No. 22-60052

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE: JASON PHILIP POWELL,
Debtor.

TICO CONSTRUCTION COMPANY INC.,
Appellant,
v.
WILLIAM ALBERT VAN METER,
CHAPTER 13 TRUSTEE; ET AL.,,
Appellees.

On Appeal from the United States Bankruptcy
Appellate Panel for the Ninth Circuit
No. 22-1014
The Honorable Robert J. Faris, Julia W. Brand,
and William J. Lafferty III

AMICUS CURIAE BRIEF OF THE NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER IN SUPPORT OF APPELLEES

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Powell v. Van Meter et al., No. 22-60050.

Pursuant to Fed. R. App. P. 26.1, Amicus Curiae, the National Consumer Bankruptcy Rights Center, makes the following disclosure:

1) Is party/amicus a subsidiary or affiliate of a publicly owned corporation? If yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party. NO

2) Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list below the identity of the corporation and the nature of the financial interest. NO

This day of August 1, 2023.

s/ Christina L. Henry

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INTEREST OF AMICUS CURIAE

The National Consumer Bankruptcy Rights Center (NCBRC) is a non-profit organization dedicated to protecting the integrity of the bankruptcy system and preserving the rights of consumer bankruptcy debtors. To those ends it provides assistance to consumer debtors and their counsel in cases likely to impact consumer bankruptcy law importantly. Among other things, it submits amicus curiae briefs when in its view resolution of a particular case may affect consumer debtors throughout the country, so that the larger legal effects of courts' decisions will not depend solely on the parties directly involved in the case. The Center also strives to influence the national conversation on bankruptcy laws and debtors' rights by increasing public awareness of and media attention to the important issues involved in bankruptcy proceedings.

NCBRC has filed *amicus curiae* briefs in numerous cases seeking to protect the rights of consumer bankruptcy debtors. *See, e.g., Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 143 S. Ct. 1689 (2023); *Evans v. McCallister (In re Evans)*, 69 F.4th 1101 (9th Cir. 2023); *Numa Corp. v. Diven*, 2022 U.S. App. LEXIS 32224, 2022 WL 17102361 (9th Cir. 2022).

The result in the case at bar will affect the administration of many consumer cases in this Circuit. If the Bankruptcy Appellate Panel ("BAP") decision is not affirmed, it will create an unenumerated exception to the rule that a Debtor has an

absolute right to dismiss a chapter 13 bankruptcy. Unless the BAP decision is affirmed, many individuals who have chosen to repay their debts through a chapter 13 bankruptcy may be dissuaded from filing bankruptcy and instead opt to file a chapter 7 bankruptcy. This is contrary to the intent of Congress and the incentives built into a chapter 13 bankruptcy.

No parties have consented to the filing of this amicus brief by NCBRC. NCBRC is filing a Motion for Leave To File Amicus Brief contemporaneously with this brief.

SUMMARY OF ARGUMENT

The Ninth Circuit in *Nichols v Marana Stockyard & Livestock Mkt., Inc. (In re Nichols)*, 10 F. 4th 956 (9th Cir. 2021), recognized that a chapter 13 debtor's right to voluntarily dismiss a pending chapter 13 case is absolute, mandated by the plain text of 11 U.S.C. § 1307(b). Despite this recent precedential ruling, Appellant seeks to carve out a non-statutory exception to this mandated right, both flying in the face of precedent while also failing to acknowledge the voluntary nature of a chapter 13 case. The Supreme Court recognized that Congress had expressed concern that forcing debtors "to toil for the benefit of creditors" would violate "the Thirteenth Amendment's involuntary servitude prohibition." *Toibb v. Radloff*, 501 U.S. 157, 165-66 (1991). Congress thus structured chapter 13 as a "completely voluntary" repayment program. H.R. Rep. No. 95-595, at 120 (1977).

A debtor cannot be forced into a chapter 13 repayment plan under any circumstances. Only a debtor may petition for chapter 13 bankruptcy and file a plan. 11 U.S.C. §§ 301(a), 1321. Likewise, a debtor cannot be forced to stay in a chapter 13 case involuntarily. A chapter 13 debtor has a right to dismiss his case outright "at any time," even if a motion to convert is pending. *Id.* § 1307(b); *Murphy v. Marinari* (*In re Marinari*), 838 F. App'x 709, 711 (3d Cir. 2021). Congress reinforced the right of immediate dismissal by making any waiver of such right unenforceable. 11 U.S.C. § 1307(b).

Chapter 13 was intended to "encourage more debtors to repay their debts over an extended period rather than to opt for straight bankruptcy liquidation and discharge." H.R. Rep. No. 95-595, at 5 (1977). "In return for a debtor's resolve to commit more of his assets to the repayment of his creditors than would be required under a Chapter 7 liquidation, Chapter 13…provides the debtor with a number of benefits unavailable under Chapter 7," such as the ability to retain property while restructuring debt. *In re Peters*, 44 B.R. 68, 71 (Bankr. M.D. Tenn. 1984); *see also In re Lennon*, 65 B.R. 130, 132 (Bankr. N.D. Ga. 1986) ("The statutory scheme of the Bankruptcy Code reflects a congressional intent to make attractive and encourage greater use, which must be voluntary, of Chapter 13 rehabilitation and creditor payment; rather than Chapter 7 liquidation with little or no creditor payment.") The right to voluntarily dismiss a chapter 13 case is essential to Congress's purpose of encouraging debtors to take advantage of chapter 13 where possible and avoiding penalizing debtors for choosing chapter 13. H.R. Rep. No. 103-835, at 57 (1994).

Not only does Appellant ignore precedent and policy, but its entire argument is premised on a factual finding that was never made by the trial court, here the bankruptcy court: that the Debtor Jason Powell was ineligible to be a chapter 13 debtor. Recognizing that "[b]ad faith and debt limits are irrelevant" to Debtor's absolute right to voluntarily dismiss his case, the bankruptcy court had no reason to

weigh admissible evidence or make a factual finding on Appellant's assertion that Debtor was ineligible. It followed the plain text of the statute and *Nichols* and granted debtor's motion to dismiss as a matter of law. As this court is well aware, only a trial court may make a factual finding; an appellate court may not. Without this critical finding, this appeal must fail.

Appellant feverishly argues that allowing debtors to voluntarily dismiss their chapter 13 cases when they never intended to complete a plan or misled the bankruptcy court as to their eligibility to be chapter 13 debtors would undermine the whole purpose of the right to file a chapter 13. However, as recognized by *Nichols* and other authorities, "[t]he Bankruptcy Code provides ample alternative tools for bankruptcy courts to address debtor misconduct." *Nichols*, 10 F. 4th at 956, 964. The bankruptcy court had the discretion to impose a bar to refiling for a substantial period of time or even to prevent Debtor from ever seeking to discharge Appellant's claim by dismissing with prejudice. The bankruptcy court exercised its discretion here to not impose a bar, but the remedy is available. Moreover, the dismissal of the bankruptcy case will now enable Appellant to exercise its state court enforcement rights unfettered. Appellant is not damaged.

ARGUMENT

I. Statutory Framework

Bankruptcy: Bankruptcy law reflects a balancing act in which Congress has established the rules for adjusting debtor-creditor relationships. The two main purposes of bankruptcy are to provide a fresh start to the debtor and to facilitate the fair and orderly repayment of creditors to the extent possible. *See Burlingham v. Crouse*, 228 U.S. 459, 473 (1913). Individuals seeking bankruptcy relief generally seek liquidation under chapter 7 of the Bankruptcy Code or propose a plan for repayment of a portion of their debt under chapter 13.

Chapter 13: Chapter 13 permits an individual debtor with a source of regular income to receive a discharge of certain debts after completing a bankruptcy plan that meets the Bankruptcy Code's requirements. Chapter 13 debtors must file a debt adjustment plan, also known as a chapter 13 plan. 11 U.S.C. § 1321. The chapter 13 plan, if confirmed, is the blueprint for adjusting debtor-creditor relationships.

A chapter 13 case is a unique proceeding under the Bankruptcy Code. It is a chapter where the choice to participate is entirely voluntary by the debtor. *Id.* § 301(a). Only the debtor may file a plan. *See id.* § 1321. Similarly, a debtor cannot be forced to stay in a chapter 13 case involuntarily. *See Toibb*, 501 U.S. at 165-66.

Chapter 13 debtors pay a consequence for voluntarily subjecting themselves to a chapter 13 proceeding. Not only does their property, as it exists on the petition date, become subject to the control of the court, as stated in 11 U.S.C. § 541(a), but they also make available future income, as required by the Code, to repay their creditors for a period of up to five years under their chapter 13 plan, as mentioned in 11 U.S.C. § 1322(b). The income they pay in accordance with their chapter 13 plans is income that they could have retained if they had filed a chapter 7 case.

In addition, as is the case when any bankruptcy case is filed, the filing can be reflected on the debtor's credit for ten years, even if the case is voluntarily dismissed. *See* 15 U.S.C. § 1681e(a)(1). In exchange, debtors get the benefit of the automatic stay provided by 15 U.S.C. § 362 and obtain the necessary breathing space in which to propose a plan to reorganize their finances. *See* 11 U.S.C. §§ 362, 1321. Assuming all goes as the plan contemplates, then the debtor receives a discharge of all remaining dischargeable debt. *See id.* § 1328.

II. Debtor's Right to Dismiss is Absolute Under the Code's Unambiguous Language

Congress structured chapter 13 as a "completely voluntary" repayment program. H.R. Rep. No. 95-595, at 120 (1977). The right to voluntarily dismiss a chapter 13 is essential to Congress's purposes of encouraging debtors to take advantage of chapter 13 where possible and of avoiding penalizing debtors for

choosing chapter 13. *See Perry v. Commerce Loan Co.*, 383 U.S. 392, 395 (1966); H.R. Rep. No. 103-835, at 57 (1994).

A debtor's right to dismiss a chapter 13 is provided by 11 U.S.C. § 1307(b), is not time-sensitive, and is not conditioned on anything other than the fact the case has not been converted from another chapter:

> (b) On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

As with any exercise in statutory interpretation, a court begins with the text of the statute, as *Nichols* did for the Ninth Circuit. *See Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004); *United States v. Ron Pair Enters.*, 489 U.S. 235 (1989). Where the statutory language is unambiguous, the court need not look further.

The language of 11 U.S.C. § 1307(b) is unambiguous. It grants the debtor an absolute right to dismiss a chapter 13 case, so long as the case has not been converted. It affords no leeway to the court by using the word "shall" dismiss. The term "shall" creates an "obligation impervious to judicial discretion." *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998). Therefore, reading the section in its ordinary and natural sense, when a chapter 13 debtor requests dismissal of an unconverted case, the court must grant the motion.

Although normally not relevant when considering an unambiguous statute, the legislative history of 11 U.S.C. § 1307(b) reinforces the concept that no exceptions limit a debtor's right to dismissal. The Senate Report accompanying the Bankruptcy Reform Act of 1978 states that this section confirms "without qualification" the right "of a chapter 13 debtor…to have the chapter 13 dismissed." S. Rep. No. 95-989, at 141 (1978). The House Report confirms the same right. H.R. Rep. No. 95-595, at 428 (1977). Because chapter 13 is voluntary, Congress intended to give the debtor control and the ability to compel dismissal.

III. The Rationale Behind This Court's Now Overruled Rosson Decision was Undermined by Law v. Siegel

In 2008 this court, relying on the Supreme Court's decision in *Marrama v. Citizens Bank*, 549 U.S. 365 (2007), decided *Rosson v. Fitzgerald* (*In re Rosson*), 545 F.3d 764 (9th Cir. 2008), which held a debtor's bad faith or abuse of process could be a bar to the absolute right to dismiss a chapter 13 case under 11 U.S.C. § 1307(b). The debtor in *Rosson* had defied a court order to turn over the proceeds of an expected arbitration award to the chapter 13 trustee, causing the court to sua sponte convert the case. However, before that order entered, the debtor moved for voluntary dismissal under section 1307(b); the bankruptcy court denied that motion. This court affirmed, referring to broad proclamations in *Marrama*, a case where a debtor sought to convert a chapter 7 to a chapter 13 but was unable to do

so because of bad faith, that "even otherwise unqualified rights in the debtor are subject to limitation by the bankruptcy court's power under 11 U.S.C. § 105(a) to police bad faith and abuse of process." *Marrama*, 549 U.S. at 773 n.12.

This court determined in *Nichols* that "Rosson has been effectively overruled by the Supreme Court's subsequent decision in *Law v. Siegel*, 571 U.S. 415, 134 S. Ct. 1188, 188 L. Ed. 2d 146 (2014)." *Nichols*, 10 F.4th 959, 959. The Supreme Court in *Law. v. Siegel* reined in its broad statement regarding the use of 11 U.S.C. § 105, making it "clear that a bankruptcy court may not use its equitable powers under 11 U.S.C. § 105(a) to contravene express provisions of the Bankruptcy Code. *Law*, 571 U.S. at 422-23, 134 S. Ct. 1188, 188 L. Ed. 2d 146." *Id.* at 961, 134 S. Ct. 1188, 188 L. Ed. 2d 146. This court properly determined that it could depart from its precedent in *Rosson* "if a subsequent Supreme Court opinion 'undercut[s] the theory or reasoning underlying the prior circuit precedent in such a way that the cases are clearly irreconcilable.' [citation omitted]." *Id.* The court reasoned that a bankruptcy court could no longer use its equitable powers to limit express language in the Bankruptcy Code, such as that in 11 U.S.C. § 1307(b). Therefore, it concluded that a debtor's right to voluntary dismissal was absolute; no exception existed other than that the case has not been previously converted.

This circuit is not alone in concluding that *Law v. Siegel* undermined the *Marrama* statement that 11 U.S.C. § 105(a) could override express statutory language. Courts which have analyzed that issue since this later Supreme Court case have uniformly rejected any non-statutory reason to undermine a debtor's right to voluntary dismissal. *Smith v. U.S. Bank N.A.* (*In re Smith*), 999 F.3d 452, 456 (6th Cir. 2021); *In re Marinari*, 610 B.R. 87, 93 (E.D. Pa. 2019); *In re Mills*, 539 B.R. 879, 888 (Bankr. D. Kan. 2015); In re Kemp, 2022 Bankr. LEXIS 16, 17-18 (Bankr. D. Kan. 2022); *In re Minogue*, 632 B.R. 287, 293 (Bankr. D.S.C. 2021).

Notwithstanding, Appellant asserts a new exception: that Debtor was not eligible to be a chapter 13 debtor. It would rewrite the statute, which is prohibited when the plain text is unambiguous. *Nichols* forecloses any non-statutory exceptions. Plus, it is well-settled that eligibility is not jurisdictional. As the underlying Bankruptcy Appellate Panel opinion noted, 11 U.S.C. § 109(e) eligibility is not jurisdictional and so long as the debtor's case is still denominated a chapter 13, he may exercise his right to voluntary dismissal. *Tico Constr. Co. Inc v. Van Meter* (*In re Powell*), 644 B.R. 181, 186 (B.A.P. 9th Cir. 2022) (citing *Wenberg v. Wenberg* (*In re Wenberg*), 94 B.R. 631 (1988), *aff'd*, 902 F.2d 768 (9th Cir. 1990)).

IV. Appellant's Entire Argument is Premised on a Factual Finding Which Was Not Made by the Bankruptcy Court

Appellant argues throughout its brief that Debtor was ineligible to be a chapter 13 debtor because his debts were over the applicable debt limits established by 11 U.S.C. § 109(e). Although the brief references the many times Appellant asserted ineligibility before the bankruptcy court, not surprisingly it does not cite to any finding, oral or written, by that court which adopted those assertions as a fact. As noted above, because it followed the mandate of Nichols that dismissal was a matter of right, the bankruptcy court had no need to weigh admissible evidence on the amount of Debtor's debts nor to make any factual findings on that issue.

Making factual determinations is the province of the trial courts. *Towers v. Iger*, 912 F.3d 523, 528 (9th Cir. 2018). If findings are made, an appellate court reviews them only for clear error. *U.S. Bank N.A. ex rel. CWCapital Asset Mgmt. L.L.C. v. Vill. at Lakeridge, L.L.C.*, 138 S. Ct. 960, 966 (2018). If no factual findings are made by the trial court, an appellate court may not make them.

In 2001, the Ninth Circuit established the start point – and usually the end point – for determining a chapter 13 debtor's eligibility under 11 U.S.C. § 109(e) in *Scovis v. Henrichsen* (*In re Scovis*), 249 F.3d 975 (9th Cir. 2001). The circuit

stated a simple rule: "We now simply and explicitly state the rule for determining Chapter 13 eligibility under 11 U.S.C. § 109(e) to be that eligibility should normally be determined by the debtor's originally filed schedules, checking only to see if the schedules were made in good faith." *Id.* at 982. Whether a debtor filed his schedules in good faith, like eligibility, is a factual issue to be decided by the bankruptcy court. The bankruptcy court here made no finding whatsoever regarding Debtor's good or bad faith when filing his original schedules.

That Debtor was ineligible is not a fact just because Appellant says it is so. Without that finding, its entire argument on appeal fails.

V. Bankruptcy Courts Have Alternative Remedies to Police Misbehaving Chapter 13 Debtors Without Disturbing Their Right to Voluntary Dismissal

Appellant asserts that allowing voluntary dismissals by chapter 13 debtors will let any debtor file a petition "under Chapter 13 in bad faith, solely for the purpose of delaying and defrauding creditors, and enjoy the full protections afforded exclusively to eligible Chapter 13 debtors for whom greater rights were intended." In other words, it argues that allowing the voluntary dismissal will permit debtors to misbehave without sanction. That is a misstatement. One of the first circuit courts to uphold the right to dismiss, the Second Circuit in *Barbieri v. RAJ Acq. Corp.* (*In re Barbieri*), 199 F.3d 616 (2d Cir. 1999), set forth the several

remedies available to a bankruptcy court when allowing dismissal of a chapter 13 when the debtor was disingenuous:

> Moreover, there are several provisions in the Bankruptcy Code that specifically authorize court action to prevent abuse. For example, notwithstanding a debtor's voluntary dismissal of a Chapter 13 petition, the Bankruptcy Court has the power, in appropriate cases, to impose sanctions. See FED R. BANKR. P. 9011(c). In addition, under 11 U.S.C. §§ 349(b) and 362(c), a voluntary dismissal results in the debtor forfeiting the protections afforded by the automatic stay. [citations omitted] Thus, by voluntarily dismissing a Chapter 13 petition, the debtor 'indicates that he is prepared to limit his rights and remedies to those available in state courts' [citation omitted].

Id. at 621.

The *Barbieri* court also itemized other steps to prevent debtor abuse of the system: creditors filing an involuntary chapter 7 under 11 U.S.C. § 303 or a referral to the United States Attorney's Office if criminal conduct is suspected. Other courts have extended this reasoning by placing conditions on the dismissal, such as a bar to refiling for a specified period of time or dismissal with prejudice to prevent refiling on the existing debt permanently. *See In re Ross*, 858 F.3d 779 (3d Cir. 2017) (affirming dismissal of a chapter 13 debtor's case with prejudice, preventing refiling on the existing debt) and *Kulick v. Leisure Village Assoc., Inc.* (*In re Kulick*), 2022 WL 17848939 (9th Cir. BAP 2022) (affirming a decision to impose a ten month refiling bar.)

As noted by the Second Circuit in *Barbieri*, Debtor here has given up the protection of the automatic stay, permitting Appellant to pursue at its will the state

court enforcement actions that led Debtor to file for bankruptcy protection in the first place.

VI. The Negative Consequences of Not Allowing Automatic Voluntary Dismissals Outweigh Any Positive Benefits

The focus of Appellant's theory of this case is that ineligibility to be a chapter 13 debtor should be an exception judicially written into the otherwise mandatory language of 11 U.S.C. § 1307(b) to prevent abuse of the bankruptcy system. As noted above, this focus is misplaced because other remedies to prevent abuse are available to the courts. In addition, Debtor now must return to face Appellant's judgment liens and other state court enforcement actions. The Debtor has voluntarily given up the automatic stay and fresh start protections afforded him by the Bankruptcy Code. Moreover, the bankruptcy filing may remain as a negative impact on the Debtor's credit for ten years even though the case was voluntarily dismissed. Thus, the court has remedies for bad faith conduct, and the creditors are restored to all their rights against Debtor.

Flip this picture and consider what will happen in the bigger scheme of things if the right to voluntarily dismiss is taken away from potential chapter 13 debtors and their counsel. Debtors receive the protection of the automatic stay during their attempts to reorganize their finances and often the opportunity to save a home or car or a livable wage from the ravages of creditors. In exchange they

make available their disposable income for the duration of their plans to repay their secured, priority, and unsecured debts. This income, however, is unavailable to the trustee in a chapter 7 and often costly for creditors to tap by using state court collection activities. A confirmed and completed chapter 13 plan is almost always a win for all concerned, including creditors who stop spending unproductive attorney's fees.

There will be fewer chapter 13 cases, however, if the right to voluntary dismissal is taken away. Most potential debtors would rather file a simple chapter 7 and obtain a discharge of their dischargeable debt. The proceeding is quick, an average of four to five months from filing to discharge. The cost is typically fixed up front, with debtors' counsel receiving a set flat fee that is rarely exceeded with postpetition charges. The outcome is predictable, as an experienced lawyer, provided the necessary facts by the debtor, can advise which debts are likely nondischargeable or at least at risk for being so and therefore the debtor will know where he or she will end up financially in the near future. And, importantly, the debtor may keep all postpetition income.

Therefore, there must be reasons why the potential debtor chooses instead to file a chapter 13, with less certain costs, outcome, and financial future. The reasons are many: a need to test the existence and extent of exemptions without risk if the ruling is unfavorable; a chance to use claims litigation to resolve a

disputed debt more quickly and inexpensively than existing state court litigation with multiple parties and complexities; an anticipated increase in income which, if the debtor is given a breathing space, will allow the debtor to keep an encumbered asset by curing an arrearage; in some circumstances, the opportunity to reduce a secured claim to the value of the asset once a court has fixed that value at an affordable figure; and most commonly the opportunity to save a house or car by curing the arrearage under the provisions of a plan.

When debtors' attorneys analyze such circumstances with potential debtors, the chance to adjust debts under chapter 13 is often preferable. The option of trying, and possibly failing in, a chapter 13 usually presents acceptable risks to the debtor. And, when the plan is confirmed, creditors win because they will receive some portion of the debtor's future income. However, the position advocated by Appellant would make it much more difficult for counsel to urge debtors into possibly favorable chapter 13 cases if they instead risk conversion to chapter 7 or the equivalent of involuntary servitude. Fewer attorneys will advise debtors to file chapter 13 cases; fewer debtors will choose to file them. That outcome is a loss to the creditor body because their opportunity to be voluntarily paid out of future income is foreclosed before it starts.

If this court follows its precedent and dismissal remains automatic upon request, debtors will continue to take the risks identified above with the potential

for confirmed plans and substantial payments to creditors from future income. Other remedies exist that discourage improper conduct by the debtors. If this court instead conditions dismissal on court discretion, risk-averse debtors will be counseled away from filing chapter 13 cases in the first place, and creditors will lose the potential to receive payments on their claims. Amici submit the statute, the case law, and the policy of a totally voluntary chapter 13 all favor preserving the voluntary right to dismissal.

CONCLUSION

Congress created a voluntary chapter 13, where debtors may make available their future income in exchange for the many benefits discussed above. Creditors, particularly unsecured creditors at the end of the distribution order, stand to benefit from the future income payment stream. Take away the voluntary nature of this chapter, however, and many fewer debtors will file a chapter 13, and the creditor bodies will lose. Further, Appellant's principal argument that Debtor is ineligible and therefore not entitled to the voluntary right to dismiss which this court's precedent already embraces is premised on a factual determination which was not made by the trier of fact, the bankruptcy court.

For all of these reasons, the decisions of the bankruptcy court and the bankruptcy appellate panel should be affirmed.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s) 22-60050

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Signature /s/ Christina L. Henry **Date August 1, 2023**

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I hereby certify that I electronically filed the foregoing brief 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 August 1, 2023. All participants that are registered as CM/ECF users will receive service via appellate CM/ECF system.

s/ Christina L. Henry
Christina L. Henry
Attorney for Amici Curiae

STATEMENT UNDER FED. R. APP. P. 29(a)(4)(E)

No party's counsel authored this amicus curiae brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and no person, other than the amicus curiae, its members, or its counsel, contributed money that was intended to fund preparing or submitting this brief.

s/ Christina L. Henry

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