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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT CALIFORNIA
LOS ANGELES DIVISION

In re) Case No.: 2:11-bk-23974-RN
9 Tamara Lynn Schwartz,) Adv. No.: 2:14-ap-01722-RN
10 Debtor)
11) Chapter 7
12)
13 Tammy Lynn Schwartz,)
14 Plaintiff)
15)
16 vs.)
17 National Collegiate Student Loan Trust 2007-1,)
18 Defendant)
19)
20) Filed Concurrently with:
21) Statement of Uncontroverted Facts
22) Memorandum of Points and Authorities
23) Proposed Order
24)
25) Date: July 7, 2015
26) Time: 2:00 p.m.
27) Crtrm: 1645; 16th Floor
28)

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 7, 2015, at 2:00 p.m., or as soon thereafter as the matter may be heard, before the Honorable Richard M. Neiter, Courtroom 1645 of the United States Bankruptcy Court, located at 255 E. Temple Street, Los Angeles, CA 90012, Plaintiff/Debtor/Movant Tamara Lynn Schwartz will, and hereby does, move under Rule 56 of the Federal Rules of Civil Procedure, for summary judgment. Specifically, Ms. Schwartz moves on the ground that the debt owed to National Collegiate Student Loan Trust, 2007-1 is not a qualified education loan pursuant to 11 U.S.C. §523(a)(8)(B).

This motion is based upon: (i) this Amended Notice of Motion; (ii) the Motion and Memorandum of Points and Authorities on the record; (iii) the pleadings on the record; (iv) the Statement of

1 Uncontroverted Facts on the record; (v) and other documents on file herein; and (vi) such further material
2 as the Court may consider at or before hearing on this Motion.

3 **Deadline for Response** is made pursuant to Local Bankruptcy Rule 7056-1.

4 Tamara Lynn Schwartz, Plaintiff, the Debtor in the above bankruptcy, files this Motion For
5 Summary Judgment, with Brief in Support, pursuant to Rule 7056 of the Federal Rules of Bankruptcy
6 Procedure and Rule 56 of the Federal Rules of Civil Procedure and Rule 7056-1 of the Local Bankruptcy
7 Rules for the entry of a summary judgment in his favor and in support thereof respectfully show unto the
8 Court the following:

9 1. On or about 09/13/2006 Tammy Lynn Schwartz executed a "Non-Negotiable Credit Agreement—
10 This is a Consumer Credit Transaction" through Bank of America, N.A. as ("Lender").

11 2. Plaintiff is the mother of Matthew Schwartz ("Student") and executed the Credit Agreement to
12 obtain loans for her son to be placed in a lockdown rehabilitation facility, Youthcare/Pine Ridge
13 Academy, in Draper, Utah.

14 3. The type of loan taken pursuant to the Credit Agreement was a "TERI K-12 loan."

15 4. From that time until some 11 months later, Matthew Schwartz resided at Youth Care. After 11
16 months in this lockdown treatment facility, Matthew left Youth Care.

17 5. Youth Care is a treatment facility for adolescents between the ages of 11 and 18 years of age.
18 They strive to promote change in adolescents that are struggling with problems such as depression, self-
19 esteem issues, substance abuse, and much more, according to their website
20 (www.youthcare.crchealth.com/about-us).

21 6. The Debtor asserts that this loan is not a "Qualified Education Loan" because her son Matthew did
22 not receive "higher education," but rather, the education received, if any, was toward a high school
23 diploma. Further, she asserts that the majority of the proceeds from the "loan" funded expenses for the
24 residency and treatment of her son's substance abuse, including room and board, medications, food, and
25 counseling treatment at the Youth Care facility.

26 7. Additionally, Tammy Schwartz asserts that her son was under the age of 18 at the time he was
27 admitted to Youth Care and the education loans that were taken were for the primary purpose of treating
28 his substance abuse.

1 8. The primary reason that Debtor filed her bankruptcy was due to disability.
2 9. Matthew Schwartz passed away on 10/16/2009
3 10. A voluntary petition under Chapter 7 was filed on March 31, 2011.
4 11. The case was Discharged by the Court on July 12, 2011. [2:11-bk-23974-RN ; Docket 11]

5 Based on the established and uncontested facts that have been developed through discovery and
6 Affidavits secured by the Plaintiff, there are no genuine issues of material fact and that the
7 Debtor/Movant is therefore entitled to judgment as a matter of law.

8 The Debtor/Movant is moving this Court for the entry of a summary judgment in favor of the
9 Debtor/Movant.

10 This motion is based upon: (i) the Notice of Motion and Motion; (ii) the
11 accompanying Memorandum of Points and Authorities; (iii) the accompanying
12 Declaration of Debtor's attorney, Christine A. Kingston and documents attached as exhibits thereto;
13 (iv) the accompanying Statement of Uncontested Facts and Conclusions of Law; (vii) the pleadings,
14 papers, and other documents on file herein; and (viii) such further material as the Court may consider at
15 or before the hearing on this Motion.

16 WHEREFORE, the Debtor/Movant respectfully prays of this Court for the following:

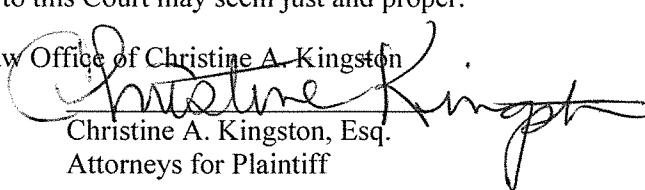
17 A. That this Court enters summary judgment in favor of the Debtor/Movant, or in the alternative
18 summary adjudication;

19 B. That this Court order declaratory relief that the subject loans are discharged in Debtor's
20 bankruptcy case; and

21 C. For such other and further relief as to this Court may seem just and proper.

22 Dated: May 29, 2015

23 Law Office of Christine A. Kingston

24 
Christine A. Kingston, Esq.
Attorneys for Plaintiff

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
5011 Argosy Avenue, Suite 3 Huntington Beach, CA 92649

A true and correct copy of the foregoing document entitled (*specify*): NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES; STATEMENT OF UNCONTROVERTED FACTS; DECLARATION OF TAMARA LYNN SCHWARTZ; DECLARATION OF CHRISTINE A. KINGSTON will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 05/29/2015, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Richard K Diamond (TR) jlv@dgdk.com, rdiamond@ecf.epiqsystems.com; DanningGill@Gmail.com
- Nicholas W Gebelt ngebelt@goodbye2debt.com
- United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) 05/29/2015, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

JUDGE: Richard M. Neiter, U.S. Bankruptcy Court, 211 E. Temple Street, Suite 1652 Los Angeles, CA 90012

Client: Tamara Lynn Schwartz via U.S. Mail to 2529 Allred Street, Lakewood, CA 90712

Counsel for Defendant National Collegiate Student Loan Trust, 2007-1.: Raymond Moats, III Weltman, Weinberg & Reis Co., L.P.A., 3705 Marlane Dr., Grove City, OH 43123

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

05/29/2015 Christine A. Kingston
Date Printed Name

/s/Christine A. Kingston
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT CALIFORNIA
LOS ANGELES DIVISION

In re	Case No.: 2:11-bk-23974-RN
	Adv. No.: 2:14-ap-01722-RN
Tamara Lynn Schwartz,	Chapter 7
Debtor	<u>MEMORANDUM OF POINTS AND</u> <u>AUTHORITIES IN SUPPORT OF</u> <u>MOTION FOR SUMMARY</u> <u>JUDGMENT OR IN THE</u> <u>ALTERNATIVE SUMMARY</u> <u>ADJUDICATION; DECLARATION OF</u> <u>TAMARA LYNN SCHWARTZ;</u> <u>DECLARATION OF CHRISTINE A.</u> <u>KINGSTON.</u>
Tammy Lynn Schwartz,	
Plaintiff	
vs.	
National Collegiate Student Loan Trust	
2007-1,	Date: July 7, 2015
	Time: 2:00 p.m.
Defendant	Crtrm: 1645; 16 th Floor

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF FACTS

Plaintiff, Tamara Lynn Schwartz is the mother of Matthew Schwartz (08/27/1989 to 10/16/2009) [“deceased”]. At some time in 2006 Matthew had attempted suicide and was placed in a psychiatric hospital for three days. During his stay, he was assessed and it was determined he needed residential treatment. He was taken directly to YouthCare in Utah. Matthew Schwartz was under the age of 18 at the time he was admitted to YouthCare. At the time Matthew was admitted to YouthCare he had no high school diploma. The Debtor understood that as part of his treatment, he would receive education classes toward his General Education Diploma (“GED”)

On or about 09/13/2006 Tammy Lynn Schwartz executed a “Non-Negotiable

1 Credit Agreement—This is a Consumer Credit Transaction” through Bank of
2 America, N.A. as (“Lender”). The type of loan taken pursuant to the Credit
3 Agreement was a “TERI K-12 loan.”

4 3. Plaintiff executed the Credit Agreement to obtain loans for her son to be
5 placed in a lockdown rehabilitation facility, Youthcare/Pine Ridge Academy, in
6 Draper, Utah to cover her portion of the treatment expenses for her son.

7 Upon admission to YouthCare, Matthew Schwartz was given a psychiatric evaluation
8 and Intake Assessment. From that time until some 11 months later, Matthew
9 Schwartz resided at Youth Care. After 11 months in this lockdown treatment
10 facility, Matthew left Youth Care.

11 6. Youth Care is a treatment facility for adolescents between the ages of 11
12 and 18 years of age. They strive to promote change in adolescents that are
13 struggling with problems such as depression, self-esteem issues, substance abuse,
14 and much more, according to their website (www.youthcare.crchealth.com/about-us).

16 7. The Debtor asserts that this loan is not a “Qualified Education Loan”
17 because her son Matthew did not receive “higher education,” but rather, the
18 education received, if any, was toward a high school diploma. Further, she asserts
19 that the majority of the proceeds from the “loan” funded expenses for her son’s
20 substance abuse, room and board, medications, food, and counseling treatment at
21 the Youth Care facility.

22 Additionally, Tammy Schwartz asserts that her son was under the age of 18
23 at the time he was admitted to Youth Care and the education loans that were
24 taken were for the primary purpose of treating his substance abuse and that the
25 education received, if any, was not for higher education, but rather for a general
26 education diploma (“GED”).

27 8. The primary reason that Debtor filed her bankruptcy was due to
28 disability.

9. Matthew Schwartz passed away on 10/16/2009.

II. LEGAL STANDARD

Summary judgment is appropriate where, reading the record in favor of the non-moving party, “there is no genuine issue as to any material fact,” and “the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). A dispute must be as to a material fact to prevent summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Material facts are those that are necessary to the proof or defense of a claim, as determined by reference to substantive law. Id. A genuine issue of material fact exists only if sufficient evidence is presented such that a reasonable fact finder could decide in favor of the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Any alleged issue of fact must be genuine. “When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.” Id. Moreover, the party seeking to oppose summary judgment must do more than introduce “some” evidence, a “scintilla” of evidence, or evidence that is not “significant[ly] probative.” Anderson, 477 U.S. at 247, 249, 251. Thus, “[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine issue for trial.’” Matsushita, 475 U.S. at 587 (internal citation omitted). Summary judgment is appropriate where, as here, the nonmoving party fails to make a sufficient showing on an essential element of his case for which he bears the burden of proof. Celotex, 477 U.S. at 322-23.

The initial burden is on the moving party to demonstrate an absence of a genuine issue of material fact. Id. Once that burden is met, the non-moving party must produce enough evidence to rebut that claim and create a genuine issue of material fact. Id. Unless the non-moving party meets this burden, the motion will be granted. Nissan Fire & Marine Ins. Co. v. Fritz Co., 210 F.3d 1099, 1103 (9th Cir. 2000).

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III. LEGAL ARGUMENT

(Determination that Student Loan Debt is Dischargeable

pursuant to 11 U.S.C. §523(a)(8)(B))

In order to be considered a "*qualified education loan*", an education loan must satisfy all of the following requirements:

a. The debt must be incurred "by a debtor who is an individual", per 11 USC 523(a)(8)(B).

b. The debt must be "incurred solely to pay qualified higher education expenses", per 26 USC 221(d)(1) by cross-reference from 11 USC

523(a)(8)(B). Mixed used loans, such as credit card debt or home equity loans, are not eligible, per example 6 of 26 CFR 1.221-1(e)(4). Even education loans are not eligible if they are incurred to pay for expenses other than qualified higher education expenses.

c. The debt must be incurred on behalf of a student who is either the debtor, the debtor's spouse, or the debtor's dependent (eligible to be claimed as an exemption on the debtor's income tax return, per 26 CFR 1.221-1(b)(2)) at the time the indebtedness was incurred, per 26 USC 221(d)(1)(A) by cross-reference from 11 USC 523(a)(8)(B).

d. The debt must be "paid or incurred within a reasonable period of time before or after the indebtedness is incurred", per 26 USC 221(d)(1)(B) by cross-reference from 11 USC 523(a)(8)(B). The regulations at 26 CFR 1.221-1(e)(3)(ii)(B) provide for a safe harbor of 90 days before or after the academic period to which the expenses relate. It is possible that a longer period of time would still be considered reasonable based on the relevant facts and circumstances, per 26 CFR 1.221-1(e)(3)(ii), but use of a loan to pay for a previous year's school charges would generally not qualify unless there were extenuating circumstances.

1 e. The debt must be "attributable to education furnished during a
2 period during which the recipient was an eligible student" per 26 USC
3 221(d)(1)(C) by cross-reference from 11 USC 523(a)(8)(B). To be an
4 eligible student, the student must be enrolled at least halftime in a Title
5 IV institution and be degree-seeking. Study abroad is only eligible to the
6 extent that it is approved for credit by the home institution.

7 There is a two-tiered analysis: first, whether a debt is an educational "loan"
8 and, if it is, then whether it meets the Internal Revenue Code definition of
9 "qualified education loan," In re Oliver, 499 B.R. 617 (Bankr. S.D. Ind., 2013); see
10 also, Inst. of Imaginal Studies v. Christoff (In re Christoff) (Bankr. N.D. Cal.,
11 2014).

12 A. Is the Debt a "Loan?"

13 The Debtor in this case does not dispute that she co-signed on a loan to pay
14 for her then minor child to be placed in a residential treatment facility that
15 accepted such "educational loans" as payment for its services.

16 Debtor acknowledges that she never received any of the funds disbursed
17 pursuant to the Non-Negotiable Credit Agreement executed and the funds, if any,
18 were sent directly to YouthCare.

19 B. Was the Loan a Qualified Education Loan Pursuant to 11 U.S.C.
20 §523(a)(8)(B)?

21 Under § 523(a)(8), the lender has the initial burden to establish the
22 existence of the debt and that the debt is an educational loan within the statute's
23 parameters. Lavy v. U.S. Dep't of Educ. (In re Lavy), 2008 WL 4964721, at *3
24 (Bankr.W.D.Wash. Nov. 14, 2008); Roth v. Educ. Credit Mgmt. Corp. (In re Roth),
25 490 B.R. 908 (B.A.P. 9th Cir., 2013)

26 For purposes of this section, a "qualified education loan" is defined as:

27 (1) *Qualified education loan.* — The term "qualified education loan" means
28 any indebtedness incurred by the taxpayer solely to pay qualified higher

1 *education expenses —*

2 *(A) which are incurred on behalf of the taxpayer, the taxpayer's spouse, or*
3 *any dependent of the taxpayer as of the time the indebtedness was incurred,*

4 *(B) which are paid or incurred within a reasonable period of time before or*
5 *after the indebtedness is incurred, and*

6 *(C) which are attributable to education furnished during a period during*
7 *which the recipient was an eligible student.*

8 *Such term includes indebtedness used to refinance indebtedness which*
9 *qualifies as a qualified education loan.*

10 *26 U.S.C. § 221(d)(1).*

11 *"Qualified higher education expenses" are defined as:*

12 *(2) Qualified higher education expenses. — The term "qualified higher*
13 *education expenses" means the cost of attendance (as defined in section 472 of*
14 *the Higher Education Act of 1965, 20 U.S.C. 1087ll, as in effect on the day*
15 *before the date of the enactment of the Taxpayer Relief Act of 1997) at an*
16 *eligible educational institution[.]*

17 *26 U.S.C. § 221(d)(2).*

18 *The "cost of attendance" for a student in the debtor's situation means:*

19 *(1) tuition and fees normally assessed a student carrying the same academic*
20 *workload as determined by the institution, and including costs for rental or*
21 *purchase of any equipment, materials, or supplies required of all students in*
22 *the same course of study;*

23 *(2) an allowance for books, supplies, transportation, and miscellaneous*
24 *personal expenses, including a reasonable allowance for the documented*
25 *rental or purchase of a personal computer, for a student attending the*
26 *institution on at least a half-time basis, as determined by the institution;*

27 *(3) an allowance (as determined by the institution) for room and board costs*
28 *incurred by the student which —*

(A) shall be an allowance determined by the institution for a student without dependents residing at home with parents;

(B) for students without dependents residing in institutionally owned or operated housing, shall be a standard allowance determined by the institution based [Page 5] on the amount normally assessed most of its residents for room and board; and

(C) for all other students shall be an allowance based on the expenses reasonably incurred by such students for room and board.] 20 U.S.C. § 1087.

In re Noland, Case No. BK09-80873-TJM (Bankr.Neb. 3/30/2010)

(Bankr.Neb., 2010)

What is a 'qualified educational institution'? Basically that is a post-secondary school authorized to participate in the U.S. Department of Education Student Loan program. The formal definition is found in 26 USC 25A(f)(2): "Eligible educational institution - The term "eligible educational institution" means an institution - (A) which is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this section, and (B) which is eligible to participate in a program under title IV of such Act."

Page 37 of IRS publication 970 describes an eligible educational institution as "any college, university, vocational school, or other postsecondary educational institution eligible to participate in a student aid program administered by the U.S. Department of Education. It includes virtually all accredited public, nonprofit, and proprietary (privately owned profit-making) postsecondary institutions.

Section 221(d)(1) of the Internal Revenue Code defines a qualified education loan as “any indebtedness incurred . . . to pay qualified higher education expenses . . . on behalf of the taxpayer, the taxpayer’s spouse, or any dependent of the taxpayer.” The term “qualified higher education expenses” is further defined as “the cost of attendance . . . at an eligible educational institution.” An “eligible educational institution” has the same meaning given such term by section 25A(f)(2).

1 of the Internal Revenue Code. An eligible educational institution is that which
2 is described and eligible to participate in a program under Title IV of the Higher
3 Education Act of 1965, as amended. 26 U.S.C. §25A(f)(2). Wills v. Sallie Mae;
4 (Bankruptcy Court S. D. Ind. 4-23-2010; Case #08-80404, Adversary Proceeding
5 #08-58043; decision April 23, 2010)

6 In the present case, the Debtor's loan in question was not made to an
7 "eligible education institution" under 26 U.S.C. §221(d)(1) and (2), which means
8 that the debt is not a "qualified education loan" under 11 U.S.C. §523(a)(8)(B), and
9 therefore is dischargeable. The Debtor co-signed on a private education loan for
10 the sole purpose of admitting her minor child to a residential treatment facility,
11 YouthCare in Draper, Utah.

12 **CONLUSION**

13 Based on the foregoing, Tamara Lynn Schwartz prays the Court grant her
14 motion for summary judgment and declare this debt discharged in her bankruptcy
15 case.

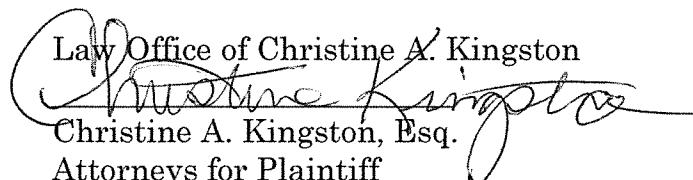
16 WHEREFORE, Plaintiff prays:

17 A. The court grant her motion for summary judgment and order the debt
18 discharged in her bankruptcy case, or in the alternative summary adjudication;
19 and

20 B. For other such and further relief as the court deems appropriate.

21 Respectfully Submitted.

22
23 Dated: May 29, 2015

24
25 
Law Office of Christine A. Kingston
Christine A. Kingston, Esq.
Attorneys for Plaintiff

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2 Christine A. Kingston, State Bar No. 256503
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8 Attorneys for Debtors

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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT CALIFORNIA
LOS ANGELES DIVISION**

In re) Case No.: 2:11-bk-23974-RN
9 Tamara Lynn Schwartz,) Adv. No.: 2:14-ap-01722-RN
10 Debtor)
11 Tammy Lynn Schwartz,) Chapter 7
12 Plaintiff)
13 vs.)
14 National Collegiate Student Loan Trust) [PROPOSED] STATEMENT OF
15 2007-1,) UNCONTROVERTED FACTS AND
Defendant) CONCLUSIONS OF LAW ON
16) PLAINTIFF'S/DEBTOR'S MOTION FOR
17) SUMMARY JUDGMENT PURUSANT TO
18) LOCAL BANKRUPTCY RULE 7056-1
19)
20)
21)
22)
23) Date: July 7, 2015
24) Time: 2:00 p.m.
25) Crtrm: 1645; 16th Floor
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28)

Under Local Bankruptcy Rule 7056-1, Tamara Lynn Schwartz, Plaintiff/Movant hereby submits the following “[Proposed] Statement of Uncontroverted Facts and Conclusions of Law” in support of his Motion For Summary Judgment.

STATEMENT OF UNCONTROVERTED FACTS

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
1. On or about 09/13/2006 Tammy Lynn Schwartz executed a “Non-Negotiable Credit Agreement—This is a Consumer Credit Transaction” through Bank of America, N.A. as (“Lender”). The type of loan taken pursuant to the Credit Agreement was a “TERI K-12 loan.”	See Tamara Lynn Schwartz (Decl. at ¶4) Ex. C, G, and H and See Christine A. Kingston (Decl. at ¶5);

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
2. Tamara Lynn Schwartz is the mother of Matthew Schwartz	See Tamara Lynn Schwartz (Decl. at ¶1)
3. In 2006 Tamara Lynn Schwartz's son had attempted suicide and was placed in a psychiatric hospital for three days. During his stay, he was assessed and it was determined he needed residential treatment. He was taken directly to YouthCare in Utah.	See Tamara Lynn Schwartz (Decl. at ¶2) Exhibit "A."
4. Matthew Schwartz was admitted to YouthCare on September 15, 2006	See Tamara Lynn Schwartz (Decl. at ¶3) Exhibit "B."
5. On or about September 13, 2006 I co-signed and executed a "Non-Negotiable Credit Agreement—This is a Consumer Credit Transaction" through Bank of America, N.A. as ("Lender")	See Tamara Lynn Schwartz (Decl. at ¶4) Ex. C, and H; and See Christine A. Kingston (Decl. at ¶6)
6. The type of loan taken pursuant to the Credit Agreement was a "TERI K-12 loan."	See Tamara Lynn Schwartz (Decl. at ¶4) Ex. C, G, and H; and See Christine A. Kingston (Decl. at ¶¶ 5, 6)
7. Upon admission to YouthCare, Matthew Schwartz was given a psychiatric evaluation and Intake Assessment.	See Tamara Lynn Schwartz (Decl. at ¶5) Exhibit "D."
8. From that time until some 11 months later, Matthew Schwartz resided at Youth Care. After 11 months in this lockdown treatment facility, Matthew left Youth Care.	See Tamara Lynn Schwartz (Decl. at ¶6)
9. Matthew Schwartz was under the age of 18 at the time he was admitted to YouthCare.	See Tamara Lynn Schwartz (Decl. at ¶7)
10. At the time Matthew was admitted to YouthCare he had no high school diploma. Tamara Lynn Schwartz understood that as part of his treatment, he would receive education classes toward his General Education Diploma ("GED")	See Tamara Lynn Schwartz (Decl. at ¶8); and See Christine A. Kingston (Decl. at ¶3, Ex. E)
11. Matthew Schwartz passed away on October 16, 2009	See Tamara Lynn Schwartz (Decl. at ¶9)
12. Matthew Schwartz was admitted to YouthCare for a drug addiction, not for education	See Tamara Lynn Schwartz (Decl. at ¶10); and See Christine A. Kingston (Decl. at ¶3, Ex. E)
13. Tamara Lynn Schwartz never personally received any of the loan proceeds of the loan that is the subject of these proceedings.	See Tamara Lynn Schwartz (Decl. at ¶11)
14. The "TERI K-12" loan program is for kindergarten through 12th grade education loans	See Christine A. Kingston (Decl. at ¶¶3, 5, 6; Ex. E, G, and H)
15. The loan that is the subject of these proceedings is a dischargeable loan.	See Christine A. Kingston (Decl. at ¶¶5, 6; Ex. F, G, and H)

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
16. YouthCare is a residential treatment facility for students ages 11-18.	Christine A. Kingston (Decl. at ¶3; Ex. E)

3 **CONCLUSIONS OF LAW**

4 **I.**
5 **PLAINTIFF/DEBTOR IS ENTITLED TO SUMMARY JUDGMENT BECAUSE**

6 A. The Loan That is the Subject of These Proceedings is a Dischargeable Loan
7 Based Upon the Defendant's Own Admissions.

8 Defendants failed to respond to Plaintiff's discovery requests. On May 8, 2015 this
9 Court deemed Plaintiff's admissions admitted. See Order at Docket 14, Plaintiff's Exhibit
10 "F." Based upon the Order, the loan that is subject to these proceedings is not disputed and
11 is a dischargeable loan.

12 B. The Loan That is the Subject of These Proceedings is Not a Qualified Education
13 Loan Pursuant to 11 U.S.C. §523(a)(8)(B) and Therefore Must be Discharged.

14 For purposes of this section, a "qualified education loan" is defined as:

15 (1) *Qualified education loan.* — The term "qualified education loan" means any
16 indebtedness incurred by the taxpayer solely to pay qualified higher education expenses —
17 (A) which are incurred on behalf of the taxpayer, the taxpayer's spouse, or any dependent
18 of the taxpayer as of the time the indebtedness was incurred,
19 (B) which are paid or incurred within a reasonable period of time before or after the
20 indebtedness is incurred, and
21 (C) which are attributable to education furnished during a period during which the
22 recipient was an eligible student.

23 Such term includes indebtedness used to refinance indebtedness which qualifies as a
24 qualified education loan.

25 26 U.S.C. § 221(d)(1).

26 "Qualified higher education expenses" are defined as:

27 (2) *Qualified higher education expenses.* — The term "qualified higher education
28 expenses" means the cost of attendance (as defined in section 472 of the Higher Education
29 Act of 1965, 20 U.S.C. 1087ll, as in effect on the day before the date of the enactment of the
30 Taxpayer Relief Act of 1997) at an eligible educational institution[.]

31 26 U.S.C. § 221(d)(2).

32 The "cost of attendance" for a student in the debtor's situation means:

33 (1) tuition and fees normally assessed a student carrying the same academic workload as
34 determined by the institution, and including costs for rental or purchase of any equipment,
35 materials, or supplies required of all students in the same course of study;

36 (2) an allowance for books, supplies, transportation, and miscellaneous personal expenses,
37 including a reasonable allowance for the documented rental or purchase of a personal
38 computer, for a student attending the institution on at least a half-time basis, as determined
39 by the institution;

40 (3) an allowance (as determined by the institution) for room and board costs incurred by
41 the student which —

(A) shall be an allowance determined by the institution for a student without dependents residing at home with parents;

(B) for students without dependents residing in institutionally owned or operated housing, shall be a standard allowance determined by the institution based [Page 5] on the amount normally assessed most of its residents for room and board; and

(C) for all other students shall be an allowance based on the expenses reasonably incurred by such students for room and board[.] 20 U.S.C. § 1087.

In re Noland, Case No. BK09-80873-TJM (Bankr.Neb. 3/30/2010) (Bankr.Neb., 2010)

CONCLUSION

Based on the foregoing, there is no genuine issue as to any material fact. The loan that is the subject of these proceedings is in fact not a qualified education loan pursuant to 11 U.S.C. §523(a)(8)(B). Accordingly, the Plaintiff/Debtor's Motion For Summary Judgment should be GRANTED in its entirety.

IT IS SO ORDERED.

Dated: _____, 2015

The Honorable Richard Neiter
United States Bankruptcy Judge