Team 32R

No. 22-0909

IN THE

Supreme Court of the United States

OCTOBER TERM, 2022

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 32R

JANUARY 19, 2023

COUNSEL FOR RESPONDENT

QUESTIONS PRESENTED

I. Does a bankruptcy court have the statutory, constitutional, and equitable authority to confirm a Subchapter V plan containing a nonconsensual third-party direct release where the plan was overwhelmingly supported by creditors, the third-party provided substantial contribution and shared an indemnity relationship with the debtor, and the proposed plan maximized creditor payouts while avoiding debtor liquidation?

II. Under a nonconsensual Subchapter V plan confirmation under section 1192, is a small business debtor discharged of the kinds of debts section 523(a) renders nondischargeable for individual debtors?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

<u>SUPREME COURT OPINIONS</u>

<u>DISTRICT COURT CASES</u>

<u>BANKRUPTCY COURT CASES</u>

<u>UNITED STATES CODE</u>

OTHER

OPINIONS BELOW

The Thirteenth Circuit Court of Appeals' decision is available at No. 22-0909 and reprinted at Record 2. The bankruptcy court summarily decided in favor of the debtor, Penny Lane Industries. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed in favor of Penny Lane.

STATEMENT OF JURISDICTION

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

RELEVANT STATUORY PROVISIONS

Determining this action requires interpreting specific provisions of Title 11 of the United States Code. Relevant provisions are listed below and are fully provided in the Appendix.

The relevant portion of 11 U.S.C. § 105(a) provides:

> (a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.

The relevant portion of 11 U.S.C. § 523(a)(6) provides:

> (a) A discharge under section . . . 1192 . . . does not discharge an individual debtor from any debt—
>
> (6) for willful or malicious injury by the debtor to another entity or to the property of another entity.

The relevant portion of 11 U.S.C. § 1123(b)(6) provides:

> (a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall-
>
> (6) provide any other appropriate provision not inconsistent with the applicable provisions of this title.

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

> If the plan of the debtor is confirmed under section 1192(b) of this title, . . . the court shall grant the debtor a discharge of all debts . . . except for any debt—
>
> (2) of the kind specified inspection 523(a) of this title.

STATEMENT OF THE CASE

This appeal arises from Petitioner's attempt to thwart the confirmation of a Subchapter V Chapter 11 plan over prodigious support from similarly situated creditors. By seeking to preclude the use of equitable settlement devices while demanding large corporations be afforded greater discharge relief than small businesses, Petitioner's appeal jeopardizes American free enterprise and undercuts the ability of the Bankruptcy Code to perform its essential functions: provide maximum payouts to creditors, and a fresh start for debtors.

I. FACTUAL HISTORY

Penny Lane Industries, Inc. (the "Debtor") operates as a small, wholly owned subsidiary of Strawberry Fields Foods, Inc. ("Strawberry Fields"), providing jobs and capital to the economically distressed Blackbird, Moot area as a manufacturer of plastic, glass, and metal food containers. R. at 4–5. Around 2017, it became apparent to Federal and State authorities that the groundwater relied on by Blackbird and surrounding communities had been contaminated by industrial chemicals. *Id.* at 5. Since at least 2013, residents have been exposed to carcinogenic toxins at 250 to 3,000 times permissible rates, causing mass sickness, congenital disabilities, and sometimes death. *Id.* Petitioner, Eleanor Rigby, a longtime resident of Blackbird, suffered the loss of her four-year-old daughter to leukemia, allegedly due to exposure to toxins in the Liverpool River. *Id.*

While the source of the contaminates remains unknown, it appears Debtor has been tried and convicted in the court of public opinion as the source of the contamination, leading Petitioner and hundreds of other residents to file suit in the court of law. *Id.* at 5–6. While many of the lawsuits contain similar allegations, Petitioner specifically alleges that Debtor had a longstanding practice of disposing its industrial waste at its Blackbird facility. *Id.* at 5. Petitioner further alleges that Debtor's now-deceased CEO was aware as early as 2014 these practices had potentially contaminated Blackbird's groundwater, posing a risk to residents. *Id.* Petitioner alleges Strawberry Fields is liable for its subsidiary's conduct on the theory it knew or should have known of Debtor's waste disposal procedure. *Id.* at 6.

For its part, Debtor maintains that its waste disposal policy was compliant with applicable law and regulation at all times, denies knowledge its practices could or did result in groundwater contamination, and points to dozens of other manufacturing facilities along the Liverpool River as plausible alternative sources of the pollution. *Id.* However, Debtor faced 10,000 individual claims totaling $400 million in disputed and unliquidated tort damages in addition to nearly $2 million already owed to trade creditors. *Id.* at 7. In order to manage increasing litigation costs and continue employing workers at its facility, Debtor filed for bankruptcy on January 11, 2021. *Id.* at 6–7.

II. PROCEDURAL HISTORY

Upon commencement of the bankruptcy case, Petitioner timely filed a currently undisputed unsecured claim for $1 million. *Id.* Weeks later, Petitioner initiated an adversary proceeding seeking to render her claims against Debtor nondischargeable pursuant to sections 1192(2), 523(a)(6) of the Bankruptcy Code. *Id.* at 7. Petitioner argued that section 1192(2) broadly applied the exceptions to discharge outlined in section 523(a) to any entity filing for Subchapter V relief, including her tort claims alleging willful and malicious injury. *Id.* In response, Debtor filed a motion to dismiss, pointing out that section 523(a) plainly limited its application to individual debtors, precluding its utilization against Debtor, a small business. *Id.* The bankruptcy court ultimately resolved this issue in favor of Debtor, finding section 1192, incorporating section 523(a), necessarily limited dischargeable debts held by individuals, not businesses. *Id.* The Thirteenth Circuit affirmed. *Id.* at 23.

While filing the automatic stay halted pending litigation against Debtor, it did not stop ligation against Strawberry Fields. *Id.* at 7. In order to maximize the possibility of global settlement, the bankruptcy court issued a temporary injunction on litigation against Strawberry Fields. *Id.* at 7–8. This effort was ultimately successful, and after two months of negotiation, the parties stipulated to a complex settlement framework ultimately commemorated in the Plan. *Id.* at 8. The Plan creates a creditors' trust funded by Debtor's disposable income for five years, along with a $100 million contribution from Strawberry Fields. *Id.* In exchange for its contribution, Strawberry Fields sought to obtain the broad release of any and all claims against it relating to Debtor's prepetition conduct or the bankruptcy case. *Id.*

Petitioner participated in the bankruptcy case but did not participate in global settlement and likewise did not support the confirmation of the Plan, despite over 95 percent of similarly situated creditors doing so. *Id.* at 9. Petitioner argued on the merits that third-party direct releases are not permissible under bankruptcy and nonbankruptcy law. *Id.* A second objection to the Plan was filed by Norwegian Wood Bank (the "Bank"), which objected to Debtor's valuation of its secured collateral as unfair and inequitable under sections 1191(b) and 1129(b)(2)(A). *Id.* The bankruptcy court ultimately confirmed the plan over both objections pursuant to section 1191(b). *Id.* at 10–11. To Petitioner's objection, the court held that while third-party direct releases are appropriate only in extraordinary circumstances, the present case fit the bill. *Id.* Petitioner timely appealed this result, which was affirmed by the United States Court of Appeals for the Thirteenth Circuit. *Id.* at 23. To the Bank's objection, the court held that Debtor's valuation was fair and equitable. *Id.* at 10. The Bank did not appeal. *See, e.g.*, *id.* at 10.

STANDARD OF REVIEW

As the parties do not dispute the facts presented on appeal, the Court is asked to interpret the Bankruptcy Code's statutory scheme.[1] This Court reviews questions of law *de novo*. *Pierce v. Underwood*, 487 U.S. 552, 558 (1988). The *de novo* standard applies even when appellate courts review bankruptcy questions involving a mixed set of laws and facts. *U.S. Bank N.A. ex rel. Vill. at Lakeridge v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 967 (2018).

SUMMARY OF THE ARGUMENT

The Thirteenth Circuit correctly ruled in favor of the Debtor when it held, first, that Debtor's subchapter V plan containing nonconsensual third-party releases was properly confirmed by the bankruptcy court pursuant to its constitutional and statutory authority, providing the most equitable outcome for Penny Lane, Ms. Rigby and all other creditors, and the blackbird community writ large; and second, that section 1192's referenced discharge exceptions apply only to individuals as it incorporates the entirety of section 523(a), including its prefatory language, as evidenced by the plain meaning, statutory context, legislative history, and the policy objectives of the Code.

Ms. Rigby's appeal seeks to preclude the bankruptcy court's constitutional and statutory powers, denying bankruptcy's ability to successfully restructure complex and intertwined debtor-creditor relationships. As a core proceeding arising under bankruptcy, plan confirmation is within a bankruptcy court's statutory and constitutional powers, including powers available to enjoin third parties in bankruptcy proceedings. As Ms. Rigby and other similarly situated creditors' claims

[1] The Bankruptcy Code can be found under Title 11 of the United States Code (the "Code"). Sections of the Code will hereinafter be referred to as "section ___".

against Strawberry Fields could not be litigated without involving Penny Lane, and any judgments collected against Strawberry Fields would eventually constitute claims against Penny Lane, the bankruptcy court necessarily and appropriately confirmed a plan of reorganization restructuring these complex and intertwined debtor-creditor relationships to the benefit of all parties.

Similarly, this Court cannot sustain Ms. Rigby's appeal to procedural due process because she was provided both notice and an opportunity to be heard. Indeed, creditors participating in the bankruptcy and potential future claimants have all been afforded notice of the restructuring of the creditor-debtor relations, with the Plan confirmation proceeding seeking the input of creditors as classes. The U.S. Constitution grants the right to a constitutionally adequate procedure, not a specific one. While the claimants may lose the right to name Strawberry Fields as a defendant, they are still entitled to redress their grievances in a district court and collect against the creditors' trust.

At the very least, the nonconsensual release of claims against Strawberry Fields was related to the bankruptcy case based on its connection with the Debtor's estate. In such a case, the bankruptcy court may adjudicate the proceeding upon the parties' consent, express or implied. This Court has determined that a claimant can waive objections to a court's jurisdiction where they engage in the litigation process on the merits and fail to file a timely objection to the court's jurisdiction. During the confirmation proceeding, Petitioner argued against the legality of nonconsensual releases but did not challenge the bankruptcy court's authority to issue a decision. Petitioner brought up subject matter jurisdiction on appeal only after receiving an adverse ruling. Accordingly, Petitioner's objection is a litigation tactic in contravention of her previous willingness to allow the court to confirm the Plan.

Most courts evaluating the legality of nonconsensual third-party direct releases have found it harmonious with the Bankruptcy Code. The minority of courts reaching the opposite conclusion generally rely on a narrow interpretation of the word *does* in section 524(e) to operate as a mandate precluding the discharge of third-party liabilities. However, *does* is not an authoritative verb and therefore generally describes the effect of discharge rather than prohibiting an effect of discharge. Per the equitable powers of sections 105(a) and 1123, a bankruptcy court may modify this general state in the interests of fairness, justice, and equity. Courts which have found section 5224(g) to carve an exception to section 523(e) are similarly misguided. This Court has already declined to interpret section 524(g) as an exception to a general rule reading section 524(e) prescriptively. This Court should therefore affirm the Thirteenth Circuit and find that in narrow, extraordinary circumstances, the effect of a debtor's discharge may be modified to encompass derivative liability of third parties as expressed in a confirmable Plan.

Finally, the Plan constitutes the best possible outcome for all parties, including Petitioner. If the goal of bankruptcy is to rehabilitate the Debtor, and Petitioner does not dispute that Debtor would likely face liquidation absent the Plan as currently contemplated, it is indisputable Debtor would be denied its chance at a fresh start should the Thirteenth Circuit be overturned. This Court should also not discount that Debtor is an employer in an economically challenged municipality. Liquidation is the worst-case scenario, can only be avoided by the Plan, and should therefore be upheld by this Court.

Ms. Rigby's appeal seeks to render the vast majority of Debtor's debts nondischargeable, foreclosing the possibility of successful reorganization in contravention of the clear text of the statutes, the legislative and statutory context, and the goals of the Bankruptcy Code. The plain text of section 1192 incorporates the entirety of section 523(a), including its prefatory language applying its exceptions to discharge to individuals.

This interpretation is supported by canons of statutory construction, particularly that a general reference to a specific statute must incorporate the instructions of the specific statute. As section 523(a) provides guidance on topics for which section 1192 is silent, the former's specificity should govern the latter's generality. Further, Subchapter V's general placement within Chapter 11 should give similar discharges to entities who file underneath. As such, non-individuals filing Subchapter V should receive a similar discharge to entities filing under Chapter 11 to render the scheme harmonious and synchronous.

Further, the clear mandate of Congress in creating Subchapter V bankruptcy was to make bankruptcy filing easier and less costly for small businesses, maximizing the possibility of a successful reorganization. Petitioner's proposed statutory interpretation runs contra to Congress' clearly expressed intentions by increasing the number of nondischargeable debts to small businesses, decreasing the likelihood of successful reorganizations. This approach also provides undue deference to a particular class of unsecured creditors (those owed section 523(a) debts), rendering Debtor's assets free and clear of all senior liens and interests, paving the way for unobstructed asset seizure.

Accordingly, this Court should AFFIRM.

ARGUMENT

This Court should affirm the judgment of the Thirteenth Circuit and find that bankruptcy courts are permitted to exercise their constitutional, statutory, and equitable authority pursuant to sections 105(a) and 1123(b)(6) to make appropriate use of nonconsensual third-party releases contemplated by Subchapter V plans of reorganization. This Court should also find that small business debtors are entitled to the same discharge privileges afforded to larger enterprises as per Congress's plain, unambiguous mandate.

I. THE THIRTEENTH CIRCUIT CORRECTLY HELD THAT NONCONSENSUAL THIRD-PARTY DIRECT RELEASES ARE AN AVAILABLE TOOL TO EFFECTUATE THE GOALS OF SUBCHAPTER V BANKRUPTCY.

Congress has entrusted bankruptcy judges with broad powers and the duty to restructure creditor-debtor relationships for the benefit of society and all interested parties. Based on the Bankruptcy Code's statutory language, the Due Process Clause of the Fourteenth and Fifth Amendments, the Supreme Court's decision in *Stern*, and the goals of bankruptcy policy, nonconsensual third-party releases are permissible, equitable tools in the restructuring of complex creditor-debtor relationships.

A. The bankruptcy court had statutory and constitutional jurisdiction to adjudicate the confirmation of Debtor's Subchapter V Plan and all other issues related to the bankruptcy case's administration.

Bankruptcy courts derive statutory subject matter jurisdiction from the United States Code. *See U.S. Brass Corp. v. Travelers Ins. Grp., Inc.* (*In re U.S. Brass Corp.*), 301 F.3d 296, 303 (5th Cir. 2002). In the American tradition of checks and balances, Congress has allocated subject matter jurisdiction over bankruptcy cases and proceedings between bankruptcy courts and federal and state courts, with the latter able to refer cases to the former. *See* 11 U.S.C. § 157(a). Upon referral, a bankruptcy court may hear and determine all Title 11 cases and all proceedings arising under the Code or in a bankruptcy case. *See* 11 U.S.C. § 157(b)(1). A bankruptcy court also has the authority to hear proceedings relating to a bankruptcy case, with the power to determine such cases upon the parties' consent. *See* 11 U.S.C. § 157(c)(1)–(2). Here, as the bankruptcy court had core *arising under* jurisdiction to determine plan confirmation proceedings, and at least *relating to* non-core jurisdiction to adjudicate Petitioner's objection, Petitioner's appeal cannot be sustained.

1. Debtor’s Plan confirmation proceeding arose under the Bankruptcy Code, granting the bankruptcy court subject matter jurisdiction notwithstanding the parties' consent.

A bankruptcy court has jurisdiction under Title 11 when a right or “cause of action [is] created or determined by a statutory provision of the Bankruptcy Code.” *Reynard v. Karass* (*In re Saito Bros.*), 560 B.R. 540, 547 (Bankr. D. Idaho 2016) (citing *Battle Ground Plaza, LLC v. Ray* (*In re Ray*), 624 F.3d 1124, 1131 (9th Cir. 2010)). Congress enumerated several core proceedings arising under the Code, including the confirmation of a debtor’s reorganization plan. *See* 11 U.S.C. § 157(b)(2)(L). Further, Congress granted bankruptcy courts special equitable powers in Subchapter V to confirm plans of reorganization, even over the objections of creditors. *See* 11 U.S.C. § 1191(b). A proceeding arises in a bankruptcy case when “it is an administrative matter unique to the bankruptcy process that has no independent existence outside of bankruptcy and could not be brought in another forum, but whose cause of action is not expressly rooted in the Bankruptcy Code.” *Reynard.*, 560 B.R. at 547 (quoting *Battle Ground Plaza*, 624 F.3d at 1131).

Plan confirmation, as a core bankruptcy proceeding specifically authorized under the Code, granted the bankruptcy court subject matter jurisdiction to adjudicate Debtor’s plan confirmation proceeding. In addition, the Plan’s restructuring of the creditor-debtor relationship arose from a plan of reorganization and is a process unique to bankruptcy law. Accordingly, the Plan’s contemplated method and manner of restructuring this relationship was a question appropriately adjudicated by the bankruptcy court.

In *Stern*, this Court considered whether a bankruptcy court had the authority to enter a final judgment on a state law counterclaim left unresolved in ruling on a creditor’s proof of claim. *Stern v. Marshall*, 564 U.S. 462, 487 (2011). This Court determined that because the resolution of the counterclaim was not necessary for the bankruptcy court’s duty of resolving the allowance of a creditor’s claim, it exceeded its constitutional authority on a matter external to bankruptcy and exclusively afforded to Article III courts. *Id.* This Court did not hold a bankruptcy court can never hear or adjudicate causes of action based on tort law, merely that "Congress exceeded its authority under the Constitution in one isolated instance by granting bankruptcy courts jurisdiction to enter final judgments on counterclaims" unrelated to and unresolvable by a bankruptcy court. *In re Safety Harbor Resort & Spa*, 456 B.R. 703, 705 (Bankr. M.D. Fla. 2011); *see also Stern*, 564 U.S. at 503.

Here, the bankruptcy court had to resolve the question of the third-party releases in order to confirm the Plan and restructure the debtor-creditor relationship. *See* R. at 9. Plans of reorganization are tools utilized by bankruptcy courts to restructure the creditor-debtor relationship. *See In re FirstEnergy Sols. Corp.*, 606 B.R. 720, 735 (Bankr. N.D. Ohio 2019). Debtor's Plan did not release claims exclusive to Strawberry Fields' conduct, but rather those deriving from Debtor's prepetition conduct. *Id.* at 8. Debtor's creditor-debtor relationships are thus intimately intertwined with its creditors' claims against its parent company. *See* R. at 6. Both the bankruptcy and appellate courts determined that the restructuring of Debtor's financial relationships required the release of Strawberry Fields. *See id.* at 10, 14. Further, the bankruptcy court did not believe that global settlement between the interested parties was possible, absent issuing a temporary stay on litigation against Strawberry Fields. R. at 7–8.

The present matter is thus distinguishable from *Stern* because while the claims released by the Plan are not entirely derivative of claims against Debtor, they are exclusively based on damages resulting from Debtor's alleged prepetition conduct and, therefore, could not be resolved or litigated without the involvement of Debtor. Therefore, because plan confirmation expressly arises under the Code, and the resolution of the Plan confirmation proceeding required a restructuring of the creditor-debtor relationships, including that of third parties, the bankruptcy court had core jurisdictional authority to bind all parties in interest to the Plan and did not run afoul of the constitutional delegation of state law claims unrelated to bankruptcy.

2. Debtor's Plan did not deny Petitioner her due process rights; it merely channeled them into a different constitutionally adequate procedure.

The Due Process Clause of the Fourteenth Amendment provides that no government shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV; *see also* U.S. Const. amend. V. The U.S. Constitution applies in full force to bankruptcy courts, as all other courts. *Bogdan Law Firm v. Marsh USA, Inc.* (*In re Johns-Manville Corp.*), 551 B.R. 104, 113 (S.D.N.Y. 2016). Due process affords notice and a meaningful opportunity to be heard. *See Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). As such, bankruptcy courts cannot deprive a person of a cognizable property interest, including a cause of action for damages. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982).

In *Mallinckrodt*, pharmaceutical debtors and their non-debtor affiliates faced hundreds of mass tort claims resulting in the filing of Chapter 11 bankruptcy and the proposal of a plan calling for the nonconsensual release of the non-debtor affiliates. *In re Mallinckrodt Pub. Ltd. Co.*, 639 B.R. 837, 850 (Bankr. D. Del. 2022). The court, ultimately approving the plan, noted that claimants' due process rights had not been violated because they received adequate notice sufficient to file an objection and a meaningful opportunity to be heard by the channeling of their claims into a creditors' trust, providing all claimants the "equal opportunity to recover on their claims" upon a hearing in the district court. *Id.* at 859 (quoting *Ad Hoc Comm. of Pers. Injury Asbestos Claimants v. Dana Corp.* (*In re Dana Corp.*), 412 B.R. 53, 62 (S.D.N.Y. 2008)).

It cannot be argued that Petitioner would have been unaware or oblivious to Debtor's proposed plan. Petitioner, like the claimants in *Mallinckrodt*, received notice of the bankruptcy and Debtor's proposed plan, allowing her to timely file an objection at the confirmation hearing.

R. at 9. Further, the bankruptcy court did not adjudicate Petitioner's claim on the merits but merely confirmed the Plan, releasing Strawberry Field's direct liability. *Id.* at 10. This result, however, does not preclude collection and an opportunity to be heard. Petitioner retains the right to prove her allegations involving Strawberry Fields before an Article III court and collect any debts owed to her through the creditors' trust. *Id.* All potential claimants are entitled to the same notice and opportunity to be heard under the same mechanism.

In *MacArthur*, the Second Circuit held that even creditors who were not a party to a bankruptcy proceeding were afforded due process rights since the bankruptcy court availed itself of hearings and related claims. *MacArthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, 94 (2d Cir. 1988). The court held that the lower court's orders were within its equitable powers, including preserving the debtor's estate and allowing all classes of creditors to participate in one proceeding. *Id.* Here, while some future claimants may not have been able to participate in the plan confirmation proceedings, they were still afforded consideration as a class of creditors. R. at 8–9.

Therefore, the bankruptcy court did not adjudicate any claim or rob any party of their day in court but restructured the complicated financial relationship between Debtor, its creditors, and Strawberry Fields. The claimant's manner of due process might have changed, but their right to due process remained the same. "The categories of substance and procedure are distinct," a person is not entitled to a specific procedure, merely a "constitutionally adequate" one. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985).

Indeed, due process may be appropriately delegated to another agency with authority to hear a claim. *See Crowell v. Benson*, 285 U.S. 22, 56 (1932) (held agencies can adjudicate facts within the constitution's due process clause). Like an agency, bankruptcy courts may hear and adjudicate claimants' facts as it relates to the core duty of administrating a bankruptcy estate. *See* *id.* As here, where claims against Strawberry Fields arise out of Penny Lane's prepetition conduct and where the Petitioner is indirectly collecting against Debtor, the bankruptcy court has the core authority to hear facts related to the administration of a case, with the final determination of collection left to the district court. *See* R. at 7–8.

Petitioner and all other potential claimants and creditors have been afforded constitutionally adequate notice and a meaningful opportunity to be heard because all interested parties have been provided with adequate notice and may pursue their claims in an Article III court to obtain an available remedy through the creditors' trust.

3. At the very least, Petitioner requested and obtained an order from the bankruptcy court granting or rejecting Debtor's Plan, implicitly granting the bankruptcy court jurisdiction to hear the claim.

The test for whether a proceeding relates a bankruptcy case is "whether the outcome of that proceeding could conceivably have *any* effect on the estate being administered in bankruptcy." *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (emphasis added). Such a proceeding "need not necessarily be against the debtor," instead, it must "alter the debtor's, rights, liabilities, options, or freedom of action" and impact the handling or administration of the bankruptcy estate. *Id.* As it relates to a Subchapter V estate, *related to* jurisdiction "extend[s] more broadly" to encompass third-party actions where the proceeding would negatively impact a debtor's chance at successful reorganization. *See Celotex Corp. v. Edwards*, 514 U.S. 300, 310 (1995).

In the present case, Petitioner sought relief from the bankruptcy court to reject Debtor's Plan on the basis that nonconsensual third-party direct releases are legally and procedurally precluded. R. at 9. As explained above, the bankruptcy court made extensive findings of fact determining the releases, securing a $100 million contribution to the creditors' trust from Strawberry Fields, are Debtor's best chance to reorganize and avoid liquidation. *Id.* at 10.

Accordingly, allowing Petitioner to void the centerpiece of Debtor's Subchapter V plan "would have a direct and substantial adverse effect on [Debtor's] ability to undergo a successful reorganization," limiting Debtor to liquidation or dismissal. *Celotex*, 514 U.S. at 310; *see also* R. at 10. That the releases involved a third-party is non-dispositive because the releases made a material difference in the Debtor's ability to reorganize. *See Celotex*, at 310. The releases contemplated by the Plan are thus necessarily at least *related to* the bankruptcy case, particularly because the released third-party claims are only those based on or related to the Debtor's prepetition conduct. R. at 8–9.

Under *related to* jurisdiction, the fundamental question concerning the bankruptcy court's authority to adjudicate a proceeding is whether Petitioner consented to adjudication. "Consent to adjudication by a bankruptcy court need not be express, but must be knowing and voluntary." *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665 (2015). To determine whether a litigant has implicitly consented to a bankruptcy court's authority, a court should "examine[] the record" for "indications of acquiescence." *Sheridan v. Michels* (*In re Sheridan*), 362 F.3d 96, 114 (1st Cir. 2004) (citing *In re G.S.F. Corp.*, 938 F.2d 1467, 1477 (1st Cir. 1991). A classic indicator of acquiescence is the "[f]ailure to object" to a bankruptcy court's authority, especially where a litigant participated in a proceeding on the merits only to appeal later an adverse decision based on subject matter jurisdiction. *Beitel v. OCA, Inc.* (*In re OCA, Inc.*), 551 F.3d 359, 368 (5th Cir. 2008); *see also Stern*, 564 U.S. at 481–82.

Here, Petitioner actively participated in the bankruptcy court's determination of the legality of nonconsensual releases on the merits, urging the court to find them legally precluded under bankruptcy and nonbankruptcy law. R. at 9. Petitioner did not object to the court's authority to render a decision until appeal. *Id.* at 10. This method of engagement is more akin to a sandbagging litigation tactic, collaterally appealing an adverse judgment than a legitimate objection sustained throughout the litigation. Based on the record, Petitioner demonstrated an initial willingness to accept the authority of the bankruptcy court and thereby implicitly consented to the court's subject matter jurisdiction, giving the bankruptcy court full authority to hear and determine Petitioner's objection and precluding the possibility of overstepping the bankruptcy court's constitutional limits. As the release of claims against Strawberry Fields necessarily related to Debtor's bankruptcy case, and Petitioner has consented to the bankruptcy court's jurisdiction, the bankruptcy court indisputably acted within its constitutional and statutory authority.

B. Third-party nonconsensual releases are in harmony with all provisions of the Bankruptcy Code.

Congress entrusted bankruptcy judges with broad, equitable powers to effectuate the policies of the Code. According to section 105, "[t]he court may 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) (emphasis added). As it relates to the contents of a plan of reorganization, a court may further "include any . . . appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6) (emphasis added). Further, a confirmable plan must "provide adequate means for the plan's implementation." 11 U.S.C. § 1123(a)(5).

Based on these traditionally broad equitable powers, most courts addressing third-party releases' availability have correctly held that nonconsensual third-party direct releases are permittable under the Code, provided they are necessary, appropriate, and not inconsistent with any provision of the bankruptcy code. *See, e.g.*, *In re Mahoney Hawkes, L.L.P.*, 289 B.R. 285 (Bankr. D. Mass. 2002); *Deutsche Bank AG, London Branch v. Metromedia Fiber Network, Inc.* (*In re Metromedia Fiber Network, Inc.*), 416 F.3d 136, 141 (2d Cir. 2005); *Behrmann v. Nat'l Heritage Found., Inc.*, 663 F.3d 704, 712–13 (4th Cir. 2011); *Class Five Nev. Claimants v. Dow*

Corning Corp. (*In re Dow Corning Corp.*), 280 F.3d 648, 657 (6th Cir. 2002); *Specialty Equip. Cos.*, 3 F.3d 1043, 1049 (7th Cir. 1993); *In re U.S. Fidelis, Inc.*, 481 B.R. 503, 517 (Bankr. E.D. Mo. 2012); *Munford v. Munford*, 97 F.3d 449, 455 (11th Cir. 1996). Nevertheless, a minority of Circuit courts have held the opposite, believing that the nonconsensual release of claims against third parties runs afoul of section 524(e). *See, e.g.*, *Bank of N.Y. Tr. Co., NA v. Off. Unsecured Creditors' Comm.* (*In re Pac. Lumber Co.*), 584 F.3d 229, 252–53 (5th Cir. 2009); *Resorts Int'l v. Lowenschuss*, 67 F.3d 1394 (9th Cir. 1995); *In re W. Real Estate Fund*, 922 F.2d 592, 602 (10th Cir. 1990), *modified sub nom. Abel v. West*, 932 F.2d 898 (10th Cir. 1991). This court should join in the majority's reasoning and find that nonconsensual third-party direct releases are statutorily permitted plan devices consistent with the Bankruptcy Court's scheme.

Section 524(e) 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). This, plainly, does not prohibit nonconsensual third-party releases but rather ensures "co-debtors or guarantors (who are not debtors in the bankruptcy case), and their property, are not *automatically* released from the debt or guaranty upon the discharge of a debtor." *In re Digit. Impact*, 223 B.R. 1, 10 (Bankr. N.D. Okla. 1998) (emphasis in original). The operative verb *does*, is the "third person singular present indicative of 'do,'" which means "to act" or "acts." *See Does*, Oxford English Dictionary 362 (4th ed. 2011) (defining the word *does*). *Does* is a descriptive, not prescriptive, verb. *Id.* Hence, section 524(e) does not mandate that a debtor's discharge *never* release the liability of other parties; it merely provides that "if the plan does not otherwise specify such releases, the discharge arising under section [1192] does not affect a creditor's claim against a non-debtor." *In re Transit Grp.*, 286 B.R. 811, 816 (Bankr. M.D. Fla. 2002). If Congress intended the blanket mandate that a discharge never affects the liability of third parties, "it would have used the mandatory terms 'shall' or 'will' rather than the definitional term 'does.'" *Airadigm Commc'ns, Inc. v. FCC* (*In re Airadigm Commc'ns, Inc*.), 519 F.3d 640, 656 (7th Cir. 2008).

Nonconsensual third-party releases are also not inapposite of section 524(g)'s limitations of the effects of discharge on third parties. *See* 11 U.S.C. § 524(g). In *Travelers*, Supreme Court considered the nature of section 524(g) regarding third-party releases. *Travelers Indem. Co. v. Bailey*, 577 U.S. 137, 150 (2009). This Court reasoned that section 524(g) is an attempt by Congress to explicitly authorize bankruptcy courts to create collectible trusts in the asbestos industry. *Id.* This Court also acknowledged the circuit split regarding nonconsensual third-party direct releases but expressly declined to apply section 524(g) to nullify such practices. *Id.* Accordingly, this Court has already interpreted the plain meaning of section 524(g) not to preclude the use of releases as contemplated in the Plan. *Id.*

Here, the terms of the Plan change the general discharge state, releasing Strawberry Fields of derivative liability. *See* R. at 8. The Plan is also 'appropriate' and 'necessary' sufficient to warrant the use of the bankruptcy judge's equitable goals. We urge this court to follow with the Fourth, Sixth, Seventh, and Eleventh Circuits when weighing which factors to consider approving this Plan:

> (1) there is an identity of interests between the debtor and the third party;
> (2) the non-debtor has contributed substantial assets to the reorganization;
> (3) the injunction is essential to reorganization;
> (4) the impacted class, or classes, has overwhelmingly voted to accept the plan;
> (5) the plan provides a mechanism to pay for all, or substantially all, of the class or classes affected by the injunction;
> (6) the plan provides an opportunity for those claimants who choose not to settle to recover in full; and
> (7) the bankruptcy court made a record of specific factual findings that support its conclusions.

> *See In re Midway Gold, US, Inc.*, 575 B.R. 475, 503 (Bank. D. Colo. 2017) (citing common factors analyzed by the majority of circuits permitting nonconsensual third-party direct releases).

First, the only claims against Strawberry Fields released by the Plan are those "based on or relating to" Debtor's prepetition conduct. R. at 8. Second, Strawberry Fields contributed substantially to the creditors' trust, offering $100 million, much greater than any amount it could likely be found liable for or Debtor could provide independently. *Id.* at 10. Third, the temporary injunction issued by the bankruptcy court was essential to successfully negotiating a global settlement and confirming the plan since Strawberry Fields' contribution hinged on the third-party release. *Id.* at 8. Fourth, the classes overwhelmingly support the plan's implementation. *Id.* at 9. Fifth, the Plan pays all classes of creditors the maximum amount possible in any restructuring of the present case. *Id.* at 10. Sixth, the Plan provides for those claimants who may choose not to settle in the bankruptcy estate by allowing them to pursue their claims against the creditors' trust. *Id.* at 8–9, 13. Seventh, the bankruptcy court made a record of specific factual findings that support its conclusions, including that the global settlement and third-party direct release were appropriate in the extraordinary circumstances of the case. *Id.* at 10.

Therefore, because the Bankruptcy Code gives courts equitable power to change the terms of a debtor's discharge where necessary and appropriate, and neither section 524(e) or 524(g) mandates the conditions of discharge cannot be modified, this Court should affirm the Thirteenth Circuit and find that nonconsensual third-party releases are in reasonable comity with, and not *per* se precluded, under all Code provisions, and whose abuse is checked by the fair and equitable judgment of a bankruptcy judge.

C. Permitting nonconsensual third-party direct releases is aligned with the goals and policies of Subchapter V bankruptcy.

Where Petitioner has not disputed the non-release provisions contemplated by the Plan are the Debtor's best chance at successful rehabilitation, the bankruptcy court *must* exercise these equitable powers in comity with, and in furtherance of, the Code. *See, e.g.*, *Manville Corp. v. Equity Sec. Holders Comm.* (*In re Johns-Manville Corp.*), 801 F.2d 60, 64 (2d Cir. 1986) ("[I]f the bankruptcy court may ever use its equitable powers . . . it may exercise that power where there is a basis for concluding that rehabilitation, the very purpose of bankruptcy proceedings, might be undone by the other action.").

1. Nonconsensual third-party direct releases provide certain debtors their best chance at a fresh start while maximizing creditor distributions, elegantly effectuating the goals and purposes of bankruptcy.

Petitioner would have this Court render all nonconsensual third-party direct releases *per se* prohibited by the Code, foreclosing the potential use of this settlement device in any Chapter 11 plan. Accordingly, it is prudent to begin with a discussion of the stakes of the pending matter, and the overall importance of the Plan's releases as it pertains to accomplishing the fundamental objectives of Chapter 11 bankruptcy.

The supreme goal and policy of Chapter 11 bankruptcy, "to which all other bankruptcy policies are subordinated, is the rehabilitation of the debtor." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989) (emphasis added); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513 (1984) (held "[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."). Under this, a bankruptcy court has broad, equitable powers to "effectuate the purposes of Chapter 11." *In re Ionosphere*, 98 B.R. at 176. These equitable powers derive from the Code's careful balancing of interests between debtors and creditors, striving to achieve as just a result as possible in determining every action. *In re Cross*, 255 B.R. 25, 32 (Bankr. N.D. Ind. 2000).

Considering these goals and principles, the present matter concerns a debtor with assets and liabilities sufficient to qualify as a small business under Subchapter V facing nearly *$400 million* in potential tort damages. R. at 6. Debtor is not a fortune 500 company with virtually unlimited assets but rather a small subsidiary operating a single facility in Blackbird. R. at 4–5. Assuming *arguendo* that Petitioner's tort allegations against Debtor are true, Debtor is a small business operating on such slim profit margins that it resorted to cutting costs in waste disposal to remain in the black. *Id.* at 5. Worse yet, the various claimants' causes of action against Strawberry Fields operate as a second blow, creating an indemnity relationship under which Strawberry Fields could collect against Debtor any sums for which it may be found liable. *Id.* at 12.

With this context considered, the Plan's release provisions are essential to achieving a result that not only leaves all parties better off but also maintains the financial integrity of the Debtor. Because Strawberry Field's contribution is contingent on the inclusion of the releases, the releases ensure that creditors are guaranteed substantial distribution while still allowing Debtor to operate. *Id.* at 8. Based on the bankruptcy court's findings, Strawberry Field's contribution allows creditors to receive significantly greater distribution than otherwise possible, especially compared to the likely alternative of liquidation. *Id.* Further, the releases elegantly channel another potential claim against Debtor by Strawberry Fields into an asset for the creditors' trust, allowing creditors to indirectly collect from Strawberry Fields without the delay, expense, and uncertainty of litigation. A dollar today is worth more than a dollar tomorrow. *In re Ulta Petrol. Corp.,* 51 F.4th 138, 148 (5th Cir. 2022). The Plan provides creditors with an immediate and assured benefit greater than any potentially gained through the pursuit of further complex litigation. R. at 10.

2. The release provisions contemplated by the Plan provide due deference to Debtor's employees, and the Blackbird community.

Debtor's Plan achieves the best possible result for Debtor's workers and the Blackbird community. Absent the release provisions, it is unlikely Debtor could cobble together a Plan providing sufficient distribution for creditors to be feasible and, therefore, confirmable. *See Coones v. Mut. Life Ins. Co.* (*In re Coones*), 168 B.R. 247, 256 (D. Wyo. 1994), a*ff'd sub nom. In re Coones*, 56 F.3d 77 (10th Cir. 1995) ("The feasibility requirement of section 1129(a)(11) provides the most compelling reason for [a] bankruptcy court's refusal to confirm [a] proposed Chapter 11 plan and ordering dismissal of the bankruptcy case."). Debtor operates on narrow profit margins and is facing substantial potential liability. R. at 5. The bankruptcy court made extensive factual findings concluding that the Plan was the best and only option to avoid liquidation. *Id.* at 9.

Courts scrutinize liquidation as a last resort, not at the whim of unsecured creditors. The Debtor's liquidation is the "worst-case scenario" for all parties to this action. *See In re Wood*, No. 89-0111, 1991 WL 332637, at *6 (W.D. Va. Nov. 11, 1991). It is unlikely liquidation, in this case, would put a dent in the potential $400 million liability, and inevitable liquidation would spell economic catastrophe for both Blackbird and Debtor's employees. R. at 10. The finality of Debtor's demise condemns the economic livelihood of its workers, who are already residing within a financially distressed area. *Id.* at 12. The Plan allows Debtor to continue its manufacturing operations, providing Blackbird with business and tax revenue and its citizens the means to support themselves and their families. Debtor's size should not discount the catastrophic effect liquidation would have on the workers who depend on it to provide for their families.

3. Any potential for the abuse of nonconsensual third-party releases is tempered by the equitable judgement of bankruptcy courts, and the limitations enumerated within the Code.

This Court answered Petitioner's appeal to equity in 1984. *Bildisco & Bildisco*, 465 U.S. at 527. The Code "does not authorize free-wheeling consideration of every conceivable equity, but rather only how the equities relate to the success of the reorganization," the ultimate goal of Chapter 11 bankruptcy. *Id.* The critical equitable question before the Court is thus not whether it is "fair" for Strawberry Fields to be released of liability but rather the impact confirming or rejecting the Plan would have on Debtor, Debtor's employees, and all creditors. *Id.* In this case, the most equitable solution under the policies of Chapter 11 is to confirm the Plan and avoid the Debtor's untimely demise and any devastating fallout from the same.

In any event, notwithstanding Petitioner's likely hyperbolic hypotheticals, this is not a case in which a Fortune 500 company is attempting to shield its billionaire shareholders from potential liability. This case is about a small subsidiary's parent company putting its money where its mouth is and providing substantial contributions to aid in its subsidiary's reorganization, leaving every party better off. This case demonstrates the necessity, elegance, and solvency of permitting nonconsensual third-party releases in Chapter 11 plans. In the final balancing of equities, a nebulous appeal to some subjective fairness should not outweigh the indisputable benefits the Plan provides to creditors, Debtor, Petitioner, and the city of Blackbird.

Based on the foregoing, this Court should affirm the decision of the Thirteenth Circuit and find that a bankruptcy court has the statutory, procedural, and constitutional authority to adjudicate and confirm a Subchapter V plan utilizing nonconsensual third-party direct releases in furtherance of its solemn duties to debtors, creditors, and the American people.

II. THE THIRTEENTH CIRCUIT CORRECTLY HELD THAT CORPORATE DEBTORS ARE ENTITLED TO DISCHARGE OF THE DEBTS SPECIFIED IN SECTION 523(A) PURSUANT TO SECTION 1192.

Under Subchapter V Chapter 11 bankruptcy, a debtor has two ways to confirm their plan of reorganization: consensually with the support of all creditor classes under section 1191(a), or nonconsensually over the objections of certain holdout creditors or classes under section 1191(b). *See* 11 U.S.C. § 1191. When, as here, a holdout creditor has forced nonconsensual plan confirmation under section 1191(b), the scope of the debtor's discharge is governed by section 1192. *See* 11 U.S.C. §§ 1192, 1192. Section 1192 holds in pertinent part:

> . . . 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—
> (1) . . .
> (2) *of the kind specified in* section 523(a) of this title.
>
> 11 U.S.C. § 1192 (emphasis added).

Section 523(a), in turn, provides that "[a] discharge under . . . [sections] 727, 1141, *1192*, 1228(a), 1228(b), or 1328(b) of this title does not discharge an *individual* from any debt" enumerated within the statute. *See* 11 U.S.C. § 523(a) (emphasis added). The parties do not dispute that Petitioner holds a debt enumerated by section 523(a) for "willful and malicious injury." *See* 11 U.S.C. § 523(a)(6). However, because the Debtor is a business entity, section 523(a) does not preclude the discharge of such debts, entitling Debtor to a complete discharge of Petitioner's claim upon completion of its reorganization plan. *See* 9D Am. Jur. 2d *Bankruptcy* § 3522 (2006). This Court must decide whether non-individual debtors are eligible for a full discharge of their debts under sections 1192 and 523(a). The plain meaning of the statute, as well as its context and legislative history, strongly suggest that Congress intended to grant non-individual debtors a complete discharge of their debts; moreover, such an interpretation would best effectuate the goal of Subchapter V, which is to provide well-deserved relief to small businesses struggling under the weight of debt.

A. The plain meaning of section 1192 incorporates the entirety of section 523(a), including its prefatory clause refining its definition of the kinds of debts nondischargeable.

The prime directive of statutory interpretation is ascertaining a statute's plain meaning, requiring an analysis of the statutory language, design, and overall policy objectives. *See Crandon v. United States*, 494 U.S. 152, 158 (1990) ("In determining the meaning of [a] statute, [the Court] must look not only to the particular statutory language, but to the design of the state as a whole and to its object and policy."). Where a statute is clear and ambiguous, the judicial inquiry may end. *See Zuni Pub. Sch. Dist. No. 89 v. Dept't of Educ.*, 550 U.S. 81, 93 (2007) ("If the intent of Congress is clear and unambiguously expressed in the statutory language at issue, that would be the end of our analysis.").

The preeminent canon of statutory interpretation is the presumption that Congress "says in a statute what it means and means in a statute what it says there." *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 184 (2004) (quoting *Conn. Nat'l. Bank v. Germain*, 503 U.S. 249, 253–254 (1992)). Under this, the best statutory interpretation is one in which meaning and "effect is given to all . . . [statutory] provisions, so that no part will be inoperative or superfluous, void or insignificant." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 393 (2013) (quoting *Corley v. United States*, 556 U.S. 303 (2009)). In the context of cross-referential statutes, "[a] basic doctrine of statutory construction declares that where possible, two statutes must be read so as to give meaning to each statute." *Laughlin v. U.S. IRS*, 98 B.R. 494, 496 (D. Neb. 1989), *aff'd*, 912 F.2d 197 (8th Cir. 1990).

Congress made the decision to have sections 523(a) and 1192(2) reference each other. *See* 11 U.S.C. §§ 1192(2), 523(a). This choice is instructive because section 523(a)'s preamble provides specific instructions as to the limits of its applicability and includes an express reference tying its prefatory language to discharges governed by section 1192. *See* 11 U.S.C. § 523(a). The format of section 523(a) is divided between a clause listing a series of discharge statutes, followed by a qualifier specifying said discharge statutes "do not discharge an individual from any debt" listed below. *Id.* (quoting section 523(a)). A noun or series of nouns followed by a qualifier matching each noun's subject is generally interpreted to apply the qualifier to each noun in the list. *See John Ii Estate, Ltd. v. Brown*, 235 U.S. 342, 348 (1914) ("When several words are followed by a clause which is applicable as much to the first . . . as to the last, the natural construction . . . demands that the clause be read as applicable to all."). This canon is strongest where catchall "clauses are to be read as bringing within a statute categories similar in type to those specifically enumerated." *Fed. Mar. Com. v. Seatrain Lines, Inc.*, 411 U.S. 726, 734 (1973). Here, section 523(a)'s list of nouns are all discharge statutes and are thus related to the clause's qualifier on discharge. Hence, as it relates to the present statutory dispute, section 523(a) can be naturally read to mean: a discharge under section 1192 does not discharge an individual of debts accrued as a result of willful or malicious injury to property. *See* 11 U.S.C. § 523(a)(6). If section 523(a)'s reference to section 1192 is to be given any meaning, this prefatory language cannot be ignored, including its qualifier that its discharge exceptions are only applicable to individuals. *See* 11 U.S.C. § 523(a).

In addition, an interpretation of section 1192's reference to 523(a), 523(a)'s reference to 1192, and 523(a) in general must render its chief qualifier, individual, operative. *See* 11 U.S.C. §§ 1192(2), 523(a). While the Code does not specifically define the term individual, it is well-settled law that the Code uses *individual* synonymously with *natural person*. *See, e.g., In re Ga. Scale Co.*, 134 B.R. 69 (Bankr. S.D. Ga. 1991) ("in defining 'person,' Congress used the word 'individual' to distinguish natural persons from corporations and partnerships."). Indeed, the Code's definition of person to encompass "individuals, partnerships, and corporations," implies a distinction between these operative nouns. *See, e.g.*, Y*amaha Motor Corp. v. Shadco, Inc.*, 762 F.2d 668, 670 (8th Cir. 1985) (found Congress did not intend individual to be used interchangeably with corporation or partnership). Further, the Code's definition of corporation expressly excludes individuals and partnerships. *See* 11 U.S.C. § 101(9)(A), (B). The Code also delineates between individuals and non-individuals in their eligibility for certain discharges. *Compare* 11 U.S.C. § 727(a)(1) (provides non-individual debtors are ineligible for Chapter 7 discharge) *with Contreras v. Corinthian Vigor Ins. Brokerage*, 103 F. Supp. 2d 1180, 1183 (N.D. Cal. 2000) ("A corporation that has been liquidated pursuant to Chapter 7 . . . does not receive a discharge from debt."). In order to not render the term individual meaningless, the only reasonable interpretation of sections 1192 and 523(a) apply discharge exceptions exclusively to individuals.

Accordingly, a clear majority of courts analyzing this issue have properly held that the best interpretation of the interplay between sections 1192 and 523(a) is that they collectively clarify that individual debtors filing Subchapter V bankruptcy are held to the same discharge exceptions as they are under every other Chapter. *See, e.g., In re Rtech Fabrications, LLC*, 635 B.R. 565, 565 (2021) ("In order to give both § 523(a)'s reference to § 1192 and its reference to *individual* debtors effect, the statute must be interpreted to mean the exceptions listed therein to a debtor's discharge—including a discharge under section 1192—only apply to an individual debtor."); *Gaske v. Satellite Rests. Inc.* (*In re Satellite Rests. Inc.*), 626 B.R. 871, 876 (Bankr. D. Md. 2021) ("When giving effect to every word of the statute, the plain language of Section 523(a) is unequivocal and confirms that the exceptions to a debtor's discharge, including a discharge under Section 1192, apply only to an individual."); *Cantell-Cleary Co. v. Cleary Packaging LLC* (*In re*

Cleary Packaging LLC), 630 B.R. 466, 472 (Bankr. D. Md. 2021), *rev'd sub nom. & remanded sub nom. In re Cleary Packaging, LLC*, 36 F.4th 509 (2022) ("the Court finds that the Code, read holistically and in accordance with common principles of statutory interpretation, limits the application of section 523 in Subchapter V cases to individual debtors.").

Nevertheless, a minority of courts have held the opposite, incorrectly reading ambiguity where none is apparent *See, e.g.*, *In re Cleary*, 36 F.4th at 509. To explain, the crux of Fourth Circuit's decision rests on its view section 1192's language renders nondischargeable certain *kinds of debt*, irrespective of the *kind of debtors*. *Id.*; *see generally* 11 U.S.C. § 1192(2). This approach, however, fictitiously creates ambiguity between the statutes by reading the word *kind* narrowly to pontificate on a question already answered by section 523. *In re Cleary*, 36 F.4th at 509 (citing American Heritage Dictionary and Merriam-Webster Dictionary to define *kind*); *see also* 11 U.S.C. § 523(a). In its preamble, section 523(a) unambiguously clarifies that the *kinds of debt* nondischargeable according to its provisions are not just specific kinds of debt, but specific kinds of debt held by specific kinds of debtors—individuals. *See* 11. U.S.C. § 523(a).

B. While section 1192's incorporation of section 523(a) is unambiguous, statutory context mandates the same finding.

When a statute is clear and unambiguous, a court should adhere to the will of the people's house. *See Babb v. Wilkie*, 140 S. Ct. 1168, 1177 (2020). However, "[i]n determining whether Congress has specifically addressed the question at issue, a reviewing court should not confine itself to examining a particular statutory provision in isolation." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000). Instead, the court should interpret the statute harmoniously within its statutory context with the goal of creating a "symmetrical and coherent regulatory scheme." *Gustafson v. Alloyd Co.*, 513 U.S. 561, 569 (1995). As section 523(a) provides clearer instructions concerning its applicability to section 1192, and because Subchapter V is fundamentally a Chapter 11 restructuring, this Court should find that the statutory context of the statutes is in comity with their plain meaning.

1. The specificity of section 523(a) should govern the generality of section 1192.

It is also a well-established canon of statutory interpretation that a court should interpret a more specific statute to govern a more general statute when the two appear to be in conflict. *See Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 645 (2009) ("it is a commonplace of statutory construction that the specific governs the general."). Even if this Court finds that section 1192's general reference to 523(a) is ambiguous enough to potentially place it in conflict with section 523(a), this general reference "cannot be allowed to supersede [section 523(a)'s] specific substantive pre-emptive provision[s]." *Morales v. TWA*, 504 U.S. 374, 385 (1992). As a general rule, the general-specific canon is "applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission." *United States v. Little,* 590 F. Supp. 3d 340, 350 (D.D.C. 2022).

Plainly, section 523(a) is a more specific statute for the purposes of statutory interpretation because it provides preemptive permissions and prohibitions of which section 1192 is silent. *Compare* 11 U.S.C. § 523(a) *with* 11. U.S.C. § 1192. Section 523(a) clarifies its own scope and applicability by providing permissions and prohibitions (1) limiting its applicability to specified statutes within the Code; (2) limiting the kind of debtor for which its discharge exclusions apply; and (3) limiting the kind of debt considered nondischargeable. *See* 11 U.S.C. § 523(a). Both statutes are equally applicable to Subchapter V because not only does section 1192 specifically reference section 523(a), but the latter also references the former. *See* §§ 1192(2), 523(a). The key difference between the two statutes is that section 1192 relies on the specific permissions and prohibitions outlined in section 523(a) for instruction, ultimately including its prefatory language qualifying its general applicability to individual debts. *Id.*

Therefore, because section 1192 cannot itself articulate the "kinds of debts specified in section 523(a)" without taking instruction from section 523(a), section 523(a)'s instructory provisions should properly govern section 1192's scope.

2. It is unlikely Congress would depart from the fundamental scheme of Chapter 11 bankruptcy to make a Subchapter V discharge less valuable to small businesses.

An interpretation of the interplay between sections 1192 and 523(a) cannot ignore section 523(a)'s preamble, which expresses the clear and unambiguous mandate of Congress that section 523(a)'s exceptions to discharge are meant to apply solely to individual debtors. *See* 11 U.S.C. §§ 523(a), 1192. As an initial matter, it is important to note that section 1192 expressly references section 523(a) in its entirety, including 523(a)'s prefatory language limiting its applicability to debt held by individuals. *Compare* 11 U.S.C. § 1192 *with* 11 U.S.C. § 523(a). Congress creates specific hierarchical schemes within its statutes—section, subsection, paragraph, and so on." *See Koons Buick Pontiac GMC, Inc. v. Nigh*, 543 U.S. 50, 60 (2004); *see also* Lawrence Filson, *The Legislative Drafter's Desk Reference*, 222 (1992). This statutory language serves a specific purpose, especially as it relates to cross references: "[w]hen Congress want[s] to refer only to a particular subsection or paragraph, it says so." *N.L.R.B. v. SW Gen., Inc.*, 580 U.S. 288, 300 (2017). Hence, if Congress "intended to refer to [11 U.S.C. § 523(a)(1)–(19)] alone, it presumable would have done so—just by adding . . . a number and a few parentheticals." *Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund,* 138 S. Ct. 1061, 1070 (2018).

As a part of Chapter 11, Subchapter V bankruptcy should be interpreted under Chapter 11's general discharge scheme, not that of Chapter 12 or 13. *See In re Rtech*, 635 B.R. at 565 ("Because Subchapter V is a part of Chapter 11, its discharge provision must be interpreted consistent with

Chapter 11's overall statutory scheme."). A unique feature of Chapter 11 is the priority it places on a business discharge, expressly discharging section 253(a) debt. *See* 11 U.S.C. § 1141(d)(2) ("A discharge under this chapter does not discharge a debtor who is an individual from any debt excepted from discharge under section 523 of this title.").

Under this context, it is unclear why Congress would attempt to reform Chapter 11 bankruptcy to facilitate the successful reorganization of small business debtors, only to turn around and discharge a small business of *less* debt than an entity ineligible for Subchapter V filing would be entitled. This is especially perplexing because the types of debt Petitioner would have this Court render nondischargeable can mean the difference between successful and unsuccessful reorganization. In the present case, Debtor is facing $400 million in unliquidated, unsecured damages that would fall under section 523(a)'s provisions and thereby be rendered nondischargeable. R. at 6–7. This colossal amount of debt outweighs Debtor's earning potential during and after the plan, and the aggregate liquidated value of its assets. *Id.* at 10.

Rendering section 523(a) claims nondischargeable would thus ensure that post-bankruptcy, Debtor is doomed to failure with no chance of remaining in business. Because the total nondischargeable claims outweigh Debtor's earning potential, Debtor would still be liable to Petitioner and similarly situated creditors for whatever value was not paid during the three to five-year bankruptcy period. *See* 11 U.S.C. § 1191(c)(2)(A). Upon completion of the plan, discharge of dischargeable debts, and lifting the automatic stay, Petitioner and similarly situated creditors would be free to pursue state law remedies of collection, including the seizure of Debtor's assets. *See* 11 U.S.C. §§ 362(c), 1186(a). A debtor post-bankruptcy would be especially vulnerable to such collection efforts because bankruptcy discharges all dischargeable debt, including the interests of secured creditors, in its property, equipment, and inventory. *See* 11 U.S.C. §§ 1192,

524. Post-discharge, unsecured creditors like Petitioner could levy Debtor's assets without worrying about other creditors' interests, likely resulting in the informal liquidation of the business. Worse yet, unlike individuals, business entities do not have access to state law exemptions protecting their interests in property. They are therefore rendered powerless to object to an aggressive creditor's collection efforts, with no hope of remaining in business.

It is illogical to allow such a business to go through three to five years of bankruptcy, dangling the promise of a fresh start, only to allow creditors to seize all its assets upon completion. Such a result is inapposite of the clear policies and goals of Subchapter V, and unjustly deprives small businesses of their chance at successful reorganization. The critical issues Congress attempted to reform included the general complexity and expense of Chapter 11 bankruptcy, the staunch requirements for nonconsensual plan reorganization, and the lack of power given to Chapter 11 debtors in the plan confirmation process. See Daniel O'Hare, *The Long and Winding Road to the Small Business Reorganization Act: Why Our Next Stop Should Be Simplicity and Accessibility*, 124 W. Va. L. Rev. 567, 572–73 (2022). Granting small business debtors a complete discharge under nonconsensual plan confirmation best aligns with these goals because it harmonizes with these stated goals because it ensured small business debtors are given a streamlined, cost-effective chance at successful reorganization, and ensures Debtors are given power in the plan confirmation process notwithstanding the objections of holdout unsecured creditors such as Petitioner.

C. Legislative history, congressional intent, and the policies of bankruptcy mandate an inclusion of section 523(a)'s limitation to just individuals as well.

The fundamental purpose behind Congress's creation of Subchapter V was to help small business debtors. As explained by the co-sponsor of the Small Business Reorganization Act ("SBRA"), Congress created Subchapter V bankruptcy to make it easier for small business debtors to "file bankruptcy in a timely, cost-effective manner, and hopefully allow them to remain in business," benefiting "owners . . . employees, suppliers, customers, and others who rely on that business for livelihood." H.R. Rep. No. 116–171, at 1 (2019), *available* at https://www.congress.gov/congressionalreport/116th-congress/house-report/171/1 (statement of co-sponsor, Representative Ben Cline (R-VA) on June 25, 2019) [hereinafter hearings]; s*ee also* Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. This purpose arose out of necessity, with Congress recognizing that not only did small businesses constitute the backbone of the American economy but were also the most likely enterprise to struggle financially and the least likely to successfully complete a Chapter 11 plan or reorganization. *See* Michelle M. Harner *et al.*, *Subchapter V Cases By the Numbers*, 40-Oct. Am. Bankr. Inst. J., 12 (Oct. 2021). Here, granting small business debtors a complete discharge of section 523(a) is harmonious with Congress's express goal of providing well-deserved relief to struggling small businesses.

1. Granting non-individual debtors a discharge best effectuates the goal of Subchapter V by providing debtors their best change at successful reorganization.

A major advantage provided to small business debtors under Subchapter V was reduced requirements for nonconsensual plan confirmation through the abolition of the absolute priority rule. *See* Paul W. Bonapfel, *A Guide to the Small Business Reorganization Act of 2019*, 93 Am. Bankr. L.J. 571, 605 (2019). This abolition lowered the bar for nonconsensual plan confirmation, with the ultimate goal of ensuring the Debtor maintained control over their plan of reorganization, even if it had to be accomplished nonconsensually. *Id.* Rendering certain debts nondischargeable under one avenue of confirmation is inconsistent with Congress's intention to abrogate the absolute priority rule, and ensures creditors owed section 523(a) are given disproportionate power in the plan confirmation process.

Under the absolute priority rule of Chapter 11, if a class of unsecured creditors objected to the confirmation of a Chapter 11 plan, a cramdown confirmation required the objecting class to be paid in full prior to any junior lien holders. *See, e.g.*, B*ank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. Lasalle St. P'ship*, 526 U.S. 434, 441 (1999). Effectually, this barred small business equity holders, often mom and pop, from receiving any return on their investments until all unsecured debt was paid in full. *Id.* As mom and pop rely on equity in their business as a source of their livelihood, this often resulted in small businesses failing to complete their Chapter 11 plans, resulting in liquidation and denial of discharge. *See* O'Hare, *supra* at 572–73. Under Subchapter V, Congress abolished the absolute priority rule, making it easier and less punishing for nonconsensual cramdown confirmations. *See, e.g.*, 11 U.S.C. § 1881(a) (abolished absolute priority rule); *see also, e.g.*, 11 U.S.C. § 1191(b) (cramdown confirmation does not result in the creation of an impair class).

If Congress intended to fully abrogate the absolute priority rule to ensure small business owners would not be rendered an impaired class, it is unclear why they would then create a new class of preferred creditors holding nondischargeable debts to the detriment of equity holders post-bankruptcy. Subchapter V's substantive goal is to allow a small business "to remain in business." *Hearings*, *supra* at 1. Ultimately, if creditors are able to circle the carcass and wait for the bankruptcy to complete, the owners of small businesses have the most to lose, as their equity would be lost through the liquidation of the business.

2. Granting non-individuals a full discharge effectuates Subchapter V's goal of empowering the Debtor to control the plan confirmation process.

It is unlikely Congress would empower Debtors to be the masters of their own plans of reorganization only to provide unsecured creditors with an incentive to use confirmation proceedings for their own advantage. A significant benefit given to debtors under Subchapter V was the ability to be the master of their own fate as it relates to the plan confirmation process *See* Bonapfel, *supra* at 605. To effectuate this change, Subchapter V gives debtors the exclusive right to propose or modify a plan of confirmation within 90 days of filing the bankruptcy petition and required a status hearing to achieve the economical and expeditious resolution of the case within 60 days of filing. *See* 11 U.S.C. §§ 1189(a)–(b), 1188(a).

For reasons explained above, in a world where consensual plan confirmation discharges section 523(a) debts but nonconsensual confirmation does not, a creditor in Petitioner's position would be given a handy tool to exert control over the plan confirmation process to ensure their debt is always rendered nondischargeable. Simply by lodging an objection, a creditor could force a nonconsensual confirmation, and thereby always have an avenue to collect after bankruptcy. *See* 11 U.S.C. 1191(b). Such a construction would incentivize creditors to sink the possibility of consensual confirmation not because the plan is unfair, but because it is in their sole interest—to the detriment of both debtor and other creditors. This Court should not construe the Bankruptcy Code in a way that disincentives fair consensual confirmation for the sole benefit of creditors who happen to be owed a certain kind of debt. Control over the plan under Subchapter V rightfully belongs to the debtor.

In conclusion, granting non-individual debtors a complete discharge of their prepetition debts is in line with the plain meaning of 11 U.S.C. § 1192 and 523(a), their statutory context, and their legislative history. It is consistent with Congress's expressed purpose in enacting the Small Business Reorganization Act, which was to provide small business debtors with a streamlined, cost-effective chance at successful reorganization. It also provides the debtor with the exclusive right to propose or modify a plan of reorganization and ensures creditors are not incentivized to object to plans that are fair and equitable. For all of these reasons, the Court should grant Debtor a complete discharge of its prepetition debt, including Petitioner's claim.

CONCLUSION

This Court should affirm the Thirteenth Circuit's decision and find that nonconsensual third-party direct releases are a constitutionally available tool to effectuate the goals of Chapter 11 bankruptcy and should grant the lower court's decision to implement a plan that supported by the vast majority of creditors, supports the community at large, and affords Penny Lane a second chance. This Court should also affirm the Thirteenth Circuit's holding that the bankruptcy court's decision is in line with the plain meaning of 11 U.S.C. §§ 1192 and 523(a), their statutory context, legislative history, and policy objections of the Bankruptcy Code since section 1192 incorporated, by direct reference, the entire meaning of section 523(a). These release provisions are essential to achieving a result that not only leaves all parties better off, but also maintains the financial integrity of the Debtor, and ensures creditors are not incentivized to object to plans that are fair and equitable.

APPENDIX

11 U.S.C. § 105. 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.

(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

(d) The court, on its own motion or on the request of a party in interest--

> (1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and
>
> (2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, may issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that--
>
> > (A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or
> >
> > (B) in a case under chapter 11 of this title--
> >
> > > (i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;
> > >
> > > (ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;
> > >
> > > (iii) sets the date by which a party in interest other than a debtor may file a plan;
> > >
> > > (iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;
> > >
> > > (v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

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

(a) A discharge under section 727, 1141, 11921 1228(a), 1228(b), or 1328(b) of this title 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, 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 [originally “$500”, adjusted effective April 1, 2022]2 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 [originally “$750”, adjusted effective April 1, 2022]2 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; 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, 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, 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, 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;

(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 (or a similar non-Federal law), or the debtor's status as a prisoner, as defined in section 1915(h) of title 28 (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, under--

> (A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or
>
> (B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;
>
> but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 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), 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, 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, 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).

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11 U.S.C. § 1123. Contents of plan.

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

(1) designate, subject to section 1122 of this title, classes of claims, other than claims of a kind specified in section 507(a)(2), 507(a)(3), or 507(a)(8) of this title, and classes of interests;

(2) specify any class of claims or interests that is not impaired under the plan;

(3) specify the treatment of any class of claims or interests that is impaired under the plan;

(4) provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest;

(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;

(6) provide for the inclusion in the charter of the debtor, if the debtor is a corporation, or of any corporation referred to in paragraph (5)(B) or (5)(C) of this subsection, of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends;

(7) contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee; and

(8) in a case in which the debtor is an individual, provide for the payment to creditors under the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan.

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

(1) impair or leave unimpaired any class of claims, secured or unsecured, or of interests;

(2) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

(3) provide for--

(A) the settlement or adjustment of any claim or interest belonging to the debtor or to the estate; or

(B) the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest;

(4) provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests;

(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

(6) include any other appropriate provision not inconsistent with the applicable provisions of this title.

(c) In a case concerning an individual, a plan proposed by an entity other than the debtor may not provide for the use, sale, or lease of property exempted under section 522 of this title, unless the debtor consents to such use, sale, or lease.

(d) Notwithstanding subsection (a) of this section and sections 506(b), 1129(a)(7), and 1129(b) of this title, if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

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11 U.S.C. § 1192. 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--

(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.