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## STATE OF WASHINGTON
## KING COUNTY SUPERIOR COURT

9 | STATE OF WASHINGTON,

NO.

10 |             Plaintiff,

COMPLAINT

11 |    v.

12 | IRVINEWEBWORKS, INC. d/b/a
STUDENT LOAN PROCESSING.US;
13 | and JAMES E. KRAUSE,

14 |            Defendants.

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### I.     PLAINTIFF

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1.1    The Plaintiff is the State of Washington.

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1.2    The Attorney General is authorized to commence this action pursuant to

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RCW 19.86.080, RCW 19.86.140, and RCW 18.28.200. The Attorney General brings this

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action to address practices that violate the Consumer Protection Act and the Debt Adjusting

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Act: charging fees for debt adjusting that are well in excess of those allowed under Washington

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law, and failing to inform consumers of important rights, most notably, their three day right to

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cancel.

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### II.    DEFENDANTS

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2.1    Defendant IrvineWebWorks, Inc. d/b/a StudentLoanProcessing.US ("Student

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Loan Processing") is a California corporation headquartered at 42 South Peak Drive in Laguna

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Nigel, California. Student Loan Processing maintains an office in Lake Forest, California and Dallas, Texas. Founded in May 2011, Student Loan Processing provides, or purports to provide, counseling, advice, and assistance to student loan borrowers applying for U.S. Department of Education federal student loan repayment programs, including Direct Consolidation Loans and the Income-Based Repayment Plan. Student Loan Processing also provides, or purports to provide, assistance facilitating enrollment in other federal student loan programs.

2.2    Defendant James E. Krause ("Krause") is the founder, president, and sole owner of Student Loan Processing. Krause has substantial managerial responsibility for and daily control over the operations of Student Loan Processing, including sales, marketing, training, communications, compliance, and development/enforcement of the company's policies and procedures. Krause personally participated in or with knowledge approved of all actions of Student Loan Processing which violate Washington's Debt Adjusting Statute and Consumer Protection Act as described below.

### III.    JURISDICTION

3.1    The State files this complaint and institutes these proceedings under the provisions of the Consumer Protection Act, RCW 19.86.

3.2    The Defendant has engaged in the conduct set forth in this complaint in King County and elsewhere in the state of Washington.

### IV.    VENUE

4.1    Venue is proper in King County pursuant to RCW 4.12.020 and 4.12.025, and Court Rule 82 because Student Loan Processing transacts business in King County – to wit: entering into contracts with consumers located in King County.

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## V.     FACTS

### Federal Student Loan Repayment Programs

5.1     The U.S. Department of Education offers numerous repayment plans to eligible borrowers with federal student loans, all which are designed to help borrowers manage their student loan debt and/or make repayment of student loans more affordable. These plans include its Graduated Repayment Plan, Income-Based Repayment Plan, and Pay As You Earn Repayment Plan. The amount the borrower will pay and the repayment term can vary depending on the repayment plan in which the borrower enrolls.

5.2     To access certain repayment plans, some borrowers will first combine their multiple eligible federal student loans into a single Direct Consolidation Loan. Eligible borrowers can apply electronically for a Direct Consolidation Loan through the U.S. Department of Education's website at www.StudentLoans.gov or by mailing a completed paper application to the U.S. Department of Education.

5.3     The U.S. Department of Education does not charge borrowers any fee to apply for a Direct Consolidation Loan or any U.S. Department of Education repayment plan or program. Additionally, its website includes numerous self-help materials and FAQs for use by individual borrowers during the consolidation process.

### Defendants' Debt Adjustment Services

5.4     Since at least July, 2011 to the present, Student Loan Processing has marketed and advertised for-cost services to advise and assist student loan borrowers applying for U.S. Department of Education federal student loan repayment programs, including the Income-Based Repayment Program, and Direct Consolidation Loans.

5.5     In exchange for an upfront enrollment fee and recurring monthly fee, Student Loan Processing, under the direction and control of Krause, purported to perform a variety of student loan debt relief services for its customers. Those services included helping borrowers identify the various U.S. Department of Education repayment plans for which the borrowers

qualify, helping borrowers prepare and complete their application for a Direct Consolidation Loan, assisting borrowers to "correct" any errors made by the U.S. Department of Education in processing the borrower's enrollment in a repayment plan, and complying with annual recertification programs. It also helped borrowers identify more favorable repayment programs in the event that the borrower's circumstances had changed, thereby making the borrower eligible for other repayment programs.

5.6     The enrollment fee charged by Defendants for their services amounted to the greater of (a) 1% of the borrower's federal student loan balance, or (b) $250.

5.7     Defendants also charged consumers a recurring monthly fee. The "Monthly Maintenance Fee" was generally $39 per month and was charged for the entire repayment term of the borrower's federal student loan.

**Defendants' Marketing of Debt Adjustment Services**

5.8     Student Loan Processing operated at least three active URLs to advertise its student loan debt relief services, all of which contained either an ".us" or ".org" suffix: www.studentloanprocessing.us, www.slpus.org, and www.studentloanprocessing.org, prominently displaying on its websites, that "With more than 25 years of combined experience managing loans for Federal student borrowers, Student Loan Processing has shown thousands of Federal student loan borrowers an end to their financial struggle." Student Loan Processing also operated and advertised on several social media websites, including pages and accounts on Facebook, LinkedIn, Tumblr, Twitter, and YouTube.

5.9     Throughout the relevant time period, Student Loan Processing primarily relied on a direct mailer and outbound telemarketing to attract consumers, including consumers in Washington. Some consumers learned about Student Loan Processing through website submissions or customer referrals.

5.10     Inside Student Loan Processing's mailer, language stated that they "work[s] with the Department of Education to consolidate all your existing Federally Insured Student

Loans." The mailer also purported to highlight "new" federal student loan benefits, which included lower monthly payments, lower interest rates, forgiveness programs, and increased monthly cash flow. Touting the "easy qualification process," the direct mailer used by Student Loan Processing during the relevant time period stated, "You [the borrower] must call the student loan processing center within 30 days of receiving this notice to receive these federal benefits."

### Defendants' Enrollment Process and Enrollment (Initial) Fee Collection

5.11 Consumers who contacted Student Loan Processing in response to an outbound call, a mailer, or any other recruitment channel spoke with a self-proclaimed "Student Loan Specialist" for enrollment with Student Loan Processing.

5.12 The enrollment calls typically began with staff at Student Loan Processing telling the consumer that they were "prequalified" for certain federal student loan repayment and forgiveness programs. During the call, the "specialists" directed the consumer to divulge their confidential 4-digit PIN information for the U.S. Department of Education's National Student Loan Data System, collected information about the borrower's federal student loan balances and annual income, and then quoted the new expected federal student loan monthly payment amount for borrowers who enroll.

5.13 Student Loan Processing then gathered banking information from the borrower for payment of the enrollment fee, which was generally collected from the consumer's debit/credit card or bank account during the initial enrollment call. If a consumer needed to schedule payment of the enrollment fee or to break the enrollment fee into more than one payment, Student Loan Processing's employees were directed to ask the consumer about the frequency with which they were paid, as well as their next expected payday, in order to schedule the enrollment fee payment around that date.

5.14 Full payment of the enrollment fee was required before Student Loan Processing mailed the application for the Direct Consolidation Loan to the consumer, and as a

1   result, well before the U.S. Department of Education modified or altered any of the repayment

2   terms of the consumer's federal student loans.

3       5.15    All the terms of the contractual relationship between Student Loan Processing

4   and the consumers, including payment terms, were set forth in a written agreement between the

5   two parties, which was generally transmitted to the consumer via email towards the end of the

6   enrollment call. Consumers were required to execute the agreement with Student Loan

7   Processing to complete enrollment. The agreement remains in effect until the consumer's

8   federal student loans are "paid in full" or "discharged due to [the consumer] qualifying for a

9   federal discharge."

10      5.16    Upon information and belief, Student Loan Processing has entered into at least

11  88 contracts with Washington residents for debt adjusting services, and has received an initial

12  fee of at least $250 on each of these contracts, thus receiving in excess of $51,000 in initial

13  fees.

14      5.17    Student Loan Processing's contracts with Washington borrowers also require

15  the borrower to pay Student Loan Processing $39 each month until the borrower has paid off

16  his/her federal loan. The standard repayment period for many federal student loans is 10 years,

17  which would result in payments to Student Loan Processing of $4,680. Some consumers may

18  also enter into extended repayment programs for their federal loans of up to 25 years, in which

19  case Student Loan Processing would collect $11,700 from the borrower in monthly payments.

20  Upon information and belief, Student Loan Processing has received in excess of $80,000 from

21  Washington borrowers in the form of monthly payments, often engaging in aggressive

22  collection tactics in the event a borrower misses one of the said $39 payments.

23  **VI.    COUNT I – VIOLATION OF WASHINGTON DEBT ADJUSTING ACT**

24      6.1    The State incorporates Paragraphs 1.1 through 5.17 herein as if set forth in their

25  entirety.

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6.2 RCW 18.28.010(2) provides that "'[d]ebt adjusting' means the managing, counseling, settling, adjusting, prorating, or liquidating of the indebtedness of a debtor, or receiving funds for the purpose of distributing said funds among creditors in payment or partial payment of obligations of a debtor." The term "debt adjuster" is defined to include "any person known as a debt pooler, debt manager, debt consolidator, debt prorater, or credit counselor, is any person engaging in or holding himself or herself out as engaging in the business of debt adjusting for compensation."

6.3 As described above, Student Loan Processing assists consumers in consolidating their federal student debt, and counsels them concerning their repayment options for federal student debt, including options regarding consolidation, income-based repayment (in which monthly payments are calculated based on income and other factors, and unpaid debt may be forgiven by the government after 20 to 25 years), and other federal student loan repayment options. The process of federal student loan consolidation also involves paying off multiple existing student loans – i.e., liquidating them – and replacing them with a new, single federal student loan. This process may be used by borrowers to manage indebtedness, and is available as a tool for defaulted federal student loan borrowers to become current on their loans and escape default. Student Loan Processing also holds itself out as engaging in the business of debt adjusting – through its websites, advertising, and direct mailings – for compensation. Consequently, Student Loan Processing is a "debt adjuster" as that term is defined in Washington's Debt Adjusting Act.

6.4 The Debt Adjusting Act places strict limits on the fees that a debt adjuster may charge for its services. First, RCW 18.28.080(1) provides that "[t]he debt adjuster may make an initial charge of up to twenty-five dollars which shall be considered part of the total fee." Each and every one of the 88 contracts between Student Loan Processing and Washington consumers provides for an initial fee of $250, or 1% of the outstanding balance of the loan(s), whichever is

greater. As a result, Student Loan processing took an initial fee of at least ten times the legal limit, and each and every one of these contracts is in violation of RCW 18.28.080(1).

6.5     Second, RCW 18.28.080(1) also provides that "The fee retained by the debt adjuster from any one payment made by or on behalf of the debtor may not exceed fifteen percent of the payment." However, every contract between Student Loan Processing and Washington consumers provides for a monthly fee of at least $39.00. Thus, for borrowers whose monthly student loan payment is less than $260, the Student Loan Processing monthly fee violates RCW 18.28.080(1). The State calculates that 56 of the 88 total contracts between Student Loan Processing and Washington consumers violate the 15% cap on per-payment fees.

6.6     The Debt Adjusting Act includes strict consequences for those who violate the fee limitations. RCW 18.28.090 provides

> [i]f a debt adjuster contracts for, receives or makes any charge in excess of the maximums permitted by this chapter, except as the result of an accidental and bona fide error, the debt adjuster's contract with the debtor shall be void and the debt adjuster shall return to the debtor the amount of all payments received from the debtor or on the debtor's behalf and not distributed to creditors.

6.7     Student Loan Processing's contracts for, and receipt of charges in excess of the maximums permitted by the Debt Adjusting Act are not accidental or the result of a bona fide error. For example, Student Loan Processing structured its contracts in such a way that the initial fee was *at least ten times greater* than the allowable $25 fee. Moreover, whether Student Loan Processing's $39.00 monthly charge exceeds 15% of the borrower's monthly payment is a matter of math, which Student Loan Processing either failed to perform or chose to ignore. As noted above, 56 of the 88 total contracts between Student Loan Processing and Washington consumers violate this provision.

6.8     As a result of Student Loan Processing's illegal fees, the State seeks a declaration that each and every contract between Student Loan Processing and any Washington consumer is void, and an order directing Student Loan Processing to return all payments made to it by

Washington consumers. Either violation of RCW 18.28.080(1) above – the excess initial fee or the excess monthly fee – provides an adequate independent basis for voiding the contracts.

6.9     In addition to violating the fee limitations explained above, Student Loan Processing also failed to comply with the notice requirements of RCW 18.28.100. Specifically, in its standard form contracts, Student Loan Processing failed to include the following notifications to borrowers, as required by law:

a.     Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank.
b.     You are entitled to a copy of this contract at the time you sign it.
c.     You may cancel this contract within three days of signing by sending notice of cancellation by certified mail return receipt requested to the debt adjuster at his or her address shown on the contract, which notice shall be posted not later than midnight of the third day (excluding Sundays and holidays) following your signing of the contract

6.10     By leaving these important consumer notifications out of its contracts, Student Loan Processing violated the Debt Adjusting Act and also prevented its customers from making informed decisions regarding contracts that both involved thousands of dollars, and could potentially hang over their heads for 10 to 25 years.

6.11     RCW 18.28.200 provides that "[n]otwithstanding any other actions which may be brought under the laws of this state, the attorney general or the prosecuting attorney of any county within the state may bring an action in the name of the state against any person to restrain and prevent any violation of this chapter." Consequently, the State seeks an injunction prohibiting Student Loan Processing from entering into contracts with Washington consumers that violate RCW 18.28.

VII.     COUNT II – VIOLATION OF WASHINGTON CONSUMER PROTECTION ACT

7.1     The State incorporates Paragraphs 1.1 through 6.11 herein as if set forth in their entirety.

7.2     RCW 18.28.185 provides that "[a] violation of this chapter constitutes an unfair or deceptive act or practice in the conduct of trade or commerce under chapter 19.86 RCW." As a

1    result, each of the acts or practices set forth above that violate the Debt Adjusting Act are also

2    violations of RCW 19.86.020.

3         7.3    Student Loan Processing's acts or practices also took place in trade or commerce

4    because they advertised their services to, entered into consumer contracts with, and received fees

5    from, Washington residents.

6         7.4    Student Loan Processing's acts or practices affect the public interest because they

7    contracted with and collected illegal fees from at least 88 Washington consumers, advertised to

8    additional Washington consumers in the manner described above, and the acts and practices

9    herein were undertaken as part of their regular business practices. In addition, unless restrained,

10   these acts have a substantial potential for repetition and to injure additional Washington

11   consumers.

12        7.5    The State requests that the Court declare the acts and practices described above are

13   unfair or deceptive under RCW 19.86.020, and violate the Consumer Protection Act.

14        7.6    RCW 19.86.080(1) provides in relevant part that "[t]he attorney general may bring

15   an action in the name of the state, or as parens patriae on behalf of persons residing in the state,

16   against any person to restrain and prevent the doing of any act herein prohibited or declared to be

17   unlawful." Accordingly, the State requests that the Court enjoin Student Loan Processing and

18   Krause from entering into contracts with Washington consumers without strictly complying with

19   RCW 18.28.

20        7.7    RCW 19.86.080(2) provides that "[t]he court may make such additional orders or

21   judgments as may be necessary to restore to any person in interest any moneys or property, real or

22   personal, which may have been acquired by means of any act herein prohibited or declared to be

23   unlawful." Accordingly, the State requests that the Court issue an order requiring Student Loan

24   Processing to return to Washington consumers all sums obtained in violation of the Debt

25   Adjusting Act and the Consumer Protection Act, or pursuant to void contracts.

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7.8     RCW 19.86.140 provides "Every person who violates RCW 19.86.020 shall forfeit and pay a civil penalty of not more than two thousand dollars for each violation" Accordingly, the State requests that the Court impose a penalty of $2,000 per violation of the Consumer Protection Act, including one penalty for each of the 88 consumers who paid an initial fee in excess of $25, and another penalty for each of the 56 consumers who paid one or more monthly payments in excess of 15% of their monthly student loan payment, for a total of at least 144 violations for which a penalty should be assessed.

## VIII.  PRAYER FOR RELIEF

Wherefore, the State prays for the following relief:

8.1     A declaration that each and every contract between Student Loan Processing and Washington consumers is void, pursuant to RCW 18.28.090;

8.2     An order requiring Student Loan Processing to return to Washington consumers all funds received from the consumers which were not forwarded on to the consumers' creditor(s), pursuant to RCW 18.28.090;

8.3     An injunction against Student Loan Processing prohibiting them from entering into contracts that require payments in excess of those allowed under RCW 18.28.080(1) or which violate any other provision of the Debt Adjusting Act, RCW 18.28, pursuant to RCW 18.28.200;

8.4     A declaration that Student Loan Processing's acts described above are unfair or deceptive acts or practices in trade or commerce, affecting the public interest, and in violation of the Consumer Protection Act, RCW 19.86;

8.5     An injunction preventing Student Loan Processing or anyone acting in concert with them from violating the Debt Adjusting Act in the manner described above, pursuant to RCW 19.86.080(1);

8.6     An order necessary to restore to any person an interest in any moneys or property, real or personal, which may have been acquired by means of an act prohibited by the Consumer Protection Act, pursuant to RCW 19.86.080(2);

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1    8.7    An award of a civil penalty in the amount of $2,000 for each and every violation

2  of Washington's Consumer Protection Act, pursuant to RCW 19.86.140;

3    8.8    An award of the State's reasonable costs and attorney's fees incurred in this action,

4  pursuant to RCW 19.86.080(1); and

5    8.9    Any other award the Court determines is just and equitable.

6  DATED this ___6th___ day of April, 2015.

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8                                    ROBERT W. FERGUSON
                                     Attorney General
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11                                   JOHN A. NELSON, WSBA #45724
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