SO ORDERED.

SIGNED this 23rd day of September, 2016.

Janice Miller Karlin
United States Chief Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:
Paula Maxine Edwards,

Debtor.

Case No. 15-22113-7

Paula Maxine Edwards,

Plaintiff,

vs.

Navient Solutions, Inc. and
U.S. Department of Education,

Defendants.

Adversary No. 15-6100

Order Granting Motion for Summary Judgment of the U.S. Department of Education

This adversary proceeding is before the Court on the motion for summary judgment of Defendant U.S. Department of Education (DoEd), seeking judgment on

Plaintiff/Debtor Paula Maxine Edwards' claim under 11 U.S.C. § 523(a)(8).[1] Section 523(a)(8) generally states that educational loans are excepted from a Chapter 7 discharge unless the debt imposes "an undue hardship on the debtor and the debtor's dependents."

The facts are not in dispute here. In fact, although the DoEd set forth 49 undisputed material facts in its memorandum, Debtor opted not to dispute a single one. Debtor is a single mother of two children, supporting her family on a limited school teacher's salary. Despite this, however, she admits that she has disposable income—enough to take a $500 to $700 annual family vacation and to expend $950 a month for food and housekeeping supplies including eating out twice a week, and admits that she can afford to pay up to $100 a month on her student loan debt to the DoEd. Because of these admissions, and the fact that the DoEd established that Debtor is eligible for an income based repayment program requiring her to pay only about $20 a month, Debtor has not shown that she has made good faith attempts to repay her student loans. Without this showing, Debtor cannot meet her burden to establish the undue hardship required by § 523(a)(8), and the Department of Education's motion for summary judgment on her claim must be granted.

I. Background and Findings of Fact

Debtor filed her Chapter 7 bankruptcy petition in October 2015, and received her discharge in March 2016. She has no secured debt at all, but scheduled a

[1] Doc. 48.

staggering amount of unsecured debt—nearly $188,000. Of this total, she claims about $151,000 in student loans.[2]

Debtor's lot in life is not an unfamiliar story. She is a 36 year old single mother of two daughters who are fifteen and six years old. She receives some child support from the father of her older child,[3] but receives none from the father of her younger child. She drives an older car: a 2004 Hyundai Sonata, worth only $1495.

Debtor is a school teacher. She has worked for as a para-professional and then an elementary school teacher for about fifteen years (teaching for the last five). Despite her length of service, Debtor earns only about $30,000 per year. In fact, the maximum earning potential for Debtor in this school district is only $41,000, and that salary is available only after 21 years of service. Debtor has no other earned income, but typically receives a federal tax refund due in part to an earned income credit. Although she contends that refund is between $3500 and $4500 per year, she

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[2] The remainder of Debtor's unsecured debt consisted mostly of credit card debt, but there was also a small amount of medical and utility debt. Her bankruptcy appears to have been instigated, at least in part, by some of that credit card debt, as prior to filing she was being garnished by one of her credit card creditors. All that credit card and other debt—over $35,000, has now been discharged.

[3] Although Debtor testified in her deposition (attached to the summary judgment motion) that she was entitled to receive $212 a month from the father who does pay support, and her Schedule I shows she receives $183 a month from child support, her Statement of Financial Affairs (SOFA) indicated she had in fact received $5,524 in child support as of the October 2, 2015 petition date, which would equate to more than $600 a month for the first 9 months of that year. *See* Doc. 1, SOFA Question 2. In addition, although it does not play a part in this decision, her Form B 22 (Doc. 4. at line 4) states she regularly receives $785 a month in "regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates" on top of her $2,723 a month gross wages.

actually received $5,173 the year before filing. Debtor has no mental or physical disability and does not claim her children have any special needs.

Debtor started her education at a local community college but graduated from Newman University with a Bachelor of Science for Elementary Education. She took out student loans to fund this education between 2002 and 2008. Presumably like many borrowers, Debtor understood that the student loans were not a gift, but she did not appreciate how large the total debt would grow. Debtor does not even understand how much she owes in total or to which creditors she owes her student loan debt. But undisputed records show that Debtor owes the DoEd nearly $72,000 ($60,631.51 in principal and $11,282.25 in interest).[4] Although Debtor is not presently considered in default on her student loan debt to the DoEd, she has only paid a total of $72.36 on these loans since she consolidated them in 2012.

The federal student loan program—the William D. Ford Federal Direct Loan Program—offers multiple repayment plans for borrowers. Debtor's loans with the DoEd have been consolidated into Direct Consolidation Loans, and one of the options available to her to repay those loans is the Revised Pay as You Earn plan (called "REPAYE"). The REPAYE plan was instituted in December 2015 and is the most flexible repayment plan available under the Direct Loan Program. Payments under REPAYE are generally ten percent of discretionary income, and after twenty

[4] Debtor stipulated in the pretrial order that she also has four loans with Defendant Navient Solutions, Inc. ("Navient"), dating from 2001 to 2008, with a total balance of $65,837.53. Doc. 46 at p. 2–3. Navient has not moved for summary judgment, and Debtor's § 523(a)(8) claim against Navient is set for trial in November, 2016.

years of repayment at this rate, the remaining balance on undergraduate loans is forgiven under the plan. Under current regulations, the IRS may consider the forgiven portion of the loan as taxable income.

Based on the amount owed by Debtor, her adjusted gross income, and two dependents, Debtor's monthly payment under the REPAYE program would be $20.59. As a requirement of the REPAYE plan, Debtor would have to provide an annual income driven repayment plan recertification form, which requires that Debtor provide her borrower information, loan status, and verification of adjusted gross income and family size. Under the REPAYE plan, therefore, Debtor's repayment amount would be adjusted annually, based on her then income and family size. It should take no longer than thirty minutes for a borrower to complete the information online and submit it to the DoEd. If the Direct Loan Program does not receive renewal income information from the borrower, however, the borrower will generally default to the standard repayment program for their loans.

In addressing the $20.59 monthly payment that would be required by Debtor under the REPAYE plan, the DoEd lists the following as examples of Debtor's discretionary expenses from which she could make her monthly payment: a cable television and internet bill of $110 per month, gifts to charity of $150 per year, gifts to students of approximately $200 per year, purchases of beer and wine, with more spent during football season, eating out twice a week, attending an exercise class that costs $10 per week, entertainment for her children, such as concerts, that cost about $150 per year, and an annual family vacation that costs about $500 to $700

per year. Debtor admitted at her deposition that she could afford to pay up to $100 a month to the DoEd on an income contingent repayment plan.

II. Conclusions of Law

An adversary proceeding to determine the dischargeability of particular debts is a core proceeding under 28 U.S.C. § 157(b)(2)(I), over which this Court may exercise subject matter jurisdiction.[5]

A. Legal Standard for Assessing a Motion for Summary Judgment

Federal Rule of Civil Procedure 56 requires a court to grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."[6] An issue is 'genuine' if "there is sufficient evidence on each side so that a rational trier of fact could resolve the issue either way."[7] 'Material facts' are those that are "essential to the proper disposition of [a] claim" under applicable law.[8] When analyzing summary judgment, the Court draws all reasonable inferences in favor of the non-moving party.[9]

The party moving for summary judgment bears the initial burden of

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[5] 28 U.S.C. § 157(b)(1) and § 1334(b).

[6] Fed. R. Civ. P. 56. Rule 56 is incorporated and applied in bankruptcy courts via Federal Rule of Bankruptcy Procedure 7056.

[7] *Thom v. Bristol-Myers Squibb Co.*, 353 F.3d 848, 851 (10th Cir. 2003) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

[8] *Id.*

[9] *Taylor v. Roswell Indep. Sch. Dist.*, 713 F.3d 25, 34 (10th Cir. 2013).

demonstrating—by reference to pleadings, depositions, answers to interrogatories, admissions, or affidavits—the absence of genuine issues of material fact.[10] In attempting to meet that standard, a movant that does not bear the ultimate burden of persuasion at trial need not negate the other party's claim; rather, the movant need simply point out to the court a lack of evidence for the other party on an essential element of that party's claim.[11] If the movant carries this initial burden, the nonmovant that would bear the burden of persuasion at trial may not simply rest upon its pleadings; the burden shifts to the nonmovant to go beyond the pleadings and "set forth specific facts" that would be admissible in evidence in the event of trial from which a rational trier of fact could find for the nonmovant.[12]

To accomplish this, sufficient evidence pertinent to the material issue "must be identified by reference to an affidavit, a deposition transcript, or a specific exhibit incorporated therein."[13] In addition, under the District of Kansas Local Bankruptcy Rules, "[t]he court will deem admitted . . . all material facts contained in the statement of the movant unless the statement of the opposing party specifically controverts those facts."[14]

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[10] *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

[11] *Thom*, 353 F.3d at 851 (citing *Celotex,* 477 U.S. at 325).

[12] *Id.* (citing Fed. R. Civ. P. 56).

[13] *Diaz v. Paul J. Kennedy Law Firm,* 289 F.3d 671, 675 (10th Cir. 2002).

[14] D. Kan. LBR 7056.1(a) and *E.E.O.C. v. Lady Baltimore Foods, Inc.*, 643 F. Supp. 406, 407 (D. Kan. 1986).

Debtor filed an opposition brief to the DoEd's motion for summary judgment, but did not attempt to controvert any of the facts contained therein. As a result, the Court deems admitted all material facts contained in the motion for summary judgment, all of which are supported by the record. The analysis below focuses on the sole issue of whether the uncontroverted facts entitle the DoEd to judgment as a matter of law.[15]

B. Plaintiff's § 523(a)(8) Claim

Although a Chapter 7 discharge is generally designed to be a relatively quick method of discharging debts and providing debtors a fresh start, there are certain debts that are not dischargeable. Under 11 U.S.C. § 523(a)(8), a Chapter 7 discharge does not discharge debts for educational loans[16] "unless excepting such debt from discharge . . . would impose an undue hardship on the debtor and the debtor's dependents." The Bankruptcy Code does not define the phrase "undue

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[15] *See ReVest, LLC v. Long (In re Long)*, No. 09-12827, 2011 WL 976460, at *1 (Bankr. D. Kan. Mar. 1, 2011) ("Once the Court determines which facts are not in dispute, it must then determine whether those uncontroverted facts establish a sufficient legal basis upon which to grant movant judgment as a matter of law.") (citing *E.E.O.C. v. Lady Baltimore Foods*, 643 F. Supp. at 407).

[16] Specifically, educational loans are:

> (A) (i) 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
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> (ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or
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> (B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual[.]

There is no dispute that the DoEd loans that are the subject of Debtor's Complaint fall within this definition.

hardship."

The Tenth Circuit, however, has adopted the three-part *Brunner* test for analyzing whether a debtor has shown that his or her student loan debt should be discharged because it would cause undue hardship.[17] Under this test, the debtor bears the burden of proving, by a preponderance of the evidence: that the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living for herself or her dependents if forced to repay the loans; that additional circumstances exist indicating this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and that the debtor has made good faith efforts to repay the loans.[18] If the court finds the debtor has failed to prove any of these three elements, the inquiry ends and the student loan is not dischargeable.[19] As noted by the Tenth Circuit Bankruptcy Appellate Panel, the Tenth Circuit "makes it clear that it disdains 'overly restrictive' interpretations of this test, and concludes that it should be applied to further the Bankruptcy Code's goal of providing a 'fresh start' to the honest but unfortunate debtor."[20] In addition, regarding nondischargeability proceedings generally, "exceptions to discharge are narrowly construed, and because of the fresh start objectives of bankruptcy, doubt

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

[18] *Id.* at 1309–10.

[19] *Id.* at 1307.

[20] *Alderete v. Educ. Credit Mgmt. Corp.*, 308 B.R. 495, 503 (10th Cir. BAP 2004) (internal quotation omitted).

as to the meaning and breadth of a statutory exception is to be resolved in the debtor's favor."[21]

This Court has had prior occasion to apply the *Brunner* test. In *Buckland v. Educational Credit Management Corp. (In re Buckland)*,[22] the Court assessed whether the debtor carried his burden to show that his student loans should be discharged because they would cause undue hardship. Regarding the third prong of the *Brunner* test, the Court stated:

> The third prong of the *Brunner* test requires the Court to determine if the debtor has made a good faith effort to repay the loan as measured by his or her efforts to obtain employment, maximize income and minimize expenses. The inquiry into a debtor's good faith should focus on questions surrounding the legitimacy of the basis for seeking a discharge. A finding of good faith is not precluded by a debtor's failure to make a payment. Undue hardship encompasses a notion that a debtor may not willfully or negligently cause his own default, but rather his condition must result from factors beyond his control.[23]

The Court also noted that a debtor's willingness to participate in income based repayment programs was "an important factor to consider in determining whether a debtor has made a good faith effort to repay a student loan debt."[24]

Ultimately, the Court found in *Buckland* that the student loan debt was not

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[21] *DSC Nat'l Properties, LLC v. Johnson (In re Johnson)*, 477 B.R. 156, 168 (10th Cir. BAP 2012) (internal quotations and alterations omitted).

[22] 424 B.R. 883 (Bankr. D. Kan. 2010).

[23] *Id.* at 889–90 (internal quotation marks and citations omitted).

[24] *Id.* at 890.

dischargeable under § 523(a)(8).[25] Although the Court determined that the first prong of the *Brunner* test was satisfied due to that debtor's unemployment and inability to pay the student loans and maintain a minimal standard of living, the Court then found that his current financial situation was not likely to continue because of improving health and good prospects for gainful employment.[26] The sticking point for the Court was the third prong of the *Brunner* test. Significantly, the Court found that debtor had not made a good faith effort to maximize income,[27] a circumstance not present here. But the Court also noted that the debtor's "refusal to consider [income based repayment programs] supports a finding that he has not made a good faith effort to repay the student loan debt," remarking that the fact that payments would be spread out twenty five years (and into the debtor's early seventies) was a natural result of taking out loans later in life.[28] And regarding debtor's concern about potential future tax consequences because of forgiven debt, the Court called the concern "legitimate, albeit somewhat speculative," ultimately concluding that a desire to avoid repaying any of [the debtor's] student loan debt because there is a possibility of negative tax consequences several years into the future does not support a finding of good faith."[29]

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[25] *Id.* at 895.

[26] *Id.* at 891–92.

[27] *Id.* at 893.

[28] *Id.* at 894–95.

[29] *Id.* at 895.

In this case, the DoEd expressly admits that it "does not contend that [Debtor] has the assets or income to repay [her] entire student loan debt with interest."[30] Rather, the DoEd moves for summary judgment based on the third prong of the *Brunner* test, arguing that by Debtor's failure to take advantage of repayment programs offered to her, she cannot, as a matter of law, demonstrate that she is making a good faith effort to repay her student loans.

The uncontroverted facts show that, while Debtor's income is certainly low for a family of three, she admits that she could afford to pay up to $100 a month for her student loans on an income contingent repayment plan. Again, this is uncontroverted and Debtor's own admission. And even if she had not so admitted, additional uncontroverted facts show that Debtor admitted under oath that she has several discretionary expenses in her budget. And while this Court always hesitates to judge how a debtor budgets his or her limited income (i.e., one debtor may prefer to save money by limiting the food budget, while another may choose to instead take the bus to work to save on gas),[31] we are not here dealing with essentials like food and transportation.

For example, her Schedule I shows she spends $950 a month for food and housekeeping supplies, when the U.S. Trustee Program's means testing figures

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[30] Doc. 49 at 1.

[31] And the Court recognizes that the good faith inquiry "should not be used as a means for courts to impose their own values on a debtor's life choices." *Polleys*, 356 F.3d at 1310.

from the IRS indicate a typical family of 3 would spend $725.[32] She admits she eats out about twice a week and regularly has sufficient income to buy beer and wine. She has enough to spend $150 a year on concerts and $10 a week to spend on fitness classes. Most significantly, Debtor and her extended family take a yearly vacation, which usually costs her between $500 to $700 a year.[33] Despite all this, Debtor has paid only $72.36 since 2012 on the entirety of her loan balance with DoEd.

The uncontroverted facts also show that Debtor is eligible for the REPAYE plan under which she would pay only $20.59 a month for her debt to the DoEd. Even without her admission that she can pay up to $100 a month, the uncontroverted facts certainly show that there is enough discretionary income in her budget to make this minimal payment. And although the Tenth Circuit has repeatedly stated that "participation in a repayment program is not required to satisfy the good-faith prong of the *Brunner* test,"[34] it is hard to imagine how Debtor

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[32] The U.S. Trustee Program's means testing figures are available, as of the date of this opinion, at https://www.justice.gov/ust/means-testing. The means testing figures for a family of 3 are $660 for food and $65 for housekeeping supplies.

[33] In her deposition, Debtor also testified that she was able, without contribution from her child's father, to find the money to pay $6,500 for braces, $1,000 for mouth surgery, and $1,000 for retainers for her older daughter. Doc. 49, Exh. D, p.37. The Court has no doubt this treatment was necessary, but it also shows that Debtor does have the ability to find a way to pay for unusual expenses even while paying for totally discretionary items.

[34] *Alderete v. Educ. Credit Mgmt. Corp. (In re Alderete)*, 412 F.3d 1200, 1206 (10th Cir. 2005). Despite this pronouncement, the Court in *Alderete* affirmed the bankruptcy court's conclusion that debtors had not shown they made a good faith effort to repay their student loans when they "had made only minimal payments on their student loans, had almost no debt other than these loans, and failed to consider alternate repayment options prior to filing bankruptcy." *Id.* The *Alderete* court even noted that the bankruptcy court had "place[d] significant weight on the fact that the [debtors] did not consider applying for the

could satisfy the good faith inquiry when she has not applied for the REPAYE program despite admitting she could afford its payments.[35] As other courts have noted, income based repayment programs are "an important factor to consider in determining whether a debtor has made a good faith effort to repay a student loan debt."[36] Based on the undisputed facts here, and in light of myriad cases so holding on similar facts,[37] Debtor cannot meet the third prong of the *Brunner* test. As a

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Income Contingent Repayment ("ICR") Plan offered by the Ford Program, which would have greatly reduced their monthly loan payments." *Id*.

[35] *See. e.g.*, *Norris v. Educ. Credit Mgmt. Corp. (In re Quarles)*, No. 02-40709-7, 2004 WL 2191608, at *7 (Bankr. D. Kan. Apr. 22, 2004) ("Undue hardship encompasses a notion that the debtor may not willfully or negligently cause his own default, but rather his condition must result from factors beyond his control." (internal quotation marks omitted)). In other words, Debtor here can control this situation, via the REPAYE plan.

The Court also notes that the facts here are drastically different than *Quarles*. There, this Court concluded that the debtor's rejection of an income based repayment program was not enough to show a lack of good faith. In *Quarles*, the debtor would have been required to pay $126.70 per month under the income based plan, but the facts established that the debtor and her spouse did not "have sufficient income to pay even this amount." *Id.* at *8. In addition, the debtor in that case suffered from severe mental illness, and two expert witnesses testified she would be "significantly harmed" by the added stress of an extended repayment and the "significant tax liability" of a forgiven debt occurring right as the debtor turned 65 years old. *Id.* at *9.

[36] *Johnson v. Educ. Credit Mgmt. Corp. (In re Johnson)*, No. 15-2631-JAR, 2016 WL 827752, at *6 (D. Kan. Mar. 2, 2016) ("Following the *Alderete* decision, bankruptcy courts in the Tenth Circuit have acknowledged that a debtor's willingness to consolidate his loan under [income based repayment programs] is an important factor to consider in determining whether a debtor has made a good faith effort to repay a student loan debt. Courts in other jurisdictions have similarly recognized the importance of consideration of alternative loan repayment programs in determining whether a debtor has made a good faith effort to repay").

[37] *See, e.g.*, *Educ. Credit Mgmt. Corp. v. Frushour (In re Frushour)*, 433 F.3d 393, 402 (4th Cir. 2005) (holding debt not discharged where debtor made several payments, but did not seriously consider the income contingent repayment plan); *Robinson v. Educ. Credit Mgmt. Corp. (In re Robinson)*, 416 B.R. 275, 282 (Bankr. E.D. Va. 2009) (holding debt not discharged when debtor failed to maximize income, did not make good faith attempts to repay loan obligations, and did not consider income based loan repayment program that

result, she is not entitled to discharge of her student loan debt to the DoEd.[38]

Debtor points to the potential future tax consequences of entering the REPAYE program, and argues this should also be weighed in the good faith analysis. The DoEd acknowledges that under current regulations, the IRS may consider any forgiven portion of Debtor's student loans as taxable income. As many courts—including this one—have noted, however, a potential future tax event "is not dispositive of whether [an income based repayment program] represents a viable avenue for repayment of student loan debt."[39] And, as noted by other courts,

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would reduce monthly payments to zero); *Gregory v. U.S. Dep't of Educ. (In re Gregory)*, 387 B.R. 182, 189 (Bankr. N.D. Ohio 2008) (holding debt not discharged when debtor made no real effort to repay student loans and had potential administrative remedy available in income-based repayment plan); *Storey v. Nat'l Enter. Sys. (In re Storey)*, 312 B.R. 867, 875 (Bankr. N.D. Ohio 2004) (holding debt not discharged when debtor failed to maximize professional resources with a higher paying job and failed to participate in repayment program); *Stupka v. Great Lakes Ed. (In re Stupka)*, 302 B.R. 236, 245 (Bankr. N.D. Ohio 2003) (holding debt not discharged when debtor did not use best efforts to minimize expenses and did not attempt to work with the income based repayment program).

[38] Failure to meet any prong of the *Brunner* analysis results in a finding of nondischargeability. *Polleys*, 356 F.3d at 1307 ("Under the *Brunner* analysis, if the court finds against the debtor on any of the three parts, the inquiry ends and the student loan is not dischargeable.").

[39] *Graney v. U.S. Dep't of Educ. (In re Graney)*, No. 12-41489-789, 2013 WL 2362254, at *3 (Bankr. E.D. Mo. Mar. 20, 2013); *see also Educ. Credit Mgmt. Corp. v. Jesperson*, 571 F.3d 775, 782 (8th Cir. 2009) (noting that "cancellation [of student loan debt] results in taxable income only if the borrower has assets exceeding the amount of debt being cancelled," and rejecting the argument that a potential future tax bill was a reason for rejecting income based repayment programs); *Educ. Credit Mgmt. Corp. v. Stanley (In re Stanley)*, 300 B.R. 813, 818 n.8 (N.D. Fla. 2003) ("Forecasting such a tax liability under whatever tax laws will be in effect in 25 years would be sheer speculation. Forecasting the effect any such liability would have on [the debtor's] actual standard of living at that time would be even more speculative."); *Buckland*, 424 B.R. at 895 (concluding that the debtor's concern about future tax consequences was speculative because it is unknown whether there would be tax consequences or what debt would remain to forgive); *Nielsen v. ACS, Inc. (In re Nielsen)*, No. 09-04888-als7, 2012 WL 649929, at *6 (Bankr. S.D. Iowa Feb. 28, 2012) ("Because no one, including the Plaintiff, can know what his financial situation will be in

if such a future tax event is realized, the appropriate time to deal with that liability is in the future, when the liability is incurred and based on the facts available at that time.[40] And finally, Debtor has put forth no facts indicating she has, at any point, even considered these future tax consequences.[41]

Debtor makes one final argument in response to the DoEd's motion for summary judgment, arguing that because the regulations surrounding income based repayment programs have changed over time, and may change in the future, the Court should not rely on the current REPAYE program as a valid basis for Debtor's repayment of her student loans. But again, the Court cannot speculate as to what may come in the future, and can only assess what is in front of it right now. The uncontroverted facts right now are that Debtor is eligible for income based

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2037, a calculation of any tax liability resulting from debt forgiveness is impossible at this time. The mere possibility of tax consequences at the expiration of the 25–year repayment period is not dispositive of the issue of whether the ICRP represents a viable avenue for repayment of student loan debt." (internal citation and footnote omitted)).

[40] *See In re Graney*, 2013 WL 2362254, at *3 ("The Plaintiff alleges that if he entered into an income-contingent loan repayment plan, when he is seventy-three years old—years from now—he would incur a large tax liability resulting from loan forgiveness. However, even if this were true, the proper time to obtain relief from that liability is when it is incurred—not now, and not through discharge in the Main Case. If and when that liability is incurred, the Plaintiff can seek legal options at that time—options that might include a debt repayment program or a debt compromise with the taxing authorities. Or, at that time, the Plaintiff could file for bankruptcy relief again, if his circumstances warrant it. But the fact that a loan forgiveness debt may be incurred significantly down the road is not a reason to discharge the Plaintiff now from the Education Loan Debt under these facts." (internal footnotes omitted)).

[41] *Arroyo v. U.S. Dep't of Educ. (In re Arroyo)*, 470 B.R. 18, 30–31 (Bankr. D. Mass. 2012) (recognizing that tax liability is "not certain to flow from discharge of liability under an ICRP" and that the debtor had not met her burden of proof to show that the tax consequences of participating in an income based repayment program would cause an undue hardship).

repayment, that at her current income and household size, Debtor's repayment would only be $20.59 per month, that Debtor has made almost no effort to repay her Department of Education loans, and that Debtor has disposable income with which she can make the low monthly payment. All federal programs may change—the Bankruptcy Code may change—but the current state of the law requires that Debtor carry the burden of proof to show that repayment of her student loans will cause an undue hardship. Based on the uncontroverted facts, Debtor has not carried this burden, and the DoEd's motion for summary judgment should be granted.

III. Conclusion

The motion for summary judgment[42] of the Department of Education is granted. Debtor's § 523(a)(8) claim again Defendant Navient will proceed to trial as scheduled on the Court's November stacked docket, on November 9–10, 2016, in Topeka, KS.

It is so Ordered.

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[42] Doc. 48.