

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY

DATE: JANUARY 10, 2018

CALENDAR: 10:00 A.M. CHAPTER 7 ADVERSARY PROCEEDINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [16-12615](#)-A-7 **IN RE: WILLIAM/DEBRA NEWMAN**
[17-1041](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-11-2017 [[1](#)]

SALVEN V. UNITED STATES
DEPARTMENT OF TREASURY,
RUSSELL REYNOLDS/ATTY. FOR PL.
DISMISSED

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

2. [17-13133](#)-A-7 **IN RE: ISABELLA CAMACHO**
[17-1084](#)

STATUS CONFERENCE RE: COMPLAINT
11-13-2017 [[1](#)]

R. ALEXANDER ACOSTA, SECRETARY
OF LABOR, UNITED ST V. CAMACHO
JESSICA FLORES/ATTY. FOR PL.
RESPONSIVE PLEADING

No Ruling

3. [17-10841](#)-A-7 **IN RE: LLOYD HOLLINS**
[17-1061](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
11-15-2017 [[33](#)]

RICHGROVE COMMUNITY SERVICES
DISTRICT V. HOLLINS
MARIO ZAMORA/ATTY. FOR PL.
RESPONSIVE PLEADING

No Ruling

4. [14-14453](#)-A-7 **IN RE: SAMUEL LOPEZ**
[14-1141](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
11-21-2014 [[1](#)]
CALLISON V. LOPEZ
DANIEL BARADAT/ATTY. FOR PL.
RESPONSIVE PLEADING

Final Ruling

This matter is continued to April 25, 2018, at 10:00 a.m. In the event that the restitution in the criminal action is resolved prior to that date, the parties may advance the status conference by ex parte application and stipulation. Not later than 14 days prior to the continued status conference the parties shall file a joint status report.

5. [16-11467](#)-A-7 **IN RE: JERRY/PAMELA STEVENS**
[17-1078](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-23-2017 [[1](#)]

HAWKINS V. STEVENS ET AL
ROBERT HAWKINS/ATTY. FOR PL.

No Ruling

6. [15-11079](#)-A-7 **IN RE: WEST COAST GROWERS, INC. A CALIFORNIA**
CORPORATION
[17-1026](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-16-2017 [[1](#)]

HAWKINS V. MCEWEN FAMILY FARMS
LISA HOLDER/ATTY. FOR PL.
RESPONSIVE PLEADING

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

7. [15-11079](#)-A-7 **IN RE: WEST COAST GROWERS, INC. A CALIFORNIA CORPORATION**
[17-1027](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-16-2017 [[1](#)]

HAWKINS V. HELMUTH ET AL
LISA HOLDER/ATTY. FOR PL.

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

8. [15-11079](#)-A-7 **IN RE: WEST COAST GROWERS, INC. A CALIFORNIA CORPORATION**
[17-1028](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-16-2017 [[1](#)]

HAWKINS V. ADAM & PHILLIP
KOLIGIAN
LISA HOLDER/ATTY. FOR PL.
RESPONSIVE PLEADING

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

9. [15-11079](#)-A-7 **IN RE: WEST COAST GROWERS, INC. A CALIFORNIA CORPORATION**
[17-1029](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-16-2017 [[1](#)]

HAWKINS V. 3F PROPERTIES
LISA HOLDER/ATTY. FOR PL.
RESPONSIVE PLEADING

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

10. [15-11079](#)-A-7 **IN RE: WEST COAST GROWERS, INC. A CALIFORNIA CORPORATION**
[17-1030](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-16-2017 [[1](#)]

HAWKINS V. DERAN KOLIGIAN
FARMS ET AL
LISA HOLDER/ATTY. FOR PL.
RESPONSIVE PLEADING

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

11. [15-11079](#)-A-7 **IN RE: WEST COAST GROWERS, INC. A CALIFORNIA CORPORATION**
[17-1031](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-17-2017 [[1](#)]

HAWKINS V. CERVELLI
LISA HOLDER/ATTY. FOR PL.
RESPONSIVE PLEADING

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

12. [15-11079](#)-A-7 **IN RE: WEST COAST GROWERS, INC. A CALIFORNIA CORPORATION**
[17-1032](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-17-2017 [[1](#)]

HAWKINS V. FOGLIO ET AL
LISA HOLDER/ATTY. FOR PL.
RESPONSIVE PLEADING

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

13. [15-11079](#)-A-7 **IN RE: WEST COAST GROWERS, INC. A CALIFORNIA CORPORATION**
[17-1033](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-17-2017 [[1](#)]

HAWKINS V. FOGLIO ET AL
LISA HOLDER/ATTY. FOR PL.
RESPONSIVE PLEADING

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

14. [15-11079](#)-A-7 **IN RE: WEST COAST GROWERS, INC. A CALIFORNIA CORPORATION**
[17-1034](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-17-2017 [[1](#)]

HAWKINS V. PAUL TOSTE FARMS ET
AL
LISA HOLDER/ATTY. FOR PL.

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

15. [17-12781](#)-A-7 **IN RE: DALIP NIJJAR**
[17-1065](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
5-5-2017 [[63](#)]

SALVEN V. NIJAR
RESPONSIVE PLEADING

No Ruling

16. [17-12781](#)-A-7 **IN RE: DALIP NIJJAR**
[17-1066](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
5-5-2017 [[63](#)]

SALVEN V. NIJJAR ET AL

No Ruling

17. [17-12781](#)-A-7 **IN RE: DALIP NIJJAR**
[17-1066](#) [GMJ-1](#)

CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF
REMOVAL
11-1-2017 [[90](#)]

SALVEN V. NIJJAR ET AL
DAVID GILMORE/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Adversary Complaint under Rule 12(b)(6)

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted in part with leave to amend; denied in part

Order: Civil minute order

Virpal Nijjar, VK Nijjar Farms, Inc. and Nijjar Farms, LLC ("the Nijjar defendants") move under Rule 12(b)(6) to dismiss an adversary proceeding filed against them by James E. Salven ("Salven"), chapter 7 trustee of the Estate of Dalip Nijjar. Dalip Nijjar and Virpal Nijjar married in 1989 and, allegedly, divorced in 2008 in Nevada. Both before and after their divorce Dalip Nijjar and Virpal Nijjar, individually and/or through entities owned by one or both of them, purchased land and engaged in farming operations in the San Joaquin Valley.

Salven has filed an adversary complaint against the Nijjar defendants alleging the following claims: (1) the Nevada divorce decree is invalid or, if valid, that the Nijjars' community property was never divided and, therefore is property of the estate, 11 U.S.C. § 541(a)(2); (2) Dalip Nijjar's transfer of four of the couple's parcels of real property in 2008 were fraudulent, 11 U.S.C. § 544(b); (3) an "interspousal transfer" of real property, transfers of two checks aggregating \$6,648 deposited to Nijjar Farms Inc., 13 checks aggregating \$79,090 deposited into Virpal's account # 3651 and two checks aggregating \$2,942.30 were fraudulent transfers, 11 U.S.C. § 548; (4) three transfers aggregating \$96,280.03, one transfer of \$25,000.00 to VK Nijjar Farms, LLC, and two transfers aggregating \$78,525.65 were fraudulent, 11 U.S.C. § 544(b); (5)

Dalip Nijjar holds a 50% ownership in VK Nijjar Farms, LLC and request an order so declaring; and (6) entitlement to an order to windup, sale and liquidate the assets of VK Nijjar Farms, LLC, see Cal. Corp. Code §§ 17707.04, 17707.05.

The Nijjar defendants have moved under Rule 12(b)(6) to dismiss the adversary proceeding. Salven has opposed that motion.

LAW

Iqbal and *Twombly*

The Supreme Court has established the minimum requirements for pleading sufficient facts. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556).

"To determine whether a pleading adequately states a plausible claim for relief, a court must first take note of the elements a plaintiff must plead to state a claim." *Ashcroft v. Iqbal*, *supra*, 556 US at 675, 129 S. Ct. at 1947.

Iqbal then requires a two-prong analysis as discussed in a well-known treatise on procedure:

1) [9:226.22] **Conclusory allegations disregarded:** First, the court must identify which statements in the complaint are factual allegations and which are legal conclusions. Courts are not bound to accept as true allegations that are legal conclusions, even if cast in the form of factual allegations. [See *Ashcroft v. Iqbal*, *supra*, 556 US at 681, 129 S. Ct. at 1951—"It is the conclusory nature of respondent's allegations, rather than their extravagantly fanciful nature, that disentitles them to the presumption of truth" (emphasis added); *Chaparro v. Carnival Corp.* (11th Cir. 2012) 693 F3d 1333, 1337—"if allegations are indeed more conclusory than factual, then the court does not have to assume their truth"]. . . .

2) [9:226.25] **Sufficiency of factual allegations:** Second, the court, drawing "on its judicial experience and common sense," must decide in the specific context of the case whether the factual allegations, if assumed true, allege a plausible claim. [*Ashcroft v. Iqbal*, *supra*, 556 US at 679, 129 S.Ct. at 1950; *Wilson v. Birnberg* (5th Cir. 2012) 667 F3d 591, 595]

"(T)he complaint should be read as a whole, not parsed piece by piece to determine whether each allegation, in isolation, is plausible." [*Braden v. Wal-Mart Stores, Inc.* (8th Cir. 2009) 588 F3d 585, 594 (emphasis added); *García-Catalán v. United States* (1st Cir. 2013) 734 F3d 100, 103]

An inference of liability is not plausible when the allegations of the complaint give rise to an "obvious alternative explanation" of legality. [*Ashcroft v. Iqbal*, *supra*, 556 US at 682, 129 S.Ct. at 1951]

However, "(t)he choice between two plausible inferences that may be drawn from factual allegations is not a choice to be made by the court on a Rule 12(b)(6) motion." The court cannot dismiss a complaint that alleges a "plausible version of the events merely because the court finds a different version more plausible." [*AndersonNews, L.L.C. v. American Media, Inc.* (2nd Cir. 2012) 680 F3d 162, 185; *see HDC, LLC v. City of Ann Arbor* (6th Cir. 2012) 675 F3d 608, 613—"mere existence of an 'eminently plausible' alternative, lawful explanation ... not enough to dismiss a complaint raising a plausible claim"]

O'Connell and Stevenson, *Federal Civil Procedure Before Trial: California and Ninth Circuit Edition* §§ 9:226.21-9:226.25 (Rutter Group 2017).

Rule 12(b)(6)

Under Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6), *incorporated by* Fed. R. Bankr. P. 7012(b). "A Rule 12(b)(6) dismissal may be based on either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121-22 (9th Cir. 2008); *accord Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

In ruling on a Rule 12(b)(6) motion to dismiss, the court accepts all factual allegations as true and construes them, along with all reasonable inferences drawn from them, in the light most favorable to the non-moving party. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). The court need not, however, accept legal conclusions as true. *Iqbal*, 556 U.S. at 678. "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id.* (quoting *Twombly*, 550 U.S. at 555).

In addition to looking at the facts alleged in the complaint, the court may also consider some limited materials without converting the motion to dismiss into a motion for summary judgment under Rule 56. Such materials include (1) documents attached to the complaint as exhibits, (2) documents incorporated by reference in the complaint, and (3) matters properly subject to judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); accord *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (per curiam) (citing *Jacobson v. Schwarzenegger*, 357 F. Supp. 2d 1198, 1204 (C.D. Cal. 2004)). A document may be incorporated by reference, moreover, if the complaint makes extensive reference to the document or relies on the document as the basis of a claim. *Ritchie*, 342 F.3d at 908 (citation omitted).

Declaratory Relief

Plaintiff's first and fifth causes of action request declaratory relief under Fed. R. Civ. P. 57. First Am. Compl., May 5, 2017, ECF # 63. Rule 57 is not applicable to adversary proceedings. *In re City of Cent. Falls, R.I. v. Central Falls Teachers Union (In re City of Cent. Falls, R.I.)*, 468 B.R. 36, 44 (Bankr. D.R.I. 2012).

But § 2201(a) of title 28 of the United States Code does authorize declaratory relief by this court. It provides in pertinent part:

In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C.A. § 2201(a).

Bankruptcy courts are courts of the United States for purposes of § 2201(a). Moreover, declaratory relief is specifically contemplated by Fed. R. Bankr. P. 7001(2). As a consequence, the court will treat causes of action pled under Rule 57 as a request for relief under 28 U.S.C. § 2201(a).

DISCUSSION

First Cause of Action: Declaratory Relief (Nevada Divorce/Community Property)

Salven seeks declaratory relief determining that the Nijjars' divorce decree rendered in Nevada is invalid or, if valid, that the Nijjars' community property was never divided and, therefore is property of the estate, 11 U.S.C. § 541(a)(2). First Am. Compl., May 5, 2017, ECF # 63. The Nijjar defendants move to dismiss the

first cause of action because (1) Nevada Revised Statute § 125.185 precludes a third party from attacking an order of marital dissolution, (2) *Rooker-Feldman* precludes collateral attack of the Nevada dissolution judgment, (3) transmutation occurred in May 2008, which places the property beyond Salven's reach, and (4) title to the property is presumptively in Virpal Nijjar, Cal. Evid. Code § 662.

At bottom, the court construes the complaint as pleading the first cause of action under two alternative theories. The court will dismiss the first alternative theory (that the Nevada divorce was invalid) for failure to state a claim. The court will not dismiss the second alternative theory (that the community property was never divided) and will allow this theory to remain pending.

The First Alternative Theory: Collateral Attack on the Nijjars' Nevada Divorce

A thorny set of legal issues arises from a collateral attack of a foreign dissolution proceeding on a variety of grounds, including lack of subject matter jurisdiction, lack of personal jurisdiction, a statute precluding such attack, the *Rooker-Feldman* doctrine. The court first will set forth several black-letter legal principles.

With one exception [not applicable here, Cal. Fam. Code § 2320(b)(1)], a judgment of dissolution entered by a state in which neither party is domiciled is 'void.'

[*Crouch v. Crouch* (1946) 28 C2d 243, 249, 169 P2d 897, 900—"decree of divorce rendered in one state may be impeached and denied recognition in another upon the ground that neither of the parties had domicile at the divorce forum"]

Thus, subject to the bar of res judicata or collateral estoppel, a court's domicile jurisdiction to dissolve a marriage may be challenged by: [1] direct attack in the dissolution action (motion to dismiss or quash in the pending action, see Ch. 4; or after default judgment, by timely set-aside motion or direct appeal, see Ch. 16); or [2] collateral attack (e.g., in a subsequent enforcement action). [See *Crouch v. Crouch*, supra, 28 C2d at 249-252, 169 P2d at 900-902—W's Calif. dissolution action not barred by H's earlier divorce decree rendered by Nevada court lacking domicile jurisdiction][.]

Hogoboom and King, *California Practice Guide: Family Law* § 3:79 (Rutter Group 2017) (emphasis added).

A judgment imposing personal obligations (support, etc.) is subject to collateral attack if the forum court lacked personal jurisdiction over the obligor. [See, e.g., *Kulko v. Super.Ct.* (1978) 436 US 84, 98 S.Ct. 1690; *Marriage of*

Stich (1985) 169 CA3d 64, 214 CR 919; *Marriage of Nosbisch* (1992) 5 CA4th 629, 6 CR2d 817].

Id. § 18:957 (emphasis added).

If the disputed issue has already been litigated by the parties, or could have been litigated in the underlying proceeding, the determination is res judicata and cannot be challenged by collateral attack in a later proceeding. [See *Moffat v. Moffat* (1980) 27 C3d 645, 653-660, 165 CR 877, 881-886; *Wall v. Donovan* (1980) 113 CA3d 122, 169 CR 644—estoppel to attack domicile jurisdiction; *Smith v. Smith* (1981) 127 CA3d 203, 179 CR 492—prior judgment binding even if incorrectly decided]

Res judicata parameters: Collateral attack will be barred by res judicata if: [A] The challenging party participated in the underlying proceeding; [B] The challenging party had a full opportunity to contest the rendering court's jurisdiction, even if the jurisdictional issue was not actually raised; and [C] The judgment could not be collaterally attacked in the rendering state. [*Sherrer v. Sherrer* (1948) 334 US 343, 351-352, 68 S.Ct. 1087, 1091—first forum's finding of domicile jurisdiction not subject to collateral attack where complaining party appeared and participated in the proceeding; *Heuer v. Heuer* (1949) 33 C2d 268, 201 P2d 385, 386-387; *Souza v. Super.Ct. (Bristow)* (1987) 193 CA3d 1304, 1311, 238 CR 892, 896-897].

Id. at §§ 18:965-66 (emphases added).

Nevada has a statute of the species described in *Sherrer*. It provides, "No divorce from the bonds of matrimony heretofore or hereafter granted by a court of competent jurisdiction of the State of Nevada, which divorce is valid and binding upon each of the parties thereto, may be contested or attacked by third persons not parties thereto." NRS § 125.185. Every known case that has considered NRS § 125.185 has barred a collateral third party from attacking a Nevada divorce. *Gutowsky v. Gutowsky*, 38 Misc. 2d 827 (1963); *Madden v. Cosden*, 271 Md. 118 (1974); *In re Marriage of Winegard*, 278 N.W. 2d 505 (1979); *Kelley v. Kelley*, 147 So. 3d 597 (2014).

The court need not, however, address whether NRS § 125.185 precludes Salven from collaterally attacking the divorce judgment issued by the Nevada state court. Nor does the court need to address whether *Rooker-Feldman* precludes such a collateral attack. The reason these arguments need not be addressed is that the first alternative theory of the first cause of action comprises allegations that are simply too conclusory under the standards enunciated in *Iqbal* and *Twombly*. See First Am. Comp. ¶ 33-36. These allegations state:

On information and belief, Virpal Never moved to Nevada in 2008 with the intent of making Nevada her personal residence, but claimed residence for the purpose of collusively and fraudulently obtaining a divorce to shield community assets from the Fresno claim. Virpal claims to have moved to Reno, Nevada for 4-5 Months during the fall of 2008, but does not remember the address of where she lived during those months, or where her two children Simi Nijjar (15) and KP Nijjar (14) lived during the period of time when she allegedly moved to Nevada On November 26, 2008, the Debtor filed a Joint Petition for Summary Divorce in the Second Judicial Court of the State of Nevada. On December 2, 2008, the Second Judicial Court of the State of Nevada entered Findings of Fact, Conclusions of Law, Judgment and Decree of Divorce for the Debtor and Virpal Nijjar. *Id.*; Findings of Fact, Conclusions of Law, Judgment and Decree of Divorce, *Nijjar v. Nijjar*, No. DV08-02132 (Nevada 2008). The Nevada divorce decree confirms that the petition was joint, does not reflect an appearance by Dalip Nijjar and makes no findings regarding Dalip Nijjar's residence. *Id.*

At best, these allegations are ambiguous as to whether Virpal Nijjar resided in Nevada at all, whether she did so other than in 2008, or whether she did so without the intent of making Nevada her personal residence. There is no allegation with respect to Dalip Nijjar's residence. Absent facts pled with plausible specificity under *Iqbal* and *Twombly*, the first alternative theory of the first cause of action fails to state a cognizable claim challenging the validity of the Nevada divorce decree.

The Second Alternative Theory: Community Property Remains Undivided

Because the parties assume California law applies, notwithstanding the Nevada marital dissolution, the court will apply California law for purposes of resolving this motion.

The trustee argues that, because the Nevada court never divided community property, it remains and is subject to his reach under 11 U.S.C. § 541. The defendants argue that a transmutation occurred from Dalip Nijjar to his spouse, thus preventing the property from being part of the estate.

The trustee has the better side of the argument. The complaint alleges sufficiently that community property existed during the marriage. And that such property was not divided in the Nevada divorce. The reasonable inference, therefore, is that the community property remains and transmutation did not occur. Cal. Family Code 852; *In re Marriage of Valli*, 58 Cal.4th 1396, 1400 (2014) (a writing transmuting property must expressly state the character or

ownership of the property at issue is being changed). Exhibit 3 does not so state.

Summary of Ruling on the First Cause of Action

A cause of action has not been stated as to the void or voidable nature of the Nevada marital dissolution. The court will dismiss this first alternative theory for failure to state a claim.

A cause of action has been plausibly stated as to the existence of community property that is property of the estate, 11 U.S.C. § 541(a)(2). The court will not dismiss this second alternative theory and will allow this theory to remain pending.

Second Cause of Action: Fraudulent Transfers (11 U.S.C. § 544(b))

Salven seeks to set aside the (1) May 5, 2008, transfers of 14233 South Highland, the Fowler Property, 13283 South Highland, and the Elkhorn Property from Dalip Nijjar to Virpal Nijjar, (2) Virpal's 2014, transfer of those properties to VK Nijjar Farms LLC, and (3) VK Nijjar Farms, LLC 2014, transfer of the Fowler residence back to Virpal Nijjar, under 11 U.S.C. §§ 544(b), 550(a)(1)-(2), Cal. Civ. Code § 3439 et seq. First Am. Compl., prayer ¶ B and ¶¶ 17, 20, 146, 153-55. He purports to do so by asserting the rights of impacted creditor Fresno Truck Center. First Am. Compl. ¶¶ 23, 152.

The Nijjar defendants move to dismiss because (1) the trustee's claim is time barred, (2) the trustee has not pled all of the elements of a fraudulent transfer cause of action, and (3) the transferred properties were encumbered and, therefore, not an asset from which creditors could be paid.

Law of Fraudulent Transfers

Section 544(b) of the Bankruptcy Code establishes the applicable legal rule. It states: "[T]he trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title." 11 U.S.C. § 544(b)(1).

California has adopted the Uniform Fraudulent Transfer Act, Cal. Civ. Code §§ 3439-3439.14, and recognizes two species of fraudulent transfers: actual fraud and constructive fraud.

As to actual fraud, the statute provides:

A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer

or incurred the obligation . . . [w]ith actual intent to hinder, delay, or defraud any creditor of the debtor.

Cal. Civ. Code § 3439.04(a)(1).

As to constructive fraud, the statute provides:

A transfer made or obligation incurred by a debtor is avoidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation . . . [w]ithout receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor either: (A) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction[; or] (B) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

Cal. Civ. Code § 3439.04(a)(2).

The statute establishes an alternative test for constructive fraud. It further provides:

A transfer made or obligation incurred by a debtor is avoidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

Cal. Civ. Code § 3439.05.

Statute of Limitations

Bankruptcy trustees invoking the avoidance powers under 11 U.S.C. § 544(b) must satisfy two time deadlines: (1) applicable state law statutes of limitation or repose, and (2) 11 U.S.C. § 546(a) (ordinarily two years after the order for relief). Section 546(a) is not applicable here. And the only issue is whether any creditor held a claim not barred by applicable state law on the date of the petition. *In re EDP Inv.*, 523 B.R. 680, 692 (9th Cir. BAP 2015).

Actual and constructive fraud have different statutes of limitations. For actual fraud actions, the statute of limitations extends "[1] not later than four years after the transfer was made or obligation was incurred; or [2] if later, not later than one year

after the transfer or obligation was or reasonably could have been discovered. [Calif. Civ.C. § 3439.09(a); see *Monastra v. Konica Business Machines, U.S.A., Inc.* (1996) 43 CA4th 1628, 1645, 51 CR2d 528, 539; *In re Serrato* (BC ND CA 1997) 214 BR 219, 226]." March, Ahart & Shapiro, *California Practice Guide: Bankruptcy*, § 21.272.1 (Rutter Group 2017).

For constructive fraud in which transfers were made for less than "reasonably equivalent value," leaving the debtor insolvent or with unreasonably small assets for its operations, the statute of limitations extends to "not later than four years after the transfer was made or the obligation was incurred. [Calif. Civ.C. § 3439.09(b); *Monastra v. Konica Business Machines, U.S.A., Inc.*, supra, 43 CA4th at 1645, 51 CR2d at 539]" *Id.* § 21.272.2.

Subject to tolling exceptions, both are subject to a seven year statute of repose. "Notwithstanding any other provision of law, a cause of action under this chapter with respect to a transfer or obligation is extinguished if no action is brought or levy made within seven years after the transfer was made or the obligation was incurred." Cal. Civ. Code § 3439.09(c).

Construed in the light most favorable to the trustee as the non-movant, the First Amended Complaint does not plead a cause of action for a fraudulent transfer given the 4-year statute of limitations. The outside date on which a fraudulent transfer action must have been filed is four years after the transfer ("the presumptively timely rule") or, if later, not later than one year after the transfer "was or reasonably could have been discovered" ("discovery rule") but in any event no later than 7 years after the transfer. Cal. Civ. Code § 3439.09(a),(c).

For purposes of the four-year statute of limitations, the clock started on the date the transfer was recorded. See Cal. Civ. Code § 3439.06(a)(1). Here, those transfers occurred on July 7, 2008. First Am. Compl. ¶ 20, May 5, 2017, ECF # 63. The clock stopped when a creditor (here, Fresno Truck Center) or the trustee filed a complaint challenging the transfer. *Kupetz v. Wolf*, 845 F.2d 842, 845 (9th Cir. 1988); *In re Brun*, 360 B.R. 669, 671 (Bankr. C.D. Cal. 2007). Here, that occurred on December 2, 2012. First Amended Complaint ¶ 97, May 5, 2017, ECF # 63. Since creditor Fresno Truck Center's complaint was filed more than 4 years after the quitclaim deed was recorded, the First Amended Complaint pleads facts indicating this creditor's complaint fell outside the statute of limitations. If Fresno Truck Center's complaint was outside the statute of limitations, then the inference is that both it, and this later-filed First Amended Complaint, are barred by the statute of limitations.

The discovery rule, moreover, applies to cases that fall outside the four-year statute of limitations. In this case, under the discovery rule, the complaint is only timely if it was filed within one year

after the transfer "was or reasonably could have been discovered" and within the statute of repose (before July 7, 2015, the 7 year anniversary of the transfer.

The Ninth Circuit Appellate Panel has rejected the argument that the mere recordation of a deed starts the clock for the purposes of the discovery rule. *In re Ezra*, 537 B.R. 924 (9th Cir. BAP 2015) (rejecting recordation as a reason the trustee should have known of the transfer). The *Ezra* court noted that the discovery rule "does not commence until the plaintiff has reason to discover the fraudulent nature of the transfer."

The Bankruptcy Appellate Panel recently applied this discovery rule. It stated as follows:

In any event, for purposes of this appeal, suffice it to say that [the trustee] could not have properly invoked this discovery rule **unless he alleged facts plausibly tending to demonstrate that the fraudulent nature of the transfers was not discovered earlier and reasonably could not have been discovered earlier.** See *Denholm v. Houghton Mifflin Co.*, 912 F.2d 357, 362 (9th Cir. 1990); *Sun 'n Sand, Inc. v. United Cal. Bank*, 21 Cal. 3d 671, 701-02 (1978); see also *Ezra v. Seror* (*In re Ezra*), 537 B.R. 924, 933 (9th Cir. BAP 2015) ("the one-year period under Cal. Civ. Code § 3439.09(a)'s discovery rule does not commence until the plaintiff has reason to discover the fraudulent nature of the transfer.").

In re Mihranian, No. 2:13-BK-39026-BR, 2017 WL 2775044, at *10 (B.A.P. 9th Cir. June 26, 2017)

Here the complaint does not plead the date when Fresno Truck Center actually discovered the Nijjar Farms transfer, nor does it plead any facts showing that the fraudulent nature of the transfer could not have been discovered earlier. A cause of action has not been stated.

Failure to Plead All Elements

As the Nijjar defendants note, the First Amended Complaint is not a model of clarity. But this court believes that the second cause of action attempts to plead both actual and constructively fraudulent transfers.

Pleading an actual fraudulent transfer requires a showing that the debtor had the "actual intent to hinder, delay, or defraud any creditor." *In re Ezra*, 537 B.R. 924 (9th Cir. BAP 2015); Cal. Civ. Code § 3439.04(a)(1). This may be demonstrated by direct or circumstantial evidence.

The First Amended Complaint contains allegations that would, if proven, constitute direct evidence of intent to hinder or delay Fresno Truck Center. First Amended Complaint ¶¶ 90-91 & Exh. 18, May 5, 2017, ECF # 63 ("The debtor told Westamerica Bank that Debtor and Virpal divorced to shield assets from [Fresno Truck Center].")

Actual intent may also be shown by circumstantial evidence. A variety of statutory factors may be considered in determining actual intent.

In determining actual intent under paragraph (1) of subdivision (a), consideration may be given, among other factors, to any or all of the following: (1) Whether the transfer or obligation was to an insider. (2) Whether the debtor retained possession or control of the property transferred after the transfer. (3) Whether the transfer or obligation was disclosed or concealed. (4) Whether before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit. (5) Whether the transfer was of substantially all the debtor's assets. (6) Whether the debtor absconded. (7) Whether the debtor removed or concealed assets. (8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred. (9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred. (10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred. (11) Whether the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.

Cal. Civ. Code § 3439.04(b)(1)-(11). No single factor is dispositive and the court should consider all relevant circumstances. *In re Ezra*, 537 B.R. 924 (9th Cir. BAP 2015).

The First Amended Complaint pleads that (1) the transfer was to Dalip Nijjar's spouse, First Amended Complaint ¶¶ 4, 17, May 5, 2017, ECF # 63; (2) Dalip remained in control of the assets, First Amended Complaint ¶¶ 39, 68, 89, 98; and (3) transfers' on May and July 2008 were proximate in time to the Fresno Truck Center debt, August 2008, First Amended Complaint ¶¶ 17, 20, 23. In short, actual fraudulent intent has been sufficiently pled under the circumstantial-evidence approach.

Pleading constructive fraud requires different factual allegations.

A plaintiff can also plead fraudulent conveyance by demonstrating facts sufficient to raise a presumption of fraudulent intent. This is referred to as constructive

intent. Cal. Civ. Code § 3439.04(a)(2). Constructive intent is shown when the debtor didn't receive "reasonably equivalent value of exchange for the transfer" and one of the following three elements is met: (1) the debtor was engaged in a transaction where the remaining assets of the debtor were unreasonably small in relation to the transaction; (2) the debtor reasonably intended to incur debt beyond his ability to pay; or (3) the debtor was insolvent at the time of the transfer and the creditor's claim arose before the transfer was made. *Id.* §§ 3439.04(a)(2), 3439.05.

Gottex Fund Mgmt. Ltd. v. MKA Real Estate Opportunity Fund I, LLC, No. SACV13922AGRNBX, 2013 WL 12137878, at *3 (C.D. Cal. Dec. 23, 2013)."

Here, the complaint is silent on the question of reasonably equivalent value received. First Am. Compl. ¶¶ 17-20, May 5, 2017, ECF # 63. It also does not plead unreasonably small assets after the transaction or facts from which the court may infer Dalip Nijjar's intent to incur debts beyond his ability to pay. *Id.* For this reason, a cause of action for a constructive fraudulent transfer has not been stated.

Transferred Assets Were Encumbered

As pled here, the trustee's claims are premised on the "transfer" of assets, i.e. real property. First Amended Complaint ¶¶ 17-20, 146. Transfer is a defined term: "**'Transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance.**" Cal. Civ. Code § 3439.01(m). Asset is also a defined term. "**'Asset'** means property of a debtor, but the term **does not** include the following: (1) **Property to the extent it is encumbered by a valid lien.** (2) Property to the extent it is generally exempt under nonbankruptcy law. (3) An interest in property held in tenancy by the entirety to the extent it is not subject to process by a creditor holding a claim against only one tenant." Cal. Civ. Code § 3439.01(a)(1)-(3).

Here, the Nijjar defendants argue that the plaintiff has not plead the existence of non-exempt equity from which creditors could be paid. Motion to Dismiss, p. 16, lines 22-26, November 1, 2017, ECF # 90. As to each of the properties, i.e., 14233 South Highland, the Fowler Property, 13283 South Highland and the Elkhorn Property, there is no allegation as to the existence of non-exempt equity that might be used to pay creditors. First. Am. Compl. ¶¶ 7-10, May 5, 2017, ECF # 63. Therefore, these properties are not alleged to be assets as defined in Cal. Civ. Code § 3439.01(a)(1)-(3). Without pleading the existence of assets as statutorily defined, the First

Amended Complaint fails to plead the existence of statutory transfers.

Because the First Amended Complaint's second cause of action does not sufficiently plead *transfers of assets*, it does not satisfy the plausible claim requirements of *Iqbal* and *Twombly*. As a consequence, the court will grant the motion to dismiss on all grounds as to the second cause of action with leave to amend.

Third Cause of Action: Fraudulent Transfers (11 U.S.C. § 548)

Salven seeks to set aside under 11 U.S.C. §§ 548 and 550 (1) an "Interspousal Transfer Deed on September 22, 2014; (2) transfers of two checks from Dalip Nijjar to Nijjar Farms, Inc.; (3) transfers of thirteen check from Dalip Nijjar to Virpal Nijjar's account # 3651; and (4) transfer of two checks from Dalip Nijjar to Virpal Nijjar. First Am. Compl. ¶¶ 165-182, May 5, 2017, ECF # 63.

The Nijjar defendants move to dismiss because check transfers because they contend that there has been no showing that the checks actually belonged to Dalip Nijjar in the first instance. And, in fact, they contend a fair reading of the complaint indicates that the checks, and funds represented by them, belonged to Nijjar Farms.

Law of Fraudulent Transfers

"The trustee may **avoid any transfer** (including any transfer to or for the benefit of an insider under an employment contract) **of an interest of the debtor in property**" 11 U.S.C. § 548(a).

Iqbal and Twombly Applied

Here, the court finds that Salven has pled a plausible claim of ownership in the checks transferred to Virpal Nijjar and Nijjar Farms, Inc. For example, Salven pleads "Golden State issued a check for \$5,089.97 made payable to the debtor." First Am. Compl. ¶ 92, May 5, 2017, ECF # 63. Similarly, Salven pleads, "National Raisin Company issued a check for \$2,252.30 payable to the Debtor." First Amended Complaint ¶ 93. For pleading purposes, the Dalip Nijjar's interest in these checks has been sufficiently pled.

As a consequence, the court will deny the motion to dismiss as to the third cause of action.

Fourth Cause of Action: Fraudulent Transfers (11 U.S.C. § 544(b))

Salven seeks to set aside (1) the transfers of three checks from the debtor to Nijjar Farms, Inc.; (2) the transfer of \$25,000 (mode unknown) from the debtor to Nijjar Farms, LLC; and (3) the transfers of two checks debtor to Virpal Nijjar. First Am. Compl. ¶¶ 183-198, May 5, 2017, ECF # 63.

The Nijjar defendants move to dismiss because they contend that there has been no showing that the checks actually belonged to Dalip Nijjar in the first instance.

Law of Fraudulent Transfers

"Asset" means property of a debtor . . . "Cal. Civ. Code § 3439.01(a) (emphasis added).

Iqbal and Twombly Applied

Here, the court finds that Salven has pled a plausible claim of ownership in the checks transferred to Virpal Nijjar, Nijjar Farms, Inc., and Nijjar Farms, LLC. First Amended Complaint ¶¶72-77, 184, 194, May 5, 2017, ECF # 63. And it does so for the same reasons as it did so as to the second cause of action.

The Nijjar defendants argue, "It is hard to imagine the logic that Dalip [Nijjar] would sign over the checks to Virpal or one of her entities unless the funds belonged to those entities." Mot. to Dismiss 18:8-9, Nov. 1, 2017, ECF # 90.

But this argument is misplaced in the Rule 12(b)(6) context. "[T]he choice between two plausible inferences that may be drawn from factual allegations is not a choice to be made by the court on a Rule 12(b)(6) motion." Here, there are two plausible inferences. One such inference is the funds belonged to Virpal Nijjar or one of the entities; the other inference is that the funds belonged to Dalip Nijjar and he transferred them to another to withhold them from creditors.

As a consequence, the court will deny the motion to dismiss as to the third cause of action.

Fifth Cause of Action: Declaratory Relief (Dalip Nijjar 50% Member of VK Farms, LLC)

Salven seeks declaratory relief that Dalip Nijjar owns a 50% interest in Nijjar Farms, LLC. First Amended Complaint, ¶¶ 199-204 and prayer ¶ E, May 5, 2017, ECF # 63. The First Amended Complaint concedes that Virpal Nijjar is the sole member. First Amended Complaint ¶¶ 28-29. But it argues that the conduct of the parties, equities and facts and circumstances, Dalip Nijjar should be deemed a 50% owner. *Id.* at ¶ 203.

The Nijjar defendants move to dismiss on grounds that there is no authority for the proposition that a non-member may be deemed to be a member by court order. The trustee opposes, arguing that (1) Virpal Nijjar's membership interest is community property, and (2) both Nijjars' representations that Dalip Nijjar was a member allow this court to declare him so.

Community Property Interest

Dalip Nijjar's community property interest in Virpal Nijjar's membership interest in VK Nijjar Farms, LLC appears for the first time in opposition to the motion. It is not plead in the First Amended Complaint. As a result, that argument is not a basis to deny the motion to dismiss this cause of action.

Defacto Ownership

Two avenues exist for the trustee to contend that Dalip Nijjar has a claim to a membership interest. The first such avenue is membership established by operation of law of agreement of the parties, i.e. Dalip Nijjar and Virpal Nijjar. "(c) **After formation of a limited liability company, a person becomes a member as follows:** (1) As provided in the operating agreement. (2) As the result of a transaction effective under Article 10 (commencing with Section 17710.01). **(3) With the consent of all the members.** (4) If, within 90 consecutive days after the limited liability company ceases to have any members, the last person to have been a member, or the legal representative of that person, designates a person to become a member, and the designated person consents to become a member." Cal. Corp. Code § 17704.01(3). (emphasis added).

Most generously read, the representations to creditors with respect to Dalip's ownership give rise to an inference of consent. But the court does not find these allegations sufficient under *Iqbal* and *Twombly*'s standards, particularly because the First Amended Complaint does not address whether the consent provisions have been modified by the Certificate of Formation, Articles of Incorporation or the Operating Agreement.

Second, principles of equity, e.g., equitable estoppel, could be applied, barring Virpal Nijjar from denying Dalip Nijjar's membership interest. Cal. Corp. Code § 17701.07(b).

A valid claim of equitable estoppel consists of the following elements: (a) a representation or concealment of material facts (b) made with knowledge, actual or virtual, of the facts (c) to a party ignorant, actually and permissibly, of the truth (d) with the intention, actual or virtual, that the ignorant party act on it, and (e) that party was induced to act on it. (internal citations omitted). There can be no estoppel unless all of these elements are satisfied. (internal citations omitted).

13 Witkin, *Summary of Cal. Law* § 213 (2017).

Certainly the plaintiff has pled at least some of the elements supporting a creditor's allegation of estoppel. But the trustee has not been misled and, even if the trustee stands in the creditors'

shoes, he has not pled that the creditor was induced to act by the representation that Virpal Nijjar and Dalip Nijjar were members, rather than the purported state of facts, e.g. that only Virpal Nijjar was a member.

As a consequence, the court will grant the motion to dismiss as to the fifth cause of action with leave to amend.

Sixth Cause of Action: Judicial Dissolution of VK Nijjar Farms, LLC

Salven seeks judicial dissolution of Nijjar Farms, LLC, under Cal. Civ. Code § 17707.03. First Am. Compl., ¶¶ 205-208 and prayer ¶ F, May 5, 2017, ECF # 63.

The relevant statute provides in pertinent part:

(a) Pursuant to an action filed by any manager or by any member or members of a limited liability company, a court of competent jurisdiction may decree the dissolution of a limited liability company whenever any of the events specified in subdivision (b) occurs.

(b)(1) It is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement. (2) Dissolution is reasonably necessary for the protection of the rights or interests of the complaining members. (3) The business of the limited liability company has been abandoned. (4) The management of the limited liability company is deadlocked or subject to internal dissension. (5) Those in control of the limited liability company have been guilty of, or have knowingly countenanced, persistent and pervasive fraud, mismanagement, or abuse of authority.

Cal. Corp. Code § 17707.03.

Here, dissolution of the limited liability company is predicated on ownership, in part, by Dalip Nijjar. As set forth above, the plaintiff has not yet pled plausible facts demonstrating ownership by Dalip Nijjar.

As a consequence, the court will grant the motion to dismiss as to the sixth cause of action with leave to amend.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Defendants Virpal Nijjar, VK Nijjar Farms, Inc. and Nijjar Farms, LLC's motion to dismiss the First Amended Complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure has been presented

to the court. Having reviewed the motion and papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is granted with leave to amend as to (1) the first alternative theory of the first cause of action (void/voidable nature of the 2008 Nevada divorce); (2) the second cause of action (2008 transfer of four parcels of real property from Dalip Nijjar to Virpal Nijjar); (3) the fifth cause of action (Dalip Nijjar's 50% ownership interest in VK Farms, LLC); and (4) the sixth cause of action (judicial dissolution of VK Farms, LLC).

IT IS FURTHER ORDERED that the motion is denied as to (1) the second alternative theory of the first cause of action (existence of community property that is property of the estate); (2) the third cause of action (fraudulent transfer of Interspousal Transfer Deed on September 22, 2014, and 17 checks); and (3) the fourth cause of action (five checks and \$25,000).

IT IS FURTHER ORDERED that the plaintiff may file and serve a Second Amended Complaint **and** a redline copy comparing the First Amended Complaint and the Second Amended Complaint not later than January 31, 2018. **If filed, a Second Amended Complaint shall re-plead all counts (including those on which the motion to dismiss was denied);**

IT IS FURTHER ORDERED that if the trustee files and serves a Second Amended Complaint, Defendants Virpal Nijjar, VK Nijjar Farms, Inc. and Nijjar Farms, LLC shall file and serve either a responsive pleading or motion not later than February 21, 2017. Any motion shall be set for hearing on the first regularly scheduled hearing date after filing that is consistent with LBR 9014-1(f)(1).

IT IS FURTHER ORDERED that the parties shall not enlarge time without order of this court and, if any of the defendants fail to respond within the time specified herein, the plaintiff shall forthwith and without delay seek to enter the default of such non-responsive defendant[s].

18. [17-12781](#)-A-7 **IN RE: DALIP NIJJAR**
[17-1066](#) [GMJ-2](#)

CONTINUED MOTION TO HAVE COURT ABSTAIN FROM HEARING ISSUES
IN ADVERSARY COMPLAINT
11-1-2017 [[93](#)]

SALVEN V. NIJJAR ET AL
DAVID GILMORE/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

19. [17-12781](#)-A-7 **IN RE: DALIP NIJJAR**
[17-1066](#) [GMJ-3](#)

CONTINUED MOTION TO EXPUNGE
11-1-2017 [[96](#)]

SALVEN V. NIJJAR ET AL
DAVID GILMORE/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling