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8 BSI FINANCIAL SERVICES, INC., subservicing agent for  
9 NSP LA TRUST c/o HMC ASSETS, LLC as Administrator  
10 of the Trust, successor in interest to Bayview Loan Servicing, LLC

11 UNITED STATES BANKRUPTCY COURT  
12 DISTRICT OF NEVADA

13 In re

14 DON HOLBROOK and  
15 LAURIE HOLBROOK,  
16 Debtors.

Bk. No: 11-27072-lbr

Chapter 11

**OBJECTION TO CONFIRMATION OF  
DEBTORS' *EIGHTH MODIFIED*  
PLAN OF REORGANIZATION DATED  
JUNE 11, 2013**

Confirmation Hearing –

Date: January 8, 2014

Time: 2:00 p.m.

Place: United States Bankruptcy Court

Foley Federal Building

300 Las Vegas Blvd. South

Las Vegas, NV 89101

Honorable Linda B. Riegler

21 Secured Creditor, BSI FINANCIAL SERVICES, IN., subservicing agent for  
22 NSP LA TRUST c/o HMC ASSETS, LLC as Administrator of the Trust, successor in interest to  
23 Bayview Loan Servicing, LLC ("Secured Creditor" herein) hereby objects to the confirmation of  
24 Debtors' *Eighth Modified* Plan of Reorganization Dated June 11, 2013, filed with this Court on  
25 June 11, 2013 (docket item no. 192), on the following grounds:  
26

1           1. On or about October 3, 2002, Debtor Don Holbrook, for valuable consideration, made,  
2           executed, and delivered to First Arizona Savings, FSB ("FAS") an Adjustable Rate Note in the  
3           principal sum of \$173,000.00 ("Note"). On or about October 3, 2002, Debtor Don Holbrook made,  
4           executed and delivered to FAS a Deed of Trust (the "Deed of Trust") granting FAS a security  
5           interest in the Property. The Deed of Trust was recorded on October 8, 2002, in the Official  
6           Records of Mohave County, State of Arizona, as instrument no. 2002068417. FAS transferred its  
7           beneficial interest in the Note and Deed of Trust to Bayview by Assignment recorded on March  
8           12, 2012. Bayview transferred its beneficial interest to NSP LA TRUST c/o HMC ASSETS, LLC  
9           ("NSP") by Assignment recorded on October 16, 2013. BSI Financial Services, Inc. is the  
10          servicing agent for NSP.  
11

12           2. The property subject to the first trust deed obligation held by NSP is generally described  
13          as **2230 N Palo Verde Blvd, Lake Havasu City, AZ** ("subject property" herein). The subject  
14          property is apparently Debtors' *vacation* home and Debtors are not generating any monthly  
15          income from the subject property.  
16

17           3. On **October 31, 2011**, Debtors filed the instant Chapter 11 petition in this Court. At the  
18          time of filing the instant bankruptcy, Debtors were due and owing for three (3) monthly mortgage  
19          payments. Secured Creditor's predecessor, FDIC as Receiver for First Arizona Savings, filed a  
20          Proof of Claim on January 16, 2012 (claim #5), listing **\$3,562.20** in pre-petition arrears and a total  
21          debt of **\$146,453.30** as of the date of filing. This **\$3,562.20** in pre-petition arrears consisted of  
22          three (3) monthly mortgage payments of \$1,146.00 *each*, late charges in the amount of \$115.05,  
23          and property inspection fees in the amount of \$9.15.  
24

25           4. Debtors have amended their Chapter 11 Plan *multiple* times. Secured Creditor is listed  
26          in the *Eighth Modified Plan* as the holder of a Class 1-A *oversecured* claim, with principal and

1 variable interest payments commencing March 1, 2013, in addition to escrow payments for taxes  
2 and insurance. The *Eighth Modified* Plan states that the initial principal and interest payment  
3 amount due to Secured Creditor is \$694.50, *plus* monthly payments for escrow for insurance and  
4 taxes. Debtors had originally indicated in their *First Modified* Plan filed on March 2, 2012 (docket  
5 entry #72) that Debtors are to commence payments in the amount of \$694.50 to Secured Creditor  
6 starting with the **February 1, 2012** payment. However, Debtors have since then moved the “goal  
7 post” with respect to the starting date of the monthly mortgage payments under the Plan.  
8

9         5. Pursuant to the proposed *Eighth Modified* Plan, Debtors were to recommence regular  
10 monthly mortgage (principal, interest, and escrow) payments to Secured Creditor (and its  
11 predecessors) in a timely manner commencing with the **March 1, 2013** post-petition payment.  
12 Debtors’ *Eighth Modified* Plan specifically states that Debtors will be responsible for the monthly  
13 escrow payments for property taxes and insurance. The *current* monthly mortgage payment owed  
14 to Secured Creditor, effective November 1, 2013, is **\$983.23**, which includes a *principal and*  
15 *interest* component of **\$757.91** and an *escrow* component for taxes and insurance of **\$225.41**.  
16 Debtors have only made one (1) full regular monthly payment in the amount of \$983.23, on  
17 November 13, 2013.  
18

19         6. While Debtors’ proposed *Eighth Modified* Plan provides for the payment of monthly  
20 mortgage payments on Secured Creditor’s claim commencing March 1, 2013, Debtor has only  
21 made five (5) *partial post-petition* monthly payments to Secured Creditor and only one (1) *full*  
22 monthly mortgage payment since the filing of the instant bankruptcy on October 31, 2011.  
23 Debtors are already in breach of their proposed *Eighth Modified* Plan. As set forth in the  
24 Declaration of Tara Spangler Re: Breach of the *Eighth Modified*, which will be filed concurrently  
25 herewith, out of the six (6) payments tendered by the Debtors since the filing of the instant  
26 bankruptcy, five (5) out of six (6) of these payments were *partial* payments that failed to include

1 an escrow payment for property taxes and insurance. Debtors are due and owing for a total of  
2 twenty two (22) *post-petition* monthly mortgage payments, as well as three (3) pre-petition  
3 monthly mortgage payments. Debtors are also due for Secured Creditor's post-petition attorneys'  
4 fees incurred in protecting Secured Creditor's *oversecured* claim.

5 7. On October 3, 2013, Secured Creditor filed an *Amended* Proof of Claim ("Amended  
6 Proof of Claim" herein), which includes both the *pre-petition* arrears owed by the Debtors as of  
7 the date of filing the instant bankruptcy, *as well as the post-petition* arrears that came due as a  
8 result of Debtors' failure to tender all regular monthly mortgage payments to Secured Creditor.

9 8. On November 20, 2013, Debtors filed the Claim Objection (docket entry # 210),  
10 alleging that the *Amended* Proof of Claim is "fatally flawed." Debtors allege that Secured Creditor  
11 did not properly account for the payments tendered by the Debtors *post-petition*, and improperly  
12 added fees in the amount of \$3,714.90 to Secured Creditors' *Amended* Proof of Claim. Secured  
13 Creditor will amend its Proof of Claim to reduce the disputed \$3,714.90 that was included in the  
14 *Amended* Proof of Claim, and will also file a Response to Debtors' Objection to Claim Debtors'  
15 Claim Objection; said Response will allege Debtors' ignorance that Secured Creditor's *Amended*  
16 Proof of Claim was amended to reflect *both* post-petition arrears as well as *pre-petition* arrears  
17 that have come due.

18 9. Debtors' *Eighth Modified* Plan must properly account for the *pre-petition* and the *post-*  
19 *petition* arrears that have come due as a result of Debtors' default on the Note.

20 10. As further set forth below, Debtors' *Eighth Modified* Plan should not and cannot be  
21 confirmed by this Court due to Debtors' failure to properly provide for Secured Creditor's claim in  
22 their Plan.

23 DEBTORS' EIGHTH MODIFIED PLAN FAILS TO PROPERLY  
24 TREAT SECURED CREDITOR'S CLAIM

25 Debtors' *Eighth Modified* Plan lists Secured Creditor in Class 1-A as an *oversecured*  
26 *creditor*. By its nature as an *oversecured* creditor, Secured Creditor must be paid on its claim in

1 full. Nonetheless, Debtors' *Eighth Modified* Plan lists the amount of Secured Creditor's claim as  
2 \$146,453.30, which *was* the amount of Secured Creditor's claim *as of the date of filing* the instant  
3 bankruptcy. However, Debtors failed to make no less than 22 post-petition monthly mortgage  
4 payments to Secured Creditor, the amount of Secured Creditor's claim listed in Debtors' *Eighth*  
5 *Modified* Plan is obviously incorrect, and must be increased to reflect Debtors failure to tender  
6 almost two (2) years of payments. Secured Creditor is currently filing a Declaration of Tara  
7 Spangler Re: Breach of the *Eighth Modified*, which sets forth Debtors' default of the terms in the  
8 *Eighth Modified* Plan.  
9

10 Debtors *Eighth Modified* Plan provides that Debtors will commence making monthly  
11 mortgage payments (including escrow) to Secured Creditor starting with the payment on March 1,  
12 2013. However, since March 1, 2013, Debtors did not tender *any* monthly payments to Secured  
13 Creditor during the month of May 2013, June 2013, and December 2013. Additionally, out of six  
14 (6) payments tendered by the Debtors since March 2013, five (5) of these payments were *partial*  
15 payments that failed to include an escrow component; only the most recent payment tendered by  
16 the Debtors in the amount of \$983.32 on November 13, 2013 included an escrow component.  
17

18 THE PLAN WAS NOT FILED IN GOOD FAITH

19 Bankruptcy Code Section 1129(a)(3) requires a finding that the Plan was filed in good  
20 faith. "A plan is proposed in good faith where it achieves a result consistent with the objectives  
21 and purposes of the Code." *In re Sylmar Paza, L.P.*, 314 F.3d 1070, 1074 (9th Cir., 2002).  
22 Whether a Chapter 11 plan complies with the good faith requirements of Section 1129(a)(3) is  
23 determined based on an evaluation of the totality of circumstances on a case by case basis. *Id.*  
24

25 The subject property serves as Debtors' vacation home. Secured Creditor is an *over-*  
26 *secured* creditor and must have its claim paid in full through any chapter 11 Plan proposed by the

1 Debtors. Nonetheless, Debtors, who are already in default of their *Eighth Modified* Plan, must  
2 provide for *both* the pre-petition and post-petition arrears that have come due to Secured Creditor.  
3 For administrative convenience, Secured Creditor had filed the *Amended* Proof of Claim on  
4 October 3, 2013 to provide for *both* the pre-petition and post-petition arrears that have come due.  
5 Nonetheless, Debtors have filed an Objection to Claim which includes the meritless dispute of  
6 these significant post-petition arrears that have come due since the filing of the case. Debtors' Plan  
7 should not be confirmed.  
8


9 CONCLUSION

10 Any Chapter 11 Plan proposed by Debtors must provide for and eliminate the objections  
11 specified above in order to be feasible and to provide adequate protection to this objecting secured  
12 creditor. It is respectfully requested that confirmation of the *Eighth Modified* Chapter 11 Plan as  
13 proposed by Debtors, be denied.

14 WHEREFORE, Secured Creditor prays as follows:

- 15 (1) That confirmation of the proposed Chapter 11 Plan of Reorganization be denied.  
16 (2) For attorneys' fees and costs incurred herein.  
17 (3) For such other relief as this Court deems proper.  
18

19 DATED: December 24, 2013

20  
21   
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BSI FINANCIAL SERVICES, INC., subservicing agent for  
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of the Trust, successor in interest to Bayview Loan Servicing, LLC

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

In re

DON HOLBROOK and  
LAURIE HOLBROOK,

Debtors.

Bk. No: 11-27072-lbr

Chapter 11

CERTIFICATE OF SERVICE

Confirmation Hearing –

Date: January 8, 2014

Time: 2:00 p.m.

Place: United States Bankruptcy Court

Foley Federal Building

300 Las Vegas Blvd. South

Las Vegas, NV 89101

Honorable Linda B. Riegler

On December 24, 2013, *(date)* I served the following documents(s) *(specify)*:

**(1) OBJECTION TO CONFIRMATION OF DEBTORS' *EIGHTH* MODIFIED PLAN OF REORGANIZATION DATED JUNE 11, 2013; and**

**(2) FIFTEEN DAY NOTICE OF DECLARATION RE: BREACH OF DEBTORS' *EIGHTH* MODIFIED CHAPTER 11 PLAN OF REORGANIZATION**

I served the above-named document(s) by the following means to the persons as listed below:

*(Check all that apply)*

1 ■ **a. ECF System** (*You must attach the "Notice of Electronic Filing", or list all persons and*  
2 *addresses and attach additional paper if necessary*)

3 U.S. Trustee –LV - 11, USTPRegion17.lv.ecf@usdoj.gov

4 THOMAS E. CROWE on behalf of Debtor DON HOLBROOK  
5 tcrowe@thomascrowelaw.com

6 THOMAS E. CROWE on behalf of Joint Debtor LAURIE HOLBROOK  
7 tcrowe@thomascrowelaw.com

8 ■ **b. United States mail, postage fully prepaid**  
9 (*List persons and addresses. Attach additional paper if necessary*)

10 **DEBTORS:**  
11 **DON HOLBROOK**  
12 **LAURIE HOLBROOK**  
13 **9200 DALMAHOY PLACE**  
14 **LAS VEGAS, NV 89145**

15 **G c. Personal Service** (*List persons and addresses. Attach additional paper if necessary*)

16 I personally delivered the document(s) to the persons at these addresses:

17 **G** For a party represented by an attorney, delivery was made by handing the document(s) to  
18 the attorney's office with a clerk or other person in charge, or if no one is in charge by  
19 leaving the document(s) in a conspicuous place in the office.

20 **G** For a party, delivery was made by handing the document(s) to the party or by leaving the  
21 document(s) at the person's dwelling house or usual place of abode with someone of  
22 suitable age and discretion residing there.

23 **G d. By direct mail (as opposed to through the ECF System)**

24 (*List persons and email addresses. Attach additional paper if necessary*)

25 Based upon the written assignment of the parties to accept service by email or a court  
26



1 order, I caused the document(s) to be sent to the persons at the mail addresses listed below. I did  
2 not receive, within a reasonable time after the transmission, any electronic message or other  
3 indication that the transmission was unsuccessful.

4  
5 **G e. By fax transmission**

6 *(List persons and fax numbers. Attach additional paper if necessary)*

7 Based upon the written assignment of the parties to accept service by fax transmission or a  
8 court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was  
9 reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

10  
11 **G f. By messenger**

12 *(List persons and addresses. Attach additional paper if necessary)*

13 I served the document(s) by placing them in an envelope or package addressed to the persons  
14 at the addresses listed below and providing them to a messenger for service.  
15 *( A declaration by the messenger must be attached to this Certificate of Service).*

16 **I declare under penalty of perjury that the foregoing is true and correct.**

17  
18 Signed on *(date)*: December 24, 2013

19 Jennifer L. Reedy

20 (NAME OF DECLARANT)

21   
22 (SIGNATURE OF DECLARANT)

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25  
26