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10

11 UNITED STATES BANKRUPTCY COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 LOS ANGELES DIVISION

14 In re

15 J.T. THORPE, INC

16 Debtors

) Case No. 2:02-bk-14216-BB and 2:12-ap-
02183-BB

) Chapter 11

) Adversary Case No. 2:12-ap-02182-BB
and 2:12-ap-02183-BB

) **MANDELBROT LAW FIRM AND**
) **TRUST BENEFICIARIES OPPOSITION**
) **RE -ORDER STRIKING DOCKET NOS.**
) **1804, 1806, AND 1808 AND GRANTING**
) **RELATED RELIEF**

) 255 E. Temple St.
) Los Angeles, CA 90012

) **Judge:** Honorable Sheri Bluebond

) Hearing: November 28, 2018 at 10:00
) a.m.

1 **TO THE HONORABLE SHERI BLUEBOND, UNITED STATES BANKRUPTCY**
2 **COURT JUDGE AND THE J.T. THORPE INC. AND THORPE INSULATION**
3 **SETTLEMENT TRUSTS:**

4
5 **PLEASE TAKE NOTICE** that Michael J. Mandelbrot, the Mandelbrot Law Firm, and Trust
6 Beneficiaries in the above-referenced adversary proceedings hereby respond to an entry for an
7 order (i) striking various legitimate filings; and (ii) granting relief to suspend Mandelbrot's
8 admission to appear before and file in this Court:

9
10 **PLEASE TAKE FURTHER NOTICE** that this OPPOSITION to the Trust's Motion is
11 based on the attached Memorandum of Points and Authorities, all judicially-noticeable facts, all
12 other admissible evidence properly before this Court, the entire record of the above-captioned
13 cases, and any argument to be presented at hearing.

14
15 **WHEREFORE**, Michael J. Mandelbrot, the Mandelbrot Law Firm and J.T. Thorpe, Inc. and
16 Thorpe Insulation Trust Beneficiaries respectfully request that the Court deny the Trusts any
17 relief.
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2
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5
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8 Snyder and Fergus represented Debtor

9
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12
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TABLE OF AUTHORITIES

Cases

Pepper v. Litton, 308 U.S. 295, 305 (1939)

In re: Duro Dyne National Corp, United States Bankruptcy Court, District of New Jersey, Case No. 18-27963

In re Western Asbestos Co, United Stated Bankruptcy Court, San Francisco, CA, Jointly Administered Case No. 02-46286-T; Current Case No. 13-31914-HLP

In re Mountain States Power Co. 118F.2d 405, 407 (3d Cir. 1941)

Colonial Penn Ins. Co. v. Coil, 887 F.2d 1236, 1239 (4th Cir. 1989)

Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992);

United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980)

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MANDELBROT LAW FIRM AND J.T. THORPE/THORPE INSULATION BENEFICIARIES
OPPOSITION TO MOTION TO STRIKE DKT. NOS 1804, 1806, 1808 AND OTHER RELATED
RELIEF

1 Federal Rule of Evidence – Rule 201 – Judicial Notice

2
3 California Rules of Professional Conduct Rule 5-300

4
5 **Other**

6 All Annual Reports of J.T. Thorpe, Inc. and Thorpe Insulation Settlement Trusts

7 LBR 9021-1(B)

8 California Rules of Professional Conduct Rule 5-300

MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

“[F]raud will not prevail, substance will not give way to form, [and] technical considerations will not prevent substantial justice from being done” in a bankruptcy proceeding. *Pepper v. Litton*, 308 U.S. 295, 305 (1939). In enforcing this maxim, the bankruptcy court has the power to exercise equity jurisdiction and “sift the circumstances surrounding any claim to see that injustice or unfairness is not done.” *Id.* at 307-308. The J.T. Thorpe and Thorpe Insulation Settlement Trusts (the “Thorpe Trusts”) lawsuit against Mandelbrot was a “sham”, brought by “interested parties.”¹ Disturbing and disgraceful “Judicial Misconduct” existed in the underlying cases against Mandelbrot, including bias, favoritism, failure to recuse, ex parte communications (w/favored parties) and retaliation.

The Thorpe Trusts now seek an order striking Docket Nos. 1804, 1806, and 1808 despite undeniable relevance in these matters. All relief requested should be denied and the Thorpe Trusts Motion deemed frivolous. Docket Nos. 1804, 1806, and 1808 contain relevant information subject to Judicial Notice in these Thorpe matters.

II. BACKGROUND

A. Factual and Procedural History:

Following a *successful* Appeal to the Ninth Circuit of a ‘sham’ lawsuit against Mandelbrot by the Thorpe Trusts before this Court, a hearing was held on February 1, 2018 solely to determine whether this Court’s prior rulings “restricted” Mandelbrot’s right to practice

¹ Trust Fiduciaries and parties to the Mandelbrot lawsuit Stephen Snyder and Gary Fergus were NOT free of disqualifying conflicts of interest and were incapable of serving as an independent Fiduciaries representing Present and Future Claimants. Snyder and Fergus filed false and misleading Declarations (failed to disclose disqualifying connections to adverse parties *and attorneys* in order to gain employment) and have acted in Bad Faith/Misappropriated millions since this Court approved them. Snyder and Fergus had a vested economic interest in the Trust, close and personal connections to other Fiduciaries, and a longstanding bias against Plaintiffs.

1 law. On February 1, 2018, after Mandelbrot's successful 3-year Appeal, this Court ruled for the
2 Thorpe Trusts due to: 1) Favoritism/Bias; 2) "Retaliation" for the filing of a Judicial Complaint;
3 3) Insider Dealing; 4) Failure to Recuse; and disturbing and unethical; 5) Ex parte
4 Communications with Thorpe Counsel (Local Rules violations, including reviewing a "Proposed
5 Order" prior to a hearing - a violation of LBR 9021-1 (B)); 6) Improper exclusion of evidence;
6 7) Disgraceful 'desire' to create "bad law" to harm Mandelbrot.

7 Since February 1, 2018, the Department of Justice has taken particular interest in
8 insider dealing, fraud, misappropriation of funds at Asbestos Trusts. Mandelbrot filed these new
9 Department of Justice Filings with this Court. They are **not** redundant, impertinent or immaterial
10 in these matters, but highly relevant to Mandelbrot's showing of fraud, misconduct by the
11 opposing party, a void judgment, and that applying the judgment prospectively is no longer
12 equitable (see below). In addition to the Department of Justice Briefs, Motions, and Investigative
13 Demand Letters, Mandelbrot has also filed additional 'new' information with the Court,
14 including improper ex parte communications (Judge Bluebond and Sandy Frey) which is also
15 relevant to judicial misconduct, fraud, or this Court's "excusable neglect."

16 ARGUMENT

17 **A. Mandelbrot Notices Should Not be Stricken from the Record Which Contain** 18 **Newly Discovered Evidence, Evidence of Misconduct, and Other Reasons Justifying** 19 **Relief**

20 Federal Rule of Civil Procedure 60(b) provides grounds for Relief from a final judgment
21 for the following reasons:

- 22 (1) **mistake, inadvertence, surprise, or excusable neglect;**
- 23 (2) **newly discovered evidence that, with reasonable diligence, could not have been discovered**
24 **in time to move for a new trial under Rule 59(b);**
- 25 (3) **fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct**
26 **by an opposing party;**
- 27 (4) **the judgment is void;**
- 28 (5) **the judgment has been satisfied, released, or discharged; it is based on an earlier judgment**
that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) **any other reason that justifies relief.**

- 2 -

1 A motion under rule Federal Rule of Civil Procedure 60 (b) must be made within a
2 reasonable time (no more than a *year*).

3 A Motion for Relief from final judgment will be timely filed in the *Thorpe v.*
4 *Mandelbrot* cases. Each filing by Mandelbrot (Docket Nos. 1804, 1806, 1808) contains “newly
5 discovered relevant evidence” that with reasonable diligence could not be discovered in time to
6 move for a new trial under Rule 59(b) and are permissible for filing this Court. In addition, the
7 Mandelbrot filings contain evidence of fraud (including Judicial), and other reasons justifying
8 relief from the final judgment.

9 A “final judgment” currently exists in 2:12-ap-02182-BB (J.T. Thorpe v. Michael J.
10 Mandelbrot and the Mandelbrot Law Firm). Under Federal Rule of Civil Procedure 60(b)(6), this
11 Court may relieve Mandelbrot of a final judgment, order, or proceeding due to “fraud (whether
12 previously called intrinsic or extrinsic), misrepresentation (i.e. criminals Stephen Snyder, Gary
13 Fergus, Sara Beth Brown and other Trust Fiduciaries), or misconduct by an opposing
14 party”(perjurers Benjamin Smith, Gary Fergus, Stephen Snyder, Laura Paul – all who should
15 have been “disqualified”....) and various other reasons (see Rule 60(b)(1-6), which are *all*
16 applicable in the adversary proceeding).

17 Dockets 1804, 1806, 1808 are newly discovered, all relevant to a FRCP Rule 60(b)
18 Motion and the underlying Thorpe matters, and should not be excluded.

19
20 **B. The Judicial Notices and their Relevance to the Beneficiaries, Trustees and**
21 **Fiduciaries of the J.T. Thorpe, Inc. Settlement Trust**

22 Each filing by the Department of Justice (filed in Docket Nos. 1804, 1806, 1808) by
23 Mandelbrot) was filed in the respective Courts after February 1, 2018. Each Department of
24 Justice filing has particular relevance before this Court as identical “disqualifying” facts
25 referenced by the Department of Justice exists among the Thorpe Trusts lawyers (i.e. bad faith,
26 “interested parties” corrupting Trusts, sham Fiduciaries, insider dealing, false Declarations) – all
27 previously ‘ignored’ (and enabled) *by this* Court. Specific Thorpe “Fiduciaries” engaging in

1 collusion and corruption include Stephen Snyder, Gary Fergus, Alan Brayton, David McClain,
2 Charles LaGrave, and many more.

3 Since the confirmation of the J.T. Thorpe, Inc. Settlement Trust, insider dealing, fraud, bad
4 faith and the misappropriation and mismanagement of J.T. Thorpe, Inc. Trust funds has depleted
5 the assets of the J.T. Thorpe, Inc. Settlement Trust and the “related” Asbestos Trusts including
6 the Western Asbestos Settlement Trust and Plant Insulation Trust. *See, In Re Western Asbestos*
7 *Co. Dkt. No. 325* for examples. On September 13, 2018, the United States Department of Justice
8 filed a Statement of Interest in Case No. 16-31602 (JCW) which *specifically referenced*
9 **fraudulent Trust default claim filed by J.T. Thorpe Trust Advisory Committee Chairman**
10 **Alan Brayton** (fraudulent *Kananian* claim with the Western Asbestos Trust paid over
11 \$500,000).²³ The ‘actual’ fraudulent *Kananian* Western Asbestos Trust is also a “newly
12 discovered” document relevant document, subject to Judicial Notice and directly relating to the
13 issues in *Thorpe v. Mandelbrot*. (See. **Exhibit 3** - Kananian Brief in Support of Entry of Default
14 Judgment as to Defendant Western MacArthur Company court stamped November 19, 2009 –
15 fraudulently claimed exposure at Hunters Point Naval Shipyard.)

16
17 The Justice Department “welcomed” reporting of asbestos trust fraud and mismanagement.
18 Extensive fraud and ‘gross’ mismanagement and misappropriation of J.T. Thorpe Beneficiary
19 funds has existed at this Trust since its confirmation. (i.e. *see all J.T. Thorpe Settlement Trust*
20 *and Thorpe Insulation Settlement Trust Annual Reports, including all payments to Fergus Law*
21 *Firm, Snyder, Miller, and Orton and Morgan Lewis and Bockius*).

22 The Department of Justice’s *Objection of the United States Trustee to Debtors’ Motion for*
23 *an Order Appointing Lawrence Fitzpatrick as a Representative for Asbestos Claimants* (See,
24

25 ² Thorpe Trusts Chairman of the Trust Advisory Committee (Alan
26 Brayton’s) fraud is well documented in an Order signed by Judge Harry Hanna
on January 18, 2007, In the Court of Common Pleas, Cuyahoga County, Ohio. See
Exhibit 1. The document is subject to Judicial Notice.

27 ³ See **Exhibit 2**. Brayton Purcell settlement report for *Kananian*
reflecting a settlement of \$547,485.75.

1 Dkt. 94 filed 09/26/2018 in the United States Bankruptcy Court, District of New Jersey, Case
2 No. 18-27963 is highly relevant in these matters. Lawrence Fitzpatrick (who the Department of
3 Justice objects to as a Future Representative) is *akin* to Gary Fergus, an attorney for the Futures
4 Representative, and a *Fiduciary* in these Thorpe matters.

5
6 Courts have long recognized that fiduciary status imposes inherent duties of undivided
7 loyalty and impartial service – and that persons who are unable to meet those stringent standards
8 are disqualified from serving as fiduciaries. *In re Mountain States Power Co.* 118F.2d 405, 407
9 (3d Cir. 1941) (fiduciary in bankruptcy case has a duty of “undivided loyalty”). And specifically,
10 like Fitzpatrick in the Department of Justice filing (and even worse), Fergus had *multiple*
11 *interests* and connections that rendered Fergus not disinterested, loyal or impartial. Examples of
12 Fergus (and Snyder’s) lack of impartiality include, but are not limited to 1) Status of employee
13 (attorney) for a Debtor (Western Asbestos – Fergus was *their* lawyer); 2) his personal financial
14 interest in the Debtors proposed plan (*see all Thorpe Trust Annual Reports* – yearly payments
15 over \$100,000 – completely unaudited); 3) his connections with the numerous plaintiffs’ law
16 firms involved in the negotiation of the plan, including by reason of his role in several other
17 asbestos trusts for which the same firms serve in a supervisory role and his 25-years
18 negotiating and settling cases as a defense lawyer at Brobeck and National Counsel for
19 ‘sister Trust’ Western Asbestos;⁴ and 4) his continuing role as a fiduciary in other bankruptcy
20 cases and for other bankruptcy trusts which unquestionably subject Mr. Fergus to conflicting
21 (and disqualifying) fiduciary duties.

22
23 ⁴ See **Exhibit 4**, page 6. Releases from clients of the Chairman of the Western Asbestos Trust Alan
24 Brayton were sent *directly to Brobeck lawyers Stephen Snyder and Gary Fergus*, as counsel for the Debtors (while
25 working at *Brobeck*). Snyder and Fergus solely had access to this e-mail address westernasbestos@brobeck.com and
26 Snyder, Fergus, and Brobeck represented the debtors, thus disqualifying any involvement with *any* asbestos Trusts.
27 Judge Bluebond had access to and ignored this disqualifying information related to Snyder and Fergus to assist
28 “favored” parties. Snyder and Fergus also represented another bankrupt asbestos insulation defendant The
Fibreboard Corporation in thousands of cases. Snyder (as Managing Trustee of the Trust and as Brobeck’s
liquidating partner) and Fergus then misappropriated \$35,542,397 from asbestos victim’s funds. See **Exhibit 5 –**
2004 Western Annual Report. Chairman Alan Brayton and David McClain also misappropriated \$12.3
million (disguised as fees) at the same time.

1 This request for Judicial Notice is relevant as it is reasonably calculated to inform the
2 Court, the Justice Department, and all Trust Fiduciaries of extensive J.T. Thorpe, Inc. fraud.

3 **C. Legal Authority for Taking Judicial Notice**
4

5 Paragraph (b)(2) of Rule 201 states in part that “[t]he court may judicially notice a fact
6 that is not subject to reasonable dispute because it: . . . can be accurately and readily determined
7 from sources whose accuracy cannot reasonably be questioned.” Mandelbrot seeks ‘judicial
8 notice’ of legally filed documents and facts which provide extensive evidence of Trustee and
9 “interested” party fraud, conflicts of interest, Judicial misconduct, favoritism, and
10 mismanagement of Trust funds that can be readily determined from the attached documents.
11 *Each Fiduciary* in the J.T. Thorpe, Inc. filed a false and misleading Declaration before this Court
12 in order to gain employment.

13 Courts regularly takes judicial notice of facts from court documents. “[T]he most
14 frequent use of judicial notice of ascertainable facts is in noticing the content of court records.”
15 *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989). Accordingly, this Court has
16 held that it “may take notice of proceedings in other courts, both within and without the federal
17 judicial system, if those proceedings have a direct relation to matters at issue.” *U.S. ex rel.*
18 *Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992); *cf.* Fed.
19 R. App. P. 32.1(b) (instructing parties to submit a copy of an “opinion, order, judgment, or
20 disposition” unavailable on publicly accessible electronic databases). Records subject to judicial
21 notice include “the records of an inferior court in other cases.” *United States v. Wilson*, 631 F.2d
22 118, 119 (9th Cir. 1980). Mandelbrot filings were relevant and proper as Dkts. 1804, 1806, and
23 1808 contained documents subject to Judicial Notice directly related to the matters at issue.

24 **D. Mandelbrot Filings Confirms Judge Sheri Bluebond’s “Modus Operandi” –**
25 **Ex Parte Communications with “Favored Parties”**

26 The Thorpe Trusts Motion seemingly fail to mention newly discovered evidence
27 contained in the Mandelbrot filings the Trusts seek to strike – “Ex Parte Communications”
28

- 6 -

1 between a judge and party to a legal proceeding. **See Exhibit 6.** This is a direct violation of the
2 **Model Code of Judicial Conduct Rule 2.9** which provides (A) A judge shall not initiate,
3 permit, or consider ex parte communications, or consider other communications made to the
4 judge outside the presence of the parties or their lawyers, concerning a pending or impending
5 matter. Unquestionably, Bluebond's "modus operandi" in *Thorpe v. Mandelbrot* was identical to
6 **Exhibit 6** and "proposed Order" discussion, below. These newly discovered e-mails of
7 Bluebond's unethical ex parte communications are highly relevant to a future Rule 60 Motion
8 (and a pending Judicial Complaint).

9 **1. Disgracefully, Ex Parte Communication between Thorpe Lawyers and Judge**
10 **Bluebond Violate Ethical and Local Bankruptcy Rules – Trusts Now Accuse**
11 **Mandelbrot of Violations**

12 LBR 9021-1 (B) provides that if the presiding judge has posted a tentative ruling
13 authorizing the submission of a proposed order, a proposed order **must not be lodged prior to**
14 **the hearing or trial of the underlying matter.** The sole purpose of this Local Bankruptcy Rule
15 is to avoid ex parte communications with a Judge about pending matters.

16 In the underlying matters before this Court, LBR 9021-1(B) and ethical rules were
17 violated by the Thorpe Trust lawyers with the filing of a proposed order prior to the hearing of
18 February 1, 2018.⁵

19 The proposed Order filed by the Thorpe lawyers prior to the February 1 2018 was
20 deceptively intended as a "roadmap" (of ex parte communications) for Judge Bluebond on
21 'how' to rule for her friends/Thorpe lawyers (despite overwhelming evidence to the contrary).
22 The proposed Order was submitted by the Thorpe attorneys (Bluebond's buddies) on or about
23

24 ⁵ The California Rules of Professional Conduct identify a number of prohibited *ex*
25 *parte* communications. For example, Rule 5-300 states that an attorney "shall not directly or indirectly
26 communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before
27 such judge or judicial officer. The Thorpe Attorneys (Bluebond's 'buddies') directly communicated with Judge
28 Bluebond regarding a contested matter by submitting a "Proposed Order" (in violation of Local Rules) in the
underlying *Thorpe v. Mandelbrot* matters. Judge Bluebond followed the "roadmap" in her ruling to create bad,
oppressive, and 'incompetent' law.

January 30, 2018 was *extensively relied upon* by Judge Bluebond to make her February 1, 2018 ruling. Sanctioning the Thorpe attorneys is appropriate for this ‘extreme’ and reckless violation of LBR9021-1(B).

Laughable that the Thorpe attorneys would now accuse Mandelbrot of violating Local Rules and the California Rules of Professional Conduct.

E. The Thorpe Trusts can cite NO Examples of Defamatory Communications in Mandelbrot’s Filings or Blog.

Thorpe Trusts accuse Mandelbrot of “defamation” in their recent filings yet cite no examples of defamation (as the Trusts are well aware “Truth” is a complete defense to defamatory accusations). Perjurer/Thorpe Trust Counsel Benjamin Smith, in a letter dated October 10, 2017, (attached as **Exhibit 7**) has already attempted to shut down Mandelbrot’s blog. Smith’s letter was ‘rejected’. Mandelbrot’s blog was deemed entirely proper.

CONCLUSION

“All through history the way of truth and love has always won. There have been tyrants and murderers and for a time they seem invincible but in the end, they always fall – Think of it, ALWAYS.”⁶ For these reasons above, the Court shall deny the Thorpe Trusts any Relief. Docket Nos. 1804, 1806, and 1808 shall remain a part of this Court’s record in their entirety.

DATED: this 13th day November 2018

MANDELBROT LAW FIRM

By: /s/ Michael J. Mandelbrot

Michael J. Mandelbrot
Appearing for Defendants
Michael J. Mandelbrot and
the Mandelbrot Law Firm

⁶ Mahatma Gandhi

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
1223 Grant Ave. Suite C., Novato, CA 94945

A true and correct copy of the foregoing document entitled (*specify*): Opposition to Motion for Order Striking Docket -
Nos. 1804, 1806, 1808

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 11/13/2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 11/14/2018, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Honorable Sheri Bluebond
U.S. Bankruptcy Court
Roybal Federal Building
Bin Outside of Suite 1534

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

11/14/2018 Tracey Mandelbrot
Date Printed Name

Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.