

**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: MONDAY
DATE: NOVEMBER 7, 2022
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. [21-22830](#)-A-7 **IN RE: RANDALL HAYASHI**
[WF-6](#)

MOTION TO SELL
10-17-2022 [\[62\]](#)

ANTHONY ASEBEDO/ATTY. FOR DBT.
DANIEL EGAN/ATTY. FOR MV.
DEBTOR DISCHARGED: 11/16/2021

No Ruling

2. [21-22830](#)-A-7 **IN RE: RANDALL HAYASHI**
[WF-7](#)

MOTION TO ABANDON
10-17-2022 [\[67\]](#)

ANTHONY ASEBEDO/ATTY. FOR DBT.
DANIEL EGAN/ATTY. FOR MV.
DEBTOR DISCHARGED: 11/16/2021

Final Ruling

Motion: Abandon Property of the Estate

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Denied without prejudice

Order: Civil Minute Order

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). 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).

NOTICE

Rule 6007(a)

Unless otherwise directed by the court, the trustee or debtor in possession shall give notice of a proposed abandonment or disposition of property to the United States trustee, all creditors, indenture trustees, and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code. A party in interest may file and serve an objection within 14 days of the mailing of the notice, or within the time fixed by the court. If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to other entities as the court may direct.

Fed. R. Bankr. P. 6007(a).

The certificate of service filed in this case does not include an attachment which shows that all creditors were served with the motion as required by Rule 6007. The certificate shows that the movant attempted to limit notice under LBR 2002-3. See *Certificate of Service*, ECF No. 71, p. 2, item 3.

A party may not limit notice in a motion to compel abandonment unless directed by the court. It appears that the movant believes the recently enacted LBR 2002-3 provides such a direction.

LBR 2002-3

Without further order of the court, the provisions of Fed. R. Bankr. P. 2002(h) are applicable to chapter 7, chapter 12 and chapter 13 cases *that otherwise satisfy the provisions of that subdivision*. The Clerk of the Court or any party in interest giving notice required by Fed. R. Bankr. P. 2002(a) may limit such notice to those persons specified in Fed. R. Bankr. P. 2002(h).

LBR 2002-3 (emphasis added).

In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, after 70 days following the order for relief under that chapter or the date of the order converting the case to chapter 12 or chapter 13, *the court may direct that all notices required by subdivision (a) of this rule be mailed only to:*

- the debtor;
- the trustee;
- all indenture trustees;
- creditors that hold claims for which proofs of claim have been filed; and
- creditors, if any, that are still permitted to file claims because an extension was granted under Rule 3002(c)(1) or (c)(2).

Fed. R. Bankr. P. 2002(h) (emphasis added).

Rule 2002(h) only allows limited notice in applicable motions listed in Rule 2002(a). Thus, LBR 2002-3 does not authorize, nor contemplate, limited service in any motion which is not included in Fed. R. Bankr. P. 2002(a). Moreover, Fed. R. Bankr. P. 6007 specifically requires notice to all creditors in motions to compel abandonment of estate property.

The court will deny the motion without prejudice as notice was not provided to all creditors as required by Rule 6007.

CIVIL MINUTE ORDER

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

The trustee's Motion to Abandon Property of the Estate has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

3. [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 Date

Notice: Continued from October 3, 2022

Disposition: Continued to December 5, 2022, at 9:00 a.m.

Order: Civil minute order

This is the continued hearing on the petitioning creditors' Motion to Set Trial Date in an involuntary Chapter 7 petition. The court will issue a notice and order for creditors to join the petition. The hearing on this motion will be continued to allow for creditors wishing to join to appear prior to the court setting a date for trial.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the Motion to Set Trial Date is continued to December 5, 2022, at 9:00 a.m.

4. [22-22056](#)-A-7 **IN RE: DAVID MICHAL**
[FEC-2](#)

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

PATRICIA WILSON/ATTY. FOR DBT.

Final Ruling

Motion: Status Conference

Notice: Continued from October 3, 2022

Disposition: Continued to December 5, 2022, at 9:00 a.m.

Order: Civil minute order

This is the continued status conference in an involuntary Chapter 7 case. The court will issue a notice and order for creditors to join the petition. The status conference will be continued to allow for creditors wishing to join the petition to appear prior to the court setting a date for trial.

Mr. Hastings and Ms. Wilson will meet and confer, by phone or in person, and file a joint status report not later than November 28, 2022. Mr. Hastings will take the lead in coordinating the meeting and the filing of the report. The status report will include (1) all remaining legal issues; (2) requests for discovery including an estimate of time required for its completion; (3) the appropriateness of Rule 26(a)(1) disclosures; (4) the necessity of summary judgments; and (5) if proceeding with trial, an assessment on usage of Alternate Direct Testimony and a timeline for the trial.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the Motion to Set Trial Date is continued to December 5, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than November 28, 2022, the parties shall file a joint status report in accordance with this ruling.

5. [22-22290](#)-A-7 **IN RE: AMD METAL WORKS, INC**
[DDM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-21-2022 [\[48\]](#)

MARK WOLFF/ATTY. FOR DBT.
DENNIS MILLER/ATTY. FOR MV.
COMMERCIAL CREDIT GROUP INC. VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

Commercial Credit Group Inc. seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). Motions for relief from stay are governed by Fed. R. Bankr. P. 4001(a) which states that the motion "shall be made in accordance with Rule 9014..." Rule 9014(b) provides that the "motion shall be served in the manner provided for service of a summons and complaint by Rule 7004". See Fed. R. Bankr. P. 9014(b).

The motion will be denied as service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), (b)(4), (b)(5), and (b)(6).

RULE 7004

Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)-(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

. . . .

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or

agency. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States.

(5) Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. If the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, service may be made as prescribed in paragraph (10) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.

Fed. R. Bankr. P. 7004.

Service on Governmental Parties

The parties served with this motion include the Internal Revenue Service and the Employment Development Department. Service on these entities was not in compliance with Rule 7004(b)(4), (5) and (6). See Certificate of Service, Attachment 6B4, ECF No. 53.

Service on Corporate Parties

Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service.

The parties served with this motion include corporate parties: Hitachi Capital America Corp. and Taylor/Lacy Properties, LLC. See Certificate of Service, Attachment 6B4, ECF No. 53.

CIVIL MINUTE ORDER

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

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

Commercial Credit Group Inc.'s Motion for Relief From Automatic Stay has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

6. [22-22290](#)-A-7 **IN RE: AMD METAL WORKS, INC**
[DNL-2](#)

CONTINUED MOTION TO ABANDON
10-3-2022 [\[31\]](#)

MARK WOLFF/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.

Final Ruling

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

Notice: Continued from October 17, 2022

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

Order: Prepared by moving party pursuant to the instructions below

Business Description: AMD Inventory; Inventory Steele for projects; Work in progress; Fabricated product for open projects; Office Furniture and Equipment; Automobiles 2019 Flatbed - Ford 650; Other machinery; Inventory from trucks, as more fully described in the motion

Value: \$720,200 as listed in Schedules A/B

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 business assets described in the motion, ECF No.31.

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).

The hearing on this motion was continued from October 17, 2022, to allow the Chapter 7 trustee to examine recently filed Amended Schedule D and provide a report to the court. On October 24, 2022, the trustee filed an additional declaration and exhibits in support of his motion. The trustee has personally inspected the subject property, located at 6100 Warehouse Way, Sacramento, California, the "Shop Facility". See Declaration, ECF No. 55.

The trustee has consulted with Tranzon Auction Strategies, and after investigating the liens against the property, the trustee has determined that there would be no net proceeds for the benefit of the estate after payment of costs of sale and payments to secured creditors. See *Id.*

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.

7. [22-21692](#)-A-7 **IN RE: EVERGREEN ARBORISTS, INC.**
[DDM-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
9-22-2022 [\[113\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
DENNIS MILLER/ATTY. FOR MV.
COMMERCIAL CREDIT GROUP, INC. VS.
RESPONSIVE PLEADING

No Ruling

8. [22-21692](#)-A-7 **IN RE: EVERGREEN ARBORISTS, INC.**
[GEL-4](#)

MOTION TO RECONVERT CASE FROM CHAPTER 7 TO CHAPTER 11 AND/OR
MOTION TO DISMISS CASE
10-14-2022 [\[130\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling