No. 21-1020

# In the Supreme Court of the United States

JANET TINGLING,

*Petitioner,*

V.

UNITED STATES DEPARTMENT OF EDUCATION; AMERICAN EDUCATION SERVICES; GREAT LAKES; EDUCATIONAL CREDIT MANAGEMENT CORPORATION; NELNET INC.; AND NAVIENT CORPORATION,

*Respondents.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit**

## PETITION FOR A WRIT OF CERTIORARI

JANET TINGLING
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JANUARY 13, 2021

## QUESTIONS PRESENTED

1. Whether the Court of Appeals position was inconsistent with the standards outlined in Rule 56(e), which provides that summary judgment is only proper if there is no genuine issue as to any material fact and that the defendant is entitled to summary judgment as a matter of law, which conflicts with the lower Courts decision to admit into evidence Education Credit Management Corporation (ECMC) altered loan documents with other students SSN# affixed to loans ECMC representative Mr. Baum claimed I owed that he later acknowledged as flawed by stating, "I believe there is a way to deal with this that may allow you to pay virtually nothing—and perhaps, absolutely nothing —on your loans."

2. Whether the lower Courts have entered a decision in conflict with other United States Courts, by admitting into evidence false or misleading legal documents as a part of business records, *see, Hoffman v. Transworld*, Case No. C18-1132-JCC (W.D. Wash. Nov. 2, 2018), such as the Department of Education (DOE), duplicate and triplicate copies of 3 identical robo-signed promissory notes with differing dollar amounts totaling almost $200,000 for dates I was not matriculated in school.

3. Whether the lower Court's procedural and evidentiary ruling requires review, especially in this case where judgment was rendered based on index numbers that the Department of Education (DOE) claimed were "unique pin identifiers, representing an electronic signature" that were also used on duplicated alleged loan documents for dates I was not matriculated in school.

4. Whether the Court's decision to unilaterally deny a pro se from revising a rough draft for a joint pretrial memorandum that I was seeing for the first time conflicts with the lack of due process, especially when defendants who are seasoned Attorneys were granted approval to revise their memorandum at least 4 times.

## PARTIES TO THE PROCEEDINGS

**Petitioner**

- Janet Tingling

**Respondents**

- United States Department of Education
- American Education Services
- Great Lakes
- Educational Credit Management Corporation
- Nelnet Inc., and
- Navient Corporation

## LIST OF PROCEEDINGS

United States Court of Appeals for the Second Circuit

No. 20-757-bk

In Re Janet Tingling, *Debtor,* Janet Tingling, *Debtor-Appellant, v.* Educational Credit Management Corporation, United States Department of Education, American Education Services, Great Lakes Educational Loan Services, Inc., Nelnet Inc., *Defendants-Appellees,* Navient Corporation, *Defendant.*

Date of Final Opinion: March 11, 2021

Date of Rehearing Denial: September 17, 2021

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United States District Court
for the Eastern District of New York

19-CV-2307(JS)

Janet Tingling, *Appellant, v.* United States Department of Education, American Education Services, Great Lakes Educational Loan Services, Inc., Nelnet, Inc., Navient Corporation, and Educational Credit Management Corporation, *Appellees.*

Date of Opinion and Order: January 30, 2020

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United States Bankruptcy Court
for the Eastern District of New York

Case No.: 16-71800-AST

In Re Janet Tingling, *Debtor,* Janet Tingling, *Plaintiff, v.* United States Department of Education, American Education Services, Great Lakes Educational Loan Services, Inc., Nelnet, Inc., Navient Corporation, and Educational Credit Management Corporation, *Defendants.*

Date of Judgment: April 15, 2019

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## INTRODUCTION

On March 11, 2021, the Second Circuit Court handed down the memorandum opinion resolving this appeal, in which the Panel found ECMC and DOE joint pretrial memorandum sufficient and properly admitted although I did not sign the memorandum on July 31, 2018, authorizing consent nor did I sign the markup so-called "stipulated facts" adopted as a pre-trial order. The bankruptcy court approved a motion for Education Credit Management Corporation (ECMC) and the Department of Education (DOE) to revise their joint memorandum a total of four times but unilaterally denied the revision of a rough draft from pro se who was seeing a memorandum for the first time—and to all appearance—believed that I would be granted the same level of due process as ECMC and DOE who are seasoned attorneys. The law states that the required elements of due process are those that "minimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis upon which a state proposes to deprive them of protected interests. *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972). Thus, the lack of due process in this matter ultimately made it impossible for me to prevail.

In this case, the Panel's memorandum opinion did not analyze or address the problem associated with fake or fraudulent documents, duplications of documents, and the absence of the underlying note purchase, sales, deposit, and transfer agreement between the lender and I; nor did the Panel address the uncorroborated cookbook computerized printout of alleged disbursements made to fraudulent loan documents

presented by DOE's representative Ms. Mary Dickman. Therefore, this case warrants a review by the Supreme Court because a summary judgment should only be granted if the Court determines that there "is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) Fed. R. Civ. P. 56(c).

Likewise, this case presents an ideal vehicle to resolve such conflict that undermines the uniformity of federal law and merits resolution by the supreme court because the absence of such review will perpetuate the future insertion of altered or forged documents by other Attorney's in similar cases, which could have a deleterious effect on the lives of other financially challenged student loan borrowers especially when the case is already decided by courts whose rulings are otherwise definitive within their territorial jurisdiction. Additionally, both DOE and ECMC attorneys knowingly filed and submitted false and misleading evidence and affidavit in support of a motion for judgment against me to collect on a debt they are not entitled to and should be held liable for misconduct. Because both defendants' actions denied me the right to fair access to justice and an impartial trial, therefore; the Supreme Court should grant the petition for a writ of certiorari to settle this important and timely issue.

## OPINIONS BELOW

Opinion of the United States Court of Appeals for the Second Circuit dated March 11, 2021 is reproduced in the appendix to this petition at App.1a. United States District Court for the Eastern District of New York delivered a Memorandum Opinion on January 30, 2020 and is reproduced in the Appendix at App.10a. Judgment of the Bankruptcy Court denying discharge of loans dated April 15, 2019 and is reproduced at App.41a. Order of the Second Circuit denied the Petition for Rehearing on September 17, 2021, and is available at App.44a.

## JURISDICTION

The Bankruptcy Court exercised subject matter jurisdiction over the underlying matter pursuant to 28 U.S.C. § 157(b)(1). The District Court exercised appellate jurisdiction over the underlying matter pursuant to 28 U.S.C. § 158(a)(1). On January 31, 2020, the District Court entered a Memorandum and Order, and Judgment, affirming the Bankruptcy Court's dismissal. On September 17, 2021, the Second Circuit Court denied a timely petition for rehearing and affirmed the decision of the District Court. On December 4, 2021, I filed a timely Notice of Appeal. This Court now has jurisdiction over this matter.

## STATUTORY PROVISION INVOLVED

**11 U.S.C. § 523(a)(8)**

A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

[. . .]

8. unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—

(A)

(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or

(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;

## STATEMENT OF THE CASE

1. On August 5, 2016, as pro se, I filed an adversary proceeding in the Bankruptcy Court against defendants, seeking a hardship discharge of student loan debt pursuant 11 U.S.C. § 523(a)(8) and the dismissal of questionable loan documents that were either, duplicated, altered, or forged with other students SSN# included. Discharge was also sought against the use of false and misleading "index numbers" on alleged loan documents that DOE defendant Ms. Dickman claimed were unique identifiers that represent electronic signatures that were used on some alleged loan documents even though I was not matriculated, which brings into question the authenticity of the index numbers provided by the defendant on all three robo-signed notes. *See, Hoffman v. Transworld*, Case No. C18-1132-JCC (W.D. Wash. Nov. 2, 2018). Nevertheless, both defendants, ECMC and the DOE entered answers alleging ownership interests in the alleged loans, which is a violation of 15 U.S.C. § 1692e (10) because attorneys and debt collectors representing loan companies are prohibited from "[t]he use of any false misrepresentation or deceptive means to collect or attempt to collect any debt[.]"

2. Prior to trial, the Bankruptcy Court inexplicably issued a Pretrial Order in which it adopted the Defendants' "Stipulated Facts" in its entirety in the proposed Joint Pretrial Memorandum ("JPTM"), and improperly set forth those facts as the agreed-upon, "stipulated facts" controlling the trial between the defendants and I although I did not sign the memorandum on July 31, 2018, authorizing consent.

Mr. Kenneth Baum independently and maliciously included my rough draft as a part of the joint memorandum without "consent" and affixed my name to the JPTM despite my vigorous objection throughout the proceeding. Thereby depriving me of the required elements of due process, which are those that "minimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis upon which a state proposes to deprive them of protected interests. *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972). The bankruptcy court should have stressed the dignitary importance of procedural rights, the worth of being able to defend one's interests even if one cannot change the result.

3. The lower Courts also improperly concluded that ECMC owns six (6) educational loans without due process despite the lack of evidence to support the admission of business records produced. Similarly, the Pretrial Order improperly concluded that I owed over $46,512.70 based on DOE's production of nine (9) alleged promissory notes for educational loans used for matriculation at Queens College, although the college bursars report obtained *via subpoena* by DOE defendant, Ms. Mary Dickman revealed that only $10,633.40 was used for my matriculation. Nevertheless, the lower courts upheld both ECMC and DOE defendant's objection from having these important and serious matters presented at trial, which warrants review by the Supreme Court.

4. Due to the Bankruptcy Court's decision to adopt ECMC defendant, word for word, "stipulated facts" regarding ownership into its Pretrial Order, I was unable to litigate three important issues of fact that were supported by credible evidence: (a) whether

ECMC had met its burden of proof regarding its purported ownership interest in loans presented; (b) whether the nine promissory notes held by DOE—conclusively proved the amounts borrowed, and (c) Whether the admission of duplicated, altered, and forged documents used by both ECMC and DOE defendants should be deemed admissible as evidence of business records in determining a judgment in this case without conducting a factual-sufficiency review, to consider, weigh, and examine all of the evidence that supports or contradicts the factfinder's determination.

5. The Bankruptcy Court's Pretrial Order not only violated my due process rights but improperly found that I owed student loan debt on "approximately twenty-five (25) federal educational loans totaling almost $200,000 despite the production of only 9 alleged promissory notes totaling $10, 633.40 that was verified by the school bursar's office. The Bankruptcy Court also inexplicably made no finding as to how much I actually owed based on the discharge of Navient loans and the actual amount DOE would dismiss based on fraudulent submission of duplicates/triplicates copies of identical loan documents even for dates when I was not matriculated in school. By failing to address the threshold questions raised as to (a) the proper proof required by ECMC in order to assert ownership of the loans and the amounts owed thereon; (b) the proper number of DOE loans and the amounts owed thereon; and (c) the existence of forgery, alteration of alleged loan documents, and the assignment of fake index numbers to nonexistent triplicate copies of loans documents improperly admitted as

business record, prevented me from receiving a fair and final ruling on the merits of this case.

## REASONS FOR GRANTING THE PETITION

### I. WHETHER THE COURTS ERRED IN NOT ALLOWING INTO EVIDENCE PROOF OF ECMC ALTERED LOAN DOCUMENTS WITH OTHER STUDENTS' SSN# ATTACHED THAT MR. KENNETH BAUM ALLEGES I OWE.

Education Credit Management Corporation (ECMC), represented by Mr. Baum, presented only two promissory notes allegedly associated with educational loans for Adelphi University. One dated 12/1/2001 and the other 10/31/03, but I attended Adelphi University from the fall of 2001 through spring of 2003, at which time I graduated. I explained to Mr. Baum that the two alleged promissory notes did not show the name of the educational institution I attended, the school code, and the disbursement amounts, which are all relevant information associated with a contract agreement in the form of a promissory note. Additionally, I pointed out to Mr. Kenneth Baum that other students' SSN #'s were included in the documents he presented on behalf of ECMC, which proves that his case was deeply flawed and brings into question the authenticity of these loans. Mr. Baum acknowledged the flaws within the evidence he presented during the discovery, at which time he stated, and I quote, "I believe there is a way to deal with this that may allow you to pay virtually nothing—and perhaps, absolutely nothing—on your loans." Nevertheless, weeks leading to the

trial, both Mr. Kenneth Baum representing ECMC and Ms. Mary Dickman representing DOE filed an order objecting to this issue being raised by me in court. The judge honored their request, which was prejudicial against me.

On the day of the trial, Mr. Baum altered the date on one of the alleged promissory notes by changing the date from 10/31/03 to 6/13/03 to reflect a date that more closely correlates with the completion of my attendance at Adelphi University in the spring semester, and affixed my signature to the altered document, which could be construed as fraud. Judge Shadur, a well-respected Judge in Chicago's federal court, stated that "a bona fide signature that has indisputably been transposed onto a totally bogus document . . . is the most egregious fraud on the court that this Court has encountered in its nearly 33 years on the bench." *Flava Works, Inc. v. Momient*, 11 C 6306, 2013 WL 1629428 at *2 (N.D. Ill. Apr. 16, 2013). Similarly, the forged documents presented by Mr. Baum, where the dates were indisputably altered, is a fraud committed not only against me but upon the court. Mr. Baum also used the same fraudulent promissory note to establish claim to Navient loans, which the court dismissed in its entirety upon my presentation of Navient's original loan document.

Mr. Baum's fraudulent intent may be properly inferred from the totality of the circumstances and the conduct of the accused under the circumstances. Mr. Kenneth Baum's never denied submission or knowledge of this false loan document during mediation with the Second Circuit Court, which points to his knowledge under the circumstances, and his intent and purpose to not only deceive me but the court.

This level of fraud resulted in an unfair affirmation of now six alleged loans after the dismissal of Navient loans.

ECMC defendant Mr. Kenneth Baum failed on numerous occasions to provide proof of legal ownership of the alleged loans by establishing an obvious bid to link the transaction documents to the specific loan contract or account. ECMC claimed that the student loans originated from Bank of America, although the promissory note dated 12/1/2001 refutes his claim by listing the original lender as Fleet Bank. This matter resulted in a conflict regarding the proof necessary to establish the link to authenticate records relating to the chain of ownership or proof of debt ECMC alleged I owe. *See, Lovett v. National Collegiate Student Loan Trust 2004-1.* Thus, Mr. Kenneth Baum's self-created computerized snapshot view of loan transfers and altered promissory loan documents should be deemed inadmissible under the business records exception to hearsay. Also, Mr. Baum's action in this matter should be a claim for relief based on his misconduct in providing false and misleading loan documents to the court, which resulted in an inappropriate summary judgment in favor of ECMC.

Notice of motion requesting production of proof of legal ownership of loans was filed on 8/10/2018, with a hearing date set for 9/25/2018, but the court never held a hearing requesting ECMC defendant Mr. Kenneth Baum to provide evidence regarding the underlying promissory note, payment history, and current terms of the loan, including a notarized legal proof of ownership of loans, purchase, sale, transfer and signed deposit agreement. *See, National Collegiate Student Loan Trusts v. Nohemi Macias.* Instead, the

court acted on procedural errors by allowing into evidence Mr. Kenneth Baum self-created computerized snapshot view of loan transfers that did not support any documents he produced, which challenges the sufficiency of the evidence used by the lower Courts in determining judgment in favor of Mr. Baum representing ECMC. A summary judgment should only be granted if the Court determines that there "is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) Fed. R. Civ. P. 56(c). As a result, the judgment, in this case, should be vacated because Mr. Kenneth Baum's action showed a deliberate, contumacious disregard for the Court's authority by the use of false and misleading documents.

## II. WHETHER THE COURTS ERRED IN ADMITTING AS A PART OF BUSINESS RECORDS INTO EVIDENCE DOE DUPLICATE AND TRIPLICATE COPIES OF THREE IDENTICAL ROBO-SIGNED PROMISSORY NOTES WITH DIFFERING ASSIGNED DOLLAR AMOUNTS TOTALING ALMOST $200,000 EVEN FOR DATES I WAS NOT MATRICULATED IN SCHOOL.

DOE's representative Ms. Mary Dickman presented three noticeably different robo-signed promissory that she alleged is linked to 16 of the 25 loans I allegedly owed. One of the notes Ms. Dickman submitted into evidence was dated 4/10/2009, which she claimed was linked to 5 of the 16 alleged loans totaling over $65,000 due to the production of triplicate copies of the identical loans with differing assigned loan origination dates, disbursement amounts, coupled with copies of alleged payment printouts from DOE computer system, which the courts affirmed in the

judgment although I was not matriculated at Davenport until July 6, 2009, which makes this document fraudulent, and brings into question the authenticity of the other two robo-signed promissory notes. The "payment disclosures" presented by Ms. Mary Dickman were both altered and duplicated to appear as federal student loans by possibly using Adobe Acrobat. Judge Shadur in Chicago's Federal Court stated that the offending party's complaint would ultimately be dismissed with prejudice as a sanction for this fraud on the court. *Pope v. Fed. Express Corp.*, 974 F.2d 982 (8th Cir. 1992) and *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991). In determining whether the moving party is entitled to summary judgment, the lower Courts should have considered only those materials properly designated pursuant to Trial Rule 56, construe all factual inferences, and resolve all doubts. Ms. Dickman acknowledged the inaccuracy of the triplicate copies of promissory notes, computer printout showing fake disbursements, and payments disclosure by agreeing to waive only $25,000, although $65,000 was assessed to bogus loan documents when I was not even enrolled in school.

According to the law, a claim should have facial plausibility if I am able to show factual content that allows the court to draw a reasonable inference that the defendant is liable for the misconduct. My claim has facial plausibility based on duplicates and triplicates copies of three identical promissory notes with different alleged loan amounts, fake index numbers, Cookbook computer printouts of nonexistent loans, and DOE's forged promissory notes, which are all pleading factual contents that could allow the Court to draw the reasonable inferences that the defendant

produced false material evidence and knowingly filed false and misleading affidavits in support of motions for judgment against me in an effort to collect on debts DOE is not entitled to.

### A. Whether the Lower Courts Erred into Admitting into Evidence Index Numbers That DOE Representative Ms. Dickman Claimed Were "Unique Pin Identifiers, Representing an Electronic Signature" Used on Triplicate Copies of Loan Documents for Dates I Was Not Matriculated in School.

Ms. Dickman claimed that the index numbers were "unique pin identifiers, representing an electronic signature." The fact that I was not matriculated when these so-called unique identifiers were established brings into question the authenticity of the index numbers provided on all three robo-signed notes. Therefore, in determining whether the moving party is entitled to summary judgment, the lower Courts should have considered only those materials properly designated pursuant to Trial Rule 56, construe all factual inferences, and resolve all doubts. Moreover, DOE representative Ms. Dickman submitted triplicate copies of a fraudulent promissory note dated 4/10/2009 and assigned fake payment and an uncorroborated cookbook computerized printout of disbursements for dates I was not even matriculated, which brings into question the authenticity of the other two robo-signed notes.

As a result, I contend that much of DOE's designated evidence is inadmissible hearsay, and thus the evidence presented is insufficient to make prima facie

showing that DOE is entitled to summary judgment on its claim against me. For DOE to make its prima facie case in support of summary judgment, DOE should have been required to show that I executed a contract for the student loan with the lender, and that Great Lake was the assignee, and is now the owner of that debt, and that I owe the original lender, the amount alleged. *See, Seth v. Midland Funding, LLC*, 997 N.E.2d 1139, 1140.

All 3 robo-signed notes became available close toward the trial hearing despite the adversary proceeding lasting for "over 2 years." Additionally, the altered payment disclosures only surfaced after I forwarded to the Bankruptcy Court my foreign student loan payment disclosures as evidence of continuous collection efforts made by Great Lakes and AES during the bankruptcy and adversary proceeding. It appears that Ms. Dickman "erased the bar codes" that would legitimize the disclosures, the institution name, and provided numerous duplicates of identical loan disclosure amounts even for loan documents dated 4/10/2009, when I was not even matriculated at the University.

In conducting a factual-sufficiency the lower Courts should have reviewed and examined all of the evidence that supports or contradicts the factfinder's determination. *See, Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001); *Plas-Tex, Inc. v. U.S. Steel Corp.*, 772 S.W.2d 442, 445 (Tex. 1989). We may set aside the verdict only if the evidence is so weak or the finding is so against the great weight and preponderance of the evidence that it is clearly wrong or manifestly unjust. *Pool v. Ford Motor Co.*, 715 S.W.2d 629, 635 (Tex. 1986). The elements of a valid contract are: (1) an offer, (2) an acceptance, (3)

a meeting of the minds, (4) each party's consent to the terms, and (5) execution and delivery of the contract with the intent that it be mutual and binding. *Beverick v. Koch Power, Inc.*, 186 S.W.3d 145, 150 (Tex. App.-Houston [1st Dist.] 2005, *pet. denied*). When an offer prescribes the manner of acceptance, compliance with those terms is required to create a contract. *Padilla v. LaFrance*, 907 S.W.2d 454, 460 (Tex. 1995). If one party signs a contract, the other party may accept by his acts, conduct, or acquiescence to the terms, making it binding on both parties. *Jones v. Citibank (S.D.), N.A.*, 235 S.W.3d 333, 339 (Tex. App.-Fort Worth). To be enforceable, a contract must be sufficiently certain to enable a court to determine the rights and responsibilities of the parties. *Williams v. Unifund CCR Partners Assignee of Citibank*, 264 S.W.3d 231, 236 (Tex. App.-Houston [1st Dist.] 2008) (*citing T.O. Stanley Boot Co. v. Bank of El Paso*, 847 S.W.2d 218, 221 (Tex. 1992)). And the lower Courts failed me in this regard that warrants review by the Supreme Court.

Here, the record shows three robo-signed promissory notes:(1) one made on 4/10/2009 when I was not matriculated, (2) triplicate copies of fake promissory notes, (3) false payment disclosures, (4) falsification of alleged computerized loan documents. Therefore, the evidence presented by Ms. Mary Dickman representing DOE is insufficient to show a valid contract in the absence of legitimate promissory notes, notarized purchase, sales, deposit, and transfer agreements to authenticate the robo-signed documents. As a result, the documents DOE presented are insufficient to support the admission of the business records neces-

sary for DOE to establish its prima facie case; hence, summary judgment was inappropriate.

Furthermore, the alleged "federal student loan payment disclosures" presented into evidence by Ms. Dickman were "altered" foreign medical school payment disclosures. The foreign student loans in question were not made, insured, or guaranteed by a governmental unit or made under a program funded in whole or in part by a governmental unit or non-profit institution because St. Matthews only recently received Title IV accreditation in June 2018. I separated from the school 9 years earlier, and AUA gained Title IV accreditation in February 2015, and I separated from the institution 7 years earlier after only being in attendance for only one semester because the level of education was not the same. *See*, *In re: Meyer*, Case No. 15-13193 (Bankr. N.D. Ohio 2016) and *In re: Swenson*, Case No. 16-00022 (Bankr. W.D. Wis. 2016). Section 523(a)(8)(B) excepts from discharge loans for attending an "eligible educational institution," recognition of which is dictated by the Federal School Codes List for the years prior to 2009, which identify "all postsecondary schools that are currently eligible for Title IV aid." St. Matthew's University School of Medicine did not appear as an eligible educational institution on the Federal School Codes List, and thus the loans from HLTXPR, serviced by Great Lake, and AUAMED loans serviced by AES formally owed by Citizen bank, which is neither a governmental unit nor non-profit institution are all not "qualified education loans," as defined in 26 U.S.C. §§ 221(d)(1) and (2). Accordingly, the loans, in this case, are not excepted from discharge under section 523(a)(8)(B). Defendants Ms. Dickman and Mr. Baum both failed

to raise this argument of foreign student loans during the pre-trial and at trial. Therefore, it could be construed that both defendants have waived the argument or have impliedly consented to this loan being discharged in bankruptcy.

### B. Whether the Lower Courts Erred into Admitting into Evidence DOE's Sworn Affidavit Stating I Borrowed $24,180 on July 22, 2015, Even Though I Graduated on December 30, 2014.

In support of the summary judgment, DOE designated the affidavit of Rhoda Terry, an employee of the Department of Education ("DOE"), for approximately three years and ten months at the time of trial, although the alleged loans were decade old or more. Ms. Terry stated that she was the "Loan Analyst" and custodian of records" for DOE. She stated that she was familiar with the process by which DOE received prior account records and conducted business practice to incorporate prior loan records, and therefore was competent and authorized to testify regarding my specific loan and "the business records attached" to the affidavit. The purpose of Ms. Terry's testimony was to authenticate and lay the foundation for the admissibility of several attached documents, the most relevant for our review were the alleged loan contract between me and Servicers represented by DOE, the schedule number of loans transferred and assignee, along with the computerized loan printouts submitted by DOE.

Trial Rule 56(e) provides that supporting and opposing affidavits on summary judgment "shall be made on personal knowledge, shall set forth such facts

as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." Trial Rule 56(E) requirements are mandatory, and a court considering a motion for summary judgment should disregard inadmissible information contained in supporting or opposing affidavits: *Seth*, 997 N.E.2d at 1143. Inadmissible hearsay contained in an affidavit may not be considered in ruling on a motion for summary judgment. *Breining v. Harkness*, 872 N.E.2d 155, 158 (Ind. Ct. App. 2007).

Ms. Terry's affidavit and supporting documents were not concluded as hearsay because DOE argued that the material offered was admissible because it falls within the business records exception to the hearsay rule. Trial Rule 803(6) provides that records of a regularly conducted business activity are not excluded by the rule against hearsay if: the record was made at or near the time by—or from information transmitted by—someone with knowledge; the record was kept in the course of a regularly conducted activity of a business; making the record was a regular practice of that activity, and all these conditions are shown by the testimony of the custodian or another qualified witness, and neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness. To ensure reliability, the proponent of a business record must authenticate it, and Evidence Rule 803(6) permits authentication by affidavit. *Speybroeck v. State*, 875 N.E.2d 813, 819 (Ind. Ct. App. 2007). As an exception to the hearsay rule, the business record exception must be strictly construed.

Here, Ms. Rhoda Terry affidavit provided no testimony to support the admission of the contract between me and the lender or the schedule number of loans sold and assigned to servicers, and she could not authenticate the copies of the alleged loan printout from DOE's computer system that did not correlate with either Terry or Dickman affidavit or payment disclosure, as business records pursuant to Evidence Rule 803(6). There was also no testimony to indicate that Ms. Terry was familiar with or had personal knowledge of the regular business practices or record keeping of the alleged Federal loans, the loan originator, or that of servicers regarding the transfer of loans, such that she could testify as to the reliability and authenticity of those documents. Indeed, Ms. Terry offered no evidence to indicate that those records were made at or near the time of the business activities in question by someone with knowledge and that the records were kept in the course of the regularly conducted activities of either DOE or the Servicers, and that making the records was part of the regularly conducted business activities. In *Speybroeck*, this Court stated that, pursuant to Trial Rule 803(6), one business "could not lay the proper foundation to admit the records of another business because the requesting business lacked the personal knowledge required to ensure reliability." *Accord Williams v. Unifund CCR, LLC*, 70 N.E.3d 375, 379 (Ind. Ct. App. 2017). Because Ms. Terry's affidavit is insufficient to support the admission of the business records necessary for DOE to establish its prima facie case, summary judgment was inappropriate.

Furthermore, Ms. Rhoda Terry could not validate robo-signed promissory notes and believes that prom-

issory notes are transferable from one educational institution to the next, which is false because each new educational institution requires the submission of a new loan application/agreement. Ms. Terry further agreed that the facts she presented in her sworn affidavit were accurate, and if the facts were wrong, it would affect the validity or accuracy of her statement. Nevertheless, both Ms. Dickman representing DOE and her witness Ms. Terry submitted in their sworn statement that on July 22, 2015, I borrowed $24,180 for attendance at Davenport even though I graduated from Davenport University on December 30, 2014. DOE defendant claimed that the information presented was a typo, which proved that the documents DOE defendant submitted for trial were deeply flawed and lacked trustworthiness, which challenged the sufficiency of evidence used by the lower courts to rule in favor of DOE without prejudice.

### C. Whether the Lower Courts Erred in Awarding an Erroneous Judgement of $46,512.70 to DOE for Attendance at Queens College When the Bursar's Record Subpoena by DOE Showed I Only Borrowed $10,633.40.

The court also awarded judgment to DOE defendant Ms. Dickman for erroneous claims of duplicated loan amounts totaling over $46,512.70 for educational loans allegedly used for Queens College, although the college bursars report obtained via subpoena by DOE defendant Ms. Mary Dickman revealed that only $10,633.40 was used for my matriculation, which again makes the summary judgment inappropriate especially towards me, a pro se in this matter that

fell victim to this defendant false and misleading affidavit.

## III. WHETHER THE LOWER COURTS ERRED IN ADOPTING INTO EVIDENCE THE ENTIRETY OF ECMC STIPULATED FACTS THAT WAS UNILATERALLY WRITTEN BY THE DEFENDANT FOR A JOINT MEMORANDUM THAT I DID NOT CONSENT TO OR SIGNED..

On March 26, 2017, Mr. Baum became increasing persistent based on repeated phone calls and text messages that felt threatening, where Mr. Baum repeatedly stated that if I did not sign inter alia consenting to authorize Educational Credit Management Corporation to Intervene in Adversary Proceeding he would file a motion with the court forcing me to sign, and I would have to go to trial on this matter. As a new pro se with no legal knowledge, I was preyed upon by Mr. Baum, who knowingly coerced and misled me into improperly signing a document he drafted and produced. Mr. Baum claimed that ECMC was already the guarantor of the alleged loans and only needed to intervene to decide on dischargeability, which was a false and misleading statement because he lacked the ability to prove his claim. New York Southern District Court of Appeals rejected, in a factually indistinguishable case, an affidavit signed by another Legal Case pro se—to all appearances—based on the same template with the same boilerplate verbiage. *See Kevin Rosenberg, Appellant-pro se, v. NY Higher Education, led by ECMC Appellee Kenneth Baum*, No. 1809023, Southern District Court of Appeals of New York, January 7, 2020. An act or practice is unfair or deceptive if it is unethical or has a tendency to deceive, and the determination of whether an act

or practice is unfair or deceptive is a question of law. *Id.* at 656, 548 S.E.2d at 711. Conduct that is proven to be fraudulent constitutes a per se violation of N.C. Gen. Stat. § 75-1.1. *Davis v. Sellers*, 115 N.C. App. 1, 9, 443 S.E.2d 879, 884(1994); *Joy v. MERSCORP, Inc.*, 935 F. Supp. 2d 848, 863 (E.D.N.C. 2013); *Angell v. Kelly*, 336 F. Supp. 2d 540, 550 (M.D.N.C. 2004). Therefore, Mr. Kenneth Baum representing ECMC action must be deemed unethical and deceptive as a matter of law, nullifying the Order authoring ECMC to intervene because ECMC was never listed as the guarantor.

## IV. THE SECOND CIRCUIT COURT INCORRECTLY STATED THAT I "WAS COERCED INTO SIGNING STIPULATED FACTS" THAT I DID NOT SIGN AND ONLY RECEIVED APPROXIMATELY TWO WEEKS AFTER ECMC FILED THE STIPULATION.

The Second Circuit court also incorrectly stated that I "was coerced into stipulating to material facts in the marked-up joint pretrial memorandum of July 31, 2018," which was not true because the only person who was in charge of editing and submitting the "markup" adopted as "stipulated facts" at the conference, was ECMC representative, Mr. Kenneth Baum. Mr. Baum did not forward a copy of the so-called stipulated facts to me until almost two weeks after he filed the stipulations with the Bankruptcy Court and was granted approval without my consent. Therefore, the lower courts abused their discretion in adopting the Joint memorandum as a pretrial order because I did not sign establishing agreement and vigorously objected to the stipulations throughout the proceeding. As a matter of fact, I was granted relief on August 16, 2018, to set out my position after

I reported Mr. Baum's misconduct to the Clerk's office of the Bankruptcy Court. Nevertheless, both DOE and ECMC defendants objected to the revision of my rough draft, and the Bankruptcy Court unfairly ruled in their favor, which unilaterally deprived me of due process and led to a miscarriage of justice.

The bankruptcy court should have stressed the dignitary importance of procedural rights, the worth of being able to defend one's interests even if one cannot change the result. *Carey v. Piphus*, 435 U.S. 247, 266-67 (1978). The procedural due process rules are meant to protect people like me, acting as pro se from the mistaken or unjustified deprivation of due process. Being deprived of the opportunity to submit my revised memorandum as part of the final Joint Pretrial Memorandum ultimately made it impossible for me to prevail under the bias standards upheld by the lower Courts that did not mirror the interpretation of the law.

The District Court Judge contends in section B of the Court's memorandum that "the decision of the Bankruptcy Court to deny a motion for default judgment pursuant to Rule 55 of the Federal Rules of Civil Court is within the trial court's discretion." But in this case, I waited for over 2 months before filing an entry of default, judgment sum certain, and notice of presentment on April 17, 2017, *against* DOE because of Ms. Mary Dickman continuous failure to respond to documents request during discovery. Which subsequently led to the filing for an adjournment by Mr. Kenneth Baum on May 2, 2017, for the scheduled May 9, 2017, pre-trial hearing by falsely stating that all parties consented even though I denied both DOE and ECMC request for an extension. Mr. Baum's

actions serendipitously created a loophole for the accommodation of an extension by the court, which was unjust, leading to the deprivation of my due process rights.

The Court once again ordered DOE defendant, Ms. Dickman to produce the loan documents within a week from the May 23, 2017 hearing, making May 30, 2017, the new deadline date for document production, but the loan documents never arrived until June 17, 2017, 3 days prior to the June 20, 2017 hearing, which was now over 4 months late from the initial request made on February 2, 2017. Ms. Dickman actions in this matter ultimately denied me of adequate time to review and prepare for the pre-trial hearing. Also, the delay in loan documents production clearly exceeded the statute of limitations under the guidelines of the bankruptcy court in pursuant to Procedure 7034 and Federal Rules of Civil Procedure 34, where the defendant has 30 days to respond to document requests to avoid summary judgment.

*Also, See; United States of America v. Files,* No. 16-cv-60-65, 2017 (E.D.N.Y. Aug. 2, 2017), final judgment that conflicts with the judgment rendered by the same District Court Judge in my case, which should have been guided by the same factors and principles used in determining liability as a matter of law, equity, and fairness. These factors are "(1) whether the defendant's default was willful; (2) whether the defendant has a meritorious defense to plaintiff's claims; and (3) the level of prejudice the non-defaulting party would suffer as a result of the denial of the motion for default judgment." *Mason Tenders Dist. Council v. Duce Constr. Corp.*, No. 02-cv-9044, 2003 WL 1960584, at (S.D.N.Y. Apr. 25, 2003).

(1) As to the first factor, the failure by Defendant to respond to the complaint for over 4 months from being notified demonstrates willfulness. *See, Indymac Bank v. Nat'l Settlement Agency, Inc.*, No. 07-cv-6865, 2007 WL 448652, at (S.D.N.Y. Dec. 20, 2007). The defendant, Ms. Dickman, did not attempt to defend herself in the present action, nor did she request an extension of time to respond to the document request when she was first notified. The defendant only made her actions known after I filed a default of summary judgment. The only effort Ms. Dickman made to secure an extension was to utilize the unjustified loophole created by ECMC defendant, Mr. Baum, to gain an extension for document production.

(2) There is no meritorious defense to DOE Defendant's (Ms. Dickman) action and her failure to present documents on-time, which should have precluded the bankruptcy court from finding in the defendant's favor.

(3) In this case, the bankruptcy court denial of default judgment was prejudicial against me because Ms. Dickman failure to respond to notice on behalf of DOE establishes the defendant's liability without prejudice. *See, Bridge Oil Ltd. v. Emerald Reefer Lines, L.L.C.*, No. 06-CV-14226, 2008 WL 5560868, at (S.D. N.Y. Oct. 27, 2008). Hence, the final Order rendered by the District Court Judge against me was wrong because Ms. Dickman is an Assistant District Attorney who deliberately disregarded the Court's orders on more than one occasion without cause, which shows an actionable disregard towards the judicial system and no one is above the law. Unlike the student loan borrower in the case of *United States of America v.*

*Files*, who might have just gotten cold feet acting as a pro se and fearfully failed to respond to the complaint.

This case thus exemplifies the importance of determining a judgment based on the legal and factual sufficiency of the evidence to avoid the rendition of an improper verdict. I contend that the courts erred in admitting fraudulent documents as business records without supportive evidence. The Courts also erred in finding ECMC and DOE joint pretrial memorandum sufficient and properly admitted, even though I did not sign the joint memorandum on July 31, 2018, authorizing consent. Neither did I consent to ECMC stipulations, which were filed and approved by the Bankruptcy Court before I received a copy via email, resulting in a miscarriage of justice. The lower Courts should have set aside their verdict based on the preponderance of evidence I provided that proved the ruling was unjust. *Pool v. Ford Motor Co.*, 715 S.W.2d 629, 635 (Tex. 1986).

## CONCLUSION

The petition for a writ of certiorari should be granted, and the lower Courts judgment vacated in light of the position asserted in this petition.

Respectfully submitted,

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