

1 Law Office of Christine A. Kingston  
Christine A. Kingston, State Bar No. 256503  
2 5011 Argosy Avenue, Suite 3  
Huntington Beach, CA 92649  
3 Tel: 714-533-9210  
Fax: 714-489-8150  
4 Attorneys for Debtors

5 **UNITED STATES BANKRUPTCY COURT**  
6 **CENTRAL DISTRICT CALIFORNIA**  
7 **LOS ANGELES DIVISION**

8 In re ) Case No.: 2:11-bk-23974-RN  
9 Tamara Lynn Schwartz, ) Adv. No.: 2:14-ap-01722-RN  
Debtor ) Chapter 7  
10 \_\_\_\_\_ ) NOTICE OF MOTION AND MOTION FOR  
11 Tammy Lynn Schwartz, ) SUMMARY JUDGMENT OR IN THE  
Plaintiff ) ALTERNATIVE SUMMARY ADJUDICATION;  
12 vs. ) MEMORANDUM IN SUPPORT;  
13 National Collegiate Student Loan Trust 2007-1, ) DECLARATION OF TAMARA LYNN  
Defendant ) SCHWARTZ; DECLARATION OF CHRISTINE  
 ) A. KINGSTON.  
14 ) Filed Concurrently with:  
15 ) Statement of Uncontroverted Facts  
16 ) Memorandum of Points and Authorities  
17 ) Proposed Order  
18 ) Date: July 7, 2015  
19 ) Time: 2:00 p.m.  
20 ) Crtrm: 1645; 16<sup>th</sup> Floor

21 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

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

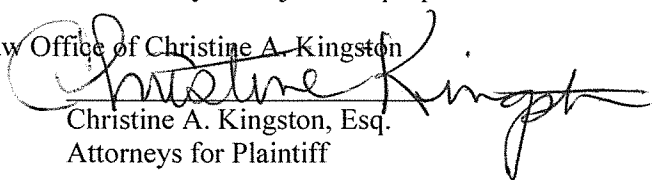
21 C. For such other and further relief as to this Court may seem just and proper.

22 Dated: May 29, 2015

Law Office of Christine A. Kingston

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@dgd.com, rdiamond@ecf.epiqsystems.com;DanningGill@Gmail.com
- Nicholas W Gebelt ngebelt@goodbye2debt.com
- United States Trustee (LA) ustpreion16.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  
Date

Christine A. Kingston  
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.

1 Law Office of Christine A. Kingston  
Christine A. Kingston, State Bar No. 256503  
5011 Argosy Avenue, Suite 3  
2 Huntington Beach, CA 92649  
Tel: 714-533-9210  
3 Fax: 714-489-8150  
Attorneys for Debtors  
4

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

7 In re 8 Tamara Lynn Schwartz, 9 10 Debtor	) Case No.: 2:11-bk-23974-RN Adv. No.: 2:14-ap-01722-RN Chapter 7
11 Tammy Lynn Schwartz, 12 Plaintiff 13 vs. 14 National Collegiate Student Loan Trust 15 2007-1, 16 Defendant	) <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>  Date: July 7, 2015 Time: 2:00 p.m. Crtrm: 1645; 16 <sup>th</sup> Floor

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 I. **INTRODUCTION AND STATEMENT OF FACTS**

19 Plaintiff, Tamara Lynn Schwartz is the mother of Matthew Schwartz  
20 (08/27/1989 to 10/16/2009) ["deceased"]. At some time in 2006 Matthew had attempted  
21 suicide and was placed in a psychiatric hospital for three days. During his stay, he was assessed  
22 and it was determined he needed residential treatment. He was taken directly to YouthCare in  
23 Utah. Matthew Schwartz was under the age of 18 at the time he was admitted to YouthCare. At  
24 the time Matthew was admitted to YouthCare he had no high school diploma. The Debtor  
25 understood that as part of his treatment, he would receive education classes toward his General  
26 Education Diploma ("GED")

27 On or about 09/13/2006 Tammy Lynn Schwartz executed a "Non-Negotiable  
28

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-](http://www.youthcare.crchealth.com/about-us)  
15 [us](http://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.

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

2 **II. LEGAL STANDARD**

3 Summary judgment is appropriate where, reading the record in favor of the non-moving  
4 party, “there is no genuine issue as to any material fact,” and “the movant is entitled to judgment  
5 as a matter of law.” Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).  
6 A dispute must be as to a material fact to prevent summary judgment. Anderson v. Liberty  
7 Lobby, Inc., 477 U.S. 242, 248 (1986). Material facts are those that are necessary to the proof or  
8 defense of a claim, as determined by reference to substantive law. Id. A genuine issue of material  
9 fact exists only if sufficient evidence is presented such that a reasonable fact finder could decide  
10 in favor of the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S.  
11 574, 586 (1986). Any alleged issue of fact must be genuine. “When the moving party has carried  
12 its burden under Rule 56(c), its opponent must do more than simply show that there is some  
13 metaphysical doubt as to the material facts.” Id. Moreover, the party seeking to oppose summary  
14 judgment must do more than introduce “some” evidence, a “scintilla” of evidence, or evidence  
15 that is not “significant[ly] probative.” Anderson, 477 U.S. at 247, 249, 251. Thus, “[w]here the  
16 record taken as a whole could not lead a rational trier of fact to find for the nonmoving party,  
17 there is no ‘genuine issue for trial.’” Matsushita, 475 U.S. at 587 (internal citation omitted).  
18 Summary judgment is appropriate where, as here, the nonmoving party fails to make a sufficient  
19 showing on an essential element of his case for which he bears the burden of proof. Celotex,  
20 477 U.S. at 322-23.

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

26 ///





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 —*

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

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

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

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

10 (Bankr.Neb., 2010)

11           What is a 'qualified educational institution'? Basically that is a post-  
12 secondary school authorized to participate in the U.S. Department of Education  
13 Student Loan program. The formal definition is found in 26 USC 25A(f)(2):  
14 "Eligible educational institution - The term "eligible educational institution" means  
15 an institution - (A) which is described in section 481 of the Higher Education Act of  
16 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this section, and  
17 (B) which is eligible to participate in a program under title IV of such Act."

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

23           Section 221(d)(1) of the Internal Revenue Code defines a qualified education  
24 loan as "any indebtedness incurred . . . to pay qualified higher education expenses .  
25 . . . on behalf of the taxpayer, the taxpayer's spouse, or any dependent of the  
26 taxpayer." The term "qualified higher education expenses" is further defined as  
27 "the cost of attendance . . . at an eligible educational institution." An "eligible  
28 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 **CONCLUSION**

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.

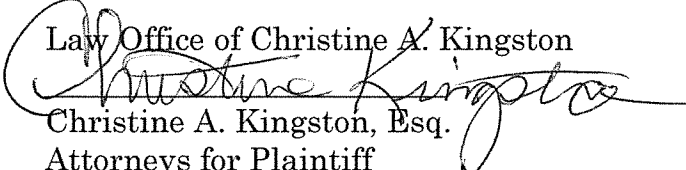
16 WHEREFORE, Plaintiff prays:

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 Law Office of Christine A. Kingston  
25   
26 Christine A. Kingston, Esq.  
27 Attorneys for Plaintiff  
28

1 Law Office of Christine A. Kingston  
 2 Christine A. Kingston, State Bar No. 256503  
 3 5011 Argosy Avenue, Suite 3  
 4 Huntington Beach, CA 92649  
 5 Tel: 714-533-9210  
 6 Fax: 714-489-8150  
 7 attorneychristine@gmail.com  
 8 Attorneys for Debtors

9 **UNITED STATES BANKRUPTCY COURT**  
 10 **CENTRAL DISTRICT CALIFORNIA**  
 11 **LOS ANGELES DIVISION**

12 In re ) Case No.: 2:11-bk-23974-RN  
 13 Tamara Lynn Schwartz, ) Adv. No.: 2:14-ap-01722-RN  
 14 Debtor )  
 15 ) Chapter 7  
 16 Tammy Lynn Schwartz, )  
 17 Plaintiff ) [PROPOSED] STATEMENT OF  
 18 vs. ) UNCONTROVERTED FACTS AND  
 19 ) CONCLUSIONS OF LAW ON  
 20 National Collegiate Student Loan Trust ) PLAINTIFF'S/DEBTOR'S MOTION FOR  
 21 2007-1, ) SUMMARY JUDGMENT PURUSANT TO  
 22 Defendant ) LOCAL BANKRUPTCY RULE 7056-1  
 23 )  
 24 )  
 25 )  
 26 )  
 27 )  
 28 ) Date: July 7, 2015  
 ) Time: 2:00 p.m.  
 ) Crtrm: 1645; 16<sup>th</sup> Floor

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)

**CONCLUSIONS OF LAW**

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

**A. The Loan That is the Subject of These Proceedings is a Dischargeable Loan Based Upon the Defendant’s Own Admissions.**

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

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

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

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

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

*26 U.S.C. § 221(d)(1).*

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

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

*26 U.S.C. § 221(d)(2).*

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

- (1) *tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;*
- (2) *an allowance for books, supplies, transportation, and miscellaneous personal expenses, including a reasonable allowance for the documented rental or purchase of a personal computer, for a student attending the institution on at least a half-time basis, as determined by the institution;*
- (3) *an allowance (as determined by the institution) for room and board costs incurred by the student which —*

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

2 (B) for students without dependents residing in institutionally owned or operated housing,  
3 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

4 (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.

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

6 **CONCLUSION**

7 Based on the foregoing, there is no genuine issue as to any material fact. The loan that is  
8 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.

9 IT IS SO ORDERED.

10 Dated: \_\_\_\_\_, 2015

11 \_\_\_\_\_  
12 The Honorable Richard Neiter  
13 United States Bankruptcy Judge  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28