UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EVAN BRIAN HAAS, MICHAEL SHAHBAZI,	§	Chapter 7
Plaintiffs,	§	Case No. 15-35586 (DRJ)
v.	§	Adv. Pro. No. 16-03175 (DRJ)
NAVIENT SOLUTIONS, LLC, NAVIENT CREDIT FINANCE CORPORATION	§	**NATIONWIDE CLASS ACTION**
Defendants.	§	

PLAINTIFFS EVAN BRIAN HAAS' AND MICHAEL SHAHBAZI'S MOTION AND INCORPORATED MEMORANDUM IN SUPPORT OF THEIR MOTION FOR APPOINTMENT AS INTERIM CLASS COUNSEL AND INTERIM LEAD COUNSEL

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.

Represented parties should act through their attorney.

A hearing on this motion will be set by separate notice.

Plaintiffs, Evan Brian Haas ("Haas") and Michael Shahbazi ("Shahbazi"), appearing both individually and on behalf of all other similarly situated individuals,[1] respectfully submit this memorandum in support of their Motion for Appointment as Interim Class Counsel and Interim Lead Counsel. Plaintiffs' seek appointment of their chosen attorneys as interim class counsel and interim lead counsel. Specifically, Plaintiffs' seek an Order:

1. Appointing the following lawyers and law firms as Interim Class Counsel:
    a. Jason W. Burge of FISHMAN HAYGOOD L.L.P.;
    b. Kathryn J. Johnson of FISHMAN HAYGOOD L.L.P.;
    c. Austin Smith of the SMITH LAW GROUP;
    d. Lynn E. Swanson of JONES, SWANSON, HUDDELL & GARRISON, L.L.C.;
    e. Joshua B. Kons of the LAW OFFICES OF JOSHUA B. KONS, LLC;
    f. Adam Corral of CORRAL TRAN SINGH, LLP; and
    g. Marc Douglas Myers of ROSS, BANKS, MAY, CRON & CAVIN, P.C.
2. Appointing Jason Burge of FISHMAN HAYGOOD L.L.P. as Interim Lead Counsel.

I. INTRODUCTION

Plaintiffs, former student debtors with consumer education loans serviced by Navient Solutions, LLC ("NSL") and Navient Credit Finacial Corporation ("NCFC" and collectively, "Defendants"), filed this action to enforce their rights and the rights of those similarly situated under the law. In this action, Plaintiffs ask this Court to end Defendants and their affiliates'

[1] Plaintiffs appear both individually and on behalf of all similarly situated individuals who are citizens of the various states who filed for bankruptcy protection in any of the United States Judicial Districts and were issued discharge orders since April 20, 2005, who (1) obtained consumer education loans from Navient Solutions, LLC ("NSL") and Navient Credit Finacial Corporation ("NCFC" and collectively, "Defendants") or their predecessors to cover expenses at non-Title IV accredited institutions; (2) have never reaffirmed any pre-petition consumer education loan debt; and (3) have nonetheless been subjected to Defendants' attempts to induce payment on discharged debts.

willful and malicious activities and prevent further manipulation of the bankruptcy process. In their previous motion, Plaintiffs sought a preliminary injunction and limited class certification to restrain Defendants and their agents, employees, servants, and attorneys from taking any action to collect or attempt to collect on debts that were discharged by the bankruptcy courts' discharge orders, in violation of Section 524(a) of the Bankruptcy Code. In response to that motion, and with instruction from this Court, Plaintiffs and Defendants were to confer so as to reach a stipulated agreement to provide that relief. The Agreed Order contemplates Defendants providing Plaintiffs' counsel with the names of putative class members who must be apprised of their rights in short order.

As such, Plaintiffs' counsel anticipate the need to make contact with absent putative class members in the near future. Thus, the circumstances of this adversary proceeding make appointment of interim class counsel at this juncture particularly favorable. As will be shown, Proposed Interim Class Counsel and Proposed Interim Lead Counsel will fulfill their primary duty, by fairly and adequately representing the interests of the class. *See* Fed. R. Civ. P. 23(g)(4).

II. FACTUAL AND PROCEDURAL BACKGROUND

This Court is exceedingly familiar with the underlying facts of this dispute, and Plaintiffs incorporate those facts herein by reference to their Second Amended Complaint and Motion for Preliminary Injunction and Limited Class Certification.[2] For convenience, a brief summary of the facts and procedural history is restated in brief below.

As students, Haas and Shahbazi applied for their respective Consumer Education Loans with subsidiaries of SLM Corporation d/b/a Sallie Mae ("SLM")—a for-profit corporation—that

[2] *See* Plaintiffs' Second Amended Complaint, Rec. Doc. 95, Plaintiffs' Motion for Preliminary Injunction and Limited Class Certification, Rec. Doc. 100.

are now serviced by Defendants.[3] Haas received a Consumer Education loan in 2009 in the form of a Bar Exam Study loan from Sallie Mae Bank to pay for expenses associated with preparing for the Texas bar exam. The loan was ultimately transferred to NCFC.[4] Shahbazi received a Sallie Mae Career Training loan from Sallie Mae, Inc. in 2002 for tuition expenses at STMC, an unaccredited technical school in Vienna, Virginia. The loan was thereafter transferred to NSL.[5] NCFC and NSL are subsidiaries of Navient Corporation ("Navient").

Haas filed for relief under Title 11 as a Chapter 7 debtor in this Court on November 3, 2015,[6] and this Court ordered discharge of all of Haas' properly scheduled pre-petition debt on February 9, 2016.[7] Shahbazi filed for relief under Title 11 as a Chapter 7 debtor in the Eastern District of Virginia on September 20, 2011.[8] The Court entered discharge of all Shahbazi's properly scheduled pre-petition debt on December 27, 2011.[9] Accordingly, both Plaintiffs received a Chapter 7 discharge under Section 524(a), discharging all education-related debt that was not excepted from discharge by 11 U.S.C. § 523(a)(8) ("Section 523(a)(8)"). Defendants did not file an adversary proceeding to contest the dischargeability of their Consumer Education Loans in either instance. Nevertheless, Defendants thereafter engaged the services of various collection firms to attempt to collect on these otherwise discharged Loans in violation of the

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[3] SLM Corporation's loan servicing operation is now a separate, publicly traded entity known as Navient Corporation.

[4] The loan was then transferred from Sallie Mae Bank to SLM Education Credit Finance Corporation, which then changed its name to Navient Credit Finance Corporation.

[5] Sallie Mae, Inc. later became Navient Solutions, Inc. On January 31, 2017, Navient Solutions, Inc. became Navient Solutions, LLC. *See* Notice of Name Change, Rec. Doc. 97.

[6] *See* Chapter 7 Voluntary Petition, *In re Evan Brian Haas*, No. 15-35886 (Bankr. S.D. Tx. Nov. 3, 2015), ECF No. 1.

[7] *See* Order Discharging Chapter 7 Debtor, *In re Haas*, No. 15-35886 (Bankr. S.D. Tx. Feb. 9, 2016), ECF No. 18.

[8] *See* Chapter 7 Voluntary Petition, *In re Michael Shahbazi*, No. 11-16643 (Bankr. E.D. Va. Sept. 20, 2011), ECF No. 1.

[9] *See* Certificate of Mailing of Discharge of Debtor, *In re Shahbazi*, No. 11-16643 (Bankr. E.D. Va. Dec. 30, 2011), ECF No. 14.

court orders and Section 524(a) of the Bankruptcy Code. As with Plaintiffs, Defendants have sought to collect on discharged Consumer Education Loans from the Class Members, all of whom borrowed various types of consumer educational loans to attend unaccredited colleges, secondary schools, trade schools, and professional skills programs, and have since been issued discharge orders from various bankruptcy courts.

On August 5, 2016, Haas filed an adversary proceeding in this Court against SLM and Navient, seeking a declaratory judgment that his debt had been discharged, entry of judgment holding Navient and SLM (the predecessor to Navient) in contempt for violations of the discharge injunction, and a temporary injunction.[10] That same day, this Court entered a Temporary Restraining Order (TRO) pending Haas' application for preliminary injunctive relief, enjoining SLM and Navient from taking any action to collect or attempt to collect from Haas in any manner.[11] On August 17, 2016, the parties agreed to a Preliminary Injunction similar in scope to the Court's TRO, but limited to the proper party Defendant, Navient Solutions, Inc. (now NSL).[12] This Court signed that Agreed Order on August 18, 2016.[13]

On August 26, 2016, Haas amended his complaint to include Shahbazi and seek certification of a putative nationwide class of all similarly situated individuals who filed for bankruptcy protection in any judicial district and were issued discharge orders since April 20, 2005, obtained consumer education loans from Defendants or their predecessors to cover expenses at non-Title IV accredited institutions, have never reaffirmed any pre-petition consumer education loan debt, and have nonetheless been subjected to Defendants' attempts to induce

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10 *See* Plaintiff's Original Complaint, Rec. Doc. 1.
11 *See* Temporary Restraining Order, Rec. Doc. 4 at 2.
12 *See* Proposed Order Re: Preliminary Injunction, Rec. Doc. 12.
13 *See* Agreed Order, Rec. Doc. 13.

payment on discharged debts.[14] Plaintiffs also sought a declaratory judgment that Plaintiffs' and Class Members' Consumer Education Loans were discharged upon the entry of their respective discharge orders and damages, including attorneys' fees and costs, arising from the Defendants' willful violations of the discharge injunctions.[15]

In response to the corporate restructuring that occurred after Plaintiffs signed their loan agreements, Plaintiffs dismissed SLM without prejudice on December 30, 2017,[16] and filed their Second Amended Complaint on January 26, 2017.[17] On January 25, 2017, this Court ordered that Defendants file an answer or otherwise respond to Plaintiffs' Second Amended Complaint within thirty days after its filing (January 26, 2017).[18]

On February 27, 2017, Plaintiffs filed their Motion for Preliminary Injunction and Limited Class Certification.[19] In a March 23, 2017 hearing, at this Court's suggestion, the parties entered into a stipulated agreement to halt all collection activities on the proposed class pending final resolution by this Court, and in so doing, acknowledged that counsel for the proposed class could contact putative class members to advise them of the Agreed Order preventing Defendants from employing collection activities against them while this matter is pending.[20] The Agreed Order, addressing such contact, was filed on April 6, 2017.[21]

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14 *See* Plaintiffs' First Amended Complaint, Rec. Doc. 15.

15 *Id.*

16 *See* Order to Dismiss Defendant SLM without Prejudice, Rec. Doc. 74.

17 *See* Plaintiffs' Second Amended Complaint, Rec. Doc. 95.

18 *See* Agreed Order, Rec. Doc. 94.

19 *See* Plaintiffs' Motion for Preliminary Injunction and Limited Class Certification, Rec. Doc. 100.

20 The Court stated on the record: "[P]art of the agreement is just a requirement that you [proposed Interim Lead Counsel Burge] be provided the name and address of those folks, and you know, if you want to send them a letter, you know, there's nothing in the Order that prohibits you from sending them a letter and telling them." *See* Transcript of March 23, 2017 Hearing at 67.

21 *See* Agreed Order, Rec. Doc. 118 at 3.

III. STANDARD FOR APPOINTMENT OF INTERIM CLASS COUNSEL

Federal Rule 23(g), made applicable herein by Bankruptcy Rule 7023, governs the appointment of interim class counsel in these proceedings. *See* Fed. R. Bankr. P. 7023. Pursuant to Rule 23(g), the court has the authority to designate counsel to act on behalf of a putative class on an interim basis before determining whether to certify the action as a class action. Fed. R. Civ. P. 23(g)(3). Such designation is within the court's discretion. *Id.*; *see also Gedalia v. Whole Foods Mkt. Servs., Inc.*, No. 4:13-CV-03517, 2014 WL 4851977, at *1 (S.D. Tex. Sept. 29, 2014).

When appointing interim class counsel, the court must consider whether the appointee will "fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(4). In making this determination, the courts apply the criteria set forth in Rule 23(g)(1)(A). *In re: Wells Fargo Wage & Hour Employment Practices Litig. (No. III)*, No. H-11-2266, 2011 WL 13135156, at *3 (S.D. Tex. Dec. 19, 2011). The factors courts consider include:

(i) the work counsel has done in identifying or investigating potential claims in the action;
(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
(iii) counsel's knowledge of the applicable law; and
(iv) the resources that counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(A). Additionally, the court may also consider "any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B).

IV. LEGAL ARGUMENT

As will be shown, the circumstances of this adversary proceeding make appointment of interim class counsel at this juncture particularly appropriate. Additionally, Proposed Interim Class Counsel and Proposed Interim Lead Counsel will fulfill their primary duty, by fairly and

adequately representing the interests of the class. *See* Fed. R. Civ. P. 23(g)(4).

It has long been recognized that such appointment in the early stages of litigation may help to avoid wasting time, money, and confusion, as well as prevent misdirecting the litigation and unnecessarily burdening the court. *See* Manual for Complex Litig., § 10.22 (4th ed. 2004). This District has previously explained the importance of appointing interim class counsel and lead plaintiffs:

> [I]t is centrally important to the litigants on both sides and to this Court, especially because there are so many parties involved and all are entitled to equal access to the evidence, that the discovery process not disintegrate into chaos and harassment. At the same time diligent and efficient prosecution of the causes of action must be encouraged. To accomplish such and to provide all parties with more information through discovery to flesh out, or perhaps even eliminate, concerns regarding conflicts of interest, the Court believes that the litigation should proceed as a unified class with a strong Lead Plaintiff, at least until the time for class certification.

In re Enron Corp. Sec. Litig., 206 F.R.D. 427, 451 (S.D. Tex. 2002). Although interim class counsel are most often appointed where several lawyers are vying for control of a putative class, early representation is necessary in this action to protect the interests of the potential class members.

In setting forth on the record broad terms of the stipulated agreement between the parties, the Court acknowledged that Plaintiffs' counsel will necessarily communicate with certain absent putative class members to advise them of the Agreed Order and resultant actions they may wish to take. This case necessitates the immediate appointment of interim class counsel because, by the terms of the Agreed Order, Defendants will be soon be providing Plaintiffs' counsel with the names of putative class members who must be apprised of their rights in short order. By appointing Plaintiffs' chosen counsel as interim class counsel and interim lead counsel, this Court can ensure that the putative class members are apprised of their rights and protected. Plaintiffs' chosen counsel have already advocated on behalf of the absent class members, and

will continue to provide the putative class with effective counsel to ensure that their rights are fairly and adequately represented.

As evidenced by each of the declarations attached hereto, Plaintiffs' choice of counsel have the skill and knowledge and background that will enable them to prosecute this action effectively and expeditiously. The firms have spent years investigating the types of claims at issue in this litigation, and have great understanding of the applicable law. *See* Decl. of Smith at ¶¶ 3-5. The firms have substantial experience in litigating complex class actions. *See* Decl. of Burge at ¶¶ 3-4; Decl. of Swanson at ¶¶ 8-12 . Finally, all firms have substantial resources to dedicate to the prosecution of this case. *See* Decl. of Burge at ¶ 7; Decl. of Swanson at ¶ 13; Decl. of Smith at ¶ 13. The Court may be assured that by designating Plaintiffs' choice of counsel as Interim Class Counsel and Interim Lead Counsel for the action, the putative class will receive high-caliber legal representation.

A. Plaintiffs' Proposed Interim Class Counsel have knowledge of the applicable bankruptcy law on dischargeable education loans, have spent years investigating and litigating the types of claims at issue in this litigation.

As this Court is aware, Plaintiffs' and putative class members' claims revolve around an obscure area of bankruptcy law—specifically, the dischargeability of certain types of education loans that are not associated with Title IV accredited institutions. Because this subject matter is both peculiar and largely unresolved, few individuals in the legal profession have had any experience litigating the types of claims at issue here, nor are they even familiar with the legal debate. However, Plaintiffs' Proposed Interim Class Counsel have been researching and exploring this nuanced area of bankruptcy law for years, have identified and investigated the conceivable claims the law provides, and have experience in other lawsuits where the types of claims were analogous to the claims asserted by Plaintiffs on behalf of themselves and the

putative class members.

Most notably, Plaintiffs' Proposed Interim Class Counsel includes Austin Smith, who has been at the forefront of investigating, researching, and identifying whether certain education loans are dischargeable through bankruptcy. In fact, this attorney researched and published the first scholarly work on this topic in 2014. *See* Decl. of Smith at ¶ 4. Since that time, he has litigated and won numerous actions across the country—vindicating the rights of debtors and obtaining relief and damages for discharge violations related to creditors' attempts to collect on discharged educational loans after bankruptcy. *See* Decl. of Smith at ¶¶ 5, 7. In addition, Smith has used his area of expertise to respond promptly to inquiries from the named Plaintiffs in this action, investigate their claims, determine that their rights had likely been violated, and expeditiously seek relief in the appropriate forum and venue. *See* Decl. of Smith at ¶¶ 3, 6, 8. All of Plaintiffs' Proposed Interim Class Counsel are committed to providing the same level and quality of legal service to all members of the putative class.

Likewise, Plaintiffs' Proposed Interim Class Counsel are more knowledgeable about the application and scope of 11 U.S.C. § 523(a)(8) than the majority of—if not all—other attorneys in the country. Plaintiffs' counsel have spent thousands of hours researching, *inter alia*, the various types of student loans; including Stafford Loans, FFELP Loans, Direct Loans, private undergraduate loans, career training loans, tutorial loans, K-12 loans, direct-to-consumer loans, and their legal status pursuant to the Bankruptcy Code. *See* Decl. of Smith at ¶¶ 3-7. Plaintiffs' counsel are also well-read in virtually every published decision on the application of Section 523(a)(8), including those involving "undue hardship" and those involving educational debts that fall outside the statutory language. *See* Decl. of Smith at ¶ 3. Finally, Plaintiffs' Proposed Interim Class Counsel have wide experience litigating issues involving 11 U.S.C. § 524 and 11 U.S.C. §

105. *See* Decl. of Smith at ¶ 7. As such, they have demonstrated the requisite knowledge of the applicable law, as well as a dedication to pursuing Plaintiffs' and putative class members' claims through their efforts in this proceeding and in prior and pending lawsuits.

B. Plaintiffs' Proposed Interim Class Counsel have experience handling class actions and other complex litigation.

Plaintiffs' Proposed Interim Class Counsel also have extensive experience handling complex class action lawsuits. Plaintiffs' counsel consist of attorneys from multiple law firms that have worked on both the plaintiff and defense side of a number of class actions, and are versatile and experienced in litigation under Federal Rule of Civil Procedure 23. *See* Decl. of Burge at ¶ 4, Decl. of Swanson at ¶¶ 6-12. Plaintiffs' Proposed Interim Class Counsel's abilities are further demonstrated in Plaintiffs' Motion for Preliminary Injunction and Limited Class Certification, [22] a Rule 23 motion that resulted in a stipulated agreement with Defendants to temporarily halt collection efforts on the putative class in this action, to be filed no later than April 6, 2017.

C. Plaintiffs' Proposed Interim Class Counsel have and will continue to commit sufficient resources to represent the putative class.

Plaintiffs' Proposed Interim Class Counsel are committed to and capable of providing the resources necessary to vindicate the interests of the class, and have already shown their dedication to such an effort. To date, Plaintiffs' counsel have devoted extensive time to conducting legal research and monitoring the developments in the relevant area of law. Plaintiffs' counsel are dedicated to advocacy on behalf of the Plaintiffs and putative class members, as they have have appeared in this Court on many occasions and have filed multiple pleadings and memoranda of law in this Court—including two amended complaints, an

[22] *See* Plaintiffs' Motion for Preliminary Injunction and Limited Class Certification, Rec. Doc. 100.

opposition to NSL's motion to compel arbitration, and the more recent motion for preliminary injunction and limited class certification. Plaintiffs' counsel have dedicated their efforts to conferring with counsel for Defendants on the terms of an Agreed Order and are presently preparing an opposition to Defendants' pending motion to dismiss. Accordingly, Plaintiffs' Proposed Interim Class Counsel have adequately shown their commitment to putting forth sufficient time and resources to adequately represent the Plaintiffs and putative class members.

Additionally, Plaintiffs' Proposed Interim Class Counsel consist of attorneys from multiple law firms. The firms, located throughout the United States, collectively have access to substantial economic and human resources to ensure the interests of this class are protected and vindicated. *See* Decl. of Burge at ¶ 7; Decl. of Swanson at ¶ 13; Decl. of Smith at ¶ 13. Specifically, the law firms of Plaintiffs' Proposed Interim Class Counsel collectively employ fifty-nine (59) lawyers whose efforts and expertise can be marshaled to ensure the interests of this class are well-served. As such, it is clear that Plaintiffs' counsel have the ability to continue to commit sufficient resources to the representation of Plaintiffs and putative class members.

V. CONCLUSION

Under the relevant circumstances herein, the undersigned respectfully submit that they are best suited to lead the case on behalf of the Plaintiffs and putative class members. Together, they present a unique skill set in the areas of complex class action lawsuits and bankruptcy law and procedure, especially in the area of dischargeable education loans. Accordingly, they respectfully request that this Court enter the accompanying Order approving the proposed interim leadership structure.

Dated: April 7, 2017 Respectfully submitted,

By: /s/ Marc Douglas Myers

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 7th day of April, 2017, a true and correct copy of *Plaintiffs Evan Brian Haas' and Michael Shahbazi's Motion and Incorporated Memorandum in Support of their Motion for Appointment as Interim Class Counsel and Interim Lead Counsel* was served via that Court's electronic case filing system (CM/ECF) to all parties registered to receive such notice in the above-captioned proceeding.

/s/ Marc Douglas Myers

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EVAN BRIAN HAAS, MICHAEL SHAHBAZI, Plaintiffs, v. NAVIENT SOLUTIONS, LLC, NAVIENT CREDIT FINANCE CORPORATION Defendants.	§	Chapter 7 Case No. 15-35586 (DRJ) Adv. Pro. No. 16-03175 (DRJ) **NATIONWIDE CLASS ACTION**

DECLARATION OF AUSTIN C. SMITH
IN SUPPORT OF PLAINTIFFS' MOTION FOR APPOINTMENT OF INTERIM CLASS COUNSEL AND INTERIM LEAD COUNSEL

I, Austin Smith, declare:

1. I am the founding member of the Smith Law Group, a law practice in New York devoted exclusively to the discharge of private student loans in bankruptcy.

2. This declaration is submitted in support of Plaintiffs' Motion for Appointment of Interim Class Counsel and Interim Lead Counsel in the above captioned matter.

Experience and Background

3. I first began researching the issue of student loan dischargeability while on the law review at the University of Maine School of Law. Since that time, I have spent thousands of hours researching, *inter alia*, case law and legislative history concerning 11 U.S.C. § 523(a)(8), and the nuances and parameters of various federal and private student loan programs.

4. In July 2014, the American Bankruptcy Institute published my article, *The Misinterpretation of 11 U.S.C. § 523(a)(8),* whose arguments and reasoning have been adopted by bankruptcy courts across the country (attached hereto as Exhibit A).

5. I spent the first two years of my legal career as an associate with the commercial litigation boutique Brewer, Attorneys and Counselors (formerly known as Bickel & Brewer). During that time, I also litigated one of the first actions successfully discharging a non-qualified private student loan, *Campbell v. Citibank et. al.*, 574 B.R. 49 (Bankr. E.D.N.Y. 2016).

6. I founded the Smith Law Group in July 2016 in order to devote all my time and energy to helping debtors discharge their student loans in bankruptcy.

7. Since that time, I have commenced and/or worked on more than twelve (12) adversary proceedings and district court actions seeking discharge of private student loans, and in many instances damages arising from illegal collection efforts, including:

(i) *Campbell v. Citibank et. al.*, 574 B.R. 49 (Bankr. E.D.N.Y. 2016). Obtained denial of Defendant Citibank's motion to dismiss, and won motion for summary judgment concerning discharge of a bar exam loan.

(ii) *Campbell v. Law Office of Kevin Stevens, et. al.,* 15-AP-01189 (Bankr. E.D.N.Y. 2016). Settled on favorable terms for client, including obtaining disgorgement of all money repaid by client on discharged educational debt.

(iii) *Schultz v. Navient Solutions, Inc.*, 16-AP-03042 (Bankr. D. Minn. 2016). Obtained favorable ruling on motion for partial summary judgment finding that private education loans were not excepted from discharge under section 523(a)(8)(A)(ii).

(iv) *Kashikar v. DB Structured Products*, 15–AP-01184 (Bankr. C.D. Cal. 2015). Currently assisting debtor's attorneys *pro bono* on appeal to Ninth Circuit Bankruptcy Appellate Panel concerning discharge of a private student loan made for a non-accredited school.

8. I also routinely assist and advice debtors and bankruptcy attorneys *pro bono* in seeking discharge of student loans.

9. My work on behalf of student debtors in discharging student loans has been featured in the Wall Street Journal, the National Law Journal, the ABA Law Journal, Fox News, ABC News, Law 360, Marketplace, National Public Radio, and more.

10. I am a featured speaker at this year's Annual Convention of the National Association of Consumer Bankruptcy Attorneys in Orlando, Florida, where I will be presenting on how to obtain discharge of non-qualified private student loans.

11. I received my J.D. degree *cum laude* from the University of Maine School of Law in 2014.

12. I was admitted to the New York Bar in October 2015. I am admitted to practice before the United States District Courts, Southern and Eastern Districts of New York.

13. I am committed to the full preparation of this case through the performance of necessary and reasonable discovery and am willing to take this case to trial should that become necessary. I am committed to acting in the best interest of the class, and understand my duties in that regard under applicable law.

Executed on the 6th day of April, 2017.

/s/ Austin C. Smith
AUSTIN C. SMITH

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Vol 12, Num 1 | July 2014

Consumer Bankruptcy
An ABI Committee Newsletter

AMERICAN BANKRUPTCY INSTITUTE

In This Issue:

The Misinterpretation of 11 U.S.C. § 523(a)(8)

by Austin C. Smith

Bickel & Brawer
New York

[1]The common belief that all student loans are protected from discharge in bankruptcy is based on a misunderstanding of 11 U.S.C. § 523(a)(8). Since 1990, bankruptcy courts have been misreading the statute to prevent any student debt that could be construed as providing educational benefits or advantages from discharge. The flawed logic in student bankruptcy cases has thus become (1) all debts that confer educational benefits are protected from discharge; (2) the debt in question facilitated the debtor's education and as such, conferred educational benefits; and (3) the debt is not dischargeable. This application was never intended by Congress. Section 523(a)(8) currently protects from discharge:

> (A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or
> (ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or
> (B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986.

Importantly, each subsection of § 523(a)(8) addresses a different kind of debt, and practitioners cannot select useful terms from the many layers and so end by creating their own personalized version of § 523(a)(8). As the *In re Alibatya* court characterized this behavior, the "[d]efendant has sought to place [the] Plaintiff's ... obligation within virtually every category of excepted educational debt identified in 11 U.S.C. § 523(a)(8). Remarkably, at the same time, [the] Defendant blurs distinctions between such excepted categories, blending them under one overarching rubric, namely, educational benefit."[2]

However, the *Alibatya* court is almost unique in refusing this argument. Most bankruptcy courts have fallen victim to the *educational benefit* siren and have refused to discharge any debt that can be construed as providing broadly defined educational advantages. This interpretation is at odds with the statutory language and legislative history of § 523(a)(8), which protects three distinct classes of debt. First, subsection (A)(i) only protects federally insured or nonprofit student loans. Second, subsection (A)(ii) only protects debts resulting from noncompliance in contractual service scholarships and grants. Third, subsection (B) only protects *private* student loans that meet narrow Internal Revenue Code qualifications. A sizeable portion of private student loan debt falls outside all three of these categories, and must be treated as non-qualified private student loans that have no protection from discharge.

History of § 523(a)(8)

The history of § 523(a)(8) is closely tied to the federal government's commitment to higher education, which has two major programs. The first program offers federally insured, guaranteed or issued loans, such as the Stafford and Perkins loans.[3] The second program offers federal scholarships and grants, such as Veteran's Tuition Assistance and the National Health Service Corps Scholarship.[4] The impetus for § 523(a)(8) was largely to protect the government (and, by extension, the taxpayer) from students who took advantage of these programs to finance an education, and then filed for bankruptcy before

EXHIBIT A

moving onto lucrative careers.[5]

Since its initial enactment, there have been three major amendments[6] to § 523(a)(8). These amendments added (1) the provision excepting from discharge all federally guaranteed and nonprofit loans in 1979,[7] (2) the clause excepting from discharge all governmental service scholarships in 1990[8] and (3) the subsection excepting qualified private student loans from discharge in 2005.[9]

In its original incantation, § 523(a)(8) only protected federally guaranteed and nonprofit loan programs. The following language protected from discharge any debt that was

> (a)(8) for an educational loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or a nonprofit institution of higher education....[10]

Notably, the original wording of § 523(a)(8) failed to address the potential problems that were created by federal scholarships and grants. In the 1980s, the issue was first raised as to whether debts resulting from service scholarships were protected by the original language in § 523(a)(8). [11] In *U.S. Dept. of Heath and Human Services v. Smith*, a student accepted a medical school scholarship on condition that he work in a "physician shortage" area for a certain number of years after graduation.[12] The student finished medical school but failed to satisfy the condition and thus incurred *an obligation to repay funds received as an educational ... scholarship.* The student then filed for bankruptcy and sought to discharge the resulting obligation, arguing that the pre-1990 language in § 523(a)(8) rendered only *loans* nondischargeable. The bankruptcy and district courts held that the scholarship was not a loan, and therefore was dischargeable. However, the Eighth Circuit felt that a contingent scholarship debt was the near enough equivalent of a "loan" and reversed the lower court's decisions and prohibited discharge.[13]

Despite the Eighth Circuit's ruling, Congress was not entirely insensitive to this problem of interpretation and added a new clause to the existing statute, "or for an obligation to repay funds received as an educational benefit, scholarship, or stipend." The language after 1990 protected from discharge any debt:

> **(a)(8)** for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend....[14]

The new language was designed to remedy the problem of conditional scholarships and Congress even provided specific examples to illustrate the meaning of the new language. "This section [523(a)(8)] adds to the list of nondischargeable debts, obligations to repay educational funds received in the form of benefits (such as VA benefits), scholarships (such as medical service corps scholarships) and stipends. "[15] These examples offer critical evidence of congressional intent. For example, Congress used the word "benefit" to mean a VA benefit, which is incompatible with the broader interpretation of "benefit" as any money lent to further a debtor's education.[16]

The rise in commercial lending in the student loan market led for-profit lenders to seek similar protection from bankruptcy discharge.[17] Congress acquiesced, and in 2005, § 523(a)(8) underwent further changes. First, the statute's original provision was bifurcated into two subsections, §§ 523(a)(8)(A)(i) and 523(a)(8)(A)(ii). Second, subsection (B) was added to protect qualified private student loans from the discharge. After 2005, the language protected any debt for the following:

> (A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or
> (ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or
> (B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986.[18]

The Misinterpretation of § 523(a)(8)(A)(ii)

Despite the plain meaning of the statute and the legislative history, many courts have misread "obligation to repay funds received as an educational benefit" to mean that any loan that facilitates or furthers a debtor's education is protected from discharge. Inherent in this error is a misreading of two pieces of the statute: "obligation to repay funds" and "benefit." First, courts are substituting the word "loan" for the phrase "obligation to repay funds."[19] Second, the term "benefit" is being interpreted to mean those educational advantages provided by a student loan.[20]

However, a growing number of courts have realized the difficulty of the resultant logic: Interpreting "educational benefit" to except from discharge any loan that in any way facilitates education renders the remaining provisions of the statute meaningless. If any money lent to any person for any educational

purpose is protected, then the remaining provisions of § 523(a)(8) — provisions carefully crafted to protect federally insured loans, nonprofit loans and other loans qualified by the IRC — become superfluous.[21]

The first error occurs when courts treat the phrase "obligation to repay funds" as synonymous with "loan." This occurred most notably in *In re Rumer*, in which the court created a summary of § 523(a)(8) that has been cited by later courts:[22]

> [Section] 523(a)(8) protects four categories of educational loans from discharge: (1) loans made, insured, or guaranteed by a governmental unit; (2) loans made under any program partially or fully funded by a government unit or nonprofit institution; (3) *loans received as an educational benefit, scholarship, or stipend*; and (4) any "qualified educational loan" as that term is defined in the [IRC].[23]

Notice how for the sake of symmetry, the *Rumer* court substituted the word "loan" for the phrase "obligation to repay funds" in the third part, thereby changing the meaning of the law. Benefits, scholarships and stipends are not loans. They are grants of money that are sometimes coupled with service obligations, which if not fulfilled result in an obligation to repay. Such conditional obligations may have attributes in common with loans, but the terms are not interchangeable.

Once the courts reclassified "obligation to repay funds" as "loans," they were forced to treat the phrase "educational benefit" as some sort of adjective-modifying loan. Thereafter, the whole focus of the analysis shifted from determining whether a debt *was an educational benefit* to determining whether the debt *was a loan that conferred education benefits*. This formula forged the words "loan" from subsection (A)(i) and "educational benefit" from subsection (A)(ii) into a single statutory chimera found nowhere in the statute's language. As a court in Michigan held, "the loans from Northstar are 'obligations to repay funds received as an educational benefit' under § 523(a)(8)(A)(ii)."[24] A Massachusetts court similarly held that "under the plain language of 11 U.S.C. § 523(a)(8)(ii), the August 2007 Agreement is a loan for an educational benefit."[25]

The Misapplication of § 523(a)(8)(B)

The problem with this misreading of § 523(a)(8)(A)(ii) is serious because it improperly serves as a catch-all provision to protect from discharge any and all debts that provide vaguely defined educational advantages. Now, some of the debts that are getting caught in the § 523(a)(8)(A)(ii) web might still be excepted from discharge under (1) § 523(a)(8)(A)(i) because they are federally insured or nonprofit loans, or (2) they might be excepted under § 523(a)(8)(B) because they are qualified private loans that meet the narrow IRC § 221(d)(1) qualifications.

However, IRC § 221(d)(1) sets forth specific requirements that are not met by every private student lender or loan. Subsection (B) protects only "qualified educational loans" (QEL) as defined in IRC § 221(d)(1). A QEL is defined as "any indebtedness incurred by the taxpayer solely to pay qualified higher education expenses."[26] "Qualified education expenses" are in turn defined as "the cost of attendance at an eligible educational institution."[27] "Cost of attendance" is defined as "tuition, books and a reasonable allowance for room and board (as defined by the institution)."[28] The "cost of attendance" "as defined by the institution" must adhere to a federal methodology that calculates the full cost of attendance for a given school in a given area. No loans in excess of that calculated amount may be qualified.[29] Thus, any money lent to a student who has already reached his/her federal limit under the qualified "cost of attendance" is a nonqualified private student loan and has no protection from discharge under § 523(a)(8).

The problem arises when bankruptcy courts use the "educational benefit" language to bypass performing a thorough analysis of private student loans under the IRC. The most extreme example occurred in *In re Carow*.[30] In that case, a debtor sought to discharge her private student loans because they had been lent in excess of the qualified limits. "Dave Hanson ... the associate director of financial aid ... testified that [the] Debtor was awarded the maximum federal loan amount for which she was eligible and *that Chase's loans could not have been certified because they were above and beyond [the] Debtor's eligibility*."[31] The court disagreed, reasoning that even if the loan was in excess of federal limits, it was enough that the debtor had affirmed in the contract that the money would be used for qualified educational expenses.[32] However, the court hedged its holding and somewhat flippantly held that "[m]oreover, even if the loans were not a qualified educational loan as defined in 26 U.S.C. § 221(d)(1) for purposes of section 523(a)(8), subsection (a)(8)(A)(ii) provides that it is enough that the debt at issue be 'an obligation to repay funds received as an educational benefit.'"[33]

Conclusion

Since 1990, courts have misread the phrase "educational benefit" to protect from discharge any debt that has an *educational purpose* or otherwise furthered a debtor's educational pursuits. Such overbroad interpretations have abrogated the fresh start for thousands of debtors and provided commercial lenders with protections from discharge in circumstances that were never intended by the Bankruptcy Code. Nonqualified private student loans have no protection from discharge in bankruptcy. Furthermore, the

Consumer Financial Protection Bureau reported that more than 31 percent of student debtors between 2005-07 took out private loans in amounts that were not certified by the institutions.[34] This does not necessarily mean these loans are not qualified under the IRC — but with more than $150 billion in total outstanding private student loan debt, this issue demands closer scrutiny.

1. Special thanks to Prof. Lois R. Lupica (University of Maine School of Law; Portland, Maine), Bill Wilson and Marschall Smith. The views expressed in this article do not necessarily represent the views of Bickel & Brewer.

2. *In re Alibatya*, 178 B.R. 335, 338 (Bankr. E.D.N.Y. 1995).

3. Federal Student Aid, *Loans*, *available at* https://studentaid.ed.gov/types/loans (last visited May 20, 2014).

4. Federal Student Aid, *Grants and Scholarships*, *available at* https://studentaid.ed.gov/types/grants-scholarships (last visited May 20, 2014).

5. H.R. Rep. No. 95-595, at 133.

6. Space precludes a discussion of every amendment to § 523(a)(8). The three amendments discussed herein are the most significant to the issues addressed in this article.

7. P.L. 96-56 (Aug. 14, 1979).

8. P.L. 101-647, 104 Stat. 4789 (1990). This clause was later made its own subsection in 2005.

9. P.L. 109-8 (April 20, 2005).

10. *Supra* n.7.

11. *See also In re Lipps*, 79 B.R. 67 (Bankr. W.D. Fla. 1987); *In re Avila*, 53 B.R. 933, 937 (Bankr. W.D.N.Y. 1985).

12. 807 F.2d 122 (8th Cir. 1986).

13. *Id.* at 126-217.

14. *Supra* n.8.

15. Federal Debt Collection Procedure of 1990: Hearing on P.L. 101-647 Before the H. Subcommittee on Economic and Commercial Law, H. Judiciary Committee 101st Cong. 74-75 (June 14, 1990) (Mr. Brooks' Questions for the Record from Mr. Wortham).

16. The congressional record even cited *In re Smith* as impetus for the change.

17. 145 Cong. Rec. H2655-02, at Part 3 of 5 on WL (May 5, 1999) (this act was ultimately defeated in 1999, but language was subsequently incorporated into Bankruptcy Abuse Prevention and Consumer Protection Act of 2005).

18. *Supra* n.9.

19. *In re Rumer*, 469 B.R. 553 (Bankr. W.D. Pa. 2012); *In re Oliver*, 499 B.R. 617, n.3 (Bankr. S.D. Ind. 2013); *In re Beesely*, 2013 WL 5134404, at *3 (Bank. W.D. Pa. 2013).

20. Consider that the word "benefit" has two common meanings. The first is "an advantage or profit gained from something." The second is "a payment made by an employer, the state or an insurance company." Courts have been using the former, but Congress clearly intended the latter. *Oxford Dictionaries*, *available at* www.oxforddictionaries.com/us.

21. *See, e.g., London-Marable v. Sterling*, 2008 WL 2705374, at *5 (Bankr. D. Ariz. 2008); *see also In re Segal*, 57 F.3d 342, 348 (3d Cir. 1999).

22. *See supra* n.19; *but see In re Corbin*, 506 B.R. 287, 291 (Bankr. W.D. Wash. 2013), wherein the court cited the passage but corrected the error.

23. *In re Rumer*, 469 B.R. 553 (Bankr. M.D. Pa. 2012).

24. *In re Maas*, 497 B.R. at 863 (Bankr. W.D. Mich. 2013).

25. *In re Belforte*, 2012 WL 4620987 (Bankr. D. Mass. 2012).

26. 26 U.S.C. § 221(d)(1).

27. 26 U.S.C. § 221(d)(2).

28. 20 U.S.C. § 1087ll.

29. Mark Kantrowitz, "Limitations on Exception to Discharge of Private Student Loans," at 5 (March 5,

2009), *available at* www.finaid.org/questions/bankruptcylimitations.pdf; *see also* CFPB, Private Student Loans 10 (Aug 29, 2012), *available at* http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf.

30. 2011 WL 802847 (2011); *see also In re Skipworth*, 2010 WL 1417964 (Bankr. N.D. Ala. 2010); *In re Roy*, 2010 WL 1523996 (Bank. D.N.J. 2010); *In re Beesely*, 2013 WL 5134404 (Bankr. W.D. Pa.).

31. *In re Carow*, 2011 WL 802847 at *2 (2011) (emphasis added).

32.. *Id.* at *4.

33. *Id.*

34. CFPB, Private Student Loans 3 and 51 (Aug. 29, 2012), *available at* http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf (major culprit here are "direct-to-consumer" loans that bypass institutions altogether).

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EVAN BRIAN HAAS, MICHAEL SHAHBAZI,	§	Chapter 7
Plaintiffs,	§	Case No. 15-35586 (DRJ)
v.	§	Adv. Pro. No. 16-03175 (DRJ)
NAVIENT SOLUTIONS, LLC, NAVIENT CREDIT FINANCE CORPORATION	§	**NATIONWIDE CLASS ACTION**
Defendants.	§	

DECLARATION OF JASON W. BURGE
IN SUPPORT OF PLAINTIFFS' MOTION FOR APPOINTMENT AS INTERIM CLASS COUNSEL AND INTERIM LEAD COUNSEL

I, Jason W. Burge, declare:

1. I am a partner at the Law Firm of Fishman Haygood, L.L.P. I am a member in good standing of the Bar of the State of Louisiana. I make these statements based on personal knowledge and would so testify if called as a witness at trial.

2. This declaration is submitted in support of Plaintiffs Evan Brian Haas' and Michael Shahbazi's Motion and Incorporated Memorandum in Support of their Motion for Appointment as Interim Class Counsel and Interim Lead Counsel in the above captioned matter.

Experience and Background

3. Fishman Haygood, L.L.P. ("Fishman Haygood") was founded in the mid-1990s by business and litigation lawyers from three of the largest law firms in Louisiana.

Fishman Haygood is a "boutique" law firm that handles complex and difficult legal and business matters.

4. The Firm's litigators actively represent clients in a number of different areas, including complex litigation. Some representative matters are discussed below.

- *Baylor College of Medicine v. Citigroup Global Markets, Inc.* (FINRA, Case No. 11-04005). Fishman Haygood represented Baylor College of Medicine in connection with losses resulting from Citi's wrongdoing in connection to the structuring and issuance of auction rate security bonds. The case settled after a two-week arbitration hearing.

- *UBS Fin. Services, Inc. v. W. Va. Univ. Hospitals, Inc.*, 660 F.3d 643 (2d Cir. 2011). Fishman Haygood represented West Virginia United Health System ("WVUHS") and its four associated hospitals in connection with losses resulting from UBS's wrongdoing in relation to its structuring and issuance of auction rate security bonds. The Second Circuit ruled that an issuer of auction rate securities is a "customer" under FINRA rules and therefore, the issuer has a right to arbitrate its disputes with the underwriter of the same securities. The case recently settled.

- *In re Merrill Lynch Auction Rate Securities Litigation*, 758 F. Supp. 2d 264 (S.D.N.Y. 2010). In this multidistrict litigation ("MDL"), Fishman Haygood represented the only plaintiff that was an issuer of auction rate securities. Fishman Haygood's client was one of two of the MDL plaintiffs whose claims against the underwriter survived motions to dismiss. Chief Judge Loretta A. Preska held that the issuer had stated valid claims against the underwriter for breach of fiduciary duty, fraud, and intentional/negligent misrepresentation.

- *Lormand v. US Unwired, Inc.*, 565 F.3d 228 (5th Cir. 2009). Fishman Haygood defended US Unwired in this securities class action and obtained a partial dismissal of the plaintiff's claims. The case subsequently settled.

- *City of New Orleans v. AMBAC Assurance Corporation, et al.*, Case No. 08-3949 (E.D. La.). Fishman Haygood represented the City of New Orleans in connection with losses resulting from UBS's wrongdoing in relation to the structuring of variable rate bonds and an interest rate swap. Following a bench trial, the matter settled.

- *Robert Ticknor v. Rouse's Enterprises, L.L.C.*, 592 Fed. Appx. 276 (5th Cir. 2014). Fishman Haygood successfully defended a grocery chain alleged to have violated the Fair and Accurate Credit Transactions Act. Fishman Haygood obtained denial of class certification, a decision that was upheld on appeal.

- *Rotstain, et al. v. Trustmark Nat'l Bank, et al.*, No. 3:09-cv-02384-N-BQ (N.D. Tex.): In this multidistrict litigation ("MDL") Fishman Haygood currently represents a proposed worldwide class exceeding 12,000 investors against five banks alleging claims that these banks aided the Allen Stanford Ponzi scheme. Plaintiffs' motion for class certification is fully briefed and pending before the Court. The Court has issued multiple rulings denying the bank defendants' various motions to dismiss.

- *Unger v. Amedisys, Inc.*, 401 F.3d 316 (5th Cir. 2005). Fishman Haygood successfully defended Amedisys in this class action, obtaining reversal of class certification on appeal. The Fifth Circuit opinion in this case established the burden of proof for class certification on the market efficiency element.

- *La. Firefighters' Ret. Sys. v. N. Trust Investments, N.A. and N. Trust Co.*, Case No. 09-cv-07203 (N.D. Ill.). Fishman Haygood represented the Louisiana Firefighters' Retirement System as class representative in this non-ERISA class action. The class alleged that the Northern Trust defendants mismanaged its comprehensive securities lending program, resulting in financial loss to members of the class.

- *Diebold, et al. v. N. Trust Investments, N.A., et al.*, Case No. 09-cv-01934 (N.D. Ill.). Fishman Haygood represented a class of ERISA-governed retirement plans that alleged claims against Northern Trust Investments, N.A. and Northern Trust Company based upon similar conduct as alleged in the Louisiana Firefighters non-ERISA class action above.

- *Adams v. Securities America,* (FINRA Arbitration Case No. 03-05687); *Adams v. Securities America,* 06-2509, 2006 WL 2631863 (E.D. La. 2006). Fishman Haygood served as plaintiffs' counsel in a mass action involving retirement funds that resulted in one of the largest verdicts ever given in FINRA arbitration, including unprecedented punitive damages. The United States District Court for the Eastern District of Louisiana subsequently affirmed the award, including the punitive damages.

- *In re: Cox Enterprises, Inc., Set-Top Cable Television Box*, Civil Action No. 09-ML-02048 (W.D. Okla.). Fishman Haygood served on the MDL plaintiffs' steering committee in this nationwide antitrust action arising from the illegal tying of set-top boxes to the purchase of digital cable.

5. I received my J.D. degree *magna cum laude* from New York University School of Law in 2006.

6. I was admitted to the Louisiana Bar in October 2006. I am admitted to practice before the United States Fifth Circuit Court of Appeals; the United States

District Court, Middle District of Louisiana; the United States District Court, Eastern District of Louisiana; and the United States District Court, Western District of Louisiana. Following a clerkship with the Honorable Jerry E. Smith of the United States Fifth Circuit Court of Appeals in Houston, I have been practicing in the field of complex litigation for the past ten years.

7. I, on behalf of Fishman Haygood, am committed to the full preparation of this case through the performance of necessary and reasonable discovery and am willing to take this case to trial should that become necessary. I am committed to acting in the best interest of the class, and understand my duties in that regard under applicable law.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 6th day of April, 2017.

JASON W. BURGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EVAN BRIAN HAAS, MICHAEL SHAHBAZI, Plaintiffs, v. NAVIENT SOLUTIONS, LLC, NAVIENT CREDIT FINANCE CORPORATION Defendants.	§ § § § § § § § § § § §	Chapter 7 Case No. 15-35586 (DRJ) Adv. Pro. No. 16-03175 (DRJ) **NATIONWIDE CLASS ACTION**

DECLARATION OF LYNN E. SWANSON IN SUPPORT OF PLAINTIFFS' MOTION FOR APPOINTMENT AS INTERIM CLASS COUNSEL AND INTERIM LEAD COUNSEL

I, Lynn E. Swanson, being first duly sworn upon my oath and under penalties of perjury, do hereby make the following statements based upon my own personal knowledge:

1. My name is Lynn E. Swanson, and I am the above-named individual.
2. I make this Declaration in support of Plaintiffs' Motion for Appointment as Interim Class Counsel and Interim Lead Counsel. I am the managing member of Jones Swanson Huddell & Garrison, L.L.C., one of the counsel of record for the named plaintiffs in the above-referenced matter.
3. I am an adult of sound mind, am aware of the matters set forth herein and the following facts and information of my own personal knowledge, and if called upon to testify to such matters, I could and would competently so testify.
4. I currently reside in New Orleans, Louisiana, where I have lived for most of my life.

5. I graduated from Bryn Mawr College in 1989 with a B.A., and received my J.D. degree from Loyola University New Orleans College of Law in 1993.
6. I was admitted to the Louisiana Bar in October, 1993. I am admitted to practice before the United States Fifth Circuit Court of Appeals; the United States District Court, Middle District of Louisiana; the United States District Court, Eastern District of Louisiana; and the United States District Court, Western District of Louisiana. I was admitted to practice in those courts in 1993 and have been practicing in the fields of complex litigation for the past twenty-three years.
7. In the courtroom, my experience includes jury trials, bench trials, and appellate arguments.
8. From 1993 through 2003, I was an attorney with the Law Offices of Daniel E. Becnel, Jr. in Reserve, Louisiana, where my practice consisted exclusively of representing plaintiffs in large class actions and mass tort litigation, with a concentration on pharmaceutical and medical device class actions.
9. During the first ten years of my career, I worked most extensively on the following matters: *In re Breast Implants Product Liability Litigation* (MDL 926); *Orthopedic Bone Screw Products Liability Litigation* (MDL 1014); *In re Diet Drug (Phentermine/Fenfluramine/Dexfedfluramine) Products Liability Litigation* (MDL 1203); *In re Vioxx Products Liability Litigation* (MDL 1657); *Scott et. al. v. The American Tobacco Co., et. al.*, Civil District Court, Parish of Orleans, State of Louisiana, Case No. 96–8461; and *In re: Chemical Release at Bogalusa*, Twenty-Second Judicial District Court, Parish of Washington, State of Louisiana, Division "C," Case No: 73341.

10. In the *Breast Implants* litigation, I worked for both the Plaintiffs' Steering Committee and a program set up by the Court to assist unrepresented women in furtherance of the statewide class action and its associated settlements. In the *Bone Screw* litigation, I worked for the Plaintiffs' Steering Committee as well. In the *Vioxx* litigation, I represented at least 400 clients. In *Phen Fen*, I led my firm's efforts in representing more than 300 plaintiffs. In *American Tobacco*, I worked extensively on pretrial matters. In the *Bogalusa* litigation, I devoted thousands of hours to deposition work and preparing the case for trial.
11. In 2003, I joined Jones, Verras, & Freiberg, LLC, where I continued my work on the *Vioxx* litigation, as well as working to establish the firm's commercial litigation practice. In 2007, the firm's name was changed to Jones Swanson Huddell & Garrison, L.L.C. and around that same time, I became the firm's managing member.
12. Since 2007, my practice has focused primarily on complex, non-formulaic business disputes, including several matters involving tax strategy advice and cases involving breach of fiduciary duty, fraud, conspiracy, breach of contract, and unfair trade practices. Beginning in 2010, I led my firm's efforts related to the 2010 Deepwater Horizon Disaster in the Gulf of Mexico and was appointed to co-coordinate the multidistrict litigation's GCCF Outreach Group. Since 2010, I have led my firm's successful efforts to recover economic damages on behalf of claimants in a wide variety of industries, including oil and gas, tourism and construction, as well as claims for general economic loss and property damage.
13. I, on behalf of Jones Swanson Huddell & Garrison, am committed to the full preparation of this case through the performance of necessary and reasonable

discovery and I am willing to take this case to trial should that become necessary. I am committed to acting in the best interest of the class, and understand my duties in that regard under applicable law.

I AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE FOREGOING FACTS AND REPRESENTATIONS ARE TRUE AND CORRECT.

Dated: April 6, 2017

By: /S/ Lynn E. Swanson
Lynn E. Swanson