

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

Honorable Fredrick E. Clement  
Sacramento Federal Courthouse  
501 I Street, 7<sup>th</sup> Floor  
Courtroom 28, Department A  
Sacramento, California

**DAY: MONDAY**  
**DATE: AUGUST 30, 2021**  
**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. [21-22902](#)-A-7     **IN RE: DENISE RODRIGUEZ**  
[MOH-1](#)

MOTION TO COMPEL ABANDONMENT  
8-13-2021    [\[6\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

### **Tentative Ruling**

**Motion:** Compel Abandonment of Property of the Estate

**Notice:** LBR 9014-1(f)(2); no 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

**Businesses' Description:** Mobile notary business, marketing business selling essential oils and personal care items with Young living

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).

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

2. [21-20514](#)-A-7     **IN RE: IGNACIO/EVANGELINA AVILA**  
[DCJ-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13  
8-4-2021     [\[29\]](#)

DAVID JOHNSTON/ATTY. FOR DBT.

### **Tentative Ruling**

**Motion:** Convert Case from Chapter 7 to Chapter 13

**Notice:** LBR 9014-1(f)(2); no 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). 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).

### **CONVERSION UNDER § 706(a)**

Section 706 of the Bankruptcy Code gives chapter 7 debtors a qualified conversion right. See 11 U.S.C. § 706(a), (d). A debtor's right to convert a case from Chapter 7 to Chapter 11, 12, or 13 is conditioned on (i) the debtor's eligibility for relief under the chapter to which the case will be converted and (ii) the case not having been previously converted under §§ 1112, 1208, or 1307. 11 U.S.C. § 706(a), (d); see also *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372-74 (2007) (affirming denial of debtor's conversion from Chapter 7 to Chapter 13 based on bad faith conduct sufficient to establish cause under § 1307(c)).

The secured and unsecured debt amounts shown in the debtor's schedules are below the debt limits provided in § 109(e). See 11 U.S.C. § 109(e). The case has not been previously converted under § 1112, 1208, or 1307 of the Bankruptcy Code. See *id.* § 706(a). No party in interest has questioned the debtor's eligibility for relief under Chapter 13.

### **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 debtor's motion to convert this case from chapter 7 to chapter 13 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 converts this case from chapter 7 to chapter 13.

3. [21-20225](#)-A-7     **IN RE: DONALD JOHNSON**  
[BLF-3](#)

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
7-14-2021     [\[42\]](#)

MICHAEL HAYS/ATTY. FOR DBT.  
LORIS BAKKEN/ATTY. FOR MV.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Objection:** Objection to Claim of Exemptions

**Notice:** LBR 9014-1(f)(1)

**Disposition:** Sustained

**Order:** Civil minute order

### **FACTS**

The trustee objects to the debtor's claim of a homestead exemption under C.C.P. § 703.730 on real property located at 35501 Brinville Road, Acton, California 93510 ("the Acton Property"). The trustee states that the debtor failed to meet his burden of proving his entitlement to such exemption.

The debtor first purchased the Acton Property in 1994. Since 2018, the debtor resided with his wife Caraly Johnson (divorce currently pending) in 1399 N. B Lane, Paradise, CA 95969 ("the Paradise Property"), which is 469 miles away from the Acton Property. The debtor stated that since moving to Paradise, he frequented to the Acton Property only 1-2 times a month (few days at a time) before the pandemic, and visited the property even less during the pandemic. He stated that his friend's daughter Stephanie Fay currently resides in the property, and that he intended to sell her the property after he moved to Paradise (sale did not occur due to issues with title), Decl., p. 7, ECF No. 53.

The debtor stated that he returned to the Acton Property on December 2021, Decl., p. 8, line 10, ECF No. 53. One month later, the debtor filed this chapter 7 case and disclosed the Acton Property as his residence, ECF No. 1. His Schedule C lists a homestead exemption under C.C.P. § 703.730 on the Acton Property in the amount of \$600,000.00, *id.*

Since the filing date, two 341 meetings were conducted - one on April 14, 2021 and the other on May 19, 2021. Both meetings were conducted while the debtor stayed in the Paradise Property. The debtor admitted he stayed in the Paradise Property on the date of filing, 341 Meeting Transcript (May 19, 2021), Exh. J, p. 7, ECF No. 48. He further indicated that he is unaware of who exactly currently resides in the Acton Property ("I believe [Stephanie's daughter] lives with [Stephanie]"). *Id.*, at p. 4 (emphasis added).

The debtor's 2020 tax returns list Paradise Property as his address, Exh. A, ECF No. 48. His driver's license, which expires in May 2025, listed the Paradise Property as his address. Exh. K, ECF No. 48. The

debtor changed the driver's license address to the Acton Property address a month before he filed bankruptcy. *Id.* He stated that he did so at his attorney's instruction so that he'd "substantiate the fact of [his] relocation" to the Acton Property, Decl., p. 8, lines 5-9, ECF No. 53. He also stated that his bank statements are still being sent to the Paradise Property, Exh. J, p. 7, ECF No. 48.

The trustee objects to the debtor's claim of exemption, stating that the debtor is scheming to obtain the exemption on the Acton Property despite actually living elsewhere (the Paradise Property).

## **LAW**

### Exemptions in Bankruptcy

"The bankruptcy estate consists of all legal and equitable interests of the debtor in property as of the date of the filing of the petition." *Ford v. Konnoff (In re Konnoff)*, 356 B.R. 201 (B.A.P. 9th Cir. 2006) (citing 11 U.S.C. § 541(a)(1)). A debtor may exclude exempt property from property of the estate. 11 U.S.C. § 522(b)(1).

11 U.S.C. § 522 allows a debtor either to exempt property under federal bankruptcy exemptions under § 522(d), unless a state does not so authorize, or to exempt property under state or local law and non-bankruptcy federal law. *Id.* § 522(b)(2)-(3)(A), (d).

"California has opted out of the federal exemption scheme and limited [debtors in bankruptcy] to the exemptions debtors may claim in non-bankruptcy cases." *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012) (citations omitted); accord 11 U.S.C. §§ 522(b)(2), 522(b)(3)(A), 522(d); Cal. Civ. Proc. Code §§ 703.010(a), 703.130, 703.140.

In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the date of the petition. 11 U.S.C. § 522(b)(3)(A); *Wolfe*, 676 F.3d at 1199 ("[B]ankruptcy exemptions are fixed at the time of the bankruptcy petition."); accord *In re Anderson*, 824 F.2d 754, 756 (9th Cir. 1987). "In California, exemptions are to be construed liberally in favor of the debtor." *In re Rawn*, 199 B.R. 733, 734 (Bankr. E.D. Cal. 1996); see also *Sun Ltd. v. Casey*, 157 Cal. Rptr. 576, 576 (Cal. Ct. App. 1979).

### Burden of Proof

Section 703.580 of the California Code of Civil Procedure allocates the burden of proof in state-law exemption proceedings. Cal. Civ. Proc. Code § 703.580(b). The bankruptcy appellate panel in this circuit has concluded that "where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation." *In re Diaz*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). In this exemption proceeding in bankruptcy, therefore, the debtor bears the burden of proof.

Further, the preponderance-of-the-evidence standard applies. See *In re Pashenee*, 531 B.R. 834, 839 (Bankr. E.D. Cal. 2015).

### Determining Residency

The factors the Ninth Circuit use to determine residency of a debtor are: 1) whether the debtor physically occupies the property, and 2) whether the debtor intends to occupy the property. March, Ahart & Shapiro, *California Practice Guide: Bankruptcy*, Exemptions §7:497 (Rutter Group 2020), citing *In re Gilman*, 887 F.3d 956, 965 (9<sup>th</sup> Cir. 2018). Lack of physical occupancy on the petition date is not required provided that the debtor intends to reside there. *In re Gilman*, at 966. Conversely, physical occupancy on the filing date without requisite intent to live there is insufficient to establish residency. *In re Diaz*, 547 B.R. 329, 336 (9<sup>th</sup> Cir. B.A.P. 2016).

### **ANALYSIS**

The issue is whether the debtor has met his burden of proving that he is entitled to the homestead exemption. Therefore, he is to show by a preponderance of evidence that he physically occupies the Acton Property and that he intends to occupy the Acton Property.

#### Physical Occupation of Acton Property

The debtor failed to show by a preponderance of evidence that he physically occupied the Acton Property on the petition date. He contends that he moved back to the Acton Property the month before he filed bankruptcy. However, he debtor admitted that he was at the Paradise Property on the date of filing. 341 Meeting Transcript (May 19, 2021), Exh. J, p. 7, ECF No. 48. Also, the debtor occupied the Paradise property during both 341 meetings.

There hasn't been any other indicia that the debtor physically occupied the Acton Property. Before the pandemic, he would frequent to the Acton Property 1-2 times a month (few days at a time), and would visit the property less frequently during the pandemic. *Id.*, at p. 5. The court construes that he rarely (if ever) physically occupied the Acton Property since filing bankruptcy, since he indicated he does not know who currently resides on the property besides Stephanie Fay ("I believe [Stephanie's daughter] lives with [Stephanie]"). *Id.*, at p. 4 (emphasis added).

#### Intent to Reside on the Acton Property

The debtor also failed to show by a preponderance of evidence that he intended to reside in the Acton Property. After moving to the Paradise Property in 2018, he would visit the Acton Property at most 1-2 times a month, a few days at a time. He stated that he allowed Stephanie Fay to reside in the Acton Property after moving to Paradise, and that he intended to sell her the Acton Property, Decl., p. 7, ECF No. 53.

The debtor's 2020 tax returns list Paradise Property as his address, Exh. A, ECF No. 48. He is still receiving his bank statements from the Paradise Property, Exh. J, p. 7, ECF No. 48. The court cannot determine that the debtor intended to make the Acton Property his actual address solely based on the fact that he changed the address

on his driver's license, which expires in May 2025, from the Paradise Property to the Acton Property a month before he filed bankruptcy. Exh. K, ECF No. 48. The debtor hasn't made any other indicia of his intent to return to the Acton Property since he moved in 2018.

The debtor failed to demonstrate both that he physically occupies and that he has any intention to reside in the Acton Property. Therefore, the debtor failed to show by a preponderance of evidence that he is entitled to an exemption under § 703.730. For the foregoing reasons, the court will sustain the trustee's objection.

#### **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 trustee's objection has been presented to the court. Having considered the objection, oppositions, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained.

4. [21-22634](#)-A-7     **IN RE: EDWARD CARDILINO**  
[DBL-1](#)

MOTION TO COMPEL ABANDONMENT  
8-11-2021    [\[13\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

#### **Tentative Ruling**

**Motion:** Compel Abandonment of Property of the Estate

**Notice:** LBR 9014-1(f)(2); trustee's non-opposition filed

**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:** Get ER Done (landscape service), business assets listed in Schedules A/B, paras. 3.1, 3.3, and 40, ECF No. 16.

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).

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 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.

5. [19-23553](#)-A-7     **IN RE: SHAWN/HEATHER WHITNEY**  
[BHS-2](#)

MOTION TO SELL  
8-2-2021    [[390](#)]

JOHN DOWNING/ATTY. FOR DBT.  
BARRY SPITZER/ATTY. FOR MV.

### **Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** estate's 75% interest in Morgans Lobster Shack, LLC

**Buyer:** Shawn and Heather Whitney

**Sale Price:** \$85,000.00 (\$30,000.00 as credit toward the purchase price for exemptions)

**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).

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.

It is further ordered that overbidding shall start at \$85,500.00, with overbids in minimum \$500.00 increments. The successful overbidder must deliver to the trustee a cashier's or certified



check for the overbid amount within 10 days of the court's approval for sale. The debtors will be allowed to credit bid their exemption of \$30,000.00. Any and all costs of the transfer will be the sole responsibility of the buyer.

6. [19-24759](#)-A-7     **IN RE: AK BUILDERS AND COATINGS, INC**  
[GMR-3](#)

MOTION FOR COMPENSATION FOR GEOFFREY RICHARDS, CHAPTER 7  
TRUSTEE(S)  
7-30-2021    [\[221\]](#)

MICHAEL NOBLE/ATTY. FOR DBT.  
AARON AVERY/ATTY. FOR MV.

### **Final Ruling**

**Application:** Allowance of Compensation and Expense Reimbursement

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

**Disposition:** Approved

**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 application was required not less than 14 days before the hearing on the application. 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).

### **COMPENSATION AND EXPENSES**

A trustee's compensation is considered in accordance with §§ 326(a) and 330(a). In 2005, "Congress removed Chapter 7 trustees from the list of professionals subject to the Section 330(a)(3) factors. . . . [and] introduced a new provision to Section 330 requiring courts to treat the reasonable compensation awarded to trustees as a 'commission, based on Section 326.'" *Matter of JFK Capital Holdings, L.L.C.*, 880 F.3d 747, 752 (5th Cir. 2018) (quoting 11 U.S.C. § 330(a)(7)). "[A] trustee's request for compensation should be presumed reasonable as long as the amount requested does not exceed the statutory maximum calculated pursuant to § 326. [A]bsent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review. If the court has found that extraordinary circumstances are present, only then does it become appropriate to conduct a further inquiry to determine whether there exists a rational relationship between the compensation requested and the services rendered." *In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015) (second alteration in original) (citations omitted) (internal quotation marks omitted).

In short, § 330(a)(7) "treats the commission as a fixed percentage, using Section 326 not only as a maximum but as a baseline

presumption for reasonableness in each case.” *Matter of JFK Capital Holdings*, 880 F.3d at 755. This provision “is best understood as a directive to simply apply the formula of § 362 in every case.” *Id.* at 753-54. The “reduction or denial of compensation . . . should be a rare event” occurring only when truly exceptional circumstances are present. *Id.* at 756.

In this Chapter 7 case, the trustee has applied for an allowance of compensation and reimbursement of expenses. The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that no extraordinary circumstances are present in this case, see *In re Salgado-Nava*, 473 B.R. 911 (B.A.P. 9th Cir. 2012); and (3) that expenses for which reimbursement is sought are actual and necessary.

#### **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 application for allowance of compensation and reimbursement of expenses 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 application,

IT IS ORDERED that the application is approved on a final basis. The court allows to the trustee compensation in the amount of \$9,168.99 and reimbursement of expenses in the amount of \$44.04.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

7. [21-20459](#)-A-7     **IN RE: GABRIELA CORREA**  
[UST-3](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO  
DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND TIME TO FILE  
A MOTION TO DISMISS CASE UNDER SEC. 707(B)  
7-26-2021     [\[67\]](#)

NOEL KNIGHT/ATTY. FOR DBT.  
JASON BLUMBERG/ATTY. FOR MV.

#### **Final Ruling**

This case having been dismissed, ECF No. 74, the court will drop this matter from the calendar as moot.

8. [21-22759](#)-A-7     **IN RE: NADIA ZHIRY**  
[AAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-17-2021    [\[36\]](#)

MARK SHMORGON/ATTY. FOR DBT.  
ANGEL SOLIS/ATTY. FOR MV.  
CITY OF SACRAMENTO VS.

**Final Ruling**

This motion is continued to September 13, 2021, at 9:00 a.m.  
pursuant to the parties' notice, ECF No. 43.

9. [21-22759](#)-A-7     **IN RE: NADIA ZHIRY**  
[KSR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-15-2021    [\[28\]](#)

MARK SHMORGON/ATTY. FOR DBT.  
KIRK RIMMER/ATTY. FOR MV.  
GERARD KEENA VS.

**Final Ruling**

This motion is continued to September 13, 2021, at 9:00 a.m.  
pursuant to the parties' notice, ECF No. 41.

10. [21-22477](#)-A-7     **IN RE: ROCKY/DIANA MANNING**

AMENDED MOTION TO AVOID LIEN OF TD BANK USA, N.A.  
7-29-2021    [\[13\]](#)

ROCKY MANNING/ATTY. FOR MV.

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**INSUFFICIENT SERVICE**

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); see also *In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). 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 for TD Bank U.S.A., N.A.

#### **DOCKET CONTROL NUMBER**

The lack of a docket control number on the papers filed in this matter violates the court's local rules. LBR 9014-1(c) (1) mandates the use of docket control numbers to be used on each document filed with the bankruptcy court in this district, including proofs of service.

11. [20-24691](#)-A-7     **IN RE: FREEDOM 123 LLC**  
[HSM-12](#)

MOTION TO ABANDON  
8-16-2021    [[282](#)]

HOWARD NEVINS/ATTY. FOR MV.

#### **Tentative Ruling**

**Motion:** Compel Abandonment of Property of the Estate  
**Notice:** LBR 9014-1(f) (2); no written opposition required  
**Disposition:** Granted  
**Order:** Prepared by moving party

**Subject:** 2463 E. Oak Street, Stockton, California  
**Value:** \$254,000.00  
**1st Trust Deed:** \$175,518.98 (Iron Oak Home Loans, Inc.)  
**Exemption:** None  
**Non-Exempt Equity:** \$78,481.02 (court values equity at \$0.00, since the trustee attempted three sales-unsuccessfully--of the property within 5 months)

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).

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 real property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment is warranted.