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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

**ORDERED PUBLISHED**

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT**

In re:	)	BAP No.	HI-12-1055-JuHPa
	)		
STACY MARIE JORGENSEN,	)	Bk. No.	10-03328
	)		
	)	Adv. No.	11-90016
Debtor.	)		
_____	)		
	)		
EDUCATIONAL CREDIT MANAGEMENT	)		
CORPORATION,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>OPINION</b>	
	)		
STACY MARIE JORGENSEN,	)		
	)		
	)		
Appellee.	)		
_____	)		

Argued and Submitted on July 19, 2012  
at Pasadena, California

Filed - September 11, 2012

Appeal from the United States Bankruptcy Court  
for the District of Hawaii

Honorable Robert J. Faris, Bankruptcy Judge, Presiding

Appearances: Adam C. Trampe, Esq. argued for Appellant  
Educational Credit Management Corporation;  
Stacy Marie Jorgensen argued pro se.

Before: JURY, HOLLOWELL, and PAPPAS Bankruptcy Judges.

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1 JURY, Bankruptcy Judge:  
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3 Debtor Stacy Marie Jorgensen ("Jorgensen") sought to  
4 discharge student loan debt owed to Educational Credit  
5 Management Corporation ("ECMC") as an undue hardship under  
6 § 523(a)(8).<sup>1</sup> The bankruptcy court granted a partial discharge  
7 of the debt. ECMC appeals, contending that the bankruptcy court  
8 erred in finding that Jorgensen met all three prongs of the  
9 undue hardship test set forth in Brunner v. N.Y. State Higher  
10 Educ. Servs. Corp. (In re Brunner), 46 B.R. 752 (Bankr. S.D.N.Y.  
11 1985) aff'd, 831 F.2d 395 (2d Cir. 1987). We AFFIRM.

12 **I. FACTS**

13 Jorgensen is forty-four years old with no dependents. She  
14 earned a bachelor of science degree in wildlife biology from the  
15 University of Montana in 1992, a master of science degree in  
16 botany from the University of Georgia in 1996, and a Ph.D. in  
17 geography from the University of Georgia in 2002.

18 Jorgensen financed her graduate education partly with  
19 student loans. She made timely payments on her loans from  
20 January 2002, when payments first became due, until June 2010.  
21 She obtained a forbearance beginning in July 2010. She has made  
22 no payments since the forbearance period ended. The loan is  
23 currently payable at \$270.07 per month. As of November 17,  
24 2011, she owed ECMC \$36,284.81 plus interest at six percent per  
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26 <sup>1</sup> Unless otherwise indicated, all chapter and section  
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

1 annum.

2 From January 2002 until June 2004, Jorgensen worked as a  
3 visiting assistant professor of geography at Ohio University.  
4 From August 2004 to the present, she has worked as an assistant  
5 professor of geography at the University of Hawai'i at Manoa.  
6 She applied for jobs with the federal government, but was  
7 unsuccessful.

8 In early 2010, a blood test revealed that Jorgensen  
9 suffered from stage IIB pancreatic adenocarcinoma. Initial  
10 blood tests in Hawaii failed to correctly identify the cancer.  
11 Jorgensen elected to seek treatment at the M.D. Anderson Cancer  
12 Center in Houston, Texas ("MDACC"). MDACC has substantially  
13 more experience and expertise with pancreatic cancer than any  
14 facility in Hawaii.

15 After undergoing chemotherapy and radiation treatments to  
16 reduce the size of the tumor, Jorgensen underwent a pylorus-  
17 preserving pancreaticoduodenectomy. Surgeons removed the head  
18 of her pancreas, her gall bladder, a section of her duodenum,  
19 and thirty-five lymph nodes. She returned to Hawaii and  
20 underwent further chemotherapy from July to October 2010. She  
21 receives quarterly checkups at MDACC to look for cancer  
22 recurrence.

23 Reports from Jorgensen's doctors show that she "is doing  
24 quite well" and that she "[is] free of disease after completing  
25 an additional four cycles of chemotherapy." Jorgensen does not  
26 challenge her doctor's reports.

27 In the wake of her cancer, however, Jorgensen suffers from  
28 several other ailments that affect her ability to work. For

1 example, she testified that she suffers from pancreatic enzyme  
2 insufficiency, high blood pressure, and anemia. As a symptom of  
3 her anemia, she experiences serious fatigue. The fatigue forced  
4 a reduction in her workload by twenty-five percent for the 2010-  
5 2011 academic year. In the 2011-2012 academic year, Jorgensen  
6 resumed a full workload, but she became so fatigued that another  
7 professor took over her teaching duties for one of her two  
8 classes in the middle of the fall semester. Jorgensen asserts  
9 that maintaining a full-time workload would not be possible  
10 because her anemia treatments over the past two years have been  
11 unsuccessful.

12 Jorgensen filed her chapter 7 bankruptcy petition pro se on  
13 October 29, 2010. On February 4, 2011, Jorgensen filed a  
14 complaint to discharge her student loan debt under  
15 § 523(a)(8). She alleged that the student loans imposed an  
16 undue hardship on her.

17 In her petition, Jorgensen listed \$2,804 in net monthly  
18 income. At the January 10, 2012 trial, Jorgensen revised her  
19 schedules. Jorgensen's net monthly income increased to \$3,750  
20 for the academic year 2011-2012. Jorgensen testified that her  
21 income increased because she returned to full-time work after  
22 her cancer treatment. Jorgensen's petition listed \$2,920 in  
23 monthly expenses. Jorgensen's revised monthly expenses were  
24 \$4,092 as of January 2012. Jorgensen testified that she revised  
25 her expenses because she neglected to include several expenses  
26 when she drafted her original schedules.

27 Jorgensen pays \$1,450 per month for rent. Jorgensen  
28 testified that she had not searched for cheaper housing because

1 she moved into her current apartment weeks before being  
2 diagnosed with cancer. She also testified that she will be  
3 giving up her apartment in January 2012 because she will be  
4 teaching in Paris for the spring semester. Jorgensen admitted  
5 that she will not pay rent while she is in Paris as an apartment  
6 will be provided for her. Jorgensen plans on putting her rental  
7 savings towards her car payments.

8 Jorgensen testified that she spends an average of \$800 per  
9 month for medical expenses. Because of her cancer, she must  
10 complete quarterly check-ups for three to five years.<sup>2</sup> After  
11 three to five years, she can reduce her checkups at MDACC from  
12 quarterly to annual.

13 In addition to her monthly medical expenses, Jorgensen  
14 incurred a one-time expense in summer 2011 of \$4,699 for  
15 orthodontic treatment. She testified that the orthodontic  
16 treatment was necessary to resolve a problem with her bite,  
17 which was deteriorating. Jorgensen's insurance company  
18 determined that the treatment was not cosmetic and contributed  
19 \$1,000 to pay for the treatment. She admitted to paying for her  
20 orthodontic care with a summer salary grant. She testified that  
21 she used the remaining portion of her summer grant to pay her  
22 monthly expenses; until that time her parents helped her make up  
23 for her monthly deficit.

24 In late 2011, Jorgensen purchased a new 2011 Mazda 2  
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27 <sup>2</sup> Jorgensen asserted that returning to MDACC for follow-up  
28 care was essential because the facility had pertinent knowledge  
of her medical history and has an expertise in treating her type  
of cancer.

1 subcompact. Jorgensen testified that her previous vehicle, a  
2 2001 Honda CRV with 90,000 miles, was in a state of disrepair.  
3 In 2009, Jorgensen spent \$3,000 in repairs on her Honda CRV.  
4 She testified that she was facing thousands of dollars in  
5 additional repairs to fix the vehicle's alignment, air  
6 conditioning, and electronic windows. In light of these  
7 repairs, Jorgensen made the decision to purchase a new car.  
8 Jorgensen financed the vehicle at a rate of \$362.73 per month  
9 over five years. Jorgensen bought the car in Texas where it was  
10 substantially cheaper and left it there with her sister until  
11 she returned from Paris.

12 Jorgensen spends \$625 per month for food. Jorgensen  
13 originally listed \$500 per month for food in her petition.  
14 Jorgensen testified that her revised food expenses were higher  
15 because before her petition was filed, she spent twenty-two  
16 weeks in Texas where food is cheaper. Jorgensen spends \$150  
17 per month for clothing. Jorgensen testified that her clothing  
18 expenses increased by \$50 per month because she lost a  
19 substantial amount of weight as a result of her cancer  
20 treatment.

21 At the January 10, 2012 trial, Jorgensen admitted that ECMC  
22 offered her a payment plan ("Graduate Repayment Option") to  
23 reduce her monthly student loan payment. Under the Graduate  
24 Repayment Option, Jorgensen would make payments of \$180 per  
25 month for 25 years. Jorgensen testified that she rejected the  
26 Graduate Payment Option because she did not have any surplus  
27 funds available. She also testified that the Graduate Payment  
28 Option was not acceptable because it was based on her income,

1 not her expenses.

2 The bankruptcy court issued a memorandum decision applying  
3 the three-prong test established in Brunner, which was adopted  
4 by the Ninth Circuit in United Student Aid Funds, Inc. v. Pena  
5 (In re Pena), 155 F.3d 1108, 1112 (9th Cir. 1998), to determine  
6 undue hardship under § 523(a)(8).

7 The bankruptcy court found that Jorgensen met all of the  
8 elements of the Brunner test. The bankruptcy court determined  
9 that Jorgensen's monthly income is \$350 less than the monthly  
10 expenses she must pay to maintain a minimal standard of living.  
11 The bankruptcy court also found that Jorgensen's financial woes  
12 are likely to persist for the rest of her life. Finally, the  
13 bankruptcy court found that despite her decision to receive  
14 orthodontic treatment, which may not have been medically  
15 essential, in the totality of circumstances she acted in good  
16 faith to repay her student loan debt.

17 Nevertheless, the bankruptcy court refused to discharge all  
18 of Jorgensen's student loan debt. The bankruptcy court  
19 determined that Jorgensen's rent savings accruing from her  
20 semester in Paris were not necessary to maintain a minimal  
21 standard of living. The bankruptcy court also found that  
22 Jorgensen did not satisfactorily explain her purchase of a  
23 vehicle before going to Paris rather than after she returned.  
24 On January 19, 2012, the bankruptcy court entered a judgment in  
25 which it refused to discharge \$8,045.02 of Jorgensen's student  
26 loan debt. ECMC filed a timely appeal.

## 27 **II. JURISDICTION**

28 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.

1 §§ 1334 and 157(b)(1). This Panel has jurisdiction under 28  
2 U.S.C. § 158.

### 3 **III. ISSUE**

4 Whether the bankruptcy court erred in granting Jorgensen a  
5 partial discharge of her student loan debt.

### 6 **IV. STANDARD OF REVIEW**

7 We review de novo the bankruptcy court's application of the  
8 legal standard in determining whether a student loan debt is  
9 dischargeable. Rifino v. United States (In re Rifino), 245 F.3d  
10 1083, 1087 (9th Cir. 2001).

11 We review the bankruptcy court's exercise of its equitable  
12 powers under § 105(a) for abuse of discretion. Missoula Fed.  
13 Credit Union v. Reinerston (In re Reinerston), 241 B.R. 451, 454  
14 (9th Cir. BAP 1999). We apply a two-part test to determine  
15 whether a bankruptcy court abused its discretion. United States  
16 v. Hinkson, 585 F.3d 1247, 1261-62 (9th Cir. 2009) (en banc).  
17 First, we review de novo whether the bankruptcy court identified  
18 the correct legal rule to apply the relief requested. Second,  
19 we determine whether the trial court's application of the  
20 correct legal rule was illogical, implausible, or without  
21 support in the record. Id. at 1262.

22 We review the bankruptcy court's factual findings for clear  
23 error. Educ. Credit Mgmt. Corp. v. Mason (In re Mason), 464  
24 F.3d 878, 881 (9th Cir. 2006) (quoting Miller v. Cardinale (In  
25 re DeVille), 361 F.3d 539, 547 (9th Cir 2004)).

### 26 **V. DISCUSSION**

27 Under § 523(a)(8), student loan debt is presumed  
28 nondischargeable unless the debtor establishes that repayment



1 would impose an undue hardship. The Bankruptcy Code does not  
2 define undue hardship. Educ. Credit Mgmt. Corp. v. Nys (In re  
3 Nys), 446 F.3d 938, 944 (9th Cir. 2006). We apply the three  
4 part test established in Brunner to determine if repayment would  
5 impose an undue hardship. See In re Pena, 155 F.3d at 1112  
6 (adopting the "Brunner test" from In re Brunner, 46 B.R. at  
7 753). Under the Brunner test, the debtor must prove that:  
8 (1) she cannot maintain, based on current income and expenses, a  
9 minimal standard of living for herself and her dependents if  
10 required to repay the loans; (2) additional circumstances exist  
11 indicating that this state of affairs is likely to persist for a  
12 significant portion of the repayment period; and (3) the debtor  
13 has made good faith efforts to repay the loans. Id. at 1111.  
14 The debtor bears the burden of proof on all three elements. In  
15 re Rifino, 245 F.3d at 1087-88.

16 **A. Partial Discharge**

17 Bankruptcy courts may exercise their equitable authority  
18 under § 105(a) to partially discharge student loans. Saxman v.  
19 Educ. Credit Mgmt. Corp. (In re Saxman), 325 F.3d 1168, 1173  
20 (9th Cir. 2003). The bankruptcy court has discretion in  
21 determining the amount and terms of payment of a partial  
22 discharge. Bossardet v. Educ. Credit Mgmt. Corp. (In re  
23 Bossardet), 336 B.R. 451, 457 (Bankr. D. Ariz. 2005).

24 However, a bankruptcy court's discretion to grant a partial  
25 discharge is not unlimited. In each case, the bankruptcy court  
26 must find that all three prongs of the Brunner test were  
27 satisfied as to the portion of debt discharged. In re Saxman,  
28 325 F.3d at 1174. Bankruptcy courts have struggled to fashion a

1 partial discharge around the third prong of the Brunner test  
2 because good faith, by its very nature, applies broadly to  
3 debtors regardless of their financial circumstances. See  
4 Hedlund v. Educ. Res. Inst., Inc., 468 B.R. 901 (D. Or. 2012),  
5 Ristow v. Educ. Credit Mgmt. Corp. (In re Ristow), BAP No.  
6 AZ-11-1376-DJuPa, 2012 WL 1001594 (9th Cir. BAP March 26, 2012).  
7 In contrast, the first prong of the Brunner test allows the  
8 bankruptcy court to determine the amount of student loan debt  
9 that prevents the debtor from maintaining a minimal standard of  
10 living and discharge only that amount.

11 In this case, the bankruptcy court did not abuse its  
12 discretion when issuing a partial discharge. The bankruptcy  
13 court refused to discharge \$6,050 because Jorgensen received a  
14 windfall by not paying rent while she was in Paris. During  
15 Jorgensen's five and one-half months in Paris her income  
16 exceeded her expenses by \$1,100, for a total of \$6,050. The  
17 bankruptcy court found that Jorgensen did not satisfactorily  
18 explain why the excess \$6,050 was necessary to maintain a  
19 minimal standard of living. The bankruptcy court also refused  
20 to discharge \$1,995.02 because Jorgensen purchased a vehicle  
21 prior to her trip to Paris. The bankruptcy court found  
22 Jorgensen's car payment while she was in Paris was not necessary  
23 to maintain a minimal standard of living.

24 Nevertheless, the bankruptcy court found that, as to the  
25 remainder of Jorgensen's debt, each prong of the Brunner test  
26 was satisfied.

27 **B. Minimal Standard of Living**

28 Under the first prong of the Brunner test the debtor must

1 prove that she cannot maintain a minimal standard of living if  
2 she were required to repay the loans. Id. at 1088. The debtor  
3 must show more than simply tight finances. United Student Aid  
4 Funds v. Nascimento (In re Nascimento), 241 B.R. 440, 445 (9th  
5 Cir. BAP 1999). "In defining undue hardship, courts require  
6 more than temporary financial adversity, but typically stop  
7 short of utter hopelessness." Id.

8 Here, the bankruptcy court found that Jorgensen's average  
9 monthly income was \$3,750. The bankruptcy court also found that  
10 Jorgensen's necessary average monthly expenses were \$4,100. The  
11 bankruptcy court concluded that Jorgensen's expenses were  
12 "essential . . . due to the nature of her employment and her  
13 serious health issues."

14 ECMC contends that the bankruptcy court's conclusion is  
15 erroneous because Jorgensen's budget contains unnecessary items  
16 such as a new car, extravagant food spending, new clothes, dry  
17 cleaning, travel, and miscellaneous expenses. ECMC contends  
18 that Jorgensen's budget does not constitute a minimal standard  
19 of living.

20 ECMC argues that courts have declined to discharge student  
21 loan debt where the debtor's budget included a new car, high  
22 clothing expenses, and extravagant food expenses. See In re  
23 Nascimento, 241 B.R. at 445 (holding that a debtor's expenses  
24 were not minimal because they included a hairdresser,  
25 chiropractor, and \$544 car payment); Chapelle v. Educ. Credit  
26 Mgmt. Corp. (In re Chapelle), 328 B.R. 565, 570 (Bankr. C.D.  
27 Cal. 2005) (finding that a debtor's \$100 recreation and \$100  
28 clothing expenses were "modest but perhaps not reasonable given

1 [her] student loan obligation and lack of full-time  
2 employment”).

3 While a number of courts have declined to discharge student  
4 loans in similar circumstances, the bankruptcy court’s refusal  
5 to require Jorgensen to further reduce her expenses in this case  
6 is not clearly erroneous. In re Rifino, 245 F.3d at 1088. The  
7 calculation of cost reductions are factual in nature and, as  
8 such, “is a matter properly left to the discretion of the  
9 bankruptcy court.” In re Pena, 155 F.3d at 1112. Accordingly,  
10 we will not disturb those findings unless they are clearly  
11 erroneous. Pa. Higher Educ. Assistance Agency v. Birrane (In re  
12 Birrane), 287 B.R. 490, 496 (9th Cir. BAP 2002). A finding is  
13 clearly erroneous when the reviewing court’s interpretation of  
14 the facts was illogical, implausible, or without support in the  
15 record. Hinkson, 585 F.3d at 1262.

16 Here, the evidence supports Jorgensen’s purchase of a new  
17 car. Her old vehicle lacked proper alignment, functional air  
18 conditioning, and automatic windows. Her new vehicle is a  
19 reliable and inexpensive subcompact with a warranty.

20 Jorgensen’s \$650 monthly food expense is directly related  
21 to her health problems. Jorgensen testified that she doesn’t  
22 digest fats properly because she suffers from pancreatic enzyme  
23 deficiency. Moreover, this Panel is not in a position to  
24 evaluate food expenses in Hawaii; that determination falls  
25 within the bankruptcy court’s proper discretion.

26 Jorgensen’s clothing expense is the result of her  
27 fluctuating weight after cancer. Once again, we refuse to opine  
28 about the clothing expenses for a professional female in Hawaii.

1 ECMC challenged several of Jorgensen's other expenses, all of  
2 which were de minimus.<sup>3</sup>

3 Accordingly, the bankruptcy court correctly determined that  
4 Jorgensen's expenses exceeded her income by \$350.

5 **C. Additional Circumstances**

6 The second prong of the Brunner test requires the debtor to  
7 show "that additional circumstances exist indicating that this  
8 state of affairs is likely to persist for a significant portion  
9 of the repayment period of the student loans." In re Brunner,  
10 831 F.3d at 396. Additional circumstances are any circumstances  
11 that show the inability to repay is likely to persist for a  
12 significant portion of the repayment period. In re Nys, 308  
13 B.R. at 444. "The circumstances need be 'exceptional' only in  
14 the sense that they demonstrate insurmountable barriers to the  
15 debtor's financial recovery and ability to pay." Id. A court  
16 may consider a number of factors not limited to the following:  
17 the debtor's age, training, physical and mental health,  
18 education, assets, and ability to obtain a higher paying job or  
19 reduce expenses. Id.

20 Here, the bankruptcy court concluded that "there is a  
21 significant chance her income will fall; she may be denied  
22 tenure and lose her current job, or her health may preclude her  
23 from working full time." ECMC contends that Jorgensen's cancer  
24 is not likely to return. ECMC, however, has not challenged

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25  
26 <sup>3</sup> For example, ECMC challenges Jorgensen's \$50 per month  
27 travel expense to see her family once a year. ECMC also  
28 challenges Jorgensen's \$85 miscellaneous expense which she uses  
for unpredictable expenses that arise throughout the year (new  
suitcases for example).

1 Jorgensen's various other health problems that imposed, and will  
2 continue to impose, a significant obstacle to her financial  
3 recovery. In addition, ECMC did not dispute Jorgensen's dubious  
4 employment circumstances.

5 ECMC contends that Jorgensen is the archetype of good  
6 health. ECMC cites Jorgensen's medical records which indicate  
7 she is free of disease and doing quite well with no evidence of  
8 recurrence. ECMC argues that Jorgensen did not satisfy her  
9 burden to show that recurrence is a probability, not a mere  
10 possibility. ECMC's challenge to Jorgensen's health is not  
11 persuasive because it does not address her overall health as an  
12 obstacle to financial improvement. For example, Jorgensen  
13 suffers from anemia which has reduced her energy levels.  
14 Jorgensen's doctor suggested that her energy may never return to  
15 normal. Jorgensen testified that when she returned to full-time  
16 employment she became increasingly fatigued. Consequently,  
17 Jorgensen asked her superiors to be relieved from one of her  
18 classes. Anemia is not Jorgensen's only ailment. Jorgensen  
19 takes prescription medication for hypothyroidism and high blood  
20 pressure.

21 In addition to her health concerns, Jorgensen's future  
22 employment prospects are uncertain. Jorgensen testified that  
23 she has had a "rough time" in her current position at the  
24 University of Hawai'i at Manoa. Jorgensen's research requires a  
25 lab which took her university four years to provide and had "a  
26 negative impact" on her. Jorgensen testified that her  
27 department split 50-50 on her recommendation for tenure.

28 The bankruptcy court considered all of these factors when

1 determining that Jorgensen met the second prong. Its findings  
2 are not clearly erroneous.

3 **D. Good Faith**

4 The third and final prong of the Brunner test requires the  
5 debtor to prove that she made good faith efforts to repay the  
6 loans or show that the forces preventing repayment are truly  
7 beyond her control. In re Brunner, 46 B.R. at 755. To  
8 determine good faith, the court measures the debtor's efforts to  
9 obtain employment, maximize income, minimize expenses, and  
10 negotiate a repayment plan. In re Mason, 464 at 884. Whether a  
11 debtor made payments prior to filing for discharge is also a  
12 persuasive factor in determining whether she made a good faith  
13 effort to repay her loans. In re Pena, 155 F.3d at 1114.

14 Here, the record supports the bankruptcy court's finding  
15 that Jorgensen is optimally employed and maximized her income.  
16 After obtaining her Ph.D. in geography, she worked as a visiting  
17 assistant professor of geography at Ohio University. Two years  
18 later, she started her current position as an assistant  
19 professor of geography at the University of Hawai'i at Manoa.  
20 While Jorgensen has applied for federal jobs, where she might  
21 increase her income, her efforts have been unsuccessful.

22 The record also supports the bankruptcy court's finding  
23 that Jorgensen made loan payments before filing for discharge  
24 and that she negotiated a repayment plan in good faith.  
25 Jorgensen made timely payments on her student loans from January  
26 2002 until she entered forbearance in June 2010. ECMC offered  
27 to reduce her payment to \$180 per month for 25 years through the  
28 Graduate Repayment Option. Jorgensen rejected the Graduate

1 Payment Option because she did not have the funds available to  
2 make the payments. She also testified that the Graduate Payment  
3 Option was not acceptable because it was based on her income,  
4 not her expenses. In an effort to resolve the matter, Jorgensen  
5 offered to pay ECMC \$180 for 18 months. ECMC refused.<sup>4</sup>

6 Turning to the expense factor, Jorgensen's decision to  
7 purchase a new car before she went to Paris and her decision to  
8 obtain orthodontic treatment both weigh against a finding of  
9 good faith.<sup>5</sup> To be clear, Jorgensen's purchase of a new car was  
10 not improper; she certainly needed a new car and purchased a  
11 relatively inexpensive and economical vehicle. Her decision to  
12 purchase the vehicle before she left for Paris, however, was  
13 imprudent. As a result, she incurred several thousand dollars  
14 of a car payment expense without using the vehicle. The  
15 bankruptcy court properly accounted for her error by finding  
16 that the extraneous expense could not be discharged.

17 Jorgensen's decision to use her summer grant to pay for  
18 orthodontic treatment instead of paying her loans also weighs  
19 against minimizing her expenses. While Jorgensen testified that  
20 she had a problem with her bite, she did not introduce any  
21 evidence that the treatment was medically necessary. The

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22  
23 <sup>4</sup> At oral argument ECMC argued that Jorgensen's failure to  
24 accept the Graduate Repayment Option was de facto evidence of a  
25 lack of good faith. To accept this argument would write  
26 § 523(a)(8) out of the Code and bestow ECMC with absolute  
27 discretion to forgive debt without judicial review.

28 <sup>5</sup> ECMC also challenges several of Jorgensen's living  
expenses. As discussed earlier, the majority of these expenses  
are the result of her health problems, and therefore, beyond her  
control.



1 bankruptcy court's memorandum of decision, however, reflects  
2 that the court weighed this unwise decision against all other  
3 factors to determine whether the debtor made a good faith effort  
4 to repay.

5 While this case presents a close question on good faith,  
6 after considering all of the circumstances, we will not disturb  
7 the bankruptcy court's determination that Jorgensen made good  
8 faith efforts to repay her student loans.

9 **VI. CONCLUSION**

10 Having determined the bankruptcy court's factual findings  
11 are not clearly erroneous and the bankruptcy court correctly  
12 applied the Brunner test, we AFFIRM.