

Kathy A. Dockery  
Chapter 13 Trustee

Automatic Stay  
Trustee's Position

## REVISIONS TO LBR 3015-1 RE: RELIEF FROM STAY

(a) PAYMENTS BY TRUSTEE WHEN NO STAY IS IN EFFECT.

Whenever the automatic stay does not apply in the case or as to a specific creditor in the case, or where the stay has terminated automatically under applicable bankruptcy law, the debtor shall file a motion to modify the plan to delete payments to the affected creditor, unless the debtor wishes to continue payments to the creditor under the plan. Any distributions of estate funds made by the chapter 13 trustee in the ordinary course of business for the benefit of debtor's estate prior to receipt of an entered order modifying the plan shall not be surcharged to the chapter 13 trustee.

Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number  <input type="checkbox"/> Individual appearing without counsel <input type="checkbox"/> Attorney for:	FOR COURT USE ONLY
<b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA</b>	
In re:          <div style="text-align: right;">Debtor(s).</div>	CHAPTER:  CASE NO.:  DATE: TIME: CTRM: FLOOR:

**NOTICE OF MOTION AND MOTION IN INDIVIDUAL CASE FOR ORDER IMPOSING A STAY OR CONTINUING THE AUTOMATIC STAY AS THE COURT DEEMS APPROPRIATE (with supporting declarations)**  
**(MOVANT: \_\_\_\_\_)**

1. NOTICE IS HEREBY GIVEN to \_\_\_\_\_ (“Secured Creditor/Lessor”), Trustee (if any), and affected creditors (“Responding Parties”), their attorneys (if any), and other interested parties that on the above date and time and in the indicated courtroom, Movant in the above-captioned matter will move this Court for an Order imposing a stay or continuing the automatic stay as to certain creditors and actions described in the Motion on the grounds set forth in the attached Motion.
  
2. **Hearing Location:**     **255 East Temple Street, Los Angeles**                       **411 West Fourth Street, Santa Ana**  
 **21041 Burbank Boulevard, Woodland Hills**                       **1415 State Street, Santa Barbara**  
 **3420 Twelfth Street, Riverside**
  
3. a.  This Motion is being heard on REGULAR NOTICE pursuant to Local Bankruptcy Rule 9013-1. If you wish to oppose this Motion, you must file a written response to this Motion with the Bankruptcy Court and serve a copy of it upon the Movant’s attorney (or upon Movant, if the Motion was filed by an unrepresented individual) at the address set forth above no less than 14 days before the above hearing and appear at the hearing of this Motion.
  
- b.  This Motion is being heard on SHORTENED TIME. If you wish to oppose this Motion, you must appear at the hearing. Any written response or evidence must be filed and served:  
 at the hearing     at least \_\_\_\_\_ court days before the hearing.
  
- (1)  A Motion for Order Shortening Time was not required (according to the calendaring procedures of the assigned judge).
- (2)  A Motion for Order Shortening Time was filed per Local Bankruptcy Rule 9075-1(b) and was granted by the Court and such motion and order have been or are being served upon the appropriate creditor(s) and trustee, if any.
- (3)  A Motion for Order Shortening Time has been filed and remains pending. Once the Court has ruled on that Motion, you will be served with another notice or an order that will specify the date, time and place of the hearing on the attached Motion and the deadline for filing and serving a written opposition to the Motion.
  
4. You may contact the Bankruptcy Clerk’s Office to obtain a copy of an approved court form for use in preparing your response (*Optional Court Form F 4001-1M.RES*), or you may prepare your response using the format required by Local Bankruptcy Rule 1002-1.

This form is mandatory by Order of the United States Bankruptcy Court for the Central District of California.

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5. If you fail to file a written response to the Motion or fail to appear at the hearing, the Court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.

Dated:

\_\_\_\_\_  
*Print Law Firm Name (if applicable)*

\_\_\_\_\_  
*Print Name of Individual Movant or Attorney for Movant*

\_\_\_\_\_  
*Signature of Individual Movant or Attorney for Movant*

In re	(SHORT TITLE)	CHAPTER:
	Debtor(s).	CASE NO.:

**MOTION FOR ORDER IMPOSING A STAY OR CONTINUING THE AUTOMATIC STAY AS THE COURT DEEMS APPROPRIATE**  
**(MOVANT: \_\_\_\_\_)**

**1. The Property or Debt at Issue:**

- a.  Movant moves for an order imposing a stay with respect to the following property ("this Property" or "the Property") :
  - Vehicle (*describe year, manufacturer, type, and model*):  
*Vehicle Identification Number:*  
*Location of vehicle (if known):*
  - Equipment (*describe manufacturer, type, and characteristics*):  
*Serial number(s):*  
*Location (if known):*
  - Other Personal Property (*describe type, identifying information, and location*):
  - Real Property  
*Street Address:*  
*Apt./Suite No.:*  
*City, State, Zip Code:*  
 Legal description or document recording number(include county of recording):
    - See attached continuation page

The following creditor(s) have a security interest or unexpired lease in this Property (give full name and address of creditor) \_\_\_\_\_ to secure the sum of approximately \$ \_\_\_\_\_ now owed. ("Secured Creditor/Lessor"). Additional creditors who are the subject of this motion, and their respective claims, addresses and collateral, are described on the continuation sheets attached. (*Attach additional sheets as necessary*)

- b.  Movant moves for an order **imposing a stay** with respect to *any and all actions* against the Debtor and the estate taken concerning the debt/lease owed to the Secured Creditors/Lessors as described in this motion; and/or
- c.  Movant moves for an order **imposing a stay as to all creditors.**
- d.  Movant moves for an order **continuing the automatic stay** with respect to *any and all actions* against the Debtor and the estate taken concerning the debt/lease owed to the Secured Creditor/Lessor; and/or
- e.  Movant moves for an order **continuing the automatic stay as to all creditors.**

**2. Case History:**

- a.  A voluntary  An involuntary petition concerning an individual[s] under Chapter  7  11  12  13 was filed concerning the present case on (*specify date*):
- b.  An Order of Conversion to Chapter  7  11  12  13 was entered on (*specify date*):
- c.  Plan was confirmed on (*specify date*):

(*Continued on next page*)

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d.  Other bankruptcy cases filed by or against this Debtor have been pending within the past year preceding the petition date in this case. These cases and the reasons for dismissal are:

1. Case Name: \_\_\_\_\_ Chapter: \_\_\_\_\_  
 Case Number: \_\_\_\_\_ Date Filed: \_\_\_\_\_ Date Dismissed: \_\_\_\_\_  
 Relief from stay re this property  was  was not granted  
 Reason for dismissal: \_\_\_\_\_

2. Case Name: \_\_\_\_\_ Chapter: \_\_\_\_\_  
 Case Number: \_\_\_\_\_ Date Filed: \_\_\_\_\_ Date Dismissed: \_\_\_\_\_  
 Relief from stay re this property  was  was not granted  
 Reason for dismissal: \_\_\_\_\_

See attached continuation page

e.  As of the date of this motion the Debtor  has  has not filed a statement of intentions regarding this Property as required under 11 U.S.C. §521(a)(2). If a statement of intentions has been filed, Debtor  has  has not performed as promised therein.

f.  The first date set for the meeting of creditors under 11 U.S.C. §341(a) is/was \_\_\_\_\_ and the court  has  has not fixed a later date for performance by Debtor of the obligations described at 11 U.S.C. §521(a)(2). The extended date (if applicable) is \_\_\_\_\_.

g.  In a previous case(s), as of the date of dismissal there was  an action by the Secured Creditor/Lessor under 11 U.S.C. §362(d) still pending or  such action had been resolved by an order terminating, conditioning or limiting the stay as to such creditor.

3. The equity in the property is calculated as follows:

a.	1. Property description/value: _____	\$ _____
	2. Creditor/Lien amount: _____	\$ _____
	3. Creditor/Lien amount: _____	\$ _____
	4. Creditor/Lien amount: _____	\$ _____
	5. Creditor/Lien amount: _____	\$ _____
	6. Total Liens	\$ _____
	7. Debtor's Homestead Exemption	\$ _____
	8. Equity in the Property (subtract lines 6 and 7 from line 1 and enter here)	\$ _____

b.	1. Property description/value: _____	\$ _____
	2. Creditor/Lien amount: _____	\$ _____
	3. Creditor/Lien amount: _____	\$ _____
	4. Creditor/Lien amount: _____	\$ _____
	5. Creditor/Lien amount: _____	\$ _____
	6. Total Liens	\$ _____
	7. Debtor's Homestead Exemption	\$ _____
	8. Equity in the Property (subtract lines 6 and 7 from line 1 and enter here)	\$ _____

See attached continuation page(s)

4. **Grounds for Continuing The Stay:**

a.  Pursuant to 11 U.S.C. §362(c)(3) the stay should be continued on the following grounds:

1.  The present case was filed in good faith notwithstanding that a prior single or joint case filed by or against the individual debtor which was pending within the year preceding the petition date was dismissed, because:

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- A.  The prior dismissal was of a case not refiled under Chapter 7 after dismissal under 11 U.S.C. § 707(b);
- B.  Good faith is shown because \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 See attached continuation page(s)
- 2.  The Property is of consequential value or benefit to the estate because:
  - A.  The fair market value of the Property is greater than all liens on the property as shown above in paragraph 3 and as supported by declarations attached (describe separately as to each property);
  - B.  The Property is necessary to a reorganization for the following reasons: \_\_\_\_\_  
 \_\_\_\_\_  
 See attached continuation page
  - C.  The Secured Creditor/Lessor's interest can be adequately protected by (describe Movant's proposal for adequate protection): \_\_\_\_\_  
 \_\_\_\_\_  
 See attached continuation page
- 3.  The presumption of a bad faith filing under 11 U.S.C. §362(c)(3)(C)(i) is overcome in this case as to *all creditors* because:
  - A.  The prior dismissal was pursuant to the creation of a debt repayment plan. 11 U.S.C. §362(i);
  - B.  Debtor's failure to file or amend the petition or other documents as required by the court or Title 11 and resulting in dismissal was excusable because such failure was caused by the negligence of debtor's attorney;
  - C.  Debtor's failure to file or amend the petition or other documents as required by the court or Title 11 and resulting dismissal was excusable because \_\_\_\_\_  
 \_\_\_\_\_  
 See attached continuation page
  - D.  Debtor's failure to provide adequate protection as ordered by the court in the prior case is excusable because \_\_\_\_\_  
 \_\_\_\_\_  
 See attached continuation page
  - E.  Debtor's failure to perform the terms of a confirmed plan in the prior case is excusable because \_\_\_\_\_  
 \_\_\_\_\_  
 See attached continuation page
  - F.  There has been a substantial change in the personal or financial affairs of the Debtor since the dismissal of the prior case(s) as follows: \_\_\_\_\_  
 \_\_\_\_\_  
 From this, the Court may conclude that this case, if a case under Chapter 7, will result in a discharge or, if under Chapter 11 or 13, in a confirmed plan that will be fully performed.  
 See attached continuation page

In re	(SHORT TITLE)	CHAPTER:
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G.  For the following additional reasons \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

See attached continuation page

4.  The presumption of a bad faith filing as to the Secured Creditor/Lessor under 11 U.S.C. §362(c)(3)(C)(ii) is overcome in this case because \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

See attached continuation page

**5. Grounds for Imposing a Stay:**

a.  Pursuant to 11 U.S.C. §362(c)(4) this case was filed in good faith and grounds exist for imposing a stay as follows:

1.  The Property is of consequential value or benefit to the estate because the fair market value of the Property is greater than all liens on the property as shown above in paragraph 3 and as supported by declarations attached.

2.  The Property is of consequential value or benefit to the estate because the Property is necessary to a reorganization for the following reasons: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

See attached continuation page

3.  The Secured Creditor/Lessor's interest can be adequately protected by (describe Movant's proposal for adequate protection): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

See attached continuation page

b.  The present case was filed in good faith notwithstanding that the prior single or joint cases filed by or against the individual debtor pending within the year preceding the petition date were dismissed, because:

1.  The prior dismissal was of a case not refiled under Chapter 7 after dismissal under 11 U.S.C. § 707(b);

2.  Good faith is shown because \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

See attached continuation page

c.  The presumption of a bad faith filing under 11 U.S.C. §362(c)(4)(D)(i) is overcome in this case as to *all creditors* because:

1.  Debtor had a substantial excuse in failing to file or amend the petition or other documents as required by the court or Title 11, resulting in the prior dismissal(s) as follows: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

See attached continuation page

2.  Debtor's failure to file or amend the petition or other documents as required by the court or Title 11 and resulting dismissal was as the result of the negligence of Debtor's attorney;

(Continued on next page)

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3.  Debtor's failure to provide adequate protection as ordered by the court in the prior case is excusable because \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 See attached continuation page

4.  Debtor's failure to perform the terms of a confirmed plan in the prior case is excusable because \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 See attached continuation page

5.  There has been a substantial change in the personal or financial affairs of the Debtor since the dismissal of the prior case(s) as follows: \_\_\_\_\_  
 \_\_\_\_\_ (from  
 which the Court may conclude that this case, if a case under Chapter 7, may be concluded with a discharge or, if under Chapter 11 or 13, with a confirmed plan that will be fully performed.  
 See attached continuation page

6.  For the following additional reasons \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 See attached continuation page

d.  The presumption of bad faith as to the Secured Creditor/Lessor under 11 U.S.C. § 362(c)(4)(D)(ii) is overcome in this case because \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 See attached continuation page

6. **Evidence in Support of Motion:** *(Important Note: Declaration(s) in support of the Motion MUST be attached hereto.)*
- a.  Movant submits the attached Declaration(s) on the Court's approved forms (if applicable) to provide evidence in support of this Motion pursuant to Local Bankruptcy Rules.
  - b.  Other Declaration(s) are also attached in support of this Motion.
  - c.  Movant requests that the Court consider as admissions the statements made by Debtor(s) under penalty of perjury concerning Movant's claims and the Property set forth in Debtor's(s)' Schedules. Authenticated copies of the relevant portions of the Schedules are attached as Exhibit \_\_\_\_\_.
  - d.  Other evidence (*specify*):
7.  **An optional Memorandum of Points and Authorities is attached to this Motion.**

**WHEREFORE, Movant prays that this Court issue an Order Imposing a Stay and granting the following (*specify forms of relief requested*):**

- 1.  That the Automatic Stay be continued in effect as to *all creditors* until further order of the court.
- 2.  That the Automatic Stay be continued in effect as to the Secured Creditor/Lessor with respect to the Property until further order of the court.

In re	(SHORT TITLE)	CHAPTER:
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3.  That the Automatic Stay be continued in effect as to the Secured Creditor/Lessor with respect to actions to collect the debt owed to the Secured Creditor/Lessor until further order of the court.
4.  That a Stay be imposed as to *all creditors* until further order of the court.
5.  That a Stay be imposed as to the Secured Creditor/Lessor with respect to the Property until further order of the court.
6.  That a Stay be imposed as to the Secured Creditor/Lessor with respect to actions to collect the debt owed to the Secured Creditor/Lessor until further order of the court.
7.  For adequate protection of the Secured Creditor/Lessor by (specify proposed adequate protection) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
8.  For other relief requested, see attached continuation page.

Dated:

Respectfully submitted,

\_\_\_\_\_  
*Movant Name*

\_\_\_\_\_  
*Firm Name of Attorney for Movant (if applicable)*

By: \_\_\_\_\_  
*Signature*

Name: \_\_\_\_\_  
*Typed Name of Individual Movant or Attorney for Movant*

**DECLARATION OF MOVANT**

I, \_\_\_\_\_, am the \_\_\_\_\_ of Movant. I have read the foregoing motion consisting of \_\_\_\_\_ pages, and the attached materials incorporated therein by reference. I declare that the foregoing is true and correct to the best of my knowledge. If reference is made to balances owing, my testimony regarding same is based upon the business records of Movant kept in the ordinary course of business of Movant by persons whose responsibility it is to accurately and faithfully record information as to the debtor's account on or near the date of events recorded. I am one of the custodians of such business records. Executed this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ at \_\_\_\_\_.

\_\_\_\_\_  
 (Signature of declarant)

In re	(SHORT TITLE)	CHAPTER:
Debtor(s).		CASE NO.:

**PROOF OF SERVICE**

STATE OF CALIFORNIA  
 COUNTY OF \_\_\_\_\_

1. I am over the age of 18 and not a party to the within action. My business address is as follows:
  
2. **Regular Mail Service:** On \_\_\_\_\_, pursuant to Local Bankruptcy Rule 9013-1, I served the documents described as: NOTICE OF MOTION and MOTION FOR ORDER IMPOSING A STAY OR CONTINUING THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (with supporting declarations) on the interested parties at their last known address in this action by placing a true and correct copy thereof in a sealed envelope with postage thereon fully prepaid in the United States Mail at \_\_\_\_\_, California, addressed as set forth on the attached list.

**NOTE:** *If the Notice and Motion have been served pursuant to an Order Shortening Time ("Order"), you must file a Proof of Service that indicates that the notice and service requirements contained in the Order have been met.*

3. **See attached list for names and addresses of all parties and counsel that have been served.** *(In the manner set forth in Local Bankruptcy Rule 7004-1(b), specify capacity in which service is made; e.g., Debtor(s), Debtor's(s)' Attorney, Trustee, Trustee's Attorney, Creditors Committee, or 20 largest unsecured creditors, etc.)*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated:

\_\_\_\_\_  
*Typed Name*

\_\_\_\_\_  
*Signature*



In re	(SHORT TITLE)	CHAPTER:
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4. The stay of 11 U.S.C. § 362(a) is
- a.  Imposed as to all creditors until further order of the court.
  - b.  Imposed as to the Secured Creditor/Lessor with respect to actions to collect the debt owed to the Secured Creditor/Lessor until further order of the court.
  - c.  Imposed as to the Secured Creditor/Lessor with respect to the Property until further order of the court.
  - d.  Continued as to all creditors until further order of the court.
  - e.  Continued in effect as to the Secured Creditor/Lessor with respect to actions to collect the debt owed to the Secured Creditor/Lessor until further order of the court.
  - f.  Continued in effect as to the Secured Creditor/Lessor with respect to the Property until further order of the court.
5.  The stay shall be imposed or continued in effect subject to the terms and conditions set forth in the Adequate Protection Attachment to this Order.
6.  See attached continuation page for additional provisions.

Dated:

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UNITED STATES BANKRUPTCY JUDGE

In re	(SHORT TITLE)	CHAPTER:
	Debtor(s).	CASE NO.:

**ADEQUATE PROTECTION ATTACHMENT  
(MOVANT: \_\_\_\_\_)**

*(This Attachment is the continuation page for Paragraph 5 of the Order on the Motion.)*

The stay shall remain in effect subject to the following terms and conditions:

1.  The Movant tendered payments at the hearing in the amount of \$\_\_\_\_\_.
  
2.  The Movant shall make regular monthly payments in the amount of \$\_\_\_\_\_ commencing \_\_\_\_\_.  
 All payments due Secured Creditor/Lessor hereunder shall be paid to the following address:  
  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
  
3.  The Movant shall cure the postpetition default computed through \_\_\_\_\_ in the sum of \$\_\_\_\_\_ as follows:
  - a.  In equal monthly installments of \$\_\_\_\_\_ each commencing \_\_\_\_\_ and continuing thereafter through and including \_\_\_\_\_,
  - b.  By paying the sum of \$\_\_\_\_\_ on or before \_\_\_\_\_,
  - c.  By paying the sum of \$\_\_\_\_\_ on or before \_\_\_\_\_,
  - d.  By paying the sum of \$\_\_\_\_\_ on or before \_\_\_\_\_,
  - e.  Other:
  
4.  The Movant shall maintain insurance coverage on the property and shall remain current on all taxes that fall due postpetition with regard to the property.
  
5.  Upon any default in the foregoing terms and conditions, Secured Creditor/Lessor shall serve written notice of default to Movant, and any attorney for Movant. If Movant fails to cure the default within 10 calendar days after mailing of such written notice:
  - a.  The stay shall automatically terminate without further notice, hearing or order.
  - b.  Secured Creditor/Lessor may file and serve a declaration under penalty of perjury specifying the default, together with a proposed order terminating the stay, which the Court may grant without further notice or hearing.
  - c.  The Secured Creditor/Lessor may move for relief from the stay upon shortened notice in accordance with Local Bankruptcy Rules.
  - d.  The Secured Creditor/Lessor may move for relief from the stay on regular notice.

*(Continued on next page)*

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6.  Notwithstanding anything contained herein to the contrary, the Movant shall be entitled to a maximum of \_\_\_\_\_ (number) notices of default and opportunities to cure pursuant to the preceding paragraph. Once the Movant has defaulted this number of times on the obligations imposed by this Order and has been served with this number of notices of default, Secured Creditor/Lessor shall be relieved of any obligation to serve additional notices of default and provide additional opportunities to cure. If an event of default occurs thereafter, Secured Creditor/Lessor shall be entitled, without first serving a notice of default and providing the Movant with an opportunity to cure, to file and serve a declaration under penalty of perjury setting forth in detail the Movant's failures to perform hereunder, together with a proposed order terminating the stay, which the Court may enter without further notice or hearing.
  
7.  The foregoing terms and conditions shall be binding only during the pendency of this bankruptcy case. If, at any time, the stay is terminated with respect to the Property by court order or by operation of law, the foregoing terms and conditions shall cease to be binding and Secured Creditor/Lessor may proceed to enforce its remedies under applicable non-bankruptcy law against the Property and/or against the Debtor(s).
  
8.  If Secured Creditor/Lessor obtains relief from stay based on Debtor's(s)' defaults hereunder, the order granting that relief shall contain a waiver of the 10-day stay created by Federal Rule of Bankruptcy Procedure 4001(a)(3).
  
9.  Secured Creditor/Lessor may accept any and all payments made pursuant to this Order without prejudice to or waiver of any rights or remedies to which it would otherwise have been entitled under applicable non-bankruptcy law.
  
10.  Other (specify):

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Judge's Initial

In re	(SHORT TITLE)	CHAPTER:
	Debtor(s).	CASE NO.:

**NOTICE OF ENTRY OF JUDGMENT OR ORDER  
AND CERTIFICATE OF MAILING**

**TO ALL PARTIES IN INTEREST ON THE ATTACHED SERVICE LIST:**

1. You are hereby notified, pursuant to Local Bankruptcy Rule 9021-1, that an ORDER GRANTING MOTION FOR ORDER IMPOSING A STAY OR CONTINUING THE AUTOMATIC STAY was entered on (*specify date*):
2. I hereby certify that I mailed a copy of this notice and a true copy of the order or judgment to the persons and entities on the attached service list on (*specify date*):

Dated:

**JON D. CERETTO**  
Clerk of the Bankruptcy Court

By: \_\_\_\_\_  
*Deputy Clerk*