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Attorney for Debtor

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:
BENJAMIN M ENRIQUEZ

Debtor

Case No.: 2-14-BK-1964 BKM

BENJAMIN M ENRIQUEZ

Plaintiff

Adversary No: 2:15-ap-00264 BKM

vs.

**COMPLAINT TO DETERMINE
DISCHARGABILITY OF
STUDENT LOAN**

Arne Duncan, Secretary, United States
Department of Education; SLM
Corporation, a Delaware Corporation; Sallie
Mae, Inc., a Delaware Corporation; Union
Bank & Trust Company, N.A.; Deutsche
Bank SLM Trusts; USA Funds, Inc.; Nelnet
Loan Services, Inc.; Educational Credit
Management Corporation; Stillwater
National Bank and Trust Company; National
Enterprise Systems; Performant Recovery
Inc.; Premiere Credit of North America,
LLC; Allied Interstate LLC; EIS
Collections; Navient Solutions Inc.; and Jill
Ford, Trustee.

Defendants

PRELIMINARY STATEMENT

1. This is an adversary proceeding brought under the Bankruptcy Code, 11 U.S.C. § 523(a)(8), to determine the dischargeability of an educational loan(s) made, insured or guaranteed by a governmental unit. As discovery progresses Debtor may become aware of, and

amend this complaint to allege, various claims under applicable non-bankruptcy law against named and un-named defendants.

JURISDICTION

2. Jurisdiction of the bankruptcy court in this matter is provided by 28 U.S.C. §§ 1334 and 157 and the Order of the United States District Court for this district dated July 25, 1984.

3. This is a core proceeding.

PARTIES

4. Plaintiff is an adult individual who resides in the State of Arizona. He is the debtor in above-captioned chapter 7 case. Plaintiff attended Scottsdale Culinary Institute between 2003 and 2007 and took out a number of student loans to pay for his education and help him meet living expenses.

5. Defendant Arne Duncan is the Secretary of the Department of Education (“ED”) and as such is the chief executive official of an agency of the United States (hereinafter “the Secretary.”) Upon information and belief, ED is the owner or holder of one or more of the student loans referenced above.

6. Upon information and belief, SLM Education Credit Management Corporation [hereinafter SLM] is a foreign corporation and is the owner/holder/guarantor/servicer of one or more of the student loans referenced above.

7. Upon information and belief, SLM Education Credit Finance Corporation [hereinafter SLM Finance] is a foreign corporation and is the owner/holder/guarantor/servicer of one or more of the student loans referenced above.

8. Upon information and belief, Sallie Mae is a foreign corporation and is the owner/holder/guarantor/servicer of one or more of the student loans referenced above.

9. Upon information and belief, Union Bank & Trust Company [hereinafter Union] is a National Banking Association and is the owner/holder/guarantor/servicer of one or more of the student loans referenced above.

10. Upon information and belief, Deutsche Bank SLM Trusts [hereinafter Deutsche Bank] is a foreign entity and is the owner/holder/guarantor/servicer of one or more of the student loans referenced above.

11. Upon information and belief, USA Funds, Inc. [hereinafter USA] is a foreign corporation and is the owner/holder/guarantor/servicer of one or more of the student loans referenced above.

12. Upon information and belief, Nelnet Loan Services Inc. [hereinafter Nelnet] is a foreign corporation and is the owner/holder/guarantor/servicer of one or more of the student loans referenced above.

13. Upon information and belief, Educational Credit Management Corporation (hereinafter ECMC) is a foreign corporation and is the owner/holder/guarantor/servicer of one or more of the student loans referenced above.

14. Upon information and belief, Stillwater National Bank and Trust Company is a National Banking Association now doing business under the name Bank (hereinafter Bank SNB) and is the /owner/holder/guarantor/servicer of one or more of the student loans referenced above.

15. Upon information and belief, National Enterprise Systems, Performant Recovery Inc., Premiere Credit of North America LLC, Allied Interstate LLC and Estate Information Services LLC dba EIS Collections are foreign corporations currently collecting or who have attempted to collect one or more of the student loans. These entities have no ownership interest in the student loans.

16. Upon information and belief, Navient Solutions Inc. is a foreign corporation and is the owner/holder/guarantor/servicer of one or more of the student loans referenced above.

17. Jill Ford is the trustee in this bankruptcy case and is a nominal party to this action.

CLAIM FOR RELIEF

18. Plaintiff is a 41 year old single man born in December of 1973.

19. Plaintiff graduated from High School in Merced, California in 1992 and attended two semesters of Community College.

20. Thereafter Plaintiff worked at a series of jobs never earning much more than the minimum wage.

21. In early 2005 Plaintiff enrolled in the Culinary Arts program at Scottsdale Culinary Institute [hereinafter SCI]. He graduated with a degree in Culinary Arts in late 2007.

22. Plaintiff was unable to afford the proffered schooling and found it necessary to take out student loans to pay for the costs of attending SCI and for his living expenses.

23. Plaintiff, through the financial aid department at SCI took out various student loans. Upon information and belief, the aggregate amount claimed to be owing on these loans is now in excess of \$150,000.00.

24. Since graduation from SCI, Plaintiff has been unable to sustain employment providing sufficient income to meet a minimal standard of living; especially if forced to repay the student loans.

25. Plaintiff suffers from a physical and/or mental condition such that his inability to earn sufficient income to maintain more than a minimal standard of living is likely to continue for a substantial portion if not all of the repayment period.

26. Plaintiff has made good faith efforts to repay the student loans.

27. Plaintiff's present income after deduction of taxes and insurance consists of less than \$1,700 month net from his position as a QA Clerk at SkyChefs. This amount is not even adequate for him to afford the basic necessities of life. He is unable to maintain a reasonable standard of living without assistance from his family.

28. Plaintiff lacks the resources to repay the student loans and any payments he would make would be at a great hardship. Excepting the loans from discharge would impose an undue hardship on him.

WHEREFORE, plaintiff-debtor requests this Court:

1. Declare the subject student loans dischargeable under 11 U.S.C. § 523(a)(8);
2. Award the debtor's counsel reasonable attorney's fees and costs;
3. Grant the debtor any other appropriate relief.

DATED this 6th day of May, 2015.

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