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UNITED STATES DISTRICT COURT
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NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. WIEKING
SAN JOSE DIVISION
U.S. DISTRICT COURT
N.D. CALIFORNIA

cl

CV 11-03502 PSG
COMPLAINT FOR DAMAGES

Helena Knezevic-In Pro Se,)
an individual)
14745 Conway Avenue)
San Jose, California 95124)
Plaintiff,)
Vs.)
Defendant,)
American Education Services)
(AES), a corporation,)
Pennsylvania Higher Education)
Assistance Agency)
DOES 1 through 28, inclusive,)
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)
)
)
)

- (1) Reporting inaccurate information 15 U.S.C. §§ 1681s-2(a) & (b)
- (2) Intentional Interference with prospective economic advantage
- (3) Breach of Contract
- (4) Defamation of Character
- (5) Intentional Infliction of Emotional Distress
- (6) Reckless Infliction of Emotional Distress
- (7) Negligent Infliction of Emotional Distress

DEMAND FOR JURY TRIAL

Plaintiff, Helena Knezevic, alleges as follows:

JURISDICTION AND VENUE

1. This is an action arising under the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681s-2(a) & (b), to secure relief for violations of the FCRA, and also to obtain monetary civil penalties for violations of the FCRA. This court has subject matter

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1 jurisdiction over causes of action 1 and 2. This court also has
2 supplemental jurisdiction over causes of action 3, 4 , 5,6 & 7.

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4 2. Venue is proper in the United States District Court for the
5 Northern District of California under 15 U.S.C. §§ 1681p.

6

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PARTIES

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9 3. Plaintiff Helena Knezevic ("an individual") was at relevant
10 times mentioned a resident of the County of Santa Clara, State of
11 California.

12

13 4. Defendant American Education Services (AES) ("a Pennsylvania
14 corporation") aka Pennsylvania Higher Education Assistance Agency is
15 and was at all relevant times a resident of the County of Dauphin,
16 State of Pennsylvania.

17

18 5. Defendant from herein after referred to as "servicer of the
19 note" was at all times acting within the course and scope of agency
20 with Student Loan Express from herein after referred to as "holder
21 of the note"

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GENERAL ALLEGATION

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1 **(By all Plaintiffs against all Defendants)**
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3 6. On or about October 20th, 2008, Plaintiff and holder of note
4 entered into a written contract for performance by both parties
5 obligating compliance by Defendant. The debt resulted from
6 plaintiff's attendance and participation in classes at Heald College
7 in Milpitas, California. The contract required the plaintiff to
8 complete a loan rehabilitation program which required plaintiff to
9 make six months of consecutive payments on time. After completion
10 of the loan rehabilitation program the holder of the note agreed to
11 remove any negative credit rating from plaintiff's personal credit
12 file relating to this particular debt.

13
14 7. Plaintiff fully satisfied obligations under the contract on or
15 around April 2009. Upon successful completion of the loan
16 rehabilitation program plaintiff contacted holder of the note and
17 communicated with Gary Sole/Vice President and requested for
18 deletion of negative credit bureau reporting's per contractual
19 agreement with the three major credit bureaus (Trans Union, Equifax
20 & Experian). Gary Sole indicated that the request for deletion of
21 the negative reporting's would be sent to the servicer of the note
22 for deletion but that the plaintiff should allow one month for
23 deletion to occur. Holder of the note provided a copy of the request
24 sent to holder of the note and the request by holder of the note was
25 timely.

1 8. Plaintiff waited until July of 2009 and viewed their personal
2 credit file and to their dismay the negative reporting's remained
3 unchanged.

4
5 9. Between July of 2009 and March 2010 (eight months) the
6 plaintiff communicated directly with the servicer of the note on at
7 least three occasions to remove the negative credit reporting's. On
8 each communication servicer of the note did not question their
9 obligation to remove the negative information. On each
10 communication with the servicer of the note the plaintiff informed
11 the defendant of her intent and desire to consolidate all school
12 loans onto a lower interest loan was being delayed by defendant's
13 willful disregard her request for contractual compliance in removing
14 the negative credit reporting's expeditiously. On each communication
15 with the defendant the plaintiff was promised that a request for
16 deletion would be placed immediately with the three major credit
17 bureaus.

18
19 10. On or about March 16, 2010 plaintiff became escalated and
20 communicated with the executive offices of the servicer of the note.
21 On this occasion plaintiff communicated with Tyler Baer and prepared
22 a demand letter. Tyler Baer was able to facilitate successful
23 removal of the negative credit reporting's on or about April 2010.

24
25 11. Successful removal of the negative credit reporting's was
26 delayed by eight months because of willful non-compliance to

1 contractual obligations by servicer of the note. The delay in
2 removing the negative credit reporting's from plaintiffs personal
3 credit file resulted in a 55-85 point lower credit score than it
4 should have been. The diminished credit score of 55-85 points
5 resulted with the plaintiff paying \$700-\$800 higher interest on
6 outstanding debt obligations from the period beginning July 2009
7 completion of the loan rehabilitation program to the actual date of
8 removal of negative credit reporting's of March 2010.

9
10 **FIRST CAUSE OF ACTION**

11 **(REPORTING INACCURATE INFORMATION 15 U.S.C. §§ 1681s-2(a) & (b))**

12
13 12. Plaintiff incorporates by reference paragraphs 1 through 11,
14 inclusive, of this Complaint (including all paragraphs of the
15 General Allegations and all paragraphs of all preceding causes of
16 action, if any) as if the same were fully set forth herein.

17
18 13. Plaintiff alleges that defendant violated 15 U.S.C. §§ 1681s-
19 2(a) & (b) by continuing to report negative account history to the
20 three major credit bureaus (Trans Union, Equifax & Experian) for
21 eight months after holder of the note instructed the defendant to
22 remove any negative reporting. To continue to report the plaintiffs
23 account status as negative constitutes reporting inaccurate
24 information and is a violation of 15 U.S.C. §§ 1681s-2(a) & (b).

1 14. The FCRA permits a private action for both willful and
2 negligent violations of the act. A negligent violation entitles a
3 consumer to actual damages, and a willful one entitles the consumer
4 to actual, statutory, and punitive damages. *Safeco*, 551 U.S. at 53
5 (citing 15 U.S.C. § 1681n & 1681o). It should be clear that
6 defendant's disregard of plaintiffs definition of permissible
7 purpose in this instance was willful and deliberate. The plaintiff
8 was aware that his credit score would be a disqualifying factor if
9 defendant submitted the lending package to their preferred lender
10 Well Fargo Dealer Services.

11
12 **SECOND CAUSE OF ACTION**

13 **(INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE)**

14 15. Plaintiff incorporates by reference paragraphs 1 through 11,
15 inclusive, of this Complaint (including all paragraphs of the
16 General Allegations and all paragraphs of all preceding causes of
17 action, if any) as if the same were fully set forth herein.

18
19 16. To state a claim for intentional interference with prospective
20 economic advantage, the complaint must allege that the plaintiff had
21 a reasonable expectation of entering into a valid business
22 relationship, the defendant knew about it, the defendant purposely
23 interfered to prevent the fulfillment of the expectancy, and the
24 plaintiff was damaged as a result. *Cook v. Winfrey*, 141 F.3d 322,
25 327 (7th Cir. 1998) (citing *Delloma v. Consolidation Coal Co.*, 996
26 F.2d 168, 170-71 (7th Cir. 1993)). Mere hopes of an economic

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1 advantage are insufficient to support a claim of intentional
2 interference. *Cavalieri-Conway v. L. Butterman & Assocs.*, 992 F.
3 Supp. 995, 1012 (N.D. Ill. 1998).

4
5 18. As a direct and proximate result of the intentional, and
6 offensive acts of Defendant, as aforesaid, Plaintiff was unable to
7 qualify for the consolidation loan approval because of a substandard
8 credit score. Plaintiff believes that at the time of the negative
9 credit reporting's her credit score was in the proximity of 640.
10 Immediately upon removal of the incorrect negative credit
11 reporting's by the defendant plaintiffs credit score increased to
12 715 range. The defendant's delay of eight months in removing the
13 negative credit reporting's resulted in the plaintiff's inability
14 qualify for intended economic advantages that would have otherwise
15 been afforded.

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20 **THIRD CAUSE OF ACTION**

21 **(Breach of Contract)**

22 19. Plaintiff incorporates by reference paragraphs 1 through 11,
23 inclusive, of this Complaint (including all paragraphs of the
24 General Allegations and all paragraphs of all preceding causes of
25 action, if any) as if the same were fully set forth herein.

26
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1 20. Plaintiff has fully performed all conditions, covenants, and
2 promises to be performed on the part of Plaintiff in accordance with
3 Loan Rehabilitation program entered into on or about October 2008
4 with holder of the note.

5
6 21. Plaintiff demanded on at least three separate occasions, prior
7 to actual removal date of March 2009, that Defendant perform on
8 their part by removing negative credit reporting's plaintiffs
9 demands were ignored.

10

11 22. As a proximate result of the breach of the contract by
12 Defendant, as herein alleged, Plaintiff has been damaged in an
13 amount to be proven at time of trial.

14

15 23. As the agent for the holder of the note the defendant was bound
16 to the contractual obligation entered into by plaintiff and holder
17 of the note. Additionally as the agent for the holder of the note
18 defendant is and was required to act responsibly with respect to
19 requests from the holder of the note. At trial plaintiff will
20 provide evidence of timely request by holder of the note for
21 deletion of any negative credit reporting's to the three major
22 credit bureaus. Defendant failed to comply with holder of the notes
23 request and intentionally delayed removal for eight months.

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FOURTH CAUSE OF ACTION

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(Defamation of Character)

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24. Plaintiff incorporates by reference paragraphs 1 through 11, inclusive, of this Complaint (including all paragraphs of the General Allegations and all paragraphs of all preceding causes of action, if any) as if the same were fully set forth herein.

25. As a direct and proximate result of the intentional, and offensive acts of Defendant, as aforesaid, Plaintiffs reputation as a consumer was damaged by a lower than acceptable credit score. Immediately upon removal of the incorrect credit reporting plaintiffs credit score increased from 640 or thereabouts to 700 - 715. The continuous reporting of negative credit rating by the servicer of the note for eight months after legally able resulted in a false report to be issued to the three major credit bureaus and any and all other agencies obtaining plaintiffs personal credit bureau for legitimate business purposes. The plaintiff incurred higher finance charges on existing obligations resulting from the incorrect reporting by servicer of the note and also was denied extensions of additional credit and reduction in existing credit lines (American Express) as a result of continued negative reporting.

FIFTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

26. Plaintiff incorporates by reference paragraphs 1 through 11, inclusive, of this Complaint (including all paragraphs of the

1 General Allegations and all paragraphs of all preceding causes of
2 action, if any) as if the same were fully set forth herein.

3
4 27. As a result of Defendants' intentional disregard of plaintiffs'
5 demands for compliance with contractual obligations, as aforesaid,
6 PLAINTIFF was forced to endure mental anguish, humiliation, feelings
7 of helplessness and desperation.

8
9 28. As a direct and proximate result of the intentional, and
10 offensive acts of Defendant, as aforesaid, Plaintiff sustained
11 severe emotional distress, all to Plaintiffs' damage in a sum within
12 the jurisdiction of this court and to be shown according to proof.

13
14 29. A plaintiff seeking damages for intentional infliction of
15 emotional distress must prove that the distress is "serious" or
16 "severe," meaning substantial or enduring rather than trivial or
17 transitory. *Bogard v. Employers Casualty Co.*, 164 Cal. App. 3d 602,
18 617, 210 Cal. Rptr. 578, 587 (1985). In this economy it is
19 certainly foreseeable and reasonable to believe that an inaccurate
20 line item on a personal credit report is cause for severe emotional
21 distress. More and more frequently potential employers rely on
22 personal credit reports when making hiring decisions. Plaintiff
23 felt utterly helpless for eight months while servicer of the note
24 ignored demands for compliance with contractual obligations.

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26 **SIXTH CAUSE OF ACTION**

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1 **(Reckless Infliction of Emotional Distress)**

2 30. Plaintiff incorporates by reference paragraphs 1 through 11,
3 inclusive, of this Complaint (including all paragraphs of the
4 General Allegations and all paragraphs of all preceding causes of
5 action, if any) as if the same were fully set forth herein.

6
7 31. As a result of Defendants' reckless disregard of plaintiffs
8 numerous requests for compliance with contractual obligations, as
9 aforesaid, PLAINTIFF was forced to endure mental anguish,
10 humiliation, feelings of helplessness and desperation.

11
12 32. As a direct and proximate result of the reckless, and offensive
13 acts of Defendant, as aforesaid, Plaintiff sustained severe
14 emotional distress, all to Plaintiffs' damage in a sum within the
15 jurisdiction of this court and to be shown according to proof.

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19 **SEVENTH CAUSE OF ACTION**

20 **(Negligent Infliction of Emotional Distress)**

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22 33. Plaintiff incorporates by reference paragraphs 1 through 11,
23 inclusive, of this Complaint (including all paragraphs of the
24 General Allegations and all paragraphs of all preceding causes of
25 action, if any) as if the same were fully set forth herein.

1 34. As a result of Defendants' negligence and disregard of
2 plaintiffs numerous requests for compliance with contractual
3 obligations, as aforesaid, PLAINTIFF was forced to endure mental
4 anguish, humiliation, feelings of helplessness and desperation.

5
6 35. As a direct and proximate result of the negligent, and offensive
7 acts of Defendant, as aforesaid, Plaintiff sustained severe
8 emotional distress, all to Plaintiffs' damage in a sum within the
9 jurisdiction of this court and to be shown according to proof.

10
11 36. To state a negligence cause of action, the defendant must owe a
12 duty of due care to the person injured, or to a class of persons of
13 which the plaintiff is a member. *Valdez v. J. D. Diffenbaugh Co.*, 51
14 Cal. App. 3d 494, 124 Cal. Rptr. 467 (1975). Between July 2009 to
15 March 2010 Defendant never challenged that they owed a duty of care
16 to the Plaintiff. On the three communications prior to the actual
17 removal date of the negative credit reporting's of March 2010 the
18 Defendant assured the Plaintiff that the request for removal of the
19 negative reporting's would be processed immediately.

20
21 37. Ordinary negligence consists of acts or omissions which are not
22 compatible with the standard of care exercised by an abstract man of
23 ordinary prudence. *People v. Young*, 20 Cal. 2d 832, 129 P.2d 353
24 (1942). Defendant did not comply with this standard as it took
25 approximately four communications by Plaintiff to Defendant to
26 facilitate contractual compliance.

27 COMPLAINT FOR DAMAGES DEMAND JURY TRIAL

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38. Legal cause requires that the defendant's negligent acts were a substantial factor in bringing about the plaintiff's injury or damage. *Mitchell v. Gonzales*, 54 Cal. 3d 1041, 1 Cal. Rptr. 2d 913 (1991); CACI 430. It is reasonable to believe that the incorrect credit reporting by the Defendant resulted in Plaintiffs financial damages. Several credit scoring models are readily available most of which consistently detail that one negative trade line on a credit report results in a drop of 50-85 points.

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PRAYER

WHEREFORE, Plaintiffs individually and collectively pray as follows with regard to each of the above causes of action which may be asserted by the one or more of the various Plaintiffs:

AS TO ALL CAUSES OF ACTION:

1. For attorneys' fees as applicable;
2. For costs of suit incurred herein; and
3. For such other and further relief as the court deems just and proper.

Dated:



Helena Knezevic