

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE: §
§ CHAPTER 11
BULLIONDIRECT, INC., §
§ CASE NO. 15-10940-tmd
Debtor. §

DEBTOR’S EMERGENCY MOTION FOR ORDER LIMITING NOTICE AND IMPLEMENTING CERTAIN NOTICE PROCEDURES

BullionDirect, Inc., Debtor and Debtor-in-Possession (“Debtor”) files this *Emergency Motion for Order Limiting Notice and Implementing Certain Notice Procedures* (the “Motion”) as follows:

Summary of Relief Requested

Debtor requests that it be authorized to utilize a Master Service List except on matters requiring notice to all creditors and parties in interest. It further requests that it be allowed to serve Website Claimants by e-mail.

I. Jurisdiction and Venue

1. This court has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. §§157 and 1334. Consideration of this Motion is a core proceeding under 28 U.S.C. § 157(b)(2). Venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

II. Procedural Status

2. On July 20, 2015 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the Western District of Texas, Austin Division (the “Bankruptcy Court”). The Debtor continues to operate its business¹ and manage its property as Debtor-in-Possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. As

¹ Debtor has ceased doing its precious metal trading business, specifically at its website located at www.bulliondirect.com. Debtor believes that there may be as many as 5,000 possible claimants related to transactions at the website (hereinafter “Website Claimants”).

of the date hereof, no trustee, examiner, or official committee of unsecured creditors has been appointed.

III. Background

3. The Debtor is a Texas corporation, which was incorporated in 1999, and is headquartered in Austin, Texas. Debtor has been primarily engaged in the online sale of precious metals. A description of the Debtor's business operations, capital structure and the events leading up to the Petition Date, as well as the facts and circumstances supporting the relief requested herein, is set forth in detail in the Bensimon Declaration, which is fully incorporated herein by reference.

IV. Relief Requested

4. The Debtor seeks authority, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rules 1015(c) and 9007, to implement certain notice procedures (the "Procedures") in connection with the administration of this Chapter 11 case.

5. The Debtor requests that, to the extent that any of the Procedures conflict with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules for the Western District of Texas (the "Local Rules"), or the order regarding procedures for complex chapter 11 cases entered in this Chapter 11 case (the "Complex Chapter 11 Case Order"), the Procedures shall govern and shall supersede such provisions and rules.

6. The Procedures establish requirements for the filing and serving of notices, motions, pleadings, applications, other requests for relief and all documents filed in support thereof (collectively, the "Pleadings") in this Chapter 11 case, including any adversary proceedings commenced in connection with this Chapter 11 case, and the filing of any objections ("Objections") or replies thereto (the "Replies"), and together with the Pleadings and the Objections (the "Documents").

The Procedures

Filing and Notification Procedures

7. Master Service List. Notice of all Documents filed in this case to each creditor and party in interest would be extremely burdensome and costly to the estates, because of the cost associated with large mailings, such as the cost of compiling,

photocopying, and addressing each mailing, and the postage expenses associated therewith. The Website Claimants may be as many as 5,000 entities. Attached as Exhibit A is a list of possible Website Claimants. Under the user agreements pursuant to which business has been conducted at the website, customers could only transact business at the website and received most of its notices by email. Debtor has sent notice of the bankruptcy filing, the date set for the First Meeting of Creditors, and the deadline for filing proofs of claim to the Website Claimants by email.

8. The Debtor, therefore, proposes to establish a master service list (the “Master Service List”), that would include: (i) the Office of the United States Trustee for the Western District of Texas (the “U.S. Trustee”); (ii) the Debtor; (iii) the attorneys for the Debtor; (iv) the attorneys for official committee of unsecured creditors (the “Committee”), if appointed; (vii) those persons who have formally appeared in this chapter 11 case and requested service pursuant to Bankruptcy Rule 2002; and (viii) all applicable government agencies to the extent required by the Bankruptcy Rules and the Local Rules. **Provided, however that the Website Claimants would receive notice only by email unless the Claimant files a Notice of Appearance under Rule 2002. Debtor will also post notices of matters for which notice is required under Rule 2002(a)-(c) and (f) at the website.** The Debtor proposes that notice of any Documents in this chapter 11 case be served only upon (a) the parties then listed on the Master Service List, (b) any parties that have formally appeared and requested service pursuant to Bankruptcy Rule 2002 that have not yet been added to the Master Service List, and (c) any party whose interests the specific document affects.

9. Until the U.S. Trustee appoints a Committee, the Debtor proposes to include on the initial Master Service List the holders of the twenty (20) largest unsecured claims against the Debtor, unless an attorney has appeared on the creditor’s behalf in which case the attorney only will be served. Once the U.S. Trustee appoints a Committee, the Debtor will add the attorneys for the Committee to the Master Service List and remove from the list the holders of the twenty (20) largest unsecured claims, unless any of such creditors have formally appeared and requested service pursuant to Bankruptcy Rule 2002.

10. The initial Master Service List will be filed within three (3) business days after the Order approving this Motion. The Debtor will update the Master Service List to include the name, address and e-mail address of any party in interest, who has made a written request for notice, weekly for the first month after filing of the initial Master Service List, then bi-weekly for the next sixty (60) calendar days, then monthly thereafter during the pendency of this chapter 11 case. If in a particular month, there are no changes to the service list, the Debtor shall file a notice with the Court so stating.

11. Upon the completion of noticing any particular matter, the noticing party or their agent shall file with the Court either an affidavit or certification of service, annexing thereto the list of parties receiving notice.

12. **Service by the Debtor.** The Debtor shall serve the parties on the Master Service List by U.S. mail, hand delivery, or, with the exception of Chambers, facsimile (the choice being in the Debtor's sole discretion). Additionally, the Debtor may use the Court's ECF system to serve any person or entity capable of receiving notices through such system, and any person or entity receiving notice via the Court's ECF system shall receive no additional form of service. The Debtor also shall be authorized to serve all Documents by e-mail on the Master Service List if such e-mail addresses are listed therein.

13. **Certain Bankruptcy Rules Preserved.** The proceedings with respect to which notice would be limited to the Master Service List shall include all matters covered by Bankruptcy Rule 2002, with the express exception of the following: (i) notice of (a) the first meeting of creditors pursuant to section 341 of the Bankruptcy Code, (b) the time fixed for filing proofs of claim pursuant to Bankruptcy Rule 3003(c), (c) any final application for allowance of fees and expenses for any estate professional, and (d) the time fixed for filing objections to, and the hearings to consider, approval of a disclosure statement and confirmation of a plan of reorganization; and (ii) notice and transmittal of ballots for accepting or rejecting a plan of reorganization (the "Exceptions"). Notice of the foregoing matters would be given to all parties in interest in accordance with Bankruptcy Rule 2002, unless the Court orders, or the Bankruptcy Code prescribes, otherwise.

14. **Deadline for Filing a Reply.** Unless otherwise ordered by the Court, a reply to an Objection shall be filed with the Court and served in accordance with these Procedures on or before 12:00 p.m. prevailing Central Time on the day that is at least one (1) business day before the date of the hearing.

V. Basis for Relief

15. Bankruptcy Rule 9007 grants the Court general authority to regulate notices. Fed. R. Bankr. P. 9007. Bankruptcy Rule 1015(c) provides that the court may enter orders in cases that are jointly administered that may tend to avoid unnecessary costs and delay. Fed. R. Bankr. P. 9007. Section 105(a) of the Bankruptcy Code further provides in relevant part that “[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The Debtor submits that implementation of the Procedures is appropriate in this chapter 11 case and well within the Court’s equitable powers under section 105 of the Bankruptcy Code.

16. The Debtor has over 5,000 creditors and notice parties. The costs of copying and mailing each pleading to each of those entities will be excessive.

17. Similar procedures, including service by e-mail, have been approved in other chapter 11 cases. *See, e.g., In re Elgin-Butler Co., et al*, Case No. 14-11180 (Bankr. W.D. Tex. Aug. 21, 2014) [Docket No. 52]; *In re Crescent Resources, LLC*, Case No. 09-11507 (Bankr. W.D. Tex. June 15, 2009) [Docket No. 33]; *In re TXCO Resources, Inc.*, Case No. 09-51807 (Bankr. W.D. Tex. May 20, 2009) [Docket No. 54]; *In re Pilgrim’s Pride Corporation, et al.*, Case No. 08-45664 (DML) (Bankr. N.D. Tex. Dec. 3, 2008) [Docket No. 71]. The Debtor submits that its circumstances warrant similar relief.

VI. Notice

18. The Debtor has served a copy of this Motion upon all known creditors and parties-in-interest.

WHEREFORE, the Debtor respectfully requests that the Bankruptcy Court enter an order granting the relief requested by this Motion and such further relief as may be just and necessary under the circumstances. A proposed Order is attached hereto.

Respectfully submitted,

MARTINEC, WINN & VICKERS, P.C.
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martinec@mwvmlaw.com

By: /s/ Joseph D. Martinec
Joseph D. Martinec
State Bar No. 13137500
PROPOSED ATTORNEYS FOR DEBTOR

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing *Emergency Motion for Order Limiting Notice and Implementing Certain Notice Procedures* was sent by first Class mail, postage prepaid, to the parties listed on the attached matrix on the 27th day of July, 2015, and to the following:

BullionDirect, Inc.
c/o Dan Bensimon
7028 Cielo Azul Pass
Austin, TX 78732

U. S. Trustee
903 San Jacinto Blvd., Ste. 230
Austin, TX 78701

/s/ Joseph D. Martinec
Joseph D. Martinec

Label Matrix for local noticing

BullionDirect, Inc. of 123

U.S. BANKRUPTCY COURT

0542-1

P.O. Box 1987

903 SAN JACINTO, SUITE 322

Case 15-10940-tmd

Austin, TX 78767-1987

AUSTIN, TX 78701-2450

Western District of Texas

Austin

Mon Jul 27 14:59:34 CDT 2015

3Seventy

Amazon Web Services, Inc.

American Express

2224 Walsh Tarlton Lane #220

410 Terry Ave. North

P.O. Box 650448

Austin, TX 78746-7718

Seattle, WA 98109-5210

Dallas, TX 75265-0448

Arkadiy Abkin

Bernal, Natasha

Bryan C Miller

202 Windsor pl

6280 McNeil Dr. #204

604 SW 6th Ave Apt 2

Madison, NJ 07940-1162

Austin, TX 78729-6907

Topeka, KS 66603-3192

BullionDirect, Inc.

CHETAN BHARGIRI

Constant Contact

4307 Opal Court

4 SOUSA COURT

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Castle Rock, CO 80104-9678

EAST WINDSOR, NJ 08520-5114

San Francisco, CA 94105-3400

Contegix

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CubeSmart

Attn: Billing

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West Grove, PA 19390-9759

Austin, TX 78745-3222

St. Louis, MO 63101-1912

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Dechert, LLP

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Unit C25

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Austin, TX 78701-3901

Tampa, FL 33629-8856

Diamond State Depository, LLC

Diamond State Depository, LLC d/b/a Inte

Dickinson, Beverly W.

c/o Jeffrey Erler and Laura Fontaine

Attn: Operations Department

8549 N. Del Mar Ave.

GRUBER HURST ELROD JOHANSEN HAIL SHANK,

406 West Basin Road

Fresno, CA 93711-6059

1445 Ross Avenue, Suite 2500

New Castle, DE 19720-6408

Dallas, Texas 75202-2701

Dillon Gage

Dillon Gage Inc of Dallas

Dream Host

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c/o Jeffrey Erler and Laura Fontaine

12235 El Camino Real, Ste. 200

Addison, TX 75001-4668

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Efax

Endicia

Frederick Noack

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Los Angeles, CA 90028-6125

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Pleasanton, CA 94566-5961

Gerard Barrack

Gerard Barrack

Germano Minin

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c/o Martin Seidler

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15-10940-tmd, Doc#14
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Filed 07/27/15 Entered 07/27/15 15:56:53
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Philadelphia, PA 19101-7346

International Depository Service
406 W. Basin Rd.
New Castle, DE 19720-6408

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Mills, Roberta
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New York, NY 10003-1622

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Austin, TX 78745-1021

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Travis County
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Austin, TX 78767-1748

Travis County Tax Collector
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Austin, TX 78767-1748

UPS
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Dallas, TX 75265-0580

United States Trustee - AU12
United States Trustee
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End of Label Matrix
Mailable recipients 94
Bypassed recipients 0
Total 94

Proposed Order

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE: §
§ CHAPTER 11
BULLIONDIRECT, INC., §
§ CASE NO. 15-10940-tmd
Debtor. §

**ORDER GRANTING DEBTOR'S EMERGENCY MOTION FOR ORDER
LIMITING NOTICE AND IMPLEMENTING CERTAIN NOTICE
PROCEDURES**

On this date, came on for consideration Debtor's *Emergency Motion for Order Limiting Notice and Implementing Notice Procedures* (the "Motion"). The Court, having considered the Motion and any objections filed, finds that the Motion is meritorious and should be granted. It is therefore,

ORDERED that, except as set forth below with respect to claimants whose claim is based on a transaction which occurred on the Debtor's website, www.bulliondirect.com, hereinafter referred to as "Website Claimants", notice will be deemed appropriate and proper if pleadings are served upon the following:

- a. The United States Trustee;
- b. The Debtor (in care of Dan Bensimon);

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- c. The Debtor's counsel;
- d. The twenty largest unsecured creditors, unless an attorney has requested notice for a specific creditor, or unless an attorney has been employed by any Unsecured Creditors Committee, then only the attorney will be served, not the creditor;
- e. The attorney for any Unsecured Creditors Committee;
- f. Those parties who have formally appeared and requested notice in this proceeding by filing with the Court and serving on Debtor's counsel a written request for notice pursuant to Bankruptcy Rule 2002; and
- g. All applicable governmental agencies.

The names and addresses of the above named parties will constitute the "Master Service List". Notice to parties on the Master Service List will be sufficient for all matters covered by Rule 2002 [including Rule 2002(a)(2), (3) and (6)]. Debtor shall file a Master Service List within three (3) days following entry of this Order, and shall update the list bi-weekly for the next sixty (60) calendar days, and monthly thereafter. The Debtor will identify the additions to the lists. Once the U.S. Trustee appoints a Committee, the Debtor will add the attorneys for the Committee to the Master Service List and remove from the list the holders of the twenty (20) largest unsecured claims, unless any of such creditors have formally appeared and requested service pursuant to Bankruptcy Rule 2002.

The proceedings with respect to which notice would be limited to the Master Service List shall include all matters covered by Bankruptcy Rule 2002, with the express exception of the following: (i) notice of (a) the first meeting of creditors pursuant to section 341 of the Bankruptcy Code, (b) the time fixed for filing proofs of claim pursuant to Bankruptcy Rule 3003(c), (c) the time fixed for filing objections to, and the hearings to consider approval of a disclosure statement and confirmation of a plan of reorganization and (d) any final application for allowance of fees for any estate professional; and (ii) notice and transmittal of ballots for accepting or rejecting a plan of reorganization (the "Exceptions"). Notice of the foregoing matters would be given to all parties in interest in accordance with Bankruptcy Rule 2002, unless the Court orders, or the Bankruptcy Code prescribes, otherwise. It is further

ORDERED further, that Website Claimants shall be entitled to the notices for the Exceptions to the Master Service List unless their claim is specifically affected by the Document filed, but notice shall be by email, unless the Website Claimant or its counsel files a Notice of Appearance under Bankruptcy Rule 2002.

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Order prepared by:

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