No. 13-935

IN THE

Supreme Court of the United States

WELLNESS INTERNATIONAL NETWORK, LIMITED,
RALPH OATS, AND CATHY OATS,
Petitioners,

v.

RICHARD SHARIF,
Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF OF THE AMERICAN COLLEGE OF BANKRUPTCY AS AMICUS CURIAE IN SUPPORT OF REVERSAL

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INTEREST OF AMICUS CURIAE[1]

Amicus curiae the American College of Bankruptcy was founded in 1989 as an honorary association of bankruptcy and insolvency professionals. Membership is by invitation only. The College's eight hundred fellows include individuals associated with all facets of bankruptcy practice: commercial and consumer bankruptcy attorneys, corporate turnaround advisers, United States Trustees, bankruptcy trustees, investment bankers, insolvency accountants, law professors, judges, government officials, appraisers, and others involved in all aspects of the bankruptcy and insolvency community.

The College has typically avoided intervening in legal and political controversies. It has filed an amicus brief only once before, in *Executive Benefits Insurance Agency* v. *Arkison*, 134 S. Ct. 2165 (2014). In *Executive Benefits*, this Court was presented with, but ultimately did not resolve, one of the issues presented in this case: whether, and under what circumstances, bankruptcy courts may enter final judgment in "non-core" matters (that is, matters of private right)[2] with the litigants' consent.

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[1] Letters from the parties consenting to the filing of this brief are on file with the Clerk of the Court. No counsel for a party authored this brief in whole or in part, and no person other than amicus curiae, its members, and its counsel made any monetary contribution to the preparation or submission of this brief.

[2] In this brief, except where otherwise indicated, amicus uses the terms "core" and "non-core" to denote matters as to which a bankruptcy court may and may not, respectively, enter final judgment consistent with the Constitution. *See Executive Benefits*, 134 S. Ct. at 2171 n.7 ("In using the term 'core'" in the Judiciary Code, Congress intended "a description of those claims that fell within the scope of the historical bankruptcy court's power.").

As the College explained in its brief in *Executive Benefits*, bankruptcy courts' ability to enter final judgment in non-core proceedings with the parties' consent is critical to the effective and efficient administration of bankruptcy cases and consistent with longstanding historical practice. A holding that Article III does not permit bankruptcy courts to adjudicate such claims with consent would throw the bankruptcy system into disarray—while also requiring the invalidation of key aspects of the magistrate system and thus undermining the effective administration of litigation more broadly.

As a non-partisan, diverse group of experienced bankruptcy professionals with expertise across all dimensions of bankruptcy and insolvency, the College has a substantial interest in the questions presented and a unique perspective on their proper resolution that differs from that of either of the parties. The College accordingly submits this brief to provide the Court with that perspective.

SUMMARY OF ARGUMENT

This Court granted certiorari in this case to resolve two questions: (1) whether petitioner Wellness International Network's claim against the respondent, debtor Richard Sharif, is a "core" bankruptcy proceeding as to which the bankruptcy court may constitutionally enter final judgment irrespective of the parties' consent; and (2) if not, whether the bankruptcy court could nonetheless constitutionally enter final judgment on that claim *with* the parties' express or implied consent. The court of appeals erred in its analysis of both questions, although not in every instance for the precise reasons Wellness articulates.

Wellness's claim against the debtor is appropriately viewed as a proceeding to determine whether certain property is owned by the debtor and thus properly included in the bankruptcy estate. *See* 11 U.S.C. §541(a). As such, Wellness's claim is at the very heart of the bankruptcy process, in which the bankruptcy court exercises *in rem* jurisdiction over all the property of the estate and adjudicates the competing claims of the debtor and its creditors to that property. *Central Va. Cmty. Coll.* v. *Katz*, 546 U.S. 356, 369-370 (2006). Put differently, Wellness's claim is part of the "restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power." *Northern Pipeline Constr. Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50, 71 (1982) (plurality opinion). Wellness's claim is thus very different from the common-law breach-of-contract suit against a third party at issue in *Marathon*, *see id.* at 71-72, or the common-law tort counterclaim at issue in *Stern* v. *Marshall*, *see* 131 S. Ct. 2594, 2611-2615 (2011). Indeed, nothing could be more central to the bankruptcy process than the marshaling and distribution of the debtor's assets, at issue here.

The court of appeals wrongly concluded that the bankruptcy court could not constitutionally enter final judgment on Wellness's claim against the debtor. The court did so both because it misapprehended the nature of Wellness's claim and because it wrongly believed that the bankruptcy court's need to apply state law to resolve the claim rendered it non-core. Wellness's claim was asserted against the debtor and sought a declaration that the debtor had a legal or equitable interest in certain property. To be sure, in order to determine whether the debtor has such a property interest, a bankruptcy court must apply state law. But many core bankruptcy matters require the application of state

law. Most notably, the resolution of creditors' claims against the bankruptcy estate—one of the bankruptcy court's primary functions—requires the court to look to the underlying state law that typically governs the merits of those claims. *See* 11 U.S.C. §502(b)(1); *Butner* v. *United States*, 440 U.S. 48, 55 (1979). Claims-allowance proceedings may nonetheless be finally adjudicated by the bankruptcy court because they are part of the core bankruptcy function of distributing the *res* among competing claimants. So too here.

The Court accordingly need not reach the question of consent in this case. Were the Court to do so, however, it should hold that Article III poses no barrier to a bankruptcy court's entering final judgment in matters of private right with the parties' consent. This Court explained in *Commodity Futures Trading Commission* v. *Schor*, 478 U.S. 833 (1986), that Article III, §1 serves to protect "primarily personal, rather than structural, interests," and that such personal rights are waivable. *Id.* at 848-849. To be sure, Article III, §1 also protects against encroachment by the political branches on the judicial branch—and arguably against improper delegation by the judicial branch of its own duties—and "the parties cannot by consent cure" such structural flaws. *Id.* at 851. But no such encroachment or improper delegation is present here, given that bankruptcy courts are units of the district court and can adjudicate matters only by reference from the district court that may at any time be withdrawn. Accordingly, the parties may give their consent to entry of final judgment by the bankruptcy court—just as they may to entry of final judgment by a federal magistrate.

Under the Federal Rules of Bankruptcy Procedure, however, such consent may not be implied. Rule 7012(b) plainly states that "[i]n non-core proceedings

final orders and judgments shall not be entered on the bankruptcy judge's order except with the *express* consent of the parties." Fed. R. Bankr. P. 7012(b) (emphasis added). *Roell* v. *Withrow*, 538 U.S. 580 (2003), which interpreted a different statutory scheme and addressed very different facts, provides no basis to rewrite the rule. It is nonetheless possible that a party might forfeit an argument that Rule 7012(b) was violated by failing to raise it in a timely manner on appeal. Amicus takes no position as to how these principles apply to this case.

ARGUMENT

I. CONSTITUTIONAL AND STATUTORY BACKGROUND

Bankruptcy's central purpose is to identify and marshal the debtor's assets that become part of the bankruptcy estate and to distribute those assets among creditors. *See, e.g., Central Va. Cmty. Coll.* v. *Katz*, 546 U.S. 356, 363-364 (2006). By granting the bankruptcy court exclusive *in rem* jurisdiction over the debtor's property and the authority to adjudicate claims to that property, bankruptcy eliminates the race to the courthouse that would otherwise occur when an insolvent debtor lacks sufficient assets to satisfy all creditors. Bankruptcy courts have historically possessed, and may constitutionally exercise, authority to enter final judgment in matters at the core of this process of assembling the bankruptcy estate and adjudicating competing claims to that estate.

1. The Bankruptcy Act of 1898 divided bankruptcy proceedings into "summary" proceedings, which were generally conducted before non-Article III "referees," and "plenary" proceedings conducted in Article III (or state) courts. Act of July 1, 1898, ch. 541, §22(a),

30 Stat. 544, 552 (repealed 1979); *see also Northern Pipeline Constr. Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50, 52-53 (1982) (plurality opinion). "[M]atters within the traditional 'summary jurisdiction' of bankruptcy courts" that "could [be] refer[red] … to specialized bankruptcy referees" "covered claims involving 'property in the actual or constructive possession of the [bankruptcy] court,' *i.e.*, claims regarding the apportionment of the existing bankruptcy estate among creditors." *Executive Benefits Ins. Agency* v. *Arkison*, 134 S. Ct. 2165, 2170 (2014) (citation omitted). "Proceedings to augment the bankruptcy estate, on the other hand, implicated the district court's plenary jurisdiction and were not referred to the bankruptcy courts absent both parties' consent." *Id.*; *see also MacDonald* v. *Plymouth County Trust Co.*, 286 U.S. 263, 266-268 (1932).

Katchen v. *Landy*, 382 U.S. 323 (1966), illustrates the point. In *Katchen*, this Court held that bankruptcy courts could enter final judgment in preference suits—suits to bring back into the estate money preferentially paid to certain creditors during the period just before the bankruptcy—against creditors who had filed claims in the bankruptcy case. *Id.* at 327-328. The Court rejected the creditor's argument that being required to proceed in bankruptcy court without his consent violated his constitutional rights, explaining that "bankruptcy courts have summary jurisdiction to adjudicate controversies relating to property over which they have actual or constructive possession"—that is, property of the bankruptcy estate. *Id.* at 336. Because the statute required the adjudication of preference claims against creditors before their claims against the estate could be determined, the preference action became part of the claims-allowance process, and thus within the bank-

ruptcy court's authority to determine. *See also Langenkamp* v. *Culp*, 498 U.S. 42, 45 (1990) (per curiam) (same under Bankruptcy Code).

2. In 1978, Congress "substantially expanded" bankruptcy courts' authority. H.R. Rep. No. 95-595, at 13 (1977). The new Bankruptcy Code abolished the statutory distinction between summary and plenary proceedings and permitted newly constituted bankruptcy courts to hear and determine "all civil proceedings arising under [the Bankruptcy Code] or arising in or related to cases under [it]." 28 U.S.C. §1471(b) (repealed 1984); *Marathon*, 458 U.S. at 54 (plurality opinion). Although the 1978 Code permitted bankruptcy courts to enter final judgment in any proceeding within federal bankruptcy jurisdiction, bankruptcy judges were not given the Article III protections of lifetime tenure and undiminished compensation.

3. In *Marathon*, this Court held that broad grant of power to a non-Article III court unconstitutional. 458 U.S. at 87 (plurality opinion); *id.* at 91 (Rehnquist, J., concurring in judgment). *Marathon* involved a state-law breach-of-contract action brought by a debtor against a third-party non-creditor. The plurality concluded that such an action was a matter of "private right," rather than "public right," and thus could not constitutionally be decided by a non-Article III tribunal absent the parties' consent. While the "divided Court" was unable to agree on the precise scope of Article III's limitations, a majority of the Court held that "Congress may not vest in a non-Article III court the power to adjudicate, render final judgment, and issue binding orders in a traditional contract action arising under state law, without consent of the litigants, and subject only to ordinary appellate review." *Thomas* v. *Union Carbide*

Agric. Prods. Co., 473 U.S. 568, 584 (1985) (citing *Marathon*, 458 U.S. at 84).

At the same time, the Court made clear that its holding did not require that all bankruptcy proceedings be adjudicated by Article III courts. The plurality explained that "the restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power," "may well be a 'public right'" that Congress could remit to a non-Article III tribunal for decision. *Marathon*, 458 U.S. at 71. And it emphasized that such proceedings "must be distinguished from the adjudication of state-created private rights, such as the right to recover contract damages" at issue in *Marathon*, which served merely "to augment [the debtor's] estate" and which the debtor could assert "[e]ven in the absence of the federal scheme." *Id.* at 71, 72 n.26. The concurring Justices agreed that "[n]one of the [Court's] cases has gone so far as to sanction the type of adjudication to which Marathon will be subjected," but similarly recognized that "different powers granted under [the Bankruptcy] Act [of 1978] might be sustained under the 'public rights' doctrine." *Id.* at 91.

4. In response to *Marathon*, Congress passed the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333. While rejecting proposals to establish an Article III bankruptcy court, Congress sought to satisfy this Court's instruction that "'the essential attributes'of the judicial power'" be retained in the Article III court. *Marathon*, 458 U.S. at 87 (plurality opinion). Accordingly, while the 1984 Act did not alter the scope of bankruptcy jurisdiction set out in the 1978 Code, it replaced the independent bankruptcy court established in the 1978 Code with an entity that would be a "unit" of the district courts and would hear bankruptcy proceedings only by refer-

ral from the district courts. 28 U.S.C. §151. Specifically, district courts "may provide that any or all cases under [the Bankruptcy Code] and any or all proceedings arising under [the Bankruptcy Code] or arising in or related to a case under [the Code] shall be referred to the bankruptcy judges for the district." *Id.* §157(a). Moreover, "[t]he district court may withdraw, in whole or in part, any case or proceeding referred [to the bankruptcy court], on its own motion or on timely motion of any party, for cause shown." *Id.* §157(d).[3]

In addition, the 1984 Act drew a distinction—at the heart of the statute's scheme for constitutionally allocating authority between district and bankruptcy courts—between "core" and "non-core" bankruptcy proceedings. "In using the term 'core,' Congress tracked the *Northern Pipeline* plurality's use of the same term as a description of those claims that fell within the scope of the historical bankruptcy court's power." *Executive Benefits*, 134 S. Ct. at 2171 n.7. The Act accordingly authorized bankruptcy courts to "hear and determine … all core proceedings arising under [the Bankruptcy Code], or arising in a case under [the Bankruptcy Code]" and to "enter appropriate orders and judgments" in such proceedings, subject only to ordinary appellate review. 28 U.S.C. §157(b)(1). By contrast, "[n]on-core proceedings … concern aspects of the bankruptcy case that *Marathon* barred non-Article III judges from determining on their own." *In re Arnold Print Works, Inc.*, 815 F.2d 165, 167 (1st Cir. 1987)

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[3] Withdrawal of a proceeding from the bankruptcy court is mandatory "if the [district] court determines that resolution of the proceeding requires consideration of both [the Bankruptcy Code] and other laws of the United States regulating organizations or activities affecting interstate commerce." 28 U.S.C. §157(d).

(Breyer, J.). Absent the parties' consent, *see* 28 U.S.C. §157(c)(2), in non-core proceedings bankruptcy courts may only enter proposed findings of fact and conclusions of law, subject to de novo review by the district court, *id.* §157(c)(1).

5. In *Stern*, this Court held that Congress's efforts in Section 157 to remedy the constitutional flaw identified in *Marathon* had failed "in one isolated respect." 131 S. Ct. at 2620. In the 1984 Act, Congress enumerated certain examples of core proceedings—proceedings that it believed the bankruptcy courts could constitutionally hear and determine without the parties' consent. 28 U.S.C. §157(b)(2). It included in the list of core proceedings "counterclaims by the estate against persons filing claims against the estate." *Id.* §157(b)(2)(C).

This Court held that, as applied to the counterclaim at issue in *Stern*—a state-law tort claim by the debtor against a creditor "that is not resolved in the process of ruling on a creditor's proof of claim"—§157(b)(2)(C) was unconstitutional. *Stern*, 131 S. Ct. at 2620. As in *Marathon*, the debtor's counterclaim was a cause of action derived from state common law and was related to her bankruptcy case only because, if she were to prevail, it would increase the estate's assets. *Id.* at 2614-2615.

As in *Marathon*, however, this Court made clear that its "narrow" ruling did not call into question bankruptcy courts' constitutional authority to enter final judgments in matters that are integral to the core restructuring process. *Stern*, 131 S. Ct. at 2617, 2620. To the contrary, the Court distinguished, and implicitly reaffirmed, its prior decisions in *Katchen* and *Langenkamp* holding that a bankruptcy court could determine a preference claim by the estate against a cred-

itor that had filed a proof of claim. *See id.* at 2616-2617; *see also Granfinanceria, S.A.* v. *Nordberg*, 492 U.S. 33 (1989) (holding that there is no jury-trial right, and hence no obstacle to proceeding in a non-Article III tribunal, in a fraudulent-transfer action against a creditor that has filed a claim against the estate, but that the same is not true in an action against a party that has not filed a claim).

* * *

In sum, this Court's precedent has distinguished between traditional "'common law … claims brought by a [debtor] to augment the bankruptcy estate'"—like the contract claim in *Marathon*, the fraudulent-transfer claim in *Granfinanceria*, and the tort claim in *Stern*—and "actions … that seek 'a pro rata share of the bankruptcy res,'" like those in *Langenkamp* and *Katchen*. *Stern*, 131 S. Ct. at 2614, 2618. "Congress may not bypass Article III simply because a proceeding may have *some* bearing on a bankruptcy case." *Id.* at 2618. Rather, the "question is whether the action at issue stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process." *Id.* In those circumstances, there is no constitutional obstacle to the bankruptcy court's entering final judgment even absent the parties' consent.

II. A BANKRUPTCY COURT MAY CONSTITUTIONALLY ENTER FINAL JUDGMENT ON THE CLAIM AT ISSUE HERE EVEN WITHOUT THE PARTIES' CONSENT

In this case, a federal district court entered a money judgment in favor of petitioner Wellness against respondent Sharif. Pet. App. 2a. Sharif then filed for chapter 7 bankruptcy. *Id.* Wellness filed an adversary proceeding against Sharif, individually and as trustee of the "Soad Watter Trust." JA5-22. Counts I-IV of the

adversary complaint objected to the discharge of the debt arising from the judgment against Sharif. JA13-19. Count V sought a declaration that assets Sharif had represented to the bankruptcy court were held by the "Soad Watter Trust" were in fact Sharif's own assets, that is, that "the Soad Watter Living Trust is the alter ego of Debtor." JA19-21. The bankruptcy court ordered Sharif to respond to Wellness's discovery requests. Pet. App. 2a. When Sharif failed to do so, the bankruptcy court entered default judgment in favor of Wellness. *Id.* On appeal, the district court affirmed. *Id.* 3a.

The court of appeals concluded that Wellness's declaratory judgment claim against Sharif "is indistinguishable from the tortious-interference counterclaim in *Stern*" or "the contract claim in *Northern Pipeline*." Pet. App. 48a. The court reasoned that "[t]he dispute is between private parties," "[i]t stems from state law rather than a federal regulatory scheme," and "it is intended only to augment the bankruptcy estate." *Id.* The better interpretation of Wellness's claim, however, is that it sought not to augment the bankruptcy estate but to ascertain and marshal the estate's existing assets for distribution to creditors—the core function of the bankruptcy process. For the reasons set out below, such a claim "stems from the bankruptcy itself," *Stern*, 131 S. Ct. at 2618, and is within the bankruptcy court's power to adjudicate regardless of the parties' consent.

A. Proceedings To Determine Whether Property Is Part Of The Bankruptcy Estate Are Core Bankruptcy Proceedings That May Be Finally Decided By The Bankruptcy Court

Like claims-allowance proceedings, proceedings to determine whether certain property is part of the

bankruptcy estate are "'integral to the restructuring of the debtor-creditor relationship,'" *Stern*, 131 S. Ct. at 2617, and thus matters that bankruptcy courts may constitutionally hear and determine.

The Bankruptcy Code provides that the commencement of a bankruptcy case "creates an estate" that includes (with certain exceptions) "all legal or equitable interests of the debtor in property," "wherever located and by whomever held." 11 U.S.C. §541(a). A bankruptcy filing also creates an automatic stay barring creditors from pursuing claims against that property or against the debtor, so that the estate may be protected, and its value preserved, for the benefit of all creditors. *Id.* §362(a), (c). Absent relief from the automatic stay, creditors' recourse is thus limited to the bankruptcy estate. Creditors may file proofs of claim against the estate, *id.* §501, which are allowed or disallowed by the bankruptcy court, *id.* §502. Following satisfaction of any secured or priority claims, estate property is then distributed ratably among creditors having allowed claims. *Id.* §§725, 726, 1123, 1129. At the conclusion of the bankruptcy process, the debtor may (again, with certain exceptions) obtain a discharge of pre-bankruptcy debts, *id.* §§727(a)(2), 1141(d), which permanently enjoins creditors from collecting those debts from the debtor, *id.* §524(a).

Delineating and marshaling the bankruptcy estate are thus fundamental to the core bankruptcy process of restructuring debtor-creditor relations. "Critical features of every bankruptcy proceeding are the exercise of exclusive jurisdiction over all of the debtor's property, the equitable distribution of that property among the debtor's creditors, and the ultimate discharge that gives the debtor a 'fresh start' by releasing him, her, or it from further liability for old debts." *Katz*, 546 U.S. at

363-364. Indeed, "[b]ankruptcy jurisdiction, as understood today and at the time of the [Constitution's] framing, is principally *in rem* jurisdiction" "'premised on the debtor and his estate.'" *Id.* at 369, 370; *see also Straton* v. *New*, 283 U.S. 318, 320-321 (1931) ("The purpose of the Bankruptcy Act … is to place the property of the bankrupt, wherever found, under the control of the court, for equal distribution among the creditors.").

Determining whether property is part of the estate is thus well within the constitutional authority of bankruptcy courts to decide by final order. A proceeding to determine whether property belongs to the debtor—and hence to his or her bankruptcy estate—unquestionably "stems from the bankruptcy itself." *Stern*, 131 S. Ct. at 2618. It is a proceeding "derived from … bankruptcy law"—§541 of the Bankruptcy Code—that does not "exist[] [outside of] any bankruptcy proceeding." *Id.* Moreover, determining what property is included in the estate is integral to the "claims allowance process." *Id.* The ultimate aim of the claims-allowance process, after all, is to distribute the estate to the debtor's creditors, as allocated in accordance with their respective claims.

Bankruptcy courts' constitutional authority to adjudicate the claims-allowance process, repeatedly recognized by this Court, is thus merely one aspect of the broader overall authority that bankruptcy courts have traditionally exercised over the bankruptcy estate. As *Katchen* explained, "'[t]he whole process of proof, allowance, and distribution is, shortly speaking, an adjudication of interests claimed in a *res*,' and thus falls within the principle … that bankruptcy courts have summary jurisdiction to adjudicate controversies relating to property within their possession." 382 U.S. at 329-330 (citation omitted); *see also Granfinanceria*, 492

U.S. at 57 (*Katchen* "turned … on the bankruptcy court's having 'actual or constructive possession' of the bankruptcy estate, and its power and obligation to consider objections by the trustee in deciding whether to allow claims against the estate" (citation omitted)).

Indeed, adjudication of interests in the bankruptcy estate has historically been handled in summary proceedings by non-Article III courts. At the time of the Constitution's framing, English bankruptcy law was a matter of statute, not the common law. Plank, *Why Bankruptcy Judges Need Not and Should Not Be Article III Judges*, 72 Am. Bankr. L.J. 567, 575-576, 590 (1998). Pursuant to the English bankruptcy statutes, bankruptcy matters were generally adjudicated by non-judicial commissioners, unless a party to the bankruptcy proceeding sought review in a court of law or equity. *Id.* at 573-578 & n.57. The commissioners determined most issues arising in the bankruptcy proceeding, including those involving property of the estate, the allowance of creditors' claims, the pro rata distribution of the estate among creditors, and the discharge of the debtor's debts. *Id.* at 573, 575-599. This summary bankruptcy procedure, conducted primarily outside the more formal judicial process of the law and equity courts, facilitated the quick and inexpensive adjustment of the relationship between an insolvent debtor and his creditors. *Id.* at 574, 596.

The first U.S. bankruptcy law, the Bankruptcy Act of 1800, "was in many respects a copy of the English bankruptcy statute then in force. … Like the English statute, [it] permitted bankruptcy commissioners, on appointment by a federal district court, … to seize and collect the debtor's assets; to examine the debtor and any individuals who might have possession of the debtor's property; and to issue a 'certificate of discharge'

once the estate had been distributed." *Katz*, 546 U.S. at 373-374 (citations omitted). The Act gave non-Article III bankruptcy commissioners broad authority over the debtor's bankruptcy proceedings and the estate, including the power to "take into their possession, all the estate, real and personal, of every nature and description to which the said bankrupt may be entitled, either in law or equity," Act of April 4, 1800, ch. 19, § 5, 2 Stat. 19, 23; to "admit the creditors of such bankrupt to prove their debts," *id.* §6, 2 Stat. at 23; and to "order … said bankrupt's estate … to be … divided among such of the bankrupt's creditors as have duly proved their debts under such commission," *id.* §29, 2 Stat. at 29.

As discussed above, the Bankruptcy Act of 1898 likewise granted non-Article III bankruptcy referees summary jurisdiction to determine what property was part of the estate. In *Mueller* v. *Nugent*, 184 U.S. 1 (1902), for instance, this Court held that a bankruptcy referee had the power to determine whether property held by a third party was "the property of the bankrupt … and … part of [the bankruptcy] estate," and to order its turnover. *Id.* at 4, 12-15.

Of particular relevance here, bankruptcy referees could enter final orders determining that property held by the debtor's alter ego belonged to the debtor and its estate. For example, in *Sampsell* v. *Imperial Paper & Color Corp.*, 313 U.S. 215 (1941), this Court held that a bankruptcy referee had "jurisdiction … by summary proceedings" to enter "a final order" determining that "the property of the [debtor's] corporation was property of the bankrupt estate," and hence that the referee's order could not be collaterally attacked by a creditor of the corporation seeking priority against the corporate assets. *Id.* at 217-219. The referee in *Sampsell* determined that the property nominally held by the corpora-

tion was property of the estate because it found "'the corporation[] to be the alter ego of the bankrupt,'" *Imperial Paper & Color Corp.* v. *Sampsell*, 114 F.2d 49, 52 (9th Cir. 1940), and "'nothing but a sham and a cloak' devised by [the debtor] 'for the purpose of preserving and conserving his assets' for the benefit of himself and his family" and "hindering, delaying and defrauding his creditors," 313 U.S. at 217. *See also e.g.*, *In re Eufaula Enters., Inc.*, 565 F.2d 1157, 1160-1161 (10th Cir. 1977) (holding that "the referee in bankruptcy properly exercised summary jurisdiction in requiring the state-appointed receiver to turn over [a trust's] assets to the trustee of [the debtor]" where it found that "[the trust] was an instrumentality or alter ego of [the debtor]").

Courts have likewise held under the current Bankruptcy Code that bankruptcy courts may, consistent with Article III, enter final judgments determining whether property—including property purportedly owned by the debtor's alter ego—is part of the debtor's bankruptcy estate. *See, e.g.*, *In re Johnson*, 960 F.2d 396, 400-402 & n.3 (4th Cir. 1992) (bankruptcy court could enter final judgment determining what portion of debtor's property was held in constructive trust for investors as matter "intimately tied to the traditional bankruptcy functions and estate"); *In re Gladstone*, 513 B.R. 149, 156-159 (Bankr. S.D. Fla. 2014) (bankruptcy court could finally determine action to declare that property held by debtor's alter-ego corporations "are actually assets of the Debtor" and "accordingly property of the estate under 11 U.S.C. §541"; the action "'stems from the bankruptcy itself'" because "determin[ing] what is and is not property of the estate" is "a decision central to the mission of the bankruptcy court").

B. The Court of Appeals Misapprehended The Nature of Wellness's Claim

The court of appeals nonetheless held that the bankruptcy court lacked constitutional authority to enter final judgment on what it called Wellness's "alter ego" claim against the debtor, deeming that claim "indistinguishable" from the contract and tort claims in *Marathon* and *Stern*. Pet. App. 48a. The court of appeals' characterization of Wellness's claim, however, misapprehended the nature of the proceeding before the bankruptcy court. The better reading of Wellness's claim is that it merely sought a declaratory judgment that property the debtor claimed he held in trust for another was, in reality, his own property, and hence property of the debtor's bankruptcy estate under the Bankruptcy Code. As discussed above, the bankruptcy court could constitutionally decide that question.

The court of appeals may have been led astray by the term "alter ego," which has been applied to two different types of claims. *See Gladstone*, 513 B.R. at 156-159. An "alter ego" claim may refer to a claim seeking to hold a third party liable for a debt the debtor owes to a creditor. Such a claim may seek, for instance, to "pierce the corporate veil," based on the injustice to the creditor of maintaining the separateness of the third party's assets from the debtor's assets. *See, e.g.*, *International Fin. Servs. Corp.* v. *Chromas Techs. Can., Inc.*, 356 F.3d 731, 734, 736-737, 740 (7th Cir. 2004) (remanding to district court to hold sister corporation liable for debt owed to creditor of debtor corporation if court found sister corporation to be debtor's alter ego).

That kind of "alter ego" claim against a third party, seeking to hold that party liable for the debtor's debts, may well be a matter that, absent the parties' consent,

requires adjudication by an Article III court. Such a claim would resemble a fraudulent-transfer suit against a non-creditor: It would arise under the common law between private parties and would seek to augment the bankruptcy estate rather than to identify and marshal the existing assets in the estate. *See Stern*, 131 S. Ct. at 2618; *Granfinanceria*, 492 U.S. at 55-56.

The claim Wellness asserted here, however, is better understood as the second kind of "alter ego" claim—that is, a claim that a nominal third party has no substantive existence separate from the debtor, and that property purportedly held by the third party is, therefore, the debtor's own property. *See Gladstone*, 513 B.R. at 157-159. Because this kind of "alter ego" claim asserts that the nominal third parties "are not truly separate entities" and "have no purpose other than to hide assets held entirely for the Debtor's benefit," the "gravamen of the complaint is … that all assets held in the names of the various [third parties] are actually assets of the Debtor," and thus "'interests of the debtor in property' [under] §541(a)(1)." *Id.* at 159. A suit against the debtor to determine what property the debtor owns for purposes of delineating the estate under §541 of the Bankruptcy Code—quite unlike a suit against a third party seeking to bring the third party's assets into the estate on a common-law theory of liability—is integral to the restructuring of debtor-creditor relations and may be determined by the bankruptcy court.

While Wellness's complaint did not expressly invoke §541, that is the substantive relief it sought: a declaratory judgment "as to the Debtor's ownership interest in property purportedly held in the name of the [trust]." JA19. Wellness alleged that the "Debtor has continuously concealed property that he admitted … he owned by claiming that such property is currently

owned by the [trust]"; that "[t]o the extent that the [trust] exists," it was "a mere tool or business conduit of Debtor," that "Debtor … exercises complete control over the trust and its assets," and "that the separateness of Debtor and the [trust] … has ceased"; and that Wellness was therefore "entitled to a declaratory judgment that the [trust] is the alter ego of the Debtor and that all assets of the trust should be treated as part of Debtor's estate." JA35, 36, 44.

The court of appeals was thus wrong to conclude that Wellness's claim was a "state-law claim … wholly independent of federal bankruptcy law." Pet. App. 51a. An action to determine the property of the estate under §541 is an action "derived from [and] dependent upon [federal] bankruptcy law." *Stern*, 131 S. Ct. at 2618. That state law might play a role in the analysis of the claim is irrelevant. Indeed, "the basic federal rule in bankruptcy is that state law governs the substance of claims, Congress having generally left the determination of property rights in the assets of a bankrupt's estate to state law." *Travelers Cas. & Sur. Co. of Am.* v. *Pacific Gas & Elec. Co.*, 549 U.S. 443, 450-451 (2007) (internal quotation marks omitted). In the claims-allowance process, for example, the bankruptcy court will typically look to state law to determine a claim's validity. *See* 11 U.S.C. §502(b)(1) (providing for disallowance of claims that are "unenforceable … under any agreement or applicable law"); *Butner* v. *United States*, 440 U.S. 48, 55 (1979) (noting that property interests in bankruptcy are typically created and defined by state law). But the claims-allowance procedure is nonetheless one that "stems from the bankruptcy itself" for Article III purposes. The same is true here.

III. Bankruptcy Courts May "Hear And Determine" Non-Core Claims With The Consent Of The Parties

Because the bankruptcy court could constitutionally enter final judgment on Wellness's claim, this Court need not reach the question of consent. Were the Court to disagree and reach that question, however, it should hold that a bankruptcy court may constitutionally hear and determine non-core matters that would otherwise require an Article III tribunal with the consent of the parties. That conclusion is most consistent with this Court's Article III jurisprudence, which holds that absent meaningful encroachment on or diminution of the prerogatives of the judicial branch, the parties' consent to non-Article III resolution of a private-right dispute does not offend the separation of powers.

Under the Federal Rules of Bankruptcy Procedure, however, consent to bankruptcy court adjudication of a non-core matter must be "express." Fed. R. Bankr. P. 7012(b). There is no reason for this Court to hold that the rule means anything other than what it says.

A. Litigants May Consent To A Bankruptcy Court's Entry Of Final Judgment On Matters Of Private Right

A bankruptcy court's adjudication of private-right controversies with the litigants' consent, as Congress authorized in §157(c)(2) of the Judiciary Code, does not offend Article III.

1. In *Commodity Futures Trading Commission* v. *Schor*, 478 U.S. 833 (1986), this Court explained that Article III, §1 serves to protect "primarily personal, rather than structural, interests." *Id.* at 848. "[A]s a personal right, Article III's guarantee of an impartial

and independent federal adjudication is subject to waiver, just as are other personal constitutional rights." *Id.*

To be sure, Article III, §1 also plays a structural role, "safeguard[ing] the role of the Judicial Branch in our tripartite system by barring congressional attempts … [to] 'emasculat[e]' constitutional courts, and thereby preventing 'the encroachment or aggrandizement of one branch at the expense of the other.'" *Schor*, 478 U.S. at 850 (citation omitted). It may also restrain the judicial branch from abdicating its own core constitutional duties. *See, e.g.*, *Peretz* v. *United States*, 501 U.S. 923, 955-956 (1991) (Scalia, J., dissenting). "To the extent that this structural principle is implicated in a given case, the parties cannot by consent cure the constitutional difficulty[.]" *Schor*, 478 U.S. at 850-851. The question, therefore, is whether a particular grant of authority to a non-Article III tribunal creates such a significant incursion on the judicial branch, or abdication of that branch's authority, that it cannot constitutionally be tolerated even if the litigants consent.

This Court has never previously identified such a case. When it has struck down a grant of power to a non-Article III tribunal, it has always been in cases in which litigants had no option to proceed before a constitutional court. In *Marathon*, for example, this Court's holding was that "Congress may not vest in a non-Article III court the power to adjudicate, render a final judgment, and issue binding orders in a traditional contract action arising under state law, *without consent of the litigants*, and subject only to ordinary appellate review." *Thomas*, 473 U.S. at 584 (emphasis added). *Stern*, too, struck down §157(b)(2)(C) as applied in that case, and distinguished *Schor*, in part because the objecting creditor "did not truly consent to resolution of

[the debtor's] claim in the bankruptcy court proceedings." 131 S. Ct. at 2614.

Similarly, consent has long been the lynchpin of the magistrate system, whose constitutionality has not been impugned by this Court. *Compare Gomez* v. *United States*, 490 U.S. 858, 872 (1989) (holding, on constitutional avoidance grounds, that Congress "did not contemplate inclusion of jury selection in felony trials among a magistrate's additional duties" where the defendant did not consent), *with Peretz*, 501 U.S. at 932 (holding that a magistrate may constitutionally exercise that duty where the defendant did consent). "[T]he litigant's consent makes the crucial difference." *Peretz*, 501 U.S. at 933. As a personal right, the defendant's right to have an Article III judge preside over voir dire is waivable. *Id.* at 936-937. Moreover, a magistrate's presiding over jury selection with the defendant's consent does not offend the "structural protections provided by Article III" because "[m]agistrates are appointed and subject to removal by Article III judges"; "[t]he 'ultimate decision' whether to invoke the magistrate's assistance is made by the district court, subject to veto by the parties"; and "'the entire process takes place under the district court's total control and jurisdiction.'" *Id.*[4]

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[4] Indeed, this Court has long approved similar practices in an array of contexts. *See Kimberly* v. *Arms*, 129 U.S. 512, 524 (1889) (approving practice in chancery courts in which "the parties consent to the reference of a case to a master or other officer to hear and decide all the issues therein, and report his findings, both of fact and of law" and concluding that decision of master had same effect as final judgment from federal court); *Newcomb* v. *Wood*, 97 U.S. 581, 583 (1878) ("The power of a court of justice, with the consent of the parties, to appoint arbitrators and refer a case pending before it, is incident to all judicial administration, where the right

The same is true here. The 1984 Act did not "'transfer jurisdiction [to non-Article III tribunals] for the purpose of emasculating' constitutional courts." *Schor*, 478 U.S. at 850. To the contrary, the Act carefully and deliberately ensured that Article III district courts would exercise a full measure of control over bankruptcy proceedings. *Cf. id.* at 857 (examining the "congressional plan at issue and its practical consequences" before upholding the grant of authority). Bankruptcy courts are "unit[s]" of the district courts, 28 U.S.C. §151, and bankruptcy judges are appointed—and may be removed—by Article III judges, *id.* §152(a), (e). The district courts enjoy extensive supervisory authority over the administration of bankruptcy proceedings: Bankruptcy courts hear no matter unless the district court has made an appropriate reference, *id.* §157(a); the district court may withdraw that reference for cause at any time, *id.* §157(d); and the district court *must* withdraw the reference of any proceeding that requires meaningful interpretation of a federal statute (other than the Bankruptcy Code) affecting interstate commerce, *id.* And, of course, all bankruptcy court judgments are reviewable by Article III courts. *Id.* §158. While these provisions are inadequate to render constitutional bankruptcy courts' *nonconsensual* entry of final judgment in non-core proceedings, *see*

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exists to ascertain the facts as well as to pronounce the law. *Conventio facit legem.* In such an agreement there is nothing contrary to law or public policy."); *Heckers* v. *Fowler*, 69 U.S. (2 Wall.) 123, 127, 131 (1865) (upholding referrals of civil matters for adjudication by non-Article III entities where "the parties agreed in writing to refer the cause to a referee 'to hear and determine the same and all the issues therein, with the same powers as the court'" and noting that the "[p]ractice of referring pending actions under a rule of court, by consent of parties, was well known at common law").

Stern, 131 S. Ct. at 2619, they demonstrate that the 1984 Act does not strip the judicial power of the United States from constitutional courts in a way that raises concerns consent cannot address.

Like bankruptcy courts, magistrates enter final judgments with the consent of the litigants in proceedings that would otherwise be the exclusive province of Article III courts, and have long done so without constitutional controversy. *See* 28 U.S.C. §636(c)(1); *Pacemaker Diagnostic Clinic of Am., Inc.* v. *Instromedix, Inc.*, 725 F.2d 537, 547 (9th Cir. 1984) (en banc) ("We hold that consensual reference of a civil case to a magistrate is constitutional[.]"). The constitutionality of a magistrate judge's authority under §636(c)(1) to enter final judgment with the parties' consent has been upheld by every court of appeals to address the issue. *See* American Bar Association, *Resolution 109*, at 5 & n.23 (Feb. 11, 2013) (collecting cases); *see also id.* at 10 (resolving that "bankruptcy judges may constitutionally enter final orders and judgments in *Stern*-type proceedings upon the consent of the parties"). There can thus be no argument that the magistrate system has a more robust consent requirement or differs in any way meaningful to the constitutional analysis.

Accordingly, were this Court to determine that the bankruptcy court may not constitutionally enter final judgment on matters of private right even with the parties' consent, that ruling would logically require the invalidation not only of §157(c)(2), but the magistrate system as well. Such a result would contradict this Court's assurance that its holding in *Stern* "does not change all that much," 131 S. Ct. at 2620, and would work nothing short of a revolution in the federal courts. It should be rejected.

2. Notably, the court of appeals did not hold that §157(c)(2) was unconstitutional. Pet. App. 43a-44a. Instead, the court expressly limited its holding to "*Stern* objection[s]," *id.* 42a, 44a—that is, objections to the bankruptcy court's entry of final judgment on a claim that Congress had mistakenly designated as "core" but that in fact could not constitutionally be determined by a non-Article III tribunal. The court held only that a litigant could not waive such an objection (or, presumably, consent to the bankruptcy court's adjudication of such a claim). *Id.* 44a.

The court expressly distinguished non-core claims that Congress did not mistakenly classify as core, strongly suggesting that §157(c)(2)'s provision for bankruptcy court adjudication of such claims with the parties' consent *is* constitutional:

> Section 157(c)(2) permits a bankruptcy judge to enter final judgment in a noncore proceeding, but only if the parties consent and the district court decides to refer the matter to the bankruptcy court. Thus, a strong argument can be made that with respect to noncore proceedings Congress has left the essential attributes of judicial power to Article III courts, and so the structural interests at issue with regard to [matters mistakenly designated as] core proceedings are not present under the current statutory scheme applicable to noncore proceedings, thereby allowing room for notions of waiver and consent.

Pet. App. 43a. In support, the court cited this Court's decisions in *Peretz* and *United States* v. *Raddatz*, 447 U.S. 667 (1980), finding no Article III barrier to the op-

eration of certain aspects of the magistrate system. *Id.* 43a-44a.

The court of appeals' distinction between "*Stern*" claims and other "non-core" claims permitted it to avoid the question whether §157(c)(2) and §636(c)(1) (permitting magistrates to enter final judgment with the parties' consent) are constitutional under its analysis. The distinction, however, makes no sense. As this Court made clear last Term in *Executive Benefits*, *Stern* claims are no different from any other non-core claims. The Court recognized that the "core" and "non-core" categories represented Congress's attempt to delineate the proceedings over which bankruptcy courts could constitutionally enter final judgment absent the parties' consent. *Executive Benefits*, 134 S. Ct. at 2171 & n.7. Applying severability principles, the Court held that *Stern* claims mistakenly categorized as "core" under §157(b) may "proceed as non-core within the meaning of §157(c)." *Id.* at 2173. Accordingly, the same provisions for consent and the same structural safeguards apply to *Stern* claims as to other non-core claims. For the reasons above, bankruptcy courts may enter final judgment with the parties' consent as to both kinds of claims. Regardless of the Court's answer to the question of consent, however, the two kinds of claims must rise and fall together—along with the analogous provisions in the magistrate system.

B. Under The Bankruptcy Rules, A Litigant's Consent Must Be Express

Although a litigant may consent to having a bankruptcy court adjudicate a matter of private right, the

Federal Rules of Bankruptcy Procedure require such consent to be express.[5]

Consent to having a non-Article III judge enter final judgment in a private-right dispute is no small thing. It is a relinquishment of the right to have an Article III judge preside over a critical—indeed, determinative—stage of the proceedings. As with respect to federal magistrates, consent is "[a] critical limitation" on the bankruptcy court's "expanded" authority. *Gomez*, 490 U.S. at 870.

Congress accordingly required that "the consent of all parties to the proceeding" be obtained before a bankruptcy court may enter final judgment in a non-core proceeding. 28 U.S.C. §157(c)(2). And the Bankruptcy Rules provide, in clear and unambiguous terms, that "[i]n non-core proceedings final orders and judgments shall not be entered on the bankruptcy judge's order *except with the express consent of the parties.*" Fed. R. Bankr. P. 7012(b) (emphasis added); *see also id.* R. 7012 advisory committee's note (1987) ("A final order of judgment may not be entered in a non-core proceeding heard by a bankruptcy judge unless all parties *expressly* consent." (emphasis added)).

The rules further require parties to state in the complaint and responsive pleading whether the action is core or non-core and, if non-core, whether the party consents to entry of final orders or judgment by the bankruptcy judge.[6] And the rules make clear that

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[5] That is not to say that the *Constitution* requires that consent be express—a question this Court need not reach and which amicus does not address.

[6] *See* Fed. R. Bankr. P. 7008(a) (complaints filed in adversary proceedings "shall contain a statement that the proceeding is core or non-core and, if non-core, that the pleader does or does not con-

"[f]ailure to include the statement of consent does not constitute consent. Only *express consent* in the pleadings or otherwise is effective to authorize entry of a final order or judgment by the bankruptcy judge in a non-core proceeding." Fed. R. Bankr. P. 7008 advisory committee's note (1987) (emphasis added).

As this Court has observed, these rules are not mere suggestions—they are commands. *See Kontrick* v. *Ryan*, 540 U.S. 443 (2004) (Federal Rules of Bankruptcy Procedure are mandatory); *see also Bank of Nova Scotia* v. *United States*, 487 U.S. 250, 255 (1988) ("[I]n every pertinent respect, [a Federal Rule of Criminal Procedure is] as binding as any statute duly enacted by Congress, and federal courts have no more discretion to disregard the Rule's mandate than they do to disregard constitutional or statutory provisions."). Accordingly, only express consent is sufficient to authorize entry of final judgment by the bankruptcy court in non-core matters—as courts have held both before and after *Stern*. *See, e.g., In re Sheridan*, 362 F.3d 96, 100-101 (1st Cir. 2004); *In re Yochum*, 89 F.3d 661, 667 (9th Cir. 1996); *In re Brickell Inv. Corp.*, 922 F.2d 696, 701-702 (11th Cir. 1991); *Home Ins. Co.* v. *Cooper & Cooper, Ltd.*, 889 F.2d 746, 749 (7th Cir. 1989).[7]

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sent to entry of final orders or judgment by the bankruptcy judge"); *id.* R. 7012(b) (responsive pleadings filed in adversary proceedings "shall admit or deny an allegation that the proceeding is core or non-core. If the response is that the proceeding is non-core, it shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge").

[7] *See also In re Lyondell Chem. Co.*, 467 B.R. 712, 722 (S.D.N.Y. 2012) (in light of Rule 7012(b), "mere implied consent appears to be insufficient"); *In re Madison Bentley Assocs.*, 474 B.R. 430, 436 (S.D.N.Y. 2012); *In re New York Skyline, Inc.*, 512

Nor does *Roell* v. *Withrow*, 538 U.S. 580 (2003), warrant a different result. *Roell* held—as a matter of statutory construction—that implied consent may satisfy §636(c)(1), a conclusion it reached only after determining that implied consent was consistent with "the text and structure of [§636] as a whole," and that an express consent rule would "'frustrate the plain objective of Congress to alleviate the increasing congestion of litigation in the district courts.'" *Id.* at 587, 590-591. The Court cautioned, however, that consent should be implied only in limited, exceptional circumstances. *Id.* at 591 n.7 ("[D]istrict courts remain bound by the procedural requirements of §636(c)(2) and Federal Rule of Civil Procedure 73(b)."). *Roell* did not address or interpret the bankruptcy rules, and it simply is not possible to read those rules to permit implied consent.

The facts of *Roell* are also instructive. The party raising the constitutional challenge (Withrow) *expressly* consented to adjudication by the magistrate and then waited until after he had lost at trial to argue that the magistrate lacked the authority to enter a final judgment because opposing counsel had not done the same. *Roell*, 538 U.S. at 582-583. The Court understandably determined that Article III's protections could not be wielded by a *consenting* party as a tactical maneuver. *Id.* at 590 ("Withrow … received the protection intended by the statute[.]"). The Court had no opportunity to address a situation in which the complaining party has not expressly consented to adjudication by a non-Article III court.

B.R. 159, 177 (S.D.N.Y. 2014); *Kramer* v. *Mahia*, 2013 WL 1629254, at *4 (E.D.N.Y. Apr. 15, 2013); *Pryor* v. *Tromba*, 2014 WL 1355623, at *6 (E.D.N.Y. Apr. 7, 2014).

Adhering to the plain language of the bankruptcy rules ensures that the parties and the bankruptcy court are on notice of whether the bankruptcy court may enter final judgment from the outset of the proceeding. If a party fails to comply with the rules' requirement that it indicate in its initial pleading whether it consents to have the bankruptcy court "hear and determine" the matter, the other party may seek to enforce the rule in the bankruptcy court and demand an express statement one way or the other at the outset of the litigation. The rules thus operate to permit the diligent litigant to avoid being "sandbagged."

There are also other protections against a party's lying in wait on the issue of consent until after appeals have been taken and the merits decided, such as the ordinary principle of appellate waiver. As this Court has explained, "[n]o procedural principle is more familiar … than that a constitutional right, or a right of any other sort, may be forfeited … by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it." *Stern*, 131 S. Ct. at 2608 (internal quotation marks omitted). Thus, even though a party's failure to object to entry of judgment does not constitute consent, on review of that judgment a party must timely raise—or forfeit according to the ordinary doctrine of appellate waiver—the argument that consent was not properly obtained.

In this case, Sharif stated in his summary judgment motion that Wellness's adversary proceeding was a core matter. Mem. in Supp. of Summ. J. 1, Dkt. 65-2 (Bankr. N.D. Ill. June 22, 2010). Amicus takes no position as to whether that statement constituted express consent sufficient to satisfy the Bankruptcy Rules. Nor does it take a position as to whether Sharif forfeited his objection to

the bankruptcy court's entry of final judgment by failing to raise that objection properly on appeal.

CONCLUSION

This Court should hold that the bankruptcy court could constitutionally enter final judgment on petitioner's claim even without respondent's consent and should therefore reverse the judgment of the court of appeals. If the Court disagrees, it should hold that bankruptcy courts may constitutionally enter final judgment in non-core proceedings with the parties' consent, but that under the Federal Rules of Bankruptcy Procedure such consent must be express.

Respectfully submitted.

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