

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

In Re:

Chapter 7

HENRY VELEZ and CARMEN I. VELEZ

Case No.

BK Case No. 12-16838-RAM

**DEBTORS' COMPLAINT TO DETERMINE
DISCHARGEABILITY OF STUDENT LOAN**

1. The Debtors filed this case under Chapter 7 of the Bankruptcy Code on March 21, 2012. This Court has jurisdiction over this action under 28 U.S.C. §1334. This proceeding is a core proceeding.

2. Two of the unsecured debts allegedly owed by Debtors and listed in Schedule F are Student Loans owing to Defendant SALLIE MAE. Specifically,

a. Sallie Mae, Account no. ending in 0930 in the amount of \$28,728.00. This account was opened in 2005. Debtor Henry Velez believes this debt is for student loans obtained by his granddaughter. However, the debtor disputes this debt as he did not sign the promissory note nor any documents related to the student loan. Debtors are not the student loan recipient.

b. Sallie Mae Account no. ending in 1200 in the amount of \$14,686.00. This account was opened in 2005. Debtors believe this debt is for student loans obtained by their granddaughter. However, the debtors dispute this debt as they did not sign the promissory note nor any documents related to the student loan. Debtors are not the student loan recipient.

3. Two of the unsecured debts allegedly owed by Debtors, and listed in Schedule F

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are Student Loans owing to Defendant, USA FUNDS. Specifically,

- a. USA Funds, Account no. ending in 9729 in the amount of \$14,620. This account was opened in 2009. Debtors believe this debt is for student loans obtained by their son. However, the debtors dispute this debt as they did not sign the promissory note nor any documents related to the student loan. Debtors are not the student loan recipient.
- b. USA Funds, Account no. ending in 9729 in the amount of \$7,078. This account was opened in 2009. Debtors believe this debt is for student loans obtained by their son. However, the debtors dispute this debt as they did not sign the promissory note nor any documents related to the student loan. Debtors are not the student loan recipient.
4. These loans were incurred to pay expenses for persons other than the Debtors.

The Debtors did not receive the benefit of these student loans.

5. The Debtors are alleged to be solely co-signers on these debts. The Debtors are not the Student Loan recipients.

6. These Student Loan debts are not qualified educational loans under IRS Code 221(d)(1) because the debt expenses were not incurred by the Debtors.

7. The Debtors have no current or anticipated available income or resources with which to pay the aforementioned loans, and any payments on these loans could be made only at great hardship to the Debtors and the Debtor's Dependents.

8. Mr. Velez, the only breadwinner, is retired and receives limited income. Debtors'

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financial hardship and circumstances are likely to persist and will not improve in the future or at any time during the repayment period of the loan.

9. The debtors cannot maintain, based on their current income and expenses, a minimal standard of living for Debtors, nor their dependents, if forced to repay the loan.

10. Although Debtors do not believe they are liable for these debts, Debtors have made a good faith effort to make payments on the loans because the recipients of the loans are their son and granddaughter.

WHEREFORE, the Debtors request this Court enter an Order finding that (i) the debtors are not liable for the student loans as they did not sign the promissory notes, (ii) in the alternative, that the student loan debts owed to Defendants USA FUNDS and SALLIE MAE, are not “educational loans” and, therefore, are not exempt from discharge pursuant to Bankruptcy Code Section 727 or 523 of the Bankruptcy Code; (iii) in the alternative, if the Court finds that all or part of Debtors alleged debt to the Defendants are “education loans,” that they are dischargeable pursuant to Bankruptcy Code Section 523(a)(8), and (iv) for such other and further relief as the Court may deem just and proper.

Dated this 26th day of April, 2012.

By: /s/ Dorothy G. Negrin
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