The following constitutes the ruling of the court and has the force and effect therein described.

Signed March 17, 2022

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Chapter 7**
THOMAS C. DAVIS	§	**Case No. 21-31274**
Debtor.	§	
WILLIAM T. WALTERS,	§	
Plaintiff,	§	
v.	§	
	§	**Adv. Pro. No. 21-03057**
THOMAS C. DAVIS,	§	
Defendant.	§	

ORDER GRANTING THE DEFENDANT'S
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Before this Court is Defendant Thomas C. Davis's (the "**Debtor**" or "**Defendant**") Motion to Dismiss for Failure to State a Claim (the "**Motion to Dismiss**") filed on December 8, 2021,[1] which seeks to dismiss the adversary complaint (the "**Complaint**") filed by Plaintiff William T. Walters (the "**Plaintiff**") on August 19, 2021.[2] The Complaint seeks an order from this Court determining that Plaintiff's claim pending in the case styled *Walters v. Davis*, Cause No. DC-18-04998 in the 95th Judicial District Court of Dallas County, Texas, is not dischargeable pursuant to 11 U.S.C. §§ 523(a)(4), (13), and (19).[3]

On December 29, 2021, the Plaintiff filed a Response in Opposition to the Defendant's Motion to Dismiss (the "**Response**").[4] In the Response, the Plaintiff additionally requested that the Court allow the opportunity for the Plaintiff to replead under Rule 15 of the Federal Rules of Civil Procedure, as incorporated by Rule 7015 of the Federal Rules of Bankruptcy Procedure, if the Court was inclined to grant the Motion to Dismiss.[5] On January 21, 2022, the Debtor filed a reply to the Motion to Dismiss (the "**Defendant's Reply**").[6] On January 26, 2022, the Court held a hearing on the Motion to Dismiss. Counsel for both the Plaintiff and the Debtor appeared. Because the underlying legal issues in the Motion to Dismiss presented what could reasonably be interpreted as a matter of first impression within this Circuit, the Court took the Motion to Dismiss under advisement.

After considering the briefing and oral arguments of counsel, the Court concludes that the Defendant's Motion to Dismiss should be **granted** with leave to amend.[7] The Plaintiff shall have

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[1] Dkt. No. 9.
[2] Dkt. No. 1.
[3] *Id.*
[4] Dkt. No. 11.
[5] *Id.* at 9.
[6] Dkt. No. 12.
[7] A court should freely grant leave to amend when justice so requires. *See* Fed. R. Civ. P. 15. "Whether leave to amend should be granted is entrusted to the sound discretion of the district court[.]" *Quintanilla v. Tex. Television, Inc.*, 139 F.3d 494, 499 (5th Cir. 1998).

twenty-one (21) days from the entry of this Order to replead, or else the Complaint shall be dismissed in accordance with this Order. The following constitutes the Court's analysis underlying the ruling herein.

II. Jurisdiction and Venue.

The Court has jurisdiction pursuant to 28 U.S.C. § 1334(b), and the matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(B). Venue is proper in this district pursuant to 28 U.S.C. § 1409(a).

II. Factual and Procedural History.

Pulled from the headlines, the underlying facts of this case are far more scandalous than the ultimate question of law. Briefly, the Debtor is the former chairman of the board for Dean Foods Company. The Plaintiff is an associate of the Debtor to whom the Debtor was convicted of giving insider information. In November 2017, the Debtor was sentenced by the Honorable Kevin Castel of the United States District Court for the Southern District of New York to a prison term of two (2) years for crimes related to insider trading.[8] Additionally, on October 20, 2017, the court ordered both the Debtor and the Plaintiff to pay restitution to their victims, jointly and severally, in the amount of $8,890,969.33 (the "**Order of Restitution**"), a substantial amount of which was to be paid to Dean Foods Company.[9] The Amended Judgment in the Debtor's criminal case, entered November 2, 2017, also provided that Plaintiff and the Debtor were ordered, jointly and severally, to pay mandatory restitution pursuant to 18 U.S.C. § 2259 in the amount of $8,890,969.33.[10]

[8] The Court takes judicial notice of the docket in *United States v. Walters*, 16-CR-338 (S.D.N.Y. Nov. 2, 2017).
[9] Dkt. No. 1 (Exhibit 1).
[10] *Id.* (Exhibit 2).

A Satisfaction of Judgment shows that the Plaintiff has since paid the full amount required under the Order of Restitution.[11] As such, the Plaintiff filed a claim for contribution against the Debtor in the case styled *Walters v. Davis*, Cause No. DC-18-04998 in the 95th Judicial District Court of Dallas County, Texas (the "**State Court Action**"). On January 28, 2021, the Plaintiff filed a motion for summary judgment in the State Court Action for contribution in the amount of $6,913,790.46.[12] Before the matter could be heard in the State Court Action, the Debtor filed a voluntary petition for bankruptcy under Chapter 7 of Title 11 of the United States Code on July 12, 2021. Therefore, the State Court Action was stayed.

On August 19, 2021, the Plaintiff filed the instant adversary proceeding, Case No. 21-03057.[13] The Complaint seeks an order from this Court determining that Plaintiff's alleged contribution claim is not dischargeable pursuant to 11 U.S.C. §§ 523(a)(4), (13), and (19). On December 8, 2021, the Debtor filed a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6) asserting that the Plaintiff's allegations did not present a claim upon which this Court could grant relief.[14]

III. Rule 12(b)(6) Standard.

Rule 12(b)(6), incorporated into the Bankruptcy Rules by Federal Rule of Bankruptcy Procedure 7012, requires federal courts to dismiss complaints that "fail[] to state a claim upon

[11] The Complaint cites to an attached "Exhibit 3," allegedly a Satisfaction of Judgment. Dkt. No. 1 at 2. However, that exhibit was not attached to the Complaint. Nonetheless, the Debtor did not contest that the Plaintiff had satisfied the judgment, and the Court is required at the Rule 12(b)(6) stage to "accept all well-pleaded facts as true, and . . . view them in the light most favorable to the plaintiff." *Walker v. Beaumont Indep. Sch. Dist.*, 938 F.3d 724, 735 (5th Cir. 2019) (citing to *Campbell v. Wells Fargo Bank, N.A.*, 781 F.2d 440, 442 (5th Cir. 1986)).

[12] "[I]n the Texas State Court Action, Plaintiff sought to recover $6,913,790.46 ($3,300,804.25 for Debtor[']s fees + $1,840,213 for Debtor's compensation + ½ of the remaining $3,554,438.95) arising from Debtor's mandatory obligations under 18 U.S.C. §§ 3663 and 3663A." Dkt. No. 1. The Court does not herein reach the amount of the contribution claim.

[13] *Id.*

[14] Dkt. No. 9 at 2 ("Litigating these issues is unnecessary because the alleged pre-petition contribution claim, as a matter of law, is dischargeable in the chapter 7 bankruptcy and is not the type of debt which may be declared nondischargeable under 11 U.S.C. § 523.").

which relief can be granted."[15] Claims may be dismissed under Rule 12(b)(6) "on the basis of a dispositive issue of law."[16] In evaluating a 12(b)(6) motion to dismiss, the Court "must accept all well-pleaded facts as true, and . . . view them in the light most favorable to the plaintiff."[17] However, the Court need not "strain to find inferences favorable to the plaintiffs."[18] To survive a motion to dismiss under 12(b)(6), a complaint must contain sufficient factual allegations, which, if accepted as true, state a plausible cause of action.[19]

IV. Analysis.

The Plaintiff asserts that the claim pending in the State Court Action is nondischargeable pursuant to 11 U.S.C. §§ 523(a)(4), (13), and (19). The Debtor argues that any claim asserted by the Plaintiff is essentially a contribution claim, and as such, does not fit within the "narrow" exceptions to discharge of 11 U.S.C. § 523.[20] Accordingly, the Debtor claims that the Plaintiff has failed to state a claim upon which relief may be granted, and the Court must dismiss the case. Because the Court finds that a pre-petition claim for contribution from a joint tortfeasor does not fall within the exceptions to discharge articulated by § 523(a)(4), (13), or (19) of the Bankruptcy Code, the Motion to Dismiss is **granted**.

The Bankruptcy Code affords a debtor a "fresh start" through a discharge of personal liability for certain debts pursuant to 11 U.S.C. § 727. The discharge has been described as a privilege, however, and not a right.[21] In that light, the Bankruptcy Code not only sets out

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[15] Fed. R. Civ. P. 12(b)(6).
[16] *Walker*, 938 F.3d at 734 (citing to *Nietzke v. Williams*, 490 U.S. 319, 326 (1989)).
[17] *Id.* at 735 (citing to *Campbell v. Wells Fargo Bank, N.A.*, 781 F.2d 440, 442 (5th Cir. 1986)).
[18] *Southland Sec. Corp. v. INSpire Ins. Solutions Inc.*, 365 F.3d 353, 361 (5th Cir. 2004) (internal quotations omitted).
[19] *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).
[20] *See* Dkt. No. 9 (citing to *Miller v. J.D. Abrams, Inc. (In re Miller)*, 156 F.3d 598, 602 (5th Cir. 1998) ("The discharge exceptions are to be narrowly construed in favor of the debtor since the aim of the Bankruptcy Code is to give the debtor a fresh start.")).
[21] *See, e.g., In re Buescher*, 491 B.R. 419, 431 (Bankr. E.D. Tex. 2013); *In re Hobbs*, 333 B.R. 751, 755 (Bankr. N.D. Tex. 2005).

requirements for discharge under § 727, but also excepts certain types of debts for public policy purposes pursuant to 11 U.S.C. § 523. Specifically, the Code provides nineteen (19) types of debts that are nondischargeable.[22] The Fifth Circuit has stated repeatedly that exceptions to discharge must be strictly construed against the creditor and liberally construed in favor of the debtor to avoid interfering with the debtor's fresh start.[23]

The Plaintiff asserts that because he made full payment under the Order of Restitution, he has a contribution claim against the Debtor that is nondischargeable under either 11 U.S.C. §§ 523(a)(4), (13), and (19). Section 523(a)(4) excepts from discharge any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny."[24] Section 523(a)(13) excepts from discharge any debt "for any payment of an order of restitution issued under title 18, United States Code."[25] Section 523(a)(19) excepts from discharge any debt:

> that (A) is for (i) the violation of any of the Federal securities laws (as that term is described in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or
> (B) results, before, on, or after the date on which the petition was filed, from (i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding; (ii) any settlement agreement entered into by the debtor; or (iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.[26]

Specifically, the Plaintiff asserts that the Order of Restitution arose under Title 18 of the United States Code for the Debtor's conviction under multiple counts of fraud related to insider trading and that those acts were committed while the Debtor was in a fiduciary role to Dean Foods

[22] 11 U.S.C. § 523.
[23] *See, e.g., Cowin v. Countrywide Home Loans, Inc. (In re Cowin)*, 864 F.3d 344, 349 (5th Cir. 2017).
[24] 11 U.S.C. § 523(a)(4).
[25] *Id.* § 523(a)(13).
[26] *Id.* § 523(a)(19).

Company.[27] Additionally, the Plaintiff alleges the Order of Restitution resulted from the Debtor's conviction for one (1) count of conspiracy to commit securities fraud and four (4) counts of securities fraud.[28] Thus, the Plaintiff claims that his contribution claim is nondischargeable pursuant to at least three separate subsections of § 523.

The Debtor asserts that the Plaintiff's Complaint fails to set forth a cognizable legal theory upon which relief may be granted because the Plaintiff misclassifies an alleged pre-petition contribution claim as one which may be declared nondischargeable under § 523.[29] The Debtor essentially claims the Plaintiff is attempting to fit a contribution claim into the dischargeability exceptions when such a claim is not contemplated by the language of § 523.[30] The Debtor admits that the debt would be non-dischargeable as to the original obligees or aggrieved parties, but just not as to a joint tortfeasor. Thus, the Debtor argues that given the basis for the debt is a contribution claim arising out of joint and several liability, the debt should not be deemed nondischargeable under §§ 523(a)(4), (13), or (19). The Court agrees.

The Court holds that the alleged pre-petition contribution claim from a joint tortfeasor is not a claim which may be declared nondischargeable under 11 U.S.C. §§ 523(a)(4), (13), or (19). In coming to this ruling, the Court puts heavy emphasis on the type of claim that the Plaintiff has set forth—a claim for **contribution**.[31] That claim for contribution arises out of an Order of

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[27] Dkt. No. 1.
[28] *Id.*
[29] Dkt. No. 9 at 3("The Court may dispose of the Plaintiff's Complaint as a matter of law because the cited provisions of section 523 do not protect the Plaintiff's alleged pre-petition contribution claim. As such, there is no nondischargeable claim at issue to litigate before this Court.").
[30] *See id.* at 4 ("The Plaintiff goes into great detail about the circumstances that led to the Restitution Judgment. But the Court need only consider the true character of the alleged debt owed to the Plaintiff: a pre-petition contribution claim.").
[31] The Plaintiff has repeatedly referred to his claim as a "contribution" claim throughout his pleadings in this adversary proceeding. *See, e.g.*, Dkt. No. 1 at 4 ("On January 28, 2021, Plaintiff filed a motion for summary judgment in the Texas State Court Action seeking contribution from Debtor in the amount of $6,913,790.46."); Dkt. No. 11 at 3 ("Walters' contribution claim meets each of those elements."); *Id.* at 5 ("Because the Southern District of New York created joint and several liability on both Walters and Debtor for the restitution obligation—*in the Restitution Order*—

Restitution for which *both* parties were held liable, jointly and severally.[32] However, the Order of Restitution itself does not provide for the right of the Plaintiff to be reimbursed by the Debtor, and neither the Bankruptcy Code nor federal common law creates such a right.[33] Rather, a contribution claim is, generally, a separate cause of action brought either under state common law or a federal or state statute.[34]

The United States Supreme Court has "stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there."[35] The Bankruptcy Code mentions "contribution" claims at various points in its provisions.[36] However, none of the three nondischargeability exceptions in question, let alone any of the other sixteen, carve out an exception to dischargeability for the contribution claim of a joint tortfeasor.[37] "When Congress provides exceptions in a statute, it does not follow that courts have authority to create others. The proper inference . . . is that Congress considered the issue of exceptions and, in the end, limited the statute to the ones set forth."[38] A matter not covered is to be treated as not covered; nothing should be added to what the text of a statute states or reasonably implies.[39] Section 523 as a whole, let alone the three provisions at issue in this case, does not provide an exception to discharge for a contribution claim of a joint tortfeasor.

Walters has a claim for contribution against Debtor arising from, by reason of, and with respect to the Restitution Order.") (emphasis in original).

[32] Dkt. No. 1 (Exhibit 1) (citing to *United States v. Walters*, 16-CR-338, Dkt. No. 248 (S.D.N.Y. Nov. 2, 2017)).

[33] *See In re Today's Destiny, Inc.*, 388 B.R. 737, 751 (Bankr. S.D. Tex. 2008) ("Neither the Bankruptcy Code nor Federal common law creates a right of contribution."). The Court finds it noteworthy that Plaintiff's counsel seemingly contradicted himself at the hearing on the Motion to Dismiss, where he both asserted that "joint and several liability" was a right purposely given to the joint tortfeasor and that courts routinely "check" the box for joint and several liability.

[34] *See, e.g.*, *id.*; *see also In re Velocita Worldwide Logistics, Inc.*, 608 F.3d 212, 214 (5th Cir. 2010) ("Under Texas law, a claim for contribution is separate from the underlying tort or contract.").

[35] *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) (citations omitted).

[36] *See, e.g.*, 11 USC §§ 502(e), 509(b).

[37] *See generally* 11 U.S.C. § 523.

[38] *United States v. Johnson*, 529 U.S. 53, 58 (2000).

[39] *See* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 93 (Thompson/West 2012).

In response to this absence in the dischargeability exceptions, the Plaintiff largely rests his argument upon a broad reading of the United States Supreme Court's decision in *Cohen v. de la Cruz*, 523 U.S. 213 (1998), claiming that the decision controls this Court's ruling.[40] In *Cohen*, the Supreme Court resolved whether § 523(a)(2)(A) excepts from discharge all liability arising from fraud, including treble damages (plus attorney's fees and costs) awarded on account of that fraud.[41] The Supreme Court held that § 523(a)(2)(A) prevents the discharge of all liability arising from fraud, and that an award of treble damages to the aggrieved party falls within the scope of the exception.[42] In doing so, the Supreme Court articulated a rule that "[o]nce it is established that specific money or property has been obtained by fraud . . . 'any debt' arising therefrom is excepted from discharge."[43]

The Plaintiff's reading of *Cohen* is overly broad and asks the Court to strain credulity and read into the ruling something that is not only not there but does not share similarities with the exceptions that are before the Court presently. In *Cohen*, the Supreme Court did not hold that a contribution claim owed to a joint tortfeasor based off an underlying exception to dischargeability fit into the Code's narrow exceptions; rather, the Supreme Court logically found that punitive damages in a judgment, based on a debtor's fraudulent obtaining of money, property, services, or credit were excepted from discharge to the same extent as compensable damages owed to the aggrieved party for the same act.[44] In *Cohen,* the treble damages arose directly from the debt

[40] *See* Dkt. No. 11.
[41] *Cohen*, 523 U.S. at 215 ("The issue in this case is whether § 523(a)(2)(A) bars the discharge of treble damages awarded on account of the debtor's fraudulent acquisition of 'money, property, services, or . . . credit,' or whether the exception only encompasses the value of the 'money, property, services, or . . . credit' the debtor obtains through fraud.").
[42] *Id.* In holding that the exception included treble damages awarded on account of the fraud, the Supreme Court highlighted the underlying policy of the Bankruptcy Code to afford relief to the "honest but unfortunate debtor." *Id.* at 217 (quoting *Grogan v. Garner*, 498 U.S. 279, 286–87 (1991)).
[43] *Id.* at 218.
[44] *Id.* at 218–19.

described in § 523(a)(2)(A) or, as the Debtor has aptly put it, the "character" of the debt described in § 523(a)(2)(A).[45] Yet, in the case at hand, the claim for contribution is not one that arises directly from the debt described in any of the three asserted exceptions to discharge. To be certain, the Plaintiff paid his ***own*** debt. His claim for contribution is a separate cause of action based off the full payment of an Order of Restitution ***shared*** jointly and severally with the Debtor. As such, it is not a claim arising from an order of restitution because the restitution was not owed to him. It is not based off fraud while acting in a fiduciary capacity because he was not defrauded. And it is not a violation of a federal securities law because he is a joint tortfeasor.

The Court found the First Circuit's reasoning in *In re Menna*, 16 F.3d 7 (1st Cir. 2000) particularly instructive.[46] In the underlying trial, a jury found Menna and another defendant jointly and severally liable for fraudulent misrepresentation[47] and awarded the victims compensatory damages.[48] The state court also entered judgment in favor of the joint tortfeasor defendant on a cross-claim for indemnification against Menna; the victims recovered $110,000.00 from the other defendant based on that judgment.[49] After Menna filed for Chapter 7 bankruptcy, the joint tortfeasor commenced an adversary proceeding to have its $110,000.00 indemnification claim declared nondischargeable pursuant to Bankruptcy Code §§ 523(a)(2)(A) (debt "for money . . . to the extent obtained by . . . actual fraud") and 523(a)(6) (debt "for willful and malicious injury by

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[45] *See* Dkt. No. 12.

[46] The Court notes that the Plaintiff alleged in the Response that the *Menna* case had been "abrogated" by *Cohen*. Dkt. No. 11 at 6. The Court disagrees. Further, any abrogation by the First Circuit's decision in *In re Spigel*, 260 F.3d 27, 31–35 (1st Cir. 2001) appears only to be to the extent that a creditor's reliance must be only justifiable, not reasonable, as formerly required by First Circuit precedent. *Id.* at 33, n.6 (citing to *Field v. Mans*, 516 U.S. 59, 70–71 (1995)). Even so, the Court makes note that it only cites *Menna* to the extent it finds the reasoning instructive as applied to the present facts.

[47] Menna had retained the other party, Balfour, to sell his business. *Menna*, 16 F.3d 7, 8 (1st Cir. 2000). After the sale, the buyers brought a state court action for fraud and negligent misrepresentation. *Id.* Balfour cross-claimed against Menna for equitable indemnification. *Id.*

[48] *Id.*

[49] *Id.*

the debtor to another entity").[50] The bankruptcy court found the indemnification claim dischargeable and entered judgment in favor of Menna. The district court affirmed.[51]

On appeal to the First Circuit, the appellant complained that § 523(a) did not require a showing that the claimant was the "*direct* or *immediate* target" of the debtor's fraudulent intent or malicious conduct.[52] Analyzing the term "debt for" as used in § 523(a), the First Circuit first noted that this language did not mean "debt based upon," as the appellant suggested—"nor does the statutory language remotely suggest that nondischargeability attaches to ***any claim other than one which arises as a direct result of the debtor's misrepresentation or malice***."[53] Like here, the First Circuit pointed out that the appellant "cite[d] no case in which it has been argued, let alone decided, that the nonfraud-based indemnification claim of an entity whose negligence has combined with the fraud of its joint tortfeasor to cause injury to a third party is nondischargeable in the bankruptcy of the fraudulent tortfeasor."[54] As such, and in the light of the strict construction required of dischargeability exceptions under § 523, the First Circuit refused to extend the statutory language in such a way.[55]

This Court finds the reasoning in *Menna* to be sound, supported by the case law, and in line with the policy of narrow construction of the dischargeability exceptions. The Court is *bound* to interpret the dischargeability exceptions narrowly.[56] This *obligation* gives effect to the fresh

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[50] *Id.*
[51] *Id.* at 8–9.
[52] *Id.* at 9 (emphasis in original).
[53] *Id.* at 9–10 (emphasis added).
[54] *Id.* at 10.
[55] *Id.*; *see In re Medlin*, 611 B.R. 547, 553–56 (Bankr. E.D. N.C. 2019) (holding that § 523(a)(2)(A) does not extend to incorporate the fraud for the benefit of the plaintiff and dismissing the adversary under Federal Rule 12(b)(6) in accordance); *In re Magisano*, 228 B.R. 187, 191–95 (Bankr. S.D. Ohio 1998) (refusing to expand the § 523(a)(2) exception to a creditor that was not a target of the debtor's fraud).
[56] *See Miller*, 156 F.3d at 602.

start policy of the Bankruptcy Code.[57] Moreover, the Plaintiff's argument ignores the fact that the exceptions to discharge do not serve only to penalize a debtor.[58] Rather, this Court sits as a court of equity, and, as such, these exceptions have been drawn to also protect the ***inculpable* creditor**.[59] The Plaintiff and the Debtor were *both* found liable in the Order of Restitution, and they were ordered to pay restitution jointly and severally in accordance. The policy goals of the Bankruptcy Code underlying the dischargeability exceptions are not served by expanding the statutory language to encompass an equally *culpable* creditor, such as the Plaintiff.[60]

V. Conclusion.

In sum, the Court finds the central facts and resulting answer are relatively straightforward. Both the Debtor and the Plaintiff were found liable, jointly and severally, to pay restitution to their victims. One party did so, and the debt, potentially otherwise nondischargeable under §§ 523(a)(4), (13) or (19), was extinguished as to those victims. That party, the Plaintiff, now pleads to the Court to find that the Debtor owes a nondischargeable debt ***to him*** under a theory of contribution. However, the Plaintiff's plea disregards the Court's duty to narrowly interpret the dischargeability exceptions and the absence of *any* mention of contribution within those exceptions. The Court will not engage in such an expansive reading of § 523, nor does it read *Cohen* as requiring it to do so.

Moreover, any plea to the Court's role as a court of equity falls on deaf ears in this case. Mr. Walters paid the debt not of altruism, but out of individual *obligation*. Neither of these parties is guiltless. However, the purpose of the Order of Restitution has been served, *i.e.*, ***the victims***

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[57] *See In re Soileau*, 488 F.3d 302, 311 (5th Cir. 2007); *In re Tran*, 151 F.3d 339, 342 (5th Cir. 1998); *In re Walker*, 48 F.3d 1161, 1164–65 (1st Cir. 1995) ("Mindful of our obligation to construe strictly exceptions to discharge in order to give effect to the fresh start policy of the Bankruptcy Code . . . we hold that section 523(a)(6) requires a deliberate or intentional injury.").

[58] *Menna*, 12 F.3d at 10.

[59] *Id.* at 10 ("[A]s a function of its essentially equitable nature, a nondischargeability determination under section 523(a) is designed concomitantly to protect the inculpable creditor[.]") (internal citations omitted) (emphasis added).

[60] *See generally id.*

were paid. The Plaintiff is not a victim. The Plaintiff is not inculpable, and neither equity nor the language of the Code can support his claim for nondischargeability under these facts.

Therefore, based upon the foregoing and the record before the Court, it is hereby

ORDERED that the Defendant's Motion to Dismiss is hereby **GRANTED** with leave to amend; and it is further

ORDERED that the Plaintiff shall have twenty-one (21) days from the entry of this Order to replead, or else the Complaint shall be dismissed.

###END OF ORDER###