



**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Chief Judge Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: TUESDAY
DATE: JUNE 13, 2023
CALENDAR: 10:30 A.M. ADVERSARY PROCEEDINGS

Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be heard simultaneously: (1) **IN PERSON** in Courtroom 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

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PRE-HEARING DISPOSITION INSTRUCTIONS

RULINGS

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

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. However, non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [23-20305](#)-A-7 **IN RE: LAKHWINDER VIRK AND RAJINDER KAUR**
[23-2040](#) [FEC-1](#)

ORDER TO SHOW CAUSE
5-12-2023 [[11](#)]

WELLS FARGO EQUIPMENT FINANCE,
INC. V. VIRK ET AL

Final Ruling

The Order to Show Cause is discharged; no sanction is imposed. No appearance is necessary. A civil minute order shall issue.

2. [14-25820](#)-A-11 **IN RE: INTERNATIONAL MANUFACTURING GROUP,**
INC.
[15-2122](#) [FEC-15](#)

PRE-TRIAL CONFERENCE RE: AMENDED ORDER TO SHOW CAUSE
1-17-2023 [[695](#)]

MCFARLAND V. CARTER ET AL

No Ruling

3. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2060](#) [FEC-2](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT (1) AVOID AND RECOVER
FRAUDULENT TRANSFERS, ET AL.
7-28-2022 [[1](#)]

GOLDEN V. KIDZ 4 CHRIST EARLY
LEARNING CENTERS, INC.
DAVID GOODRICH/ATTY. FOR PL.

No Ruling

4. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2070](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
9-15-2022 [[6](#)]

GOLDEN V. QUINTANA
DAVID GOODRICH/ATTY. FOR PL.
ADVERSARY PROCEEDING CLOSED: 5/22/23

Final Ruling

This Adversary case was dismissed on May 2, 2023. The Status Conference is concluded.

5. [22-21365](#)-A-13 **IN RE: RAFAEL/VIANA LARA**
[23-2034](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
4-11-2023 [[1](#)]

LARA, JR. ET AL V. BOSCO
CREDIT, LLC ET AL
KIM BEATON/ATTY. FOR PL.

No Ruling

6. [22-21365](#)-A-13 **IN RE: RAFAEL/VIANA LARA**
[23-2034](#) [FEC-1](#)

ORDER TO SHOW CAUSE
5-12-2023 [[12](#)]

LARA, JR. ET AL V. BOSCO
CREDIT, LLC ET AL

Final Ruling

The Order to Show Cause is discharge; no sanctions are imposed. No appearance is necessary. The court will issue a civil minute order.

7. [22-21365](#)-A-13 **IN RE: RAFAEL/VIANA LARA**
[23-2034](#) [KMB-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING
5-11-2023 [\[8\]](#)

LARA, JR. ET AL V. BOSCO
CREDIT, LLC ET AL
UNKNOWN TIME OF FILING/ATTY. FOR MV.

No Ruling

8. [21-22496](#)-A-7 **IN RE: LILLIAN/ISAGANI SISAYAN**
[23-2027](#) [REV-2](#)

MOTION FOR REMAND AND/OR MOTION FOR COMPENSATION BY THE LAW
OFFICE OF REVEILLE LAW, P.C. FOR JASON A. BRAXTON,
PLAINTIFFS ATTORNEY(S)
4-20-2023 [\[10\]](#)

RELIANCE COMMUNITY, INC. ET AL
V. DIGNITY HEALTH ET AL
JASON BRAXTON/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

This matter is continued to August 8, 2023, at 10:30 a.m. The matter has been fully briefed and, absent leave of court, no additional filings in support of, opposition to, reply to and/or evidentiary objections are authorized. A civil minute order shall issue.

9. [21-22496](#)-A-7 **IN RE: LILLIAN/ISAGANI SISAYAN**
[23-2027](#) [REV-5](#)

MOTION TO DISMISS COUNTERCLAIM
5-1-2023 [\[27\]](#)

RELIANCE COMMUNITY, INC. ET AL
V. DIGNITY HEALTH ET AL
JASON BRAXTON/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Counterclaim by Lillian Sisayan and Isagani Sisayan

Notice: Written opposition filed

Disposition: Denied

Order: Civil minute order

Date Converted: November 18, 2021

This is a motion to dismiss a counterclaim for willful violation of the stay. 11 U.S.C. § 362(a), (k)(1). Counterdefendants Reliance Community, Inc. et al. move under Rule 12(b)(6) to dismiss the complaint against them for failure to state a cause of action. Counterclaimants Lillian Sisayan and Isagani Sisayan oppose the motion.

The sole issue is whether the debt in dispute arose prepetition, such that the Sisayans are protected by the stay, 11 U.S.C. § 362(a)(1), (a)(6), or whether it arose postpetition, such that they are not protected by the stay.

FACTS

As alleged in the now-removed state court complaint (which runs 59 pages and 199 paragraphs), Verified Compl., *Reliance Community, Inc. v. Dignity Health*, No. 34-2023-00333390 (Sacramento County Superior Court 2023), Notice of Removal, ECF No. 1, this dispute arose in the following manner.

The cast of key players includes the following: (1) plaintiffs Reliance Community, Reliance Group, Reliance Care, Reliance Village, Golden Pathways and Harmony Living (collectively "Reliance Plaintiffs"), who ran residential care facilities for the elderly; (2) defendant Dignity Health, who was an insurance company and/or health care provider; and (3) defendants Lillian Sisayan and Isagani Sisayan are individuals, which own and/or operate about a half dozen companies which operate under permutations of the name "Young at Heart."

In and about 2016, Dignity Health and Reliance Community started a program whereby elder persons---often otherwise homeless--under the care of Dignity Health would be referred to Reliance Community, which would undertake the residential care of those persons and Dignity Health would pay Reliance Community for those services. Compensation was to be determined on a per person per day basis; the

agreed rate was intended to match the level of service required for the individual housed.

The program was so successful that Reliance was unable to provide, directly, residential care services for all the persons that Dignity Health wished to place with them. Dignity Health and Reliance agreed that Reliance could employ third-party subcontractors to provide additional residential care facilities to house persons referred by Dignity Health. Under the terms of the subcontractor arrangement, approved subcontractors agreed to house needy persons and abide by the rules of the referral program. In exchange, the approved subcontractor would submit invoices for services rendered to Reliance, which apparently would in turn be paid by Dignity Health.

Later, Reliance, through its Chief Executive Officer, Pak Wu, entered into discussions with the Sisayans, whereby one or more of the Young at Heart companies would become approved subcontractors to provide residential care services to elderly, homeless persons. In March 2020, Reliance and Sisayan and Young at Heart entered into an agreement by which Sisayans/Young at Heart would provide residential care facility services for elderly persons referred by Dignity Health. As a part of that agreement, Sisayans made representations about Young at Heart to Reliance regarding its financial stability and the adequacy of its capitalization. Sisayans and Young at Heart concealed that it (1) failed to comply with federal and state labor laws regarding wages and hours; (2) there was pending against it a civil action by at least six employees/former employees ("Balocating plaintiffs) for labor law violations; and (3) Sisaysans had engaged in a series of fraudulent transfers of real property to frustrate creditors (including the Balocating plaintiffs).

After the Sisayans entered into the subcontractor agreement with Reliance, the Balocating plaintiffs obtained a default judgment against them in the amount of \$2.1 million. The Balocating plaintiffs commenced collection efforts against the Sisayans and Young at Heart. Among the collection methods employed was an order from the state court assigning "any non-exempt rents and care service payments by earned by the Sisayans and/or Young at Heart" to the Balocating plaintiffs.

A Writ of Execution issued and was served (perhaps not wholly compliant with applicable law) on Reliance Community and, at some point, on Dignity Health.

In July 2021, the Sisayans filed a Chapter 11 bankruptcy. None of the Reliance plaintiffs were listed on the matrix of creditors. But in August 2021, Lillian Sisayan informed Reliance Community through its Chief Executive Officer, Pak Wu, of the bankruptcy. It does not appear that the Reliance Community affiliated companies had actual knowledge of the bankruptcy.

On November 18, 2021, the case was converted to Chapter 7. Order, ECF No. 175.

Sisayan and her attorney encouraged Reliance Community to continue to remit payment for care services to Young at Heart. As the Reliance plaintiffs explain it:

On September 1, 2021 [almost two months after the bankruptcy was filed], Plaintiff RELIANCE COMMUNITY received written correspondence from LEWIS PHON, counsel of record for Defendants LILLIAN SISAYAN and ISAGANI SISAYAN in their Chapter 11 bankruptcy case.

On September 1, 2021, Defendants LILLIAN SISAYAN and ISAGANI SISAYAN, through this written correspondence from their legal counsel and employed agent, represented to RELIANCE COMMUNITY that: (1) Defendant Lillian Sisayan would "take responsibility if you do not pay Mr. Harrington [the Balocating plaintiffs' attorney]"; (2) the residents' care homes "should also be protected from any action by Mr. Harrington"; and (3) payment should continue to be made to Defendants LILLIAN SISAYAN and YOUNG AT HEART.

Verified Compl. ¶¶ 93-94, *Reliance Community, Inc. v. Dignity Health*, No. 34-2023-00333390 (Sacramento County Superior Court 2023), Notice of Removal, ECF No. 1.

Thereafter, between September 2021 and October 2022, Reliance Community remitted monthly payments to Young at Heart.

In May 2022, the Balocating plaintiffs (defendants herein) asserted that monthly payments to the Sisayans and Young at Heart had been assigned by the Sacramento Superior Court to them and all payments from May 2021, should have been paid to the Balocating plaintiffs.

In August 2022, Reliance Community prepared and submitted monthly invoices for 51 residents, who had been referred to Young at Heart under the subcontractor agreement, in the amount of \$231,027.76. *Id.* at ¶¶ 103-106. Dignity Health paid Reliance Community \$25,901.76 and withheld \$205,116 under a levy made by the Balocating plaintiffs (defendants herein).

The Sisayans have not yet received their discharge.

PROCEDURE

In January 2023, more than two years after the Sisayans filed bankruptcy, Reliance Community and five affiliates filed an action in the Sacramento County Superior Court naming as defendants the Sisayans, the Young at Heart Companies, and a myriad of others. Verified Compl. ¶¶ 93-94, *Reliance Community, Inc. v. Dignity Health*, No. 34-2023-00333390 (Sacramento County Superior Court 2023), Notice of Removal, ECF No. 1. The causes of action included: fraud, civil conspiracy to commit fraudulent transfers, negligent misrepresentation, breach of fiduciary duty, breach of contract, conversion, Business and Professions Code § 17200, and declaratory relief.

Defendants Sisayans and Dan Christopher Matias Robes (one of the Balocating plaintiffs) removed the state court action to this court.

Sisayans answered the complaint and filed a cross-complaint, contending that the filing of the state court action, *Reliance Community, Inc. v. Dignity Health*, No. 34-2023-00333390 (Sacramento County Superior Court 2023), against them violated the stay. 11 U.S.C. § 362(a), (k)(1). Answer and Counterclaim ¶¶ 205-211, ECF No. 19. The counterclaim for violation of the stay is predicated on (1) the counter-defendants' initiation of the state court action; and (2) the facts contained in the verified complaint. *Id.*

Reliance Community Inc. now moves under Rule 12(b)(6) to dismiss the counterclaim for stay violation, contending that any debts owed to them arose post-petition, and are therefore not included within the stayed activities. 11 U.S.C. § 362(a). Mem. P & As 3:7-14, 8:4-11, ECF No. 28. As the Reliance Community counter-defendants phrase it, "Only after being financially damaged on or around August 29, 2022, did Plaintiff learn that several of these representations were false as prior to that Plaintiffs had suffered no damage." *Id.* at 3:12-13. oppose dismissal.

JURISDICTION

This court has jurisdiction. 28 U.S.C. §§ 1334(a)-(b), 157(b); see also General Order No. 182 of the Eastern District of California. Jurisdiction is core. 28 U.S.C. § 157(b)(2)(A), (G), (O); *Johnston Env't. Corp. v. Knight (In re Goodman)*, 991 F.2d 613, 617 (9th Cir. 1993); *In re Moore*, 631 B.R. 764, 777 (Bankr. W.D. Wash. 2021), appeal dismissed, No. 21-05529 RJB, 2021 WL 5824383 (W.D. Wash. Dec. 8, 2021), *aff'd sub nom. Moore v. Flagstar Bank, FSB*, No. 22-35042, 2023 WL 3092303 (9th Cir. Apr. 26, 2023).

Plaintiffs do not consent to the entry of final orders and judgments. Pltf. Rule 9027(e)(3) Statement, ECF No. 8; defendants do so consent. 28 U.S.C. § 157(b)(3); *Wellness Int'l Network, Ltd. v. Sharif*, 135 S.Ct. 1932, 1945-46 (2015). Counterclaim 19:25-26, ECF No. 19.

LAW

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). Failure to state a claim may exist as a matter of law or as a matter of fact. *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121-22 (9th Cir. 2008) ("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"); *accord Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). In considering the sufficiency of the complaint, the court may consider the factual allegations in the complaint itself and 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).

"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)).

After *Iqbal* and *Twombly*, courts employ a three-step analysis in deciding Rule 12(b)(6) motions. At the outset, the court takes notice of the elements of the claim to be stated. *Eclectic Properties East, LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 997 (9th Cir. 2014). Next, the court discards conclusions. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009); *United States ex rel. Harper v. Muskingum Watershed Conservancy District*, 842 F.3d 430, 438 (6th Cir. 2016) (the complaint failed to include "facts that show how" the defendant would have known alleged facts). Finally, assuming the truth of the remaining well-pleaded facts, and drawing all reasonable inferences therefrom, the court determines whether the allegations in the complaint "plausibly give rise to an entitlement to relief." *Iqbal*, 556 U.S. at 679; *Sanchez v. United States Dept. of Energy*, 870 F.3d 1185, 1199 (10th Cir. 2017). See generally, *Wagstaff Practice Guide: Federal Civil Procedure Before Trial*, Attacking the Pleadings, Motions to Dismiss § 23.75-23.77 (Matthew Bender & Company, Inc. 2019).

Plausibility means that the plaintiff's entitlement to relief is more than possible. *Twombly*, 550 U.S. at 570 (the facts plead "must cross the line from conceivable to plausible"); *Almanza v. United Airlines, Inc.*, 851 F.3d 1060, 1074 (11 Cir. 2017). Allegations that are "merely consistent" with liability are insufficient. *Iqbal*, 556 U.S. at 662; *McCauley v. City of Chicago*, 671 F.3d 611, 616 (7th Cir. 2011).

If the facts give rise to two competing inferences, one of which supports liability and the other of which does not, the plaintiff will be deemed to have stated a plausible claim within the meaning of *Iqbal* and *Twombly*. *Houck v. Substitute Tr. Servs., Inc.*, 791 F.3d 473, 484 (4th Cir. 2015); *16630 Southfield Ltd. P'hsip v. Flagstar Bank, F.S.B.*, 727 F.3d 502, 505 (6th Cir. 2013); see also, *Wagstaff*, Motion to Dismiss at § 23.95. But if one of the competing inferences is sufficiently strong as to constitute an "obvious alternative explanation," that inference defeats a finding of plausibility, and the complaint should be dismissed. *Marcus & Millichap Co.*, 751 F.3d

at 996 ("Plaintiff's complaint may be dismissed only when defendant's plausible alternative explanation is so convincing that the plaintiff's explanation is implausible."); *New Jersey Carpenters Health Fund v. Royal Bank of Scotland Group, PLC*, 709 F.3d 109, 121 (2nd Cir. 2013).

11 U.S.C. § 362

Section 362 determines the scope of the stay, its duration and the consequences for its violation.

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of--

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

...

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title[.]

11 U.S.C. § 362(a).

Section 362(k) provides one of the remedies against stay violators.

Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

11 U.S.C. § 362(k).

DISCUSSION

Chapter 7 forgives debtors for (almost) any debt that arose before the petition date. 11 U.S.C. §§ 523, 727. "In a chapter 7 case, the question of whether a particular debt falls within the discharge will depend on when that claim arose." *In re Moreno*, 479 B.R. 553, 564 (Bankr. E.D. Cal. 2012), citing *Siegel v. Fed. Home Loan Mortg. Corp.*, 143 F.3d 525, 532 (9th Cir.1998). "State law determines

whether a "debt," 11 U.S.C. § 523(a), exists. *Northbay Wellness Group, Inc. v. Beyries*, 789 F.3d 956, 959 n. 3 (9th Cir. 2015)." *In re Schmidt*, No. 20-25614-A-7, 2023 WL 488988, at *1 (Bankr. E.D. Cal. Jan. 24, 2023).

Federal law decides when the debt arose. *Siegel v. Fed. Home Loan Mortg. Corp.*, 143 F.3d 525, 532 (9th Cir.1998); *California Dep't of Health Servs. V. Jensen (In re Jensen)*, 995 F.2d 925, 929 (9th Cir. 1993).

Debt is a defined term. A debt means "liability on a claim." 11 U.S.C. § 101(12). A claim means "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5).

As a rule, "a claim arises, for purposes of discharge in bankruptcy, at the time of the events giving rise to the claim...." *O'Loghlin v. County of Orange*, 229 F.3d 871, 874 (9th Cir.2000); *In re Ybarra*, 424 F.3d 1018, (9th Cir. 2005). As *Ybarra*, stated it:

For example, in *Jensen*, we held that environmental cleanup expenses incurred post-petition arising from pre-petition conduct were discharged in bankruptcy. In *O'Loghlin*, alleged violations of the Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213, that took place before the date of confirmation⁶ met the definition of "claim" and were discharged in Orange County's bankruptcy, whereas violations that took place after the date of confirmation were not discharged. We reasoned that the County could not insulate itself from post-confirmation violations, despite its argument that they were part of the same course of conduct as pre-confirmation violations.

In re Ybarra, 424 F.3d 1018, 1022-23 (9th Cir. 2005) (internal citations omitted).

Particularly, where all the elements of a prima facie case have occurred or where the injured party is unaware of the harm, the Ninth Circuit has employed the "fair contemplation" test to ascertain whether the claims arose prepetition. *In re Jensen* 995 F.2d 925, 931 (9th Cir. 1993); *In re Zilog, Inc.*, 450 F.3d 996, 1000-1001 (9th Cir. 2006); *In re Morgan*, 197 B.R. 892 (Bankr. N.D. Cal. 1996). The key inquiry is whether the future damages based on "pre-petition conduct that can be fairly contemplated by the parties at the time of the debtor's bankruptcy." *Morgan*, 197 B.R. at 898. As one court noted in applying the fair contemplation test to a fraud claim:

While a fraud claim accrues when it may be fairly contemplated, the claim nonetheless accrues when "there [are] enough facts to show ... notice of the harm ... subsequently alleged to be fraudulent." *Stickrath v. Globalstar, Inc.*, 2008 WL 5384760 at *4 (N.D. Cal., Dec.22, 2008) (citing *In re Morgan*, 197 B.R. 892, 898-99 (N.D.Cal.1996)). Fair contemplation of a fraud claim may

exist even if a party lacks "complete knowledge of all pertinent facts." See *id.* Fair contemplation is likely where a potential claimant engages in negotiations and makes inquiries to guard against the possibility of being defrauded. *Morgan*, 197 B.R. at 899.

N'Genuity Enterprises Co. v. Pierre Foods, Inc., No. CV-09-385-PHX-GMS, 2010 WL 3023869, at *4 (D. Ariz. Aug. 2, 2010).

This court finds that the Sisayans have plead a plausible claim of stay violation, i.e., the existence of a prepetition claim that Reliance Community sought to enforce during the period of the stay. 11 U.S.C. § 362(a). Central to the court's thinking is the procedural context in which this arises: a motion to dismiss, Fed. R. Civ. P. 12(b)(6). And in finding that a plausible claim, i.e., the existence of a prepetition debt, has been plead the court notes the following.

First, the court may consider the superior knowledge of the Reliance Community plaintiffs with respect to the fair contemplation issue. *Oden v. Bos. Sci. Corp.*, 330 F. Supp. 3d 877, 899 (E.D.N.Y. 2018), adhered to on reconsideration, No. 18CV0334SJFSIL, 2019 WL 1118052 (E.D.N.Y. Mar. 11, 2019). At this juncture, the court may only consider the Reliance Community plaintiffs' pleadings on an issue that is essentially one of knowledge on the part of the respondent Reliance Community.

Second, due diligence by the injured party may be considered in finding fair notice of the claim. *Morgan*, 197 B.R. at 899. Here, the Reliance Community plaintiffs conducted due diligence, which suggests awareness of the issue.

Afterwards, and prior to entering into business with Defendants LILLIAN SISAYAN and YOUNG AT HEART, Plaintiff RELIANCE COMMUNITY conducted a due diligence review and confirmed that Defendant LILLIAN SISAYAN and her husband Defendant ISAGANI SISAYAN both mutually administered multiple [Residential Care Facilities for the Elderly] facilities ran by Defendant YOUNG AT HEART and owned several encumbered real estate properties through Sacramento County.

Verified Compl. ¶ 67, *Reliance Community, Inc. v. Dignity Health*, No. 34-2023-00333390 (Sacramento County Superior Court 2023), Notice of Removal, ECF No. 1 (emphasis added).

Third, Reliance Community had actual knowledge of the Balocating plaintiffs' judgment two and one-half months before the case was converted to Chapter 7 and that imparts knowledge of the bankruptcy and satisfies the fair contemplation test. Section 349(d) provides:

(a) Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but, except as provided in subsections (b) and (c) of this section, does not effect

a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

...

(d) A claim against the estate or the debtor that arises after the order for relief but before conversion in a case that is converted under section 1112, 1208, or 1307 of this title, other than a claim specified in section 503(b) of this title, shall be treated for all purposes as if such claim had arisen immediately before the date of the filing of the petition.

11 U.S.C. § 348(a), (d) (emphasis added).

Even if the Reliance Community plaintiffs did not fairly contemplate fraud before the Chapter 11 filing, they had actual knowledge of the Balocating judgment (for which they profess ignorance and claim foul) prior to conversion to Chapter 7.

On or about August 30, 2021, Defendant LILLIAN SISAYAN informed Plaintiff RELIANCE COMMUNITY and Mr. Wu (Reliance's Chief Executive Officer) that she and Defendant ISAGANI SISAYAH had filed for bankruptcy only as a part of the process of appealing the meritless judgment against Defendants LILLIAN SISAYAN, ISAGAI SISAYAN [and the Young at Heart entities..

Verified Compl. ¶ 87, *Reliance Community, Inc. v. Dignity Health*, No. 34-2023-00333390 (Sacramento County Superior Court 2023), Notice of Removal, ECF No. 1.

Thus, § 348(d) cures any deficiency in notice prior to the Chapter 11 and requires that the debt be "treated for all purposes as if" it had arisen prior to the filing of the Chapter 11 petition.

CONCLUSION

For each of these reasons, at least for the purposes of the sufficiency of pleading and surviving a Rule 12(b)(6) motion, the debt--if any--due the Reliance Community plaintiffs is a prepetition debt and the Sisayans have pleaded a plausible claim of stay violation.

While the court has ruled that for pleading purposes, only, the Reliance Community plaintiffs fairly contemplated their rights, this does not foreclose the issue for trial. Fairly contemplated is a question of fact. And the question will need to be addressed by a more fully developed evidentiary record.

The motion will be denied, and a civil minute order will issue.

CIVIL MINUTE ORDER

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

Reliance Community, Inc.'s motion has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied; and

IT IS FURTHER ORDERED that not later than 14 days from the entry of this order counter-defendants shall file an answer to the counterclaim; said answer shall comply with Federal Rule of Bankruptcy Procedure 7012(b).