

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

July 15, 2014 at 9:32 A.M.

1. [13-30690](#)-B-11 WILLIAM PRIOR CONTINUED MOTION FOR LIMITED
[13-2288](#) JWK-2 MOTION TO STAY DISCOVERY
PRIOR V. TRI COUNTIES BANK ET 11-20-13 [[48](#)]
AL

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is continued to September 23, 2014, at 9:32 a.m.

The court will issue a minute order.

2. [13-30690](#)-B-11 WILLIAM PRIOR CONTINUED MOTION FOR PROTECTIVE
[13-2288](#) NJR-1 ORDER
PRIOR V. TRI COUNTIES BANK ET 12-17-13 [[76](#)]
AL

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is continued to September 23, 2014, at 9:32 a.m.

The court will issue a minute order.

3. [13-30690](#)-B-11 WILLIAM PRIOR CONTINUED MOTION TO AMEND
[13-2288](#) WFH-1 COMPLAINT
PRIOR V. TRI COUNTIES BANK ET 2-25-14 [[184](#)]
AL

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is continued to September 23, 2014, at 9:32 a.m.

The court will issue a minute order.

4. [13-34754](#)-B-11 CIELO VINEYARDS &
SAC-6 WINERY, LLC

MOTION TO SELL AND/OR MOTION
FOR COMPENSATION FOR AMERICAN
COMMERCIAL REAL ESTATE,
BROKER(S)
6-17-14 [[108](#)]

Tentative Ruling: The motion is denied without prejudice.

By this motion the debtor seeks authorization to sell real property and personal property of the estate comprising essentially all of the debtor's assets to Coast Ventures, Inc. (the "Buyer") for \$2,100,000.00 pursuant to 11 U.S.C. § 363(b). The real property (the "Real Property") consists of two parcels of land located at 3040 and 3046 Ponderosa Road, Cameron Park, California (APN 070-131-56 (21.6 acres of undeveloped land)) and (APN 070-210-55 (19.8 acres of developed land containing a vineyard and winery buildings)). The personal property consists of equipment used in the production of wine (the "Equipment") and wine inventory (the "Inventory," and, collectively with the Real Property and the Equipment, the "Sale Assets").

The motion is denied without prejudice because it does not give sufficient information for the court to determine if the sale can be conducted under 11 U.S.C. § 363(b), i.e., without a sale free and clear of liens and interests, and whether, if the sale can be conducted, it is reasonable.

Chief among the deficiencies in information in the motion is any statement regarding encumbrances on the Real Property, the Equipment and the Inventory. The debtor has provided no information regarding the identity of the holders of liens encumbering the Real Property, Equipment or Inventory or the amounts of the obligations secured by any liens. This information is needed to determine whether the debtor will be able to satisfy all liens encumbering the Sale Assets, and therefore can sell the Sale Assets without a sale free and clear of liens.

The debtor alleges that the value of the Real Property is \$1,850,000.00. In its response to the motion objecting creditor Palaka Holdings, LLC ("Palaka"), holder of the third-priority deed of trust on the Real Property, the debtor alleges that encumbrances on the Real Property exceed \$1,895,000.00, making Palaka an undersecured creditor in the amount of approximately \$45,000.00. Although the debtor and the Buyer have agreed that the "sales price will be apportioned between the real property as this is needed to determine how the funds will be distributed between the creditors," the debtor has cited no authority for the proposition that it can "apportion" funds in amounts that are different from the actual values of the Real Property, the Inventory and the Equipment based solely on the amount needed to satisfy a particular lienholder. More specifically, the debtor has cited no authority supporting the view that it can use some or all of the net proceeds of the sale of the Equipment and/or the Inventory to "cover" the amount by which Palaka is undersecured. If the amount of the total sale price reasonably allocated to the Real Property is less than the total amount of the liens encumbering it, the sale cannot go forward unless one or more of the lienholders consents to accept less than the amount of its debt.

In addition, the motion does not provide any information regarding whether there are any connection(s) between the Buyer and the debtor, and therefore whether the proposed sale is an arms-length transaction. Such information is required to assess whether the proposed sale is a reasonable.

Finally, the copy of the sale agreement filed as an exhibit to the motion (Dkt. 111) appears to have scanning artifacts which hinder its legibility on the court's docket, specifically with respect to the various addenda attached to the agreement and the handwritten notes thereto.

The court will issue a minute order.

5. [13-34754](#)-B-11 CIELO VINEYARDS & MOTION TO DISMISS CASE
WSS-2 WINERY, LLC 6-6-14 [[102](#)]

Tentative Ruling: The court treats the motion as one filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

6. [14-21607](#)-B-7 RENA WASHINGTON OBJECTION TO DEBTOR'S CLAIM OF
PA-3 EXEMPTIONS
6-5-14 [[25](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The chapter 7 trustee's objection is sustained. The debtor's claims of exemption in "cash," "savings" and "stocks" under Cal. Civ. Proc. Code § 704.080 are disallowed. The debtor's claim of exemption in "401K" under Cal. Civ. Proc. Code § 704.110 is disallowed.

The trustee's objection is sustained for the reasons set forth therein.

The court will issue a minute order.

7. [14-20108](#)-B-7 BOYET/ANGELINE DINAMARCA TRUSTEE'S MOTION TO DISMISS FOR
SLC-1 FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITORS
6-12-14 [[68](#)]

Tentative Ruling: None.

8. [14-26509](#)-B-7 JACK/JANINE LARSCHEID MOTION TO COMPEL ABANDONMENT
AA-1 6-26-14 [[9](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is dismissed without prejudice.

This motion for abandonment of personal property used in a child care business must be served on all creditors. While the motion is technically brought under FRBP 6007(b), creditors and the United States trustee are entitled to the same notice that they would receive if the motion were brought by the trustee. First Carolina Fin. Corp. v. Trustee of Estate of Caron (In re Caron), 50 B.R. 27 (Bankr. N.D. Ga. 1984); In re Wideman, 84 B.R. 97 (Bankr. W.D. Tex. 1988).

In this case, the proof of service filed by the debtors (Dkt. 13) shows that they served the United States trustee and the chapter 7 trustee with the motion, but they did not serve any creditor. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

9. [12-31310](#)-B-7 SANDRA BEGLAU MOTION TO EMPLOY PETER BOYSEN
HCS-2 REALTY AS REALTOR(S)
6-17-14 [[29](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 327(a) and Fed. R. Bankr. P. 2014, the trustee is authorized to employ Rance Boysen ("Boysen") of Peter Boysen Realty as realtor for the estate. Boysen's fees and costs, if any, shall be paid only pursuant to application. 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016. Except as so ordered, the motion is denied.

The court finds that Boysen is a disinterested person as that term is defined in 11 U.S.C. § 101(14).

The court will issue a minute order.

10. [11-31013](#)-B-7 JOHN/MELISSA GUNDERSEN MOTION TO COMPEL ABANDONMENT
SAC-1 6-26-14 [[27](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

11. [09-43714](#)-B-7 HANS WRIGHT
BHS-6

MOTION FOR COMPENSATION FOR
BARRY H. SPITZER, TRUSTEE'S
ATTORNEY(S)
6-4-14 [[64](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$9401.50 and \$59.36 in costs, for a total of \$9460.86, for the period June 30, 2010, through and including June 4, 2014, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered on August 19, 2010 (Dkt. 26), the court authorized the chapter 7 trustee to retain the applicant as counsel for the chapter 7 trustee in this case, effective as of June 30, 2010. The applicant now seeks compensation for services rendered and costs incurred during the period June 30, 2010, through and including June 4, 2014. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

12. [11-35325](#)-B-7 JAMES COXETER
MPD-21

MOTION TO APPROVE AGREEMENT
BETWEEN TRUSTEE AND THE DEBTOR
6-17-14 [[1157](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. The First Amendment to Memorandum Agreement With James Coxeter Regarding Legal Malpractice Action (the "Agreement") filed as Exhibit "B" to the motion (Dkt. 1162 at 5) is approved and binding between the parties thereto. The trustee is authorized to execute all documents necessary to effect the Agreement. Distribution or payment of funds resulting from any recovery obtained in connection with the GW Malpractice Action or the JDTP Malpractice Action (as those terms are defined in the Agreement) shall be made only pursuant to application. Except as so ordered, the motion is denied.

The court finds, in the absence of opposition and in light of the trustee's supplemental briefing, that entry into the Agreement constitutes a reasonable exercise of the trustee's business judgment for the use of the estate's interest in the JDTP Malpractice Action pursuant to 11 U.S.C. § 363(b). See In re Lahijani, 325 B.R. 282, 288-89 (9th Cir. 2005) (position of trustee in connection with sale of property under 11 U.S.C. § 363(b) is afforded deference, particularly where business judgment is entailed in the analysis or where there is no objection).

The court will issue a minute order.

13. [11-35325](#)-B-7 JAMES COXETER MOTION TO EMPLOY ROBERT K. SALL
MPD-22 AS SPECIAL COUNSEL
6-17-14 [[1166](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Fed. R. Bankr. P. 2014, the trustee is authorized to employ Sall Spencer Callas & Krueger ("Sall") as litigation counsel for the estate. The trustee is authorized to employ Sall for the purpose of prosecuting the JDTP Claim (as that term is defined in the motion). Sall's fees and costs, if any, shall be paid only pursuant to application. 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016. Except as so ordered, the motion is denied.

The court finds that Sall is a disinterested person as that term is defined in 11 U.S.C. § 101(14).

Counsel for the trustee shall submit an order approving the employment of Sall that conforms to the foregoing ruling.

14. [11-35325](#)-B-7 JAMES COXETER MOTION TO APPROVE TOLLING
MPD-23 AGREEMENT
6-17-14 [[1152](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. The chapter 7 trustee is authorized to enter into and perform in accordance with the Tolling Agreement filed as Exhibit "A" to the motion (Dkt. 1155 at 2) and the Tolling Agreement #2 filed as Exhibit "B" to the motion (Dkt. 1155 at 6). Except as so ordered, the motion is denied.

The court will issue a minute order.

15. [09-34235](#)-B-7 SIERRA WEST BUSINESS MOTION FOR ORDER RETAINING
JRR-3 PARK, LLC JURISDICTION
5-29-14 [[370](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. Pursuant to 11 U.S.C. § 554(c), the debtor's

interest in the Amendment No. 2 to Water & Wastewater Mainline Extension Agreement (Regarding Reimbursement Agreement) between the debtor and the Amador Water Agency will not be deemed administered and abandoned to the debtor upon closure of the bankruptcy case. Except as so ordered, the motion is denied.

The court will issue a minute order.

16. [13-30038](#)-B-7 JAMES/WENDY ELMORE MOTION FOR COMPENSATION FOR
JRR-2 JOHN R. ROBERTS, TRUSTEE'S
ATTORNEY(S)
5-15-14 [[36](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$1620.00 in fees and \$0.00 in costs, for a total of \$1620.00, for the period December 9, 2013, through February 18, 2014, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered on December 9, 2013 (Dkt. 25), the court authorized the chapter 7 trustee to retain the applicant as counsel for the chapter 7 trustee in this case. The applicant now seeks compensation for services rendered and costs incurred during the period December 9, 2013, through and including February 18, 2014. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

17. [14-23939](#)-B-7 ALVIN WIMBERLY MOTION TO COMPEL ABANDONMENT
DBJ-1 6-6-14 [[13](#)]

Tentative Ruling: The motion is granted in part. Pursuant to 11 U.S.C. § 554(b), the debtor's interests in a 1995 Isuzu tow truck (the "Isuzu") and a 1996 International tow truck (the "International") scheduled at line 25 of Schedule B (Dkt. 1 at 19) are deemed abandoned by the estate. To the extent that the debtor requests that the court deem abandoned the debtor's interest in the business name "Wimberly Towing" or the debtor's interest in an entity with the name "Wimberly Towing," the motion is denied without prejudice. Except as so ordered, the motion is denied.

The debtor alleges without dispute that the Isuzu has a value of \$1,200.00. The debtor alleges without dispute that the International has a value of \$6,000.00. The debtor has claimed the entirety of the value

of both the Isuzu and International as exempt on Schedule C. The chapter 7 trustee has filed a statement of non-opposition to the motion. The court finds that the Isuzu and the International are of inconsequential value and benefit to the estate.

To the extent that the debtor requests that the court deem abandoned the debtor's interest in the business name "Wimberly Towing" or the debtor's interest in an entity with the name "Wimberly Towing," the motion is denied without prejudice. 11 U.S.C. § 554(b) only allows the court to deem abandoned "property of the estate." The debtor has not scheduled any interest in the business name "Wimberly Towing" or any interest in an entity with the name "Wimberly Towing" on Schedule B. The debtor did not list any interest in stock and interests in incorporated and unincorporated businesses at line 13 on Schedule B, and he did not list any interest in "other personal property of any kind not already listed" at line 35 on Schedule B.

The court will issue a minute order.

18. [14-23939](#)-B-7 ALVIN WIMBERLY MOTION TO COMPEL ABANDONMENT
DBJ-2 6-6-14 [[19](#)]

Tentative Ruling: The motion is granted in part. Pursuant to 11 U.S.C. § 554(b), the debtor's interests in a 1998 Chevrolet truck, a security safe, office equipment and tools (collectively, the "Property") listed at lines 25 and 28 of Schedule B (Dkt. 1 at 19, 20) are deemed abandoned by the estate. To the extent that the debtor requests that the court deem abandoned the debtor's interest in the business name "Wimberly Tire" or the debtor's interest in an entity with the name "Wimberly Tire," the motion is denied without prejudice. Except as so ordered, the motion is denied.

The debtor alleges without dispute that the Property has an aggregate value of \$14,000.00. The debtor has claimed the entirety of the value of Property as exempt on Schedule C. The court finds that the Property is of inconsequential value and benefit to the estate.

To the extent that the debtor requests that the court deem abandoned the debtor's interest in the business name "Wimberly Tire" or the debtor's interest in an entity with the name "Wimberly Tire," the motion is denied without prejudice. 11 U.S.C. § 554(b) only allows the court to deem abandoned "property of the estate." The debtor has not scheduled any interest in the business name "Wimberly Tire" or any interest in an entity with the name "Wimberly Tire" on Schedule B. The debtor did not list any interest in stock and interests in incorporated and unincorporated businesses at line 13 on Schedule B, and he did not list any interest in "other personal property of any kind not already listed" at line 35 on Schedule B.

The court will issue a minute order.

19. [14-23939](#)-B-7 ALVIN WIMBERLY
DBJ-3

MOTION TO COMPEL ABANDONMENT
6-6-14 [[25](#)]

Tentative Ruling: The motion is granted in part. Pursuant to 11 U.S.C. § 554(b), the debtor's interests in a 2000 Dodge van, a 1998 Dodge van, a 1997 Chrysler van, a 2003 Ford Crown Victoria and a 2001 Ford Crown Victoria (collectively, the "Property") listed at line 25 Schedule B (Dkt. 1 at 19) are deemed abandoned by the estate. To the extent that the debtor requests that the court deem abandoned the debtor's interest in the business name "Wimberly Taxi" or the debtor's interest in an entity with the name "Wimberly Taxi," the motion is denied without prejudice. Except as so ordered, the motion is denied.

The debtor alleges without dispute that the Property has an aggregate value of \$3,600.00. The debtor has claimed the entirety of the value of Property as exempt on Schedule C. The court finds that the Property is of inconsequential value and benefit to the estate.

To the extent that the debtor requests that the court deem abandoned the debtor's interest in the business name "Wimberly Taxi" or the debtor's interest in an entity with the name "Wimberly Taxi," the motion is denied without prejudice. 11 U.S.C. § 554(b) only allows the court to deem abandoned "property of the estate." The debtor has not scheduled any interest in the business name "Wimberly Taxi" or any interest in an entity with the name "Wimberly Taxi" on Schedule B. The debtor did not list any interest in stock and interests in incorporated and unincorporated businesses at line 13 on Schedule B, and he did not list any interest in "other personal property of any kind not already listed" at line 35 on Schedule B.

The court will issue a minute order.

20. [13-31040](#)-B-11 JIMMY ALEXANDER
UST-1

CONTINUE MOTION TO CONVERT CASE
FROM CHAPTER 11 TO CHAPTER,
MOTION TO DISMISS CASE
4-24-14 [[142](#)]

Tentative Ruling: None.

21. [14-24843](#)-B-11 DAVID BOITANO AND
RPH-1 JEANNINE ASTURIAS-TINSLEY

MOTION TO EMPLOY ROBERT P.
HUCKABY AS ATTORNEY(S)
6-19-14 [[16](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

22. [11-30846](#)-B-7 VIRGINIA HOWARD
DLO-5

MOTION FOR COMPENSATION FOR
DENISE OLRICH, SPECIAL
COUNSEL(S)
6-10-14 [[49](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The United States Trustee (the "UST")'s limited objection is sustained. The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the reduced amount of \$13,472.50 in fees and expenses for the period of August 29, 2012, through and including June 9, 2014, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered December 4, 2012 (Dkt. 24), the court authorized the chapter 7 trustee to retain the applicant as general counsel for the chapter 7 trustee in this case. The order approving the applicant's employment did not specify an effective date of employment, so the effective date of the applicant's employment was the date of the entry of the order, in this case December 4, 2012.

The applicant now seeks compensation for services rendered and costs incurred during the period of August 29, 2012, through and including June 9, 2014. This department does not approve compensation for work prior to the effective date of a professional's employment. DeRonde v. Shirley (In re Shirley), 134 B.R. 930, 943-944 (B.A.P. 9th Cir. 1992).

As the UST correctly points out, there are a series of entries on the attached billing statements which fall between August 29, 2012, and October 8, 2012, totaling \$1,062.50. As these entries fall prior to December 4, 2012, these fees are disallowed, and the total award is therefore \$13,472.50.

As set forth in the application, the approved fees and expenses are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

23. [13-34046](#)-B-7 JASON/SHANNON WONG
BHS-4

MOTION FOR COMPENSATION FOR
BARRY H. SPITZER, TRUSTEE'S
ATTORNEY(S)
6-2-14 [[76](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. Pursuant to 11

U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$6,770.00 in fees and \$102.14 in expenses, for a total of \$6,872.14, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered January 13, 2014 (Dkt. 40), the court authorized the chapter 7 trustee to retain the applicant as general bankruptcy counsel in this case. The applicant's employment was effective January 2, 2014. The applicant now seeks compensation for services rendered and costs incurred during the period of January 2, 2014, through and including June 2, 2014. As set forth in the application, the approved fees and expenses are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

24. [14-22053](#)-B-7 JOSE/CARMINE SOUSA MOTION TO EXTEND DEADLINE TO
EJN-1 FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
6-5-14 [[16](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. Pursuant to Federal Rule of Bankruptcy Procedure 4004(b)(1), the deadline for the chapter 7 trustee to file an objection to the debtors' discharge under 11 U.S.C. § 727 is extended to December 6, 2014.

The chapter 7 trustee requests an extension of the deadline to file an objection to the debtors' discharge under 11 U.S.C. § 727. When a request for an enlargement of the time to file a complaint objecting to discharge or dischargeability of certain debts is made before the time has expired, as it was here, the court may enlarge the time for cause shown. Fed. R. Bankr. P. 4004(b) and 4007(c). Here, the trustee alleges without dispute that the debtors under reported and/or failed to report certain assets in their initial schedules. He further states that he requires additional time to investigate whether the debtors have failed to disclose other assets of the estate. The foregoing constitutes "cause" for purposes of Federal Rule of Bankruptcy Procedure 4004(b)(1).

The court will issue a minute order.

25. [12-33556](#)-B-7 WILLIAM/FELICIA LASSITER MOTION TO SELL
BHS-2 6-9-14 [[49](#)]

Tentative Ruling: The motion is granted in part. Pursuant to 11 U.S.C. § 363(b)(1), the chapter 7 trustee is authorized to sell the estate's interest in music royalties (the "Property") to City Hall Records in Sumo/Oakland Street Show for \$15,500.00 in an "as is" and "where is" condition on the terms and conditions set forth in the Purchase and Sale

Agreement attached as Exhibit "A" to the motion (Dkt. 52, p.2-6), provided that the court's ruling does not authorize sale of the Property to any purchaser not approved by the court and does not authorize sale of the Property free and clear of liens. The net proceeds of the sale shall be administered for the benefit of the estate. The trustee is authorized to execute all documents necessary to complete the approved sale. The 14-day stay of the order granting this motion under Federal Rule of Bankruptcy Procedure 6004(h) is waived. Except as so ordered, the motion is denied.

The sale will be subject to overbidding on terms approved by the court at the hearing.

The trustee has made no request for a finding of good faith under 11 U.S.C. § 363(m), and the court makes no such finding.

Counsel for the trustee shall submit an order that conforms to the foregoing ruling.

26. [14-22458](#)-B-7 FERDINAND/ROWENA LACSINA MOTION TO EXTEND DEADLINE TO
SLC-1 FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
6-16-14 [[20](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(1). In this instance, because the debtors are pro se, the court issues the following abbreviated tentative ruling.

The motion is granted. Pursuant to Federal Rule of Bankruptcy Procedure 4004(b)(1), the deadline for the chapter 7 trustee to file an objection to the debtors' discharge under 11 U.S.C. § 727 is extended to September 30, 2014.

The chapter 7 trustee requests an extension of the deadline to file an objection to the debtors' discharge under 11 U.S.C. § 727. When a request for an enlargement of the time to file a complaint objecting to discharge or dischargeability of certain debts is made before the time has expired, as it was here, the court may enlarge the time for cause shown. Fed. R. Bankr. P. 4004(b) and 4007(c). Here, the trustee alleges without dispute that the debtors testified at the first meeting of creditors held on April 16, 2014, that they made several monetary transfers to friends and family members within the one-year period prior to the petition date. The trustee further alleges without dispute that the debtors failed to disclose these transfers in their petition. The trustee has continued the meeting of creditors several times so that the debtors could provide her with the names and addresses of the recipients of these pre-petition transfers as well as file an amended Statement of Financial Affairs. To date the debtors have failed to comply with the trustee's requests. Accordingly, the trustee asserts that she requires additional time to investigate the debtors' pre-petition transactions, get the debtors to file the appropriate amended documents, and/or possibly schedule a Rule 2004 examination. The foregoing constitutes "cause" for purposes of Federal Rule of Bankruptcy Procedure 4004(b)(1).

The court will issue a minute order.

27. [13-35166](#)-B-7 WILLIAM/DEBORAH ROBINSON CONTINUED MOTION TO SELL
KJH-1 6-3-14 [[21](#)]

Tentative Ruling: This matter is continued from July 1, 2014, to allow the trustee to supplement the motion with a copy of the proposed sale agreement for the subject asset. The court now issues the following abbreviated tentative ruling.

The motion is granted in part. Pursuant to 11 U.S.C. § 363(b)(1), the trustee is authorized to sell the estate's non-exempt interest in a 2003 Honda Accord LE V6 (VIN 1HGCM66573A028207) (the "Property") to Sandra Nerwinski in an "as is" and "where is" condition on the terms and conditions set forth in the Agreement Regarding Disposition of Assets attached as Exhibit "1" to the motion (Dkt. 25, p.2-3), provided that the court's ruling does not authorize sale of the Property to any purchaser not approved by the court and does not authorize sale of the Property free and clear of liens. The net proceeds of the sale shall be administered for the benefit of the estate. The trustee is authorized to execute all documents necessary to complete the approved sale. Except as so ordered, the motion is denied.

The sale will be subject to overbidding on terms approved by the court at the hearing.

The trustee has made no request for a finding of good faith under 11 U.S.C. § 363(m), and the court makes no such finding.

The trustee shall submit an order that conforms to the foregoing ruling.

28. [14-23372](#)-B-7 JUANA LUCIO TRUSTEE'S MOTION TO DISMISS FOR
ICE-1 FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITORS
6-12-14 [[29](#)]

Tentative Ruling: The debtor's opposition is overruled. The motion is granted, and the case is dismissed pursuant to 11 U.S.C. § 707(a).

By this motion, the chapter 7 trustee seeks dismissal of this case on the grounds that the debtor failed to appear and testify at the regularly scheduled and duly noticed meeting of creditors held on June 9, 2014, pursuant to 11 U.S.C. § 341(a). The court's review of the docket indicates that the first meeting of creditors was held on May 12, 2014, and the debtor appeared. However, the debtor failed to appear at the continued meeting of creditors held on May 30, 2014, June 9, 2014, and July 7, 2014. The foregoing constitutes "cause" to dismiss the case pursuant to 11 U.S.C. § 707(a).

The court acknowledges that the debtor filed a Notice of Hearing and Opposition to the motion on July 2, 2014 (Dkt. 34). However, the court finds the opposition unpersuasive for several reasons. First, it was not timely filed. Pursuant to the Notice of Trustee's Motion to Dismiss

entered on June 12, 2014 (Dkt. 30), opposition was to have been filed and served no later than fourteen (14) days before the hearing date. Fourteen days prior to today's date was July 1, 2014. The opposition was not filed until July 2, 2014, one day late. Second, the debtor provides no explanation as to why she opposes the motion. It appears that she has simply signed and dated the opposition in several places, but left blank the space reserved for her to provide an explanation for her opposition. Accordingly, the opposition is overruled, the motion is granted, and the case is dismissed pursuant to 11 U.S.C. § 707(a).

The court will issue a minute order.

29. [13-36091](#)-B-7 JAMES/MOLLY ALEXANDER MOTION TO RECONVERT CASE FROM
LBG-3 CHAPTER 7 TO CHAPTER 13
7-1-14 [[69](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

30. [14-22890](#)-B-7 ANGELINA/MIGUEL PEINADO CONTINUED MOTION TO COMPEL
MMN-1 ABANDONMENT
4-22-14 [[16](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

31. [11-40578](#)-B-7 JENNE ROSE AND BRIAN MOTION TO APPROVE COMPROMISE
PA-7 SCOTT CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JENNE E. ROSE,
CAULFIELD, DAVIES & DONAHUE,
LLP AND MICHAEL E. MYERS
6-17-14 [[104](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is not ripe, and therefore the court lacks jurisdiction over the matter. By this motion, the chapter 7 trustee seeks court approval of a settlement agreement between himself and the following parties: (1) joint debtor Jenne Ellen Rose, (2) Caulfield, Davies & Donahue, LLP and its successor Donahue Davies, LLP, and (3) Michael E. Myers. The settlement agreement purports to resolve the trustee's motion to hold the other parties to the agreement in civil contempt of court, to compel their compliance with the applicable provisions of the automatic stay, and for turnover of estate property. However, the trustee has failed to establish that there is an actual settlement agreement for the court to approve because he has failed to demonstrate that all parties consent to

the agreement.

The absence of an actual settlement agreement for the court to approve means that the court lacks jurisdiction over the matter because the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no actual, finalized settlement agreement to which all parties to the agreement consent, no case or controversy within the meaning of Article III exists.

Here, the court acknowledges that the trustee filed a Settlement Agreement and General Releases on July 8, 2014 (Dkt. 111, p.3-13) (the "Agreement"). However, the Agreement has not been signed by the trustee or any other party to the agreement. The Agreement makes clear at Paragraph 25 that "This Agreement may be executed in counterparts and shall be effective when each Party has signed a counterpart" (Dkt. 111, p.12). Although a settlement term sheet dated June 17, 2014, was filed as Exhibit "1" to the motion (Dkt. 107, p.3-4) and signed by the parties, this does not constitute a final agreement. In fact, on June 30, 2014, Donahue Davies, LLP, Caulfield, Davies & Donahue, LLP, and Michael Myers jointly filed a Notice to Court re: Settlement stating that they were yet to review or accept a formal settlement agreement (Dkt. 109). Accordingly, the motion is not ripe for adjudication and is dismissed without prejudice.

The court will issue a minute order.

32. [11-40578](#)-B-7 JENNE ROSE AND BRIAN CONTINUED MOTION FOR CONTEMPT
PA-2 SCOTT AND/OR MOTION TO COMPEL ,
MOTION FOR TURNOVER OF PROPERTY
2-25-14 [[49](#)]

Tentative Ruling: None.

33. [12-21979](#)-B-7 MARISA CISNEROS MOTION FOR COMPENSATION FOR
BHS-6 BARRY H. SPITZER, TRUSTEE'S
ATTORNEY(S)
5-23-14 [[79](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$5,000.00 in fees and \$188.05 in expenses, for a total of \$5,188.05, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered on April 11, 2012 (Dkt. 26), the court authorized former chapter 7 trustee Prem N. Dhawan ("Mr. Dhawan") to retain the applicant as general bankruptcy counsel in this case with an effective date of employment of March 5, 2012. On December 13, 2012, Mr. Dhawan resigned as trustee (Dkt. 35), and John Bell ("Mr. Bell") was appointed as successor trustee (Dkt. 36). By order entered on February 22, 2013 (Dkt. 41), the court authorized Mr. Bell to retain the applicant as general bankruptcy counsel in this case with the same effective date of employment of March 5, 2012. The applicant now seeks compensation for services rendered and costs incurred during the period of March 5, 2012, through and including May 23, 2014. As set forth in the application, the approved fees and expenses are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

34. [11-37885](#)-B-7 MERLE HOWARD MOTION FOR COMPENSATION FOR
SSA-9 STEVEN S. ALTMAN, TRUSTEE'S
ATTORNEY(S)
5-28-14 [[97](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. The application is approved on an interim basis in the amount of \$12,705.00 in fees and \$384.37 in expenses, for a total of \$13,089.37, for services rendered during the period of August 2, 2011, through and including April 1, 2014. The total allowed fees and expenses shall be payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

On July 21, 2011, the debtor filed a voluntary petition under chapter 7 (Dkt. 1). By order entered on September 7, 2011 (Dkt. 21), the court authorized employment of the applicant as general bankruptcy counsel for the chapter 7 trustee. The court did not assign an effective date of employment. On April 23, 2014, the trustee filed a motion to amend the date authorizing the applicant's employment (Dkt. 94). By order entered on May 9, 2014 (Dkt. 96), the court granted the motion and assigned the applicant an effective date of employment of July 26, 2011. The applicant now seeks interim compensation for services rendered and costs incurred during the period of August 2, 2011, through and including April 1, 2014. As set forth in the application, the approved fees and expenses are reasonable compensation for actual, necessary and beneficial services. 11 U.S.C. § 330(a)(1).

The court will issue a minute order.

35. [10-33091](#)-B-7 GASSPECS, INC.
SSA-4

MOTION FOR COMPENSATION FOR
STEVEN S. ALTMAN, TRUSTEE'S
ATTORNEY(S)
6-13-14 [[295](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

36. [14-22099](#)-B-7 IMELDA CALVAN
RTD-1

MOTION TO DISMISS CASE PURSUANT
TO 11 U.S.C. SECTION 707(B)
5-28-14 [[19](#)]

Tentative Ruling: This matter is continued to a final evidentiary hearing on September 8, 2014, at 10:00 a.m. before the Honorable David E. Russell in courtroom 32. At the hearing, evidence will be taken on the calculation of the debtor's current monthly income and the debtor's claimed deductions from income on Form B22A for purposes of determining whether a presumption of abuse has arisen under 11 U.S.C. § 707(b)(2).

On or before September 1, 2014, each party shall lodge (not file) with the Courtroom Deputy, Ms. Sheryl Arnold, two identical, tabbed binders (or set of binders), each containing (i) a witness list (which includes a general summary of the testimony of each designated witness), (ii) one set of the party's exhibits, separated by numbered or lettered tabs and (iii) a separate index showing the number or letter assigned to each exhibit and a brief description of the corresponding document. The debtor's binder tabs shall be consecutively numbered, commencing at number 1. Creditor and movant Sacramento Credit Union's binder tabs shall be consecutively lettered, commencing at letter A. On or before September 1, 2014, each party shall serve on the other party an identical copy of the party's lodged binder (or set of binders) by overnight delivery. The parties shall lodge and serve these binder(s) regardless of whether some or all of the contents have been filed in the past with this court. The lodged binder(s) shall be designated as Exhibits for Hearing on Sacramento Credit Union's Motion to Dismiss Case. In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [www.tabbies.com] - debtors' stock number 58093 and creditors' stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

The court will issue a minute order.

37. [13-25948](#)-B-7 ROBERTO CAMACHO
[13-2248](#) MDI-1
RIGGS V. CAMACHO

CONTINUED MOTION FOR SUMMARY
JUDGMENT
3-24-14 [[33](#)]

Tentative Ruling: None.