

1 Jaime Y. Clavito
5100 N. Hwy. 99 #76
Stockton, CA 95212
2 Cellular no.: (619) 348-8365
Email: jaime_clavito@yahoo.com
3 In Pro Per

4
5 **UNITED STATE BANKRUPTCY COURT**
6 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
7 **SAN DIEGO DIVISION**
8

9 Jaime Ylasco Clavito, Pro Se,
10 Debtor.

11 Jaime Ylasco Clavito, Pro Se,
12 Plaintiff,

13 vs.

14 U.S. Depart of Ed/2008-2009 LPCP;
15 And Does 1 through 10
16 Defendants.

) Bankruptcy Case No.: 16-01362-CL-7

) Chapter 7

) Adversary Proc. Case No.: 16-90059-CL

) **Third Amended Complaint to Determine
Dischargeability of Student Loan Debt
Pursuant to 11 U.S.C. § 523 (A)(8)**

) DATE: Nov. 7, 2016

) TIME: 10:00 A.M.

) DEPT: 5

) ROOM: 318

) JUDGE: Hon. Christopher B. Latham

17
18
19
20 **AMENDED COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT**

21
22 **PURSUANT TO 11 U.S.C. §523 (A)(8)**

23 Jaime Ylasco Clavito, Debtor and Plaintiff in the above captioned adversary proceeding,
24 represents as follows:
25
26
27
28

1 Department of Education/2008-2009 LPCP bases their claim upon. He called the United States
2 Department of Education asking who the 2008-2009 LPCP is, they will not answer this question.

3 9. Defendant DOES 1 through 10 herein are sued under fictitious names for the reason
4 that their true name are unknown to the Plaintiff. When such true names are ascertained, the
5 Plaintiff will amend or seek leave of this Court, to amend this Complaint accordingly.
6

7 10. Jurisdiction exist under 28 U.S.C. §1334. Venue is proper under 28 U.S.C. §1409(a).
8 The District Court has generally referred these matter to the Bankruptcy Court for hearing of 28
9 U.S.C. §157(b)(2)(1). This adversary complaint is brought pursuant to 11 U.S.C. §523(a)(8).
10

11 11. Defendant the United States Department of Education's Answered to Complaint
12 states that the Plaintiff/debtor is indebted to Defendant for student loans and that total sum due and
13 unpaid (after applying credits of \$15,748.17) is \$66,421.30.

14 12. The Plaintiff does not know how the Defendant the United States Department of
15 Education came up with a debt of \$66,421.30. Over the course of attending schools, the Plaintiff
16 borrowed approximately \$80,000 and paid back approximately 1/4 of the student loan from 2005 to
17 2012. Defendant the United States Department of Education should be required to prove this alleged
18 debt not to mentioned it violated the Servicemen Civil Relief Act (SCRA) while the Plaintiff was in
19 the military service from 2007 to 2012 over charging the student loan interest rate cap under the
20 SCRA. The Plaintiff disputes the balance and has never been provided with an accounting of the
21 loan balance.
22

23
24 13. Apparently Defendant the United States Department of Education is unsure of what
25 debt amount it is claiming that the Plaintiff owed.

26 14. In contrast to Defendant the United States Department of Education's Answer
27 dismissing the complaint, the party seeking to except a debt from discharge bears the burden of
28

1 proving the elements of the applicable nondischarge section by a preponderance of the evidence. “A
2 debtor’s undue hardship complaint is an action for a declaratory complaint judgment by the
3 bankruptcy court that her student loan is of the type that imposes an undue hardship and thus falls
4 within the scope of of Chapter 7 discharge. In other words, the debtor’s complaint seeks declaration
5 of the rights conferred by the discharge order - the prior judgment - and would not destroy or impair
6 any previous established right [...] As the Supreme Court has observed:

8 “[Section] 523(a)(8) requires a court to make a certain finding before confirming the discharge of a
9 student loan debt. It is true, as we explained in Hood, that this requirement is “self-executing.” But
10 that means only the bankruptcy court must make an undue hardship finding even if the creditor does
11 not request one[.]” [Emphasis added] *The Undue Hardship Thicket: On Access to Justice*

12 *Procedural Noncompliance, and Pollutive Litigation in Bankruptcy*, 66 Fla L. Rev. 2101 2014.

13 Also see *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. Ct 1367,1379 (2010) (emphasis
14 added)(quoting *Tenn. Student Assistance Corp v. Hood*, 541 U.S. 440, 450 (2004)) and *Grogen v*

15 *Garner*, 498 U.S. 279 (1991) . Courts construe to discharge strictly against strictly against a creditor
16 and liberally in favor in the debtor. *Id.* at 286-87. In a case under §523(a)(8), **the creditor bears**

17 **the initial burden of proving the debt exist** and that the debt is of the type excepted from
18 discharge under the discharge exception for student loan debt; if the creditor meet its burden, the
19 debt may only be discharged if the debtor establishes that repayment of the debt would constitute an
20 undue hardship. 11 U.S.C.A. §523(a)(8). *In re Maas*, 497 B.R. 863(Bankr. W.D. Mich 2013).

21 [Emphasis added].

22 15. The amount of the debt is in dispute. The Defendants should be required by this
23 Court to prove their alleged debts.

1 16. The Plaintiff borrowed approximately \$20,000 in student loans in completing his
2 bachelor’s degree in California State University, Sacramento and while attending the UCD. The
3 Plaintiff paid back almost in full left a couple thousands in Consolidated Student loans.

4 17. The Plaintiff borrowed approximately \$60,000 in completing his masteral degree in
5 National University and while attending Golden Gate University, Argosy University, and the Golf
6 Academy of America. The plaintiff paid some of these student loans and over the course of the
7 military service, he applied for deferments, military deferment, and forbearance to remain in current
8 status. These usurious student loans debt may have grown due to an interest rate(s) of
9 approximately more than nine per cent, and numerous bonus payments of tens of thousands of
10 dollars that United States Department of Education paid to the Wall Street Banks holding these
11 loans
12
13

14 **CHALLENGING AND PETITION TO REPEAL 11 U.S.C.A. §523(a)(8)**

15 **THROUGH JUDICIAL REVIEW**

16
17 18. The United State Code Chapter 11, Section 523(a)(8) as specified in the 1998
18 Bankruptcy Reform Act is repugnant and in conflict with existing bankruptcy laws which denies the
19 basic rights afforded in the U.S. Constitution and a ‘fresh start.’ The language specifying in “undue
20 hardship” is very ambiguous, outright misleading, and untenably unworkable. Courts interpretation
21 of the ‘Undue Hardship’ has been very narrow hindering anyone who asks petitions for relief from
22 student loan debts until recently. *In re Roth v. Educational Credit Management Corporation*
23 (*ECMC*), 490 B.R. 908 2013 Bankr. LEXIS 1939; Bankr. L. Rep. (CCH) P82,471, Roth Court
24 viewed and expressed that the ultimate “undue hardship” determination under 11 U.S.C. §523 (8) is
25 reviewed de novo because it is a mixed question of fact and law, and fact findings regarding the
26 surrounding situation of the debtor undermining application of bankruptcy law. In Pa. Higher Educ.
27
28

1 Assistance Agency v Birrane (in re Birrane), the United States Bankruptcy Appellate Panel for the
2 Ninth Circuit held, at least by implication, that the Brunner Prongs are mixed questions entitled to
3 de novo review. “The Congress never defined the circumstances constituting the sort of undue
4 hardship justifying the discharge of an educational debt under §523 (a)(8), apparently preferring that
5 bankruptcy court craft a working definition. While it might have been appropriate and helpful
6 adopted, respectfully, the Brunner Test determining undue hardship is truly a relic of times long
7 gone,” Bankruptcy Judge Pappas concurring the 9th Circuit U.S. Bankruptcy Appellate Panel’s
8 decision *in re Roth v. ECMC*.

9
10 19. The Department of Education has overreached its power over debt collection and its
11 employees and attorneys often abuse this power. The Department garnishes part of a borrower’s
12 paycheck, social security benefits, tax refund or sending people to jail without a court order. For
13 instance, disabled persons and grandmothers who only relied on social security and/or disability
14 checks found themselves in serious trouble that the Department hired debt collectors forcing them
15 to cough up some money to pay their student loans ([http://www.marketwatch.com/story/when-your-
16 social-security-check-disappears-because-of-an-old-student-loan-2015-06-25](http://www.marketwatch.com/story/when-your-social-security-check-disappears-because-of-an-old-student-loan-2015-06-25)). Even death cannot
17 extinguish the student loan debts, debt collectors show up after funeral forcing death debtor’s
18 parents to pay the remaining balance of their sons or daughters’ student loans ([https://
19 www.propublica.org/article/grieving-father-struggles-to-pay-dead-sons-student-loans](https://www.propublica.org/article/grieving-father-struggles-to-pay-dead-sons-student-loans)). Not only
20 that Man is sent to jail for not paying his student loans ([http://money.cnn.com/2016/02/16/pf/
21 college/arrested-student-loan-marshals/](http://money.cnn.com/2016/02/16/pf/college/arrested-student-loan-marshals/)). Indeed the debtor prison is back ([https://
22 www.armstrongeconomics.com/uncategorized/government-imprisoning-people-who-cannot-pay-a-
23 fine/](https://www.armstrongeconomics.com/uncategorized/government-imprisoning-people-who-cannot-pay-a-fine/)). Recent development is depriving millions of people their basic rights afforded by the U.S.
24 Constitution.

1 20. Similarly, the Department of Education has been very aggressive challenging the
2 bankruptcy laws preventing to discharge the student loans and the ECMC was hired to do its dirty
3 job. “Over the past couple of years, the media, consumer advocacy organizations, and courts have
4 criticized ECMC’s litigation conduct. As described in a 2012 *New York Times* article, student loan
5 debtors who press their claims of undue hardship in court “face the daunting task of arguing against
6 opponents who specialize in beating back the bankrupt,” including ECMC. A 2013 report by the
7 National Consumer Law Center referred to “the highly aggressive litigation tactics of ECMC.”
8 Similarly, according to a 2014 *New York Times* article, ECMC is now facing concerns that its
9 tactics grown ruthless.” Finally, in a recent decision by the U.S. Court of Appeals for the First
10 Circuit affirming a bankruptcy court’s imposition of sanctions against ECMC, the court observed
11 that it was *ECMC’s entire course of conduct* that led the [bankruptcy appellate panel] to conclude
12 that ECMC had abused the bankruptcy process.” *The Undue Hardship Thicket: On Access to Justice*
13 *Procedural Noncompliance, and Pollutive Litigation in Bankruptcy*, 66 Fla L. Rev. 2101 2014. In
14 other words, the ECMC use and exploits tactics such as procedural noncompliance, pollutive
15 litigation, attritions making many debtors to capitulate. Because of these abusive tactics many
16 debtors were denied their chance to have their fresh start in their lives.

20 21. What happened to Hammurabi’s Code, Right’s of Man, Magna Carta, and Bills of
21 Rights? Was not peasants and noblemen revolted against the evil King that defeated their king in
22 battle and forced him to sign the Magna Carta, which one of the provisions states that: “No free man
23 shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or
24 deprived of his standing in any other way, nor will we proceed with force against him, or send
25 others to do so, except by the lawful judgement of his equals or by the law of the land. To no one
26 will we sell, to no one deny or delay right or justice.”

1 [divinely-inspired-bible/](#)). Clearly the Supreme Court’s ruling in re *Local Loan Co v. Hunt* 292 U.S.
2 234 is in line with Judeo-Christian Tradition, which allowing debts to be forgiven: “The primary
3 purpose of the Bankruptcy Act is to relieve the honest debtor from oppressive indebtedness and
4 permit him to start afresh free from the obligations and responsibilities consequent upon business
5 misfortunes.” This purpose of the act has been again and again emphasized by the courts as being of
6 public as well as private interest, in that it gives to the honest but unfortunate debtor who surrenders
7 for distribution the property which he owns *at the time of bankruptcy*, a new opportunity in life and
8 a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.
9 See also *Stellwagen v. Clum*, U.S 605, 617; *Hanover National Bank v. Moyes*, supra. Furthermore
10 not merely just nodding the Supreme Court reiterated and reaffirmed this act in re *United States Aid*
11 *Funds v. Espinoza* where the debts including the student loans extinguished by the bankruptcy order
12 without demonstrating ‘undue hardship.’

15 24. Unfortunately the Congress clearly ignored this. Politicians sold their soul to the evil
16 bankers and made a gift to the bankers making the Student Loans exception to Bankruptcy laws
17 under 11 U.S.C. §523(a)(8) ([https://www.armstrongeconomics.com/uncategorized/clintons-gift-to-](https://www.armstrongeconomics.com/uncategorized/clintons-gift-to-bankers-made-student-loans-the-only-exception-to-bankruptcy-along-side-taxes/)
18 [bankers-made-student-loans-the-only-exception-to-bankruptcy-along-side-taxes/](https://www.armstrongeconomics.com/uncategorized/clintons-gift-to-bankers-made-student-loans-the-only-exception-to-bankruptcy-along-side-taxes/)). This includes
19 also the private student loan under the Bankruptcy Abuse Prevention and Consumer Act (BAPCPA)
20 of 2005. “Although entitled the Consumer Protection Act,” BAPCPA does not protect consumers at
21 all. In fact the incongruously named Act is antagonistic to the purpose of the 1978 code[...]. Under
22 the guise of preventing abuse, BAPCPA imposes a litany of confusing procedures and requirements
23 on consumer debtors and their counsel, contravening the purpose of the 1978 Code, which was to
24 provide debtors with a clean slate and a fresh start. BAPCPA destroys a “safety value [for society]
25 to deal with financial consequences of misfortunes,” and it undermines “one of the few areas of
26
27
28

1 consumer law that work[ed] reasonably well to meet consumer needs.” BAPCPA frustrates the
2 operation of 1978 Code, because it manifest fundamental changes in the class and power structures
3 of the U.S. economy.” *Debtor’s Prison in the Neoliberal State: “Debtfare” and the Cultural Logics*
4 *of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005* 49 Cal. W. L. Rev. 1
5 2012-2013. Basically the current status quo maintains forcing the debtors to creditors a portion of
6 their income and live on a bread and water for the rest of their lives until they die or paid the debt in
7 full. This is oppressive and enslaving entire generation making them the property of the State or
8 slaves ([http://studentdebtwar.org/general-interests/federal-law-imposes-13th-amendment-violation-](http://studentdebtwar.org/general-interests/federal-law-imposes-13th-amendment-violation-student-loan-debtors/)
9 [student-loan-debtors/](http://studentdebtwar.org/general-interests/federal-law-imposes-13th-amendment-violation-student-loan-debtors/)). This country has fought for slavery during the Civil War and now the
10 current status quo repeats the wrong doings of yester years. As the *Keiser Report* mentioned and
11 emphasized to their viewers that people nowadays are debts slaves and has been constantly
12 monitored by the ‘big brothers’ facing severe threat being thrown to jail ([https://www.youtube.com/](https://www.youtube.com/watch?v=qLkgLiDyiqM)
13 [watch?v=qLkgLiDyiqM](https://www.youtube.com/watch?v=qLkgLiDyiqM)).

14
15
16
17 25. If one asks the general public in the main street where is so called ‘recovery’? Most
18 people will answer there is none. Many middle income Americans saw the decline of income from
19 2005 to 2007 by 43 per cent and moreover over 50 million American people does not have health
20 care insurance due to the fact their significant portion of their income paid towards the health care;
21 as a result, the American middle class are living in dire economic and social state and in downward
22 spiral. *Debtor’s Prison in the Neoliberal State: “Debtfare” and the Cultural Logics of the*
23 *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005* 49 Cal. W. L. Rev. 1
24 2012-2013. Many people are unemployed or underemployed; the unofficial unemployment stands
25 at 23 per cent and the labor participation rate is at all time low at 62.5 per cent (<http://>
26
27
28

1 www.shadowstats.com/article/c810x.pdf). The United States has never recovered from the last
2 recession from 2008 and instability is on the rise with no potential recovery in the horizon ([http://](http://www.shadowstats.com/article/no-777-key-issues-in-the-past-year-and-the-year-ahead.pdf)
3 www.shadowstats.com/article/no-777-key-issues-in-the-past-year-and-the-year-ahead.pdf). In fact
4 the U.S. economy is very weak, unofficially in recession and there is a certainty of market crash
5 could happen anytime soon (<https://www.youtube.com/watch?v=4xAjR7-QHZg>).

7 26. Indeed many Americans went to school in hopes of better future. The American
8 dream was to going to school, buying a house and car, getting married, and living a comfortable life.
9 However, this dream became a nightmare. The entire American Education is a con job and many
10 people got their worthless degrees found themselves saddled with boat loans of debts including
11 student loans and unable to pay them back ([https://www.armstrongeconomics.com/uncategorized/](https://www.armstrongeconomics.com/uncategorized/fraud-of-education/)
12 [fraud-of-education/](https://www.armstrongeconomics.com/uncategorized/fraud-of-education/)). 60 per cent of graduates in the United States cannot find job in their field of
13 study ([http://www.forbes.com/sites/jamesmarshallcrotty/2012/03/01/most-college-grads-cant-find-](http://www.forbes.com/sites/jamesmarshallcrotty/2012/03/01/most-college-grads-cant-find-work-in-their-field-is-a-management-degree-the-answer/#7d02d4c46be0)
14 [work-in-their-field-is-a-management-degree-the-answer/#7d02d4c46be0](http://www.forbes.com/sites/jamesmarshallcrotty/2012/03/01/most-college-grads-cant-find-work-in-their-field-is-a-management-degree-the-answer/#7d02d4c46be0)). Furthermore, more and
15 more jobs out there does not require any degree whatsoever. Many people has been lied to so much
16 so that most General X and Millennial Generation cannot form a family of their own and stay home
17 with parents ([https://www.armstrongeconomics.com/history/americas-economic-history/clinton-](https://www.armstrongeconomics.com/history/americas-economic-history/clinton-made-student-loans-non-discharable/)
18 [made-student-loans-non-discharable/](https://www.armstrongeconomics.com/history/americas-economic-history/clinton-made-student-loans-non-discharable/) and [http://www.npr.org/sections/thetwo-way/](http://www.npr.org/sections/thetwo-way/2016/05/24/479327382/for-first-time-in-130-years-more-young-adults-live-with-parents-than-partners)
19 [2016/05/24/479327382/for-first-time-in-130-years-more-young-adults-live-with-parents-than-](http://www.npr.org/sections/thetwo-way/2016/05/24/479327382/for-first-time-in-130-years-more-young-adults-live-with-parents-than-partners)
20 [21 partners](http://www.npr.org/sections/thetwo-way/2016/05/24/479327382/for-first-time-in-130-years-more-young-adults-live-with-parents-than-partners)). Americans workers cannot compete with their Asian counterpart due to the fact most
22 Americans are debt ridden and have large overhead i.e., servicing their credit cards, rent or
23 mortgages and student loans ([http://michael-hudson.com/2016/03/the-inversion-of-classical-](http://michael-hudson.com/2016/03/the-inversion-of-classical-economics/)
24 [economics/](http://michael-hudson.com/2016/03/the-inversion-of-classical-economics/)). The United State Code Chapter 11, Section 523(a)(8) has prevented many people to
25
26
27
28

1 get their fresh start even a disabled woman living below the poverty line must repay student loans
2 and condemned her to debt bondage forever ([http://www.bloomberg.com/news/articles/2015-06-22/
3 courts-rule-that-disabled-woman-living-below-the-poverty-line-must-repay-student-loans](http://www.bloomberg.com/news/articles/2015-06-22/courts-rule-that-disabled-woman-living-below-the-poverty-line-must-repay-student-loans)).

4
5 27. For these reasons, the United State Code Chapter 11, Section 523(a)(8) is violates the
6 U.S. Constitution specifically the 5th Amendment, 9th Amendment, 13th Amendment and 14
7 Amendment, Constitutionality-Protected Religious Freedom, and violates the very essence of
8 Bankruptcy's 'Fresh Start' Policy; and thus, it must be overturned. Under the Void-Vagueness
9 Doctrine of Due Process Clauses of the 5th and 14th Amendment, if the law is not clear to average
10 person to understand it should be void. *See, e.g., Gentile v. State Bar of Nevada*, 501 U.S. 1030,
11 1048–51 (1991); *Civil Serv. Comm'n v. Nat'l Ass'n of Letter Carriers*, 413 U.S. 548, 576-79
12 (1973); *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603-04 (1967); *Cohen v. San Bernardino Valley*
13 *Coll.*, 92 F.3d 968, 970 (9th Cir. 1996). The Congress failed to define 'undue hardship' in 11 U.S.C.
14 §523(a)(8). Thus, it adversely harmed many bonafide people who seeks the bankruptcy protection
15 to discharge their student loans. To make matter worse, the Congress relied on the bankruptcy
16 courts to guess what the 'undue hardship' meant and this has lead to Department of Education
17 aggressive defenses, severe interpretation of law, and judicial law making. The primary job of
18 courts is to interpret the laws as suppose to making law. However, this is not the case and in re *Roth*
19 *v. ECMC* the Roth Court expressed its opinion that cases under 11 U.S.C. §523(a)(8) is subject to
20 trial de novo due to mixed laws and facts. "[The] ultimate undue hardship determination is reviewed
21 de novo because it is a mixed question, and mixed questions involve "the exercise of judgment
22 about he values that animate legal principles," *Bammer, 131 F.3d at 792* (emphasis added), it must
23 then follow that the three independent prongs are also mixed questions requiring de novo review. If
24
25
26
27
28

1 not, and they instead are simply factual determinations, the reviewing court, upon finding no clear
2 error as to each prong, would be bound to uphold the bankruptcy court as to the ultimate undue
3 hardship determination. Such a mechanical application of the prongs, however, would negate the
4 reviewing court's ability to "exercise judgment." Luckily the Roth Court concede the fact the the
5 law is too vague and made favorable judgement to Ms. Roth. Unfortunately many student loan
6 borrowers are not fortunate enough. Most courts still interpret narrow definition of 'undue
7 hardship. They are condemned to debt for life and making them as the property of the State or
8 slaves in other words. Their wages, tax returns, and even social and disability checks can be
9 confiscated without a court order and disallowing them to discharge their student loans. This
10 violates the 13th Amendment of the Constitution, which states that "Neither slavery nor involuntary
11 servitude, except as punishment for crime whereof the party shall have been duly convicted, shall
12 exist within the United States, or any place subject to their jurisdiction." Many American had
13 sacrificed their life to gain their freedom from slavery and at the conclusion of the American Civil
14 War has passed the 13th Amendment to prevent this happen ever again. It is very unfortunate the
15 history repeats again. The law violates Equal Protection Clause of the 14th Amendment of U.S.
16 Constitution. The courts have not applied equally to all debtors the undue hardship clause of 11
17 U.S.C. §523(a)(8). For instance, some courts heavily favor those who has dependents, did not
18 complete their college degree and disfavor debtors having income above the minimal levels, which
19 has significant impact on court's decision. It also violates the Constitutionality-Protected Religious
20 Freedom particularly the the common Judeo-Christian beliefs, which the Jewish and Christian faiths
21 prohibit condemning its members to everlasting debt. Lastly the 11 U.S.C. §523(a)(8) violates the
22 Bankruptcy's 'Fresh Start' Concept. The Bankruptcy Act of 1898 stated two major goals: (1) to
23 provide honest, hard-working debtors with a 'fresh start' in which they are free of oppressive debt,
24
25
26
27
28

1 and (2) to obtain fair and equitable treatment for debtors and creditors alike. The goal of the fresh
2 start policy is to help debtors restore financial health through bankruptcy. Without bankruptcy,
3 citizen could be saddle with a lifetime of debt that depresses their participation in society. When
4 creditors are calling, wage vanished, and more, debtors are likely to stop working and become
5 public charges. Unmanageable impacts families increases divorce, and in extreme cases, leads to
6 crime, suicide, violence, rebellion, and civil war. All these conditions have significant cost for
7 society. The fresh start policy helps to minimize these cost and bring the debtor back to economic
8 prosperity. That is the very reason that ancient civilizations like in Sumer, Babylonia, Ancient Israel
9 had cancel to debts to bring stability and prosperity among its people. Otherwise, America will
10 conclude like the Roman Empire did not cancel debt that brought its destruction. Thus, the Plaintiff
11 pleases the Court to overturn the United States Code Chapter 11 §523(a)(8).
12
13

14
15 **FIRST CAUSE OF ACTION 11 §523(a)(8):**

16
17 **PLAINTIFF IS ENTITLED TO DISCHARGE OF STUDENT LOAN BASED ON UNDUE**

18 **HARDSHIP**

19
20 28. Unfortunately the Plaintiff concedes that the current law can only discharge student
21 loans based on undue hardship. Thus, the Plaintiff petitions the Court to discharge all student loans
22 and is entitled to discharge of student loans based on undue hardship. The Plaintiff incorporates by
23 reference all allegation set forth in paragraph 1 through 27 above as though fully set forth herein.

24
25 29. Plaintiff is indebted to the Defendant to the Defendant in some amount, which is in
26 controversy, but may be approximately \$60,000 for education loans (which includes interest,
27 penalties, and bonus payments from Defendant(s) to Wall Street banks made by Defendant(s).
28

1 30. Requiring me to repay these debts will impose undue hardship on the Debtor as
2 contemplated under 11 U.S.C. §523(a)(8).

3 31. Based on Plaintiff's current income and expenses, the Plaintiff cannot maintain a
4 minim standard of living if forced to repay theses loans. He is 37 years of age. Currently he is
5 unemployed for more than four years since he was discharged from the United States Navy in 2012
6 and is homeless living temporarily with his mother in Stockton, CA. The Plaintiff believes that his
7 economic state of affairs, the fact of his age, and his health issues that he is facing are likely to
8 persist for a significant portion of the repayment period and he has made good faith efforts to pay
9 the loans.
10

11 32. The debtor has filed for bankruptcy for reasons other than just to discharge his
12 student loans.
13

14 33. The Bankruptcy Code changed significantly after ninth circuits of courts of appeals
15 including the Ninth Circuit adapted Brunner Test in *United States Aid Fund v. Pena (In re Pena)* F.
16 3d 1108, 1111-1112 (9th Cir 1998), which was developed by Second Circuit in *Brunner v. New*
17 *York State Higher Educ. Servs. Corp.*, 831 F.2d 395 (2d Cir. 1987). The following is a more
18 specific application of my personal facts to the three prongs of Brunner Test as adopted by this
19 Court. Under the Brunner test, a debtor seeking the discharge ability of a student loan must show
20 by a preponderance of the evidence that:
21

22 i. Based on current income and expenses, the debtor cannot maintain a
23 'minimum standard of living for himself and his dependents if forced to repay the loans;
24

25 ii. Additional circumstances exist indicating that this state of affairs is likely to
26 persist for a significant portion of the repayment period of the student loan; and
27

28 iii. The debtor has made good faith efforts to repay the loans.

1 34. Although the Plaintiff clearly entitled to the discharge of his student loan under the
2 *Brunner* Test, based on research to history and discourse of §523(a)(8), the Plaintiff also encourage
3 this Court to consider the views of Kansas Judge Berger in re *Geo. A Johnson* who articulated that
4 in re Polleys: the court refrained from adopting wholesale the totality of the circumstances test” and
5 criticized application of Brunner as being “overly restrictive” and failing “*to further the Bankruptcy*
6 *Code’s goal of providing a ‘fresh start’ for the honest but unfortunate debtor.*” (In re *A. Johnson, et*
7 *al v. ECMC*) 11-06250 (Bankr. D. Kan. Feb. 20, 2015); *EMCC v. Polleys* (in re Polleys), 365 F.3d.
8 1302, 1309 (10th Cir 2004). I hereby request this Court to consider all of my circumstances.
9

10 35. In re *Ackley v. Sallie Mae Student Loans, et al.* that court found both the *Brunner* and
11 the *Totality of Circumstances* are able to reach an undue hardship determination with only a slight
12 difference. Quoting Judge Frank J. Bailey:
13

14 “The Bankruptcy Appellate Panel for the First Circuit articulated the
15 totality of the circumstances test as follows:

16 The “totality of the circumstances analysis requires a debtor to: prove by
17 a preponderance of evidence that (1) his past, present, and reasonably reliable
18 future financial resources; (2) his and his dependent’s reasonably necessary
19 living expenses; and (3) other relevant facts or circumstances unique to the
20 case, prevent him from paying the student loans in question while still
21 maintaining a minimal standard of living, even when aided by a discharge of
22 other pre-petition debts”. *Lorenz v. Am. Educ. Servs.*, 337 B. R. 423, 430 (BAP
23 1st Cir. 2006)

24 The only significant difference between these is that under Brunner, the debtor
25 must establish that she made a good faith effort to repay the educational loans
26
27
28

1 at issue. When applying the totality of the circumstance test, the debtor's
2 efforts to repay may be considered, but evidence of those efforts (or lack thereof)
3 is not necessary dispositive. *ECMC v. Kelly*, 312 B.R. 200, 206-207 (B.A.P. 1 st Cir.
4 2004)

5 Under either test, the initial focus is on the debtor's current and future ability
6 to repay the student loan. But the totality of circumstance test allows the Court
7 to consider facts and circumstances unit to each case and to measure the impact of
8 those facts and circumstances on the debtor's ability to pay now and in the future.
9

10 While this inquiry would include the debtor's efforts to repay the loan, *I am not*
11 *persuaded that those efforts should rise to the level of a determination factor.*"

12 [Emphasis added] *Sanborn v ECMC* 431 B. R. 146 (D Maine 2011).

13
14 36. The Plaintiff has present the above information to demonstrate that difficulty remains
15 for the courts to select an appropriate test to determine the legislative intent. As stated previously,
16 this court has adopted the Three -Part *Brunner* Test, and as such the Plaintiff presents the factors
17 later in the paragraph.
18

19 **Background Facts**

20 37. My name is Jaime Ylasco Clavito. I am the Plaintiff in this adversary proceeding. I
21 am 37 years old, unemployed and homeless, single never married, never had any children.
22

23 38 I have been unemployed since I discharged from the United States Navy on
24 September 28, 2012. That was the last time I received full month's salary from the Department of
25 Defense. I was honorably discharged from my military service.
26

27 39. Mother and I used to live with my aunt (sister of mother)'s house in San Diego,
28 California. My mother was given authority and custody of taking her house. After my first tour in

1 the U.S. Navy completed, I moved with my mother and I was given the permission to live in my
2 aunt's house in 2012. However, my mother had constant feud with my cousin due to his
3 homosexuality and wanting his partner live in their abandoned home, and thus there were constant
4 tension between my mother and cousin. My aunt and uncle visited San Diego coming from the
5 Philippines in March 2016, they decided that it is time for us to move. They told us my mother has
6 been living in their house more than five years and I have been living in their house since 2012,
7 they had it enough that they helped us already. In short, we have been kicked out of the house
8 worrying no where to go. Fortunately my aunt was kind enough and secretly helped my mother to
9 buy her mobile home in Stockton, California.
10

11
12 40. After my mother left and moved to Stockton, California, I left living with my cousin
13 and his partner for the mean time. Months after I moved and I lived from places to place i.e., from
14 hostel to hostel and recently my mother's mobile home in Stockton, CA. I am currently temporarily
15 living with her and I know that I cannot stay with her forever.
16

17 41. I filed Chapter 7 Bankruptcy on March 14, 2016 to seek relief of debts owned to
18 unsecured debt holders approximately \$ 75,000 including the student loan. In fact I have filed
19 Chapter 7 twice in the past to get a fresh start due to unforeseeable circumstance had happened. In
20 2001 I filed 1st Bankruptcy because my mother had borrowed money on my credit card to help her
21 to open her first and last children clothing store in Manteca, California. I was told that I would be
22 paid, but her business failed due to lack of customers supporting her business and the income was
23 almost nil. I know that I would not be paid back and I also had educational expenses while I was
24 attending junior college at San Joaquin Delta College in Stockton, California. I was receiving Pell
25 Grant at the time and it was not enough to pay off the credit card debt. Thus, I filed bankruptcy and
26 my debt was extinguished. However, I filed second bankruptcy after loss my first job i.e., Premium
27
28

1 Audit Technician at American International Group (AIG) in San Francisco (after graduating from
2 California State University, Sacramento.) I was not able to discharge my debts due to premature
3 filing of the bankruptcy, which was 10 years at the time. Eventually I made settlement with credit
4 card companies and paid credit card debts including 95 percent of the student loan (I incurred in
5 completing my bachelor's degree) while I was serving in the United States Navy.
6

7 42. The totality of circumstance of my life must be disclosed here for the court to grasp
8 the certainty of hopelessness that I currently feel, and the uncertainty will be in regards to the
9 quality of life I will have in the future.
10

11 **Personal Summary of My Circumstances**

12 43. I am 37 years of age, living on VA compensation which the total indemnity I receive
13 from the Department of Veterans Affairs is \$1,758.78 per month. I am currently at 80 per cent
14 disability rating according to the Department of Veterans Affairs. I was notified in July 2013 with
15 this rating. Please see exhibit I. I have military service connected disability which are Major
16 Depressive Disorder without Psychotic Feature, hemorrhoids, left ankle sprain, lower back pain
17 with degenerative arthritis, and tinnitus. I am asking the Veterans Affairs to increase my disability
18 rating to 100 per cent due to following disability Carpal Tunnel, Degenerative Retina, Erectile
19 Dysfunction, Nose bleed, Joint Pain, Anxiety Condition, Frequent Urination, and Unemployability.
20 Please see exhibit 2. In addition, I applied for the Security Disability Benefits and my application
21 was denied. I am going to appeal in the Administrative Court and requested for hearing about my
22 case.
23
24

25 44. Since I was stationed in Naval Air Facility, Atsugi, Japan I was there when the big
26 earth quake, tsunami, Fukushima Daiichi Nuclear Power Plant explosion happened. The Japanese
27 Government and the United States Navy denies the radiation contamination was in extreme levels
28

1 and even the Department of Veterans Affairs did not acknowledged the fact that I was exposed to
2 radiation. I joined the Class Action Lawsuit against Tokyo Electric Company i.e., Lindsay Cooper
3 v. Tokyo Electric Power Co., No. 15-56424 and the lawsuit is at the 9th Circuit Courts of Appeals
4 deciding whether not to proceed hear in the U.S. ([http://www.ca9.uscourts.gov/media/
5 view_video.php?pk_vid=0000010155](http://www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000010155)).
6

7 45. I immigrated to the United States when I was 17 years old on January 30, 1998. I
8 had full of life and I thought I can leave every bad things had happened to me in the Philippines. I
9 had bad children memories and painful teenage years which I spent almost alone most of the time. I
10 was studying at the time as Freshman year in the Philippines. When I came here in the U.S. I
11 wanted to start to go to school again, but I was advised that I have to wait a year to gain California
12 residency in order to take advantage of lower student tuition. I have live all my life in poverty and I
13 thought that education was my only way out of the poverty.
14

15 46. My parents were well off back then but there was time that I wish things never
16 changed and never happened. My father gambled all the family's fortune and ruin basically
17 everybody's life and I was greatly affected. I was living from one relative to next. Through the
18 years it was struggle for me to recover from the tragedy and made me become who I am today.
19

20 47. Coming to the U.S. was a dream come true and I prayed so hard to God that I will be
21 given a chance to change my life. Like most immigrants I found myself having a full time job in
22 Blockbuster Video in South San Francisco, California as customer service at \$6.75 per hour.
23 However, I did not stay in the job very long since I have been wanting to complete my education to
24 get better paying jobs. I started to enroll in City College of San Francisco and took some college
25 courses. However, I did not stop working while going to school. I was working for W. H. Smith,
26 hotel gift shop as sales associates, in San Francisco to finance my education and received some
27
28

1 financial aid from the college. I was receiving \$7.50 per hour. At some point I applied another job
2 as cashier in Walgreens at Embarcadero, San Francisco making about the same rate.

3 48. At one time I had fight with my mother. I was sad at time tried to commit suicide by
4 overdosing tetracycline. However, medicine did not worked. Life goes on and I am still alive.

5 49. When my mother and my step-father at the time decided to move to Lathrop,
6 California in 1999. I quit my jobs in San Francisco and moved together with my mother, my sister
7 and my step-father. I enrolled in San Joaquin Delta College to continue my education. Every
8 summer break I had a chance to work as cashier at the Shell gas station full time and some times
9 part-time when the fall or spring semester came back in full swing. I tried to make ends meet and
10 financing my education as much as I can. Even studying at UC Davis and California State
11 University, Sacramento I never stopped working as part-time cashier at gas stations and Fruit Yard
12 in Modesto, California. All my life I have dedicated to my studies and sometime it was very hard
13 for me that my family was not supportive of me going to school. I spent so much time in school
14 and I did not have social life. I was full time student taking 18 units per semester, and it was heavy
15 load. It took some toll that I had some nervous break down. I sought for counseling due to the fact
16 I had suffered from depression, but I did not really know that it eventually became severe and it will
17 affect my entire life.
18
19
20

21 50. I tried to make friends in school but I ended up alone. I tried to reach out to
22 everyone, but nobody was there for me. I found that making friends is one of the difficult things I
23 experience in life. I always feel alone and deep sadness that I could not explained.

24 51. After graduating college, I search for jobs and landed a job in AIG in San Francisco,
25 California as a Premium Audit Technician. It was great I found that job however the commute from
26 Central Vally to Bay Area was way too stressful and it took me two or two and half hours to go to
27
28

1 work and another two or three hours to come back to Manteca, California. I was making \$32,000
2 per year from 2005 to 2006. I really want to move back to San Francisco to lessen the commuting
3 hours but to no avail. Everything was expensive in San Francisco, and I could not afford to pay the
4 rent alone with the salary I was receiving working at AIG not including the living expenses such as
5 food, gasoline and BART fare. After 11 months on the job, I finally gave my resignation letter and
6 searched another job much closer in Manteca, California.
7

8 52. From 2006 to 2007, it was difficult transition for me living in Central Valley
9 California. Job was very scarce and I sent over 400 resume in Manteca, CA; Stockton, CA;
10 Sacramento, CA and even I was thinking to go back to San Francisco to get another job even though
11 I hated to work there because of the commute. Since my mother worked as realtor in Central
12 Valley, she asked me if I could work a realtor with her broker that I might get some real estate deals.
13 I studied for the real estate agent and pass the DRE's test. However, I worked as assistant to the
14 broker instead. I was not making any money and I have been unemployed for almost a year.
15
16

17 53. Following my mother's suggestion to join the military, I called recruiters from the
18 U.S. Air Force and the U.S. Navy. My mother was pressuring me to find job as soon as possible
19 because time is money. The U.S. Air Force recruiter was working so slow and I waited for them to
20 respond in two weeks - nothing happened. On the other hand, the U.S. Navy recruiter called me
21 and asked me to see if I could take the Armed Services Vocational Aptitude Battery or ASVAB test
22 and possibly sign the contract with them. I took the test and next thing I know I signed the contract.
23 I also inquired if I could become a Naval Officer since I completed my bachelor's degree recently.
24 They told me I was not competitive enough but I did not realize later that I would not be given a
25 chance to rise above the enlisted ranks. After several months waiting to be shipped, I finally arrived
26 in Recruit Training Command in Great Lakes, Illinois.
27
28

1 54. My military career was like a roller coaster, and there were ups and downs. In the
2 first few months after the first duty station in North Island, CA , I had a crush injury on my right
3 middle finger. I had to be put on light limited duty. Working in my previous helicopter school
4 command, it was an interesting one. I was constantly ostracized, told to take trash, and I could
5 hardly get along with my chief and other people. I was Petty Officer Third Class or E-4 most of my
6 career in the Navy and I tried my best to serve the needs of the U.S. Navy. I attempted to apply for
7 Officer Candidate School and every time I tried I was always been shot down. I did not believe
8 anybody like me there at all. They always told me that I was not competitive enough. I followed
9 again the advise of my mother to prove them wrong and enrolled in National University to embark
10 in the masteral program. I completed the masteral program in 2010 and I still did not get noticed.
11
12 People were becoming more jealous since most enlist personnel including my chief has only have
13 high school diploma.
14

15 55. In August 2010, I went to Japan and I thought I would not like it because the fact that
16 Japan was the enemy in WWII. I was wrong and I enjoyed every minute of it stationing in Tokyo
17 until the 7.0 earth quake, tsunami, the Fukushima Daiichi Nuclear Power Plant explosion happened
18 in March 2011. Everything has changed. Operation Tomodachi and constant deployment very three
19 or four months was very stressful. It took some toll to the point that I am having depression,
20 anxiety and anger issues. The atmosphere in my last duty station was so toxic that I wanted to kill
21 my chief but I did not tempted to do it. Somebody told me it was not worth it. I constantly calling
22 my mother and told my situation was. I was always seeking counseling from Naval Hospital
23 Yokosuka and Naval Medical Clinic Atsugi, Japan about my depression, anxiety, anger at my
24 working condition and with my co-workers. I could not get along with my current workers due to
25 the fact they derelicted their duties and I tried to tell my chief and others - not a single soul gave a
26
27
28

1 damn. In the end, they gave me a ‘significant problem’ rating in my final evaluation and
2 recommended me not to re-enlist. Despite all things had happened I received an honorable
3 discharged. It was catch-22.

4 56. After discharging from the military service I thought my depression, anxiety, and
5 anger would fade away and living as civilian could be good right? I was wrong again. Life was
6 tough in the military and it is not any different in the civilian world. Prior to leaving the military
7 service, I attended TAPS Class, which entailed resume writing seminars, mock interviews, and
8 know your rights as a veteran, etc. I even attended similar seminar in Veterans Association of North
9 County in Oceanside, California after I have been out of the U.S. Navy. I sent out more than 400
10 resumes out there in the job search engines like Monster, Indeed.com, LinkedIn, etc. I also tried to
11 networking with other job seekers to seek what jobs I can find. I also talk to recruiters at the career
12 fair, and at one time there was a gentleman who wanted to recruit a financial analyst. I gave my
13 resume and interviewed me asking my experience. I did not have any financial experience but I
14 want to the job so badly because this is one of things I wanted to do working in the investment
15 banking. After few minutes of interview, he told me bluntly that I did not have any experience can
16 hindrance for me. I only have few job experience with the exception to the military servicing 5
17 years and 4 months. I sent so many resume with few interviews, and there was not a single bite. I
18 was receiving unemployment benefits in the amount of \$1,500.00 per month from 2012 to 2013.
19 However, it did only last a year. By the time I wanted to extend for another year, the EDD denied
20 my application.

21 57. I tried to work as Commercial Realtor, Residential Realtor and even working at State
22 Senator Joel Anderson’s Office in El Cajon, California as an intern. I could not stay on the job due
23 to that fact there was no regular pay check coming in and I am running out of money fast. I’m

1 trying to sell real estate but I constantly having anxiety attacks and other issues. I was fired at the
2 Rosano Partnership because I could not get along with my manager even though I spent so much
3 time trying to learn the job. I also tried work alone at Keller Williams Realty in Chula Vista,
4 California. Once I again tried to network to boost my presence and get to know other professionals
5 in the industry. I also tried to establish businesses of my own i.e., Clavito, Inc and Clavito Financial
6 and Real Estate Services and hoping that I could buck the trend of rising real estate market at that
7 time. In the end, I run out of my money and my depression kicked in again. Nobody wanted to
8 work with me and I was hungry with business deals. I could not do my job and my business failed.
9 I spent so much time, energy, and money and I got empty handed. No income, nada.

10
11
12 58. By August 2014, I am out of job and I have been sending out resume again and there
13 was no bite.

14 59. In November 2014, I tried to commit suicide because I had an argument with mother
15 and I felt very hopeless that I did not want to live anymore. Once I again I tried to overdose myself
16 with Mirtazaphine to solve my misery. I could not bear to live another sad day in my life.
17 However, the drug did not work again. After the incident, I sought for medical help from the VA
18 hospital in La Jolla, California. In the few months, I sought for outpatient therapy which it entailed
19 one-on-one counseling. My counselor gave me suicidal prevention plan and gave me a copy of it
20 and I was ordered to follow it.

21
22
23 60. I could not work due to the fact that I was on medication all the time and the effects
24 of Mirtazaphine always put me on sleep. By the time I wake up my day was half gone. I tried to
25 resist no taking my medicine so that I can have some normalcy. My therapist kept insisting that I
26 need to take my medicine since I have been depressed for so long. I tried but I kept resisting
27 because of the fear of side effects of psychiatric drugs outweighs the benefits.

1 61. I am still seek for counseling and some medicine and I believe my condition will not
2 improve. I also fear that the effects of radiation has been severe and most former Navy personnel
3 who served in Operation Tomodachi in Japan also have similar symptoms such as depression,
4 hemorrhoid, etc.

5 62. I lost my car this year due to mechanical failure. It would cost me \$7,000 dollars to
6 repair, which is much more than the value of the car. It was not worth it and was too expensive for
7 me to repair the engine and the transmission of my former car. I do not have any car and it will be
8 much to difficult for me to move around town and going to medical appointments. I only rely on
9 my mother to borrow her car.
10

11 63. Without any income I could not pay minimum payment on my credit cards, and I ask
12 for the income based plan on my student loan. What normally I would pay for student loan is \$2,500
13 which I do not have. In October 2015, I sought for help and trying to ask if I can hire an attorney to
14 help me with my bankruptcy. I made inquiry and I found most bankruptcy lawyers charge between
15 \$1,000 - \$1,400 for filing the Chapter 7 Bankruptcy alone not including the bankruptcy filing fee. I
16 was broke and I could not afford to pay any lawyer. I sought for help at the University of San Diego
17 legal clinic, Thomas Jefferson legal clinic and Legal Aid of San Diego. Nobody could help with my
18 credit issues and they are not specialized in the bankruptcy laws. One of the professors referred me
19 one of attorney who does pro bono. However when I ask the attorney if I can discharge my student
20 loan and she said no. I made my own research and I found I could discharge my student loan under
21 undue hardship. I told that attorney what I found and she told me that she never take any clients
22 who intends to seek a bankruptcy discharge of student loans. With attorney's cold shoulders, I ended
23 up on my own searching who can help me with the bankruptcy. I sought for other attorney, but I
24 could not pay what they asking for - \$5,000 for retainer alone not including the attorney's fee,
25
26
27
28

1 bankruptcy filing, etc. They said “good luck” and said that I should settled with the Department of
2 Education or apply for administrative discharge of student loan i.e., the Total and Permanent
3 Disability (TPD) discharge. Thus, I decided to file this bankruptcy case as pro se and continue this
4 adversary proceeding to seek discharge ability of student loan under 11 U.S.C. section 523 (a)(8).
5

6 64. In June 2016, I applied for TPD for cancellation/forgiveness of my student loan debt
7 with the Department of Education. However, I was denied discharge by the U.S. Department of
8 Education per written letter (see exhibit 3). I called ask why I was denied for the TPD. The
9 customer service representative told me that their program requires 100 per cent disability rating
10 from the VA or totally disabled based on individual unemployability. I tried to apply again but I
11 decided against it because I am trading from one debt to the tax liability as per the IRS income
12 recognition provision. This is the antithesis of the bankruptcy.
13

14 65. Whenever I lie on my sleeping bag, I always think how can I pay off this student
15 loan with this enormous amount. Plus the idea that I could never get out from this debt has once
16 again intensified my depression, anxiety and feel of hopelessness. I always ask how I could spend a
17 day well without any debts hanging on my neck. I think the only to discharge this is to ask the
18 Court to rescind the law or the pass three prongs of the *Brunner* Test.
19

20 66. Based on what the I have researched there is a myriad of cases proving of undue
21 hardship. The subject has been very murky and the ruling of this law is not uniformed. It has been
22 controversy leaving many courts and debtors to ponder how the law could be applied, repealed or
23 replaced with better laws to avoid misjudgment.
24

25 67. I also request the Honorable Court to consider the Totality of the Circumstance Test.
26 There is a lot more involved in my situation which requires a look at all factors; and like hundred
27
28

1 thousand of cases, requires a de novo look at the totality of circumstances as they apply to undue
2 hardship. Please see *In re Bronsdon*, 435 B.R. 791, 800 (B.A.P. 1st Cir. 2010).

3 68. I am filing this complaint Pro Se. I cannot afford an attorney. I am not a lawyer, and I
4 never had ventured into filing adversary proceeding before, I have had to prepare this case without
5 legal advice or assistance. I pray the Court's indulgence and the Court's patience in my presenting
6 my case. My preparation of this filing includes several months of research and study. I will do my
7 best to persuade the court that hist complaint has merit and it filed within the law and that I am
8 capable of representing myself.
9

10 **THREE PART BRUNNER TEST: PART I**

11 **I CANNOT MAINTAIN, BASED ON CURRENT INCOME AND EXPENSES**

12 **A MINIMAL STANDARD OF LIVING**

13 **FOR MYSELF IF FORCED TO REPAY THE LOANS.**

14 69. As set forth below, the Plaintiff cannot maintain, based on current income and
15 expenses, a minimum standard of living for myself if forced to repay the student loans.
16

17 70. The loan debt is approximately \$60,000 and the Plaintiff cannot afford to pay to
18 monthly payment of \$2,500 per month. Therefore, the debt recapitalize and continue to grow.
19

20 71. As stated before, the Plaintiff am homeless and he does not have a car. He only live
21 temporarily with my mother. The Plaintiff does not think he cannot live here very long. At some
22 point he have to move and has to live from hostel to hostel.
23

24 72. The Plaintiff has physical and mental disabilities such as Major Depression Disorder
25 Back Pain, etc. Please see *In re Gobin*, 2006 WL 3885136 (Bankr. E. D. Ky. May 15, 2006) (taking
26 judicial notice of National Institute of Mental Heal publication on symptoms of depression); *In re*
27 *Richart Allen Precht v. United States Department of Education et al*, Bankruptcy case 15-13558,
28

1 Adversary Case No. 15-01167-RGM; *In re Bonn v. Sallie Mae, Inc et al.* Case No. 11-08757-PB7,
2 Adv. No. 11-90413-PB. He is currently apply for unemployability to increase from 80 per cent to
3 100 per cent disability from the VA and the social security disability. The Plaintiff does not have
4 any source of income beside the indemnity in the amount of \$1,758.78 he received from the VA.
5 Also please see *In re Pena*, 155 F.3d 1108 (9th Cir. 1998) (debtor's testimony about mental
6 impairment, combined with evidence of Social Security disability award related to condition, are
7 sufficient evidence to establish medical condition).
8

9 73. The Plaintiff does not have a car and he cannot afford to buy a car. As stated before
10 the Plaintiff's car was lost to mechanical failure and he cannot afford to pay \$7,000 worth of
11 repairs. The Plaintiff have been relying on my mother to borrow her car to get to places. The
12 Plaintiff uses public transportation whenever he is in major metropolitan cities.
13

14 74. The Plaintiff does not not have any significant assets to repay the student loan. The
15 Plaintiff does not have any retirement plans such as Roth IRA, Traditional IRA, 401(K) or Thrift
16 Savings Plan (TSP) from the government, savings, real estate property, bonds, etc. The Plaintiff
17 owned some stock earlier this year and sold to use the funds to repair his ex-vehicle earlier this year.
18 Plaintiff's 2001 Chrysler 300M has more than 180,000 miles and it had been running in poor
19 condition. After the Plaintiff had his car repair, the car broke again and this time around he let go
20 his car and sold to scrap with the amount of \$100 less fees. The Plaintiff only owns some
21 insignificant stock options which is only worth more than \$300.00.
22

23 75. The Plaintiff lives on the paycheck to paycheck and only relied on the indemnity he
24 receives every month. It is very difficult to break even as rising inflation in food and groceries,
25 rent, transportation, dental and other expenses. He canceled his gym membership and considered
26 other alternative to do his exercise. The Plaintiff only buys what he needs due to the fact that he has
27
28

1 limited resources available to him. Living in San Diego, California is becoming unaffordable to the
2 Plaintiff like anywhere else in California i.e., San Francisco, Los Angeles, etc. The Plaintiff/Debtor
3 could not maintain a minimum standard of living whose monthly income was \$1758.78, and
4 monthly expenses almost the same were unable to maintain minimum standard of living and also
5 pay off student loan of approximately \$60,000. see *In re Alderete* (10 Cir B.A.P. 2004) 308 BR 495,
6 500; *In re Ivory*, 269 B.R. 890, 899 (Bankr. N.D. Ala. 2001).

8 76. The Plaintiff lives in hostels to hostels from time to time and eats healthily at
9 affordable restaurants whenever he can living in cities. He cannot afford to pay monthly rent
10 renting a house in San Diego, and tried to budget his income against his expenses. The median
11 income in San Diego is \$63,400 and the renting apartment for about \$1,500 per month according to
12 the City of San Diego (<https://www.sandiego.gov/housing/resources/whatis>). My current indemnity
13 receiving from the VA is far below the median income in San Diego.
14

15 77. The Plaintiff is 37 years of age and he has been out of the U.S. Navy and workforce
16 for more than four years. He sent out over 400 resumes and networked with other job seekers and
17 professionals to enhance his career; however, there was nobody interested to hire him or deal
18 business with him. His economic and social condition has been severely impacted with the prolong
19 recession, declining physical and mental health, limited marketable skills, limited circle of family
20 and friends, and scarce resources.
21

22 78. The Plaintiff does not have any family, relatives, or friends to give assistance and
23 help him morally and financially. The Plaintiff's mother has severe medical condition such as
24 fibromyalgia, high blood pressure, back pain, rheumatoid arthritis and received public assistance
25 Medi-Cal and food stamp.
26
27
28

1 79. The debtor in the *Roth* case was a woman suffered from several chronic medical
2 conditions including a thyroid condition, diabetes, macular, degeneration, cataracts, high cholesterol
3 and depression. Roth never made any voluntary payment to her student and was in default. The
4 Department of Education garnished her wages and disability benefits. The Court determined that
5 she met all three parts of the *Brunner* Test and discharged all of Roth’s student loan debt. See *Janet*
6 *Rose Roth v. ECMC*, BAP No. AZ-11-1233-RnPaki, Bk no. 09-00317-RJH, Adv No. 10.

8 80. The debtor in *Precht* case was a former military member suffered from major
9 depression and acute back problems living on SSDI and small government pension, and without any
10 assets and property owing approximately \$130,000 to Department of Education. Precht has
11 defaulted his student loans. The Court determined that he met all three parts of *Brunner* Test and
12 discharge all of Precht’s student loans fully. *Richart Allen Precht v. United States Department of*
13 *Education et al*, Bankruptcy case 15-13558, Adversary Case No. 15-01167-RGM.

15 81. The debtor in *Barrett* case was an attorney who has sent over 600 resumes and could
16 not find job in his profession. He also has small business of himself but unable to expand due to
17 severe economic recession and owing the Department of Education approximately \$330,000. The
18 Court determined that he met all three parts of Brunner Test and discharge his entire student loans.
19 *Kevin Francis Barrett v. United States Department of Education*. Bakruptcy Case No: 14-43516
20 CN7, Adv no. 14-04161.

22 82. The debtor in *Nys* case was healthy employed 51-year-old woman making \$40,000
23 per year, and she owned her own home. The Court determined that Nys met all three parts of the
24 Brunner Test and discharged almost all of Nys’ student loan debt. See *In re Nys*, 446 F.3d 939 (9th
25 Cir. 2006).

1 87. The plaintiff is 37 years old and is getting closer to his 40's. The Plaintiff had
2 limited experience in the business world and had not found any jobs in his field of his study. The
3 only longest employment he had was when he was in the U.S. Navy. His experience in other
4 industries such as insurance and real estate are not credible enough to have gainful employment. He
5 sent over 400 resumes already and there was no bite. Most businesses hire younger people instead
6 of people who has 40 years of age. Prolonged severe U.S. economic depression exacerbates getting
7 him being employed in the near future. After pass his 40's the chances of being employable is very
8 slim or nil. Furthermore, his depression, back pain and medical condition can prevent him getting
9 hired and his medical condition continues to persist.
10

11 88. After discharging from the United States Navy in 2012, the Plaintiff was diagnosed
12 with Major Depression Disorder without Psychotic features, tinnitus, back pain etc. In addition, the
13 Plaintiff constant went to hospital visits for check up and treatment for his medical illnesses and it
14 will likely be ongoing during life of the repayment period of the loan. These medical conditions
15 occurred when he was in the line of service and particularly he suffered from depression in his
16 younger years. These are barriers for me to obtain a stable and gainful employment in the future.
17

18 89. 60 per cent of the student could not find jobs in their field. If the Plaintiff were to
19 take a low part-time without discharging the student will impose due hardship and it violates the
20 13th Amendment of the U.S. constitution condemning him to debt. Thus, all his B.S. degree and
21 masteral degree had earned in the past are worthless. There is no point of continuing his education
22 and most schools are mostly diploma mills.
23

24 90. Mental Acuity and Depression issues severely affected Plaintiff's quality of life. The
25 Plaintiff has trouble concentrating and always been getting sidetracked. The Plaintiff tried to
26 mitigate unpleasant memories in the past and suicidal idealization, but it kept coming back to him.
27
28

1 His sleeping patterns are irregular in nature. The Plaintiff tend to stay up late at night and then not
2 get out of bed early. Some days he never leave his room and the place he is staying. He tried to
3 reach out to other people but to no avail. He does not have any friends and felt isolated most times.

4 91. At this state and stage of my life it would be futile for me attempt to pay off this
5 enormous debt “[T]he law does not require a party to engage in futile acts.” *Roth v. Educational*
6 *Credit Management Corp, In re Roth*, 490 B. R. 908, 920 (9th Cir. BAP 2013).

7
8 **BRUNNER TEST: PART THREE**

9 **I MADE A GOOD FAITH EFFORT TO REPAY THESE STUDENT LOAN DEBTS.**

10 92. As set forth below, I made a good faith effort to repay these student loans.

11 93. I made payment from 2008 - 2012. I have paid almost in full after finishing my
12 bachelor’s degree and made some payment on my masteral degree prior to conclusion of my
13 military career.

14 94. In *Roth v. Educational Credit Management Corporation (In re Roth)*, the Bankruptcy
15 Appellate Panel of the Ninth Circuit Court of Appeals concluded that Roth has complied with the
16 *Brunner* Test’s third prong requiring that debtors show good faith with regard to their student loan
17 repayment obligations, even though Roth had never made a single voluntary payment in over a
18 period of approximately 20 years. The Court concluded that Roth had shown good faith simply by
19 living frugally and attempting to maximize her income over the years. *In re Roth*, 490 B. R. 908
20 (9th Cir. 2013).

21 95. Nor in the Court’s view did it make sense for Roth to enroll in a 25-year income
22 based repayment plan given the virtual certainty that she would never pay off her student loan
23 balance. “[T]he law does not require a party to engage in futile acts,” the Court observed. *Id.* at
24 920. In Bankruptcy Appellate Court’s view, **“Congress could not have intended such a lengthy,**

1 **empty commitment as requirement for a determination of undue hardship.”** *Id.* (emphasis
2 supplied).

3 96. Attached Partial Payment History (exhibit 4) to the Navient Solutions or Department
4 of Education.

5 97. The Plaintiff refused to participate in Income Base Payment plan due to the fact that
6 after 25 years the student loan is forgiven and it will be come tax liability as per IRS rules. The
7 Plaintiff also refused to re-apply for the administrative loan discharge, which afford to TDP. Similar
8 Plaintiff also refused to re-apply for the administrative loan discharge, which afford to TDP. Similar
9 25 years student loan forgiveness that one will exchange from debt to the next.

10 **FRESH START**

11 98. I seek access to the “fresh start” assured to all honest debtors afford in the
12 Bankruptcy Reform Act of 1989. “ Traditional bankruptcy policy has maintained that society
13 benefits when honest and hopeless debts are relived of their debts and granted a fresh start.” *The*
14 *Fresh Start Policy in Bankruptcy Law*, 98 Harv. Rev. 3893, 1420 (1985). This is exact what the
15 Supreme Court’s ruling in re *Local Loan Co v. Hunt* 292 U.S. 234 had intended and continue to be
16 the center of the Bankruptcy policy not §523(a)(8).
17
18

19 **SECOND CAUSE OF ACTION:**

20 **PLAINTIFF IS ENTITLED TO DISCHARGE OF STUDENT LOANS**

21 **BASED ON PRINCIPLES OF EQUITY**

22 99. Plaintiff incorporates by reference all allegation set forth in paragraph 1 through 98
23 above as thought fully set forth herein.

24 100. In *In re Roth*, 490 B. R. 908 (9th Cir. BAP 2013), the Ninth Circuit Bankruptcy
25 Appellate Panel drew on equity principles when applying the Brunner test to a student loan
26 bankruptcy case. “[T]he law does not require a party to engage in futile acts,” the Court ruled in a
27
28

1 case in which was clear that forcing a student-loan debtor to make further student-loan payment
2 would be futile. *Id.* at 920. In the Ninth Circuit Bankruptcy Appellate Court’s opinion, “Congress
3 could not have intended such a lengthy, empty commitment as requirement for a determination of
4 undue hardship.”

5
6 101. In recent years, several bankruptcy court decision in the Ninth Circuit have applied
7 principles of compassion and practicality to student-loan bankruptcy case in accordance with the
8 equity principles express in *Roth*. See *In re Nys*, 446 F. 3d 938(9th Cir. 2006); *In re Scott*, 417 B. R.
9 623 (Bankr. W.D Wash., 2009); *Hedlund v. The Educ. Resources Inst., Inc. & Pa. Higher Educ.*
10 *Assistance Agency*, 718 F.3d 848 (9th Cir. 2013); & *In re Roth*, 490 B.R. 908 (9th Cir. BAP 2013).

11
12 102. In addition, in *Krieger v. Educational Credit Management Corporation*, 713 F.3d
13 882 (7th Cir. 2013), the Seventh Circuit Court of Appeals ruled that a 53-year old debtor was
14 entitled to bankruptcy relief and that her effort to obtain employment had been futile. The Seventh
15 Circuit implicitly acknowledged that the debtor’s age was a disadvantage to her in finding future
16 employment. *Id.* at 884-85.

17
18 103. Plaintiff believes that the fact set forth in this complaint and that will be further
19 elaborated at trial entitle him to relief from his student loans debts under §523(a)(8).of the
20 Bankruptcy Code as interpreted by equity principles as articulated by the Ninth Circuit Bankruptcy
21 Appellate Panel in *In Re Roth* in its interpretation of the three-part *Brunner* Test.

22
23 **THIRD CAUSE OF ACTION:**

24 **INJUCTIVE RELIEF SEEKING AN ORDER REQUIRING ALL DEFENDANT**
25 **CREDITORS TO SHOW THEY ARE THE OWNERS OF THE ALLEGED STUDENT**
26 **LOAN DEBTS AND REQUIRING THEM TO PROVIDE PROOF AND AN ACCOUNTING**
27

1 what my legal obligation to this entity might be. In a case such as this, attorneys representing
2 creditors of student-loan debtors should be held “to a higher standard of conduct” because the
3 danger of ‘robo-signing’ is real, as has occurred during litigation involving home foreclosures.
4 Jaime P. Hopkins & Katharine A Pustizzi, *A Blast from the Past: Are the Robo-Signing Issues That*
5 *Plagued the Mortgage Crisis Set to Engulf the Student Loan Industry?* 45 U.TOL. L. REV 239, 266
6 (2014).

8 **FOURTH CAUSE OF ACTION:**

9 **FULL DEBT RELIEF -BASED ON JULY 7TH, 2015**

10 **U.S. DEPARTMENT OF EDUCATION DIRECTIVE**

11
12 108. Plaintiff incorporates by references all allegations set forth in paragraphs 1 through
13 108 above as thought fully set forth herein.

14 109. Plaintiff/Debtor seeks “CAUSE” as to why this complaint DOES NOT satisfy the
15 Undue Hardship exception of §523(a)(8) based upon the Defendant’s own directives or policy letter
16 dated and published July 7th, 2015. (See exhibit 5).

17
18 110. In this 4th and final Cause of Action, Plaintiff/Debtor asks that the Department of
19 Education and all defendants who claim ownership to any amounts of said student loan debt agree
20 to dispense with litigation such as: to dispense from pre-trial hearings, interrogatories, discovery,
21 and other venues that would be unnecessary substance cost in time and resources of this Court.

22
23 111. This request is based on the letter signed by Deputy Assistant Secretary Lynn
24 Mahaffie dated on July 7, 2015: “loan holders will (need to) evaluate and weigh the cost of
25 opposing the borrower’s undue hardship claim in their decision about whether or not proceed with
26 opposition to the undue hardship discharge.”
27

1 112. The July 7th Directive Letter makes this additional statement in regards to the cost
2 of litigation. “Litigation in opposition to an undue hardship claim also has a cost to the Federal
3 Government.” Furthermore the letter reiterates this charge by stating: “Department regulations,
4 therefore, allow holders to balance the interest involved and avoid inefficient use of taxpayer
5 resources through protracted and unnecessary litigation.”

7 113. Based on the Defendant’s own directive, Plaintiff prays that this Court would
8 recognize that the Plaintiff has met all constraints of §523(a)(8), and in addition fall squarely in line
9 with Defendant’s own policy and directives to loan holders to discharge plaintiff’s loan as presented
10 by the defendant’s own letter of July 7, 2015.

12 114. The Defendant concluded it’s policy letter by stating: “All relevant facts must be
13 considered to protect the integrity and efficiency of the student loan program[...] the undue
14 hardship process in bankruptcy and the borrower (who) is typically in the best position to provide
15 the facts.”

17 115. The Plaintiff therefore adjures this Honorable Court and the Defendant to consider
18 this 4th Cause as a mean to discharge this student loan debt without the need for costly litigation
19 and procedural process, which in fact cost both Defendants, the Taxpayer, the Court, and the
20 Plaintiff’s time and money. The policy directive clearly states: “If this consideration lead to the
21 conclusion that repayment would impose an undue hardship, the holder should consent to or not
22 oppose the discharge...” (see exhibit 5).

24 WHEREFORE, the Plaintiff Debtor ask this Court to grant the follow relief:

- 25 1. For an Order declaring these student loan debt to be discharged;
- 26 2. For an Order to mask sensitive medical records and confidential records
- 27 3. For an Order to overturn 11 U.S.C. §523(a)(8) under judicial review;
- 28

1 4. Alternatively, for an Order for a sanction due to usurious in nature and
2 noncompliance, and an Order requiring Creditor(s) in this Action to submit proof that they are the
3 owners of the alleged debt and to provide a proof and a detailed accounting that shows how the
4 debt was calculated, how many payments were made, how interest was assessed, and the amount
5 and reasons for fees, assessment or penalties that were added to the original debt.
6

7 5. If the Court not granting immediate relief as state as above, then an Order requiring
8 Defendant/Creditors in this Action to prove the how Plaintiff's facts presented in this Adversary
9 Proceeding DO NOT MEET the U.S. Department of Education policy directives, DCL ID:
10 GEN-15-13, dated July 7, 2015.
11

12
13 DATED: October 27, 2016

Very Respectfully,

14
15 _____
16 Jaime Y. Clavito
17 In Pro Per
18
19
20
21
22
23
24
25
26
27
28