



**IT IS ORDERED as set forth below:**

**Date: June 16, 2016**

A handwritten signature in black ink, appearing to read "Barbara Ellis-Monro".

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**Barbara Ellis-Monro  
U.S. Bankruptcy Court Judge**

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE:

ADAM CRAIG FARINA,

Debtor.

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ADAM CRAIG FARINA,

Plaintiff,

v.

FEDLOAN SERVICING CREDIT,

Defendant.

CASE NO. 16-51125-BEM

CHAPTER 7

ADVERSARY PROCEEDING NO.  
16-5048-BEM

**ORDER**

This adversary proceeding came before the Court for a status conference on June 15, 2016. Shayna M. Steinfeld appeared on behalf of Defendant. The pro se Plaintiff did not appear.

Plaintiff filed a complaint on February 22, 2016. [Doc. 1]. Based on the cover sheet to the complaint and the identity of Defendant, it appears Plaintiff is seeking to discharge student loans pursuant to 11 U.S.C. § 523(a)(8). Defendant filed an Answer and Motion to Dismiss and Brief in Support Thereof [Doc. 5].

On the Adversary Proceeding Cover Sheet, Plaintiff describes the cause of action as “Payment of loan will cause undue hardship on myself and 2 children (3 & 4 years old) as im [sic] a single parent with joint custody. Debtor unemployed and sole income is public assistance (food stamps only).” [Doc. 1]. The complaint consists of one paragraph, as follows:

A motion of stay in bankruptcy was ascertained for rent in arrears (4621 Hadley Pl. Snellville GA 30078) to Kennedy Simmonds. Adam C. Farina has been unemployed since 12/29/2016 [sic] and has also filed for disability with Social Security Administration meaning condition is likely to persist. Adam C. Farina has also been placed on Social Welfare and is supporting two children (ages 3 and 4).

[Doc. 1].

Defendant’s Motion seeks dismissal based on (1) failure to join a necessary party; (2) insufficiency of process and insufficiency of service of process; and (3) failure to state a claim upon which relief may be granted.<sup>1</sup> Plaintiff did not file a response. Accordingly, he is deemed not to oppose the motion pursuant to BLR N.D. Ga. 7007-1(c).

The Court considered a similar case in *Shanks v. Sallie Mae (In re Shanks)*, No. 14-52925, AP No. 14-5189, 2014 WL 4365962 (Bankr. N.D. Ga. Aug. 28, 2014) (Ellis-Monro, J.). In that case, the debtor filed an adversary proceeding against Sallie Mae to determine dischargeability of student loans. *Id.* at \*1. After Sallie Mae filed a motion to dismiss, the debtor added the Department of Education to the case as the real party in interest. *Id.* Sallie Mae then

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<sup>1</sup> Defendant asserted a number of other affirmative defenses, including: (1) Plaintiff cannot meet the undue hardship standard; (2) Plaintiff has not exhausted his remedies relating to forbearance; (3) Plaintiff has not exhausted other avenues for administrative relief; and (4) Defendant is an unnecessary party to this action.

filed a second motion to dismiss contending it was not a proper party in interest. *Id.* The complaint failed to allege that the debtor owed any debt to Sallie Mae or that Sallie Mae had any interest in the student loans other than as a servicer.<sup>2</sup> *Id.* at \*1. As a result, the Court found the debtor failed to state a claim upon which relief could be granted with respect to Sallie Mae and dismissed Sallie Mae as a defendant. *Id.* at \*1-2.

A motion to dismiss for failure to state a claim upon which relief may be granted is governed by Fed. R. Civ. P. 12(b)(6) and Fed. R. Bankr. P. 7012. Federal Rule of Civil Procedure 8, incorporated by Federal Rule of Bankruptcy Procedure 7008, sets forth a liberal pleading standard that requires the complaint to contain only “a short and plain statement of the claim showing that the pleader is entitled to relief[.]” Fed. R. Civ. P. 8(a)(2). Courts hold complaints filed by pro se plaintiffs to a less stringent standard than documents filed by attorneys. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 2200 (2007). But this generous pleading standard does not require the Court to re-write a deficient pleading or otherwise act as de facto counsel for the pro se plaintiff. *Standifer v. S.E.C.*, 542 F. Supp.2d 1312, 1316 (N.D. Ga. 2008) (citing *GJR Invs., Inc. v. County of Escambia, Fla.*, 132 F.3d 1359, 1369 (11th Cir. 1998) (overruled on other grounds)).

To survive a motion to dismiss for failure to state a claim, the complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ ... A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009) (citations omitted). Although the complaint “does not need detailed factual allegations” to survive a motion to dismiss, it

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<sup>2</sup> Unlike the present proceeding, in *Shanks*, Sallie Mae provided an affidavit to show it was merely a servicer. However, the court did not consider the affidavit when deciding Sallie Mae’s motion to dismiss. 2014 WL 436962, at \*1.

requires more than conclusory statements or a recitation of the elements of the claim. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964-65 (2007); *Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949. “Factual allegations must be enough to raise a right to relief above the speculative level[.]” *Twombly*, 550 U.S. at 555, 127 S. Ct. at 1965.

As in *Shanks*, the complaint in this proceeding does not allege that Plaintiff owes a debt to Defendant or that Defendant has any interest in Plaintiff’s student loans. By itself, that omission would be sufficient to dismiss the complaint. In addition, the complaint fails to allege facts to support a claim for dischargeability. Student loans may be discharged if their repayment would “impose an undue hardship on the debtor and the debtor’s dependents[.]” 11 U.S.C. § 523(a)(8). To establish undue hardship, Plaintiff must show:

- (1) that the debtor cannot maintain, based on current income and expenses, a “minimal” standard of living for [himself] and [his] dependents if forced to repay the loans;
- (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and
- (3) that the debtor has made good faith efforts to repay the loans.

*Hemar Ins. Corp. of Am. v. Cox (In re Cox)*, 338 F.3d 1238, 1241 (11th Cir. 2003) (citing *Brunner v. New York State Higher Edu. Servs. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987)).

With respect to prong 1 of the undue hardship test, Plaintiff states that he has been unemployed since December 29, 2016. The year of unemployment appears to be an error as it represents a future date. He also states that he has been placed on Social Welfare. Neither of these allegations indicate his current income or expenses or whether Plaintiff is able to maintain a minimal standard of living if forced to repay his loans. With respect to prong 2, Plaintiff states that he has applied for disability, meaning his condition is likely to persist. However, Plaintiff does not provide any facts regarding the nature or effect of his alleged disability. His conclusory

statement that his condition is likely to persist is not sufficient when unaccompanied by any facts regarding his condition or how it affects his ability to earn income. With respect to prong 3, Plaintiff has made no allegations regarding his efforts to repay the loan.

Because Plaintiff has failed to allege facts showing that Defendant has an interest in Plaintiff's student loans and has failed to allege anything other than conclusory statements with respect to the elements of undue hardship, the Court concludes Plaintiff has failed to state a claim upon which relief may be granted. Accordingly, it is

ORDERED that Defendant's Motion to Dismiss is GRANTED without prejudice to Plaintiff refiling an adversary proceeding to show he has named the real party in interest and to allege facts sufficient to state a claim for relief.

Should Plaintiff decide to refile the adversary proceeding, he may seek legal assistance through a program established by the Bankruptcy Section of the Atlanta Bar Association, by which it will introduce pro se litigants in adversary proceedings to attorneys willing to work without payment. This program is not sponsored by the Court, and Plaintiff's participation in it is not mandatory. Plaintiff is not required to retain the attorney introduced to him and is free to represent himself if he refiles this adversary proceeding. To learn more about the program, Plaintiff may contact John Mills at (404) 264-4030 or Greg Taube at (404) 322-6144.

A separate judgment will be entered on even date herewith.

**END OF ORDER**

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