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NOT FOR PUBLICATION
UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:
JARROD CORNELIUS PORTER,
Debtor.
JARROD CORNELIUS PORTER,
Plaintiff,
v.
EDUCATIONAL CREDIT MANAGEMENT CORPORATION; and UNITED STATES DEPARTMENT OF EDUCATION,
Defendants.

Case No. 2:17-bk-19081-RK
Chapter 7
Adv. No. 2:17-ap-01571-RK

MEMORANDUM DECISION AFTER TRIAL ON PLAINTIFF'S SECOND AMENDED COMPLAINT FOR DISCHARGE OF STUDENT LOANS PURSUANT TO 11 U.S.C. § 523(a)(8)

Trial Date: October 4, 2018
Time: 9:00 a.m.
Place: Courtroom 1675
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012

This adversary proceeding came on for trial before the undersigned United States Bankruptcy Judge on October 4, 2018, on the Second Amended Complaint of Plaintiff Jarrod Cornelius Porter ("Porter"), Electronic Case Filing Number ("ECF") 29, seeking a discharge of approximately \$89,000 in student loans owed to the two defendants, Educational Credit Management Corporation ("ECMC") and United States Department of

1 Education ("DOE" and, collectively with ECMC, the "Defendants"). Porter appeared for
2 himself. Elan S. Levey and Matthew Barragan, Assistant United States Attorneys,
3 appeared for DOE; and Scott A. Schiff, of the law firm of Soukup & Schiff, LLP, appeared
4 for ECMC.

5 Defendants contend that Porter cannot meet the "undue hardship" test as to justify
6 a discharge of the subject debts. For the reasons set forth herein, the court finds that
7 Porter has not met his burden to establish by a preponderance of evidence that excepting
8 the subject student loans from discharge would impose an undue hardship on Porter.
9 Accordingly, the court will enter judgment in favor of Defendants excepting the subject
10 debts from discharge pursuant to Section 523(a)(8) of the Bankruptcy Code, 11 U.S.C.
11 This memorandum decision constitutes the court's findings of fact and conclusions of law
12 pursuant to Rule 52 of the Federal Rules of Civil Procedure, made applicable here by
13 Rule 7052 of the Federal Rules of Bankruptcy Procedure.

14 I. JURISDICTION

15 This lawsuit is an adversary proceeding within the meaning of subdivisions (6) and
16 (9) of Rule 7001 of the Federal Rules of Bankruptcy Procedure. The court has jurisdiction
17 over this adversary proceeding pursuant to 28 U.S.C. § 1334(b). Venue is proper
18 pursuant to 28 U.S.C. § 1409(a). This adversary proceeding is a core proceeding
19 pursuant to 28 U.S.C. § 157(b)(2)(A) and (I), and this court has the constitutional authority
20 to enter a final judgment on the complaint. *Wellness International Network, Ltd. v. Sharif*,
21 135 S. Ct. 1932 (2015); *Stern v. Marshall*, 564 U.S. 462 (2011).

22 II. PROCEDURAL HISTORY

23 On July 26, 2017, Porter filed a voluntary petition for relief under Chapter 7 of the
24 Bankruptcy Code, 11 U.S.C., initiating this bankruptcy case, Case No. 2:17-bk-19081-RK
25 ("Main Bankruptcy Case").¹ Howard M. Ehrenberg was appointed as the Chapter 7
26

27 ¹ The court takes judicial notice of its files and records under Federal Rule of Evidence 201. See *In re Clark*,
28 525 B.R. 442, 449 (Bankr. D. Idaho 2015), *aff'd*, 2016 WL 1377807 (9th Cir. BAP 2016) (taking judicial

(Continued...)

1 Trustee ("Trustee") in in the Main Bankruptcy Case. On September 8, 2017, the Trustee
2 filed a "no distribution" report. On November 13, 2017, the court entered its *Order of*
3 *Discharge*. Main Bankruptcy Case, ECF 13.

4 On December 12, 2017, Porter filed an adversary complaint, initiating this
5 adversary proceeding, Adv. No. 2:17-ap-01571-RK. See ECF 1. On February 7, 2017,
6 Porter filed a First Amended Complaint. ECF 26. On February 9, 2017, Porter filed the
7 Second Amended Complaint ("SAC"), the operative complaint in this proceeding. ECF 29.
8 By his SAC, Porter seeks to discharge approximately \$89,000 in student loans owed to
9 DOE and ECMC. See *id.*

10 On September 11, 2018, the parties filed a *Joint Pre-Trial Stipulation*, ECF 46
11 (approved by the *Trial Setting Order*, ECF 47), which was amended by the *First*
12 *Amendment to Joint Pre-Trial Stipulation*, ECF 52 (approved by *Order*, ECF 53), and
13 further amended by the *Second Amendment to Joint Pre-Trial Stipulation*, ECF 57
14 (approved by *Order*, ECF 60) (collectively, the "Pre-Trial Stipulation" or "PTS").

15 The court conducted the trial in this adversary proceeding on October 4, 2018. The
16 Defendants filed and served upon Porter a joint trial brief. ECF 58. At trial, Porter called
17 himself as a witness, and Defendants cross-examined Porter. The Defendants called no
18 witnesses of their own. The court had the opportunity to observe Porter as a witness,
19 evaluate his demeanor, consider his testimony, and assess his credibility.

20 In the Pre-Trial Stipulation, the parties stipulated to the admission into evidence of
21 Porter's Exhibits 1, 9, 10, 11, and 12 and Defendants' Exhibits A, B, C, D, E, and F.² See
22 PTS at 10-12. At trial, the parties further stipulated to the admission of Porter's Exhibit 12.
23 On Porter's motion, the court admitted into evidence Porter's Exhibits 2, 3, and 4 over
24 Defendants' objections, and Porter's Exhibits 5, 6, 7, 8, 14, 15, 16, and 17 without

25 _____
26 (...Continued)

27 notice of papers filed on its docket and noting, "papers filed in a bankruptcy case by a debtor under penalty
of perjury also have evidentiary significance under Fed. R. Evid. 801(d)").

28 ² Defendants' Exhibit F was identified as Exhibit G in the original PTS but designated Exhibit F by ECF 57.

1 objection. Porter withdrew his motion to admit Exhibit 13 into evidence. The parties made
2 their closing arguments orally. The court has considered Porter's trial testimony, the
3 documentary evidence received at trial, the oral and written arguments of the parties, and
4 the other matters of record before the court. The causes of action asserted in this
5 adversary proceeding are now ripe for decision.

6 **III. FACTS**

7 **A. The Subject Debts**

8 By his SAC, Porter seeks to discharge the following debts he owes to ECMC and
9 DOE, respectively:

10 Noteholder	Note Date	Disbursements	Rate	Payments
11 Educational 12 Credit 13 Management 14 Corp. 15 ("ECMC 16 Loans")	8/22/2005 ("First ECMC Note")	(1) \$10,000, 8/29/2005	4.23% (variable)	52 payments made from 3/19/2007 to 7/14/2014, for a total of \$19,611.35
		(2) \$8,500, 8/29/2005	4.23% (variable)	
		(3) \$5,000, 8/18/2006	6.8% (fixed)	
		(4) \$4,250, 8/18/2006	6.8% (fixed)	
	8/11/2006 ("Second ECMC Note")	(5) \$4,790, 9/15/2006	6.8% (fixed)	
	Outstanding on ECMC Loans as of 9/3/2018:	\$24,923.75		
18 U.S. Dept. of 19 Education 20 ("DOE 21 Loan")	2/20/2011 ("DOE Note")	(1) \$12,830, 9/14/2011	6.805% (fixed)	No payments made
		(2) \$7,670, 9/14/2011		
		(3) \$9,101, 3/16/2012		
		(4) \$4,566, 3/15/2012		
		(5) \$11,777, 3/27/2013		
	Outstanding on DOE Loan as of 9/7/2018:	\$64,076.28		
	<u>Grand Total Outstanding:</u>	<u>\$89,000.03</u>		

22 See PTS at 2-3, ¶¶ 3-7, 10-17; at 4, ¶¶ 26-29; at 7, ¶¶ 65-67 (as amended). The parties
23 stipulated that the ECMC and DOE Loans are "educational loans" for purposes of
24
25

1 Section 523(a)(8) of the Bankruptcy Code, 11 U.S.C. *Id.* at 2, ¶ 8; at 3, ¶ 19; at 4, ¶¶ 32-
2 33.

3 **B. Porter's Background**

4 Porter is 37 years old, unmarried, and has no dependents. PTS at 5, ¶ 37; *Porter*
5 *Trial Testimony, October 4, 2018 ("Porter Testimony")*. He "does not suffer from a
6 medically determinable impairment." PTS at 5, ¶ 36; *Porter Testimony*.

7 **1. Education**

8 Porter earned a Bachelor of Science degree in Electrical Engineering from Morgan
9 State University in 2003. PTS at 5, ¶ 38; *Porter Testimony*. He then attended Michigan
10 State University, where he initially struggled and was placed on academic probation but
11 went on to earn a Master of Science degree in Electrical Engineering in 2006. PTS at 5,
12 ¶ 39; *Porter Testimony*; see Porter's Exhibit 7, Michigan State University Transcript. The
13 ECMC Loans were used for Porter's graduate studies at Michigan State University. PTS
14 at 3, ¶ 18; *Porter Testimony*.

15 Porter attended Pima Community College from Fall 2009 to Fall 2010, took
16 psychology courses, but did not receive a degree. PTS at 5, ¶ 40; *Porter Testimony*. He
17 attended the online program at Walden University from March 2011 to December 2013.
18 PTS at 5, ¶ 41; *Porter Testimony*; see Porter's Exhibit 6, Walden University Transcript. At
19 Walden University, Porter was pursuing a PhD, so he took PhD-level psychology courses
20 but did not receive a degree. *Id.* Porter testified that he lost motivation and interest and
21 began to feel that the experience at Walden University was not worth the financial
22 investment. *Porter Testimony*. Porter used the DOE Loan for his studies at Walden
23 University. PTS at 4, ¶ 31; *Porter Testimony*.

24 **2. The Raytheon Company**

25 Beginning in 2007, Porter was employed by the Raytheon Company in Tucson,
26 Arizona as a project test engineer. PTS at 5, ¶ 42; *Porter Testimony*. Porter was earning
27 approximately \$74,000 per year in salary, receiving health benefits, and had
28 approximately \$60,000.00 in his 401(k) account. PTS at 5, ¶ 44; *Porter Testimony*. He

1 purchased a home in the Tucson area in 2007. *Porter Testimony*. From 2007 to 2012,
2 Porter received annual pay raises, and he was promoted in 2009 or 2010. *Id.*

3 In October 2012, Porter took a 6-month leave of absence from Raytheon and
4 moved from Tucson, Arizona to Pasadena, California to pursue "entertainment interests"
5 and "business interests." *Porter Testimony*; Porter's Exhibit 12, Raytheon Personal Leave
6 of Absence. Porter told Raytheon the reason for requesting leave was "to begin a
7 religious mission in California by serving others and showing the love of Jesus Christ." *Id.*
8 He believed that the leave would "help [him] develop personally and spiritually in [his]
9 relationships with [his] peers and management" and would "add to [his] diverse
10 experiences in meeting new people of various backgrounds with different needs." *Id.*
11 After six months, Porter extended his leave of absence by two months because he was
12 not sure what he wanted to do, but he felt it was time to move from Tucson. *Porter*
13 *Testimony*. During this time, Porter volunteered with a religious organization named
14 "Expression 58" that worked in outreach in downtown Los Angeles, often holding signs
15 that read "Free Hugs" and "Encouraging Words." *Porter Testimony*. On June 25, 2013,
16 Porter voluntarily resigned from his position at the Raytheon Company to move to
17 Pasadena, California, "based upon his religious inspirational faith" to work on his
18 business, the Eagle's Camp LLC, and to explore interests in the entertainment industry.
19 PTS at 5, ¶ 43; *Porter Testimony*. He also aspired to become a motivational speaker.
20 *Porter Testimony*.

21 **3. After the Raytheon Company**

22 Porter resigned from Raytheon without having secured a new job and knowing he
23 had a mortgage and student loans he was obligated to pay. *Porter Testimony*. He
24 eventually defaulted on his mortgage payments, and his house was foreclosed upon. *Id.*
25 His 401(k) retirement savings account was converted to an Individual Retirement Account
26 (IRA), and he relied on the funds in the IRA for his finances after leaving Raytheon. *Id.*
27 He did this knowing he would face income tax consequences for early withdrawal of the
28

1 funds. *Id.* Porter testified that he would have been able to make the standard payments
2 on the DOE Loan and the ECMC Loans had he not resigned from Raytheon. *Id.*

3 From August 2014 to November 2014, Porter worked at the Eagle's Camp, LLC,
4 his limited liability company that was registered in Arizona. PTS at 5, ¶ 45; *Porter*
5 *Testimony*. Porter was the CEO and Founder of the Eagle's Camp, LLC, as well as a
6 speaker, trainer, and tutor, and he hosted workshop training events and tutored students
7 in math. PTS at 5, ¶ 46; *Porter Testimony*.

8 Porter has worked as an independent contractor tutoring students in Burbank,
9 Pasadena, and San Gabriel, California, intermittently from December 2014 to May 2017
10 (on December 10 and 17, 2014; February 3 and 11, 2015; and February 7 through May 8,
11 2017). PTS at 6, ¶ 47; *Porter Testimony*. In February 2015, Porter worked at the Eagle's
12 Camp a total of one hour at \$40.00 per hour. PTS at 6, ¶ 48. From June 2015 to July
13 2015, Porter was self-employed as a house cleaner and cleaned residential homes. PTS
14 at 6, ¶ 49; *Porter Testimony*. From January 1, 2016 to December 31, 2016, Porter worked
15 at the Eagle's Camp as a speaker, trainer, and coach, where he hosted training
16 workshops and conducted one-on-one coaching 12 sessions. PTS at 6, ¶ 50; *Porter*
17 *Testimony*. In February 2016, Porter worked at the World Healing Church in Aliso Viejo,
18 California as an independent contractor conducting phone calls. PTS at 6, ¶ 51; *Porter*
19 *Testimony*. From February 2016 to May 2016, Porter worked at ETR Consulting in
20 Carson, California as an independent contractor tutoring students in math and English.
21 PTS at 6, ¶ 52; *Porter Testimony*. From February 2017 to the present, Porter worked at
22 the Eagle's Camp as a coach and math and English tutor. PTS at 6, ¶ 53; *Porter*
23 *Testimony*. From October 2017 to the present, Porter was self-employed as a house
24 cleaner in Pasadena, California. PTS at 6, ¶ 54; *Porter Testimony*. Porter testified that he
25 could earn much more money working as an engineer. *Porter Testimony*.

26 On December 17, 2014, Porter moved from his living accommodations at 1539
27 East Howard Street, #108, Pasadena, CA 91104 after failing to pay his rent. PTS at 6,
28 ¶ 55; *Porter Testimony*. From the night of December 17, 2014 through June 2, 2015,

1 Porter stayed with friends temporarily in Pasadena, CA, and Altadena, CA, in two friends'
2 cars for about nine nights in Pasadena, California, in Tucson, Arizona, Santa Rosa
3 Beach, Florida, and with family in Baltimore, Maryland for a brief period, before returning
4 to California on June 2, 2015.³ PTS at 6, ¶ 56; *Porter Testimony*. Porter stayed with a
5 friend while helping the friend move to a new place in June 2015 and with another friend
6 for a few short stays in 2018. PTS at 6, ¶ 57; *Porter Testimony*. He was able to make
7 these trips with his mother's financial support and by using air miles. *Porter Testimony*.
8 Porter testified that he has lived in his 1999 Toyota Sienna minivan since June 3 or 4,
9 2015. *Porter Testimony*; Porter's Exhibit 8, Pictures of Plaintiff's 1999 Minivan; *see also*
10 PTS at 7, ¶ 1. Porter's minivan needs new shocks, so he is unable to drive on freeways
11 and is limited to surface street driving. *Porter Testimony*; Porter's Exhibit 4, Auto Repair
12 Estimate; Porter's Exhibit 8, Pictures of Plaintiff's 1999 Minivan.

13 Porter has had only four job interviews for full-time employment from 2015 to 2018,
14 and he received no job offers from these interviews. PTS at 7, ¶ 58; *Porter Testimony*.
15 Three of these interviews were for education jobs, and the fourth was for a cleaning job.
16 *Porter Testimony*. Porter has not worked a full-time job since resigning from the Raytheon
17 Company in 2013. PTS at 7, ¶ 59; *Porter Testimony*. He has applied for jobs in teaching,
18 tutoring, engineering, and retail. *Porter Testimony*. He primarily applies for jobs by email
19 and through an online tutoring platform. *Porter Testimony*; *see* Porter's Exhibit 2, Job
20 Submissions. Porter's computer has not worked since September 2017, but he has been
21 using the computer at the public library to apply for jobs. *Porter Testimony*; *see* Porter's
22 Exhibit 3, Computer Repair Estimate. Porter did not give testimony regarding any regular
23 schedule for his job search or the number of hours per day or week that he spent
24 searching for employment. *Porter Testimony*. Porter admitted that he was not familiar
25 with the California Employment Development Department or its job search assistance
26

27 ³ Although the Pre-Trial Stipulation indicates that Porter returned to California in June 2018, Porter clarified
28 in his trial testimony that this actually occurred in 2015. *Porter Testimony*.

1 programs, and he has never pursued job counseling with the California Employment
2 Development Department. *Porter Testimony.*

3 **4. Assets and Earnings**

4 Porter does not have a savings account and has withdrawn most of the funds in his
5 401(k)/IRA accounts, except for \$215.40. PTS at 7, ¶ 60; *Porter Testimony.* He does not
6 have any assets he can liquidate to pay off the remaining balances on his student loans.
7 PTS at 7, ¶ 61; *Porter Testimony.* Porter's income tax returns show the following income:
8 (1) 2013 income: \$63,789, Porter's Exhibit 11, 2013 Tax Return; PTS at 7, ¶ 62; (2) 2016
9 Adjusted Gross Income: \$1,418, Porter's Exhibit 10, 2016 Tax Return; PTS at 7, ¶ 63; and
10 (3) 2017 Adjusted Gross Income: \$1,098, Porter's Exhibit 9, 2017 Tax Return; PTS at 7,
11 ¶ 64.

12 **C. Current Status of Loans**

13 Porter has not made a single payment on the DOE Loan. PTS at 4, ¶ 30; *Porter*
14 *Testimony.* As for the ECMC Loans, Porter made 52 payments totaling \$19,611.35
15 between March 19, 2007 and July 14, 2014. PTS at 7, ¶ 68 (as amended); *Porter*
16 *Testimony.* Without consolidating or otherwise modifying the loans, the standard monthly
17 payment today would be \$728 on the DOE Loan, see Defendants' Exhibit F, Copy of
18 Letter from Elan S. Levey to Plaintiff, dated June 25, 2018, at 6, and \$187 on the ECMC
19 Loans, see Defendants' Exhibit C, Copy of Letter from Scott A. Schiff to Plaintiff, dated
20 June 13, 2018, at 5.

21 The DOE Loan and the ECMC Loans are eligible for the following modifications or
22 repayment plans: (1) consolidation through either the William D. Ford Federal Direct Loan
23 Program (the "Direct Loan Program") or the Federal Family Education Program
24 ("FFELP"), PTS at 3, ¶ 20; at 4-5, ¶ 34; (2) Income Based Repayment Plan ("IBR"), PTS
25 at 4, ¶ 23; at 4-5, ¶ 34; and (3) Revised Pay as You Earn Plan ("REPAYE"), PTS at 4,
26 ¶ 23; at 4-5, ¶ 34. See Defendants' Exhibit C, Copy of Letter from Scott A. Schiff to
27 Plaintiff, dated June 13, 2018; Defendants' Exhibit F, Copy of Letter from Elan S. Levey to
28 Plaintiff, dated June 25, 2018; *Porter Testimony.* The DOE Loan is also eligible for the

1 Income Contingent Repayment Plan ("ICRP"). PTS at 4-5, ¶ 34; see Defendants' Exhibit
2 F, Copy of Letter from Elan S. Levey to Plaintiff, dated June 25, 2018.

3 Regarding the ECMC Loan, Porter's estimated payments through the Direct Loan
4 Program based on a balance of \$24,923.75 and an Adjusted Gross Income of \$18,090.00
5 or less would be \$0.00 under IBR or REPAYE. PTS at 3-4, ¶ 22; see Defendants' Exhibit
6 C. Regarding the DOE Loan, Porter's estimated payments through the Direct Loan
7 Program based on a balance of \$64,076.28 and an Adjusted Gross Income of \$18,090.00
8 or less would be \$0.00 under IBR, ICRP, or REPAYE. PTS at 4-5, ¶ 34; see Defendants'
9 Exhibit F, Copy of Letter from Elan S. Levey to Plaintiff, dated June 25, 2018.

10 Notwithstanding Porter's eligibility for these repayment plans under the Direct Loan
11 Program or the FFELP, he has refused to apply for any of these programs. PTS at 3,
12 ¶ 21; at 4, ¶ 24; at 5, ¶ 35; *Porter Testimony*. Porter testified that he was fully aware of his
13 eligibility for these programs and that his current monthly payment would be \$0 for both
14 the DOE Loan and the ECMC Loans under any payment program. *Porter Testimony*. He
15 said he was apprehensive of applying for the repayment programs because he did not
16 want to have to pay interest that accrued during the pendency of the plan upon completion
17 of the plan. *Porter Testimony*. He later admitted that he misunderstood the function of
18 the repayment programs and that all accrued interest would be forgiven along with the
19 principal upon completion of the plan term. *Id.*

20 **IV. ANALYSIS**

21 **A. Standard for Discharge of Student Loan Debts**

22 Discharge of debts fulfills the "fresh start" principle underlying the Bankruptcy
23 Code. *Grogan v. Garner*, 498 U.S. 279, 286 (1991) ("central purpose of the Code is to
24 provide a procedure by which certain insolvent debtors can reorder their affairs, make
25 peace with their creditors, and enjoy a new opportunity in life with a clear field for future
26 effort, unhampered by the pressure and discouragement of preexisting debt"). Section
27 523(a) of the Bankruptcy Code, 11 U.S.C., enumerates various types of debt that are or
28 may be determined nondischargeable. Section 523(a)(8) provides that a student loan is

1 not dischargeable "unless excepting such debt from discharge . . . would impose an
2 undue hardship on the debtor and the debtor's dependents." 11 U.S.C. § 523(a)(8).⁴

3 The United States Court of Appeals for the Ninth Circuit has articulated the policy
4 behind the statute as follows:

5 [In enacting section 523(a)(8)], Congress sought to prohibit a
6 "garden-variety debtor" from discharging student loans, especially
7 when that "garden-variety debtor" will presumably use her [or his]
8 loan-funded education to substantially increase her [or his] income
9 in the near future. What separates a "garden-variety debtor" from a
debtor who can show "undue hardship" is the realistic possibility
that a "garden-variety debtor" could improve her [or his] financial
situation in the future.

10 *Educational Credit Management Corp. v. Nys (In re Nys)*, 446 F.3d 938, 946 (9th Cir.
11 2006) (internal citations omitted).

12 "Under section 523(a)(8), the lender has the initial burden to establish the existence
13 of the debt and that the debt is an educational loan within the statute's parameters." *Roth*
14 *v. Educ. Credit Management Corp. (In re Roth)*, 490 B.R. 908, 916 (9th Cir. BAP 2013)
15 (citing *Lavy v. U.S. Department of Education (In re Lavy)*, 2008 WL 4964721, at *3 (Bankr.
16 W.D. Wash. 2008)). The burden then shifts to the debtor to prove by a preponderance of
17 evidence the three-prong test for "undue hardship" set forth below. *Id.*

18 Here, the parties have stipulated as to the existence and balance of the subject
19 loans, see PTS at 2-3, ¶¶ 3-7, 10-17; at 4, ¶¶ 26-29; at 7, ¶¶ 65-67 (as amended), and
20 that the loans are "educational loans" for purposes of Section 523(a)(8), see *id.* at 2, ¶ 8;

21 _____
22 ⁴ Section 523(a)(8) provides as follows:

23 (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an
individual debtor from any debt--

24 (8) unless excepting such debt from discharge under this paragraph would impose an undue
hardship on the debtor and the debtor's dependents, for—

25 (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

26 (ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

27 (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;

28 11 U.S.C. § 523(a)(8).

1 at 3, ¶ 19; at 4, ¶¶ 32-33. Thus, the burden shifts to Porter to prove that he meets the test
2 for "undue hardship" by a preponderance of the evidence.

3 Although the Bankruptcy Code does not define "undue hardship," the Ninth Circuit
4 in *Pena v. United Student Aid Funds, Inc. (In re Pena)*, 155 F.3d 1108, 1112 (9th Cir.
5 1998) adopted the three-prong test set forth by the Second Circuit in *Brunner v. New York*
6 *State Higher Education Service*, 831 F.2d 395 (2nd Cir. 1987). Under the *Brunner* test, to
7 obtain a discharge of student debt, the debtor bears the burden of proving all three
8 prongs:

9 (1) the debtor cannot maintain, based on current income and
10 expenses, a "minimal" standard of living for the debtor and the
debtor's dependents if forced to repay the loans;

11 (2) additional circumstances exist indicating that this state of affairs is
12 likely to persist for a significant portion of the repayment period of
the loans; and

13 (3) the debtor has made good faith efforts to repay the loans.

14 *Brunner*, 831 F.2d at 396. If the debtor fails to prove any one of the three prongs, then the
15 loan will not be discharged. *In re Roth*, 490 B.R. at 916 (citing *Carnduff v. U.S.*
16 *Department of Education (In re Carnduff)*, 367 B.R. 120, 127 (9th Cir. BAP 2007)).

17 **B. Applying the *Brunner* Test.**

18 **1. First Prong: Whether the Debtor Can Maintain, Based on Current**
19 **Income and Expenses, a "Minimal" Standard of Living for the Debtor**
and the Debtor's Dependents if Forced to Repay the Loans.

20 To meet the first prong and show that a "minimal" standard of living cannot be
21 maintained if the loans are repaid, "the debtor must demonstrate more than simply tight
22 finances." *In re Rifino*, 245 F.3d 1083, 1088 (9th Cir. 2001) (internal citation omitted).
23 The standard requires more than temporary financial adversity but does not necessarily
24 have to reach utter hopelessness. *Id.* The method of such a calculation is left to the
25 discretion of the bankruptcy court and typically involves subtracting a debtor's average
26 monthly expenses from his monthly income. See *In re Pena*, 155 F.3d at 1112-1113.

27 Porter is 37 years old, unmarried, and has no dependents. PTS at 5, ¶ 37; *Porter*
28 *Testimony*. As of June 25, 2013, when Porter voluntarily resigned from the Raytheon

1 Company, he was earning approximately \$74,000 per year, receiving health benefits, and
2 had approximately \$60,000.00 in his 401(k) account. PTS at 5, ¶¶ 43-44; *Porter*
3 *Testimony*. He currently works two part-time and sporadic jobs: (1) as a coach and math
4 and English tutor at the Eagle's Camp, where he has been since February 2017, PTS at 6,
5 ¶ 53; and (2) as a self-employed house cleaner in Pasadena, California, which he has
6 done since October 2017, *id.*, ¶ 54. *Porter Testimony*. Although Porter did not present
7 specific evidence of his current income and expenses, according to his Schedules I and J
8 filed on the petition date, as of July 26, 2017, Porter had monthly income of \$281.37,
9 monthly expenses of \$225.84, and a monthly net income of \$55.23. See Main Bankruptcy
10 Case, ECF 1 at 21-25. The monthly expenses do not include payments on the subject
11 student loans. See *id.*

12 Porter does not have a savings account and has withdrawn most of his 401(k)/IRA,
13 except for \$215.40. PTS at 7, ¶ 60; *Porter Testimony*. He does not have any assets he
14 can liquidate to pay off the remaining balances on his student loans. PTS at 7, ¶ 61;
15 *Porter Testimony*. Porter's income tax returns show the following income: (1) 2013
16 income: \$63,789, Porter's Exhibit 11; PTS at 7, ¶ 62; (2) 2016 Adjusted Gross Income:
17 \$1,418, Porter's Exhibit 10, 2016 Tax Return; PTS at 7, ¶ 63; and (3) 2017 Adjusted
18 Gross Income: \$1,098, Porter's Exhibit 9, 2017 Tax Return; PTS at 7, ¶ 64.

19 If Porter started making standard payments on the DOE and ECMC Loans without
20 consolidating or otherwise modifying the loans, the standard monthly payment today
21 would be \$728 on the DOE Loan, see Defendants' Exhibit F, Copy of Letter from Elan S.
22 Levey to Plaintiff, dated June 25, 2018, at 6, and \$187 on the ECMC Loans, see
23 Defendants' Exhibit C, Copy of Letter from Scott A. Schiff to Plaintiff, dated June 13, 2018,
24 at 5.

25 From the night of December 17, 2014 through June 2, 2015, Porter stayed with
26 friends temporarily in Pasadena, CA, and Altadena, CA, in two friends' cars for about nine
27 nights in Pasadena, California, in Tucson, Arizona, Santa Rosa Beach, Florida, and with
28 family in Baltimore, Maryland for a brief period, before returning to California on June 2,

1 2015. PTS at 6, ¶ 56; *Porter Testimony*. Porter testified that he has lived in his 1999
2 Toyota Sienna minivan since June 3 or 4, 2015. *Porter Testimony*; Porter's Exhibit 8; see
3 also PTS at 7, ¶ 1. His minivan needs new shocks, so he is unable to drive on freeways
4 and is limited to surface street driving. *Porter Testimony*; Porter's Exhibit 4, Auto Repair
5 Estimate; Porter's Exhibit 8, Pictures of Plaintiff's 1999 Minivan.

6 The court found Porter's testimony about his current living situation to be credible.
7 Living in a van on a net monthly income of \$55.23 clearly falls short of a minimal standard
8 of living. There is no way Porter could make the standard monthly payments of \$728 and
9 \$187, respectively, on the DOE and ECMC Loans. Further, modification of the loans to
10 adjust the terms would do nothing to increase his net monthly income, and the loans
11 would continue to accrue interest. Thus, Porter has established by a preponderance of
12 the evidence that he cannot maintain, based on current income and expenses, a "minimal"
13 standard of living if forced to repay the loans. However, even though Porter meets the
14 first prong of the *Brunner* test, he must still prove by a preponderance of the evidence that
15 he meets prongs two and three.

16 **2. Second Prong: Whether Additional Circumstances Exist Indicating**
17 **That This State of Affairs is Likely to Persist for a Significant Portion of**
18 **the Repayment Period of the Loans.**

19 When deciding whether a debtor has satisfied the second prong of the *Brunner*
20 "undue hardship" test, the debtor must show circumstances beyond a mere current
21 inability to pay that are likely to persist throughout the repayment period. *In re Nys*, 446
22 F.3d at 946. The court should focus on the debtor's financial situation. *Id.* The
23 circumstances need be "exceptional" only in the sense that they demonstrate
24 insurmountable barriers to the debtor's financial recovery and ability to pay. *Id.* This
25 analysis looks to the future, and there is a presumption that a debtor's financial condition
26 will improve:

26 We do not presume that an individual's present inability to make
27 loan payments will continue indefinitely. Rather, we hold that the
28 burden is on the debtor to provide the court with additional
circumstances However, . . . the determinative question is
whether the debtor's inability to pay will, given all we know about

1 the salient features of [his] existence, persist throughout a
substantial portion of the loan's repayment period.

2 Under this standard, the debtor cannot purposely choose to live a
3 lifestyle that prevents [him] from repaying [his] student loans. Thus,
the debtor cannot have a reasonable opportunity to improve [his]
4 financial situation, yet choose not to do so. See *Rifino*, 245 F.3d at
1089 (stating the bankruptcy court's factual finding that the debtor's
5 financial situation was not likely to improve was clearly erroneous
because, after she gained experience, the debtor would have
6 opportunities to advance to higher paying positions within her
profession). At the same time, we cannot fault the debtor for
7 having made reasonable choices that now inhibit [his] ability to
substantially increase [his] income in the future. . . .

8 . . . We will presume that the debtor's income will increase to a
9 point where [he] can make payments and maintain a minimal
standard of living; however, the debtor may rebut that presumption
10 with "additional circumstances" indicating that [his] income cannot
reasonably be expected to increase and that [his] inability to make
11 payments will likely persist throughout a substantial portion of the
loan's repayment period.

12 *Id.*; see also *Perez v. Direct Loans (In re Perez)*, No. 16-28473-B-7, 2018 WL 1037408, at
13 *7 (Bankr. E.D. Cal. Feb. 20, 2018) (discussing *Nys*).

14 The non-exhaustive list of factors a bankruptcy court should consider as "additional
15 circumstances" and their application to Porter is as follows:⁵

16 **(1) Serious mental or physical disability of the debtor or the**
17 **debtor's dependents which prevents employment or**
advancement.

18 Porter is 37 years old, unmarried, and has no dependents. PTS at 5, ¶ 37; *Porter*
19 *Testimony*. He "does not suffer from a medically determinable impairment." PTS at 5
20 ¶ 36; *Porter Testimony*. The court had the opportunity to observe Porter as a witness,
21 evaluate his demeanor, consider his testimony, and assess his credibility. The court saw
22 no sign of impairment and found Porter to be intelligent and articulate.

23 **(2) The debtor's obligations to care for dependents.**

24 Porter has no dependents. PTS at 5, ¶ 37; *Porter Testimony*.

25 **(3) Lack of, or severely limited, education.**

26 Porter's educational background is noteworthy. He earned a Bachelor of Science

27 ⁵ See *In re Nys*, 446 F.3d at 947.

1 degree in Electrical Engineering from Morgan State University in 2003. PTS at 5, ¶ 38;
2 *Porter Testimony*. Porter earned a Master of Science degree in Electrical Engineering
3 from Michigan State University in 2006. PTS at 5, ¶ 39; *Porter Testimony*. Porter
4 attended Pima Community College from Fall 2009 to Fall 2010, took psychology courses,
5 but did not receive a degree. PTS at 5, ¶ 40; *Porter Testimony*. He attended Walden
6 University from March 2011 to December 2013, took PhD-level psychology courses, but
7 did not receive a degree. PTS at 5, ¶ 41; *Porter Testimony*.

8 **(4) Poor quality of education.**

9 See factor 3 above.

10 **(5) Lack of usable or marketable job skills.**

11 See factor 3 above. Further, Porter gained substantial experience at the Raytheon
12 Company, where he was rewarded with a promotion and periodic pay raises. He was a
13 project test engineer at Raytheon in Tucson, Arizona from 2007 until he voluntarily
14 resigned on June 25, 2013. PTS at 5, ¶¶ 42-43; *Porter Testimony*. From 2007 to 2012,
15 Porter received annual pay raises, and he was promoted in 2009 or 2010. *Porter*
16 *Testimony*.

17 **(6) Underemployment.**

18 Porter currently works two part-time and sporadic jobs: (1) as a coach and math
19 and English tutor at the Eagle's Camp, where he has been since February 2017, PTS at 6,
20 ¶ 53; and (2) as a self-employed house cleaner in Pasadena, California, which he has
21 done since October 2017, *id.*, ¶ 54. *Porter Testimony*. On June 25, 2013, Porter
22 voluntarily resigned from his position at the Raytheon Company to move to Pasadena,
23 California, "based upon his religious inspirational faith" to work on his business, the
24 Eagle's Camp LLC, and explore interests in the entertainment industry. PTS at 5, ¶ 43;
25 *Porter Testimony*. He also aspired to become a motivational speaker. *Porter Testimony*.
26 Porter has had only four job interviews for full-time employment from 2015 to 2018, and
27 he received no job offers from these interviews. PTS at 7, ¶ 58. Three of these interviews
28 were for education jobs, and the fourth was for a cleaning job. *Porter Testimony*. Porter

1 has not worked a full-time job since resigning from the Raytheon Company in 2013. *Id.*,
2 ¶ 59; *Porter Testimony*. He has applied for jobs in teaching, tutoring, engineering, and
3 retail. *Porter Testimony*. He has not put forth sufficient effort to find more lucrative
4 opportunities than his current situation.

5 Porter was the CEO and Founder of the Eagle's Camp, LLC, as well as a speaker,
6 trainer, and tutor, hosted workshop training events and tutored students in math. PTS at
7 5, ¶ 46; *Porter Testimony*. From August 2014 to November 2014, Porter worked at the
8 Eagle's Camp, LLC, his limited liability company that was registered in Tucson, Arizona.
9 PTS at 5, ¶ 45; *Porter Testimony*. In February 2015, Porter worked at the Eagle's Camp a
10 total of one hour at \$40.00 per hour. PTS at 6, ¶ 48. From June 2015 to July 2015, Porter
11 was self-employed as a house cleaner and cleaned residential homes. PTS at 6, ¶ 49;
12 *Porter Testimony*. From January 1, 2016 to December 31, 2016, Porter worked at the
13 Eagle's Camp as a speaker, trainer, and coach, where he hosted training workshops and
14 conducted one-on-one coaching sessions. PTS at 6, ¶ 50; *Porter Testimony*. In February
15 2016, Porter worked at the World Healing Church in Aliso Viejo, California as an
16 independent contractor conducting phone calls. PTS at 6, ¶ 51. From February 2016 to
17 May 2016, Porter worked at ETR Consulting in Carson, California as an independent
18 contractor tutoring students in math and English. PTS at 6, ¶ 52; *Porter Testimony*.

19
20 **(7) Maximized income potential in the chosen educational field, and
no other more lucrative job skills.**

21 Porter testified that he has applied for jobs in teaching, tutoring, engineering, and
22 retail, but rarely does he pursue engineering positions. *Porter Testimony*. He seems to
23 have abandoned his chosen educational field.

24
25 **(8) Limited number of years remaining in the debtor's work life to
allow payment of the loan.**

26 Porter is 37 years old, unmarried, and has no dependents. PTS at 5, ¶ 37; *Porter*
27 *Testimony*. He "does not suffer from a medically determinable impairment." PTS at 5,
28 ¶ 36; *Porter Testimony*. He has Bachelor of Science degree in Electrical Engineering from

1 Morgan State University in 2003, PTS at 5, ¶ 38, and a Master of Science degree in
2 Electrical Engineering from Michigan State University in 2006, *id.*, ¶ 39. Under the
3 circumstances, Porter has many years remaining in his work life and an ability to find
4 employment that would allow payment of the loans.

5
6 **(9) Age or other factors that prevent retraining or relocation as a
means for payment of the loan.**

7 See factor 8 above.

8
9 **(10) Lack of assets, whether or not exempt, which could be used to
pay the loan.**

10 Porter does not have a savings account and has withdrawn most of his 401(k)/IRA
11 except for \$215.40. PTS at 7, ¶ 60; *Porter Testimony*. Porter does not have any assets
12 he can liquidate to pay off the remaining balances on his student loans. PTS at 7, ¶ 61;
13 *Porter Testimony*. However, Porter has the résumé and the ability to find employment
14 that would enable him to accumulate assets.

15 **(11) Potentially increasing expenses that outweigh any potential
16 appreciation in the value of the debtor's assets and/or likely
increases in the debtor's income.**

17 Porter presented no evidence on his increasing expenses.

18 **(12) Lack of better financial options elsewhere.**

19 Porter presented no evidence of a shortage of financial alternatives. On the
20 contrary, Porter testified about receiving financial assistance from his mother on multiple
21 occasions. *Porter Testimony*.

22 The only factors listed above that could constitute "additional circumstances" in
23 Porter's favor are underemployment and a lack of assets, both of which are rooted in
24 Porter's failure to capitalize on reasonable employment opportunities available to
25 someone of his age, experience, and education. Porter testified that since leaving
26 Raytheon in 2013, he has worked odd jobs, mostly in tutoring and house cleaning. He
27 has had only four job interviews for full-time employment from 2015 to 2018, and he
28 received no job offers from these interviews. Three of these interviews were for education

1 jobs, and the fourth was for a cleaning job. He testified that he "wanted to try to stick
2 within education," but was persuaded by a friend to also apply for engineering jobs based
3 on his educational background and experience. He has presented no evidence of such
4 applications. He primarily applies for jobs by email and through an online tutoring
5 platform. He has not sought job search assistance and counseling available through
6 public agencies, such as the California Employment Development Department. Porter
7 has employed a haphazard, sporadic, and unsystematic approach to his job search, which
8 appears to be based solely on blind submission of his résumé via email or online job
9 boards, and he has presented no evidence of the time spent on this effort. Porter did not
10 in his testimony describe any regular schedule for searching for employment or describe
11 the number of hours per day or week that he devoted to searching for employment, which
12 underscores the lack of any systematic, consistent and diligent search for work on his
13 part. Under the circumstances, Porter has not made a reasonable attempt to find gainful
14 employment.

15 Porter's one-dimensional job search, sending out résumés by email to prospective
16 employers, is ineffective, if not, outmoded as observed in *What Color is Your Parachute?*,
17 one of the most highly regarded job-hunting books in the world. In *What Color is Your*
18 *Parachute? 2018: A Practical Manual for Job-Hunters and Career-Changers* (2018), the
19 author, Richard N. Bolles, pointed out that "résumés are a lousy way to go about finding a
20 job" because an employer must dwindle down a giant stack of random résumés to a
21 manageable size for interviewing, so résumés have an atrocious success rate of only 1
22 out of 270 resulting in landing a job. Richard N. Bolles, *What Color is Your Parachute?*
23 *2018: A Practical Manual for Job-Hunters and Career-Changers* at 16 (2018). (The
24 Library of Congress referred to an earlier edition of this book as one of the "25 Books That
25 Have Shaped Readers' Lives" See Library of Congress listing accessed on October 10,
26 2018: <http://www.loc.gov/loc/lcib/9504/cfb.html>.)

27 Porter "cannot purposely choose to live a lifestyle that prevents [him] from repaying
28 [his] student loans. . . . [He] cannot have a reasonable opportunity to improve [his]

1 financial situation, yet choose not to do so" by failing to diligently look for work that he is
2 qualified for and would be sufficient to make payments on the subject loans. *See In re*
3 *Nys*, 446 F.3d 946. Therefore, the court determines that Porter has failed to meet his
4 burden to show by a preponderance of the evidence that additional circumstances exist
5 indicating that his current state of affairs is likely to persist for a significant portion of the
6 repayment period of the loans.

7
8 **3. Third Prong: Whether the Debtor Has Made Good Faith Efforts to
Repay the Loans.**

9 Regarding the third prong, good faith is measured by the debtor's "efforts to obtain
10 employment, maximize income, and minimize expenses." *Hedlund v. Educational*
11 *Resources Institute, Inc.*, 718 F.3d 848, 852 (9th Cir. 2013) (quoting *Pennsylvania Higher*
12 *Education Assistance Agency v. Birrane (In re Birrane)*, 287 B.R. 490, 499 (9th Cir. BAP
13 2002)). "Courts will also consider a debtor's effort—or lack thereof—to negotiate a
14 repayment plan, although a history of making or not making payments is, by itself, not
15 dispositive." *Hedlund*, 718 F.3d at 852 (quoting *Educational Credit Management Corp. v.*
16 *Mason (In re Mason)*, 464 F.3d 878, 884 (9th Cir. 2006)). This includes determining
17 whether the debtor, in good faith, considered consolidation options. *In re Nys*, 446 F.3d at
18 947 (citing *Alderete v. Educational Credit Management Corp. (In re Alderete)*, 412 F.3d
19 1200, 1206 (10th Cir. 2005) ("[although] participation in a repayment program is not
20 required to satisfy the good-faith prong," it is considered "an important indicator of good
21 faith")). "A debtor's obligation to make 'good faith' efforts to repay his education loans is
22 not extinguished with the filing of an adversary proceeding in bankruptcy." *In re Birrane*,
23 287 B.R. at 500.

24 As discussed above, Porter's job search has been haphazard, sporadic, and
25 nonsystematic, and has unsurprisingly yielded poor results. He relies on blind submission
26 of his résumé via email or online job boards. In light of his underemployment, Porter has
27 ample time to put forth the effort to meet with a job counselor, attend networking events,
28 or introduce himself to prospective employers, but he chooses not to pursue these

1 avenues. He voluntarily left his engineering job at Raytheon, and now seems determined
2 to work as a tutor. Porter has not made a reasonable attempt to diligently look for work in
3 engineering that he is qualified for and would be sufficient to make payments on the
4 subject loans. His refusal to obtain employment and maximize income is a circumstance
5 within his control that does not demonstrate a good faith effort to repay the loans. *See In*
6 *re Birrane*, 287 B.R. at 500.

7 Porter's complacency is further demonstrated by his failure to seek job counseling
8 from one of the multitude of options available to him. For example, the California
9 Employment Development Department offers a program called "CalJobs for Job Seekers"
10 that allows users to search for jobs, build résumés, access career resources, and gather
11 information on education and training.⁶ Porter was not familiar with the job search
12 assistance resources available through public agencies, such as the California
13 Employment Development Department or its programs, and he has never pursued job
14 counseling with the California Employment Development Department. *Porter Testimony*.

15 Further, Porter has not made a single payment on the DOE Loan. PTS at 4, ¶ 30;
16 *Porter Testimony*. As for the ECMC Loans, Porter made 52 payments totaling \$19,611.35
17 between March 19, 2007 and July 14, 2014, but he has not made a payment since then.
18 PTS at 7, ¶ 68 (as amended); *Porter Testimony*. Throughout this time, Porter has refused
19 to pursue a repayment plan or loan consolidation.

20 The DOE Loan and the ECMC Loans are eligible for the following modifications or
21 repayment plans: (1) consolidation through either the William D. Ford Federal Direct Loan

22 _____
23 ⁶ See https://www.edd.ca.gov/jobs_and_training/Caljobs.htm. Pursuant to Federal Rule of Evidence 201,
24 the Court "may take judicial notice on its own" of "a fact that is not subject to reasonable dispute because it .
25 . . can be accurately and readily determined from sources whose accuracy cannot reasonably be
26 questioned." Fed. R. Evid. 201(b)(2), (c)(1). "Under Rule 201, the court can take judicial notice of '[p]ublic
27 records and government documents available from reliable sources on the Internet,' such as websites run by
28 governmental agencies." *Gerritsen v. Warner Bros. Entm't Inc.*, 112 F. Supp. 3d 1011, 1033-34 (C.D. Cal.
2015) (citing *Hansen Beverage Co. v. Innovation Ventures, LLC*, No. 08-CV-1166-IEG, 2009 WL 6597891,
*1 (S.D. Cal. 2009)); see also *Daniels-Hall v. National Education Association*, 629 F.3d 992, 999 (9th
Cir.2010) (taking judicial notice of information on the websites of two school districts because they were
government entities); *Paralyzed Veterans of Am. v. McPherson*, No. C 06-4670, 2008 WL 4183981, *5
(N.D. Cal. 2008) ("Information on government agency websites has often been treated as properly subject to
judicial notice").

1 Program (the "Direct Loan Program") or the Federal Family Education Program
2 ("FFELP"), PTS at 3, ¶ 20; at 4-5, ¶ 34; (2) Income Based Repayment Plan ("IBR"), PTS
3 at 4, ¶ 23; at 4-5, ¶ 34; and (3) Revised Pay as You Earn Plan ("REPAYE"), PTS at 4,
4 ¶ 23; at 4-5, ¶ 34. See Defendants' Exhibit C, Copy of Letter from Scott A. Schiff to
5 Plaintiff, dated June 13, 2018; Defendants' Exhibit F, Copy of Letter from Elan S. Levey to
6 Plaintiff, dated June 25, 2018; *Porter Testimony*. The DOE Loan is also eligible for the
7 Income Contingent Repayment Plan ("ICRP"). PTS at 4-5, ¶ 34; see Defendants' Exhibit
8 F, Copy of Letter from Elan S. Levey to Plaintiff, dated June 25, 2018. As discussed
9 above, Porter's estimated payments through the repayment plans for which he is qualified,
10 based on an Adjusted Gross Income of \$18,090.00 or less, would be \$0 on both the DOE
11 and the ECMC Loans.

12 Notably, the IBR would require Porter to make a twenty-five-year commitment to
13 dedicate on a monthly basis one-twelfth of fifteen percent of the amount by which his
14 average gross income exceeds 150% of the federal poverty level for his family size.
15 34 C.F.R. § 685.221; see *Roth v. Educational Credit Management Corp.*, 490 B.R. 908,
16 913 (9th Cir. BAP 2013). After twenty-five years, any remaining balance would be
17 forgiven. 34 C.F.R. § 685.221(f). Based on Porter's current income, the payments under
18 the IBR (and other repayment plans) would be \$0.00. A similar loan forgiveness
19 mechanism is available through ICRP and REPAYE. See 34 C.F.R. § 685.209.

20 Porter testified that he was fully aware of his eligibility for these programs and that
21 his current monthly payment would be \$0 for both the DOE Loan and the ECMC Loans
22 under any payment program. *Porter Testimony*. He said he was apprehensive of
23 applying for the repayment programs because he did not want to have to pay interest that
24 accrued during the pendency of the plan upon completion of the plan. *Porter Testimony*.
25 He later admitted that he misunderstood the function of the repayment programs and that
26 all accrued interest would be forgiven along with the principal upon completion of the plan
27 term. *Id.* Notwithstanding Porter's eligibility for these repayment plans and the potential
28 to have the loans forgiven after twenty-five years, Porter has refused to apply for

1 consolidation or the repayment plans. This does not demonstrate a good faith effort to
2 repay the loans.


3 Accordingly, based on Porter's lack of effort to obtain employment and maximize
4 income, and his refusal to negotiate a repayment plan or pursue loan consolidation, Porter
5 has failed to prove by a preponderance of evidence that he has made good faith efforts to
6 repay the subject loans.

7 **V. CONCLUSION**

8 For all the foregoing reasons, Porter has failed to meet his burden by proving by a
9 preponderance of the evidence that excepting the subject debt from discharge would
10 impose an undue burden on him. Notably, Porter has not presented evidence that would
11 support a conclusion that additional circumstances exist indicating that his current state of
12 affairs is likely to persist for a significant portion of the repayment period of the loans or
13 that he has made good faith efforts to repay the subject loans. Accordingly, the court will
14 enter judgment for Defendants.

15 ###

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22
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24 Date: October 11, 2018



Robert Kwan
United States Bankruptcy Judge