

FILED & ENTERED

NOV 22 2011

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SAN FERNANDO VALLEY DIVISION**

In re:

Douglas Paul Textor,  
Jennifer Textor

Debtor(s),

Ryan J Vernon

Plaintiff(s),

Vs.

Douglas Paul Textor, Jennifer Textor

Defendant(s).

Case No.: 1:10-bk-25164-MT

Adversary No.: 1:11-ap-01437-MT

Chapter: 7

**NOTICE OF TENTATIVE RULING RE  
DEFENDANT'S MOTION TO DISMISS  
ADVERSARY PROCEEDING**

Date: November 16, 2011

Time: 11:00 a.m.

Location: Courtroom 302

At the above date and time, the Court held a hearing on the Motion to Dismiss Complaint for Non-Dischargeability of Debt (the "Motion to Dismiss"), filed by Defendants Douglas and Jennifer Textor. Appearances are as noted on the record for the hearing. At the hearing, the Court adopted its tentative ruling on the Motion to Dismiss. A copy of the Court's tentative ruling is attached to this cover page.

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2 On May 28, 2010, Ryan J. Vernon ("Plaintiff") filed a complaint ("original complaint") in the Los Angeles  
3 Superior Court against his former employer. Ryan J. Vernon v. Canned Interactive, Inc. et al., LASC case no.  
4 BC438690. Canned Interactive, Inc. ("Company") was a firm specializing in digital marketing doing business in  
5 Burbank, California. Douglas Textor worked as Chief Executive Officer ("CEO") and managing agent of the  
6 Company. Plaintiff asserts that Douglas Textor actively sought to employ Plaintiff as a Business Development  
7 Associate, and conducted personal meetings at the Company's Burbank facility. Plaintiff alleges the Company  
8 made a written offer of employment to Plaintiff, and Plaintiff accepted the offer despite numerous other  
9 employment opportunities available to him.

10 The allegations are also that during the meetings and conversations before Plaintiff was employed with  
11 the Company, Douglas Textor made representations to Plaintiff that Douglas Textor and the Company had an  
12 "open door" policy encouraging all employees to disclose adverse work conditions or complaints, and that  
13 employees would not be subject to retaliation for doing so, afforded employees with investigations and  
14 progressive discipline of performance deficiencies or employee complaints, terminated employees only for good  
15 cause, were committed to a non-discriminatory work environment and policies, and would afford employees with  
16 equal treatment. Plaintiff asserts Douglas Textor repeatedly made oral and written statements that he would  
17 abide by these representations, with full knowledge that these representations were not true.

18 Plaintiff alleges Douglas Textor and the Company did not have an "open door" policy encouraging such  
19 disclosures by employees, they did not afford the employees with appropriate investigations and discipline for  
20 deficiencies or protests, they would terminate employees without good cause and in bad faith to harm them, they  
21 were not committed to a non-discriminatory work environment and policies, they would physically threaten and  
22 retaliate against any employees who protested or opposed discrimination on the basis of nationality, ethnicity, or  
23 religion as Douglas Textor did with Plaintiff and Plaintiff's then-supervisor, Todd Moyer ("Moyer"), who is Jewish.

24 Plaintiff asserts Douglas Textor concealed from Plaintiff that he would not honor the representations  
25 stated above and would instead terminate Plaintiff if he sought to proceed pursuant to such representations and  
26 contract terms. Without knowledge of Douglas Textor's intentions, Plaintiff agreed to accept employment with the  
27 Company. Plaintiff alleges Douglas Textor told Plaintiff his work performance was excellent around October  
28 2008. Around November 2008, Plaintiff became aware of Douglas Textor's derogatory references toward Jews,  
referring to and in the presence of Moyer, Plaintiff, and other employees, the following: references to former  
employee as having been fired for being a "big, fat, French Jew" who had accused Douglas Textor of singing  
"Spring Time for Hitler and Germany" in the office, doing Nazi salutes, slapping the former employee three times  
in the face, referring to Hitler and Textor's family as Nazi soldiers and war heroes who had fought in World War II,  
including other derogatory and anti-Semitic comments and gestures.

Plaintiff also asserts Douglas Textor ordered Plaintiff, in a meeting around November 2008, to destroy a  
video Douglas Textor made of himself impersonating Hitler and doing the Nazi salute. Plaintiff alleges that he  
refused. Douglas Textor made a statement to Plaintiff threatening him, Moyer, or anyone else who complained or  
threatened to sue him, with words to the effect of, "If you sue me, I will get my gun, come to your house, and  
\*\*\*\*\* kill you, I mean it!" After this threatening statement, Plaintiff alleges Douglas Textor began his campaign of  
harassment and isolation of Plaintiff and his supervisor, Moyer.

Plaintiff alleges he met with the Company President, Alan Hellard, to explain to the President what had  
transpired regarding Douglas Textor and the video. In December 2008, Plaintiff submitted a written complaint and  
report of the November incident. The President assured Plaintiff his report would be kept confidential and  
protected from retaliation and harassment by Textor. Plaintiff asserts Textor subsequently threatened Plaintiff  
with the loss of his job if he cooperated with the investigations and supported "the Jew", Moyer.

In retaliation, Plaintiff asserts Douglas Textor continued to isolate Plaintiff from other employees, failed to  
give assignments to Plaintiff, replaced Plaintiff and Moyer with new hires at meetings, replaced and transferred  
their assignments to other employees, among other things. In February 2009, Moyer was terminated. In March  
2009, Plaintiff was terminated. Plaintiff alleges this termination was in retaliation for Plaintiff's actions against  
Douglas Textor's discriminatory conduct and practices. At this time, Plaintiff refused to sign a waiver of his rights  
to file any claims of employment discrimination and related claims against Douglas Textor or the Company upon  
termination. Plaintiff also asserts Douglas Textor committed slander and libel upon termination of Plaintiff for  
making oral and written publications to third parties that Plaintiff was an incompetent business development  
associate, knowing this to be false.

Plaintiff alleges that Douglas Textor's undisclosed intention in hiring Plaintiff was to misappropriate  
Plaintiff's intellectual property, including his skill and expertise, and, if necessary, breach his pre-hire  
representations and Plaintiff's employment contract and to discard and fire Plaintiff if: 1) Douglas Textor deemed it

1 expedient to do so, or 2) Plaintiff insisted that Douglas Textor adhere to these representations and terms of his  
contract.

2 Plaintiff alleges due to Douglas Textor's unlawful acts and omissions, Plaintiff has been shocked and  
humiliated, causing him severe stress. Plaintiff alleges he suffers from nervousness, anxiety, depression, severe  
3 frustration, inability to concentrate, insomnia and dizziness, among other symptoms. Plaintiff alleges Douglas  
Textor's actions affected Plaintiff's ability to obtain future positions in the marketing/film industry field. Plaintiff  
4 alleges he has suffered damages in an amount over \$5,000,000.

5 Douglas and Jennifer Textor ("Debtors") filed a Chapter 11 petition on December 2, 2010. The case was  
converted to Chapter 7 on March 3, 2011. On February 1, 2011, Canned Interactive filed for bankruptcy  
protection under Chapter 7 and commenced case number 11-11342.

6 On June 24, 2011, Plaintiff filed an adversary proceeding against Debtor Douglas Textor, his former  
supervisor, including the same allegations as in the complaint above. Ryan J. Vernon v. Douglas and Jennifer  
7 Textor, adv. proc. no. 11-01437. On September 14, 2011, Plaintiff filed the First Amended Complaint ("complaint")  
for nondischargeability of debt. Plaintiff asserts that the amount of damages owed to Plaintiff by Debtors  
8 (estimated to be around \$5,000,000) should be deemed nondischargeable in Debtors' bankruptcy case. This  
complaint omits the jury demand and adds Jennifer Textor as a defendant, deletes claims for breach of contract,  
9 promissory estoppel, and unfair business practices, and describes Douglas Textor as Ryan Vernon's supervisor  
rather than employer.

10 On September 22, 2011, an alias summons was issued to Defendant Jennifer Textor, unnamed in Plaintiff's  
original complaint. Debtors have issued written demand to dismiss as a party to the complaint Jennifer Textor.  
11 Plaintiff has not dismissed Jennifer Textor. Debtors request a finding that, as to Jennifer, the complaint was filed  
in bad faith and is baseless and devoid of merit. Debtors have filed the current Motion to Dismiss Plaintiff's  
12 complaint.

13 Standard for Motion to Dismiss Under § 12(b)(6):

14 A motion to dismiss under Rule 12(b)(6) challenges the sufficiency of the allegations set forth in the  
complaint. "A Rule 12(b)(6) dismissal may be based on either a 'lack of a cognizable legal theory' or 'the absence  
of sufficient facts alleged under a cognizable legal theory.'" Johnson v. Riverside Healthcare Sys., 534 F.3d  
15 1116, 1121 (9th Cir. 2008), *quoting* Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990). In  
resolving a Rule 12(b)(6) motion to dismiss, the court must construe the complaint in the light most favorable to  
the plaintiff and accept all well-pleaded factual allegations as true. Johnson, 534 F.3d at 1122; Knox v. Davis,  
16 260 F.3d 1009, 1012 (9th Cir. 2001). On the other hand, the court is not bound by conclusory statements,  
statements of law, and unwarranted inferences cast as factual allegations. Bell Atl. Corp. v. Twombly, 550 U.S.  
17 544, 555-57 (2007); Clegg v. Cult Awareness Network, 18 F.3d 752, 754-55 (9th Cir. 1994).

18 "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual  
allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels  
and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S.  
19 at 555 (citations omitted). "In practice, a complaint ... must contain either direct or inferential allegations  
respecting all the material elements necessary to sustain recovery under some viable legal theory." Id. at 562,  
20 *quoting* Car Carriers, Inc. v. Ford Motor Co., 745 F.2d 1101, 1106 (7th Cir. 1984).

21 In Ashcroft v. Iqbal, 556 U.S. 662 (2009), the Supreme Court elaborated on the Twombly standard: To  
survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim  
to relief that is plausible on its face.... A claim has facial plausibility when the plaintiff pleads factual content that  
22 allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged....  
Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not  
23 suffice. 550 U.S. at 570 (citations and internal quotation marks omitted). Further, the allegations of the complaint,  
along with other materials properly before the court on a motion to dismiss, can establish an absolute bar to  
24 recovery. See Weisbuch v. County of Los Angeles, 119 F.3d 778, 783 n. 1 (9th Cir. 1997) ("If the pleadings  
establish facts compelling a decision one way, that is as good as if depositions and other expensively obtained  
25 evidence on summary judgment establishes the identical facts."). While the court generally must not consider  
materials outside the complaint, the court may consider exhibits submitted with the complaint. Durning v. First  
26 Boston Corp., 815 F.2d 1265, 1267 (9th Cir. 1987).

27 In addition, facts properly subject to judicial notice may be used to establish that the complaint does not  
state a claim for relief. Intri-Plex Techs., Inc., 499 F.3d at 1052; Estate of Blue v. County of Los Angeles, 120  
F.3d 982, 984 (9th Cir. 1997); Mullis v. Bankruptcy Ct., 828 F.2d 1385, 1388 (9th Cir. 1987). In this regard, a court  
28 can properly take judicial notice of court papers filed in related litigation. Estate of Blue, 120 F.3d at 984. Further,  
court documents filed in an underlying bankruptcy case are subject to judicial notice in related adversary

1 proceedings and district court lawsuits. O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955,  
2 957-58 (9th Cir. 1989); Mullis, 828 F.2d at 1388.

3 Standard for Alter Ego:

4 Plaintiff claims Debtors are using the corporate front of Canned Interactive and are one and the same  
5 under the alter ego doctrine. Plaintiff alleges in the retaliatory discharge, discrimination and harassment, and  
6 wrongful termination causes of action in his complaint that Debtors, individually, should not be allowed to  
7 discharge debt in their bankruptcy case for the harm caused by the Company and supervisory employees at the  
8 Company. While the plaintiff's brief discusses alter ego, it is not alleged in the amended complaint.

9 1. Alter Ego Doctrine:

10 The "alter-ego doctrine," or "piercing the corporate veil," is a principle that disregards corporate structure  
11 in order to assert liability against one who utilizes the corporation as a mere conduit for their own intentional acts.  
12 1 Fletcher Cyclopedia of the Law of Corporations, § 41.10 (updated 2008). The alter ego doctrine is used to  
13 establish the direct liability of a shareholder or owner of a company when that shareholder or owner improperly  
14 uses the corporate entity to commit acts which harm the corporation itself, or third persons involved with the  
15 corporation. State law determines who has standing to assert an alter ego claim when the corporate entity which  
16 has been abused subsequently files bankruptcy. CBS, Inc. v. Folks (In re Folks), 211 B.R. 378, 385 (9th Cir. BAP  
17 1997) ("Folks").

18 The alter ego doctrine arises when a plaintiff comes to court claiming that an opposing party is using the  
19 corporate form unjustly and in violation of the plaintiff's interests. 6 Witkin, Summary of Cal. Law (8th ed. 1974);  
20 Corporations, § 5, p. 4318. In certain circumstances the court will disregard the corporate entity and will hold the  
21 individual shareholders liable for the actions of the corporation. Mesler v. Bragg Management Co., 39 Cal. 3d  
22 290, 300, 702 P.2d 601, 216 Cal. Rptr. 443 (1985).

23 Courts in California treat alter ego as a procedural doctrine, focusing intently on the issue of standing. A  
24 determination on this topic depends heavily in California on whether the alter ego claim is generalized or  
25 particularized. Ahcom Ltd. v. Smeding, 623 F.3d 1248 (9th Cir. 2010). The Ninth Circuit recently overturned what  
26 was once considered well-settled law that a trustee held the exclusive authority to bring a generalized alter ego  
27 claim against corporate shareholders on behalf of all creditors. Ahcom, 623 F.3d 1248. The Court held that  
28 California law does not recognize an alter ego claim or cause of action on a generalized theory concerning injury  
that affects all creditors as a whole and attacks all of the corporation's debts. Ahcom; see also St. Paul Fire and  
Marine Ins. v. PepsiCo Inc., 884 F.2d 688, 701 (2d Cir. 1989). However, particularized theories are less  
restricted.

2. Particularized Alter Ego Claim:

An alter-ego claim is "particularized" if the alleged injury is unique to an individual claimant, and he or she  
alone has an interest in the cause of action. See Koch Refining v. Farmers Union Cent. Exchange Inc., 831 F.2d  
1339, 1348 (7th Cir. 1987). In California, each individual creditor has standing to sue on a particularized alter ego  
theory against the debtor in a bankruptcy case. Folks, 211 B.R. at 385.

Canned Interactive has its principal place of business in Burbank, California and California law is  
controlling. Under California law, the creditor here has standing to sue under a particularized alter ego theory to  
pierce the corporate veil and attempt to hold Debtors liable and their debt nondischargeable in this bankruptcy  
case. Plaintiff, theoretically, properly can use the alter ego theory to bring the first, second, and third causes of  
action against Debtors for malicious injury based on retaliatory discharge, national origin discrimination and  
harassment by association, and wrongful termination of Plaintiff. Under California law, Plaintiff can bring a  
particularized alter ego claim against Debtors. Here, Plaintiff alleges his unique individual rights were violated by  
the corporation's practices of discrimination, harassment, and wrongful termination. Plaintiff is not alleging that all  
creditors were affected equally. Plaintiff's claims brought under an alter ego theory are allowed under current  
doctrine as they are particularized and unique to him. Leave will be given to properly amend on this basis.

Nondischargeability of Debt under § 523

Plaintiff's First Amended Complaint includes specific claims against Douglas Textor, individually, and includes his  
spouse, Jennifer Textor, for the limited stated purpose of the community's liability for nondischargeability of  
claims. Jennifer Textor was not directly involved in any of the actions that led to the harm alleged by Plaintiff.  
Plaintiff's complaint does not contain sufficient facts alleging a claim for relief from Jennifer under a cognizable  
legal theory, as required by Rule 12(b)(6). See Johnson, 534 F.3d 1116, 1121 (9th Cir. 2008); Fed. R. Civ. Proc.  
12(b)(6). In addition, it was filed too late. As to Jennifer Textor, Debtors' Motion will be sustained.

§ 523(a)(6):

1 Section 523(a)(6) excepts from discharge any debt of the debtor “for willful or malicious injury to another entity or  
2 to the property of another entity.” 11 U.S.C. § 523(a)(6). Under § 523(a)(6), Debtors’ actions would need to  
3 equate with “willful and malicious” injury within the meaning of the Code. The first step of this inquiry is whether  
4 there is “willful” injury, which is must entail a deliberate or intentional injury. Kawaauhau v. Geiger, 523 U.S. 57,  
61-62 (1998). In the Ninth Circuit, the intent required to be considered “willful” is either the subjective intent of the  
actor to cause harm or the subjective knowledge of the actor that harm is substantially certain to occur. Carrillo v.  
Su (In re Su), 290 F.3d 1140, 1144-45 (9th Cir. 2002).

The second step of the inquiry is whether Debtors’ conduct was “malicious.” The relevant test for such  
“malicious” conduct is: 1) a wrongful act; 2) done intentionally; 3) which necessarily causes injury; and 4) without  
just cause and excuse. Jett v. Sicroff (In re Sicroff), 401 F.3d 1101, 1105-1106 (9th Cir. 2005).

Here, Plaintiff’s complaint must allege sufficient facts under cognizable legal theories to support a finding  
that Debtors acted with willful and malicious conduct in bringing about the following violations of Plaintiff’s rights:  
retaliatory discharge, national origin/religious discrimination and harassment, wrongful termination, fraud and  
deceit, concealment, slander, and libel.

a. Discrimination and Wrongful Termination—First, Second, and Third Causes of Action:

Debtors’ Motion alleges the discrimination and wrongful termination causes of action cannot be brought  
against Debtors because they were not Plaintiff’s “employers” and cannot be held liable for actions of the  
corporation under an alter ego theory. This argument fails, as explained above. While the alter ego theory is  
procedural, and not a cause of action, the plaintiff must still amend his complaint to properly allege the elements  
of his alter ego theory, as the brief does not substitute for the complaint.

i. Retaliation and Retaliatory Discharge:

Section 12940(h) of FEHA sets forth California’s fundamental public policy that prohibits retaliation and  
harassment against an employee who protests against or complains of national origin or religious discrimination  
and harassment in the workplace. Cal. Gov. Code § 12940(h).

In the complaint, Plaintiff alleges his supervisor, Debtor, engaged in retaliatory conduct and discharge  
because Plaintiff complained of or attempted to prevent discrimination by Debtor and others at Canned Interactive  
on account of the national origin and religion of Judaism, by association. Plaintiff alleges Debtor committed  
discrimination against Jews by making derogatory and anti-Semitic comments about current and former  
employees. Plaintiff alleges Debtor intentionally retaliated against Plaintiff by isolating him, failing to assign work  
to him, replacing him with others at meetings, and eventually firing him for his protests against this discrimination.  
Plaintiff alleges he suffered damages as a result of Debtor’s retaliation that should be exempt from discharge.

Plaintiff has included sufficient facts under the theory of retaliation and retaliatory discharge. For this  
cause of action, Plaintiff has met his Rule 12(b)(6) burden of providing grounds for entitlement of relief under a  
legitimate legal theory.

Here, Plaintiff’s complaint must allege sufficient facts under cognizable legal theories to support a finding  
that Debtors acted with willful and malicious conduct in bringing about the following violations of Plaintiff’s rights:  
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discrimination against Jews by making derogatory and anti-Semitic comments about current and former  
employees. Plaintiff alleges Debtor intentionally retaliated against Plaintiff by isolating him, failing to assign work  
to him, replacing him with others at meetings, and eventually firing him for his protests against this discrimination.  
Plaintiff alleges he suffered damages as a result of Debtor’s retaliation that should be exempt from discharge.

Plaintiff has included sufficient facts under the theory of retaliation and retaliatory discharge. For this  
cause of action, Plaintiff has met his Rule 12(b)(6) burden of providing grounds for entitlement of relief under a  
legitimate legal theory.

1 Here, Plaintiff's complaint must allege sufficient facts under cognizable legal theories to support a finding  
2 that Debtors acted with willful and malicious conduct in bringing about the following violations of Plaintiff's rights:  
retaliatory discharge, national origin/religious discrimination and harassment, wrongful termination, fraud and  
deceit, concealment, slander, and libel.

3 a. Discrimination and Wrongful Termination—First, Second, and Third Causes of Action:

4 Debtors' Motion alleges the discrimination and wrongful termination causes of action cannot be brought  
against Debtors because they were not Plaintiff's "employers" and cannot be held liable for actions of the  
corporation under an alter ego theory. This argument fails, as explained above.

5 i. Retaliation and Retaliatory Discharge:

6 Section 12940(h) of FEHA sets forth California's fundamental public policy that prohibits retaliation and  
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and harassment in the workplace. Cal. Gov. Code § 12940(h).

7 In the complaint, Plaintiff alleges his supervisor, Debtor, engaged in retaliatory conduct and discharge  
because Plaintiff complained of or attempted to prevent discrimination by Debtor and others at Canned Interactive  
8 on account of the national origin and religion of Judaism, by association. Plaintiff alleges Debtor committed  
discrimination against Jews by making derogatory and anti-Semitic comments about current and former  
9 employees. Plaintiff alleges Debtor intentionally retaliated against Plaintiff by isolating him, failing to assign work  
to him, replacing him with others at meetings, and eventually firing him for his protests against this discrimination.  
10 Plaintiff alleges he suffered damages as a result of Debtor's retaliation that should be exempt from discharge.

11 Plaintiff has included sufficient facts under the theory of retaliation and retaliatory discharge. For this  
cause of action, Plaintiff has met his Rule 12(b)(6) burden of providing grounds for entitlement of relief under a  
legitimate legal theory.

12 ii. National Origin or Religious Discrimination and Harassment by Association:

13 Plaintiff brings this cause of action under the same statute as the previous retaliatory discharge cause of  
action. Cal. Gov. Code § 12940(h). Here, Plaintiff alleges Debtor engaged in discrimination and harassment of  
Plaintiff for his association with Jewish co-worker, Moyer, and protestations against discrimination of Moyer.  
14 Plaintiff alleges Debtor maintained policies, procedures, and patterns of conduct and practices, described above,  
that were facially neutral but with a discriminatory adverse impact on those whose national origin or religion is  
15 Jewish. Plaintiff also alleges harassment of employees, including Plaintiff, because of their association with other  
Jewish employees, including Moyer. Plaintiff alleges damages as a result of Debtor's discrimination and  
16 harassment that should be exempt from discharge.

17 Plaintiff has included sufficient facts under the theory of national origin or religious discrimination and  
harassment by association. For this cause of action, Plaintiff has met his Rule 12(b)(6) burden of providing  
grounds for entitlement of relief under a legitimate legal theory.

18 iii. Wrongful and Tortious Discharge in Violation of Fundamental Public Policy:

19 Section 232.5 of the California Labor Code provides that no employer may do any of the following: "(a)  
Require, as a condition of employment, that an employee refrain from disclosing information about the employer's  
working conditions ... (c) Discharge, formally, discipline, or otherwise discriminate against an employee who  
20 discloses information about the employer's working conditions." Cal. Lab. Code § 232.5(a),(c). Section 232.5  
sets forth California's fundamental public policy prohibiting: (1) any requirement that an employee refrain from  
21 disclosing information about the employer's working conditions or (2) the discharge or discipline of, or  
discrimination against, an employee who discloses information about the employer's working conditions.

22 Plaintiff alleges he disclosed his adverse working conditions and protested against and complained of the  
breach of public policies to Debtor. Plaintiff alleges Debtor defamed Plaintiff, denied discipline and investigations  
23 and wrongfully discharged Plaintiff in violation of § 232.5, with the intent to retaliate against Plaintiff's protestations  
of adverse work conditions. Plaintiff alleges he suffered damages as a result of Debtor's violations of § 232.5 that  
24 should be exempt from discharge.

25 Plaintiff has included sufficient facts under the theory of wrongful termination against public policy. For  
this cause of action, Plaintiff has met his Rule 12(b)(6) burden of providing grounds for entitlement of relief under  
a legitimate legal theory.

26 b. Fraud and Deceit, Concealment, Slander, and Libel

27 i. Fraud and Deceit:

28 Actual fraud under California law requires that the plaintiff show: 1) misrepresentation, 2) knowledge of  
the falsity of the representation, 3) intent to induce reliance, 4) justifiable reliance, and 5) damages. Cal. Civ.  
Code § 1572. These elements match those under § 523(a)(2)(A) of the Bankruptcy Code. 11 U.S.C.  
§ 523(a)(2)(A); see also Younie v. Gonya (In re Younie), 211 B.R. 367, 373-74 (9th Cir. 1997).

1 The allegations of Debtor's conduct satisfy all elements of actual fraud. The complaint alleges debtor  
2 engaged in fraudulent conduct by making material representations to Plaintiff orally and in writing that Canned  
3 Interactive encouraged employees to report adverse work conditions, investigations and discipline would occur if  
4 complaints were filed, Debtor would fire employees only with good cause, and that Debtor was committed to a  
5 non-discriminatory work environment. Plaintiff alleges Debtor made these representations with knowledge they  
6 were false and would induce Plaintiff to accept employment with Canned Interactive and forego other employment  
7 opportunities available to Plaintiff. Plaintiff alleges he did rely and was harmed, and he incurred damages as a  
8 result. On a motion to dismiss under Rule 12(b)(6), one must consider the plaintiff's statements to be true.  
9 Johnson, 534 F.3d at 1122; Knox, 260 F.3d at 1012. Here, Plaintiff alleges Debtor knew that the representations  
10 listed above were false when made to Plaintiff, and one must consider this allegation true.

11 Deceit under California law requires one 1) willfully deceives another 2) with the intent to induce reliance  
12 3) that results in damage to that individual. Cal. Civ. Code § 1709. Plaintiff alleges Debtor engaged in deceitful  
13 conduct by making the representations listed above to Plaintiff with the intent to deceive Plaintiff into thinking  
14 Canned Interactive and the employees there would abide by these representations that induced Plaintiff to accept  
15 employment with Canned Interactive and resulted in damage to Plaintiff.

16 The complaint included sufficient facts under the theories of fraud and deceit. For this cause of action,  
17 Plaintiff has met his Rule 12(b)(6) burden of providing grounds for entitlement of relief under a legitimate legal  
18 theory.

19 ii. Concealment:

20 Concealment under California law is defined as a type of deceit. Cal. Civ. Code § 1710(3). Concealment  
21 is the suppression of a fact by one bound to disclose it, or giving information of other facts which are meant to  
22 mislead.

23 The complaint alleges Debtor was bound to disclose important facts to Plaintiff but concealed these facts  
24 as to the policies, procedures, and patterns of conduct at Canned Interactive, as described above. The complaint  
25 adequately alleges plaintiff was induced to work for Debtor based on these concealments. For this cause of  
26 action, Plaintiff has met his Rule 12(b)(6) burden of providing grounds for entitlement of relief under a legitimate  
27 legal theory.

28 iii. Slander Per Se:

California law defines slander as false and unprivileged oral publication which: tends directly to injure  
him in respect to his office, profession, trade or business, either by imputing to him general disqualification in  
those respects which the office or other occupation peculiarly requires, or by imputing something with reference to  
his office, profession, trade, or business that has a natural tendency to lessen its profits. Cal. Civ. Code § 46(3).

The complaint alleges Debtor committed slander by making oral statements to third parties that Plaintiff is  
an "incompetent business development associate" while Debtor knew this to be false. Plaintiff alleges these  
publications constitute slander because they injured Plaintiff with respect to his profession and trade in the film  
industry by imputing to him disqualifications for his job that lessen his ability to obtain future jobs and gain profits.  
Plaintiff alleges he has worked in the film industry since 2001 and has always enjoyed an outstanding reputation  
for excellence, honesty, and integrity. After Debtor's statements, Plaintiff alleges his ability to work in this industry  
is threatened and Plaintiff has incurred damages that should be exempt from discharge by Debtor.

The complaint includes sufficient facts under the theory of slander per se. For this cause of action,  
Plaintiff has met his Rule 12(b)(6) burden of providing grounds for entitlement of relief under a legitimate legal  
theory.

iv. Libel Per Se:

California law defines libel as false and unprivileged publication by writing ... which exposes any person  
to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency  
to injure him in his occupation. Cal. Civ. Code § 45. Plaintiff alleges Debtor committed libel by making written  
statements to third parties that Plaintiff is an "incompetent business development associate" while Debtor knew  
this to be untrue. Plaintiff alleges this constitutes libel because the statements were false, written publications  
about Plaintiff by Debtor, while Debtor knew they were false, that expose Plaintiff to ridicule, cause him to be  
avoided by others, and injure Plaintiff's ability to work in the film industry.

Plaintiff has included sufficient facts under the theory of libel per se. For this cause of action, Plaintiff has  
met his Rule 12(b)(6) burden of providing grounds for entitlement of relief under a legitimate legal theory.

The § 523(a)(6) allegations meet the Rule 12(b)(6) test as to Douglas Textor only if the complaint is  
amended to properly allege an alter ego theory. Taking the statements in Plaintiff's complaint as true on their  
face and in the light most favorable to Plaintiff, there are sufficient facts to show Debtor acted with willful and  
malicious intent to cause harm to Plaintiff without just cause or excuse. Assuming an amended complaint to  
explain the alter ego theory, there has been a sufficient showing of willful and malicious conduct for all causes of

1 action against Douglas Textor. Plaintiff does not allege sufficient facts in the complaint against Jennifer Textor as  
2 to her willful and malicious conduct.

2 2. Nondischargeability under § 523(a)(2)(A):

3 Plaintiff alleges the following causes of action should be considered nondischargeable under §  
4 523(a)(2)(A) for false pretences, false representation, or fraud: fraud and deceit, concealment, slander per se, and  
5 libel per se.

6 Section 523(a)(2)(A) excepts from discharge any debt "to the extent obtained by false pretenses, a false  
7 representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition."  
8 11 U.S.C.

9 § 523(a)(2)(A). The Ninth Circuit has held that a creditor's claim of nondischargeability based on § 523(a)(2)(A)  
10 must satisfy five elements: (1) the debtor made false statement or deceptive conduct; (2) the debtor knew the  
11 representation to be false; (3) the debtor made the representation with the intent to deceive the creditor; (4) the  
12 creditor justifiably relied on the representation; and (5) the creditor sustained damage resulting from its reliance  
13 on the debtor's representation. In re Slyman, 234 F.3d 1081, 1085 (9th Cir. 2000).

14 In this case, Plaintiff's complaint must allege sufficient facts under cognizable legal theories to support a  
15 finding that Debtors obtained debt by false pretenses, false representation, or actual fraud in causing fraud and  
16 deceit, concealment, slander, and libel in violation of Plaintiff's rights.

17 a. Fraud and Deceit:

18 Plaintiff alleges Debtor should not be allowed to discharge of debt obtained by false statements under this  
19 cause of action. Plaintiff asserts Debtor made false representations to Plaintiff while Debtor knew the  
20 representations were false with the intent to deceive creditor and create reliance. Plaintiff alleges he sustained  
21 damages as a result of his reliance to take the job at the Company.

22 b. Concealment:

23 Plaintiff alleges Debtor should not be allowed to discharge of debt obtained by deceptive conduct under  
24 this cause of action. Plaintiff asserts Debtor knowingly concealed material information from Plaintiff with intent to  
25 induce reliance by Plaintiff. Plaintiff alleges he sustained damages as a result of his reliance to take the job at the  
26 Company.

27 Conclusion under 523(a)(2)(A):

28 Under § 523(a)(2)(A), the nondischargeability allegations in Plaintiff's complaint meet the Rule 12(b)(6)  
test as to Douglas Textor only. There has been a sufficient allegation of false or fraudulent conduct by Debtor  
Douglas Textor. Taking the statements in Plaintiff's complaint as true on their face and in the light most favorable  
to Plaintiff, there are sufficient facts to show Douglas Textor obtained debt by false pretenses, false  
representation, or actual fraud for these causes of action. Plaintiff does not allege sufficient facts in the complaint  
against Jennifer Textor as to her actions obtaining debt through false pretenses, false representations, or fraud.

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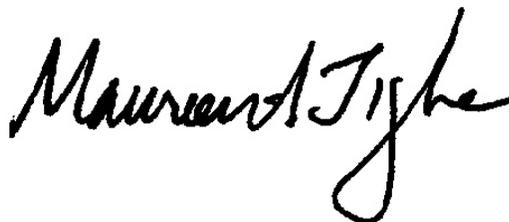
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1 The complaint alleges adequate causes of action against Douglas Textor ONLY if adequate alter ego  
2 allegations are made in an amended complaint as to causes of action 1, 2 and 3. While the causes of action in 4  
3 through 6 are adequate with alter ego being plead, the way the complaint is drafted is incorrect and confusing.  
4 This is a section 523 case, not a state discrimination suit. The 523(a)(2) and 523(a)(6) causes of action need to  
5 be separately plead and not combined into one cause of action. The state law causes of action may form the  
6 basis of the conduct alleged to be willful and malicious, but that is all plead as part of a 523(a)(6) cause of action.

7 Defendant's motion is GRANTED with leave to amend as to Douglas Textor, and without leave to amend as to  
8 Jennifer Textor.

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DATED: November 22, 2011

United States Bankruptcy Judge

**NOTE TO USERS OF THIS FORM:**

- 1) Attach this form to the last page of a proposed Order or Judgment. Do not file as a separate document.
- 2) The title of the judgment or order and all service information must be filled in by the party lodging the order.
- 3) **Category I.** below: The United States trustee and case trustee (if any) will always be in this category.
- 4) **Category II.** below: List ONLY addresses for debtor (and attorney), movant (or attorney) and person/entity (or attorney) who filed an opposition to the requested relief. DO NOT list an address if person/entity is listed in category I.

**NOTICE OF ENTERED ORDER AND SERVICE LIST**

Notice is given by the court that a judgment or order entitled (*specify*) NOTICE OF TENTATIVE RULING RE DEFENDANT'S MOTION TO DISMISS ADVERSARY PROCEEDING was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

**I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of \_\_\_\_\_, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below.

Glenn Ward Calsada glenn@calsadalaw.com  
Lesley Davis lesleydavislaw@gmail.com  
Amy L Goldman (TR) stern@lbbslaw.com, agoldman@ecf.epiqsystems.com  
United States Trustee (SV) ustpreion16.wh.ecf@usdoj.gov

Service information continued on attached page

**II. SERVED BY THE COURT VIA U.S. MAIL:** A copy of this notice and a true copy of this judgment or order was sent by U.S. Mail to the following person(s) and/or entity(ies) at the address(es) indicated below:

Rita M Morales  
Miranda Morales Law Firm  
528 Arizona Ave Ste 317  
Santa Monica, CA 90401

Service information continued on attached page

**III. TO BE SERVED BY THE LODGING PARTY:** Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s) and/or email address(es) indicated below:

Service information continued on attached page