

## Sallie Mae Agrees To Cut \$76M From Loans Over Default Fees

By **Kurt Orzeck**

Law360, Los Angeles (July 11, 2013, 8:53 PM ET) -- Sallie Mae Inc. will shave \$76 million off student debt owed by 40,000 borrowers to settle a class action accusing the loan giant of unlawfully slapping a 25 percent collection cost fee onto defaulted loans, according to a Thursday filing in California federal court.

The plaintiffs said that while the private loan terms required them to pay collection agency fees incurred by Sallie Mae, the company breached its contract by imposing the costs at the time it placed the loans with collectors — before it incurred the fees.

Sallie Mae countered that it had to pay fees when it handed over the loans and that the terms didn't limit the loan company from collecting incurred fees.

The proposed settlement class includes at least 40,245 California borrowers who were hit with the fees between July 13, 2006 — four years before the suit was filed — and May 31, 2013. Under the terms of the proposed settlement, the fees paid by the class members are retroactively reduced to 8.75 percent at the time of charge-off.

“The proposed settlement is an excellent result for the class,” plaintiffs' attorneys said in the Thursday filing. “Even after a 'binding term sheet' was signed, more than six months of protracted negotiations were required to achieve a formal settlement agreement.”

Sallie Mae puts a private loan into default if it's delinquent for more than 212 days and hands it over to a third-party collection agency, court filings said. Sallie Mae compensates the agency, which tries to collect on the outstanding balance, on a contingency basis at the rates in the collectors' contracts — usually 20 to 30 percent.

In December 2002, Sallie Mae started slapping a collection fee of 25 percent onto the principal and interest for most loans that went into collection, according to court filings. A 20 percent fee was assessed to those issued before 1997.

The loan company assessed nearly \$117 million in collection fees to roughly 36,500 California borrowers between July 13, 2006, and July 10, 2010, court documents said. Sallie Mae collected about \$7.7 million of that sum, with about 3,650 borrowers paying a portion of the fee.

Angelo Bottoni, Tracie Serrano and Paul Roberts — California residents who defaulted on their Sallie Mae private loans — filed the putative class action in July 2010 after trying to settle with the company, court filings said. An amended version of the complaint added another California resident, Shawnee Silva.





The borrowers accused Sallie Mae not only of contract breach but of inflating the

### Documents

Settlement

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#### Sections

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### Case Information

#### Case Title

 Bottoni et al v. SLM Corporation et al

#### Case Number

3:10-cv-03602

#### Court

California Northern

#### Nature of Suit

Consumer Credit

#### Judge

Laurel Beeler

#### Date Filed

August 16, 2010

#### Law Firms

 McGuireWoods

collection costs by estimating that agencies would collect the full balance of the loans when the company knew only about 27 percent of the defaulted amounts would be recovered.

Two weeks after the original action was filed, Sallie Mae halted the assessments, although the company continued to treat previous assessments as due and owing, court filings said.

The parties participated in mediation sessions in April and November 2012, court documents said. They finalized the proposed settlement, which reduces the aggregate fees for borrowers from about \$117 million to \$41 million, on June 27.

Under the terms of the settlement, the newly adjusted 8.75 percent collection fee will stay in effect for the life of the outstanding loans.

For borrowers who have paid off their loans, Sallie Mae will refund the difference between the amount of collection costs paid beyond the 8.75 percent rate and the amount that it wrote off in principal, interest and other fees, excluding collection costs. If the amount of collection costs paid in excess of 8.75 percent is less than the amount Sallie Mae wrote off, the borrower will get a \$40 refund.

The proposed settlement also blocks Sallie Mae from opposing plaintiffs counsel's planned request of attorneys' fees and expenses of \$1.2 million and payment of costs up to \$50,000.

A hearing on the settlement is set for Aug. 1.

Attorneys for both parties didn't immediately respond Thursday to requests for comment.

The plaintiffs are represented by Ray E. Gallo and Dominic Valerian of Gallo LLP.

Sallie Mae is represented by Susan L. Germaise, Patricia L. Victory, David L. Hartsell and Tammy L. Adkins of McGuireWoods LLP.

The case is Angelo Bottoni, et al. v. Sallie Mae Inc., et al., case number 3:10-cv-03602, in the U.S. District Court for the Northern District of California, San Francisco Division.

--Editing by Jeremy Barker.

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