No. 22-0909

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

TEAM NUMBER 22
COUNSEL FOR RESPONDENT

JANUARY 19, 2022

QUESTIONS PRESENTED

I. Does a bankruptcy court have the authority to confirm a chapter 11 plan of reorganization that contains non-consensual releases of direct claims held by third parties against non-debtor affiliates?

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

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OPINIONS BELOW

The bankruptcy court decided in favor of Penny Lane Industries, Chapter 11 Debtor. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed in favor of Penny Lane Industries, Chapter 11 Debtor. The Thirteenth Circuit Court of Appeals' decision is available at No. 21-0803 and reprinted at Record 2.

STATEMENT OF JURISDICTION

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

RELEVANT STATUTORY PROVISIONS

The relevant federal provisions controlling this case are 11 U.S.C. §§ 105(a), 523(a), 524(e), 1123(a)(5), 1123(b)(6), 1192(2), 1334(b). These provisions are attached in Appendix A.

STATEMENT OF THE CASE

This appeal arises from the Petitioner's attempt to disrupt a fair and equitable chapter 11 reorganization plan, jeopardizing hundreds of fellow creditors and threatening their chances of receiving payment for the injuries they suffered.

I. FACTUAL HISTORY

Penny Lane Industries, Inc. ("Debtor") manufactures plastic, glass, and metal food containers and owns a manufacturing facility in the City of Blackbird, Moot, at the edge of Liverpool River. R. at 5. The Debtor is a subsidiary company wholly owned by its corporate parent, Strawberry Fields Foods, Inc. ("Strawberry Fields"), a company that produces convenience foods and sells its well-known products in supermarkets around the country. *Id*. at 5.

From 2013 to 2017, studies conducted by the United States Environmental Protection Agency and the Centers for Disease Control and Prevention revealed that thousands of Blackbird residents drank and bathed in water contaminated with toxins and hazardous substances, which were linked to illness, birth defects, and death. *Id*. While the exact source of the contamination was not determined, thousands of lawsuits were filed against the Debtor, many of which named Strawberry Fields as a co-defendant. *Id*. At 5-6. These lawsuits alleged that the Debtor knowingly disposed of industrial chemicals that contaminated the community's ground water supply. *Id*. at 5-6.

In 2017, Eleanor Rigby, a resident of Blackbird for 35 years, sued the Debtor and Strawberry Fields, claiming that the Debtor dumped its pollutants to save money. *Id*. at 6. She asserted that her daughter's death from leukemia was caused by exposure to chemicals dumped by the Debtor. *Id*. The complaint also alleged the Debtor's then-Chief Executive Officer, Maxwell S. Hammer ("Hammer"), knew—as early as 2014—that the company's waste contaminated the

community's water supply and had the capability of injuring Blackbird residents. *Id*. Like many other plaintiffs, Ms. Rigby also alleged that Strawberry Fields was liable because it knew or should have known of its subsidiary's alleged misconduct. *Id*.

The Debtor and Strawberry Fields disputed these allegations, asserting that the waste was disposed of in the manner prescribed by the applicable environmental laws and regulations and the time. *Id*. Both companies deny knowing about the situation and assert that there is not enough evidence to link the pollutants in the water supply to the Debtor's waste, stressing that several other businesses and manufacturers were located upstream on the Liverpool River. *Id*. There has been no judicial determination about the claims asserted against the Debtor or Strawberry Fields. *Id*.

II. Procedural History

On January 11, 2021, the Debtor filed for bankruptcy under chapter 11 subchapter V as it faced a mountain of litigation. R. at 7. Since the Debtor owed less than $2 million to its trade creditors, most of the claims involved in the bankruptcy are disputed, unliquidated tort claims related to the Debtor's alleged dumping of pollutants. *Id*. In total, these claims assert damages amounting to $400 million. *Id*. Ms. Rigby filed an unsecured claim against the Debtor for $1 million, to which no objection was filed. *Id*.

A short time after the petition date, the Ms. Rigby began a proceeding against the Debtor so that her claim would be deemed non-dischargeable under sections 1192(2) and 523(a), which gives a discharge exception to any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." Id. at 7. The Debtor moved to dismiss for failure to state a claim under 12(b)(6) of the Federal Rules of Civil Procedure, which applies here through

Rule 7012 of the Federal Rules of Bankruptcy Procedure. *Id*. Ms. Rigby argues that the exceptions listed in 523(a) are not applicable to corporate debtors. *Id*.

As the bankruptcy case began, section 362(a) automatically stayed the proceedings of any current or upcoming non-bankruptcy litigation against the Respondent, but pending litigation against non-debtors like Strawberry Fields was not stayed automatically. *Id*. Respondent, however, sought and obtained from the bankruptcy court a temporary stay which halted all actions against its "current and former owners, officers, directors, employees and associated entities" related to its alleged conduct. Id. at 7-8. The injunction has been extended through negotiations and the continuation of this litigation. *Id*.

During negotiations, several stakeholders devised a complex settlement framework called the Plan, which established a creditor trust funded with the Debtor's disposable income for five years and a $100 million contribution paid by Strawberry Fields. *Id*. The money paid by Strawberry Fields greatly bolstered the creditor trust, allowing creditors to receive a significant distribution (an estimated 30-40 cents on the dollar). *Id*. In exchange for this payment, the Plan also included non-consensual releases, discharging Strawberry Fields from "any and all claims" third parties "have asserted or might assert in the future" so long as such claims are "based on or related to the Debtor's pre-petition conduct, its estate, or this chapter 11 case." *Id*. Rather than extinguish the claims, they were channeled into the creditors' trust. *Id*. Although ninety-five percent of the creditors voted in favor of the confirmation of the Plan, the Petitioner filed an objection arguing that the non-consensual releases of third-party claims against Strawberry Fields are not allowed under the applicable laws. *Id*. at 9. A secured creditor named Norwegian Wood Bank ("Bank") also filed an objection stating that the $1.5 million collateral on its bifurcated claim totaling $3.5

million was understated and therefore the Plan was not "fair and equitable" under 1191(b) and 1129(b)(2)(A). *Id.*

The bankruptcy court confirmed the Plan and overruled the Petitioner's objection after a four-day confirmation hearing, acknowledging that the extraordinary nature of this case permits and warrants the non-consensual third-party releases granted to Strawberry Fields. *Id.* at 10. The court also overruled the Bank's objection, holding that the Bank's claim was treated fairly and in compliance with the requirements of 1129(b)(2)(A) and 1191. *Id.*

After the confirmation of the Plan, the Petitioner timely appealed both the court's rulings, and, upon request, the disputes were certified for direct appeal to the Thirteenth Circuit pursuant to 28 U.S.C. § 158(d). The Thirteenth Circuit affirmed both decisions of the bankruptcy court and held that the bankruptcy court had the authority to approve the Plan's non-consensual releases of direct, third-party claims against Strawberry Fields and that a corporate debtor proceeding under subchapter V of chapter 11 may discharge debts of the kinds specified in 11 U.S.C. § 523(a) under 11 U.S.C. § 1192. *Id.* at 23.

STANDARD OF REVIEW

The facts in the case are not in dispute by the parties. The Thirteenth Circuit's holdings that bankruptcy courts have the authority to approve non-consensual releases of direct claims by third parties against non-debtor affiliates under chapter 11 reorganization and that the exceptions to discharge found in 11 U.S.C. § 1192(2) apply only to individual debtors are both questions of law, which are reviewed *de novo*. *Logan v. JKV Real Est. Services (In re Bogdan)*, 414 F.3d 507, 510 (4th Cir. 2005). "Under a *de novo* standard of review, the reviewing court decides an issue as if the court were the original trial court in the matter." *Razavi v. Comm'r of Internal Revenue*, 74 F.3d 125, 127 (6th Cir. 1996).

SUMMARY OF THE ARGUMENT

The Court should affirm the 13th Circuit's decisions and hold, first, that the bankruptcy court below had the authority to confirm a chapter 11 reorganization plan containing non-consensual releases of direct claims held by third parties against non-debtor affiliates and, second, that, pursuant to 11 U.S.C. § 1192(2), a corporate debtor may discharge debts of the kind specified in 11 U.S.C. The Bankruptcy Code was designed to allow debtors to make fresh starts without being perpetually plagued by their debts. In ruling for the Debtor, the Court would follow this well-established principle that is the very foundation on which the Bankruptcy Code was built.

As to the first issue, this Court has consistently established that bankruptcy courts have broad equitable powers to carry out the provisions of the Bankruptcy Code. The bankruptcy court below had both constitutional and statutory authority to confirm the Debtor's chapter 11 reorganization plan.

First, bankruptcy courts have constitutional authority for both proceedings that are "constitutionally core"—or integral to the chapter 11 plan—and proceedings that are "related to" cases under title 11. Confirming the third-party releases contained within the Debtor's plan was squarely within the authority of the bankruptcy court below. Without the releases, the Plan would fall apart, as the $100 million contribution made by Strawberry Fields was the primary funding source of the creditors' trust and was a central, integral part of its success. Likewise, the releases were related to the chapter 11 reorganization for a similar reason: without it, the Debtor would be forced to liquidate, and the creditors would not receive the substantial distribution promised by the trust.

Second, bankruptcy courts have broad statutory authority to issue third party releases under sections 105(a), 1123(b)(6), and 1123(a)(5) of the Bankruptcy Code. A plain reading of these

provisions reveals that Congress intended to grant bankruptcy courts broad equitable powers; and a plain reading of section 524(e) demonstrates that Congress—at most—intended it to serve as a slight limitation on the broad powers of bankruptcy courts, directing the provision only to entities involved with the bankrupt's debt *directly*, not third parties like Strawberry Fields. In fact, a majority of jurisdictions support this reading of the Bankruptcy Code, while the minority disregard the text and legislative history of 524(e).

Further, many courts grant nonconsensual third-party releases where the circumstances show they are necessary to the success of the plan and fair. The releases in the Plan are necessary to its success because, without Strawberry Fields, there would be no hope the Debtor could satisfy its debts. The releases are fair because Strawberry Fields made a substantial contribution, channeled the claims into a settlement rather than extinguishing them, and had indemnification and contribution that influenced the Debtor's estate.

Holding for the Debtor would promote the foundational principles of a chapter 11 reorganization—maximizing recovery for creditors and preserving businesses. A decision to the contrary would drastically affect chapter 11 reorganizations by deterring third party lenders and leaving Debtors unable to make significant distributions to creditors.

As to the second issue, the Debtor asserts that, because it is a corporate debtor, it is, thus, not subject to the discharge exceptions listed in § 523(a) under § 1192(2). The Debtor argues that the plain language of both § 1192(2) and § 523(a) clearly establish that § 523(a) does not apply to individual debtors, especially when compared to the plain language of other provisions similar to § 1192(2) that *do* explicitly apply to corporate debtors. Further, the legislative history of subchapter V and the history of § 523(a) reveal that Congress and the judiciary both heavily

support broad corporate discharge and are, in fact, extremely hesitant to except corporate discharge in any way under chapter 11.

Further, despite the Petitioner's claim that § 1192(2)'s similar language to 11 U.S.C. § 1228 should instruct the Court that corporate debtors should be excepted from discharge under § 523(a), the Debtor also demonstrates that the two provisions are not analogous because chapter 12 and chapter 11 are too attenuated regarding both purpose and scope to be read harmoniously.

Finally, the Debtor contends applying § 523(a) to individual debtors only under §1192(2) best fulfills the intended goals of both subchapter V and the larger Bankruptcy Code. Not only will the Debtor be able to successfully reorganize but allowing discharge for the Debtor here will ensure the most equitable result for all the Debtor's creditors.

Thus, the 13th Circuit was correct in ruling for the Debtor because bankruptcy courts have broad constitutional and statutory authority to confirm chapter 11 reorganization plans and because allowing discharge here is the most textually, historically, and equitably sound result.

ARGUMENT

I. THE THIRTEENTH CIRCUIT CORRECTLY HELD THAT BANKRUPTCY COURTS HAVE THE CONSTITUTIONAL AND STATUTORY 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.

When Congress enacted chapter 11 of the Federal Bankruptcy Code, it sought to promote efficiency and equity for parties involved in a reorganization. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984). To meet these goals, Congress granted bankruptcy courts broad authority to resolve cases according to their expertise. *United States v. Energy Res. Co.*, 495 U.S. 545 (1990) ("[B]ankruptcy courts, as courts of equity, have broad authority."); 11 U.S.C. § 105(a) (granting bankruptcy courts authority to approve reorganization plans including "*any* …

appropriate provision not inconsistent with the applicable provisions of this title") (emphasis added). Thus, it follows that bankruptcy courts have broad equitable powers to confirm chapter 11 plans of reorganization that contain third party releases.

A. Bankruptcy courts have core constitutional authority to confirm a plan of reorganization that grants a non-consensual third-party release.

It is well established that a bankruptcy court may oversee "core proceedings arising under title 11 or arising in a case under title 11." *See Stern v. Marshall*, 564 U.S. 462, 474 (2011) *quoting* 11 U.S.C. § 157(b)(1). A chapter 11 plan containing a third-party release is "constitutionally core" because such releases are integral to a chapter 11 case's adjustment of the relationship between debtor and creditor. *See Stern*, 564 U.S. 462; *see also In re Millennium Lab Holdings II, LLC*, 945 F.3d 126, 137 (3d Cir. 2019) (holding third party release was "critical to the success of the Plan" because "absent those contributions, the Debtors would be unable to satisfy their obligations."). To determine whether a specific proceeding is constitutionally core, the Supreme Court in *Stern* developed a disjunctive test for lower courts, holding that a proceeding is constitutionally "core" if the action at issue (1) stems from the bankruptcy itself *or* (2) would necessarily be resolved in the claims allowance process. 564 U.S. at 499 (emphasis added). The Court in *Stern* narrowly held that a bankruptcy court lacked the constitutional authority to enter a final judgment on the merits of a state law tort claim—which was not integral to the bankruptcy—because Congress, "in one isolated respect" exceeded its constitutional limitations. *Id.* at 503. Thus, *Stern* was a narrow decision limiting a bankruptcy court's ability to enter final judgments on the merits of claims too unrelated and tenuous from the bankruptcy at issue. *Id.* at 502 ("[W]e agree … the question presented here is a narrow one.").

1. Bankruptcy courts also have constitutional authority over cases that are "related to" a bankruptcy.

For issues that are non-core, bankruptcy courts have jurisdiction over cases that are "related to" cases under title 11. 28 U.S.C. § 1334(b) (granting original but not exclusive jurisdiction to federal courts over such cases). While Congress never specifically defined the scope of "related to" jurisdiction, the Supreme Court found the authority derived from the statute was "a grant of some breadth." *E.g.*, *Celotex Corp v. Edwards*, 514 U.S. at 300, 307-08 (1995) (holding a chapter 11 reorganization plan containing third-party releases sufficiently "related to" the bankruptcy claim). The Court in *Celotex* noted that lawsuits between third parties that affect the bankruptcy estate are proceedings that fall under the "related to" jurisdictional grant by Congress, especially actions under a chapter 11 reorganization. *Id*. at 307, n.5 ("The jurisdiction of bankruptcy courts may extend more broadly in… a reorganization under chapter 11[.]"); *see also Menard-Sanford v. Mabey (In re A.H. Robins Co.)*, 880 F.2d 89 (2d Cir. 1988) (holding third party release proper because the actions brought by products liability plaintiffs would interfere with the chapter 11 reorganization).

Lower courts have construed this broadly to apply to cases in which the action's outcome "might have any conceivable effect on the bankrupt estate." *SPV OSUS, Ltd. v. UBS AG*, 882 F.3d 333, 339-40 (2d Cir. 2018) (citing *Parmalat Capital Fin. Ltd. v. Bank of Am. Corp.*, 639 F.3d 572, 579 (2d Cir. 2011)). Many recognize the important role of a broad approach to this issue when faced with cases involving indemnification provisions. *In re Dow Corning Corp.*, 86 F.3d 482, 489-94 (6th Cir.) (holding suits against manufacturers were "related to" the bankruptcy because of potential claims for indemnification against the parent company); *Arnold v. Garlock, Inc.*, 278 F.3d 426, 440 (5th Cir. 2001) (holding contribution claims established "related to" jurisdiction). Essentially, when the outcome of an action could "alter the debtor's rights, liabilities, options, or

freedom of action," courts will find "related to" jurisdiction to promote the contribution and indemnification rights of the parties. *Celotex Corp.*, 514 U.S. at 308, n.6.

a. Non-consensual third-party releases are constitutionally core proceedings and integral to the bankruptcy claim.

The third-party release at issue here is decidedly a constitutionally "core" proceeding. The plan confirmation here was integral to the bankruptcy for two reasons: (1) the Debtor's disposable income for five years would not be enough to properly pay off its creditors; and (2) because of this, the $100 million contribution made by Strawberry Fields was vital to the success of the Plan, allowing creditors to receive a significant distribution. R. 8-9. Prohibiting bankruptcy courts from confirming plans that depend on third party funding for their success would greatly diminish any chance creditors might receive the distributions they deserve. *Id*. at 10-11. As in *Millennium*, 945 F.3d at 137, where the reorganization plan containing third-party releases was integral to the bankruptcy claim because it was "critical to the success of the plan," the contribution made by Strawberry Fields was critical to the success of the Plan at issue and thus was integral to the bankruptcy.

b. Third party releases are "related to" the bankruptcy claim.

Even if this Court finds that confirmation of chapter 11 plans is not a "constitutionally core" proceeding, it will find the Plan at issue is sufficiently "related to" the Debtor's bankruptcy claim. The question of whether creditors may immediately pursue claims against a significant contributor to the reorganization plan is surely "related to" the Debtor's bankruptcy, similar to *Celotex*, where this Court found allowing creditors to immediate execution of bonds was—at minimum— "related to" the bankruptcy. 514 U.S. at 309. Allowing a flood of litigation against Strawberry Fields would interfere with the administration of the debtor's reorganization plan by

minimizing the recovery of other creditors and destroying the Debtor's business, severely impacting the local economy. R. 10-11. A decision so entangled with the foundational principles of chapter 11 reorganizations—maximizing creditor recovery and preserving viable business—must be "related to" the Debtor's bankruptcy. *Id.* at 12.

The lone dissenter to the Thirteenth Circuit's opinion unduly stretches this Court's decision in *Stern*, 564 U.S. at 502, to the facts here, despite explicit instructions in the opinion to construe the holding narrowly. R. 21. At issue in *Stern* was a bankruptcy court's decision to release a *final judgment* on the merits of a state law tort claim asserted by a debtor against a creditor that was not integral to the bankruptcy. *Id.* at 503. Here, the bankruptcy court never ruled on the merits of a claim; it simply approved a global settlement between the Debtor, Strawberry Fields, and the creditors as part of the chapter 11 reorganization plan. R. 14. The approval of the Plan was integral to the bankruptcy and transformed the administration of the Debtor's reorganization, and—as the Thirteenth Circuit correctly held—was properly within the constitutional authority of the lower bankruptcy court. *Id.* at 16.

B. Bankruptcy courts have broad statutory authority to issue third party releases.

This Court has long recognized that bankruptcy courts have broad equitable authority to modify creditor-debtor relationships and approve settlements containing releases. *See Energy Resources.*, 495 U.S. at 549; *see also Pepper v. Litton*, 308 U.S. 295, 304 (1939) (holding bankruptcy courts "apply the principles and rules of equity jurisprudence."). Congress codified the equitable power of bankruptcy courts in section 105(a) of the Bankruptcy Code, giving it authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The Code also authorizes bankruptcy courts to exercise this equitable power in the process of chapter 11 plan confirmation in section 1123(b)(6), which allows

courts to "include any other appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6); *see In re Airadigm*, 519 F.3d 640, 657 (7th Cir. 2008) ("[A] bankruptcy court's residual authority permits [it] to release third parties from liability…if the release is appropriate and not inconsistent with any provision of the bankruptcy code."). Further authority comes from section 1123(a)(5), which requires a plan to "provide adequate means for the plan's implementation." 11 U.S.C. 1123(a)(5). Read together or separately, these statutory provisions impart broad authority to bankruptcy courts to resolve bankruptcy disputes "efficiently and expeditiously." *Celotex Corp.*, 514 U.S. at 307-08.

1. The majority of jurisdictions adopt a broad approach to a bankruptcy court's statutory authority to confirm third party releases.

Most circuits embrace this broad reading of the Bankruptcy Code, finding sections 105(a), 1123(b)(6), and 1123(a)(5)—jointly or separately—give bankruptcy courts the authority to confirm plans containing non-consensual releases of third-party claims. *See*, e.g., *Airadigm*, 519 F.3d at 656-57; *Dow Corning*, 280 F.3d 648, 656-57; *Nat'l Heritage Foundation, Inc. v. Highbourne Found.*, 760 F.3d 344 (4th Cir. 2014); *SE Prop. Holdings, LLC v. Seaside Eng'g & Surveying (In re Seaside Eng'g & Surveying)*, 780 F.3d 1070, 1076-79 (11th Cir. 2015). Other circuits in the majority agree that bankruptcy courts have the authority to confirm chapter 11 reorganization plans that include third party releases but have not yet spoken as to which statutory provision they derive the authority from. *See In re AOV Industries, Inc.*, 792 F.2d 1140 (D.C. Cir. 1986); *Millennium*, 945 F.3d at 133-40; *Monarch Life Ins. Co. v. Ropes & Gray*, 65 F.3d 973 (1st Cir. 1995).

2. Section 524(e) does not preclude non-consensual third-party releases.

Still, a small minority of courts insist section 524(e) of the Bankruptcy Code reflects unambiguous congressional intent to preclude non-consensual third-party releases. *See Bank of New York Tr. Co., NA v. Off. Unsecured Creditors' Comm. (In re Pacific Lumber Co.)*, 584 F.3d 229 (5th Cir. 2009); *Resorts Int'l v. Lowenschuss (In re Lowenschuss)*, 67 F.3d 1394 (9th Cir. 1995); *In re W. Real Estate Fund*, 922 F.2d 592 (10th Cir. 1990). Even so, the language and legislative history of section 524(e) suggest otherwise. The text provides 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). If Congress wanted to prohibit a bankruptcy court from releasing third parties from a creditor's claims, it would have used mandatory terms to convey its intent instead of the descriptive term "does". Instead, its intent was made clear when it repealed The Bankruptcy Act of 1898 and changed the terms in the prior version of 524(e) from "shall not" to "does not." 11 U.S.C. § 34 (repealed Oct. 1, 1979) ("The liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankrupt *shall not* be altered by the discharge of such bankrupt.") (emphasis added); *see Airadigm*, 519 F.3d at 656 (explaining textual and historical discrepancies with the minority approach to 524(e)). The prepositions used in the text restrict the scope of section 524(e) to apply *only* to entities and property "on, or … for, such debt." 11 U.S.C. § 524(e); *see also Airadigm*, 519 F.3d at 656. Thus, 524(e) says nothing about the authority of a bankruptcy court to release a non-debtor from a creditor's claim; it only touches on the impact such a release may have on entities and property *on* or *for* such debt. *See, e.g.*, J. Silverstein, *Hiding in Plain View*, 23 Emory Bankr. Dev. J. 13, 42-43 (2006).

3. Non-consensual third-party releases are appropriate if necessary and fair.

Even so, nonconsensual releases are still permissible if they are necessary to the reorganization and fair. *In re Global Indus. Technologies*, 645 F.3d 201, 206 (3d Cir. 2011). Courts have found nondebtor releases necessary and fair when the enjoined claims were channeled to a settlement fund, *MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89, 93-94 (2d Cir. 1988), where the estate received substantial consideration by a third party, *In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285 (2d Cir. 1992), or where the enjoined claims would—directly or indirectly—impact the indemnity or contribution of the debtor's reorganization. *A.H. Robins*, 880 F.2d 694. By imposing a standard of necessity and fairness, these courts permit nondebtor releases in circumstances where they are "necessary and appropriate" to faithfully serve the interests of the parties in a chapter 11 reorganization. 11 U.S.C. § 105(a).

a. The bankruptcy court below had the statutory authority to confirm the Debtor's chapter 11 reorganization plan.

The Thirteenth Circuit rightly held that the lower bankruptcy court had statutory authority to authorize a nonconsensual third-party release in the Plan because such authority is clear from the text and history of the Bankruptcy Code. The text of sections 105(a), 1123(b)(6), and 1123(a)(5) could not convey more clearly congressional intent for bankruptcy courts to have broad jurisdiction over complex bankruptcy matters such as the one at hand. R. 10. While the petitioner contends that section 524(e) serves as a bar for third-party releases, the specific language and history of the provision speak to the contrary. *Id.* at 16. Section 524(e) is—at most—a *limitation* on the release of third-party claims, not a complete *prohibition*. Thus, it is no surprise that most federal circuit courts find that the authority in sections 105(a), 1123(b)(6), and 1123(a)(5) outweigh the dim language of 524(e).

b. The releases were both necessary to the Debtor's reorganization and fair.

The release contained in the Debtor's chapter 11 reorganization plan was both necessary and fair. The release was vital to the success of the reorganization; without the $100 million contribution from Strawberry Fields, the plan would no doubt fail, leaving the petitioner and other creditors with little opportunity to recover any money at all from the Debtor. *Id*. at 11. The plan was entirely fair because it offered creditors the opportunity for maximum recovery and prompt compensation without the delay of litigation; under the Plan, creditors with impending medical bills and costs may have monetary relief immediately instead of months, years, or decades later due to litigation. *Id*. Like the reorganization plan in *Johns-Manville* that was considered fair by the court because it channeled enjoined claims into a settlement fund, 837 F.2d 89, the Plan channeled the enjoined claims into a settlement fund rather than extinguishing them. R. at 9. As in *Drexel Burnham*, 960 F.2d at 290, where a plan was necessary and fair because the bankruptcy estate received substantial contribution by a third party, most of the money in the creditors' trust at issue came from Strawberry Field's contribution. R. at 9. And much like *A.H. Robins*, 880 F.2d at 701, where the plan was fair because the enjoined claims indirectly impacted the indemnity and contribution of the debtor's reorganization, the enjoined claims in the Plan would impact the indemnity and contribution of Strawberry Fields. R. at 13.

Should this Court hold for the petitioner, it would ultimately damage her and other creditors seeking compensation for the Debtor's alleged conduct. Such a ruling would have drastic effects on businesses throughout the country filing for bankruptcy under chapter 11. It would undermine the very policies on which chapter 11 was written—to promote flexibility, maximize creditor recovery, and preserve viable businesses. *Id*. at 12. Prohibiting third party releases would deter major financial assistance given by third party lenders to fund creditors' trusts. This not only

crushes the Debtor's remaining business, but it would extinguish jobs that bolster local economies across the country. *Id.* at 13. Further, a prohibition on third party releases would effectively bar creditors from receiving prompt relief promised by large contributions of third-party lenders; speedy relief is essential for tort claimants such as the ones here. *Id.* at 11. Since the creditors in this case almost unanimously voted for the plan, holding for the Debtor would not have devastating consequences, as the petitioner suggests. *Id.* at 9, 22. Holding for the Debtor would not only allow its business to survive but would give its creditors prompt, adequate relief compared to what they might receive if they were to pursue their claims against Strawberry Fields.

II. THE EXCEPTIONS TO DISCHARGE LISTED IN 11 U.S.C. § 523(A) DO NOT APPLY, PURSUANT TO 11 U.S.C. § 1192(2), TO THIS PROCEEDING UNDER SUBCHAPTER V OF CHAPTER 11 OF THE BANKRUPTCY CODE BECAUSE THE RESPONDENT IS A CORPORATE DEBTOR.

The second issue before the Court is whether, under 11 U.S.C. § 1192(2), the exceptions listed in 11 U.S.C. § 523(a) apply to both corporate and individual debtors or to individual debtors only. The Debtor asks the Court to affirm the lower courts' findings that § 523(a)'s exceptions apply only to individual debtors in this context and that, thus, the Petitioner's claims are not nondischargeable.

The Debtor filed for bankruptcy as a small business under subchapter V of chapter 11 of the Bankruptcy Code. R. at 6. Under subchapter V, small businesses may seek confirmation of their plans consensually or non-consensually through the cramdown provisions found in 11 U.S.C. § 1191(b). When plans are confirmed consensually, the debtor discharges their debts pursuant to 11 U.S.C. § 1141(d), which is the discharge rule applicable in standard chapter 11 bankruptcy cases. That said, when, as here, a plan is confirmed non-consensually under § 1191(b), the discharge provisions of § 1192(2) apply. 11 U.S.C. § 1192.

"The overall statutory scheme often clarifies a seemingly ambiguous provision because 'only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.'" *Catt v. RTECH Fabrications, LLC (In re RTECH Fabrications, LLC)*, 635 B.R. 559, 564 (Bankr. D. Idaho 2021) (quoting *Ransom v. MBNA Bank (In re Ransom)*, 380 B.R. 799, 806-07 (9th Cir. BAP 2007)). The Debtor will demonstrate here that interpreting § 1192(2) and § 523(a) as applying only to individual debtors is the *only* interpretation that is compatible textually, historically, contextually, and equitably with the rest of subchapter V and the larger Bankruptcy Code. The Debtor will illustrate that the cross-references between § 1192(2) and § 523(a) lean toward limiting the application of § 523(a) to individual debtors only because of the plain language of the text and the history of corporate discharge provisions in the Bankruptcy Code. Moreover, the Debtor will dismantle the argument that chapter 12 discharge provisions are an appropriate analog for § 1192(2), both due to the groups of debtors to whom those provisions apply and due to the intents behind those provisions. Finally, the Debtor will show that though, on its face, making the Petitioner's debts nondischargeable might seemingly be the equitable conclusion here, it would, in fact, create more inequity among the Debtor's creditors.

A. The plain language of § 523(a) and § 1192(2) limit the exceptions to discharge found in § 523(a) to individual debtors only.

When dealing with questions of interpretation of the Bankruptcy Code, the Court begins "with the language of the statute itself." *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 69 (2011). The relevant statutory language for § 1192(2) states that "the court shall grant the debtor a discharge of all debts … 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. The language of § 523(a) states that "A discharge under section … 1141, 1192, 1228(a), 1228(b) … of this title does not discharge an individual

debtor from any debt…" 11 U.S.C. § 523(a). The language of § 523(a), taken alone, clearly applies only to individual debtors. The question, then, becomes how the cross-references between the two statutes affect the meaning of each.

1. The canon against superfluous language precludes § 523(a)'s discharge exceptions from applying to corporate debtors.

The canon of statutory construction against surplusage states that courts should "lean in favor of 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, 714 (2012). Thus, the Court should view Congress's inclusion or exclusion of a particular word or phrase as instructive in its interpretation.

Here, the Court must give meaning to the mention of § 1192(2) in the preamble of § 523(a) and conclude that §523(a)'s discharges do not apply to corporate debtors in the § 1192(2) context. If the Court were to conclude that §1192(2)'s excepted corporate debtors as well, it would render the inclusion of "1192" in § 523(a) meaningless, which would go against the canon against superfluous language. 11 U.S.C. § 523(a); *Avion Funding, LLC v. GFS Indus., LLC (In re GFS Indus., LLC)*, 2022 WL 16858009, at * 5 (Bankr. W.D. Tex. Nov. 10, 2022). Had Congress not included "1192" in this opening section of § 523(a), reading § 1192(2) as applying to both corporate and individual debtors might have been a very reasonable interpretation. However, as noted in *In re Satellite Restaurants, Inc. Crabcake Factory USA*, "the reference to § 1192 added to § 523(a) by the SBRA must be given meaning, and the only reasonable meaning is that Congress intended to continue to limit the application of the § 523(a) exceptions in a subchapter V case to individuals." *Gaske v. Satellite Restaurants, Inc. Crabcake Factory USA (In re Satellite Restaurants, Inc. Crabcake Factory USA)*, 626 B.R. 871, 876 (Bankr. D. Md. 2021).

2. The "kind of debt" referenced in § 1192(2) considers debtor type, and therefore 1192(2) refers only to individual debtors.

The Petitioner's argument here relies on the premise that the phrase "any debt … of the kind specified in section 523(a)" ignores the introductory language of that provision and refers only to the subcategories listed below that language. 11 U.S.C. § 1192(2). The Petitioner assumes that the word "kind" here focuses only on the debt itself and that the categorization of debt could not be influenced by whether its debtor is an individual or a corporation. R. at 18. However, there is nothing in the meaning or the contextual usage of "kind" to suggest that it intends to preclude the type of debtor from serving as a trait useful for categorizing debt. In fact, the Bankruptcy Code suggests quite the opposite. § 101(8) of the Code defines consumer debt by the purpose of the obligation and by its debtor being an individual. 11 U.S.C. § 101(8). Here, the language in 523(a) also demands that the debtor be an individual.

By ignoring that debtor type can affect the categorization of the debt itself, the Petitioner is cherry-picking parts of the Bankruptcy Code to make them fit her argument. While pretending that type of debtor is not essential to § 523(a) might be convenient for the Petitioner here, the Court would have to disregard the entire introductory clause of § 523(a) to soundly reach this conclusion. As aforementioned, "it is [the court's] duty to give effect, if possible, to every clause and word of a statute." *Duncan v. Walker*, 533 U.S. 167, 174 (2001). Considering only subsections (1) through (19) of § 523(a) while neglecting its introductory language would go against this longstanding principle of judicial interpretation, and so the Court must find that, when deciding whether debt is "of the kind specified in 523(a)," it must include the identity of the debtor in that calculation. 11 U.S.C. § 1192(2).

3. § 1192(2) being a more "specific" section than § 523(a) does not mean that it should govern the meaning here to prevent § 523(a) from limiting the discharge exceptions to individual debtors only.

In *In re Cleary Packaging LLC*, the Fourth Circuit ultimately held that corporate debtors were subject to the discharge exceptions of § 523(a) through § 1192(2) in part because of the statutory canon of construction dictating that the specific should govern the general. *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, 515 (4th Cir. 2022). The court there explained this canon by stating that "to the extent that one might find tension between the language of § 523(a) addressing individual debtors and language of § 1192(2) addressing both individual and corporate debtors – that the more specific provision should govern over the more general." *Id*. The Petitioner will argue this same idea, claiming that § 1192(2) should govern the interpretation here because it applies only to subchapter V bankruptcy cases, whereas § 523(a) applies to bankruptcy filed under all chapters.

However, the Court in *In re GFS Indus.* pointed out that this canon is to be applied, as the Fourth Circuit itself concedes, *only* when there is tension between the language of the two provisions in question. *In re GFS*, WL 16858009 at * 8. As noted by Justice Scalia and Professor Bryan Garner in their book on legal interpretation, this canon should only apply "when conflicting provisions simply cannot be reconciled – when the attribution of no permissible meaning can eliminate the conflict." Scalia & Garner, *supra*, at 183. The tension here is not extreme enough to make the two provisions' language irreconcilable. An interpretation of the two provisions that limits § 523(a)'s exceptions to individual debtors maintains harmony between the two provisions because the introductory language of § 523(a) references § 1192(2). WL 16858009 at * 8. Just as

lower courts have, the Court here will find that this reference makes the meaning of these two provisions alongside one another clear and thus the specific/general canon is unnecessary.

In conclusion, the canon against superfluous language warrants that § 1192's inclusion in the preamble of § 523(a) has meaning, and, given this, the only reading of the two provisions that follows logically is that § 523(a)'s exceptions to discharge, pursuant to § 1192(2), apply only to individual debtors. Further, the plain meaning of "kind" as it is used in § 1192(2)'s reference to § 523(a) allows for the consideration of whether the debtor is an individual or a corporation. Finally, the specific/general canon does not apply here because the plain text resolves any tension that would have to exist for that canon to be relevant. Thus, the plain meanings of § 523(a) and § 1192(2), taken together, should be read as excepting discharge for individual debtors, not corporate debtors.

B. The histories of the drafting of subchapter V and of the Bankruptcy Code, in general, reveal that Congress intended for the exceptions in § 523(a) pursuant to § 1192(2) to apply only to individual debtors, not corporate debtors.

Broadly speaking, the purpose of bankruptcy is to "discharge or restructure the debt that has caused the bankruptcy." *Cantwell-Cleary Co., Inc. v. Cleary Packaging, LLC (In re Cleary Packaging LLC)*, 630 B.R. 466, 469 (Bankr. D. Md. 2021), *rev'd* 36 F.4th 509 (4th Cir. 2022). In furtherance of this purpose, Congress passed the Small Business Debtor Reorganization Act ("SBRA") in 2019 and, with it, created subchapter V of chapter 11 of the Bankruptcy Code. 11 U.S.C. §§ 1181 – 1195. This addition to the Bankruptcy Code hoped to "streamline the bankruptcy process by which small business debtors reorganize and rehabilitate their financial concerns." 290 H.R. Rep. No. 116-171, at p. 1 (2019). Specifically, it tried to "address aspects of a traditional chapter 11 case that arguably do not work well or efficiently for small businesses and individuals

who meet the definition of 'debtor' set forth in § 1182." *Jennings v. Lapeer Aviation, Inc. (In re Lapeer Aviation, Inc.)*, 2022 WL 1110072, at * 1 (Bankr. E.D. Mich. April 13, 2022).

With the purposes of the SBRA and the wider Bankruptcy Code in mind, the Court should find that Congress intended for § 1192(2)'s reference to § 523(a) to apply only to individual debtors. First, the history of discharge and discharge exceptions in the Bankruptcy Code illuminates the longstanding principle that corporate discharge is highly regarded and favored in these proceedings. Second, nothing in the legislative record suggests that Congress intended to make § 523(a) apply to corporate debtors under subchapter V, as it would mark a massive departure from the broad discharge exceptions previously granted to corporations. Third, there is evidence in other areas of the Bankruptcy Code that Congress knows how to craft provisions that clearly except corporate debtors from § 523(a) discharge, and Congress not using such clear language in § 1192(2) is instructive. Therefore, taken with the plain language of the provisions, the history of discharge in the Bankruptcy Code and the drafting history of § 1192 reveal that Congress did not intend for these discharge exceptions to apply to corporate debtors.

1. The history of discharge exceptions in the Bankruptcy Code reveals that the Code has a propensity for broadly granting discharges to corporate debtors.

It is well-settled in bankruptcy law that the exceptions listed in § 523(a) do not apply to corporate debtors. *See Garrie v. James L. Gray, Inc.*, 912 F.2d 808, 812 (5th Cir. 1990) ("the 'willful and malicious injury exception to discharge, like all of the exceptions to discharge found in § 523(a), applies only to individual, not corporate debtors") (citing *Yamaha Motor Corp., U.S.A. v. Shadco, Inc.*, 762 F.2d 668, 670 (8th Cir. 1985)). In *In re JRB Consolidated, Inc.*, the court noted that "corporate debtors in chapter 11 are not subject to a complaint to determine dischargeability

of debt under § 523(a)." *New Venture Partnership v. JRB Consol., Inc. (In re JRB Consolidated, Inc.)*, 188 B.R. 373, 374 (Bankr. W.D. Tex. 1995).

A majority of the courts that have spoken definitively on whether § 523(a) should apply to individual debtors did so before the enactment of the SBRA and, thus, prior to the existence of subchapter V. See 912 F.2d at 812; 188 B.R. at 374. Only a few decisions exist on this particular issue with regard to § 1192(2), but many of those existing opinions also agree that, in the context of § 1192(2), § 523(a) should still apply to individual debtors only. *See Catt v. RTECH Fabrications, LLC (In re RTECH Fabrications, LLC)*, 635 B.R. 559 (Bankr. D. Idaho 2021); *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)*; *Gaske v. Satellite Restaurants, Inc. Crabcake Factory USA (In re Satellite Restaurants, Inc. Crabcake Factory USA)*, 626 B.R. 871 (Bankr. D. Md. 2021). Largely, these courts based their holdings on the plain texts of § 523(a) and § 1192(2) and on the history of corporate discharge in the Bankruptcy Code. *In re RTECH* notes that, though subchapter V is a relatively new part of the Code, Congress intentionally included it under the larger umbrella of chapter 11 rather than making it a new chapter, altogether. 635 B.R. at 565. Corporate discharge under chapter 11 has been "strenuously protected" and, without any instruction from Congress to the alternative, the Court must interpret § 1192(2) consistently with chapter 11's overall discharge scheme. *Mallinckrodt PLC v. City of Rockford (In re Mallinckrodt PLC)*, 2021 WL 2460227, at * 4 (Bankr. D. Del. June 16, 2021) As noted in the now-overturned bankruptcy court decision in *In re Cleary Packaging*, chapter 11 entities and subchapter V entities "act in the same general manner and should be subject to the same potential liabilities through the chapter 11 process." *Cleary Packaging*, 630 B.R. at 475.

To read § 1192(2) and § 523(a) as excepting discharge for corporate debtors would rebut years of judicial precedent regarding the scope of § 523(a) and would render meaningless Congress's decision to draft subchapter V not as its own chapter but as a piece in the larger frameworks of chapter 11 and the Bankruptcy Code.

2. The legislative history of subchapter V indicates that Congress intended for § 523(a) discharge exceptions to apply only to individual debtors in the context of § 1192(2).

The enactment of the Bankruptcy Code in 1978 represented an "intentional and decisive change by Congress" that sought to broaden the scope of discharges granted to corporate debtors and to limit the exceptions to such discharges. 635 B.R. at 565. Broad corporate discharge has been a guiding principle within chapter 11 legislation for the past forty-five years. *In re GFS Indus*., 2022 WL 16858009, at * 7. In fact, since 1978, Congress has limited the scope of corporate discharge only once, through § 1141(d)(6), and, even then, that discharge exception was extremely narrow and was fiercely debated for eight years in Congress before it became law. *Id*; 11 U.S.C. § 1141.

The legislative record while Congress was drafting § 1192(2) reveals nothing that would suggest Congress's intended to suddenly upend its longstanding practice of broadly discharging debt for corporate debtors. 626 B.R. at 878. A 2019 report from the Judiciary Committee noted that 1192(2) excepts "any debt that is otherwise nondischargeable," referring to § 523(a), which, as noted above, is widely recognized to except discharge only for individual debtors. 290 H.R. Rep. No. 116-171, at p. 8 (2019). In *In re Satellite Restaurants*, the court argues that, had the "drafters of the SBRA…intended to expand §523(a) to non-individual debtors, which would have been a dramatic change in existing chapter 11 law, the House Report most certainly would have addressed it." 626 B.R. at 878.

Furthermore, testimony submitted by bankruptcy experts in favor of the SBRA did not mention what would have been a drastic expansion of the exceptions to corporate discharge. *Id*. Given that expanding § 523(a) to include corporate debtors would completely disrupt nearly fifty years of legislative and judicial precedent on the issue of corporate discharge, that this change is completely absent from the legislative record seems, at minimum, odd, and, at most, completely destructive of the idea that Congress could have possibly intended for § 1192(2) to be read as expanding § 523(a) to apply corporate debtors. As noted in the lower court decision in *In re Cleary Packaging*, the suggestion that "Congress incorporated nineteen new exceptions to discharge for small corporations in a bill that was introduced in April 2019 and signed into law by the President in August 2019 seems not only improbable but also contradicts years of bankruptcy law and policy." 630 B.R. at 475.

3. Where Congress has given exceptions to discharge for corporate debtors, it has done so clearly, indicating that, had it intended for § 1192(2)'s mention of § 523(a) to apply to corporate debtors, it would have said so explicitly.

Not only is there no mention of drastic changes to corporate discharge law in the legislative history of the SBRA, but there is nothing in the drafting of the text itself to support the conclusion that Congress intended those changes. "When Congress has intended to provide regulatory exceptions to provisions of the Bankruptcy Code, it has done so clearly and expressly, rather than by a device so subtle as denominating a motive a cause." *FCC v. NextWave Pers. Communications, Inc.*, 537 U.S. 293, 302 (2003). In § 1141(d), a provision similar to § 1192(2), Congress did intend to except corporate debtors from discharge in certain instances, and it made that intention abundantly clear in the provision itself. Section § 1141(d)(2) articulates that "a discharge under this chapter does not discharge a debtor *who is an individual* from any debt excepted from discharge under section 523(a)…" while Section 1141(d)(6) states that "the confirmation of a plan

does not discharge a debtor *that is a corporation* from any debt (A) of the kind specified in paragraph (2)(A) or (2)(b) of section 523(a) that is owed to a domestic government unit…" 11 U.S.C. § 1141. These clauses from § 1141 (the aforementioned provision that Congress debated for eight years before ultimately passing) indicate that Congress can and has in the past successfully distinguished discharge exceptions for corporate debtors when it has meant to do so. Thus, here, given the absence of any such language, Congress, then, seemingly intended for § 523(a) discharge exceptions to apply only to individual debtors under § 1192(2). 2022 WL 16858009, at * 4.

The 4th Circuit, in *In re Cleary Packaging*, however, argued that this interpretation is inconsistent due to the inclusion of § 1141 in the preamble of § 523(a). 36 F.4th, at 516. It argues that, because § 523(a)'s preamble mentions section § 1141 just as it mentions § 1192, the exceptions to discharge would govern "only individuals, by reason of 523(a)'s limiting language…," and thus § 523(a)'s language stands at odds with § 1141(d)(6)'s application to corporate debtors. *Id*. It claims that, then, applying § 1192 to only individual debtors while still allowing 1141(d)(6) to apply to corporate debtors is inconsistent and irreconcilable. *Id*. The court in *In re GFS Indus.* rebuts this and argues that the differing contexts of § 1141(d)(6) and § 1192(2) dissolve this apparent irreconcilability. 2022 WL 16858009, at * 9. § 1141 excepts from discharge only debts from certain government entities and references only two specific paragraphs of 523(a). 11 U.S.C. § 1141. Meanwhile, § 1192(2) applies broadly to all of § 523(a) and creates no further limitations on the kinds of debt excepted from discharge except those limitations already outlined in § 523(a). 11 U.S.C. § 1192. As the court in *In re GFS Indus.* says, "there are no limitations placed on how § 523(a) would apply to a potential corporate defendant," which, thus, makes it appropriate to "interpret the same words differently" in this context. 2022 WL 16858009, at * 9.

Therefore, despite the arguments by the 4th Circuit to the contrary, this Court will find that Congress can and has successfully and clearly drafted applications of § 523(a) exceptions to discharge for corporate debtors and that its lack of any such language here is instructive. "Congress… does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions – it does not … hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns., Inc.* 531 U.S. 457, 468 (2001). To hold that § 1192(2) applies to corporate debtors would buck fifty years of legislative and judicial practice, the legislative history of the SBRA, and Congress's drafting principles regarding corporate discharge.

C. Comparisons to chapter 12 are not appropriate for these provisions because of the differences in purpose and in qualifying debtors between the two chapters.

The plain text of § 523(a) and § 1192(2), the legislative history of the SBRA and the Bankruptcy Code, and the existence of explicit discharge exceptions elsewhere in chapter 11 make clear that the best interpretation of these two provisions is that they apply only to individual debtors. However, the Petitioner will argue that § 1192(2)'s similarity to section § 1228 of chapter 12 and its interplay with § 523(a) will necessitate that § 1192(2) refers to both individual and corporate debtors. § 1228 states that "the court shall grant the debtor a discharge of all debts provided for…, except any debt ... (2) of the kind specified in section 523(a) of this title…" 11 U.S.C. § 1228. While the language here is very similar to the language in § 1192(2), the two sections are not sufficiently analogous to conclude that § 1192(2) grants exceptions to discharge for claims against corporate debtors firstly because of key differences between "the operation of chapter 11 corporate discharges and chapter 12 corporate discharges" and secondly because of unique considerations present only in chapter 12 cases. 2022 WL 16858009, at * 6.

1. Chapter 11, under which subchapter V operates, uses discharge in a completely different manner than chapter 12 uses discharge and, thus, using § 1228 to inform interpretation of § 1192(2) is inappropriate.

Two courts have interpreted the language in § 1228(a) to mean that its discharge exceptions apply to individual and corporate debtors, alike. *See New Venture P'ship v. JRB Consol. (In re JRB Consol., Inc.)*, 188 B.R. 373 (Bankr. W.D. Tex. 1995); *Southwest Ga. Farm Credit, ACA v. Breezy Ridge Farms, Inc. (In re Breezy Ridge Farms, Inc.)*, 2009 WL 1514671 (Bankr. M.D. Ga. 2009). In *In re Cleary Packaging*, the 4th Circuit uses these two judicial opinions to conclude that the "virtually identical" language found in § 1192(2) should be interpreted the same way. 36 F.4th at 516. It relies on the principle that "identical words and phrases within the same statute should normally be given the same meaning." *Hall v. US*, 566 U.S. 506, 519 (2012).

However, the Supreme Court has actually rejected this principle. *See Dewsnup v. Timm*, 502 U.S. 410 (holding the same term used multiple times in the same statute does not necessarily have the same meaning with each use). Moreover, the Thirteenth Circuit's opinion here notes that the opinions in *In re JRB* and *Breezy Farms* "hardly constitute the type of longstanding and well-established judicial interpretation necessary to raise any presumption regarding Congress's use of similar language in a very different chapter of the Bankruptcy Code." R. at 20, n. 20; *see also Lamar, Archer, & Cofrin, LLP v. Appling*, 138 S.Ct. 1752, 1762 (2018).

Further, the court in *In re Clearly Packaging* fails to note that one of the cases it relies on most to draw this conclusion does not even agree with that conclusion. 2022 WL 16858009, at * 9. While the court in *In re JRB Consolidated* does find that § 1228 should apply to corporate debtors, it explicitly contrasts chapter 11 discharges with chapter 12 discharges. 188 B.R. at 373. It notes that chapter 12's incorporation of discharge is much broader than chapter 11 discharge. *Id*. The court there noted that, given this difference, "it seems clear…that corporate debtors in chapter

11 are not subject to a complaint to determine dischargeability of debt under § 523(a). *Id* at 374. Moreover, other courts have noted that chapter 12 and chapter 11 differ too fundamentally to necessitate that their near-identical words have the same meaning. *U.S. v. Hawker Beechcraft, Inc.* (*In re Hawker Beechcraft, Inc.*), 515 B.R. 416, 430-31 (S.D.N.Y. 2014). In *In re Hawker Beechcraft*, a federal district court held that "the discharge provisions of [chapters 11 and 12], read in context, are too attenuated on the points at issue here" and do not require perfect harmony regarding the definitions of identical words they might use. *Id*.

Though the decisions in *In re JRB* and *In re Hawker Beechcraft* preceded the creation of subchapter V, the court in *In re GFS* argues that subchapter V discharge should be treated the same under the *In re JRB* reasoning as all other chapter 11 discharge, as it was drafted as a *part* of that chapter. 2022 WL 16858009, at * 9. Thus, as with the rest of chapter 11's discharge provisions, § 1192(2)'s exceptions to discharge should not apply to corporate debtors because, although the language might resemble that of § 1228, courts held that they are not analogous due to the intended breadth of their discharge provisions.

2. Chapter 12 is unique in its purpose and requirements, and, thus, its discharge provisions should not be applied to subchapter V.

Chapter 12 of the Bankruptcy Code allows "financially distressed family farmers and fishermen to propose and carry out a plan to repay all or part of their debts." CHAPTER 12 – BANKRUPTCY BASIC, UNITED STATES COURTS (2022), https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-12-bankruptcybasics#:~:text=Background,or%20 part%20of%20their%20debts. While chapter 12 does cover some corporations, this coverage is limited to a narrow group of "family-owned farming corporations," and, in these instances, there are often few meaningful differences between the farmers and their corporations. 11 U.S.C. § 101(18). These small family-owned corporations filing under chapter 12, thus, create a situation

where subjecting individual debtors and corporate debtors to the same discharge rules under chapter 12 makes sense.

Meanwhile, though there are some small owner-operated corporations that file under subchapter V, most other non-publicly traded corporations fall under subchapter V, as well. Thus, chapter 12 and subchapter V have completely different considerations from one another, meaning their discharge provisions need not and were not intended to receive identical interpretations. See 2022 WL 16858009, at * 7. As stated in *In re GFS Indus.*, because "chapter 12 cases have unique considerations that are not present in a chapter 11 case … the Court is not mandated to extend the holding that chapter 12 corporate debtors are subject to § 523 dischargeability actions into subchapter V notwithstanding the similar language between §§ 1228(a) and 1192(2)." *Id.*

In conclusion, though the Petitioner will argue that § 1228 is an appropriate analog to § 1192(2) and that their similar language conveys that they should be interpreted identically, the Court will find that the case law that supports this conclusion is minimal at best and that the varying purposes of these two sections of the Code preclude them from sharing a common meaning. The court in *In re Hawker Beechcraft* remarked that the broad language of chapter 12 "considered in conjunction with the narrowly circumscribed type of entity that may be a chapter 12 debtor renders analogy between the … discharge provisions [of chapter 12 and chapter 11] unpersuasive." 515 B.R. at 431.

D. The goals of subchapter V and the equity principles of the Bankruptcy Code necessitate that § 523(a) and § 1192(2), working in tandem, do not apply to corporate debtors.

The Supreme Court holds in *Howard Delivers Serv., Inc. v. Zurich Am. Ins. Co.*, that "[t]he Bankruptcy Code aims, in the main, to secure equal distribution among creditors." 547 U.S. 651, 655 (2006). Subchapter V, specifically, allows small business debtors "to file bankruptcy in a

timely, cost-effective manner, and hopefully allows them to remain in business." H.R. Rep. No. 116-171, at 4. Thus, the provisions of subchapter V should, ideally, promote equity among creditors while also allowing small business debtors, like the Respondent here, to remain in business. The Court will find that both goals can be maintained only by ruling that corporate debtors are not subject to the exceptions to discharge found in § 523(a), pursuant to § 1192(2).

The Fourth Circuit in *In re Cleary Packaging* concluded that, because subchapter V, unlike the rest of chapter 11, "provides benefits to small business debtors, regardless of whether they are individuals or corporations," applying § 1192(2)'s reference to § 523(a)'s exceptions to discharge only to individual debtors would be inequitable because it would treat corporate and individual debtors differently. 36 F.4th, at 517. That court found that this would frustrate the "important purpose for subchapter V" of "simplifying reorganizations for small businesses and reducing the administrative costs for those businesses." *Id*. However, as the court in *In re GFS Indus*. points out that that purpose would not be frustrated in any way by adhering § 1192(2)'s interpretation to the nearly fifty years of precedent that exempts corporations from discharge under § 523(a). 2022 WL 16858009, at * 10. The court argues that making § 523(a) applicable to corporations only in the subchapter V context would be such a departure from the rest of chapter 11 that it would "disincentivize corporations from availing themselves of the benefits of subchapter V." Id. The lower court ruling in *In re Cleary Packaging* mentions this as well, noting that small entities and large corporations act in "the same general manner and should be subject to the same potential liabilities through the chapter 11 process." 630 B.R., at 475. Were the Court to find that § 523(a) should apply, in the § 1192(2) context, to corporate debtors, it would punish smaller corporations for conduct for which larger corporations would not be punished. As the lower court in *Cleary* notes, "it seems incongruent that Congress would penalize a smaller entity for similar individual

conduct." Thus, the equitable result here is that the court interprets § 523(a) to apply only to individual debtors. *Id*.

The Fourth Circuit, in *In re Cleary Packaging*, also argues that, if § 523(a) applies only to individuals through § 1192(2), it would remove creditors' rights that Congress intentionally added to non-consensual subchapter V plans to "provide an additional layer of fairness and equity to creditors to balance against the altered priority that favors the debtor." 36 F.4th at 517. However, the court in *In re GFS Indus.* rebuts this argument and notes that these unsecured creditors actually benefit from not having any of their debts declared nondischargeable. 2022 WL 16858009, at * 10. First, corporate debtors who hold nondischargeable debts often liquidate because, under subchapter V, plans can only be confirmed so long as the "debtor will be able to make all the payments under the plan," and nondischargeable debt often makes this outcome impossible. *Id*. Liquidation results in unsecured creditors generally receiving less than they would under a reorganization plan. *Id*. Second, those creditors with dischargeable debts typically lose dollars they are owed because of the preference given to nondischargeable debts. *Id*. For instance, here, if the Debtor is forced to eventually pay the Petitioner's debts, other identical tort claimants will have fewer funds available to them and, ultimately, the Petitioner will receive a higher payout than other similarly situated claimants. R. at 22. This would be, quite literally, the opposite of equity. Third, this will result in a large number of creditors seeking judicial review of their debts so that those debts may be deemed nondischargeable, which will overload the courts and create inequities among creditors. 2022 WL 16858009, at * 10. The court in *In re GFS* Indus. calls this "a loss for everyone involved." *Id*.

This Court will find that the goals of subchapter V and the equity principles of the larger Bankruptcy Code can be achieved only by interpreting § 1192(2) and § 523(a) to apply only to individual debtors.

CONCLUSION

The Thirteenth Circuit correctly decided both issues in the case below. For the foregoing reasons, the Court should affirm that the bankruptcy court below properly confirmed the Plan's non-consensual release of direct third-party claims against Strawberry Fields. Further, the Debtor is entitled to the discharge of its debts because it is a corporate debtor and, thus, § 523(a) is not applicable to it under § 1192(2).

APPENDIX A

11 U.S.C. § 105(a). Power of Court.

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 523(a)(6). Exceptions to Discharge.

(a) A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt –

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

11 U.S.C. § 524(e). Effect of Discharge.

(e) Except as provided in subsection (a)(3) of this section, 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. § 1123(a)(5). Contents of Plan.

(a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall

(5) provide adequate means for the plan's implementation, such as—

(A) retention by the debtor of all or any part of the property of the estate;

(B) transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan;

(C) merger or consolidation of the debtor with one or more persons;

(D) sale of all or any part of the property of the estate, either subject to or free of any lien, or the distribution of all or any part of the property of the estate among those having an interest in such property of the estate;

(E) satisfaction or modification of any lien;

(F) cancellation or modification of any indenture or similar instrument;

(G) curing or waiving of any default;

(H) extension of a maturity date or a change in an interest rate or other term of outstanding securities;

(I) amendment of the debtor's charter; or

(J) issuance of securities of the debtor, or of any entity referred to in subparagraph (B) or (C) of this paragraph, for cash, for property, for existing securities, or in exchange for claims or interests, or for any other appropriate purpose;

11 U.S.C. § 1123(b)(5). Contents of Plan.

(b) Subject to subsection (a) of this section, a plan may –

(5) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; and

11 U.S.C. § 1192(2). Discharge.

If the plan of the debtor is confirmed under section 1191(b) of this title, 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, the court shall grant the debtor a discharge of all debts provided in section 1141(d)(1)(A) of this title, and all other debts allowed under section 503 of this title and provided for in the plan, except any debt—

(2) of the kind specified in section 523(a) of this title.