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8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION
11

12 In re
13 DENE BUSTICHI;
14 MELODIE BUSTICHI.

Case No. 14-52222
Chapter 11

15
16 Debtors
17

18
19 **CHAPTER 11 TRUSTEE'S COMBINED DISCLOSURE STATEMENT AND**
20 **PLAN OF REORGANIZATION**

21 *Dated November 21, 2016*
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1 **I. INTRODUCTION.**

2 This Combined Disclosure Statement and Plan (the “Plan”) is being furnished by KYLE
3 EVERETT, the duly appointed Chapter 11 Trustee (the “Trustee”) in the above-captioned Chapter 11 Case
4 (the “Debtor”), to provide for reorganization of the financial affairs of DENE BUSTICHI and MELODIE
5 BUSTICHI, the debtors in this case (the “Debtors”). If confirmed, this Plan will bind all creditors provided
6 for in the Plan, whether or not they file a proof of claim or accept the Plan, and whether or not their claims
7 are allowed.

8 This Combined Disclosure Statement and Plan sets forth certain information regarding the Debtors’
9 history, the reasons for the Chapter 11 bankruptcy filing, and significant events that have occurred during
10 the Chapter 11 Case. Also disclosed herein are the effects of confirmation of the Plan described in Part VI
11 of this Combined Disclosure Statement and Plan, and the manner in which distributions will be made under
12 the Plan. In addition, this document discusses the confirmation process and the voting procedures that
13 Holders of Claims entitled to vote on the Plan must follow for their votes to be counted. You may be
14 entitled to vote on the Plan, or to object to confirmation of the Plan.

15 Upon approval of the Disclosure Statement by the Bankruptcy Court, the Court (a) will have made
16 the determination that the Combined Disclosure Statement and Plan contains “adequate information” in
17 accordance with Bankruptcy Code Section 1125 to enable a hypothetical, reasonable investor typical of
18 creditors of the Debtor, and interested parties, to make an informed judgment as to whether to accept or
19 reject the Plan; and (b) authorized use of this Combined Disclosure Statement and Plan in connection with
20 the solicitation of votes with respect to the Plan. **AUTHORIZATION TO THE DEBTOR TO SOLICIT**
21 **VOTES ON THE PLAN DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION BY THE**
22 **BANKRUPTCY COURT AS TO THE FAIRNESS OR MERITS OF THE PLAN.**

23 Pursuant to the provisions of the Bankruptcy Code, only certain classes of Claims are entitled to
24 vote on the Plan. If you are entitled to vote to accept or reject the Plan, a “Ballot” and pre-addressed
25 envelope for the return of the Ballot are enclosed. If you are a creditor and did not receive a Ballot,
26 received a damaged or illegible Ballot, or lost your Ballot, please contact counsel for the Trustee, whose
27 contact information is on the first page of this document. **SPECIFIC VOTING PROCEDURES ARE**
28 **DESCRIBED IN PART IV, BELOW. THE TRUSTEE RECOMMENDS THAT THE HOLDERS**

1 **OF CLAIMS IN ALL SOLICITED CLASSES VOTE TO ACCEPT THE PLAN.**

2 **II. DISCLAIMER.**

3 THE INFORMATION CONTAINED IN THIS COMBINED DISCLOSURE STATEMENT AND
4 PLAN IS INCLUDED HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE PLAN
5 (AS SUBSEQUENTLY AMENDED IN ACCORDANCE WITH THE TERMS THEREOF AND
6 APPLICABLE LAW). ALL CREDITORS ARE ADVISED AND ENCOURAGED TO READ THIS
7 COMBINED DISCLOSURE STATEMENT AND PLAN IN ITS ENTIRETY BEFORE VOTING TO
8 ACCEPT OR REJECT THE PLAN. STATEMENTS MADE HEREIN ARE QUALIFIED IN THEIR
9 ENTIRETY BY REFERENCE TO THE PLAN.

10 THE STATEMENTS CONTAINED IN THIS COMBINED DISCLOSURE STATEMENT AND
11 PLAN ARE MADE BY THE TRUSTEE AS OF THE DATE HEREOF UNLESS OTHERWISE
12 SPECIFIED HEREIN, AND THE DELIVERY OF THIS COMBINED DISCLOSURE STATEMENT
13 AND PLAN DOES NOT IMPLY THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION
14 SET FORTH HEREIN SINCE SUCH DATE. THIS DISCLOSURE STATEMENT AND PLAN HAS
15 BEEN PREPARED BY THE TRUSTEE, WHO IS UNABLE TO WARRANT OR REPRESENT THAT
16 THIS DOCUMENT IS WITHOUT ERROR. HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE
17 PLAN SHOULD READ THIS DOCUMENT CAREFULLY AND IN ITS ENTIRETY AND, WHERE
18 POSSIBLE, CONSULT WITH COUNSEL OR OTHER ADVISORS PRIOR TO VOTING ON THE
19 PLAN.

20 THIS COMBINED DISCLOSURE STATEMENT AND PLAN HAS BEEN PREPARED IN
21 ACCORDANCE WITH SECTION 1125 OF THE UNITED STATES BANKRUPTCY CODE AND
22 RULE 3016 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT
23 NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER
24 NON-BANKRUPTCY LAW. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO
25 CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY OR BE DEEMED
26 CONCLUSIVE ADVICE ON THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN AS TO
27 HOLDERS OF CLAIMS OR INTERESTS. YOU SHOULD CONSULT YOUR PERSONAL COUNSEL
28 OR TAX ADVISOR ON ANY QUESTIONS OR CONCERNS RESPECTING TAX OR OTHER LEGAL

1 CONSEQUENCES OF THE PLAN.

2 **IRS CIRCULAR 230 NOTICE**

3 TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS AND
4 INTERESTS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES
5 CONTAINED OR REFERRED TO IN THIS PLAN IS NOT INTENDED OR WRITTEN TO BE USED,
6 AND CANNOT BE USED, BY HOLDERS OF CLAIMS OR INTERESTS FOR THE PURPOSE OF
7 AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE INTERNAL
8 REVENUE CODE; (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE
9 SOLICITATION OF VOTES ON THE PLAN AND OTHER MATTERS ADDRESSED HEREIN; AND
10 (C) HOLDERS OF CLAIMS AND INTERESTS SHOULD SEEK ADVICE BASED ON THEIR
11 PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

12 **III. SUMMARY OF PLAN.**

13 The Debtors are a married couple whose primary assets are their residence (located at 13 Sunset
14 Terrace, Scotts Valley, CA), a fractional interest in investment property (located at 19 Sunset Terrace,
15 Scotts Valley, CA) and various personal property belongings, including vehicles, equipment, and
16 household items. The Debtors' primary income derives from consulting services performed by Dene
17 Bustichi to Bustichi & Company, a contracting company owned by Dene Bustichi's son, Giovanni.

18 The Trustee has determined that the Debtors' primary residence is fully encumbered, such that
19 any liquidation of the residence would yield nothing to unsecured creditors. Consequently, the Debtors'
20 reorganization will be implemented through advances to the Debtor from his family, through
21 monetization of Mr. Bustichi's fractional interest in the investment property, through an increase in
22 salary to Mr. Bustichi by his employer, through distributions to creditors of the Debtors' disposable
23 income for eight (8) years, and- perhaps most importantly- through settlement with Ohio Casualty
24 Insurance Company, whose claim constitutes approximately 95% of the filed, unsecured claims in this
25 case (all scheduled debts without filed claims are being disputed by the Chapter 7 Trustee), and who
26 asserts that its claim against the Debtors is excepted from discharge under 11 U.S.C. § 523. The Trustee
27 believes that this reorganization offers creditors a greater return than they would receive if this case were
28 a Chapter 7 liquidation case.

1 Part IV of this Combined Disclosure Statement and Plan contains Plan Voting Procedures.

2 Part V of the Combined Disclosure Statement and Plan presents background information
3 regarding the Debtor and the events that led to the filing of the bankruptcy petition and disclosures
4 regarding the Plan.

5 Part VI of the Plan presents the monetary treatment of creditors.

6 Part VII contains other provisions governing the treatment of creditors under the Plan, including
7 provisions regarding the Debtor's discharge and creditors' remedies if the Debtor defaults in its
8 obligations under the Plan.

9 Exhibit 1 to the Plan is the draft settlement agreement between the Debtors and Ohio Casualty,
10 and related documents. Exhibit 2 contains an analysis of how much creditors would likely receive in a
11 Chapter 7 liquidation. Exhibit 3 shows Debtor's monthly income and expenses. Exhibit 4 describes
12 how much Debtor is required to pay on the effective date of the plan, and sets forth in detail distributions
13 to unsecured creditors. Exhibit 5 clarifies the limited income Mr. Bustichi will receive from his
14 fractional interest in certain investment property, described in more detail herein.

15 **IV. PLAN VOTING PROCEDURES AND REQUIREMENTS.**

16 **A. NOTICE TO HOLDERS OF CLAIMS AND INTERESTS.**

17 Approval by the Bankruptcy Court of this Disclosure Statement and Plan, for solicitation
18 purposes, means that the Bankruptcy Court has found that this Disclosure Statement and Plan contains
19 information of a kind and in sufficient and adequate detail to enable Holders of Claims to make an
20 informed judgment whether to accept or reject the Plan.

21 **THIS PLAN IS THE ONLY DOCUMENT AUTHORIZED BY THE BANKRUPTCY COURT**
22 **TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES TO ACCEPT OR**
23 **REJECT THE PLAN.** No solicitation of votes for the Plan may be made except after distribution of this
24 Disclosure Statement, and no person has been authorized to distribute any information concerning the
25 Plan other than the information contained herein.

26 **B. HOLDERS OF CLAIMS ARE ENTITLED TO VOTE ON THE PLAN.**

27 Subject to the provisions of the order approving this Disclosure Statement, any non-
28 governmental Holder of a Claim against the Debtors shall be entitled to vote to accept or reject the Plan

1 if: (i) such Holder's Claim has been included by the Debtors in the Schedules as undisputed, non-
2 contingent and liquidated in an amount more than \$0.00, or (ii) such Holder has filed a proof of claim on
3 or before December 30, 2014, unless such Claim is the subject of a pending objection or has been
4 entirely Disallowed by an order of the Bankruptcy Court.

5 Unless otherwise permitted, the Holder of any Disputed Claim is not entitled to vote with respect
6 to such Disputed Claim unless the Bankruptcy Court temporarily allows such Disputed Claim for the
7 purpose of voting to accept or reject the Plan. The Trustee may stipulate with some Holders of Disputed
8 Claims for provisional allowance of their Claims for voting purposes. Alternatively, the Holder of a
9 Disputed Claim may seek a Bankruptcy Court order provisionally allowing such Holder's Claim for
10 voting purposes prior to the Confirmation Hearing or such earlier date as may be established by the
11 Bankruptcy Court.

12 A vote on the Plan may be disregarded if the Bankruptcy Court determines, after notice and a
13 hearing, that such vote was not solicited or procured in good faith or in accordance with the provisions
14 of the Bankruptcy Code.

15 All known Holders of Claims entitled to vote on the Plan have been sent a Ballot together with
16 this Disclosure Statement. If you are a Creditor and did not receive a Ballot, received a damaged or
17 illegible Ballot, or lost your Ballot, or if you are a party in interest and have any questions concerning
18 this Disclosure Statement, any of the Exhibits hereto, the Plan or the voting procedures in respect
19 thereof, please contact counsel for the Trustee designated below.

20 **C. VOTING PROCEDURES.**

21 After carefully reviewing this Disclosure Statement and Plan, please indicate your vote with
22 respect to the Plan on the enclosed Ballot and return it either by facsimile, overnight courier, regular
23 mail or electronic mail to counsel for the Trustee at the address specified in the ballot and below.
24 Holders of Claims in Classes entitled to vote should read the Ballot carefully and follow the instructions
25 contained therein.

26 Please vote and return your ballot to the following address:

27 Gregory A. Rougeau, Esq.
28 Brunetti Rougeau LLP
400 Montgomery Street, Suite 1000

1 San Francisco, CA 94014
2 Facsimile: (415) 992-8940
3 E-mail: rougeau@brlawssf.com

4 **FOR YOUR VOTE TO COUNT, YOUR BALLOT MUST ACTUALLY BE RECEIVED**
5 **AT THE SPECIFIED ADDRESS (OR EMAIL ADDRESS) ON OR BEFORE JANUARY 20,**
6 **2017. Creditors whose claims are in an “impaired” class are entitled to vote on the Plan.**
7 **Objections to confirmation must be filed and served, no later than January 20, 2017. The Court**
8 **will hold a hearing on confirmation of the Plan on January 25, 2017 at 10:30 a.m.**

9 If you must return your ballot to a trustee, bank, broker or agent, you must return your ballot to it
10 in sufficient time for it to process the ballot and return it to Trustee’s Counsel by the voting deadline.

11 To obtain additional ballots, you may contact Trustee’s counsel at the addresses specified above.
12 The Trustee believes that prompt confirmation and implementation of the Plan is in the best interests of
13 the Debtor, all Holders of Claims and the Debtor’s estate.

14 **V. BACKGROUND AND DISCLOSURES**

15 **A. BACKGROUND.**

16 The Debtors commenced the above-captioned case by filing a Voluntary Petition with the United
17 States Bankruptcy Court for the Northern District of California on May 22, 2014 (the “Petition Date”).
18 This case was largely precipitated by litigation between the Debtors and Ohio Casualty, summarized
19 below, and the inability of the Debtors to make payments to secured and unsecured creditors.

20 Prior to the Petition Date, on December 19, 2012, Ohio Casualty filed a Complaint against BCI
21 Builders, Inc. (“BCI”), a corporation whose equity was owned, and senior management positions
22 occupied, by Dene Bustichi, and against the Debtors, in the United States District Court, Northern
23 District of California (*The Ohio Casualty Insurance Company v. BCI Builders, Inc., et al.*, Case No.
24 5:12-CV-06443). That lawsuit concerned damages allegedly suffered by Ohio Casualty as a proximate
25 result of the Debtors’ failure to indemnify Ohio Casualty for losses incurred as a result of having issued
26 certain surety bonds on behalf of BCI in connection with construction projects (the “Indemnity Action”).

27 The Debtors have generally attributed the commencement of the Indemnity Action (and other
28 claims made against them) largely to the economic downturn that started 2008, which was especially

1 damaging to contractors and other real estate-related businesses. With declining real estate values, the
2 Debtors found it difficult to obtain new contracts, and even existing construction contracts fell through.
3 According to the Debtors, the Indemnity Action came about after BCI bid on a project based on
4 subcontract bids, and BCI had difficulty completing the project when its subcontractors themselves
5 experienced financial distress and went out business.

6 Following commencement of the Indemnity Action, on or about August 5, 2013, Ohio Casualty
7 entered into a Settlement Agreement with BCI and the Debtors, wherein the Debtors agreed to pay Ohio
8 Casualty \$3,000,000 before October 15, 2023 (with regular monthly installment payments due to Ohio
9 Casualty). That payment obligation was secured by deeds of trust on certain properties owned by the
10 Debtors, including the Debtors' primary residence (located at 13 Sunset Terrace, Scotts Valley,
11 California), and commercial property, commonly known as 4652 and 4654 Scotts Valley Dr., Scotts
12 Valley, California (the "Commercial Property"), from which BCI and other, nonaffiliated, nondebtor
13 businesses operated.

14 Ohio Casualty later discovered that Mr. Bustichi retained a fractional interest in real property
15 located at 19 Sunset Terrace, Scotts Valley, California ("19 Sunset Terrace"), and asserted (and,
16 throughout this case, have continued to assert) that the interest in the investment property was not
17 disclosed to Ohio Casualty prior to executing the Debtors' executing the Settlement Agreement, and as
18 result, Ohio Casualty contends Dene Bustichi and Melodie Bustichi made material misrepresentations to
19 Ohio Casualty (thereby depriving Ohio Casualty additional collateral for the Debtors' payment
20 obligation).

21 The Debtors ultimately defaulted on their payment obligations to Ohio Casualty. The default on
22 the Ohio Casualty settlement obligation was one instance of a broader inability of the Debtors to honor
23 their financial obligations as they came due. By the time the Debtors commenced this case, they had
24 defaulted on a Note and second Deed of Trust on their primary residence (now maintained by
25 Citimortgage), had defaulted on the first Deed of Trust maintained by Umpqua Bank on the Commercial
26 Property (the Debtors had retained counsel to assist them in applying for a loan modification on that
27 Commercial Property, but for some reason the loan modification was not obtained, and Umpqua Bank
28

1 initiated foreclosure proceedings), and defaulted on various credit cards. The Debtors were in severe
2 financial distress as of the Petition Date.

3 After retaining an attorney named Robert M. Haight, the Debtors' initially sought bankruptcy
4 protection under Chapter 13 of the Bankruptcy Code, but were not qualified, given the nature and
5 amount of their debt, to be Chapter 13 debtors. They later retained the Fuller Law Offices to be their
6 Chapter 11 counsel.

7 Following the commencement of this bankruptcy proceeding, Ohio Casualty commenced an
8 Adversary Proceeding against the Debtors (*The Ohio Casualty Insurance Company v. Dene Bustichi and*
9 *Melodie Bustichi*, Adversary Case Number 14-05090) (the "Adversary Action"), seeking a
10 determination that the debt owed to Ohio Casualty (in the total amount of \$3,040,836.35) is excepted
11 from discharge, due in part to the alleged failure of the Debtors to disclose Mr. Bustichi's interest in the
12 investment property.

13 Through a separate Settlement Agreement with the Debtors and through this Plan, Ohio
14 Casualty's claims against the Debtors shall be settled, thereby facilitating the Debtors' reorganization.
15 That settlement is described in greater detail below.

16 **B. APPOINTMENT OF CHAPTER 11 TRUSTEE.**

17 Prior to the appointment of Mr. Everett, the Debtors' effort to reorganize was not met with
18 success.

19 The Debtors' prior Chapter 11 counsel, Lars Fuller, apparently spent a substantial amount of
20 time and effort negotiating a settlement with Ohio Casualty, and, on August 14, 2015, proposed a
21 Combined Plan of Reorganization and Disclosure Statement which embodied that settlement, among
22 other terms for the Debtors' reorganization. Without going into great detail concerning that proposed
23 Plan, the Trustee does not believe it was realistic. First, it proposed to grant Ohio Casualty a lien, to the
24 exclusion of other unsecured creditors, in 19 Sunset Terrace. It also attempted to restructure certain
25 secured debt impermissibly. That Plan was also infeasible as to the amount that creditors could be paid
26 postconfirmation from the Debtors' earnings. Finally, Debtors failed to disclose to the Court or their
27 creditors a pending administrative action by the California State License Board ("CSLB") against Dene
28 Bustichi and his construction companies. The CSLB revoked the contractor licenses issued to Debtors'

1 companies, and prohibited Dene Bustichi from serving as an officer, director, partner or qualifying
2 individual of any licensee for a year.

3 Not surprisingly, the Plan was met with objections from certain secured creditors. Ohio
4 Casualty's counsel discovered the CSLB's administrative action against Mr. Bustichi, and brought it to
5 the attention of Mr. Fuller, who then disclosed it to the Court.

6 On December 16, 2015, the Office of the United States Trustee filed a "Motion To Appoint A
7 Trustee Under 11 U.S.C. § 1104, Or, Alternatively, Convert The Case To One Under Chapter 7 Or
8 Dismiss The Case For Cause Under 11 U.S.C. § 1112(b)." In that motion, the United States Trustee
9 sought, for a number of reasons, and among other relief sought, the appointment of a Chapter 11 Trustee
10 in this case. The motion was unopposed by the Debtors, and, on January 7, 2016, the Court entered an
11 Order Directing The Appointment Of A Chapter 11 Trustee.

12 On January 14, 2016, the United States Trustee moved to appoint Mr. Everett as Chapter 11
13 Trustee, and the following day, the Court granted such relief. Mr. Everett accepted the appointment. No
14 committee of unsecured creditors has ever been appointed in this case.

15 **C. POTENTIAL DISPUTE CONCERNING 19 SUNSET TERRACE.**

16 In their Schedules, the Debtors disclosed that Mr. Bustichi owned a 25% fractional interest in 19
17 Sunset Terrace, and that the fair market value of the property was \$650,000 (thus making the value of
18 the interest in the subject property \$162,500).

19 During the course of his investigation as to the Debtors' affairs, the Trustee discovered that the
20 subject property had been transferred to members of the Bustichi family, or their trusts, on various
21 occasions since 2001. As of December 6, 2001, the property was owned by "Harvey L. Bustichi and
22 Irene Bustichi, Husband and Wife and Eugene Bustichi, a Single Man and Charlene B. Maxwell, a
23 Married Woman As Her Sole and Separate Property and Dene A. Bustichi, a Married Man As His Sole
24 and Separate Property." After a series of intrafamily transfers, by 2007, the subject property was owned
25 by the "Allene Bustichi 1995 Trust," of which Dene Bustichi and his brother, Eugene Bustichi, were Co-
26 Trustees. According to the records of the Santa Cruz County Recorder, on April 2, 2007, the subject
27 Trust transferred the entirety of its interest in the property to Dene Bustichi and Eugene Bustichi as
28 Tenants In Common.

1 The Debtors have insisted that Mr. Bustichi's ownership in 19 Sunset Terrace is in fact a 25%
2 interest, and that anything that was recorded to the contrary was either a mistake in the recordation, or an
3 error of counsel. Based upon what property records have been obtained by the Trustee, however, the
4 Trustee believes that a credible argument may be made that Dene Bustichi is a joint tenant, along with
5 Eugene Bustichi, in 19 Sunset Terrace.

6 Through this Plan (and following the Settlement Conference described below), the Trustee and
7 the Debtors have resolved the potential dispute as to the ownership of the subject property.

8 As set forth below, on the Effective Date, the Debtors and their family are monetizing the
9 Debtors' interest in 19 Sunset Terrace for \$130,000, which will be made immediately available to
10 creditors. That amount is greater than the estate would receive if in fact the Debtors prevailed on their
11 assertion that Mr. Bustichi owns only a 25% fractional interest in the property, and if the estate were to
12 attempt to liquidate the interest (taking into account litigation to dissolve the tenancy in common and
13 compel a sale, retain and pay a broker to sell the subject property, and pay associated closing costs and
14 transfer taxes).

15 Even if the Trustee were to litigate as to the claim that Mr. Bustichi is a tenant in common with
16 his brother, the costs and uncertainty of litigation over the matter, and the potential additional recovery
17 for the estate (an additional \$162,500 for a total recovery of \$325,000 total before litigation risk and cost
18 and selling costs), do not compare with the new value being provided through this Plan by the Debtors,
19 their family, and Bustichi & Company, as summarized in greater detail below. The Trustee requests, as
20 part of confirmation and in consideration of such new value, that any potential claim the estate may have
21 as to the fractional interest in 19 Sunset Terrace be resolved, such that Mr. Bustichi may retain whatever
22 interest and equity he has in the property, postconfirmation.

23 **D. MEDIATED SETTLEMENT WITH OHIO CASUALTY.**

24 Following his appointment, it became apparent to the Trustee that reorganization could not occur
25 without the cooperation of Ohio Casualty. As set forth above, not only does Ohio Casualty's claim
26 against the Debtors represent 95% of the amount of the unsecured, filed claims against the Debtors in
27 this case, Ohio Casualty, through the Adversary Action, has asserted that that its \$3,040,836.35 debt is
28 excepted from discharge.

1 After protracted, unsuccessful negotiations between the Trustee, the Debtors and Ohio Casualty
2 concerning settlement of the nondischargeable claim and Ohio Casualty's treatment as a creditor under a
3 reorganization, the Bankruptcy Court referred the parties to the Honorable Elaine Hammond for a
4 Settlement Conference. That Settlement Conference, conducted on November 1, 2016, was successful.
5 The terms of the agreed-upon settlement are embodied in a draft Settlement Agreement between the
6 Debtors and Ohio Casualty, attached hereto as Exhibit 1 and in this Plan.

7 As set forth in the attached Settlement Agreement, and in the terms of the Plan below, the
8 Debtors and Ohio Casualty have agreed as follows:

- 9 • First, Bustichi & Company, a nondebtor, has agreed to Ohio Casualty \$50,000.00 on or before
10 December 31, 2016 (the "Settlement Payment"), to be held in trust by Ohio Casualty's counsel,
11 and paid to Ohio Casualty only if this Plan is confirmed;
- 12 • Second, the Debtors have agreed to entry of a nondischargeable judgment in the Adversary
13 Action, and in favor of Ohio Casualty, in the amount of \$1,000,000;
- 14 • Third, the parties have agreed to value Ohio Casualty's junior lien on the Debtors' residence at
15 \$225,000.00, with payments over a 20-year period. Ohio Casualty's junior lien will be secured
16 by a Promissory Note and Deed of Trust, which Ohio Casualty may record against property upon
17 confirmation, as described in Part VI of the Plan;
- 18 • Fourth, and finally, Ohio Casualty's unsecured claim, in the amount of \$2,815,836 shall be paid,
19 on a *pro rata* basis, along with other allowed unsecured Claims. As set forth in further detail
20 below, the payments to administrative, priority and unsecured creditors will be effected from the
21 following sources:

- 22 -Existing cash on hand retained by the Trustee (approximately \$20,000);
- 23 -Transfer of the Debtor's personal property to Bustichi & Company, for \$20,000;
- 24 -\$130,000 paid by the Debtors and their family to monetize Mr. Bustichi's interest in 19
25 Sunset Terrace; and
- 26 -Following an increase of Dene Bustichi's gross salary to \$17,500 per month beginning
27 on the Effective Date, payment to creditors of the Debtors' net disposable income, over a
28 period of eight years (96 months). The Trustee estimates that the net disposable income,

1 per month, will be \$1,471.92 for the initial sixty (60) month term of the Plan, and
2 \$2,797.88 per month for the final 36 months of the Plan term. The distribution of the
3 subject funds is described in Exhibit 4.

4 The draft Settlement Agreement attached hereto as Exhibit 1 is contingent upon confirmation of the
5 Debtors' Plan. The terms of the draft Settlement Agreement and related documents may change prior to
6 the Effective Date, but the terms will not change in any way material to any creditors other than Ohio
7 Casualty.

8 The Trustee believes that the resolution of the Adversary Action and of the treatment of Ohio
9 Casualty under the Plan inures to the best interest of creditors and parties in interest. Upon
10 confirmation, the settlement shall be binding upon the Debtors, Ohio Casualty, and, by necessity, all
11 other creditors of the estate.

12 **E. LIQUIDATION AND SALE ALTERNATIVES**

13 The Trustee does not believe that there is a viable and preferable alternative to the Plan. Exhibit
14 2 contains an analysis of distributions to creditors through Chapter 11, compared to Chapter 7
15 liquidation. As set forth in Exhibit 2, unsecured creditors will receive more in Chapter 11 (5.5% of
16 claims) than in Chapter 7 (.08% of claims).

17 **F. RISK FACTORS.**

18 If confirmed, the Trustee believes that the Plan is likely to be performed, in large part due to the
19 concessions that have been made by Ohio Casualty in agreeing to settle with the Debtors. Nonetheless,
20 this Plan is not without risk.

21 The Plan depends upon the willingness and ability of the Debtors to commit eight years of their
22 disposable income to pay unsecured creditors. The Trustee believes that the Debtors are presently
23 willing and able to perform their obligations, but the length of the payment plan increases risk of
24 nonperformance, for any number of reasons that may or may not be within the control of the Debtors.

25 This Plan also depends upon the Debtors' family and Bustichi & Company- nondebtors-
26 honoring their commitments to the Debtors in connection with their reorganization efforts. As set forth
27 above, the Debtors' family has agreed to monetize Mr. Bustichi's disputed fractional interest in 19
28 Sunset Terrace on the Effective Date, in the amount of \$130,000. Bustichi & Company has agreed to

1 pay the Debtors' postpetition taxes, to purchase the Debtors' personal property, and to provide Mr.
2 Bustichi with a significant raise (from \$10,000 to \$17,500 per month in gross salary) to permit the
3 Debtors to make substantial postconfirmation payments. The willingness and ability of the Debtors'
4 family and Bustichi & Company to honor their promises to the Debtors necessarily entails some risk that
5 the nondebtors may not be able or willing to follow through on the Effective Date.

6 If the Debtors, their family or Bustichi & Company are unwilling and unable to perform, then it
7 is likely that the case may be converted to Chapter 7.

8 **VI. THE PLAN OF REORGANIZATION: CLASSIFICATION/ TREATMENT OF CLAIMS.**

9 **A. INTRODUCTION.**

10 In general, a Chapter 11 plan: (i) divides claims and equity interests into separate classes; (ii)
11 specifies the Property that each class is to receive under the plan; and (iii) contains other provisions
12 necessary to the reorganization or liquidation of the debtor.

13 **B. GENERAL PLAN DESCRIPTION.**

14 The Plan is a plan of reorganization for the Debtors. Pursuant to the Plan, the Debtors, with the
15 help of their family and of Bustichi & Company, will monetize the value of their fractional interest in 19
16 Sunset Terrace, monetize the value of the Debtors' personal property, and make provisions to
17 immediately pay certain administrative claims. The Debtors will also commit eight years of disposable
18 income toward Plan payments.

19 **C. CLASSIFICATION AND TREATMENT OF CLAIMS.**

20 Bankruptcy Code Section 1122 provides that a plan of reorganization must classify the claims
21 and interests of a debtor's creditors and equity interest holders. In accordance with Section 1122, the
22 Plan divides Claims and Interests into Classes and sets forth the treatment for each Class (other than
23 Administrative Claims and Priority Tax Claims which, pursuant to Section 1123(a)(1), are not to be
24 classified). The Trustee also is required, under Section 1122, to classify Claims against the Debtors into
25 Classes that contain Claims that are substantially similar to the other Claims in such Class.

26 The Trustee believes that the Plan has classified all Claims and Interests in compliance with the
27 provisions of Section 1122 and applicable case law, but it is possible that a Holder of a Claim may
28 challenge the Trustee's classification of Claims and that the Bankruptcy Court may find that a different

1 classification is required for the Plan to be confirmed. In that event, the Trustee intends, to the extent
2 permitted by the Bankruptcy Code and the Bankruptcy Court, to make such reasonable modifications of
3 the classifications under the Plan to permit confirmation and to use the Plan acceptances received for
4 purposes of obtaining the approval of the reconstituted Class or Classes of which each accepting Holder
5 ultimately is deemed to be a member. Any such reclassification could adversely affect the Class in
6 which such Holder initially was a member, or any other Class under the Plan, by changing the
7 composition of such Class and the vote required of that Class for approval of the Plan.

8 The classification of Claims and Interests and the nature of distributions to members of each
9 Class are summarized below. The Trustee believes that the consideration, if any, provided under the
10 Plan to the Holders of Claims reflects an appropriate resolution of their Claims, taking into account the
11 differing nature and priority of such Claims and the fair value of the Debtors' Property. Bankruptcy
12 Code Section 1129(b) permits confirmation of a Chapter 11 plan in certain circumstances even if the
13 plan has not been accepted by all impaired Classes of Claims. Although the Trustee believes that the
14 Plan can be confirmed under Section 1129(b), there can be no assurance that the Bankruptcy Court will
15 find that the requirements to do so have been satisfied.

16 1. Unclassified Claims.

17 Certain types of claims are not placed into voting classes; instead they are unclassified. They are
18 not considered impaired and they do not vote on the Plan because they are automatically entitled to
19 specific treatment provided for them in the Bankruptcy Code. As such, the Trustee has not placed the
20 following claims in a class.

21 a. Administrative Expenses

22 Administrative expenses are claims for costs or expenses of administering the Debtor's Chapter
23 11 case which are allowed under Bankruptcy Code Section 507(a)(2). The Bankruptcy Code requires
24 that all administrative claims be paid on the Plan Effective Date unless a particular claimant agrees to a
25 different treatment. The following chart lists all of the Debtor's § 507(a)(2) administrative claims and
26 their treatment under the Plan.

<u>Name</u>	<u>Amount owed</u>	<u>Treatment</u>
Office of the United States Trustee ("OUST")	\$325.00 (est.)	Paid in full on the Effective Date.
Brunetti Rougeau LLP, bankruptcy counsel to the Trustee.	\$25,000.00 (Brunetti Rougeau has agreed to cap its fees, in order to effect confirmation and to ensure the Plan is feasible).	Paid in full on the Effective Date.
Kyle Everett (Chapter 11 Trustee) and DSI (consultant to Chapter 11 Trustee).	\$10,000.00	Paid in full on the Effective Date.
Lars Fuller, former Chapter 11 counsel to the Debtors.	\$25,000.00 ¹	Paid in full on the Effective Date.
Internal Revenue Service	\$16,000.00 (est.)	Paid in full on the Effective Date, by the Debtors, from an advance made to them by Bustichi & Company.
Pacific Gas & Electric Company	\$3,256.84	Paid in full on the Effective Date.
TOTAL	\$76,325.00	Paid in the manner described above.

b. Priority Tax Claim (11 U.S.C. § 507(a)(8))

<u>Name</u>	<u>Amount owed</u>	<u>Treatment</u>
State Board of Equalization	\$1,892.23	Paid in full on the Plan Effective Date.

2. Classified Claims and Interests

a. Classes of Secured Claims

Secured claims are claims secured by liens against property of the estate. The following chart sets forth the description and treatment of each of the Debtor's secured claims:

¹ The Fuller Law Firm has applied for, and obtained interim approval of, its administrative fees and costs. The Trustee expects that the firm will agree to the same treatment as the Trustee himself and his

Class	Description	Impaired (Y/N)	Treatment
1	Bank of America <ul style="list-style-type: none"> • U2005 Sightseer 34A Motorhome (approximate value of \$42,000 as of Petition Date). • Total claim amount = \$52,381.67. 	No; allowed claims in this class are not entitled to vote on the Plan.	Debtors will surrender the collateral. This creditor has already obtained relief from stay. Any secured claim is satisfied in full through surrender of the collateral. Any deficiency claim is a general unsecured claim.
2	Wheels Financial Group dba 1-800 Loan Mart <ul style="list-style-type: none"> • 2004 Hummer H2 (65,845 miles) (approximate value of \$16,000). • Total claim amount = \$10,409.47. 	No; allowed claims in this class are not entitled to vote on the Plan.	This collateral subject to this secured claim is being transferred to Bustichi & Company, as part of Bustichi & Company's purchase of all of the Debtors' personal property assets, or the obligation owed to this creditor paid by Bustichi & Company. This creditors' legal, equitable, and contractual rights remain unchanged with respect to the real property collateral. The confirmation order will constitute an order for relief from stay.
3	Secured claim of DiTech, for the First Note and related Deed of Trust on Debtors' residence. <ul style="list-style-type: none"> • Collateral description = Real property commonly known as 13 Sunset Terrace, Scotts Valley, CA (approximate value of \$925,000.00). • Total claim amount = \$209,645.11 (est.) 	No; allowed claims in this class are entitled to vote on the Plan.	This creditors' legal, equitable, and contractual rights remain unchanged with respect to the real property collateral. The balance of the loan as of the petition date was \$209,645.11 (est.). Payments are \$1,785.00 per month. The confirmation order will constitute an order for relief from stay. DiTech shall retain its interest in the collateral until paid in full.
4	Secured claim of Citimortgage, for Second Note and Related Deed of	Yes; allowed claims in this class are entitled	Debtors will pay the entire amount contractually due by making all post-confirmation regular monthly payments,

counsel (who has agreed to cap fees, and take payments over time); if not, the Trustee will object to final approval of the firm's fees.

	<p>Trust on Debtors' residence.</p> <ul style="list-style-type: none"> • Collateral description = Real property commonly known as 13 Sunset Terrace, Scotts Valley, CA (approximate value of \$925,000.00). • Total claim amount = \$492,931.16 (est.) 	<p>to vote on the Plan.</p>	<p>in the amount of \$2,670.82 per month.</p> <p>The Trustee has been informed by Citimortgage that pre and postpetition arrears total \$75,000. The Debtors shall pay such arrears, with interest at the rate of five percent (5%) per annum, in 60 equal monthly payments, due the 1st day of the month, starting the month after the Effective Date (\$1,415 per month). To the extent arrears are determined to be other than as shown above, appropriate adjustments will be made in the number of payments.</p> <p>Citimortgage shall retain its interest in the collateral until paid in full.</p> <p>Citimortgage may not repossess or dispose of its collateral so long as Debtors are not in material default under the Plan.</p>
<p>5</p>	<p>Secured claim of Ohio Casualty, for the Third Deed Of Trust on the Debtors' residence.</p> <ul style="list-style-type: none"> • Collateral description = Real property commonly known as 13 Sunset Terrace, Scotts Valley, CA (approximate value of \$925,000.00). • Total claim amount = \$225,000.00 	<p>Yes; allowed claims in this class are entitled to vote on the Plan.</p>	<p>Debtors will make payments to Ohio Casualty according to the terms of the Settlement Agreement, and related secured Note, attached hereto as Exhibit "A."</p> <p>Ohio Casualty shall be paid a secured claim in the amount equal to the value of the collateral, plus minimal interest determined by the Plan for a total of \$236,325 in payments over twenty (20) years. Payments shall be made under the Plan as follows:</p> <p>Payments of \$602.40 per month for 60 months (5 years), due the 1st day of the month, starting the month after the Effective Date of the Plan;</p> <p>Payments of \$1,112.12 per month for 180 months (15 years), due the 1st day of the month, starting 61 months after the Effective Date of the Plan</p> <p>Ohio Casualty may not repossess or dispose of its collateral so long as Debtors are not in material default under the Plan, or under the Note.</p>

b. Disputed Secured Claims Subject To Lien Stripping

Class	Description	Impaired (Y/N)	Treatment
6	<p>No. American Bancard, LLC.</p> <ul style="list-style-type: none"> Collateral description = Real property commonly known as 13 Sunset Terrace, Scotts Valley, CA (approximate value of \$162,500) (Debtors' 25% interest). Amount of Claim = \$3,858.98. 	Yes; allowed claims in this class are entitled to vote on the Plan.	<p>Prior to confirmation, Debtors will obtain orders fixing the secured amount of this claim as \$0.00. Debtors will pay nothing to this Class as secured claims. Any claim of a creditor whose lien is stripped is a general unsecured creditor whose claim shall be paid, pro rata, with other unsecured creditors, described below.</p> <p>Creditors in this Class may not repossess or dispose of its collateral so long as Debtors are not in material default under the Plan. The Court's Guidelines for Valuing and Avoiding Liens in Individual Chapter 11 Cases and Chapter 13 Cases will apply.</p>
7	<p>iPayment, Inc.</p> <ul style="list-style-type: none"> Collateral description = Real property commonly known as 13 Sunset Terrace, Scotts Valley, CA (approximate value of \$162,500) (Debtors' 25% interest). Amount of Claim = \$13,865.81. 	Yes; allowed claims in this class are entitled to vote on the Plan.	<p>Prior to confirmation, Debtors will obtain orders fixing the secured amount of this claim as \$0.00. Debtors will pay nothing to this Class as secured claims. Any claim of a creditor whose lien is stripped is a general unsecured creditor whose claim shall be paid, pro rata, with other unsecured creditors, described below.</p> <p>Creditors in this Class may not repossess or dispose of its collateral so long as Debtors are not in material default under the Plan. The Court's Guidelines for Valuing and Avoiding Liens in Individual Chapter 11 Cases and Chapter 13 Cases will apply.</p>

c. Secured Claims Paid In Full Over Time.

Class	Description	Impaired (Y/N)	Treatment
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1			
2	8	No. American Bancard, LLC.	Yes; allowed claims in this class are entitled to vote on the Plan.
3		<ul style="list-style-type: none"> Collateral description = Real property commonly known as 19 Sunset Terrace, Scotts Valley, CA (approximate value of \$162,500). Amount of Claim = \$3,858.98. 	<p>Creditors in this Class will be paid in full over 5 years, with interest at a rate of 2% per annum (monthly payment of \$67.64).</p> <p>Creditors in this Class may not repossess or dispose of its collateral so long as Debtors are not in material default under the Plan.</p>
4			
5			
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10	9	iPayment, Inc.	Yes; allowed claims in this class are entitled to vote on the Plan.
11		<ul style="list-style-type: none"> Collateral description = Real property commonly known as 19 Sunset Terrace, Scotts Valley, CA (approximate value of \$650,000). Amount of Claim = \$3,858.98. 	<p>Creditors in this Class will be paid in full over 5 years, with interest at a rate of 2% per annum (monthly payment of \$243.04).</p> <p>Creditors in this Class may not repossess or dispose of its collateral so long as Debtors are not in material default under the Plan.</p>
12			
13			
14			
15			
16			

d. Unsecured Claims- Small Claims (Face Amount Less Than \$5,000)

General unsecured claims are unsecured claims not entitled to priority under Bankruptcy Code Section 507(a).

Distributions to creditors in Classes 10 (Unsecured Claims- Small Claims) and 11 (General Unsecured Claims) is likely to vary from the tables set forth below, and from Exhibit 4. The Trustee expects to object to numerous creditors' scheduled debts or claims (identified below as disputed) whose claims have not been evidenced through a filed Proof of Claim in this case, or whose claims are otherwise insufficient. Disallowance of any claims or scheduled debts in Class 10 will necessarily increase the amount to be distributed to creditors in Class 11.

The following chart identifies the Plan's treatment of the unsecured claims whose face amount is less than \$5,000.00:

Class	Name	Amount	Disputed	Effective Date Payment (If Allowed)
10	Afni, Inc. (Dish Networks)	95.00	Y	95.00
	Atlas Acquisitions	4,252.17	N	100.00
	Big Creek Lumber	2,732.00	Y	100.00
	Bogner's All Air	440.00	Y	100.00
	Cal. Serv. Bureau	203.00	Y	100.00
	Cap One	2,569.00	Y	100.00
	Cap One	1,162.00	Y	100.00
	Consolidated Rcvy Grp	1,152.76	Y	100.00
	Douglas Perkins	3,088.00	N	100.00
	Greenwaste Recovery	405.68	Y	100.00
	Innovative Merchant Solutions	1,152.76	N	100.00
	McCarthy Burgess & Wolfe	4,000.00	Y	100.00
	Michael Ackerman	3,897.33	Y	100.00
	OSH	2,051.21	Y	100.00
	Pacific Bell Telephone Company (AT&T)	790.41	N	100.00
	Portfolio Recovery Assoc.	2,569.39	N	100.00
	Portfolio Recovery Assoc.	1,162.25	N	100.00
	Tose Supply	1,864.00	Y	100.00
Wells Fargo Bank	936.62	N	100.00	
Wells Fargo Bank	3,383.49	N	100.00	
TOTAL		37,907.07		1,995.00

This class includes any creditor whose allowed claim is \$5,000 or less, and any creditor in Class 11 whose allowed claim is larger than \$5,000 but agrees to reduce its claim to \$100. Each creditor will receive on the Effective Date of the Plan a single payment equal to the lesser of its allowed claim or \$100.00.

Creditors in this class may not take any collection action against Debtor so long as Debtor is not in material default under the Plan (defined below). **Claimants in this class are impaired and are entitled to vote on confirmation of the Plan, unless their claims are paid in full, with interest, on the Effective Date of the Plan.**

e. General Unsecured Claims

General unsecured claims are unsecured claims not entitled to priority under Bankruptcy Code Section 507(a).

Distributions to creditors in Classes 10 (Unsecured Claims- Small Claims) above, and in Class 11 (General Unsecured Claims) below is likely to vary from the tables describing the claims, and from Exhibit 4. The Trustee expects to object to numerous creditors' scheduled debts or claims (identified below as disputed) whose claims have not been evidenced through a filed Proof of Claim in this case, or whose claims are otherwise insufficient. Disallowance of any claims or scheduled debts in this Class will necessarily increase the amount to be distributed to other creditors in this Class whose Claims are allowed.

The following chart identifies the Plan's treatment of the classes containing the Debtor's non-priority general unsecured claims in face amounts over \$5,000.00.

Class	Name	Amount	Disputed	Monthly Payments (1-60) (If Allowed)	Monthly Payments (61-96) (If Allowed)	Total Plan Payments (Including Effective Date Distributions)
11	American Infosource	11,064.45	N	3.54	6.73	701.58
	American Infosource	6,078.28	N	1.95	3.70	385.41
	Atlantic Credit & Finance	9,368.55	N	3.00	5.70	594.05
	Atrium Windows & Doors, Inc.	6,163.43	N	1.97	3.75	390.82
	Bank of America	74,672.91	Y	23.90	45.44	4,734.91
	Cap One	20,566.00	Y	6.58	12.51	1,304.06
	Com Serv Grp	8,426.00	Y	2.70	5.13	534.28
	Eugene Bustichi	38,000.00	Y	12.16	23.12	2,409.53
	Guaranty Co. of North America	1,500,000.00	Y	480.16	912.70	95,112.99
	LTD Financial Services	8,247.71	Y	2.64	5.02	522.98
	Midland Funding, LLC	11,064.00	Y	3.54	6.73	701.55
	Midland Funding, LLC	6,078.00	Y	1.95	3.70	385.41
	Midland Funding, LLC	5,963.00	Y	1.91	3.63	378.11
	Ohio Casualty	2,815,836.00	N	901.36	1,713.34	178,548.39
	Pacific Gas & Electric Company	19,715.07	N	6.31	12.00	1,250.10
Portfolio Recovery Assoc.	20,566.56	N	6.58	12.51	1,304.10	
System & Services	11,454.78	N	3.67	6.97	726.33	

Technologies, Inc.					
Wesco Insurance Co.	25,000.00	Y	8.00	15.21	1,585.22
TOTAL	4,598,264.74		1,471.92	2,797.88	291,569.82

Creditors in this class may not take any collection action against Debtor so long as Debtor is not in material default under the Plan (defined below). **Claimants in this class are impaired and are entitled to vote on confirmation of the Plan, unless their claims are paid in full, with interest, on the Effective Date of the Plan.**

VII. OTHER PROVISIONS GOVERNING THE TREATMENT OF CREDITORS

A. DEFINITIONS.

The following definitions apply in this Plan:

1. “Allowed Claim” means a Claim against the Debtors (a) proof of which was timely filed with the Bankruptcy Court and as to which no objection has been filed; (b) which was listed in Debtor's Schedules of Assets and Liabilities filed herein and (i) not shown as disputed, contingent or unliquidated and (ii) as to which no objection has been filed; or (c) which has been Allowed by a Final Order of the Bankruptcy Court.

2. "Confirmation Date" means the date on which the Order of Confirmation is entered.

3. “Debtors” means Dene Bustichi and Melodie Bustichi, the debtors herein.

4. “Effective Date” is the fifteenth day following the date of the entry of the Order of Confirmation, if no notice of appeal from that order has been filed. If a notice of appeal has been filed, Debtors may waive the finality requirement and put the Plan into effect, unless the order confirming the Plan has been stayed. If a stay of the confirmation order has been issued, the Effective Date will be the first day after that date on which no stay of the confirmation order is in effect, provided that the confirmation order has not been vacated.

5. A term used in the Plan, whether or not capitalized, that is not defined in the Plan but that is used in the Bankruptcy Code has the meaning assigned to the term in the Code. If a term is not defined in the Plan or the Code, it shall be given the meaning ordinarily ascribed to it in bankruptcy or insolvency law.

1 **B. EFFECT OF CONFIRMATION OF THE PLAN.**

2 Upon the Effective Date, all matters provided under the Plan shall be deemed to be authorized
3 and approved without further approval or order from the Bankruptcy Court. The Chapter 11 Trustee
4 shall be discharged from his responsibilities as Trustee as of the Effective Date. The Reorganized
5 Debtors shall be authorized, without further application to or order of the Bankruptcy Court, to take
6 whatever action is necessary to carry out the Plan and to effectuate the distributions provided for under
7 the Plan, subject to the provisions of the Plan.

8 **C. MEANS OF EXECUTION OF THE PLAN.**

9 1. Funding of the Plan.

10 As set forth above, the Plan shall be funded through the following sources:

- 11 a. Existing cash on hand retained by the Trustee (approximately \$20,000);
- 12 b. Transfer of the Debtor's personal property to Bustichi & Company, for
13 \$20,000;
- 14 c. \$130,000 paid by the Debtors and their family to monetize the Debtors'
15 interest in 19 Sunset Terrace; and
- 16 d. Following an increase of Dene Bustichi's gross salary to \$17,500 per
17 month beginning on the Effective Date, payment to creditors of the
18 Debtors' net disposable income, over a period of eight years (96 months).
19 The Trustee estimates that the net disposable income, per month, will be
20 \$1,471.92 for the initial sixty (60) month term of the Plan, and
21 \$2,797.88 per month for the final 36 months of the Plan term. The
22 distribution of the subject funds is described in Exhibit 4. Classes 10 and
23 11 (small claims unsecured creditors and general secured creditors) will
24 receive a total of \$291,569.82 under the Plan.

25 2. Feasibility.

26 The implementation of the Plan is feasible in that the Debtors, the Debtors' family, and Bustichi
27 & Company have demonstrable means of performing their obligations as set forth herein.

1 3. Means of Execution:

- 2 a. The Chapter 11 Trustee shall be discharged upon the Effective Date, after
3 making Effective Date distributions (or reserving for such distributions
4 pending final approval of fees).
- 5 b. Following the discharge of the Chapter 11 Trustee, the Debtors shall make
6 all payments to creditors, directly, as prescribed herein.
- 7 c. No distribution shall be made on account of any Claim unless and until it
8 is determined to be an Allowed Claim by the Trustee or the Court.
- 9 d. Any payment to be made under the Plan shall be deemed timely made if it
10 is mailed to the recipient's last known address within the 10 calendar days
11 following the date described in this Plan.

12 **D. DISCHARGE.**

13 The Debtors shall not receive a discharge of debts until they make all payments due under the
14 Plan or the court grants a hardship discharge.

15 **E. VESTING OF PROPERTY.**

16 On the Effective Date, all property of the estate and interests of the Debtor will vest in the
17 reorganized Debtor pursuant to § 1141(b) of the Bankruptcy Code free and clear of all claims and
18 interests except as provided in this Plan, subject to revesting upon conversion to Chapter 7 as provided
19 below.

20 **F. PLAN CREATES NEW OBLIGATIONS.**

21 Except as provided in Section G(4) and (5), the obligations to creditors that Debtor undertakes in
22 the confirmed Plan replace those obligations to creditors that existed prior to the Effective Date of the
23 Plan. Debtor's obligations under the confirmed Plan constitute binding contractual promises that, if not
24 satisfied through performance of the Plan, create a basis for an action for breach of contract under
25 California law. To the extent a creditor retains a lien under the Plan, that creditor retains all rights
26 provided by such lien under applicable non-Bankruptcy law.

27 **G. REMEDIES IF DEBTOR DEFAULTS IN PERFORMING THE PLAN**

- 28 1. Creditor Action Restrained. The confirmed Plan is binding on every creditor

1 whose claims are provided for in the Plan. Therefore, even though the automatic stay terminates on the
2 Effective Date with respect to secured claims, no creditor may take any action to enforce either the pre-
3 confirmation obligation or the obligation due under the Plan, so long as Debtors are not in material
4 default under the Plan, except as provided in Part G(5) below.

5 2. Obligations to Each Class Separate. Debtors' obligations under the Plan are
6 separate with respect to each class of creditors. Default in performance of an obligation due to members
7 of one class shall not by itself constitute a default with respect to members of other classes. For
8 purposes of this Part G, the holders of all administrative claims shall be considered to be a single class,
9 the holders of all priority claims shall be considered to be a single class, and each non-debtor party to an
10 assumed executory contract or lease shall be considered to be a separate class.

11 3. Material Default Defined. If Debtors fails to make any payment, or to perform
12 any other obligation required under the Plan, for more than 10 days after the time specified in the Plan
13 for such payment or other performance, any member of a class affected by the default may serve upon
14 Debtors and Debtors' attorney (if any) a written notice of Debtor's default. If Debtors fail within 30
15 days after the date of service of the notice of default either: (i) to cure the default; (ii) to obtain from the
16 court an extension of time to cure the default; or (iii) to obtain from the court a determination that no
17 default occurred, then Debtors are in Material Default under the Plan to all the members of the affected
18 class.

19 4. Remedies Upon Material Default. Upon Material Default, any member of a class
20 affected by the default: (i) may file and serve a motion to dismiss the case or to convert the case to
21 Chapter 7; or (ii) without further order of the court has relief from stay to the extent necessary, and may
22 pursue its lawful remedies to enforce and collect Debtors' pre-confirmation obligations.

23 5. Claims Not Affected by Plan. Upon confirmation of the Plan, and subject to Part
24 F, any creditor whose claims are left unimpaired under the Plan may, notwithstanding subparagraphs
25 (1), (2), (3), and (4) above, immediately exercise all of its contractual, legal, and equitable rights, except
26 rights based on default of the type that need not be cured under section 1124(2)(A) and (D).

27 6. Effect of Conversion to Chapter 7. If the case is at any time converted to one
28 under Chapter 7, property of the Debtor shall vest in the Chapter 7 bankruptcy estate to the same extent

1 provided for in section 348(f) of the Bankruptcy Code upon the conversion of a case from Chapter 13 to
2 Chapter 7.

3 7. Retention of Jurisdiction. The Bankruptcy Court may exercise jurisdiction over
4 proceedings concerning: (i) whether Debtors are in Material Default of any Plan obligation; (ii) whether
5 the time for performing any Plan obligation should be extended; (iii) adversary proceedings and
6 contested matters pending as of the Effective Date or specifically contemplated in this Plan to be filed in
7 this Court; (iv) whether the case should be dismissed or converted to one under Chapter 7; (v) any
8 objections to claims; (vi) compromises of controversies under Fed. R. Bankr. Pro. 9019; (vii)
9 compensation of professionals; and (viii) other questions regarding the interpretation and enforcement of
10 the Plan.

11 **VIII. GENERAL PROVISIONS.**

12 **A. DISPUTED CLAIM RESERVE.**

13 Debtors will create a reserve for disputed claims. Each time Debtors make a distribution to the
14 holders of allowed claims, Debtors will place into a reserve the amount that would have been distributed
15 to the holders of disputed claims if such claims had been allowed in the full amount claimed. If a
16 disputed claim becomes an allowed claim, Debtors shall immediately distribute to the claimant from the
17 reserve an amount equal to all distributions due to date under the plan calculated using the amount of the
18 allowed claim. Any funds no longer needed in reserve shall be distributed *pro-rata* among allowed
19 claims in the applicable class.

20 **B. CRAMDOWN.**

21 Pursuant to section 1129(b) of the Bankruptcy Code, Debtors reserve the right to seek
22 confirmation of the Plan despite the rejection of the Plan by one or more classes of creditors.

23 **C. SEVERABILITY.**

24 If any provision in the Plan is determined to be unenforceable, the determination will in no way
25 limit or affect the enforceability and operative effect of any other provision of the Plan.

26 **D. GOVERNING LAW.**

27 Except to the extent a federal rule of decision or procedure applies, the laws of the State of
28 California govern the Plan.

1 **F. LAWSUITS.**

2 The Trustee does not believe that causes of action for fraudulent transfers, voidable preferences,
3 or other claims for relief exist.

4 **G. NOTICES.**

5 Any notice to the Debtors shall be in writing, and will be deemed to have been given three days
6 after the date sent by first-class mail, postage prepaid and addressed as follows:

7 Dene Bustichi and Melodie Bustichi
8 c/o C. Alex Naegele, A Professional Law Corporation
9 95 S. Market Street, Suite 300
 San Jose, CA 95113

10 **H. POST-CONFIRMATION UNITED STATES TRUSTEE FEES.**

11 Following confirmation, Debtors shall continue to pay quarterly fees to the United States Trustee
12 to the extent, and in the amounts, required by 28 U.S.C. § 1930(a)(6). So long as Debtors are required to
13 make these payments, Debtors shall file with the court quarterly reports in the form specified by the
14 United States Trustee for that purpose.

15 **I. DEADLINE FOR § 1111(B) ELECTION.**

16 Creditors with an allowed secured claim can make a timely election under section 1111(b) no
17 later than 14 days before the first date set for the hearing on confirmation of the Plan.

18 **J. MODIFICATION OF PLAN.**

19 The Trustee may modify the Plan at any time before confirmation, under Section 1127 of the
20 Bankruptcy Code. A Holder of a Claim that has accepted or rejected the Plan shall be deemed to have
21 accepted or rejected, as the case may be, the Plan as altered, amended or modified, unless within the
22 time fixed by the Court, such Holder changes its previous acceptance or rejection by written notice
23 served upon the Trustee.

24 **K. REVOCATION OR WITHDRAWAL.**

25 The Plan may be revoked or withdrawn by the Trustee prior to the Confirmation Date, in which
26 case the Plan shall be deemed null and void. In such event, nothing contained herein or in the Plan shall
27 be deemed to constitute a waiver or release of any claims by the Debtor or any other entity or to
28 prejudice in any manner the rights of the Debtor or any other entity in any further proceedings involving

1 the Debtor.

2 **L. CONTINUING VIABILITY OF OTHER ORDERS/AGREEMENTS.**

3 Except to the extent expressly modified by the Plan, (i) all Final Orders previously entered by the
4 Bankruptcy Court and (ii) any agreements between the Trustee, creditors and/or the Debtors shall
5 continue in full force and effect.

6 **M. FURTHER ORDERS.**

7 From and after the Effective Date, the Reorganized Debtors may move the Court for such Orders
8 as they deem advisable or beneficial to creditors or for the implementation of this Plan.

9 **IX. CONFIRMATION REQUEST**

10 If necessary, the Trustee requests Confirmation of the Plan pursuant to Section 1129(b) of the
11 Code.

12 DATED: November 21, 2016

13 By: /s/ Kyle Everett
14 Kyle Everett
Chapter 11 Trustee

15 Presented by:

16 BRUNETTI ROUGEAU, LLP

17
18 By: /s/ Gregory A. Rougeau
19 Gregory A. Rougeau
Counsel for the Debtor

