The relief described hereinbelow is SO ORDERED.

SIGNED this 16th day of July, 2025.

Robert D. Berger
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:

JOHN M. HARGRAVE, and
LAURA A. HARGRAVE,

Debtors.

Case No. 17-21306
Chapter 13

JOHN M. HARGRAVE, and
LAURA A. HARGRAVE,

Plaintiffs,

v.

EDUCATIONAL CREDIT MANAGEMENT CORPORATION (ECMC), INC.; NAVIENT SOLUTIONS, LLC; and **UNITED STATES DEPARTMENT OF EDUCATION,**

Defendants.

Adv. No. 22-6042

ORDER GRANTING IN PART PLAINTIFFS' COMPLAINT TO DETERMINE DISCHARGEABILITY OF STUDENT LOANS UNDER 11 U.S.C. § 523(a)(8)

Plaintiffs, John and Laura Hargrave, filed a complaint to discharge 34 student loans that were incurred individually in the total amount of approximately $250,000[1] because they allege that repaying the loan balance would impose an undue hardship under 11 U.S.C. §§ 523(a)(8) and 1328(a).[2] Plaintiffs' respective loans are held by the defendants: Educational Credit Management Corporation ("ECMC") with a total loan balance of $49,772.16; Navient Solutions with a balance of $85,500; and the United States Department of Education (the "DOE") with a balance of $118,771.03.[3]

At the evidentiary hearing on February 23, 2024, the Court received evidence from the parties and testimony from both Plaintiffs. During Plaintiffs' closing argument, the Court, sua sponte, asked counsel whether the private student loans issued by Navient fell into one of the categories of

[1] Initially, Plaintiffs estimated that their loan balance was closer to $329,190. *See* Pls.' Trial Br., ECF 53 at 2. But, at the evidentiary hearing, Navient's counsel informed the Court, and apparently Plaintiffs themselves, that three of Ms. Hargrave's four loans had been forgiven in a class action lawsuit. Trial Tr., ECF 61 at 16:9–14.

[2] Pls.' Complaint, ECF 1.

[3] Plaintiffs are represented by George Thomas. ECMC is represented by Larry Bork; Navient is represented by David A. Gellis; and the DOE is represented by Steven Brookreson. The Court has jurisdiction over this adversary under 28 U.S.C. § 157(b)(2)(I) and 28 U.S.C. § 1334(b), and venue is appropriate under 28 U.S.C. § 1409.

nondischargeable student loans described in § 523(a)(8).[4] The parties were not prepared to address the question at the hearing, so the Court allowed the parties to file supplemental briefs and responses addressing the Court's inquiry.[5] After the parties filed their briefs and responses, the Court took the issue it raised sua sponte and the issue of undue burden under § 523(a)(8) under advisement.

I. <u>Findings of Fact</u>

Plaintiffs filed their chapter 13 bankruptcy case on July 11, 2017.[6] Their initial chapter 13 plan provided for monthly payments of $775 and directed any dividends to be paid to Plaintiffs' student loan creditors.[7] After financial difficulties in 2021, Plaintiffs amended their plan to reduce their plan payments to $550 per month for the remainder of their case.[8] Over the duration of their plan, Plaintiffs paid a total of $12,457.11 to their student loan creditors.[9] After Plaintiffs were discharged on August 29, 2022,[10] Plaintiffs filed this adversary proceeding on September 29, 2022, to

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[4] Trial Tr., ECF 61 at 172:3–5.

[5] ECF 55.

[6] *See* Case No. 17-21306, ECF 1 (petition).

[7] *See id.* ECF 4 (chapter 13 plan), ECF 24 (confirmation order).

[8] *See id.* ECF 106 (order on amended plan).

[9] *See id.* ECF 125 at 3 (trustee's final report).

[10] *See id.* ECF 123 (order of discharge).

determine dischargeability of 34 student loans that were incurred between 2004 and 2013.[11]

Plaintiffs are in their early-to mid-50s, have no dependents and live in Sedgwick County, Kansas. Mr. Hargrave works full-time as an experimental sheet metal fabricator at an airplane manufacturer,[12] and Ms. Hargrave works as a data processor for a local roofing contractor.[13] In November of 2022, Ms. Hargrave's hours were reduced from 40 hours to roughly 30 hours per week.[14] More recently, in November of 2023, Ms. Hargrave's hours were further reduced from 30 hours to approximately 26 to 28 hours; she does not know if this reduction is permanent.[15] She continues to search for a better job but has not been able to find one due to, she believes, her age.[16]

Plaintiffs reported an Adjusted Gross Income (AGI) of $117,571 on their 2023 tax return,[17] $114,666 on their 2022 tax return,[18] and $96,525 on their 2021 tax return.[19] Although Ms. Hargrave's hours were reduced, their

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[11] Pls.' Compl., ECF 1.

[12] *Id.* at ¶ 11.

[13] *Id.*

[14] Trial Tr., ECF 61 at 54:2–3.

[15] Trial Tr., ECF 61 at 53:25; 54:1, 5.

[16] *Id.*

[17] ECMC's Ex. LL at 398.

[18] ECMC's Ex. BB at 313.

[19] ECMC's Ex. AA at 303.

income is likely to increase again in 2024 as Mr. Hargrave expects to receive a $6.12 hourly cost-of-living raise soon.[20]

Over the years, Plaintiffs have either been employed or fervently sought employment.[21] Plaintiffs have experienced a few layoffs in the last 24 years. Most recently, Ms. Hargrave was laid off in March of 2021,[22] but Mr. Hargrave has not been laid off in at least five to six years.[23]

Plaintiffs anticipate retiring in the next 10 to 15 years but have struggled to save for retirement. Mr. Hargrave, who is 51 years old, estimates that he has over $43,000 saved in a retirement account through his job,[24] but his recent contributions are inconsistent because of their financial struggles.[25] Ms. Hargrave, who is 56 years old, does not have any retirement savings.[26]

Plaintiffs are in somewhat poor health. Mr. Hargrave has multiple cardiovascular diseases including coronary atherosclerosis and high blood pressure.[27] He was recently hospitalized in December of 2023 and diagnosed

[20] ECF 61 at 131:18–19.

[21] *Id.* at 42:1–11.

[22] *Id.* at 56:17.

[23] *Id.* at 106:6–8.

[24] *Id.* at 144:16, 20.

[25] *Id.* at 31:6–12.

[26] *Id.* at 42:12–17.

[27] *Id.* at 27:12–18.

with atrial fibrillation but has yet to schedule further testing because of the perceived expense.[28] He also has a bulging disc in his back that causes numbness to radiate down his legs as well as knee problems that make it difficult for him to walk or stand for long periods of time.[29] In the past, Mr. Hargrave has received injections in his back to help with the pain.[30] And he controls his knee pain by taking over-the-counter pain medications, often taking both ibuprofen and acetaminophen at the same time and repeating the process throughout the day.[31]

Like Mr. Hargrave, Ms. Hargrave also has cardiovascular diseases including a mitral valve prolapse and high blood pressure,[32] and she struggles with knee pain and receives injections to manage the pain.[33] Further, she has dental issues that need to be addressed but has yet to schedule the surgery because of the costs.[34] Both Plaintiffs have mental health conditions: Ms. Hargrave suffers from generalized anxiety disorder

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[28] *Id.* at 135:21–24.

[29] *Id.* at 154:14–22.

[30] *Id.* at 149:1–8.

[31] *Id.* at 147:17–18.

[32] *Id.* at 27:12–13.

[33] *Id.* at 17–18.

[34] *Id.* at 36:6–9.

and Mr. Hargrave suffers from depression.[35] Their testimony at the hearing support these diagnoses.[36]

Overall, their ailments are partially managed by prescriptions and regular doctor visits. Neither Plaintiff has been told that their medical conditions will impede their ability to work in the short-term.

Plaintiffs have medical and dental insurance through Mr. Hargrave's employer. Mr. Hargrave pays $55.58 per week for health insurance premiums and puts approximately $3,000 per year into a health savings account, i.e., flexible savings account ("FSA").[37] Plaintiffs' health insurance has a yearly out-of-pocket maximum of $6,750 per year for families.[38] To pay for medical expenses, they use their FSA funds before paying out-of-pocket. Plaintiffs met their out-of-pocket maximum in late December of 2023 when Mr. Hargrave was hospitalized.[39] However, that does not appear to be a consistent occurrence as Mr. Hargrave testified that 2023 was, perhaps, the first year

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[35] *Id.* at 27:2, 7–8.

[36] Many consumers who file for bankruptcy struggle with mental health issues, including depression and anxiety. *See* Katheryn E. Hancock, *A Certainty of Hopelessness: Debt, Depression, and the Discharge of Student Loans Under the Bankruptcy Code*, 33 L. & Psych. Rev. 151 (2009).

[37] ECMC's, Ex. S at 271.

[38] ECMC's Ex. U at 279.

[39] ECF 61 at 132:20–25.

that they met their maximum.[40] There is no evidence that Plaintiffs see out-of-network providers or require medications or treatments and procedures that are not covered by insurance.

Since their discharge, Plaintiffs have experienced financial difficulties. Notably, they have incurred $60,000 of debt,[41] most of which is credit card debt. Plaintiffs testified that most of their credit cards are close to their limit, and they have, largely, stopped using the cards, but Plaintiffs may still rely on the cards when they cannot afford to pay for necessities like gas or groceries. They have also incurred $6,000 in federal and state income tax debt over the last three years.[42]

A. Plaintiffs' Income and Expenses

Plaintiffs are paid weekly: Mr. Hargrave's average weekly net income is $1,286.03 and Ms. Hargrave's is $387.03.[43] Though Plaintiffs claim their

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[40] *Id.*

[41] *Id.* at 35:13–14.

[42] *Id.* at 37:1.

[43] The Court calculated Plaintiffs' average weekly net pay by using Plaintiffs' income from December 2023 and the first two weeks of January 2024. See ECMC Exs. S, at 263–71, T at 274–78.

monthly net income is $6,660.80,[44] they net, according to the Court's calculations, around $7,249.93 per month.[45]

For expenses, Plaintiffs' trial brief, filed in January of 2024, showed monthly expenses of $6,231.04 (excluding student loan payments),[46] which would leave them with $1,018.89 of disposable income ($7,249.93 – $6,231.04). Based on Plaintiffs' testimony, however, it seems that some of their expenses were either misstated (food and Synchrony payment), excluded (credit card payments), or underestimated; these changes are summarized as follows:[47]

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[44] ECF 53 at 2–3.

[45] Plaintiffs incorrectly multiplied their weekly pay by four to calculate their monthly net income. Instead, Plaintiffs should have multiplied their average weekly pay by the number of weeks in a year (52), then divided by the number of months (12) to determine their monthly net pay. Thus:

$$\text{Monthly Net Pay} = (\text{Average Weekly Pay} \times 52) \div 12$$

with

$$\text{Average Weekly Pay} = \$1{,}286.03 + \$387.03.$$

[46] Plaintiffs, who are no longer active in their main bankruptcy case, did not provide an updated Schedule J nor Form 122C-2 as a demonstrative exhibit but rather submitted an "Attestation in Support" as set forth in the new guidance provided by the Department of Justice and DOE. *See* U.S. Trustee Program, *Student Loan Guidance*, U.S. Dep't of Just., (Nov. 2022) https://www.justice.gov/ust/student-loan-guidance (last visited July 30, 2025). The Attestation instructs Plaintiffs to "[i]ndicate 'yes' if [their] expenses do not exceed the referenced amounts" for different generalized expenses; however, Plaintiffs did not clearly indicate their "yes" or "no" responses, choosing instead to indicate their response by "bolding" either yes or no, which is difficult to see. *See* Attestation of John and Laura Hargrave, Pls.' Ex. 1. So, the Court will instead refer to Plaintiffs' trial brief to determine expenses.

[47] ECF 61 at 25:10–19; 26:6–11; 26:22–23; 34:11–15; 34:25, 35:1; 35:6–8.

Expense	Amount Per Brief	Amount Per Testimony
Food	"Exceeding $779"	$900
Personal Care	$82	$100
Medical and Dental	$450 total	$650 total
Synchrony Payment	$205	$247
Best Egg Payment	$270	$465.26
Credit Card Payment	---	$1,900

Thus, according to Plaintiffs' testimony, they now spend $8,732.30 per month, leaving them with – $1,482.37 of disposable income to pay their student loan creditors.

B. Plaintiffs' Student Loans

During 2004 to 2013, Plaintiffs collectively received 34 student loans to attend various community colleges. Generally, Plaintiffs took college courses when they were either laid-off or between jobs, and it was common for them to jump between schools and different degree-programs. For instance, Ms. Hargrave attended four different schools between 2004 and 2011 and only completed two programs during that time, earning her associate degree of applied science in 2010 and associate degree of medical transcription in 2011.[48] Around the same time, Mr. Hargrave attended three schools and only completed one program, earning an associate degree in applied science with

[48] Pls.' Ex. 1 at 5.

an emphasis in computer science in 2010.[49] Plaintiffs have not been able to find employment within their degree-related fields.

Plaintiffs' payment history on their student loans has been inconsistent. Although Plaintiffs paid $12,457.11 to Defendants during their Chapter 13 bankruptcy, Plaintiffs have made few payments—if any—outside of bankruptcy. Further, Plaintiffs have not participated in any repayment plans for either their federal or private loans. However, Plaintiffs testified that they did try to enroll in a repayment plan with Navient, believing that it serviced all their student loans (federal and private), but they were told their monthly payments would be $3,000, which they could not afford.[50] Due to their confusion, they did not contact any federal loan servicers to apply for federal repayment plans.[51]

1. Laura Hargrave's Loans

Ms. Hargrave has 16 student loans. One is held by Navient with a total balance of $33,000.[52] Six are held by ECMC:[53]

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[49] *Id.* at 4.

[50] ECF 61 at 38:8–13.

[51] *Id.*

[52] *Id.* at 190:4–6. The Court was not provided with the current interest rate on Navient's loans.

[53] ECMC's Ex. KK at 396. ECMC provided two balance summaries for Ms. Hargrave: one as of October 2022 (ECMC's Ex. B at 2), and one as of February 2024 (ECMC's Ex. KK at 396). The amounts reflected in the table are the ones reported

Loan Type	Disbursement	Interest	Balance
Stafford Subsidized	10/15/2004	7.76%	$3,436.44
Stafford Subsidized	9/27/2005	7.76%	$3,441.36
Stafford Subsidized	9/26/2006	6.80%	$5,935.32
Stafford Subsidized	7/10/2007	6.80%	$1,485.16
Stafford Subsidized	9/25/2007	6.80%	$7,631.13
Stafford Subsidized	9/23/2008	6.0%	$4,063.47
TOTAL: $25,992.88			

And nine are held by the DOE:[54]

Loan Type	Disbursement	Interest	Balance
FFEL Stafford Subsidized	2/24/2009	6.00%	$3,070.41
FFEL Stafford Subsidized	9/22/2009	6.80%	$1,769.35
FFEL Stafford Subsidized	9/22/2009	5.60%	$4,695.53
Stafford Unsubsidized	6/1/2010	6.80%	$3,156.46
Stafford Unsubsidized	9/13/2010	6.80%	$5,828.30
Stafford Unsubsidized	10/4/2011	6.80%	$3,593.89
Stafford Unsubsidized	2/14/2012	6.80%	$15,957.67
Stafford Unsubsidized	9/6/2012	6.80%	$18,627.47
Stafford Unsubsidized	11/11/2013	3.86%	$3,887.31
TOTAL: $60,586.39			

in the February 2024 summary. The loans disbursed on 10/15/2004 and 9/27/2005 have variable interest rates; the listed interest rate is the most recent rate provided. *Id.* at 384. A "Stafford Subsidized" loan refers to "Federal Direct Stafford/Ford Loans" loans made under the William D. Ford Federal Direct Loan program pursuant to 20 U.S.C. § 1087a et seq. *See* 20 U.S.C. § 1087a(b). Subsidized loans do not accrue interest while the borrower is enrolled in school or during the six-month grace period before repayment begins. Fed. Student Aid, *Top 4 Questions: Direct Subsidized Loans vs. Direct Unsubsidized Loans*, https://studentaid.gov/articles/subsidized-vs-unsubsidized-loans/ (last visited June 26, 2025).

[54] DOE's Ex. B at 1. The "FFEL" loans refer to loans made under the Federal Family Education Loan Program. *Id.* Unlike a subsidized loan, an unsubsidized loan begins accruing interest from the date of the first loan disbursement. *See supra* n.50.

In total, Ms. Hargrave owes $119,579.27.

2. John Hargrave's Loans

Mr. Hargrave has 18 loans. Two are held by Navient with a total balance of approximately $52,500.[55] Six are held by ECMC:[56]

Loan Type	Disbursement	Interest	Balance
Stafford Subsidized	2/22/2005	3.44%	$1,816.83
Stafford Subsidized	9/27/2005	3.44%	$3,236.19
Stafford Subsidized	2/20/2007	6.80%	$2,319.22
Stafford Subsidized	9/25/2007	6.80%	$7,945.07
Stafford Subsidized	9/23/2008	6.00%	$6,990.93
Stafford Unsubsidized	9/23/2008	6.80%	$1,471.04
TOTAL: $23,779.28			

And ten are held by the DOE:[57]

Loan Type	Disbursement	Interest	Balance
FFEL Stafford Subsidized	7/8/2008	6.00%	$842.15
FFEL Stafford Subsidized	9/22/2009	5.60%	$4,210.61
Stafford Unsubsidized	10/18/2010	6.80%	$6,659.15
Stafford Unsubsidized	10/18/2010	4.50%	$2,811.19
Stafford Unsubsidized	2/7/2011	6.80%	$3,047.23
Stafford Unsubsidized	2/7/2011	4.50%	$1,758.52
Stafford Unsubsidized	2/14/2012	6.80%	$15,622.99
Stafford Unsubsidized	2/14/2012	3.40%	$963.44
Stafford Unsubsidized	9/6/2012	6.80%	$18,820.66

[55] ECF 61 at 190:4–6.

[56] ECMC's Ex. JJ at 381. Like with Ms. Hargrave, ECMC provided two balance summaries. *See* ECMC's Exs. A at 1, JJ at 381. The amounts reflected in the table are the ones reported in the February 2024 summary. The two loans disbursed in 2005 have variable interest rates; the listed interest rate is the most recent rate provided. *See Id.* at 370.

[57] DOE's Ex. C at 1.

Stafford Unsubsidized	9/9/2013	3.86%	$3,448.70
TOTAL: $58,184.64			

Mr. Hargrave's total balance for his federal and private student loans is $134,463.92. Collectively, Plaintiffs owe **$254,043.19** on their student loans.

II. Conclusions of Law

Section 523(a)(8) provides:

> [U]nless exempting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—
>
> (A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a government unit… or
>
> (A)(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or
>
> (B) any other educational loan that is a qualified education loan, as defined by section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual.

11 U.S.C. § 523(a)(8)(A)(i)–(ii), (B). The burden is on the creditor to show that the debt is an educational loan within the confines of § 523(a)(8). *McDaniel v. Navient Solutions, LLC (In re McDaniel)*, 973 F.3d 1083, 1092 (10th Cir. 2020) (citing *Roth v. Educ. Credit Mgmt. Corp. (In re Roth)*, 490 B.R. 908, 916 (9th Cir. B.A.P. 2013)). The burden then shifts to Plaintiffs to prove that the loan is dischargeable. *Murry v. Educ. Credit. Mgmt. Corp. (In re Murray)*, 563 B.R. 52, 57 (Bankr. D. Kan. 2016), aff'd sub nom. *Educ. Credit Mgmt. Corp. v. Murray*, No. 16-2838, 2017 WL 4222980 (D. Kan. Sept. 22, 2017).

A. Presumptive Nondischargeability of Navient's Loans

Plaintiffs claim that Navient's private (not issued or guaranteed by the government) loans are dischargeable under § 523(a)(8)(A) because the loans are not, *inter alia*, a "qualified education loan" under § 523(a)(8)(B) as they were not "used solely for qualified education expenses."[58] Navient disagrees and takes a different approach; it asserts that the issue of dischargeability was resolved when Plaintiffs "admitted" that Navient's loans were qualified education loans in response to Navient's Admission No. 14,[59] and this response, it argues, is binding upon Plaintiffs pursuant to Fed. R. Civ. P. 36.[60] Plaintiffs assert that it "does not matter what [Plaintiffs] thought the classification" of Navient's student loans were, and Plaintiffs "are not capable of making a legal determination."[61]

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[58] Pls.' Suppl. Trial Br., ECF 59 at 5. It is undisputed that Navient's loans are not "educational benefit[s]" under § 523(a)(8)(A)(ii). Navient's Post-Trial Br., ECF 60 at 3; *see generally In re McDaniel*, 973 F.3d at 1094–95.

[59] Admission No. 14 states:

> For each Plaintiff, admit that the NSL educational loans that you seek to discharge in this adversary proceeding are qualified educational loans, as defined by section 221(d)(1) of the Internal Revenue Code of 1986.

Navient's Ex. C at 40.

[60] ECF 60 at 2.

[61] Pls.' Resp., ECF 62 at 4.

Under Rule 36(b), a matter that is admitted in response to a request for admissions is "conclusively established unless the court, on motion, permits the admission to be withdrawn or amended." Fed. R. Civ. P. 36(b);[62] *see also Underberg v. United States*, 362 F. Supp. 2d 1278, 1283 (D.N.M. 2005) (citing *Carney v. Internal Revenue Serv. (In re Carney)*, 258 F.3d 415, 420 (5th Cir. 2001)) (admissions are binding and cannot be contradicted by evidence or testimony). Although Plaintiffs did not file a "motion to withdraw," Plaintiffs' arguments could, arguably, amount to an informal motion in light of Tenth Circuit precedent. *See Kirtley v. Sovereign Life Ins. Co. Cal. (In re Durability Inc.)*, 212 F.3d 551, 555 (10th Cir. 2000) (motion in opposition to summary judgment disputing the admission constituted an informal motion to withdraw though it was not styled as such).

Because Plaintiffs have waited until after trial to argue against their admission, the Court will only allow them to withdraw or amend *if* Plaintiffs show that doing so would prevent "manifest injustice." Fed. R. Civ. P. 36(b) ("Subject to Rule 16(e), the court may permit withdrawal …"); Fed. R. Civ. P. 16(e) ("The court may modify the [final pretrial] order … only to prevent manifest injustice."); *In re Durability Inc.,* 212 F.3d at 556; *see also Farr Man & Co. v. M/V Rozita*, 903 F.2d 871, 876 (1st Cir. 1990); *999 v. C.I.T. Corp.*,

[62] Rule 36 is made applicable to this adversary under Fed. R. Bankr. P. 7036.

776 F.2d 866, 869 (9th Cir. 1985); *Brook Vill. N. Assocs. v. Gen. Elec. Co.*, 686 F.2d 66, 71 (1st Cir. 1982).

Plaintiffs do not meet the manifest injustice standard, and because of this, they are unlikely to prevail. Still, their inability to withdraw or amend their admission is less material because, as discussed below, Plaintiffs have shown that repaying the full balance of Navient's loans imposes an undue hardship under § 523(a)(8).

B. <u>Undue Hardship</u>

The Bankruptcy Code does not define "undue hardship," but the Tenth Circuit has adopted a modified three-part *Brunner* test, which requires the debtor to prove that (1) "the debtor cannot maintain, based on current income and expenses, a 'minimal' standard of living" for themselves and their dependents if forced to repay, (2) additional circumstances exist indicating that the current state of the debtors financial affairs is likely to persist for a significant portion of the repayment period, and (3) the debtor has made a good faith effort to repay the loans. *In re Murray*, 563 B.R. at 58; *Metz v. Navient Educ. Loan Corp. (In re Metz)*, 589 B.R. 750, 757 (Bankr. D. Kan. 2018), aff'd sub nom. *Educ. Credit Mgmt. Corp. v. Metz*, No. 18-1281, 2019 WL 1953119 (D. Kan. May 2, 2019). The Tenth Circuit rejects an "overly restrictive interpretation" of the *Brunner* factors, finding instead that "to better advance … the 'fresh start' policy," the test must be applied so that debtors who "truly cannot afford to repay their loans may have their loans discharged." *In re Murray*, 563 B.R. at 58 (citing *Educ. Credit Mgmt. Corp. v. Polleys*, 356 F.3d 1302, 1309 (10th Cir. 2004)).

1. Plaintiffs could not maintain a minimal standard of living with their current income and expenses if they were forced to repay all their loans.

This prong requires Plaintiffs to establish that if, based on current finances, they are required to pay their student loans, their standard of living will fall below a minimal standard. *Rosenberg v. Educ. Credit Mgmt. Corp.*, No. 20-CV-00688, 2021 WL 4461341, at *10 (S.D.N.Y. Sept. 29, 2021). A "minimal standard of living" refers to living within the confines of a "frugal" budget in the future but does not require "living in 'abject poverty.'" *In re Murray*, 563 B.R. at 58 (quoting *Tenn. Student Assistance Corp. v. Hornsby (In re Hornsby)*, 144 F.3d 433, 438 (6th Cir 1998)). When applying this prong, courts focus on the debtor's household income and expenses to determine what expenses are necessary for the debtor to meet their basic needs such as food, shelter, and health care. *Rosenberg*, 2021 WL 4461341, at *10; *In re Murray*, 563 B.R. at 58–59; *In re Metz*, 589 B.R. at 757 (listing additional factors). Plaintiffs have the burden of showing that their claimed expenses are necessary. *See generally Rosenberg*, 2021 WL 4461341, at *10.

Here, Plaintiffs have met their burden in establishing the necessity of the following expenses: food ($900), housekeeping ($82), mortgage ($972.04), home maintenance ($75), life insurance ($116), tax debt payments ($128), and vehicle payments for their two cars ($640). These expenses are required for Plaintiffs to meet their basic needs and the amounts are also reasonable; thus, they will be allowed.[63] However, Defendants dispute the necessity and reasonableness of Plaintiffs' remaining expenses including expenses for (1) apparel and clothing, (2) medical and dental, (3) miscellaneous, (4) pet care and entertainment, (5) utilities, (6) vehicle operating costs, (7) tithing, and (8) credit debt payments.

First, Plaintiffs deduct $161 for apparel and an additional $150 for clothing without explaining why an additional clothing expense is necessary; thus, the $150 clothing expense will be removed.

Second, Plaintiffs claim to spend $650 per month on medical and dental expenses; however, Plaintiffs' claimed amount is based on generalized statements that do not provide actual support, e.g., testifying that they "have a lot of hospital and medical bills. So maybe 2 to 300 [per month]" Trial Tr. 26:22–23. And Plaintiffs do not provide *any* evidence that would support their claimed amount. Instead, the limited evidence that was provided suggests that, after using their $3,000 of FSA funds, Plaintiffs are only responsible for $3,750, or $312.50 per month, of additional out-of-pocket medical expenses—

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[63] *See generally In re Metz,* 589 B.R. at 757.

assuming they consistently meet their annual $6,750 maximum out-of-pocket expense, which, as Mr. Hargrave testified, is not the case.[64] Further, Plaintiffs do not provide any information about their dental insurance coverage (if any) or their current or upcoming dental expenses. So, the $650 expense is reduced to $312.50, which—based on the limited evidence offered at trial—appears to be adequate to cover any out-of-pocket medical and dental expenses they may have.

Third, Plaintiffs deduct $306 for undisclosed miscellaneous expenses but do not explain what miscellaneous expenses they have nor why those expenses are necessary. Thus, Plaintiffs' miscellaneous expenses will be removed.

Fourth, Plaintiffs' deductions for pet care ($150) and entertainment ($155) are necessary given that Plaintiffs should be allowed to take care of their pets and enjoy moderate entertainment. *See In re Murray*, 563 B.R. at 58–59 (quoting *Ivory v. United States (In re Ivory)*, 269 B.R. 890, 899 (Bankr. N.D. Ala. 2001) ("People must have the ability to pay for some small diversion or source of recreation, even if it is just watching television or keeping a pet.").

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[64] *See supra* n.40.

Fifth, Plaintiffs originally claimed to spend $745 per month on utilities (phone bill, gas, electric, etc.), but Plaintiffs, at the hearing, conceded that their utilities were closer to $421 per month.[65] So, including their $200 phone bill, Plaintiffs spend $621 per month; thus, this expense will be reduced accordingly.

Sixth, Plaintiffs claim $640 per month on vehicle operating costs for their two vehicles, but there is little evidence to support that figure. Ms. Hargrave estimates that they spend around $85 to $100 per week on gas[66] (averaging about $92.50 per week or $400.83 per month), and their bank statements show that they spent $137.49 on car insurance in January of 2024 (the most recent bank statement the Court was provided).[67] But there is no evidence to support the claimed $640 expense, so Plaintiffs' vehicle operating costs will be reduced to $538.32 ($400.83 + $137.49).

Seventh, Plaintiffs deduct $100 to $150 per month to donate money to political activism/charity organizations that further their religious beliefs while they find a regular church. Plaintiffs argue this donation is necessary because of their strongly held religious beliefs and is otherwise protected under the Religious Liberty and Charitable Donation Protection Act of 1998

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[65] ECF 61 at 80:14–18.

[66] ECF 61 at 75:5–13.

[67] ECMC Ex. P at 159.

(RLCDPA).[68] However, there is a split of authority as to whether the RLCDPA applies to the undue hardship analysis under § 523(a)(8), and, thus, there is no per se rule.[69] But the Court will not decide today whether the RLCDPA applies because a $100 tithe is *de minimus* under these circumstances as it will not affect the undue hardship analysis. *See U.S. Dep't of Educ. v. Innes (In re Innes)*, 284 B.R. 496, 505–06 (D. Kan. 2002).

Eighth, Plaintiffs claim that their payments on their cumulative post-petition $60,000 debt balance should be considered necessary expenses because much of the debt was incurred to pay for necessities like medical bills and home repairs.[70] The debt is unknown credit card balances and two personal loans: one from Synchrony Bank with monthly payment of $247 and a balance of about $8,000, which was used for home repairs, specifically replacing their electrical panel and roof;[71] and the Best Egg loan with a

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[68] Initially, Plaintiffs, in their Attestation, claimed to tithe $745 per month to their church, which they argued was reasonable given their strongly held religious beliefs. Pls.' Ex. 1 at 12.

[69] The majority approach rejects a per se rule that excludes charitable donations from the disposable income analysis, finding instead that the best approach is to consider the totality of the circumstances to determine whether the donation is reasonably necessary. See *In re Innes,* 284 B.R. at 505–06 for a more thorough discussion of this issue.

[70] Plaintiffs never established how much of the $60,000 balance was credit card debt versus personal loans.

[71] ECF 61 at 34:14–21.

monthly payment of $465.26 and a balance of roughly $17,875.87,[72] which was used to consolidate credit card debt and pay, roughly, $8,000 in attorney's fees for this proceeding.[73] For their credit card payments, Plaintiffs previously and consistently claimed in their Attestation and depositions that they pay $900 per month but, at the hearing, Plaintiffs testified that they now pay upwards of $1,900 per month. [74]

However, Plaintiffs provide general statements about how they used their loans and credit cards to pay for necessities but fail to provide any evidence. Instead, the limited evidence that was provided showed that Plaintiffs are, to some extent, using their cards in frivolous ways such as purchasing a $4,000 anniversary ring in November of 2022 using a card with a 16.99% APR.[75]

To be sure, if Plaintiffs were still in an active repayment status in a Chapter 13 bankruptcy, this would be irrelevant. However, because Plaintiffs are not, the Court is hesitant to exclude their post-petition debt payments considering that they will be obligated to repay the debts regardless of

[72] ECF 53 at 4.

[73] ECF 61 at 34:25, 35:2–3.

[74] *See* Pls.' Ex. 1 at 12; John Hargrave Dep. 65:5–12, ECMC's Ex. N at 89. Plaintiffs did not include their credit card payments in their trial brief even though it was included in their Attestation.

[75] Pls.' Ex. 27.

whether the Court decides to exclude the amounts as unnecessary in the undue hardship analysis. In fact, excluding the debt payments would be, in the Court's mind, contrary to the "fresh start" that bankruptcy provides. At the same time, the Court is cautious to allow Plaintiffs to deduct these payments in an attempt to substantially limit their disposable income to avoid paying their student loan creditors.

With these considerations in mind, the Court finds that allowing Plaintiffs to deduct payments on their post-petition debt is reasonably necessary to ensure that Plaintiffs can maintain a minimal standard of living while also preventing them from falling further into financial chaos. Thus, the Court will allow Plaintiffs to include the monthly payments on their Synchrony and Best Egg loans. But the Court will only allow Plaintiffs to deduct a $900 per month payment on their credit cards as Plaintiffs, prior to the hearing, consistently claimed to pay $900 per month on their credit cards, not $1,900, and Plaintiffs have otherwise failed to provide evidence to support their claimed $1,900 monthly payments.[76]

To summarize, the following monthly expenses and amounts are reasonable:

[76] Without this evidence, the Court cannot determine whether the increased monthly credit card payments are reasonable and necessary.

Food	$900	**Mortgage**	$972.04
Housekeeping	$82	**Home Maintenance**	$75
Apparel	$161	**Utilities**	$621
Personal Care	$100	**Car Payments**	$640
Medical and Dental Costs	$312.50	**Operating Costs for Vehicles**	$538.32
Tax Debt	$128	**Life Insurance**	$116
Entertainment	$155	**Tithing**	$100
Synchrony Bank	$247	**Pet Care**	$150
Best Egg	$465.26	**Credit Cards**	$900

With these adjustments, Plaintiffs' monthly expenses are $6,663.12, leaving them with $586.81 in disposable income.

Ignoring Navient's loans (which are not eligible for federal repayment plans), ECMC and the DOE argue Plaintiffs' disposable income is sufficient to make the minimum monthly payments on their federal loans if they enrolled in a repayment plan, namely the new SAVE plan, which offers decreased monthly payments and forgives any unpaid monthly interest if the borrower's actual payment is lower than the assessed interest.[77] Under this plan, ECMC calculates Plaintiffs' monthly payment to be $572.[78] These payments, ECMC explains, are likely to decrease again per the terms of the

[77] *See generally* Fed. Student Aid, *The Saving on a Valuable Educ. (SAVE) Plan Offers Lower Monthly Loan Payments*, https://studentaid.gov/announcements-events/save-plan (last visited Aug. 8, 2024).

[78] ECMC's Ex. JJ at 373.

SAVE plan, and once Plaintiffs retire and their income significantly drops, their monthly payments could be reduced to zero.

Aside from the issue of whether the SAVE plan remains a viable repayment option,[79] the question is not whether Plaintiffs can afford the minimum monthly payments but whether Plaintiffs' $586.81 disposable income is sufficient to *repay* their cumulative federal student loan balance of $165,361.51 over the 20-year repayment period required by most income-driven repayment plans.[80] *See In re Murray*, 563 B.R. at 60. True, Plaintiffs could likely afford the projected minimum monthly payment, but the minimum payment is insufficient to pay even the $848.03 of total interest that accrues each month.[81] *See Loyle v. U.S. Dep't of Educ. (In re Loyle)*, No.

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[79] At the time of the trial, the future of the SAVE Plan is uncertain as it has been the subject of numerous lawsuits since its creation. *See Missouri v. Biden*, 112 F.4th 531 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 109 (2024); Fed. Student Aid, *Dep't of Educ. Updates on Saving on a Valuable Educ. (SAVE Plan)*, https://www.ed.gov/higher-education/manage-your-loans/save-plan (last visited June 23, 2025). Since trial, the uncertainty surrounding the SAVE plan has only increased with commenters speculating that it will be dismantled. *See* Adam S. Minsky, *Student Loan SAVE Plan is 'Not Coming Back In Any Way,' Warns Official*, Forbes, (March 11, 2025 at 11:04 am EDT), https://www.forbes.com/sites/adamminsky/2025/03/11/student-loan-save-plan-is-not-coming-back-in-any-way-warns-official/.

[80] The applicable repayment period for federal income-driven repayment plans ranges from 20 to 25 years. Fed. Student Aid., *Income-Driven Repayment Plans* https://studentaid.gov/manage-loans/repayment/plans/income-driven?os=vbkn42&ref=app (last visited June 23, 2025). After 20 to 25 years of payments, the remaining balances are forgiven. *Id.*

[81] The interest rates on Plaintiffs' federal loans ranges from 3.44 to 6.80 percent per annum. Using the respective interest rates, the Court calculated the monthly

19-10065, Adv. No. 20-5073, 2022 WL 567724, at *12 (Bankr. D. Kan. Feb. 24, 2022) (noting that debtors could afford the minimum monthly payments under the income-driven repayment plans, but concluding debtors could not afford to repay their loans in full over the repayment period). With more interest compounding each month, Plaintiffs, even if they make every payment during the 20-year repayment period, would never see their principal balances decrease, and they may be left with a significant tax burden when the loan balances are ultimately forgiven.[82]

Instead, to fully repay their federal loans (including newly accrued interest and the principal balances) within the 20-year repayment period, Mr.

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assessed interest for each federal loan by dividing the annual interest rate by 365 (days in a year), then multiplying the result by the outstanding loan balance to calculate the interest accrued per day. Then, the Court multiplied the interest accrued per day by 30 (average days in a month). Thus:

Monthly Interest = ((Annual Interest Rate ÷ 365) × Loan Balance) × 30

[82] Prior to 2021, 26 U.S.C. § 108 of the Internal Revenue Code treated student loans that were forgiven under the income-driven repayment plans as taxable income, i.e., adjusted gross income, of the debtor unless the debtor was considered insolvent when the loans were forgiven. 26 U.S.C. § 108(a)(1)(B). In 2021, the American Rescue Plan Act of 2021, passed by Congress in response to the Covid-19 pandemic, specifically excluded forgiven student loan debt from a debtor's adjusted gross income though January 1, 2026. 26 U.S.C. § 108(f)(5) ("Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) after December 31, 2020, and before January 1, 2026, of—(A) any loan provided expressly for postsecondary educational expenses … if such loan was made, insured, or guaranteed by—(i) the United States…."); *see also Missouri*, 738 F. Supp. 3d at 1113 (discussing the changes to § 108(f)). However, Plaintiffs' loans are not eligible for forgiveness before January 1, 2026, so this new provision is likely inapplicable to Plaintiffs.

Hargrave would need to pay a total of $742.42 per month, and Ms. Hargrave would need to pay a total of $794.62 per month.[83] Taken together, Plaintiffs' monthly payments on only their *federal* student loans would amount to an unaffordable $1,537.04. And while the DOE and ECMC are, understandably, focused on their own loans, the Court cannot overlook Plaintiffs' payments to Navient, who's loans to Mr. and Ms. Hargrave amount to $85,500 and are not eligible for forgiveness after 20 years of repayment. Although Plaintiffs have the ability to pay a portion of their student loans, they cannot afford to devote $1,537.04 per month to their federal loans plus an additional sum each month to pay Navient's loans.

For these reasons, Plaintiffs have shown that they would fall below a minimum standard of living if they were forced to repay their entire loan balance.

2. Plaintiffs' circumstances are likely to persist considering their age and health conditions.

This factor considers whether there are additional, exceptional circumstances that are "strongly suggestive of continuing inability to repay over an extended period of time." *In re Innes*, 284 B.R. 496, 509 (D. Kan. 2002) (internal citations omitted). This requires a "realistic look" into debtor's

[83] These figures include the monthly accrued interest of $407.26 for Mr. Hargrave's loans and $440.77 for Ms. Hargrave's loans and the monthly principal payments of $335.16 for Mr. Hargrave and $353.85 for Ms. Hargrave.

circumstances and must be based on an "estimation of a debtor's prospects on specific articulable facts." *In re Murray*, 563 B.R. at 61; *Educ. Credit Mgmt. Corp. v. Polleys*, 356 F.3d at 1310 (should be based on "specific articulable facts, not unfounded optimism."). Indicators of the debtor's prospects include having dependents, medical problems, or limited education and skills that would impact the debtor's ability to repay over for several years. *In re Innes*, 284 B.R. at 509 (internal citations omitted).

Here, Plaintiffs' circumstances are unlikely to improve in the future. Plaintiffs are in their 50s and have significant medical conditions that will worsen as they age and likely require more frequent, and thus expensive, treatment. And they are nearing the end of their working life, as both Plaintiffs intend to retire in the next 10 to 15 years. While it is possible, and perhaps likely, that Plaintiffs could receive additional cost-of-living or merit-based wage increases in the future, neither Plaintiffs nor Defendants have identified any promotions or higher paying job opportunities that would significantly increase Plaintiffs' income in their remaining working years, especially considering their limited educations, skills, and ages. Their financial situation is likely to worsen when they retire in the next 10 to 15 years because they have limited retirement savings and will rely primarily on social security payments.

Therefore, Plaintiffs have shown that their circumstances are unlikely to improve.

3. Plaintiffs have shown a good faith effort to repay despite not being enrolled in a repayment plan.

The good faith inquiry is measured by debtor's payments and their efforts to obtain employment, maximize income, and minimize expenses with a focus on the legitimacy of the request for discharge. *Buckland v. Educ. Credit Mgmt. Corp. (In re Buckland)*, 424 B.R. 883, 892–93 (Bankr. D. Kan. 2010); *Alderete v. Educ. Credit Mgmt. Corp. (In re Alderete)*, 412 F.3d 1200, 1206 (10th Cir. 2005).

Under the facts and circumstances of this case, there is no indication Plaintiffs have "willfully or negligently cause[d] [their] own default." *See In re Buckland*, 424 B.R. at 890 (quoting *In re Faish*, 72 F.3d 298, 305 (3rd Cir.1995)). Although they did not seek to consolidate their loans or enroll in repayment plans, it is clear that Plaintiffs have made efforts to repay their loans when they were financially able to do so. This is evident by their $12,457.11 payments to their student loan creditors through their Chapter 13 plan.

Additionally, Plaintiffs have either been employed or fervently sought employment to maximize their income, even if they have not been able to pursue degree-related careers. By their own admission, Plaintiffs struggle to adhere to a budget, but there is no evidence that they are not minimizing expenses. Finally, their request to discharge the student loans is legitimate considering the insurmountable amount of money they owe to their lenders, their income, and their ages.

Thus, Plaintiffs have shown that they have made good faith efforts to repay.

C. <u>Partial Discharge</u>

While Plaintiffs have satisfied the *Brunner* test, a full discharge of their student loans is not warranted here because Plaintiffs can afford to pay a portion of their student loan debt without experiencing undue hardship. *In re Alderete*, 412 F.3d at 1207 (court has the ability to grant a partial discharge if debtor satisfies the *Brunner* factors); *see also Goodvin v. U.S. Dep't of Educ. (In re Goodvin)*, No. 19-10623, Adv. No. 19-5105, 2020 WL 6821867, at *11 (Bankr. D. Kan. Sept. 1, 2020) (citing cases).

Plaintiffs' current monthly disposable income is $586.81 as previously discussed. However, requiring Plaintiffs to devote all their monthly disposable income to their student loan creditors would impose an undue hardship as it would substantially hinder their ability to save for contingencies such as larger unexpected expenses, i.e., home repairs or vehicle replacements, that may occur during the repayment period. The Court also notes that inflation may take a toll on Plaintiffs' already strained finances as well. *See In re Loyle*, 2022 WL 567724 at *13. For those reasons, the Court will decrease Plaintiffs' disposable income by $150 and require them to pay $436.81 per month to their student loan creditors.

Because both Plaintiffs intend to retire in the next 10 to 15 years, a 20-year repayment period is excessive and would cause Plaintiffs undue hardship if they were required to make payments post-retirement with significantly reduced income. As such, a 12-year repayment period is more appropriate as Plaintiffs will pay off their loans before they plan to fully retire and their income decreases.

Considering Plaintiffs' circumstances, the Court concludes that Plaintiffs can pay a total of $436.81 to their student loan creditors without experiencing an undue hardship and ensuring they have the ability to save for future expenses. This amount paid over 12 years, at 0% interest, amounts to $62,900.64.

As such, $62,900.64 of Plaintiffs' total student loan debt ($29,607.61 for Ms. Hargrave and $33,293.03 for Mr. Hargrave) is excepted from discharge. All accrued and capitalized interest, and any future interest that accrues, imposes an undue hardship and will be discharged. The $62,900.64 will *not* be subject to interest. Any unpaid principal amount of Plaintiffs' student loan debt in excess of $62,900.64 will be discharged. Additionally, the nondischargeable debt shall be apportioned to the loan creditors based on the percentage of each creditor's total balance owed relative to the total student loan debt (including interest and principal) sought to be discharged.[84] Further, because Plaintiffs' loans are not consolidated, each creditor's total nondischargeable loan balance will be allocated between each Plaintiff

[84] An aspect of a student loan partial discharge not raised by the parties is whether the Court should first discharge private student loan debt and only then discharge some portion of the government-sponsored student loan debt. The public policy that initially led Congress to require a showing of undue hardship to discharge government-sponsored student loans and the dramatically different treatment of government and private loans outside of bankruptcy, support treating government-sponsored loans more favorably in partial discharge cases than private student loans. Originally, the undue hardship test only applied if the borrower sought discharge of student loans that were in repayment status for less than five years prior to the filing of the bankruptcy (this was subsequently lengthened to seven years, until the temporal discharge was eliminated entirely in 1998 as part of a budget deal between the White House and the Congress). Until 1990, government-sponsored student loans were fully dischargeable under a Chapter 13 full payment discharge. It was not until the 2005 Amendments that certain private student loans were rendered potentially nondischargeable. Public policy drove the discharge exception for government-sponsored student loans in the 1978 Act; a component of the public policy is rooted in furthering the government's ability to afford individuals an opportunity to obtain a better future that also *benefits* the general welfare and prosperity of the country while "protect[ing] the integrity of the student-loan program and sav[ing] it from 'fiscal doom.'" *In re Mason*, 456 B.R. 245, 247–48 (Bankr. N.D. W. Va. 2011). As one court noted, Congress, in recognizing the value of education, "made student loans available to those who otherwise may not have been able to receive adequate financing of a college education from private lenders" due to their credit history, and "[i]f the leveraged investment of an education does not generate the return the borrower anticipated, the student, not the taxpayers, must accept the consequences of the decision to borrow." *Matthews-Hamad v. Educ. Credit Mgmt. Corp. (In re Matthews-Hamad)*, 377 B.R. 415, 422 (Bankr. M.D. Fla. 2007) (quoting *In re Roberson*, 999 F.2d 1132, 1135-37 (7th Cir. 1993)). For now, the question of whether private student loans should be discharged before government-sponsored student loans in a partial discharge case will have to await resolution in a future case.

individually based on each Plaintiffs' debt relative to the total debt owed to the particular creditor.[85]

III. Conclusion

The Court finds that Navient's loans—*based solely* on Plaintiffs' binding Rule 36(b) admission—are presumptively nondischargeable under § 523(a)(8)(B). Further, the Court grants in part Plaintiffs' complaint under § 523(a)(8) seeking to discharge their student loan debt as imposing an undue hardship. Although the Court finds that Plaintiffs cannot afford to pay the *total* student loan debt owed, it finds that Plaintiffs can pay $62,900.64 ($436.81 per month) to their student loan creditors over 12 years without experiencing an undue hardship. The $62,900.64 nondischargeable debt will not bear interest. The excess principal and interest (including interest previously accrued and capitalized and any interest that would otherwise accrue in the future) is discharged. The nondischargeable student loan debt will be apportioned between the loan creditors and Plaintiffs as follows:

[85] For example, Plaintiffs owe ECMC a total of $49,772.16, so ECMC is owed approximately 19.6% of the total student loan debt owed (($49,772.16 ÷ $254,043.19) × 100 = approx. 19.6%). This means ECMC's share of the $62,900.64 nondischargeable loan balance is $12,323.50 ($62,900.64 × 19.6% = $12,323.50). Ms. Hargrave owes ECMC $25,992.88, which is 52.2% of Plaintiffs' total debt owed to ECMC. So, out of the total nondischargeable loan balance of $12,323.50 owed to ECMC, Ms. Hargrave's share of the nondischargeable loan balance would be $6,435.79 (52.2% × $12,323.50 = $6,435.79) and Mr. Hargrave, who owes 47.8% of the total debt owed to ECMC, would be liable on the remaining $5,887.71.

- ECMC holds a combined 19.6% of the total debt owed and will have a total nondischargeable loan balance of $12,323.50 with $6,435.79 owed by Ms. Hargrave and $5,887.71 owed by Mr. Hargrave.
- The DOE holds a combined 46.8% of the total debt and will have a nondischargeable loan balance of $29,407.49 with $15,001.08 owed by Ms. Hargrave and $14,406.41 owed by Mr. Hargrave.
- Navient holds a combined 33.7% of the total debt and will have a nondischargeable loan balance of $21,169.65 with $8,170.74 owed by Ms. Hargrave and $12,998.91 owed by Mr. Hargrave.

IT IS SO ORDERED.

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