

1 PETER C. ANDERSON  
UNITED STATES TRUSTEE  
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ASSISTANT UNITED STATES TRUSTEE  
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4 OFFICE OF THE UNITED STATES TRUSTEE  
725 So. Figueroa Street, Suite 2600  
5 Los Angeles, California 90017  
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9 **UNITED STATES BANKRUPTCY COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**  
11 **LOS ANGELES DIVISION**

12 In re: ) Case Number 2:11-bk-17831-AA  
13 ) Chapter 13  
14 **GENE DOUGLAS BALAS and CARLOS A. MORALES,** ) **UNITED STATES TRUSTEE'S**  
15 Debtor(s). ) **NOTICE OF MOTION AND**  
16 ) **MOTION TO DISMISS PURSUANT**  
17 ) **TO 11 U.S.C. § 1307(c) OR FOR**  
18 ) **RELATED RELIEF**  
19 ) Date: May 11, 2011  
20 ) Time: 1:30 p.m.  
21 ) Courtroom: 1345  
22 ) 255 E. Temple Street  
23 ) Los Angeles, CA 90012

24 **TO THE HONORABLE THOMAS DONOVAN, UNITED STATES BANKRUPTCY**  
25 **JUDGE, DEBTORS, DEBTORS' COUNSEL, CREDITORS AND OTHER INTERESTED**  
26 **PARTIES:**

27 PLEASE TAKE NOTICE THAT, on May 11, 2011, at 1:30 p.m., or as soon thereafter as  
28 the matter may be heard, the United States Trustee for the Central District of California (hereafter  
"U.S. Trustee"), through the undersigned attorney, will and hereby does move this Court to enter  
an Order dismissing this case under 11 U.S.C. § 1307(c), unless the Debtors voluntarily sever their


1 joint petition, on the ground that the debtors have filed a joint case not authorized by 11 U.S.C. §  
2 302.

3 If you wish to oppose or respond to this motion, you must file a written response with the  
4 Clerk of the United States Bankruptcy Court at Edward R. Roybal Building and Courthouse, 255  
5 E. Temple St., Room 940, Los Angeles, California, 90012, serve a copy of it on the U.S. Trustee  
6 at the address set forth above and upon the Chapter 13 Trustee (see attached service list) no less  
7 than 14 days prior to the above hearing date. If you fail to file a response to this motion within such  
8 time period, the Court may treat such failure as a waiver of your right to oppose the motion and  
9 may grant the requested relief.

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Respectfully submitted,  
PETER C. ANDERSON  
UNITED STATES TRUSTEE

DATED: April 15, 2011

By:   
HATTY YIP  
Attorney for the United States Trustee

1 **UNITED STATES TRUSTEE'S MOTION TO**

2 **DISMISS PURSUANT TO 11 U.S.C. § 1307(c), OR FOR RELATED RELIEF**

3 **I. INTRODUCTION**

4 The U.S. Trustee hereby moves this Court to dismiss this case pursuant to 11 U.S.C. §  
5 1307(c), unless the debtors voluntarily sever their joint petition, on the ground that the Debtors have  
6 filed a joint case not authorized by 11 U.S.C. § 302.

7 The U.S. Trustee is charged with supervising the administration of cases under chapter 7  
8 of title 11. 28 U.S.C. § 586. In furtherance of that duty, the U.S. Trustee is granted standing to  
9 raise and be heard on any issue in any bankruptcy case or proceeding. 11 U.S.C. § 307.

10 The U.S. Trustee requests the Court enter an order dismissing this case, unless the Debtors  
11 voluntarily sever their joint petition, based upon the following facts and law.

12 **II. STATEMENT OF FACTS**

13 1. Debtors Gene Douglas Balas and Carlos A. Morales ("Debtors") filed a joint  
14 voluntary chapter 13 petition on February 24, 2011.<sup>1</sup> Debtors are represented by counsel, Peter M.  
15 Lively.<sup>2</sup> Kathy A. Dockery was appointed the chapter 13 trustee, and the first meeting of creditors  
16 was scheduled for, and held on, March 28, 2011.<sup>3</sup>

17 2. Debtors, two men, were legally married in the state of California on August 30,  
18 2008, and were still married as of the date of filing the petition.<sup>4</sup>

19 **III. ARGUMENT**

20 3. Section 302 of the Bankruptcy Code, the exclusive means for the filing of a joint  
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22 <sup>1</sup>See Case Docket for *In re: Gene Douglas Balas and Carlos A. Morales*, case no. 2:11-  
23 *bk-17831-AA*, ("Case Docket"), U.S. Trustee's Request for Judicial Notice ("RJN") filed  
concurrently with this Motion.

24 <sup>2</sup>See Case Docket, U.S. Trustee's RJN filed concurrently with this Motion.

25 <sup>3</sup>See Case Docket, U.S. Trustee's RJN filed concurrently with this Motion.

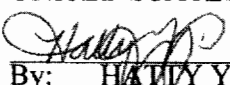
26 <sup>4</sup>The State of California granted marriage licenses to same-sex couples from June 16,  
27 2008 to November 4, 2008. See *In re Marriage Cases*, 183 P.3d 384 (2008). However, the  
28 granting of such licenses was discontinued following the passage of a ballot initiative amending  
California's Constitution. Cal. Const. art. I, § 7.5.

1 voluntary bankruptcy case, permits "the filing with the bankruptcy court of a single petition under  
2 [chapter 7] by an individual that may be a debtor under such chapter and such individual's *spouse*."  
3 11 U.S.C. § 302 (a) (emphasis added).

4 4. For purposes of federal law, the term "spouse" refers only to a person of the opposite  
5 sex, who is a husband or wife. 11 U.S.C. § 7.<sup>5</sup> Because the Bankruptcy Code, including 11 U.S.C.  
6 § 302, is an "Act of Congress," the ability to file a joint case in bankruptcy is restricted to married  
7 couples of the opposite sex.

8 5. The remedy requested for Debtors' improper joint petition is appropriate. Section  
9 1307(c) of the Bankruptcy Code permits dismissal of a case for cause after notice and a hearing.  
10 11 U.S.C. § 1307(c). The examples of cause in section 1307(c) are merely illustrative and not  
11 exhaustive. See Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999). Thus, courts  
12 confronting an improper joint petition have dismissed the case, or required debtors to amend their  
13 petition subject to dismissal. See, e.g., In re Jephunneh Lawrence & Assoc. Chartered, 63 B.R.  
14 318, 321 (Bankr. D. Colo. 1986) (dismissing case because joint petition was improperly filed by  
15 corporation and its sole shareholder); In re Malone, 50 B.R. 2, 3 (Bankr. E.D. Mich. 1985)  
16 (requiring unmarried, cohabiting couple to amend joint petition).

17 **WHEREFORE**, the U.S. Trustee respectfully requests that the Court dismiss this case,  
18 unless the Debtors voluntarily sever their joint petition by a date certain.

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20 Respectfully submitted,  
21 PETER C. ANDERSON  
22 UNITED STATES TRUSTEE  
23   
24 By: HATTY YIP  
25 Trial Attorney

21 DATED: April 15, 2011

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27 <sup>5</sup>In its entirety, section 7 provides that "[i]n determining the meaning of any Act of  
28 Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and  
agencies of the United States, the word 'marriage' means only a legal union between one man  
and one woman as husband and wife, and the word 'spouse' refers only to a person of the  
opposite sex who is a husband or a wife." 11 U.S.C. § 7.

**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 South Figueroa Street, Suite 2600, Los Angeles, California 90017-1574**

A true and correct copy of the foregoing document described as: **UNITED STATES TRUSTEE'S NOTICE OF MOTION AND MOTION TO DISMISS PURSUANT TO 11 U.S.C. §1307(c) OR 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 4/15/11 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) ustpreregion16.la.ecf@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 4/15/11 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.

#### SEE ATTACHED SERVICE LIST (IF APPLICABLE)

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 4/15/11 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. **Upon filing I will be giving a filed document to a Court delivery service consistent with our normal business practice, with instructions to deliver the copy to the bin outside the suite (Court Manual Appendix F), as follows:**

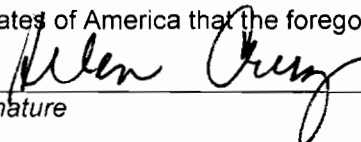
- The Honorable Alan M. Ahart, Judge Ahart's Courtesy Bin outside Suite 1382, 255 E. Temple St, Los Angeles, CA 90012
- The Honorable Thomas Donovan, Courtesy Bin outside Suite 1352, 255 E. Temple St., Los Angeles, CA 90012

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.

4/15/11  
Date

HELEN CRUZ  
Type Name

  
Signature

**ADDITIONAL SERVICE INFORMATION**

**II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL:**

**DEBTORS:**

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

**DEBTORS' COUNSEL:**

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

**DEBTORS' COUNSEL:**

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

**CREDITORS:**

American Honda Finance Corp., Acura Financial Services, PO Box 168088, Irving TX 75016-8088

BANK OF AMERICA, P.O. BOX 15026, WILMINGTON, DE 19850

BMW FINANCIAL SERVICES, C/O VITAL RECOVERY SERVICES, INC., P.O. BOX 923748, NORCROSS, GA 30010

BMW FINANCIAL SERVICES, P.O. BOX 3608, DUBLIN, OH 43016-0306

Candica L.L.C , C O WEINSTEIN AND RILEY, PS, 2001 WESTERN AVENUE, STE 400, SEATTLE, WA 98121

Candica L.L.C, C O WEINSTEIN AND RILEY, PS, 2001 WESTERN AVENUE, STE 400, SEATTLE, WA 98121

CAPITAL ONE BANK, P.O. BOX 30285, SALT LAKE CITY, UT 84130

CEDARS-SINAI, P.O. BOX 60109, LOS ANGELES, CA 90060

CHASE, P.O. BOX 15298, WILMINGTON, DE 19850

CHEVRON CREDIT BANK, P.O. BOX 5010, CONCORD, CA 94524

CITIBANK, P.O. BOX 26892, SAN FRANCISCO, CA 94126

CONSULTANTS FOR PATHOLOGY, 4607 LAKEVIEW CANYON RD., SUITE 598, WESTLAKE VILLAGE, CA 91361

EMPLOYMENT DEVELOPMENT DEPARTMENT, State of California, Benefit Overpayment Collection Section, MIC 91, P.O. Box 826218, Sacramento, CA 94230-6218

FIA Card Services aka Bank of America, c o Becket and Lee LLP, POB 3001, Malvern, PA 19355-0701

FIA Card Services, NA as successor in interest to, Bank of America NA and MBNA America Bank, 1000 Samoset Drive, DE5-023-03-03 , Newark, DE 19713

Franchise Tax Board, Bankruptcy Section MS A340, PO BOX 2952, Sacramento CA 95812-2952

FRANCHISE TAX BOARD, ATTENTION: BANKRUPTCY, P.O. BOX 2952, SACRAMENTO, CA 95812

HSBC Bank Nevada, N.A., by PRA Receivables Management, LLC, PO Box 12907, Norfolk VA 23541

HSBC CARD SERVICES, C/O HUNT & HENRIQUES, 151 BERNAL ROAD, SUITE 8, SAN JOSE, CA 95119

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

HSBC CARD SERVICES, P.O. BOX 81622, SALINAS, CA 93912

HSBC CARD SERVICES, HUNT & HENRIQUES, 151 BERNAL ROAD, SUITE 8, SAN JOSE, CA 95119

HSBC CARD SERVICES, C/O NCO FINANCIAL SYSTEMS, P.O. BOX 15372, WILMINGTON, DE 19850

INTERNAL REVENUE SERVICE, CENTRALIZED INSOLVENCY OPERATION, P.O. BOX 7346, PHILADELPHIA,  
PA 19101-7346

INTERNAL REVENUE SERVICE, P.O. BOX 21126, PHILADELPHIA, PA 19114

MD PERIODONTICS, A. MOSHREFI, DDS MS & N. DANESHMAND, 9735 WILSHIRE BLVD., SUITE 211,  
BEVERLY HILLS, CA  
90212

Park La Brea, 6200 W. Third Street, Los Angeles, CA 90036

SALLIE MAE, P.O. BOX 9533, WILKES-BARRE, PA 187773-9533

Sallie Mae Inc. on behalf of USA FUNDS, Attn: Bankruptcy Litigation Unit E3149, P.O. Box 9430, Wilkes-Barre, PA  
18773-9430

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