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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF SAN FRANCISCO (UNLIMITED JURISDICTION)**

17 DANIEL L. BALSAM, an individual,
18 Plaintiff,

19 v.

20 SALLIE MAE INC., a Delaware corporation,
21 SLM CORPORATION, a Delaware
22 corporation, and

23 DOES 1-100,
24 Defendants.

) Case No.: CGC-09-485996

)

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) **VERIFIED FIRST AMENDED**
) **COMPLAINT FOR DAMAGES,**
) **INJUNCTIVE RELIEF, AND**
) **DECLARATORY RELIEF**

)

-) **1. VIOLATIONS OF CALIFORNIA**
) **RESTRICTIONS ON UNSOLICITED**
) **COMMERCIAL E-MAIL**
) **ADVERTISERS (Cal. Bus. & Prof.**
) **Code § 17529.5)**
) **2. VIOLATIONS OF CONSUMERS**
) **LEGAL REMEDIES ACT (Cal. Civ.**
) **Code § 1750 et seq.)**
) **3. VIOLATIONS OF ROSENTHAL**
) **FAIR DEBT COLLECTIONS**
) **PRACTICES ACT (Cal. Civ. Code**
) **§ 1788 et seq.)**
) **4. DECLARATORY RELIEF**

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1 COMES NOW PLAINTIFF DANIEL L. BALSAM and files this Verified Complaint for causes
2 of action against Defendants SALLIE MAE INC., SLM CORPORATION, and DOES 1 through
3 100, inclusive, and alleges as follows:

4
5 **I. SUMMARY OF THE COMPLAINT**

6 1. Plaintiff DANIEL L. BALSAM (“BALSAM”) brings this action against Defendants
7 SALLIE MAE INC., SLM CORPORATION, and Does 1-100 for advertising in and sending
8 twenty (20) Unsolicited Commercial Email (“UCE” or “spam”) messages to BALSAM between
9 April 5, 2007 and February 10, 2009, inclusive.

10 2. Sixteen of the 20 spam messages had subject lines that were misleading, in violation of
11 Cal. Bus. & Prof. Code § 17529.5.

12 3. All 20 spam messages contained false claims of connections/associations between
13 Defendants and BALSAM, false claims that BALSAM had current loans/accounts and owed
14 Defendants money, and false claims that BALSAM requested to receive communications from
15 Defendants, all of which are prohibited by the Consumers Legal Remedies Act (Cal. Civ. Code
16 § 1750 *et seq.*) and the Rosenthal Fair Debt Collections Practices Act (Cal. Civ. Code § 1788 *et*
17 *seq.*).

18 4. BALSAM requests that this Court award statutory damages of \$1,000 for each of the 16
19 spams with misleading subject lines, as provided by Cal. Bus. & Prof. Code
20 § 17529.5(b)(1)(B)(ii), and not consider any reduction, because Defendants failed to implement
21 reasonably effective systems designed to prevent the sending of unlawful spam in violation of
22 the statute. The verbiage of the subject lines represents willful decisions, not clerical errors.

23 5. Moreover, BALSAM unsubscribed from Defendants’ email lists three times (and
24 received confirmations), sent a certified/return-receipt letter to Defendants’ Chief Executive
25 Officer, and even had direct conversations with Defendants’ General Counsel and Assistant
26 General Counsel, all to no avail.

27 6. Defendants continue to send spam to BALSAM.

28 7. BALSAM requests that this Court award a penalty of \$1,000 pursuant to Cal. Civ. Code
29 § 1788.30(b) due to Defendants’ willful and knowing violations of the Rosenthal Fair Debt
30 Collections Practices Act, by continuing to send communications to BALSAM referring to his
31 (purported) loans and accounts, none of which existed.

1 8. This Court should grant injunctive relief to prohibit Defendants from engaging in
2 deceptive marketing practices, as authorized by Civ. Code § 1780(a)(2), because Defendants
3 have not identified all consumers similarly situated to BALSAM and notified them that they
4 would no longer engage in deceptive marketing practices.

5 9. This Court should award BALSAM his attorneys' fees pursuant to Cal. Bus. & Prof.
6 Code § 17529.5(b)(1)(C), Cal. Civ. Code § 1780(d), and Cal. Civ. Code § 1788.30(c).
7 Attorneys' fees should be in addition to recovery of damages, because BALSAM is incurring the
8 cost of litigation that should confer a benefit on a large class of persons (California email users
9 and *former* Sallie Mae borrowers) by reducing the amount of false and deceptive spam such
10 persons receive. Cal. Code Civ. Proc. § 1021.5.

11 10. This Court should award punitive damages pursuant to Civ. Code § 3294 due to
12 Defendants' malicious, fraudulent, and oppressive actions, as they repeatedly and deceptively
13 attempted to solicit monies from BALSAM under the false pretenses that BALSAM had current
14 loans/accounts with Defendants.

15 11. Although BALSAM does not bring a cause of action under the federal CAN-SPAM Act,
16 BALSAM points out that 18 of the 20 spams violated CAN-SPAM because Defendants
17 continued to send spam to BALSAM even after BALSAM opted out; 17 of the 20 violated CAN-
18 SPAM because Defendants did not include their physical mailing address; and 13 of the 20
19 violated CAN-SPAM because they did not provide a means to opt-out from future emails.

20 21 **II. PARTIES**

22 **A. Plaintiff Daniel L. Balsam**

23 12. BALSAM is an individual residing in the State of California, in the City and County of
24 San Francisco. BALSAM received the spam messages at issue in San Francisco.

25 13. BALSAM is a consumer because BALSAM seeks and acquires, by purchase or lease,
26 goods and services for personal, family, or household purposes.

27 14. BALSAM was *formerly* a consumer of Defendants' financial products and services, but
28 BALSAM paid off his student loans in full in 2001.

1 **B. Defendants SALLIE MAE INC. and SLM CORPORATION**

2 15. BALSAM is informed and believes and thereon alleges that SALLE MAE INC. is now,
3 and was at all times relevant herein, a corporation duly organized and recognized under the laws
4 of the State of Delaware with a principal place of business in Reston, Virginia.

5 16. BALSAM is informed and believes and thereon alleges that SALLIE MAE INC. is
6 registered with the California Secretary of State to do business in California.

7 17. BALSAM is informed and believes and thereon alleges that SALLIE MAE INC. is the
8 wholly-owned corporate management and marketing subsidiary of SLM CORPORATION.

9 18. BALSAM is informed and believes and thereon alleges that SLM CORPORATION is
10 now, and was at all times relevant herein, a corporation duly organized and recognized under the
11 laws of the State of Delaware with a principal place of business in Reston, Virginia.

12 19. BALSAM is informed and believes and thereon alleges that SLM CORPORATION is
13 generally known as “Sallie Mae.”

14 20. BALSAM is informed and believes and thereon alleges that there exists, and at all times
15 since incorporation of the entities has existed, a unity of interest and ownership between
16 Defendants SLM CORPORATION and SALLIE MAE INC. such that any separateness between
17 them has ceased to exist.

18 21. BALSAM is informed and believes and thereon alleges that SLM CORPORATION has
19 completely controlled, dominated, managed and operated SALLIE MAE INC. since
20 incorporation. BALSAM is informed and believes and thereon alleges that SALLIE MAE INC.
21 is, and at all times mentioned was, a mere shell, instrumentality and conduit through which SLM
22 CORPORATION carried on activities in the corporate name exactly as it would have in its own
23 name.

24 22. BALSAM is informed and believes and thereon alleges that SLM CORPORATION
25 exercised and exercises such complete control and dominance of such activities that any
26 individuality or separateness of SALLIE MAE INC. does not, and at all relevant times did not,
27 exist.

28 23. BALSAM is informed and believes and thereon alleges that adherence to the fiction of
29 the separate existence of each of SLM CORPORATION and SALLIE MAE INC. would permit
30 an abuse of the corporate privilege, with the intention of preventing BALSAM from obtaining
31 monetary relief pursuant to the liquidated damages specified by statute.

1 24. For the above reasons, BALSAM hereinafter refers to SALLIE MAE INC. and SLM
2 CORPORATION collectively as “SLM.”

3 25. BALSAM is informed and believes and thereon alleges that SLM owns the domain name
4 *SallieMae.com* and operates the website *www.SallieMae.com*.

5 26. BALSAM is informed and believes and thereon alleges that SLM’s primary business is
6 financial services: i.e., to originate, hold, and/or manage student loans.

7 27. BALSAM is informed and believes and thereon alleges that SLM profits from its
8 financial services.

9 28. BALSAM is informed and believes and thereon alleges that SLM manages a portfolio of
10 student loans worth approximately \$153 billion (as of 2007).

11 **C. BALSAM’s Past Relationship with SLM**

12 29. BALSAM borrowed monies for graduate school via federal Stafford loans in 1996-1998.

13 30. BALSAM consolidated various educational loans with SLM in 1999.

14 31. BALSAM fully repaid his loans with SLM in 2001. Attachment A is a true and correct
15 copy of a letter from SLM to BALSAM (redacted only to remove BALSAM’s social security
16 number and address), dated November 9, 2001, acknowledging that the loans were fully repaid.

17
18 **III. SLM ADVERTISED IN AND SENT TWENTY UNLAWFUL SPAMS TO BALSAM**

19 **A. Overview**

20 32. From April 5, 2007-February 10, 2009 – i.e., beginning six years after BALSAM paid off
21 his loans in full – SLM advertised in and sent 20 unsolicited commercial e-mail advertisements
22 to BALSAM.

23 “Commercial e-mail advertisement” means any electronic mail message initiated
24 for the purpose of advertising or promoting the lease, sale, rental, gift offer, or
25 other disposition of any property, goods, services, or extension of credit.

26 Cal. Bus. & Prof. Code § 17529.1(c).

27 33. Attachment B is true and correct copies of the 20 spam messages, redacted only to
28 remove BALSAM’s email address, which has no relevance to the falsity and deception in the
29 spam messages.

30 34. Sixteen of the emails had misleading subject lines, including false claims that BALSAM
31 had current loans/accounts with SLM.

32 35. All 20 emails made false claims that BALSAM had current loans/accounts with SLM.

1 36. BALSAM followed the instructions in the spams to unsubscribe from SLM's email lists
2 on three separate occasions – May 12, 2007, September 19, 2007, and June 29, 2008. On each
3 occasion, BALSAM received a confirmation of his unsubscribe request. Attachment C is true
4 and correct copies of the three unsubscribe attempts and confirmations.

5 37. SLM continued to send BALSAM spam despite BALSAM's repeated unsubscribe
6 attempts.

7 38. After SLM continued to send spam even after the third unsubscribe attempt, BALSAM
8 sent a certified/return receipt letter to Mr. Albert Lord, Vice Chairman and Chief Executive
9 Officer of SLM, on July 19, 2008. This letter informed SLM that BALSAM did not have loans
10 with SLM and that SLM was sending unwanted spam. The letter provided a list of dates of the
11 spams¹ and BALSAM's email address, and informed SLM that it was not honoring BALSAM's
12 unsubscribe requests. BALSAM received the green postcard back, indicating that SLM received
13 the letter on July 22, 2008. Attachment D is a true and correct copy of BALSAM's letter to Mr.
14 Albert Lord (without attachments, redacted to remove BALSAM's address, email address, and
15 offer to settle the dispute) and the green postcard showing receipt by SLM.

16 39. BALSAM then received two more spams from SLM in August-September 2008, even
17 after SLM received BALSAM's letter to Mr. Lord.

18 40. BALSAM and SLM's General Counsel (Mike Sheehan) and Assistant General Counsel
19 (Nicolas Jafarieh) communicated via telephone and email in September-October 2008 about
20 these emails.

21 41. On September 26, 2008, Mr. Jafarieh sent an email to BALSAM claiming that SLM
22 "removed the email address you provided in your letter from any and all communications."
23 Attachment E is a true and correct copy of Jafarieh's email to BALSAM.

24 42. Nevertheless, BALSAM received yet another spam on February 10, 2009.

25 **B. Spams and Unsubscribe Attempts, in Chronological Order**

26 43. Table 1 on the next page shows a timeline of the SLM spams and BALSAM's
27 unsubscribe attempts.

28
29
30
31 ¹ BALSAM accidentally omitted a spam from June 24, 2008 in the list.

Table 1: SALLIE MAE SPAM & UNSUBSCRIBE CHRONOLOGY

DATE	UNSUBSCRIBE/ CONFIRMATION	SPAM	DECEPTIVE SUBJ. LINE	DECEPTIVE BODY TEXT	PHYSICAL ADDRESS	OPT-OUT LINK
4/5/07		Spam #1	Yes	Yes	No	No
5/8/07		Spam #2	Yes	Yes	Yes	Yes
5/12/07	Unsubscribe #1 & confirmation (website)					
5/13/07		Spam #3	Yes	Yes	No	No
6/4/07		Spam #4	Yes	Yes	No	No
6/13/07		Spam #5	Yes	Yes	No	No
7/13/07		Spam #6	Yes	Yes	No	No
7/26/07		Spam #7	Yes	Yes	No	No
8/12/07		Spam #8	Yes	Yes	No	No
8/23/07		Spam #9	Yes	Yes	Yes	Yes
9/13/07		Spam #10	Yes	Yes	No	No
9/18/07		Spam #11	Yes	Yes	Yes	Yes
9/19/07	Unsubscribe #2 & confirmation (website)					
4/8/08		Spam #12	Yes	Yes	No	No
5/27/08		Spam #13	Yes	Yes	No	No
6/4/08		Spam #14	No	Yes	No	No
6/17/08		Spam #15	No	Yes	No	No
6/24/08		Spam #16	Yes	Yes	No	Yes (via Hotmail)
6/29/08	Unsubscribe #3 & confirmation (website)					
7/17/08		Spam #17	No	Yes	No	Yes (via Hotmail)
7/22/08	Unsubscribe #4 (cert. letter to CEO received)					
8/5/08		Spam #18	Yes	Yes	No	Yes (via Hotmail)
9/16/08		Spam #19	Yes	Yes	No	Yes (via Hotmail)
9/26/08	Confirmation of unsubscribe by Asst. General Counsel					
2/9/09		Spam #20	No	Yes	No	No
			<i>16 have deceptive subject lines</i>	<i>All 20 have deceptive body text</i>	<i>17 have no physical address</i>	<i>13 have no opt-out link</i>

1 44. SLM advertised in and sent a spam to BALSAM on April 5, 2007. The subject line was
2 “Important Information About A Repayment Feature On Your Student Loan Account.”

3 Attachment B.

4 45. SLM advertised in and sent a spam to BALSAM on May 8, 2007. The subject line was:
5 “Imagine no student loan payments for 6 months.” Attachment B. This spam attempted to
6 convince BALSAM to purchase or refinance a home through SLM.

7 46. On May 12, 2007, BALSAM followed the instructions in the May 8, 2007 spam to
8 unsubscribe, and received a confirmation of his request. Attachment C.

9 47. SLM advertised in and sent a spam to BALSAM on May 13, 2007. The subject line was:
10 “Sallie Mae Account Information.” Attachment B.

11 48. SLM advertised in and sent a spam to BALSAM on June 4, 2007. The subject line was:
12 “Important Information About A Repayment Feature On Your Student Loan Account.”

13 Attachment B.

14 49. SLM advertised in and sent a spam to BALSAM on June 13, 2007. The subject line was:
15 “Sallie Mae Account Information.” Attachment B.

16 50. SLM advertised in and sent a spam to BALSAM on July 13, 2007. The subject line was:
17 “Sallie Mae Account Information.” Attachment B.

18 51. SLM advertised in and sent a spam to BALSAM on July 26, 2007. The subject line was:
19 “Sallie Mae and Upromise can help you save on your student loans.” Attachment B.

20 52. SLM advertised in and sent a spam to BALSAM on August 12, 2007. The subject line
21 was: “Sallie Mae Account Information.” Attachment B.

22 53. SLM advertised in and sent a spam to BALSAM on August 23, 2007. The subject line
23 was: “Important information about repayment features on your student loan account.”

24 Attachment B.

25 54. SLM advertised in and sent a spam to BALSAM on September 13, 2007. The subject
26 line was: “Sallie Mae Account Information.” Attachment B.

27 55. SLM advertised in and sent a spam to BALSAM on September 18, 2007. The subject
28 line was: “New benefit for paying down your student loans.” Attachment B.

29 56. On September 19, 2007, BALSAM followed the instructions in the September 18, 2007
30 spam to unsubscribe, and received a confirmation of his request. Attachment C.

1 57. SLM advertised in and sent a spam to BALSAM on April 8, 2008. The subject line was:
2 “Sallie Mae Account Information.” Attachment B.

3 58. SLM advertised in and sent a spam to BALSAM on May 27, 2008. The subject line was:
4 “Imagine no student loan payments for 6 months.” Attachment B.

5 59. SLM advertised in and sent a spam to BALSAM on June 4, 2008. The subject line was:
6 “Sallie Mae Drawing for \$1000.” BALSAM does not consider this subject line to be deceptive
7 because it does not claim that BALSAM has a current account or a loan with SLM. Attachment
8 B.

9 60. SLM advertised in and sent a spam to BALSAM on June 17, 2008. The subject line was:
10 “Sallie Mae Drawing for \$1000.” BALSAM does not consider this subject line to be deceptive
11 because it does not claim that BALSAM has a current account or a loan with SLM. Attachment
12 B.

13 61. SLM advertised in and sent a spam to BALSAM on June 24, 2008. The subject line was:
14 “Important Information regarding your account.” Attachment B.

15 62. By June 24, 2008, SLM appears to have changed its email formatting. The spam itself on
16 longer included an unsubscribe link; however, BALSAM’s email service provider, Hotmail,
17 displayed a link at the top of the spam that stated “You’re subscribed to this mailing list.
18 Unsubscribe.” On June 29, 2008, BALSAM clicked the Unsubscribe link and received a
19 confirmation that Hotmail asked the sender to remove me from this mailing list. Attachment C.

20 63. SLM advertised in and sent a spam to BALSAM on July 17, 2008. The subject line was:
21 “Important feedback request from Sallie Mae.” BALSAM does not consider this subject line to
22 be deceptive because it does not claim that BALSAM has a current account or a loan with SLM.
23 Attachment B.

24 64. On July 19, 2008, BALSAM sent a certified/return-receipt letter to Mr. Albert Lord,
25 Vice-Chairman and Chief Executive Officer of SLM. This letter advised SLM that it was
26 violating California’s anti-spam law (Bus. & Prof. Code § 17529.5), the Consumers Legal
27 Remedies Act (Civ. Code § 1750 *et seq*), as well as the federal CAN-SPAM Act, and provided
28 precise reasons why the spams were unlawful. This letter also provided BALSAM’s email
29 address at which he had been receiving the SLM spam messages. BALSAM received the green
30 postcard back, indicating that SLM received the letter on July 22, 2008. Attachment D.

1 65. SLM advertised in and sent a spam to BALSAM on August 5, 2008. The subject line
2 was: "Important Information about your account." Attachment B.

3 66. SLM advertised in and sent a spam to BALSAM on September 16, 2008. The subject
4 line was: "Important Information about your account." Attachment B.

5 67. On September 26, 2008, SLM's Assistant General Counsel sent an email to BALSAM
6 confirming that BALSAM's email address had been "removed [] from any and all
7 communications." Attachment E.

8 68. SLM advertised in and sent a spam to BALSAM on February 10, 2009. The subject line
9 was "Changes to Email Communication," Attachment B, which also suggests that there will be
10 *more* emails coming.

11 12 **IV. SPECIFIC ALLEGATIONS**

13 **A. BALSAM's Email Usage**

14 69. BALSAM owns and at all relevant times herein owned a computer with an Internet
15 connection. BALSAM ordinarily uses this computer to access his email accounts. This
16 computer is located in the State of California, in the City and County of San Francisco.
17 BALSAM received all of the spam messages over his Internet Service Provider's and email
18 service provider's equipment, located in the State of California.

19 70. BALSAM's email address at which BALSAM received the spam messages at issue in
20 this action is a "California email address."

21 "California e-mail address" means 1) An e-mail address furnished by an
22 electronic mail service provider that sends bills for furnishing and maintaining
23 that e-mail address to a mailing address in this state; 2) An e-mail address
24 ordinarily accessed from a computer located in this state; 3) An e-mail address
furnished to a resident of this state.

25 Cal. Bus. & Prof. Code § 17529.1(b). Definitions 2 and 3 apply. BALSAM ordinarily accesses
26 this email address from a computer located in California. BALSAM was a resident of California
27 at the time the email address was furnished to him (and has always been a resident of California
28 since the email address was furnished to him).

29 71. BALSAM's email address is confidential for numerous reasons, including, but not
30 limited to, avoiding the risk of retaliation by "mail bombing" (sending massive amounts of email
31 to BALSAM's email addresses), "joe jobbing" (sending unlawful email as if it were coming
from BALSAM's email addresses as a means of harassment), or sharing of BALSAM's email

1 addresses with other unknown parties who might in turn send spam or mail bombs to BALSAM
2 or as if from BALSAM.

3 **B. SLM Did Not Have BALSAM's Direct Consent to Send Him Commercial Email**

4 72. The *commercial email advertisements* at issue in this action – except perhaps the first two
5 – were all *unsolicited* because BALSAM did not provide *direct consent* to receive
6 advertisements from SLM. Cal. Bus. & Prof. Code § 17529.1(c), (o), (d).

7 73. Even if BALSAM had given SLM direct consent in the past, such consent was revoked
8 when BALSAM first unsubscribed from SLM's email lists on May 12, 2007.

9 **C. Specific Violations of Cal. Bus. & Prof. Code § 17529.5, the Consumers Legal Remedies**
10 **Act (Cal. Civ. Code § 1750 et seq.), and the Rosenthal Fair Debt Collections Practices**
11 **Act (Cal. Civ. Code § 1788 et seq.)**

12 74. BALSAM paid off his SLM loans in 2001, six years before SLM began advertising in
13 and sending the spams at issue to BALSAM. Attachment A,

14 75. BALSAM did not have loans with SLM in 2007-2009, when SLM advertised in and sent
15 BALSAM the spams at issue.

16 76. BALSAM did not have an account with SLM in 2007-2009, when SLM advertised in and
17 sent BALSAM the spams at issue.

18 **1. Violations of Cal. Bus. & Prof. Code § 17529.5**

19 77. Bus. & Prof. Code § 17529.5(a)(3) prohibits email subject lines that are likely to mislead
20 a recipient, acting reasonably under the circumstances, about a material fact regarding the
21 contents or subject matter of the message. Sixteen of the 20 SLM spams contain deceptive
22 subject lines.

23 78. Bus. & Prof. Code § 17529.5(a)(3) does not require that BALSAM rely on the misleading
24 subject lines in order to have standing. The statute prohibits *falsity and deception*, without
25 requiring that a plaintiff demonstrate the common-law *fraud* requirements of reliance and
26 damages. In fact, the Legislature's reference to the "reasonable person" standard demonstrates
27 that the Legislature did *not* intend to require that a plaintiff demonstrate reliance, in that the
28 "reasonable person" is by definition a construct; no such actual person exists.

29 79. Here, BALSAM contends that emails from a financial institution such as SLM that claim
30 that the recipient has current loans and accounts with SLM, and owes SLM money, could easily
31 mislead a recipient into believing that such claims are true.

1 **2. Violations of the Consumers Legal Remedies Act**

2 80. Cal. Civ. Code § 1770(a)(3) prohibits “Misrepresenting the affiliation, connection, or
3 association with, or certification by, another.” Cal. Civ. Code § 1770(a)(5) prohibits
4 “Representing that . . . a person has a sponsorship, approval, status, affiliation, or connection
5 which he or she does not have.” Cal. Civ. Code § 1770(a)(14) prohibits “Representing that a
6 transaction confers or involves rights remedies, or obligations which it does not have or involve,
7 or which are prohibited by law.” All 20 SLM spams violated the CLRA, as described below, by
8 falsely claiming that, at the time SLM sent the spams, BALSAM had a connection/association
9 with SLM in the form of current accounts and loans, that BALSAM had the status of a
10 customer/borrower, and/or that BALSAM had an obligation to pay money to SLM, when in fact
11 BALSAM had paid off his loans six years before receiving these spams.

12 81. Cal. Civ. Code § 1770(a)(16) prohibits “Representing that the subject of a transaction has
13 been supplied in accordance with a previous representation when it has not.” Because BALSAM
14 unsubscribed from SLM’s lists on May 12, 2007, and SLM confirmed the unsubscribe request,
15 all 18 subsequent spams implicitly represent that BALSAM represented that he wanted to
16 receive such emails when in fact he had indicated precisely the opposite.

17 **3. Violations of the Rosenthal Fair Debt Collection Practices Act**

18 82. Cal. Civ. Code § 1788.2(d) defines “debt” to mean money due or owing *or alleged to be*
19 due or owing (emphasis added).

20 83. Cal. Civ. Code § 1788.17 requires compliance with the federal Fair Debt Collections
21 Practices Act, 15 U.S.C. § 1692b-j, as of January 1, 2001.

22 84. Cal. Civ. Code § 1788.17 requires compliance with 15 U.S.C § 1692c(c), which states
23 that “If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or
24 that the consumer wishes the debt collector to cease further communication with the consumer,
25 the debt collector shall not communicate further with the consumer with respect to such debt,
26 except – [].” Because SLM continued to send emails to BALSAM after BALSAM sent a
27 certified, return-receipt letter to SLM’s Chief Executive Officer, SLM violated 15 U.S.C.
28 § 1692c(c) and therefore Cal. Civ. Code § 1788.17 too.

29 85. Cal. Civ. Code § 1788.17 requires compliance with 15 U.S.C § 1692d, which states that
30 “A debt collector may not engage in any conduct the natural consequence of which is to harass,
31 oppress, or abuse any person in connection with the collection of a debt.” SLM harassed and

1 oppressed BALSAM by continuing to send emails to BALSAM alleging that BALSAM had
2 loans and accounts with SLM, even after BALSAM unsubscribed from SLM's email lists three
3 times, sent a certified, return-receipt letter to SLM's Chief Executive Officer, and had
4 conversations with SLM's General Counsel and Assistant General Counsel. SLM's continued
5 emails to BALSAM violated 15 U.S.C. § 1692c(c) and therefore Cal. Civ. Code § 1788.17 too.
6 86. Cal. Civ. Code § 1788.17 requires compliance with 15 U.S.C § 1692e, which states that
7 "A debt collector may not use any false, deceptive, or misleading representation or means in
8 connection with the collection of any debt." It is specifically unlawful to make a "false
9 representation of the character, amount, or legal status of any debt," 15 U.S.C. § 1692e(2)(A),
10 and to "use [] any false representation or deceptive means to collect or attempt to collect any
11 debt," 15 U.S.C. § 1692e(10). SLM sent BALSAM 20 emails falsely and deceptively referring
12 to BALSAM's loans, accounts, and payments with SLM. SLM's false and deceptive emails to
13 BALSAM violated 15 U.S.C. § 1692e and therefore Cal. Civ. Code § 1788.17 too.

14 87. Cal. Civ. Code § 1788.17 requires compliance with 15 U.S.C § 1692f, which states that
15 "A debt collector may not use unfair or unconscionable means to collect or attempt to collect any
16 debt." SLM's actions of sending BALSAM 20 emails falsely and deceptively referring to his
17 loans and accounts with, and payments due to, SLM, even though SLM knew BALSAM had
18 paid off his loans and BALSAM made repeated efforts to stop such emails, is unfair and
19 unconscionable. SLM's continuing false and deceptive emails to BALSAM violated 15 U.S.C.
20 § 1692f and therefore Cal. Civ. Code § 1788.17 too.

21 **4. Detailed Analysis**

22 88. The spams from April 5, 2007 and June 4, 2007 had the subject line "Important
23 Information About A *Repayment Feature On Your Student Loan Account*" (emphasis added).
24 The spam from August 23, 2007 had essentially the same subject line: "Important information
25 about *repayment features on your student loan account*" (emphasis added). These subject lines
26 are false and deceptive because they claim that BALSAM had an active account with SLM, and
27 active loans that required repayment. The body of the spams reiterated the [false] claim of the
28 subject line: "This new feature, which is now available on *your existing Sallie Mae student loan*
29 *account*, can help you pay down your loans faster" (emphasis added).

30 89. The spam from May 8, 2007 had the subject line "Imagine *no student loan payments* for
31 6 months" (emphasis added). This subject line is deceptive because it claims that BALSAM had

1 an active loan with SLM for which BALSAM would normally be required to make payments.
2 The body of the spam reiterated the [false] claim of the subject line, describing a promotion
3 through which “[A]s a Sallie Mae[®] customer, we [SLM] will pay you the value of six months of
4 *your Sallie Mae student loan payment* when you purchase or refinance a home through Sallie
5 Mae Home Loans[®]” (emphasis added).

6 90. The spam from July 26, 2007 had the subject line “Sallie Mae and Upromise can help
7 you save on *your student loans*” (emphasis added). This subject line is false and deceptive
8 because it claims that BALSAM had active student loans with SLM. The body of the spam
9 reiterated the [false] claim of the subject line: “This new feature, which is now available on *your*
10 *existing Sallie Mae student loan account*, can help you pay down your loans faster” (emphasis
11 added).

12 91. The spam from September 18, 2007 had the subject line “New benefit for *paying down*
13 *your student loans*” (emphasis added). This subject line is false and deceptive because it claims
14 that BALSAM had active student loans with SLM that had *not* been paid down. The body of the
15 spam reiterated the [false] claim of the subject line: “This new feature, which is now available on
16 *your existing Sallie Mae student loan account*, can help you pay down your loans faster”
17 (emphasis added).

18 92. The spams from May 13, 2007, June 13, 2007, July 13, 2007, August 12, 2007,
19 September 13, 2007, and April 8, 2008 had the subject line “Sallie Mae *Account Information*”
20 (emphasis added). This subject line is false and deceptive because it claims that BALSAM had
21 an active student loan account with SLM. The body of the spams reiterated the [false] claim of
22 the subject line: “*Your account updates* are viewable in the attached PDF document. The file is
23 password-protected and you need to enter your Social Security number to open it” (emphasis
24 added). However, BALSAM tried to open the attached PDF document using his social security
25 number as a password and received an error message that the password was incorrect. SLM’s
26 own document therefore proves that BALSAM did *not* have an active account with SLM. The
27 body of the spams also said “You can also view *your account information* online []” (emphasis
28 added). However, BALSAM went to SLM’s website and entered his social security number and
29 date of birth, and SLM’s own website responded that BALSAM does not have an existing user
30 account. SLM’s own website therefore proves that BALSAM did *not* have an active account
31 with SLM.

1 93. The spam from May 27, 2008 had the subject line “Important information about *your*
2 *Sallie Mae account*” (emphasis added). The spam from June 24, 2008 had the subject line
3 “Important Information regarding *your account*” (emphasis added). The spams from August 5,
4 2008 and September 16, 2008 had the subject line “Important Information about *your account*”
5 (emphasis added). These subject lines are all false and deceptive because they claim that
6 BALSAM had an active student loan account with SLM. The body of the spams reiterated “your
7 account.” As above, BALSAM did not have active accounts or loans with SLM, as confirmed
8 by SLM’s own website.

9 94. The subject line “Changes to Email Communication” (February 10, 2009) is deceptive,
10 because this subject line suggests that the recipient opted in, and was separately deceptive to
11 Balsam, given the history between Balsam and SLM. Moreover, the body of the email referred
12 to “your student loan account” and “your Sallie Mae online account.”

13 **D. Damages**

14 95. BALSAM suffered actual damages as a result of the wrongful conduct of SLM. *See, e.g.,*
15 Cal. Bus. & Prof. Code § 17529(d), (e), (g), (h).

16 96. BALSAM was damaged by each unlawful SLM spam when BALSAM received each
17 unlawful spam, in the State of California, sent by SLM to BALSAM’s California email
18 address(es).

19 97. Cal. Bus. & Prof. Code § 17529.5 does not require BALSAM to quantify his actual
20 damages or to demonstrate reliance on the advertisements contained in the spams.

21 98. The California Legislature defined liquidated damages to be \$1,000 per spam. Cal. Bus.
22 & Prof. Code § 17529.5(b)(1)(B)(ii).

23 99. Plaintiff is informed and believes and thereon alleges that this figure is comparable with
24 damages in other areas of consumer protection law, e.g., \$500-\$1,500 statutory damages per junk
25 fax, 47 U.S.C. § 227(b)(3).

26 100. BALSAM’s rightful and lawful assertion of the California Legislature’s liquidated
27 damages amount of \$1,000 per email is necessary to further the Legislature’s objective of
28 protecting California residents from unlawful spam.

29 101. Defendants’ actions warrant the imposition of punitive damages, in that the actions were
30 oppressive because of the volume of the advertising, fraudulent as to specific statements within
31 the advertising, and the acts of advertising were done intentionally and with malice.

1 **E. Violations of the Federal CAN-SPAM Act**

2 102. Although BALSAM brings this action under California law, BALSAM points out to this
3 Court that SLM also repeatedly violated the federal CAN-SPAM Act, 15 U.S.C. § 7701 *et seq.*

4 103. The CAN-SPAM Act requires that commercial emails offer recipients a means of opting
5 out of future spam. 15 U.S.C. § 7704(a)(3). Thirteen of the spams – April 5, 2007, May 13,
6 2007, June 4, 2007, June 13, 2007, July 13, 2007, July 26, 2007, August 12, 2007, September 13,
7 2007, April 8, 2008, May 27, 2008, June 4, 2008, June 17 2008, and February 10, 2009 – have
8 no means of opting out. Therefore, SLM violated federal law 13 times.

9 104. The CAN-SPAM Act prohibits spamming after a recipient opts out. 15 U.S.C.
10 § 7707(a)(4). SLM sent 18 spams after BALSAM’s first unsubscribe attempt on May 12, 2007.
11 Therefore, SLM violated federal law 18 times.

12 105. The CAN-SPAM Act requires physical mailing addresses in the body of commercial
13 emails. 15 U.S.C. § 7704(a)(5)(A)(iii). Only three of the 20 spams – May 8, 2007, August 23,
14 2007, and September 18, 2007 – have a physical mailing address. Therefore, SLM violated
15 federal law 17 times.

16
17 **FIRST CAUSE OF ACTION**

18 **[Violations of California Restrictions on Unsolicited Commercial Email Advertisers,**
19 **California Business and Professions Code § 17529.5]**
20 **(Against All Defendants)**

21 106. BALSAM hereby incorporates each and every foregoing paragraph as though set forth in
22 full herein.

23 107. The statute of limitations for an anti-spam action pursuant to Cal. Bus. & Prof. Code
24 § 17529.5 is four years. Cal. Bus. & Prof. Code § 17208 (applying to § 17200, which defines
25 “unfair competition” to include acts prohibited by § 17500 *et seq.*). The spams at issue are all
26 within the statute of limitations.

27 108. SLM sent or caused to be sent and advertised in 20 unsolicited commercial emails that
28 BALSAM received at his California email address; 16 of these spams had deceptive subject lines
29 claiming that BALSAM had a current account and/or loans with SLM.

30 109. BALSAM suffered damages as a result of Defendants’ wrongful conduct.

31 110. The California Legislature set liquidated damages at One Thousand Dollars (\$1,000) per
email in violation of the statute. Cal. Bus. & Prof. Code § 17529.5(b)(1)(B)(ii).

1 111. SLM is not entitled to any reduction in liquidated damages because SLM cannot
2 demonstrate that it has reasonably effective systems in place to prevent the sending of unlawful
3 spam in violation of the statute.

4 112. Plaintiff is informed and believes and thereon alleges that the subject lines at issue were
5 deliberately conceived and written by Defendants; they were not “clerical mistakes.”

6 113. SLM is not entitled to any reduction in liquidated damages because SLM cannot
7 demonstrate that it has reasonably effective systems in place to prevent the sending of unlawful
8 spam in violation of the statute. The fact that SLM continued to send spam to BALSAM, despite
9 three confirmed unsubscribe attempts, a certified/return-receipt letter to the CEO, and direct
10 communications with SLM’s General Counsel and Assistant General Counsel (who confirmed
11 that BALSAM’s email address had been removed from all lists) demonstrates that such systems
12 – if they exist at all – are entirely *ineffective*.

13 114. BALSAM seeks reimbursement of attorneys’ fees and costs as authorized by Cal. Bus. &
14 Prof. Code § 17529.5(b)(1)(C). The attorneys’ fees provision for a prevailing plaintiff is typical
15 of consumer protection statutes and supported by Cal. Code Civ. Proc. § 1021.5. By prosecuting
16 this action, BALSAM expects to enforce an important right affecting the public interest and
17 thereby confer a significant benefit on the general public or a large class of persons. The
18 necessity and financial burden of private enforcement is such as to make the award appropriate,
19 and the attorneys’ fees should not, in the interest of justice, be paid out of the recovery of
20 damages.

21
22 WHEREFORE, BALSAM prays for judgment against Defendants, and each of them, as
23 hereinafter set forth.

24
25 **SECOND CAUSE OF ACTION**

26 **[Violations of Consumers Legal Remedies Act, California Civil Code § 1750 *et seq.*]**
27 **(Against all Defendants)**

28 115. BALSAM hereby incorporates each and every foregoing paragraph as though set forth in
29 full herein.
30
31

1 116. The statute of limitations for a Consumers Legal Remedies Act (“CLRA”) cause of
2 action is three years. Cal. Civ. Code § 1783. The spams at issue are all within the statute of
3 limitations.

4 117. The CLRA is a *general* consumer protection statute that is not specific to email. In fact,
5 the CLRA does not even mention the word “email” or “Internet.”

6 118. A corporation may be sued where the cause of action arises. Code Civ. Proc. § 395.5.
7 BALSAM received the spam messages in San Francisco County. Therefore, venue is proper in
8 San Francisco County.

9 119. In all 20 emails at issue, SLM referred to BALSAM’s account or loans, attempted to
10 solicit money from BALSAM, and sell (or “re-sell”) their financial services to BALSAM.

11 120. BALSAM suffered actual damages as a result of the wrongful conduct of SLM. *See, e.g.,*
12 Cal. Bus. & Prof. Code § 17529(d), (e), (g), (h).

13 **A. Liberal Construction to Protect Consumers**

14 121. The California Legislature enacted the CLRA, Cal. Civ. Code § 1750 *et seq.*, in order to
15 protect consumers against unfair and deceptive business practices and to provide efficient and
16 economical procedures to secure such protection. To that end, the CLRA “shall be liberally
17 construed.” Cal. Civ. Code § 1760.

18 122. “The evils of deceptive advertising cannot be reached effectively if legislation to that end
19 is interpreted to require proof of actual reliance upon a false statement knowingly made, as in a
20 common law action in deceit.” *Webster v. Board of Dental Examiners*, 17 Cal.2d 534, 541
21 (1941).

22 **B. The CLRA Applies to Consumer Loans**

23 123. The CLRA applies to consumer loans – financial services that are not extensions of credit
24 – used to purchase other services, such as a graduate degree. *See, e.g., Hernandez v. Hilltop*
25 *Financial Mortgage Inc. et al*, 2007 U.S. Dist. LEXIS 80867 (N.D. Cal. Oct. 22, 2007) (holding
26 that financial transactions in general – including loans – are subject to the CLRA (*Kagan v.*
27 *Gibraltar Savings & Loan Assn.*, 35 Cal. 3d 582 (1984) (partially reversed on other grounds,
28 *Meyer v. Sprint Spectrum L.P.*, 2009 Cal. LEXIS 337 (Cal. Sup. Ct. Jan. 29, 2009)), because they
29 are *not* extending a line of credit *separate and apart* from the sale or lease of any specific good
30 or service (*Berry v. American Express Publishing Inc.*, 147 Cal. App. 4th 224 (4th Dist. 2007)).
31 *See also Knox v. Ameriquest Mortgage Co.*, 2005 U.S. Dist. LEXIS 40709 (N.D. Cal. Aug. 10,

1 2005) (“the Court has reviewed the limited case law on this issue and finds that California courts
2 generally find financial transactions to be subject to the CLRA”).

3 **C. Specific Violations of the CLRA**

4 124. The CLRA is explicitly cumulative – each unlawful spam is a separate violation.

5 125. The subject lines of 16 of the unlawful spams identified above, and the body text of the
6 17 unlawful spams identified above, include the following language: “your existing Sallie Mae
7 student loan account,” “your student loans,” “your Sallie Mae student loan payment,” “a
8 repayment feature on your student loan account,” “paying down your student loans,” “account
9 updates,” “account information.”

10 126. Cal. Civ. Code § 1770(a)(3) prohibits “Misrepresenting the affiliation, connection, or
11 association with, or certification by, another.” The 17 spams described above violate Civ. Code
12 § 1770(a)(3) because they represent that BALSAM had an account and/or loan with SLM – i.e.,
13 that there was a connection and association between BALSAM and SLM – when there was *no*
14 such connection or association, because BALSAM did not have an account or loans with SLM at
15 the time that SLM advertised in and sent the spams to BALSAM.

16 127. Cal. Civ. Code § 1770(a)(5) prohibits “Representing that . . . a person has a sponsorship,
17 approval, status, affiliation, or connection which he or she does not have.” The 16 spams
18 described above violate Civ. Code § 1770(a)(5) because they represent that BALSAM has a
19 status – that of a SLM customer/borrower – that he did not have, because BALSAM did *not* have
20 an account or loans with SLM at the time that SLM advertised in and sent the spams to
21 BALSAM.

22 128. Cal. Civ. Code § 1770(a)(14) prohibits “Representing that a transaction confers or
23 involves rights remedies, or obligations which it does not have or involve, or which are
24 prohibited by law.” The 16 spams described above violate Civ. Code § 1770(a)(14) because
25 references to accounts and loans – and particularly language such as “a repayment feature on
26 your student loan account” and “paying down your student loans” – indicated that BALSAM has
27 an obligation to pay money to SLM, when in fact BALSAM had paid off his loans six years
28 before receiving these spams.

29 129. Cal. Civ. Code § 1770(a)(16) prohibits “Representing that the subject of a transaction has
30 been supplied in accordance with a previous representation when it has not.” Because BALSAM
31 unsubscribed from SLM’s lists on May 12, 2007, and SLM confirmed the unsubscribe request,

1 all 17 subsequent spams imply that BALSAM represented that he wanted to receive such emails
2 when in fact he had indicated precisely the opposite.

3 **D. Balsam Sent a Letter Informing SLM of CLRA Violations; SLM Did Not Respond**

4 130. BALSAM sent a letter by certified mail, return-receipt requested, to Albert Lord, SLM's
5 Chief Executive Officer, on July 19, 2008 – more than 30 days prior to filing this lawsuit –
6 alleging specific violations of the CLRA, as required by Cal. Civ. Code § 1782(a). Attachment
7 D.

8 131. SLM did not respond within 30 days of receipt of notice (July 22, 2008), as required by
9 Cal. Civ. Code § 1782, and identify all consumers similarly situated as BALSAM and notify
10 those consumers that it would remedy its marketing practices, as required by Cal. Civ. Code
11 § 1782(c).

12 132. SLM appears to have ignored BALSAM's letter altogether, and continued to send more
13 unlawful spam to BALSAM claiming that BALSAM has current accounts and loans with SLM.

14 133. BALSAM seeks equitable relief, pursuant to Cal. Civ. Code § 1782(a)(2), in the form of
15 an injunction prohibiting SLM, either directly or through agents, servants, and employees, and
16 all persons acting under, in concert with, or for them, from sending unlawful commercial email
17 advertising.

18
19 WHEREFORE, BALSAM prays for judgment against Defendants, and each of them, as
20 hereinafter set forth.

21
22 **THIRD CAUSE OF ACTION**

23 **[Violations of Rosenthal Fair Debt Collection Practices Act,**
24 **California Civil Code § 1788 *et seq.***
25 **(Against all Defendants)**

26 134. BALSAM hereby incorporates each and every foregoing paragraph as though set forth in
27 full herein.

28 135. The Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788 *et seq.*,
29 prohibits unfair and deceptive conduct by debt collectors towards consumers, for moneys
30 actually owed and *allegedly* owed. Cal. Civ. Code §§ 1788.1, 1788.2(d). The Rosenthal Fair
31 Debt Collection Practices Act at Cal. Civ. Code § 1788.17 also incorporates by reference many

1 provisions of the federal Fair Debt Collection Practices Act, including the requirements of 15
2 U.S.C. § 1692b-j and the remedies of 15 U.S.C. § 1692k.

3 136. SLM violated Cal. Civ. Code § 1788.17 by violating 15 U.S.C. § 1692c(c): Continuing to
4 communicate with BALSAM even after BALSAM notified SLM in writing to stop sending him
5 emails.

6 137. SLM violated Cal. Civ. Code § 1788.17 by violating 15 U.S.C § 1692d: Harassing and
7 oppressing BALSAM by continuing to send him emails alleging that BALSAM had loans and
8 accounts with SLM even after BALSAM unsubscribed from SLM's email lists three times, sent
9 a certified, return-receipt letter to SLM's Chief Executive Officer, and had conversations with
10 SLM's General Counsel and Assistant General Counsel.

11 138. SLM violated Cal. Civ. Code § 1788.17 by violating 15 U.S.C. § 1692e: Falsely and
12 deceptive referring to BALSAM's (purported) loans, accounts, and payments with SLM even
13 though BALSAM had paid off his loans, and using false and deceptive means to collect or
14 attempt to collect a debt.

15 139. SLM violated Cal. Civ. Code § 1788.17 by violating 15 U.S.C. § 1692f: Using unfair and
16 unconscionable means to collect or attempt to collect a debt, i.e. by sending BALSAM repeated
17 emails falsely and deceptively referring to his loans and accounts with, and payments due to,
18 SLM, even though SLM knew BALSAM had paid off his loans and BALSAM made repeated
19 efforts to stop such emails.

20
21 WHEREFORE, BALSAM prays for judgment against Defendants, and each of them, as
22 hereinafter set forth.

23
24 **FOURTH CAUSE OF ACTION**

25 **[Declaratory Relief]**
26 **(Against All Defendants)**

27 140. BALSAM hereby incorporates each and every foregoing paragraph as though set forth in
28 full herein.

29 141. An actual controversy has arisen between BALSAM and SLM as to the nature of their
30 email advertising.

1 142. BALSAM respectfully requests this Court to make a judicial declaration and
2 determination that the subject lines of SLM's spam were likely to mislead a reasonable recipient,
3 in violation of Cal. Bus. & Prof. Code § 17529.5(a)(3).

4 143. BALSAM respectfully requests this Court to make a judicial declaration and
5 determination that SLM's email advertising referring to BALSAM's accounts and loans, and
6 implying that BALSAM requested to receive such communications, was false and deceptive, in
7 violation of the Consumers Legal Remedies Act.

8 144. BALSAM respectfully requests this Court to make a judicial declaration and
9 determination that SLM's continued emails to BALSAM falsely claiming that BALSAM has
10 loans and accounts with SLM, even after BALSAM took repeated steps to stop such emails,
11 violated the Rosenthal Fair Debt Collection Practices Act.

12
13 WHEREFORE, BALSAM prays for judgment against Defendants, and each of them, as
14 hereinafter set forth.

15
16 **PRAYER FOR RELIEF**

17 **(Against All Defendants)**

- 18 A. An Order from this Court declaring that Defendants SALLE MAE INC. and SLM
19 CORPORATION have violated Cal. Bus. & Prof. Code § 17529.5, the Consumer Legal
20 Remedies Act (Cal. Civ. Code § 1750 *et seq.*), and the Rosenthal Fair Debt Collection
21 Practices Act (Cal. Civ. Code § 1788 *et seq.*);
- 22 B. Liquidated damages jointly and severally against SALLIE MAE INC. and SLM
23 CORPORATION in the amount of Sixteen Thousand Dollars (\$16,000) – One Thousand
24 Dollars (\$1,000) for each of 16 spam messages with deceptive subject lines – as authorized
25 by Cal. Bus. & Prof. Code § 17529.5(b)(1)(B)(ii);
- 26 C. A penalty jointly and severally against SALLIE MAE INC. and SLM CORPORATION in
27 the amount of One Thousand Dollars (\$1,000), as authorized by Cal. Civ. Code § 1788.17
28 (incorporating 15 U.S.C. § 1692k(a)(2)(A)) and Cal. Civ. Code § 1788.30(b).
- 29 D. Punitive damages against SALLIE MAE INC. and SLM CORPORATION as authorized by
30 Cal. Civ. Code § 3294 in an amount to be determined by the Court;
- 31

- 1 E. Equitable relief in the form of an injunction prohibiting SALLIE MAE INC. and SLM
- 2 CORPORATION, either directly or through agents, servants, and employees, and all persons
- 3 acting under, in concert with, or for them, from sending and advertising in unlawful
- 4 commercial email advertising, as authorized by Cal. Civ. Code § 1780(a)(2);
- 5 F. Attorneys' fees as authorized by Cal. Bus. & Prof. Code § 17529.5(b)(1)(C), Cal. Civ. Code
- 6 § 1780(d), Cal. Civ. Code § 1788.30(c), and Cal. Code Civ. Proc. § 1021.5;
- 7 G. Costs of suit; and
- 8 H. Such other and further relief as the Court deems proper.

9
10 LAW OFFICES OF TIMOTHY WALTON

11 Date: _____ BY: _____
12 TIMOTHY J. WALTON
13 Attorneys for Plaintiff

14
15
16 **VERIFICATION**

17 The undersigned for himself declares:

18 I am the plaintiff in the above-entitled action. I have read the forgoing First Amended
19 Complaint and know the contents thereof. With respect to the causes of action alleged by me,
20 the same is true by my own knowledge, except as to those matters which are therein stated on
21 information and belief, and, as to those matters, I believe them to be true. I declare under penalty
22 of perjury under the laws of the State of California that the forgoing is true and correct.
23

24 Date: _____
25 DANIEL L. BALSAM

ATTACHMENT A

**Letter from SLM to BALSAM from November 2001,
acknowledging that BALSAM's loans were fully repaid**

DANIEL L BALSAM

ACCOUNT NUMBER: [REDACTED]

[REDACTED]
SAN FRANCISCO CA 94118-3942

Dear DANIEL L BALSAM,

11/09/01

Congratulations! This is your official notification that you have completely paid off the student loans starred(*) below.

We are pleased to have had you as a customer and wish you the best of luck in the future. Thank you!

Customer Service

Loan Information

If you have questions or concerns about your account, write to us at the address provided above.

The list below includes all the loans in your account with us. Loans marked with a star (*) are the loans referred to in this letter.

LOAN DATE	ORIGINAL LOAN AMOUNT	OUTSTANDING PRINCIPAL	INTEREST RATE	LOAN PROGRAM
* 05/04/99	\$ 22,831.44	\$.00	8.250	SMART LOAN
* 05/04/99	22,686.76	.00	8.250	SMART LOAN

ATTACHMENT B

SLM advertised in and sent 20 spam emails to BALSAM



[REDACTED]@hotmail.com

Printed: Monday, May 28, 2007 6:59 PM

From : Sallie Mae <SallieMae@mail.salliemae.com>
Reply-To : SallieMae@mail.salliemae.com
Sent : Thursday, April 5, 2007 11:53 PM
To : [REDACTED]@hotmail.com
Subject : Important Information About A Repayment Feature On Your Student Loan Account

MIME-Version: 1.0

Received: from mail09.rm04.net ([129.41.69.95]) by bay0-mc4-f15.bay0.hotmail.com with Microsoft SMTPSVC(6.0.3790.2668); Thu, 5 Apr 2007 22:33:28 -0700

Received: by mail09.rm04.net id h2ndqa0beoc8 for <[REDACTED]@hotmail.com>; Thu, 5 Apr 2007 19:53:35 -0400 (envelope-from <v-mjdch_bhpdnejko_bjkaccb_bjkaccb_a@bounce1.rm05.net>)

X-Message-Info: LsUYwwHHnt2X/sEiah6Vc3DAMNHuG5M6rmpT1JpxefK6u0HP0MnSP3TdHHg5VRou

x-mid: 824103

Return-Path: v-mjdch_bhpdnejko_bjkaccb_bjkaccb_a@bounce1.rm05.net

X-OriginalArrivalTime: 06 Apr 2007 05:33:28.0874 (UTC) FILETIME=[1B2620A0:01C7780D]

Important Information About A Repayment Feature On Your Student Loan Account

Dear Daniel:

Sallie Mae(R) wants to notify you about a new customer benefit - the Sallie Mae Upromise Loan Link(SM) Program. This new feature, which is now available on your existing Sallie Mae student loan account, can help you pay down your loans faster.

In order to sign up for this new feature, visit the link below.

<http://sdm3.rm04.net/ctt?kn=1&m=824103&r=NjQyOTY5MDI4NgS2&b=2&j=MjY4NzAzMDUS1&mt=1>.

By joining Upromise(R) you can earn rewards on eligible everyday purchases. Additionally, by signing up for Upromise Loan Link, you can designate all or a percentage of your accumulated rewards of at least \$25 to be automatically applied to your Sallie Mae loan account on a quarterly basis.

Rewards earned through Upromise are in addition to other Sallie Mae savings programs that may include zero origination fees, zero default fee and various repayment status borrower benefit programs.

Visit the link below for more information about Upromise and the Upromise Loan Link Program.

<http://sdm3.rm04.net/ctt?kn=1&m=824103&r=NjQyOTY5MDI4NgS2&b=2&j=MjY4NzAzMDUS1&mt=1>

As one of our valued customers, we hope you take advantage of this new, free benefit today.

(c) 2007 Sallie Mae, Inc. All rights reserved.

SLM Corporation(R) and its subsidiaries are not sponsored by or agencies of the United States of America. Sallie Mae is a registered service mark of Sallie Mae, Inc. Upromise and Upromise Loan Link are service marks or registered service marks of Upromise, Inc.



[REDACTED]@hotmail.com

Printed: Monday, May 28, 2007 7:00 PM

From : Sallie Mae Home Loans <SallieMaeHomeLoans@mail.salliemae.com>
Reply-To : SallieMaeHomeLoans@mail.salliemae.com
Sent : Tuesday, May 8, 2007 3:46 PM
To : [REDACTED]@hotmail.com
Subject : Imagine no student loan payments for 6 months

MIME-Version: 1.0

Received: from mail1292.mail.salliemae.com ([129.41.98.42]) by bay0-mc10-f11.bay0.hotmail.com with Microsoft SMTPSVC (6.0.3790.2668); Tue, 8 May 2007 09:28:18 -0700

Received: by mail1292.mail.salliemae.com id h82ihu0beocn for <[REDACTED]@hotmail.com>; Tue, 8 May 2007 11:46:33 -0400 (envelope-from <v-najbl_bjbmhbgaj_bkkelbc_bkkelbc_a@reply.mail.salliemae.com>)

X-Message-Info: txF49lGdW40hV0wns9MC828bFOSA2K4hwS5f3K8SN+ldT92bLrvUkCOG2nd3UTsw

x-mid: 854299

Return-Path: v-najbl_bjbmhbgaj_bkkelbc_bkkelbc_a@reply.mail.salliemae.com

X-OriginalArrivalTime: 08 May 2007 16:28:18.0711 (UTC) FILETIME=[E2EF7A70:01C7918D]

This message contains graphics. If you do not see the graphics, [click here to view](#).
 To view future messages properly, please add salliemaehome loans@mail.salliemae.com to your Address Book by following the Instructions provided for your email provider: [Instructions for how to add us to your Address Book](#).

A company you trust. Service you can rely on.

SallieMae
HOME LOANS™

We will pay 6 months of your Sallie Mae student loan*



Have an ARM and looking for the stability of a fixed-rate?

With a Sallie Mae Home Loans Buy Down Loan you get:

- Low introductory rate
- Low initial monthly payment for up to 2 years
- Security of a fixed rate
- The ability to afford more of a home

And, as a Sallie Mae® customer, we will pay you the value of six months of your Sallie Mae student loan payment--up to a total of \$500--when you purchase or refinance a home through Sallie Mae Home Loans®.

Call
 800/SLM-6404
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 to have a
 Home Loan
 Expert
 call you.

Contact Us Now!

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 A company you trust. Service you can rely on.**

EB07XMX

*Sallie Mae Home Loans will credit to you at closing an amount equal to six months of payments on one of your current Sallie Mae student loans, up to an overall total of \$500. For Sallie Mae customers that are paid in full, Sallie Mae Home Loans will pay \$250 towards closing costs. Certain low down payment products will require credit be applied towards the new principal balance. Offer is good for first mortgages only. One offer per person only. Terms and conditions apply.

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Printed: Monday, May 28, 2007 6:58 PM

From : Sallie Mae, Inc. <CustomerService@salliemae.com>
Reply-To : CustomerService@salliemae.com
Sent : Sunday, May 13, 2007 7:27 PM
To : [REDACTED]@hotmail.com
Subject : Sallie Mae Account Information

 Attachment : [Attachment.pdf](#) (0.10 MB)

MIME-Version: 1.0

Received: from sinetfi3.salliemae.com ([167.104.7.226]) by bay0-mc10-f12.bay0.hotmail.com with Microsoft SMTPSVC(6.0.3790.2668); Sun, 13 May 2007 12:35:22 -0700

Received: from spcrlyfi20.usa-ed.net (connect1.salliemae.com [167.104.6.11]) by sinetfi3.salliemae.com (4.1/4.1) with ESMTTP id I4DJZLnX028353for <[REDACTED]@hotmail.com>; Sun, 13 May 2007 15:35:21 -0400

Received: from salliemae.com (speeefi010.usa-ed.net [172.19.42.50]) by spcrlyfi20.usa-ed.net (4.1/4.1) with SMTP id I4DInxAH012200for <[REDACTED]@HOTMAIL.COM>; Sun, 13 May 2007 15:35:21 -0400

X-Message-Info: oG9qAjD2BNG0yVIB517PPGnn3qlAeYybyzMIPoh6gGcYxgSr4s1QlWDA1LdDnTQ

X-Mailer: StrongMail Enterprise 3.1.4(2.00.127)

X-SMHeaderMap: mid="X-MailingID"

X-MailingID:

00000::00000::00000::00000::414d51204d5046334153202020202046185c7225ad1ed7##CustomerService@salliemae.com##Mercury##Mercury::6902

X-Destination-ID: <[REDACTED]@HOTMAIL.COM>

X-SLMAID: 414d51204d5046334153202020202046185c7225ad1ed7##CustomerService@salliemae.com##Mercury##Mercury

X-VirtualServerGroup: UNDEF

Return-Path: 414d51204d5046334153202020202046185c7225ad1ed7@enterpriseemail.salliemae.com

X-OriginalArrivalTime: 13 May 2007 19:35:22.0435 (UTC) FILETIME=[D8DC9930:01C79595]

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It's quick and it's easy. If you've enrolled, you can use MYL to pay online, change your payment plan, review your payment history, learn about repayment and consolidation options, and more.

If you have questions about this email or the attached document, or if you are unable to access your account online, please call Sallie Mae today at 888/2-SALLIE (888/272-5543).

Thank you,

Sallie Mae



[REDACTED]@hotmail.com

Printed: Wednesday, June 6, 2007 5:56 AM

From : Sallie Mae <SallieMae@mail.salliemae.com>
Reply-To : SallieMae@mail.salliemae.com
Sent : Monday, June 4, 2007 9:22 PM
To : [REDACTED]@hotmail.com
Subject : Important Information About A Repayment Feature On Your Student Loan Account

MIME-Version: 1.0

Received: from mail09.rm04.net ([129.41.69.95]) by bay0-mc7-f22.bay0.hotmail.com with Microsoft SMTPSVC(6.0.3790.2668); Tue, 5 Jun 2007 10:43:22 -0700

Received: by mail09.rm04.net id hcmgbk0beod for <[REDACTED]@hotmail.com>; Mon, 4 Jun 2007 17:22:02 -0400 (envelope-from <v-nhdjp_bjpeehcbm_blijpck_blijpck_a@bounce1.rm05.net>)

X-Message-Info: oG9qAjD2BNE73yoj6WoBktg7oYxv4VU5FN9JgRAtNiBbGJNfq9xTCAGyr3rLyz9U

x-mid: 881567

Return-Path: v-nhdjp_bjpeehcbm_blijpck_blijpck_a@bounce1.rm05.net

X-OriginalArrivalTime: 05 Jun 2007 17:43:22.0198 (UTC) FILETIME=[02CA0F60:01C7A799]

Important Information About A Repayment Feature On Your Student Loan Account

Dear Daniel:

Sallie Mae(R) wants to notify you about a new customer benefit - the Sallie Mae Upromise Loan Link(SM) Program. This new feature, which is now available on your existing Sallie Mae student loan account, can help you pay down your loans faster.

In order to sign up for this new feature, visit the link below.

<http://sdm3.rm04.net/ctt?kn=1&m=881567&r=Njk2NzAzMDMwMAS2&b=2&j=Mjg4NzY1ODYS1&mt=1>.

By joining Upromise(R) you can earn rewards on eligible everyday purchases. Additionally, by signing up for Upromise Loan Link, you can designate all or a percentage of your accumulated rewards of at least \$25 to be automatically applied to your Sallie Mae loan account on a quarterly basis.

Rewards earned through Upromise are in addition to other Sallie Mae savings programs that may include zero origination fees, zero default fee and various repayment status borrower benefit programs.

Visit the link below for more information about Upromise and the Upromise Loan Link Program.

<http://sdm3.rm04.net/ctt?kn=2&m=881567&r=Njk2NzAzMDMwMAS2&b=2&j=Mjg4NzY1ODYS1&mt=1>

As one of our valued customers, we hope you take advantage of this new, free benefit today.

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[REDACTED]@hotmail.com

Printed: Thursday, June 14, 2007 4:13 AM

From : Sallie Mae, Inc. <CustomerService@salliemae.com>
Reply-To : CustomerService@salliemae.com
Sent : Wednesday, June 13, 2007 11:58 AM
To : [REDACTED]@hotmail.com
Subject : Sallie Mae Account Information

 Attachment : [Attachment.pdf](#) (0.10 MB)

MIME-Version: 1.0

Received: from sinetfi3.salliemae.com ([167.104.7.226]) by bay0-mc10-f9.bay0.hotmail.com with Microsoft SMTPSVC(6.0.3790.2668); Wed, 13 Jun 2007 05:07:47 -0700

Received: from spcrlyfi20.usa-ed.net (connect20.salliemae.com [167.104.6.43]) by sinetfi3.salliemae.com (4.1/4.1) with ESMTP id I5DC7kbb022998for <[REDACTED]@hotmail.com>; Wed, 13 Jun 2007 08:07:46 -0400

Received: from salliemae.com (speefi010.usa-ed.net [172.19.42.50]) by spcrlyfi20.usa-ed.net (4.1/4.1) with SMTP id I5DBJ7F5018330for <[REDACTED]@HOTMAIL.COM>; Wed, 13 Jun 2007 08:07:46 -0400

X-Message-Info: oG9qAjd2BNG0yVIB517PPEvNA32ku3H19VEIT2jwI3i3ikqM6tAR0JuJG70AFaI4

X-Mailer: StrongMail Enterprise 3.1.4(2.00.127)

X-SMHeaderMap: mid="X-MailingID"

X-MailingID:

00000::00000::00000::00000::414d51204d50464341532020202020204635fec7276deb3f##CustomerService@salliemae.com##Mercury##Mercury::37826

X-Destination-ID: <[REDACTED]@HOTMAIL.COM>

X-SLMAID: 414d51204d50464341532020202020204635fec7276deb3f##CustomerService@salliemae.com##Mercury##Mercury

X-VirtualServerGroup: UNDEF

Return-Path: 414d51204d50464341532020202020204635fec7276deb3f@enterpriseemail.salliemae.com

X-OriginalArrivalTime: 13 Jun 2007 12:07:47.0814 (UTC) FILETIME=[7510E060:01C7ADB3]

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You can also view your account information online: Go to SallieMae.com and follow the instructions on the homepage to sign in or enroll in Manage Your Loans (MYL), Sallie Mae's online account management tool.

It's quick and it's easy. If you've enrolled, you can use MYL to pay online, change your payment plan, review your payment history, learn about repayment and consolidation options, and more.

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Thank you,

Sallie Mae



Sallie Mae Account Information

From: **Sallie Mae, Inc.** (CustomerService@salliemae.com)

Sent: Fri 7/13/07 12:19 PM

To: [REDACTED]@hotmail.com

Attachments: [Attachment.pdf](#) (105.4 KB)

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Thank you,

Sallie Mae



[REDACTED]@hotmail.com

Printed: Wednesday, August 1, 2007 2:29 AM

From : Sallie Mae <SallieMae@mail.salliemae.com>
Reply-To : SallieMae@mail.salliemae.com
Sent : Thursday, July 26, 2007 9:31 PM
To : [REDACTED]@hotmail.com
Subject : Sallie Mae and Upromise can help you save on your student loans

MIME-Version: 1.0

Received: from mail1205.mail.salliemae.com ([129.41.78.209]) by bay0-mc12-f2.bay0.hotmail.com with Microsoft SMTPSVC (6.0.3790.2668); Thu, 26 Jul 2007 22:41:47 -0700

Received: by mail1205.mail.salliemae.com id hl62pm0beocu for <[REDACTED]@hotmail.com>; Thu, 26 Jul 2007 17:31:40 -0400 (envelope-from <v-oeijf_bmdghhoof_bngelmk_bngelmk_a@repy.mail.salliemae.com>)

X-Message-Info: LsUYwwHHNt0AQhMW9H5iCtUY+zdBXhUt7hLi/Wcn2cgQBxI2sP7gKzMRSxapFy94

DomainKey-Signature: a=rsa-sha1; c=noFWS; q=dns; s=spop; d=mail.salliemae.com;

b=OFRjjQb3DXowe7NBZwHkc3vvn6v/dwurPqhSKy8/eN2fQKyIN7iSkQSgkQxQoIEFg9/u7Y/+xEMz Ts8Zw84Mqg==;

x-mid: 936085

Return-Path: v-oeijf_bmdghhoof_bngelmk_bngelmk_a@repy.mail.salliemae.com

X-OriginalArrivalTime: 27 Jul 2007 05:41:47.0333 (UTC) FILETIME=[D284EF50:01C7D010]

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Dear Daniel:

Sallie Mae® wants to notify you about a new customer benefit – the Sallie Mae Upromise Loan LinkSM Program. This new feature, which is now available on your existing Sallie Mae student loan account, can help you pay down your loans faster.

In order to sign up for this new feature, [click here](#).

By joining Upromise® you can earn rewards on eligible everyday purchases. Additionally, by signing up for Upromise Loan Link, you can designate all or a percentage of your accumulated rewards of at least \$25 to be automatically applied to your Sallie Mae loan account on a quarterly basis.

Rewards earned through Upromise are in addition to other Sallie Mae savings programs that may include zero origination fees, zero default fee and various repayment status borrower benefit programs.

For more information about Upromise and the Upromise Loan Link Program, [click here](#). As one of our valued customers, we hope you take advantage of this new, free benefit today.

.....

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[REDACTED]@hotmail.com

Printed: Tuesday, August 14, 2007 3:39 AM

From : Sallie Mae, Inc. <CustomerService@salliemae.com>
Reply-To : CustomerService@salliemae.com
Sent : Sunday, August 12, 2007 11:31 PM
To : [REDACTED]@hotmail.com
Subject : Sallie Mae Account Information

Attachment : Attachment.pdf (0.10 MB)

MIME-Version: 1.0

Received: from sinetf3.salliemae.com ([167.104.7.226]) by bay0-mc12-f14.bay0.hotmail.com with Microsoft SMTPSVC(6.0.3790.2668); Sun, 12 Aug 2007 16:32:06 -0700

Received: from spcrlyfi10.usa-ed.net (connect20.salliemae.com [167.104.6.43]) by sinetf3.salliemae.com (4.1/4.1) with ESMTP id I7CNW5Ri018512for <[REDACTED]@hotmail.com>; Sun, 12 Aug 2007 19:32:05 -0400

Received: from salliemae.com (speeefi010.usa-ed.net [172.19.42.50]) by spcrlyfi10.usa-ed.net (4.1/4.1) with SMTP id I7CIXTPM018115for <[REDACTED]@HOTMAIL.COM>; Sun, 12 Aug 2007 19:32:05 -0400

X-Message-Delivery: Vj0zLjQuMDt1cz0wO2k9MDtsPTA7YT0w

X-Message-Info: R00BdL5giqp+ASWiiiiKIVGPySbFaSrYZKc1Pt7DWYWiQsSot1pfozW/HrGnZ45+0uWlR+EM/pa964vh5STkxA==

X-Mailer: StrongMail Enterprise 3.1.4(2.00.127)

X-SMHeaderMap: mid="X-MailingID"

X-MailingID:

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X-Destination-ID: <[REDACTED]@HOTMAIL.COM>

X-SLMAID: 414d51204d50464d414c2020202020206ec54b46fa0a342f##CustomerService@salliemae.com##Mercury##Mercury

X-VirtualServerGroup: UNDEF

Return-Path: 414d51204d50464d414c2020202020206ec54b46fa0a342f@enterpriseemail.salliemae.com

X-OriginalArrivalTime: 12 Aug 2007 23:32:06.0839 (UTC) FILETIME=[FEEFE470:01C7DD38]

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[REDACTED]@hotmail.com

Printed: Friday, August 24, 2007 3:04 PM

From : Sallie Mae <SallieMae@mail.salliemae.com>
Reply-To : SallieMae@mail.salliemae.com
Sent : Thursday, August 23, 2007 7:20 PM
To : [REDACTED]@hotmail.com
Subject : Important information about repayment features on your student loan account

MIME-Version: 1.0

Received: from mail1205.mail.salliemae.com ([129.41.78.209]) by bay0-mc3-f11.bay0.hotmail.com with Microsoft SMTPSVC (6.0.3790.2668); Thu, 23 Aug 2007 19:41:02 -0700

Received: by mail1205.mail.salliemae.com id hpp2js0beocd for <[REDACTED]@hotmail.com>; Thu, 23 Aug 2007 15:20:49 -0400 (envelope-from <v-ollan_bndoaggpk_bohpjol_bohpjol_a@reply.mail.salliemae.com>)

X-Message-Delivery: Vj0zLjQuMDt1cz0wO2k9MDtsPTA7YT0w

X-Message-Info: JGTyoYF78jEM0IUINixH74+6p2e3Jo/6b1CBuB/+d0+VijOA3s/FUPG78o3djqpENvvZjyLK7NeqrKdG+Li8tHw==

DomainKey-Signature: a=rsa-sha1; c=noFws; q=dns; s=spop; d=mail.salliemae.com;

b=cjE9XXPOmRAHO4J4B3i8VnIhWQKDPEfaRj/MD3OnNXQ0U/JQ87BV8SS+JMQJ3cI9xZO5iUsVZFCz vAs5IshmYQ==;

x-mid: 965389

Return-Path: v-ollan_bndoaggpk_bohpjol_bohpjol_a@reply.mail.salliemae.com

X-OriginalArrivalTime: 24 Aug 2007 02:41:02.0525 (UTC) FILETIME=[36138ED0:01C7E5F8]

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[REDACTED]@hotmail.com

Printed: Friday, September 14, 2007 7:48 PM

From : Sallie Mae, Inc. <CustomerService@salliemae.com>
Reply-To : CustomerService@salliemae.com
Sent : Thursday, September 13, 2007 1:14 PM
To : [REDACTED]@hotmail.com
Subject : Sallie Mae Account Information

 Attachment : [Attachment.pdf](#) (0.10 MB)

MIME-Version: 1.0

Received: from sinetf3.salliemae.com ([167.104.7.226]) by bay0-mc6-f23.bay0.hotmail.com with Microsoft SMTPSVC(6.0.3790.2668); Thu, 13 Sep 2007 06:15:52 -0700

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Received: from salliemae.com (speeefi010.usa-ed.net [172.19.42.50]) by spcrlyfi20.usa-ed.net (4.1/4.1) with SMTP id I8DBTswF015618for <[REDACTED]@HOTMAIL.COM>; Thu, 13 Sep 2007 09:15:51 -0400

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X-Mailer: StrongMail Enterprise 3.1.4(2.00.127)

X-SMHeaderMap: mid="X-MailingID"

X-MailingID:

00000::00000::00000::00000::414d51204d504648414c2020202020cd8ec046ff3f4e25##CustomerService@salliemae.com##Mercury##Mercury::26502

X-Destination-ID: <[REDACTED]@HOTMAIL.COM>

X-SLMAID: 414d51204d504648414c2020202020cd8ec046ff3f4e25##CustomerService@salliemae.com##Mercury##Mercury

X-VirtualServerGroup: UNDEF

Return-Path: 414d51204d504648414c2020202020cd8ec046ff3f4e25@enterpriseemail.salliemae.com

X-OriginalArrivalTime: 13 Sep 2007 13:15:52.0211 (UTC) FILETIME=[358F6630:01C7F608]

You are receiving this email with information regarding your Sallie Mae(r) student loan account.

Your account updates are viewable in the attached PDF document. The file is password-protected and you need to enter your Social Security number to open it.

Please keep in mind these personal safeguards:

- Save the document to your computer and disconnect from the Web before opening it.
- Only use a personal computer to view the file--do not use a public computer.

You will need Adobe(r) Reader(r) to view the file. Our email correspondence is viewable with Adobe 5.0; for optimal viewing, we recommend Adobe 6.0 or higher. A free copy of the Reader is available for download at <http://www.adobe.com/products/acrobat/readstep2.html>

You can also view your account information online: Go to SallieMae.com and follow the instructions on the homepage to sign in or enroll in Manage Your Loans (MYL), Sallie Mae's online account management tool.

It's quick and it's easy. If you've enrolled, you can use MYL to pay online, change your payment plan, review your payment history, learn about repayment and consolidation options, and more.

If you have questions about this email or the attached document, or if you are unable to access your account online, please call Sallie Mae today at 888/2-SALLIE (888/272-5543).

Thank you,

Sallie Mae

Windows Live™

New benefit for paying down your student loans

From: **Sallie Mae** (SallieMae@mail.salliemae.com)
Sent: Tue 9/18/07 3:26 PM
To: [REDACTED]@hotmail.com

To view future messages properly, please add SallieMae@mail.salliemae.com to your Address Book by following the Instructions provided for your email provider. Add us to your Address Book by following this link:
[Instructions for adding us to your Address Book.](#)

Important Information About A Repayment Feature On Your Student Loan Account

Dear Daniel:

Sallie Mae® wants to notify you about a new customer benefit – the Sallie Mae Upromise Loan LinkSM Program. This new feature, which is now available on your existing Sallie Mae student loan account, can help you pay down your eligible loans.

In order to sign up for this new feature, [click here](#).

By joining Upromise® you can earn rewards on eligible everyday purchases. Additionally, by signing up for Upromise Loan Link, you can designate all or a percentage of your accumulated rewards of at least \$25 to be automatically applied to your Sallie Mae loan account on a quarterly basis.

Rewards earned through Upromise are in addition to other Sallie Mae savings programs that may include zero origination fees, zero default fees and various repayment status borrower benefit programs.

For more information about Upromise and the Upromise Loan Link Program, [click here](#). As one of our valued customers, we hope you take advantage of this new, free benefit today.

.....
LEGAL

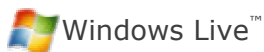
[Privacy](#) | [Terms of use](#)

Sallie Mae is a registered service mark of Sallie Mae, Inc. Upromise and Upromise Loan Link are service marks or registered service marks of Upromise, Inc. SLM Corporation and its subsidiaries, including Sallie Mae, Inc. and Upromise, Inc., are not sponsored by or agencies of the United States.

Unsubscribing: This email message may contain an advertisement or solicitation. Sallie Mae's postal address is P.O. Box 9500, Wilkes-Barre, Pennsylvania 18773-9500 . Upromise, Inc.'s postal address is 95 Wells Avenue, Suite 160, Newton, MA 02495. If you wish to unsubscribe from future email advertisements/solicitations from this Sallie Mae business, please [click unsubscribe here](#).

Specific terms and conditions apply for each company's contributions. Participating companies, contribution levels and terms and conditions subject to change without notice. For additional information and a current listing of participating companies, visit www.upromise.com.

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Sallie Mae Account Information

From: **Sallie Mae, Inc.** (CustomerService@salliemae.com)

Sent: Tue 4/08/08 3:26 AM

To: [REDACTED]@hotmail.com

Attachments: [Attachment.pdf](#) (59.4 KB)

Security scan upon download 

Please do not respond to this automated message. Emails sent to this address are not monitored.

Thank you for choosing Sallie Mae.

You can view a copy of this letter and get the most up-to-date information on your account by logging into your account on www.SallieMae.com.

It's quick, free and easy -- and it's available whenever and wherever you are. You can make payments online, learn more about repayment options, change your payment plan, check your payment history, update your information and more.

Not yet enrolled?

Go to www.SallieMae.com. If you are a first-time user, click on the "Register" button on the right side of the page and follow instructions.

To read email, simply click on the -Email correspondence- link on the Account Summary page.

Important: You must have received your first loan disbursement from us before you can create an account and view correspondence.

Your account updates are viewable in the attached PDF document. The file is password-protected and you need to enter your Social Security number to open it.

Please keep in mind these personal safeguards:

- Save the document to your computer and disconnect from the Web before opening it.
- Only use a personal computer to view the file--do not use a public computer.

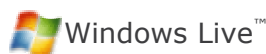
You will need Adobe(r) Reader(r) to view the file. Our email correspondence is viewable with Adobe 5.0; for optimal viewing, we recommend Adobe 6.0 or higher. A free copy of the Reader is available for download at <http://www.adobe.com/products/acrobat/readstep2.html>

No longer interested in getting account information by email?

You can update your preferences by logging into www.SallieMae.com and clicking on "My contact information." Or, you are welcome to call us toll free at 888-272-5543.

We appreciate your business.

Sincerely,
Sallie Mae Customer Service



Important information about your Sallie Mae account

From: **Sallie Mae** (SallieMae@mail.salliemae.com)

Sent: Tue 5/27/08 4:50 PM

To: [REDACTED]@hotmail.com

This message contains graphics. If you do not see the graphics, [click here to view](#).

To view future messages properly, please add SallieMae@mail.salliemae.com to your Address Book by following the Instructions provided for your email provider. Add us to your Address Book by following this link: [Instructions for adding us to your Address Book](#).

Enjoy the convenience of online correspondence and a chance to win \$1000!!!

Dear Daniel:

With Sallie Mae's email correspondence service, you can receive your account information easily and quickly through email. **Make the decision to receive your correspondence online and you could win \$1,000 cash from Sallie Mae®!**

It's easy to select, make your confirmation today.

By receiving all of your student loan communications through email, you can be sure not to miss any information if you move, and you can avoid unnecessary mailings.

- **It's secure** - your correspondence can only be opened with your secure pass code; avoid the worry of intruders getting hold of your sensitive documents.
- **It's simple** - when we need to contact you, your information arrives to your email account. Access your information from wherever you have email access.
- **It's efficient** - remove the clutter of unnecessary mail; view your information online and save documents to your computer for your records.

Complete our secure form online now to enroll in this convenient benefit. By enrolling, you qualify for our drawing to win \$1,000 in cash from Sallie Mae.

Thank you for allowing Sallie Mae to help you make your education dreams come true.

Sincerely,

Sallie Mae Customer Service

Please do not reply to this email. You will not receive a response.

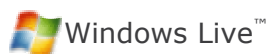
LEGAL

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For a full set of sweepstakes rules and regulations, [click here](#).

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Sallie Mae Drawing for \$1000

From: **Sallie Mae** (SallieMae@mail.salliemae.com)

Sent: Wed 6/04/08 5:25 PM

To: [REDACTED]@hotmail.com

This message contains graphics. If you do not see the graphics, [click here to view](#).

To view future messages properly, please add SallieMae@mail.salliemae.com to your Address Book by following the Instructions provided by your email provider. Add us to your Address Book by following this link: [Instructions for adding us to your Address Book](#).

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Dear Daniel:

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Complete our secure form online now to enroll in this convenient benefit. By enrolling, you qualify for our drawing to win \$1,000 in cash from Sallie Mae.

Thank you for allowing Sallie Mae to help you make your education dreams come true.

Sincerely,

Sallie Mae Customer Service

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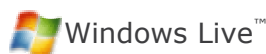
LEGAL

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Sallie Mae Drawing for \$1000

From: **Sallie Mae** (SallieMae@mail.salliemae.com)

Sent: Tue 6/17/08 3:15 PM

To: [REDACTED]@hotmail.com

This message contains graphics. If you do not see the graphics, [click here to view](#).

To view future messages properly, please add SallieMae@mail.salliemae.com to your Address Book by following the Instructions provided by your email provider. Add us to your Address Book by following this link: [Instructions for adding us to your Address Book](#).

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Dear Daniel:

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It's easy to select, make your confirmation today.

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Thank you for allowing Sallie Mae to help you make your education dreams come true.

Sincerely,

Sallie Mae Customer Service

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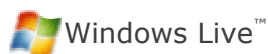
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Important Information regarding your account

From: **Sallie Mae** (SallieMae@mail.salliemae.com)

Sent: Tue 6/24/08 6:25 PM

To: [REDACTED]@hotmail.com

This message contains graphics. If you do not see the graphics, [click here to view](#).

To view future messages properly, please add SallieMae@mail.salliemae.com to your Address Book by following the Instructions provided by your email provider. Add us to your Address Book by following this link: [Instructions for adding us to your Address Book](#).

Join the 2 million Sallie Mae® customers who are already paperless!

Dear Daniel:

With Sallie Mae's email correspondence service, you can receive your account information easily and quickly through email.

It's easy to select, make your confirmation today.

By receiving all of your student loan communications through email, you can be sure not to miss any information if you move, and you can avoid unnecessary mailings.

- **It's secure** - your correspondence can only be opened with your secure pass code; avoid the worry of intruders getting hold of your sensitive documents.
- **It's simple** - when we need to contact you, your information arrives to your email account. Access your information from wherever you have email access.
- **It's efficient** - remove the clutter of unnecessary mail; view your information online and save documents to your computer for your records.

Complete our secure form online now to enroll in this convenient benefit.

Thank you for allowing Sallie Mae to help you make your education dreams come true.

Sincerely,

Sallie Mae Customer Service

Please do not reply to this email. You will not receive a response.

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Important feedback request from Sallie Mae

From: **Sallie Mae** (SallieMae@mail.salliemae.com)

Sent: Thu 7/17/08 2:05 PM

To: [REDACTED]@hotmail.com

If you are unable to see the message below, [click here to view](#).

To view future messages properly, please add SallieMae@mail.salliemae.com to your Address Book by following the instructions provided by your email provider: [Instructions for how to add us to your Address Book](#).



Dear Daniel:

At Sallie Mae®, your opinion is valuable to us, as we continually strive to improve our service to you. We would appreciate your participation in a survey to help us better understand and meet your customer service needs. This survey will take only 3 minutes to complete and is completely confidential.

Please follow the link below to take the survey:

<http://resp.survey01.net/servlet/survey?surveyId=NzY3NgS2>

Thank you in advance for your time. We look forward to hearing from you and bringing improved service to your account in the near future.

Regards,

Sallie Mae Customer Care Team

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Important Information about your account

From: **Sallie Mae** (SallieMae@mail.salliemae.com)

Sent: Tue 8/05/08 2:35 PM

To: [REDACTED]@hotmail.com

If you are unable to see the message below, [click here to view](#).

To view future messages properly, please add SallieMae@mail.salliemae.com to your Address Book by following the Instructions provided by your email provider. Add us to your Address Book by following this link: [Instructions for adding us to your Address Book](#).

Win up to \$25,000 in a student loan payoff when you switch to our convenient Email Correspondence Service!

Dear Daniel,

Make the decision to receive all your correspondence online and you will receive two (2) entries into the 'Great Sallie Mae Giveaway' Sweepstakes.

A winner is drawn every month! If you win, we'll pay off your loan balance - up to \$25,000. No Purchase Necessary. See [Official Rules](#) for details.

- **It's secure:** Secure your sensitive documents with a Sallie Mae personal pass code.
- **It's simple:** Access your Sallie Mae data from anywhere you can access your personal email.
- **It's efficient:** View, discard, or save all your information to your personal computer without the mess of paper.

[Enroll today for this convenient benefit.](#)

Thank you for allowing Sallie Mae® to help you make your education dreams come true.

Sincerely,

Sallie Mae Customer Service

.....
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Important Information about your account

From: **Sallie Mae** (SallieMae@mail.salliemae.com)

Sent: Tue 9/16/08 2:50 PM

To: [REDACTED]@hotmail.com

If you are unable to see the message below, [click here to view](#).

To view future messages properly, please add SallieMae@mail.salliemae.com to your Address Book by following the Instructions provided by your email provider. Add us to your Address Book by following this link: [Instructions for adding us to your Address Book](#).

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Sincerely,

Sallie Mae Customer Service

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Changes to Email Communication

From: Sallie Mae (Customerservice@mail.salliemae.com)

Sent: Mon 2/09/09 9:58 PM

To: [REDACTED]@hotmail.com

If you are unable to see the message below, [click here to view](#).

To view future messages properly, please add CustomerService@mail.salliemae.com to your Address Book by following the instructions provided by your email provider. Add us to your Address Book by following this link: [Instructions for adding us to your Address Book](#).



Please do not respond to this automated message. Emails sent to this address are not monitored.

Dear Daniel,

Because you are a valued customer, we want you to know that Sallie Mae® is strongly committed to protecting the privacy of your personal information. That is why we are changing the way we provide you with correspondence relating to your student loan account.

Effective February 21, 2009, emails from Sallie Mae will no longer contain a password-protected attachment. Instead, you will receive an email saying a document awaits you and can be viewed by accessing our secure web site, the link to which will be in the email.

Access the web site by using the same user ID and password you created for your Sallie Mae online account. If you have not yet created an account, you can do so online at www.SallieMae.com. Because we take your privacy very seriously, we continually review the safeguards we take to protect the security and confidentiality of your information.

Keep in mind that you can always view your correspondence from us by accessing your online account.

We appreciate the opportunity to serve you.

Sincerely,

Sallie Mae Customer Service

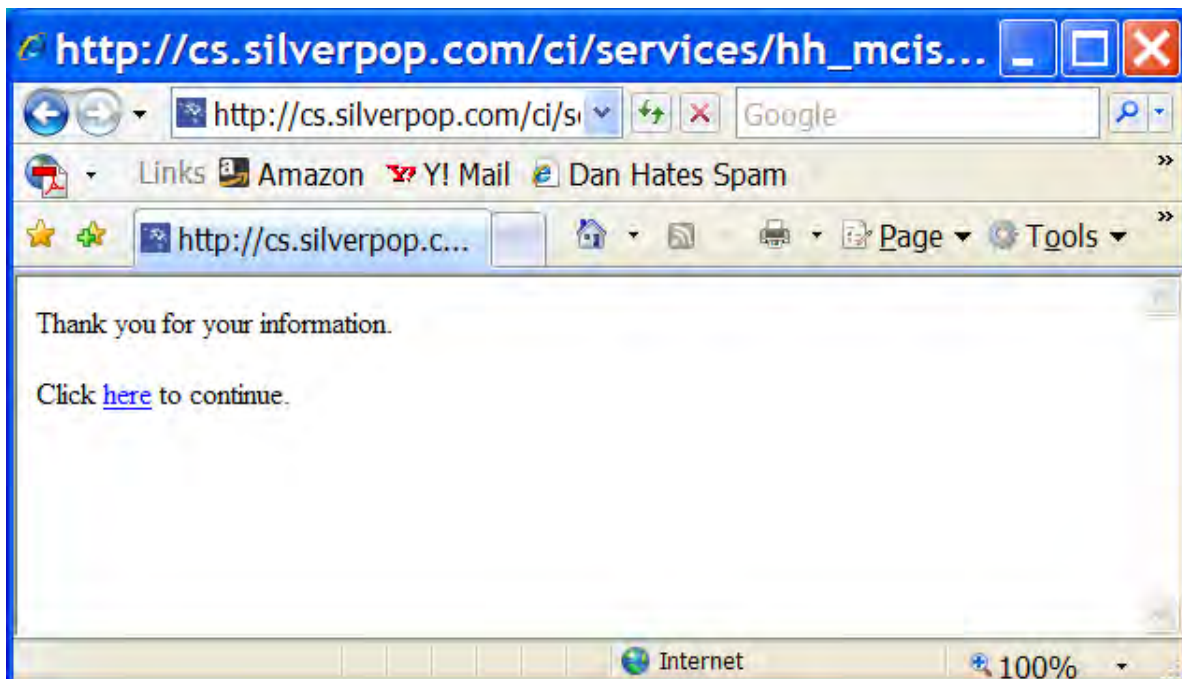
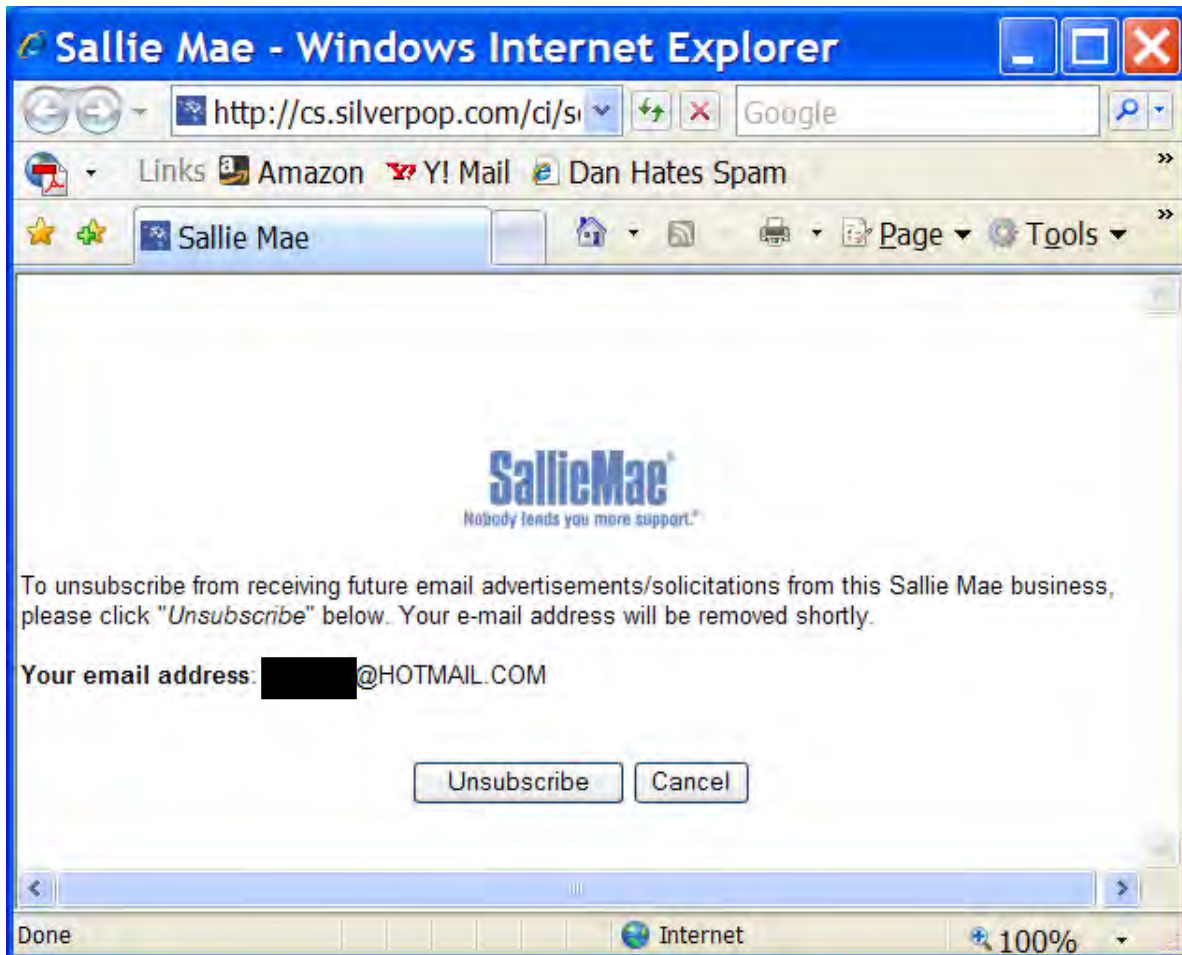
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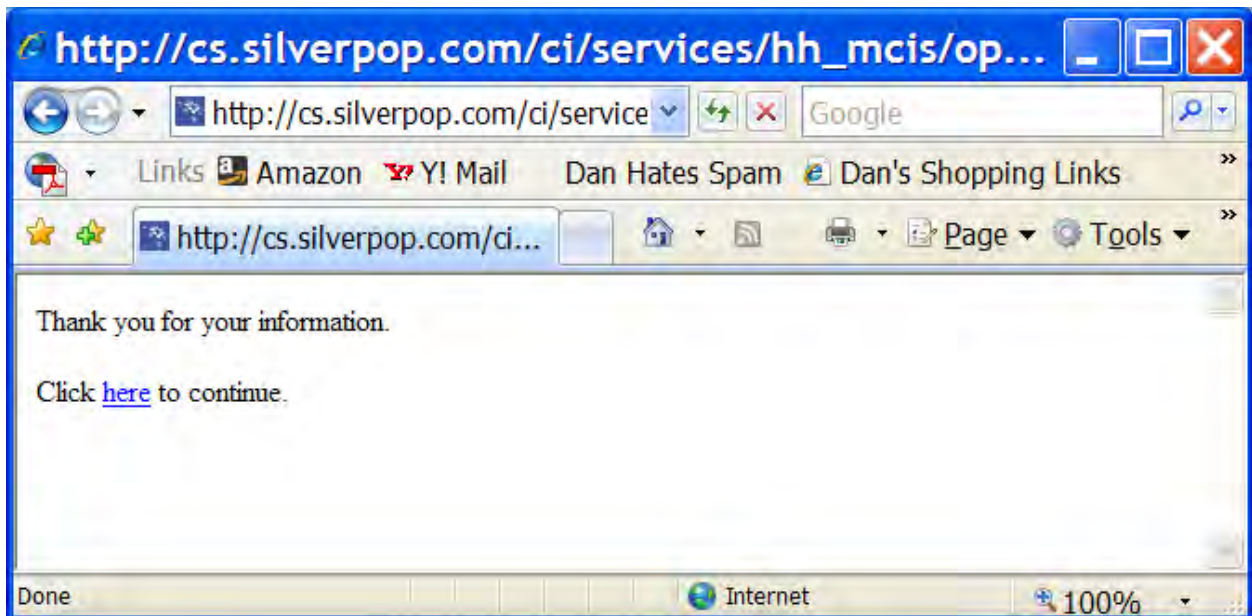
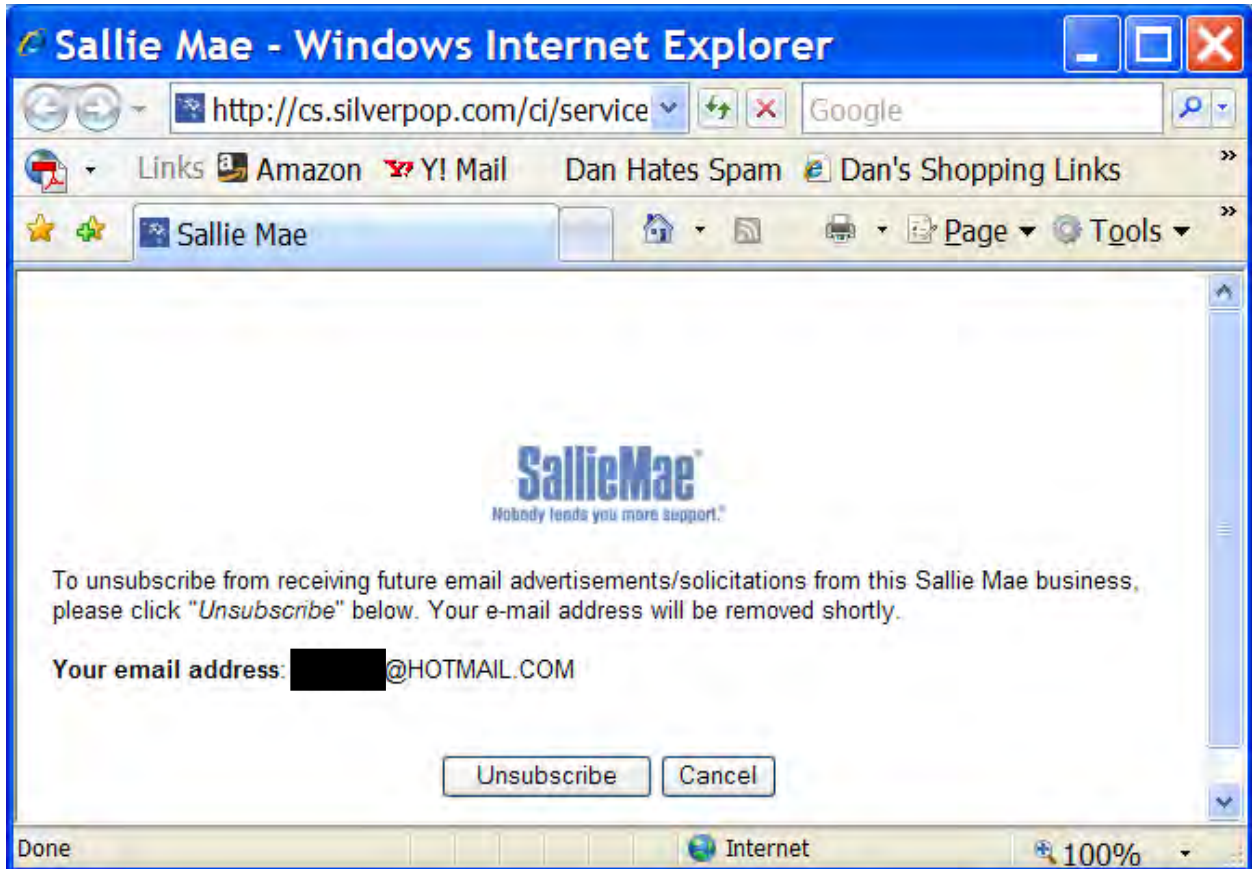
ATTACHMENT C

BALSAM unsubscribed from SLM's spam lists three times and received confirmations

5/12/07



9/19/07 8:20am



6/29/08

Windows Live Hotmail - Windows Internet Explorer

http://bl137w.blu137.mail.live.com/mail/mail.aspx?wa=wsigni

Links Amazon Y! Mail Dan Hates Spam Petition Dan's Shopping Links Google Lexis

Zappos... The No... Wind...

Norton 360 Fraud monitoring is on

Limited time offer: Earn enough points for a free airline ticket. The Gold Card from American Express OPEN. Apply Now

Windows Live™ @hotmail.com Sign out

Home Hotmail Spaces OneCare | MSN

New Reply Reply all Forward Delete Junk Move to Check mail Options

We've asked the sender to remove you from this mailing list.

Inbox Junk Drafts Sent Deleted (...) Bebo Blubet Today Mail Contacts Calendar

on vacation?

Switch to classic Privacy Statement

This message contains graphics. If you do not see the graphics, click here to view.

To view future messages properly, please add SallieMae@mail.salliemae.com to your Address Book by following the Instructions provided by your email provider. Add us to your Address Book by following this link: [Instructions for adding us to your Address Book](#).

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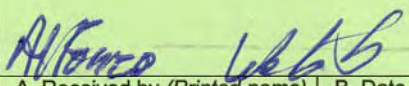
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- **It's simple** - when we need to contact you, your information arrives to your email account. Access your information from wherever you have email access.

Internet 100%

ATTACHMENT D

**BALSAM's July 2008 letter to SLM's Chief Executive Officer,
and postcard showing receipt**

Sender: Complete this section	Complete this section upon Delivery:	
1. Complete item 2. 2. Print your name and address on the reverse so that we can return the card to you. 3. Attach this card to the back of the mailpiece, or on the front if space permits.		
1. Article Number 7114 3364 8130 1302 5767	A. Received by (<i>Printed name</i>)	B. Date of Delivery 7-22-08
2. Article Addressed to <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> Mr. Albert L. Lord Vice Chairman and CEO SLM Corporation 12061 Bluemont Way Reston, VA 20190 </div>	C. Signature  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
3. Service Type CERTIFIED MAIL	D. Is delivery address different from item 2? If YES, enter delivery address below <input type="checkbox"/> Yes <input type="checkbox"/> No	
4. Restricted Delivery? (<i>Extra fee</i>)		

Daniel L. Balsam
[REDACTED]

July 19, 2008

Mr. Albert L. Lord
Vice Chairman and CEO
SLM Corporation
12061 Bluemont Way
Reston, VA 20190
Sent via U.S.P.S. certified mail

RE: Unlawful Email Advertising – Violations of Cal. Business and Professions Code § 17529.5 and Civil Code § 1750 et seq.

Dear Mr. Lord:

I am writing to you in response to Sallie Mae's continued violations of California Business & Professions Code § 17529.5, Prohibitions Against Unlawful Unsolicited Commercial Email and the Consumers Legal Remedies Act (Civil Code § 1750 *et seq.*), as well as the federal CAN-SPAM Act.

I have had educational loans with Sallie Mae in the past... a long time ago. Nevertheless, even if I once gave permission to receive commercial email from you to my email address [REDACTED]@hotmail.com, I revoked that permission by *repeatedly* unsubscribing from your lists, and yet you keep on spamming.

Specifically, since I started logging these emails:

April 5, 2007 – Spam	September 13, 2007 – Spam
May 8, 2007 – Spam	September 18, 2007 – Spam
May 12, 2007 – Unsubscribe	September 19, 2007 – Unsubscribe
May 13, 2007 – Spam	April 8, 2008 – Spam
June 4, 2007 – Spam	May 27, 2007 – Spam
June 13, 2007 – Spam	June 4, 2008 – Spam
July 13, 2007 – Spam	June 18, 2008 – Spam
July 26, 2007 – Spam	June 29, 2008 – Unsubscribe
August 12, 2007 – Spam	July 17, 2008 – Spam
August 24, 2007 – Spam	

I am attaching the first spam, the first unsubscribe, and a recent spam as evidence.

These emails violate Cal. Bus. & Prof. Code § 17529.5(a)(3) because the subject lines refer to student loans and my account, which I do not have with Sallie Mae. California law sets liquidated damages at \$1,000 per email, and authorizes attorneys' fees for a prevailing plaintiff.

Daniel L. Balsam
[REDACTED]

Because of the deceptive subject lines, the federal CAN-SPAM Act does *not* pre-empt California law. See 15 U.S.C. § 7707(b). You can review the relevant laws, if you wish, on my website: www.DanHatesSpam.com.

Speaking of the CAN-SPAM Act, many of these spams also violated federal law by using deceptive subject lines in violation of 15 U.S.C. § 7704(a)(2); failing to include a means of opting out as required by 15 U.S.C. § 7704(a)(3); spamming after I opted out in violation of 15 U.S.C. § 7704(a)(4); and failing to include a physical mailing address as required by 15 U.S.C. § 7704(a)(5)(A)(iii).

Because you falsely claim that I have loans and accounts with Sallie Mae, you are also violating various provisions of California's Consumers Legal Remedies Act:

- Civil Code § 1770(a)(3) – “Misrepresenting the affiliation, connection, or association with, or certification by, another.”
- Civil Code § 1770(a)(14) – “Representing that a transaction confers or involves rights, remedies, or obligations which it does not have, or which are prohibited by law.”
- Civil Code § 1770(a)(16) – “Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.”

Since the CLRA is not specific to email, it is *never* preempted by the CAN-SPAM Act. I also demand that you remedy your violations of the CLRA by identifying all similarly situated consumers as myself and notifying them that you have or will cease your unlawful marketing, as required by Civil Code § 1782.

I would think Sallie Mae has enough legal problems, without engaging in unlawful spamming.

I hereby offer to release you from your liability under Bus. & Prof. Code § 17529.5 for \$7,000, which is \$500 per email (half of the statutory amount) that I received after the May 12, 2007 unsubscribe request. I will agree to standard release / no admission of liability language and confidentiality as to the terms of the settlement. Otherwise, you'll face me in court, where I will ask for \$1,000 per spam, plus all attorneys' fees and costs, and an injunction.

Please let me know within 30 days if you accept my offer. Thank you for your prompt attention to this request.

Sincerely,

Daniel L. Balsam

Daniel L. Balsam
[REDACTED]

July 19, 2008

Mr. Albert L. Lord
Vice Chairman and CEO
SLM Corporation
12061 Bluemont Way
Reston, VA 20190
Sent via U.S.P.S. certified mail

RE: Unlawful Email Advertising – Preservation of Evidence

Dear Mr. Lord:

This letter accompanies another letter outlining your company's liability for unsolicited advertising sent in violation of California law. I would prefer to avoid litigation, but I recognize that some disputed issues may need to be resolved through court action.

I am notifying you that you must not destroy evidence in your possession and in your possession only. I am referring to marketing materials, databases, email software files, server log files, messages, lists of affiliate codes, correspondence (including via email) or contact notes with your affiliates/principals, affiliate agreements, and records of affiliate payments. Of course, my request does not give you license to destroy other files which you know to be relevant to potential litigation.

Under California Evidence Code § 413, the court can decide that your failure to save evidence is itself evidence of your liability. In addition, the discovery laws provide a broad range of sanctions for conduct that amounts to a "misuse of the discovery process." Code Civ. Proc. § 2023.030. Destruction of evidence in anticipation of a discovery request also violates the law. Such a finding could result in not only the issue being decided against you, but monetary sanctions as well.

The lawyer who represents you in court will almost certainly advise you to preserve the files because participation in the destruction of relevant evidence could subject him or her to disciplinary action before the California State Bar. Your company's attorney will almost certainly realize that "even if the evidence is unfavorable, the negative inferences that would flow from its intentional destruction are likely to harm the client as much or more than the evidence itself." *Cedars-Sinai Med. Ctr. v. Superior Court*, 18 Cal. 4th 1, 13 (1998).

You may contact me at the above address/telephone number if you have any questions about which evidence is relevant, in addition to that mentioned above.

Sincerely,

Daniel L. Balsam

ATTACHMENT E

**SLM Assistant General Counsel's Email to BALSAM from September 2008, confirming
that BALSAM's email address had been removed from all SLM lists**

Dan Balsam

From: Nicolas Jafarieh [Nicolas.Jafarieh@salliemae.com]
Sent: Friday, September 26, 2008 1:04 PM
To: [REDACTED]@danbalsam.com
Subject: Re: FW: 16 actionable sallie mae spams; settlement agreement

Dan, we have removed the email address you provided in your letter from any and all communications. If you have any further inquiries, please direct them to me. Thanks.

Nicolas Jafarieh
Assistant General Counsel
Office of the General Counsel
Sallie Mae, Inc.
12061 Bluemont Way
Reston, VA 20190
(703) 984-5016 (voice)
(703) 984-6500 (fax)
Nicolas.Jafarieh@SallieMae.com

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