

1 Thomas H. Allen, State Bar #11160
Khaled Tarazi, State Bar #32446
2 **ALLEN BARNES & JONES, PLC**
1850 N. Central Ave., Suite 1150
3 Phoenix, Arizona 85004
Ofc: (602) 256-6000
4 Fax: (602) 252-4712
Email: tallen@allenbarneslaw.com
5 ktarazi@allenbarneslaw.com

6 Attorneys for Debtors

7 **UNITED STATES BANKRUPTCY COURT**

8 **DISTRICT OF ARIZONA**

9 In re:

Chapter 11

10 THOMAS NELSON PAYNE and
BARBARA C. PAYNE,

Case No. 2:15-bk-10752-DPC

11 Debtors.

**DEBTORS' AMENDED DISCLOSURE
STATEMENT DATED NOVEMBER 11,
2016**

13 Thomas Nelson Payne and Barbara C. Payne, the debtors and debtors-in-possession in
14 the above captioned Chapter 11 case ("Debtors"), hereby submit their *Amended Disclosure*
15 *Statement Dated November 11, 2016* to assist their creditors in making an informed decision in
16 voting on the *Debtors' Amended Plan of Reorganization Dated November 11, 2016* ("Plan")
17 proposed pursuant to 11 U.S.C. § 1121.

18 **ARTICLE 1**

19 **INTRODUCTION TO THE DISCLOSURE STATEMENT AND VOTING**

20 **1.1 Purpose of the Disclosure Statement.**

21 This Disclosure Statement sets forth certain information regarding the Debtors' pre-petition
22 history, their assets, significant events that have occurred during this Chapter 11 Case, a summary
23 of the Plan, including when and how Creditors will be paid, and a brief discussion of the
24 confirmation process and the voting procedures that holders of Claims in impaired Classes must
25 follow for their votes to be counted. The information provided herein is true and accurate based
26 upon the Debtors' personal knowledge, information, and belief.

27 The primary purpose of this Disclosure Statement is to provide adequate information to
28 those Creditors voting on the Plan so that they may make a reasonably informed decision with

1 respect to exercising their rights to accept or reject the Plan. This Disclosure Statement is intended
2 for the sole use of Creditors and other parties-in-interest and is not intended to be relied upon for
3 any purpose other than to determine how to vote on the Plan. Nothing contained herein shall be
4 deemed conclusive advice on the tax or other legal effects of the reorganization on holders of
5 Claims or interests.

6 **You should consult your personal counsel or tax advisor on any questions or concerns**
7 **respecting tax, securities, or other legal consequences of the Plan.**

8 **1.2 Definitions.**

9 Unless otherwise defined herein, terms defined in the Plan shall have the same meanings
10 when used in this Disclosure Statement. In addition, unless otherwise defined herein or in the Plan,
11 terms used in this Disclosure Statement shall have the same meanings as in the Bankruptcy Code
12 (“Code”) or the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), or, if not defined
13 therein, their ordinary meanings.

14 **1.3 Authorized Representations.**

15 This Disclosure Statement is the only document authorized by the Bankruptcy Court to be
16 used in connection with the solicitation of votes on the Plan. You should not rely upon any
17 representations or inducements made to secure your acceptance of the Plan other than those set
18 forth herein or in the Plan. **The Bankruptcy Court’s approval of this Disclosure Statement**
19 **does not constitute a certification or ruling by the Court regarding the completeness or**
20 **accuracy of any statements contained herein. The information contained in this Disclosure**
21 **Statement came from the Debtors’ records.**

22 This Disclosure Statement is not the Plan. This Disclosure Statement, together with the
23 Plan (**Exhibit A**), should be read in its entirety before you vote on the Plan. For the convenience
24 of Creditors and holders of interests, the Plan is summarized in this Disclosure Statement, but all
25 summaries are qualified in their entireties by the Plan itself, which is controlling in the event of any
26 inconsistency. The financial information contained herein has been provided in good faith, but has
27 not been audited by a certified public accountant and has not necessarily been prepared in
28 accordance with generally accepted accounting principles.

1 impaired Classes, the Court may nonetheless confirm the Plan pursuant to Code § 1129(b) if one
2 impaired Class accepts the Plan and the Court finds that Debtors' Plan provides, among other
3 things, fair and equitable treatment of the Classes rejecting the Plan and that Creditors receive as
4 much or more under the Plan than they would receive in a Chapter 7 liquidation (discussed more
5 fully below).

6 When confirmed by the Bankruptcy Court, this Plan will bind all holders of Claims against
7 the Debtors, whether or not they are entitled to vote, or did vote on the Plan and whether or not
8 they received or retained any distributions or property under the Plan.

9 **1.6 Debtors' Recommendations and Position.**

10 The Debtors strongly urge each Creditor to vote to accept the Plan. The Debtors believe
11 that each person or entity entitled to vote will conclude that the Plan is fair, reasonable, and
12 provides the greatest return to the greatest number of Creditors.

13 **ARTICLE 2**

14 **THOMAS NELSON PAYNE AND BARBARA C. PAYNE**

15 **2.1 History of the Debtors.**

16 The Debtors have been married for over fifty-eight years and have lived in Arizona for
17 the last twenty-five years. Mr. Payne is a business man who has started several small companies
18 over the past twenty years. Mr. Payne is currently the principal of—and until recently, operated—
19 Western Estate Planning Services, LLC (“WEPS”) a small business that provides consulting and
20 trust and estate planning services. Mrs. Payne is a retired attorney who previously practiced in
21 Connecticut, Texas, and Arizona.

22 **2.2 Incidents Leading to Chapter 11 Filing.**

23 In 2005, the Debtors had a sizable net worth consisting of Arizona and California real
24 estate, half ownership in a medium sized manufacturing company, and a portfolio of stocks and
25 bonds. In 2007, the Debtors sold their interest in the manufacturing company and invested a
26 portion of the proceeds in a small manufacturing services company located in Mexico. Within a
27 year of the sale of the manufacturing company, the buyer sued the company, alleging
28 misrepresentation involving certain accounting practices. Under the terms of the sale contract, the

1 Debtors indemnified the buyer against a portion of any judgments. The buyer obtained judgments
2 against the company and the Debtors in excess of \$4 million, essentially all of the proceeds of the
3 sale. In addition, the Debtors became liable for approximately \$750,000 in legal fees.

4 The Debtors' other assets declined greatly in value between 2007 and 2009, and the
5 recession impacted the Debtors' manufacturing services business in Mexico, forcing them to sell at
6 a loss. As a result of this loss of income, the Debtors fell behind on their debt payments and have
7 been unable to recover financially. The Debtors filed for Chapter 11 bankruptcy to reorganize their
8 debts and make a meaningful distribution to creditors.

9 **2.3 Debtors' Future.**

10 The Debtors receive social security and limited retirement income. Unfortunately, Mr.
11 Payne has suffered certain health issues recently that will make it difficult for him to work. By
12 liquidating the Homestead and restructuring their debts, the Debtors will be able to pay
13 administrative, Secured, and priority Creditors, and make a distribution to Unsecured Creditors.
14 As detailed in the budget attached hereto as **Exhibit B**, the Debtors have also pledged their
15 disposable income over five years to provide an additional \$1,500 return to Unsecured
16 Creditors.¹

17 **ARTICLE 3**

18 **DEVELOPMENTS DURING THE BANKRUPTCY CASE**

19 **3.1 Bankruptcy Proceeding.**

20 **3.1.1 Filing of the Case.**

21 On August 24, 2015 ("Petition Date"), the Debtors filed a petition for relief
22 under Chapter 11 of the Bankruptcy Code. The Debtors filed for relief under Chapter 11 as
23 their debts exceeded the statutory limits for Chapter 13 relief. The Debtors employed Allen
24 Barnes & Jones, PLC ("AB&J") to represent them in this Case, which employment was
25 approved by this Court on August 27, 2015. One of the Debtors' largest unsecured creditors is
26 the Clarke Law Firm, PLC ("Clarke") with a claim for \$669,467.12. Clarke has been active in

27
28 ¹ Exhibit B does contemplate a small, \$16 per month cushion to allow the Debtors a minimal and reasonable margin for error on a monthly basis. However, the Debtors pledge the rest of their disposable income—income derived solely from otherwise exempt pension and social security benefits—to Unsecured Creditors.

1 this Case, appearing at the meeting of creditors and the initial status hearing and seeking
2 discovery from the Debtors pursuant to Fed.R.Bankr.P. 2004. The Debtors have negotiated
3 throughout the Case with Clarke and other Creditors in an attempt to resolve their Claims and
4 confirm a consensual Plan.

5 **3.1.2 The Initial Plan.**

6 On December 22, 2015, the Debtors filed the *Debtors' Disclosure Statement*
7 *Dated December 22, 2015* [ECF No. 50] ("Initial Disclosure Statement") and *Debtors' Plan of*
8 *Reorganization Dated December 22, 2015* [ECF No. 49] ("Initial Plan"). The Debtors were
9 optimistic about reorganization because, based on a new business and marketing strategy,
10 WEPS was beginning to show increased profits that would support the Initial Plan. On March
11 29, 2016, the Court entered an Order approving the Initial Disclosure Statement [ECF No. 88]
12 and scheduled the hearing on confirmation of the Initial Plan for May 17, 2016. The Court
13 subsequently continued the confirmation hearing to October 31, 2016.

14 Unfortunately, in the last week of July 2016, Mr. Payne was admitted to the
15 hospital with a severe medical condition. Mr. Payne was later released from the hospital, but
16 certain health issues remain that will make it difficult for him to work as before. Therefore, it
17 became clear that a Chapter 11 reorganization was no longer a viable prospect, and the Debtors
18 chose to file this Plan as a liquidating plan to maximize distributions to all Creditors.

19 **3.1.3 The Homestead Property.**

20 On their bankruptcy Schedule A, the Debtors listed their interest in the real
21 property located at 7516 N. Clearwater Parkway, Scottsdale, Arizona 85253 ("Homestead").
22 JPMorgan Chase Bank, N.A. ("Chase") is the lien holder on the Homestead. On August 9,
23 2016, Chase filed the *Movant's Motion to Lift the Automatic Bankruptcy Stay* [ECF No. 135]
24 ("Motion for Relief") in connection with the Homestead. As set forth in Article 5 of this
25 Disclosure Statement, the Debtors believe that there is equity in the Homestead above the
26 value of the Claim Chase asserts in the Motion for Relief.

27 In the Initial Plan, the Debtors planned to retain the Homestead and pay Chase
28 the value of its Secured Claim. However, after it became clear that the Debtors would be

1 filing this liquidating Plan, the Debtors retained a real estate agent to begin marketing the
2 Homestead. As of the filing of this Disclosure Statement, the Debtors have come to an
3 agreement with Chase to resolve the Motion for Relief that includes adequate protection
4 payments and a “drop dead” period to market and sell the Homestead. The automatic stay will
5 lift on January 1, 2017.

6 On September 23, 2016, the Court entered an Order [ECF No. 152] approving
7 the employment of Wendy Walker of Coldwell Banker Residential Brokerage as real estate
8 agent with respect to the sale of the Homestead. Ms. Walker is an experienced and qualified
9 real estate agent who has been licensed since 1999, and is very experienced with the sale of
10 properties of the same type and location as the Homestead. With Ms. Walker’s help, the
11 Debtors listed the Homestead for sale at the end of September 2016. In the event that the
12 Debtors are able to enter into a contract for sale of the Homestead prior to confirmation of this
13 Plan, the Debtors will seek approval of such sale pursuant to Code § 363, seek the Court’s
14 approval to distribute sale proceeds to Chase on account of its Secured Claim, and hold the
15 remaining proceeds for distribution consistent with any order confirming this Plan.

16 **3.1.4 Claims.**

17 As of the filing of this Disclosure Statement, ten (10) proofs of Claim have been
18 filed. See Claims Register. Based upon a review of (i) the schedules filed in this case [ECF No.
19 24], and (ii) the proofs of Claim filed on the Claims register, the estimated Allowed Unsecured
20 Claims, excluding any deficiency claims, are approximately \$1,011,252.09 (“Unsecured Claim
21 Total”), which may be reduced if timely filed objections to any Claims result in the disallowance of
22 any such Claims.

23 Included in the Unsecured Claim Total are the Claims of Clarke and Kennedy
24 Johnson Gallagher, LLC (“KJG”) pursuant to proofs of Claim 8-1 and 9-1, respectively. Both
25 Clarke and KJG assert in their proofs of Claim that they hold Secured Claims. Each of their
26 Claims relate to judgments obtained by Clarke and KJG and recorded with the Maricopa County
27 Recorder’s Office. However, in Arizona, judgment liens do not attach to property that is claimed
28 as a homestead. Evans v. Young, 661 P.2d 1148, 1154 (Ariz. Ct. App. 1983); see also Rand v.

1 United Auto Grp., Inc. (In re Rand), 400 B.R. 749, 754 (Bankr. D. Ariz. 2008). The only real
2 property the Debtors own in Maricopa County, Arizona is the Homestead, in which the Debtors
3 have claimed their homestead exemption on their Schedule C; therefore, Clarke and KJG's
4 judgments did not attach as liens on the Homestead, and proofs of Claim 8-1 and 9-1 are
5 Unsecured Claims and will be treated with the General Unsecured Class in the Plan.

6 As to the remaining proofs of Claim, the Debtors are in the process of reviewing
7 each proof of Claim filed. In the event the Debtors dispute a proof of Claim, the Debtors will
8 timely object to the proof of claim and/or try to reach an informal resolution with the relevant
9 Creditor.

10 **ARTICLE 4**

11 **SUMMARY OF THE DEBTORS' CURRENT FINANCIAL CONDITION**

12 As set forth in Article 3 of this Disclosure Statement, the Debtors' financial situation has
13 worsened since the onset of Mr. Payne's recent health condition that has rendered him unable to
14 work. The Debtors' sole source of income is now from exempt pension social security benefits,
15 and the Debtors intend to reduce their expenses after selling the Homestead by moving into an
16 apartment. The Debtors believe that (i) liquidating their non-exempt assets through the Plan;
17 and (ii) pledging certain of their exempt assets to Administrative and Unsecured Creditors, will
18 be in the best interests of all parties in interest in this Case. The Debtors' budget for five years
19 is detailed in Exhibit B. Summarily, the Debtors' total average monthly income is
20 approximately \$3,341, and average monthly expenses are \$3,253.00.

21 **ARTICLE 5**

22 **DESCRIPTION OF ASSETS**

23 The Debtors' assets and liabilities are listed on their Schedules and Statement of
24 Financial Affairs filed in this case [ECF No. 24]. The value of certain of the Debtors' assets—
25 specifically, the Homestead and some artwork—has been at issue in this Case. On Schedule A,
26 the Debtors valued the Homestead at \$1,250,000 based upon their knowledge of their
27 neighborhood, sales of comparable properties surrounding the Homestead, and the condition of
28 the Homestead. On Schedule B, the Debtors listed household goods and furnishings of \$16,000

1 and artwork valued at \$8,000. From the beginning of the Case, Clarke has contested the
2 valuation of both the Homestead and the artwork and asserted that the Debtors had purposefully
3 undervalued them on their Schedules.

4 To support its position, Clarke obtained appraisals of the Residence and its contents. As
5 to the Residence, Clarke obtained two appraisals from Terry Fenlon Appraisal Services: a
6 retrospective appraisal showing the value as of the Petition Date of \$1,500,000, and another
7 showing the value as of March 2016 of \$1,550,000.²

8 Of course, the Debtors disputed Clarke's valuation and subsequently sought and
9 obtained Court approval to retain Jay Josephs of Joseph's Appraisal Group ("JAG") to conduct
10 an appraisal of the Homestead. JAG's appraisal stated that, as of April 2016, the Homestead
11 had a value of \$1,220,000. The Debtors' initial valuation of \$1,250,000 on Schedule A was
12 slightly higher than JAG's appraisal.

13 As set forth in Section 3.1.3 of this Disclosure Statement, the Debtors have since
14 retained Wendy Walker of Coldwell Banker Residential Brokerage as real estate agent with
15 respect to the sale of the Homestead. With Ms. Walker's guidance, the Debtors listed the
16 Homestead for sale for \$1,400,000 with the goal of an eventual sale price of at least \$1,375,000.

17 As to the Debtors' artwork, the Debtors initially listed the artwork on Schedule B with a
18 value of \$8,000. The Debtors based such value mostly upon what they paid for the artwork
19 while collecting it over the course of 40 years. Further, the Debtors did not believe the value of
20 the artwork would be of significant issue in their Case, because it is subject to the lien of Dina
21 Atkinson (as described below) on all of the Debtors' personal property that far exceeds its
22 value. However, Clarke asserted that the artwork was worth significantly more and hired Linda
23 McAdoo Personal Property Appraisals, who opined that the artwork was worth \$62,450.

24 The Debtors sought appraisals of the artwork from Larsen Art Gallery of Scottsdale,
25 which provided an appraisal of certain pieces. For the remaining pieces, the Debtors
26 commissioned the appraisal division of Auctionata, a large international auction company.

27
28 ² Though the second appraisal shows the value as of March 2015, the Debtors believe this is a typographical error,
and that the appraiser was intending to provide a then-current value in March 2016.

1 Together, the appraisals of Larsen and Auctionata provided a value for the artwork of
2 approximately \$22,160.

3 On November 1, 2016, the Debtors filed their *Notice of Intent to Abandon Real Property*
4 [ECF No. 166] in connection with the real property located at 8 Danbury, Ladera Ranch, CA
5 92694 (“California Property”). The Debtors do not anticipate any objections to the
6 abandonment of the California Property, as it is burdensome to the bankruptcy estate. Chase
7 also holds the first position lien on the California Property, and after it is abandoned, will be
8 free to exercise its California state law rights with respect to the California Property.

9 Along with the foregoing, the remainder of the Debtors’ property is listed on the
10 Liquidation Analysis Chart, attached hereto as **Exhibit C**. As detailed in Exhibit C, the total
11 non-exempt, unencumbered value of the Debtors’ assets is approximately \$150.00. Further, as
12 detailed in Exhibit C (and Article 10 below) liquidation of the Assets through the Plan will
13 provide a greater return to Unsecured Creditors than a Chapter 7 liquidation. In the Plan, the
14 Debtors have pledged so much of their homestead exemption and exempt retirement income as
15 is necessary to satisfy all Administrative Claims and provide a return to Unsecured Creditors.
16 In a Chapter 7 liquidation, a Chapter 7 Trustee would likely abandon the Homestead because its
17 value after costs of sale and the satisfaction of Chase’s lien does not exceed the homestead
18 exemption. Therefore, the value of the Homestead to Administrative and Unsecured Creditors
19 in this Case is optimized under the Plan rather than a Chapter 7 liquidation.

20 **ARTICLE 6**

21 **POST-CONFIRMATION CONTROL**

22 The Debtors will retain control of their Assets, most of the value of which will be
23 liquidated for the benefit of Creditors, or surrendered to Creditors. The Debtors shall also be
24 responsible for preparing and filing quarterly post-confirmation financial reports. Copies of those
25 reports shall be provided to the United States Trustee’s Office. During the term of the Plan, the
26 Debtors will pay, in cash, or other certified funds, quarterly fees to the United States Trustee’s
27 Office.

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ARTICLE 7

SUMMARY OF THE PLAN

This section contains a brief summary of the Plan, and it is qualified in its entirety by reference to the Plan, which accompanies this Disclosure Statement. **THIS SUMMARY DOES NOT PURPORT TO BE COMPLETE. THE PLAN ITSELF CONTROLS THE RELATIONSHIP BETWEEN DEBTORS AND CREDITORS. YOU SHOULD READ THE PLAN IN ITS ENTIRETY PRIOR TO CASTING YOUR BALLOT.**

7.1 Classification and Treatment of Claims. The Plan provides for the following classification and treatment of Claims.

7.1.1 Class I(a) – General Administrative Claims.

Class I(a) consists of the allowed Administrative Claims for actual and necessary costs and expenses of administration entitled to priority under Code §§ 503(b) and 507(a)(1), but not including the Debtors’ attorneys’ fees. Any Creditor seeking payment with respect to an Administrative Claim, other than Chapter 11 Professionals, must file an application for allowance and payment of its Administrative Claim with the Bankruptcy Court no later than the Administrative Claim Bar Date. The holders of Allowed Class I(a) Claims shall be paid in full from the proceeds of the sale of the Homestead. To the extent that the proceeds from the sale of the Homestead, after payment of the costs of sale and after the payment of the Allowed Class III(a) Claim of Chase, do not exceed the amount of the Debtors’ homestead exemption, the Debtors pledge such portion of their homestead exemption as will be required to pay the Class I(a) Claim in full.

7.1.2 Class I(b) – Administrative Claim of AB&J.

Class I(b) consists of the allowed Administrative Claim of AB&J for attorneys’ fees incurred representing the Debtors in connection with this Case. Prior to the Petition Date, the Debtors provided AB&J with a retainer in the amount of \$8,867.34, of which \$3,914.29 was applied to pre-bankruptcy advice and services and the Chapter 11 filing fee, and \$4,953.05 was held in AB&J’s IOLTA trust account. AB&J has filed one fee application in this Case, which the Court approved on April 1, 2016 [ECF No. 94], and AB&J subsequently applied the trust

1 balance to the approved fees. Thus, the Attorneys' fees in this Case exceed the retainer. While
2 unforeseen Plan litigation is possible, the Debtors do not anticipate employing any further
3 professionals in this Case. The holder of the Allowed Class I(b) Claim shall be paid in full from
4 the proceeds of the sale of the Homestead. To the extent that the proceeds from the sale of the
5 Homestead, after payment of the costs of sale, payment of the Allowed Class III(a) Claim of
6 Chase, and payment of the Class I(a) Administrative Claims, do not exceed the amount of the
7 Debtors' homestead exemption, the Debtors pledge up to one half (1/2) of the remaining portion
8 of their homestead exemption as will be required to pay the Class I(b) Claim in full.

9 **7.1.3 Class II – Priority Claims.**

10 Class II consists of all Claims which are entitled to priority treatment pursuant to
11 Code § 507(a). Each holder of a Priority Claim in Class II is considered to be in its own
12 separate subclass within Class II, and each such subclass is deemed to be a separate Class for
13 purposes of the Plan. Class II consists of various subclasses of asserted priority creditor claims.
14 Unless otherwise specified, holders of Allowed Priority Claims in any of the Class II subclasses
15 shall receive payment in full, within five years of the Petition Date. The first payment will be
16 due on the Effective Date. The interest rate paid to Allowed Class II Claims shall be four
17 percent (4.0%) per annum from the Effective Date.

18 **7.1.3.1 Class II(a) - Priority Claim of Arizona Department of**
19 **Revenue.**

20 Class II(a) consists of any Allowed Priority Claim of the Arizona
21 Department of Revenue relating to individual income taxes due by the Debtors, if any. The
22 Debtors are not aware of, and do not believe there are, any Class II(a) Claims. To the extent
23 such Claims exist, holders of Allowed Class II(a) Claims shall receive payment in full within
24 sixty (60) months of the Petition Date. The first payment will be due on the Effective Date.
25 The interest rate paid to Allowed Class II(a) Claims shall be four percent (4.0%) per annum
26 from the Effective Date. No prepayment penalty shall pertain to this Claim. Class II(a) is
27 unimpaired.

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1 If Debtors fail to comply with the provisions of the Plan with respect to
2 the liability owed to ADOR, which includes but is not limited to, the failure to make the full and
3 timely payments, such failure shall constitute a default of the Plan. If the Debtors fail to cure
4 the default within 30 days after written notice of the default from ADOR or its agents, the entire
5 balance due to ADOR shall be immediately due and owing. In the event of a default, the
6 ADOR may enforce the entire amount of its claim, exercise any and all rights and remedies
7 under applicable non-bankruptcy law which include, but are not limited to, state tax collection
8 procedures, and any other such relief as may be deemed appropriate by the Bankruptcy Court.

9 **7.1.3.2 Class II(b) - Priority Claim of Internal Revenue Service.**

10 Class II(b) consists of any Allowed Priority Claim of the Internal
11 Revenue Service relating to individual income taxes due by the Debtors. The Debtors are not
12 aware of, and do not believe there are, any Class (II)(b) Claims. To the extent such Claims
13 exist, holders of Allowed Class II(b) Claims shall receive payment within sixty (60) months of
14 the Petition Date. The first payment will be due on the Effective Date. The interest rate paid to
15 Allowed Class II(b) Claims shall be four percent (4.0%) per annum from the Effective Date.
16 No prepayment penalty shall pertain to this Claim. Class II(b) is unimpaired.

17 In the event that the Debtors default on any payment due to the Internal
18 Revenue Service as required under the confirmed Plan, and in the event that the Debtors fail to
19 cure said default within thirty days after written notice of the default is mailed to the Debtors
20 and the Debtors' attorney, the entire imposed liability together with any unpaid current
21 liabilities, shall become due and payable immediately. The Internal Revenue Service may
22 collect unpaid liabilities that become due as a result of the default, through the administrative
23 collection provision or the judicial remedies as set forth in the Internal Revenue Code. The
24 Internal Revenue Service shall not be required to seek a modification from the automatic stay to
25 collect any tax liabilities from the property that has reverted with the Debtors.

26 **7.1.4 Class III – Secured Claims.**

27 Class III consists of various subclasses of asserted secured creditor claims. Each
28 holder of a Secured Claim in Class III is considered to be in its own separate subclass within

1 Class III, and each such subclass is deemed to be a separate Class for purposes of the Plan.
2 Unless otherwise specified below, holders of Allowed Secured Claims in any of the Class III
3 subclasses shall receive full payment of the amount of their allowed secured claims. Any of the
4 Debtors' defaults and the loan documents with the Allowed Secured Claimant shall be deemed
5 cured as of the Effective Date to the extent such loan documents provide for default resulting
6 from Debtors' bankruptcy filing, such default shall not be enforceable. Notwithstanding any
7 pre-bankruptcy agreements with Class III Claimants, the Debtors' statement of the value of each
8 secured claim shall be final unless a Creditor objects to the Debtors' value prior to the
9 confirmation of the Plan. Unless otherwise specified herein or in an order entered by the
10 Bankruptcy Court, holders of Allowed Secured Claims shall retain any existing perfected lien to
11 secure the Debtors' obligations under the Plan. Payments to holders of Allowed Class III
12 Secured Claims will begin on the Effective Date.

13 **7.1.4.1 Class III(a) – Secured Claim of Chase on the Homestead.**

14 Class III(a) consists of Chase's Allowed Secured Claim relating to its
15 first position deed of trust on the Homestead. The holder of the Allowed Class III(a) Claim
16 shall be paid in full from the proceeds of the sale of the Homestead. No prepayment penalty
17 shall pertain to this Claim. The Class III(a) Claim is impaired.

18 **7.1.4.2 Class III(b) – Secured Claim of Chase Bank on the**
19 **California Property.**

20 Class III(b) consists of Chase's Allowed Secured Claim relating to its
21 first position lien on the real property located at 8 Danbury, Ladera Ranch, CA 92694
22 ("California Property"). On November 1, 2016, the Debtors filed their *Notice of Intent to*
23 *Abandon Real Property* [ECF No. 166] in connection with the California Property. The
24 Debtors believe the value of the California Property is approximately \$655,000 and the value
25 of the Class III(b) Claim is approximately \$808,409.00. The Debtors do not anticipate any
26 objections to the abandonment of the California Property, as it is burdensome to the bankruptcy
27 estate. After the California Property is abandoned, Chase will be free to exercise its California
28 state law rights with respect to the California Property in full and final satisfaction of the Class

1 III(b) Claim. No prepayment penalty shall apply to the Class III(b) Claim. The Class III(b)
2 Claim is impaired.

3 **7.1.4.3 Class III(c) – Secured Claim of Ladera Ranch**
4 **Maintenance Corporation.**

5 Class III(c) consists of the Allowed Secured Claim of Ladera Ranch
6 Maintenance Corporation (“LRMC”) for its second position lien on the California Property
7 arising out of any and all unpaid home owner’s association dues in the amount of \$7,712.60. As
8 set forth in Section 7.1.4.2 above, the Debtors believe that there is no equity in the California
9 Property to secure the Class III(c) Claim. Therefore, the Class III(c) Claim is Unsecured and
10 shall be treated as a Class IV General Unsecured Claim. The Class III(c) Claim is impaired.

11 **7.1.4.4 Class III(d) - Secured Claim of Dina Atkinson.**

12 Class III(d) consists of the Allowed Secured Claim of Dina Atkinson
13 relating to her Secured Claim in the Debtors’ personal property pursuant to the UCC Financing
14 Statement filed on June 19, 2012 with the Arizona Secretary of State, filing number
15 201216960078, in the amount of \$259,809.04. Upon the Effective Date, the Debtors will
16 surrender all nonexempt assets to Atkinson in the amount of \$43,738.00. See Exhibit C. The
17 deficiency amount of \$216,071.04 shall be treated as a Class IV General Unsecured Claim.
18 The Class III(d) Claim is impaired.

19 **7.1.4.5 Class III(e) – Secured Claim of Samuel Marsh.**

20 Class III(e) consists of the Allowed Secured Claim of Samuel Marsh
21 related to his vehicle title lien on the 2001 Mercedes S-500. The holder of the Allowed
22 Secured Class III(e) Claim shall receive the full amount of his Allowed Secured Claim over
23 five years with interest at the rate of 5% per annum. Any deficiency amount shall be treated as
24 a Class IV General Unsecured Claim. The payments to the Allowed Secured Class III(e)
25 Claimant shall begin on the Effective Date. No prepayment penalty shall apply to the Class
26 III(e) claim. The Class III(e) Claim is impaired.

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1 **7.1.4.6 Class III(f) – Clarke Law Firm, PLC Judgment Lien**

2 Class III(f) consists of the Claim of Clarke related to the Clarke
3 Judgment. In Arizona, judgment liens do not attach to property that is claimed as a homestead.
4 Evans v. Young, 661 P.2d 1148, 1154 (Ariz. Ct. App. 1983); see also Rand v. United Auto
5 Grp., Inc. (In re Rand), 400 B.R. 749, 754 (Bankr. D. Ariz. 2008). The Debtors have claimed
6 the Homestead as a homestead; therefore, the Clarke Judgment did not attach as a lien on the
7 Homestead.

8 To the extent that recordation of the Clarke Judgment created any liens
9 on the Homestead, such liens shall be released. Upon confirmation of the Plan, the Debtors are
10 authorized to record the Confirmation Order with the Maricopa County Recorder’s Office and
11 upon recording of the Confirmation Order the Clarke Judgment Lien shall be released from the
12 Homestead. Accordingly, the Allowed Class III(f) Claim shall be treated as a Class IV
13 General Unsecured Claim. Class III(f) is impaired.

14 **7.1.4.7 Class III(g) – Kennedy Johnson Gallagher, LLC Judgment**
15 **Lien.**

16 Class III(g) consists of the Claim of KJG related to the KJG Judgment.
17 In Arizona, judgment liens do not attach to property that is claimed as a homestead. Evans v.
18 Young, 661 P.2d 1148, 1154 (Ariz. Ct. App. 1983); see also Rand v. United Auto Grp., Inc. (In
19 re Rand), 400 B.R. 749, 754 (Bankr. D. Ariz. 2008). The Debtors have claimed the Homestead
20 as a homestead; therefore, the KJG Judgment did not attach as a lien on the Homestead.

21 To the extent that recordation of the KJG Judgment created any liens on
22 the Homestead, such liens shall be released. Upon confirmation of the Plan, the Debtors are
23 authorized to record the Confirmation Order with the Maricopa County Recorder’s Office and
24 upon recording of the Confirmation Order the KJG Judgment Lien shall be released from the
25 Homestead. Accordingly, the Allowed Class III(g) Claim shall be treated as a Class IV
26 General Unsecured Claim. Class III(g) is impaired.

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1 As a condition to confirmation, Code § 1129(a)(15) requires that where the holder of an
2 Allowed Unsecured Claim objects to Confirmation of the Plan: (a) the value on the Effective
3 Date of the property to be distributed under the Plan is sufficient to pay the amount of the
4 objector's Allowed Unsecured Claim; or (b) the value of the property to be distributed under the
5 Plan is equal to the projected disposable income of the debtor (as defined in § 1325(b)(2)) to be
6 received during the five-year period, beginning on the Initial Payment Date, or during the period
7 for which the Plan provides payments, whichever is longer.

8 "Disposable income" is defined as current monthly income received by the debtor (other
9 than child support payments, foster care payments, or disability payments for a dependent child
10 made in accordance with applicable non-bankruptcy law to the extent reasonably necessary to
11 be expended for such child) less amounts reasonably necessary to be expended: (i) for the
12 maintenance or support of the debtor or a dependent of the debtor, or for a domestic support
13 obligation, that first becomes payable after the date the petition is filed; (ii) for charitable
14 contributions (that meet the definition of "charitable contribution" under § 548(d)(3)) to a
15 qualified religious or charitable entity or organization (as defined in § 548(d)(4)) in an amount
16 not to exceed 15% of gross income of the debtor for the year in which the contributions are
17 made; and (iii) if the debtor is engaged in business, for the payment of expenditures necessary
18 for the continuation, preservation, and operation of such business. The Debtors have provided a
19 calculation of their current monthly income herein at Section 4 and detailed in Exhibit B. To
20 fund payments to Unsecured Creditors under the Plan, the Debtors are pledging \$5,000 of their
21 homestead exemption upon its sale, and \$1,500 over five years, a total representing significantly
22 all of the Debtors' disposable income over such time.

23 **ARTICLE 10**

24 **LIQUIDATION ANALYSIS**

25 As a condition to confirmation, Bankruptcy Code § 1129(a)(7) requires the Plan to
26 provide that each Creditor either accept the Plan or receive from the Debtors' estate as much
27 under the Plan as each Creditor would receive in a Chapter 7 liquidation. The Debtors' assets
28 and liabilities are listed in their schedules and statement of financial affairs, and as amended.

1 Additionally, the Debtors have investigated and are unaware of any receivable owing to them or
2 any transfer that may be avoided for the benefit of the bankruptcy estate. In that regard, the
3 nonexempt, unencumbered value of the Debtors' assets is no more than \$150.00, see Exhibit
4 "C"; Article 5, above.

5 As detailed in Exhibit C, liquidation of the Assets through the Plan will provide a greater
6 return to Unsecured Creditors than a Chapter 7 liquidation. In the Plan, the Debtors have
7 pledged so much of their homestead exemption as is necessary to satisfy all Administrative
8 Claims and provide a return to Unsecured Creditors. In a Chapter 7 liquidation, a Chapter 7
9 Trustee would likely abandon the Homestead because its value after costs of sale and the
10 satisfaction of Chase's lien does not exceed the homestead exemption. Therefore, the value of
11 the Assets to Administrative and Unsecured Creditors in this Chapter 11 Case is optimized
12 under the Plan rather than a Chapter 7 liquidation.

13 **ARTICLE 11**

14 **TAX ISSUES**

15 Debtors make no representations regarding any tax implications resulting from
16 confirmation of the Plan. **CLAIMANTS AND PARTIES IN INTEREST ARE ADVISED TO**
17 **CONSULT WITH THEIR TAX ADVISORS CONCERNING THE INDIVIDUAL TAX**
18 **CONSEQUENCES OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN,**
19 **INCLUDING STATE AND LOCAL TAX CONSEQUENCES.**

20 **ARTICLE 12**

21 **BALLOTING INSTRUCTIONS**

22 Creditors will vote to accept or reject this Plan. **THIS PLAN CANNOT BE CONFIRMED**
23 **IF THE PLAN DOES NOT RECEIVE AT LEAST TWO-THIRDS (2/3) IN AMOUNT AND**
24 **MORE THAN ONE-HALF (1/2) IN NUMBER OF ALLOWED CLAIMS VOTING IN EACH**
25 **IMPAIRED CLASS, provided, however, if the requisite acceptances are not obtained from one or**
26 **more Impaired Classes, the Court may nonetheless confirm the Plan pursuant to 11 U.S.C.**
27 **§ 1129(b) if one Impaired Class accepts the Plan and the Court finds that the Plan provides, among**
28 **other things, fair and equitable treatment of the classes rejecting the Plan and that creditors receive**

1 as much or more under the Plan than they would receive in a Chapter 7 liquidation.

2 **ARTICLE 13**

3 **MODIFICATION OF PLAN**

4 The Debtors reserve the right to modify the Plan in accordance with the provisions of the
5 Bankruptcy Code and Chapter 11 as follows:

6 **13.1 Pre-Confirmation.**

7 In accordance with Code § 1127(a), the modification of the Plan may be proposed in
8 writing by the Debtors at any time before its Confirmation, provided that the Plan, as thus
9 modified, meets the requirements of Code §§ 1122 and 1123, and the Debtors comply with Code
10 § 1125.

11 **13.2 Post-Confirmation.**

12 In accordance with Code § 1127(b), the Plan also may be modified at any time after its
13 Confirmation and before its substantial consummation, provided that the Plan as thus modified
14 meets the requirements of Code §§ 1122 and 1123, provided further that the circumstances then
15 existing justify such modification, and the Court confirms the Plan as thus modified under Code
16 § 1129.

17 **13.3 Objections.**

18 Any holder of a claim or equity interest that has accepted or rejected the Plan will be
19 deemed to have accepted or rejected, as the case may be, the Plan as modified unless, within the
20 time fixed by the Bankruptcy Court for doing so, such holder changes its previous acceptance or
21 rejection.

22 **13.4 Effect.**

23 Every modification of the Plan will supersede the previous version of the Plan as and when
24 each modification is effective. When superseded, the previous version of the Plan will be in the
25 nature of a withdrawn or rejected settlement proposal, and will be null, void, and unusable by
26 Debtors or any other party for any purposes whatsoever with respect to any of the contents of such
27 version of the Plan.

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1 **13.5 Default.**

2 If the Debtors are unable to perform the terms and conditions of the Plan, then they will be
3 in default. Any creditor may seek to enforce the Plan. Before doing so, the creditor must provide
4 notice to the Debtors specifying the nature of the alleged default and a 30-day period to cure the
5 default. Any notice must be in writing and sent via certified mail to the Debtors at the address on
6 file with the Clerk of this Court and with a copy sent via certified mail to:

7 Thomas H. Allen
8 Khaled Tarazi
9 ALLEN BARNES & JONES, PLC
10 1850 N. Central Ave., Suite 1150
11 Phoenix, Arizona 85004

12 **ARTICLE 14**

13 **CONFIRMATION, RISKS & RECOMMENDATION**

14 **14.1 Best Interests Test.**

15 Debtors believe that the “best interests test” imposed by 11 U.S.C. § 1129(a)(7) is satisfied
16 by the Plan because each holder of a Claim not accepting the Plan will receive at least as much as
17 such holder would receive in a Chapter 7 liquidation as discussed in detail in Article 9 herein.

18 **14.2 Fair and Equitable Test.**

19 To the extent such requirements are applicable based upon the votes of Creditors on the
20 Plan, the Plan satisfies the fair and equitable requirements of Code § 1129(b). With respect to
21 Secured Classes, the Plan provides for (i) the surrender of collateral; or (ii) the sale of collateral and
22 all Secured Creditors to retain pre-petition liens and to be paid the full value of their Allowed
23 Secured Claims from the proceeds of such sales. With respect to Unsecured Creditors, the Debtors
24 (i) are not retaining any non-exempt property, and (ii) have pledged \$5,000 of their homestead
25 exemption and \$1,500 of exempt post-petition pension and social security income to Unsecured
26 Creditors.

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14.3 Recommendation of the Debtors.

Debtors recommend that Creditors approve the Plan.

RESPECTFULLY SUBMITTED this 11th day of November, 2016.

/s/ Thomas Nelson Payne
Thomas Nelson Payne

/s/ Barbara C. Payne
Barbara C. Payne

APPROVED AS TO FORM AND CONTENT:

ALLEN BARNES & JONES, PLC

By: /s/ THA #11160
Thomas H. Allen
Khaled Tarazi
1850 N. Central Avenue, Suite 1150
Phoenix, Arizona 85004
Attorneys for Debtors