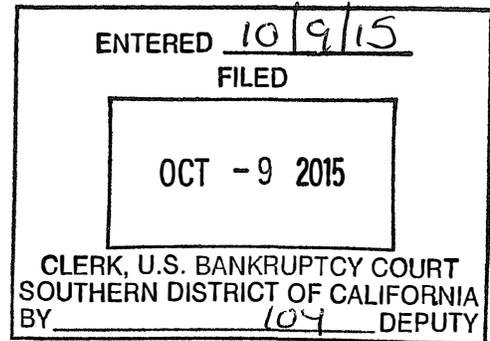


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WRITTEN DECISION – FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case No. 14-07464-CL7
)
PAMELA MARIE BROWN,) Adversary Proceeding No. 14-90230-CL
)
Debtor,) Chapter 7
)
)
PAMELA MARIE BROWN,) MEMORANDUM DECISION AND ORDER
) FINDING BAR STUDY LOAN TO BE AN
17 Plaintiff,) EDUCATION LOAN, DENYING DEFAULT
) JUDGMENT, AND DISMISSING
18 v.) COMPLAINT
)
19 CITIBANK, N.A.,)
)
20 Defendant.)
21 Judge: Christopher B. Latham

1 provisions because it does not fall under any of that statute's enumerated categories. Nor does she
2 contend that paying the loan obligation would impose an undue hardship on her.

3 Citibank has not responded or otherwise appeared in this adversary proceeding. The court
4 entered Citibank's default on May 8, 2015 (ECF No. 20). Brown then brought this motion for default
5 judgment (ECF No. 24).

6 The court initially heard argument on August 6, 2015. It then continued the matter with
7 instructions that Brown provide: (1) a memorandum of point and authorities discussing whether a bar
8 study loan is an educational loan under § 523(a)(8); (2) a copy of the subject note supported by a
9 declaration; (3) a copy of the most recent Citibank statement showing to whom the loan was paid and
10 when; and (4) a declaration stating whether Brown has any knowledge of whether the note was
11 assigned to another holder or taken over by a guarantor.

12 The court held a further hearing on September 10, 2015. It now addresses Brown's arguments
13 and concludes that she is not entitled to judgment on her complaint. She fails to establish entitlement
14 to judgment as a matter of law. Accordingly, the court dismisses this adversary proceeding without
15 prejudice.

16 17 III. LEGAL ANALYSIS AND CONCLUSIONS

18 A. Section 523(a)(8) Nondischargeability

19 The Bankruptcy Code is designed to provide a "fresh start" to the
20 discharged debtor. *United States v. Sotelo*, 436 U.S. 268, 280, 98 S.Ct.
21 1795, 56 L.Ed.2d 275 (1978). As a result, the Supreme Court has
22 interpreted exceptions to the broad presumption of discharge narrowly.
23 See *Kawaauhau v. Geiger*, 523 U.S. 57, 62, 118 S.Ct. 974, 140 L.Ed.2d 90
24 (1998). As we have observed "exceptions to discharge should be limited
to dishonest debtors seeking to abuse the bankruptcy system in order to
evade the consequences of their misconduct." *Sherman v. SEC (In re*
Sherman), 658 F.3d 1009, 1015-16 (9th Cir. 2011).

25 *Hawkins v. Franchise Tax Bd. of Cal.*, 769 F.3d 662, 666 (9th Cir. 2014).

26 Under § 523(a)(8), the following claims are excepted from discharge:

27 (A)(i) an educational benefit overpayment or loan made, insured, or
28 guaranteed by a governmental unit, or made under any program funded in
whole or in part by a governmental unit or nonprofit institution; or

1 (ii) an obligation to repay funds received as an educational benefit,
2 scholarship, or stipend; or
3 (B) any other educational loan that is a qualified education loan, as
4 defined in section 221(d)(1) of the Internal Revenue Code of 1986,
5 incurred by a debtor who is an individual. . .

6 11 U.S.C. § 523(a)(8).

7 Brown seeks to discharge her bar study loan through a finding that it is not an education loan.
8 Ordinarily, the creditor bears the burden of proving that a particular debt falls within one of § 523(a)'s
9 exceptions to discharge. *See Grogan v. Garner*, 498 U.S. 279, 291 (1991); *see also In re Betancourt*,
10 BAP No. CC-14-1010-KiKuDa, 2015 WL 3500322, at *5 (B.A.P. 9th Cir. June 3, 2015). But under
11 § 523(a)(8), “the lender has the initial burden to establish the existence of the debt and that the debt is
12 an educational loan within the statute’s parameters The burden then shifts to the debtor to prove all
13 three *Brunner* prongs by a preponderance of the evidence.” *In re Roth*, 490 B.R. 908, 916-17 (B.A.P.
14 9th Cir. 2013); *see also Benson v. Corbin (In re Corbin)*, 506 B.R. 287, 291 (Bankr. W.D. Wash.
15 2014); *In re Maas*, 497 B.R. 863, 868-69 (Bankr. W.D. Mich. 2013; 11 U.S.C. § 523(a)(8). Brown is
16 not alleging, however, that repaying the loan would be an undue hardship. Rather, she admits the debt
17 but contends that it is subject to her § 727 discharge since it is not among the types of obligations set
18 forth in §§ 523(a)(8)(A)(i), (a)(8)(A)(ii), or (a)(8)(B). The court considers each basis in turn.

19 **1. § 523(a)(8)(A)(i)**

20 Brown alleges that the subject bar study loan was not “made, insured, or guaranteed by a
21 governmental unit, or made under any program funded in whole or in part by a governmental unit or
22 nonprofit institution.” 11 U.S.C. § 523(a)(8)(A)(i). The court finds this formulaic recitation dubious.
23 *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). To start, it has reservations about the
24 sufficiency of Brown’s evidence and her inadequate compliance with the court’s prior instructions.
25 She offers a July 30, 2014 account statement, dating from two months before her bankruptcy. It
26 indicates that, as of its date, Citibank held the loan with a principal balance of \$15,000 and \$4,051.60
27 in accrued interest. The “loan type” listed on the statement is “student loan.” The court instructed
28 Brown at the August 6, 2015 hearing to provide evidence of whether the note was assigned to another
holder or was assumed by a guarantor. In her declaration – as well as in open court on September 10,

1 2015 – Brown stated that she no longer has the note and is unsure if the loan was transferred to a
2 guarantor. But she proffers no evidence for the blanket assertion that no governmental unit or
3 nonprofit organization was involved in funding, insuring, or guaranteeing the subject loan in any
4 degree. Not having proven the claim, she is not entitled to judgment based on § 523(a)(8)(A)(i).²

5 **2. § 523(a)(8)(A)(ii)**

6 Brown further asserts that her bar loan is not “an obligation to repay funds received as an
7 educational benefit, scholarship, or stipend.” The court specifically directed additional briefing on the
8 question of whether a bar study loan is an education loan under § 523(a)(8), but Brown’s supplemental
9 memorandum of points and authorities fails to meaningfully address the issue. And the court
10 concludes that a bar study loan indeed falls under § 523(a)(8)(A)(ii)’s broad definition of “educational
11 benefit.”

12 This appears to be an unresolved issue in the Ninth Circuit. Indeed, the Bankruptcy Appellate
13 Panel (“BAP”) in the recent decision *In re Christoff*, 527 B.R. 624 (B.A.P. 9th Cir. 2015) – while
14 analyzing the separate issue of what constitutes “funds received” under § 523(a)(8)(A)(ii) –
15 acknowledges that there are no published Ninth Circuit Court of Appeals or BAP cases interpreting
16 § 523(a)(8)(A)(ii) since BAPCPA’s 2005 enactment. *In re Christoff*, 527 B.R. at 632. And there is
17 only one other published opinion in this circuit construing the provision: *In re Corbin*.

18 In *Corbin*, a non-debtor co-signer paid off an education loan and then obtained a default
19 judgment against the student in state court. After the latter filed bankruptcy, the court had to consider
20 whether the loan was nondischargeable under §§ 523(a)(8)(A)(i) and (ii). In its § 523(a)(8)(A)(ii)
21 analysis, the court interpreted the term “educational benefit,” noting first that it is not defined in the
22 Bankruptcy Code. *In re Corbin*, 506 B.R. at 296. Its analysis is instructive.

23 The *Corbin* court notes that “a majority of courts have held that a loan qualifies as an
24 ‘educational benefit’ if the stated purpose for the loan is to fund educational expenses.” *Id.* (citing *In*
25 *re Maas*, 497 B.R. at 869-70). Further, “courts have interpreted the phrase ‘obligation to repay funds
26 received as an educational benefit’ so broadly . . . that Section 523(a)(8)(A)(i) is almost subsumed by
27 subsection (ii).” *In re Corbin*, 506 B.R. at 296 (citing *In re Beesley*, No. 12-24194-CMB, 2013 WL

28 ² See discussion at III.B., *infra*.

1 5134404, at *4 (Bankr. W.D. Pa. Sept. 13, 2013)). The court goes on to note that “[P]ublished cases
2 addressing 523(a)(8)(A)(ii) . . . merely support the proposition that subsection (ii) is interpreted very
3 broadly.” *In re Corbin*, 506 B.R. at 296; *see also In re Baiocchi*, 389 B.R. 828, 831-32 (Bankr. E.D.
4 Wis. 2008) (§ 523(a)(8)(A)(ii) must be read as encompassing a broader range of educational benefit
5 obligations). Additionally, “[w]hen analyzing subsection (ii), courts pay no attention to who the lender
6 is, but focus instead entirely on whether, in the plain language of the subsection, the obligation is ‘to
7 repay funds received as an educational benefit’ as reflected by the debtor’s agreement and intent to use
8 the funds at the time the obligation arose.” *In re Corbin*, 506 B.R. at 296. The *Corbin* court concludes
9 that “it appears that almost any obligation incurred for the purpose of paying an education-related
10 expense is excepted from discharge under 523(a)(8)(A)(ii).” *Id.* Thus, the trend in the Ninth Circuit
11 and elsewhere is to interpret § 523(a)(8)(A)(ii) broadly.

12 At least one other bankruptcy court, analyzing the very issues at bar, has come to the same
13 conclusions. In *In re Skipworth*, No. 09-83982-JAC-7, 2010 WL 1417964 (Bankr. N.D. Ala. Apr. 1,
14 2010), the debtor filed an adversary proceeding against Citibank Student Loan Corporation seeking a
15 determination that a debt owed to Citibank was dischargeable under § 523(a)(8) because the obligation
16 was neither insured by the government nor an educational loan as defined in the Internal Revenue
17 Code. There – as here – the debtor received a loan from Citibank to pay for a bar examination review
18 course. In concluding that the obligation was a student loan under § 523(a)(8), the court found that the
19 debtor: (1) admitted the loan was incurred for bar study; (2) took out the loan while he was enrolled as
20 a law student; (3) listed the loan on Schedule F as a “student loan”; and (4) was given the loan to assist
21 him with his educational expenses, i.e., the bar review course. *In re Skipworth*, 2010 WL 1417964, at
22 *2. The court also found that § 523(a)(8)(A)(ii) is to be interpreted broadly. *Id.* It ultimately denied
23 the motion for default judgment and dismissed the adversary proceeding. *Id.* at *3.

24 With the exception that the *Skipworth* debtor took out his loan while enrolled as a law student –
25 Brown incurred hers post-graduation – the circumstances are essentially identical to those here. Brown
26 admits that she borrowed the money so she could sit for the California Bar Examination and support
27 herself while preparing. She discloses the obligation on Schedule F. Though Schedule F does not
28 describe the loan, Brown’s supplemental declaration states that she has a “student loan account with

1 Defendant" (ECF No. 35, p. 4). And the attached Citibank statements list the "loan type" as "student
2 loan."³

3 The analysis in *Skipworth* is apposite and persuasive. The subject loan's exact timing –
4 coming, as it did, after Brown received her law degree – does not amount to a material difference.
5 Both cases featured a *bar study loan* that both debtors conceded was a *student loan*. And by the
6 endeavor's very nature, bar preparation typically occurs after schooling is done and before the
7 examination date. There is no meaningful distinction between Brown's case and *Skipworth* in that
8 regard. That Brown signed the note after graduating does not make it any less an educational benefit.
9 If she had not attended law school, she would not have had the need – nor likely even the opportunity –
10 to take a bar study loan.⁴ In addition, a requirement for the debtor to have been a student when the
11 debt was incurred applies only to § 523(a)(8)(B).⁵ There is no corresponding provision in
12 § 523(a)(8)(A). The court gives effect to this textual difference and concludes that a debtor need not
13 have been a student at the time of the loan for nondischargeability under either of § 523(a)(8)(A)'s two
14 subsections.

15 The court is persuaded by these authorities, and concludes that § 523(a)(8)(A)(ii) should be
16 interpreted broadly to include a bar examination loan under the definition of "educational benefit."
17 Brown cites no authority holding otherwise, despite the duty of candor to the court to acknowledge
18 case law contrary to her position.

19 3. § 523(a)(8)(B)

20 In addition, Brown argues that her bar study loan is not a "qualified education loan" under
21 § 523(a)(8)(B). "Qualified education loan," for bankruptcy purposes, is defined in § 221(d)(1) of the
22 Internal Revenue Code of 1986. 11 U.S.C. § 523(a)(8)(B). There, a "qualified education loan" is

23 any indebtedness incurred by the taxpayer solely to pay qualified higher education
24 expenses – (A) which are incurred on behalf of the taxpayer . . . as of the time the
25 indebtedness was incurred, (B) which are paid or incurred within a reasonable period of

26 ³ In addition, Brown stated at oral argument on September 10, 2015 that the Citibank student loan application
27 form she submitted was specifically one for bar study. Thus she and Citibank were presumably both aware that
28 the loan was being taken in furtherance of Brown's legal education.

⁴ Notwithstanding those rare situations where applicants without formal legal education can qualify to take the
California Bar Examination. *See* CAL. BUS. & PROF. CODE § 6060(e)(2)(B)-(C).

⁵ *See* discussion at III.A.3., *infra*.

1 time before or after the indebtedness is incurred, and (C) which are attributable to
2 education furnished during a period during which the recipient was an eligible student.

3 26 U.S.C. § 221(d)(1)(A)-(C). Brown asserts that the subject loan does not meet this definition
4 because she did not incur it while an eligible student. Given the Internal Revenue Code's definition of
5 "eligible student", she is correct. *See* 26 U.S.C. § 25A(b)(3). She graduated from law school in May
6 2008, but did not take the Citibank loan until September 2008. The court thus finds § 523(a)(8)(B)
7 inapplicable to this loan.

8 **B. Brown Is Not Entitled to Default Judgment**

9 Brown – in both her motion and supplemental papers – emphasizes that she should have default
10 judgment because "Plaintiff has satisfied the procedural requirements for default judgment pursuant to
11 Federal Rule of Civil Procedure 55(a)." This is not so. Federal Rule of Civil Procedure 55(b), made
12 applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7055, establishes "a two-step
13 process to obtain a default judgment in a nondischargeability proceeding: '(1) entry of the party's
14 default (normally by the clerk), and (2) entry of a default judgment.'" *In re Yong Li*, BAP Nos. CC-
15 11-1490-HTaMk, 11-15237-TD, 11-02107-TD, 2012 WL 5419068, at *2 (B.A.P. 9th Cir. Nov. 7,
16 2012) (quoting *In re McGee*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006)). But "entry of a default does
17 not entitle the nondefaulting party to a default judgment as a matter of right." *Id.* The Ninth Circuit
18 sets forth seven factors to consider in reviewing a motion for default judgment:

- 19 • The possibility of prejudice to the plaintiff;
- 20 • The merits of the plaintiff's substantive claim;
- 21 • The sufficiency of the complaint;
- 22 • The sum of money at stake in the action;
- 23 • The possibility of a dispute concerning material facts;
- 24 • Whether the default was due to excusable neglect; and
- 25 • The strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the
26 merits.

27 *Id.*; *see also Senior's Choice v. Mattingly*, No. SACV-11-1622-JST (MLGx), 2012 WL 3151276, at *2
28 (C.D. Cal. July 31, 2012) (citing *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986)).

Further, "before granting a default judgment, the court must first ascertain whether the
unchallenged facts constitute a legitimate cause of action." *In re Yong Li*, 2012 WL 5419068, at *2

1 (quoting *Chanel, Inc. v. Gordashevsky*, 558 F. Supp. 2d 532, 536 (D.N.J. 2008)). And “a court may
2 refuse to enter a default judgment if it determines that no justifiable claim has been alleged.” *In re*
3 *Yong Li*, 2012 WL 5419068, at *2; *see also In re Kubick*, 171 B.R. 658, 662 (B.A.P. 9th Cir. 1994)
4 (“The court, prior to entry of a default judgment, has an independent duty to determine the sufficiency
5 of a claim . . .”).

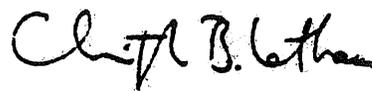
6 In denying Brown’s motion, the court affords significant weight to the second and third factors
7 set forth above. She has not met her burden of proving that her loan obligation to Citibank does not
8 fall under § 523(a)(8)’s nondischargeability requirements. Not only is she wrong on the merits of her
9 substantive claim, her adversary complaint is insufficient as a matter of law. Brown has failed to state
10 a claim upon which relief can be granted. Accordingly, the motion for default judgment is denied, and
11 the adversary proceeding is dismissed without prejudice.

12
13 **IV. CONCLUSION**

14 For the foregoing reasons, the court holds that the subject bar study loan is an education loan
15 for § 523(a)(8) purposes, and thus not dischargeable in bankruptcy absent a showing of undue
16 hardship. Brown’s motion for default judgment to the contrary is accordingly **denied**, and the
17 complaint is **dismissed** without prejudice.

18 IT IS SO ORDERED.

19
20 Dated: October 9, 2015



21 CHRISTOPHER B. LATHAM, JUDGE
22 United States Bankruptcy Court
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Notice Recipients

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