

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MEREDITH D. DAWSON,

Plaintiff,

v.

GREAT LAKES EDUCATIONAL
LOAN SERVICES, INC., GREAT
LAKES HIGHER EDUCATION
CORPORATION, JILL LEITL, DAVID
LENTZ, MICHAEL WALKER, UNITED
STATES OF AMERICA, UNITED
STATES DEPARTMENT OF
EDUCATION, and ARNE DUNCAN in
his official capacity as United States
Secretary of Education,

Civil Action No. 15 CV 475

Defendants.

**DEFENDANTS GREAT LAKES'
ANSWER AND COUNTERCLAIM**

Defendants Great Lakes Educational Loan Services, Inc., Great Lakes
Higher Education Corporation, Jill Leidl, David Lentz, and Michael Walker
(referred to herein collectively as Great Lakes, and the latter three as the
Individual Defendants), by their undersigned attorneys, answer the complaint as
follows:

1. State that they lack knowledge or information sufficient to form
a belief about the truth of the allegations of paragraph 1 insofar as they

concern the personal knowledge of the plaintiff (Dawson) and her counsel's investigation of the substance of her allegations.

2. Admit the allegations of paragraph 2, except state that Great Lakes lacks knowledge or information sufficient to form a belief about the truth of the allegations about why the Department of Education has contracted with private parties to act as student-loan servicers.

3. Admit the allegations of paragraph 3, except deny any implication that defendant Great Lakes Higher Education Corporation is a federal student-loan servicer, alleging further in this respect that the entity that services federal student loans, including Dawson's, is defendant Great Lakes Educational Loan Services, Inc.

4. With respect to the allegations of paragraph 4, admit that Great Lakes has certain contractual obligations to the United States (and, more specifically, to the Department of Education) to service borrowers' loans; deny the remainder of the allegations of paragraph 4, which concern Dawson's theories regarding the wrongful compounding or capitalization of interest.

5. Deny the allegations of paragraph 5.

6. Deny the allegations of paragraph 6 insofar as they concern Great Lakes; further state that the remainder of paragraph 6 contains allegations and legal conclusions, as part of the claim in Count IV against the United States, that Great Lakes needs not and does not either admit or deny.

7. Deny the allegations of paragraph 7.

8. Admit the allegations of paragraph 8.

9. Admit the allegations of paragraph 9, but allege further that defendant Great Lakes Higher Educational Corporation's ownership of all the shares of defendant Great Lakes Higher Educational Loan Services, Inc. is not a ground to assert liability against the former entity.

10. With respect to the allegations of paragraph 10, admit that Ms. Leitl is the Chief Operating Officer of Great Lakes Educational Loan Services, Inc; deny the remaining allegations of paragraph 10 insofar as they do not define "all relevant times," alleging further in this respect that Ms. Leitl served as Chief Servicing Officer of defendant Great Lakes Higher Educational Loan Services, Inc. from February 8, 2010 until May 3, 2015.

11. Deny the allegations of paragraph 11, inasmuch as Mr. Lentz is not now the Chief Technology Officer of defendant Great Lakes Higher Educational Loan Services, Inc., inasmuch as Mr. Lentz is not and never has been domiciled in Wisconsin, and inasmuch as the allegations of paragraph 11 do not define "all relevant times," alleging further in this respect that Mr. Lentz, who is domiciled in Illinois, served as Chief Technology Officer of defendant Great Lakes Higher Educational Loan Services, Inc. from December 30, 2001 until March 21, 2014.

12. Deny the allegations of paragraph 12, inasmuch as Mr. Walker is not and never has been the Chief Information Officer or Chief Technology Strategy Officer of defendant Great Lakes Higher Education Corporation and

inasmuch as the allegations of paragraph 12 do not define “all relevant times,” alleging further in this respect that Mr. Walker served in the role of Chief Infrastructure Officer of defendant Great Lakes Higher Educational Loan Services, Inc. from December 30, 2001 until July 1, 2012, as Chief Technical Architect and Procurement Officer of the same entity from July 2, 2012 through January 31, 2013, and as Chief Technology Strategy Officer of the same entity from February 1, 2013 through August 7, 2015.

13. Admit the allegations of paragraph 13.

14. Admit the allegations of paragraph 14.

15. Admit the allegations of paragraph 15.

16. With respect to the allegations of paragraph 16, state that Great Lakes lacks information sufficient to form a belief as to the truth of the allegations as to Dawson’s domicile; allege further that Great Lakes began servicing at least some of Dawson’s loans in March 2010, when they were transferred from another servicer, and that Dawson continued to take out additional loans from September 2010 until July 2012, at least some of which are serviced by Great Lakes, to fund her education. In total, Dawson borrowed \$24,250 in student loans (not including the interest that accrued on those loans before her graduation) for which Great Lakes acts as the servicer.

17. Admit the allegations of paragraph 17.

18. With respect to the allegations of paragraph 18, admit that this Court has discretion to exercise supplemental jurisdiction under 28 U.S.C.

§ 1367 over Dawson’s common-law tort claims because they “are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution”; though affirmatively asserts that, if the Court dismisses Dawson’s RICO claim and determines that it lacks jurisdiction under 28 U.S.C. § 1332(d), it should decline, under 28 U.S.C. § 1367(c), to exercise supplemental jurisdiction over Dawson’s state-law claims; further deny the remainder of the allegations of paragraph 18 and specifically that the complaint includes a cause of action pleaded on behalf of a class for which “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs,” such that it satisfies the requirements for original jurisdiction in this Court under 28 U.S.C. § 1332(d)(2).

19. State that paragraph 19 contains allegations and legal conclusions concerning Dawson’s claim in Count IV against the United States that Great Lakes needs neither admit nor deny.

20. Deny the allegations of paragraph 20 insofar as they speculate regarding Congress’s intentions or motivations in passing the Higher Education Act of 1965.

21. Deny the allegations of paragraph 21 insofar as they constitute an over-simplification of recent global financial events and the United States government’s response to said events, leaving out critical additional information.

22. Admit the allegations of paragraph 22.

23. Admit the allegations of paragraph 23.

24. Admit the allegations of paragraph 24, alleging further in this respect that the number of accounts serviced by Great Lakes does not equal the number of unique borrowers.

25. Deny the allegations of paragraph 25 insofar as Dawson speculates regarding Congress's intentions or motivations in passing the Higher Education Act of 1965, oversimplifies the regulations passed by Congress, and asserts the relevance of four, and only four, "mechanisms" passed by Congress.

26. Admit the allegations of paragraph 26 insofar as they describe generally income-driven repayment plans.

27. Admit the allegations of paragraph 27 insofar as they describe generally a deferment and the qualifications therefor, alleging further in this respect that in-school deferments do not require borrowers to provide their student-loan servicers with documentation; Great Lakes, for example, can obtain the necessary information automatically through other means.

28. Admit the allegations of paragraph 28 insofar as they describe generally a forbearance and the qualifications therefor, alleging further in this respect that certain types of forbearances may be granted upon an oral request.

29. Admit the allegations of paragraph 29 insofar as they describe generally a consolidation.

30. Admit the allegations of paragraph 30 insofar as they describe generally a forbearance or deferment and the qualifications therefor, alleging further in this respect that certain types of forbearances or deferments can be granted upon oral request or automatically, without written documentation.

31. Deny the allegations of paragraph 31 insofar as they speculate regarding Congress's intentions and contemplations regarding an administrative forbearance.

32. Affirmatively state that the correct citation for the FFELP-loan regulation is 34 C.F.R. § 682.211(f); admit the remaining allegations of paragraph 32.

33. Deny the allegations contained in footnote 9; admit the remaining allegations of paragraph 33.

34. Admit the allegations of paragraph 34.

35. With respect to the allegations of paragraph 35, admit that Great Lakes has certain contractual obligations to the United States (and, more specifically, to the Department of Education) to service borrowers' loans; further deny the remainder of the allegations of paragraph 35.

36. With respect to the allegations of paragraph 36, admit that when a borrower indicates his or her desire to apply for deferment, forbearance, consolidation loan, or IDR plan, and the borrower is delinquent

on a loan and has not authorized payment through an Automated Clearing House mechanism, Great Lakes places the borrower's loans into an administrative forbearance and that Great Lakes then records the timing of and reason for the forbearance in the borrower's loan history; further deny the remainder of the allegations of paragraph 36.

37. Deny the allegations of paragraph 37.

38. With respect to the allegations of paragraph 38, deny that the website, www.mygreatlakes.org, is for lenders to access the "precise dollar value of its federal student loan portfolio down to the borrower or loan level," alleging further in this respect that this website is for borrowers, not lenders; admit the remaining allegations of paragraph 38.

39. Deny the allegations of paragraph 39.

40. Deny the allegations of paragraph 40.

41. Deny the allegations of paragraph 41, as set forth in the affirmative allegations contained in Great Lakes' counterclaim.

42. Deny the allegations of paragraph 42, as set forth in the affirmative allegations contained in Great Lakes' counterclaim.

43. With respect to the allegations of paragraph 43, admit only insofar as they accurately reflect the date of the November 7, 2007 control report and the period covered; state that the paragraph quoted from the control report speaks for itself as to its contents; and deny the remainder of the allegations of paragraph 43, if any.

44. With respect to the allegations of paragraph 44, admit only insofar as they accurately reflect the date of the November 11, 2008 control report and the period covered; state that the paragraph quoted from the control report speaks for itself as to its contents; and deny the remainder of the allegations of paragraph 44, if any.

45. With respect to the allegations of paragraph 45, admit only insofar as they accurately reflect the date of the November 12, 2009 control report and the period covered; state that the paragraph quoted from the control report speaks for itself as to its contents; and deny the remainder of the allegations of paragraph 45, if any.

46. With respect to the allegations of paragraph 46, admit only insofar as they accurately reflect the date of the November 9, 2010 control report and the period covered; state that the paragraph quoted from the control report speaks for itself as to its contents; deny the remainder of the allegations of paragraph 46, if any; and allege further in this respect that there are multiple control reports in 2009 and 2010, some of which overlap as to the period covered.

47. Deny the allegations of paragraph 47.

48. With respect to the allegations of paragraph 48, admit only insofar as they accurately reflect the date of the November 9, 2011 control

report and the period covered; state that the quoted paragraph speaks for itself; deny the remainder of the allegations of paragraph 48, if any.

49. Deny the allegations of paragraph 49.

50. With respect to the allegations of paragraph 50, state that Dawson has omitted certain key elements of the Management Assertion quoted in her complaint so as to change the import of that section; and deny the remainder of the allegations of paragraph 50.

51. With respect to the allegations of paragraph 51, admit that Individual Defendants Leitl, Walker, and Lentz signed the 2011 Assertion in accordance with applicable regulations; deny the remainder of the allegations of paragraph 51.

52. With respect to the allegations of paragraph 52, admit only insofar as they accurately reflect the date of the August 13, 2013 control report and the period covered; state that Dawson has misquoted the paragraph from the 2013 control report; and deny the remainder of the allegations of paragraph 52, if any.

53. With respect to the allegations of paragraph 53, state that Dawson has omitted certain key elements of the Management Assertion quoted in her complaint so as to change the import of that section; deny the remainder of the allegations of paragraph 53.

54. With respect to the allegations of paragraph 54, admit that Individual Defendant Leitl signed the 2013 Assertion in accordance with applicable regulations; deny the remainder of the allegations of paragraph 54.

55. Admit the allegations of paragraph 55 only insofar as they reflect the date of and period covered by the February 13, 2014 control report; deny the remainder of the allegations of paragraph 55.

56. With respect to the allegations of paragraph 56, state that Dawson has failed to identify the specific source for the quoted paragraphs; deny the remainder of the allegations of paragraph 56.

57. Deny the allegations of paragraph 57.

58. Deny the allegations of paragraph 58.

59. Deny the allegations of paragraph 59.

60. State that the terms of Great Lakes' servicing contract with the Department of Education speak for themselves as to their contents and deny any allegation of paragraph 60 that is inconsistent with those terms.

61. Deny the allegations of paragraph 61.

62. Admit that the Department of Education is Great Lakes' largest servicing customer and that the overwhelming majority of student loans serviced by Great Lakes consistently have been FFELP or Direct Loans held by the Department; deny the remaining allegations of paragraph 62.

63. Deny the allegations of paragraph 63.

64. With respect to the allegations of paragraph 64, admit that Dawson is a borrower of both FFELP and Direct Loans serviced by Great Lakes; deny the remainder of the allegations of paragraph 64, as set forth in the affirmative allegations contained in Great Lakes' counterclaim.

65. With respect to the allegations of paragraph 65, admit that Great Lakes placed Dawson's loans into administrative-forbearance status on October 3, 2013; further deny the remainder of the allegations of paragraph 65, as set forth in the affirmative allegations contained in Great Lakes' counterclaim, including that Great Lakes wrongfully capitalized \$819.65 in interest on Dawson's loans.

66. Deny the allegations of paragraph 66, as set forth in the affirmative allegations contained in Great Lakes' counterclaim.

67. With respect to the allegations of paragraph 67, state that Great Lakes, as of year-end 2014, was servicing approximately \$33 billion of Direct and FFELP Loans set on an IDR plan for nearly 737,000 borrowers and that some of those borrowers had applied for and been placed in administrative forbearance; further deny the remainder of the allegations of paragraph 67, including specifically any allegation that Great Lakes wrongfully capitalized interest accrued during an administrative-forbearance period as described in the complaint.

68. Deny the allegations of paragraph 68.

69. Deny the allegations of paragraph 69.

70. With respect to the allegations of paragraph 70, admit that Great Lakes placed Dawson's loans into administrative-forbearance status on February 16, 2015; further deny the remainder of the allegations of paragraph 70, as set forth in the affirmative allegations of Great Lakes' counterclaim, including that Great Lakes had reprogrammed its system after years of "continuously and illegally capitalizing" interest during an administrative-forbearance period.

71. Deny the allegations of paragraph 71.

72. With respect to the allegations of paragraph 72, deny that Great Lakes made changes to its borrower interface, alleging further in this respect that Great Lakes' borrowers never have been able to see transactions that are more than 12 months old through Great Lakes' borrower interface, although borrowers always have been able to obtain their full transaction histories from Great Lakes upon request; deny the remainder of the allegations of paragraph 72, including specifically any allegation that Great Lakes made these changes in an effort to conceal from borrowers the improper capitalization of interest accrued during an administrative-forbearance period.

73. Deny the allegations of paragraph 73, including any allegation implied in paragraph 73 that Great Lakes made changes to its borrower interface as part of an effort to conceal from borrowers the improper

capitalization of interest accrued during an administrative-forbearance period.

74. Deny the allegations of paragraph 74.

75. Deny the allegations of paragraph 75.

76. Deny the allegations of paragraph 76, alleging further in this respect that Dawson's proposed class of plaintiffs is flawed because the complaint reveals that Dawson fundamentally misunderstands the calculation of interest during an administrative-forbearance period.

77. Deny the allegations of paragraph 77, alleging further in this respect that Dawson's proposed class of plaintiffs is flawed because the complaint reveals that Dawson fundamentally misunderstands the calculation of interest during an administrative-forbearance period.

78. Deny the allegations of paragraph 78, alleging further in this respect that members of Dawson's proposed class will not necessarily have suffered the same harm as one another; Dawson's proposed class of plaintiffs is flawed because the complaint reveals that Dawson fundamentally misunderstands the calculation of interest during an administrative-forbearance period.

79. State that it lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 79.

80. Deny the allegations of paragraph 80, alleging further in this respect that members of Dawson's proposed class will not necessarily have the same issues of fact and law as one another; Dawson's proposed class of plaintiffs is flawed because the complaint reveals that Dawson fundamentally misunderstands the calculation of interest during an administrative-forbearance period.

81. Admit the allegations of paragraph 81 only insofar as they show that any damages suffered by borrowers during the relevant administrative-forbearance periods will be small; deny the remainder of the allegations of paragraph 81, alleging further in this respect that Dawson's proposed class of plaintiffs is flawed because the complaint reveals that Dawson fundamentally misunderstands the calculation of interest during an administrative-forbearance period.

82. With respect to the allegations of paragraph 82 of the complaint, repeat, reallege, and incorporate herein by reference, as if fully set forth, the allegations of paragraphs 1-81 of this answer.

83. Deny the allegations of paragraph 83.

84. With respect to the allegations of paragraph 84, admit that the Individual Defendants had personal knowledge of the operation of Great Lakes' student-loan servicing; further deny the remainder of the allegations of paragraph 84.

85. Deny the allegations of paragraph 85.

86. Deny the allegations of paragraph 86.

87. Deny the allegations of paragraph 87.

88. Deny the allegations of paragraph 88.

89. With respect to the allegations of paragraph 89 of the complaint, repeat, reallege, and incorporate herein by reference, as if fully set forth, the allegations of paragraphs 1-88 of this answer.

90. With respect to the allegations of paragraph 90, admit that Great Lakes has certain contractual obligations to the United States (and, more specifically, to the Department of Education) to service borrowers' loans; further deny the remainder of the allegations of paragraph 90.

91. Deny the allegations of paragraph 91.

92. Deny the allegations of paragraph 92.

93. With respect to the allegations of paragraph 93 of the complaint, repeat, reallege, and incorporate herein by reference, as if fully set forth, the allegations of paragraphs 1-92 of this answer.

94. Deny the allegations of paragraph 94.

95. With respect to the allegations of paragraph 95, admit only that Great Lakes is the primary point of contact for borrowers concerning their Great Lakes-serviced loans and deny the remainder of the allegations of paragraph 95.

96. Deny the allegations of paragraph 96.

97. With respect to the allegations of paragraph 97 of the complaint, repeat, reallege, and incorporate herein by reference, as if fully set forth, the allegations of paragraphs 1-96 of this answer.

98. With respect to the allegations of paragraph 98, deny that the Department of Education owes Dawson anything; state that the remainder of paragraph 98 contains allegations and legal conclusions, as part of a claim in Count IV against the United States for breach of contract, that need not be and are not either admitted or denied by Great Lakes.

99. State that paragraph 99 contains allegations and legal conclusions, as part of a claim in Count IV against the United States for

breach of contract, that need not be and are not either admitted or denied by Great Lakes.

100. State that paragraph 100 contains allegations and legal conclusions, as part of a claim in Count IV against the United States for breach of contract, that need not be and are not either admitted or denied by Great Lakes.

101. State that paragraph 101 contains allegations and legal conclusions, as part of a claim in Count IV against the United States for breach of contract, that need not be and are not either admitted or denied by Great Lakes.

FIRST AFFIRMATIVE DEFENSE

102. Inasmuch as defendant Great Lakes Higher Education Corporation does not service Dawson's loans, or any federal student loans, it is not a proper party because the complaint fails to state a claim against it upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

103. Great Lakes made two minor errors in calculating the interest on Dawson's account during her administrative-forbearance period that began on October 3, 2013, as described more fully in its counterclaim below.

104. Despite those minor interest miscalculations, Dawson still has significant balances outstanding on her loans.

105. Dawson has not, therefore, suffered any injury or damage from these miscalculations. Great Lakes can and will promptly credit her payments against her account properly, and she will not have made any excessive repayments on her account.

**COUNTERCLAIM
for Declaratory Judgment**

Great Lakes, for its counterclaim against Dawson, alleges as follows:

106. Upon the facts set forth in the admitted portions of the complaint, in this answer, and in this counterclaim, all incorporated herein by reference as if fully set forth, Great Lakes is entitled to a declaration from the Court, pursuant to 28 U.S.C. § 2201, that any miscalculations on the part of Great Lakes related to the capitalization of interest during the relevant administrative-forbearance period that affected Dawson's account were not made knowingly or intentionally, and specifically not as part of any scheme to defraud.

Dawson Never Complained to Great Lakes Regarding Her Accrued Interest.

107. Great Lakes began servicing at least some of Dawson's loans in March 2010, when they were transferred from another servicer. Dawson continued to take out additional loans from September 2010 until July 2012,

at least some of which are serviced by Great Lakes, to fund her education. In total, Dawson borrowed \$24,250 in student loans (not including the interest that accrued on those loans before her graduation) for which Great Lakes acts as the servicer.

108. Neither Dawson nor her attorney ever communicated with Great Lakes about the subject of her complaint in this action before filing it on July 31, 2015.

109. During those five years, Dawson was in regular contact with Great Lakes, obtaining a special direct consolidation of her student loans, applying for (and in some cases receiving) forbearances based on her financial hardship, and restructuring her monthly payment plans.

110. Never during that five-year period did she raise any issue with Great Lakes related to the capitalization of interest during an administrative-forbearance period, as she has now done in the complaint. In fact, she never communicated anything to Great Lakes at all concerning the calculation of interest on her account.

Dawson Confuses the Types of Interest Associated with an Administrative-Forbearance Period.

111. If Dawson had brought to Great Lakes' attention the facts asserted in her complaint regarding capitalization of interest on her loans, Great Lakes would have investigated the situation and discovered, as it has

now done after investigation, two miscalculations of interest on her account that occurred at the end of an administrative forbearance period. The sum of these miscalculations is \$129.87—an amount considerably smaller than the \$819.65 that Dawson alleges was wrongfully capitalized. These errors bear little if any resemblance to the allegations in Dawson’s complaint.

112. Instead, despite never having suffered any injury by paying any of the amounts that Dawson alleges that she was overcharged, Dawson has chosen this Court as the first place to seek correction of the very minor interest miscalculations on her student-loan account.

113. As a matter of fact, consistent with the federal regulations (for FFELP Loans, 34 C.F.R. § 682.211(f)(11), and for Direct Loans, 34 C.F.R. § 685.205(b)(9)), the standard form Master Promissory Notes issued by the Department of Education and signed by borrowers who take out FFELP or Direct Loans, and the language that appears on the standard application forms issued by the Department of Education and distributed by Great Lakes for IDR plans, deferments, and consolidation loans, Great Lakes has never pursued a policy of capitalizing interest accrued during an administrative-forbearance period. (*See, e.g.*, Compl. ¶¶ 32-34.) Dawson’s allegation to the contrary is wrong.

Great Lakes Unearths Two Miscalculations in Dawson's Account.

114. What Great Lakes in fact did was to make two miscalculations related to the interest on Dawson's account in connection with the capitalization of interest at the end of an administrative-forbearance period. The consequence of neither of these miscalculations, taken individually or together, is nearly as large as Dawson alleges the error in her account to be.

115. *First*, Great Lakes misapplied Dawson's payments attributable to interest, totaling \$199.73, made on October 4, 2013. Only the day before, October 3, 2013, her account had started a 60-day administrative-forbearance period. While Great Lakes credited her account for the amount of the October 4 payments, it did not apply it to the proper "bucket" of interest.

116. A brief explanation is in order. In the ordinary course of a borrower's loan, interest accrues on that loan when the borrower has not made a scheduled monthly payment. This interest is subject to capitalization or compounding. But, when a borrower enters a period of administrative forbearance under the relevant regulations, though interest on the loan continues to accrue during the administrative-forbearance period itself, this administrative-forbearance interest is not subject to compounding under the regulations and is not later capitalized.

117. There are, in other words, two distinct types of interest (viewed conceptually as two buckets of interest) on an account that has entered an administrative-forbearance period under the relevant regulations: (a) one bucket consisting of interest that is “cappable” (that is, subject to capitalization at the end of the forbearance period) and (b) another bucket of interest that is “noncappable” (that is, not subject to capitalization).

118. Cappable interest accrues over the ordinary course of the loan (and frequently some amount of this interest will be outstanding when a loan enters an administrative-forbearance period, unless a borrower has paid off all the outstanding interest on the exact date that a loan enters an administrative-forbearance period); noncappable interest accrues only during the relevant administrative-forbearance period.

119. Great Lakes’ system properly recognizes and accounts for these different types of interest—and thus does not wrongfully capitalize noncappable interest accrued during the administrative-forbearance period, despite what Dawson claims.

120. But when Dawson made her October 4, 2013 payments during an administrative-forbearance period that had started the day before, Great Lakes incorrectly credited that payment (after the administrative-forbearance period) against the bucket of noncappable interest (that is, the

interest that had accrued most recently during the administrative-forbearance period), when it should have credited her payment against the older interest, that is, the cappable interest, which remained outstanding from the time before her account entered an administrative-forbearance period.

121. The *second* issue that affected Great Lakes' miscalculation of Dawson's interest is simpler than the first. An administrative-forbearance period under 34 C.F.R. § 682.211(f)(11) for FFELP Loans and 34 C.F.R. § 685.205(b)(9) for Direct Loans is up to 60 days in length. Great Lakes programmed its system to recognize an administrative forbearance for 60 days, but the algorithm contained a minor flaw: When calculating the period's end, it counted *to* the 60th day, not *through* the 60th day. The effect was to shorten the noncapping period to 59 days—or, put differently, to turn one day of what should be noncappable interest into cappable interest.

122. The sum of both issues is minuscule, much smaller than the “[e]xactly \$819.65 of those principal balances” and the “14 cents per day, \$51 per year,” which Dawson alleges that she was overcharged, *see* Compl. ¶¶ 64-66. The total incorrectly capitalized interest on Dawson's account amounts to \$129.87, and that incorrectly capitalized interest accrued at no more than \$0.01 per day, or \$3.65 per year.

None of This Amounts to a Scheme to Defraud.

123. Neither of these errors was part of any scheme to defraud, such as Dawson alleges that Great Lakes conducted knowingly over many years.

124. Great Lakes has not made any effort to hide miscalculations from borrowers, as Dawson alleges. In fact, Great Lakes never has made more than 12 months of transactions available to borrowers through its web interface, but borrowers always have been able to receive, upon request from Great Lakes, a full transaction history for their accounts.

125. Nor did Great Lakes change its system, *pace* Dawson's allegations, "somewhere between February 1, 2014 and April 16, 2015" in an effort to cover-up a fraud. *See* Compl. ¶¶ 70-71. There was no interest-capitalization event after Dawson's administrative forbearance in 2015 because she was in an Income Based Repayment schedule. Great Lakes is permitted to capitalize interest while a borrower is in an Income Based Repayment schedule only when the borrower leaves the Partial Financial Hardship tier and enters the Permanent Standard Tier. Dawson already was in the Permanent Standard Tier, so Great Lakes would not have capitalized interest on her accounts.

126. In all events, the issues that Great Lakes unearthed simply were errors in the calculation of interest that Great Lakes' system capitalized

at the end of the relevant administrative-forbearance periods, and these were not even the errors that Dawson identified in her complaint.

Great Lakes Will Correct Dawson's Account.

127. It took Great Lakes' independent research to discover these issues after reviewing Dawson's complaint, and, as a result of that research, Great Lakes intends to correct her account. Dawson still has outstanding balances owed on her student loans and will still have substantial remaining balances even after Great Lakes corrects its minor miscalculations, meaning that Dawson has not overpaid her student loans and will have suffered no damages as a result of Great Lakes' innocent errors.

Dawson's Allegations Concerning the Control Reports Are Imprecise and Thus Inaccurate.

128. Great Lakes never erroneously claimed in its control reports that the lender was entitled to capitalize the interest that accrued during the particular type of administrative-forbearance period involved in Dawson's case.

129. Lost or never mentioned in Dawson's complaint is the fact that the administrative-forbearance period under 34 C.F.R. § 682.211(f)(11) for FFELP Loans and § 685.205(b)(9) for Direct Loans is only one type of forbearance period out of the currently 35 different types of forbearance periods established by the Department of Education.

130. These control reports (SAS 70, produced through December 31, 2010, and SSAE 16, issued from June 30, 2011 through the present) are, in the parlance of the accounting profession, Service Organization Control 1 reports—in other words, audits of the financial controls of a service organization (here, Great Lakes). Currently these reports are prepared twice annually. They are considered an auditor-to-auditor communication. They are prepared *by Great Lakes’ auditors for use by the auditors of its customers* (here, either the auditors of private lenders or Federal Student Aid), as part of process that allows those external auditors to attest to the accuracy and completeness of the lenders’ financial statements. In fact, the relevant part of these reports cited by Dawson explicitly is prepared “for users of the Student Loan Servicing Program [*i.e.*, the lenders] . . . , and their independent auditors *who have a sufficient understanding to consider the Description.*” Dec. 31, 2014 Control Report (emphasis added). The narrative in these reports is by no means designed to explain the complex rules and regulations governing the student-loan industry to borrowers or others lacking in knowledge of the details of those rules and regulations.

131. In all events, the duration and terms of each of the 35 types of forbearance period currently available vary, depending both on the type of forbearance and, in some cases, the evolution of the Department’s regulations governing the forbearance.

132. Some forbearance periods require the capitalization of the interest that accrues during the forbearance; others (like those which are the subject of Dawson's complaint) prohibit capitalization of the interest accrued during the forbearance period, but permit interest accrued before the forbearance to be capitalized at the end of the forbearance period.

133. From 2007 to 2009, Great Lakes issued control reports to its customers' auditors with a statement in the narrative description of its student-loan servicing program that "[t]he lender is authorized to capitalize the accrued unpaid interest at the end of any forbearance period."

134. This was an accurate, general statement about forbearances and was entirely consistent with the reports' purpose: *viz.*, providing a *general* description of the service organization's regulatory environment sufficient for the reports' intended audience (auditors). It is true that, of the approximately 28 types of forbearances available to FFELP loan holders during that period, each of them allowed interest capping at the end of a forbearance period. What the reports did not say is which *type* of interest may be capitalized. 34 C.F.R. § 682.211(f)(11) (and later, § 685.205(b)(9), when the program for Direct Loans began) prohibited capitalizing during the administrative-forbearance period, but interest that accrued *before* the forbearance period still was subject to capitalization at the end of the forbearance period.

135. These control reports were not wrong, and they certainly did not express Great Lakes' supposedly erroneous position that the lender was entitled to capitalize all interest that accrued during an administrative-forbearance period.

136. Contrary to the allegations in paragraph 48 of the complaint, the word "generally," as a clarification of when the lender was authorized to capitalize unpaid interest at the end of a forbearance period, first was added to the August 11, 2010 control report, not the November 9, 2011 control report. Most control reports (with one exception) issued after the August 11, 2010 control report and through the report issued on August 10, 2012 contained the statement in the narrative description of Great Lakes' student-loan servicing program that "[g]enerally, the lender is authorized to capitalize the accrued unpaid interest at the end of the forbearance period."

137. Further, and contrary to the allegations in paragraph 49 of the complaint, the addition of a citation to 34 C.F.R. § 685.205 occurred in the December 31, 2010 control report—the first control report issued after Great Lakes began servicing Direct Loans in July 2010. This change was not made "belatedly" in November 2011.

138. In the December 31, 2012 control report, the section describing "Deferment and Forbearance Processing" underwent a more substantial rewrite. The Service Auditing department removed the more general

statement concerning interest capitalization and added the following sentence to the end of the section: “The System automatically accrues and capitalizes interest based on the terms of a deferment or forbearance and, for lender-held subsidized loans, will bill [the Department of Education] for interest benefits quarterly.” The Service Auditing department also revised the paragraph to explain that “[t]here are many types of deferments.”

139. All these changes—from the original in 2007–2009, to the addition of “generally” in the June 30, 2010 report, to the new sentence that conditioned interest capitalization on the terms of the deferment or forbearance in the December 31, 2012 report—were a further refinement of what was designed to be nothing more than a general summary for lenders’ auditors of a complex program.

WHEREFORE, Great Lakes demands judgment against Dawson as follows:

- a. Upon its answer, dismissing Dawson’s complaint in its entirety, upon its merits, and with prejudice;
- b. Upon its counterclaim, declaring that any miscalculations on the part of Great Lakes related to the calculation of interest during the relevant administrative-forbearance period that affected Dawson’s

account were not made knowingly or intentionally, and specifically not as part of any scheme to defraud.

- c. For its costs of this action; and
- d. For such other and further relief as shall be just.

s/ Thomas L. Shriner, Jr. _____

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