

**IN THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

IN RE:)	
)	
TAMMIE TERRELL FULLER,)	CASE NO. 19-31905-CLH
)	CHAPTER 13
Debtor.)	
)	
TAMMIE TERRELL FULLER,)	
)	
Plaintiff,)	
)	
v.)	ADVP NO. 23-03003-CLH
)	
UNITED STATES OF AMERICA, et al.,)	
(DEPARTMENT OF EDUCATION))	
)	
Defendant(s).)	

**STIPULATION AND JOINT MOTION
FOR ORDER DETERMINING DISCHARGEABILITY
AND DISMISSING THE UNITED STATES OF AMERICA**

Plaintiff, Tammie Terrell Fuller, and the United States of America, by and through the United States Attorney for the Middle District of Alabama, Sandra J. Stewart, on behalf of the United States Department of Education, (hereinafter USDE), respectfully stipulate to the following facts and conclusions, and jointly move this Court for a determination that a portion of Plaintiff's student loan debts that are the subject of this Adversary Proceeding are dischargeable under 11 U.S.C. § 523(a)(8), offering the following in support thereof:

Background Facts

I. Plaintiff's Bankruptcy Case

1. Plaintiff filed a Voluntary Petition for Relief under Title 11, Chapter 13, of the United States Bankruptcy Code on July 11, 2019. *See* (Bankr. Case No. 19-31905, Doc. 1).

2. On March 2, 2023, the Chapter 13 Trustee filed a Notice of Completion of Plan Payments. (Bankr. Case No. 19-31905, Doc. 69). On March 3, 2023, the Clerk issued a Notice of Final Requirements Necessary for Discharge. (Bankr. Case No. 19-31905, Doc. 71).
3. On March 21, 2023, Plaintiff filed this Adversary Proceeding to determine dischargeability of her student loan debts owed to USDE.¹ (Doc. 1).
4. On March 31, 2023, Plaintiff filed a Motion for Chapter 13 Discharge, which this Court granted on April 25, 2023. (Docs. 74 and 78).

II. Plaintiff's Student Loan History

5. Plaintiff borrowed \$86,407.00 across thirteen student loans to attend Walden University, Webster University, and Alabama State University between 2008 and 2015.
6. As of September 8, 2023, the approximate balance of the USDE-held student loan debts was:

NSLDS Loan No.	Disbursement Date	Amount	Capitalized Interest	Interest Rate	Current Interest	Current Principal
40 – Parent Plus	01/23/2015	\$2,000.00	\$0.00	7.21%	\$740.26	\$2,000.00
39 – Parent Plus	09/19/2014 – 01/12/2015	\$8,652.00	\$0.00	7.21%	\$3,320.99	\$8,652.00
38	11/13/2011 – 07/20/2012	\$4,208.00	\$1,760.96	6.80%	\$445.36	\$5,965.50
37	01/13/2011 – 07/20/2012	\$2,631.00	\$1,371.35	6.80%	\$298.80	\$4,002.35
36 – Parent Plus	09/12/2011 – 01/30/2012	\$15,125.00	\$0.00	7.90%	\$9,928.65	\$15,125.00
35	09/15/2010 – 05/11/2011	\$12,000.00	\$7,250.97	6.80%	\$1,437.20	\$19,250.94

¹ Plaintiff's Complaint also sought a determination of dischargeability as to loans held by Defendant Educational Credit Management Corporation, (hereinafter ECMC). This Stipulation and Joint Motion concerns only the student loans held by Defendant USDE.

34	09/15/2010 – 05/11/2011	\$8,500.00	\$3,557.11	6.80%	\$899.61	\$12,050.13
31	06/15/2009 – 09/02/2009	\$11,592.00	\$587.17	6.80%	\$5,793.11	\$8,861.69
30	06/15/2009 – 09/02/2009	\$7,904.00	\$0.00	6.80%	\$4,187.99	\$7,904.00
29	03/26/2009	\$4,250.00	\$34.04	6.80%	\$2,252.93	\$4,284.04
28	03/26/2009	\$872.00	\$86.70	6.80%	\$619.06	\$958.70
27	10/30/2008	\$4,423.00	\$239.42	6.80%	\$1,305.48	\$2,021.66
26	10/30/2008	\$4,250.00	\$34.04	6.80%	\$2,252.93	\$4,284.04

7. Plaintiff seeks a determination that all of these student loans are dischargeable.

III. Plaintiff's Current Standard of Living

8. Plaintiff is a fifty-five-year-old single-income individual, paying rent of \$1,200.00 per month and \$350.00 in utilities.

9. Plaintiff's gross income totals approximately \$4,900.00 monthly, entirely comprised from her employment.

10. Other than her monthly food bill, Plaintiff indicated in her Attestation that her remaining living expenses, which includes housekeeping supplies, apparel and services, personal care products and services (non-medical), uninsured medical costs, and miscellaneous expenses exceed the Internal Revenue Service (IRS) Collection Financial Standards. Plaintiff further indicated that she had additional financial demands that extended beyond those covered by the National and Local Standards. In total, Plaintiff's monthly expenses are around \$5,144.00.

11. Based on the above, Plaintiff shows a negative net monthly income of \$244.00, before making any payment on her student loans.

12. On her current income, Plaintiff cannot maintain a minimal standard of living under the IRS's National Standards and make payments towards all of her student loan debts.

IV. *Plaintiff's Future Ability to Pay*

13. Plaintiff obtained student loans while pursuing her undergraduate and graduate degree in human resources. Although she completed her degrees and has found employment, Plaintiff's financial circumstances have changed since she took out the loans. Specifically, when Plaintiff took out the loans, her spouse was able to cover all of the household expenses. Plaintiff is now divorced and must cover expenses on her own going forward.

14. Additionally, with the exception of the Parent Plus loans, NSLDS Loan Numbers 36, and 39 through 40, Plaintiff's USDE-held loans have been in repayment status for at least ten years.

V. *Plaintiff's Previous Student Loan payments*

15. Plaintiff has made good faith efforts in the past to repay her student loans.

16. Since graduating, Plaintiff has communicated with the loan holder/servicer regarding her loans and made payments on the loans. Additionally, Plaintiff has applied for deferments or forbearances, an IDR plan, and for federal consolidation.

Legal Analysis

Student loan debts are generally not to be discharged under the Bankruptcy Code. 11 U.S.C. § 523(a)(8). However, a narrow exception exists where “excepting such debt from discharge . . . will impose an undue hardship on the debtor and the debtor’s dependents.” *Id.* While the Bankruptcy Code does not define “undue hardship,” the Eleventh Circuit has joined the significant majority of other circuits in adopting the standard set forth in *Brunner v. New York State Higher Educ. Serv. Corp.*, 831 F.2d 395, 396 (2nd Cir. 1987). *In re Cox*, 338 F.3d 1238, 1241-42 (11th Cir. 2003). The *Brunner* test requires the debtor to show:

- (1) that the debtor cannot maintain, based on current income and expenses, a ‘minimal’ standard of living for herself and her

dependents if forced to repay the loans; (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) that the debtor has made good faith efforts to repay the loans.

In re Grady, 852 F. App'x 509, 512 (11th Cir. 2021) (quoting *In re Cox*, 338 F.3d at 1241).

The debtor must prove that all three *Brunner* factors are met by a preponderance of the evidence. *In re Mosley*, 494 F.3d 1320, 1324 (11th Cir. 2007). However, “the bankruptcy court must make an independent determination of undue hardship . . . even if the creditor fails to object or appear in the adversary proceeding.” *United Student Aid Funds v. Espinosa*, 559 U.S. 260, 278 (2010).

Here, the United States and Plaintiff agree that Plaintiff has satisfied the *Brunner* test and shown that excepting certain USDE-held loans from discharge will impose an undue hardship on Plaintiff. Specifically, the United States and Plaintiff agree that:

- (1) Plaintiff’s current gross monthly income totals \$4,900.00, and her housing and monthly expenses total \$5,144.00. Therefore, Plaintiff cannot maintain a minimal standard of living and also make payments towards all of her student loan debts;
- (2) Plaintiff has had a change in financial circumstances that will likely persist for a significant portion of the repayment period. Additionally, with the exception of the Parent Plus loans, NSLDS Loan Numbers 36, and 39 through 40, Plaintiff’s USDE-held loans have been in repayment status for at least ten years; and
- (3) Plaintiff has made good faith efforts in the past to repay her student loans. Plaintiff has also communicated with the loan holder/servicer regarding the loans and applied for deferments or forbearances, an IDR plan, and for federal consolidation.

Therefore, the United States and Plaintiff jointly move this Court for an order determining that certain USDE-held student loan debts are dischargeable under 11 U.S.C. § 523(a)(8).

Conclusion

WHEREFORE, premises considered, the United States and Plaintiff respectfully request that this Court enter an Order:

- (1) Determining that Plaintiff's USDE-held student loans, National Student Loan Database System (NSLDS) Loan Numbers 26 through 31, 34 through 35, and 37 through 38, which totals approximately \$89,075.52, are dischargeable pursuant to 11 U.S.C. § 523(a)(8);
- (2) Finding that this Court's order granting Plaintiff's discharge under 11 U.S.C. § 1328(a) on April 25, 2023, in bankruptcy case 19-31905, at docket entry 78, discharges Plaintiff's student loan debts, National Student Loan Database System (NSLDS) Loan Numbers 26 through 31, 34 through 35, and 37 through 38;
- (3) Determining that Plaintiff will remain indebted to USDE regarding her Parent Plus student loans, NSLDS Loan Numbers 36, and 39 through 40, for an approximate remaining balance of \$39,766.90, which will not be subject to discharge under 11 U.S.C. § 523(a)(8);
- (4) Determining that each party to the action will bear responsibility for its own costs and attorney fees in this matter;
- (5) Dismissing, with prejudice, the United States as a party to this Proceeding, pursuant to Rule 7041 of the Federal Rules of Bankruptcy Procedure. All parties appearing in this Proceeding, including Plaintiff, the United States, and ECMC, agree that dismissal of the United States is proper upon entry of the Order on this Stipulation and Joint Motion, as indicated by the electronic signatures below. *See* Fed. R. Bankr. P. 7041(a)(1)(A)(ii); *City of Jacksonville v. Jacksonville Hospitality Holdings, L.P.*, --- F.4th ---, 2023 WL 5944193,

at *5-6 (11th Cir. Sept. 13, 2023) (holding that voluntary dismissals under Federal Rule of Civil Procedure 41(a)(1)(A)(ii) requires all parties who have appeared in a case to sign a joint stipulation of dismissal, even if they are not the party being dismissed from the case).

The determinations set forth herein, and the dismissal of the United States from this Proceeding, shall have no bearing on Plaintiff's claims against ECMC; and

(6) Any such other relief as this Court

Respectfully submitted this 22nd day of September, 2023.

/s/ Audrey L. Willis

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*Defendant ECMC does not consent to the findings set forth above but has no objection to the relief requested as between Plaintiff and Defendant USDE.

/s/ Kristofer D. Sodergren

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