

**Michael Fuller, Oregon Bar No. 09357**  
Pro Bono Attorney for Plaintiff  
Olsen Daines PC  
US Bancorp Tower  
111 SW 5th Ave., 31st Fl.  
Portland, Oregon 97204  
[michael@underdoglawyer.com](mailto:michael@underdoglawyer.com)  
Direct 503-201-4570

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re

[REDACTED]

Debtor.

[REDACTED]

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF  
EDUCATION, NATIONAL  
COLLEGIATE STUDENT LOAN TRUST  
2005-3, NATIONAL COLLEGIATE  
STUDENT LOAN TRUST 2004-2,  
NATIONAL COLLEGIATE STUDENT  
LOAN TRUST 2005-2, NATIONAL  
COLLEGIATE STUDENT LOAN TRUST  
2006-4, CITIBANK N.A., U.S. BANK N.A.,  
and EDUCATIONAL CREDIT  
MANAGEMENT CORPORATION,**

Defendants.

Case No. 15-62794-fra13

Adv. Proc. No. 15-06116-fra

**AMENDED COMPLAINT TO  
DETERMINE DISCHARGEABILITY OF  
STUDENT LOANS**

11 U.S.C. § 523(a)(8)

**AMENDED COMPLAINT TO DETERMINE DISCHARGEABILITY OF STUDENT  
LOANS - Page 1 of 7**

Olsen Daines PC  
US Bancorp Tower  
111 SW 5th Ave., 31st Fl.  
Portland, Oregon 97204

1.

### **JURISDICTION**

The United States District Court for the District of Oregon has jurisdiction of this action pursuant to 28 U.S.C. § 1334 because plaintiff's dischargeability complaint arises under Title 11.

2.

The United States Bankruptcy Court for the District of Oregon has jurisdiction of this action pursuant to 28 U.S.C. § 157 and LR 2100-1 because plaintiff's complaint arose in her bankruptcy case, number 15-62794-fra13, filed under Chapter 13 of Title 11 in this United States Bankruptcy Court for the District of Oregon.

3.

### **NATURE OF CLAIM**


Plaintiff's dischargeability complaint is a core proceeding under 28 U.S.C. § 157(b)(2) and plaintiff consents to entry of final orders and judgment by the bankruptcy judge in this adversary proceeding.

4.

Venue is proper in this district because plaintiff reside here and filed bankruptcy here.

5.

### **THE PARTIES**

 ("plaintiff") is an individual living in Central Point, Oregon. Plaintiff's educational debts to defendants are collectively referred to as her "student loans" in this complaint.

**AMENDED COMPLAINT TO DETERMINE DISCHARGEABILITY OF STUDENT LOANS - Page 2 of 7**

Olsen Daines PC  
US Bancorp Tower  
111 SW 5th Ave., 31st Fl.  
Portland, Oregon 97204

6.

Defendant United States Department of Education filed claim no. 1 in plaintiff's bankruptcy case for a student loan in the amount of \$128,792.72 on August 20, 2015.

7.

Defendant National Collegiate Student Loan Trust 2005-3 filed claim no. 2 in plaintiff's bankruptcy case for a student loan in the amount of \$21,830.65 on August 28, 2015.

8.

Defendant National Collegiate Student Loan Trust 2004-2 filed claim no. 3 in plaintiff's bankruptcy case for a student loan in the amount of \$18,480.99 on August 28, 2015.

9.

Defendant National Collegiate Student Loan Trust 2005-2 filed claim no. 4 in plaintiff's bankruptcy case for a student loan in the amount of \$6,159.47 on August 28, 2015.

10.

Defendant National Collegiate Student Loan Trust 2006-4 filed claim no. 5 in plaintiff's bankruptcy case for a student loan in the amount of \$14,159.65 on August 28, 2015.

11.

Defendant Citibank N.A. filed claim no. 7 in plaintiff's bankruptcy case for a student loan in the amount of \$3,628.02 on September 8, 2015.

12.

Defendant Citibank N.A. filed claim no. 8 in plaintiff's bankruptcy case for a student loan in the amount of \$3,232.20 on September 8, 2015.

**AMENDED COMPLAINT TO DETERMINE DISCHARGEABILITY OF STUDENT LOANS** - Page 3 of 7

Olsen Daines PC  
US Bancorp Tower  
111 SW 5th Ave., 31st Fl.  
Portland, Oregon 97204

13.

Defendant U.S. Bank N.A. filed claim no. 9 in plaintiff's bankruptcy case for a student loan in the amount of \$7,080.21 on December 18, 2015.

14.

Defendant Educational Credit Management Corporation filed claim no. 10 in plaintiff's bankruptcy case for a student loan in the amount of \$3,198.82 on December 23, 2015.

15.

This complaint's allegations are based on personal knowledge as to plaintiff's own conduct, and are made on information and belief as to the acts of others.

16.

**FACTUAL ALLEGATIONS COMMON TO ALL DEFENDANTS**

On August 14, 2015, plaintiff filed for bankruptcy protection under Chapter 13 of Title 11. Prior to the commencement of plaintiff's bankruptcy case, plaintiff owed defendants student loans.

17.

Plaintiff can't maintain a minimal standard of living if required to repay her student loans to defendants. Plaintiff lives paycheck to paycheck and has no disposable income left over each month to repay her student loans. Plaintiff has almost \$200,000 in student loans and will never be able to fully amortize her student loans with defendants.

18.

Plaintiff has made all reasonable attempts to maximize her income prior to filing bankruptcy. Plaintiff's job as an office assistant at Rogue Valley Symphony is the highest paying job she can find. Plaintiff works full time. Plaintiff doesn't qualify for any job training programs. Plaintiff lives in a small studio guest house and can't take on roommates for additional income. Plaintiff is willing to relocate to find a higher paying job. Plaintiff has searched other areas for higher paying jobs but has found no positions that would result in higher disposable income when cost of living increases are factored in.

19.

It would be unconscionable for this Court to require plaintiff to reduce her expenses further than she has already reduced them. Plaintiff can't decrease her monthly expense budget in any way. Plaintiff's expense budget does not include tanning salons, gyms, new clothes, hairdressers, cable TV, or any other frivolous expenses. Plaintiff contributes nothing to retirement even though she has no savings. Plaintiff can't even afford a car payment or car insurance payment even though she requires transportation to get to work. Plaintiff's mobile phone plan is one of the cheapest plans offered by her carrier. Plaintiff does not spend money on gambling, alcohol, or drugs.

20.

Additional circumstances prove plaintiff's state of affairs above is likely to persist in the future. Plaintiff's education is limited in the fact that her religion degree is irrelevant to every career path available to her and she doesn't qualify for additional student loans to attend graduate

**AMENDED COMPLAINT TO DETERMINE DISCHARGEABILITY OF STUDENT  
LOANS - Page 5 of 7**

Olsen Daines PC  
US Bancorp Tower  
111 SW 5th Ave., 31st Fl.  
Portland, Oregon 97204

school. Plaintiff has no usable or marketable job skills. Plaintiff has maximized her income potential and no more favorable jobs are available to her. Plaintiff is not expecting any inheritance or gifts in the future that might allow her to repay her student loans. Plaintiff has no assets she could sell to repay her student loans. Plaintiff's rent and other monthly expenses continue to increase and her wages don't keep up with the costs of living.

21.

Plaintiff has made good faith efforts to repay her student loans to defendants. From the time she finished school plaintiff has worked to maximize her income and minimize her expenses as alleged above. Plaintiff has attempted to negotiate repayment plans on her student loans and has made payments on her student loans as she has been able to after finishing school. Plaintiff has not repaid other debts instead of her student loans.

22.

### **CAUSE OF ACTION**

#### **CLAIM ONE**

(Determination of Dischargeability – 11 U.S.C. § 523(a)(8))

Plaintiff incorporates the above allegations by reference.

23.

Based on the allegations above, this Court should determine that excepting plaintiff's debts to defendants from discharge would impose an undue hardship on plaintiff.

**AMENDED COMPLAINT TO DETERMINE DISCHARGEABILITY OF STUDENT  
LOANS - Page 6 of 7**

Olsen Daines PC  
US Bancorp Tower  
111 SW 5th Ave., 31st Fl.  
Portland, Oregon 97204

24.

**WHEREFORE**, plaintiff requests:

- A. An order determining plaintiff's debts to defendants as alleged above are discharged pursuant to 11 U.S.C. § 523(a)(8) because excepting plaintiff's debts to defendants from discharge would impose an undue hardship on plaintiff under the three-prong Brunner test; and an award of costs, and
- B. For other equitable relief this Court may determine is fair and just.

DATED: February 1, 2016

**RESPECTFULLY FILED,**

/s/ Michael Fuller

**Michael Fuller, Oregon Bar No. 09357**

Pro Bono Attorney for Plaintiff

Olsen Daines PC

US Bancorp Tower

111 SW 5th Ave., 31st Fl.

Portland, Oregon 97204

[michael@underdoglawyer.com](mailto:michael@underdoglawyer.com)

Direct 503-201-4570

**AMENDED COMPLAINT TO DETERMINE DISCHARGEABILITY OF STUDENT  
LOANS - Page 7 of 7**

Olsen Daines PC  
US Bancorp Tower  
111 SW 5th Ave., 31st Fl.  
Portland, Oregon 97204