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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  
 FOR DEFENDANTS STUDENT LOAN  
 XPRESS, INC. AND AMERICAN  
 EDUCATION SERVICES**

**[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 asserted against Defendants;

2 WHEREAS, on July 15, 2008, the Court entered an order setting the Case  
3 Management Conference for October 20, 2008 and requiring Defendants to respond to the  
4 Complaint by that same date;

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

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

9 WHEREAS, on the same date, the Court *sua sponte* continued the Case Management  
10 Conference to February 2, 2009;

11 WHEREAS, on January 14, 2009, the parties filed another stipulation to extend the  
12 time for all Defendants to respond to the Complaint;

13 WHEREAS, the January 14 stipulation advised, inter alia, that (a) Plaintiffs in this  
14 action, Plaintiffs in the Florida Action and SLX had reached an agreement in principle on the  
15 material terms of a settlement that would resolve the claims asserted SLX and AES through a  
16 proposed nationwide class action settlement, and (b) the parties intended to present the proposed  
17 settlement to the Honorable Steven D. Merryday of the Middle District of Florida, where the Florida  
18 Action, a putative nationwide class action, has been pending since February 2008;

19 WHEREAS, on January 16, 2009, the Court entered a stipulated order extending the  
20 time for Defendants to respond to the Complaint to April 24, 2009 and continued the Case  
21 Management Conference to April 27, 2009 at 1:30 p.m.;

22 **STATUS OF FLORIDA ACTION**

23 WHEREAS, on January 7, 2009, the Magistrate Judge in the Florida Action  
24 conducted a pretrial conference, and after considering counsel's report as to the status of their  
25 settlement negotiations, entered an order extending SLX's deadline to respond to the complaint to  
26 April 10, 2009 and continuing the preliminary pretrial conference to that same date;

27 WHEREAS, on April 3, 2009, the parties in the Florida Action submitted a joint  
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1 motion (a) reporting on their efforts to finalize the settlement and present it and associated  
2 documents (*e.g.*, the notice, claim forms, etc.) for preliminary approval, (b) advising of their  
3 intention to submit the nationwide settlement for preliminary approval before May 28, 2009, and (c)  
4 requesting an extension of time for SLX to respond to the complaint until May 28, 2009;

5 WHEREAS, on April 8, 2009, Judge Merryday entered an order extending the time  
6 for SLX to respond to the complaint until May 28, 2009;

7 WHEREAS, on April 10, 2009, the Magistrate Judge conducted another pretrial  
8 conference;

9 **REQUEST FOR CONTINUANCE**

10 WHEREAS, although prior stipulations included Defendants KeyBank and Great  
11 Lakes, the present stipulation is only between Plaintiffs, SLX and AES;

12 WHEREAS, since January, Plaintiffs and SLX have continued to work diligently to  
13 finalize the settlement that would resolve the claims asserted against SLX and AES on a nationwide  
14 basis;

15 WHEREAS, among other things, Plaintiffs in this action, Plaintiffs in the Florida  
16 Action and SLX have (a) engaged in confirmatory discovery; (b) negotiated a protective order to  
17 facilitate the exchange of information in connection with the confirmatory discovery process (this  
18 order was entered by the Court in the Florida Action); (c) exchanged multiple drafts of a sixty-five  
19 (65) page settlement agreement (which they expect to finalize in the next few weeks); and  
20 (d) exchanged drafts of the other documents that will be filed in connection with their joint request  
21 for preliminary approval of the settlement, including the motion for preliminary approval, the notice  
22 to be disseminated to class members and the claim forms. In addition, since January, Plaintiffs'  
23 counsel in both actions have reviewed extensive and voluminous records obtained from SSH's  
24 bankruptcy trustee;

25 WHEREAS, despite their diligent efforts, Plaintiffs and SLX require a modest  
26 amount of additional time to finalize the settlement and to present the settlement agreement and  
27 associated documents (*e.g.*, the notice and claim forms) for preliminary approval to the Court in the

1 Florida Action;

2 WHEREAS, as the parties have advised the Court in the Florida Action, this  
3 additional time is necessary to complete the following tasks, among other things: (a) compile the  
4 class member data and information necessary to provide notice to appropriate state and federal  
5 officials as required by the Class Action Fairness Act (*see* 28 U.S.C. § 1715); (b) finalize the  
6 settlement agreement, class notice, claim forms, and other documents that will be submitted in  
7 connection with the parties' joint request for preliminary approval; and (c) coordinate with a third-  
8 party settlement administrator who will be responsible for the dissemination of the notice and  
9 administration of the settlement;

10 WHEREAS, upon receiving preliminary approval of the proposed nationwide  
11 settlement, Plaintiffs in this action will dismiss the claims against SLX and AES without prejudice  
12 pending the Fairness Hearing and final approval process in the Florida Action;

13 WHEREAS, because Plaintiffs and SLX require additional time to complete the  
14 aforementioned tasks and to submit the proposed nationwide settlement for preliminary approval to  
15 the Court in the Florida Action, they request that the deadline for SLX and AES to respond to the  
16 Complaint be extended to June 5, 2009;

17 WHEREAS, Plaintiffs, SLX and AES also jointly request that the Court continue the  
18 Case Management Conference as to them only to June 8, 2009 at 1:30 p.m.; and

19 WHEREAS, Plaintiffs, SLX and AES agree that this extension will promote  
20 efficiency and judicial economy by permitting the parties to concentrate their efforts on finalizing  
21 the settlement and presenting it for preliminary approval to the Court in the Florida Action rather  
22 than filing moot adversarial motions (or otherwise responding to the Complaint that will be  
23 dismissed as to SLX and AES shortly after the nationwide settlement receives preliminary approval).

24 NOW, THEREFORE, IT IS HEREBY STIPULATED by and between Plaintiffs,  
25 SLX and AES, through their respective counsel of record, that SLX and AES shall have up to and  
26 including June 5, 2009 to answer, move, or otherwise respond to the Complaint. The parties also  
27 jointly request that the Case Management Conference for SLX and AES be continued to June 8,

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2009 at 1:30 p.m.

Dated: April 15, 2009

Respectfully submitted,

**PINNACLE LAW GROUP LLP**

By: /s/ Andrew A. August  
Andrew A. August (SBN 112851)  
Attorneys for Plaintiffs

Dated: April 15, 2009

**SIDLEY AUSTIN LLP**

By: /s/ Robert M. Stone  
Robert M. Stone (SBN 205365)  
Attorneys for Defendant  
STUDENT LOAN XPRESS, INC.

Dated: April 15, 2009

**MCKENNA LONG & ALDRIDGE LLP**

By: /s/ Ann G. Grimaldi  
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 Student Loan Xpress, Inc. (“SLX”) and American Education Services  
 (“AES”) shall have up to and including June 5, 2009 to answer, move, or otherwise respond to the  
 Complaint. Additionally, the Case Management Conference is hereby continued for SLX and AES  
 until June 8, 2009 at 1:30 p.m.

PURSUANT TO STIPULATION OF COUNSEL, IT IS SO ORDERED.

Dated: April 16, 2009



