THE FOLLOWING ORDER
IS APPROVED AND ENTERED
AS THE ORDER OF THIS COURT:

DATED: November 3, 2016

G. Michael Halfenger
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In Re:

Jeffery A. and Diane L. Toczek, Case No. 13-33214-GMH

Debtors. Chapter 13

DECISION AND ORDER

The debtors, Jeffery and Diane Toczek, listed Beer Capitol among the "creditors holding unsecured nonpriority claims" on Schedule F. CM-ECF Doc. No. 1 at 22. They did not provide any information about the nature of Beer Capitol's claim, instead stating, "Notice Only" in the schedule's column requiring information about, among other things, when the claim was incurred and "$0" in the column calling for the claim amount. CM-ECF Doc. No. 1 at 22. The debtors also listed Beer Capitol on their creditor matrix, which resulted in the clerk notifying Beer Capitol of the Toczeks' bankruptcy. The clerk's notice, which states that it provides "important information for the debtor(s) and creditors", explains that creditors must file a timely proof of claim if they desire to be paid in the bankruptcy case. CM-ECF Doc. No. 5 at 1–2.

Collection Associates, Ltd., timely filed Claim No. 15-1 on behalf of Beer Capitol Distributing, Inc. (presumably the same entity the debtors called, "Beer Capitol") using the official proof of claim form. The proof of claim asserts that the debtors owe Beer Capitol $1,871.06 for "goods sold". Claim No. 15-1 at 1. It further states that notices should be sent to "Beer Capitol Distributing, Inc[.,] C/O Collection Associates[,] PO Box 465[,] Brookfield, WI 53008" and "nancy@collectionassociates.net". *Id.*

The debtors objected to Beer Capitol's claim (and several others) asserting that Beer Capitol has no right to payment against them as individuals; any right to payment is against a limited liability company. CM-ECF Doc. No. 78 at 2–3. The debtors submitted affidavits explaining that Jeff Toczek was a 51% owner of a company that operated a bar and grill. CM-ECF Doc. No. 78 at 8. Diane Toczek was a company employee. CM-ECF Doc. No. 78 at 9. According to the debtors, any alleged amounts owed to Beer Capitol are owed by the bar and grill, not the debtors personally. CM-ECF Doc. No. 78 at 8–9. The debtors mailed a copy of their objection and the supporting affidavits to "Beer Capitol Distributing, Inc.[,] Attn: Mike Merriman, President[,] W222 N5700 Miller Way[,] Sussex, WI 53089". CM-ECF Doc. No. 92 at 1.

An August 29, 2016, order required Beer Capitol to respond to the debtors' objection by October 4, 2016. CM-ECF Doc. No. 85. Because the debtors submitted affidavit testimony sufficient to overcome Rule 3001(f)'s presumption that Beer Capitol's claim is valid against the debtors, the order provided that if Beer Capitol failed timely to respond, the court might sustain the objection without a hearing. *Id.* On August 31, the clerk, through the Bankruptcy Noticing Center, emailed notice to Beer Capitol's agent, Collection Associates, at nancy@collectionassociates.net, as Collection Associates had requested in its proof of claim. CM-ECF Doc. No. 99 at 1.

On October 12, the debtors filed an affidavit of their counsel attesting that Beer Capitol had not timely responded to their claim objection. CM-ECF Doc. No. 109. The debtors also filed a proposed order that would disallow Beer Capitol's claim. CM-ECF Doc. No. 110.

The debtors' October 12 filing signaled that the debtors believed the objection was ripe for adjudication. After reviewing the record, I ordered the debtors to re-serve Beer Capitol at the address stated in the proof of claim and provide notice of an additional 30 days for Beer Capitol to file a response. See October 18, 2016, docket order; see also Fed. R. Bankr. P. 3007(a) (requiring 30 days' notice before action on claim objection).

The debtors re-served the objection as ordered, but they also requested immediate entry of an order disallowing the claim. CM-ECF Doc. Nos. 117 & 119. They contend that they properly served the claim objection by mailing it to an officer of Beer Capitol in the manner provided in Rule 7004. They argue that Rule 9014(b), which governs contested matters, requires service of claim objections under Rule 7004. Several decisions agree with them, see, *e.g.*, *United States v. Levoy (In re Levoy)*, 182 B.R. 827, 833–34 (B.A.P. 9th Cir. 1995); *In re Sunde*, No. 07–10151, 2007 WL 3275128, at *1–3 (Bankr. W.D. Wis. Oct. 2, 2007); others do not, see, *e.g.*, *In re Anderson*, 330 B.R. 180, 185–86 (Bankr. S.D. Tex. 2005); *Jorgenson v. State Line Hotel, Inc. (In re State Line Hotel, Inc.)*, 323 B.R. 703, 710–13 (B.A.P. 9th Cir. 2005), *vacated as moot*, 242 Fed. Appx. 460, 2007 WL 1961935 (9th Cir. 2007).

The debtors and their supporting authorities begin with a correct premise: Claim objections are contested matters. They infer from that premise that Rule 9014(b) requires service of claim objections as provided in Rule 7004. The inference is faulty.

Rule 9014(b) requires service of *motions* seeking relief in contested matters to be served under Rule 7004: "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)." Fed. R. Bankr. P. 9014(b) (emphasis added). The motion to which Rule 9014(b) refers is the motion described by subsection (a), which provides, "[i]n a contested matter *not otherwise governed by these rules*, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a) (emphasis added).

Claim objections are not motions. They are contested matters "otherwise governed" by the rules. Fed. R. Bankr. P. 9014(a). Rule 3007 provides, "[a]n objection to the allowance of a claim shall be in writing and filed. A copy of the objection with *notice* of the hearing thereon shall be mailed or otherwise delivered to the claimant . . . at least 30 days prior to the hearing." Fed. R. Bankr. P. 3007(a) (emphasis added). While Rule 3007 directs the method to contest a claim, it provides only that the objecting party must mail or otherwise deliver the objection and notice of hearing "to the claimant". Rule 3007 leaves unanswered the question of the day: To what address should the objector "mail or otherwise deliver" the objection and hearing notice?

The answer is not obvious. The debtors propose that a permissible answer is to mail the objection and notice to the claimant at an address that would accomplish service under Rule 7004.

If, however, one accepts the premise that claim objections are contested matters not initiated by motion, then Rule 7004 does not apply to claim objections. Rule 9014(c) makes some Part VII rules applicable to contested matters. Rule 7004 is not among them. Rule 7004 applies to contested *motions* because Rule 9014(b) directs that motions must be served in the manner provided in Rule 7004. Rule 9014(c) excludes Rule 7004 (and other Part VII Rules) "[e]xcept as otherwise provided in this rule". Thus, subsection (c)'s introductory clause and subsection (b)'s direction to serve contested motions under Rule 7004 limits Rule 7004's application to contested matters in which relief is requested by motion. If service of all contested matters were governed by Rule 7004, there would be no reason to exclude Rule 7004 from Rule 9014(c) and to limit its

application to motions under Rule 9014(b). Rather than making Rule 7004 applicable to service of claim objections, a careful reading of Rule 9014 reveals that Rule 7004 does *not* govern service of claim objections.

This leaves the conclusion that a party objecting to a claim should "mail or otherwise deliver" the claim objection and notice of the objection to the address the claimant provides in the proof of claim. The official proof-of-claim form includes a section that requires the claimant to identify the address where notices should be sent. See Official Form 410, Part 1, §3; see also Official Form B10 (superseded by Official Form 410 on December 1, 2015). Rule 3007 requires an objecting party to deliver a "copy of the objection *with notice* of the hearing thereon" to the claimant. Fed. R. Bankr. P. 3007(a) (emphasis added). Claims must adhere substantially to the official form. See Fed. R. Bankr. P. 3001(a). Thus, a properly filed proof of claim must provide an address to which notices should be sent, including the notice of hearing on a claim objection and the accompanying objection.

Not only is this the best textual reading of the rules, it makes the most sense. Requiring service on the address selected by the claimant is consistent with Rule 2002(g)'s requirement that notices be delivered to the mailing address identified in a proof of claim. See Fed. R. Bankr. P. 2002(g)(1)(A). Rule 2002(g)(1)(A) provides, "[n]otices required to be mailed under Rule 2002 to a creditor . . . *shall* be addressed as such entity or an authorized agent has directed" and "a proof of claim filed by a creditor . . . that designates a mailing address constitutes a filed request to mail notices to that address . . . ." Fed. R. Bankr. P. 2002(g)(1)(A) (emphasis added). While Rule 2002 does not govern notices of hearings on claim objections, a reading of Rule 3007 that requires noticing creditors at the same address as the one mandated by Rule 2002 provides valuable consistency in addressing claim-related notices.

Requiring service of claim objections on the creditor's designated address also allows the creditor to decide how best to ensure that claim objections are received by

persons authorized to act on them or who are best positioned to get the objection into the hands of persons with that authority. Creditors often refer the task of filing and monitoring claims to outside counsel, dedicated personnel, or third-party collection agents. These creditors, or their agents, file proofs of claim that designate a mailing address for reaching the individuals assigned the task of handling the claim. It makes little sense under those circumstances to mail a claim objection to the creditor's CEO or some other agent authorized generally to accept service of process. See Fed. R. Bankr. P. 7004(b). Where a creditor's proof of claim designates a person and address to receive claim-related notices, delivering a claim objection and notice to that person is the method that *best* provides "notice reasonably calculated, under all the circumstances, to apprise [the creditor] of the pendency of the [objection] and afford [it] an opportunity to present [a response]." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

For these reasons, the debtors' request that the court immediately disallow Beer Capitol's claim is denied.

# # # # #