

Debtor in Possession argues that Counsel's appointment and retention is necessary to enable Debtor in Possession to faithfully execute its duties and to implement the restructuring and reorganization of Debtor in Possession. The Bankruptcy Group P.C. will provide legal advice to Debtor in Possession and act to preserve the bankruptcy estate of Debtor.

Stephan Brown, a shareholder in The Bankruptcy Group P.C., testifies that he conducted a conflicts check and that The Bankruptcy Group P.C. is a "disinterested person" under 11 U.S.C. § 101(14). Stephan Brown testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Debtor in Possession notes that the following individuals may be involved with this case as part of the employment of Counsel:

- A. Edward Smith, Senior Attorney;
- B. Stephan Brown, Attorney;
- C. Eric Welch, Legal Administrator;
- D. Brenda Guy, CPA;
- E. Daniel Griffin, Attorney; and
- F. Law clerks, paralegals, and administrative staff.

MARCH 22, 2018 HEARING

At the hearing, counsel explained that the Schedules needed to be amended and additional information disclosed concerning assets of the Estate and operation of the business. Dckt. 30. The court continued the hearing to 10:30 a.m. on April 19, 2018, to afford counsel time to amend the Schedules and Statement of Financial Affairs and to demonstrate there being a financial reason for Debtor in Possession to operate the Estate and the ability of counsel to represent Debtor in Possession. Dckt. 32.

DEBTOR IN POSSESSION'S SUPPLEMENTAL PLEADING

Debtor in Possession filed a Supplemental Pleading on April 4, 2018. Dckt. 36. Debtor in Possession discloses that The Bankruptcy Group negotiated pre-petition with the Internal Revenue Service and other creditors to avoid filing a bankruptcy case, but has not otherwise represented Debtor in Possession, its creditors, equity security holders, the U.S. Trustee, or other parties in interest.

APPLICABLE LAW

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the

trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

DISCUSSION

Taking into account the court's indication that this case appears to exist solely to pass money through to MYGORIDE, Inc., and to pay \$4,000.00 per month to the CFO, Secretary, and 20% shareholder of Debtor, Debtor in Possession amended the Petition and Schedules, listing numerous creditors to be paid through this case. *See* Dckt. 40, 41.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Stephan Brown and others in The Bankruptcy Group P.C. as Counsel for the Chapter 11 Estate on the terms and conditions set forth in the court's order. The court does not approve any specific the hourly rate for any persons authorized to be employed. FN.1.

FN.1. The Motion seeks authorization to employ "Counsel." The court notes that a member of proposed counsel's firm is listed as being a "CPA." The court has authorized the employment of counsel by Debtor in Possession, not a "CPA," bookkeeper, or other non-counsel professional.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Employ filed by Laurels Medical Services ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, and Debtor in Possession is authorized to employ Stephan Brown, of The Bankruptcy Group P.C., as Counsel for Debtor in Possession on the terms and conditions as set forth in the court's order.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this Order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession’s Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on April 4, 2018. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

The Motion to Assume was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion to Assume is ~~XXXXX~~.

Laurels Medical Services (“Debtor in Possession”) moves for court authorization pursuant to 11 U.S.C. § 365 to assume an executory contract with the San Francisco Veteran’s Affairs hospital, which contains a sub-contract with MYGORIDE, Inc.

Debtor in Possession argues that there are four pre-petition payments in default, estimated in the amount of \$396,000.00, but post-petition payments are current. Debtor in Possession states that upon court approval, it intends to pay up to \$200,000.00 to the sub-contractor within thirty days to cure approximately two months of the default. For the remainder of the default, Debtor in Possession proposes to cure the deficiency through a Chapter 11 plan.

U.S. TRUSTEE'S OBJECTION

Tracy Hope Davis (“the U.S. Trustee”) filed an Objection on April 10, 2018. Dckt. 49. The U.S. Trustee argues that assuming the MYGORIDE, Inc., sub-contract has not been shown to be beneficial to the Estate. The U.S. Trustee argues that the contract costs the Estate nearly \$500,000.00 but produces little gain.

The U.S. Trustee notes that even though the Motion asserts that Debtor in Possession is current on post-petition payments, the court’s order granting interim use of cash collateral was only for a period that began on March 22, 2018, not back to the filing of this case on February 27, 2018. *See* Dckt. 33. Additionally, it is pointed out that the Internal Revenue Service has not consented to cash collateral being used to cure payments due to MYGORIDE, Inc.

The U.S. Trustee argues that approving assumption of the lease is “nonsensical” because Debtor in Possession proposes to spend nearly \$500,000.00 to net \$38,000.00 on a contract that can be cancelled by MYGORIDE, Inc., unilaterally with thirty or forty-five days’ notice. The U.S. Trustee argues that good business judgment means that Debtor in Possession should be ready to proceed with an alternative plan if the contract is cancelled.

DISCUSSION

11 U.S.C. § 365(a) states that a trustee or debtor in possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” That section of the Code continues and states that “[i]f there has been a default in an executory contract or unexpired lease of the debtor, the trustee [or debtor in possession] may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee [or debtor in possession] cures, or provides adequate assurance that the trustee [or debtor in possession] will promptly cure, such default.” 11 U.S.C. § 365(b)(1)(A).

Here, Debtor in Possession argues that within thirty days \$200,000.00 will be paid against the default and that the remainder will be paid through the Plan. While proposing to pay the \$200,000 (approximately one-half the default amount), Debtor in Possession does not identify the source of the monies to make the payment. This bankruptcy case having been filed February 28, 2018, the court does not have the benefit of any monthly operating reports to consider the financial viability of such proposed payment.

Reviewing the information provided under penalty of perjury by Debtor in Possession, the amount in deposit in checking, savings, money market, and brokerage accounts for the bankruptcy estate is \$0.00 as of the commencement of this case. Schedule A/B, Dckt. 41 at 6. Debtor did report \$425,962.69 in current accounts receivable (aged ninety days or less). *Id.* at 7.

The court has issued an order authorizing the use of cash collateral from the post-petition operation of the business that is property of the bankruptcy estate. Order, Dckt. 33. Under that Order, of the \$112,000 per month being generated on the Veteran’s Affairs Contract, \$100,000 will be paid to MYGORIDE, Inc. for its post-petition services in performing the Contract, \$4,000 to the principal of Debtor for serving as the responsible representative, and \$400 for payroll taxes. The bankruptcy estate will net only \$7,600.00 per month.

The Internal Revenue Service is asserting a \$449,539.16 secured claim in this case. Proof of Claim 7-1. The lien is claimed in all property of Debtor, which appears to include the accounts receivable if such is intended to be used to cure the arrearage. The Internal Revenue Service asserts in Proof of Claim 7-1 that its claim exceeds the value of Debtor's assets.

There is no motion filed for the court to authorize the use of cash collateral to make the \$200,000 payment, which is approximately one-half of the total \$396,000 pre-petition arrearage. Debtor in Possession asserts that this arrearage arose because the Internal Revenue Service levied pre-petition on the monies due on the contract, resulting in the pre-petition defaults to the sub-contractor.

At the hearing, Debtor in Possession argued that assuming the contract is in the best interest of the Estate because **XXXXXXXXXXXX**, and that its back-up plan is **XXXXXXXXXXXX**.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Assume filed by Laurels Medical Services ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Assume is **XXXXXXXXXXXX**.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 29, 2018. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

The Motion to Abandon was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion to Abandon is granted.

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Eric Nims (“the Chapter 7 Trustee”) requests that the court authorize him to abandon property commonly known as 2901 Corriente Way, Lincoln, California (“Property”). The Property is encumbered by the lien of CitiBank N.A. as Trustee, in Trust for Registered Holders of WAMU Asset-Backed Certificates WAMU Series 2007-HE3 Trust, securing a claim of \$1,220,301.70. The Declaration of Eric Nims has been filed in support of the Motion and provides testimony that the value of the Property is \$830,000.00.

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the

Property is of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the Property.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Abandon Property filed by Eric Nims (“the Chapter 7 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is granted, and the Property identified as 2901 Corriente Way, Lincoln, California is abandoned to Hsin-Shawn Cyndi Sheng (“Debtor”) by this order, with no further act of the Chapter 7 Trustee required.

4. [18-90029-E-11](#) **JEFFERY ARAMBEL**
MF-11 **Matt Olson**

**MOTION TO EMPLOY PEARSON
REALTY AS BROKER(S)**
4-3-18 [[188](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession’s Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 4, 2018. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion to Employ is granted.

Jeffery Arambel (“Debtor in Possession”) seeks to employ Jon Daggett of Pearson Realty (“Broker”) pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Broker to assist with marketing and selling two pieces of real property commonly known as Home Ranch and Howard Ranch.

Debtor in Possession argues that Broker’s appointment and retention (retroactive to the petition date) is necessary to continue with pre-petition efforts made by Broker to market and sell the properties. Debtor in Possession proposes to employ Broker on a commission-basis for the sales of the properties.

Jon Daggett, a Senior Vice President of the Farmlands Department of Pearson Realty, testifies that he has fourteen years of experience with sales similar to those proposed by Debtor in Possession. He testifies he and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Jon Daggett of Pearson Realty as Broker for the Chapter 11 Estate on the terms and conditions set forth in the Vacant Land Listing Agreements filed as Exhibits A & B, Dckt. 190. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Employ filed by Jeffery Arambel ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, and Debtor in Possession is authorized to employ Jon Daggett of Pearson Realty as Broker for Debtor in Possession on the terms and conditions as set forth in the Vacant Land Listing Agreements filed as Exhibits A & B, Dckt. 190.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of

property commonly known as 83.93 acres of apricot orchards on Howard Road near Stark Road near Patterson, California (APN 021-013-006) (“Property”).

The proposed purchaser of the Property is Skip Foppiano, and the terms of the sale are:

- A. Purchase price of \$1,700,000.00 at \$20,254.97 per acre, all cash;
- B. Property sold “as is,” “where is,” and “with all faults;”
- C. Deposit of \$2,000.00 paid into escrow;
- D. Close of escrow set for April 25, 2018, subject to extension by the parties;
- E. The proposed sale is concurrent with and subject to a proposed sale of “Home Ranch” for \$3,700,000.00;
- F. Mr. Foppiano has made two \$50,000.00 deposits in connection with potential pre-petition sale of two other properties identified as “Kellner Ranch” and “Newman Ranch,” and the parties dispute whether those deposits are refundable;
- G. Sale free and clear of the liens of SBN V Ag I LLC (“Summit”) and Employment Development Department (“EDD”);
- H. A 4% broker’s commission to Pearson Realty; and
- I. Escrow fees, recording fees, transfer taxes, and other closing costs not to exceed 2% of the gross purchase price.

The Motion seeks to sell the Property free and clear of the lien of Summit and EDD. The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

“(f) The trustee [or debtor in possession] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.”

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant asserts that both Summit’s and EDD’s liens are subject to a bona fide dispute. For Summit’s lien, Movant argues that (1) it arises from a guarantee of obligations to JEA2, LLC, that may be attached to that company’s assets (CAL. CIV. CODE §§ 2899, 3433), (2) it is subject to equitable subordination under 11 U.S.C. § 510(c) because Summit created JEA2, LLC, to place assets beyond creditors’ reach, and (3) it may not be covered by an exception to usury law because Summit is not licensed with the California Department of Business Oversight. For EDD’s lien, Movant argues that the lien was filed post-petition and is void for violating the automatic stay (11 U.S.C. § 362(a)(4)).

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **xxxxxxxxxxxxxxxxxx**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale proceeds are sufficient to pay all claims that are not subject to a dispute while generating more than \$800,000 in net proceeds.

Movant disclosed that a four percent broker’s commission is part of the sale. The court calculates that four percent of the sales price totals \$68,000.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a four percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because “[a]ll creditors and parties-in-interest have been provided with notice and afforded an opportunity to object, and no party will be prejudiced by waiver of the applicable stays.” Dckt. 165 at 8:10–12.

The asserted grounds do not demonstrate any unusual circumstances that necessitate the court overruling what the Supreme Court has established. Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is not granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Jeffery Arambel (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Jeffery Arambel, Debtor in Possession, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f)(4) to Skip Foppiano or nominee (“Buyer”), the unincorporated property commonly known as 83.93 acres of apricot orchards on Howard Road near Stark Road near Patterson, California (APN 021-013-006) (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$1,700,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 170, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
- C. The Property is sold free and clear of the liens of SBN V Ag I LLC and Employment Development Department, creditors asserting secured claims, pursuant to 11 U.S.C. § 363(f)(4), with the liens of such creditors attaching to the proceeds. Debtor in Possession shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.
- D. Debtor in Possession is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. Debtor in Possession is authorized to pay a real estate broker’s commission in an amount equal to four percent of the actual purchase price upon consummation of the sale. The four percent commission shall be paid to Debtor’s in Possession broker, Pearson Realty.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is not waived for cause.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession’s Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on March 29, 2018. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion to Sell Property is granted.

The Bankruptcy Code permits Jeffery Arambel, Debtor in Possession, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as Home Ranch, comprising approximately 180.81 acres of apricot and peach orchards on Needham Road near Stark Road west of Westley, California (APNs 021-013-025; 021-013-026; 021-013-027, and 021-013-028), excluding a 3,200 square foot home and shop built upon the land along with the approximate one acre surrounding the home and shop (“Property”).

The proposed purchaser of the Property is Skip Foppiano, and the terms of the sale are:

- A. Purchase price of \$3,700,000.00;
- B. Property sold “as is,” “where is,” and “with all faults;”

- C. Deposit of \$2,000.00 paid into escrow;
- D. Close of escrow set for April 25, 2018, subject to extension by the parties;
- E. The proposed sale is concurrent with and subject to a proposed sale of “Howard Ranch” for \$1,700,000.00;
- F. Mr. Foppiano has made two \$50,000.00 deposits in connection with potential pre-petition sale of two other properties identified as “Kellner Ranch” and “Newman Ranch,” and the parties dispute whether those deposits are refundable;
- G. Sale free and clear of the liens of SBN V Ag I LLC (“Summit”) and Employment Development Department (“EDD”);
- H. A 4% broker’s commission to Pearson Realty;
- I. Escrow fees, recording fees, transfer taxes, and other closing costs not to exceed 2% of the gross purchase price;
- J. Assets to be sold include any crop grown in 2018 and its proceeds, which Debtor in Possession expects to be none or one nominal crop; and
- K. Upon closing the sales for Howard Ranch and Home Ranch, deposits of \$100,000.00 for potential sales of Kellner Ranch and Newman Ranch will be released by way of cancelling the underlying escrows, whereupon the deposits will be used to pay the purchase price for these proposed sales—\$50,000.00 to the purchase of Home Ranch and \$50,000.00 to the purchase of Howard Ranch.

The Motion seeks to sell the Property free and clear of the lien of Summit and EDD. The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

“(f) The trustee [or debtor in possession] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.”

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant asserts that both Summit’s and EDD’s liens are subject to a bona fide dispute. For Summit’s lien, Movant argues that (1) it arises from a guarantee of obligations to JEA2, LLC, that may be attached to that company’s assets (CAL. CIV. CODE §§ 2899, 3433), (2) it is subject to equitable subordination under 11 U.S.C. § 510(c) because Summit created JEA2, LLC, to place assets beyond creditors’ reach, and (3) it may not be covered by an exception to usury law because Summit is not licensed with the California Department of Business Oversight. For EDD’s lien, Movant argues that the lien was filed post-petition and is void for violating the automatic stay (11 U.S.C. § 362(a)(4)).

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **xxxxxxxxxxxxxxxxxx**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale proceeds are sufficient to pay all claims that are not subject to a dispute while generating more than \$800,000 in net proceeds.

Movant disclosed that a four percent broker’s commission is part of the sale. The court calculates that four percent of the sales price totals \$148,000.00 As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a four percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because “[a]ll creditors and parties-in-interest have been provided with notice and afforded an opportunity to object, and no party will be prejudiced by waiver of the applicable stays.” Dckt. 172 at 8:11–13.

The asserted grounds do not demonstrate any unusual circumstances that necessitate the court overruling what the Supreme Court has established. Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is not granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Jeffery Arambel (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Jeffery Arambel, Debtor in Possession, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f)(4) to Skip Foppiano or nominee (“Buyer”), the Property commonly known as Home Ranch, comprising approximately 180.81 acres of apricot and peach orchards on Needham Road near Stark Road west of Westley, California (APNs 021-013-025; 021-013-026; 021-013-027, and 021-013-028), excluding a 3,200 square foot home and shop built upon the land along with the approximate one acre surrounding the home and shop (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$3,700,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 177, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
- C. The Property is sold free and clear of the liens of SBN V Ag I LLC and Employment Development Department, creditors asserting secured claims, pursuant to 11 U.S.C. § 363(f)(4), with the liens of such creditors attaching to the proceeds. Debtor in Possession shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.
- D. Debtor in Possession is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. Debtor in Possession is authorized to pay a real estate broker’s commission in an amount equal to four percent of the actual purchase price upon consummation of the sale. The four percent commission shall be paid to Debtor’s in Possession broker, Pearson Realty.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is not waived for cause.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required. FN.1.

FN.1. Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held to allow Movant to withdraw as counsel. The court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Movant is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s Attorney, Creditor, parties requesting special notice, and Office of the United States Trustee on March 7, 2018. By the court’s calculation, 43 days’ notice was provided. 14 days’ notice is required.

The Motion to Withdraw as Attorney was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion to Withdraw as Attorney is granted.

Joseph Schuchert (“Movant”), attorney of record for Priscilla Camperud-Schaefer (“Creditor”), filed a Motion to Withdraw as Attorney as Creditor’s counsel in the bankruptcy case. Movant states the following:

- A. The Motion is brought pursuant to Local Bankruptcy Rule 2017-1(e).

- B. Creditor has informed Movant that she wishes to proceed *in pro per* in this case.

CHAPTER 7 TRUSTEE’S STATEMENT OF NON-OPPOSITION

Kimberly Husted (“the Chapter 7 Trustee”) filed a Statement of Non-Opposition on March 22, 2018.

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client’s interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client’s case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California (“Rules of Professional Conduct”). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF’L CONDUCT 3- 700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client’s behavior is taken without probable cause and for the purpose of harassing or maliciously injuring

any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(5) The client knowingly and freely assents to termination of the employment.

CAL. R. PROF'L CONDUCT 3-700(C)(5).

DISCUSSION

As a ground for the Motion to Withdraw as Attorney, Movant states that Creditor wishes to proceed in this case *in pro per*. Movant states in his affidavit:

“Creditor has informed me that she wishes to proceed *in pro per* in the above-captioned matter.”

Dckt. 441.

Movant states that his withdrawal will not cause any prejudice or delay in this case. No relevant party has filed an opposition to this Motion. Additionally, the Chapter 7 Trustee has filed a Statement of Non-Opposition with the court.

Furthermore, under California Rule of Professional Conduct 3-700(C)(5), Creditor's knowingly and freely giving assent to the termination of Movant's employment is a sufficient reason for permissive withdrawal.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Withdraw as Attorney filed by Joseph Schuchert (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Withdraw as Attorney is granted, and Joseph Schuchert is permitted to withdraw as counsel for Priscilla Camperud-Schaefer (“Creditor”).

8. [16-26593-E-7](#) JAY KLIPP
Michael Hays

TRUSTEE'S MOTION TO DISMISS FOR
FAILURE TO APPEAR AT SEC. 341(A)
MEETING OF CREDITORS
3-21-18 [\[81\]](#)

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and creditors on March 23, 2018. By the court's calculation, 27 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has not been set properly for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is ~~denied without prejudice, and the deadlines for the Chapter 7 Trustee and U.S. Trustee to object to Debtor's discharge are extended to May 31, 2018.~~

Michael Dacquisto ("the Chapter 7 Trustee") alleges that Jay Klipp ("Debtor") did not appear at the Meeting of Creditors on March 21, 2018, held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(c)(1).

Alternatively, if Debtor's case is not dismissed, the Chapter 7 Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 11:00 a.m. on April 18, 2018. If Debtor fails to appear at the continued Meeting of Creditors, the Chapter 7 Trustee requests that the case be dismissed without further hearing.

DEBTOR'S RESPONSE

Debtor filed a Response on April 5, 2018. Dckt. 86. Debtor states that he has already made arrangements with his employer to have April 18, 2018, off of work to attend the meeting in Redding. Debtor states that he will make every effort to attend the next scheduled Meeting of Creditors and agrees that, should he not attend that meeting, then his case should be dismissed.

INSUFFICIENT NOTICE OF MOTION

According to the Certificate of Notice for this Motion, service was performed on March 23, 2018. The Chapter 7 Trustee provided twenty-seven days' notice of this Motion. Local Bankruptcy Rule 9014-1(f)(1)(B) requires a minimum of twenty-eight days. The Chapter 7 Trustee has provided one day fewer than the minimum.

Additionally, the U.S. Trustee Guidelines state that the Office of the U.S. Trustee requests service of all matters in Chapter 7 cases, except for proofs of claim, relief from the automatic stay, lien avoidance, reaffirmation/redemption, and discovery. The Certificate of Notice issued by the Bankruptcy Noticing Center does not explicitly list the U.S. Trustee.

The court shortens, *sua sponte*, the notice period for the Motion, it being only one day deficient and Debtor having filed a response.

RULING

Debtor has responded, indicating an intention to prosecute his case. Debtor had a prior Chapter 13 case that was dismissed on September 12, 2016. Debtor commenced this case as one under Chapter 13 on October 3, 2016, with the same counsel as in his prior case. A Chapter 13 Plan was confirmed in the current case on December 19, 2016. Order, Dckt. 43.

On December 19, 2017, the Chapter 13 Trustee filed a Motion to Dismiss the Chapter 13 case. Motion, Dckt. 57. It is asserted in the Motion that Debtor was \$786.00 delinquent in the plan, with monthly payments of \$262.00 required. *Id.* Facing the dismissal of a second case, Debtor elected to convert this case to one under Chapter 7 on January 6, 2018.

The Chapter 7 Trustee reports that Debtor ~~did / did not~~ attend the continued Meeting of Creditors on April 18, 2018.

At the hearing, the court addressed with the Chapter 7 Trustee the Office of the U.S. Trustee not being served. The Chapter 7 Trustee explained ~~XXXXXXXXXXXXXX~~.

~~Cause exists to dismiss this case. The Motion is denied without prejudice, and the deadlines to object to Debtor's discharge are extended to May 31, 2018.~~

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 7 case filed by Michael Dacquisto ("the Chapter 7 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss ~~is denied without prejudice.~~

~~**IT IS FURTHER ORDERED** that the deadlines to file objections to discharge by the Chapter 7 Trustee and the U.S. Trustee pursuant to 11 U.S.C. § 707(b) and § 727 are extended through and including May 31, 2018.~~