UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
CYNTHIA ANN HOLCOMB,	)	CASE NO. 08-34272 HCD
	)	CHAPTER 7
DEBTOR.	)	
	)	
CYNTHIA ANN HOLCOMB,	)	
PLAINTIFF,	)	
vs.	)	PROC. NO. 12-3043
	)	
SLM CORPORATION, *aka* SALLIE MAE;	)	
EDUCATIONAL CREDIT MANAGEMENT	)	
CORPORATION; USA FUNDS, UNITED	)	
STATES DEPARTMENT OF EDUCATION;	)	
DIRECT LOAN SERVICING CENTER; and	)	
UNIVERSITY ACCOUNTING SERVICE/	)	
INDIANA UNIVERSITY,	)	
DEFENDANTS.	)	

Appearances:

Cynthia Ann Holcomb, pro se, 1702 Longwood Court, Goshen, Indiana 46526;

Stacia Yoon, Esq., counsel for Educational Credit Management Corporation, Genetos Retson & Yoon LLP, 1000 East 80th Place, Suite 555 North Tower, Merillville, Indiana 46410; and

Robin W. Morlock, Esq., Assistant United States Attorney, counsel for United States Department of Education, 5400 Federal Plaza, Suite 1500, Hammond, Indiana 46320.

MEMORANDUM OF DECISION

At South Bend, Indiana, on June 18, 2013.

Before the court are the Motion for Summary Judgment filed by plaintiff Cynthia Ann Holcomb, chapter 7 debtor, and the responses of the United States of America, on behalf of its Department of Education ("DOE"). For the reasons that follow, the court grants the plaintiff's Motion.[1]

[1] The court has jurisdiction to decide the matter before it pursuant to 28 U.S.C. § 1334 and § 157 and the Northern District of Indiana Local Rule 200.1. The court has determined that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

The plaintiff's summary judgment motion sought a discharge of her educational loan debt on the ground that repayment of those loans would cause an undue hardship on her under 11 U.S.C. § 523(a)(8). The plaintiff contended that she was totally, permanently disabled, with debilitating bone death and pain; that her only income was social security disability income; and that she could not be employed due to her medical disability.

Two of the defendants responded to the summary judgment motion. The Response of the Educational Credit Management Corporation ("ECMC") stated that, in its role as guarantor of loans that were subrogated to the DOE, it had no interest in this adversary proceeding. *See* R. 47. The court determines, therefore, that any student loan currently listed as being "held" by ECMC is now discharged in the plaintiff's bankruptcy pursuant to § 523(a)(8).

The Response filed by the DOE advised the court that it did not contest the plaintiff's Motion for Summary Judgment with regard to three student loans it held:

> Direct Stafford Loan (Unsubsidized), dated January 2, 2009 ($1,182.00 disbursed);
> Direct Stafford Loan (Subsidized), dated August 20, 2008 ($1,537.00 disbursed); and
> Direct Stafford Loan (Unsubsidized), dated August 20, 2008 ($1,660.00 disbursed).

It conceded that a judgment should be entered declaring that those loans were discharged. *See* R. 46.

The DOE then filed a Supplemental Response stating that eleven (11) additional student loans had been assigned to it on February 20, 2013, by ECMC. It advised the court that it did not contest the summary judgment motion with regard to the loans. It conceded that judgment should be entered declaring that the following loans are discharged: Nos. 750719, 756949, 756950, 756951, 756952, 756953, 756954, 756955, 756956, 756957, and 756958. *See* R. 52. The court thus finds that the DOE has agreed that a total of fourteen (14) educational loans (the "Loans") are dischargeable in the plaintiff's bankruptcy.

In its prior Orders the court has found that the remaining defendants – SLM Corporation (aka Sallie Mae); Direct Loan Servicing Center; and University Accounting Service/Indiana University – never

responded in this adversary proceeding and are in default. The court therefore finds that any educational loans held by those defendants are hereby discharged pursuant to § 523(a)(8).

The Supreme Court has declared that "a debtor may obtain a discharge of certain government-sponsored student loan debts only if failure to discharge that debt would impose an 'undue hardship' on the debtor and his dependents." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 263, 130 S. Ct. 1367, 176 L.Ed.2d 158 (2010). The plaintiff filed this dischargeability Motion (deemed a Complaint) to prove that the educational loan debts she owed would impose an undue hardship on her. The DOE, by advising the court that the 14 Loans are subject to discharge, has conceded that the debtor has made the required three-part showing for undue hardship: The plaintiff has demonstrated her inability to maintain a minimal standard of living if required to repay the loans; her inability to pay in the future, due to her persistent, deteriorating state of health; and her good faith effort to repay the loans. *See Krieger v. Educational Credit Management Corp.*, 713 F.3d 882, 883 (7th Cir. 2013) (quoting *In re Roberson*, 999 F.2d 1132, 1135 (7th Cir. 1993) (quoting in turn *Brunner v. New York State Higher Education Servs. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987)). Upon review of the record herein, the court finds that the debtor has demonstrated fully that her circumstances are, and will continue to be, quite dire, that she has acted in good faith, and that payment of these loans would cause an undue hardship on her.

In light of the DOE's position of no contest to the plaintiff's motion, the court now grants the plaintiff's Motion for Summary Judgment with respect to the Loans held by the DOE. Furthermore, finding that the plaintiff is entitled to the discharge of these Loans and that no other defendant has demanded repayment of other specific loans, it now discharges any and all educational loan obligations owed by this plaintiff to the named defendants pursuant to 11 U.S.C. § 523(a)(8).

Therefore, the court grants the Motion for Summary Judgment of the plaintiff Cynthia Ann Holcomb. The educational loan debt held by the defendants is discharged pursuant to 11 U.S.C. § 523(a)(8).

SO ORDERED.

/s/ HARRY C. DEES, JR.
HARRY C. DEES, JR., JUDGE
UNITED STATES BANKRUPTCY COURT