

**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: DECEMBER 5, 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**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-28-2022 [\[46\]](#)

NOEL KNIGHT/ATTY. FOR DBT.
TODD GARAN/ATTY. FOR MV.
U.S. BANK NATIONAL ASSOCIATION VS.
CASE DISMISSED: 11/8/22

Final Ruling

The case dismissed has been dismissed, and as a result, the motion will be dropped as moot.

Had the motion not been denied as moot, it would have been denied for improper service. Service for a motion to dismissed must be accomplished under Rule 7004. Fed. R. Bankr. P. 4001(a)(1). The debtor and the 20 largest creditors have not been served in that fashion. *In re LSSR, LLC*, No. BAP CC-12-1636-DKITA, 2013 WL 2350853, at *1 (B.A.P. 9th Cir. May 29, 2013).

Moreover, service has not been memorialized consistent with LBR 7005-1. Among the problems are: (1) use of an out-of-date EDC Form 7-005; (2) failure to check box 6A and append Attachment 6A, reflect service on the debtor and 20 largest creditors, Fed. R. Bankr. P. 7004(b); (3) failure to include Attachment 6B(1) (Clerk's Official list of registered users of the court's electronic-filing system); and (4) failure to include Attachment 6B(2) (Clerk's Official list of creditors).

2. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[WGG-28](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH FAIRWAY AMERICA, LLC
10-28-2022 [\[671\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
DAVID GOODRICH/ATTY. FOR MV.

Final Ruling

Motion: Approve Compromise of Controversy

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).

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

SERVICE AND NOTICE

As of November 1, 2022, Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

In this case there are problems with the use and completion of the standardized Certificate of Service, EDC 7-005. Here, the motion is supported by multiple Certificates of Service, ECF No. 676, 677.

Two Certificates of Service

Two certificates of service are not authorized.

(e) Service and Proof of Service.

- 1) Service of all pleadings and documents filed in support of, or in opposition to, a motion shall be made on or before the date they are filed with the Court.

2) *A proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed.*

3) *The proof of service for all pleadings and documents filed in support or opposition to a motion shall be filed as a separate document and shall bear the Docket Control Number. Copies of the pleadings and documents served shall not be attached to the proof of service. Instead, the proof of service shall identify the title of the pleadings and documents served.*

LBR 9014-1(e)(2) (emphasis added).

Moreover, it is unnecessary. EDC Form 7-005 contemplates service of some parties with the entire motion, and all supporting papers, and other parties with the notice only but memorialization in but a single service. EDC Form 7-005 § 5 right column, first line. Certificate of Service ECF No. 677 correctly marked the box next to the line "All creditors and parties in interest (Notice of Hearing only)." But a separate Certificate of Service to memorialize that is not authorized by local rules and is not necessary.

Outdated Version of Form

The most recent version of EDC 7-005 is dated 10/22, and available on the court's website. The movant is using a form dated 09/22. Certificates of Service, ECF Nos. 676-677.

Certificate of Service ECF No. 676

The Certificate of Service is not completed correctly. Section 5 right column, line 9 purports to serve "Persons who have filed a Request for Notice." But Section 6B(2) "Request for Special Notice" is not checked and is not supported by Attachment 6B(3) (so the court can confirm proper service).

Moreover, attachments 6B(2) and 6B(3) may not be aggregated into one page.

Finally, Section 6B(3) is improperly used. Parties to be served by email must be served consistently with Fed. R. Bankr. P. 9036 and LBR 9036-1. A party may not serve by email unless the recipient has consented in writing and the written consent is filed as an attachment to the Certificate of Service. Fed. R. Bankr. P. 9036; LBR 9036-1.

Certificate of Service ECF No. 677

The Certificate of Service is not completed correctly. At the outset, in Section 6B(2) both the "Clerk's Matrix of Creditors" and the "List Other Than the Clerk's Matrix of Creditors."

Both may not be checked; this is an "either or" selection. Moreover, attachments 6B(2) and 6B(3) may not be aggregated into one page.

The Certificate of Service makes inconsistent representations as to service of "Other party(ies) in interest." Section 5 indicates no such parties are served. Certificate of Service § 5, right column, last line. Similarly, § 6B(2) indicates that no such parties are served. *Id.* at § 6B(2). But Attachment 6B(5) indicates that such parties were served. *Id.* at Attachment 6B(5).

Section 6B(3) is incorrectly used. Section 6B(2) may not be used to accomplish service where other sections of EDC Form 7-005 control. Here, the parties have used that portion to accomplish service on parties that can and should be listed in Section 6B(2).

Attachment 6B(5) is also incorrect. It should be labelled Attachment 6B(6). But more importantly, it circumvents the use of the Clerk's Matrix. Unless six or fewer parties are served or unless the parties served are not on the Clerk's Matrix the Certificate of Service must be supported by the "Clerk of the Court's Official Matrix." LBR 7005-1(a). Custom matrices are not authorized.

Though movant has not substantially complied with LBR 7005-1 and has not fully and properly completed EDC Form 7-005. Future violations of local rules and/or failure to memorialize service in the manner required by EDC Form 7-005 may result in summary denial of relief and/or an order to show cause against counsel.

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.

Jeffrey M. Golden's motion to approve a compromise 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 motion,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as exhibit and filed at docket no. 674.

3. [22-20632](#)-A-11 **IN RE: SOUTHGATE TOWN AND TERRACE HOMES,**
INC.
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
3-16-2022 [\[1\]](#)

STEPHEN REYNOLDS/ATTY. FOR DBT.

No Ruling

4. [22-21583](#)-A-11 **IN RE: KAREN SINNUNG**
[AF-2](#)

APPROVAL OF DISCLOSURE STATEMENT
10-15-2022 [\[35\]](#)

ARASTO FARSAD/ATTY. FOR DBT.

Final Ruling

Matter: Approval of Disclosure Statement

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

Disposition: Disapproved

Order: Civil minute order

BACKGROUND

The debtor in possession Karen Sinnung (the "Debtor") has filed a combined plan and disclosure statement and plan, and now requests court approval of the disclosure statement. Combined Plan and Disclosure Statement, ECF NO. 35. No party in interest has objected to it. For the reasons discussed, the court will disapprove the disclosure statement.

LAW

Before the disclosure statement and proposed plan may be sent to all creditors and parties in interest, the disclosure statement must be approved by the court. 11 U.S.C. § 1125(b). Under § 1125 of the Bankruptcy Code, a disclosure statement accompanying a proposed chapter 11 plan must contain adequate information "that would enable [an investor typical of holders of claims or interests of the relevant class] to make an informed judgment about the plan." 11 U.S.C. § 1125(a)(1).

"The determination of what is adequate information is subjective and made on a case-by-case basis. This determination is largely within the discretion of the bankruptcy court." *In re Brotby*, 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003) (citation omitted) (internal quotation marks omitted).

Further, "[i]t is now well accepted that a court may disapprove of a disclosure statement, even if it provides adequate information about

a proposed plan, if the plan could not possibly be confirmed." *In re Main St. AC, Inc.*, 234 B.R. 771, 775 (Bankr. C.D. Cal. 1999) (citations omitted); *accord In re Am. Capital Equip., LLC*, 688 F.3d 145, 154-55 (3d Cir. 2012). To avoid inefficiency, issues appearing on the face of the plan or disclosure statement that would make the plan non-confirmable may be addressed at the hearing on the approval of the disclosure statement rather than at the hearing on confirmation of the plan. *See, e.g., In re Valrico Square Ltd.*, 113 B.R. 794, 795-96 (Bankr. S.D. Fla. 1990) (reasoning that the court properly considered classification problem in the plan at the hearing on the disclosure statement because waiting until confirmation to consider such an issue would delay an inevitable obstacle to confirmation at a cost to creditors).

DISCUSSION

There are at least three problems with respect the combined plan and disclosure statement. These problems indicate both inadequate information and preclude confirmation.

Lack of Feasibility

Sinnung is an individual. After paying living expenses, including ongoing secured debt payments, Sinnung plans to \$709.30 to payment of her prepetition debts (including priority tax claims). Plan p. 13, ECF No. 35. She contends this is feasible because she has net income of \$8,167 per month and expenses of 6,719.65 per month. Plan pp. 12-13, ECF No. 35.

Discrepancies between the debtor's description of income and expenses and actual income and expense preclude confirmation of the plan or, at least, suggest a lack of sufficient information by which creditors can make an informed decision to support or oppose plan confirmation.

Income

The debtor contends her income after taxes is \$8,167.00 per month. Schedule I, Line 9, ECF No. 37. This does not square with the debtor's actual income as reported in the Monthly Operating Reports. The last four months the debtor's gross income has averaged \$7,537.00 (July Monthly Operating Report p. 9, ECF No. 25: \$8,167; August Monthly Operating Report p. 9, ECF No. 30: \$8,646; September Monthly Operating Report p. 9, ECF No. 34: \$6,003; and October Monthly Operating Report p. 9, ECF No. 42: \$7,332). This represents a \$630 discrepancy.

Expenses

The debtor contends her living expenses for a family of three is \$6,719.65 per month. Schedule J, Line 22c, ECF No. 37. This does not square with the debtor's actual expenses as reported in the Monthly Operating Reports. The last four months the debtor's living expenses has averaged \$8,098.00 (July Monthly Operating Report p. 9, ECF No. 25: \$7,910; August Monthly Operating Report p. 9, ECF No. 30: \$5,224; September Monthly Operating Report p. 9, ECF No. 34:

\$5,771; and October Monthly Operating Report p. 9, ECF No. 42: \$13,487). This represents a \$630 discrepancy.

The bottom line is the debtor contends she has \$1,447.35 to fund a plan. Schedule J, Line 23c, ECF No. 37. The last four monthly operating reports indicate that the debtor is underwater \$561.00 per month.

Debtor Not Entitled to Discharge

The plan indicates this debtor is eligible for discharge. Plan § 5(a). She is not. A Chapter 11 debtor is not entitled to a discharge if she received a discharge in a case filed in the last 8 years. 11 U.S.C. §§ 727(a)(8), 1141(d)(3)(C). Here, the debtor filed a Chapter 7 case on July 31, 2017, and received a discharge. Vol. Pet., July 31, 2017, ECF No. 1; Discharge, ECF No. 45. Since 2017, is within 8 years of this file, she is not now entitled to a discharge.

Insufficient Information with Respect to Tax Claims

The plan is incomplete with respect to payment of tax claims. The plan provides for payment of \$8,316.26 at 5% interest with 36 payments of \$249.25. Plan § 3(c), ECF No. 35. But it does not specify the interval of payment, the due date, or the start date. Without that information the taxing agency, the Internal Revenue Service, cannot ascertain compliance with the Bankruptcy Code.

The code provides:

The court shall confirm a plan only if all of the following requirements are met:

...

(9) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

...

(C) with respect to a claim of a kind specified in section 507(a)(8) of this title, the holder of such claim will receive on account of such claim regular installment payments in cash—

(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) *over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and*

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by

the plan (other than cash payments made to a class of creditors under section 1122(b)).

11 U.S.C. § 1129(a)(9)(C) (emphasis added).

The plan provides:

Tax Claims. Debtor will pay allowed claims entitled to priority under section 507(a)(8) in full over time (at the non-bankruptcy statutory interest rate) in equal amortizing payments in accordance with section 511 of the Bankruptcy Code.

Payments will be made [monthly/quarterly], due on the [number] day of the [month quarter], starting [month & year]. To the extent amounts owed are determined to be other than as shown below, appropriate adjustments will be made in the number of payments...

Plan § 3(c), ECF No. 35 (emphasis added).

The failure to include the information within brackets appears to be a scrivener's error and the court suspects that monthly payments were intended. But it is not clear. If the plan provides for 36 monthly payments it complies with 11 U.S.C. § 1129(a)(9)(C); if the plan intends quarterly payments to the Internal Revenue Service it does not comply with that section. At any rate, the disclosure does not provide the IRS with sufficient information with respect to supporting or opposing confirmation.

For these reasons, the disclosure statement will be disapproved.

SERVICE AND NOTICE

As of November 1, 2022, Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

In this case the Certificate of Service does not comply with LBR 7005-1. Since service was accomplished and the Certificate of Service filed on October 15, 2022, compliance with LBR 7005-1 was not mandatory. But future Certificates of Service must comply with LBR 76005-1 and failure to do so may result in summary denial of the motion.

CIVIL MINUTE ORDER

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

Karen Sinnung's motion has been presented to the court. Having considered the motion

IT IS ORDERED that the motion is denied.