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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: JANET E. LONNEKER,

Debtor.

Civil No.: 17cv1079-JAH (KSC)  
Bankruptcy No. 15-08140-LA7  
Adversary No. 16-90054-LA

RICHARD LAMBERTUS, an individual,  
Plaintiff and Appellant,

v.

JANET E. LONNEKER,  
Defendant and Appellee.

**ORDER DISMISSING APPEAL**

**I. INTRODUCTION**

Richard Lambertus (“Lambertus” or “Appellant”), proceeding *pro se*, appeals the Bankruptcy court’s order granting Janet E. Lonneker’s (“Lonneker” or “Appellee”) motion for sanctions. Lonneker moved for sanctions against Appellant pursuant to Federal Rule of Civil Procedure (“*Fed. R. Civ. P.*”) Rule 11 after the Bankruptcy court dismissed Appellant’s second amended complaint (“SAC”). The bankruptcy court held a hearing on the motion and issued a tentative ruling with further instructions to the movant. After the filing of this appeal, the bankruptcy court confirmed a modified ruling awarding sanctions against Appellant. “ ‘Although the issue of whether this Court has jurisdiction over the appeal was not raised, the Court must address the question *sua sponte*’”. *In re Thompson*,

1 633 F. App'x 479, 480 (9th Cir. 2016) (citing *Hostler v. Groves*, 912 F.2d 1158, 1160 (9th  
2 Cir.1990). The Court **DISMISSES** Lambertus' appeal for lack of appellate jurisdiction.

## 3 **II. BACKGROUND**

4 Lambertus commenced adversarial proceedings in the chapter 7 bankruptcies of two  
5 of the managing members of Liberty Metals Group, LLC, John M. Lonneker ("John") and  
6 Janet E. Lonneker ("Debtor" or "Appellee"). Lambertus filed a complaint for denial of  
7 discharge under 11 USC § 727 in both actions; first in *Lambertus v. John Mark Lonneker,*  
8 *Jr.*, Adversary Proceeding No. 15-90111-LA7 ("the John Action" ), then in *Lambertus v.*  
9 *Janet Lonneker*, Adversary Proceeding No. 16-90054 ("the Janet Action") . *Doc. No. 5-1*  
10 at 11.

11 In the Janet action, Lonneker moved for judgment on the pleadings, which the  
12 bankruptcy court granted with limited leave to amend. *Id.* at 47. On January 10, 2017,  
13 Lambertus filed a second amended complaint ("SAC") in the Janet Action that was nearly  
14 identical to the proposed amended complaint he sought leave to file in the John Action *Id.*  
15 at 10, 45. The bankruptcy court issued a tentative ruling denying Lambertus' motion for  
16 leave to file the amended complaint in the John Action. The tentative ruling was confirmed  
17 as the order of the court on February 23, 2017. Approximately one week later, and in light  
18 of the court's order in the John Action, Appellee filed a motion to dismiss the SAC in the  
19 Janet Action and notified Lambertus that a motion for sanctions would be filed with the  
20 court unless the SAC was voluntarily dismissed. *Id.* at 11, 18. Appellee served a copy of  
21 the motion for sanctions upon Lambertus pursuant to *Fed. R. Civ. P.* Rule 11(c)(2). *Id.* at  
22 13.

23 Lambertus declined to dismiss the SAC in the Janet action and the Court granted  
24 Appellee's motion to dismiss with prejudice on March 30, 2017. Lambertus timely  
25 appealed. *See In re Lonneker*, No. 17CV732-JAH (KSC), 2019 WL 1434708 (S.D. Cal.  
26 Mar. 29, 2019). On or about April 6, 2017, Appellee filed the motion for sanctions with  
27 the bankruptcy court. *Id.* at 10- 15. While the order granting Lonneker's motion to dismiss  
28 the SAC in the Janet Action was on appeal, the bankruptcy court issued a tentative ruling

1 granting the motion for sanctions. On May 12, 2017, a day after the hearing on the motion  
2 was held, Lonneker filed a Notice of Lodgment of order on the motion for sanctions for  
3 signature by the judge pursuant to Rule 7054-3(b) of the Local Rules of the United States  
4 Bankruptcy Court for the Southern District of California. *Id.* at 46. The notice informed  
5 Lambertus he had seven (7) days within which to file and serve any objections to the lodged  
6 order, and/or file and serve an alternate order upon Lonneker. *Id.* No objections were filed.

7 The bankruptcy court’s tentative ruling on the motion for sanctions indicated a  
8 forthcoming order issuing sanctions against Lambertus in the amount “of \$3,210.00 for  
9 Lonneker’s attorney’s fees and costs incurred to dismiss the SAC, plus her attorney’s fees  
10 and costs incurred to prosecute this Motion for Sanctions”. *Doc. No. 5-1* at 57. The  
11 tentative ruling further instructed that the latter award was to be established by declaration  
12 to be filed within one week of the hearing. The court issued a minute order instructing  
13 counsel to “file a declaration and order with blanks in it for additional fees and cost for his  
14 services for the Court to fill in and serve on [ ] Lambertus.” *Id.* at 63.

15 On May 24, 2017, Appellant filed a notice of appeal with this Court, listing the date  
16 on which judgment, order, or decree was entered as May 12, 2017. *Doc. No. 1-2* at 1. The  
17 bankruptcy court confirmed its tentative ruling, *as modified*, on May 26, 2017. *Id.* at 2, 52-  
18 57.<sup>1</sup> The final modified order was not made part of the appellate record.

### 19 III. DISCUSSION

20 This Court has jurisdiction to hear appeals from a final order of the bankruptcy court  
21 pursuant to 28 U.S.C. § 158(a); *See In re AFI Holding, Inc.*, 530 F.3d 832, 836 (9th Cir.  
22 2008) (“[A] bankruptcy court order is final and thus appealable where it (1) resolves and  
23 seriously affects substantive rights and (2) finally determines the discrete issue to which it  
24 is addressed.”)

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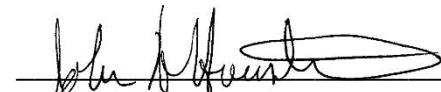
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28 <sup>1</sup> Appellant’s designation of record lists the Court Modified Order Regarding Defendant’s Motion for Sanctions Under Federal Rule 11 as bankruptcy docket number 100, signed and modified on May 26, 2017. Despite the designation, the modified order is not included in the record on appeal.

1 [A]n order awarding sanctions ... is not final until judgment is entered, an appeal  
2 generally must be dismissed as premature when it is taken after an order awarding  
3 sanctions ... but before the determination of damages and entry of judgment.  
4 *In re Thompson*, 633 F. App'x 479, 480 (9th Cir. 2016) (citations omitted).

5 As in *In re Thompson*, Lambertus never appealed from the final order of the  
6 bankruptcy court. Lambertus filed the notice of appeal two days prior to the entry of the  
7 Court Modified Order and only included in the appellate record the bankruptcy court's  
8 tentative ruling. 633 F. App'x at 480. Although an appellate court may treat a premature  
9 appeal as filed on the date of and after the entry of judgment pursuant to Federal Rule of  
10 Appellate Procedure 4(a)(2), it may do so only "when all that remain[s] [i]s the clerk's  
11 ministerial task of entering a Rule 58 judgment." *Id.* at 481 (quoting *Kennedy v. Applause,*  
12 *Inc.*, 90 F.3d 1477, 1483 (9th Cir.1996)(internal quotations omitted). Here the bankruptcy  
13 court's tentative ruling granting sanctions expressly called for Lonneker to file and serve  
14 additional evidence in the form of a declaration detailing the fees and costs associated with  
15 bringing the sanction motion, thus reserving a determination of the total award of sanctions  
16 to be imposed. "The remaining tasks were unlike the 'ministerial task' of entering  
17 judgment, *Kennedy*, 90 F.3d at 1483, so Rule 4(a)(2) does not permit [the Court] to  
18 treat [Lambertus'] appeal as timely." *Id.*

19 Accordingly, and for the reasons set forth, the Court finds the appeal premature and  
20 DISMISSES the appeal for lack of jurisdiction.

21 DATED: November 14, 2019.

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24 HON. JOHN A. HOUSTON  
25 UNITED STATES DISTRICT JUDGE  
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