

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

Honorable Fredrick E. Clement  
Fresno Federal Courthouse  
2500 Tulare Street, 5<sup>th</sup> Floor  
Courtroom 11, Department A  
Fresno, California

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY  
**DATE:** AUGUST 23, 2017  
**CALENDAR:** 1:30 P.M. CHAPTER 11 AND 9 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [17-11824](#)-A-7     HORISONS UNLIMITED     CONTINUED STATUS CONFERENCE RE:  
CHAPTER 11 VOLUNTARY PETITION  
NON-INDIVIDUAL. THIS ORDER IS  
TRANSMITTED TO BNC FOR SERVICE.  
STATUS CONFERENCE  
5-10-17 [[1](#)]

CECILY DUMAS/Atty. for dbt.

**Final Ruling**

The case converted to Chapter 7, the status conference is concluded.

2. [17-11824](#)-A-7     HORISONS UNLIMITED     MOTION TO EMPLOY WAYNE C. ALLEN  
PSZ-2     AS CHIEF FINANCIAL OFFICER  
KAVITA GUPTA/MV     8-2-17 [[122](#)]  
CECILY DUMAS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

3. [15-12827](#)-A-11     BLUEGREENPISTA     CONTINUED STATUS CONFERENCE RE:  
ENTERPRISES, INC.     CHAPTER 11 VOLUNTARY PETITION  
7-18-15 [[1](#)]

**Final Ruling**

At the suggestion of the parties, the status conference is continued to November 15, 2017, at 1:30 p.m. Not later than 14 days prior to the continued status conference the trustee shall (and other parties may) file a status report.

4. [17-12389](#)-A-11     DON ROSE OIL CO., INC.     MOTION TO APPOINT TRUSTEE  
CLF-1     AND/OR MOTION TO CONVERT CASE  
DONALD ROSE/MV     FROM CHAPTER 11 TO CHAPTER 7  
7-19-17 [[108](#)]

RILEY WALTER/Atty. for dbt.  
VONN CHRISTENSON/Atty. for mv.  
RESPONSIVE PLEADING

**No Ruling**

5. [17-12389](#)-A-11 DON ROSE OIL CO., INC.  
JWC-1  
BMO HARRIS BANK N.A./MV  
RILEY WALTER/Atty. for dbt.  
JENNIFER CRASTZ/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-9-17 [[207](#)]

**No Ruling**

6. [17-12389](#)-A-11 DON ROSE OIL CO., INC.  
UST-1  
TRACY DAVIS/MV

MOTION TO APPOINT TRUSTEE  
AND/OR MOTION TO CONVERT CASE  
FROM CHAPTER 11 TO CHAPTER 7  
8-2-17 [[163](#)]

RILEY WALTER/Atty. for dbt.  
ROBIN TUBESING/Atty. for mv.

**No Ruling**

7. [17-12389](#)-A-11 DON ROSE OIL CO., INC.  
WW-3  
DON ROSE OIL CO., INC./MV  
RILEY WALTER/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO EMPLOY NICK PRITCHETT  
AS SPECIAL COUNSEL  
7-24-17 [[117](#)]

**No Ruling**

8. [17-12389](#)-A-11 DON ROSE OIL CO., INC.  
WW-4  
DON ROSE OIL CO., INC./MV  
RILEY WALTER/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO EMPLOY BROWN  
ARMSTRONG AS ACCOUNTANT(S)  
7-12-17 [[86](#)]

**No Ruling**

9. [17-12389](#)-A-11 DON ROSE OIL CO., INC.  
WW-6  
DON ROSE OIL CO., INC./MV

MOTION TO APPROVE STIPULATION  
FOR RELIEF FROM THE AUTOMATIC  
STAY  
7-24-17 [[114](#)]

RILEY WALTER/Atty. for dbt.  
RESPONSIVE PLEADING

**No Ruling**

10. [17-12389](#)-A-11 DON ROSE OIL CO., INC.  
WW-7  
DON ROSE OIL CO., INC./MV  
MOTION FOR APPROVAL OF  
STIPULATION AND AGREEMENT FOR  
ADEQUATE PROTECTION AND  
MODIFICATION OF THE AUTOMATIC  
STAY  
8-7-17 [[179](#)]  
  
RILEY WALTER/Atty. for dbt.

**No Ruling**

11. [12-12998](#)-A-11 FARSHAD TAFTI  
RWR-1  
TULARE COUNTY TAX COLLECTOR/MV  
PETER FEAR/Atty. for dbt.  
RUSSELL REYNOLDS/Atty. for mv.  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-13-17 [[324](#)]

**Tentative Ruling**

**Motion:** Relief from Stay

**Disposition:** Denied without prejudice

**Order:** Civil minute order

As a contested matter, the motion for relief from stay is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). A motion initiating a contested matter must be served pursuant to Rule 7004 on the parties against whom relief is sought. Fed. R. Bankr. P. 9014(b).

If the case is a chapter 11 reorganization case and a committee of unsecured creditors has not been appointed, then a motion for relief from stay must also be served on the creditors included on the list of the 20-largest creditors filed under Rule 1007(d). See Fed. R. Bankr. P. 4001(a)(1). Service must be made on each of the 20-largest creditors according to Rule 7004. See *In re LSSR, LLC*, No. CC-12-1636-DKiTa, 2013 WL 2350853, \*4 (B.A.P. 9th Cir. May 29, 2013) (unpublished decision).

All creditors on the list of the 20-largest creditors have not been served pursuant to Rule 7004. Business entities have not been served pursuant to Rule 7004(b)(3) or (h). In addition, to the extent an individual or entity has been named as the intended person to receive service on behalf of an entity, the individual's capacity as an officer, managing or general agent, or other authorized agent, or the entity's capacity as an agent for service of process, has not been stated.

Furthermore, federal governmental creditors have not been properly served. Service on federal government agencies must be made pursuant to Federal Rule of Bankruptcy Procedure 7004(b)(5). Fed. R. Bankr. P. 7004(b)(5). Under this rule, service must be made both (1) on the agency, and (2) on the United States. See *id.* Rule 7004(b)(4) prescribes the manner of service on the United States and requires service to be made to the attention of the civil process clerk at the U.S. attorney's office for this district and division and to the attention of the Attorney General of the United States at Washington, District of Columbia. Fed. R. Bankr. P. 7004(b)(4).

Service on state governmental creditors is also insufficient. Service upon a state or local governmental agency or entity must be made pursuant to Rule 7004(b)(6) or Federal Rule of Civil Procedure 4(j). Fed. R. Bankr. P. 7004(b)(6); Fed. R. Civ. P. 4(j), incorporated by Fed. R. Bankr. P. 7004(a). Rule 7004(b)(6) permits service upon such an entity to be made by first class mail addressed "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(b)(6). Subsection (a) of section 416.50 of the California Code of Civil Procedure provides that "[a] summons may be served on a public entity by delivering a copy of the summons and of the complaint to the clerk, secretary, president, presiding officer, or other head of its governing body." Cal. Civ. Proc. Code § 416.50(a). Subsection (b) of this section defines a "public entity" to include "a county, city, district, public authority, public agency, and any other political subdivision or public corporation in this state." Id. § 416.50(b).

