

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

Chief Judge Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: TUESDAY
DATE: JANUARY 3, 2023
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

RULINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [22-22628](#)-A-7 **IN RE: JULIA REECE AND RYAN COLLINS**
[ESC-1](#)

MOTION TO COMPEL ABANDONMENT
12-5-2022 [\[21\]](#)

ELIZABETH CARLSEN/ATTY. FOR DBT.

Final Ruling

Motion: Compel Abandonment of Property of the Estate
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted only as to the business and such business assets described in the motion
Order: Prepared by moving party pursuant to the instructions below

Business Description: Julia Reece, M.D., Business and Furnishings
Value of Assets: \$1,001.00
Exemption Claimed: \$1,001.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor seeks an order compelling the Chapter 7 trustee's abandonment of business furnishings and her medical practice under 11 U.S.C. § 554.

ABANDONMENT

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The movant bears the burden of proof. *In re Pilz Compact Disc., Inc.*, 229 B.R. 630 (Bankr. E.D. Pa. 1999) (Chapter 7 trustee). "[B]urdensome to the estate" means "consumes the resources and drains the income of the estate." *In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988). "[O]f inconsequential value and benefit to the estate" refers to assets not likely to be liquidated for the benefit of creditors. 11 U.S.C. § 704(a)(1); *Matter of Taxman Clothing Co.*, 49 F3d 310, 315 (7th Cir. 1995) (Chapter 7 trustee has no duty to liquidate assets where costs of doing so likely to exceed asset's value). Of inconsequential value and benefit to the estate includes assets that (1) have no equity

(including post-petition appreciation), *In re Viet Vu*, 245 B.R. 644 (9th Cir. BAP 2000); and (2) assets with equity, which has been wholly and properly exempted by the debtor. *In re Montanaro*, 307 B.R. 194 (Bankr. E.D. Cal. 2004).

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted. The order will compel abandonment of only the business and its assets that are described in the motion.

DUPLICATE DOCKET CONTROL NUMBER - VIOLATION OF LBR 9014-1(c)

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

The moving party has used the same docket control number, ESC-1, on a previous motion to compel abandonment, filed November 4, 2022, ECF No. 14.

2. [22-22231](#)-A-7 IN RE: DEAN SWENOR [SW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-13-2022 [\[21\]](#)

MARY ANDERSON/ATTY. FOR DBT.
ADAM BARASCH/ATTY. FOR MV.
DEBTORS DISCHARGED: 12/12/2022;
ELITE ACCEPTANCE VS.

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Denied without prejudice

Order: Civil minute order

Elite Acceptance Corporation seeks an order for relief from the automatic stay of 11 U.S.C § 362(a).

The motion will be denied without prejudice as the moving party has failed to properly provide notice to all parties as required.

The following parties filed a request for special notice: United Shore Financial Services, LLC.

The certificate of service states that only the debtor, debtor's attorney, the chapter 7 trustee, and the United States Trustee were served with the motion. As indicated in the Certificate of Service, the special notice party was not served with the motion. See *Certificate of Service*, p. 2, no. 5, ECF No. 26. Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

NOTICE

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

- (a) the trustee or debtor in possession and on those entities specified by these rules; or
- (b) *the entities the court directs if these rules do not require service or specify the entities to be served.*

Fed. R. Bankr. P. 9013 (emphasis added).

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, *the entities to whom*, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Fed. R. Bankr. P. 9007 (emphasis added).

Rules 9013 and 9007 allow the court to designate additional parties which must receive notice of a motion and opportunity to be heard.

LBR 9014-1(d)(3)(B)(iv)

When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts

necessary for a party to determine whether to oppose the motion. *However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.*

LBR 9014-1(d)(3)(B)(iv) (emphasis added).

In the Eastern District the court has ordered that parties which have filed requests for special notice must receive notice of motions. LBR 9014-1(d)(3)(B)(iv) includes creditors which have filed requests for special notice as parties who must be served with all motions and supporting papers.

LBR 9014-1(d)(3)(B)(iv) does not limit the notice required to special notice creditors. Thus, the moving party is required to serve its motion on creditors who have filed requests for special notice.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

Because the moving party has failed to comply with Local Rules regarding service of the motion the court will deny the motion without prejudice.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Elite Acceptance Corporation's motion for relief from the automatic stay has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is denied without prejudice.

3. [19-24044](#)-A-7 **IN RE: TIEN LAM**
[RLL-2](#)

MOTION FOR ADMINISTRATIVE EXPENSES
11-15-2022 [\[88\]](#)

GARY ZILAFF/ATTY. FOR DBT.
ANTHONY ASEBEDO/ATTY. FOR MV.
DEBTORS DISCHARGED: 10/07/2019

Final Ruling

Motion: Allow Administrative Expense [Estate Taxes]
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Civil minute order

Taxes Approved 2021 Tax Year: \$11,232.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 7 trustee, Eric Nims, seeks an order approving payment of \$11,232.00 in taxes to the California Franchise Tax Board. The trustee has marketed and sold real property on behalf of the estate. Consequently, the estate will owe taxes for the 2021 tax year.

ALLOWANCE OF ADMINISTRATIVE EXPENSE

"Subject to limited exceptions, a trustee must pay the taxes of the estate on or before the date they come due, 28 U.S.C. § 960(b), even if no request for administrative expenses is filed by the tax authorities, 11 U.S.C. § 503(b)(1)(D), and the trustee must insure that 'notice and a hearing' have been provided before doing so, see *id.* § 503(b)(1)(B). The hearing requirement insures that interested parties . . . have an opportunity to contest the amount of tax paid before the estate's funds are diminished, perhaps irretrievably." *In re Clooback*, 788 F.3d 1243, 1246 (9th Cir. 2015). It is error to approve a trustee's final report without first holding a hearing, see 11 U.S.C. § 102(1), to allow creditors and parties in interest an opportunity to object to the allowance or amount of tax before it is paid. *Id.* 1245 n.1, 1246.

Creditors and parties in interest have had an opportunity to contest the allowance and amount of the estate taxes in this case. No objection has been made. Accordingly, the taxes specified in the motion shall be allowed as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The chapter 7 trustee's motion for allowance of administrative expense has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court allows California state taxes of \$11,232.00 as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

4. [22-22056](#)-A-7 **IN RE: DAVID MICHAL**
[CLH-1](#)

CONTINUED MOTION TO SET TRIAL DATE
9-19-2022 [\[14\]](#)

PATRICIA WILSON/ATTY. FOR DBT.

Final Ruling

Motion: Motion to Set Trial

Notice: Continued from December 5, 2022

Disposition: Continued to January 23, 2023, at 9:00 a.m.

Order: Civil minute order

The hearing on this motion was continued from December 5, 2022. At the hearing on December 5, 2022, both counsel for the alleged debtor, Patricia Wilson, and the petitioning creditor(s), Charles Hastings, were present and agreed to the continued hearing date and time.

At the hearing on December 5, 2022, the court also ordered as follows:

[N]ot later than 14 days prior to the continued hearing, the parties shall file a joint status report addressing all issues articulated in ECF No. 56, paras. 1A, 1B and 1C, to the extent that they have changed, and to update the status of discovery.

Order, ECF No. 60.

See also, Civil Minutes, ECF No. 58.

The Status Report was to have been filed not later than December 20, 2022. The parties have failed to file a status report.

The court will further continue the hearing on this matter to allow the parties to file the status report as ordered. Absent the parties' compliance with its order the court is unable to adequately prepare for the hearing on this matter.

LBR 1001-1(g)

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.*

LBR 1001-1(g) (emphasis added).

The failure of the parties to timely file the status report as required by this order may be grounds for imposition of sanctions or dismissal of this motion, or the petition, under LBR 1001-1(g).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the motion is continued to January 23, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than January 9, 2023, the parties shall file a joint status report addressing all issues articulated in ECF No. 56, paras. 1A, 1B and 1C, to the extent that they have changed, and to update the status of discovery.

5. [22-22056](#)-A-7 **IN RE: DAVID MICHAL**
[FEC-4](#)

STATUS CONFERENCE RE: INVOLUNTARY PETITION
8-18-2022 [[1](#)]

PATRICIA WILSON/ATTY. FOR DBT.

Final Ruling

The Status Conference will be continued to January 23, 2023, at 9:00 a.m. to coincide with the hearing on the Motion to Set Trial, CLH-1. No appearances are required on January 3, 2023.

Any potential creditors, and all other parties in interest, may appear at the continued status conference on January 23, 2023, at 9:00 a.m. in person or by telephone. A civil minute order shall issue.

6. [22-21692](#)-A-7 **IN RE: EVERGREEN ARBORISTS, INC.**
[RAP-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-7-2022 [[187](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.
RAYMOND POLICAR/ATTY. FOR MV.
SUMITOMO MITSUI FINANCE AND LEASING COMPANY, LTD. VS.

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Denied without prejudice

Order: Civil minute order

Sumitomo Mitsui Finance and Leasing Company, Ltd., seeks an order for relief from the automatic stay of 11 U.S.C § 362(a).

The motion will be denied without prejudice as the moving party has failed to properly provide notice to all parties as required.

The following parties filed a request for special notice: AIS Portfolio Services; Ally Bank; Ally Bank AIS Portfolio Services, LP; Frank Greer, Reynolds Law Corporation; Commercial Credit Group, Inc.; Electrical Annuity Plan; Ford Motor Credit Company LLC, Cooksey, Toolen, Gage, Duffy & Woog; Tracy Davis Attn: Jason Blumberg; International Brotherhood of Electrical Workers.

The certificate of service states that only the debtor, debtor's attorney, the chapter 7 trustee, and the United States Trustee were served with the motion. As indicated in the Certificate of Service,

the remaining special notice parties were not served with the motion. See *Certificate of Service*, p. 2, no. 5, ECF No. 190. Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

NOTICE

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

- (a) the trustee or debtor in possession and on those entities specified by these rules; or
- (b) *the entities the court directs if these rules do not require service or specify the entities to be served.*

Fed. R. Bankr. P. 9013 (emphasis added).

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, *the entities to whom*, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Fed. R. Bankr. P. 9007 (emphasis added).

Rules 9013 and 9007 allow the court to designate additional parties which must receive notice of a motion and opportunity to be heard.

LBR 9014-1(d)(3)(B)(iv)

When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. *However, the motion and supporting papers shall be served on those parties who have requested special*

notice and those who are directly affected by the requested relief.

LBR 9014-1(d)(3)(B)(iv) (emphasis added).

In the Eastern District the court has ordered that parties which have filed requests for special notice must receive notice of motions. LBR 9014-1(d)(3)(B)(iv) includes creditors which have filed requests for special notice as parties who must be served with all motions and supporting papers.

LBR 9014-1(d)(3)(B)(iv) does not limit the notice required to special notice creditors. Thus, the moving party is required to serve its motion on creditors who have filed requests for special notice.

LBR 7005-1

Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, *the Certificate of Service Form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or the adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders.*

LBR 7005-1(a) (emphasis added).

In addition to the failure to give notice of the motion to parties requesting special notice, the moving party has failed to attach a matrix which conforms to LBR 7005-1(a). Attachment 6B1 is not the Clerk's Official Matrix for this case. See Certificate of Service, Attachment 6B1, ECF No. 190. The court also notes that while a defective matrix was attached to the certificate of service, the certificate does not indicate that service was made on all parties listed in the matrix. See Certificate of Service, p. 2, No. 5, ECF No. 190.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

Because the moving party has failed to comply with Local Rules regarding service of the motion the court will deny the motion without prejudice.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Sumitomo Mitsui Finance and Leasing Company, Ltd.'s motion for relief from the automatic stay has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is denied without prejudice.

7. [22-22896](#)-A-7 **IN RE: K & W KITCHENS, INC.**
[KMT-2](#)

MOTION TO EMPLOY TMC AUCTION, INC. AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
12-13-2022 [\[20\]](#)

GERALD WHITE/ATTY. FOR DBT.
GABRIEL HERRERA/ATTY. FOR MV.

Tentative Ruling

Motion: Sell Property and Employ and Compensate Auctioneer

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Prepared by moving party

Property: Vehicles, Equipment, Tools

Sale Type: Public auction

Auctioneer: TMC Auction, Inc.

Compensation Approved: 10% of gross sale proceeds

Expenses: Actual expenses incurred not to exceed \$3,000.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Kimberly Husted, Chapter 7 trustee, seeks an order authorizing the sale of the bankruptcy estate's interest in the following items via public auction: (a) 2008 Chevy Silverado 1500 4 X 4, Approx 158,500

Miles, Xtra Cab, Vortek Max Engine; (b) Cabinetry, Lumber, Hardware; (c) Ingersol Rand 2 Stage 80 Gallon Air Compressors; (d) 2 Sections 16' Pallet Racking, 2 Sections 16' Cantalever Racking; (e) Wood Sawhorses, Approx 10 PCS; (f) Large Shop Fan; (g) Assorted Paint Sprayers, Approx 3 PCS; (h) Vertical Pole Clamps, Approx 6 PCS; (i) Pallet Jack; (j) Rolling Carts, Approx 4 PCS; (k) Small Hand Tools, Drill Press; (l) Office Equipment, Phones, Display Racks, Laptop Computer, Contents of Showroom; (m) Mini Max ME 20 Edge Bander; (n) LoBo Band Saw; (o) Evans Roto RK Cut Out Machine; (p) EZY-Mier Counter Top/Table Saw; and (q) 2011 Chevrolet 2500 Express Van (located in Texas).

The trustee also seeks an order authorizing the employment of TMC Auction, Inc., as the auctioneer; and approval of compensation of 10% of the gross sale proceeds and reimbursement of actual expenses in an amount not to exceed \$3,000.00. The trustee further requests that the 14-day stay period imposed by Federal Rule of Bankruptcy Procedure 6004(h) be waived.

SECTION 363(b) SALE

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

SECTION 328(a) EMPLOYMENT AND COMPENSATION

The Chapter 7 trustee may employ an auctioneer that does not hold or represent an interest adverse to the estate and that is disinterested. 11 U.S.C. §§ 101(14), 327(a). The auctioneer satisfies the requirements of § 327(a), and the court will approve the auctioneer's employment.

Federal Rule of Bankruptcy Procedure 6005, moreover, requires the court to "fix the amount or rate of compensation" whenever the court authorizes the employment of an auctioneer. Section 328(a) authorizes employment of a professional on any reasonable terms and conditions of employment. Such reasonable terms include a fixed or percentage fee basis. The court finds that the compensation sought is reasonable and will approve the application. The court finds that the costs of sale sought in an amount not to exceed \$3,000.00 is also reasonable.

8. [22-22896](#)-A-7 **IN RE: K & W KITCHENS, INC.**
[KMT-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH MASH PETROLEUM, INC.
12-13-2022 [\[28\]](#)

GERALD WHITE/ATTY. FOR DBT.
GABRIEL HERRERA/ATTY. FOR MV.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Civil minute order

Parties to Compromise: Chapter 7 Trustee, Mash Petroleum, Inc.
Disputes Compromised: Lease Deposit, Allowance of Claim, Rejection of Lease

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Kimberly Husted, the Chapter 7 trustee, seeks approval of the agreement and compromise of controversy between the bankruptcy estate and Mash Petroleum, Inc. The compromise requests the court approve the following terms:

1) Landlord is allowed to keep a lease deposit in Landlord's possession, in the amount of \$6,000, in full satisfaction of any Chapter 7 administrative claim Landlord may assert against the bankruptcy estate; 2) Landlord is allowed to file a proof of claim asserting only a general unsecured claim against the bankruptcy estate for any prepetition debt owed and/or on account of the rejection of the lease for certain real property located at 430 Gateway Plaza, Suite A, Dixon, California, (if authorized under applicable law) and Trustee shall retain her right to object to any proof of claim, if necessary; and 3) Trustee to cause the lease for the Leased Property to be rejected, and certain personal property assets located at the Leased Property to be removed no later than January 3, 2023.

The signed agreement between the parties is submitted with the moving papers as Exhibit A, ECF No. 31.

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party

proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles the dispute described above. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Kimberly Husted's motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement filed concurrently with the motion as Exhibit A and filed at docket no. 31.

9. [22-22896](#)-A-7 **IN RE: K & W KITCHENS, INC.**
[KMT-4](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
12-20-2022 [\[33\]](#)

GERALD WHITE/ATTY. FOR DBT.
GABRIEL HERRERA/ATTY. FOR MV.

Tentative Ruling

Motion: Reject Unexpired Lease (Chapter 7)
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Prepared by moving party

Leased Property: 430 Gateway Plaza, Suite A, Dixon, California

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The Motion for Order Authorizing the trustee to Reject Unexpired Non-Residential Real Property Lease has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). See 11 U.S.C. § 365(a); Fed. R. Bankr. P. 6006(a), 9014; LBR 9014-1(f)(2). Parties in interest are not required to file written opposition to the motion; opposition may be presented at the hearing. If opposition is presented at the hearing the court may set a briefing schedule; if opposition is not presented at the hearing the court will rule on the merits.

Kimberly Husted, Chapter 7 trustee, moves for an order rejecting the debtor's prepetition lease agreement with Mash Petroleum, Inc., for the real property located at 430 Gateway Plaza, Suite A, Dixon, California, effective January 3, 2023. The motion is a companion to the trustee's motion for approval of the agreement and compromise of controversy between the bankruptcy estate and Mash Petroleum, Inc., (KMT-3).

LEASE REJECTION

Absent opposition, the motion will be granted. The trustee may assume or reject an unexpired lease of non-residential real property with the court's approval. 11 U.S.C. § 365(a).

In evaluating motions to reject real property leases, the court applies the business judgment rule. See *In re Pomona Valley Med. Group*, 476 F.3d 665, 670 (9th Cir. 2007); *Durkin v. Benedor Corp. (In re G.I. Indust., Inc.)*, 204 F.3d 1276, 1282 (9th Cir. 2000). Under this standard, the decision to reject receives only a "cursory review." *In re Pomona Valley*, 476 F.3d at 670. The court presumes

"that the [trustee] acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Id.* (citing *Navellier v. Sletten*, 262 F.3d 923, 946 n.12 (9th Cir. 2001)). The rejection of an unexpired lease of non-residential real property should be approved absent a finding that the decision to reject is "so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice." *Id.* (quoting *Lubrizol Enters. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985)).

Related Motion to Resolve Controversy

Among the assets of the debtor's bankruptcy estate is the debtor's interest in various personal property assets, which the trustee has sought to employ an auctioneer to sell. The assets are located at the Leased Property and are anticipated to be removed prior to January 3, 2023. The trustee has visited the leased property and inspected the personal property assets with her proposed auctioneer. As the assets have been stored at the Leased Property and the trustee intends on selling the assets, the trustee entered into an agreement with the landlord that resolves any claims the landlord may have for an administrative claim against the debtor's bankruptcy estate.

The agreement between the trustee and the landlord is the subject of a motion to resolve controversy (KMT-3) and includes the following pertinent terms: (a) the landlord to be allowed to keep a lease deposit in the landlord's possession, in the amount of \$6,000, in full satisfaction of any Chapter 7 administrative claim the landlord may assert against the debtor's bankruptcy estate; (b) the landlord to be allowed to file a proof of claim asserting only a general unsecured claim against the debtor's bankruptcy estate for any prepetition debt owed; and (c) the trustee to cause the lease for the Leased Property to be rejected and the personal property assets to be removed from the Leased Property no later than January 3, 2023.

Here, rejection of the lease for the Leased Property is appropriate. The trustee has determined that there is no further value to the estate, particularly since the personal property assets will be removed prior to January 3, 2023. Moreover, the trustee entered into the Agreement which provides for the lease to be rejected. The Agreement is of significant benefit to the estate as it limits any potential administrative claim by the landlord and assists the trustee in being able to liquidate the personal property assets. Finally, this is a Chapter 7 case, the trustee is not operating the business of the Debtor, and the debtor has ceased operations. Consequently, rejection of the lease will be granted.

The court, therefore, finds that the trustee's rejection of the lease is a prudent exercise of the trustee's sound business judgment.

The moving party shall submit an order consistent with the court's ruling in this matter.

10. [22-22896](#)-A-7 **IN RE: K & W KITCHENS, INC.**
[KMT-5](#)

MOTION TO ABANDON
12-20-2022 [\[38\]](#)

GERALD WHITE/ATTY. FOR DBT.
GABRIEL HERRERA/ATTY. FOR MV.

Tentative Ruling

Motion: Authorized Trustee's Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted only as to the business assets described in the motion

Order: Prepared by moving party pursuant to the instructions below

Business Description: furniture, fixtures, equipment, and other personal property at 430 Gateway Plaza, Suite A, Dixon, California

Value: \$0

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The chapter 7 trustee moves for an order authorizing his abandonment of the bankruptcy estate's interest in the inventory, supplies, office furniture, and office equipment described in the motion, ECF No. 73.

ABANDONMENT

The movant bears the burden of proof. *In re Pilz Compact Disc., Inc.*, 229 B.R. 630 (Bankr. E.D. Pa. 1999) (Chapter 7 trustee). "[B]urdensome to the estate" means "consumes the resources and drains the income of the estate." *In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988). "[O]f inconsequential value and benefit to the estate" refers to assets not likely to be liquidated for the benefit of creditors. 11 U.S.C. § 704(a)(1); *Matter of Taxman Clothing Co.*, 49 F3d 310, 315 (7th Cir. 1995) (Chapter 7 trustee has no duty to liquidate assets where costs of doing so likely to exceed asset's value). Of inconsequential value and benefit to the estate includes assets that (1) have no equity (including post-petition appreciation), *In re Viet Vu*, 245 B.R. 644 (9th Cir. BAP 2000); and (2) assets with equity, which has been wholly and properly exempted by the debtor. *In re Montanaro*, 307 B.R. 194 (Bankr. E.D. Cal. 2004).

11 U.S.C. § 554(a)

"After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a).

Kimberly Husted, Chapter 7 trustee, moves to abandon the bankruptcy estate's interest in the furniture, fixtures, equipment, and other personal property to be remaining at 430 Gateway Plaza, Suite A, Dixon, California (Leased Property).

The *abandonment expressly excludes* the following assets the trustee intends on auctioning and has removed from the Leased Property (if so located): (a) a 2008 Chevy Silverado 1500 4 X 4, Approx 158,500 Miles, Xtra Cab, Vortek Max Engine; (b) Cabinetry, Lumber, Hardware; (c) Ingersol Rand 2 Stage 80 Gallon Air Compressors; (d) 2 Sections 16' Pallet Racking, 2 Sections 16' Cantalever Racking; (e) Wood Sawhorses, Approx 10 PCS; (f) Large Shop Fan; (g) Assorted Paint Sprayers, Approx 3 PCS; (h) Vertical Pole Clamps, Approx 6 PCS; (i) Pallet Jack; (j) Rolling Carts, Approx 4 PCS; (k) Small Hand Tools, Drill Press; (l) Office Equipment, Phones, Display Racks, Laptop Computer, Contents of Showroom; (m) Mini Max ME 20 Edge Bander; (n) LoBo Band Saw; (o) Evans Roto RK Cut Out Machine; (p) EZY-Mier Counter Top/Table Saw; and (q) 2011 Chevrolet 2500 Express Van (located in Texas) (collectively "Personal Property Assets"). A motion to approve the sale of these items via public auction is to be heard concurrently with this motion (KMT-2). The trustee has also submitted with this motion photographs of the property which is to be abandoned. See Exhibit B, ECF No. 41.

The court finds the assets described above are either burdensome to the estate or of inconsequential value to the estate. An order authorizing the trustee's abandonment of such assets is warranted. The order will authorize abandonment of only the assets that are described in the motion.