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**UNITED STATES BANKRUPTCY COURT
 CENTRAL DISTRICT OF CALIFORNIA**

In re:
 Estate Financial, Inc.,

 Debtor(s).

CASE NO.:
 9:08-bk-11457-PC

NOTICE OF SALE OF ESTATE PROPERTY

Bid Deadline: August 9, 2016	Time: 5:00 p.m.
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Type of Sale: Public Private Last date to file objections: July 27, 2016

Description of Property to be Sold: \$6,946,226.92 Guaranty Claim against guarantor of loan (Loan B575-05)

Terms and Conditions of Sale: See attached motion

Proposed Sale Price: \$25,000

Overbid Procedure (If Any): The Trustee wishes to allow any third party, including a Subject Investor, or third party to pay an amount in excess of \$25,000 (an "Overbid") to purchase the Claim. The Trustee seeks to establish as overbid procedures that (i) the EFI Trustee must be informed of the proposed overbid and contact information for the overbidder prior to the Hearing on the Motion; and (ii) the overbidder (or its authorized agent or attorney capable of binding it contractually) must attend the Hearing.

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing: August 10, 2016 at 10:00 a.m. in Courtroom 201 of the U.S. Bankruptcy Court located at 1415 State Street, Santa Barbara, California 93101.

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e-mail address):

Matt Sorenson, Development Specialists, Inc.
333 South Grand Avenue, Suite 4070
Los Angeles, California 90071
Tel: (213) 617-2717; Fax: (213) 617-2718

Date: July 20, 2016

EXHIBIT A

1 Robert B. Orgel (CA Bar No. 101875)
Jeffrey L. Kandel (CA Bar No. 115832)
2 Cia H. Mackle (admitted *pro hac vice*)
PACHULSKI STANG ZIEHL & JONES LLP
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6 Attorneys for Thomas P. Jeremiassen, EFI Trustee

7 **UNITED STATES BANKRUPTCY COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
9 **NORTHERN DIVISION**

9 In re:
10 ESTATE FINANCIAL, INC.,
11 Debtor

Case No.: 9:08-bk-11457-PC

Chapter 11

**EFI TRUSTEE’S NOTICE OF MOTION AND
MOTION FOR ORDER AUTHORIZING THE
TRANSFER OF CLAIM AGAINST
TEHACHAPI GUARANTOR TO ESTATE,
SUBJECT TO OVERBID; MEMORANDUM
OF POINTS AND AUTHORITIES;
DECLARATION OF THOMAS P.
JEREMIASSEN**

(LOAN B575-05)

Hearing:

Date: August 10, 2016
Time: 10:00 a.m.
Location: US Bankruptcy Court
1415 State Street
Courtroom 201
Santa Barbara, CA 93101
Judge: The Honorable Peter Carroll

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21 **TO SUBJECT INVESTORS, OFFICE OF THE UNITED STATES TRUSTEE, EFI**
22 **CREDITORS’ COMMITTEE, SPECIAL NOTICE PARTIES IN THE EFI CASE**
23 **(COLLECTIVELY, THE “NOTICE PARTIES”) AND, VIA THE TRUSTEE’S WEBSITE,**
24 **TO ALL CREDITORS AND PARTIES IN INTEREST:**

25 **PLEASE TAKE NOTICE THAT** Thomas P. Jeremiassen (the “EFI Trustee”), the duly
26 appointed chapter 11 trustee for debtor Estate Financial, Inc. (“EFI”), hereby moves this Court (the
27 “Motion”) for an order substantially in the form of Exhibit A attached hereto, pursuant to section
28 105 and 363 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004 and
9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 6004-1,

1 6004-2 and 9013-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the
2 Central District of California (the “Local Rules”), authorizing (1) the transfer (the “Transfer”),
3 subject to overbid, of a claim (the “Claim”) against Petar Mladenovic, guarantor of the loan
4 identified in the caption of this Motion (the “Loan”), which the Trustee holds in favor of investors
5 in the Loan (the “Subject Investors”), to address the right of the bankruptcy estate in the above-
6 captioned case (the “Estate”) to repayment of the \$46,794 in outstanding advances made and fees
7 incurred in having the Trustee attempt to realize value on the Loan for the Subject Investors. To
8 date, the Trustee has foreclosed on and sold the real property related to the Loan, although as a result
9 of delinquent real property taxes, the proceeds of sale only partially covered the Estate’s advances.
10 The Trustee believes that there remains only a low probability of any recovery on the Loan.

11 **PLEASE TAKE FURTHER NOTICE** that should any party, including any Subject
12 Investor, wish to purchase the Claim for an amount in excess of \$25,000, the Trustee will sell the
13 Claim at the Hearing to such party, or to a higher bidder as determined at the hearing hereon,
14 subject to reimbursement to the Estate of its advances through closing.

15 **PLEASE TAKE FURTHER NOTICE** that, upon confirmation of the pending plan of
16 liquidation in this chapter 11 case, the Trustee will lose the ability to pursue the Claim on behalf of
17 Subject Investors and, thus, the Trustee needs to provide for disposition or abandonment of the Loan
18 prior to or through the Plan. In light of the uncertain and unlikely recovery on the Loan and the
19 passage of several years since the commencement of the Case, the Trustee was and is unwilling to
20 have the Estate (that exists to benefit all creditors) incur the expense of creating through the plan
21 some new entity to hold the Loan for only the Subject Investors, was and is unwilling to have the
22 Estate incur the expense to solicit the Subject Investors to approve his post-confirmation
23 management of such entity, and was and is unwilling to commit the Estate to pay for the expenses of
24 post-confirmation management of such entity and the Loan. Because the proposed Transfer will
25 address the need to deal with the Loan prior to plan confirmation and also preserves the ability of the
26 Estate to recover something for its prior advances, the Transfer is in the best interests of the Estate.
27 Because the Trustee is aware of no cost-effective way to have the Loan managed post-confirmation
28 exclusively for the Subject Investors, the Trustee believes that the Transfer also is in the best interest

1 of the Subject Investors, who at least will benefit from any recovery on the Loan as general
2 unsecured creditors in the Case.

3 **PLEASE TAKE FURTHER NOTICE** that the relief sought is being brought in the form of
4 this Motion, rather than using the abbreviated procedures established by this Court in the *Procedures*
5 *Order re: (1) Real Property Sales and Related Distributions and Payments, Including Brokerage*
6 *Commissions; (2) Loan Payoffs and Reconveyances; (3) Related Compromises; (4) The Making of*
7 *Secured Advances; and (5) Loan Collection, Administration and Enforcement, Including*
8 *Foreclosures, Forbearances, and Deeds in Lieu* [EFI Docket No. 271] (the “Procedures Order”),
9 because, even though the relief sought by the Motion is similar to relief permitted to be sought under
10 the Procedures Order, the Procedures Order does not specifically cover the transfer or sale of a claim
11 against a guarantor.

12 **PLEASE TAKE FURTHER NOTICE** that the relief sought is based on the attached
13 Memorandum of Points and Authorities, the declaration of Thomas P. Jeremiassen (the “Jeremiassen
14 Declaration”) attached hereto, the record and pleadings on file in this case, and such further oral and
15 documentary evidence as may be presented at any hearing on the Motion.

16 **PLEASE TAKE FURTHER NOTICE** that on August 10, 2016, at 10:00 a.m., or as soon
17 thereafter as the matter may be heard, in Courtroom 201 of the U.S. Bankruptcy Court located at
18 1415 State Street, Santa Barbara, California 93101, the Court will conduct a hearing on the Motion
19 (the “Hearing”). Pursuant to Rule 9013-1(f)(1), any response or opposition to the Motion must be in
20 writing, must otherwise comply with the Local Bankruptcy Rules and must be filed with the Court
21 and served on Pachulski Stang Ziehl & Jones, LLP, Attn: Jeffrey L. Kandel, Esq. 10100 Santa
22 Monica Boulevard, Suite 1300, Los Angeles, California 90067, no later than fourteen (14) days prior
23 to the hearing on this Motion. Pursuant to Local Bankruptcy Rule 9013-1, the failure to timely file
24 and serve a written opposition may be deemed by the Court to be consent to the granting of the relief
25 requested.

PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

1 **WHEREFORE**, the EFI Trustee respectfully requests that this Court enter an order granting
2 the Motion and relief requested therein and such other and further relief as is just and proper under
3 the circumstances.

4
5 Dated: July 20, 2016

6 PACHULSKI STANG ZIEHL & JONES LLP

7 By /s/ Jeffrey L. Kandel
8 Robert B. Orgel
9 Jeffrey L. Kandel
10 Cia H. Mackle

11 Attorneys for the EFI Trustee

PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

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4 The Loan secured by the so-called “Tehachapi Property” (defined below as the “Property”)
5 was guaranteed by Petar Mladenovic. In March of 2016, the Trustee sold the Property but did not
6 generate sufficient proceeds to fully reimburse the Estate for postpetition advances, let alone to
7 make distributions to Subject Investors. Thereafter, the Trustee sued Petar Mladenovic on behalf
8 of Subject Investors in connection with his guarantee of the Loan (the “Claim”), pursuant to the
9 Procedures Order (defined below) entered in this case and Loan Servicing Agreements entered into
10 prepetition between EFI and Subject Investors. This action is pending.

11 The Trustee has proposed a plan of liquidation in this case (to be considered concurrently
12 with this Motion), pursuant to which all outstanding Loan Servicing Agreements will be rejected.
13 Accordingly, if the plan is confirmed and the Loan is not transferred prior thereto, the Trustee will
14 lose the ability to act on behalf of the specific Subject Investors and, therefore, to pursue the action
15 for the Subject Investors against Mr. Mladenovic on the guarantee.

16 Accordingly, the Motion seeks to transfer the Claim to the Estate free and clear of interests
17 of Subject Investors, enabling the Trustee (and the Liquidating Trustee to follow him) to pursue
18 the Claim on behalf of all unsecured creditors, including the Subject Investors. However, if a
19 party is willing to purchase the Claim from the Estate, the Trustee seeks authority to hold an
20 auction for the Claim. The proceeds of any such auction will be paid first to the Estate for
21 reimbursement of postpetition advances (and EFI’s prepetition advances, if any), and then either
22 distributed to consenting Subject Investors in accordance with the procedures and parameters
23 established in this case or held in a disputed claims reserve pending resolution (post-confirmation)
24 of the claims of non-consenting Subject Investors.

25 If either no bids are received or the Claim is sold for a price generating insufficient
26 proceeds to reimburse the Estate and provide funds to make a meaningful distribution to Subject
27 Investors, the Trustee proposes that each Subject Investor be granted an unsecured claim in the
28 amount of his/her/its investment.

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II.

BACKGROUND

A. Procedural Background

1. On June 25, 2008, an involuntary petition was filed against Estate Financial, Inc. (“EFI”) commencing its above-captioned bankruptcy case and on July 16, 2008, an order for relief was entered by consent.

2. On July 1, 2008, a voluntary bankruptcy petition was filed by Estate Financial Mortgage Fund, LLC (“EFMF”) commencing its bankruptcy case. EFMF is the largest investor in loans arranged by EFI. It is a limited liability company and EFI was its manager.

3. On July 28, 2008, Bradley D. Sharp accepted his appointment as chapter 11 trustee of EFMF (the “EFMF Trustee”) and on July 30, 2008, Thomas P. Jeremiassen accepted his appointment as EFI Trustee (together with the EFMF Trustee, the “Trustees”).

4. On July 15, 2011, the Court entered an order confirming the *Joint Chapter 11 Plan of Liquidation (Dated as of November 18, 2010)* in the EFMF case.

5. On April 8, 2016, the Trustee and official committee of unsecured creditors in the case filed their *Third Amended Liquidating Plan Under Chapter 11 of the Bankruptcy Code Dated April 8, 2016 Proposed by the Chapter 11 Trustee and Creditors’ Committee* [Docket No. 3639] (the “Plan”). A hearing to consider confirmation of the Plan will be held on August 10, 2016.

B. The Procedures Order

5. On October 27, 2008, the United States Bankruptcy Court for the Central District of California (the “Court”) entered the Procedures Order. Pursuant to the Procedures Order, to facilitate the efforts of the Trustees to take a variety of actions in a timely and cost-effective manner with respect to loans and / or real properties in which the estates of EFI and EFMF hold interests, and in which various co-owners hold interests (or investors contend they hold co-ownership interests), among other things, the Court granted the EFI Trustee authority to sell real property owned by one or the other trustee or other co-owners or any combination of them, pay

1 related closing costs and distribute the proceeds after, *inter alia*, giving notice and opportunity to
2 object.

3 **C. History Related to Loan and Guaranty**

4 7. Petar Mladenovic (“Mladenovic”) executed that certain Continuing Guaranty
5 securing the payment of a loan made by EFI to Pannon Design and Development, Inc.
6 (“Pannon”), an entity owned and operated by Mladenovic. Pannon defaulted on the loan in 2007,
7 and following EFI’s bankruptcy the EFI Trustee began foreclosure proceedings on the real
8 property security. At the request of Mladenovic, the Trustee delayed foreclosure for more than
9 four years so that Mladenovic might seek alternate financing or sell the property.

10 8. The EFI Trustee completed foreclosure on February 11, 2015, and subsequently
11 notified Mladenovic that he would pursue collection on the Continuing Guaranty. On March 1,
12 2016, the Trustee filed a collection action against Mladenovic in the San Luis Obispo Superior
13 Court entitled *Jeremiassen v. Mladenovic*, San Luis Obispo Sup. Ct. Case No. 16CVP0059.

14 9. Mladenovic did not respond to the complaint and a default was entered on April
15 12, 2016. An *Application for Default Judgment* was filed on April 26, 2016 and a *Default*
16 *Judgment* was entered by the court on May 5, 2016 in the total amount of \$6,946,226.92 plus
17 additional interest.

18 10. On June 2, 2016, Mladenovic filed a *Motion to Set Aside Default*. The Motion was
19 heard on July 5, 2016, and the court vacated the *Default Judgment* and ordered Mladenovic to
20 reimburse the EFI Trustee for costs incurred in perfecting the Judgment and writs of execution.
21 On July 12, 2016, Mladenovic reimbursed the EFI Trustee in the amount of \$1,850.00.

22 11. The matter is scheduled for a Case Management Conference on October 12, 2016,
23 at which time it is anticipated that it will be set for trial. The EFI Trustee has served written
24 discovery, and plans to seek summary judgment at the earliest opportunity.

25 **D. Background Related to Subject Property and Transfer**

26 12. On February 8, 2016, the EFI Trustee proposed a sale (the “Proposed Sale”) of the
27 real property related to the Loan (the “Property”) pursuant to the Procedures Order by filing and
28 serving his *Notice of Trustee’s Proposed (1) Sale of Interests in Real Property (226 Acres,*

1 *Tehachapi, CA) Free and Clear of Liens; (2) Payment of Closing Costs Including Brokerage*
2 *Commissions; (3) Partial Reimbursement of Prepetition and Postpetition Advances; and (4)*
3 *Provision of Unsecured Claims for Subject Investors (Loan B575-05) [Docket No. 3604] (the*
4 *“Sale Notice”).*

5 13. Pursuant to the Sale Notice, the Trustee proposed to sell the Property for \$400,000
6 (the “Property Sale”), of which approximately \$369,000 was used to pay closing costs and to
7 reimburse the Estate for previous disbursements for past due property taxes. Of the remaining
8 \$31,000 in sales proceeds, the Trustee proposed to partially repay the Estate for \$58,000 in
9 advances and fees incurred in connection with administration of the Loan, leaving an outstanding
10 balance due to the Trustee of approximately \$27,000 as of March 2016. Since then, the Estate has
11 incurred additional expenses of approximately \$20,000 and to date, the Estate is owed
12 approximately \$47,000 in outstanding advances and administrative charges on account of the
13 Loan.

14 14. As the Proposed Sale did not generate sufficient net proceeds to pay costs of
15 administration in full, each Subject Investor received a claim in the full amount of his/her/its
16 investment.

17 15. As required by the Procedures Order, the EFI Trustee sought and obtained a
18 Majority Investor Vote from investors in the Loan, and thereafter, the Proposed Sale was
19 consummated.

20 **III.**

21 **RELIEF REQUESTED**

22 By the Motion, the EFI Trustee seeks Court issuance of an order, pursuant to 11 U.S.C. §
23 363(b), Bankruptcy Rules 2002(a)(2), 6004 and 9014, authorizing the Transfer, subject to overbid,
24 of the Claim against Petar Mladenovic, guarantor of the Loan, which the Trustee holds in favor of
25 Subject Investors therein, to address the right of the bankruptcy estate in the above-captioned case
26 (the “Estate”) to repayment of the \$46,794 in outstanding advances made and fees incurred in
27 having the Trustee attempt to realize value on the Loan for the Subject Investors. To date, the
28 Trustee has foreclosed on and sold the real property related to the Loan, although as a result of

1 delinquent real property taxes, the proceeds of sale only partially covered the Estate's advances.
2 The Trustee believes that there remains only a low probability of any recovery on the Loan.
3 Should any party, including any Subject Investor, wish to purchase the Claim for an amount in
4 excess of \$25,000, the Trustee will sell the Claim at the Hearing to such party, or to a higher
5 bidder as determined at the hearing hereon, subject to reimbursement to the Estate of its advances
6 and fees.

7 Relevant is that, upon confirmation of the pending plan of liquidation in this chapter 11
8 case, the Trustee will lose the ability to pursue the Claim on behalf of Subject Investors and, thus,
9 the Trustee needs to provide for disposition or abandonment of the Loan prior to or through the
10 Plan. In light of the uncertain and unlikely recovery on the Loan and the passage of several years
11 since the commencement of the Case, the Trustee was and is unwilling to have the Estate (that
12 exists to benefit all creditors) incur the expense of creating through the plan some new entity to
13 hold the Loan for only the Subject Investors, was and is unwilling to have the Estate incur the
14 expense to solicit the Subject Investors to approve his post-confirmation management of such
15 entity, and was and is unwilling to commit the Estate to pay for the expenses of post-confirmation
16 management of such entity and the Loan.

17 Because the proposed Transfer will address the need to deal with the Loan prior to plan
18 confirmation and also preserves the ability of the Estate to recover something for its prior
19 advances, the Transfer is in the best interests of the Estate. Because the Trustee is aware of no
20 cost-effective way to have the Loan managed post-confirmation exclusively for the Subject
21 Investors, the Trustee believes that the Transfer also is in the best interest of the Subject Investors,
22 who at least will benefit from any recovery on the Loan as general unsecured creditors in the Case.

23 IV.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **A. The Proposed Transfer is Appropriate and in the Estate's Best Interests.**

26 Pursuant to § 363(b)(1) of the Bankruptcy Code, a trustee, after notice and a hearing, may
27 sell, other than in the ordinary course of business, property of the estate. A trustee's application of
28 his sound business judgment in the sale of such property is subject to great judicial deference. *In*

1 *re Moore*, 110 B.R. 924 (Bankr. C.D. Cal. 1990); *In re Canyon Partnership*, 55 B.R. 520 (Bankr.
2 S.D. Cal. 1985).

3 In determining whether any sale of assets out of the ordinary course of business should be
4 approved, bankruptcy courts usually consider the following factors:

5 (1) Whether a sufficient business reason exists for the sale;

6 (2) Whether the proposed sale is in the best interest of the estate, which in turn
7 consists of the following factors:

8 (a) that terms of the sale are fair and reasonable;

9 (b) that the proposed sale has been adequately marketed;

10 (c) that the proposed sale terms have been properly negotiated and
11 proposed in good faith; and

12 (d) that the purchaser is involved in an “arms-length” transaction with
13 the seller; and

14 (3) Whether notice of the sale was sufficient.

15 *See generally In re Walter*, 83 B.R. 14, 19-20, (B.A.P. 9th Cir. 1988) (“there must be some
16 articulated business justification for using, selling, or leasing the property outside the ordinary
17 course of business . . . the bankruptcy judge should consider all salient factors pertaining to the
18 proceeding and, accordingly, act to further the diverse interests of the debtor, creditors and equity
19 holders, alike. . .”).

20 The EFI Trustee submits that a sufficient business justification exists for the Transfer,
21 which is the only way for the Estate, and Subject Investors, to retain any value with respect to the
22 Claim. Jeremiassen Decl., ¶6.

23 The EFI Trustee acts on behalf of Subject Investors in accordance with the Procedures
24 Order and Loan Servicing Agreements entered into prepetition between EFI and the Subject
25 Investors in each Loan. Upon confirmation of the Plan proposed in the Case, the applicable Loan
26 Servicing Agreement will be rejected the Trustee will thus no longer have the right to continue
27 pursuit of the Claim on behalf of Subject Investors. Accordingly, the Trustee proposes to transfer
28 the Claim (1) to the high bidder at an auction to be conducted at the Hearing, for a minimum bid of

1 \$25,000, or (2) if no such bid is received, to the Estate. If the former occurs, the first \$46,794 of
2 any such bid will be paid to the Estate for remaining costs of administration of the Loan and the
3 remainder will be distributed to Subject Investors in the same manner as proceeds of the hundreds
4 of sales of Properties during this Case. If no such bid is received, the Claim will be transferred to
5 the Estate in satisfaction of prior Estate advances, thereby enabling the Trustee to pursue the Claim
6 for the benefit of all unsecured creditors of the Estate (and, following Plan confirmation, the
7 Liquidating Trustee for the benefit of all beneficiaries of the Liquidating Trust) and, to the extent
8 there is any recovery, allow Subject Investors, in their role as general unsecured creditors, to
9 realize value therefrom.

10 Based in part on discussions with counsel, which takes into account the likelihood of
11 recovery on the Claim, the Trustee believes the value of the Claim is less than \$25,000, which is
12 substantially less than the outstanding administrative costs incurred by the Estate. Further, pursuit
13 of the Claim will likely cost the Estate not less than an additional \$20,000. Accordingly, even if
14 the Trustee were able to continue pursuit of the Claim on behalf of Subject Investors, Subject
15 Investors would be likely to receive nothing on account thereof.

16 Further, as a result of the anticipated difficulty in collecting a judgment against the
17 Guarantor in contrast to the costs of obtaining a judgment and collecting on it, the Trustee is
18 unwilling to continue to utilize Estate resources, which are borne by all general unsecured
19 creditors, to continue pursuit of the judgment on behalf of Subject Investors only, unwilling to
20 expend Estate resources to craft plan provisions for creation of a new entity for the Subject
21 Investors, and unwilling to commit the Estate to expending resources post-confirmation to manage
22 such entity and the Loan. For the foregoing reasons, the Trustee believes that transferring the
23 Claim to the Estate for the benefit of all unsecured creditors will provide the greatest likelihood
24 that a recovery of any sort would be obtained for the benefit of all creditors, including Subject
25 Investors.

26 **1. Sale Free and Clear of Liens or Interests.**

27 The Bankruptcy Code permits a sale of real property “free and clear of any interest in such
28 property of an entity other than the estate” if any one of the following five conditions is met: (1)

1 applicable nonbankruptcy law permits sale of such property free and clear of such interest; (2) such
2 entity consents; (3) such interest is a lien and the price at which such property is to be sold is
3 greater than the aggregate value of all liens on such property; (4) such interest is in bona fide
4 dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a
5 money satisfaction of such interest. 11 U.S.C. § 363(f). Section 363(f) is written in the
6 disjunctive; thus, satisfaction of any one of the five conditions is sufficient to sell property free and
7 clear of all liens and the relevant bases for the sale being “free and clear” will be set forth in the
8 applicable notice. *See, e.g., Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343,
9 345 (Bankr. E.D. Pa. 1988); *Mutual Life Ins. Co. v. Red Oak Farms, Inc. (In re Red Oak Farms,*
10 *Inc.)*, 36 B.R. 856, 858 (Bankr. W.D. Mo. 1984).

11 The Trustee believes that to the extent Subject Investors have any interests in the Claim,
12 those interests under sub-section (5), in that the investors could be compelled in a legal or
13 equitable proceeding to accept a money satisfaction of their interests.

14 **2. Procedure for Overbidding.**

15 As set forth above, the Trustee believes a reasonable value for the Claim is \$25,000. The
16 Trustee wishes to allow any third party, including a Subject Investor, or third party to pay an
17 amount in excess of \$25,000 (an “Overbid”) to purchase the Claim. The Trustee seeks to establish
18 as overbid procedures that (i) the EFI Trustee must be informed of the proposed overbid and
19 contact information for the overbidder prior to the Hearing on the Motion; and (ii) the overbidder
20 (or its authorized agent or attorney capable of binding it contractually) must attend the Hearing.

21 To help assure that the highest and price is being attained, the EFI Trustee is posting notice
22 of the sale in the Court’s register for such purpose in accordance with Local Bankruptcy Rule
23 6004-2, along with posting this notice of motion and motion on the Trustee’s website. If an
24 Overbid is properly made in accordance with the above procedures, the EFI Trustee will
25 recommend approval of the sale to the overbidder. If more than one qualifying Overbid is
26 received, the Trustee will conduct an auction at the Hearing and recommend that a sale of the
27 Claim to the highest bidder at such auction be approved. If no Overbids are received, the Trustee
28 will continue to seek approval of the Transfer to the Estate.

1 To the extent that the proposed provision to accommodate Overbids is viewed as an
2 overbidding procedure, Courts have regularly approved and enforced orderly bidding procedures,
3 holding that the interest in regular, reliable sales under the aegis of the court is paramount. *See,*
4 *e.g., In re Gil Bern*, 526 F.2d 627, 629 (1st Cir. 1975); *In re Twenevers, Inc.*, 127 B.R. 467 (D.
5 Colo. 1991); *In re Karpe*, 84 B.R. 926, 932 (Bankr. M.D. Pa. 1988); *In re Table Talk, Inc.*, 53 B.R.
6 937, 945 (Bankr. D. Mass. 1985). The bidding procedures requested above are structured to
7 provide an orderly bidding process without encumbering the process with unnecessary structure.

8 **3. Reimbursement for Fees.**

9 To the extent a Subject Investor or other party purchases the Claim, the Trustee proposes to
10 allocate any such sale amount as a proceed of the Loan, which shall be distributed to Subject
11 Investors after recoupment by the Estate of outstanding advances, fees, charges or interest by EFI
12 or the Trustee, estimated to be approximately \$46,794.

13 Advances were permitted under the Loan Servicing Agreement (“LSA”) executed by each
14 investor for “costs and expenses as [EFI] may reasonably determine are necessary to protect the
15 [investors’] interest in and to enforce the [investors’] rights under the Loan Documents and, if
16 necessary, to manage, refinance or sell the Property” and “may include, without limitation, ... the
17 costs and expenses of engaging attorneys, accountants ... and other third parties.” Also, under the
18 LSA, advances are subject to repayment with interest at the maximum legal rate and EFI is entitled
19 to an annual one percent servicing fee. As well, recoupment is appropriate based on the common
20 benefit afforded by such expenditures. The EFI Trustee seeks recoupment of such advances,
21 which are an element of a potential recovery for creditors of EFI, including EFMF and its
22 investors.

23 For each loan, the EFI Trustee also is to receive as advances a fixed amount or percentage
24 payment to contribute towards the postpetition costs of “attorneys, accountants ... and other third
25 parties” of resolving distribution or other issues relating to the particular loan or property,
26 determined by taking into account the number of investors, known issues, the extent of the
27 interests of the estates of EFI or EFMF, available funds or other matters.

28 In connection with the Property Sale, the Trustee has already recouped approximately

1 \$31,000 in advances, leaving an outstanding amount of \$26,794 to be recouped. Also, the Trustee
2 and his professionals have incurred approximately \$20,000 in fees pursuing the Claim. Any
3 proceeds from the sale of the Claim will be treated in the same manner and according to the same
4 procedures as were proceeds of the sale of the Property: first, applied to repayment to the Estate
5 of such advances.

6 **B. Treatment of Subject Investors.**

7 In connection with the Property Sale, because net proceeds of the Property Sale were
8 insufficient to allow a distribution to the Subject Investors or even to reimburse the Estate for all
9 the post-petition advances for taxes, foreclosure and other costs incurred to preserve the Property,
10 the EFI Trustee proposed to provide each Subject Investor with an unsecured claim against the EFI
11 estate for the full amount of the Subject Investor's investment in their respective Loan but no
12 distribution from the proceeds of the Proposed Sale. The Trustee does not anticipate that a sale of
13 the Claim will result in an amount sufficient to cover the EFI Trustee's advances; however, to the
14 extent it does, the EFI Trustee will propose a distribution to investors which will be set forth in a
15 separate notice pursuant to the Procedures Order and settlement parameters approved by the Court.
16 Monies for non-consenting Subject Investors would be placed in the disputed claims reserve being
17 maintained by the Trustee.

18 **C. Notice is Appropriate and Adequate.**

19 The EFI Trustee is serving notice and this Motion on the Subject Investors and Notice
20 Parties in accordance with this Court's prior *Order Generally Limiting Scope of Notice* [Docket
21 No. 273] and will post a copy of this Motion on the case website promptly upon its filing.
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DECLARATION OF THOMAS P. JEREMIASSEN

I, Thomas P. Jeremiassen, declare as follows:

1. I am the duly appointed chapter 11 trustee of the estate of the debtor Estate Financial, Inc.

2. I have personal knowledge of the facts set forth herein and, if called upon as a witness, I could and would competently testify as to all of the matters stated therein. I make this declaration in support of the foregoing Motion.¹

3. To date, the Estate is owed approximately \$46,794 in outstanding advances and administrative charges on account of the Loan.

4. I believe that there remains only a low probability of any recovery on the Loan.

5. Upon confirmation of the pending plan of liquidation in this chapter 11 case, I will lose the ability to pursue the Claim on behalf of Subject Investors and, thus, I need to provide for disposition or abandonment of the Loan prior to or through the Plan. In light of the uncertain and unlikely recovery on the Loan and the passage of several years since the commencement of the Case, I was and am unwilling to have the Estate (that exists to benefit all creditors) incur the expense of creating through the plan some new entity to hold the Loan for only the Subject Investors, was and am unwilling to have the Estate incur the expense to solicit the Subject Investors to approve my post-confirmation management of such entity, and was and am unwilling to commit the Estate to pay for the expenses of post-confirmation management of such entity and the Loan.

6. Because the proposed Transfer will address the need to deal with the Loan prior to plan confirmation and also preserves the ability of the Estate to recover something for its prior advances, the Transfer is in the best interests of the Estate. Because I am aware of no cost-effective way to have the Loan managed post-confirmation exclusively for the Subject Investors, I believe that the Transfer also is in the best interest of the Subject Investors, who at least will benefit from any recovery on the Loan as general unsecured creditors in the Case. I submit that a sufficient business justification exists for the Transfer, which is the only way for the Estate, and Subject Investors, to retain any value with respect to the Claim.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

EXHIBIT A

1 Robert B. Orgel (CA Bar No. 101875)
2 Jeffrey L. Kandel (CA Bar No. 115832)
3 Cia H. Mackle (admitted *pro hac vice*)
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10 Attorneys for Thomas P. Jeremiassen, Trustee

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

NORTHERN DIVISION

11 In re:
12 ESTATE FINANCIAL, INC.,
13 Debtor

Case No.: 9:08-bk-11457-RR

Chapter 11

**[PROPOSED] ORDER AUTHORIZING THE
TRANSFER OF CLAIM AGAINST
TEHACHAPI GUARANTOR TO ESTATE,
SUBJECT TO OVERBID**

(LOAN B575-05)

Hearing:

14 Date: August 10, 2016
15 Time: 10:00 a.m.
16 Location: US Bankruptcy Court
17 1415 State Street
18 Courtroom 201
19 Santa Barbara, CA 93101
20 Judge: The Honorable Peter Carroll

21
22 On August 10, 2016 at 10:00 a.m., the Court heard and considered (the “Hearing”) the *EFI*
23 *Trustee’s Motion for Order Authorizing the Transfer of Claim Against Tehachapi Guarantor to*
24 *Estate, Subject to Overbid (Loan B575-05)* (the “Motion”)² [Docket No. ___] filed by the Thomas P.
25 Jeremiassen, the duly-appointed chapter 11 trustee of Estate Financial, Inc. (the “Trustee”)
26 requesting the Court’s approval of the transfer of a claim (the “Claim”) against Petar Mladenovic,
27 guarantor of the loan identified in the caption of this Motion (the “Loan”), which the Trustee holds

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² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1 in favor of investors in the Loan (the “Subject Investors”), subject to reimbursement of expenses, to
2 the bankruptcy estate in the above-captioned case for the benefit of creditors generally (the
3 “Estate”). Appearances were made as set forth on the record.

4 Having considered the Motion, including the declarations and exhibits attached thereto, the
5 evidence proffered or adduced at the Hearing, the arguments of counsel made at the Hearing; and
6 upon the entire record of such Hearing and this case; and after due deliberation thereon, and good
7 cause appearing therefore:

8 **IT IS HEREBY ORDERED:**

- 9 1. Notice of the Motion was appropriate and sufficient.
- 10 2. The Trustee is authorized, but not required, to transfer the Claim to the Estate for the
11 benefit of creditors generally.
- 12 3. The Motion is granted, the terms and conditions of the proposed Transfer are hereby
13 approved and authorized in all respects.
- 14 4. The Transfer shall be free and clear of any interests of Subject Investors in the Claim.
- 15 5. The Court determines inapplicable the stay of Rule 6004(h) of the Federal Rules of
16 Bankruptcy Procedure.
- 17 6. This Court will retain jurisdiction to determine all matters arising from or relating to
18 the implementation of this order.

19 Dated: _____, 2016

21 _____
22 HONORABLE PETER CARROLL
23 United States Bankruptcy Judge
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