

<p>Attorney or Party Name, Address, Telephone &amp; FAX Nos., State Bar No. &amp; Email Address</p> <p>David J. Richardson (SB No. 168592)  <b>SulmeyerKupetz, A Professional Corporation</b>                  drichardson@sulmeyerlaw.com                  333 South Hope Street, 35<sup>th</sup> Floor                  Los Angeles, CA 90071                  Telephone: 213.626.2311                  Facsimile: 213.629.4520</p> <p><input type="checkbox"/> Individual appearing without attorney  <input checked="" type="checkbox"/> Attorney for: Chapter 7 Trustee Elissa D. Miller</p>	<p>FOR COURT USE ONLY</p>
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<p><b>UNITED STATES BANKRUPTCY COURT                  CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION</b></p>	
<p>In re:</p> <p>YOUNG W. KONG,</p> <p style="text-align: right;">Debtor(s).</p>	<p>CASE NO.: 2:11-bk-48629-BR</p> <p>CHAPTER: 7</p> <p style="text-align: center;"><b>NOTICE OF SALE OF ESTATE PROPERTY</b></p>

<p><b>Sale Date:</b> July 5, 2016</p>	<p><b>Time:</b> 2:00 p.m.</p>
<p><b>Location:</b> 255 East Temple Street, Los Angeles, California 90012, Courtroom "1668"</p>	

**Type of Sale:**  Public  Private      **Last date to file objections:** June 21, 2016

**Description of property to be sold:** The estate's right, title and interest in the stock representing a 1/3 ownership in Lekos Dye and Finishing, Inc. (the "Stock") and any and all rights and claims relating to that Stock.

**Terms and conditions of sale:** Free and clear of liens, claims, encumbrances and/or interests of persons and entities receiving notice and receiving notice and who do not object or whose objections are overruled and subject to lien and pledge of the Stock to BBCN Bank, (successor to Nara Bank). Also subject to the attached overbid procedures; the Stock is being sold on an "as is, where is" basis, with no warranties, recourse, contingencies, or representations of any kind.

**Proposed sale price:** \$55,000.00 plus non-cash components

**Overbid procedure (if any):** - See Attached Overbid Procedures, and Procedures to Qualify to Overbid.

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**If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:**

July 5, 2016  
2:00 p.m.  
255 East Temple Street  
Courtroom "1668"  
Los Angeles, California 90012

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**Contact person for potential bidders (include name, address, telephone, fax and/or email address):**

Elissa D. Miller, Esq.  
**Chapter 7 Trustee**  
333 South Hope Street, 35<sup>th</sup> Floor  
Los Angeles, California 90071  
Telephone: 213.626.2311

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Date: June 14, 2016

### **OVERBID PROCEDURES**

The Trustee has entered into a settlement (attached hereto as Exhibit 1) with the Debtor whereby:

- the Trustee will transfer the Estate's interest in the stock of Lekos Dye & Finishing, Inc. (the "Stock") to the Debtor, subject to the Nara Lien;
- the Debtor will abandon its efforts to vacate dismissal of litigation that the Debtor had previously filed in connection with the Stock, and had dismissed with prejudice prior to the June 6, 2016 ruling of the Bankruptcy Appellate Panel for the Ninth Circuit Court of Appeals (the "BAP Judgment"), and will provide the Trustee with releases of all claims arising in such litigation;
- the Debtor will not appeal the BAP Judgment, or will dismiss any notice of appeal that is filed;
- the Estate will retain a \$40,000 payment made in September 2015 by the Debtor as consideration for an earlier settlement with the Estate that included an abandonment of the Stock, and the Debtor will pay an additional \$15,000, for total cash consideration of \$55,000 (the "2016 Settlement").

To whatever extent any party is prepared to provide value to the estate in excess of the 2016 Settlement, such a proposed overbid is subject to the following proposed overbid procedures:

**(1) Intent To Bid And Overbid Amount**

Any party wishing to bid on the Stock and/or other components of the 2016 Settlement ("Overbidder") shall advise the Trustee of his/her or its intent to submit an overbid, and the amount and nature of their overbid (the "Initial Overbid"), no later than Friday, July 1, at 12:00

noon (the “Overbid Deadline”). An Initial Overbid may be an all-cash bid or may include non-cash components, but must propose overall value to the estate that is superior to the value offered by the 2016 Settlement.

**(2) Payment Of Deposit**

Any Overbidder shall provide the Trustee with a cashier’s check, payable to “Elissa D. Miller, Chapter 7 Trustee,” in an amount of \$5,500, which reflects ten percent (10%) of the cash component of the 2016 Settlement, to serve as a deposit (the “Deposit”). The Deposit must be delivered so that it is received by the Trustee at the address set forth on the upper left corner of the first page of this Motion, by no later than the Overbid Deadline. In the case of the Debtor, the \$40,000 previously paid to the estate in 2015 for an earlier settlement will continue to be held by the Trustee pending the Hearing on this Motion, as a Deposit towards the cash component of the 2016 Settlement.

**(3) Evidence Of Financial Ability To Perform**

Any Overbidder must provide the Trustee with evidence of the proposed buyer’s financial ability to pay the full amount of the Overbid, or perform all non-cash components of the Overbid, so that such evidence is received by the Trustee by no later than the Overbid Deadline.

**(4) Multiple Bids And Auction**

All parties who have submitted timely bids and otherwise satisfied the foregoing requirements will be able to participate in any auction to be conducted at the Hearing on the Motion as is necessary in order to increase their bid. To the extent that there is a cash component to each bid, further overbids must increase the cash component by at least \$5,000 to qualify as a successful overbid. The Trustee reserves the right to lower the required amount of the overbid during any auction in the Bankruptcy Court in order to maximize the value of the winning bid to

the Estate.

Because the Trustee anticipates that at least one party's competing bid will involve non-cash components (*i.e.*, the Debtor's litigation undertakings), any comparison of competing bids will necessarily involve an analysis of overall benefit to the Estate. The Trustee will propose a winning bidder to the Court based upon her business judgment and analysis of the competing bids, and a determination as to the overall value that each competing bid provides to the Estate, in order to determine the bid of highest value (the "Winning Bidder").

**(5) Tender Of Balance Of Purchase Price**

The Winning Bidder's Deposit shall be applied towards any cash component of the total purchase price. The Winning Bidder must tender the balance of the total final Purchase Price to the Trustee via cashier's check, money order or wire transfer within fourteen (14) calendar days following entry of the order approving the sale of the Stock to such buyer, and perform all non-cash components to such bid as soon as practicably possible. To the extent the Winning Bidder fails to tender the balance of the purchase price by such date, that bidder's entire Deposit shall be non-refundable and forfeited to the Trustee.

To the extent that any bidder is not the Winning Bidder, that party's Deposit will be refunded by the Trustee.

**(6) Agreement To Terms And Overbid Procedures**

Any Overbidder's tender of the Deposit to the Trustee shall serve as that Overbidder's agreement with these proposed overbid procedures.

# **EXHIBIT 1**

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (the “Settlement Agreement”), dated June 14, 2016, is between: (i) Chapter 7 Trustee Elissa D. Miller (the "Trustee"), in her capacity as chapter 7 trustee for the chapter 7 bankruptcy estate of Young W. Kong (the “Estate”) in chapter 7 Case No. 2:11-bk-58222-ER (the “Bankruptcy Case”); and (2) chapter 7 debtor Young W. Kong (“Kong”), and encompasses the terms of a settlement (the “Settlement”) reached between the Trustee and Kong (collectively, the “Parties”).

### **I.**

#### **RECITALS**

A. Kong filed a chapter 7 petition on September 23, 2011, and the Trustee was appointed to serve as the chapter 7 trustee in the Bankruptcy Case.

B. In the course of administering the Debtor’s Bankruptcy Case, the Trustee took various actions to uncover and recover certain assets. The Trustee’s actions led to the negotiation in 2014 of a global settlement between the Trustee, Kong, and his wife (the “Original Settlement”). On September 3, 2014, the Trustee filed a motion in the Bankruptcy Court for an order approving the terms of the Parties' Original Settlement, which the Bankruptcy Court granted by Order entered October 1, 2014.

C. The Trustee believed that the Original Settlement did not address, in any way, the Estate’s rights and interests in certain stock (the “Stock”) owned by the Debtor in Lekos Dye & Finishing, Inc. (“Lekos”). Accordingly, on August 28, 2015, the Trustee filed a motion (the “Sale Motion”) to sell the Stock, free and clear of all liens, encumbrances or other interests, subject to a bank lien, pursuant to section 363(f) of the Bankruptcy Code, for total consideration of \$35,000, with a hearing scheduled for September 22, 2015 (the "Sale Hearing").

D. Prior to the hearing on the Sale Motion, Kong: (i) filed an opposition to the Sale Motion asserting that the Trustee could not sell the Stock because, pursuant to the terms of the Original Settlement, the Trustee had released the Estate's interest in the Stock to Kong in exchange for payment of \$90,000; (ii) filed an adversary proceeding against the Trustee for: (1) Breach of Contract; (2) Breach of Covenant of Good Faith and Fair Dealing; (3) Equitable Estoppel; (4) Intentional Interference with Contractual Relations; and (5) Injunctive Relief, captioned *Kong v. Miller et al.*, bearing Adv. No. 2:15-ap-01499-BR; and (iii) filed an emergency motion for a temporary restraining order in an effort to prevent the sale of the Stock from going forward (collectively, the “Debtor Litigation”).

E. At the Sale Hearing, the Trustee and Kong entered into an agreement whereby: (i) the Trustee would withdraw the Sale Motion; (ii) Kong would pay the Estate \$40,000; (iii) Kong would dismiss the Debtor Litigation with prejudice; (iv) the Trustee would abandon the Estate’s interest in the Stock to Kong; and (v) Kong would release the Trustee of all claims arising in the Debtor Litigation (the “2015 Settlement”). The Bankruptcy Court approved the 2015 Settlement at the Sale Hearing, and following entry of the order approving the 2015 Settlement (the “Order”), Kong paid \$40,000 to the Trustee in two separate payments (the “2015 Settlement Payment”), and Kong dismissed the Debtor Litigation with prejudice.

F. Yang Jin, Ltd., a creditor of the Debtor’s Estate, appealed the Order to the Bankruptcy Appellate Panel of the Ninth Circuit Court of Appeal (the “BAP”), arguing that the 2015 Settlement was improperly approved at the Sale Hearing without a separately noticed motion and hearing pursuant to Fed. R. Bankr. P 9019. On June 6, 2016, the BAP entered a judgment overruling the Bankruptcy Court’s Order and remanding the matter to the Bankruptcy Court.

G. Kong intends to file an appeal of the BAP judgment and/or file a motion to revive the dismissed Debtor Litigation. The final date on which Kong may timely file such a notice of appeal is July 6, 2016.

H. In consideration of their respective claims and defenses, and without making any admissions other than those specifically contained herein, the Parties hereby agree to the following terms of settlement:

**NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

**II.**

**AGREEMENT**

1. Incorporation of Recitals. The Recitals set forth in Paragraphs A through H above, are hereby incorporated by reference.
2. Bankruptcy Court Approval. This Settlement Agreement is subject to the approval of the Bankruptcy Court on a noticed motion pursuant to Federal Rule of Bankruptcy Procedure 9019(a). The Trustee shall prepare and file a motion seeking the approval of this Settlement Agreement promptly upon execution of this Settlement Agreement by the Parties hereto. The Trustee recognizes that parties in interest in the Bankruptcy Case will seek to overbid the value of this Settlement, and the Trustee will consider such offers in fulfillment of her duties to creditors of the Estate.
3. Settlement Terms Upon Bankruptcy Court Approval. On the date upon which an order of the Bankruptcy Court approving this Settlement becomes final and non-appealable (the "Effective Date"), the following terms of Settlement shall apply:

3.1 Payment Terms. The Trustee shall be entitled to retain the 2015

Settlement Payment in consideration for the terms of this Settlement, and the Debtor will

pay the Trustee an additional \$15,000 within 45 days of the Entry of the Order Approving the Settlement Agreement, for total cash consideration of \$55,000;

3.2 Transfer of Stock. As a material consideration, the Trustee shall be deemed to have transferred the Estate's interest in the Stock to Kong, who is the record owner of the Stock, subject to the lien of BBCN Bank, formerly known as Center Bank and/or Nara Bank;

3.3 Withdrawal of Motion to Revive Debtor Litigation. The Debtor shall withdraw any motion that it has filed, if any, to revive the Debtor Litigation previously dismissed with prejudice, and shall not take any further action to attempt to revive the Debtor Litigation;

3.4 No Appeal of BAP Judgment. The Debtor shall not pursue any appeal of the BAP Judgment to the Ninth Circuit Court of Appeals, and, if any notice of appeal from the BAP Judgment has been filed by the Debtor, the Debtor shall promptly dismiss such appeal with prejudice.

3.5 Releases Effective. The Kong Releases contained herein shall become effective upon the Effective Date.

4. Kong Releases. Except for the Obligations created by this Settlement Agreement, upon the Effective Date, Kong and each of his attorneys, agents, predecessors or successors, and all persons acting for, under or in concert with them, past or present (the "Kong Release Parties") hereby release the Trustee, on behalf of herself and the Estate, as well as her attorneys, agents, predecessors or successors, and all persons acting for, under or in concert with them, past or present (collectively, the "Trustee Release Parties"), of any and all claims, demands, actions, causes of action in law or equity, suits, debts, liens, contracts, agreements, promises, demands,

damages, liabilities or loss (including any claims for contribution or indemnification), obligations, costs or expenses of any nature whatsoever (including attorneys' fees and costs, of any kind or nature, whatsoever), past or present, ascertained or unascertained, whether or not known, suspected or claimed, that were pleaded, or could have been pleaded, in the Debtor Litigation (collectively, "Settlement Claims").

5. Waiver of Civil Code Section 1542. The Parties acknowledge that they have each been informed by their respective counsel of the provisions of section 1542 of the California Civil Code and the applicability of those provisions to this Settlement Agreement. With the advice of their counsel, to the extent the releases in this Settlement Agreement are deemed to be general releases in connection with the matters they encompass, the Parties hereto hereby expressly waive and relinquish all rights and benefits which any of them have or may in the future have under section 1542 of the California Civil Code which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties hereto acknowledge that they may hereafter discover facts which are different from or in addition to those which they now know or believe to be true with respect to the Settlement Agreement or to the matters herein released, and agree that the Settlement Agreement shall be and remain in full force and effect in all respects notwithstanding any such different or additional facts.

6. Events of Default. Any of the following shall constitute an Event of Default under this Settlement Agreement:

(a) if Kong takes any action beyond the Effective Date to pursue the Debtor

Litigation and/or Settlement Claims against any of the Trustee Release Parties;

(b) if Kong takes any action to pursue any appeal of the BAP Judgment.

7. Defendants' Right to Cure. Upon the occurrence of an Event of Default, and following the delivery by the Trustee of written notice of such Event of Default to Kong's counsel at the address listed below, which shall include notice by electronic mail, Kong shall have ten (10) days to cure such default. Delivery of such written notice by electronic mail shall constitute delivery on the same day.

8. Failure to Cure. If Kong fails to cure the Event of Default in accordance with Section 7 above, the Trustee shall be entitled to rescind her abandonment of the Stock and pursue all other options or remedies to maximize the value of the Stock to the Estate. The Trustee shall be entitled to offset against the 2015 Settlement Payment any and all attorney's fees and costs that she incurs as a result of any failure by Kong to cure an Event of Default.

9. No Reliance; Independent Investigation. The undersigned agree that each of the Parties in entering into this Settlement Agreement relied upon its own investigation and judgment in regard to all matters herein contained and that it has not relied on any representations made by the other parties hereto except as expressly set forth herein, that this Settlement Agreement is made and entered into by each of the Parties of its own volition, and each of the Parties warrants that this Settlement Agreement was made and entered into free of any duress, coercion, or undue influence from any source whatsoever.

10. Merger. This Settlement Agreement represents the entire agreement among the Parties in regard to all matters contained herein and contains all the representations, warranties,

agreements and understandings among the Parties and supersedes all prior negotiations, representations or agreements, either written or oral.

11. Amendments. Any waiver, alteration or modification of any of the provisions of this Settlement Agreement or cancellation or replacement of this Settlement Agreement shall not be valid unless in writing and signed by all Parties.

12. Authority. Each of the Parties has full authority and power to enter into this Settlement Agreement and this Settlement Agreement is the legal, valid and binding obligation thereof, subject to the approval of the Bankruptcy Court.

13. Representation by Counsel. Each Party represents and warrants to the other that it has been represented, or had the full and complete opportunity to be represented, by separate independent legal counsel, solely selected by it and that it has had the opportunity to have full and separate independent legal advice with respect to the negotiation, entering into, meaning and legal import of all terms, conditions and provisions of this Settlement Agreement.

14. Drafting of Agreement. The undersigned agree that this Settlement Agreement shall not be construed either in favor of or against any Party hereto, nor shall any Party hereto be deemed the sole drafter hereof. Moreover, all Parties hereto represent and warrant that they have carefully read and fully understand all of the provisions of this Settlement Agreement and that they have voluntarily and knowingly signed this Settlement Agreement.

15. Successors and Assigns. This Settlement Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, executors, representatives, successors and assigns.

16. Governing Law. This Settlement Agreement and the rights and obligations of the Parties shall be governed by, and construed in accordance with, the laws of the State of California (without giving effect to its principles of conflicts of law).

17. Non-Waiver; Enforcement. The failure of any Party hereto to enforce at any time any of the provisions of this Settlement Agreement, or to require at any time performance by any other Party hereto of any of the provisions hereof, or to resort to any remedy or to exercise one or more remedies, shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this Settlement Agreement or any Party, or the right of such Party to enforce each and every provision.

18. Consent to Jurisdiction. The Parties agree that any disputes pertaining to this Settlement Agreement shall be heard by the United States Bankruptcy Court for the Central District of California.

19. Counterparts. This Settlement Agreement may be executed in counterparts, and when all counterparts have been executed, each executed counterpart will have the force and effect of the original. This Settlement Agreement may also be executed and delivered through counterparts transmitted by facsimile, electronic mail or other electronic means.

20. Further Assurances. The Parties and their counsel shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Settlement Agreement.

21. Notices: Any notices to be provided to either Party or any Parties under the terms of, or in connection with, this Settlement Agreement, shall be made by U.S. mail, overnight mail, or electronic mail, to the following addresses:

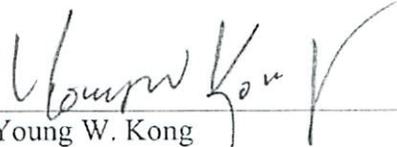
To the Trustee:  
c/o David J. Richardson

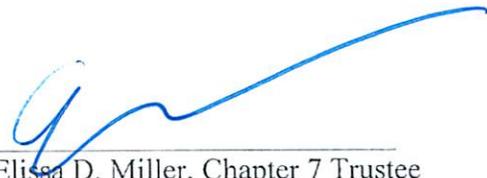
SulmeyerKupetz, a Professional Corporation  
333 S. Hope St., 35<sup>th</sup> Floor  
Los Angeles, CA 90071  
Telephone: 213-626-2311  
Email: drichardson@sulmeyerlaw.com

To Kong:  
c/o S. Young Lim  
PARK & LIM  
3530 Wilshire Boulevard, Suite 1300  
Los Angeles, CA 90010  
Telephone: (213) 386-5595  
Email: young@parkandlim.com

22. Captions/Headings. The captions/headings appearing at the beginnings of the paragraph hereof are descriptive only and for convenience of reference. Should there be any conflict, or apparent conflict, between any such caption/heading and any paragraph at the head of which it appears, the content of the paragraph shall govern the construction of this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto, each by persons duly authorized, have caused the Settlement Agreement to be executed as of the day and year first written above.

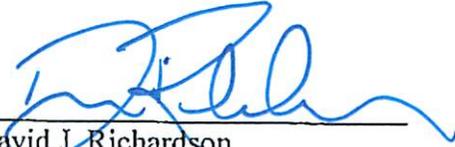
By:   
Young W. Kong

By:   
Elissa D. Miller, Chapter 7 Trustee

Approved as to form:  
PARK & LIM, LLP

Approved as to form:  
SULMEYERKUPETZ,  
a Professional corporation

By:   
S. Young Lim  
Attorneys for Young W. Kong  
Chapter 7 Debtor

By:   
David J. Richardson  
Attorneys for Elissa D. Miller,  
Chapter 7 Trustee

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 333 South Hope Street, Thirty-Fifth Floor, Los Angeles, CA 90071-1406.

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF SALE OF ESTATE PROPERTY** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) June 14, 2016 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Raymond H. Aver on behalf of Debtor Young W. Kong - ray@averlaw.com
- William S Brody on behalf of Creditor BBCN Bank - wbrody@buchalter.com, dbodkin@buchalter.com; IFS\_filing@buchalter.com
- Barry W Ferns on behalf of Plaintiff Sovereign Bank - bferns@fernslaw.com
- Peter F Jazayeri on behalf of Creditor Yang Jin Co., Ltd. - peter@jaz-law.com
- Steve J Kim on behalf of Defendant Young W. Kong/Defendant Min Shin Clara Kong - william@parkandlim.com
- David Brian Lally on behalf of Attorney David B Lally - davidlallylaw@gmail.com
- Elissa Miller (TR) - CA71@ecfcbis.com, MillerTrustee@Sulmeyerlaw.com; C124@ecfcbis.com
- Stella K Park on behalf of Creditor Yang Jin Co., Ltd. - spark@parkandzheng.com, yzheng@parkandzheng.com
- Joseph L Pittera on behalf of Debtor Young W. Kong - evlam2000@aol.com
- David J Richardson on behalf of Trustee Elissa Miller (TR) - drichardson@sulmeyerlaw.com, drichardson@ecf.inforuptcy.com
- Thomas J Ryu on behalf of Creditor Yang Jin Co., Ltd. - tryu@ksplr.com
- Jeffrey S Shinbrot on behalf of Interested Party II Gun Lee - jeffrey@shinbrotfirm.com, sandra@shinbrotfirm.com
- United States Trustee (LA) - ustpregion16.la.ecf@usdoj.gov

Service information continued on attached page.

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) \_\_\_\_\_, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page.

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) June 14, 2016, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Honorable Barry Russell – VIA PERSONAL DELIVERY  
U.S. Bankruptcy Court  
Roybal Federal Building  
255 E. Temple Street  
Los Angeles, CA 90012 - Bin outside of Suite 1660

Service information continued on attached page.

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

June 14, 2016

Andrea Gonzalez

/s/ Andrea Gonzalez

Date

Printed Name

Signature