

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

**December 13, 2018 at 10:30 a.m.**

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1. <a href="#"><u>17-25114-E-7</u></a> <a href="#"><u>FF-5</u></a>	<b>HSIN-SHAWN SHENG</b> <b>Richard Jare</b>	<b>MOTION BY GARY RAY FRALEY TO WITHDRAW AS ATTORNEY 10-30-18 [130]</b>
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**Final Ruling:** No appearance at the December 13, 2018, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, and Office of the United States Trustee on October 30, 2018. By the court's calculation, 44 days' notice was provided. 14 days' notice is required.

The Motion to Withdraw as Attorney 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). 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.

<p><b>The Motion to Withdraw as Attorney is denied as moot.</b></p>
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Gary Ray Fraley ("Movant"), counsel of record for Hsin-Shawn Cyndi Sheng ("Debtor"), filed a Motion to Withdraw as Attorney as Debtor's counsel in the bankruptcy case. Movant states the following:

- A. Debtor has refused to cooperate with counsel and proceeds as if in *Pro Se*. Debtor appears notwithstanding being instructed not to, and openly criticizes counsel in court.

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- B. Debtor insists upon following her advice regarding legal strategy and becomes angry upon refusal.
- C. Debtor has become abusive to Movant's staff.
- D. Through her criticism, Debtor has voiced constructive consent to withdrawal.
- E. The totality of Debtor's conduct constitutes good cause for Movant to withdraw.
- F. If the Motion is granted Debtor may be served with notices and papers at 2901 Corriente Way, Lincoln, California 95648.

Movant's Memorandum of Points and Authorities states argues permissive withdrawal is permitted when it is unreasonably difficult to serve as attorney pursuant to California Rule of Professional Conduct 3-700(C)(1). Movant also argues withdrawal is proper based on client consent and for good cause pursuant to California Rules of Professional Conduct 3-700(C)(5) and (C)(6).

Movant supports the Motion with the Declaration of Gary Fraley. Dckt. 132. The Fraley Declaration supports facts stated in the Motion, and adds that Debtor has not provided sufficient information to counsel for representation and that there has been a complete breakdown in communication.

## **SUBSTITUTION OF ATTORNEY**

On November 16, 2018, Debtor filed a motion for the Substitution of Attorney. Dckt. 136. That motion substituted Movant for Richard Jare, esq. as counsel in this case. On November 20, 2018, the court issued an Order granting the substitution of attorney. Order, Dckt. 137.

## **APPLICABLE LAW**

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

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FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.  
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It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3-700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(1) The client

(d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively.

CAL. R. PROF'L CONDUCT 3-700(C)(1)(d).

## **DISCUSSION**

Here, the parties already consented to and filed, and the court issued an Order granting, the substitution of attorney. Therefore, this Motion to Withdraw is denied as moot.

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 Withdraw as Attorney filed by Gary Fraley (“Movant”) 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 Withdraw as Attorney is denied as moot, the Movant already having been authorized to withdraw as counsel for Debtor and a new counsel substituted in as attorney of record for Debtor.

2. 16-25321-E-7 JAY COHEN  
SLE-5 Steele Lanphier

**MOTION TO COMPEL  
ABANDONMENT  
11-14-18 [216]**

**Final Ruling:** No appearance at the December 13, 2018, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2108. By the court's calculation, 29 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). 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). 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 Compel Abandonment is granted.**

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is 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).

The Motion filed by Jay Gary Cohen (“Debtor”) requests the court to order J. Michael Hopper (“the Chapter 7 Trustee”) to abandon property commonly known as 9029 Boise Court, Sacramento, California (“Property”). The Property is encumbered by the lien of U.S. Bank Trust, N.A. as trustee for LSF9 Master Participation Trust c/o Caliber Home Loans, Inc, securing a claim of \$263,954.60. Proof of Claim, No. 13. The Declarations of Jay Cohen and Chris Little have been filed in support of the Motion, valuing the Property at \$325,000.00. Debtor in this case has claimed an exemption of \$86,046.00 in the Property. Dckt. 185.

## **TRUSTEE’S NONOPPOSITION**

J. Michael Hopper, the Chapter 7 Trustee (“Trustee”), filed an entry of non-opposition on the docket on November 20, 2018.

## **DISCUSSION**

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines, in light of the Chapter 7 Trustee exercising his sound business decision and not to opposing this Motion, that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

The court shall issue an Order (not 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 Compel Abandonment filed by Jay Gary Cohen (“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 is granted, and the Property identified as 9029 Boise Court, Sacramento, California and listed on Schedule A / B by Debtor is abandoned by J. Michael Hopper (“the Chapter 7 Trustee”) to Jay Gary Cohen by this order, with no further act of the Chapter 7 Trustee required.