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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
14 and on behalf of all others similarly situated;
KEVIN WILHELMY, individually and on
behalf of all others similarly situated;

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, STUDENT
20 LOAN XPRESS, a Delaware Corporation;
AMERICAN EDUCATION SERVICES,
21 form of entity unknown, and Does 1-25,

22 Defendants.

23

24 **CASE NO.**

25 **CLASS ACTION**

26 **FIRST AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF**

- 27
- 28
1. **UNFAIR COMPETITION (Bus. &
Prof. Code § 17200 *et. seq.*)**
2. **AIDING AND ABETTING FRAUD**
3. **R.I.C.O. (18 USC 1962)**

29 **I. INTRODUCTION**

30 1. This class action seeks to remedy an ongoing scheme of unconscionable, predatory
31 lending practices perpetrated by the Defendants who, purporting to hide behind the shield of
32

1 Ohio's staunchly pro-bank/anti-consumer laws, team up with operators of private, unlicensed and
2 unregulated sham vocational schools and dupe prospective students into accepting loans from
3 Defendants, the funds of which are paid directly to the school long before the education is
4 completed thereby fueling the schools' enrollment Ponzi schemes. When the schools shutter their
5 doors because the scheme collapses, the students are left with no education, no accreditation and
6 no employment prospects but still obligated to repay the loans.

7 2. This pattern of unfair, unlawful and deceptive conduct has been the subject of very
8 recent congressional investigation and extensive journalistic reporting (See collective Exhibit A
9 hereto). Because the laws of Ohio exempt Ohio-domiciled banks from that state's consumer
10 protection laws, the defendants, in complicity with the sham schools, have prayed on
11 unsuspecting, socio-economically vulnerable California resident students with legally repugnant
12 adhesive loan documents containing Ohio choice of law, forum selection, and anti-class action
13 arbitration clauses. Using these perceived impenetrable "shields", defendants have repeatedly
14 and *intentionally* flaunted both federal and California consumer protection laws.

15 3. As to defendant KeyBank USA, N.A. ("KeyBank") in particular, it has engaged
16 in this pervasive pattern and practice of fraudulent conduct in California and elsewhere with
17 numerous vocational schools. Because KeyBank perpetrated its fraud through the use of the U.S.
18 mail and wire carriers in this instance, its actions constitute racketeering activity and violates the
19 Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.*

20 4. This particular action is brought by and on behalf of only those California
21 residents who 1) enrolled in Silver State Helicopters vocational school ("SSH"), 2) either
22 borrowed their SSH tuition from one of the defendant lenders or co-signed on behalf of such a
23 borrower, 3) executed a "Master Student Loan Promissory Note" or "Application/Master
24 Promissory Note" (or similarly titled agreement – the "Note" or "Notes") that failed to contain
25 certain notices required by the Federal Trade Commission's consumer protection regulations, 4)
26 failed to complete their educational program prior to SSH filing bankruptcy, and 5) remain
27 obligated on their Note in a principal amount less than \$75,000.

1 5. The sole remedy Plaintiffs seek on behalf of themselves and the proposed classes
2 is an injunction prohibiting defendants from contacting credit agencies regarding the Notes and
3 prohibiting them from taking any action to enforce the Notes. The injunctive relief sought by this
4 action is based on the Defendants' 1) knowing and intentional violation of 16 C.F.R. 433.2 (the
5 so-called "FTC Holder Rule" or "Holder Rule Notice") which constitutes a predicate violation
6 under California's Unfair Competition Law (California Business and Professions Code Section
7 17200, et. seq.), and 2) aiding and abetting SSH's Ponzi scheme as described below.

8 6. As the materials in Exhibit A reflect, in recent years there has been a proliferation
9 of unlicensed and unaccredited trade schools that do not participate in the federal student aid
10 programs and therefore are largely unregulated. Their growth has been fueled by unscrupulous
11 lenders that have willingly and irresponsibly "partnered" with these sham operations to provide
12 expensive private loans to the high-risk students these schools tend to attract. The lenders have
13 then turned around and, like subprime mortgage lenders, securitized the loans, shifting the risk of
14 the loans onto unsuspecting investors. Defendants have been major players in these schemes that
15 have ensnared hundreds if not thousands of California students in the past several years. In this
16 particular case, Defendants partnered with SSH as the latter's "preferred" lenders and followed
17 the usual script from which they have reaped millions of dollars. As with previous failed
18 vocational school "partners" of Defendants, SSH was unregulated and unaccredited and, when its
19 Ponzi scheme collapsed, SSH filed bankruptcy leaving its students with nothing but Defendants'
20 threats to enforce the loans.

21 7. By 2005, SSH had become the largest private helicopter flight academy and one
22 of the fastest growing companies in any industry in the United States. From 2002 to 2005, it
23 grew at an astounding 2,786 *percent*. Tuition for the school – which promised commercial
24 helicopter pilot certification within 18 months of enrollment – was nearly \$70,000 per student.
25 The school targeted second career, limited income individuals who, but for the Defendants' loan,
26 lacked the personal financial wherewithal to pay the tuition. Thus, the Defendants' willingness
27 to loan money without question, qualification or restriction was the fundamental catalyst for
28 SSH's exponential growth.

1 8. As described in greater detail below, the Defendants worked intimately with SSH
2 employees to solicit its loans in California during the course of SSH’s “application” process. By
3 providing SSH with the loan proceeds in the manner it did, the Defendants aided and abetted
4 SSH in a Ponzi scheme that enabled its owner and CEO (Jerry Airola – “Airola”) and his
5 partners to siphon off millions of dollars for their own personal use. As a result, SSH was unable
6 to provide the equipment, instructors or maintenance necessary to enable the students to attain
7 their pilot ratings. SSH perpetrated its fraudulent scheme by, among other things,
8 misrepresenting and or concealing 1) anticipated tuition costs, 2) its capability to provide
9 adequate equipment, proper training and sufficient maintenance, 3) the time frame for receiving
10 ratings, 4) its intended and actual use of the loan proceeds, and 5) employment opportunities. In
11 reliance on these false and deceptive representations and omissions, Plaintiffs and other members
12 of the proposed class entered into written Service Contract Agreements¹ pursuant to which SSH
13 was obligated to provide educational services.

14 9. SSH further induced its students to enroll in the school by pre-arranging with
15 Defendants to have them finance 100% of the student’s tuition and remit all of the money to SSH
16 (or to the student who was then obligated to immediately transmit the tuition to SSH under threat
17 of expulsion) well before any possible date of completion for the students’ education program.
18 Because Defendants had previously partnered with other failed private vocational schools and
19 enforced the student loans even though the fully paid for education was not delivered,
20 Defendants knew exactly what they were doing here: They took great pains - in violation of the
21 FTC Holder Rule – to ensure that their Notes and SSH’s Service Contract Agreements omitted
22 the required Holder Rule Notice thereby enabling the Defendants to argue that SSH’s students
23 have no rights under the Holder Rule to assert defenses against them that the students could
24 assert against SSH for failing to deliver the bargained-for educational services.

25 10. Because the Defendants paid most, if not all, of the students’ tuition to SSH

26 1 Plaintiffs are informed and believe and thereon allege that in 2003 and 2004 SSH referred to
27 their agreements with students as Service Contracts and in 2005 and 2006 as Training
28 Agreements. Although the Service Contracts and Training Agreements are not identical, they do
contain the same material terms complained of here, and will hereinafter sometimes be
collectively referred to as Service Contracts.

1 directly within months after a student's registration and at least a year before the students could
2 possibly complete their education and because Airola and SSH's senior executives were stealing
3 the tuition payments, SSH was dependent on recruiting ever-larger pools of new students to
4 finance the training of earlier ones. And that recruitment was, in turn, dependant on the
5 Defendants' deliberate and calculated willingness to turn its eye from the bright red flags of
6 SSH's Ponzi scheme.

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

- 15 a. Circumventing the regulatory purpose of the FTC Holder Rule by knowingly and
16 intentionally omitting the required notice from the Note and requiring that SSH do
17 the same with its Service Contract Agreements, thereby enabling the Defendants
18 to argue in Ohio courts that the Holder Rule does not apply because it was not
19 included in the Note or Service Contract Agreement;
- 20 b. Purporting to impose on California residents a patently unreasonable and unjust
21 Ohio choice of law provision in a clear adhesion contract² despite Plaintiffs' lack
22 of any constitutionally mandated contacts with Ohio, other than a forum selection
23 clause (and in Student Loan Express' case, even though it is headquartered in
24 California)

25

26 ² 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 c. In KeyBank's case, purporting to impose on California residents an Ohio forum
2 selection provision in an adhesion contract, despite knowing the students would
3 effectively be barred from having their day in court because of the time and
4 expense of traveling to Ohio and having California resident witnesses appear in
5 Ohio;
- 6 d. In KeyBank's case, imposing an anti-class action arbitration clause that violates
7 California public policy, both substantively and procedurally;
- 8 e. In KeyBank's case, including an attorneys fee clause in the Notes that enables
9 only KeyBank to recover fees from the students if KeyBank sues to enforce the
10 Note with no complimentary provision benefitting the student if he or she is the
11 prevailing party (there is no reciprocity of fee allocation under Ohio law as there
12 is under California law).

13 12. Plaintiffs are informed and believe and thereon allege that the Defendants have
14 engaged in this pattern and practice throughout the country with a variety of unregulated
15 vocational schools. This action seeks to end that practice in California.

16 **II. PARTIES and NON-PARTY AIDERS AND ABETTORS**

17 A. Representative Plaintiffs

18 13. Plaintiff Matthew C. Kilgore ("Kilgore") is an individual over the age of 18 and
19 is, and at all relevant times was, a resident the State of California. Kilgore brings this action
20 pursuant to Cal. Bus. & Prof. Code §§17203, 17204 and Cal. Code Civ. Pro. §1021.5 on behalf
21 of himself and all members of the proposed class as defined in paragraph 25 below. In or about
22 November 2004, Kilgore entered into a Service Contract Agreement and KeyBank Note at
23 SSH's facility in Oakland, California.

24 14. Plaintiff William Bruce Fuller ("Fuller") is an individual over the age of 18 and
25 was, at all relevant times, a resident the State of California. Fuller brings this action pursuant to
26 Cal. Bus. & Prof. Code §§17203, 17204 and Cal. Code Civ. Pro. §1021.5 on behalf of himself
27 and all members of the proposed class as defined in paragraph 25 below. In or about October
28 2004, Fuller executed a Service Contract Agreement and KeyBank Note at SSH's facility in

1 Oakland, California. Kilgore and Fuller shall sometimes be collectively referred to as
2 Kilgore/Fuller.

3 15. Plaintiff Kevin Wilhelmy (“Wilhelmy”) is an individual over the age of 18 and is,
4 and at all relevant times was, a resident the State of California. Wilhelmy brings this action
5 pursuant to Cal. Bus. & Prof. Code §§17203, 17204 and Cal. Code Civ. Pro. §1021.5 on behalf
6 of himself and all members of the proposed class as defined in paragraph 25 below. In or about
7 September 2006, Wilhelmy executed a Training Agreement and Student Loan Xpress Note at
8 SSH’s facility in California.

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

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

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

21 18. Plaintiffs are informed and believe and thereon allege that defendant Great Lakes
22 Educational Services, Inc. (“Great Lakes”) is, and at all material times was, a Wisconsin
23 corporation authorized to do business, and in fact doing business in the State of California.
24 Plaintiffs are informed and believe and thereon allege that Great Lakes knowingly and
25 intentionally participated in the acts complained of herein. Plaintiffs are further informed and
26 believe and thereon allege that Great Lakes was and is in the business of servicing KeyBank
27 loans for SSH students and in fact serviced loans to Kilgore/Fuller and members of the proposed
28 KeyBank class. Hereinafter, KeyBank, Key Education Resources and Great Lakes shall be

1 collectively referred to as “KeyBank.”

2 **C. Defendants Student Loan Xpress and American Education Services**

3 19. Plaintiffs are informed and believe and thereon allege that defendant Student Loan
4 Xpress (“SLX”) is, and at all material times was, a Delaware corporation with its principal place
5 of business in the State of California, authorized to do business, and in fact doing business in the
6 State of California. Plaintiffs are further informed and believe and thereon allege that SLX was
7 and is in the business of processing and/or making education loans to students in the State of
8 California.

9 20. Plaintiffs are informed and believe and thereon allege that defendant American
10 Education Services (“AES”) is, and at all material times was, a business entity form unknown
11 authorized to do business, and in fact doing business in the State of California. Plaintiffs are
12 informed and believe and thereon allege that AES knowingly and intentionally participated in the
13 acts complained of herein. Plaintiffs are further informed and believe and thereon allege that
14 AES was and is in the business of servicing SLX loans for SSH students and in fact serviced
15 loans to Wilhelmy and members of the proposed SLX/AES Class. Hereinafter, SLX and AES
16 shall be collectively referred to as “SLX/AES.” KeyBank and SLX/AES shall sometimes be
17 collectively referred to as “Defendants.”

18 **D. Non-Party Aider and Abettor - SSH**

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

and abetted each other in the unlawful, fraudulent and deceptive activities alleged herein.

E. Doe Defendants

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

23. Defendants, and each of them, are sued both based upon their individual liability under the UCL and as participants, aiders and abettors of SSH in the wrongful activities complained of herein, and their liability arises from the fact that each has engaged in all or part of the improper acts, plans, schemes, or transactions complained of herein.

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

III. CLASS ALLEGATIONS

25. This action is brought by Plaintiffs pursuant to California Code of Civil Procedure Section 382 on behalf of the two following proposed classes (“Proposed Classes”):

KeyBank Proposed Class

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

1 **SLX/AES Proposed Class**

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

10 26. Plaintiffs and the Proposed Classes seek certification of claims against Defendants
11 for injunctive relief pursuant to the section 17204 of the UCL.

12 27. This action is brought as a class action and may properly be so maintained
13 pursuant to the provisions of California Code of Civil Procedure section 382. Plaintiffs reserve
14 the right to modify each Proposed Class definition and the class period pursuant to discovery that
15 is conducted hereafter.

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

22 29. **Existence of Common Questions of Fact and Law.** There is a well-defined
23 commonality and community of interest in the questions of fact and law involved affecting the
24 members of each Proposed Class. The common questions of law and fact as to each Proposed
25 Class include, but are not limited to:

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

28

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

c) Whether Defendants and SSH intentionally violated FTC regulations by knowingly and intentionally omitting the required Holder Rule Notice from the Notes and insisting SSH omit the language from the Service Contract Agreements thereby enabling Defendants to argue in litigation with California residents that the Holder Rule is inapplicable to it as a matter of law because the Notice is in neither the Service Contract Agreements nor the Note;³

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

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

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

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

31. **Adequacy:** Plaintiffs are adequate representatives of each Proposed Class because their interests do not conflict with the interests of the members of each Proposed Class they seek to represent. Plaintiffs have retained competent counsel for this class action and

³ In numerous reported and unreported cases, KeyBank has argued the oxymoron that the 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.

Plaintiffs intend to prosecute this action vigorously. Plaintiffs and its counsel will fairly and adequately protect the interests of the members of each Proposed Class.

32. **Predominance and Superiority.** This suit may also be maintained as a class action under Code of Civil Procedure section 382 because questions of fact and law common to each Proposed Class predominate over the questions affecting only individual members of the classes and a class action is superior to other available means for the fair and efficient adjudication of this dispute. The injury suffered by each individual class member may be disproportionate to the burden and expense of individual prosecution of complex and extensive litigation to proscribe Defendants' conduct and practices. Additionally, effective redress for each and every class member against Defendants may be limited or even impossible where serial, duplicitous, or concurrent litigation occurs on these disputes. Even if individual class members could afford or justify the prosecution of their separate claims, the court system may not be up to the task. Individualized litigation may lead to incongruous and conflicting judgments against Defendants. To the contrary, a class action procedure involving all class members, Defendants and the court present fewer management difficulties, and provide the benefit of a single adjudication, economy of scale, and judicial efficiency and fairness.

33. Defendants have created and seek to enforce an unlawful, unfair and deceptive contract through unfair and deceptive acts and practices in violation of both federal and California State consumer protection law as set forth further herein. This action is therefore appropriate and necessary under California Code of Civil Procedure section 1021.5 to enforce an important public interest and to deter and enjoin future illegal activity by Defendants.

IV. GENERAL ALLEGATIONS

A. SSH's Fraudulent Scheme

34. SSH lured its students, including Plaintiffs and members of each Proposed Class, into its Ponzi scheme through the use of carefully orchestrated “Career Opportunity Seminars” (the “Seminars”) conducted throughout California. The Seminars were advertised on radio and in print media and were designed to draw hundreds of prospective students to each Seminar. At the Seminars, SSH executives and employees used prepared videos and standardized marketing

1 materials that promised prospective students a lucrative and exciting career piloting commercial
2 helicopters within 18 months, fully financed by Defendants. SSH conducted the Seminars at their
3 flight school locations (in Plaintiffs' cases, in Oakland) flanked by helicopters and flight
4 simulators which prospective students were invited to "touch and feel" so they could experience
5 the excitement of being a commercial helicopter pilot.

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

15 36. Because SSH knew that most of the prospective students had limited income and
16 financial resources, SSH also knew that most of the attendees were unable to afford the nearly
17 \$70,000 per student tuition. But in each of the Seminars SSH specifically and expressly
18 addressed this concern by explaining that those chosen to be students would be provided with low
19 interest loans through an arrangement SSH had established with Defendants. Plaintiffs are
20 informed and believe and thereon allege that Defendants created, reviewed, approved and/or ratified
21 SSH's sales presentation as it related to Defendants' loan program.

22 37. Plaintiffs are informed and believe and thereon allege that during the "interview"
23 process, SSH made the members of each Proposed Class believe they were among a select few
24 "Top Guns" chosen for admission to SSH. Plaintiffs are further informed and believe and thereon
25 allege, however, that in reality SSH accepted practically anyone who was willing to pay the
26 tuition fee, either on their own or with a loan from Defendants (and who could qualify for a loan
27 based upon a cursory credit check).

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

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

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

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

26 41. In 1976, the Federal Trade Commission promulgated 16 C.F.R. part 433, intended to
27 address the problem of consumer liability to financial institutions that finance the purchase of
28 defective goods. As explained in the FTC's *Staff Guidelines on Trade Regulation Rule Concerning*

1 *Preservation of Consumers' Claims and Defenses*, the purpose of the regulation was to make it
2 impossible "for a seller to arrange credit terms for buyers which separate the consumer's legal duty
3 to pay from the seller's legal duty to keep his promises." The Holder Rule provides:

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

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

8 NOTICE

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

12 or

13 (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
14 provision in at least ten point, bold face, type:

15 NOTICE

16 ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL
17 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
18 PAID BY THE DEBTOR HEREUNDER. [Emphasis Added]

19 42. The Notes are "Consumer Credit Contracts" under Section 433.1(i) of the Holder
20 Rule and the loans made by Defendants to Plaintiffs and the Proposed Classes evidenced by the
21 Notes are "Purchase Money Loans" under Section 433.1(d).

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

27 // /
28

1 C. **KeyBank's Complicity in SSH's Fraudulent Scheme**

2 44. Kilgore/Fuller are informed and believe and thereon allege that KeyBank was
3 SSH's preferred lender during 2003 and 2004.

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

14 46. Kilgore/Fuller are informed and believe and thereon allege that KeyBank
15 specifically conspired with Airola and other SSH executives to insure that the students' entire tuition
16 was disbursed to SSH in short order.

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

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

29 Please Check One. (optional) **Primary (Good Credit History) _____ Secondary (May
30 Not Qualify) _____ Not Sure _____**

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

1 **please provide the following information:**

2 48. Kilgore/Fuller are informed and believe and thereon allege that as part of the
3 Business Arrangement, KeyBank reviewed, approved and/or ratified the Flight Academy
4 Application and agreed that SSH would act as its agent for processing prospective SSH student loan
5 applications including, but not limited to: i) promoting KeyBank as the preferred provider of tuition
6 loans, ii) disseminating KeyBank's credit applications and related documents and information to
7 prospective students, (iii) permitting SSH to apply for the loans on the prospective student's behalf,
8 (iv) receiving credit information from prospective students and transmitting that information to
9 KeyBank, and (v) overseeing execution and transmission to KeyBank of the Notes.

10 49. Kilgore/Fuller are informed and believe and thereon allege that SSH/KeyBank's
11 Business Arrangement was generally carried out by, among other means, the following:

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

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

18 c. KeyBank would approve the loan, prepare the Note and transmit it to SSH
19 which, in turn, would give it to the prospective student. Kilgore/Fuller are further informed and
20 believe and thereon allege that KeyBank required and directed SSH to use only its form of the Note
21 and refused to accept any Note which contained the Holder Rule notice;

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

24 e. The local SSH office would then send the executed Note to SSH's
25 corporate offices in Las Vegas which would then send it to KeyBank in Ohio.

26 50. Kilgore/Fuller are informed and believe and thereon allege that at the request of
27 KeyBank and on KeyBank's behalf, SSH employed "student finance managers" whose
28 responsibility was to interact with Kilgore/Fuller and members of the KeyBank Proposed Class

1 regarding financing tuition through KeyBank.

2 51. Kilgore/Fuller are informed and believe and thereon allege that neither KeyBank nor
3 SSH informed any members of the KeyBank Proposed Class of the existence of, purpose for or
4 terms of the Holder Rule.

5 52. Kilgore/Fuller are informed and believe and thereon allege that with respect to
6 themselves and each member of the KeyBank Proposed Class, KeyBank fully funded the entire
7 Loan amount to SSH before the student could possibly have completed or did actually complete
8 their education with SSH. Kilgore/Fuller are further informed and believe and thereon allege SSH
9 has only graduated a small percentage of students from its California schools, none of which are
10 members of the KeyBank Proposed Class in this action.

11 53. On or about February 4, 2008, after receiving the entirety of Kilgore/Fuller's and
12 members of the KeyBank Proposed Class' tuition, directly or indirectly, from KeyBank, SSH
13 ceased doing business and filed for bankruptcy. Kilgore/Fuller and the KeyBank Proposed Class
14 have valid defenses against SSH and against KeyBank but KeyBank failed and refused and
15 continue to fail and refuse to discharge Kilgore/Fuller and the KeyBank Proposed Class'
16 obligations on the Notes.

17 i. **KeyBank's Pattern and Practice of Partnering with Sham Vocational**
18 **Schools**

19 54. Kilgore/Fuller have ascertained through investigation that the manner in which they
20 were referred from SSH to KeyBank is part of a pattern of generating business engaged in by
21 KeyBank, and that KeyBank has also disclaimed responsibility for the claims of other consumers
22 whose transactions were financed in the same manner and who have claims arising from their
23 enrollment at vocational schools.

24 55. KeyBank's involvement with SSH and its treatment of the SSH students is part of
25 a pattern and practice of fraudulent conduct by KeyBank. Using the U.S. mails and wires,
26 KeyBank has been involved in a deliberate pattern and practice of aiding and abetting fraudulent
27 vocational schools that aggressively induce students into obtaining loans with KeyBank. In fact,
28 Defendant KeyBank has seen *a nearly identical scenario* unfold in teaming up with another flight

1 school known as Makarion Institute of Aeronautics in Chino, California (“Makarion”). There,
2 KeyBank allowed Makarion to solicit students to enter into student loans with KeyBank. As with
3 SSH, Makarion closed its door prior to providing the agreed upon services and filed for
4 bankruptcy. As is the case here, the Makarion students were left holding the bag and KeyBank
5 nonetheless demanded payment of the entire loan.

6 56. Kilgore/Fuller are informed and believe and thereon allege that KeyBank has
7 engaged in the same pattern and practice complained of with numerous other unregulated
8 vocational schools throughout the country including but not limited to Sierra Academy of
9 Aeronautics which had facilities in Oakland, California and Airman Flight School based in
10 Norman, Oklahoma.

11 **ii. KeyBank’s Use of Mails and Interstate Wires**

12 57. Kilgore/Fuller are informed and believe and thereon allege that beginning in or about
13 September 2003 KeyBank used and continues to use the U.S. mail to send to and receive from
14 Kilgore/Fuller and the KeyBank Proposed Class the Notes and other documentation and information
15 concerning the Notes and to communicate with Kilgore/Fuller and the KeyBank Proposed Class
16 about their outstanding “obligations” on the Notes. Kilgore/Fuller are further informed and believe
17 and thereon allege that KeyBank used the U.S. mails and wires to establish its relationship with SSH
18 and to facilitate its communications with SSH’s employees who were directed by KeyBank to mail
19 and fax loan applications, enrollment applications, the Notes and other documents to KeyBank for
20 processing. Kilgore/Fuller are further informed and believe and thereon allege that numerous
21 students within the KeyBank Proposed Class used the U.S. mails in communicating with KeyBank
22 through SSH.

23 58. Kilgore/Fuller are informed and believe and thereon allege that KeyBank funded
24 SSH with Kilgore/Fuller’s and the KeyBank Proposed Class’ tuition through the use of interstate
25 wires. Kilgore/Fuller are further informed and believe and thereon allege that KeyBank invited
26 students in the KeyBank Proposed Class to make payments on their loans through the use of U.S.
27 mails and/or wires.

1 59. Kilgore/Fuller are informed and believe and thereon allege that, based on normal
2 bank practices with respect to the origination of consumer credit transactions, KeyBank used
3 interstate wire transmissions with credit reporting agencies in order to select the consumers with
4 respect to which it engaged in the conduct complained of. The use of wire communications with
5 credit reporting agencies was material, if not essential, to the commission of the scheme complained
6 of herein, because the object of the scheme was to get the consumer's money, and KeyBank therefore
7 had to determine if the consumer was creditworthy and able to pay money.

8 **D. SLX/AES's Complicity in SSH's Fraudulent Scheme**

9 60. Wilhelmy is informed and believes and thereon alleges that SLX/AES was SSH's
10 preferred lender in California between 2005 and 2006.

11 61. Wilhelmy is informed and believes and thereon alleges that SLX/AES not only
12 deliberately ignored the numerous red flags of SSH's fraudulent scheme but purposefully
13 facilitated that scheme by directly soliciting SSH students to enter into loans with SLX/AES to
14 fund their SSH tuition. Wilhelmy is further informed and believes and thereon alleges that
15 SLX/AES intentionally omitted the Holder Rule Notice from its loan documents and directed
16 SSH to do the same with its Service Contracts.

17 62. Wilhelmy is informed and believes and thereon alleges that SLX/AES aided and
18 assisted SSH in its fraudulent scheme by, among other things, having SLX/AES employees,
19 known as Financial Aid Managers, attend the Seminars for the sole purpose of soliciting students
20 to enter into SLX/AES promissory notes at the SSH seminars. The SLX/AES Financial Aid
21 Managers handed SLX/AES loan documents to the students at the SSH seminars and personally
22 counseled students regarding the SLX/AES loans. SLX/AES engaged in this activity knowing
23 that if SSH failed to deliver the contracted for educational services, the students would
nevertheless remain obligated to SLX/AES and would be unable to assert defenses against
SLX/AES that it had against SSH.

24 63. Wilhelmy is informed and believes and thereon alleges that SLX/AES and SSH
entered into a formal contract as defined in Section 433.1(f) or, alternatively, an informal
understanding, procedure, course of dealing, or arrangement (hereinafter, collectively "Business
Arrangement") that provided SLX/AES exclusive access to the students at the SSH seminars in
order to entice the students to enter into SLX/AES "Application/Master Promissory Notes."

25 64. Wilhelmy is informed and believes and thereon alleges that SSH-SLX/AES'

1 Business Arrangement was generally carried out by, among other means, the following:

2 a. During the Seminars, SSH would grant SLX/AES Financial Aid Managers
3 exclusive access to solicit students to apply for loans from SLX/AES to fund their SSH tuition at the
4 time they completed their SSH application;

5 b. Prospective students would complete their SSH application and SLX/AES
6 Application/Master Promissory Note at the SSH California facility with the joint assistance of both
7 SLX/AES employees and SSH employees working in concert. The complete documents would then
8 be faxed by either an SSH employee or the prospective student to SSH's corporate offices in Las
9 Vegas, Nevada. SSH would, after weeding out those applicants with unacceptable credit,
10 transmit the application(s) to SLX/AES;

11 c. SLX/AES would approve the loan, prepare the Note and transmit it to SSH
12 which, in turn, would give it to the prospective student. Wilhelmy is further informed and believes
13 and thereon alleges that SLX/AES required and directed SSH to use only its form of the Note and
14 refused to accept any Note which contained the Holder Rule notice;

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

17 e. The local SSH office would then send the executed Note to SSH's
18 corporate offices in Las Vegas which would then send it to SLX/AES.

19 65. Wilhelmy is informed and believes and thereon alleges that neither SLX/AES nor
20 SSH informed any members of the SLX/AES Proposed Class of the existence of, purpose for or
21 terms of the Holder Rule.

22 66. Wilhelmy is informed and believes and thereon alleges that with respect to his loan
23 and that of each member of the SLX/AES Proposed Class, SLX/AES fully funded the entire Loan
24 amount to SSH before the student could possibly have completed or did actually complete their
25 education with SSH. Wilhelmy is further informed and believes and thereon alleges that SSH has
26 only graduated a small percentage of students from its California schools, none of which are
27 members of the SLX/AES Proposed Class in this action.

28 67. On or about February 4, 2008, after receiving the entirety of Wilhelmy's and

1 members of the SLX/AES Proposed Class' tuition, directly or indirectly, from SLX/AES, SSH
2 ceased doing business and filed for bankruptcy. Wilhelmy and the SLX/AES Proposed Class
3 have valid defenses against SSH and against SLX/AES but SLX/AES failed and refused and
4 continues to fail and refuse to discharge Wilhelmy's and the SLX/AES Proposed Class'
5 obligations on the Notes.

6 **FIRST CAUSE OF ACTION**

7 **Violation of Unfair Competition Law (B&P Section 17200, et seq.)**
(Against all Defendants and DOES 1 through 20)

8 68. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
9 in paragraphs 1 through 67 above, as though they are set forth in full.

10 69. Defendants violated and continue to violate the UCL by engaging in and proposing
11 to engage in unfair competition by means of the following unlawful, unfair and fraudulent acts
12 and practices:

- 13 a. Knowingly and intentionally omitting from its Note the Holder Rule Notice
14 despite Defendants' knowledge that the Note was a Consumer credit contract for a
15 Purchase money loan as those terms are defined in Section 433.1 and that their
16 failure to include the required Notice in the Note is an unfair or deceptive act or
17 practice under the FTC Holder Rule;
- 18 b. Knowingly and intentionally ensuring that SSH omitted from its Service Contract
19 Agreements the Holder Rule Notice despite Defendants' knowledge that failure to
20 include such Notice was an unfair or deceptive act or practice under FTC
21 regulations;
- 22 c. As to KeyBank, knowingly, intentionally or recklessly authorizing and/or
23 appointing SSH to act as Defendants' agent for soliciting loans to Kilgore/Fuller
24 and the KeyBank Proposed Class for educational services KeyBank knew or
25 should known could not and would not be provided;
- 26 d. As to SLX/AES, having its employees participate in the Seminars and directly
27 solicit loans to Wilhelmy and the SLX/AES Proposed Class for educational

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

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

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

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

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

17 72. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
18 in paragraphs 1 through 71 above, as though they are set forth in full.

19 73. 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 74. 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 75. 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
 and property and are entitled to injunctive relief as set forth below.

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

3

THIRD CAUSE OF ACTION

4 **Violation of Racketeering Influenced and Corrupt Organization Act (“RICO”)**
(Alleged by Kilgore/Fuller and the KeyBank Proposed Class
Against KeyBank and Does 21-25)
(18 U.S.C. 1962 §§ et seq.)

5

6 76. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
7 in paragraphs 1 through 75 above, as though they are set forth in full.

8 77. The corporate group of which KeyBank is a part is an enterprise within the
9 meaning of 18 U.S.C. §1961(4). Its activities affect interstate commerce.

10 78. KeyBank devised and implemented the scheme described in paragraphs 44-53.
11 This scheme constitutes a scheme or artifice to defraud, within the meaning of 18 U.S.C. § 1341
12 and 18 U.S.C. § 1343.

13 79. As described above, the mails and interstate wires were used for the purpose of
14 executing this scheme and artifice.

15 80. KeyBank conducted and participated in the conduct of the affairs of the enterprise
16 described above through the scheme described above, in violation of 18 U.S.C. § 1962(c).

17 81. Kilgore/Fuller and each member of the KeyBank Proposed Class suffered
18 pecuniary injury as a result of these violations.

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

21

PRAAYER FOR RELIEF

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

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

27 3. For such other orders or judgments as the Court may consider necessary to
28 prevent the use or employment by Defendants of any practice which constitutes unfair

1 competition under the UCL;

2 4. For attorneys' fees pursuant to California Code of Civil Procedure §1021.5 and 18
3 U.S.C. 1964(c);

4 5. For statutory costs of suit herein; and

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

6 DATED: May 16, 2008

PINNACLE LAW GROUP LLP

8 By: _____
9 Andrew A. August,
Attorneys for Plaintiffs

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