

Michael Fuller, OSB No. 09357
Pro Bono Attorney for Plaintiff
Olsen Daines PC
US Bancorp Tower
111 SW 5th Ave., Suite 3150
Portland, Oregon 97204
michael@underdoglawyer.com
Direct 503-201-4570

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re

Lori Lynn Heath,

Debtor.

Lori Lynn Heath,

Plaintiff,

v.

**United States Department of
Education,**

Defendant.

Case No. 17-60186-tmb7

Adv. Proc. No.

COMPLAINT

11 U.S.C. § 523(a)(8)

1.

JURISDICTION AND THE PARTIES

This Court has jurisdiction under 28 U.S.C. § 1334 because Heath's dischargeability complaint arises under Title 11.

2.

Plaintiff Lori Heath (Heath) is an individual living in Turner, Oregon who filed Chapter 7 bankruptcy on January 25, 2017 in case number 17-60186-tmb7. Heath's educational debts to defendant are collectively referred to as her "student loans" in this complaint.

3.

Defendant United States Department of Education (DOE) is an agency of the United States. Heath owes approximately \$135,000 to defendant.

4.

Venue is proper because Heath resides here and filed bankruptcy here.

5.

NATURE OF CLAIM

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

6.

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

7.

FACTUAL ALLEGATIONS

Prior to the commencement of Heath's bankruptcy case, she owed student loans to defendant.

8.

Heath can't maintain a minimal standard of living if required to repay her student loans to defendant. Heath is unemployed. Her only income is food stamps. She has no disposable income left over each month to repay her student loans. She suffers from severe depression and has applied for disability benefits. Heath will never be able to fully amortize her student loans with defendant.

9.

Heath is not aware that she qualifies for any job training programs. Heath lives with family and can't take on roommates for additional income.

10.

It would be unconscionable for this Court to require Heath to reduce her expenses further than she has already reduced them. Heath

can't decrease her monthly expense budget in any way. Heath's expense budget does not include gyms, expensive clothes, hairdressers, cable TV, or any other frivolous expenses. Heath hasn't paid for any vacations after ending her education. Heath has a modest, reliable 2005 Chevrolet Malibu. Her mom helps pay for her car insurance and gas. Heath contributes nothing to retirement even though she has no savings. Heath is on the cheapest mobile phone plan her carrier offers. Her mom gives her money to buy a phone card. Heath does not spend money on gambling, alcohol, or drugs.

11.

Additional circumstances prove Heath's state of affairs above is likely to persist in the future. Heath suffers from severe depression that limits her ability to work. She is being treated for her severe depression, and her illness is unlikely to change in the future. Heath's income is not expected to grow exponentially or to exceed the rising costs of living. At all times relevant after leaving college, Heath has maximized her income potential and no more favorable jobs are available to her. Heath is not expecting any inheritance or gifts in the future that might allow her to repay her student loans. Heath has no assets she could sell to repay her student loans.

12.

Heath has made good faith efforts to repay her student loans to defendant but hasn't had any disposable income since she lost her job in November 2016. At all times relevant after leaving college, Heath worked to maximize her income and minimize her expenses as alleged above. Heath is not aware that she qualifies for income-based repayment plan options lower than her current monthly payment amounts, which she can't afford. Heath has not repaid other debts instead of her student loans.

13.

CAUSE OF ACTION

CLAIM ONE

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

Heath incorporates the above allegations by reference.

14.

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

15.

WHEREFORE, Heath requests:

- A. an order determining Heath's debts to defendant as alleged above are discharged under 11 U.S.C. § 523(a)(8), and an award of costs, and
- B. any other equitable relief this Court may determine is fair and just.

February 27, 2017

RESPECTFULLY FILED,

/s/ Michael Fuller

Michael Fuller, OSB No. 09357

Pro Bono Attorney for Plaintiff

Olsen Daines PC

US Bancorp Tower

111 SW 5th Ave., Suite 3150

Portland, Oregon 97204

michael@underdoglawyer.com

Direct 503-201-4570