

1 KEMNITZER, BARRON, & KRIEG, LLP  
2 BRYAN KEMNITZER Bar No. 066401  
3 ELLIOT CONN Bar No. 279920  
4 445 Bush St., 6th Floor  
5 San Francisco, CA 94108  
6 Telephone: (415) 632-1900

7 EAST BAY COMMUNITY LAW CENTER  
8 Sharon Djemal Bar No. 208461  
9 3130 Shattuck Ave.  
10 Berkeley, CA 94705  
11 Telephone: (510) 269-6612  
12 Facsimile: (510) 8490-1536

13 Attorneys for Plaintiff Winifred Cabiness and the putative class

14 GREENSPOON MARDER LLP  
15 BETH-ANN KRIMSKY (*pro hac vice*)  
16 JESSICA B. ALHALEL (*pro hac vice*)  
17 200 East Broward Blvd., Suite 1800  
18 Fort Lauderdale, FL 33301  
19 Telephone: (954)527-2427

20 NOSSAMAN LLP  
21 JAMES H. VORHIS Bar No. 245034  
22 50 California Street, 34<sup>th</sup> Floor  
23 San Francisco, CA 94111  
24 Telephone: (415) 398-3600

25 Attorneys for Defendants

26 UNITED STATES DISTRICT COURT  
27 NORTHERN DISTRICT OF CALIFORNIA  
28 SAN FRANCISCO DIVISION

29 WINIFRED CABINESS, individually and on  
30 behalf of all others similarly situated,

31 Plaintiff,

32 v.

33 EDUCATIONAL FINANCIAL SOLUTIONS,  
34 LLC dba CAMPUS DEBT SOLUTIONS, BETA  
35 INVESTMENT GROUP, INC.; EQUITY  
36 ACQUISITIONS, LLC; VENTURETECH  
37 SOLUTIONS, LLC; DEBT.COM, LLC; and  
38 HOWARD DVORKIN

Defendants.

**Case No. 3:16-cv-01109-JST**

**JOINT SUPPLEMENTAL BRIEFING IN  
SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

**Courtroom 9, 19th Floor  
Judge: Hon. Jon S. Tigar**

1           **A.     INTRODUCTION**

2           Plaintiff Winifred Cabiness (“Plaintiff” or “Class Representative”) and Defendants  
3 Educational Financial Solutions, LLC dba Campus Debt Solutions, (“CDS”), Beta Investment  
4 Group, Inc., Equity Acquisitions, LLC, Venturetech Solutions, LLC, Debt.com, LLC, and  
5 Howard Dvorkin, (collectively “Defendants”), hereby submit the following joint supplemental  
6 briefing as requested by the Court in its March 28, 2018 Order. [ECF No. 115].

7           **B.     MEMORANDUM**

8                     **1. EAST BAY COMMUNITY LAW CENTER’S QUALIFICATIONS**

9           The qualifications of the East Bay Community Law Center (“EBCLC”) are set forth in  
10 the Declaration of Sharon Djemal in Support of Supplemental Briefing in Support of Motion for  
11 Preliminary Approval of Class Action Settlement, filed herewith. EBCLC initially represented  
12 Plaintiff in her individual case against CDS. Upon the decision to amend the complaint to assert  
13 class claims, EBCLC sought out experienced co-counsel and found Kemnitzer, Barron & Krieg,  
14 LLP to act as Lead Counsel. In doing so, EBCLC acted appropriately to assure that the class  
15 would be well represented. *See* Jocelyn D. Larkin, *Pick Me, Pick Me: Getting Appointed as*  
16 *Class Counsel*, American Bar Association, *Class Action & Derivatives Suits Report*,  
17 Spring/Summer 2009 Issue, [https://apps.americanbar.org/litigation/litigationnews/practice\\_areas/](https://apps.americanbar.org/litigation/litigationnews/practice_areas/class-actions-class-counsel.html)  
18 [class-actions-class-counsel.html](https://apps.americanbar.org/litigation/litigationnews/practice_areas/class-actions-class-counsel.html) (last visited April 2, 2018); *see also*, *Walter v. Palisades*  
19 *Collection, LLC*, No. CIV.A. 06-378, 2010 WL 308978, at \*11, fn. 12 (E.D. Pa. Jan. 26, 2010)  
20 (“counsel’s relative lack of resources and experience could possibly be remedied by association  
21 with co-counsel”); *LeBeau v. United States*, 222 F.R.D. 613, 619 (D.S.D. 2004).

22                     **2. SKIP-TRACING RETURNED NOTICES**

23           Pursuant Section 7.3 of the Settlement Agreement and Release, “[i]f any Notices are  
24 returned, they will be re-mailed if an additional address can be obtained by the Settlement  
25 Administrator.” [ECF No. 110-1 at 30]. Specifically, Notices that are returned as undeliverable  
26 will be sent through an address tracing process with LexisNexis in order to obtain updated  
27

1 addresses. The Settlement Administrator will then re-mail all returned Notices to all updated  
2 addresses obtained through the LexisNexis address tracing. *See* Declaration of Elliot Conn in  
3 Support of Supplemental Briefing in Support of Motion for Preliminary Approval of Class  
4 Action Settlement (“Conn Decl.”), ¶ 3.

### 5 **3. PROCEDURE AND REQUIREMENTS FOR FILING OBJECTIONS**

6 In accordance with the Court’s suggestion, the Parties request that the Court’s  
7 Preliminary Approval Order require that objections be mailed solely to the Court and not to the  
8 Settlement Administrator. In negotiating and drafting the Settlement Agreement, the Parties  
9 anticipated that the Court could require modifications to the procedures and requirements for  
10 filing objections in connection with the Final Approval Hearing. The Settlement Agreement  
11 specifies that objections shall be considered “at the Court’s discretion” (*See* ECF No. 110-1, at  
12 42, Class Action Settlement Agreement, § 13.2), that the Court shall “approve the manner in  
13 which and deadline by which Persons in the Settlement Class may submit an Objection to the  
14 Settlement,” (*Id.* at 35, § 10.1(i)), and that the objection procedures are “[s]ubject to the approval  
15 of the Court.” (*Id.* at 40, § 13.1). As a result, the Parties agree that the Court may modify the  
16 procedures and requirements for filing objections without the need to re-execute the Class Action  
17 Settlement Agreement.

18 Accordingly, the Parties request that the Court require that objections be mailed solely to  
19 the Court, as set forth in the Long Form Notice and set forth in the revised [Proposed] Order  
20 Granting Motion for Preliminary Approval of Class Action Settlement filed herewith. The  
21 Parties request that the Court enter the objections into the Court file as docketed entries so the  
22 Parties receive notice of the objections.

### 23 **4. CHANGES TO THE POSTCARD NOTICE**

24 Similarly, in light of the Court’s observation that the Postcard Notice does not include the  
25 toll-free telephone number, the Parties request that the Court order dissemination of a revised  
26 Postcard Notice of Proposed Class Action Settlement, substantially in the form attached as  
27

1 **Exhibit A** to the Declaration of Elliot Conn filed herewith, that now includes forth the toll-free  
2 telephone number. Again, the Settlement Agreement allows the Court to make minor changes to  
3 the ordered Notices without the need to re-execute the Class Action Settlement Agreement. (*See*  
4 ECF No. 110-1, at 14, Class Action Settlement Agreement, § 1.34. Notices are to be provided “in  
5 such similar form as may be ordered by the Court.”).

6 **C. CONCLUSION**

7 The Parties request that the Court conditionally certify the proposed Settlement Class  
8 pursuant to Federal Rules of Civil Procedure, Rule 23(b)(3), grant preliminary approval of the  
9 proposed Class Action Settlement Agreement, approve and order distribution of the proposed  
10 Class Notice, and schedule a Final Approval Hearing.

11 Dated: April 3, 2018

KEMNITZER, BARRON & KRIEG, LLP

12  
13  
14 By: /s/ Elliot Conn  
ELLIOT CONN  
Attorneys for Plaintiff

15  
16 Dated: April 3, 2018

GREENSPOON MARDER LLP

17  
18 By: /s/ Beth-Ann Krinsky  
BETH-ANN KRIMSKY (admitted *pro hac vice*)  
Attorneys for Defendants