Team 39P

No. 21-0803

IN THE

SUPREME COURT OF THE UNITED STATES

ELEANOR RIGBY, PETITIONER

V.

PENNY LANE INDUSTRIES, INC., RESPONDENT

On Writ of Certiorari to

the United States Court of Appeals

for the Thirteenth Circuit

BRIEF FOR THE PETITIONER

Team Number 39

JANUARY 19, 2023

Counsel for Petitioner

QUESTIONS PRESENTED

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

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

TABLE OF CONTENTS

QUESTIONS PRESENTED…………………………………………………………………….,..i

TABLE OF CONTENTS……………………………………………………………………ii

TABLE OF AUTHORITIES……………………………………………………………....

OPINIONS BELOW………………………………………………………………………

STATEMENT OF JURISDICTION………………………………………………………

STATUTORY PROVISIONS……………………………………………………………..

STATEMENT OF FACTS………………………………………………………………..1

I. Factual History……………………………………………………………………1

A. Background Information…………………………………………………………1

B. The Plan Dispute: Objection to Third-Party Releases ……………………………2

C. The Nondischargeability Action Dispute …………………………………………3

II. Procedural Posture…………………………………………………………………...3

STATEMENT OF ARGUMENT…………………………………………………………4

STANDARD OF REVIEW………………………………………………………………7

ARGUMENT……………………………………………………………………………...8

I. NON-CONSENSUAL THIRD-PARTY RELEASES ARE NOT PERMISSIBLE UNDER CHAPTER 11 OF THE BANKRUPTCY CODE………………………………8

A. *11 U.S.C. § 524 Prohibits the Release of Third-party Claims Against Non-debtors*

1) Section 524(e) expressly limits discharge to the debtor alone…………..8

2) The following statutory construction principles, *expressio unius est exclusio alterius* and legislative History, also support the conclusion that § 524's discharge is limited to debtors……………………………...10

B. *Chapter 11 of the Bankruptcy Code, Read Comprehensively, Gives Rise to the Negative Inference that Congress Never Intended for Non-Consensual Third-Party Releases to be Permissible*……………………………………………..13

1) Non-consensual third-party releases abuse the power of discharge without providing any countervailing protections to creditors as the Code had intended. …………………………………………………14

2) Bankruptcy courts have broad equitable powers to carry out the provisions of the Code, so long as the implemented remedies are consistent with the Code – authorization of nonconsensual third-party releases is an abuse of this equitable power……………………………18

3) The "rare case" exception is contrary to the overall statutory scheme of the Code. …………………………………………………………..…….20

II. SECTION 1192(2) EMPHASIZES THE "KIND OF DEBT" DISCHARGED AS OPPOSED TO THE TYPE OF DEBTOR; THE MAJORITY INCORRECTLY IMPUTES THE RESTRICTIONS OF 523(a) CONTRARY TO THE INTETION OF CONGRESS AND SETTLED PRECEDENT………………………………………..21

A. The Plain Language of § 1192 Demonstrates that Debt "of a Kind" Remains Subject to the Discharge Exceptions of § 523(a); Congress Explicitly Sets the Parameters of Debtors Subject to Discharge Exceptions Within § 1192……….21

1) Applying rules of statutory construction with the canon of construction generalia specialibus non derogant reinforces this statutory analysis…23

2) Chapter 12 discharge exceptions apply to corporate debtors using the same analysis the dissent outlines…………………………………..24

3) The Thirteenth Circuit's interpretation improperly limits discharge to individual debtors, creating inconsistencies with congress' intent and current precedent……………………………………………………29

B. *The Underlying Policy Purposes of Subchapter V Differentiate Subchapter V from Traditional Chapter 11 Analysis*………………………………………………32

1) Congress constructed subchapter V to include additional leverage to the debtor; as a result, discharge exceptions apply to all subchapter V debtors………………………………………………………………33

2) The Thirteenth Circuit's analysis of subchapter V creates perverse incentives to debtors to the detriment of creditors—incentives that directly counter stated policy of subchapter V……………………...…34

CONCLUSION………………………………………………………………………….35

APPENDIX………………………………………………………………………………I

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT CASES

Conn. Nat'l Bank v. Germain, 503 U.S. 253 (1992)…..8

Dewsnup v. Timm, 502 U.S. 410 (1992).. 27

Hall v. United States, 566 U.S. 506 (2012)..27

Jevic Holding Corp., 137 S. Ct. 973 (2017)... 20, 21

Kelly v Robinson, 479 U.S. 36 (1986).. 13, 29

King v. Burwell, 135 S. Ct. 2480 (2015)... 13

Law v. Siegel, 571 U.S. 415 (2014)... 11, 19

Lena v. Pena, 518 U.S. 186 (1996)... 23

Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555 (1935)... 15

Martin v. Wilks, 490 U.S. 755, 761-62 (1989)..5

Miles v. Apex Marine Corp., 498 U.S. 19 (1990)...27

Morales v. Trans World Airlines, Inc., 504 U.S. 374 (1992)...13

N.L.R.B. v. Bildisco & Bildisco, 465 U.S. 513 (1984)...27

N.L.R.B. v. SW General, Inc., 580 U.S 288 (2017)...10

Nitro-Lift Technologies, L.L.C. v. Howard, 568 U.S. 17 (2012)...23

Norwest Bank Worthington v. Ahlers, 485 U.S. 197 (1988)).. 19, 32

Stern v. Marshall, 564 U.S. 462 (2011)...17

United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs, Ltd., 484 U.S. 365 (1988)..….29

U.S. v. Boisdore's Heirs, 49 U.S. 113 (1850)..29

Whitman v. American Trucking Assns., Inc., 531 U.S. 457 (2001)................................10, 13, 21

Wisconsin Central Ltd. v. U.S., 138 S. Ct. 2067 (2018)..8

UNITED STATES COURT OF APPEALS CASES

Am. Hardwoods, Inc. V Deutsche Credit Corp., 885 F.2d 621 (9t Cir. 1989) 9

In re Akorn Inc., 2022 WL 17222417 (3d. Cir. 2022) 32

In re Continental Airlines, 203 F.3d 203 (3d Cir. 2000) 20

In re Dow Corning Corp., 280 F.3d 648 (6th Cir. 2002) 20

MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.), 837 F.2d 89 (2d. Cir. 1988) 12

New England Dairies, Inc. v. Dairy Mart Convenience Stores, Inc. (*In re Dairy Mart Convenience Stores, Inc.*), 351 F.3d 86 (2d Cir. 2003) 19

Resorts Int'l, Inc. v. Lowenschuss (In re Lowenschuss), 67 F.3d 1394 (9th Cir. 1995) 9, 11

Texas v. Soileau (In re Soileau), 488 F.3d 302 (5th Cir. 2007) 7

UNITED STATES DISTRICT COURT CASES

In re Purdue Pharma, L.P., 635 B.R. 26 (S.D.N.Y Dist. Ct. 2021) ....*passim*

UNITED STATES BANKRUPTCY COURT CASES

Avion Funding, LLC. v. GFS Indus. LLC (In re GFS Indus. LLC), 2022 WL 16858009 (Bankr. W.D. Tex. 2022). 31

Deutsche Bank AG, London Branch v. Metromedia Fiber Network, Inc. (*In re Metromedia Fiber Network, Inc*.), 416 F.3d 136 (2d Cir. 2005). 8, 15, 20

New Venture P'ship v. JRB Consol, Inc. (In re JRB Consol., Inc.), 188 B.R. 373 (Bankr. W.D. Tex. 1995) ....*passim*

Southwest Ga. Farm Credit, ACA v. Breezy Ridge Farms, Inc. (In re Breezy Ridge Farms), 2009 WL 1514671 (Bankr. M.D. Ga. 2009). 24, 25

STATUTES

11 U.S.C. §101(2) 23

11 U.S.C. § 101(18)(B) 25

11 U.S.C. § 101(19)(B) 25

11 U.S.C. § 105(a) ....*passim*

11 U.S.C. § 523(a) ....*passim*

11 U.S.C. § 524(a) 9

11 U.S.C. § 524(e) 8

11 U.S.C. § 524(g) 10, 13

11 U.S.C. § 524(g)(4)(A)(ii) 11

11 U.S.C. § 524(h) 12
11 U.S.C. § 1123(a)(5) 8, 18
11 U.S.C. § 1123(b)(6) .... *passim*
11 U.S.C. § 1129(a)(7) 15
11 U.S.C. § 1141(d) .... *passim*
11 U.S.C. § 1182(1)(A) 22-23, 23
11 U.S.C. § 1182(1)(B) 35
11 U.S.C. § 1189(b) 33
11 U.S.C. § 1190(1) 33
11 U.S.C. § 1192.................... *passim*
11 U.S.C. § 1192(2) .... *passim*
11 U.S.C. 1201 *et seq*. 25
11 U.S.C. 1228(a) ....passim
28 U.S.C. § 157....................15
28 U.S.C. § 157(b)(5) 15, 16, 17
28 U.S.C. § 1334.................... 15

LEGISLATIVE MATERIALS

H.R REP. NO. 103-835 (1994) 12
H.R. Rep No. 116-171 (2019) 34

OTHER SOURCES

2 *Collier on Bankruptcy* ¶ 105.01[2] (16th ed. 2013) 11, 19
Vol. E., *Collier on Bankruptcy*, at App. Pt. 9-78....................13
Kind, MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/kind (last visited Jan. 18, 2022). 22

OPINIONS BELOW

The United States Bankruptcy Court for the District of Moot answered both issues in favor of the Debtor. The United States Court of Appeals for the Thirteenth Circuit affirmed the

Bankruptcy Court's ruling. It found that: (1) bankruptcy courts have equitable authority to approve non-consensual third-party releases under 11 U.S.C. §§ 105(a), 1123(a)(5), and 1123(b)(6); (2) corporate debtors proceeding under subchapter V may discharge debts of types specified under § 523(a) because the plain language of 523(a) dictates that 523(a) is limited to individual debtors. The Thirteenth Circuit Court of Appeals' opinion is reproduced as the record in this appeal.

STATEMENT OF JURISDICTION

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

STATUTORY PROVISIONS

This case involves interpreting 11 U.S.C. §§ 524, 105, 1123, 523, and1192 of the Bankruptcy Code. The relevant statutory provisions are set forth in Appendix A below.

STATEMENT OF FACTS

I. FACTUAL HISTORY

A. *Background Information*

The Debtor, Pennylane Industries Inc., is a plastic, glass, and metal food containers manufacturer, based in the City of Blackbird, Moot. (R. at 4). Debtor is wholly owned by Strawberry Fields Foods, Inc. ("Strawberry Fields.") (R. at 5). Debtor has been accused of knowingly disposing of chemical pollutants at its manufacturing facility and consequently contaminating Blackbird's ground water supply. (R. at 5). The Environmental Protection Agency and the Centers for Disease Control and Prevention estimate that, over a four-year period, Blackbird's water supply contained toxins at 250-3,000 times the "permitted level." (R. at 5). Exposure to these toxins has "been linked to sickness, birth defects, and even death." (R. at 5). Nearly 10,000 claims asserting cumulative damages of $400 million were filed against Debtor for its alleged misconduct. (R. at 6). Strawberry Fields was named as co-defendant in many of these lawsuits. (R. at 6).

Debtor filed for subchapter V bankruptcy on January 11, 2021. (R. at 6). All non-bankruptcy claims against the Debtor were automatically stayed as a result of the filing. (R. at 7). Debtor also obtained a temporary injunction to protect Strawberry Fields from pending litigation, holding that Strawberry Fields' involvement was essential to the facilitation of a global settlement. (R. at 7). Following mediation between the Debtor, Strawberry Fields, and ad hoc creditor groups, the Debtor ultimately filed a Plan of Reorganization (the "Plan"). (R. at 7, 8). Under the Plan, creditors will receive thirty to forty cents on the dollar. Strawberry Fields has demanded a broad release of all third-party claims against it in exchange for its $100 million contribution to the settlement fund. (R. at 8). The court held a four-day confirmation hearing

regarding the plan and addressed objections filed by Ms. Rigby and Norwegian Bank. (R. at 9). The bankruptcy court overruled both objections; because Norwegian Bank is a separately classified secured creditor, its dissent forced the court to "cram down" the Plan. (R. at 9-10).

Ms. Rigby lost her daughter to leukemia; she believes the pollutants that Debtor allegedly dumped caused her daughter's cancer. (R. at 5). In 2017, Ms. Rigby filed a $1 million claim against Debtor and Strawberry Fields. Her claim against Debtor was automatically stayed upon commencement of the bankruptcy proceeding, and her claim against Strawberry Fields has been temporarily enjoined. (R. at 5, 7). Though Ms. Rigby was able to participate in the mediation process, she was not included in negotiations of the settlement framework. (R. at 8). She has not received an opportunity to adjudicate her claim on the merits. If the Thirteenth Circuit's ruling is affirmed, her claim against the Debtor will be discharged and she will be forced to release her right to pursue any claims against Strawberry Fields. (R. at 7, 10).

B. *The Plan Dispute: Objection to Third-Party Releases*

In exchange for Strawberry Field's $100 million contribution to the trust, the Plan expressly releases and discharges all claims that third parties "'have asserted or might assert in the future against Strawberry Fields' to the extent that such claims are 'based on or related to the Debtor's pre-petition conduct, its estate or this chapter 11 case.'" (R. at 4, 8). Ms. Rigby's class of unsecured creditors approved the plan with 95% of the vote. (R. at 9). The majority of creditors outweighed the minority of creditors who objected to the release of their claims against Strawberry Fields and the Plan was confirmed by the Bankruptcy Court—this release is therefore non-consensual. (R. at 9). Ms. Rigby objected to the Plan, contending that non-consensual third-party releases are not permissible under the Bankruptcy Code. (R. at 9).

If this Court affirms the judgment below, dissenting creditors will be forced to release their right to pursue claims against Strawberry Fields without any countervailing protections (R. at 9). Ms. Rigby will be stripped of her day in court against Strawberry Fields in exchange for thirty cents on the dollar.

C. The Nondischargeability Action Dispute

Within weeks of the Debtor's petition, Ms. Rigby "commenced an adversary proceeding against the Debtor seeking to have her $1 million claim deemed non-dischargeable pursuant to §§ 523(a) and 1192(2)." (R. at 7). The bankruptcy court dismissed Ms. Rigby's claim for failing to state a claim under Federal Rules of Civil Procedure 12(b)(6). (R. at 7). Ms. Rigby filed a timely appeal on this question because she has yet to receive an opportunity to adjudicate this claim on its merits.

This Court has never addressed the application of § 523(a) to corporate entities – a question on which the lower courts and other circuits are also divided. Boxed out from all other avenues seeking redress, Ms. Rigby's appeal remains the last opportunity to determine the legality of Debtor's discharge of its debts.

II. Procedural Posture

The Bankruptcy Court for the District of Moot ruled in favor of Debtor on both issues. (R. at 4). The court concluded that it had broad equitable authority under the Bankruptcy Code ("Code") to approve a Plan which contains non-consensual third-party releases in extraordinary circumstances such as this one. The $100 million pledged by Strawberry Fields—in the court's language—enabled "Strawberry Fields to 'buy peace' and avoid the negative publicity and reputational damage of further litigation." (R. at 10). The court asserted that the proposed distribution under this Plan was greater than that which creditors would receive through any

other means. (R. at 9). The bankruptcy court dismissed Ms. Rigby's nondischargeability action because it found that the discharge exceptions of § 523(a) do not apply to corporate debtors (R. at 7). Ms. Rigby's alleged amounts owed were not excepted from discharge under § 523(a)(6). (R. at 7). Ms. Rigby timely appealed to the United States Court of Appeals for the Thirteenth Circuit, which affirmed the bankruptcy court on both issues. (R. at 11).

The dissent at the Thirteenth Circuit found that both rulings contradicted the plain text of the Code and Congress' intended bankruptcy policy. (R. at 23). It held that § 524(e) expressly and unambiguously prohibits non-consensual third-party releases. (R. at 25). Alternatively, even if § 524(e) does not sufficiently address the question at hand, no other provision in the Code confers authority upon bankruptcy courts to grant such releases. (R. at 26). There is no statutory authority, constitutional authority, or jurisdiction for bankruptcy courts to decide this matter. (R. at 24, 26). The dissent also found that § 1192(2) subjects corporate debtors to the § 523(a) discharge exceptions. The plain language of § 1192(2) focuses on the type of debt subject to discharge; the majority's focus on the type of debtor misconstrued the relationship of § 1192 to § 523(a). (R. 30-31) The dissent concluded that the Thirteenth Circuit erred in presuming that Congress intended for § 1192(2) to be limited to individual debtors. (R. at 31). Ms. Rigby, Petitioner, petitioned this Court for writ of certiorari, which this Court granted.

STATEMENT OF ARGUMENT

The Court of Appeals for the Thirteenth Circuit erred in its ruling. The Thirteenth Circuit incorrectly interpreted case law and statute to arrive at a result which undermines the purpose of chapter 11 as Congress envisioned it. The Supreme Court has established that a "voluntary settlement . . . cannot possibly 'settle,' voluntarily or otherwise, the conflicting claims of [those]

who do not join in the agreement." *Martin v. Wilks*, 490 U.S. 755, 761-62, 768 (1989). Not only has the Thirteenth Circuit granted a non-consensual release of Ms. Rigby's claims against a non-debtor, but it has also dismissed her nondischargeability action without giving her a proper day in court—these results do not represent a "voluntary settlement" as the Supreme Court has defined. This appeal represents Ms. Rigby's last chance to receive the justice she deserves.

Congress spent years forming chapter 11 of the Bankruptcy Code. The permissibility of non-consensual third-party releases has been disputed for years, yet nothing in the Code supports nor even contemplates the release of third-party claims against non-debtors. Releases of this nature are substantively equivalent to the discharge granted to debtors once they have subjected themselves to the bankruptcy process. Section 524(e) expressly limits the benefits of discharge to the debtor and this must be taken at face value. We know from the codification of § 524(g) and (h) that Congress has the language necessary to authorize third-party releases in narrow circumstances—Congress' purposeful silence cannot be inferred as indicative of its intent to make non-consensual third-party releases permissible.

Each provision must be read bearing the overall intended statutory scheme of the Code in mind. While bankruptcy courts are courts of equity, these powers must be exercised within the statutory and thematic confines of the Code. Congress formed chapter 11 of the Code with the debtor-creditor relationship in mind; Congress did not contemplate the relationship between non-debtors and creditors. If it had, Congress would have implemented provisions to define the bounds of this relationship analogous to those which shape the debtor-creditor relationship. Until Congress speaks on the permissibility of third-party releases, third-party releases are statutorily prohibited and contrary to the purpose of the Code. If this Court affirms the Court of Appeal's ruling, it will create a power which exceeds the scope of the Code; Strawberry Fields will enjoy

the benefits of bankruptcy without bearing any of the burden, and Ms. Rigby will be deprived of the creditor protections the Code guarantees.

The correct reading of §1192(2) enables discharge for debts "of a kind" included in the list of exceptions in § 523(a). For cramdown proceedings under subchapter V, Congress created a separate rule to govern the dischargeability of debt in § 1192. Congress clearly defined the parameters of discharge under these proceedings. "Debtors" as defined as "persons"—including individuals and corporations—are all subject to the discharge exceptions of § 523(a). The Thirteenth Circuit improperly conducts its analysis in reverse. The Thirteenth Circuit contends that § 523(a) must dictate the scope of each separate chapter of the Code; only "individual debtors" qualify for discharge exceptions, regardless of the specific intent of Congress in creating each separate chapter of the Code.

The Thirteenth Circuit's analysis counters basic tenets of statutory interpretation, supplanting the specific provisions of subchapter V with the general provisions of § 523(a). The Thirteenth Circuit argues this even with the benefit of established precedent. Chapter 12 contains identical language to subchapter V, with courts repeatedly affirming that "debtors" subject to § 523(a) discharge exceptions include corporations. Congress was aware of judicial precedent regarding this language in chapter 12 when it chose to include it in subchapter V. The Thirteenth Circuit painstakingly attempts to differentiate chapter 12 from subchapter V, resulting in a pick-and-choose framework that applies the "individual debtor" limitation of § 523(a) to certain chapters of the Code but not others. Subchapter V constructs parameters for debtor subjection to discharge exceptions identical to chapter 12.

Subjecting corporate debtors in subchapter V cramdown confirmations to the § 523(a) discharge exceptions furthers the policy goals of Congress in enacting subchapter V. Nowhere is this more evident than in the present case; Ms. Rigby was left out of "global settlement" negotiations after repeated injunctions of the court that stayed her suit against Strawberry Fields in perpetuity. Strawberry Fields, as parent company to the Debtor, "[bought] peace" by convincing a judge that its payments to unsecured tort claimants were "fair and reasonable." In return, Strawberry Fields purchased a broad release from all claims. Strawberry Fields was able to do this through the Thirteenth Circuit's construction of subchapter V. Under a traditional chapter 11 reorganization, the absolute priority rule forces debtors to negotiate in good faith with classes of creditors or risk paying their debts in full to those who dissent. Subchapter V eliminated the absolute priority rule which provides debtors with significant leverage over creditors. Congress specifically changed the discharge rules in cramdown confirmations to balance this leverage. Debtors—including individuals and corporations—are subjected to the § 523(a) discharge provisions. Congress' explicit intention to do so balances the leverage between debtors and creditors, ensuring the fair negotiation of a settlement.

Accordingly, this Court must reverse the Thirteenth Circuit's decision on both issues.

STANDARD OF REVIEW

The issues to be addressed are centered around statutory interpretation of the Code, and thus, are questions of law. Our standard of review for this appeal is *de novo*. *Texas v. Soileau (In re Soileau)*, 488 F.3d 302, 305 (5th Cir. 2007).

ARGUMENT

I. NON-CONSENSUAL THIRD-PARTY RELEASES ARE NOT PERMISSIBLE UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

A. *11 U.S.C. § 524 Prohibits the Release of Third-party Claims Against Non-Debtors*

1. Section 524(e) expressly limits discharge to the debtor alone

The Thirteenth Circuit held that bankruptcy courts have statutory authority to confirm plans which release third-party claims against non-debtors. (R. at 12) The court relied on the broad equitable powers conferred upon courts through. §§ 105(a), 1123(a)(5), and 1123(b)(6) and rejected the assertion that § 524(e) prohibits such releases. (R. at 15). It held that § 524(e) is "merely a savings clause clarifying that the debtor's discharge does not by itself discharge claims of others," and found Ms. Rigby's reading of § 524(e) inconsistent with § 524 as a whole. (R. at 15). The Thirteenth Circuit concluded that if Congress had intended to limit the bankruptcy court's powers as Ms. Rigby contends, it would have done so clearly. (R. at 15).

The Thirteenth Circuit erred in concluding that § 524(e) does not govern. A third-party release is a release in form only; in substance, it "operate[s] as a bankruptcy discharge arranged without a filing and without the safeguards of the Code." *Deutsche Bank AG, London Branch v. Metromedia Fiber Network, Inc.* (*In re Metromedia Fiber Network, Inc.*), 416 F.3d 136, 142 (2d Cir. 2005). Therefore, § 524(e), which limits discharge to debtors, must control.

Section 524(e) states that ". . . 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." This provision must be read in accordance with the plain meaning rule—"words should be interpreted as taking their ordinary, contemporary, common meaning at the time Congress enacted the statute." *Wisconsin Central Ltd. v. U.S.,* 138 S. Ct. 2067, 2074 (2018). When the plain language

of a statute is unambiguous, the judicial analysis is complete. C*onn. Nat'l Bank v. Germain*, 503 U.S. 253, 254 (1992). Section 524(e) expressly and unambiguously prohibits the extension of discharge to non-debtor parties.

In *Lowenschuss*, the Ninth Circuit addressed and affirmed the very argument we put forward today. *Resorts Int'l, Inc. v. Lowenschuss (In re Lowenschuss)*, 67 F.3d 1394, 1401 (9th Cir. 1995). The court emphasized that it has "repeatedly held, without exception, that § 524(e) precludes bankruptcy courts from discharging the liabilities of non-debtors." *Id*. The court provided the following explanation: Section 524(a) releases the debtor from personal liability for any debts. *In re Lowenschuss*, 67 F.3d at 1402. "Section 524 does not, however, provide for the release of *third parties* from liability; to the contrary, § 524(e) specifically states that '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.'" *Id*. The *Lowenschuss* court also discussed the relationship between § 524 and § 105. It concluded that §§ 524(a) and 524(e) "displace the court's equitable powers under [§] 105" because "[section] 105 does not authorize relief inconsistent with more specific law." *Id.* (quoting *American Hardwoods, Inc. V Deutsche Credit Corp.*, 885 F.2d 621, 625-26 (9t Cir. 1989)).

Any reading of the provision which extends discharge to non-debtor parties simply contradicts the policy behind the Code. *See Landsing Diversified Props. II v. First Nat'l Bank and Trust Co of Tulsa (In re Western Real Estate Fund, Inc.)*, 922 F.2d 592, 600 (10th Cir. 1990). The debtor alone has "invoked and submitted to the bankruptcy process"; Congress could not have intended to extend such benefits to non-debtors because a bankruptcy discharge does not extinguish the debt, "it [must] still be collected from any other entity that may be liable." *Id*. Therefore, Congress did not intend to "release from liability those who are liable with [the

debtor]." *Id.* If this Court affirms the Thirteenth Circuit's decision, not only will non-debtors be in direct violation of § 524(e), but they will also be granted discharge without "any countervailing justification of debtor protection." *Id.* at 602.

Section 524(e) expressly and unambiguously prohibits third-party releases. The Thirteenth Circuit incorrectly extended the discharge benefit of bankruptcy to Strawberry Fields by promulgating a misinterpretation of § 524(e). This Court does not need to look past the plain meaning of the text to reject the position affirmed by the Thirteenth Circuit.

2. The following statutory construction principles, *expressio unius est exclusio alterius* and legislative History, also support the conclusion that § 524's discharge is limited to debtors.

The Thirteenth Circuit held that Ms. Rigby's reading of § 524(e) was inconsistent with § 524 as a whole. (R. at 15). It relied on provisions § 524(g) and (h) as support for its conclusion. (R. at 15). The court of appeals held that § 524(g) should be read as setting forth *additional requirements* for asbestos releases. (R. at 15). It asserted that the legislative history of the statute "negate[s] any argument that the addition of asbestos specific provisions infers that third-party injunctions were not previously permissible." (R. at 15). The Thirteenth Circuit's interpretation is incorrect; instead, § 524(g) acts as the only exception to the express limitation on discharge found in § 524(e). Congress does not "hide elephants in mouseholes" and the Thirteenth Circuit's reading of § 524(e) is wholly inconsistent with basic principles of statutory construction. *Whitman v. American Trucking Assns., Inc*., 531 U.S. 457, 468 (2001).

The following key language in § 524(g), "[n]otwithstanding the provisions of section 524(e) . . ." introduces this provision as the only exception to § 524(e)'s express limitation on the scope of the discharge. § 524(g)(4)(A)(ii); *In re Purdue Pharma, L.P.*, 635 B.R. 26, 92 (S.D.N.Y Dist. Ct. 2021); *N.L.R.B. v. SW General, Inc.*, 580 U.S 288, 940 (2017). It is understood that a

"notwithstanding" clause indicates which of any two provisions controls "in the event of conflict." 580 U.S at 940. Therefore, § 524(e) governs in the event of conflict and it expressly limits discharge to debtors, unless otherwise stated by Congress.

This combined reading of § 524(e) and (g) is consistent with the statutory canon *expressio unius est exclusio alterius,* and this Court's recommended reading of the Code. *Id*. at 933. *Expressio unius est exclusio alterius* means "expressing one item of [an] associated group or series excludes another left unmentioned." *Id*. It can be inferred from the codification of § 524(g) that Congress was aware of the draft language necessary to extend discharge to non-debtors outside of the narrow asbestos context; it chose not to create any such analogous provisions—Congress' intent is clear. *See, e.g., In re Lowenschuss*, 67 F.3d at 1401-2; *In re Purdue Pharma, L.P.*, 635 B.R. at 92.

While this Court recognizes a bankruptcy court's equitable powers, a bankruptcy court oversteps its bounds when it uses its judicial power to create additional exceptions to the Code not contemplated by Congress. *See Law v. Siegel*, 571 U.S. 415, 424 (2014). In *Siegel*, this Court discussed the broad equitable powers of § 105(a) in conjunction with another, more specific, provision of the Code which had set forth a "number of carefully calibrated exceptions and limitations." *Id.* at 424. This Court reiterated that it is "hornbook law that § 105(a) 'does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code.'" *Id.* at 421 (quoting 2 *Collier on Bankruptcy* ¶ 105.01[2], p. 105-6 (16th ed. 2013)). While § 105(a) grants bankruptcy courts authority to "carry out" provisions of the Code, bankruptcy courts may not "contravene specific statutory provisions" in exercising this equitable power. *Id.* Accordingly, this Court concluded that bankruptcy courts are not authorized to create other additional exceptions where the Code is silent. *Id.* at 424. Doing so would undermine

Congress' "meticulous -- not to say mind-numbingly detailed – enumeration of exemptions and exceptions to those exemptions" within the Code. *Id*.

The logic applied above essentially reiterates the *expressio unius est exclusio alterius* canon within the specific context of chapter 11. This Court has established the framework for an appropriate reading of the Code—there is no need to look any further. Section 524 has set forth "a number of carefully calibrated exceptions and limitations" and the Thirteenth Circuit overstepped its judicial power when it read the general permissibility of third-party releases into the Code. *Id*. at 424. Congress' detailed enumeration of requirements in § 524(a)-(h) is clearly indicative of its intent. If Congress had intended to extend the benefits of discharge to non-debtors, it would have added a provision analogous to § 524(g).

The legislative history of § 524(g) lends support for the conclusion that Congress intended § 524(g) to be an exception to the general rule rather than an imposition of "additional requirements" as the Thirteenth Circuit has posited. (R. at 15). Congress passed § 524(g) in response to the Second Circuit's decision which affirmed a permanent injunction barring claims against non-debtors. *See MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89, 91 (2d. Cir. 1988); *See* H.R. REP. NO. 103-835, at 41 (1994). Notably, in authorizing the third-party release, the *Johns-Manville* court "did not cite to a single section of the Bankruptcy Code as authorizing entry of the injunction." *In re Purdue Pharma, L.P.*, 635 B.R. at 92 (citing *In re Johns-Manville Corp*., 837 F.2d at 90). In codifying the *Johns-Manville* decision, Congress specifically said "[t]he Committee has decided to provide explicit authority in the asbestos area because of the singular cumulative magnitude of the claims involved. How the new statutory mechanism works in the asbestos area may help the Committee judge whether the

concept should be extended into other areas." *In re Purdue Pharma, L.P.*, 635 B.R. at 94 (quoting Vol. E., *Collier on Bankruptcy*, at App. Pt. 9-78).

This legislative history in conjunction with the passing of § 524(h), which made only injunctions previously entered in *asbestos cases* statutorily compliant, demonstrates Congress only intended for third-party releases to be permissible in this narrow context. *See* 11 U.S.C. § 524(h). Congress purposefully remained silent on the general permissibility of third-party releases. *See In re Purdue Pharma, L.P.*, 635 B.R. at 94 (citing Vol. E., *Collier on Bankruptcy*, at App. Pt. 9-78).

Congress does not "hide elephants in mouseholes"—a comprehensive reading of § 524 in conjunction with its legislative history clearly indicates that § 524(e) limits the benefits of discharge to debtors; the statute's silence cannot be inferred as implicitly authorizing otherwise. *Whitman v. Am. Trucking Assns., Inc.*, 531 U.S. at 468.

B. *Chapter 11 of the Bankruptcy Code, Read Comprehensively, Gives Rise to the Negative Inference that Congress Never Intended for Non-Consensual Third-Party Releases to be Permissible*

While it is a common rule of statutory construction that the "specific governs the general," each provision must still be interpreted bearing the overall intended statutory scheme of the Code in mind. *Morales v. Trans World Airlines, Inc.,* 504 U.S. 374, 384 (1992); *see* K*ing v. Burwell,* 135 S. Ct. 2480, 2489 (2015); *Kelly v Robinson*, 479 U.S. 36, 43 (1986) ("In expounding [the Bankruptcy Code], we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.") (internal quotation marks omitted).

Consequently, this Court must maintain the policy objective of chapter 11 at the forefront of its decision. The Thirteenth Circuit held that the bankruptcy court was acting within its equitable discretion in granting this third-party release based on the following reasoning: (1) no provision in the Code explicitly prohibits such releases, therefore, the court's exercise of discretion to grant such releases is not inconsistent with the Code, (2) these releases are creating greater monetary recovery for creditors, therefore promoting the purpose of chapter 11, and (3) if these releases are not granted, it will unnecessarily delay reorganization, lead to increased cost, and further harm the reputation of both Debtor and Strawberry Fields. (R. at 11, 14).

While it is quite possible that creditors are receiving greater recovery than they would have if the Debtor had liquidated or through individual litigation against Strawberry Fields, the statutory scheme of the Code encompasses other creditor protections which the lower courts overlooked. Congress purposely implemented guardrails within the Code to limit a bankruptcy court's equitable powers—in affirming the bankruptcy court's order to grant a non-consensual third-party release, the Thirteenth Circuit promoted a use of power inconsistent with specific provisions of the Code and contrary to the overarching scheme of the Code.

1. Non-consensual third-party releases abuse the power of discharge without providing any countervailing protections to creditors as the Code had intended.

The Thirteenth Circuit concluded that this non-consensual third-party release aligns with the purpose of the Code because this Plan, as it stands, is maximizing recovery of creditors and preserving a viable business. (R. at 11). While it may be true that this Plan is maximizing recoveries, monetary recovery is only one of many considerations that must be weighed before a Plan is confirmed. The Plan as is, maximizes recovery at the expense of the protections guaranteed to creditors under the Code.

The greatest power of Chapter 11 proceedings is the ability to discharge debtors from their personal liability to creditors. *See Louisville Joint Stock Land Bank v. Radford,* 295 U.S. 555, 602 n.18 (1935). It must not be taken lightly. Accordingly, Congress has implemented a series of individual and collective protections within the plan process to maintain a balance between the debtor-creditor relationship. 11 U.S.C. § 1129(a)(7); 28 U.S.C. § 157(b)(5); 28 U.S.C. § 1334. Congress did not contemplate the extension of discharge to non-debtors when creating these protections, so granting non-debtors such relief is entirely abusive. If Congress had found third-party releases to be a permissible function of the Code, it would have included safeguards analogous to the protections offered to creditors within the debtor-creditor relationship. *See In re Metromedia Fiber Network,* 416 F.3d 136, 142 (2005).

Individual creditors are offered some protection through the "best interests" test, the procedural requirements of 28 U.S.C. § 157 when dealing with personal injury claims, and the limits of a bankruptcy court's jurisdiction as defined in 28 U.S.C. § 1334. 11 U.S.C. § 1129(a)(7); 28 U.S.C. § 157(b)(5); 28 U.S.C. § 1334.

Pursuant to § 1129(a)(7), a plan cannot be confirmed unless all individual dissenting creditors would not receive less than what they would have received pursuant to a chapter 7 liquidation. 11 U.S.C. § 1129(a)(7). Therefore, the corporation must conduct a liquidation analysis comparing the value of the chapter 11 plan's considerations to the value derived from a liquidation to satisfy this test. *Id*. Section 1129(a)(7) is written on the assumption that the debtor is liquidated; it is not structurally built around a presumption that third-parties are also getting released. *See id*. Though the facts are unclear as to whether the court conducted a liquidation analysis, that liquidation analysis would not have considered the impact of these releases. Therefore, Ms. Rigby has been stripped of a creditor protection without any countervailing

justification, and the Thirteenth Circuit has assumed that this Plan was maximizing creditor recovery without providing any tangible proof to support this assertion. (R. at 11). In fact, the Thirteenth Circuit only discussed the benefits of chapter 11 over chapter 7 in regards to the debtor. (R. at 12). There has not been an adequate balance of the debtor-creditor relationship as Congress intended.

In the same vein, Congress has attempted to protect individual creditors through § 157(b)(5) of the Code. Section 157(b)(5) requires that personal injury tort or wrongful death claims be tried in district court, not the bankruptcy court. Substantially all of the claims filed against Debtor and Strawberry Fields are personal tort injury claims—Ms. Rigby is just one of a thousand creditors to have named Strawberry Fields jointly liable in her tort claim against the Debtor (R. at 6). None of these claims have been adjudicated because all non-bankruptcy litigation against Debtor was stayed pursuant to commencement of the bankruptcy case. Debtor also obtained a temporary injunction to halt actions against Strawberry Fields. (R. at 7, 8). If the Thirteenth Circuit's decision is affirmed, then the Plan "expressly releases and discharges 'any and all claims' that third parties 'have asserted or might assert in the future against Strawberry Fields' to the extent that such claims are 'based on or related to the Debtor's pre-petition conduct, its estate or this chapter 11 case.'" (R. at 8). In short, if the Thirteenth Circuit's decision is upheld, Ms. Rigby and other individual dissenting creditors will be forced to release their right to pursue personal injury tort claims against Strawberry Fields.

This would be an extraordinary result. If Strawberry Fields had been an individual under traditional chapter 11, or, for the reasons described below, were a debtor under subchapter V, creditors would be entitled to argue that these personal injury tort claims would not be dischargeable under § 523(a) in court. Surely then, Strawberry Fields, a non-debtor, should not

be afforded more protections through a non-consensual third-party release than it would have received if it had filed for its own bankruptcy as an individual under chapter 11 or under subchapter V. Brief of Amici Curiae Law Professors in Support of Appellees Regarding the "Abuse" Standard at 8, *In re Purdue Pharma L.P.*, 635 B.R. 26, 92 (S.D.N.Y Dist. Ct. 2021) (No. 22-110). This is a clear abuse of the bankruptcy power of discharge and does not provide any countervailing justifications of protection for the individual creditors. If Congress had contemplated third-party releases, it can be inferred that Congress would have created exceptions to discharge for third-parties similar to those which have been created for debtors under § 523. Congress did not create such exceptions and bankruptcy courts are not authorized to create additional exceptions, as discussed *infra* Part 1B.

Lastly, Congress has limited the scope of bankruptcy courts' jurisdiction to protect creditor's rights. 28 U.S.C. § 157(b)(5); 28 U.S.C. § 1334. Bankruptcy courts have jurisdiction over "cases and proceedings" that "arise under" the Code or are "related to" bankruptcy cases. 28 U.S.C. § 1334. Direct claims that creditors hold against non-debtors, like the personal injury tort claims creditors hold against Strawberry Fields, "do not fall within the scope of these jurisdictional grants." (R. at 27). These claims do not impact the Debtor's estate nor do they appear "to be related – much less integral – to the restructuring of the debtor-creditor relationship." (R. at 27). Even if this Court finds that "related to" jurisdiction exists, this Court has previously held that "in the absence of consent, a bankruptcy court does not have constitutional authority to render a final decision in a dispute involving a pure state law tort claim that was not necessarily resolved in determining a claim against the estate and did not stem from the bankruptcy itself." (R. at 27) (citing *Stern v. Marshall*, 564 U.S. 462, 471-72 (2011)). Therefore, it cannot follow that a court which does not have the jurisdictional authority to

adjudicate non-consensual third-party claims, can permanently release and discharge third-party claims. Such a decision is contrary to the precedent and strips creditors of their statutorily protected right to trial.

The Thirteenth Circuit incorrectly concluded that such releases align with the purpose of chapter 11. (R. at 11). In essence, Strawberry Fields has received all of the benefits of discharge without any of the burden. These releases have been granted at the expense of the protections guaranteed to creditors under the Code, and the Thirteenth Circuit has failed to identify any analogous protections for creditors to justify this action. In fact, no such analogous protections exist because Congress never contemplated the release of third-parties when writing the Code. If this Court affirms the Thirteenth Circuit's decision, this decision will be inconsistent with the Code and perpetuate the abuse of the power of discharge.

2. Bankruptcy courts have broad equitable powers to carry out the provisions of the Code, so long as the implemented remedies are consistent with the Code – authorization of nonconsensual third-party releases is an abuse of this equitable power

The Thirteenth Circuit found that §§ 105(a), 1123(b)(6) and 1123(a)(5) give bankruptcy courts broad equitable authority to "approve settlements containing releases and injunctions." (R. at 14). It concluded that Ms. Rigby had not cited any provisions which prohibit such releases so such approvals must not be incompatible with the Code. (R. at 15).

The Thirteenth Circuit simply went too far. The cited provisions only grant Courts the discretion to issue orders and implement provisions that are supported by authority found elsewhere in the Code. The Thirteenth Circuit presents the same arguments for §§ 1123(a)(5) and (b)(6) as it does for § 105(a) -- it is not necessary to consider § 1123 provisions separately, as an

analysis of the equitable authority conferred upon courts through § 105(a) is also applicable to any argument presented regarding the scope of § 1123.

Section 105(a) does not provide an express authority to grant non-consensual third-party releases. Section 105(a), at most, provides for a generalized authority that grants bankruptcy courts a residual power to do things that are broadly *consistent* with the Code. *Law v. Siegel*, 571 U.S. at 421. (holding that it is "hornbook law that § 105(a) 'does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code.'" *Id.* at 421 (quoting 2 *Collier on Bankruptcy* ¶ 105.01[2], p. 105-6 (16th ed. 2013)).

A plain reading of the provision indicates as much: Section 105(a) states that a 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). It is unreasonable to infer from the plain language of this provision that Congress would have intended to grant bankruptcy courts the power to create substantive rights not already statutorily provided elsewhere in a Code they spent nearly a decade reforming. *Law v. Siegel*, 571 U.S. at 415; *New England Dairies, Inc. v. Dairy Mart Convenience Stores, Inc.* (*In re Dairy Mart Convenience Stores, Inc.*), 351 F.3d 86, 92 (2d Cir. 2003) (holding Section 105(a) does not "authorize the bankruptcy courts to create substantive rights that are otherwise unavailable under applicable law, or constitute a roving commission to do equity.")

It is well settled law that the "traditional equitable power" of a bankruptcy court "can only be exercised within the confines of the Bankruptcy Code." *In re Purdue Pharma, L.P.*, 635 B.R at 94 (quoting *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197 (1988)). Courts can use this equitable power to fill in gaps within the statute, but they must do so within the guardrails of

the Code. Granting debtor benefits to non-debtor parties who never subjected themselves to the bankruptcy process is equivalent to granting a divorce through a plan provision—the Code does not contemplate either action and equitable powers only reach so far. The importance of protecting creditor rights and the significance of such releases should lead the Court to expect more than statutory silence if, and when, Congress were to intend a departure as great as the Thirteenth Circuit is encouraging. *See Jevic Holding Corp.*, 137 S. Ct. 973, 984 (2017).

In summary, the assertion put forth by the Thirteenth Circuit that bankruptcy courts have discretion to authorize third-party releases under § 105 and § 1123 is an abuse of the equitable power Congress intended to extend to courts.

3. The "rare case" exception is contrary to the overall statutory scheme of the Code.

The Thirteenth Circuit analogized this case to those "rare cases" in which other circuits have found that exceptional circumstances existed to necessitate third-party releases. (R. at 13). Each sister circuit has set forth varying criteria for what conditions justify non-consensual third-party releases. *See e.g.*, *In re Metromedia Fiber Network Inc.*, 416 F.3d at 141-42 (listing out a set of considerations but cautioning that releases should be limited to unique circumstances where they are necessary for the success of the plan); *In re Dow Corning Corp.,* 280 F.3d 648, 656-58 (6th Cir. 2002) (stating seven factors that must be present for non-consensual third-party releases to be permissible); *In re Continental Airlines,* 203 F.3d 203, 214 (3d Cir. 2000) (defining the "hallmarks of permissible nonconsensual releases" as fairness, necessity to the reorganization, and backed by sufficient factual findings).

This vast range of acceptable criteria is meant to inform whether a court has been presented with a "rare case" or not. However, this Court recently held that there is no "rare case"

exception in bankruptcy that allows a court to trump the Bankruptcy Code. *See Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 986 (2017).

The *Jevic* decision should govern here today. This Court denied a structured dismissal, which the lower courts had approved by reading a "rare case" exception into the cited statute. *Jevic*, 137 S. Ct. at 986. The Court found that the structured dismissal undermined the core of chapter 11 as Congress had envisioned it. *See id*. at 984. This is eerily similar to the issue we are dealing with today. Other circuits have carved out "rare cases" in which non-consensual third-party releases are permissible without citing to any express legislative authority. The current Code's meticulous design carries with it the inference that Congress intended for that statutory scheme to be followed absent any guidance otherwise. *Id*. (holding that if Congress intended such a departure from the Code, we would "see some affirmative indication of intent").

Congress does not "hide elephants in mouseholes." *Whitman v. Am. Trucking Assns., Inc.*, 531 U.S. at 468. Reading the permissibility of third-party releases into the Code under the guise of a "rare case" exception is offensive to the overall statutory scheme of Chapter 11.

II. SECTION 1192(2) EMPHASIZES THE "KIND OF DEBT" DISCHARGED AS OPPOSED TO THE TYPE OF DEBTOR; THE MAJORITY INCORRECTLY IMPUTES THE RESTRICTIONS OF 523(a) CONTRARY TO THE INTETION OF CONGRESS AND SETTLED PRECEDENT

A. The Plain Language of § 1192 Demonstrates that Debt "of a Kind" Remains Subject to the Discharge Exceptions of § 523(a); Congress Explicitly Sets the Parameters of Debtors Subject to Discharge Exceptions Within § 1192

The court must interpret § 1192(2) to focus on the "debt of the kind" outlined in § 523(a) and disregard restrictions to individual debtors as prefatory and irrelevant to the present analysis. Under subchapter V, debtors utilizing cramdown confirmations are subject to the discharge rules of § 1192(2). In a cramdown confirmation, debtors discharge their debts subject to the standard

chapter 11 rules stipulated in § 1141(d), with two additional exceptions. Particular to this analysis, debtors may not discharge any debts "of the kind specified in section 523(a) of this title." 11 U.S.C. § 1192(2). Section 523(a) stipulates that a plan confirmation does not "discharge an individual debtor from any debt" included among the list of nineteen exceptions to discharge. 11 U.S.C. § 523(a). The correct analysis focuses on Congress' use of the "kind" of debt to define the characteristics of the § 523(a) exceptions. The Thirteenth Circuit improperly imputed the § 523(a) individual debtor restriction to § 1192(2) through its focus on prefatory language irrelevant to the analysis. (R. at 18).

To understand the intent of Congress in passing § 1192, the court must begin its analysis with a focus on the specific words used in § 1192 and § 523(a). The central dispute between § 1192(2) and § 523(a) focuses on the terms "debt 'of the kind'" listed in § 1192(2) and the restriction of discharge exceptions to "individual debtors" in § 523(a). Merriam-Webster's dictionary defines "kind" as "a group united by common traits or interests" and "a specific or recognized variety." *Kind*, MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/kind (last visited Jan. 18, 2022). The focus of § 1192 centers around "debt" to be discharged, not the types of debtors. *See* 11 U.S.C. § 1192 ("except *any debt* . . . of the kind specified in section 523(a) of this title.") (emphasis added).

Section 1192 sets specific parameters to define the applicability of discharge exceptions. Congress provided no ambiguity as to the type of debtor referred to in § 1192. Section 1192(2) refers to debtors under the definition provided under § 1182(1)(A)—in part "a person engaged in commercial or business activities (including any affiliate of such person . . .)[.]" 11 U.S.C. §1182(1)(A). Under the Code, the term "person" includes any "individual, partnership, and corporation." 11 U.S.C. § 101(41). Section 1182(1)(A) reinforces this inclusion of corporations

within subchapter V by including "any affiliate of such person" as persons qualifying for subchapter V proceedings. The term "affiliate" includes a broad range of potential debtor corporations and business entities as well as individuals. 11 U.S.C. § 101(2). This inclusive definition provides efficient bankruptcy protection to a range of small business forms—be it a corporation, partnership, and the like—who qualify not as a specific business form or entity but under the debt threshold of $7.5 million. 11 U.S.C. § 1182(A). Subchapter V therefore binds all qualifying persons to the discharge provisions of § 1192, including to the "kinds of debts" stipulated for in § 523(a).

1. Applying rules of statutory construction with the canon of construction generalia specialibus non derogant reinforces this statutory analysis

When ambiguity exists between two sections of law, courts rely on canons of construction to deduce statutory meaning. *Lena v. Pena*, 518 U.S. 186, 211 (1996). In cases of conflicting provisions of equivalent dignity, the court applies the principle of *generalia specialibus non derogant*—in effect, the specific statutory provision governs over the more general provision. *See Nitro-Lift Technologies, L.L.C. v. Howard*, 568 U.S. 17, 21 (2012).

As the more specific statutory provision, § 1192 must remain in force over § 523(a). The ambiguity forms around the cross references of both statutes; in cross-referencing § 523(a), § 1192 provides no mention of individual debtors, but rather only the kind of debt. Housed within subchapter V, § 1192 focuses on a small subset of debtors within the Bankruptcy Code. To the contrary, § 523(a) provides a list of discharges applicable to each relevant section of the Code. Notably, the interpretation of § 523(a) changes by chapter. In chapter 7, no discharges apply, yet in chapter 11, § 523(a) discharge exceptions apply both to individuals and corporations. Chapter 12 contains no distinction between individuals and corporations; courts hold the § 523(a)

discharge exceptions to apply to both. *New Venture P'ship v. JRB Consol, Inc. (In re JRB Consol., Inc.)*, 188 B.R. 373, 374 (Bankr. W.D. Tex. 1995); *Southwest Ga. Farm Credit, ACA v. Breezy Ridge Farms, Inc. (In re Breezy Ridge Farms)*, 2009 WL 1514671 at *2 (Bankr. M.D. Ga. 2009).

Different applications of § 523(a) demonstrate its broad nature; § 523(a) provides broad exceptions within the specific confines of each bankruptcy chapter. Forcing the broad exceptions of § 523(a) within the specific confines of §1192 prioritizes the general over the specific.

The Thirteenth Circuit contends that § 1192's explicit cross reference in § 523(a) shows the clear intent of Congress to limit § 1192's discharge exceptions to individuals. But the Thirteenth Circuit's analysis supplants the specific provision of § 1192 with § 523(a)'s general terms. Section 1192 sets clear parameters for the scope of discharge exceptions; debtors, defined as persons, may discharge debt, though types of debt are subject to § 523(a) exceptions. Chapter 12—as will be discussed further—sets identical parameters to discharges that courts accept as precedent. Congress would explicitly note if its passage of § 523(a) was meant to overturn settled precedent regarding chapter 12 discharge exceptions for corporate debtors. Chapter 11 constructs a complex set of discharge exceptions applying to individual and corporate debtors in § 1141. The Thirteenth Circuit's analysis requires piece-meal exceptions to each chapter of the Code to maintain current precedent; by enabling each specific set of discharge rules to be applied to different chapters and subchapters, these distinctions are maintained. As the more specific statutory provision, § 1192 corporate discharge exceptions must remain in force.

2. Chapter 12 discharge exceptions apply to corporate debtors using the same analysis the dissent outlines

Chapter 12 discharge provisions provide further support for exceptions to corporate discharge. Eligibility for chapter 12 is reserved for family farmers and fisherman. 11 U.S.C. []. Pursuant to §§ 101(18)(B) and 101(19)(B), the terms family farmer and family fisherman include the entity as a corporate form, enabling farmers and fisherman who decided to incorporate to retain the benefits of chapter 12. Chapter 12 discharge provides identical language to § 1192, with § 1228(a) providing in relevant part that

> as soon as practicable after completion by the debtor of all payments under the plan . . . the court shall grant the debtor a discharge of all debts provided for by the plan, allowed under section 503 of this title, or disallowed under section 502 of this title, except any debt—
>
> ***
>
> (2) of a kind specified in section 523(a) of this title, except as provided in section 1232(c).

11 U.S.C. 1228.

Section 1228 contains the same language—and ambiguity—that courts confront in subchapter V cases. Chapter 12 discharge provisions emphasize the kind of debt to be discharged, rather than the type of debtors. Courts have consistently found that corporate debtors in chapter 12 proceedings are subject to § 523(a) exceptions. *See In re Breezy Ridge Farms*, 2009 WL 1514671 at *2.; *In re JRB Consol., Inc.*, 188 B.R. at 374.

In both cases, the courts—contrary to the Thirteenth Circuit—used § 523(a) to "limit the parameters set forth in" § 1228, "not define the breadth of the discharge." *In re Breezy Ridge Farms,* 2009 WL 1514671, at *1. The parameters of each chapter define the scope of the discharge. Chapter 7 does not provide discharges for corporations, and in chapter 13, only an individual's prepetition debts may be discharged subject to § 523(a). *Id.* Chapter 11 stipulates different scopes of discharges for individuals and corporations; individuals are eligible for discharge upon completion of a plan's payments subject to § 523(a), while corporations are

eligible to discharge debts except for debts "of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a)[.]" *Id.*; 11 U.S.C. § 1141(d)(6). Chapter 11 also contains a specific "'liquidation versus continuing business'" distinction; corporations only receive discharges when continuing their business. *In re JRB Consol., Inc.*, 188 B.R. at 374;11 U.S.C. § 1141(d)(3). In sum, Congress proceeds on a chapter-by-chapter basis to determine the breadth of discharge within that chapter, using § 523(a) to "limit the parameters" with a list of nineteen specific exceptions.

For chapter 12 discharges, the language of the statute constructs the parameters around the debtor; no distinction is made between the individual debtor and corporate debtor. 11 U.S.C. § 1228. The *Breezy Ridge Farms* and *JRB Consol* courts emphasized the "special treatment" of chapter 12; virtually all chapter 12 debtors could proceed in proceedings for chapters 7 and 11, and individuals could proceed in chapter 13. Debtors in chapter 11 must qualify to file for chapter 12 proceedings. Separate classes of debtors require tailored rules of bankruptcy. Congress explicitly defined a debtor for chapter 12 proceedings; its intent to use debtor to include both qualifying individuals and corporations in chapter 12 demonstrates clear intent to define the parameters of discharge for chapter 12 proceedings. 11 U.S.C. § 1228. Accordingly, corporate debtors under chapter 12 remain subject to § 523(a) discharge exceptions.

Subchapter V discharge exceptions present the same analysis. Congress created a separate class of debtors eligible for subchapter V. Almost all debtors eligible for subchapter V can file for chapter 7 or traditional chapter 11 proceedings, and individual filers under subchapter V can file in chapter 13 proceedings. But subchapter V requires specific qualifications in § 1182 to obtain the unique benefits of subchapter V proceedings. 11 U.S.C. § 1182. Congress tailored rules for a subset of debtors to receive separate treatment—the removal of the absolute priority rule and the payments made to creditors over time recognize as much. And Congress constructed

clear parameters to determine discharge eligibility; identical to chapter 12 discharge eligibility, no difference is made between individual and corporate debtors in § 1192. Congress explicitly used "debtor" to include all "persons" eligible for subchapter V proceedings. Subchapter V maintains explicit parameters; § 523(a) discharge exceptions to corporate debtors in § 1191(b) cramdown confirmations apply identically to chapter 12.

This Court has the benefit of hindsight to aid this analysis. The Court must presume that Congress was aware of the courts' analysis of chapter 12 discharge applicability to corporate debtors. *See N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 524 (1984); *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990). Congress passed § 1192(2) with identical language to § 1228(a)(2), aware of previous judicial analysis. This Court further instructs courts to "give[] the same meaning" to identical language in the same statute. *Hall v. United States*, 566 U.S. 506, 519 (2012). Given Congress' awareness of chapter 12 proceedings, it elected to utilize the same language as to the kind of debt discharged, as well as a broad definition of "debtor" that constructs the parameters to include an individual and corporate debtor.

The Thirteenth Circuit contends that this reading is incorrect, citing case law directing courts to not apply identical meanings for similar terms. *Dewsnup v. Timm*, 502 U.S. 410 (1992). But the Thirteenth Circuit cites inapplicable case law. The *Dewsnup* court decided that, where ambiguity existed in the use of the term "allowed secured claim" in both §§ 506(a) and 506(d), the terms could not be construed identically. *Id.* at [] But the impetus of this decision rested in pre-Code practice; separate definitions were required where the petitioner sought to freeze collateral at a judicially determined value as opposed to enabling the lien on real property to "pass through" bankruptcy proceedings—a pre-Code practice known to Congress at the time of passage. *Id.* at 418. The majority cites to no pre-Code practice that restricts the discharge

exceptions only to individuals. To the contrary, the *Dewsnup* Court admitted that, were this a case operating on a "clean slate"—without the pre-Code practice influence—they would be inclined to interpret the statutory provisions identically. *Id*. at 410, 417.

The Thirteenth Circuit further attempts to differentiate § 1192(2) from § 1228(a)(2). First, the Thirteenth Circuit claims that the comparison with chapter 12 is inappropriate because chapter 12 makes no distinction between individual and corporate debtors. (R. at 20). Further, the Thirteenth Circuit contends that subchapter V includes other corporate forms such as non-publicly traded corporations not considered in chapter 12. (R. at 20). Yet this is the exact intention of Congress; chapter 12 sets the parameters of the term "debtors" with no distinction between individual and corporate debtors, applying the kinds of debt listed in § 523(a) exceptions to those debtors. Family farmers and fisherman, inextricably linked to their businesses, require no separation of the individual from the corporation. For policy reasons, discharging the corporation but applying exceptions to the individual would lead to inconsistent application and a resistance of individual farmers to file under chapter 12.

Tellingly, Congress enacted subchapter V with the same parameters. Debtors include individuals and corporations, enabling a separate class of small businesses to access a special bankruptcy proceeding. Congress intended this special class to consist primarily of small businesses—the local mom-and-pop shop and Main Street corner store that required special access to bankruptcy proceedings. The limiting principle of subchapter V is not the corporate form, but the amount of debt the debtor maintains—limited to $7.5 million. Congress explicitly included all corporate forms—including non-publicly traded corporations such as the debtor—within the parameters of § 1192. The Thirteenth Circuit's contention that chapter 12 does not apply, instead highlights its precise similarity to subchapter V.

3.The Thirteenth Circuit's interpretation improperly limits discharge to individual debtors, creating inconsistencies with congress' intent and current precedent

The Thirteenth Circuit's focus on the prefatory language of § 523(a) emphasizes a single phrase to the detriment of the different policy goals of each chapter of the Code. When "expounding a statute," courts "must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." *U.S. v. Boisdore's Heirs*, 49 U.S. 113, 122 (1850); *see also Kelly v Robinson*, 479 U.S. 36, 43 (1986). Construing statutory language in the Code is a "holistic endeavor"; courts must take care that their interpretations "produce[] a substantive effect that is compatible with the rest of the law[.]" *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs, Ltd.*, 484 U.S. 365, 371 (1988). The Thirteenth Circuit's analysis follows that Congress never explicitly stated that corporations were subject to § 523(a) discharge exceptions in subchapter V. Instead, the Thirteenth Circuit argues that chapter 11's explicit differentiation of individual and corporate debtors within § 1141 dictates that Congress never intended to apply discharge exceptions to corporate debtors.

The Thirteenth Circuit's reliance on the explicit wording of § 1141 undermines its own analysis. Traditional chapter 11 reorganizations under § 1141(d)(2) explicitly restrict the discharge of "any debt" under the § 523(a) exceptions to "individual debtors," emphasizing the type of debtor as the mechanism to understanding the application of discharge exceptions. 11 U.S.C. § 1141(d)(2). The difference in language between § 1141(d)(2) and provisions such as §§ 1192 and 1228(a) highlights a distinction between the provisions. In § 1192, Congress clearly defined the type of debtor subject to discharge exceptions—"debtors" are "persons," including individuals and corporations. In § 1192, Congress provided an explicit definition of the scope of the debtor as it did §§ 1141(d) and 1228(a). The Thirteenth Circuit claims that—because § 1192

did not contain the same differentiation of individuals and corporations as § 1141(d), it must only apply discharge exceptions to individuals. To follow this logic, this Court must ignore the general differences of chapter 11 and subchapter V while also ignoring the explicit definition of debtor provided for in § 1192. Instead, § 1141(d) provides additional proof that, under each section of the bankruptcy code dealing with discharge exceptions, Congress outlines explicit parameters that accentuate the unique purposes of the chapters and subchapters supported.

The Thirteenth Circuit attempts to erase this distinction. Under their analysis, § 523(a) creates a threshold qualification for discharge exceptions by requiring the debtor to be an individual debtor. The Thirteenth Circuit's focus on individual debtors is understandable—§ 523(a) stipulates "[a] discharge under section . . . 1192 . . . does not discharge an individual debtor from any debt" that qualifies under any of the nineteen exceptions provided. 11 U.S.C. § 523(a). But the Thirteenth Circuit improperly hoists § 523(a) above competing provisions—using prefatory language to impact statutory provisions across the bankruptcy code. Thus, the Thirteenth Circuit's analysis misses the forest for the trees. The Thirteenth Circuit forces § 523(a) limitations on subchapter V proceedings through its singular analysis of traditional chapter 11 proceedings. Worse, this interpretation produces substantial effects incompatible with the rest of the Code. Specifically, the current interpretation of chapter 12 from *In re Breezy Ridge Farms* and *In re JRB Consol, Inc.* remain incompatible with the Thirteenth Circuit 's interpretation. Section 523(a) references §1228(a) within the same prefatory language the circuit court emphasizes for application to subchapter V. The Thirteenth Circuit's pick-and-choose application provides little cohesion throughout the Code.

The Thirteenth Circuit contends that, given the narrow discharge rules in chapter 11, the court cannot separate subchapter V from chapter 11's limited scope. Section 1141(d)(2) applies §

523(a) discharge exceptions to individuals proceeding under chapter 11. 11 U.S.C. § 1141(d)(2). Section 1141(d)(3) disallows the discharge of debts of liquidating debtors in general, though narrow exceptions apply for those denied a discharge under § 727(a). 11 U.S.C. § 1141(d)(3). Corporate debtors receive complete discharges with specific exceptions cabined in §§ 523(a)(2)(A) or 523(a)(2)(B). 11 U.S.C. 1141(d)(6). The *In re JRB Consol, Inc.* court emphasized that, per §§ 1141(d)(2) and 1141(d)(3), chapter 11 debtors must be subject to a claim to determine dischargeability of debt. *In re JRB Consol, Inc.*, 188 B.R. at 374. The *In re GFS Indus.* court emphasized this "well-established principle" that discharge exceptions do not apply to corporations in chapter 11 cases—Congress would need to explicitly state a departure from this principle to expand discharge exceptions to corporations. *Avion Funding, LLC. v. GFS Indus. LLC (In re GFS Indus. LLC)*, 2022 WL 16858009 at *5 (Bankr. W.D. Tex. 2022)

Once again, the Thirteenth Circuit uses rigid statutory construction to ignore the differences in discharge provisions across the Code. The Thirteenth Circuit's argument rests solely on the assertion that subchapter V conforms to all the same principles as chapter 11. But Congress constructed explicit parameters different from chapter 11 to determine debtor discharge eligibility in subchapter V—"debtor" is defined as "persons" to include individuals and corporations. 11 U.S.C. § 101(41). Congress purposefully designed this inclusive definition of § 1192 to capture a subset of small business debtors looking for bankruptcy relief distinct from normal Chapter 11—all subchapter V debtors could qualify for chapter 11, but only a subset of chapter 11 debtors qualifies for subchapter V. This is the exact logic the *In re JRB Consol, Inc.* court applied to differentiate chapter 12 debtors from chapter 11 debtors; the "specific chapter, limited to certain types of debtors" would "provide for different treatment" of debtors. By assuming that all unwritten principles of chapter 11 carry over to a new code, the Thirteenth

Circuit implants the general provisions of chapter 11 into the specific policy goals of subchapter V. Once again, the Thirteenth Circuit emphasizes prefatory language that results in inconsistencies throughout the Code. Statutory construction is two-way street; where § 523(a) uses prefatory language to define the scope of debtors, § 1192(2) only uses language in cross-reference to § 523(a) to refer to the kind of debt discharged. The exceptions of § 523(a) present a list of the types of debt excepted from discharge in § 1192(2). This reading ensures that interpretations of other chapters of the Code remain in effect while advancing the specific policy goals intended by Congress in each chapter.

B. *The Underlying Policy Purposes of Subchapter V Differentiate Subchapter V from Traditional Chapter 11 Analysis*

1. Congress constructed subchapter V to include additional leverage to the debtor; as a result, discharge exceptions apply to all subchapter V debtors

Subchapter V enacts several significant changes to the Code in a departure from traditional chapter 11 coverage. Most significantly, subchapter V abandons the absolute priority rule for cramdown confirmations. A major tenet to chapter 11 reorganizations, the absolute priority rule ensures that dissenting creditors are paid in full before any junior class of creditors receive payment or retain ownership in a confirmation plan. *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 202 (1988); *In re Akorn Inc.*, 2022 WL 17222417 at *2 (3d. Cir. 2022). For many businesses, the absolute priority rule provides an untenable barrier to maintaining effective business ownership post-confirmation; plans must adhere to the demands of dissenting creditors or face payments leading to liquidation. Timing remains a crucial factor in chapter 11 reorganization proceedings. Debtors must approve a consensual plan or pay dissenting creditors at the time of confirmation, ensuring the plan remains fair and equitable to classes of creditors.

Subchapter V enables small businesses to access a streamlined bankruptcy proceeding. *See* 11 U.S.C. §§ 1181, *et seq.* Debtors may confirm bankruptcy plans consensually under § 1191(a) or through a cram down method outlined in § 1191(b). Discharge rules for consensual confirmation under subchapter V fall under standard chapter 11 discharge rules found in § 1141. In relevant part, § 1141(d)(2) "does not discharge a debtor *who is an individual* from any debt excepted from discharge under section 523 of this title." 11 U.S.C. 1141(d)(2) (emphasis added).

In a cramdown confirmation, a plan with dissenting creditors may still be confirmed if the court determines the plan is "fair and equitable" to those creditors. 11 U.S.C. § 1191(b). Pursuing a cramdown confirmation changes the governing provisions over discharge. Instead of applying standard chapter 11 discharge rules, subchapter V discharges debt through § 1192.

Subchapter V eliminates the absolute priority rule for cramdown confirmations. Instead of mandating payment at the time of confirmation, § 1192 enables debtors to make continued payments to creditors for at least three or up to five years after confirmation. 11 U.S.C. § 1192. Additionally, per § 1189(b), debtors do not need to file a disclosure statement alongside a confirmation plan. 11 U.S.C. § 1189(b). Instead, debtors need only to provide a brief history of business operations, liquidation analysis, and projections of the debtor to repay debts. 11 U.S.C. § 1190(1). Debtors pursuing confirmation of a plan are left with two avenues: (1) consensual confirmation and the adherence to the absolute priority rule, or (2) cramdown confirmations approved by a judge as "fair and equitable."

2. The Thirteenth Circuit's analysis of subchapter V creates perverse incentives to debtors to the detriment of creditors—incentives that directly counter stated policy of subchapter V

The Thirteenth Circuit incorrectly argues that dissent's reading of § 1192 results in both inequities for debtors and unfair procedures for creditors. Debtors maintain no control whether a

plan is consensual or cram down; creditors decide to accept or reject plans through voting. (R. at 22). When a class of creditors denies a plan, subjecting the confirmation to cramdown methods, creditors may seek repayment on non-dischargeable debts to the detriment of other creditors. (R. at 22). But the Thirteenth Circuit grossly misinterprets the leverage of the debtor to the detriment of all creditors. Debtors no longer need approval from each class of creditors; instead, debtors may seek to negotiate a "global settlement" that does not receive the approval of all creditors. Without the risk of payment to dissenting creditors, debtors only need court approval that the plan is "fair and reasonable" in the circumstances.

The perverse impacts of such a negotiation without further leverage for creditors are evident in this case. Strawberry Fields did not need to receive approval from Ms. Rigby or Norwegian Wood Bank. Consequently, Ms. Rigby was removed from negotiations of the "global settlement"; her individual interests in filing claims against the Debtor remained unheard in negotiations. Ms. Rigby's claims against Strawberry Fields were further thwarted by temporary injunctions that the bankruptcy court extended in perpetuity. Strawberry Fields was able to "buy peace" in a bankruptcy system that enabled it to ignore certain creditor interests while including enough money to receive the approval of the judge.

The Thirteenth Circuit's analysis of creditor rights directly counters Congress' stated policy purposes in enacting subchapter V. Congress enacted subchapter V for the purpose of enabling small businesses, "typically family-owned businesses, startups, and other entrepreneurial ventures," a new avenue of reorganization to pursue. H.R. Rep No. 116-171, at 2 (2019). Traditional chapter 11 reorganizations enabled about "20 percent of small businesses [to] survive the first year," leaving small businesses with little hope of successfully navigating a chapter 11 reorganization. Congress provided unambiguous language in § 1192 to determine

requisite qualifications for subchapter V discharge. Debtors receive the benefits of discharge not based solely on the type of debtor they are, but whether they engaged in business and maintained debts under a $7.5 million threshold.

But these added benefits come at a price. In subchapter V proceedings, Congress explicitly made § 523(a) exceptions contingent on the occurrence of a cram down plan. 11 U.S.C. § 1192(b). Where cramdown plans enabled small business debtors to avoid the absolute priority rule, Congress ensured that creditors retained some amount of leverage to avoid the exact situation that Ms. Rigby has found herself in. Notably, Congress did not extend discharge exceptions to debtors proceeding under a consensual confirmation; plans confirmed under § 1191(a) receive traditional discharge under § 1141(d). 11 U.S.C. § 1191(a); 11 U.S.C. § 1141(d). The Thirteenth Circuit conveniently ignores this point. Without this separate set of rules, debtors exercising significant leverage absent the absolute priority rule would find a cramdown confirmation exceedingly attractive next to a consensual plan. Debtors that may not traditionally fit the profile of the "mom-and-pop store" meant for subchapter V—such as Debtor in this case—may unfairly use their leverage in "global settlements" to "buy peace" at a fair and reasonable price while conveniently ignoring the interests of creditors.

CONCLUSION

For the reasons stated herein, Petitioner respectfully requests this Court to reverse the Court of Appeals of the Thirteenth Circuit's decision on both issues.

APPENDIX A

11 U.S.C. § 105(a): The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 524:

(a) A discharge in a case under this title—

> **(1)**voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1192, 1228, or 1328 of this title, whether or not discharge of such debt is waived;
>
> **(2)** operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and
>
> **(3)** operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1192, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

(b) [omitted]

(c) [omitted]

(d) [omitted]

(e) Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.

11 U.S.C. § 523:

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

> **(1)** [omitted]
>
> **(2)** [omitted]
>
> **(3)** [omitted]

(4) [omitted]

(5) [omitted]

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

(7) [omitted]

(8) [omitted]

(9) [omitted]

(10) [omitted]

(11) [omitted]

(12) [omitted]

(13) [omitted]

(14) [omitted]

(15) [omitted]

(16) [omitted]

(17) [omitted]

(19) [omitted]

11 U.S.C. § 1123:

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

(1) [omitted]

(2) [omitted]

(3) [omitted]

(4) [omitted]

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

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

(1) [omitted]

(2) [omitted]

(3) [omitted]

(4) [omitted]

(5) [omitted]

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

11 U.S.C. § 1192: 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.