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2
3 **UNITED STATES BANKRUPTCY COURT**
4 **THE DISTRICT OF ARIZONA**
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7
8 **In re**)
9 **BENJAMIN LAZAR and JACKIE**)
10 **CAROLON GURLEY**)
11 **Debtors.**)
12 _____)
13 **BENJAMIN LAZAR and JACKIE**)
14 **CAROLON GURLEY**)
15 **Plaintiffs**)
16 **v.**)
17 **STILLWATER NATIONAL BANK**)
18 **AND TRUST et al,**)
19 **Defendants.**)
20 _____)
21

In Chapter 13 proceedings
Case No. 08-5227-CGC
Adversary No. 08-426

**MEMORANDUM DECISION RE
DEFAULT JUDGMENT**

22 Before the Court are applications for default judgment against Stillwater National Bank
23 and Trust (“Stillwater”) and Career Education Corporation (“CEC”). Based on the applications
24 and post-hearing documentation filed with the Court, the Court will enter default judgment in
25 favor of the Debtors.

26 Between 2004 and 2006, Ms. Gurley obtained over \$55,000 in student loans to attend
27 Collins College from which she graduated in 2007. Soon after filing a Chapter 7 petition in May
28 2008, the Debtors filed an adversary proceeding seeking discharge of student loans against Sallie

1 Mae, Stillwater, and CEC. In the complaint, the Debtors allege that Ms. Gurley is disabled and
2 therefore entitled to an undue hardship discharge. The Court scheduled a status hearing for
3 September 4, 2008. None of the defendants appeared at the hearing, but ECMC did appear and
4 asked via oral motion to be substituted for Sallie Mae. The Court granted the motion and entered
5 an order on September 18, 2008. Thereafter, ECMC and the Debtors worked to settle the matter.

6 The settlement came to fruition via an agreed dismissal of the adversary. Under that
7 agreed dismissal, the Debtors submitted an application for total and permanent disability
8 (“TPD”) discharge; ECMC approved the student loans for conditional TPD discharge; and
9 ECMC assigned the loans to the United States Department of Education for final approval. The
10 agreed order does not state which specific loans are subject to TPD discharge. The Court signed
11 the agreed order on January 8, 2009.

12 The case lay dormant until September 23, 2009 when the Debtors filed separate
13 applications for default against CEC and Stillwater.¹ The Clerk entered default against CEC in
14 September 2009 and Stillwater in November 2009. The case again lay dormant until the Debtors
15 filed an application for entry of default on July 20, 2010.²

16 The Court held a hearing on the matter on January 13, 2011. During the course of the
17 hearing it became clear that specificity is needed in this matter. Neither the Court, nor the
18 Debtors, knew which loans are subject to the TPD discharge and which loans, if any, were not.
19 The matter is of great concern to the Debtors and the Court because General Revenue
20 Corporation is allegedly making collection efforts on the loans formerly held by CEC. At the
21 conclusion of the hearing, the Court indicated that it was inclined to enter default judgment
22 against Stillwater and CEC, but to do so it needed to know the specific loans held by each entity.

25
26 ¹The Debtors filed a second application for default against Stillwater on October 30, 2009 to correct a
deficiency noted by the Clerk’s office.

27 ²In the application it is unclear whether the Debtors are asking for default against Stillwater, CEC or both.
28 The Court will take the request as requesting default against Stillwater and CEC.

1 Accordingly, it asked the Debtors to send account information to chambers so the Court could
2 enter the appropriate orders.

3 The Debtors did send documentation to the Court which shows the following loans under
4 account number 9959116583-1:³

<u>Loan Number</u>	<u>Loan Program</u>	<u>Current Owner</u>	<u>Date of Loan</u>
03-1	Stafford	Sallie Mae Trust	8/20/2004
07-1	Stafford	Sallie Mae Trust	3/16/2005
08-1	XCEF	Career Education Corporation	3/21/2005
10-1	XCEF	Career Education Corporation	8/12/2005
12-1	XCEF	Career Education Corporation	11/16/2005
13-1	Stafford	Sallie Mae Trust	10/19/2005
14-1	Stafford	Sallie Mae Trust	10/21/2005
15-1	XCEF	Career Education Corporation	9/27/2006
16-1	Stafford	SLM Education Credit Finance	6/16/2006
17-1	Stafford	SLM Education Credit Finance	6/16/2006

11 Despite this documentation, the Court could not determine which loans were part of the
12 settlement with ECMC so it ordered ECMC to file a report with the Court identifying which
13 loans were subject to the TPD discharge. ECMC filed the report on June 13, 2011 (“Report”).

14 The Report identifies the following loans as subject to the TPD discharge:

<u>Loan Number</u>	<u>Loan Program</u>	<u>Current Owner</u>	<u>Date of Loan</u>
03-1	Stafford	Sallie Mae Trust	8/20/2004
07-1	Stafford	Sallie Mae Trust	3/16/2005
13-1	Stafford	Sallie Mae Trust	10/19/2005
14-1	Stafford	Sallie Mae Trust	10/21/2005
16-1	Stafford	SLM Education Credit Finance	6/16/2006
17-1	Stafford	SLM Education Credit Finance	6/16/2006

19 The Report makes no representation as to the status of the remaining loans, other than to state
20 that they were not subject to the TPD discharge.

21 Based on the foregoing, the Court grants judgment in favor of the Debtors against
22 Stillwater and Career Education Corporation CEC and finds that the following loans (“XCEF
23 Loans”) are discharged:

<u>Loan Number</u>	<u>Loan Program</u>	<u>Current Owner</u>	<u>Date of Loan</u>
08-1	XCEF	Career Education Corporation	3/21/2005
10-1	XCEF	Career Education Corporation	8/12/2005
12-1	XCEF	Career Education Corporation	11/16/2005

27 ³The document appears to be a printout of an internet report dated April 27, 2007.

2 Accordingly,

3 **DEFAULT JUDGMENT IS HEREBY ENTERED** in favor of the Debtors against
4 Stillwater and CEC finding the XCEF Loans dischargeable.

5
6 **So ordered.**

7
8 DATED: July 18, 2011

9
10 
11 CHARLES G. CASE II
12 UNITED STATES BANKRUPTCY JUDGE

13
14 **COPY** of the foregoing mailed by the BNC and/or
15 sent by auto-generated mail to:

16 BENJAMIN LAZARA GURLEY
17 JACKIE CAROLON GURLEY
18 3255 S. DORSEY LANE
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21 Debtors

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