

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT**

|   |   |                         |
|---|---|-------------------------|
| <hr/>                                     | : | Case No. 23-20880 (JJT) |
| In re:                                    | : |                         |
|   | : |                         |
| David M. Falvo,                           | : |                         |
|   | : | Chapter 7               |
| Debtor                                    | : |                         |
| <hr/>                                     | : |                         |
| David M. Falvo,                           | : | A.P. No. 24-02022 (JJT) |
|   | : |                         |
| Plaintiff,                                | : |                         |
|   | : |                         |
| v.  | : |                         |
|   | : |                         |
| United States Department of Education and | : |                         |
| AidVantage,                               | : | June 13, 2025           |
| Defendants.                               | : |                         |
| <hr/>                                     | : |                         |

**DEFENDANT U.S. DEPARTMENT OF EDUCATION'S  
MOTION FOR SUMMARY JUDGMENT**

Defendant, the United States Department of Education, pursuant to Fed. R. Bank. P. 7056, which incorporates and applies Fed. R. Civ. P. 56, respectfully moves for summary judgment denying Plaintiff, David M. Falvo's, claim that his student loan debt held by DOE should be discharged in bankruptcy pursuant to 11 U.S.C. § 523(a)(8).

This motion is supported by a Memorandum of Law, Local Rule 56(a)1 Statement of Undisputed Material Facts, and Declaration of Chad T. Keller, submitted herewith.

Respectfully submitted,

DEFENDANT, UNITED STATES  
DEPARTMENT OF EDUCATION

DAVID X. SULLIVAN  
UNITED STATES ATTORNEY

/s/ Julie G. Turbert

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| v.  | : |                         |
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| United States Department of Education and | : |                         |
| AidVantage,                               | : |                         |
| Defendants.                               | : |                         |
| _____                                     | : |                         |

**CERTIFICATION OF SERVICE**

I hereby certify that on June 13, 2025, I electronically filed the: **MOTION FOR SUMMARY JUDGMENT** with the Clerk of the Bankruptcy Court for the District of Connecticut using the CM/ECF System, which will send electronic notification of such filing to appearing counsel.

/s/ Julie G. Turbert  
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ASSISTANT UNITED STATES ATTORNEY  
FEDERAL BAR NO. ct23398

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| Plaintiff,                                | : |                         |
| v.  | : |                         |
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| AidVantage,                               | : |                         |
| Defendants.                               | : |                         |
| <hr/>                                     | : |                         |

**DEFENDANT U.S. DEPARTMENT OF EDUCATION'S  
MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Defendant, the United States Department of Education (“DOE”), files this memorandum in support of its Motion for Summary Judgment pursuant to Fed. R. Bank. P. 7056, which incorporates and applies Fed. R. Civ. P. 56, seeking summary judgment denying Plaintiff, David M. Falvo’s (“Falvo”), claim that his student loan debt held by DOE should be discharged in bankruptcy pursuant to 11 U.S.C. § 523(a)(8).

**I. Introduction**

Falvo filed a Chapter 13 bankruptcy on October 31, 2023, which he later converted to Chapter 7, and received a discharge on July 17, 2024. He has filed an adversary proceeding seeking a “hardship discharge” of his student loan debt held by DOE. Educational loans such as those taken out by Falvo are excepted from discharge unless “excepting such debt from discharge under this

paragraph would impose and undue hardship on debtor and debtor's dependents." 11 U.S.C. § 523(a)(8).

The procedure for determining whether a "hardship discharge" exists is commonly referred to as "the *Brunner* test," which originated in the Second Circuit's decision in *Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987). However, before the *Brunner* test can be applied, the student loan debt must be a pre-petition debt, in this case a debt that arose prior to the bankruptcy petition date of October 31, 2023. The student loan debt in question in Falvo's adversary proceeding originated after the bankruptcy case was filed and therefore is not subject to discharge.

## **II. Procedural Background**

On October 31, 2023, Falvo filed for relief under Chapter 13 of the United States Bankruptcy Code. On January 17, 2024, Falvo converted from Chapter 13 to Chapter 7 pursuant to 11 U.S.C. § 1307(a) and Fed. R. Bankr. P. 1017(f)(3). On July 17, 2024, the Court granted Falvo a discharge pursuant to 11 U.S.C. § 727. On November 6, 2024, Falvo moved to reopen the case for the purposes of filing an adversary proceeding. After a hearing, the Court entered an order granting the Motion to Reopen on December 6, 2024.

On December 10, 2024, Falvo commenced this adversary proceeding by filing a Complaint requesting that his student loans be discharged pursuant to 11 U.S.C. § 523(a)(8), claiming, *inter alia*, that if he were forced to repay the loans, he could not meet a minimal standard of living based upon his income and expenses.

DOE has answered Falvo's claims and denies that he is entitled to the relief he seeks. For the reasons that follow, summary judgment should enter in favor of DOE.

### III. Material Facts Not In Dispute

On October 31, 2023, Falvo filed a voluntary Chapter 13 Bankruptcy Petition. *See* Local Rule 56(a)1 Statement of Undisputed Material Facts (hereinafter “Facts”). Facts at ¶ 1. At the time of his bankruptcy filing, Falvo was the obligor on the following five (5) Title IV loans for attendance at the University of St. Joseph and University of Bridgeport:

| NSLDS Loan # | Loan Holder Name  | Loan Date | Loan Amount | Loan Type              | Loan Status                                | Principal | Interest | Entered Repayment |
|--------------|-------------------|-----------|-------------|------------------------|--|-----------|----------|-------------------|
| 5            | Dept Of Ed/Nelnet | 7/19/2023 | \$13,666.00 | Direct Stafford Unsub. | Non-dfltd, Paid in Full via Consol. Loan#6 | \$0.00    | \$0.00   | N/A               |
| 4            | Dept Of Ed/Nelnet | 8/23/2022 | \$35,159.00 | Direct PLUS            | Non-dfltd, Paid in Full via Consol. Loan#6 | \$0.00    | \$0.00   | N/A               |
| 3            | Dept Of Ed/Nelnet | 8/23/2022 | \$17,015.00 | Direct Stafford Unsub. | Non-dfltd, Paid in Full via Consol. Loan#6 | \$0.00    | \$0.00   | N/A               |
| 2            | Dept Of Ed/Nelnet | 8/27/2021 | \$11,667.00 | Direct Stafford Unsub. | Non-dfltd, Paid in Full via Consol. Loan#6 | \$0.00    | \$0.00   | N/A               |
| 1            | Dept Of Ed/Nelnet | 9/2/2020  | \$11,454.00 | Direct Stafford Unsub. | Non-dfltd, Paid in Full via Consol. Loan#6 | \$0.00    | \$0.00   | N/A               |

Facts at ¶ 2; *see also* Ex. A, Keller Decl. at ¶ 5.

On January 17, 2024, Falvo converted from Chapter 13 to Chapter 7 pursuant to 11 U.S.C. § 1307(a) and Fed. R. Bankr. P. 1017(f)(3). Facts at ¶ 3.

On or about July 10, 2024, Falvo executed a Direct Consolidation Loan Application and Promissory Note under the William D. Ford Federal Direct Loan Program pursuant to the Higher Education Act of 1965, as amended, 20 U.S.C. § 1087a, *et seq.* Facts at ¶ 4. On August 2, 2024, this loan was disbursed in the amount of \$94,322.81 at 6.63% interest per year. Facts at ¶ 6. As of

June 2, 2025, the total debt owed to the DOE was \$96,375.81. Facts at ¶ 10; *see also* Keller Decl. at Ex. 2.

Pursuant to that promissory note, on August 2, 2024, DOE disbursed proceeds for an unsubsidized consolidation loan in the amount of \$94,323.00 (National Student Loan Database System (NSLDS) Loan No. 6). The 2024 consolidation loan extinguished and paid off the balances on all outstanding federal student loans, that is NSLDS Loan Nos. 1-5. Facts at ¶ 6; Keller Decl. at Ex. 3.

Currently, Falvo is the obligor of one 2024 consolidation loan held by and funded by the federal government through the William D. Ford Federal Direct Loan Program. The 2024 consolidation loan is the only outstanding loan owed by Falvo and is held by the DOE.

As of June 2, 2025, the outstanding balance of the 2024 consolidation loan, including unpaid principal and accrued interest, was \$96,375.81. Facts at ¶ 10. Loan details are set forth in the Certificate of Indebtedness attached as Exhibit 3 to the Chad T. Keller Declaration (Keller Declaration).

#### **IV. Standard of Review: Summary Judgment**

A motion for summary judgment is governed by Fed. R. Civ. P. 56, and made applicable in this case by Fed. R. Bank. P. 7056. Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “Summary judgment . . . is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to ‘secure the just, speedy and inexpensive determination of every action.’” *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) (quoting Fed. R. Civ. P. 1).

Summary judgment is “appropriate where the ‘pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.’” *Westra v. Credit Control of Pinellas*, 409 F.3d 825, 827 (7<sup>th</sup> Cir. 2005) (quoting Fed. R. Civ. P. 56(c)). “Once a party files a motion for summary judgment showing within its four corners entitlement to prevail, judgment must be entered ‘against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden at trial.’” *Herman v. City of Chicago*, 870 F.2d 400, 404 (7<sup>th</sup> Cir. 1989) (quoting *Celotex*, 477 U.S. at 322).

In reviewing a motion for summary judgment, the Court views the facts in the light most favorable to the non-moving party and all reasonable inferences are drawn in the non-movant’s favor. *Ault v. Speicher*, 634 F.3d 942, 945 (7<sup>th</sup> Cir. 2011). It is not, however, enough for the party opposing a properly supported motion for summary judgment to rest on mere allegations or denials of his pleadings. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986).

**V. Argument: Falvo’s Debt Cannot be Discharged Because It Arose Post-Petition**

Falvo’s student loan debt to DOE cannot be discharged because it is based entirely on a post-petition loan. As an initial matter, Falvo may only obtain a discharge of debts that arose *before* he filed his bankruptcy petition in 2023. The scope of Falvo’s bankruptcy discharge in his Chapter 7 case is governed by § 727(b) of the Bankruptcy Code, which states that “[e]xcept as provided in *section 523 of this title*, a discharge under subsection (a) of this section discharges the debtor from all debts *that arose before* the date of the order for relief under this chapter.” 11 U.S.C. § 727(b) (emphasis added). Here, the “date of the order for relief is October 31, 2023 – the date Falvo

commenced his voluntary bankruptcy case by filing a petition. 11 U.S.C. § 301. Thus, to the extent Falvo's consolidated student loan debt arose after October 31, 2023, such debt is not dischargeable.

In fact, the student loan debt that Plaintiff owes to the Defendant arose in 2024 when he obtained a consolidation loan that paid off and discharged his pre-existing student loan debt. Student loans consolidated into a consolidation loan made under the direct loan program are "discharged" when the consolidation loan is originated, and the previous, pre-existing loans are paid in full from the proceeds of the consolidation loan. 34 C.F.R. § 685.220(a) and (f)(2); *see also* 20 U.S.C. § 1078-3(b)(1)(D) (providing that consolidation loans under the former Federal Family Education Loan Program "discharge the liability" of the consolidated loans); 29 U.S.C. § 1087e(a)(1) (loans made under the Direct Loan Program "shall have the same terms, conditions, and benefits" as loans made under 20 U.S.C. § 1078-3).

Accordingly, as the Seventh Circuit Court of Appeals has held, a consolidation loan discharges the original debt and creates a "new, distinct debt." *Hiatt v. Indiana State Student Assistance Comm'n*, 36 F.3d 21, 23 (7<sup>th</sup> Cir. 1994). And that new, distinct debt cannot be discharged when the consolidation loan originated after the bankruptcy petition. *In re Grubin*, 476 B.R. 699, 709 (E.D.N.Y. 2012) ("[i]t is settled that, where a debtor incurs student loan debt pre-petition, but then enters into a post-petition agreement to consolidate that debt, the consolidation agreement extinguishes the pre-petition debt and gives rise to new, post-petition debt"); *In re Schultz*, 615 B.R. 834, 844 (D. Minn. 2020) ("courts have long held that an educational loan consolidation discharges the previous educational loans and if consolidation occurs postpetition, it creates a new postpetition obligation that cannot be discharged"); *In re Hayward*, 655 B.R. 458, 462 (W.D. Tex. 2023) (consolidation loans are new and distinct post-petition debts that did not arise *before* the date of the order for relief as required by 11 U.S.C. § 727(b)); *Williams v. Trans*

*Union LLC*, 759 F.Supp.3d 336, 341 (D. Conn. 2024) (“[t]he act of consolidation involves taking out a *new* loan that is used to pay off the older loans”).

Here, the student loan debt that Falvo currently owes to the DOE is based on a consolidation loan that originated in 2024 – approximately 9 months after his bankruptcy petition was filed. Therefore, the Court should grant summary judgment in favor of the DOE on Falvo’s request for a dischargeability determination because the student loan debt that Falvo owes to the DOE arose post-petition and is non dischargeable.

## V. CONCLUSION

Falvo’s existing consolidated loan arose post-petition and is therefore nondischargeable. Under these circumstances, summary judgment in favor of DOE is appropriate. DOE respectfully requests the Court grant its Motion for Summary Judgment.

Respectfully submitted,

DAVID X. SULLIVAN  
UNITED STATES ATTORNEY

/s/ Julie G. Turbert

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