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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLARD WESTFALL,

Plaintiff - Appellant,

v.

MII LIQUIDATION, INC.,

Defendant - Appellee.

No. 07-56536

D.C. No. CV-06-02343-BEN

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Argued and Submitted March 3, 2009
Pasadena, California

Before: O'SCANNLAIN, RYMER, and WARDLAW, Circuit Judges.

Willard Westfall appeals from the district court's decision affirming the bankruptcy court's order striking his class proof of claim in the liquidation of MII

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Liquidation, Inc. and its subsidiary, AHP Liquidation, LLC.¹ Westfall's appeal is moot because this court cannot fashion an effective remedy under the terms of the confirmed and substantially implemented plan of liquidation. *See In re Focus Media, Inc.*, 378 F.3d 916, 922-23 (9th Cir. 2004); *In re Roberts Farms, Inc.*, 652 F.2d 793, 797-98 (9th Cir. 1981). Furthermore, because Westfall abandoned his direct appeal of the confirmation order and failed to obtain a stay of the bankruptcy proceedings in this appeal, and because any remedy would adversely effect the interests of third party creditors not before the court, his claim is equitably moot. *See Roberts Farms*, 652 F.2d at 798; *In re Combined Metals Reduction Co.*, 557 F.2d 179, 187-93 (9th Cir. 1977); *see also In re Baker & Drake, Inc.*, 35 F.3d 1348, 1351-52 (9th Cir. 1994).

DISMISSED.

¹ Appellee's Request for Judicial Notice and Appellant's Request for Judicial Notice dated February 20, 2009 are both granted.