UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

In re:	§	**CHAPTER 7**
	§	
JAMES CHARLES PAPPAS,	§	**CASE NO. 97-54148**
Debtor	§	
	§	
	§	
JAMES CHARLES CORLETTA,	§	
Formerly known as	§	
James Charles Pappas,	§	**ADVERSARY NO. _____**
Plaintiff	§	
	§	
v.	§	
	§	
THE TEXAS HIGHER EDUCATION	§	
COORDINATING BOARD,	§	
Defendant	§	

COMPLAINT

TO THE HONORABLE CRAIG A. GARGOTTA,
UNITED STATES BANKRUPTCY JUDGE:

JAMES CHARLES CORLETTA, formerly known as James Charles Pappas, the debtor in the above-captioned chapter 7 case (the "**Debtor**"), asks that the Court enter a judgment that (a) the claim filed against his estate by the Texas Higher Education Coordinating Board (the "**THECB**") in his 1997 Chapter 7 bankruptcy proceeding was based on a dischargeable debt,[1] (b) that said debt was discharged in 1997, (c) that the THECB is permanently enjoined from pursuing collection actions relating to that claim against the Debtor pursuant to section 524 of

[1] In the Travis County Suit (defined below), Corletta has raised various state-law defenses to liability on the notes underlying the subject debt. When the Court ordered this case to be reopened, it limited the subject matter of this adversary proceeding to the issues related to dischargeability and discharge, reserving the remaining defenses to be tried by the Travis County Court, if necessary. Accordingly, throughout this Complaint, it is assumed for the sake of argument that the state law defenses are inapplicable. However, the Debtor expressly disclaims any waiver of the remaining state law defenses that have been raised in the Travis County Suit, which may be litigated in that suit, if necessary.

the Bankruptcy Code,[2] (d) that the THECB willfully violated the discharge injunction, and (e) that the Debtor be awarded his damages and such other relief to which he may show himself justly entitled. In support of his *Complaint*, the Debtor shows the Court as follows:

PARTIES

1. Debtor is an individual residing in Bexar County, Texas.

2. The THECB is an agency of the State of Texas. It can be served by delivering citation to its counsel, Nicole Mignone, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548.

JURISDICTION AND VENUE

3. This adversary proceeding is being brought in connection with the Debtor's bankruptcy case under Chapter 7 of the Bankruptcy Code, which was reopened by this Court on February 19, 2014.

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This Motion is a core proceeding as that term is used at 28 U.S.C. § 157(B)(2)(I).

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The statutory predicate for relief is 28 U.S.C. § 2201(a), 11 U.S.C. § 523(a)(8) and Rules 4005 and 4007 of the Federal Rules of Bankruptcy Procedure and the contempt remedies allowed for in 11 U.S.C. § 105(a) for violation of the discharge injunction provided for in 11 U.S.C. § 524(a)(2).

[2] 11 U.S.C. § 101 *et seq.*

FACTUAL ALLEGATIONS

A. Facts Related To The College Access Loan Program

7. The Texas "College Access Loan" program ("**CAL Loans**") was created in 1987 to cover all or part of the expected family contribution for post-secondary education for students who could not demonstrate financial need.

8. CAL Loans are not need-based but are designed to cover all or part of the expected family contribution.

9. CAL Loans are private alternatives to federal education loans.

10. The amount of a CAL Loan is determined by the financial aid office of the borrower's educational institution.

11. In 1990, CAL Loans were suspended due to a shortage of funds.

12. In response to the shortage of funds, in 1991 the 72nd Texas legislature enacted House Bill 686 authorizing the issuance of private revenue bonds to fund CAL Loans beginning in 1991 and authorizing a new section in the Texas Education Code (to wit, Chapter 56, Subchapter H) governing the administration of the CAL Loans issued from the new private revenue bond fund.

13. This new bond fund was to be administered by the THECB, which would be allowed to: issue revenue bonds to fund the loan program, use the revenue bond proceeds for loans to qualified students from the fund, and to charge and collect loan originating fees from borrowers to offset the operating expenses for the loan program incurred by the THECB.

14. The THECB is not a non-profit institution.

15. The revenue bonds would not be backed by the state and, therefore, would have no fiscal impact on the State. The Texas Education Code specifically provides that the revenue bonds from which CAL Loans are sourced do not constitute an indebtedness of the State.

16. In July 1991 the THECB issued its Texas College Student Loan Senior Lien Revenue Bonds, Series 1991, and its Texas College Student Loan Junior Lien Revenue Bonds, Series 1991 (collectively the "**Revenue Bonds**") pursuant to the terms of a resolution approved by the THECB in July of 1991, which Revenue Bonds were secured by an Indenture of Trust dated as of July 1, 1991 between the THECB and the Comptroller of Public Accounts and the State of Texas, as trustee.

17. The proceeds of the Revenue Bonds were deposited in the Student Loan Revenue Bond Fund established in the State Treasury pursuant to Subchapter H of Chapter 56 of the Texas Education code (the "**Revenue Bond Fund**") and these segregated funds were used to originate private CAL Loans to students to finance the costs of post-secondary education in Texas.

18. Revenue from CAL Loans was kept in a segregated account until 2005 when the holders of the Revenue Bonds had been paid in full on account of their bonds.

19. As trustee for the private bond fund, the THECB did not "make" CAL Loans but was merely charged with administering the loans for the account of the bond holders of the private Revenue Bond Fund.

B. Facts Related To The Debtor's Bankruptcy And The Travis County Suit

20. In the early 1990s, Debtor was honorably discharged from active duty in the United States Air Force and began attending a low-cost community college to become a medical technician. During that time, he paid his educational expenses and supported himself using his

GI Bill benefits and working part-time in food service and as an ambulance driver. He did not take out student loans of any type to pay for his educational or living expenses, but he did incur a fair amount of credit card debt.

21. On or about August 12, 1997, Debtor filed a bankruptcy proceeding in order to discharge his credit card debt.

22. The Debtor retained Edward B. Hinders of the law firm Hervol, Hinders & Walker to represent him in his bankruptcy proceeding.

23. He was not aware of any obligations other than the credit card debt and he did not have any conversations with his bankruptcy lawyer about what debts would be dischargeable and if any debts might not be dischargeable.

24. The Debtor's schedules indicated that all of his assets were exempt.

25. Included on Debtor's Schedule F (Creditors Holding Nonpriority Claims) was a debt designated as "Hinson-Hazelwood College Access Loan" owed to "Texas Higher Education" in the amount of $18,193.56 (the "**CAL Debt**"). The Debtor's Schedule F further represented that the loan was taken out in 1994 by an individual named Joan Durbin ("**Durbin**" or "**Borrower**") and that the consideration for the debt was a cosigned student loan application.

26. The Debtor is not, and never has been, legally related to Durbin.

27. On August 15, 1997, the Court entered an Order Combined With Notice of Commencement of Case Under Chapter 7 of the Bankruptcy Code, Meeting of Creditors, and the Fixing of Dates, establishing November 18, 1997 as the deadline to file a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Types of Debts.

28. On or about September 10, 1997 the THECB filed a Proof of Claim in the above-captioned case asserting an unsecured nonpriority claim in the amount of $18,383.66 (the

"**Claim**"). The Proof of Claim states: "Since guaranteed student loans are not dischargeable except as provided for under Title 11 U.S.C. 523(a)(8), we ask that you determine the dischargeability of this debt." Attached to the Proof of Claim were two (2) loan applications purportedly cosigned by Debtor and dated October 8, 1993 (recommended loan amount $5,986.00) and November 30, 1994 (recommended loan amount $6,000.00), respectively.

29. However, the THECB never filed a Complaint objecting to the discharge or to determine dischargeability of its alleged debt. In other words, the THECB never initiated an adversary proceeding relating to dischargeability.

30. On or about September 19, 1997 the Chapter 7 Trustee filed a No Asset Report.

31. On December 8, 1997 the Court entered its Discharge of Debtor (the "**Discharge Order**") which provided, *inter alia*, that "[t]he above-named debtor is released from all dischargeable debts."

32. Prior to issuing the Discharge Order the Court did not determine the dischargeability of the obligation claimed by the THECB, despite the "request" on the Claim. The Trustee never objected to the Proof of Claim filed by the THECB.

33. The THECB had actual notice of the Discharge Order.

34. From 1997 to 2011, the Debtor was not aware that THECB still claimed that he was obligated on the CAL Debt. He never received any written communication from the THECB alleging that he was still obligated to repay the CAL Debt. There were no attempts by THECB to collect the alleged debt.

35. Then, on or about September 9, 2011 the State of Texas, acting by and through the THECB, sued Debtor in the County Court at Law of Travis County, Texas in a suit docketed

as No. C-1-CV-11-009412 (the "**Travis County Suit**"), which was not served on Debtor until November 18, 2011.

36. In the Travis County Suit, the THECB alleges that Debtor owes the State a total principal amount of $13,086.00 on two (2) promissory notes dated in 1993 and on one (1) promissory note dated in 1994 plus accrued interest, costs, post judgment interest, attorney's fees and other unspecified relief.

37. On or about November 21, 2011 the THECB recorded an abstract of judgment against the Borrower in the records of Travis County, Texas, entered into a repayment agreement with the Borrower according to the THECB's records, and the Borrower immediately began repaying the CAL Debt. The abstract of judgment represents that the Borrower has been made responsible for the loan for her lifetime.

38. The Debtor raised his 1997 bankruptcy discharge as a defense in the Travis County Suit, among other state law defenses.

39. On January 30, 2014 Debtor filed his motion to reopen the 1997 bankruptcy case for cause.

40. On February 10, 2014 the THECB filed its objection to the reopening.

41. On February 17, 2014 Debtor filed his reply to the THECB's objection.

42. On February 19, 2014, the Court heard the Motion to Reopen.

43. At the February 19, 2014 hearing, Deputy Attorney General John Adams, who represents the THECB in the Travis County Suit, admitted that the CAL Debt is not a "guaranteed" educational loan as that term is defined for purposes of section 523(a)(8) of the Bankruptcy Code.

44. On February 19, 2014, after hearing the arguments of both parties, this court abated the Travis County Suit and reopened the 1997 bankruptcy case for the purpose of resolving the discharge issues.

COUNT I: DECLARATORY JUDGMENT

45. The allegations in paragraphs 1 to 44, *supra*, are incorporated by reference as though fully restated herein.

46. Pursuant to 28 U.S.C. § 2201(a), the Debtor seeks a Declaratory Judgment in his favor and against the THECB that the CAL Debt was dischargeable and was actually discharged in his 1997 bankruptcy proceeding.

A. Student Loan Debt Is Presumptively Dischargeable Against Co-Signers With No Legal Relationship To The Borrower.

47. Section 523(a)(8) of the Bankruptcy Code governs which student loans are exempted from the presumption of dischargeability.

48. In 2005, Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA"), Public Law 109-8, effective October 17, 2005, which among other things, expanded the presumption of nondischargeability found in section 523(a)(8) of the Bankruptcy Code to private student loans.

49. In particular, BAPCPA expanded the definition of a nondischargeable student loan to include "any other educational loan that is a qualified education loan, as defined in Section 221(d)(1) of the Internal Revenue Code of 1986."

50. Section 221(d)(1) of the Internal Revenue Code of 1986 defines "qualified education loans" as

> 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.

(Emphasis added.)

51. Thus, even under the broader discharge exemption enacted under the BAPCPA, indebtedness on co-signed private education loans that are incurred on behalf of someone who is *not* legally related to the Debtor are not automatically exempt from discharge.

52. The Debtor is not – and never has been – legally related to the Borrower.

53. The Debtor and the Borrower were co-workers beginning in 1992 and ending in 1993. Debtor allowed Borrower to live in his apartment for a short period of less than six months, beginning in 1992.

54. Debtor did not stand to benefit from the Borrower's education, had no close association with or concern for the Borrower and, therefore, he was not abusing either a student loan program or the bankruptcy process by having the CAL Debt discharged.

55. Debtor is not an individual who incurred or co-signed federal, guaranteed educational loans and is seeking to have that obligation discharged before embarking on a lucrative career, thereby essentially converting the loans to scholarships.

56. Because Debtor is not the borrower under the pertinent CAL Loans, nor was he legally related to the Borrower at any time, the CAL Debt is now – and always has been – presumptively dischargeable as to him.

57. Because the CAL Debt was presumptively dischargeable as to the Debtor, the THECB was required to file an adversary proceeding and bore the burden of proving adequate grounds to deny the discharge of the CAL Debt in the 1997 bankruptcy proceeding.

58. Because the THECB did not prove any grounds for denying the discharge of the CAL Debt in 1997, the CAL Debt was discharged pursuant to the Discharge Order and Debtor is entitled to a Declaratory Judgment in his favor and against the THECB to that effect.

B. The CAL Debt Is A Private Educational Loan That Was Presumptively Dischargeable Under Bankruptcy Code As It Existed In 1997

59. The allegations contained in paragraphs 1 to 58, *supra*, are incorporated by reference as though fully set forth herein.

60. In the alternative, the presumption of nondischargeability that arises under the applicable version of section 523(a)(8) does not apply to the CAL Debt because: (a) the CAL Loan is not an "educational loan" as defined under the Bankruptcy Code as it existed in 1997, (b) the CAL Loan was not made, insured, or guaranteed by a governmental unit, and (c) the CAL Loan was not made under any program funded in whole or in part by a governmental unit or a non-profit institution of higher learning..

The CAL Loan Is Not An "Educational Loan" As Defined Under the Bankruptcy Code As It Existed In 1997

61. As originally enacted on November 6, 1978, section 523(a)(8) of the Bankruptcy Code read in pertinent part: "(a) A discharge … does not discharge an individual debtor from any debt – (8) for an educational loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or a non-profit institution of higher education, unless …" 11 U.S.C. § 523(a)(8) (1975).

62. The term "educational loan" is not explicitly defined in the Bankruptcy Code.

63. Statutory history makes it clear that "educational loan," under the version of the Bankruptcy Code in effect in 1997, applied only to federal education loans governed by the Higher Education Act of 1965.

64. The Higher Education Act of 1965 created the Guaranteed Student Loan Program ("**GSLP**"), which provided for guaranteed federally-backed low-interest loans to qualified students who could demonstrate need for financial assistance.

65. Under the GSLP, educational loans were made by banks, credit unions, educational institutions, and other lenders and were required to be insured by the United States Department of Education or insured by state agencies or nonprofit organizations and then reinsured by the Department of Education.

66. Under the GSLP, if the borrower failed to make repayments because of death or disability or was relieved of the obligation to pay through discharge in bankruptcy, the lender was entitled to repayment from the federal government. Neither the Act nor the provisions governing the GSLP specifically prohibited the discharge of student loans.

67. The Truth in Lending Act ("**TILA**"), 15 U.S.C. § 1601 et seq., was enacted on May 29, 1968 and became effective July 1, 1969.

68. Pursuant to TILA section 140(a)(6), "private education lender" includes any entity engaged in the business of soliciting, making, or extending private education loans, which includes government agencies like the THECB.

69. In turn, TILA Section 140(a)(7) defines "private education loan" as a loan provided by a private education lender that is not made, insured, or guaranteed under Title IV of the Higher Education Act of 1965.

70. In 1976 Congress amended the Higher Education Act of 1965 by adding Section 439A, which made guaranteed student loans governed by the Higher Education Act nondischargeable in bankruptcy. It did not affect the dischargeability of private education loans, regardless of who issued the loans.

71. In 1978 Congress created a new Title 11 of the United States Code, i.e., the Bankruptcy Code. At the same time, Congress repealed Section 439A of the Higher Education Act and imported it as section 523(a)(8) of the Bankruptcy Code.

72. Since section 439A of the Higher Education Act pertained exclusively to federal education loans made under the GSLP, section 523(a)(8), as it was originally enacted and as it was in force and effect in 1997, also pertained exclusively to federal education loans made under the GSLP and guaranteed by the United States.

73. In 1979, Congress enacted Public Law 96-56 to correct the different treatment of profit-making and nonprofit institutions of higher education under 11 U.S.C. §523(a)(8) regarding the dischargeability of guaranteed educational loans. The Act stated the intent of Congress was "[t]o amend the Bankruptcy Act to provide for the nondischargeability of certain student loan debts *guaranteed or insured by the United States*." (Emphasis added.) This amendment corrected the uneven treatment afforded to student loan programs administered by the Department of Health, Education and Welfare, such as National Direct Student Loans, which had been funded by both nonprofit and profit-making institutions of higher education.

74. The restriction of 11 U.S.C. §523(a)(8) to government-guaranteed student loans remained unchanged until the enactment of BAPCPA.

75. The 1997 College Access Loan debt claimed by the THECB is not for a loan or loans made, insured or guaranteed under Title IV of the Higher Education Act of 1965.

76. The CAL Debt claimed by the THECB is for a "private educational loan" as that term is defined under TILA. In 1997, such "private educational loans" were not "educational loans" as that term was used or applied in defining nondischargeable student loans under 523(a)(8) as it existed in 1997.

77. Various websites created, owned, operated, or otherwise controlled by the THECB contain representations that CAL Loans are private education loans that are not made, insured, or guaranteed under Title IV of the Higher Education Act of 1965.

78. The websites of various colleges and universities in Texas identify the CAL Loans as alternative or private education loans.

79. On January 15, 2002, the THECB wrote a letter addressed to the Borrower stating that a College Access Loan is not a federal education loan.

CAL Loans Are Not Made, Insured, Or Guaranteed By A Governmental Unit

80. The THECB, through its counsel's sworn testimony, has admitted that the CAL Loans are not guaranteed as that term is used in section 523(a)(8) of the Bankruptcy Code. In other words, the CAL Loans are not guaranteed *by a governmental unit*.

81. CAL Loans are not insured by the THECB or any other governmental unit.

82. Because the funds used by the THECB to issue CAL Loans were not government funds, the THECB could not be considered to be the "maker" or "lender" of the loans as contemplated by section 523(a)(8) of the Bankruptcy Code. That is, the CAL Loans are not "made" by a governmental unit.

CAL Loans Are Not Funded In Whole Or In Part By A Governmental Unit Or Non-Profit Institution Of Higher Education

83. CAL Loans are funded by the Revenue Bonds and the funds from the sale of the bonds were placed into a segregated Revenue Bond Fund.

84. The Texas Education Code explicitly provides that the Revenue Bonds are not an obligation of the State.

85. The Revenue Bond Fund was not comprised of funds belonging to any governmental unit or non-profit institution of higher education.

86. Based on the foregoing, the CAL Debt was not automatically exempted from discharge under the version of section 523(a)(8) of the Bankruptcy Code in effect in 1997 because it was not "an educational loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or a non-profit institution of higher education."

87. CAL Loans are private, non-guaranteed loans, which in 1997 were treated as any other unsecured private debt, such as credit card debt, and were presumptively dischargeable.

88. Because the CAL Debt was presumptively dischargeable, it was incumbent on the THECB to prove that the CAL Debt was nondischargeable under a particular provision of the Bankruptcy Code in the 1997 bankruptcy case.

89. The THECB did not meet its burden of proving that the CAL Debt was not dischargeable under the Bankruptcy Code.

90. Accordingly, the Debtor is entitled to a declaratory judgment in his favor and against the THECB declaring that, under section 523(a)(8) as in effect in 1997, the CAL Debt was presumptively dischargeable and was therefore discharged pursuant to the Discharge Order.

C. In 1997, The THECB Did Not Show By A Preponderance Of The Evidence That The CAL Debt Was Nondischargeable Because It Was "Guaranteed" For Purposes Of Section 523(a)(8) Of The Bankruptcy Code.

91. Paragraphs 1 to 90, *supra*, are incorporated by reference as though fully restated herein.

92. The party objecting to the discharge of a debt has the burden of proving nondischargeability by a preponderance of the evidence. *Grogan v. Garner*, 498 U. S. 279, 288 (1991); see also Fed. R. Bankr. P. 4005 ("At the trial on a complaint objecting to a discharge, the plaintiff has the burden of proving the objection.").

93. The Bankruptcy Code mandates that courts narrowly construe exceptions to discharge against the creditor and in favor of the debtor thus effectuating the "fresh start" principal of the bankruptcy code. *See In re McClure*, 210 B.R. 985, 988 (Bankr. N.D. Tex. 1997) (citing *Boyle v. Abilene Lumber, Inc. (In re Boyle)*, 819 F.2d 583, 588 (5th Cir. 1987)); *ITT Fin. Serv. v. Long (In re Long)*, 124 B.R. 54, 56, Bankr. N.D. Ohio 1991)).

94. The THECB's proof of claim merely made the bald assertion that the "guaranteed" CAL Debt was nondischargeable. Yet, it was not guaranteed (as defined in section 523(a)(8) of the Bankruptcy Code) and no proof of any such guarantee existed.

95. The CAL Debt was presumptively dischargeable because it did not fall within the scope of 523(a)(8) as it existed in 1997. The CAL Debt was also presumptively dischargeable as to the Debtor because he is a co-signer who has never been legally related to the Borrower.

96. A creditor objecting to the discharge of a presumptively dischargeable debt has the burden of commencing a proceeding to determine dischargeability and of proving that the discharge should be denied under some provision of the Bankruptcy Code.

97. The THECB never formally commenced any proceeding to determine the dischargeability of the CAL Debt.

98. The only ground for denying the discharge that was asserted by the THECB in the 1997 bankruptcy proceeding was that the CAL Loan was a "guaranteed" student loan.

99. The THECB did not – and could not – meet its burden of proving that the CAL Debt was a "guaranteed" student loan for purposes of section 523(a)(8).

100. Pursuant to Texas Education Code § 56.126(e), which governs the Revenue Bond Fund, the CAL loans do not constitute an indebtedness of the State. That is, CAL loans are not guaranteed by the State.

101. The THECB's records – which predate the 1997 bankruptcy proceedings – state that the CAL Debt is not guaranteed by the State.

102. Thus, the THECB knew that its representation in its Proof of Claim that the CAL Debt was nondischargeable and was a guaranteed student loan under section 523(a)(8) of the Bankruptcy Code was false at the time that the representation was made.

103. The THECB, through its counsel's sworn testimony, has admitted that the CAL Debt is not "guaranteed" for purposes of section 523(a)(8) of the Bankruptcy Code.

104. Thus, the THECB did not – and could not – prove by a preponderance of the evidence that the CAL Debt should be exempted from discharge under section 523(a)(8) of the Bankruptcy Code on the basis that it was for a guaranteed student loan.

105. Because the THECB failed to meet its burden relating to any request to find the CAL Debt nondischargeable, the Debtor is entitled to a judgment in his favor and against the THECB declaring that the CAL Debt was dischargeable under the applicable version of 523(a)(8) and was discharged in 1997.

COUNT II: CONTEMPT

106. The allegations contained in paragraphs 1 to 105, *supra*, are incorporated by reference as though fully restated herein.

107. The THECB received actual notice of the Discharge Order in 1997.

108. The THECB had actual knowledge that there was no order entered in Debtor's bankruptcy case declaring its claim to be nondischargeable.

109. The THECB knew or should have known that its claim against the Debtor's bankruptcy estate was presumptively dischargeable because it did not fall within the exemption to discharge contained in section 523(a)(8) of the Bankruptcy Code in effect in 1997.

110. The THECB knew or should have known that the Discharge Order constituted an injunction against any further action against the Debtor or his estate to collect the CAL Debt.

111. Despite the foregoing, the THECB intentionally made various attempts to collect the CAL Debt from the Debtor after his discharge order was entered, including without limitation, by filing the Travis County Suit.

112. Those collection attempts, including without limitation the filing of the Travis County Suit, constitute a willful violation of the discharge injunction under section 524(a) of the Bankruptcy Code.

113. Section 105(a) of the Bankruptcy Code empowers this Court to impose sanctions against parties that willfully violate the discharge injunction.

114. The Debtor has suffered actual damages proximately caused by the THECB's willful violation of the discharge injunction, including without limitation, lost wages, attorney's fees, and court costs in an amount to be proven at trial.

115. The Debtor has suffered emotional distress as a result of the THECB's willful violation of the discharge injunction, for which he is entitled to an award of damages in an amount to be proven at trial.

116. The THECB's willful violation of the discharge injunction is so egregious as to warrant an award of punitive damages in an amount to be proven at trial.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Debtor prays that this Court enter an Order and Judgment in his favor and against Defendant Texas Higher Education Coordinating Board:

A. Declaring that the CAL Debt was dischargeable in 1997;

B. Declaring that the CAL Debt was actually discharged in 1997;

C. Declaring that the THECB willfully violated the discharge injunction;

D. Awarding the Debtor his actual damages, including without limitation, lost wages, attorneys' fees and court costs;

E. Awarding the Debtor damages for emotional distress;

F. Awarding punitive damages;

G. Awarding pre- and post-judgment interest;

H. Attorneys' fees and costs; and

I. For such other relief as the Court deems just and proper.

Dated: March 19, 2014.

Respectfully submitted,

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ATTORNEYS FOR DEBTOR