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5 **IN THE UNITED STATES BANKRUPTCY COURT**
6 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

8 DAVID ANANIAN and)
DIANE ANANIAN,)
9 Debtors.)

CASE NO. 10-72622
Chapter 7

11 DAVID ANANIAN and)
DIANE ANANIAN,)
12 Plaintiffs,)

ADVERSARY PROCEEDING
NO.

13 vs.)
14)

15 SALLIE MAE, ACS/UBS RL EST SEC,)
ACS/SLM TRUST, AES/SUNTRUST BANK,)
16 AES/RBS CITIZENS NA, AES MRU,)
NELNET, and LOAN TO LEARN, et al.,)

17 Defendants.)
18)

19 **COMPLAINT TO DETERMINE THE DISCHARGEABILITY OF A DEBTS**

20 Plaintiffs, DAVID ANANIAN and DIANE ANANIAN, allege as follows:

21 **GENERAL ALLEGATIONS**

22 **Jurisdiction**

23 1. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157(b) and
24 1334 and 28 U.S.C. §§ 523(a)(8).

25 **Proceedings**

26 2. This adversary proceeding is a "core proceeding" brought under 11 U.S.C. § 523(a)(8) to
27 discharge obligation to repay funds received as educational benefits.

1 **Parties**

2 3. Plaintiffs and Debtors herein, DAVID (hereinafter "David") ANANIAN and DIANE
3 (hereinafter "Diane") ANANIAN (hereinafter "Debtors"), are married individuals who, at all relevant times,
4 resided within the Northern District of California.

5 4. Defendant, SALLIE MAE (hereinafter "SALLIE MAE"), is a financial institution, form
6 unknown which, at all relevant times, was doing business in the Northern District of California.

7 5. Defendant, ACS/UBS RL EST SEC (hereinafter "ACS/UBS"), is a financial institution, form
8 unknown which, at all relevant times, was doing business in the Northern District of California.

9 6. Defendant, ACS/SLM TRUST (hereinafter "ACS/SLM"), is a financial institution, form
10 unknown which, at all relevant times, was doing business in the Northern District of California.

11 7. Defendant, AES/MRU (hereinafter "AES/MRU"), is a financial institution, form unknown
12 which, at all relevant times, was doing business in the Northern District of California.

13 8. Defendant, AES/RBS CITIZENS NA (hereinafter "AES/RBS"), is a financial institution, form
14 unknown which, at all relevant times, was doing business in the Northern District of California.

15 9. Defendant, AES/SUNTRUST BANK (hereinafter "AES/SUNTRUST"), is a financial
16 institution, form unknown which, at all relevant times, was doing business in the Northern District of
17 California.

18 10. Defendant, NELNET (hereinafter "NELNET"), is a financial institution, form unknown which,
19 at all relevant times, was doing business in the Northern District of California.

20 11. Defendant, LOAN TO LEARN (hereinafter "LOAN TO LEARN"), is a financial institution,
21 form unknown which, at all relevant times, was doing business in the Northern District of California.

22 **Factual Allegations**

23 12. Debtors are the parents of David J. Ananian (hereinafter "David J.") and James Ananian
24 (hereinafter "James").

25 13. In or about August 2006, David, Diane, and James co-signed for an educational loan for James,
26 to be funded by HSBC BANK, and thereafter assigned to LOAN TO LEARN, and which loan was
27 memorialized in an account ending in 3319.
28

1 14. In or about October 2006, Diane signed for an educational loan for James, to be funded by
2 NELNET, which loan was memorialized in an account ending in 0849.

3 15. In or about December 2006, David and James co-signed for an educational loan for James, to
4 be funded by ACS/SLM, which loan was memorialized in an account ending in 2161.

5 16. In or about March 2007, David and James co-signed for an educational loan for James, to be
6 funded by SALLIE MAE, which loan was memorialized in an account ending in 0313.

7 17. In or about March 2007, David and James co-signed for an educational loan for James, to be
8 funded by AES/MRU, which loan was memorialized in an account ending in 0001.

9 18. In or about June 2007, David and James co-signed for an educational loan for James, to be
10 funded by AES/MRU, which loan was memorialized in an account ending in 0002.

11 19. In or about August 2007, David and Diane co-signed for an educational loan for James, to be
12 funded by SALLIE MAE, which loan was memorialized in an account ending in 0807.

13 20. In or about December 2007, David and James co-signed for an educational loan for James, to
14 be funded by AES/RBS, which loan was memorialized in an account ending in 0003.

15 21. In or about January 2008, David and James co-signed for an educational loan for James, to
16 be funded by ACS/UBS, which loan was memorialized in an account ending in 6253.

17 22. In or about July 2008, David and David J co-signed for an educational loan for David J., to
18 be funded by SALLIE MAE, which loan was memorialized in an account ending in 0730.

19 23. In or about September 2008, David signed for an educational loan for James, to be funded by
20 SALLIE MAE, which loan was memorialized in an account ending in 0919.

21 24. In or about November 2008, David and James co-signed for an educational loan for James,
22 to be funded by AES/SUNTRUST, which loan was memorialized in an account ending in 0004.

23 25. Debtors' total educational loan debt at the time this case was commenced was approximately
24 \$266,000.

25 26. Debtors' total monthly payment obligations for their combined educational loan debts, at the
26 time this case was commenced, was almost \$2,500.

27 27. Debtors filed the petition and related documents initiating the underlying bankruptcy case on
28 October 310, 2010.

1 28. At the time Debtors commenced this case, their average monthly income was approximately
2 \$1,700 less than their average monthly expenses, without consideration of their educational loan obligations.

3 29. At the time Debtors commenced this case, their annualized monthly income was less than the
4 applicable median family income for their household size.

5 30. At the time Debtors commenced this case, they were unable to maintain a minimal standard
6 of living if compelled to pay their educational loan obligations.

7 31. Debtors current average monthly income is approximately \$1,700 less than their average
8 monthly expenses, without consideration of their educational loan obligations.

9 32. In 1970, Diane was diagnosed with systemic lupus erythematosus, which responded to
10 treatment until approximately May 2010.

11 33. Diane began to suffer from increased joint and muscle pain and stiffness, and in January 2011,
12 she was advised that her systemic lupus erythematosus was no longer responsive to treatment.

13 34. In January 2011, Diane was diagnosed with chronic arthritis of the knee joints.

14 35. In January, 2011, Diane was advised that her systemic lupus erythematosus and her arthritis
15 were chronic physically debilitating conditions limiting her daily living activities and precluding her from full
16 time employment.

17 36. Debtors made their first payment on an educational loan in or about September 2006, and
18 made their last payment on an educational loan or about May 2012.

19 37. In or about April 2011, Debtors entered into a settlement agreement with EduCap, Inc.,
20 regarding the payment of their LEARN TO LOAN obligation, but have been unable to comply with the terms
21 of that agreement.

22 **(FIRST CLAIM FOR RELIEF)**
23 **(Discharge of Educational Loans)**
24 **(11 U.S.C. § 523(a)(8))**

24 38. Debtors incorporate paragraphs 1 through 37 above as if fully set forth herein.

25 39. Debtors are informed and believe, and thereon allege, that each of the above-described loans
26 was either a loan insured or guaranteed by a governmental unit, or a loan made under a program funded in
27 whole or in part by a governmental unit or nonprofit institution.

1 40. At the present time, Debtors are unable to maintain a minimal standard of living if compelled
2 to pay their educational loan obligations.

3 41. Debtors' financial condition is probably permanent, as they are each 55 years of age, and
4 Diane's medical condition has been diagnosed as chronic and disabling.

5 42. Debtors have made a good faith efforts to pay their educational loan obligations, in that they
6 made payments on five of their educational twelve loans, and entered into a agreement for a repayment plan
7 regarding their LEARN TO LOAN debt.

8 43. Debtors will suffer undue hardship if they are compelled to pay their educational loan
9 obligations.

10 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

11 1. For a determination that each of Debtors' educational loan debts to Defendants are
12 discharged; and

13 2. For such other and further relief as the Court deems just and proper.

14 DATED: July 19, 2012

LAW OFFICES OF R. KENNETH BAUER

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16 By: _____ */s/ RK Bauer*
17 R. Kenneth Bauer
18 Attorneys for Debtors ANANIAN

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