


B104 (FORM 104) (08/07)

<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)		<b>ADVERSARY PROCEEDING NUMBER</b> (Court Use Only)
<b>PLAINTIFFS</b>  JAVIER MEDINA	<b>DEFENDANTS</b>  NATIONAL COLLEGIATE STUDENT LOAN TRUST 2004-2, et.al.	
<b>ATTORNEYS</b> (Firm Name, Address, and Telephone No.) David Mincin, Esq., MINCIN LAW, PLLC 528 S. Casino Center, #325, Las Vegas, NV 89101 (702) 589-9881		<b>ATTORNEYS</b> (If Known) Joseph Dinoia, Esq., PATENAUDE & FELIX 7271 W. Charleston Blvd., #100, LV, NV 89117 (702) 952-2031
<b>PARTY</b> (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee		<b>PARTY</b> (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Debtor seeks declaratory relief. These student loans are subject to discharge due to undue hardship and because loans are not qualified.		
<b>NATURE OF SUIT</b>		
(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
<b>FRBP 7001(1) – Recovery of Money/Property</b> <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other  <b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b> <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property  <b>FRBP 7001(3) – Approval of Sale of Property</b> <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)  <b>FRBP 7001(4) – Objection/Revocation of Discharge</b> <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)  <b>FRBP 7001(5) – Revocation of Confirmation</b> <input type="checkbox"/> 51-Revocation of confirmation  <b>FRBP 7001(6) – Dischargeability</b> <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny  (continued next column)		<b>FRBP 7001(6) – Dischargeability (continued)</b> <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input checked="" type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other  <b>FRBP 7001(7) – Injunctive Relief</b> <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other  <b>FRBP 7001(8) Subordination of Claim or Interest</b> <input type="checkbox"/> 81-Subordination of claim or interest  <b>FRBP 7001(9) Declaratory Judgment</b> <input type="checkbox"/> 91-Declaratory judgment  <b>FRBP 7001(10) Determination of Removed Action</b> <input type="checkbox"/> 01-Determination of removed claim or cause  <b>Other</b> <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$	
Other Relief Sought		

B104 (FORM 104) (08/07), Page 2

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Javier Medina	BANKRUPTCY CASE NO. BK-S-10-33712-MKN	
DISTRICT IN WHICH CASE IS PENDING Nevada	DIVISION OFFICE	NAME OF JUDGE Nakagawa
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE 10/14/15	PRINT NAME OF ATTORNEY (OR PLAINTIFF) David Mincin, Esq.	

## INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

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6 **UNITED STATES BANKRUPTCY COURT**

7 **DISTRICT OF NEVADA**

8  
9 Re: JAVIER MEDINA,

10 Debtor.

Case No.: BK-S-10-33712-MKN

Chapter: 7

11 JAVIER MEDINA,

12 Plaintiff,

13 vs.

14 NATIONAL COLLEGIATE STUDENT  
15 LOAN TRUST 2004-2; NATIONAL  
16 COLLEGIATE STUDENT LOAN TRUST  
2005-2; NATIONAL COLLEGIATE  
17 STUDENT LOAN TRUST 2005-3; and  
18 NATIONAL COLLEGIATE STUDENT  
LOAN TRUST 2006-3, Delaware Statutory  
Trust (s).

19 Defendants.

20 **ADVERSARY COMPLAINT TO DETERMINE  
21 THAT DEBT IS DISCHARGEABLE**

22 Debtor/Plaintiff Javier Medina alleges and complains against Defendants NATIONAL  
23 COLLEGIATE STUDENT LOAN TRUST 2004-2; NATIONAL COLLEGIATE STUDENT  
24 LOAN TRUST 2005-2; NATIONAL COLLEGIATE STUDENT LOAN TRUST 2005-3; and  
25 NATIONAL COLLEGIATE STUDENT LOAN TRUST 2006-3 Delaware Statutory Trust (s),  
26 as follows.  
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1           1.       On December 22, 2010 Debtor Javier Medina (“Medina”) filed a voluntary  
2 petition under Chapter 7 of the Bankruptcy Code, thereby commencing the above-captioned  
3 Chapter 7 case.

4           2.       An Order Discharging Debtor was entered on March 30, 2011 and the Final  
5 Decree, Discharge of Trustee and Closing Of Chapter 7 Case was filed on April 26, 2012.

6           3.       On January 15, 2014 National Collegiate Student Loan Trust 2004-2 filed a  
7 complaint in Clark County District Court against Medina alleging it is the holder of student  
8 loan debt and contending inter alia that the debt is not affected by Medina’s discharge entered  
9 in this case. Subsequently, Trusts 2005-2, 2005-3, 2006-3 have also asserted claims.

10          4.       Defendants claim to hold various additional student loans that it alleges are  
11 excepted from discharge.

12          5.       Defendants were scheduled as creditors in the above captioned chapter 7 case  
13 and were given proper notice and/ or received notice of the above captioned chapter 7 case.

14          6.       This matter constitutes an adversary proceeding under FRBP 7001(6) because  
15 it is a proceeding to determine the dischargeability of a debt.

16          7.       Jurisdiction exists over this adversary proceeding under 28 USC § 1334(b) and  
17 venue is proper in this Court under 28 USC § 1409(a).

18          8.       This is a core proceeding under 28 USC §157(I).

19          9.       Plaintiff consents to entry of a final judgment by this Court.

20          10.       Medina is, and at all pertinent times, has been, a resident of Clark County,  
21 Nevada.

22          11.       Under 11 USC § 523(a) (8) student loans which are funded by a governmental  
23 or non-profit entity and which are qualified education loans may be excepted from discharge  
24 unless undue hardship is shown.

25          12.       Medina is informed and believes that the loans held by Defendants are not held  
26 or funded by a governmental or non-profit entity.

1           13.     In addition to and in the alternative, the loans held by Defendants are not  
2 qualified education loans because, amongst other reasons, they were not used solely for  
3 educational purposes.

4           14.     In addition to and in the alternative, Medina is informed and believes the loans  
5 held by Defendants are not qualified education loans because, amongst other reasons, the  
6 underlying school which provided the course work was not properly certified and/ or the  
7 programs in which Medina enrolled were not properly certified.

8           15.     In addition to and in the alternative, Medina is informed and believes the loans  
9 held by Defendants are subject to discharge because the underlying programs purportedly  
10 funded by the loans were either shams, or as applied to Medina, was a sham, as Medina was  
11 not given a legitimate opportunity to complete his program of instruction and thereby become  
12 qualified to earn an income as a licensed aviator.

13           16.     In addition to and in the alternative, imposing the debt held by Defendants  
14 would impose an undue hardship on Medina.

15           17.     A justiciable controversy exists between Medina and Defendants concerning  
16 whether the claims purportedly held by Defendants are subject to discharge.

17           18.     Medina is entitled to a decree that the claims held by Defendants are subject to  
18 discharge.

19           19.     In order to prosecute this action, it was necessary for Medina to retain the  
20 services of counsel to represent him. Accordingly, he is entitled to an award of attorneys' fees  
21 and costs incurred filing and prosecuting this action.

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As such, judgment is requested against Defendants as follows:

1. For a decree that the claims held by defendants are subject to discharge.
2. For costs of suit and attorneys fees.
3. For such other and further relief as the court may deem just and proper.

DATED this 14<sup>th</sup> day of October, 2015.

MINCIN LAW, PLLC



By: /s/ David Mincin

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