

**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: OCTOBER 31, 2022
CALENDAR: 1:30 P.M. CHAPTERS 9, 11 AND 12 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. [22-22118](#)-A-11 **IN RE: DANA HERNANDEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-11-2022 [\[39\]](#)

NOEL KNIGHT/ATTY. FOR DBT.
10/12/22 FILING FEE PAID \$32

Final Ruling

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

2. [22-22118](#)-A-11 **IN RE: DANA HERNANDEZ**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
8-24-2022 [\[1\]](#)

NOEL KNIGHT/ATTY. FOR DBT.

No Ruling

3. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[GT-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-3-2022 [\[645\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
BENJAMIN LEVINSON/ATTY. FOR MV.
JEFFREY SCOTT BLEECKER, AS TRUSTEE OF THE BLEECKER
FAMILY TRUST VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Continued to December 12, 2022, at 1:30 p.m.

Order: Civil minute order

This is the movant's third attempt to obtain stay relief to record a lis pendens. The movant's first two motions were denied for failure of service and other procedural deficiencies. Civil Minutes, ECF No. 579, 623. With respect to the current motion, service is still insufficient, and the motion will be continued to allow the movant to address the problem.

NOTICE

"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(d)

A motion for stay relief 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, at least 7 creditors who filed a Request for Special Notice were not served with the motion: Michael Delisi, ECF No. 14; Bank of Stockton, ECF No. 42; The Socotra Opportunity Fund, ECF No. QZ; Placer County Office of the Treasurer, ECF No. 149; Yosemite Capital LLC, ECF Nos. 134, 137, 150; Brad Evans, ECF No. 180; and Jeffrey Bleecker, ECF No. 12. The failure to serve Jeffrey Bleecker is particularly troublesome in that creditor Bleecker claims a security interest in the subject property, 1449 Adams, Los Angeles, California. Proof of Claim 4-1. Accordingly, service is insufficient. The court will continue the hearing to allow the movant to address these issues.

LBR 7005-1

Counsel for the movant is reminded that effective November 1, 2022, all attorneys and trustees must comply with LBR 7005-1 in accomplishing service of process and must use EDC Form 7-005 to memorialize service. That rule provides:

LOCAL RULE 7005-1

Mandatory Certificate of Service Form for Use by
Attorneys, Trustees, or
Other Registered Electronic Filing System Users

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by either attorneys, trustees, or other Registered Electronic Filing System Users shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court. In addition to other requirements stated on the Official Certificate of Service Form:

(a) Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, the Certificate of Service Form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or the adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders.

(b) For persons served electronically pursuant to their consent to such service (not ECF Registered User service by the Clerk of the Court), a copy of the written consent to such electronic service must be attached to the Certificate of Service.

(c) When a Clerk's Office Matrix is attached to the Certificate of Service, for the persons not served by that method of service, the filer shall strike out the names of such persons not served by that method of service.

(d) Where the Clerk's Matrix of Creditors is attached to the Certificate of Service form, such list shall be downloaded not more than 7 days prior to the date of serving the pleadings and other documents and shall reflect the date of downloading. The serving party may download that matrix either in "pdf label format" or in "raw data format." Where the matrix attached is in "raw data format," signature on the Certificate of Service is the signor's representation that no changes, e.g., additions, deletions, modifications, of the data have been made except: (1) formatting of existing data; or (2) removing creditors from that list by the method described in paragraph (c) of this rule.

The Official Certificate of Service Form (Form EDC 007-005) may be found on the Court's Website using the Bankruptcy Forms, Forms and Publications link.

LBR 7005-1 (emphasis added).

Failure to comply with local rules is, itself a basis, to deny the motion. All future filings by the movant shall comply with applicable local rules.

CIVIL MINUTE ORDER

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

The trustee's motion for stay relief has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is continued to December 12, 2022, at 1:30 p.m.;

IT IS FURTHER ORDERED that the stay remain in effect the motion is resolved;

IT IS FURTHER ORDERED that not later than November 7, 2022, the movant shall file and service a notice of continued hearing on all persons entitled to notice, including without limitation all parties in interest listed in the Certificate of Service, ECF No. 649 and all parties who have filed a Request for Special Notice; that notice shall indicate that written opposition must be filed and served no

later than November 28, 2022, and that the failure to do so may result in resolution of the matter without further notice or hearing;

IT IS FURTHER ORDERED that not later than November 7, 2022, the movant shall serve the motion and all supporting papers on all persons that have filed a Request for Special Notice; and

IT IS FURTHER ORDERED that not later than November 10, 2002, the movant shall file a Certificate of Service on EDC Form 7-005 memorializing compliance with each of the foregoing paragraphs; that Certificate of Service shall comply with LBR 7005-1.

4. [22-20632](#)-A-11 **IN RE: SOUTHGATE TOWN AND TERRACE HOMES, INC.**
[RLC-18](#)

MOTION TO USE CASH COLLATERAL AND/OR MOTION TO GRANT
REPLACEMENT LIENS , MOTION TO APPROVE DIP BUDGET
9-30-2022 [\[208\]](#)

STEPHEN REYNOLDS/ATTY. FOR DBT.

Final Ruling

Motion: Use Cash Collateral

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

Disposition: Denied without prejudice

Order: Civil minute order

Southgate Town and Terrace Homes, Inc. moves to use the cash collateral of the United States Department of Housing and Urban Development and the California Department of Housing and Community Development. Mot. to Use Cash Collateral pp. 3-4, ECF No. 208. 11 U.S.C. § 363(c)(2).

Service of a motion to use cash collateral is governed by Federal Rule of Bankruptcy Procedure 4001. In the pertinent part, that rule provides:

(1) Motion; service

(A) Motion. *A motion for authority to use cash collateral shall be made in accordance with Rule 9014 and shall be accompanied by a proposed form of order.*

...

(C) Service. *The motion shall be served on: (1) any entity with an interest in the cash collateral; (2) any committee elected under § 705 or appointed under § 1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured*

creditors has been appointed under § 1102, the creditors included on the list filed under Rule 1007(d); and (3) any other entity that the court directs.

Fed. R. Bankr. P. 4001(b)(1)(A), (C) (emphasis added).

Rule 9014(b) provides:

Service. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined under Rule 9006(d). Any written response to the motion shall be served within the time determined under Rule 9006(d). Any paper served after the motion shall be served in the manner provided by Rule 5(b) F. R. Civ. P.

Fed. R. Bankr. P. 9014(b).

Rule 7004 service has a particular meaning. As to corporations it requires service in the following manner:

Service by first class mail. Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)-(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

...

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint 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 and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or agency. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk

at the office of the United States attorney or to the Attorney General of the United States.

(5) Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. If the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, service may be made as prescribed in paragraph (10) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint 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)(3)-(6) (emphasis added).

As to public entities, California is clear as to the method service must be accomplished.

(a) 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.

(b) As used in this section, "public entity" includes the state and any office, department, division, bureau, board, commission, or agency of the state, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in this state.

Cal. Code of Civ. Proc. § 416.50 (emphasis added).

Here, the movant has memorialized service with EDC Form 7-005. The problem is that the underlying service is defective. As to parties

with an interest in the cash collateral, i.e., United States Department of Housing and Urban Development and the California Department of Housing and Community Development, the movant has given notice, Fed. R. Civ. P. 5, of these proceedings. See Certificate of Service § 6B(2) and Attachment 6B(2). As to the United States Department of Housing and Urban Development service must be made on (1) the Civil Process Clerk of the United States Attorney, Eastern District of California; (2) the Attorney General for the United States; and (3) United States Department of Housing and Urban Development. Fed. R. Bankr. P. 7004(b)(4),(5). Two of those three serves were missing. As to the California Department of Housing and Community Development, the agency must be served to the clerk, secretary, president or the like of the agency. Though the agency is listed on Attachment 6B(2), the mailing is not addressed to the proper officer.

As to the 20 largest creditors, Fed. R. Bankr. P. 4001(1)(C), similar problems exist. See Official Form 204 (20 Largest Creditors). Corporate creditors are not served to the attention of an officer or agent: CIG Insurance; Pitney Bowes; Cropper Accountancy Corporation; Accurate Cleaning, Inc.; Zoethex Flooring, Inc.; Kelly Moore Paints; and Comcast of Sacramento, LLC. Fed. R. Bankr. P. 7004(b)(2). The City of Sacramento is not served to the mayor or other person described in California Code of Civil Procedure 416.50.

Failing proper service, the motion is denied without prejudice.

CIVIL MINUTE ORDER

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

Southgate Town and Terrace Homes, Inc.'s motion 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 without prejudice.

5. [22-20632](#)-A-11 **IN RE: SOUTHGATE TOWN AND TERRACE HOMES, INC.**
[RLC-9](#)

CONTINUED MOTION TO USE CASH COLLATERAL AND/OR MOTION
GRANTING REPLACEMENT LIENS , MOTION APPROVING DIP BUDGET
6-7-2022 [\[84\]](#)

STEPHEN REYNOLDS/ATTY. FOR DBT.

No Ruling