KARL T. ANDERSON, TRUSTEE
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Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

RIVERSIDE DIVISION

In re: ARTHUR DAY MORENO, DINA ALICE MORENO, Debtors.	Case No. 6:09-bk-20850-PC CHAPTER 7 **MOTION OF THE CHAPTER 7 TRUSTEE TO:** **1) SELL PERSONAL PROPERTY OF THE ESTATE BY AUCTION FREE AND CLEAR OF ALL LIENS, CLAIMS OR INTERESTS OF THE INTERNAL REVENUE SERVICE;** **2) EMPLOY JACK POPE AS AUCTIONEER, AND** **3) COMPENSATE THE AUCTIONEER** [Local Bankruptcy Rule 9013-1(o)] [No hearing required]

MEMORANDUM OF POINTS AND AUTHORITIES

The debtors, Arthur Day Moreno and Dina Alice Moreno ("Debtors"), commenced this case by filing a voluntary chapter 7 bankruptcy petition on May 20, 2009. Karl T. Anderson ("Trustee") is the chapter 7 trustee for the bankruptcy estate of the Debtors. The Trustee hereby requests an order authorizing the Trustee to (1) sell personal property of the estate by auction free and clear of all liens, claims and interests of the Internal Revenue Service, (2) employ Jack Pope as auctioneer and (3) compensate Jack Pope.

I. THE COURT HAS AMPLE AUTHORITY TO APPROVE AN AUCTION.

The assets of the bankruptcy estate include vehicles, equipment and various other personal property described on Exhibit 2 including 1965 Malibu, Honda Raptor Quad, custom softail street bike, cement saws, mixers and tampers, jackhammers, gas tanks with pumps, trailers, and other equipment. (collectively, the "Estate Property"). The Trustee requests authority to sell the Estate Property by auction. According to Jack Pope, the proposed auctioneer, the value of the Estate Property is approximately $45,000 to $50,000.

As the Court is well aware, one of the primary duties of a chapter 7 trustee is to liquidate assets of the estate. 11 U.S.C. § 701(4). The bankruptcy code requires that the trustee "collect and reduce to money the property of the estate" and close the estate as "expeditiously" as possible. Id.; United States v. Hemmen, 51 F.3d 883, 890 n.6 (9th Cir. 1995) (noting that the bankruptcy trustee is "charged with the duty to reduce to money the property of the estate."). In order to accomplish this task, section 363(b) of the Bankruptcy Code gives the Trustee the power to sell property of the estate. In re Cutler, 165 B.R. 275, 278 (Bankr. D.Ariz. 1994) ("It is the duty of the Chapter 7 trustee to 'collect and reduce to money the property of the estate for which such trustee serves.' 11 U.S.C. § 704(1). As one means of accomplishing this task, the Trustee has the power under Section 363(b)(1) to sell property of the estate out of the ordinary course of business.").

Under section 363(b)(1) of the Bankruptcy Code "[t]he trustee, after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate."

11 U.S.C. § 363(b)(1); see also, Magnoni v. Globe Investment and Loan Company (In re Globe Investment and Loan Company, Inc.), 867 F.2d 556, 560 (9th Cir. 1989). Under section 363(b)(1), "[i]t is within the discretion of the bankruptcy judge whether to approve a trustee's proposed sale of property of the estate. Underlying this determination are factors concerning the integrity of the trustee's sale and the preservation of and the best interest of the estate." In re Alves, 52 B.R. 353, 355 (Bankr. D.R.I. 1985) (citations omitted); Apex Oil Company v. Vanguard Oil & Service Company, Inc. (In re Vanguard Oil & Service Company, Inc.), 88 B.R. 576, 581 (Bankr. E.D.N.Y. 1988) (citing Alves). "The proper standard for determining in the first instance if a proposed sale should be ordered is whether such sale is in the best interest of the estate." In re Planned Systems, Inc., 82 B.R. 919, 923 n.2 (Bankr. S.D. Ohio 1988).

This standard has been satisfied in this case. The sale of personal property by auction in bankruptcy cases is an extremely common practice. An auction is the most cost-effective choice for the creditors in this case. In addition, as discussed below, the Trustee has selected a high quality auctioneer, Jack Pope, to conduct the auction. Therefore, conducting an auction is in the best interests of the creditors of the estate and, unless a creditor objects, the Court should give the Trustee authority to conduct the auction. After the auction is concluded, Mr. Pope will provide the Court with a report of the results of the auction which (among other things) will state the amount received at the auction.

II. THE ESTATE PROPERTY SHOULD BE SOLD FREE AND CLEAR OF ALL LIENS, CLAIMS AND INTERESTS OF THE UNITED STATES OF AMERICA AND THE INTERNAL REVENUE SERVICE.

The Trustee requests that the Court authorize the sale of the Estate Property free and clear of all liens, claims and interests of the United States of America and the Internal Revenue Service (collectively, "IRS"). The IRS asserts no liens afainst this bankruptcy estate.

III. EMPLOYMENT OF JACK POPE.

The Trustee wishes to employ Jack Pope as auctioneer for the purpose of auctioning the Estate Property. Mr. Pope has agreed to accept compensation of 25% of the gross proceeds of the auction. Mr. Pope and his employees will plan, advertise and conduct the auction. The Estate Property shall be sold to the highest bidder.

The Trustee has selected Mr. Pope as auctioneer because Mr. Pope is well qualified to act in this capacity. Mr. Pope and the high quality of his auctions are well known in the auction community and the bankruptcy community. Mr. Pope serves many of the panel trustees and has conducted innumerable auctions in bankruptcy cases. Mr. Pope's qualifications are discussed in his attached declaration.

To the best knowledge of Mr. Pope, he has not previously been employed by the Debtor and he has no known previous connections with the Debtor. See Declaration of Jack Pope, ¶¶ 5-6. Mr. Pope has no pre-petition claim against the Debtor or the estate. Id. To the best knowledge of Mr. Pope, he represents no interest adverse to the Debtor or the estate. Id. Therefore, Mr. Pope is a disinterested person as defined by 11 U.S.C. § 101(14).

IV. COMPENSATION OF JACK POPE.

As set forth above, Mr. Pope will retain 25% of the gross proceeds of the auction as his compensation. The Trustee believes this rate of compensation is fair, equitable and within the range of compensation typically charged by high quality auctioneers. The order approving his employment shall also approve the payment of this compensation. No further order shall be obtained. Likewise, no fee application shall be filed and no further notice shall be provided regarding the payment of this compensation.

V. THE COURT SHOULD WAIVE THE PROVISIONS OF RULE 6004(h) AND AUTHORIZE AN IMMEDIATE AUCTION.

Finally, the Trustee requests that the Court waive the ten day stay imposed by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure.

VI. CONCLUSION.

In conclusion, the Trustee requests that the Court enter an order authorizing the Trustee to (1) sell personal property of the estate by auction free and clear of all liens, claims and interests of the Internal Revenue Service, (2) employ Jack Pope as auctioneer and (3) compensate Jack Pope.

DATED: January 7, 2010

KARL T. ANDERSON
Chapter 7 Trustee

Karl T. Anderson
Trustee

DECLARATION OF JACK POPE

I, JACK POPE, declare:

1. I am over the age of twenty-one and a resident of the State of California. I have personal knowledge of the contents of this declaration which are based on matters within my personal knowledge. If called upon to testify to the contents of this declaration, I could and would competently testify thereto.

2. I am an auctioneer licensed by the State of California since 1959. I have decades of experience conducting auctions in the Inland Empire area including San Bernardino County and Riverside County. My principal place of business is Pope's Auctions & Antiques, Inc. ("Pope's Auctions"), 55912 Santa Fe Trail, Yucca Valley, California 92284 (760) 329-1077. I have conducted hundreds of auctions for numerous courts and trusts. I am licensed and bonded by the State of California and my bond is on file with the Office of the United States Trustee. A more complete description of my credentials is attached as Exhibit 1.

3. The professional services that I shall render as auctioneer in this case include planning, advertising and conducting an auction of vehicles, equipment and various other personal property described on Exhibit 2 including a 1965 Malibu, Honda Raptor Quad, custom softail street bike, cement saws, mixers and tampers, jackhammers, gas tanks with pumps, trailers, and other equipment. As always, property shall be sold to the highest bidder.

4. As compensation for my services, I shall charge a flat commission rate of 25% of the gross proceeds of the auction.

5. To the best of my knowledge, neither I nor Pope's Auctions have ever represented the Debtors and neither Pope's Auctions nor I hold any pre-petition claim against the Debtors.

Neither I nor Pope's Auctions hold or represent any interest adverse to the Debtors or the estate. Both Pope's Auctions and I are "disinterested persons" within the meaning of 11 U.S.C. § 101(14). To the best of my knowledge, neither I nor Pope's Auctions (a) is a creditor, an equity security holder, or an insider of the Debtors, (b) is or was, within two years before the date of the filing of the petition, a director, officer or employee of the Debtors or (c) have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors, or for any other reason.

6. To the best of my knowledge, neither I nor Pope's Auctions have any connections with the Debtors, the creditors of the Debtors, any other parties in interest in this bankruptcy case (other than the Trustee), their respective attorneys and accountants, the United States Trustee or any person employed in the Office of the United States Trustee. I have, of course, worked with the Trustee and the Trustee's professionals in other bankruptcy cases.

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

Executed on this 7th day of January 2010 at Yucca Valley, California.

Jack Pope, Auctioneer

EXHIBIT 1

Pope's Auctions & Antiques, Inc.
Estates Bought & Sold – Antiques – Appraisals
55912 Santa Fe Trail, Yucca Valley, California 92284
P.O. Box 2167, Yucca Valley, California 92286
(760) 329-1077 (Office)
(760) 365-3358 (Facsimile)

Jack Pope State License # A691

Jack Pope owns, operates and is the principal of Pope's Auctions & Antiques, Inc. ("Pope's Auctions"). He is its principal auctioneer and has been licensed as an auctioneer by the State of California since 1959. He has over forty-five years of business experience in the sale of personal property by both private sale and by auction. Pope's Auctions has provided auction and appraisal services to numerous businesses. He provides such services to trust departments of banks, insurance companies, local courts, and private clients. Pope's Auctions was chosen as the auctioneer for the program known as "Lifestyles of the Rich & Famous". Pope's Auctions has also provided its services for fund raisers and celebrity events including the Roy Rogers – Dale Evans "Happy Trails Children's Foundation", the Barbara Sinatra Children's Foundation, The United Way, The City of Hope and The Boys and Girls Club.

Jack Pope been an auctioneer and appraiser for decades. He has been employed in many bankruptcy proceedings located in the San Bernardino, Riverside and Palm Springs area. He has also been appointed in probate matters by the Superior courts throughout the San Bernardino, Riverside and Palm Springs area. His experience in appraisal and liquidation has included participation in a variety of different industries and markets. For example, he has appraised and liquidated the equipment and inventory of construction companies, manufacturing concerns, retail stores, lumber yards, hardware stores, motels and hotels. As an agent for bankruptcy trustees, he has also had numerous occasions to provide management and supervising services in support of operating bankruptcy cases. Jack Pope is licensed and bonded by the State of California and has a security bond on file with the Secretary of State of California.

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 the 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: Karl T. Anderson, Chapter 7 Trustee, 700 E. Tahquitz Canyon Way, Suite H, Palm Springs. California 92262.

The foregoing document described **MOTION OF THE CHAPTER 7 TRUSTEE TO: 1) SELL PERSONAL PROPERTY OF THE ESTATE BY AUCTION FREE AND CLEAR OF ALL LIENS, CLAIMS OR INTERESTS OF THE INTERNAL REVENUE SERVICE; 2) EMPLOY JACK POPE AS AUCTIONEER, AND 3) COMPENSATE THE AUCTIONEER** 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 January 7, 2010, 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:

Karl T. Anderson	edansie@hotmail.com
United State Trustee (RS)	ustpregion16.rs.ecf@usdoj.gov
Phillip K. Evans	phillipevansattorney@gmail.com
Doyna V Dardon	bknotice@mccarthyholthus.com
Sheryl K Ith	sith@cookseylaw.com
Bernard J Kornberg	bjk@severson.com
John Patton on	jpatton@cookseylaw.com
Cassandra J Richey	cmartin@pprlaw.net

☐ Service information continued on attached page

II. **SERVED BY U.S. MAIL:** On November 25, 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.*

SEE ATTACHED SERVICE LIST

☒ 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.

January 7, 2010	Anna Anderson	
Date	*Type Name*	*Signature*

SERVICE LIST
Arthur Day Moreno, Dina Alice Moreno
6:09-bk-20850-PC

Debtor
Arthur Day Moreno
Dina Alice Moreno
11251 Union Street
Cherry Valley, CA 92223

Auctioneer
Jack Pope
Pope's Auctions & Antiques
P.O. Box 2167
Yucca Valley, California 92286