

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

**EVAN BRIAN HAAS,

Debtor.**

Chapter 7

Case No. 15-35886 (DRJ)

**EVAN BRIAN HAAS and
MICHAEL SHAHBAZI,

Plaintiffs,**

Adv. Pro. No. 16-03175 (DRJ)

v.

**NAVIENT SOLUTIONS, LLC and
NAVIENT CREDIT FINANCE
CORPORATION,

Defendants.**

**DEFENDANTS' OBJECTIONS AND RESPONSES TO
PLAINTIFFS' REQUEST FOR PRODUCTION 10(A)**

Defendants Navient Solutions, LLC ("NSL") and Navient Credit Finance Corporation ("NCFC"; collectively with NSL, "Defendants"), by and through their undersigned counsel, pursuant to Federal Rules of Civil Procedure 26 and 33, which Federal Rules of Bankruptcy Procedure 7026 and 7033 incorporate into this adversary proceeding, hereby object and respond as follows to *Plaintiffs' Request for Production 10(A)*.

GENERAL OBJECTIONS

The following General Objections apply to and are incorporated into responses to Request for Production 10(A) ("Request 10(A)") and related Definitions. In addition to these General Objections, Defendants state specific objections to Request 10(A) below. By setting forth such additional specific objections, Defendants do not, in any way, intend to limit or restrict their

EXHIBIT C
to Smith Declaration

General Objections. Moreover, the assertion of the same, similar, or additional objections in response to Request 10(A) does not waive, limit, or modify any of these General Objections. Finally, in the event that Defendants are eventually required to provide a response to any aspect of Request 10(A) to which they object, such response shall not constitute a waiver of any General Objection or any Specific Objection.

Defendants state the following General Objections:

1. Defendants' investigation of facts relevant to this proceeding is ongoing. The following objections and responses are therefore based solely on the information that is presently available and specifically known to Defendants at this time, and are given without prejudice to the rights of Defendants to present evidence of any subsequently discovered facts. Further investigation, research, and analysis may uncover additional facts, add meaning to known facts, and perhaps establish new factual conclusions. Thus, Defendants make the objections and responses set forth below without prejudice to Defendants' rights to assert any additional or supplemental objections and responses, should Defendants discover additional grounds for such.

2. Defendants object to Request 10(A) to the extent that it exceeds the scope of discovery presently authorized by the Court, which is limited to class-certification issues. *See* Dkt. No. 134 ¶ 1.

3. Defendants make the objections and responses below without, in any manner, waiving: (a) the right to object to the use of any response, document, or thing for any purpose in these actions or any other actions on grounds of privilege, relevancy, materiality, or any other appropriate basis; (b) the right to object to any other discovery requests that relate to the subject matter of these objections and responses and any documents or things produced by Defendants; or (c) the right to revise, correct, supplement, or clarify at any time any of the responses below.

4. Defendants expressly reserve the right to supplement their objections and responses.

5. Any responses will be supplied by Defendants subject to all objections as to competency, relevance, materiality, propriety, admissibility, and any and all other objections on any grounds that would require the exclusion of the response or information if such were offered in evidence, all of which objections and grounds are expressly reserved and may be interposed later.

6. Defendants generally object to Request 10(A) to the extent that it seeks to impose obligations beyond or inconsistent with those required by the Federal Rules of Civil Procedure, as incorporated into this adversary proceeding by the Federal Rules of Bankruptcy Procedure, the Local Rules of the United States Bankruptcy Court for the Southern District of Texas (the “Court”) and the procedures of Judge David R. Jones (collectively, the “Local Rules”), any orders of the Court, or any stipulations or agreements of the parties.

7. Defendants generally object to Request 10(A) to the extent that it seeks information concerning communications between NSL or NCFC, on the one hand, and NSL’s or NCFC’s auditors or accountants, on the other, that are protected from disclosure on the basis of privilege.

8. Defendants generally object to Request 10(A) to the extent that it seeks information concerning communications between NSL or NCFC, on the one hand, and any state or federal governmental agency, on the other, that are protected from disclosure on the basis of privilege.

9. Defendants generally object to Request 10(A) to the extent that it is unlimited as to loans potentially at issue, thereby rendering such request vague, overbroad, ambiguous, unduly burdensome, and disproportionate to the needs of the case.

10. Defendants generally object to Request 10(A) to the extent that it seeks information subject to a confidentiality or nondisclosure agreement, or that relate to or contain trade secrets, proprietary or confidential business information, or competitively or financially sensitive business, personal, customer, or borrower information.

11. Defendants generally object to Request 10(A) to the extent that it: (1) seeks information that is not relevant to this action; (2) is not proportional to the needs of the case; (3) is vague and ambiguous; (4) is overbroad; (5) is unduly burdensome; (6) is harassing; (7) is duplicative; or (8) will cause unnecessary expense.

12. Defendants generally object to Request 10(A) insofar as it purports to require Defendants to provide information beyond what Defendants are able to locate through a reasonably diligent search in accordance with the requirements of the Federal Rules of Civil Procedure, as incorporated into this adversary proceeding by the Federal Rules of Bankruptcy Procedure, and the Local Rules.

13. Defendants generally object to Request 10(A) insofar as it calls for information that is not within Defendants' possession, custody, or control (including, without limitation, in the possession of separate legal entities) on the grounds that such request is overbroad, unduly burdensome, and violates and exceeds the requirements of the Federal Rules of Civil Procedure, as incorporated into this adversary proceeding by the Federal Rules of Bankruptcy Procedure, and the Local Rules. To the extent Defendants respond that they will search for and produce non-privileged, responsive documents or information, Defendants will make a reasonably diligent effort to conduct a search of the files and records of those individuals likely to have meaningful information responsive to Request 10(A) as maintained in the ordinary course of business, and subject to Federal Rule of Civil Procedure 34(b)(2)(E), as incorporated by Federal Rule of

Bankruptcy Procedure 7034. Defendants are not offering or promising to search for and produce every document or piece of information that may exist in the possession, custody, or control of all of its employees and agents where any such items are not included within the results of a reasonable search as described herein.

14. Defendants object to Request 10(A) insofar as it may be construed as calling for information subject to a claim of privilege, including, without limitation, the attorney-client privilege, the attorney work product doctrine, the party-communication privilege, or any other applicable evidentiary privilege arising under federal, state, or local law, or under the regulations and laws of any applicable foreign jurisdiction. Defendants have construed Request 10(A) as not seeking information or documents prepared in anticipation of litigation or documents exchanged with the in-house legal department or outside counsel for the purpose of seeking or rendering legal advice. The inadvertent production of any material protected by the attorney-client privilege, work product doctrine, or any other applicable evidentiary privilege, exception, or immunity is not intended and should not be construed as a waiver, and Defendants reserve the right under Federal Rule of Civil Procedure 26(b)(5)(B), as incorporated by Federal Rule of Bankruptcy Procedure 7026, to recall any such information or document. Defendants demand that Plaintiffs and their agents and attorneys notify Defendants' undersigned counsel of the production of any such information or documents immediately upon discovery of such information or documents, and return such information or documents to such undersigned counsel upon request.

15. Nothing contained in any objection or response herein shall be deemed to be an admission or acknowledgment that Request 10(A) calls for information that is relevant to the subject matter of this action. Further, Defendants have objected and responded to Request 10(A) without waiving or intending to waive any objection to the competency or admissibility as

evidence of any information provided, referred to, or made the subject of any response. Defendants expressly reserve the right to object to further discovery of the subject matter of the request and the introduction into evidence of any provided information, document, or testimony, including, without limitation, under Federal Rules of Evidence 403 and 408. A partial response to any part of Request 10(A) that has been objected to, in whole or in part, is not intended to be a waiver of the objection(s).

16. Defendants object to Request 10(A) to the extent it seeks information or documents unrelated to the relevant time period and loans potentially at issue, thereby rendering such request vague, overbroad, ambiguous, and unduly burdensome, and not relevant to any claim or defense, proportional to the needs of the case, or within the scope of permissible class certification discovery under the Scheduling Order.

17. Defendants do not intend, and their responses should not be construed as, an agreement or acquiescence with any characterization of fact, assumption, or conclusion of law contained in or implied by the request. Defendants' responses shall not be construed as an admission of the admissibility or relevance of any information or documents produced in response to Request 10(A) or any other discovery responses. Defendants reserve all evidentiary objections, including, without limitation, objections to the relevance and admissibility of requested information and documents.

18. Defendants incorporate by reference their General Objections into each of the Specific Objections to Definitions and Objections and Responses to Request 10(A) below. From time to time, and for purpose of emphasis, Defendants may restate one or more of the General Objections as specific objections to Definitions or Request 10(A). Such restatement, or the failure to restate, should not be taken as a waiver of any General Objection not restated.

SPECIFIC OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

In addition to Defendants' General Objections (which are incorporated herein by reference), Defendants object to the following Instructions and Definitions (as set forth in Request Nos. 1–12 (collectively with Request 10(A), the "Requests")).

1. Defendants object to Definition 1 because it is vague and ambiguous and therefore subject to different meanings such that Defendants cannot reasonably determine what information is being requested. Defendants will interpret the term "Action" to mean the adversary proceeding captioned *Evan Brian Haas and Michael Shahbazi v. Navient Solutions, LLC and Navient Credit Finance Corporation*, No. 16–3175 (DRJ) (Bankr. S.D. Tex.).

2. Defendants object to Instruction 3 to the extent it attempts to impose the requirement to produce documents that are not in Defendants' possession, custody or control (including, without limitation, documents in the possession of separate entities). Subject to any and all objections stated herein, Defendants will search for and produce responsive, non-privileged documents in Defendants' custody and control in accordance with the Federal Rules of Civil Procedure and applicable case law.

3. Defendants object to Instruction 4 to the extent the definitions and instructions therein attempt to impose the requirement to produce documents in the custody and control of various third-parties, including, without limitation, separate corporate entities. Further, Defendants object to Instruction 4 on the basis that the definitions and instructions therein include legal counsel and thus call for production of documents that may contain information or communications protected by the attorney-client privilege, the attorney work product doctrine, or other protection in accordance with Fed. R. Civ. P. 26(b)(3). Defendants respond to the Requests only on behalf of Defendants and not on behalf of Defendants' legal counsel or any other person or entity.

4. Defendants object to Instruction 5 to the extent it attempts to impose the requirement to produce full families of documents with attachments because it potentially encompasses documents that are not relevant to the issues in this litigation nor proportional to the needs of the case. Further, Defendants reserve the right to produce only the responsive, non-privileged portions of documents where such documents also contain information that is not relevant to the subject matter of the Request, is not reasonably calculated to lead to the discovery of admissible evidence, is privileged, or is otherwise protected from disclosure. Defendants have no duty to produce non-responsive or privileged documents.

5. Defendants object to Instruction 7, and Section III on page 7 of the Requests titled “Privileged or Proprietary Documents,” to the extent it attempts to impose an unduly burdensome requirement to log each and every document prepared in anticipation of litigation or documents exchanged with the in-house legal department or outside counsel for the purpose of seeking or providing legal advice, as applicable, particularly given that RFP 10(A) seeks documents for more than a twelve-year span. *See e.g., Benson v. Rosenthal*, No. CV 15–782, 2016 WL 1046126, at *10–11 (E.D. La. Mar. 16, 2016) (authorizing categorical log where “it would be burdensome and wasteful . . . to log every work product communication that [a party’s] attorneys, representatives and experts have had since the lawsuit was filed”) and *Manufacturers Collection Co., LLC v. Precision Airmotive, LLC*, No. 12–cv–853, 2014 WL 2558888, at *3–6 (N.D. Tex. June 6, 2014) (finding categorical log appropriate where (a) the underlying suit spanned 10 years and involved multiple law firms, (b) the volume of documents was substantial, and (c) the “listing of an entire litigation file . . . [or certain requested documents] could potentially reveal some or part of the privileged or work-product information that [the party] seeks to protect”); *see also Orbit One Commc’ns, Inc. v. Numerex Corp.*, 255 F.R.D. 98, 109 (S.D.N.Y. 2008) (permitting party to submit

categorical log in order to “lessen the burden posed by reviewing and recording a large quantity of protected communications”); *Fifty-Six Hope Road Music, Ltd. v. Mayah Collections, Inc.*, No. 2:05-cv-01059, 2007 WL 1726558, at *8 (D. Nev. June 11, 2007) (permitting categorical privilege log where emails numbered in hundreds or thousands and requiring a privilege log for each email communication would be unduly burdensome and not serve the legitimate purposes of discovery under Fed. R. Civ. P. 26); *In re Imperial Corp. of Am.*, 174 F.R.D. 475, 478-79 (S.D. Cal. 1997) (authorizing categorical privilege log where document-by-document log would have been “unreasonable and unduly burdensome” given that there were thousands of documents subject to attorney-client privilege or work-product protection); *SEC v. Thrasher*, No. 92-civ-6987 (JFK), 1996 WL 125661, at *1 (S.D.N.Y. Mar. 20, 1996) (categorical privilege logs are appropriate where “(a) a document-by-document listing would be unduly burdensome and (b) the additional information to be gleaned from a more detailed log would be of no material benefit to the discovering party in assessing whether the privilege claim is well grounded”).

6. Defendants object to the unnumbered Instruction following Instruction 7, which attempts to impose the requirement to produce documents “as they are kept in the ordinary course of business.” Fed. R. Civ. P. 34(b)(2)(E)(i) provides that “[a] party must produce documents as they are kept in the usual course of business **or** must organize and label them to correspond to the categories in the request.” Defendants will produce documents in a reasonable format consistent with the manner of production Defendants requested of Plaintiffs.

7. Defendants object to Definition 2 to the extent it causes Request 10(A) to become vague or ambiguous.

8. Defendants object to Definition 4, and Section IV on page 8 of the Requests titled “Lost or Destroyed Documents,” to the extent it attempts to impose the obligation to “state” certain

information or “submit a written statement” regarding documents that are no longer in Defendants’ possession or control because it would be disproportional to the needs of this case and impose an undue burden on Defendants to provide a log with all of the requested details for every document that might have been deleted or otherwise removed from Defendants’ possession and control during the more than twelve (12) year period covered by the Requests.

9. Defendants object to the embedded legal conclusion in Definition 5 that the named Plaintiffs in this action are “similarly situated” with any other particular borrowers, which is an ultimate issue in dispute that has not yet been determined in this action, particularly since the named Plaintiffs’ respective loan documentation differs from one another in material respects, and the purported definition of “Class Members” in the Requests includes alleged borrowers whose loans are dissimilar to the Plaintiffs’ loans at issue and also includes borrowers with loans that are not relevant to the issues presented in this action, such as borrowers whose loans were obtained post-petition and borrowers who did not receive a discharge within the relevant time period (i.e., the definition includes borrowers who obtained discharge orders in bankruptcy cases filed before October 17, 2005). Defendants further object to Definition 5 to the extent it assumes that any particular loans or categories of loans are dischargeable or were discharged in any particular bankruptcy case. Defendants further object to the use of the defined term “Class Members” as vague and ambiguous because no class has been certified in this action, nor has a putative class been ascertained or determined to be ascertainable. Finally, Defendants object to Definition 5 because all of the foregoing issues render the defined term “Class Members” vague, ambiguous, overbroad, unduly burdensome, and not relevant to any claim or defense, proportional to the needs of the case, or within the scope of permissible class certification discovery under the Scheduling Order.

10. Defendants object to Definition 6 to the extent it characterizes any particular loan or category of loan as a “consumer” loan, which is a conclusion of law, and to the extent it incorrectly paraphrases or assumes which categories of loans are within the scope of any particular subsection of 11 U.S.C. § 523(a)(8). Defendants further object to Definition 6 to the extent the phrase “loan product made by or serviced by NSL or NCFC or their predecessors” causes any request to become vague, ambiguous, overbroad, or unduly burdensome. Finally, Defendants object to Definition 6 because all of the foregoing issues render the defined term “Consumer Education Loan” in any request vague, ambiguous, overbroad, unduly burdensome, and not relevant to any claim or defense, proportional to the needs of the case, or within the scope of permissible class certification discovery under the Scheduling Order. Solely for purposes of responding in good faith to the Requests, and without any admission or concession regarding the nature or dischargeability of such loans or the nature of the educational institutions associated with such loans, Defendants understand that Plaintiffs define Definition 6 to *include* bar study loans, career training loans, and other similar loans to the extent any such loans are associated with non-Title IV institutions (as determined as of the date of origination of the loan), and to *exclude* loans that are or were “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 associated with a Title-IV institution (as determined as of the date of origination of the loan).

11. Defendants object to Definition 8 to the extent that it seeks information that is unrelated to this matter and to the extent it causes a request to become vague or ambiguous and therefore subject to different meanings such that Defendants cannot reasonably determine what information is being requested. Defendants will interpret the term “Truth in Lending Disclosure Statement” in the context of and in accordance with each Request in which the term appears.

12. Defendants object to Definitions 9, 10, and 11 to the extent they include any person or entity other than the Defendants.

REQUEST FOR PRODUCTION

Request 10(A)

Please produce all documents relating to the creation or confection of any compliance manuals, training materials, or other internal documentation produced in response to RFP 10, as well as any internal analyses justifying or providing a business rationale for these materials.

OBJECTIONS: Defendants object to this request because the use of the terms “relating to,” “creation or confection,” “confection,” “other internal documentation,” “internal analyses,” “justifying or providing a business rationale,” and “these materials” render this request vague, ambiguous, overbroad, unduly burdensome, and not relevant to any claim or defense, proportional to the needs of the case, or within the scope of permissible class certification discovery under the Scheduling Order, particularly given the pendency of Defendants’ completely dispositive Motion for Summary Judgment. Defendants further object to this request on the basis that any documents other than compliance manuals, training materials, policies, procedures, or similar documents that are or have been distributed to Defendants’ employees or agents setting forth, interpreting, or describing Defendants’ current or former bankruptcy policies and practices for the post-discharge servicing and collection of loans from borrowers who received discharge orders during the relevant time period are outside the scope of permissible class certification discovery under the Scheduling Order and are not relevant to any claim or defense or proportional to the needs of the case at this stage. Defendants further object to this request to the extent it seeks any documents or communications concerning any particular individual borrower or loan. Defendants further object to the extent that this request seeks information and documents relating to time periods or borrowers whose loans are not relevant to the issues presented in this action, such as borrowers who did not receive a discharge within the relevant time period (i.e., the request includes borrowers who received discharge orders in bankruptcy cases filed before October 17, 2005). Defendants further object to this request to the extent it seeks documents protected by the work-product doctrine, the attorney-client privilege, the common-interest or joint-defense doctrine, and/or any other applicable privilege, immunity, or protection.

RESPONSE: Subject to and without waiving the foregoing objections, Defendants respond that their investigation and collection efforts are continuing in regard to this request and that, subject to entry of a mutually agreeable confidentiality agreement and protective order, they will (a) search for and produce on or around December 11, 2017 responsive, non-privileged copies of the requested categories of documents during the relevant time period that are in Defendants’ possession, custody or control and can be located through a reasonably diligent inquiry as set forth above, and (b) identify whether any responsive documents have been withheld on the basis of privilege or any of the other General or Specific Objections set forth above.

Dated: November 10, 2017

NAVIENT SOLUTIONS, LLC AND
NAVIENT CREDIT FINANCE CORPORATION

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CERTIFICATE OF SERVICE

I certify that on this 10th day of November, 2017, I served the foregoing document by email on the following counsel for the Plaintiffs:

Jason Burge, *Counsel for Plaintiffs*, jburge@fishmanhaygood.com
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/s/ Thomas M. Farrell
Thomas M. Farrell (TXB 06839250)