



Signed and Filed: February 15, 2022

A handwritten signature in black ink that reads "Dennis Montali".

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
10) No. 10-31718-DM
OSCAR D. TERAN,)
11) Chapter 7
12)
Debtor.)
13)
_____))
14) Adversary Proceeding
OSCAR D. TERAN,) No. 20-03075-DM
15)
Plaintiff,)
16)
v.) Date: February 25, 2022
17) Time: 11:00 AM
NAVIENT SOLUTIONS, LCC; NAVIENT) Via Tele/Videoconference
18) www.canb.uscourts.gov/calendars
CREDIT FINANCE CORPORATION)
19)
Defendants.)
20)
_____))

MEMORANDUM DECISION ON MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION AND PROCEDURAL HISTORY

Plaintiff Oscar D. Teran ("Teran") was a law student at UC Hastings from 2005 until 2008. In his final year of law school, he took out a private bar study loan ("Bar Loan") from Sallie Mae's LAWLOANS program to cover the cost of a BarBri bar prep course and living expenses while Teran studied for the Texas bar

1 exam. The Bar Loan was eventually assigned to Defendant Navient
2 Credit Finance Corporation and serviced by Defendant Navient
3 Solutions, LLC (together, "Navient").

4 In May 2010, Teran filed for chapter 7 bankruptcy in this
5 court, and listed the Bar Loan among his unsecured debts. He
6 received a bankruptcy discharge in August 2010. In August 2020,
7 Teran initiated the above-captioned adversary proceeding on
8 behalf of himself and a proposed class of similarly situated
9 debtors against Navient ("Complaint") (Dkt. 1), alleging that
10 Navient had been improperly collecting on Teran's discharged Bar
11 Loan and reporting the Bar Loan as not discharged to credit
12 reporting agencies in violation of state consumer protection
13 law.

14 Navient filed a *Motion to Dismiss Count Three of*
15 *Plaintiff's Complaint, or Alternatively, Compel Arbitration*
16 ("MTD") (Dkt. 20), which Teran opposed ("Opposition to MTD")
17 (Dkt. 24). The MTD and the Opposition to MTD focused on whether
18 the portion of the Complaint alleging wrongful credit reporting
19 was outside the court's jurisdiction and thus should be
20 dismissed or submitted to arbitration.

21 At a hearing on the MTD, the court ruled that as a
22 threshold matter there first must be a determination as to
23 whether Teran's Bar Loan is nondischargeable, because the
24 question of dischargeability is critical to all parts of the
25 proposed class action. The court deferred a ruling and directed
26 the parties to meet and confer to set a schedule on cross-
27 motions for summary judgment.

1 Pursuant to the schedule developed by the parties, Navient
2 filed a *Defendant's Motion for Summary Judgment* ("MSJ") (Dkt.
3 34) seeking a determination that the Bar Loan was excepted from
4 Teran's bankruptcy discharge pursuant to 11 U.S.C. §
5 523(a)(8)(A)(i) and/or 11 U.S.C. § 523(a)(8)(B). Teran filed an
6 *Opposition to Defendant's Motion For Summary Judgment* (Dkt. 41)
7 but did not file a cross-motion for summary judgment. The court
8 held a hearing on the MSJ, and directed to parties to file
9 further briefing, after which the court took the matter under
10 submission.

11 The court concludes that there is a material factual
12 dispute as to whether the Bar Loan was made under a program that
13 is excepted from discharge under § 523(a)(8)(A)(i), and summary
14 judgment as to this subsection must be denied. The court
15 further concludes that Bar Loan does not fall within the type of
16 loan contemplated under § 523(a)(8)(B) as a matter of law, and
17 summary judgment as to this subsection in favor of Teran is
18 appropriate.

19 **II. STANDARD FOR SUMMARY JUDGMENT**

20 On a motion for summary judgment, the court must determine
21 whether, viewing the evidence in the light most favorable to the
22 nonmoving party, there are any genuine issues of material fact
23 as to any claim, part of claim, defense, or part of defense.
24 *Simo v. Union of Needletrades, Indus. & Textile Employees*, 322
25 F.3d 602, 609-10 (9th Cir. 2003); Fed. R. Civ. P. 56. Summary
26 judgment against a party is appropriate when the pleadings,
27 depositions, answers to interrogatories, and admissions on file,
28 together with the affidavits, if any, show that there is no

1 genuine issue as to any material fact and that the moving party
2 is entitled to judgment as a matter of law. Fed. R. Civ. P. 56.
3 It is within a court's discretion to grant summary judgment in
4 favor of the nonmovant. Fed. R. Civ. P. 56(f)(1); *Gospel*
5 *Missions of America v. City of Los Angeles*, 328 F.3d 548, 553
6 (9th Cir. 2003) (court may enter summary judgment for nonmovant
7 if the movant had "full and fair opportunity to ventilate the
8 issues involved in the matter" and the issues adjudicated were
9 present in the original motion.) (citations omitted).

10 **III. ANALYSIS**

11 **A. The LAWLOANS Program**

12 According to Navient, LAWLOANS was a program set up to be a
13 "one-stop source of funding" through which both private loans
14 and federally funded Stafford loans and Grad PLUS loans
15 (together, "Stafford loans" for convenience) were made available
16 to student borrowers through a single application. The program
17 was established by a Multiparty Agreement between four private
18 entities and one nonprofit entity in 1989, which was later
19 amended at least four times between 1992 and 1995. (Box Decl.,
20 Dkt. 36). The Multiparty Agreement and subsequent Amendments
21 presented by Navient show that, at least until 1995, there was
22 an agreement between four for-profit entities (including Sallie
23 Mae) and one nonprofit entity to advertise, originate, service,
24 and guarantee both private and federal loans. *Id.* In
25 particular, the Multiparty Agreement and Amendments show that
26 the role of the sole participating nonprofit, first the Higher
27 Education Assistance Foundation and later Northstar Guarantee
28 Inc., was critical to the origination, guarantee, reinsurance,

1 and consolidation of Stafford loans. Navient concedes that it
2 cannot produce any Amendment of the Multiparty Agreement beyond
3 the 1995 Amendment. Navient contends that the LAWLOANS program
4 was still making federal Stafford loans in 2008, while Teran
5 disputes this claim.

6 **B. Stafford Loans**

7 At the time Teran obtained the private Bar Loan from the
8 LAWLOANS program in 2008, federal student loans including
9 Stafford loans were made under the Federal Family Education Loan
10 Program ("FFEL"). Under FFEL, private lenders would originate
11 student loans subject to specific eligibility criteria and set
12 interest rates. Those loans were then guaranteed by state or
13 nonprofit agencies¹. Those nonprofit guarantors were
14 subsequently "reimbursed by the federal government for all or
15 part of the insurance claims they pay to lenders." See *Federal*
16 *Family Education Loan Programs: Federal Stafford Loans, Federal*
17 *PLUS, and Federal Consolidation Loans-Introduction* (1998)².

18 The legal structure of Stafford loans under FFEL meant that
19 it was impossible for a lender to have made a Stafford loan to a
20 borrower without the participation of a nonprofit entity. When
21 referencing Stafford loans made prior to 2010, the involvement
22
23

24 ¹ Because only nonprofit entities are relevant to this Order, the
25 court will hereinafter only reference nonprofit entities as
26 guarantors of FFEL loans.

27 ² Available at [https://fsapartners.ed.gov/knowledge-](https://fsapartners.ed.gov/knowledge-center/library/handbooks-manuals-or-guides/1998-06-12/federal-family-education-loan-programs-federal-stafford-loans-federal-plus-and-federal-consolidation-loan-programs-introduction)
28 [center/library/handbooks-manuals-or-guides/1998-06-12/federal-](https://fsapartners.ed.gov/knowledge-center/library/handbooks-manuals-or-guides/1998-06-12/federal-family-education-loan-programs-federal-stafford-loans-federal-plus-and-federal-consolidation-loan-programs-introduction)
[family-education-loan-programs-federal-stafford-loans-federal-](https://fsapartners.ed.gov/knowledge-center/library/handbooks-manuals-or-guides/1998-06-12/federal-family-education-loan-programs-federal-stafford-loans-federal-plus-and-federal-consolidation-loan-programs-introduction)
[plus-and-federal-consolidation-loan-programs-introduction](https://fsapartners.ed.gov/knowledge-center/library/handbooks-manuals-or-guides/1998-06-12/federal-family-education-loan-programs-federal-stafford-loans-federal-plus-and-federal-consolidation-loan-programs-introduction)

1 of both a nonprofit and the government was essential to the
2 making of those loans.

3 **C. 11 U.S.C. § 523(a) (8) (A) (i)**

4 Generally, § 523(a) (8) excepts certain types of student
5 loans from the bankruptcy discharge unless a debtor can make a
6 showing of an undue hardship resulting in an inability to repay
7 the loans. No hardship on the part of Teran is at issue here,
8 only whether Teran's Bar Loan is the type of loan contemplated
9 by any subsection of § 523(a) (8).

10 Section 523(a) (8) (A) (i) (hereafter referred to as the
11 "Program Section") excepts from discharge "an educational
12 benefit overpayment or loan made, insured, or guaranteed by a
13 governmental unit, or made under any program funded in whole or
14 in part by a governmental unit or nonprofit institution."

15 There is no dispute that the Bar Loan is generally an
16 "educational loan," a term for which there is no set definition.
17 That the loan was meant at least in part for a bar study course
18 is enough, and an "educational loan" need not meet the rigorous
19 standards of a "qualified education loan" contemplated in
20 § 523(a) (8) (B) and discussed below. See *In re Moon*, 610 B.R.
21 616, 623-24 (Bankr. E.D. Wis. 2019).

22 Navient concedes that the Bar Loan is a wholly private
23 loan, with no hint of government or nonprofit funding. Instead,
24 Navient argues that because LAWLOANS was a program through which
25 private loans as well as Stafford loans were made available to
26 students, Teran's Bar Loan is a loan "made under any program
27 funded in whole or in part by a governmental unit or nonprofit
28 institution."

1 **1. Funded by Nonprofit**

2 Curiously, while Navient's general argument is that the
3 umbrella nature of the LAWLOANS program means that it is a
4 program funded by *either* a government or nonprofit institution,
5 the supporting evidence and caselaw asserted by Navient focus
6 solely on nonprofit, and not government, involvement. Navient's
7 MSJ relies heavily on *In re Pilcher*, 149 B.R. 595 (B.A.P. 9th
8 Cir. 1993). In *Pilcher*, the plaintiff, a law student took out a
9 private loan under a program called the Law Access Program, an
10 umbrella program which made both private loans and federally
11 guaranteed loans. *Id.* at 596. The Law Access Program was the
12 culmination of a Multiparty Agreement between five private and
13 nonprofit entities to create "a streamlined method for the
14 procurement, processing, and service of law school educational
15 loans." *Id.* at 599. The plaintiff asserted her loan was subject
16 to bankruptcy discharge because neither of the nonprofits
17 involved in the Law Access Program had anything to do with her
18 private loan. *Id.* The Ninth Circuit BAP interpreted the plain
19 language of the Program Section to mean that so long as a
20 private loan was derived from a program that was even minimally
21 funded by a nonprofit institution, that loan was
22 nondischargeable. *Id.* at 600. Thus, even the small amount of
23 participation by the nonprofit entities in the Law Access
24 Program generally meant that the plaintiff's private loan was
25 made by a program at least partially funded by a nonprofit
26 entity and was thus nondischargeable.

27 Including *Pilcher*, every case cited by Navient determined
28 that a private loan was nondischargeable because the loan was

1 made under a program that had at least a minimal amount of
2 voluntary nonprofit involvement.³

3 Unlike *Pilcher* and every other case cited by Navient,
4 Navient admits that there is no evidence that any nonprofit was
5 involved with the LAWLOANS program by the time Teran took out
6 his Bar Loan in 2008. Without any evidence of nonprofit
7 involvement in the LAWLOANS program, the court is unable to
8 apply the law of *Pilcher* to this matter. Without such evidence,
9 it is unclear whether LAWLOANS could even legally originate
10 Stafford loans.

11 As noted above, the most recent documentation of the
12 Multiparty Agreement governing the LAWLOANS program is from
13 1995, the fourth Amendment to the Multiparty Agreement in almost
14 as many years, and nearly thirteen years prior to the time Teran

16 ³ *O'Brien v. First Marblehead Educ. Resources, Inc. (In re*
17 *O'Brien)*, 419 F.3d 104 (2d Cir. 2005) (loan program that
18 included loans guaranteed by a participating nonprofit); *Univ.*
19 *v. Merchant (In re Merchant)*, 958 F.2d 738 (6th Cir. 1992)
20 (same); *Decker v. EduCap, Inc.*, 476 B.R. 463(W.D. Pa. 2012)
21 (program in which privately made loans were serviced and
22 guaranteed by nonprofit); *Medina v. Nat'l Collegiate Student*
23 *Loan Tr. 2*, No. 17-05276-LT7, 2020 WL 5552687 (Bankr. S.D. Cal.
24 Aug. 4, 2020) (private educational loan that was later
25 guaranteed by a nonprofit); *In re Duits*, No. 14-05277-RLM-13,
26 2020 WL 256770 (Bankr. S.D. Ind. Jan. 15, 2020) (private student
27 loan made under a program with a nonprofit that guaranteed
28 federal loans); *Greer-Allen v. Nat'l Collegiate Student Loan Tr.*
2005-1 (In re Greer-Allen), 602 B.R. 831 (Bankr. D. Mass. 2019)
(same); *Cleveland v. Educ. Credit Mgmt. Corp. (ECMC) (In re*
Cleveland), 559 B.R. 265 (Bankr. N.D. Ga. 2016) (debtor's loans
were either federal loans or private loans made under a program
funded in part by a nonprofit); *Drumm v. New England Loan*
Marketing Assoc. (In re Drumm), 329 B.R. 23 (Bankr. W.D. Pa.
2005) (program included loans guaranteed by nonprofit); *In re*
Hammarstrom, 95 B.R. 160 (Bankr. N.D. Cal. 1989) (same).

1 accessed his loan through the LAWLOANS program. Navient does
2 not assert this lack of documentation is because the 1995
3 Amendment was the final Amendment to the Multiparty Agreement.

4 At the hearing on the MSJ, Navient conceded that it "was
5 unaware of any documents that postdate" the 1995 Amendment to
6 the Multiparty Agreement, and that nonprofit involvement in the
7 LAWLOANS program in 2008 could not be proved. Immediately after
8 this concession, Navient argued for the first time that because
9 federal loans were distributed under the LAWLOANS program in
10 2008 as demonstrated by its own Quick Reference Guide (Box
11 Decl., Dkt. 36), the program was funded in part by the
12 government and thus still fell under the purview of the Program
13 Section.

14 **2. Funded by Government**

15 The only case provided by Navient in support of the theory
16 that LAWLOANS is a program funded in whole or in part by the
17 government is a recent decision from the Southern District of
18 New York, *Mader v. Experian Info. Sols., LLC.*, 2020 WL 427813
19 (S.D.N.Y. July 24, 2020). In *Mader*, the plaintiff was a former
20 seminary student who took out a private loan from Sallie Mae
21 (that was later assigned to Navient) through an unnamed program
22 that also made Stafford loans. *Id.* at *1. The court determined
23 that because Stafford loans were, by law, guaranteed by
24 nonprofits or government units, the program through which the
25 plaintiff took out his private loan was a program that was
26 funded in part by a government unit or nonprofit institution
27 pursuant to the requirement of the Program Section. *Id.* at *3.

1 Navient likens the LAWLOANS program to the program at issue
2 in *Mader*. Just as the unnamed program in *Mader* made both
3 private and Stafford loans, so too, did the LAWLOANS program.

4 The reasoning of *Mader* is not helpful or relevant in this
5 case. In *Mader*, there was no dispute that the program that
6 originated the plaintiff's private loan also made Stafford
7 loans. There does appear to be such a dispute here. Navient
8 cannot admit that it is unable to produce any evidence of
9 nonprofit involvement in LAWLOANS program in 2008, and then
10 immediately state that the LAWLOANS program in 2008 issued
11 Stafford loans and therefore was funded in part by the
12 government. As discussed above, the legal framework of Stafford
13 loans made under FFEL meant that Stafford loans could not be
14 made without nonprofit involvement. Inability to show nonprofit
15 involvement inherently means that Navient is also unable to show
16 that the LAWLOANS program was funded in part by the government
17 or was able to make Stafford loans in 2008.

18 Navient contends that the Quick Reference Guide Sallie Mae
19 produced for the 2007-2008 academic year advertised LAWLOANS'
20 ability to grant Stafford loans. The court takes note of the
21 reference guide, but also notes that this guide is only an
22 advertisement produced by Sallie Mae. The Quick Reference Guide
23 itself does not prove that LAWLOANS actually could or did make
24 such loans in 2008. Further calling into question LAWLOANS
25 ability to make Stafford loans in 2008 are Sallie Mae's own
26 marketing materials to purchasers of student loan backed
27 securities from the same year, which defines LAWLOANS as a
28 program which provides law students with only supplemental

1 private loans, not Stafford loans (Dkt. 45). It appears
2 Navient's predecessor's own accounts of LAWLOANS in 2008 are
3 contradictory.

4 On the evidence presented, unlike *Pilcher* or *Mader*, Navient
5 has not proven as a matter of law that LAWLOANS was a program
6 funded in whole or part by a nonprofit or government entity at
7 the time Teran took out the Bar Loan. The MSJ as to the Program
8 Section must be denied.

9 **D. 11 U.S.C. § 523(a) (8) (B)**

10 Section 523(a) (8) (B) (hereafter referred to as the
11 "Qualified Loan Section") excepts from discharge "any other
12 educational loan that is a qualified education loan, as defined
13 in section 221(d) (1) of the Internal Revenue Code of 1986 [26
14 USC § 221(d) (1)], incurred by a debtor who is an individual."

15 From the plain language of the Internal Revenue Code
16 ("IRC"), the Bar Loan is not a qualified education loan as a
17 matter of law. In reaching the conclusion that the Bar Loan is
18 not a qualified education loan, a nesting doll of special terms
19 under the IRC must be defined.

20 **1. Qualified Education Loan**

21 The IRC defines a qualified educational loan as "any
22 indebtedness incurred by the taxpayer solely to pay *qualified*
23 *higher education expenses* . . . which are attributable to
24 education furnished during a period during which the recipient
25 was an *eligible student*." IRC § 221(d) (1) (emphasis added).

26 **2. Qualified Higher Education Expense**

27 The IRC defines qualified higher education expenses as
28 "the cost of attendance . . . at an *eligible educational*

1 *institution, reduced by the sum of . . . [other scholarships,*
2 *income, and loans].” IRC § 221(d) (2) (emphasis added).*

3 **3. Eligible Educational Institution**

4 The IRC defines an eligible educational institution as one
5 which meets specific attendance, accreditation and course
6 offering standards under 20 U.S.C. § 1088 and is also eligible
7 for federal funding under Title IV of Higher Education Act, 20
8 U.S.C. §§ 1070 *et seq.*

9 **4. Eligible Student**

10 The IRC defines an eligible student as one who is “enrolled
11 or accepted for enrollment in a degree, certificate, or other
12 program . . . leading to a recognized educational credential at
13 an institution of higher education that is an eligible
14 institution . . .” 26 U.S.C. § 25A(b) (3); 20 U.S.C. §
15 1091(a) (1).

16 **5. The Bar Loan is Not a Qualified Educational Loan**

17 Navient argues that the Bar Loan is a qualified educational
18 loan because its terms required that (1) Teran be a student at
19 an eligible educational institution at the time he applied for
20 the Bar Loan; (2) he had to graduate from that institution prior
21 to the disbursement of funds; and (3) the funds disbursed were
22 less than the cost of attendance at that institution minus his
23 other loans and income. These requirements set by Navient do
24 mimic the definitions of an eligible educational institution,
25 eligible student, and qualified higher education expenses.
26 However, the attempts of Navient to mimic the terms that are
27 crucial to a qualified educational loan do not transform the Bar
28 Loan into a qualified educational loan. Teran was not an

1 eligible student when he received the Bar Study funds, and the
2 funds were specifically meant to pay bar prep expenses, not to
3 pay the cost of attendance at his law school.

4 The loan was meant for a bar prep program and for living
5 expenses while preparing for the bar. BarBri does not meet the
6 attendance, accreditation, or course offering standards of an
7 eligible educational institution. The loan money is further
8 attributable to education that Teran would undertake while he
9 was not an eligible student.

10 The Bar Loan is not a qualified educational loan under the
11 Qualified Loan Section as a matter of law, and summary judgment
12 must be granted in favor of Teran.

13 **IV. DISPOSITION AND FURTHER PROCEEDINGS**

14 For the foregoing reasons, summary judgment should be
15 GRANTED in favor of Teran as to the Qualified Loan Section and
16 DENIED as to the Program Section. Before it enters any order on
17 these matters, the court will conduct a status conference on
18 February 25, 2022 at 11:00 a.m. to discuss further proceedings
19 including whether Navient wishes to provide further factual
20 support for nondischargeability under the Program Section.

21 **END OF MEMORANDUM DECISION**

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