



1 Richard A. Marshack  
2 **MARSHACK HAYS LLP**  
3 5410 Trabuco Road, Suite 130  
4 Irvine, CA 92620  
5 Telephone: (949) 333-7777  
6 Facsimile: (949) 333-7778  
7 Email: rmarshack@marshackhays.com

8 Chapter 7 Trustee

9  
10 **UNITED STATES BANKRUPTCY COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

12 In re  
13 **ANGELA E. PACHECO,**  
14  
15 Debtor.

16 Case No. 8:08-bk-12529-ES  
17 Chapter 7

18 **NOTICE OF TRUSTEE’S MOTION FOR ORDER**  
19 **AUTHORIZING SALE OF REAL PROPERTIES OF THE**  
20 **ESTATE FREE AND CLEAR OF LIENS and APPROVING**  
21 **PAYMENT OF REAL ESTATE COMMISSIONS**

22 **Real Properties Located at:**

- 23 (1) 1313 S. Market Street, Wichita, KS; and  
24 (2) 2327 S. Emporia, Wichita, KS

25 [NO HEARING PURSUANT TO LBR 9013-(o)(1)]

26 **PLEASE TAKE NOTICE** that Richard A. Marshack, Chapter 7 Trustee (“Trustee”) for the bankruptcy estate of Angela E. Pacheco (“Debtor”), will bring a motion for an order (1) authorizing the sale of the real properties of the bankruptcy estate free and clear of liens and subject to certain overbid procedures; (2) approving those overbid procedures; and (3) approving payment of real estate commissions (the “Sale Motion”). In support thereof, the Trustee respectfully represents as follows:

27 1. Debtor filed a petition for bankruptcy pursuant to Chapter 7 of Title 11 on May 9, 2008 (the “Petition Date”) and Richard A. Marshack was appointed as Chapter 7 trustee for the bankruptcy Estate.

28 2. Debtor owns the real properties located at 1313 S. Market, Wichita, Kansas (the “Market Property”) and 2327 S. Emporia, Wichita, Kansas (the “Emporia Property”) (collectively referred to herein as the “Properties”). In her Schedule “A”, Debtor valued the Market Property at \$40,000 and the Emporia Property at \$24,000. In Schedule “C”, Debtor claimed exemptions in the amount of \$10,000 for each property. Debtor’s Schedule “D” reflects no liens against the Properties.

29 3. On March 12, 2009, an order was entered authorizing the employment of Tom Tuttle of SEI Real Estate as Trustee’s real estate broker (“Broker”). Broker provided broker price opinions of value (“BPO”) for the Properties. The BPO for the Market Property reflected a more accurate value between \$14,000 and \$20,000. The BPO for the Emporia Property reflected a value between \$18,000 and \$28,000. The Properties are in severe disrepair and not habitable in their current conditions. However, Broker located buyers and has presented offers for the purchase of the Properties.

30 4. Trustee has obtained offers to purchase the Properties (the “Offers”) as follows:  
31 a. **Market Property:** Levihen LLC (the “Market Buyer”) has submitted an offer to purchase the Market Property. Attached to the Sale Motion as Exhibit “A” is a true and correct copy of the proposed Purchase and Sale Agreement (the “Market Agreement”). The Market Agreement itself is the legally binding document for which the Trustee is seeking approval through this Sale Motion.

- b. **Purchase Price of Market Property:** the Purchase Price shall be \$16,000, or an amount as increased by any overbid, all cash, to be paid at the close of escrow. Trustee has received a \$1,000 deposit that will be held in the Estate’s trust account until Bankruptcy Court approval of the sale. The deposit is refundable only if the Market Buyer’s offer is not approved by the Bankruptcy Court. The balance of the Purchase Price will be all cash at the conclusion of the sale.
- c. **Emporia Property:** German and Veronica Vega (the “Emporia Buyers”) have submitted an offer to purchase the Emporia Property. Attached to the Sale Motion as Exhibit “B” is a true and correct copy of the proposed Purchase and Sale Agreement (the “Emporia Agreement”). The Emporia Agreement itself is the legally binding document for which the Trustee is seeking approval through this Sale Motion.
- d. **Purchase Price of Emporia Property:** the Purchase Price shall be \$20,000, or an amount as increased by any overbid, all cash, to be paid at the close of escrow. Trustee has received a \$100 deposit that will be held in the Estate’s trust account until Bankruptcy Court approval of the sale. The deposit is refundable only if the Market Buyer’s offer is not approved by the Bankruptcy Court. The balance of the Purchase Price will be all cash at the conclusion of the sale.

5. A summary of the terms of the Market Agreement and Emporia Agreement is as follows:

- a. **Properties Sold “as is – where as”:** The Properties are being sold “as is – where as”, at the conclusion of the sale without the benefit of any representations or warranties regarding their conditions. Thus, I am not making any representations or warranties, either express or implied, as to the Properties condition, uses (prior, present and future), or otherwise. Moreover, I do not warrant or represent the Properties compliance with any applicable federal, state or local environmental laws, zoning laws or applicable regulations. I make no warranties or representations whatsoever pursuant to California Civil Code Sections 1102-1102.13 or any other provision of California law or otherwise. The Market Buyer and the Emporia Buyers (collectively referred to herein as the “Buyers”) will purchase the Properties based upon and in reliance upon his or her own inspection and analysis of the condition of the Properties. As of the conclusion of the sale, the Buyers shall acquire the Properties "as is," with all faults and conditions then existing at Properties, including any hazardous substances or hazardous waste that may be located on, under or around Properties, whether known or unknown. The Buyers are releasing me, as the Trustee, but not assuming Trustee’s nor the bankruptcy estate’s liabilities.
- b. **Sale Subject to Bankruptcy Court Approval:** This transaction is expressly conditioned on approval of the United States Bankruptcy Court for the Central District of California, Santa Ana Division, the Honorable Erithe A. Smith presiding.
- c. **Disbursements at the Conclusion of Sale:** Trustee will approve in writing all disbursements to be made at the conclusion of the sale of the Properties. No funds are to be disbursed without Trustee’s prior written approval.
- d. **Unknown Contingencies:** If Trustee is unable to complete the sale, the Buyers’ sole damages will be limited to the refund of any deposits less title charges.
- e. **Good Faith of the Buyers:** The sales are subject to the Court finding that the sales are in good faith pursuant to Bankruptcy Code Section 363(m).

6. There are no liens against the Properties.

7. Through the Sale Motion, as provided in the Purchase Agreements, Trustee seeks authorization to pay real estate broker commissions as follows:

<b>MARKET PROPERTY</b> – Purchase Price \$16,000	Commission to be Paid
Trustee’s Broker: Tom Tuttle / SEI Real Estate 3% of the Purchase Price	\$480.00
Agent for Buyer: Corbin Turpin / Citywide Realty Corp 3% of the Purchase Price	\$480.00
Total Commission to be Paid	\$960.00

<b>EMPORIA PROPERTY</b> –Purchase Price \$20,000	Commission to be Paid
Trustee’s Broker: Tom Tuttle / SEI Real Estate	\$600.00

3% of the Purchase Price	
Agent for Buyer: Tom Tuttle / SEI Real Estate 3% of the Purchase Price	\$600.00
Total Commission to be Paid	\$1,200.00

8. The Sale of the Properties as proposed herein is expected to generate net proceeds for the Debtor's bankruptcy estate, as follows:

<b><u>MARKET PROPERTY</u></b>	
Purchase Price	\$16,000.00
Estimated Costs of Sale (including 6% commission)	\$(1,280.00)
Property Taxes	\$(1,081.00)
Debtor's Exemption	\$(10,000.00)
Estimated Net Proceeds	\$3,639.00

<b><u>EMPORIA PROPERTY</u></b>	
Purchase Price	\$20,000.00
Estimated Costs of Sale (including 6% commission)	\$(1,600.00)
Property Taxes	\$(1,480.00)
Debtor's Exemption	\$(10,000.00)
Estimated Net Proceeds	\$6,920.00

9. Trustee has made a business decision that it is in the best interest of the creditors of this Estate that this Sale Motion be approved based on the following:

- a. When compared to other recent sales of similar properties in the area, Trustee believes that the proposed sale price of the Property is fair and reasonable.
- b. The sales will generate cash from the sale of an asset for its fair market value. Thus, the sale of the Property must go forward without delay in order to avoid losing this favorable business opportunity.

For further information, please see the Trustee's Motion For Order Authorizing Sale of Real Properties of The Estate and Approval of Payment of Real Estate Commissions; Memorandum Of Points And Authorities And Declaration Of Richard A. Marshack In Support Thereof on file with the Clerk of the above-entitled Court which may be reviewed Monday through Friday from 9:00 a.m. to 4:00 p.m.

**PLEASE TAKE FURTHER NOTICE** that any objection and request for hearing as to the proposed sale must be in the form as required by Local Bankruptcy Rule 9013-1(f) and filed with the Clerk of the above-entitled Court no later than fifteen days (15) from the date of service of this Notice, and a copy served on Richard A. Marshack, Chapter 7 Trustee at the address indicated in the upper left hand corner of this document and upon the Office of the United States Trustee, 411 W. Fourth Street, Suite 9041, Santa Ana, California 92701. Failure to timely respond may be deemed as acceptance of the proposed sales. **SEE LOCAL BANKRUPTCY RULE 9013-1(o)(1)**. Requests for a copy of the Application should be in writing and directed to Richard Marshack at the address indicated above.

Dated: May \_\_, 2009



Richard A. Marshack  
Chapter 7 Trustee for the bankruptcy estate of  
Angela E. Pacheco

In re:

ANGELA E. PACHECO, Debtor(s).

CHAPTER 7

CASE NUMBER 8:08-12529-ES

### 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:  
26632 Towne Center Drive, Suite 300  
Foothill Ranch, CA 92610

The foregoing document described **NOTICE OF CHAPTER 7 TRUSTEE'S MOTION FOR ORDER AUTHORIZING SALE OF REAL PROPERTIES OF THE ESTATE FREE AND CLEAR OF LIENS** 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 indicated below:

**I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On May 14, 2009 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

United States Trustee (SA)	ustpregion16.sa.ecf@usdoj.gov
Joseph A Weber, Esq.	firmanweber@yahoo.com
Gilbert B Weisman, Esq.	notices@becket-lee.com

Service information continued on attached page

**II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL**(indicate method for each person or entity served):

On May 20, 2009 I served the following person(s) and/or entity(ies) at the last known address(es) 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/or with an overnight mail service 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.*

The Honorable Erithe A. Smith  
411 W. Fourth Street, 6-135  
Santa Ana, CA 92701

Service information continued on attached page

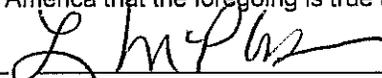
**III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL** (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on \_\_\_\_\_, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. *Listing the judge here constitutes a declaration that personal delivery on 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 of America that the foregoing is true and correct.

May 20, 2009  
Date

Laurie McPherson  
Type Name

  
Signature

## SERVICE LIST

### REAL ESTATE AGENT

TOM TUTTLE  
SEI REAL ESTATE  
7804 E. FUNSTON, SUITE 209  
WICHITA, KS 67207

### DEBTOR

ANGELA E. PACHECO  
2136 W. ASH AVE.  
FULLERTON, CA 92833-3211

### INTERESTED PARTY

UNITED STATES TRUSTEE (SA)  
411 W FOURTH ST., SUITE 9041  
SANTA ANA, CA 92701-4593

### CREDITOR

EMPLOYMENT DEVELOPMENT DEPT.  
BANKRUPTCY GROUP MIC 92E  
P.O. BOX 826880  
SACRAMENTO, CA 94280-0001

### CREDITOR

FRANCHISE TAX BOARD  
ATTN: BANKRUPTCY  
P.O. BOX 2952  
SACRAMENTO, CA 95812-2952

### CREDITOR

GE MONEY BANK  
25 SE 2ND AVENUE, SUITE 1120  
MIAMI, FL 33131-1605

### CREDITOR

WELLS FARGO BANK  
P O BOX 53476  
PHOENIX, AZ 85072-9955

### CREDITOR

ACA INNTERNATIONAL  
1802 N.E. LOOP 400  
SAN ANTONIO, TX 78217

### CREDITOR

AMERICAN EXPRESS  
CO FIRSTSOURCE ADVANTAGE,  
LLC  
205 BRYANT WOODS SOUTH  
AMHERST, NY 14228

### CREDITOR

AMERICAN EXPRESS/MAC TOOL  
CO VALENTINE & KEBARTAS, INC.  
PO BOX 325  
LAWRENCE, MA 01842

### CREDITOR

APEX FINANCIAL MANAGEMENT,  
LLC  
PO BOX 2189  
NORTHBROOK, IL 60065

### CREDITOR

APPLIED CARD BANK  
PO BOX 11170  
WILMINGTON, DE 19850-1170

### CREDITOR

ASSOCIATED RECOVERY SYSTEMS  
P.O. BOX 469046  
ESCONDIDO, CA 92046-9046

### CREDITOR

BANK OF AMERICA  
PO BOX 15026  
WILMINGTON, DE 19850-5026

### CREDITOR

CAPITAL MANAGEMENT  
SERVICES, LP  
726 EXCHANGE STREET  
SUITE 700  
BUFFALO, NY 14210

### CREDITOR

CAPITAL ONE  
PO BOX 30285  
SALT LAKE CITY, UT 84130-0285

### CREDITOR

CARE CREDIT/GEMB  
CO ZWICKER & ASSOCIATES, P.C.  
80 MINUTEMAN ROAD  
ANDOVER, MA 01810-1031

### CREDITOR

DISCOVER FIN. SVCS., LLC  
P.O. BOX 15316  
WILMINGTON, DE 19850

### NO ADDRESS

CREDITOR  
ELIZABETH PINEDA

### CREDITOR

FREDERICK J. HANNA &  
ASSOCIATES, PC  
1427 ROSWELL ROAD  
MARIETTA, GA 30062

### CREDITOR

GMAC  
PO BOX 380902  
BLOOMINGTON, MN 55438-0902

### CREDITOR

HSBC CARD SRVS  
PO BOX 81622  
SALINAS, CA 93912-1622

### CREDITOR

JC PENNY  
PO BOX 981403  
EL PASO, TX 79998-1403

**CREDITOR**

KEY EQUIPMENT FINANCE/AMEX  
CUSTOMER SERVICE  
600 TRAVIS SUITE 1300  
HOUSTON, TX 77002

**CREDITOR**

MYSTIC DUNES RESORT  
CO PALMS CONDO ASSOCIATION  
PO BOX 538699  
ATLANTA, GA 30353

**CREDITOR**

NCO FINANCIAL SYSTEMS, INC.  
1804 WASHINGTON BLVD.  
MAILSTOP 450  
BALTIMORE, MD 21230

**CREDITOR**

NORTHLAND GROUP, INC  
PO BOX 390846  
MINNEAPOLIS, MN 55439

**CREDITOR**

ORCHARD BANK  
HSBC CARD SERVICES  
PO BOX 80084  
SALINAS, CA 93912-0084

**CREDITOR**

PROVIDIAN  
PO BOX 660433  
DALLAS, TX 75266-0433

**CREDITOR**

QUEEN CITY  
1051 CLINTON STREET  
BUFFALO, NY 14206

**CREDITOR**

RECOVERY MANAGEMENT SYSTEMS  
CORPORATION  
25 S.E. 2ND AVENUE, SUITE 1120  
MIAMI, FL 33131-1605

**CREDITOR**

ROUNDUP FUNDING, LLC  
MS 550  
PO BOX 91121  
SEATTLE, WA 98111-9221

**CREDITOR**

TRI  
5422 CARRIER DRIVE SUITE 100  
ORLANDO, FL 32819

**CREDITOR**

TEMPUS FINANCIAL SERVICES  
PO BOX 690895  
ORLANDO, FL 32869-0895

**CREDITOR**

WASHINGTON MUTUAL  
PO BOX 660433  
DALLAS, TX 75266-0433

**CREDITOR**

WELLS FARGO BANK, N.A.  
MAC S4101-08C  
100 W. WASHINGTON ST.,  
PHOENIX, AZ 85003

**CREDITOR**

WELLS FARGO BUSINESSLINE  
WF BUSINESS DIRECT  
PO BOX 348750  
SACRAMENTO, CA 95834

**CREDITOR**

WELLS FARGO CARD SERVICES  
PO BOX 10347  
DES MOINES, IA 50306

**CREDITOR**

WINN LAW GROUP APC  
THE CHAPMAN BUILDING  
110 E WILSHIRE AVENUE  
SUITE 212

**CREDITOR**

ROSEVILLE GMAC  
PO BOX 130424  
ROSEVILLE, MN 55113

**PROPOSED REAL ESTATE AGENT**

TOM TUTTLE  
SEI REAL ESTATE  
7804 E. FUNSTON, SUITE 209  
WICHITA, KS 67207

In re ANGELA E. PACHECO,	CHAPTER: 7
Debtor(s).	CASE NO.: 8:08-12529-ES

**NOTE:** When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on a CM/ECF docket.

**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:  
 MARSHACK HAYS LLP  
 5410 TRABUCO ROAD, SUITE 130  
 IRVINE, CA 92620

A true and correct copy of the foregoing document described as 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 indicated below:

**I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** - Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On 5/14/09 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email addressed indicated below:

United States Trustee (SA) [ustpregion16.sa.ecf@usdoj.gov](mailto:ustpregion16.sa.ecf@usdoj.gov)  
 Joseph A Weber, Esq. [firmanweber@yahoo.com](mailto:firmanweber@yahoo.com)  
 Gilbert B Weisman, Esq. [notices@becket-lee.com](mailto:notices@becket-lee.com)

Service information continued on attached page

**II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL** (indicate method for each person or entity served):  
 On \_\_\_\_\_ I served the following person(s) and/or entity(ies) at the last known address(es) 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/or with an overnight mail service addressed as follow. 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

**III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL** (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on 5/22/09 I served the following person(s) and/or entity(ies) by personal delivery, 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 mailing to the judge will be completed no later than 24 hours after the document is filed.

The Honorable Erithe A. Smith  
 411 W. Fourth Street, 5-041  
 Santa Ana, CA 92701

Service information 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.

5/22/09 MELISSA HAWKINS Melissa Hawkins  
 Date Type Name Signature