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10 Attorneys for Plaintiffs Matthew C. Kilgore,  
 11 William Bruce Fuller and Kevin Wilhelmy

12 **UNITED STATES DISTRICT COURT**  
 13 **NORTHERN DISTRICT OF CALIFORNIA**

14 MATTHEW C. KILGORE, individually and on )  
 15 behalf of all others similarly situated; )  
 16 WILLIAM BRUCE FULLER, individually and )  
 17 on behalf of all others similarly situated; )  
 18 KEVIN WILHELMY, individually and on )  
 19 behalf of all others similarly situated, )

20 Plaintiffs, )

21 v. )

22 KEYBANK, NATIONAL ASSOCIATION, a )  
 23 national banking association organized under )  
 24 the laws of the United States of America and )  
 25 successor in interest to KEYBANK USA, N.A.; )  
 26 KEY EDUCATION RESOURCES, a division )  
 27 of KEYBANK, NATIONAL ASSOCIATION; )  
 28 GREAT LAKES EDUCATIONAL LOAN )  
 SERVICES, INC., a Wisconsin corporation; )  
 STUDENT LOAN XPRESS, a Delaware )  
 corporation; AMERICAN EDUCATION )  
 SERVICES, form of entity unknown; DOES )  
 1-25, )

Defendants. )

Case No. C08-02958 TEH

**STIPULATION AND ~~[PROPOSED]~~  
 ORDER TO EXTEND TIME TO RESPOND  
 TO COMPLAINT AND TO CONTINUE  
 CASE MANAGEMENT CONFERENCE**

**[DECLARATION OF ANDREW A.  
 AUGUST FILED CONCURRENTLY  
 HEREWITH]**

**STIPULATION AND [PROPOSED] ORDER TO EXTEND TIME  
 TO RESPOND TO COMPLAINT AND CONTINUE CMC  
 CASE NO. C08-02958 TEH**

1                   WHEREAS, the Second Amended Complaint (“Complaint”) asserts claims on behalf  
2 of a California-only putative class of student-borrowers who were attending a helicopter pilot  
3 training school – Silver State Helicopters (“SSH”) – when SSH ceased operations and filed a  
4 voluntary petition for relief under chapter 7 of title 11 of the United States Code, 11 U.S.C. § 101 et  
5 seq., in the United States District Court for the District of Nevada in February 2008, Case No. BK-S-  
6 08-10936-MKN (“SSH Bankruptcy Action”);

7                   WHEREAS, SSH is not a party to this action, but rather, the Complaint asserts claims  
8 against Defendants who are the holders or servicers of loans taken out by students to finance their  
9 education at SSH;

10                   WHEREAS, the putative class is comprised of two classes: (a) a class of student-  
11 borrowers whose loans are held by Defendant Student Loan Xpress, Inc. (“SLX”) and serviced by  
12 Defendant American Education Services (“AES”) (the “SLX Class”); and (b) a class of student  
13 borrowers whose loans are held by Defendant KeyBank, N.A. (“KeyBank”) and serviced by  
14 Defendant Great Lakes Education Loan Services, Inc. (“Great Lakes”) (the “KeyBank Class”);

15                   WHEREAS, approximately 80% of the putative class members are part of the SLX  
16 Class because the vast majority of the loans at issue in this action are held by SLX and serviced by  
17 AES;

18                   WHEREAS, the Complaint asserts claims based on, among other things, Defendants’  
19 alleged involvement with SSH and the absence of the FTC Holder Notice in the students’ loan  
20 documents;

21                   WHEREAS, this action is one of several putative class actions and one collective  
22 action pending against SLX arising from the closure and bankruptcy of SSH, including other actions  
23 pending in the United States District Court for the Middle District of Florida (the “Florida Action”),  
24 and the United States District Court for the District of South Carolina;

25                   WHEREAS, on July 11, 2008, the parties filed a stipulation to extend the time for  
26 Defendants to respond to the Complaint and to continue the Case Management Conference to afford  
27 Plaintiffs and Defendants an opportunity to participate in an early mediation regarding the claims

1 asserted against Defendants;

2 WHEREAS, on July 15, 2008, the Court entered an order setting the Case  
3 Management Conference for October 20, 2008 at 1:30 p.m. and requiring Defendants (in accordance  
4 with the parties' stipulation) to respond to the Complaint by that same date;

5 WHEREAS, on October 2, 2008, Plaintiffs in this action and the Defendants in the  
6 KeyBank Class – KeyBank and Great Lakes – stipulated to participate in mediation at JAMS;

7 WHEREAS, on October 7, 2008, the parties filed a stipulation to extend the time for  
8 Defendants to respond the Complaint to allow the parties to continue the mediation process;

9 WHEREAS, on October 8, 2008, the Court entered a stipulated order extending the  
10 time for Defendants to respond to the Complaint to January 20, 2009;

11 WHEREAS, on the same date, the Court *sua sponte* continued the Case Management  
12 Conference to February 2, 2009 at 1:30 p.m.;

13 **TENTATIVE SETTLEMENT WITH SLX**

14 WHEREAS, Plaintiffs in this action, Plaintiffs in the Florida Action and SLX  
15 participated in three full days of mediation before the Honorable William J. Cahill (Ret.) on August  
16 21, September 23, 2008, and December 10, 2008;

17 WHEREAS, as a result of the mediation, Plaintiffs in this action, Plaintiffs in the  
18 Florida Action, and SLX have reached an agreement in principle on the material terms of settlement  
19 that would resolve the claims asserted against SLX and AES through a proposed nationwide class  
20 action settlement;

21 WHEREAS, the settlement between Plaintiffs and SLX would thus dispose of  
22 approximately 80% of the claims in this action;

23 WHEREAS, the Plaintiffs in this action, Plaintiffs in the Florida Action, and SLX are  
24 presently working to draft the documents necessary to memorialize the settlement terms and seek  
25 preliminary approval of the settlement;

26 WHEREAS, the Plaintiffs in this action, Plaintiffs in the Florida Action, and SLX  
27 will present the settlement for approval to the Honorable Steven D. Merryday of the Middle District  
28

1 of Florida, where the Florida Action, a putative nationwide class action, has been pending since  
2 February 2008;

3 WHEREAS, on January 7, 2009, the Magistrate Judge in the Florida Action  
4 conducted a pre-trial conference. After considering counsel's reports as to the status of their  
5 settlement negotiations and their intent to submit papers in support of the motion for preliminary  
6 approval within the next sixty (60) days; the Magistrate Judge entered an order extending SLX's  
7 deadline to respond to the Complaint to April 10, 2009 and continuing the preliminary pretrial  
8 conference to the same date;

9 **MEDIATION BETWEEN PLAINTIFFS AND KEYBANK**

10 WHEREAS, the Defendants in the KeyBank Class previously advised plaintiffs of  
11 their desire to review SSH records in order to meaningfully participate in mediation;

12 WHEREAS, Plaintiffs first attempted to obtain SSH records from the Trustee of the  
13 SSH Bankruptcy Action in August 2008. Because of difficulties with the Trustee Plaintiffs served a  
14 subpoena on the Trustee on October 22, 2008. The Trustee filed a Motion to Quash in response.  
15 The initial hearing on the Motion to Quash was heard on November 19, 2008, and the matter was  
16 continued to December 5, 2008 to allow time for supplemental briefing. On December 5, 2008 the  
17 Bankruptcy Court denied the Motion to Quash and ordered that SSH records be produced to  
18 Plaintiffs. Plaintiffs received the first tranche of SSH records on December 10, 2008 and the second  
19 tranche on December 30, 2008;

20 WHEREAS, the SSH records will significantly facilitate any efforts to resolve the  
21 claims against KeyBank and Great Lakes, including, but not limited to, records that should confirm  
22 which student-borrowers were attending SSH at the time the school closed and declared bankruptcy  
23 in February 2008 (see Declaration of Andy A. August, ¶ 14);

24 WHEREAS, the Defendants in the KeyBank Class and Plaintiffs have agreed to  
25 participate in mediation at JAMS with the Honorable William J. Cahill (Ret.) and are in the process  
26 of confirming a date in early April 2009;

27 ///

1                                    **REQUEST FOR CONTINUANCE**

2                                    WHEREAS, in light of the substantial progress that has already been made towards  
3 resolving the vast majority of claims in this action and to conserve further the resources of the  
4 parties and this Court, the parties have agreed that the deadline for Defendants' response to the  
5 Complaint should be extended until April 24, 2009 to afford (1) Plaintiffs and SLX a reasonable  
6 opportunity to finalize and fully document the terms of their settlement (which, again, would also  
7 dispose of the claims asserted against Defendant AES), and (2) Plaintiffs and the remaining  
8 Defendants – KeyBank and Great Lakes – an opportunity to resolve their dispute after an  
9 opportunity to review records from SSH's Bankruptcy Trustee;

10                                    WHEREAS, the parties also jointly request that the Court continue the Case  
11 Management Conference currently set for February 2, 2009 to April 27, 2009 at 1:30 p.m.;

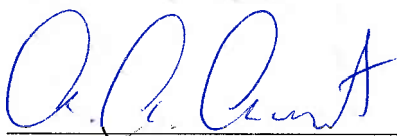
12                                    WHEREAS, all parties agree that this extension will significantly facilitate their  
13 efforts to resolve this matter by allowing them to concentrate on the settlement process without  
14 simultaneously being required to fully brief and litigate the threshold legal issues raised in the  
15 Complaint.

16                                    NOW, THEREFORE, IT IS HEREBY STIPULATED by and between the parties  
17 hereto, through their respective counsel of record, that all Defendants shall have up to and including  
18 April 24, 2009 to answer, move, or otherwise respond to the Complaint. The parties also jointly  
19 request that the Case Management Conference be continued to April 27, 2009 at 1:30 p.m.

20 Dated: January 14, 2009

21                                    Respectfully submitted,

22                                    **PINNACLE LAW GROUP LLP**

23                                      
24 By: \_\_\_\_\_  
25                                    Andrew A. August (SBN 112851)  
26                                    Attorneys for Plaintiffs  
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Dated: January 13, 2009

**SIDLEY AUSTIN LLP**

By: *Jennifer Altfeld Landau*  
Jennifer Altfeld Landau (SBN 153780)  
Attorneys for Defendant  
STUDENT LOAN XPRESS, INC.

Dated: January \_\_, 2009

**NIXON PEABODY LLP**

By: \_\_\_\_\_  
Courtney Q. Brooks  
Attorneys for Defendants  
KEYBANK, NATIONAL  
ASSOCIATION AND ITS DIVISION  
KEY EDUCATION RESOURCES,  
AND GREAT LAKES EDUCATIONAL  
LOAN SERVICES, INC.

Dated: January \_\_, 2009

**MCKENNA LONG & ALDRIDGE LLP**

By: \_\_\_\_\_  
Ann G. Grimaldi (SBN 160893)  
Attorneys for Defendant  
AMERICAN EDUCATION SERVICES

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Dated: January \_\_, 2009

**SIDLEY AUSTIN LLP**

By: \_\_\_\_\_  
Jennifer Altfeld Landau (SBN 153780)  
Attorneys for Defendant  
STUDENT LOAN XPRESS, INC.

Dated: January 14, 2009

**NIXON PEABODY LLP**

By: Courtney Brooks  
Courtney Q. Brooks  
Attorneys for Defendants  
KEYBANK, NATIONAL  
ASSOCIATION AND ITS DIVISION  
KEY EDUCATION RESOURCES,  
AND GREAT LAKES EDUCATIONAL  
LOAN SERVICES, INC.

Dated: January \_\_, 2009

**MCKENNA LONG & ALDRIDGE LLP**

By: \_\_\_\_\_  
Ann G. Grimaldi (SBN 160893)  
Attorneys for Defendant  
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Dated: January \_\_, 2009

**SIDLEY AUSTIN LLP**

By: \_\_\_\_\_  
Jennifer Altfeld Landau (SBN 153780)  
Attorneys for Defendant  
STUDENT LOAN XPRESS, INC.

Dated: January \_\_, 2009

**NIXON PEABODY LLP**

By: \_\_\_\_\_  
Courtney Q. Brooks  
Attorneys for Defendants  
KEYBANK, NATIONAL  
ASSOCIATION AND ITS DIVISION  
KEY EDUCATION RESOURCES,  
AND GREAT LAKES EDUCATIONAL  
LOAN SERVICES, INC.

Dated: January 13, 2009

**MCKENNA LONG & ALDRIDGE LLP**

By: R. Woodson for  
Ann G. Grimaldi (SBN 160893)  
Attorneys for Defendant  
AMERICAN EDUCATION SERVICES



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**ORDER**

Based on the foregoing stipulation of counsel and good cause appearing therefore, it is  
HEREBY ORDERED that all Defendants shall have up to and including April 24, 2009 to answer,  
move, or otherwise respond to the Complaint. Additionally, the Case Management Conference is  
hereby continued to April 27, 2009 at 1:30 p.m.

PURSUANT TO STIPULATION OF COUNSEL, IT IS SO ORDERED.

Dated: January 15, 2009

