

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 04-33687

KRISTI MICHELLE HENDRIX

Debtor

KRISTI MICHELLE HENDRIX

Plaintiff

v.

Adv. Proc. No. 04-3197

EDUCATIONAL CREDIT MANAGEMENT
CORPORATION as ASSIGNEE OF SALLIE
MAE SERVICING CORPORATION and
TENNESSEE STUDENT ASSISTANCE CORPORATION

Defendants

MEMORANDUM

APPEARANCES: BAILEY, ROBERTS & BAILEY, P.L.L.C.
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RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

This adversary proceeding is before the court upon the Complaint filed by the Debtor, Kristi Michelle Hendrix, on August 26, 2004, seeking a determination and order by the court discharging the educational loans owed to the Defendant, Educational Credit Management Corporation, as assignee of Sallie Mae Servicing Corporation (Sallie Mae) and Tennessee Student Assistance Corporation (TSAC), pursuant to 11 U.S.C.A. § 523(a)(8) (West 2004). In support of her request, the Debtor contends that it would be an undue hardship for her to repay the loans. The Defendant argues that the Debtor would not be unduly burdened by repayment of her student loans and asks the court to determine that the debts are nondischargeable under § 523(a)(8).

The trial was held on April 19, 2005. The record before the court consists of the Stipulation for Trial filed April 14, 2005, thirty-two exhibits stipulated into evidence, and the testimony of the Debtor.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(I) (West 1993).

I

From August 1986 until May 1989, the Debtor attended Cleveland State Community College, pursuing a two-year liberal arts degree, first majoring in criminal justice and then in psychology.¹ In August 1989, the Debtor transferred to The University of Tennessee, Knoxville (UT), and in December 1992, she received a B.S. degree in Human Services Education.² She then attended UT from January 1993 until

¹ She did not attend classes in the Spring Quarter of 1987 in order to care for her ill father.

² The Debtor gave birth to her son, Jordan, in September 1991, and did not attend classes in the Summer or Fall Semesters of that year.

December 1995, during which time she obtained a M.S. in Educational and Counseling Psychology. In conjunction with obtaining her degrees, the Debtor received thirteen student loans (collectively, Loans), totaling \$51,382.00, through TSAC, which she then consolidated through Sallie Mae in October 1996. In order to consolidate under the Stafford Loan Program, the Debtor executed an application and promissory note requiring her to repay the principal amount of the Loans totaling \$55,460.11, together with interest at 8%, and any costs of collection and attorneys' fees in the event of default. *See* TRIAL EX. 1. The Loans were later assigned to the Defendant by Sallie Mae and TSAC. The Debtor also obtained a student loan directly from UT in the amount of \$1,500.00. This loan was paid in full in February 2000. *See* TRIAL EX. 3.

After consolidation of her Loans, and the expiration of a deferment, the Debtor made the following payments to Sallie Mae: (1) in 1997, two payments totaling \$141.60; (2) in 1998, twelve payments totaling \$856.00; (3) in 1999, twelve payments totaling \$923.92; (4) in 2000, twelve payments totaling \$1,092.28; (5) in 2001, ten payments totaling \$960.00; (6) in 2002, eleven payments totaling \$2,656.10; and (7) in 2003, five payments totaling \$1,275.50. *See* TRIAL EX. 2. Although the Debtor repaid \$7,905.40³ over six years, at the time of her default in September 2004, the outstanding principal balance on the Loans, including capitalized interest at 8%, was \$90,244.76. *See* TRIAL EX. 8.

The Debtor filed the Voluntary Petition commencing her underlying Chapter 7 bankruptcy case on July 12, 2004, and her discharge was granted on November 24, 2004. She filed the Complaint initiating

³ The parties stipulated that the Debtor made payments in the amount of \$7,906.20; however, based upon the figures contained in Trial Exhibit 2, the payments credited to her account by Sallie Mae totaled \$7,905.40.

this adversary proceeding on August 26, 2004, averring that she is a single mother, attempting to raise her child without adequate assistance from his father, who is in arrears on his child support for more than \$10,117.42. *See* TRIAL EX. 23. Additionally, the Debtor argues that because she suffers from hyperthyroidism and the ailments associated therewith, and her son, Jordan, is asthmatic, she incurs significant medical expenses each month. Moreover, the Debtor contends that she has made a good faith effort to repay the Loans, and in fact, has repaid more than \$10,000.00 total, including the \$1,500.00 loan to UT. Based upon these factors, the Debtor argues that she cannot repay the Loans while maintaining a minimal standard of living for herself and her son, and she asks the court to find that it would be an undue hardship for her to repay the Loans, and thus, grant a discharge of the Loans totaling \$94,319.44, as of the date of trial.⁴

The Defendant argues that the Debtor cannot show circumstances beyond her control that are likely to persist for a significant portion of the repayment period to prevent her from maintaining a minimal standard of living if she is required to repay the Loans. Accordingly, the Defendant asks the court to find the Loans are nondischargeable in their entirety.

II

The primary purpose of Chapter 7 is to relieve “honest but unfortunate” debtors of their debts and allow them a “fresh start” through a discharge of their debts. *Buckeye Retirement, LLC v. Heil (In re*

⁴ The parties stipulated that the principal due on September 25, 2004, was \$90,244.76, plus 8% interest per annum. *See* TRIAL EX. 8. This amounts to \$7,219.58 per annum, or \$19.78 per diem. Multiplying the \$19.78 per diem by the 206 days between September 25, 2004, and April 19, 2005, yields interest of \$4,074.68.

Heil), 289 B.R. 897, 901 (Bankr. E.D. Tenn. 2003) (quoting *In re Krohn*, 886 F.2d 123, 125 (6th Cir. 1989) (citing *Local Loan Co. v. Hunt*, 54 S. Ct. 695, 699 (1934))). 11 U.S.C.A. § 727 (West 2004) provides for this general discharge of a Chapter 7 debtor’s pre-petition debts. Section 727(b), however, limits the discharge to those debts “[e]xcept as provided in section 523 of this title” 11 U.S.C.A. § 727(b). Section 523(a), governing the nondischargeability of certain debts, provides, in material part:

(a) A discharge . . . does not discharge an individual debtor from any debt—

. . . .

(8) for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor’s dependents.

11 U.S.C.A. § 523(a)(8). Because student loans enjoy a presumption of nondischargeability, a debtor seeking a discharge thereof must establish that repayment will impose an undue hardship by a preponderance of the evidence. *Siegel v. U.S.A. Group Guarantee Servs. (In re Siegel)*, 282 B.R. 629, 634 (Bankr. N.D. Ohio 2002); *Daugherty v. First Tenn. Bank (In re Daugherty)*, 175 B.R. 953, 955 (Bankr. E.D. Tenn. 1994).

The Bankruptcy Code does not specify what factors constitute an undue hardship, leaving this determination to the courts. *See Tenn. Student Assistance Corp. v. Hornsby (In re Hornsby)*, 144 F.3d 433, 437 (6th Cir. 1998). In the Sixth Circuit, a debtor seeking to establish that repayment of all or a portion of student loan debt imposes an undue hardship must demonstrate the following factors:

“(1) that the Debtor cannot maintain, based on current income and expenses, a ‘minimal’ standard of living for herself and her 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; and (3) that the debtor has made good faith efforts to repay the loans.”

Oyler v. Educ. Credit Mgmt. Corp. (In re Oyler), 397 F.3d 382, 385 (6th Cir. 2004) (quoting *Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987)). Also included within this analysis are the following factors:

(1) the debt amount; (2) the interest rate; (3) the debtor’s claimed expenses and current standard of living to evaluate whether the debtor has attempted to minimize expenses; (4) the debtor’s income, earning ability, health, education, dependents, age, wealth, and professional degree; and (5) whether the debtor has attempted to maximize income by seeking or obtaining employment commensurate with her education and abilities.

Oyler, 397 F.3d at 385 (citing *Miller v. Pa. Higher Educ. Assistance Agency (In re Miller)*, 377 F.3d 616, 623 (6th Cir. 2004)).

The Debtor is 36 years old. She is a licensed school counselor at Sweetwater Primary School, employed by the Monroe County School System. The Debtor is also a licensed real estate agent. She is divorced and has one child. As of the date of the trial, the outstanding balance owed to the Defendant, inclusive of interest, was \$94,319.44.⁵

A

The first factor before the court requires the assessment of the Debtor’s standard of living and a determination of whether she can afford to repay her loans. “The essence of the minimal standard of living

⁵ See *supra* n. 4.

requirement . . . is that a debtor, after providing for . . . her basic needs, may not allocate any of . . . her financial resources to the detriment of [her] student loan creditor(s).” *Flores v. U.S. Dep’t of Educ. (In re Flores)*, 282 B.R. 847, 853 (Bankr. N.D. Ohio 2002). Accordingly, the analysis “must necessarily center around two considerations: (1) the debtor’s income; and (2) those expenses which are necessary for the debtor to meet his or her basic needs.” *Flores*, 282 B.R. at 853. The bankruptcy court must “ascertain what amount is minimally necessary to ensure that the [debtor and her] dependents’ needs for care, including food, shelter, clothing, and medical treatment are met.” *Rice v. United States (In re Rice)*, 78 F.3d 1144, 1151 (6th Cir. 1996).

In order to meet the minimal standard of living factor, debtors are required to “make some major sacrifices, both personal and financial, with respect to their current style of living.” *Flores*, 282 B.R. at 854 (citing *Shirzadi v. U.S.A. Group Loan Servs. (In re Shirzadi)*, 269 B.R. 664, 668 (Bankr. S.D. Ind. 2001)). This does not mean, however, that debtors must “live in abject poverty.” *Flores*, 282 B.R. at 854. A debtor earning a modest income and living on an unbalanced budget with no unnecessary or frivolous expenses may be discharged based upon an undue hardship. *See Hornsby*, 144 F.3d at 438 (citing *Correll v. Union Nat’l Bank of Pittsburgh (In re Correll)*, 105 B.R. 302, 306 (Bankr. W.D. Pa. 1989)).

Here, the Debtor married in June 1991, while attending school, and her son was born in September 1991. Sometime thereafter, her husband began using illegal drugs, and the Debtor filed for divorce in May 1993. The Debtor was granted a divorce on August 19, 1993, pursuant to a Final Judgment for Divorce entered in the Fourth Circuit Court for Knox County, Tennessee, incorporating into its terms a Marital

Dissolution Agreement executed by the parties on May 7, 1993 (collectively Divorce Decree). *See* COLL. TRIAL EX. 27. Pursuant to the Divorce Decree, the Debtor's ex-husband was required to pay child support in the amount of \$55.00 per week. In addition, he was required to maintain health insurance for her son. Following her divorce, the Debtor and her son lived in public housing in Sweetwater, Tennessee.

Subsequent to completing her Master's degree in 1995, the Debtor experienced periods of unemployment. Although she applied for counseling positions, the Debtor was unable to find one with an adequate salary and/or work schedule.⁶ During that time, the Debtor did receive some sporadic child support from her ex-husband, and in July 1997, she began working as a counselor for Camelot Residential Treatment Center, with a starting salary of approximately \$22,000.00. This job required her to work sixty hours per week, and she was on call 24 hours a day. The Debtor was employed by Camelot Residential Treatment Center for three years, and over the course of that time, she received salary increases. At the time she left that employment, the Debtor's annual salary was \$29,983.52. *See* TRIAL EX. 10.

In 2000, the Debtor began working for Hiwassee Mental Health Center as a counselor. She took a small pay cut in her annual salary, but in exchange, enjoyed more stability, fewer work hours, being closer to home and thus cutting her commute to and from work, and alleviating some of her childcare costs. She remained in this position for approximately fourteen months. While employed with Hiwassee, in July 2001, the Debtor and her son moved to Coker Creek, Tennessee, to live with her parents in order to reduce

⁶ The Debtor testified that she applied for a job with Head Start but was not offered a position. She also applied for and was offered a position with Child and Family Service's Great Start in-home program in Maryville, Tennessee, but it required her to be on call 24 hours per day, and she could not obtain overnight childcare for her son. The Debtor also testified that she lived with her sister in Florida for a brief time and looked for employment in Florida as well, to no avail. She returned to Tennessee to care for her father when he once again fell ill.

expenses. This move required the Debtor to commute more than an hour to and from work. Additionally, during this time, her son experienced problems with his new school.

Thereafter, in October 2001, the Debtor accepted a job as a school counselor with the Monroe County School System in Madisonville, Tennessee, a position that she continues to hold. Her current salary in that position is \$33,062.00. *See* TRIAL EX. 20. At the suggestion of her employer, the Debtor transferred her son from the school near her parents' home back to the school in Sweetwater. This transfer added approximately an hour, round-trip, to the Debtor's daily commute. To reduce this commute, the Debtor began renting a house in Sweetwater in November 2003. The Debtor and her son currently reside in this home.

As stated, the Debtor has been a licensed school counselor at Sweetwater Primary School since 2001. She is paid by the Monroe County Board of Education ten months out of the year, receiving no paycheck in July or August. As of the date of trial, the Debtor earns a gross monthly income of \$3,306.20. TRIAL EX. 16. Her net income per month is \$2,365.83, after the following deductions: (1) \$268.98 for federal income taxes; (2) \$192.31 for social security; (3) \$44.98 for Medicare; (4) \$165.31 for the Tennessee Consolidated Retirement System; and (6) \$268.79 for family medical insurance, disability, and life insurance. TRIAL EX. 16. At trial, the Debtor testified that she makes ends meet during those two months for which she does not receive a pay check by saving her tax refunds, cutting back and putting aside anything extra, and if necessary, taking loans from her family members.

The Debtor also received her real estate license in May or June 2004, and between September 2004 and March 2005, she earned two commissions as selling agent, totaling \$4,426.50, in supplemental income from this part-time business. At trial, the Debtor testified that she currently has two active listings and that both of the commissions she has earned were for real estate contracts executed in 2004.

The Debtor's monthly household expenses average approximately \$2,543.40. *See* COLL. TRIAL

Ex. 28. The following represent the Debtor's expenses for March 2005:

General Expenses:	
Rent (plus insurance)	\$450.00
Utilities	\$137.84
Phone	\$ 36.97
Car Expenses (gas, repairs)	\$448.81
Life Insurance	\$ 32.00
Installment Payments/Contracts:	
Car	\$350.00
Orthodontist	\$145.00
Cell Phone	\$ 54.14
Other Expenses:	
Food (incl. household expenses)	\$200.00
Clothing	\$163.85
Medical, Dental, Drugs	\$ 80.00
Laundry/Cleaning	\$ 0.00
Recreation (including baseball fees)	\$ 75.11
School Expenses	\$ 15.00
Beauty/Barbershop (incl. hygiene)	\$103.15
Work Expenses (ads, bus duty, etc.)	\$158.90
Licensure/CEU's	\$ 0.00
Church	\$ 40.00
Pet	\$ 32.73
Other (\$700 loan, \$129 weedeater, \$13 baby gift, \$15 efile, \$85 Lowes \$35 grandma	\$977.22

COLL. TRIAL EX. 28. Notwithstanding the receipt of the real estate commissions in the amount of \$2,145.00 in September 2004 and \$2,281.50 in March 2005, the Debtor's monthly expenses between July 2004 and March 2005 generally averaged \$2,543.46. During that same period, her income averaged \$2,663.74, including both commissions, a \$2,000.00 loan from her sister, one payment of \$770.00 for child support in July 2004, and gifts to herself and her son totaling \$350.00.

Although she is entitled to receive child support from her former spouse in the amount of "\$55.00 per week plus \$40.00 reimbursement for medical insurance on the child for a total of \$95.00 per week[,]” TRIAL EX. 27, the Debtor does not generally receive any support. Consequently, as of August 2004, the Debtor was entitled to back child support in the amount of \$10,117.42. *See* TRIAL EX. 23. At trial, the Debtor testified that she is also owed \$120.00 per week since July 2004, in addition to the prior arrearage amount. The Debtor does not know the present location of her ex-husband, who has been evading an arrest warrant issued in August 2004.

On the other side, the Defendant argues that the Debtor has done nothing more than demonstrate tight finances, contending that she has obtained a real estate license, giving rise to additional income and that she has not fully explored her options for part-time work. Additionally, the Defendant argues that the Debtor's budget reflects discretionary expenses such as a cell phone and a pet, and therefore, she is living above the minimal standard of living. Finally, the Defendant questioned the Debtor's mandatory retirement deduction and her additional life insurance policies.

Based upon the budgets that she provided, it appears that more often than not, the Debtor's household runs in the negative. Out of the nine months presented, between July 2004 and March 2005, the Debtor's expenses exceeded her income five times. Moreover, her budget is skimpy, with no extras or extravagances. The Debtor's regular monthly expenses are basic and frugal. Over the nine months examined, the Debtor's food and household expenses category has averaged \$331.98 for herself and her son. Their clothing category averaged \$77.59. The Debtor's greatest monthly expense is her rent, which, at \$450.00 per month, is not unreasonable. Likewise, her automobile payment of \$350.00 is not unreasonable.⁷ Additionally, the Debtor's son has worn braces for approximately nine months, and will, at the very least, continue wearing them for another nine to thirteen months, during which time, the Debtor must pay his orthodontist \$145.00 per month.⁸

Moreover, the Debtor has made sacrifices in order to minimize her expenses. The Debtor testified that she had pulled her son out of Boy Scouts and many sporting activities, cut entertainment, and plans no vacations in order to save, which is reflected by the fact that her recreation category averages \$29.91 monthly. The Debtor also pays an average of \$72.99 monthly in medications, even though her testimony indicated that her actual monthly expenses for prescriptions should be at least \$200.00.⁹

⁷ At trial, the Defendant questioned the Debtor concerning her automobile loan, which she pays to her father. The Debtor explained, to the court's satisfaction, that she initially bought the car, a 2001 Nissan, but her father refinanced it in order to get a lower interest rate and monthly payment based upon his better credit.

⁸ At trial, the Debtor stated that her son might possibly require oral surgery, which would extend the time he must wear his braces, and she is required to pay the orthodontist \$145.00 per month for as many months as her son wears the braces.

⁹ See detailed discussion with respect to the Debtor's medical issues in section B *infra*.

With respect to the areas of concern expressed by the Defendant, the court finds that the Debtor has not included “discretionary” expenses that cause her to live above the minimal standard of living. The Debtor acknowledged that she spends approximately \$40.00 per month on maintaining her son’s dog,¹⁰ testifying that her son has had the pet for four years, and he would be heartbroken if forced to give it up as well. Additionally, the Debtor acknowledged that she maintains both a cellular telephone as well as a land line, explaining that her real estate broker requires her to have a cell phone, and she feels it necessary to have a land line available for her son, on the occasions that he is home alone in the afternoons. With respect to the life insurance, the Debtor stated that although she pays for and receives life insurance through her employer, she feels it necessary to carry the outside policies because, in the event of her death while her son is still a minor, he will go live with her parents, who have health issues and no extra funds to support him.¹¹

The court agrees that each of these expenses is necessary and reasonable, under the Debtor’s circumstances, and are included among those expenses that are “minimally necessary to ensure that the [debtor and her dependents’] needs for care, including food, shelter, clothing, and medical treatment are met.” *Rice*, 78 F.3d at 1151.

The Defendant also questions the Debtor’s retirement contributions of \$165.31 per month, representing 5% of her gross monthly income, into the Tennessee Consolidated Retirement System, inquiring whether those contributions are, in fact, mandatory, as stated by the Debtor. This retirement

¹⁰ This expense actually averaged \$34.34 per month.

¹¹ The Debtor testified that her father is disabled, and her mother is a nurse who recently retired due to health issues.

system is governed by statute, which clearly states that “[a]ny person who becomes a teacher, [or] a general employee . . . on or after July 1, 1972, shall become a member of the retirement system as a condition of employment.” TENN. CODE ANN. § 8-35-101 (2002); *see also* TRIAL EX. 18. There is no question that the Debtor is required to contribute this percentage of her income into the State of Tennessee’s mandatory retirement account, and it is unavailable for payment of any monthly expenses, including the Loans.¹²

The question is whether the Debtor can meet the minimal standard of living, which includes only those expenses that are necessary for meeting the basic needs of the Debtor and her family. Based upon the proof presented, the court agrees that the Debtor is maintaining a minimal standard of living. Her budget is generally unbalanced, and she usually operates in a deficit. Accordingly, the first prong of the *Brunner/Oyler* test falls in favor of granting the Debtor a discharge of her Loans for undue hardship.

B

The second factor to be considered is the existence of “additional circumstances” to indicate that the Debtor’s current financial woes will continue into the future. The Bankruptcy Code does not provide a specific list of “additional circumstances” to be considered to indicate the persistence of a debtor’s state of affairs; however, courts should examine “the debtor’s income, earning ability, health, education, dependents, age, wealth, and professional degree.” *Oyler*, 397 F.3d at 385; *see also Healey v. Mass. Higher Educ. (In re Healey)*, 161 B.R. 389, 396 (E.D. Mich. 1993). The Debtor must establish that her

¹² Additionally, these funds are not subject to execution, garnishment, or assignment. *See* TRIAL EX. 17 (referencing TENN. CODE ANN. § 8-36-111 (2002)).

distressed state of financial affairs [is] the result of events which are clearly out of [her] control; . . . that [she has] done everything within [her] power to improve [her] financial situation[, and] that the hardship [she] is experiencing is actually “undue,” as opposed to the garden variety financial hardship experienced by all debtors who file for bankruptcy relief.

Kirchhofer v. Direct Loans (In re Kirchhofer), 278 B.R. 162, 167 (Bankr. N.D. Ohio 2002) (citations omitted). The court should additionally analyze whether the Debtor has attempted to maximize her income.

See Oylar, 397 F.3d at 385-86.

In support of her position, the Debtor testified that she and her son both have medical problems that are likely to persist into the future. At trial, the Debtor testified, to the court’s satisfaction, as to the various medical ailments that she and her son face, along with the various medications necessary for treatment. First, the Debtor testified that in 2002, she was diagnosed with hyperthyroidism, after suffering from severe weight gain, adult acne, irritable bowel syndrome, and depression for years. In connection with these ailments, the Debtor testified that she takes the following prescription medications: (1) Synthroid for her hyperthyroidism, which is incurable; (2) Yasmin for her acne; and (3) Zelnorm for irritable bowel syndrome. The Debtor also has high cholesterol, for which she takes Lipitor.¹³

Additionally, the Debtor testified that her son has asthma which, up until a couple of months ago, required him to take prescription medication twice a day. Nevertheless, he still uses a rescue inhaler. He also requires glasses, which the Debtor testified must be replaced annually. Finally, he wears braces and

¹³ The Debtor testified that she also has two topical ointments for the acne, which she tries to stretch for two months at a time. She also testified that she has been prescribed an anti-depressant that she does not take because “it’s the only one I can live without, and it’s too expensive.” DEBTOR’S TEST. at 28. The total cost of the Debtor’s prescribed medications is \$265.00 per month.

will most likely need oral surgery to correct a crooked tooth. In connection with this testimony, the Debtor offered into proof a table detailing her family's traceable medical expenses between 1999 and 2004, which exceeded \$9,526.92. *See* TRIAL EX. 19. This evidence was not refuted by the Defendant.¹⁴

The court observes that the Debtor did not attempt to argue that her medical conditions interfere with her ability to work, and to the contrary, the evidence shows that the Debtor is willing and able to work in order to support herself and her son. Instead, the Debtor argues that the costs she incurs to control these medical ailments faced by her family are likely to persist, in that her hyperthyroidism, her high cholesterol, and her son's asthma are treatable but not curable. To that end, the Defendant has not disputed the Debtor's testimony concerning her prescription medications.

The Defendant does, however, argue that the Debtor's son will no longer be wearing his braces sometime within the next two or three years, which will then provide the Debtor with an additional \$145.00 per month. Similarly, the Defendant points out that the Debtor's son, who is thirteen and in the seventh grade, will be eighteen and graduating from high school in five years. The Defendant avers that, at that time, the Debtor will have additional funds to repay her Loans, which, under the William D. Ford Program, she can repay over the next twenty-five years. Finally, the Defendant contends that the Debtor should be able to increase her monthly income by "moonlighting" as a part-time, private-practice counselor, in addition to growing her part-time real estate work.

¹⁴ Furthermore, in her Schedule J, the Debtor listed \$165.00 per month for medical and dental expenses, plus \$145.00 for her child's orthodontics. *See* COLL. EX. 6.

When questioned by the Defendant concerning supplemental, part-time income, the Debtor explained that she has looked into private counseling during the summer, but there are large start-up costs associated with doing so, such as rent and malpractice insurance. The Debtor stated that although some of those expenses could be reimbursed by TennCare, it is currently months behind, and it would take a long time to get reimbursement. The Debtor also expressed concerns about the low referral rate in Monroe County, as well as the potential ethical problems associated with her inability to continue treating patients once school begins after the summer break.

The Debtor's reservations concerning private, part-time counseling are well-founded and understandable. The court agrees that the Debtor should not be expected to expend large sums for malpractice insurance and rent out of her own pocket to counsel patients for possibly two months out of the year, especially in light of the fact that there is the real possibility that she would not even be reimbursed by TennCare for these initial expenses. Furthermore, the court concurs with the Debtor's ethical concerns, particularly her fear that she would have to discontinue treatment of patients once school was again in session.

With respect to her real estate license, the Debtor testified that she obtained it as a means of supplementing her income, and that she had borrowed the approximately \$1,200.00 necessary for classes and start-up costs from her sister.¹⁵ The Debtor stated that she thought real estate would be a good part-time supplemental job because she could take her son with her to showings, and she could do it nights and

¹⁵ Pursuant to an agreement with her sister, the Debtor repaid the \$1,200.00 from the commissions she received in September 2004 and March 2005. *See* COLL. TRIAL EX. 28.

weekends. However, at trial, the Debtor testified that being a part-time real estate agent was not as profitable as she had anticipated; and that, in fact, she was earning much less than she had expected, due to her inability to work full-time and her lack of availability to prospects during the week. The Debtor testified that she has had only five listings since obtaining her license, one of which was with a relative, and currently, she has only two active listings, with one due to expire in May 2005. On the other hand, the Debtor acknowledged that she was able to claim a loss of \$3,061.00 from the business on her 2004 tax return, resulting in a lower adjusted gross income and lower taxes. *See* TRIAL EX. 15. The Debtor also acknowledged that she was receiving a tax refund for 2004 in the amount of \$3,065.00. *See* TRIAL EX. 15.

The court is satisfied with the Debtor's explanations, and the proof evidences that the Debtor's attempts to earn additional income by becoming a licensed real estate agent have not been particularly fruitful. Instead, as the Debtor testified, her expectations outweighed the reality of pursuing that field part-time. In fact, there is no guarantee that the Debtor will obtain future listings, leading to additional commissions. Moreover, even in the event the Debtor does receive future real estate commissions, based upon the amounts that she received in September 2004 and March 2005, the commissions are barely enough to cover her expenses during the summer months that she does not receive a paycheck.

Similarly, the Debtor cannot realistically anticipate that she will ever receive either the \$10,117.42 in back child support or the weekly \$120.00 support to which she is entitled. On five separate occasions between June 1999 and August 2004, the Debtor's ex-husband was found in contempt of court for failing to pay his child support. *See* TRIALEXS. 23 - 27. Additionally, the Debtor has personally expended more

than \$2,000.00 trying to collect child support. *See* TRIAL EX. 22. At trial, the Debtor testified that there has been a warrant issued for her ex-husband's arrest since August 2004, but thus far, he has not been found. Further, the last child support payment that the Debtor received, either voluntarily or involuntarily through garnishment, was \$200.00 on July 14, 2004. *See* COLL. TRIAL EX. 28 (evidencing a total of \$770.00 in child support received in July 2004).¹⁶

In addition, the court believes that the Debtor is not purposely underemployed. To the contrary, it appears that the Debtor has attempted to fully maximize her income. She is using her degrees, and she is performing a public service by working as a school counselor, which is commensurate with being a school teacher. The Debtor is earning the highest salary that she can under the Monroe County School System Professional Employee Salary Schedule for an individual, employed for three years, that holds a Master's degree, irrespective of the position.¹⁷ *See* TRIAL EX. 20. Moreover, even though she is entitled to annual pay raises, these increases are generally less than \$500.00 per year, with the exception of those occurring at the 5-year anniversary intervals. Specifically, the Debtor will be entitled to the following raises over the next fifteen years:

\$316.00 in year four to \$33,378.00, resulting in \$31.60 per month;¹⁸

\$1,662.00 in year five to \$35,040.00, resulting in \$166.20 per month;

\$362.00 in year six to \$35,402.00, resulting in \$36.20 per month;

\$484.00 in year seven to \$35,886.00, resulting in \$48.40 per month;

¹⁶ The Debtor also testified that her son has not seen or talked to his father in more than a year.

¹⁷ The Debtor's uncontradicted testimony was that the pay scale offered by the Monroe County Board of Education was as good or better than those offered by nursing homes, treatment facilities, or mental institutions.

¹⁸ These figures are divided by the ten months that the Debtor is paid. Each of these figures is calculated by subtracting the prior year's base annual salary, without deducting taxes or retirement.

\$481.00 in year eight to \$36,367.00, resulting in \$48.10 per month;
\$348.00 in year nine to \$36,715.00, resulting in \$34.80 per month;
\$1,443.00 in year ten to \$38,158.00, resulting in \$144.30 per month;
\$683.00 in year eleven to \$38,841.00, resulting in \$68.30 per month;
\$443.00 in year twelve to \$39,284.00, resulting in \$44.30 per month;
\$604.00 in year thirteen to \$39,888.00, resulting in \$60.40 per month;
\$703.00 in year fourteen to \$40,591.00, resulting in \$70.30 per month;
\$1,257.00 in year fifteen to \$41,848.00, resulting in \$125.70 per month;
\$562.00 in year sixteen to \$42,410.00, resulting in \$56.20 per month;
\$34.00 in year seventeen to \$42,444.00, resulting in \$3.40 per month; and
\$884.00 in year eighteen to \$43,328.00, resulting in \$88.40 per month.

TRIAL EX. 20. The Debtor's income "tops out" in the eighteenth year, and, under the current salary schedule, the highest salary that she can earn, without obtaining a more advanced degree, is \$43,328.00.¹⁹

TRIAL EX. 20.

Additionally, since 1999, the Debtor has received the following tax refunds: (1) \$1,573.00 for 1999; (2) \$1,491.00 for 2000; (3) \$1,096.00 for 2001; (4) \$3,130.00 for 2002; (5) \$1,783.00 for 2003; and (6) \$3,065.00 for 2004. With respect to her tax refunds, the Debtor testified that she uses those funds to support herself and her son during July and August, when she does not receive a paycheck from Monroe County. On cross-examination, the Debtor testified that she has not used these funds to pay on her Loans. Nevertheless, the evidence clearly supports the Debtor's use of these tax refunds to support herself and her son during the months in which she does not receive a regular paycheck.

¹⁹ Even with a doctoral degree, the highest annual salary, obtainable at nineteen years, is \$48,480.00. See TRIAL EX. 20.

With respect to the Defendant's argument that the Debtor will have more income to apply to the Loans when her son turns eighteen in five years, the court notes that

[a] complicating factor in predicting Debtor's future disposable income is the fact that Debtor's minor child will reach the age of majority and should no longer need Debtor's financial support. While that might be a significant financial event to Debtor, it is likely over this same period of time that Debtor's "minimal standard of living" will increase with her maturing personal and vocational circumstances. Any other conclusion is unreasonable and, worse, unfair. Every debtor that appears in this Court has a slightly different budget. Debtors with higher incomes and longer employment tenures regularly demonstrate a higher minimum standard of living. If this Debtor's standard of living is to be fairly considered over such a long period, it cannot remain static for [twenty-five] years based on budget numbers advanced in [2005].

Rivers v. United Student Aid Funds, Inc. (In re Rivers), 213 B.R. 616, 620 (Bankr. S.D. Ga. 1997).

After examining the Debtor's current monthly expenses, the court doubts that the emancipation of the Debtor's son will significantly increase her disposable income. Her rent will not change, nor will her car payment, gas, repairs, work-related expenses, or church offerings. The Debtor's utilities could possibly change, slightly, as could the clothing, food, laundry, and recreation expenses, although these changes would most likely be negligible. Additionally, the majority of the family's medical expenses belong to the Debtor, with the major exception being her son's orthodontics, which is \$145.00 per month.

On the other hand, once her son no longer wears his braces, the Debtor will have that additional \$145.00 per month. Additionally, once he is older, the Debtor can give up her land line telephone, costing \$36.97 per month, which she maintains in addition to her cellular telephone so that her son will not be without communication in the event of an emergency. She will also no longer be required to pay school

expenses, which averaged \$66.85 per month from July 2004 to March 2005. *See* COLL. TRIAL EX. 28. And, at that point, the Debtor may also give up her additional life insurance policies, totaling \$32.00 per month. Assuming that none of the Debtor's expenses increase, these changes would result in an additional \$280.82 per month. Even under *Rivers*, taking into account inflation and the typical increase in expenses, the Debtor should have some additional funds once her son has turned eighteen and graduated from high school.

The court recognizes that many months the Debtor's budget operates in the negative. However, as her son ages and no longer needs as much financial assistance, some funds will be freed up. Furthermore, the Debtor will be receiving pay raises over the next fifteen years. Although some of these raises are much smaller than others, the Debtor is scheduled to receive pay increases over the next five years that will yield an additional \$330.50 gross monthly income. And, under the projected scheduled income reflected in Trial Exhibit 20, the Debtor's income in 2019 will be \$10,266.00 greater than her current income, yielding a gross monthly income that is \$1,026.60 greater than her current income. These figures do not include any commissions from her real estate work that the Debtor may receive over these years. The Debtor may use any of this supplemental income to pay on the Loans.

The Debtor has met her burden of proof that all of the additional circumstances she faces, i.e., her medical issues and her former spouse's failure to pay child support, are out of her control such that they constitute an undue hardship and are likely to continue in the future. In addition, the Debtor met her burden of proof that she is attempting to fully maximize her income. Nevertheless, the Debtor is entitled to annual pay raises, and although many of these raises are not significant, over the course of time, they will allow her

to make some payments on her Loans. Moreover, as her son ages, the Debtor's financial responsibilities to him will decrease, thus freeing up funds for payment on her Loans. Accordingly, based upon evidence presented, the court finds that the Debtor has met her burden of proof with respect to the second *Brunner/Oyler* factor such that it would be an undue hardship for the Debtor to repay the entire balance of her Loans, but that it will not be an undue hardship for the Debtor to pay a portion of the Loans.

C

Finally, under the third factor of the *Brunner/Oyler* test, the court focuses on whether the Debtor has made a good faith effort to repay the Loans. Under the analysis, "a primary consideration, as one would expect, is whether the debtor actually made any payments on the obligation, and if so, the total amount of payments." *Hall v. United States Dep't of Educ. (In re Hall)*, 293 B.R. 731, 737 (Bankr. N.D. Ohio 2002). Additionally, when determining whether the Debtor has acted in good faith in attempting to repay the student loan obligation, the courts have been instructed to examine other factors, including:

- (1) whether a debtor's failure to repay a student loan obligation is truly from factors beyond the debtor's reasonable control;
- (2) whether the debtor has realistically used all of [her] available financial resources to pay the debt;
- (3) whether the debtor is using [her] best efforts to maximize [her] financial potential;
- (4) the length of time after the student loan first becomes due that the debtor seeks to discharge the debt;
- (5) the percentage of the student loan debt in relation to the debtor's total indebtedness;
- (6) whether the debtor obtained any tangible benefit(s) from [her] student loan obligation.

Flores, 282 B.R. at 856 (citations omitted). This list is not exhaustive, and not all factors will apply to all debtors.

In this case, it is undisputed that the Debtor has made payments on the Loans, a fact acknowledged and commended by the Defendant. Between 1997, when they first became due for repayment, and 2003, when the payment was doubled, the Debtor made payments totaling \$7,905.40. Additionally, during that time, the Debtor paid a loan, in full, to The University of Tennessee in the amount of \$1,500.00.

Instead, the Defendant's sole argument as to this factor is that the Debtor's failure to apply for the William D. Ford Direct Loan repayment program precludes a finding that she has acted in good faith to repay the Loans. This program was outlined for the Debtor by the Defendant on November 8, 2004, through its attorneys. *See* TRIAL EX. 32. According to this letter, the following repayment plans were calculated on a consolidated loan balance of \$87,896.00 at 8% interest: (1) under the Standard Repayment Plan, the Debtor would be required to pay \$1,066.42 per month, for 120 months; (2) under the Extended Repayment Plan, the Debtor would be required to pay \$644.95 for 360 months; (3) under the Graduated Repayment Plan, the initial payments would be \$585.97, but would be increased over the 360 month term at 2-year intervals; and (4) under the Income Contingent Repayment Plan, using the Debtor's \$31,644.00 income, plus her family size of two, her payments would start at \$325.40 per month and increase as her salary did for 300 months. The letter also states that the Debtor could seek deferment or forbearance of the Loans.

The Debtor acknowledged that she did not enroll in the William D. Ford Direct Loan program, but she testified that she did discuss all of the repayment options with her attorney both prior to and after filing for bankruptcy. As part of that discussion, the Debtor and her attorney entered her income information into the Loan Calculator offered by the government's website. *See* TRIAL EX. 4. Based upon the

projected monthly payments, the Debtor determined that she could not afford any of the payments, which ranged from \$1,066.42 to \$325.40.

Under the *Brunner/Oyler* test, the Debtor should explore payment alternatives, such as the William D. Ford Direct Loan program. See, e.g., *Murphy v. CEO/Mgr., Sallie Mae (In re Murphy)*, 305 B.R. 780, 799 (Bankr. E.D. Va. 2004). Nevertheless, “the failure to explore such programs, especially if the programs offer no effective relief, is not per se an indication of a lack of good faith.” *Cota v. U.S. Dep’t of Educ. (In re Cota)*, 298 B.R. 408, 420 (Bankr. D. Ariz. 2003). Here, the Debtor was aware of the program, having discussed her alternatives with her attorney. Because she could not afford even the \$325.40 payment, testifying that it had been difficult to make the prior \$255.10 payment, the Debtor did not enroll in the program. Her failure to enroll does not indicate a lack of good faith.

Likewise, the court believes that the Debtor has made a good faith effort to repay her Loans with respect to the other factors. The court has already determined that the Debtor’s financial woes are, in large part, due to circumstances beyond her control, including her need for expensive medications to control medical ailments and her ex-husband’s failure to pay the child support he owes. Additionally, the court has examined, in detail, the Debtor’s attempts to maximize her income and minimize her expenses, finding that she has had no available funds to repay the Loans.

With respect to the length of time after the Loans first became due and the Debtor filed her Complaint, the Debtor acted in good faith. The Debtor’s Loans entered repayment in 1997, and for six years, she consistently made the required monthly payments. In 2003, the Debtor was making payments

of \$255.10, until she received a letter dated May 28, 2003, advising her that her payments were increasing to \$541.28, based upon her income. *See* TRIAL EX. 29. Upon receipt of this letter, the Debtor testified that she called Sallie Mae to see if her payments could again be lowered, but she was told that she did not qualify for a lower payment. *See also* TRIAL EX. 29. The only assistance offered at that time was a “verbal forbearance” for three months, but if she accepted it, her payments beginning on September 26, 2003, would be raised to \$640.14 per month. It was only after her monthly payment more than doubled that the Debtor stopped making payments on the Loans. Furthermore, she waited an additional year before filing for bankruptcy and attempting to discharge the Loans.

As for her other debts, the Debtor has no secured debt, and her now-discharged unsecured debt, minus the student loans, was \$18,057.26. Of that amount, \$15,857.26 was attributed to two credit cards, which the Debtor testified she used to pay for clothing, groceries, daycare, utilities, gasoline, and other various living expenses. Her Schedules do not reflect luxury items that she wants to retain, and there is no evidence that she has spent money frivolously. Although the vast majority of her debt is comprised of the Loans, under the facts of this case, the court does not believe that this represents an indication of the Debtor’s lack of good faith.

Similarly, there is no question that the Debtor received a benefit, in the form of her degrees, from the Loans. Because the Debtor is employed in her chosen field, she is utilizing the knowledge that she obtained during her time in college, which is directly attributable to the loan money she received. Nevertheless, this benefit, alone, does not weigh against the Debtor, especially in light of the overwhelmingly favorable factors weighing in her favor.

In summary, based upon the evidence presented, in conjunction with its analysis under the *Brunner/Oyler* test, the court finds the Debtor cannot, based upon her current income and expenses, maintain a minimal standard of living for her family and that she has made a good faith effort to repay the Loans. Additionally, the court believes that additional circumstances exist to indicate that this state of affairs is likely to persist for a significant portion of the repayment period, such that repayment of the full amount of the Debtor's student loan debt would impose an undue hardship. Nevertheless, the court finds that, after scheduled pay increases and milestone events involving her son, it would not pose an undue hardship for the Debtor to repay a portion of the Loans.

III

In cases involving discharge of a student loan, “an all-or-nothing treatment thwarts the purpose of the Bankruptcy [Code].” *Hornsby*, 144 F.3d at 439. To remedy this problem, the Sixth Circuit determined that

[w]here a debtor's circumstances do not constitute undue hardship, some bankruptcy courts have thus given a debtor the benefit of a “fresh start” by partially discharging loans, whether by discharging an arbitrary amount of the principal, interest accrued, or attorney's fees; by instituting a repayment schedule; by deferring the debtor's repayment of the student loans; or by simply acknowledging that a debtor may reopen bankruptcy proceedings to revisit the question of undue hardship.

Hornsby, 144 F.3d at 440. Accordingly, “when a debtor does not make a showing of undue hardship with respect to the entirety of her student loans, a bankruptcy court may— pursuant to its § 105(a)[²⁰]

²⁰ Section 105(a) of the Bankruptcy Court defines the power of the court as follows:

(continued...)

powers—contemplate granting the various forms of relief discussed in *Hornsby*, including granting a partial discharge of the debtor’s student loans.” *Miller*, 377 F.3d at 620. Nevertheless, “partial discharges of student loans for reasons other than undue hardship are impermissible and are at odds with the ‘express language of the Bankruptcy Code.’” *Fields v. Sallie Mae Servicing Corp. (In re Fields)*, ___ B.R. ___, 2005 Bankr. LEXIS 505, at *14, 2005 WL 756570, at *5 (B.A.P. 6th Cir. Apr. 5, 2005) (quoting *Miller*, 377 F.3d at 620). Therefore, “the requirement of undue hardship must always apply to the discharge of student loans in bankruptcy—regardless of whether a court is discharging a debtor’s student loans in full or only partially.” *Miller*, 377 F.3d at 622.

As previously stated, the court agrees that it would be an undue hardship for the Debtor to repay the Loans in their entirety. The Debtor has made good faith efforts to repay the Loans. Furthermore, based upon the findings set forth in this Memorandum, the court acknowledges that, presently, the Debtor does not have the ability to service the Loans, even at a reduced rate. Her current budgets indicate that she, more often than not, operates in a deficit, and there does not appear to be any further “belt-tightening” to be done. The court’s decision with respect to its finding centers entirely around the fact that the Debtor

²⁰(...continued)

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C.A. § 105(a) (West 2004). Section 105 provides bankruptcy courts with the ability and “power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” *Casse v. Key Bank Nat’l Ass’n (In re Casse)*, 198 F.3d 327, 336 (2d Cir. 1999) (quoting 2 COLLIER ON BANKRUPTCY ¶ 105-5 to -7 (Lawrence P. King ed., 15th ed. 1999)). Nevertheless, “§ 105(a) is not without limits, may not be used to circumvent the Bankruptcy Code, and does not create a private cause of action unless it is invoked in connection with another section of the Bankruptcy Code.” *In re Rose*, 314 B.R. 663, 681 n.11 (Bankr. E.D. Tenn. 2004) (citing, among others, *Greenblatt v. Richard Potasky Jeweler, Inc. (In re Richard Potasky Jeweler, Inc.)*, 222 B.R. 816, 829 (S.D. Ohio 1998) and *Yancy v. Citifinancial, Inc. (In re Yancy)*, 301 B.R. 861, 868 (Bankr. W.D. Tenn. 2003)). Instead, the court may only use § 105(a)’s equitable powers “in furtherance of the goals of the [Bankruptcy] Code.” *Childress v. Middleton Arms, L.P. (In re Middleton Arms, L.P.)*, 934 F.2d 723, 725 (6th Cir. 1991).

will receive scheduled pay increases over the next fourteen years, which fall within the William D. Ford Direct Loan program's twenty-five year repayment term, and because certain expenses involving her minor son will dissipate within the next few years. Consequently, any payments will be deferred until such time as the Debtor will have the ability to make payments on a consistent basis.

Therefore, in order to provide the Debtor with her "fresh start," while at the same time holding her responsible for the portion of her student loans that she is reasonably capable of paying, the court will fashion its own repayment plan, based upon equitable principles. *See Hornsby*, 144 F.3d at 438-40. The first aspect of this plan focuses on the amount to be repaid. As previously stated, the total outstanding amount due on the Loans, as of the date of trial, was \$94,319.44. *See* note 4, *supra*. This balance is accruing interest at a fixed rate of 8.0% per annum, which translates to \$19.78 per diem. At the time she consolidated her Loans, the total balance was \$55,460.11. *See* TRIALEX. 1. The Debtor made payments totaling \$7,905.40, of which only \$287.72 was applied towards the principal balance. In essence, because the Debtor's income was not higher, the payments she was required to make barely serviced the interest being charged her. Therefore, the court finds that it is appropriate to discharge all of the interest accrued above the original \$55,460.11 that the Debtor consolidated. Furthermore, the court will deduct from that original amount the \$7,905.40 that the Debtor paid in good faith from 1997 until 2003. Accordingly, all amounts owed on the Loans above \$47,554.71 will be discharged.

Next, with respect to the interest, the court finds that the Debtor requires some "breathing room" from the accrual of interest, late fees, or other charges, over and above the principal amount. The Debtor's Loans are accruing interest at 8.0%, which the court believes is excessive. Interest rates for consolidated

loans disbursed in 1996, when the Debtor consolidated hers, are figured by adding the 91-day Treasury bill rate to 2.5%, with a maximum interest rate of 8.25%. *See* 34 CFR 685.202(A)(1)(i). The Treasury bill rate relied upon by Federal Student Aid for the period between July 1, 2004, and June 30, 2005, was 1.07%.²¹ In light of the current Department of Education Regulations, the court modifies the rate of interest upon which the Loans may accrue to a fixed rate of 3.57%. Interest shall not, however, accrue on the nondischargeable \$47,554.71 for a period of seven years, and interest may not be capitalized at any time. The Defendant may begin accruing the 3.57% interest on the Debtor's unpaid principal balance owing as of September 15, 2012, pursuant to the payment schedule hereinafter set by the court.

Finally, the court holds that repayment of the nondischargeable portion of the Debtor's Loans shall not commence until the Debtor's circumstances have changed such that she has additional income. Many circumstances are due to change for the Debtor in the next five years. By 2010, the Debtor will have received pay increases totaling \$330.50 pre-tax, per month. Additionally, during that time, her son will, at some point, stop wearing his braces, which will free up \$145.00 per month. The Debtor should also be able to give up her land line telephone, and she will no longer be responsible for paying her son's school expenses, since he will be graduating from high school. At that point, the Debtor can also forgo the additional life insurance policies that she carries in order to assist her parents in the event that they are required to care for her son. These expenses total \$280.82.

Nevertheless, this reduction of expenses presumes that nothing new arises, so the court will also consider inflation as a factor in calculating the future value of money. *See, e.g., Mitcham v. United States*

²¹ This information is available on Federal Student Aid's website, found at <http://www.fp.ed.gov>.

Dep't of Educ. (In re Mitcham), 293 B.R. 138, 146 (Bankr. N.D. Ohio 2003). Additionally, the court is aware that, in the Debtor's case, any future pay increases will be subject to the mandatory 5% retirement imposed by the State of Tennessee. Taking all factors into account, the court will direct that the Debtor's payments commence on September 15, 2010, at which time, the Defendant shall be responsible for providing the Debtor with a payment invoice each month, including the address at which all payments are to be made and indicating a due date of the 15th day of each month.

Beginning September 15, 2010, through August 15, 2012, the Debtor's payments shall be fixed at \$300.00 per month. Beginning on September 15, 2012,²² after the Debtor receives her ten-year anniversary pay increase, her payments shall increase to \$400.00 per month, continuing through August 15, 2014. Beginning on September 15, 2014, and continuing through August 15, 2017, the Debtor's payments shall be \$500.00 per month. From September 15, 2017, until the balance is paid in full, or through August 15, 2026, the Debtor's payments shall be \$600.00 per month. At that point, if any unpaid balance remains, it shall be discharged.²³

²² Payments on and after this date shall include interest on the unpaid principal balance owing on September 15, 2012, at the rate of 3.57% per year.

²³ Of course, nothing in this Memorandum precludes the Debtor from paying more than the scheduled amount, or in the event that she makes substantial commissions from her real estate business, paying the balance in full.

A judgment consistent with this Memorandum will be entered.

FILED: May 5, 2005

BY THE COURT

s/ Richard Stair, Jr.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 04-33687

KRISTI MICHELLE HENDRIX

Debtor

KRISTI MICHELLE HENDRIX

Plaintiff

v.

Adv. Proc. No. 04-3197

EDUCATIONAL CREDIT MANAGEMENT
CORPORATION as ASSIGNEE OF SALLIE
MAE SERVICING CORPORATION and
TENNESSEE STUDENT ASSISTANCE CORPORATION

Defendants

J U D G M E N T

For the reasons stated in the Memorandum filed this date containing findings of fact and conclusions of law as required by Rule 52(a) of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by Rule 7052 of the Federal Rules of Bankruptcy Procedure, it is ORDERED, ADJUDGED, and DECREED as follows:

1. All educational loan obligations owed by the Plaintiff Kristi Michelle Hendrix to the Defendant Educational Credit Management Corporation in excess of \$47,554.71 are discharged pursuant to the undue hardship provisions of 11 U.S.C.A. § 523(a)(8) (West 2004).

2. The \$47,554.71 nondischargeable obligation of the Plaintiff owed the Defendant shall be paid as follows:

A. Beginning on September 15, 2010, and continuing through August 15, 2012, the Plaintiff's payments shall be \$300.00 per month, with each payment applied exclusively to reduce the unpaid principal balance.

B. Beginning on September 15, 2012, and continuing through August 15, 2014, the Plaintiff's payments shall increase to \$400.00 per month, with each payment to include interest at the rate of 3.57% per annum on the unpaid principal balance.

C. Beginning on September 15, 2014, and continuing through August 15, 2017, the Plaintiff's payments shall increase to \$500.00 per month, with each payment to include interest at the rate of 3.57% per annum on the unpaid principal balance.

D. Beginning on September 15, 2017, and continuing until the unpaid principal balance is paid in full or through August 15, 2026, whichever occurs first, the Plaintiff's payments shall increase to \$600.00 per month, with each payment to include interest at the rate of 3.57% per annum on the unpaid principal balance. Any balance due on the Plaintiff's \$47,554.71 nondischargeable educational loan outstanding after her August 15, 2026 payment shall be discharged.

3. The Defendant shall, by September 1, 2010, and by the first day of each month thereafter while the Plaintiff is obligated to make the payments set forth herein, provide the Plaintiff with a payment invoice evidencing the amount of the monthly payment that is owing and its due date on the 15th day of the month, the unpaid balance owing on the \$47,554.71 nondischargeable obligation, the total amount of interest paid

after interest begins to accrue on September 15, 2012, and the address at which the payment is to be made.

4. The Plaintiff shall immediately notify the Defendant of any change in her address.

ENTER: May 5, 2005

BY THE COURT

s/ Richard Stair, Jr.

RICHARD STAIR, JR.

UNITED STATES BANKRUPTCY JUDGE