

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE Connecticut - Connecticut - Hartford**

In re: )

David M Falvo, )

Plaintiff(s). )

Case No. 23-20880  
Chapter 7

David M Falvo, )

Plaintiff, )

Adv. Pro. No. \_\_\_\_\_

v. )

UNITED STATES DEPARTMENT  
OF EDUCATION,  
AIDVANTAGE  
Defendant(s). )

**COMPLAINT TO DETERMINE DISCHARGEABILITY OF STUDENT LOANS**

Plaintiff, David M Falvo, by and through his attorney, Gregory F. Arcaro, brings the following complaint and alleges as follows:

**I. NATURE OF CASE**

1. This is an action to declare the Plaintiff's student loan debt to Defendant(s), the United States Department of Education ("US DOE"), dischargeable as an undue hardship under 11 U.S.C. § 523(a)(8).

**II. JURISDICTION AND VENUE**

2. On October 31, 2023, Plaintiff filed a voluntary 7 bankruptcy proceeding, Case Number 23-20880. Subsequently, Plaintiff filed a Motion to Convert Case from Chapter 13 to a Chapter 7 proceeding. The Plaintiff received his Discharge on July 17, 2024 after successfully overcoming the United States Trustee's Motion to Dismiss pursuant to 11 U.S.C. §707(b)(1) for Abuse Under 11 U.S.C. §707(b)(2) For Presumed Abuse. The instant Chapter 7 Proceeding was closed on August 1, 2024. A Motion to Reopen the Chapter 7 was filed on November 6 2024 with ECF #72. The Order granting the Motion to Reopen was entered on December 6, 2024, ECF #78.

3. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157. This is an action to determine the dischargeability of a debt under 11 U.S.C. § 523(a)(8), and as such, this is a core

proceeding under 28 U.S.C. §157(b)(2)(I). The Plaintiff consents to the Bankruptcy Court's entry of a final order.

4. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1409(a).

5. This is an adversary proceeding filed pursuant to Fed. R. Bankr. P. 7001(6).

### III. PARTIES

6. Plaintiff is a resident of the State of Connecticut.

7. Defendant is a qualifying governmental institution in the business of making, insuring, and guaranteeing student loans. Defendant's mailing address is United States Department of Education, 400 Maryland Ave., SW, Washington, DC 20202. Aidvantage is the official servicer of the student loan with an address of PO Box 300001, Greenville, TX 75403-3001.

### IV. STATEMENT OF FACTS

8. Prior to filing bankruptcy, in the course of Plaintiff's education, Plaintiff borrowed approximately \$88,961.00 from Defendant(s) in order to finance Plaintiff's education. The current outstanding balance of the student loan(s) is \$95,350.00. A list of the loans with current balances is attached as Exhibit #1.

9. Plaintiff incurred the student loan(s) while attending University of Bridgeport and University of Saint Joseph's where Plaintiff was pursuing a Masters degree. No payments were due on these loans while Plaintiff was a full-time student.

10. Plaintiff left his course of study in October 2023 and did not receive a degree.

11. Under the terms of the loans, Plaintiff was required to begin payments six months after enrollment in the school ended.

12. Under the U.S. Department of Education's Standard Repayment Plan, Plaintiff would be required to maintain monthly payments of \$1,089.00 for ten years in order to pay off the balance of the student loans.

13. Since repayment on the student loans began, the Plaintiff has:

- a. Made approximately 0 payments on the loans, totaling approximately \$0.00
- b. Received 7 cumulative forbearances & deferments totaling 23.6 months
- c. Applied for Income-Driven Repayment Plan
- d. Applied for a federal consolidation loan

14. Plaintiff is currently employed as a Call Center Representative with CVS Health. Plaintiff's gross monthly income from employment is \$3,045.00. Plaintiff has other monthly income totaling \$0.00.

15. Plaintiff's current monthly household income is \$10,545.00. Plaintiff's current monthly household expenses, including payroll deductions, are \$10,331.12, leaving only \$213.88 to pay the student loans.

16. Plaintiff's income is not likely to improve such that he will be able to repay his student loans.

#### **V. DETERMINATION OF DISCHARGEABILITY**

17. Under Section 523(a)(8) of the Bankruptcy Code, certain student loans may not be discharged in bankruptcy unless the bankruptcy court determines that payment of the loan "would impose an undue hardship on the debtor and the debtor's dependents." 11 U.S.C. § 523(a)(8).

18. The most common framework for assessing undue hardship is the so-called Brunner test. *Brunner v. New York State Higher Education Services Corp.*, 831 F.2d 395 (2d Cir. 1987). To discharge a student loan under the Brunner test, a bankruptcy court must find that the debtor has established that (1) the debtor cannot presently maintain a minimal standard of living if required to repay the student loan, (2) circumstances exist that indicate the debtor's financial situation is likely to persist into the future for a significant portion of the loan repayment period, and (3) the debtor has made good faith efforts in the past to repay the student loan. *Id.* at 396.

19. Plaintiff is unable to make payments on his student loans. After deducting Plaintiff's reasonable and necessary expenses from his income, Plaintiff's discretionary income is insufficient to make student loan payments as required under the loan agreement.

20. Plaintiff's current state of affairs is likely to persist, and his financial circumstances are unlikely to materially improve, for a significant portion of the debt repayment period.

21. Plaintiff has made good faith efforts to repay the student loans at issue in this proceeding.

22. Plaintiff is unable to work in the Education field for which he went to school for due to health issues.

23. Plaintiff has engaged meaningfully with a third party regarding his student loans.

24. Based upon the foregoing facts and circumstances, Plaintiff cannot maintain a minimal standard of living if forced to repay the student loans.

WHEREFORE, Plaintiff respectfully requests this Court to enter an order finding that excepting his student loans from discharge would impose an undue hardship as provided in 11 USC §523(a)(8), declaring the student loans to be included in Plaintiff's discharge under §727(a)/1328(a), and for any other relief as the Court deems just and proper.

Respectfully Submitted,

By: /s/ Gregory F. Arcaro  
Gregory F. Arcaro, Esq.  
Grafstein & Arcaro, LLC  
114 West Main Street  
(860) 674-8003  
garcaro@grafsteinlaw.com

**Exhibit #1**

**List of loans with current balances**

| Loan Type (Loan Holder/Servicer)                              | Principal Balance | Accrued Interest | Status          |
|---|-------------------|------------------|-----------------|
| DIRECT CONSOLIDATED<br>UNSUBSIDIZED(DEPT OF<br>ED/AIDVANTAGE) | \$ 94,323.00      | \$ 1,027.00      | IN<br>REPAYMENT |

**B1040 (FORM 1040) (12/24)**

|  |  |  |  |
|--|--|--|--|
| <b>ADVERSARY PROCEEDING COVER SHEET</b>  |  | <b>ADVERSARY PROCEEDING NUMBER</b>   |  |
| (Instructions on Reverse)  |  | (Court Use Only)   |  |
| <b>PLAINTIFFS</b><br>DAVID M. FALVO  |  | <b>DEFENDANTS</b><br>UNITED STATES DEPARTMENT OF EDUCATION<br>AIDVANTAGE   |  |
| <b>ATTORNEYS (Firm Name, Address, and Telephone No.)</b><br>GRAFSTEIN & ARCARO, LLC<br>114 WEST MAIN ST. STE 105 NEW BRITAIN, CT 06051<br>860-674-8003   |  | <b>ATTORNEYS (If Known)</b>  |  |
| <b>PARTY (Check One Box Only)</b><br><input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin<br><input type="checkbox"/> Creditor <input type="checkbox"/> Other<br><input type="checkbox"/> Trustee   |  | <b>PARTY (Check One Box Only)</b><br><input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin<br><input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other<br><input type="checkbox"/> Trustee   |  |
| <b>CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)</b><br>This is an action to determine the dischargeability of a student loan debt under 11 U.S.C §523(a)(8). This is a core proceeding under 28.U.S.C §157(b)(2)(I).   |  |  |  |
| <b>NATURE OF SUIT</b>  |  |  |  |
| (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)   |  |  |  |
| <b>FRBP 7001(a) – Recovery of Money/Property</b><br><input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property<br><input type="checkbox"/> 12-Recovery of money/property - §547 preference<br><input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer<br><input type="checkbox"/> 14-Recovery of money/property - other<br><br><b>FRBP 7001(b) – Validity, Priority or Extent of Lien</b><br><input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property<br><br><b>FRBP 7001(c) – Approval of Sale of Property</b><br><input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)<br><br><b>FRBP 7001(d) – Objection/Revocation of Discharge</b><br><input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)<br><br><b>FRBP 7001(e) – Revocation of Confirmation</b><br><input type="checkbox"/> 51-Revocation of confirmation<br><br><b>FRBP 7001(f) – Dischargeability</b><br><input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims<br><input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud<br><input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny<br><br>(continued next column) |  | <b>FRBP 7001(f) – Dischargeability (continued)</b><br><input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support<br><input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury<br><input checked="" type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan<br><input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)<br><input type="checkbox"/> 65-Dischargeability - other<br><br><b>FRBP 7001(g) – Injunctive Relief</b><br><input type="checkbox"/> 71-Injunctive relief – imposition of stay<br><input type="checkbox"/> 72-Injunctive relief – other<br><br><b>FRBP 7001(h) Subordination of Claim or Interest</b><br><input type="checkbox"/> 81-Subordination of claim or interest<br><br><b>FRBP 7001(i) Declaratory Judgment</b><br><input type="checkbox"/> 91-Declaratory judgment<br><br><b>FRBP 7001(j) Determination of Removed Action</b><br><input type="checkbox"/> 01-Determination of removed claim or cause<br><br><b>Other</b><br><input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i><br><input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case) |  |
| <input type="checkbox"/> Check if this case involves a substantive issue of state law  |  | <input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23  |  |
| <input type="checkbox"/> Check if a jury trial is demanded in complaint  |  | Demand \$ N/A  |  |
| <b>Other Relief Sought</b><br>Determination of Dischargeability  |  |  |  |

**B1040 (FORM 1040) (12/24)**

| <b>BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES</b> |  |                                 |
|--|--|---------------------------------|
| NAME OF DEBTOR<br>DAVID M. FALVO                                 |  | BANKRUPTCY CASE NO.<br>23-20880 |
| DISTRICT IN WHICH CASE IS PENDING<br>CONNECTICUT                 | DIVISION OFFICE<br>HARTFORD                                    | NAME OF JUDGE<br>JAMES TANCREDI |
| <b>RELATED ADVERSARY PROCEEDING (IF ANY)</b>                     |  |                                 |
| PLAINTIFF  | DEFENDANT  | ADVERSARY PROCEEDING NO.        |
| DISTRICT IN WHICH ADVERSARY IS PENDING                           | DIVISION OFFICE  | NAME OF JUDGE                   |
| SIGNATURE OF ATTORNEY (OR PLAINTIFF)<br><br>/s/Gregory F. Arcaro |  |                                 |
| DATE<br><br>December 10, 2024                                    | PRINT NAME OF ATTORNEY (OR PLAINTIFF)<br><br>Gregory F. Arcaro |                                 |

**INSTRUCTIONS**

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

A party filing an adversary proceeding must also complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

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

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

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

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

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

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