

1 PETER C. ANDERSON  
UNITED STATES TRUSTEE  
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9 **UNITED STATES BANKRUPTCY COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**  
11 **LOS ANGELES DIVISION**

12 In re: ) Case No. 2:11-bk-17831-TD  
13 )  
14 ) Chapter 13  
15 )  
16 ) **GENE DOUGLAS BALAS and CARLOS**  
17 ) **A. MORALES,**  
18 ) **UNITED STATES TRUSTEE'S**  
19 ) **NOTICE OF MOTION AND MOTION**  
20 ) **TO DISMISS UNDER FED. R. BANKR.**  
21 ) **P. 8001(c) FOR RELATED RELIEF;**  
22 ) **MEMORANDUM OF POINTS AND**  
23 ) **AUTHORITIES AND**  
24 ) **CONCURRENTLY-FILED REQUEST**  
25 ) **FOR JUDICIAL NOTICE IN SUPPORT**  
26 ) **THEREOF**  
27 )  
28 )

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20 **TO THE HONORABLE THOMAS B. DONOVAN, UNITED STATES BANKRUPTCY**  
21 **JUDGE, DEBTORS, DEBTORS' COUNSEL, CREDITORS AND OTHER INTERESTED**  
22 **PARTIES:**

23 The United States Trustee for the Central District of California, through undersigned counsel,  
24 hereby moves under Fed. R. Bankr. P. 8001(c) to withdraw his appeal from the orders of the United  
25 States Bankruptcy Court for the Central District of California that denied the United States Trustee's  
26 motion, brought under 11 U.S.C. § 1307 to dismiss the debtors' chapter 13 case, and his motion  
27 objecting to the debtors' proposed chapter 13 plan. The debtors in this case opposed the United  
28 States Trustee's motion to dismiss and objection to confirmation and urged that Section 3 of the

1 Defense of Marriage Act, 1 U.S.C. § 7 (“Section 3 of DOMA”), on which the United States Trustee’s  
2 motions are based, is unconstitutional.

3 The United States Trustee’s motion to dismiss and his objection to confirmation relied on  
4 Section 302 of the Bankruptcy Code, which permits the filing of a single bankruptcy petition by an  
5 individual and the individual’s “spouse,” and on Section 3 of DOMA, which limits the word  
6 “spouse” to a person of the opposite sex who is a husband or wife.

7 On February 23, 2011, the Attorney General notified Congress that the Executive Branch has  
8 determined that Section 3 of DOMA, as applied to same-sex couples who are legally married under  
9 state law, violates the equal protection component of the Fifth Amendment. Accordingly, the  
10 Department of Justice will no longer defend the constitutionality of Section 3 as applied to those  
11 couples. The Attorney General’s February 23 letter stated that “the President has informed [the  
12 Department of Justice] that Section 3 of DOMA will continue to be enforced by the Executive  
13 Branch.”<sup>1</sup> The Attorney General noted that “this course of action respects the actions of the prior  
14 Congress that enacted DOMA, and it recognizes the judiciary as the final arbiter of the constitutional  
15 claims raised.” The Attorney General further stated that the Department of Justice “attorneys will  
16 also notify the courts of our interest in providing Congress a full and fair opportunity to participate  
17 in the litigation in those cases.”<sup>2</sup>

18 The Department of Justice has advised the House Bipartisan Legal Advisory Group (the  
19 “BLAG”) of the pendency of this appeal, and the BLAG has responded that it does not intend to  
20 appear to present arguments in support of Section 3 of DOMA. The BLAG is actively participating  
21 in litigation in several other courts in which the constitutionality of Section 3 has been challenged.  
22 In light of the decision by the BLAG not to participate in this appeal and the availability of other  
23 judicial fora for resolution of the constitutional question, the United States Trustee has determined  
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25 <sup>1</sup>Letter from Eric H. Holder, Jr. to The Honorable John A. Boehner dated February 23, 2011,  
26 a copy of which is attached to the concurrently-filed Request for Judicial Notice as Exhibit “1”.

27 <sup>2</sup>Id.


1 that it is not a necessary or appropriate expenditure of the resources of this Court and the parties to  
2 continue to litigate the appeal.

3 The United States Trustee requested that Debtors agree to the withdrawal of the appeal, but  
4 Debtors refused. The United States Trustee requests that the court enter an order approving  
5 withdrawal of the appeal.

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7 DATED: July 6, 2011

Respectfully submitted,

8 PETER C. ANDERSON  
9 UNITED STATES TRUSTEE

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11 By: JILL M. STURTEVANT  
Assistant United States Trustee

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1 PARTIES TO APPEAL:

2 DEBTORS:

3 **Gene Douglas Balas**  
4 5702 Lindenhurst Ave.  
5 Los Angeles, CA 90036

6 **Carlos A. Morales**  
7 5702 Lindenhurst Ave.  
8 Los Angeles, CA 90036

9 DEBTORS' COUNSEL:

10 **Peter M. Lively**  
11 The Law Offices of Peter M Lively  
12 11268 Washington Blvd Ste 203  
13 Culver City, CA 90230-4647

14 SPECIAL COUNSEL:

15 **Robert J Pfister**  
16 Klee Tuchin Bogdanoff & Stern LLP  
17 1999 Ave of the Stars 39th Fl  
18 Los Angeles, Ca 90067

19 CHAPTER 13 TRUSTEE:

20 **Kathy A Dockery**  
21 700 S. Flower Street, Suite 1950  
22 Los Angeles, CA 90017

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**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 the 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:

**725 S. Figueroa St., Suite #2600, Los Angeles, CA 90017**

A true and correct copy of the foregoing document described as **UNITED STATES TRUSTEE'S NOTICE OF MOTION AND MOTION TO DISMISS UNDER FED. R. BANKR. P. 8001(c) FOR RELATED RELIEF** 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 7/6/11, 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 email address(es) indicated below:

- Kathy A Dockery (TR) efileing@CH13LA.com
- M Jonathan Hayes jhayes@polarisnet.net
- Peter M Lively PeterMLively2000@yahoo.com, PeterMLively2000@yahoo.com
- Robert J Pfister rpfister@ktbslaw.com
- United States Trustee (LA) ustpreion16.la.ecf@usdoj.gov
- Hatty K Yip hatty.yip@usdoj.gov

Service information continued on attached page

II. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL** (indicate method for each person or entity served):

On 7/6/11, 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 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.

DEBTOR: Gene Douglas Balas & Carlos A. Morales, 5702 Lindenhurst Ave., Los Angeles, CA 90036

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 7/6/11, 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 personal delivery on the judge will be completed no later than 24 hours after the document is filed.

The Honorable Thomas B. Donovan, Judge Donovan's Courtesy Bin outside Suite 1352, 255 E. Temple St., Los Angeles, CA 90012

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.

7/6/11

PATTI BRUNDIGE

Date

Type Name

Signature

