

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address

Leonard M. Shulman – State Bar No. 126349
Elyza P. Eshaghi – Bar No. 293395
SHULMAN HODGES & BASTIAN LLP
100 Spectrum Center Drive, Suite 600
Irvine, California 92618
Telephone: (949) 340-3400
Facsimile: (949) 340-3000
Email: lshulman@shbllp.com; eeshaghi@shbllp.com

☐ Individual appearing without attorney
☒ Attorney for: Lynda T. Bui, Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - RIVERSIDE DIVISION**

ORALIA CASTILLO SMITH,

CHAPTER: 7

NOTICE OF SALE OF ESTATE PROPERTY

~~Last Day to Submit Bids: 6/16/2015 at 5:00 pm~~

Sale Date: Final Bidding Round/Court Hearing: 6/23/2015

Time: 10:00 am

Location: See Attached.

Last date to file objections: 06/09/2015

Description of property to be sold: Real Property: 79600 Cortez Lane, La Quinta, CA 92253

Terms and conditions of sale: Free and clear of liens, if any, pursuant to Bankruptcy Code §§ 363(b)(1) and (f)
Purchase price of \$200,000, subject to overbids. See attached for Bid Procedures

Proposed sale price: \$ 200,000.00

Overbid procedure (if any): Potential overbidders must bid an initial amount of at least \$5,000 over the consideration offered by the Buyer, (total of at least \$205,000.) Minium bid increments after that shall be \$1,000.

See attached for more information.

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

June 23, 2015 at 10:00 am

Courtroom 301

U.S. Bankruptcy Court

3420 Twelfth Street

Riverside, CA 92501

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

Elyza P. Eshaghi , Esq.

SHULMAN HODGES & BASTIAN LLP

100 Spectrum Center Drive, Suite 600, Irvine, CA 92618

Telephone: (949) 340-3400

Facsimile: (949) 340-3000

Email: eeshaghi@shbllp.com

Date: 05/28/2015

In re Oralia Castillo Smith
Case No. 6:11-bk-46165-MJ

Attachment to Notice of Sale of Estate Property:

I. INTRODUCTION

Lynda T. Bui, Chapter 7 Trustee (“Trustee”) for the bankruptcy estate (“Estate”) of Oralia Castillo Smith (“Debtor”), will bring a Motion for Order: (1) Approving the Sale of Real Property of the Estate Free and Clear of Certain Liens Pursuant to Bankruptcy Code §§ 363(b)(1) and (f) and Subject to Overbids, Combined With Notice of Bid Procedures and Request for Approval of the Bid Procedures Utilized; (2) Approving Payment of Real Estate Commission; and (3) Granting Related Relief (“Sale Motion”).

The Trustee received an offer from TonieMarie Stinson and Dale Stinson (collectively “Buyer”)¹ to purchase the real property located at 79600 Cortez, La Quinta, California 92253 (“Cortez Property”) for \$200,000. The Cortez Property is a single family residence.

The Cortez Property has been on the market for over one year. The Buyer’s offer is the result of negotiations between the Trustee and the Buyer for the highest and best offer. Additionally, the sale of the Cortez Property will be subject to the Bid Procedures set forth below. The Bid Procedures provide, among other things, that bids must be in writing and be received by the Trustee and the Trustee’s counsel, Shulman Hodges & Bastian LLP to the attention of Elyza Eshaghi at 100 Spectrum Center Drive, Suite 600, Irvine, CA 92618 on or before **5:00 p.m. (California time) on June 16, 2015**. If overbids are received, **the final bidding round shall be held at the hearing on the Sale Motion on June 23, 2015 at 10:00 a.m. (California Time), or if rescheduled, upon telephonic notice to the Buyer and the parties having submitted overbids.** At the final bidding round, the Trustee or her counsel will, in the exercise of her business judgment and subject to Court approval, accept the bidder who has made the highest and best offer to purchase the Cortez Property, consistent with the Bid Procedures.

¹ The purchase offer was signed only by ToniMarie Stinson who has since advised escrow that vesting at the close of escrow will be ToniMarie Stinson and Dale Stinson.

Through the sale, the Trustee is expected to generate proceeds of \$180,000 for the benefit of the Estate and its creditors. In the event the purchase price is increased by a successful overbid, the estimated net proceeds will increase.

The Court's Claims Register indicates that there have been thirteen general unsecured claims filed totaling \$57,765.59. The Debtor's former spouse also filed a late proof of claim in an "unknown" amount, which amount appears to be based on his community interest and/or equitable distribution in the marital assets during the time that they were married. The Trustee anticipates that if the sale is approved, unsecured creditors are expected to receive a meaningful distribution.

Prior to the bankruptcy filing, the Debtor and her former spouse were involved in a divorce proceeding for approximately six years but there had been no final dividing up of their community properties. The Trustee intends to reach out to the former spouse to obtain an amicable resolution.

In summary, the Trustee believes that good cause exists to grant the Sale Motion so the Trustee does not lose this favorable business opportunity.

II. RELEVANT FACTS

A. Case Commencement

The Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on November 29, 2011.

Lynda T. Bui is the duly appointed, qualified and acting Chapter 7 trustee for the Debtor's Estate.

B. Claims Against the Estate

The last day to file proof of claims in this case was May 7, 2012 (government claims were due by July 30, 2012). The Court's Claims Register indicates that there have been thirteen general unsecured claims filed totaling \$57,765.59 plus an "unknown" amount by the Debtor's former spouse. Only a small portion of the claims appear to be community debts.

C. The Cortez Property

A true and correct copy of a preliminary title report on the Cortez Property dated

1 April 16, 2015 is attached as **Exhibit 1 to the Declaration of Lynda T. Bui annexed to the**
2 **Sale Motion** ("Bui Declaration"). The preliminary title report indicates the legal description for
3 the Cortez Property as follows:²

4 CITY OF LA QUINTA, COUNTY OF RIVERSIDE, STATE OF
5 CALIFORNIA:

6 LOT 32 OF TRACT NO. 2667, IN THE CITY OF LA QUINTA,
7 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS
8 SHOWN BY MAP ON FILE IN BOOK 50, PAGES 64 AND 65
9 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF
10 SAID COUNTY.

11 TOGETHER WITH THAT PORTION OF LOT 16 OF SAID
12 TRACT 2667, DESCRIBED AS FOLLOWS:

13 BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT
14 16; THENCE NORTH 08° 07' 15" EAST 61.24 FEET TO THE
15 NORTHEAST CORNER OF LOT 32 OF TRACT NO. 2667 AS
16 SHOWN ON MAP ON FILE IN BOOK 50, PAGES 64 AND 65
17 OF MAPS, RIVERSIDE COUNTY RECORDS;

18 THENCE SOUTH 01° 38' 36" EAST 55.16 FEET TO THE
19 NORTH LINE OF CORTEZ LANE AS SHOWN ON MAP OF
20 TRACT 2667 ON FILE IN BOOK 50, PAGES 64 AND 65 OF
21 MAPS, RIVERSIDE COUNTY RECORDS;

22 THENCE ON A CURVE CONCAVE TO THE NORTH HAVING
23 A RADIUS OF 275.00 FEET, THROUGH A CENTRAL ANGLE
24 OF 02° 25' 38" AND A CURVE LENGTH OF 12.00 FEET TO
25 THE POINT OF BEGINNING.

26 EXCEPT ONE-HALF INTEREST IN AND TO ALL OIL, GAS,
27 MINERAL AND OTHER HYDROCARBON SUBSTANCES, AS
28 RESERVED IN DEED FROM LEONARD A. GRENIER AND
MARY LOUISE GRENIER, HUSBAND AND WIFE,
RECORDED OCTOBER 11, 1955 IN BOOK 1805, PAGE 153,
OFFICIAL RECORDS OF RIVERSIDE COUNTY,
CALIFORNIA.

APN: 600-041-008-1

23 Although the Debtor failed to list the Cortez Property on her Bankruptcy Schedules, the
24 Cortez Property is an asset of the Estate and title is held in the Trustee's name solely in her
25 capacity as the Trustee for the Estate. Specifically, on August 31, 2012, the Trustee filed a quiet
26 title complaint against the Debtor, Olga Moreno, Ramon Vela Moreno, and Onie Castillo

27 ² The legal description for the Cortez Property is believed to be accurate but may be
28 corrected or updated by the title company in the transfer documents as necessary to
complete the proposed sale transaction.

(collectively referred to herein as “Defendants”) commencing Adversary Case No. 6:12-ap-01334-MJ (“Quiet Title Action”) relating to the fraudulent conveyance of various properties, including the Cortez Property. On January 10, 2014, in order to avoid the cost and uncertainty associated with litigating the Quiet Title Action, the Trustee and the Defendants entered into a Settlement Agreement and Mutual General Release (“Settlement Agreement”), which was approved by Court order entered on March 25, 2014 (docket 60). The Defendants defaulted on the Settlement Agreement by failing to make any required settlement payments to the Trustee. Under the terms of the default provisions of the Settlement Agreement, a Quitclaim Deed for the Cortez Property was recorded with the Riverside County Recorder on March 14, 2014, (recording number 2014-0095807) transferring title to the Cortez Property to the Trustee on behalf of the Estate. A true and correct copy of the recorded Quitclaim Deed is attached to the as **Exhibit 2 to the Bui Declaration annexed to the Sale Motion**.

The Cortez Property was not listed in the Debtor’s Schedules and the Debtor has not claimed an exemption in the Cortez Property. In reviewing the history transaction for the Cortez Property, it appears to have been purchased by the Debtor and her former spouse, David Smith, in 1991. It is believed that the Debtor as a married woman, as her sole and separate property, obtained a loan on the Cortez Property in 1994 of approximately \$140,000 which has since been paid off. The Debtor and Mr. Smith separated in or around 1999. As indicated on the preliminary title report, the Cortez Property is currently unencumbered and free and clear of any lender liens.

D. The Dissolution Action

Prior to the Petition Date, a Grant Deed was recorded on 5/19/1999, recording number 1999-218558, wherein David Smith, the Debtor’s former spouse, released his interest in the Cortez Property. A true and correct copy of the Grant Deed is attached to as **Exhibit 3 the Bui Declaration annexed to the Sale Motion**. However, the Trustee is advised that the Cortez Property is subject to a pending dissolution proceeding involving the Debtor and her former spouse David Smith styled *David Smith v. Oralia Castillo Smith*; San Diego County Superior Court Case No. D-488799 (“Dissolution Action”). The Dissolution Action had been pending for

1 approximately six years prior to the Petition Date and involves several properties and assets,
2 including the Cortez Property. Through the Dissolution Action, Mr. Smith is attempting to
3 determine what portion of the Debtor's assets are community property and what assets if any, he
4 would be entitled to as his sole and separate property. The Dissolution Action involves issues
5 regarding fraudulent transactions, breach of fiduciary duties, and misuse of community funds.
6 There was no final decree in the Dissolution Action identifying and/or dividing all the marital
7 property on the Petition Date.

8 The Trustee intends to communicate with Mr. Smith regarding the sale of the Cortez
9 Property and it is believed that Mr. will consent to and support the Trustee's proposed sale.

10 **E. Broker Employment, Marketing Efforts and Basis for Value of the Property**

11 On February 27, 2014, the Trustee filed an application to employ Richard A. Halderman
12 Jr. (docket 58) ("Employment Application"), as her real estate broker ("Broker") to assist in the
13 marketing for sale of the Cortez Property and the Holly Property.³ On April 7, 2014, the Court
14 entered an order approving the Employment Application (docket 63) ("Employment Order").
15 The listing agreement with the Broker provides for a real estate commission to be paid of six
16 percent of the sale price.

17 The Estate does not have the funds to obtain a formal written appraisal for the estimated
18 value of the Cortez Property. The Broker has more than twenty years of experience in the sale of
19 real property as well as property valuations and is familiar with valuing real property in today's
20 economic environment. The Broker inspected the Cortez Property and believed that the Cortez
21 Property had fair market value that supported it be listed for sale at \$355,000. The listing price
22 was determined on comparable sales of similar properties in the area.

23 The Trustee believes that the proposed sale, subject to overbids, will be at fair market
24 value. Given that the sale is subject to overbids, it is anticipated that the Trustee will receive the
25 best and highest value for the Cortez Property and therefore the proposed sale price is fair and
26 reasonable.

27
28 ³ The Holly Property refers to the real property located at 45615 Holly Court, Indio, CA 92201.

**F. Liens and Encumbrances Against the Property and Their Proposed Treatment
Through the Sale**

The following chart sets forth the liens, encumbrances and other interests against the Cortez Property as detailed in a preliminary title report and also describes the proposed treatment of the liens, encumbrances and other interests through the sale:

<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owing</u>	<u>Treatment</u>
Riverside County Treasurer – Tax Collector	Real property taxes	Property taxes \$4,000 (estimated): ⁴	Pro-rata outstanding real property taxes will be paid through escrow on the sale transaction.

⁴ 1st installment due 12/10/2014 of \$1,265.81 plus delinquent penalty of \$126.56, and 2nd installment due 4/10/2015 of \$1,265.81, plus delinquent penalty of \$165.19. Supplemental taxes: 1st installment due 12/10/2014 of \$477.29 plus delinquent penalty of \$47.773, and 2nd installment due 4/10/2015 of \$477.29, plus delinquent penalty of \$86.36.

<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owing</u>	<u>Treatment</u>
David Smith	Pending Court Action re Riverside Superior Court Case No. D-488799, recorded on 10/27/2010, recording number 2010-0516035	\$0.00	<p>The priority, validity and amount of this encumbrance is the subject of a bona fide dispute.</p> <p>Furthermore, a Grant Deed was recorded on 5/19/1999, recording number 1999-218558, wherein Mr. Smith released his interest in the Cortez Property. A true and correct copy of the Grant Deed is attached to as Exhibit 3 to the Bui Declaration annexed to the Sale Motion. As such, the Trustee believes that Mr. Smith had no interest in the Cortez Property on the Petition Date.</p> <p>As it is subject to a bona fide dispute, pursuant to Bankruptcy Code Sections 363(b) (1) and (f)(4), the Trustee seeks to sell the Cortez Property free and clear of the encumbrance with such disputed encumbrance to attach to the proceeds of the sale in the same validity and priority as prior to the sale pending agreement with Mr. Smith or further Court order. The Trustee intends to communicate with Mr. Smith regarding the sale and it is believed that Mr. will consent to and support the sale.</p>

In summary, all costs of sale, including escrow fees and real estate commissions will be paid at closing. In addition, all outstanding pro-rata real property taxes and city liens, if any, will be paid through the sale. The encumbrance arising under the Pending Court Action recorded by Mr. Smith will attach to the proceeds of the sale pending further Court order or agreement with Mr. Smith.

G. The Purchase Offer and Summary of the Sale Terms

The Buyer offered to purchase the Cortez Property for \$200,000. The purchase price

includes a deposit of \$5,000. Attached as **Exhibit 4 to the Bui Declaration annexed to the Sale Motion** is a true and correct copy of the Residential Purchase Agreement and Joint Escrow Instructions and related addendum (collectively the “Agreement”).

A summary of the Agreement’s terms and highlights are discussed below, but the summary and discussion are not meant to be a complete review of every provision of the Agreement. The Agreement itself is the legally binding document the Trustee seeks approval of and, in the event of any inconsistency between the terms, provisions or effect of the Agreement and the description of it in these pleadings, the Agreement alone shall govern and not these pleadings or the descriptions herein. In summary, the principal terms of the sale are as follows (the Trustee is referred to at times as the “Seller” in the following summary):

Buyer:	ToniMarie Stinson and Dale Stinson ⁵ 4842 Carfax Avenue Lakewood, CA 90713
Purchase Price:	\$200,000, subject to the Bid Procedures set forth below. \$5,000 deposit. Balance of purchase price paid at close of escrow.
Escrow Holder:	The escrow holder shall be A&A Escrow, Beverly Hills, CA
Escrow, Title and Other Costs:	Escrow company fees shall be allocated equally between Seller and Buyer. Real property taxes payable by the Seller shall be prorated to close of escrow based upon the latest tax information available. No fees shall be paid and no costs shall be reimbursed unless and until ordered by the Bankruptcy Court. Any and all such fees and costs shall be the sole and exclusive liability of and claim against the Debtor’s Estate. The Trustee shall not have any personal liability on any account.
Disclosure or Warranty	As the Seller is a federal bankruptcy trustee, notwithstanding that the Agreement contains disclose or warranty provisions, there will be no warranties or disclosures made concerning the Property.

⁵ The purchase offer was signed only by ToniMarie Stinson who has since advised escrow that vesting at the close of escrow will be ToniMarie Stinson and Dale Stinson.

1 2 3 4 5 6 7	"As-Is" Sale	Buyer is purchasing the Property from the Seller "AS IS" without warranties of any kind, expressed or implied, being given by the Seller, concerning the condition of the property or the quality of the title thereto, or any other matters relating to the Property. Buyer represents and warrants that Buyer is purchasing the Property as a result of its own investigations and is not buying the Property pursuant to any representation made by any broker, agent, accountant, attorney or employee acting at the direction, or on the behalf of the Seller, except as expressly set forth in the Agreement. Buyer acknowledges that Buyer has inspected the Property, and upon closing of Escrow governed by this Agreement, Buyer forever waives, for itself, its heirs, successors and assigns, all claims against the Debtor, their attorneys, agents and employees, the Estate, Lynda T. Bui as Trustee and individually, and his attorneys, the law firm for which she is associated, her agents and employees, arising or which might otherwise arise in the future concerning the Property.
8 9		Because the sale of the Property is a bankruptcy sale, the sale shall be "as-is" and without any warranties (whatsoever), and any transfer shall be by the Bankruptcy Trustee's Deed or Quitclaim deed at the Seller's option.
10 11 12	Bankruptcy Court Approval	The Agreement is unenforceable and of no legal effect, unless and until approved by the Bankruptcy Court. Any and all sales of the Property are subject to overbid at the time of the hearing on the Sale Motion. If the Buyer is overbid at the auction for the Property in the Bankruptcy Court, the Buyer agrees to release the Seller from any and all obligations under the Agreement other than the return of any deposits made by the Buyer.
13 14	Real Estate Agent Commission	Through escrow on the sale of the Property, and subject to Court approval, the Trustee shall pay compensation for real estate agent services to the Buyer's agent and the Estate's agent. The agents shall equally split a commission in the amount of six percent of the final purchase price.
15 16	Jurisdiction of the Bankruptcy Court	Any and all disputes in connection with the Agreement are subject to the exclusive jurisdiction and venue of the United States Bankruptcy Court hearing in the Bankruptcy Case in Riverside, California.
17	Sale Subject to Overbidding	The sale of the Property is subject to the Bid Procedures described below.

19 **H. Bid Procedures**

20 The Trustee has determined that it would benefit the Estate to permit all interested parties
21 to receive information and bid for the Cortez Property instead of selling the Cortez Property to
22 the Buyer on an exclusive basis. Accordingly, in order to obtain the highest and best offer for
23 the benefit of the creditors of this Estate, the Trustee is utilizing and also seeks Court approval of
24 the following bid procedures ("Bid Procedures"):

25 1. Potential bidders must bid an initial amount of at least \$5,000 over the Purchase
26 Price, or \$205,000. Minimum bid increments thereafter shall be \$1,000. The Trustee shall have
27 sole discretion in determining which overbid is the best for the Estate and will seek approval
from the Court of the same.

28 2. Bids must be in writing and be received by the Trustee and the Trustee's counsel,
Shulman Hodges & Bastian LLP to the attention of Elyza P. Eshaghi on or before **5:00 p.m.
(California time) on June 16, 2015.**

3. Bids must be accompanied by certified funds in an amount equal to three percent of the overbid purchase price.

4. The bidder must also provide evidence of having sufficiently committed funds to complete the transaction or a lending commitment for the bid amount and such other documentation relevant to the bidder's ability to qualify as the purchaser of Property and ability to close the sale and immediately and unconditionally pay the winning bid purchase price at closing.

5. The bidder must seek to acquire the Cortez Property on terms and conditions not less favorable to the Estate than the terms and conditions to which the Buyer has agreed to purchase the Cortez Property as set forth in the Agreement with the Buyer including no contingencies and closing on the sale in the same time parameters as the Buyer.

6. All competing bids must acknowledge that the Cortez Property is being sold on an "AS IS" basis without warranties of any kind, expressed or implied, being given by the Seller, concerning the condition of the Cortez Property or the quality of the title thereto, or any other matters relating to the Cortez Property. The competing bid buyer must represent and warrant that he/she is purchasing the Cortez Property as a result of their own investigations and are not buying the Cortez Property pursuant to any representation made by any broker, agent, accountant, attorney or employee acting at the direction, or on the behalf of the Seller. The competing bidder must acknowledge that he/she has inspected the Cortez Property, and upon closing of Escrow governed by the Agreement, the Buyer forever waives, for himself/herself, their heirs, successors and assigns, all claims against the Debtor, their attorneys, agents and employees, the Debtor's Estate, Lynda T. Bui as Trustee and individually, and her attorneys, the law firm for which she is associated, Shulman Hodges & Bastian LLP, her agents and employees, arising or which might otherwise arise in the future concerning the Cortez Property.

7. If overbids are received, the final bidding round shall be held at the hearing on the Sale Motion (**June 23, 2015 at 10:00 a.m., California Time, at the U.S. Bankruptcy Court, Courtroom 301, 3420 Twelfth Street, Riverside, California 92501**), or if rescheduled, upon telephonic notice to the Buyer and the parties having submitted overbids in order to allow all potential bidders the opportunity to overbid and purchase the Cortez Property. At the final bidding round, the Trustee or her counsel will, in the exercise of their business judgment and subject to Court approval, accept the bidder who has made the highest and best offer to purchase the Property, consistent with the Bid Procedures ("Successful Bidder").

8. At the hearing on the Sale Motion, the Trustee will seek entry of an order, *inter alia*, authorizing and approving the sale of the Cortez Property to the Successful Bidder. The hearing on the Sale Motion may be adjourned or rescheduled without notice other than by an announcement of the adjourned date at the hearing on the Sale Motion.

9. In the event the Successful Bidder fails to close on the sale of the Cortez Property within the time parameters approved by the Court, the Trustee shall retain the Successful Bidder's Deposit and will be released from her obligation to sell the Cortez Property to the Successful Bidder and the Trustee may then sell the Cortez Property to the First Back-Up Bidder approved by the Court.

10. In the event First Back-Up Bidder fails to close on the sale of the Cortez Property within the time parameters approved by the Court, the Trustee shall retain the First Back-Up Bidder's Deposit and will be released from her obligation to sell the Cortez Property to the First Back-Up Bidder and the Trustee may then sell the Cortez Property to the Second Back-Up Bidder approved by the Court.

I. Notice Regarding the Bid Procedures

The Trustee is proposing the sale of the Cortez Property to be subject to the Bid Procedures discussed above. The Bid Procedures will be provided to all creditors and any

potential bidders or parties who have shown an interest in the Cortez Property. A Notice of Sale of Estate Property will be filed with the Court for posting on the Court's website under the link "Current Notices of Sales", thereby giving notice to additional potential interested parties.

The Broker will update the Multiple Listing Service to reflect the Bid Procedures above. The Trustee will also post the sale and Bid Procedures on the website for the National Association of Bankruptcy Trustees.

Based on the foregoing, the Trustee believes that under the circumstances of this case, the Cortez Property will have been appropriately marketed for bidding.

J. Costs of Sale

Pursuant to the Court order approving the employment of the Broker (docket 63), the Broker is entitled to a commission in the amount not to exceed six percent of the purchase price (\$12,000 based on the Buyer's offer of \$200,000), which will be split between the Trustee's Broker and the Buyer's real estate broker. Escrow fees shall be split between Buyer and Estate in the manner customary in Riverside County, California where the Cortez Property is located.

K. Tax Consequences

The Trustee is evaluating issues regarding capital gains tax consequences and at this time, has not determined what the capital gains taxes liability will be, if any, generated by the sale. The Estate may be entitled to the capital gains exclusion because the Debtor may have resided in the Cortez Property two of the last five years. If the Estate is not entitled to such exclusion, it is anticipated that, based real property records, there will be no capital gains taxes.⁶

⁶ Assuming the documentary transfer tax listed on a Grant Deed of the Cortez Property to David and Laurie Smith on 9/13/1991 is based on the full purchase price:

Documentary Transfer Tax	\$206.80
Divided by \$.55	\$ 376
Multiplied by \$500 = Purchase Price in 1991	\$188,000
Estimated Net Sale Proceeds	\$180,000
Less Estimated Original Purchase Price	(\$188,000)
Basis for Capital Gains	\$.00
15% Tax	\$.00

1 **L. The Sale Will Be Free and Clear of Liens**

2 The Cortez Property will be sold free and clear of all liens and encumbrances impacting
3 the Property. The Cortez Property shall be delivered to the Buyer free and clear of all liens and
4 encumbrances except for those approved by the Buyer. Out of an abundance of caution, any
5 liens and interests against the Cortez Property that are not resolved through either (1) the Court
6 order approving the sale, or (2) through escrow, shall attach to the sale proceeds with the same
7 force, effect, validity, and priority as such liens or interests had with respect to the Cortez
8 Property prior to the sale. The *lis pendens* filed by David Smith will attach to the sale proceeds.

9 **M. The Debtor's Vacating of the Cortez Property**

10 On April 30, 2015, the Trustee's Broker communicated with the Debtor by telephone
11 regarding the Trustee's intention to sell the Cortez Property and advised the Debtor that she will
12 need to move from the Cortez Property by the first week of June 2015. A true and correct copy
13 of the Broker's correspondence to the Debtor confirming the telephone conversation and the date
14 for the Debtor's vacating of the Cortez Property is attached as **Exhibit 5 to the Declaration of**
15 **Richard Halderman annexed to the Sale Motion.**

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: **100 Spectrum Center Drive, Suite 600, Irvine, California 92618**

A true and correct copy of the foregoing document entitled (*specify*): **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*) **May 28, 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:

- **Patti H Bass** ecf@bass-associates.com Attorney for HSBC Bank Nevada, N.A..
- **Mark Bradshaw** mbradshaw@shbllp.com, sswartzell@shbllp.com, rhodges@shbllp.com Attorney for Chapter 7 Trustee
- **Lynda T. Bui (TR)** trustee.bui@shbllp.com, C115@ecfcbis.com Chapter 7 Trustee
- **Michael J Bujold** Michael.J.Bujold@usdoj.gov, Attorney for United States Trustee
- **Dolores A Contreras** dc@contreraslawfirm.com Attorney for David Wayne Smith
- **Franklin J Contreras** fcontreras@shbllp.com, lverstegen@shbllp.com Attorney for Chapter 7 Trustee
- **Elyza P Eshaghi** eeshaghi@shbllp.com, sswartzell@shbllp.com Attorney for Chapter 7 Trustee
- **Rosemary Nguyen** bknotice@rcolegal.com Attorney for Wells Fargo Bank, N.A.
- **Ryan D ODea** rodea@shbllp.com, sswartzell@shbllp.com Attorney for Chapter 7 Trustee
- **Jennifer A Pursley** ecf@bass-associates.com Attorney for eCAST Settlement Corporation
- **Leonard M Shulman** lshulman@shbllp.com Attorney for Chapter 7 Trustee
- **Andrew Edward Smyth** office@smythlo.com NEF for Interested Party
- **United States Trustee (RS)** ustpregion16.rs.ecf@usdoj.gov United States Trustee
- **Edward T Weber** bknotice@rcolegal.com NEF Courtesy Notice
- **Jerome A Yelsky - INACTIVE -** yelsky@cherinandyelsky.com, casupportgroup@w-legal.com NEF Courtesy Notice

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) **May 28, 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.

☒ 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*) **May 28, 2015**, 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.

Judge's Copy - Via Messenger

Hon Meredith A. Jury, U.S. Bankruptcy Court, 3420 Twelfth Street, Bin Outside Courtroom 301, Riverside, CA 92501-3819

☐ 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.

May 28, 2015

Date

Lorre Clapp

Printed Name

/s/ Lorre Clapp

Signature

U.S. MAIL SERVICE LIST

Buyer

ToniMarie Stinson and Dale Stinson
4842 Carfax Avenue
Lakewood, CA 90713

Buyer's Agent/Broker

Armando Molina
Nationwide Real Estate Executives
4425 Atlantic Avenue, Bldg. C
Long Beach, CA 90807

Trustee's Agent/Broker

Richard Halderman
Lido Pacific Asset Management
3857 Birch St Suite 480
Newport Beach, CA 92660

CONTINUED ON THE FOLLOWING PAGE.

U.S. MAIL SERVICE LIST CONTINUED.

DEBTOR

ORALIA CASTILLO SMITH
79600 CORTEZ LANE
LA QUINTA, CA 92253

INTERESTED PARTY

UNITED STATES TRUSTEE (RS)
3685 MAIN STREET, SUITE 300
RIVERSIDE, CA 92501

COURT NOTICE MATRIX

ECAST SETTLEMENT CORPORATION
C/O BASS & ASSOCIATES, P.C.
3936 E. FT. LOWELL ROAD, SUITE #200
TUCSON, AZ 85712

COURT NOTICE MATRIX

ALTURA CREDIT UNION
2847 CAMPUS PKWY
RIVERSIDE, CA 92507

PROOF OF CLAIM ADDRESS

AMERICAN EXPRESS CENTURION BANK
BECKET AND LEE LLP
PO BOX 3001
MALVERN, PA 19355-0701

COURT NOTICE MATRIX

AMEX
PO BOX 297871
FORT LAUDERDALE, FL 33329

COURT NOTICE MATRIX

BANK OF AMERICA
PO BOX 17054
WILMINGTON, DE 19850

COURT NOTICE MATRIX

BASIE & FRITZ
3638 CAMINO DEL RIO NORTH, 280
SAN DIEGO, CA 92108

COURT NOTICE MATRIX

CAPITAL ONE, N.A.
C/O CREDITORS BANKRUPTCY SERVICE
PO BOX 740933
DALLAS, TX 75374

TRANSFEE OF CLAIM NO. 8

CAPITAL ONE, N.A.
C/O BASS & ASSOCIATES, P.C.
3936 E. FT. LOWELL ROAD, SUITE #200
TUCSON, AZ 85712

COURT NOTICE MATRIX

CBNA
PO BOX 6497
SIOUX FALLS, SD 57117

COURT NOTICE MATRIX

CHASE
PO BOX 15298
WILMINGTON, DE 19850

COURT NOTICE MATRIX

CHASE-PIER
PO BOX 15298
WILMINGTON, DE 19850

COURT NOTICE MATRIX

CITI
PO BOX 6241
SIOUX FALLS, SD 57117

COURT NOTICE MATRIX

DISCOVER BANK
DB SERVICING CORPORATION
PO BOX 3025
NEW ALBANY, OH 43054-3025

COURT NOTICE MATRIX

DISCOVER FIN SVCS LLC
PO BOX 15316
WILMINGTON, DE 19850

COURT NOTICE MATRIX

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

PROOF OF CLAIM ADDRESS

GE CAPITAL RETAIL BANK
C/O RECOVERY MANAGEMENT SYSTEMS
CORP.
25 SE 2ND AVENUE, STE 1120
MIAMI, FL 33131-1605

COURT NOTICE MATRIX

GEGRB/GE MONEY BANK LOWES
PO BOX 103065
ROSWELL, GA 30076

COURT NOTICE MATRIX

GEGRB/PACIFIC SALES
PO BOX 981439
EL PASO, TX 79998-1439

COURT NOTICE MATRIX

GEGRB/WALMART
PO BOX 981400
EL PASO, TX 79998-1400

PROOF OF CLAIM ADDRESS

MIDLAND FUNDING LLC
BY ITS AUTHORIZED AGENT RECOSER,
LLC
25 SE 2ND AVENUE, STE 1120
MIAMI, FL 33131-1605

COURT NOTICE MATRIX

HSBC BANK
ATTN BANKRUPTCY DEPT
PO BOX 5213
CAROL STREAM, IL 60197-5213

COURT NOTICE MATRIX

HSBC BANK NEVADA, N.A.
C/O BASS & ASSOCIATES, P.C.
3936 E. FT. LOWELL ROAD, SUITE #200
TUCSON, AZ 85712-1083

COURT NOTICE MATRIX

KOHL'S/CAPONE
N56 W 17000 RIDGEWOOD DR
MENOMONEE FALLS, WI 53051

COURT NOTICE MATRIX

LOWE'S
PO BOX 530914
ATLANTA, GA 30353

COURT NOTICE MATRIX

MCYDSNB
9111 DUKE BLVD
MASON, OH 45040

COURT NOTICE MATRIX

MIDWEST LOAN SERVICES
616 SHELLEN AVE STE 300
HOUGHTON, MI 49931

COURT NOTICE MATRIX

NOVACK LAW OFFICES
JEFFREY N. NOVACK
171 SAXONY RD, SUITE 211
ENCINITAS, CA 92024

COURT NOTICE MATRIX

NOVACK LAW OFFICES
43537 RIDGE PARK DRIVE
TEMECULA, CA 925903615

PROOF OF CLAIM ADDRESS

PYOD, LLC, ITS SUCCESSORS AND
ASSIGNS AS ASSIGNEE OF CITIBANK
RESURGENT CAPITAL SERVICES
PO BOX 19008
GREENVILLE, SC 29602

COURT NOTICE MATRIX

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

PROOF OF CLAIM ADDRESS

SMITH, DAVID WAYNE
705 SALEM COURT, #4
SAN DIEGO, CA 92109-7004

PROOF OF CLAIM ADDRESS

KIM TRACOFF-SMITH
705 SALEM COURT, #4
SAN DIEGO, CA 92109-7004

COURT NOTICE MATRIX

US BANK
PO BOX 5227
CINCINNATI, OH 45201

COURT NOTICE MATRIX

US BANK
PO BOX 5229
CINCINNATI, OH 45201-5229

COURT NOTICE MATRIX

WELLS FARGO HM MORTGAG
8480 STAGECOACH CIR
FREDERICK, MD 21701

COURT NOTICE MATRIX

WELLS FARGO BANK NA
WELLS FARGO HOME MORTGAGE AMERICA
SERVICING CO
ATTN BANKRUPTCY DEPT MAC X7801-014
3476 STATEVIEW BLVD
FORT MILL, SC 29715-7203

COURT NOTICE MATRIX

WELLS FARGO BANK NA
RCO LEGAL, P.S.
1241 EAST DYER ROAD, SUITE 250
SANTA ANA, CA 92705-5611

COURT NOTICE MATRIX

WACHOVIA DEALER SERVICES INC.
ATTN BANKRUPTCY DEPT
PO BOX 19657
IRVINE, CA 92623-9657

CREDITOR LISTING

WFDS/WDS
PO BOX 1697
WINTERVILLE, NC 28590

NOTICE PURPOSES

INTERNAL REVENUE SERVICE
PO BOX 7346
PHILADELPHIA, PA 19101-7346

COURT NOTICE MATRIX

CALIFORNIA FRANCHISE TAX BOARD
BANKRUPTCY SECTION MS: A-340
PO BOX 2952
SACRAMENTO, CA 95812-2952

INTERESTED BIDDER - REAL PROPERTY

TONY DEAZTLAN
82632 HWY 111 #1
INDIO, CA 92201

RETURNED MAIL COMMENTS

**3/19/12; NOT DELIVERABLE AS
ADDRESSED; UNABLE TO FORWARD
CREDITOR LISTING**

HSBC/BEST BUY
PO BOX 15519
WILMINGTON, DE 19850

**3/15/12; NOT DELIVERABLE AS
ADDRESSED; UNABLE TO FORWARD
CREDITOR LISTING**

GMAC
PO BOX 12699
GLENDALE, AZ 85318

**3/14/12; NOT DELIVERABLE AS
ADDRESSED; UNABLE TO FORWARD
CREDITOR LISTING**

GEGRB/WALMART DC
PO BOX 981400
EL PASO, TX 79998

**1/10/13; CLAIM TRANSFERRED TO
CAPITAL ONE, N.A.
CREDITOR LISTING**

HSBC BANK NEVADA, N.A.
BASS & ASSOCIATES, P.C.
3936 E. FT. LOWELL ROAD, SUITE #200
TUCSON, AZ 85712

**1/19/13; CLAIM TRANSFERRED TO
MIDLAND FUNDING LLC
PROOF OF CLAIM ADDRESS**

GE CAPITAL RETAIL BANK
C/O RECOVERY MANAGEMENT SYSTEMS
CORP.
25 SE 2ND AVENUE, STE 1120
MIAMI, FL 33131-1605

**RETURNED 3/3/14; BOX CLOSED; NO
ORDER
CREDITOR LISTING**

GEGRB/PACIFIC SALES
PO BOX 981439
EL PASO, TX 79998

**SEE NEW ADDRESS
COURT NOTICE MATRIX**

RICHARD A HALDERMAN JR
4020 BIRCH STREET SUITE 480
NEWPORT BEACH, CA 92660-2213