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 WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRTEENTH CIRCUIT

BRIEF FOR RESPONDENT

Team 50
Counsel for Respondent

QUESTION 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 of 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).

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The Thirteenth Circuit Court of Appeals opinion can be located at Case No. 22-0909. The Thirteenth Circuit affirmed the Bankruptcy Court of Moot's decision that the Court has the authority to confirm a Plan which contains a non-consensual third-party release provision and that section 523 does not apply to corporations.

STATEMENT OF JURISDICTION

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

I. STATEMENT OF CONSTITUTIONAL AND STATUTORY PROVISIONS

The statutory provisions relevant to the case before the Court are listed below and provided in the Appendices.

11 U.S.C. §101

11 U.S.C. §101(d)

11 U.S.C. §101(41)

11 U.S.C §105(a)

11 U.S.C §523

11 U.S.C §523(a)

11 U.S.C §523(a)(6)

11 U.S.C §524(e)

11 U.S.C §524(g)

11 U.S.C §524(h)

11 U.S.C §1123

11 U.S.C §1123(a)

11 U.S.C §1123(a)(5)

11 U.S.C §1123(b)(6)

11 U.S.C §1129

11 U.S.C §1129(a)(1)

11 U.S.C §1129(b)

11 U.S.C §1129(b)(2)(A)(ii)

11 U.S.C §1141

11 U.S.C §1141(d)(6)

11 U.S.C §1191

11 U.S.C. §1191(b)

11 U.S.C §1192

11 U.S.C §1228(a)

11 U.S.C §1228(a)(2)

11 U.S.C §1228(b)

11 U.S.C §1323

11 U.S.C §1328(b)

28 U.S.C §157

28 U.S.C §157(b)

28 U.S.C §157(b)(2)(L)

28 U.S.C §1334

U.S. CONST. Art. III

STATEMENT OF FACTS

This is a mass tort case under Subchapter V of Chapter 11. R. at 3. This case involves allegations that Penny Lane Industries, Inc. ("Penny Lane") knowingly disposed of environmental pollutants on the property of its manufacturing facility located in the City of Blackbird, Moot. *Id*. Penny Lane filed for relief under Subchapter V of Chapter 11 of the Bankruptcy Code (the "Code") to deal with the tsunami of litigation related to these allegations. *Id*.

Penny Lane is a wholly owned subsidiary of Strawberry Fields Foods, Inc. ("Strawberry Fields"). *Id*. at 4. Strawberry Fields is a company that produces cereal and convenience foods and markets its products under several well-known brands sold in supermarkets throughout the country. *Id*. at 5. Penny Lane manufactures plastic, glass, and metal food containers. *Id*. Allegations allege that Penny Lane knowingly disposed of industrial chemicals and pollutants at its manufacturing facility in Blackbird, contaminating the area's groundwater supply; however, it has not conclusively been established that Penny Lane was the source of the contamination. *Id*.

Exposure to such toxins has been linked to sickness, congenital disabilities, and even death. *Id*. In 2017, the Appellant, Ms. Elanor Rigby ("Rigby"), a resident of Blackbird since 1982, filed suit against Penny Lane and Strawberry Fields, asserting that her four-year-old daughter died of leukemia caused by exposure to pollutants. *Id*. Rigby alleged that Penny Lane disposed of pollutants on its property. *Id*. She also alleges that the pollutants made their way into the Liverpool River, which runs along the rear of Penny Lane's property. *Id*. Rigby further alleged that Penny Lane's then Chief Executive Officer, Maxwell S. Hammer, was aware, as early as 2014, that waste on Penny Lane's property contaminated the community's water supply. *Id*. Rigby alleges that Strawberry Fields is liable because, among other theories, it knew, or should have known, of its subsidiary's alleged misconduct. *Id*. at 6.

Hundreds of similar suits have been filed against Penny Lane. *Id*. Many of these suits also name Strawberry Fields as a co-defendant. *Id*. Allegations in these suits are disputed. *Id*. Additionally, Penny Lane asserts that any dumping of pollutants done on its land was done in accordance with applicable environmental law. *Id*. Penny Lane denies any knowledge of waste infiltrating the groundwater supply. *Id*. Furthermore, there is insufficient evidence linking Penny Lane to any pollution as there are dozens of other manufacturing businesses in the area. *Id*. Additionally, there has been no judicial determination regarding the claims against Penny Lane or Strawberry Fields. *Id*.

Due to the mounting lawsuits against it, Penny Lane filed for Subchapter V of Chapter 11 on January 11, 2021. *Id*. Penny Lane owes less than $2 million to its trade creditors. *Id*. However, nearly 10,000 claims asserting cumulative damages of almost $400 million have been filed against Penny Lane. *Id*. Rigby has filed an unsecured claim against Penny Plane for $1 million. *Id*. Shortly after the petition date, Rigby commenced an adversary proceeding seeking to have her claim against Penny Lane non-dischargeable under sections 523(a)(6) and 1192. *Id*. at 7. However, Rigby commenced an adversary proceeding against Penny Lane, seeking to have her $1 million claim deemed non-dischargeable under sections 523(a) and 1129(2). *Id*.

After months of mediation, creditors and several stakeholders memorialized a Plan. Id. at 8. The Plan provides for the establishment of a creditors trust that would be funded with Penny Lane's disposable income for five years and $100 million from Strawberry Fields. This trust would provide creditors with a more significant distribution of thirty to forty cents on the dollar. Id. In exchange for funding the global settlement, Strawberry Fields would be released from all claims, including estate and direct claims. *Id*. The proposed release is non-consensual. Id.

Rigby objected to the confirmation despite the Plan being nearly consensual with over ninety-five creditor support. *Id*. at 9. Rigby argued that the bankruptcy court does not have the authority to release third-party claims against non-debtor entities. *Id*. The bankruptcy court dismissed Rigby's' non-dischargeability action concluding that section 523 applies only in cases where Penny Lane is an individual. *Id*. The bankruptcy court also overruled Rigby's' objection to that Plan holding that it had the authority to approve the releases. *Id*. On direct appeal from the bankruptcy court for the District of Moot, the Circuit Court of appeals for the Thirteenth Circuit affirmed the bankruptcy courts ruling, and Rigby now appeals to the Supreme Court.

SUMMARY OF THE ARGUMENT

This Court should affirm the Thirteenth Circuit's decision. Confirming a reorganization plan that includes the non-consensual third-party release is appropriate to facilitate a global settlement by Penny Lane, the parent corporation Strawberry Fields, and several creditor groups. This Court should also affirm the circuit court's decision that the exceptions to discharge in section 523(a) do not apply in a case where Penny Lane is a corporation, even in cases filed under Subchapter V of Chapter 11.

I. The bankruptcy court has the authority to approve non-consensual releases of claims held by third parties against non-debtor affiliates

The Bankruptcy Court is authorized to approve releases based on several provisions within the Code. Sections 105(a), 1123(a)(5) and (b)(6), and 1129(a)(1) of the Code, provide the court authority to use its "residual authority" to confirm a Plan with a non-consensual third-party release provision. Section 105(a) grants the Bankruptcy Court authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. 105(a).

Section 1123(a)(5) provides that a plan shall "provide adequate means for the plan's implementation." 11 U.S.C. 1123(a)(5). Section 1123(b)(6) provides that a plan may "include any other appropriate provisions not inconsistent with the applicable provisions of this title." 11 U.S.C. 1123(b)(6). And section 1129(a)(1) addresses one of the requirements for confirmation of a plan and provides that a plan shall be confirmed only if it "complies with the applicable provisions of this title." 11 U.S.C. 1129(a)(1).

Respondents will argue that the Bankruptcy Court lacks the authority to approve non-consensual third-party releases based on sections 524(e) and 524(g) of the Code. However, this is misguided for three reasons: (1) because the Bankruptcy Court has broad residual authority to confirm a plan, (2) because confirmation of a plan is core bankruptcy proceeding, and (3) because failing to confirm the Plan will likely result in Penny Lane liquidating and the creditors without any meaningful recovery.

II. Section 523 applies to corporations

The plain language of section 523(a) provides that discharge exceptions apply to corporate debtors with non-consensual in Subchapter V. First, the plain language of section 523(a) supports the interpretation that section 1192 does not except corporate debtors from discharge. Section 523(a) states that a discharge under section 1192 does not discharge an individual debtor from any debt. § 523(a). Second, there is no mention of "corporate debtor" in section 523(a). Accordingly, the exceptions to discharge do not apply to corporate debtors under Subchapter V.

ARGUMENT

When reviewing a bankruptcy court's conclusions of law, they are addressed under a de novo standard of review. *In re Soileau*, 488 F.3d 302, 305 (5th Cir. 2007). Under a de novo

standard of review, the reviewing court decides an issue as the trial court. *Razavi v. Comm'r of Internal Revenue*, 74 F.3d 125, 127 (6th Cir. 1996). Penny Lane raises two questions: (I) whether section 105(a) prohibits the court from confirming a plan containing a non-consensual third-party release provision; and (II) whether section 523 allows a corporate debt. Because the parties do not dispute the facts, these questions are based on the bankruptcy court's conclusions of law on the Code. R. at 11. Therefore, this Court's standard of review for these questions is *de novo*.

I. THE THIRTEENTH CIRCUIT CORRECTLY HELD THAT THE BANKRUPTCY COURT HAS BROAD AUTHORITY TO APPROVE A NON-CONSENSUAL RELEASES OVER THE OBJECTIONS OF CREDITORS

The Thirteenth Circuit correctly held that the Bankruptcy court acted within its authority to confirm a Plan that contained a non-consensual third-party release provision. Courts that have approved such non-consensual third-party releases have found statutory authority in several sections within the Code, including sections: 105(a), 1123(a)(5), 1123(b)(6), and 1129. Section 105(a) states that "the 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). Section 1123(a)(5) states that "notwithstanding any otherwise applicable non-bankruptcy law, a plan shall…provide adequate means for the plan's implementation." 11 U.S.C. § 1123(a)(5). Section 1123(b)(6) provides that a plan may "include any other provision not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6).

A. The Supreme Court and Circuit Courts hold that bankruptcy court approval of non-consensual third-party releases has a Statutory Basis

Congress has conferred jurisdiction to the bankruptcy courts under 28 U.S.C. § 1334. Section 1334 states that "district courts shall have original and exclusive jurisdiction of all cases under title 11." 11 28 U.S.C. 1334. Congress has also delineated a non-exhaustive list of

bankruptcy matters that a bankruptcy court has jurisdiction over. 28 U.S.C. § 157. Section 157 outlines sixteen specific matters that bankruptcy courts have jurisdiction over as core to a bankruptcy proceeding. 28 U.S.C. 157(b)(2). More specifically, 28 U.S.C. § 157(b)(2)(L) specifically denotes that a reorganization plan is a core bankruptcy proceeding. Furthermore, under *Stern v. Marshall*, bankruptcy courts are permitted to issue "orders" and "judgments" in "cases under title 11" and "all core proceedings arising under title 11, or arising in a case under title 11." *Stern v. Marshall*, 564 U.S. 462 (2011).

In *Stern*, this Court examined the bankruptcy courts authority to issue a final matter on a state law claim. *Id*. This Court found that bankruptcy courts have jurisdiction over matters arising in, arising under, and matters related to a title 11 case. *Id*. This Court held that under the statute's language, core proceedings are matters that arise in a case or under Title 11. *Id*. at 476. Furthermore, "the detailed list of core proceedings in section 157(b)(2) provides courts with ready examples of such matters." *Id*.

While *Stern* was not a case involving third-party claims, this Court examined the bankruptcy courts jurisdiction over certain types of claims such as those that can only arise in a bankruptcy proceeding. Here, a reorganization plan is a matter that can only arise in a bankruptcy proceeding. Because the Plan can only arise in a bankruptcy proceeding, the confirmation of a Plan is a core bankruptcy matter as identified in 28 U.S.C. 157(b)(2)(L). Additionally, because the confirmation of Penny Lane's Plan is a core bankruptcy matter, the bankruptcy court had the authority to confirm it despite the third-party release provision. Furthermore, because the non-consensual third-party release is a matter that arose under a title 11 proceeding and a matter related to a title 11 proceeding as specified in 28 U.S.C. 1334 and *Stern*, the bankruptcy court acted within its jurisdictional authority to approve the release and confirm the Plan.

1. The bankruptcy code has broad and equitable powers

The plain language of section 105(a) directly supports the lower court's confirmation of a plan containing a non-consensual third-party release. The bankruptcy court may issue any order, process, or judgment necessary or appropriate to carry out the provisions of the the Code. 11 U.S.C. § 105(a). This Court held that the task of resolving the dispute over the meaning begins where all such inquiries must begin: with the statute's language. *Ransom v. FIA Card Servs.*, N.A., 562 U.S. 61, 131 S. Ct. 716, 178 L. Ed. 2d 603 (2011) (quoting *United States v. Ron Pair Enter.*, 489 U.S. 235, 241, 109 S. Ct. 1026, 1030 (1989)).

This Court has also held that sections 105(a) and 1123(b)(6) provide the bankruptcy court with broad, equitable powers. *See United States v. Energy Res. Co.*, 495 U.S. 545 (1990*). In Energy Resources*, the Supreme Court held that sections 105(a) and 1123(b)(6), in combination, granted broad authority to the bankruptcy courts to approve and enforce plan provisions necessary for the implementation of the plan of reorganization. *Id*. at 549. As this Court explained, "[t]hese statutory directives are consistent with the traditional understanding that bankruptcy courts, as courts of equity, have broad authority to modify creditor-debtor relationships." *Id*. This Court further held that absent a provision of the The Code or a federal stature clearly, specifically, and unequivocally barring the plan provision at issue, the bankruptcy court had the statutory authority to approve and enforce the provision. *Id*. at 549-50. In *Energy Resources*, this Court held that the combination of sections 105(a) and 1123(b)(6) provided the bankruptcy court the authority to approve and enforce the plan provision. *Id*. Because this Court did not find any express code sections or other statutes prohibiting the provisions in the plan, this Court held that the bankruptcy court had the authority to approve and enforce them and properly exercised that authority. *Id*. at 550-51.

Given this Court's guidance, Circuit courts that have approved third-party releases in reorganization plans, have found that statutory authority exists in sections 1123 and 105. The bankruptcy court examined a Chapter 11 mass tort case in Dow Corning. *In re Dow Corning Corp.*, 280 F.3d 648 (6th Cir. 2002). In *Dow*, the Sixth Circuit agreed with the district court, holding that the circuit court's finding that the combination of sections 105(a) and 1123(b)(6) provided specific statutory authority for the inclusion of third-party releases in plans and the court's approval and enforcement of such releases. *Id*. at 657-58 (quoting the district court's opinion). Furthermore, the Sixth Circuit held that no provision of the Code or federal law, including, section 524(e) of the The Code, barred third-party releases. *Id*.

The *Dow* court did not find that the Code barred non-consensual third-party releases. *Id*. at 657. The court reasoned that non-consensual third-party releases are a dramatic measure to be used cautiously and should only be appropriate in "unusual circumstances." *Id*. The Sixth Circuit created the seven-factor test to mitigate problems arising from the bankruptcy court having broad authority to enter a judgment or order. *Id*. The court based its decision on these seven factors: (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, namely, the reorganization hinges on the debtor being free from indirect suits against parties; (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.. *Id*. at 657.

In applying the precedent set by this Court in *Energy Resources*, the bankruptcy court for the District of Moot, was granted broad authority to approve provisions in the Penny Lane's Plan. R. at 11. Like both *Energy Resources* and *Dow* noted, unless an express Code section prohibits a provision within the Plan, such as the non-consensual third-party release, then a bankruptcy court has broad authority to approve the provision. Here, there is no express provision within the Code or other statute that prohibits a non-consensual third-party release. Given that neither this Court nor Rigby will be able to point to a provision in the Code or any other statute that prohibits non-consensual third-party releases, the bankruptcy court acted with its inherent broad authority to approve the release of Strawberry Fields.

2. Debts of the Debtor

The Seventh Circuit, in *Airadigm Communications, Inc. v. Federal Communications Comm'n.*, approved a plan with a non-consensual third-party release. *In re Airadigm Commc'ns, Inc.*, 519 F.3d 640, 657 (7th Cir. 2008). The plan contained a provision releasing a third party from all liability "in connection with" the reorganization except for willful misconduct. *Id*. at 644. On appeal, the Seventh Circuit found that the release was necessary because of the substantial contribution made by the third party to ensure the debtor's successful reorganization. *Id*. The issue before the Seventh Circuit was whether Bankruptcy Code expressly prohibits the release of a non-debtor. The court examined 524(e), which states, "[D]ischarge of 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.SC. 524(e). The court reasoned that because section 524(e) does not include the words "shall" or "will" it does not prevent the court from making a specific ruling altering third-party liability. Id. at 656.

The court supported its conclusion by contrasting the wording in the prior Bankruptcy Act and comparing it to the language of section 524(e). *Id*. The court found that in the previous Bankruptcy

Act, there was specific language of prohibition, such as "shall" or "will." *Id*. The court then reasoned that since there was no specific language of prohibition, the next step is to look at whether the bankruptcy court had jurisdiction. The Seventh Circuit held that the bankruptcy court had broad and equitable power under sections 105(a) and 1123(b)(6).

3. Section 524(g) does not expressly prohibit non-consensual third-party releases in cases outside of asbestos

In *Manville*, the debtor filed for bankruptcy after being unable to deal with the onslaught of claims related to asbestos-related injuries. *Macarthur Co. v. Johns-Manville Corp.*, 837 F.2d 89 (2d Cir. 1988)(cert denied). The *Manville* plan included broad releases of third parties in exchange for a contribution to a substantial trust which would satisfy present and future asbestos-related claims. *Id*. The court noted that claimants would have little chance of recovery without the contribution to the trust. *Id*. The court also noted that if the releases were not approved and *Manville* was forced to litigate all claims against it, it would create a race to the court and an unfair distribution to all creditors. *Id*.

Manville was a unique case that presented the bankruptcy court with one of the first opportunities to find a solution for an insolvent debtor involved in thousands of mass tort claims. After the Second Circuits' approval of the non-consensual third-party and confirmation of the plan, Congress attempted to codify the ruling in Manville with the Bankruptcy Reform Act of 1994, by adding section 524(g). H.R. R.E.P. 103-835, 41, 1994 U.S.C.C.A.N. 3340, 3349. Section 524(g) permits non-consensual third-party release concerning asbestos or asbestos-related injuries. 11 U.S.C. 524(g). While section 524(g) allows releases in specific circumstances, nothing in the section prohibits releases in other cases. Furthermore, Congress specifically added a "rule of construction" which directs courts on how to read and apply the section. The rule of construction

appears in section 111(b) of the Public law that went before both houses and was signed by the President. P.L. 103-394. The rule of construction states: Nothing in [the subsection adding 11 U.S.C. §524(g) to the Code] shall be construed to modify, impair or supersede any other authority the court has to issue injunctions in connection with an order confirming a plan of reorganization. *Id*. See also 11 U.S.C. §524(g) (rule of construction).

The rule of construction of section 524(g) supports the bankruptcy court's approval of Penny Lane's Plan. There is no express provision within the Code prohibiting non-consensual third-party releases. Additionally, the rule of construction of section 524(g) notes the courts' authority to issue injunctions in connection with a reorganization plan. The rule of construction implies that the court has the authority to approve injunctions and that authority is not limited to asbestos cases. Accordingly, non-consensual third-party releases are not limited to asbestos cases and the court had the authority to confirm the Plan, which authorized the release of Strawberry Fields.

B. The majority of circuits approve non-consensual third-party releases

A majority of Circuits have approved non-consensual third-party releases. The Circuits that have done so include the First, Third, Fourth, Sixth, Seventh, and Eleventh Circuits. *See Monarch Life Ins. Co. v. Ropes & Gray*, 65 F.3d 973, 983-84 (1st Cir. 1995); *Metromedia*, 416 F.3d at 141; *In re Lower Bucks Hosp.*, 571 Fed. Appx. 139, 144 (3d Cir. 2014); *Nat'l Heritage Found., Inc. v. Highbourne Found.*, 760 F.3d 344, 347-51 (4th Cir. 2014), *cert. denied* 574 U.S. 1076 (2015); *In re Dow Corning Corp.*, 280 F.3d 648, 658 (6th Cir. 2002); *In re Airadigm Commc'ns, Inc.*, 519 F.3d 640, 657 (7th Cir. 2008); *In re Seaside Eng'g & Surveying*, 780 F.3d 1070, 1076-79 (11th Cir. 2015). Furthermore, two recent bankruptcy decisions involving mass tort cases have

also approved third-party releases against the objections of one or more creditors. See *In re BSA*, 642 B.R. 504 (Bankr. D. Del. 2022); *In re Mallinckrodt PLC*, 639 B.R. 837.

1. Third-party releases should be approved in unusual circumstances.

Courts that have looked at whether a non-consensual third-party release is appropriate, have held that these types of releases should only be approved in "rare cases and when appropriate." See *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136 (2d Cir. 2005). In *Metromedia*, the Second Circuit held that courts may consider several findings when deciding whether a third-party release is appropriate. *Id*. The court noted that in and of itself, non-consensual third-party releases may lend themselves to abuse. *Id*. at 142. The court in *Metromedia* held that as a way to prevent abuse, the courts should look at: (1) whether the releases are important to a debtor's plan; (2) the claims are channeled to a settlement fund rather than extinguished; (3) whether the enjoined claims would indirectly impact the debtor's reorganization by way of indemnity or contribution; (4) the released party provides substantial contribution; or (5) whether the plan otherwise provides for full payment of the enjoined claims.

Like the court noted in *Metromedia*, the Thirteenth Circuit too noted that such non-consensual releases are permitted only in extraordinary cases. R. at 10. The Plan in the present case meets the standards outlined in *Metromedia*. Here, the release of Strawberry Fields is a key component of Penny Lane's Plan. *Id*. at 10. The Plan provides that Strawberry Fields will be released of all claims in exchange for $100 million to be placed in creditor trust. *Id*. at 8. The creation of this trust to satisfy current and future claims complies with the standards outlined in *Metromedia*. Like the standard outlined in Metromedia, the release is an essential part of Penny Lane's Plan. The Bankruptcy Court for the District of Moot noted that the release was fair and

equitable and that without the release, there did not "exist a conceivable means to achieve the results accomplished by the Plan." *Id*. at 10. Additionally, under the guidelines in *Dow*, the Thirteenth Circuit was correct in affirming the bankruptcy court's decision to approve the non-consensual third-party release. Like in Dow, Judge Harrison of the Circuit of Moot noted that this case is an unusual case and as such approving the third-party release is appropriate.

2. Recent decisions support the approval of non-consensual third-party releases.

Most recently, two decisions from bankruptcy courts out of the Third Circuit, have allowed non-consensual third-party releases. *See In re BSA*, 642 B.R. 504 (Bankr. D. Del. 2022); *In re Mallinckrodt PLC*, 639 B.R. 837. In the first case, decided in July of 2022, Judge Silverstein issued an opinion confirming a plan which contained a non-consensual third-party release. *In re BSA*, 642 B.R. 504. The case involves mass tort claims over allegations of sexual abuse within the ranks of Boy Scouts of America. *Id*. The court held that approving these releases was at the court's discretion. *In re BSA*, 642 B.R. 504, 564. The court discussed the court's authority to approve a plan under section 1129, noting that a plan had to comport with the section's mandates. *Id*. at 553. Furthermore, the court opined that as a factfinder, "[t]he court need not be convinced that the settlement is the best possible compromise to approve it; instead, the court "need only conclude that the settlement falls within the reasonable range of litigation possibilities somewhere above the lowest point in the range of reasonableness." *Id*. Judge Silverstein noted that third-party releases are not inconsistent with other provisions of the Code and "section 1123(a)(5) permits a plan to provide adequate means for its implementation. *Id*.

The court further opined that section 1123(b)(6) provides that a plan may include "any other appropriate provision not inconsistent with the applicable provisions of this title." *Id*. at 594.

Judge Silverstein further distinguished section 524(g), holding that while the section allows third-party releases in asbestos-related cases, the Code does not expressly prohibit them in other cases. *Id*. In its opinion, the court quoted the rule of construction that Congress added in its enactment of section 524(g): Public Law section 111(b), which went before both houses of Congress and was signed by the President stating: "[N]othing in subsection (a) [what would be codified as § 524(g) and (h)] shall be construed to modify, impair, or supersede any other authority the court has to issue injunctions in connection with an order confirming a plan of reorganization." *Id*. at 594-95; quoting Bankruptcy Reform Act, Pub. L. 103-394 § 111(b) (1994).

Judge Silverstein held that the court acted within its authority to confirm a plan in accordance with section 1129, the court had discretionary power to confirm a plan under section 105(a), and that confirming the plan did not contravene any other provisions of the Code. *Id*. After the court found that the plan met the provisions in section 1129 and did not contravene any other provisions, Judge Silverstein confirmed the plan allowing the non-consensual third-party releases. *Id*. However, Judge Silverstein did not release all creditors. *Id*. Acting with the court's discretionary powers, the court found that one of the releases was not sufficiently related to the bankruptcy case or the issues that gave rise to the bankruptcy case. *Id*.

In the second most recent case, a court approved a non-consensual third-party release in *Mallinckrodt*. *In re Mallinckrodt*, 839. In this case, the court confirmed a plan which released third parties against the objections of the debtor's creditors. *Id*. In this case, *Mallinckrodt* filed for Chapter 11 after being saddled with over 3,000 opioid lawsuits filed against it. *Id*. Its plan included third-party releases of opioid claims and actions surrounding the business reorganization. *Id*. Judge Dorsey found that the releases satisfied section 1123(b). *Id*. The court held that it had "core" authority to approve the plan under 28 U.S.C. 157(b)(2)(L). *Id*. at 866. The court held that the

Bankruptcy court has statutory authority to approve the plan but that provisions within the plan must be "integral to the debtor-creditor relationship" to pass constitutional scrutiny. *Id*. Judge Dorsey held that the releases were "integral to restructuring the debtor-creditor relationship, and, therefore, acting within its statutory and constitutional authority." *Id*. Furthermore, Judge Dorsey held that the "bankruptcy courts may adjudicate matters arising in the claims-allowance process because those matters are integral to the debtor-creditor relationship, not the other way around." Id. at 867; quoting *Stern v. Marshall*, 564 U.S. 462 (2011).

The present case presents facts analogous to both *Mallinckrodt* and *B.S.A*. Like those cases, the present case is a mass tort case. R. at 3. Similarly, objections to the confirmation of the Penny Lane Plan stem from the creditor's misguided assertion that the court lacks jurisdictional authority to approve the plan. *Id*. at 12. This assertion is misguided because sections 105(a), 1123(a5), (b)(6), and 1129 all confer authority on the bankruptcy courts to confirm a plan and approve the provisions within the plan. *Energy Resources* and the provisions within the Code provided the lower court with the authority to confirm a Plan.

As noted in *B.S.A.*, the plan must meet the mandates of section 1129. The Penny Lane Plan provides for the creation of a trust to satisfy creditor claims. R. at 4. The Plan also provides creditors with a more significant and immediate recovery than if Penny Lane liquidated. *Id*. at 10. Specifically, the Plan allows creditors to recover an estimated 30 to 40 cents on the dollar. *Id*. at 8. While no amount of money will compensate the creditors for their loss, this amount is far more than creditors will receive if Penny Lane were forced to liquidate. Judge Silverstein noted in *B.S.A.* that while the amount of recovery under the *B.S.A.* plan would not compensate the victims for their injuries, the plan provided a fair and equitable recovery for all claimants. Here, the Plan is fair and

equitable being that it provides greater recovery not just for Rigby, but for the 10,000 other claims as evidenced by the over ninety-five percent creditor approval. R. at 9.

Additionally, as noted in *Mallinckrodt*, the bankruptcy court had statutory authority to confirm the plan and approve the non-consensual third-party release under section 1123(b). Specifically, section 1123(b)(6) gives the court the authority to include any other provision that is not inconsistent with the Code. 11 U.S.C. 1123(b)(6). As both Judge Dorsey and Judge Silverstein noted, no provision within the Code expressly prohibits non-consensual third-party releases. In following *Mallinckrodt*, the bankruptcy court appropriately confirmed a plan that was not inconsistent with any other provision of the Code.

C. Failure to confirm the Plan will yield outcomes that go against the pillars of bankruptcy

Two fundamental purposes of a Chapter 11 bankruptcy are to provide creditors with maximum recovery and find workable solutions so that the debtor can reorganize. Through months of mediation with various other creditors, the Plan set forth by Penny Lane accomplishes two essential pillars of bankruptcy: Maximized recovery for creditors and a workable solution that allows Penny Lane to reorganize.

Many courts have noted that non-consensual third-party releases should be scrutinized and allowed in rare circumstances. Courts have indicated that failing to confirm a plan will lead to a "race" to the court's scenario where early claimants may receive more than later claimants. Additionally, in cases like Penny Lane, which involve mass tort cases, claimants would be left without a means of recovery until the case is fully litigated. It could be several years before claimants receive the relief they might desperately need.

II. THE THIRTEENTH CIRCUIT CORRECTLY HELD THAT SECTION 523(A) DOES NOT APPLY TO CORPORATIONS UNDER SUBCHAPTER V.

The court below correctly held that the Code's goal of providing a fresh start, gives rise to a strong presumption against excepting discharges of corporate debtors under Subchapter V. The decision of whether the recently enacted Subchapter V expands the applicability of section 523(a) to non-individual debtors turns on statutory interpretation and Congressional intent.

A. The language of section 523(a) limits the exceptions to individual debtors

In 2019, Congress enacted the Small Business Reorganization Act ("S.B.R.A.") to promote and encourage the survival of small businesses. Before S.B.R.A, small business debtors were the "least likely to reorganize successfully" in a Chapter 11 case. H.R. Rep. No. 116-171, at 2 (2019). The legislature created Subchapter V as part of Chapter 11. *Id*. Subchapter V allows courts to confirm a Plan even if all classes reject it. It eliminates the absolute priority rule, making it easier for small business debtors to have their reorganization plan confirmed and successfully reorganize. *Id*. at 4. Additionally, the discharge section of Subchapter V allows a debtor to discharge their debts. *Id*. Debtors petition the courts to grant them a discharge as soon as practicable after completion by the debtor of all payments due within the first three years of the plan or a longer period not to exceed five years as the court may decide. *Id*. at 2. Such discharge pertains to all debts as provided under the plan, except any otherwise not dischargeable debt. *Id*. In the relevant part, Section 1192 provides:

If the plan of the debtor is confirmed under section 1191(b)…as soon as practicable after completion be the by the debtor of all payments…the court shall grant the debtor a discharge of all debts … except any debt of the kind specified in section 523(a) of this title.

11 U.S.C. § 1192. This discharge section refers to the debts specified in section 523(a), which lists nineteen exceptions to discharge. This argument analyzes the relationship between section 1192 and section 523(a) to determine whether a non-individual debtor is subject to the non-dischargeable debts listed in section 523(a).

1. The plain language of section 523(a) equivocally applies to only individual debtors

This Court should find that section 523(a) only applies to individual debtors because the plain language states that only the discharges of individuals are excepted. Section 523(a) states, "[a] discharge under sections 727, 1141, 1192, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt." 11 U.S.C. § 523(a). This Court wrote that a proper analysis of the Code provisions must begin with the statute's language. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989). When the provision's language is plain, the sole function of courts is to enforce it according to its terms. *Id*. Additionally, a majority of bankruptcy courts have held that "the introductory sentence of section 523(a) makes it clear that the provision is limited to individual debtors…and is not applicable to corporate debtors." *In re Voyager Digital Holdings, Inc*., No. 22-10943, WL 1734349, at (Bankr. S.D.N.Y. November 30, 2022); *see also In re G.F.S. Indus., L.L.C.*, No. 22-50403-CAG, 2022 WL 16858009, at *7 (Bankr. W.D. Tex. November 10, 2022).

In 2022, the Fourth Circuit held that the non-individual debtor's debt was dischargeable because the exceptions to discharge under section 523(a) apply only to individuals. Section 1192 does not extend the exceptions to corporations. *Id*. at 3. *G.F.S. Industries* received funding due to the increased burden of administrative costs caused by the COVID pandemic. *Id*. at 1. Despite receiving funding, *G.F.S.* was unable to service its operations. *Id*. This led *G.F.S.* to file for Chapter

11 bankruptcy under Subchapter V. *Id*. *Avion*, a creditor of *G.F.S.*, filed an adversary proceeding claiming under section 523(a). *Id*. Judge Gargotta concluded that G.F.S.'s discharge could not be excepted by section 523(a) because, in the Subchapter V context, only individuals, not corporations, can be subject to section 523(a) dischargeability actions. *Id*. at 4, 5.

Like *G.F.S.*, Penny Lane is classified as a corporation because Penny Lane is a manufacturer and wholly owned subsidiary of Strawberry Fields. R. at 4-5. In addition, Rigby is similar to the creditor *Avion Funding* because Rigby brought an adversary suit against Penny Lane under section 523(a). R. 7. Judge Gargotta opined that the preamble of section 523(a) is critical to the analysis of section 1192(2). *In re G.F.S.*, No. 22-50403-CAG, at *4. As such, this Court should hold that the exceptions to discharge do not apply to Penny Lane because the plain language of section 523(a) unequivocally applies to only individual debtors.

Rigby will contend that the use of the word "debtor" and "debts of kind specified in section 523(a)" extends the nondischargeable debts under section 523(a) to corporations. Because the use of the word "debtor" in section 1192 applies to debts that are not dischargeable to both corporate and individual small business debtors, on its face, section 1192 seems to extend the debts listed in section 523(a) to apply to both individual and non-individual debtors. This argument would likely fail because the plain language of section 523(a) only applies to individuals. *Id*. at 3. Similar to *In re G.F.S.*, the limiting language of section 523(a) does not allow section 1192(2)'s reference to expand the list of non-dischargeable debts to Penny Lane. Thus, this Court should find that the debts listed in section 523(a) do not apply to Penny Lane because the preamble of section 523(a) clearly only applies to individual debtors.

2. The specific provisions of section 523(a) govern over the general provisions section 1192

This Court should find that section 523(a) only applies to individual debtors because section 523(a) states explicitly that it expects the discharge of individual debtors. The specificity of the type of debtor in section 523(a) unequivocally provides for individual debtors. The canons of statutory construction established that when there is contention between a specific statute and a general statute, the specific statute governs over the general. *See RadLAX Gateway Hotel, L.L.C. v. Amalgamated Bank*, 566 U.S. 639, 645 (2012). The general/specific canon provides that the general language of a statute, although broad enough to include a specific component, does not apply to a subject that is specifically dealt with by another statute. *Id*.

For instance, in *RadLAX Gateway Hotel* the court found that because a creditor's ability to receive an "indubitable equivalent" of its claim under section 1129(b)(2)(A)(iii) is general enough to encompass section 1129(b)(2)(A)(ii)'s provision of allowing said creditor to specifically credit-bid at a sale, the specific statute governs over the general. *Id*. 640. Section 1129(b)(2)(A)(ii) provides the debtor the ability to sell its property free and clear of liens which permits the creditor to credit-bid at the sale and receive a lien on the sale proceeds to satisfy its claim(s). *Id*. While the proposed plan forbade the creditor bank to credit-bid, *RadLAX* argued that its plan, under section 1129(b)(2)(A)(iii), gives the Bank an indubitable equivalent. *Id*. The court held that the plan was unsatisfactory because clause (ii) is specific and thus governs over clause (iii). *Id*.

Although the facts in *RadLAX Gateway Hotel* are not analogous to this case, the reasoning and holding are applicable. Here, like in *RadLAX Gateway Hotel*, the language of section 523(a) specifically refers to "individual debtors," while section 1192 broadly encompasses all "debtors." The word "debtor" throughout Subchapter V refers to "small business debtors." H.R. Rep. No.

116-171, at 2 (2019). A small business debtor is defined in the Code as "a person engaged in commercial or business activities." 11 U.S.C. §§ 101(51)(d), 1182. A "person" is further defined as individuals and corporations. 11 U.S.C. § 101(41). Similar to *RadLAX Gateway Hotel,* where the "indubitable equivalent" of a claim was broad enough to encompass credit bids, the use of the word "debtor" pertains to individual and non-individual debtors. *Id*.; 11 U.S.C section 523(a). The specific use of the word "individual debtor", in section 523(a), is more intentional than section 1192's broad application of "debtor." Thus, the Court should rule in favor of Penny Lane because the application of section 523(a) is more specific than section 1192. And section 523(a) applies to only individual debts.

3. The application of section 523(a) to other discharge sections

Lastly, this Court should find that section 523(a) does not apply to Penny Lane because if Congress intended the list of debts to be applicable to non-individual debtors under Subchapter V, it knew how to. Another rule of statutory construction is that every word must be given meaning so that no word in a statute is rendered superfluous. *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883). A court should give effect to every clause and word of a statute, avoiding any construction which implies that the legislature was ignorant of the meaning of the language employed. *Id*. A statute should be constructed so that effect is given to all its provisions so that no part will be inoperative or superfluous, void or insignificant. *Hibbs v. Winn*, 524 U.S. 88, 101 (2004).

In *Satellite* the court held that when effect is given to every word of the statute, the plain language of section 523(a) confirms that exceptions to a debtor's discharge under section 1192 apply only to individuals. *In re Satellite Rests, Inc. Crabcake Factory U.S.A.*, 626 B.R. 871, 876 (Bankr. D. Md. 2021). In *Satellite*, several employees filed a complaint against the defendant for

violations of the Fair Labor Standards Act of 1938 ("F.L.S.A."). *Id*. at 873. Subsequently, the defendant filed under Subchapter V of Chapter 11 of the bankruptcy code. *Id*. The plaintiffs filed an adversary proceeding asserting that Satellite's debt to them was non-dischargeable because the F.L.S.A. claims were for willful and malicious injury under section 523(a)(6). *Id*. The court held that the exceptions to discharge only apply to individual debtors, including debtors under section 1192. *Id*. at 876. In reaching this conclusion, the court reasoned that every word of section 523(a) should be given meaning. *Id*. Therefore, section 523(a)'s inclusion of "section 1192" and "individual debtors" when read together, shows that the exceptions to discharge only apply to individuals in section 1192. *Id*.

Similar to the creditors in *Satellite*, Rigby contends that Penny Lane's debts are non-dischargeable under section 523(a)(6) because the debt arises from a willful and malicious injury. R. at 7. Additionally, because Penny Lane is a non-individual debtor, like *Satellite Restaurants*, this Court should follow the analysis in *Satellite* that the addition of section 1192 can only reasonably mean that Congress intended to continue to limit the application of section 523(a) to individuals. *In re Satellite*, USA 626 B.R. at 878. In doing so, this Court should affirm the lower court's ruling and find that section 523(a) is not applicable in this case because when given effect to every word in section 523(a) and section 1192, section 523(a) confirms that the exceptions to discharge only apply to individuals.

Moreover, in *In re G.F.S.*, the Fifth Circuit wrote that if Congress intended the list of debts to apply to non-individual debtors, Congress knew how to do so because it did so in section 1141(d). *In re G.F.S., L.L.C.*, 2022 WL 1685009 at *12. In Chapter 11's discharge, section 1141, Congress explicitly distinguishes the discharges applicable to individual debtors and those applicable to non-individual debtors in subsection (d). *Id*. In the relevant part, section 1141 states,

"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." 11 U.S.C. § 1141(d). It further states in section 1141(d)(6), "[T]he confirmation of a Plan does not discharge a debtor that is a corporation from any debt of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a)." *Id*.

Here, to determine which type of debtor under section 1192, one must look at the language of section 523 because the preamble of section 523(a) will otherwise be inoperative or superfluous. *In re Satellite*, USA 626 B.R. at 878. When effect is given to the differentiation section 1141 makes between individual and corporate debtors compared to the construction of section 1192, it is clear that Congress did not intend for the language of section 1192 to extend the exceptions beyond non-individual debtors. *Id*. As such, because Congress differentiated between corporate and individual debtors in section 1141 and did not in section 1192, Congress did not intend section 1192 to expand the application of section 523(a) to non-individual debtors. Therefore, this Court should find that exception to debts from malicious and willful acts does not extend to the discharge of Penny Lane.

B. CONGRESS DID NOT INTEND TO EXPAND SECTION 523(A) TO CORPORATIONS WHEN IT CREATED SECTION 1192.

Even when the language of a statute is clear, the Court may look to legislative history to ascertain whether there is support for an alternate interpretation. *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 200 (1976). Nothing in the legislative history for section 1192 supports an alternate meaning of section 523(a) within a Subchapter V discharge. *In re G.F.S.*, No. 22-50403, 2022 WL 16858009, at *7 (Bankr. W.D. Tex. November 10, 2022) (citing *In re Satellite*, 626 B.R. at 876).

1. The legislative history of 1192 does not support exceptions to corporate discharge

In the Report of the House of Representatives Judiciary Committee, Congress clarified that the new section 1192 of the bankruptcy code excepts debts on which the last payment is due after the plan and "any debt that is otherwise non-dischargeable." 290 H.R. Rep. No. 116-171, at p. 8 (2019). "Otherwise nondischargeable" includes section 523(a), which only applies to individual debtors according to its plain language. *In re Satellite*, 626 B.R. at 878. Nothing in the House Report addresses expanding the applicability of section 523(a) to corporations under section 1992. If Congress intended an expansion, it would have mentioned as much in the detailed report. 290 H.R. Rep. No. 116-171 (2019).

Further, the Honorable A. Thomas Small, Jr., submitted testimony to support the passage of S.B.R.A. to the 116th Congress with no mention of applying the exception to corporations in Subchapter V. Judge Small noted that the most important requirement for a non-consensual plan would be that "the plan must provide that all the debtor's projected disposable income be received in a 3 to 5-year period, as determined by the court…" *Hearing on Oversight of Bankruptcy Law & Legislative Proposals Before the Subcommittee. On Antitrust, Commercial and Amin. Law of the H. Comm. On the Judiciary,* 116th Cong. 2 (Revised Testimony of A. Thomas Small on Behalf of the National Bankruptcy Conference) pg. 114-115. It is unlikely that Congress intended to apply all of the exceptions listed in section 523(a) without any mention of doing so. *In re Satellite*, 626 B.R. at 878.

In holding that section 523(a) does not apply to corporations, the *Satellite* court reasoned that the absence of any mention of expanding the discharge exceptions to non-individual debtors in the legislative history of section 1192 validates that Congress did not intend an expansion. *In re*

Satellite, 626 B.R. at 878. This Court should not apply section 523(a) to Penny Lane because doing so would create inappropriate legislation where Congress was intentionally silent. When Congress did choose to explain 1192, it simply stated debts that were "otherwise non-dischargeable" are excepted without expounding on this meaning because they knew section 523(a) was evident in that it only applies to individual debtors.

2. Corporate discharge has historically been protected in Chapter 11

The decisions of every bankruptcy court that has looked at this issue since the passage of S.B.R.A. has held that section 523(a) only applies to individuals in a Subchapter V case. *In re Rtech Fabrications L.L.C.,* 635 B.R. 559 (Bankr. D. Idaho 2021); *In re Satellite*, 626 B.R. at 871; *In re Cleary Packaging, LLC* 630 B.R. 466 (Bankr. D. Md. 2021); *In re Lapeer Aviation, Inc.*, Adv. No. 22-03002, 2022 WL 11100072 (Bankr. E.D. Mich. Apr. 13, 2022); *In re GFS*, 2022 WL 16858009 at *2. All five courts have consulted the history of corporate discharge in Chapter 11 to find that Congress did not secretly expand section 523(a) to corporations when it created Subchapter V.

In *In Re RTech*, the court held that Subchapter V should be interpreted according to the statutory scheme of Chapter 11. *In re Rtech*, 635 B.R. at 565. In that case*, RTech Fabrications* specialized in building and modifying custom vehicles. Jerry Catt, Jr. obtained an order against RTech for breach of contract, fraud, and alter ego veil piercing. *Id*. at 562. This led *RTech* to file for bankruptcy under Chapter 11, Subchapter V. *Id*. Catt sought to except his claim against *RTech* under section 523(a). *Id*. After considering the history of corporate discharge of Chapter 11, the court found that section 523(a)'s exceptions to discharge only apply to individual debtors. In Chapter 11, the corporate discharge has been "strenuously protected." *Id*. at 565 (citing *Cleary*

Packaging, 630 B.R. 466, 474, (Bankr. D. Md. June 29, 2021). The only two exceptions to discharge that apply to corporations took eight years to become law and are found in section 1141(d)(6). *Id*. The court reasoned that it is doubtful Congress expanded the 19 exceptions in section 523(a) to corporations in a bill that took less than a year to become law. *Id*.

Furthermore, in *In re Lapeer*, the court noted numerous pre-SBRA cases in Chapter 11 that support finding that section 523(a) clearly limits an exception to discharge to individual debtors. *In re Lapeer*, 2022 WL 11100072 at *2. In, *Lapeer*, the debtor, Lapeer Aviation, filed for Subchapter V of Chapter 11 bankruptcy. *Id*. Carl Jennings filed an adversary proceeding to have his claims against Lapeer deemed non-dischargeable pursuant to sections 523(a)(4) and 523(a)(6). *Id*. In holding that section 523(a) does not apply to corporations, the court cited Chapter 11 cases decided before the passage of S.B.R.A. as instructive in making its determination. *Id*. (citing *In re M.F. Glob. Holdings, Ltd.*, No. 11-15059(M.G.), 2012 WL 734175, at *3 (Bankr. S.D.N.Y. March 6, 2012); *Adam Glass Serv., Inc. v. Federated Dep't Stores*, Inc., 173 B.R. 840, 842 (E.D.N.Y. 1994); *Savoy Records Inc. v. Trafalgar Assocs. (In re Trafalgar Assocs.)*, 53 B.R. 693, 696 (Bankr. S.D.N.Y. 1985) *Williams v. Sears Holding Co.*, No. 06-PWG-455-M, 2008 WL 11424255, at *4 (N.D. Ala. March 28, 2008); *Garrie v. James L. Gray, Inc.*, 912 F.2d 808, 812 (5th Cir. 1990)). See also *Yamaha Motor Corp. U.S.A. v. Shadco, Inc.*, 762 F.2d 668 (8th Cir. 1985).

In this case, this Court should not apply section 523(a)(6) to Penny Lane because doing so would go against what Congress intended when it created section 1192 and it would be contrary to the history of corporate discharge in Chapter 11. Here, like in *RTech* and *Lapeer*, the court should apply the protections corporations have historically been afforded in Chapter 11 cases because Penny Lane elected to proceed under Subchapter V of Chapter 11 when it filed for bankruptcy and satisfied the requirements for a small business debtor. R. at 6 n 5. If this Court

were to apply section 523(a) to Penny Lane, it would change Chapter 11 in a way that Congress never intended when it created 1192 because this would suddenly extend all 19 exceptions to corporations for the first time.

Further, this Court should follow the history of protecting corporate discharge in Chapter 11 because corporations, like Penny Lane and those in *RTech* and *Lapeer*, often file for Subchapter V because they are facing lawsuits that threaten to put an end to the small business. In this case, Penny Lane sought the protection of Chapter 11, Subchapter V because it is facing nearly 10,000 claims that total nearly $400 million. R. at 6. Applying section 523(a) to Penny Lane would defeat the reason many corporations have filed under this chapter in the past, which is that they know the claims against them will be discharged if the plan is confirmed and all the requirements under section 1192 are met. Extending section 523(a) would also go against the overall statutory scheme of Chapter 11 because Subchapter V is a part of Chapter 11. *In re Rtech*, 635 B.R. at 565. Therefore, this Court should limit the exceptions to discharge to individuals, as has been done in pre-SBRA cases and the majority of the cases that have been decided after S.B.R.A.

3. The history of Chapter 12 corporate discharge is not relevant

Additionally, this Court should not apply the exceptions to discharge to corporations based on a comparison to cases in chapter 12 that have done so. See *Breezy Ridge Farms,* 2009 WL 1514671, at *1-2; *In re J.R.B. Consol., Inc.,* 188 B.R. 373 (Bankr. W.D. Tex. 1995). In *In re G.F.S.*, the court explained that its previous decision in *In re J.R.B.*, which applied section 523(a) to corporations in a Chapter 12 discharge, was not applicable in a Subchapter V case. *In re G.F.S. Indus., LLC.*, 2022 WL 16858009 at *6. The creditor in that case, *Avion Funding*, sought to have its debts deemed nondischargeable under section 523(a). *Id*. The court distinguished the

Subchapter V case with its decision in *In re JRB.* by noting that Subchapter V is not its own chapter of bankruptcy, but rather a part of Chapter 11. *Id*. at *6. Therefore, the difference between the operation of Chapter 11 corporate discharges and Chapter 12 corporate discharges is still relevant to a Subchapter V analysis. The court ultimately clarified that its decision in *In re J.R.B.* should not be extended to Chapter 11 cases. *Id.* at *7.

The only other decision that has extended the exception to discharge to corporations in Chapter 12 has not been followed by any other bankruptcy court. *In re Satellite*, 626 B.R. at 877. The *Satellite* court stressed that any comparison between sections 1192(2) and 1228(a)(2) is inappropriate because only two decisions in Chapter 12 have applied 523(a) to corporate debtors. *Id.* at 877. The court further noted that any other bankruptcy court has not followed Breezy, and when the court in *Hawker* had the opportunity to consider *Breezy* in a Chapter 11 case, it declined to follow its reasoning. *Id*. at 877.

Rigby may argue that This Court should apply section 523(a) to corporations because the Fourth Circuit overturned the decision in *Satellite* when it held that the exceptions to discharge are extended based on the fact that Congress was aware of the similarity between the language in a Subchapter V discharge and a Chapter 12 discharge. *In re Cleary Packaging, L.L.C.,* 36 F4th 509, 516 (4th Circ. 2022). The Fourth Circuit found that the use of the word ‘debtor’ and the phrase ‘debts of the kind’ in section 1228(a)(2) are instructive because “identical words and phrases within the same statute should normally be given the same meaning.” *Id*. at 517. *citing Hall v. United States*, 566 U.S. 506, 519 (2012).

This Court should follow the decision in *Satellite* because extending section 523(a) to corporations in Subchapter V would go against congressional intent and incorrectly rely on two

Chapter 12 cases as opposed to the five that have looked at this exact issue. This case is similar to *Satellite*, because Penny Lane asserts that it complied with laws and regulations, while Rigby alleges Penny Lane acted dishonestly. R. at 6. Further, Penny Lane is also a small business facing the possibility of a costly, time-consuming lawsuit based on unproven allegations. R. at 6-7. If This Court were to apply section 523(a) to corporations, it would incorrectly rely on only two Chapter 12 cases, one of which the Court itself refused to follow. *In re G.F.S. Indus.,* 2022 WL 16858009 at *7.

This Court should not adopt the decision in Cleary because the facts, in that case, are vastly different from this case and the basis for its decision is misplaced. The facts in *Cleary* involved a tortious interference with a contract, while this case involves mass tort claims for the dumping of pollutants that are all disputed by Penny Lane. R. at 6. Ultimately, *Cleary* incorrectly looked to *In re JRB.* and *Breezy* for guidance on its decision. See *Cleary Packaging*, 36 F4th at 516-17.

Accordingly, this Court should not apply section 523(a) to apply to corporations because this would go against the legislative history of 1192. Expanding section 523(a) would also disrupt the long held practice among the bankruptcy courts of protecting corporations from non-dischargeability claims in Chapter 11. Finally, if this Court were to look at the language in the chapter 12 discharge section as instructive, it would rely on inapplicable decisions instead of looking at all the other courts that have decided this precise issue.

C. THE PURPOSE OF SECTION 523(A) IS NOT APPLICABLE IN THIS CASE

Section 523(a) lists 19 exceptions to discharge that all pertain to dishonesty and only accept an individual debtor from discharge. Specifically, section 523(a)(6) does not discharge an

individual debtor from any debt for willful and malicious injury by the debtor. 11 U.S.C. § 523(a)(6). Section 523(a) does not apply to Penny Lane industries because it is an honest, corporate debtor.

1. The purpose of section 523(a) is to protect from dishonest debtors

This Court should affirm the lower court's ruling because the purpose of section 523(a) does not apply to this case. One of the main pillars of the bankruptcy system is "to aid the unfortunate debtor by giving him a fresh start in life, free from debts, except of a certain character." *Stellwagen v. Clum*, 245 U.S. 605, 617 (1918). The exceptions listed in section 523(a) are evidence of the "basic policy animating the Code of affording relief only to an 'honest but unfortunate debtor.'" *Lamar, Archer & Cofrin, L.L.P. v. Appling*, 138 S.Ct. 1752 (2018) (citing *Cohen v. de la Cruz*, 523 U.S. 213, 217 (1998).

This Court has held that section 523(a) requires the heightened standard of preponderance of the evidence instead of a clear-and-convincing standard because the Code limits the opportunity for perpetrators of the exceptions listed to receive a fresh start. *Grogan v. Garner*, 498 U.S. 279, 288 (1991). *Grogan* dealt with a debtor who filed under Chapter 11 and sought to have a fraud judgment discharged. *Id*. at 655. The creditor, Frank Garner, then filed a complaint to have their claim for fraud excepted from discharge under section 523(a). *Id*. In reaching its holding that a heightened standard was required for section 523(a), the court considered that Congress intended to restrict a dishonest debtor's opportunity for a complete fresh start because of the types of debts that were excepted from discharge—"such as child support, alimony, and certain unpaid educational loans and taxes, as well as liabilities for fraud." *Id*. at 287.

Penny Lane is not a dishonest debtor because any waste dumped on their property was disposed of in accordance with the applicable environmental laws and regulations. R at 6. In addition, Penny Lane is not dishonest because the source of contamination has not been conclusively determined, and there are dozens of manufacturing facilities along the Liverpool River. R. at 5-6. Therefore, this Court should not apply section 523(a) to Penny Lane because doing so would rob this honest but unfortunate debtor of a fresh start free from the consequences of business misfortunes that have fallen upon it. *Local Loan Co. v. Hunt* 54 S. Ct. 695 (c*iting Williams v. U.S. Fidelity & Guaranty Co.,* 236 U.S. 549 (1915)).

2. Corporations physically cannot commit a dishonest act

Section 523(a) does not apply to Penny Lane because Penny Lane cannot physically act. The nineteen exceptions listed in section 523(a) are actions that a natural person typically commits. However, a corporation is not a physical person. *Clark v. Austin*, 101 S.W.2d 977, 982 (Mo. 1937). A corporation is a fictitious legal person different from the people who compose it because it lacks ordinary people's capabilities. *Aberdeen Bindery v. Eastern States Printing & Publishing Co., Inc.*, 3 N.Y.S.2d 419, 422 (N.Y. App. Div. 1938) (citing Blackstone's Commentaries, 17th Ed., 468). Therefore, a corporation must act through its agents or representatives. *Clark*, 101 S.W.2d at 982.

When looking at the issue of non-dischargeability, this Court should not create a new federal common law rule through the application of federal bankruptcy law. *In re Consol. Freightways Corp.*, 443 F.3d 1160, 1162 (9th Cir. 2006). The matter of non-dischargeability is a federal law governed by the bankruptcy code. *Grogan*, 498 U.S. at 284. Thus, exceptions to the operation of discharge under the code "should be confined to those plainly expressed. . ." *Gleason v. Thaw*, 236 U.S. 558, 562 (1915).

Here, Rigby alleges that Penny Lane knowingly disposed of pollutants at its manufacturing facility. R. at 5. However, Penny Lane is a corporation that is incapable of willfully and maliciously disposing of waste like a natural person. Any waste that may have been disposed of on Penny Lane's property, must have been done by an agent or representative of the corporation.

Rigby may argue that this Court should impute the actions of Penny Lane's employees or representatives to Penny Lane based on a theory of agency. *In re Bartenwerfer*, 860 Fed.Appx. 544, 546 (9th Cir. 2021) (holding that the debtors husbands actions were imputed to the debtor-wife based on agency theory for purposes of section 523(a)), *cert. granted sub nom*. *Bartenwerfer v. Buckley*, 142 S. Ct. 2675 (2022). This argument is flawed because while state law determines whether Rigby's claim is valid, non-dischargeability is governed by section 523(a), which by its plain language, only applies to individuals. If this Court were to apply section 523(a) to Penny Lane based on a theory of agency, this would create a new common law rule through the use of agency to contradict what the Code plainly states.

CONCLUSION

This Court should affirm the lower court's decision because the bankruptcy court had statutory and jurisdictional authority to approve a non-consensual third-party release and confirm the Plan. This Court should also find that section 523(a) does not apply to corporations. For the foregoing reasons, this Court should hold in favor of Penny Lane.