SO ORDERED.

SIGNED this 19th day of November, 2025.

Mitchell L. Herren
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

IN RE: **Benjamin Kyle Kirby,** **Debtor.**	**Case No. 23-10903** **Chapter 7**
Benjamin Kyle Kirby, **Plaintiff,** **vs.** **Nelnet, Inc., U.S. Department of Education,** **Defendants.**	**Adv. No. 25-5027**

Order Addressing Discovery Motions and Objections

Pro se Plaintiff Benjamin Kyle Kirby reopened his Chapter 7 bankruptcy case to bring this adversary proceeding seeking discharge of his student loan debt under

11 U.S.C. § 523(a)(8),[1] which designates these loans *non*dischargeable unless their payment imposes "an undue hardship on the debtor and the debtor's dependents."[2]

I. Facts and Procedural History

Plaintiff filed a Chapter 7 bankruptcy petition in September of 2023. Discharge was entered and the case closed in December of 2023. Then, Plaintiff re-opened his bankruptcy in 2025, and filed this adversary proceeding against Defendants Nelnet, Inc. and the U.S. Department of Education, seeking to discharge about $70,000 in student loans.[3]

Plaintiff alleges his situation satisfies the undue-hardship standard.[4] As support, Plaintiff's complaint alleges several hardships: difficulty gaining employment due to a felony conviction, unstable employment over the last decade, extremely low income, concerns over any future income, and inability to afford a residence.[5]

The parties began the discovery process in June 2025. On July 14, Plaintiff filed a motion for protective order, claiming Defendant Department of Education's discovery requests were burdensome and repetitive.[6] The Court denied that motion because Plaintiff failed to satisfy his duty to confer with Defendant and failed to follow other requirements for filing a discovery-related motion.[7] The Court explained the law entitles Defendant to obtain relevant, proportional discovery from

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[1] Future statutory references are to the Bankruptcy Code, title 11, unless otherwise specified.
[2] 11 U.S.C. § 523(a)(8).
[3] Doc. 1 p. 1.
[4] *Id.* at p. 3.
[5] *Id.* at p. 2.
[6] Doc. 28.
[7] Doc. 32.

Plaintiff. The Court also made clear that Plaintiff could not refuse to produce discovery responses simply because Plaintiff preferred to later produce the responsive information as support documentation for a planned motion for summary judgment.

The Court entered a Protective Order[8] to govern the exchange of confidential information. Since then, Plaintiff has only produced a few documents to Defendant: a one-page summary of IRS data,[9] a LinkedIn resume,[10] and a one-page financial summary from QuickBooks[11]—all apparently created by Plaintiff. Plaintiff has refused to produce the supporting information he used to create these summary documents.

As discovery disputes continued, the Court held a status conference to address the following matters:

1. Defendant's Notice of Intent to Issue Subpoena Duces Tecum.[12] Plaintiff filed an Objection to this Notice,[13] Defendant filed a Response,[14] and Plaintiff filed a Reply.[15]

2. Defendant's Motion to Modify Deadlines Contained in Scheduling Order.[16]

3. Plaintiff's Motion for Relief from Abusive Discovery and Motion for Sanctions for Attorney Misconduct.[17] Defendant filed a Response to

[8] Doc. 40.
[9] Doc. 57 Ex. C.
[10] Doc. 56 Ex. E.
[11] Doc. 57 Ex. D.
[12] Doc. 45.
[13] Doc. 46.
[14] Doc. 48.
[15] Doc. 49.
[16] Doc. 52.
[17] Doc. 50.

these Motions,[18] Confidential Materials as Support Documents,[19] and a Notice of Proposed Sealed Record for those documents.[20] Plaintiff filed a Reply.[21]

4. Defendant's Motion to Compel Answers to Interrogatories and Requests for Production.[22] Defendant filed Confidential Materials as Support Documents[23] to this Motion and a Notice of Proposed Sealed Record[24] for those Documents. Plaintiff filed an Objection to this Motion.[25]

5. Plaintiff's Motion to Maintain Provisional Seals and for Leave to File Under Seal.[26]

6. Plaintiff's Motion to Strike from the Record and Replace Plaintiff's Earnings Exhibits.[27]

In full consideration of the pending matters and the parties' discussion at the status conference, the Court addresses each of these in turn.

II. Legal Standard

A. Undue Hardship

Section 523(a)(8) allows debtors to discharge student loans if the court finds that repayment of those debts results in an "undue hardship" on the debtor.[28] Initially, the creditor bears the burden to show the debt qualifies for the Code's presumption against discharge for an "education loan" under § 523(a)(8).[29] If the

[18] Doc. 60.
[19] Doc. 61.
[20] Doc. 62.
[21] Doc. 65.
[22] Doc. 56.
[23] Doc. 57.
[24] Doc. 58.
[25] Doc. 65.
[26] Doc. 63.
[27] Doc. 64.
[28] 11 U.S.C. § 523(a)(8).
[29] *Grogan v. Garner*, 498 U.S. 279, 290–91 (1991).

creditor meets that burden, the debtor-plaintiff must prove repayment of the education loan creates an undue hardship on the debtor and any dependents.[30]

The term "undue hardship" is undefined.[31] But most circuits—including the Tenth Circuit—follow the Second Circuit's test in *Brunner*.[32] That test requires the debtor to prove three factors:

> (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;"
>
> (3) "that the debtor has made good faith efforts to repay the loans."[33]

The debtor must prove each factor by a preponderance of the evidence.[34]

B. Discovery

The rules governing discovery apply to all litigants, even pro se debtors such as Plaintiff.[35]

Parties may obtain discovery on "any non-privileged matter that is relevant to any party's claim or defense and proportional to the needs of the case . . . ."[36] When a responding party fails to make a disclosure or permit discovery and the discovering party files a motion to compel, the responding party has an opportunity

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[30] *McDaniel v. Navient Sols., LLC (In re McDaniel)*, 973 F.3d 1083, 1092 (10th Cir. 2020).
[31] *Educ. Credit Mgmt. Corp. v. Polleys*, 356 F.3d 1302, 1306 (10th Cir. 2004).
[32] *Id.* at 1307 (adopting the majority's *Brunner* test for undue hardship); *see also Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987).
[33] *Brunner*, 831 F.2d at 396.
[34] *Grogan*, 498 U.S. at 291.
[35] *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).
[36] *Id.*

to reassert and offer support for objections made in the discovery responses. Any objection the responding party does not reassert in its response to a motion to compel is deemed abandoned. When the discovery is relevant, the party resisting it bears the burden to support its objections.[37]

Information sought in discovery is relevant if "any possibility" exists it "could reasonably be calculated to lead to the discovery of admissible evidence."[38] Parties can challenge a discovery request by objecting to relevance or proportionality,[39] or by claiming a privilege.[40] If a request is not facially relevant, then the requesting party must show relevance.[41] But "[r]elevance is broadly construed at the discovery stage of the litigation and a request for discovery should be considered relevant if there is any possibility the information sought may be relevant to the subject matter of the action." [42] General or "boilerplate" objections complaining about "vague," "ambiguous," "overbroad," or "unduly burdensome" requests are insufficient to overcome a showing of relevance.[43]

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[37] *Mercado v. Arrow Truck Sales, Inc.*, No. 23-2052-HLT-ADM, 2024 WL 1557539, at *2, 4 (D. Kan. Apr. 10, 2024) (citing *Kannaday v. Ball*, 292 F.R.D. 640, 644 (D. Kan. 2013) ("[O]bjections initially raised but not supported in the objecting party's response to the motion to compel are deemed abandoned") and *Firestone v. Hawker Beechcraft Int'l Serv. Co.*, No. 10-1404, 2011 WL 13233153, at *2 (D. Kan. Sept. 28, 2011)).

[38] *See Rowan v. Sunflower Elec. Power Corp.*, No. 15-9227-JWL-TJJ, 2016 WL 3745680, at *2 (D. Kan. July 13, 2016) (ruling the *Oppenheimer Fund, Inc. v. Sanders* relevancy standard remains after the 2015 Amendments to Rule 26(b)(1)).

[39] Fed. R. Civ. P. 26(b)(2)(C)(iii); *see also Johnson v. Kraft Foods N. Am., Inc.*, 238 F.R.D. 648, 653 (D. Kan. 2006) (citation omitted).

[40] Fed. R. Civ. P. 26(b)(5)(A).

[41] *Etienne v. Wolverine Tube, Inc.*, 185 F.R.D. 653, 657 (D. Kan. 1999) (citation omitted).

[42] *Mercado,* 2024 WL 1557539, at *3 (citing *Waters v. Union Pacific R.R. Co.*, No. 15-1287-EFM, 2016 WL 3405173, at *1 (D. Kan. June 21, 2016)).

[43] Fed. R. Civ. P. 33, 34; *Sonnino v. Univ. of Kan. Hosp. Auth.*, 221 F.R.D. 661, 670-71 (D. Kan. 2004) (An objecting party "must specifically show in its response to the motion to compel, despite the broad and liberal construction afforded by the federal discovery rules, how each request for production or interrogatory is objectionable.").

III. Discussion

A. Plaintiff's Objection to Defendant's Subpoena Duces Tecum

The Court overruled Plaintiff's objection to Defendant's Notice of Subpoena Duces Tecum directed to one of his former employers after hearing the arguments from both sides at the status conference on September 25, 2025; that ruling is incorporated into this Order. Plaintiff's objection focused on his expectation that the information to be produced would relate to his income, and that he had already produced a summary he compiled of his income history. He asserted this would be duplicative information and would also be an undue burden.

The information sought by the subpoena is directly related to the issues in this case, thus the request is relevant and proportional. Additionally, because Plaintiff did not claim a personal right or privilege in the requested documents, he does not have standing to object.[44] Defendant may issue the subpoena. If any of the responsive documents are appropriate for protection by the protective order, its terms may be invoked.

B. Plaintiff's Motion for Relief from Abusive Discovery and Defendant's Motion to Compel

These motions are at the center of this discovery dispute. Plaintiff first moved for relief from what he characterized as abusive discovery after receiving

[44] *E.E.O.C. v. Unit Drilling Co.*, No. 13-CV-147-TCK-PJC, 2014 WL 130551, at *1 (N.D. Okla. Jan. 13, 2014) ("As a general rule, a party lacks standing under Fed. R. Civ. P. 45(d)(3) to challenge a subpoena issued to a nonparty unless the party claims a personal right or privilege with respect to the documents requested in the subpoena. A party generally does not have standing to object to a subpoena served on a nonparty on grounds of the undue burden imposed on the nonparty, especially where the nonparty itself has not objected.").

Defendant's discovery requests. Plaintiff argues his previously produced summary pages of information he compiled and produced were sufficient, and restating his objections to producing the documents forming the bases of these summary documents.[45] Defendant then moved to overrule those objections and compel Plaintiff to provide complete and clear answers to Defendant's discovery requests.[46]

The Court denies Plaintiff's motion for relief in whole. Plaintiff cannot dictate the parameters of discovery based on his own subjective characterization and summarization of the information and documents he fails to produce to the opposing party. Further, Defendant has not overly burdened Plaintiff. Defendant issued relevant interrogatories and requests for production of documents based on Plaintiff's claims, and Plaintiff failed to respond with the required clarity and specifics. For example, Defendant's Request for Production No. 4 seeks:

> "[a]ll documents showing any amount of money or income you received from any source since January 1, 2020, including, but not limited to, copies of checks, Form W-2s, Form 1099, Form K-1, workers compensation records, unemployment compensation records, records reflecting the receipt of state or federal benefits, diaries, journals, ledgers, bank deposit records, royalty agreements, payment histories, wills, trust documents, bank statements, and investment account summaries or statements."[47]

Plaintiff responded by citing a "General Objection and Incorporation Statement, Supra" [48] also used in response to fifteen other requests. In essence, Plaintiff's

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[45] Doc. 50.
[46] Doc. 56.
[47] Doc. 61 p. 4.
[48] *Id*. at p. 4. This general objection states: "Plaintiff incorporates by reference all documents already produced in response to Requests for Production Nos. 1 and 2, including Plaintiff's IRS AGI earnings chart (1993–2025) reflecting a career largely in decline for almost 6 years, QuickBooks screenshot reflecting negative income for 2025, and LinkedIn profile PDF documenting continuous employment

objection appears to be that he has already produced three documents that he, himself, created—two of which are purported summaries of his income.

Defendant's Request for Production No. 4 seeks information tied directly to the undue-hardship question, specifically to Plaintiff's financial history—i.e., the income he has earned and the sources of that income. When Plaintiff brought this proceeding under § 523(a)(8), he placed his financial history directly at issue and subjected it to scrutiny.[49] Defendant's seeking of this information is not an abuse of discovery—it is routine discovery. The Court addresses Plaintiff's numerous other objections to the discovery categorically below.

1. Overly Broad, unduly burdensome, not proportional, and duplicative or cumulative objections

First, Plaintiff's objections on these grounds fall under the general or "boilerplate" category; they are overruled on that basis.[50] Boilerplate objections leave the other party clueless about specifics and prolong litigation.[51] The District of Kansas strongly disfavors these objections.[52] Second, Plaintiff's objections are substantively without merit. Defendant requested relevant information that

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efforts and educational history demonstrating good faith. Plaintiff objects to the remaining Requests for Production to the extent they are cumulative, duplicative, unduly burdensome, or disproportionate to the needs of the case under Federal Rule of Civil Procedure 26(b)(1) and 26(b)(2)(C). Plaintiff has provided complete records sufficient to show all sources of income, employment efforts, and financial condition. No further unique responsive documents pertinent to the needs of this case are in Plaintiff's possession, custody, or control. Without waiving these objections, Plaintiff reserves the right to supplement, if additional records or recollections become available through ongoing document review."

[49] *Educ. Credit Mgmt. Corp. v. Polleys*, 356 F.3d 1302, 1309–10 (10th Cir. 2004).

[50] This covers objections with the terms "overly broad," "unduly burdensome," "not proportional," "duplicative or cumulative," or "See, General Objection and Incorporation Statement, Supra."

[51] *Sonnino v. Univ. of Kan. Hosp. Auth.*, 221 F.R.D. 661, 671 (D. Kan. 2004).

[52] *Id.* at 670.

addresses the foundation of Plaintiff's undue-hardship claim and allows for evaluation of its veracity. These objections are overruled.

2. Vague or ambiguous objections

Likewise, the Court overrules Plaintiff's objections to Defendant's Interrogatory No. 12 and Request for Production No. 1 on the basis that the requests were "vague and ambiguous."[53] Defendant used specific language in these requests that warrants specific responses from Plaintiff.

3. Privacy-related objections

Plaintiff's privacy-related objections are overruled. A Protective Order already provides a level of protection for "Plaintiff's sensitive personal, financial, employment, business, legal or medical information."[54] Again, the information sought is relevant and not unduly burdensome to produce. The fact that information is considered by Plaintiff to be sensitive or even that it might be private in another setting is not a valid basis to object to otherwise discoverable information.[55]

4. Calls-for-legal-conclusion objections

The Court also overrules the objections that Interrogatories 12 and 15 call for legal conclusions. These questions asked about material facts supporting allegations Plaintiff specifically made in his complaint. Rule 33(a)(2) states that "[a]n

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[53] *See* Doc. 57 p. 1 (Request for Production No. 1 asked Plaintiff to produce "[a]ll documents identified by you in your answers to interrogatories."); *see also* Doc. 57 Ex. B p. 21 (Interrogatory No. 12 asked "[i]dentify all material facts supporting your position that you will not be able to repay your student loans in the future, including why you assert you are without hope for future income.").
[54] Doc. 40 p. 3.
[55] *In re Bank of Am. Wage & Hour Emp. Pracs. Litig.*, 275 F.R.D. 534, 541 (D. Kan. 2011).

interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact."[56]

5. Attorney-client privilege and attorney work product objections

The Court overrules the attorney-client privilege and attorney work product doctrine objections. Plaintiff is pro se and no attorney-client relationship has been identified by Plaintiff that could apply here. Thus, the attorney-client privilege is unavailable.[57] Although the work-product doctrine is available to parties as well as their attorneys, it does not protect information that is otherwise discoverable.[58] Here, Defendant asked for the production of documents identified, referred to, or relied upon by Plaintiff in his interrogatory responses. These requests are routine and appropriate. If Plaintiff did identify, refer to, or rely upon some document that would meet the definition of Rule 26(b)(3)(A) trial preparation ("work product") material, he was obliged to identify the information withheld pursuant to Rule 26(b)(5)(A); he did not do so. This waived any objection based on work product.

6. Other objections

Last, Plaintiff lodges several objections against Defendant that are not valid for discovery purposes, at least not in the broad and unspecified manner in which they were used here. These objections, such as "mischaracterization", "compounding", "argumentative or assumes facts not in evidence", and "unduly

[56] Fed. R. Civ. P. 33(a)(2).
[57] *United States v. Ruedlinger*, No. 97-40012-01-RDR, 1998 WL 45002, at *2 (D. Kan. Jan. 7, 1998) (citing *Moorhead v. Lane*, 125 F.R.D. 680, 687 (C.D.Ill. 1989)).
[58] Fed. R. Civ. P. 26(b)(3)(A)(i).

prejudicial", are not appropriate in discovery, [59] and amount to boilerplate objections.[60] Plaintiff may make these types of objections, if appropriate, when evidence is propounded by Defendant at trial. These objections are overruled at this time as to the requested discovery.

C. Plaintiff's Motion for Sanctions for Attorney Misconduct and Response to Defendant's Motion to Compel

Plaintiff's motion for sanctions seeks relief based on several grounds: undue burden, bad faith and harassment, and abuse of process.[61] The Court denies Plaintiff's motion for sanctions on both procedural and substantive grounds.

The motion fails procedurally for several reasons. First, Plaintiff failed to meaningfully confer with Defendant prior to moving for attorney sanctions.[62] Plaintiff asserts he did attempt to confer by providing his limited discovery responses, along with a proposed "stipulation for discharge"—in essence, a confession of judgment—that he alleges was appropriate for Defendant to agree to after receiving his discovery responses. He interpreted Defendant's lack of favorable response to that proposal to mean that "[f]urther conferral would be futile. . . ."[63]

The Court does not agree that Defendant's refusal to agree to confess judgment was sanctionable conduct on Defendant's part. It also did not absolve

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[59] *See Grider v. Shawnee Mission Med. Ctr., Inc.*, No. 16-CV-2750-DDC, 2018 WL 3862703, at *4 (D. Kan. Aug. 14, 2018).
[60] *Id.*
[61] Doc. 50 p. 6–10.
[62] Fed. R. Civ. P. 37(d)(1)(B); *see also* D. Kan. Rule 37.2 (requiring the moving party to confer or make "reasonable effort to confer with opposing counsel concerning the matter in dispute prior to the filing of the motion."). The Court already addressed Plaintiff's failure to confer when he first moved for a protective order.
[63] Doc. 50 p. 9.

Plaintiff from the duty to confer about the seeking of sanctions before filing the motion. Second, Plaintiff did not file the sanctions motion separate and apart from other motions.[64] Third, to the extent the sanctions Plaintiff sought were in part pursuant to Fed. R. Bankr. P. 9011, as Plaintiff argues, Plaintiff failed to serve Defendant with the motion according to Rule 7004(b)(4) and (5).[65]

The motion also fails for substantive reasons. Plaintiff alleges Defendant sometimes referring to itself in this litigation as the "United States" "underscores Defendant's pattern of overreach and harassment."[66] However, Plaintiff sued Defendant,[67] the United States Department of Education—a department of the executive branch of the United States.[68] The United States Attorney's Office represents Defendant in this action. Courts and litigants across the country commonly refer to agencies and departments of the government as the "United States" during litigation; not only is it routine, it is accurate. Thus, when Defendant's counsel refers to the "United States," it does not create prejudicial "rhetorical implications."[69]

Plaintiff argued seven other reasons in support of sanctioning Defendant, many of which echo his related discovery objections.[70] First, Plaintiff claims Defendant's conduct places an unfair and disproportionate burden on himself as a pro se litigant with limited means; however, Defendant has sought nothing

[64] Fed. R. Bankr. P. 9011(c)(2)(A).
[65] *Id.*; Fed. R. Bankr. P. 7004(b)(4), (5).
[66] Doc. 50 p. 9.
[67] Doc. 1.
[68] 20 U.S.C. § 3411.
[69] Doc. 50 p. 18.
[70] *Id.* at p. 9–10.

extraordinary in discovery. Defendant has made proportional requests relating directly to the subject matter of this case. Second, Plaintiff calls for sanctions to avoid Defendant's alleged, further harassment of low-income debtors; but no evidence of harassment has been produced. The documentation of the communications between the parties indicates routine efforts by a party propounding discovery to follow up on what it considered to be incomplete discovery responses.

Third, Plaintiff asserts that Defendant's conduct and reference to the taxpayer burden associated with student debt discharge under § 523(a)(8) serves to intimidate and create inflammatory rhetoric. Again, the documentation attached to the briefing fails to substantiate that characterization. Plaintiff's fourth allegation, that Defendant attempts to heighten the evidentiary standard for § 523(a)(8), also fails. When the time comes, the Court—not the parties—will apply the applicable standard to weigh the evidence. Until then, this lawsuit is simply in the discovery stage.

Fifth, Plaintiff asserts Defendant tried to deceive Plaintiff and mislead this Court when inaccurately referring to Plaintiff's documentation as a "one-page screenshot."[71] This is unpersuasive. Because the exhibit in question appears to be either a screenshot or digital printout of a one-page QuickBooks table,[72] "screenshot" is a fair, non-judgmental description.

[71] *Id.* at p. 10.
[72] *See, e.g.*, Doc. 57 Ex. C.

Sixth, Plaintiff alleges Defendant's discovery requests and communications are a misuse of judicial economy and show contempt of law. Defendant's requests are normal questions in an undue-hardship adversary proceeding. The delay in the progress of this lawsuit has primarily resulted from Plaintiff's delays in responding to discovery.

Seventh, Plaintiff claims Defendant's actions reveal a recurring pattern of unlawful behavior and institutional unfairness. The record fails to support this claim.

Plaintiff also argues in response to Defendant's motion to compel that Defendant violated the automatic stay and employed coercion and false premises. However, no bankruptcy stay is in place. Plaintiff's Chapter 7 case closed two years ago and with it the automatic stay ended.[73] Once terminated, the stay does not revive automatically when a case is reopened.[74]

D. Plaintiff's Motion to Strike from the Record and Replace Plaintiff's Earnings Exhibits

The Court denies Plaintiff's Motion to Strike from the Record and Replace Plaintiff's Earnings Exhibits.[75] In this motion, Plaintiff seeks to strike an exhibit containing a summary of Plaintiff's lifetime AGI earnings data that Plaintiff produced in discovery and was later attached to Defendant's motion to compel.[76]

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[73] 11 U.S.C.§ 362(c)(2)(A).
[74] 11 U.S.C. § 524; *Diviney v. NationsBank, N.A. (In re Diviney)*, 225 B.R. 762, 770 (B.A.P. 10th Cir. 1998).
[75] Doc. 64.
[76] Doc. 57 Ex. C.

Plaintiff wants to replace that exhibit to Defendant's motion with a new exhibit, including updated figures.[77]

Rule 12(f) allows motions to strike materials contained in the pleadings.[78] This document is an exhibit to an opposing party's motion and has no evidentiary impact on the ultimate judgment in this case. In addition, "motions to strike are disfavored and will only be granted under the rarest of circumstances", making the movant's burden a heavy one.[79] That heavy burden involves showing a strong prejudice to one party caused by something in the pleadings,[80] and Plaintiff made no such showing here. If Plaintiff wants to produce an updated summary to Defendant, he is free to do so.

E. Plaintiff's Omnibus Motion To Maintain Provisional Seals, And For Leave To File Under Seal

Plaintiff's Motion to Maintain Provisional Seals and for Leave to File Under Seal asks that the Court keep several documents relating to Defendant's motion to compel under seal.[81] Plaintiff also asks to file additional material under seal related to his several motions. Plaintiff reasons that publicly disclosing these materials (sensitive data about personal and business finances) undermines his privacy and security interests. The Court denies the motion for several reasons.

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[77] Doc. 64 p. 1–2.
[78] *Bunn v. Perdue*, 966 F.3d 1094, 1099 (10th Cir. 2020) (citing *Ysais v. New Mexico Jud. Standard Comm'n*, 616 F. Supp. 2d 1176, 1184 (D.N.M. 2009)).
[79] *Volking v. Airxcel, Inc.*, No. 22-1046-DDC-KGG, 2022 WL 843501, at *1 (D. Kan. Mar. 22, 2022).
[80] *Id.*
[81] Doc. 63 p. 3.

Plaintiff asks to seal files that go to the ultimate question of his case.[82] The Tenth Circuit holds that a strong presumption of public access attaches to these kind of documents absent an articulated "real and substantial interest that justifies depriving the public of access to the records."[83] Plaintiff has not articulated that interest here. Courts routinely require production of documents that bear on the issues in the case, such as: employment history and performance; personal, business and tax finances; and criminal history. Second, Plaintiff failed to comply with D. Kan. Rule 5.4.2(c) by not providing the needed details to justify sealing.[84]

F. Defendant's Motion to Modify Deadlines Contained in Scheduling Order

The Court grants in part Defendant's Motion to Modify Deadlines Contained in Scheduling Order and extends the deadline for expert witness disclosure to January 9, 2026. The close of discovery deadline is now February 13, 2025. Plaintiff shall prepare and send to Defendant in Microsoft Word format a first draft of the Final Pretrial Order using the Court's form no later than February 27, 2026. The Joint Pretrial Order shall be submitted in Word format via email (not filed) to the Court no later than March 6, 2026. If the parties have language in the Joint Pretrial Order they do not agree on, each party shall separately include their proposed language in the document. All dispositive motions shall be filed by March 13, 2026. A trial date will be set at a status conference set by the Court after submission of

[82] *Educ. Credit Mgmt. Corp. v. Polleys*, 356 F.3d 1302, 1307–09 (10th Cir. 2004).
[83] *Colony Ins. Co. v. Burke*, 698 F.3d 1222, 1242 (10th Cir. 2012).
[84] D. Kan. Rule 5.4.2(c).

the Joint Final Pretrial Order. The Court will issue a separate scheduling order with these deadlines.

IV. Conclusion

Because Plaintiff seeks discharge of student loan debt under § 523(a)(8), he put his ability to pay the loans and his employment history and opportunities directly at issue. Thus, Plaintiff's finances, criminal record, and lifestyle—as well as all related documentation—are germane to this inquiry.[85] Defendant has the right to review the bases for the claims Plaintiff is making, and Defendant is under no obligation to rely on Plaintiff's self-generated summaries of the underlying documentation. Plaintiff's offense taken when Defendant failed to stipulate to judgment in Plaintiff's favor based on Plaintiff's summary documents might indicate a lack of understanding of how a lawsuit such as this adversary proceeding works. The ultimate decision regarding undue hardship is for the Court, but the law entitles Defendant to discover information and documents that may support or contradict Plaintiff's claims in order to place Defendant in a position to frame up its position at trial.

Plaintiff must amend his response to Defendant's First Set of Interrogatories by December 4, 2025. If he cannot completely respond and provide requested documents, he must, without objection, clearly state the reasons why. Plaintiff must also amend his response to Defendant's First Set of Requests for Production by December 4, 2025, and produce, without objection, all responsive materials and

[85] *Polleys*, 356 F.3d at 1309–10.

documents in his possession or control. If he cannot produce any requested documents or materials, he must clearly state why.

The Court therefore:

- **Overrules** Plaintiff's Objection to Defendant's Notice of Intent to Issue Subpoena Duces Tecum;[86]
- **Grants** in whole Defendant's Motion to Compel Answers to Interrogatories and Requests for Production;[87]
- **Denies** Plaintiff's Motion for Relief from Abusive Discovery and Motion for Sanctions for Attorney Misconduct;[88]
- **Denies** Plaintiff's Motion to Maintain Provisional Seals and for Leave to File Under Seal;[89]
- **Denies** Plaintiff's Motion to Strike from the Record and Replace Plaintiff's Earnings Exhibits;[90] and
- **Grants** in part Defendant's Motion to Modify Deadlines Contained in Scheduling Order.[91]

In accordance with D. Kan. Rule 5.4.2, the documents filed provisionally under seal[92] will be **unsealed**.

It is so Ordered.

[86] Doc. 46.
[87] Doc. 56.
[88] Doc. 50.
[89] Doc. 63.
[90] Doc. 64.
[91] Doc. 52.
[92] Docs. 57 and 61.