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Tuesday, March 7, 2000

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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

In re

DANIEL R. LINDSEY,

No. 99-11034

[Debtor](#)  (s).

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DANIEL R. LINDSEY,

[Plaintiff](#)  (s),

v.

A.P. No. 99-1133

AFSA DATA CORPORATION, et al.,

[Defendant](#)  (s).

_____ /

Memorandum of Decision

In this [adversary proceeding](#), debtor and plaintiff Daniel Lindsey seeks a [discharge](#) of his student loans incurred when he was a student at San Jose State University from 1985 to 1991. Pursuant to § 523(a)(8) of the [Bankruptcy Code](#), these loans are dischargeable only if the debtor shows that excepting the loans from discharge would impose an undue hardship on the debtor and the debtor's dependents. The problem with the Lindsey's case is that he has shown no hardship whatsoever beyond current inability to pay the loan. He is 32 years old, employed full time, and in good health. He is fit, intelligent, and capable of earning a good income. He is married, and his wife is also employed. He does not have the current income necessary to pay the student loans only because he lives in a part of the state where opportunities and employment are limited. The court understands that he cannot move because he would lose shared custody of his three children from his prior marriage. Nonetheless, these are reasons why he does not currently make more money. They are not evidence of hardship. Lindsey argues that he has met the three-pronged test of *In re Pena*, 155 F.3d 1108, 1111 (9th Cir. 1998). He has demonstrated that he cannot maintain, based on his current income and expenses, a minimal standard of living and repay the loans. He has also established that he made a good faith effort to repay the loans. However, he has failed to demonstrate that *additional circumstances exist* indicating that his state of affairs is likely to persist. Lindsey has shown that his finances are unlikely to improve over the next few years if nothing changes. However, circumstances could change tomorrow. Lindsey or his wife could find a better-paying job, or Lindsey and his first wife could agree to move, or different custody arrangements could be made. Even in his current location, Lindsey has in prior years earned significantly more than he now makes. There are no additional circumstances which make the current situation necessarily long-term. Lindsey has demonstrated no persistent hardship. In *Pena*, one of the debtors suffered from a serious mental disability. She had been hospitalized due to psychotic episodes, and had not been able to hold a job for more than six months. These circumstances justified a finding of undue hardship. Unlike that debtor, Lindsey has shown no circumstances constituting any hardship at all, let alone undue hardship. All he has shown is that he has no present ability to pay the loan. Congress intended *undue* hardship to mean something more than ordinary circumstances. See *In re Brunner*, 46 B.R. 752, 753 (S.D.N.Y.1985), *aff'd* 831 F.2d 395 (2nd Cir.1987). Lindsey has shown nothing more than ordinary circumstances. For the foregoing reasons, the court concludes that the student loan in question is not dischargeable. Lindsey will take nothing by his complaint, which will be dismissed. Defendants shall recover their costs of suit. This memorandum constitutes the court's findings and conclusions pursuant to FRCP 52(a) and FRBP 7052. Counsel for the prevailing party shall submit an appropriate form of judgment forthwith.

Dated: March 7, 2000

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#)

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