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**ENDORSED  
FILED  
ALAMEDA COUNTY**

**MAY 12 2008**

**CLERK OF THE SUPERIOR COURT  
By Carolyn Lemos, Deputy**

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF ALAMEDA**

10 **UNLIMITED JURISDICTION**

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

14  
15 Plaintiffs,

16 vs.

17 KEYBANK USA, N.A., a national banking  
association organized under the laws of the  
United States of America, KEY  
18 EDUCATION RESOURCES, a division of  
KEYBANK USA, N.A.; GREAT LAKES  
19 EDUCATIONAL LOAN SERVICES, INC.,  
a Wisconsin Corporation and Does 1-25,

20 Defendants.  
21

**CASE NO. Rg08386980**

**CLASS ACTION**

**COMPLAINT FOR INJUNCTIVE RELIEF**

**BY FAX**

22  
23 **I. INTRODUCTION**

24 1. This class action seeks to remedy an ongoing scheme of unconscionable, predatory  
25 lending practices perpetrated by an Ohio bank (KeyBank USA) on California residents who,  
26 using student loan funds borrowed from the Bank, enroll in private, unlicensed and unregulated  
27 sham vocational schools in California. When the schools shutter their doors because their ponzi  
28 scheme - which is fueled by the Bank's lending practices - collapses, the students are left with no

1 education, no accreditation and no employment prospects but still obligated to repay the loans.  
2 This pattern has been the subject of very recent congressional investigation and extensive  
3 journalistic reporting (See collective Exhibit A hereto). Because the laws of Ohio exempt Ohio-  
4 domiciled banks from that state’s consumer protection laws, the Bank, in complicity with the  
5 sham schools, has preyed on unsuspecting California resident students with legally repugnant  
6 adhesive loan documents containing Ohio choice of law, forum selection, and anti-class action  
7 arbitration clauses and, using these perceived impenetrable “shields”, has engaged in a long-time  
8 pattern of *intentionally* flaunting both federal and California consumer protection laws.

9         2. This particular action is brought by and on behalf of only those California  
10 residents who 1) enrolled in Silver State Helicopters vocational school (“SSH”), 2) either  
11 borrowed their SSH tuition from KeyBank or co-signed on behalf of such a borrower, 3) executed  
12 a “Master Student Loan Promissory Note” (or similarly titled agreement – the “Note” or “Notes”)  
13 that failed to contain certain notices required by the Federal Trade Commission’s consumer  
14 protection regulations, 4) failed to complete their educational program prior to SSH filing  
15 bankruptcy, and 5) remain obligated to KeyBank on their Note in a principal amount less than  
16 \$75,000.

17         3. The sole remedy Plaintiffs seek on behalf of themselves and the proposed class is  
18 an injunction prohibiting defendants from contacting credit agencies regarding the Notes and  
19 prohibiting them from taking any action to enforce the Notes. The injunctive relief sought by this  
20 action is based on 1) KeyBank’s knowing and intentional violation of 16 C.F.R. 433.2 (the so-  
21 called “FTC Holder Rule” or “Holder Rule Notice”) which constitutes a predicate violation under  
22 California’s Unfair Competition Law (California Business and Professions Code Section 17200,  
23 et. seq.), and 2) KeyBank’s aiding and abetting of SSH’s ponzi scheme as described below.

24         4. As the materials in Exhibit A reflect, in recent years there has been a proliferation  
25 of unlicensed and unaccredited trade schools that do not participate in the federal student aid  
26 programs and therefore are largely unregulated. Their growth has been fueled by unscrupulous  
27 lenders that have willingly and irresponsibly “partnered” with these sham operations to provide  
28 expensive private loans to the high-risk students these schools tend to attract. The lenders have

1 then turned around and, like subprime mortgage lenders, securitized the loans, shifting the risk of  
2 the loans onto unsuspecting investors. Defendant KeyBank has been a major player in these  
3 schemes that have ensnared hundreds if not thousands of California students in the past several  
4 years. In this particular case, KeyBank partnered with SSH as the latter’s “preferred” lender and  
5 followed its usual script from which it has reaped millions of dollars over the years. Like  
6 KeyBank’s previous failed vocation school “partners”, SSH was unregulated and unaccredited  
7 and, when its ponzi scheme collapsed, SSH filed bankruptcy leaving its students with nothing but  
8 KeyBank’s threat to enforce the loans.

9           5. By 2005, SSH had become the largest private helicopter flight academy and one  
10 of the fastest growing companies in any industry in the United States. From 2002 to 2005, it  
11 grew at an astounding *2,786 percent*. Tuition for the school – which promised commercial  
12 helicopter pilot certification within 18 months of enrollment – was nearly \$70,000 per student.  
13 The school targeted second career, limited income individuals who, but for KeyBank’s loan,  
14 lacked the personal financial wherewithal to pay the tuition. Thus, the fundamental catalyst for  
15 SSH’s exponential growth was KeyBank.

16           6. As described in greater detail below, KeyBank worked intimately with SSH  
17 employees to solicit its loans in California during the course of SSH’s “application” process. By  
18 providing SSH with the loan proceeds in the manner it did, KeyBank aided and abetted SSH in a  
19 ponzi scheme that enabled SSH’s owners and executives to siphon off millions of dollars for  
20 their own personal use. As a result, SSH was unable to provide the equipment, instructors or  
21 maintenance necessary to enable the students to attain their pilot ratings. SSH perpetrated its  
22 fraudulent scheme by, among other things, misrepresenting and or concealing 1) anticipated  
23 tuition costs, 2) its capability to provide adequate equipment, proper training and sufficient  
24 maintenance, 3) the time frame for receiving ratings, 4) its intended and actual use of the loan  
25 proceeds, and 5) employment opportunities. In reliance on these false and deceptive  
26 representations and omissions, Plaintiffs and other members of the proposed class entered into  
27 written Service Contract Agreements pursuant to which SSH was obligated to provide  
28 educational services.

1           7.       SSH further induced its students to enroll in the school by arranging with  
2 KeyBank to finance 100% of the student's tuition and to remit to SSH (or to the student who was  
3 then obligated to transmit the tuition to SSH) the entire tuition amount well ahead of any possible  
4 date of completion for the students' education program. Because KeyBank had previously  
5 partnered with other failed private vocational schools and fought the students to enforce their  
6 loan obligations despite the school's failure to deliver the fully paid-for education, KeyBank  
7 knew exactly what it was doing here: It took great pains - in violation of the FTC Holder Rule -  
8 to ensure that its Note and SSH's Service Contract Agreement omitted the required Holder Rule  
9 Notice thereby enabling KeyBank to argue that SSH's students have no rights under the Holder  
10 Rule to assert defenses against it that the students could assert against SSH for failing to deliver  
11 the bargained-for educational services.

12           8.       Because KeyBank paid most, if not all, of the students' tuition to SSH directly  
13 within months after a student's registration and at least a year before the students could possibly  
14 complete their education and because SSH's owners and senior executives were stealing the  
15 tuition payments, SSH was dependent on recruiting ever-larger pools of new students to finance  
16 the training of earlier ones. And that recruitment was, in turn, dependant on the KeyBank's  
17 deliberate and calculated willingness to turn its eye from the bright red flags of SSH's ponzi  
18 scheme.

19           9.       Plaintiffs are informed and believe and thereon allege that KeyBank's willingness  
20 to fund SSH's fraudulent scheme was driven by the enormous profits KeyBank was able to  
21 realize from the high interest rates on the Notes, from selling the Notes into the secondary  
22 market, and from servicing the Notes through its co-defendant subsidiaries. KeyBank knew or  
23 acted in reckless disregard of the fact that SSH's scheme would collapse but drafted its Note  
24 specifically to make it as difficult as possible for its borrowers to assert any defense against  
25 KeyBank's loan collection efforts. Plaintiffs are informed and believe and thereon allege that  
26 KeyBank accomplished this by, among other things:

- 27           a.       Circumventing the regulatory purpose of the FTC Holder Rule by knowingly and  
28                   intentionally omitting the required notice from the Note and requiring that SSH do

1 the same with its Service Contract Agreement, thereby enabling KeyBank to  
2 argue in Ohio courts that the Holder Rule does not apply because it was not  
3 included in the Note or Service Contract Agreement;

- 4 b. Purporting to impose on California residents a patently unreasonable and unjust  
5 Ohio choice of law provision in a clear adhesion contract<sup>1</sup> despite Plaintiffs' lack  
6 of any constitutionally mandated contacts with Ohio, other than a forum selection  
7 clause;
- 8 c. Purporting to imposing on California residents an Ohio forum selection provision  
9 in an adhesion contract, despite knowing the students would effectively be barred  
10 from having their day in court because of the time and expense of traveling to  
11 Ohio and having California resident witnesses appear in Ohio;
- 12 d. Imposing an anti-class action arbitration clause that violates California public  
13 policy, both substantively and procedurally;
- 14 e. Including an attorneys fee clause in the Notes that enables only KeyBank to  
15 recover fees from the students if KeyBank sues to enforce the Note with no  
16 complimentary provision benefitting the student if he or she is the prevailing party  
17 (there is no reciprocity of fee allocation under Ohio law as there is under  
18 California law).

19 10. Plaintiffs are informed and believe and thereon allege that KeyBank has engaged  
20 in this pattern and practice throughout the country with a variety of unregulated vocational  
21 schools. This action seeks to end that practice in California.

## 22 **II. PARTIES and NON-PARTY AIDERS AND ABETTORS**

### 23 **A. Representative Plaintiffs**

24 11. Plaintiff Matthew C. Kilgore ("Kilgore") is an individual over the age of 18 and

25 \_\_\_\_\_  
26 <sup>1</sup> Ohio law is decidedly anti-consumer and pro-lender. For example, lenders are exempt from  
27 liability for fraudulent conduct under Ohio's consumer protection statutes whereas the California  
28 Court's have long embraced such actions under the UCL and Consumer Legal Remedies Act.  
Ohio also prohibits the recovery of attorneys fees based on the private attorney general doctrine,  
even where the plaintiffs have enforced important public policy considerations on behalf of the  
general public. California Code of Civil Procedure 1021.5, of course, has long been a backbone of  
California consumer protection.

1 is, and at all relevant times was, a resident the State of California. Kilgore brings this action  
2 pursuant to Cal. Bus. & Prof. Code §§17203, 17204 and Cal. Code Civ. Pro. §1021.5 on behalf  
3 of himself and all members of the proposed class as defined in paragraph 20 below. In or about  
4 November 2004, Kilgore entered into a Service Contract Agreement and Note at SSH’s facility  
5 in Oakland, California.

6 12. Plaintiff William Bruce Fuller (“Fuller”) is an individual over the age of 18 and  
7 was, at all relevant times, a resident the State of California. Fuller brings this action pursuant to  
8 Cal. Bus. & Prof. Code §§17203, 17204 and Cal. Code Civ. Pro. §1021.5 on behalf of himself  
9 and all members of the proposed class as defined in paragraph 20 below. In or about October  
10 2004, Fuller executed a Service Contract Agreement and Note at SSH’s facility in Oakland,  
11 California.

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

13 13. Plaintiffs are informed and believe and thereon allege that at all relevant times,  
14 defendant KeyBank USA, N.A. was and is a national banking association organized under the  
15 laws of the United States of America engaged in commerce throughout the United States,  
16 including the State of California. Plaintiffs are further informed and believe and thereon allege  
17 that KeyBank was and is in the business of processing and/or making education loans to students  
18 in the State of California.

19 14. Plaintiffs are informed and believe and thereon allege that at all relevant times,  
20 defendant Key Education Resources was and is a division of KeyBank USA, N.A. engaged in  
21 commerce throughout the United States, including the State of California. Plaintiffs are informed  
22 and believe and thereon allege that Key Education Resources knowingly and intentionally  
23 participated in the acts complained of herein.

24 15. Plaintiffs are informed and believe and thereon allege that defendant Great Lakes  
25 Educational Services, Inc. (“Great Lakes”) is, and at all material times was, a Wisconsin  
26 corporation authorized to do business, and in fact doing business in the State of California.  
27 Plaintiffs are informed and believe and thereon allege that Great Lakes knowingly and  
28 intentionally participated in the acts complained of herein. Plaintiffs are further informed and

1 believe and thereon allege that Great Lakes was and is in the business of servicing KeyBank  
2 loans for SSH students and in fact serviced loans to Plaintiffs and members of the proposed  
3 class. Hereinafter, KeyBank, Key Education Resources and Great Lakes shall be collectively  
4 referred to as “Defendants.”

5 **C. Non-Party Aider and Abettor - SSH**

6 16. Plaintiffs are informed and believe and thereon allege that Silver State  
7 Helicopters, LLC (“SSH”) is a limited liability company organized under the laws of the state of  
8 Nevada, having its principal place of business at 500 E. Cheyenne Avenue, Clark County, North  
9 Las Vegas, Nevada 89030-8030, and which did business within the State of California. Plaintiffs  
10 are further informed and believe and thereon allege that SSH and its owners, officers and  
11 directors knowingly and intentionally sought and obtained the aid and assistance of Defendants  
12 in perpetrating the fraudulent scheme alleged herein. On or about February 4, 2008, SSH filed  
13 bankruptcy in United States Bankruptcy Court, District of Nevada (Las Vegas – Bankruptcy  
14 Petition No. 08-10936). Because of the effect of the automatic stay under 11 U.S.C. §362, SSH  
15 cannot properly be made – and is not – a party to this case. However, SSH and Defendants aided  
16 and abetted each other in the unlawful, fraudulent and deceptive activities alleged herein.

17 **D. Doe Defendants**

18 17. The true names and capacities (whether individual, corporate, or otherwise) of  
19 Defendants Does 1 through 25, inclusive, are unknown to plaintiff. Therefore, plaintiffs sue those  
20 Defendants by such fictitious names pursuant to Code Civ. Proc. § 474. Plaintiffs further allege  
21 that each fictitious Defendant is in some manner responsible for the acts and occurrences alleged  
22 herein. Plaintiffs will seek leave of this Court to amend this Complaint to state the true names  
23 and capacities of said fictitiously named Defendants when the same have been ascertained.  
24 Plaintiffs are further informed and believe and thereon allege that the fictitiously named  
25 Defendants proximately caused their damages.

26 18. Defendants, and each of them, are sued both based upon their individual liability  
27 under the UCL and as participants, aiders and abettors of SSH in the wrongful activities  
28 complained of herein, and their liability arises from the fact that each has engaged in all or part of

1 the improper acts, plans, schemes, or transactions complained of herein.

2 19. Each of the Defendants named herein acted as the co-conspirator, agent, joint  
3 venturer or alter ego of or for the other Defendants and SSH with respect to the acts, violations,  
4 and common course of conduct alleged herein or is otherwise liable.

### 5 III. CLASS ALLEGATIONS

6 20. This action is brought by Plaintiffs pursuant to California Code of Civil Procedure  
7 Section 382 on behalf of the following proposed class (“Proposed Class”):

8 Only California residents who 1) enrolled in SSH, 2) either borrowed their SSH  
9 tuition from Defendants or co-signed on behalf of such a borrower, 3) executed a  
10 “Master Student Loan Promissory Note” (or similarly titled agreement) that failed  
11 to contain the “Holder Rule Notice” required by 16 C.F.R. § 433.2, 4) failed to  
12 complete their SSH educational program prior to SSH filing bankruptcy, and 5)  
13 remain obligated to Defendants on their Note in a principal amount (i.e., exclusive  
14 of interest and costs) less than \$75,000.

15 21. Plaintiffs and the Proposed Class seek certification of claims against Defendants  
16 for injunctive relief pursuant to the section 17204 of the UCL.

17 22. This action is brought as a class action and may properly be so maintained  
18 pursuant to the provisions of California Code of Civil Procedure section 382. Plaintiffs reserve  
19 the right to modify the Proposed Class definitions and the class period pursuant to discovery that  
20 is conducted hereafter.

21 23. **Numerosity of the Proposed Class:** Plaintiffs are informed and believe and  
22 thereon allege that the Proposed Class, while being comprised of less than 100 individuals, is  
23 nevertheless sufficiently numerous that their individual joinder is impractical. The precise  
24 identities, numbers and addresses of members of the Proposed Class is unknown to the Plaintiffs,  
25 but may and should be known with proper and full discovery of Defendants, third parties, and  
26 their respective records.

27 24. **Existence of Common Questions of Fact and Law.** There is a well-defined  
28 commonality and community of interest in the questions of fact and law involved affecting the

1 members of the Proposed Class. The common questions of law and fact include, but are not  
2 limited to:

3 a) Whether Defendants engaged in “commerce” in making the Loans to the  
4 Proposed Class;

5 b) Whether Defendants and SSH were affiliated with each other or had a  
6 business arrangement in connection with SSH’s solicitation of prospective students and offering  
7 of tuition financing from Defendants;

8 c) Whether Defendants and SSH intentionally violated FTC regulations by  
9 knowingly and intentionally omitting the required Holder Rule Notice from the Notes and  
10 insisting SSH omit the language from the Service Contract Agreement thereby enabling  
11 Defendants to argue in litigation with California residents that the Holder Rule is inapplicable to  
12 it as a matter of law because the Notice is in neither the Service Contract Agreement nor the  
13 Note;<sup>2</sup>

14 d) Whether California or Ohio Choice of Law rules apply;

15 e) Whether Defendants’ fraudulent and deceptive acts in violation of 16  
16 C.F.R. 433.2 (i.e., by failing to include the required language in the Note ) constitute a predicate  
17 unlawful, unfair or deceptive act or practice under the UCL;

18 f) Whether the Defendants and SSH aided and abetted each other in carrying  
19 out their conduct alleged herein.

20 25. **Typicality:** Plaintiffs claims are typical of the claims of the members of the  
21 Proposed Class because 1) Plaintiffs satisfy each of the criteria of the Proposed Class; 2) all other  
22 members of the Proposed Class have suffered or will suffer the identical harm as Plaintiffs as a  
23 result of Defendants’ violations of law as alleged herein; 3) the sole remedy sought by Plaintiffs,  
24 injunctive relief, is also sought by each of the other members of the Proposed Class and is  
25 directed towards Defendants’ conduct perpetrated on the Proposed Class as a whole.

26 \_\_\_\_\_  
27 <sup>2</sup> In numerous reported and unreported cases, KeyBank has argued the oxymoron that the  
28 FTC’s Holder Rule Notices requirement is “voluntary”, such that if KeyBank or SSH chose to not  
include the prescribed language in their respective documentation, the Rule cannot be applied to  
KeyBank. This, of course, is completely contrary to the language and remedial purpose of the  
Holder Rule.



1 “Seminars”) conducted throughout California. The Seminars were advertised on radio and in  
2 print media and were designed to draw hundreds of prospective students to each Seminar. At the  
3 Seminars, SSH executives and employees used prepared videos and standardized marketing  
4 materials that promised prospective students a lucrative and exciting career piloting commercial  
5 helicopters within 18 months, fully financed by Defendants. SSH conducted the Seminars at their  
6 flight school locations (in Plaintiffs’ cases, in Oakland) flanked by helicopters and flight  
7 simulators which prospective students were invited to “touch and feel” so they could experience  
8 the excitement of being a commercial helicopter pilot.

9 30. During the Seminars, SSH executives and employees used standardized  
10 infomercial-type sales pitches such as enticing Plaintiffs with sweeping promises of glorious  
11 careers as helicopter pilots while also empathizing with their unhappiness with their current  
12 careers. SSH went to great lengths to convince prospective students that there was a shortage of  
13 helicopter pilots in the United States and the future demand would be great. SSH provided  
14 purported job statistics for the helicopter pilot market showing that the number of pilots had  
15 shrunk dramatically and that the “helicopter pilot shortage” was only going to worsen in the  
16 coming years. SSH also preached how attainable a career was for each Plaintiff, giving examples  
17 such as how even a 63 year old woman SSH student was hired as a pilot.

18 31. Because SSH knew that most of the prospective students had limited income and  
19 financial resources, SSH also knew that most of the attendees were unable to afford the nearly  
20 \$70,000 per student tuition. But in each of the Seminars SSH specifically and expressly  
21 addressed this concern by explaining that those chosen to be students would be provided with low  
22 interest loans through an arrangement SSH had established with Defendants. Plaintiffs are  
23 informed and believe and thereon allege that Defendants created, reviewed, approved and/or ratified  
24 SSH’s sales presentation as it related to Defendants’ loan program.

25 32. Plaintiffs are informed and believe and thereon allege that during the “interview”  
26 process, SSH made the Proposed Class members believe they were among a select few “Top  
27 Guns” chosen for admission to SSH. Plaintiffs are further informed and believe and thereon  
28 allege, however, that in reality SSH accepted practically anyone who was willing to pay the

1 tuition fee, either on their own or with a loan from Defendants (and who could qualify for a loan  
2 based upon a cursory credit check).

3 33. During the Seminars, SSH disseminated uniform enrollment materials, including  
4 application forms, exemplar Service Contract Agreements and loan information materials  
5 provided to it by Defendants. Plaintiffs are informed and believe and thereon allege that  
6 Defendants provided SSH employees with Defendants' business cards to disseminate to interested  
7 prospective students.

8 34. SSH represented during the Seminars and in the Service Contract Agreement that  
9 the tuition would cover the cost of education to enable the student to obtain their Private Rating,  
10 Commercial Rating, Certified Flight Instructor Rating, External Load, Instrument Rating, and  
11 Turbine Transition (collectively "Promised Education"). The Service Contract Agreement  
12 expressly required that all training be completed within 18 months of the start of class.  
13 Therefore, SSH expressly and impliedly represented to prospective students that there would be  
14 adequate training equipment, sufficient instructors and maintenance personnel to enable a  
15 reasonably diligent student to complete the Promised Education within the contractually required  
16 timeframe.

17 35. Plaintiffs are informed and believe and thereon allege that because SSH's  
18 executives were stealing and misusing company funds – including the Proposed Class' loan  
19 proceeds obtained from Defendants – for their own personal benefit and enjoyment, SSH knew it  
20 did not have and never would have sufficient equipment, trainers or maintenance personnel to  
21 meet its obligations under the Service Contracts. Thus, although the Service Contracts provided  
22 that students were to complete their training within 18 months, when that time period expired for  
23 each student, the student was told to request an extension from Defendants, give Defendants  
24 another estimated date of completion and SSH would provide the signature of someone from SSH  
25 verifying that Plaintiffs were still currently enrolled. This further reinforced the appearance of a  
26 collaborative relationship between SSH and Defendants.

27 **B. The F.T.C. Holder Rule**

28 36. In 1976, the Federal Trade Commission promulgated 16 C.F.R. part 433, intended to

1 address the problem of consumer liability to financial institutions that finance the purchase of  
2 defective goods. As explained in the FTC’s *Staff Guidelines on Trade Regulation Rule Concerning*  
3 *Preservation of Consumers’ Claims and Defenses*, the purpose of the regulation was to make it  
4 impossible “for a seller to arrange credit terms for buyers which separate the consumer’s legal duty  
5 to pay from the seller’s legal duty to keep his promises.” The Holder Rule provides:

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

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

11 NOTICE

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

14 or

15 (b) Accept, as full or partial payment for such sale or lease, the proceeds of any purchase  
16 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:

17 NOTICE

18 ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL  
19 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  
20 PAID BY THE DEBTOR HEREUNDER. [Emphasis Added]

21 37. The Notes are Consumer Credit Contracts under Section 433.1(i) of the Holder  
22 Rule and the loans made by Defendants to Plaintiffs and the Proposed Class evidenced by the  
23 Notes are Purchase money loans under Section 433.1(d).

24 38. In enacting the Holder Rule, the FTC noted that loans pertaining to vocational  
25 schools, in particular, were an arena where the rule was needed. In its Statement of Basis and  
26 Purpose, the FTC declared that “the rule expressly applies to credit contracts arising from sales of  
27 services, such as trade or vocational school agreements...” *Guidelines on Trade Regulation Rule*  
28 *concerning Preservation of Consumers’ Claims and Defenses*, 41 Fed. Reg. 20022, 20024. The

1 FTC has repeatedly stated that the Holder Rule applies to student loans.

2 **C. Defendants' Complicity in SSH's Fraudulent Scheme**

3 39. Plaintiffs are informed and believe and thereon allege that Defendants not only  
4 deliberately ignored the red flags of SSH's fraudulent scheme but actively participated in that  
5 scheme by facilitating the loans and insulating both SSH and itself from liability by omitting and  
6 causing SSH to omit the Holder Rule Notice from the relevant transaction documents.  
7 Defendants did so through an arrangement with SSH perpetrated on Plaintiffs and the Proposed  
8 Class that entailed using SSH to solicit the prospective students, refer those students to  
9 Defendants and process the student's loan applications on behalf of Defendants, all the while  
10 knowing that if SSH failed to deliver the contracted for educational services, the students would  
11 nevertheless remain obligated to Defendants and would be unable to assert defenses against  
12 Defendants that it had against SSH.

13 40. Plaintiffs are informed and believe and thereon allege that Defendants and SSH  
14 entered into a formal contract as defined in Section 433.1(f) or, alternatively, an informal  
15 understanding, procedure, course of dealing, or arrangement (hereinafter, collectively "Business  
16 Arrangement") that was designed to aid and assist SSH in signing up students who would then  
17 finance their tuition through Defendants. SSH's Flight Academy Application contains the following  
18 provision that indentified Defendants as SSH's preferred lender:

19 Finance Preference: There are student loans available to those who do not have the means to  
20 pay for their education in full. These loans are available OAC to qualified applicants. A full  
21 disclosure of the terms and conditions for student loans is available at [ww.key.com/aviation](http://ww.key.com/aviation)  
22 or 1-800-KEY-LEND [Key Education Resources, a division of KeyBank]. **By signing this  
23 application, you give Silver State Helicopters permission to apply for a student loan on  
24 your behalf [Emphasis added].** Loan approval alone does not guarantee you enrollment in  
25 our Flight Academy Program, nor does it obligate you to any debt if you do not attend the  
26 Program. If you do not want a loan application processed on your behalf, please initial here .  
27 You can often expedite the financing process by indicating your credit situation.

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

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

41. Plaintiffs are informed and believe and thereon allege that as part of the Business  
Arrangement, Defendants reviewed, approved and/or ratified the Flight Academy Application and  
agreed that SSH would act as its agent for processing prospective SSH student loan applications

1 including, but not limited to: i) promoting Defendants as the preferred provider of tuition loans, ii)  
2 disseminating Defendants' credit applications and related documents and information to prospective  
3 students, (iii) permitting SSH to apply for the loans on the prospective student's behalf, (iv)  
4 receiving credit information from prospective students and transmitting that information to  
5 Defendants, and (v) overseeing execution and transmission to Defendants of the Notes.

6 42. Plaintiffs are informed and believe and thereon allege that SSH/Defendants' Business  
7 Arrangement was generally carried out by, among other means, the following:

8 a. During the Seminars, SSH would have an "enrollment person" solicit  
9 students to apply for loans from Defendants at the time they completed their SSH application;

10 b. Prospective students would complete their SSH application and loan  
11 application both of which would be faxed by either the enrollment person or the prospective student  
12 to SSH's corporate offices in Las Vegas, Nevada. SSH would, after weeding out those applicants  
13 with unacceptable credit, transmit the application(s) to Defendants;

14 c. Defendants would approve loan, prepare the Note and transmit it to SSH  
15 which, in turn, would give it to the prospective student. Plaintiffs are further informed and believe  
16 and thereon allege that Defendants required and directed SSH to use only its form of the Note and  
17 refused to accept any Note which contained the Holder Rule notice;

18 d. The prospective Student would sign note either at their local SSH  
19 California facility or at home and return it to the local SSH office;

20 e. The local SSH office would then send the executed Note to SSH's  
21 corporate offices in Las Vegas which would then send it to Defendants in Ohio.

22 43. Plaintiffs are informed and believe and thereon allege that at the request of  
23 Defendants and on Defendants' behalf, SSH employed "student finance managers" whose  
24 responsibility was to interact with Plaintiffs and Proposed Class members regarding financing  
25 tuition through Defendants.

26 44. Plaintiffs are informed and believe and thereon allege that neither Defendants nor  
27 SSH informed any members of the Proposed Class of existence of, purpose for or terms of the  
28 Holder Rule.



1 Defendants' agent for soliciting loans to Plaintiffs for educational services  
2 Defendants knew or should known could not and would not be provided;  
3 d. Ratifying SSH's unlawful, unfair and fraudulent acts and practices by making  
4 loans to Plaintiffs and the Proposed Class;  
5 e. Knowingly, intentionally or recklessly providing the financial means for SSH to  
6 perpetrate its fraudulent scheme in order to generate for itself profit from the sale  
7 of student loans into the secondary market and to generate loan servicing fees.

8 49. Plaintiffs and each member of the Proposed Class have suffered injury in fact and  
9 have lost money or property as a result of the Defendants' violations of the UCL as alleged  
10 herein.

11 50. Plaintiffs are entitled under the UCL to a preliminary and permanent mandatory  
12 and/or prohibitory injunction as prayed for herein.

13 WHEREFORE, Plaintiffs pray for judgment and relief against Defendants, and each of  
14 them, as set forth below.

15 **SECOND CAUSE OF ACTION**  
16 **Aiding and Abetting Fraud**  
**(Against Defendants and DOES 1 through 20)**

17 51. Plaintiffs re-allege and incorporate by reference each and every allegation set forth  
18 in paragraphs 1 through 50 above, as though they are set forth in full.

19 52. Defendants aided and abetted SSH by knowingly, intentionally or recklessly  
20 facilitating SSH's fraudulent scheme by providing unlawful, unfair and fraudulent loans to  
21 Plaintiffs and the members of the Proposed Class, the proceeds of which Defendants knew, or  
22 should have known, SSH used to further its ponzi scheme.

23 53. As a direct and legal result of Defendants' aiding and abetting of SSH, SSH was  
24 able to perpetrate its fraudulent scheme on Plaintiffs and the Proposed Class. Plaintiffs are  
25 informed and believe and thereon allege that but for Defendants' aid and assistance, SSH would  
26 not have been able to successful perpetrate its fraud on Plaintiffs and the Proposed Class.

27 54. As a proximate result of the conduct of Defendants in aiding and abetting SSH's  
28 fraudulent scheme as alleged herein, Plaintiffs have suffered injury in fact and have lost money

1 and property and are entitled to injunctive relief as set forth below.

2 WHEREFORE, Plaintiffs pray for judgment and relief against Defendants, and each of  
3 them, as follows:

4 **PRAYER FOR RELIEF**

5 1. For an order and judgment preliminarily and permanently enjoining Defendants  
6 and each of them from reporting to any credit agency any default by Plaintiffs or the Proposed  
7 Class under the Notes;

8 2. For an order and judgment preliminarily and permanently enjoining Defendants  
9 and each of them from enforcing the Notes against Plaintiffs and the Proposed Class or taking  
10 any action in furtherance of enforcement efforts;

11 3. For such other orders or judgments as the Court may consider necessary to  
12 prevent the use or employment by Defendants of any practice which constitutes unfair  
13 competition under the UCL;

14 4. For attorneys' fees pursuant to California Code of Civil Procedure §1021.5;

15 5. For statutory costs of suit herein; and

16 6. For such other and further relief as the Court may deem proper.

17 DATED: May 12, 2008

PINNACLE LAW GROUP LLP

18 By: 

19 Andrew A. August,  
20 Attorneys for Plaintiffs