

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In re:**

**Dennis L. & Anna C. Peters**

**Chapter 7**

**Debtor**

**BK 04-33120**

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**Habbo G. Fokkena, United States Trustee**

**Plaintiff,**

**vs.**

**Adv. No. 04-3355**

**Dennis L. & Anna C. Peters**

**Defendants.**

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**MOTION FOR DEFAULT JUDGMENT**

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Habbo G. Fokkena, United States Trustee, Plaintiff, by and through his undersigned attorney, Sarah J. Wencil, hereby moves for a default judgment to be entered against Dennis LeRoy and Anna Carol Peters, Defendants, on the following grounds:

1. A hearing will be held on this motion on October 27, 2004, at 10:15 a.m. before the Honorable Gregory F. Kishel, Courtroom No. 228B, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.

2. Any response to this motion must be filed and delivered not later than October 22, 2004, which is three days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays), or filed and served by mail not later than October 18, 2004, which is seven days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays). Local Bankruptcy Rule 9006-1. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

3. The United States Trustee filed the above named complaint under FED. R. BANKR. P. 7001(4) to seek a denial of discharge to Defendants pursuant to 11 U.S.C. § 727(a)(9).

4. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and FED. R. BANKR. P. 4004. This proceeding is a core proceeding.

5. Summons was issued on August 17, 2004, by the United States Bankruptcy Court, District of Minnesota, directing the Defendants to reply to the United States Trustee's complaint within thirty (30) days and file an answer with the United States Bankruptcy Court pursuant to the Bankruptcy Rules. *See* Att. Ex. 1 (Docket Report in Adv. Case No. 04-3355). The United States Trustee mailed the complaint and summons to the defendant debtor and his bankruptcy attorney on August 17, 2004. *See* Att. Ex. 2 (Affidavit of Service).

6. An answer to the United States Trustee's complaint was due on approximately September 16, 2004. FED. R. BANKR. P. 7012(a).

7. As of September 17, 2004, the Defendants have not filed an answer to the United States Trustee's complaint. *See* Affidavit of Default.

8. The United States Trustee made the following allegation in his complaint:

- a. The defendant debtors, Dennis L. & Anna C. Peters, are residents of Minnesota.
- b. The defendant debtors commenced the present bankruptcy case on May 25, 2004 (Bankr. Case No.04-33120).
- c. The defendant debtors commenced a prior chapter 13 bankruptcy case on February 23, 1999 (Bankr. Case No. 99-30918).
- d. Jasmine Keller was appointed as Chapter 13 trustee.
- e. A chapter 13 plan was confirmed on May 19, 1999 and later modified on

March 14, 2002.

- f. The defendant debtors received a discharge under 11 U.S.C. § 1328 in the Chapter 13 case on June 4, 2004.
- g. The defendant debtors' previously confirmed Chapter 13 plan provided for payment of the allowed unsecured claims in the total amount of forty-three percent (4.66%).
- h. The defendant debtors do not qualify for the one hundred percent (100%) or the seventy percent (70%) exception provided by Section 727(a)(9).
- i. The previously filed Chapter 13 case of the defendant debtors in which they received a discharge under Section 1328 was commenced within six years before the date of the filing of the present chapter 7 petition.

9. The Defendants are not entitled to a discharge of their debts in this case pursuant to 11 U.S.C. § 727(a)(9).

WHEREFORE, the Plaintiff requests that the Bankruptcy Court enter a default judgment denying the defendant debtor's discharge in bankruptcy case no 04-33120.

Dated September 17, 2004

HABBO G. FOKKENA  
UNITED STATES TRUSTEE  
REGION 12

BY: /s/ Sarah J. Wencil  
Sarah J. Wencil  
Trial Attorney  
1015 U.S. Courthouse  
300 S. 4<sup>th</sup> Street  
Minneapolis, MN 55415  
(612) 664-5500  
IA ATTY NO. 14014

# Exhibit 1

Return to Search Results Page

U.S. Bankruptcy Court  
District of Minnesota (St. Paul)

Adversary Proceeding #: 04-3355

Date filed: 8/17/04

Assigned to: CHIEF JUDGE GREGORY F KISHEL

Related Bankruptcy Case #: 04-33120

In Re: DENNIS LEROY PETERS, ANNA CAROL PETERS

Demand: \$0,000

Nature of Suit: 424

=====

\* Attorneys \*

HABBO G FOKENA US TRUSTEE  
300 S 4TH ST STE 1015  
MINNEAPOLIS, MN 55415  
\* Plaintiff \*

SARAH J WENCIL  
US TRUSTEE OFFICE  
300 S 4TH ST STE 1015  
MINNEAPOLIS, MN 55415  
612-664-5500

v.

ANNA CAROL PETERS  
822 3RD ST N  
ST JAMES, MN 56081  
SSN: XXX-XX-2236  
\* Defendant \*

DENNIS LEROY PETERS  
822 3RD ST N  
ST JAMES, MN 56081  
SSN: XXX-XX-5537  
\* Defendant \*

Proceedings include all events.  
04-3355 In re:

HABBO G and ANNA

8/17/04 1 Complaint (04-3355) HABBO G  
vs. ANNA CAROL PETERS . NOS 424  
Objection To Discharge (727) by Sarah Wencil on: Tue Aug  
17 10:11:21 2004 (A052) [EOD 08/17/04] [04-3355]

8/17/04 2 Summons issued on DENNIS LEROY PETERS, ANNA CAROL PETERS.  
Answer due 9/16/04 for DENNIS LEROY PETERS, for ANNA CAROL  
PETERS Non-Service of Process Deadline 12/15/04 (A052)  
[EOD 08/17/04] [04-3355]

8/17/04 3 Certificate of Service by Plaintiff HABBO G FOKENA US  
TRUSTEE of [2-1] Summons by ANNA CAROL PETERS, DENNIS  
LEROY PETERS, [1-1] Complaint NOS 424 Objection To  
Discharge (727) . (A052) [EOD 08/17/04] [04-3355]

8/18/04 4 Pro Bono Notice to Defendants Re: [1-1] Complaint NOS 424  
Objection To Discharge (727) . Court's Certificate of  
Mailing. (aml) [EOD 08/18/04] [04-3355]

9/15/04 5 Order for Scheduling Conference ;Sched/Pre-Trial Conf. set  
for 10:15 10/27/04 at Courtroom 228B (St. Paul) .  
Certificate of Mailing. (aml) [EOD 09/15/04]  
[04-3355]

# Exhibit 2

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Dennis L. & Anna C. Peters

Chapter 7

Debtor

BK 04-33120

---

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-3355

Dennis L. & Anna C. Peters

Defendants.

---

AFFIDAVIT OF SERVICE

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The undersigned states under penalty of perjury that she is an employee of the United States Trustee's Office and in the course of said employment served the following:

SUMMONS AND COMPLAINT OBJECTING TO DISCHARGE

on the entities named below and/or on the attached service by enclosing true and correct copies of same in an envelope, properly addressed, and postage prepaid, and depositing same in the United States mail, unless otherwise noted.

Dated: August 17, 2004

  
Cheri LeVair

Subscribed and sworn before me in Hennepin County, Minnesota  
on the 17th day of August 2004.



Notary Public

My commission expires on 11/31/05



**Addresses:**

**Dennis L. and Anna C. Peters**  
822 - 3rd Street N.  
St. James, MN 56081

**Christopher M. Kennedy**  
Kennedy & Kennedy  
PO Box 3223  
Mankato, MN 56002-3223

**Michael S. Dietz**  
505 Marquette Bldg.  
PO Box 549  
Rochester, MN 55903

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In re:**

**Dennis L. & Anna C. Peters**

**Chapter 7**

**Debtor**

**BK 04-33120**

---

**Habbo G. Fokkena, United States Trustee**

**Plaintiff,**

**vs.**

**Adv. No. 04-3355**

**Dennis L. & Anna C. Peters**

**Defendants.**

---

**AFFIDAVIT OF DEFAULT**

---

I, Sarah J. Wencil, being duly sworn and under oath, state that:

1. I am employed as a trial attorney for the United States Trustee.
2. I am the attorney of record for the United States Trustee in the above entitled adversary proceeding.
3. The United States Trustee has not been served with an answer by the Defendants.
4. A BANCAP/PACER docket report generated on September 17, 2004, shows that no answer was docketed by the Bankruptcy Court within the time prescribed by the Bankruptcy Rules. *See Application for Default Judgement, Att. Ex. 1.*

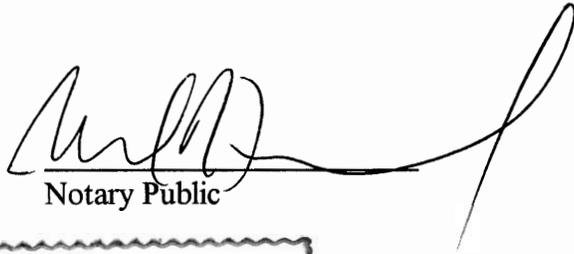
This concludes my Affidavit.

Dated: September 17, 2004



Sarah J. Wencil  
Trial Attorney

Subscribed and Sworn Before Me This 17<sup>th</sup> Day of September, 2004.



Notary Public



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In re:**

**Dennis L. & Anna C. Peters**

**Chapter 7**

**Debtor**

**BK 04-33120**

---

**Habbo G. Fokkena, United States Trustee**

**Plaintiff,**

**vs.**

**Adv. No. 04-3355**

**Dennis L. & Anna C. Peters**

**Defendants.**

---

**AFFIDAVIT OF IDENTIFICATION**

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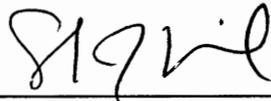
I, Sarah J. Wencil, being duly sworn and under oath, state that:

1. I am employed as a trial attorney to the United States Trustee.
2. I am the attorney of record in the above entitled adversary case.
3. The name and address of the Defendants in the above entitled matter was listed on the Notice of Commencement of Case under Chapter 7 of the Bankruptcy Code (case number 04-33120): Dennis LeRoy and Anna Carol Peters, 822 3<sup>rd</sup> St. N., St. James, MN 56081. *See Att. Ex. 1.*
4. Original Schedule I lists that the Defendants are married and that Mr. Peters is employed as a truck driver. *See Att. Ex. 2.*
5. According to the attached Schedule, the Defendants are not infants and are not employed by a military organization.
6. The Defendants are represented by counsel in bankruptcy case number 04-33120:

Christopher M. Kennedy, Kennedy & Kennedy, PO Box 3223, Mankato, MN,  
who was also served with a copy of the United States Trustee's complaint. *See*  
Application for Default Judgment, Att. Ex. 2.

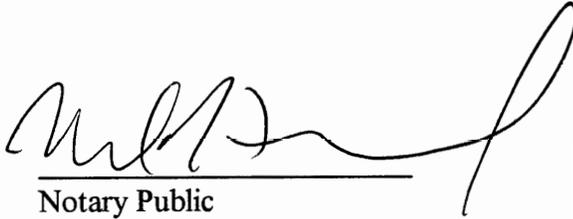
7. Based on the foregoing, the United States Trustee is of the belief that the  
Defendants are competent.

Dated: September 17, 2004



\_\_\_\_\_  
Sarah J. Wencil  
Trial Attorney

Subscribed and Sworn Before Me The 17<sup>th</sup> Day of September, 2004.



\_\_\_\_\_  
Notary Public



# Exhibit 1

## UNITED STATES BANKRUPTCY COURT

District of Minnesota

## Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, &amp; Deadlines

A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on 05/25/04.

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected by accessing the court's web site at [www.mnb.uscourts.gov](http://www.mnb.uscourts.gov) or at the bankruptcy clerk's office at the address listed below. **NOTE:** The staff of the bankruptcy clerk's office cannot give legal advice.

## See Reverse Side For Important Explanations.

## Debtor(s) (name(s) and address):

DENNIS LEROY PETERS  
822 3RD ST N  
ST JAMES, MN 56081

ANNA CAROL PETERS

Case Number:  
04 - 33120 - GFK

Social Security/Taxpayer ID Nos.:  
XXX-XX-5537  
XXX-XX-2236

## Attorney for Debtor(s) (name and address):

CHRISTOPHER M KENNEDY  
KENNEDY & KENNEDY  
PO BOX 3223  
MANKATO, MN 56002-3223  
Telephone number: 507-345-4582

## Bankruptcy Trustee (name and address):

MICHAEL S DIETZ  
505 MARQUETTE BLDG  
PO BOX 549  
ROCHESTER, MN 55903  
Telephone number: 507-288-9111

## Meeting of Creditors:

Date: **July 7, 2004**      Time: **11:00 am**      Location: **U S BANKRUPTCY COURT  
PO BLDG 2ND FL  
401 S 2ND ST  
MANKATO, MN 56002**

## Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

**Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts:**  
09/07/04

**Deadline to Object to Exemptions:**  
Thirty (30) days after the *conclusion* of the meeting of creditors.

## Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

**Please Do Not File A Proof of Claim Unless You Receive a Notice To Do So.**

## Address of the Bankruptcy Clerk's Office:

U S BANKRUPTCY COURT  
U S COURTHOUSE RM 200  
316 N ROBERT ST  
ST PAUL, MN 55101  
Web address: [www.mnb.uscourts.gov](http://www.mnb.uscourts.gov)

## For the Court:

Acting Clerk of the Bankruptcy Court:  
LORI VOSEJPKA

Hours Open: Monday - Friday 8:00 AM - 5:00 PM

Date: 05/26/04

# Exhibit 2

In re **Dennis LeRoy Peters,  
Anna Carol Peters**

Case No. \_\_\_\_\_

Debtors

**SCHEDULE I. CURRENT INCOME OF INDIVIDUAL DEBTOR(S)**

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Debtor's Marital Status:  <b>Married</b>	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP <b>None.</b>	AGE
<b>EMPLOYMENT:</b>	DEBTOR	SPOUSE
Occupation	<b>Truck Driver</b>	
Name of Employer	<b>Kuehl Transport</b>	
How long employed	<b>3 years</b>	
Address of Employer		

	DEBTOR	SPOUSE
INCOME: (Estimate of average monthly income)		
Current monthly gross wages, salary, and commissions (pro rate if not paid monthly)	\$ <u>2,800.00</u>	\$ <u>0.00</u>
Estimated monthly overtime	\$ <u>0.00</u>	\$ <u>0.00</u>
<b>SUBTOTAL</b>	<b>\$ <u>2,800.00</u></b>	<b>\$ <u>0.00</u></b>
<b>LESS PAYROLL DEDUCTIONS</b>		
a. Payroll taxes and social security	\$ <u>771.52</u>	\$ <u>0.00</u>
b. Insurance	\$ <u>539.52</u>	\$ <u>0.00</u>
c. Union dues	\$ <u>0.00</u>	\$ <u>0.00</u>
d. Other (Specify) _____	\$ <u>0.00</u>	\$ <u>0.00</u>
<b>SUBTOTAL OF PAYROLL DEDUCTIONS</b>	<b>\$ <u>1,311.04</u></b>	<b>\$ <u>0.00</u></b>
<b>TOTAL NET MONTHLY TAKE HOME PAY</b>	<b>\$ <u>1,488.96</u></b>	<b>\$ <u>0.00</u></b>
Regular income from operation of business or profession or farm (attach detailed statement)	\$ <u>0.00</u>	\$ <u>0.00</u>
Income from real property	\$ <u>0.00</u>	\$ <u>0.00</u>
Interest and dividends	\$ <u>0.00</u>	\$ <u>0.00</u>
Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above	\$ <u>0.00</u>	\$ <u>0.00</u>
Social security or other government assistance (Specify) _____	\$ <u>0.00</u>	\$ <u>320.00</u>
_____	\$ <u>0.00</u>	\$ <u>0.00</u>
Pension or retirement income	\$ <u>0.00</u>	\$ <u>0.00</u>
Other monthly income (Specify) _____	\$ <u>0.00</u>	\$ <u>0.00</u>
_____	\$ <u>0.00</u>	\$ <u>0.00</u>
<b>TOTAL MONTHLY INCOME</b>	<b>\$ <u>1,488.96</u></b>	<b>\$ <u>320.00</u></b>
<b>TOTAL COMBINED MONTHLY INCOME</b>	<b>\$ <u>1,808.96</u></b>	

(Report also on Summary of Schedules)

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In re:**

**Dennis L. & Anna C. Peters**

**Chapter 7**

**Debtor**

**BK 04-33120**

---

**Habbo G. Fokkena, United States Trustee**

**Plaintiff,**

**vs.**

**Adv. No. 04-3355**

**Dennis L. & Anna C. Peters**

**Defendants.**

---

**AFFIDAVIT ON MERITS AND AMOUNT DUE**

---

I, Sarah J. Wencil, being duly sworn and under oath, state that:

1. I am a trial attorney to the United States Trustee.
2. I am the attorney of record in the above entitled case.
3. A monetary judgment has not been requested in this adversarial proceeding. The relief sought by the United States Trustee is a denial of the defendant debtor's Chapter 7 discharge in bankruptcy case number 04-33120.
4. The United States Trustee has a legal basis upon which to request such relief pursuant to the authority of 11 U.S.C. § 727(a)(9).
5. Said relief is supported by the following facts:
  - a. The defendant debtors, Dennis L. & Anna C. Peters, are residents of Minnesota.
  - b. The defendant debtors commenced the present bankruptcy case on May 25, 2004 (Bankr. Case No.04-33120).
  - c. The defendant debtors commenced a prior chapter 13 bankruptcy case on

February 23, 1999 (Bankr. Case No. 99-30918).

- d. Jasmine Keller was appointed as Chapter 13 trustee.
- e. A chapter 13 plan was confirmed on May 19, 1999 and later modified on March 14, 2002.
- f. The defendant debtors received a discharge under 11 U.S.C. § 1328 in the Chapter 13 case on June 4, 2004.
- g. The defendant debtors' previously confirmed Chapter 13 plan provided for payment of the allowed unsecured claims in the total amount of forty-three percent (4.66%).
- h. The defendant debtors do not qualify for the one hundred percent (100%) or the seventy percent (70%) exception provided by Section 727(a)(9).
- i. The previously filed Chapter 13 case of the defendant debtors in which they received a discharge under Section 1328 was commenced within six years before the date of the filing of the present chapter 7 petition.

6. The Defendants are not entitled to a discharge of their debts in this case pursuant to 11 U.S.C. § 727(a)(9).

Dated: September 17, 2004



Sarah J. Wencil  
Trial Attorney

Subscribed and Sworn Before Me The 17<sup>th</sup> Day of September, 2004.



Notary Public



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In re:**

**Dennis L. & Anna C. Peters**

**Chapter 7**

**Debtor**

**BK 04-33120**

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**Habbo G. Fokkena, United States Trustee**

**Plaintiff,**

**vs.**

**Adv. No. 04-3355**

**Dennis L. & Anna C. Peters**

**Defendants.**

---

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER FOR JUDGMENT**

---

At St. Paul, Minnesota on the \_\_\_\_\_ day of \_\_\_\_\_, 2004, the United States Trustee's Motion for Default Judgment, which was supported by an Affidavit of Default, an Affidavit of Identification, and an Affidavit on the Merits as required by Local Bankruptcy Rule 7055-1, came before the undersigned.

**Findings of Fact**

1. The defendant debtors commenced the present bankruptcy case on May 25, 2004 (Bankr. Case No.04-33120).
2. The defendant debtors commenced a prior chapter 13 bankruptcy case on February 23, 1999 (Bankr. Case No. 99-30918).
3. Jasmine Keller was appointed as Chapter 13 trustee in the prior case.
4. A chapter 13 plan was confirmed on May 19, 1999 and later modified on March 14, 2002.
5. The defendant debtors received a discharge under 11 U.S.C. § 1328 in the Chapter

13 case on June 4, 2004.

6. The defendant debtors' previously confirmed Chapter 13 plan provided for payment of the allowed unsecured claims in the total amount of forty-three percent (4.66%).
7. The defendant debtors do not qualify for the one hundred percent (100%) or the seventy percent (70%) exception provided by Section 727(a)(9).
8. The previously filed Chapter 13 case of the defendant debtors in which they received a discharge under Section 1328 was commenced within six years before the date of the filing of the present chapter 7 petition.

#### **Conclusions of Law**

The defendant debtors, Dennis LeRoy and Anna Carol Peters, are not eligible to receive a discharge in this case pursuant to 11 U.S.C. § 727(a)(9). The payments under the Chapter 13 plan in Bankr. No. 99-30918 failed to meet the thresholds of one hundred percent (100%) or seventy percent (70%), as provided by Section 727(a)(9). Bankr. No. 99-30918 was commenced within six years before the date of the filing of the present chapter 7 petition.

#### **Order for Judgment**

IT IS HEREBY ORDERED: The discharge for defendant debtors, Dennis LeRoy and Anna Carol Peters, in bankruptcy case number 04-33120 is denied. LET JUDGMENT BE ENTERED ACCORDINGLY.

---

The Honorable Gregory F. Kishel  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In re:**

**Dennis L. & Anna C. Peters**

**Chapter 7**

**Debtor**

**BK 04-33120**

---

**Habbo G. Fokkena, United States Trustee**

**Plaintiff,**

**vs.**

**Adv. No. 04-3355**

**Dennis L. & Anna C. Peters**

**Defendants.**

---

**AFFIDAVIT OF SERVICE**

---

The undersigned hereby certifies that she is an employee in the Office of the United States Trustee for the District of Minnesota and is a person of such age and discretion as to be competent to serve papers.

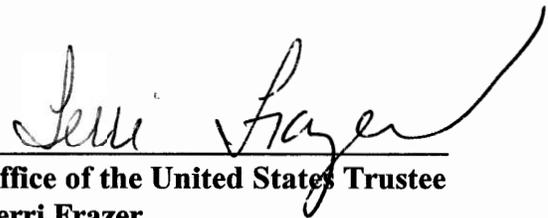
That on September 17, 2004, she served a copy of the attached: Motion for Default Judgement, Affidavit of Default, Affidavit of Identification, Affidavit on the Merits, and proposed Findings of Fact, Conclusions of Law and Order for Judgement, by placing said copies in a postpaid envelope addressed to the person(s), herein after named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Minneapolis, Minnesota.

**Addressees:**

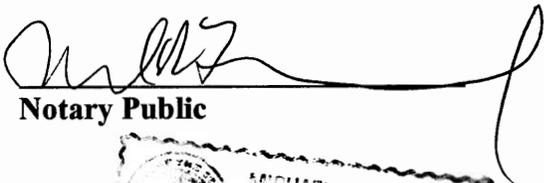
Dennis L. and Anna C. Peters  
822 - 3rd Street N.  
St. James, MN 56081

Christopher M. Kennedy  
Kennedy & Kennedy  
PO Box 3223  
Mankato, MN 56002-3223

Michael S. Dietz  
505 Marquette Bldg.  
PO Box 549  
Rochester, MN 55903

  
Office of the United States Trustee  
Terri Frazer

Subscribed and sworn to before  
me the 17<sup>th</sup> day of September, 2004.

  
Notary Public

