No. 18-55688

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MELISSA CARIN MATHER BOBKA,
Appellant,

– v. –

TOYOTA MOTOR CREDIT CORPORATION,
Appellee.

On appeal from the United States District Court for the Southern District of California, No. 17-2380

BRIEF OF *AMICI CURIAE* NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER AND NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS IN SUPPORT OF THE DEBTOR AND SEEKING REVERSAL OF THE BANKRUPTCY COURT DECISION

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July 31, 2018
On brief: Meredith Jury

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Bobka v. Toyota Motor Credit Corporation, No. 18-55688.

Pursuant to Fed. R. App. P. 26.1, Amicus Curiae, the National Association of Consumer Bankruptcy Attorneys, and the National Association of Consumer Bankruptcy Attorneys make the following disclosure:

1) Is party/amicus a publicly held corporation or other publicly held

entity? **NO**

2) Does party/amicus have any parent corporations? **NO**

3) Is 10% or more of the stock of party/amicus owned by a publicly held corporation or other publicly held entity? **NO**

4) Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? **NO**

5) Does this case arise out of a bankruptcy proceeding? **YES**. If yes, identify any trustee and the members of any creditors' committee. **Chapter 7 Trustee – Ronald E. Stadtmueller. There is no creditors' committee.**

This 31th day of July, 2018.

s/ Tara Twomey
Tara Twomey

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STATEMENT OF INTEREST OF *AMICI CURIAE*

The National Consumer Bankruptcy Rights Center (NCBRC) is a nonprofit organization dedicated to preserving the bankruptcy rights of consumer debtors and protecting the bankruptcy system's integrity. The Bankruptcy Code grants financially distressed debtors certain rights that are critical to the bankruptcy system's operation. Yet consumer debtors with limited financial resources and minimal exposure to that system are often ill-equipped to protect their rights in the appellate process. NCBRC files amicus curiae briefs in systemically-important cases to ensure that courts have a full understanding of the applicable bankruptcy law, the case, and its implications for consumer debtors.

The National Association of Consumer Bankruptcy Attorneys (NACBA) is also a nonprofit organization of over 2,500 consumer bankruptcy attorneys nationwide. NACBA advocates nationally on issues that cannot adequately be addressed by individual member attorneys. It is the only national association of attorneys organized for the specific purpose of protecting the rights of consumer bankruptcy debtors.

NCBRC, NACBA and its membership have a vital interest in the outcome of this case. Chapter 7 discharge allows the honest but unfortunate debtor to rise out of financial distress and get a fresh start. Because of the importance of this fresh start, not only to the debtor but to society as a whole, Congress has codified the limited exceptions from discharge. Specifically, a debt that the debtor voluntarily reaffirms may be excepted from discharge so long as significant notice and disclosure requirements are met, and the court is notified of the reaffirmation. Here, the courts below improperly, and without clear textual support, added another exception to discharge for debtors who assume a car lease but where the procedures for reaffirmation are not met. Where one quarter of all vehicle transactions are leases, the ruling of the courts below will have a far-reaching and highly detrimental effect on debtors who unwittingly assume car leases without realizing that they are waiving their right to discharge.

The decision of the bankruptcy court should be reversed. *See State Compensation Ins Fund v. Zamora*, 616 F.3d 1001, 1004-05 (9th Cir. 2010) (Court of Appeals independently reviews bankruptcy court decision).

AUTHORSHIP AND FUNDING OF AMICUS BRIEF

Pursuant to Fed. R. App. P. 29(c)(5), no counsel for a party authored this brief in whole or in part, and no person or entity other than NCBRC or NACBA, their members, and their counsel made any monetary contribution toward the preparation or submission of this brief.

SUMMARY OF ARGUMENT

A debtor's primary purpose for filing a chapter 7 bankruptcy case is to obtain a discharge of dischargeable debt. This discharge affords an honest but unfortunate debtor a fresh start. Since 1898 Congress has consistently affirmed the fresh start policy as a primary goal in consumer cases. S*ee, e.g., Burlingham v Crouse*, 228 U.S. 459, 473 (1913). All exceptions to discharge have been codified. *See, e.g.*, 11 U.S.C. §§ 523(a) (listing exceptions to discharge), 727(a) (providing for the denial of discharge in certain circumstances). Some of them are self-executing such as sections 523(a)(5) (domestic support obligations) and 523(a)(7)(criminal debts). Others require affirmative action such as sections 523(a)(2), (4), and (6) (all related to fraud, defalcation, etc.).

The Bankruptcy Code also gives a debtor the option to affirmatively waive a discharge of a particular debt under section 524(c). However, when a debtor affirmatively waives the opportunity to discharge an otherwise dischargeable debt by reaffirming it, she is depriving herself to some extent of that fresh start. As a result, such reaffirmations are disfavored by statute and in practice. *See Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059, 1067 (9th Cir. 2002) ("Because reaffirmation agreements are not favored, strict compliance with section 524(c) is mandated."); *In re Getzoff*, 180 B.R. 572, 574 (B.A.P. 9th Cir. 1995) ("Because of the danger that creditors may coerce debtors into undesirable reaffirmation agreements, they are not favored under the Bankruptcy Code and strict compliance with the specific terms in Section 524 is mandatory.").

Notwithstanding the text of the Bankruptcy Code and policy disfavoring reaffirmations, the decisions of the bankruptcy court and district court below hold that a debtor who assumes a car lease under section 365(p) deprives herself of the discharge of the debt due under the lease. This outcome is achieved without any statutory provision that states the debt is excepted from discharge, without the assurance

of an informed debtor who, often without the assistance of counsel, is enticed into assuming the lease by an institutional lessor, without disclosures similar to those required for a section 524(c) reaffirmation, and without any court oversight, including the requirement that such lease assumption be filed.

Amici asserts that this woeful outcome for an unsuspecting debtor is neither authorized by the Bankruptcy Code nor consistent with Congressional policy behind the goal of a fresh start. Because almost one quarter of all new car contracts are leases rather than secured purchase transactions,[1] this is not a rare or isolated instance, but one which will prevent myriads of debtors from receiving the boost toward economic recovery that a chapter 7 should achieve. In this day in which attention to consumer protections is on the rise, this outcome bucks the trend, leaving the vulnerable debtor at the mercy of her car lessor. *Amici* assert that this court may right this wrong by reversing the lower court decisions.

[1] In 2013, leasing represented a record 23 percent of new car sales. *See* Lacey Plache, "AutoEconomy Trends: Leasing Goes Mainstream," Edmunds.com (Feb. 13, 2014), available at Edmunds.com/industry.

I. STATUTORY FRAMEWORK

This case involves the intersection of section 524(c) of the Bankruptcy Code and section 365(p), which was added to the Code in 2005.

Section 524(c) relates to debts for which the debtor affirmatively waives the discharge. The Code refers to these "waivers" as reaffirmations. For an effective reaffirmation, the debtor must be provided an extensive set of disclosures. In 2005, Congress heightened the disclosure requirements and increased protections for debtors contemplating reaffirmation agreements that waive the discharge with respect to certain debts. 11 U.S.C. § 524(k).

In 2005, Congress also added section 365(p), which gives the debtor the ability to assume a lease under certain circumstances. Prior to the enactment of section 365(p) only the chapter 7 trustee was able assume certain leases. Section 365(p) gives the trustee, as representative of the estate, the ability to assume any personal property lease to which the debtor is a party. 11 U.S.C. § 365(p)(1). Most consumer leases for personal property provide no benefit to the estate, and it is rare for a chapter 7 trustee to assume such a lease. If the

trustee fails to assume the lease then the leased property is no longer property of the estate and the automatic stay is terminated. 11 U.S.C. § 365(d)(1). Under section 365(p)(2)(A), the debtor may then notify the lessor in writing that the debtor desires to assume the lease. Once the lessor is so notified, the lessor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor. Assumption permits the debtor to keep the property so long as the obligations of the lease are satisfied, which is significantly different than reaffirmation. Section 365 says nothing about waiving the discharge with respect to such debt, and provides none of the disclosures and protections required for chapter 7 debtor to waive the discharge with respect to that debt.

Section 523(a) is also relevant because it provides a detailed and explicit list of debts that are nondischargeable. 11 U.S.C. § 523(a).

II. ALL EXCEPTIONS TO DISCHARGE ARE SPECIFICALLY AUTHORIZED BY THE BANKRUPTY CODE

The debtor has argued that all exceptions to discharge require court supervision in some form and are consummated by an order or judgment. The bankruptcy and district courts correctly rejected that assertion by referencing examples with no court supervision such as

reaffirmation of debt secured by real property, 11 U.S.C. § 524(c)(6)(B), or automatic exceptions to discharge set forth in section 523(a). However, a discharge is never denied without a specific reference in the Bankruptcy Code to that outcome. As noted above, specific debts may be excepted from discharge under section 523(a), whether automatically or after some action and proof the conditions have been satisfied. The general discharge may be denied under section 727(a) when a person's behavior was inconsistent with that of "an honest but unfortunate" debtor. The Code specifically provides for reaffirmation under section 524(c), making it explicit that reaffirmed debts will lose the benefit of discharge, but only if there is compliance with stringent protective provisions.

To the contrary, section 365(p), which governs the assumption of personal property leases, is silent; it fails to state affirmatively that the result of assumption will be denial of discharge. This silence has caused the judicial split addressed in this appeal. Both the bankruptcy court and district court found that the plain language of the statute is inconclusive about the interplay between assumption under section 365(p) and reaffirmation under section 524(c). *In re Bobka*, 2017 WL

7798098, at *5 (Bankr. S.D. Cal. Nov. 16, 2017); Bobka v. Toyota Motor Credit Corp., 586 B.R. 470 (S.D. Cal. 2018). Both bankruptcy courts and the Ninth Circuit have noted the challenges created by the manner in which Congress amended the existing Code in 2005.[2] Here, the courts below employed numerous cannons of statutory construction to conclude that section 365, the more specific statute, trumps the general language in section 524 and that section 365(p) would be superfluous if reaffirmation was also required. However, both courts failed to take into account that nowhere does the statute say "and such debt is not discharged" or "the section 524 discharge is therefore inapplicable" or

[2] Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). Pub. L. 109-8 (2005); *See Dumont v Ford Motor Credit Co. (In re Dumont*), 581 F. 3d 1104, 1121 (9th Cir. 2009) ("When faced with confusing and contradictory amendments to already confusing and contradictory statutory text, what should we do?") (Graber, J., dissenting); *see also In re Donald*, 343 B.R. 524, 529 (Bankr. E.D.N.C. 2006) ("The amendments are confusing, overlapping, and sometimes self-contradictory. They introduce new and undefined terms that resemble, but are different from, established terms that are well understood. Furthermore, the new provisions address some situations that are unlikely to arise. Deciphering this puzzle is like trying to solve a Rubik's Cube that arrived with a manufacturer's defect."); *In re Trejos*, 352 B.R. 249, 253-54 (Bankr. D. Nev. 2006) ("Making practical sense of this provision, like trying to make sense of much of BAPCPA, requires bankruptcy judges to adopt the approach of the White Queen, and believe in 'as many as six impossible things before breakfast.'").

some similar explicit way of saying such assumption will create an exception to discharge—an exception to a fresh start.

Just as important a canon of statutory construction as those cited in the cases below is the cannon that addresses omissions, such as occurred when Congress chose not to create an explicit exception to discharge for the assumed debt. This canon says it is reasonable to assume the omission was purposeful. *Universal Const. Co., Inc. v Occupational Safety and Health Review Com'n*,182 F.3d 726, 729 (10th Cir. 1999). ("Where language appears in one section of a statute and not in another section, we assume the omission was intentional."); *Maney v Kagenveama (In re Kagenveama)*, 541 F 3d 868, 874 (9th Cir. 2008), overruled on other grounds by *Danielson v. Flores* (*In re Flores)*, 735 F.3d 855 (9th Cir. 2013) ("When Congress includes language in one part of a statute and excludes it from another part of the same statute, it is presumed that Congress acted purposely in the disparate inclusion and exclusion."). Nothing prevented Congress, when enacting section 365(p) in 2005, from adding "and the debt entailed in such lease assumption shall not be discharged." In fact, the specific language used when speaking of such assumption – "the liability under the lease

will be assumed"—differs markedly from other instances where Congress limited the applicability of the discharge. The lack of clear language excepting assumed obligations from discharge has created controversy in reported decisions. *Compare Thompson v Credit Union Financial Group (In re Thompson),* 453 B.R. 823, 828 (W.D. Mich. 2011) (concluding more is needed before a discharge is lost) *with In re Mortenson*, 444 B.R. 225, 231 (Bankr. E.D.N.Y. 2011)(holding nothing more than assumption is required to create a nondischargeable debt). In fact, a fair reading of section 365(p)(2)(B) is that its purpose is to assure that the estate will not be liable, not to place nondischargeable liability on the debtor.

Courts have argued, including the bankruptcy court here, *Bobka*, 2017 WL 7798098, at *6, that the consequence of lease assumption under section 365 has long been settled to mean that the prepetition liability established by the executory contract will be a postpetition obligation of the party assuming, citing to section 365(a) and (b). *See, e.g., Mortenson*, 444 B.R. at 231. However, without more, this settled law, which applies to the estate, cannot be construed to also apply to a chapter 7 debtor. The relevant subsections of section 365 refer only to

"trustee", i.e. the estate representative, but not a debtor with a discharge on the line. Therefore, on its face, the case law that construes the outcome of lease assumption would be inapplicable to anyone not a representative of the estate. Moreover, the lease assumption contemplated by these subsections requires court approval, as is consistent when estate liability is implicated. No court approval of debtor assumption is provided for in section 365(p); in fact, as noted above, there is not even a requirement that the assumption agreement be filed. Congress could have enacted a statute that explicitly stated an assuming debtor was subject to the same liability as an estate representative, but it did not. This omission should not be disregarded. It appears that Congress purposefully omitted the necessary specific language that would burden a chapter 7 debtor with a nondischargeable liability.

Amici submit that Congress, which specifically called out nondischargeable liability in every other instance in the Bankruptcy Code, did not intend to implicitly create nondischargeability when it enacted section 365(p).

III. CONGRESS AND PUBLIC POLICY HAVE RECOGNIZED THE SERIOUS IMPLICATIONS OF AFFIRMATIVELY WAIVING THE RIGHT TO DISCHARGE DEBT

Debtor's opening brief and the courts below note that several bankruptcy judges, when asked to determine the effect of section 365(p) assumption, ruled that without the protections of the reaffirmation disclosures set forth in section 524(k), future debt entailed by lease assumption cannot be deemed nondischargeable. In light of the emphasis placed by the Bankruptcy Code and in practice on assuring that any debtor who seeks to deprive herself of the right to discharge a dischargeable debt by reaffirmation be fully informed of the consequences, it is not surprising that these judges, sitting on the front line of chapter 7 proceedings with the fresh start policy well in mind, would conclude that, without more, nondischargeable liability cannot be created. After all, Congress has assured that no unrepresented debtor can reaffirm a debt without a hearing before a judge, who must advise the debtor of her right to discharge the debt and must make findings that reaffirmation will not create an undue hardship and is in the debtor's best interest before approving it. If the debtor is represented by an attorney who signs the reaffirmation agreement, then the advice

and counsel given by the judge is instead the duty of such attorney, again assuring that reaffirmation will not create an undue hardship.

The treatment of reaffirmations by the Bankruptcy Code, enacted in 1978, has evolved over time.[3] Initially only a bankruptcy judge could approve a reaffirmation by making certain findings. This judicial supervision represented a shift toward greater court involvement than the silence of the 1898 Bankruptcy Act and therefore provided greater protection for debtors against entering into improvident reaffirmation agreements. Anecdotally, this change was successful in preventing widespread reaffirmations that put debtors at economic risk.[4] However, the consumer credit industry, accustomed to unfettered reaffirmations under the Act, attacked the court supervision provided by the Code and lobbied heavily to do away with those provisions.[5]

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[3] The Bankruptcy Act of 1898 made no reference to reaffirmation agreements directly and left the issue entirely up to state law.

[4] *See, e.g.,* Jeffrey W. Morris and Joseph E. Uhrich, "Reaffirmation Under the Consumer Bankruptcy Amendments of 1984: A Loser for All Concerned," 43 Wash. & Lee L. Rev. 111, 111-14 (1986) ("If the reported decisions are any indication, the Code prevented many debtors from entering into improvident reaffirmation agreements. The most frequently stated rationale for the bankruptcy courts' refusal to approve proposed reaffirmation agreements was that the agreements were not in the best interest of the debtor.").

[5] *Id*. at 115-16.

Because of the intervention of jurisdictional and constitutional difficulties with the Code raised by the Marathon Pipeline case, *Northern Pipeline Constr. Co. v Marathon Pipe Line Co.,* 458 U.S. 58 (1982), the credit industry's influence was dampened and oversight of reaffirmations was only modified, not stricken. In 1984, Congress substituted the debtor's attorney, when present, for the court, and the agreement was enforceable if that attorney filed a declaration stating that the agreement "represents a fully informed and voluntary agreement by the debtor; and … does not impose an undue hardship on the debtor or a dependent of the debtor." Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98-353, § 308 (1984). As a result, for more than 20 years, judges conducted hearings whenever an unrepresented debtor sought to deny herself the discharge of otherwise dischargeable debt and only approved such agreement when it was in the best interest of the debtor. Attorneys for debtors provided advice and counsel and assured that no hardship would occur if they signed off on reaffirmation agreements.

Still greater protections were afforded debtors under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

(BAPCPA). Pub. L. 109-8, § 203 (2005). It added extensive disclosure requirements in section 524(k) and expanded the attorney's declaration required if a court hearing was to be avoided in section 524(c)(3). Moreover, with the exception of a debt to a credit union, it created a presumption of undue hardship if the debtor's monthly income less the debtor's monthly expenses is less than the scheduled payment on the reaffirmed debt. 11 U.S.C. § 524(m). In practice, the additional requirements on debtor's counsel have caused fewer attorneys to "sign off" on reaffirmation agreements because they perceive the requirements as creating a conflict between their duties to their clients and their duties to the court. *See* Gregory M. Duhl, "Divided Loyalties: The Attorney's Role in Bankruptcy Reaffirmations," 84 Am. Bankr. L. J. 361, [pin] (Fall 2016). The practical result was uniform reaffirmation forms which all contain the required disclosures, and more court hearings than before BAPCPA. Fed. R. Bankr. P. Proc. Official Bankruptcy Form 427 (Cover Sheet for Reaffirmation); Bankruptcy Form B2400, et seq. (Reaffirmation Agreement and related documents) (Addendum A). Such hearings have resulted in a myriad of reported bankruptcy court decisions in which the judges have by and large

upheld the right to debtor protection from aggressive creditors based on the obvious Congressional intent behind the additional disclosures and attorney declarations. *See, e.g.*, *In re Carrington*, 509 B.R. 337 (Bankr. E.D. Wash 2014) (not approving reaffirmation agreement to tire sales company where debtor did not have ability to pay); *In re Caldwell*, 464 B.R. 694 (Bankr. W.D. Pa. 2012) (declining to approve reaffirmation agreement for co-owned manufactured home that was not debtor's residence).

The Congressional intent to provide greater protections for debtors before they affirmatively create nondischargeable debt has also had an impact on the processes employed in the bankruptcy courts. Recognizing that Congress has given the fresh start real meaning and has essentially discouraged debtors from entering into economically infeasible reaffirmation agreements, many courts around the country and the Ninth Circuit have adopted practices to assure debtors take the disclosures seriously and that only agreements that are truly in the best interest of the debtor are enforceable (i.e. either approved by the court or "signed off" by the attorney). For example, in the Los Angeles Division of the Central District of California, all judges with a chapter 7

caseload pool their reaffirmation hearings together on one calendar before a single judge one day a month. The court invites volunteer attorneys to meet in advance with the pro se debtors, to make certain they are fully advised of the risks entailed in reaffirming. Once so advised, a large majority of the debtors withdraw their reaffirmation applications before the hearings, taking advantage of the available discharge of the potential deficiency liability entailed in auto loans.

With this manifest intent of debtor protection against affirmatively creating a nondischargeable postpetition obligation, it is difficult to justify the position that an unrepresented debtor can do the same by entering into an automobile lease assumption agreement with no court oversight, no disclosures, and not even a requirement that it be filed with the court. Yet such assumptions create a similar risk of nondischarged liability as present in an automobile loan reaffirmation. The statute is devoid of an explanation why a debtor who has chosen to lease rather than buy a car is placed at so much greater risk of future liability.

Statutory constructions requires the court to look at a statute as a whole. If an interpretation of an ambiguous statute creates a situation

at odds with otherwise overwhelming Congressional intent to make discharge of debt a true and achievable outcome of bankruptcy and denial of such discharge an explicit exception, can such interpretation be the correct one? The courts below have construed the ambiguous terms to arrive at just such anomaly. *Amici* posit such interpretation cannot be the correct one. Therefore, *amici* respectfully request this court reverse the decision of the district court.

CONCLUSION

Amici NACBA and NCBRC respectfully request this court reverse the decisions of the bankruptcy court.

Respectfully submitted,

s/ Tara Twomey

Tara Twomey
Attorney for *Amici Curiae*

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(d) and Ninth Circuit Local Rule 29(d) because this brief contains 3,630 words, excluding parts exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This filing complies with Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point type.

3. This brief has been scanned for viruses pursuant to Rule 27(h)(2).

s/ Tara Twomey
Tara Twomey
Attorney for *Amici Curiae*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on July 31, 2018. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Tara Twomey
Tara Twomey
Attorney for *Amici Curiae*

ADDENDUM A

FORM REAFFIRMATION AGREEMENT

Form 2400A (12/15)

Check one.
☐ **Presumption of Undue Hardship**
☐ **No Presumption of Undue Hardship**
See Debtor's Statement in Support of Reaffirmation, Part II below, to determine which box to check.

UNITED STATES BANKRUPTCY COURT

In re ______________________________________,
Debtor

Case No. ________________

Chapter ________________

REAFFIRMATION DOCUMENTS

Name of Creditor: ______________________________________

☐ Check this box if Creditor is a Credit Union

PART I. REAFFIRMATION AGREEMENT

Reaffirming a debt is a serious financial decision. Before entering into this Reaffirmation Agreement, you must review the important disclosures, instructions, and definitions found in Part V of this form.

A. Brief description of the original agreement being reaffirmed: ________________________________
For example, auto loan

B. ***AMOUNT REAFFIRMED***: $___________________________

The Amount Reaffirmed is the entire amount that you are agreeing to pay. This may include unpaid principal, interest, and fees and costs (if any) arising on or before _________________, which is the date of the Disclosure Statement portion of this form (Part V).

See the definition of "Amount Reaffirmed" in Part V, Section C below.

C. The ***ANNUAL PERCENTAGE RATE*** applicable to the Amount Reaffirmed is _________%.

See definition of "Annual Percentage Rate" in Part V, Section C below.

This is a *(check one)* ☐ Fixed rate ☐ Variable rate

If the loan has a variable rate, the future interest rate may increase or decrease from the Annual Percentage Rate disclosed here.

D. Reaffirmation Agreement Repayment Terms *(check and complete one)*:

☐ $________ per month for ________ months starting on____________.

☐ Describe repayment terms, including whether future payment amount(s) may be different from the initial payment amount.

E. Describe the collateral, if any, securing the debt:

Description: ____________________________
Current Market Value $____________________________

F. Did the debt that is being reaffirmed arise from the purchase of the collateral described above?

☐ Yes. What was the purchase price for the collateral? $___________________

☐ No. What was the amount of the original loan? $___________________

G. Specify the changes made by this Reaffirmation Agreement to the most recent credit terms on the reaffirmed debt and any related agreement:

	Terms as of the Date of Bankruptcy	Terms After Reaffirmation
Balance due *(including fees and costs)*	$__________	$_________
Annual Percentage Rate	__________%	_________%
Monthly Payment	$__________	$_________

H. ☐ Check this box if the creditor is agreeing to provide you with additional future credit in connection with this Reaffirmation Agreement. Describe the credit limit, the Annual Percentage Rate that applies to future credit and any other terms on future purchases and advances using such credit:

PART II. DEBTOR'S STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT

A. Were you represented by an attorney during the course of negotiating this agreement?

Check one. ☐ Yes ☐ No

B. Is the creditor a credit union?

Check one. ☐ Yes ☐ No

C. If your answer to EITHER question A. or B. above is "No," complete 1. and 2. below.

1. Your present monthly income and expenses are:

a. Monthly income from all sources after payroll deductions (take-home pay plus any other income) $_________

b. Monthly expenses (including all reaffirmed debts except this one) $_________

c. Amount available to pay this reaffirmed debt (subtract b. from a.) $_________

d. Amount of monthly payment required for this reaffirmed debt $_________

If the monthly payment on this reaffirmed debt (line d.) ***is greater than*** *the amount you have available to pay this reaffirmed debt (line c.), you must check the box at the top of page one that says "Presumption of Undue Hardship." Otherwise, you must check the box at the top of page one that says "No Presumption of Undue Hardship."*

2. You believe that this reaffirmation agreement will not impose an undue hardship on you or your dependents because:

Check one of the two statements below, if applicable:

☐ You can afford to make the payments on the reaffirmed debt because your monthly income is greater than your monthly expenses even after you include in your expenses the monthly payments on all debts you are reaffirming, including this one.

☐ You can afford to make the payments on the reaffirmed debt even though your monthly income is less than your monthly expenses after you include in your expenses the monthly payments on all debts you are reaffirming, including this one, because:

Use an additional page if needed for a full explanation.

D. If your answers to BOTH questions A. and B. above were "Yes," check the following statement, if applicable:

☐ You believe this Reaffirmation Agreement is in your financial interest and you can afford to make the payments on the reaffirmed debt.

Also, check the box at the top of page one that says "No Presumption of Undue Hardship."

PART III. CERTIFICATION BY DEBTOR(S) AND SIGNATURES OF PARTIES

I hereby certify that:

(1) I agree to reaffirm the debt described above.

(2) Before signing this Reaffirmation Agreement, I read the terms disclosed in this Reaffirmation Agreement (Part I) and the Disclosure Statement, Instructions and Definitions included in Part V below;

(3) The Debtor's Statement in Support of Reaffirmation Agreement (Part II above) is true and complete;

(4) I am entering into this agreement voluntarily and am fully informed of my rights and responsibilities; and

(5) I have received a copy of this completed and signed Reaffirmation Documents form.

SIGNATURE(S) (If this is a joint Reaffirmation Agreement, both debtors must sign.):

Date ______________ Signature ____
Debtor

Date ______________ Signature ____
Joint Debtor, if any

Reaffirmation Agreement Terms Accepted by Creditor:

Creditor ______________________________ ______________________________________
Print Name *Address*

________________________________ ___________________________ ________
Print Name of Representative *Signature* *Date*

PART IV. CERTIFICATION BY DEBTOR'S ATTORNEY (IF ANY)

To be filed only if the attorney represented the debtor during the course of negotiating this agreement.

I hereby certify that: (1) this agreement represents a fully informed and voluntary agreement by the debtor; (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

☐ A presumption of undue hardship has been established with respect to this agreement. In my opinion, however, the debtor is able to make the required payment.

Check box, if the presumption of undue hardship box is checked on page 1 and the creditor is not a Credit Union.

Date __________ Signature of Debtor's Attorney_________________________________

Print Name of Debtor's Attorney _______________________________

PART V. DISCLOSURE STATEMENT AND INSTRUCTIONS TO DEBTOR(S)

Before agreeing to reaffirm a debt, review the terms disclosed in the Reaffirmation Agreement (Part I above) and these additional important disclosures and instructions.

Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these steps, which are detailed in the Instructions provided in Part V, Section B below, are not completed, the Reaffirmation Agreement is not effective, even though you have signed it.

A. DISCLOSURE STATEMENT

1. **What are your obligations if you reaffirm a debt?** A reaffirmed debt remains your personal legal obligation to pay. Your reaffirmed debt is not discharged in your bankruptcy case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Your obligations will be determined by the Reaffirmation Agreement, which may have changed the terms of the original agreement. If you are reaffirming an open end credit agreement, that agreement or applicable law may permit the creditor to change the terms of that agreement in the future under certain conditions.

2. **Are you required to enter into a reaffirmation agreement by any law?** No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments that you agree to make.

3. **What if your creditor has a security interest or lien?** Your bankruptcy discharge does not eliminate any lien on your property. A ''lien'' is often referred to as a security interest, deed of trust, mortgage, or security deed. The property subject to a lien is often referred to as collateral. Even if you do not reaffirm and your personal liability on the debt is discharged, your creditor may still have a right under the lien to take the collateral if you do not pay or default on the debt. If the collateral is personal property that is exempt or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the collateral, as the parties agree or the court determines.

4. **How soon do you need to enter into and file a reaffirmation agreement?** If you decide to enter into a reaffirmation agreement, you must do so before you receive your discharge. After you have entered into a reaffirmation agreement and all parts of this form that require a signature have been signed, either you or the creditor should file it as soon as possible. The signed agreement must be filed with the court no later than 60 days after the first date set for the meeting of creditors, so that the court will have time to schedule a hearing to approve the agreement if approval is required. However, the court may extend the time for filing, even after the 60-day period has ended.

5. **Can you cancel the agreement?** You may rescind (cancel) your Reaffirmation Agreement at any time before the bankruptcy court enters your discharge, or during the 60-day period that begins on the date your Reaffirmation Agreement is filed with the court, whichever occurs later. To rescind (cancel) your Reaffirmation Agreement, you must notify the creditor that your Reaffirmation Agreement is rescinded (or canceled). Remember that you can rescind the agreement, even if the court approves it, as long as you rescind within the time allowed.

6. **When will this Reaffirmation Agreement be effective?**

   a. **If you *were* represented by an attorney during the negotiation of your Reaffirmation Agreement and**

      i. **if the creditor is not a Credit Union**, your Reaffirmation Agreement becomes effective when it is filed with the court unless the reaffirmation is presumed to be an undue hardship. If the Reaffirmation Agreement is presumed to be an undue hardship, the court must review it and may set a hearing to determine whether you have rebutted the presumption of undue hardship.

      ii. **if the creditor is a Credit Union**, your Reaffirmation Agreement becomes effective when it is filed with the court.

   b. **If you *were not* represented by an attorney during the negotiation of your Reaffirmation Agreement**, the Reaffirmation Agreement will not be effective unless the court approves it. To have the court approve your agreement, you must file a motion. See Instruction 5, below. The court will notify you and the creditor of the hearing on your Reaffirmation Agreement. You must attend this hearing, at which time the judge will review your Reaffirmation Agreement. If the judge decides that the Reaffirmation Agreement is in your best interest, the agreement will be approved and will become effective. However, if your Reaffirmation Agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home, you do not need to file a motion or get court approval of your Reaffirmation Agreement.

7. **What if you have questions about what a creditor can do?** If you have questions about reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement. If you do not have an attorney helping you, you may ask the judge to explain the effect of this agreement to you at the hearing to approve the Reaffirmation Agreement. When this disclosure refers to what a creditor "may" do, it is not giving any creditor permission to do anything. The word "may" is used to tell you what might occur if the law permits the creditor to take the action.

B. INSTRUCTIONS

1. Review these Disclosures and carefully consider your decision to reaffirm. If you want to reaffirm, review and complete the information contained in the Reaffirmation Agreement (Part I above). If your case is a joint case, both spouses must sign the agreement if both are reaffirming the debt.

2. Complete the Debtor's Statement in Support of Reaffirmation Agreement (Part II above). Be sure that you can afford to make the payments that you are agreeing to make and that you have received a copy of the Disclosure Statement and a completed and signed Reaffirmation Agreement.

3. If you were represented by an attorney during the negotiation of your Reaffirmation Agreement, your attorney must sign and date the Certification By Debtor's Attorney (Part IV above).

4. You or your creditor must file with the court the original of this Reaffirmation Documents packet and a completed Reaffirmation Agreement Cover Sheet (Official Bankruptcy Form 427).

5. *If you are not represented by an attorney, you must also complete and file with the court a separate document entitled "Motion for Court Approval of Reaffirmation Agreement" unless your Reaffirmation Agreement is for a consumer debt secured by a lien on your real property, such as your home.* You can use Form 2400B to do this.

C. DEFINITIONS

1. **“Amount Reaffirmed”** means the total amount of debt that you are agreeing to pay (reaffirm) by entering into this agreement. The total amount of debt includes any unpaid fees and costs that you are agreeing to pay that arose on or before the date of disclosure, which is the date specified in the Reaffirmation Agreement (Part I, Section B above). Your credit agreement may obligate you to pay additional amounts that arise after the date of this disclosure. You should consult your credit agreement to determine whether you are obligated to pay additional amounts that may arise after the date of this disclosure.

2. **“Annual Percentage Rate”** means the interest rate on a loan expressed under the rules required by federal law. The annual percentage rate (as opposed to the “stated interest rate”) tells you the full cost of your credit including many of the creditor’s fees and charges. You will find the annual percentage rate for your original agreement on the disclosure statement that was given to you when the loan papers were signed or on the monthly statements sent to you for an open end credit account such as a credit card.

3. “**Credit Union”** means a financial institution as defined in 12 U.S.C. § 461(b)(1)(A)(iv). It is owned and controlled by and provides financial services to its members and typically uses words like “Credit Union” or initials like “C.U.” or “F.C.U.” in its name.