

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

January 11, 2024 at 11:00 a.m.

1. <u>22-22625-E-7</u> <u>23-2086</u> DWL-1	JASON/CHRISTINE EATMON Bruce Dwigins	MOTION FOR A MORE DEFINITE STATEMENT 12-4-23 [8]
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LOCKWOOD ET AL V. EATMON ET AL

**The Court Has Posted This as a Tentative Ruling to Insure that It
Correctly Understood the Statement in the Discovery Plan that Either
an Opposition to This Motion Would be Filed or an Amended Complaint.**

**If the Parties concur with the ruling no appearances are required.
The court requests that the respective counsel notify the other whether they
concur or whether counsel intends to appear at the hearing**

Tentative Ruling: 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 4, 2023. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

The Motion for a More Definite Statement has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for a More Definite Statement is denied without prejudice as moot, Plaintiffs having filed an Amended Complaint once as a matter of course pursuant to Fed. R. Civ. P. 15(a)(1)(B), as incorporated into the Rules of Bankruptcy Procedure under Rule 7015.

On October 31, 2023, creditors Daniel and Roseanna Lockwood (“Creditors,” “Plaintiffs”) filed a complaint objecting to discharge against debtors Jason and Christine Eatmon (“Debtors”). Docket 1. Creditors prayed for five counts of relief under the Bankruptcy Code, including relief under 11 U.S.C. § 727(a)(2)(A), 11 U.S.C. § 727(a)(2)(B), 11 U.S.C. § 727(a)(3), 11 U.S.C. § 727(a)(4)(A), and 11 U.S.C. § 727(a)(5). *Id.* at p. 10-12.

In response, Debtors filed this Motion for a More Definite Statement on December 4, 2023, pursuant to Fed. R. Bankr. P. 7009(b) and Fed. R. Civ. P. 12(e), as incorporated into the Rules of Bankruptcy Procedure under Rule 7012(b). Docket 9.

Plaintiffs and Debtors subsequently entered into a Discovery Plan on December 19, 2023, agreeing that:

Plaintiffs will file either an Amended Complaint or opposition to the motion prior to the hearing. The Parties believe that initial disclosures should be deferred until the pleadings are finalized so that they know about the respective claims and defenses and can address them in their disclosures.

Docket 14, p. 2 ¶ A.

In accordance with the Discovery Plan, Plaintiffs then filed an Amended Complaint on December 26, 2023. Docket 27. According to Fed. R. Civ. P. 15(a)(1)(B), as incorporated into the Rules of Bankruptcy Procedure under Rule 7015, Plaintiffs had a right to amend their complaint once as a matter of course within 21 days after service of a Motion for a More Definite Statement under Rule 12(e). When a plaintiff amends their complaint pursuant to Fed. R. Civ. P. 15(a)(1)(B) in response to a Motion for a More Definite Statement, the pending Motion for a More definite Statement is rendered moot. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967) (holding when a plaintiff files an amended complaint under Fed. R. Civ. P. 15(a) once as a matter of right, “[t]he amended complaint supersedes the original, the latter being treated thereafter as non-existent.”).

Plaintiffs then reissued their summons on December 27, 2023, restarting the litigation process. Docket 29.

The Motion is Denied without prejudice.

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 a More Definite Statement filed by Defendants Jason and Christine Eatmon having been presented to the court, Plaintiffs and Defendants having subsequently filed a Joint Discovery Plan which states that Plaintiffs may file an Amended Complaint in lieu of filing an opposition to the Motion, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for a More Definite Statement is denied without prejudice.