IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
____________ DIVISION

IN RE:	§	
	§	**CASE NO: ________________**
_________________________,	§	
	§	**CHAPTER ______**
Debtor(s).	§	
	§	
	§	
	§	
_________________________,	§	
	§	
Plaintiff(s),	§	
	§	
VS.	§	**ADVERSARY NO. __________**
	§	
UNITED STATES DEPARTMENT OF EDUCATION, [ET AL], Defendant(s).		

ORIGINAL COMPLAINT

COMES NOW Plaintiff(s), and files this Complaint to Determine Dischargeability of Student Loan, and for good cause would show the Court the following:

JURISDICTION AND VENUE

The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and this Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

This Complaint is commenced pursuant to sections 523(a)(8) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 7001(1)(2) and (9) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

Pursuant to Federal Rule of Bankruptcy Procedure 7008 and Rule 7008-1 of the Bankruptcy Local Rules for the Southern District of Texas, Plaintiff consents to the entry of final orders or judgments by this Court if it is determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

PARTIES

Plaintiff is the Debtor ("Plaintiff" or "Debtor") in the underlying bankruptcy case and resides at ____.

Defendant United States Department of Education may be served with a copy of this Adversary Complaint and the Summons at [1] the U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202 and by serving the United States Attorney, Southern District of Texas, 1000 Louisiana, Suite 2300, Houston, Texas 77042 [or the district where the action is brought], and by serving the Attorney General of the United States, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, D.C. 20530.

Defendant ____[other holders of student loans, the current loan holder must be named as a defendant].

FACTUAL BACKGROUND

Plaintiff/Debtor has the following student loans: ___________________________. The outstanding balance of the student loans Plaintiff/Debtor is seeking to discharge in this adversary proceeding is $____________. Plaintiff/Debtor incurred the student loans while attending ______________________, where Plaintiff/Debtor was pursuing a _________________ degree with a specialization in ______________. Debtor/Plaintiff completed my course of study and received a ____________ degree [OR] Debtor/Plaintiff left my course of study and did not receive a degree. Debtor/Plaintiff is currently employed as a ______________________, at ____[Employer name and address] [OR] Debor/Plaintiff is not currently employed.

Debtor/Plaintiff does not have the ability to make payments on the student loan(s) while maintaining a minimal standard of living himself/herself and his/her household, as his/her gross monthly income is $_____________, and monthly expenses are $_____________.

In addition, Plaintiff/Debtor's financial circumstances are unlikely to materially improve over a significant portion of the repayment period as Plaintiff/Debtor is [over 65 years **and/or** the student loans that Plaintiff/Debtor is seeking to discharge have been in repayment status for at least 10 years, **and/or** Plaintiff/Debtor did not complete the degree for which the student loan was

[1] See Rule 7004(b)(5) for service

incurred, which has inhibited future earning capacity due to _________________, **and/or** Plaintiff/Debtor has a disability or chronic injury (describe is using this provision) impacting income potential **and/or** Plaintiff/Debtor has been unemployed for at least five of the past ten years, **and/or** Plaintiff/Debtor incurred the student loan(s) in pursuit of a degree from an institution that is now closed, **and/or** Plaintiff/Debtor is currently employed, but is **1.** unable to obtain employment in the field for which the education or specialized training was received, **or 2**. The income is insufficient to pay the loan(s) that Plaintiff/Debtor is seeking to discharge, **or 3**. The income is unlikely to increase to an amount necessary to make substantial payments on the student loan(s), **and/o**r any other reasons why financial circumstances will not materially improve].

Plaintiff/Debtor has made good faith efforts to repay the student loan(s) at issue in this proceeding, including: 1. Making a total of $________________ in payments, and/or 2. Applied for a forbearance or deferment for ________ months, and/or 3. Attempted to contact the company that services or collects on my student loan(s) or the Department of Education regarding payment options, forbearance and deferment options or loan consolidation at least _______ times. Furthermore, Plaintiff/Debtor has enrolled in one or more "Income Driven Repayment Programs" or similar programs offered by the Department of Education [if not, why not].

Plaintiff/Debtor submits the following circumstances as additional support for the efforts to discharge student loan(s) as an "undue hardship" under 11 U.S.C. § 523(a)(8).

Dischargeability under 11 U.S.C. 523(a)(8).

11 U.S.C. 523(a)(8) provides as follows:

523(a) states a discharge under section 727, 1141, 1192, 1228(a), 1228(b) or 1328(b) of this title does not discharge an individual debtor from any debt -
(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—
(A)(i)
an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or
(ii)
an obligation to repay funds received as an educational benefit, scholarship, or stipend.

Plaintiff/Debtor has demonstrated that it would impose an undue hardship on the debtor and the debtor's dependents to except the student loan(s) from discharge.

WHEREFORE, Plaintiff/Debtor respectfully requests that the Court determine that Plaintiff/Debtor's student loan(s) debt to Defendants are dischargeable under 11 U.S.C. 523(a)(8), and that the Court grant Plaintiff/Debtor such other and further relief to which he/she may show themselves entitled.

Respectfully submitted.

[signature block]