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Jeffrey B. Gardner, Bar No. 115648
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A Professional Corporation
3 4400 MacArthur Boulevard, Suite 700
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04 JUL 12 PM 3:15

CLERK U.S. BANKRUPTCY COURT
CALIFORNIA, BY: *[Signature]*

5 Attorneys for Karen Sue Naylor,
Chapter 7 Trustee
6
7

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 In re
12 ERIC O. SWENSON,
13 Debtor.

Case No. SA04-12813-RA

Chapter 7

**NOTICE OF MOTION FOR ORDER
APPROVING: (1) SALE OF THE
ESTATE'S RIGHT, TITLE AND
INTEREST IN PERSONAL PROPERTY
OF THE ESTATE, AS IS, WHERE
IS, WITHOUT REPRESENTATIONS OR
WARRANTIES BY AUCTION, FREE
AND CLEAR OF LIENS, AND (2)
OVERBID PROCEDURES**

Date: August 5, 2004
Time: 11:00 a.m.
Place: Courtroom 6C

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20 TO ALL INTERESTED PARTIES HEREIN:

21 PLEASE TAKE NOTICE that on August 5, 2004 at 11:00 a.m., in
22 Courtroom 6C of the above-entitled Court located at 411 West
23 Fourth Street, Santa Ana, California, Karen Sue Naylor, the duly
24 appointed, qualified and acting Chapter 7 Trustee ("Trustee"), of
25 the above-entitled estate ("Estate"), will move the Court for an
26 Order Approving: (1) Sale of the Estate's Right, Title and
27 Interest In Personal Property of the Estate, As Is, Where Is,
28 Without Representations or Warranties by Auction, Free and Clear

1 of Liens, and (2) Overbid Procedures ("Motion"), on the terms set
2 forth herein.

3 On April 29, 2004, Eric O. Swenson ("Debtor"), filed a
4 voluntary petition under Chapter 7 of the Bankruptcy Code.

5 Although not listed in his Statement of Financial Affairs,
6 the Debtor testified at his 341(a) meeting of creditors that
7 prior the filing of the petition herein, he had purchased a 1998
8 BMW 323i convertible, VIN WBABJ7328WEA166092 (the "BMW"), which
9 he transferred to Lyric Enterprises, a corporation in which
10 Debtor is the principal shareholder. However, the Debtor
11 testified that although the transfer had been recorded in the
12 books of Lyric Enterprises, title to the BMW remained in the name
13 of the Debtor, and no sums were paid by Lyric Enterprises for the
14 transfer.

15 Lyric Enterprises is also involved in a Chapter 7 bankruptcy
16 proceeding which is pending under Case No. SA04-10145-RA ("Lyric
17 Estate"). The Chapter 7 Trustee in the Lyric Enterprises
18 bankruptcy case, Weneta M.A. Kosmala, claims an interest in the
19 BMW and its proceeds. This estate holds a claim in the Lyric
20 Estate for over \$316,000.00, which the Trustee understands is
21 disputed by Ms. Kosmala as the Trustee for Lyric Enterprises.

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1 The Trustee, however, has arrived at a tentative settlement,
2 subject to Bankruptcy Court approval, with the Lyric Estate
3 wherein the Lyric Estate will either: (1) receive one half of the
4 net proceeds of the BMW (of which "net proceeds" consists of the
5 sales proceeds of the BMW less \$2,000 in administrative costs),
6 or (2) this bankruptcy estate will waive its claim in the Lyric
7 Estate of over \$316,000 in exchange for the Lyric Estate waiving
8 any interest in the BMW or the sales proceeds. Both Ms. Kosmala
9 and the Trustee are investigating these alternatives and
10 recognize that any agreement reached is subject to Bankruptcy
11 Court approval in both estates. In the interim, however, Ms.
12 Kosmala has indicated that she will not oppose the sale of the
13 BMW by the Debtor's estate so long as the net proceeds are
14 maintained by the Trustee until the interests in the net proceeds
15 are determined.

16 The Trustee is informed and believes, based upon the
17 Debtor's Schedules and his testimony at the 341(a) hearing, that
18 there are no liens against the BMW. The Debtor did not list the
19 BMW in his Schedule B, and did not claim any exemption in the BMW
20 in his Schedule C. No liens were listed in the Schedule D in the
21 Lyric Enterprises case either.

22 The BMW is currently located at the Debtor's residence,
23 however, the Debtor has vacated the premises and moved out of the
24 state. The Trustee is currently in the process of marketing the
25 residence. The Trustee is informed and believes that the

26 _____
27 For example, if the BMW sells for \$14,500, the Lyric
28 Estate would receive \$6,250 derived as one half of \$12,500, the
\$14,500 less the \$2,000.

1 insurance premiums are current on both the residence and the BMW.
2 Ms. Kosmala is in possession of the pink slip for the BMW and has
3 indicated she will turn it over to the Trustee so the sale can be
4 effectuated.

5 The Trustee is informed and believes, based upon the current
6 Kelley Blue Book, that the present fair market value of the BMW
7 is \$14,460.00.

8 The Trustee has received an offer to purchase the BMW from
9 James G. Sittler ("Buyer"), for the sum of \$14,500.00. The
10 Trustee has received a good faith deposit from the Buyer in the
11 sum of \$3,000.00, which has been placed in the Trustee's trust
12 account pending the Court's approval of the sale, and which is
13 subject to refund in the event the Buyer is not the successful
14 bidder at the auction. The remaining sum of \$11,500.00 shall be
15 tendered by the Buyer in certified funds at the auction.

16 The proceeds received from the sale of the BMW shall be
17 maintained in the Trustee's trust account pending a determination
18 of the respective rights of the estate and the Lyric Estate.

19 The Trustee proposes to sell the estate's right, title and
20 interest in the BMW as is, where is, without representations or
21 warranties, free and clear of liens and interests, and expressly
22 subject to overbid and court approval of the United States
23 Bankruptcy Court for the Central District of California, Santa
24 Ana Division.

25 The terms of the overbid procedures include the following:

26 1. The auction of the BMW will occur on the date of the
27 hearing on August 5, 2004 at 11:00 a.m., in or in the vicinity of
28 Courtroom 6C of the United States Bankruptcy Court for the

1 Central District of California, Santa Ana Division, conducted by
2 the Trustee or her counsel, and subject to the approval of the
3 Bankruptcy Court.

4 2. The initial minimum net overbid shall be \$15,000.00.

5 3. Each additional overbid shall be in a minimum of
6 increments of \$100.00.

7 4. Each bid must be all cash, non-contingent, and on the
8 same terms and conditions, other than price, as those set forth
9 herein.

10 5. Any person wishing to overbid on the BMW must be
11 personally present at the auction, and must present cash or
12 certified funds in the sum of \$15,000.00 payable to Karen Sue
13 Naylor, Chapter 7 Trustee. All remaining funds above this
14 initial deposit must be paid within three (3) business days of
15 the auction, in certified funds payable to the Trustee.

16 6. Any potential purchasers may inspect the BMW by
17 contacting Trustee's counsel no less than seven (7) days prior to
18 the hearing on this Motion. Any inspections must be completed no
19 later than three (3) days prior to the hearing unless otherwise
20 approved by the Trustee.

21 7. In the event there are no overbids received by the
22 Trustee at the auction, Buyer shall, subject to Court approval,
23 be deemed the successful bidder and the estate's right, title and
24 interest in the BMW shall be sold to him for the sum of
25 \$14,500.00, as is, where is, without representations or
26 warranties.

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1 8. In the event the Buyer is not deemed the successful
2 bidder, the Trustee will release any rights to the \$3,000.00
3 deposit which will be promptly refunded.

4 In order that the sale may be finalized as promptly as
5 possible, the Trustee requests that the Court waive the 10-day
6 stay provided under Bankruptcy Rule 6004(g).

7 For more information, please see the MOTION FOR ORDER
8 APPROVING: (1) SALE OF THE ESTATE'S RIGHT, TITLE AND INTEREST IN
9 PERSONAL PROPERTY OF THE ESTATE, AS IS, WHERE IS, WITHOUT
10 REPRESENTATIONS OR WARRANTIES BY AUCTION, FREE AND CLEAR OF
11 LIENS, AND (2) OVERBID PROCEDURES: MEMORANDUM OF POINTS AND
12 AUTHORITIES AND DECLARATION OF KAREN SUE NAYLOR IN SUPPORT
13 THEREOF ("Motion"). The Motion is on file with the United States
14 Bankruptcy Court for the Central District of California, Santa
15 Ana Division, and may be viewed at the Clerk's Office located at
16 411 West Fourth Street, Santa Ana, California 92701, Monday
17 through Friday between the hours of 9:00 a.m. and 4:00 p.m.; or a
18 copy of the Motion may be obtained by contacting Hydee J.
19 Mulichak, 4400 MacArthur Boulevard #700, Newport Beach,
20 California 92660, telephone 949/851-9111.

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1 PLEASE TAKE FURTHER NOTICE that pursuant to Local Bankruptcy
2 Rule 9013-1(1)(g), opposition, if any, to the Motion must be in
3 writing, filed with the Court and served upon all appropriate
4 parties, including Trustee's counsel, not later than 14 days
5 prior to the hearing on the Motion. Failure to timely file and
6 serve objections may be deemed a waiver of the same.

7 DATED: July 9, 2004

BARBY, GARDNER & KINCANNON
A Professional Corporation

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Hydee J. Mulichak
11 Attorneys for Karen Sue Naylor,
Chapter 7 Trustee

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CERTIFICATE RE NOTICE

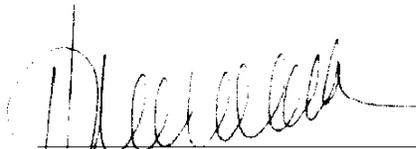
The undersigned [() Attorney or () Movant] hereby certifies that:

1. The entities served as set forth in the annexed proof of service are all of the entities required by applicable law to be served with the pleading(s) referred to therein; and

2. The names and addresses of such entities set forth in the annexed proof of service are their correct names and addresses according to the records of the United States Bankruptcy Court for the case specified below in which such proof of service is to be filed.

The undersigned hereby acknowledges that this Certificate is filed in compliance with Bankruptcy Rule 9011(a) and may be relied upon by the Bankruptcy Court for the purpose of determining whether each pleading which is the subject of such proof of service has been properly served.

DATED: July 9, 2004



(Signature)

Hydee J. Mulichak

(Name, typed or printed)

CASE NAME: In re Eric O. Swenson

CASE NO.: SA04-12813-RA

REVISED 7-9-03

NOTICE OF PROCEDURES FOR MOTIONS BEFORE JUDGE ALBERTS

1. The form Certificate Re Notice on the reverse side of this Notice **must** be completed by Movant's attorney (or, if Movant is not represented by an attorney, by Movant), appended to and filed with the Proof of Service for the Motion. The Certificate Re Notice form for all E-filed motions shall be filed at the time of the E-filing.

2. Movant is to bring to the hearing completed Notice Of Entry forms and postage-paid, addressed envelopes necessary to enable the Court Clerk's office to give notice of entry of the Order respecting the Motion in accordance with Federal Rule of Bankruptcy Procedure 9022 and Local Bankruptcy Rule 9021-1(1)(a)(v).

3. The Notice Of Entry forms are to be entitled "Notice Of Entry Of Order Re (insert name of motion here)". Where applicable, please include the following information on the Notice Of Entry forms: names of Debtor(s), Movant, Respondent, Plaintiff, Defendant, bankruptcy case number, adversary number and date of hearing. Please attach a complete service list and complete set of addressed, postage-paid mailing envelopes to the Notice Of Entry forms. Please submit an original and enough copies of the Notice of Entry Forms for each entity entitled to notice of entry.

4. Unless otherwise announced by the Court at the hearing, the Court will prepare the orders respecting all motions determined by Judge Alberts.

5. In all stay relief motions involving foreclosure of real estate, Movant, IN THE MOTION PAPERS, is to provide the relevant county recorder's recorded document number for the deed of trust or mortgage sought to be foreclosed.

6. In all stay relief motions involving foreclosure of tangible personal property, Movant, IN THE MOTION PAPERS, is to provide the legal description (e.g. vehicle identification number or vessel registration number), if any, of such property.

7. For all motions requiring notice to the debtor, the trustee, and all creditors, movant is encouraged to attach to the proof of service a current copy of the master matrix as the service list for the motion. A copy of the master matrix is available either through pacer or at the Intake Desk on the 2nd floor of the Bankruptcy Court located at 411 W. Fourth Street, Santa Ana, CA.

8. Copies of this Notice must be served with the Motion.

9. Motions to which nowritten, timely opposition has been served and filed may be included by the Court on default calendars, which are announced, called and granted at the beginning of each calendar call, in advance of contested motions scheduled for the same time, if the relief requested in such motions is relief to which the Court determines the Movant is clearly entitled under applicable law.

10. All proposed Orders, other than those specifically set forth in FRCP 58(A), must be set forth on a separate document. Any and all proposed orders submitted to the court which contain findings of fact or conclusions of law or do not otherwise conform with Bankruptcy rule 9021 and FRCP 58 shall be rejected.

FAILURE TO COMPLY WITH THE FOREGOING MAY RESULT IN CONTINUANCE
OF THE HEARING OR DENIAL OF THE MOTION

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF ORANGE

3 I am employed in the County of Orange, State of California.
4 I am over the age of 18 and not a party to the within action; my
5 business address is 4400 MacArthur Boulevard, Suite 700, Newport
6 Beach, California 92660.

7 On July 9, 2004, I served the foregoing document described
8 as **NOTICE OF MOTION FOR ORDER APPROVING: (1) SALE OF THE ESTATE'S**
9 **RIGHT, TITLE AND INTEREST IN PERSONAL PROPERTY OF THE ESTATE AS**
10 **IS, WHERE IS, WITHOUT REPRESENTATIONS OR WARRANTIES BY AUCTION,**
11 **FREE AND CLEAR OF LIENS, AND (2) OVERBID PROCEDURES** on the
12 interested parties in this action by placing a true copy thereof
13 enclosed in a sealed envelope addressed as follows:

14 SEE ATTACHED SERVICE LIST

15 /X/ [BY MAIL] I am readily familiar with the firm's business
16 practice of collection and processing correspondence for
17 mailing. Under that practice, it would be deposited with the
18 U.S. Postal Service on that same day with postage thereon
19 fully prepaid at Newport Beach, California in the ordinary
20 course of business. I am aware that on motion of the party
21 served, service is presumed invalid if postal cancellation
22 date or postage meter date is more than one day after date
23 of deposit for mailing in affidavit.

24 /X/ [FEDERAL] I declare that I am employed in the office of a
25 member of the bar of this court at whose direction the
26 service was made.

27 Executed on July 9, 2004, at Newport Beach, California.

28


Gretchen Crumpacker

1 In re Swenson
Case No. SA04-12813-RA

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3 **SERVICE LIST**

4 Debtor

4 Eric O. Swenson
175 North Cambridge Street
5 Orange, CA 92866

Attorney for Debtor

Don R. Perry
2130 East Fourth Street #120
Santa Ana, CA 92705-3818

6 Chapter 7 Trustee

6 Karen Sue Naylor
7 P.O. Box 504
8 Santa Ana, CA 92702-0504

U.S. Trustee

United States Trustee
411 West Fourth Street #9041
Santa Ana, CA 92701

9 Chapter 7 Trustee for the Estate
of Lyric Enterprises

9 Weneta M.A. Kosmala
10 P.O. Box 16279
11 Irvine, CA 92623-9998

Buyer

James G. Sittler
13 Malibu
Laguna Niguel, CA 92610

12 All Creditors

12 ADP
13 P.O. Box 78415
14 Phoenix, AZ 85072-8415

ADT Security Services
P.O. Box 371956
Pittsburgh, PA 15250-7956

15 Allegiance Telecom
16 P.O. Box 650226
17 Dallas, TX 75265-0226

American Express Centurion Bank
P.O. Box 30371
Salt Lake City, UT 84130-0371

18 American Express
19 P.O. Box 0001
20 Los Angeles, CA 90096-0001

Bank of America #410
P.O. Box 51906
Los Angeles, CA 90051-6206

21 Bank of America
22 P.O. Box 5270
23 Carol Stream, IL 60197-5270

Bank of America
P.O. Box 53155
Phoenix, AZ 85072-3155

24 Bank One
25 P.O. Box 94014
26 Palantine, IL 60094

Business Cards Tomorrow
23101 Terra Drive
Laguna Hills, CA 92653

27 California Bank & Trust
28 401 West Whittier Boulevard #401
La Habra, CA 90631

Chase Freedom
P.O. Box 52195
Phoenix, AZ 85072

Chase Manhattan Mortgage
P.O. Box 91187
Cleveland, OH 44101-3187

Chrysler Financial
P.O. Box 93129
Long Beach, CA 90809-3129

Cintas
1851 South Wineville Avenue
Ontario, CA 91761

Citibank
P.O. Box 6414
The Lakes, NV 88901

1	Citicorp Vendor Finance, Inc. P.O. Box 7247-0322	Coastal Imaging P.O. Box 23758
2	Philadelphia, PA 19170-0322	Santa Barbara, CA 93121
3	Continental Milano 2750 West Fifth Avenue	Copy Club West 9404 Genesee Avenue #100
4	Denver, CO 80204	La Jolla, CA 92037
5	Copyguard 626 West Hastings Road	Coverall of Orange County 770 the City Drive South #7000
6	Spokane, WA 99218	Orange, CA 92868
7	Discover P.O. Box 30395	Lyle D. Elliott 1912 Grand Bahama Drive #E
8	Salt Lake City, UT 84130	Palm Springs, CA 92264
9	GE Capital 10 Riverview Drive	GE Capital P.O. Box 31001-0273
10	Canterbury, CT 03810	Pasadena, CA 91110-0273
11	General Binding Corp. P.O. Box 71361	Goodman & Metz 17043 Ventura Boulevard
12	Chicago, IL 60694-1361	Encino, CA 91316-4128
13	Graphic Enterprises, Inc. P.O. Box 14546	Joan K. Green, CPA 1700 East Pacific Coast Highway
14	Des Moines, IA 50306-3546	Seal Beach, CA 90740
15	A. Hillary Grosberg 16601 Ventura Boulevard #400	Hilson Specialty Products 16418 Berwyn Road
16	Encino, CA 91436	Cerritos, CA 90703
17	Ikon Office Solutions 1516 West 17 th Street	IOS Capital 70 Valley Stream Parkway
18	Tempe, AZ 85281	Malvern, PA 19355
19	Stanley M. Kelton 9922 Cornerbrook Drive	The Kutzer Company for Galleria Orange
20	Huntington Beach, CA 92645-7326	716 Mission Street South Pasadena, CA 91030-3040
21	Lyric Enterprises, Inc. c/o Weneta M.A. Kosmala	MBNA America P.O. Box 15137
22	P.O. Box 16279	Wilmington, DE 19886-5137
23	Irvine, CA 92623-9998	
24	Musak, Southern California 1285 Columbia Avenue	OCE Financial Services Department A-40302
25	Riverside, CA 92507	Atlanta, GA 31192-0302
26	OCE USA, Inc. 12379 Collections Center Drive	Pacific Office Solutions 10750 Thornmint Road
27	Chicago, IL 60693	San Diego, CA 92127-2700
28		

1	Redwire Broadband 5771 Copley Drive #100 San Diego, CA 92111	Source Pointe Business Supply 2852 Walnut Avenue #F2 Tustin, CA 92780
3	Universal Label 12521 McCann Drive P.O. Box 3648 Santa Fe Springs, CA 90670	Waterfield Mortgage Company P.O. Box 7007 Indianapolis, IN 46207-7007
6	WFS Financial P.O. Box 25341 Santa Ana, CA 92799-5341	Xpedx Stores Division P.O. Box 18452 Chicago, IL 60618-0452
8	Xpedx 17411 Valley Boulevard City of Industry, CA 91744	Ikon Financial Services P.O. Box 6338 Macon, GA 31208-6338
10	Citicorp Vendor Finance Inc. 1800 Overcenter Drive Moberly, MO 65270	American Express Travel Related c/o Becket & Lee P.O. Box 3001 Dept. Malvern, PA 19355-0701
12	American Express Centurion Bank c/o Becket & Lee P.O. Box 3001 Dept. Malvern, PA 19355-0701	Employment Development Department Bankruptcy Group MIC92E P.O. Box 826880 Sacramento, CA 94280-0001
15	Franchise Tax Board Attn: Bankruptcy P.O. Box 2952 Sacramento, CA 95812-2952	
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