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5 **UNITED STATES BANKRUPTCY COURT**
6 **CENTRAL DISTRICT CALIFORNIA**
7 **LOS ANGELES DIVISION**

8 KAREN LYNN SCHAFFER,) Chapter 7
9 Plaintiff,)
10 vs.) Case No.: 2:10-bk-64135-RN
11 EDUCATIONAL CREDIT MANAGEMENT) Adv. Case No.: 2:11-ap-01878-RN
12 CORPORATION,) FINDINGS OF FACT AND
13 Defendant.) CONCLUSIONS OF LAW
14) Date: June 26, 2012
Time: 9:00 a.m.
Place: Courtroom 1652
Judge: Hon. Richard M. Neiter
)

15
16 A bench trial was held June 26, 2012 at 9:00 a.m. on the
17 complaint filed by Karen Lynn Schaffer for an order discharging
18 her student loan debt [Docket 1]. The court having received and
19 admitted certain documents and oral testimony into evidence
20 pursuant to the stipulation of the parties and the Federal Rules
21 of Evidence. Appearances were noted on the record. Therefore the
22 Court makes the following Findings of Fact and Conclusions of
23 Law. To the extent a Finding of Fact constitutes a Conclusion
24 of Law it shall be deemed a Conclusion of Law, and to the extent
25 a Conclusion of Law constitutes a Finding of Fact it shall be
26 deemed a Finding of Fact.
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1 **A. Findings of Fact**

2 The Court makes the Findings of Fact as stated on the record.

3 **B. Conclusions of Law**

4 Based on the Findings of Fact as stated on the record, the
5 Court makes the following Conclusions of Law.

6 1. The Undue Hardship Standard

7 a. The First Prong

8 Plaintiff must establish that she cannot maintain, based on
9 current income and expenses a "minimal" standard of living for
10 herself and her dependents if forced to repay the loans. *United*
11 *Student Aid Funds, Inc. v. Pena (In re Pena)*, 155 F.3d 1108,
12 1112 (9th Cir. 1998). In defining undue hardship, courts require
13 more than temporary financial adversity, but typically stop
14 short of utter hopelessness. *In re Hornsby*, 144 F.3d 433, 437
15 (6th Cir. 1998). The proper inquiry is whether it would be
16 "unconscionable" to require the debtor to take steps to earn
17 more income or reduce her expenses. *Penn. Higher Educ.*
18 *Assistance Agency v. Birrane (In re Birrane)*, 287 B.R. 490,
19 495 (9th Cir. BAP 2002); *In re Nascimento*, 241 B.R. 440, 445 (9th
20 Cir. BAP 1999); *Pennsylvania Higher Educ. Assistance Agency v.*
21 *Faish (In re Faish)*, 72 F.3d 298, 307 (3d Cir. 1995).

22 This Court finds that Plaintiff has maximized her income.
23 Plaintiff gets up at 4 a.m. each morning to take care of her
24 husband who is suffering from a terminal illness. Not only does
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1 Plaintiff get up at 4 a.m. to take care of her ailing husband,
2 she goes to work by 7 a.m. She works until 3 p.m. or 5 p.m.
3 when she finishes not only her duties as a campus security
4 guard, but to her own sobriety by attending meetings and
5 therapy. Afterwards she goes home to make meals and attend to
6 her husband each evening. This schedule leaves her no time to
7 take on a second job.
8

9 Plaintiff now works full-time at 40 hours per week as a
10 campus security guard. Plaintiff testified that her income has
11 increased since the filing of her bankruptcy case because she
12 now works an eight hour day as of May 7, 2012, as opposed to six
13 and one half hours per day at the time her bankruptcy case was
14 filed.
15

16 The Court finds it inconceivable that the Debtors could
17 further maximize their income with the permanent disability of
18 Mr. Schaffer and the already full-time employment of Plaintiff
19 coupled with her own self help maintaining her sobriety and the
20 remainder of her time taken for the care and well-being of her
21 husband.
22

23 As for ECMC's argument that they might be able to rent out
24 the additional bedroom in their home for more money than their
25 son is paying, the Court believes that they may not even be able
26 to get \$300.00 per month because the room is very small with a
27 shared bathroom. Additionally, this Court finds that \$300.00
28

1 per month is not unreasonable for rent in this area and
2 especially where Mr. Schaffer is very ill and could worsen.

3 ECMC also contends that if the Debtors were to sell their
4 home, they could realize the \$70,000.00 in equity or reduce
5 their mortgage expense. However, the Court finds the Debtors
6 would incur potential capital gains income taxes and broker fees
7 from the sale of their home that would ameliorate any
8 significant gain in their financial condition. Further, the
9 Debtors already tried to sell their home and were unable to.
10

11 *Minimize Expenses:*

12 *In In re Nascimento*, 241 B.R. at 445, the court reversed
13 and remanded the case because the court determined that the
14 debtor had room in their budget for 'belt tightening.' However,
15 in this case, the Court finds there is not sufficient room in
16 their budget for more belt-tightening to make a significant
17 enough difference. This is because the Debtor's currently have
18 a monthly deficit of \$-739.42.
19
20

21 ECMC argued that the Debtors could make further reductions
22 to their expenses such as cease voluntary retirement
23 contributions in the amount of \$197.00 per month, cut cable
24 television at \$100.00 per month, pet expenses of \$100.00 per
25 month, and Mrs. Schaffer's life insurance policy. However, even
26 if all of their unnecessary expenses were removed, they would
27 still be unable to raise enough money to enable the Debtors to
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1 meet their minimal living expenses that they still have to meet
2 and have enough left over to meet the lowest payment option
3 under the Ford program of \$197.00 per month.

4 Additionally, Plaintiff already reduced some of the
5 Debtors' expenses by obtaining a loan modification on their
6 first mortgage and second mortgage and obtaining "medical
7 allowance" discounts for their electric and gas utilities.
8 Plaintiff also reduced their car insurance premium to liability
9 only.
10

11 The Court concludes that the first prong is satisfied
12 because the Debtors cannot reduce enough expenses and have also
13 maximized their income.
14

15 b. The Second Prong

16 Second, the Plaintiff must show "that additional
17 circumstances exist indicating that this state of affairs is
18 likely to persist for a significant portion of the repayment
19 period of the student loans." *Brunner v. New York State Higher*
20 *Educ. Svcs. Corp. (In re Brunner)*, 831 F.2d 395, 369 (2nd Cir.
21 1987). This second prong is intended to effect "the clear
22 congressional intent exhibited in section 523(a)(8) to make the
23 discharge of student loans more difficult than that of other
24 nonexcepted debt." *Id. Pena*, 155 F.3d at 1111.
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26

27 To be eligible for a discharge of student loans, the debtor
28 must prove that her present inability to pay will likely persist

1 throughout a substantial portion of the loan's repayment period.
2 See *Pena*, 155 F.3d at 1114 (finding that the debtors satisfied
3 the *Brunner* test in part because "their unfortunate financial
4 situation was likely to continue for a substantial portion of
5 the repayment period").

6 Plaintiff's husband is hoping to get a liver transplant.
7 Mr. Schaffer is 60 years old and has a cancerous liver and is
8 competing with those people who need a liver who have a longer
9 life expectancy or opportunity to live a healthier life if their
10 liver is transplanted.
11

12 The Court finds that this situation will last through a
13 significant portion of the repayment period because the evidence
14 is that Mr. Schaffer get sicker and sicker and the only way he's
15 going to get better is if he gets a liver transplant. And, the
16 opportunities to get a liver transplant are not great.
17

18 The Debtors' situation could easily get worse. The
19 Plaintiff's expenses can increase with her husband's declining
20 health while she is unable to increase her income further with
21 her already full schedule. Hopefully Mr. Schaffer will get
22 better and live a long life, but even if he does, it won't be
23 cheap. He'll have to pay for whatever medical expenses there
24 are and chances are that it could get worse and he could die.
25 And, if he dies, there's not only the loss of her husband, but
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1 the loss of his income of roughly \$1,991 per month. The second
2 prong is satisfied because this is a very long term situation.

3 c. The Third Prong

4 The third prong requires "that the debtor has made good
5 faith efforts to repay the [**7] loans" *Brunner*, 831
6 F.2d at 396; *In re Pena*, 155 F.3d at 1111. The "good-faith"
7 requirement fulfills the purpose behind the adoption of section
8 523(a)(8). *In re Brunner*, 46 B.R. 752, 754-55 (Bankr. S.D.N.Y.
9 1985). Section 523(a)(8) was a response to "a 'rising incidence
10 of consumer bankruptcies of former students motivated primarily
11 to avoid payment of education loan debts.'" *Id.*, (quoting the
12 Report of the Commission on the Bankruptcy Laws of the United
13 States, *House Doc. No. 93-137, Pt. I, 93d Cong., 1st Sess.*
14 (1973) at 140 n. 14).

15 This section was intended to "forestall students . . . from
16 abusing the bankruptcy system." *Id.*

17 Courts have measured good faith by examining various
18 factors. "Good faith is measured by the debtor's 'efforts to
19 obtain employment, maximize income, and minimize expenses.'" *In*
20 *re Roberson*, 999 F.2d 1132, 1136 (7th Cir. 1993); *Goulet v.*
21 *Educational Credit Management Corp.*, 284 F.3d 773, 779 (7th
22 Cir. 2002). "A debtor's effort--or lack thereof--to negotiate a
23 repayment plan is an important indicator of good faith." *United*
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1 *States Dep't of Educ. v. Wallace (In re Wallace)*, 259 B.R. 170,
2 185 (Bankr. C.D. Cal. 2000) (citations omitted).

3 The Court has already concluded that the Plaintiff has
4 sufficiently maximized her income and concludes that the amount
5 of expenses that could be eliminated from the Debtors' budget
6 would not be sufficient to make up the deficit and afford any
7 student loan payment offered within the ICRP program, and thus
8 finds Plaintiff has met her burden of proving good faith. Even
9 eliminating several of the Debtors' expenses would not erase the
10 \$739.42 deficit they incur each month.
11

12 Plaintiff has satisfied her burden that the payment of the
13 student loan would be an undue hardship and, therefore her
14 student loans are not excepted from discharge.
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17
18 Approved as to form and content:

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