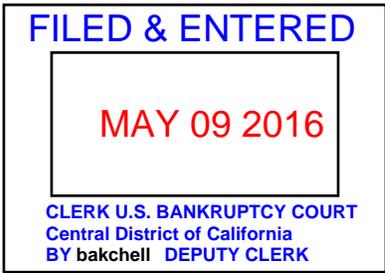


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**NOT FOR PUBLICATION**  
**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**LOS ANGELES DIVISION**

In re:  
  
L. Scott Apparel, Inc.,  
  
Debtor.  
  
Howard Grobstein as Liquidating  
Trustee of L. Scott Apparel, Inc.,  
  
Plaintiff,  
  
v.  
  
Lowell S. Sharron, an individual; Beyond  
Basics, LLC dba Daily Threads, a  
California limited liability company; and  
DOES 1-10, inclusive,  
  
Defendants.

Case No. 2:13-bk-26021-RK  
Chapter 11  
Adv. No. 2:15-ap-01122-RK

**ORDER ON PLAINTIFF'S MOTION AND  
APPLICATION FOR: (1) ORDERS FOR  
ISSUANCE OF WRITS OF  
ATTACHMENT AGAINST  
DEFENDANTS, AND (2) ISSUANCE OF  
PRELIMINARY INJUNCTION  
FREEZING ASSETS OF LOWELL S.  
SHARRON PENDING CONCLUSION  
OF LITIGATION AND FOR  
SUPPLEMENTAL BRIEFING AND  
EVIDENCE AND CONTINUANCE OF  
HEARINGS**

Date: May 10, 2016  
Time: 3:30 p.m.  
Courtroom: 1675

Pending before the court is the motion of Plaintiff Howard Grobstein, Liquidating  
Trustee of L. Scott Apparel Inc. Bankruptcy Liquidating Trust ("Plaintiff") for: (1) orders for  
issuance of writs of attachment against defendants and (2) issuance of preliminary  
injunction freezing assets of Lowell S. Sharron pending conclusion of litigation ("Motion").

1 ECF 25. The Motion, which was noticed for hearing on May 10, 2016 at 3:30 p.m.,  
2 relates to two applications, both for right to attach orders and orders for issuance of writs  
3 of attachment (“Applications”) filed against Defendant Lowell Sharron, ECF 26, and  
4 Defendant Beyond Basics, LLC, dba Daily Threads, ECF 28, (collectively, “Defendants”).  
5 Defendants filed an opposition to the Motion, ECF 43, and Plaintiff filed a reply thereto,  
6 ECF 55. Defendants also filed an opposition to the Applications and a claim of  
7 exemption. ECF 41. Plaintiff filed an opposition to Defendants’ claim of exemption. ECF  
8 46. Brian L. Davidoff and Lori L. Werderitch, of the law firm of Greenberg Glusker  
9 Claman & Machtinger LLP, represent Plaintiff. Lloyd S. Mann, of Law Offices of Mann &  
10 Zarpas, represents Defendants.

11 The Motion and corresponding Applications relate to the Motion for Leave to File  
12 First Amended Complaint, ECF 23, which this court is concurrently entering an order  
13 granting. The Motion for Leave to File First Amended Complaint seeks to add additional  
14 causes of action against Defendants for Account Stated and Open Book Account, and a  
15 cause of action against Defendant Sharron for an Accounting. Because the Motion  
16 appears to be based on the additional causes of action which Plaintiff seeks to add to his  
17 complaint through his Motion for Leave to File First Amended Complaint, and which this  
18 court is now granting by separate order, and for the additional reasons stated below, the  
19 court would determine that it would be procedurally improper at this time to grant the  
20 Motion and issue writs of attachment based upon claims in the first amended complaint  
21 which has not yet been “filed”. Leave of court was required for Plaintiff to file the first  
22 amended complaint. See Federal Rule of Bankruptcy Procedure 7015, making Federal  
23 Rule of Civil Procedure 15(a)(2) applicable to this adversary proceeding. By separate  
24 order being entered concurrently herewith, the court is granting Plaintiff’s motion for leave  
25 to file his first amended complaint. The first amended complaint is not officially filed until  
26 Plaintiff files it pursuant to this order. “A complaint must be filed before plaintiff may apply  
27 for an attachment.” 1 Ahart and Paris, *California Practice Guide: Enforcing Judgments*  
28

1 *and Debts*, ¶ 4:111 at 4-28 (2015), *citing*, California Code of Civil Procedure §§ 484.010,  
2 485.210 and 492.020. “Attachment is a purely *statutory* remedy. The attachment  
3 statutes are subject to *strict construction*—i.e., unless specifically provided for by the  
4 attachment law, no attachment procedure may be ordered by the court.” 1 Ahart and  
5 Paris, *California Practice Guide: Enforcing Judgments and Debts*, ¶ 4:15 at 4-6  
6 (emphasis in original), *citing inter alia*, *Nakasone v. Randall*, 129 Cal.App.3d 757, 761  
7 (1982)(citation omitted).

8 Having reviewed the moving and opposing papers, the Applications, the exhibits  
9 and declarations attached therein, and the record before the court, the court determines  
10 that an evidentiary hearing needs to be set to address and decide the claims and  
11 defenses relating to the Motion and related Applications and therefore issues the  
12 following rulings and sets the following schedule:

13 Regarding the Motion’s merits as to the requested right to attach orders and  
14 orders for issuance of writs of attachment, the court observes that Plaintiff in his moving  
15 papers does not state the applicable legal standard for showing that the court should  
16 issue the requested writs of attachment. Plaintiff cites California Code of Civil Procedure  
17 § 483.010, *Motion* at 8-13, which addresses which claims are subject to attachment, see  
18 *also*, *Nakasone v. Randall*, 129 Cal.App.3d at 761-762 rather than California Code of  
19 Civil Procedure § 484.090, which sets forth the proper standard for determining whether  
20 a writ of attachment should be issued:

21  
22 (a) At the hearing, the court shall consider the showing made by the  
23 parties appearing and shall issue a right to attach order, which shall state  
the amount to be secured by the attachment determined by the court in  
accordance with Section 483.015 or 483.020, if it finds all of the following:

- 24 (1) The claim upon which the attachment is based is one upon which an  
attachment may be issued.  
25 (2) The plaintiff has established the probable validity of the claim upon  
which the attachment is based.  
26 (3) The attachment is not sought for a purpose other than the recovery  
on the claim upon which the attachment is based.  
27 (4) The amount to be secured by the attachment is greater than zero.

1 See also, 1 Ahart and Paris, *California Practice Guide: Enforcing Judgments and Debts*,  
2 ¶ 4:263 at 4-60, *citing inter alia*, *Loeb & Loeb v. Beverly Glen Music, Inc.*, 166 Cal.App.3d  
3 1110, 1116 (1985). Plaintiff does not exactly address the elements of a claim for a writ of  
4 attachment in his moving papers, but the court in reading these papers could infer that  
5 Plaintiff could put together plausible claims for attachment against Defendants that he  
6 now has claims against them in the first amended complaint now authorized for filing,  
7 which are for Account Stated and Open Book Account, based on Defendant Sharron's  
8 deposition testimony and Debtor's books and records. However, as indicated in the  
9 opposition of Defendants, the claims are disputed on various grounds, including their  
10 asserted defenses based on their claims of rights of setoff and exemption. Accordingly,  
11 the court believes that the prudent and appropriate action to take with respect to  
12 Plaintiff's claims and Defendants' defenses is to set an evidentiary hearing pursuant to  
13 California Code of Civil Procedure § 484.040 on these claims and defenses. Because  
14 this litigation is an adversary process, the court believes that Plaintiff should expressly  
15 address the elements of a claim of writ of attachment under California Code of Civil  
16 Procedure § 484.090 based on the evidence he submitted in the first instance by filing a  
17 supplemental brief rather than having the court attempt to reconstruct Plaintiff's  
18 arguments in his motion into a coherent analysis under the applicable legal standard  
19 under the statute, and of course, Defendants may file and serve a response to such  
20 supplemental briefing.

21 As to Plaintiff's Motion requesting that the court enter a preliminary injunction  
22 pursuant to Rule 65 of the Federal Rules of Civil Procedure, made applicable to this  
23 adversary proceeding through Rule 7065 of the Federal Rules of Bankruptcy Procedure,  
24 freezing Sharron's assets pending trial, the court determines that such request also  
25 requires an evidentiary hearing. To determine whether to issue a preliminary injunction,  
26 the court "balances the plaintiff's likelihood of success against the relative hardship to the  
27 parties. To receive a preliminary injunction, [a plaintiff is] required to show either a  
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1 likelihood of success on the merits and the possibility of irreparable injury, or that serious  
2 questions going to the merits were raised and the balance of hardships tips sharply in its  
3 favor. These two alternatives represent extremes of a single continuum, rather than two  
4 separate tests.” *In re Focus Media Inc.*, 387 F.3d 1077, 1085 (9th Cir. 2004) (citation  
5 omitted). “A preliminary injunction is an extraordinary remedy never awarded as of right.”  
6 *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008)(citation  
7 omitted). Based on this record, the court would deny Plaintiff’s request for a preliminary  
8 injunction for failure to meet its burden of showing with sufficient evidence the possibility  
9 of irreparable injury or that the balance of hardships tips sharply in his favor. Plaintiff’s  
10 argument on irreparable harm and balance of hardships was as follows:

11       The further dissipation of creditor assets by Sharron, obtained through his  
12       improper diversions over time, certainly tips the balance of the harms in  
13       Plaintiff’s favor and constitutes irreparable injury. Such disposition of assets  
      would make ultimate loss by the creditors a virtual certainty. Based on  
      Sharron’s historical pattern, the risk of asset dissipation is very real.

14 Motion at 15. There was no evidence cited in support of this argument. *Id.* Also, there is  
15 a logical disconnect between “diversion” and “dissipation,” that is, one does not  
16 necessarily lead to the other. In any event, improper diversion is disputed by  
17 Defendants, dissipation is not shown with evidence at this point, and argument is not a  
18 substitute for admissible evidence in this court.

19       For the foregoing reasons, the court orders as follows:

- 20       1. The hearings on Plaintiff’s Motion and the Applications, ECF 25, 26 and 28,  
21       are continued to June 22, 2016 at 9:00 a.m. for an evidentiary hearing  
22       before the undersigned United States Bankruptcy Judge in Courtroom 1675  
23       at 255 East Temple Street, Los Angeles, California 90012. The court is  
24       scheduling a one-day evidentiary hearing from 9:00 a.m. to 12 noon and  
25       1:30 p.m. to 4:30 p.m. No appearances are required on May 10, 2016 on  
26       the Motion and the Applications.

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- 2. Plaintiff has until June 8, 2016 to file and serve a supplemental brief and supplemental declarations and other evidence in support of his claims to address the deficiencies identified in this order
- 3. Defendants have until June 15, 2016 to file and serve a responsive brief and supplemental declarations and other evidence in response to Plaintiff's supplemental declarations and evidence.
- 4. The parties are expected to have witnesses whose declarations are submitted available at the evidentiary hearing for cross-examination.

IT IS SO ORDERED

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Date: May 9, 2016



Robert Kwan  
United States Bankruptcy Judge