

Overbid procedure (if any): _____

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

Contact person for potential bidders (include name, address, telephone, fax and/or email address):

Steven J. Schwartz, Esq. _____
Danning, Gill, Diamond & Kollitz, LLP _____
1900 Avenue of the Stars, 11th Floor _____
Los Angeles, CA 90067 _____
Telephone: (310) 277-0077 _____
Facsimile: (310) 277-5735 _____
sschwartz@dgdk.com _____

Date: 2/6/2015

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6 Attorneys for John J. Menchaca,
Chapter 7 Trustee
7

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **LOS ANGELES DIVISION**

11 In re
12 ANDRE P. JOSE,
13 Debtor.

Case No. 2:14-bk-23747-RN
Chapter 7

**TRUSTEE'S NOTICE OF MOTION TO
CONFIRM SALE OF ESTATE'S RIGHT,
TITLE AND INTEREST IN REAL
PROPERTY**

[No Hearing Required Pursuant to Local
Bankruptcy Rule 9013-1(o)]

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18 **TO THE HONORABLE RICHARD M. NEITER, UNITED STATES BANKRUPTCY**
19 **JUDGE, THE DEBTOR AND HIS COUNSEL, THE UNITED STATES TRUSTEE, ALL**
20 **CREDITORS, AND ALL PARTIES IN INTEREST:**

21 **PLEASE TAKE NOTICE** that unless an objection is timely made and a hearing is timely
22 requested by a party in interest in the manner set forth below, John J. Menchaca, the Chapter 7
23 trustee (the "Trustee") for the estate of Andre P. Jose (the "Debtor's Estate"), intends to apply to
24 the Court pursuant to 11 U.S.C. §363(b) and Local Bankruptcy Rule 9013-1(o) for an order to
25 confirm the sale of his right, title and interest in real property more commonly described as 29017
26 Lomita Drive, Val Verde, California 91384 (aka 29017 Lomita Drive, Cerritos, California 91384)
27 (the "Property") to Andre P. Jose (the "Debtor" or "Buyer") for \$40,000 cash and a waiver of any
28 claim of exemption in said payment.

1 The Motion is made on the grounds that: (1) the Property should be sold to generate funds
2 for creditors; and (2) that the purchase price is fair and reasonable and the sale is in the best interest
3 of the creditors and the estate.

4 Pursuant to Local Bankruptcy Rule 6004-1(c)(3), the Trustee provides the following
5 information:

6 (A) No hearing will be set unless a timely objection and request for hearing is made, in
7 accordance with Local Bankruptcy Rule 9013-(o).

8 (B) The Debtor is the proposed buyer. His address is the address of the Property being
9 sold.

10 (C) The property to be sold is the Trustee's right, title and interest in the Property.

11 (D) The terms of the Purchase and Sale Agreement (the "Agreement") include, without
12 limitation, the following:

13 (1) The Debtor shall purchase the Property subject to all voluntary and
14 involuntary liens and encumbrances thereon, known or unknown and all rights, reservations and
15 restrictions known or unknown.

16 (2) The purchase price for the Property shall be \$40,000, all cash (the "Purchase
17 Price").

18 (3) The Purchase Price shall be paid as follows: \$1,500 on or before March 1,
19 2015; and \$1,500, on or before the first of each month thereafter until paid in full (i.e., \$1,500 per
20 month for 26 months and \$1,000 on the first day of the 27th month).

21 (4) The Debtor shall execute in the Trustee's favor a Deed of Trust securing the
22 Debtor's obligations to pay the Purchase Price, which the Trustee may record against the Property
23 once this Agreement has been executed, in the form of Exhibit "A" attached to the Agreement,
24 which the Debtor shall execute and deliver to the Trustee contemporaneously with the execution of
25 this Agreement.

26 (5) The Debtor covenants that no encumbrances (other than those already in
27 existence as of the Petition Date) have been placed against the Property or shall be placed against
28 the Property in the future without the prior, written approval of the Trustee, which the Trustee may

1 grant or withhold in his sole and absolute discretion, until the Purchase Price is paid in full. The
2 Trustee shall execute and record a release of the Deed of Trust (if recorded) promptly upon receipt
3 of the entire Purchase Price.

4 (6) The Debtor waives all contingencies, inspections, investigations, tests and
5 reviews of reports and has completed all due diligence which might otherwise be required for the
6 purchase of the Property, including, but not limited to, financing contingency, zoning and any
7 geological or soil tests.

8 (7) The Debtor waives any exemption in the Purchase Price.

9 (8) The Trustee is selling the Property in his capacity as the Chapter 7 Trustee of
10 the Debtor's estate, not in his personal capacity, and he shall not be liable personally as a result of
11 the sale.

12 (9) Any material breach of this Agreement shall be considered an event of
13 default under this Agreement, including, but not limited to, failure to pay any monthly installment
14 when due and failure to cure any such late payment within 15 calendar days following its due date.
15 In that event, the Trustee shall be entitled to recover the entire unpaid portion of the Purchase Price,
16 plus all reasonable professional fees and costs incurred by the Trustee and his professionals from
17 and after the date of default, in enforcing the Agreement.

18 (E) The proposed sale is "as-is" and "where-is" with no warranty or recourse
19 whatsoever, subject to all rights and claims of ownership therein, and subject to all liens, claims
20 and encumbrances.

21 (F) The proposed sale is not subject to overbids. The Trustee certifies that he has not
22 been contacted by any potential overbidder and that, in the Trustee's business judgment, there are
23 no viable alternative purchasers. Specifically, the Trustee is proposing to sell only his right, title
24 and interest in the Property, subject to all liens and encumbrances, for a sum that is expected to be
25 sufficient to pay creditors 100% of their allowed claims. The Purchase Price is \$40,000 and the
26 total claimed amount of creditors filing proof of claims is \$23,053.44. The claims bar dates have
27 passed for both ordinary and governmental claims. Were the Trustee to sell the Property free and
28 clear of liens, it is anticipated that the net benefit to the estate would be substantially the same,

1 since any additional consideration received would only result in a surplus to the Debtor. The
2 Debtor, who desires to keep his home, had filed a motion to convert the bankruptcy case to one
3 under Chapter 13 of the Bankruptcy Code (the "Motion to Convert"). The Trustee opposed the
4 motion. The Trustee and the Debtor reached agreement on the terms of sale as a consequence of
5 the Debtor's voluntary withdrawal of the Motion to Convert. In the event that the transaction is
6 viewed as a compromise, the facts justify approval on that basis as well.

7 (G) The estimated net sale proceeds for the Trustee are \$40,000

8 (H) There are no brokerage commissions associated with this sale.

9 (I) The Trustee believes that there will be no tax consequences to the estate relative to
10 the sale.

11 The Motion is based upon the Notice of Motion, the Motion, the accompanying pleadings
12 on file herein, and such other evidence that may be presented to the Court.

13 **PLEASE TAKE FURTHER NOTICE** that a written objection to the proposed sale,
14 together with a request for hearing, must be filed and served pursuant to LBR 9013-1(o) not later
15 than 14 days from the date of service of the notice, plus 3 additional days if you were served by
16 mail, electronically, or pursuant to F.R.Civ.P. 5(b)(2)(D), (E), or (F), or unless the notice period is
17 shortened by order of the Court. The response or opposition to the Motion shall be filed with the
18 Bankruptcy Court and served on the United States Trustee, at 915 Wilshire Boulevard, Suite 1850,
19 Los Angeles, CA, 90017, the Trustee at Menchaca & Company LLP, 835 Wilshire Boulevard,
20 Suite 300, Los Angeles, California 90017, and counsel for the Trustee, Steven J. Schwartz,
21 Danning, Gill, Diamond & Kollitz, LLP at 1900 Avenue of the Stars, 11th Floor, Los Angeles, CA
22 90067. A copy of the Motion may also be obtained by contacting for counsel for the Trustee at
23 the address and telephone number indicated in the upper left hand corner of the first page of this
24 Notice.

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1 In the absence of an objection, an order may be entered authorizing the sale of the Property
2 without further notice or hearing.

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DATED: February 6, 2015

DANNING, GILL, DIAMOND & KOLLITZ, LLP

By: /s/ Steven J. Schwartz
STEVEN J. SCHWARTZ
Attorneys for John J. Menchaca, Trustee

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:
1900 Avenue of the Stars, 11th Floor
Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled: **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 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)* 2/6/2015, 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:

Vernon L Ellicott on behalf of Debtor Andre P Jose vlc@vlelaw.com - Doah Kim on behalf of Trustee John J Menchaca (TR) Doah.Kim@LewisBrisbois.com, Monique.Talamante@LewisBrisbois.com - John J Menchaca (TR) jmenchaca@menchacacpa.com, ca87@ecfcbis.com;igaeta@menchacacpa.com - Steven J Schwartz on behalf of Interested Party Courtesy NEF ssschwartz@dgd.com, DanningGill@gmail.com;sschwartz@ecf.inforuptcy.com - United States Trustee (LA) ustpreion16.la.ecf@usdoj.gov

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On *(date)* 2/6/2015, 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.

Hon. Richard M. Neiter
U.S. Bankruptcy Court
255 E. Temple Street, Suite 1652
Los Angeles, CA 90012

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.

2/6/2015 Cheryl Caldwell /s/ Cheryl Caldwell
Date *Printed Name* *Signature*