No. 23-785

In the Supreme Court of the United States

PHH MORTGAGE CORPORATION,
Petitioner,

v.

MARK ANTHONY GUTHRIE,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF AMICUS CURIAE ACA INTERNATIONAL IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

1. Whether the exclusive vehicle to remedy an alleged violation of the Federal Bankruptcy Code's discharge order under 11 U.S.C. § 524(a) is a motion for contempt in the Bankruptcy Court that issued the discharge order?

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INTEREST OF AMICUS CURIAE[1]

ACA International ("ACA") represents approximately 1700 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs over 113,000 people worldwide. The accounts receivable management industry is instrumental in keeping America's credit-based economy functioning with access to credit at the lowest possible cost.

Many of ACA's members engage in debt collection activities across the country and are therefore responsible for compliance with applicable federal and state laws governing debt collection.

Creditors, as well as those collecting debts on their behalf, rely on the consistent application of the Bankruptcy Code to guide collection efforts during and after bankruptcy proceedings. When a bankruptcy proceeding concludes and a discharge order is issued by the bankruptcy court, the injunctive power of that order guides further collection efforts, if any. And sometimes, like here, the effect of that discharge order may be subject to different, yet objectively reasonable, interpretations.

Indeed, this Court has already held that alleged violations of a bankruptcy court's discharge order must be measured against an objective standard and are not subject to a strict liability analysis. *See Taggart v. Lorenzen*, 139 S. Ct. 1795 (2019). The Fourth

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[1] All parties were given timely notice and have consented to this filing. No party's counsel authored this brief in whole or in part, and no person or entity other than amicus curiae, its counsel, or its members made a monetary contribution intended to fund the brief's preparation or submission.

Circuit's decision in the instant matter, however, would undermine the Court's *Taggart* holding. It would thus undermine the efficiency, fairness, and balancing of creditor and consumer interests that Congress strove to achieve in enacting the Bankruptcy Code and on which ACA members rely.

SUMMARY OF THE ARGUMENT

The Fourth Circuit's decision in this case threatens the viability of this Court's precedential decisions and creates a split in circuit authority, making this question a critical one for this Court's review. *See* Sup. Ct. R. 10(a). By permitting a plaintiff to pursue state law causes of action that are otherwise unavailable under the Bankruptcy Code, the Fourth Circuit has effectively nullified the standard set forth in *Taggart*. Thus, this decision creates a risk of inconsistent application of the Bankruptcy Code and the comprehensive remedies established therein. Additionally, if the Fourth Circuit's decision is allowed to stand, it will open the door to costly class actions that the Bankruptcy Code otherwise precludes.

ARGUMENT

I. LEFT UNCORRECTED, THE FOURTH CIRCUIT'S DECISION WILL CAUSE MULTIPLE PROBLEMS OF NATIONAL SIGNIFICANCE.

The Fourth Circuit departed from established law regarding the applicability of the Bankruptcy Code and its preemption of federal and state law claims that invade the exclusive purview of the Bankruptcy Code.

Respondent Mark Anthony Guthrie ("Respondent") and his former wife had a mortgage through

Petitioner PHH Mortgage Corporation ("PHH"). Respondent and his wife separated, and Respondent filed for Chapter 13 bankruptcy in April 2011. The couple later divorced and Respondent was granted a discharge order in 2016. PHH holds an interest in the property for which Respondent's personal liability (but not necessarily *in rem* liability) was discharged in the bankruptcy proceeding.

The bankruptcy court provided PHH with the discharge order in May 2016. *See* 11 U.S.C. § 524 ("section 524"). Respondent alleged that PHH violated the discharge order and sued it for improper collection attempts on the discharged debt, and for allegedly furnishing inaccurate credit information. Instead of filing a motion for contempt in the bankruptcy court that issued the discharge order, Respondent asserted numerous state law and federal statutory claims, some of which hold creditors, like PHH, to a stricter standard of liability than that contemplated in *Taggart*.

Following cross motions for summary judgment, the court granted PHH's motion in full and denied Respondent's. Respondent then appealed to the Fourth Circuit Court of Appeals. In a split ruling, the Fourth Circuit detoured from the authority established by every other circuit to consider the issue and held that "the Bankruptcy Code does not preempt Guthrie's state law claims arising from alleged improper collection attempts of a discharged debt." *See Guthrie v. PHH Mortg. Corp.*, 79 F.4th 328, 348 (4th Cir. 2023).

Circuit Judge Wynn dissented in part, opining that Respondent's state law claims, to the extent they are premised on a violation of the discharge injunction issued by the bankruptcy court, are preempted by the Bankruptcy Code. *Id.* at 349 (Wynn, J., concurring in

part and dissenting in part). Indeed, Judge Wynn highlighted Congress's intent in forming the Bankruptcy Code, as well as the contrary and incompatible holdings in the First, Second, Sixth, Seventh and Ninth Circuits. *Id.*

The Fourth Circuit's departure from this Court's precedent, federal preemption holdings across the country, and demonstrated congressional intent underlying the Bankruptcy Code, now raises a host of issues with national significance.

A. The Court Should Address this Case Because it Threatens the Precedential Value of this Court's Decision in *Taggart*.

The Fourth Circuit's decision allows consumers to circumvent this Court's holding in *Taggart*. Failure to address this conflict will damage *Taggart*'s precedential value and the ability of creditors and consumers across the country to rely on its holding.

The *Taggart* Court explained that the "bankruptcy statutes incorporate the traditional standards in equity practice for determining when a party may be held in civil contempt for violating an injunction." 139 S.Ct. at 1801. This standard is generally an *objective* one. *Id.* at 1802. In rejecting a strict liability standard, the Court observed that such a standard "may lead risk-averse creditors to seek an advance determination in bankruptcy court even where there is only slight doubt as to whether a debt has been discharged." *Id.* at 1803.

Thus, this Court rejected anything less than an objective standard, including strict liability, as the measure for the legality of creditors' and debt

collectors' efforts to collect on debts in the face of discharge orders. *Id.* at 1804.

Unlike Respondent, in *Taggart*, a Chapter 7 consumer used the appropriate bankruptcy court contempt process for challenging a perceived violation of the discharge order. Taggart was sued in Oregon state court for breach of contract, but before trial, filed his petition for bankruptcy. Taggart obtained a discharge order in his bankruptcy proceeding. As this Court recognized, Taggart's discharge order went "no further than the statute: It simply says that the debtor 'shall be granted a discharge under § 727.'" *Id.* at 1800. These form orders note only that "[m]ost debts are covered by the discharge, but not all," and that "[e]xamples of debts that are *not* discharged are . . . debts that the bankruptcy court has decided or will decide are not discharged," or "some debts for which the debtors did not properly list," to name just two. United States Courts, Order of Discharge: Official Form 318 (Dec. 2015), http://www.uscourts.gov/sites/default/files/form_b318_0.pdf (last visited February 16, 2024). These form letters do not indicate with specificity which debts survive.

Subsequently, the Oregon state court entered judgment against Taggart in the pre-bankruptcy suit and awarded the prevailing party their post-petition attorneys' fees. Taggart filed a motion with the bankruptcy court to hold the attorney and his clients in contempt when they attempted to collect their post-petition attorneys' fees award. Taggart claimed that the collection attempts violated the bankruptcy court's discharge order. *See Taggart*, 139 S.Ct. at 1800. This Court was ultimately asked to rule on the

correct standard against which to analyze an alleged violation of the discharge order.

This Court determined that "a court may hold a creditor in civil contempt for violating a discharge order if there is *no fair ground of doubt* as to whether the order barred the creditor's conduct." *Id.* at 1799 (emphasis in original). The Court explicitly rejected Taggart's request for a strict liability standard when analyzing alleged violations of a discharge order. The decision highlighted the importance of an objective standard for these proceedings. *Id.* at 1801 ("In our view, these provisions authorize a court to impose civil contempt sanctions when there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful under the discharge order.").

The Court's decision turned on the understanding that a "chief purpose of the bankruptcy laws" is "to secure a prompt and effectual resolution of bankruptcy cases within a limited period." *Id.* at 1803 (quoting *Katchen v. Landy*, 382 U.S. 323, 328 (1966)). The *no fair ground of doubt* standard, while based in principles of equity, can differ from the statutory and common law standards available in state causes of action. *See Guthrie*, 79 F.4th at 336 (discussing Respondent's state law claims including those under the North Carolina Debt Collection Act, which imposes a strict liability standard in some cases).

Accordingly, to allow a private right of action based in state law claims would permit—or incentivize—consumers to circumvent this Court's *Taggart* holding. Consumers could pursue creditor and debt collectors for purported violations of the discharge without having to prove that those creditors had "no

fair ground of doubt" that their conduct was unlawful under the discharge order.

B. The Fourth Circuit's Decision Undermines the Uniformity and Consistent Application of the Bankruptcy Code.

The Bankruptcy Code is a uniform system designed to balance consumer and creditor interests and resolve any arising disputes. *See Taggart*, 139 S. Ct. at 1804; *see also Clark v. Rameker*, 573 U.S. 122, 129 (2014). As Judge Wynn observed, the Bankruptcy Code is characterized by the "comprehensive and particularly federal nature of bankruptcy law." *Guthrie*, 79 F.4th at 349 (Wynn, J., concurring in part and dissenting in part). Congress commands the express power to enact "uniform Laws on the subject of Bankruptcies." U.S. Const. art. I, § 8, cl. 4. And it has done so: "Congress has wielded [its bankruptcy] power by creating comprehensive regulations on the subject and by vesting exclusive jurisdiction over bankruptcy matters in the federal district courts." *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417, 425 (6th Cir. 2000). Through the Bankruptcy Code, Congress created an integrated system in which it "intended that all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with." *Grady v. A.H. Robins Co., Inc.*, 839 F.2d 198, 202 (4th Cir. 1988).

To that end, the Bankruptcy Code "provides a comprehensive federal system of penalties and protections to govern the orderly conduct of debtors' affairs and creditors' rights." *E. Equip. & Servs. Corp. v. Factory Point Nat'l Bank*, 236 F.3d 117, 120 (2d Cir. 2001) (per curiam). As acutely relevant here, the

Bankruptcy Code has "an enforcement mechanism for violations of § 524 via the contempt remedies available under § 105(a)." *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 509 (9th Cir. 2002). And the "'weight of circuit authority' holds that '§ 105(a) does not authorize separate lawsuits as a remedy for bankruptcy violations.'" *In re Bernhard*, No. 23-1358, 2024 WL 379468, at *2 (3d Cir. Feb. 1, 2024) (quoting *In re Joubert*, 411 F.3d 452, 456 (3d Cir. 2005)).

Allowing the Fourth Circuit's decision here to stand "could put enforcement of the discharge injunction in the hands of a court that did not issue it (perhaps even in the hands of a jury), which is inconsistent with the present scheme that leaves enforcement to the bankruptcy judge whose discharge order gave rise to the injunction." *Walls*, 276 F.3d at 509. And the present system "makes a good deal of sense, given that the equities at issue are bankruptcy equities, and it would undermine Congress's deliberate decision to place supervision of discharge in the bankruptcy court." *Id.*; *Pertuso*, 233 F.3d at 426 (quoting *Bibbo v. Dean Witter Reynolds, Inc.*, 151 F.3d 559, 563 (6th Cir. 1998)) ("Permitting assertion of a host of state law causes of action to redress wrongs under the Bankruptcy Code would undermine the uniformity the Code endeavors to preserve and would 'stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'"). Assuring these adjudications remain within the Bankruptcy Code also comports with the unremarkable acknowledgment that "a bankruptcy court has 'unique expertise in interpreting its own injunctions and determining when they have been violated.'" *Bruce v. Citigroup Inc.*, 75 F.4th 297, 304 (2d Cir. 2023) (quoting *In re Gravel*, 6 F.4th 503, 513 (2d Cir. 2021)).

Condoning the viability outside bankruptcy court proceedings of "disputes over discharge . . . might gravely affect the already complicated processes of the bankruptcy court." *MSR Exploration, Ltd. v. Meridian Oil, Inc.,* 74 F.3d 910, 914 (9th Cir. 1996). "[T]he highly complex laws needed to constitute the bankruptcy courts and regulate the rights of consumers and creditors also underscore the need to jealously guard the bankruptcy process from even slight incursions and disruptions." *Id.* This is a question of courts "interfering with the whole complex, reticulated bankruptcy process itself." *Id.*

Congress was deliberate in its efforts to construct a Bankruptcy Code that presided over all matters related to discharge. In Congress's own words: "Since 1898, in all but extraordinary situations the effect of a discharge had been a matter which would be determined only in a state court or, where there was some ground of jurisdiction other than the involvement of the discharge, in a federal court." Report of the Commission on the Bankruptcy Laws of the United States, H.R. Doc. No. 137, 93d Cong., 1st Sess. (1973), quoted in H.R. Rep. No. 95–595 at 46–47 (1978). But, given that the equities at issue are bankruptcy equities, "Congress became convinced that relegating a discharged bankrupt to other courts for vindication of his discharge resulted so often in the loss of its intended benefit and frustration of the objective of the federal legislation that jurisdiction of determining the effect of a discharge was given to the bankruptcy court." *Id.*

C. The Fourth Circuit's Decision Disturbs the Balance of Interests that Congress Intended when Creating the Bankruptcy Code.

The Bankruptcy Code necessarily involves a balancing of interests: the competing aims of giving debtors a "fresh start" while protecting creditors' rights to repayment. *Moses v. CashCall, Inc.*, 781 F.3d 63, 72 (4th Cir. 2015) ("bankruptcy provides consumers with a fresh start and creditors with an equitable distribution of the debtor's assets"). Indeed, as the Fourth Circuit has penned, "a principal purpose of the Bankruptcy Code is to provide consumers and creditors with 'the prompt and effectual administration and settlement of the [debtor's] estate.'" *Id.* (quoting *Katchen*, 382 U.S. 328) (alternation in original).

Numerous courts have held that allowing state law claims, when the Bankruptcy Code provides the exclusive remedies for alleged violations of its provisions, "would circumvent the remedial scheme of the Code under which Congress struck a balance between the interests of debtors and creditors by permitting (and limiting) debtors' remedies for violating the discharge injunction to contempt." *Walls*, 276 F.3d at 510. "[A] mere browse through the complex, detailed, and comprehensive provisions of the lengthy Bankruptcy Code . . . demonstrates Congress's intent to create a whole system under federal control which is designed to bring together and adjust all of the rights and duties of creditors and embarrassed debtors alike." *Id.* (quoting *MSR,* 74 F.3d at 914).

In order to effectuate this balance, Congress constructed the Bankruptcy Code with the authority,

power, and jurisdiction to address all disputes arising thereunder or in connection with a consumer's bankruptcy estate. As acknowledged by the Fourth Circuit, "a principal purpose of the Bankruptcy Code is . . . to centralize dispute over the debtor's assets and obligations *in one forum*, thus protecting both consumers and creditors from piecemeal litigation and conflicting judgments." *Moses*, 781 F.3d at 72 (emphasis added). "Ease and centrality of administration are thus foundational characteristics of bankruptcy law." *Id.* (quoting *French v. Liebmann (In re French)*, 440 F.3d 145, 154–55 (4th Cir. 2006) (Wilkinson, J., concurring)). In practice, for example, a claim that a financial service provider violated the Fair Debt Collection Practices Act ("FDCPA") by attempting to collect on a debt following discharge, "necessarily entails bankruptcy-laden determinations," and thus the consumer's "protection and remedy remain[ed] in the Bankruptcy Code." *Walls*, 276 F.3d at 510.

D. If Permitted to Stand, the Fourth Circuit's Decision will Cause Consumer Forum Shopping, Waste Judicial Resources, and Destabilize the Credit Industry.

As this Court acknowledged in *Taggart*, the "typical discharge order entered by a bankruptcy court is not detailed," rather it is "written in general terms." 139 S.Ct. at 1803, 1802. These short form letters do not explicitly denote which debts are discharged and which are not. And yet, these orders "operate against a complex statutory backdrop." *Id.* at 1803. Presumably, it is this dynamic that, at least in part, necessitated the Court's decision in *Taggart* and contributed to its conclusion that the appropriate standard for

whether a creditor violated a discharge order is whether there is "a 'fair ground of doubt' as to whether the creditor's conduct *might* be lawful under the discharge order." *Id.* at 1804 (emphasis added).

Allowing the Fourth Circuit's decision to go unreviewed will lead to opportunistic consumer forum-shopping and the potential for incompatible determinations.

Consumers could turn to state courts, who are not versed in interpreting discharge orders, and secure incorrect and inconsistent decisions, thus degrading bankruptcy court determinations. *See* H.R. Doc. No. 137, *supra* ("relegating a discharged bankrupt to other courts for vindication of his discharge resulted so often in the loss of its intended benefit and frustration of the objective of the federal legislation"). Consumers would be able to pursue more expansive claims as private rights of action (rather than a limited motion for contempt) with potentially lower burdens of proof than the objective standard set forth in *Taggart*, resulting in the risk that collecting debts post-discharge would become exponentially more fraught. Not only would this prioritize the rights of consumers over creditors, disturbing Congress's intended balance, it would create unnecessary inefficiencies in the creditor and debt collection markets.

As this Court noted in *Taggart*, creditors and debt collectors would be incentivized to rush to bankruptcy courts to secure a final determination of the viability of a consumer's debt before undertaking any collection efforts. 139 S.Ct. at 1800. Bankruptcy courts across the country would become backlogged because of creditor and debt-collector actions to interpret discharge orders.

And, if creditors and debt collectors forgo collection, all consumers and the entire credit industry will suffer as the cost of credit for everyone increases due to the increased risk in lending. Ultimately, if the precedential value of *Taggart* is eroded, it will destabilize the credit industry.

E. The Fourth Circuit's Decision Creates a Risk of Frivolous Class Action Litigation Previously Precluded under the Bankruptcy Code.

The Fourth Circuit's decision also provides a novel opportunity for consumers and the plaintiffs' bar to assert frivolous class actions that would otherwise be barred by the Bankruptcy Code.

In a recent decision, the Second Circuit plainly laid out the logic behind the Bankruptcy Code's barring of class actions suits. *See Bruce*, 75 F.4th 297. The court reasoned that the bankruptcy statutes incorporate "traditional standards in equity practice for determining when a party may be held in civil contempt for violating an injunction." *Id.* at 303 (quoting *Taggart*, 139 S.Ct. at 1801). This honors the "longstanding equitable principle that 'civil contempt proceedings leave the offended judge *solely responsible* for identifying, prosecuting, adjudicating, and sanctioning the contumacious conduct.'" *Id.* (quoting *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831 (1994)) (emphasis in original). "The civil contempt power is, at its core, uniquely personal to each court; by providing a mechanism to mandate compliance when a court is confronted with disobedience, it is a necessary corollary to a court's authority to issue binding orders." *Id.* at 304.

Thus, any path leading to "a free-wielding contempt authority, capable of exercise by one court on behalf of another court, would 'present the anomalous proceeding of one court taking cognizance of an alleged contempt committed before and against another court, which possessed ample powers, itself to take care of its own dignity and punish the offender.'" *Id.* (quoting *Ex parte Bradley*, 74 U.S. 364, 372 (1868)). Indeed, as noted above, the Ninth Circuit ascribes the authority to enforce a discharge order not only to the bankruptcy court, but to the specific *judge*. *See Walls*, 276 F.3d at 509; *Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1188–89 (9th Cir. 2011). The Fourth Circuit's decision here, therefore, has extensive consequences that are incompatible with Congress's Bankruptcy Code and prior interpretations of courts across the country.

II. THE SUPREME COURT SHOULD ADDRESS THE FOURTH CIRCUIT'S DECISION TO HARMONIZE THE CONFLICT IT CREATES WITH OTHER CIRCUITS.

The Fourth Circuit's decision creates a split in circuit authority. The Supreme Court's review would allow it to harmonize conflicting decisions in a way that upholds the precedential value of other Supreme Court cases, like *Taggart*, as well as creating certainty in the legal system upon which consumers and creditors alike, can rely.

A. The Fourth Circuit's Decision Directly Conflicts with Authority Established by the First, Sixth, and Seventh Circuits.

The Fourth Circuit is the only circuit to hold that a consumer can pursue private causes of action for alleged violations of section 524 discharge orders issued by bankruptcy courts. This decision is wrong. The rationale behind the holdings in the First, Sixth, and Seventh (and analogously the Second) Circuits aligns with the purpose of the Bankruptcy Code, Congress's intent, and widely accepted principles of federal preemption.

In *Bessette v. Avco Financial Services, Inc.*, the First Circuit found a consumer's unjust enrichment claim was preempted by the Bankruptcy Code. 230 F.3d 439 (1st Cir. 2000). A Chapter 7 consumer brought a purported class action against the defendant consumer finance companies for alleged violations of a discharge order issued at the conclusion of her bankruptcy proceeding. After explaining that the proper vehicle to challenge purported violations of the discharge order was to seek contempt under section 105 of the Bankruptcy Code, the court turned to the viability of Bessette's state law claims. The First Circuit agreed with the district court below that the consumer's state law cause of action for unjust enrichment was preempted. *Id.* at 448.

The First Circuit observed that an alternative state court remedy conflicts with Congress's plan that federal courts enforce section 524 through section 105:

> [W]e concur with [the district court's] conclusion that the appellant's state law claim for

> unjust enrichment for collecting debt under an improper reaffirmation agreement is preempted. Because we concluded . . . that § 105 of the Code authorizes federal courts to order damages for violations of § 524 when necessary—i.e., disgorgement of unjust profit—an alternative state court remedy for unjust enrichment in these circumstances is inevitably in conflict with Congress's plan that federal courts enforce § 524 through § 105.

Id. at 447.

While acknowledging that both field and conflict preemption could apply, the court found that field preemption was evident from the comprehensive structure of the Bankruptcy Code, as well as its view of Congress's intent. *Id.* (relying on existence of a "statutory scheme so pervasive that Congress clearly intended to 'occupy the field' to the exclusion of state law"). The court drew from prior decisions noting that "[s]tates may not pass or enforce laws to interfere with or complement the Bankruptcy Act or to provide additional or auxiliary regulations." *Id.* (quoting *Patriot Portfolio, LLC v. Weinstein (In re Weinstein)*, 164 F.3d 677, 682–83 (1st Cir.1999)). It went on: "the broad enforcement power under the Bankruptcy Code preempts virtually all alternative mechanisms for remedying violations of the Code" and "[o]ther courts that have been faced with a state unjust enrichment claim have held that Congress's intent in enacting the remedial provisions of the Bankruptcy Code leaves 'no room for the state cause of action.'" *Id.* (quoting *Cox v. Zale Del., Inc.*, 242 B.R. 444,450 (N.D.Ill.1999) *aff'd* 239 F.3d 910 (7th Cir. 2001)).

The Sixth Circuit similarly affirmed the district court's holding and dismissed all claims in *Pertuso*. *See generally*, 233 F.3d 417. There, discharged Chapter 7 consumers brought a purported class action alleging that the defendant creditor had violated both the automatic stay and the discharge order.

After finding that section 524 of the Bankruptcy Code does not confer a private right of action, the court analyzed the consumer's unjust enrichment and accounting claims. The court explained that "[s]everal factors highlight the exclusively federal nature of bankruptcy proceedings. The Constitution grants Congress the authority to establish 'uniform Laws on the subject of Bankruptcies.'" *Id.* at 425 (quoting U.S. Const. art. I, § 8). The court went on: "Congress has wielded this power by creating comprehensive regulations on the subject and by vesting exclusive jurisdiction over bankruptcy matters in the federal district courts." *Id.* (citing 28 U.S.C. § 1334(a)). And finally, the court reasoned that "[w]hile it is true that bankruptcy law makes reference to state law at many points, the adjustment of rights and duties within the bankruptcy process itself is uniquely and exclusively federal. It is very unlikely that Congress intended to permit the superimposition of state remedies on the many activities that might be undertaken in the management of the bankruptcy process." *Id.* (quoting *MSR*, 74 F.3d at 914).

In *Cox v. Zale Delaware*, the Seventh Circuit affirmed dismissal of a consumer's state law unjust enrichment claim on the basis of federal preemption. *See generally* 239 F.3d 910. There the consumer filed a class-action suit alleging that Zale had violated the bankruptcy court's discharge order and claim. The

consumer sought to rescind a reaffirmation agreement and to recover amounts paid thereunder. *Id.* at 913. He also pled a claim for unjust enrichment.

The Seventh Circuit held that "remedies against debt-affirmation agreements contended to violate the Bankruptcy Code are a matter exclusively of federal bankruptcy law." *Id.* (citing *Pertuso*, 233 F.3d at 426; *Bessette*, 230 F.3d at 447–48); *see also MSR*, 74 F.3d at 913–14. This, the court determined, "extinguishes the plaintiff's claim for unjust enrichment, which is based on state law." *Cox,* 239 F.3d at 913.

Thus, for nearly 25 years, circuit courts have consistently held that the Bankruptcy Code preempts state law causes of action arising out of a creditor's or debt collector's alleged violation of a section 524 discharge order.

Analogously, the Court of Appeals for the Second Circuit addressed preemption in the context of the Bankruptcy Code's automatic stay provisions. While sections 362 and 524 of the Bankruptcy Code differ—mostly in the former's express grant of a private right of action—their preemption analysis remains the same. Indeed, in *Eastern Equipment*, Chapter 7 consumers filed a complaint in federal district court to recover for creditors' alleged violations of the automatic stay under various state law theories, including, intentional infliction of emotional distress, abuse of process, negligence, fraud, and harassment. 236 F.3d at 119.

After discussing the preemptive power of the Supremacy Clause, the Second Circuit affirmed the district court's grant of the creditors' motion for judgment on the pleadings reasoning that : "courts that have

examined this issue have held that the federal Bankruptcy Code preempts any state law claims for a violation of the automatic stay, and precludes jurisdiction in the district courts. Any relief for a violation of the stay must be sought in the Bankruptcy Court." *Id.* at 121.

The court articulated the various reasons claims based in state law were necessarily preempted:

> (1) Congress placed bankruptcy jurisdiction exclusively in the district courts under 28 U.S.C. § 1334(a); (2) Congress created a lengthy, complex and detailed Bankruptcy Code to achieve uniformity; (3) the Constitution grants Congress exclusive power over the bankruptcy law; (4) the Bankruptcy Code establishes several remedies designed to preclude the misuse of the bankruptcy process; and (5) the mere threat of state tort actions could prevent individuals from exercising their rights in bankruptcy, thereby disrupting the bankruptcy process.

Id. (internal citations omitted).

The rationale underlying the Second Circuit's preemption decision in *Eastern Equipment* applies equally to cases involving purported violations of discharge orders.

B. The Fourth Circuit's Decision is Also Incompatible with Authority from the Ninth Circuit.

While not specifically addressing the preemptive effect of the Bankruptcy Code, the Ninth Circuit has also issued compelling authority that is incompatible

with the Fourth Circuit's decision here. These Ninth Circuit cases highlight the "complex, detailed, and comprehensive provisions of the lengthy Bankruptcy Code" and Congress's "intent to create a whole system under federal control which is designed to bring together and adjust all of the rights and duties of creditors and embarrassed consumers alike." *MSR*, 74 F.3d at 914.

Just like in the cases discussed above, in *Walls*, the Ninth Circuit addressed whether a consumer could assert a private right of action for alleged violations of a discharge order. *See* 276 F.3d 502. The court held that, reading sections 524 and 105(a) together, as we must, the Bankruptcy Code is clear that the exclusive vehicle for challenging an alleged violation of a discharge order is to file a motion for contempt with the court that issued the order. *Id.* at 510–11.

The court explained, "we decline Walls's invitation to expand the remedies available under the Bankruptcy Code for violating § 524" because "to create a new remedy would put us in the business of legislating. We agree with the Sixth Circuit's view in [*Pertuso*] that it is not up to us to read other remedies into the carefully articulated set of rights and remedies set out in the Bankruptcy Code." *Id.* at 507. Rather, "[t]he provisions of this title simply denote a set of remedies fixed by Congress. A court cannot legislate to add to them." *Id.* (quoting *Pertuso*, 233 F.3d at 423).

Highlighting the impact of Congressional intent, the Ninth Circuit opined, "to whatever extent this legislative history is relevant, nothing in it manifests any intent to create a private right of action; indeed, nothing in it gives any indication that these concerns are not adequately addressed through the contempt

remedy that Congress expressly provided." *Id.* at 508. "Had Congress meant to create a private right of action for violations of § 524, it could easily have done so; that it did not is a strong indiction [*sic*] that it did not intend any such remedy." *Id.* at 509 (contrasting affirmative creation of private right of action for violations of automatic stay provision at section 362, with apparent decision not to provide such remedies for violations of discharge orders under section 524 in 1984 amendments to Bankruptcy Code).

Ultimately, the court held, "to imply a private right of action would undercut the 'complex, detailed, and comprehensive provisions of the lengthy Bankruptcy Code,' because it *has* an enforcement mechanism for violations of section 524 via the contempt remedies available under § 105(a)." *Id.* (quoting *MSR*, 74 F.3d at 914) (emphasis in original).

The *Walls* decision is also instructive for the Court's analysis here because it addressed whether the consumer could assert an FDCPA claim premised on a creditor's purported violations of the discharge order. *Id.* at 510–11. The analysis concerned federal preclusion of competing statutes, rather than federal preemption of conflicting *state* law claims, but the court's rationale is persuasive here and further illustrates the incompatibility of the Fourth Circuit's decision with prevailing law.

Importantly, the court held that the FDCPA did not provide a means of skirting the Bankruptcy Code:

> There is no escaping that Walls's FDCPA claim is based on an alleged violation of § 524. As the district court noted, this necessarily entails bankruptcy-laden

> determinations . . . The Bankruptcy Code provides its own remedy for violating § 524, civil contempt under § 105. To permit a simultaneous claim under the FDCPA would allow through the back door what Walls cannot accomplish through the front door—a private right of action. This would circumvent the remedial scheme of the Code under which Congress struck a balance between the interests of debtors and creditors by permitting (and limiting) debtors' remedies for violating the discharge injunction to contempt. . . . Nothing in either Act persuades us that Congress intended to allow consumers to bypass the Code's remedial scheme when it enacted the FDCPA. While the FDCPA's purpose is to avoid bankruptcy, if bankruptcy nevertheless occurs, the consumer's protection and remedy remain under the Bankruptcy Code. Because Walls's remedy for violation of § 524 no matter how cast lies in the Bankruptcy Code, her simultaneous FDCPA claim is precluded.

Id. at 510–11 (internal citations omitted).

The Ninth Circuit addressed section 524 discharge orders again in *Barrientos* in which a consumer attempted to challenge a creditor's purported violation of a discharge order by bringing an adversary proceeding. *See* 633 F.3d 1186. Citing *Walls*, the Ninth Circuit reaffirmed its holding there and extended it further to explain that a motion for contempt against an alleged violator of the discharge order must be brought in the core bankruptcy proceeding before the judge who issued the order. *Id.* at 1191.

C. Consumers Should Not be Permitted to Circumvent the Plain Language and Limitations of the Bankruptcy Code.

Other circuits that have spoken on this issue make clear that state law claims premised on an alleged violation of a discharge order are preempted as a matter of law. But even setting preemption aside, the rationale underlying the Ninth Circuit's decisions in *Walls* and *Barrientos* demonstrates how it makes little sense to allow a consumer to pursue punishment for an alleged violation of a discharge order anywhere but in the original core bankruptcy proceeding and through the exclusively recognized vehicle of a contempt motion.

The bar on independent, private actions—as compared to motions for contempt which remain components of the original bankruptcy proceeding—extends to those that are the "functional equivalent" to a claim for violation of the discharge order. This means that regardless of how they characterize their affirmative causes of action, consumers challenging violations of a discharge order may not sneak through the back door what they cannot accomplish through the front door—a private right of action. Because, as the Ninth Circuit so plainly articulated, "this would circumvent the remedial scheme of the Code under which Congress struck a balance between the interests of consumers and creditors." *Walls*, 276 F.3d at 510.

Respondent is attempting to do just that. Instead of utilizing the remedies provided by the Bankruptcy Code, Respondent is trying to circumvent the comprehensive law, disregard Congress's intent, and pursue

his creditor through improper means. But, like in *Walls*, Respondent's state law causes of action hinge on the alleged violation of the discharge order. Given the "bankruptcy-laden" issues surrounding whether his discharge order was violated, the only appropriate place and method for him to pursue PHH is through a motion for contempt in the core bankruptcy case before the judge who issued the order. To allow otherwise would be to permit consumers to asymmetrically wield their discharge orders as a weapon in a way that undermines the very purpose of the Bankruptcy Code.

CONCLUSION

This case warrants Supreme Court review. It presents numerous issues of national significance, including the erosion of the comprehensive federal Bankruptcy Code, which is intended to fairly and expeditiously adjudicate the interests of *both* consumers and creditors. Review is also necessary to resolve a circuit split created by the Fourth Circuit's decision. Until this case, circuits that addressed this issue were in agreement. But now, the Fourth Circuit has disturbed the balance of authority, which will inevitably lead to inconsistent application of the law regarding discharge orders. Finally, the Fourth Circuit's decision threatens the precedential value of *Taggart*, issued by this Court only a few years ago. Because consumers and creditors alike rely on the consistent application of the Bankruptcy Code and fair and balanced interpretations of their rights thereunder, this Court should grant certiorari and review the decision of the Fourth Circuit.

Respectfully submitted,

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