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FILED
MAY 12 2011
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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EASTERN DISTRICT OF CALIFORNIA

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In re:) Case No. 10-50583-D-7
)
JIMMIE EARL STEPHEN,)
)
Debtor.)
_____)

10 This memorandum decision is not approved for publication and may
11 not be cited except when relevant under the doctrine of law of
the case or the rules of claim preclusion or issue preclusion.

12 MEMORANDUM DECISION

13 On December 16, 2010, the debtor in this case, Jimmie Earl
14 Stephen (the "debtor"), filed a notice of appeal from this
15 court's order denying his application for waiver of the filing
16 fee and the order dismissing this chapter 7 case. The appeal is
17 pending in the Ninth Circuit Bankruptcy Appellate Panel ("BAP")
18 as Case No. EC-10-1511.¹

19 On March 25, 2011, the debtor filed in the BAP a motion for
20 leave to proceed with the appeal in forma pauperis (the "IFP
21 Motion"). On April 7, 2011, the BAP transferred the IFP Motion
22 to the United States District Court for this district on the
23 basis that the BAP has no authority to grant in forma pauperis
24 motions under 28 U.S.C. § 1915(a) because bankruptcy courts are
25 not "court[s] of the United States" as defined in 28 U.S.C. §

26

27 1. By order of the BAP dated March 7, 2011, the scope of
28 the appeal has been limited to the November 30, 2011 order
dismissing the case.

1 451. The BAP cited Perroton v. Gray (In re Perroton), 958 F.2d
 2 889 (9th Cir. 1992) and Determan v. Sandoval (In re Sandoval),
 3 186 B.R. 490, 496 (9th Cir. BAP 1995) for this holding.

4 The district court, in turn, on April 28, 2011 issued an
 5 order holding that, as units of the district court under 28
 6 U.S.C. § 151, "[w]ithin their subject matter jurisdiction, 28
 7 U.S.C. § 157, bankruptcy judges have authority to grant in forma
 8 pauperis status as would any other judge of the district court."²
 9 Thus, the district court concluded that the IFP Motion had been
 10 erroneously transferred to the district court rather than the
 11 bankruptcy judge who presided in this case, and transferred the
 12 IFP Motion to this court. The district court did not address the
 13 Perroton and Sandoval cases.

14 As the BAP is comprised of bankruptcy judges, it appears the
 15 BAP is, as much as this court, a "court of the United States"
 16 with, according to the district court, the jurisdiction to hear
 17 and determine in forma pauperis motions under 28 U.S.C. §
 18 1915(a). This court believes it is most appropriate for the
 19 court where the matter is pending to decide the debtor's request
 20 for a waiver of the filing fee for that matter. If the BAP feels
 21 differently, upon remand with any instructions, this court will
 22 decide the IFP Motion.

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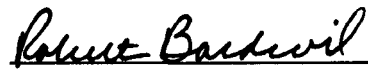
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27 2. Order filed April 28, 2011 in Stephen v. Fukushima,
 28 United States District Court, Eastern District of California,
 Case No. MC 0037 MCE GGH PS, at 2:4-6.

1 Accordingly, this court will transfer the IFP Motion back to
2 the BAP. The court will issue an appropriate order.

3
4 Dated: May 12, 2011



ROBERT S. BARDWIL
United States Bankruptcy Judge

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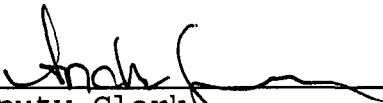
CERTIFICATE OF MAILING

I, Andrea Lovgren, in the performance of my duties as Deputy Clerk to the Honorable Robert S. Bardwil, caused to be mailed by ordinary mail a true copy of the attached document to each of the parties listed below:

Jimmie Earl Stephen C56483
P.O. Box 4000-22-H-3-L
Vacaville, CA 95696

Alan Fukushima
9245 Laguna Springs Dr., #200
Elk Grove, CA 95758

DATE: MAY 12 2011



Deputy Clerk