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DIVISION II

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STATE OF WASHINGTON
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No. 48064-6-II

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

ST. MARTIN'S UNIVERSITY,
Appellant

v.

CARMEN FLORES,
Respondent

BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

Assignments of Error

1. The trial court erred in finding that the Washington State Statute of Limitations, R.C.W. 4.16.040(2), applied to the Federal Perkins Loans obtained by Respondent. Clerk's Papers Index ("CP"), p.220-222, ¶ 1.2-1.3.
2. The trial court erred in finding that the Petitioner was required to affirmatively plead federal preemption in either the Complaint or in the Response to Counter-Claims for it to be applicable. *Id.* ¶ 1.4.
3. The trial court erred in finding that the dishonored check drafted by Respondent is a "ledger balance". *Id.* ¶ 1.6.
4. The trial court erred in finding that Appellant's Complaint was not sufficiently pled to legally include the dishonored check. *Id.* ¶ 1.8.
5. The trial court erred in granting summary judgment in favor of Respondent on the basis of Appellant's Federal Perkins Loans claim being time-barred. *Id.* ¶ 2.1.
6. The trial court erred in granting summary judgment in favor of Respondent on the basis of Appellant's dishonored check claim being time-barred. *Id.*
7. The trial court erred in granting Respondent's Motion for Attorney's Fees. CP, p. 234-236.

Issues Pertaining to Assignments of Error

1. Whether the trial court erred in applying R.C.W. 4.16.040(2) to Federal Perkins loans when said loans are expressly exempted under 20 U.S.C. 1091a. Assignments of Error 1, 2 and 5.
2. Whether the trial court erred in finding that Appellant's claim on a dishonored check is time-barred as a "ledger balance" because the check was not specifically pled, but the amount and date of said check were pled, and the Respondent admitted to tendering the instrument. Assignments of Error 3, 4 and 6.
3. Whether the trial court erred in awarding attorney's fees under RCW 4.84, et. seq. – the Small Claims Settlement Statutes. Assignment of Error 7.

II. STATEMENT OF THE CASE

1. Appellant filed a Summons and Complaint on January 3, 2014, under Thurston County Superior Court Case No. 14-2-00021-6. CP, p. 4-7. The Complaint alleges that Respondent owes certain debts incurred while she was a student at St. Martin's University. CP, p. 6-7.

2. The first cause of action in the Complaint references a group of Federal Perkins Loans ("Loans"). *Id.*, p. 7, l. 1-4.

3. The second cause of action relates to a dishonored check. *Id.*, p. 7, l. 5-8.

4. Respondent filed an Answer and Counterclaims in response to Appellant's Motion for Default Judgment. CP, p. 38-45. The counterclaims allege numerous violations of 15 U.S.C. § 1692(e)(2)(A), R.C.W. 19.16.250 - Washington's State Collection Agency Act, and R.C.W. 19.86, et. seq. - Washington's Consumer Protection Act. *Id.*

5. Respondent filed and obtained a default judgment on her counterclaims. CP, p. 53-54 and 56-57, respectively.

6. On motion of the Appellant, the trial court vacated this default judgment. CP, p. 83-97 and 133-134, respectively.

7. Parties then submitted to mandatory arbitration on both Appellant's Claims and Respondent's Counterclaims.

8. Based on the decision of the arbitrator, Appellant requested a trial de novo. CP, p. 142-143.

9. Respondent then filed both a Motion for Summary Judgment and Motion for Declaratory Judgment. CP, p. 146-171 and 174-190, respectively.

10. The Memorandum in Support of Respondent's Motion for Summary Judgment ("Memo in Support") asserted that both of Appellant's claims were time-barred by the Washington State Statute of Limitations. CP, p. 147-171.

11. Appellant filed Responses to both Motions. CP, p. 193-195 and 196-200. With respect to the affirmative defenses argued by Respondent in her Motion for Summary Judgment, Appellant asserted well-settled law that (i) the Loans were exempted from any state statute of limitations under 20 U.S.C. 1091a, and (ii) the debt identified by Respondent as a "ledger balance" was actually a dishonored check subject to a six-year statute of limitation from the date of execution. CP, p. 193-195, ¶ I and II.

12. Respondent filed an Objection and Strict Reply to Appellant's Responses. CP, p. 201-216.

13. Respondent's Motion for Declaratory Judgment was denied. CP, p. 218-219.

14. Respondent's Motion for Summary Judgment was granted under the finding that both of Appellant's claims were time-barred by the Washington State Statute of Limitations. CP, p. 220-222.

15. On September 21, 2015, Appellant filed a Notice of Appeal on the Order Granting Summary Judgment in favor of Respondent. CP, 223-227.

16. Thereafter, on September 25, 2015, the trial court entered an Order awarding attorney's fees to Respondent based on R.C.W. 4.84, et. seq. CP, p. 234-236.

III. STANDARD OF REVIEW

The appellate court reviews summary judgment decisions de novo, engaging in the same inquiry as the trial court, to determine if the moving party is entitled to summary judgment as a matter of law and if there is any genuine issue of material fact requiring a trial. *Michak v. Transnation Title Ins. Co.*, 148 Wn.2d 788, 794-95, 64 P.3d 22(2003); *Green v. A.P.C.*, 136 Wn.2d 87, 94, 960 P.2d 912 (1998); *Welch v. Southland Corp.*, 134 Wn.2d 629, 632, 952 P.2d 162 (1998); *Kaplan v. Northwestern Mut. Life Ins. Co.*, 115 Wn. App. 791, 799, 65 P.3d 16 (2003), *review denied*, 151 Wn.2d 1037 (2004).

Under a de novo review, the factual findings of the trial court on summary judgment are not entitled to any weight. Accordingly, all facts

and reasonable inferences therefrom must be viewed most favorably to the party resisting the summary judgment motion. Even if the facts are undisputed, if reasonable minds could draw different conclusions, summary judgment is improper. *Chelan County Deputy Sheriffs' Ass'n v. Chelan County*, 109 Wn.2d 282, 745 P.2d 1 (1987).

IV. APPELLANT'S ARGUMENTS

A. NO STATE STATUTE OF LIMITATION APPLIES TO FEDERAL PERKINS LOANS.

The appeal of the summary judgment on these Loans is borne out of a negligent misrepresentation by Respondent as to the current embodiment of the Higher Education Act ("HEA"), U.S.C., Title 20, Chapter 28, specifically Subchapter IV - Student Assistance. This is further exacerbated by misinterpretations of the law by the trial court as to (i) who bears the burden of asserting the affirmative defense of a statute of limitations bar, and (ii) the applicable period of time for Appellant to bring the causes of action alleged in its Complaint.

a. **Under certain circumstances, federal law preempts state law.**

The doctrine of federal preemption is derived from the Supremacy Clause, which states that "the Laws of the United States...shall be the supreme Law of the Land." U.S. Const., art. VI. Federal preemption of a given state law can be "either expressed or implied, and is compelled

whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose." *Gade v. Nat'l Solid Waste Mgmt. Assoc.*, 505 U.S. 88, 98, 112 S.Ct. 2374, 120 L.Ed.2d 73 (1992).

"There is a strong presumption against preemption and 'state laws are not superseded by federal law unless that is the clear and manifest purpose of Congress.'" *Stevedoring Servs. of Am. Inc. v. Eogert.* 129 Wn.2d 17, 24, 914 P.2d 737 (1996) (quoting *Washington State Physicians Ins. Exch. & Assn v. Fisons Corp.*, 122 Wn.2d 299, 327, 858 P.2d 1054 (1993)).

With respect to the present matter, Congress clearly manifested an intent to preempt state law via statute. See 20 U.S.C. 1091a.

b. 20 U.S.C. 1091a preempts state law and applies to ALL federally-guaranteed student loans, including the Loans at bar.

The Loans in question are secured by Promissory Notes ("Notes"). CP 146-171, Ex. 16, 19, and 20. According to their terms, these Notes "shall be interpreted in accordance with Part E of Title IV of the Higher Education Act of 1965, *as amended*, as well as Federal Regulations entered under the Act" (emphasis added). *Id.* The Notes were signed during the period of October 3, 1997, and September 25, 1998. *Id.*

In 1991, Congress amended certain portions of the HEA when it passed the Higher Education Technical Amendments of 1991 (“HETA”). Germaine to this matter, Congress amended section 484A of the HEA to eliminate all statutes of limitations for lawsuits brought to collect defaulted student loans. Pub.L. no. 102-26, 105 Stat. 123, 125 (codified at 20 U.S.C. § 1091a(a) (1991)). Section 3(a) of HETA provides, in pertinent part: (1) “It is the purpose of this subsection to ensure that obligations to repay loans and grant overpayments are enforced without regard to any Federal or State statutory, regulatory, or administrative limitation on the period within which debts may be enforced.” (2) “notwithstanding any other provision of statute, regulation, or administrative limitation, no limitation shall terminate the period within which a suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action may be taken” (emphasis added). Codified respectively as 20 U.S.C. 1091a(a)(1) and (2).

Our jurisdiction has continuously upheld this bar on statutes of limitations on all federally-guaranteed student loans. See *United States v. Phillips*, 20 F.3d 1005, 1007 (9th Cir. 1994) (Court finds that Congress expressly removed statute of limitations on collection actions of federal student loan by enacting 20 U.S.C. §1091a). See also *United States v. Falcon*, 805 F.3d 873, 875 (9th Cir. 2015).

Uniform findings have been made in jurisdictions throughout this country. *U.S. v. Brown*, 2001 7 Fed.Appx. 353 2001 WL 303362 (6th Cir. 2001) (Sixth Circuit Court of Appeals found no statute of limitations applies to actions on federal student loans). See also *United States v. Smith*, 862 F.Supp. 257 (D.Hawai'i 1994); *United States v. Robbins*, 819 F.Supp. 672 (E.D.Mich. 1993); *United States v. Hodges*, 999 F.2d 341, 342 (8th Cir. 1993) ("Higher Education Technical Amendments of 1991 eliminated the... statute of limitations for student loan collections....").

This action by Congress not only expressly eliminated the previous six-year statute of limitations period, but also revived all actions which would have been otherwise time-barred. *Phillips* at 1007.

Appellant has been unable to identify a single case adjudicated after the passing of HETA wherein a statute of limitation was applied to a federally-guaranteed student loan.

Of course, these actions are limited to certain entities. Pertinent to the case at bar, 20 U.S.C. § 1091a(a)(2)(C) includes "an institution that has an agreement with the Secretary pursuant to section 1087c or 1087cc(a) of this title that is seeking the repayment of the amount due from a borrower on a loan made under part C or D of this subchapter after the default of the borrower on such loan" (emphasis added).

- i. *Appellant is a qualifying institution under 20 U.S.C. § 1091a(a)(2)(C) because (i) it has an agreement with the Secretary and (ii) the Loans were made under Subchapter IV, Part D, of the HEA.*

Firstly, the Appellant is an accredited university that has an agreement with the Secretary under 20 U.S.C. § 1087c. The Loans and corresponding Notes are prima facie evidence of this relationship. CP, p. 147-171, Ex. 16, 19, 20. An established agreement with the Secretary is a condition precedent of any institution being able to offer federally-guaranteed loans. 20 U.S.C. § 1087c. Without this agreement, the Respondent - nor any other St. Martin's University student - would be able to obtain such assistance. Because it is undisputed that Respondent received these Loans, an agreement with the Secretary necessarily exists.

Secondly, Appellant made these Loans under Subchapter IV, Part D, of the HEA. This subchapter is entitled "Federal Perkins Loans" and is codified at 20 U.S.C. § 1087aa through 1087ii.

Respondent misstated the law in her summary judgment motion by saying "Part C refers to 42 USC § 2751 through 2757 which is the same as HEA, Title IV, Part C – Federal Work Study Programs." CP, p. 147-171, ¶ 3.10. And "Part D refers to 42 USC § 2761 through 2763 which is the same as HEA, Title IV, Part D – Special Impact Programs." *Id.* In making these assertions on the law, Respondent relied on a copy of the Table of

Contents from the 1998 version of Subchapter IV of the HEA. CP, p. 147-171, Ex. 55. She reiterated this incorrect law in her strict reply. CP 62, p. 205, l. 15, through p. 206, l. 13. See also CP, p. 201-216, unmarked exhibits. Indeed, under that version, the Part C and D identified by the Respondent would be correct. Similarly, the language of the Notes in question would accurately point to the controlling body of law as being Part E – Federal Perkins Loans.

Unfortunately for the Respondent's position, the structure of the HEA has changed substantially as a consequence of the codification process. And these changes are fatal to the arguments Respondent made with respect to the inapplicability of 20 U.S.C. § 1091a. For reference, the court and Respondent need only look to "www.uscode.house.gov", the government website for the Office of the Law Revision Counsel, to search Subchapter IV of the HEA in its current form, together with the full record of amendments and codification changes. Office of the Law Revision Counsel, *20 USC Chapter 28, Subchapter IV: Student Assistance*, (February 10, 2016, 4:32 p.m.), <http://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title20-chapter28-subchapter4&edition=prelim>.

Upon review, one can see that Part C is no longer the section for Federal Work Studies Programs. That "Part C of title IV of Pub. L. 89-

329, consisting of sections 441-447, as added by Pub. L. 99-498, title IV, §403(a), Oct. 17, 1986, 100 Stat. 1429, is set out as section 2751 et seq. of Title 42, The Public Health and Welfare, because sections 441 to 446 of Pub. L. 89-329 had originally been enacted as part C of title I of the Economic Opportunity Act of 1964, consisting of sections 121 to 126 of Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 513, prior to the transfer of such sections into Pub. L. 89-329, and had already been classified to section 2751 et seq. of Title 42 at the time of the transfer.” *Id.* at codification note listed with the heading for Part C. Currently, Part C is the section for the William D. Ford Federal Direct Loan Program. *Id.* Previously, this section was found under Part D.

Similarly, Part D is no longer the section for Special Impact Programs. As Respondent correctly pointed out, that body of law is now codified in 42 USC § 2761-2763. In its stead is the section on Federal Perkins Loans, previously identified as Part E. *Id.* at codification note listed with the heading for Part D. These are the types of loans obtained by the Respondent during her time as a student of St. Martin’s University.

This trickle-down effect continues throughout the rest of Subchapter IV of the HEA, with Part E being replaced by the Need Analysis section, previously identified as Part F, and Part F being replaced by the General Provisions section, previously identified as Part G. *Id.*

Respondent will likely try to rely on the exhibit she included as the last page of her Objection and Strict Reply in support of her Motion for Summary Judgment. CP, p. 216. That exhibit shows a printout with a codification note on 42 U.S.C. Chapter 34, Subchapter 1, Part C. However, she would be remiss to do so as this only speaks to the content of the statute, not its placement within the U.S.C. This was necessary because, as was previously mentioned in the quoted codification note for the HEA, Subchapter IV, Part C, only section 441 through 446 were part of the original Economic Opportunity Act, whereas 441-447 were transferred from the HEA as part of the recodification effort of Congress.

For further evidence of irrelevancy, one need only look to the provisions of 20 U.S.C. § 1091a(a)(2)(C) which specifically state that the loan must be made under “Part C or D of this subchapter”. The statutes on Federal Work Study are codified in 42 U.S.C. Chapter 34, Subchapter I, whereas 20 U.S.C. § 1091a is codified in 20 U.S.C. Chapter 28, Subchapter IV. Simply put, it is not applicable.

The facts are clear: (i) the current version of 20 U.S.C. § 1091a(a)(2)(C) states that *notwithstanding any other law*, no statute of limitations shall apply to an institution seeking to collect on a loan made under “*Part C or D of this subchapter*”, the subchapter being Part IV of

the HEA, (ii) jurisdictions have unanimously held that 20 U.S.C. 1091a applies to all federal student loans, (iii) at some point after Respondent obtained the Loans, Part E - the section on Federal Perkins Loans - was amended to Part D of Subchapter IV of the HEA, (iv) the section in the U.S.C. regarding Federal Work Study Programs is found in Title 42, Chapter 34, Subchapter I, thereby making it irrelevant to the requirements of 20 U.S.C. § 1091a(a)(2)(C) (v) the Loans offered by Appellant to Respondent are prima facie evidence of an agreement between Appellant and the Secretary, and (vi) it is undisputed that the Respondent obtained the Loans, as evidenced by the Notes. CP, p. 147-171, Ex. 16, 19, 20. For these reasons, the trial court erred in granting summary judgment on the grounds that the Notes are time-barred by the Washington State Statute of Limitations. Assignments of Error, 1 and 5.

B. THE BURDEN OF PROOF FOR THE AFFIRMATIVE DEFENSE OF A STATUTE OF LIMITATIONS TIME-BAR LIES WITH THE RESPONDENT, AS SHE IS THE ASSERTING PARTY.

Under C.R. 8(c), a defendant must raise any matter “constituting an avoidance or affirmative defense” in its answer or in another appropriate pleading. *Alexander v. Food Services of America, Inc.*, 76 Wn. App. 425, 886 P.2d 231 (Div. 1 1994). Statute of limitations is an affirmative defense on which the defendant bears the burden of proof.

Young Soo Kim v. Choong-Hyun Lee, 174 Wn. App. 319, 300 P.3d 431 (Div. 1 2013).

In the present matter, the Respondent is the only one who asserted a statute of limitations affirmative defense with respect to any claims. CP, 146-171. As the one asserting the defense, it is Respondent's burden to show that an applicable statute of limitation applies.

With respect to the claim on the Loans, the trial court erred in eluding that Appellant somehow waived this by "fail[ing] to affirmatively plead the federal preemption in either the Complaint or in the Response to Counter-Claims." CP, p. 220-222, Assignment of Error 2. Appellant properly brought this statute before the trial court in its Response to Respondent's Summary Judgment Motion, CP, p. 194, l. 1-3. Prior to this time, it had no duty to assert the law as it was not the party alleging the affirmative defense.

Moreover, it has long been held that when a case is governed by federal law, no special pleadings or procedures are required. The trial court is required to take judicial notice of the federal law, regardless of whether it is pled. *Federal Nat. Mortg. Ass'n v. Carrington*, 60 Wn. 2d 410, 374 P.2d 153 (1962). This includes federal laws that expressly preempt state law, like 20 U.S.C. 1091a.

With respect to the claim on the dishonored check, the same onus applies. Appellant will discuss further the applicable statute of limitation in the proceeding section.

C. THE "LEDGER BALANCE" IS A DISHONORED CHECK SUBJECT TO A SIX-YEAR STATUTE OF LIMITATION FROM THE DATE OF EXECUTION.

Respondent characterizes the other claim of Appellant as a "ledger balance" and attempts to relate this debt to the original loan in order to support her argument that the statute of limitations had run. CP, p. 147-171, ¶ 3.1-3.5. Appellant contends that this is incorrect as it is not seeking recovery on the underlying loan, but rather the check drafted by the Respondent. CP, p. 193-195, ¶ II. The Respondent readily admits under oath to writing the bad check. CP, p. 153, l. 14-20. Accordingly, it was an error on the part of the trial court to categorize this instrument as such.

Assignment of Error 3.

a. The claim on the debt alleged in Appellant's Complaint is legally sufficient under Washington State's Notice Pleading standard to be considered a negotiable instrument.

Under C.R. 8(a), the only requirement for a complaint is that it must contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief claimed. Of course, C.R. 8 and 9 require certain matters to be specifically

pled. However, none of these specified matters apply to the pleading of a dishonored check.

Pleadings are to be construed liberally; if a complaint states facts entitling the plaintiff to some relief it is immaterial by what name the action is called. *Simpson v. State*, 26 Wn. App. 687, 615 P.2d 1297 (1980). Further, all pleadings are to be construed as to do substantial justice. C.R. 8(f).

Appellant's Complaint states verbatim the following with respect to the dishonored check claim:

“Defendant Carmen Flores became indebted to Plaintiffs for educational services provided to Defendant beginning on or around January 1, 2003. Despite demands the Defendant has failed to pay as required and there is now due and owing \$642.85, plus interest in the rate of 12% from November 18, 2008 plus collection costs of \$475.75.”

CP, p. 7, l. 5-8.

This statement is legally sufficient to satisfy the standard set by Washington State as it (i) claims a debt that is owed, (ii) lists the date on which interest accrues as the date the dishonored check was executed, and (iii) makes a demand for payment.

Appellant has found no case law or rule to support the trial court's position that a claim on a negotiable instrument is not sufficiently pled when said instrument is not specifically identified in the Complaint.

Further, the Respondent did not provide any legal authority to support this position in her pleadings. CP, p. 146-171 and 201-216. Accordingly, and based on the liberal standard of Washington State, Appellant contends that the trial court erred by not considering the debt for what it accurately is – a dishonored check. Assignment of Error 4. To construe otherwise is a miscarriage of justice on this issue, in violation of C.R. 8(f).

b. A dishonored check is entitled to a six-year statute of limitation.

A check is defined as a “draft payable on demand and drawn on a bank.” RCW 62A.3-104. It is well-established that a check is a type of negotiable instrument. *General Cas. Co. of America v. Seattle-First Nat. Bank*, 42 Wn.2d 433, 441, 256 P.2d 287, (Wash. 1953). As a negotiable instrument, the check is subject to Washington State’s Uniform Commercial Code codified under R.C.W. 62A, et. seq.

R.C.W. 62A.3-118 provides the applicable statutes of limitations for various negotiable instruments. Pertinent to this matter is R.C.W. 62A.3-118(f) which reads as follows: An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (i) within six years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite

time, or (ii) within six years after the date of the acceptance if the obligation of the acceptor is payable on demand.

In the present matter, Appellant asserted a six-year statute of limitation based on RCW 4.16.040 on the basis that it is a written instrument. CP, p.193-195, ¶ II. The Respondent agreed that the six-year statute of limitation afforded by RCW 4.16.040 applies to a dishonored check. CP p. 207, l. 1-5. And a court has interchanged the six-year statute of limitations on checks with that of the six-year statute of limitations on written instruments found in RCW 4.16.040. *Federal Financial Co. v. Gerard*, 90 Wn.App. 169, 172, 949 P.2d 412, (1998).

Applying the proper statute of limitation of six years from the date of execution of the negotiable instrument, Appellant would have been required to file its Complaint no later than November 18, 2014. Appellant filed its Complaint on January 3, 2014, well-before this deadline. Accordingly, the trial court erred in granting summary judgment in favor of Respondent on the basis that this claim was time-barred. Assignment of Error 6.

D. THE ORDER AWARDING RESPONDENT'S ATTORNEY'S FEES MUST BE NECESSARILY REVERSED.

Subsequent the filing of Appellant's Notice of Appeal, the trial court awarded attorney's fees in the amount of \$13,980.00 as a result of

the trial court's decision to grant summary judgment in favor of Respondent. CP, p. 234-236. This award was based off of RCW 4.84, et. seq. – the Small Claims Settlement Statutes. However, RCW 4.84.270 makes it clear that any award is contingent on final resolution to the litigation. Pursuant to the justice requirement of R.A.P. 12.2, if this Court agrees with Appellant that summary judgment was wrong, in either claim, then the trial court's subsequent Order for Attorney's Fees must be reversed.

E. APPELLANT SHOULD BE AWARDED ITS ATTORNEY'S FEES IN HAVING TO BRING THIS APPEAL.

Appellant respectfully requests that its attorney's fees be awarded in having to bring this appeal. The Notes signed by the Respondent have an attorney's fees provision under the last section entitled "PROMISE TO PAY". CP, p. 147-171, Ex. 16, 19, and 20. A prevailing party may claim fees when provided for by contract, statute, or recognized ground in equity. *In re Impoundment of Chevrolet Truck*, 148 Wn.2d 145, 160, 60 P.3d 53 (2002). A provision in a contract allowing attorney fees incurred in an action on the contract is generally interpreted to include fees on appeal as well as trial. *Marine Enters. V. Sec. Pac. Trading Corp.*, 50 Wn. App. 768, 750 P.2d 1290, *review denied*, 111 Wn. 2d 1013 (1988).

The Respondent obtained its summary judgment by making misrepresentations to the trial court as to the law regarding the statute of limitations exclusion in 20 U.S.C. § 1091a. These actions encroach the boundaries of Rule 11 violations. Respondent's reliance on outdated materials, rather than a review of current law, was negligent. Moreover, a mere acknowledgement of the statutory codification should have put Respondent on notice of her flawed logic. All components of the HEA are codified under Title 20 - Education, Chapter 28 of the United States Code. In contrast, the components Respondent asserted as Part C and Part D of HEA, Subchapter IV, are found in Title 42 - The Public Health and Welfare. Further, the Respondent misrepresented the requirement that a dishonored check needed to be specifically pled.

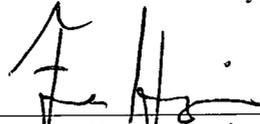
As a direct consequence of these misrepresentations, Appellant has had to expend considerable time and effort in bringing this appeal. Should the court grant the fees requested, Appellant will file a separate motion to establish quantum.

I. CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court (i) reverse the Order Granting Summary Judgment on both the Loans and the dishonored check, (ii) reverse the Order Awarding

Respondent's Attorney's Fees, and (iii) award Appellant's Attorney's Fees
on this appeal.

Respectfully submitted this 16th day of February, 2016



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No. 48064-6-II

COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

FILED
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DIVISION II
2016 MAR -7 PM 2:38
STATE OF WASHINGTON
BY _____
DEPUTY

ST. MARTIN'S UNIVERSITY,

Petitioner,

vs.

CARMEN FLORES,

Respondent.

**DECLARATION OF
TRANSMITTAL**

Declaration of Transmittal

Under the penalty of perjury under the laws of the State of Washington, I affirm the following to be true:

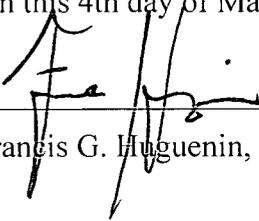
I transmitted the revised original and copy of Petitioner's Appellant Brief to the Washington State Court of Appeals, Division II, by first class mail, postage prepaid at:

Washington State Court of Appeals
Division II
950 Broadway, Suite 300
Tacoma, WA 98402

Additionally, I transmitted a true and correct copy of this document, together with this Declaration of Transmittal, to Respondent's

attorney of record, Sans Gilmore. Said documents were transmitted to Mr. Gilmore's email address at sansgilmore@gmail.com, pursuant to a pre-existing email service agreement.

Signed at Seattle, Washington on this 4th day of March, 2016



Francis G. Huguenin, Declarant