

**Government Claims Form**

California Victim Compensation and Government Claims Board  
P.O. Box 3035  
Sacramento, CA 95812-3035

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State of California

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Victim Compensation Board  
Revenue Recovery Section

For Office Use Only  
Claim No.:

**Is your claim complete?**

- ☒ New! Include a check or money order for \$25 payable to the State of California.
- ☒ Complete all sections relating to this claim and sign the form. Please print or type all information. **FILING FEE RECEIVED**
- ☒ Attach receipts, bills, estimates or other documents that back up your claim.
- ☒ Include two copies of this form and all the attached documents with the original.

**Claimant Information**

<b>1</b>	Mather Development Partners IV, L.P. ("Mather")	<b>2</b>	Tel: 916 481 6300
Last name	First Name	MI	
<b>3</b>	Email: marc_sussman@mccuen.com		
<b>4</b>	3610 American River Dr. Ste. 100	Sacramento	CA 95864
Mailing Address	City	State	Zip
<b>5</b>	Best time and way to reach you: Contact Mather's counsel, George O'Connell, listed below.		
<b>6</b>	Is the claimant under 18?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If YES, give date of birth: MM DD YYYY

**Attorney or Representative Information**

<b>7</b>	O'Connell George	<b>8</b>	Tel: 916 329 9111
Last name	First Name	MI	
<b>9</b>	Email: glo@sojllp.com		
<b>10</b>	400 Capitol Mall Ste. 1400	Sacramento	CA 95814
Mailing Address	City	State	Zip
<b>11</b>	Relationship to claimant: Counsel to Mather		

**Claim Information**

<b>12</b>	Is your claim for a state-dated warrant (uncashed check) or unredeemed bond? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	State agency that issued the warrant:	If NO, continue to Step <b>13</b>
	Dollar amount of warrant:	Date of issue: MM DD YYYY
	Proceed to Step <b>22</b>	
<b>13</b>	Date of Incident: approximately July 20, 2010 to Present; See also Attachment A	
	Was the incident more than six months ago?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	If YES, did you attach a separate sheet with an explanation for the late filing?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>14</b>	State agencies or employees against whom this claim is filed: California Student Aid Commission, Department of Finance, California State Controller's Office, State of California, and Public Employee/Representatives indicated on Attachment A	
<b>15</b>	Dollar amount of claim: \$40,000,000.00 (See Attachment A)	
	If the amount is more than \$10,000, indicate the type of civil case:	<input type="checkbox"/> Limited civil case (\$25,000 or less) <input checked="" type="checkbox"/> Non-limited civil case (over \$25,000)
	Explain how you calculated the amount: See Attachment A	

<b>16</b>	Location of the incident:
	See Attachment A
<b>17</b>	Describe the specific damage or injury:
	See Attachment A
<b>18</b>	Explain the circumstances that led to the damage or injury:
	See Attachment A
<b>19</b>	Explain why you believe the state is responsible for the damage or injury:
	See Attachment A
<b>20</b>	Does the claim involve a state vehicle? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>
	If YES, provide the vehicle license number, if known:

### Auto Insurance Information

<b>21</b>	Name of Insurance Carrier		
	Mailing Address	City	State
			Zip
	Policy Number:	Tel:	
	Are you the registered owner of the vehicle? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span>		
	If NO, state name of owner:		
	Has a claim been filed with your insurance carrier, or will it be filed? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span>		
	Have you received any payment for this damage or injury? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span>		
	If yes, what amount did you receive?		
	Amount of deductible, if any:		
	Claimant's Drivers License Number:	Vehicle License Number:	
	Make of Vehicle:	Model:	Year:
	Vehicle ID Number:		

### Notice and Signature

<b>22</b>	I declare under penalty of perjury under the laws of the State of California that all the information I have provided is true and correct to the best of my information and belief. I further understand that if I have provided information that is false, intentionally incomplete, or misleading I may be charged with a felony punishable by up to four years in state prison and/or a fine of up to \$10,000 (Penal Code section 72).
	<div style="display: flex; justify-content: space-between;"> <span>Signature of Claimant or Representative</span> <span>Date</span> </div>
<b>23</b>	Mail the original and two copies of this form and all attachments with the \$25 filing fee or the "Filing Fee Waiver Request" to: Government Claims Program, P.O. Box 3035, Sacramento, CA, 95812-3035. Forms can also be delivered to the Victim Compensation and Government Claims Board, 400 R St., 5th flr, Sacramento.

### For State Agency Use Only

<b>24</b>	Name of State Agency	Fund or Budget Act Appropriation No.
	Name of Agency Budget Officer or Representative	Title
	Signature	Date

VCGCB-GC-002 (Rev. 8/04)

**Clear Form**

**Print**

Attachment A to Government Claim Form Submitted by Mather  
Development Partners IV, L.P.

**Claimant:** Mather Development Partners IV, L.P. ("MATHER"), individually and on behalf of EdFund, Inc. (as to Claim No. 5)

**Contact information for Claimant:** To reach or communicate with Claimant, please call or e-mail Claimant's counsel, George O'Connell, at 916-329-9111 ([glo@sojllp.com](mailto:glo@sojllp.com)).

**Agencies/government entities/public employees/representatives against whom these claims are filed:**

California Student Aid Commission (CSAC"), California Department of Finance,  
California State Controller's Office, State of California

CSAC Commissioners: James Sandoval, Josefina Baltodano, Rory Diamond, Michele Dyke, James Fousekis, Sally Furay, Dean Johnston, Adele Levine, Louise McClain, J. Michael Ortiz, David, Roth, Chad Charton, Daniel Friedlander, Dennis Galligani, Lorena Hernandez, Alice Perez, Lynne De Bie, Alexander Gonzalez, Lorena Hernandez, Lawrence C. Hershman, Patricia Fong Kushida, Bonaparte H. Liu, Barry Keene, Enrique G. Murillo, Isreal Rodriguez, Antonio Solorzano Jr., Fred Wood, and Diana Fuentes-Michal (CSAC Executive Director)

**General Basis for Claims, Relief, and Damages:**

1. EDFUND, INC. ("EDFUND") is a California nonprofit benefit corporation that was formed in 1997 as an "auxiliary organization" to the CALIFORNIA STUDENT AID COMMISSION ("CSAC") for the specific purpose of administering CSAC's functions as a guaranty agency under the Federal Family Loan Program (FFEL).
2. In early 2006, EDFUND and CSAC issued a "Request for Developer Qualifications" ("RDQ") seeking bids for the construction and lease of a new facility to house EDFUND and CSAC's corporate headquarters. A copy of the RDQ is attached hereto as Exhibit A and incorporated by reference herein. The RDQ specifically indicated that both EDFUND and CSAC were seeking a "state of the art facility" that would "house their operations well into the future." The RDQ further provided that "EDFUND-CSAC has determined that their preference is to lease the facility on a long-term lease."
3. MATHER was the successful bidder and, in October 2006, MATHER entered into a 10-year commercial lease (as amended, the "Lease") with EDFUND for a facility MATHER agreed to build as EDFUND's and CSAC's new headquarters in Sacramento ("the leased premises"). A copy of the Lease, along with the amendments thereto, is attached hereto as Exhibit B and incorporated by reference herein.

4. MATHER elected to submit a bid in response to the RDQ, and agreed to execute the Lease and construct the facility pursuant to the Lease (at substantial cost to MATHER) based on repeated oral and written assurances from EDFUND and CSAC representatives that EDFUND had, and would continue to have, sufficient assets and revenues within its possession, control, and authority to satisfy all of its ongoing obligations and rent payments over the entire term of the Lease. These representations included, among other things, balance sheets and other financial statements that EDFUND and CSAC provided to MATHER that reflected that EDFUND, in each of the previous three years, had generated and received substantial revenues and had assets that substantially exceeded the projected rental obligations under the long-term lease arrangement sought by EDFUND and CSAC. Copies of such financial statements are attached hereto as Exhibit C and incorporated herein by reference.

5. In addition, as part of its statutory obligations as a non-profit corporation, EDFUND has made annual public filings with both the California Attorney General's Office and the Internal Revenue Service. These public filings made by EDFUND reflect that EDFUND had total assets well above \$70 million in each of the three years prior to execution of the Lease, with its most recent filings showing EDFUND had total assets in excess of \$130 million for both 2007 and 2008. A summary of these filings from the California Attorney General's website is attached hereto as Exhibit D and incorporated by reference.

6. MATHER relied on these financial statements and filings, as well as the previously described oral and written representations, in proceeding to construct a purpose-built headquarters facility for EDFUND/CSAC and to enter into the Lease with EDFUND. However, MATHER has very recently learned that these written and oral financial documents and assurances regarding EDFUND's financial condition were false and misleading in that MATHER is informed and believes that, in truth and fact, EDFUND did not then, and does not now, have requisite control or authority over its revenues and assets.

7. Further, to induce MATHER to enter into an amendment to the Lease in 2008, EDFUND representatives again falsely and misleadingly conveyed to MATHER that EDFUND had more than sufficient revenues and net assets within its possession, control, and authority to satisfy all of its financial obligations under the long-term Lease. This included, among other things, a March 2008 letter from EDFUND's counsel advising MATHER that "the financial data EdFund has supplied your clients clearly demonstrates their ability to easily meet all financial obligations under the lease" and an April 24, 2008 letter to MATHER from EDFUND's Chief Financial Officer indicating that EDFUND's "financial condition has not changed in any material manner subsequent to the financial information provided by Cathy Reynolds." A copy of the letters are attached hereto as Exhibit E and Exhibit F, respectively, and are incorporated by reference herein.

8. EDFUND commenced making lease payments when it took occupancy of the facility in July 2008. Total rent for the remaining term on the Lease presently totals

almost \$40,000,000 in aggregate monthly lease payments for the entire headquarters facility.

9. On or about July 20, 2010, the United States Department of Education (“DOE”) notified EDFUND, CSAC, and the California Department of Finance (“CDF”) that DOE was terminating CSAC as a guaranty agency under the FFEL, and that all the guaranty agency functions and operations performed by EDFUND would be transferred, in full, to a separate entity (ECMC of Minnesota) effective November 1, 2010. This letter expressly stated that “the Department’s guaranty agency agreement with CSAC will be terminated no later than the close of business on October 31, 2010,” and that DOE expected to work with CSAC “to ensure CSAC’s orderly termination of its operations and liquidation of the assets.” A true and correct copy of this letter is attached hereto as Exhibit G and incorporated by reference herein.

10. Thus, since July 20, 2010, EDFUND has been in de-facto dissolution and abandonment of its business, as EDFUND and CSAC (and other State entities and officials) have been on notice that by no later than November 1, 2010 (1) both CSAC’s and EDFUND’s corporate activities would cease; (2) CSAC’s and EDFUND’s assets would be liquidated; and, (3) EDFUND’s business would no longer exist.

11. EDFUND’s most recent balance sheet reflects that as of June 30, 2010, only three weeks before it received notice from DOE that its business was going to terminate, EDFUND had assets in excess of \$139,000,000, including over \$18,000,000 in “unrestricted equity” and over \$25,000,000 in “working capital.” A copy of this balance sheet is attached hereto as Exhibit H and incorporated by reference herein.

12. In light of the DOE decision to terminate CSAC as a guaranty agency and the resulting de-facto dissolution and impending business abandonment of EDFUND, on September 3, 2010, a representative of MATHER sent a letter to Sam Kipp, President of EDFUND, regarding MATHER’s concerns about EDFUND’s ability and willingness to meet its ongoing obligations under the Lease. A copy of this letter is attached hereto as Exhibit I and incorporated by reference herein. Among other things, the letter informed EDFUND that MATHER’s damages in the event EDFUND breaches the Lease will exceed \$39,000,000, and further advised EDFUND of its corporate statutory obligations to make adequate provision for MATHER before it liquidates any of its assets. Finally, the letter requested that, as EDFUND’s business operations come to an end, EDFUND reserve \$39,000,000 in a separate account to satisfy its liability to MATHER under the Lease.

13. In a response letter dated September 9, 2010, EDFUND’s general counsel informed MATHER that EDFUND would not be setting aside assets for its liability under the Lease and did not address whether EDFUND otherwise had, or intended to take, other adequate steps to ensure that its liabilities under the Lease were met before any of its assets were transferred or dispersed as part of its winding up and termination of its business due to DOE’s decision to transfer its activities and functions (and the default

loan portfolio) to ECMC. A copy of this letter is attached hereto as Exhibit J and incorporated by reference herein.

14. On October 14, 2010, a representative of MATHER sent another letter to Sam Kipp, President of EDFUND, regarding MATHER's continued concerns about EDFUND's ability and willingness to meet its ongoing obligations under the Lease. A copy of this letter is attached hereto as Exhibit K and incorporated by reference herein. Among other things, this letter again advised EDFUND of its corporate statutory obligations to make adequate provision for MATHER before liquidating or transferring any of its assets. The letter also reiterated MATHER's request that, as EDFUND's business operations come to an end, EDFUND reserve \$40,000,000 in a separate account to satisfy its liability to MATHER under the Lease. Finally, the letter requested that EDFUND provide "written assurances that EDFUND presently has sufficient assets to satisfy its obligations and liabilities under the Lease in full, and that appropriate provisions have been made to ensure that such assets will be available to satisfy EDFUND's creditors by October 21, 2010."

15. To date, no written response or assurances have been received from EDFUND in response to MATHER's October 14, 2010 letter indicating that EDFUND has or will set aside sufficient assets, as it winds up its business operations, to ensure full satisfaction of its debts and remaining liabilities under the Lease.

16. Consistent with the decision by DOE, MATHER is informed and believes that, on or about November 1, 2010, all of EDFUND's business activities and operations were in fact transferred to, and taken over by, ECMC.

17. On or about November 4, 2010, MATHER representatives spoke with EDFUND's general counsel, David Reid, regarding (among other things) the status of EDFUND in light of the transfer of its operations to ECMC. During that discussion, Mr. Reid indicated that, on or about December 20, 2010, EDFUND would no longer have any employees. In a subsequent meeting between MATHER representatives and EDFUND, MATHER was advised that, by January 1, 2011, EDFUND would essentially be a "shell." During these same discussions and meeting, EDFUND representatives also advised that its substantial "unrestricted assets" that were reflected on its financial statement as of June 30, 2010 (See Exhibit H) have since been transferred to CSAC or ECMC, or are no longer available to EDFUND to satisfy its liability under the Lease. Subsequently, Mather representatives were informed by EDFUND representatives that EDFUND would be without any employees as of December 6, 2010.

18. On November 15, 2010, MATHER representatives attended an EDFUND Board Meeting. At this meeting, among other things, a MATHER representative expressly asked the full Board whether EDFUND had sufficient available assets to satisfy its obligations under the Lease, and whether EDFUND had, or planned to, preserve such assets for this creditor liability as required by California corporations law and its own Articles of Incorporation. A copy of EDFUND's Articles of Incorporation are attached hereto as Exhibit L.

19. On November 19, 2010, MATHER received an e-mail from EDFUND's President purportedly in response to the questions MATHER posed to the EDFUND Board on November 15, 2010. However, instead of assuring MATHER that EDFUND had in fact complied with its corporate statutory obligations (and its own Articles of Incorporation) by setting aside sufficient assets to ensure full satisfaction of its debts and remaining liabilities under the Lease, MATHER was informed that EDFUND has transferred substantially most, if not all, of its assets to CSAC and possibly other entities. According to the e-mail, this included EDFUND transferring all of its unrestricted revenues, funds, and assets (in the "EdFund Equity Account") to CSAC on November 1, 2010. A copy of this e-mail is attached hereto as Exhibit M and incorporated by reference herein.

20. On November 19, 2010, MATHER also received a letter from EDFUND's President notifying MATHER that EDFUND was "terminating" the Lease effective December 31, 2010, thereby indicating that EDFUND intended to abandon the premises and cease paying rent beginning January 1, 2011. A copy of this letter is attached hereto as Exhibit N and incorporated by reference herein. As noted, rent for the remaining term on the Lease presently totals almost \$40,000,000 in aggregate monthly lease payments for the entire headquarters facility.

21. ON November 22, 2010, MATHER responded to EDFUND's "termination" notice by making clear that EDFUND's letter constitutes a repudiation of the Lease and that EDFUND is still obligated under it. A copy of this response letter is attached hereto as Exhibit O and incorporated by reference herein.

22. On January 4, 2011, MATHER sent a letter to EDFUND's president confirming that EDFUND has failed to pay rent due for January 2011 in further breach of the Lease, and that MATHER has reserved, and intends to pursue, all of its rights and remedies under the Lease and California law. A copy of this letter is attached hereto as Exhibit P.

23. While EDFUND (and the other entities and individuals named herein) remain liable for the full amount due and owing under the Lease and all related damages and losses, MATHER has taken steps to mitigate its damages since EDFUND's "termination" of the Lease. These steps have included leasing a portion of the premises to ECMC and to Sutter.

24. As described further below, the government agencies, entities, and public employees and representatives named herein are liable to MATHER directly and/or on the basis of alter ego, agency, aiding and abetting, ratification, civil conspiracy, joint and several liability, nonprofit corporate membership status and/or related theories in that EDFUND is an entity that was formed by CSAC as a mere component unit or instrument of CSAC, and is an entity over which CSAC, CDF and/or the California State Controller's Office has asserted and continues to assert complete ownership, domination and control, including asserting complete ownership, control, authority, and right to substantially all, if not all, of EDFUND's revenues, assets, and equity during its winding up in direct violation of corporate law and EDFUND's own Articles of Incorporation.

**CLAIM NO. 1 (Negligent Misrepresentation):**

25. As indicated above, MATHER agreed to execute the Lease and to construct the new headquarters facility for EDFUND and CSAC based on the repeated oral and written assurances in 2006 from EDFUND and CSAC representatives that EDFUND had, and would continue to have, sufficient assets and revenues within its possession, control, and authority to satisfy all of its ongoing obligations and rent payments over the entire term of the Lease. Such assurances, included, among other things, providing MATHER with financial statements showing very substantial EDFUND revenues and net assets as indicated herein.

26. MATHER is further informed and believes that the EDFUND directors (and/or officers), and some or all of the CSAC commissioners and other CSAC representatives, were aware and/or authorized its representatives to provide MATHER with EDFUND's financial statements, and to represent to and otherwise assure MATHER that EDFUND had sufficient financial ability and resources to meet its ongoing obligations under the Lease.

27. Also, as indicated above, as an inducement to MATHER to enter into the Lease, EDFUND representatives again conveyed to MATHER that EDFUND had more than sufficient revenues and net assets to satisfy all of its financial obligations under the long-term Lease. MATHER is informed and believes that the EDFUND directors and officers authorized and/or were aware that MATHER was provided with such additional assurances regarding EDFUND's financial ability to meet its obligations under the Lease.

28. When such financial assurances and documentation were provided to MATHER, EDFUND, CSAC, and their directors, officers, commissioners, and other representatives had no reasonable grounds for believing that such representations were true. In truth and in fact, as EDFUND and CSAC, and their directors, officers, commissioners, and other representatives, knew or should have known, EDFUND did not have sufficient assets and revenues within its requisite possession, control, and authority to satisfy all of its ongoing obligations and rent payments over the entire term of the Lease.

29. Instead, as MATHER has very recently learned, in truth and in fact, EDFUND did not, and does not, have requisite control or authority over its revenues and assets and that CSAC, CDF, and/or the California State Controller's Office (through its directors, officers, commissioners, or other representatives) have, or have asserted, ownership, control and authority over such assets and revenues, and have recently directed or permitted EDFUND to transfer all such assets and revenues to CSAC and possibly other agencies or entities.

30. The negligent and reckless representations and assurances that were made, or allowed to be made, as indicated above, regarding EDFUND's financial condition and status, were made or allowed to be made with the intent to induce MATHER to execute the Lease, to construct the new headquarters facility for EDFUND and CSAC, and to



enter into the later amendments to the Lease. Had MATHER been informed of EDFUND's true financial condition and status, MATHER would not have bid on the project or entered into the Lease.

31. As a result of the negligent and reckless misrepresentations and assurances indicated above, MATHER has suffered damages, including, but not limited to, the substantial time, resources, and costs in preparing the bid, negotiating the Lease and all amendments thereto, the substantial potential liability to its outside lender from whom MATHER secured substantial construction financing for the construction of the headquarters in an amount in excess of \$30 million, and the loss of rent under the Lease, substantial costs and expenses in attempting to re-lease the building, and other consequential damages according to proof.

32. EDFUND and CSAC, acting by and through their directors, officers, employees, and other representatives or agents, are liable to MATHER on this claim directly and individually. Further CSAC, CDF, and the California State Controller's Office are liable to MATHER on this claim on the basis of alter ego, agency, aiding and abetting, ratification, civil conspiracy, joint and several liability, nonprofit corporate membership status and/or related theories in that EDFUND is an entity that was formed by CSAC as a mere component unit or instrument of CSAC, and is an entity over which CSAC, CDF and/or the California State Controller's Office have asserted and continues to assert complete ownership, domination and control, including asserting complete ownership, control, authority, and right to substantially all, if not all, of EDFUND's revenues, assets, and equity during its winding up in direct violation of corporate law and EDFUND's own Articles of Incorporation.

#### **CLAIM NO. 2 (Breach of Contract):**

33. EDFUND's refusal to provide MATHER with assurances of its ability to fulfill its obligations under the Lease, its notification that it is "terminating" the Lease, and its failure to pay the rent due and owing for January 2011, constitute a complete and material breach of the Lease.

34. The Lease provides for the provision of attorneys' fees and court costs to the prevailing party in any action brought to enforce its terms.

35. MATHER has performed all the promises, covenants, and conditions it agreed to perform in accordance with the terms of the Lease, except for those promises, covenants and conditions excused by acts or omissions of EDFUND and CSAC.

36. But for EDFUND's breach, MATHER stands ready, willing, and able to perform its obligations under the Lease.

37. Accordingly, MATHER will be damaged in an amount to be determined at trial in an amount no less than \$40 million, including the value of all remaining rental payments under the Lease (less any amounts actually received by MATHER in mitigation), the substantial costs of attempting to re-lease the building, and other consequential damages according to proof.

38. CSAC, CDF, and the California State Controller's Office are liable to MATHER on this claim on the basis of alter ego, agency, aiding and abetting, ratification, civil conspiracy, joint and several liability, nonprofit corporate membership status and/or related theories in that EDFUND is an entity that was formed by CSAC as a mere component unit or instrument of CSAC, and is an entity over which CSAC, CDF and/or the California State Controller's Office have asserted and continues to assert complete ownership, domination and control, including asserting complete ownership, control, authority, and right to substantially most, if not all, of EDFUND's revenues, assets, and equity during its winding up in direct violation of corporate law and EDFUND's own Articles of Incorporation.

**CLAIM NO. 4 (Breach of Fiduciary Duty):**

39. As indicated herein, on July 20, 2010, EDFUND and CSAC received notice from DOE that EDFUND's business operations and guaranty agency functions would be transferred, in their entirety, to ECMC no later than November 1, 2010. Thus, since no later than July 20, 2010, EDFUND has been insolvent and in de-facto dissolution in that, as EDFUND was aware, its then existing assets and revenues, which would cease on November 1, 2010, would be insufficient to meet its present and reasonably foreseeable liabilities as they mature.

40. Accordingly, due to EDFUND's insolvent condition that resulted no later than July 20, 2010, all of the then assets and revenues of EDFUND were, and are, legally considered to be held in trust for EDFUND's creditors, including MATHER, and the EDFUND directors and officers at that time incurred a fiduciary duty to MATHER and EDFUND's other creditors that precluded them from, among other things, dissipating, transferring, or otherwise squandering EDFUND's assets and revenues that otherwise would be available to satisfy EDFUND's creditors.

41. As alleged further herein, MATHER is informed and believes and thereon alleges that EDFUND and its directors and officers breached their fiduciary duties to MATHER since July 20, 2010, by transferring, or permitting to be transferred, substantially all of EDFUND's assets to other entities and/or individuals without first taking any steps to preserve sufficient assets to meet its liabilities to its creditors, including its liability to Mather under the Lease.

42. In breaching their fiduciary duties to MATHER as hereinabove alleged, MATHER has suffered, and will continue to suffer, substantial monetary losses and damages as alleged further herein, and in an amount to be proven at trial.

43. CSAC, CDF, and the California State Controller's Office are liable to MATHER on this claim on the basis of alter ego, agency, aiding and abetting, ratification, civil conspiracy, joint and several liability, nonprofit corporate membership status and/or related theories in that EDFUND is an entity that was formed by CSAC as a mere component unit or instrument of CSAC, and is an entity over which CSAC, CDF and/or the California State Controller's Office have asserted and continues to assert complete ownership, domination and control, including asserting complete ownership, control, authority, and right to substantially most, if not all, of EDFUND's revenues, assets, and equity during its winding up in direct violation of corporate law and EDFUND's own Articles of Incorporation.

**CLAIM NO. 5 (Violation of Corporations Code 6713 and 6719):**

44. California Corporations Code Section 6713 provides that during its winding up process and prior to distributing any assets, EDFUND as a non-profit corporation must ensure that all of its known debts and liabilities "have been paid or adequately provided for."

45. California Corporations Code Section 6719(a) expressly provides that "[w]henever in the process of winding up a [non-profit] corporation any distribution of assets has been made, otherwise than under an order of court, without prior payment or adequate provision for payment of any of the debts and liabilities of the corporation, any amount so improperly distributed to any person may be recovered by the corporation." Section 6719(c) defines the "process of winding up" to include any distribution of corporate assets "made in contemplation of termination or abandonment of the corporate business."

46. EDFUND's corporate obligation under these sections to set aside sufficient funds for its creditors is also expressly acknowledged by EDFUND in Article X of its own Articles of Incorporation which provides: "Upon dissolution or winding up of this corporation, its assets remaining after payment, or provisions for payment, of all debts and liabilities of this corporation, shall be distributed to the California Student Aid Commission." A copy is attached hereto as Exhibit O and incorporated by reference.

47. California Corporations Code Section 6719(b) provides that a "[s]uit may be brought in the name of the [non-profit] corporation to enforce the liability under subdivision (a) against any and all persons receiving the distribution by . . . any one or more creditors of the corporation, whether or not they have reduced their claims to judgment." (emphasis added).

48. As set forth above, MATHER is informed and believes that, notwithstanding the fact that EDFUND has been in de-facto dissolution and "in contemplation of termination" of its corporate business since July 20, 2010, EDFUND has transferred and continues to transfer substantial assets to CSAC, CDF and/or the California State Controller's Office since that date while failing to honor its corporate statutory obligations to preserve

sufficient assets and to make adequate provisions for the payment of its debts and liabilities, including but not limited to its obligations under the Lease to MATHER.

49. CSAC, CDF, the California State Controller's Office and the State of California are liable on this claim directly under Corporations Code Section 6719 and on the basis of alter ego, agency, aiding and abetting, ratification, civil conspiracy, joint and several liability, nonprofit corporate membership status and/or related theories in that EDFUND is an entity that was formed by CSAC as a mere component unit or instrument of CSAC, over which CSAC and/or CDF have asserted and continues to assert complete domination and control, including asserting complete control, authority, and right to substantially most, if not all, of EDFUND's revenues, assets, and equity in direct violation of corporate law and EDFUND's own Articles of Incorporation.

50. As part of this Claim (and all the other claims set forth herein), MATHER demands:

a. That CSAC, CDF, and/or the California Controller's Office immediately return to EDFUND (or otherwise set aside in an account specifically reserved for payment of EDFUND creditors) any and all revenues and assets received from EDFUND since July 20, 2010, including, but not limited to, any "unrestricted assets" listed on EDFUND's June 30, 2010 financial statement, the \$20 million in EDFUND working capital listed on such statement, any and all funds, revenues, and assets contained in EDFUND's "Equity Account" that purportedly were transferred to CSAC on November 1, 2010, and the \$3.8 million in fixed assets listed on such statement, including, but not limited to, any and all furniture and equipment (excluding the furniture in the portion of the Premises leased to ECMC pursuant to the lease between MATHER and ECMC dated December 22, 2010)(See Exhibits H and L).

b. That EDFUND, CSAC, CDF, and/or the California Controller's Office immediately cease any further distributions, disbursements, dissipation, or transfers of any revenues or assets until such time that EDFUND has preserved and set aside sufficient assets for the satisfaction of its liability under the Lease,

c. That CSAC, CDF, and the California State Controller's Office direct EDFUND to immediately cease any further distributions, disbursements, dissipation, or transfers of any revenues or assets until such time that EDFUND has preserved sufficient assets for the satisfaction of its liability under the Lease;

d. That EDFUND, CSAC, CDF, and the California State Controller's Office immediately make adequate provisions for the payment of its creditors, including MATHER, as part of the termination of its business and its contemplated dissolution;

e. That CSAC, CDF, and the California State Controller's Office direct EDFUND to immediately make adequate provisions for the payment of its creditors, including MATHER, as part of the termination of its business and its contemplated dissolution; and

**CLAIM NO. 6 (Fraudulent conveyances/transfers):**

51. California Civil Code Section 3439 et seq. prohibits a debtor such as EDFUND from transferring its assets without receiving reasonably equivalent value in exchange and with the intent to hinder, delay, or defraud any creditor, where such transfers are made when the debtor is insolvent, or the transfers rendered the debtor insolvent.

52. MATHER is informed and believes that, notwithstanding the fact that EDFUND has been de facto insolvent and in the process of abandoning its business since July 20, 2010, EDFUND has transferred and continues to transfer substantially all, if not all, of its assets to CSAC, CDF and/or the California State Controller's Office and has not received reasonably equivalent value in return, including, but not limited to, the transfer of all funds, revenues, and assets contained in EDFUND's "Equity Account" that purportedly were transferred to CSAC on November 1, 2010 (See Exhibit L), and that such transfers were made with the intent to hinder, delay, or defraud MATHER's ability to collect on its claims stated herein.

53. Pursuant to California Civil Code Section 3439.07, MATHER is entitled to set aside and compel return of any such fraudulent and improper transfers to the extent necessary to satisfy MATHER's claims alleged herein, to recover damages, to obtain provisional and permanent injunctive/equitable remedies as indicated herein, and to obtain all other appropriate relief.

54. CSAC (and its commissioners and other representatives), CDF, and the California State Controller's Office are liable on this claim directly and individually as knowing participants and aiders in these fraudulent and improper transfers, and on the basis of alter ego, agency, aiding and abetting, ratification, civil conspiracy, joint and several liability, nonprofit corporate membership status and/or related theories in that EDFUND is an entity that was formed by CSAC as a mere component unit or instrument of CSAC, over which CSAC and/or CDF have asserted and continues to assert complete domination and control, including asserting complete control, authority, and right to substantially most, if not all, of EDFUND's revenues, assets, and equity in direct violation of corporate law and EDFUND's own Articles of Incorporation.

**CLAIM NO. 7 (Breach of Operating Agreement)**

55. In connection with its role as the auxiliary organization to CSAC as a guaranty agency under the FFEL Program, EDFUND and CSAC entered into a written Operating Agreement. MATHER is informed and believes that the Operating Agreement authorizes and directs EDFUND to perform services and activities for the benefit of CSAC as part of its participation in the FFEL Program. MATHER is further informed and believes that the Operating Agreement authorizes EDFUND to enter contracts and incur expenses to implement and effectuate its activities and services under the Operating Agreement, and

that it also expressly obligates CSAC to pay for or reimburse EDFUND for all such expenses and liabilities.

56. As alleged above, in order to perform and carry out its services and activities under the Operating Agreement and to implement the FFEL Program activities for CSAC, EDFUND entered into the Lease (and amendments) with MATHER with the knowledge and authorization of CSAC. However, MATHER is informed and believes that CSAC has failed and refuses to pay for or reimburse EDFUND for its remaining outstanding obligation and liability under the Lease even though CSAC is obligated to pay for such expenses and liabilities under the Operating Agreement.

57. In breaching its duties and responsibilities under the Operating Agreement in this regard, including breaching its duty of good faith and fair dealing, CSAC is liable to MATHER directly because MATHER is a third-party creditor and/or intended beneficiary to the Operating Agreement and to CSAC's obligations to pay for and reimburse EDFUND for its expenses, including EDFUND's outstanding liabilities and obligations under the Lease.

As noted, to reach or communicate with Claimant with any questions, or with a response to these claims, call or e-mail Claimant's counsel, George O'Connell, at 916-329-9111 ([glo@sojllp.com](mailto:glo@sojllp.com)).