

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

SALLIE MAE, INC.,

Plaintiff,

v.

ITT EDUCATIONAL SERVICES, INC.,  
Serve: Registered Agent  
CT Corporation System  
4701 Cox Road, Suite 301  
Glen Allen, VA 23060

Defendant.

Case No. 2012-19327

FILED  
CIVIL INTAKE  
2012 DEC 26 PM 3:30  
JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

COMPLAINT

COMES NOW the Plaintiff, Sallie Mae, Inc., by counsel, and files this Complaint for damages against Defendant ITT Educational Services, Inc., stating as follows:

1. Sallie Mae, Inc. ("SMI") is a Delaware corporation with a place of business in Reston, Virginia. SMI is in the business of, among other things, originating and servicing student loans.

2. ITT Educational Services, Inc. ("ITT") is a Delaware for-profit corporation with a principal place of business in Carmel, Indiana. ITT is in the business of, among other things, offering undergraduate and graduate coursework in a variety of fields. ITT's website states that ITT "serves approximately 80,000 students at its campuses in 38 states and online."

3. Venue is proper in this Court as SMI is located here and ITT operates at least two facilities in Fairfax County. The parties have also agreed to submit to jurisdiction in the Commonwealth of Virginia.

4. A number of ITT's students have obtained student loans that were originated by SMI.

5. On or about July 17, 2007, ITT and SMI entered into a "Risk Sharing Loan Program Agreement" (the "Agreement") to ensure that student loans were available to ITT's students.

6. To induce SMI to extend credit to ITT's students, the Agreement provided that ITT would guarantee the repayment, under certain circumstances, of 100% of the remaining loan balance of what the parties termed "Risk Sharing Loans" within a "Cohort." Although the plain language of the Agreement requires ITT to pay SMI directly, SMI is also the party authorized by the current holders of the Risk Sharing Loans ("Holders") to receive payment from ITT for the Risk Sharing Loans on the Holders' behalf.

7. The "Cohort" consists of all private education loans originated and serviced by SMI for students attending post-secondary educational institutions owned or operated by ITT that were approved from July 17, 2007 through the term of the Agreement.

8. A "Risk Sharing Loan" is defined as any loan made pursuant to the Agreement.

9. The "Risk Sharing" obligation by ITT under the Agreement is to guarantee the repayment of all outstanding Risk Sharing Loans once a certain number of them are in default. Specifically, the Agreement provides that after the "Charge Offs" of the Cohort exceed a certain threshold, ITT guarantees that it will repay 100% of the Remaining Loan Balance of all Risk Sharing Loans.

10. Under the Agreement, a "Charge Off" is the Remaining Loan Balance of the Risk Sharing Loans that have been in a state of default for a specified period of time under SMI's charge off policy for private loans.

11. In short, ITT has to provide SMI with full and prompt payment of the Remaining Loan Balance of all outstanding Risk Sharing Loans under the Agreement once Charge Offs exceed 24% of the total original balance of the Cohort (the "24% Threshold").

12. In or about September 2010, SMI notified ITT that Charge Offs of the Cohort were approaching the 24% Threshold.

13. In or about February 2011, Charge Offs exceeded the 24% Threshold. Accordingly, SMI initiated the process to obtain payment from ITT for amounts that had become due (the "Claims").

14. Under the Agreement, payment by wire is due from ITT to SMI within 10 days of ITT's receipt of a Claim.

15. Under the Agreement, ITT waived notice of presentment, protest or notice of protest with respect to Claims (among other waivers).

16. On or about March 1, 2011, SMI submitted a first set of Claims to ITT for 142 loans for which payment was then due in the amount of \$1,536,381.10.

17. On or about March 10, 2011, SMI submitted a second set of Claims to ITT for 372 loans for which payment was then due in the amount of \$2,219,898.90.

18. On or about April 5, 2011, SMI sent written notice to ITT requesting payment of all Claims due under the Agreement as, "to this date, Sallie Mae has not received payment of the amounts due."

19. On or about April 11, 2011, SMI submitted a third set of Claims to ITT for 248 loans for which payment was then due in the amount of \$1,348,007.54.

20. On or about May 11, 2011, SMI submitted a fourth set of Claims for 298 loans for which payment was then due in the amount of \$1,656,053.49.

21. On or about June 14, 2011, SMI submitted a fifth set of Claims for 490 loans for which payment was then due in the amount of \$3,028,702.55.

22. On or about July 13, 2011, SMI submitted a sixth set of Claims for 266 loans for which payment was due in the amount of \$1,582,759.54.

23. On July 27, 2011, SMI filed a lawsuit in the Circuit Court of Fairfax County seeking damages for the Claims that had defaulted from March 11, 2011 through the filing of the lawsuit (the "Initial Lawsuit").

24. Since the filing of SMI's Initial Lawsuit, additional Risk Sharing Loans defaulted. Although ITT contends that the 24% Threshold has not been reached based on its view of the parties' Agreement, by written notice dated November 11, 2011 (Exh. A) and June 28, 2012 (Exh. B), ITT was informed that charge-offs exceed the 24% threshold even under ITT's erroneous interpretation of the Agreement. Nonetheless, ITT has continued to refuse to pay amounts due and owing. In addition, ITT has further claimed that ITT could never owe any money to SMI under the Agreement, which constitutes a breach by repudiation.

25. On or about August 16, 2011, SMI submitted a seventh set of Claims for 321 loans for which payment was due in the amount of \$1,832,531.16.

26. On or about September 13, 2011, SMI submitted an eighth set of Claims for 360 loans for which payment was due in the amount of \$1,985,302.94.

27. On or about October 5, 2011, SMI submitted a ninth set of Claims for 227 loans for which payment was due in the amount of \$1,295,856.21.

28. On or about November 7, 2011, SMI submitted a tenth set of Claims for 318 loans for which payment was due in the amount of \$2,012,725.14.

29. On or about December 8, 2011, SMI submitted an eleventh set of Claims for 404 loans for which payment was due in the amount of \$2,536,312.96.
30. On or about January 10, 2012, SMI submitted a twelfth set of Claims for 260 loans for which payment was due in the amount of \$1,509,826.11.
31. On or about February 6, 2012, SMI submitted a thirteenth set of Claims for 270 loans for which payment was due in the amount of \$1,632,128.73.
32. On or about March 8, 2012, SMI submitted a fourteenth set of Claims for 268 loans for which payment was due in the amount of \$1,711,495.84.
33. On April 13, 2012, SMI was granted leave to amend its damages claim in the Initial Lawsuit to seek damages for the Claims that had defaulted from July 2011 to March 2012. This case is a supplement to the Initial Lawsuit.
34. On or about April 10, 2012, SMI submitted a fifteenth set of Claims for 179 loans for which payment was due in the amount of \$1,144,566.62.
35. On or about May 10, 2012, SMI submitted a sixteenth set of Claims for 187 loans for which payment was due in the amount of \$1,229,205.51.
36. On or about June 11, 2012, SMI submitted a seventeenth set of Claims for 274 loans for which payment was due in the amount of \$1,647,574.91.
37. On or about July 2, 2012, SMI submitted an eighteenth set of Claims for 199 loans for which payment was due in the amount of \$1,256,982.32.
38. On or about August 3, 2012, SMI submitted a nineteenth set of Claims for 241 loans for which payment was due in the amount of \$1,528,617.02.
39. On or about September 11, 2012, SMI submitted a twentieth set of Claims for 287 loans for which payment was due in the amount of \$2,052,327.72.

40. On or about October 2, 2012, SMI submitted a twenty-first set of Claims for 195 loans for which payment was due in the amount of \$1,381,296.94.

41. On or about November 5, 2012, SMI submitted a twenty-second set of Claims for 260 loans for which payment was due in the amount of \$1,810,646.52.

42. On or about December 5, 2012, SMI submitted a twenty-third set of Claims for 317 loans for which payment was due in the amount of \$2,158,570.65.

43. ITT has continued to reject all Claims packages from SMI, and indicated that it will not pay any of the aforementioned Claims or any Claims that have since accrued.

44. ITT's refusal to fulfill its obligations is unjustified and unreasonable. Indeed, SMI has provided ITT with records to verify its obligations not less than three times:

a. In April 2011, SMI provided ITT with a Master Data File containing detailed information related to the approximately 43,000 Risk Sharing Loans in the Cohort.

b. In April 2012, at ITT's request, SMI granted ITT access to its facility in Wilkes-Barre, Pennsylvania to permit it to review a sample selection of Risk Sharing Loans in the Cohort.

c. In October 2012, SMI granted ITT access to its facility in Wilkes-Barre, Pennsylvania to access information for every loan made to any of ITT's students who had obtained a Risk Sharing Loan (the number of loans was in the hundreds of thousands).

Notwithstanding this broad access and the magnitude of records requested, ITT only sent four auditors to SMI's facility, and they stayed for less than four days before voluntarily leaving. They never returned.

45. As of the date of filing this Complaint, ITT has not paid any of the aforementioned Claims, and Claims are continuing to accrue.

46. As a consequence, ITT owes SMI not less than the current amount of the Claims.

47. In all cases, ITT owes attorney's fees as permitted by Section 6.6(b) of the Agreement, interest as set forth below, costs and such other and further Claims as may mature now or in the future.

COUNT I  
(BREACH OF CONTRACT)

48. The aforementioned paragraphs 1-47 are incorporated herein by reference.

49. Under the Agreement, after the Charge Offs of the Cohort exceed 24% of the total original balance of the Cohort, ITT absolutely and unconditionally guaranteed the full and prompt payment to SMI of 100% of the Remaining Loan Balance of all Risk Sharing Loans in the Cohort.

50. ITT's refusal to pay the Claims presented from April 10, 2012, May 10, 2012, June 11, 2012, July 2, 2012, August 3, 2012, September 11, 2012, October 2, 2012, November 5, 2012, and December 5, 2012 constitutes breaches of the Agreement, in addition to the breaches encompassed by the Initial Lawsuit.

51. SMI has fully performed under the Agreement, including any and all conditions precedent unless waived by ITT.

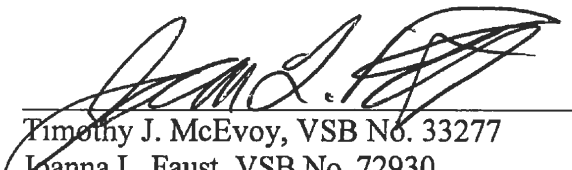
52. As a direct and proximate result of ITT's breaches, as aforesaid, SMI has been damaged in an amount to be shown at trial, but not less than \$14,209,788.21, plus pre- and post-judgment interest at the judgment rate, attorney's fees pursuant to Section 6.6(b) of the Agreement, and costs and such other and further Claims as may mature during the pendency of this action.

WHEREFORE, the foregoing premises considered, Sallie Mae, Inc. seeks an order from this Honorable Court granting judgment against ITT Educational Services, Inc. in the amount of

not less than \$14,209,788.21, plus pre- and post-judgment interest, attorney's fees, such other and further Claims as may mature during the pendency of this action, as well as all such other and further relief as justice may require.

Respectfully submitted,

SALLIE MAE, INC.  
By Counsel



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**Cameron / McEvoy**  
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**MOTION TO SEAL EXHIBITS TO COMPLAINT**

COMES NOW the Plaintiff, Sallie Mae, Inc. ("SMI"), by counsel, and moves this Honorable Court to seal the attachments to Exhibits A and B to Plaintiff's Complaint. These exhibits contain information of a highly proprietary nature which, if publicly disclosed would likely prejudice one or both of the parties in this case. Maintaining these exhibits under seal and prohibiting their disclosure, except for purposes of this litigation, would not prejudice the rights of any person or entity.

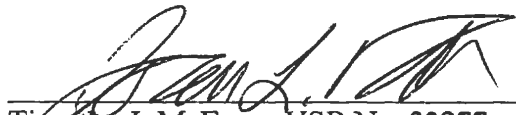
WHEREFORE, Plaintiff respectfully moves the Court to seal the attachments to Exhibits A and B to the Complaint, and for such further and other relief as deemed just and proper.

Respectfully submitted,

SALLIE MAE, INC.  
By Counsel

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***Counsel for Plaintiff***