

1 **NOSSAMAN LLP**
 CHRISTOPHER D. HUGHES (SBN 254864)
 2 chughes@nossaman.com
 621 Capitol Mall, Suite 2500
 3 Sacramento, CA 95814
 Telephone: 916.442.8888
 4 Facsimile: 916.442.0382

5 Attorneys for Kimberly J. Husted,
 Chapter 7 Trustee

7 **UNITED STATES BANKRUPTCY COURT**
 8 **EASTERN DISTRICT OF CALIFORNIA**
 9 **SACRAMENTO DIVISION**

11 In re
 12 TRONG DINH NGUYEN,
 13 Debtor.

Case No: 16-21659-D-7

DCN: NOS-007

**CHAPTER 7 TRUSTEE’S MOTION TO
 APPROVE SALE OF PROPERTY OF
 THE ESTATE; TO APPROVE
 OVERBIDDING PROCEDURES; AND
 TO ALLOW AND PAY
 ADMINISTRATIVE EXPENSES**

Date: December 12, 2018
 Time: 10:00 a.m.
 Dept. D (Courtroom 34)

20 To THE HONORABLE ROBERT S. BARDWIL, United States Bankruptcy Judge:
 21 Kimberly J. Husted, the duly appointed Chapter 7 Trustee (the “Trustee”) for the
 22 bankruptcy estate of Trong Dinh Nguyen (Case No. 16-21659-D-7), hereby submits this Motion
 23 to Approve Sale of Property of the Estate and to Approve Overbidding Procedures (“Motion”).
 24 The Motion is brought pursuant to section 363(b) of Title 11 of the United States Code, as
 25 amended (the “Bankruptcy Code”), section 503(b) of the Bankruptcy Code, and Rule 6004 of the
 26 Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). The Motion is supported by
 27 the Declaration of Kimberly J. Husted (“Husted Declaration”), submitted herewith.

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1 5. John R. Roberts was subsequently appointed as the Chapter 7 Trustee and acted
2 solely in his capacity as the court-appointed Chapter 7 Trustee, and not as an individual. [Docket
3 No. 2].

4 6. On May 16, 2016, the Debtor filed an Amended Summary of Schedules
5 (“Amended Schedules”) and Amended Statement of Financial Affairs (“Amended SOFA”).
6 [Docket No. 29]. A true and correct copy of the Debtor’s Amended Schedule A/B is submitted
7 herewith as Exhibit 2.

8 7. On or about June 15, 2018, John R. Roberts retired from the case and Kimberly J.
9 Husted was appointed as the successor Trustee and is acting solely in her capacity as the court-
10 appointed Chapter 7 Trustee, and not as an individual. [Docket No. 152].

11 8. The Debtor’s Original and Amended Schedules list a seventy percent (70%)
12 interest in a corporation called World of Good Tastes, Inc.

13 9. The 70% interest in World of Good Tastes, Inc. is property of the Bankruptcy
14 Estate.

15 10. The Trustee has agreed with the minority shareholder to market and sell 100% of
16 the ownership interest in World of Good Tastes, Inc. (hereafter, the “Business”) with the net
17 proceeds apportioned accordingly.

18 11. The Trustee believes it is in the best interest of the Estate to sell the Business
19 because the Estate will benefit.

20 12. On October 22, 2018, this Court entered an order approving the Trustee’s
21 engagement of Ron Landini (“Broker”), and his agent, Constance H. Wright as Trustee’s
22 commercial business broker to list and sell the Business. [Docket No. 175]. The listing
23 agreement entered into by the Trustee and Broker, and submitted with the application to employ,
24 provides for a commission fee to be paid to Broker of ten percent (10%) for the sale of
25 ownership interest in the Business. But the Trustee will not pay the ten percent (10%)
26 commission if no one enters an overbid at the hearing to approve sale or the sales price for 100%
27 of the Business does not generate a sale of at least \$90,000.

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1 “the manner of sale is within the discretion of the Trustee.” *In re The Canyon Partnership*, 55
2 B.R. 520, 524 (Bankr. S.D. Cal. 1985).

3 The Trustee believes that the sale of the Property is in the best interest of the Estate. The
4 sale of the Business to La Bou Fresh, Inc. will realize a benefit to the Estate.

5 **B. Waiver of Bankruptcy Rule 6004(h) is Appropriate.**

6 Pursuant to Rule 6004(h) of the Bankruptcy Rules, an “order authorizing the use, sale or
7 lease of property . . . is stayed until the expiration of 14 days after the entry of the order, unless
8 the court orders otherwise.” The purpose of the rule is to permit sufficient time for an objecting
9 party to appeal the decisions. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h).
10 However, the court may eliminate the stay to allow a sale or other transaction to close
11 immediately.

12 The Trustee respectfully requests that the Court order that the 14-day stay period set forth
13 in Bankruptcy Rule 6004(h) is waived in connection with the proposed sale of the Property.

14 **C. The Expenses Incurred by the Trustee Were Actual and Necessary and**
15 **Provided a Benefit to the Bankruptcy Estate.**

16 “After notice and a hearing, there shall be allowed administrative expenses . . . , including
17 the actual necessary costs and expenses of preserving the estate” 11 U.S.C. § 503(b)(1)(A).
18 These administrative expenses include “wages salaries, and commissions for services rendered
19 after the commencement of the case. 11 U.S.C. § 503(b)(1)(A)(i).

20 In this case, the actual necessary costs of selling the Estate include the closing costs to
21 sell the Business and as also include the ten percent (10%) commission to be paid to the Broker
22 employed by the Estate to market and list and sell the Business.

23 The Trustee respectfully requests authority to pay all necessary closing costs, including
24 the commissions of the Broker, out of escrow. These closing costs, including the commission of
25 the Broker are actual and necessary costs. No portion of the closing costs, including the
26 commissions, will be paid until the escrow has closed.

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Notice

Notice of this Motion has been provided to the Debtor, the Debtor’s attorney, all creditors, and the Office of the United States Trustee, to the extent required by the Bankruptcy Rules and the Local Rules for the United States Bankruptcy Court for the Eastern District of California, and those persons who have formally appeared and requested service in this case pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Trustee submits that no further notice of this Motion is necessary.

Conclusion

WHEREFORE, the Trustee respectfully requests that this Court enter an order:

- 1. Authorizing the Trustee to sell the Property, described in more detail below to La Bou Fresh, Inc. for \$90,000.00 or to the highest bidder at the hearing on the Motion;
- 2. Approving the overbid procedures described herein;
- 3. Authorizing the Trustee to sell and convey title to the Property and to execute any and all documents necessary to transfer title of the Property to the new buyer;
- 4. Waiving the fourteen-day stay of the order authorizing the sale of the Property;
- 5. Authorizing the Trustee to pay through escrow, as an administrative expense, any costs including the commission to the broker employed by the Estate; and
- 6. Granting the Trustee such other and further relief as is just and proper.

Date: November 21, 2018

NOSSAMAN LLP

By: /s/ Christopher D. Hughes
Christopher D. Hughes, Attorney for
Kimberly J. Husted, Chapter 7 Trustee