IN THE

Supreme Court of the United States

IN RE PENNY LANE INDUSTRIES, INC., DEBTOR

ELEANOR RIGBY, PETITIONER

v.

PENNY LANE INDUSTRIES INC., RESPONDENT.

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

BRIEF FOR RESPONDENT

JANUARY 19, 2023

TEAM NUMBER 12
COUNSEL FOR THE RESPONDENT

QUESTIONS PRESENTED

1. Does a bankruptcy court have the authority to approve non-consensual releases of direct claims held by third parties against non-debtor affiliates as part of a chapter 11 plan of reorganization?

2. May a corporate debtor proceeding under subchapter V of chapter 11 of the Bankruptcy Code, pursuant to 11 U.S.C. § 1192, discharge debts of types specified in subparagraphs (1) through (19) of 11 U.S.C. § 523(a)?

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OPINIONS BELOW

The Thirteenth Circuit Court of Appeals' decision is available at No. 22-0909 and reprinted beginning at Record 3. The bankruptcy court decided in favor of Penny Lane Industries, Inc., the Debtor, in both the non-dischargeability action dispute and the plan confirmation dispute. Upon request of the parties, the two disputes were certified for direct appeal to the Thirteenth Circuit under 28 U.S.C. § 158(d) and then consolidated on appeal. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed in favor of Penny Lane Industries, Inc., the Debtor.

STATEMENT OF JURISDICTION

The formal statement of jurisdiction is waived pursuant to Competition Rule VIII.

RELEVANT STATUTORY PROVISIONS

This action involves statutory construction of certain provisions of Title 11 of the United States Code. The following sections are also restated in full in the Appendix.

The relevant portion of 11 U.S.C. § 1192(2) provides:

> If the plan of the debtor is confirmed under section 1191(b) of this title . . . the court shall grant the debtor a discharge of all debts . . . except any debt–
>
> (2) of the kind specified in section 523(a) of this title.

The relevant portion of 11 U.S.C. § 523(a) provides:

> (a) A discharge under section . . . 1192 . . . of this title does not discharge an individual debtor from any debt [subparagraphs (1)–(19) listed thereafter]

STATEMENT OF THE CASE

This appeal arises from the Petitioner's attempt to upend careful settlement negotiations and a confirmed plan of reorganization to further her own claims against the Debtor and its parent company. Petitioner's appeal also threatens decades of settled Bankruptcy Code[1] law by asking this Court to hold that the statutes at issues do not mean what they say.

I. Factual History

Penny Lane Industries, Inc. ("Penny Lane") is a company based in Blackbird, Moot, that manufactures plastic, glass, and metal food containers. R. at 4. Penny Lane's productive capacity has provided "substantial" jobs for the community for at least the past eight years. R. at 12. As a manufacturer in Blackbird, Penny Lane is part of a robust community of similar facilities. R. at 6. Penny Lane's parent company, Strawberry Fields Foods, Inc. ("Strawberry Fields"), manufactures "cereals and convenience foods," and markets them throughout the country. R. at 5.

Eleanor Rigby (the "Petitioner") sued Penny Lane and Strawberry Fields in 2017. *Id.* The Petitioner alleged, among other claims, that Penny Lane's manufacturing activities inadvertently caused the Petitioner's daughter's passing. *Id.* Although it has been confirmed that there is contaminated groundwater underneath Blackbird, the source remains unknown. *Id.* The dozens of other manufacturers along the Liverpool River were not named to the lawsuit. R. at 6. Nevertheless, other claimants emerged, alleging the same or similar claims as the Petitioner. *Id.*

At the time of filing the present case, other than the disputed claims against it, Penny Lane owed less than $2 million dollars to trade creditors. *Id.* Penny Lane's only other significant liability against it is a bank loan of approximately $3.5 million held by Norwegian Wood Bank (the "Bank"), secured by a first-priority lien on Penny Lane's manufacturing equipment. R. at 9.

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[1] The Bankruptcy Code is set forth in 11 U.S.C. §§ 101 *et seq.* Specific sections of the Bankruptcy Code are identified herein as "section __" or "chapter __." "Code" refers to the Bankruptcy Code.

II. PROCEDURAL HISTORY

Penny Lane filed the present case under the subchapter V of the Code's chapter 11 on January 11, 2021, to reorganize beneath mounting defense costs against disputed allegations. R. at 3, 6. The Petitioner then filed an unsecured claim of $1 million against Penny Lane and commenced an adversary proceeding to have that claim deemed non-dischargeable pursuant to sections 523(a) and 1192(2). R. at 6–7. Penny Lane filed and won a motion to dismiss the adversary proceeding for failing to state a claim for which relief can be granted. R. at 7. The bankruptcy court held that the section 523(a) discharge exceptions do not apply to corporate debtors, regardless of where under chapter 11 the case was filed. *Id*.

Penny Lane also sought and obtained a temporary injunction which halted all actions against Penny Lane and its "current and former owners, officers, directors, employees and associated entities" regarding Penny Lane's alleged conduct. R. at 7–8. The bankruptcy court granted this stay to facilitate the complex negotiation between Penny Lane, Strawberry Fields, and *ad hoc* creditor groups. R. at 8. This process, which involved the Petitioner, ultimately resulted in a Plan of Reorganization (the "Plan") which would be funded in part by Penny Lane's net income for the next five years. *Id*. The far more significant concession would be $100 million paid by Strawberry Fields, representing a distribution to creditors of 30–40 cents on the dollar. *Id*.

As part of funding the settlement trust, creditors overwhelmingly approved a broad release of all claims against Strawberry Fields. *Id.* Despite the releases being non-consensual, over 95 percent of creditors voting on the Plan voted in favor of confirmation. R. at 8–9.

Two relevant objections were filed. R. at 9. The Petitioner objected to the non-consensual releases by challenging the bankruptcy court's authority and the due process provided by the plan's confirmation. *Id.* The Bank objected, arguing the Plan understated its collateral's value. *Id.*

The bankruptcy court overruled both objections. R. at 10. The court made "detailed findings about the probability of success" as part of the confirmation hearing. *Id.* In its undisputed findings, the $100 million settlement trust marked a recovery "substantially greater" than any other recovery if Penny Lane were liquidated and the allegations pursued through complex, costly litigation. *Id.* The court also found that treatment of the Bank's claim was "fair and equitable" as required by the Code. *Id.* The bankruptcy court then confirmed the Plan. R. at 11.

The Petitioner timely appealed the bankruptcy court's rulings, and the Thirteenth Circuit certified the disputes for direct appeal and consolidated them. *Id.* The Thirteenth Circuit thereafter affirmed the bankruptcy court's rulings. R. at 23.

STANDARD OF REVIEW

The questions presented rely on interpretation of the Code and the United States Constitution and are therefore exclusively questions of law. *Question of law*, WEX (online ed.). Therefore, *de novo* review is the appropriate standard of review for both questions presented on this appeal. *Pierce v. Underwood*, 487 U.S. 552, 558 (1988).

SUMMARY OF THE ARGUMENT

The Thirteenth Circuit correctly held that a bankruptcy court maintains the constitutional and statutory authority to approve non-consensual third-party release provisions within chapter 11 reorganization plans. The Thirteenth Circuit also correctly held that the discharge exceptions enumerated in section 523(a) do not apply to corporate debtors.

The United States Constitution and the Code authorize a bankruptcy court to approve a chapter 11 plan including a non-consensual third-party release. In some extraordinary cases, Congress and the Supreme Court implicitly require bankruptcy courts to authorize these releases to achieve broader objectives. Article III of the United States Constitution permits bankruptcy courts to resolve matters related and integral to reorganizing the creditor-debtor relationship. Whether a release is integral is a factual question. Therefore, the Constitution limits, rather than denies, the court's authority to approve these releases. Similarly, because a non-consensual third-party release can preserve a creditor's right to due process, due process requirements do not prohibit these releases but rather establish further requirements for their contents.

The Code also provides bankruptcy courts the means and authority for authorizing these releases. Non-consensual third-party releases result from disputes "related to" to administration of the bankruptcy estate and plan confirmation, placing them under bankruptcy jurisdiction via 28 U.S.C. § 1334 and 28 U.S.C. § 157. Both sections 105(a) and 1123(b)(6) provide bankruptcy courts means by which to effectuate a plan that complies with the greater Code scheme. The fact that Congress used flexible language to describe how the bankruptcy courts exercise its powers illustrates Congressional intent to permit a broad range of bankruptcy court action. Furthermore, because bankruptcy courts remain within Code limitations when approving non-consensual third-party releases in chapter 11 plans, their approvals do not violate the "no rare case rule."

Non-consensual third-party releases do not run afoul of any Code provision or this Court's jurisprudence covering bankruptcy court jurisdiction. Sections oft-cited as prohibiting these releases either have no bearing on non-consensual third-party releases or demonstrate Congress's support for bankruptcy courts' cautious, principled approval.

In extreme cases, Congressional objectives require bankruptcy courts to authorize non-consensual third-party releases within chapter 11 plans. The Supreme Court has recognized Congress's overarching goals for chapter 11: reestablishing the debtor as a viable business while maximizing returns to creditors. Congress has reinforced this objective by requiring the plan's feasibility to ensure the success of the restructuring. In most cases, as in this one, approving a plan with a non-consensual third-party release is the only way to achieve these ends.

The discharge of the debts of a corporate debtor proceeding under section 1192 is not subject to the discharge exceptions listed in subparagraphs (1)–(19) of section 523(a). The plain language of both statutes confirms this. While corporate and individual debtors can both file for reorganization under subchapter V, the prefatory language of section 523(a) notes that individual debtors will not have the listed kinds of debts discharged on confirmation of a plan.

Although one intermediate court has read ambiguity into the statutes, long-standing canons of construction and interpretive maxims reinforce that the language of sections 523(a) and 1192 support affirming the Thirteenth Circuit. Congressional choices in the language of these sections and the Code more generally support the differences of an individual and a corporation. This distinction supports the proper reading that section 523(a)'s exceptions only apply to an individual's debts. Further, Congress is presumed to legislate against the backdrop of existing judicial interpretation. The case law uniformly finds over a 40-year period that a corporate debtor's debts in chapter 11 are not subject to the exceptions of section 523(a). Judicial interpretations and testimonials lastly confirm that corporate debtors' debts do not fall under section 523(a)'s auspices.

The linguistic and logical acrobatics necessary to justify an interpretation otherwise would lead to absurdity. Section 523(a), as all language, should start at the beginning and end at the end. When done so, the logical interpretation is a narrowing of the types of debtors (from all to individuals) and then the exclusion of certain of their debts from discharge. The alternative, starting at the end with the kinds of debts excepted from discharge and then applying them writ large to all chapter 11 debtors is fundamentally incoherent. The logical form of *modus ponens* is simple to apply here and accurate: if the debtor is an individual, then the kinds of debts in subparagraphs (1)–(19) are not discharged. The form cannot work the other way.

Beyond that, the policy aims imbued into the Code by Congress are best served by excluding corporate debtors from exceptions to discharge under section 523(a). From the Code's enactment in 1978, corporate debtors were entitled to a complete discharge post-confirmation of a plan of reorganization. Congress made it so in response to the impracticability of the prior scheme which permitted exceptions to corporate debts. Penny Lane is also one of the "honest and deserving" debtors for whom the Code has been enacted to provide a fresh start. A decision otherwise would upend decades of settled law and legislative purpose.

Specific to subchapter V, Congress' mandate for a broad corporate discharge should be reinforced, not frustrated. Subchapter V's purpose came from Congressional response to the plight of prior small business (individual or corporate) debtors unable to confirm or successfully perform a plan. In enacting these statutes (section 1192 included), Congress carefully weighed and measured the costs and benefits of its updates to the Code. The scheme it enacted provides both additional requirements and flexibility for small businesses, their creditors, and American society. Slamming down on the scale from inside the courtroom would frustrate that careful balance and should be avoided.

The Court should therefore affirm the Thirteen Circuit's decision on both issues.

ARGUMENT

This Court should affirm the Thirteenth Circuit's decision that the bankruptcy court had the statutory and constitutional authority to issue a final order confirming a plan with a third-party injunction. This Court should also affirm the circuit court's holding that the discharge exceptions listed in section 523(a) apply only to individual debtors.

I. THE THIRTEENTH CIRCUIT CORRECTLY HELD THAT BANKRUPTCY COURTS HAVE THE AUTHORITY TO APPROVE NON-CONSENSUAL RELEASES OF DIRECT CLAIMS HELD BY THIRD PARTIES AGAINST NON-DEBTOR AFFILIATES AS PART OF A CHAPTER 11 PLAN OF REORGANIZATION.

Congress explicitly permits bankruptcy courts to approve non-consensual releases of direct claims held by third parties against non-debtor affiliates as part of a chapter 11 plan of reorganization in asbestos cases. *See* 11 U.S.C. § 524(g). The bankruptcy court's authority to take similar action in non-asbestos cases is less explicit but no less certain. The Constitution, the Code, and Supreme Court precedent reinforce a bankruptcy court's authority to approve these releases. Furthermore, overarching bankruptcy policy and jurisprudence often demand bankruptcy courts approve these releases in exigent circumstances.

A. Bankruptcy courts maintain the constitutional authority to approve non-consensual third-party releases in chapter 11 plans.

1. Article III does not prohibit bankruptcy courts from approving non-consensual third-party releases within chapter 11 plans.

Article III jurisdictional limitations do not preclude bankruptcy courts from approving non-consensual third-party releases in chapter 11 plans. *See generally* U.S. Const. art. III, § 1. In *Stern*, this Court clarified which issues Article III permits bankruptcy courts to resolve. *See Stern v. Marshall*, 564 U.S. 462, 496–97 (2011). The *Stern* court reiterates a principle established in *Langenkamp*: whether a bankruptcy court can resolve a claim can depend on whether the action "become[s] integral to the restructuring of the debtor-creditor relationship." *Id*. (citing *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990) (*per curiam*)). The *Stern* opinion highlights that in *Langenkamp*, a preference action became integral to restructuring the debtor-creditor relationship via the claims-allowance process. *Id.* However, it reasoned that the bankruptcy court maintained the constitutional authority to adjudicate the preference action not because it was part of the claims-allowance process but because *then* that procedure transformed the preference action into a factor integral to the restructuring of the debtor-creditor relationship. *Id.* (emphasis in original). Therefore, whether the claim is integral to restructuring the debtor-creditor relationship can be the determining factor in whether Article III permits a bankruptcy court to adjudicate a claim. *Id. See also In re Millennium Lab Holdings II, LLC*, 945 F.3d 126, 136–37 (3d Cir. 2019).

A non-consensual third-party release is integral to restructuring the debtor-creditor relationship if required to effectuate the reorganization. An action is "integral" if it is "essential to [the] completeness" of the restructuring of the debtor-creditor relationship. *Integral*, MERRIAM-WEBSTER DICTIONARY (online ed.). Whether a non-consensual third-party release is required to effectuate the debtor-creditor relationship is a fact-specific inquiry, not a matter of law. *Millennium Lab*, 945 F.3d at 137. *See also Patterson v. Mahwah Bergen Retail Grp., Inc.*, 636 B.R. 641, 683 (Bankr. E.D. Va. 2022); *Airadigm Communs., Inc. v. FCC (In re Airadigm Communs, Inc.)*, 519 F.3d 640, 657 (7th Cir. 2008). Therefore, the Article III jurisdictional limitations articulated in *Stern* do not prohibit a bankruptcy court from approving a non-consensual third-party release within a chapter 11 plan but instead require that the bankruptcy court find that such a provision is essential to successfully restructuring the creditor-debtor relationship.

2. A bankruptcy court can approve non-consensual third-party releases as an exercise of "related to" jurisdiction under 28 U.S.C. § 1334.

Bankruptcy courts may approve non-consensual third-party releases because the releases stem from plan confirmation and administration of the bankruptcy estate. Pursuant to 28 U.S.C. § 157, plan confirmation is a "core proceeding" that a bankruptcy judge may hear and determine. 28 U.S.C. § 157(b)(2)(L). Under 28 U.S.C. § 1334, bankruptcy courts maintain jurisdiction over "cases . . . related to cases under title 11 of the United States Code." 28 U.S.C. § 1334(a)(2). This Court has interpreted "related to" jurisdiction broadly, specifically encompassing "more than simple proceedings involving the property of the debtor or the estate." *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 n.5 (1995). The latter includes "suits between third parties which have an effect on the bankruptcy estate." *Id.* at 308. The Third Circuit includes within "related to" jurisdiction "an action . . . which in any way impacts upon the handling and administration of the bankrupt estate." *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984).

A non-consensual third-party release greatly impacts the handling and administration of the bankruptcy estate. In *Begier v. IRS*, this Court characterized the bankruptcy estate as "the property available for distribution to creditors." *Begier v. IRS*, 496 U.S. 53, 58 (1990). Here, the creditor trust, as a vehicle for distributing property to creditors, effectively supplants the bankruptcy estate. *See* R. at 8. The Petitioner's dispute arose from Strawberry Fields's release from liability, which was required for it to finance the *de facto* bankruptcy estate. *See id*. Therefore, the dispute is "related to" the handling and administration of the bankruptcy estate.

3. A non-consensual third-party release can preserve a creditor's jury trial and due process rights.

Non-consensual third-party releases do not necessarily violate a creditor's right to due process or to a jury trial. First, this Court has held that because bankruptcy courts proceed in equity, the Seventh Amendment does not confer a jury trial right in cases controlled by the bankruptcy court. *Katchen v. Landy*, 382 U.S. 323, 337 (1966). Second, as addressed by the Thirteenth Circuit, the bankruptcy court's confirmation did not resolve the Petitioner's claim, but rather redirected it towards the creditor trust distribution. R. at 13 (citing *MacArthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, 91–92 (2d Cir. 1988)). Therefore, the issue is whether the procedure into which the bankruptcy court channeled Petitioner's claim satisfied due process requirements.

The procedure that the bankruptcy court has established to resolve Petitioner's claim—the creditor trust distribution process—satisfies due process requirements. This Court has underlined the flexibility of due process and that its requirements may conform to specific circumstances. *See* *e.g., Gilbert v. Homar*, 520 U.S. 924, 929 (1997) (citations omitted); *Wilkinson v. Austin*, 545 U.S. 209, 224–25 (2005). In *Mathews v. Eldridge*, this Court provided guidelines to determine due process requirements in an individual case. *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). Although *Mathews* dealt with an administrative tribunal rather than a bankruptcy court, this Court has applied the *Mathews* factors as a "framework to evaluate the [due process] sufficiency of particular procedures" in different types of civil cases. *Wilkinson*, 545 U.S. at 224 (analyzing a state prison policy under the *Mathews* framework). *See also Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (applying the *Mathews* framework to a civil rights action). Therefore, *Mathews* is the appropriate framework to analyze whether a bankruptcy court's approval of non-consensual third-party release can satisfy due process requirements.

Analyzing the *Mathews* factors confirms that a bankruptcy court's approval of non-consensual third-party releases can satisfy due process requirements. According to *Mathews*, a due process analysis considers the following:

> "*First*, the private interest that will be affected by the official action; *second*, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, and *finally*, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."

Mathews, 424 U.S. at 334 (emphasis added).

Here, the bankruptcy court's confirmation of the Plan not only preserved but improves upon the Petitioner's affected private interest. The Petitioner had a private interest in compensation from Strawberry Fields for her alleged harm. R. at 5. The bankruptcy court found, and the Petitioner accepts, that "she and all other tort claimants are receiving more under the Plan than they would otherwise be able to recover by prosecuting their claims against the [Penny Lane] and Strawberry Fields to conclusion." R. at 11. Therefore, the bankruptcy court's confirmation of the Plan so positively impacted the Petitioner's interest that it exceeded what she would have accomplished if the Plan were not confirmed. Furthermore, because the Plan enhanced the Petitioner's recovery interest, there is no valid concern that its confirmation deprived her of any interest. Similarly, there would have been no value in substitute procedural safeguards because the Plan confirmation ensures that the Petitioner's recovery *exceeded* her legal interest. Given that the Petitioner's and the other creditors' legal interests were not only protected but augmented by the Plan confirmation procedure, the administrative burden of thousands of individual lawsuits would have been absurd and counterproductive by reducing each creditor's recovery. *See* R. at 11-12. The plan instead "offered a significant and immediate benefit to creditors" which could not otherwise be obtained. R. at 10. Because a non-consensual third-party release can satisfy due process requirements, due process requirements do not prohibit the releases but rather place requirements on their contents.

B. *The Code authorizes a bankruptcy court to approve non-consensual third-party releases of direct claims held by third parties against non-debtor affiliates as part of a chapter 11 plan of reorganization.*

1. The Code permits a bankruptcy court to approve chapter 11 plans that include non-consensual third-party releases.

The Code authorizes bankruptcy courts to approve chapter 11 plans that include non-consensual third-party releases. Section 105(a) lets the court issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Code]." 11 U.S.C. § 105(a). It is not a license for the bankruptcy court to "create substantive rights" or "a roving commission to do equity." *New England Dairies, Inc. v. Dairy Mart Convenience Stores, Inc. (In re Dairy Mart Convenience Stores, Inc.)*, 351 F.3d 86, 92 (2d Cir. 2003). It does not provide "substantive authority" under which a bankruptcy court may take a specific action. *See In re Purdue Pharma, LP*, 635 B.R. 26, 105 (Bankr. S.D.N.Y. 2021). Instead, this provision authorizes the means and methods by which the bankruptcy court may take constitutionally and statutorily permitted action. *See* TABB, CHARLES J. & BRUBAKER, RALPH, BANKRUPTCY LAW 735 (5th ed. 2021) ("the power conferred by § 105(a) is one to implement rather than override") (citations omitted). Permitted actions are not limited to those explicitly stated in the Code. Bankruptcy court actions must be "tied to another [ ] Code section and not merely to a general bankruptcy concept or objective," but not need not be explicitly stated. *Purdue*, 635 B.R. at 105 (citations omitted).

Approving a non-consensual third-party release as part of a chapter 11 plan is tied to the bankruptcy court's authorization to confirm a chapter 11 plan in section 1123(b)(6). *See* 11 U.S.C. § 1123(b)(6). Section 1123(b)(6) permits bankruptcy courts to authorize a plan including "any other appropriate provision not inconsistent with the applicable provisions of [Chapter 11]." *Id.* The word "any" illustrates Congress's intent to authorize the bankruptcy court to approve chapter 11 plans with a broad range of provisions. *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 214 (2008) ("[r]ead naturally, the word 'any' has an expansive meaning") (citations omitted). Congress limits this authority by requiring only that provisions are both appropriate and not inconsistent with other chapter 11 provisions. 11 U.S.C. § 1123(b)(6). The appropriateness of the release provision is not in dispute. R. at 12, 13. The limitation that the provision is "not inconsistent" merely requires that it not run afoul of chapter 11—not that the Code expressly enumerates authority for the provision. Because non-consensual third-party releases do not violate any provision of the Code, they are permitted under section 105(a) via section 1123(b)(6). *See* 11 U.S.C. §§ 105(a), 1123(b)(6).

2. Chapter 11 plan provisions including non-consensual third-party releases are not inconsistent with any provision of the Code.

Chapter 11 plans containing non-consensual third-party releases are not inconsistent with any provisions in chapter 11. The Petitioner cites section 524(e) as prohibiting non-consensual third-party releases. R. at 15. Section 524(e) states that the "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, *such debt.*" 11 U.S.C. § 524(e) (emphasis added). Therefore, section 524(e) does not allow a bankruptcy court to discharge a non-debtor for the *same debt* for it discharges a debtor. *See Blixseth v. Credit Suisse*, 961 F.3d 1074, 1083 (9th Cir. 2020); *In re PWS Holding Corp.*, 228 F.3d 224, 245–46 (3d Cir. 2000). However, the provision does not impact a non-debtor's liability for anything other than the debtor's discharged debt. If Congress had intended for this provision to encompass a non-debtor's liability for more than the debtor's discharged debt, it would not have used the term "such debt" to clarify the scope of the provision. Considering Congress's limiting language, any broader reading of this provision would render the words "such debt" inappropriately superfluous. *See Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (a statute should be interpreted so no part is superfluous). The appropriately narrow reading of section 524(e) does not govern non-consensual third-party releases because any liabilities relating to the third parties will not be the same as the discharged debt. *See* Ralph Brubaker, *Nondebtor Releases and Injunctions in Chapter 11: Revisiting Jurisdictional Precepts and the Forgotten Callaway v. Benton Case*, 72 AM. BANKR. L. J. 7 (1998) (although often relied upon as authority prohibiting non-consensual third-party releases, § 524(e) is a "red herring" stifling "more principled analysis").

Similarly, section 524(g) does not illustrate Congressional intent to relegate bankruptcy courts' power to approve non-consensual third-party releases to asbestos cases. 11 U.S.C. § 524(g). As the Thirteenth Circuit correctly recognized, the House Report states, "[Section 524(g)] is not intended to alter any authority bankruptcy courts may already have to issue injunctions in conjunction with a plan of reorganization." Bank. Reform Act of 1994, 140 CONG. REC. 10752 (1994). Congress "expresse[d] no opinion as to *how much* authority a bankruptcy court may generally have under its traditional equitable powers to issue an enforceable injunction of this kind." *Id.* (emphasis added). This illustrates Congress's certainty that a bankruptcy court can issue these injunctions in non-asbestos cases, only leaving the question of whether limiting principles exist.

The Fifth Circuit's interpretation of section 524(g) supports a progressive approach. The Fifth Circuit reads section 524(g) broadly to "suggest[ ] [that] non-debtor releases are most appropriate as a method to channel mass claims toward a specific pool of assets." *Bank of N.Y. Tr. Co., NA v. Off. Unsecured Creditors' Comm. (In re Pac. Lumber Co.)*, 584 F.3d 229, 252 (5th Cir. 2009). Therefore, the Fifth Circuit, generally hostile to non-consensual third-party releases, acknowledges that 524(g) does not grant the bankruptcy court limited authority to approve channeling injunctions to asbestos cases but implies Congress's focus on the benefits of channeling injunctions in cases with mass claims. *See id.*

Finally, the "no rare case rule" does not bar non-consensual third-party releases. *See Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 471 (2017). In *Czyzewski*, a chapter 11 bankruptcy case, this Court held that "Congress did not authorize a 'rare case' exception that permits courts to disregard a Code scheme for 'sufficient reasons.'" *Id.* at 451. As noted by the dissent in that case, under no circumstances may a court's decision "trump the [ ] Code." R. at 24. That is true. The *Czyzewski* holding, however, does not bar a court from acting *within* statutory and constitutional limitations. *See Czyzewski*, 580 U.S. at 451. As discussed, the Code and the Constitution legitimize a bankruptcy court's authority to approve non-consensual third-party releases. Thus, such a court does not impermissibly rely on its own "sufficient reasons."

C. *Bankruptcy courts operate under an implicit mandate to approve non-consensual third-party releases when required to achieve Congressional objectives.*

As illustrated above, Bankruptcy Courts maintain the constitutional and statutory authority to approve non-consensual third-party releases. In fact, both Congress and the Supreme Court implicitly require bankruptcy courts to authorize non-consensual third-party releases in extraordinary circumstances. Therefore, the bankruptcy court correctly authorized the chapter 11 plan releasing Strawberry Fields.

Chapter 11 facilitates two primary Congressional objectives: (1) rehabilitating the debtor to avoid loss of jobs and economic waste and (2) mitigating forfeitures by creditors. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984); *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 389 (1993); Am. Bankr. Inst. Comm'n to Study the Reform of Chapter 11, *2012-2014 Final Rep. and Recommendations*, 23 AM. BANKR. INST. L. REV. 255-56 (2015). These priorities fall under "an overriding goal of ensuring the success of the reorganization." *Pioneer*, 507 U.S. at 389. In cases where bankruptcy courts approve non-consensual third-party releases, these releases are almost always required for the bankruptcy court to execute Congress's mandate and implement the plan. For example, in *Millennium Lab*, the Third Circuit found that the releases were "necessary to the entire agreed resolution" of the restructuring and essential "to avoid corporate destruction." *Millennium Lab*, 945 F.3d at 132. Similarly, in *Airadigm*, the Seventh Circuit affirmed the bankruptcy court's decision to approve a non-consensual third-party release because the release was required to induce a non-debtor to finance the reorganization. *Airadigm*, 519 F.3d at 657–58. The Seventh Circuit reasoned that the releases were critical to the restructuring's success because no other lender would fund the reorganization under the circumstances. *Id.* Furthermore, section 1123(a)(5) requires that a plan "provide adequate means for the plan's implementation." 11 U.S.C. § 1123(a)(5). In the cases described, where the plan would not have been feasible without these releases, section 1123(a)(5) required courts to approve the releases to meet the joint requirements of plan feasibility and ensuring reorganizational success. *See* R. at 14. If the bankruptcy courts in these cases had rejected the non-consensual third-party releases, they would have shirked their duty to prioritize the reorganization's success.

In this case, the releases balance debtor and creditor interests while focusing on the reorganization's overall success. First, the Plan allows Penny Lane to maintain its business and continue employing community residents. R. at 12. Second, the Plan *eliminates*, rather than merely mitigates, forfeitures by creditors, leaving them better off than if they had been required to pursue their claims independently. R. at 11. Finally, the releases induce Strawberry Fields's contributions to a creditor trust, which must satisfy section 1123(b)(5) by ensuring the plan's feasibility. R. at 14. 11 U.S.C. § 1123(b)(5). Ultimately, this Plan represents an authorized, ideal, and principled outcome that Congress could only Imagine.

II. THE THIRTEENTH CIRCUIT CORRECTLY HELD THAT THE EXCEPTIONS TO DISCHARGE LISTED IN SUBPARAGRAPHS (1)–(19) OF 11 U.S.C. § 523(A) APPLY EXCLUSIVELY TO INDIVIDUAL DEBTORS PURSUANT TO ANY CHAPTER 11 PROCEEDING.

The question is not whether the Court *should* read section 523(a) as the Petitioner prefers, but if it *can* coherently read the section to encompass corporate debtors within the confines of the statute. "[I]mproving legislation by amending it is not [a court's] function; only Congress can rewrite the statute." *See Mar. Asbestosis Legal Clinic v. LTV Steel Co. (In re Chateaugay Corp.)*, 920 F.2d 183, 187 (2d Cir. 1990). The logical construction of the statutory language urges this Court to reject the Petitioner's claims, affirming that corporate debtors confirming a plan under section 1192(2) are not subject to the exceptions to discharge listed under section 523(a).

A. The plain statutory language and legislative history both unambiguously confirm that, under chapter 11, the kinds of debt enumerated in Section 523(a) apply only to individual debtors and not corporate ones.

Unless otherwise defined, courts must apply the statutory language as written, in accordance with their ordinary meaning. *Sebelius v. Cloer*, 569 U.S. 369, 369 (2013), (citation and quotations omitted). *See also Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992). Where the language is plain, the inquiry is complete, and the court is there to enforce the law as written. *Id*. at 254. Furthermore, the interpreting court should always strive to read the statute in a way that gives effect to every word. *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("[A] statute ought . . . to be so construed that . . . no clause, sentence, or word shall be superfluous, void, or insignificant" (internal quotation marks omitted)); *Williams v. Taylor*, 529 U.S. 362, 404 (2000).

1. The plain meaning of sections 1192 and 523(a) necessitate concluding the exceptions to discharge in subparagraphs (1)–(19) only apply to individual debtors, not corporate ones.

Where the text is clear and unambiguous, the court's work in interpreting the statute is complete. *Sebelius*, 569 U.S. at 376.; *Est. of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992). Therefore, the analysis must start by examining the relevant statutes.

Section 1192 governs the discharge of debts for cases where the debtor has elected to proceed under subchapter V and confirmation of the plan seeks to apply the cramdown provision of section 1191(b). 11 U.S.C. § 1192. "If the plan of the debtor is confirmed under section 1191(b) [the cramdown provision] . . . the court shall grant the debtor a discharge [of all debts as provided by statute or provided for in the plan], except any debt . . . (2) of the kind specified in section 523(a) of this title." 11 U.S.C. § 1192(1). It is undisputed that the bankruptcy court confirmed the plan pursuant to section 1191(b). R. at 11. Therefore, we must examine to what the "debt . . . of the kind specified in section 523(a)" refers. 11 U.S.C. § 1192.

Section 523(a), a decades-old Code provision, provides, "a discharge under section . . . 1192 . . . does not discharge an individual debtor from any debt" as defined in the following 19 subparagraphs. 11 U.S.C. § 523(a). The plain language is unambiguous: the section applies only to individual debtors. *Gaske v. Satellite Res., Inc. Crabcake Factory USA (In re Satellite Restaurants, Inc. Crabcake Factory USA)*, 626 B.R 871, 876 (Bankr. D. Md. 2021).

The Petitioner's preferred reading, that those exceptions apply to all debtors, cannot hold because it reads "individual" out of the statute. Statutory interpretation should make no "clause, sentence, or word [to] be superfluous, void, or insignificant." *TRW*, 534 U.S. at 31; *Duncan v. Walker*, 533 U.S. 167, 174 (2002). Had Congress intended section 523(a) to apply the categories of debt in subparagraphs (1)–(19) to all debtors, it could easily have done so by eliminating "individual" from the introductory language. Congress did not. Therefore, the language illustrate that the exceptions do *not* apply to all debtors, only individual debtors.

Moreover, the Petitioner and the Thirteenth Circuit's dissent both rely on inapposite case law— interpreting provisions of chapter 12, not chapter 11—to support their positions. *New Venture P'ship v. JRB Consol. (In re JRB Consol., Inc.)*, 188 B.R. 373 (Bankr. W.D. Tex. 1995); *Cantwell-Cleary Co., Inc. v. Cleary Packaging, LLC (In re Cleary Packaging, LLC)*, 630 B.R. 466 (Bankr. D. Md. 2021), *rev'd* 36 F.4th 509 (4th Cir. 2022). First, although the *JRB Consol.* court found that a corporate debtor under chapter 12 might be excepted from certain discharges, "corporate debtors in Chapter 11 are not subject to a complaint to determine dischargeability of debt under § 532(a)." *JRB Consol.*, 188 B.R. at 374. Therefore, one of the Petitioner's key cases eviscerates the Petitioner's argument by imposing a blanket ban on the Petitioner's ability to seek adjudication of a subchapter V corporate debtor's dischargeability under section 523(a). The same court later clarified its position by expressly rejecting the Petitioner's position. *See In re GFS Indus., LLC*, 2022 WL 16858009 at *5 ("confirmed by the language used in Subchapter V . . . Chapter 11 corporate debtors are not subject to § 523(a) complaints to determine their dischargeability"). Thus, even the Petitioner's own supporting case law favors the inapplicability of excluding Penny Lane from discharge of the debts in section 523(a)(1)–(19).

Cleary Packaging likewise fails to support the Petitioner's argument and should be rejected by this Court. The Fourth Circuit drew relationships between chapters 7, 12, 13, and a corporate case under subchapter V of chapter 11 to support its position. *Cleary Packaging*, 36 F.4th at 516. *See also* 11 U.S.C. § 727(a)(1) (chapter 7 discharge limited to individuals); 11 U.S.C. § 1328 (chapter 13 discharge limited to individuals); *In re Trepetin*, 617 B.R. 841, 848 (Bankr. D. Md. 2020) (discussing similarity in language between section 1228 and section 1192). The Fourth Circuit was correct that "Congress conscientiously defined and distinguished the kinds of debtors covered by each provision." *In re Cleary Packaging, LLC*, 36 F.4th at 516. Nevertheless, the court then relied heavily on chapter 12 proceedings—available only to family farmers or family fishermen, both of whom require the debtor to be an individual—to rationalize its decision about a corporate debtor. *Id.*; *Southwest Ga. Farm Credit, ACA v. Breezy Ridge Farms, Inc. (In re Breezy Ridge Farms, Inc.)*, 2009 WL 1514671, at *1–2 (Bankr. M.D. Ga. 2009). *See* 11 U.S.C. §§ 101 (18), (19A). Although the maxim of *in pari materia* (dealing with same matter) might suggest interpreting these statutes similarly, that approach should be rejected where legislative history and purpose materially differ. *See Fogerty v. Fantasy, Inc.*, 510 U.S 517, 521–524 (1994). Here, the Fourth Circuit overlooked the legislative and jurisprudential history that corporations, because of their distinction from other debtor types, have been exempted from section 523(a) since the Code's inception. *Avion Funding, LLC, v. GFS Indus., LLC (In re GFS Indus., LLC)*, 2022 WL 16858009 at *8; *Jerry Catt, Jr. v. Rtech Fabrications LLC (In re Rtech Fabrications, LLC)*, 635 B.R. 559, 565 (Bankr. D. Idaho 2021); *Mallinckrodt PLC v. City of Rockford (In re Mallinckrodt PLC)*, 2021 WL 2460227, at *4 (Bankr. D. Del. June 16, 2021) (corporate debtor's discharge in chapter 11 is "generally all encompassing") (citing 8 Collier on Bankruptcy ¶ 1141.05[1][b] (16th ed. 2021); *see* Ralph Brubaker, *Taking Exception to the New Corporate Discharge Exceptions*, 13 AM. BANKR. INST. L. REV. 757, 764–66 (2005)). Other courts have more appropriately rejected any perceived similarities between chapters 11 and 12 , bolstering this distinction. *E.g.*, *Rtech Fabrications*, 635 B.R. at 565 n. 6. The Fourth Circuit erroneously relies on *Trepetin* for support. *Trepetin*, 617 B.R. at 848 n.14. In fact, *Trepetin* undercuts the Fourth Circuit's position that chapter 12 is an appropriate comparison for subchapter V analysis—a backstab on the very same page cited by that court for support. *Id*. The material differences between a corporation and an individual, and their treatment by the Code, discourage the Fourth Circuit's interpretation.

All bankruptcy courts that have confronted this issue of corporate debtor dischargeability under subchapter V have rejected the Fourth Circuit's position, unanimously finding the limiting language in section 523(a) dispositive. *GFS Industries*, 2022 WL 16858009 at *7; *Jennings v. Lapeer Aviation, Inc. (In re LaPeer Aviation, Inc.),* 2022 WL 1110072 (Bankr. E.D. Mich. Apr. 13, 2022); *Rtech Fabrications,* 635 B.R. at 563; *Gaske v. Satellite Rest., Inc. Crabcake Factory USA (In re Satellite Rest., Inc. Crabcake Factory USA),* 626 B.R. 871, 873 (Bankr. D. Md. 2021).

Given subchapter V's purpose of reorganizing and rehabilitating small businesses, exceptions to the discharge "should be confined to those plainly expressed." *Gleason v. Thaw*, 236 U.S. 558, 562 (1915); *See also Kawaauhau v. Geiger*, 523 U.S. 57, 58 (1998). The Petitioner cannot show, and the Petitioner's cases fail to support, that exceptions to discharge for corporate debtors exist within the plain language of either section 523(a) or 1192. Therefore, those listed exceptions should be confined to the plainly expressed circumstances: those of individual debtors.

2. Statutory construction of the Code and the legislative history behind the Small Business Reorganization Act ("SBRA") both support affirming that section 523(a) applies exclusively to individual debtors.

Assuming, *arguendo*, that the internal cross-references between §§ 523(a) and 1192 do create ambiguity, other canons of statutory construction confirm that the debts excepted from discharge in Section 523(a) are only applicable to individual debtors remains correct. *See, e.g.*, *Lena v. Paul*, 518 U.S. 187, 211 (1996) ("[Courts] appropriately rely on canons of construction as tie breakers to help us discern Congress' intent when its message is not entirely clear."). Here, canons of construction find that the statutory language, legislative history, and expert analysis bolster the conclusion that section 523(a) is solely applicable to individual debtors.

a. The language and statutory framework favor interpreting section 523 to apply only to individual debtors.

Where Congress uses different language in different parts of a statute, a court should presume Congress intended different meanings to apply. *Sosa v. Alvarez–Machain*, 542 U.S. 692, 711 n.9, (2004) (citing 2A N. Singer, Statutes and Statutory Construction § 46:06, p. 194 (6th rev. ed. 2000)). Moreover, the expression of one thing implies the exclusion of others. *O'Melveny & Myers v. FDIC*, 512 U.S. 79, 85–87 (1994). Congress' choice to use "individual" in section 523(a) to modify "debtor" should therefore be presumed to exclude other categories of debtor: among them, the corporate debtor.

Throughout the Code, Congress made deliberate choices in its definition and use of terms, including sets and subsets of different actors and roles under the Code. The most important of these is the delineation of the "set" of who may be a "debtor." "Debtor" means either a "person" or "municipality" subject to a bankruptcy proceeding. 11 U.S.C. § 101(13). A "person," in turn, includes the subsets of "individual, partnership, and corporation." 11 U.S.C. § 101(41).

Despite not being specifically defined under the Code, the separate enumeration of "individual" and "corporation" as subsets of "person" indicates an intention to treat these subsets separately under the Code. *See Yamaha Motor Corp. v. Shadco, Inc*. 762 F.2d 668, 670 (8th Cir. 1985). Where different language is used in different parts of the statute, the Court should presume Congress meant different definitions to apply. *Sosa*, 542 U.S. at 711 n.9. To eliminate any doubt, the choice between "person," "debtor," and "individual" recurs throughout the Code with drastic implications for the rights and obligations of each. For example, the "farmer" of section 101(20) permits the debtor to be any category of "person," while section 101(18) "family farmer" requires the debtor to be an individual. *Compare* 11 U.S.C. § 101(20) *with* § 101(18).

Meanwhile, "corporation" is defined as having a "unique" power, that of an association "having a power or privilege that is a private corporation, but not an individual . . . possesses . . . ." 11 U.S.C. § 101(9). This formulation of "corporation" as being unique and possessing a power which an individual cannot possess further supports the conclusion that Congress intended for corporations and individuals to be affected differently under the Code. Moreover, a corporation under any definition is a legal entity, distinct from the natural persons which make up its constituents and owners. *E.g.*, *Corporation*, BLACK'S LAW DICTIONARY (11th ed. 2019). Congress' enumeration of a corporation as one subset of "person" most naturally confirms that "individual" and "corporation" are meant to be distinct from each other.

Individual, likewise, can only be meant to be a singular, natural person. One of an individual's characteristics under the Code is that an individual can be a "relative" to another individual. *See* 11 U.S.C. § 101(45). "[R]elative" includes, among other things, an individual related by consanguinity to another individual. *See id*. Consanguinity – the sharing of one's blood – is an attribute which can only be held by a natural person. *Consanguinity*, BLACK'S LAW

DICTIONARY (11th ed. 2019). Because "individual" is therefore part and parcel with a singular, natural person, the term "individual" might just as easily be read as "singular, natural person" throughout the Code unless Congress clarified otherwise. Because Congress did not define "individual" in the Code except by its distinction from (among others) a "corporation," Congress cannot have meant for individuals and corporations to be considered equivalent.

Therefore, because "individual" is expressed in section 523 the type of "debtor" to whom these exceptions apply, the most appropriate reading is that the kinds of debts listed in subparagraphs (1)–(19) only apply to individual debtors.

b. In the face of existing case law, the legislative process and history surrounding the SBRA likewise support affirming the Thirteenth Circuit's correct reading that exceptions to discharge under section 523(a) apply only to individual debtors.

The legislative process and history behind the enactment of the SBRA also support affirming the Thirteenth Circuit's holding that the exemptions to discharge under section 523 exclusively apply to individual debtors. Congress had two bites at the apple within the last twenty years to clarify that section 523 should be read to apply to both corporate and individual debtors. Its choice not to do so implies that Congress meant for the judicial interpretation barring application of section 523 to corporate debtors to stand.

Congress legislates against the backdrop of existing case law and legislation is presumed to account for and incorporate rulings. *Lorillard v. Pons*, 434 U.S. 575, 580 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change"). Existing rulings applied section 523 as a whole only to individual debtors and not to corporate debtors. *See Adam Glass Serv., Inc. v. Federated Dep't Stores, Inc.*, 173 B.R. 840, 842 (Bankr. E.D.N.Y 1994) ("[Section] 523 only applies to individual debtors.") (citing *In re Spring Valley Farms Inc.*, 863 F.2d 832, 834 (11th

Cir. 1989)); *Delco Dev. Co. of Harrison Rd., Ltd. v. Kuempel Co. (In re Kuempel Co.)*, 14 B.R. 324, 325 (Bankr. S.D. Ohio 1981) (using individual to modify debtor "clearly evidences the intent of Congress to exclude corporate debtors from the operation of section 523."). *See also In re Pac. Atl. Trading Co.*, 64 F.3d 1292, 1302 (9th Cir. 1995) ("[Section] 523 only applies to individual and not corporate debtors.") (citing *Yamaha*, 762 F.2d at 670). The "universal case law" establishes that section 523 only applied to corporate debtors. *See Daluz v. Automatic Plating of Bridgeport (In re Automatic Plating of Bridgeport)*, 202 B.R. 540, 542 (Bankr. D. Conn. 1996).

Congress could have rejected this "universal case law" when it enacted the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (2005). Far from amending the Code to make such a clarification, at least one section of the bill amended section 1141(d) to confirm that a discharge under chapter 11 for an individual debtor does not discharge a debt excepted under section 523. *See* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, H.R. Rep. No. 109-31 (2005). The bill made numerous other amendments to section 523 without amending the language of 523(a) to include corporate debtors. *E.g.*, *id.* (amending 523(a)(5) to provide that "a 'domestic support obligation' (as defined in section 211 of [the BAPCPA]) is nondischargeable while eliminating [ ] Code section 523(a)(18)"). Congress's explicit amendment of section 1141, "Effect of confirmation," reference to individual debtors in that and other amendments, and silence on section 523(a)'s relationship with corporate debtors suggests that Congress incorporated the settled case law on section 523's inapplicability to corporate debtors into the BAPCPA.

In the time between the BAPCPA's enactment and the SBRA, courts reinforced that section 523 applies exclusively to individual, non-corporate debtors. *See In re MF Global Holdings, Ltd.,* No. 11–15059 (MG), 2012 WL 734175, at *3 (Bankr. S.D.N.Y. Mar. 6, 2012) ("In the Second Circuit, it is well-settled that section 523 does not apply to corporate debtors."). In 2014, the court in *Hawker Beechcraft* noted that "from the enactment of section 523 in 1978 to the decision of the bankruptcy court [in 2013], no court had held that section 523 applies to non-individual debtors." *United States ex rel. Minge v. Hawker Beechcraft Corp. (In re Hawker Beechcraft, Inc.)*, 515 B.R. 416, 426 (S.D.N.Y. 2014). The *Hawker Beechcraft* court kept this unbroken streak and reversed the bankruptcy court's holding that section 523 applied to non-individual debtors. *Id*. at 427–30.

Congress made no effort to refute these unyielding judicial conclusions that section 523(a) only applies to individual debtors when enacting the SBRA. Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 179 (2019). The new subchapter V discharge excepts from discharge any debts for which the last payment is due after the plan duration and "any debt that is otherwise nondischargeable." Small Business Reorganization Act of 2019, H.R. Rep. No. 116-171, at 8 (2019). The Section-by-Section Analysis portion of the House Report on SBRA is also absent any discussion of amending section 523. *Id.* Finally, testimony from a retired bankruptcy court judge supporting and explaining the SBRA made no reference to expanding section 523(a) to cover corporate debtors. *See Oversight of Bankruptcy Law and Legislative Proposals: Hearing Before the Subcomm. on Antitrust, Comm. and Admin. Law of the H. Comm. on the Judiciary*, 116th Cong. 2 (revised testimony of A. Thomas Small on behalf of the National Bankruptcy Conference). The dearth of discussion in either testimonial support or Congressional reporting to expand section 523(a) confirms Congress did not intend such an expansion.

It bears reminding that individuals, not just corporations, can petition for relief under subchapter V. 11 U.S.C. § 1182(1)(A) ("The term debtor . . . means a *person* engaged in commercial or business activities . . . .") (emphasis added); *Toibb v. Radloff*, 501 U.S. 157, 163

(1991) (holding that chapter 11 is also available to individual debtors without an ongoing business). "Person" includes the distinct categories of "individual" and "corporation" under the Code. *See supra* Section II (A)(2)(a); 11 U.S.C. § 101(41). Congress' use of "person" is clear: it lets the most potential debtors file under subchapter V and excludes other categories of debtor such as municipalities. *See* 11 U.S.C. § 101(41); 11 U.S.C. § 101(13); 11 U.S.C. § 101(40). Because individuals are potential debtors under subchapter V, these "otherwise nondischargeable" debts, "of the kind specified in section 523(a)," thus logically refer to the debts which are nondischargeable for *individual debtors* under section 523(a).

Congress is plainly aware of how to enact amendments to the Code. The robust discussion on both the BAPCPA and the SBRA, including the proposed, rejected, and incorporated amendments to each of those bills is testament to that fact. *See, e.g.,* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, H.R. Rep. No. 109-31 (2005). Furthermore, where Congress has intended to create exceptions to the Code in the past, "it has done so clearly and expressly." *FCC v. NextWave Personal Comm's, Inc.*, 537 U.S. 293, 302 (2003). One example of this is the explicit limitation to corporate debtor discharge in the language of section 1141(d)(6). 11 U.S.C. § 1141(d)(6) ("Notwithstanding paragraph (1), the confirmation of a plan *does not discharge a debtor that is a corporation* from any debt…") (emphasis added). In the present case, Congress left intact the prefatory language in section 523(a) which includes "individual" and its attendant modification of "debtor." 11 U.S.C. § 523(a). The Petitioner's contention that Congress intended a sweeping change without modifying the law cannot stand. Had Congress intended to broaden the exception to discharge to encompass, it would have done so in its linguistic choices. By choosing not to use a more global category, such as "debtor" without modification, Congress meant to limit the exception to the Code to individual debtors.

When in doubt, courts should not create exceptions beyond those *specified* by Congress. *See United States v. Smith*, 499 U.S. 160, 166–67 (1991). The Court should also not read the Code to erode the past practice of applying section 523(a) exclusively to individual debtors without clear Congressional intent. *Penn. Pub. Welfare Dep't v. Davenport*, 495 U.S. 552, 563 (1990). Nothing in the SBRA's legislative history supports leaping to the conclusion that Congress intended for section 523(a) to expand without discussion. *Satellite Res.*, 626 B.R. at 878. *See also Whitman v. Am. Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001) ("Congress … does not, one might say, hide elephants in mouseholes."). Adopting the Petitioner's interpretation would at least double the number of exceptions by applying the excepted debts of subparagraphs (1)–(19) to corporate as well as individual debtors. Therefore, the Court should interpret Congress' choice to leave 523 otherwise untouched as meaningful, incorporating preexisting case law finding section 523 exclusively applicable to debtors who are individuals.

c. Academic and practitioner analysis of the SBRA and its effects on section 523(a) likewise support holding that section 523(a)'s exceptions to dischargeability are inapplicable to corporate debtors.

Beyond legislative discussion, analysis of sections 1192 and 523(a) support holding that the exceptions to discharge apply exclusively to individual debtors. The Honorable Paul Bonapfel, in his "A Guide to the Small Business Reorganization Act of 2019," dedicates 36 pages to legislative and judicial analysis before concluding "Congress did not intend that the exceptions to discharge in 523(a) apply to the discharge of an entity under 1192." *See* Hon. Paul W. Bonapfel, *A Guide to the Small Business Reorganization Act of 2019* 203–39 (2020 rev. 2022). Other conclusions have failed to grapple with the plain language of section 523(a). *See, e.g.*, William L. Norton, III and James B. Bailey, *The Pros and Cons of the Small Business Reorganization Act of 2019*, 36 EMORY BANKR. DEV. J. 383, 386 (2020). *See also* 8 Collier on Bankruptcy ¶ 1192.03

(2020). Instead of stating a conclusion unsupported by the statute's language, Judge Bonapfel dissects sections 523(a) and 1192 to examine their interplay:

> As amended, therefore, [section] 523(a) states, "A discharge under section . . . 1192 . . . does not discharge an individual debtor from any debt" that [section] 523(a) lists. The implication of this language is that [section] 1192(2)'s reference to debts "of a kind specified" in [section] 523(a) includes only debts that [section] 523(a) excepts, which are only debts of individuals. In other words, although [section] 1192(2) states discharge rules for all debtors without regard to whether they are individuals or not, its reference to [section] 523(a) in the case of an entity has no operative effect because [section] 523(a), as amended, applies only to individuals.

Hon. Paul W. Bonapfel, *A Guide to the Small Business Reorganization Act of 2019* 204 (2020 rev. 2022).

Judge Bonapfel's conclusion is the only natural one. It sees what the plain language states: exceptions to discharge in section 523(a) apply solely to individuals.

3. The Petitioner's insistence that "kind of debts" is the operative phrase of section 1192(2) and exclusion of "individual debtors" from operation in section 523(a) would lead to incoherent results and should be rejected.

The Petitioner correctly notes that section 1192(2) exempts from discharge debts that are "of the kind specified in section 523(a)," but draws an incorrect conclusion. Section 523(a) limits the set of debtors to whom the exceptions apply: individual debtors. *GFS Indus.*, 2022 WL 16858009 at *4. The kinds of debt that follow are a list of Congress' choices about which debts the individual debtor cannot discharge through subchapter V. The Petitioner relies too heavily on "of the kind" in section 1192(2) while ignoring "individual" in section 523(a).

Instead of reading section 523(a) from the beginning, the Petitioner leaps over the introduction, landing on the exceptions to discharge in subparagraphs (1)–(19). Removing the individual debtor requirement requires segregating the subparagraphs from their own introduction. Congress has only done this once to add an exception to the corporate discharge in chapter 11, and it did so explicitly. *See* 11 U.S.C. § 1141(d)(6) (using "[n]othwithstanding paragraph (1)" to identify exception to otherwise complete corporate discharge). Even within section 523, Congress emphasizes when it is making exceptions. *E.g.*, 11 U.S.C. § 523(b) ("Notwithstanding subsection (a) of this section[,]" certain debts are dischargeable even though they should be nondischargeable). The most appropriate reading of section 523 appreciates the threshold question: is the debtor an individual? Without meeting this threshold requirement, the discharge exceptions do not apply.

This reading also fits the larger statutory scheme. Throughout the Code, the type of debtor may deactivate entire chapters. For example, *if* the debtor is an individual, *then* it *may* make use of chapter 13, *but* it *may not* make use of chapter 9. *See* 11 U.S.C. § 1301 *et seq.*; 11 U.S.C. § 901 *et seq*. Despite chapter 9's inaccessibility for most petitioners, no court would hold it surplusage. Here, section 523 reads the same: *if* the debtor is an individual ("individual debtor"), *then* the debts listed will not be discharged. The Petitioner attempts to affirm the consequent, that these debts are nondischargeable, then have the Court discard the rest. Such an outcome should be rejected.

Adopting the Petitioner's interpretation would relegate the antecedent, the prefatory language of section 523(a), to surplusage and absurdity. When interpreting statutes, courts should interpretations yielding provisions superfluous. *See Ratzlaf v. United States*, 510 U.S. 135, 140–41 (1994). Courts should instead "favor [ ] a construction which will render every word operative, rather than one which may make some idle and nugatory." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 69, 174 (2012) (citing Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest upon the Legislative Power of the States of the American Union* 58 (1868)). Reading § 523 to except corporate debtors from the broad discharge guaranteed them under subchapter V would incorrectly ignore Congress' choice to modify the "debtors" to be "individual debtors." Overlooking the adjective "individual" also results in absurdity, another outcome courts should avoid. *See United States v. Wilson*, 500 U.S. 329, 334 (1992). Petitioner does not and cannot explain why "individual" should be given operative meaning as a modifier in only some places.

Ultimately, the Petitioner reverses the causal order: starting from the nondischargeable categories of debt and applying them backwards to all debtors. The Thirteenth Circuit and the plain language support the opposite. From the beginning, the statute first limits applicability to individuals, then determines which types of debts are nondischargeable. Therefore, the Court should affirm the Thirteenth Circuit's holding.

B. The policy underlying the Code, chapter 11, and subchapter V support a broad discharge for corporations under sections 1192(2) and 523(a) while nevertheless excepting certain debts from an individual's discharge under chapter 11.

The policy underlying chapter 11, specifically vis-à-vis corporate debtors filing for reorganization under subchapter V, also supports this Court affirming the Thirteenth Circuit's holding with respect to 523(a). Although Congress' chosen language remains most persuasive, the Court can also look "beyond the words to the purpose of the act . . . ." *United States v. Am. Trucking Ass'ns*, 310 U.S. 534, 543 (1940).

"The premise underlying chapter 11 is that everyone—creditors, stockholders, employees, the community at large—is better off if a salvageable business can be rescued." CHARLES JORDAN TABB, THE LAW OF BANKRUPTCY, § 1.24 (5th ed. 2020). Before the SBRA, "most chapter 11 business cases [were] filed by small business debtors, [but] they [were] often 'the least likely to reorganize successfully.'" Small Business Reorganization Act of 2019, H.R. Rep. No. 116-171, at 8 (2019). Congress enacted the SBRA to provide to debtors bankruptcy protections without the costs or restraints of pre-existing provisions. *GFS Indus.,* 2022 WL 16858009 at *2.

1. The Code affords corporate debtors under subchapter V a virtually complete discharge of debts to facilitate the Congress' core aims and policy.

As a default, corporate debtors receive a virtually complete discharge under chapter 11. R. at 16; 11 U.S.C. § 1141. Subchapter V slightly modifies the process and requirements but retains the fundamental blank slate. Under section 1192, if a plan of reorganization is confirmed, the court must grant the debtor a complete discharge. 11 U.S.C. § 1192. The debts listed in subparagraphs (1)–(19) are "[e]xceptions to discharge" from this default, comprehensive discharge. 11 U.S.C. § 523. Courts should interpret exceptions narrowly to prevent the exception from swallowing the rule. *See Comm'r v. Clark*, 489 U.S. 726, 739 (1989). Bankruptcy jurisprudence consistently construes exceptions to discharge broadly in favor of the debtor and strictly against an objecting creditor to effectuate the Code's policy aims of affording a "fresh start to honest and deserving debtors." *Household Credit Servs. v. Peterson (In re Peterson)*, 182 B.R. 877, 879 (Bankr. N.D. Okla. 1995); *see also Williams v. United States Fid. & Guar. Co.*, 236 U.S. 549, 550 (1915); *Bank of Fayette Cnty. v. Hampton (In re Hampton*), 550 B.R. 773, 791 (Bankr. E.D. Ark. 2016).

Penny Lane exemplifies an "honest and deserving" debtor seeking Code protections to reorganize and reemerge. Penny Lane is part of a robust manufacturing industry in and around Blackbird, Moot consisting of dozens of businesses and facilities. R. at 6. The company's plastic, glass, and metal food container production provides "substantial" jobs to the local community with Penny Lane being one of the major employers. R. at 12. It is undisputed that "[t]he fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources." *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984). The plan confirmed by the Bankruptcy Court for the District of Moot achieves that aim, preserving community jobs and properly using economic resources to guarantee Penny Lane's creditors the maximum recovery. R. at 11. In so confirming the plan, the Bankruptcy Court also implicitly found the plan feasible and "not likely to be followed by the liquidation, or the need for further reorganization" of Penny Lane. *See id.*; 11 U.S.C. § 1129(a)(11). Therefore, the Petitioner must clear a high bar to refute the presumption that Penny Lane is entitled to complete discharge.

Where the objecting creditor fails to establish all necessary elements to exempt a debt from discharge, the debt is dischargeable. *Valley Nat'l Bank v. Bush (In re Bush)*, 696 F.2d 640, 643 n.4 (8th Cir. 1983). The Petitioner must show each element by a preponderance of the evidence. *See Grogan v. Garner*, 498 U.S. 279, 286–87 (1991). This is impossible for the Petitioner. As a threshold matter, any exception to discharge under section 523 requires the debtor be an individual. *See supra* Section II(A)(3). Because the Petitioner cannot show this, Penny Lane's debts must be dischargeable upon plan confirmation. 11 U.S.C. § 1192. If the Court adopts the Petitioner's interpretation and reads the exception broadly *against* Penny Lane, the Court will upend decades of bedrock bankruptcy jurisprudence.

2. Subchapter V was a legislative response to further the goal of small business reorganization under the previously unworkable chapter 11 processes which carefully and correctly balances creditor and debtor interests, effectuating the Code's purpose and should therefore not be disturbed.

Congress enacted Subchapter V in response to previously unworkable chapter 11 processes that impeded small business reorganization. DAVID G. EPSTEIN, ET AL., BANKRUPTCY: DEALING WITH FINANCIAL FAILURE FOR INDIVIDUALS AND BUSINESSES 470 (5th ed. 2021). Only about a quarter of small businesses filing under chapter 11 could confirm a plan—fewer could ultimately succeed. TABB, THE LAW OF BANKRUPTCY, § 1.27. In 2019, Congress passed the SBRA to alleviate this "paltry number" of success stories. *Id. See also* Small Business Reorganization Act of 2019, H.R. Rep. No. 116-171, at 8 (2019). This Court must recognize Congress' carefully considered the tradeoffs in its revamp: the final product reflects a delicate balance that the Petitioner would cast aside.

The requirements of a debtor proceeding under subchapter V comes with inseparable costs and benefits. As the dissent notes, the "absolute priority rule" is done away with in a cramdown in favor of a more flexible "projected disposable income" test. R. at 34; 11 U.S.C. §§ 1191(c)(2), (d). The dissent fails to note, however, that election for reorganization under subchapter V already comes with a number of additional restrictions imposing burdens not found in chapter 11 proceedings otherwise. First, the business must elect in its petition to have subchapter V apply to it. 11 U.S.C. § 103(i). A necessary condition of this election's approval is that the debtor's liabilities are below a ceiling – for this case, the cap is set at $7.5 million. 11 U.S.C. § 1182(1). The subchapter V debtor also owes additional reporting and disclosure requirements. *See* 11 U.S.C. §§ 308, 1116, and 1187. Last among these examples, a trustee is required to serve in every case, regardless of whether the debtor remains in possession or not, with an increased role monitoring and facilitating the proceedings as compared with a general chapter 11 reorganization. *Compare* § 1183 *with* § 1104(a). Congress carefully crafted the increased flexibility to work in concert with the increased requirements. Had Congress wanted more burdens to be applied, the time for that is in legislative session, not within a courthouse.

Balanced against these restrictions, the route to confirming a plan is simplified. This effectuates Congress' intent for the debtor to quickly reorganize and emerge. Congress even authorized an "all cramdown" plan—for the first time in chapter 11, there need not be *any* affirmatively consenting class for a plan to be confirmed. A plan under section 1191(b), the subchapter V cramdown provision, is not required to comply with certain traditional requirements of confirmation. 11 U.S.C. § 1191(b). A subchapter V debtor need not have any class whose claims are impaired under the plan assent to the confirmation. 11 U.S.C. §§ 1191(b), 1129(a)(10). For a plan proceeding under section 1191(b) to be confirmed as fair and equitable, it need only meet the criteria in 1191(c). 11 U.S.C. §§ 1191(b)–(c). Section 1191(c)(2)(A) will find a plan to be fair and equitable to the impaired creditors if the plan provides "all of the projected disposable income of the debtor" for payments to creditors under the plan. 11 U.S.C. § 1192(c)(2)(A). The dissent incorrectly interprets this as needing to come with a tit-for-tat: if Congress improved the ability of subchapter V debtors to confirm a plan, the dissent mistakenly believes that Congress must have intended to hamper those efforts by imposing nondischargeable debts on the debtors to balance the scales. *See* R. at 34. This reading haunts the legislature's design with a phantom tradeoff that undermines the Code's purpose.

Outside of subchapter V, Congress has made tradeoffs which permit additional impairment or elimination of creditors' rights to preserve the other Code aim of maximizing the size of the estate for creditors and therefore support maintaining the legislature's decision that exceptions to discharge apply solely to debtors who are individuals. One need look no further than sales of a debtor's assets authorized pursuant to section 363(b). 11 U.S.C. § 363(b). In combination with section 363(f), a sale of assets under an approved section 363(b) sale permits the debtor to transfer title to the purchaser free and clear of any prior liens and encumbrances. 11 U.S.C. §§ 363(b), (f). These sales are permitted even in the case that there is a predetermined purchaser. *In re On-Site Sourcing, Inc.*, 412 B.R. 817, 829 (Bankr. E.D. Va. 2009). Combined with section 363(m), which bars reversal or modification of the sale except within narrow circumstances, these sales are powerful. They deprive creditors of their claims to the debtor's assets and in exchange serve the Code's purpose (and Congress' intent) of maximizing overall returns for the creditors on their claims. The dissent's argument that there exists some policy reason for excepting the kinds of debts under section 523(a) from a corporate debtor's discharge fails to account for the fact that

Congress would have designed that scheme into the Code had Congress meant for it to be there. Such a position is untenable within the wider goals of the Code.

Finally, Congress enacted chapter 11, "Reorganization," to reap the benefits of a renewed business for American society at large. The essence of the chapter stands opposite to that of chapter 7, "Liquidation," where the goal is (for the corporate debtor) dissolution and a winding down of affairs. *See* 11 U.S.C. § 701 *et seq.* By enacting chapter 11 and reinvigorating it over the decades, Congress has repeatedly made the considered decision to prioritize certain outcomes–successful reorganization on a go-forward basis–above other rights. Those rights include creditors' rights to come back to the till after a corporate reorganization for the kinds of debts in sub paragraphs (1)–(19) of section 523(a). Most utilitarian, the cost-benefit calculation is such that both Penny Lane and Strawberry Fields would be better off financially by liquidating. The undisputed factual findings show that Penny Lane's creditors, present and future, would receive far less than their current share of the $100 million being entrusted by Strawberry Fields to settle the unproven allegations. For Congress' balancing of rights and obligations to be maintained, the exceptions to discharge in section 523(a) must not be applied to corporate debtors.

CONCLUSION

The bankruptcy court recognized its authority to confirm the Plan inclusive of the third-party releases. That court also correctly held that the section 523(a) exceptions to discharge do not apply to corporate debtors. The Thirteenth Circuit correctly affirmed both those decisions. For the preceding reasons, we ask that the Court AFFIRM the Thirteenth Circuit's decision.

APPENDIX

11 U.S.C. § 1192. Discharge.

If the plan of the debtor is confirmed under section 1191(b) of this title [11 USCS § 1191(b)], as soon as practicable after completion by the debtor of all payments due within the first 3 years of the plan, or such longer period not to exceed 5 years as the court may fix, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter [11 USCS §§ 1101 et seq.], the court shall grant the debtor a discharge of all debts provided in section 1141(d)(1)(A) of this title [11 USCS § 1141(d)(1)(A)], and all other debts allowed under section 503 of this title [11 USCS § 503] and provided for in the plan, except any debt—

(1) on which the last payment is due after the first 3 years of the plan, or such other time not to exceed 5 years fixed by the court; or

(2) of the kind specified in section 523(a) of this title [11 USCS § 523(a)].

11 U.S.C. § 523. Exceptions to Discharge.

(a) A discharge under section 727, 1141, 1192, 1228(a), 1228(b), or 1328(b) of this title [11 USCS § 727, 1141, 1192, 1228(a), 1228(b), or 1328(b)] does not discharge an individual debtor from any debt—

(1) for a tax or a customs duty—

(A) of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title [11 USCS § 507(a)(2) or 507(a)(8)], whether or not a claim for such tax was filed or allowed;

(B) with respect to which a return, or equivalent report or notice, if required—

(i) was not filed or given; or

(ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

(B) use of a statement in writing—

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive; or

(C)

(i) for purposes of subparagraph (A)—

(I) consumer debts owed to a single creditor and aggregating more than $800 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

(II) cash advances aggregating more than $1,100 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

(ii) for purposes of this subparagraph—

(I) the terms "consumer", "credit", and "open end credit plan" have the same meanings as in section 103 of the Truth in Lending Act [15 USCS § 1602]; and

(II) the term "luxury goods or services" does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor;

(3) neither listed nor scheduled under section 521(a)(1) of this title [11 USCS § 521(a)(1)], with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;

(5) for a domestic support obligation;

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity;

(7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty—

> **(A)** relating to a tax of a kind not specified in paragraph (1) of this subsection; or
>
> **(B)** imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition;

(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—

> **(A)**
>
> > **(i)** an educational benefit overpayment or 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 nonprofit institution; or
> >
> > **(ii)** an obligation to repay funds received as an educational benefit, scholarship, or stipend; or
>
> **(B)** any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986 [26 USCS § 221(d)(1)], incurred by a debtor who is an individual;

(9) for death or personal injury caused by the debtor's operation of a motor vehicle, vessel, or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;
(10) that was or could have been listed or scheduled by the debtor in a prior case concerning the debtor under this title or under the Bankruptcy Act in which the debtor waived discharge, or was denied a discharge under section 727(a)(2), (3), (4), (5), (6), or (7) of this title [11 USCS § 727(a)(2), (3), (4), (5), (6), or (7)], or under section 14c(1), (2), (3), (4), (6), or (7) of such Act;

(11) provided in any final judgment, unreviewable order, or consent order or decree entered in any court of the United States or of any State, issued by a Federal depository institutions regulatory agency, or contained in any settlement agreement entered into by the debtor, arising from any act of fraud or defalcation while acting in a fiduciary capacity committed with respect to any depository institution or insured credit union;

(12) for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institutions regulatory agency to maintain the capital of an insured depository institution, except that this paragraph shall not extend any such commitment which would otherwise be terminated due to any act of such agency; or
(13) for any payment of an order of restitution issued under title 18, United States Code;

(14) incurred to pay a tax to the United States that would be nondischargeable pursuant to paragraph (1);

(14A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);

(14B) incurred to pay fines or penalties imposed under Federal election law;

(15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit;

(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;

(17) for a fee imposed on a prisoner by any court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under subsection (b) or (f)(2) of section 1915 of title 28 [28 USCS § 1915] (or a similar non-Federal law), or the debtor's status as a prisoner, as defined in section 1915(h) of title 28 [28 USCS § 1915(h)] (or a similar non-Federal law);

(18) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986 [26 USCS § 401, 403, 408, 408A, 414, 457, or 501(c)], under—

> **(A)** a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 [29 USCS § 1108(b)(1)], or subject to section 72(p) of the Internal Revenue Code of 1986 [26 USCS § 72(p)]; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5 [5 USCS §§ 8431 et seq.], that satisfies the requirements of section 8433(g) of such title [5 USCS § 8433(g)];

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d) [26 USCS § 414(d)], or a contract or account under section 403(b) [26 USCS § 403(b)], of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title; or

(19) that—

(A) is for—

(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 USCS § 78c(a)(47)]), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or
(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

(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.

For purposes of this subsection, the term "return" means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986 [26 USCS § 6020(a)], or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986 [26 USCS § 6020(b)], or a similar State or local law.

(b) Notwithstanding subsection (a) of this section, a debt that was excepted from discharge under subsection (a)(1), (a)(3), or (a)(8) of this section, under section 17a(1), 17a(3), or 17a(5) of the Bankruptcy Act, under section 439A of the Higher Education Act of 1965, or under section 733(g) of the Public Health Service Act in a prior case concerning the debtor under this title or under the Bankruptcy Act, is dischargeable in a case under this title unless, by the terms of subsection (a) of this section, such debt is not dischargeable in the case under this title.

(c)

(1) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

(2) Paragraph (1) shall not apply in the case of a Federal depository institutions regulatory agency seeking, in its capacity as conservator, receiver, or liquidating agent for an insured depository institution, to recover a debt described in subsection (a)(2), (a)(4), (a)(6), or (a)(11) owed to such institution by an institution-affiliated party unless the receiver, conservator, or liquidating agent was appointed in time to reasonably comply, or for a Federal depository institutions regulatory agency acting in its corporate capacity as a successor to such receiver, conservator, or liquidating agent to reasonably comply, with subsection (a)(3)(B) as a creditor of such institution-affiliated party with respect to such debt.

(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust.

(e) Any institution-affiliated party of an insured depository institution shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11).