

1 Damian P. Richard, Esq. (SBN 262805)  
2 SESSIONS, FISHMAN & NATHAN IN CALIFORNIA, L.L.P.  
3 1545 Hotel Circle South, Suite 150  
4 San Diego, CA 92108-3426  
5 Tel: 619/758-1891  
6 drichard@session-law.biz  
7 Attorneys for Defendants  
8 National Collegiate Student Loan Trust 2007-2 and  
9 National Collegiate Student Loan Trust 2006-3

10 UNITED STATES BANKRUPTCY COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

12 In Re: )  
13 LAURA PIERSON a.k.a. RAIGE )  
14 PIERSON )  
15 Debtors )

16 Case No.: 14-bk-21848-DS  
17 Chapter 7

18 LAURA PIERSON,  
19 Plaintiff,

20 Adv. Proc. No.: 14-ap-01582-DS

21 vs.

22 DEFENDANTS' MEMORANDUM OF  
23 POINTS AND AUTHORITIES IN  
24 REPLY TO PLAINTIFF'S  
25 OPPOSITION TO DEFENDANTS'  
26 MOTION FOR SUMMARY  
27 JUDGMENT

28 NATIONAL COLLEGIATE  
STUDENT LOAN TRUST 2007-2, a  
Delaware Statutory Trust(s);  
NATIONAL COLLEGIATE  
STUDENT LOAN TRUST 2006-3, a  
Delaware Statutory Trust(s); THE US  
DEPARTMENT OF EDUCATION;  
SALLIE MAE, INC., a subsidiary of  
SLM Corporation; FEDERAL LOAN  
SERVING, a Department of Education  
Servicer; THE STUDENT LOAN  
CORPORATION, dba Student Loan  
Corp, a Delaware corporation; WELLS  
FARGO BANK, N.A.; and DOES 1  
through 50, Inclusive.

Date: April 5, 2016  
Time: 2:00 p.m.  
Location:  
Edward R. Roybal Federal Building  
255 E. Temple Street  
Courtroom 1339  
Los Angeles, CA 90012

Defendants.

1 Defendants National Collegiate Student Loan Trust 2006-3 and National  
2 Collegiate Student Loan Trust 2007-2 (collectively “Defendants”) respectfully  
3 submit this memorandum of points and authorities in Reply to Plaintiff Laura  
4 Pierson (“Plaintiff”)’s Opposition to Defendants’ Motion for Summary Judgment.

5 **I. INTRODUCTION**

6 The role of summary judgment “is to enable the [Court] to identify  
7 meritless suits and dispense with them short of trial.” *Foster v. Arcata Associates,*  
8 *Inc.*, 772 F.2d 1453, 1459 (9th Cir. 1985)). This is such a case. Plaintiff fails all  
9 three elements of the *Brunner* test. Most significantly, she has made *no effort* to  
10 repay the moving Defendants. Summary judgment is warranted.

11 **II. PLAINTIFF FAILS THE BRUNNER TEST**

12 **a. Plaintiff Fails The 1st Prong—Plaintiff Can Maintain A**  
13 **Minimum Standard Of Living And Pay Defendants**

14 Plaintiff can still maintain a minimum standard of living *and* make  
15 payments on the loans she owes to Defendants. Plaintiff lives in Venice,  
16 California, less than five blocks from the beach. She works from home and her  
17 job would allow her to easily move to a more affordable area. Her *unnecessary*  
18 expenses include, but are not limited to, the following:  
19

- 20 1. Monthly subscription to “Preferred TV,” “HBO,” “Ultimate 100  
21 Upgrade,” “Showtime,” “The Movie Channel,” and “Netflix”
- 22 2. “Keenan Hair Studio” (Total: \$625)
- 23 3. “CHAYA Restaurant, Venice” (Total: \$276.22)
- 24 4. “Starbucks,” (Total: \$241.09)
- 25 5. “Lincoln Liquor” (Total: \$214.83)
- 26 6. “World Vision Donations” (Total: \$180)
- 27 7. “The Bootleg Theater”
- 28 8. “Library Ale House”

- 1 9. “Whole Foods”
- 2 10.“Kaya Sushi, Marina Del Rey.”
- 3 11.“Hilton Garden Inn”
- 4 12.“The Misfit Restaurant and Bar”
- 5 13.“dogs”
- 6 14.“Smokes”
- 7 15.“Drinks.”

8 [Dkt. 41-3 to 41-7.]

9 **b. Plaintiff Fails The 2nd Prong—Circumstances Not Likely to**  
10 **Persist**

11 Plaintiff’s circumstances are not likely to persist. Her own *admissions*  
12 establish that she is strategically and purposefully underemployed. She is skilled  
13 and sophisticated and could obtain higher-paying work if she desired. She *admits*  
14 to excelling at the following:

- 15 1) “Marketing executive . . . .”
- 16 2) “Sweet, smart . . . .”
- 17 3) “Performing Arts”
- 18 4) “Writing”
- 19 5) “Grant Writing”
- 20 6) “Acting”
- 21 7) “Editing”
- 22 8) “Public Speaking”
- 23 9) “Event Planning”

24 [Dkt. 41-5 to 41-7.]

25 To the extent Plaintiff claims an “undue hardship” based on a diagnosis of  
26 bipolar disorder, she has failed to demonstrate that such a disorder impairs her  
27 ability to make student loan payments and maintain a minimal standard of living.  
28

1 Moreover, it is well documented that persons with such disorders can live normal,  
2 productive lives. *See generally* Kay Redfield Jamison, *Touched with Fire: Manic-*  
3 *Depressive Illness and the Artistic Temperament* (1993) (includes a study of Lord  
4 Byron’s illness) *and An Unquiet Mind* (1995) (autobiography). Jamison is an  
5 American clinical psychologist and writer. Her work has centered on bipolar  
6 disorder, which she has had since her early adulthood. She holds a post of  
7 Professor of Psychiatry at the Johns Hopkins University School of Medicine and  
8 is an Honorary Professor of English at the University of St Andrews.

9 **c. Plaintiff Fails The 3rd Prong—No Good Faith Effort to Repay**

10 Defendants have demonstrated that “there is an absence of evidence to  
11 support the nonmoving party’s case” as to the third element of the *Brunner* test.  
12 *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Plaintiff’s Opposition does  
13 not, and cannot, dispute that she has not made a *single* payment on the student  
14 loans she owes to the moving parties. (ECF No. 40, ¶ 4.) Plaintiff’s Complaint  
15 and her Opposition *admit* that the only student loan payments she ever made were  
16 to *other* lenders who are not a party to this case and are therefore irrelevant (i.e.  
17 Sallie Mae, Dept. of Education, etc.). (Compl. ¶ 39; ECF No. 52-2, ¶ 28.)  
18 Purported payments to those creditors do not constitute payments to Defendants.  
19 The moving Defendants were entitled to payments, and Plaintiff made *zero*  
20 payments to these Defendants—this is not a good faith effort to repay. This is *no*  
21 *effort* to repay. As such, she has failed to meet the third element of the *Brunner*  
22 test—as to the moving Defendants specifically. Summary judgment is warranted.  
23

24 **III. OBJECTION TO DECLARATION OF TARA ZUCKER:**  
25 **PLAINTIFF FAILED TO DISCLOSE EXPERT UNDER FRBP 26**  
26 **AND DECLARATION SHOULD BE STRICKEN**

27 Defendants hereby object to the Declaration of Tara Zucker as in violation  
28 of FRBP 26 and request that it be stricken from the record. Pursuant to FRBP

1 7026, Plaintiff had a *duty* to disclose any expert testimony on or before December  
2 22, 2015. Plaintiff made no such disclosure before, on, or even after that date.  
3 Now, in an effort to gain an undue advantage at summary judgment, Plaintiff  
4 attempts to present inadmissible expert testimony.

5 Defendants are prejudiced by this gamesmanship. Had the declarant been  
6 properly disclosed prior to the December 22, 2015, deadline, Defendants would  
7 have had the opportunity to conduct a deposition and discredit her testimony. The  
8 Declaration is inadmissible under FRBP 7026 and should be stricken.

9 **IV. CONCLUSION**

10 There are no disputed material facts. The undisputed facts show that  
11 Plaintiff has a long-term job in the field of her choice. She has no extraordinary  
12 circumstances. She made *no effort* to repay the student loans at issue. These  
13 circumstances do not show an “undue” hardship within the meaning of section  
14 523(a)(8). Summary judgment should be granted.  
15

16 Date: 3/21/16

17 SESSIONS FISHMAN NATHAN & ISRAEL, LLP  
18 /s/Damian P. Richard  
19 Damian P. Richard  
20 Attorney for  
21 National Collegiate Student Loan Trust 2007-2 and  
22 National Collegiate Student Loan Trust 2006-3  
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