

<div>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address</div> <div><input type="checkbox"/> Attorney for Debtor <input type="checkbox"/> Debtor appearing without an attorney:</div>		<div>FOR COURT USE ONLY</div>	
<div>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - **SELECT DIVISION**</div>			
<div>In re:</div> <div>Debtor(s).</div>		<div>CASE NO.:</div> <div>CHAPTER: **Select Chapter**</div>	
		<div>NOTICE OF MOTION AND MOTION FOR ORDER ESTABLISHING ADEQUATE PROTECTION, INCLUDING PROCEDURES TO RETURN SEIZED PERSONAL PROPERTY</div> <div>[11 U.S.C. §§ 362, 363, 542]</div>	
		<div>This motion is being made under <u>ONLY ONE</u> of the following notice procedures:</div> <div>No hearing requested: LBR 9013-1(p); Hearing requested on emergency basis: LBR 9075-1(b); or Hearing requested on shortened notice: LBR 9075-1(b); or Hearing set on regular notice: LBR 9013-1(d):</div> <div>DATE: TIME: COURTROOM: ADDRESS:</div>	
<div>Creditor:</div>			

TO THE CREDITOR, INCLUDING ALL PART(IES) WITH POSSESSION, CUSTODY, OR CONTROL OF THE PROPERTY DESCRIBED BELOW (COLLECTIVELY, CREDITOR), AND OTHER PARTIES IN INTEREST:

1. **PLEASE TAKE NOTICE THAT** the undersigned debtor(s) (collectively, Debtor) moves this court for an adequate protection order for the following property (Property) seized prepetition by Creditor (*describe vehicle or other property*):_____.
2. **NOTICE PROVISIONS AND DEADLINES FOR FILING AND SERVING A WRITTEN RESPONSE:** Your rights might be affected by this Motion. You may want to consult an attorney. Refer to the box checked below for the deadline to file and serve a written response. If you fail to timely file and serve a written response, the court may treat such failure

This form is optional. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

as consent to the relief sought in the Motion and may grant the requested relief. You must serve a copy of your opposition upon Debtor, Debtor's attorney, the United States trustee, and also serve a copy on the judge assigned to this bankruptcy case pursuant to LBR 5005-2(d) and the Court Manual.¹

- a. ☐ **Hearing Requested on Emergency Basis under LBR 9075-1(a):** Debtor has contacted the court and requested an emergency hearing on less than 48 hours notice. If the court grants the request, you will receive a separate Notice of Hearing that identifies the deadline for you to file and serve a written response. If the court denies the request to set an emergency hearing, Debtor will provide written notice of a hearing date on regular notice or other disposition of this Motion and the deadline for filing an opposition.
- b. ☐ **Hearing Requested on Shortened Notice under LBR 9075-1(b):** Debtor has filed a separate application asking the court to set a hearing on shortened notice, entitled Application for Order Setting Hearing on Shortened Notice (Application). If the court grants the Application, Debtor will serve you with another document providing notice. The deadline to file and serve a written response will be contained in this document. If the court denies the Application, Debtor will provide written notice of a regular hearing date or other proposed disposition of this Motion.
- c. ☐ **Hearing Set on Regular Notice: Notice Provided Under LBR 9013-1(d):** This Motion is set for hearing on regular notice pursuant to LBR 9013-1(d). The full Motion and supporting documentation are attached, including the legal and factual grounds upon which the Motion is made. If you wish to oppose this Motion, you must file a written response with the court and serve it as stated above **no later than 14 days prior to the hearing**. Your response must comply with LBR 9013-1(f). The undersigned hereby verifies that the hearing date and time selected were available for this type of Motion according to the judge's self-scheduling procedures [LBR 9013-1(b)].
- d. ☐ **Hearing Not Requested: Notice Provided Under LBR 9013-1(p):** The Debtor and Creditor reached an agreement (which is set forth in the Adequate Protection Attachment) and there are no other parties affected by the agreement.
- e. ☐ **Other (specify):**

Date: _____

By: _____
Signature of Debtor or attorney for Debtor

Name: _____
Printed name of Debtor or attorney for Debtor

¹ "LBR" refers to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California. "Court Manual" refers to the Court Manual of the United States Bankruptcy Court for the Central District of California. The LBR and the Court Manual are posted on the court's website and may be viewed online. "FRBP" refers to the Federal Rules of Bankruptcy Procedure. "11 U.S.C." refers to Title 11 of the United States Code, or the Bankruptcy Code.

**MOTION FOR ORDER ESTABLISHING
ADEQUATE PROTECTION, INCLUDING
PROCEDURES TO RETURN SEIZED PERSONAL PROPERTY**

1. **Urgency of Need.** Debtor urgently needs the Property, which was seized prepetition, for the following reasons (*check all that apply for vehicle or other Property*):
 - ☐ to commute to work;
 - ☐ for Debtor's business (*e.g., deliveries*);
 - ☐ to travel to medical appointments;
 - ☐ for grocery shopping;
 - ☐ to take children to school;
 - ☐ to transport elderly relatives to appointments;
 - ☐ other (describe):_____.
2. **Nature of relief.** Debtor requests that the court issue an order:
 - a. fixing the proposed types of adequate protection set forth below, including directing Creditor to provide a point of contact and cooperate in arranging for return of the Property; and
 - b. authorizing (to the extent required) use of property of the estate to provide such adequate protection.
3. **Authority.** Debtor seeks the foregoing relief pursuant to 11 U.S.C. §§ 105(a), 361, 362(a), (d) and (g), 363(b) and (e), 542, 543, and 549(a)(2)(B), and FRBP 4001(a) and (d). Specifically, in this contested matter Debtor seeks a court order (x) determining what will adequately protect Creditor's interest in the Property, (y) granting relief from the automatic stay, to the extent required, so that Debtor may offer and Creditor may accept whatever adequate protection is to be provided to Creditor, and (z) authorizing Debtor to use property of the estate to provide such adequate protection to Creditor. Debtor maintains that such relief is appropriate to facilitate turnover of the Property under 11 U.S.C. §§ 542 and 543, and pursuant to the authorization required for postpetition transfers under 11 U.S.C. § 549(a)(2)(B). In the event that Creditor fails or refuses to turn over the Property notwithstanding any proffered and/or ordered adequate protection, Debtor reserves all rights (a) to seek an order or judgment enforcing any turnover obligation and (b) to seek compensatory, coercive, or other sanctions, including (i) filing any motion for contempt sanctions for violation of 11 U.S.C. § 542 and (ii) filing a complaint to recover the Property and for any additional injunctive, declaratory, or other relief. See FRBP 7001(1), (7), (9).
4. **Service.** Debtor asserts that service on the following persons is sufficient notice of the relief requested in this Motion (*check one*):
 - a. ☐ **Service on usual persons:** Debtor has served:
 - (i) Creditor, and/or an attorney representing Creditor in this bankruptcy case, known as (*name(s) of Creditor or bankruptcy attorney*):

 - (ii) any trustee in this case, and, if applicable,
 - (iii) any official creditors committee, or the persons included on Debtor's filed list of 20 largest unsecured creditors,all pursuant to FRBP 4001(a)(1) or 4001(d)(1)(C) and as shown on the attached proof of service.
*Note to Debtor: **Telephoning, emailing or faxing Creditor** might be advisable to provide as much notice as possible; but, unless Creditor has consented to service by email or facsimile, those methods do constitute legal service.*¹
 - b. ☐ **Consensual, immediate relief:** Debtor asserts that no notice is required beyond what is shown on the attached proof of service, and no hearing is required, based on
 - (i) Creditor's consent, shown by its signature below, and
 - (ii) Debtor's urgent need for the Property,all pursuant to 11 U.S.C. §§ 102(2) and 363(e) (adequate protection "shall" be provided, on request of any party with an interest in property proposed to be used, "at any time ... with or without a hearing"), and FRBP 4001(a)(2) (entitled "Relief Without Hearing").

¹ See Federal Rule of Civil Procedure ("FRCP") 4(d)(1)(G) (incorporated by FRBP 7004 and 9014(b)) (procedures for waiving regular service of initial motion papers) *and compare, e.g.,* FRCP 5(b)(2)(E) (incorporated by FRBP 7005) (procedures for consent to electronic service after initial motion papers) *and* FRBP 9036 (same).

c. ☐ Other (describe): _____.

If the court is unwilling to grant relief on the notice described above and in the attached proof of service, Debtor requests that the court issue an order directing what notice Debtor must provide.

5. Proposed Adequate Protection. Debtor asserts that the Property can be returned to Debtor while adequately protecting any interest that Creditor may have in the Property based on the following (Proposed Adequate Protection) (select all that apply):

a. ☐ Insurance and taxes. Debtor will:

(i) maintain adequate insurance on the Property (*attach a copy of insurance declarations page or similar proof of insurance, which may need to name Creditor as a loss payee if required by the parties' contract*) and

(ii) remain current on any taxes or other governmental charges that become due postpetition and would, if unpaid, constitute a lien on the Property.

b. ☐ Monthly adequate protection payments (*attach evidence of ability to pay, such as a copy of latest redacted pay stub; Bankruptcy Schedules "I" and "J"; and/or a similar evidence*).

Debtor will make payments as follows (*choose one*):

☐ direct payments: Debtor will pay Creditor all regular monthly payments coming due postpetition, in the approximate amount of \$_____, which may be subject to change under the terms of the underlying contract, subject to any additional or different provisions in any attached form of proposed Adequate Protection Order (APO); or

☐ payments by the chapter 13 trustee: Creditor will be paid by the chapter 13 trustee in the dollar amount proposed in the chapter 13 plan attached hereto (*attach copy of plan*)

c. ☐ Cure of arrears. Debtor will cure arrears as set forth in (*choose one*):

☐ plan: a chapter 11 or 13 plan, a draft of which is attached (*attach proposed plan*);

☐ APO: the attached proposed APO (*attach proposed APO*).

d. ☐ Allowed administrative expense. Debtor proposes that Creditor be granted an allowed administrative expense in the following estimated amounts (e.g., \$xx for postpetition expenses such as delivering the Property to Debtor as provided below):

e. ☐ Equity cushion. Based on the attached declaration, Debtor submits that there is sufficient equity in the property to provide adequate protection. Debtor asserts that the value of the Property is not less than \$_____ and that the dollar amount of the debt owed to Creditor is approximately \$_____, leaving an equity cushion of \$_____ or ____%.

f. ☐ Other (describe): _____.

Debtor requests that the court issue an order approving the foregoing Proposed Adequate Protection.

6. Return of Property. In furtherance of the foregoing, and as further adequate protection of any interest that Creditor may have in the Property, Debtor seeks to establish the following procedures for the safe and speedy return of the Property to Debtor as follows. Creditor is requested *immediately* to contact Debtor (if not already done) using the contact information specified below, (x) to specify the name, email address, and telephone number of a point of contact for Creditor and (y) to arrange a reasonable time and place for return of the Property to Debtor. Debtor requests that this Court direct Creditor to *immediately* provide such a point of contact and to meet and confer regarding return of the Property.

a. For future communications regarding return of the Property, Creditor should contact (*select all that apply*):

i. ☐ Attorney for Debtor, at the telephone number and email address listed in the top left corner of the first page of this Motion

ii. ☐ Debtor directly, at the following telephone number and email address (if different from any contact information in the top left corner of the first page of this Motion):

b. Debtor proposes return of the Property in the following ways (*select all that apply*):

i. ☐ Debtor pickup: Debtor will retrieve the Property from (*specify full address of location*):

_____, during regular business hours between _____ a.m. and _____ p.m. on Mondays through Fridays, _____ m. to _____ p.m. on Saturdays, and _____ m. to _____ p.m. on Sundays.

ii. ☐ Creditor delivery: Creditor is requested to deliver the Property to Debtor's address, (*specify Debtor's home or business address*):

_____, at a day and time to be arranged by communicating immediately with Debtor, between the hours of _____ m. and _____

_.m., using the telephone number or email address referenced in paragraph "6.a.ii" above, or as follows (specify any different telephone number and/or email address):

c. ☐ Other (describe): _____

Debtor requests that the court issue an order establishing the foregoing proposed procedures for return of the Property to Debtor as a reasonable and appropriate form of adequate protection of any interest that Creditor may assert in the Property.

7. Reservation of rights. This form provides standard procedures for establishing adequate protection, including the safe and speedy return of the Property, but both Debtor and Creditor may be obligated or permitted to act sooner, or take other steps, than what is contemplated in this form. See, e.g., 11 U.S.C. §§ 362(f), 363(e), 542.

8. Additional Provisions: _____

☐ Attached to this motion is an (optional) Memorandum of Points and Authorities.

For the foregoing reasons, Debtor requests that the court issue an order (a) establishing that the Proposed Adequate Protection set forth above is adequate to protect any interest that Creditor may assert in the Property and, to the extent required, that this Court authorize payment of the proposed adequate protection payments or other proposed use of property of the estate to provide such Proposed Adequate Protection, and (b) as additional adequate protection, establishing the procedures set forth above for the safe and speedy return of the Property, and authorize and direct Debtor and Creditor to do all things reasonably necessary or appropriate to implement such procedures.

Date: _____

By: _____
Signature of Debtor or attorney for Debtor

Name: _____
Printed name of Debtor or attorney for Debtor

CONSENT BY CREDITOR *(if applicable)*

- a. ☐ Proposed Adequate Protection. The undersigned Creditor hereby consents to the Proposed Adequate Protection set forth in paragraph "5" of the Motion, with the following exceptions or additions *(specify, if any)*: _____
- b. ☐ Return of the Property. The undersigned Creditor hereby consents to the proposed procedures for return of the Property set forth in paragraph "6" of the Motion, with the following exceptions or additions *(specify, if any)*: _____
- c. ☐ Point of contact.
Name of Creditor's point of contact: _____
Email address of Creditor's point of contact: _____
Telephone number of Creditor's point of contact: _____
- d. ☐ Additional provisions. (Add any additional provisions regarding the foregoing consent, or the requests for relief in the Motion.)

Date: _____

By: _____
Signature of Creditor or attorney for Creditor

Name: _____
Printed name of Creditor or attorney for Creditor

**DECLARATION OF DEBTOR IN SUPPORT OF
MOTION FOR ORDER ESTABLISHING
ADEQUATE PROTECTION, INCLUDING
PROCEDURES TO RETURN SEIZED PERSONAL PROPERTY**

I, _____, declare:

1. I am the debtor in this case.
2. The facts asserted in this declaration are of my own personal knowledge.
3. I am the owner of the Property described in the Motion, or I have the following interest in the Property (e.g., if Debtor is a co-owner of the Property) (*describe, if applicable*): _____

4. I urgently need the Property for the reasons set forth in the Motion.
5. To the extent that adequate protection is offered and/or required, I offer the forms of adequate protection indicated in the Motion.
6. Attached to this Declaration are true and correct copies of documents evidencing my ability to provide the forms of adequate protection indicated in the Motion, including (if stated in the Motion):
 - ☐ evidence of insurance;
 - ☐ evidence of my ability to pay (e.g., a copy of latest redacted pay stub, Bankruptcy Schedules "I" and "J," or other evidence);
 - ☐ a copy of my proposed chapter 11 or 13 plan;
 - ☐ a copy of my proposed Adequate Protection Attachment: (see Exh. A, in proposed order);
 - ☐ if an equity cushion is asserted as a form of adequate protection then (i) based on the attached evidence (e.g., BlueBook valuation) and/or based on my familiarity with the condition of the Property and the common value of comparable property, I believe that the value of the Property is not less than \$_____; (ii) based on the attached evidence (e.g., a recent billing statement), I believe that the dollar amount of the debt owed to Creditor is approximately \$_____, and (iii) I calculate that this results in an equity cushion of \$_____ or _____%.
 - ☐ other (*describe*): _____

7. I propose to provide adequate protection, and I propose to recover the Property, pursuant to the terms of the Motion and any Memorandum of Points and Authorities attached to the Motion.

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

Date

Printed Name of Debtor

Signature of Debtor

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:

A true and correct copy of the foregoing document entitled: **NOTICE OF MOTION AND MOTION FOR ORDER ESTABLISHING ADEQUATE PROTECTION, INCLUDING PROCEDURES TO RETURN SEIZED PERSONAL PROPERTY [11 U.S.C. §§ 362, 363, 542]** 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) _____, 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:

☐ 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) _____, 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.

☐ 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.

Date

Printed Name

Signature