

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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

DAY: WEDNESDAY
DATE: JANUARY 20, 2021
CALENDAR: 1:30 P.M. ADVERSARY PROCEEDINGS

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. [19-20617](#)-A-7 **IN RE: DAISY CUARESMA**
[20-2003](#)

STATUS CONFERENCE RE: COMPLAINT
1-3-2020 [[1](#)]

FARRAR V. CUARESMA
AARON AVERY/ATTY. FOR PL.

Final Ruling

The status conference is continued to July 20, 2021 at 1:30 p.m.
Not later than 14 days prior to the continued status conference the
plaintiff shall file a status report.

2. [19-26426](#)-A-7 **IN RE: PRUDENCIO FARIAS**
[20-2043](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT FOR NON-DISCHARGEABILITY
OF DEBT AND DENIAL OF DISCHARGE
4-20-2020 [[1](#)]

VARGAS V. FARIAS
HANNAH KREUSER/ATTY. FOR PL.

Final Ruling

This hearing is dropped from calendar. The court has issued a
scheduling order that directs the further handling of this adversary
proceeding. Scheduling Order, December 28, 2020, ECF No. 40.

3. [20-23029](#)-A-7 **IN RE: SEAN RILEY**
[20-2169](#)

STATUS CONFERENCE RE: COMPLAINT
11-11-2020 [[1](#)]

SMITH V. RILEY
J. CUNNINGHAM/ATTY. FOR PL.

No Ruling

4. [20-23029](#)-A-7 **IN RE: SEAN RILEY**
[20-2170](#)

STATUS CONFERENCE RE: COMPLAINT
11-12-2020 [[1](#)]

GARCIA V. RILEY
NICHOLAS LAZZARINI/ATTY. FOR PL.

No Ruling

5. [19-23452](#)-A-7 **IN RE: CIAO RESTAURANTS, LLC**
[20-2110](#)

CONTINUED STATUS CONFERENCE RE: THIRD-PARTY COMPLAINT
7-29-2020 [[13](#)]

HUSTED V. OLD REPUBLIC TITLE
COMPANY
EDWARD SMITH/ATTY. FOR PL.

No Ruling

6. [19-23452](#)-A-7 **IN RE: CIAO RESTAURANTS, LLC**
[20-2110](#) [SLB-1](#)

MOTION FOR ORDER PERMITTING SERVICE OF SUMMONS BY
PUBLICATION
12-16-2020 [[55](#)]

HUSTED V. OLD REPUBLIC TITLE
COMPANY
EDWARD SMITH/ATTY. FOR MV.

Final Ruling

Motion: Motion for Order Permitting Service of Summons by
Publication

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).

Old Republic Title Company moves for an Order Directing Service of Summons by Publication for Old Republic's Third-Party Complaint (ECF No. 13) on B.N. Restaurant, Inc. ("BNR"), Balbir S. Dhillon, Miranda Mulgeci, Joseph Anthony Charity, and Marc Riedel (collectively "counter-defendants").

FACTS

On or about September 28, 2017, buyer/assignee and owner of debtor corporation Miranda Mulgeci entered into an Asset Purchase Agreement with seller BNR for the sale and purchase of certain business assets in Roseville at a price of \$100,000, ECF No. 13. In order to facilitate the Asset Sale, Old Republic was thereafter caused to open the subject escrow and received the following deposits into the escrow: (a) \$10,000 by check from counter-defendant Charity on October 6, 2017; and (b) \$63,862.58 by wire transfer from the debtor on November 30, 2017, ECF No. 13. The Asset Sale was never completed and the escrow did not close. *Id.* There remains on deposit in the escrow with Old Republic the sum of \$72,554.43 ("Subject Funds"), which Old Republic is informed were intended to go towards the buyer's funds needed to close its purchase under the Asset Purchase Agreement. *Id.*

On May 30, 2019 the debtor filed its petition for Chapter 11 bankruptcy. The case was subsequently converted to Chapter 7. On June 2, 2020, the trustee filed this adversary proceeding against Old Republic, moving for turnover of the Subject Funds under 11 U.S.C. § 542(a), ECF No. 1. Old Republic is informed that the trustee and the counter-defendants each assert claims regarding the distribution of the subject funds which are adverse and conflicting.

Old Republic filed a third-party complaint for interpleader of the Subject Funds against BNR, Balbir S. Dhillon, Miranda Mulgeci, Joseph Anthony Charity, and Marc Riedel, ECF No. 13. Old Republic's counsel investigated multiple public records databases to locate the addresses of the counter-defendants for service of the Summons and Counterclaim, Declaration, ECF No. 57.

On August 12, 2020, Old Republic attempted to serve the counter-defendants the Summons and Counterclaim by U.S. Mail at the following addresses: BNR at 35669 Carnation Way, Fremont, CA 94536; Dhillon at 35669 Carnation Way, Fremont, CA 94536; Marc Riedel at 4985 Topaz Avenue, Rocklin, CA 95677; Miranda Mulgeci at 109 Sprig Way, Roseville, CA 95678; and Joseph Anthony Charity at 109 Sprig Way, Roseville, CA 95678, Certificates of Service, ECF Nos. 21-27. The mailings to Mulgeci and Charity were returned to Old Republic as undeliverable. Declaration of Stacey C. Quan, ECF No. 57.

On September 15, 2020, after a search of alternative addresses in the public records, Old Republic attempted to re-serve Mulgeci and Charity by U.S. Mail at 18 Treecrest Court, Roseville, CA 95678 and for Charity at 609 Tamarindo Way, Roseville, CA 95678. The second mailing was returned to Old Republic as undeliverable, ECF No. 57.

Because the seven-day deadline had past under the original Summons, Old Republic obtained a reissued Summons and on November 5, 2020,

and attempted a third time to serve the counter-defendants by U.S. Mail at the following addresses: BNR at 35669 Carnation Way, Fremont, CA 94536; Dhillon at 35669 Carnation Way, Fremont, CA 94536; Marc Riedel at 4985 Topaz Avenue, Rocklin, CA 95677; Miranda Mulgeci at 609 Tamarindo Way, Roseville, CA 95678; Joseph Anthony Charity at 609 Tamarindo Way, Roseville, CA 95678; and Joseph Anthony Charity at 18 Treecrest Court, Roseville, CA 95678, Certificates of Service, ECF Nos. 39-44. As of this date, all the third-round mailings except the mailings to Riedel and Mulgeci have been returned as undeliverable, ECF No. 57. Old Republic's counsel searched multiple public records databases and confirmed that the addresses used for mail service are the last known and available addresses for BNR, Dhillon, Charity and Mulgeci as reflected in the public records, ECF No. 57.

Old Republic now requests an order permitting service of summons on the counter-defendants by publication under Fed. R. Bankr. Proc. 7004.

LAW

Fed. R. Bankr. Proc. 7004(a) applies the Federal Rules of Civil Procedure to the service of summons of adversary proceedings, F.R.B.P. Rule 7004(a). Federal Rule of Civil Procedure Rule 4(e)(1) permits the service of summons on an individual "*following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made*". F.R.C.P. 4(e)(1). A similar rule applies to corporations, F.R.C.P. 4(h)(1)(A). Additionally, "Summons and complaint may ... be served by any means set forth in FRCP 4(a), (b), (c)(1), (d)(5), (e)-(j), (l) and (m)," F.R.B.P. 7004(a)(1). "In an adversary proceeding to determine or protect rights in property in the custody of the court where a party cannot be served as provided in FRCP 4(e)-(j) or F.R.B.P. 7004(b), the court may order summons and complaint to be served by first class mail to the party's last known address and at least one publication (in manner and form directed by the court)." March, Ahart & Shapiro, *California Practice Guide: Bankruptcy* § 20:145(Rutter Group 2020); Fed. R. Bankr. Proc. 7004(c).

Service by publication is permitted in California pursuant to California Code of Civil Procedure Section 415.50: " ...if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot *with reasonable diligence* be served in another manner specified in this article and that either: (1) A cause of action exists against the party upon whom service is to be made or he or she is a necessary or proper party to the action. (2) The *party to be served has or claims an interest in real or personal property in this state that is subject to the jurisdiction of the court* or the relief demanded in the action consists wholly or in part in excluding the party from any interest in the property." C.C.P. § 415.50(a)(1)-(2).

The term "reasonable diligence" in C.C.P. § 415.50(a) "denotes a thorough, systematic investigation and inquiry conducted in good faith by the party or his agent or attorney. A number of honest

attempts to learn defendant's whereabouts or his address by inquiry of relatives, friends, and acquaintances, or of his employer, and by investigation of appropriate city and telephone directories, the voters' register, and the real and personal property index in the assessor's office, near the defendant's last known location, are generally sufficient. These are the likely sources of information, and consequently must be searched before resorting to service by publication." Editor's Notes, C.C.P. § 415.50; *citing Stern v. Judson*, 163 Cal. 726, 736 (1912).

Where a court determines that service by publication is appropriate, "The court shall order the summons to be published in a named newspaper, published in this state, *that is most likely to give actual notice to the party to be served*. If the party to be served resides or is located out of this state, the court may also order the summons to be published in a named newspaper outside this state that is most likely to give actual notice to that party." See C.C.P. §415.50(b).

ANALYSIS

Cal. Civ. Proc. § 415.50(a)

The court finds that the counter-defendants cannot with reasonable diligence be served in any other manner but publication under C.C.P. § 415.50(a). Old Republic made three unsuccessful attempts to serve the counter-defendants by U.S. Mail at all known and available addresses and its counsel has unsuccessfully conducted searches into public records databases for additional addresses where counter-defendants may be located, Declaration, ECF No. 57. The court finds that such efforts constitute "reasonable diligence" under C.C.P. § 415.50(a), and despite such efforts to serve the counter-defendants and to ascertain their addresses, Old Republic has not been able to serve BNR, Dhillon, and Charity. Old Republic also cannot receive confirmation that Riedel and Mulgeci were properly served.

The court also finds the counter-defendants to be served have an interest in personal property in this state that is subject to the jurisdiction of the court or the relief demanded in the action consists wholly or in part in excluding the party from any interest in the property under C.C.P. § 415.50(a)(2). Old Republic states that it is informed that each of the counter-defendants may claim an interest in the Subject Funds that Old Republic seeks to interplead with the Court, ECF No. 56. Also, Miranda Mulgeci and Marc Reidel are the sole owners of the debtor corporation and are parties to the Asset Sale for which Old Republic is holding the Subject Funds in escrow. BNR is the seller to the asset sale. Balbir S. Dhillon is the principal and controlling owner of BNR. Joseph Anthony Charity deposited \$10,000 into the subject escrow account pursuant to the asset sale, and Old Republic is informed and believes that Charity is Miranda Mulgeci's spouse, ECF No. 56.

For the foregoing reasons, the court will grant the motion for an Order Permitting Service of Summons by Publication on all the counter-defendants.

Cal. Civ. Proc. § 415.50(b)

Old Republic requests leave to serve the counter-defendants by publication in the Placer Herald, the Roseville Press Tribune and the Argus Newspaper. The Placer Herald is a publication of general circulation and is commonly used for legal notices in Rocklin, California, Declaration, ECF No. 57. Because the last known address for Riedel is in Rocklin, California, the court finds that that service by publication in the Placer Herald is proper under C.C.P. § 415.50(b).

The Roseville Press Tribune is a publication of general circulation and is commonly used for legal notices in Roseville, California, *Id.* Because the last known address for Mulgeci and Charity is in Roseville, California, the court finds that that service by publication in the Roseville Press Tribune is likewise proper.

The Argus Newspaper is a publication of general circulation and is commonly used for legal notices in Fremont, California, *Id.* Because the last known addresses for BNR and Dhillon are located in Fremont, California in Alameda County, the court finds that service by publication in the Argus Newspaper is likewise proper.

CIVIL MINUTE ORDER

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

Old Republic Title Company's Motion for Order Permitting Service of Summons by Publication 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 granted. Old Republic Title Company's Third-Party Claim (ECF No. 13) shall be served by publication in accordance with Fed. R. Bankr. Proc. 7004(c) and C.C.P. 415.50 on B.N. Restaurant, Inc. ("BNR"), Balbir S. Dhillon, Miranda Mulgeci, Joseph Anthony Charity, and Marc Riedel.

IT IS FURTHER ORDERED that Old Republic Title Company shall serve the counter-defendants by publication in the Placer Herald, the Roseville Press Tribune and the Argus Newspaper.

7. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[20-2045](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-23-2020 [[1](#)]

HUSTED V. CELAN TV RECYCLERS
INC.
CHRISTOPHER SULLIVAN/ATTY. FOR PL.

Final Ruling

The Default Judgment having been entered on January 5, 2021, ECF No. 34, the Status Conference is concluded.

8. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[20-2051](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-23-2020 [[1](#)]

HUSTED V. A.S.I CYBER
CONCEPTS, LLC.
CHRISTOPHER SULLIVAN/ATTY. FOR PL.

Final Ruling

The Default Judgment having been entered on January 5, 2021, ECF No. 33, the Status Conference is concluded.

9. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[20-2056](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-23-2020 [[1](#)]

HUSTED V. MP TRANSPORTATION &
CO
CHRISTOPHER SULLIVAN/ATTY. FOR PL.

Final Ruling

The Default Judgment having been entered on January 5, 2021, ECF No. 29, the Status Conference is concluded.

10. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[20-2071](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-23-2020 [[1](#)]

HUSTED V. 3C ENVIRONMENTAL
SOLUTIONS.
CHRISTOPHER SULLIVAN/ATTY. FOR PL.

Final Ruling

The Default Judgment having been entered on January 5, 2021, ECF No. 33, the Status Conference is concluded.

11. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[20-2084](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-24-2020 [[1](#)]

HUSTED V. DOUBLE R ELECTRIC
INCORPORATED
CHRISTOPHER SULLIVAN/ATTY. FOR PL.
ADVERSARY PROCEEDING DISMISSED: 1/5/2021

Final Ruling

The Adversary case having been dismissed the Status Conference is concluded.

12. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[20-2084](#) [PP-1](#)

CONTINUED MOTION TO DISMISS CAUSE(S) OF ACTION FROM
COMPLAINT
9-8-2020 [[15](#)]

HUSTED V. DOUBLE R ELECTRIC
INCORPORATED
UNKNOWN TIME OF FILING/ATTY. FOR MV.
ADVERSARY PROCEEDING DISMISSED: 1/5/2021

Final Ruling

The Adversary case having been dismissed the motion is dropped as moot.

13. [09-29162](#)-A-11 **IN RE: SK FOODS, L.P.**
[10-2117](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
8-6-2010 [[25](#)]

SHARP ET AL V. INTERNAL
REVENUE SERVICE ET AL
GREGORY NUTI/ATTY. FOR PL.

Final Ruling

The status conference is continued to April 7, 2021, at 1:30 p.m.

14. [09-29162](#)-A-11 **IN RE: SK FOODS, L.P.**
[10-2117](#) [TJD-5](#)

MOTION TO ENFORCE SETTLEMENT AGREEMENT
12-18-2020 [[292](#)]

SHARP ET AL V. INTERNAL
REVENUE SERVICE ET AL
TODD DRESSEL/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

The motion is continued to April 7, 2021, at 1:30 p.m. Opposition shall be filed not later than 14 days prior to that hearing date; reply may be filed not later than 7 days before that hearing date. A civil minute order will issue.

15. [09-29162](#)-A-11 **IN RE: SK FOODS, L.P.**
[11-2339](#) [TJD-8](#)

MOTION TO ENFORCE SETTLEMENT AGREEMENT
12-18-2020 [[415](#)]

BANK OF MONTREAL V. CALIFORNIA
FRANCHISE TAX BOARD ET AL
TODD DRESSEL/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

The motion is continued to April 7, 2021, at 1:30 p.m. Opposition shall be filed not later than 14 days prior to that hearing date; reply may be filed not later than 7 days before that hearing date. A civil minute order will issue.

16. [09-29162](#)-A-11 **IN RE: SK FOODS, L.P.**
[11-2340](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-4-2011 [[1](#)]

BANK OF MONTREAL V. COLLINS ET AL
TODD DRESSEL/ATTY. FOR PL.

Final Ruling

The status conference is continued to April 7, 2021, at 1:30 p.m.

17. [09-29162](#)-A-11 **IN RE: SK FOODS, L.P.**
[11-2340](#) [TJD-8](#)

MOTION TO ENFORCE SETTLEMENT AGREEMENT
12-18-2020 [[472](#)]

BANK OF MONTREAL V. COLLINS ET
TODD DRESSEL/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

The motion is continued to April 7, 2021, at 1:30 p.m. Opposition shall be filed not later than 14 days prior to that hearing date; reply may be filed not later than 7 days before that hearing date. A civil minute order will issue.