B.A.P. Case No. CC-22-1250

Bankr. No. 8:22-bk-10127

U.S. BANKRUPTCY APPLELLATE PANEL

FOR THE NINTH CIRCUIT COURT OF APPEALS

In re:

JASON M. LEE and JANICE CHEN,

Debtor

MISSION HEN, LLC,

Appellant,

v.

JASON M. LEE and JANICE CHEN,
and Amrane Cohen, Chapter 13 Trustee,

Appellees.

APPELLEES' OPENING BRIEF

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TABLE OF AUTHORITIES

Appellees Jason M. Lee and Janice Chen ("Appellees") hereby file their opening brief in response to the opening brief filed in this appeal by appellant Mission Hen, LLC ("Appellant")(collectively the "Parties").

I
STATEMENT OF ISSUE

There are three issues to be determined by this Court: (1) whether the Bankruptcy Court properly interpreted 11 U.S.C. §1322(c)(2), in conjunction with 11 U.S.C §506(a) and 11 U.S.C. §1325(a)(5), as allowing for the modification of the amount of Appellant's secured claim, (2) whether Appellees complied with the requirements as set forth in 11 U.S.C §109(e), and (3) whether Appellees complied with the requirements as set forth in 11 U.S.C. §1325(a)(6).

II
APPLICABLE STANDARDS OF REVIEW

"The bankruptcy court's findings of fact are reviewed for clear error and its conclusions of law are reviewed de novo." *In re Contractors Equip. Supply Co.* 861 F.2d 241, 243 (9th Cir. 1988) (citing *Ragsdale v. Haller*, 780 F.2d 794, 795 (9th Cir. 1986)). An appellate court will find clear error when it is left with a "definite and firm conviction" that mistake has been committed. *Id.* A "finding of is 'clear and erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has

been committed." *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948). If the lower court's "account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as trier of fact, it would have weighed the evidence differently. Where there are two permissible views of evidence, the factfinder's choice between them cannot be clearly erroneous. *United States v. Yellow Cab Co.,* 338 U.S. 338, 342 (1949).

III
STATEMENT OF THE CASE

On January 26, 2022, Appellees commenced the bankruptcy case underlying this appeal by filing a voluntary petition for relief under chapter 13 of the Bankruptcy Code, their Original Chapter 13 Plan, and Motion for Order Determining Value of Collateral (the "Valuation Motion") in the Central District of California. (Appx., 1, 2, 4). The hearing on the Valuation Motion was set for February 23, 2022.

On February 9, 2022, the Parties entered into a stipulation to continue the hearing on the Valuation Motion out to April 7, 2022, to allow Appellant additional time to conduct an appraisal. (Appx., 6) Said stipulation was entered by the Bankruptcy Court on February 17, 2022. (Appx., 7)

On March 8, 2022, Appellant filed and objection to the Confirmation of Appellees' Chapter 13 Plan. (Appx., 9). Appellee objected to the valuation of Appellees' residence, the proposed interest on Appellant's secured claim, the feasibility of Appellees' plan and to whether Appellees were making their best efforts to repay the unsecured creditors. (Appx., 9: 175-180).

On March 24, 2022, Appellant filed their Opposition to Appellees' Valuation Motion. (Appx., 12). Appellant's, in their opposition, alleged the fair market value of Appellees' residence to be $1,360,00.00. (Appx. 11:303 [LL 19-20]).

On April 8, 2022, the Bankruptcy Court set an evidentiary hearing to determine the value of Appellee residence. (Appx, 13). The hearing was set for and heard on June 22, 2022.

On July 8, 2022, Appellees filed amended schedules I and J of their bankruptcy petition and their First Amended Chapter 13 Plan. (Appx., 16, 17). Appellees amended their plan to address the arrears listed on PHH Mortgage's filed proof of claim.

On July 8, 2022, Appellant filed an objection to Confirmation of Appellee's Amended Chapter 13 Plan. (Appx., 18). Appellee objected to the valuation of Appellees' residence, the proposed interest on Appellant's secured claim, and the feasibility of Appellees' plan. (Appx., 18: 389-392).

On July 20, 2022, Appellee filed a Declaration Re: Contribution to Plan. (Appx., 19).

On July 29, 2022, the Bankruptcy Court entered an Order Re: Motion for Order Determining the Value of Collateral (the "Valuation Order"). (Appx., 22). Per the Valuation Order, Appellees' residence was valued at 1,225,000.00. (Appx., 22: 416). Based on said value, PHH Mortgage, the senior lienholder, was determined to have a secured claim of $959,526.94 and Appellee was determined to have a secured claim of $265,473.06. (*Id.)*

On August 19, 2022, Appellee's filed their Second Amended Chapter 13 Plan. (Appx. 23). Appellees amended the conform with the Valuation Order.

On September 1, 2022, Appellant filed an objection to Confirmation of Appellees' Second Amended Chapter 13 Plan. Appellant objected to the feasibility of Appellees' plan, the proposed interest on Appellant's secured claim, Appellees' §109(e) eligibility, and to whether Appellees were making their best efforts to repay the unsecured creditors. (Appx., 24: 435-441).

On October 5, 2022, Appellee's filed their Third Amended Chapter 13 Plan. (Appx. 27). Appellee's amended the plan to adjust the interest rate on Appellant's secured claim.

On October 13, 2022, Appellant filed an objection to Confirmation of Appellees' Third Amended Chapter 13 Plan. Appellant objected to the feasibility

of Appellees' plan, Appellees' §109(e) eligibility, and the modification of Appellant's claim as proposed. (Appx., 32: 690-698).

On October 21, 2022, Appellees filed their Fourth Amended Chapter 13 Plan (Appx., 35) and Reply to Appellant's objection to Confirmation of Appellee's Third Amended Plan. (Appx., 36). Appellees amended the plan to address typographical errors.

On October 27, 2022, the Bankruptcy Court, after reviewing all filed objections and entertaining oral arguments from both the Appellee and Appellant, overruled Appellant's objections based on feasibility (Appx., 50: 1020 [LL 9-17]) and the anti-modification clause of §1322(b)(2). (Appx., 50: 1026 [13-24]).

On December 1, 2022, after determining Appellees were both current on their post-petition mortgage payments to PHH Mortgage (Appx. 51:1043 [LL 9-14]) and plan payments (Appx., 51: 1040 [LL 1-3]), the Bankruptcy Court confirmed Appellee's Fourth Amended Chapter 13 Plan.

On December 16, 2022, the Bankruptcy Court entered an Order Confirming Chapter 13 Plan, wherein it confirmed the Appellee's Fourth Amended Chapter 13 Plan. (Appx., 48).

On December 29, 2022, Appellant initiated this instant appeal.

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IV
ARGUMENT

A. SUMMARY OF ARGUMENT

The "plain language" of §1325(a)(5) of the Bankruptcy Code (all future code sections will reference the Bankruptcy Code), as made applicable by the "plain language" in §1322(c)(2), clearly allows for Appellee to provide for Appellant's claim, as determined by §506(a), and not any amount in excess of that determination, as part of the allowed secured claim. This fact is supported by relevant case law and acts of Congress. Therefore, the Bankruptcy Court did not err in allowing Appellant's claim to be bifurcated and crammed down.

Furthermore, the value of Appellees' residence, a sum necessary for a §506(a) determination, was not readily ascertainable, which is evidenced by the fact that an evidentiary hearing was required. Therefore, the Bankruptcy Court was forced to look outside the schedules to make the correct determination that Appellees where within the debt limits as set forth in §109(e).

The Bankruptcy Court considered Appellant's objections, the Trustee's recommendation, and the evidence at hand. Based on those considerations, the Bankruptcy Court correctly determined that Appellees' plan had a reasonable

chance of success and thus feasible pursuant to the requirements set forth in §1325(a)(6).

B. THE PLAIN LANGUAGE FOUND IN 11 U.S.C. §1322(c)(2) AND 11 U.S.C. §1325(a)(5) ALLOWS FOR THE BIFURCATION AND CRAM DOWN OF APPELLANT'S CLAIM

This Court's analysis begins by looking at the language of the statute itself to determine if the statute is plain or ambiguous. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 649 132 S. Ct. 2065, 182 L. Ed. 2d 967 (2012). "[I]n determining plainness or ambiguity, courts are directed to look 'to the language itself, the specific context in which the language is used, and the broader context of the statute as a whole.'" *In re Phillips,* 485 B.R. 53, 56 (Bankr. E.D.N.Y. 2012) (quoting *Robinson v. Shell Oil Co.,* 519 U.S. 337, 341, 117 S. Ct. 843, 136 L.Ed. 2d 808 (1997)). "Courts are required to apply the plain meaning of the statute, unless the statute is ambiguous or applying the unambiguous plain meaning would yield an absurd result." *Id.* If the statutory language is clear, a court's analysis must end there. *Hartford Underwriters Inc. Co. v. Union Planters Bank, Nat'l Ass'n*, 530 U.S. 1, 6, 120 S. Ct. 1942, 147 L. Ed. 2d 1 (2000) ("[W]hen the statute's language is plain, the sole function of the courts – at least where the disposition required by text is not absurd – is to enforce it according to its terms."

§1322(b) of the Bankruptcy Code reads in pertinent part:

Subject to subsections (a) and (c) of this section, the plan may –

(1)… ;

(2)modify the rights of holders of secured claim, other than a claim secured by a security interest in real property that is the debtor's principal residence…

11 U.S.C. §1322(b)

Here, there is no dispute that the subject property is Appellee's principal residence. Therefore, it would appear that the restrictions set forth in §1322(b)(2), commonly known as the "anti-modification clause", would apply. There are, however, exceptions to the application of the anti-modification clause set forth in §1322(c) that clearly apply here.

§1322(c) of the Bankruptcy Code reads in pertinent part:

Notwithstanding subsection (b)(2) and applicable non-bankruptcy law-

1) … ; and

2) in a case in which the last payment on the original payment schedule for a claim secured only by an interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.

11 U.S.C. §1322(c).

The Parties are asking this Court to resolve whether the phrase "payment of the claim as modified" permits modification of the "claim" or whether it only

permits modifying the "payment of claim." Appellee asserts that the text allows for modification of the "claim" and that modification of the allowed claim amount through bifurcation and cram down under §1325(a)(5)(B)(ii) and §506(a)(1) is permitted.

Looking at the plain language of §1322(c)(2), it is clear that the structure of the text supports Appellee's argument that "as modified" refers to "the claim." Such a reading comports with the grammatical rule of the last antecedent, i.e., that a phrase should modify its immediate antecedent. Here, the phrase "as modified" should be read as modifying the word "claim," which is its immediate antecendent. *Am. Gen. Fin., Inc. v. Paschen (In re Paschen),* 296 F.3d 1203, 1208 (11th Cir. 2002)(rejecting the argument that "as modified" relates to "payment of the claim" rather than the "claim" as a "grammatically strained reading of the statute").

> §1325(a)(5) of the Bankruptcy Code reads in pertinent part:
> with respect to each allowed secured claim provided for by the plan –
> (B)
> (i) the plan provides that-
> (I) the holder of such claim retain the lien securing such claim until the earlier of –
> (aa) the payment of the underlying debt determined under nonbankruptcy law; or
> (bb) discharge under §1328; and

> (II) if the case under this chapter is dismissed or converted without competition of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;
>
> (ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount such claim; and
>
> (iii) if-
>
> (I) property to be distributed pursuant to this subsection is in the
>
> of periodic payments, such payments shall be in equal monthly amounts…

11 U.S.C §1325(a)(5).

Looking at the "plain language" of §1325(a)(5), as made applicable by §1322(c)(2), it clearly allows for Appellee to provide for Appellant's claim, which is secured by Appellee's primary residence, by paying Appellant the value of its secured claim, as determined by §506(a), and not any amount in excess of that determination, as part of the allowed secured claim.

C. CASE LAW AND THE ACTS OF CONGRESS SUPPORT THE PROPOSITION THAT APPELLEE IS ALLOWED TO BIFURCATE AND CRAM DOWN APPELLANT'S CLAIM

In *In re Paschen*, the Eleventh Circuit concluded that the §1322(c)(2) exception works through §1325(b)(5) to allow not only payment terms to be modified, but also to allow for a §506(a) valuation of such claim. In *Hurlburt v. Black,* 925 F.3d 154 (4th Cir. 2019), the Fourth Circuit concluded that the

§1322(c)(2) exception providing for the §1325(a)(5) treatment of claims that come due in full during the period of the plan to be modified, includes a §506(a) valuation of such claims.

Appellant directs this Court to the Supreme Court decision, *Nobelman v. American Savings Bank (In re Nobelman),* 508 U.S. 324, 113 S. Ct. 2106, 124 L. Ed. 2d 228 (1993), the Fourth Circuit decision in *Witt v. United Cos. Lending Corp. (In re Witt)*, 113 F.3d 508 (4th Cir. 1997) (subsequently overruled in *Hurlburt)* and the dissent in *Hurlburt*, for the proposition that the provisions of §1322(b)(2), when read in conjunction with §506, precludes bifurcation of any and all claims secured by the debtor's primary residence if there is any value to protect such lien.

Appellant's cited authorities are not convincing for two reasons. First, as discussed above, the structure of the text supports a plain reading that unambiguously allows debtors to bifurcate the claims secured by their principal residences if the last payment on the original payment schedule is due before the final payment under the plan.

Second, in 1994, one year after the decision in *Nobelman*, Congress amended the §1322, adding §1322(c) as it now exists (relettering former paragraph (c) as (d)) to add an exception to §1322(b)(2). When the Supreme Court issued its

ruling in *Nobleman*, there was not, and there could not have been, consideration of the then yet to be enacted exception to §1322(b)(2).

Collier on Bankruptcy provides an extended discussion of this statutory exception in §1322(c)(2) to the residence secured claim limitations in §1322(b)(2), which in pertinent part reads:

> P 1322.17 Exceptions to the Rule Against Modification of Home Mortgages; §1322(c)(2)
>
> Section 1322(c)(2) carves out an exception to the rule of section 1322(b)(2), which prohibits the modification of the rights of holders of claims secured solely by a security interest in real estate that is the debtor's principal residence. It provides that if the last payment on the original payment schedule for such a mortgage is due before the final payment under the plan is due the debtor may pay the claim as modified pursuant to section 1325(a)(5).
>
> Because the plan may not extend beyond five years, this section will encompass short term mortgages, fully matured mortgages, long-term mortgages on which debtor has nearly completed payments, and mortgages with balloon payments. Congress obviously believed that debtors with such mortgages need additional protection. Short term and balloon payment mortgages often have high rates or terms that are particularly unfavorable, which Congress has deemed deserving of scrutiny…
>
> The legislative history of the provision states that it was intended to overrule the decision of the Court of Appeals of the Third Circuit in *First National Fidelity Corp. v. Perry*, which held that a debtor could not utilize section 1325(a)(5) to provide for a home mortgage protected from modification by section 1322(b)(2)…
>
> The exception from the modification prohibition also overrules for such mortgages the Supreme Court's decision in *Nobelman v. American Savings Bank.* That decision was based solely on section 1322(b)(2), to which section 1322(c) is an [subsequently enacted]

> exception. Again, it is not surprising that Congress would create an exception for the types of mortgages described above, which are undersecured.

8 Collier on Bankruptcy, P 1332.17 (Sixteenth Edition)

Therefore, based on the clear and unambiguous language of Congress' amendment of §1332, which occurred after the ruling in *Nobel,* there is no doubt the Bankruptcy Court had the authority to bifurcate and cramdown Appellant's claim.

D. THE UNSECURED PORTION OF APPELLANT'S CLAIM WAS NOT READILY ASCERTAINABLE

The Ninth Circuit's decision in *Scovis v. Henrichsen (In re Scovis),* 249 F. 3d 975, 981 (9th Circuit 2001) provides binding precent for deciding that under §506(a), undersecured debt must be considered unsecured for a §109(e) eligibility determination. A debtor must meet the debt limits as of the petition date. *Id* at 981. Initially, a court looks at the debtor's schedules to determine whether the debtor meets the debt limit requirements. *Id* at 982. A court may look beyond the schedules if there are allegations or indicia that the schedules were not filled out in good faith. *Id.*

The facts of the present case are distinguishable from those in *Scovis. In Scovis* the debtors valued their residence at $325,000.00. In their petition the

debtors listed a first deed of trust that secured a note totaling $249,026.91 and a judgment lien totaling $208,000.00, which was also secured by their residence. The debtors also listed on their petition a homestead exemption of $100,000.00. By applying §506(a) the *Scovis* Court determined that $132,026.91 of the judgement lien was unsecured debt. The remaining $75,973.09 was determined unsecured because it was readily ascertainable that the debtor could avoid the lien based on the debtors homestead exemption. The *Scovis* Court found that even though the lien avoidance was filed well after the filing of the case, the homestead exemption's effect on the status of debtor's debt as secured or unsecured was "readily ascertainable."

In *Slack v Wilshire Ins. Co. (In re Slack),* 187 F.3d 1070, 1073-1074 (9th Cir, 1999) the Ninth Circuit stated that the "definition of 'ready determination' turns on the distinction between a simple hearing to determine the amount of a certain debt, and an extensive and contested evidentiary hearing in which substantial evidence may be necessary to establish amount of liability." (quoting *Federal Deposit Ins. Corp.v. Wenberg (In re Wenberg)*, 94 B.R. 631, 634 (B.A.P. 9th Cir. 1988)) The Court went on to state:

> "[U]nder this circuit's 'readily determinable' standard, if the amount of the creditor's claim at the time of the filing of the petition is ascertainable with certainty, a dispute regarding liability will not necessarily render the debt unliquidated. Whether the debt is subject to 'ready determination' will depend on whether the amount is easily

> calculable or whether extensive hearing will be needed to determine the amount of the debt or the liability of the debtor."

Id. at 1074.

In *Scovis* the Court went on to state:

> "Although we were defining the term 'liquidated" and not "secured", we included in the eligibility determination readily ascertainable amounts, even though the liability on the debt had not been finally decided. This principle of certainty carries equal force in the present context, where the homestead exemption's effect on the status of Debtors' debt as secured or unsecured is readily ascertainable."

Scovis, 249 F.3d at 984.

In *Scovis* there was no dispute regarding the amount owed on the first deed of trust, the amount owed on the secured judgment lien, the value of debtor's residence, or the amount of debtor's homestead exemption. There appeared to be no reason to look beyond the schedules. Here, however, from the initial filing of Appellees' bankruptcy petition, which was contemporaneously filed with Appellees' Motion to Value (Appx. 1, 4), there has been a dispute over the value of Appellant's residence. Unlike in *Scovis*, the secured and unsecured portions of Appellant's claim were not readily ascertainable or determinable. This is evidenced by Appellant's vigorous objections to the Appellees' valuation of their residence. In its Objection to Confirmation of Chapter 13 Plan, Appellant argued the fair market value of Appellees' residence was "significantly greater than" valuation listed by Appellee and that its claim was wholly secured. (Appx., 9: 177

[LL 16-19]). Furthermore, in Appellant's Opposition to Appellees' Valuation Motion, it claimed the value of Appellee's residence was $1,360,00.00. (Appx. 11:303 [LL 19-20]). Appellant's assertions called into question the veracity of Appellees' valuation and consequently the value listed on schedule A of their petition. In fact, an evidentiary hearing was required to settle the dispute. Hypothetically, if Appellant's claim was based on a judgment lien and Appellees were claiming a $600,000.00 homestead exemption, Appellees would concede that it would be "readily ascertainable" to determine Appellant's claim completely unsecured, thus making them ineligible for chapter 13 relief. That was not the case with the facts at hand.

As the value of Appellees' residence was not readily ascertainable, which is evidenced by the fact that an evidentiary hearing was required to make that determination, the Bankruptcy Court was forced to look outside the schedules to determine whether Appellees complied with the debt limits set forth in §109(e). After conducting an evidentiary hearing, the Bankruptcy Court determined that, as of the date the petition was filed, the value of Appellee's home was $1,225,000.00. Thus, Appellant's claim of $469,503.56 was bifurcated into a secured claim of $265,473.06 and an unsecured claim of $204,030.50. (Appx., 22) Well within the debt limits as set forth in §109(e).

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E. APPELLEES WERE IN COMPLAINCE WITH THE DEBT LIMITS AS SET FORTH IN 11 U.S.C. §109(e)

While the debt limitation found in §109(e) have been increased and simplified since the filing of Appellant's chapter 13 case, the operative debt limits when Appellants filed were $419.275.00 in unsecured debt and $1,257,850.00 in secured debt.

The Total amount of secured claims owed by the Debtors at the time of filing was $1,225,261.00, which includes the secured portion of Mission Hen's Claim of $265,734.06 (Appx., 22) as well as the amount owed to the senior lienholder, PHH Mortgage Corporation ($959,526.94 as determined by Valuation Order). (Appx., 22: 416). The Appellees' analysis of the secured debts only includes the secured portion of Mission's claim as determined by the Bankruptcy Court after holding an evidentiary hearing. This reflects the reality of what the secured debt was at the time of filing based on the value of the residence, which at that time was not readily ascertainable as argued above. The claims of the homeowners associations, Stonetree Manor and Woodbury Community Association, which could readily be ascertained as unsecured are not included in the secured debt analysis.

When Appellees filed their Chapter 13 schedules, the total amount of unsecured claims listed under schedules E-F was $83,185.04. (Appx., 1: 28) When the unsecured portion of the claims of Mission Hen's claim ($204,030.50) (Appx., 22) and the HOA claims ($21,030.39, and 11,060.08) (Appx., 1: 20) are added to that tally the total unsecured claims per the schedules is $319,306.01.

Thus, Appellees were within the bounds of the debt limits found in §109 (e) that were operative at the time Appellee's bankruptcy petition was filed. Appellees do not assert that post-petition events in their bankruptcy case should alter the analysis under §109 (e). The values stated above clearly reflect the nature and amount of Appellant's claim on the day Appellees' case was filed. The determination of the secured portion of Appellant's claim, determined by the Bankruptcy Court after an evidentiary hearing, should not be construed as post-petition event, because it determined the secured value as of the filing date of Appellees' petition. Furthermore, it would be patently absurd to give greater worth to the value of Appellant's claim found on Appellees' schedules than to the value as determined by the Bankruptcy Court after an evidentiary hearing.

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F. APPELEES WERE IN COMPLAINCE WITH THE FEASIBILITY REQUIREMENTS AS SET FORTH IN 11 U.S.C. §1325(a)(6)

Pursuant to §1325(a)(6), a court cannot confirm a chapter 13 plan unless, "after considering all creditors' objections and receiving the advice of the trustee, the judge is persuaded that the debtor will be able to make all payments under the plan." *Till v. SCS Credit Corporation,* 541 U.S. 465, 158 L. Ed. 2d 787, 124 S. Ct. 1951, 1962 (2004). If the lower court's "account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as trier of fact, it would have weighed the evidence differently. Where there are two permissible views of evidence, the factfinder's choice between them cannot be clearly erroneous. *United States v. Yellow Cab Co.,* 338 U.S. 338, 342 (1949).

Here, the Bankruptcy Court considered Appellant's objections and the advice of the Trustee and based on said considerations determined the plan to be feasible. Specifically, the Trustee advised the Bankruptcy Court that that he did not have any objection regarding feasibility and in fact determined the plan feasible. (Appx., 50:1010 [LL 15-25], 50:1011 [LL 1-10]). The Bankruptcy Court went on to list the reasons why it determined the plan feasible. (1) The Trustee had

no issues regarding feasibility. (2) Appellant failed to file an evidentiary objection. (3) The declaration was satisfactory. (Appx., 50:1020 [LL 9-17])

Linda Chen, under penalty of perjury, filed a declaration with the Bankruptcy Court, which stated that she (1) was related to Appellees, (2) resided with Appellees, (3) was committed to funding Appellees plan, (4) was willing to do so for the entirety of the plan, and (5) that the sale proceeds of her home provided her with the funds to do so. (Appx., 19). Based on a careful review of the evidence the Bankruptcy Court determined that Appellees' plan was feasible. The Bankruptcy Court's decision was not arbitrary or clearly erroneous.

Furthermore, by time of the final confirmation hearing Appellees were post-petition current with both their plan payments (Appx., 51: 1040 [LL 1-3]) and mortgage payments. (Appx. 51:1043 [LL 9-14], 47). Appellees had fallen behind on their mortgage payments, however this was not due to an inability to make the payments. The reality is that Appellees were mistakenly sending in an incorrect amount. Appellees were mistakenly making monthly mortgage payments in the amount of $2,997.67 (Appx., 20:401-406, 26:558-563), when in fact the correct monthly mortgage payments were in the amount of $4,037.61. (Appx., 31: 641). When Appellees became aware of their mistake, they promptly cured the deficiency. (Appx., 38: 835-839).

"A debtor does not need to prove that his or her plan is guaranteed to be successful. To demonstrate that a plan is feasible, chapter 13 debtors must show that their plan has a reasonable chance of success." *In re Ewing,* 583 B.R. 252, 259 (Bankr. D. Mont. 2018). Here, the Bankruptcy Court considered Appellant's objections, the Trustee's recommendation, and the evidence at hand. Ultimately, the Bankruptcy Court correctly determined that Appellees' plan was feasible.

V
CONCLUSION

For the foregoing reasons, Appellees, Jason M. Lee and Janice Chen, respectfully request that this panel affirm the Bankruptcy Court's Confirmation Order.

Dated: 6/16/2023

Respectfully submitted,

By: */s/ Christopher J. Langley*

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CERTIFICATE OF COMPLIANCE WITH BANKRUPTCY RULE 8015

The undersigned certifies that the following parties have an interest in the outcome of this appeal. These representations are made to enable judges of the Panel to evaluate possible disqualification or recusal:

- Mission Hen, LLC
- Brian A. Piano

The undersigned certifies that the following are known related cases and appeals:

- *In re Jason M. Lee and Janice*
  Bankruptcy Court, Central District of California, Santa Ana Division

The undersigned certifies this Opening Brief has 4,393 words, which is less than the 13,000-word limit under Fed. R. Bankr. Proc. 8015(a)(7).

Dated: 6/16/2023

Respectfully submitted,

By: */s/ Christopher J. Langley*
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