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12 **UNITED STATES BANKRUPTCY COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **LOS ANGELES DIVISION**

15 In re:
16 Gene Douglas Balas and Carlos A. Morales,
17 Debtors.

Case No.: 2:11-bk-17831-TD
Chapter 13

**DEBTORS' REQUEST FOR
CERTIFICATION OF DIRECT
APPEAL TO THE U.S. COURT OF
APPEALS FOR THE NINTH
CIRCUIT; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF PATRICK
McMAHON; DECLARATION OF
CAROLYN DYE; DECLARATION
OF ROSENDO GONZALEZ;
DECLARATION OF HEIDI KURTZ;
DECLARATION OF SAM LESLIE;
DECLARATION OF AMY
GOLDMAN; DECLARATION OF
RENAY RODRIGUEZ; SPECIMEN
CERTIFICATION ORDER**

Hearing To Be Set If Requested
(LBR 9013-1(o))

1 **TO THE HONORABLE THOMAS B. DONOVAN, UNITED STATES**
2 **BANKRUPTCY JUDGE; PETER C. ANDERSON, UNITED STATES TRUSTEE;**
3 **KATHY A. DOCKERY, CHAPTER 13 TRUSTEE; AND ALL CREDITORS AND**
4 **PARTIES IN INTEREST:**

5 Pursuant to section 158(d)(2) of the Judicial Code, Rule 8001(f) of the Federal Rules
6 of Bankruptcy Procedure (“FRBP”), and Rule 8000-1(c) of the Local Bankruptcy Rules of
7 the United States Bankruptcy Court for the Central District of California (“LBR”), Gene
8 Douglas Balas and Carlos A. Morales, the debtors (together, the “Debtors”) in the above-
9 captioned chapter 13 bankruptcy case (the “Bankruptcy Case”), respectfully request that the
10 Court enter an order substantially in the form annexed hereto as a specimen certifying the
11 appeal taken by the United States Trustee to the United States Court of Appeals for the Ninth
12 Circuit.

13 As set out in the annexed Memorandum of Points and Authorities and supporting
14 declarations, the issue on appeal – whether legally married same-sex couples are entitled to
15 the same rights and obligations under section 302(a) of the Bankruptcy Code as legally
16 married opposite-sex couples – is “a question of law as to which there is no controlling
17 decision of the court of appeals for the circuit or of the Supreme Court of the United States,”
18 28 U.S.C. § 158(d)(2)(A)(i), and “involves a matter of public importance,” *id.*, thus
19 satisfying two separate bases for certification of a direct appeal. This request for
20 certification is timely, *see* 28 U.S.C. § 158(d)(2)(E); FRBP 8001(f)(1); is properly made in
21 this Court, *see* FRBP 8001(f)(2); *In re Frye*, 389 B.R. 87 (B.A.P. 9th Cir. 2008); and is
22 concurrently being noticed as required by FRBP 8001(f)(3)(B).

23 Pursuant to LBR 3015-1(x) and LBR 9013-1(o), this Motion is being served upon the
24 United States Trustee, the Chapter 13 Trustee, and all creditors and parties in interest, and
25 may be determined upon notice of opportunity to request a hearing. *See also* FRBP
26 8001(f)(3)(E) (providing that requests for certification of direct appeals to the court of
27 appeals “shall be submitted without oral argument unless the court otherwise directs”). Any
28 response to this Motion must be filed “within 14 days after the notice of the request is

1 served, or another time fixed by the court.” FRBP 8001(f)(3)(D); *accord* LBR 9013-
2 1(o)(1)(A)(ii). “Papers not timely filed and served may be deemed by the court to be consent
3 to the granting . . . of the motion” LBR 9013-1(h).

4 WHEREFORE, the Debtors respectfully request that the Court enter an order
5 substantially in the form annexed hereto certifying the appeal taken by the United States
6 Trustee to the United States Court of Appeals for the Ninth Circuit.

7 Dated: June 30, 2011

KLEE, TUCHIN, BOGDANOFF & STERN LLP

8
9 /s/ Robert J. Pfister

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 BACKGROUND

4 On June 13, 2011, twenty Judges of this Court signed a *Memorandum of Decision*
5 [Docket No. 47] (the “Opinion”) holding section 3 of the federal Defense of Marriage Act,
6 Pub. L. No. 104-199, 110 Stat. 2419 (Sep. 21, 1996), *codified in pertinent part at* 1 U.S.C.
7 § 7 (“DOMA”), unconstitutional under the Fifth Amendment’s due process clause insofar as
8 DOMA mandates the dismissal of this Bankruptcy Case solely on the ground that the
9 Debtors are two men.¹ As the Court explained, “[t]he only issue in this Bankruptcy Case is
10 whether some legally married couples are entitled to fewer rights than other legally married
11 couples, based solely on a factor (the gender and/or sexual orientation of the parties in the
12 union) that finds no support in the Bankruptcy Code or Rules and should be a constitutional
13 irrelevancy.” Opinion at 2:8-13. The Court answered that question in the negative, holding
14 that “no legally married couple should be entitled to fewer bankruptcy rights than any other
15 legally married couple.” *Id.* at 2:13-15.

16 The Opinion is the first decision by a bankruptcy court to squarely address the
17 constitutionality of DOMA.² Its holding that DOMA cannot constitutionally be applied to
18 require the dismissal of joint bankruptcy petitions filed by lawfully married same-sex
19 spouses is a critically important development for families in this District and across the State
20 of California struggling financially in the current economic environment. Indeed, as news

21 _____
22 ¹ The Opinion is designated for publication, and is currently available electronically at
2011 WL 2312169 and 2011 Bankr. LEXIS 2157.

23 ² As the Debtors noted in their *Opposition and Response* [Docket No. 35], the only other
24 bankruptcy decision concerning the constitutionality of DOMA is *In re Kandou*, 315 B.R. 123
25 (Bankr. W.D. Wash. 2004), which concerned a Washington couple whose Canadian
26 marriage was invalid under the law of their home state. *See id.* at 130; *see also id.* at 133
27 (“Washington State has adopted its own definition of marriage identical to DOMA . . .”).
28 Accordingly, the *Kandou* court neither confronted nor decided the issue presented here, where
“[i]t is undisputed that the Debtors are a **lawfully married** California couple who were
married at the time they filed their bankruptcy petition.” Opinion at 2:18-19 (emphasis
added; footnote omitted).

1 reports following the Opinion noted, “same-sex couples have become integrated into the
2 economic life of the country,” Michael Hiltzik, *In Bankruptcy Court, A Giant Step for Same-
3 Sex Marriage*, L.A. TIMES (June 21, 2011) (hereafter, “Hiltzik, L.A. TIMES”), and whether
4 those same-sex couples who are lawfully married may avail themselves of the same
5 protections afforded to married opposite-sex couples is a question that will be presented to
6 bankruptcy courts with increasing frequency. *Cf.* Opinion at 2 n.2 (noting that
7 “approximately 18,000 same-gender couples were legally wed in California prior to the
8 November 2008 passage of California Proposition 8”).

9 Yet notwithstanding this Court’s path-marking Opinion, same-sex couples (and the
10 attorneys trying to give them sound legal advice) still lack binding, authoritative guidance
11 concerning the availability of oftentimes desperately needed relief under the Bankruptcy
12 Code. As set out in the annexed declarations of practitioners in this District and elsewhere in
13 California, the lack of definitive appellate guidance makes it difficult to advise same-sex
14 married couples in this state. *See, e.g.*, Declaration of Patrick McMahon ¶ 3 (describing a
15 public notice on the website of the U.S. Bankruptcy Court for the Northern District of
16 California, which advises that “[t]he Balas and Morales decision is not binding in this court”
17 and same-sex couples who file jointly may be subject to “proceedings as are appropriate to
18 determine the legal and factual questions” that arise as a result of DOMA).

19 Even in this District – where 20 of 24 sitting jurists signed the decision – motions to
20 dismiss will apparently continue to be lodged in every joint bankruptcy case filed by a same-
21 sex couple. *See* Declaration of Carolyn Dye ¶¶ 2-3 (chapter 7 panel trustee describing
22 instructions received from the United States Trustee’s office to report all joint filings by
23 same-sex couples so that motions to dismiss can be filed); Declaration of Rosendo Gonzalez
24 ¶¶ 2-3 (same); Declaration of Heidi Kurtz ¶¶ 2-3 (same); Declaration of Sam Leslie ¶¶ 2-3
25 (same); Declaration of Amy Goldman ¶¶ 2-3 (same) *see also* Declaration of Renay
26 Rodriguez ¶ 3 (describing the challenge of advising same-sex married couples even in this
27 District: “[N]otwithstanding this Court’s June 13, 2011 decision, I and my same-sex married
28 clients face the prospect that the United States Trustee’s office in this District will

1 nevertheless seek dismissal of all joint petitions filed by married same-sex couples. This
2 makes it difficult to provide married same-sex couples with clear legal guidance.”); *Court*
3 *Rules DOMA Unconstitutional, To What Effect?*, 54 BANKR. CT. DECISIONS: WEEKLY NEWS
4 & COMMENT 5 (July 5, 2011) (reporting that the Department of Justice declined to confirm
5 or deny whether such motions will be filed).

6 Absent definitive appellate guidance, the result in this District and throughout
7 California may well be “a sort of selective prosecution,” as one reporter put it:

8 It’s not always obvious when two spouses are the same sex. You may assume
9 George and Thomas are a gay couple, but what about Dana and Chris, or
10 Cameron and Pat? (Bankruptcy lawyers say they’re aware of at least one case
in which a couple with ambiguous first names are hoping to complete the
process before the U.S. Trustee gets wise to them.)

11 Hiltzik, L.A. TIMES, *supra*. And just as it is unfair for a couple named “George and
12 Thomas” to be forced to litigate the issue afresh while others can secure bankruptcy relief
13 without incident, it is similarly unwarranted to subject married same-sex couples in the
14 Northern, Eastern and Southern Districts of California to different rules when definitive
15 appellate guidance could settle the issue for the entire state. *Cf.* McMahon Decl. ¶ 3 (quoting
16 the notice on the Northern District’s website, which advises that bankruptcy judges in that
17 district “may properly address the issue raised in Balas and Morales only if and when that
18 issue is properly presented in a case before this court”).

19 Fortunately, appellate guidance will soon be forthcoming. The United States Trustee
20 has timely appealed the Opinion, *Notice of Appeal* [Docket No. 50], dated June 27, 2011, and
21 has exercised his statutory right to have the appeal heard in the United States District Court
22 for the Central District of California, *Notice of Election* [Docket No. 51], dated June 27,
23 2011.³ A decision rendered by the District Court, however, will not establish a binding rule

24
25 ³ The United States Trustee also filed what appears to be a protective request for leave to
26 appeal, should the Opinion be deemed interlocutory. *Motion for Leave to Appeal* [Docket
27 No. 53], dated June 27, 2011. But this Court subsequently entered its *Order Confirming*
28 *Chapter 13 Plan* [Docket No. 54], dated June 29, 2011, which is unquestionably a final,
appealable order into which the Opinion has merged. *United Student Aid Funds, Inc. v.*
Espinosa, 130 S. Ct. 1367, 1376 (2010); *Great Lakes Higher Educ. Corp. v. Pardee (In re*
Pardee), 193 F.3d 1083, 1087 (9th Cir. 1999); *Giesbrecht v. Fitzgerald (In re Giesbrecht)*,

(Footnote Continued)

1 on which other litigants can rely. As Judge Mund explained in *Life Insurance Co. v. Barakat*
2 (*In re Barakat*), 173 B.R. 672 (Bankr. C.D. Cal. 1994), an “appellate ruling by a district
3 judge is only binding on [the parties in] the case in which it is made and not on the district as
4 a whole,” including “other district judges of that district [or] the bankruptcy judges of that
5 district.” *Id.* at 678-79; accord *Coyne v. Westinghouse Credit Corp. (In re Globe*
6 *Illumination Co.)*, 149 B.R. 614, 619 (Bankr. C.D. Cal. 1993) (Bufford, J.); see also *State*
7 *Compensation Ins. Fund v. Zamora (In re Silverman)*, 616 F.3d 1001, 1005 (9th Cir. 2010)
8 (holding that “bankruptcy courts are bound by . . . the decision of the district judge to whom
9 their ruling has been appealed”); *Starbuck v. City & County of San Francisco*, 556 F.2d 450,
10 457 n.13 (9th Cir. 1977) (“The doctrine of *stare decisis* does not compel one district court
11 judge to follow the decision of another.”).

12 Because no ruling by the District Court can establish the authoritative guidance – one
13 way or the other – that judges, practitioners, debtors, creditors and interested parties need on
14 this important issue, the Debtors seek certification of this appeal directly to the Ninth Circuit.
15 See McMahon Decl. ¶ 5 (“Unless and until the Ninth Circuit decides the matter, or a decision
16 is issued in the Northern District, validly married same-sex couples in the district where I
17 practice will face significant uncertainty regarding the availability of relief under the
18 Bankruptcy Code.”); Dye Decl. ¶ 3 (“[A]bsent a definitive ruling by the U.S. Court of
19 Appeals for the Ninth Circuit, it is my understanding that . . . motions to dismiss pursuant to
20 DOMA will continue to be filed in each and every joint bankruptcy case filed by a same-sex
21 couple.”); Gonzalez Decl. ¶ 3 (same); Kurtz Decl. ¶ 3 (same); Leslie Decl. ¶ 3 (same);
22 Goldman Decl. ¶ 3 (same); Rodriguez Decl. ¶ 4 (“Without a clear ruling from the Ninth
23 Circuit, my clients will continue to face significant uncertainty regarding the availability of
24 joint bankruptcy relief.”).

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27 429 B.R. 682, 687-88 (B.A.P. 9th Cir. 2010). Presumably the United States Trustee will file
28 an amended notice of appeal from that order, thus mootng the request for leave to appeal
(which, in any event, the Debtors do not oppose, should leave be necessary).

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II.
ARGUMENT

Section 158(d)(2) of the Judicial Code provides a discretionary mechanism by which an appeal from the Bankruptcy Court may be heard directly by the Ninth Circuit, bypassing either the District Court or the Bankruptcy Appellate Panel. The statute provides, in pertinent part:

The appropriate court of appeals shall have jurisdiction of [bankruptcy] appeals . . . if the bankruptcy court . . . involved, acting on its own motion or on the request of a party to the judgment, order, or decree . . . , certifi[ies] that . . . the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance . . . if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

28 U.S.C. § 158(d)(2)(A). This provision was adopted as part of the 2005 amendments to the Code to allow circuit courts to definitively “settle unresolved questions of law where there is a need to establish binding precedent at the court of appeals level, where the matter is one of public importance” Report of the Committee on the Judiciary, House of Representatives, to Accompany S. 256, H.R. Rep. No. 109-31, Pt. 1, 109th Cong., 1st Sess. (2005), at 148 (reprinted in Volume E-2 COLLIER ON BANKRUPTCY App. Pt. 10-227 (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev.)).

There is no question that this case, or one like it, will ultimately reach the Ninth Circuit. The only question is whether there will first be an unnecessary detour to the District Court, during which time married same-sex couples throughout California (and the bankruptcy practitioners they consult for guidance) will continue to face legal uncertainty. Furthermore, there is no need for a District Court decision here because the only issue presented is a pure question of law – to which the Ninth Circuit would not defer to the District Court in any event. *See, e.g., Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1188 (9th Cir. 2011) (“We review a district court’s decision on an appeal from a bankruptcy court de novo, with no deference given to the district court’s decision.”).

1 All requirements for certification of a direct appeal specified in the statute and
2 applicable rules are satisfied here:

- 3 • Whether legally married same-sex couples are entitled to the same rights and
4 obligations under section 302(a) of the Bankruptcy Code as legally married
5 opposite-sex couples unquestionably is “a question of law as to which there is
6 no controlling decision of the court of appeals for the circuit or of the Supreme
7 Court of the United States,” 28 U.S.C. § 158(d)(2)(A)(i), and also indisputably
8 “involves a matter of public importance,” *id.*, thus satisfying two separate
9 bases for certification of a direct appeal.
- 10 • This request for certification is being made “after a timely appeal has been
11 taken in the manner required by subdivisions (a) or (b) of [FRBP 8001] and the
12 notice of appeal has become effective under Rule 8002,” FRBP 8001(f)(1), and
13 “not later than 60 days after the entry of the judgment, order, or decree,” 28
14 U.S.C. § 158(d)(2)(E), and is therefore timely.
- 15 • This request for certification has been “filed in the court in which [the] matter
16 is pending for purposes of 28 U.S.C. § 158(d)(2) and [FRBP] 8001” because
17 “[a] matter is pending in a bankruptcy court until the docketing, in accordance
18 with Rule 8007(b), of an appeal taken under 28 U.S.C. § 158(a)(1) or (2), or
19 the grant of leave to appeal under 28 U.S.C. § 158(a)(3).” FRBP 8001(f)(2);
20 *see also In re Frye*, 389 B.R. at 90 (noting the specialized meaning of the term
21 “docketing” in this context). Here, the requirements of FRBP 8007(b) have not
22 yet been satisfied, nor has the Court ruled on the United States Trustee’s
23 protective *Motion for Leave to Appeal* [Docket No. 53], dated June 27, 2011.
- 24 • Finally, this request for certification is concurrently being noticed as required
25 by FRBP 8001(f)(3)(B).

26 The United States Trustee’s appeal also satisfies the prudential considerations the
27 Ninth Circuit takes into account when determining whether to exercise its discretion to hear
28 direct appeals, which further weighs in favor of certification by this Court to the Ninth

1 Circuit. In particular, “this appeal presents a question of law, making it unlikely that further
2 proceedings in the district court will cast more light on the issue.” *Blausey v. U.S. Trustee*,
3 552 F.3d 1124, 1131 (9th Cir. 2009) (citing *Weber v. U.S. Trustee*, 484 F.3d 154, 158 (2d
4 Cir. 2007)); *see also* 1 COLLIER ON BANKRUPTCY ¶ 5.06[5][b] (Alan N. Resnick & Henry J.
5 Sommer eds., 15th ed. rev.) (issues properly certified for direct appeal “should transcend the
6 litigants and involve a legal question the resolution of which will advance the cause of
7 jurisprudence to a degree that is usually not the case”). Nor is the legal issue intertwined
8 with “the particular facts of [this] case” such that the precise contours of the question are
9 obscured by “an incomplete or ambiguous record.” *Weber*, 484 F.3d at 158. Rather, the
10 facts of this case are straightforward and uncontested. Finally, as in *Blausey*, “the
11 bankruptcy courts lack a clear precedent” for resolving this important legal issue. 552 F.3d
12 at 1131-32. All of these factors weigh in favor of certification.

13 “In authorizing direct appeals to the circuit courts, [the 2005 amendments] made a
14 significant change to the bankruptcy appellate regime.” *Berman v. Maney (In re Berman)*,
15 344 B.R. 612, 615 (B.A.P. 9th Cir. 2006). That change was made for cases just like this,
16 which “raise controlling questions of law, concern matters of public importance, and arise
17 under circumstances where a prompt, determinative ruling might avoid needless litigation.”
18 *Weber*, 484 F.3d at 158. The need for definitive appellate guidance is acute here.

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III.
CONCLUSION

For the reasons set out above, the Debtors respectfully request that the Court enter an order substantially in the form annexed hereto certifying the appeal taken by the United States Trustee to the United States Court of Appeals for the Ninth Circuit.

Dated: June 30, 2011

KLEE, TUCHIN, BOGDANOFF & STERN LLP

/s/ Robert J. Pfister

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1 **DECLARATION OF PATRICK McMAHON**

2 I, Patrick McMahon, hereby declare under penalty of perjury that:

3 1. I am an attorney duly admitted to practice law in the State of California and in
4 the Northern District of California. I respectfully submit this declaration in support of the
5 Debtors' Request for Certification of Direct Appeal to the U.S. Court of Appeals for the
6 Ninth Circuit. I am over eighteen years of age and have personal knowledge of the facts set
7 forth herein; if called as a witness, I could and would testify competently thereto from my
8 own personal knowledge.

9 2. I routinely represent consumer debtors seeking relief under the Bankruptcy
10 Code in the United States Bankruptcy Court for the Northern District of California. Many of
11 my clients are married couples for whom a joint filing pursuant to section 302(a) of the
12 Bankruptcy Code is appropriate. Certain of these married clients are same-sex couples. For
13 these couples, this Court's June 13, 2011 ruling in the above-captioned case (holding that
14 application of section 3 of the federal Defense of Marriage Act, Pub. L. No. 104-199, 110
15 Stat. 2419 (Sep. 21, 1996), *codified in pertinent part at* 1 U.S.C. § 7 ("DOMA"), in this
16 context would be unconstitutional) is a welcome development.

17 3. However, to the best of my knowledge, no Judge in the court in which I
18 practice has expressly considered this issue, and there is no binding appellate authority one
19 way or the other. In fact, a public notice on the court's website indicates as follows:

20 **JOINT BANKRUPTCY PETITIONS**

21 **BY SAME-SEX MARRIED COUPLES**

22 It is appropriate for this court to clarify its practices
23 regarding joint petitions, in light of the much-publicized
24 Balas and Morales decision, in which the Bankruptcy Court
25 in the Central District of California held that same-sex
26 individuals lawfully married under state law are entitled to
27 file a joint bankruptcy petition, despite the contrary command
28 of the federal Defense of Marriage Act.

1 The Balas and Morales decision is not binding in this
2 court, because it is the decision of a court equal to this court,
3 rather than a court superior to this court. This court may
4 properly address the issue raised in Balas and Morales only if
5 and when that issue is properly presented in a case before this
6 court.

7 This court will continue to apply the following
8 practices regarding all joint petitions submitted to this court.

9 (a) The Clerk's Office accepts for filing upon payment of
10 a single filing fee any petition filed by two individuals
11 who represent to the court that they are lawfully
12 married.

13 (b) This court does not on its own initiative investigate
14 whether any individuals who represent that they are
15 married, whether same-sex or mixed-sex, are in fact
16 recognized as married under state or federal law.

17 (c) If any party in interest files a motion or action
18 contending that individuals who have filed a joint
19 petition are not entitled to do so, this court will
20 schedule such proceedings as are appropriate to
21 determine the legal and factual questions raised in that
22 action or motion.

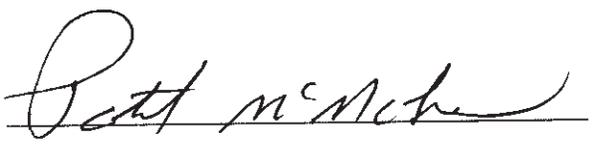
23 Home Page (<http://www.canb.uscourts.gov>) (visited June 30, 2011).

24 4. The absence of binding appellate authority regarding the applicability of
25 DOMA to joint bankruptcy cases filed by lawfully married same-sex couples makes it
26 difficult to advise these couples concerning the bankruptcy process. Even if they rely on this
27 Court's decision, I can provide no assurance that the United States Trustee (or any creditor or
28 party in interest) will not seek dismissal of their joint petition pursuant to DOMA.

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5. Unless and until the Ninth Circuit decides the matter, or a decision is issued in the Northern District, validly married same-sex couples in the district where I practice will face significant uncertainty regarding the availability of relief under the Bankruptcy Code.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Executed on June 29, 2011 at SAN FRANCISCO, California.



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DECLARATION OF CAROLYN DYE

I, Carolyn Dye, hereby declare under penalty of perjury that:

1. I am an attorney duly admitted to practice law in the State of California and in this Court. I respectfully submit this declaration in support of the Debtors' Request for Certification of Direct Appeal to the U.S. Court of Appeals for the Ninth Circuit. I am over eighteen years of age and have personal knowledge of the facts set forth herein; if called as a witness, I could and would testify competently thereto from my own personal knowledge.

2. I am a chapter 7 panel trustee in this District. At a meeting of the panel trustees which I attended on June 8, 2011, a few days before the decision in this case was issued, Peter Anderson, the United States Trustee for the Central District, instructed all the chapter 7 panel trustees to notify the United States Trustee's office of all joint bankruptcy cases filed by same-sex couples in this District. His stated purpose for that request was to enable the United States Trustee to file motions to dismiss those cases pursuant to section 3 of the federal Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (Sep. 21, 1996), *codified in pertinent part at* 1 U.S.C. § 7 ("DOMA"). Notwithstanding this Court's June 13, 2011 ruling in the above-captioned case that application of DOMA in this context would be unconstitutional, I have not received any different instruction and I am not aware of any different instruction having been given to any other trustee.

3. Thus, absent a definitive ruling by the U.S. Court of Appeals for the Ninth Circuit, it is my understanding that these motions to dismiss pursuant to DOMA will continue to be filed in each and every joint bankruptcy case filed by a same-sex couple.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Executed on June 27, 2011 at Los Angeles, California.



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DECLARATION OF ROSENDO GONZALEZ

I, Rosendo Gonzalez, hereby declare under penalty of perjury that:

1. I am an attorney duly admitted to practice law in the State of California and in this Court. I respectfully submit this declaration in support of the Debtors' Request for Certification of Direct Appeal to the U.S. Court of Appeals for the Ninth Circuit. I am over eighteen years of age and have personal knowledge of the facts set forth herein; if called as a witness, I could and would testify competently thereto from my own personal knowledge.

2. I am a chapter 7 panel trustee in this District. At a meeting of the panel trustees which I attended on June 8, 2011, a few days before the decision in this case was issued, Peter Anderson, the United States Trustee for the Central District, instructed all the chapter 7 panel trustees to notify the United States Trustee's office of all joint bankruptcy cases filed by same-sex couples in this District. His stated purpose for that request was to enable the United States Trustee to file motions to dismiss those cases pursuant to section 3 of the federal Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (Sep. 21, 1996), *codified in pertinent part at* 1 U.S.C. § 7 ("DOMA"). Notwithstanding this Court's June 13, 2011 ruling in the above-captioned case that application of DOMA in this context would be unconstitutional, I have not received any different instruction and I am not aware of any different instruction having been given to any other trustee.

3. Thus, absent a definitive ruling by the U.S. Court of Appeals for the Ninth Circuit, it is my understanding that these motions to dismiss pursuant to DOMA will continue to be filed in each and every joint bankruptcy case filed by a same-sex couple.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Executed on June 29th, 2011 at LOS ANGELES, California.



DECLARATION OF HEIDI KURTZ

I, Heidi Kurtz, hereby declare under penalty of perjury that:

1. I am a chapter 7 panel trustee in this District. I respectfully submit this declaration in support of the Debtors' Request for Certification of Direct Appeal to the U.S. Court of Appeals for the Ninth Circuit. I am over eighteen years of age and have personal knowledge of the facts set forth herein; if called as a witness, I could and would testify competently thereto from my own personal knowledge.

2. At a meeting of the panel trustees which I attended on June 8, 2011, a few days before the decision in this case was issued, Peter Anderson, the United States Trustee for the Central District, instructed all the chapter 7 panel trustees to notify the United States Trustee's office of all joint bankruptcy cases filed by same-sex couples in this District. His stated purpose for that request was to enable the United States Trustee to file motions to dismiss those cases pursuant to section 3 of the federal Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (Sep. 21, 1996), *codified in pertinent part at* 1 U.S.C. § 7 ("DOMA"). Notwithstanding this Court's June 13, 2011 ruling in the above-captioned case that application of DOMA in this context would be unconstitutional, I have not received any different instruction and I am not aware of any different instruction having been given to any other trustee.

3. Thus, absent a definitive ruling by the U.S. Court of Appeals for the Ninth Circuit, it is my understanding that these motions to dismiss pursuant to DOMA will continue to be filed in each and every joint bankruptcy case filed by a same-sex couple.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Executed on June 30th, 2011 at San Pedro, California.



DECLARATION OF SAM LESLIE

I, Sam S. Leslie, hereby declare under penalty of perjury that:

1. I am a chapter 7 panel trustee in this District. I respectfully submit this declaration in support of the Debtors' Request for Certification of Direct Appeal to the U.S. Court of Appeals for the Ninth Circuit. I am over eighteen years of age and have personal knowledge of the facts set forth herein; if called as a witness, I could and would testify competently thereto from my own personal knowledge.

2. At a meeting of the panel trustees which I attended on June 8, 2011, a few days before the decision in this case was issued, Peter Anderson, the United States Trustee for the Central District, instructed all the chapter 7 panel trustees to notify the United States Trustee's office of all joint bankruptcy cases filed by same-sex couples in this District. His stated purpose for that request was to enable the United States Trustee to file motions to dismiss those cases pursuant to section 3 of the federal Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (Sep. 21, 1996), *codified in pertinent part at* 1 U.S.C. § 7 ("DOMA"). Notwithstanding this Court's June 13, 2011 ruling in the above-captioned case that application of DOMA in this context would be unconstitutional, I have not received any different instruction and I am not aware of any different instruction having been given to any other trustee.

3. Thus, absent a definitive ruling by the U.S. Court of Appeals for the Ninth Circuit, it is my understanding that these motions to dismiss pursuant to DOMA will continue to be filed in each and every joint bankruptcy case filed by a same-sex couple.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Executed on June 29th, 2011 at Los Angeles, California.

Sam S. Leslie

DECLARATION OF AMY GOLDMAN

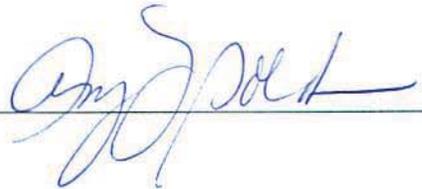
1
2 I, Amy Goldman, hereby declare under penalty of perjury that:

3 1. I am an attorney duly admitted to practice law in the State of California and in
4 this Court. I respectfully submit this declaration in support of the Debtors' Request for
5 Certification of Direct Appeal to the U.S. Court of Appeals for the Ninth Circuit. I am over
6 eighteen years of age and have personal knowledge of the facts set forth herein; if called as a
7 witness, I could and would testify competently thereto from my own personal knowledge.

8 2. I am a chapter 7 panel trustee in this District. At a meeting of the panel
9 trustees which I attended on June 8, 2011, a few days before the decision in this case was
10 issued, Peter Anderson, the United States Trustee for the Central District, instructed all the
11 chapter 7 panel trustees to notify the United States Trustee's office of all joint bankruptcy
12 cases filed by same-sex couples in this District. His stated purpose for that request was to
13 enable the United States Trustee to file motions to dismiss those cases pursuant to section 3
14 of the federal Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (Sep. 21, 1996),
15 *codified in pertinent part at* 1 U.S.C. § 7 ("DOMA"). Notwithstanding this Court's June 13,
16 2011 ruling in the above-captioned case that application of DOMA in this context would be
17 unconstitutional, I have not received any different instruction and I am not aware of any
18 different instruction having been given to any other trustee.

19 3. Thus, absent a definitive ruling by the U.S. Court of Appeals for the Ninth
20 Circuit, it is my understanding that these motions to dismiss pursuant to DOMA will
21 continue to be filed in each and every joint bankruptcy case filed by a same-sex couple.

22
23 I declare under penalty of perjury that the forgoing is true and correct to the best of my
24 knowledge and belief. Executed on June 30, 2011 at Los Angeles,
25 California.

26
27 
28

KLEE, TUCHIN, BOGDANOFF & STERN LLP
1999 AVENUE OF THE STARS, 39TH FLOOR
LOS ANGELES, CALIFORNIA 90067-6049
(310) 407-4000

DECLARATION OF RENAY RODRIGUEZ

I, Renay Rodriguez, hereby declare under penalty of perjury that:

1. I am an attorney duly admitted to practice law in the State of California and in this Court. I respectfully submit this declaration in support of the Debtors' Request for Certification of Direct Appeal to the U.S. Court of Appeals for the Ninth Circuit. I am over eighteen years of age and have personal knowledge of the facts set forth herein; if called as a witness, I could and would testify competently thereto from my own personal knowledge.

2. I routinely represent consumer debtors seeking relief under the Bankruptcy Code in this District. Some of my clients are validly married same-sex couples who would benefit by filing jointly pursuant to section 302(a) of the Bankruptcy Code, as twenty Judges of this Court ruled was permissible given the unconstitutionality of applying section 3 of the federal Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (Sep. 21, 1996), *codified in pertinent part at 1 U.S.C. § 7 ("DOMA")*, in this context.

3. Yet notwithstanding this Court's June 13, 2011 decision, I and my same-sex married clients face the prospect that the United States Trustee's office in this District will nevertheless seek dismissal of all joint petitions filed by married same-sex couples. This makes it difficult to provide married same-sex couples with clear legal guidance.

4. Without a clear ruling from the Ninth Circuit, my clients will continue to face significant uncertainty regarding the availability of joint bankruptcy relief.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Executed on June 25, 2011 at Chatsworth, California.


Renay Grace Rodriguez

KLEIN, TUCHIN, BOGDANOFF & STERN LLP
1999 AVENUE OF THE STARS, 39TH FLOOR
LOS ANGELES, CALIFORNIA 90067-6049
(310) 497-4000

SPECIMEN CERTIFICATION ORDER

[To be lodged by the Debtors electronically pursuant to LBR 9021-1(a)]

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

Gene Douglas Balas and Carlos A. Morales,
Debtors.

Case No.: 2:11-bk-17831-TD
Chapter 13

**CERTIFICATION OF DIRECT
APPEAL TO THE U.S. COURT OF
APPEALS FOR THE NINTH
CIRCUIT**

Upon consideration of the *Debtors' Request for Certification of Direct Appeal to the U.S. Court of Appeals for the Ninth Circuit*, filed June 28, 2011 (the "Request for Certification"), including the declarations annexed thereto, and based upon the entire record in this case, including all pleadings, papers and orders to date, the Court hereby FINDS and ORDERS as follows:

1. The Request for Certification was timely and properly filed in this Court, and satisfies all the requirements of section 158(d)(2) of the Judicial Code, Rule 8001(f) of the Federal Rules of Bankruptcy Procedure ("FRBP"), and Rule 8000-1(c) of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, including all notice provisions thereof.

2. The Court's *Memorandum of Decision* [Docket No. 47], filed June 13, 2011 (the "Opinion") is an order of the type described in the first sentence of section 158(a) of the Judicial Code, and a timely appeal of the Opinion has been taken. Absent certification by this Court and acceptance of the certification by the Court of Appeals, the appeal of the Opinion will be heard by the District Court.

1 3. Two of the circumstances specified in section 158(d)(2)(A)(i) of the Judicial
2 Code exist: the Opinion both “involves a question of law as to which there is no controlling
3 decision of the court of appeals for the circuit or of the Supreme Court of the United States”
4 and “involves a matter of public importance.” Specifically, the issue on appeal is whether
5 legally married same-sex couples are entitled to the same rights and obligations under
6 section 302(a) of the Bankruptcy Code as legally married opposite-sex couples. Neither the
7 Ninth Circuit nor the Supreme Court has squarely decided that issue, and the issue is of great
8 importance to the orderly administration of joint bankruptcy cases commenced by lawfully
9 married same-sex couples in this District and throughout the State of California.

10 4. The “facts necessary to understand the question presented,” FRBP
11 8001(f)(3)(C)(i), are as follows:

12 a. Gene Douglas Balas and Carlos A. Morales, the debtors (together, the
13 “Debtors”) in the above-captioned chapter 13 bankruptcy case (the “Bankruptcy Case”), are
14 lawfully married under the laws of the State of California. Opinion at 2:17-19.

15 b. The Debtors commenced the Bankruptcy Case jointly, pursuant to
16 section 302(a) of the Bankruptcy Code, which permits the filing of a single joint bankruptcy
17 petition “by an individual that may be a debtor . . . and such individual’s spouse.” Opinion
18 at 3:3-5.

19 c. The Debtors are each eligible to file a voluntary bankruptcy petition,
20 and they have satisfied all applicable requirements for confirmation of a joint plan of
21 reorganization to restructure and repay their debts under chapter 13 of the Bankruptcy Code.
22 Opinion at 3:1-12.

23 d. Nothing in section 302(a) of the Bankruptcy Code limits joint
24 bankruptcy filings to opposite-sex married couples. However, section 3 of the federal
25 Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (Sep. 21, 1996), *codified in*
26 *pertinent part at* 1 U.S.C. § 7 (“DOMA”), redefines the term “spouse” for the purpose of any
27 federal law to mean “a person of the opposite sex who is a husband or a wife.” Opinion at
28 5:1-7.

1 e. The United States Trustee moved to dismiss the Debtors' joint petition
2 pursuant to DOMA, and objected to confirmation of the Debtors' joint plan of reorganization
3 on the same ground. Opinion at 4:1-3 & 4:26-5:1. The Debtors timely opposed the motion
4 and responded to the objection, on the ground that DOMA is unconstitutional under the Fifth
5 Amendment's due process clause insofar as DOMA mandates the dismissal of the Debtors'
6 bankruptcy case solely on the ground that the Debtors are two men. Opinion at 6:16-7:4.

7 f. Duly noticed hearings on the United States Trustee's motion were held
8 on May 17, 2011 and June 13, 2011, and all interested parties had full notice and opportunity
9 to be heard. Opinion at 3:9-19.

10 g. The Court exercised jurisdiction to hear and determine the United States
11 Trustee's motion to dismiss and objections to plan confirmation pursuant to sections 157 and
12 1334 of the Judicial Code. Opinion at 3:21-26.

13 h. On June 13, 2011, twenty Judges of this Court issued the Opinion,
14 holding that "the Debtors have met their high burden of overcoming the presumption of the
15 constitutionality of DOMA," such that DOMA cannot constitutionally be applied to mandate
16 the dismissal of the Debtors' joint bankruptcy petition. Opinion at 20:1-10.

17 i. On June 20, 2011, the Court entered an order overruling the United
18 States Trustee's confirmation objection, for the reasons set out in the Opinion. *Order*
19 *Overruling The United States Trustee's Objection to Confirmation of Plan* [Docket No. 48].

20 j. On June 27, 2011, the United States Trustee timely appealed the
21 Opinion. *Notice of Appeal* [Docket No. 50].

22 k. On June 29, 2011, the Court confirmed the Debtors' plan of
23 reorganization. *Order Confirming Chapter 13 Plan* [Docket No. 54].

24 5. The question presented in the United States Trustee's appeal is whether legally
25 married same-sex couples are entitled to the same rights and obligations under section 302(a)
26 of the Bankruptcy Code as legally married opposite-sex couples. The relief sought by the
27 United States Trustee's appeal is the reversal of the Opinion. *See Motion for Leave to*
28 *Appeal* [Docket No. 53], filed June 27, 2011, at 3:15-16 ("The United States Trustee . . .

1 requests that the Memorandum of Decision and the denial of the Motion to Dismiss be
2 reversed.”).

3 6. The issue on appeal is “a question of law as to which there is no controlling
4 decision of the court of appeals for the circuit or of the Supreme Court of the United States,”
5 28 U.S.C. § 158(d)(2)(A)(i), because neither the Ninth Circuit nor the Supreme Court has
6 squarely decided whether DOMA may be constitutionally applied to require the dismissal of
7 a joint bankruptcy petition solely on the ground that the lawfully married debtors are not of
8 the opposite sex.

9 7. The issue on appeal “involves a matter of public importance,” 28 U.S.C.
10 § 158(d)(2)(A)(i), because absent binding appellate guidance, the orderly administration of
11 joint bankruptcy cases commenced by lawfully married same-sex couples in this District and
12 throughout the State of California will be greatly impeded – as demonstrated by the
13 declarations annexed to the Request for Certification.

14
15 For the foregoing reasons, the Request for Certification is GRANTED, and the United States
16 Trustee’s appeal (including any amended notice of appeal) is hereby CERTIFIED for direct
17 appeal to the U.S. Court of Appeals for the Ninth Circuit.

In re:
Gene Douglas Balas and Carlos A. Morales,

Debtor(s).

CHAPTER 13

CASE NUMBER 2:11-bk-17831-TD

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on a CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
1999 Avenue of the Stars, Thirty-Ninth Floor
Los Angeles, CA 90067

A true and correct copy of the foregoing document described as **DEBTORS' REQUEST FOR CERTIFICATION OF DIRECT APPEAL TO THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF PATRICK McMAHON; DECLARATION OF CAROLYN DYE; DECLARATION OF ROSENDO GONZALEZ; DECLARATION OF HEIDI KURTZ; DECLARATION OF SAM LESLIE; DECLARATION OF AMY GOLDMAN; DECLARATION OF RENAY RODRIGUEZ; SPECIMEN CERTIFICATION ORDER** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d), and **(b)** in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") - Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On June 30, 2011 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the e-mail address indicated below:

SEE ATTACHED SERVICE LIST

Service Information continued on attached page.

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served): On June 30, 2011 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follow. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

SEE ATTACHED SERVICE LIST

Service Information continued on attached page.

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P.5 and/or controlling LBR, on June 30, 2011 I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method) by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

The Honorable Thomas B. Donovan
U.S. Bankruptcy Court
Roybal Federal Building
255 E. Temple Street, Suite 1352
Los Angeles, CA 90012-3332

Service Information continued on attached page.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

June 30, 2011

Date

Robert J. Pfister

Type Name

/s/ Robert J. Pfister

Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

In re: Gene Douglas Balas and Carlos A. Morales,	Main Document	Page 26 of 27	CHAPTER 13
	Debtor(s).	CASE NUMBER 2:11-bk-17831-TD	

ADDITIONAL SERVICE INFORMATION (if needed):**SERVICE VIA NOTICE OF ELECTRONIC FILING**

Kathy A. Dockery (TR)	efiling@CH13LA.com
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Peter M. Lively On behalf of Debtor Gene Balas	PeterMLively2000@yahoo.com
Robert J. Pfister On behalf of Debtor Gene Balas	rpfister@ktbslaw.com
United States Trustee (LA)	Ustpreion16.la.ecf@usdoj.gov
Hatty K. Yip On behalf of United States Trustee (LA)	hatty.yip@usdoj.gov

Service by Federal Express

Paul D. Clement
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Wilmington, DE 19850-5026

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Franchise Tax Board
Bankruptcy Section MS A340
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Capital One Bank
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Salt Lake City, UT 84130-0285

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c/o NCO Financial Systems
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Centralized Insolvency Operation
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Carlos A. Morales
5702 Lindenhurst Avenue
Los Angeles, CA 90036-3275

Los Angeles Division
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Los Angeles, CA 90012-3332

BMW Financial Services
c/o Vital Recovery Services, Inc.
P.O. Box 923748
Norcross, GA 30010-3748

Cedars-Sinai
P.O. Box 60109
Los Angeles, CA 90060-0109

In re: Gene Douglas Balas and Carlos A. Morales, Debtor(s).	Main Document Page 27 of 27	CHAPTER 13 CASE NUMBER 2:11-bk-17831-TD
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SERVICE BY US MAIL

Citibank
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FIA Card Services aka Bank of America
c/o Becket and Lee LLP
P.O. Box 3001
Malvern, PA 19355-0701

HSBC Bank Nevada, N.A.
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HSBC Card Services
Hunt & Henriques
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Centralized Insolvency Operations
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Sacramento, CA 95812-2952

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San Jose, CA 95119-1306

HSBC Card Services
P.O. Box 81622
Salinas, CA 93912-1622

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A. Moshrefi, DDS MS & N. Daneshmand
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Sallie Mae Inc. on behalf of USA Funds
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Internal Revenue Service
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