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8 **UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF NEVADA**

10 In re
11 AMERICAN WEST
12 DEVELOPMENT, INC., a Nevada
13 corporation,
14
15 Debtor.

Case No. BK-S-12-12349-MKN
Chapter 11
**APPLICATION FOR ORDER
AUTHORIZING EMPLOYMENT OF
THE GARDEN CITY GROUP, INC. AS
CLAIMS AND NOTICING AGENT**
Hearing Date: April 10, 2012
Hearing Time: 9:30 a.m.

18 American West Development, Inc. ("AWDI" or "Debtor"), debtor and debtor in possession
19 in the above-referenced chapter 11 bankruptcy case (the "Chapter 11 Case"), respectfully submits
20 this application (the "Application") for an order authorizing Debtor to employ The Garden City
21 Group, Inc. ("GCG") as claims and noticing agent, effective as of March 1, 2012 (the "Petition
22 Date").

23 This Application is made and based on the following memorandum of points and
24 authorities, the Omnibus Declaration Of Robert M. Evans In Support of Debtor's First Day
25 Motions (the "Omnibus Declaration") and the Declaration of Angela Ferrante in Support of the
26 Application (the "Ferrante Declaration") filed concurrently herewith, the pleadings, papers and
27 records on file herein, judicial notice of which is hereby requested, and the argument of counsel
28 entertained by the Court at the time of the hearing of the Application.

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I.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Application pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue of this Chapter 11 Case in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

II.

DEBTOR’S BACKGROUND

2. On March 1, 2012 (the “Petition Date”), Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, §§ 101 *et. seq.* (the “Bankruptcy Code”) in this Court. See Docket No. 1.

3. Debtor has continued and is operating and managing its business as debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. See generally Chapter 11 Case Docket.

4. No request has been made for the appointment of a trustee or examiner, and no statutory committee has been appointed. See id.

5. The factual background relating to Debtor’s commencement of this Chapter 11 Case is set forth in detail in the Omnibus Declaration, which is incorporated herein by this reference.

6. Debtor has determined that in order to carry out its duties as provided for under sections 1107 and 1108 of the Bankruptcy Code, it is necessary and in the best interest of the estate to employ an experienced claims and noticing agent. Debtor desires to employ GCG as its claims and notice agent.

III.

RELIEF REQUESTED

7. By this Application, Debtor requests authorization to employ GCG as its claims and noticing agent.

8. Prior to the Petition Date, Debtor and GCG entered into a Bankruptcy Administration Agreement (such agreement together with all amendments, modification, renewals thereof and all documents ancillary thereto or otherwise entered into in connection therewith, are

1 collectively referred to herein as the “Engagement Agreement”), a copy of which is attached to the
2 Ferrante Declaration as **Exhibit “1”** thereto and is incorporated herein by this reference. See
3 Omnibus Declaration, ¶ 112; Ferrante Declaration, ¶ 3.

4 9. The “Guidelines For A Claims Agent” issued by the Bankruptcy Court in this
5 District (the “Guidelines”)¹ provide that the appointment of a claims, noticing, and balloting agent,
6 pursuant to 28 U.S.C. § 156(c), is required if there are 1,000² or more creditors in a case and may
7 be required by the Court in other circumstances.

8 10. Under the Guidelines, the claims and noticing agent shall:

- 9 a. Relieve the Clerk's office of all noticing under any applicable bankruptcy
10 rules and processing of claims.
- 11 b. At any time, upon request, satisfy the Court that the claims and noticing
12 agent has the capability to efficiently and effectively notice, image proofs
13 of claim, docket (in the Court’s CM/ECF system and the claims and
14 noticing agent's computer system), and securely maintain the proofs of
15 claim.
- 16 c. Prepare and serve required notices in this Chapter 11 Case, including but
17 not limited to: (i) notice to all creditors of the filing of the bankruptcy
18 petition and of the setting of the first meeting of creditors, pursuant to 11
19 U.S.C. § 341(a), under the proper provision of the Bankruptcy Code; (ii)
20 notice of the claims bar date; (iii) notices of objections to claim; (iv)
21 notices of any hearings on a disclosure statement and confirmation of a
22 plan of reorganization; (v) notices of judgments or orders pursuant to
23 Administrative Order 2011-02; and (vi) notice of any other matters as
24 required by the order retaining the claims and noticing agent.
- 25 d. Furnish a last date for the filing of a proof of claim and a form for filing a
26 proof of claim to each creditor notified of the filing.
- 27 e. Maintain an up-to-date copy of Debtor’s schedules that list the creditors
28 and the amounts owed, and maintain an accurate and up-to-date mailing
list.
- f. Provide creditors with their scheduled amount and classification — the
debtor with which each creditor is scheduled should also be provided.

¹ The Guidelines are available at: <http://www/nvb.uscourts.gov/downloads/cm-ecf/guidelines-claims-agent.pdf>.

² Debtor anticipates it will be required to provide notice of the Chapter 11 Case to several thousand persons and/or entities, each of which could conceivably file a proof of claim.

- g. File with the Clerk a certificate of service within 10 days, which includes a copy of the notice, a list of persons to whom it was mailed (in alphabetical order by last name or company name), and the date mailed.
- h. Image the proofs of claim and all attachments in PDF format (not to exceed 3 MG in size per image), make the electronic docket entry into the Court's CM/ECF docketing system and the claims and noticing agent's docketing system of each proof of claim including the entry of the creditor's name and address, if necessary, and attach that image to the appropriate proof of claim docket entry to enable the electronic viewing of the documents by court personnel, counsel, and the public.
- i. Cause to be forwarded all proofs of claim and transfers of claims from the office of the Clerk to the claims and noticing agent through a messenger service or postage paid envelopes.
- j. Once imaged, maintain any hard copies of proofs of claim originally received in paper format for the life of the case, or until otherwise ordered by the Court: (i) in correct claim number order; and (ii) in an environmentally secure area to protect the integrity of these original documents from theft and/or alteration.
- k. Maintain an official claims register in CM/ECF and the claims and noticing agent's computer docketing system by docketing all proofs of claim on a claims register, including but not limited to the following information: (i) the name and address of the claimant and the agent, if an agent filed the proof of claim; (ii) the date received; (iii) the claim number assigned (CM/ECF assigns a claim number automatically; the assigned claim number is to be written on the hard copy of the claim in the lower right hand corner); and (iv) the amount and classification asserted by such claimant.
- l. Have the option to send at the discretion of Debtor or the Clerk, an acknowledgment letter to the creditor when its claim is processed.
- m. Maintain a telephone staff to handle inquiries related to procedures about filing proofs of claim.
- n. Ensure electronic filing (in the Court's CM/ECF docketing system) and processing of all assignments and transfers of claims pursuant to Bankruptcy Rule 3001(e) by: (i) electronically filing and docketing all transfers of claim in the Court's CM/ECF docketing system; (ii) providing notice of the transfer as required by Bankruptcy Rule 3001(e) and electronically filing and docketing the notice of transfer; (iii) after said electronic docketing, writing the document number in the lower right hand corner of the document, and delivering the original document to the Clerk's office by hand delivery or by mail for filing with other original non-proof of claim paper documents.

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- o. Make changes in the claims register pursuant to Court order.
- p. Make all original documents available to the Clerk on an expedited immediate basis.
- q. Not employ any past or present employees of Debtor for work on this Chapter 11 Case involving Debtor.
- r. Provide notices, at the expense of Debtor’s estate, to any entities, not limited to creditors, that Debtor or the Court deems necessary for an orderly administration of this Chapter 11 Case.
- s. At the close of this Chapter 11 Case, conversion, or when the claims and noticing agent is terminated for any reason: (i) the claims and noticing agent will file a Notice of Termination, using the approved local form available on the Court’s website; (ii) allow for the Clerk’s office to assume responsibility of the claims register using the claims register functionality in CM/ECF, including making formatting modifications to the claims register before turning over to the Clerk’s office for uploading; (iii) send the Court the final version of the claims register in PDF format so the final version can be docketed in CM/ECF; and (iv) box and ship all original documents in proper format, as provided by the Clerk’s office, to the office address of the Clerk of the Bankruptcy Court.
- t. Ensure that no notices or forms are sent on behalf of Debtor without prior approval of the Clerk.
- u. Be responsible for regular contact with Debtor’s counsel to ensure any changes in the claims that appear on the docket, i.e., withdrawals, transfers, etc., are transmitted to the claims and noticing agent for electronic recordation on the claims register and the case docket, as appropriate.

11. 28 U.S.C. § 156(c) expressly authorizes the Court to use “facilities” or “services” other than the Clerk’s Office for administration of bankruptcy cases. It states:

Any court may utilize facilities or services, either on or off the court’s premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

28 U.S.C. § 156(c).

12. Additionally, Bankruptcy Rule 2002 regulates the notices that must be provided to creditors and other parties in interest in a bankruptcy case. Under Bankruptcy Rule 2002, the Court

1 may direct that a person other than the clerk of the Court give notice of the various matters
2 described therein. See Fed. R. Bankr. P. 2002.

3 13. Accordingly, Debtor's engagement of GCG as claims and noticing agent is
4 authorized under 28 U.S.C. § 156(c) and Bankruptcy Rule 2002. Debtor believes that engaging
5 GCG as its claims and noticing agent will expedite the service of Bankruptcy Rule 2002 notices,
6 streamline the claims administration process, and permit Debtor to focus on its reorganization
7 efforts. See Omnibus Declaration, ¶ 113; see Ferrante Declaration, ¶ 4.

8 14. Consistent with the Guidelines, this Court has previously required the retention of
9 claims and noticing agents in large chapter 11 cases in this District. See e.g., In re Lake at Las
10 Vegas Joint Venture, LLC, case no. 08-17814-LBR; In re Zante, Inc., et al., case no. 09-50746-
11 GWZ; In re Stations Casinos, Inc., case no. 09-52477-GWZ; and In re Riviera Holdings Corp.,
12 case no. 10-29910-LBR; and In re 155 East Tropicana, LLC, case no. 11-22216-BAM.

13 IV.

14 **SERVICES TO BE RENDERED**

15 15. Consistent with the Guidelines set forth above, and subject to Court approval, GCG
16 agrees to provide Debtor with noticing and claims processing services in relation to this Chapter 11
17 Case. See Omnibus Declaration, ¶ 114; see Ferrante Declaration, ¶ 5.

18 16. The scope of GCG's services may be expanded from time to time, provided that
19 GCG and Debtor mutually agree in writing to any such expansion and any corresponding increase
20 in fees. See Omnibus Declaration, ¶ 115; see Ferrante Declaration, ¶ 6.

21 17. Subject to this Court's approval of the Application, GCG is willing to serve as
22 Debtor's claims and noticing agent and to perform the services described above and in the
23 Engagement Agreement. GCG will use reasonable efforts to coordinate with Debtor's other
24 retained professionals to avoid unnecessary duplication of services. See Omnibus Declaration, ¶
25 116; see Ferrante Declaration, ¶ 7.

26 18. Debtor selected GCG because it is one of the country's leading chapter 11
27 administrators with expertise in noticing, claims processing, balloting administration and
28 distribution. GCG is well qualified to provide Debtor with experienced noticing, claims and

1 balloting services in connection with this Chapter 11 Case. GCG has developed efficient and cost-
 2 effective methods to handle properly the voluminous mailings associated with the noticing, claims
 3 processing and balloting portions of chapter 11 cases to ensure the orderly and fair treatment of
 4 creditors, equity security holders and all parties in interest. Furthermore, GCG will work with the
 5 Clerk's office to ensure that such methodology conforms with all of the Court's procedures, the
 6 Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the
 7 District of Nevada (the "Local Rules") and the provisions of any orders entered by this Court. See
 8 Omnibus Declaration, ¶ 117.

9 19. GCG has substantial experience in matters of this size and complexity, and has
 10 acted as the official claims and noticing agent in many large bankruptcy cases throughout the
 11 nation, including:

- 12 • In re ShengdaTech, Inc., case no. 11-52649-BTB; In re Riviera Holdings Corp., case no. 10-29910-LBR; In re Las Vegas Monorail Company, case no 10-10464-BAM; and In re 155 East Tropicana, LLC, case no. 11-22216-BAM, which were filed in this District;
- 13 • In re: Motors Liquidation Company (f/k/a General Motors Corp.), case no. 09-50026 (REG); In re: BearingPoint, Inc., case no. 09-10691 (REG), In re: Fortunoff Holdings, LLC, case no. 09-10497 (RDD); In re: Star Tribune Holdings Corporation, case no. 09-10244 (RDD), which were filed in the Southern District of New York;
- 14 • In re: Building Materials Holding Corporation, case no 09-12074 (KJC); In re: R.H. Donnelley Corporation, case no. 09-11833 (KG); In re Hayes Lemmerz International, Inc., case no. 09-11655 (MFW), which were filed in the District of Delaware; In re: TCI 2 Holdings, LLC (a/k/a Trump Entertainment Resorts, Inc.), case no. 09-13654 (JHW); In re Foxtons, Inc., et al., case no. 07-24496 (MBK), which were filed in the District of New Jersey;
- 15 • In re: Oscient Pharmaceuticals Corporation, case no. 09-16576 (HJB), which was filed in the District of Massachusetts;
- 16 • In re: O'Sullivan Industries, Inc., case no. 05-83049 (CRM) and In re: Galey & Lord, Inc., et al., case no. 04-43098 (MGD), which were filed in the Northern District of Georgia;
- 17 • In re: SENCORP, case no. 09-12869 (JVA) and In re: United Producers, Inc., case no. 05-55272 (CMC), which were filed in the Southern District of Ohio;

- In re: The Boyds Collection, Ltd., case no. 05-43793 (DWK), which was filed in the District of Maryland; and
- In re: The Oceanaire Texas Restaurant Company, L.P., case no. 09-34262 (BJH) and In re: Romacorp, Inc., case no. 05-86818 (BJH), which were filed in the Northern District of Texas.

Accordingly, GCG is qualified and competent to serve as claims and noticing agent in this Chapter 11 Case. See Ferrante Declaration, ¶ 8.

20. Debtor believes that GCG is both well qualified and able to represent it as claims and noticing agent in this Chapter 11 Case in an efficient manner and that such representation is in the best interests of Debtor, its estate, and its constituents. See Omnibus Declaration, ¶ 118.

V.

COMPENSATION

21. Debtor respectfully submits that the fees and expenses that would be incurred by GCG under the proposed engagement would be administrative in nature and, therefore, should not be subject to standard fee application procedures.

22. In connection with its retention as claims and noticing agent, GCG represents, among other things, that: (a) it will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the claims and noticing agent in this Chapter 11 Case; (b) by accepting employment in this Chapter 11 Case, GCG waives any rights to receive compensation from the United States government; (c) in its capacity as the claims and noticing agent in this Chapter 11 Case, GCG will not be an agent of the United States and will not act on behalf of the United States; and (d) GCG will not employ any past or present employees of Debtor in connection with its work as the claims and noticing agent in this Chapter 11 Case. See Ferrante Declaration, ¶ 9.

23. The fees to be charged by GCG in connection with this Chapter 11 Case are set forth in the Engagement Agreement. GCG has received a \$190,000 retainer from Debtor, as payment for Debtor’s prepetition services. \$174,500 was deemed earned and applied to prepetition fees and expenses incurred by GCG. The balance of the unearned retainer is \$15,500 and will be applied to GCG’s postpetition fees and expenses incurred in this Chapter 11 Case. Debtor

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1 proposes that the cost of GCG's services be paid from Debtor's estate as provided by 28 U.S.C. §
2 156(c) and 11 U.S.C. § 503(b)(1)(A). Debtor respectfully submits that GCG's rates for its services
3 in connection with the notice, claims processing and solicitation services are competitive and
4 comparable to the rates charged by its competitors for similar services. See Omnibus Declaration,
5 ¶ 119; see Ferrante Declaration, ¶ 10.

6 24. Debtor respectfully submits that the fees and expenses incurred by GCG are
7 administrative in nature and, therefore, should not be subject to the standard fee application
8 procedures for professionals. Specifically, Debtor requests authorization to compensate GCG on a
9 monthly basis, in accordance with the terms and conditions set forth in the Engagement
10 Agreement, upon GCG's submission to Debtor of invoices summarizing in reasonable detail the
11 services rendered and expenses incurred in connection with services provided by GCG on behalf of
12 Debtor.

13 25. There is no agreement of any nature, as to the sharing of compensation to be paid to
14 GCG. See Ferrante Declaration, ¶ 11.

15 VI.

16 DISINTERESTEDNESS

17 26. Although Debtor does not propose to retain GCG under section 327 of the
18 Bankruptcy Code, based upon the disclosures in the Engagement Agreement and the Ferrante
19 Declaration, GCG and its professionals do not hold or represent any interest materially adverse to
20 Debtor's estate nor have a connection to Debtor, its creditors, or its related parties, and as such,
21 GCG and its professionals are disinterested within the meaning of section 101(14) of the
22 Bankruptcy Code. See Ferrante Declaration, ¶ 12.

23 27. GCG has informed Debtor that, except with respect to its proposed employment by
24 Debtor and as may be set forth herein and in the Ferrante Declaration and exhibits attached thereto,
25 GCG does not hold or represent any interest adverse to Debtor or Debtor's estate, and GCG is a
26 "disinterested person" as that term is defined in Bankruptcy Code section 101(14), as modified by
27 Bankruptcy Code section 1107(b). Debtor does not propose to retain GCG under Bankruptcy Code
28 section 327(a), but GCG has disclosed that GCG and its professionals:

- a. Are not creditors or insiders of Debtor.
- b. Are not and were not, within two years before the date of this application, a director, officer, or employee of Debtor, as specified in subparagraph (c) of 11 U.S.C. § 101(14).
- c. Do not hold an interest materially adverse to the interest of the estate or of any class of creditors or equity holders except as stated herein.
- d. GCG does not represent or otherwise have other material connections with any persons or entities other than as disclosed in the subparagraphs immediately below. GCG will supplement these disclosures in the event further material connections are discovered regarding persons or entities that later become identified as parties in interest in this case.

See Ferrante Declaration, ¶ 13.

28. To the best of its knowledge, GCG does not hold or represent any interest adverse to the estate, and GCG is a disinterested person within the meaning of Bankruptcy Code section 101(14). See Ferrante Declaration, ¶ 14.

VII.

NOTICE

29. Notice of this Application is being served on (i) the Office of the United States Trustee; (ii) Debtor’s secured creditor(s) or their counsel; (iii) Debtor’s 20 largest unsecured creditors; (iv) those governmental agencies required to receive notice under Bankruptcy Rule 5003(e); and (v) any parties who have requested notice in this proceeding. In light of the nature of the relief requested herein, Debtor submits that no other or further notice need be provided.

VII.

NO PRIOR APPLICATION

30. No previous application for the relief requested herein has been made to this Court or any other court.

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EXHIBIT A

PROPOSED FORM OF ORDER

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re

AMERICAN WEST DEVELOPMENT,
INC., a Nevada corporation,

Debtor.

Case No. BK-S-12-12349-MKN

Chapter 11

**ORDER AUTHORIZING
EMPLOYMENT OF THE GARDEN
CITY GROUP, INC. AS CLAIMS
AND NOTICING AGENT**

Hearing Date:
Hearing Time:

The Court, having reviewed and considered the Application of American West Development, Inc. (“AWDI” or “Debtor”), debtor and debtor in possession in the above-referenced chapter 11 bankruptcy case (the “Chapter 11 Case”) for an Order Authorizing Employment of The Garden City Group, Inc. (“GCG”) as Claims and Noticing Agent (the

1 “Application”),³ filed on March 1, 2012 by Debtor, and (ii) the Declaration of Angela Ferrante in
2 Support of the Application (the “Ferrante Declaration”), and (iii) the Omnibus Declaration of
3 Robert M. Evans filed in Support of Debtor’s First Day Motions (the “Omnibus Declaration”),
4 and with all other findings set forth in the record at the hearing noted above incorporated herein,
5 pursuant to Bankruptcy Rule 7052; and it appearing that this Court has jurisdiction to consider the
6 Application pursuant to 28 U.S.C. §§ 157 and 1334; it appearing that venue of this Chapter 11
7 Case in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this
8 matter is a core proceeding pursuant to 28 U.S.C. § 157(b); the Court hereby finds (1) that notice
9 of the Application was good and sufficient as provided therein and under the circumstances; (2)
10 GCG (a) does not represent any other entity having an interest materially adverse to the interests
11 of Debtor in connection with this Chapter 11 Case; (b) GCG is a “disinterested person” within the
12 meaning of Bankruptcy Code section 101(14); (c) the employment of GCG as Debtor’s claims and
13 noticing agent is necessary and in the best interests of Debtor’s estate and (3) good cause exists to
14 approve the employment of GCG.

15 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- 16 1. The Application is granted in all respects.
- 17 2. Pursuant to 28 U.S.C. § 156(c) and Bankruptcy Rule 2002, Debtor is authorized to
18 employ and retain GCG as claims and noticing agent, effective as of the Petition Date, to perform
19 the services set forth in the Application and under the terms of the retention agreement attached as
20 Exhibit 1 to the Ferrante Declaration (“Engagement Agreement”).
- 21 3. GCG is disinterested as that term is defined in Bankruptcy Code section 101(14), as
22 modified by Bankruptcy Code section 1107(b), and used in Bankruptcy Code section 327(a).
- 23 4. Pursuant to the Guidelines For A Claims Agent” issued by the Bankruptcy Court in
24 this District (the “Guidelines”),⁴ GCG shall relieve the Clerk’s office of all noticing under any
25 applicable Bankruptcy Rules and processing of claims.

26 ³ All capitalized terms not otherwise defined herein shall have the same meaning ascribed in the
27 Application.

28 ⁴ The Guidelines are available at: <http://www/nvb.uscourts.gov/downloads/cm-ecf/guidelines-claims-agent.pdf>.

1 5. Without further order of the Court, Debtor is authorized to compensate GCG on a
2 monthly basis in accordance with the terms and conditions of the Engagement Agreement, upon
3 GCG’s submission to Debtor of monthly invoices summarizing in reasonable detail the services
4 rendered and expenses incurred in connection therewith.

5 6. The terms of this Order shall be immediately effective and enforceable upon its
6 entry.

7 7. The Court retains jurisdiction with respect to all matters arising from or related to
8 the implementation of this Order.

9
10 Prepared and Respectfully Submitted by:

11 **FOX ROTHSCHILD LLP**

12 By _____

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20 *[Proposed] Counsel for American West Development, Inc.*

21 APPROVED/DISAPPROVED:

22 **OFFICE OF THE UNITED STATES TRUSTEE**

23 BY: _____

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CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021

In accordance with Local Rule 9021, counsel submitting this document certifies as follows:

- The Court has waived the requirement of approval in LR 9021(b)(1).
- No party appeared at the hearing or filed an objection to the motion
- I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

ATHANASIOS	[INSERT, AS APPLICABLE]
AGELAKOPOULOS, OFFICE OF	
THE UNITED STATES TRUSTEE	_____

Approved / Disapproved

- I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

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