk managers  
20 added special requirements for schools such as SSH that were eligible for non-government  
21 guaranteed loans. These included requiring three years in business under the same operational  
22 structure, assurance that the school was properly licensed in all states in which it operated,  
23 minimum D&B stress scores, minimum “Cohort” employment rates (completion rate x  
24 placement rate), complete on-site visits by KeyBank representatives, multiple disbursement of  
25 loan proceeds, all borrowers be U.S. citizens, enhanced on-going school monitoring through  
26 systematic and procedural changes, annual school visits and on-site check-lists, all of which were  
27 intended to ensure that all partner schools were in compliance with KeyBank’s lender/school  
28 partnership requirements.

1           43.     Plaintiffs are informed and believe and thereon allege that because KeyBank was  
2 aware of the especially high failure rate of aviation schools, KeyBank established special  
3 standards for such schools including an affiliation with a public or private college or university, a  
4 minimum student to plane ratio, a requirement that the school be at least 5 years old under the  
5 same operational structure, a minimum number of students had to be enrolled in a commercial  
6 pilot program of study and have a graduation and placement rate of 90%. Plaintiffs are informed  
7 and believe and thereon allege that these special aviation school standards were in effect before  
8 KeyBank made any of the Loans.

9           **D.     KeyBank’s Partnership with SSH**

10           44.     On December 31, 2002, a KeyBank Client Relations Specialist informed SSH in  
11 writing that KeyBank would consider SSH for participation in its education loan programs.  
12 KeyBank therefore provided SSH with its school/training registration form which stated it was  
13 designed to enable KeyBank to form a detailed profile of SSH’s administrative operations and  
14 assist KeyBank in establishing whether SSH’s academic programming met KeyBank’s eligibility  
15 requirements. It also was a solicitation from KeyBank to provide SSH with a full range of other  
16 financing, transaction processing and advisory services. KeyBank also provided SSH with its  
17 new school training registration form instructions which expressly states:

18           *Key Education Resources* requests all educational institutions, universities and training  
19 centers to complete a registration document so that we may confirm your eligibility to  
20 participate as a **partner** in our education loan programs and services. Information you  
21 provide to us is retained in a school administrator database and is utilized to deliver a fast  
22 and accurate credit decision to a loan applicant and timely disbursement of education  
23 loan proceeds to the school. *Key Education Resources* may periodically request updated  
24 information about your school as we deem necessary to ensure that our eligibility  
25 requirements are being maintained.

26           As a general rule, school **partnership** eligibility is based on the following criteria: (1)  
27 time elapsed from your date of first establishment; (2) your accreditation credentials; (3)  
28 a sufficiently high ratio of students who successfully complete your programs; (4)  
satisfactory responses from business credit reporting agencies we may employ as part of  
a standard background check of your school. To facilitate our background check, please  
provide your federal tax ID number as requested in the biographic section of the survey.

(Emphasis Added)

45.     After receiving SSH’s application, which included a request by SSH for KeyBank

1 to provide business checking, credit card equipment leasing and merchant services, on January  
2 10, 2003, KeyBank rejected SSH's application because SSH did not have an affiliation with a  
3 public or private college or university, the school had not been in existence for more than 5 years  
4 and there was no proof that two-thirds of SSH's students were enrolled in a commercial pilot  
5 training program (thus emphasizing the importance to KeyBank of the career aspect of the  
6 Service Contract).

7 46. On January 13, 2003 Timothy Jean, SSH's head of student recruiting "corrected"  
8 SSH's application to KeyBank by asserting an affiliation with Utah Valley College (Orem,  
9 Utah), stating although SSH had only been in business since 2002, its parent company had been  
10 in business since 1989 and that 97% of its students were enrolled in a commercial pilot program.  
11 SSH also represented to KeyBank that more than 90% of the SSH students that were enrolled in  
12 the program graduated and secured employment. Although KeyBank was told less than 4 weeks  
13 later that Mr. Jean was no longer employed by SSH, Plaintiffs are informed and believe and  
14 thereon allege KeyBank did nothing to corroborate the information provided by SSH which, as it  
15 turned out, was false and misleading. Plaintiffs are informed and believe that if KeyBank  
16 conducted even a cursory background check, it would have discovered the falsity of the  
17 information provided by Mr. Jean. Ignoring the red flags, on January 22, 2003, KeyBank  
18 notified SSH that its application had been accepted.

19 47. In furtherance of their lender-school partnership and in order to provide electronic  
20 loan processing, email notification for certification requests and disbursements and permit SSH  
21 to have access to information on KeyBank loans serviced by Great Lakes, in March 2003  
22 KeyBank had its loan servicing agent Great Lakes install SCHOLARNET® software on SSH's  
23 computers.

24 48. SSH's Flight Academy Application contained the following provision that  
25 identified KeyBank as SSH's preferred lender:

26 Finance Preference: There are student loans available to those who do not have the  
27 means to pay for their education in full. These loans are available OAC to qualified  
28 applicants. A full disclosure of the terms and conditions for student loans is available  
at [ww.key.com/aviation](http://ww.key.com/aviation) or 1-800-KEY-LEND [Key Education Resources, a  
division of KeyBank]. **By signing this application, you give SSH Helicopters**

1 **permission to apply for a student loan on your behalf [Emphasis added].** Loan  
2 approval alone does not guarantee you enrollment in our Flight Academy Program,  
3 nor does it obligate you to any debt if you do not attend the Program. If you do not  
4 want a loan application processed on your behalf, please initial here . You can often  
5 expedite the financing process by indicating your credit situation.

6 Please Check One. (optional) **Primary (Good Credit History)** \_\_\_\_\_ **Secondary**  
7 **(May Not Qualify)** \_\_\_\_\_ **Not Sure** \_\_\_\_\_

8 **By adding a qualified co-signer to your loan application you may increase your**  
9 **chances of being approved and/or lower the cost of your loan, If you wish to**  
10 **add a co-signer, please provide the following information:**

11 49. Plaintiffs have been informed by SSH's former head of financial aid that SSH  
12 provided exemplar copies of its Service Contract to KeyBank for its review and approval before  
13 KeyBank approved any of the Loans or disbursing the Loan proceeds to SSH. Even though SSH  
14 was a "seller" under the Holder Rule, SSH's Service Contract did not contain the required  
15 Holder Rule Notice.

16 50. Based on information provided to Plaintiffs by SSH's former head of financial aid  
17 and by other SSH employees, Plaintiffs are informed and believe and thereon allege that  
18 KeyBank ostensibly made SSH its agent for processing prospective SSH student loan  
19 applications by, among other things enabling SSH to i) promote KeyBank as the preferred  
20 provider of tuition loans; ii) disseminate to and collect from prospective SSH students  
21 KeyBank's credit applications and related documents and information; (iii) apply for the loans  
22 on the prospective student's behalf; (iv) receive credit information from prospective students and  
23 transmit that information to KeyBank; and (v) oversee execution and transmission to KeyBank  
24 of the Notes.

25 51. Based on information provided to Plaintiffs by SSH's former head of financial aid  
26 and other students, Plaintiffs are informed and believe and thereon allege that the mechanics by  
27 which SSH and KeyBank implemented their institution/lender partnership included the following:

- 28 a. During the Career Day Seminars, SSH would have an "enrollment person" solicit  
prospective students to apply for loans from KeyBank at the time they completed  
their SSH application;
- b. Prospective students would complete their SSH application and KeyBank loan

1 application, both of which would be faxed by either the enrollment person or the  
2 prospective student to SSH's corporate offices in Las Vegas, Nevada. SSH would,  
3 after weeding out those applicants with unacceptable credit, transmit the  
4 application(s) to KeyBank;

- 5 c. KeyBank would approve the loan, prepare the Note and transmit it to SSH which  
6 upon receiving the Note, would give it to the prospective student;
- 7 d. The prospective Student would sign the Note either at their local SSH California  
8 facility or at home and return it to the local SSH Flight Academy Office;
- 9 e. The local SSH office would, after taking or receiving the Note, then send the  
10 executed Note to SSH's corporate offices in Las Vegas which would then send it  
11 to KeyBank in Ohio;
- 12 f. At the request of KeyBank and on its behalf, SSH employed "student finance  
13 managers" whose responsibility was to interact with Plaintiffs regarding financing  
14 tuition through KeyBank. Neither KeyBank nor SSH informed Plaintiffs of the  
15 existence of, purpose for or terms of the Holder Rule.

16 52. Plaintiffs are informed and believe and thereon allege that by May 2003, KeyBank  
17 had experienced so many losses in its private student loan portfolio that its then Executive Vice  
18 President and Director of Key Education Resources, Randall Behm, had calculated that KeyBank's  
19 profitability with such loans had been entirely wiped out by those losses and that it would take more  
20 than \$500 million in "good loans" to overcome the losses. In order to stem KeyBank's financial  
21 hemorrhaging from private student loans, on May 12, 2003, Behm issued a written memorandum  
22 (the "Behm Memo") to KeyBank's student loan management team directing that effective June 1,  
23 2003, KeyBank would take the following actions on a "NO EXCEPTION" basis and that the  
24 Portfolio and Risk Management departments were to spearhead the implementation of these tasks:

- 25 a. Require multiple disbursements of loan proceeds to the schools just prior to and  
26 well into the academic period;
- 27 b. Require a valid governmental license to operate at *all* locations and prohibiting  
28 disbursements to all locations if a school lacked a valid license at any location;

- 1 c. Prohibit disbursements to any school location where there is no government
- 2 licensing requirement;
- 3 d. Report a school that did not maintain a valid government license to the appropriate
- 4 licensing entity;
- 5 e. Require all borrowers to be U.S. citizens (i.e, resident alien status no longer
- 6 allowed);
- 7 f. Require on-site visits by KeyBank personnel at least every 18 months;
- 8 g. Require all schools to maintain a Cohort Employment Rate (graduation rate times
- 9 placement rate) of at least 70%;
- 10 h. Establish a Mystery Shopper Program with an outside entity to pose as a student
- 11 and review student enrollment processes.

12 53. Based on SSH's financial records, Plaintiffs are informed and believe and thereon  
13 allege that prior to the May 12, 2003 Behm Memo, KeyBank had originated and disbursed less  
14 than .05% of the total amount of Loans made to SSH students over the entire history of the  
15 relationship. Put another way, more than 99.5% of loans to SSH students were originated and  
16 disbursed by KeyBank with knowledge that the private student loan industry – and particularly  
17 aviation schools – was a slowly unfolding disaster.

18 54. Plaintiffs are informed and believe and thereon allege that KeyBank's Risk  
19 Management department does not play any role with a school until it first becomes aware of a  
20 complaint about the school. McDermott testified in a deposition regarding another failed flight  
21 school that the Risk Management department did not "monitor" flight schools and instead would  
22 open a file on a school "[o]nly if I needed to" and went on to explain Risk Management would  
23 only "need" to become involved in the event of a "complaint" against the school. Plaintiffs are  
24 further informed and believe and thereon allege that McDermott had opened a file on SSH in or  
25 about August 2003.

26 55. Plaintiffs are informed and believe and thereon allege that because KeyBank's  
27 Portfolio and Risk Management departments were spearheading the implementation of the  
28 corrective actions described in the Behm Memo and because they had received complaints, they

1 were aware throughout the partnership with SSH of numerous irregularities but did nothing to  
2 terminate the relationship or cease funding the Loans. Plaintiffs are further informed and believe  
3 and thereon allege that the KeyBank personnel in these departments also knew that KeyBank had  
4 failed to follow most, if not all, of KeyBank's due diligence policies described in paragraphs 41,  
5 42 and 51 above in dealing with SSH.

6 56. For example, in late summer 2003, a KeyBank school support employee who was  
7 asked to open two branches for SSH (Mesa, Arizona and West Jordan, Utah) informed  
8 McDermott and a KeyBank Financing Specialist that SSH's location in Mesa, Arizona lacked any  
9 FAA certification and Arizona did not require any other licensing. The employee noted that the  
10 situation violated the policy language in the Behm Memo and suggested a D&B stress score on  
11 the school to confirm overall viability. Plaintiffs are informed and believe and thereon allege that  
12 the employee's concerns and request for clarification of the policy language were ignored by the  
13 KeyBank executives. Nevertheless, between late summer 2003 and the date KeyBank ceased  
14 disbursing Loan proceeds, it disbursed to SSH no less than \$12 million<sup>5</sup> in new Loans on behalf  
15 of unsuspecting SSH students.

16 57. In May 2004, McDermott reported to KeyBank Vice President, Regional Sales  
17 Manager Rodney Landrum, that Risk Management had not yet received requested financial  
18 statements from SSH and had run the school by Marc Williams, an aviation school expert and  
19 founder of the Pilot Career Foundation. McDermott reported that Williams had such a poor  
20 opinion of SSH that he (Williams) predicted that SSH could be the next big school failure.

21 58. Armed with this disturbing information from Williams, McDermott continued his  
22 investigation of SSH. He checked SSH's file to determine how it was approved. McDermott  
23 reported that SSH was not approved in accordance with KeyBank's policies. Specifically, he did  
24 not believe the school had been in existence the required amount of time and did not believe the  
25 "corrected" information provided by SSH (*see* paragraph 45 above). Finally, McDermott also  
26 reported that four other schools had contacted KeyBank to give it a heads up about SSH. Despite

27 <sup>5</sup> This \$12 million figure is based solely on information regarding students still enrolled at the  
28 time of SSH's bankruptcy. Thus, the total amount actually disbursed to SSH on behalf of all  
students after this date is much greater. *See* footnote 3 above.

1 all of the warnings by the risk management vice president charged with investigating SSH,  
2 between May 2004 and the date KeyBank ceased disbursing Loan proceeds, it disbursed no less  
3 than \$10 million<sup>6</sup> in new Loans on behalf of unsuspecting SSH students.

4 59. Plaintiffs are informed and believe and thereon allege that by March 2005, SSH  
5 had become KeyBank's largest producer of private student loans and one its highest risk schools.  
6 By this time, KeyBank's Risk Management had targeted SSH for monitoring. McDermott  
7 reported that SSH was an FAA Part 61 school which has less strict requirements than an FAA  
8 Part 141 certified flight school and although KeyBank decided in mid 2004 that all new flight  
9 schools would need to be Part 141, it also decided to grandfather SSH in as a Part 61 only. Based  
10 on SSH's audited financials for years 2002 and 2003 and internal financials for 2004, McDermott  
11 determined that SSH's portfolio performance had been dramatically trending negatively and thus  
12 its existence was solely dependent on recruiting more students to finance their tuition with KeyBank  
13 loans.

14 60. Based on a March 10, 2005 on-site visit checklist prepared by KeyBank sales  
15 representative Terri Boose, Plaintiffs are informed and believe and thereon allege that despite this  
16 knowledge, KeyBank had failed to do regular on-site visits to each of SSH's locations, failed to  
17 obtain Cohort rates, student/aircraft ratios, student/flight instructor ratios, or mechanic/aircraft  
18 ratios for each location. For those locations that KeyBank did have such information, it failed to  
19 ensure compliance with its Aviation School Exception Policy and otherwise failed to follow  
20 KeyBank's due diligence protocols described in paragraphs 41, 42 and 51 above. Plaintiffs are  
21 informed and believe and thereon allege that the on-site visit made KeyBank aware of and  
22 concerned with, among other things, SSH's financial stability and its failure to adequately or  
23 properly track student training and default prevention. Nevertheless, between March 2005 and  
24 the date KeyBank ceased disbursing any Loan proceeds, it disbursed no less than \$1.74 million<sup>7</sup>  
25 in new Loans on behalf of unsuspecting SSH students.

26 61. By mid April 2005, KeyBank's private student loan management team finally  
27 admitted that KeyBank had lacked the infrastructure, processes and resources to judge, monitor

28 <sup>6</sup> See footnote 5 above.

<sup>7</sup> See footnote 5 above.

1 and be successful in non-Title IV student loan programs. Therefore, KeyBank decided to cease  
2 originations to non-Title IV schools including SSH. But the damage was done. KeyBank single-  
3 handedly fueled the meteoric rise of SSH which subsequent lenders gleefully continued. In the  
4 wake of KeyBank’s departure, more than \$56 million was loaned to students chasing a vaporous  
5 dream and who today have only their debt to KeyBank to show for it.

6 **FIRST CLAIM FOR RELIEF**

7 **Violation of California Business & Professions Code Section 17200**  
8 **(Unlawful Prong – Direct Violation of 16 C.F.R. 433.2(a))**

9 62. Plaintiffs re-allege and incorporate by reference each and every allegation set forth  
10 in the preceding paragraphs, as though they are set forth in full.

11 63. The UCL prohibits acts of “unfair competition,” including any “unlawful” act or  
12 practice. The Holder Rule, subsection (a), provides that it is an unfair or deceptive act or practice  
13 within the meaning of section 5 of the FTC Act for a seller, directly *or* indirectly, to take or  
14 receive a consumer credit contract which fails to contain the Holder Notice.

15 64. KeyBank’s Note is a consumer credit contract under the Holder Rule.

16 65. KeyBank engaged in unlawful conduct under the UCL by taking the Notes which  
17 failed to contain the Holder Rule.

18 66. Plaintiffs and each member of the Class have suffered injury in fact (e.g., the loss  
19 of their right to assert defenses and affirmative claims against KeyBank that the Holder Rule  
20 provides) and have lost and will lose money or property as a result of KeyBank’s unlawful  
21 violations of the UCL as alleged herein.

22 67. Plaintiffs are entitled under the UCL to a preliminary and permanent mandatory  
23 and/or prohibitory injunction as prayed for herein.

24 **SECOND CLAIM FOR RELIEF**

25 **Violation of California Business & Professions Code Section 17200,**  
26 **(Unlawful Prong – Direct Violation of 16 C.F.R. 433.2(b))**

27 68. Plaintiffs re-allege and incorporate by reference each and every allegation set forth  
28 in the preceding paragraphs, as though they are set forth in full.

69. The UCL prohibits acts of “unfair competition,” including any “unlawful” act or  
practice. The Holder Rule, subsection (b), provides that it is an unfair or deceptive act or practice

1 within the meaning of section 5 of the FTC Act for a seller, directly *or* indirectly, to accept, as  
2 full or partial payment for such sale or lease, the proceeds of any purchase money loan (as  
3 purchase money loan is defined herein), unless any consumer credit contract made in connection  
4 with such purchase money loan contains the Holder Rule Notice.

5 70. SSH's Service Contract was a consumer credit contract that required inclusion of  
6 the Holder Rule Notice but did not. The Loans from KeyBank were purchase money loans.  
7 Therefore, KeyBank acted unlawfully under the UCL by providing to SSH – and thus facilitating  
8 SSH's unlawful acceptance of - the proceeds of a "purchase money loan" (i.e., full or partial  
9 payment of the Class' tuition) in violation of the Holder Rule.

10 71. Plaintiffs and each member of the Class have suffered injury in fact (e.g., the loss  
11 of their right to assert defenses and claims against KeyBank that the Holder Rule provides) and  
12 have lost and will lose money or property as a result of KeyBank's unlawful violations of the  
13 UCL as alleged herein.

14 72. Plaintiffs are entitled under the UCL to a preliminary and permanent mandatory  
15 and/or prohibitory injunction as prayed for herein.

16 **THIRD CLAIM FOR RELIEF**

17 **Violation of California Business & Professions Code Section 17200  
(Aiding and Abetting SSH's Unlawful Violation of 16 C.F.R. 433.2(a))**

18 73. Plaintiffs re-allege and incorporate by reference each and every allegation set forth  
19 in the preceding paragraphs, as though they are set forth in full.

20 74. The UCL prohibits acts of "unfair competition," including any "unlawful" act or  
21 practice. The Holder Rule, subsection (a), provides that it is an unfair or deceptive act or practice  
22 within the meaning of section 5 of the FTC Act for a seller, directly *or* indirectly, to take or  
23 receive a consumer credit contract which fails to contain the Holder Notice. SSH's Service  
24 Contract was a consumer credit contract that required inclusion of the Holder Rule Notice. SSH  
25 took or received a consumer credit contract (i.e., its Service Contract) without including the  
26 Holder Rule Notice in its Service Contract.

27 75. KeyBank knew that SSH's Service Contract did not contain the required Holder  
28 Rule Notice. Therefore, KeyBank acted unlawfully under the UCL by aiding and abetting SSH's

1 violation of subsection (a) of the Holder Rule by facilitating SSH's taking or receiving a  
2 consumer credit contract (i.e., the Service Contract ) which lacked the required Holder Rule  
3 Notice.

4 76. Plaintiffs and each member of the Class have suffered injury in fact (e.g., the loss  
5 of their right to assert defenses and claims against KeyBank that the Holder Rule provides) and  
6 have lost and will lose money or property as a result of KeyBank's unlawful violations of the  
7 UCL as alleged herein.

8 77. Plaintiffs are entitled under the UCL to a preliminary and permanent mandatory  
9 and/or prohibitory injunction as prayed for herein.

10 **FOURTH CLAIM FOR RELIEF**  
11 **Violation of California Business & Professions Code Section 17200**  
12 **(Aiding and Abetting SSH's Unlawful Violation of 16 C.F.R. 433.2(b))**

13 78. Plaintiffs re-allege and incorporate by reference each and every allegation set forth  
14 in the preceding paragraphs, as though they are set forth in full.

15 79. The Holder Rule, subsection (b), provides that it is an unfair or deceptive act or  
16 practice within the meaning of section 5 of the FTC Act for a seller, directly *or* indirectly, to  
17 accept, as full or partial payment for such sale or lease, the proceeds of any purchase money loan  
18 (as purchase money loan is defined herein), unless any consumer credit contract made in  
19 connection with such purchase money loan contains the Holder Rule Notice. SSH's Service  
20 Contract was a consumer credit contract that required inclusion of the Holder Rule Notice. The  
21 Loans from KeyBank were purchase money loans. SSH accepted purchase money loan proceeds  
22 from KeyBank without including the Holder Rule Notice in its Service Contract.

23 80. KeyBank acted unlawfully under the UCL by aiding and abetting SSH's violation  
24 of subsection (b) of the Holder Rule by facilitating SSH's acceptance of the proceeds of a  
25 "purchase money loan" (i.e., full or partial payment of the Class' tuition) with the knowledge that  
26 the Service Contract did not contain the Holder Rule Notice.

27 81. Plaintiffs and each member of the Class have suffered injury in fact (e.g., the loss  
28 of their right to assert defenses and claims against KeyBank that the Holder Rule provides) and

1 have lost and will lose money or property as a result of KeyBank’s unlawful violations of the  
2 UCL as alleged herein.

3 82. Plaintiffs are entitled under the UCL to a preliminary and permanent mandatory  
4 and/or prohibitory injunction as prayed for herein.

5 **FIFTH CLAIM FOR RELIEF**  
6 **Violation of California Business & Professions Code Section 17200**  
7 **(Unfair Prong)**

8 83. Plaintiffs re-allege and incorporate by reference each and every allegation set forth  
9 in the preceding paragraphs, as though they are set forth in full.

10 84. The UCL prohibits acts of “unfair competition,” which includes any “unfair” act or  
11 practice. In the context of consumer transactions an “unfair” act or practice is one that violates a  
12 declared legislative or regulatory policy. An “unfair” act or practice is also one that offends an  
13 established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or  
14 substantially injurious to consumers. An “unfair” act or practice occurs where the utility of the  
15 defendant’s conduct is outweighed by the gravity of the harm to the victim and there is no  
16 legitimate or reasonable justification for the defendant’s conduct.

17 85. By engaging in the conduct alleged herein (particularly those acts and omissions  
18 alleged in paragraphs 24-27 and 44-59 above), KeyBank violated the declared legislative policy  
19 of the Holder Rule and acted – and continues to act - towards Plaintiffs and the Class in an  
20 immoral, unethical, unscrupulous manner that is substantially injurious to Plaintiffs and the Class.  
21 Further, the injuries in fact suffered by Plaintiffs and the Class are not outweighed by any  
22 countervailing benefits to consumers or competition and are not injuries that Plaintiffs and the  
23 Class could reasonably have avoided, especially in light of KeyBank’s vastly superior knowledge  
24 of and experience with failed non-Title IV schools in general and its specific knowledge of SSH.  
25 Given KeyBank’s familiarity with failed non-Title IV schools and its knowledge of the declared  
26 policy of the Holder Rule, there are no legitimate reasons or justifications for its conduct other  
27 than its motive of laying the groundwork for securitizing student loans (i.e., pursuing profit at the  
28 expense of unsuspecting students).



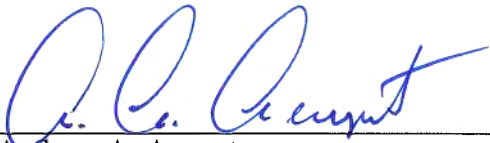


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- 5. For attorneys' fees pursuant to California Code of Civil Procedure §1021.5;
- 6. For statutory costs of suit herein; and
- 7. For such other and further relief as the Court may deem proper.

DATED: December 16, 2009

PINNACLE LAW GROUP LLP

By:   
Andrew A. August  
Kevin F. Rooney

JAMES C. STURDEVANT (SBN 94551)  
(jsturdevant@sturdevantlaw.com)  
WHITNEY HUSTON (SBN 234863)  
(whuston@sturdevantlaw.com)  
THE STURDEVANT LAW FIRM  
A Professional Corporation  
354 Pine Street, Fourth Floor  
San Francisco, CA 94104  
Telephone: (415) 477-2410  
Facsimile: (415) 477-2420  
  
Attorneys for Plaintiffs