



Below is a Memorandum Decision of the Court.

Mary Jo Heston

**Mary Jo Heston
U.S. Bankruptcy Judge**

(Dated as of Entered on Docket date above)

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

In re:

HEATHER ANN COPLIN,

Debtor.

HEATHER ANN COPLIN,

Plaintiff,

v.

US DEPARTMENT OF EDUCATION;
TRANSITIONAL GUARANTY AGENCY;
WELLS FARGO BANK, N.A.; ECMC;
UNIVERISTY OF THE PACIFIC;
UNIVERSITY OF WASHINGTON; SALLIE
MAE, INC; NAVIENT CREDIT FINANCE
CORP.; NORTHWEST EDUCATION LOAN
ASSOCIATION

Defendants.

Case No. 13-46108

Adversary No. 16-04122

**MEMORANDUM DECISION
(NOT FOR PUBLICATION)**

This matter came before the Court for trial on October 31, 2017, on the complaint filed by Heather Ann Coplin ("Plaintiff") seeking discharge of her student loan debt pursuant to 11

1 U.S.C. § 523(a)(8).¹ The Plaintiff commenced this adversary proceeding on October 5, 2016,
2 following completion of her Chapter 13 plan. The Plaintiff's Chapter 13 case was filed on
3 September 27, 2013, with a plan of reorganization confirmed on November 26, 2013. The
4 confirmed Chapter 13 plan provided for monthly payments of \$80 for 36 months and promised
5 no dividend to general unsecured creditors. The Plaintiff was represented by counsel in the
6 Chapter 13 proceedings and received a full compliance discharge on October 6, 2016.

7 The Plaintiff appeared *pro se* in this adversary. Defendants Educational Credit
8 Management Corporation ("ECMC"); the United States Department of Education ("DOE");
9 University of the Pacific ("Pacific"); and Navient Credit Finance Corporation ("Navient")
10 appeared through counsel. Prior to the start of the trial, the Plaintiff and Navient entered into a
11 stipulation to discharge the Navient loans and dismiss the complaint as to Navient and Sallie
12 Mae, Inc. (Order Apprv. Stip., ECF No. 64). With the exception of Navient and Sallie Mae, the
13 Court will refer to the remaining student loan creditors collectively as "the Defendants" except
14 where necessary for clarity.

15 Following testimony by the Plaintiff, the Plaintiff's fiancé Theodore Rohde ("Rohde"),
16 and Cristin O'Keefe, DOE's loan specialist, the Court took the matter under advisement.
17 Based on the evidence admitted, arguments of the parties, and pleadings submitted, the
18 Court determines that the Plaintiff is granted a discharge of her student loan debt to the extent
19 it exceeds \$222,000. In support of its determination that a portion of the Plaintiff's student
20 loans constitutes an undue hardship, the Court makes the following findings of fact and
21 conclusions of law.

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25 ¹ Unless otherwise indicated, all chapter, section and rule references are to the Federal Bankruptcy Code,
11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 **FINDINGS OF FACT**

2 A. Personal and Professional History.

3 In 2003, the Plaintiff received an associate degree from Whatcom Community College.
4 Two years later, in 2005, the Plaintiff received a B.A. in Political Science from the University of
5 Washington and started law school that same year. In 2009, the Plaintiff received a Juris
6 Doctor from University of the Pacific's McGeorge School of Law. Unfortunately, the Plaintiff's
7 law school education did not result in the kind of lucrative legal employment the Plaintiff likely
8 expected because of her family and personal situation described in detail below.

9 The Plaintiff is a 45-year-old single mother of seven children. At the time of trial five of
10 her children under the age of 18 resided with Plaintiff. Four of these children are disabled.
11 Three of the disabled children were born significantly prematurely just as the Plaintiff was
12 completing law school. The Plaintiff, with the help of Rohde, provides most of the daily care
13 for her children except for eight hours a week of after-school assistance and some respite
14 care provided by the State of Washington. The Plaintiff is bi-polar and has made several
15 suicide attempts. Despite the lack of childcare, her own medical issues and the needs of her
16 children, the Plaintiff has consistently held some form of employment for most of the time
17 since leaving school. (DOE Ex. 6 at 26-27). Currently, Plaintiff is employed for about 30 hours
18 a week as a waitress on a night shift at a local casino.

19 The Plaintiff's triplets were born significantly prematurely in 2009. (DOE Ex. 6 at 19).
20 The triplets suffer from a variety of health problems resulting in extensive medical and
21 psychological needs. The Plaintiff's daughter (second of the triplets) is unable to walk and
22 currently moves on her knees when around the house and otherwise uses an electric
23 wheelchair for mobility. This child is incontinent and generally unable to care for herself. She
24 also cannot read, write, or count to 100. After birth, the daughter required a shunt to drain
25 spinal fluid and suffers from repeated seizures. The Plaintiff testified that she believes based

1 on her experience over the past eight years that her daughter will never be self-sufficient due
2 to mental and physical limitations.

3 The two male triplets also suffer from significant health problems and delayed learning
4 issues. Since birth, one of these children also has required a spinal shunt. Both of these
5 children suffer from muscular issues impairing mobility, and each has varying levels of
6 cognitive, physical and sensory abilities and serious medical issues. (DOE Ex. 6 at 22-23).

7 The Plaintiff also has a 15-year-old son who suffers from severe behavioral issues,
8 likely related to autism. (DOE Ex. 6 at 18-19). This child has sensory problems, including
9 auditory and visual hallucinations, that interfere with his ability to interact and function during
10 school and sometimes make him violent. This child is over six feet tall and weighs over 340
11 pounds. The Plaintiff is required to attend regular counseling sessions, intervene during
12 school hours to address anxiety-induced acting-out behavior, and has called the police on
13 several occasions to deal with her son's aggressiveness. At trial, the Plaintiff testified that
14 despite some improved behavioral changes overall resulting from significant social worker
15 involvement, her son struck Rohde the week prior requiring police intervention.

16 Following the triplets' premature births, the Plaintiff spent considerable time in the
17 hospital to address the numerous health issues with the children, including emergency room
18 visits. For the period from 2009 through the present, the Plaintiff has regularly attended
19 numerous medical emergency and non-emergency appointments for her children averaging
20 six to seven every week. These medical appointments together with her difficulties in finding
21 affordable and competent child care have made it extremely difficult, if not impossible, for
22 Plaintiff to work lucratively as an attorney or to work any kind of a job during the day. The
23 Plaintiff testified that it is unclear what the future medical, emotional and other care needs of
24 her three disabled sons will be after they reach the age of majority and finish their schooling
25 and other treatment.

1 Since graduating from law school Plaintiff has attempted to secure profitable
2 employment while at the same time provide safe and competent childcare with varying
3 degrees of success. For a short period of time following law school, for example, the Plaintiff's
4 then ex-husband was unemployed and cared for the children at home. However, since her
5 divorce in November 2012, the Plaintiff has struggled to find suitable care given the needs of
6 her children. Although all five of the children currently living with the Plaintiff attend public
7 school during the day, Plaintiff credibly testified that short-term childcare is still necessary
8 after school for five days of the week to handle all of the appointments and needs of her four
9 disabled children.

10 From 2009 to 2012, the Plaintiff worked for a number of legal entities as a paralegal
11 because she did not pass the Washington State bar exam until the summer of 2012.
12 Following bar passage, the Plaintiff continued to work as an associate attorney for a law
13 office. After several years of working as an associate, the Plaintiff decided to open her own
14 law firm when it became apparent she was not on an advancement track that would likely
15 improve her financial situation. Unfortunately, the Plaintiff's solo venture proved unsuccessful
16 despite attempts to increase revenue through volunteer and reduced-fee legal work through
17 the Tacoma-Pierce County Bar Association. The Plaintiff closed her law practice in 2015 and
18 is attempting to complete her representation of one final client. She hopes to reopen the law
19 practice if able to do so in the future, subject to her children's ongoing medical needs and care
20 requirements.

21 In addition to her work in the legal field, the Plaintiff has endeavored to make money in
22 other jobs. For several months in 2016 the Plaintiff was either unemployed or working as a
23 pizza delivery driver for Domino's Pizza. The Plaintiff ceased working as a delivery driver
24 when her vehicle insurance threatened to drop her. At some point during this time period, the
25 Plaintiff also attempted to make money as an Uber driver and obtained a real estate broker's

1 license. The Plaintiff has received modest real estate commissions on at least two occasions
2 from the sale of properties. Finally, in early 2017, the Plaintiff began working part time as a
3 waitress at the Muckleshoot Casino and was employed there at the time of trial. Although
4 Plaintiff's Juris Doctor is not necessary for work as a waitress, the Plaintiff credibly testified
5 that Muckleshoot offers her better pay and benefits, as well as better hours, than any of her
6 previous work based on the needs of her children. Crucially, the Plaintiff's present
7 employment offers health insurance to cover substantially all of the medical expenses of
8 herself and her minor children when combined with both Medicaid benefits and her ex-
9 husband's insurance, which covers some of the children.

10 The Plaintiff met Rohde, who is a retired U.S. Airforce Master Sargent, in 2013. Rohde
11 currently is employed by a waste transportation company. The Plaintiff and her dependent
12 children moved into a house Rohde bought in 2016, and he provides childcare at night when
13 Plaintiff is working at her current job. Rohde testified that he fell about one and one-half
14 months behind on the house payment in connection with a refinance effort, and to date has
15 not been able to catch up. Rohde and the Plaintiff have rescheduled their wedding date three
16 times, with the current date set in fall 2019.

17 The Plaintiff was in a car accident on March 29, 2017, in which her older Prius was
18 totaled and she suffered some soft tissue injury, which has resulted in the need for physical
19 therapy, massage and physical exercise to develop core strength (i.e., Pilates). She then
20 purchased a 2015 Prius to have efficient and reliable transportation for her current night job.

21 B. Assets, Income and Expenses.

22 The Plaintiff currently receives an annual tax refund, which for 2015 was \$5,803, and
23 for 2016 was \$6,421. (DOE Ex. 7). The Plaintiff testified that the tax refunds have typically
24 been used for larger items including car repairs or down payments on cars, and home
25

1 improvements to increase energy efficiency as well as safety and accessibility for her
2 physically disabled children.

3 The Plaintiff does not own any real property. She has two vehicles: a 2000 GMC Safari
4 van used to transport her family to medical, school and other appointments, and a 2015 Prius,
5 which she purchased following her car accident in which a newer Prius was totaled. The
6 Plaintiff testified that she will likely need to replace the van in the near term because of its age
7 and the need for a wheelchair accessible vehicle to transport her daughter, who is becoming
8 too heavy for the Plaintiff to lift.

9 The only other potential asset available to the Plaintiff is her recovery from the auto
10 accident. Although the Plaintiff is represented by an attorney to pursue her claims arising out
11 of the auto accident, she testified that her counsel was unable to provide an estimate of
12 potential recovery.

13 At trial the parties presented documentary evidence and testimony regarding the
14 Plaintiff's income and expenses. Testimony was also elicited as to Rohde's income
15 contributed for certain of the Plaintiff's expenses. The Court finds that the testimony of the
16 Plaintiff and Rohde is both credible and sufficiently reliable for the Court to adopt the income
17 and expenses as testified to at trial. From the evidence submitted, the Court determines that
18 the Plaintiff's individual monthly income and expenses that she currently pays are as follows:

19 Plaintiff's	Source	Plaintiff's	Expense Item
20 Income		Expenses	
\$2,472.25	Net income after payroll deductions	\$497	Vehicle payment for 2015 Prius ²
\$2,566.66	SSI & Child Support for children	\$400	Childcare
\$535.00	Amortized tax refund of \$6,420	\$1,200	Groceries (not including meals eaten outside of the home)

24 _____
25 ² The Plaintiff purchased this vehicle in April 2017, after filing her complaint against the Defendants but prior to the trial. The Court will consider the vehicle payment as part of the Plaintiff's present expenses as of the date of the trial.

		\$110	Gas for vehicles
		\$142	Amortized amount for clothing
		\$70.83	Co-pays
		\$500	Amortized Utilities
		\$200	Cable television (inc. HBO, STARS, Showtime and DVR) and landline
		\$50	Personal Care
		\$20	Prescriptions
Total Income: \$5,573.91	Income w/o tax refund: \$5,038.91	Total Expenses: \$3,189.83	Net income w/o tax refund: \$1,849.08

For his part, Rohde makes approximately \$3,500 net after payroll deductions from his current employment and also receives Air Force retirement pay of \$356.74 after deductions for child support for his dependent children. Rohde maintains separate bank accounts from the Plaintiff, and the Plaintiff does not have access to these accounts. Rohde also testified that he had other expenses of his own, including approximately \$562 a month for expenses related to his own personal creditors and expenses related to his own children from a prior marriage. However, the additional expenses were not detailed and Rohde's bank accounts were not put into evidence.

The evidence does clearly show, however, that Rohde pays several of the Plaintiff's larger fixed expenses as follows:

Plaintiff's Expenses Covered by Rohde's Income	Expense Item
\$1,850	Mortgage (in Rohde's name only)
\$11	Gas utility line
\$369.00	Car Insurance for 3 drivers and 4 vehicles

\$354.54	Cellphones (3 phones, 2 tablets and 1 smartwatch)
Total \$2,584.54	

The foregoing expenses were confirmed at trial by the Plaintiff and Rohde. However, the Plaintiff also testified that certain unexpected, necessary, non-regular expenses for her household were not represented because they fluctuated on a monthly basis. In their pre-trial briefing, the Defendants challenged certain of the Plaintiff's expenses, including fast food expenses, vacation expenses, cable, massages and Pilates. However, at trial, cross-examination on these expenses was somewhat limited, and the responses of both Rohde and the Plaintiff showed that her expenditures are generally reasonable under the unusual circumstances of the Plaintiff's personal and family situation. For example, the Plaintiff testified that she often needed to feed her children while visiting medical and other required appointments and fast food was the only readily available source. The Plaintiff also testified that both the massages and Pilates were recommended following her car accident and that the weekly massage expense was now paid by insurance. Additionally, the Plaintiff testified that the family had taken only one vacation to visit her parents and that other trips had largely been paid for by relatives. Finally, the Plaintiff indicated that cable television was the family's only real means of entertainment.

In addition to specific expenses, the Plaintiff testified to additional non-recurring expense amounts for upgrades to the house purchased by Rohde in 2016 to reduce energy costs and to accommodate her children's physical disabilities, and for other generalized expenses related to vehicles, meals outside the home while taking children to medical appointments, and the need for emergency savings. As with the specific expenses already outlined, the Court finds the testimony of the Plaintiff and Rohde credible and does not doubt the need for flexibility in the monthly budget. Many of the additional expenses referenced by

1 the Plaintiff at trial are corroborated by the bank records admitted into evidence. (DOE Ex. 8,
2 9). A review of the ending cash balances contained in the Plaintiffs' bank statements for the
3 period of November 2015 through April 2017 confirms that on average the Plaintiff has an
4 ending cash balance at the end of each month of around \$1,400³ exclusive of the tax refunds,
5 with actual monthly ending cash balances varying between \$403.53 and \$6,705.38 in the
6 personal account. The business account reflects a much smaller variation, with some months
7 showing a negative balance. The bank records confirm that the Plaintiff's unbudgeted and
8 unexpected expenses vary from month to month and more closely align with the somewhat
9 higher expenses contemplated by the National and Local Standards for this size of a family
10 than the amounts testified to by the Plaintiff. The National and Local Standards used in
11 bankruptcy cases are based on the IRS Collection Financial Standards and appear in other
12 provisions of the Bankruptcy Code.⁴ While not determinative in student loan discharge
13 hearings, the IRS Collection Financial Standards are helpful to the Court in this instance
14 because of the limitation to "expenses that are necessary to provide for a taxpayer's (and his
15 or her family's) health and welfare and/or production of income," which has some similarity to
16 the minimal standard of living discussed *infra*.⁵

17 C. Student Loans, Deferrals, Bankruptcy and Loan Payments.

18 During the course of the Plaintiff's post-secondary education she incurred
19 approximately \$484,964.77 of federally guaranteed educational loans, including accrued
20 interest.⁶ Prior to the start of trial, Navient entered into a stipulation with the Plaintiff to include
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23 ³ This figure was arrived at by taking the ending cash balances for both the Plaintiff's personal and business
24 accounts, deducting the tax returns and \$3,727 of non-recurring amounts for home improvements, which the
25 Plaintiff testified come out of the tax returns, and dividing the balance by the number of months available.

⁴ See § 707(b)(2)(A)(ii)(I)

⁵ United States Trustee, General Information Regarding IRS Collection Financial Standards, available at,
<https://www.justice.gov/ust/means-testing/20171101> (last visited Nov. 22, 2017).

⁶ The Court calculated this figure based on the documentary evidence received by Defendants at trial. See Navient Stipulation, ECF No. 62; O'Keefe Test.; Pacific Ex. 5; ECMC Ex. 3). However, defendant ECMC did not

1 the \$68,967.58 owed to Navient and Sallie Mae in the Plaintiff's Chapter 13 discharge.
2 (Navient Stip., ECF No. 62). Therefore, the approximate loan balance at the time of trial for
3 the remaining three Defendants was \$415,997.19.

4 Since graduating from law school in late 2009, the Plaintiff has made certain efforts to
5 avoid defaulting on her student loan obligations. Between 2009 and 2013, the Plaintiff took
6 advantage of the deferment and forbearance options available for her federal loans. The
7 Plaintiff also used an interest-only payment option available from her private lenders under a
8 hardship program from 2010 until she defaulted on the payments in 2012. In 2013, the Plaintiff
9 filed a Chapter 13 bankruptcy case and obtained confirmation of a plan of repayment. From
10 2013 until the completion of her Chapter 13 plan payments in October 2016, the student loan
11 creditors also received payments from the bankruptcy trustee. All told, the Plaintiff has paid
12 the Defendants approximately \$2,242.99, with the majority of these payments made through
13 the Chapter 13 plan. (DOE Ex. 1A; Pacific Ex. 5; ECMC Ex. 8).⁷

14 Although the Plaintiff is eligible to enroll in an income-based repayment plan ("IBR") for
15 the amounts owed to ECMC and DOE, she testified that she was not participating in the
16 program at the time of trial and had not utilized the program previously because: 1) the IBR
17 payments of \$0.00 did not provide any benefit (i.e., did not reduce the amount owed) and
18 could lead to tax liability at the end of the repayment period, and 2) the two private loans were
19 in also in default and not part of the IBR program. Under these IBRs, the Defendants
20 produced evidence that the Plaintiff's payments based on her current income would be \$0. In
21
22

23 provide evidence of the precise loan balance as of the time of trial and its documentary evidence is current as of
24 January 25, 2017. (ECMC Ex. 3).

25 ⁷ ECMC did not provide the exact amount of the payments it has received from the Plaintiff, or a total balance
through the date of the trial. The Court calculated the total payments by adding the items described as "PY-
Payment" in the ECMC account ledger, admitted as ECMC Ex. 8, to the \$1,133.00 of payments described in the
testimony and exhibits presented by DOE and Pacific. The total loan figure was calculated off of ECMC's total
owed of \$210,924.48 through January 25, 2017. (ECMC Ex. 3).

1 making this determination, Rohde's income is apparently not included, since Plaintiff and
2 Rohde are not currently married.⁸

3 CONCLUSIONS OF LAW

4 The Bankruptcy Code excepts from a debtor's discharge any qualified educational
5 loan, unless the debtor establishes by a preponderance of the evidence that repayment of
6 such loan would "impose an undue hardship on the debtor and the debtor's dependents"
7 § 523(a)(8); Nys v. Educ. Credit Mgmt. Corp. (In re Nys), 308 B.R. 436, 441 (9th Cir. BAP
8 2004), aff'd on other grounds, 446 F.3d 938 (9th Cir. 2006). The Code does not define "undue
9 hardship," requiring the courts to develop a variety of factors to distinguish between garden-
10 variety hardships and those circumstances that in fact warrant relief from student loan debt.
11 See Rifino v. United States (In re Rifino), 245 F.3d 1083, 1087 (9th Cir. 2001). The Ninth
12 Circuit Court of Appeals has adopted a three-part test for bankruptcy courts to apply when
13 conducting the undue hardship analysis. United Student Aid Funds Inc. v. Pena (In re Pena),
14 155 F.3d 1108, 1111-1112 (9th Cir. 1998) (adopting test set forth in Brunner v. New York
15 State of Higher Educ. Servc. Corp. (In re Brunner), 46 B.R. 752, 753 (S.D. N.Y. 1985), aff'd
16 831 F.2d 395 (2d. Cir. 1987)). The Brunner test requires a plaintiff to prevail on three separate
17 inquiries:

- 18 1) The debtor cannot maintain, based on current income and expenses, a
19 "minimal" standard of living for herself and her dependents if forced to repay
20 the loans;
- 21 2) Additional circumstances exist indicating that this state of affairs is likely to
22 persist for a significant portion of the repayment period of the student loans;
23 and
- 24 3) The debtor has made good faith efforts to repay the loans.

25 Pena, 155 F.3d at 1112 n.4. The plaintiff must meet all three prongs to successfully establish
the dischargeability of a student loan. Rifino, 245 F.3d at 1087-88. The court may grant a

⁸ 34 C.F.R. § 682.215(a)(1).

1 partial discharge of a debtor's student loan after determining, based on the parties' evidence,
2 whether the debtor can afford to pay all, part, or none of the student loan debt without undue
3 hardship. Carnduff v. U.S. Dept. of Educ. (In re Carnduff), 367 B.R. 120, 133 (9th Cir. BAP
4 2007). "Debtors have the burden to prove all three prongs of *Brunner* 'as to the *portion* of the
5 debt to be discharged.'" Carnduff, 367 B.R. at 133 (quoting Saxman v. Educ. Credit Mgmt.
6 Corp. (In re Saxman), 325 F.3d 1168, 1174 (9th Cir. 2003)).

7 Before applying the Brunner test to the facts of this case, it is important to recognize
8 the changes in student loan law since the time the test was first announced some three
9 decades ago. At the time *Brunner* was decided in 1987, a debtor could discharge a student
10 loan obligation in two ways: (1) a showing that the loan obligation came due more than **five**
11 **years** prior to the bankruptcy petition, or (2) that excepting the loan from discharge would
12 impose an undue hardship on the debtor and the debtor's dependents. (Pub. L. No. 96-56, §
13 3, 93 Stat. 387, 387 (Aug. 14, 1979)). A subsequent amendment to § 523(a)(8) extended the
14 time for a loan to have entered repayment to seven years preceding the petition date.
15 However, in 1998 Congress chose to limit student loan relief solely to cases of undue
16 hardship in order to eliminate any discharge for older student loan obligations. (Higher Educ.
17 Amends. Of 1998, Pub. L. No. 105-244, Title IX, Part G, § 971(a), 112 Stat. 1837 (Oct. 7,
18 1998)). At the time Brunner was decided, only debtors who were either unwilling or unable to
19 wait the five years necessary requested an undue hardship discharge of their student loan
20 obligations.

21 This Court is not the first to recognize the drastically different landscape for student
22 loan debtor from the time when Brunner was decided. See Price v. United States Dep't of
23 Educ. (In re Price), 573 B.R. 579, 598 (Bankr. E.D. Penn. 2017) (citing Roth v. Educ. Credit
24 Mgmt. Corp. (In re Roth), 490 B.R. 908, 921 (9th Cir. BAP 2013)(Pappas, J., concurring)).
25 Although the Court is required to follow binding Ninth Circuit precedent, the Brunner test is far

1 from the formulaic analysis suggested by the Defendants. Therefore, the Court's application of
2 the Brunner standards is with an understanding that student loans debts are somewhat
3 different than those faced by debtors of 30 years ago.⁹

4 A. Current Financial Situation and Ability to Pay.

5 The first prong of the Brunner inquiry is the Plaintiff's ability to maintain a "minimal
6 standard of living" based on current income and expenses if forced to repay the loans. The
7 debtor must show more than "tight finances" but is not required to prove "utter hopelessness."
8 In re Nascimento, 241 B.R. 44, 445 (9th Cir. BAP 1999). Although a debtor is not required to
9 "live in abject poverty," the minimal standard of living in § 523(a)(8) "does not equate to a
10 middle class standard of living' either." Educ. Credit Mgmt. Corp. v. Beattie (In re Beattie), 490
11 B.R. 581, 586 (W.D. Wash. 2012) (quoting In re Howe, 319 B.R. 886, 889 (9th Cir. BAP
12 2005)). However, some modest amount of diversion or recreation is permitted as part of a
13 minimal standard of living. In re Ivory v. United States (In re Ivory), 269 B.R. 890, 899 (Bankr.
14 N.D. Ala. 2001).

15 It is in the court's discretion to determine the method to calculate a debtor's average
16 monthly expenses. Educ. Credit Mgmt. Corp. v. Mason (In re Mason), 464 F.3d 878, 882 n.3
17 (9th Cir. 2006). The court also has discretion to minimize or eliminate expenses that are not
18 reasonably necessary to maintain a minimal standard of living. Berchtold v. Educ. Credit
19 Mgmt. Corp. (In re Berchtold), 328 B.R. 808, 814 (Bankr. D. Idaho 2005). The court is not
20 required to arrive at a "precise figure" in order to determine whether a debtor has satisfied the
21 first Brunner prong. Beattie, 490 B.R. at 587.

22 The Defendants argue that the Court should include the total income and expenses of
23 both Rohde and the Plaintiff in making its determination under this prong. The Defendants
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25 ⁹ Daniel A. Austin, The Indentured Generation: Bankruptcy and Student Loan Debt, 53 Santa Clara L. Rev. 329,
335-336 (2013) (describing rapid growth in the amount of debt, number of students borrowing, and total
education cost between 1989-2010).

1 also argue that the Court is required to make a determination of a minimal standard of living
2 by utilizing the payment a debtor is eligible for under any of the government's IBR programs,
3 regardless of whether the debtor is actually enrolled in such a program.¹⁰

4 1. *Rohde's Income and Contribution to the Plaintiff's Expenses*

5 The Court acknowledges that authority exists to support the Defendants' use of
6 Rohde's entire net income in the calculation of the Plaintiff's current financial picture,
7 especially where the debtor is either married or living in what is essentially a marital-type
8 relationship. See In re Sederlund, 440 B.R. 168, 172-73 (8th Cir. BAP 2010) (income of
9 debtor's long-term boyfriend properly considered); Beattie, 490 B.R. at 587 (seasonal income
10 of spouse included). Admittedly, this argument has some appeal because the Plaintiff and
11 Rohde have allocated the household expenses between the two of them. In this instance,
12 however, the Court will only include Rohde's income to the extent he contributes it in payment
13 of \$2,584.54 of the Plaintiff's expenses. (See p. 8, *supra*).

14 Excluding the remainder of Rhode's income and expenses from the calculation more
15 fairly represents the Plaintiff's current financial situation. Although Rohde is the Plaintiff's
16 fiancé, the couple have been engaged on two previous occasions but have yet to actually
17 wed, with the earliest date now under consideration sometime in November 2019. The Plaintiff
18 also testified that she does not have access to Rohde's bank accounts and knows little about
19 his finances. In this sense, the Plaintiff and Rohde have not fully commingled their respective
20 households. Furthermore, the testimony at trial failed to provide a complete picture of Rohde's
21 unbudgeted expenses, including expenses for his own children and debts, leaving the Court
22 with only a partial view of his financial obligations.

23 At the same time the evidence at trial did establish that the Plaintiff and Rohde have
24 agreed to an allocation of expenses where the Plaintiff does not need to pay for certain larger

25 ¹⁰ Federal loans qualify for a variety of payment programs based on a debtor's income. 20 U.S.C. § 1098e(b). It is undisputed that Plaintiff's payment under any of these programs is \$0.00. (ECMC Am. Trial Brief, ECF No. 54).

1 items covered by Rohde, such as her rent/mortgage, vehicle insurance, and cellular phones.
2 At trial, there was no indication that the Plaintiff and Rohde intended to abandon the allocation
3 of expenses between themselves now or in the future. Therefore, the Court concludes that
4 including Rohde's income to the extent of payment of the Plaintiff's foregoing expenses
5 provides an accurate financial picture of the Plaintiff's current ability to maintain a minimal
6 standard of living. The Court's chosen methodology for calculating present financial
7 circumstances does not exclude Rohde from the analysis entirely. Instead, Rohde's share of
8 expenses are essentially imputed to the Plaintiff by limiting her to those expenses she actually
9 pays without the need for the Court to rely on an incomplete picture of Rohde's finances.¹¹

10 *2. Use of the IBR Payment*

11 Defendants ECMC and DOE offered testimony and documentary evidence during trial
12 to establish that the Plaintiff not only qualifies for several IBR payment programs, but her
13 monthly payments would be \$0.00 if she were participating in one of the income options
14 presented. Thus, ECMC and DOE argue that the Plaintiff cannot pass the first Brunner prong
15 because the loans impose no payment obligation whatsoever. Pacific also uses the fact that
16 Plaintiff is eligible for IBR payments, but argues that without the need to pay the two loans
17 eligible for IBR, the Plaintiff can easily make the monthly payment of \$148.50 owed on the
18 Pacific loan. The Court rejects both of these argument for the reasons set forth below, as they
19 ignore the particularities of this Plaintiff's situation as well as the applicable legal standards.

20 The court-developed undue hardship test attempts to balance the policies of making it
21 difficult to discharge student loan debts against a debtor's need for a fresh start. IBR
22 programs, on the other hand, are administrative programs developed to offer borrowers
23 options to defer or reduce payments based on a certain portion of available income,
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25 ¹¹ It is interesting to note that the government programs do not even include Rohde's income to this extent.

1 calculated as a percentage of adjusted gross income less either 100 or 150 percent of the
2 poverty level. Under the current IBRs, a borrower must certify the required information for the
3 program each year, and any remaining balance left unpaid at the end of the program period,
4 25 years in this case, is forgiven. The problem with this approach is that unless circumstances
5 change, these repayment plans may not result in the actual repayment of the loans, thereby
6 creating the risk of a large tax bill on completion of the program, or a significantly higher loan
7 balance if the borrower ceases or is denied participation in the program before the end of the
8 25-year period or the programs terminate.

9 IBR programs are payment structures created by Congress to help debtors with
10 repayment of qualifying student loans. Congress could add additional payment programs, or
11 even eliminate IBRs altogether if it chose to do so. Rather than supplanting a bankruptcy
12 discharge, the IBR programs appear to serve a different purpose than § 523(a)(8). Federal
13 IBR programs do not account for the total amount of loans owed in many cases. For debtors
14 such as the Plaintiff, the loans negatively amortize during the repayment period and may
15 effectively grow beyond what a student loan borrower could ever afford, although the borrower
16 technically remains “current” on the obligation. While the Court does not discount the benefits
17 of these programs for certain types of borrowers, such programs should not supplant the
18 bankruptcy court’s analysis under § 523(a)(8). Simply waiting for the loans to go away is
19 contrary to the Ninth Circuit Bankruptcy Appellate Panel’s (BAP) statement that the first
20 Brunner prong must consider what it would take to actually pay the loans over the
21 amortization period. Carnduff, 367 B.R. at 128.

22 A number of courts have considered IBR programs in applying the Brunner test,
23 concluding that the IBR payment is the amount that plaintiff must show he or she cannot pay
24 and still maintain a minimal standard of living. See Beattie, 490 B.R. at 588. This is the case
25 regardless of whether the borrower is actually enrolled in an IBR program. One of the main

1 rationales for the use of the IBR payment program is found in the Beattie decision, where the
2 court determined that to use the contract monthly payment would “yield an absurd result:
3 almost every debtor would satisfy Prong 1 easily if courts were restricted to considering only
4 the amount of [the debtor’s] contract payment.” Beattie, 490 B.R. at 588. The Beattie court
5 went on to state that “Congress’s creation of the flexible income-based repayment options . . .
6 reflects an intent that debtors not be automatically or easily excused from their student loan
7 obligations.” Id. This analysis creates significant problems in the application of the Brunner
8 test and ignores the high bar generally set by the Brunner test for establishing undue
9 hardship. The logical fallacy in relying on the IBR payment amount is the assumption that it
10 avoids the situation of every debtor-plaintiff passing the first prong of the Brunner test. The
11 Beattie court failed to recognize what several other courts have, that using the IBR payment
12 program results in most low income debtors, such as the Plaintiff, failing to pass the first
13 prong, because if the debtor’s financial circumstances are dire enough the payment is often
14 \$0.00. Morrison v. Sallie Mae, Inc. (In re Morrison), No. 13-00933-FPC7, 2014 WL 73838, at *
15 4 (Bankr. E.D. Wash. Feb. 26, 2014). If Congress intended to create a student loan payment
16 program that eliminated bankruptcy court discretion to discharge student loans as an undue
17 hardship, it could have said so explicitly. Morrison, 2014 WL 73838, at * 4.

18 The IBR program is also limited to an income-side analysis of a Plaintiff’s situation. It
19 relies on adjusted gross income and the poverty limits to come up with a payment amount.
20 For many debtors, such as the Plaintiff, the calculated IBR payment is little to nothing when
21 based on gross income and assumed household expenses. With such a payment structure,
22 many debtors would fail to pass the first Brunner prong simply because they technically can
23 afford a payment of \$0.00. If it were undisputed that a borrower’s payments would remain at
24 \$0.00 for the entire IBR term, should the bankruptcy court tell the borrower to wait decades for
25 relief? It is difficult to see how this advances either the policy of repayment of student loans or

1 the debtor's fresh start. This Court agrees with the reasoning in Morrison and determines that
2 if Congress intended to supplant the student loan discharge provision of § 523(a)(8) with an
3 annually-adjusting income-driven program it would have done so explicitly. Therefore, the
4 Court holds that the payment required by prong one is the payment necessary to satisfy the
5 entire outstanding loan balance over the remaining loan term.

6 3. *The Plaintiff's Current Financial Circumstances*

7 The Court has already determined that the appropriate inquiry in this circumstance is to
8 look at the Plaintiff's current income and expenses, while including Rohde's income to the
9 extent he pays the Plaintiff's expenses. At trial the Defendants produced testimony on cross-
10 examination estimating that the Plaintiff's net income, without including the monthly amortized
11 amount of the annual tax refund, is \$1,850.¹²

12 The Plaintiff testified that the budget she affirmed under cross-examination did not
13 include all of her expenses, such as emergency savings and necessary repairs, meals outside
14 of the home, or alterations to the house she lives in with Rohde. The Plaintiff also stated that
15 she will require a wheelchair accessible van in the future in order to accommodate her
16 daughters mobility needs. The Plaintiff's testimony is entirely credible as to the existence of
17 the additional expenditures. However, simply because these expenditures are understandable
18 in many instances, such as alterations to the railings on the stairwells to prevent injury to her
19 children, this Court cannot permit the Plaintiff to claim certain unarticulated additional
20 expenditures while also requesting the Court exclude the amortized amount of her tax refund.
21 Historically, the Plaintiff has received tax refunds of approximately \$6,000 per year. On a
22 monthly basis, this is \$500 of additional income that Plaintiff may use as needed. From the
23 testimony and documentary evidence produced at trial, the savings, sudden expenses, and
24

25 ¹² The Court arrived at this figure by rounding the net income of \$1,849.08 up to \$1,850.

1 need for a future van purchase are adequately covered by the tax refund amount. Therefore,
2 the Court determines that the Plaintiff's net income, after providing a minimal standard of
3 living for herself and her dependents, is \$1,850.

4 The Plaintiff bears the burden of proving that her expenses and income are insufficient
5 to ensure a minimal standard of living if forced to repay the student loans. It is not enough for
6 a Plaintiff at trial to indicate that additional expenses exist that would turn an apparent surplus
7 into a net loss without actually offering proof of those expenses. Although the Plaintiff has not
8 established by a preponderance of the evidence that she is unable to pay something to her
9 student loans, she has established that her net income is insufficient to pay the loans in full.
10 With an approximate loan balance of \$415,997.19 at the time of trial, it would require more
11 than 225 months (18 years) to repay the current amount of the Defendants' loans if the
12 Plaintiff committed her entire net income of \$1,850 to the loans without any additional amount
13 of interest accruing on the loans.¹³ Once even a nominal amount of interest is included in the
14 calculation, the amount necessary to repay the loans in full far exceeds the \$1,850
15 available.¹⁴ Therefore, the Plaintiff has met her burden to show she unable to pay the entire
16 amount of the outstanding loans while maintaining a minimal standard of living based on her
17 current financial situation.¹⁵

18 **B. Persistence of the Current State of Affairs.**

19 The second inquiry under the Brunner test is whether additional circumstances exist
20 indicating that the present inability to pay will persist "throughout a substantial portion of the
21 loan's repayment period." Nys, 446 F.3d at 945. It is presumed that the debtor's income will
22

23 ¹³ The Plaintiff's loans have interest rates of between 3.28 and 10.25 percent. (Pl. Trial Brief, ECF No. 39).

24 ¹⁴ Even if the interest rate were two percent for all loans, this would require a monthly payment in excess of
25 \$1,920 over the next 25 years to pay the loans in full. If the Plaintiff committed her entire adjusted net income of
\$1,850, she could repay the loans with two percent interest by the time she reached the age of 71, after some 26
years of payments.

¹⁵ The Plaintiff offered no evidence at trial of the actual monthly payment amounts for the loans but did testify she
was unable to pay the loans in full.

1 increase to a point where it is possible to repay the loans, but “the debtor may rebut this
2 presumption though a showing of ‘additional circumstances’ indicating that her income cannot
3 reasonably be expected to increase and that her inability to make payments will likely persist
4 throughout a substantial portion of the loan's repayment period.” Nys, 446 F.3d at 946. To aid
5 in this determination the Ninth Circuit has adopted 12 non-exhaustive factors that may allow a
6 debtor to show “additional circumstance” to rebut the presumption of an improving financial
7 situation. The factors are:

8 [(1)] Serious mental or physical disability of the debtor or the debtor's dependents
9 which prevents employment or advancement; [(2)] The debtor's obligations to
10 care for dependents; [(3)] Lack of, or severely limited education; [(4)] Poor quality
11 of education; [(5)] Lack of usable or marketable job skills; [(6)]
12 Underemployment; [(7)] Maximized income potential in the chosen educational
13 field, and no other more lucrative job skills; [(8)] Limited number of years
14 remaining in [the debtor's] work life to allow payment of the loan; [(9)] Age or
15 other factors that prevent retraining or relocation as a means for payment of the
16 loan; [(10)] Lack of assets, whether or not exempt, which could be used to pay
17 the loan; [(11)] Potentially increasing expenses that outweigh any potential
18 appreciation in the value of the debtor's assets and/or likely increases in the
19 debtor's income; [(12)] Lack of better financial options elsewhere.

20 Nys, 446 F.3d at 947 (internal citation omitted). The point of this analysis is to determine
21 whether the debtor is purposely choosing to live a lifestyle that prevents repayment of the
22 loans. Id. at 946.

23 The Defendants suggest that the operative repayment period when applying the
24 second Brunner prong is the termination of a theoretical IBR program. Depending on how a
25 court applied this analysis, the IBR payment period could tack on an additional 25 to 30 years
to the repayment terms without any consideration of the time a borrower has been under an
obligation to make payments. There is a dearth of authoritative caselaw to guide the Court's
analysis as to the appropriate repayment period, for purposes of the second Brunner prong.
Price, 573 B.R. at 607 (collecting cases and utilizing the contractual loan period). The parties
did not address the issue of the relevant loan repayment period and the Plaintiff did not

1 submit any evidence of when her loans were contractually due. Given the sparse record, the
2 Court will use the standard amortization period for Direct Loans of ten years. 34 C.F.R. §
3 685.208(b)(1).¹⁶

4 Though a licensed member of the Washington State Bar Association, the Plaintiff is
5 currently working as a waitress at the Muckleshoot Casino. The Plaintiff credibly testified that
6 her employment as a waitress is reasonable given the needs of her dependents because it
7 allows her to work on nights and weekends while offering excellent medical benefits. On these
8 facts, the Court cannot fault the Plaintiff for her decision not to use her law degree.

9 The Plaintiff's previous work history as an attorney did not result in sufficient income to
10 repay her student loans and take care of her dependents. Instead, the Plaintiff's employment
11 history demonstrates that she is likely earning more with benefits than should could through
12 practicing law. Although the Plaintiff did indicate a general desire to revive her law practice if
13 she were ever able to do so, there is no indication of when this could occur because the
14 triplets will not reach the age of 18 for another decade. The Plaintiff also received her real
15 estate broker's license in the last two years and has sold at least two homes resulting in
16 modest commissions. Based on the record, it does not appear that the Plaintiff's activities as
17 a broker will provide a significant source of income over the next several years. The Court
18 agrees with the Plaintiff's assessment that she will need to remain available to assist her
19 dependent children and that this situation will continue for at least the ten year period if not
20 beyond. (DOE Ex. 6).

21 It is evident that Plaintiff's circumstances will not change substantially to allow her to
22 make the payments necessary to retire the full amount of the student loan debt by the end of

23
24 ¹⁶ The Plaintiff's loans are likely eligible for a variety of payment options, such as the extended repayment
25 schedule available to borrowers with loans exceeding \$30,000, which would be up to 25 years. 34 C.F.R. §
682.209(a)(6)(ix). However, the parties did not provide any evidence that the Plaintiff was enrolled in anything
other than the standard repayment schedule.

1 the ten year period. The Plaintiff has very little in the way of assets available to pay the
2 student loan creditors, leaving prospective income as the only source of repayment. The
3 Plaintiff is also without retirement savings and will be over the age of 55 at the end of ten
4 years. The serious mental and physical issues of the Plaintiff's four dependent children
5 prevent her from substantially increasing her current income and also limit her options for
6 employment beyond what she has been able to obtain. The future prospects do not look
7 brighter since her current situation does not result in her obtaining equity in Rohde's house,
8 although his assistance does eliminate certain major expenses and promises significant child
9 care and emotional support. The Plaintiff has satisfied the second prong of the Brunner test.

11 C. Good Faith

12 The Court's final inquiry under the Brunner test is whether the Debtor has made a good
13 faith effort to repay the student loans. In re Pena, 155 F.3d at 1111. A debtor's good faith is
14 measured by "efforts to obtain employment, maximize income, and minimize expenses."
15 Penn. Higher Educ. Assistance Agency v. Birrane (In re Birrane), 287 B.R. 490, 499 (9th Cir.
16 BAP 2002) (internal quotation marks and citation omitted). The court should also examine
17 whether the debtor made any payments before filing for bankruptcy, the history of deferments
18 and forbearances, and whether the financial condition resulted from factors beyond the
19 debtor's control. Roth v. Educ. Credit Mgmt. Corp. (In re Roth), 490 B.R. 908, 917 (9th Cir.
20 BAP 2013). The mere fact that a debtor has not entered into an IBR program is not
21 determinative. Id. at 919-20.

22 The Defendants argue that the Plaintiff has not made a good faith effort to repay her
23 student loans because she has not pursued enrollment in an IBR program, has made *de*
24 *minimus* payments on the loans, and has spent financial surpluses on trips. The Court rejects
25 these arguments and finds that the Plaintiff has made a good faith effort to repay her loans.

1 1. *Lack of loan payments*

2 Two of the Defendants' concerns—the payments and the spending of additional
3 surplus funds—are readily dealt with. The Plaintiff just completed a three-year Chapter 13
4 plan. During this time, the Plaintiff was not allowed to make payments to her unsecured
5 student loans except as otherwise provided in the plan. As a result, the funds received by the
6 Defendants from the Chapter 13 Trustee represent what the Plaintiff was allowed to pay and
7 presumably what she could afford to pay in the context of her bankruptcy.

8 Prior to filing bankruptcy, the Plaintiff explained that the unexpected birth of triplets with
9 significant, immediate healthcare needs made it impossible for her to make payments on the
10 loans. During this same period of time, the Plaintiff also separated from her husband and both
11 parents experienced periods of unemployment. Although the Plaintiff's present circumstances
12 indicate additional income to fund repayments, this state of affairs is a recent occurrence.
13 Even assuming the Plaintiff could have kept one of her numerous loans current through
14 payments of any surplus income, such a use of funds would have been foolish. Some of the
15 Plaintiff's loan obligations are to private lenders. Unless the Plaintiff were able to prevent
16 collection actions from all lenders at the same time, any payment made to keep one loan
17 current would not satisfy the other loan obligations. It is no solution at all to pay one lender
18 just to invite collection actions from the others.

19 The Plaintiff's uncontroverted testimony regarding how she spent financial surpluses
20 also supports her good faith. The "surplus" funds the Plaintiff received came in the form of tax
21 refunds. The Plaintiff used these refund checks to bring monthly bills current and for
22 expenditures that she anticipates will lower expenses, such as upgrades to the current
23 heating system. (DOE Ex. 6 at 28). The evidence establishes that the Plaintiff's infrequent
24 trips were largely paid for by family members, and there is no contrary evidence that these
25

1 trips cost substantially more than the ordinary amount the Plaintiff would have spent to feed
2 her family in any given day.

3 *2. Failure to apply for an IBR payment plan*

4 The Defendants place considerable weight on the Plaintiff's rejection of an IBR
5 program. It is important to distinguish between investigation and actual enrollment in a loan
6 repayment program. The law does not require actual participation in an IBR program but it
7 does mandate some investigation and explanation for why a student loan debtor chooses to
8 not participate. Roth, 490 B.R. at 917. In this instance the parties made a great deal about the
9 potential for the Plaintiff to experience cancellation of indebtedness income at the end of the
10 IBR period. This is entirely speculative because it would require that the Plaintiff acquire
11 greater assets than she has debts. 26 U.S.C. § 108(a)(1).¹⁷ This speculation is unsupported
12 since no party presented any evidence in support of the respective arguments. In her closing
13 argument, the Plaintiff clarified that she was not dissuaded from enrolling in the IBR program
14 solely because of future tax consequence, but because her payments under the program
15 would amount to \$0.00 and would not advance her financial future on account of the existence
16 of multiple lenders, including two private lenders.

17 The Plaintiff credibly testified that she did investigate the IBR program approximately
18 one year before filing the complaint after her bankruptcy attorney told her about the options
19 available for her student loans. The Plaintiff's explanation for not enrolling in any of the IBR
20 programs is that the payment plans offered would result in a \$0.00 payment. This is not a
21 repayment of the loan under any scenario but is instead a wait-and-see approach from the
22 lenders while the loan balances continue to increase. The Plaintiff credibly testified as to her
23 concern that the ever-increasing loans would limit her ability to prepare for the future for
24

25 ¹⁷ "Gross income does not include any amount which (but for this subsection) would be includible in gross
income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if . . .the discharge
occurs when the taxpayer is insolvent . . ." 26 U.S.C. § 108(a)(1)(B).

1 herself and her children and to care for them at present. The Court finds that based on the
2 evidence, the Plaintiff has made a good faith effort to repay her student loans.

3 D. Partial Discharge of the Educational Loans

4 Where the Plaintiff satisfies the three Brunner prongs, the Court may order a discharge
5 of any portion of the debt that would impose an undue hardship. Saxman, 325 F.3d at 1175.
6 Though Saxman acknowledges the equitable power of the bankruptcy court to partially
7 discharge student loans, it offers little guidance on how to accomplish this. See, e.g.,
8 Bossardet v. Educ. Credit Mgmt. Corp. (In re Bossardet), 336 B.R. 451, 459 (Bankr. D. Ariz.
9 2005) (partially discharging principal, reducing principal balance, reducing the interest rate,
10 and changing the loan term); Ayele v. Educ. Credit Mgmt. Corp. (In re Ayele), 468 B.R. 24, 36
11 (Bankr. D. Mass. 2012) (order prospective bankruptcy discharge to avoid tax consequences).
12 The end result is that the bankruptcy court retains discretion to determine the amount and
13 manner of a partial discharge of a student loan pursuant to § 523(a)(8).

14 1. *The Plaintiff is entitled to a partial discharge of her student loans.*

15 The Plaintiff in this case has met her burden to establish that she cannot, without
16 undue hardship, repay the more than \$415,000 owed to the Defendants. However, the Court
17 finds that the Plaintiff does have present net income of \$1,850 after making adjustments as
18 described above. If the Court projects this figure out for the remaining ten years of a standard
19 repayment program, the Plaintiff would need to repay a total of \$222,000 of the Defendants'
20 loans. In ten years the Plaintiff will be 55 years old and with some time left in her working life.
21 However, at least one of the Plaintiff's children is likely to remain with her as a dependent at
22 this point, and the remainder of her earning years presents an opportunity to save something
23 for retirement besides her minimal Social Security income. The Court is convinced that the
24 Plaintiff's diligence and showing of fortitude will result in her making a good faith effort to
25 repay the remaining student loan obligations. Based on the Court's calculations, each

1 Defendant's pro rata share of the remaining student loan obligations is as follows: ECMC-
2 \$123,520.80; DOE- \$88,400.40; and Pacific- \$10,078.80.¹⁸

3 2. *The Plaintiff has not established any basis for further reduction of the surviving*
4 *amount of student loan obligations.*

5 A partial discharge of student loans is not an exact science because it requires the
6 Court to speculate to some extent about the borrower's future. At trial the Plaintiff argued that
7 the Court should consider certain additional changes to her finances when determining the
8 dischargeability of her student loans. Specifically, the need for a wheelchair accessible van for
9 her dependent daughter and the termination of child support. As the Court already indicated in
10 its analysis of the second Brunner prong, excluding the annual tax refund from the calculation
11 of net income provides a source of money for larger necessary expenses, including a
12 replacement vehicle. Additionally, to the extent the Plaintiff recovers any money from her auto
13 accident, these funds may be used for repayment. Therefore, the Court will not make an
14 adjustment for a new van or the other undefined expenditures the Plaintiff claims she will need
15 to make in the future and these expenditures will need to be paid from the tax refunds.

16 The evidence presented as to the termination of child support is also insufficient to
17 support reducing the net income further for purposes of determining the amount the Plaintiff
18 can pay over the next ten years. No party presented any evidence of when the child support
19 ceases completely or how it would be offset by changes in expenses. From the bank
20 statements admitted into evidence it appears that child support is approximately \$1,400 of the
21 \$2,566 of SSI and child support income. (DOE Ex. 8). The Plaintiff did testify that she will lose
22 \$550 of child support attributable to her oldest son when he turns 18 in less than two years.
23 On the other hand, the Plaintiff would also presumably see a reduction in expenses as

24 ¹⁸ The Court calculated the pro rata share of each loan from the original principal amount received as evidence
25 at trial. (ECMC 3, DOE 1A, PAC 5). From the Defendants' exhibits, the principal balance owed to ECMC was
\$171,716 or 55.64%; to DOE \$122,901.12 or 39.82%; and to Pacific, \$14,000 or 4.54%. The use of the principal
amount avoids any inequity in differences between how the Defendants calculate and capitalize interest, or
charge expenses.

1 children leave the house, as two of her eldest children have already done. Therefore, the
2 Court will not reduce the net income available for on this basis.

3 The Plaintiff is an intelligent and able individual who has capably dealt with the
4 significant challenges posed by the many needs of her disabled children. Though \$222,000 is
5 a large amount, the Court's partial discharge of her student loan obligations will hopefully
6 provide the Plaintiff with some hope and ability to pay the student loans within her working life
7 while still being able to care for her children.

8 Finally, the Plaintiff testified at trial that she was concerned the potential tax
9 consequences following completion of an IBR plan would negate any advantage of her
10 participating in the program. The Court will not discourage the Plaintiff from participating in a
11 repayment program for her student loans but will not reduce the remaining loan balance
12 further based on this asserted concern. The Plaintiff's tax concern is speculative and based
13 on an assumption that she will fail to repay the loans and that she will acquire sufficient assets
14 to create taxable income under the insolvency provision of 26 U.S.C. § 108. No evidence was
15 presented as to the likelihood of a taxable event should the Plaintiff choose to participate in a
16 repayment plan so the Court will not speculate on such liability. Therefore, the Court will
17 discharge, pro rata, the portion of the Plaintiffs' student loan obligations owed to the
18 Defendants to the extent the amount owed exceeds \$222,000. The Plaintiff shall pay this
19 amount pursuant to whatever terms the Plaintiff and Defendants may agree. The Court does
20 not find it appropriate at this time to set the repayment terms and hopes that the parties will be
21 able to come up with terms that are reasonable. The Court's decision is, however, without
22 prejudice to the Plaintiff's ability to participate in any current or future repayment program
23 offered by any of the Defendants, or otherwise available, for which she is eligible or to resolve
24 issues with the payment terms through mediation or other settlement means.

25 *///End of Memorandum Decision///*