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VELTEX CORPORATION
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8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 In re:)
12)
13 Lee George Scharf and Kimberly Anne)
Scharf,)
14 Debtors.)
15)
16 _____)
17 Veltex Corporation,)
18 Plaintiff,)
19 vs.)
20 Lee George Sharf,)
21 Defendant.)
22 _____)

Chapter 7
Case No: 2:09-bk-36378-SB
Adv. No.:
COMPLAINT FOR:
NONDISCHARGEABILITY OF DEBT
PURSUANT TO 11 U.S.C. §523(a)(4)
AND 11 U.S.C. §523(a)(6)

1 **COMPLAINT FOR NONDISCHARGEABILITY OF DEBT**

2 Veltex Corporation, as Plaintiff herein, complains of Debtor and Defendant Lee George Scharf
3 (“Debtor” or “Scharf”) as follows:

4 JURISDICTION AND VENUE

5 1. This Court has jurisdiction over the subject matter of this adversary proceeding pursuant
6 to the provisions of 28 U.S.C. §1334 and the reference order of the United States District Court for the
7 Central District of California. This adversary proceeding relates to the Chapter 7 case of Lee George
8 Scharf, Case No. 1:09-bk-36378SB, now pending in the United States Bankruptcy Court for the Central
9 District of California. The matter is a core proceeding pursuant to 28 U.S.C. §157.

10 2. Venue herein is proper pursuant to the provisions of 28 U.S.C. §1409.

11 GENERAL ALLEGATIONS

12 3. On September 29, 2009, Debtor together with his wife, filed a voluntary petition for
13 relief under the provisions of chapter 7 of the United States Bankruptcy Code, and an order for relief
14 was entered on that date.

15 4. When Debtor filed his petition, he was in the middle of legal proceedings in the Third
16 Judicial District in and for the State of Utah which were pending under the caption and docket number
17 of *Fletcher et. al. v. Veltex Corporation*, Civil Action No. 080907145 (the “*Fletecher* Suit).
18 Specifically, those proceedings involved a challenge to Scharf’s fraudulent conduct in the
19 administration of an interim receivership to which he was appointed over Plaintiff Corporation, a Utah
20 Corporation (“Veltex”) which is publically listed in the pink sheets.

21 5. The *Fletcher* Suit was filed by some shareholders of Veltex in April, 2008 and initially
22 sought to compel the existing management of Veltex to hold a shareholders meeting. Scharf was
23 appointed as an interim receiver for Veltex in July, 2008, when the District Court enjoined a reverse
24 merger and removed the existing management of the Corporation. Scharf’s appointment was
25 sponsored by the *Fletcher* plaintiffs, because Scharf claimed to have been the co-founder a major textile
26 apparel company which is listed on the New York Stock Exchange. This claim has since proven to be
27 a fabrication.

1 6. It was contemplated that Scharf would marshal and preserve the assets of Veltex until
2 a shareholders meeting could be held and new management elected. Although urged by the Utah Judge
3 to call a meeting as quickly a possible, Scharf never called the meeting. Instead, he proceeded to sell
4 off Veltex's assets and pay himself, all without approval of the Court or receiver's reports to the Utah
5 Court.

6 7. Scharf totally ignored the purpose of this appointment. He never sought to organize and
7 hold a shareholder's meeting for Veltex as his oath required. Accordingly, the *Fletcher* plaintiffs
8 organized, financed and held their own shareholder's meeting, after Scharf's resignation. This meeting
9 was held on March 10, 2009, at my offices, 70 West Madison Street, Suite 2100, Chicago, Illinois.
10 Scharf had nothing to do with the meeting, although in a purported receiver's report that he
11 subsequently filed with the Utah Court, he claimed to have organized it. The claim was a fabrication.

12 8. Scharf finally submitted a report to the District Court in *Fletcher* on March 17, 2009.
13 The Receiver's Report which Mr. Scharf filed with the District Court evidenced more than his
14 insensitivity to the costs of organizing the shareholders meeting. It evidenced gross violations of
15 Scharf's fiduciary duties as Veltex's receiver and fraud:

16 (A) On August 15, 2008, within three (3) days of the confirmation of his appointment
17 on August 12, 200, Scharf started selling the assets of Veltex without disclosure to the Court and Veltex
18 plaintiffs or Court approval;

19 (B) Scharf started paying himself without from the proceeds of the asset sales without
20 disclosure to the Court and plaintiffs or Court approval on August 21, 2008, within nine (9) days of the
21 confirmation of his appointment on August 12, 2008;

22 (C) Scharf paid himself an aggregate amount of eighty thousand dollars (\$80,000), at
23 the rate of twenty thousand dollars (\$20,000) per month until the money was extinguished from the sale
24 of Veltex's assets;

25 (D) Scharf reimbursed himself over nine thousand dollars (\$9,000) in purported
26 expenses without disclosure to the Court and plaintiffs or Court approval;

27 (E) Scharf took three trips to various trade shows in Las Vegas and Atlanta at the

1 expense of the Veltex estate, taking his wife on at least one of the trips to Las Vegas, all without
2 disclosure to the Court and plaintiffs or Court approval;

3 (F) Scharf returned various assets of Veltex to the prior rouge management of the
4 Corporation, including an automobile titled to Veltex, various warehouse racks, inventory and office
5 furniture and equipment, all without disclosure to the Court and plaintiffs or Court approval;

6 (G) Scharf sold inventory and equipment to personal friends at below the market value
7 of such assets or even a fair liquidation value; and

8 (H) Scharf never accounted for funds which he obtained from Veltex's bank accounts.

9 9. Scharf's liquidation of the Veltex's material assets and self-payment came as a complete
10 surprise to the parties that supported his approval as a receiver. Throughout the summer and fall of
11 2008, Veltex's attorneys actively worked with Scharf to recover assets from the former officers and
12 directors of Veltex. During the course of these activities, Veltex's attorneys were apprised by Scharf
13 that the value of the goods which we had recovered was between \$350,000 and \$400,000 and perhaps
14 even more depending on the purchasers which might be obtained.

15 10. The seriousness of Scharf's failure diversions is further illustrated by the fact that the
16 Corporation was left with over Seventy Thousand Dollars (\$70,000) in outstanding obligations. This
17 figure includes over Thirty Five Thousand Dollars (\$35,000) of expenses attributable to the
18 organization of the shareholder's meeting, in addition to a like amount which was inherited from the
19 prior management of Veltex.

20 11. On behalf of the Fletcher plaintiffs, Veltex's counsel filed objections to Scharf's
21 Receiver's Report on May 6, 2009. In these objections, the Fletcher plaintiffs sought the deposit by
22 Scharf of the fees and expense which he had taken from the Veltex estate and ultimately the charge
23 back against Scharf of such fees, expenses and other damages as the Court believed appropriate. Scharf
24 engaged counsel and responded to these objections in an lengthy affidavit and in additional Receiver's
25 Report. A hearing was held by the District Court on August 17, 2009. At the conclusion of the
26 hearing, the District Court ordered a full blown evidentiary hearing to be held on September 30, 2009,
27 at which Scharf's presence was to be required. This hearing was subsequently continued on September

1 24, 2009, to allow Scharf's counsel to withdraw and to provide Scharf time to find new counsel. The
2 new date set by the District Court for the hearing was October 21, 2009. Plaintiff believe and based
3 thereon allege that the District Court was going to hold not only an evidentiary hearing but a contempt
4 hearing as well.

5 12. Scharf's conduct of the receivership was part of continuous pattern of behavior to enrich
6 himself at the expense of the *Fletcher* plaintiffs, Plaintiff corporation and the Utah Court that appointed
7 him an interim receiver.

8 FIRST CLAIM FOR RELIEF

9 (Nondischargeability against the Debtor Lee George Scharf - Pursuant to 11 U.S.C. §523(a)(4))

10 13. Plaintiff adopts, incorporate by reference, and alleges herein all of the allegations set
11 forth in paragraph 1 through 12, inclusive, as if set forth individually in this First Claim for Relief.

12 14. Pursuant to §523(a)(4) of the Unites States Bankruptcy Code, a debt incurred by a debtor
13 who perpetrates fraud or defalcation while acting as a fiduciary shall be nondischargeable

14 15. At all relevant times, the Debtor was acting as a court appointed receiver for Plaintiff
15 corporation.

16 16. The Debtor breached his fiduciary duty to Plaintiff when he engaged in the following
17 acts, among others:

18 (A) On August 15, 2008, within three (3) days of the confirmation of his appointment
19 on August 12, 2008, Scharf started selling the assets of Veltex without disclosure to the Court and
20 plaintiffs or Court approval;

21 (B) Scharf started paying himself without from the proceeds of the asset sales without
22 disclosure to the Court and plaintiffs or Court approval on August 21, 2008, within nine (9) days of the
23 confirmation of his appointment on August 12, 2008;

24 (C) Scharf paid himself an aggregate amount of eighty thousand dollars (\$80,000), at
25 the rate of twenty thousand dollars (\$20,000) per month until the money was extinguished from the sale
26 of Veltex's assets;

27 (D) Scharf reimbursed himself over nine thousand dollars (\$9,000) in purported

1 expenses without disclosure to the Court and plaintiffs or Court approval;

2 (E) Scharf took three trips to various trade shows in Las Vegas and Atlanta at the
3 expense of the Veltex estate, taking his wife on at least one of the trips to Las Vegas, all without
4 disclosure to the Court and plaintiffs or Court approval;

5 (F) Scharf returned various assets of Veltex to the prior rouge management of the
6 Corporation, including an automobile titled to Veltex, various warehouse racks, inventory and office
7 furniture and equipment, all without disclosure to the Court and plaintiffs or Court approval;

8 (G) Scharf sold inventory and equipment to personal friends at below the market value
9 of such assets or even a fair liquidation value; and

10 (H) Scharf never accounted for funds which he obtained from Veltex's bank accounts.

11 17. As a direct and proximate result of the foregoing, Plaintiff has suffered damages in an
12 amount not presently ascertained but believed to be in excess of \$500,000 which should be exempted
13 from discharge in the Debtor's bankruptcy. Based on the foregoing fraud and defalcation, Plaintiff
14 requests that the debt owed to Plaintiff by the Debtor be deemed not dischargeable in his bankruptcy.

15 18. In committing the acts hereinabove described, the Debtor acted wilfully, maliciously,
16 and with deliberate intent to deceive Plaintiff, and because thereof, Plaintiff is entitled to punitive and
17 exemplary damages in an amount to be determined at the time of trial.

18 SECOND CLAIM FOR RELIEF

19 (Nondischargeability against the Debtor Lee George Scharf - Pursuant to 11 U.S.C. §523(a)(6))

20 19. Plaintiff adopts, incorporate by reference, and alleges herein all of the allegations set
21 forth in paragraph 1 through 12, inclusive, as if set forth individually in this Second Claim for Relief.

22 20. Pursuant to §523(a)(6) of the Unites States Bankruptcy Code, a debt incurred by a debtor
23 who engages in wilful and malicious conduct which results in damages shall be nondischargeable.
24 Sharf engaged in wilful and malicious conduct as well as in the conversion of Plaintiff's assets.

25 21. While acting as a court appointed receiver for Plaintiff corporation, the Debtor engaged
26 in the following wilful and malicious acts, among others:

27 (A) On August 15, 2008, within three (3) days of the confirmation of his appointment

1 on August 12, 2008, Scharf started selling the assets of Veltex without disclosure to the Court and
2 plaintiffs or Court approval;

3 (B) Scharf started paying himself without from the proceeds of the asset sales without
4 disclosure to the Court and plaintiffs or Court approval on August 21, 2008, within nine (9) days of the
5 confirmation of his appointment on August 12, 2008;

6 (C) Scharf paid himself an aggregate amount of eighty thousand dollars (\$80,000), at
7 the rate of twenty thousand dollars (\$20,000) per month until the money was extinguished from the sale
8 of Veltex's assets;

9 (D) Scharf reimbursed himself over nine thousand dollars (\$9,000) in purported
10 expenses without disclosure to the Court and plaintiffs or Court approval;

11 (E) Scharf took three trips to various trade shows in Las Vegas and Atlanta at the
12 expense of the Veltex estate, taking his wife on at least one of the trips to Las Vegas, all without
13 disclosure to the Court and plaintiffs or Court approval;

14 (F) Scharf returned various assets of Veltex to the prior rouge management of the
15 Corporation, including an automobile titled to Veltex, various warehouse racks, inventory and office
16 furniture and equipment, all without disclosure to the Court and plaintiffs or Court approval;

17 (G) Scharf sold inventory and equipment to personal friends at below the market value
18 of such assets or even a fair liquidation value; and

19 (H) Scharf never accounted for funds which he obtained from Veltex's bank accounts.

20 22. As a direct and proximate result of the foregoing, Plaintiff has suffered damages in an
21 amount not presently ascertained but believed to be in excess of \$500,000 which should be exempted
22 from discharge in the Debtor's bankruptcy. Based on the foregoing fraud and defalcation, Plaintiff
23 requests that the debt owed to Plaintiff by the Debtor be deemed not dischargeable in his bankruptcy.

24 23. In committing the acts hereinabove described, the Debtor acted wilfully, maliciously,
25 and with deliberate intent to deceive Plaintiff, and because thereof, Plaintiff is entitled to punitive and
26 exemplary damages in an amount to be determined at the time of trial.

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1 PRAYER FOR RELIEF

2 WHEREFORE, Plaintiff requests judgment against Debtor and Defendant Lee George Scharf
3 as follows:

4 1. On its First Claim for Relief, for judgment against Debtor and Defendant Lee George
5 Scharf. determining that the debt owed by the Debtor to Plaintiff, is not dischargeable in his bankruptcy
6 case and for judgment according to proof.

7 2. On its Second Claim for Relief, for judgment against Debtor and Defendant Lee George
8 Scharf. determining that the debt owed by the Debtor to Plaintiff, is not dischargeable in his bankruptcy
9 case and for judgment according to proof.

10 3. That Plaintiff be awarded its costs of suit incurred herein and for such other and
11 further relief as this Court deems proper.


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19 Dated: December 29, 2009

LITWAK & HAVKIN



STELLA A. HAVKIN
Attorney for Plaintiff
VELTEX CORPORATION

ADVERSARY PROCEEDING COVER SHEET (Instructions on Page 2)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS Veltex Corporation		DEFENDANTS Lee George Scharf
ATTORNEYS (Firm Name, Address, and Telephone No.) Stella A. Havkin, #134334, Litwak & Havkin, 6320 Canoga Avenue, #1500, Woodland Hills, CA 91367 (818) 888-1568		ATTORNEYS (If Known) Dennis E. Megoldrick 350 S. Crenshaw Blvd., Suite A207B, Torrance, CA 90503
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee		PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other		FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input checked="" type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other
FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property		FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other
FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)		FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest
FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)		FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment
FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation		FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause
FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input checked="" type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny		Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
(continued next column)		
<input type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23
<input type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$ 500,000.00
Other Relief Sought		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Lee George Scharf		BANKRUPTCY CASE NO. 2:09-bk-36378SB
DISTRICT IN WHICH CASE IS PENDING Central	DIVISIONAL OFFICE Los Angeles	NAME OF JUDGE Samuel L. Bufford
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE 12/29/09	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Stella A. Havkin	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not presented by an attorney, the plaintiff must sign.

Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number Stella A. Havkin, #134334 Litwak & Havkin Attorneys at Law 6320 Canoga Avenue, #1500 Woodland Hills, CA 91367 Telephone (818) 999-1568 Facsimile (818) 999-2867 Attorney for Plaintiff Veltex Corporation	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA	
In re: Lee George Scharf, Kimberly Anne Scharf <div style="text-align: right;">Debtor.</div>	CHAPTER <u>7</u> CASE NUMBER 2:09-bk-36378SB ADVERSARY NUMBER
Veltex Corporation, <div style="text-align: right;">Plaintiff(s),</div> vs. Lee George Scharf, <div style="text-align: right;">Defendant(s).</div>	(The Boxes and Blank Lines below are for the Court's Use Only) (Do Not Fill Them In) <div style="text-align: center;"> SUMMONS AND NOTICE OF STATUS CONFERENCE </div>

TO THE DEFENDANT: A Complaint has been filed by the Plaintiff against you. If you wish to defend yourself, you must file with the Court a written pleading, in duplicate, in response to the Complaint. You must also send a copy of your written response to the party shown in the upper left-hand corner of this page. Unless you have filed in duplicate and served a responsive pleading by _____, the Court may enter a judgment by default against you for the relief demanded in the Complaint.

A Status Conference on the proceeding commenced by the Complaint has been set for:

Hearing Date:	Time:	Courtroom:	Floor:
<input checked="" type="checkbox"/> 255 East Temple Street, Los Angeles		<input type="checkbox"/> 411 West Fourth Street, Santa Ana	
<input type="checkbox"/> 21041 Burbank Boulevard, Woodland Hills		<input type="checkbox"/> 1415 State Street, Santa Barbara	
<input type="checkbox"/> 3420 Twelfth Street, Riverside			

PLEASE TAKE NOTICE that if the trial of the proceeding is anticipated to take less than two (2) hours, the parties may stipulate to conduct the trial of the case on the date specified, instead of holding a Status Conference. Such a stipulation must be lodged with the Court at least two (2) Court days before the date set forth above and is subject to Court approval. The Court may continue the trial to another date if necessary to accommodate the anticipated length of the trial.

Date of Issuance: _____

JON D. CERETTO
 Clerk of the Bankruptcy Court

By: _____
Deputy Clerk

In re Lee George Scharf, Kimberly Anne Scharf	CHAPTER <u>7</u>
Debtor.	CASE NUMBER 2:09-bk-36378SB

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF Los Angeles

1. I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is as follows:
6320 Canoga Avenue, #1500, Woodland Hills, CA 91367
2. **Regular Mail Service:** On _____, I served the foregoing Summons and Notice of Status Conference (and any instructions attached thereto), together with the Complaint filed in this proceeding, on the Defendant(s) at the following address(es) by placing a true and correct copy thereof in a sealed envelope with postage thereon fully prepaid in the United States Mail at _____, California, addressed as set forth below.
3. **Personal Service:** On _____, personal service of the foregoing Summons and Notice of Status Conference (and any instructions attached thereto), together with the Complaint filed in this proceeding, was made on the Defendant(s) at the address(es) set forth below.
4. Defendant(s) and address(es) upon which service was made:

Names and Addresses continued on attached page

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

Dated:

Type Name

Signature

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