

**In Re:**  
*LESLEY CAMPBELL v.*  
*CITIBANK, N.A., et al.*

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*Case No. 14-45990-cec; Adv. Case No. 15-01038-cec*  
*November 17, 2015*

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1 UNITED STATES BANKRUPTCY COURT

2 EASTERN DISTRICT OF NEW YORK

3 Case No. 14-45990-cec

4 Adv. Case No. 15-01038-cec

5 - - - - -x

6 In the Matter of:

7 LESLEY CAMPBELL,

8 Debtor.

9 - - - - -x

10 LESLEY CAMPBELL,

11 Plaintiff,

12 -against-

13 CITIBANK, N.A., et al.,

14 Defendants.

15 - - - - -x

16 United States Bankruptcy Court

17 271 Cadman Plaza East

18 Brooklyn, New York

19

20 November 17, 2015

21 11:53 AM

22

23 B E F O R E:

24 HON. CARLA E. CRAIG

25 U.S. BANKRUPTCY JUDGE

1

2 [1] Complaint by Lesley Campbell Against Citibank, N.A., The  
3 Student Loan Corporation, Citibank, N.A. The Student Loan  
4 Corporation - Nature(s) of Suit: (63 (Dischargeability -  
5 523(a)(8), Student Loan), (65 (Dischargeability - Other)

6

7 [18] Motion to Dismiss Adversary Proceeding (Related  
8 Document(s) [9])

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A P P E A R A N C E S :

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## P R O C E E D I N G S

THE CLERK: Number 27, 28 Lesley Campbell v. Citibank.  
Campbell v. Citibank.

Appearances please.

MR. SMITH: Austin Smith from the Brewer Storefront on  
behalf of plaintiff Lesley Campbell.

MS. INGRAM: Good morning, Your Honor. Samantha  
Ingram from Locke Lord on behalf of defendant Citibank and  
Student Loan Corporation.

THE COURT: Okay. So I've read your briefs, and I'm  
interested in the dischargeability question. And I'll be  
writing a decision on this.

My inclination is to say that to interpret educational  
benefit to include any student loan would swallow up the rest  
of the -- would render the rest of the provisions superfluous.  
So I'm not inclined to go that way.

And I also don't see that the amendments in 2005  
changed the meaning of the provision relating to educational  
benefit, as it wasn't -- there was no change in the language.  
That's my view.

But my questions I guess -- other questions I have  
relate to if I decide this is a dischargeable loan, do -- does  
your fraud -- does the fraud standing have any further  
relevance? Fraud claim have any further relevance?

MR. SMITH: We believe it does, Your Honor. For the

1 reason that our client -- my client has been subjected to a  
2 year-long battle here.

3 THE COURT: So what would be the damages?

4 MR. SMITH: We believe the fraud damages really come  
5 in two kinds. One is the expense she's had to incur over the  
6 last year trying to get rid of this debt that was  
7 misclassified. And the second more under the unjust enrichment  
8 prong.

9 THE COURT: Okay. So what was the -- what would have  
10 been -- in terms of reliance, what's the reliance? She relied  
11 on the representation that it was a nondischargeable loan --

12 MR. SMITH: Correct.

13 THE COURT: -- in taking -- okay. So she said I only  
14 want to take out this loan if I can't discharge it?

15 MR. SMITH: No, Your Honor, that's not what we  
16 suggest.

17 THE COURT: Well, that would be the reliance.

18 MR. SMITH: No, Your Honor. We believe the reliance  
19 would be that if it had been properly labeled as just a  
20 dischargeable consumer loan --

21 THE COURT: Right.

22 MR. SMITH: -- whether -- she would have taken the  
23 loan either way --

24 THE COURT: Right.

25 MR. SMITH: -- but she would have been more appraised

1 of her legal rights. It would have --

2 THE COURT: Well, that's -- there's no -- I don't see  
3 any damages, any reliance there. She would have been apprised  
4 of her legal rights and -- I think you have to -- in order to  
5 show reliance you have to show that the person would not  
6 have -- that they took an action in reliance on the  
7 representation.

8 MR. SMITH: And we believe that when she -- she and  
9 her lawyer prepared their schedule petition when she went  
10 through the bankruptcy proceeding.

11 THE COURT: Okay. But they have to have taken -- they  
12 have to have relied on the representation in entering into the  
13 transaction.

14 MR. SMITH: Okay.

15 THE COURT: I think that's what the reliance has to  
16 have taken place at the time the transaction was entered into.

17 MR. SMITH: Okay.

18 THE COURT: I believe. I don't think -- and I'm  
19 having trouble seeing reliance here.

20 MR. SMITH: I understand, Your Honor. In that event,  
21 we still do believe that, given this is a motion to dismiss, we  
22 would like to do some discovery on that issue, because we do  
23 believe that there will be some discovery that could reveal the  
24 extent to which the fraudulent misrepresentation --

25 THE COURT: Well, you have -- the fraudulent

1 misrepresentation that it was a nondischargeable loan, how  
2 would that conceivably damage you? That -- it doesn't make any  
3 sense to me. You'd have to be telling me that she was  
4 specifically looking for a nondischargeable loan, and that  
5 she -- it would make more sense the other way around, if they  
6 had -- if you were telling me that they had represented to her  
7 that it was dischargeable and then took the position after the  
8 fact that it was nondischargeable, then that makes some sense  
9 to me maybe.

10 MR. SMITH: Okay.

11 THE COURT: But that's not -- you're saying the  
12 opposite of that.

13 MR. SMITH: I am saying the opposite. I do believe  
14 that there are, as we've said in our papers, had this been  
15 reflected in her credit reports, she's been carrying around  
16 this misclassified debt, it has caused her injury. And --

17 THE COURT: Well, that -- I don't see how that's  
18 fraud.

19 MR. SMITH: Okay.

20 THE COURT: And as far as truth in lending is  
21 concerned, it seems like you have a statute of limitations  
22 problem.

23 MR. SMITH: And we believe that we're entitled to  
24 equitable tolling on that, Your Honor.

25 THE COURT: Based upon?



1 MR. SMITH: Based upon the fact that the defendants  
2 have concealed the existence of this --

3 THE COURT: How have they concealed it?

4 MR. SMITH: They concealed it by continuing to  
5 represent it as a student loan, when, in fact, they  
6 do -- they --

7 THE COURT: Well, they take the position it is a  
8 student loan.

9 MR. SMITH: And we do believe that discovery will  
10 reveal that they've taken inconsistent positions for that with  
11 respect to the disclosures they've made to investors. We do  
12 believe that they actually are entirely aware that this is a  
13 non -- is a dischargeable consumer loan.

14 We don't believe the defendant should be entitled to  
15 just -- in making these classifications, there have to be some  
16 consequences to it, beyond just having the debt discharged.  
17 That we do believe this was, on its face, a violation of the  
18 Truth in Lending Act. And to come into Court and --

19 THE COURT: So what's the -- what's the concealment?

20 MR. SMITH: The concealment is that by continuing to  
21 represent it as a student loan, the plaintiff was denied her  
22 right to understand the legal obligations, which was that this  
23 wasn't a dischargeable debt.

24 THE COURT: But this -- it seems to me that you are  
25 conflating two things. You're saying that the -- that the

1 false representation --

2 MR. SMITH: Yes, ma'am.

3 THE COURT: -- was that it was a nondischargeable  
4 loan.

5 MR. SMITH: Correct.

6 THE COURT: And you said they're concealing  
7 it -- they're concealing that representation -- they concealed  
8 their misrepresentation by representing that it was a  
9 nondischargeable loan. So that -- I think you're -- that  
10 does -- I don't think that that falls into the category of  
11 fraudulent concealment.

12 MR. SMITH: Your Honor, with respect, I would state  
13 that --

14 THE COURT: She --

15 MR. SMITH: -- one of the prongs on the test for  
16 equitable tolling is that the defendant is responsible for  
17 concealing the cause of action from plaintiff. And we just  
18 believe in this case, the plaintiff should not have been  
19 obligated to consult the tax code and the Higher Education Act,  
20 and case law to determine what sort of debt she had. They've  
21 been continuously representing it as a student loan, which by  
22 definition means it's presumptively nondischargeable in  
23 bankruptcy.

24 They have saddled her with a debt and forced her into  
25 an adversary proceeding, that if it had just been labeled

1 properly, none of this would have happened. The debt would  
2 have been discharged as we believe it was discharged by your  
3 order of March.

4 THE COURT: Okay.

5 MR. SMITH: And I understand the concern, Your Honor,  
6 that the fraudulent concealment is simply an ongoing  
7 misrepresentation. And that, in your opinion, may not be  
8 substantively different from the original misclassification.

9 THE COURT: Right.

10 MR. SMITH: But we submit, Your Honor, that there was  
11 a truth in lending violation, given that the defendants have  
12 drawn up very lengthy papers arguing that they made no such  
13 misclassification. This is clearly a question that's confused  
14 a lot of people. And we believe, Your Honor, that, if nothing  
15 else, we are entitled to a little bit of discovery to show how  
16 the defendants have not entirely been truthful about their  
17 knowledge.

18 THE COURT: So your stand -- your contention is that  
19 they -- that they have represented to investors? What, is this  
20 in publicly filed documents at some point?

21 MR. SMITH: Yes, Your Honor, SEC disclosures.

22 THE COURT: Well, then why do you need -- why do you  
23 need discovery, you can pull those off online?

24 MR. SMITH: We can pull this online, we would just  
25 like some discovery to see -- I mean, that's one example, we

1 believe that there will be more.

2 THE COURT: So you're saying that there is a form 8-K  
3 or something -- a 10-K that shows this?

4 MR. SMITH: When these loans are created, a lot of  
5 times they're securitized into asset-backed securities.

6 THE COURT: I see.

7 MR. SMITH: And in the disclosures that Citibank made  
8 as an underwriter and a book runner for a number of these  
9 trusts, there are disclosures that say student loans that are  
10 not made for qualified educational expenses are not protected  
11 from discharge in bankruptcy.

12 THE COURT: Okay. But they would take the position  
13 that this was a student loan made for a qualified educational  
14 expense?

15 MR. SMITH: No, Your Honor, they do not take that  
16 position actually.

17 THE COURT: Is that right?

18 MS. INGRAM: We take the position that the student  
19 loan was an educational benefit under Section 523(a)(8)(A)(ii)  
20 of the Bankruptcy Code.

21 THE COURT: So you're saying the disclosure says that  
22 any loan that is not a qualified education loan is not  
23 dischargeable?

24 MR. SMITH: What the disclosure actually says -- and  
25 the trusts sort of state it a different ways sometimes. But

1 what it says is bankruptcy disclosure, loans made for qualified  
2 educational expenses are protected from discharge in  
3 bankruptcy. However, this trust includes many loans that were  
4 made -- that were not made for qualified educational expenses  
5 and, therefore, are not protected from discharge in bankruptcy.

6 THE COURT: Okay.

7 MR. SMITH: To the extent you own any of those notes,  
8 you bear the loss --

9 THE COURT: Okay.

10 MR. SMITH: -- in value.

11 THE COURT: Well, how do we know that that disclosure  
12 was meant to refer to this loan?

13 MR. SMITH: We believe, Your Honor -- well, it wasn't  
14 meant to -- actually refer to plaintiff's loan specifically, it  
15 was meant to refer to anything --

16 THE COURT: Or this type of loan?

17 MR. SMITH: This type of loan. Well, in the sense  
18 that this was a student loan that was not made for qualified  
19 educational expenses. And there are a number of these. The  
20 bar exam loans, loans for medical students in residency, career  
21 training loans, loans made to schools that are not accredited  
22 by the Department of Education. So there's a -- there's a  
23 plethora of these types of loan, and the commonality of all of  
24 them is that none of them were made for qualified educational  
25 expenses.

1 THE COURT: Well, then none of them -- the terminology  
2 in the statute is qualified education loan.

3 MR. SMITH: Correct. And a qualified education loan  
4 is defined by IRC 22.1(d) as a loan incurred solely to pay for  
5 qualified educational expenses.

6 THE COURT: Okay, all right.

7 So your view is that that is a truth in lending  
8 violation?

9 MR. SMITH: Yes, Your Honor. We believe that that is  
10 a misrepresentation of the legal obligations between the  
11 parties.

12 THE COURT: And what about your unjust enrichment  
13 claim?

14 MR. SMITH: Our unjust enrichment claim --

15 THE COURT: How does that work?

16 MR. SMITH: -- like the fraud claim -- is based on  
17 what we allege is Citibank's practice of selling unsecured  
18 consumer loans as nondischargeable student loans in order to  
19 increase their value on the secondary market. Obviously a debt  
20 that is nondischargeable in bankruptcy we believe is worth a  
21 lot more than an unsecured consumer debt that can be discharged  
22 in bankruptcy.

23 THE COURT: Well, that might be fraud on the person  
24 who bought the loan, but I don't know how it's fraud on --

25 MR. SMITH: No, we agree that it also could be fraud

1 with the person who bought the loan. However, we do believe  
2 that that cate- -- the purpose -- that one of the purposes  
3 Citibank had in representing this as a nondischargeable loan  
4 was to increase its value in the secondary market. We believe  
5 our client was injured by that. It's true that Cash LLC may  
6 also have been injured.

7 THE COURT: But she has -- there has to be  
8 representation that she relied on to her detriment somehow.

9 MR. SMITH: I understand, Your Honor. And we believe  
10 that until --

11 THE COURT: I don't --

12 MR. SMITH: -- her day in court today she has been  
13 relying on that.

14 THE COURT: I know, but what's -- reliance is when you  
15 say okay, because you -- because you're telling me this --

16 MR. SMITH: Yes.

17 THE COURT: -- I will go ahead -- I'll do this deal  
18 with you.

19 MR. SMITH: Okay. I understand, Your Honor. Under  
20 that understanding of reliance we would not be able to show  
21 that, no.

22 THE COURT: All right. Do you have anything you want  
23 to put on the record?

24 MS. INGRAM: Yes, Your Honor. To the extent -- would  
25 you welcome me to speak a little bit about the dischargeability

1 issue?

2 THE COURT: Go ahead.

3 MS. INGRAM: Okay. Thank you, Your Honor.

4 Your Honor had expressed a concern about if we hold  
5 that the bar study loan to be nondischargeable, that will apply  
6 to a wide swath of loans.

7 THE COURT: Correct.

8 MS. INGRAM: And we're here today, Your Honor, on  
9 behalf of defendant Citibank and Student Loan Corporation, not  
10 all defendants, just those two defendants who have moved here  
11 today, to say that only bar study loans specifically should --

12 THE COURT: Are there other -- are there other  
13 defendants here that haven't moved to dis --

14 MS. INGRAM: Yes, there are three other defendants,  
15 Your Honor.

16 THE COURT: What is their connection with this?

17 MS. INGRAM: They've answered. So Citibank and  
18 Student Loan Corporation sold the loan to SquareTwo Financial  
19 in 2013, about a year before the plaintiff even filed for  
20 bankruptcy. So those three other defendants have answered the  
21 complaint and not joined our motion to dismiss. And there are  
22 additional claims that have just been brought against them, and  
23 not my clients.

24 THE COURT: So if I grant -- if I deny this motion to  
25 dismiss on the basis that as a matter of law this is a



1 non -- this is a dischargeable loan, is that law of the case,  
2 what happens here -- what happens next? What happens then?

3 MR. SMITH: I believe, Your Honor, yes --

4 THE COURT: You didn't make a motion -- did you make  
5 motion for summary judgment?

6 MR. SMITH: We have not made a motion for summary  
7 judgment, Your Honor.

8 THE COURT: Okay. All right. Sorry, go ahead.

9 MS. INGRAM: Thank you, Your Honor.

10 So, again, we're just asking the Court to hold that  
11 student bar loans, such as the loan at issue here --

12 THE COURT: Why would I take out -- how do you get  
13 that out of the language of the statute? I understand that you  
14 don't-- you don't want me to read this broadly --

15 MS. INGRAM: Right.

16 THE COURT: -- but why would your -- why would a  
17 student bar loan -- where does it say student bar loans here,  
18 or --

19 MS. INGRAM: Right.

20 THE COURT: -- anything that could be reasonably  
21 interpreted to point in that direction?

22 MS. INGRAM: Yes, Your Honor. So we believe that a  
23 student bar loans falls under the educational benefit category  
24 of Section 523.

25 THE COURT: Based on what?

1 MS. INGRAM: Based on the case law that's on point.  
2 There are two cases directly on point.

3 THE COURT: Yeah. I don't -- I respectfully disagree  
4 with both of those cases.

5 MS. INGRAM: Okay, Your Honor. Also, the 2005  
6 amendments, I know you had mentioned those before. But we  
7 believe that separating out that section that is now subsection  
8 (A)(ii) made it a separate category of loans. And that if you  
9 apply it to the other remaining categories, the qualified  
10 education loans, and those being insured by governmental units,  
11 there are "ors" in the language of the statute. And if you  
12 read educational benefit to also be required to be a  
13 government --

14 THE COURT: But I don't know why you would read it  
15 that way in the pre-BAPCPA. I think the "or" indicates that  
16 qualified educational loan was not -- was something separate  
17 from a federally insured loan, or federally guaranteed loan.  
18 The fact that it was contained in the same subsection doesn't  
19 mean that it was modified by that same -- by the language  
20 guaranteed.

21 MS. INGRAM: Right. We're just saying that separating  
22 out to be its own subsection meant it didn't also have to meet  
23 the categories that are still in the other two subsections.

24 THE COURT: Right. And I'm saying it wasn't before.

25 MS. INGRAM: It was altogether in one trump report.

1           THE COURT: But I declined to conclude that the fact  
2 that the word -- that the words "obligation to repay funds  
3 received as an educational benefit scholarship or stipend" the  
4 fact that it was previously part of subsection (A)(i) with the  
5 exact same language, that means that it was -- that this was  
6 intended to refer at that time to a guaranteed loan or benefit.

7           MS. INGRAM: Um-hmm.

8           THE COURT: I think -- I don't think that you can  
9 reasonably read the language to provide that.

10          MS. INGRAM: Okay.

11          THE COURT: Also, the other thing I would say is that  
12 the fact that they added "a qualified educational loan" as a  
13 separate category of nondischargeable loan, I think undercuts  
14 your argument, because clearly they intended -- Congress  
15 intended to provide for the nondischargeability of a limited  
16 category of nongovernmental guaranteed loans, namely qualified  
17 educational loans. So if you were to interpret educational  
18 benefit to include any kind of -- or other kinds of private  
19 loans, nongovernmental loans that are not guaranteed and are  
20 not qualified, then I think your -- I think that becomes  
21 superfluous. And I don't know how -- you're saying well, it's  
22 not all private loans, it's just bar loans. I don't know where  
23 you get that from the language of the statute. If I read it to  
24 include bar loans, because they're -- and conclude that that's  
25 an educational benefit, I don't know why I wouldn't conclude

1 that any other loan made for -- to a student is a educational  
2 benefit.

3 I also don't think the word "educational benefit"  
4 would be normally understood to include a loan. A loan, unless  
5 it's -- I suppose if it were at a zero interest rate loan, or  
6 something like that, might be considered a benefit. But a loan  
7 is a commercial transaction, it's not a benefit. A benefit is  
8 typically understood to be a grant or a -- something that is  
9 given to you that is advantageous from -- and not on normal  
10 commercial terms. And I wouldn't consider this to be -- unless  
11 you're telling me that this was a super low interest rate loan,  
12 or something like that?

13 MS. INGRAM: No, Your Honor, we were just basing our  
14 argument on the case law that's interpreted Section --

15 THE COURT: Yes, I saw that.

16 MS. INGRAM: -- (A)(ii) to be broader than it was  
17 initially before the 2005 amendments, and the other cases --

18 THE COURT: Right.

19 MS. INGRAM: -- that have held these types of loans to  
20 be nondischargeable.

21 THE COURT: I disagree with those cases.

22 MS. INGRAM: Understood.

23 THE COURT: Do you want to talk about the other -- the  
24 other issues?

25 MS. INGRAM: Yes, please, Your Honor.

1           As you have noted, regardless of the decision of  
2 whether the student bar loan is held to be dischargeable or  
3 not, there are other reasons to dismiss the additional causes  
4 of action that have been brought against our clients.

5           First, with respect to the Truth in Lending Act claim,  
6 we would agree that there's no equitable tolling that applies,  
7 since our clients haven't made a misrepresentation of  
8 concealment.

9           THE COURT: You would agree with who?

10          MS. INGRAM: With what Your Honor was getting at  
11 before.

12          THE COURT: I haven't concluded that.

13          MS. INGRAM: No, respectfully, you have not concluded  
14 it. It was just based on your questioning, Your Honor.

15          We would argue that the Truth in Lending Act claim is  
16 barred by the one-year statute of limitations, and that there's  
17 no need for any additional discovery. Plaintiff's counsel had  
18 mentioned some public disclosures. Again, those are public,  
19 and anything else would be a fishing expedition. We've put all  
20 the relevant documents before the Court and plaintiff's  
21 counsel. We've attached the note itself, and there's no  
22 misrepresentations in the language of the note.

23          There's also the --

24          THE COURT: Well, they argued that the statement that  
25 it's nondischargeable is a misrepresentation.

1 MS. INGRAM: Well, I think they were arguing perhaps  
2 that we knew we were misrepresenting the loan as  
3 nondischargeable. And we maintain the position that the loan  
4 in our opinions was nondischargeable. So that wasn't an  
5 intentional misrepresentation.

6 Also, with respect to the unjust enrichment claim. I  
7 would like to add that it's our position that the plaintiffs  
8 don't have standing to bring that claim, both under Article 3  
9 and prudential standing -- standards. There's --

10 THE COURT: Why is that?

11 MS. INGRAM: Well, for Article 3, first, Your Honor,  
12 there's been no clear statement of any injury, or how that  
13 injury could be redressed if --

14 THE COURT: Well, she's incurred attorney's fees in  
15 fighting this battle with you. That, I suppose, would  
16 be -- that's the injury that I'm assuming that they're looking  
17 at.

18 MS. INGRAM: It's not stated, I believe, in the  
19 complaint, Your Honor.

20 THE COURT: Is that the injury you're talking about?

21 MR. SMITH: Yes, Your Honor. And we -- those fees are  
22 ongoing, so to the extent that we stated in the complaint that  
23 in an amount to be determined at trial.

24 THE COURT: Um-hum.

25 MS. INGRAM: Well then, still, Your Honor, there's no

1 pleading that disgorging the proceeds of those sale to my  
2 clients would redress the plaintiff's injury. If -- and that  
3 kinds of gets into prudential standing.

4 THE COURT: Well, just paying the attorney's fees  
5 would redress her damages.

6 MS. INGRAM: Paying the attorney's fee for the  
7 unjust --

8 THE COURT: Right.

9 MS. INGRAM: -- enrichment claim.

10 THE COURT: Right, which she's incurred in  
11 defending -- in prosecuting, or in obtaining a court  
12 determination that this loan is nondischargeable.

13 MS. INGRAM: The way --

14 THE COURT: Is dischargeable, I should say.

15 MS. INGRAM: -- I believe the claim was pled was that  
16 the sale of the loan from my clients to the other defendants  
17 was what unjustly enriched my clients. And that is  
18 plaintiff's -- basis of plaintiff's claim.

19 THE COURT: Okay.

20 MS. INGRAM: And it's not clear how she was injured by  
21 that, or how --

22 THE COURT: Yeah.

23 MS. INGRAM: -- disgorging the proceeds of that sale  
24 would redress that injury.

25 THE COURT: Yeah, I guess that's right. That's

1 not -- that wouldn't be necessarily --

2 MS. INGRAM: That would conceivably only affect  
3 SquareTwo who bought the loan.

4 THE COURT: And I don't know that how -- I don't think  
5 that causing someone to incur attorney's fees enriches  
6 Citibank.

7 MR. SMITH: No, Your Honor, we would think that that  
8 does not enrich Citibank.

9 THE COURT: Okay, all right.  
10 Anything else?

11 MS. INGRAM: And just quickly, Your Honor, lastly on  
12 the fraudulent misrepresentation claim. In addition to the  
13 dischargeability issue, we just note that there has been  
14 insufficient pleading with respect to the nature of the  
15 fraudulent misrepresentation: who made the representation, when  
16 it was made, and the nature of that misrepresentation.

17 THE COURT: Well, isn't there statement -- the  
18 statement of it as a nondischargeable loan is in the loan  
19 documents, isn't it?

20 MS. INGRAM: That was raised in their opposition, not  
21 in the complaint itself, Your Honor. And even still, I don't  
22 believe that the note itself --

23 THE COURT: Well, isn't the loan -- is the note  
24 attached to the --

25 MS. INGRAM: The note's attached to our motion.



1 THE COURT: 'Cause --

2 MR. SMITH: Yes, Your Honor. In our amended  
3 complaint -- the plaintiff's first amended complaint, we allege  
4 in paragraph 15, that the defendants Student Loan Corporation  
5 and Citibank misrepresented this debt as a student loan to the  
6 plaintiff.

7 And what's important about that, Your Honor, is  
8 because the Supreme Court has said that student loans are, by  
9 definition, presumptively nondischargeable, simply by calling  
10 it a student loan they set in chain this motion of events  
11 that --

12 THE COURT: Yeah.

13 MR. SMITH: -- has led to her debt.

14 THE COURT: But she's saying where did we say it was a  
15 student loan.

16 MR. SMITH: The document's titled the Master Student  
17 Loan Promissory Note.

18 THE COURT: Is that document anywhere in the record?  
19 That's I think the point that she's making.

20 MR. SMITH: Yes. They attached it to their response.  
21 We, certainly, incorporate it by reference in our complaint.

22 THE COURT: Okay. To the extent that you're arguing  
23 that because it wasn't attached to the complaint, I can't  
24 consider it, I suppose that's something that could be easily  
25 enough rectified by amendment, if that were --

1 MS. INGRAM: No, Your Honor, because we've --

2 THE COURT: -- sufficient.

3 MS. INGRAM: -- attached the note to our motion. And  
4 I do -- I see it's called Master Student Loan Promissory Note,  
5 but we would disagree with the assumption that just because  
6 it's called a student loan it's automatically considered --

7 THE COURT: Does the note say -- does the note say  
8 anything about it, to be effective it's nondischargeable?

9 MS. INGRAM: I don't believe it does, Your Honor.

10 MR. SMITH: We would concede it does not, Your Honor.  
11 But, nonetheless, it doesn't need to.

12 THE COURT: Okay. Do you have anything else?

13 MS. INGRAM: No. I believe those are all the claims,  
14 Your Honor.

15 THE COURT: So where do you say that the  
16 misrepresentation was made that it's a nondischargeable loan?

17 MR. SMITH: Your Honor --

18 THE COURT: If it's not in -- you're saying just by  
19 calling it a student loan, that was a misrepresentation that it  
20 was a nondischargeable loan?

21 MR. SMITH: Correct, Your Honor, because according to  
22 Supreme Court precedent, all student loans are presumptively  
23 nondischargeable. So if you call it a student loan you invest  
24 it with this legal protection that it survives a bankruptcy  
25 proceeding, and the creditor's due process rights require an

1 adversary proceeding. And if you look at a statistic, 99.9  
2 percent of students never seek that adversary proceeding  
3 because it's very expensive. So just by calling it a student  
4 loan, 99.9 percent of these loans survive bankruptcy whether or  
5 not they were student loans at all, and can be continued to be  
6 collected upon --

7 THE COURT: Okay.

8 MR. SMITH: -- till the death of the debtor.

9 THE COURT: Okay, thank you.

10 MR. SMITH: Thank you.

11 THE COURT: Anything else?

12 All right. Thanks a lot.

13 MS. INGRAM: Thank you, Your Honor.

14 (Whereupon these proceedings were concluded at 12:19 PM)

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C E R T I F I C A T I O N

I, Esther Accardi, certify that the foregoing transcript is a true and accurate record of the proceedings.



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Date: November 18, 2015

	<p><b>5:25</b> <b>apprised (1)</b> 6:3</p>	<p><b>18,25;19:2,3,6,7,7</b> <b>beyond (1)</b> 8:16</p>	<p><b>certainly (1)</b> 24:21</p>	<p><b>8:25</b> <b>confused (1)</b> 10:13</p>
<p><b>A</b></p> <p><b>able (1)</b> 14:20</p> <p><b>according (1)</b> 25:21</p> <p><b>accredited (1)</b> 12:21</p> <p><b>Act (4)</b> 8:18;9:19;20:5,15</p> <p><b>action (3)</b> 6:6;9:17;20:4</p> <p><b>actually (4)</b> 8:12;11:16,24; 12:14</p> <p><b>add (1)</b> 21:7</p> <p><b>added (1)</b> 18:12</p> <p><b>addition (1)</b> 23:12</p> <p><b>additional (3)</b> 15:22;20:3,17</p> <p><b>advantageous (1)</b> 19:9</p> <p><b>adversary (3)</b> 9:25;26:1,2</p> <p><b>affect (1)</b> 23:2</p> <p><b>again (2)</b> 16:10;20:18</p> <p><b>against (2)</b> 15:22;20:4</p> <p><b>agree (3)</b> 13:25;20:6,9</p> <p><b>ahead (3)</b> 14:17;15:2;16:8</p> <p><b>Ai (1)</b> 18:4</p> <p><b>Aii (2)</b> 17:8;19:16</p> <p><b>allege (2)</b> 13:17;24:3</p> <p><b>altogether (1)</b> 17:25</p> <p><b>amended (2)</b> 24:2,3</p> <p><b>amendment (1)</b> 24:25</p> <p><b>amendments (3)</b> 4:17;17:6;19:17</p> <p><b>amount (1)</b> 21:23</p> <p><b>answered (2)</b> 15:17,20</p> <p><b>Appearances (1)</b> 4:4</p> <p><b>applies (1)</b> 20:6</p> <p><b>apply (2)</b> 15:5;17:9</p> <p><b>appraised (1)</b></p>	<p><b>argue (1)</b> 20:15</p> <p><b>argued (1)</b> 20:24</p> <p><b>arguing (3)</b> 10:12;21:1;24:22</p> <p><b>argument (2)</b> 18:14;19:14</p> <p><b>around (2)</b> 7:5,15</p> <p><b>Article (2)</b> 21:8,11</p> <p><b>asset-backed (1)</b> 11:5</p> <p><b>assuming (1)</b> 21:16</p> <p><b>assumption (1)</b> 25:5</p> <p><b>attached (6)</b> 20:21;23:24,25; 24:20,23;25:3</p> <p><b>attorney's (4)</b> 21:14;22:4,6;23:5</p> <p><b>Austin (1)</b> 4:5</p> <p><b>automatically (1)</b> 25:6</p> <p><b>aware (1)</b> 8:12</p>	<p><b>bit (2)</b> 10:15;14:25</p> <p><b>book (1)</b> 11:8</p> <p><b>both (2)</b> 17:4;21:8</p> <p><b>bought (3)</b> 13:24;14:1;23:3</p> <p><b>Brewer (1)</b> 4:5</p> <p><b>briefs (1)</b> 4:10</p> <p><b>bring (1)</b> 21:8</p> <p><b>broader (1)</b> 19:16</p> <p><b>broadly (1)</b> 16:14</p> <p><b>brought (2)</b> 15:22;20:4</p>	<p><b>chain (1)</b> 24:10</p> <p><b>change (1)</b> 4:19</p> <p><b>changed (1)</b> 4:18</p> <p><b>Citibank (10)</b> 4:2,3,8;11:7;14:3; 15:9,17;23:6,8;24:5</p> <p><b>Citibank's (1)</b> 13:17</p> <p><b>claim (12)</b> 4:24;13:13,14,16; 20:5,15;21:6,8;22:9, 15,18;23:12</p> <p><b>claims (2)</b> 15:22;25:13</p> <p><b>classifications (1)</b> 8:15</p> <p><b>clear (2)</b> 21:12;22:20</p> <p><b>clearly (2)</b> 10:13;18:14</p> <p><b>CLERK (1)</b> 4:2</p> <p><b>client (3)</b> 5:1,1;14:5</p> <p><b>clients (6)</b> 15:23;20:4,7;22:2, 16,17</p> <p><b>code (2)</b> 9:19;11:20</p> <p><b>collected (1)</b> 26:6</p> <p><b>commercial (2)</b> 19:7,10</p> <p><b>commonality (1)</b> 12:23</p> <p><b>complaint (8)</b> 15:21;21:19,22; 23:21;24:3,3,21,23</p> <p><b>concealed (4)</b> 8:2,3,4;9:7</p> <p><b>concealing (3)</b> 9:6,7,17</p> <p><b>concealment (5)</b> 8:19,20;9:11;10:6; 20:8</p> <p><b>concede (1)</b> 25:10</p> <p><b>conceivably (2)</b> 7:2;23:2</p> <p><b>concern (2)</b> 10:5;15:4</p> <p><b>concerned (1)</b> 7:21</p> <p><b>conclude (3)</b> 18:1,24,25</p> <p><b>concluded (3)</b> 20:12,13;26:14</p> <p><b>conflating (1)</b></p>	<p><b>Congress (1)</b> 18:14</p> <p><b>connection (1)</b> 15:16</p> <p><b>consequences (1)</b> 8:16</p> <p><b>consider (2)</b> 19:10;24:24</p> <p><b>considered (2)</b> 19:6;25:6</p> <p><b>consult (1)</b> 9:19</p> <p><b>consumer (4)</b> 5:20;8:13;13:18, 21</p> <p><b>contained (1)</b> 17:18</p> <p><b>contention (1)</b> 10:18</p> <p><b>continued (1)</b> 26:5</p> <p><b>continuing (2)</b> 8:4,20</p> <p><b>continuously (1)</b> 9:21</p> <p><b>Corporation (4)</b> 4:9;15:9,18;24:4</p> <p><b>counsel (2)</b> 20:17,21</p> <p><b>COURT (105)</b> 4:10;5:3,9,13,17, 21,24;6:2,11,15,18, 25;7:11,17,20,25; 8:3,7,18,19,24;9:3,6, 14;10:4,9,18,22; 11:2,6,12,17,21; 12:6,9,11,16;13:1,6, 12,15,23;14:7,11,12, 14,17,22;15:2,7,12, 16,24;16:4,8,10,12, 16,20,25;17:3,14,24; 18:1,8,11;19:15,18, 21,23;20:9,12,20,24; 21:10,14,20,24;22:4, 8,10,11,14,19,22,25; 23:4,9,17,23;24:1,8, 12,14,18,22;25:2,7, 12,15,18,22;26:7,9, 11</p>
	<p><b>B</b></p> <p><b>bankruptcy (12)</b> 6:10;9:23;11:11, 20;12:1,3,5;13:20, 22;15:20;25:24;26:4</p> <p><b>bar (10)</b> 12:20;15:5,11; 16:11,17,17,23; 18:22,24;20:2</p> <p><b>barred (1)</b> 20:16</p> <p><b>Based (6)</b> 7:25;8:1;13:16; 16:25;17:1;20:14</p> <p><b>basing (1)</b> 19:13</p> <p><b>basis (2)</b> 15:25;22:18</p> <p><b>battle (2)</b> 5:2;21:15</p> <p><b>bear (1)</b> 12:8</p> <p><b>becomes (1)</b> 18:20</p> <p><b>behalf (3)</b> 4:6,8;15:9</p> <p><b>benefit (14)</b> 4:14,19;11:19; 16:23;17:12;18:3,6,</p>	<p><b>C</b></p> <p><b>call (1)</b> 25:23</p> <p><b>called (2)</b> 25:4,6</p> <p><b>calling (3)</b> 24:9;25:19;26:3</p> <p><b>Campbell (3)</b> 4:2,3,6</p> <p><b>can (5)</b> 10:23,24;13:21; 18:8;26:5</p> <p><b>career (1)</b> 12:20</p> <p><b>carrying (1)</b> 7:15</p> <p><b>case (5)</b> 9:18,20;16:1;17:1; 19:14</p> <p><b>cases (4)</b> 17:2,4;19:17,21</p> <p><b>Cash (1)</b> 14:5</p> <p><b>cate- (1)</b> 14:2</p> <p><b>categories (2)</b> 17:9,23</p> <p><b>category (5)</b> 9:10;16:23;17:8; 18:13,16</p> <p><b>cause (2)</b> 9:17;24:1</p> <p><b>caused (1)</b> 7:16</p> <p><b>causes (1)</b> 20:3</p> <p><b>causing (1)</b> 23:5</p>	<p><b>conceded (1)</b> 10:13;18:14</p> <p><b>clearly (2)</b> 10:13;18:14</p> <p><b>CLERK (1)</b> 4:2</p> <p><b>client (3)</b> 5:1,1;14:5</p> <p><b>clients (6)</b> 15:23;20:4,7;22:2, 16,17</p> <p><b>code (2)</b> 9:19;11:20</p> <p><b>collected (1)</b> 26:6</p> <p><b>commercial (2)</b> 19:7,10</p> <p><b>commonality (1)</b> 12:23</p> <p><b>complaint (8)</b> 15:21;21:19,22; 23:21;24:3,3,21,23</p> <p><b>concealed (4)</b> 8:2,3,4;9:7</p> <p><b>concealing (3)</b> 9:6,7,17</p> <p><b>concealment (5)</b> 8:19,20;9:11;10:6; 20:8</p> <p><b>concede (1)</b> 25:10</p> <p><b>conceivably (2)</b> 7:2;23:2</p> <p><b>concern (2)</b> 10:5;15:4</p> <p><b>concerned (1)</b> 7:21</p> <p><b>conclude (3)</b> 18:1,24,25</p> <p><b>concluded (3)</b> 20:12,13;26:14</p> <p><b>conflating (1)</b></p>	<p><b>created (1)</b> 11:4</p> <p><b>credit (1)</b> 7:15</p> <p><b>creditor's (1)</b> 25:25</p> <p><b>D</b></p> <p><b>damage (1)</b> 7:2</p>

<p><b>damages (4)</b> 5:3,4;6:3;22:5 <b>day (1)</b> 14:12 <b>deal (1)</b> 14:17 <b>death (1)</b> 26:8 <b>debt (11)</b> 5:6;7:16;8:16,23; 9:20,24;10:1;13:19, 21;24:5,13 <b>debtor (1)</b> 26:8 <b>decide (1)</b> 4:22 <b>decision (2)</b> 4:12;20:1 <b>declined (1)</b> 18:1 <b>defendant (4)</b> 4:8;8:14;9:16;15:9 <b>defendants (10)</b> 8:1;10:11,16; 15:10,10,13,14,20; 22:16;24:4 <b>defending (1)</b> 22:11 <b>defined (1)</b> 13:4 <b>definition (2)</b> 9:22;24:9 <b>denied (1)</b> 8:21 <b>deny (1)</b> 15:24 <b>Department (1)</b> 12:22 <b>determination (1)</b> 22:12 <b>determine (1)</b> 9:20 <b>determined (1)</b> 21:23 <b>detriment (1)</b> 14:8 <b>different (2)</b> 10:8;11:25 <b>direction (1)</b> 16:21 <b>directly (1)</b> 17:2 <b>dis (1)</b> 15:13 <b>disagree (3)</b> 17:3;19:21;25:5 <b>discharge (4)</b> 5:14;11:11;12:2,5 <b>dischargeability (3)</b> 4:11;14:25;23:13 <b>dischargeable (9)</b> 4:22;5:20;7:7; 8:13,23;11:23;16:1;</p>	<p>20:2;22:14 <b>discharged (4)</b> 8:16;10:2,2;13:21 <b>disclosure (4)</b> 11:21,24;12:1,11 <b>disclosures (5)</b> 8:11;10:21;11:7,9; 20:18 <b>discovery (7)</b> 6:22,23;8:9;10:15, 23,25;20:17 <b>disgorging (2)</b> 22:1,23 <b>dismiss (4)</b> 6:21;15:21,25; 20:3 <b>document (1)</b> 24:18 <b>documents (3)</b> 10:20;20:20;23:19 <b>document's (1)</b> 24:16 <b>don't- (1)</b> 16:14 <b>drawn (1)</b> 10:12 <b>due (1)</b> 25:25</p>	<p>6:12 <b>entirely (2)</b> 8:12;10:16 <b>entitled (3)</b> 7:23;8:14;10:15 <b>equitable (3)</b> 7:24;9:16;20:6 <b>even (2)</b> 15:19;23:21 <b>event (1)</b> 6:20 <b>events (1)</b> 24:10 <b>exact (1)</b> 18:5 <b>exam (1)</b> 12:20 <b>example (1)</b> 10:25 <b>existence (1)</b> 8:2 <b>expedition (1)</b> 20:19 <b>expense (2)</b> 5:5;11:14 <b>expenses (6)</b> 11:10;12:2,4,19, 25;13:5 <b>expensive (1)</b> 26:3 <b>expressed (1)</b> 15:4 <b>extent (5)</b> 6:24;12:7;14:24; 21:22;24:22</p>	<p>20:5;21:11;24:3 <b>fishing (1)</b> 20:19 <b>forced (1)</b> 9:24 <b>form (1)</b> 11:2 <b>fraud (9)</b> 4:23,23,24;5:4; 7:18;13:16,23,24,25 <b>fraudulent (6)</b> 6:24,25;9:11;10:6; 23:12,15 <b>funds (1)</b> 18:2 <b>further (2)</b> 4:23,24</p>	<p style="text-align: center;"><b>I</b></p> <p><b>important (1)</b> 24:7 <b>inclination (1)</b> 4:13 <b>inclined (1)</b> 4:16 <b>include (4)</b> 4:14;18:18,24; 19:4 <b>includes (1)</b> 12:3 <b>inconsistent (1)</b> 8:10 <b>incorporate (1)</b> 24:21 <b>increase (2)</b> 13:19;14:4 <b>incur (2)</b> 5:5;23:5 <b>incurred (3)</b> 13:4;21:14;22:10 <b>indicates (1)</b> 17:15 <b>INGRAM (44)</b> 4:7,8;11:18;14:24; 15:3,8,14,17;16:9, 15,19,22;17:1,5,21, 25;18:7,10;19:13,16, 19,22,25;20:10,13; 21:1,11,18,25;22:6, 9,13,15,20,23;23:2, 11,20,25;25:1,3,9, 13;26:13 <b>initially (1)</b> 19:17 <b>injured (3)</b> 14:5,6;22:20 <b>injury (7)</b> 7:16;21:12,13,16, 20;22:2,24 <b>insufficient (1)</b> 23:14 <b>insured (2)</b> 17:10,17 <b>intended (3)</b> 18:6,14,15 <b>intentional (1)</b> 21:5 <b>interest (2)</b> 19:5,11 <b>interested (1)</b> 4:11 <b>interpret (2)</b> 4:13;18:17 <b>interpreted (2)</b> 16:21;19:14 <b>into (7)</b> 6:12,16;8:18;9:10, 24;11:5;22:3 <b>invest (1)</b></p>
	<b>E</b>	<b>F</b>	<b>G</b>	
	<p><b>easily (1)</b> 24:24 <b>Education (6)</b> 9:19;11:22;12:22; 13:2,3;17:10 <b>educational (20)</b> 4:13,18;11:10,13, 19;12:2,4,19,24; 13:5;16:23;17:12, 16;18:3,12,17,17,25; 19:1,3 <b>effective (1)</b> 25:8 <b>either (1)</b> 5:23 <b>else (5)</b> 10:15;20:19; 23:10;25:12;26:11 <b>enough (1)</b> 24:25 <b>enrich (1)</b> 23:8 <b>enriched (1)</b> 22:17 <b>enriches (1)</b> 23:5 <b>enrichment (5)</b> 5:7;13:12,14;21:6; 22:9 <b>entered (1)</b> 6:16 <b>entering (1)</b></p>	<p style="text-align: center;"><b>H</b></p> <p><b>face (1)</b> 8:17 <b>fact (7)</b> 7:8;8:1,5;17:18; 18:1,4,12 <b>falls (2)</b> 9:10;16:23 <b>false (1)</b> 9:1 <b>far (1)</b> 7:20 <b>federally (2)</b> 17:17,17 <b>fee (1)</b> 22:6 <b>fees (4)</b> 21:14,21;22:4; 23:5 <b>fighting (1)</b> 21:15 <b>filed (2)</b> 10:20;15:19 <b>Financial (1)</b> 15:18 <b>First (3)</b></p>	<p><b>gets (1)</b> 22:3 <b>given (3)</b> 6:21;10:11;19:9 <b>Good (1)</b> 4:7 <b>government (1)</b> 17:13 <b>governmental (1)</b> 17:10 <b>grant (2)</b> 15:24;19:8 <b>guaranteed (5)</b> 17:17,20;18:6,16, 19 <b>guess (2)</b> 4:21;22:25</p>	

25:23 <b>investors (2)</b> 8:11;10:19 <b>IRC (1)</b> 13:4 <b>issue (4)</b> 6:22;15:1;16:11; 23:13 <b>issues (1)</b> 19:24	<b>LLC (1)</b> 14:5 <b>Loan (72)</b> 4:9,14,22;5:11,14, 20,23;7:1,4;8:5,8,13, 21;9:4,9,21;11:13, 19,22,22;12:12,14, 16,17,18,23;13:2,3,4, 24;14:1,3;15:5,9,18, 18;16:1,11,17;17:16, 17,17;18:6,12,13; 19:1,4,4,5,6,11;20:2; 21:2,3;22:12,16; 23:3,18,18,23;24:4, 5,10,15,17;25:4,6,16, 19,20,23;26:4 <b>loans (29)</b> 11:4,9;12:1,3,20, 20,21,21;13:18,18; 15:6,11;16:11,17,23; 17:8,10;18:16,17,19, 19,22,22,24;19:19; 24:8;25:22;26:4,5 <b>Locke (1)</b> 4:8 <b>look (1)</b> 26:1 <b>looking (2)</b> 7:4;21:16 <b>Lord (1)</b> 4:8 <b>loss (1)</b> 12:8 <b>lot (4)</b> 10:14;11:4;13:21; 26:12 <b>low (1)</b> 19:11	<b>mean (2)</b> 10:25;17:19 <b>meaning (1)</b> 4:18 <b>means (2)</b> 9:22;18:5 <b>meant (4)</b> 12:12,14,15;17:22 <b>medical (1)</b> 12:20 <b>meet (1)</b> 17:22 <b>mentioned (2)</b> 17:6;20:18 <b>might (2)</b> 13:23;19:6 <b>misclassification (2)</b> 10:8,13 <b>misclassified (2)</b> 5:7;7:16 <b>misrepresentation (13)</b> 6:24;7:1;9:8;10:7; 13:10;20:7,25;21:5; 23:12,15,16;25:16, 19 <b>misrepresentations (1)</b> 20:22 <b>misrepresented (1)</b> 24:5 <b>misrepresenting (1)</b> 21:2 <b>modified (1)</b> 17:19 <b>more (5)</b> 5:7,25;7:5;11:1; 13:21 <b>morning (1)</b> 4:7 <b>motion (9)</b> 6:21;15:21,24; 16:4,5,6;23:25; 24:10;25:3 <b>moved (2)</b> 15:10,13	5:11;7:1,4,8;9:3,9, 22;13:18,20;14:3; 15:5;18:13;19:20; 20:25;21:3,4;22:12; 23:18;24:9;25:8,16, 20,23 <b>none (3)</b> 10:1;12:24;13:1 <b>nonetheless (1)</b> 25:11 <b>nongovernmental (2)</b> 18:16,19 <b>normal (1)</b> 19:9 <b>normally (1)</b> 19:4 <b>note (10)</b> 20:21,22;23:13,22, 23;24:17;25:3,4,7,7 <b>noted (1)</b> 20:1 <b>notes (1)</b> 12:7 <b>note's (1)</b> 23:25 <b>Number (3)</b> 4:2;11:8;12:19	<b>original (1)</b> 10:8 <b>ors (1)</b> 17:11 <b>out (5)</b> 5:14;16:12,13; 17:7,22 <b>over (1)</b> 5:5 <b>own (2)</b> 12:7;17:22
<b>J</b>				<b>P</b>
<b>joined (1)</b> 15:21 <b>judgment (2)</b> 16:5,7				<b>papers (2)</b> 7:14;10:12 <b>paragraph (1)</b> 24:4 <b>part (1)</b> 18:4 <b>parties (1)</b> 13:11 <b>pay (1)</b> 13:4 <b>paying (2)</b> 22:4,6 <b>people (1)</b> 10:14 <b>percent (2)</b> 26:2,4 <b>perhaps (1)</b> 21:1 <b>person (3)</b> 6:5;13:23;14:1 <b>petition (1)</b> 6:9 <b>place (1)</b> 6:16 <b>plaintiff (6)</b> 4:6;8:21;9:17,18; 15:19;24:6 <b>plaintiffs (1)</b> 21:7 <b>plaintiff's (7)</b> 12:14;20:17,20; 22:2,18,18;24:3 <b>pleading (2)</b> 22:1;23:14 <b>please (2)</b> 4:4;19:25 <b>pled (1)</b> 22:15 <b>plethora (1)</b> 12:23 <b>PM (1)</b> 26:14 <b>point (5)</b> 10:20;16:21;17:1, 2;24:19 <b>position (7)</b> 7:7;8:7;11:12,16, 18;21:3,7 <b>positions (1)</b>
<b>K</b>				
<b>kind (1)</b> 18:18 <b>kinds (3)</b> 5:5;18:18;22:3 <b>knew (1)</b> 21:2 <b>knowledge (1)</b> 10:17	<b>M</b>			
<b>L</b>	<b>ma'am (1)</b> 9:2 <b>maintain (1)</b> 21:3 <b>makes (1)</b> 7:8 <b>making (2)</b> 8:15;24:19 <b>many (1)</b> 12:3 <b>March (1)</b> 10:3 <b>market (2)</b> 13:19;14:4 <b>Master (2)</b> 24:16;25:4 <b>matter (1)</b> 15:25 <b>may (2)</b> 10:7;14:5 <b>maybe (1)</b> 7:9	<b>N</b>		
<b>labeled (2)</b> 5:19;9:25 <b>language (8)</b> 4:19;16:13;17:11, 19;18:5,9,23;20:22 <b>last (1)</b> 5:6 <b>lastly (1)</b> 23:11 <b>law (5)</b> 9:20;15:25;16:1; 17:1;19:14 <b>lawyer (1)</b> 6:9 <b>led (1)</b> 24:13 <b>legal (5)</b> 6:1,4;8:22;13:10; 25:24 <b>lending (6)</b> 7:20;8:18;10:11; 13:7;20:5,15 <b>lengthy (1)</b> 10:12 <b>Lesley (2)</b> 4:2,6 <b>limitations (2)</b> 7:21;20:16 <b>limited (1)</b> 18:15 <b>little (2)</b> 10:15;14:25		<b>namely (1)</b> 18:16 <b>nature (2)</b> 23:14,16 <b>necessarily (1)</b> 23:1 <b>need (4)</b> 10:22,23;20:17; 25:11 <b>next (1)</b> 16:2 <b>non (2)</b> 8:13;16:1 <b>nondischargeability (1)</b> 18:15 <b>nondischargeable (23)</b>	<b>O</b>	
			<b>obligated (1)</b> 9:19 <b>obligation (1)</b> 18:2 <b>obligations (2)</b> 8:22;13:10 <b>obtaining (1)</b> 22:11 <b>Obviously (1)</b> 13:19 <b>off (1)</b> 10:23 <b>One (5)</b> 5:5;9:15;10:25; 14:2;17:25 <b>one-year (1)</b> 20:16 <b>ongoing (2)</b> 10:6;21:22 <b>online (2)</b> 10:23,24 <b>only (3)</b> 5:13;15:11;23:2 <b>opinion (1)</b> 10:7 <b>opinions (1)</b> 21:4 <b>opposite (2)</b> 7:12,13 <b>opposition (1)</b> 23:20 <b>order (3)</b> 6:4;10:3;13:18	

8:10 <b>practice (1)</b> 13:17 <b>pre-BAPCPA (1)</b> 17:15 <b>precedent (1)</b> 25:22 <b>prepared (1)</b> 6:9 <b>presumptively (3)</b> 9:22;24:9;25:22 <b>previously (1)</b> 18:4 <b>private (2)</b> 18:18,22 <b>problem (1)</b> 7:22 <b>proceeding (5)</b> 6:10;9:25;25:25; 26:1,2 <b>proceedings (1)</b> 26:14 <b>proceeds (2)</b> 22:1,23 <b>process (1)</b> 25:25 <b>Promissory (2)</b> 24:17;25:4 <b>prong (1)</b> 5:8 <b>prongs (1)</b> 9:15 <b>properly (2)</b> 5:19;10:1 <b>prosecuting (1)</b> 22:11 <b>protected (3)</b> 11:10;12:2,5 <b>protection (1)</b> 25:24 <b>provide (2)</b> 18:9,15 <b>provision (1)</b> 4:18 <b>provisions (1)</b> 4:15 <b>prudential (2)</b> 21:9;22:3 <b>public (2)</b> 20:18,18 <b>publicly (1)</b> 10:20 <b>pull (2)</b> 10:23,24 <b>purpose (1)</b> 14:2 <b>purposes (1)</b> 14:2 <b>put (2)</b> 14:23;20:19	<b>qualified (15)</b> 11:10,13,22;12:1, 4,18,24;13:2,3,5; 17:9,16;18:12,16,20 <b>quickly (1)</b> 23:11	<b>report (1)</b> 17:25 <b>reports (1)</b> 7:15 <b>represent (2)</b> 8:5,21 <b>representation (7)</b> 5:11;6:7,12;9:1,7; 14:8;23:15 <b>represented (2)</b> 7:6;10:19 <b>representing (3)</b> 9:8,21;14:3 <b>require (1)</b> 25:25 <b>required (1)</b> 17:12 <b>residency (1)</b> 12:20 <b>respect (5)</b> 8:11;9:12;20:5; 21:6;23:14 <b>respectfully (2)</b> 17:3;20:13 <b>response (1)</b> 24:20 <b>responsible (1)</b> 9:16 <b>rest (2)</b> 4:14,15 <b>reveal (2)</b> 6:23;8:10 <b>rid (1)</b> 5:6 <b>Right (18)</b> 5:21,24;8:22;10:9; 11:17;13:6;14:22; 16:8,15,19;17:21,24; 19:18;22:8,10,25; 23:9;26:12 <b>rights (3)</b> 6:1,4;25:25 <b>runner (1)</b> 11:8	<b>scholarship (1)</b> 18:3 <b>schools (1)</b> 12:21 <b>SEC (1)</b> 10:21 <b>second (1)</b> 5:7 <b>secondary (2)</b> 13:19;14:4 <b>Section (4)</b> 11:19;16:24;17:7; 19:14 <b>securities (1)</b> 11:5 <b>securitized (1)</b> 11:5 <b>seeing (1)</b> 6:19 <b>seek (1)</b> 26:2 <b>seems (2)</b> 7:21;8:24 <b>selling (1)</b> 13:17 <b>sense (4)</b> 7:3,5,8;12:17 <b>separate (3)</b> 17:8,16;18:13 <b>separating (2)</b> 17:7,21 <b>set (1)</b> 24:10 <b>show (4)</b> 6:5,5;10:15;14:20 <b>shows (1)</b> 11:3 <b>simply (2)</b> 10:6;24:9 <b>Smith (59)</b> 4:5,5,25;5:4,12,15, 18,22,25;6:8,14,17, 20;7:10,13,19,23; 8:1,4,9,20;9:2,5,12, 15;10:5,10,21,24; 11:4,7,15,24;12:7, 10,13,17;13:3,9,14, 16,25;14:9,12,16,19; 16:3,6;21:21;23:7; 24:2,13,16,20;25:10, 17,21;26:8,10 <b>sold (1)</b> 15:18 <b>solely (1)</b> 13:4 <b>somehow (1)</b> 14:8 <b>someone (1)</b> 23:5 <b>sometimes (1)</b> 11:25 <b>Sorry (1)</b> 16:8	<b>sort (2)</b> 9:20;11:25 <b>speak (1)</b> 14:25 <b>specifically (3)</b> 7:4;12:14;15:11 <b>SquareTwo (2)</b> 15:18;23:3 <b>stand (1)</b> 10:18 <b>standards (1)</b> 21:9 <b>standing (4)</b> 4:23;21:8,9;22:3 <b>state (2)</b> 9:12;11:25 <b>stated (2)</b> 21:18,22 <b>statement (4)</b> 20:24;21:12; 23:17,18 <b>statistic (1)</b> 26:1 <b>statute (6)</b> 7:21;13:2;16:13; 17:11;18:23;20:16 <b>still (4)</b> 6:21;17:23;21:25; 23:21 <b>stipend (1)</b> 18:3 <b>Storefront (1)</b> 4:5 <b>Student (32)</b> 4:9,14;8:5,8,21; 9:21;11:9,13,18; 12:18;13:18;15:9, 18;16:11,17,17,23; 19:1;20:2;24:4,5,8, 10,15,16;25:4,6,19, 22,23;26:3,5 <b>students (2)</b> 12:20;26:2 <b>study (2)</b> 15:5,11 <b>subjected (1)</b> 5:1 <b>submit (1)</b> 10:10 <b>subsection (4)</b> 17:7,18,22;18:4 <b>subsections (1)</b> 17:23 <b>substantively (1)</b> 10:8 <b>sufficient (1)</b> 25:2 <b>suggest (1)</b> 5:16 <b>summary (2)</b> 16:5,6 <b>super (1)</b> 19:11
	<b>R</b>			
	<b>raised (1)</b> 23:20 <b>rate (2)</b> 19:5,11 <b>read (6)</b> 4:10;16:14;17:12, 14;18:9,23 <b>really (1)</b> 5:4 <b>reason (1)</b> 5:1 <b>reasonably (2)</b> 16:20;18:9 <b>reasons (1)</b> 20:3 <b>received (1)</b> 18:3 <b>record (2)</b> 14:23;24:18 <b>rectified (1)</b> 24:25 <b>redress (3)</b> 22:2,5,24 <b>redressed (1)</b> 21:13 <b>refer (4)</b> 12:12,14,15;18:6 <b>reference (1)</b> 24:21 <b>reflected (1)</b> 7:15 <b>regardless (1)</b> 20:1 <b>relate (1)</b> 4:22 <b>relating (1)</b> 4:18 <b>relevance (2)</b> 4:24,24 <b>relevant (1)</b> 20:20 <b>reliance (11)</b> 5:10,10,17,18;6:3, 5,6,15,19;14:14,20 <b>relied (3)</b> 5:10;6:12;14:8 <b>relying (1)</b> 14:13 <b>remaining (1)</b> 17:9 <b>render (1)</b> 4:15 <b>repay (1)</b> 18:2			
		<b>S</b>		
		<b>saddled (1)</b> 9:24 <b>sale (3)</b> 22:1,16,23 <b>Samantha (1)</b> 4:7 <b>same (3)</b> 17:18,19;18:5 <b>saw (1)</b> 19:15 <b>saying (10)</b> 7:11,13;8:25;11:2, 21;17:21,24;18:21; 24:14;25:18 <b>schedule (1)</b> 6:9		
<b>Q</b>				



<p><b>superfluous (2)</b> 4:15;18:21</p> <p><b>suppose (3)</b> 19:5;21:15;24:24</p> <p><b>Supreme (2)</b> 24:8;25:22</p> <p><b>survive (1)</b> 26:4</p> <p><b>survives (1)</b> 25:24</p> <p><b>swallow (1)</b> 4:14</p> <p><b>swath (1)</b> 15:6</p>	<p><b>trusts (2)</b> 11:9,25</p> <p><b>truth (6)</b> 7:20;8:18;10:11; 13:7;20:5,15</p> <p><b>truthful (1)</b> 10:16</p> <p><b>trying (1)</b> 5:6</p> <p><b>two (5)</b> 5:5;8:25;15:10; 17:2,23</p> <p><b>type (2)</b> 12:16,17</p> <p><b>types (2)</b> 12:23;19:19</p> <p><b>typically (1)</b> 19:8</p>	<p>17:15;22:13</p> <p><b>ways (1)</b> 11:25</p> <p><b>welcome (1)</b> 14:25</p> <p><b>what's (5)</b> 5:10;8:19,19; 14:14;24:7</p> <p><b>Whereupon (1)</b> 26:14</p> <p><b>wide (1)</b> 15:6</p> <p><b>word (2)</b> 18:2;19:3</p> <p><b>words (1)</b> 18:2</p> <p><b>work (1)</b> 13:15</p> <p><b>worth (1)</b> 13:20</p> <p><b>writing (1)</b> 4:12</p>	<p><b>5</b></p> <p><b>523 (1)</b> 16:24</p> <p><b>523a8Aii (1)</b> 11:19</p> <p><b>8</b></p> <p><b>8-K (1)</b> 11:2</p> <p><b>9</b></p> <p><b>99.9 (2)</b> 26:1,4</p>
<p><b>T</b></p>	<p><b>U</b></p>	<p><b>Y</b></p>	
<p><b>talk (1)</b> 19:23</p> <p><b>talking (1)</b> 21:20</p> <p><b>tax (1)</b> 9:19</p> <p><b>telling (4)</b> 7:3,6;14:15;19:11</p> <p><b>terminology (1)</b> 13:1</p> <p><b>terms (2)</b> 5:10;19:10</p> <p><b>test (1)</b> 9:15</p> <p><b>Thanks (1)</b> 26:12</p> <p><b>therefore (1)</b> 12:5</p> <p><b>three (2)</b> 15:14,20</p> <p><b>till (1)</b> 26:8</p> <p><b>times (1)</b> 11:5</p> <p><b>titled (1)</b> 24:16</p> <p><b>today (3)</b> 14:12;15:8,11</p> <p><b>tolling (3)</b> 7:24;9:16;20:6</p> <p><b>took (2)</b> 6:6;7:7</p> <p><b>training (1)</b> 12:21</p> <p><b>transaction (3)</b> 6:13,16;19:7</p> <p><b>trial (1)</b> 21:23</p> <p><b>trouble (1)</b> 6:19</p> <p><b>true (1)</b> 14:5</p> <p><b>trump (1)</b> 17:25</p> <p><b>trust (1)</b> 12:3</p>	<p><b>Um-hmm (1)</b> 18:7</p> <p><b>Um-hum (1)</b> 21:24</p> <p><b>under (5)</b> 5:7;11:19;14:19; 16:23;21:8</p> <p><b>undercuts (1)</b> 18:13</p> <p><b>understood (3)</b> 19:4,8,22</p> <p><b>underwriter (1)</b> 11:8</p> <p><b>units (1)</b> 17:10</p> <p><b>unjust (5)</b> 5:7;13:12,14;21:6; 22:7</p> <p><b>unjustly (1)</b> 22:17</p> <p><b>unless (2)</b> 19:4,10</p> <p><b>unsecured (2)</b> 13:17,21</p> <p><b>up (2)</b> 4:14;10:12</p> <p><b>upon (3)</b> 7:25;8:1;26:6</p>	<p><b>Z</b></p> <p><b>year (2)</b> 5:6;15:19</p> <p><b>year-long (1)</b> 5:2</p> <p><b>zero (1)</b> 19:5</p> <p><b>1</b></p> <p><b>10-K (1)</b> 11:3</p> <p><b>12:19 (1)</b> 26:14</p> <p><b>15 (1)</b> 24:4</p> <p><b>2</b></p> <p><b>2005 (3)</b> 4:17;17:5;19:17</p> <p><b>2013 (1)</b> 15:19</p> <p><b>22.1d (1)</b> 13:4</p> <p><b>27 (1)</b> 4:2</p> <p><b>28 (1)</b> 4:2</p> <p><b>3</b></p> <p><b>3 (2)</b> 21:8,11</p>	
	<p><b>V</b></p>		
	<p><b>W</b></p>		
	<p><b>way (5)</b> 4:16;5:23;7:5;</p>		