Team 7

No. 22-0909

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**IN THE SUPREME COURT OF THE UNITED STATES**

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IN RE PENNY LANE INDUSTRIES, INC., DEBTOR,

ELEANOR RIGBY, PETITIONER

v.

PENNY LANE INDUSTRIES, INC., RESPONDENT.

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On Writ of Certiorari to the United States Court of Appeals for the Thirteenth Circuit

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**BRIEF FOR PETITIONERS**

Team 7

Counsel for Petitioner

## QUESTIONS PRESENTED

I. In the absence of an express grant of authority from the Bankruptcy Code, do bankruptcy courts have the authority to approve non-consensual releases of direct claims against non-debtor affiliates as part of a Chapter 11 plan?

II. Does section 1192(2) of Subchapter V, which exempts from discharge “any debt . . . of the kind specified in section 523(a),” allow corporate small business debtors to discharge debts listed in 523(a)?

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**BRIEF FOR PETITIONERS**

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## OPINIONS BELOW

The United States Bankruptcy Court for the District of Moot dismissed Petitioner's adversary proceeding against Respondent regarding the dischargeability of her claim and confirmed Respondent's plan for reorganization under Subchapter V of Chapter 11 over Petitioner's objection. R.7–8. The United States Court of Appeals for the Thirteenth Circuit upheld both rulings on direct appeal. *Id.* at 11–22.

## JURISDICTION

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

## STATUTORY PROVISIONS

The appendix reproduces Article III, Section 1 and Amendment V of the U.S. Constitution as well as pertinent provisions of sections 101, 507, 523, 524, 727, 1123, 1129, 1141, 1181, 1189, 1191, 1192, 1221, 1225, and 1228 of the Bankruptcy Code (11 U.S.C.).

## STATEMENT OF THE CASE

### I. Facts

Petitioner Eleanor Rigby is a longtime resident of Blackbird, Moot and a mother whose four-year-old daughter died from leukemia allegedly caused by exposure toxic contaminants. R.5. Respondent Penny Lane Industries, Inc. is a manufacturing company with a facility in the city of Blackbird. *Id.* at 3. Penny Lane Industries is a wholly owned subsidiary of Strawberry Fields Foods, Inc. and is a bankruptcy debtor under Subchapter V of Chapter 11. *Id.* at 3–4.

Between 2013 and 2017, tens of thousands of Blackbird residents were exposed to high levels of toxins that seeped into their water supply from a contaminated groundwater plume underneath the city. *Id.* at 5. This severe exposure has been linked to sickness, birth defects, and death in the Blackbird community. *Id.* Rigby's four-year-old daughter died from leukemia that was likely caused by exposure to the contaminated water. *Id.*

Rigby filed a lawsuit against Penny Lane and Strawberry Fields claiming that Penny Lane knowingly disposed of pollutants that contaminated Blackbird's groundwater supply, and that exposure to this contaminated groundwater caused her daughter to develop leukemia, which ultimately took her life. *Id.* Rigby's claim alleges that Penny Lane's Chief Executive Officer, Maxwell S. Hammer, knew about the pollution and its potential for harm and allowed it to continue. *Id.* The petitioner's claim also asserts a direct claim against Penny Lane's parent company, Strawberry Fields, alleging that it knew or should have known about Penny Lane's misconduct. *Id.* at 6. Around 10,000 similar claims were filed by other plaintiffs who were harmed by the contamination, with damages totaling around $400 million. *Id.*

## II. Procedural History

In response to mounting litigation, Penny Lane filed a petition for bankruptcy under Subchapter V of Chapter 11. R.3–4. After filing its petition, the bankruptcy court granted Penny Lane a temporary injunction halting all actions against Strawberry Fields and others relating to Penny Lane's alleged misconduct. *Id.* at 7–8. Petitioner Rigby filed a $1 million unsecured claim against the debtor, and subsequently commenced an adversary proceeding seeking to have her claim deemed non-dischargeable under section 523(a)(6) of the Bankruptcy Code, which prevents the discharge of debts for "willful and malicious injury by the debtor to another entity." 11 U.S.C. 523(a)(6). *Id.* at 6–7. The debtor filed a motion to dismiss the proceeding and argued that the 523(a) non-dischargeability provisions do not apply to business entities in Subchapter V Chapter 11 cases. The bankruptcy court granted the debtor's motion to dismiss. *Id.* at 7.

Petitioner Rigby later filed an objection to the proposed Chapter 11 plan. *Id.* at 9. The plan proposed to create a creditor trust funded primarily by a $100 million contribution from Strawberry Fields, and in exchange for its contribution Strawberry Fields would receive a binding, non-consensual release of all claims held by third parties against it in relation to Penny Lane's conduct and subsequent Chapter 11 case. *Id.* at 7–8. Ms. Rigby objected that the bankruptcy court did not have the authority to approve a non-consensual release of third-party direct claims against Strawberry Fields. *Id.* at 9. The bankruptcy court overruled Rigby's objection and confirmed the plan, holding that non-consensual non-debtor releases are permitted in "extraordinary cases." *Id.* at 10.

The Thirteenth Circuit affirmed both the order of confirmation and the dismissal of the adversary proceeding, holding that non-consensual releases of third-party claims against non-debtor entities may be included in Chapter 11 plans, and that section 523(a)'s non-dischargeability

provisions only apply to individual debtors. *Id.* at 11–23. Judge McCarthy authored a dissent. *Id.* at 23–34. This Court granted certiorari for both issues. *Id.* at 2.

## SUMMARY OF THE ARGUMENT

Bankruptcy courts do not have authority to approve non-consensual releases of direct claims against non-debtors in non-asbestos cases. There is no provision of the Bankruptcy Code that gives bankruptcy courts authority to approve these releases outside of the narrow asbestos context. The bankruptcy court cannot use its equitable powers to approve these releases either, because exercises of the court's equitable powers must connect back to the substantive provisions of the Bankruptcy Code. In addition, non-consensual non-debtor releases are unconstitutional because they violate Article III under *Stern v. Marshall* and they extinguish property rights without affording due process. Thus, this Court should reverse the Thirteenth Circuit and hold that bankruptcy courts do not have authority to approve non-consensual non-debtor releases.

A corporate debtor proceeding under a non-consensual Subchapter V plan also does not receive a discharge of debts listed in section 523(a). Section 1192(2) only refers to the types of debt listed in 523(a) rather than its preamble as well, and accordingly limits the discharge that both corporate and individual debtors receive upon completion of a non-consensual plan. This is congruent with a similar mechanism in section 1128(a), which also does not allow corporate debtors to discharge 523(a) debts. Further, this approach avoids upsetting a crucial balance between debtor relief and creditor protection that Congress struck when it added Subchapter V to the Bankruptcy Code. The Thirteenth Circuit's decision to discharge Petitioner's 523(a) claim against Respondent was therefore in error and demands reversal.

## ARGUMENT

There is no provision of the Bankrutpcy Code that allows bankruptcy courts to approve non-consensual non-debtor releases in non-asbestos cases. Without an express grant of authority, a bankruptcy court may not create such a right out of convenience. *See Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988). The Bankruptcy Code does say, however, that a non-consensual Subchapter V plan does not discharge "any debt . . . of the kind specified in section 523(a)." 11 U.S.C. § 1192(2). Similarly, section 1228(a)(2) excepts from discharge debts "of a kind specified in section 523(a) of this title," which lower courts have held applies to both individual and corporate debtors. *See, e.g., In re Breezy Ridge Farms, Inc.*, 2009 WL 1514671, at *3 (Bankr. M.D. Ga., 2009).

The Thirteenth Circuit erred in affirming the debtor's Chapter 11 plan because bankruptcy courts may not approve non-consensual non-debtor releases outside the asbestos context. Additionally, the Thirteenth Circuit erroneously affirmed Respondent's motion to dismiss because corporate debtors in Subchapter V are not exempted from section 523(a)'s non-dischargeability provisions when the plan is non-consensual. This Court should thus reverse the Thirteenth Circuit on both grounds.

### I. BANKRUPTCY COURTS DO NOT HAVE AUTHORIY TO APPROVE NON-CONSENSUAL RELEASES OF DIRECT CLAIMS HELD BY THIRD PARTIES AGAINST NON-DEBTOR AFFILIATES AS PART OF A CHAPTER 11 PLAN.

Upon the completion of payments in a plan of reorganization under Subchapter V of Chapter 11, a debtor receives a discharge of all debts incurred prior to confirmation. 11 U.S.C. § 1192. This discharge is an "extreme remedy" that "strip[s] a creditor of its claims against its will," and is thus "reserved for those entities which file a petition under the bankruptcy code and abide by its rules." *In re Arrowmill Dev. Corp.*, 211 B.R. 497, 503 (Bankr. D. N.J. 1997) ("Simply put,

'the enjoyment of the benefits afforded by the code is contingent on the acceptance of its burdens.'") (citation omitted).

In this case, the Court is asked to determine whether bankruptcy courts may, in addition to granting a discharge to the debtor, approve the non-consensual release of direct claims held by third-party creditors against a non-debtor as part of a Chapter 11 plan. Such releases have become increasingly common in Chapter 11 cases. *See In re Aegean Marine Prot. Network Inc.*, 599 B.R. 717, 726 (S.D.N.Y. 2019) ("Almost every proposed Chapter 11 Plan that I receive includes proposed releases."). In the mass tort context, non-consensual non-debtor releases arise from a common set of circumstances. First, the Chapter 11 debtor lacks the funds to make a substantial distribution to creditors. Second, the debtor has an affiliate with deep pockets, and this affiliate is facing liability for claims related to the debtor's conduct but based on the non-debtor affiliate's "own alleged misconduct and the breach of duties owed to claimants other than [the debtor]." *See In re Purdue Pharma, L.P.*, 635 B.R. 26, 90 (S.D.N.Y. 2021). The non-debtor affiliate will offer to make a large contribution to the debtor's estate in exchange for a provision in the Chapter 11 plan releasing all claims held by third parties against the non-debtor, regardless of whether the claims arise from the bankrutpcy. If the Chapter 11 plan is confirmed, the debtor's bankruptcy creditors will receive a larger distribution due to the affiliate's contribution to the estate, and third parties with direct claims against the non-debtor affiliate will be enjoined from ever pursuing their claims. *See, e.g.*, *id.* at 66–68.

Courts are divided as to whether bankruptcy courts have the authority to approve these releases. The Second, Third, Fourth, Sixth, Seventh, and Eleventh Circuits have all held that bankruptcy courts have authority to approve non-consensual non-debtor releases. *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 141 (2d. Cir. 2005); *In re Millennium Lab*

*Holdings II, LLC.*, 945 F.3d 126, 133–40 (3d. Cir. 2019); *In re A.H. Robins Co.*, 880 F.2d 694, 701–02 (4th Cir. 1989); *In re Dow Corning Corp.*, 280 F.3d 648, at 656–58 (6th Cir. 2002); *In re Airadigm Commc'ns, Inc.*, 519 F.3d 640, 656–57 (11th Cir. 2008); *In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d 1070, 1078–79 (11th Cir. 2015). The Fifth, Ninth, and Tenth Circuits have held that bankruptcy courts have no such authority. *In re Pac. Lumber Co.*, 584 F.3d 229, 251–52 (5th Cir. 2009); *In re Lowenschuss*, 67 F.3d 1394, 1401–02 (9th Cir. 1995); *In re W. Real Est. Fund, Inc.*, 922 F.2d 592, 600 (10th Cir. 1990).

At its core, this issue is about whether the bankruptcy court may approve a Chapter 11 plan that circumvents the provisions of the Bankruptcy Code if it believes that doing so will advance the objectives of the Code. This Court has already answered this question in the negative. *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988) ("[W]hatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code."). This Court should hold that bankruptcy courts do not have authority to approve non-consensual non-debtor releases in Chapter 11 plans for three reasons. First, non-consensual non-debtor releases are not permitted by any provision of the Bankruptcy Code. Second, these releases violate the constitutional rights of creditors. Finally, these releases do not achieve the objectives of bankruptcy and have great potential for abuse.

### A. Bankruptcy Courts Do Not Have Statutory Authority to Approve Non-Consensual Non-Debtor Releases in Chapter 11 Plans.

The Bankruptcy Code is a "comprehensive scheme" that has "deliberately targeted specific problems with specific solutions." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (citation omitted). Accordingly, bankruptcy courts may not approve "solutions" that are not authorized by the bankruptcy code. *In re Purdue Pharma, L.P.*, 635 B.R. at 106 (explaining that the Bankruptcy Code's equitable provisions "confer[] on the Bankruptcy Court

only the power to enter orders that carry out other, substantive provisions of the Bankruptcy Code."). The circuits that allow non-consensual non-debtor releases rely on the mistaken notion that the Bankruptcy Code's equitable provisions grant bankruptcy courts *carte blanche* to include "any imaginable provision in a plan," regardless of whether such provisions connect back to another section of the Bankruptcy Code. R.14. This freewheeling approach cannot be squared with this Court's holding in *Ahlers* that the bankruptcy court's "equitable powers . . . can only be exercised within the confines of the Bankruptcy Code." 485 U.S. at 206.

Respondent and the circuit courts that it cites fail to name any provision in the Bankruptcy Code specifically authorizing non-consensual non-debtor releases in Chapter 11 plans outside of the asbestos[1] context. Instead, they insist that the bankruptcy court's "equitable" or "residual" powers allow it to spawn new rights and remedies at will. Because there is no Code provision expressly authorizing non-consensual non-debtor releases, bankruptcy courts may not approve such releases in Chapter 11 plans.

i. <u>The plain language of section 524(e) of the Bankruptcy Code is unclear as to whether bankruptcy courts have authority to approve non-consensual non-debtor releases.</u>

The text of section 524(e) of the Bankruptcy Code has become somewhat of a red herring that has distracted circuit courts for decades. 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." The plain meaning of this section is that when a debtor receives a discharge in bankruptcy, non-debtors may not receive a discharge for the *same* debts. However, 524(e) is ambiguous with regards to non-debtor releases because non-debtor releases involve *different* debts than those discharged in bankruptcy.

[1] The asbestos provisions, sections 524(g) and 524(h), are discussed in detail in Subpart A.ii of this argument.

Some courts have interpreted 524(e) as "precluding bankruptcy courts from discharging the liabilities of nondebtors." *In re Lowenschuss*, 67 F.3d at 1401. This interpretation, while favorable to Ms. Rigby, seems imprecise. The words "such debts" in 524(e) suggest that the discharge of a particular debt in bankruptcy does not affect the liability that a non-debtor may have for that *same debt*—in other words, 524(e) on its face only applies to debts for which the debtor and the non-debtor are co-liable. Non-consensual non-debtor releases deal with claims that are independent of any claims against the debtor and thus do not fall under the purview of 524(e). Thus, the plain language of 524(e) does not expressly prohibit non-consensual non-debtor releases.

On the other side of the coin, the plain language of 524(e) does not authorize bankruptcy courts to approve non-consensual non-debtor releases either. No circuit that allows these releases has held that 524(e) provides such authority because there is simply no construction of 524(e) that reaches this outcome. Accordingly, the plain language of 524(e) provides little guidance as to the legality of non-consensual non-debtor releases. As explained below, this lack of clarity in the text of the statute does not mean that Congress did not intend for 524(e) to prohibit non-consensual non-debtor releases or that it has not assumed that 524(e) prohibits such releases since its passage.

ii. Sections 524(g) and 524(h) of the Bankruptcy Code suggest that non-consensual non-debtor releases may only be approved in asbestos cases.

The language of sections 524(g) and 524(h) of the Bankruptcy Code is much more instructive. Section 524(g) was added to the Bankruptcy Code in 1994 and grants bankruptcy courts the authority to approve non-consensual non-debtor releases exclusively in asbestos cases. 11 U.S.C. § 524(g). The pertinent portion of 524(g) reads: "Notwithstanding the provisions of section 524(e), such an injunction may bar any action directed against a third party who . . . is alleged to be directly or indirectly liable for the conduct of, claims against, or demands of the debtor to the extent such alleged liability of such third party arises by reason of . . . the third party's

ownership of a financial interest in . . . a past or present affiliate of the debtor." *Id.* § 524(g)(4)(A)(ii). The text and legislative history of 524(g) indicate that bankruptcy courts have no authority to approve non-consensual non-debtor releases outside the asbestos context.

First, the phrase, "[n]otwithstanding section 524(e)," at the beginning of section 524(g)(4)(A)(ii) makes obvious that when Congress adopted 524(g), it viewed the provision as an exception to 524(e). As the Southern District of New York pointed out in its recent *Purdue Pharma* decision, "[t]he word 'notwithstanding,' suggests that the type of injunction Congress was authorizing in § 524(g) would be barred by § 524(e) in the absence of the statute." 635 B.R. at 92. If Congress did not believe that 524(e) barred non-consensual non-debtor releases, it would not have needed to include the word "notwithstanding" in the text of 524(g)(4)(A)(ii), which authorizes such releases in asbestos cases. *See id.* at 107 ("It is hard to read that phrase and not conclude that Congress thought it was creating an exception to section 524(e) by authorizing the release of third-party claims against non-debtors in certain limited circumstances.").

The legislative history of 524(g) also suggests that bankruptcy courts lack authority to approve non-consensual non-debtor releases. The majority opinion from the Thirteenth Circuit in this case cites the following statement from a committee report submitted to the House of Representatives prior to the passage of the Bankruptcy Reform Act of 1994, which added 524(g) and 524(h) to the Bankruptcy Code: "[T]he special rule being devised for the asbestos claim trust/injunction mechanism is not intended to alter any authority bankruptcy courts may already have to issue injunctions in connection with a plan of reorganization." R.15 n.14; *see* 140 Cong. Rec. H10766 (daily ed. Oct. 4, 1994). The Thirteenth Circuit found this excerpt to "negate any argument that the addition of asbestos-specific provisions infers that third-party injunctions were not previously permissible" and chided the dissent for "conveniently ignor[ing] this express

rejection of its concocted conclusion that Congress 'believed' it was creating an exception to 524(e)." R.15 n.14. But the majority neglected to include the following language that appeared immediately after its excerpt that suggests the exact opposite:

> Indeed, Johns-Manville and UNR firmly believe that the court in their cases had full authority to approve the trust/injunction mechanism. And other debtors in other industries are reportedly beginning to experiment with similar mechanisms. The Committee expresses no opinion as to how much authority a bankruptcy court may generally have under its traditional equitable powers to issue an enforceable injunction of this kind. The 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.

140 Cong. Rec. H10766 (daily ed. Oct. 4, 1994). In the final sentence of this excerpt, the Committee all but explicitly states that bankruptcy courts do not have statutory authority to approve these releases outside the asbestos context until Congress decides to "extend[]" this power into "other areas." *Id.* This added bit of legislative history also disposes of the Thirteenth Circuit's unsupported assertion that non-consensual non-debtor releases are generally under the code, and that 524(g) simply "imposes additional requirements on asbestos-related releases." R.15. To the contrary, 524(g) is inarguably the first time Congress has ever authorized such releases.

Like 524(g), section 524(h) also implies that courts lack statutory authority to approve non-consensual releases outside of asbestos cases. In short, 524(h) retroactively validates any injunctions that were entered prior to the passage of 524(g) that satisfy 524(g)'s requirements. 11 U.S.C. § 524(h). What is so telling about 524(h) is that it grants this retroactive authority exclusively to third-party releases entered in asbestos cases. As explained in the Committee excerpt above, at the time 524(g) and 524(h) were enacted, the Committee was fully aware that non-debtor releases had been approved in non-asbestos cases. Knowing this, Congress still only retroactively authorized these releases in asbestos cases. One could argue that because Congress

knew these releases were being granted in other contexts when it enacted 524(g) and 524(h), it could have simply prohibited these releases in non-asbestos cases; however, this argument puts the cart before the horse, because there still must be a provision in the code that expressly authorizes such releases for the argument to carry weight. No such provision exists.

This is also common sense. If bankruptcy courts had authority to approve non-consensual non-debtor releases in general, Congress would have had no reason to enact 524(g) to create such authority in asbestos cases or 524(h) to retroactively grant authority to those releases that had already been approved. Similarly, Congress could have extended this statutory authority to all Chapter 11 cases when it enacted 524(g), but it declined to do so and has not done so since.

It is a "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Davis v. Mich. Dept. of Treasury*, 489 U.S. 803, 810 (1989). When read together, the only way to make sense of sections 524(e), 524(g), and 524(h) of the Bankruptcy Code is to recognize that bankruptcy courts only have statutory authority to approve non-consensual non-debtor releases in asbestos cases—any other interpretation would make these sections incompatible.

iii. The bankruptcy court's "equitable" or "residual" powers do not allow it to approve non-consensual non-debtor releases in the absence of a substantive grant of authority from elsewhere in the Bankruptcy Code.

The Thirteenth Circuit's opinion rests almost entirely on the idea that sections 105(a), 1123(b)(6), and 1123(a)(5) grant bankruptcy courts express statutory authority to approve non-consensual non-debtor releases. *See* R.14. These provisions never specifically mention non-consensual non-debtor releases, but instead give bankruptcy courts their so-called "equitable" and "residual" powers. *See In re Airadigm Comm'ns, Inc.*, 519 F.3d 640, 657 (7th Cir. 2008). The Thirteenth Circuit insists that these equitable and residual powers allow bankruptcy courts to approve "any imaginable provision" in a Chapter 11 plan, regardless of whether the provision

draws authority from elsewhere in the Bankruptcy Code. R.14. This is an overbroad conception of the court's equitable powers—one that this Court has rejected on at least two occasions. *See Ahlers*, 485 U.S. at 206; *Law v. Siegel*, 571 U.S. 415, 421 (2014).

Section 105(a) embodies the bankruptcy court's equitable powers. Its relevant portion reads: "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). The words "to carry out the provisions of this title" mean that the court may only use its equitable powers to effectuate other provisions of the Bankruptcy Code. On the other hand, 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." *In re Dairy Mart Convenience Stores, Inc.*, 352 F.3d 86, 92 (2d. Cir. 2003) (citation omitted). This Court has recognized on multiple occasions that bankruptcy courts' equitable powers are bounded by the code's substantive provisions. *Ahlers*, 485 U.S. at 206 ("[W]hatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code."); *Siegel*, 571 U.S. at 421.

The Thirteenth Circuit summarily concluded that 105(a) gives bankruptcy courts the power to approve non-consensual non-debtor releases, but it failed to name a provision of the Bankruptcy Code that expressly creates this substantive right. R.14. Undergirding the 105(a) argument advanced by the Thirteenth and other circuits is the notion that a non-consensual non-debtor release is permissible under the court's equitable powers if the release will advance Chapter 11's "twin objectives" of "preserving going concerns and maximizing property available to satisfy creditors." *See Fla. Dept. of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 50 (2008) (citation omitted). This notion runs counter to the text of 105(a) and this Court's interpretation of it. Section 105(a) "uses the term 'provisions' and not the term 'purposes' in describing the bankruptcy court's

power to effect the mandate of the Bankruptcy Code," suggesting that "an exercise of section 105 power be tied to another Bankruptcy Code section and not merely to a general bankruptcy concept or objective." 2 *Collier on Bankruptcy* ¶ 105.01 (16th ed. 2022). Absent an independent grant of authority from the Bankruptcy Code's substantive provisions, 105(a) on its own does not give bankruptcy courts authority to approve non-consensual non-debtor releases.

Similarly, the Thirteenth Circuit mistakenly held that sections 1123(b)(6) and 1123(a)(5) of the Bankruptcy Code give courts statutory authority to approve non-consensual releases. Section 1123(b)(6) states that a Chapter 11 plan may "include any other appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6). The Thirteenth Circuit reads this as an invitation for bankruptcy courts to approve any provision they please, but in reality, 1123(b)(6) is "substantively analogous" to section 105(a) in that it does not create any substantive rights and is simply a tool to carry out the substantive rights created in *other* sections of the Code. *See In re Purdue Pharma, LP.*, 635 B.R. at 106 .

Section 1123(a)(5) states that a Chapter 11 plan shall "provide adequate means for the plan's implementation." 11 U.S.C. § 1123(a)(5). The Thirteenth Circuit insists that this "not only authorizes but requires" a non-consensual non-debtor release for Strawberry Fields because such it is "crucial" to the implementation of the plan. R.14. To the contrary, the language of 1123(a)(5) does not contain an express grant of authority to approve non-consensual releases, and such a grant of authority cannot simply be inferred. *In re Purdue Pharma, L.P.*, 635 B.R. at 109 ("Section 1123(a)(5) does not authorize a court to give its imprimatur to something the Bankruptcy code does not otherwise authorize, simply because doing so would ensure funding for a plan. Nothing in section 1123(a)(5) suggests that a debtor has the right to secure sufficient funds for implementation by any means necessary.").

The last leg of the Thirteenth Circuit's "equitable" and "residual" powers argument is the idea that, even in the absence of an express grant of statutory authority, non-consensual non-debtor releases are permissible under "narrow" or "exceptional circumstances" where certain bankruptcy objectives are met. R.13 n.12. This "exceptional circumstances" concept is merely a rebranding of the "rare case" approach to bankruptcy that this Court rejected in *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 471 (2017) ("[W]e conclude that Congress did not authorize a 'rare case' exception. We cannot 'alter the balance struck by the statute,' not even in rare cases.") (citation omitted). The bankruptcy court may not approve a Chapter 11 plan unless it has statutory authority to do so, even if "exceptional circumstances" exist.

The Thirteenth Circuit and its cohorts are eager to turn over every stone in search of statutory authority for non-consensual non-debtor releases, but this search remains fruitless. This Court should reject the erroneous interpretations of the Bankruptcy Code that are currently being passed around the circuit courts in favor of non-consensual non-debtor releases. It is resoundingly clear that there is *no* provision in the Bankruptcy Code expressly permitting bankruptcy courts to "take jurisdiction over, and release, claims that do not belong to the debtors." R.26. As one court put it, "Either statutory authority exists or it does not." *In re Purdue Pharma, L.P.*, 635 B.R. at 37. In the case of non-consensual non-debtor releases, it undoubtedly does not.

### B. Even if Statutory Authority for Non-Consensual Non-Debtor Releases Exists, Bankruptcy Courts May Not Approve Such Releases Because They Violate the Constitution.

When the Bankruptcy Code and the Constitution come into conflict, bankruptcy courts must follow the Constitution. *See Stern v. Marshall*, 564 U.S. 462, 482 (2011). Therefore, any statutory authority that courts may find for non-consensual non-debtor releases must also pass constitutional muster. The Constitution prohibits the bankruptcy court from approving the non-consensual release of Ms. Rigby's claim against Strawberry Fields for two reasons. First, under

Article III, bankruptcy courts may not enter final judgment on state law tort claims that are not resolved in the process of ruling on a creditor's proof of claim. Second, non-consensual non-debtor releases extinguish creditors' property rights without affording them due process.

i. Article III prohibits bankruptcy courts from approving a non-consensual release of Ms. Rigby's state law tort claim against Strawberry Fields.

Article III, section 1 of the Constitution states that "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as Congress may from time to time ordain and establish." U.S. Const. art. III, § 1. It requires that "[t]he Judges, both of the supreme and inferior courts, shall hold their Offices during good Behaviour," and that their compensation "shall not be diminished during their Continuance in Office." *Id.* Article III is an "inseparable element of the constitutional system of checks and balances" that "ensure[s] that each judicial decision [is] rendered, not with an eye toward currying favor with Congress or the Executive, but rather the 'clear heads . . . and honest hearts' deemed 'essential to good judges.'" *Stern*, 564 U.S. at 483–84 (citations omitted). As part of this system of checks and balances, Congress may not "confer the government's 'judicial power' on entities outside Article III." *Id.* at 484. Accordingly, this Court has held that jurisdiction over matters that are "the subject of a suit at the common law, or in equity, or admiralty" rests with Article III courts and cannot be assigned by Congress to non-Article III courts. *Id.* (citation omitted).

In *Stern v. Marshall*, this Court held that bankruptcy courts, as non-Article III courts, do not have constitutional authority to enter final judgment on state law tort claims that are not resolved in the process of ruling on a creditor's proof of claim. *Id.* at 503. Ms. Rigby's claim against Strawberry Fields is a state law tort claim. Her claim is *not* resolved in the process of ruling on any creditor's proof of claim in the Penny Lane bankruptcy, because Rigby's claim involves Strawberry Fields' own conduct independent of any claims against Penny Lane. Thus, per *Stern*,

the bankruptcy court does not have constitutional authority to enter a final judgment on Rigby's claim.

The Thirteenth Circuit relies on the Third Circuit case, *In re Millennium Lab Holdings II*, to contend that the non-consensual release of Rigby's claim against Strawberry Fields is constitutional under *Stern*. R.12–13; *see In re Millennium Lab Holdings II, LLC.*, 945 F.3d at 137–38. The essence of this argument is that (i) bankruptcy courts have constitutional authority under *Stern* to resolve any matter that is "integral to the restructuring of the debtor-creditor relationship," and (ii) a confirmation order, regardless of its contents, is "integral to the restructuring of the debtor-creditor relationship" and is thus constitutional under *Stern*. R.12–13. This argument fails for two reasons. First, this reasoning would render *any* imaginable plan provision constitutional simply by virtue of being included in a Chapter 11 plan. Second, adjudicating independent tort claims against third parties can hardly be characterized as "integral to the restructuring of the debtor-creditor relationship," because such claims do not involve the debtor and do not arise from the debtor's bankrutpcy. Releasing tort claims against a non-debtor affiliate in a Chapter 11 case may indeed help secure contributions to the estate from the affiliate who benefits from this arrangement, but this practice clearly violates Article III under *Stern*.

ii. Third-party releases extinguish creditors' property rights in their claims without affording due process.

The Fifth Amendment Due Process Clause states that "no person shall . . . be deprived of . . . property, without due process of law." U.S. Const. amend. V. This Court has recognized that legal claims are "property" for the purposes of the Due Process Clause. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982). It has also recognized that "parties who choose to resolve litigation through settlement may not dispose of the claims of a third party . . . without that party's agreement." *Loc. No. 93, Intern. Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501, 529

(1986). When a bankruptcy court approves a non-consensual non-debtor release, it extinguishes creditors' property interests in their claims against a non-debtor without affording them due process.

The Thirteenth Circuit insists that Rigby's property interest in her claim was not extinguished because the bankruptcy court "made no ruling on the merits of her claim," and "merely approved the global settlement." R.13. This characterization misses the point. As explained by the court in *Purdue Pharma*, "[t]here really can be no dispute that the release of a claim 'finally determines' that claim. It does so by extinguishing the claim, so that it cannot be adjudicated on the merits." 625 B.R. at 82. A non-consensual non-debtor release is "essentially a final judgment against the claimant, in favor of the non-debtor, entered 'without any hearing on the merits.'" *Id.* (citation omitted). Thus, the third-party release approved by the bankruptcy court extinguished Rigby's property interest in her claim against Strawberry Fields without affording her due process.

**C. If Bankruptcy Courts Are Permitted to Approve Non-Consensual Non-Debtor Releases in Chapter 11 Cases, This Practice Will Surely Be Abused by Non-Debtors Who Have Caused Serious Harm to Innocent Claimants.**

This Court has recognized that it does "not sit to assess the relative merits of different approaches to various bankruptcy problems" and that "[a]chieving a better policy outcome . . . is a task for Congress, not the courts." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 13–14 (2000). The Court's decision should therefore turn on the statutory and constitutional issues in this case rather than policy arguments. Nevertheless, the policy debate decidedly points in favor of barring non-consensual non-debtor releases because of the great potential for abuse these releases create.

The circuits that allow non-consensual non-debtor releases justify this practice as a necessary evil that is required in exceptional cases to further Chapter 11's "twin objectives" of "preserving going concerns and maximizing property available to satisfy creditors." *See Fla. Dept. of Revenue*, 554 U.S. at 50 (citation omitted). They insist that these releases result in larger distributions to creditors, facilitate speedy compensation to claimants, and are often the only feasible path to plan confirmation. R.11–13; *see In re Cont'l Airlines*, 203 F.3d 203, 212–13 (3d. Cir. 2000).

The reality is that non-consensual non-debtor releases have become a tool for non-debtors with deep pockets to skirt liability and negative press in exchange for contributions to the debtor's estate. They allow non-debtors to receive "in effect . . . a bankruptcy discharge arranged without a filing and without the safeguards of the Code." *In re Metromedia Fiber Network, Inc.*, 416 F.3d at 142. This improperly leaves non-debtors that receive releases in a much better position than the debtors who make it through the bankruptcy process and receive a discharge. Unsurprisingly, this "eject button" for affiliates of mass tortfeasors has become increasingly popular in Chapter 11 cases. *See In re Aegean Marine Petroleum Network Inc.*, 599 B.R. at 726 ("Almost every proposed Chapter 11 Plan that I receive includes proposed releases.").

This Court should prohibit non-consensual non-debtor releases because they give non-debtor affiliates an inordinate amount of power to control bankruptcy proceedings for their own advantage. Despite the purported benefits that the Thirteenth Circuit and its contemporaries promise, non-consensual third-party releases "simply provide a contrived means for solvent nondebtors to impose extraordinary mandatory settlements of their mass tort liabilities upon nonconsenting victims," preventing seriously injured plaintiffs like Ms. Rigby from ever having their day in court. Ralph Brubaker, *Mandatory Aggregation of Mass Tort Litigation in Bankruptcy*,

131 Yale L.J. F. 960, 965 (2022). Because the Bankruptcy Code, the Constitution, and sound policy all reach the same conclusion, this Court should hold that bankruptcy courts do *not* have the authority to approve non-consensual non-debtor releases in a Chapter 11 plan.

## II. SECTION 1192 DOES NOT ALLOW CORPORATE DEBTORS TO SHIRK DEBTS STEMMING FROM THEIR WRONGFUL ACTS.

The Small Business Reorganization Act of 2019 (SBRA) added subchapter V of Chapter 11 to the Bankruptcy Code to simplify the reorganization process for small businesses. *See* H.R. Rep. No. 116-171, at 1 (2019). When a court confirms a consensual plan under section 1191(a) in a Subchapter V case, section 1141(d) governs discharge and, with the exception of subsection (d)(5), discharge proceeds the same way as in a traditional Chapter 11 case. *See* 11 U.S.C. § 1181(a). However, non-consensual plans such as Respondent's work differently. Section 1181(c), entitled, "Special rule for discharge," explains that section 1192 rather than 1141(d) controls when a court confirms a plan through cramdown under section 1191(b). Section 1192 grants debtors "a discharge of all debts" subject to certain exceptions, one of which is "any debt . . . of the kind specified in section 523(a)." *Id.* § 1192(2) (emphasis added). Section 523(a) then provides that "[a] discharge under section 727, 1141, 1192, 1228(a), 1228(b), or 1328(b) of this title [11] does not discharge an individual debtor from" any listed category of non-dischargeable debts, including "for willful and malicious injury by the debtor to another entity or to the property of another entity." *Id.* § 523(a)(6).

Some lower courts have considered whether the non-dischargeability provisions of 523(a) apply to corporate debtors proceeding with cramdown under Subchapter V. *In re GFS Indus., LLC*, 2022 WL 16858009 (Bankr. W.D. Tex. Nov. 10, 2022); *In re Lapeer Aviation, Inc.*, 2022 WL 1110072 (Bankr. E.D. Mich. Apr. 13, 2022); *In re RTECH Fabrications, LLC*, 635 B.R. 559 (Bankr. D. Idaho 2021); *In re Cleary Packaging LLC*, 630 B.R. 466 (Bankr. D. Md. 2021), *rev'd*

36 F.4th 509 (4th Cir. 2022); *In re Satellite Rests., Inc. Crabcake Factory USA*, 626 B.R. 871 (Bankr. D. Md. 2021). However, only two circuits have addressed the issue. Although the Thirteenth Circuit rested its interpretation on the idea that "[h]umans and corporations are treated very differently under the Bankruptcy Code," R.15, the Fourth Circuit has held that 523(a) exceptions apply to both individuals and corporations in Subchapter V, as 1192(2) makes no distinction between individual and corporate debtors. *In re Cleary Packaging, LLC*, 36 F.4th at 515.

In agreement with the Fourth Circuit, the IRS agent manual, which provides persuasive authority for interpreting a statute, *see Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 73 n.7 (2011), provides that 523(a) exceptions apply to corporate small business debtors. IRM 5.9.8.5.1(9) (Jan. 2, 2020) ("All exceptions to discharge in 11 U.S.C. § 523(a) of the Bankruptcy Code apply to the small business debtor. This is a different from a typical corporate Chapter 11 case which has limited exceptions to discharge set forth in 11 U.S.C. § 1141.") (internal citation omitted). The Official Bankruptcy Forms, albeit not themselves substantive law, *see In re Reyes*, 401 B.R. 910, 916 (Bankr. C.D. Cal. 2009), also follow this approach. *See, e.g.,* Official Form B425A, Article 9 (explaining that corporate small business debtors do not receive a discharge for debt "excepted from discharge under § 523(a)").

This Court should adopt the Fourth Circuit's reasoning that 1192(2) does not permit a corporate debtor in Subchapter V to escape responsibility for its willful and malicious conduct via cramdown. First, the plain language of 1192(2) limits the discharge a debtor receives upon completion of a non-consensual plan by excepting from discharge certain kinds of debts, not certain kinds of debtors, and accordingly only integrates the types of debt listed in 523(a) rather than its preamble as well. Second, 1192(2) and other Subchapter V provisions borrow mechanisms

from Chapter 12 of the Bankruptcy Code, which also does not allow corporate debtors to discharge 523(a) debts. Finally, allowing corporate debtors in Subchapter V to shed 523(a) liability with cramdown would upset the balance Congress sought to strike between creditor protection and debtor relief, transforming a process meant to promote efficiency and rehabilitation into one that gives debtors *carte blanche* to leave creditors they have injured through their wrongdoing in the dust.

### A. The Text of Section 1192 Forecloses a Discharge of Section 523(a) Debts Upon Completion of a Non-Consensual Subchapter V Plan, Regardless of Whether the Debtor Is an Individual or a Corporation.

Section 1192 controls the discharge of both individual and corporate small business debtors proceeding with non-consensual plans under Subchapter V of Chapter 11 and states, in relevant part, that "the court shall grant a discharge of all debts . . . except any debt . . . *of the kind* specified in section 523(a) of [title 11]." 11 U.S.C. § 1192(2) (emphasis added). Section 523(a) provides in its introductory language that a discharge under several Bankruptcy Code sections "does not discharge an individual debtor from" certain debts and proceeds to list twenty-one kinds of debt, which the Thirteenth Circuit believed removes corporate debtors from the ambit of 1192(2), R.18-19.

However, 1192(2) incorporates only the sorts of debt listed in 523(a), not its preamble, and the Thirteenth Circuit eschewed the "far more natural" reading of the statute. *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 569 (2012). Section 1192(2) does not create a discharge exception for what 523(a)'s preamble focuses on (certain kinds of *debtors*), but for what 523(a) lists (certain kinds of *debt*). This interpretation also avoids impermissible surplusage and homes in on the provision most relevant to a Subchapter V discharge, 1192. Moreover, 1192(2) emulates Chapter 12's section 1228(a)(2), which courts have found applies to both individual and corporate debtors.

i. <u>The most natural reading of the plain language of section 1192(2) does not limit its discharge exceptions to individuals.</u>

As always, "[t]he task of resolving [a] dispute over the meaning of . . . [a statute] begins where all such inquiries must begin: with the language of the statute itself." *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989). If the statutory language is plain, "the sole function of the courts is to enforce it according to its terms." *Caminetti v. United States*, 242 U.S. 470, 485 (1917). "When a term goes undefined in a statute, [the court] give[s] the term its ordinary meaning," but just because "a definition is broad enough to encompass one sense of a word does not establish that the word is *ordinarily* understood in that sense." *Taniguchi*, 566 U.S. at 566, 568 (emphasis in original).

Section 1192(2) exempts *debts* "of the kind specified in section 523(a)" from discharge but is silent as to the kind of *debtors* that it applies to. "Kind" means a particular sort or category, *see, e.g., American Heritage Dictionary of the English Language* (online ed.) ("[a] group of individuals or instances sharing common traits; a category or sort"), and because 523(a) lists various sorts and categories of debt, 1192(2) simply incorporates the types of debt listed in 523(a) as shorthand rather than its preamble as well. *In re Cleary Packaging, LLC*, 36 F.4th at 515. The statute does not refer to debts "as provided in" or "to the extent of" 523(a), and so to hold that the phrasing of 1192(2) somehow incorporates the debtors "of the kind" in 523(a)'s preamble constitutes an impermissible feat of "linguistic gymnastics." *See St. Martin Evangelical Lutheran Church v. South Dakota*, 451 U.S. 772, 791 n.4 (1981) (Stevens, J., concurring). In fact, the use of the nearly identical phrase "of a kind" in 1141(d)(6) to refer to 523(a) debts held by corporations indicates that this language does not integrate the preamble of 523(a), as reading the preamble in would nonsensically result in a provision that specifically refers to corporations only being applied against individuals. *See In re Cleary Packaging, LLC*, 36 F.4th at 516.

Also, Congress knows how to distinguish between types of debtors when it wants to. For example, Chapter 11 provides that "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," whereas "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)." 11 U.S.C. § 1141(d)(2), (6) (emphasis added). Accordingly, if the exceptions to a non-consensual Subchapter V discharge were limited to a certain kind of debtor, this would be specified in 1192 as it is in sections 1141(d)(2) and (6) for traditional Chapter 11 debtors.

Further, although Congress may be loath to "hide elephants in mouseholes," *Whitman v. Am. Trucking Ass'ns., Inc.*, 531 U.S. 457, 468 (2001), applying 523(a) exceptions to corporate debtors in Subchapter V does no such thing. As discussed above, 1141(d)(6) already limits the discharge a corporation receives in a traditional Chapter 11 case by reference to some debts listed in 523(a) and, as the Thirteenth Circuit itself noted, certain categories of 523(a) debts such as domestic support obligations and court fees for prisoners would never apply to corporations anyway. 11 U.S.C. § 523(a)(5), (17); R.16. In addition, other types of 523(a) debt—even if dischargeable—receive priority treatment under section 507 in traditional Chapter 11 cases and the absolute priority rule demands these claims be paid in full for equity holders to retain their interests after cramdown as they do in Subchapter V, shrinking the expansion of 523(a) discharge exceptions even more. *See* 11 U.S.C. § 1129(b)(2)(B); *Bank of Am. Nat. Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 444-49 (1999); William L. Norton III & James B. Bailey, *The Pros and Cons of the Small Business Reorganization Act of 2019*, 36 Emory Bankr. Dev. J. 383, 386 (2020).

And while the Thirteenth Circuit suggested that the legislative history's silence regarding this change militates against applying 523(a) exceptions, R.21, the legislative history is silent on an even more extreme change. A discharge is unavailable for a liquidating corporation in a traditional Chapter 11 case, but section 1181(c) specifically provides that 1141(d) is inapplicable when a plan is confirmed under 1191(b), meaning that a corporate debtor does receive a discharge in a liquidation under Subchapter V. "Congress provided no explanation of this change, but the statute clearly supports that interpretation." William L. Norton III, *Subchapter V—One Year Later*, 2021 No. 6 Norton Bankr. L. Adviser NL 1 (June 2021). By the same token, the lack of legislative history regarding the dischargeability exceptions under 523(a) does not foreclose applying them to corporate debtors in Subchapter V.

ii. Applying section 523(a) exemptions to corporate debtors gives independent meaning to section 1192(2), which actually controls discharge.

Principles of statutory interpretation demand that a statute "be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW, Inc. v. Andrews*, 534 U.S. 19, 31 (2001). Respondent's position fails this test, as it is unnecessary to avoid surplusage in 523(a) and fails to give independent meaning to 1192.

Section 523 is entitled, "Exceptions to discharge," and 523(a) includes 1192 in its introductory language for the same reason it includes the discharge provisions of all other chapters of the Bankruptcy Code: to limit the scope of discharge for individuals. Congress took a belt-and-suspenders approach to make this limitation clear even for discharge sections that are already targeted toward individuals. For example, 523(a)'s preamble references discharge provisions under Chapters 7 and 13, which are exclusively for individuals and which themselves reference section 523(a), and broadly includes 1141, even though only 1141(d)(2) speaks to discharge exceptions for individual debtors.

It is not only bizarre to reason that 523(a) somehow has the opposite effect of expanding the scope of discharge under provisions that reference the "kinds" of debt in 523(a), but such a reading also misses why 523(a) includes 1192. Because 523(a) already referenced other discharge provisions, debtors could argue that 523(a) does not apply to individuals proceeding under a non-consensual Subchapter V plan if 1192 were omitted from the preamble. Section 523(a)'s preamble therefore includes 1192 to put these arguments to bed.

In addition, the Thirteenth Circuit's logic could just as easily lead to the opposite inference regarding the applicability of 523(a) to corporate debtors. If Congress wanted to apply 523(a) exceptions only to individual debtors when a plan is confirmed under 1191(b), it could have included the reference to 1192 in 523(a)'s preamble and left it at that. This would make clear that a 1192 discharge does not relieve an individual debtor of 523(a) debts, but this is not the approach Congress took. Section 1192(2) itself refers to debts "of the kind" in 523(a), and this language is meaningless unless Congress wished to expand 1192(2)'s scope beyond individual debtors. Accordingly, far from "giv[ing] meaning to every term of both sections," R.19, the Thirteenth Circuit's tunnel-vision interpretation of 523(a)'s reference to 1192 renders 1192's reference to 523(a) mere surplusage.

Even if giving effect to 1192 makes 523(a)'s preamble somewhat repetitive, "[s]ometimes the better overall reading of the statute contains some redundancy." *Barton v. Barr*, 140 S. Ct. 1442, 1453 (2020). "[T]hat's hardly a reason to abandon it, for [Respondent's] alternative promises a graver surplusage problem of its own." *Wisconsin Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2073 (2018). When some surplusage is inevitable, "[i]t is a commonplace of statutory construction that the specific governs the general . . . [and] where general and specific authorizations exist side-by-side, the general/specific canon avoids rendering superfluous a specific provision that is

swallowed by the general one." *RadLAX Gateway Hotel, LLC*, 566 U.S. a 645 (citation and internal quotation omitted). And the Thirteenth Circuit's reading of 523(a), a general provision, leaves 1192(2), the specific provision governing discharge, with nothing to do. Further, while the Thirteenth Circuit hung its hat on the notion that the reference to 1192 in 523(a) must have independent meaning, R.19, it ignored that the House Report characterizes the addition of 1192 to 523(a) as a "conforming amendment," *see* H.R. Rep. No. 116-171, at 9 (2019), for which there is a lesser need to avoid redundancy. *Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund*, 138 S. Ct. 1061, 1071 (2018) ("Congress does not make 'radical—but entirely implicit—change[s]' through 'technical and conforming amendments.'") (quoting *Director of Revenue of Mo. v. CoBank ACB*, 531 U.S. 316, 324 (2001)). Because 1192 specifically controls discharge whereas 523(a) is simply a general authorization, 1192 must do something more than simply reiterate what 523(a) already says.

iii. Section 1192 mirrors section 1228(a)(2), which also prohibits granting corporate debtors a discharge of section 523(a) debts.

This Court has explained that "identical words and phrases within the same statute should normally be given the same meaning." *Hall v. United States*, 566 U.S. 506, 519 (2012). Further, "[w]hen administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial interpretations as well." *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998); *see also Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752, 1762 (2018) ("When Congress used the materially same language . . . it presumptively was aware of the longstanding judicial interpretation of the phrase and intended for it to retain its established meaning.").

Although "[s]ubchapter V and chapter 12 are not identical, and invoking chapter 12 standards may not be warranted in *every* instance . . . [Subchapter V] draws on the structure of chapter 12" and it is appropriate to consider interpretations of Chapter 12 provisions when construing identical Subchapter V language. *In re Trepetin*, 617 B.R. 841, 848 n. 14 (Bankr. D. Md. 2020) (emphasis added). Section 1228(a)(2) of Chapter 12 excepts from discharge any debt "of *a* kind specified in section 523(a) of this title," and so the only linguistic distinction between 1228(a)(2) and 1192(2) is that the latter refers to debts "of *the* kind specified in section 523(a) of this title." (emphasis added). Indeed, the materials Congress considered suggest that Chapter 12 was the primary model for Subchapter V. *See, e.g.*, Nat'l Bank. Conf., *A Proposal for Amending Chapter 12 to Accommodate Small Business Enterprises Seeking to Reorganize* 1 (2010) ("[Chapter 12] provides a time-tested, successful model for efficient reorganization of small businesses."); *see also* H.R. Rep. No. 116-171, at 18 (2019) (stating that a trustee in a Subchapter V case "would perform many of the same duties required of a chapter 12 trustee").

For over a decade before the addition of Subchapter V to the Bankruptcy Code, lower courts held that under 1228(a)(2), "Chapter 12 discharge does not include debts of the kind specified in § 523(a), regardless of whether the debtor is an individual or a corporation." *In re Breezy Ridge Farms, Inc.*, 2009 WL 1514671, at *3 (Bankr. M.D. Ga., 2009); *see also In re JRB Consol., Inc.*, 188 B.R. 373, 374 (Bankr. W.D. Tex. 1995) (holding that 1228 does not provide a broader Chapter 12 discharge for corporations than for individuals). In *Breezy Ridge*, the court explained that "[a]lthough § 523(a) applies only to individuals, Congress has used it as shorthand to define the scope of a Chapter 12 discharge for corporations as well as individuals." *Id.* at *2. This is consistent with the narrower application of 523(a) exceptions in traditional Chapter 11, as "[t]he inclusive language [of Chapter 12] is broader than the Chapter 11 discharge language,"

which distinguishes between individual and corporate debtors. *JRB Consol., Inc.*, 188 B.R. at 374. This vindicates "the intent of Congress to provide special treatment for certain kinds of debtors otherwise eligible to file for Chapter 12." *Id.* Section 1192 makes no distinction between types of debtors and should thus be construed the same way.

Further bolstering this conclusion is that Subchapter V imports several mechanisms from Chapter 12 that are nowhere in traditional Chapter 11. Subchapter V and Chapter 12 apply to individuals and corporations engaged in business with no distinction between the two, and both set comparable debt limits for eligibility. *See id.* §§ 101(18), 101(19A), 1182(1) (aggregate debt limits of $11,097,350 for family farmers, $2,268,550 for family fishermen, and $7,500,000 for small businesses). Both also introduce provisions that only make sense given the close relationship between the equity holder and the debtor–corporation, as—unlike traditional Chapter 11—they incorporate: (1) the abrogation of the absolute priority rule, *id.* §§ 1191(c), 1225(b); (2) the exclusive right of the debtor to propose a plan, *id.* §§ 1189(a), 1221; and (3) the ability of the debtor to confirm a plan even if all creditors reject it. *Id.* U.S.C. §§ 1191(b), 1225(b). Further, Subchapter V provides that to confirm a plan, a debtor must pay its projected disposable income over a three- to five-year period, which has no analog in Chapter 11 and the concept is instead borrowed from Chapter 12. *See id.* §§ 1191(c), 1225(b). This strong overlap suggests that, as with Chapter 12, Congress sought to prevent corporations in Subchapter V from discharging 523(a) debts.

In addition, none of the differences between Chapter 12 and Subchapter V is a sound basis for refusing to look to 1228 for guidance. Even though Subchapter V applies to a wider range of debtors than Chapter 12 that includes corporations that are not engaged in farming or fishing operations, this gets us nowhere, and the category of debtors that qualify for Subchapter V is

narrower than those that can pursue traditional Chapter 11 anyway. It is also of no effect that 1228(a)(2) was taken from Chapter 13's section 1328. The "of a kind" language of 1228(a)(2) is like the language in 1141(d)(6)(A) that excepts a corporate debtor from discharge for any debt "of a kind specified in" sections 523(a)(2)(A) or (B), so Congress clearly does think it can use that language to extend 523(a) exceptions to corporations. *See In re Cleary Packaging, LLC*, 36 F.4th at 516. Moreover, adopting the Thirteenth Circuit's reasoning here creates problems. Unlike a consensual plan under 1191(a) where 1141(d) governs discharge, *see* 11 U.S.C. § 1181(a), only 1192 controls discharge when a court confirms a plan through cramdown under 1191(b). *Id.* § 1181(c). So, if a corporate debtor confirms a non-consensual plan under 1191(b), the discharge exceptions in 1141(d)(6) would not apply either. Corporate debtors would then have an incentive to push smaller creditors to vote against a plan to discharge otherwise non-dischargeable debts under the False Claims Act and for willful tax evasion—a result Congress could not have intended. The ostensibly important distinctions the Thirteenth Circuit made between Chapter 12 and Subchapter V, *see* R.20, are thus no reason to find that nearly identical language applies to both individuals and corporations in the former but only to individuals in the latter.

Considering that the similarity between Chapter 12 and Subchapter V reinforces an interpretation of 1192 that is already supported by its plain language and the rule against surplusage, 523(a) exemptions must apply to corporate Subchapter V discharges.

**B. Applying Section 523(a) Exemptions to Corporate Section 1192 Discharges Preserves an Essential Balance Between Rehabilitating Debtors and Safeguarding Creditors.**

Although the language of 1192(2) is plain and supports reversal, the Thirteenth Circuit also ignored important policy considerations. "The overall purpose and function of the Bankruptcy Code is to strike a balance between creditor protection and debtor relief." *In re Travel 2000, Inc.*,

264 B.R. 444, 448 (Bankr. W.D. Mich. 2001). It is trite law that one of the policy goals of discharge is to rehabilitate corporate debtors with a "fresh start," *see* R.21, but the Bankruptcy Code "limits the opportunity for a completely unencumbered new beginning to the 'honest but unfortunate debtor.'" *Grogan v. Garner*, 498 U.S. 279, 286-97 (1991). Accordingly, "the fresh start policy is not always paramount," and a necessary "corollary of the policy of giving *honest* debtors a fresh start . . . [is] to deny *dishonest* debtors a fresh start." *In re Jercich*, 238 F.3d 1202, 1206 (9th Cir. 2001) (emphasis added). "To that end, the Bankruptcy Code contains broad provisions for the discharge of debts, subject to exceptions" like those in 523(a), which are targeted at morally dubious behavior. *Lamar, Archer & Cofrin, LLP*, 138 S. Ct. at 1758.

Here, the Thirteenth Circuit permitted Respondent's existing equity holders to retain their equity interests, pay creditors a pittance, and allowed Respondent to discharge debts arising from the bad acts of its equity holders. R.15. Such a ruling absurdly motivates corporate Subchapter V debtors to try and obtain non-consensual plans to obtain a broader discharge than they would receive under consensual plans. In addition, it does a disservice to creditors such as Ms. Rigby and disregards that the policy concerns underpinning the discharge of 523(a) debts in traditional Chapter 11 cases are distinct from those at play in Subchapter V.

i. <u>Applying section 523(a) exceptions only to individual debtors would create a perverse incentive for corporate debtors to pursue non-consensual plans to obtain a broader discharge.</u>

One purpose of Subchapter V is to encourage the confirmation of a consensual plan. Uniquely, it requires the appointment of a trustee who is tasked with "facilitat[ing] the development of a consensual plan of reorganization." 11 U.S.C. § 1183(b)(7); *see In re 218 Jackson LLC*, 631 B.R. 937, 947 (Bankr. M.D. Fla. 2021) ("[T]he [S]ubchapter V trustee is the only trustee directed to 'facilitate the development of a consensual plan of reorganization.' 11

U.S.C. § 1183(b)(7). This duty is assigned to no other trustee in bankruptcy."). Congress considered this a "principal feature" of Subchapter V. *See* H.R. Rep. No. 116-171, at 4 (2019).

As alluded to earlier, if a corporate debtor confirms a non-consensual plan under 1191(b), 1192 alone controls discharge. 11 U.S.C. § 1181(c). With a consensual plan, 1141(d) controls and accordingly integrates the exceptions in 1141(d)(6). *See id.* § 1181(a). But under the Thirteenth Circuit's reasoning no parts of 523(a), including those enumerated in section 1141(d)(6), apply in a non-consensual Subchapter V discharge, so a non-consensual plan gives a *greater* discharge than a consensual one. *See* R.22. This is an absurd result that does not square with Congress's intent to encourage consensual plans—if anything, any interpretation of 1192 should yield a narrower discharge.

A narrower discharge also does not extinguish the benefits of Subchapter V for corporate debtors, as it is unlikely that creditors would be able to "hijack" the Subchapter V process by withholding consent and submitting 523(a) claims. While a traditional Chapter 11 plan is subject to the absolute priority rule, its broader discharge generally nixes 523(a) claims and is thus less appealing to 523(a) claimholders as well. *Id.* § 1181(c). On the other hand, while equity holders get to maintain their interests in a non-consensual Subchapter V plan, they will receive a narrower discharge under 1192. This threatens mutually assured destruction that can only be avoided with a consensual Subchapter V plan, striking an appropriate balance: both creditors and debtors are motivated to compromise on a consensual Subchapter V plan that will give a higher distribution to creditors and allow equity holders to retain their interests.

ii. <u>The close relationship between small businesses and their equity holders distinguishes Subchapter V from traditional Chapter 11 plans.</u>

In a traditional corporate Chapter 11 plan, 1141(d) grants a near-total discharge, including 523(a) debts. Two major policy concerns justify this. First, "[i]t is necessary for a corporation or

partnership undergoing reorganization to be able to present its creditors with a fixed list of liabilities upon which the creditors or third parties can make intelligent decisions," and applying 523(a) would frustrate that process. 124 Cong. Rec. 32,408 (1978). Second, because the absolute priority rule requires owners to surrender their equity interests if dissenting creditors are not paid in full, "the creditors who take over the reorganized company should not bear the burden of acts for which the creditors were not at fault." S. Rep. No. 95-989 (1978). But a Subchapter V case does not implicate these concerns, as unlike a traditional Chapter 11 plan, creditor classes do not need to approve a Subchapter V plan, nor does pre-bankruptcy equity lose ownership. Other routes of recovery also offer cold comfort to creditors and are insufficient to effectively redress their claims.

Subchapter V abrogates the absolute priority rule and, with this, alters the policy grounds for the far-reaching discharge granted to corporations under traditional Chapter 11. The latter "places equity holders at the bottom of the priority list," *Czyzewski*, 580 U.S. at 458, but under Subchapter V equity holders can retain ownership so long as the plan pays the debtor's disposable income for a three- to five-year period and is feasible. 11 U.S.C. § 1191(c)(2)(A), (3). No class of creditors must approve the plan, *Id.* § 1191(b), and there is no process where creditors can (let alone must) be sure of the debtor's financial position when voting. *See id.* § 1181(b). To retain their equity interests, small business owners also do not need to pay all creditors in full, put their equity interests up for bidding, or allow competing plans as they would in a traditional Chapter 11 case. *Compare id.* §§ 1181(a), 1189(a), 1191(b), *with 203 N. LaSalle St. P'ship*, 526 U.S. at 444-49. All this also comes with a grab-bag of new powers and tools to streamline reorganization. *See In re Seven Stars on the Hudson Corp.*, 618 B.R. 333, 340 (Bankr. S.D. Fla. 2020) (listing new benefits for Subchapter V debtors).

The justification for these new powers is the close relationship between equity holders and small businesses, as Chapter 11 "was designed for large corporations with extensive operations and complex capital structures, not small enterprises that depend critically on the skills of a single owner-manager and family members." Nat'l Bank. Conf., *supra*, at 1. But because of this personal relationship, there is far less separation between the acts of the corporation and its equity holders, and the corporation is hardly operating as a faceless entity devoid of moral agency. It accordingly makes perfect sense to apply 523(a) exceptions to corporate debtors in Subchapter V considering the expanded powers they enjoy.

Conversely, creditors are left with a paucity of remedies if a 1192 discharge also wipes out 523(a) debts. While judgment creditors can pursue individual LLC equity holders, most states limit a creditor's lien to the rights to distributions from equity rather than the equity itself. *See* Amy P. Jetel, *Comparison of Creditors' Rights Provisions of State LLC Acts*, 2 Asset Protection: Dom. & Int'l L. & Tactics § 18:5 (2022). And because equity holders still retain voting rights, they could simply vote to not to pay distributions, leaving creditors with little recourse. In addition, equity holders can file for bankruptcy individually. This could delay execution for up to five years in a Chapter 13 case even if the debt is non-dischargeable under 523(a), as "the automatic stay [generally] remains in effect irrespective of a determination of dischargeability." *In re Mu'min*, 374 B.R. 149, 161 (Bankr. E.D. Pa. 2007); *see also Matter of Branch*, 175 B.R. 732, 734 (Bankr. D. Neb.1994) ("When this Chapter 13 case was filed, the automatic stay of 11 U.S.C. § 362(a) prohibited the student loan creditor from attempting to collect the nondischargeable student loan balance.").

And while "the Bankruptcy Code aims, in the main, to secure equal distribution among creditors," *Howard Delivers Serv., Inc., v. Zurich Am. Ins. Co.*, 547 U.S. 651, 655 (2006), the Code

strays from this aim and treats 523(a) debts differently for good reason. At least from a moral perspective, these creditors should receive some preference and debtors should not be able to get off scot-free for their bad behavior, which is why 523(a) limits discharge in individual cases and 507 gives many 523(a) creditors priority in traditional Chapter 11 cases. To hold that 523(a) debts are discharged under 1192 as well would yield a lopsided result that aggrandizes debtor relief at the expense of creditor protection.

## CONCLUSION

Respondent's Chapter 11 plan should not have been confirmed because it contained non-consensual non-debtor release provisions, which are not authorized by the Bankruptcy Code outside of asbestos cases. In addition, Respondent's motion to dismiss was improperly granted because corporate debtors are not exempted from section 523(a)'s non-dischargeability provisions in a non-consensual plan under Subchapter V. The Thirteenth Circuit improperly affirmed the bankruptcy court's ruling on both issues. Therefore, this Court should reverse the Thirteenth Circuit's decision.

# APPENDIX

**U.S. Const. Art. III**

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

**U.S. Const. Amend. V**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**11 U.S.C. § 101. Definitions.**

In this title the following definitions shall apply:

. . .

(18) The term "family farmer" means—

(A) individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed $11,097,350 [originally "$10,000,000", adjusted effective April 1, 2022]1 and not less than 50 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income for—

(i) the taxable year preceding; or

(ii) each of the 2d and 3d taxable years preceding;

the taxable year in which the case concerning such individual or such individual and spouse was filed; or

(B) corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation, and

(i) more than 80 percent of the value of its assets consists of assets related to the farming operation;

(ii) its aggregate debts do not exceed $11,097,350 [originally "$10,000,000", adjusted effective April 1, 2022]1 and not less than 50 percent of its aggregate noncontingent, liquidated debts (excluding a debt for one dwelling

which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, arise out of the farming operation owned or operated by such corporation or such partnership; and

(iii) if such corporation issues stock, such stock is not publicly traded.

. . .

(19A) The term "family fisherman" means—

(A) an individual or individual and spouse engaged in a commercial fishing operation—

(i) whose aggregate debts do not exceed $2,268,550 [originally "$1,500,000", adjusted effective April 1, 2022]1 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such individual or such individual and spouse; and

(ii) who receive from such commercial fishing operation more than 50 percent of such individual's or such individual's and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

(B) a corporation or partnership—

(i) in which more than 50 percent of the outstanding stock or equity is held by—

(I) 1 family that conducts the commercial fishing operation; or

(II) 1 family and the relatives of the members of such family, and such family or such relatives conduct the commercial fishing operation; and

(ii) (I) more than 80 percent of the value of its assets consists of assets related to the commercial fishing operation;

(II) its aggregate debts do not exceed $2,268,550 [originally "$1,500,000", adjusted effective April 1, 2022]1 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for 1 dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such corporation or such partnership; and

(III) if such corporation issues stock, such stock is not publicly traded.

**11 U.S.C. § 507. Priorities.**

(a) The following expenses and claims have priority in the following order:

(1) First:

(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.

(C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302, the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment of such claims.

(2) Second, administrative expenses allowed under section 503(b) of this title, unsecured claims of any Federal reserve bank related to loans made through programs or facilities authorized under section 13(3) of the Federal Reserve Act (12 U.S.C. 343), and any fees and charges assessed against the estate under chapter 123 of title 28.

(3) Third, unsecured claims allowed under section 502(f) of this title.

(4) Fourth, allowed unsecured claims, but only to the extent of $15,150 [originally “$10,000”, adjusted effective April 1, 2022]1 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or

(B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that

the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

(5) Fifth, allowed unsecured claims for contributions to an employee benefit plan—

(A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only

(B) for each such plan, to the extent of—

(i) the number of employees covered by each such plan multiplied by $15,150 [originally “$10,000”, adjusted effective April 1, 2022]1; less

(ii) the aggregate amount paid to such employees under paragraph (4) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.

(6) Sixth, allowed unsecured claims of persons—

(A) engaged in the production or raising of grain, as defined in section 557(b) of this title, against a debtor who owns or operates a grain storage facility, as defined in section 557(b) of this title, for grain or the proceeds of grain, or

(B) engaged as a United States fisherman against a debtor who has acquired fish or fish produce from a fisherman through a sale or conversion, and who is engaged in operating a fish produce storage or processing facility—

but only to the extent of $7,475 [originally “$4,000”, adjusted effective April 1, 2022]1 for each such individual.

(7) Seventh, allowed unsecured claims of individuals, to the extent of $3,350 [originally “$1,800”, adjusted effective April 1, 2022]1 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided.

(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for—

(A) a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition—

(i) for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition;

(ii) assessed within 240 days before the date of the filing of the petition, exclusive of—

(I) any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and

(II) any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period, plus 90 days; or

(iii) other than a tax of a kind specified in section 523(a)(1)(B) or 523(a)(1)(C) of this title, not assessed before, but assessable, under applicable law or by agreement, after, the commencement of the case;

(B) a property tax incurred before the commencement of the case and last payable without penalty after one year before the date of the filing of the petition;

(C) a tax required to be collected or withheld and for which the debtor is liable in whatever capacity;

(D) an employment tax on a wage, salary, or commission of a kind specified in paragraph (4) of this subsection earned from the debtor before the date of the filing of the petition, whether or not actually paid before such date, for which a return is last due, under applicable law or under any extension, after three years before the date of the filing of the petition;

(E) an excise tax on—

(i) a transaction occurring before the date of the filing of the petition for which a return, if required, is last due, under applicable law or under any extension, after three years before the date of the filing of the petition; or

(ii) if a return is not required, a transaction occurring during the three years immediately preceding the date of the filing of the petition;

(F) a customs duty arising out of the importation of merchandise—

(i) entered for consumption within one year before the date of the filing of the petition;

(ii) covered by an entry liquidated or reliquidated within one year before the date of the filing of the petition; or

(iii) entered for consumption within four years before the date of the filing of the petition but unliquidated on such date, if the Secretary of the Treasury certifies that failure to liquidate such entry was due to an investigation pending on such date into assessment of antidumping or countervailing duties or fraud, or if information needed for the proper appraisement or classification of such merchandise was not available to the appropriate customs officer before such date; or

(G) a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss.

An otherwise applicable time period specified in this paragraph shall be suspended for any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the

debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days; plus any time during which the stay of proceedings was in effect in a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days.

(9) Ninth, allowed unsecured claims based upon any commitment by the debtor to a Federal depository institutions regulatory agency (or predecessor to such agency) to maintain the capital of an insured depository institution.

(10) Tenth, allowed claims for death or personal injury resulting from the operation of a motor vehicle or vessel if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance.

(b) If the trustee, under section 362, 363, or 364 of this title, provides adequate protection of the interest of a holder of a claim secured by a lien on property of the debtor and if, notwithstanding such protection, such creditor has a claim allowable under subsection (a)(2) of this section arising from the stay of action against such property under section 362 of this title, from the use, sale, or lease of such property under section 363 of this title, or from the granting of a lien under section 364(d) of this title, then such creditor's claim under such subsection shall have priority over every other claim allowable under such subsection.

(c) For the purpose of subsection (a) of this section, a claim of a governmental unit arising from an erroneous refund or credit of a tax has the same priority as a claim for the tax to which such refund or credit relates.

(d) An entity that is subrogated to the rights of a holder of a claim of a kind specified in subsection (a)(1), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(9) of this section is not subrogated to the right of the holder of such claim to priority under such subsection.

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

(a) A discharge under section 727, 1141, 11921 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(1) for a tax or a customs duty—

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

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

(i) was not filed or given; or

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

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

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

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

(B) use of a statement in writing—

(i) that is materially false;

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

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

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

(C) (i) for purposes of subparagraph (A)—

(I) consumer debts owed to a single creditor and aggregating more than $800 [originally “$500”, adjusted effective April 1, 2022]2 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

(II) cash advances aggregating more than $1,100 [originally “$750”, adjusted effective April 1, 2022]2 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

(ii) for purposes of this subparagraph—

(I) the terms “consumer”, “credit”, and “open end credit plan” have the same meanings as in section 103 of the Truth in Lending Act; and

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

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

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

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

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

(5) for a domestic support obligation;

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

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

(A) relating to a tax of a kind not specified in paragraph (1) of this subsection; or

(B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition;

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

(A) (i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or

(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;

(9) for death or personal injury caused by the debtor's operation of a motor vehicle, vessel, or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;

(10) that was or could have been listed or scheduled by the debtor in a prior case concerning the debtor under this title or under the Bankruptcy Act in which the debtor waived discharge, or was denied a discharge under section 727(a)(2), (3), (4), (5), (6), or (7) of this title, or under section 14c(1), (2), (3), (4), (6), or (7) of such Act;

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

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

(13) for any payment of an order of restitution issued under title 18, United States Code;

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

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

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

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

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

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

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

(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

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

(19) that—

(A) is for—

(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any

of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or

(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

(B) results, before, on, or after the date on which the petition was filed, from—

(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

(ii) any settlement agreement entered into by the debtor; or

(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.

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

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

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

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

(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court

finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust.

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

**11 U.S.C. § 524. Effect of discharge.**

. . .

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

. . .

(g) (2) (B) The requirements of this subparagraph are that—

(i) the injunction is to be implemented in connection with a trust that, pursuant to the plan of reorganization—

(I) is to assume the liabilities of a debtor which at the time of entry of the order for relief has been named as a defendant in personal injury, wrongful death, or property-damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products;

. . .

(4) (A) (ii) Notwithstanding the provisions of section 524(e), such an injunction may bar any action directed against a third party who is identifiable from the terms of such injunction (by name or as part of an identifiable group) and is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor to the extent such alleged liability of such third party arises by reason of—

(I) the third party's ownership of a financial interest in the debtor, a past or present affiliate of the debtor, or a predecessor in interest of the debtor;

(II) the third party's involvement in the management of the debtor or a predecessor in interest of the debtor, or service as an officer, director or employee of the debtor or a related party;

(III) the third party's provision of insurance to the debtor or a related party; or

(IV) the third party's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of the debtor or a related party, including but not limited to—

(aa) involvement in providing financing (debt or equity), or advice to an entity involved in such a transaction; or

(bb) acquiring or selling a financial interest in an entity as part of such a transaction.

**11 U.S.C. § 702. Election of trustee.**

(a) A creditor may vote for a candidate for trustee only if such creditor—

(1) holds an allowable, undisputed, fixed, liquidated, unsecured claim of a kind entitled to distribution under section 726(a)(2), 726(a)(3), 726(a)(4), 752(a), 766(h), or 766(i) of this title;

(2) does not have an interest materially adverse, other than an equity interest that is not substantial in relation to such creditor's interest as a creditor, to the interest of creditors entitled to such distribution; and

(3) is not an insider.

(b) At the meeting of creditors held under section 341 of this title, creditors may elect one person to serve as trustee in the case if election of a trustee is requested by creditors that may vote under subsection (a) of this section, and that hold at least 20 percent in amount of the claims specified in subsection (a)(1) of this section that are held by creditors that may vote under subsection (a) of this section.

(c) A candidate for trustee is elected trustee if—

(1) creditors holding at least 20 percent in amount of the claims of a kind specified in subsection (a)(1) of this section that are held by creditors that may vote under subsection (a) of this section vote; and

(2) such candidate receives the votes of creditors holding a majority in amount of claims specified in subsection (a)(1) of this section that are held by creditors that vote for a trustee.

(d) If a trustee is not elected under this section, then the interim trustee shall serve as trustee in the case.

**11 U.S.C. § 727. Discharge.**

(a) The court shall grant the debtor a discharge, unless—

(1) the debtor is not an individual;

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—

(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;

(3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case;

(4) the debtor knowingly and fraudulently, in or in connection with the case—

(A) made a false oath or account;

(B) presented or used a false claim;

(C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or

(D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs;

(5) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities;

(6) the debtor has refused, in the case—

(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;

(B) on the ground of privilege against self-incrimination, to respond to a material question approved by the court or to testify, after the debtor has been granted immunity with respect to the matter concerning which such privilege was invoked; or

(C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify;

(7) the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6) of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case, under this title or under the Bankruptcy Act, concerning an insider;

(8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within 8 years before the date of the filing of the petition;

(9) the debtor has been granted a discharge under section 1228 or 1328 of this title, or under section 660 or 661 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition, unless payments under the plan in such case totaled at least—

(A) 100 percent of the allowed unsecured claims in such case; or

(B) (i) 70 percent of such claims; and

(ii) the plan was proposed by the debtor in good faith, and was the debtor's best effort;

(10) the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter;

(11) after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply with respect to a debtor who is a person described in section 109(h)(4) or who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional courses under this section (The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in this paragraph shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.); or

(12) the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is reasonable cause to believe that—

(A) section 522(q)(1) may be applicable to the debtor; and

(B) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

(b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.

(c) (1) The trustee, a creditor, or the United States trustee may object to the granting of a discharge under subsection (a) of this section.

(2) On request of a party in interest, the court may order the trustee to examine the acts and conduct of the debtor to determine whether a ground exists for denial of discharge.

(d) On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if—

(1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee;

(3) the debtor committed an act specified in subsection (a)(6) of this section; or

(4) the debtor has failed to explain satisfactorily—

(A) a material misstatement in an audit referred to in section 586(f) of title 28; or

(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28.

(e) The trustee, a creditor, or the United States trustee may request a revocation of a discharge—

(1) under subsection (d)(1) of this section within one year after such discharge is granted; or

(2) under subsection (d)(2) or (d)(3) of this section before the later of—

(A) one year after the granting of such discharge; and

(B) the date the case is closed.

**11 U.S.C. § 1123. Contents of plan.**

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

. . .

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

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

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

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

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

(E) satisfaction or modification of any lien;

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

(G) curing or waiving of any default;

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

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

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

. . .

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

. . .

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

**11 U.S.C. § 1129. Confirmation of plan.**

. . .

(b) (2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides—

(i) (I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

(B) With respect to a class of unsecured claims—

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

(C) With respect to a class of interests—

(i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

**11 U.S.C. § 1141. Effect of confirmation.**

. . .

(d) (1) Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan—

(A) discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind specified in section 502(g), 502(h), or 502(i) of this title, whether or not—

(i) a proof of the claim based on such debt is filed or deemed filed under section 501 of this title;

(ii) such claim is allowed under section 502 of this title; or

(iii) the holder of such claim has accepted the plan; and

(B) terminates all rights and interests of equity security holders and general partners provided for by the plan.

(2) A discharge under this chapter does not discharge a debtor who is an individual from any debt excepted from discharge under section 523 of this title.

(3) The confirmation of a plan does not discharge a debtor if—

(A) the plan provides for the liquidation of all or substantially all of the property of the estate;

(B) the debtor does not engage in business after consummation of the plan; and

(C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.

(4) The court may approve a written waiver of discharge executed by the debtor after the order for relief under this chapter.

(5) In a case in which the debtor is an individual—

(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;

(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if—

(i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date;

(ii) modification of the plan under section 1127 is not practicable; and

(iii) subparagraph (C) permits the court to grant a discharge; and

(C) the court may grant a discharge if, after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that—

(i) section 522(q)(1) may be applicable to the debtor; and

(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B);

and if the requirements of subparagraph (A) or (B) are met.

(6) Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt—

(A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute; or

(B) for a tax or customs duty with respect to which the debtor—

(i) made a fraudulent return; or

(ii) willfully attempted in any manner to evade or to defeat such tax or such customs duty.

**11 U.S.C. § 1181. Inapplicability of other sections.**

(a) <u>In general.</u>– Sections 105(d), 1101(1), 1104, 1105, 1106, 1107, 1108, 1115, 1116, 1121, 1123(a)(8), 1123(c), 1127, 1129(a)(15), 1129(b), 1129(c), 1129(e), and 1141(d)(5) of this title do not apply in a case under this subchapter.

(b) <u>Court authority.</u>– Unless the court for cause orders otherwise, paragraphs (1), (2), and (4) of section 1102(a) and sections 1102(b), 1103, and 1125 of this title do not apply in a case under this subchapter.

(c) <u>Special rule for discharge.</u>– If a plan is confirmed under section 1191(b) of this title, section 1141(d) of this title shall not apply, except as provided in section 1192 of this title.

**11 U.S.C. § 1182. Definitions.**

In this subchapter:

(1) <u>Debtor.</u>– The term "debtor"—

(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning single asset real estate) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than $7,500,000 (excluding debts owed to 1 or more affiliates or insiders) not less

than 50 percent of which arose from the commercial or business activities of the debtor; and

(B) does not include—

(i) any member of a group of affiliated debtors under this title that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than $7,500,000 (excluding debt owed to 1 or more affiliates or insiders);

(ii) any debtor that is a corporation subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)); or

(iii) any debtor that is an affiliate of a corporation described in clause (ii).

**11 U.S.C. § 1189. Filing of the plan.**

(a) Who may file a plan.– Only the debtor may file a plan under this subchapter.

(b) Deadline.– The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend the period if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable.

**11 U.S.C. § 1191. Confirmation of plan.**

(a) Terms.– The court shall confirm a plan under this subchapter only if all of the requirements of section 1129(a), other than paragraph (15) of that section, of this title 1 are met.

(b) Exception.– Notwithstanding section 510(a) of this title, if all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

(c) Rule of construction.– For purposes of this section, the condition that a plan be fair and equitable with respect to each class of claims or interests includes the following requirements:

(1) With respect to a class of secured claims, the plan meets the requirements of section 1129(b)(2)(A) of this title.

(2) As of the effective date of the plan—

(A) the plan provides that all of the projected disposable income of the debtor to be received in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or

(B) the value of the property to be distributed under the plan in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date on which the first distribution is due under the plan is not less than the projected disposable income of the debtor.

(3) (A) The debtor will be able to make all payments under the plan; or

(B) (i) there is a reasonable likelihood that the debtor will be able to make all payments under the plan; and

(ii) the plan provides appropriate remedies, which may include the liquidation of nonexempt assets, to protect the holders of claims or interests in the event that the payments are not made.

(d) Disposable income.– For purposes of this section, the term “disposable income” means the income that is received by the debtor and that is not reasonably necessary to be expended—

(1) for—

(A) the maintenance or support of the debtor or a dependent of the debtor; or

(B) a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(2) for the payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor.

(e) Special rule.– Notwithstanding section 1129(a)(9)(A) of this title, a plan that provides for the payment through the plan of a claim of a kind specified in paragraph (2) or (3) of section 507(a) of this title may be confirmed under subsection (b) of this section.

**11 U.S.C. § 1192. Discharge.**

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

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

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

**11 U.S.C. § 1221. Filing of plan.**

The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend such period if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable.

**11 U.S.C. § 1225. Confirmation of plan.**

. . .

(b) (1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim;

(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or

(C) the value of the property to be distributed under the plan in the 3-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the plan is not less than the debtor's projected disposable income for such period.

(2) For purposes of this subsection, "disposable income" means income which is received by the debtor and which is not reasonably necessary to be expended—

(A) for the maintenance or support of the debtor or a dependent of the debtor or for a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(B) for the payment of expenditures necessary for the continuation, preservation, and operation of the debtor's business.

**11 U.S.C. § 1228. Discharge.**

(a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, other than payments to holders of allowed claims provided for under section 1222(b)(5) or 1222(b)(9) of this title, 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 for by the plan, allowed under section 503 of this title, or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1222(b)(5) or 1222(b)(9) of this title; or

(2) of a kind specified in section 523(a) of this title, except as provided in section 1232(c).

(b) Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1229 of this title is not practicable.

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1222(b)(5) or 1222(b)(9) of this title; or

(2) of a kind specified in section 523(a) of this title, except as provided in section 1232(c).

(d) On request of a party in interest before one year after a discharge under this section is granted, and after notice and a hearing, the court may revoke such discharge only if—

(1) such discharge was obtained by the debtor through fraud; and

(2) the requesting party did not know of such fraud until after such discharge was granted.

(e) After the debtor is granted a discharge, the court shall terminate the services of any trustee serving in the case.

(f) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that—

(1) section 522(q)(1) may be applicable to the debtor; and

(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).