

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

September 17, 2013 at 9:32 A.M.

PLEASE TAKE NOTE: Matters with tentative rulings on this calendar and which are associated with In re ZF In Liquidation, LLC, case no. 12-37961-B-11 (matters 38-44), will not be called for hearing before 11:00 a.m.

1. [13-30807](#)-B-7 RAYMUND/KLARENE OLIVAREZ MOTION TO COMPEL ABANDONMENT
JCO-1 8-27-13 [[9](#)]

Disposition Without Oral Argument: The motion is continued to October 29, 2013, at 9:32 a.m., for conclusion of the meeting of creditors under 11 U.S.C. § 341 and expiration of the period to object to claims of exemption established by Fed. R. Bankr. P. 4003(b).

2. [13-25108](#)-B-7 DEBRA LOCKHART MOTION FOR HARDSHIP DISCHARGE
[13-2252](#) LOCKHART V. CHASE BANK 1981 8-7-13 [[5](#)]

Tentative Ruling: The motion is denied.

By this motion the plaintiff debtor seeks relief against defendant "Chase Bank" and the Internal Revenue Service. Specifically, the debtor requests a determination that a student loan debt owed to Chase Bank based on a student loan obtained by the debtor in 1981 is dischargeable in her bankruptcy case. The court also construes the motion as requesting a determination that an unspecified income tax liability owed to the Internal Revenue Service is dischargeable in her bankruptcy case.

The relief that the debtor seeks cannot be obtained by motion. Federal Rule of Bankruptcy Procedure 7001(6) states that a proceeding to determine the dischargeability of a debt is an adversary proceeding which is governed by the rules of Part VII of the Federal Rules of Bankruptcy Procedure. The court acknowledges that this motion was filed in an adversary proceeding, but the fact that the motion was filed in an adversary proceeding does not mean that the debtor can obtain relief she seeks by this motion. The debtor must prosecute the adversary proceeding pursuant to the requirements of Part VII of the Federal Rules of Bankruptcy Procedure.

The requirements of Part VII of the Federal Rules of Bankruptcy Procedure include, inter alia, the essential first step of service of the summons and the complaint on the defendant, as required by Bankruptcy Rule 7004. Service of the summons and complaint gives the defendant an opportunity to file an answer or other response to the complaint, after which the court may move forward with the proceedings necessary to advance the matter to trial, if necessary. Certain things might make a trial unnecessary. For example, if the defendant does not file an answer or response after proper service of the summons and complaint, the defendant's default may be taken and the debtor may request a default judgment. No default can be entered, and no default judgment can be requested, however, until the defendant has been properly served with the summons and complaint pursuant to the requirements of the Federal Rules of Bankruptcy Procedure. There is no evidence on the docket that the debtor has properly served the summons and complaint.

The court will issue a minute order.

3. [13-25108](#)-B-7 DEBRA LOCKHART MOTION FOR HARDSHIP DISCHARGE
8-7-13 [[70](#)]

Tentative Ruling: The motion is denied.

This motion is identical to a motion filed in Adversary Proceeding 13-2252, which is resolved elsewhere on this calendar.

By this motion the plaintiff debtor seeks relief against defendant "Chase Bank" and the Internal Revenue Service. Specifically, the debtor requests a determination that a student loan debt owed to Chase Bank based on a student loan obtained by the debtor in 1981 is dischargeable in her bankruptcy case. The court also construes the motion as requesting a determination that an unspecified income tax liability owed to the Internal Revenue Service is dischargeable in her bankruptcy case.

The relief that the debtor seeks cannot be obtained by motion. Federal Rule of Bankruptcy Procedure 7001(6) states that a proceeding to determine the dischargeability of a debt is an adversary proceeding which is governed by the rules of Part VII of the Federal Rules of Bankruptcy Procedure. The debtor must prosecute an adversary proceeding pursuant to the requirements of Part VII of the Federal Rules of Bankruptcy Procedure.

The court will issue a minute order.

4. [11-38954](#)-B-11 KENNETH KNIGHTEN DEBTOR'S OBJECTION TO ENTRY OF
MHK-21 ORDER CLOSING CHAPTER 11 CASE
8-13-13 [[418](#)]

Tentative Ruling: The objection is sustained. The bankruptcy case shall not be closed by the court clerk pursuant to the Notice of Intent to Close Chapter 11 Case entered on July 24, 2013, and shall remain open

pending further order of the court.

The court will issue a minute order.

5. [11-38954](#)-B-11 KENNETH KNIGHTEN MOTION FOR ENTRY OF DISCHARGE
MHK-22 8-20-13 [[422](#)]

Tentative Ruling: The motion is denied without prejudice.

The debtor seeks entry of his discharge in this chapter 11 case before he has completed payments pursuant to the terms of his confirmed plan. To obtain entry of his discharge, the debtor must satisfy the requirements of 11 U.S.C. § 1141(d)(5)(B). The motion does not address all of these requirements. Specifically the motion does not address the issue of whether the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date. The motion also does not address whether modification of the plan under § 1127 is practicable.

The court will issue a minute order.

6. [11-35325](#)-B-7 JAMES COXETER MOTION BY JULIE H. ROME-BANKS
[11-2643](#) BMA-1 TO WITHDRAW AS ATTORNEY
MISKE V. COXETER 8-20-13 [[26](#)]

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

The motion is granted. The movant, Binder & Malter, LLP, is permitted to withdraw as counsel for defendant James Coxeter ("Defendant"), in this adversary proceeding (11-2643). The movant shall forward to the Defendant any documents or correspondence that are related to this case and received by the movant in the future. Except as so ordered, the motion is denied.

Movant alleges without dispute that Defendant has rendered it unreasonably difficult for movant to carry out the employment effectively, citing a breakdown in communications which has caused the attorney-client relationship to deteriorate. The movant also alleges without dispute that the Defendant has failed to honor his agreement to pay the movant for attorney fees and costs incurred for services rendered in connection with this adversary proceeding. In the absence of opposition, movant has shown sufficient grounds for permissive withdrawal under California Rule of Professional Conduct 3-700(C)(1)(d) and (f).

The court will issue a minute order.

7. [11-35325](#)-B-7 JAMES COXETER
BMA-317

MOTION BY JULIE H. ROME-BANKS
TO WITHDRAW AS ATTORNEY
8-20-13 [[889](#)]

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

The motion is granted. The movant, Binder & Malter, LLP, is permitted to withdraw as counsel for debtor James Coxeter ("Debtor"), in this bankruptcy case (11-35325). The movant shall forward to the Defendant any documents or correspondence that are related to this case and received by the movant in the future. Except as so ordered, the motion is denied.

Movant alleges without dispute that Debtor has rendered it unreasonably difficult for movant to carry out the employment effectively, citing a breakdown in communications which has caused the attorney-client relationship to deteriorate. The movant also alleges without dispute that the Debtor has failed to honor his agreement to pay the movant for attorney fees and costs incurred for services rendered in connection with the bankruptcy case. In the absence of opposition, movant has shown sufficient grounds for permissive withdrawal under California Rule of Professional Conduct 3-700(C)(1)(d) and (f).

The court will issue a minute order.

8. [11-35325](#)-B-7 JAMES COXETER
MPD-10]

MOTION TO SELL AND TO WAIVE
FOURTEEN DAY STAY]
8-27-13 [[907](#)]

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

The motion is granted in part. Pursuant to 11 U.S.C. § 363(b) and (f), the chapter 7 trustee is authorized to sell personal property of the estate consisting of the debtor's interest in a 1959 Mercedes-Benz 190SL automobile, California license plate no. 233CDR (the "Property") in an "as-is" and "where-is" condition to Victor Mantjes for \$40,000.00. The trustee is authorized to distribute the sale proceeds in the manner set forth in the motion. The trustee is authorized to sell the Property free and clear of the judgment lien of George Miske ("Miske") pursuant to 11 U.S.C. § 363(f)(2). 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 fourteen-day stay of the order granting this motion imposed by Fed. R. Bankr. P. 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 on the motion.

The court authorizes a sale free and clear of the judgment lien in favor of Miske pursuant to 11 U.S.C. § 363(f)(2). Pursuant to the terms of a

compromise (Dkt. 865) approved by the court by order entered August 27, 2013 (Dkt. 917), the trustee and Miske agreed that the estate would receive 10% of the gross sale proceeds from a sale of the Property, and that Miske would receive the remainder of the proceeds after deductions for normal and customary costs of sale, consensual liens and any exemption claimed by the debtor. In this case, there are no costs of sale or consensual liens. The debtor has also not claimed any exemption in the Property.

The trustee shall submit a proposed form of order that is consistent with the foregoing ruling.

9. [11-35325](#)-B-7 JAMES COXETER MOTION TO SELL AND TO WAIVE
MPD-11 FOURTEEN DAY STAY
8-27-13 [[912](#)]

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

The motion is granted in part. Pursuant to 11 U.S.C. § 363(b) and (f), the chapter 7 trustee is authorized to sell personal property of the estate consisting of the debtor's interest in a 1985 Mercedes-Benz 300DT Turbodiesel automobile, California license plate no. 2BPZ660 (the "Property") in an "as-is" and "where-is" condition to the debtor, James Coxeter, for \$4,500.00. The trustee is authorized to distribute the sale proceeds in the manner set forth in the motion. The trustee is authorized to sell the Property free and clear of the judgment lien of George Miske ("Miske") pursuant to 11 U.S.C. § 363(f)(2). 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 fourteen-day stay of the order granting this motion imposed by Fed. R. Bankr. P. 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 on the motion.

The court authorizes a sale free and clear of the judgment lien in favor of Miske pursuant to 11 U.S.C. § 363(f)(2). Pursuant to the terms of a compromise (Dkt. 865) approved by the court by order entered August 27, 2013 (Dkt. 917), the trustee and Miske agreed that the estate would receive 10% of the gross sale proceeds from a sale of the Property, and that Miske would receive the remainder of the proceeds after deductions for normal and customary costs of sale, consensual liens and any exemption claimed by the debtor. In this case, there are no costs of sale or consensual liens. The debtor has also not claimed any exemption in the Property.

The trustee shall submit a proposed form of order that is consistent with the foregoing ruling.

10. [11-35325](#)-B-7 JAMES COXETER
MPD-12

MOTION TO SELL AND TO WAIVE
FOURTEEN DAY STAY
8-27-13 [[919](#)]

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

The motion is granted in part. Pursuant to 11 U.S.C. § 363(b) and (f), the chapter 7 trustee is authorized to sell personal property of the estate consisting of the debtor's interest in a 1997 Mercedes Benz SL500 automobile, California dealer license plate no. 21417 (the "Property") in an "as-is" and "where-is" condition to the debtor, James Coxeter, for \$7,000.00. The trustee is authorized to distribute the sale proceeds in the manner set forth in the motion. The trustee is authorized to sell the Property free and clear of the judgment lien of George Miske ("Miske") pursuant to 11 U.S.C. § 363(f)(2). 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 fourteen-day stay of the order granting this motion imposed by Fed. R. Bankr. P. 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 on the motion.

The court authorizes a sale free and clear of the judgment lien in favor of Miske pursuant to 11 U.S.C. § 363(f)(2). Pursuant to the terms of a compromise (Dkt. 865) approved by the court by order entered August 27, 2013 (Dkt. 917), the trustee and Miske agreed that the estate would receive 10% of the gross sale proceeds from a sale of the Property, and that Miske would receive the remainder of the proceeds after deductions for normal and customary costs of sale, consensual liens and any exemption claimed by the debtor. In this case, there are no costs of sale or consensual liens. The debtor has also not claimed any exemption in the Property.

The trustee shall submit a proposed form of order that is consistent with the foregoing ruling.

11. [11-35325](#)-B-7 JAMES COXETER
MPD-13

MOTION TO SELL AND TO WAIVE
FOURTEEN DAY STAY
8-27-13 [[924](#)]

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

The motion is granted in part. Pursuant to 11 U.S.C. § 363(b) and (f), the chapter 7 trustee is authorized to sell personal property of the

estate consisting of the debtor's interest in a 1997 Mercedes Benz S500C automobile, California dealer license plate no. 21417 (the "Property") in an "as-is" and "where-is" condition to the debtor, James Coxeter, for \$3,500.00. The trustee is authorized to distribute the sale proceeds in the manner set forth in the motion. The trustee is authorized to sell the Property free and clear of the judgment lien of George Miske ("Miske") pursuant to 11 U.S.C. § 363(f)(2). 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 fourteen-day stay of the order granting this motion imposed by Fed. R. Bankr. P. 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 on the motion.

The court authorizes a sale free and clear of the judgment lien in favor of Miske pursuant to 11 U.S.C. § 363(f)(2). Pursuant to the terms of a compromise (Dkt. 865) approved by the court by order entered August 27, 2013 (Dkt. 917), the trustee and Miske agreed that the estate would receive 10% of the gross sale proceeds from a sale of the Property, and that Miske would receive the remainder of the proceeds after deductions for normal and customary costs of sale, consensual liens and any exemption claimed by the debtor. In this case, there are no costs of sale or consensual liens. The debtor has also not claimed any exemption in the Property.

The trustee shall submit a proposed form of order that is consistent with the foregoing ruling.

- 12. [11-35325](#)-B-7 JAMES COXETER MOTION TO SELL AND TO WAIVE
MPD-14 FOURTEEN DAY STAY
8-27-13 [[929](#)]

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.

- 13. [11-35325](#)-B-7 JAMES COXETER MOTION TO SELL AND TO WAIVE
MPD-15 FOURTEEN DAY STAY
8-27-13 [[934](#)]

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.

14. [11-35325](#)-B-7 JAMES COXETER
MPD-9

MOTION TO SELL AND TO WAIVE
FOURTEEN DAY STAY
8-27-13 [[902](#)]

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

The motion is granted in part. Pursuant to 11 U.S.C. § 363(b) and (f), the chapter 7 trustee is authorized to sell personal property of the estate consisting of the debtor's interest in a 1985 Ferrari 308 GTSI automobile, California license plate no. 2PAM667 (the "Property") in an "as-is" and "where-is" condition to Victor Mantjes for \$25,000.00. The trustee is authorized to distribute the sale proceeds in the manner set forth in the motion. The trustee is authorized to sell the Property free and clear of the judgment lien of George Miske ("Miske") pursuant to 11 U.S.C. § 363(f)(2). 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 fourteen-day stay of the order granting this motion imposed by Fed. R. Bankr. P. 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 on the motion.

The court authorizes a sale free and clear of the judgment lien in favor of Miske pursuant to 11 U.S.C. § 363(f)(2). Pursuant to the terms of a compromise (Dkt. 865) approved by the court by order entered August 27, 2013 (Dkt. 917), the trustee and Miske agreed that the estate would receive 10% of the gross sale proceeds from a sale of the Property, and that Miske would receive the remainder of the proceeds after deductions for normal and customary costs of sale, consensual liens and any exemption claimed by the debtor. In this case, there are no costs of sale or consensual liens. The debtor has also not claimed any exemption in the Property.

The trustee shall submit a proposed form of order that is consistent with the foregoing ruling.

15. [11-37711](#)-B-7 DELANO RETAIL PARTNERS,
[12-2686](#) LLC HKS-1
C&S WHOLESALE GROCERS, INC. V.
DELANO ET AL

MOTION TO DISMISS ADVERSARY
8-19-13 [[53](#)]

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

The motion is continued to October 1, 2013, at 9:32 a.m. The briefing for this matter is closed.

The court will issue a minute order.

16. [11-37711](#)-B-7 DELANO RETAIL PARTNERS, MOTION TO DISMISS ADVERSARY
[13-2250](#) LLC HKS-1 8-19-13 [[22](#)]
C&S WHOLESALE GROCERS, INC. V.
DELANO ET AL

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

The motion is continued to October 1, 2013, at 9:32 a.m. The briefing for this matter is closed.

The court will issue a minute order.

17. [12-35709](#)-B-7 ARTURO SANCHEZ CONTINUED MOTION FOR ENTRY OF
[12-2666](#) RLR-1 DEFAULT JUDGMENT
TRAVELERS EXPRESS COMPANY, 4-22-13 [[42](#)]
INC. V. SANCHEZ

Disposition Without Oral Argument: This matter is continued to October 1, 2013 at 9:32 a.m.

18. [13-27086](#)-B-7 LINDA LUERS AND ERIC MOTION TO DISMISS CASE
UST-1 SARVER 7-30-13 [[17](#)]

Tentative Ruling: This matter is continued to October 15, 2013 at 9:32 a.m. On or before October 1, 2013, the United States trustee ("UST") shall file a written reply to the debtors' response (Dkt. 24) filed August 30, 2013 and addendum (Dkt. 25) filed September 3, 2013. The UST reply will conclude the briefing on this matter.

The docket indicates that the debtors' response and addendum were never served on the UST or any other party in interest as is required by Local Bankruptcy Rule 9014-1(e).

The court will issue a minute order.

19. [12-39826](#)-B-7 ILDEFONSO/ANDREA RUIZ
FF-2

MOTION TO COMPEL ABANDONMENT
7-29-13 [[78](#)]

Tentative Ruling: The debtors' motion to compel abandonment of the real property located at 11 Chicory Bend Court, Sacramento, CA 95831 County of Nevada is continued to a final evidentiary hearing on October 10, 2013 at 2:00 p.m. before the Honorable David E. Russell in courtroom 32.

On or before October 3, 2013, 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 debtors' binder tabs shall be consecutively numbered, commencing at number 1. The respondent's binder tabs shall be consecutively lettered, commencing at letter A. On or before October 3, 2013, 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 Debtors' Motion to Compel Abandonment of Real Property Located at 11 Chicory Bend Court, Sacramento, CA 95831. 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.

20. [12-40028](#)-B-7 GLENN LOWERY
DAO-2

MOTION TO COMPEL ABANDONMENT
8-1-13 [[31](#)]

Tentative Ruling: The court issues the following abbreviated ruling.

The motion is denied without prejudice.

Pursuant to 11 U.S.C. § 554(b), "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(b). The debtor has the burden of showing that the property is of inconsequential value and benefit to the estate. In re Viet Vu, 245 B.R. 644, 647 (9th Cir. BAP 2000).

The debtor has not carried his burden in this case. The debtor's motion

describes in detail the facts surrounding this case and his pending Chapter 13 case, as well as the proposed Stipulation between the debtor and the Chapter 7 trustee. However, at no point in either the motion itself or the proposed Stipulation does the debtor set forth the grounds for compelling abandonment of property of the estate pursuant to 11 U.S.C. § 554(b).

The court will issue a minute order.

21. [10-37129](#)-B-11 CAPITOL PROPERTIES, LLC CONTINUED MOTION TO CONVERT OR
UST-1 DISMISS CASE
4-2-13 [[527](#)]
WITHDRAWN BY M.P.

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

This motion has been withdrawn, and it is dropped from the calendar.

The United States Trustee withdrew this motion on August 30, 2013 (Dkt. 573).

The court will issue a minute order.

22. [13-22530](#)-B-11 BUTTE CREEK PARK, LLC A MOTION TO CONVERT CASE FROM
UST-1 CALIFORNIA LIMITED CHAPTER 11 TO CHAPTER 7 AND/OR
MOTION TO DISMISS CASE
8-7-13 [[75](#)]

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

The motion is granted, and the instant case is ordered converted to one under chapter 7.

By this motion the United States trustee ("UST") seeks conversion of this chapter 11 case to one under chapter 7 or, alternatively, dismissal of the case. Pursuant to 11 U.S.C. § 1112(b)(1), the court shall convert or dismiss a chapter 11 case, whichever is in the best interests of creditors and the estate, for cause. Section 1112(b) limits the foregoing directive in several ways:

First, under section 1112(b)(1), the court shall not convert or dismiss the case if the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate. Section 1104(a)(2) states that "at any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee if such appointment is in the interests of creditors, any equity security

holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor." 11 U.S.C. § 1104(a)(2).

Second, under section 1112(b)(2), the court may not convert or dismiss the case, even if the movant establishes cause, if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes the requirements of sections 1112(b)(2)(A) and (B). Specifically, the debtor or any other opposing party in interest must establish that:

(A) There is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and

(B) The grounds for converting or dismissing the case include an act or omission of the debtor other than substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation - (i) for which there exists a reasonable justification for the act or omission; and (ii) that will be cured within a reasonable period of time fixed by the court.

11 U.S.C. § 1112(b)(2)(A)-(B).

Section 1112(b)(4) sets forth a non-exhaustive list of examples of "cause." If one of the enumerated examples of cause set forth in section 1112(b)(4) is proven by the movant by a preponderance of the evidence, the court must find that the movant has established cause. 7-1112 Collier on Bankruptcy § 1112.04 (16th ed. 2013).

The court finds, for the reasons stated in the motion, that the UST has established cause for conversion or dismissal under 11 U.S.C. § 1112(b)(4)(F).

The court further finds that the debtor has not established that, even though cause exists, the case should not be converted or dismissed. The debtor has failed to file any response to the UST's motion. Therefore, the debtor has failed to meet its burden under sections 1112(b)(2)(A) and (B).

The court makes no finding of unusual circumstances that would establish that converting or dismissing this case would not be in the best interests of creditors and the estate.

Finally, the court finds that conversion of this case to a case under chapter 7 is in the best interests of creditors and the estate because, although this is a single asset real estate case and relief from the automatic stay has already been granted as to the holders of the 1st and 2nd deeds of trust on the property, the scheduled value of the property exceeds that total of the liens and may, in the event of a sale by a trustee, provide money for distribution to unsecured creditors.

The court will issue a minute order.

23. [13-24136](#)-B-7 GERALD DECAMP MOTION TO COMPEL ABANDONMENT
DMA-1 8-10-13 [[28](#)]

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

Pursuant to 11 U.S.C. § 554(b), the motion is granted, and the estate's interest in the real properties located at 703 Adeline Place, Davis, CA, and 7834 Strawberry Road, Twin Bridges, CA (collectively, the "Properties") are deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtor alleges without dispute that the Properties, after accounting for all encumbrances and claimed exemptions, have no equity available for distribution to creditors. The debtor has proven that the Properties are of inconsequential value and benefit to the estate. The chapter 7 trustee has filed a statement of non-opposition.

The court will issue a minute order.

24. [12-24939](#)-B-7 KARINA URENA MOTION TO AVOID LIEN OF CAPITAL
EJS-1 ONE BANK (USA), N.A.
8-22-13 [[36](#)]

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.

25. [13-28939](#)-B-7 BOBBIE/SYLVIA PEARSON MOTION TO COMPEL ABANDONMENT
DJH-1 8-27-13 [[11](#)]

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.

26. [08-31840](#)-B-7 CLINTON MYERS MOTION TO SELL
MLG-106 8-20-13 [[1083](#)]

Tentative Ruling: The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 363(b), the chapter 7 trustee is authorized to sell certain water hook up rights related to various lots of the Sun Peak subdivision in Park City, UT to the Mountain Regional Water District for \$22,125.00 in an as-is, where-is condition, with all faults, on the terms

set forth in the Purchase and Sale Agreement filed with the motion (Dkt. 1086 at p. 2). The proceeds of the sale payable to the estate shall be administered for the benefit of the estate. 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 14-day stay under Fed. R. Bankr. P. 6004(h) is waived.

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.

27. [13-29642](#)-B-7 RUSSELL/JILL TOWNE MOTION TO COMPEL ABANDONMENT
DL-1 8-15-13 [[14](#)]

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

This matter is continued to October 15, 2013 at 9:32 a.m., to be heard after the deadline to object to Debtors' claim of exemptions.

28. [13-24145](#)-B-7 THE CALIFORNIA MOTION TO COMPROMISE
DMW-2 HOSPITALIST PHYSICIANS, CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH THE CALIFORNIA
HEALTHCARE INSURANCE COMPANY,
INC.
8-15-13 [[31](#)]

Tentative Ruling: The motion is dismissed.

The motion is dismissed because it is moot. On July 23, 2013, the chapter 7 trustee filed a motion (Dkt. 23, Docket Control No. "DMW-1") that sought the same relief that the trustee now seeks in this motion. By order entered on August 27, 2013 (Dkt. 37), the court granted the trustee's prior motion (Dkt. 37). Therefore, this motion is moot since the trustee has already obtained the relief he seeks by this motion.

The court will issue a minute order.

29. [13-29151](#)-B-7 JUAN CORONA
SAC-2

MOTION BY JINGMING CAI TO
WITHDRAW AS ATTORNEY
8-15-13 [[14](#)]

Tentative Ruling: The motion is denied without prejudice.

The motion suffers from a procedural defect. The notice fails to inform the debtor as to how he may oppose the motion. This information is required pursuant LBR 9014-1(d) (3) for any motion brought under LBR 9014-1(f) (1) or (f) (2). This information is especially important where the person against whom the motion is made is pro se as to the motion.

Additionally, LBR 2017-1(e) requires that an attorney seeking to withdraw as counsel provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. The court acknowledges that the movant filed a certificate of service (Dkt. 17) listing the debtor and an address and saying that the moving papers were "caused to be served" on Debtor. However, the certificate of service does not state how the debtor was served, e.g., by first class mail, in person, etc.

Finally, given the declaration filed by attorney James Cai in support (Dkt. 16), the court requires, in this instance, that the movant provide proof as to how the motion was communicated to Debtor, e.g, in Spanish and in English, in English only, through a translator, etc.

The court will issue a minute order.

30. [13-29955](#)-B-7 EUGENE/JOYCE SARNIK
BB-1

MOTION TO COMPEL ABANDONMENT
8-16-13 [[11](#)]

Tentative Ruling: The motion is denied without prejudice to the trustee's filing of a motion to sell, subject to overbidding.

The motion is denied without prejudice because Debtors fail to cite the legal authority upon which they rely for the relief they seek [LBR 9014-1(d) (5)] and analyze the facts of the case within the context of any legal authority. Specifically, a motion seeking abandonment of property of the estate, by a party other than the trustee, is governed by 11 U.S.C. § 554(b). Pursuant to this code section, the court may order that the property be abandoned if it is either burdensome to the estate or of inconsequential value and benefit to the estate. Debtors have made no reference to section 554(b) let alone any analysis as to whether the property they seek the trustee to abandon is either burdensome to the estate or of inconsequential value and benefit to the estate.

The court further notes that Debtors' business "Variety City" is not listed on Schedule B or C. The court can only authorize abandonment of property of the estate. The debtors have stated under penalty of perjury that they own no interests in any incorporated or unincorporated business. (Dkt. 1, p. 13, Item 13).

The court will issue a minute order.

31. [13-20769](#)-B-7 MICHAEL/KRISTINE SHAFFER MOTION TO SELL
JRR-2 8-19-13 [[38](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is not ripe, and therefore the court lacks jurisdiction over the matter. The trustee seeks court approval to short sell real property located at 3231 Black Oak Drive, Rocklin, CA, 95765 (APN: 377-080-014) (the "Property") to Brian V. Cumbra and Nicole Cumbra for \$640,000.00. In this case, Macquarie Mortgages USA Inc. ("MM") holds a senior lien as well as a junior lien against the Property. Pursuant to the motion, the trustee asserts that MM has agreed to accept \$542,890.52 in full satisfaction of its claims. According to Schedule D, MM has a claim for \$649,224.27 as to the first deed of trust, and \$172,882.50 as to the second deed of trust (Dkt. 1 at 27). The trustee has not provided proof that MM consents to the proposed sale.

The absence of an actual compromise or sale 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 finalized, actual compromise or sale agreement to which the lienholder agrees, no case or controversy within the meaning of Article III exists.

The court acknowledges that it previously granted a motion to sell the same property on nearly the same terms (Dkt. 35). However, it was due to the court's oversight that the prior motion was granted because, even there, the trustee failed to provide the court with proof that MM's consented to the sale. Nonetheless, the court will accept MM's consent stated at the hearing through counsel.

The court will issue a minute order.

32. [12-24376](#)-B-7 PAULETTE WEILL MOTION TO COMPROMISE
HSM-2 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH SHONDRA WEILL,
MICHELLE WEILL AND WEILL
INDUSTRIAL SUPPLY, INC.
8-16-13 [[25](#)]

Tentative Ruling: The motion is granted. The chapter 7 trustee is authorized to enter into and perform in accordance with the Settlement Agreement and Release (the "Settlement") filed as an exhibit to the motion (Dkt. 28). Pursuant to 11 U.S.C. § 363(b) and the Settlement the

trustee is authorized to sell property of the estate consisting of the debtor's claims which are compromised of the disputes set forth in the motion (Dkt. 25) between the estate and Shondra Weill, Michelle Weill ("the Weills") and Weill Industrial Supply, Inc. ("the Company"). The proceeds of the Settlement shall be administered for the benefit of the estate. The trustee is authorized to execute all documents necessary to complete the sale and perform in accordance with the Settlement. 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 court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

The trustee asserts that the compromise is fair and equitable. The trustee alleges without dispute that the outcome of the litigation is uncertain and that if the estate did obtain a judgment in its favor the trustee would have difficulty collecting from the Weills and the Company. By entering into the Settlement the trustee also spares the estate the time and expense of complex litigation. Accordingly, the court finds that the trustee has carried the burden of persuading the court that the proposed compromises are fair and equitable, and the motion is granted. However, the court makes the finding that the compromise is fair and equitable under bankruptcy law; making that bankruptcy law finding is not a finding or conclusion that every term of the compromise is enforceable under non-bankruptcy law.

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.

33. [13-23188](#)-B-7 SHAWN/MARY PETERS MOTION TO DISMISS ADVERSARY
[13-2183](#) GTB-1 7-17-13 [[11](#)]
MCGREEVY V. PETERS ET AL
ADV. DISMISSED 8/29/13

Tentative Ruling: The motion is dismissed in part and denied in part.

The motion is dismissed as to the request that the plaintiff's complaint be dismissed. On August 29, 2013, Plaintiff voluntarily dismissed his complaint (Dkt. 23). Therefore, Debtors' request for dismissal is moot.

The motion is denied as to the request for attorney's fees. The motion fails to cite the legal authority upon which Debtors rely for the relief

they seek [LBR 9014-1(d)(5)] and analyze the facts of the case within the context of any legal authority.

The court will issue a minute order.

34. [13-23398](#)-B-7 LEONARD/ROSA CIRAULO MOTION TO SELL
DNL-7 8-20-13 [[82](#)]

Tentative Ruling: The motion is granted in part. Pursuant to 11 U.S.C. § 363(b), the chapter 7 trustee is authorized to sell real property located at 717 Broadway Street, Fairfield, CA 94533 ("Property") in an "as-is" and "where-is" condition to Hoka Investments LLC for \$329,000.00. 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 application for real estate broker's commissions is approved on a final basis in the amount of \$19,740.00, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

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

On March 13, 2013, the debtors filed a chapter 7 petition. By order entered on May 23, 2013 (Dkt. 39) (the "Order"), the court authorized the trustee to retain Coldwell Banker Real Estate ("Coldwell") as real estate broker for chapter 7 trustee in this case. Coldwell is to receive 6% of the sales price of the Property. Coldwell now seeks compensation for commissions earned from the sale. As set forth in the application, the approved commissions are reasonable compensation for actual, necessary and beneficial services.

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.

35. [13-25898](#)-B-7 KEITH/PATRICIA HEARDEN MOTION TO AVOID LIEN OF BAYVIEW
RWF-1 LOAN SERVICING, LLC
8-7-13 [[15](#)]

Tentative Ruling: The motion is denied without prejudice.

The motion is denied without prejudice.

The debtors seek to avoid the lien of Bayview Loan Servicing, LLC that allegedly impairs their exemption in their former residence located at 967 Hancock Road, Bullhead City, AZ 86442 ("Hancock Property"), pursuant to the motion (Dkt. 15 at 2). However, the debtors have not satisfied all of the elements required for avoidance of a judicial lien pursuant to 11 U.S.C. § 522(f).

First, there must be an exemption to which the debtor "would have been entitled under subsection (b) of this section." 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be either a nonpossessory, nonpurchase-money security interest in categories of property specified by the statute, 11 U.S.C. § 522(f)(2), or be a judicial lien. 11 U.S.C. § 522(f)(1).

In re Mohring, 142 B.R. 389, 392-93 (Bankr. E.D. Cal. 1992), aff'd, 24 F.3d 247 (9th Cir. 1994) (table).

Here, the debtors have failed to establish the existence of an exemption claimed in the Hancock Property. The court notes that Debtors have only listed one property on Schedule A with an address of 2520 Highland Trail, Bullhead City, AZ 86442 ("Highland Trail Property") (Dkt. 21 at 2). The court also notes that the only property listed on Schedule C is the Highland Trail Property (Dkt. 19 at 2). As a result, the debtors have not shown that the subject lien is avoidable under 11 U.S.C. § 522(f)(1).

The court will issue a minute order.

36. [12-24939](#)-B-7 KARINA URENA MOTION FOR ASSESSMENT OF FINES AGAINST, AND FOR FORFEITURE OF FEES BY DONNA L. CARDOZA
UST-2 8-16-13 [[28](#)]

Tentative Ruling: None.

37. [13-29996](#)-B-7 BARNES ROMINE MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY AND/OR MOTION FOR DAMAGES FOR CREDITOR MISCONDUCT
BMV-1 8-16-13 [[9](#)]

Tentative Ruling: None.

38. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC CONTINUED OBJECTION TO CLAIM OF CALIFORNIA SELF-INSURERS' SECURITY FUND, CLAIM NUMBER 110-2 (1)
FWP-83 7-2-13 [[1919](#)]

Disposition Without Oral Argument: The motion is removed from the calendar.

The parties filed a stipulation to withdraw this claim and vacate the

hearing. The stipulation was approved by order entered on August 15, 2013 (Dkt. 2083).

39. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC CONTINUED OBJECTION TO CLAIM OF
FWP-89 UNIVERSITY OF CALIFORNIA, CLAIM
NUMBER 368
7-2-13 [[1949](#)]
- ORDER VACATING HRG ON
8/30/13

Disposition Without Oral Argument: The motion is removed from the calendar.

The parties filed a stipulation to allow the claim in a reduced amount and vacate the hearing. The stipulation was approved by order entered on August 30, 2013 (Dkt. 2166).

40. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC CONTINUED OBJECTION TO CLAIM OF
FWP-91 WASTE MANAGEMENT, CLAIM NUMBER
347
7-2-13 [[1961](#)]

Tentative Ruling: This matter will not be called for hearing before 11:00 a.m. This objection is unopposed. In this instance, the court issues the following abbreviated tentative ruling.

The objection is overruled with prejudice.

Debtor objects to Claim No. 347 filed on January 17, 2013 by Waste Management for \$40,001.00 (the "Claim") filed pursuant to 11 U.S.C. § 502(b) on the basis that the Claim includes post-petition services and/or post-petition finance charges for a total amount of \$10,401.79.

A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure ("FRBP") constitutes prima facie evidence of the validity and amount of a claim. FRBP 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006).

Here, Debtor contends that the Claim is based upon services performed which are set forth in certain invoices attached to the Claim. The declaration of Jennifer Byrne filed in support sets forth the same general statement (Dkt. 1963, at 2, para. 7). Debtor states that the invoices range in dates from October 15, 2011 through November 1, 2012. Debtor then makes a conclusory argument that \$10,401.79 of the Claim consists of post-petition services. Debtor's support for this argument is merely attaching 42 pages of invoices with various dates on them.

Nowhere in the objection does Debtor specifically cite to which invoices include post-petition services. Therefore, Debtor has failed to meet its burden of providing the court with evidence sufficient to rebut the prima facie evidence of Waste Management's Claim.

The court will issue a minute order.

41. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC OMNIBUS OBJECTION TO CLAIMS
FWP-93 8-2-13 [[2025](#)]

Tentative Ruling: This matter will not be called for hearing before 11:00 a.m. The court issues no tentative ruling.

42. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC OBJECTION TO CLAIM OF
FWP-94 VETERINARY SERVICE INC., CLAIM
NUMBER 400
8-2-13 [[2030](#)]

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

The debtor's objection is sustained, and claim No. 400 filed on February 5, 2013, by Veterinary Service, Inc., (the "Claim") is disallowed for any amount in excess of \$332,345.92.

A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure ("FRBP") constitutes prima facie evidence of the validity and amount of a claim. FRBP 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006).

Here, the claim is entitled to prima facie validity. The proof of claim form is properly completed and specifies an amount and basis for the Claim. The Claim is also accompanied by an invoice summary which details the unpaid invoices on which the Claim is based.

However, as the motion and the supporting declaration of Jennifer Byrne point out, while the invoice summary indicates that several invoices are not included in the total amount of the claim because the goods were sold after the petition date of October 8, 2012, several charges for invoices dated October 9, 2012, one day after the petition date, and totaling \$7,819.83 have not been deducted from the total. The foregoing is sufficient to rebut the prima facie validity of the Claim's amount and justifies disallowance of the Claim for any amount in excess of \$332,345.92.

The court will issue a minute order.

43. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC
FWP-95

OBJECTION TO CLAIM OF LUWAYNE
WILLIAMS, CLAIM NUMBER 152
8-2-13 [[2035](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the number of matters on this morning's calendars (81 matters), the court issues the following abbreviated ruling.

The debtor's objection is sustained, and claim No. 152 filed on November 26, 2012, by Luwayne Williams, in an unspecified amount (the "Claim") is disallowed.

The Claim does not state a valid basis for the claimant's claim against the Debtor; the Claim states that the basis is "chapter 11 bankruptcy," but that is not a basis for a claim in favor of the claimant against the debtor. It merely states the fact that the debtor has filed a chapter 11 case. The Claim also does not specify any amount. The debtor seeks complete disallowance of the Claim.

A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure ("FRBP") constitutes prima facie evidence of the validity and amount of a claim. FRBP 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006).

Here, the Claim is not entitled to prima facie validity. By failing to state a valid basis for the claim against the debtor or any amount, even an amount designated as "unknown," the Claim is not completed in a form which substantially conforms to the Official Form B10, which constitutes proof of a claim in bankruptcy cases, as required by Fed. R. Bankr. P. 3001(a).

In many cases, simply presenting evidence in an objection that the Claim is not prima facie valid is insufficient to invalidate the Claim. See Heath v. American Express Travel Related Services Co., et al. (In re Heath), 331 B.R. 424, 434-35 (9th Cir. BAP 2005). However, the Bankruptcy Appellate Panel in Heath also recognized that "creditors have an obligation to respond to formal or informal requests for information. That request could even come in the form of a claims objection, if it is sufficiently specific about the information required." Heath, 331 B.R. at 436. A creditor's obligation to provide information in response to an objection is especially heightened where the claim is so lacking in supporting information that the objecting party cannot determine the basis for the claim in even the most general terms. Such is the case here. The Claim merely states the identity of the claimant. It does not state a valid basis for the claim, and it sets forth no amount sought. In this instance the claimant's failure to respond to the objection with evidence supporting the Claim justifies complete disallowance.

The court will issue a minute order.

44. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC OBJECTION TO CLAIM OF PACIFIC
FWP-96 GAS AND ELECTRIC COMPANY, CLAIM
NUMBER 254
8-2-13 [[2041](#)]

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

This matter is continued to October 15, 2013 at 9:32 a.m., pursuant to stipulation of the parties, which was approved by court order signed September 13, 2013.

45. [12-34448](#)-B-7 BRENDA RIDINGER MOTION TO AMEND THE PRE-TRIAL
[12-2652](#) GAR-1 ORDER O.S.T.
WELLS FARGO BANK, N.A. V. 9-9-13 [[38](#)]
RIDINGER

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(3) (motions set on shortened time). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.