

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In re:	:	Case No. 23-20880 (JJT)
David M. Falvo,	:	
Debtor	:	Chapter 7
David M. Falvo,	:	A.P. No. 24-02022 (JJT)
Plaintiff,	:	
v.	:	
United States Department of Education and AidVantage,	:	
Defendants.	:	January 15, 2025

**UNITED STATES DEPARTMENT OF EDUCATION'S
ANSWER TO THE COMPLAINT**

The defendant, United States Department of Education (hereinafter "United States" or "ED"), through the undersigned counsel, hereby responds to the Plaintiff's Complaint (ECF No. 1) as follows:

I. NATURE OF THE CASE

1. The allegations set forth in Paragraph 1 of the Complaint contain a characterization of the action and are not allegations of fact to which a response is required.

II. JURISDICTION AND VENUE

2. The allegations set forth in Paragraph 2 of the Complaint are admitted.

3. With regard to the allegations set forth in Paragraph 3 of the Complaint, these contain a statement of jurisdiction and a characterization of the action and are not allegations of fact to which a response is required.

4. With regard to the allegations set forth in Paragraph 4 of the Complaint, these contain a statement of venue and are not allegations of fact to which a response is required.

5. The allegations set forth in Paragraph 5 of the Complaint contain a characterization of the action and are not allegations of fact to which a response is required.

III. PARTIES

6. The United States denies knowledge sufficient to form a belief regarding the allegations set forth in Paragraph 6 of the Complaint, and leaves Plaintiff to his proof.

7. The allegations set forth in the first two sentences of Paragraph 7 of the Complaint are admitted. The United States denies knowledge sufficient to form a belief regarding the last sentence in Paragraph 7 of the Complaint, and leaves Plaintiff to his proof.

IV. STATEMENT OF FACTS

8. With regard to the allegations set forth in Paragraph 8 of the Complaint, the United States avers that according to ED records, the total outstanding balance of the Plaintiff's federal student loans as of January 6, 2025, including principal and interest, is \$96,923.00.

9. The United States denies knowledge sufficient to form a belief regarding the allegations set forth in Paragraph 9 of the Complaint, and leaves Plaintiff to his proof.

10. The United States denies knowledge sufficient to form a belief regarding the allegations set forth in Paragraph 10 of the Complaint, and leaves Plaintiff to his proof.

11. With regard to the allegations set forth in Paragraph 11 of the Complaint, the United States avers that while the Plaintiff's underlying Stafford loans are provided with a six-month grace period before a payment is required, these loans were consolidated post-petition into a direct consolidation loan. The consolidation loan in question requires a payment be made within 60 days.

12. The allegations set forth in Paragraph 12 of the Complaint are admitted.

13. With regard to the allegations set forth in Paragraph 13 of the Complaint:

a. Paragraph 13(a) is admitted.

b. With regard to Paragraph 13(b), the United States avers that the consolidation loan in question, NSLDS #6, shows a 4-month forbearance dating from 08/02/2024 to 12/17/2024, totaling 137 days.

c. Paragraph 13(c) is denied.

d. Paragraph 13(d) is admitted.

14. The United States denies knowledge sufficient to form a belief regarding the allegations set forth in Paragraph 14 of the Complaint, and leaves Plaintiff to his proof.

15. The United States denies knowledge sufficient to form a belief regarding the allegations set forth in Paragraph 15 of the Complaint, and leaves Plaintiff to his proof.

16. The United States denies knowledge sufficient to form a belief regarding the allegations set forth in Paragraph 16 of the Complaint, and leaves Plaintiff to his proof.

IV. DETERMINATION OF DISCHARGEABILITY

17. With regard to the allegations set forth in Paragraph 17 of the Complaint, these contain legal conclusions and are not allegations of fact to which a response is required.

18. With regard to the allegations set forth in Paragraph 18 of the Complaint, these contain legal conclusions and are not allegations of fact to which a response is required.

19. The United States denies knowledge sufficient to form a belief regarding the allegations set forth in Paragraph 19 of the Complaint, and leaves Plaintiff to his proof.

20. The United States denies knowledge sufficient to form a belief regarding the allegations set forth in Paragraph 20 of the Complaint, and leaves Plaintiff to his proof.

21. The United States denies knowledge sufficient to form a belief regarding the allegations set forth in Paragraph 21 of the Complaint, and leaves Plaintiff to his proof.

22. The United States denies knowledge sufficient to form a belief regarding the allegations set forth in Paragraph 22 of the Complaint, and leaves Plaintiff to his proof.

23. The United States denies knowledge sufficient to form a belief regarding the allegations set forth in Paragraph 23 of the Complaint, and leaves Plaintiff to his proof.

24. The United States denies knowledge sufficient to form a belief regarding the allegations set forth in Paragraph 24 of the Complaint, and leaves Plaintiff to his proof.

25. With regard to the allegations set forth in the concluding section of the Complaint beginning "WHEREFORE", these allegations set forth Plaintiff's claims for

relief, and are not statements of fact to which a response is required. To the extent that a response is required, they are denied.

26. The United States denies each and every allegation set forth in the Complaint not previously admitted or otherwise qualified.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff is not entitled to a discharge of his federal student loans in this case. While Plaintiff's federal student loans were initially pre-petition debts, Plaintiff consolidated all of his pre-petition federal student loans after he filed for bankruptcy, and therefore his post-petition consolidation loan became a new post-petition debt. As such, his consolidation loan is not eligible for discharge through this adversary pursuant to 11 U.S.C. § 727(b), as it is not a debt "that arose before the date of the order for relief".

SECOND AFFIRMATIVE DEFENSE

Notwithstanding the United States' First Affirmative Defense, Plaintiff is not entitled to a discharge of pre-petition student loans unless he meets his burden of proving "undue hardship" within the meaning of 11 U.S.C. § 523(a)(8).

WHEREFORE, the Defendant, United States Department of Education, respectfully requests that this Court enter judgment in its favor and award Defendant such other and further relief as this Court deems just and proper.

Pursuant to Fed. R. Bankr. P. 7012(b), the United States consents to entry of final orders or judgment by this Bankruptcy Court.

Respectfully submitted,

VANESSA ROBERTS AVERY
UNITED STATES ATTORNEY

/s/ Lauren M. Nash

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David M. Falvo,	:	
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United States Department of Education and AidVantage,	:	
Defendants.	:	
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CERTIFICATION OF SERVICE

I hereby certify that on January 15, 2025, I electronically filed the foregoing **UNITED STATES DEPARTMENT OF EDUCATION’S ANSWER TO THE COMPLAINT** with the Clerk of the Bankruptcy Court for the District of Connecticut using the CM/ECF System. Electronic notification of such filing will be sent through that system to all registered participants. Notice of this filing will also be sent by first class mail to anyone unable to accept electronic filing on the Notice of Electronic Filing.

/s/ Lauren M. Nash

LAUREN M. NASH
ASSISTANT UNITED STATES ATTORNEY
FEDERAL BAR NO. CT01705