Letter Stating that Student Loan is “Ineligible for Bankruptcy Discharge” is False, Deceptive and Misleading Statement under FDCPA

/EINPresswire.com/ Student loans are presumptively nondischargeable in bankruptcy. However, student loans can be discharged in bankruptcy if a debtor demonstrates, by a preponderance of the evidence, that requiring their repayment would impose an undue hardship on the debtor. To seek an undue hardship discharge of student loans, a debtor must commence an adversary proceeding by serving a summons and complaint on affected creditors. To succeed in such a proceeding, the debtor must show: (1) that the debtor cannot maintain, based on current income and expenses, a ”minimal” standard of living for herself and her 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.

With this state of the law as a background, would a statement to a consumer that her/his student loan was “ineligible for discharge in bankruptcy” be deemed a false statement under the FDCPA? The Second Circuit recently responded to this question in the affirmative.

In Easterling v. Collecto, Inc., 2012 U.S. App. LEXIS 18444 (2d Cir. N.Y. Aug. 30, 2012), Berlincia Easterling obtained a student loan. Approximately 4 years later she filed for bankruptcy, however, in her petition, she classified the student loan as non-dischargeable. Accordingly, her student loan was not discharged. When the debt collector for the Department of Education learned about the bankruptcy, it sent Easterling a letter advising her that her account was “NOT eligible for bankruptcy discharge. After receiving the letter, Easterling filed a claim under the Fair Debt Collection Practices Act (“FDCPA”), contending that the collection letter’s statement that her student loan was “ineligible for bankruptcy discharge” was false, deceptive, or misleading under the least sophisticated consumer standard. The District Court granted defendant/debt collector’s motion for summary judgment. Easterling appealed.

The Second Circuit held that the debt collector violated the FDCPA’s proscription against false, misleading, or deceptive practices by sending the debtor a collection letter incorrectly informing her that her student loans were “ineligible for bankruptcy discharge” because, although the debtor may have faced significant hurdles to discharging her student loans in bankruptcy, the least sophisticated consumer would have interpreted the letter as representing, incorrectly, that bankruptcy discharge of her loans was wholly unavailable to her. The appellate Court concluded that the letter’s capacity to discourage debtors from fully availing themselves of their legal rights

rendered its misrepresentation exactly the kind of abusive debt collection practice that the FDCPA was designed to target.

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For more information about the Fair Debt Collection Practices Act, or, its state law counterpart, the Florida Consumer Collection Practices Act, visit us at: www.StopDebtorHarassment.com

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