

2. The Court has jurisdiction over this matter, in that the Plaintiff is a debtor in these proceedings, and the Defendant is scheduled as unsecured creditor in this case. This adversary is a “core proceeding” as that term is defined in Title 28, United States Code, section 157(b)(2)(F).

3. On June 6, 2012, a petition for relief was filed by Plaintiff under Chapter 7 of Title 11, U.S.C.

4. Plaintiff is indebted to Defendant in amount of \$149,579.69, together with interest thereon, as a result of certain debts incurred by the Plaintiff herein with this Defendant. Plaintiff estimates that approximately \$90,000.00 of these loans are private loans, and that the balance is for federally guaranteed loans.

5. Pursuant to 11 U.S.C. Section 523(a)(8), an educational 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 is nondischargeable, unless the debtor is able to show that the payment of the loan would cause an undue hardship. Specifically, the Plaintiff (a) 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 will likely to persist for a significant portion of the repayment period of the student loans; and (3) that the Plaintiff has made good faith efforts to attempt to repay the loans. *See Brunner v. New York State Higher Education Services Corp.*, 831 F.2d 395.

6. Furthermore, most of the student loans held by Sallie Mae are private loans, and as to such loans, the *Brunner* test does not apply, and further, Plaintiff need not show undue hardship to obtain discharge of these private loans, if such loans are not qualified. Plaintiff alleges and states that the private loans were not “qualified” as that term is defined by 11 U.S.C. § 523(a)(8)(B), and that accordingly, such private loans are dischargeable in this proceedings. Specifically, and without

limitation, Plaintiff will show that the private loans held by Defendant were not incurred “solely to pay qualified higher education expenses,” per 26 U.S.C. §221(d)(1), and were not “attributable to education furnished during a period during which the recipient was an eligible student,” as defined by 26 U.S.C. §221(d)(1)(C). Plaintiff has further reason to believe that the private loans held by Defendant were not “school certified loans” and as such did not satisfy the requirements of a “qualified educational loan” as defined by 11 U.S.C. §523(a)(8)(B).

7. Plaintiff alleges that any private loans held by Defendant which are not “qualified educational loans” are dischargeable in this case without the need to show undue hardship.

WHEREFORE, Plaintiff requests that the Court find and hold that all indebtedness owed to the Defendant by Plaintiff is dischargeable under 11 U.S.C. Section 523(a)(8), and for such other and further relief as the Court deems just and equitable.

s/ Paul D. Post

PAUL D. POST

Attorney for Debtor and
Plaintiff