

## **EXHIBIT A**

SUPERIOR COURT OF THE STATE OF NEW JERSEY  
BERGEN COUNTY

----- X	:
ASHLEY BOTELLO, individually, and on behalf	:
of other similarly situated consumers,	:
	:
Plaintiff,	:
	:
- against -	:
	:
NAVIENT SOLUTIONS, LLC,	:
	:
Defendant.	:
----- X	:

To the above-named Defendants:

***YOU ARE HEREBY SUMMONED*** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within thirty-five (35) days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief as demanded in the complaint. The nature of this action is negligence. The relief sought is damages. Upon your failure to appear, judgment will be taken against you by default together with the costs of this action.

Dated: August 15th, 2022

/s/ Daniel Zemel  
Daniel Zemel, Esq.  
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**Attorneys for Plaintiff**

TO: Navient Solutions, LLC  
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ASHLEY BOTELLO, individually, and on	)	SUPERIOR COURT OF NEW JERSEY
behalf of other similarly situated consumers,	)	BERGEN COUNTY
	)	LAW DIVISION
Plaintiff,	)	
vs.	)	Case No.:
	)	
NAVIENT SOLUTIONS, LLC,	)	
	)	CIVIL COMPLAINT –
Defendants.	)	CLASS ACTION
	)	
	)	

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Plaintiff, Ashley Botello (“Plaintiff”), alleges:

### **PRELIMINARY STATEMENT**

1. This is an action for fraud, violation of the Fair Credit Reporting Act, 15 U.S.C. §1681 *et seq.* (hereinafter “FCRA”), and breach of fiduciary duties in the course of servicing Plaintiff’s student loans.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to R. 4:3-2.

3. Venue is proper in the Superior Court of New Jersey, Bergen County pursuant to R. 4:3-2 because Plaintiff resides in this county and the cause of action arose in this county.

### **PARTIES**

4. Plaintiff is a natural person, who at all relevant times has resided in Carlstadt, New Jersey.
5. Defendant Navient Solutions LLC (“Navient”) is a business entity that regularly conducts business in New Jersey with its principal place of business as 13865 Sunrise Valley Dr. Ste. 100 Herndon, Virginia, 20171. Navient is a “furnisher” as defined in 15 U.S.C. § 1681a(f) and engaged in the business of assembling, evaluating, and disbursing information concerning consumers for the purpose of furnishing consumer reports, as defined in 15 U.S.C. §1681 a(d), to third parties.

### **FACTUAL STATEMENT**

6. Navient has been servicing a number of Plaintiff’s loans from as early as 2006.
7. The varying loans have different interest rates.
8. During the course of her regular payments, Plaintiff chose to focus on her higher interest student loan accounts and sought to pay those accounts off first.
9. Before choosing which loan to pay off, Defendant communicated to Plaintiff the exact payoff amount for account 502935\*\*\*\*, which had the highest rate of interest amongst other loans, and was advised that Plaintiff could pay off this loan to avoid the higher interest rate.
10. Based on these representations, on or about April 2017, Plaintiff made the payment with the intent to pay off account 502935\*\*\*\*, by issuing a check to Navient in the amount of \$26,792.00.
11. Navient’s interests however directly conflict with Plaintiff. Navient would prefer for Plaintiff to pay off the lower interest loans, so that it can profit off of the higher interest rates. Accordingly, when Navient received Plaintiff’s payment, Navient chose to apply the payment to different accounts with lower interest rates in order to profit more from Plaintiff.

12. Defendant has a strong financial interest in preventing student loan debtors from paying additional interest more quickly than scheduled – larger profits.

13. For example, a loan with a higher principal balance will accrue interest at a higher rate. If Defendant refused to apply extra loan payments to principal only, but rather applied it to future payments or to other loans, the debtor will pay more significantly more interest over the life of the loan.

14. Despite the payment in full, Plaintiff discovered that Navient continues to report a balance over \$8,000 on Plaintiff's paid off account.

15. This information is inaccurate.

16. This is part of a systemic attempt to misapply single loan payments across multiple loans to ensure greater profits. Defendant actively seeks to prevent student loan debtors from making payments to a specific loan, even when a debtor directs a payment to a specific one. To this end, Defendant will split the single payment across a debtor's multiple loans, applying that payment to all of the debtor's interest due, before applying the difference of the payment amount to outstanding principal.

17. On or about August 2020, Plaintiff sent a dispute to the credit reporting agencies Equifax, Experian, and TransUnion.

18. After receiving a dispute from Plaintiff concerning the erroneous information of the Navient Account, Defendants Equifax, Experian and TransUnion forwarded Plaintiff's disputes on to Navient.

19. Defendant failed to conduct a reasonable investigation and continued reporting an erroneous balance.

### **CLASS ACTION ALLEGATIONS**

#### **The Class**

20. Plaintiff brings this as a class action pursuant to New Jersey Court Rule 4:32 on behalf of herself and all other similarly situated consumers who have been subject to the same misapplication of funds towards loan with lesser interest rates, (the “Class”).

21. Excluded from the Class is Defendant herein, and any person, firm, trust, corporation, or other entity related to or affiliated with the defendant, including, without limitation, persons who are officers, directors, employees, associates or partners of Defendant.

#### **Numerosity**

22. Upon information and belief, there have been thousands of consumers throughout the United States that have been subject to the same systemic policies of misapplication by Defendant. The members of the Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

23. The exact number and identities of the Class members are unknown at this time and can only be ascertained through discovery. Identification of the Class members is a matter capable of ministerial determination from Defendant’s records.

#### **Common Questions of Law and Fact**

24. There are questions of law and fact common to the class that predominates over any questions affecting only individual Class members. These common questions of law and fact include, without limitation: (i) Whether Defendant engaged in unfair and fraudulent conduct by misapplying loan payments; (ii) Whether Plaintiff and the Class have been injured by Defendant's conduct; (iii) Whether Plaintiff and the Class have sustained damages and are entitled to restitution as a result of Defendant's wrongdoing and, if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and (iv) Whether Plaintiff and the Class are entitled to declaratory and/or injunctive relief.

#### **Typicality**

25. Plaintiff's claims are typical of the claims of the Class, and Plaintiff has no interests adverse or antagonistic to the interests of other members of the Class.

**Protecting the Interests of the Class Members**

26. Plaintiff will fairly and adequately represent the Class members' interests, in that the Plaintiff's counsel is experienced and, further, anticipates no impediments in the pursuit and maintenance of the class action as sought herein.

**Proceeding Via Class Action is Superior and Advisable**

27. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted.

28. The members of the Class are generally unsophisticated individuals, whose rights will not be vindicated in the absence of a class action.

29. Prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying standards for the parties.

30. A class action will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment also will permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein.

31. Absent a class action, the Class members will continue to suffer losses borne from Defendant's breaches of Class members' statutorily protected rights as well as monetary damages, thus allowing and enabling: (a) Defendant's conduct to proceed and; (b) Defendant to further enjoy the benefit of its ill-gotten gains.

32. Defendant has acted, and will act, on grounds generally applicable to the entire Class, thereby making appropriate a final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

**COUNT I**  
**VIOLATION OF THE FAIR CREDIT REPORTING ACT**  
**BY NAVIENT**

33. Plaintiff repeats, realleges, and reasserts the allegations contained in the paragraphs above and incorporates them as if specifically set forth at length herein.

34. Plaintiff repeats the allegations contained in the above paragraphs and incorporates them as if specifically set forth at length herein.

35. At all times pertinent hereto, Navient was a “person” as that term is used and defined under 15 U.S.C. § 1681a.

36. Navient willfully and negligently supplied Equifax, Experian, and TransUnion with information about Plaintiff that was false, misleading, and inaccurate.

37. Navient willfully and negligently failed to conduct an investigation of the inaccurate information that Plaintiff disputed.

38. Navient willfully and negligently failed to report the results of its investigation to the relevant consumer reporting agencies.

39. Navient willfully and negligently failed to properly participate, investigate, and comply with the reinvestigations that were conducted by any and all credit reporting agencies, concerning the inaccurate information disputed by Plaintiff.



40. Navient willfully and negligently continued to furnish and disseminate inaccurate and derogatory credit, account, and other information concerning Plaintiff to credit reporting agencies.

41. Consumer reports were prepared, compiled, issued, assembled, transferred, published, and otherwise reproduced with the Navient error to third parties regarding Plaintiff.

42. Navient willfully and negligently failed to comply with the requirements imposed on furnishers of information pursuant to 15 U.S.C. § 1681s-2(b).

43. As a direct and proximate cause of Navient's failure to perform its duties under the FCRA, Plaintiff has suffered injury to her creditworthiness.

44. Plaintiff has also suffered embarrassment, humiliation, and other emotional injuries as a result of errors on her credit report and creditworthiness

45. Navient's conduct, action and inaction were willful, rendering it liable for actual and statutory damages, and punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n

46. In the alternative, Navient was negligent entitling the Plaintiff to recover actual damages under 15 U.S.C. § 1681o

**COUNT II**  
**BREACH OF FIDUCIARY DUTY**  
**BY NAVIENT**

47. Plaintiff repeats, realleges, and reasserts the allegations contained in the paragraphs above and incorporates them as if specifically set forth at length herein.

48. Navient owed a fiduciary duty to Plaintiff by being in a superior position and managing her student loan payments.

49. Navient breached that duty by applying Plaintiff's payment to different accounts with lower interest than the one Plaintiff intended to pay off.

50. Plaintiff was directly and proximately harmed by Navient's actions, which caused Plaintiff to incur more interest than she would have otherwise.

**COUNT III**  
**VIOLATION OF NEW JERSEY CONSUMER FRAUD ACT**  
**N.J. STAT. ANN. §§ 56:8-1, ET SEQ.**  
**BY NAVIENT**

51. Plaintiff repeats, realleges, and reasserts the allegations contained in the paragraphs above and incorporates them as if specifically set forth at length herein.

52. Defendants' business acts and practices alleged herein constitute unfair, unconscionable and/or deceptive methods, acts, or practices under the New Jersey Consumer Fraud Act, N.J.S.A. §§ 56:8-1, *et seq.*

53. Plaintiff is a "person" within the meaning of N.J.S.A. § 56:8-1(d).

54. Pursuant to the New Jersey Consumer Fraud Act, "merchandise" includes "any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale." N.J.S.A. § 56:8-1(c). As a service offered, Defendant's offering fits within the meaning of "merchandise."

55. Defendant engaged in the unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, and the knowing, concealment, suppression, or omission of a material fact, with respect to the services offered to Plaintiff.

56. Such conduct was directed toward Plaintiff.

57. Plaintiff relied on the ability to make early payments and was damaged as a result.

**COUNT IV**  
**BREACH OF CONTRACT**  
**BY NAVIENT**

58. Plaintiff repeats, realleges, and reasserts the allegations contained in the paragraphs above and incorporates them as if specifically set forth at length herein.

59. The contract governing the student loan allows for Plaintiff to make early payments or direct an entire payment to one loan or account.

60. By redirecting Plaintiff's payment, Defendant breached the contract between the parties.

**COUNT V**  
**UNJUST ENRICHMENT**  
**BY NAVIENT**

61. Plaintiff repeats, realleges, and reasserts the allegations contained in the paragraphs above and incorporates them as if specifically set forth at length herein.

62. By engaging in unfair and deceptive practices, Defendant was unjustly enriched by Plaintiff's payment of funds. Despite representations that Plaintiff could pay off individual loans at her choosing, Defendant ignored Plaintiff's instruction to yield higher profits.

63. Plaintiff suffered financial loss as a result.

**COUNT V**  
**COMMON LAW FRAUD**

64. Plaintiff repeats the allegations contained in the above paragraphs and incorporates them as if specifically set forth at length herein.

65. Defendant made specific representations to Plaintiff regarding the ability to pay off a single loan, upon which Plaintiff relied.

66. Defendant made such representations with the specific intent for Plaintiff and other consumers to rely on these representations. All the while, Defendant knew these representations were false.

67. Plaintiff justifiably relied on said representations and was damaged as a result.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court do the following:

- A. Certify the class described herein and appoint Plaintiff as Lead Plaintiff, and Plaintiff's Counsel as Lead Counsel;
- B. Enter judgment against Defendant for statutory and actual damages for the Plaintiff and the class;
- C. Award costs and reasonable attorneys' fees;
- D. Grant such other and further relief as may be just and proper.

Dated this 22<sup>nd</sup> day of July, 2022.

Respectfully Submitted,

/s/ Daniel Zemel  
Daniel Zemel, Esq.  
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Attorneys for Plaintiff

**JURY DEMAND**

Plaintiff hereby prays and demands that this Court allow and permit a Jury Trial as to all legal and factual issues giving rise to the within complaint.

/s/Daniel Zemel  
Daniel Zemel, Esq.  
ATTORNEY FOR PLAINTIFF

DESIGNATION OF TRIAL COUNSEL

Plaintiff hereby designates Nicholas Linker, Esq. and Daniel Zemel as Trial Counsel pursuant to Rule 4:25-4.

/s/Daniel Zemel

Daniel Zemel, Esq.  
ATTORNEY FOR PLAINTIFF

CERTIFICATION PURSUANT TO R.4:5-1

The undersigned certifies that the matter in controversy is not the subject matter of any other action, and not the subject matter of any pending or anticipated arbitration proceeding, and that to the best of my knowledge all known parties have been joined as party litigants.

Additionally, I recognize the continuing obligation of each party to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this certification.

/s/Daniel Zemel

Daniel Zemel, Esq.  
ATTORNEY FOR PLAINTIFF

CERTIFICATION PURSUANT TO R.1:38-7

I Certify that confidential personal identifiers have been redacted from documents now submitted to the Court and will be redacted from all documents submitted in the future in accordance with R.1:38-7(a).

/s/Daniel Zemel

Daniel Zemel, Esq.  
ATTORNEY FOR PLAINTIFF