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9
10 **UNITED STATES BANKRUPTCY COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 **In re**

Case No. 14-31817 DM 7

14 **ANALISA ICKEN WEDEMEYER**

Chapter 7

15 **Debtor(s).**

A.P. No. 15-_____

16 **SSN XXX-XX-5056**

17 **ANALISA ICKEN WEDEMEYER**

18 **Plaintiff,**

19 **v.**

20 **UNITED STATES DEPARTMENT OF**
21 **EDUCATION; GREAT LAKES HIGHER**
22 **EDUCATION CORPORATION; GREAT**
23 **LAKES HIGHER EDUCATION**
24 **GUARANTY CORPORATION;**
25 **EDUCATIONAL CREDIT**
26 **MANAGEMENT CORPORATION; and**
27 **DOES 1-10.**

Defendants.

28 **ADVERSARY COMPLAINT –**
COMPLAINT TO DETERMINE DISCHARGEABILITY OF EDUCATIONAL LOANS

Case No. 14-31817 DM 7/ A.P. No. 15 -

COMPLAINT TO DETERMINE DISCHARGEABILITY OF EDUCATIONAL LOANS

1 **The Debtor's Student Loans**

2 11. In original form, the Debtor undertook obligations for Federal Stafford Loans;
3 however, the Debtor has since consolidated the educational loans.

4 12. In present form, the Debtor has two (2) Federal Family Educational Loans ("FFEL"),
5 indirectly guaranteed by the U.S. Department of Education and directly guaranteed by Great Lakes.

6 13. According to the National Student Loan Database² the Debtor's total, present,
7 education loan obligations are as follows:

8

Type of Loan	Loan Amount	Loan Date	Disbursed Amount	Canceled Amount	Outstanding Principal	Outstanding Interest
FFEL CONSOLIDATED	\$93,455	12/01/04	\$93,192	\$263	\$85,804	\$95
FFEL CONSOLIDATED	\$34,129	12/01/04	\$34,129	\$0	\$28,932	\$92
Total					\$114,736	\$127

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15 **The Debtor's Educational and Professional Background**

16 14. The Debtor began undergraduate work at The University of Richmond, in Richmond,
17 VA, in August of 1989. The Debtor graduated in May of 1993, with a BA in Criminal Justice and
18 Political Science.

19 15. Shortly thereafter, the Debtor moved to California.

20 16. In 1995 and 1996, the Debtor began pre-requisite work for a Masters in Physical
21 Therapy at both San Francisco State University and Foothills Community College in Northern
22 California. These pre-requisites were later applied as credits for the Debtor's Chiropractic education.

23 17. In June of 2001, the Debtor began schooling at Life Chiropractic College West, in
24 Hayward, CA

25 18. The Debtor graduated in June of 2004 with a Doctor of Chiropractic.

26 19. The Debtor obtained educational loans during the above time periods.

27
28 ² https://www.nslds.ed.gov/nslds_SA/ (last accessed 3/27/2015)

1 30. Specifically, Dr. Lancer had used the Debtor’s National Provider Identifier (“NPI”)
2 number without the Debtor’s knowledge in over 500 adjustments, billed for said adjustments, and
3 received compensation for said adjustments – all illegally.

4 31. It is on public record that the Debtor was a victim of the above criminal case had had
5 done nothing wrong or illegal.

6 32. Nevertheless, since the incident, it has been difficult – near impossible – for the
7 Debtor to find employment with an insurance based practice

8 33. On information and belief, chiropractic businesses that interview the Debtor express
9 concern about questionable billing practices stemming from Dr. Lanser’s illegal acts and will not
10 employ the Debtor.

11 34. As a result, the Debtor has been able to secure work only at chiropractic offices that
12 operate on a cash basis – where the level of income for the chiropractic practitioner is much lower
13 than with the insurance based practices.

14 35. As a result, it has been impossible for the Debtor to find any suitable form of
15 employment as a chiropractic office that would allow the Debtor to continue paying the necessary
16 bills and maintain any quality of life.

17 36. In September of 2013, the Debtor went inactive for the first time with her
18 Chiropractic license because the Debtor had all but given up hope in continuing with Chiropractic.

19 37. By some chance happening, the Debtor met with a purely cash based practice owner
20 and practitioner, Dr. William Tarr. After the Debtor explained the Debtor’s situation to Dr. Tarr, Dr.
21 Tarr convinced the Debtor not to leave the Chiropractic profession and to try instead a cash-based
22 practice.

23 38. Since January of 2014, the Debtor has been employed as an independent contractor at
24 Peak Performance Chiropractic, in Menlo Park, CA on a cash-basis.

25 39. It has been a great pleasure for the Debtor to work again with patients and enjoy
26 doing what the Debtor is trained to do on a daily basis.

1 at fair market rental prices. The rental expense increase alone is expected to be
2 in between \$2,000 to \$4,000 range.

3 c. On information and belief, beginning April 2015, the educational loan repayment
4 schedule will jump to \$545.64 per month from the current reduced figure of
5 \$329.14.

6 50. Clearly, the Debtor has done everything possible to maximize, income, minimize
7 expenses.

8 51. The Schedules clearly show that the Debtor cannot maintain a reasonable standard of
9 living.

10 **The Debtor Has Timely Made all Pre-Petition Educational Loan Payments**

11 52. Here, at great sacrifice to herself, the Debtor timely made every pre-petition loan
12 payment.

13 53. Additionally, at times, the Debtor attempted to negotiate reduced payment figures
14 and periods of deferment in order to ensure a continuity of timely meeting her monthly payment
15 obligations.

16 54. There is no question that the Debtor has made a good faith effort to repay the loans.

17 55. Periods of deferment, however, cannot continue *ad infinitum*.

18 56. The Debtor's schedules indicate that the Debtors' expenses are about to rise when as
19 the Debtor must re-locate out of the current "rent-free" location and secure an apartment rental in
20 the San Francisco Bay Area peninsula at fair market prices in the imminent future.

21
22 **FIRST CLAIM FOR RELIEF**

23 **ACTION FOR DETERMINATION OF DISCHARGEABILITY OF EDUCATIONAL**
24 **LOANS**

25 **(11 S.C. § 523(a)(8))**

26 57. The foregoing paragraphs of the Complaint are incorporated herein by reference.

27 58. Section 523(a) (8) of the Bankruptcy Code provide, in material part:

1
2 (a) A discharge under section 727, 1141, 1228(a),
3 1228(b), or 1328(b) of this title does not discharge an
4 individual debtor from any debt—

5 . . .
6 (8) unless excepting such debt from discharge under this paragraph
7 would impose an undue hardship on the debtor and the debtor's
8 dependents, for—

9 (A)

10 (i) an educational benefit overpayment or loan made, insured, or
11 guaranteed by a governmental unit, or made under any program
12 funded in whole or in part by a governmental unit or nonprofit
13 institution; or

14 (ii) an obligation to repay funds received as an educational benefit,
15 scholarship, or stipend; or

16 (B) any other educational loan that is a qualified education loan, as
17 defined in section 221(d)(1) of the Internal Revenue Code of 1986,
18 incurred by a debtor who is an individual;

19 11 U.S.C. § 523(a)(8)

20 59. To determine if a Debtor has shown undue hardship, the Ninth Circuit follows the
21 three part test from *In re Brunner*, 46 B.R. 752, 753 (S.D.N.Y., 1985) (*Aff'd* by 831 F.2d 395 (2d
22 Cir.1987)) ("*Brunner*"); see *In re Pena* 155 F.3d 1108, 1111 (9th Cir. 1998).

23 60. Per *Brenner*, the Debtor must prove that (1) she cannot maintain, based on current
24 income and expenses, a "minimal" standard of living for herself and her dependents if required to
25 repay the loans; (2) additional circumstances exist indicating that this state of affairs is likely to
26 persist for a significant portion of the repayment period; and (3) the debtor has made good faith
27 efforts to repay the loans. *Brenner*, 831 F.2d at 396

28 61. Here, the Debtor cannot maintain, based on current income, a minimal standard of
living for herself and her dependents if required to repay the loans.

62. Here, the Debtor has pled additional, extraordinary circumstances indicating that this
state of affairs is likely to persist for a significant portion of the repayment period.

63. Here, the Debtor has clearly made a good faith effort to repay the loans.

