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UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

In re **Jens Peter Soballe,** Debtor.	Case No. 11-40345-tmb7 **RESPONSE TO MOTION FOR ORDER OF CONTEMPT AND JUDGMENT AGAINST PORTLAND STATE UNIVERSITY**

INTRODUCTION

Debtor, Jens Peter Soballe, has filed a contempt motion against Portland State University ("PSU"), claiming that PSU violated the discharge injunction entered in March 2012 by enforcing Debtor's student loan obligation. Debtor argues that his obligation to PSU is not a student loan—and was discharged by the order—because Debtor never attended the class underlying the obligation and therefore never received an educational benefit from the loan. The issue, however, is not whether Debtor received an educational benefit but whether the *nature of the obligation* is a student loan. Because the nature of the obligation was for an educational benefit, it is a student loan and was not discharged. The Court should deny Debtor's motion.

FACTUAL BACKGROUND

On or about October 30, 2005, Debtor entered into a Revolving Charge Account Agreement (the "Agreement") with PSU. Declaration of Jens Soballe ("Soballe Decl.") (Dkt. No. 18), ¶ 3, Ex. 2. Under the Agreement, PSU agreed to advance tuition to Debtor in exchange for Debtor's repaying the amounts advanced when due. *Id.* The Agreement specifically provides that "if I am a student, any credit extended to me is an educational benefit or loan." *Id.* The Agreement also provides that it is subject to all administrative rules of PSU. *Id.*

In the summer of 2010, Debtor registered for a fall class at PSU. Soballe Decl., ¶ 2. Although he attempted to drop the class, Debtor was not able to under PSU's rules. Debtor never attended the fall 2010 class. *Id.* Debtor became obligated to PSU under the Agreement after he failed to pay for the class when payment was due.

On December 6, 2011, Debtor filed a voluntary petition under Chapter 7 of the Bankruptcy Code. Debtor acknowledged the obligation to PSU in his bankruptcy schedules. Dkt. No. 1, Schedule F. At no time before, during, or after the bankruptcy case did Debtor contest the validity of the debt or seek an order that his obligation was dischargeable. On March 12, 2012, this Court entered a discharge order that enjoined any creditor from collecting on its debts except for those debts that were not discharged. Since then, PSU has continued to enforce Debtor's obligation. Now, more than four years later, Debtor brings this contempt motion against PSU, arguing that because he never attended classes, his obligation is not a student loan. For the reasons below, the Court should deny the motion.

QUESTION PRESENTED

Must a debtor actually receive an educational benefit from a student loan for that loan to be nondischargeable under 11 U.S.C. § 523(a)(8)?

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ANSWER

No. The analysis of whether an obligation is a student loan depends on the nature of the obligation, not whether a debtor actually received any educational benefit.

LEGAL ARGUMENT

Under 11 U.S.C. § 523(a)(8), a student loan is excepted from discharge unless the debtor can prove undue hardship. To determine whether an obligation is a student loan, courts analyze the nature of the obligation rather than the actual educational benefit received by the debtor. *In re Barth*, 86 B.R. 146, 148 (Bankr. W.D. Wis. 1988) ("The language of section 523(a)(8) does not refer to whether the debtor or anyone else derived educational benefits. . . . The focus of section 523(a)(8) is on the *nature and character of the loan* . . . .") (emphasis added); *In re Chapman*, 238 B.R. 450, 453 (Bankr. W.D. Mo. 1999) ("This Court . . . has no authority to change the *nature of the loan* because [the debtor] did not feel he received the value he expected.") (emphasis added); *In re Rumer*, 469 B.R. 553, 562 (Bankr. M.D. Pa. 2012)[1] ("Most courts, including the Courts of Appeals for the Fifth and Seventh Circuits, have analyzed whether a loan is a qualified educational expense by focusing on the stated purpose for the loan when it was obtained, rather than how the proceeds were actually used by the borrower. . . . Section 523(a)(8) is concerned with the circumstances surrounding the origination of the loan, rather than what benefits the debtor may have derived.").

Debtor argues that *McKay* states that a debtor must actually receive an educational benefit for an obligation to be a student loan. Motion at 5-6 (citing *McKay v. Ingleson*, 558 F.3d 888, 891 (9th Cir. 2009)). *McKay* provides no such rule. In the *McKay* matter, this Court, acting as the trial court, never considered whether a student loan requires a debtor to actually receive an educational benefit (for example, by attending class). Rather, the

[1] *In re Rumer* was cited unfavorably regarding an unrelated issue in *In re Christoff*, 527 B.R. 624, 632 (9th Cir. BAP 2015). That citation does not relate to the issue for which *In re Rumer* is quoted above.

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issue in *McKay* was whether an agreement between the debtor and Vanderbilt University to advance tuition in exchange for repayment was a loan even though the agreement did not quantify a specific repayment amount or repayment terms. The debtor argued that the tuition advance agreement was not a loan because there was no such specificity. *See McKay v. Vanderbilt (In re McKay)*, United States Bankruptcy Court for the District of Oregon, No. 06-3182, Plaintiff's Response to Defendants' Motions for Summary Judgment (copy attached). This Court disagreed and held on summary judgment that the agreement was a loan. *See McKay v. Vanderbilt*, Transcript of Proceedings (Sept. 5, 2006) (copy attached).

The issue on appeal to both the district court and the Ninth Circuit was also whether the agreement constituted a loan. *In re McKay*, 366 B.R. 144, 145 (D. Or. 2007); *Ingleson*, 558 F.3d at 889. In affirming the rulings of both the trial court and the district court (which both held that the agreement was a loan), the Ninth Circuit acknowledged that the amount due under the loan must quantifiable (for example, the cost of tuition, housing, or room and board). *Ingleson*, 558 F.3d at 891. Because those amounts were readily quantifiable (and for other reasons), the Ninth Circuit held that the agreement was a loan. *Id.* Neither this Court, nor the district court on direct appeal, nor the Ninth Circuit considered whether the debtor's student loan would be dischargeable if she had never attended classes and had received no tangible educational benefit from the amounts advanced.

To the extent that Debtor argues that no student loan was ever created because "no funds changed hands," his argument should not be well taken. Motion at 5-6. It is well established that no funds need to actually change hands for an educational loan to arise. *In re Rosen*, 179 B.R. 935, 939 (Bankr. D. Or. 1995) ("Most courts that have examined the language under 523(a)(8) have broadly interpreted 'loan' to include extension of credit for tuition and not to require the delivery of a sum of money."). In that same vein, to the extent that Debtor argues that he has *no* obligation to PSU because he never attended classes, that point should not change anything because Debtor scheduled his debt and never challenged it before now. There is no

doubt that there is a debt to PSU. The question is whether the debt is a student loan.

From a practical standpoint, if Debtor's interpretation of Section 523(a)(8) were correct, then it would lead to many unintended consequences. For example, any student who wished to escape a student loan obligation could voluntarily drop out of school, file for bankruptcy, and discharge any loans associated with that term. A student could change majors or decide to transfer schools before a term started but after the deadline for dropping classes. A student could unilaterally decide not to attend classes and then later argue that he had received no benefit and discharge his debt. Such an outcome would not only be contrary to the clear legislative intent of Congress, but also defy logic. *See In re Rosen*, 179 B.R. at 938 ("[T]he purpose of the educational loan nondischargeability provision is to preserve the solvency of student loan programs so that funds will be available for future students.").

Debtor registered for his fall class and agreed to repay tuition for that class under the Agreement. The amount owed is readily quantifiable by the amount of tuition and fees he agreed to pay. The Agreement, by its nature, is a student loan because it provided for the repayment of tuition advanced to Debtor to take college classes. Debtor's failure to drop the class on time or attend class after he was bound to pay for it does not change the nature of the loan. The Court should deny the motion with prejudice.

DATED this 20th day of May, 2016.

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I hereby certify that I served the foregoing Response to Motion for Order of Contempt and Judgment Against Portland State University on:

- **J MARVIN BENSON** bensonjmlaw@juno.com
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by the following indicated method or methods on the date set forth below:

☒ **CM/ECF system transmission.**

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☐ **Facsimile communication device.**

☐ **First-class mail, postage prepaid.**

☐ **Hand-delivery.**

☐ **Overnight courier, delivery prepaid.**

DATED this 20th day of May, 2016.

/s/ Jeanne Kallage Sinnott
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TRUE COPY

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re ELLE MELISSA MCKAY, Debtor. vs. THE VANDERBILT UNIVERSITY, a Tennessee Non-Profit Corporation and JOHN B. INGLESON	Case No. 03-36285-tmb7 Adv. Pro. No. 06-03182-tmb PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT PURSUANT TO LBR 7056

Pursuant to LBR 7056-1A Plaintiff offers this response to Defendants' Motion for Summary Judgment. Plaintiff incorporates by reference her Motion for Partial Summary Judgment and the documents filed therewith. In addition, Plaintiff offers the argument contained herein.

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POINTS AND AUTHORITIES

Defendants Ingleson and Vanderbilt both assume that the debt is a student loan. Whether the debt is a student loan is the issue before the court. For example, Ingleson relies on In Re: *Clark, 266 BR 301(E)(D) PA (2001)* and *In Re: Penn 262 BR 788 (WDMO 2001)* for the proposition that non-dischargeability is presumed. Both *In Re Clark* and *In Re Penn* stand for the proposition that student loans are presumed non-dischargeable where in this case the issue is whether the debt is a student loan.

LEGAL ANALYSIS

Educational Loan

The parties do not dispute that Plaintiff was a student at Vanderbilt University, that she signed a Student Account and Deferment Agreement and the account was not paid. The issue before the court is whether the debt is nondischargeable as an educational loan or benefit under §523(a)(8).

In order for the Defendants to prevail they must meet their burden of proving that the debt falls into one of two categories, i.e. (1) a debt for educational benefit overpayments or loans made, insured or guaranteed by a governmental unit or nonprofit institution; or 2) debts for obligations to repay funds received as an educational benefit, scholarship or stipend. §523(a)(8); *In Re Hawkins*, 317 B.R. 104, 109 (9th Cir. 2004); *Mehlman v. New York City Bd. of Educ. (In re Mehlman), 268 B.R. 379, 383 (Bank. S.D.N.Y. 2001). See Also IN RE NAVARRO, 284 B.R. 727 (C.D.Cal. 2002)*

The term "loan" is not defined under the Bankruptcy Code and, therefore, it must be interpreted according to its settled meaning under common law. *Cazenovia Coll. v. Renshaw (In*

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re Renshaw), 222 F.3d 82, 88 (2nd Cir. 2000). In very general terms, a transaction may be properly characterized as a loan where, pursuant to a contractual relationship, one party transfers a defined quantity of money, goods, or services to another and the receiving party agrees to pay for the sum or items transferred at a later date. In re Renshaw, 222 F.3d at 88. The agreement to transfer items in return for later payment must be reached before or contemporaneous with the transfer. Id.; *Manning v. Chambers (In re Chambers), 348 F.3d 650, 657 (7th Cir. 2003)*.

While an educational loan need not include an actual transfer of money or some form of cash equivalent to Debtor, in order to fall within the definition of a nondischargeable debt under § 523(a)(8), the loan instrument must sufficiently articulate definite repayment terms and the repayment obligation must reflect the value of the benefit actually received, rather than some other ill defined measure of damages or penalty. See also, *Navarro v. Univ. of Redlands (In re Navarro). 284 B.R. 727, 733-734 (Bankr. C.D. Cal. 2002)* (An agreement holding the debtor liable for tuition did not constitute a loan where no liquidated sums were stated and where the debtor did not agree to pay a sum certain in the future).

In this case, Plaintiff filed an open ended credit agreement that allowed her to charge anything that Vanderbilt had to offer and allowed Vanderbilt to charge Plaintiff for any charges including library charges and traffic fines. There is no evidence that Plaintiff received any funds from the school and the Account Agreement fails to articulate definite repayment terms and the repayment obligation does not reflect the value of the benefit actually received, rather than some other ill defined measure of damages or penalty. *Hawkins*, at 110, See also, *Navarro v. Univ. of Redlands (In re Navarro), 284 B.R. 727, 733-734 (Bankr. C.D. Cal. 2002)* The key reason that the Account Agreement fails to qualify as a Student Loan under §523(a)(8) is the contract's

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failure to quantify the educational benefit being conferred upon Debtor and to set forth adequate loan repayment terms reflecting that the amount being repaid is the value of the benefit received by Debtor.

Educational Benefit

Under § 523(a)(8), a discharge under § 727 does not discharge an individual debtor from a debt for " . . . an obligation to repay funds received as an educational benefit." § 523(a)(8) (emphasis added). *Hawkins*, at 112. As pointed our above, there is no evidence that Plaintiff received funds and notwithstanding that she did received a subsidy that the subsidy received by Plaintiff does not qualify as an "educational benefit" under § 523(a)(8) because the plain language of this prong of the statute requires that a debtor receive actual funds in order to obtain a nondischargeable educational benefit. See *Cazenovia Coll. v. Renshaw (In re Renshaw), 229 B.R. 552, 555 n.5 (2nd Cir. BAP 1999)* (recognizing that the exception for an obligation to repay an educational benefit requires the actual receipt of funds), aff'd 222 F.3d 82 (2nd Cir. 2000).

Defendant Ingleson's reliance upon *Stone v. Vanderbilt University 180 DR 499 (Bankr. M.D. TENN. 1995)* and *In Re Rosen 179 BR 935 (Bankr D. OR 1995)* is misplaced. The Second Circuit in *Renshaw* expressly rejected the holding in *Stone*. *In Re Renshaw at 90*. This circuit follows *In Re Renshaw*. See *In Re Hawkins 317 BR 104 (9th Circuit 2004)*.

In *Rosen* there were two issues. The first issue was whether the Scholarship Loan Agreement in *Rosen* was the type of obligation within 523(a)(8) and secondly whether the obligation should be discharged on the bases of undue hardship. With respect to the type of a loan, Judge Paris found that the obligation did not involve an educational benefit overpayment nor was it one to repay funds received as an educational benefit. In that respect *Rosen* supports

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Plaintiff in this case. Judge Paris went on to find that the debt was a loan in that both the debtor and the Training Committee agreed that the cost of the training and the amount of the scholarship loan in question was $3,313.44. Under those circumstances *Rosen* is clearly distinguishable from this case.

Ingleson request the court rule for summary judgment in his favor because he was attempting to collect "student loan" and because there was no determination of dischargeability. The real issue is whether the debt was a "student loan" as contemplated under §523(a)(8). Clearly, the debt does not qualify as a student loan §523(a)(8). Ingleson's collection efforts were made at his own risk and his Motion for Summary Judgment should be denied.

Dated this 22nd day of August, 2006.

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re	)	
	)	Case No. 3-36285
ELLE MELISSA McKAY,	)	
	)	
Debtor.	)	PORTLAND, OREGON
	)	**SEPTEMBER 5, 2006**
	)	2:34 - 2:52 P.M.
	)	
ELLE MELISSA McKAY,	)	
	)	
Plaintiff,	)	Adv. Proceeding
	)	No. 06-3182
vs.	)	
	)	
THE VANDERBILT UNIVERSITY, et al.,	)	MOTION FOR SUMMARY JUDGMENT FILED BY DEFENDANT JOHN B. INGLESON AND THE VANDERBILT UNIVERSITY
	)	
	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE TRISH M. BROWN
United States Bankruptcy Judge

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For John B. Ingleson	DAVID GRAY 5911 S.E. 43rd Avenue Portland, Oregon 97206
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P R O C E E D I N G S

SEPTEMBER 5, 2006

THE COURT: So I've reviewed the materials submitted by the parties. Do you have anything in addition to the materials you'd like me to consider?

MS. SCHLEICHER: I don't have anything in addition to the materials that I'd like you to consider, Your Honor. I don't know if you want oral argument --

THE COURT: Sure.

MS. SCHLEICHER: All right. Then let me make a few points. As you've gathered, I'm sure, the facts are largely uncontested, if not entirely uncontested. Vanderbilt University is a nonprofit corporation doing business in the state of Tennessee and providing educational services. On October 2nd of 1996, the debtor executed a Graduate and Professional Student Account and Deferment Agreement, a copy of which is attached to one of the affidavits we submitted in support of our motion for summary judgment. And we refer to that agreement in our memorandum as the loan agreement.

It provides that the debtor agrees to pay Vanderbilt the sums incurred for certain specified educational services: tuition, room and board, and other university charges. It provides specific due dates for payments: November 30 for the fall semester; April 30 for the spring semester; and one week prior to the beginning of the fall semester for the summer

session.

Past-due amounts under the loan agreement accrue interest at 18 percent per annum. The loan agreement specifies that it's an extension of credit. It's for educational services. And it's uncontested that it was entered into prior to the debtor attending Vanderbilt.

The main issue in this case, Your Honor, appears to be the debtor's contention that a specific amount of money must be set out in the loan agreement for the obligation to qualify as an educational loan subject to nondischargeability under 523(a)(8). But as John Ingleson points out in his memorandum, no court has ever denied a nonprofit institution providing educational services nondischargeability under that code provision for failure to list a specific sum in the obligation, the written document.

There are cases that have denied the nondischargeability in instances where the agreement was not executed prior to the provision of the educational services. One example is Navarro, which the plaintiff cites heavily. But that's distinguishable, as we set forth in our memorandum, because the debtor did sign the loan agreement prior to obtaining educational services from Vanderbilt.

There are other instances where the agreement didn't have the earmarkings of a loan, and the Court's denied nondischargeability. There were no due dates, et cetera. Or

where the amount to be paid was actually a form of liquidated damages in the form of if a student didn't provide a certain amount of service to the State at post-education or post-graduation, then that student would have to pay for another student's tuition.

And that's what happened in the Hawkins case; again, a case that the plaintiff cites heavily to and relies upon, but that's totally distinguishable from our case because, as you know, the debtor is paying for her educational services in this instance: educational services that were provided to her by Vanderbilt, and it's not a liquidated damages sum. It's simply an extension of credit that the debtor agreed to pay for prior to obtaining her educational services from Vanderbilt.

So if you look at the test in Navarro, you have to have a contract. We have that here. We have the loan agreement. You have a defined quantity of educational services that the debtor agreed to pay for. You have that here because Vanderbilt transferred a defined quantity of educational services in an amount to which the debtor agrees. There's no issue about the amount. And then finally, the debtor agreed to pay for these educational services at a later date.

All those elements are met, Your Honor, so we think that the debt should be considered a loan, and that's nondischargeable under 523(a)(8).

THE COURT: Mr. Gray?

MR. GRAY: Well, Your Honor, I don't know that we need to get to that issue before we determine that my client, Mr. Ingleson isn't -- shouldn't be subject to liability in this lawsuit, the reason being that the obligation to go forward to determine whether or not a student loan is dischargeable is the debtor's obligation. That is, the debtor needs to put this into question before we even get to the question of whether or not this is a student loan that's not dischargeable.

The case law suggests that it's improper for a creditor to go forward and seek a declaration on a student loan when the Legislature has indicated that a student loan shall be nondischargeable until determined otherwise.

So as to defendant Ingleson -- and I'm not talking about the ultimate question of whether the student should be liable for the loan; just whether defendant Ingleson shall be subject to prosecution for pursuing a discharge of debt -- that question shouldn't arise until the debtor puts that issue into question by bringing this adversary proceeding.

There's been no collection effort since this adversary proceeding so we shouldn't even -- you know, there's been no violation of the discharge rules.

THE COURT: All right. Mr. Slominski?

MR. SLOMINSKI: May I sit, Your Honor?

THE COURT: You may. Pull the microphone down, though, so we make sure we get a good record.

MR. SLOMINSKI: Addressing Mr. Ingleson's argument: I think one of the problems here is the issue is whether it is a student loan. And Mr. Gray is correct that generally where it is a student loan it's the debtor's obligation to bring forth an action to determine dischargeability under one of the exceptions.

However, under Mr. Gray's theory, any defendant could call their debt a student loan. And my suggestion is the creditor who categorizes a loan as a nondischargeable student loan and attempts to collect on it does so at that the debtor's peril. In this issue, if it is in fact not a student loan and the debtor did not have an obligation to bring that into the court to determine dischargeability, no more than a Texaco card or any other form of an extension of credit.

Now, with respect to the other arguments and dealing with Navarro and Renshaw and In re Chambers, they're not just talking about any contract. They're talking about -- that needs to be entered either prior to extension of credit -- in fact, actually I shouldn't even use the word "extension of credit," because that's 523(a)(2) language, where we're under 523(a)(8), and the Legislature expressly rejected the (a)(2) language for the terms of the loan.

So what we're really looking at is whether this is loan as contemplated under 523(a)(8). And the indicia of that is having some defined sums and defined payment terms. There

are no payment terms in this agreement. There is not even an obligation to extend credit for educational purposes. Under paragraph (6), it says, "Vanderbilt University reserves the right to refuse to apply for further assistance" -- excuse me, "further charges to the student's account, and furthers a right to conditions student's enrollment upon payment of the full account" [sic].

Also, there's no payment terms. There's no interest on these terms. And as a practical matter, there's no --

THE COURT: Well, wait, they're due on a particular date, and if they're not paid on that date, interest accrues, not as Ms. Schleicher said in her state -- in her opening, but actually at the rate of one and a half percent per month, which actually works out to more than 18 percent, I believe.

But at any rate, there is a due date. There is an interest rate. What makes you say there isn't?

MR. SLOMINSKI: Well, under this agreement, there could be a due date. It just states "all amounts deferred" -- it doesn't say "amounts will be deferred" -- are due, and then it says "but not later after," and it has those dates: November 30th for the fall semester and April 30th for spring semester.

If you look at the charges, the list of charges that they provided, which I believe is their Exhibit -- Vanderbilt's Exhibit 2, and it's been --

THE COURT: Okay, well, let me get to that.

Okay, Exhibit 2.

MR. SLOMINSKI: Okay, we know that the agreement, which is just an account agreement -- and there's several of these cases that had account agreements as well as part of their enrollment procedures, and they have student accounts. But that was executed on October 2, '96.

Now, the first charge -- the first group of charges, which are tuition, housing, activity, a whole bunch of fees charged, they're charged as of November 21, 1996 for the next semester which is, they indicate, '97 spring. Those -- and you can see approximately $9,000 in charges. They're already billing it approximately two months before the next semester starts.

And then you notice when -- the next charge is $130 worth of late fees. They're already charging late fees as of November 29. And I think the reason they say that's incurred '96 -- excuse me, '96, is that's of course when it's being charged as well. But we have late fees already being charged on that account. And of course there's no indication of any kind of a pre-balance.

So what they have done is is they have basically charged for a spring semester, before she starts, and requiring that she pays it spring semester -- or, excuse me, fall semester, before spring semester. And they're charging her

late fees already.

THE COURT: I guess I don't read it that way. It says -- the loan agreement says that "if you don't pay by November 30th, then" --

MR. SLOMINSKI: That --

THE COURT: -- that they're deferred till November 30th, and then if they're not paid on November 30th. I mean, I don't --

MR. SLOMINSKI: Well, the loan agreement says fall expenses are -- if they're deferred. It doesn't say they will be deferred. There's no promise of deferment. This is not a promissory note with definite terms as to when it's going to be due. I believe that there's a account agreement. So you have basically have a credit card account which says it will be deferred month to month. In other words, you bill -- they charge you this month and you pay it off the next month.

This is typical -- this is a revolving credit card account. And they basically billed her for spring semesters in the fall, making it due before spring starts, and already charging her late fees. I just can't see where that's any deferment of credit or any kind of a loan as defined under Renshaw.

And then secondly, there's been no breakout of what all these different charges are and why these other charges, of course, are educational fees or loans for a kid. This is a

credit card.

Okay, Ms. Schleicher?

MS. SCHLEICHER: Well, it isn't a credit card, Your Honor. We also submitted an affidavit from Francis Gladu from Vanderbilt regarding the uses for which the extension of credit could be used, and it specifies that they're all educational services: to make room and board charges, Vanderbilt dining services, on-campus vending machines, on-campus Laundromats, the Vanderbilt bookstore, the Vanderbilt student health services for prescription medications only, and Campus Copy, the on-campus copy shop. And that's all in paragraph 6 of Mr. Gladu's affidavit.

So there were certain educational services for which Vanderbilt provided credit to the debtor. The loan agreement has specific earmarkings of a loan. It says that "we're going to be providing you credit for these educational services, and that you're to pay by certain deadlines," and it says, "Any balances not paid by the end of each calendar month will be assessed a late fee of one and one-half percent per month," in paragraph 3 of the loan agreement.

Again, I think that we have established there are loan terms. This is a loan agreement. And we think it's nondischargeable.

THE COURT: And they couldn't take the card and just -- she couldn't take the card and just charge it anywhere --

MS. SCHLEICHER: Oh, no.

THE COURT: -- it had to be used at particular places, right?

MS. SCHLEICHER: Exactly. Specific -- specifically for educational services that she was accruing at Vanderbilt during her education there.

THE COURT: Okay, and I have the Defendant Vanderbilt University's concise statement of agreed facts. And Mr. Slominski, you agreed to those facts. You didn't dispute any of those facts?

MR. SLOMINSKI: That she was extended credit for spring term; no, I did not. That was the primary --

THE COURT: It says, "The loan charges were incurred by the debtor for tuition, course-related fees, housing, activity and recreation fees, dining, long-distance charges, flexible spending on the Commodore Card, a campus debit card, for dining, vending machines, on-campus Laundromats, Vanderbilt bookstore charges, copy charges for the Vanderbilt on-campus copy facility and prescription medications." You agreed to that.

MR. SLOMINSKI: Yes.

THE COURT: Okay. Well, quite frankly, I looked at the case Stone v. Vanderbilt University, which is a case decided in 1995 by the judge -- by a judge in Tennessee -- same university, same -- I assume similar loan agreements. I don't

know for a fact. -- but I am going to find that, as Judge Lundin did, that this was a loan executed by the Chapter 7 debtor for the amount owed to the university on the debtor's student loan account for tuition, late payment fees, other fees, which were either loans or educational benefit, within the scope of the student loan discharge exception.

But the debtor -- as in the Stone case, here the debtor doesn't deny the indebtedness; doesn't -- the amount claimed was liquidated, because the amount claim was liquidated in a previous case in that -- in the Stone case as well. The debtor attended classes, and the debtor enrolled in the university here, and therefore, I find that it -- I'm not persuaded by the cases that -- that were cited in your brief, Mr. Slominski, that this isn't a student loan.

It's for the purpose of the debtor going -- going to school. It's a non-profit. They provided the educational services. Your client agreed to pay. It was for tuition, rooms, and there was specific due dates. There was a past-due date. It was executed prior to her beginning. There was a contract, and therefore, I am going to rule that it is in fact a student loan and therefore not discharged in the prior bankruptcy. And therefore, there isn't -- I think that takes care of the issues about violating the automatic -- or violating the discharge injunction.

MS. SCHLEICHER: I agree.

THE COURT: So you can submit -- I assume you can do one order.

MS. SCHLEICHER: Okay.

THE COURT: And you can just say "for the reasons cited on the record, the Court grants summary judgment in favor of the defendants."

And once it's a student loan, then I -- if you look at the Stone case -- do you want the cite for that?

MS. SCHLEICHER: I have it. Thank you.

THE COURT: Okay.

MR. SLOMINSKI: It's also in the -- Renshaw cites Stone too.

THE COURT: Then there isn't a violation of the discharge injunction, so the judgment should be granted for the defendants.

And I guess that takes care of the trial we have set sometime soon.

And you had a motion to defer, I think, the trial or something.

MS. SCHLEICHER: The trial memo. And also the trial, I think; yeah.

THE COURT: So that takes care of it. The trial will just come off the docket.

MS. SCHLEICHER: Okay. Thank you, Your Honor.

MR. GRAY: Thank you, Your Honor. (Concluded)

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I, Patricia Morgan, of Morgan Verbatim, Inc., hereby certify that:

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(C) that the foregoing pages, consisting of pages 1 through 12, represent an accurate and complete transcription of the entire record of the proceedings, as requested, to the best of my belief and ability.

WITNESS my hand at Appleton, Washington this 3rd day of November 2006.

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