

GENERAL CLASS ACTION ALLEGATIONS

1
2 105. Both the proposed National Class and the proposed Nevada Subclass will be
3 collectively referred to as the Class except where it is necessary to differentiate them.

4 106. Plaintiff is among many thousands of persons in the United States who have filed
5 bankruptcies pursuant to Chapters 7 and 13 of the U.S. Bankruptcy Code and who have been
6 granted orders of discharge by a U.S. Bankruptcy Court. Under federal bankruptcy laws, such an
7 order fully and completely discharges all statutorily dischargeable debts incurred prior to the filing
8 of bankruptcies, except for those that have been: (1) reaffirmed by the debtor in a reaffirmation
9 agreement; or (2) successfully challenged as non-dischargeable by one of the creditors in a related
10 adversary proceeding. Plaintiff and the Class Members are persons for whom the debts at issue
11 have been discharged through bankruptcy.
12

13 107. Navient is a creditor who regularly engages in the business of loaning money to
14 former students like Plaintiff and other members of the Class.
15

16 108. In the ordinary course of business, Navient’s debtors who are enduring financial
17 hardship fall behind on their payments of Navient accounts. Prior to the filing of any personal
18 bankruptcies, Navient, its collection agencies and delinquent debt companies that purchase
19 Navient’s debt, act to collect these past due debts by threatening in dunning letters to place a
20 “charge off” or other similar “past due” notations on the debtors’ credit reports. Said letters
21 threaten to ruin the debtors’ credit unless they pay the past due debt. Navient, its debt collectors
22 and delinquent debt companies that purchase Navient’s debt also act to collect these past due debts
23 by promising in dunning letters to remove the “charge off” or other “past due” notations on the
24 debtors’ credit reports to show that the past due debts have been paid if the debts are paid.
25

26 109. In the ordinary course of business, Navient issues reports to credit reporting
27 agencies as to the current status of debts incurred by individuals whom Navient has extended
28 credit. It is also an entity which regularly and, in the ordinary course of business, furnishes
29

1 information to one of more credit reporting agencies about its transactions and experiences with
2 consumers.

3 110. Navient has knowledge of when its past due debts are discharged because it receives
4 a discharge notice from the U.S. Bankruptcy Court.

5 111. Despite the fact that Navient has received notice of the discharge of each Class
6 Member's debt to Navient, Navient has a deliberate policy of not notifying credit reporting
7 agencies that debts formerly owing to Navient are no longer "Open," "charged off," or currently
8 still due and owing because they have been discharged in bankruptcy.

9 112. As a result of Navient's refusal to make such updates to credit reporting agencies,
10 debts that have been discharged in bankruptcy are instead listed on Class Members' credit reports
11 as "open," "past due," and/or "charged off." These notations clearly indicate to potential creditors,
12 employers, or other third parties that a Class Member still owes a debt and that debt may be subject
13 to collection. These notations therefore adversely affect a Class Member's ability to obtain credit
14 or employment and have the inherent coercive effect of inducing Class Members to make payment
15 on the debt.
16

17 113. Moreover, Navient's failure and further refusal to update credit report tradelines for
18 many thousands of consumers to reflect that their debts were, in fact, discharged in Bankruptcy,
19 as opposed to reporting a current (pay) status of "open," "charged off," or "past due," runs afoul
20 to Section 727 of the Bankruptcy Code and the primary purpose of the protection offered by the
21 Bankruptcy Code: The discharge of a debt. *See Marrama v. Citizens Bank of Massachusetts*, 549
22 U.S. 365, 367 (2007).
23

24 114. Many debtors whose debts have been discharged in bankruptcy have advised
25 Navient, via an FCRA dispute, of its failure to update the information on their credit reports to
26 show that their debts have been discharged through bankruptcy. Said debtors have requested that
27 Navient remove the "open," "charged off," and "past due" statuses from their credit reports.
28 Navient has refused to do so.
29

1 115. Upon information and belief, Navient has a deliberate policy of refusing the
2 debtors' requests to remove inaccurate, derogatory, and misleading statuses from the Navient
3 debts that were transferred/sold prior to the filing of the bankruptcy from the debtors' credit
4 reports. As a result, the credit reports of these individuals and of all Class Members incorrectly
5 show their indebtedness to Navient to be legally collectible.

6 116. Upon information and belief, even in response to notices made pursuant to the
7 FCRA §1681i(a)(2), from Class Members that information contained in their credit reports was
8 inaccurate, Navient has refused to correct erroneous credit information despite its affirmative duty
9 to do so under FCRA §1681s-2(b).

10 117. Upon information and belief, Navient also received many requests from the CRAs
11 that Navient verify that the debts owed by Plaintiff and Class Members were discharged in
12 bankruptcy, to which Navient responded that the debts were still due and owing, despite Navient's
13 knowledge that such debts have in fact been discharged in bankruptcy.

14 118. Navient knew that the existence of such inaccurate information in the Class
15 Members' credit reports would damage the Class Members' credit ratings and their ability to
16 obtain new credit, a lease, a mortgage or employment, all of which may be essential to
17 reestablishing their life after going through bankruptcy.

18 119. Navient chose not to advise the CRAs of the fact that the Class Members' debts
19 have been discharged because Navient continues to receive payment either directly or indirectly
20 on discharged debts. This results from the fact that Class Members, in order to obtain favorable
21 credit or credit at all, often feel it necessary to pay off the debt despite its discharge in order to
22 remove the inaccurate information from their credit reports.

23 120. This belief is intentionally reinforced by Navient itself when Class Members
24 contact Navient asking Navient to correct the erroneous credit information. Not only does Navient
25 refuse to make such correction, but it advises Class Members that, so long as the discharged debt
26

1 remains unpaid, the misleading information will remain on their credit report for at least seven
2 years.

3 121. Thus, when a Class Member needs to rent a car, obtain employment or rent an
4 apartment, or other similar transactions, and they are advised by Navient that it will not remove
5 the erroneous information unless they pay the debt, Class Members often pay that debt despite the
6 fact that it has been discharged in bankruptcy. Accordingly, Navient knows it is obtaining
7 repayment on debts that have been discharged in bankruptcy.
8

9 122. Class Members believe they must pay the debt in order to remove it from the credit
10 reports because they are often advised prior to bankruptcy by Navient and collection agencies that,
11 if their debt is reported on their credit report, it will dramatically affect their credit rating and will
12 severely impact their ability to receive credit in the future.

13 123. Navient has adopted a systematic pattern and practice of failing and refusing to
14 update credit information with regard to debts discharged in bankruptcy because it sells those debts
15 and profits by the sale. Navient knows that if the credit information is not updated, then many
16 Class Members will feel compelled to pay off the debt even though it is discharged in bankruptcy.
17 Thus, buyers of Navient debt know, and are willing to pay more for the fact that, they will be able
18 to collect portions of Navient debt despite the discharge of that debt in bankruptcy.
19

20 124. Upon information and belief, Navient receives a percentage fee of the proceeds of
21 each debt repaid to Navient and forwarded to the buyer of Navient debt. Navient therefore has a
22 clear economic incentive to violate the FCRA.
23

24 125. Buyers of Navient consumer debts that have been sold by Navient prior to a
25 bankruptcy being filed know that, post-sale, Navient will refuse to correct the credit report to
26 reflect the consumer's bankruptcy discharge, which means that the debtor will feel significant
27 added pressure to obtain a "clean" report by paying on a discharged debt.

28 126. Class Members' discharged debts that have been sold or transferred fail to identify
29 the purchaser. Therefore, as far as the debtor is concerned, the only creditor to approach to correct

1 the credit reports is Navient , which, as a matter of policy, refuses to correct them. While, in
2 addition, retaining a percentage of payments sent to Navient by the debtor, as opposed to Navient’s
3 undisclosed buyer. This highlights further the perniciousness of Navient’s systematic approach in
4 refusing to correct such reports.

5 127. Reporting a debt to a credit bureau is a “powerful tool designed, in part, to wrench
6 compliance with payment terms.” *Rivera v. Bank One*, 145 F.R.D. 614, 620 (1993).

7 128. Navient’s actions also constitute a violation of 11 U.S.C. § 524(a)(2), which
8 provides that a discharge in bankruptcy operates as an injunction against the commencement or
9 continuation of an action, the employment or process, or an act, to collect, recover or offset any
10 such debt as a personal liability of the debtor.

11 129. Accordingly, Navient violated the FCRA by failing to comport its credit reporting
12 with the terms of the Bankruptcy Discharge under §§ 727 and 524(a)(2) of the Bankruptcy Code,
13 which ultimately intentionally assisted in the collection of discharged debt by not correcting the
14 Class Members’ credit reports to reflect that the debt has, in fact, been discharged.
15

16 130. Navient’s reporting was inaccurate and materially misleading due to the effect of
17 Plaintiff’s successful Bankruptcy Discharge, because:
18

19 "The failure to update a credit report to show that a debt has been discharged
20 is also a violation of the discharge injunction if shown to be an attempt to
21 collect the debt. Because debtors often feel compelled to pay debts listed in
22 credit reports when entering into large transactions, such as a home
23 purchase, it should not be difficult to show that the creditor, by leaving
24 discharged debts on a credit report, despite failed attempts to have the
25 creditor update the report, is attempting to collect the debt.”⁴

26 131. Navient’s conduct is in bad faith, is vexatious and oppressive and is done with full
27 knowledge that it is in violation of the law.

28 132. As a result of a major class action settlement, the CRAs have agreed to revise their
29 procedures to report all pre-bankruptcy debts as discharged, unless furnishers provide information

⁴Collier on Bankruptcy, paragraph 524.02[2][B] (16th Ed. 3 2013), at page 524-23.

1 showing that a debt was excludable from discharge. *White v. Experian Info Solutions, Inc.*, Case
2 No. CV 05-01070 (C.D. Cal. Aug. 19, 2008) (lead case number).

3 133. Therefore, even the CRAs acknowledged that the accurate and proper way to report
4 the status of all pre-bankruptcy debts, like Plaintiff's and Class Members' debts, following
5 successful Bankruptcy discharges of the debt, is "Discharged in Bankruptcy" (or the equivalent).

6 134. Navient's persistent refusal to provide updated credit information to the credit
7 reporting agencies that Class Members' Navient debts are no longer "open," "charged off," or
8 "past due" because they have been discharged in bankruptcy is knowing and willful and constitutes
9 violations of the FCRA.
10

11 135. Navient has also directly collected on debts that the Plaintiff and Class Members
12 discharged in bankruptcy.

13 136. Plaintiff's claims are typical of Class Members' claims in that Plaintiff's claims
14 and Class Members' claims all arise from Defendant's wrongful misreporting of consumer credit
15 information on their credit reports.
16

17 137. A class action is superior to other available methods for the fair and efficient
18 adjudication of the controversy. Class treatment of common questions of law and fact is superior
19 to multiple individual actions or piecemeal litigation. Absent a class action, most class members
20 would likely find that the cost of litigating their individual claim is prohibitively high and would
21 therefore have no effective remedy. Defendant would retain the benefits of its wrongdoing despite
22 its serious violations of the law.
23

24 138. The prosecution of separate actions by individual class members would create a
25 risk of inconsistent or varying adjudications with respect to individual class members, which
26 would establish incompatible standards of conduct for Defendant. In contrast, the adjudication of
27 this action as a class action presents far fewer management difficulties, conserves judicial
28 resources and the parties' resources, and protects the rights of each class member.
29

1 139. Defendant has acted or failed to act on grounds that apply generally to the class as
2 a whole, so that class certification, injunctive relief, and corresponding declaratory relief are
3 appropriate on a class-wide basis.

4 140. Class certification, therefore, is appropriate pursuant to Rule 23 because the
5 common questions of law or fact predominate over any questions affecting individual Class
6 Members, and a class action is superior to other available methods for the fair and efficient
7 adjudication of this controversy.
8

9 **FIRST CAUSE OF ACTION**

10 **Violations of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, et seq.**
11 **(On Behalf of Plaintiff and All Class Members)**

12 141. Plaintiff repeats, re-alleges, and incorporates by reference all above paragraphs.

13 142. Navient failed to reference the bankruptcy filing and discharge in the CII field in
14 Plaintiff's Equifax, Trans Union, and Experian Credit Reports with respect to Plaintiff's accounts
15 successfully discharged through Plaintiff's bankruptcy.

16 143. Instead, Navient reported that the current status of the debts were "Open" and/or
17 "Past Due" and reflecting balances of as high as \$44,625, i.e. still legally collectable, as opposed
18 to "Discharged in Bankruptcy."
19

20 144. The status reported by Navient, as opposed to the correct status of "Discharged in
21 Bankruptcy", inaccurately and misleadingly suggested that Plaintiff still has a personal legal
22 liability to pay the alleged Debt, which is the opposite effect of receiving a bankruptcy discharge.

23 145. A "materially misleading" statement is concerned with omissions to credit entries,
24 that in context create misperceptions about what otherwise may be factually accurate data.
25 *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1163 (9th Cir. 2009).

26 146. In a letter dated June 21, 2022, Plaintiff disputed the inaccurate reporting pursuant
27 to 15 U.S.C. § 1681i, by notifying Trans Union, in writing, of the inaccurate, misleading, and
28 derogatory information.
29

1 147. Specifically, Plaintiff sent a letter, certified, return receipt, to Trans Union,
2 requesting the above inaccurate information be updated, modified, or corrected.

3 148. In a letter dated May 20, 2022, Plaintiff disputed the inaccurate reporting pursuant
4 to 15 U.S.C. § 1681i, by notifying Equifax, in writing, of the inaccurate, misleading, and
5 derogatory information.

6 149. Specifically, Plaintiff sent a letter, certified, return receipt, to Equifax, requesting
7 the above inaccurate information be updated, modified, or corrected.

8 150. In a letter dated May 20, 2022, Plaintiff disputed the inaccurate reporting pursuant
9 to 15 U.S.C. § 1681i, by notifying Experian, in writing, of the inaccurate, misleading, and
10 derogatory information.

11 151. Specifically, Plaintiff sent a letter, certified, return receipt, to Experian, requesting
12 the above inaccurate information be updated, modified, or corrected.

13 152. Upon information and belief, the CRA's timely notified Navient of Plaintiff's
14 disputes.
15

16 153. Navient was required to conduct a reasonable investigation into this specific
17 accounts on Plaintiff's and the Class' consumer reports pursuant to 15 U.S.C. § 1681s-2(b)(1)(A).
18

19 154. Upon information and belief, Navient's investigation of Plaintiff's and the Class'
20 disputes was unreasonable. More specifically, Navient, should have discovered from its records,
21 including Plaintiff's and the Class' dispute letters and the bankruptcy records that were publicly
22 available to Navient , that the information Navient was reporting was patently inaccurate and
23 materially misleading.
24

25 155. A reasonable investigation would have also led to Navient consulting with the
26 CRRG's Metro 2 instructions to determine the accurate and proper reporting of the current status
27 of the accounts, which would have revealed that Navient should have reported the status as
28 "Discharged in Bankruptcy."
29

1 156. However, following Navient's FCRA investigations, there was no notation, status
2 update, or any other indication in the tradelines that the accounts were discharged in Plaintiff's
3 and the Class' Bankruptcies.

4 157. Accordingly, Navient failed to conduct a reasonable investigation with respect to
5 the disputed information as required by 15 U.S.C. § 1681s-2(b)(1)(A) by failing to remove and/or
6 correct the disputed and incorrect information.

7 158. Navient failed to review all relevant information provided by Plaintiff and the Class
8 Members, as required by and in violation of 15 U.S.C. § 1681s-2(b)(1)(B).

9 159. Due to Navient's failure to reasonably investigate, they further failed to correct and
10 update Plaintiff's and the Class' information as required by 15 U.S.C. § 1681s-2(b)(1)(E), thereby
11 causing continued reporting of inaccurate information in violation of 15 U.S.C. § 1681-
12 s(2)(b)(1)(C).

13 160. Plaintiff's and the Class' continued efforts to correct Navient's erroneous and
14 negative reporting of the accounts by communicating their disputes with Navient were fruitless.

15 161. Navient's continued inaccurate and negative reporting of the Accounts in light of
16 its knowledge of the actual error was willful.

17 162. By inaccurately reporting account information relating to the accounts after notice
18 and confirmation of its errors, Navient failed to take the appropriate measures as determined in
19 15 U.S.C. §§ 1681-s(2)(b)(1)(D) and (E).

20 163. The foregoing acts and omissions constitute numerous and multiple willful,
21 reckless, or negligent violations of the FCRA, including, but not limited to, each and every one of
22 the above-cited provisions of the FCRA, 15 U.S.C. § 1681.

23 164. Plaintiff and the Class Members were (and continue to be) damaged as a direct and
24 proximate result of Defendant's unlawful conduct including without limitation, fear of credit
25 denials, out-of-pocket expenses in challenging the inaccurate reporting, damage to their

1 creditworthiness, emotional distress, loss of privacy, and other economic and non-economic harm,
2 for which they are entitled to compensation.

3 165. As a result of each and every willful violation of the FCRA, Plaintiff and the Class
4 are entitled to actual damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(1);
5 statutory damages pursuant to 15 U.S.C. § 1681n(a)(1); punitive damages as the Court may allow,
6 pursuant to 15 U.S.C. § 1681n(a)(2); and reasonable attorney's fees and costs pursuant to 15 U.S.C.
7 § 1681n(a)(3) from Navient .
8

9 **SECOND CAUSE OF ACTION**

10 **Unjust Enrichment**
11 **(On Behalf of Plaintiff and All Class Members)**

12 166. Plaintiff repeats, re-alleges, and incorporates by reference all above paragraphs.

13 167. Plaintiff and the Class Members were (and continue to be) damaged as a direct and
14 proximate result of Defendant's unlawful conduct including without limitation, collecting funds
15 that were discharged in bankruptcy.

16 168. Plaintiff and Class Members are therefore entitled to damages, including restitution
17 and unjust enrichment, disgorgement, declaratory and injunctive relief, and fees and costs of
18 litigation.
19

20 **THIRD CAUSE OF ACTION**

21 **Bankruptcy Discharge Injunction violations under 11 U.S.C. § 524**
22 **(On Behalf of Plaintiff and All Class Members)**

23 169. Plaintiff fully incorporates by reference all of the above paragraphs, as though fully
24 set forth herein.

25 170. For the reasons stated in more detail above, it was inaccurate and materially
26 misleading for Navient to continue to collect from Plaintiff and the Class on accounts that were
27 discharged in bankruptcy.
28

1 171. By knowingly and willfully collecting from Plaintiff and the Class on accounts that
2 had been discharged in bankruptcy, Navient was noncompliant with 11 U.S.C. §§ 524(a)(2) and
3 727 of the Bankruptcy Code.

4 172. The foregoing acts and omissions constitute numerous and multiple willful,
5 reckless, or negligent violations of § 524 of the Bankruptcy Code.

6 173. The Plaintiff and Class Members s have been damaged by Defendant’s conduct and
7 therefore seek an award of sanctions, a declaration that the Defendant violated 11 U.S.C. § 524(i),
8 injunctive relief, and all appropriate damages and other recovery, including but not limited to
9 actual damages, punitive damages, and attorneys’ fees and costs pursuant to the Court’s inherent
10 powers and its statutory 11 U.S.C. § 105(a) powers for Defendant's gross violations of the
11 discharge injunction and orders of the Bankruptcy Courts.
12

13
14 **FOURTH CAUSE OF ACTION**

15 **Violation of The Nevada Deceptive Trade Practices Act NRS 598 et seq. (NDTPA),**
16 **Constituting “Consumer Fraud” Under NRS 41.600 et seq.**
(On Behalf of Plaintiffs and the Nevada Class)

17 174. Plaintiff fully incorporates by reference all of the above paragraphs, as though fully
18 set forth herein.

19 175. Through this conduct, Defendant violated NRS 598.0915(15) by knowingly
20 making a false representation regarding Plaintiff’s legal rights and obligations regarding the
21 alleged debt, and by taking legal action Defendant was not entitled to take to collect the alleged
22 debt.
23

24 176. Through this conduct, Defendant violated NRS 598.0923(1)(c) by violating the
25 NDTPA, a Nevada statute.

26 177. Pursuant to NRS 41.600(2)(e), Defendant’s illegal attempts to collect the alleged
27 debts from Plaintiff, in violation of NRS 598.0923(1)(c) and NRS 598.015(15), constitute
28 “consumer fraud.”
29

178. The foregoing acts and omissions constitute numerous and multiple violations of

1 the NDTPA.

2 179. As a result of each and every violation of the NDTPA, the Plaintiff is entitled to
3 any damages sustained, pursuant to NRS 41.600(3)(a); and reasonable attorney's fees and costs
4 pursuant to NRS 41.600(3)(b) from Defendant.

5 **PRAYER FOR RELIEF**

6
7 180. Wherefore, Plaintiff, individually and on behalf of the other members of the Class
8 proposed in this complaint, respectfully requests that the Court enter judgement in favor of Plaintiff
9 and the Class as follows:

- 10
- 11 • Certifying this action as a class action, with a class as defined above;
 - 12 • An award of actual damages, in an amount to be determined at trial or
13 damages of a maximum of \$1,000 pursuant to 15 U.S.C. §
14 1681n(a)(1)(A), against Navient for each incident of willful
15 noncompliance of the FCRA;
 - 16 • An award of punitive damages, as the Court may allow pursuant to 15
17 U.S.C. § 1681n(a)(2), against Navient for each incident of willful
18 noncompliance to the FCRA;
 - 19 • An award of actual damages in an amount to be determined at trial
20 pursuant to 15 U.S.C. § 1681o(a)(1) against Navient for each incident
21 of negligent noncompliance of the FCRA;
 - 22 • An award of costs of litigation and reasonable attorney's fees pursuant
23 15 U.S.C. § 1681n(a)(3) and 15 U.S.C. § 1681o(a)(2) against Navient
24 for each incident of noncompliance of the FCRA;
 - 25 • For equitable relief enjoining Defendant from engaging in the wrongful
26 acts and omissions complained of herein pertaining to the reporting of
27 derogatory, misleading, and inaccurate information on consumers' credit
28 reports;
 - 29 • Awarding compensatory damages to redress the harm caused to Plaintiff
and Class Members in the form of, *inter alia*, unjust enrichment;
 - Actual damages, punitive damages, and attorneys' fees and costs

1 pursuant to the Court's inherent powers and its statutory 11 U.S.C. §
2 105(a) powers for Defendants' gross violations of the discharge
3 injunction and orders of the Bankruptcy Courts

- 4 • Awarding Plaintiff and the Class such other and further relief as this
5 Court deems just and proper.

6
7 **TRIAL BY JURY**

8 181. Pursuant to the seventh amendment to the Constitution of the United States of
9 America and the Constitution of the State of Nevada, Plaintiff is entitled to, and demands, a trial
10 by jury.

11 DATED this 28th day of June 2022.

12 Respectfully submitted,

13 **FREEDOM LAW FIRM**

14 /s/ George Haines

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**to motion for appearance pro hac vice
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