

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Sacramento, California

July 10, 2014 at 10:30 a.m.

1. [13-34303](#)-E-7 RAYMOND CLIFFORD AND TRUSTEE'S MOTION TO DISMISS FOR
JMH-1 RHONDA WILSON FAILURE TO APPEAR AT SEC.
David Ndudim 341(A) MEETING OF CREDITORS
5-22-14 [[94](#)]

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on May 22, 2014. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Dismiss is continued to 10:30 a.m. on August 7, 2014.

Michael J. Hopper, Chapter 7 Trustee, moves for the case to be dismissed for failure to appear at the Section 341 Meeting of Creditors held on May 21, 2014. Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. §341. Attendance is mandatory. 11 U.S.C. § 343. Trustee continued the meeting to July 11, 2014.

Counsel for Debtor responds, stating that he was summoned for jury

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duty on the day of the scheduled creditors meeting on May 20, 2014.

The court notes that the Meeting of Creditors was held on May 21, 2014, and Debtor's Counsel testifies he was in jury duty on May 19 and May 20. There does not appear to be a conflict in dates based on the testimony before the court.

However, the court continues the hearing on the Motion to Dismiss until after the continued meeting of creditors.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is continued to 10:30 a.m. on August 7, 2014.

Tentative Ruling: The Motion to Abandon Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on June 19, 2014. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Abandon Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion to Abandon Property is denied without prejudice.

MOTHORITIES

The pleading title motion is a combined motion and points and authorities in which the grounds upon which the motion is based are buried in detailed citations, quotations, legal arguments, and factual arguments (the pleading being a "Mothorities") in which the court and Plaintiff are put to the challenge of de-constructing the Mothorities, divining what are the actual grounds upon which the relief is requested (Fed. R. Civ. P. 7(b) and Fed. R. Bankr. P. 7007), restate those grounds, evaluate those grounds, consider those grounds in light of Fed. R. Bankr. P. 9011, and then rule on those grounds for the Defendant. The court has declined the opportunity to provide those services to a movant in other cases and adversary proceedings, and has required debtors, plaintiffs, defendants, and creditors to provide

those services for the moving party.

The court has also observed that the more complex the Motions in which the grounds are hidden, the more likely it is that no proper grounds exist. Rather, the moving party is attempting to beguile the court and other party.

In such situations, the court routinely denies the motion without prejudice and without hearing. Law and motion practice in federal court, and especially in bankruptcy court, is not a treasure hunt process by which a moving party makes it unnecessarily difficult for the court and other parties to see and understand the particular grounds (the basic allegations) upon which the relief is based. The court does not provide a differential application of the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules as between creditors and debtors, plaintiff and defendants, or case and adversary proceedings. The rules are simple and uniformly applied.

REVIEW OF MOTION

After notice and hearing, the court may order the Trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000). Here the

The Motion filed by William Conrad ("Debtor") requests the court to order the Trustee to abandon the bankruptcy estate's interest in Debtor's business, BC Power and Concrete, a sole proprietorship. Debtor states that the business maintains no assets of value and derives income solely in labor and his ability to perform his concrete projects. Debtor states all the assets of the business have been listed on Schedule B and exempted on Schedule C.

However, Debtor does not provide a description of the assets in the business that he wishes to abandon. The court does not have sufficient information regarding the property to be abandoned. For the court to grant this motion, the Debtor needs to specify what business assets are being abandoned. For instance, the business name, specific business accounts, supplies, office hardware (laptop, computer, printer), and office furniture (dental chairs, industrial lights). This court will not issue vague orders.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Abandon Property filed by William Conrad ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment

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is denied without prejudice.

3. [12-36419](#)-E-11 KFP-LODI, LLC MOTION FOR COMPENSATION BY THE
SAC-12 Scott A. CoBen LAW OFFICE OF SCOTT A. COBEN
AND ASSOCIATES FOR SCOTT A.
COBEN, DEBTOR'S ATTORNEY
5-29-14 [[419](#)]

Final Ruling: No appearance at the July 2, 2014 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on May 29, 2014. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6) 21 day notice and L.B.R. 9014-1(f)(1) 14-day opposition filing requirements.)

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

CoBen & Associates, the Attorney ("Applicant") for Debtor, KFP-LODI, LLC ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period April 2, 2013 through May 22, 2014. The order of the court approving employment of Applicant was entered on April 2, 2013.

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 16.8 hours in this category. Applicant arranged for continued use of cash collateral during the life of the case; attended status conferences, prepared a status

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conference statement and pleadings addressing the court's concerns about potential conflicts of interest; reviewed the state court litigation against the guarantors and evaluated the impact on the case; reviewed claims and arranged for the claim filed by Choice to be modified; provided requested information to Creditors; and prepared this fee application.

Motions to Value: Applicant spent 17.1 hours in this category. Applicant prepared motions to value the secured claims of Community Reinvestment Fund and the two claims of Nick Patel; negotiated resolutions of these motions and drafted stipulations and order addressing these motions to value; and attended the hearings on the motions to value.

Employment Application: Applicant spent 5.4 hours in this category. Applicant drafted the application, declaration, and proposed orders authorizing the employment of Attorney and Debtors' CPA.

Relief from Stay: Applicant spent 11.8 hours in this category. Applicant reviewed and opposed motions for relief from stay filed by TerraCotta and SBG1; negotiated the denial of these motions in connection with confirmation of a consensual plan.

Plan Confirmation: Applicant spent 76.20 hours in this category. Applicant spent the majority of the time in this category because he was not involved with much of the preliminary work in the case. Applicant extensively negotiated with counsel for creditors; drafted and filed the disclosure statement and plan, and confirmed the plan on February 27, 2014.

Post-Confirmation Matters: Applicant spent 17.4 hours in this category. Applicant filed a motion to modify the plan post-confirmation, seeking to enjoin the state court litigation while Debtor performed under the plan; court denied the motion stating that the injunction should be sought by adversary proceeding; Debtor and Creditor reached an agreement to secure financing to pay off debt at a discount; motion to approve financing drafted and to be set for hearing.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a

reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

- (I) unnecessary duplication of services; or
- (ii) services that were not--
 - (I) reasonably likely to benefit the debtor's estate;
 - (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged as legal services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the legal services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including confirming a Chapter 11 Plan of Reorganization. The court finds

the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

The fees request are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Scott A. CoBen	134.7	\$250.00	<u>\$33,675.00</u>
Total Fees For Period of Application			\$33,675.00

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$33,675.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Plan Administrator under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Applicant is allowed, and the Plan Administrator is authorized to pay, the following amounts as compensation to this professional in this case:

Fees \$33,675.00

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by CoBen & Associates, the Attorney ("Applicant") for Debtor, KFP-LODI, LLC having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that CoBen & Associates is allowed the following fees and expenses as a professional of the Estate:

CoBen & Associates, Professional Employed by Debtor in Possession

Fees in the amount of \$ 33,675.00

to be resolved by the proposed settlement are an interest in an Arizona State Court judgment obtained by the Debtors against Settlor entered on or about September 22, 2009, in Maricopa County Superior Court, Case No. CV2006-0 16562, in the amount of \$409,662.29 ("State Court Judgment").

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit D in support of the Motion, Dckt. 109):

- A. The Tarantos shall pay the Trustee a total of \$70,000.00 in full satisfaction of all claims the Trustee may have against the Tarantos with respect to the State Court Judgment and the Discharge Judgment, payable as follows: (a) \$5,000.00 due upon execution of the Settlement, nonrefundable in all cases unless the Settlement is not approved by this Court; and (b) the balance of \$65,000.00 due within 10 calendar days of entry of this Court's order approving the Settlement, which the Trustee is informed will be funded by relatives of the Tarantos;
- B. If full payment is not timely made, the Trustee shall be allowed to retain all payments, retain all rights under the State Court Judgment and the Discharge Judgment, and pursue all rights and remedies available under applicable law against the Tarantos with respect to the State Court Judgment and the Discharge Judgment, including recovery of attorney fees and costs; and
- C. Effective upon the Trustee's receipt of good settlement funds, the parties shall exchange releases of claims with respect to the State Court Judgment and the Discharge Judgment.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

- 1. The probability of success in the litigation;
- 2. Any difficulties expected in collection;
- 3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
- 4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Under the terms the Settlement all claims of the Estate, including any pre-petition claims of the Debtor, are fully and completely settled, with all such claims released. Settlor has granted a corresponding release for Debtor and the Estate.

Probability of Success

Trustee argues this factor weights in favor of the Settlement. While the State Court Judgment and Discharge Judgment have already been obtained, it is unknown to what extent the Tarantos could alter the Trustee's judgment creditor rights through a Chapter 11 plan (e.g. delaying payments). The Tarantos have contended that they can alter the Trustee's rights. While the Trustee believes the Tarantos would be unable to satisfy the requirements of 11 U.S.C. Section 1129 and confirm a plan that alters her rights over her objection, the probability of success in such litigation is unknown. More importantly, Trustee states that even if she is successful in such litigation, it may be of little value given the potential difficulties in collection.

Difficulties in Collection

Trustee argues that this factor weighs in favor of the Settlement because the Trustee is unaware of any significant assets held by the Tarantos from which a successful judgment could be recovered at this time, with the exception of Mr. Taranto's income. However, even if the Trustee resumes garnishment efforts, she will be limited to 25% of Mr. Taranto's disposable earnings. Moreover, the Trustee will be dependent on Mr. Taranto's continuing employment.

Expense, Inconvenience and Delay of Continued Litigation

Trustee states this bankruptcy case is nearly four years old and the Settlement is an attempt to efficiently administer the estate's interest in the State Court Judgment and avoid any unnecessary litigation and delay in collection on account of the judgment. Given the Tarantos' multiple bankruptcy filings, the lack of significant assets from which to collect on account of the judgment, and the risks and delay associated with collecting balance of the State Court Judgment through garnishment efforts, the Settlement is a good faith effort to maximize and efficiently administer the estate's interest in the judgment.

Paramount Interest of Creditors

Movant argues that settlement is in the paramount interests of creditors since as the compromise provides prompt payment to creditors which could be consumed by the additional costs and administrative expenses created by further litigation.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to the Movant

FEES REQUESTED

The Law Office of Michael J. Fuller, Special Counsel ("Applicant") for Susan Didriksen, Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case. The order of the court approving employment of Applicant was entered on February 4, 2011, to serve as special counsel to assist the Trustee in enforcing the State Court Judgment (Arizona State Court judgment obtained by the Debtors against the Tarantos entered on or about September 22, 2009, in Maricopa County Superior Court, Case No. CV2006-0 16562), pursuant to a contingency fee agreement in the amount of 40% of the gross amount of the total recovery.

Applicant states he has spent a substantial amount of time and effort attempting to secure and collect the State Court Judgment. Applicant has been working on the matter for over 7 years, spending over 250 hours working on the matter prior to and after the Debtors' bankruptcy filing. The services rendered by Applicant are summarized as follows:

- (a) successfully secured the State Court Judgment after a jury trial;
- (b) responded to appeal of the State Court Judgment;
- (c) performed post-judgment collection actions, including initiating and continuing wage garnishment efforts and responding to claims of exemption against such wage garnishment;
- (d) acted as the Trustee's local counsel in Arizona;
- (e) appeared on the Trustee's behalf in the Tarantos' bankruptcy cases, including attending the Tarantos' meetings of creditors; and
- (f) advised the Trustee with respect to collection efforts and potential settlements, including the settlement that is the subject of DNL-4.

Applicant computes the fees for the services provided as a percentage of the monies recovered for Client. Applicant represented Client in litigation to enforce a state court judgment, for which Client agreed to a contingent fee of 40% of the gross amount of total recovery. In approving the employment of applicant, the court approved the contingent fee, subject to further review pursuant to 11 U.S.C. § 328(a). \$44,499.90 of net monies was recovered for Client, with \$70,000 anticipated through the proposed settlement.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

- (A) the time spent on such services;
- (B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

- (I) unnecessary duplication of services; or
- (ii) services that were not--
 - (I) reasonably likely to benefit the debtor's estate;
 - (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged as legal services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the legal services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed

issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including obtaining and collecting on State Court Judgment. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

The court finds that the fees computed on a percentage basis recovery for Client to be reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of \$45,799.96 pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant. The Trustee is authorized to disburse funds from the available funds of the Estate in a manner consistent with the order of distribution in the Chapter 7 case.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$45,799.96
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by The Law Office of Michael J. Fuller, Special Counsel ("Applicant") for Susan Didriksen, Chapter 7 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that The Law Office of Michael J. Fuller is allowed the following fees and expenses as a professional of the Estate:

The Law Office of Michael J. Fuller, Professional Employed by Trustee

Fees in the amount of \$ 45,799.96

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

6. [13-25332-E-7](#) TIMOTHY/TRACI SHIELDS MOTION TO COMPEL ABANDONMENT
DBJ-5 Douglas B. Jacobs 6-6-14 [[135](#)]

Tentative Ruling: The Motion to Compel Abandonment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 6, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Compel Abandonment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Motion to Abandon Property is denied without prejudice.

The Motion filed by Timothy and Traci Shilds ("Debtor") requests the court to order the Trustee to abandon property commonly known as 2778 El Nobel Drive, Oroville, California (the "Property").

However, the Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

NOTICE is given that debtors, by and through Douglas B. Jacobs, their attorney of record, have filed a notice requesting the abandonment of property by the Court in their bankruptcy case.

The property, known as 2778 El Nobel Drive, Oroville, CA has no value to the estate and is listed on the petitioners' bankruptcy schedules. Thus the court is requested, pursuant to 11 USC § 554(b), to abandon the property back to the debtors.

Motion, Dckt. 135.

The Motion to Abandon does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from

stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities - buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and

authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

The court being unable to determine the grounds for abandoning the subject real property from the Motion, it is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Abandon Property filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is denied without prejudice.

7. [13-25332-E-7](#) **TIMOTHY/TRACI SHIELDS** **MOTION TO COMPEL ABANDONMENT**
DBJ-6 Douglas B. Jacobs 6-6-14 [[141](#)]

Tentative Ruling: The Motion to Abandon Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on June 6, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Abandon Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule

9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Motion to Abandon Property is denied without prejudice.

The Motion filed by Timothy and Traci Shields ("Debtor") requests the court to order the Trustee to abandon property commonly known as 2088 Marilyn Drive, Chico, California (the "Property").

However, the Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

NOTICE is given that debtors, by and through Douglas B. Jacobs, their attorney of record, have filed a notice requesting the abandonment of property by the Court in their bankruptcy case.

The property, known as 2088 Marilyn Drive, Chico, CA has no value to the estate and is listed on the petitioners' bankruptcy schedules. Thus the court is requested, pursuant to 11 USC § 554(b), to abandon the property back to the debtors.

Motion, Dckt. 141.

The Motion to Abandon does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable

specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities - buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

The court being unable to determine the grounds for abandoning the subject real property from the Motion, it is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Abandon Property filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is denied without prejudice.

8. [13-29073-E-7](#) AARON/JOLINE ROBERTSON
BLG-1

MOTION TO AVOID LIEN OF MARY M.
MCATEE
6-2-14 [[71](#)]

Final Ruling: No appearance at the July 10, 2014 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Creditor, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on June 2, 2014. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Mary M. McAtee ("Creditor") against property of Aaron Robertson and Joline Robertson ("Debtor") commonly known as 2600 Lake Redding Drive, Redding, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$197,253.45. An abstract of judgment was recorded with Shasta County on July 3, 2014, which encumbers the Property.

The Motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$220,000.00 as of the date of the petition. The unavoidable consensual liens total \$150,188.20 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(2) in the amount of \$69,811.80 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Mary M. McAtee, California Superior Court for Ventura County Case No. 56-2012-00417451-CU-BC-VTA, recorded on July 3, 2013, Document No. 2013-0024548 with the Shasta County Recorder, against the real property commonly known as 2600 Lake Redding Drive, Redding, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

9. [13-29073-E-7](#) AARON/JOLINE ROBERTSON
BLG-2

MOTION TO COMPEL ABANDONMENT
6-2-14 [[67](#)]

Final Ruling: No appearance at the July 10, 2014 hearing is required.

The Debtor having filed a "Withdrawal of Motion" for the pending Motion to Compel Abandonment, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Compel Abandonment, and good cause appearing, **the court dismisses without prejudice the Motion to Compel Abandonment.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Compel Abandonment having been filed by the Debtor, the Debtor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion is dismissed without prejudice.

10. [11-38424-E-7](#) PARK FOREST LLC
Ken Baker

ORDER SETTING STATUS CONFERENCE
RE: 1) CASE TO REMAIN REOPENED,
2) REAPPOINTMENT OF CHAPTER 7
TRUSTEE, AND 3) WHETHER THE
COUNTERCLAIMS ARE PROPERTY OF
THE ESTATE, ET AL.
7-2-14 [[61](#)]

Debtor's Atty: Ken Baker

Notes:

Ex Parte Motion to Reopen Bankruptcy Case filed 5/12/14 [Dckt 60]; Order granting filed 7/2/14 [Dckt 61]

Notice Provided: The Order was served by the Clerk of the Court through the Bankruptcy Noticing Center on Counsel for the Movant, Debtor, U.S. Trustee and prior Chapter 7 Trustee on July 2, 2014. 8 days notice of the hearing was provided.

Park Forest, LLC, the debtor, moved for an order reopening the case in order to file an intervention in the Sacramento County Superior Court Case No: 34-2012-00135417. The court granted the motion and set a Status Conference to address (1) the need for the case to remain reopened, (2) whether a Chapter 7 Trustee needs to be reappointed, and (3) whether the counterclaims are property of the estate for which a Chapter 7 Trustee must be appointed to administer the assets identified in the Motion.