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Pro se Debtor/Appellant's

Certificate of GOOD FAITH and not to delay

Certificate that grounds are limited to intervening circumstance of substantial or controlling effect Debtor cannot pay $22841 to Exhusband, as she only receives alimony. Appellant filed Motion to Proceed to Appeal in Forma Pauperis. Since Voya retirement account was equitably divided, Debtor claimed it as an exempt asset. Money $22841 owed Exhusband was for DSO and unsecured creditor. Debtor filed bankruptcy in GOOD FAITH. Bad faith was never mentioned in any hearing. Judge Ray dismissed case without cause and instructed Trustee to prepare dismissal order, which did not state cause for dismissal and that funds paid by Debtor would be refunded to her. Judge Ray did not hear Debtor's Motion for Reinstatement until June 2016, but had already refunded payments to Debtor. Debtor was not given opportunity to file and hearing scheduled for Motion for Reinstatement or opportunity to convert case to Chapter 7.

Certificate that grounds are limited to other substantial grounds not previously presented. 11th Circuit would not review transcript showing that Judge Ray instructed Trustee to prepare dismissal order which did not state reason or CAUSE for dismissal. Judge Ray never stated in the hearing transcript why he was dismissing Debtor's bankruptcy without cause.

In accordance with Rule 44, this Certificates that Debtor/Appellate states that she is filing this Motion for Rehearing in GOOD FAITH and not to delay. Because Voya Retirement was claimed as exempt asset, Debtor Judge Ray in his order denying confirmation and dismissing case (and instructed Trustee to refund funds to Debtor) did not give DEBTOR AN OPPORTUNITY to request a REHEARING or REINSTATEMENT OF BANKRUPTCY CASE. Judge Ray also did not give DEBTOR OPPORTUNITY TO CONVERT Chap 13 bankruptcy to Chap 7 bankruptcy, which DEBTOR has RIGHT to automatically convert case to a different chapter.

In a recent decision, *Marrama v. Citizens Bank of Massachusetts1 May 15 2007,* United States Supreme Court upheld one of Basic equitable principles underlying bankruptcy law in **emphasizing that principal purpose of Bankruptcy Code is to grant a "fresh start" to "honest but unfortunate debtor."** The Supreme Court made clear in the case of *Marrama v. Citizens Bank, 549 U.S. 365 (2007),* **that bankruptcy courts must give full effect to § 706(d), which provides that "a case may not be converted to a case under another chapter . . . unless the debtor may be a debtor under such chapter.**" 11 U.S.C. § 706(d). In *Marrama,* the Supreme Court found the debtor had committed acts that constituted cause for dismissal of a chapter 13 case under 11 U.S.C. § 1307(c) for bad faith. Because there was cause to dismiss the case under § 1307(c), the **Supreme Court found that the debtor was ineligible to be a debtor under chapter 13** and § 706(d) required his motion to convert his case to be denied. *Marrama, 549 U.S. at 373-74* ("In practical effect, a ruling that an individual's Chapter 13 case should be dismissed or converted to Chapter 7 because of prepetition bad-faith conduct . . . is tantamount to a ruling that the individual does not qualify as a debtor under Chapter 13."). In *Marrama*, it was the debtor's pre-petition bad faith that provided cause for dismissal under § 1307(c).

Appellant's Chapter 13 plan was proposed in GOOD Faith with funds to pay payments, not as in *Frank Anthony Arenas and Sarah Eve Arenas,*14-11406 HRT 08/28/14

"Any plan proposed by the Debtors would necessarily be executed by unlawful means and the Court would be unable to find, under § 1325(a)(3), that their plan is "proposed in good faith and not by any means forbidden by law." There are cases holding that the identical chapter 11 confirmation requirement that "[t]he plan has been proposed . . . not by any means forbidden by law," 11 U.S.C. § 1129(a)(3) (emphasis added) "focuses not on the terms of the plan and its means of implementation but on the manner in which the plan 'has been proposed.'" In re *Irving Tanning Co., 496 B.R. 644, 660 (B.A.P. 1st Cir. 2013).* See also In re *Sovereign Group, 1984-21 Ltd., 88 B.R. 325, 328 (Bankr. D. Colo. 1988).* Yet – at least in the chapter 13 context – the requirement, appearing in the same sentence, that "[t]he plan has been proposed in good faith . . . ," 11 U.S.C. § 1325(a)(3) (emphasis added), is based on a totality of the circumstances. See In re *Cranmer, 697 F.3d 1314, 1318 (10th Cir. 2012)*

("The good faith determination is made on a case-by-case basis considering the totality of the circumstances."). The totality of the circumstances good faith analysis, employed by the courts under § 1325(a)(3), goes far beyond a narrow procedural reading to the term "proposed." See, e.g., In re *Melander, 506 B.R.*

855, 870 (Bankr. D. Minn. 2014) (plan not proposed in good faith where plan found to constitute an abuse of the spirit of Chapter 13 **due to the excess expenses** claimed); In re *Tucker, 500 B.R. 457, 463-64 (Bankr. N.D. Miss. 2013)* (modification not proposed in good faith where debtor sought to surrender uninsured collateral after it sustained fire damage); In re *Rodriguez, 487 B.R. 275, 285-86 (Bankr. D. N.M. 2013)* (plan not proposed in good faith where debtor manipulated the Bankruptcy Code to discharge ex-spouse claim based on misappropriation of retirement funds while **debtor contributes over $700.00 monthly to his own retirement**); In re *Amos, 452 B.R. 886, 894 (Bankr. D. N.J. 2011)* (plan not proposed in good faith where debtors proposed plan to **pay $0 to unsecured creditors while retaining and making mortgage payments on second home**).

In § 1325(a)(3) the word "proposed" refers to two separate clauses within the same sentence. As a result, the subsection creates two separate conditions to confirmation: 1) that the plan be proposed "in good faith" and 2) that the plan be proposed "not by any means forbidden by law." 11 U.S.C. § 1325(a)(3). "The normal rule of statutory construction assumes that identical words used in different parts of the same act are intended to have the same meaning." *Sorenson v. Secretary of Treasury, 475 U.S. 851, 860 (1986)* (citations and internal quotes omitted). Here, the Court is not construing a word used in different parts of a statute but is construing a single word that refers to two separate clauses within a single sentence. It would be anomalous to find that Congress intended for the word "proposed" to carry a broad "totality of the circumstances" meaning with respect to the "good faith" clause and a limited procedural meaning in connection with the "not by any means prohibited by law" clause. The Court concludes that § 1325(a)(3) requires it to examine the lawfulness of a plan's means of implementation in order to satisfy the requirement that "the plan has been proposed . . . not by any means forbidden by law." 11 U.S.C. § 1325(a)(3). Because the Debtors lack any legal means of proposing a confirmable plan, the Court finds that they are acting in bad faith. Under the rationale of the *Marrama* case, the Debtors are ineligible for relief under chapter 13 and their motion to convert must be denied under 11 U.S.C.

§ 706(d). III. CONCLUSION The Court regards the legal analysis necessary for the resolution of this case to be relatively straight-forward while recognizing that the result is devastating for the Debtors. The Debtors' need the relief that would otherwise be available to them under the Bankruptcy Code. It is relief that, under the circumstances, the Court cannot provide. As a federal court, the Court cannot force the Debtors' Trustee to administer assets under circumstances where the mere act of estate administration would require him to commit federal crimes under the CSA. Nor can the Court

confirm a reorganization plan that is funded from the fruits of federal crimes. The Debtors' ownership and control over premises that are used in the **production and distribution of a Schedule I controlled substance** as well as Mr. Arenas' **direct involvement in the production and sale of a Schedule I controlled substance violate the CSA.** The Debtors' activities preclude the orderly operation of a case under either chapter 7 or chapter 13 of the Bankruptcy Code. Because the Court finds cause to dismiss the Debtor's chapter 7 case under § 707(a) and because the Court cannot permit the Debtors to convert their case under § 706(a), the case must be dismissed. Therefore, it is ORDERED that Debtor's Motion to Convert Chapter 7 Case to One under Chapter 13 Pursuant to 11 U.S.C. §348(a) and FED. R. BANKR. P. 1017(f)(2) (docket #23) is DENIED. It is further ORDERED that the United States Trustee's Motion to Dismiss Debtors' Case under 11 U.S.C. §707(a) (docket #17) is GRANTED."

This Motion for Rehearing states with particularity each point of law or fact, Debtor swears before US Supreme court that previous Appellate Courts have overlooked or misapprehended, but Judge Ray dismissed Debtor's bankruptcy without cause. Debtor swears **Judge Ray had no CAUSE (listed in 11 US Code 1307) to dismiss bankruptcy at Confirmation hearing Jan 14, 2016. Trustee was instructed to prepare Dismissal order. Trustee does not list a reason/cause in 11 US Code 1307 for dismissing Debtor's bankruptcy. In Transcript Judge Ray never states a reason or cause in 11 US Code 1307 for dismissal of Debtor's bankruptcy. 11th Circuit never requested transcript, but in transcript court would know that Judge Ray did not state a reason for dismissal of bankruptcy case.** In this case, lower courts have not followed 11 US Code 1307 or Supreme Court decision *Marrama v. Citizens Bank of Massachusetts1 May 15 2007,* in dismissing Debtor's bankruptcy without CAUSE.

"US Supreme Court has ruled that Debtor Supreme Court's GVR practice. A GVR is an order summarily granting certiorari, vacating the judgment below, and remanding to the lower court for reconsideration. The GVR order is **Fed. R. Civ. P. 60(b)** (providing for reopening judgments in certain circumstances). The Supreme Court's Controversial GVRs-**Most frequently used when a judgment of a lower court has been called into question by a subsequent**

decision of the Supreme Court. If the Supreme Court issues a relevant decision during the period for filing a petition for certiorari, which typically runs for 90 days after the judgment. When that happens during your period for seeking certiorari, you may file a petition for certiorari asking the Court to hold your case on its docket and, if the new precedent turns out to be relevant once it comes down, issue a GVR at that time." **Rather than giving such cases full merits conideration on the one hand or simply denying review on the other, the Court uses the GVR procedure to return such cases to the lower courts so that the lower courts can apply the Supreme Court's new precedent and make any necessary modifications.**

Appellant, Paula Kunsman, hereby certifies that Motion for Rehearing is file in GOOD FAITH and not to delay. Appellant also requests U.S. Supreme court hold this case on the docket for 90 days if a new precedent is relevant to this case. Debtor swears that her bankruptcy case was dismissed without cause. No cause or reason was given by Judge Ray (in hearing transcript) or order prepared by Trustee. Executed on June 21, 2019.

Paula Kunsman Paula Jo Kunsman, Pro Se Appellant

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