

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:)		
)		
Jane Doe,)		
Debtor)		
)		
Jane Doe,)		
Plaintiff,)		
vs.)		Case No. 00-31234
)		Chapter 7
)		Adv. Proc. No. _____
Educational Credit Management)		
Corporation,)		
Creditor/Defendant,)		
and)		
Department of Health and)		
Human Services,)		
Creditor/Defendant.)		COMPLAINT
)		

**COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBTS
(Educational Loans)**

Plaintiff Jane Doe, for her complaint, states and alleges as follows:

PARTIES AND JURISDICTION

- 1) Jurisdiction of this adversary proceeding is conferred on this Court by 28 U.S.C. §§ 157 and 1334, Rules 5005, 7001(6), and 7002, Fed. R. Bankr. P.

- 2) This is a Core Proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). This Complaint is brought pursuant to 11 U.S.C. § 523(a)(8), 42 U.S.C. § 292f (g) and Federal Rule of Bankruptcy Procedure 7001.

- 3) The Plaintiff is an individual and the Debtor in the above-entitled case under chapter 7 of the Bankruptcy Code filed in this Court on May 31, 2000.

- 4) The Plaintiff resides in Washington County, in the State of Minnesota. Her address is 1234 Maple Street, Yourtown, MN 55000. Her Social Security number is 444-22-4444.

5) Defendant, Educational Credit Management Corporation ("ECMC") is located at 101 East Fifth Street, #2400, St. Paul, MN 55101.

6) Defendant, Department of Health and Human Services, HEAL Debt Management Branch ("HEAL") is located at Parklawn Building, Room 16A-12, 5600 Fishers Lane, Rockville, MD 20857.

FACTUAL ALLEGATIONS SUPPORTING ALL CLAIMS FOR RELIEF

7) Discharge was entered on August 30, 2000.

8) ECMC holds a claim against the Plaintiff in the amount of approximately Fifty-Six Thousand Six Hundred Eleven and 90/100 Dollars (\$56,611.90), plus interest, incurred through educational loan disbursements. Defendant ECMC received its claim through an assignment from Great Lakes Higher Education Corp. ("Great Lakes"), c/o OSI Collections Services, which received this claim from the originator of the loan, the United States Department of Education.

9) HEAL holds a claim against the Plaintiff in the amount of Sixteen Thousand Sixty-Three and 53/100 Dollars (\$16,063.53), plus interest, incurred through educational loan disbursements.

10) In 1986, Plaintiff completed chiropractic school at Spinal College of Chiropractic in Theirtown, MN ("Spinal").

11) Plaintiff paid for her tuition at Spinal through student loans obtained from Defendants or their assignors. The monies obtained through these student loans were used strictly for educational expenses including tuition, books, and living expenses while Plaintiff was enrolled at Spinal.

12) Plaintiff's student loans are a debt incurred for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under a 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, and excepting such debt from discharge under §523(a)(8)(B) will impose an undue hardship on Plaintiff and her dependent daughter.

13) More than seven (7) years have expired since the first date when repayment of such loans was required, exclusive of any period after such date in which the obligation to pay installments on the loan is suspended.

14) The Secretary of Health and Human Services has not waived the Secretary's rights to apply subsection (f) of §292f to the borrower and the debt Plaintiff seeks to be discharged.

15) Excepting this debt from discharge under §292f(g) would be unconscionable.

16) After graduating from Spinal, Plaintiff worked full time as a chiropractor from 1986 until 1994 and routinely paid on her educational loan debts.

17) In or around 1990, Plaintiff founded and worked in her own Chiropractic clinic. She ran this clinic until 1994, when she became inexplicably and increasingly fatigued and depressed. Additionally, Plaintiff began to lose her mental faculties, as she increasingly forgot her medical training and lost all of her analytical thought processes. The onset of this debilitating condition rendered Plaintiff unable to work for ever-greater periods of time.

18) Plaintiff's condition continued to deteriorate through 1995, causing her to continually miss work and cancel appointments until, with her clinic on the brink of collapse, she transferred it to a friend. Because of the dire condition of the business and the dearth of clients remaining, Plaintiff was forced to transfer the business without receiving any compensation.

19) In September of 1995 Plaintiff, still unable to work due to her distressing illness, sold the home in which she and her daughter lived in order to continue to repay her debts, including her student loans.

20) For a period of three (3) months after the sale of her home, Plaintiff attempted to live with a friend in her friend's apartment. Plaintiff discovered, however, that her condition was too severe to continue living on her own while trying to support her young daughter, who was then only five (5) years old. By this time, Plaintiff was experiencing symptoms such as panic attacks intermingled with almost constant fatigue that left her bedridden much of the day. Additionally, Plaintiff felt the need to compulsively wash her hands, to avoid contact with public facilities such as phones or restrooms and to avoid using dishes or eating food that others had touched.

21) Eventually, during the 1995 holiday season, Plaintiff moved home to live with her parents. She spent Christmas of that year in bed, fatigued and depressed.

22) By the first part of 1996 Plaintiff had become suicidal. Despite oppressive fatigue and depression Plaintiff located and consulted a general practitioner, Dr. John Johnson ("Dr. Johnson"), for help. Dr. Johnson met with Plaintiff on a couple of occasions, and referred her to a Psychologist, Dr. Pete Peterson ("Dr. Peterson"). Plaintiff continued to meet with both Drs. Johnson and Peterson on a weekly basis for approximately six (6) months as they attempted to diagnose and effectively treat her condition.

23) In late 1996, Dr. Johnson concluded that he and Dr. Peterson did not possess the adequate training to effectively diagnose and treat Plaintiff's condition.

Based on this conclusion, Dr. Johnson referred her to Dr. Doug Douglas (“Dr. Douglas”). For approximately one (1) year Plaintiff concurrently visited Drs. Johnson, Peterson and Douglas. She continued to see Drs. Johnson and Peterson weekly due to the concern regarding her suicidal tendencies, and met with Dr. Douglas once every four (4) to six (6) weeks.

24) Dr. Douglas concluded that Plaintiff was suffering from Obsessive Compulsive Disorder, Severe Clinical Depression, Chronic Fatigue Syndrome, Manic Depression and suspected that Plaintiff may be Bi-Polar. In fact, Dr. Douglas filled out a form labeled “Temporary or Permanent Total Disability Certification” (“DIS”) which certified that Plaintiff was disabled, and therefore unable to repay her student loans, in July of 1997. A copy of the DIS is attached to this Complaint as Exhibit A.

25) In 1997, Plaintiff and her physicians finally found a combination of drugs that allowed her to attempt to reenter society, which allowed her to attempt to gain employment. Unfortunately the medication caused Plaintiff to suffer partial, temporary memory loss. Additionally, she continued to suffer from chronic fatigue and decreased analytical ability.

26) From late 1997 through the middle of 1998, Plaintiff sought various employment, but was incapable of putting forth the effort required of her, even for the most mundane of tasks.

27) In 1999, Plaintiff’s continuing education, required to maintain her chiropractic license, lapsed. At that time she attempted to voluntarily retire her license so that, in the event she did one day recover, she would be able to resume practicing as a chiropractor. Unfortunately, the Minnesota licensing authority terminated her license, citing the fact that Plaintiff had failed to prepare the additional paperwork required to retire her license.

28) As a result of the termination of her license, Plaintiff is now foreclosed from working as a chiropractor ever again. In order to reinstate her license, Plaintiff would have to retake and again pass the Board Exams. This is an endeavor that Plaintiff is unlikely to be capable of at any time, due to the time, energy and concentration it requires.

29) Shut out of the only profession she had ever previously considered, Plaintiff is currently employed at Yourtown Community College, located at 100 Oak Street, Yourtown, MN 55000. She is permitted to work no more than 1185 hours per year, and works no more than 35 hours in a given week, making slightly more than Eight and No/100 Dollars (\$8.00) per hour. Plaintiff was hired to set up labs for students and to assist in tutoring, but has been unable to focus well enough to tutor.

30) Today, Plaintiff continues to labor without the analytical skills she relied upon before her illness. She continues to suffer from chronic fatigue and must sleep in

excess of twelve (12) hours per night. Plaintiff also has a failing memory that often does not allow her to retain even the most significant of events.

31) During the ten (10) years that Plaintiff was able, she continued to make payments on her student loans and had paid at least the amount of the principle on both of them. Plaintiff even sold her home to continue to make loan payments.

32) Plaintiff's outstanding indebtedness to each of the Defendants is substantially greater than her total net assets.

33) Plaintiff's conservative monthly necessary living expenses are approximately One Thousand One Hundred Fifty-Five and No/100 (\$1,155.00).

34) Plaintiff's gross monthly income before taxes is approximately One Thousand One Hundred Sixty-Three and 17/100 (\$1,163.17) per month.

35) Plaintiff's reasonable monthly expenses are scarcely less than her monthly income.

36) Given her current income and expenses, requiring Plaintiff to make monthly loan payments will prevent her from maintaining a "minimal" standard of living for herself and her dependant daughter.

37) Plaintiff has made good faith efforts to achieve the financial security which would allow her to repay the loans.

CLAIM FOR RELIEF
(11 U.S.C. § 523 (a)(8)(B) and (b), and
42 U.S.C. § 292f (g))

WHEREFORE, Jane Doe, petitions this Court grant for relief of Defendants ECMC and HEAL, as follows:

1. On the ground that excepting such debt from discharge will be unconscionable Plaintiff prays that this court find that the above-mentioned debt owed to the Defendants is discharged pursuant to 11 U.S.C. §523(a)(8)(B) and (b), and 42 U.S.C. §292f(g); or, in the alternative, that

2. Such debt will impose an undue hardship on the debtor and the debtor's dependents. Therefore Plaintiff prays that this court find that the above mentioned debt owed to the defendant creditors is discharged pursuant to 11 U.S.C. § 523(a)(8)(B) and (b); and

3. Such other and further relief as the Court deems just and equitable.

Dated: January 1, 2001

Joe Attorney (#87654)
Law Firm
Address
Phone #

Attorney for Plaintiff