

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

November 12, 2013 at 9:32 A.M.

1. [12-34448](#)-B-7 BRENDA RIDINGER MOTION FOR COMPENSATION BY THE
[12-2652](#) PGM-1 LAW OFFICE OF PETER G. MACALUSO
WELLS FARGO BANK, N.A. V. FOR PETER G. MACALUSO,
RIDINGER DEFENDANTS ATTORNEY(S), FEES:
\$8,100.00, EXPENSES: \$0.00
10-11-13 [[62](#)]

Tentative Ruling: None.

2. [11-38954](#)-B-11 KENNETH KNIGHTEN MOTION FOR FINAL DECREE
MHK-23 10-15-13 [[437](#)]

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

The motion is granted. Pursuant to Fed. R. Bankr. P. 3022, the clerk of the court shall enter a final decree in this case on form EDC-7-170 (Rev. 9/1/10). Upon entry of the final decree, the clerk of the court shall close the case.

The court finds, based on the undisputed declaration of the debtor-in-possession in support of the motion, that the debtor's estate has been fully administered pursuant to the terms of the confirmed chapter 11 plan.

The court will issue a minute order granting the motion.

3. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA CONTINUED MOTION TO USE CASH
KG-484 COLLATERAL
9-10-13 [[494](#)]

Tentative Ruling: None.

4. [11-43629](#)-B-7 ROBERT/JANICE HESS MOTION TO DISMISS ADVERSARY
[11-2793](#) EJS-1 PROCEEDING
PEAKE V. HESS ET AL 10-7-13 [[25](#)]

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

The motion is granted. The adversary proceeding is dismissed pursuant to Fed. R. Bankr. P. 7041(a).

The court will issue a minute order.

5. [13-27205](#)-B-7 THOMAS MURPHY OBJECTION TO DEBTOR'S CLAIM OF
TAA-2 EXEMPTIONS
10-10-13 [[39](#)]
WITHDRAWN BY M.P.

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

The objection is removed from the calendar. The chapter 7 trustee withdrew the objection on October 30, 2013 (Dkt. 44).

6. [12-21906](#)-B-7 JEFFREY WINSHIP AND DIANE MOTION TO EMPLOY GONZALES &
DNL-5 WHITE-WINSHIP SISTO, LLP AS ACCOUNTANT(S)
AND/OR MOTION FOR COMPENSATION
FOR GONZALES & SISTO, LLP,
ACCOUNTANT(S), FEES: \$1,300.00,
EXPENSES: \$0.00
10-10-13 [[78](#)]

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 chapter 7 trustee is authorized to employ Gonzales & Sisto, LLP ("G&S") as accountants for the chapter 7 trustee for tax-related accounting and preparation of state and federal income tax returns. The trustee is also authorized pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016 to pay G&S compensation in the amount of \$1,300.00 for the aforementioned services. Except as so ordered, the motion is denied.

The court finds that G&S is a disinterested person as that term is defined in 11 U.S.C. § 101(14). The court also finds that the approved fees and costs are reasonable compensation for actual, necessary and beneficial services to be rendered to the estate.

The court will issue a minute order.

7. [13-29606](#)-B-7 MARIA AVINA AND GUILLERMO MOTION TO CONVERT CASE FROM
DRE-1 AVINA-SEGURA CHAPTER 7 TO CHAPTER 13
10-15-13 [[43](#)]

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.

8. [12-41214](#)-B-11 RICHARD LYMAN MOTION FOR COMPENSATION FOR
JHH-11 JUDSON H. HENRY, DEBTOR'S
ATTORNEY(S), FEES: \$5,000.00,
EXPENSES: \$0.00
10-22-13 [[141](#)]

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.

9. [11-48519](#)-B-11 VICTOR HANNAN CONTINUED MOTION FOR
DL-6 COMPENSATION BY THE LAW OFFICE
OF DAHL LAW, ATTORNEY AT LAW
FOR WALTER R. DAHL, DEBTOR'S
ATTORNEY(S), FEES: \$9,641.00,
EXPENSES: \$213.54
9-11-13 [[145](#)]

Tentative Ruling: None.

10. [13-29428](#)-B-7 SANTIAGO GOMEZ MOTION TO CONFIRM TERMINATION
OR ABSENCE OF STAY
9-30-13 [[16](#)]

Tentative Ruling: The motion is denied.

Movant, secured creditor Wells Fargo Bank, N.A., seeks an order confirming that the automatic stay in this case has terminated as to the bank's collateral consisting of the debtor's residence located at 334 N.

Barrett Road, Yuba City, California, (the "Property"). Movant argues that the chapter 7 trustee's report of no distribution filed on August 22, 2013, indicates an intent to abandon the Property and therefore effects an abandonment of the Property, thereby terminating the automatic stay as to the Property pursuant to 11 U.S.C. § 362(c)(1).

The movant is incorrect that the trustee's "indication of an intent to abandon" in the report of no distribution effects an abandonment of the Property. Pursuant to 11 U.S.C. § 554(a), the trustee may abandon property of the estate only after notice and a hearing and only after showing that the property to be abandoned is either burdensome to the estate or is of inconsequential value and benefit to the estate. No hearing on abandonment of the Property has occurred in this case, and no showing that satisfies the standard set by § 554(a) has been made. The movant has cited no authority by which an "automatic abandonment" of the Property occurs based on the trustee's report of no distribution.

The court will issue a minute order.

11. [13-32529](#)-B-7 GARY/DEBRA CAMPBELL MOTION TO COMPEL ABANDONMENT
RPH-1 10-23-13 [[24](#)]

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

The motion is denied without prejudice.

The debtors did not give sufficient notice of the motion. The debtors filed this motion for abandonment of certain business-related personal property on October 23, 2013, with a notice of hearing (Dkt. 25) which requires written opposition to be filed and served no later than 14 days before the date of the hearing pursuant to the court's procedures under Local Bankruptcy Rule 9014-1(f)(1).

LBR 9014-1(f)(1), however, requires that a motions filed utilizing that procedure be filed and served no later than 28 days before the date of the hearing. In this case, the debtors filed and served the motion only 20 days before the date of the hearing. The debtors have made no request for an order shortening time.

The court will issue a minute order.

12. [12-33540](#)-B-11 CHUNGILL/KYU KIM
ET-5

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF EASON AND
TAMBORNINI, ALC FOR MATTHEW R.
EASON, DEBTOR'S ATTORNEY(S),
FEES: \$8,415.00, EXPENSES:
\$79.93
10-11-13 [[72](#)]

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 \$8415.00 in fees and \$79.93 in expenses, for a total of \$8494.73, for services rendered during the period July 23, 2012, through and including April 10, 2013, payable as a chapter 11 administrative expense pursuant to the terms of the confirmed chapter 11 plan confirmed by order entered April 10, 2013 (Dkt. 65). Except as so ordered, the motion is denied.

The debtors commenced this case by the filing of a voluntary petition under chapter 11 on July 23, 2012. By order entered on October 1, 2012 (Dkt. 24), the court authorized the debtors to retain the applicant as counsel for the debtors in this case, with an effective date of employment of July 23, 2012. The applicant now seeks compensation for services rendered and costs incurred during the period July 23, 2012, through April 10, 2013. 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.

13. [13-23040](#)-B-11 HERBERT MILLER
PD-2

MOTION TO DISMISS CASE AND/OR
MOTION TO CONVERT CASE FROM
CHAPTER 11 TO CHAPTER 7
10-8-13 [[135](#)]

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

The motion is removed from the calendar. By order signed November 6, 2013, the court continued the motion pursuant to the stipulation of the movants and the debtor to November 26, 2013, at 9:32 a.m.

14. [12-24939](#)-B-7 KARINA URENA CONTINUED MOTION FOR ASSESSMENT
UST-2 OF FINES AGAINST, AND FOR
FORFEITURE OF FEES BY, DONNA L.
CARDOZA
8-16-13 [[28](#)]

Tentative Ruling: None.

15. [13-31642](#)-B-7 SAM RANDO MOTION TO VALUE COLLATERAL OF
UNION BANK
10-16-13 [[11](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion was not properly served. A bankruptcy court lacks jurisdiction over a defendant if the defendant was not served properly under Fed. R. Bankr. P. 7004. See Scott v. United States (In re Scott), No. NV 09-1273-DHPa (9th Cir. BAP June 21, 2010), citing United States v. Levoy (In re Levoy), 182 B.R. 827, 832 (9th Cir. BAP 1995); Harlow v. Palouse Producers, Inc. (In re Harlow Props., Inc.), 56 B.R. 794, 799 (9th Cir. BAP 1985); see also Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc., 840 F.2d 685, 688 (9th Cir. 1988) (applying Fed. R. Civ. P. 4). Fed. R. Bankr. P. 7004 applies in contested matters. See Fed. R. Bankr. P. 9014(b).

By this motion the debtor seeks to value the collateral of Union Bank, N.A. ("Union"), holder of a lien secured by the real property located at 2551 Fulton Square #44, Sacramento, CA (the "Property"). As a contested matter under Fed. R. Bankr. P. 9014, Union, as the party against whom the debtor seeks relief, must be served with the motion in accordance with the rules set forth in Fed. R. Bankr. P. 7004. To date, there has been no certificate/proof of service filed for this motion. Therefore, there is no evidence that Union or any other party in interest was ever served with or given notice of the motion. Accordingly, the motion is dismissed without prejudice.

The court notes that even if proof of service were properly filed in this case, the motion would be denied without prejudice because it suffers from the following procedural defects. First, the motion fails to provide proper notice to parties in interest as is required by the Local Bankruptcy Rules. The debtor's notice of hearing (Dkt. 12) is set pursuant to Local Bankruptcy Rule 9014-1(f)(1). Local Bankruptcy Rule 9014-1(f)(1) states that "unless a different amount of time is required by the Federal Rules of Bankruptcy Procedure, these Local Rules, or by order of the Court, or the moving party elects to give the notice permitted by LBR 9014-1(f)(2), the moving party shall file and serve the motion at least twenty-eight (28) days prior to the hearing date." LBR 9014-1(f)(1). Since the debtor elected to give notice to parties pursuant to Local Bankruptcy Rule 9014-1(f)(1), he was required to provide twenty-eight (28) days' notice. The date of this hearing is November 12, 2013. Twenty-eight

days prior to the hearing date was October 15, 2013. Notice of the hearing was filed on October 16, 2013, which is only twenty-seven (27) days prior to the hearing date. Therefore, the debtor provided insufficient notice of the hearing in this instance.

Second, the debtor has failed to provide any evidence, *i.e.*, a declaration or appraisal, in support of the motion. Local Bankruptcy Rule 9014-1(d)(6) requires that every motion "be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested." LBR 9014-1(d)(6). A failure to comply with the requirements of the Local Bankruptcy Rules constitutes grounds to deny the motion. LBR 1001-1(g).

The court will issue a minute order.

16. [11-30846](#)-B-7 VIRGINIA HOWARD MOTION TO COMPROMISE
DLO-3 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH MERCURY
INSURANCE COMPANY
10-11-13 [[31](#)]

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

The motion is granted in part, and the chapter 7 trustee is authorized to enter into and perform in accordance with the settlement agreement (the "Agreement") on the terms set forth in the motion (Dkt. 31). The chapter 7 trustee is further authorized to disburse the net proceeds from the Agreement to the consensual lien creditors listed in the motion to satisfy their claims in the amounts set forth in the motion. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the court approves \$10,000.00 in fees and \$1,368.00 in costs, for a total of \$11,368.00, to Max Arnold ("Mr. Arnold"), payable from the net proceeds of the Agreement. Any remaining proceeds from the Agreement shall be administered for the benefit of the estate. Except as so ordered, the motion is denied.

Regarding the proposed Agreement, 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 chapter 7 trustee alleges without dispute that the Agreement is fair and equitable. The Agreement represents the limits of the policy held by the defendant in the case currently pending in the Butte County Superior Court, case no. CBCM 11-11421 (the "State Court Case"). As such, it is the most the estate could recover without having to worry about added legal fees and expenses that would be associated with fully litigating the matter. The court finds that the Agreement is a reasonable exercise of the trustee's business judgment. In re Rake, 363 B.R. 146, 152 (Bankr. D. Idaho 2006). Accordingly, the court finds that the trustee has

carried her burden of persuading the court that the proposed Agreement is fair and equitable, and the motion to enter into the Agreement is approved.

Regarding the proposed fees and costs for Mr. Arnold, by order entered on May 8, 2013 (Dkt. 30), the court authorized the trustee to retain Mr. Arnold as special counsel for the purpose of prosecuting the State Court Case. Mr. Arnold now seeks compensation for services rendered and costs incurred in connection with that litigation. As set forth in the motion and Mr. Arnold's supplemental declaration (Dkt. 34), the approved fees and costs are reasonable compensation for actual, necessary and beneficial services.

For counsel's future reference, the court notes that a separate certificate/proof of service was not filed for this motion. Rather, it was included as part of the notice of hearing document. Local Bankruptcy Rule 9014-1(e)(3) requires that "the proof of service for all pleadings and documents filed in support or opposition to a motion shall be filed as a separate document and shall bear the Docket Control Number." LBR 9014-1(e)(3). A failure to comply with the requirements of the Local Bankruptcy Rules may constitute grounds to deny motions in the future. LBR 1001-1(g).

The court will issue a minute order.

17. [13-21846](#)-B-7 RYAN SIMMERS MOTION FOR COMPENSATION BY THE
SLF-3 LAW OFFICE OF THE SUNTAG LAW
FIRM FOR DANA A. SUNTAG,
TRUSTEE'S ATTORNEY(S), FEES:
\$2,500.00, EXPENSES: \$0.00
10-15-13 [[38](#)]

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 a first and final basis in the amount of \$2,143.80 in fees and \$0.00 in expenses, for a total of \$2,143.80, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

Applicant seeks compensation for services rendered and costs incurred during the period of April 3, 2013 through October 15, 2013. By order entered on May 13, 2013 (Dkt. 28), the court authorized the trustee to retain the applicant as counsel in this case. The applicant's employment was effective April 3, 2013. The fees and costs requested are approved, with the exception of \$356.20 that the applicant has set aside for a telephonic court appearance on this matter. This matter is being disposed of without oral argument and will therefore not be called at the hearing on November 12, 2013. No telephonic court appearance is required. Therefore, the applicant's fees are reduced by \$356.20 for a total fee award of \$2,143.80. 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.

18. [12-33558](#)-B-7 DENNIS/BARBARA GYLES
MPD-2

MOTION TO SELL AND/OR MOTION TO
PAY , MOTION TO APPROVE PAYMENT
OF A BUYER'S PREMIUM TO THE
BANKRUPTCY ESTATE
10-15-13 [[26](#)]

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 8972 Sierra Street, Elk Grove, CA 95624 (the "Property") to Huong Phan and Sopheap Nhieu for \$92,000.00 in cash with a \$15,000.00 buyer's premium to be paid by the purchasers. In this case, Nationstar Mortgage, LLC ("Nationstar") holds a lien against the Property in the amount of \$229,115.00. The trustee has not provided proof that this lienholder consents to the proposed short 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 lienholders agree, no case or controversy within the meaning of Article III exists.

The court acknowledges that the trustee has filed an approval letter from Nationstar (Dkt. 29, p.29). However, according to this letter, Nationstar's approval of the short sale is contingent upon the closing occurring on or before November 4, 2013 at 12:00 p.m. It is now November 12, 2013. There is no evidence before this court that a sale closed prior to the November 4 deadline, or that Nationstar has consented to an extension of the deadline. As such, the trustee has failed to provide proof that Nationstar has consented to the proposed short sale, and there is not an actual short sale for the court to approve.

The court will issue a minute order.

19. [13-28559](#)-B-7 JOSE/ROSA RODRIGUEZ

MOTION TO CONFIRM TERMINATION
OR ABSENCE OF STAY
10-7-13 [[18](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is dismissed without prejudice because the movant has failed to demonstrate that there is an actual case or controversy between itself and the debtors. As such, 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.

Here, the movant has failed to show that it has any standing whatsoever to bring this motion. The movant is not listed in the creditor matrix for this case, has not filed a proof of claim, is not listed on any of the debtor's schedules, and has failed to provide any evidence that it is the assignee of any other creditor's claim or interest. Additionally, the motion contains several inaccuracies that are inapplicable to the instant case. For example, it seeks a determination that the automatic stay has terminated as to the real property located at 121 Silver Willow Court, Galt, CA 95632 (the "Property"). However, the Property does not appear on the debtor's schedules and the movant has presented no evidence that the Property is property of this bankruptcy estate. The movant states that it holds an "undisputed, secured claim" against the Property in the amount of \$274,000.00, but no such secured claim has been filed in this case. The motion also refers to a petition date of July 25, 2013, when the petition date in this case was actually June 26, 2013. The movant further states that Mr. Geoffrey Richards was appointed the chapter 7 trustee, when the chapter 7 trustee in this case has always been Ms. Irma C. Edmonds. Additionally, the movant states that the chapter 7 trustee filed a report of no distribution on September 4, 2013. However, the chapter 7 trustee's report of no distribution was filed in this case on August 21, 2013. The movant has failed to demonstrate that it has standing to bring this motion or that the court has jurisdiction over the matter, and the motion is dismissed.

The court will issue a minute order.

20. [12-29460](#)-B-7 MARK/MARIANNA HARRIS MOTION FOR COMPENSATION FOR
LBG-2 LUCAS B. GARCIA, DEBTOR'S
ATTORNEY(S), FEES: \$5,130.00,
EXPENSES: \$383.56
10-12-13 [[67](#)]

Tentative Ruling: The motion is denied without prejudice.

The motion is denied without prejudice because the movants have failed to provide any legal authority in support of their assertion that their attorney, Mr. Lucas Garcia, is entitled to legal fees and expenses as the prevailing party in a lien avoidance action. Simply referring to "courts of California" and "state standards", without more, is insufficient for an award of attorney's fees and expenses. Local Bankruptcy Rule 9014-1(d)(5) requires that "each motion, opposition, and reply shall cite the legal authority relied upon by the filing party." LBR 9014-1(d)(5). A failure to comply with the requirements of the Local Bankruptcy Rules constitutes grounds to deny the motion. LBR 1001-1(g).

The court will issue a minute order.

21. [12-20461](#)-B-7 VALERIE BOWEN
JRR-2

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT AND/OR MOTION FOR
COMPENSATION FOR JOHN C.
MAPLES, SPECIAL COUNSEL(S),
FEES: \$105,000.00, EXPENSES:
\$4,446.62., MOTION TO PAY
10-15-13 [[49](#)]

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 enter into a \$300,000.00 settlement agreement with Mr. Michael Jones ("Mr. Jones"), an attorney who represents the defendant in a personal injury lawsuit in which the debtor is the plaintiff. The trustee also seeks court authorization to disburse the net proceeds from the settlement agreement to pay special counsel John Maples ("Mr. Maples") his contingency fee and costs for the work performed in the personal injury lawsuit, as well as satisfy the claims of certain secured medical lienholders. The trustee proposes to use the remaining proceeds to fully pay the claims of allowed unsecured creditors of the estate. The trustee, however, has failed to submit evidence that there is an actual settlement or compromise for the court to approve.

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 lienholders agree, no case or controversy within the meaning of Article III exists.

Here, the court acknowledges that the trustee has attached as Exhibit D to the motion (Dkt. 52, p.8) what he refers to as the "settlement agreement" between the parties. However, the court notes that this document is a liability release form executed solely by the trustee. It purports to release the defendant in the personal injury lawsuit, Mr. Connie Jo Fey, as well as her insurance provider, United Services Automobile Association Insurance Company, from any and all future liability stemming from the car accident on May 6, 2010, in exchange for the \$300,000.00 settlement. However, this agreement has not been signed by both parties. The trustee has provided no evidence that Ms. Fey, her insurance provider, Mr. Jones, or any of their representatives consent to the terms of the settlement agreement. In fact, in the letter dated August 19, 2013 from Mr. Maples, attached as Exhibit C to the motion (Dkt. 52, p.7), Mr. Maples states that "The Defense Counsel in the personal injury case is requiring BK Court approval." If this is true, then the trustee is simply seeking a court order "pre-approving" the settlement agreement, and its associated disbursements, to which the necessary parties may or may not agree. The court has no jurisdiction to issue such an order in the absence of an

actual case or controversy.

The court will issue a minute order.

22. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC CONTINUED OBJECTION TO CLAIM OF
FWP-96 PACIFIC 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.

The objection is removed from the calendar, as resolved by the stipulation of the parties filed on October 31, 2013 (Dkt. 2304), which stipulation was approved by order signed November 6, 2013.

23. [12-27767](#)-B-11 DOMINIQUE ENGEL MOTION FOR COMPENSATION FOR
MLA-5 MITCHELL L. ABDALLAH, DEBTOR'S
ATTORNEY(S), FEES: \$11,597.30,
EXPENSES: \$989.80
10-22-13 [[169](#)]

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.

24. [12-35371](#)-B-7 PAVEL KUZMENKO MOTION TO SELL
JRR-2 10-21-13 [[41](#)]

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 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 9028 Allbritton Way, Elk Grove, CA 95758 (the "Property") to JHN Enterprise, LLC for \$207,000.00 cash in an "as is" condition with a \$15,000.00 buyer's premium. In this case, Bayview Loan Servicing, LLC ("Bayview") holds a first deed of trust against the Property in the amount of \$221,000.00. The trustee has not provided proof that this lienholder consents to the proposed short 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 lienholders agree, no case or controversy within the meaning of Article III exists.

The court acknowledges that the trustee has filed an approval letter from Bayview (Dkt. 44, p.51). However, according to this letter, Bayview's approval of the short sale "is good through 10/29/2013 end of business day." It is now November 12, 2013. There is no evidence before this court that a sale closed prior to the October 29 deadline, or that Bayview has consented to an extension of the deadline. As such, the trustee has failed to provide proof that Bayview has consented to the proposed short sale, and there is not an actual short sale for the court to approve.

The court will issue a minute order.

25. [08-37476](#)-B-7 SOMALY KONG

MOTION FOR ENTRY OF DISCHARGE
10-18-13 [[32](#)]

Tentative Ruling: The motion is denied without prejudice.

The motion is denied without prejudice because it suffers from the following procedural defects. First, the motion fails to provide proper notice to parties in interest as is required by the Local Bankruptcy Rules. The debtor's notice of hearing (Dkt. 33) is set pursuant to Local Bankruptcy Rule 9014-1(f)(1). Local Bankruptcy Rule 9014-1(f)(1) states that "unless a different amount of time is required by the Federal Rules of Bankruptcy Procedure, these Local Rules, or by order of the Court, or the moving party elects to give the notice permitted by LBR 9014-1(f)(2), the moving party shall file and serve the motion at least twenty-eight (28) days prior to the hearing date." LBR 9014-1(f)(1). Since the debtor elected to give notice to parties pursuant to Local Bankruptcy Rule 9014-1(f)(1), she was required to provide twenty-eight (28) days' notice. The date of this hearing is November 12, 2013. Twenty-eight days prior to the hearing date was October 15, 2013. Notice of the hearing was sent out on October 18, 2013, which is only twenty-five (25) days prior to the hearing date. Therefore, the debtor provided insufficient notice of the hearing in this instance.

Second, the debtor failed to file a separate certificate/proof of service for this motion. Rather, it was included as part of the notice of hearing document. Local Bankruptcy Rule 9014-1(e)(3) requires that "the proof of service for all pleadings and documents filed in support or opposition to a motion shall be filed as a separate document and shall bear the Docket Control Number." LBR 9014-1(e)(3). A failure to comply with the requirements of the Local Bankruptcy Rules constitutes grounds to deny the motion. LBR 1001-1(g).

The court notes that even if the motion did not suffer from these procedural defects, the motion would be denied because, in order to obtain a

discharge, the debtor must first succeed in vacating the prior dismissal of her chapter 7 case. That requires a motion to vacate the dismissal. Since a motion to vacate a dismissal is a request for relief against all of the debtor's creditors, it is a contested matter and must be set for a hearing and properly served on all creditors, the chapter 7 trustee, and the United States trustee. Fed. R. Bankr. P. 9014; LBR 9014-1(a).

In any motion to vacate the prior dismissal, the debtor must address whether the court has authority to vacate an automatic dismissal under 11 U.S.C. § 521(i), which was the reason for the prior dismissal. Under 11 U.S.C. § 521(i)(1), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under 11 U.S.C. § 521(a)(1) within forty-five (45) days after the date of the filing of the petition, the case is automatically dismissed effective on the forty-sixth day after the date of the filing of the petition. Under 11 U.S.C. § 521(i)(3), upon request of the debtor made within forty-five days after the filing of the petition, the court may allow the debtor additional time beyond the initial forty-five day period, not to exceed an additional forty-five days, to file the required documents if the court finds justification for extending the period for the filing. If a request for an extension is not granted and the case is automatically dismissed, the court cannot vacate the automatic dismissal. When Congress enacted BAPCPA, it "created a law that is sometimes self-executing, inflexible and unforgiving. Title 11 U.S.C. § 521(i) is just one of those provisions. . . . After the expiration of the specified period set forth in 11 U.S.C. § 521(i)(1), there are no exceptions, no excuses, only dismissal and consequences that flow therefrom." In re Ott, 343, B.R. 264, 266-268 (Bankr. D. Colo. 2006).

Here, the debtor filed her voluntary chapter 7 petition as a "skeleton" petition on November 26, 2008, in which the statement of social security number, master address list, Exhibit D with certificate for debtor, statement of financial affairs, attorney disclosure statement, summary of schedules, statistical summary, Schedules A-J, and Form 22A were not filed. Forty-five days after the petition date was January 10, 2009. As evidenced by both the entries on the docket and the order to show cause that was mailed to the debtor and her attorney on December 31, 2008 (Dkt. 12), the debtor still needed to submit Schedules A-J, the statement of financial affairs, the statistical summary, and the summary of schedules at the time the forty-five day period expired. The debtor did not request additional time to file the information required by 11 U.S.C. § 521(a)(1) within the forty-five day period following the filing of the petition. As a result, the case was automatically dismissed pursuant to 11 U.S.C. § 521(i) as of 12:01 a.m. on January 13, 2009 (Dkt. 18).

The court will issue a minute order.

26. [11-36395](#)-B-7 GURJIT JOHL
GJH-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF HUGHES LAW
CORPORATION FOR GREGORY J.
HUGHES, SPECIAL COUNSEL(S),
FEES: \$203,823.75, EXPENSES:
\$13,528.75
10-15-13 [[59](#)]

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

This matter is continued to November 26, 2013 at 9:32 a.m.

Pursuant to Local Bankruptcy Rule 9014-1(j), "continuances of hearings must be approved by the Court. A request for a continuance must be made orally at the scheduled hearing or in advance of it if made by written application. A written application shall disclose whether all other parties-in-interest oppose or support the request for a continuance." LBR 9014-1(j). On November 5, 2013, Hughes Law Corporation ("Hughes") filed an ex parte application to continue this matter to November 26, 2013 at 9:32 a.m. (Dkt. 71). No parties-in-interest opposed the prior motion, and the court finds no reason to conclude that any party would be opposed to this continuance. As such, the court grants Hughes' request to continue this matter to November 26, 2013 at 9:32 a.m. Notice of the continued hearing date shall be given to all creditors and parties in interest no later than November 5, 2013 pursuant to Fed. R. Bankr. P. 2002(a)(6). Opposition is due by November 12, 2013. Replies, if any, are due by November 19, 2013.

The court will issue a minute order.