

**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 21, 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. [22-22314](#)-A-7 **IN RE: MARIA GARCIA**
[EJS-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-31-2022 [\[26\]](#)

GEORGE BURKE/ATTY. FOR DBT.
ERIC SCHWAB/ATTY. FOR MV.
SMOKETREE 520, LLC VS.

Final Ruling

Motion: Relief from Stay

Disposition: Continued to December 12, 2022, at 9:00 a.m.

Order: Civil minute order

SERVICE

"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)).

Motions under 11 U.S.C. § 362(a)

A motion for relief from the automatic stay is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4001(a)(1), 9014(b).

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 be served with 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.

In this case creditor AIS Portfolio Services, LLC, has filed a request for special notice. *See Request for Notice*, ECF No. 13. LBR 9014-1(d)(3)(B)(iv) does not limit the notice required (to special notice creditors) to Rule 2002 motions. Thus, the movant is bound to serve its motion to dismiss or convert under 11 U.S.C. § 1307(c) on creditors who have filed requests for special notice.

The Certificate of Service filed in support of this motion does not list the special notice creditor as a party served with the notice as required. *See Certificate of Service*, ECF No. 31.

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.

IT IS ORDERED that the motion is continued to December 12, 2022, at 9:00 a.m. No later than November 28, 2022, the movant shall file and serve the motion on the creditor requesting special notice and a notice of continued hearing on the debtor and counsel for the debtor.

2. [22-21115](#)-A-7 **IN RE: JANICE/DAVID LACROIX**
[GMR-2](#)

MOTION FOR ADMINISTRATIVE EXPENSES
10-24-2022 [\[170\]](#)

NIKKI FARRIS/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.

Final Ruling

Motion: Allow Administrative Expense - Estate Taxes

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

Disposition: Granted

Order: Civil minute order

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, Geoffrey Richards seeks an order authorizing payment of 2022 estimated estate taxes to the Internal Revenue Service in the amount of \$195,000.00 and to the Franchise Tax Board in the amount of \$48,000.00. The taxes are due by December 15, 2022.

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 Cloobek*, 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 federal taxes of \$195,000.00 and California state taxes of \$48,000.00 as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

3. [21-22830](#)-A-7 **IN RE: RANDALL HAYASHI**
[WF-6](#)

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

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

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: All nonexempt assets of the bankruptcy estate

Buyer: Debtor, Randall Hayashi

Sale Price: \$115,000.00

Sale Type: Private sale subject to overbid opportunity

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 hearing on this motion to sell was continued to coincide with the trustee's Motion to Abandon Assets (WF-8).

Chapter 7 trustee Nikki Farris seeks an order approving the sale of all nonexempt assets of the bankruptcy estate to the debtor. The

assets include the proceeds of amounts payable for the Estate of Thomas Hayashi, or the Hayashi Trust dated September 29, 2007. The trustee investigated the value of the assets consulting with Tranzon LLC. See Declaration, 2:12-13, ECF No. 64. The trustee indicates her belief that liquidation of the assets presents difficulties, given partial ownership interests and out of state assets held in trust. See *id.*, 2:16-22. The agreement for purchase and sale of the assets is memorialized in Exhibit A, which was filed and served with the motion, ECF No. 65.

SALE OF ASSETS

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.

The court approves the sale of assets as called for in the agreement filed and served concurrently with the motion as Exhibit A, ECF No. 65.

The movant shall submit an order consistent with the court's ruling.

4. [21-22830](#)-A-7 **IN RE: RANDALL HAYASHI**
[WF-8](#)

MOTION TO ABANDON
11-7-2022 [\[77\]](#)

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

Tentative Ruling

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

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

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

Order: Prepared by moving party pursuant to the instructions below

Asset Description: all exempt assets in the debtor's Schedule C

Value: none

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).

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 Chapter 7 trustee, Nikki Farris, moves for an order authorizing her abandonment of the bankruptcy estate's interest in the exempt assets indicated in the debtor's Schedule C as described in the motion, ECF No. 77. The assets are more fully described in Exhibit A (which contains a copy of the debtor's Schedule C), which was filed and served with the motion, ECF No. 80. The trustee indicates that the motion to abandon is contingent upon the court's approval of the Motion to Sell Assets, (WF-6). The hearing on the motion to sell was continued to be heard concurrently with this motion to abandon.

The court has granted the motion to sell (WF-6).

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.

5. [22-21833](#)-A-7 **IN RE: CORNELIUS HARRELL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-25-2022 [\[40\]](#)

PETER MACALUSO/ATTY. FOR DBT.
10/27/22 FILING FEE PAID \$25.00

Final Ruling

As the fee has been paid in full, the order to show cause is discharged. The case will remain pending.

6. [21-22987](#)-A-7 **IN RE: ROBERT MCKEAGUE**
[APN-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-18-2022 [\[52\]](#)

GEOFF WIGGS/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
DEBTOR DISCHARGED: 11/12/2021
TOYOTA MOTOR CREDIT CORPORATION VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part, denied in part as moot

Order: Civil minute order

Subject: 2015 Toyota Highlander

Discharge: November 12, 2021

Delinquency: \$2,000.00; 3.5 monthly payments

These minutes constitute the court's findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a), *incorporated* by Fed. R. Bankr. P. 7052, 9014(c). The findings of fact are as set forth above; the conclusions of law are as set forth below.

Toyota Motor Credit Corporation seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The debtor received a discharge on November 12, 2021. The Chapter 7 trustee, Nikki Farris indicated, on the court's docket, her non-opposition to the motion on October 25, 2022.

DEFAULT OF RESPONDENT

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).

STAY RELIEF

"[A]fter notice and a hearing," the court may terminate, annul, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); see also Fed. R. Bankr. P. 4001(a)(1). The party seeking stay relief bears the burden of proof as to "the debtor's equity in the property" and on the validity and perfection of its security interest, as well as the amount of its debt. 11 U.S.C. § 362(g)(1); *In re Dahlquist*, 34 B.R. 476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g., the debtor or Chapter 7 trustee, bears the burden of proof on all other issues. 11 U.S.C. § 362(g)(2).

As to the Debtor

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. The stay that protects the debtor terminates at the entry of discharge. 11 U.S.C. § 362(c)(2). In this case, discharge has been entered. As a result, the motion will be denied as moot as to the debtor.

As to the Estate

"[A]fter notice and a hearing," the court may terminate, annual, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); see also Fed. R. Bankr. P. 4001(a)(1). The party seeking stay relief bears the burden of proof as to "the debtor's equity in the property" and on the validity and perfection of its security interest, as well as the amount of its debt. 11 U.S.C. § 362(g)(1); *In re Dahlquist*, 34 B.R. 476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g., the debtor or Chapter 7 trustee, bears the burden of proof on all other issues. 11 U.S.C. § 362(g)(2).

Section 362(d)(1) authorizes stay relief for cause and Section 362(d)(2) authorizes relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the debtor has defaulted in payments post-discharge. The Chapter 7 trustee has indicated her non-opposition to the motion. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

The movant filed a certificate of service in this case using EDC 7-005, ECF No. 57. The movant has correctly served the motion on all parties including the creditor which filed a request for special notice.

The Certificate of Service is not properly completed as follows. The attachment to the certificate is improperly labeled. The movant has combined all parties noticed in a single attachment labeled "6A1". This is incorrect. The attachment (if combining all parties served) should be labeled "6B2". As such, the corresponding box under 6B2 should also be checked.

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.

Toyota Motor Credit Corporation's motion for relief from the automatic stay 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 in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as a 2015 Toyota Highlander. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

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

MOTION TO SET A DEADLINE TO ASSUME OR REJECT LEASE
11-1-2022 [\[158\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
RAYMOND POLICAR/ATTY. FOR MV.

Final Ruling

Motion: Set Deadline to Assume or Reject Lease

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

Disposition: Denied as moot

Order: Civil minute order

Date Case Converted to Chapter 7: September 28, 2022

ASSUMPTION OR REFJECTION OF LEASE IN CONVERTED CASE

This case was filed under Chapter 11 on July 7, 2022. On September 28, 2022, the case was converted to Chapter 7. See Order Converting, ECF No. 126. Nikki B. Farris was appointed the Chapter 7 trustee on September 29, 2022, ECF No. 127.

The movant, Sumitomi Mitsui Finance and Leasing Company Limited is the lessor under a lease, which it acquired on assignment from Alliance Funding Group. The subject of the lease is a 2020 Kenworth Heavy Haul Truck Tractor. Movant requests the court set a deadline for the Chapter 7 trustee to assume or reject its lease, under 11 U.S.C. § 365(d)(2).

While Section 365(d)(2) authorizes the court to grant such a motion, that authority is not granted in Chapter 7 cases as 11 U.S.C. § 365(d)(2) is applicable only in "a case under chapter 9, 11, 12, or 13 of this title". This case has been converted to Chapter 7. Thus, § 365(d)(2) is not applicable. The applicable sections are 365(d)(1) and 348(c) as follows.

Sections 365(d)(1) and 348(c)

In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.

11 U.S.C. § 365(d)(1).

(c) Sections 342 and 365(d) of this title apply in a case that has been converted under section 706, 1112, 1208, or 1307 of this title, as if the conversion order were the order for relief.

11 U.S.C. § 348(c) (emphasis added).

The unexpired lease must be assumed within 60 days of the order for relief. Under 11 U.S.C. § 348(a), when a case under one chapter is converted to a case under another chapter, the conversion of the case constitutes an order for relief.

In re Tompkins, 95 B.R. 722, 723-24 (B.A.P. 9th Cir. 1989).

The court need not enter a date for the trustee to assume or reject the lease as the date is provided for by statute. Section 348(c) states that the date of conversion is considered the operative date of the order for relief in matters under 342 and 365(d). Thus, the trustee has sixty (60) days from September 28, 2022, to assume or reject the lease under 11 U.S.C. § 365(d)(1). Neither the Chapter 7 trustee nor the movant have requested an extension of the sixty-day period for cause under § 365(d)(1). The court will deny the motion as moot.

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

The movant filed a certificate of service in this case using EDC 7-005, ECF No. 161.

Rules 6006 and 9014

Rule 6006 provides that notice and service of this motion must comply with Fed. R. Bankr. P. 9014. See Fed. R. Bank. P. 6006.

Rule 9014 requires that service of the motion comply with Rule 7004. Service of the motion did not comply with Rules 9014 or 7004. First, although the appropriate box was checked indicating service upon the debtor, the debtor does not appear in any of the attachments affixed to the Certificate of Service. Thus, the debtor was not served with the motion. Had the motion not been denied as moot it would have been denied for failure to serve the debtor. Second, Section 3 of the certificate is incorrectly completed. This is not a motion brought under Rule 2002(a) thus, limited notice under Rule 2002(h) is not appropriate. Third, there is no Attachment 6B2 affixed to the motion, nor are the appropriate boxes checked under 6B indicating service of the parties which do not appear on the remaining attachments. Finally, as Rule 9014 requires service under Rule 7004, the boxes indicating service pursuant to Rule 7004 should have been checked as to those parties.

CIVIL MINUTE ORDER

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

Sumitomi Mitsui Finance and Leasing Company Limited's Motion to Set Deadline to Assume or Reject Lease has been presented to the court. Having considered the motion, together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied as moot.

8. [22-22290](#)-A-7 **IN RE: AMD METAL WORKS, INC**
[DDM-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY O.S.T.
11-14-2022 [\[80\]](#)

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

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: Inventory and Equipment

Value of Collateral: \$202,000.00

Aggregate of Liens: \$335,530.25

These minutes constitute the court's findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a), *incorporated* by Fed. R. Bankr. P. 7052, 9014(c). The findings of fact are as set forth above; the conclusions of law are as set forth below.

DEFAULT OF RESPONDENT

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).

FACTS

Commercial Credit Group, Inc., moves for relief from the automatic stay of 11 U.S.C. § 362(a) to foreclose on personal property collateral. The collateral consists of equipment, as defined in the

Memorandum, filed concurrently with the motion, and is subject to three lease agreements executed by the debtor in favor of the movant. Movant also seeks relief to enforce its blanket security interest in all assets of the debtor except accounts receivable.

The movant contends that it is entitled to relief pursuant to Section 362(d)(2) in that there is no equity in the equipment/collateral for the estate, and the equipment/collateral is not necessary for an effective reorganization. Movant also contends that it is entitled to relief for cause pursuant to § 362(d)(1). The debtor ceased operations upon filing the Chapter 7. Debtor's insurance on its personal property has lapsed and it is not clear the movant's equipment/collateral are secure.

The court granted the Chapter 7 trustee's motion to abandon the estate's interest in the equipment. See Order Authorizing Abandonment of Estate Assets, ECF No. 75.

JUDICIAL NOTICE

The court takes judicial notice of the bankruptcy schedules, and all other orders which appear on its docket in this case. Fed. R. Evid. 201(b)(2).

STAY RELIEF

"[A]fter notice and a hearing," the court may terminate, annul, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); see also Fed. R. Bankr. P. 4001(a)(1). The party seeking stay relief bears the burden of proof as to "the debtor's equity in the property" and on the validity and perfection of its security interest, as well as the amount of its debt. 11 U.S.C. § 362(g)(1); *In re Dahlquist*, 34 B.R. 476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g., the debtor or Chapter 7 trustee, bears the burden of proof on all other issues. 11 U.S.C. § 362(g)(2).

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982).

In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. As a consequence, the motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

The movant filed a completed Certificate of Service, ECF No. 86. However, there are problems with the use and completion of the standardized Certificate of Service, EDC 7-005.

Limited Service Not Appropriate

The movant has checked the box in Section 3 indicating that this case is subject to limited noticing. This is incorrect. First, a motion for relief from stay is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4001(a)(1), 9014(b). Second, the box indicates that there is an order limiting notice in this case. There is no such order.

How Service is Accomplished

Section 6 is incorrectly completed. Because service is governed by Rule 7004, boxes 6A and 6A1 should have been checked, evidencing service upon the debtor. The United States Trustee, the Chapter 7 trustee, and debtor's counsel have been correctly served via electronic notice and an appropriate clerk's matrix has been affixed to the certificate indicating this service.

Special Notice Creditors Not Served

This motion is brought pursuant to Rule 9014 which requires that notice and an opportunity to be heard shall be "afforded the party against whom relief is sought."

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.

In this case the following creditors have filed a request for special notice: (1) Taylor/Lacy Properties, LLC, ECF No. 30; (2) Hitachi Capital America Corp, ECF No. 38; (3) Modern Building Inc, Seegert Construction, Descor, Inc., ECF No. 58; and (4) U.S. Granite Corporation, ECF NO. 59. The movant failed to serve any of these parties with notice of the motion. LBR 9014-1(d)(3)(B)(iv) does not limit the notice required (to special notice creditors) to Rule 2002 motions. Thus, the movant is bound to serve its motion on creditors who have filed requests for special notice.

Because the court has granted the Chapter 7 trustee's motion to authorize abandonment of estate assets the court deems service on the special notice parties unnecessary in this instance.

Additionally, Taylor/Lacy Properties, LLC has filed its own motion for relief from the automatic stay which will be heard concurrently with the instant motion. However, failure to correctly serve all required parties and to properly complete the Certificate of Service in the future will likely result in denial of the relief sought and/or imposition of sanctions, LBR 1001-1(g).

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.

Commercial Credit Group Inc.'s motion for relief from the automatic stay 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 automatic stay is vacated with respect to the property described in the motion, commonly known as all personal property and equipment, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

9. [22-22290](#)-A-7 **IN RE: AMD METAL WORKS, INC**
[TF-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY O.S.T.
11-15-2022 [\[89\]](#)

MARK WOLFF/ATTY. FOR DBT.
JENNIFER PRUSKI/ATTY. FOR MV.
TAYLOR/LACY PROPERTIES, LLC VS.

No Ruling