UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
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In re: Chapter 7

TASHANNA B GOLDEN Case No. 16-40809-ess
fka TASHANNA B PEARSON,

Debtor.
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TASHANNA B GOLDEN, Adv. Pro. No. 17-01005-ess
fka TASHANNA B. PEARSON ON BEHALF OF
HERSELF AND ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,
v.

NATIONAL COLLEGIATE STUDENT LOAN
TRUST 2006-4 (NCT 2006), GS2 2016-A (GS2),
PENNSYLVANIA HIGHER EDUCATION ASSISTANCE
AGENCY *dba* AMERICAN EDUCATION SERVICES,
FIRSTMARK SERVICES LLC,

Defendants.
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ORDER GRANTING THE PLAINTIFF'S
MOTION FOR A PRELIMINARY INJUNCTION

WHEREAS, on February 29, 2016, Tashanna B Golden filed a petition for relief under Chapter 7 of the Bankruptcy Code, Case No. 16-40809.

Background

WHEREAS, on January 18, 2017, Ms. Golden commenced this adversary proceeding by filing a complaint, ECF No. 1, against JP Morgan Chase Bank N.A., GoldenTree Asset Management LP, National Collegiate Trust, Nelnet Servicing, LLC, d/b/a Firstmark Services LLC ("Firstmark"), seeking a determination that certain debts that she incurred as a student are not dischargeable student loan debts under Bankruptcy Code Section 523(a)(8)(B), an award of damages, including attorneys' fees and costs, for the defendants named in the Complaint's willful violations of the bankruptcy discharge order entered in Ms. Golden's case, and an award of damages, including attorneys' fees and costs, for Firstmark's violations of the Fair Debt Collection Practices Act; and

WHEREAS, on April 18, 2017, the Court entered a So-Ordered Stipulation, ECF No. 7, permitting the intervention of GS2 2016-A as a defendant in this adversary proceeding; and

WHEREAS, on May 31, 2017, the Court entered a so-ordered stipulation, ECF No. 11, permitting the intervention of National Collegiate Student Loan Trust 2005-3 and National Collegiate Student Loan Trust 2006-4 (together, the "NCT Defendants"), as defendants in this adversary proceeding; and

WHEREAS, on July 12, 2017, Ms. Golden filed a motion to amend the complaint, ECF No. 15, to add Pennsylvania Higher Education Assistance Agency ("PHEAA"), as a defendant, and to add allegations that the defendants' improper actions with regard to the collection of discharged student debt extended to a class of plaintiffs situated similarly to Ms. Golden (the "Putative Class Members"); and

WHEREAS, on July 25, 2017, the Court entered a So-Ordered Stipulation, ECF No. 20, between Ms. Golden and JP Morgan Chase Bank N.A., dismissing JP Morgan Chase Bank N.A. from this adversary proceeding; and

WHEREAS, on October 5, 2017, the Court entered a So-Ordered Stipulation, ECF No. 31, between Ms. Golden, the NCT Defendants, GS2 2016-A, and Firstmark, whereby the NCT Defendants, GS2 2016-A, and Firstmark consented to Ms. Golden's request for leave to file an amended complaint; and

WHEREAS, on October 17, 2017, Ms. Golden filed an amended complaint (the

"Amended Complaint"), ECF No. 32, as a putative class action, on behalf of herself and the Putative Class Members, naming the NCT Defendants, GS2 2016-A, PHEAA, and Firstmark as defendants, and seeking, as to herself and the Putative Class Members, a determination that certain debts that they incurred as students are not dischargeable student loan debts under Bankruptcy Code Section 523(a)(8)(B), an award of damages, including attorneys' fees and costs, for the defendants named in the Complaint's willful violations of the bankruptcy discharge orders entered in Ms. Golden and the Putative Class Members' cases, and an award of damages, including attorneys' fees and costs for Firstmark's violations of the Fair Debt Collection Practices Act; and

WHEREAS, on November 9, 2017, the Court entered an Order, ECF No. 35, dismissing GoldenTree Asset Management LP from this adversary proceeding; and

WHEREAS, on December 8, 2017, the NCT Defendants, GS2 2016-A, PHEAA, and Firstmark filed motions to compel arbitration or, in the alternative, to dismiss the adversary proceeding (together, the "Motion to Compel or Dismiss"), ECF Nos. 39, 41, 44, and memoranda of law in support of the Motion to Compel or Dismiss, ECF Nos. 40, 42, 45; and

WHEREAS, on January 8, 2018, Ms. Golden filed her opposition, ECF No. 57, to the Motion to Compel or Dismiss, in which she withdrew her claim against Firstmark under the Fair Debt Collection Practices Act; and

WHEREAS, on July 25, 2018, the Court issued a Memorandum Decision and Order, ECF Nos. 88-89, on the Motion to Compel or Dismiss, and denied the motion to the extent that it sought to compel arbitration of Ms. Golden's claims; and

WHEREAS, on August 6, 2018, the Court entered a So-Ordered Stipulation, ECF No. 92, between Ms. Golden, the NCT Defendants, GS2 2016-A, PHEAA, and Firstmark, dismissing

National Collegiate Student Loan Trust 2005-3 from this adversary proceeding; and

WHEREAS, on January 31, 2019, the Court issued a second Memorandum Decision and Order, ECF Nos. 122-23, on the Motion to Compel or Dismiss, denying the Motion to Compel or Dismiss to the extent it sought to dismiss this adversary proceeding.

Ms. Golden's Preliminary Injunction Motion

WHEREAS, on July 13, 2020, Ms. Golden filed a motion for partial summary judgment, ECF No. 244, a motion for a preliminary injunction (the "Preliminary Injunction Motion"), ECF No. 254, and a motion for class certification (the "Class Certification Motion"), ECF No. 255; and

WHEREAS, from time to time between July 13, 2020, and August 2, 2023, the parties filed several letters and responses identifying supplemental authority in support of their respective positions; and

WHEREAS, on August 2, 2023, the Second Circuit rendered its decision in *Bruce v. Citigroup Inc.*, 75 F.4th 297 (2d Cir. 2023); and

WHEREAS, on August 14, 2023, the Court held a pre-trial conference and continued hearings on the Preliminary Injunction Motion and the Class Certification Motion, and requested that the parties address the Second Circuit's *Bruce* decision and any other relevant developments in supplemental briefs; and

WHEREAS, on September 15, 2023, Ms. Golden filed two supplemental memoranda of law in further support of the Preliminary Injunction Motion and the Class Certification Motion, ECF Nos. 620-21; and

WHEREAS, on October 27, 2023, National Collegiate Student Loan Trust 2006-4, GS2 2016-A, PHEAA, and Firstmark (together, the "Defendants"), filed opposition to the Preliminary

Injunction Motion, ECF Nos. 627, 630, 637, and the Class Certification Motion, ECF Nos. 631, 635, 638, and PHEAA filed an additional memorandum of law addressing the impact of *Bruce* on the Preliminary Injunction Motion and the Class Certification Motion, ECF No. 634; and

WHEREAS, on November 20, 2023, Ms. Golden filed two reply memoranda of law in support of the Preliminary Injunction Motion, ECF No. 648, and the Class Certification Motion, ECF No. 647; and

WHEREAS, on November 29, 2023, the Court held a pre-trial conference and hearings on the Preliminary Injunction Motion and the Class Certification Motion, at which the parties appeared and were heard; and

WHEREAS, on January 11, 2024, Ms. Golden filed a letter, ECF No. 660, confirming that "all counsel agree that the pending motion for a temporary restraining order/preliminary injunction may be treated for all purposes as a motion for a preliminary injunction"; and

WHEREAS, time to time, and on November 25, 2024, the Court held a continued pre-trial conference and hearings on the Preliminary Injunction Motion and Class Certification Motion; and

WHEREAS, on January 17, 2025, PHEAA filed a letter, ECF No. 674, to bring to the Court's attention certain recent decisions in the context of the Preliminary Injunction Motion and the Class Certification Motion; and

WHEREAS, on February 5, 2025, Ms. Golden filed a letter, ECF No. 675, in response to PHEAA's January 17, 2025, letter; and

WHEREAS, on March 31, 2025, Ms. Golden filed a letter, ECF No. 676, to bring to the Court's attention a recent decision entered by the bankruptcy court in *Anderson v. Credit One Bank, N.A.* (*In re Anderson*), 2025 WL 957097 (Bankr. S.D.N.Y. Mar. 28, 2025); and

WHEREAS, on April 9, 2025, PHEAA filed a response, ECF No. 677, to Ms. Golden's March 31, 2025, letter; and

WHEREAS, on April 15, 2025, Ms. Golden filed a reply, ECF No. 679, to PHEAA's April 2025 Letter.

The Standard To Issue a Preliminary Injunction

WHEREAS, in the Second Circuit, a party seeking a preliminary injunction must demonstrate:

> "(1) 'a likelihood of success on the merits or . . . sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in the plaintiff's favor'; (2) a likelihood of 'irreparable injury in the absence of an injunction'; (3) that 'the balance of hardships tips in the plaintiff's favor'; and (4) that the 'public interest would not be disserved' by the issuance of an injunction."

Benihana, Inc. v. Benihana of Tokyo, LLC, 784 F.3d 887, 895 (2d Cir. 2015) (quoting *Salinger v. Colting*, 607 F.3d 68, 79-80 (2d Cir. 2010)).

The Court's Preliminary Injunction Memorandum Decision

WHEREAS, on May 7, 2025, the Court entered a Memorandum Decision on the Preliminary Injunction Motion (the "Preliminary Injunction Memorandum Decision"); and

WHEREAS, as set forth in the Preliminary Injunction Memorandum Decision, the Court finds and concludes that the preliminary injunction sought by Ms. Golden does not seek to disrupt the status quo, and therefore the relief that Ms. Golden seeks is prohibitory, not mandatory, and that she therefore does not need to meet a heightened standard to show a likelihood of success on the merits; and

WHEREAS, as set forth in the Preliminary Injunction Memorandum Decision, the Court finds and concludes that, as to the NCT Loan, Ms. Golden: (1) has shown a likelihood of success on the merits, or sufficiently serious questions going to the merits to make them a fair ground for litigation, as to her assertion that TERI is not a bona fide nonprofit institution under Section 523(a)(8)(A)(1); (2) has shown a likelihood of success on the merits, or sufficiently serious questions going to the merits to make them a fair ground for litigation, as to her assertion that the NCT Loan exceeded the cost of attendance; (3) has not shown a likelihood of success on the merits, or sufficiently serious questions going to the merits to make them a fair ground for litigation, as to her assertion that the NCT Loan was not "funded" by a governmental unit or nonprofit institution as a consequence of the TERI guarantee; and, (4) to the extent that Ms. Golden has established "'sufficiently serious questions going to the merits to make them a fair ground for litigation,'" but not a likelihood of success on the merits, has shown that the balance of hardships tips decidedly in her favor. *See Benihana*, 784 F.3d at 895; and

WHEREAS, as set forth in the Preliminary Injunction Memorandum Decision, the Court finds and concludes that, as to the Bar Loan, Ms. Golden: (1) has shown a likelihood of success on the merits, or sufficiently serious questions going to the merits to make them a fair ground for litigation, as to her assertion that the Bar Loan is not a "qualified education loan"; and, (2) to the extent that Ms. Golden has established "'sufficiently serious questions going to the merits to make them a fair ground for litigation,'" but not a likelihood of success on the merits, has shown that the balance of hardships tips decidedly in her favor. *See Benihana*, 784 F.3d at 895; and

WHEREAS, as set forth in the Preliminary Injunction Memorandum Decision, the Court finds and concludes that, as to the NCT Loan and the Bar Loan, Ms. Golden has shown a likelihood of irreparable injury in the absence of relief; and

WHEREAS, as set forth in the Preliminary Injunction Memorandum Decision, the Court finds and concludes that, as to the NCT Loan and the Bar Loan, Ms. Golden has shown that the balance of hardships tips in her favor; and

WHEREAS, as set forth in the Preliminary Injunction Memorandum Decision, the Court finds and concludes that, as to the NCT Loan and the Bar Loan, Ms. Golden has shown that the public interest would not be disserved by a preliminary injunction; and

WHEREAS, as set forth in the Preliminary Injunction Memorandum Decision, the Court finds and concludes that Ms. Golden may seek injunctive relief without joining all loan owners; and

WHEREAS, as set forth in the Preliminary Injunction Memorandum Decision, the Court finds and concludes that this Court may enter a declaratory judgment and ancillary injunctive relief that affects debtors outside of this District; and

WHEREAS, as set forth in the Preliminary Injunction Memorandum Decision, the Court finds and concludes that Ms. Golden has shown that this Court may enter a preliminary injunction on behalf of all putative class members.

NOW, THEREFORE, based on the entire record, it is hereby

ORDERED, that for the reasons stated herein, and in the Preliminary Injunction Memorandum Decision, dated May 7, 2025, which is incorporated herein by reference, and based on the entire record, Ms. Golden's Preliminary Injunction Motion is granted; and it is further

ORDERED, that the Defendants are restrained and enjoined from taking any acts to collect on loans that exceed the cost of attendance as defined by Internal Revenue Code § 221(D), irrespective of whether those loans were guaranteed by TERI, that are held by Ms. Golden and the Putative Class Members, as the class is described in the Amended Complaint, that have an outstanding balance subject to collection; and it is further

ORDERED, that the Defendants are restrained and enjoined from taking any acts to collect on post-graduation loans incurred to pay for living expenses while pursuing professional licensure, that are held by Ms. Golden and the Putative Class Members, as the class is described in the Amended Complaint, that have an outstanding balance subject to collection.

Dated: Brooklyn, New York
May 7, 2025

Elizabeth S. Stong
United States Bankruptcy Judge