

Overbid procedure (if any): (SEE THE ATTACHED NOTICE.)

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

Date: 10/9/2014

1 UZZI O. RAANAN (State Bar No. 162747)
uraanan@dgdk.com
2 STEVEN J. SCHWARTZ (State Bar No. 200586)
sschwartz@dgdk.com
3 DANNING, GILL, DIAMOND & KOLLITZ, LLP
1900 Avenue of the Stars, 11th Floor
4 Los Angeles, California 90067-4402
Telephone: (310) 277-0077
5 Facsimile: (310) 277-5735
6 Attorneys for Richard K. Diamond,
Chapter 7 Trustee
7

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

11 In re
12 JOHN JAY MARSHALL,
13 Debtor.

Case No. 2:14-bk-16539-TD
Chapter 7

**NOTICE OF HEARING ON MOTION OF
CHAPTER 7 TRUSTEE FOR ORDER: (1)
AUTHORIZING SALE OF ESTATE'S
RIGHT, TITLE AND INTEREST IN
CERTAIN PERSONAL PROPERTY; (2)
FINDING THAT BUYER IS A GOOD
FAITH PURCHASER; (3) WAIVING
RULE 6004(H) AUTOMATIC STAY OF
ORDER; AND (4) RELATED RELIEF**

Date: November 5, 2014
Time: 10:00 a.m.
Place: Courtroom "1345"
255 East Temple Street
Los Angeles, CA 90012

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22 **TO THE HONORABLE THOMAS B. DONOVAN, UNITED STATES BANKRUPTCY**
23 **JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, THE DEBTOR, OTHER**
24 **PARTIES IN INTEREST, AND THEIR RESPECTIVE COUNSEL:**

25 **PLEASE TAKE NOTICE** that on **November 5, 2014 at 10:00 a.m.**, or as soon thereafter
26 as the matter may be heard, in Courtroom "1345" of the United States Bankruptcy Court, 255 E.
27 Temple Street, Los Angeles, California, Richard K. Diamond, the duly appointed, qualified, and
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1 acting Chapter 7 trustee (the “Trustee” or “Seller”) of the estate (the “Estate”) of John Jay Marshall
2 (the “Debtor”), shall and hereby does move this Court for an Order:

3 (1) authorizing the Trustee to (a) sell certain assets of the Estate described below (the
4 “Assets”) and in the Purchase and Sale Agreement attached to the Trustee’s Declaration, marked as
5 Exhibit “1” and incorporated herein by this reference (the “Sale Agreement”), for the total purchase
6 price of \$160,000, cash, on an “as-is” and “where is” basis, without any warranties or
7 representations, subject to all liens, encumbrances, rights and claims of any kind or nature, to
8 Randy Simon or his designee (the “Buyer”), or to any person who appears at the hearing and
9 submits a higher acceptable bid, in accordance with the terms and conditions of the Sale Agreement
10 and this Motion; and (b) execute any and all documents that may be necessary to consummate the
11 sale of the Assets (the “Sale”);

12 (2) approving the Sale Agreement;

13 (3) finding that the Buyer, or any person who appears at the hearing and submits a
14 higher acceptable bid and becomes the purchaser, is a good faith purchaser under 11 U.S.C.
15 § 363(m); and

16 (4) waiving the 14-day stay period under Fed.R.Bankr.P. 6004(h) with respect to the
17 sale of the Assets (the “Motion”).

18 This Motion is made pursuant to 11 U.S.C. §§ 105, 363(b)(1), 363(f), 363(m); Rule 6004 of
19 the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule 6004-1, on the grounds
20 that: (1) the purchase price is fair and reasonable and the sale is in the best interests of the creditors
21 and the estate; and (2) the Buyer, or any other person who appears at the hearing and submits a
22 higher acceptable bid and becomes the purchaser, is a good faith purchaser under 11 U.S.C.
23 § 363(m).

24 The following disclosures are made pursuant to LBR 6004-1(c)(3):¹

25 _____
26 ¹ The following contains general summaries of the pertinent provisions of the Sale Agreement
27 attached to the Trustee’s Declaration, marked as Exhibit “1” and incorporated therein by this
28 reference. It does not, nor does it intend to, in any way amend or alter the provisions contained
therein. In the event of a conflict, the Sale Agreement controls in all respects.

1 **Date, time and place of the hearing on the proposed sale**

2 The hearing on the Motion and an auction, to the extent that qualified overbids are received
3 in accordance with the proposed procedures set forth below (the “Sale Hearing”), shall take place
4 on **November 5, 2014 at 10:00 a.m.** in Courtroom “1345” of the United States Bankruptcy Court,
5 255 E. Temple Street, Los Angeles, California.

6 **Name and address of the proposed buyer**

7 Randy Simon, c/o his counsel, Rene Tovar, Esq. for Tovar & Cohen, LLP, 5525 Oakdale
8 Avenue, Suite 350, Woodland Hills, CA 91364.

9 **Description of the sale and property to be sold**

10 The property to be acquired by the Buyer shall consist of the Estate’s right, title and interest
11 in the following (the “Assets”), on an “as is” and “where is” basis, with no representations or
12 warranties:

13 (a) a certain 1973 Ferrari 246GTS (Dino Spider) (the “Ferrari”);

14 (b) a stream of royalties related to the motion picture “The Exorcist” (the “Royalties”),
15 which were being paid annually by Warner Brothers Entertainment, Inc. (“Warner Bros.”);

16 (c) Location Creations, Inc., Location Cameras, Inc. and John Marshall Entertainment,
17 Inc. (collectively, the “Debtor’s Corporations”), including the Debtor’s stock shares, as well as the
18 Debtor’s, the Debtor’s Corporations’, the Estate’s and/or the Trustee’s rights to recover money
19 and/or other assets of the Debtor’s Corporations, including, but not limited to, Royalties from any
20 third parties pursuant to applicable law;

21 (d) solely with regard to the Estate’s right, title and interest in the Ferrari, the Royalties
22 and the Debtor’s Corporations, any rights that the Trustee and the Estate have or may have to seek
23 any turnover order(s), as well as rights to avoid fraudulent and/or preferential transfers by the
24 Debtor and/or the Debtor’s Corporations to others, including any claims which may be brought
25 against the Debtor’s daughter Stephanie Marshall (“Stephanie”), or her corporations Strategic
26 Partnership Alliance, Inc. (“SPA”) and Integrated Dynamics, Inc. (collectively, “Stephanie’s
27 Corporations”).

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1 **Terms and conditions of the proposed sale, including the price and all contingencies.**

2 1. **Purchase Price.** The purchase price for the Assets shall consist of cash in the sum of
3 One Hundred Sixty Thousand Dollars (\$160,000.00) (the "Sale Price"). The Sale Price shall be
4 paid by Buyer to Seller as follows: Buyer shall deposit the sum of \$16,000 with the Trustee
5 concurrently with the Buyer's execution and delivery of this Agreement. The balance owed on the
6 Sale Price shall be paid to the Trustee within 10 calendar days after the Bankruptcy Court has
7 entered an Order approving this Agreement.

8 2. **Subordination of Buyer's Claim.** As additional consideration for the sale terms
9 herein, Buyer agrees to subordinate and, when the above sale to Buyer becomes final, thereby does
10 subordinate any claim filed by the Buyer against the Debtor's bankruptcy estate to administrative
11 expenses, priority unsecured and general unsecured claims other than the Buyer, with respect to the
12 first \$160,000 distributed by the Trustee in the Estate. The Buyer shall share, pro rata with other
13 unsecured creditors, any amounts distributed to unsecured creditors after the first \$160,000 is
14 distributed. Notwithstanding the above, in the event the Sale Price exceeds the amount of
15 administrative expenses, priority unsecured and general unsecured claims other than the Buyer,
16 then the amount that would otherwise have been paid to the Debtor under 11 U.S.C. section
17 726(a)(6) shall be paid to Buyer up to the amount necessary to pay in full his unsecured claim plus
18 the interest required by the Bankruptcy Code. However, in the event the Sale Price exceeds the
19 Buyer's offer as set forth herein, Buyer's subordination of his claims shall be deemed withdrawn.

20 3. **Objections to Sale.** The sale is conditioned on the Trustee prevailing with respect to
21 any objections to the proposed sale.

22 **Whether the proposed sale is free and clear of liens, claims or interests, or subject to**
23 **them, and a description of all such liens, claims or interests.**

24 The proposed sale shall be subject to all liens, encumbrances, rights and claims of any kind
25 or nature, including the right and/or obligation to litigate in order to preserve and/or secure the
26 assets referred to therein.

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1 **Whether the proposed sale is subject to higher and better bids.**

2 The proposed sale is subject to overbids. The Trustee recommends that the Court adopt the
3 following procedures: Any party wishing to tender an overbid must attend the sale hearing and/or
4 out of court auction in person, and must agree to the identical terms as described in the Agreement
5 and tender a deposit in the sum of \$16,000, which is refundable only if the bidder is not the
6 successful bidder. The purchase price shall be \$160,000, plus an initial overbid of not less than
7 \$5,000. Further bidding shall be in increments of not less than \$1,000. The Buyer and any
8 prospective overbidder must sign a declaration under penalty of perjury disclosing any and all
9 agreements and connections that they have with the Debtor, and stating that the funds they will use
10 to pay for the winning bid in this auction have not come from and will not be repaid by the Debtor
11 and/or any Debtor related or affiliated person and/or entity. The Trustee holds sole discretion in
12 accepting and rejecting all overbids.

13 **The consideration to be received by the estate, including estimated commissions, fees,**
14 **and other costs of sale.**

15 There shall be no broker commission associated with this sale. The consideration that the
16 Trustee will receive is \$160,000.

17 **A description of the estimated or possible tax consequences to the estate, if known, and**
18 **how any tax liability generated by the sale of the property will be paid.**

19 The tax liability to the Estate for the sale of the Assets, if any, is presently unknown. It is
20 not anticipated that there will be any tax liability to the Estate generated by the sale of the Assets.
21 To the extent that there is any tax liability, it will be paid from the sale proceeds.

22 The Motion is based upon this Notice of Hearing, the Motion, the accompanying
23 Memorandum of Points and Authorities, Request for Judicial Notice, and Declaration of Richard K.
24 Diamond, the papers and pleadings on file in this case, and such other evidence that may be
25 presented to the Court.

26 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Bankruptcy Rule 9013-1(f),
27 each interested party opposing, joining, or responding to the Motion must, not later than 14 days
28 before the date of the hearing referenced above, file with the Clerk of the Bankruptcy Court and

1 serve upon (1) the Trustee's counsel, Steven J. Schwartz, Danning, Gill, Diamond & Kollitz, LLP,
2 1900 Avenue of the Stars, Eleventh Floor, Los Angeles, California 90067-4402; (2) the Office of
3 the United States Trustee, 915 Wilshire Blvd., Suite 1850, Los Angeles, CA 90017; and (3) all
4 other parties in interest who are entitled to notice of this matter: (i) a complete written statement of
5 all reasons in opposition thereto or in support or joinder thereof, declarations and copies of all
6 photographs and documentary evidence on which the responding party intends to rely, and (ii) any
7 responding memorandum of points and authorities. Pursuant to Local Bankruptcy Rule 9013-1(h),
8 oppositions not filed and served in accordance with the foregoing notice may be deemed waived.
9 If you do not oppose the relief requested in this Motion, you need not take any further action.

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11 DATED: October 9, 2014

DANNING, GILL, DIAMOND & KOLLITZ, LLP

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By: /s/ Steven J. Schwartz

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STEVEN J. SCHWARTZ
Attorneys for Richard K. Diamond,
Chapter 7 Trustee

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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)* 10/9/2014, 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:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On *(date)* _____, 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.

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)* 10/9/2014, 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.

Served by Personal Delivery to be delivered by 10/10/2014

Hon. Thomas B. Donovan
U.S. Bankruptcy Court, 255 E. Temple Street, Bin outside of Suite 1352
Los Angeles, CA 90012

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.

10/9/2014
Date

Cheryl Caldwell
Printed Name

/s/ Cheryl Caldwell
Signature

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”)

Stephen L Burton on behalf of Creditor Randy Simon
steveburtonlaw@aol.com

Stephen L Burton on behalf of Plaintiff Randy Simon
steveburtonlaw@aol.com

Richard K Diamond (TR)
jlv@dgdk.com, rdiamond@ecf.epiqsystems.com;DanningGill@Gmail.com

Richard H Gibson on behalf of Debtor John Jay Marshall
Rick@GibsonLawLA.Com, Kristi@GibsonLawLA.Com

Richard H Gibson on behalf of Defendant John Marshall
Rick@GibsonLawLA.Com, Kristi@GibsonLawLA.Com

Merdaud Jafarnia on behalf of Creditor LaSalle Bank NA as trustee for WaMu Mortgage Pass-Through Certificates
Series 2007-HY3 Trust, its assignees and/or successors, by and through its servicing agent Select Portfolio Servicing,
Inc.
bknotice@mccarthyholthus.com, mjafarnia@mccarthyholthus.com

Uzzi O Raanan, ESQ on behalf of Trustee Richard K Diamond (TR)
uor@dgdk.com, DanningGill@gmail.com;uraanan@ecf.inforuptcy.com

United States Trustee (LA)
ustregion16.la.ecf@usdoj.gov

Gilbert B Weisman, II on behalf of Creditor American Express Bank FSB
notices@becket-lee.com